

U.S. Department of Labor  
Occupational Safety and Health Administration

Cranes and Derricks Negotiated Rulemaking Advisory Committee

Meeting Summary - July 6-9, 2004

**FINAL CONSENSUS**

**Final consensus was reached at 3:15 pm EDT on July 9, 2004, on all issues of the proposed safety standards for construction Cranes and Derricks.**

Given that the Cranes and Derricks Negotiated Rulemaking Advisory Committee (C-DAC) reached a final consensus agreement on all issues, OSHA will use the consensus-based language as its proposed standard (subject to regulatory review requirements), and C-DAC members will refrain from providing formal written negative comments on the consensus-based regulatory language published in the Federal Register.

If OSHA alters the C-DAC consensus regulatory language in its proposed standard, OSHA will reopen the negotiated rulemaking process or provide 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." (Per C-DAC Ground Rules (adopted 9/26/2003), Section IV: Agreement).

According to the C-DAC Ground Rules, Section III: Decision Making, C-DAC considered consensus to have been reached when there was no dissent by more than two non-federal C-DAC members. 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.

All issues were agreed to unanimously except §1422, Operator Qualifications, from which the Associated General Contractors (AGC) and National Association of Home Builders (NAHB) dissented. Since only two C-DAC members dissented, final consensus

agreement<sup>1</sup> was reached on §1422, Operator Qualifications, and those two members may request that OSHA include their reasons for dissenting in the preamble. They must still refrain from providing formal written negative comments on the consensus-based regulatory language published in the Federal Register.

### Agenda Review

The Committee reviewed and accepted the meeting agenda.

### Review and Approve June 1-4 Meeting Summary

The Committee reviewed and approved the June 1-4, 2004 draft meeting summary and made no changes to it. It was approved as final and will be available through the OSHA docket.

### Review draft regulatory language

The Committee reviewed the draft regulatory language document as a whole with special attention to the remaining outstanding issues. All outstanding issues were resolved, and all tentative agreements were reviewed, and in some cases, revised.

The outstanding issues discussed and agreed to were: §1400(d)(2) Scope, Limited Requirements (dedicated pile drivers); §1417 Training; §1422 Operator Qualifications; §1425 (o), (p) Hoisting Personnel in drill shafts (Use of Boatswain's Chair) and Hoisting Personnel for pile driving equipment; §14XX Power Line Safety - equipment in transit under Power Lines (on construction sites); §14XX Power Line Safety - exclusion for work covered Subpart V; §1431 Derricks; §1433 Floating Cranes & Cranes on Barges; §1437.XXX Tower Cranes - Operational Aids (alternative measures); and §14XX Supplemental Requirements for Sideboom Cranes.

The following reflects C-DAC discussions relative to some of the sections listed above.

**§1422 Operator Qualifications.** C-DAC members agreed to include a section addressing crane operator certification. Among other requirements, the section provided for a phase-in period of 4 years after the effective date of the standard, after which crane operators will (except as noted below with regard to the U.S. Military or government entities) be required to be certified in one of two ways. They may be certified by either: (1) any testing organization accredited by a nationally recognized

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<sup>1</sup> One of the Committee members indicated to the Committee that he had been requested by the American Road and Transportation Builders Association (ARTBA) to dissent on Section 1422 (Operator Qualifications). However, with approval from Zachary Construction Corporation, he declined to do so and did not dissent on Section 1422 (Operator Qualifications).

accrediting agency, or (2) an employer's qualification program, which must be evaluated by an auditor, who is certified by an accredited crane/derrick operator testing organization. The auditor will be required to evaluate the employer's tests based upon nationally recognized testing development standards. Provision was also made for qualification of operators by the U.S. Military as well as treating licensing of operators by a government entity as meeting the certification requirement under specified circumstances. It should be noted that another suggestion that provided for certification by an accredited educational institution or program was discussed and rejected by the Committee. C-DAC members also decided to delete any reference to language requirements in this section and Section 1406 Operation – Procedures.

