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**COMMENTS FILED BY THE
SOUTHERN BUILDING MATERIAL ASSOCIATION
SUBMITTED TO
NORTH CAROLINA DEPARTMENT OF LABOR
REGARDING 13 NCAC 07F .0901**

October 2, 2009

Pursuant to a Notice of Text¹:

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On behalf of the 245 members of the Southern Building Material Association, Inc. residing and doing business in North Carolina, whose operations will be directly impacted by the regulation referenced herein, these comments object to the regulation 13 NCAC 07F .0901 relative to the scope of the North Carolina Standards for Cranes and Derricks.

SUMMARY

With these comments, we submit that an existing, voluntary consensus standard, ASME B30.22-2005², is the appropriate and superior means of addressing any hazards

¹ Notice of Text filed with the Office of Administrative Hearings, July 8, 2009 relative to 13 NCAC 07F.0901 by North Carolina Department of Labor (hereafter "Notice").

² The ASME B30.22-2005 (Revision of ASME B30.22-2000), Articulating Boom Cranes (hereafter cited as "ASME B30.22" or in this footnote as "the Standard"), is an American National Standard and is copyrighted by the American Society of Mechanical Engineers. The current Standard was issued on December 15, 2005 and the next edition is scheduled for publication in 2010. The current Standard was approved by ANSI and designated as an American National Standard on September 28, 2005, and as such, the Standard was developed under procedures accredited as meeting the criteria for American National Standards, including an opportunity for public comment. The ASME B30 Standards Committee that approved the current Standard includes representatives from the U.S. Department of

associated with the use of commercial truck-mounted articulating booms in the delivery of building materials to the construction site.

Therefore, we recommend that NCDOL include an additional exemption in the scope of the regulation 13 NCAC 07F .0901 to provide that commercial truck-mounted articulated booms³ with a fixed fork assembly mounted for purposes of handling or hoisting material whose operators are trained to the standards of ASME B30.22 will not be subject to the state regulations.

NCDOL has relied on an incomplete economic impact analysis and the recommendations of the negotiated rulemaking body (C-DAC) that have not included the lumber and building material (LBM) industry sector, many family-owned small businesses found throughout the state. In particular, C-DAC failed to consider the risks associated with commercial truck-mounted articulating booms used for the purpose of delivering building materials to the construction site. C-DAC further failed to consider the impact that new regulations applicable to a multitude of lifting and hoisting equipment, with unique functions and risks, will have on the LBM sector using a specifically equipped articulating boom for the sole purpose of delivering building materials to the construction site.

We believe that operators who deliver building materials to construction sites should be trained and need only be trained in the safe operation of the specific equipment used for that purpose. We do not believe the numerous other provisions of the regulation will have any effect on enhancing safety relative to the operation of articulating booms as the LBM sector use them. Training programs, based on ASME B30.22, which this sector already adheres to, are focused, effective, and most appropriate for the work our crews engage in when delivering materials to the construction site.

Therefore, NCDOL should adopt an additional, sixteenth (16th) exception to the new rules applicable to cranes and derricks in construction:

(16) Commercial truck-mounted articulated booms with fixed fork assembly mounted for purposes of handling or hoisting material whose operators are trained to the standards of ASME B30.22.

BASIS OF OBJECTION AND RECOMMENDATION

Labor, as well as the Army Corps of Engineers, the U.S. Department of the Army, and the U.S. Department of the Navy.

³ For visual representations of this equipment and its functionalities, see Comments filed by the National Lumber and Building Material Dealers Association in OSHA Docket Number 2007-0066 - 0380.2 at

<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064809a19d0>.

1. The lumber and building material (LBM) industry sector has long used the commercial truck-mounted articulating boom for the sole purpose of delivering building materials to the construction site without accidents or incidents⁴ to warrant regulatory action.

The LBM sector is in the business of selling and delivering building supplies to our customers' residential and commercial construction sites. Such products delivered are for example drywall, roofing material, and lumber for the use of construction workers. Our crews deliver building materials to a construction site, using a truck-mounted, hydraulic-powered, articulating boom equipped with a fork attachment in a locked cradle position at the end. We use these to offload materials or pallets of materials similar to the function of a powered industrial lift truck.

These hydraulic-powered articulating booms do not require assembly or disassembly, and are not designed to have any cable devices, cable-winding drums, nor do they require any rigging devices to safely place the load. The materials we deliver are very stable and not prone to shift or fall when moved. For example, the fork attachment locked in a cradle position secures a typical lift of drywall consisting of a maximum 34 sheets as well as lifts or pallets of other materials; none of these weighing more than 6,000 pounds. The articulating booms available today have a maximum rated weight capacity of 7,500 pounds.

The lifts are offloaded and placed on the ground or through an elevated opening inside the structure that's under construction and can range anywhere from one foot to ninety feet as a maximum height. Upon completing the delivery to the site, our crews have nothing whatsoever to do with the unpacking, setup, or installation of the materials, and they are not required to remain on the construction site to assist construction employees with their duties. The delivery of building materials to construction sites begin in our yards and end when the material is placed where required by the builder.

Furthermore, our sector has long recognized and trained personnel to the body of knowledge specifically and appropriately focused on articulating booms, ASME B30.22. These standards currently serve as an effective guide for our sector and should be a point of reference for NCDOL. Articulating boom operators who deliver building materials to construction sites should be trained and need only be trained in the safe operation of the equipment for that purpose. Training programs, based on the ASME standard, are focused, effective, and most appropriate for the work our employees do when delivering

⁴ For a specific analysis of accidents associated with commercial truck-mounted articulating booms used for the purpose of delivering building materials, see Specialty Building Materials Distributors Safety Coalition (hereafter "SBMDSC"), OSHA-2007-0066-0384 at <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064809a38da> or at <http://www.regulations.gov/search/Regs/contentStreamer?objectId=09000064809a38d5&disposition=attachment&contentType=xml>.

materials to the construction site. We do not believe the numerous other provisions of the rule will have any effect on enhancing safety relative to the operation of articulating booms as we use them.

With respect to the current state regulations, we respectfully suggest that NCDOL first address the risks associated with tower cranes and other equipment with similar inherent risks. This indeed would be consistent with what NCDOL explains as its purpose for adopting the C-DAC recommendations –

As is evidenced by recent events involving crane operations throughout the United States, accidents, injuries and fatalities resulting from ineffective regulation of the crane industry remain unacceptably high. In North Carolina, there have been ten (10) fatalities over the past ten (10) years linked to mobile cranes. While North Carolina has not had a high profile tower crane accident occur, such as those in other states, it is not due to the lack of exposure or risk. It simply has not happened yet. Tower cranes are increasing in use, primarily in city construction of high-rise buildings. In order to decrease the likelihood that future accidents and injuries occur, it is necessary for rules to be adopted which include certification and training requirements for those involved in crane operations. The better trained personnel are in recognizing hazards before they happen, the less likely accidents are to occur. While the proposed rules will have an economic impact on businesses throughout North Carolina, more stringent rules and regulations are needed to ensure the safety and welfare of North Carolina's workers and citizens through the substantial reduction of safety risks and protection of workers and citizens in and around crane operation areas.⁵

In a separate line of inquiry we would invite NCDOL to determine the risks associated with articulating booms in the delivery of building materials to construction sites. We believe that once the specific risks associated with our equipment are analyzed, that NCDOL will conclude not only that the current rules are inappropriate, but that our industry follows practices and procedures already recognized and in place today.

