

ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH
(ACCSH)

MINUTES of 5 December, 2002 Meeting

U.S. Department of Labor
200 Constitution Ave.
Washington, D.C. 20210

The meeting of the Advisory Committee on Construction Safety and Health (ACCSH) was called to order by the **Chair, Robert Krul**, at 8:00 a.m. on Thursday, December 5, 2002. The following members were present for all or part of the meeting:

NAME	SECTOR Represented	TITLE & ORGANIZATION
Robert Krul Chair	Labor	Dir. of Safety & Health, United Union Roofers Waterproofers & Allied Workers
Manuel Mederos	Labor	Asst. Business Mgr., Local 1245 Intl. Brotherhood of Elec. Workers
Frank L. Migliaccio JR.	Labor	Exec. Dir. Of Safety & Health, Intl. Assoc. of Bridge, Struct. Ornam. & Reinforcing Iron Workers
Joseph L. Durst	Labor	Dir. of Safety & Health, United Brotherhood of Carpenters Intl. Training Center
Greg Strudwick	Mgt.	President, Greg Strudwick & Assoc. Inc.
David M. Bush	Mgt.	CEO, Adena Corporation
Mike Sotelo	Mgt.	Vice President/Field Operations, W.G. Clark Construction Co.
Thomas A. Broderick	Public	Executive Director, Construction Safety Council
James Ahern	Mgt.	President, Ahern & Assoc., Inc.
Dan Murphy	Mgt.	V.P. Risk Control, St. Paul Fire and Marine Insurance
Kevin Beauregard	State	Assist. Dep. Commissioner, Dir. of Div. of Occupational Safety &

NAME	SECTOR Represented	TITLE & ORGANIZATION
		Health, N.C. DOL
Marie Haring Sweeney	Fed.	Chief, Doc. Dev. Branch Ed. and Info. Div., NIOSH
Jane F. Williams	Public	Safety and Health Consultant
Bruce Swanson	Fed.	Designated Federal Representative (DFR) for ACCSH, Director Directorate of Construction

Stew Burkhammer acted for **Bruce Swanson** as the **Designated Federal Official** (DFO) Swanson arrived shortly there after. ACCSH members Larry Edginton and John O'Connor were unable to attend. Approximately 20 members of the public were in attendance at various times, as were a number of DOL/OSHA representatives, including Mr. Biersner and Brad Hammock (DOL Office of the Solicitor).

Robert Krul, the ACCSH Chair, welcomed all attendees, asked all present to introduce themselves, and requested that members of the public who wished to address ACCSH submit their names to the Chair.

Stewart Burkhammer gave a presentation titled **Introduction To Construction Services**. He first talked about a number Directorate of Construction (DOC) staff personnel, introduced those who were present, and described their duties and responsibilities. He then outlined the mission of the DOC, and described how the DOC staff supports ACCSH activities. Burkhammer then proceeded to give a detailed presentation on **Partnerships, Alliances, and Agreements**. He emphasized that the purpose of the DOC involvement in all these programs is to reduce accidents, fatalities, injuries, and illnesses in the construction industry. He described the functions of a number of existing alliances, and pointed out that the focus of an alliance is training and education, outreach and communication, and promotion of a national dialogue. He went on to fully describe how partnerships work, what the benefits to participants can be, and talked about several important success stories, where significant reductions in injuries and fatalities have been documented. Burkhammer went on to outline his plans to step up the marketing of these programs around the country in the near future.

In an ensuing discussion, the recent dramatic increase in fatalities and injuries among Hispanic worker on construction sites was discussed. It was pointed out that an OSHA Spanish language web site has been set up, in addition to an Hispanic 1-800 hotline phone number. Both are being used - people are calling in, and visiting the web site.

Kevin Beauregard was asked by the Chair to give ACCSH an update on the tower erection standard in progress in North Carolina. Beauregard described the progress to date in drafting the standard, and indicated that he would try to have the latest version of the draft standard available at the next ACCSH meeting. The Committee discussed the national situation in regards to tower erection. It appears that the National Association of Tower Erectors (NATE) might negotiate a partnership with OSHA in 2003. Burkhammer will keep ACCSH informed on the progress of this endeavor.

