

U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

ADVISORY COMMITTEE ON
CONSTRUCTION SAFETY AND HEALTH (ACCSH)

Thursday, May 23, 2013

Frances Perkins Building
200 Constitution Avenue, N.W.
Washington, D.C.

COMMITTEE MEMBERS PRESENT:

EMPLOYEE REPRESENTATIVES:

Erich J. (Pete) Stafford, Chairman
Director of Safety and Health, Building and
Construction
Trades Department, AFL-CIO

Sarah Coyne
Executive Assistant Director, International Union of
Painters and Allied Trades/Finishing Trades Institute

Roger Erickson
International Brotherhood of Boilermakers, Iron
Ship Builders, Blacksmiths, Forgers & Helpers
AFL-CIO, MOST Administrator

Laurie Shadrick
S&H National Coordinator, United Association of
Plumbers and Pipefitters

EMPLOYER REPRESENTATIVES:

Kristi Barber (telephonic)
President, Glenn C. Barber & Associates

Kevin R. Cannon
Director of Safety and Health Services, Associated
General Contractors of America

Thomas Marrero, Jr.
National Safety Director, Tradesman International

Donald L. Pratt
President and CEO, Construction Education and
Consultation Services of Michigan

Jerry Rivera
National Director of Safety, National Electrical
Contractors Association

STATE REPRESENTATIVES:

Charles Stribling
OSH Federal-State Coordinator, Kentucky Labor Cabinet,
Department of Workplace Standards

COMMITTEE MEMBERS PRESENT: [continued]

Steven D. Hawkins (telephonic)
Administrator, Tennessee Occupational Safety and
Health Administration

PUBLIC REPRESENTATIVES:

Letitia K. Davis (telephonic)
Director, Occupational Health Surveillance Program,
Massachusetts Department of Public Health

Jeremy Bethancourt (telephonic)
Co-Owner and Program Director, Arizona Construction
Training Alliance

FEDERAL REPRESENTATIVES:

Matt Gillen
Deputy Director, Office of Construction Safety
& Health, CDC/NIOSH, Office of the Director

DESIGNATED FEDERAL OFFICIALS:

Ben Bare
Deputy Director, DOL-OSHA Directorate of Construction

Dean McKenzie (Alternative)
Office of Construction Services, Directorate of
Construction

COMMITTEE CONTACTS:

Damon Bonneau, ACCSH Coordinator, Office of
Construction
Services, Directorate of Construction

COMMITTEE COUNSEL:

Sarah Shortall
ACCSH Counsel, Office of the Solicitor, DOL

OSHA, DIRECTORATE OF CONSTRUCTION:

Paul Bolon
Garvin Branch
Ashley Briefel
Chris Brown

OSHA, DIRECTORATE OF CONSTRUCTION: [continued]

Dayton Eckerson
Chuck Harvey
Bruce Justh
Jim Maddux
Kia McAllister
Erin Patterson
Michael Payne
Danezza Quintero
Rebecca Reindel

ALSO PRESENT:

Bob Biersner, Solicitor's Office

Mary Brandenberger, OSHA, Office of Communications

Graham Brent, National Commission for Certification
of Crane Operators

Lance Burney, Sigalarm

Chris Cole, Inside OSHA

Tim Couples, Federal Highway Administration

Todd Cunningham, National Rural Electric Cooperative
Association

Richard De Angelis, OSHA, Office of Communications

Debbie Dickinson, Crane Institute Certification

Nigel Ellis, Ellis Fall Safety Solutions

Richard Ewell, Solicitor's Office

Ben Gott, The Hale Newspaper

Rich Gottwald, International Sign Association

Dan Glucksman, Internat'l Safety Equipment Association

Bill Hering, Matrix SME, representing Association
of Union Constructors

ALSO PRESENT: [continued]

Gwen Foley Hering, Matrix SME

La Tonya James-Rouse, Esq., American Staffing Assoc.

George Kennedy, NUCA

Bryan Lincoln, OSHA, Office of Regulatory Analysis

Lisa London, Division for Enterprise Development,
University of Texas, Arlington

Kate Lynn, OSHA, Office of State Plans

John Masarick, Independent Electric Contractors

Rob Matuga, National Association of Home Builders

Revae Moran, GAO, Government Accountability Office

Lana Nieves, Office of Health Enforcement

Thad Nusell, The Insurance Services Office

Beth O'Quinn, Specialized Carriers and Rigging Assoc.

Bill Parsons, Air Force Chief of Ground Safety

Arthur Sapper, Crane Power Line Safety Organization

Jim Tigon, Aginomics

Stephen Todd, Specialized Carriers and Rigging Assoc.

Jim Tomaseski, Internat'l Brotherhood of Electrical
Workers

Tom Trauger, Winchester Homes

Bruce Watson, Occupational Safety and Health Reporter

Rod Weber, PENTA Building Group

Lauren Williams, Associated Builders and Contractors

Lisa Wilson, Solicitor's Office

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1 P R O C E E D I N G S [10:06 a.m.]

2 OPENING REMARKS/AGENDA OVERVIEW

3 CHAIRMAN STAFFORD: Let's go ahead and get
4 started. We have a full agenda and just three hours to
5 cover it. Welcome to the Construction Advisory
6 Committee.

7 My name is Pete Stafford. I'm Chairman of
8 the Committee, a labor representative. I want to first
9 start out by thanking all of our members for your
10 patience.

11 We are kind of flying by the seat of our
12 pants here in terms of our meetings, with OSHA's
13 limitations in their budget. There is no longer travel
14 support or at least in this year for ACCSH meetings.

15 There are some folks around this table that
16 actually paid their own dime to be at this meeting
17 today and I greatly appreciate that, and for the
18 others, this is why we have abbreviated the agenda.

19 We have several members that couldn't do that
20 and will be participating by phone, but we certainly
21 have a quorum, I think, based on what I hear from the
22 folks on the phone, that we have all members right now

1 in attendance.

2 With that, I'd like to go ahead again and
3 welcome you, and let's start the meeting by
4 introductions, starting on my left.

5 MR. PRATT: Don Pratt. I'm here representing
6 employers.

7 MS. SHORTALL: Sarah Shortall, ACCSH counsel.

8 MR. ERICKSON: Roger Erickson, employee rep.

9 MR. MARRERO: Tom Marrero, Tradesmen,
10 International, employer rep.

11 MR. RIVERA: Jerry Rivera, NECA, employer
12 rep.

13 MR. GILLEN: Matt Gillen, NIOSH, Office of
14 Construction Safety and Health.

15 MR. CANNON: Kevin Cannon, The Associated
16 General Contractors of America, employer rep.

17 MS. COYNE: Sarah Coyne, employee rep.

18 MR. STRIBLING: Good morning. Chuck
19 Stribling, Kentucky Labor Cabinet, representing the
20 state plans.

21 MS. SHADRICK: I'm Laurie Shadrick, ACCSH
22 employee member.

1 MR. BARE: Ben Bare, DOC or Directorate of
2 Construction, I'm the DFO.

3 CHAIRMAN STAFFORD: Designated Federal
4 Official.

5 Those of you on the phone, please go ahead.
6 Why don't we start with you, Jeremy?

7 MR. BETHANCOURT: Jeremy Bethancourt, public
8 representative.

9 MS. DAVIS: Tish Davis. Massachusetts
10 Department of Public Health, public representative.

11 MS. BARBER: Kristi Barber, employee
12 representative.

13 CHAIRMAN STAFFORD: That's it, I think. We
14 have a full quorum. Let's go around the room as well.
15 We are kind of in tight quarters, we will at least
16 know who we are going to be close to for the next three
17 hours. Nigel, why don't we start with you and work our
18 way around?

19 MR. ELLIS: I'm Nigel Ellis, Ellis Fall
20 Safety Solutions, EFSS, based in Wilmington, Delaware.
21 Fall protection is my interest and that's why I'm here.

22 MR. MADDUX: Jim Maddux, OSHA's Directorate

1 of Construction.

2 MS. McALLISTER: Kia McAllister, I work in
3 the Directorate of Construction.

4 MS. DICKINSON: Debbie Dickinson, Executive
5 Director, CIC, Crane Institute Certification. Good
6 morning.

7 MR. SAPPER: Good morning. Art Sapper here
8 for the Crane Power Line Safety Organization.

9 MR. WEBER: Good morning. Rod Weber with the
10 PENTA Building Group, Las Vegas.

11 MR. CUNNINGHAM: Todd Cunningham, National
12 Rural Electric Cooperative Association.

13 MR. BOLON: Paul Bolon, I'm in the
14 Directorate of Construction.

15 MR. JUSTH: Bruce Justh, Directorate of
16 Construction.

17 MR. WATSON: I'm Bruce Watson of Occupational
18 Safety and Health Reporter.

19 MR. BRENT: Good morning. Graham Brent,
20 National Commission for the Certification of Crane
21 Operators, NCCCO.

22 MS. PATTERSON: I'm Erin Patterson,

1 Directorate of Construction.

2 MS. BRIEFEL: Ashley Briefel, Directorate of
3 Construction.

4 MS. O'QUINN: Beth O'Quinn, Specialized
5 Carriers and Rigging Association.

6 MS. WILLIAMS: Lauren Williams, Associated
7 Builders and Contractors.

8 MS. NIEVES: Lana Nieves, Office of Health
9 Enforcement.

10 MR. HERING: Bill Hering, Matrix SME and also
11 representing the Association of Union Constructors.

12 MS. HERING: Gwen Foley Hering, Matrix SME.

13 MS. MORAN: Revae Moran with Government
14 Accountability Office.

15 MR. TRAUGER: Tom Trauger, Winchester Homes.

16 MR. MATUGA: Rob Matuga, National Association
17 of Home Builders.

18 MR. KENNEDY: George Kennedy, NUCA.

19 MR. TIGON: Jim Tigon, Aginomics.

20 MR. GLUCKSMAN: Dan Glucksman, International
21 Safety Equipment Association.

22 MR. NUSELL: Thad Nusell, The Insurance

1 Services Office.

2 MS. WILSON: Lisa Wilson, the Solicitor's
3 Office.

4 MR. TOMASESKI: Jim Tomaseski, International
5 Brotherhood of Electrical Workers.

6 MR. GOTTWALD: Rich Gottwald, The
7 International Sign Association.

8 MS. LYNN: Kate Lynn, OSHA Office of State
9 Plans.

10 MR. LINCOLN: Bryan Lincoln, OSHA Office of
11 Regulatory Analysis.

12 MR. TODD: Stephen Todd, Specialized Carriers
13 and Rigging Association.

14 MR. MASARICK: John Masarick, Independent
15 Electric Contractors.

16 MR. BIERSNER: Bob Biersner, Solicitor's
17 Office.

18 MR. PARSONS: Bill Parsons, Air Force Chief
19 of Ground Safety.

20 MR. GOTT: Ben Gott, The Hale Newspaper.

21 MR. De ANGELIS: Richard De Angelis, OSHA
22 Office of Communications.

1 MR. COLE: Chris Cole, Inside OSHA.

2 MR. COUPLES: Tim Couples, Federal Highway
3 Administration.

4 MS. BRANDENBERGER: Mary Brandenberger, OSHA
5 Office of Communications.

6 MR. HARVEY: I'm Chuck Harvey, Directorate of
7 Construction.

8 MR. BRANCH: Garvin Branch, Directorate of
9 Construction.

10 MR. EWELL: Richard Ewell, Solicitor's
11 Office.

12 MS. QUINTERO: Danezza Quintero, Directorate
13 of Construction.

14 MR. MCKENZIE: Dean McKenzie, Directorate of
15 Construction.

16 MR. PAYNE: Michael Payne, Directorate of
17 Construction.

18 CHAIRMAN STAFFORD: Thank you. That looks
19 like that covers everyone. Again, welcome, and thank
20 you very much for being here.

21 I will remind you now and I will remind you
22 throughout the meeting, for any folks who want to make

1 public comment to the Committee, there is a sign-in
2 sheet in the back. Due to our abbreviated schedule, we
3 are going three hours today and three hours tomorrow,
4 depending on the number of folks signing up, we may
5 have to limit the time for speaking because we want to
6 give everybody an opportunity.

7 I am going to say right now maybe ten minutes
8 or so would be an appropriate amount of time. We just
9 don't have much more than that.

10 With that, Ben, do you have any
11 announcements?

12 MR. BARE: No, I just want to welcome
13 everyone, and particularly Sarah Coyne and Jerry
14 Rivera, to the meeting. We have an action packed
15 agenda to get through. Look forward to working with
16 everyone.

17 CHAIRMAN STAFFORD: I think there are action
18 packed agenda's, that's for sure. I'd like to take
19 this opportunity to acknowledge Bill Hering, while I am
20 thinking about it. Bill is a past member, and it is
21 great to have him here and still working with the
22 Committee. Bill, thank you.

1 Sarah?

2 MS. SHORTALL: I have a couple of
3 announcements. The first is Walter Jones is unable to
4 be with us today and tomorrow. He has assigned his
5 proxy as per OSHA regulations to Pete Stafford.

6 Also, many of the exhibits that are going to
7 be discussed today have already been put into the
8 Docket for this meeting. The Docket number is OSHA-
9 2013-0006. Those items are available on
10 Regulations.gov.

11 CHAIRMAN STAFFORD: Thank you, Sarah. We
12 have on the schedule, David Michaels -- Ben, do you
13 need to do the evacuation procedures?

14 MR. BARE: This is a new room. The
15 evacuation procedures would be to go out to the
16 entrance where you came in and you go down the hallway
17 to the stairways and work your way down and back to the
18 center lobby and exit there. There will be a meeting
19 place out in front of the central lobby area.

20 CHAIRMAN STAFFORD: Thank you.

21 MR. HAWKINS: Mr. Chairman?

22 CHAIRMAN STAFFORD: Yes, Steve?

1 MR. HAWKINS: This is Steve Hawkins. I
2 recorded my name, I didn't know if it got announced
3 that I was in attendance or not.

4 CHAIRMAN STAFFORD: No, why don't you go
5 ahead and introduce yourself, Steve?

6 MR. HAWKINS: My name is Steve Hawkins. I'm
7 the Administrator of the Tennessee OSHA Program, and
8 I'm a public safety agency representative to ACCSH.

9 CHAIRMAN STAFFORD: Thank you. I guess I
10 need to take this opportunity, too, for all ACCSH
11 members, remember to say your name if you have a
12 comment or question, and particularly, I think, it's
13 important for you folks on the telephone if you have
14 any comments, to please state your name prior to
15 proceeding.

16 With that, let's go ahead. Dr. Michaels was
17 our first presenter. I just heard from Debbie that
18 he's running just a few minutes late. Like I said, we
19 have a lot to talk about over the next couple of days.
20 I don't want to linger too long.

21 Perhaps, Jim, we can get started with you,
22 and we will kick you out when David gets here, and then

1 have you come back on.

2 MR. MADDUX: Sounds good.

3 MR. BETHANCOURT: This is Jeremy. I think we
4 are experiencing difficulties with the image. Were
5 they going to continue to try to work on that or should
6 we just kind of forget about that for this morning?

7 CHAIRMAN STAFFORD: I think they are working
8 on that as we speak, Jeremy, so hopefully, you will be
9 on-line soon.

10 MR. BETHANCOURT: Okay. We will just keep
11 watching them. Thank you, Pete.

12 CHAIRMAN STAFFORD: Thanks. It's my
13 pleasure, and typically at all our ACCSH meetings, we
14 start out by hearing from the Assistant Secretary for
15 OSHA, Dr. Michaels. We are here to advise him and OSHA
16 on policies and regulations for this Agency, and it has
17 been great to work with David.

18 David, welcome.

19 ASSISTANT SECRETARY'S AGENCY UPDATE AND REMARKS

20 DR. MICHAELS: Thank you so much. My
21 apologies for being late. It's great to see all of
22 you. You have already introduced yourselves, I assume.

1 I want to welcome the new members and welcome again
2 the continuing members. This has been a very
3 productive committee. We have certainly benefited
4 greatly from your advice, and we look forward to that
5 continuing.

6 I am also grateful to see such a large
7 audience here. I think it reflects the important work
8 this Committee does and the good work that OSHA is
9 doing, that we have generated such public interest. We
10 are very pleased to see all of you here.

11 Certainly, construction safety is an area
12 that we take very seriously and we value your advice.
13 Construction fatalities continue to be at levels we
14 think are absolutely unacceptable. We need to address
15 them and look at new ways to reduce fatalities,
16 injuries and illnesses in the construction industry.

