

**Occupational Safety and Health Administration
U.S. Department of Labor
Crane and Derrick Negotiated Rulemaking Advisory Committee**

Ground Rules

I. Mission Statement

The Occupational Safety and Health Administration of the U.S. Department of Labor (OSHA) has established the Crane and Derrick Negotiated Rulemaking Advisory Committee (C-DAC) to develop a proposed rule to increase employee protection by improving safety standards for cranes and derricks in construction (Subpart N 29 CFR 1926.550).

Every effort will be made to complete proposed regulatory language by July 31, 2004.

II. Participation

A. The Committee consists of the following members:

Stephen Brown, International Union of Operating Engineers
Michael Brunet, Manitowoc Cranes, Inc., Crane Manufacturers (AEM/CIMA)
Stephen P. Charman, Viacom Outdoor, Inc., Outdoor Advertising Association of America (OAAA)
Joseph Collins, Zachry Construction Corporation, American Road and Transportation Builders (ARTBA)
Noah Connell, U.S. Department of Labor/OSHA
Michael Hyland, American Public Power Association
Peter Juhren, Morrow Equipment Company, L.L.C.
Bernie McGrew, Link-Belt Construction Equipment Co.
Larry Means, Wire Rope Technical Board
Frank Migliaccio, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers
Brian Murphy, Sundt Construction, Associated General Contractors (AGC)
George R. "Chip" Pocock, C.P. Buckner Steel Erection, Steel Erectors Association of America
David Ritchie, The St. Paul Companies, Training and Testing
Emmett Russell, International Union of Operating Engineers
Dale Shoemaker, Carpenters International Training Center
William Smith, Maxim Crane Works
Craig Steele, Schuck & Sons Construction Company, Inc., National Association of Home Builders (NAHB)
Darlaine Taylor, Century Steel Erectors, Co., Association of Union Constructors
William J. "Doc" Weaver, National Electrical Contractors Association, Inc.

Robert Weiss, Cranes Inc. and A.J. McNulty & Company, Inc., Allied Building Metal Industries
Doug Williams, Buckner Heavylift Cranes, Specialized Carriers and Rigging Association
Stephen Wiltshire, Turner Construction Company, Associated Builders and Contractors
Charles Yorio, Acordia

- B. C-DAC may, by consensus, recommend that OSHA add members if it determines that there are unrepresented interests relative to the issues to be addressed in the proposed rule. If so, OSHA will publish a request for additional nominations to represent such interests in the Federal Register. The Secretary or her designee may then select one or more additional representatives, who will be added as C-DAC members. The additional members will not be entitled to revisit any issue that has already been negotiated, unless the C-DAC members agree by consensus to do so.
- C. If a C-DAC member becomes unavailable or otherwise unable to serve, the Secretary or her designee will select a replacement member to represent the interest represented by the original member.
- D. C-DAC may, by consensus, invite experts to address the Committee, as appropriate.

III. Decision Making

- A. C-DAC will make every effort to reach unanimity on all issues related to the proposed regulatory text, meaning that there is no dissent by any member. However, if the facilitator determines that additional discussions are not likely to lead to unanimous consent, C-DAC will consider consensus to have been reached when there is no dissent by more than two non-federal C-DAC members. Agreement will not be considered to have been reached if there is dissent by OSHA. If OSHA is the sole dissenter on an issue, OSHA will publish the regulatory text on that issue, as endorsed by the other C-DAC members, in the preamble to the proposed rule as an alternative approach, and ask the public to comment on that alternative. A member must be present to dissent.
- B. Upon the request of a dissenter to an agreement, OSHA will include the dissenter's reasons for dissenting in the preamble of the proposed rule.
- C. Work groups may be designated by C-DAC to address specific issues. Work groups are not authorized to make decisions for the full committee.

IV. Agreement

- A. The goal of C-DAC is to develop a proposed standard that improves worker protection and that reflects a final consensus of the Committee.
- B. If C-DAC reaches a **final** consensus agreement on all issues, OSHA agrees to use the consensus-based language as its proposed standard, and C-DAC members will refrain from providing formal written negative comments on the consensus-based regulatory language published in the Federal Register, except as provided in paragraph IV E.
- C. If the C-DAC reaches a **final** consensus agreement on some but not all issues, OSHA will include the consensus-based language in its proposed standard, and C-DAC members agree to refrain from providing formal written negative comments on the consensus-based language published in the Federal Register, except as provided in paragraph IV E.
- D. During the course of the negotiations, C-DAC will provide reasons for the proposed regulatory text. The preamble to the proposed rule will not be subjected to C-DAC negotiations, but OSHA will provide the draft preamble to C-DAC members prior to publication of the proposed standard.
- E. Once C-DAC has reached a final consensus agreement on a completed document, OSHA will use the C-DAC regulatory language in its proposed standard without altering the consensus-based regulatory text unless OSHA reopens the negotiated rulemaking process or provides to C-DAC members a detailed statement of the reasons for altering the consensus-based language. This written explanation will be provided to C-DAC members sufficiently in advance of publication of the proposed standard so as to provide C-DAC members with an opportunity to express their concerns to OSHA. If OSHA alters consensus-based language, it will identify such changes in the preamble to the proposed standard, and C-DAC members may provide formal written negative or positive comments on those changes and on other parts of the proposed standard to which that issue was "linked."

V. Committee Meetings

- A. The facilitator will draft meeting summaries to maintain a clear and reliable record of tentative and final agreements reached during the negotiation process. After review and approval by the committee, meeting summaries will be certified by the designated federal official and made available to the public.
- B. To the extent practicable, OSHA will distribute documents for discussion at C-DAC meetings at least seven days in advance of the meetings.

- C. C-DAC members will communicate their interests and concerns to each other. They will present proposals and counter proposals in an effort to address those interests and concerns.
- D. A C-DAC member may request a caucus (a private meeting of a subset of C-DAC) for consultation at any time.
- E. The facilitator will be responsible for preparing the agenda for each meeting in consultation with C-DAC members.
- F. All C-DAC meetings, but not caucuses, will be open to the public.

VI. Safeguards for Members

- A. Any member may withdraw from the negotiations at any time by notifying OSHA in writing.
- B. All members shall act in good faith in all aspects of these negotiations.
- C. Members will maintain contact with constituencies throughout the negotiations to obtain feedback on proposals and to provide information about tentative agreements reached.
- D. Contact with the media should generally be limited to discussion of the overall objectives and progress of the negotiations. C-DAC members should refrain from characterizing or commenting to the media on positions taken by other C-DAC members and from commenting negatively on agreed upon regulatory text. If an article appears that misquotes or inaccurately represents an individual's position, that individual should inform the C-DAC members of it.

VII. Meeting Facilitation

- A. Facilitation services will be provided by Susan Podziba & Associates. The facilitator will support the deliberative process of C-DAC and will be responsible for helping to ensure that the process runs smoothly, developing meeting agendas, preparing and distributing meeting summaries, which will provide a record of agreements, and helping the parties resolve their differences and achieve consensus on the issues to be addressed by C-DAC.
- B. The facilitator will be available to facilitate all meetings of the full C-DAC and may assist with caucuses and work groups.
- C. The facilitator is obligated to keep verbal communications confidential if requested by a C-DAC member to do so.