

(b) \* \* \*

(1) Items for use by the Cuban private sector for private sector economic activities, except for items that would be used to:

(i) Primarily generate revenue for the state; or

(ii) Contribute to the operation of the state, including through the construction or renovation of state-owned buildings.

(2) Items sold directly to individuals in Cuba for their personal use or their immediate family's personal use, other than officials identified in paragraphs (d)(4)(ii) or (iii) of this section.

\* \* \* \*

(d) \* \* \*

(4) \* \* \*

(ii) Ministers and Vice-Ministers; members of the Council of State; members of the Council of Ministers; members and employees of the National Assembly of People's Power; members of any provincial assembly; local sector chiefs of the Committees for the Defense of the Revolution; Director Generals and sub-Director Generals and higher of all Cuban ministries and state agencies; employees of the Ministry of the Interior (MININT); employees of the Ministry of Defense (MINFAR); secretaries and first secretaries of the Confederation of Labor of Cuba (CTC) and its component unions; chief editors, editors and deputy editors of Cuban state-run media organizations and programs, including newspapers, television, and radio; or members and employees of the Supreme Court (Tribuno Supremo Nacional); and

\* \* \* \*

## PART 746—[AMENDED]

■ 5. The authority citation for part 746 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 9, 2017, 82 FR 21909 (May 10, 2017); Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

■ 6. Section 746.2 is amended by revising Note 2 to Paragraph (b)(3)(i) to read as follows:

### § 746.2 Cuba.

\* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) \* \* \*

**Note 2 to paragraph (b)(3)(i):** The policy of case-by-case review in this paragraph is intended to facilitate exports and reexports to meet the needs of the Cuban people. Accordingly, BIS generally will deny applications to export or reexport items for use by state-owned enterprises, agencies, and other organizations that primarily generate revenue for the state, including those engaged in tourism and those engaged in the extraction or production of minerals or other raw materials. Applications for export or reexport of items destined to the Cuban military, police, intelligence or security services also generally will be denied. Additionally, pursuant to section 3(a) of the National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba (NSPM), dated June 16, 2017, BIS generally will deny applications to export or reexport items for use by entities or subentities identified by the Department of State in the *Federal Register* or at <https://www.state.gov/e/eb/tfs/spi/cuba/cubarestrictedlist/index.htm>, unless such transactions are determined to be consistent with sections 2 and 3(a)(iii) of the NSPM.

\* \* \* \*

Dated: November 6, 2017.

**Richard E. Ashoooh,***Assistant Secretary for Export Administration.*

[FR Doc. 2017-24448 Filed 11-8-17; 8:45 am]

BILLING CODE 3510-33-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1926

[Docket ID-OSHA-2007-0066]

RIN 1218-AC96

#### Cranes and Derricks in Construction: Operator Certification Extension

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

**ACTION:** Final rule.

**SUMMARY:** OSHA is delaying its deadline for employers to ensure that crane operators are certified by one year until November 10, 2018. OSHA is also extending its employer duty to ensure that crane operators are competent to operate a crane safely for the same one-year period.

**DATES:** This final rule is effective on November 9, 2017.

**ADDRESSES:** In accordance with 28 U.S.C. 2112(a)(2), the Agency designates Ann Rosenthal, Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor, Room S-4004, U.S. Department of Labor, 200

Constitution Avenue NW., Washington, DC 20210, to receive petitions for review of the final rule.

#### FOR FURTHER INFORMATION CONTACT:

*General information and press inquiries:* Mr. Frank Meilinger, OSHA Office of Communications: telephone: (202) 693-1999; email: [Meilinger.Francis2@dol.gov](mailto:Meilinger.Francis2@dol.gov).

*Technical inquiries:* Mr. Vernon Preston, Directorate of Construction: telephone: (202) 693-2020; fax: (202) 693-1689; email: [Preston.Vernon@dol.gov](mailto:Preston.Vernon@dol.gov).

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

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. Introduction

OSHA is publishing this final rule to further extend by one year the employer duty to ensure the competency of crane operators involved in construction work. Previously this duty was scheduled to terminate on November 10, 2017, but now continues until November 10, 2018. OSHA also is further delaying the deadline for crane operator certification for one year from November 10, 2017, to November 10, 2018. As explained in more detail in the following Regulatory Background section, the extension and delay are necessary to provide sufficient time for OSHA to complete a related rulemaking to address issues with its existing Cranes and Derricks in Construction standard (29 CFR part 1926, subpart CC, referred to as "the crane standard" hereafter) (75 FR 47905).

In establishing the effective date of this action, the Agency finds good cause pursuant to 5 U.S.C. 553(d)(3) of the Administrative Procedure Act that this rule be made effective on November 9, 2017, rather than delaying the effective date for 30 days after publication. The basis for this finding is that it is unnecessary to delay this effective date to provide an additional period of time for employers to comply with a new requirement because OSHA is extending the status quo. This final rule establishes no new burdens on the regulated community; rather, it further delays implementation of the crane operator certification requirements in the crane standard and further extends the employer duty in the crane standard to ensure the competency of crane operators, a duty that employers have been required to comply with since publication of the crane standard in 2010.

capacity of equipment that is most similar to that equipment, and for which a certification examination is available.