17 We have an Acting Secretary, as you know,
18 Seth Harris. He's been with this Administration since
19 the very beginning. He also served --

20 CHAIRMAN STAFFORD: Steve? Can we ask people
21 on the phone to put their phone on mute? Thanks.

22 SPEAKER: It's difficult to hear Dr.

1 Michaels.

2 DR. MICHAELS: I'm sorry. Secretary Harris
3 has a long history of supporting workplace safety and
4 health. We continue to work with him very closely and
5 we are looking forward to having a new Secretary of
6 Labor, Tom Perez, hopefully in the not too distant
7 future.

8 I also know he has a deep long-standing
9 commitment to worker safety and health. As the Labor
10 Commissioner of Maryland, he showed us that. We don't
11 expect major changes in what we do when he comes.

12 I know you are going to cover many issues
13 today. You are getting very important updates.

14 There are just really two areas I want to
15 talk about, to give you updates on what we are doing,
16 and I'll be available for questions afterwards to cover
17 other things as well.

18 The two areas I'd like to talk about, one is
19 protecting temporary workers, and the other is
20 strengthening protections. Every time I come to this
21 meeting I talk about some different issues and try to
22 fill you in on what we are doing and get your thoughts

1 on it, and say this is a new area that OSHA is going
2 in.

3 There are two areas. Temporary workers is
4 one that we have been working on for a while. It's
5 very, very important because of the changing nature of
6 the workforce. In recent months, we have seen many
7 reports of temporary workers suffering serious
8 injuries, sometimes fatal injuries, in some cases, on
9 their first day of the job.

10 You can find this yourself if you Google
11 "first day on the job fatality," you will see cases out
12 there. They are shocking.

13 One of our most recent high profile
14 enforcement cases involved the Bacardi Bottling Company
15 in Jacksonville, Florida, following the death of a 21-
16 year-old temporary worker, Lawrence "Day" Davis, he was
17 known as "Day." He was crushed to death his first day
18 on the job.

19 He was told to clean up the glass under a
20 palletizer. I have some pictures. There are big signs
21 on that palletizer saying "Danger - Do Not Enter."

22 No one told him about lock or tag out. He

1 was sent by a temporary agency. It was his first day
2 on the job. His supervisor said go in there with a
3 broom and clean out that glass. What is he going to
4 do? The sign says don't go in there. If it was your
5 first day on the job and you had no background in this
6 thing, you would assume you were doing a safe job -- he
7 went in there, someone turned the machine on. His
8 first day on the job was his last day on earth.

9 Our investigation found that he and his co-
10 workers were never trained on lock and tag out
11 procedures, and that training could have saved his
12 life.

13 Many of the workers who are killed in their
14 first days on the job are doing construction work.
15 Workers like 21-year-old Adrian Semoran in New York.
16 He fell 40 feet from a scaffold working on the
17 restoration of an 11 story building in New York. It
18 was his first day on the job. He wasn't given a safety
19 harness or any necessary safety training. He left
20 behind a wife and two young daughters.

21 Last August, Mark Rainey, a 60-year-old
22 temporary worker at Ohio Roofing Company was working in

1 the hot summer sun on the roof. He was throwing
2 roofing materials down into a dump truck. He started
3 to become lethargic and confused, he lost consciousness
4 and he died of heat stroke. He also left behind two
5 daughters and three grandchildren, a large extended
6 family.

7 The Bureau of Labor Statistics tells us 31
8 percent of all heat related fatalities in 2011 were in
9 construction. BLS has also given us some important
10 information about temporary and contract workers in
11 construction and their risk of fatality. They have
12 just done a very important report. It is their first
13 work on what they call "contract workers."

14 This includes temporary workers, workers who
15 have various different contractual relationships with
16 an employer, but not the normal employer/employee
17 relationship. They are there on contract for whatever
18 reason.

19 BLS tells us that fatal work injuries
20 involving contractors accounted for 542 of the 4,693
21 reported deaths from work injuries. That is about 12
22 percent.

1 We see anecdotally in the cases that come to
2 us significant numbers of workers who are contract
3 workers, temporary contingent workers, killed on their
4 first days on the job, the first day, the second day,
5 the first week. This, by the way, has been true for
6 100 years, and the studies done 100 years ago show new
7 workers are at greater risk of injury and greater risk
8 of fatality.

9 I think what's interesting about what's going
10 on in the workplace today is there is a great deal more
11 use of non-traditional contracting relationships using
12 staffing agencies than we saw 20 or 30 years ago.

13 When we look at situations, we think about
14 what's the employer's thinking in this case? An
15 employer calls for a small number of workers to fill a
16 job temporarily, maybe for a day, maybe for a week,
17 maybe for a month, maybe for six months. In some
18 cases, we see temporary workers working for a year.

19 Some of those workers eventually may be
20 hired, but many of them always stay in this temporary
21 status.

22 In any case, think that you're the employer

1 and normally you train your employees to do the job
2 safely, and we believe every employer should do this.
3 I'm looking at people here, some of the trade
4 associations, who I know tell their members they have
5 to train people to do the job safely.

6 You bring in a temporary worker who is just
7 going to be there for a relatively short period of
8 time, are you going to put the resources in to train
9 them to do that job safely? OSHA's answer is yes, you
10 better do that, because if you don't do that, you're
11 exposing them to unnecessary risk and you're breaking
12 the law.

13 We have started an initiative that tells our
14 COSHOs to look at temporary workers and to look at
15 training that is provided to those workers, and if the
16 training was a required training, were they given that
17 training. When we are going out to work sites in
18 construction and manufacturing, we plan on doing that.

19 The report from BLS on contract workers also
20 noted that Hispanic and Latino contract workers
21 accounted for 28 percent of the total fatal injuries
22 among contractors compared to 16 percent, which is

1 their representation in overall fatal injuries.
2 Hispanic and Latino workers are over represented in
3 this group of contract workers who are being killed on
4 the job.

5 As I said, we have a new initiative that
6 we're working on that will focus on temporary workers
7 that tells our COSHOs -- we have already sent this memo
8 out -- underscoring the importance of assessing whether
9 employers who use temporary workers are complying with
10 their responsibility under the law, because temporary
11 workers have all the same protections as every other
12 worker, and we have to make sure that is well
13 understood.

14 We are going to code on our records when
15 temporary workers are exposed to safety and health
16 violations so we can begin to track this, and we are
17 asking our inspectors to assess whether these temporary
18 workers receive training and receive that training in a
19 language and vocabulary that they understand. We know
20 non-English speakers are also over represented among
21 the temporary workers.

22 In addition, OSHA is working with the

1 American Staffing Association. We are putting together
2 a webinar for their members that highlights employee
3 rights and employer responsibilities. The American
4 Staffing Association shares our concern. This webinar
5 is going to include important information about the
6 hazards, addressing them, and also best practices for
7 staffing agencies and their client employers.

8 We expect everybody to come together and step
9 up to the plate on this. This is a very important
10 issue.

11 We would be interested in your thoughts in
12 thinking about how this particularly applies to
13 construction and ways we can move this forward and save
14 some lives.

15 Another important area I'd like to discuss
16 with you is the ongoing work we have strengthening our
17 whistleblower protection activities. Acting Secretary
18 of Labor Harris recently testified before the House
19 Appropriations Committee on our budget, on the fiscal
20 year 2014 budget, and that request includes a \$5.9
21 million increase for our whistleblower program.

22 That actually includes a 40 percent increase

1 in our field investigators, which is a huge increase
2 and we appreciate the White House's support on that.
3 It is really significant in this day and age to get a
4 40 percent increase in any component of the budget, but
5 we were certainly asking for that.

6 Secretary Harris told Congress our program
7 has tremendous value, and while we face resource
8 challenges, we are ready and willing to move forward
9 with whatever resources are provided. We are pushing
10 very hard right now, and we have to.

11 Since 2005, the total number of whistleblower
12 complaints that OSHA has received increased from about
13 1,900 to about 2,800 per year. It's up about 40
14 percent.

15 During that time frame, and this is not well
16 known to many people in the field, OSHA's whistleblower
17 responsibilities increased. We now cover 22 different
18 statutes, we have gotten ten new statutes since 2005.

19 We are the whistleblower investigators not
20 just for the OSHA law and the 11(c) component to the
21 OSHA law, which says very clearly that workers can't be
22 or shouldn't be retaliated against for raising safety

1 and health concerns with their employer or with OSHA or
2 other agencies as well.

3 In addition, we are the investigator for a
4 wide range of different laws. One recent one is the
5 Food Safety Modernization Act. If a worker in a food
6 factory sees activity going on that threatens the
7 safety of the food for the American public, if he or
8 she raises that concern with the employer or with the
9 USDA or actually with the Food and Drug Administration,
10 that worker is protected, and shouldn't be retaliated
11 against, or it becomes an OSHA issue and OSHA
12 investigates.

13 Sarbanes-Oxley is one of our laws. If an
14 accountant, in some cases, if a CEO of a publicly
15 traded corporation sees financial fraud, securities
16 fraud, and raises a concern with the Board of
17 Directors, with the SEC, and they are retaliated
18 against -- we have cases involving CEOs actually
19 raising this -- OSHA investigates.

20 We cover a wide range of laws that are
21 written to protect the health and safety not just of
22 American workers but the health, safety and well being

1 of the entire country.

2 The laws that we investigate include the
3 Clean Water Act, the Clean Air Act, the Pipeline Safety
4 Act, Dodd-Frank and Sarbanes-Oxley for securities and
5 financial fraud, Food Safety Modernization, several of
6 the transportation laws that are designed to ensure
7 that our modes of transportation are safe, we cover
8 what we call AIR21, which covers aviation, the Federal
9 Railway Safety Act, the Surface Transportation Act, and
10 in all of these areas, we are getting more and more
11 complaints, so our resources are being stretched
12 thinner and thinner, but we are doing, I think, a
13 better job in addressing this.

14 Sixty-one of our complaints were 11(c).
15 Straight ahead OSHA complaints, but 39 percent are
16 these other laws. The largest group after 11(c) are
17 complaints under the Federal Railroad Safety Act, we
18 have 353 complaints right now. It's a new law.

19 It says very clearly that railroad workers
20 have the right to raise concerns, but also in this law
21 it says very clearly that railroad workers must be
22 protected when they report injuries to their employer.

1 The reason for that is injury reporting is an
2 important part of safety and health.

3 If injuries are not reported, then they can't
4 be investigated, and if we can't investigate injuries,
5 we can't keep track of them, we can't investigate even
6 the near misses, but if we can't investigate injuries,
7 then future injuries won't be prevented.

8 There was a great deal of testimony before
9 Congress by railroad workers saying that the railroad
10 industry discourages injury reporting, and that is a
11 safety and health issue.

12 This law is very clear about that. OSHA has
13 issued dozens of findings, some of them well above
14 \$100,000 each, because this law allows us to add
15 punitive damages as well to railroads, who we have
16 found have retaliated against workers for reporting
17 injuries.

18 We have one case where a worker who had a 35-
19 year perfect record, never being injured at work,
20 blacked out, hit their head, and then was retaliated
21 against after reporting that injury. We thought that
22 was absolutely illegal. We issued a finding.

1 Our message has clearly been heard by the
2 railroad industry and we are very gratified that BNSF,
3 one of the largest carriers, has signed a voluntary
4 agreement with OSHA eliminating the points policy.
5 They used to give points to workers who were injured,
6 no matter what the cause, no matter how they were
7 injured. Those points were held against them.

8 BNSF has seen the light. They have signed a
9 very good accord with us that we think is a model for
10 other railroad companies and also other industries to
11 look at saying this is how we are going to treat
12 injuries in the future.

13 We have settled a large number of cases with
14 them. We are very pleased with that development, and
15 we look forward to working in that direction with other
16 employers, in other industries as well.

17 To help us do a better job, we have
18 established a whistleblower protection advisory
19 committee, which is a sister committee to you. It
20 gives us advice on how to improve our whistleblower
21 activities and how to make a bigger difference out
22 there in the world because we cover so many different

1 industries with so many different activities.

2 We have asked the committee in particular to
3 focus on a couple of areas. One of those is actually
4 thinking about the culture of workplaces and how
5 employers might recognize workers who raise concerns
6 actually as individuals who can help rather than ones
7 who are in the way who need to be essentially
8 retaliated against.

9 We think there are a lot of employers who
10 have very good practices, who understand this issue
11 well, who have set up systems to encourage people to
12 raise concerns rather than to retaliate against them.

13 We would like to look at that issue with that
14 committee and we are hoping this Committee as well can
15 give us some advice on that area, who has good
16 programs, how do they work, what can we learn from
17 them.

18 We have also elevated the whistleblower
19 program, whistleblower protection program, to its own
20 directorate run by a member of the Senior Executive
21 Service, who has extensive experience, not just in the
22 area of labor and employment, but specifically on

1 whistleblower issues.

2 We have also for the first time given this
3 directorate its own budget so we know exactly how much
4 money is being spent and how we can make sure the money
5 is being spent right.

6 Unfortunately, this is the period of
7 sequestration, and that will be a challenge not just to
8 our whistleblower program but to all our programs. It
9 had made a very big difference in our work. We have
10 made the decision, as many of you know, not to furlough
11 workers, OSHA staff, and as a result of that, we have
12 cut back in many areas.

13 In whistleblower, in construction, all of our
14 areas, we are trying to do our best with less. We will
15 continue to do that.

16 Those are the two areas I just wanted to
17 raise with you but I'm happy to talk about other areas
18 as well, and I'm very glad you are here, and want to
19 thank you again for the good work you do.

20 CHAIRMAN STAFFORD: Thank you very much, Dr.
21 Michaels. Any questions or comments for Dr. Michaels?

22 Yes, Tom?

1 MR. MARRERO: How are you doing, Dr.
2 Michaels? Tom Marrero with Tradesmen International, an
3 employer rep.

4 Are there any plans on creating a subgroup
5 for the protection of temporary workers? I know you
6 guys are working with the ASA and so forth. What is
7 OSHA envisioning with all of this?

8 DR. MICHAELS: It's a new initiative. We are
9 working -- what we tend to do with all our initiatives,
10 we think about compliance assistance and getting
11 education out to employers and workers, and we think
12 about enforcement, is enforcement a relevant path in
13 this case. I think we see both of them are. We
14 believe getting the right information out with ASA will
15 help us a great deal.

16 On the other hand, we are seeing situations
17 which are intolerable, and we certainly will enforce in
18 those situations.

19 We have an informal work group within OSHA.
20 We haven't set up a work group within any of the
21 advisory committees, but we would certainly be eager
22 for you to address it in any way you like, and if you

1 can help us with that. It clearly is an important
2 issue and we certainly could use some help.

3 CHAIRMAN STAFFORD: We can talk about that,
4 maybe setting up a work group. Any other questions or
5 comments? Anyone on the phone?

6 MS. DAVIS: Yes. Pete, this is Tish Davis.
7 Hi, David, thank you for the presentation. I just want
8 to weigh in on a couple of issues with respect to
9 temporary workers that we have been trying to address
10 here in Massachusetts.

11 As you know, we have new legislation
12 providing temporary workers with rights to have
13 additional information about their employers and
14 employment status and health and safety issues.

15 One of the things that is really clear to me
16 is we need better clarification on who is responsible
17 for training. Is it the temporary agency or is it the
18 host employer, or what aspects of training should be
19 assigned to those two parties. I think more
20 clarification on that is important.

21 We have guidance that says a temporary agency
22 has to provide general health and safety information

1 and the host employer needs to obviously provide the
2 site-specific training.

3 I just want to put that out there. The other
4 thing is we are also interested in the issues -- as you
5 know, we do surveillance of work related illnesses and
6 injuries, and ways in which we can better document the
7 hazards faced by temporary workers.

8 One of the recommendations that came out of a
9 recent meeting is that there be an additional item on
10 the OSHA logs that identifies workers as temporary
11 workers. I know that involves a recordkeeping change,
12 but again, I just wanted to put that out there, and
13 developing new approaches to how we can really document
14 these issues better than currently is important.

15 DR. MICHAELS: Thank you, Tish. I think many
16 of you know that Massachusetts is the first state to
17 pass legislation on this, and we are watching very
18 carefully and hope to see what the impact is of that
19 legislation.

20 You raised some very interesting points and
21 we would love it if this Committee wants to think about
22 those issues and give us advice.

1 CHAIRMAN STAFFORD: We appreciate it. I
2 think we should as a Committee take a look at this
3 issue. I have a question for you, David, given the
4 budget constraints, I know you have two national
5 campaigns going on now, on heat, and of course,
6 construction on falls.

