energy API

Associated Petroleum Industries of Pennsylvania
A Division of API

Rolf Hanson
Executive Director

240 North Third Street
P.O. Box 925
Harrisburg, Pennsylvania
Telephone 717-234-7983
Fax 717-234-5461
Email hansonr@api.org
www.api.org

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Regulatory Unit Counsel
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649

Re: Comments to Proposed Rulemaking on Crane Operators, Published by State Board of Crane Operators, 40 Pa. Bull. 3041, on June 5, 2010 (proposed 49 Pa. Code Ch. 6)

To Whom It May Concern:

The Associated Petroleum Industries of Pennsylvania (APIP), a division of the American Petroleum Institute (API), is pleased to provide comments on the subject proposed rulemaking. APIP/API is a national trade association representing over 400 companies involved in all aspects of the oil and natural gas industry including exploration and production, transportation, marketing and refining. As such, our members have a direct interest in the proposed rulemaking.

The Associated Petroleum Industries of Pennsylvania submits the following comments to the Pennsylvania Board of Crane Operators ("Board") on behalf of one of its members ("Member"), in response to the Board's Proposed Rulemaking Concerning Crane Operators, published in the Pennsylvania Bulletin, 40 Pa. Bull. 3041, on June 5, 2010. Our comments particularly address the proposed regulations as they relate to certification and licensing procedures and their applicability to the unique use of cranes by the oil and gas industry in Pennsylvania. Please note that while the comments are submitted on behalf of Member, they are aligned with the interests of the oil and gas exploration and drilling industry in Pennsylvania generally.

Our comments are premised upon two primary themes: (1) the Proposed Rulemaking governing licensing and certification of crane operators – particularly the apparent preference for the National Commission for the Certification of Crane Operators – is intended to apply to operations and standardized training of crane operators in the traditional building construction context, not to the oil and gas industry; and (2) the Proposed Rulemaking does not align with the circumstances or needs of the oil and gas industry's crane operations, and accordingly their application to the oil and gas industry would undercut, rather than foster, the General Assembly and Board's stated goals of maximizing worker and public health and safety, under the Professions and Occupations—Crane Operator Licensure Act, 63 P.S. §2400.101 *et seq.* ("Act").

I. The Act, the Proposed Rulemaking and the Board's Explanatory Comments Focus On the Construction Industry, Not the Oil and Gas Industry, Which Should Be Expressly Excluded

A. Neither the Board's Proposed Rulemaking, Nor the OSHA Proposed Rule to Which the Board Refers, Appear to Apply to the Oil and Gas Industry

The Preamble to the Board's Proposed Rulemaking, the Proposed Rulemaking itself, and OSHA's Proposed Rule on Cranes and Derricks in Construction, published at 73 Fed. Reg. 59713-599954 (October 9, 2008) (the "OSHA Proposed Rule") to which the Board refers, all suggest that the Proposed Rulemaking is intended to apply to crane operators in the construction industry. Respectfully, we believe that the Proposed Rulemaking should not be applied to the use or operators of cranes in the oil and gas industry, which is far afield from the traditional construction context. Member's use of cranes relating to its oil and gas business in Pennsylvania shares few of the hallmarks of crane operation in the construction industry.

The Proposed Rulemaking refers to and relies upon, to a considerable extent, OSHA's Proposed Rule. In this regard, OSHA emphasizes that a negotiated rulemaking process was used to develop the OSHA Proposed Rule, with the goal of developing a rule that represents a consensus of all interests. We note, however, that OSHA's Cranes and Derricks Negotiated Rulemaking Advisory Committee ("C-DAC") did not include any representatives from the oil and gas industry. Accordingly, the oil and gas industry's interests, including the unique and limited manner in which cranes are used in the industry and the safety concerns associated with such use, are not reflected in the OSHA Proposed Rule, just as these interests and concerns were not considered in the Board's Proposed Rulemaking.