## 2. Overview of § 1926.1427(k) (Phase-In Provision)

The crane standard published in 2010 replaced provisions in 29 CFR part 1926, subpart N—Cranes, Derricks, Hoists, Elevators, and Conveyors, of the construction safety standards. OSHA delayed the deadline for the operator certification requirement for four years, until November 10, 2014 (see § 1926.1427(k)(1)). During this four-year “phase-in” period, the crane standard imposed an employer duty to ensure that crane operators could safely operate equipment (see § 1926.1727(k), Phase-in). Thus, pursuant to § 1926.1427(k)(2)(i), OSHA required employers to “ensure that operators of equipment covered by this standard are competent to operate the equipment safely.” Under § 1926.1427(k)(2)(ii), employers must train and evaluate the operator when the operator “assigned to operate machinery does not have the required knowledge or ability to operate the equipment safely.”

## 3. Post-Final Rule Developments

After OSHA issued the crane standard, it continued to receive feedback from members of the regulated community and conducted stakeholder meetings on April 2 and 3, 2013, to give interested members of the public the opportunity to express their views. Participants included construction contractors, labor unions, crane manufacturers, crane rental companies, accredited testing organizations, one of the accrediting bodies, insurance companies, crane operator trainers, and military employers. Detailed notes of participants’ comments are available at ID-0539. Various parties informed OSHA that, in their opinion, the operator certification option would not adequately ensure that crane operators could operate their equipment safely at a construction site. They said that a certified operator would need additional training, experience, and evaluation, beyond the training and evaluation required to obtain certification, to ensure that he or she could operate a crane safely.

OSHA also received information that two (of a total of four) accredited testing organizations have been issuing certifications only by “type” of crane, rather than offering different certifications by “type and capacity” of crane, as the crane standard requires. The two organizations later confirmed this (ID-0521, p. 109 and 246). As a result, those certifications do not meet

the standard’s requirements and operators who obtained certifications only from those organizations could not, under OSHA’s crane standard, operate cranes on construction sites after November 10, 2014. Some stakeholders in the crane industry requested that OSHA remove the capacity requirement.

Most of the participants in the stakeholder meetings expressed the opinion that an operator’s certification by an accredited testing organization did not mean that the operator was fully competent or experienced to operate a crane safely on a construction work site. The participants likened operator certification to a new driver’s license, or a learner’s permit, to drive a car. Most participants said that the operator’s employer should retain the responsibility to ensure that the operator was qualified for the particular crane work assigned. Some participants wanted certification to be, or viewed to be, sufficient to operate a crane safely. Stakeholders noted that operator certification was beneficial in establishing a minimum threshold of operator knowledge and familiarity with cranes.

### *D. Initial Extension of the Employer Assessment Duties and Deadline for Operator Certification*

On February 10, 2014, OSHA published a proposal to delay the deadline for operator certification by three additional years to November 10, 2017, and to extend the existing employer duty to ensure crane operator competency for the same period (79 FR 7611). OSHA conducted a public hearing on May 19, 2014. Representatives of the construction industry reiterated that requiring the certification of all operators and supplanting the employer duty would not ensure the competency of crane operators to safely operate cranes to do construction work. A representative of one of the testing organizations that certifies by capacity (and who had previously opposed removing the capacity requirement) conceded that OSHA should undergo a rulemaking to consider removing capacity from certification requirements.

On September 26, 2014, OSHA published a final rule that delayed the operator certification deadline and extended the existing employer duty for three years to November 10, 2017, to provide time for OSHA to consider what regulatory approach it should take (79 FR 57785).

### *E. Consulting ACCSH—Draft Proposal for Revised Crane Operator Requirements*

With the additional three-year extension in place, OSHA began work on a rulemaking to address the issues raised by stakeholders. On March 31 and April 1, 2015, the Agency consulted with the Advisory Committee on Construction Safety and Health (ACCSH) to solicit feedback from industry stakeholders on the draft regulatory text for a revised operator certification standard.<sup>1</sup> Prior to the meeting, OSHA made available the draft regulatory text,<sup>2</sup> an overview of the draft regulatory text,<sup>3</sup> and a summary of the site visits with stakeholders.<sup>4</sup> OSHA received many comments and suggestions for revising the regulatory text at the ACCSH meeting. Since that meeting, the Agency has worked to redraft the regulatory text and preamble for the proposed rule. To ensure the Agency has enough time to propose and finalize the rulemaking, OSHA proposed this one-year extension of the certification requirement compliance date (82 FR 41184 (Aug. 30, 2017)). As with the previous extensions, OSHA also proposed an extension of the existing employer assessment duty for the same time period (Id.). OSHA requested public comment on these proposals.