7 We have a training and outreach committee
8 that we are thinking about talking about maybe things
9 we would do in the future, either extending a campaign
10 or adding a new one for construction. Is that
11 something, given the budget situation at this point, to
12 consider?

13 DR. MICHAELS: These campaigns take as much
14 money as you can put into them. We have obviously cut
15 back the money that we put into everything we do, but
16 we are very grateful that these campaigns, in
17 particular, falls, has the support and activity of a
18 wide range of stakeholders I see in this room, the home
19 builders, laborer's union, NIOSH, they have all helped
20 us with that campaign.

21 We are beyond a lot of the initial expenses
22 of materials, that you all helped with. I see Matt

1 here from NIOSH. NIOSH played a big role. Everybody
2 has really been on board for these campaigns.

3 We are going to continue them. Starting new
4 campaigns, I think right now it is not something we are
5 about to do. We have two we need to do. We will
6 continue to do them. They are important.

7 CHAIRMAN STAFFORD: One last thing, I would
8 like to thank you. At the last meeting, our Committee
9 recommended to OSHA that OSHA go back and do an
10 evaluation of the OSHA outreach training program, you
11 know, 80 percent of the students that go through that
12 program are for the construction industry.

13 In my understanding talking to DOE staff and
14 your office, you are looking into that, maybe finding
15 some way that we could bring someone in to help us,
16 again work with our training and outreach committee to
17 do that kind of assessment.

18 I think it is very important to our industry
19 and everyone around this table certainly, and we thank
20 you very much for taking a look at that for us.

21 DR. MICHAELS: Good.

22 CHAIRMAN STAFFORD: Any other questions or

1 comments?

2 MR. HAWKINS: Mr. Chairman?

3 CHAIRMAN STAFFORD: Steve, please.

4 MR. HAWKINS: I would like to just comment on
5 Dr. Michaels' comments on both the things you talked
6 about, and that is temporary workers and discrimination
7 protection. What we see frequently in our state is a
8 temporary worker will complain about a safety or health
9 issue, and the host employer frequently feels like all
10 they have to do is tell the temporary agency please
11 don't send Pete Stafford back out to my site tomorrow,
12 and they don't.

13 We clearly communicate to that host employer
14 as well as the temporary service that, you know, we're
15 going to investigate this allegation and one of you
16 could be held liable for this act.

17 It is interesting that Dr. Michaels brings up
18 both of those things. I think one of the true problems
19 we have with temporary workers is they don't feel like
20 they have any safety and health rights in the
21 workplace.

22 They feel very vulnerable and frequently when

1 they do raise an issue, sure enough, they are asked not
2 to come back the next day. Often times, those are
3 folks right on the margin, you know, just barely making
4 ends meet, and a few days of missed pay is a major
5 problem to them.

6 I would just like to point out those two
7 things intersect frequently.

8 DR. MICHAELS: Steve, you are absolutely
9 right. We see that as well. That does raise
10 interesting issues about the role of not just the
11 proximate employer but the staffing association. If
12 the staffing association agrees not to send them back,
13 are they then compliant. These are areas we are just
14 beginning to address. We are very interested in
15 looking at them.

16 We would love your thoughts and your advice.

17 Really what we want to do is make sure these workers
18 are protected, and anything we can do to get there will
19 be valuable.

20 CHAIRMAN STAFFORD: Anyone else?

21 [No response.]

22 CHAIRMAN STAFFORD: Dr. Michaels, thank you

1 very much.

2 DR. MICHAELS: Again, my apologies for being
3 late.

4 CHAIRMAN STAFFORD: Thank you so much.

5 MS. SHORTALL: Mr. Chairman? At this time,
6 I'd like to enter two exhibits into the record for this
7 meeting. As Exhibit No. 1, the agenda for today and
8 tomorrow, and as Exhibit No. 2, Walter Jones' proxy
9 designating you to take his vote.

10 CHAIRMAN STAFFORD: Thank you, Sarah. Where
11 is Mr. Maddux? Jim, do you want to give us an update
12 on the Directorate of Construction?

13 Jim Maddux is the Director of DOC. Pleasure
14 to have you here. Jim?

15 DIRECTORATE OF CONSTRUCTION REGULATORY UPDATE

16 MR. MADDUX: Thanks, Pete. Thanks,
17 everybody. Like Ben and Dr. Michaels, I want to start
18 out congratulating Sarah and Jerry for joining the
19 Committee. We also have six members whose memberships
20 have been renewed for two years, Tish Davis, Kevin
21 Cannon, Tom Marrero, Chuck Stribling, Laurie Shadrick,
22 and Pete Stafford, who will continue, as you can tell,

1 as the Chair of the Committee.

2 I just want to thank all of you for all that
3 you do. I know this is a volunteer kind of thing. We
4 pay very poorly for your labor. We will continue to do
5 so. I especially want to thank everybody that is
6 participating by phone. I know this is really a
7 difficult thing to try to participate via the phone.

8 We are trying to do some things to make that
9 a better experience, by limiting the meetings to three
10 hours a day. We are hoping this room will have better
11 acoustics than we had in the other room we were in last
12 time, and things like that.

13 Please let us know whatever we can do to try
14 to make it a positive experience for everybody.

15 I did want to report some regulatory
16 accomplishments. I do want to say we do have a very
17 full agenda, as Ben said. I don't want to go through
18 kind of all the recommendation history that the
19 Committee is making, but I did want to point out that
20 three of the issues that we are discussing at this
21 meeting came from ACCSH recommendations.

22 The issues of proper PPE fit, the issue of

1 the tunneling decompression tables, and an update for
2 the Manual of Uniform Traffic Control Devices, are all
3 recommendations that this Committee made where we are
4 now taking this next step of actually consulting with
5 the Committee on the actual implementation or getting
6 into the rulemaking process on them. It's good to see
7 these issues moving forward.

8 We also have a few regulatory accomplishments
9 since the last time we got together. The standard to
10 include underground in demolition work under the crane
11 standard has been completed and just went into effect a
12 couple of days ago.

13 This eliminates the old crane standard which
14 we had codified as Subpart DD, just to preserve
15 coverage for those industries. Now we can begin taking
16 down some of the old letters of interpretation,
17 eliminating any confusion those old letters may have
18 created.

19 Very shortly, we will publish a final rule
20 implementing the Digger Derrick settlement agreement we
21 made with EEI. That is also approaching completion,
22 probably within the few weeks.

1 One of the issues that this Committee is
2 working on are several more of the elements that will
3 be included in a corrections and amendments standard to
4 the crane standard.

5 One of these, which is very important, we
6 have had several members of the public report to the
7 Committee on this, is the proposal to extend the dates
8 to implement operator certification, along with the
9 interim requirements that we have in place right now,
10 that employers continue to ensure their operators are
11 qualified.

12 We are hoping to use this three-year
13 extension to give us the needed time to reexamine these
14 issues of certification, including certification by
15 type and capacity, and more importantly, the proper way
16 to ensure that crane operators are qualified to do the
17 work they do.

18 We have a team in place, Paul is running
19 that, to take a look at these issues, and we are going
20 to continue to try to make sure we have a good crane
21 standard that ensures employees' safety.

22 While crane issues have been taking up a lot

1 of our time, we are also continuing to work on our
2 confined space standard, and we are making good
3 progress there. I think it will be able to get into
4 clearance pretty soon.

5 I also just wanted to make a brief mention of
6 the fall prevention campaign that Pete raised with Dr.
7 Michaels. The campaign is continuing to be a huge
8 success. Christine Branche at NIOSH and I did a couple
9 of kick-off events already this year.

10 The fall protection web pages are now at over
11 half a million page views, which I think is well beyond
12 any kind of an expectation that we would have had for
13 the campaign. It really has gotten a tremendous amount
14 of traffic, and a lot of people are doing a lot of
15 things to support the campaign.

16 We recently published a new letter safety
17 document that is very interesting. It is formatted
18 specifically for book readers, on your Tablet or
19 Smartphone. This is a very exciting development. It
20 is the first product of this type that OSHA has done.

21 We are going to be working on more of these
22 kinds of mobile applications, I think, in the future,

1 especially in tight budget times where we don't have
2 the publication budget that we have had in past years,
3 trying to get things out in electronic and mobile
4 device friendly formats is a big deal for us.

5 The last thing I would like to do is to
6 embarrass Mr. Bare a little bit. I hate to inform the
7 Committee but you are going to lose your designated
8 Federal official. Mr. Bare has decided to retire.
9 This will probably be his last meeting with the
10 Committee.

11 Of course, I thank him for his many years of
12 service with OSHA, and especially with the Directorate
13 of Construction. He's been a great ally and partner in
14 our work, and I hope that other people will
15 congratulate him on his decision.

16 [Applause.]

17 CHAIRMAN STAFFORD: Yes, Ben.

18 MR. MADDUX: I'll be happy to take any
19 questions that the Committee has.

20 CHAIRMAN STAFFORD: Any questions or comments
21 for Jim? Yes, Kevin?

22 MR. CANNON: The type and capacity issue and

1 the extension of the effective date, three years down
2 the road, I think that will give folks a better
3 understanding of where they are at this point, but I
4 don't think it really solves the true problem as to
5 those who are going to continue to certify their
6 operators through the two organizations that are
7 considered to be not compliant.

8 Is there any further guidance to say to the
9 industry as to how they should proceed in certifying
10 the operators? I understand some folks may be holding
11 back on certifying because they are not sure if their
12 certifications will be valid.

13 MR. MADDUX: I don't think that we really can
14 give them additional advice right now, Kevin. We are
15 looking at a two-stage rulemaking process. The first
16 stage will extend these effective dates by three years,
17 kind of hold the position we are in right now, and then
18 we are going to have to reexamine these issues through
19 a rulemaking to decide what to do for the permanent
20 fix.

21 Unfortunately, we are back into the
22 rulemaking mode. That means that we have an open mind

1 in terms of what to do. We will reexamine these issues
2 thoroughly, go back out for public comment, and try to
3 figure out the right way to deal with the issue.

4 CHAIRMAN STAFFORD: Can you give us an
5 indication of timing for step two, when that process
6 would start, Jim?

7 MR. MADDUX: We are hoping to get the first
8 step going in the next month or so, to extend the
9 dates. We have a team in place that is coming up with
10 options right now in terms of what we would propose.

11 We are going to have to take a look at that,
12 make some regulatory decisions about how to move
13 forward, take a look at whether or not those options
14 have economic impact, all the usual things we would do
15 through rulemaking's.

16 I am really hopeful we can step out smartly
17 and do this in a reasonable time frame, at least
18 reasonable in terms of regulatory programs, regulatory
19 stuff does not move quickly. It's definitely very high
20 on our priority list of things to push on.

21 MR. CANNON: I say that because based on the
22 discussions during this ACCSH meeting, it was brought

1 up that you have some customers/clients that require a
2 particular certifying organization, and it could very
3 well be one of those that would be deemed not complying
4 with the certification requirements, and then you also
5 have some states that may be introducing laws that
6 require a particular certifying organization which may
7 be one of the two.

8 That is why I say I think folks who are in
9 those positions need to have a better understanding how
10 they should go about it, instead of just sitting on the
11 side lines until it is figured out.

12 MR. MADDUX: I think certifications in
13 general seem to be an increasing part of how employers
14 make sure that their workers have a certain skill level
15 to do all sorts of things in the world. The crane
16 operator certifications are just one example of that.

17 I think as people are continuing to get their
18 operators certified, the popularity of these programs
19 is continuing to increase. I am hopeful that people
20 will continue to do everything they can to make sure
21 these crane operators are qualified to do the very
22 sensitive work they do.

1 Especially with these larger cranes and with
2 cranes that are operating in urban areas, when
3 something goes wrong, it can be a real problem in terms
4 of worker safety and public safety and lots of things.

5 CHAIRMAN STAFFORD: This may be a part of
6 Paul's presentation, but I'm assuming you're looking to
7 ACCSH for some kind of recommendation with respect to
8 step one and if we are going to recommend the three or
9 delay in implementation.

10 I participated in the stakeholder meeting
11 myself and we have quite an issue here going on. I
12 think it is the right thing to do. Clearly, we have to
13 understand as an industry what we are doing with
14 respect to this standard. It is incredibly important.

15 Just observing the stakeholder meeting and seeing
16 where we are at, you could almost see the two sides of
17 what's going on here.

18 I think CETA intended one thing and it didn't
19 necessarily come out at the end of the pipe. I think
20 it's the right thing to do to extend this step one
21 while it's getting sorted out. I would make that
22 recommendation when the time comes, Jim.

1 MR. MADDUX: Paul will be presenting today to
2 the Committee on this extension of the dates, and we
3 would appreciate a recommendation and consideration of
4 that by the Committee.

5 When we have figured out how we think the
6 right way to move forward is with a proposal to deal
7 with the larger issue, we will be coming back to the
8 Committee to ask you to consider our ideas on that and
9 give your advice about how best to move forward.

10 The Committee will continue to be involved
11 with this as we work our way through the solution.

12 CHAIRMAN STAFFORD: Any other questions or
13 comments? Jerry?

14 MR. RIVERA: Jerry Rivera with NECA, employer
15 rep. I just have a question. I was looking at the
16 Notice and it says that OSHA is considering the
17 rulemaking process. Are you confirming that it will go
18 through the rulemaking process to address
19 certification/qualifications?

20 MR. MADDUX: Yes, I think that what we clearly
21 know is the problems that we have are inherent in the
22 language of the crane standard. The only way to make

1 any change here is through some sort of a change in the
2 regulatory language.

3 I guess it's possible that we could go into
4 all of this and there would be such a strong comment
5 saying no, where you are at is exactly the right place
6 to be, that you should just maintain that and keep
7 doing that.

8 With what we have learned in the stakeholder
9 meetings and through all our other interactions with
10 stakeholders on this issue, I think that's pretty
11 unlikely.

12 MR. RIVERA: Do you have a time line on the
13 Notice of Proposed Rulemaking?

14 MR. MADDUX: No, we don't. I wouldn't say we
15 are early in it because of course, we have learned a
16 lot about this issue as we were going through the
17 previous rulemaking, so we have a pretty good knowledge
18 base here. We have to take a look at what it will take
19 to get all of our materials together so we can move
20 forward with a proposed rule.

21 As we all know, there are a lot of
22 requirements in the rulemaking process, and we need to

1 first of all kind of come up with the policy approach
2 that we think is right and then we need to make sure
3 that we do all the right things through the rulemaking
4 process.

5 MR. RIVERA: Thank you.

6 CHAIRMAN STAFFORD: Any other questions or
7 comments? Anyone on the phone?

8 MR. ERICKSON: Jim, Roger Erickson, MOST
9 Programs. You had mentioned in your opening remarks
10 confined space. Could you bring us up to date on that
11 item?

12 MR. MADDUX: We have been working for a
13 couple of months now kind of trying to close up a
14 couple of sections of the preamble. I think over the
15 last couple of weeks, we made some really, really good
16 strides in doing that. We have now agreement on kind
17 of the last chapter we were trying to work out with our
18 attorneys.

19 We are making the final touches to the
20 economic analysis. I think we can get that moving into
21 the clearance process certainly by the middle of July
22 or something like that.

1 Once we get into the clearance process, going
2 through the Department of Labor processes we have in
3 place, and then going through the OMB process, it's
4 hard to predict those time lines.

5 I think we are approaching at least getting
6 to a point with our work where we are ready to start
7 that clearance.

8 MR. ERICKSON: Thank you.

9 CHAIRMAN STAFFORD: Anyone else? Anybody on
10 the phone have any questions or comments?

11 [No response.]

12 CHAIRMAN STAFFORD: All right, Jim. You are
13 off the hook.

14 MR. MADDUX: Thank you very much.

15 CHAIRMAN STAFFORD: Thanks for being here. I
16 guess, Paul, we will start with you.

17 MR. BONNEAU: Mr. Chairman, we have some
18 additional chairs that we could bring in, if we could
19 take a short pause.

20 CHAIRMAN STAFFORD: Sounds good. How about a
21 five-minute break? A five-minute break.

22 [Recess.]

1 CHAIRMAN STAFFORD: We can reconvene. For
2 your folks on the phone, I think some of you can see us
3 and some of you cannot. OSHA staff has asked me to
4 tell you if you can't see us, try to log back on, and I
5 believe that will fix the issue.

6 We are going to spend the majority of the
7 remainder of our time talking about SIP IV. I guess we
8 are going to start with our favorite issue of crane
9 amendments. Paul?

10 CRANE AMENDMENTS - NRTL - APPROVED EQUIPMENT

11 MR. BOLON: Right, we are going to do two
12 crane issues and then get into SIP. SIP is Standards
13 Improvement Project.

