

ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
U.S. DEPARTMENT OF LABOR
Washington, DC

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The meeting was convened, pursuant to notice,
at 8:45 a.m., MR. STEWART BURKHAMMER, Acting Chairman,
presiding.

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P R O C E E D I N G S

WELCOME, INTRODUCTIONS and ACCSH BUSINESS

1
2
3 CHAIRMAN BURKHAMMER: Good morning. Welcome to
4 the year ending ACCSH meeting for 1999, the last ACCSH
5 meeting of the millennium.

6 We'll start by going around the room and
7 introducing ourselves. We'll start with the committee.
8 Owen?

9 (Whereupon, the attendees introduced
10 themselves.)

11 CHAIRMAN BURKHAMMER: We'll now go around the
12 audience and introduce ourselves. Why don't we start on
13 the left?

14 (Whereupon, the members of the audience
15 introduced themselves.)

16 CHAIRMAN BURKHAMMER: Members of the public who
17 would like to speak or make a presentation to the
18 committee, if you would give me, in writing, your name,
19 your association, and what you'd like to talk about, and
20 I'll make sure you get an opportunity.

21 We'd like to start this morning with a moment of
22 silence for the six fire fighters that died in the fire in

1 Worcester. There's a memorial service this morning.
2 President Clinton is going to be there, and I'd like to
3 have a moment of silence in the room for the six fire
4 fighters.

5 (Whereupon, a moment of silence was observed.)

6 CHAIRMAN BURKHAMMER: We want to welcome back
7 Dr. Marie Haring Sweeney from NIOSH. I wrote her off last
8 meeting, but her replacement at that time, Lynn
9 DeGodenauer, has accepted another assignment within NIOSH
10 and we're extremely pleased and happy to have Marie back
11 with us.

12 Before the Assistant Secretary comes and shares
13 with us, I thought I would take a moment and talk about
14 some personal feelings I have on some recent criticism
15 that some of the workgroups and ACCSH has come under
16 regarding some of the work processes that the committee
17 does.

18 For those of you that attend here on a regular
19 basis, you will remember a couple of meetings ago that
20 Jane Williams, who chaired a work group, a committee on
21 guidelines of the ACCSH committee. She presented that
22 report to the ACCSH and it was approved unanimously and

1 forwarded on to OSHA.

2 These are the guidelines with which the
3 committee now does business. I think there were copies
4 made available. I think the V&A and some others had a
5 copy of this. So I think everybody kind of understands
6 what they are, but I want to pick out a couple of things
7 and share with you of how we do our business.

8 The work groups are open to the public.
9 Anybody, anywhere, any place, any time can come to the
10 workgroup meetings and participate fully, as has been the
11 case in the past and will continue to be the case in the
12 future.

13 Some of the workgroups draw more participation
14 than others, and I fully believe that that's because of
15 the topic or the subject that the workgroup is discussing.
16 Some subjects and topics have more interest than others.

17 So some of the committees have had 30, 40 people
18 at times, other workgroups have had 2 and 3. But the
19 process, no matter how many people come and participate,
20 or some people come and don't participate and just sit
21 there, still continues on and the workgroup continues to
22 do their work.

1 There seems to be a misunderstanding, or in some
2 folks a misunderstanding, how the workgroup votes. The
3 workgroup prepares a document and they try to get
4 consensus, and most of the time do achieve consensus in a
5 lot of the workgroups, on the various topics that they're
6 working on.

7 The co-chairs, and two years ago we went to
8 using co-chairs rather than singular chairs, bring to
9 ACCSH the workgroup product and present it to the full
10 ACCSH committee. The ACCSH committee then votes on the
11 workgroup product if there's a motion put forth by the
12 workgroup chairs.

13 A lot of times, the workgroup reports will be
14 just that, a report on what the workgroup has achieved
15 since the last meeting, if they've had any meetings since
16 the last meeting, some of the things they're working on
17 since the last meeting, but they may not have a motion
18 because they haven't finished their product or they
19 haven't gotten to the point where they need to make a
20 motion to ACCSH to vote on.

21 Once ACCSH does vote, if the vote is more ayes
22 than nays--and most of the time the votes are unanimous on

1 this committee, though lately we've had one or two people
2 that have either abstained or not voted in the unanimous
3 portion of it--and then we forward it on to OSHA for their
4 doing whatever they want to do with what our
5 recommendation was.

6 This committee, like NACOSH, is powered to make
7 recommendations. We don't set policy. We don't develop
8 standards, although we may develop a skeletal outline of a
9 standard and present it to OSHA. It's up to them then to
10 take whatever the product we deliver to them and do with
11 it as they see fit.

12 In the past, in the 14 years that I have been
13 attending and participating, in the beginning of those 14
14 years back in the middle of the late 1980s, there would
15 seem to be a lot of committee members who felt that OSHA
16 didn't do a lot with what they produced.

17 I think, in the 1990s, that has changed
18 substantially, and that OSHA now fully expects and accepts
19 the products that the workgroup delivers. They have been
20 very diligent in coming back to ACCSH whenever they have a
21 change in the product, or they want us to review their
22 final product before they go out. Multi-employers is a

1 perfect example of that.

2 Noah Connell, from OSHA, worked with the
3 Felipe's group on Multi-Employer. They produced a product
4 that came to ACCSH. We made some changes, we voted the
5 product unanimously. It went to OSHA. OSHA worked on the
6 product.

7 They brought it back to Felipe and ACCSH, we
8 gave it back to Felipe's workgroup for a final review and
9 clean-up. It went back, and now it's ready to hit the
10 street. I think it's at the publishers now, and hopefully
11 will hit the street shortly.

12 So there's a prime example of something that, in
13 the past, could have taken 12, 13, 14 years, and they did
14 it in a span of a couple of years. I think a big part of
15 that is the workgroups' efforts and the hard work that the
16 workgroup chairs, the people in the audience, and the
17 public that participate in those workgroups to get the
18 products out the door, get them back into OSHA, so we get
19 some meaningful things out on the street to help protect
20 the workers in America today.

21 So I think some of the criticism that has been
22 weighed against ACCSH and the workgroups is incorrect. I

1 think, as far as the process goes, the process is not
2 flawed. The process is realistic, it works.

3 What makes the process work even better is when
4 more and more people participate in the process, and more
5 and more people come to the workgroups, and more and more
6 people help provide input--meaningful input--to the
7 products. That way, the product truly is a consensus
8 product.

