

**Advisory Committee on Construction Safety and Health (ACCSH)
Minutes for September 9, 2019 Teleconference Meeting**

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, D.C. 20210

The meeting of the Advisory Committee on Construction Safety and Health (ACCSH) was called to order by Chairman Kevin R. Cannon at 10:25 AM., on Monday, September 9, 2019. The following committee members, OSHA staff, and other attendees were present via teleconference:

NAME	SECTOR REPRESENTED	TITLE & ORGANIZATION
Kevin R. Cannon	Employer Representative	Director, Safety and Health Services, Associated General Contractors of America (AGC)
Fravel E. Combs	Employer Representative	Corporate Manager EH&S, M.A. Mortenson Company
Greg Sizemore	Employer Representative	Vice President of Health, Safety, Environment and Workforce Development, Associated Builders and Contractors (ABC)
Wesley L. Wheeler	Employer Representative	National Director of Safety, National Electrical Contractors Association
Palmer L. Hickman	Employee Representative	Director of Safety and Code Training and Curriculum Development, International Brotherhood of Electrical Workers, Electrical Training Alliance
Randall A. Krocka	Employee Representative	Administrator and Project Director, Sheet Metal Occupational Health Institute Trust, International Association of Sheet Metal, Air, Rail and Transportation Workers
Richard Tessier	Employee Representative	Director of Safety, United Union of Roofers, Waterproofers, & Allied Workers Representative Research & Education Joint Trust
Christina Trahan Cain	Employee Representative	Safety and Health Director, North America's Building Trades Unions
Christopher A. Fought	Public Representative	Global Construction & North America Contractor Safety Manager, General Motors, LLC
R. Ronald Sokol	Public Representative	President & CEO, Safety Council of Texas City
Christopher (Scott) Mabry	State Representative	Assistant Deputy Commissioner, North Carolina Department of Labor
Charles N. Stribling	State Representative	Kentucky Labor Cabinet, Department of Workplace Standards
G. Scott Earnest	Federal Representative	Deputy Director, Office of Construction Safety & Health, National Institute for Occupational Safety & Health (NIOSH)
Scott Ketcham	Designated Federal Official (DFO)	Director, Directorate of Construction, U.S. Department of Labor - OSHA

Joseph (Joey) Gilliland	ACCSH Council	Office of the Solicitor, U.S. Department of Labor
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Other Attendees:

Radha Vishnuvajjala	OSHA/ SOL
Bill Perry	OSHA / DSG
Mandy Edens	OSHA / DTSEM
Lolita Oliver	OSHA / DOC
Eric Kampert	OSHA / DOC
Bryant Seymour	OSHA / DOC
Courtney Murray	OSHA / DOC
Michael Payne	OSHA / DOC
Veneta Chatmon	OSHA / DOC
Damon Bonneau	OSHA / DOC

Opening Remarks:

Speaker: Chairman, Kevin R. Cannon

Chairman Cannon called the meeting to order and briefly acknowledged the unique characteristics of hosting the meeting via teleconference. Mr. Cannon performed a roll call to identify the ACCSH members and noted that a quorum was present. He also announced that there were two members that were not joining the meeting: Ms. Cindy DePrater, who is an Employer Representative, and Mr. Mark Mullins, who is an Employee Representative. Chairman Cannon also stated that Mr. Mullins had given his proxy vote to Ms. Christina Trahan Cain. He then stated that the first item of business would be an OSHA Update by Ms. Loren Sweatt, Principal Deputy Assistant Secretary.

For a full account of Chairman Cannon’s opening remarks, refer to page 4 (Line 2) of the September 9, 2019 meeting transcript, in Docket No. OSHA-2018-0012 at <https://www.regulations.gov/document?D=OSHA-2018-0012-0125>.

Agency Update and Remarks:

Speaker: Ms. Loren Sweatt, Principal Deputy Assistant Secretary of Labor, OSHA

Ms. Sweatt welcomed everyone in attendance to the meeting. She began by noting that the draft proposal being discussed was already at OMB and that this meeting could still impact that document. She encouraged members to take the opportunity provided by this advisory committee process to provide constructive criticism to OSHA.