14 There are two issues about cranes we wanted
15 to bring before the Committee today. The first one is
16 an amendment to the crane standard, and the second one
17 is the one that Jim Maddux already talked about, which
18 is to extend the compliance date for the operator
19 certification in that part of the crane standard.

20 At the last ACCSH meeting, we presented a
21 list of crane amendments, six or eight things,
22 including new definitions, corrections, a fix on using

1 forklifts to lift and move things.

2 The first item that we are dealing with,
3 which is the NRTL approved equipment, will be part of
4 that proposal, will be part of the crane amendments,
5 and I will go through this issue here.

6 In your written materials, it is at the end
7 of Exhibit 3. I think there are also some copies on
8 the back table.

9 Several provisions in the final crane
10 standard permits use of NRTL approved equipment, that
11 is proximity alarms and insulating links, as one of
12 several options for additional safety on power lines,
13 and NRTL is an acronym that stands for "nationally
14 recognized testing laboratory."

15 In one provision, insulating links are a
16 requirement when working very close to power lines,
17 whereas in the other instances, the proximity alarms
18 and links are options, one of several options.

19 When it issued the standard, OSHA was aware
20 that there weren't any proximity alarms or insulating
21 links that had been listed, labeled or accepted by a
22 nationally recognized testing laboratory, but they

1 included as options under several provisions of power
2 line work, and as I mentioned, it was a requirement,
3 and this was in the expectation that the devices would
4 soon become available.

5 Including them as options under some of the
6 provisions, we didn't see it as a hindrance because
7 employers could always choose from other available
8 options, and when the equipment became NRTL approved,
9 that would also be another option they could use.

10 Because both for proximity alarms and
11 insulating links there are still options under several
12 sections, we are not proposing to modify the substance
13 of those. For one section, which is 1410, the
14 insulating links must be used within the permitted
15 minimum clearance distances, and it requires employers
16 to use a number of precautions concurrently including
17 an insulating link to protect workers.

18 To take into account the fact there were no
19 NRTL listed labeled or accepted insulating links at the
20 time the rule was issued, we temporarily required non-
21 NRTL devices to be used, but also required that
22 employees who may come into contact with the equipment,

1 the load or the load line, to be insulated or guarded
2 from the equipment by other means.

3 As I said, OSHA anticipated that NRTL devices
4 would become available soon after the rule was issued.

5 So far, no insulating links have been NRTL labeled or
6 accepted, nor does it appear they will be in the near
7 future.

8 To accommodate the absence of compliant
9 devices, we are proposing to revise the standard to
10 permit employers either to use an NRTL listed or
11 labeled or accepted device, which is an option they can
12 use when they become available, when they become NRTL
13 approved, or two, they can use an insulating link that
14 is not NRTL listed, labeled or accepted in conjunction
15 with another means of insulating or guarding workers
16 from the equipment, the load or load line.

17 Basically, our final standard has a
18 requirement for employers that because the equipment is
19 not available, it is infeasible, and in our effort to
20 fix it and also to get us off trying to anticipate
21 certain dates -- we had very specific dates in the
22 final rule -- NRTL can be used if and when the

1 equipment becomes approved.

2 Any questions from the Committee?

3 CHAIRMAN STAFFORD: Questions or comments?

4 MR. CANNON: I have a question. Does it make
5 sense? Do you know a time line for these devices to be
6 available?

7 MR. BOLON: I know there are a number of
8 issues of getting NRTL approval for this equipment.
9 One of them was, for instance, just the market size.
10 It's not a huge market. It required some specialized
11 equipment for testing.

12 We have an office that is involved in the
13 NRTL auditing, the laboratories and so forth. I know
14 they are working on some alternative means of NRTL
15 improvement that can better handle situations like
16 this. I think they are thinking it will take a year or
17 two to get those in place.

18 MR. CANNON: There are alternatives to
19 nationally recognized testing laboratory listed,
20 labeled or accepted devices that would be considered?

21 MR. BOLON: We are going to consider them.
22 There are some alternatives. One, I believe, is called

1 "qualified laboratories." There are some alternatives
2 that we will consider as alternatives as we go ahead.

3 MR. CANNON: In turn, would that change the
4 language that would be in the standard?

5 MR. BOLON: It could. If there is something
6 that we think is adequately safe or is a substitute,
7 then that's an alternative we could end up doing.

8 CHAIRMAN STAFFORD: Any other questions or
9 comments?

10 MR. RIVERA: Jerry Rivera with NECA, employer
11 rep. I'm thinking you mentioned there might be other
12 alternatives. I know the issue came up a while back
13 about manufacturer self declaration. I don't remember
14 what the ultimate outcome was.

15 I know the industry or least the nationally
16 recognized testing laboratories saw the value in going
17 through that process. I don't know what the ultimate
18 outcome was, but consider that when you move forward.

19 It is intriguing, and this is just a comment,
20 how can we require a nationally recognized testing
21 laboratory to perform this or have that requirement
22 without that technology being available. It is kind of

1 the carrot and the horse type of deal.

2 MR. BOLON: I think the technology is
3 available. I think it is really just a question of the
4 size and market and any NRTL having the right
5 equipment. It requires a combination because you have
6 the electrical aspect to it and the tension aspect
7 because it's part of a load line. I think that tripped
8 them up, and the size of the market.

9 We are aware of your first point. Europe
10 tends to have manufacturer self-certification. We are
11 also aware of that.

12 CHAIRMAN STAFFORD: Paul, back to Kevin's
13 comments, if there are other alternatives, are you
14 thinking about specifying what those are or just saying
15 "other alternatives" can be utilized?

16 MR. BOLON: I think what we are saying is we
17 are going to investigate them. This is the most
18 straightforward and obvious solution in that a decision
19 was made they should be NRTL approved. We really don't
20 want to keep a standard before employers that is
21 confusing and infeasible.

22 This is proposing a simple and obvious

1 alternative that was already in the original standard,
2 that is using the insulating link plus some other
3 protection.

4 We will be considering all the alternatives
5 that have been mentioned here during the rulemaking.

6 CHAIRMAN STAFFORD: Kevin?

7 MR. CANNON: The public will have an
8 opportunity?

9 MR. BOLON: Absolutely.

10 CHAIRMAN STAFFORD: Anyone else? Anyone on
11 the phone?

12 [No response.]

13 MR. BOLON: By the way, this is Bruce Justh
14 with me. He's working in the Directorate of
15 Construction and worked in the Solicitor's Office for
16 many years.

17 Our next topic is one that Jim Maddux
18 mentioned in his remarks, and you have already
19 discussed a little bit. I don't know if you want to
20 discuss it more. This is the issue of the crane
21 operator certification. This is what we just talked
22 about, the NRTL equipment would be part of the crane

1 amendments. This would be a separate proposal.

2 Because crane operator certification has not
3 played out as we anticipated, that everyone would be
4 reasonably certified by type and capacity by November
5 2014, in order to avoid disruption to the industry and
6 also to initiate a new rulemaking basically on what
7 "qualification" is. We are proposing to extend the
8 dates requiring operator certification by three years.

9
10 The fix is rather simple. It's just
11 extending the dates. The second part, which will
12 really get into what "qualification" should mean is a
13 tougher job, but it's not part of just extending the
14 dates.

15 CHAIRMAN STAFFORD: We were talking about
16 this earlier. It's my view that the industry really
17 doesn't have much of a choice. I think for this
18 Committee, we should probably take the action, make the
19 recommendation that the dates are extended by that
20 three-year period. It's very unfortunate.

21 I don't know when CDAC began, but it was
22 many, many years ago. The agency has been working on

1 this for a very, very long time. To have to do this is
2 in a lot of ways very frustrating for many of us in
3 this room, some more than I, I'm sure. Selfishly, from
4 my perspective, moving forward, we can see this isn't
5 something that's in place and we can move on.

6 This is going to be a sap of resources, and
7 with resources more and more limited as we move
8 forward, the agency is going to be backing up, opening
9 up the rule again and dealing with this issue all over
10 again.

11 I think it's frustrating on many levels.
12 With that said, we are in a mess right here, and I
13 think we need time, the industry needs time, OSHA needs
14 time to figure it out.

15 I would like to entertain a motion from this
16 Committee that we recommend OSHA extend the rule for
17 three years to whatever that would be. What is that?
18 November 10, 2017. I can put that, Ms. Sarah, in the
19 form of a motion or ask someone on the Committee to do
20 so.

21 MS. SHORTALL: I don't know if we have any
22 public comment yet on this particular issue, might want

1 to see if any member of the public signed up to speak
2 on this issue before you finish your deliberations.

3 CHAIRMAN STAFFORD: Okay. I know we have
4 several folks that have signed up. I'm not sure what
5 the issues are. As Sarah has just pointed out, if
6 there is anyone that wanted to comment as part of the
7 public comment period about this issue, the extension,
8 then it would be appropriate to hear from them now.
9 Yes?

10 MS. DICKINSON: My name is Debbie Dickinson.

11

12 CHAIRMAN STAFFORD: Do we have a mike for
13 Debbie?

14 MR. BETHANCOURT: Mr. Chairman, this is
15 Jeremy, if I could ask a question before she or he -- I
16 can't really hear very well -- begins. Perhaps that
17 person could have a seat at the table so we can hear
18 well, by having a microphone.

19 CHAIRMAN STAFFORD: Debbie, come on up here.

20 MR. BETHANCOURT: Thank you, Mr. Chairman.

21

PUBLIC COMMENTS

22 MS. DICKINSON: Thank you for giving me a few

1 minutes to speak today. I'll keep my comments brief
2 because I know we have a tight schedule.

3 This Committee has heard many opinions
4 regarding the OSHA regulation that was issued --

5 MS. SHORTALL: Excuse me. Will you please
6 identify your name, your organization, before you
7 start?

8 MS. DICKINSON: Yes, you didn't hear me over
9 there. I'm Debbie Dickinson, Executive Director of
10 CIC. I've been the Executive Director of CIC, Claim
11 Institute Certification, since 2007.

12 CIC was accredited, nationally accredited, on
13 five levels in 2008 by type and capacity. Our subject
14 matter experts, our governing committee, had our
15 programs and gave the input of accrediting crane
16 operators by type and capacity because employers, as
17 Jim said earlier, were looking for certification as a
18 means to distinguish a difference in the levels of the
19 knowledge, skills and abilities of crane operators, to
20 be able to tell the difference between someone who
21 tested out on 15/18 ton cranes and someone who operated
22 a crane at a much higher capacity and demonstrated

1 knowledge, skills and abilities across those levels.

2 They worked very hard for years leading up to
3 this point, and every one of the programs and the
4 titles that we have issued for two full years before
5 this regulation was published in 2010, we have a
6 certificate of accreditation from NCCA, the National
7 Commission for Certifying Agencies, to back up that
8 credential.

9 A lot of work, a tremendous amount of work
10 and study, time and testing has gone into the over
11 30,000 tests conducted since then.

12 I come from a standpoint of saying this is
13 something that we spent a lot of time studying, and the
14 value of it is that having higher levels of
15 certification or graduated levels of certification by
16 type and capacity does just what the employers who
17 approached us -- and helps this group assembled --
18 asked for, and that is to be able to distinguish
19 knowledge, skills and abilities and to be able to look
20 how do match people up to the jobs and to the machines.

21 Does it replace common sense, good business
22 practices? Of course not. Certification is

1 qualification in terms of who you hire, who you bring
2 to the job site, who you consider putting on which type
3 of machines, it is a credential to know what to do with
4 the crew and with the personnel.

5 Good common sense, good business practices,
6 lift planning with your crew are not going to be
7 replaced or legislated in any way, shape, form or
8 fashion. That is what keeps people safe at work.

9 Next, I've heard some fantastic and rather
10 amazing numbers floated for the cost of certifying by
11 type and capacity. Mike Tillery, a claims supervisor
12 with Southern Nuclear will be quoted in an E&R Magazine
13 article, along with some other individuals, who stated
14 their cost of type and capacity certification.

15 One of the organizations that came to us and
16 has certified for years their operators by type and
17 capacity, their average cost is 300 to \$500 a year per
18 operator, including the cost of training,
19 certification, and the cranes.

20 Not an unreasonable number. From where some
21 of these numbers are coming from with regard to the
22 cranes, with regard to the cost of training, is pretty

1 amazing to me, we don't have that kind of budget. I
2 would sure like to, but we certainly don't. Those are
3 not in our cost factors.

4 Is there anything in the rule that can be
5 improved? I think having a definition and
6 understanding what "qualification" is, it's not an end
7 all, it's not a blanket, it's not this fixes everything
8 and you don't need to do anything else, that's silly,
9 but what businessperson does that. You hope none.

10 At some point, we just cannot legislate
11 common sense. People have got to have good business
12 practices.

13 Additional definition around what
14 "qualification" is, certification as who you start
15 with, what you do, and a basis, that is a norm outside
16 of our industry, across many professional industries.

17 Thank you very much. Those are the comments
18 that I wanted to bring for consideration today.

19 CHAIRMAN STAFFORD: Thank you, Debbie. We
20 have several folks. I think we should hear all the
21 comments. We have several folks that are signed up to
22 comment at the end of the day.

1 We will reserve any official motion or
2 recommendation until tomorrow morning after we have a
3 chance to hear all the comments, and we will move on
4 from this issue. I think that will be the appropriate
5 thing to do.

6 MS. SHORTALL: Mr. Chair, if someone is not
7 addressing the particular issue before the table right
8 now, which is you wanted a motion on the training
9 certification extension deadline, you can defer those
10 and move forward with that. If there are comments
11 pertaining to something else, you can wait until later.
12 If they are not germane to the item before you, you
13 don't have to listen to the comments at this particular
14 moment.

15 CHAIRMAN STAFFORD: I think we should go
16 ahead and push them back and move on. There are four
17 people on the list.

18 MR. SAPPER: Mr. Chairman, can I speak for a
19 moment? It would be extremely inconvenient for my
20 client to speak at the end of the meeting. I had
21 signed up in advance to speak. I thought I would be
22 recognized by the Chair.

1 CHAIRMAN STAFFORD: You certainly will be
2 recognized from the Chair. Typically, as we have said,
3 and it's on the agenda, Mr. Sapper, all the public
4 comments are at the end of the meeting. I wanted to
5 make a motion, that was my mistake, and I was informed
6 by my Solicitor that we couldn't make a motion unless
7 the public had specific things they wanted to speak
8 about with respect to the issue of the three year
9 extension, and that is all.

10 MR. SAPPER: I wanted to speak about the
11 insulating link issue which has been already spoken
12 about on the floor, if I could have --

13 MR. SHORTALL: Mr. Sapper, your comments at
14 this point are out of order. It is at the discretion
15 of the Chair and as time permits, how much time and
16 when the Chair will permit you to speak.

17 CHAIRMAN STAFFORD: We will do it at the end
18 with the sign-in public comments with the other folks.

19 SPEAKER: One question, when you say "the
20 end" --

21 CHAIRMAN STAFFORD: The end of today's
22 meeting. As I said earlier, we will have public

1 comment. Typically, at all ACCSH meetings, anybody
2 that signs up for public comment, we make time at the
3 end of the meeting. We will do that for both today and
4 tomorrow. It is reflected on the agenda.

5 Let's move on. Who is going to be walking us
6 through from the Directorate of Standards and Guidance
7 on SIP?

8 MS. SHORTALL: Mr. Chair, while they get up
9 to the microphone, I'd like to mark as Exhibit No. 3,
10 the amendments to Subpart CC of Cranes and Derricks,
11 and as No. 4, the proposed rule on operator
12 certification.

13 CHAIRMAN STAFFORD: Thanks, Ms. Sarah.

14 I don't know who you are, sorry about that,
15 you will have to introduce yourselves. Please do.

16 SIP IV - REMOVE REQUIREMENTS FOR CHEST X-RAYS IN
17 CERTAIN HEALTH STANDARDS, SUCH AS CADMIUM AND INORGANIC
18 ARSENIC, THAT MAY AFFECT CONSTRUCTION EMPLOYEES AND
19 PERMIT DIGITAL STORAGE OF X-RAYS (NOT JUST FILM)

20 MR. BROWN: My name is Chris Brown. I'm a
21 health scientist in the Directorate of Standards and
22 Guidance.

1 MS. REINDEL: My name is Rebecca Reindel and
2 I'm an industrial hygienist in the Directorate of
3 Standards and Guidance.

4 MR. BROWN: We will be walking you through
5 some information on proposed amendments to screening
6 and diagnostic radiography requirements in OSHA
7 standards, and we will be talking in general about
8 eight OSHA standards that our proposed amendments would
9 affect, but specifically, three that concern the
10 construction industry.