9 In February of 2000, as we announced at the last
10 meeting, ACCSH will be meeting in conjunction with the
11 Chicago Land Safety Congress in Rosemont, Illinois in
12 February, I think it is, 15th through 18th. There will be
13 on that Monday of that week workgroups.

14 We are really looking forward to having safety
15 professionals and union foremen, non-union foremen,
16 stewards, representatives of employees come to share with
17 us the real-world thoughts on some of the stuff we're
18 doing.

19 I know Felipe wants to have a multi-employer
20 workgroup because we'll have the product out on the street
21 then and we'd like some advice and comments back from the
22 real working people about what they think they can live

1 with and can't live with.

2 We've talked about some other workgroups and, at
3 the end of today, in the 3:00 hour today, we're going to
4 be preparing the agenda for the February meeting. So for
5 the ACCSH committee, please make some notes of anything
6 you'd like on that agenda, and then we'll get to it at
7 3:00.

8 I hope we can prepare an agenda. We're looking
9 at a one-day agenda, plus a one-day workgroup. The
10 suggestion has been made, and I think it's an excellent
11 one, of maybe while we're out there going over to the
12 Training Institute and getting Manny to give us a little
13 tour and show us what they're doing at the Institute.

14 It would be a good time for ACCSH to be able to
15 do that, and Manny has come up before us many times and
16 made some presentations. So if that's something the
17 committee would like to include, maybe we could take a
18 half a day, and if everything works out, we could tour the
19 Institute. So, keep that in mind.

20 Bruce, do you have anything to comment on before
21 we start here?

22 MR. SWANSON: I do not, Stew.

1 CHAIRMAN BURKHAMMER: Thank you.

2 Sarah?

3 MS. SHORTALL: Only that under our regulations,
4 as well as the Federal Advisory Committee Act, there are
5 no specific requirements, other than making sure that
6 subgroups are open to the public, that govern the
7 workgroups here.

8 The efforts that have been made by ACCSH to
9 regularize with guidelines their workgroup, is actually
10 going beyond what would be required under our regulations
11 as an agency, and under the regulations of the government
12 as a whole.

13 CHAIRMAN BURKHAMMER: Thank you.

14 We're waiting for the Assistant Secretary to
15 join us. I've been told he will be here any second. He
16 is now here.

17 MR. SWANSON: Charles is here.

18 CHAIRMAN BURKHAMMER: So I no longer have to get
19 up and dance.

20 MR. JEFFRESS: Oh, no. Go right ahead. Don't
21 let me stop you.

22 CHAIRMAN BURKHAMMER: Shine the light and do the

1 finger puppets on the wall. Welcome back from your
2 retreat.

3 MR. JEFFRESS: Thank you. Back from my retreat.
4 We finished with out strategic retreats and we now are
5 ready for advances.

6 CHAIRMAN BURKHAMMER: Good. The floor is all
7 yours.

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REMARKS

By Charles N. Jeffress

MR. JEFFRESS: Thank you. I apologize for being a little late. I did have a staff meeting downstairs this morning I just walked in from.

Let me say, I got a call from Harry Payne's office just before I went to the staff meeting. He missed his flight, the first flight. He will be here, but it will be about 10:30 or so before he arrives. It seems like just yesterday we were together.

This morning I wanted to cover several things with you; budget news, in terms of what Congress has done, kind of a little preview of standards activities that Marthe is going to talk more about this afternoon, and then some of the thinking that came out of our staff retreat the past few days about directions for the coming year.

First, on the budget, the Congress passed, and the President has signed. There is still a little bit of tweaking going on because there's a very small cut that

1 Congress mandated be taken.

2 The administration isn't clear whether it's
3 going to be across the board yet, or exactly how it's
4 going to be assigned. So, there is some minor tinkering
5 that might still happen with the budget.

6 But essentially, for OSHA, the President had
7 asked on our behalf that we have a major initiative this
8 coming year on education, outreach, and expanding that
9 part of what we do.

10 Congress provided for about half of what we
11 asked for in this regard. We expect to add between 30 and
12 35 new positions that will be full-time trainers,
13 compliance assistance specialists, in our area offices
14 around the country.

15 We did get funds to increase by about 50 percent
16 the Susan Harwood training grants that provide training to
17 employees through nonprofits and others across the
18 country.

19 We've gotten more money to expand the Expert
20 Advisors, our Internet-based application for people who
21 are looking for help with compliance with safety and
22 health procedures.

1 So we've got a significant part of the
2 investment in expanding our outreach and education. We're
3 pleased with that, and I do expect us to be able to make
4 significant advances next year, but, really, it's only a
5 small down payment.

6 In terms of where I'd like to see the agency go
7 in the year 2001, it would be to expand further on this.
8 This is really just a small beginning and it's something
9 I'd like to keep growing. But I'm happy with that part of
10 what was provided in the budget.

11 Overall, the budget was about an eight percent
12 increase for OSHA in the coming year. That's on top of
13 about a six percent increase the previous year, so that
14 the Congress has done relatively well by OSHA, given its
15 difficult budget times of the past couple of years.

16 In addition to the investment in the
17 education/training/outreach part of what we're doing,
18 significant investment in our information technology. We
19 got a \$7 million increase in IT. This is not for great
20 leaps forward, this is to replace equipment that is beyond
21 its expected life that the manufacturer has stopped
22 supporting and that we need to replace.

1 Those of you who are not familiar with the OSHA
2 system, we have many computers in every state consultation
3 program, in every federal area office, and in every state
4 OSHA program.

5 There are 225 mini-computers around the country
6 that feed into our OSHA data system, and every one of
7 those has to be replaced, along with all the programming
8 software and everything that goes with it.

9 So the bulk of that money is going to be for a
10 new system which, of course, will be new and improved, but
11 basically it's a replacement for the system that we have
12 now.

13 There is also a small amount of money for
14 enhancing enforcement, 14 or 15 positions in that area, a
15 third of which will probably be dedicated for 11-C, or
16 whistle blower positions, given the workload.

17 We are unable to complete our work for whistle
18 blower complaints in a timely manner, and we'll put a
19 percentage of these towards expanding our capacity in the
20 whistle blower area.

21 So that's kind of the highlights of what the
22 budget is that the Commerce passed for the coming year.

1 Before I go on to anything else, any comments or questions
2 about that that folks have?

3 (No response)

4 MR. JEFFRESS: It is really just an excuse for
5 me to pour water. Thanks.

6 CHAIRMAN BURKHAMMER: Well, it sounds like you
7 did well.

8 MR. JEFFRESS: As I say, I think the Department
9 did relatively well and the Congress treated us relatively
10 well. I thank the President for his advocacy on our
11 behalf.

