



VIA ELECTRONIC SUBMISSION

July 5, 2018

Loren Sweatt
Deputy Assistant Secretary
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: Docket ID OSHA-2007-0066, Comments on OSHA's Proposed Rulemaking on Cranes and Derricks in Construction: Operator Qualification (RIN 1218-AC96)

Dear Deputy Assistant Secretary Sweatt:

Associated Builders and Contractors, Inc. submits the following comments to the U.S. Department of Labor's Occupational Safety and Health Administration in response to the above-referenced notice of proposed rulemaking published in the *Federal Register* on May 21, 2018, at 83 Fed. Reg. 23534.

About Associated Builders and Contractors Inc.

ABC is a national construction industry trade association established in 1950 that represents more than 21,000 members. ABC and its 70 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors. Moreover, the vast majority of its contractor members are classified as small businesses. ABC's diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry. The philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

ABC members know exceptional jobsite safety and health practices are inherently good for business. ABC understands the importance of common-sense regulations based on sound evidence and scientific analysis with appropriate consideration paid to implementation costs and input from employers. Many ABC companies have implemented safety programs that are among the best programs in the industry, often far exceeding OSHA requirements.

Background

On Aug. 9, 2010, OSHA issued a final rule for cranes and derricks in construction through a negotiated rulemaking process.¹ The final rule required employers to ensure that their crane operators were certified by Nov. 10, 2014. After the final rule was published, several entities informed OSHA that the crane operator certification was insufficient for determining whether an operator could safely operate their equipment on a construction site. In response, OSHA held a number of public meetings to discuss the issue.

Due to the concerns raised at the meetings, OSHA proposed to extend the deadline for crane operator certification by three years, to Nov. 10, 2017, and to extend the existing employer duties for that same period.² In advance of the publication of the proposed rule, OSHA presented the proposal to the Advisory Committee on Construction Safety and Health, which recommended instead that OSHA postpone certification indefinitely pending further rulemaking and continue the existing employer duties for that same period. ABC submitted comments to OSHA, supporting ACCSH's recommendation of postponing the certification indefinitely until OSHA had clarified the type and capacity issue and continuing the same employer duties for that same period.³

On Sept. 26, 2014, OSHA issued a final rule extending from Nov. 10, 2014, to Nov. 10, 2017, the enforcement date for crane operator certification as well as the employer duty to ensure crane operator competency for construction work.⁴ OSHA subsequently finalized a second delay on Nov. 9, 2017, for one year, to Nov. 10, 2018, in order to address stakeholder concerns over the operator certification requirements.⁵ ABC submitted comments when the extension was proposed,⁶ stating that while it appreciates OSHA's one-year delay, it strongly encourages the agency to consider an indefinite extension.⁷

OSHA is now proposing to update its standard for cranes and derricks by permanently extending the employer duty to ensure that a crane operator is qualified to safely operate equipment and removing a provision of the 2010 final rule that requires different levels of crane operator certification based on rated lifting capacity of equipment.⁸

ABC's Comments in Response to OSHA's Proposed Rule

ABC appreciates OSHA's proposal to update its standard for cranes and derricks in construction to ensure crane operators are qualified to safely operate equipment. The proposal resolves ABC's previous concerns surrounding operator certification by type and capacity by eliminating the requirement for crane operators to be certified by capacity altogether. Also, the addition of a permanent employer duty

¹ 75 Fed. Reg. 47906.

² 79 Fed. Reg. 7611.

³ <https://www.regulations.gov/document?D=OSHA-2007-0066-0492>.

⁴ 79 Fed. Reg. 57785.

⁵ 82 Fed. Reg. 41184.

⁶ 82 Fed. Reg. 51986.

⁷ <https://www.regulations.gov/document?D=OSHA-2007-0066-0650>.

⁸ 83 Fed. Reg. 23534.

to ensure the competency of crane operators will clarify employer obligations under the standard and codify a practice that is standard within the construction industry and essential to ensuring workplace safety.

Crane Operator Certification Requirement

ABC is pleased that OSHA's 2018 proposed rule resolves the operator certification issue surrounding certification by type and capacity. ABC believes that certification by type is sufficient to establish a basic level of skill and knowledge about the operation of a particular crane. As OSHA states in its proposal, it is the employer's evaluation that best ensures that the operator is qualified to operate a crane, and capacity is just one factor in an employer's qualification.⁹

ABC requests, however, that OSHA leave language in the final rule that clarifies that employers who wish to certify operators by both type and capacity may continue to do so. Many ABC members currently require certification by type and capacity, and have expressed that they find both types of certification to be beneficial to establishing a baseline operator competency. Language in the final rule that clarifies that operator certifications by both type and capacity satisfy the requirement under the standard will help alleviate confusion about the changes to the requirement and allow employers to maintain their current certification requirements as they see fit.

Crane Operator Qualification Requirement

ABC agrees with OSHA's proposed changes to clarify and make permanent the employer duty to ensure that crane operators are qualified to safely operate equipment. Many of ABC's members have expressed the similar belief that the operator certification itself is not sufficient to establishing crane operator competency, and believe that employers must initially evaluate and continue to re-evaluate their crane operators to determine their ability to safely operate a crane.

Additionally, ABC appreciates OSHA's decision not to provide specific objective criteria for the evaluation of crane operators. ABC believes that such a regulatory scheme would be practically infeasible given the wide variety of equipment, construction tasks, jobsite conditions and other related criteria that factor into ensuring operator competency. As acknowledged in the 2018 proposal, most employers, including ABC members, have long considered it necessary to evaluate crane operators to ensure their ability to safely operate equipment, and have established operator competency programs that far exceed OSHA standards. Therefore, ABC requests that OSHA maintain this flexibility in the final rule so that employers have the ability to continue their existing programs or craft new programs that meet the needs of their company's workplace.

Regarding OSHA's proposed requirement for employers to document operator qualification, ABC appreciates that this proposal does not create a new system of documentation, and instead leaves employers the flexibility to capture this information in a way that makes sense for their workplace. As previously mentioned, many ABC members already have advanced operator competency programs in

⁹ 83 Fed. Reg. 23542.

place, which include their own system of documentation, and therefore, any requirement from OSHA to document this information in a standardized form would be duplicative and unnecessary.

Effective Date of Final Revisions to the Standard

ABC asks that OSHA delay the effective date of the certification requirement¹⁰ by an additional six months while OSHA works to finalize its 2018 proposed rule. Should the requirement go into effect on Nov. 10, 2018, before the proposal is finalized, it would create substantial confusion about whether certification by capacity is necessary. Therefore, a delay would alleviate confusion for impacted stakeholders as well as give OSHA adequate time to craft the safest and most comprehensive rule to ensure the safety of crane operators in the workforce.

Still, ABC members would like to see the rulemaking completed in a timely fashion so that employers can have certainty over what is required of them under the updated standard and can focus on compliance.

Conclusion

ABC appreciates OSHA's proposal to update its standard for cranes and derricks in construction to ensure crane operators are qualified to safely operate equipment, and agrees with OSHA's assessment that this proposal will go a long way in maintaining health and safety protections for workers while also reducing onerous compliance burdens for employers.¹¹

Thank you for your time and consideration on this matter.

Respectfully submitted,



Greg Sizemore
Vice President, HSE and Workforce Development

¹⁰ 82 Fed. Reg. 51986.

¹¹ 83 Fed. Reg. 23534.