

CRANE SAFETY GETS A LIFT



The long and winding road to update OSHA's crane safety regulations. BY DANIELLE J. COLE

The path to bring about changes in national crane safety standards evokes images of “the long and winding road” that The Beatles first sang about in 1969. The efforts to establish national crane safety standards date back almost as far as the original recording of that famous song. The current set of regulations governing the use of cranes and derricks in construction, based on consensus standards published from 1967-69, was implemented by the U.S. Department of Labor, Occupational Safety & Health Administration (OSHA) in 1971.

Since the time the cranes and derricks regulation first went into effect in 1971, industry professionals have worked with government representatives in an effort to expand the reach of the current regulations for the purpose of establishing higher safety standards. These efforts are aimed at the goal of reducing the number of crane-related accidents, injuries and fatalities, which occur annually. In furtherance of this

goal, in 2003 OSHA established the Crane and Derrick Negotiated Rulemaking Advisory Committee (C-DAC), which was charged with developing a new proposed safety standard, the Crane and Derrick Standard for Construction.

Following the committee's meetings, C-DAC reached a consensus on suggested regulations, completed its draft proposal of the new proposed safety standard and submitted it to OSHA in July 2004 for further action. The proposed regulations address common safety issues relevant to crane operations, including: certification and training of crane operators, ground conditions for crane operations, inspection of cranes, the erection and dismantling of cranes, operation of cranes near high-voltage power lines, and the use of safety devices and hand signals in crane operation.

Addressing a Need

The need for a thorough, nationally recognized set of regulations governing crane safety cannot be denied. Without established federal guidelines, states, cities, municipalities and counties are left to their own devices to establish adequate regulations governing crane safety. This is inefficient and costly. The absence of uniform standards for crane operator certification alone presents a significant risk to public safety. Certification or licensing of crane operators is not required in the vast majority of states, with only 15 states and a few cities requiring such credentials of crane operators. Even where such credentials are required, the certification standards are divergent. While some require certification by a nationally accredited crane operator testing organization, such as the National Commission for the Certification of Crane Operators (NCCCO), others utilize internally developed certification programs.

Industry professionals have long advocated the implementation of a federal regulation requiring operator certification by a national certification organization as a means of achieving standardization of qualifications and to promote transfer of operator credentials between states. The proposed Crane and Derrick Standard for Construction would create a federal regulation governing crane operator certification – a component missing in OSHA's current regulations.

The proposed regulations require different levels of operator certification based on equip-

ment capacities and types and additionally establish four separate means of attaining crane operator certification: certification through an accredited testing organization, qualification through an audited employer-testing program, qualification issued by the U.S. military or qualification through a state or local licensing authority. Under the proposed regulations, a certification would be valid for a period of five years, while the accreditation of testing agencies "would be required to be reviewed every three years to ensure continuing quality of testing materials and administration." Once the final regulations are published, employers will have a period of five years in which to meet the crane operator certification requirements established by the regulations.

A federal regulation requiring operator certification through an accredited process also will result in less cost to employers performing work in multiple jurisdictions, who might otherwise be subjected to the fees associated with obtaining multiple licenses under a state-by-state, city-by-city or county-by-county licensing scheme. Cost escalation from both a licensure and tax-dollar standpoint could be a significant consideration if additional cities and counties follow the path of others (e.g. New York City and Florida's Miami-Dade County) in enacting their own measures related to crane safety and certification. The taxpayer costs associated with developing and implementing multiple sets of crane safety standards across states, cities and counties are not only daunting, but given the existing federal regulations and the more expansive changes proposed by the new regulations, such measures are not guaranteed to withstand a legal challenge. On Jan. 14, 2009, the U.S. District Court for the Southern District of Florida ruled that the OSHA largely pre-empted Miami-Dade's crane safety ordinance enacted last year. OSHA's implementation of the new regulations will likely subject other crane safety measures to legal challenge.

Making Strides

Though it is unclear why the proposed Crane and Derrick Standard for Construction has not made its way through OSHA's rulemaking process earlier, the proposed regulations began making strides in late 2008. On Oct. 8, 2008, the proposed regulations were published for public comment, the period for which expired on Jan. 22, 2009. Informal public hearings were conducted by OSHA in Washington, D.C., March 17 to 20, 2009, where testimony and evidence relating to the proposed regulations was received from various industry organizations including the Associated General Contractors of America, the American Society of Safety Engineers, the Associated Builders & Contractors and the American National Standards Institute.

What is evident from reports of crane-related accidents in recent years is that change is necessary to protect both the industry and the public. The process of change, by and for the industry, is under way. OSHA has not yet provided a date certain upon which the Crane and Derrick Standard for Construction might make its way into the ranks of official law. The rulemaking process is, and has been, notoriously slow, and OSHA has left the door open to releasing revised drafts and engaging in further vetting, which could extend the rulemaking process for several years. While no definitive end to the long and winding road is yet in sight, it does appear that it is, perhaps, just over the horizon. ♦



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