## II. Summary and Explanation of the Final Rule

Commenters in their written remarks on the proposal to delay the operator certification deadline and extend the existing employer duty to November 10, 2018 focused on three issues arising from the Agency’s proposed changes: (1) Whether to delay the date for crane operators to be certified; (2) whether to extend the employer duty to ensure crane operators are competent and safe; and (3) the length of time of an extension. This section examines these issues—in the order above—by first summarizing the comments and then explaining the Agency’s decisions and determinations based on the record as a whole.

<sup>1</sup> Transcript for March 31: [https://www.osha.gov/doc/acccsh/transcripts/acccsh\\_20150331.pdf](https://www.osha.gov/doc/acccsh/transcripts/acccsh_20150331.pdf); transcript for April 1: [https://www.osha.gov/doc/acccsh/transcripts/acccsh\\_20150401.pdf](https://www.osha.gov/doc/acccsh/transcripts/acccsh_20150401.pdf).

<sup>2</sup> <https://www.osha.gov/doc/acccsh/acccshcrane.pdf>.

<sup>3</sup> <https://www.osha.gov/doc/acccsh/proposed-crane.html>.

<sup>4</sup> <https://www.osha.gov/doc/acccsh/summary-crane.html>.

with OSHA's standard. The impact on the industry would be particularly unwarranted in light of OSHA's public disclosure to ACCSH during the committee's meeting on March 31 and April 1, 2015, that the Agency intends to propose removing the capacity component of certification, which is the sole reason that most of these operator certifications would not comply with OSHA's standard. OSHA also acknowledges the commenters' point that while there has been time for more operators to become certified, many employers may have delayed in requiring their employees to be certified while they waited for OSHA to clarify the criteria for the certification so that they could avoid spending funds on a certification that would not meet OSHA's standard. To the extent that the Agency's actions have contributed to this uncertainty, OSHA agrees that it would not be fair to penalize employers by enforcing the certification requirement before completing the separate rulemaking to change that criteria. The additional one-year extension will provide the Agency with the time it needs to address those concerns.

#### *B. Extension of the Existing Employer Duty*

The commenters who specifically addressed the extension of the existing employer assessment duty were unanimous in supporting the extension to ensure that employers retained responsibility for ensuring that their operators are competent to operate cranes. All of the comments opposed to the one-year extension focused entirely on certification and did not mention the employer duty.

The North America's Building Trades Union commented that "without the proposed extension there would not be an employer duty to ensure operators can safely operate equipment, which not only puts the operator at risk of fatality or injury, but also puts all construction workers around the equipment at risk as well as the general public on certain construction projects." (ID-0618). The IUOE argues that even if certification is required, "[c]ertification alone . . . is simply insufficient in the absence of *subsequent employer qualification* to ensure that a crane operator is qualified to safely operate the crane to which he or she is assigned." (ID-0651).

While OSHA is not prepared to make a determination whether certification alone is insufficient as the IUOE claims, OSHA agrees that in order to ensure safe and competent crane operations during the one-year extension, the employer duty must also be extended. Without an

extension of the employer duty, the standard would have no requirement to ensure that crane operators know how to operate the crane safely during the operator certification extension. Therefore it is important that the Agency extend the employer duty while it engages in subsequent rulemaking.

#### *C. Length of the Extensions*

Having determined that it is appropriate to delay the certification deadline and extend the employer duty to ensure operator competence, the remaining issue is the length of the extension. In the NPRM, OSHA proposed delaying the operator certification deadline and extending the existing employer duty for one year, until November 10, 2018. OSHA requested comment on the duration of the extension.

The majority of comments support OSHA's proposed extension of the deadline for crane operator certification and the employer duty for one year. (ID-0545, 0561, 0563, 0566, 0572–575, 0578, 0580–582, 0585, 0588–600, 0602–605, 0607–614, 0617–618, 0621, 0624–627, 0632–640, 0642–643, 0645–647, 0651, 0653, 0656–660, 0662–6664, 0666–667). Some of these comments recommend that OSHA move as quickly as possible to address these rules. (ID-0605, 0618, 0632, 0651, 0656). NCCCO agrees with the Agency's proposed extension and "urges OSHA to act with all speed to ultimately issue its Final Rule *well within the extension* on this vitally important safety issue. . . ." (ID-0632). Jonathan Branton of Murray State University commented that "this issue does not need to be pushed back any further than one year" and it is "OSHA's responsibility to not allow this to be further extended." (ID-0605). The IUOE asked the Agency to "[p]lease do everything in your power to ensure that OSHA completes the process by November 2018." (ID-0651).

Additionally, OSHA received comments recommending an extension of three years and an indefinite extension until OSHA addresses the certification issues raised by stakeholders after publication of the 2010 final cranes and derricks standard.

