



VIA ELECTRONIC SUBMISSION

March 12, 2014

The Honorable David Michaels, PhD, MPH
Assistant Secretary
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Docket ID OSHA-2007-0066, Comments on OSHA's Proposed Rulemaking on Cranes and Derricks in Construction: Operator Certification

Dear Assistant Secretary Michaels:

Associated Builders and Contractors, Inc. (ABC) submits the following comments to the U.S. Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) in response to the above-referenced notice of proposed rulemaking published in the *Federal Register* on February 10, 2014, at 79 Fed. Reg. 7611.

About Associated Builders and Contractors, Inc.

ABC is a national construction industry trade association with 22,000 chapter 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 they work. ABC member contractors employ workers, whose training and experience span all of the 20-plus skilled trades that comprise the construction industry. Moreover, the vast majority of our contractor members are classified as small businesses. Our 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. This process assures that taxpayers and consumers will receive the most for their construction dollar.

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 August 9, 2010, OSHA issued a final rule for Cranes and Derricks in Construction through a negotiated rulemaking process.¹ The final rule requires employers to ensure that their crane operators are certified by November 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 is proposing² to extend the deadline for crane operator certification by three years to November 10, 2017, and to extend the existing employer duties for that same period. During this time period, OSHA will address the issue of how it can ensure competent and safe crane operation. In advance of the publication of the proposed rule, OSHA presented the proposal to the Advisory Committee on Construction Safety and Health (ACCSH), which recommended instead that OSHA postpone certification indefinitely pending further rulemaking and continue the same employer duties for that same period.

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

ABC supports OSHA extending the crane operator certification deadline. Many in the industry believe that without an extension, the industry will face a crane operator shortage in the coming years. For the industry to continue to perform work without disruption it is important an extension is granted. However, ABC is concerned that extending it by three years still leaves questions about whether the agency will have the additional rulemaking completed in time. Limiting the amount of time the agency has to complete the rulemaking could lead to rushed and unclear regulations, such as the “type” and “capacity” operator certification issue that has led to this rulemaking. It is important that OSHA consult with the industry to arrive at a mutually agreeable interpretation in regard to the certification process. By extending it indefinitely, OSHA will alleviate any confusion on the compliance deadline, as OSHA, in cooperation with its’ industry partners, will be able to complete the additional rulemaking and then set a new certification deadline. As a result, ABC supports ACCSH’s recommendation of postponing the certification indefinitely until OSHA has clarified the “type” and “capacity” issue and continuing the same employer duties for that same period.

ABC appreciates OSHA proposing to extend the certification period. ABC is also willing to assist the agency in drafting a common sense solution to the “type” and “capacity” issue,³ as OSHA’s current interpretation artificially limits the equipment that a certified crane operator may operate. Requiring crane operators to be certified on multiple crane capacities provides no additional safety or risk-management benefits. Currently, not one of the 17 states that operate licensing programs requires “type” and “capacity” testing. Under the “Frequently Asked Questions” interpretation,⁴ OSHA allows operators to operate capacities that are lower than the crane they are certified to use, but not on a crane with a higher capacity. Existing crane operator certification courses and operator’s manuals for each crane specifically instruct the operator on how to lift the equipment’s maximum capacity safely, so any argument against an operator being unable to perform a safe lift on higher-capacity equipment with the same controls is troubling. ABC requests OSHA take these concerns into consideration, and work with industry to reach a mutually agreeable interpretation.

¹ 75 Fed. Reg., 47906.

² 79 Fed. Reg., 7611.

³ See: 75 Fed. Reg., 47906. Provisions in question available at 48017.

⁴ See: <http://www.osha.gov/cranes-derricks/faq.html>.

In addition, OSHA has raised the question about whether operator certification in and of itself is enough to qualify an individual to operate a crane in a safe manner, or whether employers should view certification as a “minimum” standard that an operator would use to continue his/her journey towards becoming a safe crane operator through further training and in-seat experience. ABC feels that much more substantive discussion will need to occur between OSHA and its’ industry partners in order to find common ground on this issue. ABC believes that an indefinite extension of the operator certification requirement would provide OSHA with the time to craft the safest possible solution to this question.

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Thank you for your time and consideration on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Burr", with a long horizontal flourish extending to the right.

Geoffrey Burr
Vice President, Government Affairs