DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket ID-OSHA-2007-0066]

RIN 1218-AC86

Cranes and Derricks in Construction: Operator Certification

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

ACTION: Notice of Proposed Rulemaking.

SUMMARY: On August 9, 2010, OSHA issued a final standard establishing requirements for cranes and derricks used in construction work. The standard requires employers to ensure that crane operators are certified by November 10, 2014. Until that date, employers also have added duties under the standard to ensure that crane operators are trained and competent to operate the crane safely. The Agency is proposing to extend the deadline for operator certification by three years to November 10, 2017, and to extend the existing employer duties for the same period.

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, using 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. Note that this docket may include several different Federal Register notices involving active rulemakings, so it is extremely important to select the correct notice or its ID number when submitting comments for this rulemaking. After accessing the docket (OSHA-2007-0066), check the "proposed rule" box in the column headed "Document Type," find the document posted on the date of publication of this document, and click the "Submit a Comment" link. Additional instructions for submitting comments are available from the regulations.gov homepage.

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, and the docket number (OSHA-2007-0066) so that the Docket Office can attach them to the appropriate document.

Regular mail, express delivery, hand delivery, and messenger (courier) service: Submit comments and any additional material to the OSHA Docket Office, RIN No. 1218-AC86, 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: Operator Certification), 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; email: Meilinger.Francis2@dol.gov.

Technical inquiries: Mr. Vernon Preston, 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; email: Preston.Vernon@dol.gov.

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.

SUPPLEMENTARY INFORMATION:

I. Summary and Explanation of the Proposed Amendments to the Standard

A. Introduction

OSHA is publishing this Notice of Proposed Rulemaking to extend for three years the employer duty to ensure crane operator competency for construction work, from November 10, 2014, to November 10, 2017. OSHA also is proposing to extend the enforcement date for crane operator certification for three years from November 10, 2014, to November 10, 2017. After publishing the final rule for cranes and derricks in construction, several entities informed OSHA that crane operator certification was insufficient for determining whether an operator could operate their equipment safely on a construction site. After hosting several public meetings discussing this issue, OSHA decided to propose extending the enforcement date for: the employer to ensure competent and safe crane operation; and operator certification. During the three-year extension, OSHA will examine and determine how to address this issue systematically.

B. Summary of Economic Impact

This proposed rule is not economically significant. OSHA proposes to revise 29 CFR 1926.1427(k) (competency assessment and training) to extend the deadline for compliance with the operator-certification requirement in its construction standard for cranes and derricks, and to

extend the existing employer duties for the same period. OSHA's preliminary economic analysis shows that extending the date for operator certification and employers' assessment of crane operators, rather than allowing both provisions to expire on November 10, 2014, will result in a net cost savings for the affected industries. Extending the compliance date for operator certification results in estimated cost savings that exceed the estimated new costs for employers to continue to assess crane operators to ensure their competent operation of the equipment in accordance with 1926.1427(k). The detailed preliminary economic analysis is in the "Agency Determinations" section of this preamble.

C. Background

1. Operator certification options

OSHA developed the final rule for cranes and derricks in construction (29 CFR subpart CC, referred to as "the cranes standard" hereafter) through a negotiated rulemaking process. OSHA established a federal advisory committee, the Cranes and Derricks Negotiated Rulemaking Advisory Committee (C-DAC), to develop a draft proposed rule. C-DAC met in 2003 and 2004 and developed a draft proposed rule that it provided to OSHA. The rule that OSHA subsequently proposed closely followed C-DAC's draft proposal (73 FR 59718).

The Agency initiated a Small Business Advocacy Review Panel in 2006. The Agency published the proposed rule for cranes in construction in 2008, received public comment on the proposal, and conducted a public hearing. OSHA's final rule incorporated, with minor changes, the four-option scheme C-DAC recommended and the Agency proposed. Accordingly, in §1926.1427, OSHA requires employers to ensure that their crane operators are certified under at least one of four options by November 10, 2014. The four options are:

Option 1. Certification by an independent testing organization accredited by a nationally recognized accrediting organization;

Option 2. Qualification by an employer's independently audited program;

Option 3. Qualification by the U.S. military; or

Option 4. Compliance with qualifying state or local licensing requirements.

The third-party certification option in §1926.1427(b)—Option 1—is the only certification option that is "portable," meaning that any employer who employs an operator may rely on that operator's certification as evidence of compliance with the cranes standard's operator certification requirement. This certification option also is the only one that is available to all employers; it is the option that OSHA, and the parties that participated in the rulemaking, believed would be the one most widely used. In this regard, OSHA is not aware of an audited employer qualification program among construction industry employers (Option 2), and the cranes standard limits the U.S. military crane operator certification programs (Option 3) to federal employees of the Department of Defense or the armed services. While state and local governments certify some crane operators (Option 4), the vast majority of operators who become certified do so through Option 1—by third-party testing organizations accredited by a nationally recognized accrediting organization.