The National Propane Gas Association (NPGA) recommended delaying the deadline for the certification requirement and extending the employer duty "at least three years", arguing that "if three years was not an adequate amount of time" to address certification issues raised by stakeholders, "it is not reasonable to presume one year is sufficient." (ID-0648). The NPGA continues that "[w]e are concerned that the short delay is

indicative of the agency's intent to conduct an expedited process. . . . an accelerated rulemaking would be antithetical to the purpose and spirit of public engagement in the regulatory process." (ID-0648). The National Association of Home Builders recommends that OSHA delay the deadline for the certification requirements and extend the employer duty another three years or indefinitely, arguing that "OSHA needs to ensure the certification procedures will actually improve safety" and not allowing enough time to address certification issues "only hurts the workers and the regulated community with continually changing deadlines and requirements." (ID-0598). ABC also recommended that both the deadline for the certification requirement be delayed and the employer duty be extended indefinitely as recommended by ACCSH in 2014, arguing that a one year delay "will not provide a sufficient amount of time for OSHA to complete a further rulemaking. . . . Limiting the amount of time the agency has to complete the rulemaking could lead to rushed and unclear regulations." (ID-0650).

While OSHA appreciates the concern of some stakeholders that a one-year extension is an insufficient amount of time to address the issues raised by the industry after publication of the crane standard, OSHA is not persuaded an extension longer than one year is necessary. OSHA had not even decided whether to pursue rulemaking when it finalized the three-year extension in 2014. The Agency needed time to determine what regulatory approach would be appropriate for addressing the concerns raised by stakeholders after publication of the crane standard. (79 FR 7613). OSHA took time to make site visits and spoke to over 40 industry representatives about crane operator certification and operator competency. Using this information, OSHA drafted regulatory text that it presented to a special meeting of ACCSH on March 31, and April 1, 2015, where several stakeholders had the opportunity to provide feedback to the Agency.<sup>6</sup> OSHA has taken the information from that meeting and worked to develop a proposed rule addressing stakeholders' concerns. OSHA has nearly completed that proposed rule and intends to publish it for public comment shortly.

OSHA is in a different point of the process than it was three years ago and is confident that it will be able to

<sup>6</sup> Transcript for March 31: [https://www.osha.gov/doc/acccsh/transcripts/acccsh\\_20150331.pdf](https://www.osha.gov/doc/acccsh/transcripts/acccsh_20150331.pdf); transcript for April 1: [https://www.osha.gov/doc/acccsh/transcripts/acccsh\\_20150401.pdf](https://www.osha.gov/doc/acccsh/transcripts/acccsh_20150401.pdf).

OSHA's analysis follows the steps below to reach its estimate of an annual net \$4.4 million in savings:

- (1) Estimate the annual assessment costs for employers;
- (2) Estimate the annual certification costs for employers; and
- (3) Estimate the year-by-year cost differential for delaying the certification deadline to 2018.<sup>8</sup>

The methodology used here is substantially the same as used in the 2014 extension FEA, and OSHA did not receive any comment on this methodology when it included it in the 2017 PEA. Below, Table 1 summarizes these costs and the differentials across the two scenarios. The major differences are updated wages and a revised forecast of the composition of the operator pool across certification levels. The 2014 FEA analysis addressed a 3-year extension, so it gradually increased the number of operators without any certification during that period. The model in this PEA addresses an extension of just a single year, so it holds the number of operators with each certification level constant. The latter significantly simplifies the analysis versus that presented in the 2014 FEA extension.

#### a. Annual Assessment Costs

OSHA estimated the annual assessment costs using the following three steps: First, determine the unit costs of meeting this requirement; second, determine the number of assessments that employers will need to perform in any given year (this determination includes estimating the affected operator pool as a preliminary step); and finally, multiply the unit costs of meeting the requirement by the number of operators who must meet it in any given year.

*Unit assessment costs.* OSHA's unit cost estimates for assessments take into account the time needed for the assessment, along with the wages of both the operator and the personnel who will perform the assessment. OSHA based the time requirements on crane operator certification exams currently offered by nationally accredited testing organizations. OSHA determined the time needed for various certification

and benefits using two interest rate assumptions, 3 percent and 7 percent, as recommended by OMB Circular A-4 of September 17, 2003. All dollar amounts unless otherwise stated are in 2016 dollars.

<sup>8</sup> Though this is a single year extension, the analysis needs to extend over several future years. For convenience, OSHA refers to the annual time period as a "Certification Year" (CY) in this economic analysis, which OSHA defines as ending November 10 of the calendar year; e.g., CY 2017 runs from November 10, 2016, to November 9, 2017.

tests from the 2014 extension, drawing primarily from informal conversations with industry sources who participated in the public stakeholder meetings.