As material handling delivery devices used solely to make job site deliveries, commercial truck-mounted articulating booms with a fixed fork assembly have all the characteristics of General Industry warehouse forklifts and do not meet the concerns which the C-DAC recommendations and the North Carolina regulations seek to remediate:

- Many of these articulated boom material handling devices are operated by seat controls, or more frequently, with a portable wireless remote control by the operator standing away from the machine, thereby giving the operator full view of the load in relation to overhead wires and other personnel and equipment, obviating the standard's concern with blind spots and need for a signal person and spotters;
- The portable remote control is typically suspended by a strap around the neck or waist of the operator, so that the operator using a portable remote control is not

⁵ See OSBM Review, page 2.

- seated at an operator's platform, thereby allowing the operator instantly to react to operate the controls if necessary. Accordingly, operation of boom material handling devices with portable remote controls should be considered as exempt because the object of the standard to keep the operator at the controls is alternatively addressed.
- Most delivery loads are small – usually well under 5,000 pounds – which pales in comparison to the huge 300+ ton cranes which are the real object of the proposed standard.
 - These loads are very stable, typically being on a fork-holding secure position on the lift device.
 - Members' deliveries to construction sites are of very short duration – typically less than one or two hours' duration on the construction site. This is because delivering by offloading goods with truck mounted booms on the one hand, and construction using such goods, obviously are categorically different functions deserving of different regulation. Member companies offload to the ground or to designated spots on the job site and then immediately leave the job site; the trucks spend more time in our General Industry-regulated warehouses than they do making deliveries on construction sites.
 - Members' truck booms have state of the art load capacity limiter safety devices which prevent further movement of the load that would exceed the crane's rated lifting capacity, considering the weight of the load and angle and height of the crane, and give a warning at 90 percent of the crane's lifting capacity, considering the weight of the load and angle and height of the crane, as established by the equipment manufacturers' standards. As a result of load capacity limiters, the risk of tipovers of trucks in making deliveries is vastly reduced.
 - As a result of such relatively light loads coupled with required outriggers or stabilizers and cribbing when indicated, "sinking" of members' trucks on unstable ground during deliveries is vastly minimized.

2. ASME B30.22-2005 would be the appropriate and superior means of addressing any hazards associated with the use of commercial truck-mounted articulating booms in the delivery of building materials to the construction site.

The stated purpose of ASME B30.22 is to "guard against and minimize injury to workers, and otherwise provide for the protection of life, limb, and property by prescribing safety requirements," to "provide direction to owners, employers, supervisors, and others concerns with, or responsible for, its application," and to "guide governments and other regulatory bodies in the development, promulgation, and enforcement of appropriate safety directives."⁶

⁶ See Section III: Purpose. See also, Section IV: Use by Regulatory Agencies: "This Standard may be adopted in whole or in part for governmental or regulatory use. If adopted for governmental use, the references to other national codes and standards in the specific volumes may be changed to refer to the corresponding regulations of the governmental authorities."

The Standard provides that “[t]he scope includes only cranes of the types [specifically described in the Standard], articulated by hydraulic cylinders, which are powered by internal combustion engines or electric motors and are mounted on a mobile chassis or stationary installation.”⁷

The scope also clarifies that the standard applies only to “machines when used as lifting cranes” and includes coverage of any “load hoist mechanism”, such as the “fork attachment in a locked cradle position at the end”.

The Standard defines a “commercial truck-mounted” articulating boom crane as “a crane, consisting of a rotating mast, mainframe or base, boom, and one or more operator’s stations, such as ground controls, top seat controls, or remote controls, mounted on a frame attached to a commercial truck chassis, retaining a payload capability whose power source may power the crane. The function is to lift, lower, and swing loads a various radii.”⁸

Chapter 22-1, “Construction and Characteristics,” addresses load ratings, boom lift, boom telescoping, load hoist mechanisms, swing mechanisms, crane transport, rope and reeving accessories, controls, installation, and construction. The Chapter anticipates load ratings where stability governs lifting performance⁹ and where structural competence governs lifting performance¹⁰. It also speaks to the load rating chart¹¹, and addresses the boom lift¹², boom telescoping¹³, load hoist mechanisms¹⁴, and the swing mechanism¹⁵. It speaks to controls, control forces and movements, and testing for installations. It speaks to crane transport¹⁶, rope and reeving accessories¹⁷. The Standard requires a

7 See Section 22-0.1: Scope of B30-22. See Para. 22-0.2.1, for a description of the specifically covered equipment. In its comments, and these clarifications, NLBMDA has indicated that its members will use the articulated boom when “commercial truck-mounted”.

8 See Para. 22-0.2.1.

9 See Para. 22-1.1.1.

10 See Para. 22-1.1.2.

11 See Para. 22-1.1.3.

12 See generally Section 22-1.2: Boom Lift, Boom Telescoping, and Load Hoist Mechanisms. See particularly Para. 22-1.2.1.

13 See Para. 22-1.2.2.

14 See Para. 22-1.2.3.

15 See generally, Section 22-1.3: Swing Mechanism.

16 See Section 22-1.4: Crane Transport, requiring “commercial truck-mounted” articulating booms to meet applicable requirements of the U.S. Department of Transportation Standards.

17 See Section 22-1.5, and attention to rope design factors, ropes, reeving accessories, sheaves and sheave sizes, and load hooks, fall assemblies, and load blocks.

manufacturer to furnish a crane operating manual that must include “operating safety guidance,” “crane operation instructions,” and “crane specifications and recommended service and maintenance information.”¹⁸

The Standard addresses inspection, testing, maintenance, as well as separately, rope inspection, replacement and maintenance.¹⁹ It defines inspection classifications²⁰, speaks to the frequency of inspections²¹, determines scope of periodic inspections,²² addresses equipment “not in regular use”²³, and requires the maintenance of inspection records²⁴. It requires manufacturers to test new equipment²⁵, including a load test²⁶. Section 22-2.3: Maintenance, covers preventive maintenance²⁷, sets out a maintenance procedure²⁸, establishes requirements for adjustment and repairs²⁹, and requires lubrication of all moving parts³⁰.