The **Chair** entertained a motion to vote on the draft minutes of the 6 December 2001 ACCSH meeting, and ACCSH voted unanimously to accept the draft minutes without changes.

Dr. Mohammed Ayub gave a presentation titled **Introduction to the Office of Engineering Services**. He described his organization and the work it performs, including the engineering investigation of serious accidents around the country. Ayub's description of some recent radio tower accidents produced a detailed discussion on this subject among ACCSH members. The Chair informed ACCSH that he would invite experts on communication tower accidents to give a presentation at the next ACCSH. It was decided that experts representing both workers and tower owners would be asked to address the committee. Bruce Swanson took an action item to invite tower owners to attend the presentation. The Chair also informed ACCSH that he intended to form a tower erection construction/fall protection workgroup.

Assistant Secretary John L. Henshaw gave a presentation on **OSHA** and its plans and recent activities. The **Assistant Secretary** made it clear to ACCSH members that they have performed a much needed public service in the past by helping OSHA work to prevent accidents and injuries in the workplace. He emphasized that he has been in the safety and health business for over 26 years, and that he takes his responsibilities as a safety and health professional very seriously. The Assistant Secretary pointed out that construction fatalities in 2001 were up by 6 percent. He

stated unequivocally that OSHA needs to address that seriously, with ACCSH providing essential assistance. The Assistant Secretary discussed an innovation in training compliance officers on how to do inspections and convey the results to construction facilities. The Assistant Secretary encouraged ACCSH to help decide what is the best way to achieve safe work environments, without automatically assuming that the only allowable path is the regulatory process. He spoke at length on the importance of partnerships and alliances in leveraging accident and injury prevention activities in the work place. The Assistant Secretary also discussed his commitment to negotiated rule making, and his desire to firmly adhere to published schedules for producing standards and rules. He emphasized his commitment to enabling professional certification for OSHA personnel - allowing OSHA people to achieve certification in whatever area they choose, e.g. construction, hygiene, safety, medicine, nursing, etc. Assistant Secretary Henshaw stated that his mission is to impact the lives of American working men and women in this country, in a way that provides a safer workplace for them to work and achieve their personal expectations and goals.

Bruce Swanson spoke briefly about **Directorate of Construction (DOC)** support for ACCSH. He then introduced **Noah Connell**, who gave a brief on **Negotiated Rulemaking - Subpart N - Cranes and Derricks**. Connell began with a description of what the Office of Construction Standards and Guidance does, and how it operates. He gave an in-depth brief on the topic of Negotiated Rule Making, and pointed out that, in the case of Subpart N, OSHA is confining the efforts of the negotiated rule making to the part of Subpart N that deals with cranes and derricks. He informed ACCSH that OSHA was in the process of determining who to put on the committee.

James Ahern presented a **Crane Workgroups Report** during which he described in detail the history of this effort. In addition, Ahern expressed the Work Group's desire that the report be forwarded to the Negotiated Rule Making Committee. He stated that he hoped that some of the Work Group participants would be appointed to that committee. **Kevin Beauregard** briefed ACCSH on the section treating **Operator Training and Qualification**. He explained why the report recommended a requirement for a written exam every five years for crane operators, in addition to a physical requirement for crane operators that would include a

drug testing program as well. In addition, he explained the rationale for a practical, hands-on operator's exam. The following motion from the Work Group was unanimously accepted by ACCSH:

"The Subpart N - Cranes Workgroup was charged by ACCSH to review and propose language for 29 CFR 1926.550, Cranes, and has been conducting public meetings for the past four years.

Workgroup meetings have been attended by as many as 36 representatives of manufacturers, employers, employees, associations, OSHA state plans, and the general public. The workgroup convincingly requested OSHA to consider the re-write of Subpart N, Cranes, as a candidate for negotiated rulemaking that was consummated by the *Federal Register* notice and call for committee nominations to serve all interests identified. As a result of the proposed negotiated rulemaking for Subpart N, Cranes, the workgroup agreed to continue their work product through the appointment process period and established a meeting schedule to conclude in December, 2002. In multiple workgroup and subcommittee workgroup meetings over these years, many involved stakeholders, including participation of European manufacturers representing the expertise of their interests, have participated in in-depth discussions.