The Agency estimates separate assessment costs for three types of affected operators, which together comprise all affected operators: Those who have a certificate that is in compliance with the existing cranes standard; those who have a certificate that is not in compliance with the existing cranes standard; and those who have no certificate.<sup>9</sup> As it did in the previous extension, OSHA uses certification status as a proxy of competence in estimating the amount of assessment time needed for different operators. OSHA expects that an operator already certified to operate equipment of a particular type and capacity will require less assessment time than an operator certified by type but not capacity, who in turn will require less time than an operator who is not certified. In deriving these estimates, OSHA determined that operators who have a certificate that is compliant with the crane standard would have to complete a test that is the equivalent of the practical part of the standard crane operator test. The Agency estimates that it would take an operator one hour to complete this test. Operators who have a certificate that is not in compliance with the cranes standard would have to complete a test that is equivalent to both a written general test and a practical test of the standard crane operator test. OSHA estimated that the written general test would take 1.5 hours to complete, for a total test time of 2.5 hours of testing for each operator (1.5 hours for the written general test and 1.0 hour for the practical test). Finally, operators with no certificate would have to complete a test that is equivalent to the standard written test for a specific crane type (also lasting 1.5 hours), as well as the written general test and the practical test, for a total test time of 4.0 hours (1.5 hours for the test on a specific crane type, 1.5 hours for the written general test, and 1.0 hour for the practical test).

The wages used for the crane operator and assessor come from the BLS Occupational Employment Survey for May 2016 (BLS 2017a), which is an updated version of the same source used

<sup>9</sup> OSHA is not making any determination about whether a specific certification complies with the requirements of the cranes standard. For the purposes of this analysis only, OSHA will treat certificates that do not include a multi-capacity component as not complying with the cranes standard, and certificates that include both a type and multi-capacity component as complying with the cranes standard.

in the 2014 extension. From this survey a crane operator's (Standard Occupational Classification (SOC) 53-7021 Crane and Tower Operators) average hourly wage is \$26.58. The full cost to the employer includes all benefits as well as the wage. From the BLS Employer Costs For Employee Compensation for December 2016 (BLS 2017b) the average percentage of benefits in total for the construction sector is 30.2 percent, giving a markup of the wage to the total compensation of 1.43 ( $1/(1 - 0.302)$ ). Hence the "loaded" total hourly cost of an operator is \$38.08 ( $1.43 \times \$26.58$ ), including a markup for benefits.<sup>10</sup> Relying on the same sources, the wage of the assessor is estimated to be the same as the average wage of a construction supervisor (53-1031 First-Line Supervisors of Transportation and Material-Moving Machine and Vehicle Operators) of \$28.75, while the total hourly cost is \$41.19 ( $1.43 \times \$28.75$ ). Below these total hourly costs will be referred to as the respective occupation's "wage." For assessments performed by an employer of a prospective employee (*i.e.*, a candidate), OSHA uses these same operator and assessor wages and the above testing times to estimate the cost of assessing prospective employees.

Multiplying the wages of operators, assessors, and candidates by the time taken for each type of assessment provides the cost for each type of assessment. Hence, the cost of assessing an operator already holding a certificate that complies with the standard (both type and capacity) is one hour of both the operator's and assessor's time: \$79.27 (\$38.08 + \$41.19). For an operator with a certificate for crane type only (not crane capacity), the assessment time is 2.5 hours for a cost of \$198.17 ( $2.5 \times (\$38.08 + \$41.19)$ ). Finally, for an operator with no certificate, the assessment time is 4.0 hours for a cost of \$317.48 ( $4.0 \times (\$38.08 + \$41.19)$ ). OSHA did not receive any comments on these unit cost estimates.

Besides these assessment costs, OSHA notes that § 1926.1427(k)(2)(ii) requires employers to provide training to employees if they are not already competent to operate their assigned equipment. To determine whether an operator is competent, the employer must first perform an assessment. Only if an operator fails the assessment must the employer provide additional operator training required by § 1926.1427(k)(2)(ii).

<sup>10</sup> Calculations in the text may not exactly match due to rounding for presentation purposes. All final costs are exact, with no rounding.

for the one-year extension in scenario 2. As in the annual assessment-cost analysis described above, OSHA provides the calculations for CY 2017 under the existing 2017 deadline (scenario 1), and then presents the certification costs for CY 2018 that result from OSHA's delay of the certification requirement to November 2018 (scenario 2).

**Unit certification costs.** Unit certification costs vary across the three different types of operators in the operator pool (operators with compliant certification; operators with type-only certification; and operators with no certification). Among operators without certification there is a further distinction with different unit certification costs: Experienced operators without certification and operators who have only limited experience. As such, there are different unit certification costs for four different types of operators. There also are ongoing certification costs due to the following two conditions: The requirement for re-certification every five years and the need for some certified operators to obtain additional certification to operate a crane that differs by type and/or capacity from the crane on which they received their current certification.