The Standard also carefully addresses the operation of the articulated boom.³¹ Chapter 22-3, “Operation,” speaks to the qualification and conduct of operators³², including limiting those individuals who may “enter the operating area”³³. It also sets out mandatory “conduct of the operator”, including to “not engage in any practice that may divert his attention while actually engaged in operating” the equipment.³⁴ The Chapter also establishes operating practices to cover handling the load³⁵ and covers handling the load, and “operating near electric power lines”³⁶. Cranes are required to be operated so

18 See generally Section 22-1.9: Operating Manual.

19 See generally Chapter 22-2, “Inspection, Testing, and Maintenance”.

20 See Para. 22-2.1.2.

21 See Para. 22-2.1.3.

22 See Para. 22-2.1.4.

23 See Para. 22-2.1.5.

24 See Para. 22-2.1.6.

25 See Para. 22-2.2.1.

26 See Para. 22-2.2.2.

27 See Para. 22-2.3.1.

28 See Para. 22-2.3.2.

29 See Para. 22-2.3.3.

30 See Para. 22-2.3.4.

31 See Chapter 22-3, “Operation”.

32 See Para. 22-3.1.2.

33 See Para. 22-3.1.2.

34 See Para. 22-3.1.3. See also, Subparagraph (a).

35 See Section 22-3.2: Operating Practices.

36 See Para. 22-3.3.1.

that no part of the crane or load enters into the danger zone, which is established by an arc extending from the most exterior lines of a series of power lines suspended from a single pole, with the arc defined by distances from ten to 45 feet.³⁷ The Standard anticipates when and how a danger zone may be entered,³⁸ and requires a “signalperson” to be assigned to observe clearance and give warning before approaching the established limits.³⁹

3. C-DAC, OSHA⁴⁰, and therefore NCDOL, failed to consider ASME B30.22 as a means to provide an appropriate regime addressing risks relative to the use of commercial truck-mounted articulating booms in the delivery of materials to construction sites.⁴¹

We note that NCDOL anticipates that OSHA will at some point implement the C-DAC recommendations on a national basis.⁴² NCDOL appears to have endorsed not only the reasoning and rationale of C-DAC and OSHA, but it also appears to assume that any final rule applied nation-wide will be identical to the new state regulations.

Reliance on OSHA does not justify the scope of the new state regulations. The OSHA proposal is based on the C-DAC recommendations that neglected many sectors that rely on various types of equipment that would be covered, and OSHA ignored established federal policy in ignoring existing, consensus based, voluntary standards applicable to specific equipment and functions so casually captured by C-DAC, OSHA, and NCDOL.

For example, OSHA acknowledges in the “Procedural Determinations” of its notice of proposed rulemaking that “[a] safety standard is reasonably necessary or appropriate within the meaning of Section 652(8) if it substantially reduces or eliminates significant risk, is economically and technologically feasible, is cost effective, is consistent with or is

37 See Subparagraph 22-3.3.1(a). See also Figure 17, “Danger Zone for Cranes and Lifted Loads Operating Near Electrical Transmission Lines” and Table 1, “Required Clearance for Normal Voltage in Operating Near High Voltage Power Lines and Operation in Transit With No Load and Boom or Mast Lowered”.

38 See Clauses (1) and (2) of Subparagraph 22-3.3.1(a).

39 See Clause (2)(4) of Subparagraph 22-3.3.1.

40 Throughout, we use “OSHA” to designate the Federal Occupational Safety and Health Administration.

41 See comments filed by the American Society of Mechanical Engineers relative to the federal OSHA proposal, OSHA-2007-0066-0140 at <http://www.regulations.gov/search/Regs/contentStreamer?objectId=090000648081d439&disposition=attachment&contentType=xml>.

42 See “OSBM Review: Permanent Rules with Substantial Economic Impact” relative to 13 NCAC 07F .1901 to .0927 at: http://www.osbm.state.nc.us/files/pdf_files/DOL11202008.pdf.

a justified departure from prior Agency action, is supported by substantial evidence, and is better able to effectuate the Act's purposes than a relevant national consensus standard."⁴³

However, OSHA does not in these same determinations identify and render conclusions regarding the existence of an applicable voluntary consensus standard or the applicability of Circular A-119 relative to a determination that an existing voluntary consensus standard would not be appropriate in this rulemaking proceeding relative to articulating booms.⁴⁴

Some of the types of equipment subject to this proposed standard are addressed by current national consensus standards in the ASME B30 series, including: ASME B30.5-2004, "Mobile and Locomotive Cranes"; ASME B30.6-2003, "Derricks"; ASME B30.8-2004, "Floating Cranes and Floating Derricks"; ASME B30.3-2004, "Construction Tower Cranes"; ASME B30.14-2004, "Side Boom Tractors"; and ASME B30.2-2001, "Overhead and Gantry Cranes." In addition, ASME B30.7-2005, "Base-Mounted Drum Hoists," addresses a type of equipment that is often a component of derricks, and ASME B30.23-2005, "Personnel Lifting Systems," addresses issues that are covered by proposed Sec. 1926.1431, Hoisting personnel.

The particular ASME voluntary consensus standard applicable to the articulated boom, ASME B30.22-2005 (and due to be revised through the American National Standards consensus requirements in 2010) is not identified here or elsewhere in the Summary and Explanation of the OSHA proposed standard. C-DAC documents and OSHA commentary provide no information or explanation why this particular standard was not review by the Committee during its deliberations, or why this particular standard was not identified and discussed by OSHA in its Summary and Explanation or in Part G of its Procedural Determinations.

C-DAC consulted these ASME standards (or the most current versions available at the time) and other resources in developing its proposal.

In most instances, the ASME standards that the Committee consulted were entered into the docket, including: ASME B30.5-2000 (OSHA-S030-2006-0663-0334); ASME B30.5a-2002 Addenda (OSHA-S030-2006-0663-0335); ASME B30.6-2003 (OSHA-S030-2006-0663-0337); ASME B30.17-2003 (OSHA-S030-2006-0663-0338); ASME B30.3-1996 (OSHA-S030-2006-0663-0353); and ASME B30.23-1998 (OSHA-S030-2006-0663-0354).⁴⁵

43 See Federal Register Notice of Proposed Rule (October 9, 2008), 73 FR at page 59872.

44 See 73 FR at page 59913, Part G, "Applicability of Existing Consensus Standards".

45 See 73 FR at pages 59913 and 59914.

Again, no mention of ASME B30.22-2005 or the suitability of it or the necessity of a government-unique standard applicable to articulating booms. The summary of the C-DAC deliberations, relative to the suitability of existing voluntary consensus standards, provides no guidance to those who own and operate commercial truck-mounted articulating booms how it was determined or if it were even considered that ASME B30.22 may or may not be appropriate as a voluntary national standard to be referred to, adopted in whole or in part, or whether the C-DAC and OSHA determined that it did not address the risks associated with the covered equipment.