Under Option 1, a third party performs testing. Before a testing organization can issue operator certifications, paragraph 1427(b)(1) of the cranes standard provides that a nationally recognized accrediting organization must accredit the testing organizations. To accredit a testing organization, the accrediting agency must determine that the testing organization meets industry-recognized criteria for written testing materials, practical examinations, test administration,

grading, facilities and equipment, and personnel. The testing organization must administer written and practical tests that:

• assess the operator's knowledge and skills regarding subjects specified in the cranes standard;

• provide different levels of certification based on equipment capacity and type;

• have procedures to retest applicants who fail; and

• have testing procedures for recertification.

Paragraph 1427(b)(2) of the final cranes standard also specifies that, for the purposes of compliance with the cranes standard, an operator is deemed qualified to operate a particular piece of equipment only if the operator is certified for that type and capacity of equipment or for higher-capacity equipment of that type. It further provides that, if no testing organization offers certification examinations for a particular equipment type and/or capacity, the operator is deemed qualified to operate that equipment if the operator is certified for the type/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 final cranes standard replaced provisions in 29 CFR 1926 subpart N—Cranes, Derricks, Hoists, Elevators, and Conveyors, of the construction safety standards. Provisions for employers to ensure that operators of equipment, including cranes, are trained and qualified to safely operate that equipment are available elsewhere in the construction safety standards (see, for example, §1926.20(b)(4) and (f)(2)).

OSHA delayed the effective date of the operator certification requirement for four years, until November 10, 2014 (see §1427(k)(1)). The Agency also wanted to ensure the final cranes

standard maintained an employer duty during that four-year "phase-in" period 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 final rule, 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 http://www.osha.gov/cranes-derricks/stakeholders.html and OSHA-2013-0024-0001. 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 by the "type and capacity" of crane, as the cranes standard requires. As a result, those certifications do not

meet the standard's requirements and operators who obtained certifications from those organizations cannot, under OSHA's cranes 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 beginner'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. Explanation of Proposed Action and Request for Comment

The effective dates of the operator certification requirement and the other "phase-in" employer duties are in 29 CFR 1926.1427(k)(1). The Agency is proposing to revise §1427(k)(1) to extend the deadline for operator certification by three years from November 10, 2014, to November 10, 2017, to provide additional time for the Agency to consider potential rulemaking options. The Agency also is proposing to extend the current employer duties in §1926.1427(k)(2)(i) and (ii) to ensure that there is no reduction in worker protection during this three-year period. When OSHA included these employer duties in the final cranes standard in 2010, these duties were to be a "phase in" to certification (75 FR 48027). By extending the date

as proposed in this notice, the requirements would continue to serve that purpose and preserve the status quo.[1]

As discussed later in this preamble, the Advisory Committee on Construction Safety and Health (ACCSH) recommended postponing certification indefinitely pending further rulemaking and also recommended continuing the existing employer duties for that same period. OSHA seeks comment on this alternative; however, the Agency believes that an indefinite extension would result in complacency in the regulated community because employers may assume that operator certification is not important. Moreover, if the Agency extends the certification deadline indefinitely, it could face additional procedural hurdles in reinstituting the certification requirement, rather than having those requirements take effect automatically at the end of a fixed period.

By extending the enforcement dates by three years, the Agency will have about four years to pursue and complete rulemaking. The Agency is proposing a three-year extension, rather than a shorter period, to give it sufficient time to complete a rulemaking should it choose to do so. The Agency is confident that it can complete a subsequent rulemaking by November, 2017, because: (1) this issue is critical to construction safety and the effectiveness of the final cranes standard, which OSHA previously estimated would prevent 22 fatalities per year (75 FR 47914), and (2) OSHA expects that a subsequent rulemaking would focus on a limited number of discrete issues already debated extensively by stakeholders in the regulated community.

OSHA seeks comment on this approach, including the duration (three years) of the proposed extension of the operator certification deadline and the existing employer duties, as

[1]A parallel training requirement in §1430(c)(2) reiterates the training requirement in paragraph 1427(k)(2), specifying that the training occur during the four-year transition period. OSHA is not proposing to amend §1430(c)(2) because it believes that amending §1427(k)(2) is sufficient to extend the relevant employer training duty for employers; however, the Agency welcomes comment on this issue.

well as the alternative approach recommended by the ACCSH. OSHA encourages commenters to include a rationale for any alternatives that they propose. In addition, OSHA requests comment, data, or information on the potential safety impact of extending operator certification and the current employer duty--or any alternatives. OSHA requests comment on the "Agency Determinations" section that follows, including the preliminary economic analysis, paperwork requirements, and other regulatory impacts of this rule on the regulated community.

II. Agency Determinations

A. Preliminary Economic Analysis and 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 Orders 12866 (58 FR 51735) (Sept. 30, 1993) and 13563 (76 FR 3821 (Jan. 21, 2011)). OSHA also published a Final Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601-612). This preliminary economic analysis (PEA) uses some estimates from these documents.

Because OSHA estimates that this proposed rule will have a cost savings for employers of $21.4 million per year for the three years of the proposed extension, this proposed rule is not economically significant within the meaning of Executive Order 12866, or a major rule under the Unfunded Mandates Reform Act or Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.). In addition, this proposed rule complies with Executive Order 13563.

