

Update on OSHA's Crane Rule

NPGA Webinar

November 13, 2018

OSHA's Cranes and Derricks in Construction Rule

Where did this rule come from?

Since 2009 OSHA has proposed, finalized, modified, and delayed this rule, and on several occasions OSHA produced information to NPGA and Congress that was inconsistent.

What does the final rule say?

“Propane field technician operators would fall under the crane rule in only one very specific and limited scenario: installation of new tanks (not replacement of existing tanks in kind) at a construction site.”

Final Crane Rule Released on November 6

What cranes are included in the certification requirement?

Third-party certification is required for operators of all types of cranes with a hoisting capacity of more than 2,000 pounds regardless of size, make, model, or manufacture date.

What is a construction site?

OSHA defines 'construction' at 29 C.F.R. 1926.32(g) as *“work for construction, alteration, and/or repair, including painting and decorating.”*

What is the compliance date?

December 10. The effective date of the employer evaluation and documentation requirements of the Final Rule is February 7, 2019.

What triggers the Crane Rule requirements?

Final Rule:

*“Propane field technician operators would fall under the crane rule in only one very specific and limited scenario: **installation** of **new** tanks (not replacement of existing tanks in kind) at a **construction site**.”*

Factors to consider:

- Construction site
- Delivery and immediate installation
- New

The Crane Rule applies when all three factors are present.

Does the Crane Rule Apply?

Delivery or retrieval of a new or replacement propane tank by a crane to a location (residential, commercial, agricultural, permanent, or temporary) that is not a construction site?

Factors:

- Construction site
- Delivery and immediate installation
- New

No, tank delivery/retrieval to non-construction sites is not subject to the Crane Rule requirements.

Does the Crane Rule Apply?

Delivery or retrieval of a new or replacement propane tank by a crane directly to/from the ground without immediate installation at a construction site (residential, commercial, agricultural, temporary, or permanent)?

Factors:

- Construction site
- Delivery and immediate installation
- New

No, without immediate installation, it is not subject to the Crane Rule.

Does the Crane Rule Apply?

Delivery or retrieval of a replacement tank of the same kind (size, mechanics, competitor, or same owner) by a crane directly to/from the ground at any location (construction, non-construction, commercial, agricultural, residential, permanent, or temporary)?

Factors:

- Construction site
- Delivery and immediate installation
- New

No, replacement of the same kind of tank is not subject to the Crane Rule.

Does the Crane Rule Apply?

Delivery or retrieval by a crane of a new propane tank and immediate installation at a construction site?

Factors:

- Construction site
- Delivery and immediate installation
- New

Yes, delivery/retrieval of a new tank and immediate installation of it at a construction site is subject to the Crane Rule.

Does the Crane Rule Apply?

Delivery or retrieval of a new propane tank by a crane to/from an excavation or to/from pads at a construction site (residential, commercial, agricultural, permanent, or temporary)?

Factors:

- Construction site
- Delivery and immediate installation
- New

The Final Rule does not address excavations or pads. A Letter of Interpretation by OSHA indicates that delivery/retrieval of a tank to/from an excavation or pads at a construction site is subject to the Crane Rule.

Resources for Propane Marketers

Fact Sheet Summarizing Latest Rule

- Includes most likely scenarios marketers will face
- List of certification groups

NPGA Crane Rule White Paper

- Overview of the rule and history
- OSHA information

All Resources Available at www.npga.org

Options for Litigation

U.S. Court of Appeals for the D.C. Circuit

- **Petition for Review**
 - Court’s role is to review *how* OSHA reached it’s conclusion
 - It is **not** Court’s role to agree/disagree with OSHA’s conclusion
- Occupational Safety & Health Act defines how much deference the Court should give to OSHA:

“The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.”

- **Court conclusions**
 - Vacate: Cancel entire regulation for all industries.
 - Remand: Send regulation back to OSHA for OSHA to give a new explanation for the regulation or make a new regulation.
 - Dismiss: Dismiss the litigation; rulemaking stands.

Your Voices Made a Difference

In 2018, supporters of the propane industry have sent more than 13,000 messages to The White House, U.S. Congress and OSHA.

Congressman Drew Ferguson supported the propane industry's position by introducing HR 5988, the Common Sense Certification Reform Act, which currently has 50 co-sponsors.

Questions?

Have a question after the webinar is over?

Contact NPGA staff!

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