



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket ID-OSHA-2007-0066]

RIN 1218-AC61

Cranes and Derricks in Construction: Demolition and Underground Construction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: On August 9, 2010, OSHA issued a final standard updating the requirements for cranes and derricks used in construction work. For most construction work, the final rule replaced a prior cranes and derricks standard. However, the prior standard continues to apply to demolition and underground construction work. Through this proposed rule, OSHA is proposing to apply the updated requirements to that work. With this proposed rule, OSHA also is proposing to correct inadvertent errors made to the demolition and underground construction standards when it issued the final rule for cranes and derricks in construction.

DATES: Submit comments to this proposed rule, including comments to the information-collection (paperwork) determination (described under the section titled AGENCY DETERMINATIONS), hearing requests, and other information by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: Submit comments, hearing requests, and other material, identified by Docket No. OSHA-2007-0066, by any of the following methods:

Electronically: Submit comments and attachments, as well as hearing requests and other information, electronically at <http://www.regulations.gov>, which is the Federal e-Rulemaking Portal. Follow the instructions online for submitting comments. Please note that this docket may include several different Federal Register notices involving active rulemakings, so selecting the correct notice or its ID number when submitting comments for this rulemaking is extremely important. After accessing the docket (OSHA-2007-0066), look for the name of this rulemaking (Cranes and Derricks in Construction: Demolition and Underground Construction) in the column labeled “Title.”

Facsimile: OSHA allows facsimile transmission of comments that are 10 pages or fewer in length (including attachments). Fax these documents to the OSHA Docket Office at (202) 693-1648. OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (e.g., studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender’s name, the date, subject, the title of the rulemaking (Cranes and Derricks in Construction: Demolition and Underground Construction) and the docket number (OSHA-2007-0066) so that the Docket Office can attach them to the appropriate document.

Regular mail, express delivery, hand (courier) delivery, and messenger service: Submit comments and any additional material to the OSHA Docket Office, RIN No. 1218-AC61, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone: (202) 693-2350.

(OSHA's TTY number is (877) 889-5627). Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The Docket Office will accept deliveries (express delivery, hand delivery, messenger service) during the Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency's name, the title of the rulemaking (Cranes and Derricks in Construction: Demolition and Underground Construction), and the docket number (*i.e.*, OSHA Docket No. OSHA-2007-0066). OSHA will place comments and other material, including any personal information, in the public docket without revision, and the comments and other material will be available online at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov> or to the OSHA Docket Office at the above address. The electronic docket for this proposed rule established at <http://www.regulations.gov> lists most of the documents in the docket. However, some information (*e.g.*, copyrighted material) is not available publicly to read or download through this website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Mr. Frank Meilinger, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1999.

Technical inquiries: Mr. Garvin Branch, Directorate of Construction, Room N-3468, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2020; fax: (202) 693-1689.

Copies of this Federal Register notice and news releases: Electronic copies of these documents are available at OSHA's Web page at <http://www.osha.gov>.

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Amendments to Standards

I. Request for Comment.

OSHA requests comment on all issues related to the proposed rule, including economic, paperwork, or other regulatory impacts of this rule on the regulated community. If OSHA receives no significant adverse comment to either this proposal or

the companion direct final rule, OSHA will publish a *Federal Register* document confirming the effective date of the direct final rule and withdrawing this companion proposed rule. Such confirmation may include minor stylistic or technical changes to the document. For the purpose of judicial review, OSHA considers the date of confirmation of the effective date of the direct final rule as the date of promulgation.

II. Direct Final Rulemaking.

In direct final rulemaking, an agency publishes a direct final rule in the *Federal Register* with a statement that the rule will become effective unless the agency receives significant adverse comment within a specified period. The agency may publish an identical proposed rule at the same time. If the agency receives no significant adverse comment in response to the direct final rule, the agency typically confirms the effective date of a direct final rule through a separate *Federal Register* notice. If the agency receives a significant adverse comment, the agency withdraws the direct final rule and treats such comment as a response to the proposed rule. An agency uses direct final rulemaking when it anticipates that a rule will not be controversial.

OSHA is publishing a companion direct final rule along with this proposed rule in the “Final Rules” section of today’s *Federal Register*. For purposes of this proposed rule and the companion direct final rule, a significant adverse comment is one that explains why the amendments to OSHA’s underground construction and demolition standards would be inappropriate. In determining whether a comment necessitates withdrawal of the direct final rule, OSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. OSHA will not consider a comment recommending an additional amendment to be a significant

adverse comment unless the comment states why the direct final rule would be ineffective without the addition.

The comment period for the direct final rule runs concurrently with that of this proposed rule. OSHA will treat comments received on the companion direct final rule as comments regarding the proposed rule. OSHA also will consider significant adverse comment submitted to this proposed rule as comment to the companion direct final rule. If OSHA receives a significant adverse comment on either the direct final rule or this proposed rule, it will publish a timely withdrawal of the companion direct final rule and proceed with this proposed rule. In the event OSHA withdraws the direct final rule because of significant adverse comment, OSHA will consider all timely comments received in response to the direct final rule when it continues with the proposed rule. After carefully considering all comments to the direct final rule and the proposal, OSHA will decide whether to publish a new final rule.

