

Advisory Committee on Construction Safety and Health (ACCSH)

Minutes for June 20, 2017 Teleconference Meeting

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, N.W.
Washington, DC 20210

The meeting of the Advisory Committee on Construction Safety and Health (ACCSH) was called to order by Chairman Erich J. (Pete) Stafford at 1:08 p.m., on Tuesday, June 20, 2017. The following committee members, OSHA staff, and other attendees were present via teleconference:

NAME	SECTOR REPRESENTED	TITLE & ORGANIZATION
Erich J. (Pete) Stafford Chair	Employee Representative	Advisor to the President, North America's Building Trades Unions and CPWR-The Center for Construction Research and Training
Kevin R. Cannon	Employer Representative	Director of Safety and Health Services, The Associated General Contractors of America
Steven L. Rank	Employee Representative	Executive Director of Safety and Health, International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers
Randy Krocka	Employee Representative	Administrator, Sheet Metal Occupational Health Institute Trust; International Association of Sheet Metal, Air, Rail and Transportation Workers
Charles Stribling	State Representative	OSH Federal-State Coordinator, Kentucky Labor Cabinet, Department of Workplace Standards
Steven D. Hawkins	State Representative	Administrator, Tennessee Occupational Safety and Health Administration
Letitia Davis	Public Representative	Director, Occupational Health Surveillance Program, Massachusetts Department of Public Health
R. Ronald Sokol	Public Representative	President/CEO, Safety Council of Texas City

Palmer Hickman	Employee Representative	Director of Safety Code Training & Curriculum Development, Electrical Training ALLIANCE
Alejandro G. Beltran	Employee Representative	Director of Training, International Union of Painters and Allied Trades
Andrew Peters	Employer Representative	Corporate Senior Vice President, Chief Safety Officer, AECOM
Thomas Marrero, Jr.	Employer Representative	Safety Director, OTS Holdings
Jerry Rivera	Employer Representative	Safety Director, Washington, DC Chapter, National Electrical Contractors Association
Christine Branche	Federal Representative	Principal Associate Director, and Director, Office of Construction Safety and Health, NIOSH
Eric Kampert	Designated Federal Official	Director, Office of Construction Services, Directorate of Construction, U.S. Department of Labor - OSHA
Lisa Wilson	ACCSH Counsel	Office of the Solicitor, U.S. Department of Labor

U.S. Department of Labor Attendees:

Dean McKenzie	Directorate of Construction, U.S. Department of Labor-OSHA
Scott Ketcham	Directorate of Construction, U.S. Department of Labor-OSHA
Damon Bonneau	Directorate of Construction, U.S. Department of Labor-OSHA
Garvin Branch	Directorate of Construction, U.S. Department of Labor-OSHA
Lolita Oliver	Directorate of Construction, U.S. Department of Labor-OSHA
Veneta Chatmon	Directorate of Construction, U.S. Department of Labor-OSHA
Courtney Murray	Directorate of Construction, U.S. Department of Labor-OSHA
Gopal Menon	Directorate of Construction, U.S. Department of Labor-OSHA
Bryant Seymour	Directorate of Construction, U.S. Department of Labor-OSHA
Vernon Preston	Directorate of Construction, U.S. Department of Labor-OSHA
Michael Payne	Directorate of Construction, U.S.

	Department of Labor-OSHA
Joe Hajdusiewicz	Directorate of Construction, U.S. Department of Labor-OSHA
Richard Ewell	Office of the Solicitor, U.S. Department of Labor
Megan Broad	Office of the Solicitor, U.S. Department of Labor
Ariel Landa-Seiersen	Office of the Solicitor, U.S. Department of Labor

Other Attendees:

Shane Adams	Graham Brent
Michael Anderson	Tony Brown
John Anderson	Mike Caldarera
Thomas Ashely	Victoria Calderon
Carlos Batista	Jamie Carlile
Frederick Beard	Bo Collier
Robert Cook	Christine Cromarty
Ben Crossman	Sydney Delprato
Rick Devine	Matthew Dina
Daniel Dupre	Brian Ealey
Michael Eggenberger	Jacob Ewer
Daniel Forest	James Frierson
Norm Garhardt	Scotty Gaut
Anna Gevattiste	Gloria Gonzalez
Walter Guilfoyle	Brett Hart
James Headley	Darin Hinnergardt
Daniel Hoeffner	Mark Hoffman
Wesley Hood	Larry Hopkins
Joey Howell	John Hulse
Michael Ickes	Ken Jakobe
John Kirk	Greg Konwinski
Richard Krolewski	Lee Lander
Patrick Leonard	Bryan Lincoln
Phil Litwiller	Jose Lopez
James MacKenzie	Katie Mackey
Nick Magana	Kevin Manning
Michael Massey	Edward Matejcek
Wes McCracken	Mark Mcdaniel
Kevin Mckenney	Matthew McNicholas
Dave Medbery	Adrian Medrano
Michele Mihelic	David Miller
Bryan Miller	Michael Moon
Russell Morris	William Neiles
Brian Olzepek	Beth O'Quinn
Katie Parrish	Joseph Patten
Sam Pearson	Kenny Peskin
Robert Peterson	John Puz

Kim Qualls	Sarah Reboli
Rick Reubelt	Jeff Roach
Mark Schmoller	Matthew Shaw
Barney Shorter	Bill Smith
Larry Snyder	Edwin Soto
Chris Steeves	Charles Stinson
Kim Strickland	Jay Sturm
Dan Swiggum	Louis Trujillo
Kevin Turner	Patrick Vallejos
Travis Vanassche	Craig Verret
Troy Wagner	Mike White
Chuck Wigger	Marc Willis
Gary Wright	Dylan Wright
Charles Wu	

Opening Remarks

Speaker: Chairman Erich J. (Pete) Stafford

Chairman Stafford called the meeting to order and briefly acknowledged the unique characteristics of hosting the meeting via teleconference. Mr. Stafford performed roll call to identify the ACCSH members in attendance and proceeded to turn the meeting over to Eric Kampert.

For a full account of Mr. Stafford's remarks, refer to the recorded account of the June 20, 2017, ACCSH meeting (timestamp 0:21) in Docket No. OSHA-2017-0007 at: <http://www.regulations.gov>.

OSHA Designated Federal Official

Speaker: Mr. Eric Kampert, Director, Office of Construction Services, OSHA

Mr. Kampert introduced himself and stated a recorded account of the meeting would be available on the ACCSH website and in the docket (Docket No. OSHA-2017-0007) at: <http://www.regulations.gov>. Mr. Kampert explained there would be a public comment period at the end of the meeting for those who wish to speak and any additional comments could be submitted to Damon Bonneau, OSHA-Office of Construction Services, via e-mail.

For a full account of Mr. Kampert's remarks, refer to the recorded account of the June 20, 2017, ACCSH meeting (timestamp 3:36) in Docket No. OSHA-2017-0007 at: <http://www.regulations.gov>.

ACCSH Counsel

Speaker: Lisa Wilson, Office of the Solicitor, U.S. Department of Labor

Ms. Wilson introduced herself and welcomed everyone in attendance. She indicated the meeting being held by teleconference was an official, formal meeting. Additionally, Ms. Wilson noted that all Federal Advisory Committee Act rules apply. She stated OSHA would provide a recorded account of the meeting and official minutes would also be available.

For a full account of Ms. Wilson's remarks, refer to the recorded account of the June 20, 2017, ACCSH meeting (timestamp 5:15) in Docket No. OSHA-2017-0007 at: <http://www.regulations.gov>.

Opening Remarks (cont.)

Speaker: Chairman Erich J. (Pete) Stafford

Mr. Stafford announced the focus of the meeting was to discuss OSHA's proposed rule for extending the enforcement date for the crane operators' certification requirement and employer duty. Summarizing the anticipated order of events for the meeting, Mr. Stafford noted that Mr. Vernon Preston, OSHA, would be providing information pertaining to the proposed rule and ACCSH members would have time to discuss and deliberate the proposal. Mr. Stafford stated ACCSH would ultimately take action on the proposed rule based on what it heard from OSHA and committee member discussions. He also noted that he intended on closing the meeting with public comments and turned the meeting over to Mr. Preston.

For a full account of Mr. Stafford's remarks, refer to the recorded account of the June 20, 2017, ACCSH meeting (timestamp 5:47) in Docket No. OSHA-2017-0007 at: <http://www.regulations.gov>.

