

Advocacy Recommends That OSHA Consider Alternatives to its Proposed Cranes and Derricks in Construction Rule

On January 16, 2009, the U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submitted comments to the Occupational Safety and Health Administration (OSHA) on OSHA's *Proposed Cranes and Derricks in Construction Rule* [73 Fed. Reg. 59919 (October 9, 2008)]. The proposed rule would impose new obligations on employers in the construction industry to ensure the safe operation of cranes and hoisting equipment used in construction. The proposed rule was the subject of a negotiated rulemaking by the Cranes and Derricks Negotiated Rulemaking Advisory Committee (C-DAC) in 2002 as well as a Small Business Advocacy Review (SBAR) Panel in 2006. The SBAR Panel was assisted in its review of the draft rule by a number of small business representatives from the construction industry who reviewed the draft rule and provided recommendations to the panel.

A complete copy of Advocacy's letter to OSHA is available at: www.sba.gov/advo/laws/comments/.

- Advocacy recommends that OSHA consider feasible alternatives to mandating third-party certification of crane operators, such as exempting some small cranes or routine lifts or by allowing employers to "self-certify" that an operator is fully trained and competent. If third-party certification is required, Advocacy recommends that OSHA expand the number of entities that can provide such certification.
- Advocacy recommends that OSHA exempt equipment used solely to deliver materials to a construction site and to clarify the meaning of the term "construction work" for the purposes of the rule.
- Advocacy is concerned about the provisions that require a controlling entity to provide information on site conditions and underground hazards to contractors because the controlling entity may not be engaged in any construction work and may therefore have little or no expertise about site conditions. Advocacy also expressed apprehension about OSHA imposing legal obligations on employers for employees who are not their own.
- Advocacy objects to OSHA mandating that employers follow crane manufacturers' recommendations because manufacturers may unduly limit the operating parameters of the equipment in order to avoid potential liability, thereby narrowing the range of safe operations an employer may undertake.
- Advocacy recommends that OSHA consider and document any significant alternatives to the proposed rule that would specifically reduce the burden on small businesses, including alternatives that deviate from the C-DAC draft.

For more information about OSHA's proposed rule, please visit Advocacy's Web page at www.sba.gov/advo or contact Bruce Lundegren, Assistant Chief Counsel, at (202) 205-6144 (or bruce.lundegren@sba.gov).