As discussed in detail in the Summary and Explanation of the proposed standard, a number of provisions in this proposal contain concepts that are similar to those in provisions in the various ASME standards. However, the Committee determined in most instances that, for reasons of enforceability, clarity or ease of use, the wording of those concepts needed to be modified. For some issues, the ASME standards do not address issues covered by this proposal, or the Committee determined that a different approach is needed. For example, in the provisions on inspections (Sec. 1926.1412 and 1926.1413), C-DAC concluded that shift, monthly and annual inspection intervals are most appropriate, in contrast to the ASME approach, which uses “frequent” and “periodic” intervals. In the provisions addressing assembly/disassembly (Sec. 1926.1403 through 1926.1406) and the encroachment prevention provisions for power lines (Sec. 1926.1407 through 1926.1411), C-DAC adopted approaches with no comparable counterparts in the ASME standards.

In some instances, C-DAC determined that it was appropriate to incorporate ASME standards by reference, in whole or in part. For example, in proposed Sec. 1926.1433, Design, construction and testing, the proposed rule incorporates by reference ANSI B30.5-1968, safety code for “Crawler, Locomotive, and Truck Cranes,” “PCSA Standard No. 2,” for crawler, truck and locomotive cranes manufactured prior to [EFFECTIVE DATE OF THE FINAL RULE], and incorporates portions of ASME B30.5a-2004, “Mobile and Locomotive Cranes,” for mobile (including crawler and truck) and locomotive cranes manufactured on or after [EFFECTIVE DATE OF THE FINAL RULE].⁴⁶

We would further note that ASME B30.22, as with other voluntary consensus standards, will most certainly be reviewed and revised more often, as well as more efficiently and effectively, than the state regulations promulgated by NCDOL or any such regulations that may be promulgated by OSHA.

In a November 13, 2008 communication, the American Society of Mechanical Engineers urged OSHA on this point⁴⁷. First with respect to the already outdated C-DAC recommendations:

46 73 FR at page 59914.

47 See comments filed by the American Society of Mechanical Engineers relative to the federal OSHA proposal, OSHA-2007-0066-0140 at

“Four years ago, C-DAC completed its work and since that time the document has been reviewed by several government entities ... In that four year time, ASME has updated many of its B30 consensus standards on cranes and related equipment as a part of the continuous process to effectively address safety issues and technological advances. Thus, OSHA’s notice of proposed rulemaking, Docket No. OSHA 2007-0066 reference standards that have been updated since C-DAC completed its work. ...Further we encourage OSHA to continuously update the proposed rulemaking to reflect current revisions of industry consensus standards.”

Second, on the point of government rulemaking:

“...since 1971, section 1926.550 has been amended substantially only twice ... there have been considerable technological changes since the 1971 OSHA standards were issued. Considering how often the previous rule was updated, we would strongly the regular updates of outdated rules be a made a priority of the agency. It is important to provide the most up-to-date references of voluntary consensus standards because these standards are continuously updated to reflect the ongoing technological changes, lessons learned from experience, and present day best practices.”

Finally, on the role of voluntary consensus standards:

“For over 20 years our federal government has maintained a strong and effective reliance on the non-governmental sector for development and maintenance of the standards at use across all sectors of our economy. First implemented through OMB Circular A119 and later codified by Congress through P.L. 104-113, the National Technology Transfer and Advancement Act (NTTAA), this policy is motivated by the recognition that a regulatory process is not the most thorough, effective or efficient way to ensure the full debate of public and private viewpoints necessary to develop and maintain relevant standards in use by the private sector and government alike.”

4. Training to a broad standard applicable to the whole host of hoisting equipment subject to the current state regulation threaten the safety record achieved with articulating booms and imposes undue burdens on sectors not considered by C-DAC or NCDOL.⁴⁸

By imposing an over-broad state regulation on sectors that use a specific type of equipment for a specific purpose, NCDOL threatens the safety record achieved by the

<http://www.regulations.gov/search/Regs/contentStreamer?objectId=090000648081d439&disposition=attachment&contentType=xml>.

48 The particular provisions of the state regulation referred to here is section 1926.1427(c), Option #2, “Qualification by an audited employer program”.

LBM sector with commercial truck-mounted articulating booms used in the delivery of building materials to the construction site. Consider the costs, time and effort devoted to training based on standards applicable to hundreds of different types of cranes, standards that do not speak to all of the competencies required to safely operate the specific equipment in question, and standards, in fact, that contradict in many instances the manufacturers' recommended use of said equipment.

Consider the observations of the Articulating Boom Crane Council of North America⁴⁹ –

The Proposed Rules will have substantial and significant consequences upon the articulating crane industry and present a substantial economic threat to the industry's continued existence. The Proposed Rule cites numerous operational conditions and product requirements that presumably apply to all cranes referenced in 1926.1400(a), but which in fact have no relevance to articulating cranes. In some cases, if the requirements in the Proposed Rules are applied to articulating cranes it will create situations that are dangerous and require the equipment to be operated in ways that violate the manufacturer's recommended operational procedures.

The Proposed Rules refers primarily to ASME B30.5 regarding Cranes and Derricks in Construction as the basic external standard. Because of the unique issues regarding articulated booms, however, over 20 years ago ASME removed these devices from the general B30.5 consensus standard and created a new specialized consensus standard, B30.22 ARTICULATING BOOM CRANES. Inclusion of articulating cranes without differentiating them from telescoping cranes is inappropriate and creates irreconcilable rules for articulating cranes, potentially diminishing rather than enhancing safety. Blanket inclusion places impossible burdens upon the articulating boom crane industry and the users of such equipment, without reason or rationale for safety.

Further, these regulations will impose significant costs that have not been a part of its cost estimates. In fact, contrary to the narrative below, the regulation will require firms in the LBM sector (already training operators to the ASME B30-22 standard) to essentially start from scratch, losing years of investments in training programs, and impose competencies on their operators that are in no way relevant to the safe and appropriate operation of commercial truck-mounted articulating booms when used to deliver building materials to the construction site. These employers would be required to seek out a limited number of certification bodies, impose unnecessary training on employees, and as a practical matter train to two separate standards, the appropriate and industry-recognized ASME B30-22 (to achieve the safety the LBM sector desires) and the over-broad regulation imposed by the state (to meet a state regulatory requirement).

49 See comments filed January 22, 2009 in the OSHA proceedings, OSHA-2007-0066-0106 at <http://www.regulations.gov/search/Regs/contentStreamer?objectId=09000064807c1ad6&disposition=attachment&contentType=xml>.