It is suggested that the ACCSH committee would require extensive time, potentially without the industry expertise represented by the workgroup participants, to review the workgroup's in-progress report. As the full ACCSH committee is meeting December 5 and 6, and as it is anticipated the full ACCSH committee may not formally meet again until after the commencement of negotiated rulemaking deliberations begin, the workgroup's in-progress report is presented to the full ACCSH committee for acceptance. By ACCSH committee acceptance, it is understood that this product is a work in progress. Acceptance does not acknowledge the correctness of the participants' views and understanding. It does not supersede established regulatory texts or letters of interpretation, nor is it to be placed on the ACCSH web page as a completed workgroup product. As such, and in accordance with adopted ACCSH guidelines, a work-in-progress report is not available to the general public. Acceptance of the Subpart N, Cranes Workgroup in-progress report acknowledges the efforts of the workgroup and provides

access to the data contained for reference by the Negotiated Rule Making Committee, as provided by the Assistant Secretary. This report includes deliberations of the workgroup through its meetings of December 3 and 4, 2002. Therefore, it is understood that the co-chair will circulate this in-progress report to the workgroup attendees of record. Further comments by the workgroup participants may be individually submitted to the Negotiated Rulemaking Committee in the manner established by the committee.

The Subpart N - Cranes, Workgroup will now officially disband and will not meet again, unless reconstituted by the ACCSH chair. Therefore, the Subpart N - Cranes Workgroup moves for the full ACCSH committee to adopt the in-progress Subpart N - Cranes report and that it be forwarded to the Assistant Secretary as a reference document to be provided to the Negotiated Rule Making Committee for use during their deliberations. As this is a workgroup report, it does not require a second. Respectfully submitted this 5th day of December, 2002, Jim Ahern-Subpart N - Cranes, 1926.550 Workgroup Co-chair."

Noah Connell gave an update to ACCSH on the following subjects: **MUTCD, Confined Space in Construction, and Steel Erection Directive.**

Bill Perry and Dr. Loretta Schuman gave a briefing on **Silica.** Schuman gave a brief update and status report on the status of the rule making process and what can be expected in the future. She pointed out that nearly two million U.S. workers are currently exposed to silica, and that half of these workers are in the construction industry. About 100,000 workers are in high-risk occupations such as sand blasters, rock drillers, and tunnelers. Approximately 250 to 300 workers are reported to die each year from silicosis. Schuman stated that silica remains a regulatory priority on the OSHA agenda, and that OSHA has been conducting research for the past two years in order to be able to develop regulatory options for silica. She reported that OSHA is currently analyzing the information obtained to evaluate the feasibility, effectiveness, and potential impacts of regulatory alternatives. Possible regulatory alternatives include consideration of exposure limits, exposure assessment approaches, and health screening. OSHA might develop a comprehensive

standard such as the asbestos and lead standards, or may opt for a program that is smaller in scope. The analysis will also help decide whether the regulatory action will trigger SBREFA (Small Business Regulatory Enforcement Fairness Act) requirements. Jane Williams informed Schuman and Perry that the ACCSH Chair would be announcing the appointment of a Silica Workgroup later that day, with Williams and Marie Haring Sweeney as probable co-chairs. Schuman and Perry expressed an interest in working with the working group on both the rulemaking project and on the guidance project.

Jane Williams, as acting Chair took the opportunity to read into the record a statement that Krul had provided. The following statement is from **Building Trades Safety and Health Committee of the AFL-CIO**:

"The Building and Construction Trades Department is extremely pleased that the Advisory Committee on Construction Safety and Health, ACCSH, is again in session to carry out its mandate in the 1969 Construction Safety Act, to advise the Secretary in the formulation of construction safety and health standards and other regulations, and with respect to policy matters arising in the administration of this act. The Secretary's regulations characterized the committee as a continuing advisory body and provides that ACCSH shall also constitute an advisory committee within the meaning of the Occupational Safety and Health Act of 1970. The regulations required the Assistant Secretary to provide the committee with "all pertinent factual information available to him, including the result of research, demonstrations, and experiments."

