

**OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)
REGULATORY UPDATES**

FINAL STATUTES, RULEMAKINGS, AND GUIDANCE

Citations	Summary
<p>Federal Register August 9, 2010</p> <p>29 CFR Part 1926 Docket No. OSHA- 2007-0066</p> <p>RIN: 1218-AC01</p> <p>Cranes and Derricks in Construction – Final Rule</p> <p>Effective Date: November 8, 2010</p>	<p>On August 9, 2010, OSHA issued a new rule addressing the use of cranes and derricks in construction. The new rule is designed to prevent the leading causes of fatalities, including electrocution, crushed-by/struck-by hazards during assembly/disassembly, collapse and overturn. It also sets requirements for ground conditions and crane operator assessment. In addition, the rule addresses tower crane hazards, addresses the use of synthetic slings for assembly/disassembly work, and clarifies the scope of the regulation by providing both a functional description and a list of examples for the equipment that is covered.</p> <p>Several provisions have been modified from the proposed rule. For example:</p> <ul style="list-style-type: none"> • Employers must comply with local and state operator licensing requirements which meet the minimum criteria specified in 1926.1427. • Employers must pay for certification or qualification of their currently uncertified or unqualified operators. • When employers, with employees qualified for power transmission and distribution, are working in accordance with the power transmission and distribution standard (§ 1910.269), that employer will be considered in compliance with this final rule's requirements for working around power lines. • Employers must use a qualified rigger for rigging operations during assembly/disassembly. Employers must perform a pre-erection inspection of tower cranes. • This final rule requires operators of most types of cranes to be qualified or certified under one of the options set forth in 1926.1427. • Employers have up to 4 years to ensure that their operators are qualified or certified, unless they are operating in a state or city that has operator requirements. If a city or state has its own licensing or certification program, OSHA mandates compliance with that city or state's requirements only if they meet the minimum criteria set forth in this rule at 1926.1427. This final rule clarifies that employers must pay for all training required by the final rule and for certification of equipment operators employed as of the effective date of the rule. <p>The complete rule is available at http://www.osha.gov/FedReg_osha_pdf/FED20100809.pdf. The regulation text is available at http://www.osha.gov/doc/cranesreg.pdf.</p>

Citations	Summary
Federal Register August 31, 2010 1) Docket Number OSHA-2010-0006 RIN 1218-AC47 2) Docket Number OSHA-2008-0026] RIN 1218-AC36 Procedures for the Handling of Retaliation Complaints. Interim Final Rule	OSHA published three interim final rules in the Aug. 31, 2010 <i>Federal Register</i> that will help protect workers who voice safety, health and security concerns. The regulations, which establish procedures for handling worker retaliation complaints, allow filing by phone as well as in writing and filing in languages other than English. Additionally, the regulations create consistency among various OSHA complaint procedures. The interim final rules also establish procedures and time frames for handling complaints under the whistleblower sections of the Implementing Recommendations of the 9/11 Commission Act of 2007 and the Consumer Product Safety Act of 2008. Additional information is available at: http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=18249 .

Letters of Interpretation:

OSHA issued the following letters of interpretation during July and August 2010. Links to the letters are provided below each reference.

- Acceptable equivalent to control lines for a Controlled Decking Zone (CDZ) in steel erection activities. 29 CFR 1926.760(c)(3).[1926.760;1926.760(c)(3);1926.502(f)(2)(iv)]. Issued on August 10, 2010.
 - http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27503
- Whether OSHA prohibits the use of a double D-bend elbow ("Rams Horn") shut-off valve at the end of a concrete pumping hose [1926.702; 1926.702(e)]. Issued on July 29, 2010.
 - http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27500
- English language proficiency at construction sites [1926.21(b)(2);1926.503(a)(1)]. Issued on July 26, 2010
 - http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27491
- Standards for decompression chambers for use with pressurized face-tunnel boring machines.[1926.803;1926.803(e)(5); 1926.803(m)(3)]. Issued on July 23, 2010.
 - http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27497

- Hand-held gas-powered cut-off saws.[1926.303(d)]. Issued on July 22, 2010.
 - http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27494
- The definitions of combustible and flammable liquids under 29 CFR 1926 and 29 CFR 1910.[1910.106; 1910.106(a)(18); 1910.106(a)(19); 1926.155; 1926.155(c); 1926.155(h)]. Issued on July 14, 2010.
 - http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27488
- Can a person who qualifies as a "competent" person under one section of Sub-Part P also qualify as a competent designer of structural ramps under §1926.651(c)(1)(i)?.[1926.650(b); 1926.651(c)(1)(i); 1926.652(b); 1926.652(b)(2); 1926.652(b)(4)]. Issued on July 1, 2010.
 - http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27506

