HOW GOVERNMENT AND INDUSTRY CAN ENGAGE FOR EFFECTIVE REGULATORY ACTION

A Practical Example from the U.S. Private Sector

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Evidence-based Regulatory Decision Making
Twangale Park, Lusaka, Zambia
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Two Examples

• Initiative No. 1:
  – Originating in the **Industry/Private Sector** (and later adopted by Government)

• Initiative No. 2:
  – Originating in **Federal Government** at the *request* of Industry, developed by both, and then enshrined into federal regulations
Who is NCCCO?

• NCCCO formed in January 1995
• Created *by* the U.S. construction industry to provide personnel certifications *for* the industry
• Independent, non-profit 501(c)6 organization
• Certification body that does NOT provide training
• Largest and most recognized certification body for construction professionals in the U.S.
• Volunteer-driven, managed by a staff of 60 with headquarters close to Washington, DC
Who is NCCCO?

OUR MISSION

To develop effective performance standards for those who work in and around cranes; provide fair, valid and reliable assessments of their knowledge and skill; and act as an authoritative industry resource of related information.

Committed to Quality, Integrity, and Fairness in Testing Since 1995
Who is NCCCO?

OUR VISION

A global lifting environment in which crane and crane-related risks are reduced, performance records improved, training needs stimulated, and overall safety enhanced.

Committed to Quality, Integrity, and Fairness in Testing Since 1995
Certification vs. License?

NCCCO is a certification body. NCCCO is NOT an association, nor a training company, nor a government agency.

Certification – issued by a certification body or association. Voluntary, unless mandated by an official agency or company.

License – issued by an official agency (local, state, federal). Provides individual legal authority to work in the given industry (mandatory).
By the Numbers

- **150,000** individuals certified since inception
- **90,000+** currently certified
- More than **350,000** certifications issued
- **1,000,000+** written & practical tests administered
- **120+** training firms nationwide (unaffiliated)
Program History

• Early 1987, industry concern emerges
• Unacceptable number of crane accidents occurring
• Many apparently attributable to operator error
• Real cost much higher than realized
  – Personal Injury/Property Damage
  – Workers’ Comp./Lost Time
  – Safety Record/”Mod.” Rate
• Training needed BUT only effective if learning verified
• Verification through operator certification
Construction in the ’80s

- Personnel certification an “alien” concept
- No history of third-party evaluation
- No culture of testing or even systemized training in construction industry
- ANSI (B30) & OSHA standards light on detail
- No federal requirement; 5 states had rules
- No pathway to compliance
- Lip service to personnel competency assessment widespread
U.S. Standards-Setting Process

- American National Standards Institute (ANSI)
  - VOLUNTARY Standards developed by the private sector through industry associations, e.g. B30 Crane standards developed by American Society of Mechanical Engineers (ASME)

- Occupational Safety and Health Administration (OSHA)
  - MANDATORY Regulations developed by the Federal Government without private sector input.

- Two Considerations:
  - Voluntary standards can become mandatory if adopted by OSHA though “incorporation by reference”
  - Government can use “Negotiated Rulemaking” to develop rules with industry participation
U.S. Licensing Requirements 1995

- **State Licensing Program**: Licensing not legislated
- **Long Boom License Only**
- **Mandatory Training Requirement Only**

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Aftermath

- San Francisco tower crane collapse kills 5
- Immediate regulatory response
  - State: California proposes state-wide licensing (2000)
  - Federal: OSHA publishes ANPR (1992)
- Industry mobilizes to preserve self-regulatory position
- Ultimately two (2) initiatives emerge:
  - No. 1. Targeted: Operator Certification Program
  - No. 2. Generalized: Revise Entire Federal Crane Regulation
Participants in Certification Program Development

- Operators
- Equipment Inspectors
- Training Firms
- Insurance Carriers
- Safety Specialists
- Construction Companies
- Consultants
- Contractors
- Petrochemical Firms

- Trade Unions
- Crane Manufacturers
- National Standards Body Members (ASME/ANSI B30)
- Crane Rental Firms
- Industrial Corporations
- Educators
- Military Agencies
- OSHA
Certification Program Timeline

• 1989-1992: Industry stakeholders meet, volunteer/industry experts convene
• 1994: Focus shifts from training to certification; psychometricians join the effort
• 1995: National Commission (NCCCO) formed
• 1996: First tests (written) released for first program (mobile cranes)
Telescopic Boom Crane
Lattice Boom Crane
Certification Program