OSHA Update - Operator Certification and Employer Duty Extension

Speaker: Mr. Vernon Preston, Office of Construction Standards and Guidance, OSHA

Mr. Preston began his remarks by providing background information regarding OSHA's proposal to extend the crane operator certification compliance date and the employer duty by one year. He briefly defined Subpart CC and stated operator certification was one of the main safety provisions from that rulemaking. Mr. Preston explained the reasoning behind OSHA's proposal to extend the compliance date and provided a historical analysis of the negotiated rule making process as it related to crane operator certification. This analysis included how the certification provision related to the standard, various stakeholder involvement and position on the issue, and OSHA's consideration of stakeholders' input. Mr. Preston noted the previous ACCSH recommendation of extending the compliance date and employer duty until OSHA revisited its operator certification requirements and determined what changes would be made. Mr. Preston concluded his presentation by stating OSHA needs additional time to propose and finalize a rule addressing stakeholders' concerns and it was not OSHA's intent to cause industry disruption. Mr. Preston concluded OSHA was proposing to extend the crane operator certification compliance date and the employer duty to ensure competent and safe crane operations by one year, until November 10, 2018.

For a full account of Mr. Preston's remarks, refer to the recorded account of the June 20, 2017, ACCSH meeting (timestamp 6:31) in Docket No. OSHA-2017-0007 at: <http://www.regulations.gov>.

Committee Discussion:

Speakers: Chairman Erich J. (Pete) Stafford, ACCSH Committee Members, OSHA Staff

At the conclusion of Mr. Preston's remarks, Mr. Stafford opened the meeting up for discussion, requesting questions and comments from the committee members regarding the proposal.

Kevin Cannon, an Employer Representative, referenced Mr. Preston's remarks and asked if the committee would have another opportunity to review the OSHA drafted regulatory text revising the operator

certification requirements. Mr. Preston stated once the rule was proposed, industry stakeholders and the general public would be able to review the rule and have an opportunity for public comment.

Steve Rank, an Employee Representative, asked the same question as Mr. Cannon and added that he felt it was important for the agency to allow the committee to review the rule prior to proposal.

Chairman Stafford stated he considered Mr. Rank's remarks a "process" question, deferring to Lisa Wilson, ACCSH Counsel, for clarification. Ms. Wilson stated that OSHA has worked with stakeholders extensively on this issue which came before the committee in 2015, for recommendation. She further stated that OSHA was now engaged in rulemaking and the proposal would be published as a proposed rule and available for public comment. Ms. Wilson noted the proposed rule would not be placed before the committee again.

Jerry Rivera, an Employer Representative, asked if there was any way OSHA could provide a summary of any changes made to the proposed rule since the committee reviewed it in 2015. Chairman Stafford stated he believed the answer to the question was no and provided an additional breakdown of where OSHA was in the rulemaking process.

Kevin Cannon inquired on how soon the proposed compliance date extension would be published in the Federal Register, pending the committee's recommendation to move forward. Additionally, Mr. Cannon also requested an estimate of the expected time frame to publish a final rule. Mr. Stafford deferred to OSHA staff to answer these questions and gave a brief historical summation of ACCSH involvement in the proposed rule to this point.

Vernon Preston stated OSHA was trying to move the rulemaking for extension along as quickly as possible along with the subsequent proposed changes to the rule thereafter. Mr. Preston made clear this issue was a priority for the agency. Mr. Preston also explained the purpose of the meeting was to get the committee's recommendation on the proposal to extend the crane operator certification compliance date as opposed to focusing on the substantive changes to the operator certification requirements.

Palmer Hickman, an Employee Representative, stated that based on what he knew at the time, the electrical workers were in support of the extension to allow OSHA to do their important work.

Alejandro Beltran, an Employee Representative, expressed concerns on how the industry would be impacted by the extension and the time frame involved. Chairman Stafford stated he was unclear how to respond to Mr. Beltran's comment. Mr. Stafford offered his opinion that everybody was frustrated with the length of time ACCSH and OSHA have spent on the issue, but felt it was unfair to expect OSHA to give an exact timeframe to the committee regarding the operator certification requirements final language.

Steve Rank, an Employee Representative, stated he held comfort in the fact the language in the proposed rule would be based on the feedback OSHA received from industry stakeholders through ACCSH.