This PEA focuses solely on costs, and not on any changes in safety and benefits resulting from extending the certification deadline and the employer duties under §1427(k)(2). OSHA previously provided its assessment of the benefits of the cranes standard in the FEA of that

standard. As noted elsewhere in this preamble, the primary rationale for proposing the extension is to provide additional time for OSHA to consider the potential costs and benefits of possible adjustments to the operator certification requirements in future rulemaking.

Extending the employer's requirement to ensure an operator's competency during this period means continuing measures in existence since publishing the final crane standard in 2010. As OSHA stated in the preamble to the final rule, the interim measures in paragraph (k) "are not significantly different from requirements that were effective under subpart N of this part at former §1926.550, §1926.20(b)(4) ('the employer shall permit only those employees qualified by training or experience to operate equipment and machinery'), and §1926.21(b)(2) ('the employer shall instruct each employee in the recognition and avoidance of unsafe conditions . . .')" (75 FR 48027).

Delaying the operator certification requirement defers a regulatory requirement and should impose no new costs on employers. There would, however, be continuing employer costs for extending the requirement to assess operators under existing §1926.1427(k)(2); if OSHA does not extend these requirements, they would expire in 2014 and employers would not incur these costs after 2014. With the extension, these continuing employer costs would be offset by a reduction in expenses that employers would otherwise incur to ensure that their operators are certified before the existing November 2014 deadline.

Overview

In the following analysis, OSHA examined costs and savings to determine the net economic effect of the proposed rule. By comparing the additional assessment costs to the certification cost savings across two scenarios—a scenario in which there is no extension of the 2014 deadline, and a scenario in which there is an extension until 2017—OSHA estimates a net

savings for employers of $21.4 million per year, annualized over the 3-year period of the proposed extension using a 7% interest rate ($19.5 million per year using an interest rate of 3%).[2]

OSHA's analysis follows the steps below to reach its estimate of an annual net $21.4 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 if OSHA extends the certification deadline to 2017.[3]

Table 1 below summarizes these costs and the differentials. In a separate analysis, OSHA examined the cost differential under an alternative to the proposal in which the Agency delays indefinitely the certification deadline and employer-assessment phase out.

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 the assessments 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 to determine the annual costs.

[2]As explained in the following discussion, OSHA typically calculates the present value of future costs and benefits using two interest rate assumptions, 7% and 3%, as recommended by OMB Circular A-4 of September 17, 2003.

[3]For convenience, OSHA refers to the annual time period as a "Certification Year" (CY) in this economic analysis, which OSHA defines as beginning November 10 of the calendar year; e.g., CY 2013 runs from November 10, 2013, to November 9, 2014. There is some small variation in both assessment and certification costs across CYs due to changes in the composition of the operator pool resulting from turnover (discussed below). In this regard, OSHA presents CY 2013 costs in full, and then presents the minor adjustments needed for other CYs.

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 specialized operator assessor 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 tests from informal conversations the Agency had with industry sources who participated in the public stakeholder meetings. OSHA invites comment on these estimates.

The Agency estimates separate assessment costs for three types of affected operators, which together include all affected operators: those who have a certificate that is in compliance with the existing cranes standard; those who have a certificate from a nationally accredited testing organization that is not in compliance with the existing cranes standard; and those who have no certificate.[4] 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 cranes standard would have to complete a test that is 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

[4]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 capacity component as not complying with the cranes standard, and certificates that include both a type and capacity component as complying with the cranes standard.

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 written test on a specific crane type of the standard crane operator test (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 final cranes rule (75 FR 48102). Accordingly, the operator wage is $35.62, while the wage of the assessor is estimated to be the same as the wage of a crane inspector, $41.25. For assessments performed by an employer of a prospective employee (i.e., a candidate), OSHA used 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: $76.87 ($35.62 + $41.25). For an operator with a certificate for crane type only (not crane capacity), the assessment time is 2.5 hours for a cost of $192.18 (2.5 x ($35.62 + $41.25)). Finally, for an operator with no certificate, the assessment time is 4.0 hours for a cost of $307.48 (4.0 x ($35.62 + $41.25)).

Besides these assessment costs, OSHA notes that §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 will the operator require training. However, in determining this cost, OSHA made a distinction between a nonemployee candidate for an operator position and an operator who is currently an employee. For an employer assessing a nonemployee candidate, OSHA assumed, based on common industry practice, that the employer will not hire a nonemployee candidate who fails the assessment. In the second situation, an employee qualified to operate a crane fails a type and/or capacity assessment for a crane that differs from the crane the employee currently operates. In this situation, the cost-minimizing action for the employer is not to assign the employee to that type and/or capacity crane, thereby avoiding training costs. While the Agency acknowledges that there will be cases in which the employer will provide this training, it believes these costs to be minimal and, therefore, is not taking costs for the training.