12 In the standards area, there was a little news a
13 couple of weeks ago about the ergonomics proposal that we
14 were going forward with in general industry.

15 There has been a fair amount of correspondence
16 that some of you all have seen about the ergonomics and
17 construction, and your part in that, and our role in
18 continuing to promote it on an educational basis,
19 addressing ergonomics in construction. We have taken your
20 recommendation to us. We are promoting it, we are
21 publishing it. We will continue to address ergonomics in
22 construction.

1 I know there are folks who like ergonomics in
2 general industry that don't believe in the science. We do
3 believe in the science. We do believe that there are
4 things that can be done here to protect workers and to
5 make workplaces more productive, so we will continue to
6 promote ergonomics in construction.

7 But the rule making, of course, is in general
8 industry and that will continue to attract attention, I'm
9 sure. The comment period ends February 1, hearings in
10 February, March, and April in general industry, where our
11 goal continues to be to complete the general industry
12 proposal by the end of next year.

13 Other standards activities that, again, Marthe
14 is going to talk about in more detail later, but I want to
15 highlight for you. One of the things that I've been
16 concerned about for some time is our lack of moving
17 forward with noise in construction, and I think we need to
18 move on that. I've asked the standards teams to work on
19 noise in construction this year as a priority, and Marthe
20 will talk more about that.

21 Steel erection. Hearings, of course, have been
22 held. We've evaluated the comments on that, and I am

1 going back to consult with the Negotiated Rule Making
2 Committee on steel erection next week. We'll have a
3 meeting with them.

4 Following that meeting, we'll have to make some
5 final decisions here in the Department to go forward to
6 OMB for their final review. It seems to take forever
7 sometimes to get these things, but after the Department's
8 review, the OMB's review, I expect that we'll have a final
9 on that by spring, anyway.

10 Some other areas that we're working. In silica,
11 and many of you are involved or know about the stakeholder
12 meetings we've had in silica, we're trying to go forward
13 with construction and general industry at the same time in
14 this area. Marthe will talk more about where that team is
15 headed.

16 There has been an interest, even while that team
17 is going forward, in trying to have some kind of
18 equivalency established between the two measuring systems
19 for silica, and while the standards team is moving forward
20 with the standards development in this area, we will also
21 continue to ask researchers and other silica experts, is
22 there some way we could establish some equivalency so we

1 can end this kind of interregnum we have in terms of
2 construction measurement on silica. We're trying to work
3 on that piece of it.

4 Chromium is another area that our standards team
5 is working on that has some application in construction
6 that you all will be interested in, and Marthe will be
7 talking about.

8 Then the process safety management standard.
9 We'll be doing an advanced notice of proposed rule making
10 in that area, talking about adding reactive chemicals to
11 this, and ask questions about addressing the Mir decision
12 that accepted flammable liquids in atmospheric storage
13 tanks from coverage under the PSM standards.

14 All of those standards activities, I think, will
15 affect folks in construction and you might be interested
16 in. Marthe will talk about those in more detail this
17 afternoon.

18 In terms of general plans for next year for
19 OSHA, about 40 senior managers from OSHA met last the last
20 two days to go over our accomplishments for the past year
21 and to talk about where we're headed the next year.

22 I think, within OSHA, we feel like we're

1 addressing significant issues, that we've made significant
2 progress this year, basically, an affirmation of the
3 direction we're headed. There was consensus there in the
4 retreat amongst the managers, which I endorsed and led the
5 discussion of.

6 The enforcement program. We're doing roughly
7 34,000 inspections a year. With a little increase in
8 compliance officers, we might get to 35,000. But the
9 inspections are basically steady.

10 The number of significant cases, that is, the
11 cases with penalties of more than \$100,000, increased
12 substantially last year, construction not being a big part
13 of that.

14 The biggest part of the increase was the result
15 of our focusing on the high injury rate sites in general
16 industry, using the OSHA Data Initiative to identify the
17 workplaces, the employers, with the highest injury rates,
18 and has taken us places where there are real problems
19 occurring and we found more significant cases.

20 I expect that trend to continue, and we will
21 certainly continue to use the enforcement tool to get
22 folks' attention. I continue to be frustrated, as some of

1 you all are, that we have no way to identify individual
2 contractor rates, and will be seeking support from the
3 administration in the future to do something similar in
4 construction to what we're doing in general industry.
5 Perhaps by the next meeting we can talk about where we are
6 in that proposal and where we might go with that.

7 Beyond strong enforcement, obviously, I've
8 already mentioned the money for education outreach.
9 Expansion of that is important for us. One of the things
10 that you may see as you touch different parts of OSHA, is
11 that virtually every part of our organization does
12 something in this area.

13 We have our standards teams that are telling
14 people about how to comply with standards, what the
15 standard means, and interpretations, and are doing
16 outreach when new standards occur.

17 Our Public Information Office, of course, is
18 producing documents on compliance with safety and health
19 issues, and general promotion of occupational safety and
20 health issues.

21 Our compliance people are involved in this, our
22 tech support people who do a lot of technical information

1 bulletins are involved in this. Our Internet is a huge
2 resource for people; we are averaging 14 million hits a
3 month on that.

4 So there are a lot of different parts of the
5 agency that are involved in this, and we will spend some
6 time this year establishing some clear lines of
7 responsibility, some clear delineation of who's going to
8 do what as we go forward, because we are going to be
9 expanding this and I want make sure it's done in a
10 coordinated matter and folks aren't tripping over each
11 other, and that we get the most bang out of the buck for
12 the additional increase we have.

13 So, again, the promotion of outreach and
14 education activities will be a significant part of what we
15 do this coming year.

16 The partnerships that we promoted this past year
17 have been effective. At the end of the fiscal year, there
18 were 51 active partnerships that were working.

19 One of my observations about these is that, in
20 several cases, I've signed, at the national level, a
21 statement of principles of cooperation and principles of
22 partnership with organizations, and those are good policy

1 statements of cooperation, but it's very difficult to, at
2 a national level, set a partnership that actually affects
3 behavior at local levels in terms of things that people
4 follow up on, are committed to, and invest in.

5 The best partnerships seem to come when people
6 at the local level get together and talk about what
7 they're going to do differently in that area, in that
8 state where our folks are involved, employers are
9 involved, employees are involved, and folks really get
10 together and talk about what's going to change in the way
11 they work.

