

6/2/03 Hoisting Machine Operator's Advisory Board

Questions from public hearings 1/22/02 (Maui) 1/23/02 (Hilo) 1/24/02(Oahu)

1. **If you have a contract with the State DOT to pave a Highway and part of the contract is to hire a subcontractor to trim & remove trees along the State Highway, do these operators need to be certified to run large boom trucks?**

Yes, the guidelines and rules definition of construction found in the Hawaii Administrative Rules (HAR Section 12-50-2) define construction as "Construction" or "construction work" means work for construction, alteration, demolition, or repair including painting and decorating, erection of new electric transmission and distribution lines and equipment, and the alteration, conversion, and improvement of the existing transmission and distribution lines and equipment. At this time the current proposed rules will cover only hoisting machines as defined in the proposed rule "a power operated machine as defined in ASME B30.5a, Section 5-0.2", and is used in construction, demolition, or excavation work and has a lifting capacity of more than 5 tons.

2. **A new resort is being built and palm trees are being brought on to the project to be transplanted around the new buildings as part of the construction of the new hotel, do these operators need to be certified?**

Yes, if the site were under construction the same rules would apply per DLIR guidelines and rules definition of construction (HAR Section 12-50-2).* see above reasoning (number 1).

3. **The Chief Engineer's Office, Department of Facility Maintenance, City & County of Honolulu requests exemption of our employees from certification requirements of proposed Administrative Rules for Hoisting Machine Operators because hoisting machine use is limited to maintenance & emergency work such as dredging/stream cleaning, back-filling, and loading/unloading steel plates; equipment is not used for industrial construction activities. Given the difficulty to meet certification requirements for an employee whose regular duties include hoisting equipment, it will be unlikely for a TA employee to meet the requirements of 1000 hrs experience (including maintenance, training, and inspection). As currently proposed, the administrative rules will adversely impact City & County temporary assignment, promotional opportunity, and job retention.**

A hoisting machine operator certificate will not be issued to anyone who has not already received a valid certification card from the NCCCO or its equivalent. The requirement is 1,000 hours over a five-year period which includes maintenance, training, and inspection time. This translates to less than 4 hours a week. The Board feels this should be quite attainable. If an employee cannot meet the minimum experience requirements he/she should not be considered a hoisting machine operator.

There will be no exemption for not meeting the hour's requirement since the safety and experience requirement is considered to be a minimum.

- 4. The definition should be clarified and clearly state "mobile and locomotive cranes", in lieu of ASME B30.5a, and if safety is the main concern, boom trucks should also be included.**

ASME B30.5a, Section 5-0.2, definitions clearly state that boom trucks are included.

- 5. Why are these regulations being restricted to construction activities? Shouldn't the rules cover "General Industry" as a crane is a crane whether or not it belongs to a construction company, utility company, or the City or State for that matter, as they all perform functions of construction , demolition, and excavation?**

That is correct, the rules cover all companies and employees if they are doing construction work.

- 6. Will these rules apply to the mobilization and demobilization of cranes, as many times the person mobilizing and demobilizing is required to raise and lower the boom?**

Section 12-48-4(d) is being amended for clarification. The Amendment will read: (d) A hoisting machine operator certificate is not required for persons involved in mobilization & demobilization of the hoisting machine and maintenance personnel or inspectors who are performing their usual and customary duties (defined in ASME B0.5a, page 29).

- 7. It appears that the only way a person can qualify for the NCCCO hour qualifications is to be a full time operator. This requirement would be detrimental to small businesses that have operators, but not full time operators with enough duties for that operator to qualify for the requirement. How does the State intend to help these businesses?**

A special certificate will be available for those hoisting machine operators who work for only one employer and operate only specific hoisting machines identified by the applicant's employer. At the time of application the applicant's employer must certify in writing to the director that they have provided operator training that meets the training qualifications of ASME B30.5a for the specific hoisting machine identified in the application. The operator will have to comply with certain rules. A special certificate is valid for two years or until the holder terminates employment with the employer, whichever comes first. A special certificate is not renewable and is valid for only those hoisting machines specifically identified on the certificate. (for emergency situations see also number 3) Small businesses may need to consider contracting companies with crane operators for emergencies. At this time Section 12-48-7 will remain with an expiration term of two years.