Number of assessments and number of affected operators. The number of assessments is difficult to estimate due to the heterogeneity of the crane industry. Many operators work continuously for the same employer, already have their assessment, and do not need reassessment, so the number of new assessments required by the cranes standard for these operators will be zero. Some crane companies will rent both a crane and an operator employed by the rental company to perform crane work, in which case the rental crane company is the operator's employer and responsible for operator assessment. In such cases there is no need for the contractor who is renting the crane service to conduct an additional operator assessment. Assuming that employers already comply with the assessment and training requirements of the existing §1427(k)(2), employers only need to assess a subset of operators: new hires; employees who will operate equipment that differs by type and/or capacity from the equipment on which

they received their current assessment; and operators who indicate that they no longer possess the required knowledge or skill necessary to operate the equipment.

To calculate the estimated annual number of assessments, OSHA first estimated the current number of crane operators affected by the cranes standard. The FEA in the final cranes standard identified a total of 142,630 affected crane operators (75 FR 48108). However, after publishing the final cranes standard, OSHA made revisions to the cranes standard that reduced the total number of affected operators. In this regard, OSHA excluded a significant percentage of digger-derrick use from the scope of the cranes standard (see Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks, 78 FR 32110 (May 29, 2013)). Accordingly, for electric power generation and transmission work covered by the digger-derrick exemption, OSHA found that the two industries using digger derricks have a total of 25,500 operators for both digger derrick and other covered equipment; these industries are: Electric Power Generation, NAICS: 221110; and Electric Power Transmission, NAICS: 221120; see 78 FR 32114). Subtracting these digger-derrick operators from the original total leaves the total number of operators affected by this proposal at 117,130 (i.e., 142,630 - 25,500).

For the purpose of determining the number of assessments required each year under this proposal, OSHA is relying on the original 23% turnover rate for operators identified in the 2008 PEA for the cranes rule (73 FR 59895), which includes all types of operators who would require assessment: operators moving between employers; operators moving between different types and/or capacities of equipment; and operators entering the occupation. OSHA estimated that 26,940 assessments occur each year based on turnover (i.e., 117,130 operators x 0.23 turnover rate). This number includes assessments performed by an employer on current employees assigned to a new type and/or capacity crane. In addition, OSHA in the 2008 PEA assumed that

15% of operators involved in assessments related to turnover would fail the first test administration and need reassessment (73 FR 59895). Therefore, in this proposal, OSHA is adding 4,041 reassessments (i.e., 26,940 operators x 0.15) to the number of reassessments resulting from turnover, for a total of 30,981 yearly assessments resulting from turnover and test failure (i.e., 26,940 + 4,041).

Annual assessment costs. Annual assessment costs will vary by year depending on several factors; the following section addresses year-by-year variations. However, OSHA must first determine the annual base amount from which to account for the variations, and must do so for the two scenarios: (1) retaining the deadline specified by the existing cranes standard (status quo); and (2) extending the deadline to 2017 (proposed rule).

The first part of the calculation is the same under both scenarios. Because the annual assessment costs vary by the different levels of assessment required (depending on the operator's existing level of certification), OSHA grouped the 117,130 operators subject to the cranes standard into three classifications: operators with a certificate that complies with the standard; operators with a certificate only for crane type; and operators with no certification. From discussions with members of the crane industry, OSHA estimated that 15,000 crane operators currently have a certificate that complies with the existing cranes standard, and another 60,000 have a certificate for crane type only (but not capacity). Therefore, 42,130 crane operators have no crane certification (i.e., 117,130 total operators - (15,000 operators with compliant certification + 60,000 operators with certification for type)).

Assuming the turnover rate of 23% and the failure rate of 15% for turnover-related assessments are distributed proportionally across the three types of operators, then the number of assessments for operators with compliant certification is 3,968 (i.e., (0.23 + (0.23 x 0.15)) x

15,000), the number of assessments for operators with type-only certification is 15,870 (i.e., (0.23 + (0.23 x 0.15)) x 60,000), and the number of assessments for operators with no certification is 11,143 (i.e., (0.23 + (0.23 x 0.15)) x 42,130). Under scenario 2 (employer-assessment requirement extended to 2017), OSHA estimated the CY 2013 costs by multiplying the assessment numbers for each type of operator by the unit costs, resulting in a cost of $6,781,167 (i.e., ($76.87 x 3,968) + ($192.18 x 15,870) + ($307.48 x 11,143)). Under scenario 1, employers would be certifying operators throughout CY 2013, whereas under scenario 2 employers would be deferring the certifications until CY 2016; as a result, the CY 2013 assessment costs for scenario 1 would decrease from $6,781,167 to $4,581,334 because a percentage of the operators under scenario 1 will obtain a compliant certificate before they are assessed, thereby reducing the time and cost needed for the assessment (see discussion of year-by-year cost differential in section c below for more details about this determination).

b. Annual certification costs

OSHA estimated the annual certification costs using the three steps used for estimating annual assessment costs: first, determine the unit costs of meeting this requirement; second, determine the number of affected operators; and, finally, multiply the unit costs of meeting the requirement by the number of operators who must meet them. For the proposed extension, OSHA estimated that almost all certification will occur in the year prior to the deadline. OSHA notes that although the current November 2014 deadline is just over a year away, there is evidence that the vast majority of operators do not yet have certification that is in compliance with the existing standard. Based upon this evidence, if OSHA extends the existing requirements to November 2017, OSHA estimates that the vast majority of employers will again wait until the year before the deadline (i.e., CY 2016) to certify all operators. As in the annual assessment-cost

analysis described above, OSHA provides the calculations for CY 2013 under the 2014 deadline specified by the existing cranes standard (scenario 1), and then presents the certification costs for CY 2016 that would apply if OSHA extends the certification requirement to November 2017 (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. Therefore, there are different unit certification costs for four different types of operators. There also are ongoing certification costs due to the following three conditions: the five-year limit on operator certification; 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 assessment; and a yearly 5% turnover rate (i.e., 5% new crane operators entering the occupation to replace operators leaving the occupation).