OSHA determined that the subject of this rulemaking is suitable for direct final rulemaking. Under the final rule for cranes and derricks in construction, most construction work involving cranes and derricks falls under new subpart CC of 29 CFR 1926, but underground construction and demolition remain covered under the former rule (*i.e.*, § 1926.550). These proposed amendments will result in the new subpart CC covering all construction operations, thereby improving worker safety because the new rule provides better protection to workers than the former rule. Moreover, these proposed amendments will facilitate employer compliance by having all construction operations involving cranes and derricks subject to a single rule rather than by having a few operations subject to a different rule. In addition, this proposed (and the direct final) rule

corrects inadvertent errors made to the standards for underground construction and demolition when OSHA issued the final cranes rule. Therefore, OSHA does not expect objections from the public to this rulemaking action. Accordingly, the Agency believes the regulated community will welcome this effort to harmonize the requirements regulating crane and derrick operations in underground construction and demolition, and to remove errors that hinder interpretation and proper application of existing standards.

III. Discussion of Amendments.

A. Background.

OSHA designed the final rule for cranes and derricks in construction, codified at 29 CFR 1926, subpart CC, to replace the earlier rule (§ 1926.550) for all construction work.¹ In proposing the new cranes and derricks rule, OSHA explained that the rule's purpose was "to protect employees from the hazards associated with hoisting equipment when used to perform construction activities" (73 FR 59714). Because OSHA developed the new rule to supplant the former rule entirely, OSHA proposed to remove and reserve § 1926.550 (73 FR 59915). When other OSHA construction standards referred to § 1926.550 directly, or indirectly, as part of subpart N, OSHA proposed to amend those provisions to refer instead to the new requirements in subpart CC (73 FR 59914-15).

In the proposed rule for cranes and derricks in construction, OSHA inadvertently did not propose to amend three provisions that referred to subpart N and encompassed the requirements of § 1926.550. These provisions included two provisions applicable to demolition work (§ 1926.856(c) and § 1926.858(b)), and one provision applicable to underground construction work (§ 1926.800(t)). When it issued the final rule, OSHA noted concerns about potentially inadequate notice to the public regarding any effort to

¹OSHA published the final rule at 75 FR 47906 (Aug. 9, 2010).

amend these provisions in the final rule; consequently, OSHA decided not to amend these provisions in the final rule. OSHA instead stated that it would revisit the issue later (75 FR 47920-21).

Having removed the requirements of § 1926.550 in the final rule, OSHA had to reestablish the substance of the demolition and underground construction provisions in a new subpart DD in the final rule, redesignate § 1926.550 as § 1926.1501 of subpart DD, and amend the demolition and underground construction provisions that previously referred to subpart N to refer instead to the new subpart DD. OSHA provided in § 1926.1500 of subpart DD that “[t]his subpart applies in lieu of § 1926 subpart CC.” However, in making these revisions, OSHA inadvertently made changes to the demolition and underground construction provisions that modified the meaning of these provisions. In addition, the Code of Federal Regulations eliminated all of the subparagraphs of § 1926.800(t), except for the introductory paragraph, because of a technical error in the draft regulatory language.

This proposed rule, therefore, will accomplish two goals. First, it will bring all crane and derrick use in construction work under new subpart CC. Second, it will correct the errors in the final rule that substantively altered the demolition and underground construction provisions, and replace subparagraphs § 1926.800(t)(1) through (4). Below, OSHA describes the amendments to the demolition and underground construction standards that OSHA made in the final rule for cranes and derricks in construction (including inadvertent errors), as well as the revisions and corrections to these standards that OSHA proposes.

B. Demolition Work.

Before OSHA issued the final rule for cranes and derricks in construction, § 1926.856(c) stated, “Mechanical equipment used shall meet the requirements specified in subparts N and O of this part,” and § 1926.858(b) read, “Cranes, derricks, and other hoisting equipment used shall meet the requirements specified in subpart N of this part.” In the final rule for cranes and derricks in construction, OSHA established a new subpart DD, redesignated the prior cranes and derricks rule (§ 1926.550) as § 1926.1501 of subpart DD, and amended § 1926.856(c) to require compliance with the new subpart DD, in addition to the remaining requirements of subparts N and O. OSHA also amended § 1926.858(b) to require compliance with new subpart DD instead of subpart N.

It was OSHA’s expressed purpose not to make substantive revisions to the requirements of these two sections in the final rule.² Nevertheless, OSHA made an inadvertent substantive change to § 1926.858(b).³ That section originally incorporated all requirements of subpart N for “cranes, derricks, and other hoisting equipment,” not just the requirements of subpart N’s cranes and derricks standard at § 1926.550. However, the final rule did not reference other requirements of subpart N that pertain to demolition work, which include the requirements of § 1926.552 (Material hoists, personnel hoists, and elevators) and § 1926.554 (Overhead hoists). As a result, the amendment had the effect of deleting the requirement for employers engaged in demolition work to comply

²OSHA explained in the preamble to the final rule that the “redesignation of § 1926.550 and the replacement of references [to subpart N] do not alter any of the substantive requirements of §§ 1926.856(c) and 1926.858(b)” (75 FR 47921).

³OSHA also inadvertently listed the heading of § 1926.858 as “Removal of walls, floors and materials with equipment” (the same heading as § 1926.856), instead of “Removal of steel construction,” but this erroneous heading did not appear in the subsequent edition of the Code of Federal Regulations (CFR). Therefore, OSHA finds no need to address this error in this rulemaking.

with §§ 1926.552 and 1926.554. Therefore, to cover all construction work under subpart CC, and to correct these errors, OSHA is proposing to amend §§ 1926.856(c) and 1926.858(b) by replacing the requirements to comply with subpart DD with requirements to comply with subpart CC, and is proposing to amend § 1926.858(b) by reinstating the requirement to comply with subpart N as well.