- 8. There is a concern regarding abilities of operators and their abilities to undertake a written exam. Has any consideration been taken for these operators?**

Reading ability will be a requirement. ASME B30.5a (page 36), Section 5-3.1.2(b)(3) states “Operators shall demonstrate their ability to read, write, comprehend, and exhibit arithmetic skills and load/capacity chart usage, in the language of the crane manufacturer’s operation and maintenance instruction materials”. Also, the State has an adult education program and the telephone number for information is 594 0172.

- 9. Is the Board considering any other equivalent certification other than NCCCO such as NACB and how will they make this determination?**

Yes, the proposed rules allow for consideration of equivalent training or certifications. The certifying agency must be accredited as a certifying organization, by nationally recognized organizations such as the National Organization for Competency Assurance (NOCA), the National Skill Standards Board (NSSB) or the Council of Engineering and Scientific Specialty Boards (CESSB). The Board will require documentation of its accreditation by a nationally recognized organization as well as documentation that its written and practical examinations are psychometrically sound, valid and an effective measurement of a crane operator's knowledge and skills by nationally recognized credentializing agencies such as the Professional Examination Service (PES), Experior Assessments, LLC, and Assessment Strategies, Inc.

- 10. Who is responsible for the \$500 fee, employer or employee? In these hard economic times the fee seems excessive as compared to licenses required by contractors, engineers, CDL drivers, COF, etc. Fees should be reduced to reflect the average number of hours (500 hours or less for \$250).**

The employee is responsible for the \$500 fee. The individual operator is responsible since the certificate is issued to the individual and is portable to wherever the individual works.

- 11. We recommend a 2-year moratorium to allow for the appropriate training and certification to take place. Presently there are no local training/preparatory courses available outside of the operators union.**

DLIR will not enforce penalties until the certification process is in place. There has been sufficient time to prepare for certification and industry and labor groups have been aware of the process for over two years. The Board has been notifying the construction industry of the impending requirements.

- 12. 12-48-7 Special Certification should be amended to be valid until the holder terminates with the employer.**

The special certification is designed to be an interim solution until the operator is certified under the NCCCO, not a lifetime exemption.

- 13. For Government Workers minimum requirements, we would like to recommend training be conducted initially, periodically and whenever changes occur.**

Minimum training requirements will be the same for both the public and the private sector. A hoisting machine operator certificate will not be issued to anyone who has not already received a valid certification card from the NCCCO or its equivalent. (see also number 3)

- 14. Hoisting machine operator definition should be Stated as any certified person operating a hoisting machine [and is] while engaged in construction, demolition or excavation work.**

The language is approved by Attorney General's Office.

- 15. We recommend that section 12-48-4 (d) be amended to, “A hoisting machine operator certificate is not required for personnel involved in the movement of a hoisting machine to or from the jobsite for maintenance personnel or inspectors who are performing their usual and customary duties.**

Thank you. The Amendment will read: (d) A hoisting machine operator certificate is not required for persons involved in mobilization & demobilization of the hoisting machine and maintenance personnel or inspectors who are performing their usual and customary duties (defined in ASME B30.5a, page 29).

- 16. Can the State subsidize non-union companies the \$500 fee?**

It is the responsibility of the operator because it’s issued to the operator and not the company. (see also number 10)

- 17. The UPW requests exemption because it would directly conflict with the Unit 1, Agreement Section 89-10 (d) HRS; clearly States: "Whenever there is a conflict between the collective bargaining agreement and any of the rules adopted by the employer, including civil service or other personnel policies, standards, and procedures, the terms of the agreement shall prevail; provided that the terms are not inconsistent with section 89-9 (d)."**

A hoisting machine operator certificate will not be issued to anyone who has not already received a valid certification card from the NCCCO or its equivalent. The requirement is 1,000 hours over a five-year period which includes maintenance, training, and inspection time. This translates to less than 4 hours a week. The Board feels this should be quite attainable. If an employee cannot meet the minimum experience requirements he/she should not be considered a hoisting machine operator. There will be no exemption for not meeting the hour’s requirement since the safety and experience requirement is considered to be a minimum.