11 All of these are detailed in a table that was
12 made available on the ACCSH website as well as in the
13 back of the room. What we will be discussing is
14 covered in this table as well as in a handout that is
15 back there as well, if you are interested in that.

16 Just to give you some background on this
17 issue, OSHA's standards include a number of medical
18 surveillance requirements that are designed primarily
19 to detect the onset of certain adverse health effects
20 so that appropriate intervention measures can be taken,
21 and each individual OSHA standard has a number of
22 provisions for medical surveillance monitoring and what

1 sort of measures employers are required to take as a
2 result of that.

3 Chest x-ray is one that has traditionally
4 been used in a number of standards to detect lung
5 cancer among other health effects.

6 We are primarily interested, at least for the
7 first part of this presentation, in that lung cancer
8 outcome. OSHA has done a preliminary evaluation of
9 presently available scientific evidence, and we have
10 considered professional opinion, a number of consensus
11 standards, and the opinions of several professional
12 organizations that deal with these types of issues, and
13 have preliminarily come to the conclusion that chest x-
14 rays are fairly ineffective at detecting lung cancer,
15 and are basically exposing workers to what can be
16 considered unnecessary radiation.

17 Unfortunately, at this time, there doesn't
18 seem to be a suitable replacement as a screening tool
19 for lung cancer, so there is not really one that has
20 been widely shown in the scientific evidence to reduce
21 lung cancer morbidity and mortality as a result of
22 using it as a screening tool.

1 Therefore, we are proposing to remove the
2 lung cancer screening requirements using chest x-ray
3 for five standards, and those include two that affect
4 the construction industry, cadmium in construction,
5 inorganic arsenic, and then the other three that are
6 more applicable to general industry are the general
7 industry cadmium standard, coke oven emissions, and the
8 acrylonitrile standard.

9 Speaking about cadmium, with specific regard
10 to the construction standard, that is 1926.1127, the
11 primary health effects of concern in that standard are
12 renal disease and lung cancer.

13 Cadmium exposure has been linked to other
14 health effects, including bronchitis, fibrotic lung
15 changes, emphysema like lung changes, and those are all
16 detected by other screening tools not involving chest
17 x-rays, so things like pulmonary function testing,
18 physical exams as part of medical screening, and other
19 techniques.

20 The cadmium standard for construction affects
21 about 3,750 workers.

22 Moving to inorganic arsenic, the primary

1 health effects of concern there are lung cancer and
2 skin irritation. Again, skin irritation is something
3 that can be detected by signs and symptoms reported by
4 workers during medical exam's, and that standard would
5 affect about 157 workers.

6 What we are proposing to do there is
7 eliminate the chest x-ray screening requirement for
8 lung cancer, and we would be updating the standard as
9 well as any appendices that would need to be updated if
10 the regulatory text were to be changed.

11 Rebecca is going to talk a little bit about
12 making some modifications to other standards that do
13 not involve removing the chest x-ray requirements
14 completely.

15 MS. REINDEL: Good morning. Aside from
16 removing chest x-ray requirements, we are suggesting
17 updates to some existing chest x-ray requirements for
18 standards that use chest x-rays to detect other
19 outcomes other than lung cancer. For instance, such as
20 asbestosis in the asbestos standards.

21 The OSHA standards, we are not proposing to
22 remove chest x-rays from these, just to update the

1 chest x-ray requirement to be clear. OSHA is
2 considering modernizing its standards to align with the
3 current medical practice guidelines.

4 There are updates such as digital radiography
5 for chest x-rays, the ILO in 2011 released a set of
6 reference images for digital radiography, digital chest
7 x-rays, so that the traditional form of chest x-rays
8 can use digital radiography instead, and we would
9 basically be proposing to permit digital radiography
10 use in place of traditional chest x-rays and change
11 some of the regulatory language to show that, and also
12 allow equivalent diagnostic studies just as in the
13 standards we are proposing to remove chest x-rays to
14 allow equivalent diagnostic studies in place of
15 traditional chest x-ray requirements where it is
16 appropriate.

17 The proposal does use the ILO new standard of
18 reference images or would permit them, the ones from
19 2011.

20 The equivalent diagnostic studies that we
21 propose to allow would be things such as CT, low dose
22 CT or high resolution CT. These are not shown to be

1 completely effective at this time and only preliminary
2 findings show these could be possible equivalent
3 diagnostic studies. We are considering using those in
4 this case.

5 This updating would cover three asbestos
6 standards, which would be 1910.1001 and 1926.1101,
7 1915.1001. The 1926.1101 would obviously pertain to
8 construction, so it would affect these three standards.

9 Since the chest x-rays cannot be removed from
10 the standards at this time, some language we are
11 considering using would be proposing modifications to
12 the asbestos standard in construction, and it would be
13 adding words like using "or an equivalent diagnostic
14 study."

15 This would permit equivalent diagnostic
16 studies to be administered at the discretion of the
17 physician, which is some of the language that is
18 already in the standard.

19 OSHA would also, just in the removal of chest
20 x-ray requirements, update the regulatory text in any
21 associated appendices that go along with that.

22 CHAIRMAN STAFFORD: Any questions or

1 comments?

2 [No response.]

3 CHAIRMAN STAFFORD: Matt?

4 MR. GILLEN: Thank you.

5 COMMENTS ON BEHALF OF NIOSH

6 MR. GILLEN: This is an important topic and
7 NIOSH does have some subject matter experts on this
8 issue, and I conferred with them and came up with some
9 bullet points here to share with the group.

10 Not everybody in ACCSH may know that NIOSH is
11 mandated by Federal law to provide radiographic
12 surveillance to underground coal miners and to maintain
13 a certification program documenting physician
14 competency and using the ILO classification system, the
15 B Reader Program is something that NIOSH operates.

16 NIOSH has performed research related to the
17 transition from film to digital radiography, and we
18 have a topic page about digital imaging, and we have
19 guidelines on the topic that OSHA may refer to, NIOSH
20 guidelines called "Application of Digital Radiography
21 for the Detection and Classification of
22 Pneumoconiosis." I can provide the web link for that.

1

2 That provides recommendations in proper image
3 acquisitions, storage and display criteria, and we are
4 also building a repository of identified digitally
5 acquired chest radiographs and computed tomography, CT
6 scans, to be used for research training, quality
7 assurance, publication and other public health
8 purposes.

9 There is evidence showing that film based
10 chest x-rays are not an effective screening tool for
11 lung cancer. Medical surveillance is an important tool
12 for protection of worker health, and baseline testing
13 at pre-placement or at the initiation of a program
14 plays an important role.

15 A question to consider for standards
16 involving lung carcinogens is whether removing the
17 chest x-ray requirement would leave workers in
18 positions without an imaging substitute for baseline
19 testing, and even with known limitations, chest x-rays
20 serve to document the absence of disease, so NIOSH is
21 available for additional discussions with OSHA if you
22 would like to talk about that issue a little bit

1 further as you make your decisions for the proposal.

2 Also, NIOSH is currently evaluating the
3 applicability of the low dose computed tomography,
4 LDCT, as a screening tool for workers exposed to lung
5 carcinogens, but the work is not yet finished, and it
6 will take some time before we can provide a final
7 recommendation.

8 The current available efficacy studies for
9 LDCT are for cancers related to smoking, and societal
10 and professional organizations currently recommend that
11 type of screening only for smokers and former smokers
12 who are age 55 to 74 who smoked 30 pack years or more
13 and either continue to smoke or have quit within the
14 past 15 years.

15 For asbestos, which causes cancer and non-
16 cancer lung disease, the current Standards Improvement
17 Project language will allow the use of equivalent
18 diagnostic studies at the discretion of the
19 occupational physicians. This will allow the use of
20 digital radiography.

21 We wanted to report that NIOSH is not aware
22 of any other currently available equivalent diagnostic

1 studies that have been shown to be an effective
2 screening tool for lung cancer in non-smoking workers
3 potentially exposed to lung carcinogens.

4 We did want to suggest that OSHA might refer
5 to the NIOSH guidelines somewhere, the NIOSH guidelines
6 for digital radiography, in addition to those from the
7 ILO, because there are a few differences in them, and
8 perhaps the appendices.

9 Lastly, NIOSH noted that the SIP language
10 includes deletion of chest x-ray information in the
11 recordkeeping requirements, and given these
12 recordkeeping requirements also reflect tests that have
13 already been given, and some of the requirements
14 explicitly address x-rays with "a demonstrated
15 abnormality in all subsequent x-rays," that is language
16 that is in the coke oven and inorganic arsenic
17 standard.

18 OSHA should word these requirements carefully
19 to assure they apply only to new records. OSHA would
20 not want to inadvertently suggest that existing Legacy
21 records no longer need to be retained.

22 Those are some of the points that NIOSH and

1 its subject matter experts wanted to share with ACCSH.

2 Thanks.

3 CHAIRMAN STAFFORD: Thank you, Matt. Any
4 other questions or comments?

5 [No response.]

6 CHAIRMAN STAFFORD: If I understand you,
7 Matt, is OSHA not talking to NIOSH about this?

8 MR. BROWN: OSHA has every intention of
9 consulting with NIOSH.

10 CHAIRMAN STAFFORD: But hasn't done that yet?

11 MR. BROWN: Not yet. We have been in the
12 preliminary stages of evaluating the evidence, and
13 still plan to discuss this with NIOSH.

14 CHAIRMAN STAFFORD: I would suggest that is a
15 very good idea. I think that is what NIOSH is there
16 for. I don't know the science. We do medical
17 screening programs. I thought CT scans was proven
18 scientifically to be a good early detection screening.

19 MR. BROWN: The benefits of that are still
20 being explored. Some of the studies that exist right
21 now suggest that the benefits aren't seen until many
22 years later, so the tradeoff between radiation exposure

1 and the reduced mortality from lung cancer aren't
2 really showing up until several years down the road.
3 Workers aren't going to see an immediate benefit from
4 that, but some of the studies do suggest that is the
5 case over time.

6 CHAIRMAN STAFFORD: Any other questions or
7 comments? Anyone on the phone?

8 MS. DAVIS: This is Tish. I just want to
9 weigh in that I would like to hear more about the
10 relevance of use of CT scans for even arsenic and
11 cadmium exposure. I would support the recent
12 recommendation there be more conversation about it.

13 CHAIRMAN STAFFORD: Thank you. Anything
14 else?

15 [No response.]

16 MS. REINDEL: Thank you.

17 CHAIRMAN STAFFORD: Thank you very much.

18 MS. SHORTALL: Mr. Chair, maybe Matt, you
19 could get the conversation out further away from here.
20 I would like to add into the record at this point
21 Exhibit No. 5, proposed amendments of screening and
22 diagnostic radiography requirements in OSHA standards

1 presentation by Chris Brown and Rebecca Reindel.

2 The proposed amendments of screening and
3 diagnostic requirements in OSHA standards, Exhibit 7,
4 and as Exhibit 6, screening and diagnostic requirements
5 in OSHA standards.

6 CHAIRMAN STAFFORD: Thank you, Sarah. Paul?

7 SIP IV - REVISE THE CONSTRUCTION PERSONAL PROTECTIVE
8 EQUIPMENT STANDARDS TO MAKE CLEAR THE REQUIREMENT THAT
9 EQUIPMENT MUST FIT EACH EMPLOYEE

10 MR. BOLON: Hi. Paul Bolon again from the
11 Directorate of Construction, the Office of Standards
12 and Guidance. With me is Dayton Eckerson, who is a
13 staff person who is working on the Standards
14 Improvement Project, which we call "SIP."

15 Just to keep everything in order, the
16 presentation that you just heard on x-rays and storage
17 technology and so forth, those were two items that we
18 are planning to include on the Standards Improvement
19 Project, and then there are four more you are going to
20 hear, two right now from Dayton and I, and then two
21 tomorrow.

22 The Standards Improvement Project, this is

1 the fourth version we have done. We had published an
2 RFI and asked for comments. I think we got 25 to 30
3 comments. We probably have 10 or 15 things that are
4 really mostly just technical corrections, correcting
5 typo's in references, things like that. These six
6 items are fairly substantial for SIP items, and I
7 suspect we are going to have more to present at the
8 next ACCSH meeting.

9 The two that we are going to present right
10 now are ones that actually originated at least in part
11 from ACCSH. The first one deals with ensuring in the
12 construction standards that personal protective
13 equipment, that's PPE, fits correctly.

14 PPE, when you have to use it, making sure
15 that it fits correctly is really essential. It is
16 critical for it to work correctly.

17 This came up in discussions with ACCSH at
18 least in one facet in the work group that dealt with
19 issues affecting female employees. It was often
20 reported to be the case that they didn't have PPE that
21 was appropriately sized.

22 That is part of the impetus for changing the

1 wording in the construction PPE standards. We think
2 this will clarify the standards. We don't think it's
3 imposing a new duty. We think it is clearer and more
4 explicit language which will provide guidance to
5 everyone, both employees and employers.

6 Again, I would just say properly fit PPE is
7 really essential, it's critical for the PPE to do its
8 job.

9 This was an idea that was presented by
10 several commentors to the RFI. As I said, it also
11 originated right here in ACCSH.

12 Comments from the Committee?

13 CHAIRMAN STAFFORD: Any questions or
14 comments? Go ahead, Matt.

15 COMMENTS ON BEHALF OF NIOSH

16 MR. GILLEN: Mr. Chairman, I consulted with
17 our subject matter experts in our National Personal
18 Protective Technology Lab, and they as well feel like
19 the selection is an important issue. They did point
20 out there are some other issues for selection in
21 addition to fit, and it relates to suitability for the
22 hazard, especially when it comes down to respirators.

1 They pointed out there is some existing
2 language in 1926.32 that defines the term "suitable,"
3 and "suitable" means that which fits and has the
4 qualities or qualifications to meet a given purpose,
5 occasion, condition, function or circumstance.

6 They wanted to share the idea that the
7 1926.95(c) language -- some consideration might be
8 given to thinking about modifying that language to say
9 to ensure it is suitable, meaning that it fits, meets
10 the given purpose, circumstances, for each affected
11 employee.

12 CHAIRMAN STAFFORD: I think that is an
13 excellent suggestion. I think overall the Committee is
14 very supportive of this one, and this came through
15 here, and this is something we have talked about.

16 Yes, Don?

17 MR. PRATT: Mr. Chairman and Paul, I agree
18 PPEs have to fit properly and I like Matt's idea with
19 "suitable." I think that is good.

20 What I am fearful of is we have to make sure
21 that we put language in where the employee cannot say
22 well, it doesn't fit properly, and therefore, I'm not

1 going to use it. I think we have to be very careful
2 about how we write this, how we develop this process.

3 I absolutely agree that personal protective
4 equipment must be fit and must be fit properly. We
5 already have that in the rules. We need to make sure
6 that we don't put something in here that is going to
7 give employees a way out, something they can use to say
8 well, my employer didn't give me the right color
9 glasses, as an example. Maybe that is going overboard.

10 I want to try to make my point.

11 Or as an example, my harness doesn't fit
12 properly. As we all know who have been in this
13 business, you can buy a harness for X amount of money,
14 40 to \$50, or you can buy a harness for 150 to \$200.

15 We just have to be sure that we don't put
16 something in here where we are giving the employee the
17 right to back out of something or do something that
18 would be contrary to what Matt just mentioned.

19 CHAIRMAN STAFFORD: Sarah, please.

20 MS. COYNE: Sarah Coyne with IUPAT, employee
21 representative. Maybe I am misunderstanding you. If a
22 worker -- are you implying that if a worker is asked to

1 do exterior high work and my size, for example, and the
2 only thing that is available is a 3X harness, I
3 shouldn't be able to say that it doesn't fit so I'm not
4 going to do it?

5 MR. PRATT: No, Sarah, that's not what I'm
6 not saying at all. I'm just saying the language is
7 going to be very important in how we develop this rule,
8 to make sure that we don't put something in there that
9 gives the employee a way out of doing something.

10 Obviously, a harness has to fit the body.
11 That is not what I'm talking about. I'm talking about
12 -- I have a couple of harnesses myself. I have one
13 that is very comfortable and I have one that is not
14 very comfortable. They were both issued by an
15 employer.

16 I'm just saying we want to make sure that we
17 are not getting ourselves in a trap here. I think it's
18 a great idea. I think we have to make sure equipment
19 fits properly, especially when it comes to breathing
20 devices.