12 So I will continue to emphasize partnerships
13 created at the local level, while I certainly want to
14 continue to encourage principles of cooperation at a
15 national level.

16 The real strength in these things is when the
17 people in the area, in the regional office or in the
18 state, agree to some change in behavior. So I will be
19 promoting those and, once again, encouraging people to
20 solve problems in their area with the people in their
21 area, and have them focus locally.

22 One of the advantages of that, is I think it

1 really does change behavior better than the national
2 partnerships do. The disadvantage is, they don't get the
3 attention. If you're doing something in Boise, Idaho,
4 folks in Maine don't hear about it, folks in Washington
5 don't hear about it, folks in Florida don't hear about it.
6 So, I think these partnerships are important. I think
7 they make a significant difference.

8 All the investment sometimes won't pay off in
9 terms of public relations because people don't understand
10 the cooperation that's going on, but I think it will be a
11 better way to change behavior than trying just to use
12 principles of cooperation at the national level.

13 Then the fourth area, is the standards. I
14 mentioned to you already, in terms of construction, some
15 of the standards that we're going to be dealing with. We
16 have reinvented, on the nonconstruction side of the
17 agency, the way we do standards into a team-based
18 approach.

19 We are evaluating that this month and hope to
20 make some permanent changes in the way we do business for
21 most of the standards teams this year. So, we will
22 internalize that.

1 This year, while the standards teams were
2 refocusing and getting up to speed on this new way of
3 working, a lot of work got done on things that were under
4 way, and there's a big crop of standards that will come
5 out this year.

6 It's not because this year there was a big
7 emphasis, it's because there was big emphasis last year to
8 pay off and come to fruition this year. I expect the PPE
9 payment issue to be final this year. The record closes
10 this month and it will be final next year. Steel erection
11 will be final. Record keeping will go final.
12 Tuberculosis will go final.

13 Ergonomics, as you know, we have published and
14 hope to go final. We'll have proposals for safety and
15 health programs. We'll have a number of these that we're
16 working on.

17 We have work being done on them, so I expect it
18 to be a very active year in terms of the public seeing the
19 product of the work that was started this past year in the
20 standards area.

21 Those are the four types of activities you'll
22 see from us this coming year that all the OSHA folks have

1 agreed to invest in. But these are means of accomplishing
2 our strategic plan, all of these ways of working, if you
3 will; strong enforcement, outreach and education, setting
4 standards and partnerships. They're all means to achieve
5 the goals in our strategic plan.

6 You all got copies of the draft strategic plan
7 revisions that we worked on this fall. We have a
8 strategic plan that goes through 2002. We've been asked
9 to modify that to reach out to 2004, and we will be, this
10 year, modifying that. But at the moment, we're still
11 working on 2002 goals.

12 Where we are on reaching those goals. Next
13 week, the Bureau of Labor Statistics will report the 1988
14 injury and illness numbers, so rather than try to predict
15 what's going to happen, let me just say, next week we'll
16 know more about our success in the five industries where
17 we are trying to work with employers and employees to
18 reduce injuries and illnesses.

19 We already know, in terms of silica and lead
20 exposures, which are the exposures that we measure as we
21 make inspections, there appears to be progress. Exposures
22 appear to be lower now than what they were in 1995, which

1 we took as our base year.

2 An area that I'm very concerned about not being
3 lower is construction fatalities. Now, we have fatality
4 data that comes in sooner than injury and illness data.
5 We already know, in 1998, fatalities in the construction
6 industry went up. Both in numbers and in rate per 10,000
7 employees, the fatalities increased.

8 So while overall injuries and illnesses in
9 construction have been on a steady decline in the last
10 five years, the fatalities in the last two years have
11 increased; clearly, the wrong direction for you all.

12 You all don't want to see that happen. No
13 employer, no union out there wants to see that happen, we
14 don't want to see that happen, but it is happening.

15 One of the things we've got to do in
16 construction is to rededicate ourselves to looking at the
17 primary causes of fatalities in construction. We've got
18 to work hard to get employers and unions to join us in
19 some partnerships to focus on training employees in
20 construction.

21 But fatalities continue to increase. That's one
22 glaring place in our strategic plan, probably the most

1 glaring place, that we're not making progress in terms of
2 addressing one of our strategic goals.

3 The other two strategic goals in our plan often
4 get overlooked. The first one is measurable in terms of
5 reduction in injuries, illnesses, and fatalities, and that
6 gets talked about a lot.

7 But the second goal that we've got in terms of
8 changing workplace culture is just as important to us, and
9 I think is really much a means as enforcement is in terms
10 of getting numbers down, ultimately.

11 So the kinds of partnerships we're working on,
12 safety and health promotion we can do. I would say, for
13 instance, the ergonomics promotion that we're going to do
14 in construction based on what you all recommended to us,
15 all that is geared to changing workplace cultures without
16 necessarily using standards or enforcement as a way to do
17 it, but teaching people new ways of working and getting
18 people to work in different ways. Part of our outreach
19 and education investment is directed towards this second
20 goal to change workplace cultures.

21 Then the third goal in terms of securing public
22 confidence in what we do. Again, it is important to us.

1 Under this goal I would lump customer satisfaction kinds
2 of issues, employee satisfaction kinds of issues.

3 If our employees are capable and confident,
4 people have more confidence in us. And if people have
5 more confidence in us, I think that will enhance the
6 reputation of the program and will encourage people to
7 listen more to what's going on.

8 So, I think it's important for us to emphasize
9 customer satisfaction and employee satisfaction. We've
10 talked about ways to be more responsive to our clients and
11 to our customers, and we'll be adopting some new ways of
12 working here and revising some of the ways we proceed that
13 we hope will be more responsive.

14 We need to work those through in the
15 organization before I make any public announcements of
16 what they are, but I will say the field adopted, in the
17 strategic plan, goals of getting to complaint responses by
18 phone and fax within a day of the time that people ask for
19 an investigation, or if they require an on-site visit
20 getting there within five days, and getting fatalities and
21 catastrophes within a day.

22 We're up in the 80 percent range on achieving

1 that for fatalities and catastrophes and for
2 investigations. I expect we'll get in the 90 percent
3 range this year. I think it's very responsive, and I'm
4 very pleased with that.

5 We need to be able to do the same thing for the
6 kinds of inquiries people make to us, the kind of
7 responsiveness to letters and requests for assistance that
8 we get beyond enforcement, and that's one of the things
9 we've been working on this year.