Other Recent Developments:

OSHA Continues Focusing Enforcement Efforts on Plants Processing Hazardous Chemicals

OSHA issued a directive July 8 extending its National Emphasis Program (NEP) to inspect facilities processing large amounts of highly toxic or flammable chemicals and gases. Unexpected releases of these substances can cause devastating industrial disasters such as the 1991 explosion at a chemical plant in Louisiana that killed eight workers and injured 120 others. This resulted in OSHA fining the Angus Chemical Company and IMC Fertilizer Group \$11.5 million, the third highest penalty in OSHA history. Inspections under this extended NEP, which was initiated last year, will ensure that chemical plants have process safety management (PSM) programs in place to prevent similar tragedies. OSHA has a separate NEP focusing on PSM programs for oil refineries. A copy of the July 8 directive is available at: http://www.osha.gov/OshDoc/Directive_pdf/CPL_02_10-05.pdf

Enforcement Program Targeting Employers who Repeatedly Endanger Workers' Lives Takes Effect

OSHA's new Severe Violator Enforcement Program directive went into effect June 18. The directive establishes procedures and enforcement actions for the severe violator program, including increased inspections, such as mandatory follow-up inspections and inspections of other worksites of the same company where similar hazards or deficiencies may be present. The directive explains that the SVEP is intended to focus enforcement efforts on employers who have demonstrated recalcitrance or indifference to their OSH Act obligations by committing willful, repeated or failure-to-abate violations in one or more of the following circumstances: a fatality or catastrophe situation; in industry operations or processes that expose workers to severe occupational hazards; exposing workers to hazards related to the potential releases of highly hazardous chemicals; and all egregious enforcement actions. More details are available at:

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=4503

Review Commission Upholds OSHA's Multi-Employer Citation Policy

The Occupational Safety and Health Review Commission has upheld OSHA's multi-employer citation policy in a reversal of a decision the Commission made during the previous administration. Under the policy, OSHA inspectors may cite employers on multi-employer worksites for violations that do not expose their own workers to occupational hazards. For example, a general contractor who controls the worksite may be responsible for violations created by a subcontractor whose workers are exposed to safety or health hazards. In reaching its Aug. 19 decision, the Commission agreed with an earlier decision by the Eighth Circuit Court of Appeals, which had rejected the Commission's previous contrary view that employers are only legally responsible for protecting the safety and health of their own workers. The case under consideration involved Summit Contractors Inc., a general contractor constructing an apartment complex in Lebanon, Pa., in 2005. An OSHA compliance officer cited Summit for a safety violation after observing workers of a subcontractor using electrical equipment that lacked ground fault circuit interrupters and which had been brought onto the worksite by Summit.

OSHA Proposes Revisions to its On-Site Consultation Program

OSHA published a notice in the September 3 *Federal Register* proposing to revise regulations that govern the agency's On-site Consultation Program. The proposed changes will provide enhanced worker safety and greater flexibility for OSHA to allow sites to be inspected, even if those sites are normally exempt because of their status in OSHA's Safety and Health Achievement Recognition Program (SHARP). For example, SHARP sites could be included in industry-wide inspections carried out by OSHA in response to workplace incidents that generate widespread public concern about a hazard or substance, such as diacetyl or combustible dust. Another proposed change would allow inspectors to terminate an employer's on-site consultation visit and conduct an enforcement inspection when the agency receives allegations of potential workplace hazards or violations from state or local health departments, media, and other sources. OSHA is also proposing that employers who have achieved SHARP status receive an initial exemption from programmed inspections for one year with an extension of up to another year.

OSHA Changing Policy to Improve Outreach Training Program

OSHA has revised its Outreach Training Program Guidelines to require authorized trainers to limit courses to a maximum of 7½ hours per day. This means that all 10-hour courses must be taught over a minimum of two days and 30-hour courses over a minimum of four days. Reducing the length of classroom instruction helps ensure that workers retain important information that may prevent injuries, illnesses and death.

Prior to this change, OSHA had no requirements for how long these classes should last each day. OSHA became concerned that students might miss some essential safety and health training if their attention were to fade while being required to sit through 10 hours of instruction in one day. Another concern was that training courses presented over compressed timeframes of one to three days were not meeting 10- and 30-hour program time requirements. This concern became evident after OSHA reviewed several fraud cases that involved issues with the length of training.