**§1430 Power line safety.** C-DAC members agreed to certain exceptions/modifications to the power line safety requirements for work covered by 29 CFR 1926 Subpart V. In addition, the Committee agreed to exempt such work from the prohibition of working below power lines. The Committee also made the application of several provisions governing crane operations inside the Table A zone subject to the minimum table distances specified in Subpart V. Those provisions require the use of several safety measures, which are outlined in the standard.

**§1433 Floating Cranes & Land Cranes on Barges.** C-DAC members decided to include a provision with supplemental requirements for floating cranes/derricks and land cranes/derricks on barges, pontoons, vessels or other means of flotation ("vessels"). In addition to the §1415 inspection requirements for cranes/derricks, the vessels are subject to inspections on a shift, monthly, annual (external) and quadrennial (internal) basis. Subject to an exception allowing for the limited use of auxiliary cranes, the Committee also agreed to a requirement that subjects land cranes on vessels to one of the following four options (designed by a qualified person) to limit or prevent shifting: physical attachment, corralling, rails, or centerline cable system.

#### **Additional Issues Discussed**

The Committee discussed the additional issues of controlled substance and alcohol testing for all crane operators and various other employees such as signal persons, and physical qualification requirements for crane operators. C-DAC decided not to include either in the standard for various reasons, including legal and enforcement concerns, as outlined by OSHA.

**Controlled substances and testing:** C-DAC considered incorporating by reference the U.S. Department of Transportation regulations for controlled substance and alcohol testing, which regulates all commercial drivers. Committee members discussed implementation and enforcement concerns such as an employer's inability to "stand down" (remove) a crane operator, based on an unconfirmed test result, until a positive result is verified by a medical review officer.

**Physical qualifications:** C-DAC members discussed the lack of an agreed upon list establishing physical demands associated with being a crane operator, and the consequences of such a list.

### **Public Comment**

Al Papsy, Miller Products, described his company's insulating devices, which are built into balls and hooks, and stated that of their approximately 10,000 devices produced, none have failed or led to litigation. He requested that the mechanical design criteria be consistent with the type of equipment being operated.

Joel Dandrea, Specialized Carriers & Rigging Association, spoke in favor of crane operator certification by a nationally accredited certifying organization. He stated that leaving certification to individual employers is not sufficient to achieve increased worker safety.

Kevin Cunningham, Special Risk Services Group, LLC, recommended that the standard only allow certification by a nationally accredited certifying organization. He stated that his insurance company statistics reflected a 400% decrease in fatal accidents for policies written for companies employing third party certified crane operators.

Bob Moore, Stone & Moore, whose law firm has handled claims and litigation related to the crane industry, stated that the benefits of certification by an organization accredited by ANSI or the National Commission for Certifying Agencies (NCCA) outweigh the costs.

George Young, George Young Company and Specialized Carriers & Rigging Association, stated that third party testing was needed to ensure that crane operators have a predictable skill set.

Michael Vlaming, Crane Owners Association, stated that only operator certification by a nationally accredited certifying organization satisfies the goal of objective, valid, and meaningful certification.

James Pritchett, Crane Inspection Service, Inc., recommended that the standard require that third party certified inspectors conduct annual crane inspections. He also stated that operators should be trained and tested on the specific equipment they will use and that written and practical exams should be more stringent than they currently are.

Dr. John Kuffel, Kinetrics, described his company's testing procedures for insulators and other electrical safety devices and materials. He stated that testing requirements for crane insulating links could easily be developed.

Mark Savit, Patton Boggs LLP, stated that if crane operators test positive for drug use by an unverified test, they should be reassigned or suspended with pay until the results are confirmed.

George Kennedy, National Utility Contractors Association, requested that the standard provide the underground utility industry with the same exemptions as those provided for work covered by Subpart V. He also recommended that allowance be made for certification by construction industry associations, that audits of employers' certification programs take place every five years rather than three, that employers rather than auditors retain documentation, and that older operators who cannot read be allowed to continue to work under the new standard. He also expressed his opposition to including side boom tractors in the standard because he believes they pose different hazards.