Nowhere in the Proposed Rulemaking does it state that the Board intended for the regulations to apply to the oil and gas industry. The oil and gas industry has come under tremendous attention in the last several years in connection with Marcellus Shale exploration and drilling. It is also widely known that a host of statutory and regulatory analysis is underway to address issues specific to these activities, in addition to the series of federal laws already in place. The Proposed Rulemaking does not appear to be among such regulations. This makes sense given the unique aspects of oil and gas industry activities in Pennsylvania.[1] The Proposed Rulemaking should not be foisted upon the oil and gas industry when their unique issues and concerns were not intended to be addressed by the Act.

B. Use of Cranes in the Oil and Gas Industry Is Unique, And the Proposed Crane Operation Rulemaking Does Not Account for the Industry's Specialized Needs

[1] It is moreover consistent with the Board's recognition in the Preamble that "[p]lainly, the act was not intended to cover the operation of oil rigs." 40 Pa. Bull. 3041, 3043.

The type of activities crane operators conduct for the oil and gas industry in Pennsylvania will be limited, focused, predictable and repetitive. Operations will take place in low-population density areas, with little public pedestrian or vehicular traffic, and in a controlled and restricted-access environment. Furthermore, oil and gas industry operations, like Member's, are themselves standardized. The use of cranes in these operations varies significantly from how cranes are used in the construction industry.

By way of example, Member wellsite frac activities will utilize a number of trucks, some used for blending frac fluid and others used to pump fluid into wells. Certain trucks are considered "support equipment." The crane truck falls into that category. The crane truck carries the high pressure manifold for assembly between the pump trucks and the wellhead, and is used to assemble and disassemble the manifold on site. The crane is additionally used to prepare wells, in a manner designed to control pressure and prevent dangers from hydrocarbon production.

That the crane's role in these activities is both crucial to the overall operation and safety of all involved, and is but one in a series of carefully orchestrated, inter-related activities, is self-evident. The training of Member's employees who will operate cranes in these circumstances should similarly be focused and tailored to the highly specialized work. The oil and gas industry employs programs, like those designed by Member, to train and evaluate employees to ensure they possess the requisite comprehensive knowledge and skill set to be safe and integral members of the wellsite team.

As the Board recognizes in its explanation accompanying the Proposed Rulemaking, C-DAC "concluded that incorrect operation was a factor in many accidents. Operating a crane is a complex job requiring skill and knowledge. To operate a crane safely requires a thorough knowledge of the equipment and controls and a complete understanding of the factors that can affect the safe operation." 40 Pa. Bull. 3042. Member agrees. This is why the oil and gas industry should be exempt from the certification and licensure requirements; and why evaluation processes that are focused on how cranes are used by the oil and gas industry, unlike the ASME and National Commission for Certification of Crane Operators requirements, and which add a formal competency component to the employee qualification process, should be recognized by the Board to suffice.

The Proposed Rulemaking's one-size-fits-all approach is not sufficiently tailored to train Member employees for the types of work they will be doing or the circumstances in which they may find themselves on wellsite worksites. Although the National Commission for Certification of Crane Operations evaluation process being required by the Board may be appropriate for the construction industry generally, it does not test crane operators for the distinct skills of oil and gas industry employees. Comparing programs, such as those used by Member to ensure employee preparedness for the job, to the process for qualifying crane operators used by the National Commission for Certification of Crane Operators, illustrates that employees satisfy more rigorous criteria in the current system than what is envisioned in the Proposed Rulemaking. For example, training for crane operators in the oil and gas industry includes documented hands-on assessment of whether an employee is safely and sufficiently operating crane equipment, as well as a written test with questions that are focused on the

types of cranes the employees will be operating and the setting and circumstances in which they will be operating cranes.

The National Commission for Certification of Crane Operators' program does not have an appropriate level of expertise or focus in its evaluative process to fit the oil and gas industry's training and evaluation needs. Because it is not geared to evaluating individuals' understanding or knowledge needed in crane operation in oil and gas applications, a passing score on that examination does not demonstrate adequate preparation for crane operators in the oil and gas field. Indeed, if oil and gas companies are required to fund the classes and examinations of its employees to take the National Commission for Certification of Crane Operators examination, they will nonetheless need to provide significant additional targeted training and evaluation to their employees. (Not to mention the concomitant distractions and diversions of pulling employees out of the field to attend classes and sit for examinations on another company's schedule, which disrupts teams, routines and continuity, and creates potential for conflicting instruction and practices).