10 But I would have to caution you, and this would
11 be my last comment and then I'll take questions, in terms
12 of customer satisfaction, it is important to remember we
13 are a regulatory agency.

14 These surveys that survey whether or not people
15 are satisfied with the agency include in the population
16 being surveyed people who got bad news and who didn't like
17 the results. I'm careful to posit what we're trying to do
18 as being responsive to people and being protective of
19 safety and health.

20 Making everybody happy is not within our
21 capacity, and it's not our goal. But it is our goal to be
22 reasonable, to be fair, and to be responsive to folks.

1 But, on a customer satisfaction survey, a regulatory
2 agency is going to be somewhat lower than those folks who
3 are selling products, or passing out checks, or delivering
4 services to folks.

5 So I'd just caution you. I acknowledge that, I
6 hope you'll acknowledge that, and we can go forward,
7 recognizing that we can improve what we're doing in terms
8 of customer satisfaction. Our goal is not necessarily
9 making everybody happy.

10 Thank you, Mr. Chairman.

11 CHAIRMAN BURKHAMMER: Thank you very much.
12 Committee? Jane?

13 MS. WILLIAMS: Charles, I have two questions, if
14 I can impose. I ask the committee up front to bear with
15 me on these issues.

16 MR. JEFFRESS: I know the first one. What's the
17 second one?

18 (Laughter)

19 CHAIRMAN BURKHAMMER: No fair preempting.

20 MS. WILLIAMS: Charles, it's been repeatedly
21 told to me that this has been an extremely aggressive
22 ACCSH committee, and I think it is so in my own opinion

1 because everyone at this table has agreed to consensus, we
2 want to protect our employers, and we certainly are here
3 to protect the workers. So we have not always agreed, but
4 we certainly have come to a very good, positive consensus.
5 That's why I think we have been so productive.

6 My two questions concern, of course, our issue
7 of sanitation. Regulatory agenda is out, and I guess I
8 should be appreciative that sanitation finally made it
9 onto the agenda. But after all this time, I feel that you
10 and the administrative have continued to fail our
11 construction workers and our industry.

12 I see a long-term goal for sanitation. I see
13 notice of proposed rule making for December 2000. The
14 Directorate's Office explained to me that the long-term
15 goal was because no date was given, and that's a process
16 that OMB does, in fact, assign.

17 I found it unacceptable that we cannot look at
18 this issue and project a date when we could get it
19 through. In all my research, I don't think I have to tell
20 you or anybody that that OSHA act is very clear.

21 On a sanitary workplace, it doesn't say all fall
22 protection, it doesn't say steel, it doesn't say silica,

1 yet we've failed to provide our workers with sanitary
2 facilities that are accessible, that they can get to, that
3 in Arizona in 112 degree weather you don't even want to
4 walk by it, let alone go into it.

5 I guess my first question to you, sir, is what
6 is your priority for sanitation for our construction
7 workers?

8 MR. JEFFRESS: As I've said before, and I'll say
9 again today, I think sanitation is an appropriate area for
10 OSHA to act in. We've put it on our regulatory agenda.
11 It does have to compete with all of the other standards
12 that need to be adopted to protect construction workers.
13 I don't like to promise things we can't deliver.

14 In my looking at what the capacity agency is, at
15 the standards that are under way and have been under way,
16 many of them, for as long as sanitation, and sanitation
17 has been around a long time as well, we had to make
18 choices. The choice I made was, yes, we will address
19 sanitation. We will not make it the first, second, or
20 third one we do this year. We will put it on a list to
21 achieve.

22 Since I cannot predict confidently when we will

1 address that, I chose not to give a date, whereas, I am
2 saying that we will complete steel erection this year, we
3 will move forward with noise in construction, we do have
4 dates for some of the others that have been around for a
5 while as well.

6 I did not feel like I could promise to deliver
7 something. Since I couldn't deliver something with the
8 staff we had, I didn't give a date for it. It is a
9 priority, it needs to be accomplished. I can agree with
10 your statement, that is something that needs to be done.

11 MS. WILLIAMS: Charles, that brings me to my
12 second question, to conclude the first part. I can't see
13 any resource in your agency that would not be more
14 appropriate for you to achieve your strategic plan and
15 bring a cultural difference than to provide our workers
16 with sanitary facilities. I truly believe that. I intend
17 to make that known to every political candidate that I
18 can.

19 I am going to ask the president of the building
20 trades to join me and let me address the building trades
21 to bring this issue, and all the associations who love to
22 write letters, I want them to look at this issue also, and

1 I wanted you to know that I was going to be doing that,
2 personally, up front before I did it.

3 MR. JEFFRESS: I encourage you to do that.
4 Again, the more attention and more interest there is in
5 safety and health protection in all areas, including
6 sanitation, the better for all of us.

7 I welcome that, and I would agree with your
8 assertion that this is a very aggressive ACCSH committee,
9 and I'm glad to have an aggressive ACCSH committee. I'd
10 much rather have folks pushing for improvements than
11 sitting there waiting for us to tell folks what to do.

12 MS. WILLIAMS: Well, my second question, and
13 then I certainly will allow other members to get in here.
14 The process that ACCSH is going through, we worked on
15 sanitation for a year and a half at the request that we do
16 so. We then sat and waited one year for it to even be
17 addressed.

18 We were done with our work, very aggressively
19 did our work and pulled every stop we possibly could for
20 input, had other people participate. It was done a year
21 ago November. Here, it is now December, we're just making
22 the agenda, and that's two years.

1 I guess my question is the process of ACCSH. We
2 are given assignments and we fulfill those assignments.
3 Yes, we have been very aggressive to do it, and not to
4 just get something out, but we have done it thoroughly.

5 So I guess my concern is, when we are given
6 these assignments and the Directorate and everyone knows
7 we're working on these items, why are these not
8 automatically in your process for resourcing?

9 Why do we have to wait two years after the
10 conclusion of our work? It's very discouraging to have so
11 many people flying in and participating and doing all the
12 things that we're doing, and we don't see an end to our
13 resource.

14 So I think my second question to you is, am I
15 expecting too much of ACCSH and our work products, or the
16 support of yourself and future assistant secretaries to
17 help us achieve these goals?