“Through discussions with industry leaders in North Carolina, NCDOL has learned that many of the larger companies are already either already requiring certification of their operators, or they are in the process of implementing such requirements. As a result, the costs from these proposed rules will not be new to them. However, it is impossible to determine exactly how many companies have already complied with the substance of these proposed regulations. Thus, the economic impact of these new rules has not been adjusted based upon this information.”⁵⁰

Given the limited number of credentialing bodies, and the inability of the state to certify employer programs, and the fact the North Carolina employers be paying for the cost of training operators to a new set of competencies in a national vacuum, NCDOL puts North Carolina business at a competitive disadvantage. Ironically, NCDOL has ignored, at least in the instance of ASME B30-22, a long-standing, industry-recognized, voluntary consensus standard, developed to ANSI consensus-building standards; instead, NCDOL has imposed a one-size-fits-all governmental standard on a host of different hoisting and material handling equipment, and yet NCDOL has turned over the responsibility as well as the economic monopoly to private sector certification programs and training companies:

Of particular concern, the regulation offers no cost-effective means for employers to demonstrate the validity of a standards-based training program to the state. Given that there will be no national standard to drive competition on pricing and availability of accreditation or certification, and given that the state will not offer itself as an independent certifier, the option offered by the regulations for the accreditation and auditing of an employer training program is rendered meaningless.

In addition to the fact that ASME B30-22 is already known to employers, operators, equipment manufacturers and providers of training, as an ANSI accredited standard, any accreditation or auditing of a training program would not require certification programs or auditors specializing in crane operation, or those choosing niche markets for specific types of cranes. Such training programs would only need to be verified as having all of those elements necessary to address every part of the ASME B30-22 standard and that the testing and evaluation of employees followed normative means to testing and evaluations – essentially a process management assessment that any auditor accredited under common ISO or ANSI standards could readily determine.⁵¹

⁵⁰ See OSBM Review, page 6.

⁵¹ Speaking to the general desire to measure specific and needed competencies, the ASME standard appropriately acknowledges that training should be tailored to the specific equipment being used: “Operators shall be required by the employer to pass a practical operating examination. Qualifications shall be limited to the specific type of equipment for which examined.”. See section 22-3.1.2, “Qualifications for operators”.

Finally, NCDOL, while unable to wait for OSHA action, makes the assumption that OSHA will not only eventually impose a nation-wide governmental mandate on so broad a category of equipment, but that it will not in the meantime be persuaded by any of the now hundreds of comments and testimony received since the proposal was published in the Federal Register.

“In addition, although still in the early stages, Federal OSHA published its proposed revisions to the federal crane and derrick standards (29 CFR Part 1926, Subpart N) in the *Federal Register* on October 9, 2008. The public comment period for the federal proposed rule is December 8, 2008, but given the new presidential administration that will be taking over in January 2009, the federal rule is not expected to be effective for at least one year. Nevertheless, once effective, all employers in the United States will be subject to the new federal rule. And, since the regulations proposed by NCDOL mirror those of Federal OSHA, the fiscal impact of the North Carolina proposed rule will be negated once the federal rule goes into effect.”⁵²

We recommend the comments filed by the Small Business Administration’s Office of Advocacy relative to the C-DAC recommendations and OSHA proposal⁵³ –

OSHA should consider eliminating the requirement for third-party certification of crane operators – at least for some small cranes or routine lifts. The proposed rule requires third-party certification of all crane operators. However, it is clear from the SBAR Panel process and subsequent discussions with small business representatives that some small business representatives favor third-party certification of operators while others strenuously oppose it. However, all small business representatives favor requiring operators to be fully trained and competent. Accordingly, OSHA should consider feasible alternatives to mandating third-party certification for all operators, such as by exempting some small cranes (based on vehicle weight or boom length) or routine lifts. OSHA should also assess whether it is feasible to allow small employers to “self-certify” that an operator is trained and competent to operate the equipment and perform the tasks being conducted (similar to OSHA’s Forklift/Powered Industrial Trucks standard¹³). Such an approach might be appropriate for small cranes used in residential construction or for routine, redundant operations. If third-party certification is to be required for all operators, OSHA should expand the number of entities that can provide such certification (such as community colleges or any other accredited educational institution) in order to reduce the cost and ensure the availability of these services.

⁵² See OSBM Review, page 6.

⁵³ See comments filed by SBA Office of Advocacy (January 16, 2009), OSHA-2007-0066-0147.1 at <http://www.regulations.gov/search/Regs/contentStreamer?objectId=090000648082301d&disposition=attachment&contentType=xml>.

OSHA should consider and document any “significant alternatives” to the proposed rule. Advocacy understands that a great deal of time and effort went into the development of the proposed rule through the C-DAC negotiated rulemaking and the SBAR Panel processes. However, because OSHA had committed to publishing the draft rule developed by C-DAC as the proposed rule, a full consideration of significant alternatives that would specifically reduce the burden on small businesses have not been documented in the proposed rule. As stated above, the RFA specifically requires OSHA to “consider any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.” The SERs provided a number concerns and recommendations about the proposed rule that OSHA should assess prior to finalizing the rule, even if that means deviating from the C-DAC draft. Indeed, at least one small business representative has recommended that OSHA discard the C-DAC draft and adopt the revised ASME B-30 consensus crane standard instead. Others have objected to the third-party certification provisions and sought greater flexibility for small cranes performing routine tasks. For these reasons, Advocacy recommends that OSHA consider and document any significant alternatives to the C-DAC draft that it considered so that the public can assess the fullness of the process.⁵⁴

OBJECTION AND RECOMMENDATION

Given the existence of a body of knowledge in the LBM industry relative to an existing voluntary consensus standard specifically applicable to commercial truck-mounted articulating booms, we object to the regulation as presented in the Notice⁵⁵ and recommend the addition of a sixteenth (16th) exception to the scope of the state regulation applicable to cranes and derricks:

13 NCAC 07F .0901 SCOPE

(a) This Section applies to power-operated equipment used in construction that can hoist, lower and horizontally move a suspended load. Such equipment includes: articulating cranes (such as knuckle-boom cranes); crawler cranes; floating cranes; cranes on barges; locomotive cranes; mobile cranes (such as wheel-mounted, rough-terrain, all-terrain, commercial truck-mounted, and boom

⁵⁴ Advocacy notes that a “significant” regulatory alternative is defined as one that: 1) reduces the burden on small entities; 2) is feasible; and 3) meets the agency's underlying objectives. See, A Guide to Federal Agencies, How to Comply with the Regulatory Flexibility Act, SBA Office of Advocacy, May 2003, p. 73-75 (available at <http://www.sba.gov/advo/laws/rfaguide.pdf>).

⁵⁵ Notice of Text filed with the Office of Administrative Hearings, July 8, 2009 relative to 13 NCAC 07F.0901 by North Carolina Department of Labor (hereafter “Notice”).

truck cranes); multi-purpose machines when configured to hoist and lower (by means of a winch or hook) and horizontally move a suspended load; industrial cranes (such as carry-deck cranes); dedicated pile drivers; service/mechanic trucks with a hoisting device; a crane on a monorail; tower cranes (such as fixed jib ("hammerhead boom"), luffing boom and self-erecting); pedestal cranes; portal cranes; overhead and gantry cranes; straddle cranes; side-boom tractors; derricks; and variations of such equipment. However, items listed in Paragraph (c) of this Rule are excluded from the scope of this Section.