As the Board recognizes in the Proposed Rulemaking, specialization matters. *See* Proposed 49 Pa. Code §6.14, 40 Pa. Bull. 3062. Accordingly, Member respectfully submits that crane operations in the oil and gas industry should be expressly exempt from the certification requirements in the Proposed Rulemaking. Against the backdrop of the unique nature of how the oil and gas industry will utilize cranes and the interconnectedness of crane operations to other sensitive complexities of the business, it is clear that the premise in proposed § 6.1(4) that a "uniform" standard of testing, certification and licensure will reduce incidents of error and promote a higher degree of conformity to safe crane operations, may not universally hold. Stated otherwise, training and qualification processes that are targeted to those crane operations should be encouraged and recognized as suitable responsible alternatives.[2]

For these reasons, the Proposed Rulemaking should explicitly exempt the industry from the crane operation certification requirements set forth in the Proposed Rulemaking.[3] At a minimum, the Board should exclude the oil and gas industry from coverage under the Proposed Rulemaking until the Board and industry have a reasonable opportunity to evaluate whether and in what contexts, if any, the industry's use of cranes in Pennsylvania should be regulated through certification and licensing requirements.

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[2] This is not to advocate that the oil and gas industry be universally exempted from crane certification requirements in Pennsylvania for all purposes. For instance, use of cranes to construct a building to house workers living near Marcellus Shale drilling worksites might be subject to the requirements of the Act and the Proposed Rulemaking.

[3] For the Board's convenience, we suggest this could be accomplished by including a provision along the following lines: (i) Individuals engaged in operation of a crane incidental to oil or gas exploration, investigation, drilling and related activities, including but not limited to operation of a crane for the purpose of assembling and disassembling equipment used in connection with said drilling, are not covered by or subject to the certification or other requirements of these regulations; or (ii) These regulations do not apply to crane operators directly employed by an oil and gas company, who have been qualified by their employer to operate cranes, while working at sites owned, leased by, subject to easement rights vested in, or otherwise controlled by their employing oil and gas company.

II. The Act Provides for a More Expansive Range of Alternatives for Certification and Licensure of Crane Operators Than Does the Board

In the event the Board does not believe a general exemption should be adopted, we believe that other aspects of the Proposed Rulemaking must be reconsidered.

A. The Board May Not Substitute Its Judgment for that of the Legislature

The Board's authority derives from and is bounded by the terms of the Act. Section 302, sets forth the powers and duties of the Board, including at subpart (3) "[t]o administer and enforce the provisions of this act," and at subpart (5) "[t]o promulgate and enforce regulations, *not inconsistent with this act*, as necessary *only* to carry into effect the provisions of this act." 63 P.S. §2400.302(3), (5) (emphasis added). The Board is not at liberty to selectively implement, enforce or disregard portions of the Act, but must honor all of its elements.

B. Proposed Changes in Definitions, Interpretations and the Import of Acronyms Used in the Act Have a Material Impact On Which Organizations May Certify Crane Operators

The Proposed Rulemaking seems to redefine "certification" and "NCCCO," changes how the General Assembly uses the acronym NCCCO, changes a key "or" to "and," and limits critical concepts of "equivalence." Unless amended, the Board's Proposed Rulemaking will constitute an abuse of discretion and exceed its legal authority.

