



AGC of Texas

Highway, Heavy, Utilities & Industrial Branch



THOMAS L. JOHNSON
Executive Vice President

June 2, 2004

OSHA
DOCKET OFFICER
DATE JUN 2 2004
TIME S030
EX-67-12

Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Conference Room N-3437 A, B, C

RE: Crane and Derrick Negotiated Rulemaking Advisory Committee (C-DAC)
Docket No. S-030

Dear Sirs:

The C-DAC members and their respective affiliations have made a tremendous commitment to review and update 29 CFR 1926.550, Subpart N. I wish to thank the committee members for that commitment.

I am addressing you on the referenced subject as President of AGC of Texas – Highway, Heavy, Utilities, & Industrial Branch. The AGC of Texas represents small, medium and large contractors performing civil construction for public and private owners. The three hundred members of AGC of Texas performed over 120,000,000 work hours on public and private civil construction projects throughout Texas in 2003. The importance of safety to our chapter membership is shown in the average incident rate of 1.23. 2003 is representative of the award winning culture of safety our membership have developed in their firms.

The typical workforce of our membership is seventy-five (75) to eighty (80) percent Hispanic. Our typical member operates 6 to 8 cranes, employing 9 to 11 crane operators. Our members seek out the most qualified and competent workers to operate and maintain their cranes. Once hired these workers are provided additional training opportunities to enhance their knowledge.

AGC of Texas has a long history of supporting safety training and training of equipment operators, including crane operators. For the past eight years we have participated in a grant program offering equipment operator training at no cost to the employer.

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AGC of Texas has reviewed the current working drafts and offer the following concerns:

1. **1420 (c) Exclusions** – As currently written there is an exclusion for forklifts no exclusion for wheel or track loaders that may be equipped with forks to use as lifting devices. We believe an exclusion should be extended to these pieces of equipment, as their primary use is not as a lifting device.
2. **1422 (a) Physical examination** – Currently the draft indicates that the physical examination requirements may be omitted. We strongly believe that mandatory drug testing should be required on a pre-hire, post accident, near miss, and random basis.
3. **1422 (b) Operator Certification** – The AGC of Texas is opposed to mandatory crane operator certification. As proposed, this certification must be by a third party who achieves their accreditation from a sole source as dictated by the proposed regulation. It should be noted that this sole source's experience in accrediting testing entities is predominately in the medical field. The draft language recognizes only ONE accrediting group in all of the United States and to date they have only accredited ONE testing source. The proposed language is too restrictive in both venues for testing and the type of testing. We would proposed that the employer be given the ability and responsibility to train and qualify their operators under a specific set of training guide lines adopted during this review. This same concept is used 1910.178 in the current standards. Assigning the responsibility to train to the employer and giving the employer the opportunity to train internally would not preclude an employer the opportunity to utilize an outside entity if they choose to do so.
4. **1422 (b) (2)** – Should the proposed certification requirements be adopted as drafted, a four (4) year period does not provide the time needed to have the entire workforce of crane operators certified.
5. **1422 (c) (1)** – English is not the first language for many in our work force, a fact recognized by recent efforts by OSHA to encourage bi-lingual training. The probability of such employees, including many crane operators in our state – and a growing number of others across the country – successfully taking a written test in English is very small. Even many for whom English is their first language cannot pass a written test due to literacy or test anxiety problems.

Thank you for the opportunity to express our concerns to you. Please do not hesitate to contact me should you have any questions.

Sincerely,

Art Daniel
President