C. Underground Construction.

Section 1926.800(t) contains requirements for hoisting that are unique to underground construction. Before OSHA issued the final rule for cranes and derricks in construction, the previous version of § 1926.800(t) contained an introductory paragraph that cross-referenced other OSHA standards that apply to hoisting in underground construction; these cross-references consisted of the requirements of the prior cranes and derricks rule at § 1926.550, including most of § 1926.550(g) (the provision of the prior rule that applied to hoisting personnel), and requirements for material hoists, personnel hoists, and elevators at § 1926.552(a) through (d). Previous § 1926.800(t) included one substantive modification to the requirements of prior § 1926.550(g)(2): employers could use cranes to hoist employees for routine access to underground worksites via a shaft without showing that conventional means would be more hazardous, or not possible, for this purpose due to structural design or worksite conditions.⁴ When it issued the underground construction rule, OSHA included this modification because hoisting personnel for routine access to the underground worksites via a

⁴Prior § 1926.550(g)(2) required employers to show, before using cranes to hoist personnel to a worksite, that conventional means would be more hazardous than cranes, or not possible, due to structural design or worksite conditions.

shaft occurs under more controlled, and less hazardous, conditions than hoisting personnel in general (54 FR 23824, 23845). Previous § 1926.800(t)(1) through (4) contained additional requirements for hoisting unique to underground construction. Language at the beginning of the introductory paragraph of § 1926.800(t), “Except as modified by this paragraph (t),” clarified that the requirements and exceptions in 1926.800(t)(1) through (4) take precedence over the cross-referenced requirements, including the former cranes standard under § 1926.550.

In the final cranes rule, OSHA redesignated the prior cranes and derricks rule as § 1926.1501 of subpart DD. It was OSHA’s expressed purpose to preserve the existing crane requirements for underground construction by changing references in the introductory paragraph of § 1926.800(t) from § 1926.550 and § 1926.500(g)(2) to § 1926.1501 and § 1926.1501(g)(2), respectively. OSHA clarified this purpose in the preamble to the final rule by stating that the revisions to § 1926.800(t) “do not alter any of the substantive requirements of § 1926.800(t)” (75 FR 47920). However, OSHA inadvertently changed § 1926.800(t) by amending the introductory paragraph to require employers engaged in underground construction to comply only with new § 1926.1501(g) (which duplicated § 1926.550(g)), instead of preserving the former routine-access exemption by requiring compliance with § 1926.1501 in its entirety, and modifying the requirements of § 1926.1501(g)(2) (which duplicated former § 1926.550(g)(2)).⁵ Additionally, OSHA inadvertently moved the language “Except as modified by paragraph (t)” to the beginning of the second sentence of the introductory paragraph so

⁵ OSHA stated in the final rule that it was including the reference to § 1926.1501(g) to avoid any potential notice problem that may arise if OSHA substituted a reference to subpart CC in place of the prior reference to § 1926.550(g) (75 FR 47920).

that it no longer applied to the cross-referenced § 1926.1501 requirements, but instead only applied to the cross-referenced requirements in § 1926.552(a) through (d). Finally, although OSHA did not plan to alter any of the (then remaining) requirements and exemptions of § 1926.800(t)(1) through (4), but only to amend the introductory paragraph, a technical error in the instructions to the *Federal Register* resulted in the deletion of subparagraphs § 1926.800(t)(1) through (4). The deletion was not mentioned in the preamble to the final cranes rule.

As amended by the final cranes rule, § 1926.800(t) presents four problems. First, the prior version of § 1926.800(t) incorporated all of § 1926.550, not just § 1926.550(g). However, the amended version of § 1926.800(t) refers only to § 1926.1501(g), the successor to § 1926.550(g). Therefore, as now written, § 1926.800(t) does not explicitly require employers to comply with either the final cranes rule or the prior rule at § 1926.550, except for § 1926.1501(g), the prior rule's provision on hoisting personnel. Second, the exception from § 1926.550(g)(2), specified in the former version of § 1926.800(t), provided that employers could use cranes to hoist personnel for routine access to underground worksites via a shaft without showing that other means of access are more hazardous or impossible. OSHA did not include this exception in the new version of § 1926.800(t). This inadvertent error places an additional and unnecessary burden on employers that use cranes for this purpose. Third, moving the text "Except as modified by paragraph (t)" to the beginning of the second sentence of the introductory paragraph of § 1926.800(t) results in ambiguity as to the relationship between incorporated crane requirements and the provisions in § 1926.800(t)(1) through (4). Finally, the inadvertent elimination of § 1926.800(t)(1) through (4) from the Code of

Federal Regulations resulted in eliminating requirements that OSHA adopted in a 1989 rulemaking (54 FR 23843) to ensure that employees engaged in underground construction receive adequate protection from hazards unique to hoisting in this setting.