OSHA estimated these different unit certification costs using substantially the same unit-cost assumptions from the FEA. In the FEA, 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 $2,141.16 (i.e., $1,500 + (18 hours x $35.62)) (see 75 FR 48096). 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 estimated the cost of a certificate compliant with the standard for an operator who has a type-only certificate to be $339.05 (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 (i.e., (2.5 hours x $35.62) + $250). For an experienced operator with no certificate, the cost is $392.48 (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 (i.e., (4.0 hours x $35.62) + $250).[5]

The cranes standard under Option 1 (the standard case) of §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., $76.87).

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 assessment. 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 $1,070.08 (i.e., $2,141.16 ÷ 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% new-hire estimate from the FEA discussed above to calculate the number of new operators; therefore, of the 117,130 operators affected by the proposed standard, 5,857 (i.e., 0.05 x 117,130) would be new operators who would require two days for training and certification each year. As discussed earlier, OSHA estimated that 60,000 operators have type-only certification, and 15,000 operators have certification that complies with

[5]There are no certification costs for operators who already have a certificate that complies with the cranes standard.

the existing cranes standard. The remaining 36,274 operators (i.e., 117,130 - (60,000 + 15,000 + 5,857)) are experienced operators without certification.

After all operators attain certification by the proposed deadline, there will still be ongoing certification costs each year. OSHA estimated that 5% of all operators each year, or 5,857 (i.e., .05 x 117,130), are new operators with no experience or certification and, therefore, will need an initial certification. Consequently, with a constant total number of operators, the same number of operators (5,857) will be leaving the occupation each year and will not require recertification when their current 5-year certification ends. This leaves 111,274 operators (i.e., 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% of all operators with a 5-year certificate (i.e., 22,255 operators (.20 x 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 assessment. This situation arises for both operators working for a single employer and operators switching employers. The 23% turnover rate from the cranes PEA covers pre-deadline situations in which an operator needs an assessment, and also situations in the post-deadline period in which an operator needs multiple certifications. The operators requiring assessments in the pre-deadline period who will not need additional certification 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 from their previous employer. These operators will not need reassessment because of the portability of an operator certificate across employers specified by the cranes

standard (see §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% of the 117,130 operators (26,940, i.e., 0.23 x 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 that 5% of that turnover, or 5,857 ((i.e., 0.05 x 117,130), will result from new operators entering the occupation each year; 9%, or 10,542 (i.e., 0.09 x 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%, 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.

Annual certification costs. As with the assessment costs, certification costs will vary by year depending on several factors addressed in the following section. However, OSHA still needs to determine the annual base amount from which to account for the variations, and must do so for the same two scenarios: (1) retaining the deadline specified by the existing cranes standard (status quo); and (2) extending the deadline to 2017 (proposed rule).

To estimate the annual base cost for the first scenario, OSHA calculates the certification costs for CY 2013 because that is the remaining period before the deadline specified by the existing cranes standard. The total cost for certifying all operators in CY 2013 in accordance with the existing cranes standard using the above unit-cost estimates and numbers of operators is $47,119,327 (i.e., (60,000 operators with type-only certification x $339.05) + (36,274 experienced operators without certification x $392.48) + (5,857 operators with no experience or

certification x $2,141.16)). The Agency, following the FEA (75 FR 48096), annualized this cost for the five-year period during which operator certification remains effective, resulting in an annualized cost of $8,433,648. In section c below, OSHA uses this amount in calculating the annual certification costs under scenario 1.

To determine the annual amount used in calculations for the second scenario (the proposed extension to 2017), OSHA examines the costs in CY 2016 because that is the first year with certification costs (as noted earlier, OSHA determined that, under the proposed extension, employers will postpone certification costs until CY 2016, so there will not be any new certification costs for CY 2013-2015). Using the same methodology used to calculate the CY 2013 certification costs, the total cost for having all crane operators certified in CY 2016 is $48,416,216 (in 2016 dollars). The annualized cost over the five-year period during which certification remains effective is $8,749,948. In the following section, OSHA uses this amount in calculating the annual certification costs under scenario 2.

c. Year-by-year cost differential if OSHA extends the certification deadline to 2017

The ultimate goal of this analysis is to determine the annual cost differential between scenario 1 (the status quo) and scenario 2 (the proposed rule), so the final part of this PEA compares the yearly assessment and certification costs employers will incur for the two scenarios. Because the assessment and certification costs change each year under each scenario, OSHA must compare the cost differential in each year separately to determine the annual cost savings for each year attributable to adopting scenario 2. OSHA calculated the present value of each year's differential, which provides a consistent basis for comparing the cost differentials over the extended compliance period. OSHA then annualized the present value of each

differential to identify an annual amount that accounts for the discounted costs over this period. Table 1 below summarizes these calculations.