OSHA estimated these different unit certification costs using substantially the same unit-cost assumptions used in the FEA for the 2010 cranes standard (and exactly the same as the FEA of the 2014 deadline extension). In those previous FEAs, OSHA estimated that training and certification costs for an operator with only limited experience would consist of \$1,500 for a 2-day course (including tests) and 18 hours of the operator's time, for a total cost of \$2,185.44 (\$1,500 + (18 hours × \$38.08)) (see 75 FR 48096–48097). OSHA continues to use a cost of \$250 for the tests taken without any training (a constant fixed fee irrespective of the number of tests (75 FR 48096)), and the same number of hours used for each test that it used in the assessment calculations provided above (which the Agency based on certification test times). Accordingly, OSHA estimates the cost of a certificate compliant with the crane standard for an operator who has a type-only certificate to be \$345.20 (*i.e.*, 1 type/capacity-specific written test at 1.5 hours and 1 practical test at 1.0 hours (2.5 hours total), plus the fixed \$250 fee for the tests (2.5 hours × \$38.08) + \$250). For an experienced operator with no certificate, the cost is \$402.32 (*i.e.*, the same as the cost for an operator with a type-only certificate plus the cost of an added general

written test of 1.5 hours (4.0 hours × \$38.08) + \$250)).<sup>11</sup>

For scenario 1, § 1926.1427(b)(4) specifies that a certificate is valid for five years. OSHA estimates the recertification unit cost would be the same as the assessment for an operator with compliant certification (*i.e.*, \$79.27). In the 2014 extension, OSHA assumed that employers would pay a reduced fee for the recertification testing as opposed to the cost of a full first-time examination. Because OSHA lacked data on exactly how much the fee would be reduced, it used the assessment cost as a proxy for the cost of recertification (79 FR 57794). OSHA did not receive any comment on that approach and is retaining it for this FEA.

Finally, there will be certified operators who must obtain certification when assigned to a crane that differs by type and/or capacity from the crane on which they received their current certification. This situation requires additional training, but less training than required for a "new" operator with only limited experience. Accordingly, OSHA estimated the cost for these operators as one half of the cost of training and certifying a new operator, or \$1,092.72 (\$2,185.44/2).

**Number of certifications.** After establishing the unit certification costs, OSHA had to determine how many certifications are necessary to ensure compliance with OSHA's standard. In doing so, the Agency uses the 5 percent new-hire estimate from the FEA discussed above to calculate the number of new operators; therefore, of the 117,130 operators affected by the standard, 5,857 (0.05 × 117,130) would be new operators who would require two days for training and certification each year. As discussed earlier, OSHA estimated that 71,700 operators have type-only certification, 15,000 operators have certification that complies with the existing cranes standard, and the remaining 24,574 operators (117,130 – (71,700 + 15,000 + 5,857)) are experienced operators without certification.

Under scenario 1 (no extension), after all operators attain certification by November 2017 there will still be ongoing certification costs each year. With a constant total number of operators, the same number of operators (5,857) will be leaving the profession each year and will not require recertification when their current 5-year certification ends. This leaves 111,274 operators (117,130 – 5,857) who will

need such periodic recertification. If we approximate the timing of requirements for recertification as distributed proportionally across years, then 20 percent of all operators with a 5-year certificate (22,255 operators (.20 × 111,274)) would require recertification each year.

A final category of unit certification costs involves the continuing need for certified operators to obtain further certification when assigned to a crane that differs by type and/or capacity from the crane on which they received their current certification. This situation arises for both operators working for a single employer and operators switching employers.

The operators who will not need multiple certifications in the post-deadline period are operators with certification who move to a new employer and operate a crane with the same type and capacity as the crane on which they received certification while with their previous employer. These operators will not need multiple certifications because operator certificates are portable across employers, as specified by the cranes standard (see § 1926.1427(b)(3)). For an employer looking to hire an operator for a specific crane, this option will minimize cost, and OSHA assumes employers will choose this option when possible.

After the certification deadline, OSHA estimates that each year 23 percent of the 117,130 operators (26,940 = 0.23 × 117,130) will enter the workforce, change employers, or take on new positions that require one or more additional certifications to operate different types and/or capacities of cranes. Of these 26,940 operators, OSHA estimates 5 of the total 23 percent, or 5,857 (0.05 × 117,130), will result from new operators entering the occupation each year; 9 percent, or 10,542 (0.09 × 117,130), will result from operators switching employers but operating a crane of the same type and capacity as the crane they operated previously (*i.e.*, no certification needed because certification is portable in this case); and the remaining 9 percent, or 10,542, changing jobs or positions and requiring one or more additional certification to operate a crane that differs by type and/or capacity from the crane they operated previously. These percentages are identical to those in the 2014 FEA and the 2017 PEA.