In this proposed rule, OSHA is proposing to amend § 1926.800(t) to extend subpart CC to underground construction, and to resolve the technical errors set forth in this section. OSHA is proposing to amend the introductory paragraph of § 1926.800(t) to restore the provision allowing employers to use cranes to hoist personnel for routine access to the underground worksites via a shaft without the need to show that conventional means of access are more hazardous or impossible for this purpose. This amendment excepts routine access of employees to an underground worksite via a shaft from the requirements of § 1926.1431(a). The requirements of § 1926.1431(a) are virtually identical to the requirements of § 1926.550(g)(2). In addition, OSHA is proposing to amend § 1926.800(t) by restoring the clause “Except as modified by this paragraph (t)” to the beginning of the introductory paragraph, and restoring § 1926.800(t)(1) through (4). OSHA is also proposing to revise the language in the introductory paragraph for clarity, and is proposing to correct three minor grammatical errors that appeared in the text of paragraphs §1926.800(t)(3)(vi), (t)(4)(iii), and (t)(4)(iv), as previously published in the Code of Federal Regulations.

D. Rationale for Extending Subpart CC to Demolition and Underground Construction.

The revisions made by this proposed rule will enable OSHA to cover all cranes and derricks used in construction under subpart CC. These revisions implement the original purpose of the rule and will benefit both employees and employers. These

revisions would ensure that the significant benefits of subpart CC, which include saving 22 lives per year and preventing 175 non-fatal injuries per year compared to prior § 1926.550 (75 FR 48079), extend to demolition and underground construction. Accordingly, applying subpart CC to demolition and underground construction will ensure that construction workers in those sectors receive the same safety protections from new subpart CC as other construction workers.

The revisions also will benefit construction contractors that engage in underground construction or demolition work, in addition to other types of construction work, because these contractors will now be subject to a single standard rather than having some of their activities covered under subpart CC and other work covered by subpart DD. This action will avoid the confusion that would result if new subpart CC covers part of a project and revised § 1926.800(t) covers another part of the project. For example, in a cut-and-cover tunneling project, the underground construction standard applies only after covering the excavation in such a manner as to establish conditions characteristic of underground construction. 29 CFR 1926.800(a). Therefore, under the current requirements, subpart CC would apply to the work while the excavation is open, but after covering the excavation, subpart DD would apply, thereby resulting in the same crane or derrick being subject to different standards during different phases of the project. Finally, this action will facilitate employer compliance because demolition and underground construction contractors will no longer be subject to the outdated requirements in prior § 1926.550, which relied heavily on pre-1970 consensus standards.

IV. Agency Determinations.

A. Final Economic Analysis and Final Regulatory Flexibility Analysis.

When it issued the final cranes rule, OSHA prepared a final economic analysis (FEA) as required by the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 *et seq.*) and Executive Order 12866 (58 FR 51735). OSHA also published a Final Regulatory Flexibility Analysis (FRFA) as required by the Regulatory Flexibility Act (5 U.S.C. 601-612). OSHA's approach to estimating costs and economic impacts in these analyses began by estimating, for all construction sectors, the total number of cranes and whether they were owned and rented; owned without rental; or leased. As a result, both analyses covered all cranes engaged in construction activities, including cranes engaged in underground construction and cranes engaged in construction work involving demolition. The FEA for the final cranes standard, which included all cranes, crane operations, and industry sectors subject to this proposed rule, found that the requirements of the rule were technologically and economically feasible.

Because the FEA drew these conclusions from calculations encompassing all of the underground construction and demolition crane operations covered by this proposed rule, the conclusions in the earlier FEA are valid for this proposed rule. The reference to the FEA for the final cranes rule, therefore, establishes that this proposed rule is technologically and economically feasible, addresses significant risks, and reduces those risks significantly. The FEA, which OMB reviewed, meets the requirements of Executive Orders 12866 and Executive Order 13563 with respect to the operations covered by this proposed rule; OSHA included these operations in the FEA for the final cranes standard. Therefore, OSHA believes that that this proposed rule also complies with Executive Orders 12866 and Executive Order 13563.

To determine if this proposed rule has annual costs of greater than \$100 million, or would have a significant economic impact on a substantial number of small firms, OSHA examined the sectors most affected by this proposed rule. This proposed rule affects two construction sectors: NAICS 237990 (Other Heavy and Civil Engineering Construction), which includes all establishments engaged in underground construction, and NAICS 238910 (Site Preparation Contractors), which includes all establishments engaged in demolition. This analysis, therefore, reviews the results for these two sectors reported in the final crane standard's FEA, which the *Federal Register* published on August 9, 2010.

That FEA simply considered all cranes and crane operations in these sectors, and did not analyze separately those operations involving underground construction or demolitions because OSHA planned to apply subpart CC to these operations. OSHA will report here the results for these entire sectors, which will inevitably involve greater costs and impacts than for the activities addressed in this proposed rule because both sectors have many cranes and crane jobs that do not involve underground construction or demolition activities. Table B-9 of the FEA showed that NAICS 237990, which includes all crane operations involved in underground construction operations, had annualized compliance costs of \$1,903,569 for firms that own and rent cranes, \$205,532 for firms that own but do not rent cranes, and \$1,151,759 for firms that lease cranes, for total annualized costs of \$3,260,860 (75 FR 48102–48105). Table B-9 also showed that NAICS 238910, which contains all crane operations involving demolitions, had annualized compliance costs of \$1,232,974 for firms that own and rent cranes, \$292,601 for firms that own but do not rent cranes, and \$1,626,463 for firms that lease cranes, for

total annualized compliance costs of \$3,152,038. The total annualized compliance costs for both sectors are \$6,412,898. Because these two NAICS sectors include operations not involved in underground construction or demolition, the total estimated annualized compliance costs of \$6,412,898 for these two sectors will be greater than the actual costs of this proposed rule. Based on these costs, OSHA concludes that this proposed rule is not a significant rule under either E.O. 12866 or the Unfunded Mandates Act.