Steve Hawkins, a State Representative, gave a summary of the rulemaking process as it related to the proposal to extend the compliance date. Mr. Hawkins relayed his confidence in the process and stated he believed the language would accurately represent the recommended language agreed upon by ACCSH in

2015. He asked for clarification on the assumption if the language was substantially different from when the rule was proposed, would OSHA ask for additional input from the committee.

Ron Sokol, a Public Representative, stated his concerns regarding extending the rule and the possibility of the proposed language not representing the recommendations of ACCSH.

Letitia Davis, a Public Representative, suggested it was important for the committee to move forward with the extension so OSHA can amend the proposed rule based on the input they received from ACCSH in 2015. She stated if ACCSH did not agree on the extension it would unnecessarily prolong the process and expressed the importance of the committee taking a good faith step forward by assuming OSHA had taken the committee's recommendations into account.

Steve Rank, an Employee Representative, stated his desire that OSHA refrain from publishing a compliance directive on type and capacity. He further offered a directive may cause confusion in the workplace on how the Agency would interpret and enforce elements of the proposed rule change.

Charles Stribling, a State Representative, mentioned state plan states would also need to initiate rulemaking to extend the deadline. Mr. Stribling asked the Agency if it had an overall time estimate for completing the process of publishing a final rule mandating the extension. Garvin Branch, Directorate of Construction, responded to Mr. Stribling's question by stating the Agency intended to publish the rule by November 2017. Mr. Stribling posed a follow up question asking if the agency intended on publishing the proposed rule change for operator certification requirements during the one year extension period. Mr. Branch responded by stating OSHA's intention was to do so.

For a full account of this discussion, refer to the recorded account of the June 20, 2017, ACCSH meeting (timestamp 10:12) in Docket No. OSHA-2017-0007 at: <http://www.regulations.gov>.

ACCSH Motions and Committee Discussion:

Speakers: ACCSH Committee Members

[Approved motions are in bold]

Chairman Stafford moved that ACCSH support OSHA's proposed rule to extend the enforcement date for the crane operator certification requirements and existing employer duty in the cranes and derricks standard to November, 2018. Steve Hawkins seconded the motion.

Chairman Stafford amended his motion to: **ACCSH support OSHA's proposed rule to extend the enforcement date for the crane operator certification requirements and existing employer duty in the cranes and derricks standard to November 10, 2018.**

After some discussion, the motion passed unanimously.

For a full account of Approved Motions and Committee Discussion, refer to the recorded account of the June 20, 2017, ACCSH meeting (timestamp 37:52) in Docket No. OSHA-2017-0007 at: <http://www.regulations.gov>.

Public Comments

Michael Eggenberger, Crane Safety Manager

Mr. Eggenberger asked the committee to explain the reasoning behind the proposal to extend the compliance date for crane operator certification, reciting the question from OSHA's question and answer section of the Cranes and Derricks webpage. He also recited the answer to the question given on the webpage. Mr. Eggenberger requested the agency provide him with anticipated language representing the undetermined changes to the operator certification requirements.

Richard Ewell, Office of the Solicitor, U.S. Department of Labor

Mr. Ewell informed Mr. Eggenberger the request went beyond the agenda of the meeting.

Beth O'Quinn, Specialized Carriers and Rigging Association (SC&RA)

Ms. O'Quinn began her comments by introducing herself and the organization she represents. She stated the Specialized Carriers and Rigging Association had come before ACCSH several times over the last two years to express concerns regarding proposed language regarding type and capacity and employer training obligations. Ms. O'Quinn added SC&RA was in full support of the crane operator certification provision and an employer's obligation to fully train and qualify their operators. She also stated the organization supported OSHA's proposal to extend the compliance date by one year for the reasons noted in their proposal.

Graham Brent, National Commission for the Certification of Crane Operators

Mr. Brent stated NCCCO supported OSHA's proposal to extend the enforcement date for the crane operators' certification requirement and produced a narrative characterizing their support.

Kenny Peskin, International Sign Association

Mr. Peskin explained to the committee the challenges and frustrations his industry has faced associated with previous and current proposed rules extending the enforcement date for the crane operators' certification requirement.

For a full account of the Public Comments, refer to the recorded account of the June 20, 2017, ACCSH meeting (timestamp 1:09:05) in Docket No. OSHA-2017-0007 at: <http://www.regulations.gov>.

Chairman Stafford adjourned the meeting at 2:36 p.m.