ACCSH offers the Agency valuable advice drawn from numerous sections of the construction industry. The Building and Construction Trades Department is also extremely pleased that OSHA has included the promulgation of a comprehensive silica standard in its recent regulatory agendas, has conducted a special emphasis program on silica, has held stakeholder meetings concerning the silica hazard, and has placed the promulgation of the silica standard on the agenda of this ACCSH meeting.

ACCSH is the appropriate and ideal body to review this subject and to make a recommendation to the Assistant Secretary with regard to a Part 1926 comprehensive silica

standard. The promulgation of a comprehensive silica standard for the construction industry is the Building and Construction Trades Department's highest priority insofar as protecting construction workers from occupational health hazards is a concern. More than 60 years ago, Secretary of Labor Francis Perkins stated, "Our job is one of applying techniques and principles to every known silica dust hazard in American industry. We know the methods of control. Let us put them in practice.

Today, more than 30 years after the passage of the OSHA act, we still do not have in place an effective standard. This is particularly surprising because OSHA listed crystalline silica as one of the five priorities chosen for rulemaking as part of its priority planning process in 1994 and 1995, which included consultation with NIOSH, EPA, MSHA, and the Labor Department's Office of Policy. Further, in 1996, the Internal Agency for Research of Lung Cancer reviewed the public experimental epidemiologic reports of cancer in animals and the workers exposed to respiratorial crystalline silica and concluded that there was sufficient evidence in humans for the carcinogenics of inhaled crystalline silica in the form of quartz or crystabolite from occupational sources. In the same year, directors of the American Thoracic Society adopted an official statement that described the adverse health effects of exposure to crystalline silica, including lung cancer.

A listing of construction tasks which exposed workers to excessive amounts of dust-containing silica already has been compiled and recommendations for effective dust control measures already exist. Yet, excessive exposures continue largely undocumented. As was the case with the occupational exposure to asbestos, the unique nature of the construction industry requires a separate Part 1926 Silica Standard to protect construction workers. Issues relating to multi-employer work sites, short duration jobs, and extremely high exposures produced in the course of certain construction tasks make a separate standard necessary. We hope that at this advisory committee meeting, an ACCSH workgroup on silica will be established and a meeting of that workgroup scheduled soon. The working group will have available to it a great deal of valuable information to review in preparing a recommendation to the full committee. For example, it will have the record of the several silica stakeholder

meetings that have occurred in various parts of the country, the documentation of OSHA inspections that took place under OSHA's special emphasis program on silica, NIOSH hazard evaluations on silica, including the April, 2000 report entitled "Health Effects of Occupational Exposure to Respiral Crystalline Silica," and a draft of a comprehensive silica standard for the construction industry that the Building and Construction Trades Department Safety and Health Committee has developed over a period of several years and which was sent to your office in September, 2001, shared with the Directorate of Health Standards, and discussed with a number of private organizations.

In conclusion, we believe ACCSH is the appropriate vehicle to move forward a comprehensive silica standard for the construction industry. Through that committee, we, as an industry partner, can assist OSHA's development of a standard agreeable to all stakeholders, which is the role of ACCSH as the Construction Safety and Health Advisory Committee to OSHA.

Thank you for this opportunity to address ACCSH on this important subject."

Discussions ensued concerning the fact that the Chair intended to establish a Silica Work Group. Swanson pointed out this standard was being done through Health Standards, not DOC. Nevertheless, he stated that he would work with ACCSH and its workgroup, and coordinate with colleagues in health standards to assist in the effort.

