

**Testimony of
Mr. Graham J. Brent
National Commission for the Certification of Crane Operators (NCCCO)
before the Advisory Committee on Construction Safety and Health (ACCSH)
regarding OSHA's Draft Proposal to Revise OSHA's Crane Operator Qualification
Requirement in the Cranes and Derricks in Construction Standard.**

March 31, 2015

Good afternoon. My name is Graham Brent and I am the Chief Executive Officer of the National Commission for the Certification of Crane Operators (NCCCO). NCCCO—or CCO as I shall also refer to this organization for brevity's sake—was formed in January 1995 as a non-profit organization to develop effective performance standards for safe crane operation to assist all segments of construction and general industry.

NCCCO's mission was—and remains today—to provide a thorough, independent assessment of operator knowledge and skill and, thereby, to enhance lifting equipment safety, reduce workplace risk, improve performance records, stimulate training, and give due recognition to the professional skill of crane operation.

My comments here today will be in the capacity of a certification body, one that conducts no operator training. By way of background, Mr. Chairman, since testing began in April 1996, NCCCO has issued over 280,000 CCO certifications to 100,000 individuals through almost 900,000 written and practical exams in one or more of 20 CCO certification categories offered in all 50 states. NCCCO has been nationally accredited as a personnel certification organization since 1998, and internationally accredited to ISO 17024 since 2007 through the personnel certification accreditation program developed and administered by ANSI—the American National Standards Institute. We have been formally recognized by Federal OSHA since 1999, and by more than a dozen other federal agencies and national organizations—including the Associated General Contractors of America, the International Union of Operating Engineers, and the Steel Erectors Association of America. And all states that have introduced licensing requirements for crane operators since the CCO program was introduced have accepted or adopted the CCO certification process by reference.

NCCCO has reviewed OSHA's Draft Proposal to Revise OSHA's Crane Operator Qualification Requirement in the Cranes and Derricks in Construction Standard. NCCCO commends OSHA for listening to crane users, manufacturers and certification bodies alike and taking their advice to remove crane capacity from the crane operator certification requirement. As industry experts have repeatedly stated since OSHA first declared its intention to interpret the C-DAC language in this way, crane operator skill is simply not determined by crane capacity in and of itself. In addition to being psychometrically unsupportable, to require crane operator certification to be driven by the capacity of the crane would be unduly burdensome to employers and operators alike and, more importantly, would contribute nothing to achieving improved crane safety.

NCCCO also applauds OSHA for accepting the expert opinion of both the construction industry and certification experts that certification, while a powerful tool in the employer's toolbox, cannot be expected to rise to the level of determining qualification,

as defined by OSHA. The almost infinite variety of crane models, the array of configurations they can be used in, and the variety of environments in which they are deployed quite simply make this administratively unachievable for any national certification program. As we have stated on numerous occasions, including at the OSHA hearing on the proposed rule held almost exactly six years ago to this day, certification—as powerful as it can be in revealing much about an operator’s knowledge and skill—is not a panacea and does not relieve an employer of his or her responsibility of determining whether or not a particular individual is qualified to operate a particular piece of equipment, on any particular day, in a particular environment.

How that determination is done, however, leads me to my next point. One major proposed addition to the rule is that of a greatly expanded role for evaluation of the operator by the employer. While evaluation is not certification, both involve the assessment of an operator’s hands-on skills. In the same spirit of cooperation and advice that NCCCO has brought to this debate over the past 13 years since the C-DAC committee was formed, we would like to offer the following observations on this proposed additional requirement.

The employer evaluation process proposed by OSHA appears to require evaluation by make and model of crane, as well as by capacity. As we have previously commented, there is already ample testimony on the record, from manufacturers and users alike, that there is no justification for evaluation on a piece of equipment simply because it is of a higher or lower capacity than another. As for boom length, how much longer does a crane boom have to be before OSHA would expect a new evaluation to be conducted?

A guiding precept of certification is that no testing is done unnecessarily. If there is no change in the skill set, there is no justification for additional testing. The same is true if someone is using a skill regularly; that is why NCCCO does not require certificants who have a given amount of experience to take a practical exam upon recertifying. The bottom line is that anything that could be challenged as “testing for testing’s sake” will not pass the accreditation threshold. We request simply that OSHA’s proposal in this regard be held to the same standard.

The emphasis OSHA appears to be placing on evaluation also raises the question of how the evaluator is selected. OSHA states in the draft proposed language that evaluations are to be conducted by “an individual who has the knowledge, training, and experience necessary to assess equipment operators.” To this should be added “and to determine competency” since the evaluator must attest to this on the Evaluation Form contained in Appendix D. That’s a tall order for both the employer and the person whom that employer designates as an evaluator. How does a person become competent to determine the competency of another? And how is an employer to achieve that?

In the certification world, and by way of contrast, the Practical Examiners that NCCCO trains to conduct the CCO practical exams must successfully participate in a rigorous three-day Examiner Workshop, pass a written Examiners’ exam, and then pass the practical exams themselves. If this is deemed necessary by ANSI as NCCCO’s accrediting body to authorize examiners to conduct practical exams necessary for a certification that OSHA has characterized as nothing more than a “learner’s permit”,

what steps are an employer to take to satisfy OSHA's requirement to determine competency by make, model and configuration of crane?

NCCCO also has reservations about the frequency with which these evaluations would be required. What, for instance, is the basis for the one-year and six-month time periods identified in the evaluation process? Do skills really atrophy to the point where a re-evaluation would be required at six-monthly intervals? In the world of certification, such periods have to be justified either by reference to established certification protocols or by independent studies. Without such corroborating evidence, such time periods may be judged as arbitrary.

Indeed, the role of OSHA's proposed evaluation in achieving the safety goal of this regulation could be called into question given the evidence at hand. Take, for example, the 30-year study conducted by the Construction Safety Association of Ontario that conclusively demonstrated the dramatic and positive effects of both training and certification on the construction-related accident rate in the province. Or the Cal-OSHA study published in 2008 that charted six years of fatality and injury data attributable to crane operations and revealed an 80% decline in deaths as well as a 57% decrease in injuries since accredited crane operator certification was mandated in the state in mid-2005, a remarkably close parallel to the trend already noted in Canada. Neither Ontario nor California (nor any of the 17 states that license or certify) require the type of employer evaluation proposed by OSHA, and lives have clearly been saved and injuries reduced.

Finally, we would request OSHA take another look at the proposed timeframe for the certification requirement. Under the draft proposed language, the extended date of November 10, 2017 would remain unchanged, but all other changes would take effect on the effective date of the rule. Five years after the final rule was published, and fully 12 years since C-DAC presented its final draft to this Committee, we see no reason for this continued delay. In the September 26, 2014 final rule that extended the certification deadline by a further three years, OSHA stated [Federal Register, Vol. 79, No. 187, Friday, September 26, 2014, page 57791, Col. 1.] "OSHA notes it is not constrained to use the entire three years to take action on this issue . . . OSHA will address the issue of operator qualification as quickly as it can, meaning the Agency could determine the appropriate regulatory action . . . and implement it in less than three years. In that case, the Agency could impose an earlier deadline . . ." Mr. Chairman, we urge OSHA to so do.

In closing, Mr. Chairman, I would like to thank you, the Committee and Federal OSHA for the opportunity to provide these observations here today in support of the effort to improve safety on worksites wherever lifting equipment is being used. NCCCO continues to stand prepared to lend its expertise in assisting OSHA achieve its safety mission.

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