Table 1 shows that assessment and certification costs vary each year under scenario 2. There are several factors that cause these costs to vary: (1) the five-year limit on operator certification causes some operators to require recertification during this period; (2) 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 assessment; and (3) the yearly 5% turnover that results in new crane operators entering the occupation. In addition, the composition of the operator pool will shift in the year before the deadline because a higher share of all operators will have certification. This shift would decrease the need to perform a longer and more costly assessment, thereby reducing the high costs associated with operators who do not have certification (i.e., employers would take less time assessing operators with compliant certification in this certification year compared to years in which there is no deadline). To account for this effect, OSHA adjusted assessment costs in the year directly preceding the deadline in each scenario (i.e., CY 2013 for scenario 1 and CY 2016 for scenario 2).

Accordingly, OSHA determined that assessment costs for CY 2013 under the first scenario would decrease from $6,781,167 under scenario 2 to $4,581,334 under scenario 1

because of the increasing certification effect that occurs near the deadline.[6] A similar calculation for CY 2016 (the year prior to the proposed certification deadline in 2017) lowers the estimated assessment costs from $7.2 million (in the absence of the deadline and accompanying certification) to $4.8 million under scenario 2.

One-time costs for certifying operators with non-compliant certification ($20,343,000) and certifying experienced operators with no certification ($14,236,623) account for much of the rise in certification costs in CY 2013 under scenario 1. OSHA annualized these one-time operator certification costs across CY 2013-2017 (matching the 5-year duration of the certifications received in the last year before the deadline), resulting in an annualized cost of $8,433,648 for each year of this five-year period under scenario 1.[7] Under scenario 2, the corresponding annualized certification costs for CY 2016-2020 (again matching the 5-year duration of the certifications received in the last year before the deadline) would be $8,749,948. The certification costs vary in the other (pre-deadline) years depending on factors identified earlier in this PEA.

As noted earlier, OSHA estimated the overall cost differential between these two scenarios by calculating the difference in total (assessment and certification) costs each year

[6]OSHA estimates that operators will obtain their compliant certification at a uniform rate throughout the certification year immediately preceding the deadline, which implies that certification costs can be estimated by using a weighted average of the unit costs if no operators become compliant certified, and the unit costs if all operators are so certified, with equal weight attributed to each condition (i.e., each condition (no operators and all operators) contributing one half to the estimate). The Agency then values assessment unit costs as if none of the operators had certification, which would result in maximum assessment times, with unit costs determined by total costs divided by total assessments, which is $218.18 (i.e., $6,781,167 total assessment cost ÷ 30,981 total yearly assessments). OSHA next values unit assessment costs as if all operators had compliant certification, which would require the shortest assessment time of 1 hour, and a cost of $76.87. The ratio of the second unit assessment cost to the first unit assessment cost is .35 ($76.87 ÷ $218.88). Therefore, the resulting assessment cost in CY 2013 using the weighted average formula is $4,581,334 (i.e., (0.5 x $6,781,167) + (0.5 x 0.35 cost ratio x $6,781,167).

[7]Under scenario 1, therefore, the total certification costs of $33,969,804 for each year over CY2014-2017 consist of the annualized cost of $8,433,648 for the one-time operator certification costs and $25,536,156 for fixed costs involving recertification of compliant operators, additional certifications for operators changing type or capacity of crane, and certification of new operators.

across the two scenarios. The net employer cost savings in current dollars attributable to adopting the second scenario are, for each certification year: 2013, $18.8 million; 2014, $27.1 million; 2015, $26.9 million; 2016, $7.9 million; 2017, -$0.3 million; 2018, -$8.7 million; 2019, -$8.7 million; and 2020, -$8.7 million.[8]

[8]A positive cost differential indicates net savings and a negative cost differential indicates net costs. Savings in earlier years results largely from the extension of the certification deadline. The cost differential then turns negative in later years largely because employers complete certification under the first scenario while they are just beginning certification under the second scenario.

By 2017, under both scenarios all existing operators will have compliant certification. However, under the second scenario, the five-year annualization of when certification costs are incurred would continue until 2020. Hence, 2021 is the first year when, under both scenarios, employer costs would consist solely of ongoing certification costs, and the cost differential between the two scenarios would be zero. The ongoing certification costs consist of: the yearly cost resulting from new operators (5% of all operators) entering the operator pool; the proportion of the pool that must receive recertification each year resulting from expiration of the five-year certification; and the annual additional certifications that occur.