**Annual certification costs.** To estimate the annual base cost for the first scenario, OSHA calculates the certification costs for CY 2017 because that is the remaining period before the existing deadline. The total cost for

<sup>11</sup> There are no certification costs for operators who already have a certificate that complies with the cranes standard.

range of overhead estimates currently used within the Federal government—for example, the Environmental Protection Agency has used 17 percent,<sup>13</sup> and government contractors have been reported to use an average of 77 percent.<sup>14</sup><sup>15</sup> Some overhead costs, such as advertising and marketing, vary with output rather than with labor costs. Other overhead costs vary with the number of new employees. For example, rent or payroll processing costs may change little with the addition of 1 employee in a 500-employee firm, but those costs may change substantially with the addition of 100 employees. If an employer is able to rearrange current employees' duties to implement a rule, then the marginal share of overhead costs such as rent, insurance, and major office equipment (e.g., computers, printers, copiers) would be very difficult to measure with accuracy (e.g., computer use costs associated with 2 hours for rule familiarization by an existing employee).

If OSHA had included an overhead rate when estimating the marginal cost of labor, without further analyzing an appropriate quantitative adjustment, and adopted for these purposes an overhead rate of 17 percent on base wages, as was done in a sensitivity analysis in the FEA in support of OSHA's 2016 final rule on Occupational Exposure to Respirable Crystalline Silica, the overhead costs would increase cost savings from \$4.4 million to \$4.5 million at a discount rate of 3 percent, an increase of 1.8 percent, and would increase cost savings from \$5.2 million to \$5.3 million at a discount rate of 7 percent, an increase of 1.9 percent.

#### d. Certification of No Significant Impact on a Substantial Number of Small Entities

**Most employers will have savings resulting from the one-year extension, particularly employers that planned to pay for operator certification in the year before the existing 2017 deadline.** The only entities likely to see a net cost will be entities that planned to hire an operator with compliant certification

<sup>13</sup> U.S. Environmental Protection Agency, "Wage Rates for Economic Analyses of the Toxics Release Inventory Program," June 10, 2002.

<sup>14</sup> Grant Thornton LLP, 2015 Government Contractor Survey. (<https://www.grantthornton.com/-/media/content-page-files/public-sector/pdfs/surveys/2015/Gov-Contractor-Survey.ashx>).

<sup>15</sup> For a further example of overhead cost estimates, please see the Employee Benefits Security Administration's guidance at <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-august-2016.pdf>.

after November 10, 2017. Without the one-year extension, these entities will have no separate assessment duty, but under the one-year extension they will have the expense involved in assessing operator competency. As noted above, however, OSHA estimated the maximum cost for such an assessment (for operators with no certification) to be \$317.08 per certified operator.

Small businesses will, by definition, have few operators, and OSHA believes the \$317.08 cost will be well below 1 percent of revenues, and well below 5 percent of profits, in any industry sector using cranes. OSHA does not consider such small amounts to represent a significant impact on small businesses in any industry sector. Hence, OSHA certifies this final rule will not have a significant impact on a substantial number of small entities. After providing relatively similar estimates in the 2014 FEA, OSHA made the same certification in the 2014 FEA and proposed the same certification in the 2017 PEA but did not receive any adverse comment on either the certification or its underlying rationale.

#### B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) requires Federal agencies to obtain the Office of Management and Budget (OMB) approval of information collection requirements before an Agency can conduct or sponsor the information collection requirement; and to display the OMB control (approval number) (44 U.S.C. 3507(d)). Agencies submit an Information Collection Request (ICR), with paperwork analysis, to OMB seeking approval of their paperwork requirements. The information collection requirements in the Cranes and Derricks in Construction Standard (29 CFR part 1926, subpart CC) have been approved by OMB in the ICR titled *Cranes and Derricks in Construction Standard* (29 CFR part 1926, subpart CC), under OMB control Number 1218–0261. These paperwork requirements expire on February 28, 2020.

In the August 30, 2017 NPRM, OSHA notified the public that the Agency believed the proposed Cranes and Derricks in Construction: Operator Certification Extension rule did not contain additional collection of information, and that OSHA did not believe it was necessary to submit a new (revised) ICR to OMB. OSHA instructed the public to submit comments on this determination to OMB and encouraged them to submit their comments to OSHA. No comments were received and OSHA has determined this final rule requires no additional collection of

information or any permanent change to the collection program. As a result, the Agency did not submit an ICR to OMB.

The Agency notes that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other law, no person may generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number.<sup>16</sup>

#### C. Federalism

OSHA reviewed this final 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 Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 et seq.), Congress expressly provides that States and U.S. territories may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards. OSHA refers to such States and territories 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). In States without an OSHA-approved State Plan, this final rule limits State policy options in the same manner as every standard promulgated by OSHA. For State Plan States, Section 18 of the OSH Act, as noted in the previous paragraph, permits State-Plan States to develop and enforce their own crane standards

<sup>16</sup> See 5 CFR 1320.5(a) and 1320.6.

**§ 1926.1427 Operator qualification and certification.**

(k) *Phase-in.* (1) The provisions of this section became applicable on November 8, 2010, except for paragraphs (a)(2) and (f) of this section, which are applicable November 10, 2018.

(2) When paragraph (a)(1) of this section is not applicable, all of the requirements in paragraphs (k)(2)(i) and (ii) of this section apply until November 10, 2018.

