

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

DRAFT Ground Rules

**I. Mission Statement**

The Occupational Health and Safety 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 safety standards for cranes and derricks in construction (the cranes and derricks portions of Subpart N, 29 CFR 1926.550).

Every effort will be made to complete a Notice of Proposed Rulemaking (NPRM) 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.
  - Stephen P. Charman, Viacom Outdoor, Inc.
  - Joseph Collins, Zachry Construction Corporation
  - 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 Corporation
  - George R. "Chip" Pocock, C.P. Buckner Steel Erection
  - David Ritchie, The St. Paul Companies
  - 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.
  - Darlaine Taylor, Century Steel Erectors, Inc.

William J. "Doc" Weaver  
Robert Weiss, Cranes Inc. and A.J. McNulty & Company, Inc.  
Doug Williams, Buckner Heavylift Cranes  
Stephen Wiltshire, Shirley Contracting  
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 Committee members. The additional members will not be entitled to revisit any issue that has already been negotiated, unless the Committee agrees 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.

### III. Decision Making

#### A.

**Option A:** C-DAC will operate by consensus agreement, meaning that agreement will be considered reached when there is no dissent by any member. Thus, no member can be outvoted. Members who would prefer another option but are willing to support the proposed recommendation may register their objections for the record. A member must be present to dissent. (NOTE: See IV. C.).

**Option B:** Every effort will be made to reach unanimity on all issues related to the NPRM, meaning that there is no dissent by any member. However, consensus will be considered reached when there is no dissent by more than [one, two, three...] non-federal negotiators. A member must be present to dissent.

**Option C:** Every effort will be made to reach unanimity on all issues related to the NPRM, meaning that there is no dissent by any member. However, consensus will be considered reached when less than [25%, 20%, 10%...] of the non-federal negotiators present do not dissent. A member must be present to dissent.

B. 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 regulation 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 agree to refrain from commenting negatively on the consensus-based regulatory language, 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 commenting negatively on the consensus-based language, except as provided in paragraph IV E.
- D. During the course of the negotiations, C-DAC will provide the reasons for the proposed regulatory text. The preamble to the proposed rule will not be subjected to committee negotiations, but OSHA will provide the draft preamble to C-DAC prior to publication of the proposed standard.
- E. Once C-DAC has reached a final consensus agreement on regulatory text, OSHA will use the C-DAC regulatory language in its proposed standard for those issued covered 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 comment positively or negatively on those changes and on all other parts of the proposed standard.

#### 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 committee 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 publicly on positions taken by other members of the Committee. If an article appears that misquotes or inaccurately represents an individual's position, that individual should inform the committee of it.

## VII. Meeting Facilitation

- A. Facilitation services will be provided by Susan Podziba & Associates. The facilitator will support the deliberative process of D-DAC and 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 the 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 Committee member to do so.