John Steelnack gave a presentation on the **Proposed Assigned Protection Factor (APF) Rule Making**. Brad Hammock assumed the duties of ACCSH legal counsel during the course of this presentation, due to a potential conflict of interest on the part of Biersner with this issue. Steelnack briefed the committee on the assigned protection factors for the various classes of respirators. He explained that his office is going to be preparing a Notice of Proposed Rule Making that will be published, adding the missing definitions that have been reserved. An Assigned Protection Factor table with individual numbers for the various classes of respirators, will be included. The agency will also publish suggested revisions to the Respiratory Protection sections of the 6B5 Substance-Specific Standards and bring them all into line so that everybody is using

the same APF table and using the same numbers for their respirators. This will ensure that the best information available on the performance of these individual classes of respirators has been incorporated. Steelnack explained that he is looking for feedback on the proposed rule, especially concerning current respirator use patterns in the industry. ACCSH members expressed the hope that ACCSH would be able to be briefed, and have an input on whether the economic impact assumed in the proposal was realistic. Steelnack discussed a proposal currently under study, which would affect the difficulty of passing the respirator fit test.

The **Chair** informed the committee that, because of the weather, ACCSH would complete its deliberations in one day.

Bruce Swanson advised the committee that the Assistant Secretary has made it clear that adhering to the regulatory agenda time tables is a high priority.

Noah Connel gave an presentation to ACCSH on **Subpart R - Steel Erection - CSHO Training Progress**. He described how compliance officers are not only given a hands-on demonstration of various steel erection processes, but also get the opportunity to do hands-on work on steel mock-ups that the Ironworkers have put together. Video demonstration, and simulations are used extensively. The training is done at Ironworker facilities around the country. An in-depth discussion of various aspects of Subpart R ensued. The discussion closed with the following statement by **Swanson**:

" What Noah explained on the shear connectors, or Nelson studs, is what we are training our people. If a contractor has his employees up there 100 percent protected from falls over 15', and he has got joists up there with Nelson studs that were sent from the fabricator with those studs on them, he is not in violation of the standard. That's the way we're interpreting it, that's the way we're enforcing it. Not everyone agrees with that."

Kevin Beauregard pointed out that this standard is different in North Carolina, and possibly other State Plan states.

Chairman Krul made the following additional Co-Chair appointments to the following Work Groups:

Data Collection/Targeting	Marie Haring Sweeney Thomas Broderick
Diversified Construction Workforce Initiatives	Jane Williams David Bush
Musculoskeletal Disorders	Marie Haring Sweeney, Joe Durst
Multi-lingual Issues in Construction	Marie Haring Sweeney Greg Strudwick Tom Broderick Mike Sotelo
Noise in Construction	Marie Haring Sweeney Joe Durst
OSHA Training Institute - Certification and Training	Frank Migliaccio Joe Durst Greg Strudwick Thomas Broderick
Safety and Health Program Standard	Jane Williams Kevin Beauregard
Sanitation	Jane Williams
State Plan States	Kevin Beauregard Joe Durst Mike Sotelo
Tower Erection, Construction/ Fall Protection, Fatalities, Injuries	Kevin Beauregard James Ahern Frank Migliaccio

Silica

Jane Williams
James Ahern
Marie Haring Sweeney
Greg Strudwick
Manuel Mederos
David Bush

Marie Haring Sweeney presented an informal overview of the services provided by NIOSH.

The **Chair** agreed to have **Joe Durst** present some recommendations for minor **changes to the advisory committee guidelines** at the next ACCSH. The revisions will describe how emergency medical coverage will be provided for ACCSH members and stakeholders during ACCSH and Work Group meetings.

The public was given an opportunity to present issues and ideas to ACCSH. One person from the public made short statements to ACCSH. Dan Gluxman, from the International Safety Equipment Association, discussed his company's outreach program.

The Chair discussed the timing of the next ACCSH meeting. It was decided that Swanson would request the funding to hold the next ACCSH meeting in Chicago, on the 13th and 14th of February, 2003, in conjunction with the Construction Safety Council conference. If this timing is not approved by OSHA, the next ACCSH meeting will probably be held during March 2003 in Washington DC.

The meeting was adjourned at approximately 4:22 p.m. on 5 December, 2002.