Ms. Sweatt stated that for the construction industry, OSHA has evidence that the only operations within the scope of the beryllium construction standards are abrasive blasting operations with certain abrasive blasting media. She indicated that to date, OSHA has not received any additional data demonstrating there are beryllium exposures outside of that operation and construction activities.

Ms. Sweatt explained that OSHA is now proposing to update certain ancillary provisions of the beryllium construction standard rather than revoking them entirely. This update is geared to better tailor the requirements to the construction industry, considering the limited exposure to beryllium, and to align with changes to general industry standards where appropriate.

For a full account of Ms. Sweatt's remarks, refer to page 6 (Line 11) of the September 9, 2019 meeting transcript, in Docket No. OSHA-2018-0012 at <https://www.regulations.gov/document?D=OSHA-2018-0012-0125>.

Beryllium Standard for Construction:

Speaker: Ms. Maureen Ruskin, Office of Standards and Guidance, OSHA

Ms. Ruskin began her remarks by providing background information regarding OSHA's final rule on the occupational exposure for beryllium and beryllium content compounds, published in the federal register in January 2017, and the subsequent NPRM published on June 27, 2017, which proposed to revoke the ancillary provisions of the construction and shipyards standards. She then explained OSHA's decision to issue a final rule declining to revoke the ancillary provisions of the construction and shipyards standards and to instead issue a new proposal. She then explained that, broadly speaking, OSHA was now proposing to make the following revisions:

- Updates to the definitions. These are primarily updates in provisions that relate to medical surveillance and medical testing.
- Simplify the written exposure control plan.
- Make changes that are related to dermal contact.

Ms. Ruskin explained that the next steps in the process were; publishing of the proposal, providing time for stakeholder comment, and hosting a public hearing.

Ms. Ruskin then indicated that OSHA was seeking a recommendation from ACCSH to publish the planned notice of proposed rulemaking to revise the beryllium standard for construction that would tailor the ancillary provisions to the construction industry and align them with the general industry standards where appropriate.

For a full account of Ms. Ruskin's remarks, refer to page 11 (Line 3) of the September 9, 2019 meeting transcript, in Docket No. OSHA-2018-0012 at <https://www.regulations.gov/document?D=OSHA-2018-0012-0125>.

Public Comments:

Shanna Devine, with Public Citizen

Ms. Devine stated Public Citizen is a consumer advocacy organization with more than 500,000 members and supporters. Ms. Devine explained that Public Citizen opposes the June 2017 proposal to rescind for construction and shipyard workers the ancillary provisions from OSHA's final 2017 beryllium rule. She then explained their reasons in detail, including the following:

- Existing OSHA regulations do not overlap entirely with the beryllium standard's ancillary provisions and any standards that do overlap were not drafted to specifically address the unique hazards of beryllium.
- Where requirements overlap, employers would not incur new costs or burdens if they are already in compliance.
- Relying solely on engineering controls to protect workers from beryllium exposures will not provide adequate protection.

At the request of the Chairman, Ms. Devine then agreed to provide a written statement of her comments for ACCSH (see Docket No. OSHA-2018-0012 at <https://www.regulations.gov/document?D=OSHA-2018-0012-0126>).

For a full account of Ms. Devine's Public Comments, refer to page 24 (Line 5) of the September 9, 2019, ACCSH meeting transcript, in Docket No. OSHA– 2018–0012 at <https://www.regulations.gov/document?D=OSHA-2018-0012-0125>.

Jeff Tanenbaum, with the Abrasive Blasting Manufacturers Alliance (ABMA)

Mr. Tanenbaum introduced himself and explained that ABMA members manufacture various types of abrasive blasting media used in construction and have a particularly strong interest in OSHA's regulation on beryllium in construction, especially because OSHA has now focused its attention on abrasive blasting as producing beryllium exposures of concern in the industry.