- 18. We recommend adding to section 12-48-5 (c). “This section does not apply to hoisting machine operators covered under Section 12-48-7.”**

12-48-7 clearly excludes 12-48-5(c).

19. **Is an excavator-lifting drainpipe to set in a trench covered under hoisting machine? If so, there is no exam covered under NCCO for excavators.**

Only mobile and locomotive cranes, as defined in ASME B30.5a, are covered under this rule at this time. Excavators are covered under other rules.

20. **Are County and State agencies and utility companies included under these rules? Yes. (see also numbers 3 and 5).**

21. **If an individual has 6 months left on his NCCO card before it expires and applies to the State to be certified under their program, does he have to pay the \$500 fee, retake the NCCO exam within 6 months and pay again to renew his certificate?**

Fees will be prorated to \$100 per year, exactly 365 calendar days from date of issuance. This operator would pay \$100 at the time of their application for the partial year up to the CCO card expiration date. The operator will then need to take the recertification exam in order to renew the NCCCO certification. When the CCO recertification is completed, application can be made to renew the Hawaii certification at a cost \$500 for 5 full years.

22. **We recommend running this program like trucks and have a program to oversee the licensing of operators. The State should set up an examiner like they did for CDL. Will the State become or provide an approved testing site?**

The NCCCO has specific instructions for establishing a testing site for both the written and the practical examination. They provide the application forms for operators, employers and others interested in providing an approved testing site. This also provides room for a "for-profit" organization to provide services that would be open to anyone willing to pay for the service. The Operating Engineers Local #3, has stepped forward to provide their members classroom training and a testing site for the practical exam, other industry organizations are encouraged to do the same. The State may consider to fund and administer only the initial written and practical testing.

23. **Do the rules apply to anyone operating a crane from general industry that comes on to a construction site?**

Yes, per DLIR HAR Section 12-50-2. Again, it is not the industry the employer belongs to but the kind of work being performed. If the operator comes onto a construction site and does no construction work (crane maintenance, inspection, mobilization or demobilization) - then he is not covered.

24. **Which rule applies for drug testing State or federal?**

Drug testing requirements are part of the physical examination as outlined in the physician's instructions in the candidate handbook. For crane operators covered by this proposed chapter - the State rules under the proposed Chapter 48 – applicants must submit a complete and current copy of either an NCCCO medical examiner's

certificate or a DOT certificate of medical examination. The Board has reviewed both medical examination certificates and found they both meet vision, drug, and all other requirements for certification. Copies of the medical certificate may be obtained in the NCCCO candidate handbook, physician's instructions, at your physician's office, and at the Department of Transportation office.

- 25. Is it required only with exam or also after an accident?**

Drug testing is required at the time of each physical examination. Operators must maintain a current NCCCO Physical Examination Form or a current DOT Medical Examiners Certificate. The certification is valid only with a current medical certificate as defined by ASME B30.5, page 36, (every three years). However, the operator's employer may also require a more frequent drug test. Drug testing after an accident or for cause is not required under the proposed Chapter 48.

- 26. Is drug testing for cause permissible?**

Drug testing requirements are part of the physical examination as outlined in the physician's instructions in the candidate handbook. (see also number 24).

- 27. Who and where is the drug testing acceptable by HMOAB? Drug testing should be spelled out; it may cost millions if not addressed correctly.**

Drug testing requirements are part of the physical examination as outlined in the physician's instructions in the candidate handbook or you may also go to your own doctor with the forms. (see also number 24).

- 28. Is boom trucks over 17.5 tons considered a large hydraulic crane and why?**

Yes, by definition of NCCCO, anything over 17.5 is a large hydraulic crane. The decision for determining the tonnage of large vs. small hydraulic cranes was made by the NCCCO standards committee, made up of crane experts across the nation.

- 29. When is a mechanic or maintenance personnel considered an operator?**

While performing actual construction work vs. maintenance or repair work. If the work being done by mechanic or maintenance personnel is being performed on the crane - then never. The operator must be performing construction work, which includes construction, demolition, or repair work on structures or infrastructure - not on the crane itself.