1. Definition of "NCCCO" and "Certification" in §6.2

The Proposed Rulemaking does not adhere to the Act's definition of "certification." 63 P.S. § 2400.102. The Proposed Rulemaking uses the acronym NCCCO, as a defined term in §6.2, to refer only to the National Commission for the Certification of Crane Operators. The Act, though, uses NCCCO to collectively include "the National Commission for the Certification of Crane Operators *or another organization found by the State Board of Crane Operators (NCCCO)* to offer an equivalent testing and certification program meeting the applicable requirements of [ASME] B30.5 as relating to mobile cranes ... and the accreditation requirements of the National Commission for Certifying Agencies *or* the American National Standards Institute." *Id.* (emphasis added). This disparity is problematic in a number of respects, most significantly by narrowing the potential organizations that could be acceptable certifiers.

Additionally, we point out that in explaining the definition of "certification" in §6.2 of the Proposed Rulemaking, the Board notes that "for the sake of anticipating changes" to ASME B30, it "preferred to use phrases such as 'applicable requirements,' 'applicable provisions' or 'applicable volumes' of ASME B30, rather than enumerate ASME B 30.3, B 30.4 and B 30.5," "*and any successor volumes.*" In so doing, the Board unlawfully delegates its authority to ASME by allowing the regulations to automatically incorporate *any*

modifications which ASME may in the future make to ASME B30. Such a naked delegation of authority to a private party absent a procedure for review is clearly prohibited by Article II, Section I of the Pennsylvania Constitution. *See State Bd. of Chiropractic Examiners v. Life Fellowship of Pennsylvania*, 272 A.2d 478, 480-81 (Pa. 1971) ("It is axiomatic that the legislature cannot delegate its power to make laws to any other branch of government or to any other body or authority."); *see also* 45 P.S. §§1122,1201-08 and 71 P.S. §§745.1-745.15 (requiring public comment and review by the Independent Regulatory Review Commission).

The Board may not circumvent the rulemaking process by automatically adopting and incorporating whatever changes ASME makes to its standards outside of the rulemaking process.[4]

2. Interpretation of "Equivalence" in § 6.51

It is not clear why the Board concludes, as articulated in the Preamble, that an "equivalence" determination requires that "other organizations" be "point-by-point identical to NCCCO in relevant criteria" in order to become a certified organization. The Act says nothing to that effect, and there is no indication that the General Assembly would require this, particularly if a different process were superior or more appropriate under the relevant circumstances, and thereby likely to better foster the goals of the Act. This has particular bearing on whether an employer could be qualified as a certifying organization.[5]

3. In §§ 6.52 and 6.53, the Board Requires that to be Found Equivalent an Organization Must be Accredited by Both NCCA *and* ANSI, Which is Contrary to the Express Provisions in the Act

The Proposed Rulemaking also suggests that the Board will not consider, and can deny, "equivalency" status on the basis that an organization is not accredited by both NCCA and ANSI, and therefore "is per se not equivalent to certification issued by NCCCO." Proposed 49 Pa. Code § 6.53(a). This directly contradicts the Act (and the well-established precedent that the General Assembly understands the difference between using the conjunctive "and" and disjunctive "or"). Section 102 of the Act, 63 P.S. § 2400.102, expressly states accreditation may come from NCCA *or* ANSI. The Board does not have legal authority to change the

[4] To the extent that the Board wishes to incorporate the ASME standards into its regulations, it should incorporate specific ASME standards as they exist as of a date certain. Should the Board thereafter wish to update its regulations to incorporate subsequent ASME revisions, the Board may make amendments to its regulations through the rulemaking process.

[5] Moreover, the Board's comments to proposed § 6.51 states that in section 102 of the Act, the legislature "empowered" the Board "to designate organizations as certifying organizations" and that the "statutory criteria include a requirement that the organization offer a testing and certification program that is equivalent to NCCCO, that it meet applicable requirements of ASME and that it be accredited by NCCA or ANSI." 40 Pa. Bull. 3055. The Board's characterization of its authority to "designate" and "approve" organizations as certifying organizations suggests a broader power to disapprove those organizations than conveyed by the Act. Section 102 of the Act does not say the Board has unlimited discretion to determine what organizations to "designate" as equivalent of the National Commission for the Certification of Crane Operators. Rather, under section 102 of the Act, the Board effectively has to make findings of whether entities satisfy the criteria specified in the Act.