18 MR. JEFFRESS: The question you raise is not
19 just an ACCSH question. Other advisory committees have
20 similar concerns. Perhaps OSHA hasn't been doing you a
21 fair service in asking people to try to give fair
22 proposals for what good policies should be in the safety

1 and health area. Again, my experience with standard
2 setting is mostly limited to the last couple of years.
3 I've learned a lot in a couple of years.

4 One of the things I have appreciated much more
5 now is the extent to which writing the right policy for
6 whatever the hazard is is 5 to 10 percent of the work of
7 producing a standard.

8 Doing the feasibility for standards, the
9 research on what's feasible, is a significant investment.
10 Significant proof is required. Depending on the nature of
11 the standard, it might be more difficult or less
12 difficult, but the economic feasibility and the
13 technological feasibility requires research beyond just,
14 okay, what's the best policy? How can you prove in a
15 court of law that this is technologically feasible and
16 economically it's feasible for the workplaces effected?

17 To document and research the health effects.
18 Something like sanitation, it's common sense that we all
19 would agree on, I think, that there should be separate
20 facilities and they should be sanitary. I can't say that
21 to a judge and have the judge say, you're right. We will
22 have to, in fact, show the health effects of not providing

1 sanitary facilities.

2 That takes research beyond deciding what the
3 best policy is. I think, in terms of what we've been
4 asking our advisory councils to do, is to tell us what you
5 think the best policy is without, in fact, asking you to
6 do -- and I'm not sure we should ask you to do the work,
7 but without, in fact, sharing with you the kind of back-up
8 documentation there has to be once you decide what the
9 best policy is.

10 I know every other standard that I've had to
11 deal with where the policy appears clear what direction we
12 should go, the fact that it takes another two years to do
13 the background research and documentation to make it
14 survive whatever legal challenges might occur is very
15 frustrating to the folks involved in the process,
16 including myself.

17 But I have a greater respect for both the need
18 for it now, and for the amount of work it takes to do
19 that. So I would not say that the agency is not
20 supporting ACCSH. I would say that we've probably done a
21 disservice by leading people to the expectation that, once
22 you decide on a policy, all the agency has to do is

1 publish it.

2 That's not a fair assessment of what's required
3 to get a standard out. I don't know that I would
4 necessarily encourage you to try to be involved in all the
5 research is ACCSH was interested in it.

6 I would welcome you all participating in all the
7 kind of background feasibility proofs, technological
8 proofs, legal proofs, health effects proofs, significant
9 risk proofs that we have to produce.

10 But, given that you're volunteers, I'm not sure
11 that I would commend it to you as particular good use of
12 your time. I found the best use of your time is your
13 telling us what the best policy is. But we probably ought
14 to have an expectation that, once we decide what the best
15 policy is, documenting that so that we can propose it
16 takes a lot of time.

17 MS. WILLIAMS: Charles, I do thank you. The
18 only thing I'll conclude with is that this standard
19 exists. It's minimal to change it and make it work, and
20 this would be a legacy far better than the ergonomics to
21 the worker. Thank you very much.

22 Thank you, Chairman.

1 CHAIRMAN BURKHAMMER: Mr. Rhoten?

2 MR. RHOTEN: Yes. Just a comment. I concur
3 with Jane's opinion on the whole thing, Mr. Jeffress. I'm
4 not sure how these things become prioritized. I would
5 assume that you get recommendations from staff and they
6 decide which standard we might move forward with.

7 But I would suggest that, if a lot of the people
8 that have made those recommendations actually had to use
9 those facilities on a construction site, that it would get
10 a little more priority, I think. I think it's a real
11 serious problem, and I would encourage you to try to
12 expedite this to the top of the list.

13 MR. JEFFRESS: Thank you.

14 CHAIRMAN BURKHAMMER: Mr. Masterson?

15 MR. MASTERSON: I'd have to agree with both Jane
16 and Bill on that. But to balance the equation out, it
17 might be good if you all could help us understand what
18 hoops you jump through, maybe take us actually through the
19 process of setting a standard for yourself and those
20 things that you do have to accomplish and approve, so that
21 we all are looking at the same playing field you are, and
22 maybe that will help our expectation better.

1 MR. JEFFRESS: We've been doing that with
2 NACOSH. Maybe it would be helpful to do with ACCSH.
3 We've had a series, or a piece of probably five meetings
4 now, that has been dedicated to the standards setting
5 process.

6 The first one, just going through what all it
7 takes to adopt a standard, the 116 different steps that
8 are required to adopt a standard, and then we've had
9 sessions with different stakeholders in terms of their
10 view of OSHA's standards setting process, how they
11 participate, how they'd like to participate, and what
12 problems they have, and maybe that would be helpful to do
13 with ACCSH as well, to walk people through the standards
14 setting process.

15 I, for one, know some of the pieces that you
16 have to jump through, but there are probably a whole host
17 of them that don't even have an inkling that you're going
18 through. It would help me with my expectation of what
19 OSHA is bringing or doing with our recommendations if we
20 did have an understanding of that.

21 I had no idea there were 116 different steps
22 that you had to go through. I mean, I thought the

1 bureaucracy in a private company is bad; you're in a lot
2 worse situation, it sounds like.

3 MR. JEFFRESS: One of the frustrations, is every
4 time Congress passes a law to "reform" the rule making
5 process in government, they never go back and eliminate
6 any steps, they only add additional steps.

7 So for the past few years, every time some
8 reform bill is passed, you can count on it making the
9 process longer, more complicated, with more steps to
10 achieve. They never go back and review the whole thing
11 and eliminate any steps in the process.

12 The same thing happens with court decisions.
13 When standards get challenged, frequently the end result
14 of a court decision is yet another test that a standard
15 has to meet, therefore, the agency has to produce the
16 documentation to meet whatever test that decision ends up
17 with.

18 So it is not a fixed process in law. It changes
19 every year by Congressional act, it changes with various
20 court decisions, and it is an evolving process. But I
21 think it would be interesting. I know NACOSH found it
22 fascinating to hear the various steps involved in the

1 process.

2 MR. MASTERSON: It would seem you'd have some
3 kind of a template, that you'd know right up front, here
4 are the steps you're going to go through. Is that a
5 simple document, an overview, that we might be able to get
6 our hands on?

7 CHAIRMAN BURKHAMMER: Nothing's simple.

8 (Laughter)

9 MR. MASTERSON: We don't need all the details.

10 MR. JEFFRESS: We don't have a template like
11 that. We did commit ourselves this past year to
12 developing a standard writers manual that would have all
13 the steps in it.