(b) Attachments. This Section applies to equipment included in Paragraph (a) of this Rule when used with attachments. Such attachments, whether crane-attached or suspended include: hooks, magnets, grapples, clamshell buckets, orange peel buckets, concrete buckets, drag lines, personnel platforms, augers or drills and pile driving equipment.

(c) Exclusions. This Section does not cover:

(1) Machinery included in Paragraph (a) of this Rule while it has been converted or adapted for a non-hoisting/lifting use. Such conversions/adaptations include power shovels, excavators and concrete pumps.

(2) Power shovels, excavators, wheel loaders, backhoes, loader backhoes, track loaders. This machinery is also excluded when used with chains, slings or other rigging to lift suspended loads.

(3) Automotive wreckers and tow trucks when used to clear wrecks and haul vehicles.

(4) Service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries, such as digger derricks (radial boom derricks).

(5) Machinery originally designed as vehicle-mounted aerial devices (for lifting personnel) and self-propelled elevating work platforms.

(6) Telescopic/hydraulic gantry systems.

(7) Stacker cranes.

(8) Powered industrial trucks (forklifts).

(9) Mechanic's truck with a hoisting device when used in activities related to equipment maintenance and repair.

(10) Machinery that hoists by using a come-a-long or chainfall.

(11) Dedicated drilling rigs.

(12) Gin poles used for the erection of communication towers.

(13) Tree trimming and tree removal work.

(14) Anchor handling with a vessel or barge using an affixed A-frame.

(15) Roustabouts.

(16) Commercial truck-mounted articulated booms with fixed fork assembly mounted for purposes of handling or hoisting material whose operators are trained to the standards of ASME B30.22.

(d) All rules of this Section apply to the equipment covered by this Section unless specified otherwise.

(e) The duties of controlling entities under this Section include the duties specified in 13 NCAC 07F .0912(a)(3), 13 NCAC 07F .0912(a)(5) and 13 NCAC 07F .0916(n)(2).

(f) Where provisions of this Section direct an operator, crewmember, or other employee to take certain actions, the employer shall establish, effectively communicate to the relevant persons, and enforce work rules, to ensure compliance with such provisions.

ECONOMIC IMPACT ANALYSIS

1. The reports and recommendations of C-DAC, as apparently analyzed by NCDOL, and the economic impact offered by OSHA, as apparently endorsed by NCDOL, do not consider the impact of the new rules on the lumber and building materials (LBM) industry sector.

We note NCDOL endorsement of the C-DAC recommendations:

“... NCDOL is taking a proactive approach toward protecting those in North Carolina who operate and work around cranes. Working from the C-DAC document proposed by OSHA in the October 9, 2008 edition of the *Federal Register*, NCDOL is proposing new rules for cranes and derricks that mirror the federal consensus document with some minor exceptions (e.g., organization and grouping to promote ease in reading and understanding by the regulated community in North Carolina).”⁵⁶

Further, we note this narrative:

Reason for Proposed Action: *Due to significant changes in construction consensus standards and requests from several industry stakeholders, Federal OSHA has been working since 1998 on an update to 29 CFR Part 1926, Subpart N, designed to protect employees from the hazards associated with hoisting equipment when used to perform construction activities and will affect establishments across a variety of different construction industries with work involving cranes and derricks. To that end, in July 2002, OSHA announced its intent to use the negotiated rulemaking process to revise Subpart N, and established the Cranes and Derricks Negotiated Rulemaking Advisory Committee (C-DAC). The C-DAC committee began meeting in August 2003, and completed their task in July 2004. As a result of their meetings, the C-DAC committee submitted a proposed revision to Subpart N to OSHA on July 13, 2004. After years of review, OSHA published a notice of proposed rule in the Federal Register on October 9, 2008. However, due to a number of factors affecting the federal rulemaking process, a final rule is not expected from OSHA for at least one year. As a result, NCDOL is taking a proactive approach toward protecting those in North Carolina who operate and work around cranes. N.C. Gen. Stat. § 95-131 sets forth that “[a]ll occupational safety and health standards promulgated under the federal act by the Secretary, and any modifications,*

⁵⁶ See “OSBM Review: Permanent Rules with Substantial Economic Impact” relative to 13 NCAC 07F.1901 to .0927 at: http://www.osbm.state.nc.us/files/pdf_files/DOL11202008.pdf.

revision, amendments or revocations in accordance with authority conferred by the federal act or any other federal act or agency relating to safety and health and adopted by the Secretary, shall be adopted as the rules of the Commissioner of this State unless the Commissioner decides to adopt an alternative State rule as effective as the federal requirement and providing safe and healthful employment in places of employment as required by the federal act and standards and regulations heretofore referred to and as provided by the Occupational Safety and Health Act of 1970." Therefore, NCDOL is proposing to adopt new rules for cranes and derricks that mirror the federal consensus document with some minor exceptions (e.g., organization and grouping to promote ease in reading and understanding by the regulated community in North Carolina).⁵⁷

NCDOL endorsed the OSHA methodology for purposes of estimating the economic impact of the state regulation.

“The methodology behind this economic analysis was derived from an in depth analysis conducted by the federal government of the same regulations being proposed for application throughout the United States (*see* Attachment H). In order to tailor the analysis to North Carolina, the North American Industry Classification System (NAICS) codes used in the federal analysis (*see* Attachment C) were accessed in the Employment Security Commission database and data maintained by the NC Department of Labor (NCDOL) (*see* Attachment D). In some instances, the NCDOL data was more accurate due to the onsite visits made by compliance officers and agency personnel and was used in place of the ESC data. Every effort was made to ensure that the most accurate estimate of the number of firms and establishments was used to estimate the number of cranes and crane jobs throughout North Carolina.”⁵⁸

NCDOL failed to consider the use of the LBM industry sector of commercial truck-mounted articulating booms.

Reliance on C-DAC fails to consider the economic impact on the LBM industry sector.

Federal law provides a compelling consideration of the economic impact on small business. In its own reliance on C-DAC recommendations, OSHA cites authority for the proposition:

A standard is economically feasible if industry can absorb or pass on the costs of compliance without threatening its long-term profitability or competitive structure. See ATMI, 452 U.S. at 530 n.55; AISI, 939 F.2d at 980.

⁵⁷ See North Carolina Register, Volume 23, Issue 12, pages 1091 – 1155 (December 15, 2008) at <http://www.ncoah.com/rules/register/Volume23Issue12December152008.doc>.

⁵⁸ See OSBM Review, page 3.

OSHA cites similar authority relative to the cost effectiveness of the proposed standard.