legislature's word choice to "and." Accordingly, the Preamble statements concerning § 6.52 that "[t]he Board requires the applicant to identify its accreditations with ANSI and NCCA in § 6.52(a)(8)," and concerning § 6.53 that "[i]n the Board's judgment, there are several criteria that automatically disqualify an applicant asserting equivalence to NCCCO," that "[t]hose factors include the failure to posses *both ANSI and NCCA accreditation,*" and that "the equivalency test could only be satisfied by possessing both forms of accreditation," do not comport with the law. Plainly, the language in § 6.53 which allows disapproval of an application for not having both ANSI and NCCA accreditation is not consistent with the Act.[6] *See* § 6.53(a)(1) and (2).

III. The Proposed Rulemaking Should Be Modified to Allow An Employer Certification Program Option

Third-party testing and certification of crane operators is not necessary in the oil and gas industry, particularly when the operator certification system envisioned in the Proposed Rulemaking is inadequate and would fail to test oil and gas industry employees in the skills essential for their safety. As described above, industry-specific programs for qualifying workers to safely operate cranes in complex industries, such as the oil and gas industry, are more appropriately tailored to meet the safety goals of the Act. The Board, therefore, is respectfully urged to reconsider its Proposed Rulemaking, either by (i) recasting the equivalence evaluation to allow an employer to submit a plan to the Board for approval as an acceptable certification organization, or (ii) at a minimum, adopting OSHA's audited employer program option.[7]

A. There Is No Valid Reason Not to Deem an Employer a Proper Certifying Organization

Section 6.52 of the Proposed Rulemaking provides that "[a]n entity seeking to issue certification under the act shall submit, in writing, an application in a form prescribed by the Board," with certain required information. *Proposed 49 Pa. Code* §6.52(a). Among those requirements, the applicant must aver "[w]hether the applicant is accredited by ANSI, NCCA, or both," include "[a] description of the testing and certification program administered by the applicant," and aver "that the applicant's testing and certification program is equivalent to the testing and certification program used by NCCCO." Proposed 49 Pa. Code § 6.52(a)(8), (9) and (13).

For industries like this one, there should be a mechanism in the regulations allowing employers to be deemed an "equivalent" or granted an alternative type of approval to act as a certifying organization.[8] Since the

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[6] The Board has also drafted § 6.53 to allow it to disapprove an application of a certifying organization because it does not have a voluntary agreement with OSHA. There is no support for this in the Act.

[7] The Board should at least defer its rulemaking process until OSHA's rules become final, and then, at a minimum, adopt the certification methods proposed by OSHA.

[8] The Board should not be concerned that such specialized evaluation and certification programs will somehow diminish the qualifications and value of licensing and certification throughout Pennsylvania or create additional risk. To the contrary, processes

Act itself does not prohibit an employer-based option, the Board could easily add such an option as a basis by which an employer could be approved as a certifying organization, which would enable oil and gas companies with company-run programs, to train and test their employees.[9]

There is no reason to believe that assessment systems like Member's will fail to maintain a high degree of integrity or create conflicts of interest.[10] The knowledge portion of an employer's exam will likely be more comprehensive than the National Commission for Certification of Crane Operators test and will be specifically molded to the type of operations and situations in which crane operators will find themselves working in the oil and gas field. Employers can also assure that their examinations will be securely proctored, and scored in a way that eliminates bias or leeway in grading.

B. At a Minimum, The Board Should Provide for Audited Employer Programs as Permitted Under OSHA's Proposed Rule

Short of facilitating an employer-developed option that would result in certifying organization status, the Board could approve employer plans that are subject to independent auditing, as proposed by OSHA. Member questions the Board's decision to limit the options for certification even more severely than OSHA's negotiated rulemaking, and considers the decision out-of-step with the intention of the General Assembly and with OSHA. OSHA's rulemaking contemplates four ways individuals could receive certification as crane operators: (1) certification by an accredited organization; (2) audited employer programs; (3) military certification; and (4) state licensing. The Proposed Rulemaking eliminates the category 2 option:

> OSHA would accept qualification through an audited employer program. However, this option also requires a written and practical examination and an independent audit to verify the authenticity and reliability of the employer's testing program. Furthermore, qualification under this provision is not portable, meaning that it is valid only with that particular employer. *Act 100 does not recognize this second option as a basis for granting a license.*

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similar to Member's for training, evaluation and licensing are established, specially-designed and carefully implemented for its employees only. Member does not retain contractors or subcontractors to operate its cranes. Its program qualifies its employees only to perform crane operations at Member sites and on Member projects, such that its licenses are not portable nor can be used to establish qualification to carry out across-the-board crane operations.

[9] The Board could condition approval on requirements such as: (i) the administrator (or other corporate supervisor) of the employer's program has himself or herself been qualified by the National Commission for the Certification of Crane Operators; (ii) the employer submits an affidavit to the Board averring that the employer's program is equivalent to or surpasses the NCCCO program, as applied to the industry and functions to be carried out by its employees; (iii) the employer-sponsored plan is annually submitted to the Board, with information concerning details of the program, and data regarding the number of employees successfully trained and tested who have engaged in crane operations in Pennsylvania; or (iv) the employer conducts self-auditing.

[10] The Board could adopt safeguards to ensure impartiality in the testing and certification processes and require the company to seek recertification on a periodic basis.

40 Pa. Bull. 3046 (Board's comments regarding proposed § 6.12) (emphasis supplied). Although the Board correctly described what OSHA allows by way of an audited option, it incorrectly jumps to the conclusion that Pennsylvania's Act does not recognize this option as a basis for granting a license. To the contrary, the Act shows no bias for or against audited employer programs and certainly does not foreclose them.

There is no reason why the Act's definition of "certification" – in particular its reference to "another organization found by the [Board] ... to offer an equivalent testing and certification program meeting the applicable requirements of [ASME] and the accreditation requirements of the National Commission for Certifying Agencies of the American National Standards Institute" – cannot readily be interpreted to include an audited employer program.[11] 63 P.S. § 2400.102

C. The Act Does Not Provide for Separation of Training and Testing, and the Board's Proposed Regulations, at Least as Applied to the Oil and Gas Industry, Are Arbitrary and Counter-Intuitive to the Protection and Safety Goals of the Act and of OSHA

Section 6.53(a)(4) of the Proposed Rulemaking provides that the Board will not qualify an applicant as a certifying organization where "[t]he applicant is a parent or subsidiary of an entity that offers a program of training or education in crane operation." The Proposed Rulemaking's blanket prohibition on allowing a training organization to be a certifying organization for crane operators lacks support in the Act, and appears to constitute an arbitrary exercise of discretion that exceeds the scope of the Board's authority. There is nothing in the Act even hinting that a program that offers both training and evaluation is inherently unreliable or undesirable.

In explaining the rationale for this requirement, the Board explained that it believes "that the combination of those functions constitutes a conflict of interest." 40 Pa. Bull. 3056. Yet, in contemplating the same issue in the context of its Negotiated Rulemaking, OSHA came to the opposite conclusion, finding that "a testing entity may also conduct training as long as an adequate 'firewall' exists between the two functions." 73 Fed. Reg. 59816 (Oct. 9, 2008). OSHA specifically noted that it "was aware of an impression among some people in the industry that a testing entity could not get accredited if it also provided training." It concluded that this impression was incorrect, referencing ISO 17024, a standard of the International Organization for Standardization, which provides that a certifying entity may not offer training *unless* it can demonstrate that the training is independent of both evaluation and certification. As proposed, 29 C.F.R. §1926.1427(g) thus permits a testing entity to also provide training "as long as the criteria of the applicable accrediting agency . . . for an

[11] However, we strongly encourage the Board to adopt an employer option that does not require tests to be developed by an accredited crane operator testing organization or approved by an auditor who is certified by such a testing organization as OSHA's proposed regulations do. As many commentors to the OSHA Proposed Rule noted, these organizations may lack any incentive to develop a large pool of certified auditors, and would instead have an interest in maintaining demand for their own testing services and certification procedures.

organization providing both services are met." Nothing would prohibit the Board from requiring that similar safeguards be implemented in the Pennsylvania regulations governing crane operators.