With respect to technological feasibility, the earlier FEA, which included consideration of both underground construction and demolition operations, noted:

In accordance with the OSH Act, OSHA is required to demonstrate that occupational safety and health standards promulgated by the Agency are technologically feasible. Accordingly, OSHA reviewed the requirements that would be imposed by the final regulation, and assessed their technological feasibility. As a result of this review, OSHA has determined that compliance with the requirements of the final standard is technologically feasible for all affected industries. The standard would require employers to perform crane inspections, utilize qualified or certified crane operators, address ground conditions, maintain safe distances from power lines using the encroachment prevention precautions, and to fulfill other obligations under the standard. Compliance with all of these requirements can be achieved with readily and widely available technologies. Some businesses in the affected industries already implement the requirements of the standard to varying degrees (some states have requirements), as noted during the SBREFA Panel. OSHA believes that there are no technological constraints in complying with any of the proposed requirements, and received no comments that suggested that these standards were technologically infeasible.

(75 FR 48095).

In Table B-12 of the FEA for the final cranes rule, OSHA examined the costs as a percentage of revenues and as a percentage of profits in these two sectors. This table shows that, for both sectors, the greatest potential impacts were on establishments that own and rent cranes with operators. This table showed that for NAICS 237990, which

includes all underground construction operations, costs were 0.18 percent (less than 1 percent) of revenues and 3.54 percent of profits. This table also showed that for NAICS 238910, including all demolition operations involving cranes, costs were 0.18 percent of revenues and 4.05 percent of profits. (Table B-12 and the FEA as a whole provide the full calculations and derivations.) The FEA from the final cranes standard stated:

The Agency concludes that the final standard is economically feasible for the affected industries. As described above, a standard is economically feasible if there is a reasonable likelihood that the estimated costs of compliance “will not threaten the existence or competitive structure of an industry, even if it does portend disaster for some marginal firms.” *United Steelworkers of America v. Marshall*, 647 F.2d 1189, 1272 (DC Cir. 1980). The potential impacts on employer costs associated with achieving compliance with the final standard fall well within the bounds of economic feasibility in each industry sector. Costs of 0.2 percent of revenues and 4 percent of profits will not threaten the existence of the construction industry, affected general industry sectors, or the use of cranes in affected industry sectors. OSHA does not expect compliance with the requirements of the final standard to threaten the viability of employers or the competitive structure of any of the affected industry sectors. When viewed in the larger context of the construction sector, an increase in costs of \$148.2 million a year is effectively negligible, and will have no noticeable effect on the demand for construction services. Even when viewed as an increase in the costs of using cranes, an increase in the cost of rentals services of 0.2 percent will not cause the construction industry to forego the use of cranes and, thus, put crane leasing firms out of business.

(75 FR 48112). Because the earlier FEA drew this conclusion with respect to costs that included the costs of this proposed rule, as well as other costs that made the impacts greater than those of this proposed rule, OSHA concludes that the FEA for the cranes and derricks final rule demonstrates that this proposed rule is economically feasible.

Tables B-14 and B-15 of the FEA for the cranes and derricks final rule examined the costs as a percentage of revenues and as a percentage of profits in these two sectors for small firms as defined by SBA, and very small entities with less than 20 employees, respectively. Because so many firms owning cranes are small, there is no appreciable

difference between the impacts on small and very small firms versus the impacts for all firms already discussed. Comparison of the two tables shows that, for NAICS 237990, the impacts for very small firms were equal to or greater than those for small firms. Table B-15 shows that, for NAICS 237990, costs were 0.18 percent of revenues and 3.54 per cent of profits. This table also shows that, for NAICS 238910, including all demolition operations involving cranes, there were no very small entities that owned and rented cranes, with the result that the greatest impacts are for small entities that own and rent crane where costs are 0.18 percent of revenues and 4.05 percent of profits.

In its regulatory flexibility analysis, OSHA generally defines a significant economic impact on small entities as one with costs in excess of one percent of revenues or five percent of profits. The possible costs of this proposed rule clearly are well below these thresholds. OSHA, therefore, certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act of 1995.

When OSHA issued the final rule on August 9, 2010, it submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) titled Cranes and Derricks in Construction (29 CFR Part 1926, Subpart CC). This ICR⁶ covered all establishments in the construction industry, including all of the establishments in NAICS 237990 and NAICS 238910. On November 1, 2010, OMB approved the ICR under OMB control number 1218-0261, with an expiration date of November 30, 2013. Subsequently, in December 2010, OSHA discontinued the Cranes and Derricks Standard for Construction (29 CFR 1926.550) ICR (OMB Control Number 1218-0113) because

⁶The ICR is part of Exhibit 0425 in the docket for the final rule on cranes and derricks in construction (OSHA-2007-0066). It is available at www.regulations.gov and at www.reginfo.gov (OMB Control Number 1218-0261).

the new ICR superseded the existing ICR. In addition, OSHA retitled the new ICR to *Cranes and Derricks in Construction (29 CFR Part 1926, Subpart CC and Subpart DD)*.⁷

This proposed rule requires no additional collection of information.⁸ OMB's approval of OSHA's ICR under Control Number 1218-0261 already covers all collections of information required by this proposed rule, and OSHA does not believe it is necessary to submit a new ICR to OMB seeking to collect additional information under this proposed rule.