Mr. Tanenbaum then explained ABMA's position on this issue, including the following:

- ABMA's belief that OSHA has been inconsistent with respect to whether the construction and shipyard sectors should be covered by the new proposed beryllium regulations.
- ABMA's belief that there is no legal, scientific, or medical basis for OSHA to be imposing new beryllium regulations in construction.
- Abrasive blasting is already highly regulated under more than 20 preexisting standards which have been effective, and further regulation is going to impose unnecessary burdens, not just on employers, but employees and incur substantial expenses that are just not justified.

For a full account of Mr. Tanenbaum's Public Comments, refer to page 28 (Line 21) of the September 9, 2019, ACCSH meeting transcript, in Docket No. OSHA– 2018–0012 at <https://www.regulations.gov/document?D=OSHA-2018-0012-0125>.

Peggy Mroz, with National Jewish Health

Ms. Mroz thanked everyone for the opportunity to offer comments and then explained that she represents National Jewish Health, division of environmental and occupational health sciences. National Jewish Health represents occupational worker safety and health, seeing patients clinically, and has been involved in beryllium health and safety for over 30 years.

Ms. Mroz then explained National Jewish Health's position on this issue. This included the following items:

- National Jewish Health supports the lower exposure limits and encourages the retention of the ancillary provisions.
- They believe that it is important to retain those ancillary provisions in order to protect workers from the health effects of beryllium exposure. The ancillary provisions are the core of a comprehensive beryllium rule.
- They feel that the lower PEL of .2 micrograms per cubic meter and a STEL of 2.0 micrograms per cubic meter will protect workers.

For a full account of Ms. Mroz Public Comments, refer to page 35 (Line 11) of the September 9, 2019, ACCSH meeting transcript, in Docket No. OSHA–2018–0012 at <https://www.regulations.gov/document?D=OSHA-2018-0012-0125>.

**ACCSH Committee Discussion and Recommendations:
Speakers: ACCSH Committee Members**

A question and answer (Q & A) session was then conducted between ACCSH members and Ms. Maureen Ruskin regarding her presentation on the Beryllium Standard for Construction. Ms. Ruskin provided additional insight regarding items discussed during her presentation.

For a full account of the ACCSH Committee discussion and recommendations to OSHA, refer to page 45 (Line 8) of the September 9, 2019, ACCSH meeting transcript, in Docket No. OSHA–2018–0012 at <https://www.regulations.gov/document?D=OSHA-2018-0012-0125>.

Following the committee’s discussion, ACCSH made these recommendations:

Motion: Christina Trahan Cain, Employee Representative, moved that ACCSH recommend that OSHA revise the beryllium standard for construction to ensure that the ancillary provisions are tailored to the construction industry and aligned with the general industry standard, where appropriate. The motion was seconded by Randy Krocka and passed (12 in favor, 2 abstained).

For a full account of the recommendation, refer to page 57 (Line 3) of the September 9, 2019, ACCSH meeting in Docket No. OSHA–2018–0012 at <https://www.regulations.gov/document?D=OSHA-2018-0012-0125>.

Motion: Christina Trahan Cain, Employee Representative, moved that ACCSH recommends that OSHA issue the final rule and proposed rule as soon as possible. The motion was seconded by Randy Krocka and passed unanimously.

For a full account of the recommendation, refer to page 65 (Line 4) of the September 9, 2019, ACCSH meeting in Docket No. OSHA–2018–0012 at <https://www.regulations.gov/document?D=OSHA-2018-0012-0125>.

Joey Gilliland, ACCSH Counsel (EXHIBIT LIST)

Mr. Gilliland designated the following as exhibits:

- Update on OSHA’s Beryllium Standard for Construction presentation as Exhibit 1.
- Presentation from National Jewish Health titled OSHA Occupational Exposure to Beryllium and Beryllium Compounds in the Construction Industry as Exhibit 2.

He stated that he would move them to the record.

For a full account of Mr. Gilliland’s exhibit list, refer to page 67 (Line 14) of the July 17, 2019, meeting transcripts in Docket No. OSHA-2018-0012, at <https://www.regulations.gov/document?D=OSHA-2018-0012-0125>.

Speaker: Chairman Kevin R. Cannon

Chairman Cannon thanked Mr. Gilliland and then adjourned the meeting.

Meeting adjourned at 11:50 a.m.