21 On the other hand, we just can't go
22 overboard. That's all I'm saying.

1 MS. COYNE: Agreed. Thank you.

2 CHAIRMAN STAFFORD: Any other questions or
3 comments? Laurie, please.

4 MS. SHADRICK: Laurie Shadrick. I think it
5 would be in the employer's best interest to have
6 properly fitting equipment on the job for the employee
7 to avoid accidents and injuries.

8 CHAIRMAN STAFFORD: I think that is the
9 intent. That's the idea. Any other questions or
10 comments?

11 [No response.]

12 CHAIRMAN STAFFORD: Paul?

13 SIP IV - REMOVE THE REQUIREMENT FOR CERTIFICATION OF
14 TRAINING IN SUBPART M - FALL PROTECTION

15 MR. BOLON: The next item we are going to
16 bring to your attention, it is actually one that we
17 have talked about on at least one occasion before with
18 ACCSH, and that is in SIP, we are often looking for
19 ways to remove burdens that are unnecessary or find
20 better substitutes or technologies or provide
21 alternatives.

22 One thing that we do is try to find ways to

1 eliminate paperwork. I know in the last several SIPs,
2 we have been removing certifications, written
3 certifications for various things, and the one that we
4 are bringing to your attention now is we have a big
5 paperwork burden for certifying training for fall
6 protection.

7 That is the one we are proposing to delete.
8 We don't think recording certification necessarily
9 leads to more training. It doesn't really necessarily
10 help our compliance officers cite if there was no
11 training.

12 That's it.

13 CHAIRMAN STAFFORD: I have a comment. I
14 absolutely don't agree with that. I think that is the
15 wrong approach. Subpart M is a very important
16 standard. I don't care how far you go back and look at
17 the data, consistently one-third of the people that get
18 killed in this industry are getting killed from falls.

19

20 To do anything to weaken that standard, I
21 think is a mistake, and our industry relies a lot on
22 it, the Union side folks coming out of training centers

1 that are already trained using third party training
2 providers, and I think a simple thing of asking for a
3 piece of paper that training was provided is not
4 necessarily over burdensome to the industry, and I
5 personally don't think that is an appropriate thing to
6 be doing.

7 Kevin?

8 MR. CANNON: I was just going to ask for
9 clarification. With removing the certification
10 requirements, does that eliminate the need to maintain
11 such a written record of training that's being
12 conducted?

13 MR. BOLON: Yes, for OSHA enforcement
14 purposes.

15 MR. CANNON: I agree with Pete, if it's not
16 written, if it hasn't been done, let's say the
17 compliance officers rely on employee interviews, are
18 there like standard questions that they ask or is it a
19 pop quiz? How do you verify in the absence of any
20 records?

21 MR. BOLON: Are you suggesting it would be
22 better to require keeping the records of training

1 rather than --

2 MR. CANNON: Yes. I think folks would do
3 that anyhow.

4 CHAIRMAN STAFFORD: I think that is the case.
5 Don, and then we will go to Jerry.

6 MR. PRATT: Mr. Chairman, Paul, I think this
7 is directed to you. Do you know where this came from?
8 Where did this request -- I have a question and I have
9 a comment. Do you know where this came from, Paul?
10 Who recommended this?

11 MR. BOLON: It came basically from me because
12 when we look at SIP, we have a lot of information on
13 where the paperwork burden arises, and this was
14 something that just jumped out.

15 MR. PRATT: Mr. Chairman, if I could make a
16 comment now.

17 CHAIRMAN STAFFORD: Sure; please.

18 MR. PRATT: I happen to agree with you, Mr.
19 Chairman.

20 [Laughter.]

21 MR. PRATT: Our industry needs to be better
22 at recordkeeping. We need to do a better job of

1 training. We need to make sure the employer is
2 protected in certain instances where the training has
3 been properly done.

4 I think doing away with this would be a
5 mistake.

6 CHAIRMAN STAFFORD: Jerry and then Tom, and
7 then I'm sure we will come back around. Jerry?

8 MR. RIVERA: Jerry Rivera with NECA, employer
9 rep. I think the language is worded funny. Maybe I
10 see the intent to provide some relief as far as
11 generated paperwork, but maybe it could be something
12 like maintain digital records or records of training.
13 I think we are trying to deviate from certification
14 does mean the person is qualified, maybe that might be
15 the rationale.

16 The trail of maybe paperwork, whether it's
17 digital, paper, it's a common practice in the
18 construction industry, it is required for
19 subcontractors. That is already in play. To take it
20 away, I don't know if we will deviate from it as an
21 industry in general, so the paperwork or the digital
22 records will continue to be upheld.

1 Maybe we should word that differently if the
2 intent is to not imply the certification or the records
3 mean the person is qualified, but other means to
4 maintain records versus paperwork, like digital format.

5 MR. BOLON: We certainly permit it. We
6 permit any format, I think, in terms of compliance.
7 This certification is just a written certification that
8 the training occurred.

9 CHAIRMAN STAFFORD: It's not necessarily a
10 card in your pocket or whatever. It's a piece of paper
11 that Jerry was trained on this particular issue.

12 MR. RIVERA: : In that case, I want to
13 reaffirm that we do need that.

14 MR. BETHANCOURT: Mr. Chairman, I have a
15 question.

16 CHAIRMAN STAFFORD: Hold on one second,
17 Jeremy. Tom is first and then we will come back
18 around. Tom?

19 MR. MARRERO: I happen to agree with you, too,
20 Mr. Chairman. In essence, I think all protection
21 training is beneficial to an employer as well as to the
22 employee, especially with new hire's. If you have a

1 guy that's green, who has never won a harness, it's
2 imperative that we train them.

3 CHAIRMAN STAFFORD: Jeremy and then Tish.

4 MR. BETHANCOURT: Let Tish go.

5 CHAIRMAN STAFFORD: Tish and then Jeremy.

6 MS. DAVIS: I agree with Pete, I don't think
7 the requirement to record the training should be
8 eliminated. I can appreciate, Paul, that the
9 inspectors do not rely on that information in the
10 course of investigations because clearly a bad actor
11 could be a bad actor with respect to recordkeeping. I
12 can appreciate that.

13 I think it serves other purposes, and we
14 really need to think about those other purposes. I
15 think it gives weight to the requirement, it puts
16 employers on notice. I think those other purposes need
17 to be considered as well.

18 CHAIRMAN STAFFORD: Thanks, Tish. Jeremy?

19 MR. BETHANCOURT: I agree a great deal with
20 what many of the Committee members have said. I don't
21 necessarily agree in getting rid of the requirement. I
22 do recognize that it is a burden, per se. One thing

1 that I have recognized in our industry is there are
2 employers, as Tish alluded to, that are bad actors, who
3 utilize those certifications as a means of simply
4 claiming an affirmative defense, where they have been
5 able to amass a good amount of paperwork to protect the
6 employer, where it may be the employer just relied only
7 on the paperwork.

8 I'm curious if there is any thought when they
9 were explaining that they want to assist the COSHO,
10 that the COSHO was meeting with an inability to enforce
11 the spirit of the law with the fact that the
12 certification is supposed to be a means to document
13 that you have given a certain type of training and the
14 employee understands the training.

15 I have some questions, the COSHOs are finding
16 they can't enforce the spirit because of the paperwork
17 that's there or -- I can't say we would stop or advise
18 any of the folks we interact with to stop having
19 certification.

20 Like Tish said, it gives weight to the
21 importance of the training. We gave training yesterday
22 and we documented it.

1 I guess that is one of my concerns. I have a
2 few concerns about the reason why they would take it
3 off. Would it reduce a burden? Yes. Then would it
4 introduce another burden? Yes. How do you prove you
5 have given somebody training? How do you verify they
6 have the training? Employees aren't perfect,
7 they may not remember all the nuances of it, but if
8 they remember the main points, I suspect maybe that is
9 how a COSHO would be able to verify they have training.

10 Those are just some comments I have. Thank
11 you, Mr. Chairman.

12 CHAIRMAN STAFFORD: Thank you, Jeremy. I'm
13 assuming, and I can't speak for Paul, I believe what
14 they are saying is the compliance officers aren't
15 necessarily asking to see the certification, that they
16 can tell training has been done by observation.

17 MR. BOLON: By observation and by
18 interviewing employees.

19 CHAIRMAN STAFFORD: If we observe somebody
20 falling off a roof, then we can say they weren't
21 properly trained.

22 MR. CANNON: The training can be delivered

1 and the individual still not follow the training
2 content and program.

3 CHAIRMAN STAFFORD: Anyone else on the phone?

4 [No response.]

5 CHAIRMAN STAFFORD: We will go back around
6 the table. Chuck?

7 MR. STRIBLING: Thank you. Chuck Stribling,
8 Kentucky Labor Cabinet. I can tell you that with our
9 program, and we have a full staff of compliance
10 officers, when we have gone to a site and we have asked
11 an individual in employee interviews have you had
12 training on fall protection, yes, I have. Well, what
13 was your training was about, what did you talk about.
14 You don't spend 30 minutes on it.

15 We have never turned around and then cited an
16 employer for not having the certification, because we
17 just don't ask. If the employees tell us they have
18 been trained, they have been trained.

19 Where this is important though is in the case
20 of a fatality. You don't have an employee to
21 interview. I can't ask that employee were you trained.
22 We would ask the employer has this employee been

1 trained. That certification becomes very important
2 then because they can show it to us and then okay.

3 Bad actors will do what bad actors do. Most
4 employers are not bad actors. That certification
5 record does come in handy. Occasionally, you will have
6 interviews and you will ask an employee have you been
7 trained in fall protection, well, I was trained at such
8 and such place before I got here. Certification comes
9 into play there, did the employer talk to the employee
10 about what do you know, what do you don't know.

11 Some employees were trained by that
12 particular employer but it's been a few years and I
13 don't exactly remember, so then we would go to an
14 employer and say has so and so been trained, yes, he
15 has, here's the certification record, we're done.
16 Compliance officer moves on.

17 It does have a value. I understand it could
18 be construed as a burden to employers. It is also a
19 very valuable tool for employers just to simply keep
20 the compliance officer happy, if you will, and then
21 they don't have to address the whole training issue.
22 Thank you.

1 CHAIRMAN STAFFORD: Thank you, Chuck. Kevin?

2 MR. CANNON: Do you have any examples of how
3 it has been cited? You said over 700 times. Is it a
4 date missing or a signature missing?

5 MR. BOLON: The simple answer is I don't
6 know. Dean?

7 MR. MCKENZIE: Probably a total lack of
8 documentation.

9 CHAIRMAN STAFFORD: Okay. Jerry?

10 MR. RIVERA: This is Jerry Rivera with NECA,
11 employer rep. Maybe instead of deleting the entire
12 requirement, to say a training record. I think the
13 information, the content requested, name, type of
14 training and so forth, it is important, date trained,
15 and employers use that to assess whether it is current
16 or you need to go back to it. Maybe it doesn't need to
17 be a certified record, but a training record in
18 essence.

19 Again, I think it is vitally important to
20 maintain accurate records that the training is
21 occurring and the language is there that identified the
22 identity of the employee who was trained, the date, the

1 type of training, signature, acknowledgment that the
2 training did occur.

3 Again, it plays a vital role in the
4 administration of the fall protection training program
5 that employers currently run.

6 CHAIRMAN STAFFORD: Thank you, Jerry. Matt?

7 MR. GILLEN: To me, what it is is it's really
8 the manifestation of an accountability system. You
9 have to be accountable for this, and that's important.
10 If people aren't doing it, it might indicate there are
11 other areas where accountability needs to be looked at.
12 It kind of is important.

13 CHAIRMAN STAFFORD: I agree. I think it
14 sounds like we all agree. Ms. Sarah, if we need to
15 make that in the form of a recommendation, that this
16 Committee would like to see this removed from SIP IV, I
17 think --

18 MS. SHORTALL: You can entertain such a
19 motion.

20 M O T I O N

21 CHAIRMAN STAFFORD: I'll entertain such a
22 motion. Would someone want to make that motion?

1 MR. BETHANCOURT: I'll make a motion for
2 that, Mr. Chairman. This is Jeremy.

3 MR. ERICKSON: I second.

4 CHAIRMAN STAFFORD: All right. Jeremy, if
5 you want to frame the motion for purposes of the
6 record.

7 MR. BETHANCOURT: I would make a motion that
8 we remove this particular item from the SIP agenda, as
9 the ACCSH members seem to be in consensus that this
10 requirement on employers is actually more of a benefit
11 and not necessarily a burden. Is that enough specific?

12 CHAIRMAN STAFFORD: That's probably more than
13 we need.

14 [Laughter.]

15 MR. BETHANCOURT: I agree.

16 CHAIRMAN STAFFORD: How about that we move
17 that OSHA removes training certifications, Subpart M,
18 off of SIP IV?

19 MR. BETHANCOURT: I make that motion.

20 CHAIRMAN STAFFORD: We have a second from
21 Roger Erickson. All those in favor, signify by saying
22 aye.

1 [Chorus of ayes.]

2 CHAIRMAN STAFFORD: Any opposed?

3 MS. SHORTALL: I apologize. We have to at
4 the very least have the persons on the phone do a roll
5 call of their votes.

6 MR. BETHANCOURT: This is Jeremy, aye.

7 MS. DAVIS: This is Tish, aye.

8 MS. BARBER: This is Kristi, aye.

9 MR. HAWKINS: This is Steve Hawkins. I vote
10 aye.

11 MS. SHORTALL: Thank you.

12 CHAIRMAN STAFFORD: Thank you, Sarah. Ms.
13 Sarah?

14 MS. SHORTALL: I would like to add as Exhibit
15 No. 8, the SIP IV Candidates for Proposed Rulemaking
16 presentation.

17 CHAIRMAN STAFFORD: Let's move on. If you
18 would like to make public comments, please sign up. I
19 think we should probably move to public comment. We
20 are a little bit ahead of schedule, which is a good
21 thing. I don't have the list before me. Debbie has
22 already gone, I assume.

1 MS. DICKINSON: I can make another one.

2 CHAIRMAN STAFFORD: I'm sure you can. We'll
3 put you at the end, Debbie, to make sure the other
4 folks have time. We have eight folks signed up,
5 including you. We will move to have you come up here.

6 In the sake of time, I'd like to limit any
7 comments to ten minutes for now, to give everyone a
8 chance. If we have more time for discussion at the
9 end, we will be glad to do that.

10 The first person is Arthur Sapper, who would
11 like to talk about the insulating links standard, I
12 believe. Arthur, please.

13 MS. SHORTALL: Mr. Sapper, are you giving the
14 presentation instead of the client that you indicated
15 would be presenting?

16 MR. SAPPER: I'm sorry. I'm making a
17 presentation on behalf of the Crane Power Line Safety
18 Organization.

19 MS. SHORTALL: Okay. Thank you.

20 PUBLIC COMMENTS

21 MR. SAPPER: Thank you, Mr. Chairman. I'm
22 speaking on behalf of the Crane Power Line Safety

1 Organization. I'm Art Sapper. The Crane Power Line
2 Safety Organization is concerned with safety of
3 employees who work near power lines. It has advocated
4 the use and improvement of things like proximity alarms
5 and insulating links.

6 I'm here to speak today to urge the Committee
7 to not approve OSHA's proposed amendments to the
8 insulating link requirements of the crane standards.

9 The problem is that although Mr. Bolon is
10 absolutely right, the current standard has not worked
11 and it is important that I take a moment to explain why
12 it hasn't worked. It has not worked.

13 The approach that they have proposed is not
14 going to be much better and it is certainly not going
15 to protect employees very well. There is a much better
16 approach.

17 The reason the current standard hasn't worked
18 is it fails to match the economy of scale of the
19 market, which is tiny. No one can afford the equipment
20 to get NRTL certification, as Paul did say. The
21 problem is there are certain internal NRTL requirements
22 that OSHA has set. I'm not asking those be changed at

1 this time, and the Committee doesn't have jurisdiction
2 over them anyway, but it has jurisdiction over the
3 crane standard.

4 The problem is that the proposal would allow
5 as an alternative permanent solution to the problem of
6 electrocution the use of insulating links not meeting
7 any criteria for performance or safety, plus gloves.
8 That's what the proposal is. There is no requirement
9 that it meet any standard, that it be approved by
10 anybody. You just purchase it on the market, could be
11 anything, as long as you use gloves, that would be
12 legal.

13 It unnecessarily exposes employees to danger.
14 I'm personally familiar with cases in which wedding
15 rings have become widow makers because they wear holes
16 in the gloves and the employees don't check them every
17 day.

18 There are links on the market also that pose
19 great problems. They are not as safe as others, and
20 yet the OSHA proposal would allow them.