Interested parties who comment on OSHA's determination that this proposal contains no additional paperwork requirements must send their written comments to the Office of Management and Budget, Attn: OMB Desk Officer for OSHA, Room 10235, 726 Jackson Place, NW., Washington, DC 20503. OSHA also encourages commenters to submit their comments on this paperwork determination to it, along with their other comments on the proposed rule.

OSHA notes that a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the agency displays a currently valid OMB control number. The public need not respond to a collection of information requirement unless the agency displays a currently valid OMB control number, and, notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of

⁷The request and OMB approval for discontinuing the previous Cranes and Derricks in Construction ICR (OMB Control Number 1218-0113) and the retitling of the ICR are available at www.reginfo.gov.

⁸Although the final rule for cranes and derricks in construction did not require employers covered by subpart DD to meet the information-exchange requirements of subpart CC, OSHA did not subtract these employers from its analysis of the burden and costs for these requirements in the paperwork analysis for subpart CC. Therefore, this approach inflated the burden and costs estimates of the ICR approved by OMB for subpart CC; however, the burden and costs estimates are accurate now that OSHA is applying subpart CC to underground construction and demolition work.

information requirement if the requirement does not display a currently valid OMB control number.

C. Federalism.

OSHA reviewed this proposed rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of state law only with the expressed consent of Congress. Federal agencies must limit any such preemption to the extent possible.

Under Section 18 of the OSH Act, Congress expressly provides that states may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. States that obtain Federal approval for such a plan are referred to as “State Plan States.” Occupational safety and health standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. 29 U.S.C. 667. Subject to these requirements, State Plan States are free to develop and enforce under state law their own requirements for safety and health standards.

OSHA previously concluded from its analysis that promulgation of subpart CC complies with Executive Order 13132. 75 FR 48128-29. That analysis applies to the extension of subpart CC to establishments engaged in demolition work and underground construction; therefore, this proposed rule complies with Executive Order 13132. In

states without an OSHA-approved State Plan, any standard developed from this proposed rule would limit state policy options in the same manner as every standard promulgated by OSHA. In states with OSHA-approved State Plans, this rulemaking does not significantly limit state policy options.

D. State Plan States.

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, State Plan States must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, *e.g.*, because an existing state standard covering this area is “at least as effective” as the new Federal standard or amendment. 29 CFR 1953.5(a). The state standard must be at least as effective as the final Federal rule. State Plan States must adopt the Federal standard or complete their own standard within six months of the promulgation date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State Plan States are not required to amend their standards, although OSHA may encourage them to do so. The 27 states and U.S. territories with OSHA-approved occupational safety and health plans are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming; Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to state and local government employees only.

The amendments in this proposed rule will result in more stringent requirements for cranes and derricks used in demolition and underground construction work.

Therefore, when OSHA promulgates a new final rule, states and territories with approved State Plans must adopt comparable amendments to their standards for cranes and derricks used in demolition and underground construction within six months of OSHA's promulgation of the final rule (*i.e.*, the date OSHA publishes confirmation of the effective date) unless they demonstrate that such a change is not necessary because their existing standards are already the same, or at least as effective, as OSHA's new final rule.

E. Unfunded Mandates Reform Act.

When OSHA issued the final rule for cranes and derricks in construction, it reviewed the rule according to the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.* (58 FR 58093)), and Executive Order 12875 (75 FR 48130). OSHA concluded that the final rule did not meet the definition of a "Federal intergovernmental mandate" under the UMRA because OSHA standards do not apply to state or local governments except in states that have voluntarily adopted State Plans. OSHA further noted that the rule imposed costs of over \$100 million per year on the private sector and, therefore, required review under the UMRA for those costs, but that its final economic analysis met that requirement.

As discussed above in Section IV.A (Final Economic Analysis and Final Regulatory Flexibility Analysis) of this preamble, this proposed rule does not impose any costs on private-sector employers beyond those costs already taken into account in the final rule for cranes and derricks in construction. Because OSHA reviewed the total costs of this final rule under the UMRA, no further review of those costs is necessary. Therefore, for the purposes of the UMRA, OSHA certifies that this proposed rule does not mandate that state, local, or tribal governments adopt new, unfunded regulatory

obligations, or increase expenditures by the private sector of more than \$100 million in any year.

F. Consultation and Coordination with Indian Tribal Governments.

OSHA reviewed this proposed rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it does not have “tribal implications” as defined in that order. As proposed, the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

G. Legal Considerations.

The purpose of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) is “to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources.” 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 654(b), 655(b). A safety or health standard is a standard “which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment.” 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) when a significant risk of material harm exists in the workplace and the standard would substantially reduce or eliminate that workplace risk. See *Industrial Union Department, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980). In the cranes and derricks final rule, OSHA made such a determination with respect to the

use of cranes and derricks in construction at the same time that it noted that the Agency would apply subpart CC to the activities addressed in this proposed rule (75 FR 47913, 47920-21).