- 1994: Focus shifts from training to certification
- 1995: National Commission (NCCCO) formed
- 1996: First tests (written) released for first program (mobile cranes)
- 1998: First tests (practical) released
- 1988: Program receives independent accreditation
- 1989: Federal government recognizes certification
U.S. Department of Labor

February 26, 1999

VOLUNTARY AGREEMENT

BETWEEN THE

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

AND THE

NATIONAL COMMISSION FOR THE CERTIFICATION OF CRANE OPERATORS

This Statement of Agreement describes a voluntary cooperative action between representatives of the crane industry and OSHA to recognize crane operator certification issued by the National Commission for the Certification of Crane Operators (NCCCO). The NCCCO has been accredited by the National Commission for Certifying Agencies (NCCA). NCCCO certification is based on criteria that will contribute to our mutual goal of reducing the number of deaths and injuries resulting from crane related accidents. The ability of crane operators to safely operate mobile cranes plays a major role in overall safety on most construction sites. An accredited certification program that attests to the qualifications and experience of crane operators will provide employers and OSHA with a valuable tool in determining if crane operators are "Qualified" to perform their tasks. The execution of this agreement with the NCCCO should have an immediate, significant and beneficial impact on safe crane operations.

1. PURPOSE:

The purpose of this agreement is to provide a non-regulatory means of recognizing a program that validates the competency and certifies the qualifications of crane operators. NCCCO has developed a validated certification program which meets the requirements of ANSI/ASME B30.5 (American National Standards Institute/ American Society of Mechanical Engineers) as referenced by 29 CFR 1926, §50(a)(1) and (a)(2).

Establishment of a crane operator certification program through the joint efforts of the lifting industry and OSHA is an important step forward in promoting the common goal of safe crane operation. As this certification program becomes more widely used, education and training will become primary factors in developing and maintaining qualified crane operators in the construction industry. Certification will become the natural progression in crane operators' careers as they gain more education, training and experience working with the multitude of equipment in use today and the increasingly more advanced cranes of the future.
OSHA Recognizes Third-Party, Accredited Certification

“An accredited certification program that attests to the qualifications and experience of crane operators will provide employers and OSHA with a valuable tool in determining if crane operators are “qualified” to perform their tasks.”

“The benefit to the employer is that the presence of NCCCO certified crane operators on a job site will be an indicator to [OSHA] compliance officers that the crane(s) is being operated by someone with demonstrated knowledge and ability.”

“The execution of this agreement with NCCCO should have an immediate, significant and beneficial impact on safe crane operations.”

Voluntary Agreement between OSHA and NCCCO signed February 26, 1999
Third-Party Accreditation

- ANSI and ISO International Standards
- Personnel Certification Standard
  - ISO 17024 Conformity assessment - General requirements for bodies operating certification of persons
Recognition—Federal

US Army Corps of Engineers.
Certification Program

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- 1996: First tests (written) released for first program (mobile cranes)
- 1998: First tests (practical) released
- 1988: Program receives independent accreditation
- 1989: Federal government recognizes certification
- 2001: First recertification exams released
- 2004: Expansion begins into other crane types
Tower Crane & Overhead Crane

Committed to Quality, Integrity, and Fairness in Testing Since 1995
Articulating Crane & Digger Derrick
Pile Driving & Drill Rig
Signal Person & Rigger
Crane Inspector & Lift Director

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Supporting Industry Partners
No. 2: Entire Rule Revision

- OSHA Crane Rule written in 1970s; no major revision and only one addition since then
- Referenced out-of-date/print voluntary standards
- 2000-2002: **Subpart N Work Group** is formed under the aegis of the Advisory Committee on Construction Safety & Health (ACCSH)
- Work Group meets regularly but makes limited progress
- 2002: OSHA announces intent to use **Negotiated Rulemaking**
What is Negotiated Rulemaking?

- Established by Congress in 1990 to:
  - address concerns that rulemaking had become too adversarial

- Negotiated rulemaking is a process in American administrative law
  - used by federal agencies
  - representatives from a government agency and affected interest groups negotiate the terms of a proposed administrative rule.