14 NACOSH has asked for, and we have not yet
15 produced it--when we do, we'll share it with both of you--
16 just a wall chart, a flow chart, that will go around the
17 room as to what happens at different steps, depending on
18 what you find and what actions are taken. We've committed
19 to doing that, and would be happy to share that with you
20 all as well. Thank you.

21 CHAIRMAN BURKHAMMER: Maybe we can get with
22 Bruce and work out something for the May meeting, to have

1 a presentation on that.

2 MR. JEFFRESS: Okay.

3 CHAIRMAN BURKHAMMER: Marie?

4 DR. SWEENEY: I'd like to change the subject
5 just a little bit, Mr. Jeffress. I would like to
6 personally thank you for your attention and support of the
7 ACCSH Musculoskeletal Committee. We really appreciate
8 that.

9 On that same note, we know that construction
10 ergonomics is not on the regulatory agenda, again. Since
11 you are now enhancing your education, training, and
12 outreach programs, would you consider putting construction
13 ergonomics at the top of one of those lists in terms of
14 your education outreach? One might be developing a
15 technical advisor, or a couple of them that deal with
16 construction ergonomics.

17 The reason I say this, is there is a lot of
18 information already out there that can be easily
19 integrated. I'm sure my co-chair on the committee would
20 be more than willing to get the committee to assist in
21 putting these together, because I think they would be
22 really valuable.

1 MR. JEFFRESS: One thing I will encourage you to
2 help me do, in ergonomics in general industry, I'm
3 directing our staff that we don't have to invent
4 everything or write everything ourselves; there's a lot of
5 good information out there.

6 And one of the things I want to do, is to
7 enhance even further what we've already got, which is a
8 pretty extensive bibliography of ergo materials, and
9 actually begin using stuff developed by NIOSH or developed
10 by other organizations that we'll give credit to, instead
11 of having to write ourselves, take what's out there, and
12 use it to give to our compliance assistance specialists to
13 train with in the field. We will do that for construction
14 ergonomics as well. I can't promise to develop something
15 new, but I can promise to do a search on what's the best
16 stuff out there, and then use that like we are in other
17 areas.

18 DR. SWEENEY: That would be wonderful. Thank
19 you.

20 MR. JEFFRESS: Okay.

21 CHAIRMAN BURKHAMMER: Mr. Devora?

22 MR. DEVORA: Yes. Mr. Jeffress, I want to

1 change the subject back to piggy-back on a little bit of
2 what Jane said.

3 MR. JEFFRESS: Yes.

4 MR. DEVORA: One of your comments, and we talk
5 about this all the time, is cultural change in the
6 industry. I know that seems to be one of your important
7 goals. We struggle with that all the time. As a
8 representative of a construction company, we can effect
9 that change and a lot of times we try to see how we can
10 think outside the box and accomplish that.

11 But as we sit here today, and Jane asked you
12 some of these questions, I hear you saying -- and I
13 realize you are a government agency, but even government
14 agencies need some cultural change in their behavior at
15 times. So we're not opposed to --

16 MR. JEFFRESS: Point well taken.

17 (Laughter)

18 MR. DEVORA: We're not opposed to you thinking
19 outside the box either and finding a way to get these
20 things to the table a little bit quicker.

21 MR. JEFFRESS: Fair enough.

22 CHAIRMAN BURKHAMMER: Mr. Edginton?

1 MR. EDGINTON: Thank you, Mr. Chairman.

2 Charles, I'd like to get back to where Jane was
3 on the sanitation standard. I must tell you, on behalf of
4 myself and my own organization, we were stunned when we
5 saw the status that the proposed rule had been given.

6 As we sit here today, there are somewhere
7 between five and six million construction workers who do
8 not enjoy the benefit of basic human decency, which is
9 having a clean, sanitary place to defecate, urinate. They
10 don't have an ability to wash their hands as a matter of
11 regulation. These are benefits that all other categories
12 of workers in this country currently enjoy.

13 MR. JEFFRESS: I suggest you talk to some
14 agricultural and farm workers.

15 MR. EDGINTON: It bothers us tremendously. From
16 my own organization, we say, this should be a slam/dunk.
17 This is just plain common sense. We talk about the
18 ability to effectuate change that would benefit a broad
19 cross section of draft workers in a way, unlike many of
20 the other regulations that we're working on, or the agency
21 is working on, do not.

22 It would seem to me that there ought to be a

1 way, when you look at something like that, you realize the
2 number of workers that would be affected by it, benefit
3 from it, to give it a higher priority. As many of my
4 colleagues have said here this morning, if there is a way
5 to figure out how to move this along a little faster, we
6 really think it's in order.

7 I think Jane was also right about expressing
8 concerns about ACCSH and its role with the agency, the
9 role of the workgroups on ACCSH. Perhaps what all of us
10 need to be working on more, I think, is what I would
11 loosely characterize as expectation management, what we
12 expect out of you and what you expect out of us. I think,
13 to the extent that we can continue to work together to
14 refine that, we're all going to be better off because of
15 it.

16 MR. JEFFRESS: I think that's a good point, and
17 Bruce and I probably ought to talk more openly about how
18 many folks we have dedicated to construction standards
19 development, and given what's required to produce a
20 standard, what's a reasonable level of work to expect from
21 that kind of staff.

22 I would expect from that you would probably

1 suggest to me I need to put more resources in construction
2 standards, and that is something we should discuss as
3 well, you know, in a finite world, where do you get those
4 resources? But I agree with you, I think that is a
5 discussion we ought to have more openly with ACCSH.

6 CHAIRMAN BURKHAMMER: One thing to think about,
7 maybe. I noticed when you looked at the regulatory
8 agenda, noise was on there. There is certainly a lot of
9 noise because sanitation isn't higher, so maybe you ought
10 to take a look at that.

11 (Laughter)

12 CHAIRMAN BURKHAMMER: Mr. Buchet? Michael?

13 MR. BUCHET: Having enjoyed the privilege of
14 sitting on a negotiated rule making committee, we
15 refreshed our understanding of the rule setting process
16 once or twice in the cycle of the committee.

17 I know that some at the Solicitor's Office, at
18 least, do not have a canned speech, but they have notes
19 that are fairly easy and it would probably be very
20 instructive for us to enjoy.

21 MR. JEFFRESS: Right.

22 CHAIRMAN BURKHAMMER: Marie?

1 DR. SWEENEY: Thank you, Mr. Chairman.

2 One other thing. You alluded to, or you
3 emphasized the fact that fatalities are going up in
4 construction, and we all are appalled by that. There are
5 two workgroups in ACCSH that are working on helping OSHA
6 reform a form that collects information on fatalities.
7 This is the 170 form for construction.