Brad Giles, Washington Group International, spoke in favor of strict crane operator certification requirements. He also expressed concern that the U.S. Department of Transportation drug testing procedures do not include certain drugs, and he stated that employers should have the right to suspend an employee while waiting for confirmation of a positive drug test.

J. Nigel Ellis, Ellis Fall Safety Solutions, provided the percentage and number of fall-related deaths at heights of six feet and ten feet. He recommended requiring horizontal grab rails and guard rails.

Douglas Sidelinger, Cianbro Corporation, spoke in favor of certification of crane operators, by a nationally accredited agency. He stated that the cost of such certification is less than the loss associated with accidents.

Mitch White, Manson Construction, recommended having a qualified person rather than a marine surveyor conduct the quadrennial inspections of the internal portion of the means of flotation used to support land cranes and derricks operating on water. He

also stated that void compartments were not usually inspected on a weekly basis and that power line safety training should not be mandated for crews working with water-based cranes since they are rarely near power lines. Finally, he questioned the requirement in the Equipment Modifications section that requires manufacturer approval and suggested the insertion of a parallel option to use a registered professional engineer.

Michael Eggenberger, Bay Ltd., expressed concern that requiring employers to certify their employees using nationally accredited exams would result in certification of crane operators for larger cranes than they are capable of operating. He recommended allowing employer-based certification, as that set forth in the ASME standard.

Dan Kuhs, Pile Drivers Local Union #56 (New England), recommended that the Committee further consider drug testing requirements and asked that qualifications for qualified crane inspectors be more clearly defined.

Hugh Pratt, Crane Power Line Safety Organization, stated that one in eight crane fatalities in the U.S. annually could be avoided by the presence of an insulating link, and that the inclusion of insulating links could ultimately reduce the cost of cranes. He reiterated his recommendation that all new mobile cranes be equipped with insulating links.

Tom Chamberlain, Northrop Grumman-Newport News Shipbuilding, recommended that the standard incorporate Appendix Q as a general requirement for all cranes and include additional separate testing requirements for each type of crane, for example, tower, gantry, etc.

Kenneth Anderson, Modern Continental, recommended requiring certified crane inspectors and stated that drug testing procedures need to be more rigorous.

Steve Marquis, Modern Continental, spoke in favor of a national certification program for crane inspectors, and stated that only requiring inspectors to be "competent" allows insufficiently qualified persons to perform inspections.

### Next Steps

**Documents:** The approved June 1-4 meeting summary will be distributed as final. The facilitators will draft and distribute the meeting summary for the July meeting. Committee members will be asked to provide comments and approvals by email. If necessary, a revised version will be sent to Committee members for review and approval.

C-DAC

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Approved - August 20, 2004

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**Regulatory Language:** OSHA will distribute the final consensus regulatory language.

**Preamble:** OSHA will provide the draft preamble to C-DAC members for review prior to publication of the proposed standard.

**Rulemaking Process:** The final consensus regulatory language will undergo an economic analysis, a Small Business Regulatory Flexibility Act (SBRFA) review and a review by the Office of Management and Budget (OMB). Upon completion of these reviews, the proposed standard will be published in the Federal Register. Following publication, there will be a public comment period and possibly a public hearing. OSHA will take into account significant comments and respond to them in the preamble to the final rule, which, along with the final rule, will be published in the Federal Register.

## C-DAC Attendance - July 6-9, 2004

### **Present:**

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  
Peter Juhren, Morrow Equipment Company, L.L.C.  
Bernie McGrew, Link-Belt Construction Equipment Co  
Larry Means, Wire Rope Technical Board, ASME  
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  
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 Constructor  
Wallace Vega, III, Entergy Corporation, Inc.  
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  
Charles Yorio, Acordia  
Susan Podziba, Facilitator, Susan Podziba & Associates  
Alexis Gensberg, Facilitator, Susan Podziba & Associates

### **Absent:**

Emmett Russell, International Union of Operating Engineers  
Stephen Wiltshire, Turner Construction Company, Associated Builders and Contractors