Table 1.—Year-by-year cost differential if OSHA extends the certification deadline to 2017									
	2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**
Operator Pool									
Scenario 1 (no deadline extension)									
Operators with type-only certification	60,000	0	0	0	0	0	0	0	0
Operators with complaint certification	15,000	111,274	111,274	111,274	111,274	111,274	111,274	111,274	111,274
Operators with no certification	36,274	0	0	0	0	0	0	0	0
New operators	5,857	5,857	5,857	5,857	5,857	5,857	5,857	5,857	5,857
Scenario 2 (deadline extension)									
Operators with type-only certification	60,000	57,000	54,150	51,443	0	0	0	0	0
Operators with compliant certification	15,000	14,250	13,538	12,861	111,274	111,274	111,274	111,274	111,274
Operators with no certification	36,274	40,024	43,586	46,970	0	0	0	0	0
New operators	5,857	5,857	5,857	5,857	5,857	5,857	5,857	5,857	5,857
Costs									
Scenario 1 (no deadline extension)									
Total assessment costs	$4,581,334	0	0	0	0	0	0	0	0

Total certification costs	20,973,352	$33,969,804	$33,969,804	$33,969,804	$33,969,804	$25,536,156	$25,536,156	$25,536,156	$25,536,156
Total	**25,554,686**	**33,969,804**	**33,969,804**	**33,969,804**	**33,969,804**	**25,536,156**	**25,536,156**	**25,536,156**	**25,536,156**
Scenario 2 (deadline extension)									
Total assessment costs	6,781,167	6,918,409	7,048,788	4,777,075	0	0	0	0	0
Total certification costs	0	0	0	21,289,651	34,286,103	34,286,103	34,286,103	34,286,103	25,536,156
Total	**6,781,167**	**6,918,409**	**7,048,788**	**26,066,726**	**34,286,103**	**34,286,103**	**34,286,103**	**34,286,103**	**25,536,156**
Cost Differential (Scenario 2 - Scenario 1)	**(18,773,519)**	**(27,051,395)**	**(26,921,015)**	**(7,903,078)**	**316,299**	**8,749,948**	**8,749,948**	**8,749,948**	**0**

Source: OSHA, ORA Calculations.									

OSHA next determined the present value of these cost differentials between the two scenarios. OSHA calculated the present value of future costs using two interest rates assumptions, 7% and 3%, which are the rates OSHA used in the FEA of the cranes standard (75 FR 48080), and which follow the OMB guidelines specified by Circular A-4 of September 17, 2003. At an interest rate of 7%, the present value of the cost differentials for CY 2013 onwards results in an estimated savings of $56.3 million ($55.2 million using the 3% rate). Finally, annualizing the present value over the proposed three-year extension period results in an annualized cost differential (i.e., net employer cost savings) of $21.4 million per year ($19.5 million per year using the 3% rate).

d. Alternative: indefinite extension of the certification deadline

As noted above, ACCSH recommended that OSHA extend indefinitely the deadline for operator certification and the employer duties under §1427(k)(2). OSHA is requesting comment on this alternative, and is providing the following analysis of potential employer costs and savings under this alternative. Based on the calculations described above, cost savings under this alternative would be larger than the cost savings under the proposed 2017 extension because there would be no rise in certification costs later in the extension period.

This alternative would result in an indefinite extension of employer assessments and associated costs. Assuming that no operator would have any type of certification, all assessments would involve the 4-hour assessment at a cost of $307.48. Thus, using the same estimates of 23% turnover and a 15% failure rate described above, the yearly assessment costs would be $9,526,003 (0.23 x 1.15 x 117,130 x $307.48) for this alternative.

While assessment costs would disappear after the deadline under any scenario with a specified certification deadline, there will still be annual ongoing employer certification costs for new operators, as well as recertifications and additional certifications for operators previously certified. As noted earlier, total yearly ongoing certification costs consist of: 5% new operators each year with certification costs of $2,141.16 for each operator, or $12,539,704 total (0.05 x 117,130 x $2,141.16); recertification of 20% of the previously certified operator pool at a cost of $76.87 for each operator, or $1,710,719 total (0.20 x 0.95 x 117,130 x $76.87); and 9% of the operator pool getting additional certification at a unit cost of $1,070.58 for each operator, or $11,285,733 total (0.09 x 117,130 x $1,070.58). Adding these costs, the grand total each year post-deadline for scenarios with specified certification deadlines is $25,536,156 ($12,539,704 + $1,710,719 + $11,285,733). Hence, even without considering the upfront costs of having all current operators certified to the standard, postponing the certification deadline indefinitely would result in a net yearly savings of $16,010,153 ($25,536,156 - $9,526,003) each year. Therefore, the ACCSH-recommended alternative would increase cost savings by removing the additional cost associated with having to fully certify, and maintain certification for, the total operator pool by a specified deadline.

e. Certification of no significant impact on a substantial number of small entities

Because the Agency estimates the cost of any single assessment to be no higher than $307.48, it believes the economic impact would be minimal on any employer. Most employers would have savings resulting from the three-year extension, particularly employers that planned to pay for operator certification in the year before the deadline specified by the existing cranes standard. The only entities likely to see a net cost would

be entities that planned to hire an operator with compliant certification after November 10, 2014. Without the proposed extension, these entities would have no separate assessment duty, but under the proposed extension they would have the expense involved in assessing operator competency. As noted above, however, OSHA estimated the cost for such assessments (for operators with a type and capacity certification) to be $76.87 per certified operator.