A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection.
ATMI, 453 U.S. at 514 n.32; International Union, UAW v. OSHA, 37 F.3d 665, 668 (D.C. Cir. 1994) (“LOTO III”).

However, in the case of the C-DAC recommendations, the North American Industry Classification System (NAICS)⁵⁹ code or codes, or the Standard Industry Classification (SIC) code or codes associated with the owners and operators of commercial truck-mounted articulated booms used for the sole purpose of delivering building materials to the construction site have not been included in the analysis of the economic impact of the proposed rules.

The Scope of the Lumber and Building Material Industry (NLBMDA 2009) provides a detailed analysis of the industry sector.

By any measure, the lumber and building materials (LBM) distribution channel is a mature industry. Stud frame construction as it is practiced today is not dramatically different than it was in the 1830s when the Industrial Revolution first enabled mass production of cut lumber and nails. Distribution channels are organized around the industries they serve, and this one is not exception.

LBM dealers are typically divided into two general categories:

Construction suppliers whose primary target market is professional contractors: single- or multifamily builders, remodelers, specialty trade contractors, and commercial builders and remodelers. These dealers often sell to consumers, but as a rule, do not actively solicit their business.

Home improvement retailers whose mix of products and services, merchandising strategies, and marketing efforts are primarily aimed at consumer customers. Companies in this category may derive a significant portion of their sales from professional contractors, but are typically perceived by contractors as “convenience stores” rather than primary suppliers.

The construction supply segment of the channel can be further divided into three general categories: lumberyards, specialty distributors, and component manufacturers (called fabricators).⁶⁰ The home improvement retailing segment of the channel may also be

59 Go to the U.S. Census Bureau Web page: <http://www.census.gov/eos/www/naics/index.html>.

60 For a more in-depth discussion of these three categories of the construction supply segment of the LBM channel, see pages 2 through 8 of Scope of the Lumber and Building Material Industry as cited above.

divided into three general categories: home center warehouses, home centers, and specialty retailers.⁶¹

The size and scope of the LBM industry is captured in the NAICS system. For purposes of general reference and discussion only, the retail trade is encompassed in the two-digit codes 44 and 45. Building material and garden supply dealers are in the three-digit code 444. NAICS 4441 covers building material dealers only⁶²; dealers are further segmented by five to seven-digit codes into home centers, lumberyards, hardware stores, paint and wallpaper stores, lawn and garden stores, and outdoor power equipment stores.⁶³

The economic impact of new and unfamiliar standards on a specific type of equipment in such a sector cannot be assumed or minimized. Given the slim margins and strong competition of providing lumber and building materials to construction projects, it cannot be assumed that an appropriate portion of the industry would be able to absorb or pass on the costs of compliance without threatening the long-term profitability or competitiveness of a significant part of the sector. Likewise, given the neglect in acknowledging and considering the role of an existing voluntary consensus standard, one in this instance widely accepted by the effected sector, any authority relying on the C-DAC recommendations cannot conclude that the proposed protective measures are the least costly alternatives to achieve the same level of protection.

We also assert that requirements should create clarity and certainty for purposes of compliance and training appropriate to the identified risks. We believe that articulating boom operators who deliver building materials to construction sites should be trained and need only be trained in the safe operation of the equipment for that purpose.

2. The state regulation imposes significant costs, if not confusion, relative to compliance, on organizations currently relying of an existing voluntary consensus standard to meet safety concerns associated with the use of commercial truck-mounted articulating booms for purposes of delivering building materials to the construction site.⁶⁴

61 For a more in-depth discussion of these three categories of the home improvement retailers segment of the LBM channel, see pages 8 through 10 of Scope of the Lumber and Building Material Industry.

62 See the 2007 NAICS definition for Sector 44-45, Retail Trade: 4441, Building Material and Supplies Dealers: “This industry group comprises establishments primarily engaged in retailing new building materials and supplies.”

63 For further and more detailed discussion of the NAICS and its applicability in defining the LBM industry, see Chapter 2 of Scope of the Lumber and Building Material Industry.

64 As asserted, members of the LBM industry, the lumber and building material industry, use a commercial truck-mounted articulated boom to deliver building materials to the construction site as a functional part of both their business model and their competencies. It is further asserted that this

C-DAC and therefore NCDOL neglected to consider the sector of lumber and building material dealers and their use of commercial truck-mounted articulating booms for the delivery of building materials to the construction site.

NCDOL also articulates a false assumption regarding firms that would be impacted by the state regulation –

It is also important to note that the economic analysis includes the smallest to the largest companies in North Carolina and encompasses all entities (state, local, federal, private, and small business). NCDOL believes that the final impact analysis appears to have a much greater impact that it actually will. There are very small employers in these industries, but it is likely that only the larger companies will own cranes.⁶⁵

However, there can be expected to be significant impact on very small employers who may engage a single commercial truck-mounted articulated boom and whose employees have built years of experience and training under ASME B30.22. Given the cost burdens associated with training and certification⁶⁶, and the lack of affordable accreditation and certification options, many businesses can be expected to be unable to continue to deliver building materials to the construction site, significantly jeopardizing their competitiveness and business model.

3. No cost analysis has been undertaken to consider the impact of the state regulations on the LBM sector, whose NAICS code begins with the four-digits 4441 and whose SIC code is 5211.

The cost analysis of the OSHA proposed rule on cranes and derricks used in construction does not include an analysis on the impact on lumber and building material dealers, and

competency, developed through training based on ASME B30.22, represents significant investments by the industry, not only for the protection of its own employees and equipment and as considerations of prudent expense management relative to insurance costs, but also to the benefit of the construction industry, which relative to the delivery of materials to the construction site, does not have to invest in these specialized competencies or equipment, and can therefore train and protect against risks and hazards associated with their construction activities.

⁶⁵ See OSBM Review, page 3.

⁶⁶ NCDOL notes: “It is also important to note that the economic analysis includes the smallest to the largest companies in North Carolina and encompasses all entities (state, local, federal, private, and small business). NCDOL believes that the final impact analysis appears to have a much greater impact that it actually will. There are very small employers in these industries, but it is likely that only the larger companies will own cranes.”.

North American Industry Classification System (NAICS) code 4441⁶⁷ and Standard Industry Classification (SIC) code 5211⁶⁸ are not cited in OSHA's discussion and analysis.

*Establishments engaged in selling primarily lumber, or lumber and a general line of building materials, to the general public. While these establishments may sell primarily to construction contractors, they are known as retail in the trade. The lumber which they sell may include rough and dressed lumber, flooring, molding, doors, sashes, frames, and other millwork. The building materials may include roofing, siding, shingles, wallboard, paint, brick, tile, cement, sand, gravel, and other building materials and supplies. Hardware is often an important line sold by retail lumber and building materials dealers. Establishments which do not sell to the general public and those which are known in the trade as wholesale are classified in Wholesale Trade, Industry Group 503.*⁶⁹

Furthermore, the negotiated rulemaking preceding these proceedings did not capture or engage this particular stakeholder group. Likewise, there is no indication that the C-DAC reviewed or considered the applicability of ASME B30.22 to articulating booms, there is no reference to the summary and explanations provided by OSHA in its notice of the proposed rule, and there is no justification, discussion, acknowledgement that an existing voluntary consensus standard exists and could be appropriate to the goals of the agency if adopted in whole or in part relative to the use of commercial truck-mounted articulating booms used to deliver building materials to the construction site.