- 30. Is auto crane used in maintenance included in these rules? No it is not.**

- 31. These rules are for 5 tons and over - OSHA spells out one ton or greater, is this an oversight? In the same definition, it sets a lifting capacity of 5 tons or greater, but in referring to B30.5a, that capacity is set at 1 ton and greater. When dealing with**

HIOSH regulations they need to be as strict as or stricter than incorporated standards, which they are not doing.

Chapter 48 proposes operator certification, neither OSHA nor ANSI B30.5 require operator certification therefore there is no conflict. OSHA rules do not address the capacity of cranes, however ANSI B30.5 states “... cranes having a maximum rated capacity of one ton or less are excluded”. This means that operators of equipment covered by ANSI B30.5 that is over one ton capacity but under 5 tons capacity must meet the operator requirements of ANSI B30.5 but do not need to be certified by HIOSH.

- 32. If an accident occurs while operating a 3-ton crane, which causes a fatality and the family of the deceased file suit after finding out the operator was not certified, liability falls on whom?**

Certification has no bearing on determining who is liable, this is determined by our legal system. We are unable to answer liability questions.

- 33. Each neighboring county should be represented on the HMOAB.**

The representation for the HMOAB is defined and implemented by the Hawaii Revised Statutes.

- 34. Many references are made to ASME B30.5a. To avoid uncertainty should a copy be included in the rules?**

The standard is copyrighted material and may be purchased by the public from the American Society of Mechanical Engineers.

- 35. The Board should be part of the entire process, the Board could and should act as a neutral party, this would insure fairness for both operators and employers, large or small, union or non-union.**

The Board is part of the entire process and is made up of 5 individuals representing a cross section of the industry, both union and non-union, as provided by law, to insure fairness for both operators and employers, large or small, union or non-union. The Board is required to be fair and impartial to all.

- 36. We recommend amending section 12-48-7 (a) Special Certification to: “A special certification is available for a hoisting machine operator who works for only one employer or is a public employee of the State or county government and operates only specific hoisting machines identified by the applicant's employer.”**

Special certification is available for all employers including State and public workers.

- 37. We recommend amending section 12-48-7 (b) to: “At the time of applicant the applicant's employer must certify in writing to the director that they have provided**

operator training that meets the training qualifications of ASME B30.5a for the specific hoisting machines identified in the application. The operator, if properly employed, must comply with sections 12-48-5(a,b,d, & e), and 12-48-6 (a,c, & e) of these rules. The operator, if an employee of State or county government, shall meet the above requirements, except for the NCCCO experience requirement. In lieu of that requirement, an employee of the State or county workers shall provide proof of training that meets the qualifications of ASME B30.5a. NCCCO.”

The Board has deemed that the experience requirement must remain as stated in the proposed rules.

- 38. We recommend amending section 12-48-7 c to: “A special certificate, for a privately employed operator, is valid for two years or until the holder terminates employment with the employer, whichever comes first. A special certificate, for an employee of the State or county operator, is valid until the holder terminates employment with the employer.”**

The Board has deemed that the terms for special certification shall stand at 2 years because 1) that is sufficient time to retire if the operators prefer not to be certified; 2) prepare to find another type of job if the operators prefer not to be certified; or 3) prepare to pass certification.

- 39. We recommend amending section 12-48-5 c to: “At the time of application, an applicant must provide a current NCCCO certificate or an equivalent that is approved by the Board and must possess hoisting machine operation experience as required for the NCCCO written exam. A copy of the NCCCO experience form is acceptable. This section does not apply to hoisting machine operators covered under Section 12-47-7.**

Section 12-48-7 clearly excludes 12-48-5c.

- 40. The HMOAB should make the decision in the denial and suspension revocation process instead of DLIR.**

The Board is part of the entire process and will be recommending decisions to HIOSH.

- 41. Is it true that there has been some discussion in the "Employer's Council" that the employer will be responsible for paying the certification fee for the crane operators?**

The Board is not aware of any discussion on the matter by the council. The certification is for the individual crane operator and not the employer, therefore the operator is responsible for the fees. The employer can certainly reimburse the employee if they feel that is appropriate.