

Summary of Comments and Agency Decisions

Title: Cranes and Derricks in Construction: Operator Qualification, CFR 1926

Administrative Order Number: 1-2019

Adopted: May 9, 2019

Effective: May 9, 2019

Delayed Enforcement Until: January 1, 2020

History

In 1998, federal OSHA began rulemaking on crane operator training requirements. The initial work was exploratory in nature and resulted in a decision to formally pursue rulemaking which began in earnest in 2004.

The resulting final rule was adopted in 2010 after extensive rulemaking committee meetings and comment periods. The rule was due to take full effect in 2014, but subsequent extensions delayed the effective date of the rule into November 2018. These extensions included additional comment periods and rule language changes. The different phases of this rulemaking eventually added up to an adoption timeframe of roughly 20 years from the initial committee meetings to full and effective adoption on Nov. 9, 2018.

During these years Oregon OSHA adopted crane operator certification rules for Oregon, with the intent to provide more stringent training requirements than those federally mandated during the extended rulemaking process. The latest of these rules was adopted in April 2002 with the intent that Oregon OSHA's rulemaking on crane and derrick operator qualifications would reopen with the final adoption of the federal rules that were being worked on. The nature of Oregon OSHA's state plan certification requires that Oregon-specific rules be at least as effective as federal rules. Oregon Administrative Rule (OAR) 437-003-0081 was judged more effective than the federal rules in effect at the time of adoption.

With the final adoption and enforcement of these federal rules, which included a requirement for a "Nationally Accredited" training program completion for operators, this is no longer the case. Oregon OSHA didn't see any feasible modifications to this new federal rule that would be more effective. This is echoed by the Oregon OSHA stakeholder groups who have been silent on the subject of modifying this federal rule with an OAR to provide greater protection. Therefore Oregon OSHA adopted the federal rules as written and repealed OAR 437-003-0081 and its appendices.

Summary

This rule affects the training and certification process for crane operators involved in construction work. The basic requirements of the rule are that a new "operator-in-training" will be trained through a combination of formal and practical instruction in order to develop the skills, knowledge, and ability to operate their assigned equipment safely on the job site.

Initial training must be done under the continuous supervision of a qualified trainer. This trainer will monitor all aspects of the work performed by the operator-in-training. The goal of this training is to ensure that the operator and co-workers are safe while they gain the skills needed to operate the equipment proficiently.

Supervised on-the-job training will end when the trainer feels that the operator has gained sufficient skills and knowledge to begin operating independently. At this point the operator-in-training must gain a formal license or certification. The rule allows four avenues to achieve compliant certification.

The first is qualification by the U.S. military for federal employees of the Department of Defense (DOD) or the Armed Forces. However, this qualification is not transferable to employment by organizations not under the aegis of the DOD or Armed Forces.

The second is qualification by a local government entity such as a city or county. If such an entity meets the requirements to issue crane operator certifications the certification will only be valid within the jurisdiction of the issuing entity. The certification issued by a local or state government cannot be valid for more than five years and it isn't valid while working for employers other than the issuing government entity.

The third avenue for qualification is the one that Oregon OSHA expects to be the most common within this jurisdiction. This is certification by a nationally accredited crane operator testing organization. Certifications gained under this option are valid for five years and are portable by the operator between different employers who are required to have operators certified under this rule.

The final option for certification is through an employer program that is audited by a third-party. Programs to provide certification under this option must be developed by an accredited crane operator testing organization or approved by an independent auditor who is certified by an accredited crane operator testing organization. Certification awarded under this option is valid for five years and is only valid for work under the employer who awarded the certification.

After a crane operator-in-training gains certification under one of the four options allowed by the rule, they must be evaluated by their employer. The evaluator will require the operator to demonstrate the skills and knowledge they acquired through their on-the-job training and certification course. The evaluation must be conducted on the type of equipment the operator is certified to operate and be specific to the size and configuration of the crane they will use on the job. The evaluator will ensure that the operator can recognize and avoid safety risks and evaluate use of machine specific safety devices, operational aids, and software. The evaluator will also ensure the operator can perform the hoisting activities required for their assigned work. This includes complex operations such as blind lifts, personnel hoisting, and multi-crane lifts. The employer must document the evaluation and retain the evaluation documentation at the jobsite for the duration of the operators employment.

Comments

Oregon OSHA received only two written public comments related to this rule. This may be related to the lengthy nature of the federal rulemaking process. Many construction industry employers in Oregon have already begun using a nationally accredited crane operator testing organization as part of their training processes in anticipation of this rule going into effect.

One of the two written comments was from a representative of the water/wastewater utility industry. He stated that water utility industry employers commonly use "small truck cranes" for both general industry (which has a less stringent training requirement than this rule) and construction activities related to their business and that the majority "95+%" was general

industry type activities. His position was that it is “problematic for small and large utilities to train to the higher level for work that is rarely performed” and expressed a desire for Oregon OSHA to develop an industry specific training requirement outside of this rule. A similar point of view was voiced in stakeholder meetings by representatives of Portland General Electric and the Eugene Water & Electric Board. Oregon OSHA cannot adopt rules that would grant industry specific exemptions from this rule. Doing so would violate the principal that rules adopted by a state plan must be at least effective as federal rules.

The other written comment was a request that Oregon OSHA delay adopting this rule until Aug. 7, 2019 and to delay enforcement for a further sixty days. Oregon OSHA adopted this rule in May, 2019 but has decided to delay enforcement until Jan. 1, 2020. This enforcement delay is necessary due to the foreseeable training program backlog that adoption will create, and is meant to ensure that all employers in Oregon have time to meet the requirements of the rule without unduly impacting their business operations. Until Jan. 1, 2020 Oregon OSHA will cite violations of this rule only if the conditions would have been a violation of the previous rules contained in OAR 437-003-0081.