Small businesses would, by definition, have few operators, and OSHA believes the $76.78 cost would be well below 1% of revenues, and well below 5% 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 proposed rule would not have a significant impact on a substantial number of small entities. OSHA invites comments on this certification and the underlying rationale.

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).[9] 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 the new ICR superseded the existing ICR. In addition,

[9]The ICR is available at ID-0425 at www.regulations.gov and at www.reginfo.gov (OMB Control Number 1218-0261).

OSHA retitled the new ICR to Cranes and Derricks in Construction (29 CFR Part 1926, Subpart CC and Subpart DD).[10]

This proposed rule requires no additional collection of information. 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 information requirement if the requirement does not display a currently valid OMB control number.

[10]The 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.

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 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, any standard developed from this proposed rule would limit 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 cranes standards provided these requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements specified in this proposal.

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 do not have to amend their standards, although OSHA may encourage them to do so. The 21 states and 1 U.S. territory 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.

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 within six months of OSHA's promulgation of the final rule 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.

The proposed amendments to OSHA's cranes standard preserve the status quo and would not impose any new requirements on employers. Accordingly, State Plan States would not have to amend their standards to delay the effective date of their operator certification requirements, but they may do so if they so choose. However, if they choose to delay the effective date of their certification requirements, they also would need to include a corresponding extension of the employer duty to assess and train operators that is equivalent to §1427(k)(2).

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.) and Executive Order 13132 (64 FR 43255 (Aug. 10, 1999). 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 voluntarily adopt 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 (Preliminary Economic Analysis and 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. Consultation with the Advisory Committee on Construction Safety and Health

Under 29 CFR parts 1911 and 1912, OSHA must consult with the Advisory Committee on Construction Safety and Health (ACCSH or Committee), established pursuant to Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.), in setting standards for construction work. Specifically, §1911.10(a) requires the Assistant Secretary to provide the ACCSH with a draft proposed rule (along with pertinent factual information) and give the Committee an opportunity to submit recommendations. See also §1912.3(a) ("[W]henever occupational safety or health standards for construction activities are proposed, the Assistant Secretary [for Occupational Safety and Health] shall consult the Advisory Committee"). Accordingly, the ACCSH met on May 23, 2013, and discussed OSHA's proposal to delay the crane

operator certification deadline and extend the existing employer duties to assess and train crane operators pursuant to §1926.1427(k).

During the ACCSH deliberations, one member of the ACCSH recommended extending the compliance date for qualification/certification indefinitely until OSHA completed a rulemaking on crane operator qualification. This member noted that extending the compliance date by three years would lead to new uncertainty, and not provide sufficient time for OSHA to complete a rulemaking that would clarify the responsibility of both crane operators and their employers (OSHA 2013-0006-0024, 133-134). Other members of the ACCSH agreed that it would be better to extend the compliance date indefinitely, allow OSHA to address the issue of crane operator qualification, and then establish a new compliance date for the industry once new guidance is in place (OSHA-2013-0006-0024, 136-137).

The ACCSH passed a motion recommending that OSHA suspend the operator certification requirement until OSHA completes a rulemaking on crane operator qualification, and require employers to continue to comply with the existing "phase-in" employer duties in §1926.1427 during the same period (OSHA-2013-0006-0025, 30-31). (See OSHA's discussion of the ACCSH's motion under section I.D (Explanation of Proposed Action and Request for Comment) of this preamble.)

H. 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 rulemaking, OSHA made such a determination with respect to the use of cranes and derricks in construction (75 FR 47913, 47920-21). This proposed rule does not impose any new requirements on employers. Therefore, this proposal does not require an additional significant risk finding (see Edison Electric Institute v. OSHA, 849 F.2d 611, 620 (D.C. Cir. 1988)).

In addition to materially reducing a significant risk, a safety standard must be technologically feasible. See UAW v. OSHA, 37 F.3d 665, 668 (D.C. Cir. 1994). A standard is technologically feasible when the protective measures it requires already exist, when available technology can bring the protective measures into existence, or when that technology is reasonably likely to develop (see American Textile Mfrs. Institute v. OSHA, 452 U.S. 490, 513 (1981); American Iron and Steel Institute v. OSHA, 939 F.2d 975, 980 (D.C. Cir. 1991)). In the 2010 Final Economic Analysis for the cranes standard, OSHA found the standard to be technologically feasible (75 FR 48079). This proposed rule would, therefore, be technologically feasible as well because

it would not require employers to implement any additional protective measures; it would simply extend the duration of existing requirements.

List of Subjects in 29 CFR Part 1926

Construction industry, Cranes, Derricks, Occupational safety and health, Safety.

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 February 3, 2014.

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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 CC—Cranes and Derricks in Construction

1. The authority citation for subpart CC of 29 CFR part 1926 continues to read as follows:

AUTHORITY: 40 U.S.C. 3701et seq.; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Orders 5-2007 (72 FR 31159) or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

2. In §1926.1427, revise paragraph (k) to read as follows:

§ 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, 2017.

(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, 2017.

(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.

BILLING CODE 4510-26-P

[FR Doc. 2014-02579 Filed 02/07/2014 at 8:45 am; Publication Date: 02/10/2014]