This proposed rule will not reduce the employee protections put into place by the standard OSHA is updating under this rulemaking. Instead, this rulemaking likely will enhance employee safety by ensuring that the construction workers involved in demolition and underground construction receive the same safety protections from recently published subpart CC as other construction workers. The revisions also will benefit construction contractors that engage in underground construction or demolition work in addition to other types of construction work, because these contractors will now be subject to a single standard rather than having some of their construction work under subpart CC, and other work covered by existing subpart DD. This action, therefore, will clarify employer obligations by avoiding the confusion that would result if subpart CC covers part of a project and existing subpart DD covers another part of the project. Accordingly, it is unnecessary to make a separate determination of significant risk, or the extent to which this rule would reduce that risk, as typically required by Industrial Union Department.

List of Subjects in 29 CFR Part 1926.

Construction industry, Demolition, Occupational safety and health, Safety, Underground construction.

Authority and Signature.

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington,

DC 20210, authorized the preparation of this notice. OSHA is issuing this proposed rule under the following authorities: 29 U.S.C. 653, 655, 657; 40 U.S.C. 3701 *et seq.*; 5 U.S.C. 553; Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012); and 29 CFR part 1911.

Signed at Washington, DC, on August 8, 2012.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standards

For the reasons stated in the preamble of this proposed rule, OSHA proposes to amend 29 CFR part 1926 as follows:

PART 1926—[AMENDED]

Subpart S—Underground Construction, Caissons, Cofferdams, and Compressed Air.

1. Revise the authority citation for subpart S of 29 CFR part 1926 to read as follows:

AUTHORITY: 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 5-2007 (72 FR 31159), or 1–2012 (77 FR 3912), as applicable.

2. Amend § 1926.800 by revising paragraph (t) to read as follows:

§ 1926.800 Underground construction.

* * * * *

(t) Hoisting unique to underground construction. Except as modified by this paragraph (t), employers must: comply with the requirements of subpart CC of this part, except that the limitation in § 1926.1431(a) does not apply to the routine access of employees to an underground worksite via a shaft; ensure that material hoists comply with § 1926.552(a) and (b) of this part; and ensure that personnel hoists comply with the personnel-hoists requirements of § 1926.552(a) and (c) of this part and the elevator requirements of § 1926.552(a) and (d) of this part.

(1) General requirements for cranes and hoists. (i) Materials, tools, and supplies being raised or lowered, whether within a cage or otherwise, shall be secured or stacked in a manner to prevent the load from shifting, snagging or falling into the shaft.

(ii) A warning light suitably located to warn employees at the shaft bottom and subsurface shaft entrances shall flash whenever a load is above the shaft bottom or subsurface entrances, or the load is being moved in the shaft. This paragraph does not apply to fully enclosed hoistways.

(iii) Whenever a hoistway is not fully enclosed and employees are at the shaft bottom, conveyances or equipment shall be stopped at least 15 feet (4.57 m) above the bottom of the shaft and held there until the signalman at the bottom of the shaft directs the operator to continue lowering the load, except that the load may be lowered without stopping if the load or conveyance is within full view of a bottom signalman who is in constant voice communication with the operator.

(iv)(A) Before maintenance, repairs, or other work is commenced in the shaft served by a cage, skip, or bucket, the operator and other employees in the area shall be informed and given suitable instructions.

(B) A sign warning that work is being done in the shaft shall be installed at the shaft collar, at the operator's station, and at each underground landing.

(v) Any connection between the hoisting rope and the cage or skip shall be compatible with the type of wire rope used for hoisting.

(vi) Spin-type connections, where used, shall be maintained in a clean condition and protected from foreign matter that could affect their operation.

(vii) Cage, skip, and load connections to the hoist rope shall be made so that the force of the hoist pull, vibration, misalignment, release of lift force, or impact will not disengage the connection. Moused or latched open-throat hooks do not meet this requirement.

(viii) When using wire rope wedge sockets, means shall be provided to prevent wedge escapement and to ensure that the wedge is properly seated.

(2) Additional requirements for cranes. Cranes shall be equipped with a limit switch to prevent overtravel at the boom tip. Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(3) Additional requirements for hoists. (i) Hoists shall be designed so that the load hoist drum is powered in both directions of rotation, and so that brakes are automatically applied upon power release or failure.

(ii) Control levers shall be of the “deadman type” which return automatically to their center (neutral) position upon release.

(iii) When a hoist is used for both personnel hoisting and material hoisting, load and speed ratings for personnel and for materials shall be assigned to the equipment.

(iv) Material hoisting may be performed at speeds higher than the rated speed for personnel hoisting if the hoist and components have been designed for such higher speeds and if shaft conditions permit.

(v) Employees shall not ride on top of any cage, skip or bucket except when necessary to perform inspection or maintenance of the hoisting system, in which case they shall be protected by a body belt/harness system to prevent falling.

(vi) Personnel and materials (other than small tools and supplies secured in a manner that will not create a hazard to employees) shall not be hoisted together in the same conveyance. However, if the operator is protected from the shifting of materials, then the operator may ride with materials in cages or skips which are designed to be controlled by an operator within the cage or skip.

(vii) Line speed shall not exceed the design limitations of the systems.

(viii) Hoists shall be equipped with landing level indicators at the operator's station. Marking the hoist rope does not satisfy this requirement.

(ix) Whenever glazing is used in the hoist house, it shall be safety glass, or its equivalent, and be free of distortions and obstructions.