(i) The employer must ensure that operators of equipment covered by this standard are competent to operate the equipment safely.

(ii) When an employee assigned to operate machinery does not have the required knowledge or ability to operate the equipment safely, the employer must train that employee prior to operating the equipment. The employer must ensure that each operator is evaluated to confirm that he/she understands the information provided in the training.

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**DEPARTMENT OF THE TREASURY****Office of Foreign Assets Control****31 CFR Part 515****Cuban Assets Control Regulations**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Cuban Assets Control Regulations to implement the National Security Presidential Memorandum (NSPM), "Strengthening the Policy of the United States Toward Cuba," signed by the President on June 16, 2017. These amendments implement changes to the authorizations for travel to Cuba and related transactions and restrict certain financial transactions. These amendments also implement certain technical and conforming changes.

**DATES:** Effective: November 9, 2017.

**FOR FURTHER INFORMATION CONTACT:** The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202-622-2480, Assistant Director for Regulatory Affairs, tel.: 202-622-4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets

Control), Office of the General Counsel, tel.: 202-622-2410.

**SUPPLEMENTARY INFORMATION:****Electronic Availability**

This document and additional information concerning OFAC are available from OFAC's Web site ([www.treasury.gov/ofac](http://www.treasury.gov/ofac)).

**Background**

The Department of the Treasury issued the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), on July 8, 1963, under the Trading With the Enemy Act (50 U.S.C. 4301-41). OFAC has amended the Regulations on numerous occasions. Today, OFAC, the Department of Commerce's Bureau of Industry and Security, and the Department of State are taking coordinated actions to implement the NSPM, "Strengthening the Policy of the United States Toward Cuba," signed by the President on June 16, 2017.

OFAC is making amendments to the Regulations with respect to financial transactions, travel and related transactions, educational activities, support for the Cuban people, and certain other activities, as set forth below.

**Financial Transactions**

*Restrictions on direct financial transactions with certain entities and subentities.* In accordance with section 3(a)(i) of the NSPM, the State Department is publishing a list of entities and subentities that are under the control of, or act for or on behalf of, the Cuban military, intelligence, or security service or personnel, and with which direct financial transactions would disproportionately benefit the Cuban military, intelligence, or security services or personnel at the expense of the Cuban people or private enterprise in Cuba—the State Department's List of Restricted Entities and Subentities Associated with Cuba ("Cuba Restricted List"). In accordance with section 3(a)(ii) of the NSPM, OFAC is adding new § 515.209 to restrict direct financial transactions with entities and subentities listed on the Cuba Restricted List. OFAC is making conforming edits to § 515.421 to clarify that transactions ordinarily incident to licensed financial transactions with such entities and subentities if the terms of the applicable general or specific license expressly exclude such direct financial transactions.

In order to implement this prohibition, OFAC is adding corresponding language in the following

general licenses: §§ 515.530, 515.534, 515.545, 515.560, 515.561, 515.564, 515.565, 515.566, 515.567, 515.572, 515.573, 515.574, 515.576, 515.577, 515.578, 515.581, 515.584, and 515.590. OFAC has not incorporated this prohibition into certain general licenses in accordance with the exceptions detailed in section 3(a)(iii) of the NSPM.

**Travel and Related Transactions**

*Educational travel.* In accordance with section 3(b) of the NSPM, OFAC is revising the categories of educational travel currently set forth in § 515.565(a)(1)-(6) to authorize travel that was permitted by regulation in effect on January 27, 2011.

In addition, OFAC is adding the requirement set forth in the NSPM that certain categories of educational travel authorized by § 515.565(a), which were not permitted by regulation in effect on January 27, 2011, take place under the auspices of an organization that is a person subject to U.S. jurisdiction. This requirement is incorporated in § 515.565(a)(2). The same provision also now will require that all travelers must be accompanied by a person subject to U.S. jurisdiction who is an employee, paid consultant, agent, or other representative of the sponsoring organization, except in cases where the traveler is an employee, paid consultant, agent, or other representative traveling individually (not as part of a group), if the individual obtains a letter from the sponsoring organization. Such a letter must state that: (1) The individual is traveling to Cuba as an employee, paid consultant, agent, or other representative (including specifying the responsibilities of the individual that make him or her a representative) of the sponsoring organization; (2) the individual is acting for or on behalf of, or otherwise representing, the sponsoring organization; and (3) the individual's travel to Cuba is related to his or her role at the sponsoring organization.

In addition, OFAC is adding a "grandfathering" provision in § 515.565(d) to authorize certain travel that previously was authorized where the traveler has already completed at least one travel-related transaction (such as purchasing a flight or reserving accommodation) prior to November 9, 2017.

*People-to-people educational travel.* In accordance with section 3(b)(ii) of the NSPM, OFAC is amending § 515.565(b) to require that people-to-people educational travel be conducted under the auspices of an organization that is subject to U.S. jurisdiction and that sponsors such exchanges to promote