NCDOL has cast a very wide net, mirroring the methodology of OSHA to anticipate the sectors that would be affected by the proposed standard. See the tabulations in the OSBM Review: Attachment B, "Estimated Cost of Compliance to NC firms, based on NC wages"; Attachment C, "OSHA Estimates of Cranes, Crane Jobs and Affected Crane Operators in the U.S."; Attachment D, "Number of Affected Firms By NAICS Code in North Carolina"⁷⁰; Attachment E, "Estimates of NCDOL Affected Firms and

67 See the NAICS Definition for 4441 Building Material and Supplies Dealers: "This industry group comprises establishments primarily engaged in retailing new building materials and supplies."

68 See the SIC "Description for 5211: Lumber and Other Building Materials Dealers (a part of Division G: Retail Trade; Major Group 52: Building Materials, Hardware, Garden Supply, And Mobile Home Dealers; and Industry Group 521: Lumber And Other Building Materials Dealers, at the OSHA Web site: http://www.osha.gov/pls/imis/sic_manual.display?id=13&tab=description.

69 Description for 5211: Lumber and Other Building Materials Dealers (emphasis added).

70 NCDOL notes that the "NCDOL Affected Firms were calculated by NCDOL by taking the NAICS codes utilized by Federal OSHA for crane-related industries and gathering state-specific information on those NAICS codes from the Employment Security Commission database and data maintained by NCDOL."

Establishments by sector and NAICS Codes”⁷¹; Attachment F, “NCDOL Estimates of Cranes, Crane Jobs and Affected Crane Operators in North Carolina”.

NCDOL having referenced the OSHA methodology, we note the following narrative in the OSHA proposal, which is associated with the NCDOL cost estimate by reference⁷² –

*The proposed standard would affect establishments across a variety of different construction industries with work involving cranes and derricks.*⁷³

Table B–2 presents data on the numbers of affected firms, establishments, employees, and average establishment revenues and profits. The Agency sorted establishments, by industry, into five sectors according to their crane or equipment activities, as follows:

- Crane Rental with Operators,
- Crane Rental without Operators,
- Own and Rent Cranes with Operators,
- Own but Do Not Rent, and
- Crane Lessees in the Construction Industry (or just “Crane Lessees”).

Table B–3 shows the adjustments OSHA made to estimate the number of establishments renting cranes in each industry and its rationale. Table B–4 shows the estimated number of construction small entities that meet the SBA criteria for each sector. OSHA notes that given the SBA revenue criteria and the size of typical construction entities that virtually all entities in the industries fall within the SBA definition of small entities. Almost 99 percent of all construction establishments are small entities, following the SBA criteria. Table B–5 shows the industrial profile for those establishments that would be considered very small, having less than 20 employees.

Nevertheless, OSHA’s exercise and analysis did not capture the LBM industry sector and did not consider the impact of subjecting the proposed regulations on equipment used in the delivery of building materials to the construction site. If a similar exercise were made relative to the sectors that use the commercial truck-mounted articulating boom for purposes of delivering building materials to the construction site, considering the current investment being made to train operators to an existing voluntary consensus standard, and

71 NCDOL notes that the “NCDOL Affected Firms and NCDOL Affected Establishments were calculated by NCDOL using information obtained from the Employment Security Commission database and data maintained by NCDOL (see Attachment D), and multiplying it by the OSHA% of NAICS in Column H to obtain the total number of affected firms and establishments by NAICS codes and by sector. The NCDOL Affected Firm and NCDOL Affected Establishments are those that would be affected by the proposed State rulemaking.”

72 See Attachment H to the OSBM Review,

73 See the tables and discussion associated with the Industry Profile in the Federal Register Notice beginning on page 59875.

acknowledging that the body of knowledge that has been focused on developing equipment-specific standards to this type of equipment, we believe that NCDOL would conclude that ASME B30.22 should remain as the applicable standard governing the use and operation of this equipment.

CONCLUSION

NCDOL should recognize ASME B30.22, an existing voluntary consensus standard, for purposes of addressing any concerns that may exist with commercial truck-mounted articulating booms used to deliver building materials to the construction site. ASME B30.22 provides an appropriate means to address concerns relative to the use of commercial truck-mounted articulating booms in the delivery of materials to construction sites.

We believe that articulating boom operators who deliver building materials to construction sites should be trained and need only be trained in the safe operation of the equipment for that purpose. We do not believe the numerous other provisions of the rule will have any effect on enhancing safety relative to the operation of articulating booms as we use them. Furthermore, training programs, based on the ASME standard, are focused, effective, and most appropriate for the work our employees do when delivering materials to the construction site.

The state regulation was not developed to and does not appropriately address risks that may be inherent in or associated with the use of commercial truck-mounted articulating booms used to deliver building materials to the construction site. The regulations impose significant costs, if not confusion, relative to compliance, on organizations currently relying on an existing voluntary consensus standard to meet the safety concerns identified in the proposed rulemaking. Furthermore, its over-broad application threatens the competencies and training programs developed specifically for commercial truck-mounted articulating booms, in some instances, creating inconsistencies with manufacturers' recommendations.

A review by NCDOL of the industry-wide acceptance and investment in training against ASME B30.22 would demonstrate that ASME B30.22 is the appropriate voluntary consensus standard to apply to the articulating boom and its use by the LBM industry: it addresses all risks associated with the use of the articulating boom; significant investments have been made in the development of competencies that would be part of any economic impact relative to risks reduced; and these competencies and investments have benefited other sectors that need not develop such competencies or invest in such specialized equipment.

Therefore, NCDOL should adopt an additional, sixteenth (16th) exception to the new rules applicable to cranes and derricks:

(16) Commercial truck-mounted articulated booms with fixed fork assembly mounted for purposes of handling or hoisting material whose operators are trained to the standards of ASME B30.22.

With respect to the current state regulations, we respectfully suggest that NCDOL first address the risks associated with tower cranes and other equipment with similar inherent risks. In a separate line of inquiry, should circumstances so justify, we would invite NCDOL to determine the risks associated with articulating booms in the delivery of building materials to construction sites. We are confident that once the specific risks associated with our equipment is analyzed, NCDOL will conclude not only that its current regulations are inappropriate relative to the articulating booms so used, but that our industry follows standards-based training, practices and procedures already recognized and in place today.

RESPECTFULLY SUBMITTED

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