(x) A fire extinguisher that is rated at least 2A:10B:C (multi-purpose, dry chemical) shall be mounted in each hoist house.

(xi) Hoist controls shall be arranged so that the operator can perform all operating cycle functions and reach the emergency power cutoff without having to reach beyond the operator's normal operating position.

(xii) Hoists shall be equipped with limit switches to prevent overtravel at the top and bottom of the hoistway.

(xiii) Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(xiv) Hoist operators shall be provided with a closed-circuit voice communication system to each landing station, with speaker microphones so located that the operator can communicate with individual landing stations during hoist use.

(xv) When sinking shafts 75 feet (22.86 m) or less in depth, cages, skips, and buckets that may swing, bump, or snag against shaft sides or other structural protrusions shall be guided by fenders, rails, ropes, or a combination of those means.

(xvi) When sinking shafts more than 75 feet (22.86 m) in depth, all cages, skips, and buckets shall be rope or rail guided to within a rail length from the sinking operation.

(xvii) Cages, skips, and buckets in all completed shafts, or in all shafts being used as completed shafts, shall be rope or rail-guided for the full length of their travel.

(xviii) Wire rope used in load lines of material hoists shall be capable of supporting, without failure, at least five times the maximum intended load or the factor recommended by the rope manufacturer, whichever is greater. Refer to § 1926.552(c)(14)(iii) of this part for design factors for wire rope used in personnel hoists. The design factor shall be calculated by dividing the breaking strength of wire rope, as reported in the manufacturer's rating tables, by the total static load, including the weight of the wire rope in the shaft when fully extended.

(xix) A competent person shall visually check all hoisting machinery, equipment, anchorages, and hoisting rope at the beginning of each shift and during hoist use, as necessary.

(xx) Each safety device shall be checked by a competent person at least weekly during hoist use to ensure suitable operation and safe condition.

(xxi) In order to ensure suitable operation and safe condition of all functions and safety devices, each hoist assembly shall be inspected and load-tested to 100 percent of its rated capacity: at the time of installation; after any repairs or alterations affecting its structural integrity; after the operation of any safety device; and annually when in use. The employer shall prepare a certification record which includes the date each inspection and load-test was performed; the signature of the person who performed the inspection and test; and a serial number or other identifier for the hoist that was inspected and tested. The most recent certification record shall be maintained on file until completion of the project.

(xxii) Before hoisting personnel or material, the operator shall perform a test run of any cage or skip whenever it has been out of service for one complete shift, and whenever the assembly or components have been repaired or adjusted.

(xxiii) Unsafe conditions shall be corrected before using the equipment.

(4) Additional requirements for personnel hoists. (i) Hoist drum systems shall be equipped with at least two means of stopping the load, each of which shall be capable of stopping and holding 150 percent of the hoist's rated line pull. A broken-rope safety, safety catch, or arrestment device is not a permissible means of stopping under this paragraph.

(ii) The operator shall remain within sight and sound of the signals at the operator's station.

(iii) All sides of personnel cages shall be enclosed by one-half inch (12.70 mm) wire mesh (not less than No. 14 gauge or equivalent) to a height of not less than 6 feet (1.83 m). However, when the cage or skip is being used as a work platform, its sides may be reduced in height to 42 inches (1.07 m) when the conveyance is not in motion.

(iv) All personnel cages shall be provided with a positive locking door that does not open outward.

(v) All personnel cages shall be provided with a protective canopy. The canopy shall be made of steel plate, at least 3/16-inch (4.763 mm) in thickness, or material of equivalent strength and impact resistance. The canopy shall be sloped to the outside, and so designed that a section may be readily pushed upward to afford emergency egress. The canopy shall cover the top in such a manner as to protect those inside from objects falling in the shaft.

(vi) Personnel platforms operating on guide rails or guide ropes shall be equipped with broken-rope safety devices, safety catches or arrestment devices that will stop and hold 150 percent of the weight of the personnel platform and its maximum rated load.

(vii) During sinking operations in shafts where guides and safeties are not yet used, the travel speed of the personnel platform shall not exceed 200 feet (60.96 m) per minute. Governor controls set for 200 feet (60.96 m) per minute shall be installed in the control system and shall be used during personnel hoisting.

(viii) The personnel platform may travel over the controlled length of the hoistway at rated speeds up to 600 feet (182.88 m) per minute during sinking operations in shafts where guides and safeties are used.

(ix) The personnel platform may travel at rated speeds greater than 600 feet (182.88 m) per minute in completed shafts.

* * * * *

Subpart T—Demolition.

3. Revise the authority citation for subpart T of 29 CFR part 1926 to read as follows:

AUTHORITY: 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor’s Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 5-2007 (72 FR 31159), or 1–2012 (77 FR 3912), as applicable.

4. Amend § 1926.856 by revising paragraph (c) to read as follows:

§ 1926.856 Removal of walls, floors, and material with equipment.

* * * * *

(c) Cranes, derricks, and other mechanical equipment used must meet the requirements specified in subparts N, O, and CC of this part.

5. Amend § 1926.858 by revising paragraph (b) to read as follows:

§ 1926.858 Removal of steel construction.

* * * * *

(b) Cranes, derricks, and other hoisting equipment used must meet the requirements specified in subparts N and CC of this part.

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Subpart DD—[Removed]

6. Remove subpart DD.

BILLING CODE 4510-26-P

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