21 What am I talking about? There are
22 insulating links that don't work if they are wet. They

1 don't work if they're dirty. The manufacturer's
2 literature requires they be cleaned or dried. We are
3 talking about construction sites. We all know they are
4 going to get wet, they are going to get dirty, and
5 there are crane operators or riggers who are just not
6 going to towel them off. They won't work. They will
7 get flash over on the outside surface of the link, and
8 the rigger holding the line will be electrocuted.

9 There is a better way. There are links on
10 the market that meet ANSI UL 2737. They work if they
11 are wet. They work if they are dirty. If they don't
12 work, they self test all the time and they report if
13 they are not. I'm not working, don't use this crane.

14 These are links that meet ANSI UL 2737.
15 Unfortunately, even though that standard has been
16 approved by OSHA for use by NRTLs, the NRTLs, including
17 UL, can't get certification because of the NRTL
18 requirements.

19 We are proposing put an incentive on the
20 market for employers to buy these better insulating
21 links. If they are certified by the manufacturer or if
22 they are approved by a qualified testing laboratory,

1 not a NRTL, a QTL, if you will, which the OSHA
2 standards recognize, it is in 1926.449 already, then
3 that would be an alternative. That is what we are
4 proposing. You would not have to use gloves.

5 Why is that important? Because if you
6 require even the ANSI UL 2737 links to be used with
7 gloves, there is then no economic incentive for
8 employers to buy the best links. You still have to use
9 gloves. They are no better, so I might as well use
10 something else.

11 Give the market an incentive to cause
12 employers to buy the best so we don't rely on gloves,
13 which will turn out to be otherwise the line of
14 protection, which we don't want. After all, OSHA's
15 safety philosophy has for decades been let's not rely
16 on PPE if we don't have to. Why are we doing it
17 differently here?

18 I have a proposal. It is in my slides. I
19 would also ask the Chairman for his indulgence.
20 Somehow, a slide got dropped. I have copies of an
21 additional slide. Essentially, these slides, including
22 the slide I am adding, Mr. Chairman, if you would be so

1 kind, would simply say here are two alternatives for
2 OSHA's consideration.

3 I would ask the Committee to move this and
4 vote that OSHA be required to consider these
5 alternatives, either, that you don't have to use
6 gloves, as long as you have an ANSI UL, which OSHA has
7 approved already, link, that is certified by the
8 manufacturer or certified by a qualified testing
9 laboratory.

10 That's our proposal. If there are any
11 questions, Mr. Chairman, from the Committee members, I
12 would be happy to answer them.

13 CHAIRMAN STAFFORD: Thank you very much, Mr.
14 Sapper, for your comments. Any questions?

15 MR. RIVERA: I have a couple of questions. I
16 guess the proposed language is that products or
17 insulating links that lead to ANSI UL 2737 be accepted
18 as a means of protection for line workers?

19 MR. SAPPER: Correct, as long as they are
20 certified as meeting that standard by the manufacturer
21 or by a qualified testing laboratory.

22 MR. RIVERA: The qualified testing laboratory

1 would certify that, not the manufacturer itself?

2 MR. SAPPER: It could be one or the other. I
3 would say that would be in the Committee's discretion.

4 MR. RIVERA: My only concern with the
5 manufacturer's self qualification of that process is
6 while it has a role in the development of that product,
7 it's vital that self certifying opens up a different
8 can of worms.

9 MR. SAPPER: Here's why self-certification
10 might be a good idea. If a manufacturer sticks his
11 neck out to certify something as meeting UL 2737, he
12 better be right, or else there are going to be
13 battalions of lawyers crawling all over him. I trust
14 the legal system on that score.

15 I've advised manufacturers, and I think this
16 is the dynamic that is going to work. I think that
17 would be an useful thing. That is why Paul did mention
18 that as an alternative. He's right. It is a serious
19 alternative and should be considered. I would ask the
20 Committee to vote accordingly.

21 CHAIRMAN STAFFORD: Thank you again, Mr.
22 Sapper.

1 MR. SAPPER: Thank you all.

2 CHAIRMAN STAFFORD: Next on the list is Lance
3 Burney. Come on up, Lance.

4 MS. SHORTALL: Mr. Chair, while he's doing
5 that, I'd like to mark as Exhibit No. 9 the missing
6 slide from Art Sapper's earlier presentation.

7 CHAIRMAN STAFFORD: Thank you, Sarah.

8 MR. BURNEY: Hi, my name is Lance Burney.
9 I'm the owner of Sigalarm, we are a manufacturer of
10 proximity alarms here in the U.S. I'm not good at
11 public speaking so I'm just going to read off this and
12 won't be looking up, if that is okay.

13 CHAIRMAN STAFFORD: That's fine, you have ten
14 minutes.

15 MR. BURNEY: There you go, I'm going to speed
16 read. Our products have been on the market since the
17 1960s. My wife and I have owned the company since
18 1999. We have sold thousands of units around the world
19 without any requirements to do so. It is strictly
20 based solely on our performance, reputation,
21 reliability and ability to keep operators and their
22 equipment away from power lines.

1 To my knowledge, there has never been a
2 lawsuit, product liability claim, or litigation against
3 any of Sigalarm's products.

4 I am here publicly to put on the record the
5 unintentional negative consequences resulting from the
6 unnecessary additional burden placed on Sigalarm and
7 its primary core product line of devices known as
8 "proximity alarms."

9 I have submitted multiple testimonials, test
10 reports, NIOSH field studies, requirements by the Corps
11 of Engineers to use our products, some going back as
12 early as the 1970s. I'm very concerned about the
13 unintentional elimination of proximity warning devices
14 as an option in the standard while not addressing the
15 potential limitation of other options, especially the
16 option of spotters, which I'll address in a few
17 moments.

18 We believe CETA is a vastly improved standard
19 with several layers of protection including Table A
20 measures, and no one method was meant to be the only
21 source of protection.

22 However, jeopardizing worker safety is based

1 on the following: creating a definition for "proximity
2 alarm" that requires NRTL testing when (1) there is no
3 standard to do so. There is no standard in existence
4 for NRTL to even test. There is no NRTL
5 approved/accredited to test these devices. Pretty
6 much, we are in a deadlock.

7 Our primary core line of business is we don't
8 have one now. It has caused a significant problem for
9 us.

10 There are alternate testing standards
11 available to the Secretary of Labor. There are
12 alternates that are available, and we would like for
13 you to consider those for testing sites, NRTL.

14 Again, no standard, no accredited NRTL, and
15 because of the size of our market, to my knowledge, we
16 are one of two maybe manufacturers of proximity alarms
17 in the world, especially in the United States. There
18 is no NRTL that is going to go buy expensive equipment
19 to go test two products. It is just not going to
20 happen.

21 We have been essentially written out of the
22 standard which we don't believe was the intention of

1 CETA. We believe CETA wanted to give the employers
2 options, five options, and that is not happening right
3 now. We are concerned about that, especially one like
4 ours with a history of protecting people that we have
5 done for so many years.

6 We ask that OSHA explain its scope of
7 accreditation for proximity devices and how to move
8 forward, identify who is in charge of the scope and
9 criteria so we can work with them.

10 OSHA mentioned NIOSH testing, again, some
11 limitations of proximity alarms which we have already
12 addressed in the manual and it explicitly excludes from
13 employees or operators using our products in those two
14 potential areas brought up.

15 If you eliminate one of the five options,
16 then some of the other options are for a spotter.
17 Well, a spotter has been proven cannot judge the
18 distance between power lines and equipment. If you
19 can't judge the distance, if you don't have a proximity
20 alarm available, most people are going to fall back on
21 a "spotter." They have been proven not to be able to
22 judge that distance.

1 The least we would like to do is ask for
2 spotter testing, since we have been tested, to find out
3 the relationship, apples to apples, if that's even
4 doable because the tests that we presented had
5 operators five feet in air and they had 20 minutes to
6 stand there and try to give a definition of how far
7 that power line was from the crane boom, and they were
8 off as much as five feet, while taking up to 20 minutes
9 to do so, in studies.

10 We are very concerned there is a lack of
11 safety out there for the workers right now.

12 I'm skipping over a bunch of stuff, but I'm
13 really nervous, but I'm going to keep going. I know we
14 are on a time limit.

15 The last thing I would like to say is there
16 has been an unintentional restriction of trade, since
17 that is our primary core business, because of this NRTL
18 requirement, no standard to test to and not one
19 approved, we are pretty much out of business. We think
20 that is a problem.

21 CHAIRMAN STAFFORD: I would, too.

22 [Laughter.]

1 MR. BURNEY: We believe there is no one
2 measure utilized to protect workers. We feel proximity
3 alarms should be immediately available, especially ones
4 that have a 40 year history like we have. We are just
5 asking for common sense, just some common sense.

6 I urge the Committee to reconsider
7 requirements, and consider the thousand of existing
8 customers that are successfully utilizing proximity
9 alarms to keep clear of power lines right now, while
10 maybe pushing on them something that hasn't been
11 tested. Like I said, a spotter, insulated links,
12 things like that.

13 I would ask if anybody has ever heard of
14 anybody ever being injured using a proximity alarm, and
15 I don't believe there has. We have thousands of units
16 around the world, in every kind of working condition,
17 from Alaska in the snow to the Amazon, on moving
18 equipment.

19 CHAIRMAN STAFFORD: Thank you. Any questions
20 or comments? Jerry?

21 MR. RIVERA: Lance, thanks for the
22 presentation. I noticed there is a challenge with the

1 nationally recognized testing laboratories, and I'm
2 asking you as a manufacturer of this product, would it
3 be easier to have kind of a qualified laboratory test
4 that kind of equipment? I'm just trying to assess
5 moving forward if that is a feasible means.

6 MR. BURNEY: There is a little bit of vague
7 area whereas I think OSHA was asked -- there were two
8 concerns, how do we address that. We test, obviously,
9 before they go out the door. There needs to be
10 something besides an NRTL requirement, especially on a
11 product that has been protecting workers for 40 years.
12 We cannot do that right now.

13 MR. RIVERA: Would the qualified testing
14 laboratory be an alternative?

15 MR. BURNEY: I believe OSHA would have to
16 approve a standard, and that's where again there is a
17 roadblock; roadblock, roadblock. The standard has to
18 be approved and then we have to get past the NRTL.
19 There are two separate issues that need to be
20 addressed, and I'm thinking immediately.

21 CHAIRMAN STAFFORD: Thank you. Anything
22 else? Any other questions or comments?

1 [No response.]

2 CHAIRMAN STAFFORD: Mr. Burney, thank you
3 very much. We will certainly consider --

4 MS. SHORTALL: Can I get one explanation? I
5 can understand how to members of the public certain
6 things feel like a road block, but the reason OSHA has
7 do a standard is Congress has delegated to the
8 Occupational Safety and Health Administration to set
9 requirements and to set rules for protecting worker
10 safety. They have not designated that to qualified
11 laboratories nor nationally recognized testing
12 laboratories, that would be an undue, unauthorized
13 delegation of power.

14 MR. BURNEY: Thank you.

15 CHAIRMAN STAFFORD: Thank you. Nigel Ellis.

16 MR. BONNEAU: Mr. Chairman, I have on the
17 back table a sheet with a link to the public comments
18 that were submitted that are in the Docket.

1 CHAIRMAN STAFFORD: All right. Thank you,
2 Damon.

3 MR. ELLIS: My name is Nigel Ellis. I'm
4 President of Ellis Fall Safety Solutions. I've been in
5 the fall protection business since 1970. I've studied
6 the subject I'm going to relate to the Committee and
7 guests, which I am going to term --

8 MS. SHORTALL: Pardon me, Mr. Ellis, could
9 you pull the microphone closer to you? Thank you.

10 MR. ELLIS: I'm going to talk today about a
11 new definition for three point control. Three-point
12 control really amongst a number of other definitions,
13 is related to what you hold at low heights for
14 stability and balance, be it a ladder, step bolts, or
15 any other thing. In the case of car carriers, it could
16 be the hood of a car that is being transported.

17 Now this is a subject I've been studying for
18 over ten years right now. I believe it's responsible
19 for many deaths and injuries at low levels,
20 particularly from those types of stationary vehicles
21 that are being moved and require holding onto with very
22 little traction at all.

1 First of all, the results from the University
2 of Michigan Biomechanics Department in January 2011, a
3 Ph.D. thesis produced by Justin Young, now Dr. Young,
4 Professor Young, which shows some critical conclusions
5 regarding three point control.

6 Three-point control is not the same as three-
7 point contact, but has the performance to hold a human
8 body in starting a fall.

9 I'm having more detailed discussions with
10 OSHA following this meeting concerning the engineering
11 of the test results I'm going to summarize to you in
12 the next few minutes.

13 Fall protection through the use of hands
14 alone and feet, of course, is critical for ladders,
15 both portable and fixed. Ladders are responsible for
16 179 deaths per year, give or take one or two each year.

17 Also, fall protection with the use of hands is
18 important for grab bars, hand holds of all different
19 types on machinery, and some principles need to be
20 established. I'm hoping the Committee will take this
21 up.

22 Many industry standards and practices have

1 adopted three point contact, including transportation,
2 stationary vehicles, such as car carriers, and produced
3 from the following results, which could affect every
4 industry out there where people are off the ground by a
5 few inches up to maybe 18 feet, which is the least a
6 landing can absorb your fall at maximum legality.

7 One, if you want to stay up and you beginning
8 to fall, hold the horizontal bars only, which means in
9 the case of a ladder, rungs only. The ladder rungs and
10 holding bar must be round. The bars must be 1 to 1.5
11 inch in diameter for optimum grip.

12 Women upper body strengths, emphasis needs to
13 be placed in training because 20 percent could not hold
14 on their own weight, and these tests were done mildly
15 dynamic with having a step that rotated vertical to
16 produce a drop.

17 The engineering tables will be presented in
18 July 2013 at the ISFP, International Society for Fall
19 Protection, symposium in Las Vegas. The overall
20 results were presented in November 2012 in the
21 Professional Safety Journal, which was peer reviewed.

22 I am requesting that ACCSH study the

1 industries affected and make recommendations to OSHA
2 about design safety of handholds including rungs. That
3 is my presentation, Mr. Chairman.

4 CHAIRMAN STAFFORD: Thank you very much,
5 Nigel. Any questions or comments?

6 [No response.]

7 CHAIRMAN STAFFORD: Thank you, Nigel. We
8 will consider that. Thank you very much.

9 Mr. Weber, PENTA Building Corp.?

10 MR. WEBER: I don't have anything.

11 CHAIRMAN STAFFORD: Okay. Mr. Gottwald?

12 MR. GOTTWALD: Thank you. I am Rich Gottwald
13 with the International Sign Association. I don't have
14 any formal comments but I wanted to comment on the
15 motion to extend the certification date out three
16 years.

17 I represent the International Sign
18 Association, and I'm really, I think, speaking here on
19 behalf of all small businesses. Just so you know who
20 we are, we represent the manufacturers and installers
21 of small signs, any sort of sign you see out there,
22 whether it be a Starbucks or men's room, whatever it

1 is. Our members do that sort of stuff.

2 There are about 25,000 sign companies in this
3 country. Most of those companies have less than 50
4 employees. They are small family run operations.

5 I have worked with them for a lot of years
6 now, and I encourage them to comply with laws. When
7 this regulation was published back in 2010, with an
8 implementation date of 2014, I think we did the right
9 thing and we have been on the ball and we started
10 working with our members to get them trained and
11 certified to the new rule. We sent out a memo last
12 week, you have a little bit more than a year left to
13 get on the ball.

14 Slowly, they are doing it, and they are
15 spending upwards of \$3,000 per individual to get
16 trained and certified. Now I am going to have to call
17 them and tell them that forget this, it's going to be
18 another three years because OSHA can't decide the
19 difference between the definition of "qualification"
20 and "certification."

21 I was on Google back there while some of you
22 were speaking. In 1960, Kennedy made a speech and he

1 said by the year 1969, we are going to put a man on the
2 moon and we are going to get him back safely. In nine
3 years, they did that.

4 OSHA has been messing around with this rule
5 for longer than that because they can't decide the
6 definition of "certification" versus "qualification."

7 I want the record -- in no way am I asking
8 for more regulation on small businesses in this
9 country, but they want clarity and they want to know
10 what the rules are so they can get back to doing what
11 they do best, and that is running their businesses.

12 Thank you.

13 CHAIRMAN STAFFORD: Thank you. Any questions
14 or comments?

15 MR. GILLEN: Mr. Gottwald, do you have any
16 more detail about the kind of cranes your members use?

17 It's not clear to me what they would use the cranes
18 for. It is installing the signs?

19 MR. GOTTWALD: This is installing the signs.

20 These are mobile cranes, boom trucks. Basically, any
21 sign that is above ten feet is installed with a crane.

22 CHAIRMAN STAFFORD: Thank you. Any other

1 questions or comments?