In this highly specialized and regulated industry, there is every reason to believe that a program that *requires* training, and couples training with on-the-job evaluation and written assessment focused on the precise nature of the business, would more thoroughly account for real risks and enhance safety. While this approach may be different than envisioned by the Proposed Rulemaking, it is not inferior.

IV. The Proposed Rulemaking's Limited Options for Certifying Organizations Creates a Real Danger of Hindering the Ability to Have Available Licensed Crane Operators

If the Proposed Rulemaking is not revised, the Board has basically left one option, and required certification by an organization accredited by both NCCA and ANSI, which is even more restrictive than OSHA's limited options that depend upon accreditation from either NCCA or ANSI. Member is concerned about the capacity of NCCA and ANSI – and in turn the National Commission for Certification of Crane Operators – to handle the number of applicants for approval, and concurs with the comments expressed by C-DAC member Brian H. Murphy on behalf of the Associated General Contractors of American ("AGC") in the dissenting view published in the Preamble to the OSHA Proposed Rule. 73 Fed. Reg. 59819-22. Member directs the Board's attention to comments addressing the following:

i. It is highly unlikely that the limited number of certifying organizations could meet the enormous demand for crane operator testing and certification that will be generated by the Proposed Rule.

ii. The Proposed Rule assumes that the increased demand for operator training and certifications will cause other testing organizations to seek accreditation. However, OSHA has not provided any facts to support its assumption, nor has it evaluated the costs that organizations would incur to qualify for accreditation or to provide testing and certification services on the massive scale contemplated by section 1427. In the current economic market, it is not clear that any testing organizations will invest the requisite capital, especially not until testing and certification become mandatory.[12]

iii. Member questions the prudence of placing such a dominant role in the implementation of federal and state regulations in the hands of a small number of private organizations, such as the NCCA, ANSI and NCCCO, which will not be subject to direct oversight by OSHA or the Board.

For all these reasons, and in light of the significant number of crane operators that would seek certification through limited accredited organizations, the operator certification system suggested by OSHA's section

[12] This is of particular concern where Pennsylvania's requirement of certification will be effective as of December 9, 2011, well before the OSHA regulations require certification, as the OSHA requirement of certification is phased in four years following the regulations' effective date. 29 C.F.R. § 1926.1427(k). Until the OSHA regulations are effective there is a limited incentive for organizations to undertake the expense of becoming "certifying organizations."

1926.1427 – and now the Board's more limited certification regulations – would likely result in excessive charges and an inability for many to meet and/or timely meet these requirements.

As mentioned above, oil and gas drilling in Pennsylvania has been taken to a level of scrutiny and attention that could not have been envisioned even two years ago. The number of oil and gas companies using cranes in Marcellus Shale exploration and drilling in Pennsylvania will proliferate. Even before this, it has been widely suspected that the National Commission for Certification of Crane Operators is insufficiently equipped, from a staffing and resources perspective, to handle the volume of applications for examination. To allow an already-overloaded evaluation process to potentially log jam Marcellus Shale development would interfere with business, industry and regulation throughout the Commonwealth.

Finally, it is worth reiterating that the certification tests currently offered by the accredited testing organizations require employees to learn and demonstrate crane skills that have minimal application in the oil and gas industry. Perhaps even more troubling is the reality that these certification tests do not adequately focus on the actual crane skills utilized in the oil and gas industry or concentrate on how the crane operations relate to other activities and safety considerations at the wellsites. Thus, the Proposed Rulemaking requires the oil and gas industry to spend significant sums obtaining operator certifications that have no appreciable safety benefits for its employees.

We appreciate the opportunity to provide these comments to the Board on the Proposed Rulemaking for Crane Operators.

Sincerely,

Rolf Hanson
Executive Director
Associated Petroleum Industries of PA