- The agency then:
  - publishes the proposed rule in the Federal Register
  - follows the usual rulemaking procedure of soliciting public comments, which are evaluated for inclusion in the final rule
Cranes & Derricks Advisory Committee

- 23 members: Industry stakeholders
- Federal OSHA lawyer part of team
- Public Policy Mediator appointed
- Task: Completely revise the federal standard governing cranes
- Held x11, 3-day meetings over 12 months
- Submit draft rule to ACCSH, which unanimously approves it; sends to OSHA
Cranes & Derricks Advisory Committee

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- Professional Moderator appointed
- Hold x11, 3-day meetings over 12 months
- Completely revise the federal standard governing cranes
- Submit draft rule to ACCSH, which unanimously approves it; sends to OSHA
- Incorporates crane operator certification requirement!
OSHA Rule Timeline 2002-2010

OSHA announces intent to use **Negotiated Rulemaking**; creates Cranes & Derricks Advisory Committee (CDAC)

2003—2004: CDAC Meetings held/ACCSH Supports Consensus Document

2006: Fiscal Impact Study Finalized

2008: Office of Management & Budget Review Finalized, **Proposed Rule Published**

2009: Public Hearings held

2010: **Final Rule Published**
Federal Rule

- 1926.1400  Scope
- 1926.1401  Definitions
- 1926.1402  Ground Conditions
- 1926.1403-1406  Assembly/Disassembly
- 1926.1407-1411  Power Line Safety
- 1926.1412  Inspections
- 1926.1413-1414  Wire Rope
- 1926.1415-16  Safety Devices/Operational Aids
- 1926.1417-1418  Operation
- 1926.1419-22  Signals
- 1926.1423  Fall Protection
- 1926.1424  Work Area Control
- 1926.1425  Keeping Clear of the Load
- 1926.1426  Free Fall and Controlled Load Lowering
- **1926.1427-1430**  Qualifications and Training of Operators, Signal Persons, Maintenance & Repair Employees
  - 1926.1431  Hoisting Personnel
  - 1926.1432  Multiple Crane Lifts
  - 1926.1433  Design, Construction and Testing
  - 1926.1434  Equipment Modifications
  - 1926.1435-1442  Tower Cranes, Derricks, Floating Cranes, Overhead Cranes, Pile Drivers, Sideboom Cranes, Equipment <=2,000lbs capacity, Severability
Problems surface upon publication of the rule:

- Text added *after* proposed rule stage (not reviewed by industry)
- OSHA “reinterprets” industry (CDAC) position on certification

2010 – present

- Industry representation to OSHA
- Series of Stakeholder meetings
- Industry Coalition formed (CCOS)
- Ultimately, OSHA issues a second, Proposed Rule to “fix” the language at issue
Industry Concerns

American Public Power Association
American Wind Energy Association
Associated Builders and Contractors
Associated Equipment Distributors
Associated General Contractors
Association of Equipment Manufacturers
Brick Industry Association
Building and Construction Trades Dept.
AFL-CIO
CPWR Center for Construction Workforce and Training
Edison Electric Institute
General Electric Corporation
House of Representatives Education and Workforce Committee
House of Representatives Small Business Committee
International Union of Operating Engineers
Ironworkers International
Manitowoc Cranes
National Association of Home Builders
National Electric Contractors Association
National Propane Gas Association
National Rural Electric Cooperatives Association
NBIS
Small Business Administration
Specialized Carriers & Rigging Association
Steel Erectors Association of America
TAUC The Association of Union Constructors
Coalition for Crane Operator Safety (CCOS)

- Dialogue with Directorate of Construction and provide guidance
- Inform Department of Labor of issues to help keep pressure on OSHA
- Outreach to Congress through oversight/appropriations to influence OSHA office
Lessons Learned

- Government and Industry/Private Sector can work collaboratively yo create effective rules, but . . .
- There must be a genuine, shared belief in the collaborative process, underscored by mutual trust
- There needs to be clear direction by government as to any legal consequences involved in rulemaking
- All language in a Proposed Rule should be made available for industry/public review
- Regulators need to understand the industry they’re regulating
- Industry needs to appreciate/respect regulatory process
- The regulatory review process (incl. fiscal impact studies) need to be expedited—Delays cause private sector confusion/frustration
- Bottom line: The investment (time, labor) at the outset pays dividends at the end (quality of regulation, compliance by industry)
Summary: A Model Collaborative Effort

EFFECTIVE REGULATION

- Government Agencies
- Employers
- Crane Manufacturers
- Industry Associations
- Training Providers
- Standards Organizations
QUESTIONS?

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