2 [No response.]

3 CHAIRMAN STAFFORD: Graham? I'm sorry, Ms.
4 Sarah?

5 MS. SHORTALL: While the next speaker comes
6 up, I'd like to mark a few additional exhibits for the
7 record.

8 As Exhibit No. 10, Mr. Sapper's entire
9 presentation on behalf on the Crane Power Line Safety
10 Organization. Exhibit No. 11, presentation by Lance
11 Burney of Allied Safety System d/b/a Signalarm.

12 CHAIRMAN STAFFORD: Thank you, Sarah.
13 Graham, I guess we're talking about cranes.

14 MR. BRENT: I guess so, Mr. Chairman. Thank
15 you. For the record, my name is Graham Brent. I'm
16 Executive Director of the National Commission for the
17 Certification of Crane Operators, NCCCO.

18 I'm going to keep my comments brief and to
19 the point, recognizing that we have a limited amount of
20 time. I would emphasize that the comments I'm going to
21 make are those of a service organization, so we have
22 heard a lot about the industry position on things, this

1 Committee seeks to represent the industry position.

2 As a service organization, we seek to reflect
3 what the industry itself has indicated it needs.

4 I'd like to point out that in the 17 years we
5 have been certifying crane operators, we have issued
6 135,000 certifications of which 78,000 were to crane
7 operators, which accounts for roughly something in
8 excess of 98 percent of those certifications issued in
9 the country.

10 I make those comments because we have heard
11 this morning already comments about the impact on the
12 industry that this rule, as OSHA has seen certain
13 aspects of it, what that would mean for those who have
14 already been issued certifications in those 17 years.

15 Because they have been deemed non-compliant
16 by Federal OSHA, and we are one of the two earlier
17 referenced this morning non-compliant crane operator
18 certification bodies, and we are non-compliant for a
19 reason, and the reason is that CETA's intent was not to
20 require certain aspects that OSHA has deemed
21 subsequently to be required.

22 You could say that while we're non-compliant

1 with the Federal rule, we believe we are compliant with
2 the committee that put this rule together and as
3 already been pointed out, over ten years ago.

4 We have been told that the intent of CETA is
5 not important. It has been stated several times by the
6 Directorate. We are hoping as an organization, since
7 we feel we are pretty much in touch with the industry's
8 feeling on the matter, that OSHA now may be inclined
9 more to listen to the intent of the original crafter's
10 of this document, and which this Committee approved a
11 number of years ago.

12 It is unfortunate for sure that it has taken
13 so long for OSHA to register that the industry does
14 have a problem with a couple of aspects of this rule
15 regarding crane operator certification and specifically
16 issues of certifying by capacity and what the meaning
17 of "certification" actually is.

18 On the first aspect, the issue is not if a
19 certification body can test by capacity. It is
20 perfectly appropriate and possible for a certification
21 body to do that. The construction of the test is not
22 difficult.

1 The issue is why should they, and this comes
2 back to the intent of CETA, and what is the basis for
3 requiring that. It has already been pointed out by our
4 accrediting body, where is the data that would indicate
5 that was important.

6 OSHA has certainly indicated in its remarks
7 over the last 18 months in particular the position of
8 the accrediting body is extremely important. We are
9 not just accountable to the industry and accountable to
10 OSHA, but we are also accountable to the accrediting
11 body and the accrediting bodies are very clear that you
12 need data to support your position on these types of
13 issues.

14 It is also gratifying to see that most of the
15 44 stakeholders that accepted OSHA's invitation to
16 participate in the stakeholder meetings that were held
17 in April also don't see the value and were almost
18 unanimous and some overwhelmingly in favor of not
19 proceeding in the way OSHA seems to think we should or
20 the industry should.

21 Although this delay, as it has been
22 characterized, will certainly not be popular within the

1 industry, I don't think it really makes anyone
2 particularly happy to see another three-year extension,
3 and we have already heard from the previous speaker the
4 effect that will have on him and his organization and
5 members.

6 We do see it in many ways as vindication of
7 what the industry has been trying to tell OSHA now and
8 somewhat intensely for the last 18 months.

9 In addition to that, we would urge OSHA to
10 move swiftly to phase two. We heard something this
11 morning about phase one, which is the proposal before
12 the Committee here. We have not had any indication
13 from Director Maddux as to how long it will take to get
14 to phase two, which is the really important part, as to
15 exactly what OSHA intends to address with respect to
16 reopening or readdressing of those issues that have
17 been so much in contention.

18 We would certainly urge OSHA to move on this
19 with all speed so that removes the uncertainty from the
20 industry, and I guess we would have to use the word
21 "reluctantly," Mr. Chairman, we would reluctantly
22 support the Committee in its deliberations to approve

1 the motion to extend the deadline.

2 That concludes my comments.

3 CHAIRMAN STAFFORD: Thank you, Graham. Any
4 questions or comments for Graham?

5 [No response.]

6 CHAIRMAN STAFFORD: Jim Tomaseski?

7 MR. TOMASESKI: Good afternoon. I'd like to
8 comment on two subject, if you would, the first being
9 the crane operator certification compliance date and
10 also on the insulating links' issue, so I will be brief
11 for both.

12 First, I would just like to say that the IBEW
13 agrees with the need to do something about the
14 compliance date for 2014. I'm not sure we necessarily
15 agree with what's been proposed.

16 I say that because to expand on a comment
17 that was made earlier. There is a bit of an unknown
18 out there. We don't know what's going to happen at the
19 end of the rulemaking if and when the rulemaking takes
20 place, and what good is just going for three years.

21 The rulemaking might take three years and we
22 still don't know what we are going to have at the end

1 of that three years.

2 I would think the most appropriate way to do
3 this would be to just extend the compliance date -- not
4 have a compliance date until the rulemaking is
5 finished, and then at that point, whatever the outcome
6 is with operator certification/qualification, establish
7 a compliance date at that point. To me, that would
8 make more sense.

9 On the second issue with the insulating
10 links, these things are in use today. People are using
11 them. That's a personal choice. If they want to use
12 them, that's fine. I don't have a problem with those.

13 There are different methods to protect the
14 worker on the ground. We do work on power lines, not
15 just in the vicinity of energized power lines, but we
16 do work on power lines every day. There are several
17 different options with ropes that we will consider "hot
18 ropes."

19 There is an ASTM standard, F1701, that
20 establishes manufacture and testing criteria for ropes
21 that we actually hang on energized 500,000-volt lines
22 and the workers on the ground operate the ropes.

1 There are also fiberglass sticks that can be
2 put in line with a non-dielectric rope that we use to
3 protect workers every day also. They are rated
4 different sizes, different ratings.

5 You can be a little bit innovative on how to
6 protect workers on the ground, not just with rubber
7 gloves. Rubber gloves have defined limitations,
8 depending upon the class of rubber insulating gloves
9 that you have, you pretty much cannot insulate over
10 35,000 volts.

11 At any voltage above that, which cranes are
12 operating in the vicinity of every day, you need to do
13 something different. Gloves are mandated in the
14 standard, they just can't be used.

15 There are other methods to be used.

16 CHAIRMAN STAFFORD: Thank you. Any questions
17 or comments? I do. What you are suggesting is we
18 extend the time period for the certification issue
19 indefinitely, until the rule is opened back up and
20 simply the new rule comes out? Is that what you are
21 saying?

22 MR. TOMASESKI: "Indefinitely" just sounds

1 bad. Maybe it can be worded a little bit different.

2 [Laughter.]

3 MR. TOMASESKI: Until the rulemaking is
4 finalized and a determination at that point of what
5 type of delay needs to be established.

6 CHAIRMAN STAFFORD: Kevin?

7 MR. CANNON: I guess it makes sense because
8 you are going to still have folks that are going to be
9 certified through either the two organizations -- say
10 just yesterday, a guy got certified, November 2017,
11 he's still going to be invalid because it's within the
12 five year re-certification.

13 CHAIRMAN STAFFORD: I get that, but I don't
14 understand how you cannot do an extension.

15 MR. CANNON: No, I agree with him as far as
16 lifting any absolute end all date because you are going
17 to have people still going through the processes and
18 still have to figure out where they are going.

19 MR. TOMASESKI: I get questions all the time,
20 what do we do. With all this going on, people are aware
21 of the stakeholder meetings and the issues that were
22 discussed at the stakeholder meetings, now they want to

1 know what to do.

2 I don't have a good answer for them, except do what
3 your employer tells you to do.

4 We are spending money, and a lot of those
5 funds come out of joint labor/management funds, and
6 depending upon what is going to happen at the end, we
7 may have to spend more money, double what we have
8 already spent. Why do that now unless we know what we
9 need to do is my point.

10 CHAIRMAN STAFFORD: Okay. I appreciate that.

11 Yes, Jerry?

12 MR. RIVERA: I just want to make a comment.

13 Jerry Rivera, NECA. Mr. Chairman, I would support an
14 alternate motion to not establish a compliance date
15 until the rulemaking process takes its toll. That
16 might be a better alternative.

17 You are right, we have a lot of our employers
18 asking us what to we do, some are certifying, some are
19 not, some are qualifying. It's a whole big mess, they
20 don't have any direction. Waiting until the rulemaking
21 process is handled on that approach makes total sense
22 to us. We would support that motion.

1 CHAIRMAN STAFFORD: Okay. We will take
2 action one way or the other tomorrow. I think we have
3 another comment on this issue and we will have to
4 figure that out. I understand what you are saying. We
5 will have to take an action in the morning in terms of
6 an official recommendation.

7 Thank you. Dan Glucksman?

8 MR. GLUCKSMAN: Thank you. Dan Glucksman
9 with the International Safety Equipment Association. I
10 wanted to make a comment on the issue of PPE fitting
11 and so forth.

12 An interesting discussion on the notion of
13 suitability. I would like to see the term
14 "suitability" in Appendix B at 1910.132.

15 If we do go the suitability route, I do think
16 it's important that PPE fitting within Appendix B --

17 MR. GILLEN: In the standard?

18 MR. GLUCKSMAN: Right, thanks. That "fit"
19 still be specifically mentioned even within a reference
20 to suitability.

21 MR. GILLEN: The definition includes the word
22 "fit."

1 MR. GLUCKSMAN: Okay; great. Really, that's
2 all.

3 [Laughter.]

4 CHAIRMAN STAFFORD: We should have started
5 with you.

6 MR. GLUCKSMAN: I know we talked about women
7 but I know the issue of fit also extends to all sizes,
8 whether it is a small man, women. It really covers the
9 entire range of workers, although I know the genesis of
10 this was on PPE for women. Thank you.

11 CHAIRMAN STAFFORD: Thank you very much. Ms.
12 Sarah?

13 MS. SHORTALL: As Exhibit 12, the
14 presentation by Nigel Ellis on three point control and
15 ladder hand hold breaking strength experimental
16 results.

17 CHAIRMAN STAFFORD: Okay. Thank you. Debbie,
18 we have a few minutes.

19 MS. DICKINSON: Thank you for allowing me
20 this opportunity to continue. I will keep my comments
21 brief. I do have some handouts here. Again, my name
22 is Debbie Dickinson with CIC, Crane Institute

1 Certification, where I am the Executive Director.

2 I do understand that there has been and even
3 today this conversation with regard to what is the
4 right thing to do that keeps taking a financial turn.
5 That is very important. None of us can operate without
6 financial resources.

7 The concern for me is we spend more time
8 talking about the financial impact than we are talking
9 about the safety impact, and with regard to what does
10 this mean to the employer in terms of who you certify,
11 who you put on a job, who do you even put forth for
12 certification.

13 Working with some of our customers,
14 particularly in the electrical and utility world, we
15 advise don't certify every single body you think might
16 ever be in this position, wait. Make sure those
17 persons are properly trained.

18 The numbers that I gave -- my card is
19 available, I am here, see me, I can substantiate those
20 numbers in great detail. The quote I gave was from
21 Southern Company, a multi-state user of cranes,
22 certifying a lot of individuals. They have run those

1 numbers very carefully. They are real numbers.

2 The cost to add a certification during the
3 five years particularly, we are talking hundreds of
4 dollars, not thousands. Hundreds of dollars, not
5 thousands.

6 When we look at the added safety benefit of
7 being able to distinguish different skills, knowledge
8 and ability levels -- there are solutions. There are
9 solutions for the organizations that themselves say
10 they are not compliant to the current rule.

11 I'm very thankful to our governing committee
12 and the fact they had a type and capacity certification
13 in mind back in 2008. I realize what a good place that
14 puts us in. I am very happy for that.

15 I don't know why but for some reason on the
16 lattice boom, we failed, although we documented it, we
17 failed to file initially under a capacity rating for
18 our lattice boom cranes. We have since corrected that.
19 We have done it.

20 One of the things we are doing as an
21 organization that our committee voted on, we are
22 providing re-testing for those operators at no charge,

1 because we failed to give them the right credential, so
2 we are taking that hit. They didn't mess up, we did.
3 We are taking that hit.

4 Other solutions would be to look at the
5 cranes that people certified on, if there's no
6 documentation, because Graham is right, that record
7 building does have to happen, that documentation, you
8 can't just start doing it, you have to provide all of
9 that, and the data has to be collected over a period of
10 time and a number of tests.

11 We have that data. We have since filed, but
12 for those people who were caught in the cracks, we are
13 taking care of them.

14 There are solutions. The industry does need
15 answers. For me as an executive director of a
16 certification body, it's pretty scary to think
17 everything might just be thrown up in the air now and
18 where are we. We have spent a small fortune trying to
19 be completely compliant, including the re-testing at
20 our own dime.

21 We are very concerned for the customers that
22 we serve and helping them to know what you need to do,

1 and we are getting those same questions as the
2 gentleman said before, people are asking what do we do.

3 Thank you.

4 CHAIRMAN STAFFORD: Thank you, Debbie. Any
5 questions or comments for Debbie?

6 [No response.]

7 CHAIRMAN STAFFORD: Any questions or comments
8 generally?

9 [No response.]

10 CHAIRMAN STAFFORD: I appreciate your
11 patience under this situation. We will reconvene
12 tomorrow morning again at 10:00 a.m. Thank you. Thank
13 everyone for being here.

14 MR. BETHANCOURT: Would it be possible for us
15 who are not able to actually be there -- if there are
16 items that have been distributed, can we get those sent
17 to us via e-mail, if there are going to be any future
18 discussion for tomorrow's meeting?

19 CHAIRMAN STAFFORD: I'm looking at staff.
20 The answer is yes.

21 MR. BETHANCOURT: Thank you, Mr. Chairman.

22 CHAIRMAN STAFFORD: Ms. Sarah?

1 MS. SHORTALL: We will have to send them
2 electronically. We will send what we received today
3 electronically. You should have already received the
4 comments from Mr. Sapper and Mr. Burney. Do you have
5 those?

6 MR. BETHANCOURT: Yes, ma'am.

7 MS. SHORTALL: Okay. We will send the others
8 electronically, in case you wish to discuss the items
9 tomorrow.

10 I have one other additional sort of
11 housekeeping. Were you able to hear people speaking or
12 were there problems that we can correct by tomorrow?

13 MR. BETHANCOURT: I did not have any problem.
14 It went fairly well once they started going up to the
15 front. Of course, the folks that were out in the crowd
16 -- speaking for myself, not the other folks on the line
17 -- I didn't hear anybody out in the crowd. That would
18 be the only thing, if there is any interaction with
19 folks in the crowd, we are going to have to find a way
20 to bring them up.

21 MS. SHORTALL: There wasn't. What about the
22 rest of you, did you have any problems hearing after

1 Tish brought up the issue?

2 MS. DAVIS: I thought it worked remarkably
3 well. I could hear almost everything.

4 MS. SHORTALL: Okay. Thank you. Steve?

5 MS. HAWKINS: Ms. Sarah, I can hear fairly
6 well, I would echo what Jeremy said.

7 MS. SHORTALL: Okay. Ms. Barber?

8 MS. BARBER: I heard pretty well. It really
9 helped when the people were speaking directly into the
10 microphone.

11 MS. SHORTALL: Okay. We will make sure we
12 get that tomorrow. Thank you.

13 CHAIRMAN STAFFORD: Thank you. We will
14 adjourn until tomorrow morning at 10:00 a.m. Thanks.

15 (Whereupon, at 12:48 p.m., the meeting was
16 recessed, to reconvene the following day, Friday, May
17 24, 2013.)

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E X H I B I T S

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