8 I would hope that, in your upgrade of all your
9 computer systems, you, in fact, can also think about
10 upgrading this form. We are trying to make sure that you
11 use standardized processes, that, in fact, you have a
12 computerized system that allows the compliance officer an
13 easy way of entering the data, but also that the data is
14 informative when it's brought back to home base for
15 analysis.

16 Right now, from what we've seen, the data aren't
17 that useful. There are a fair number of errors that can
18 be changed, even in the coding system. So I would hope,
19 and I'm sure the co-chairs of those two groups would
20 agree, that this should, in fact, be a priority, because
21 then you can use this information for developing
22 interventions for reducing fatalities or intervening on

1 the types of fatalities that occur most often.

2 MR. JEFFRESS: Okay.

3 CHAIRMAN BURKHAMMER: That brings up an
4 interesting point I'd like to ask you, Charles, or anybody
5 you'd like to have answer. In April, I believe it was
6 April, the workgroup drafted a letter from you to the
7 Secretary of Commerce on certain construction verbiage
8 changes to the 170 form.

9 MR. JEFFRESS: Right.

10 CHAIRMAN BURKHAMMER: And the workgroup has been
11 working based on that letter since then. Did we send the
12 letter, number one, and did we get a response yet from the
13 Secretary of Commerce?

14 MR. JEFFRESS: After talking with folks in the
15 Department of Commerce, they decided it was better not to
16 put that in writing because there may be different ways of
17 approaching it than what was put in writing, what was
18 drafted.

19 So there have been a series of conversations
20 with folks in the Department of Commerce, and they have
21 said, in fact, they want to be responsive and want to work
22 with us.

1 So the conversations are occurring, but the
2 letter was never officially sent. After talking it over
3 with folks at Commerce, we felt like maybe it was better
4 to not start down a path in writing that might not end up
5 being the best path to go.

6 But the conversations are ongoing, and I really
7 know about that much of it. I don't know whether Bruce
8 has more information on the nature of those conversations
9 and how they've progressed or not.

10 CHAIRMAN BURKHAMMER: Okay. Mr. Cooper?

11 MR. COOPER: Thank you, Mr. Chairman.

12 Charles, on this regulatory agenda, and I'm very
13 familiar with the years of work that go into getting one
14 of these passed --

15 MR. JEFFRESS: Yes, you are.

16 MR. COOPER: And many of these have been
17 previous administrations, going way back.

18 MR. JEFFRESS: Yes.

19 MR. COOPER: And I'm also familiar with the
20 massive amount of people you have to go through and delay,
21 that OSHA has to go through on any standards. I think
22 most of the people on the committee, but many that are not

1 in earshot, don't know that the U.S. Department of Labor
2 Solicitor's Office informed OSHA a couple of years ago
3 that the present sanitation form, 1926.51, was not
4 enforceable in its present form. So we have no sanitation
5 standard at this moment that is enforceable.

6 The problem is, that standard at one time was
7 accepted as a standard, so the difficulty in trying to get
8 it back -- we were just talking about revising the
9 sanitation standard.

10 Larry Edginton hit it right on the head;
11 those of us that represent people in the construction
12 industry in this country were stunned by, first of
13 all--and you've heard this before--missing the time frame
14 to even get it on close to the agenda and now having it in
15 the backside agenda. You've heard it all before this
16 morning.

17 Now, I am one of the co-chairmen on OSHA 170,
18 which also, Marie, is a good means for targeting, and it is
19 important also. But I know of no other standard that is
20 more important to the people in the workplace than a
21 place, as Larry Edginton well put it and described it
22 well, to go to the restroom and a place to wash your

1 hands, even if it is available. To me, that's number one.

2 As far as ergonomics and construction, which was
3 brought up this morning, I don't know how we can even look
4 at ergonomics when we can't get the damn sanitation
5 problem resolved. Now, that's not your fault, but we're
6 going to blame it on you.

7 (Laughter)

8 MR. JEFFRESS: It goes with the territory; I
9 understand.

10 MR. COOPER: But that has occurred over time.
11 Seriously, all the rest of the standards that we're
12 working on, if we can't get that resolved fast, we're just
13 wasting a lot of time, playing some kind of game that
14 never happens.

15 Now, we all know that many of us will not be on
16 this committee forever, and heads of agencies come and go,
17 and administrations come and go. That is what is the
18 result here of these numerous standards. I can recall the
19 trenching standard that was worked on for, what was it, 18
20 years, Steve?

21 MR. CLOUTIER: A lifetime.

22 MR. COOPER: I don't even know where it's at,

1 now. The person that worked on it for 15 years here died.

2 (Laughter)

3 MR. COOPER: That's true.

4 MR. JEFFRESS: Was it caused by the trenching
5 standard or lack of sanitation?

6 MR. COOPER: We will be long gone and this
7 issue, unless it's addressed in top priority, will fall by
8 the wayside. And you know what's going to happen 10 years
9 from now? And you and I will not be here, and we'll
10 probably be glad we're not.

11 Someone will bring it up again, and some
12 assistant secretary will bring it before this committee
13 again, and assign a workgroup again to look at how we can
14 get sanitation facilities on a job site.

15 MR. JEFFRESS: I acknowledge, for the second or
16 third time, I am getting a very clear message from ACCSH,
17 a consensus on this area.

18 (Laughter)

19 MR. JEFFRESS: I appreciate it. I hear it. I'm
20 not going to make any public commitments that I can't
21 keep, so I'll have to talk back to you again about this,
22 okay?

1 MR. COOPER: Well, I just will say this to you
2 in closing. Everyone in construction, not unlike other
3 humans, use the restroom every day and wash their hands
4 every day. When that occurs with you today, would you
5 think about this?

6 (Laughter)

7 MR. JEFFRESS: I will, indeed.

8 (Laughter)

9 CHAIRMAN BURKHAMMER: Ms. Williams?

10 MS. WILLIAMS: There are other interests that I
11 had. Form 170. This is another extremely aggressive
12 workgroup. We have pulled out the stops to deal with
13 this. We've got joint meetings. We've had internal
14 meetings.

15 We will have a recommendation later when that
16 subject comes up from the workgroup, combined workgroups,
17 that that also be a priority because we feel that it's
18 going to not only assist in targeting, but certainly show
19 you where the emphasis needs, or the fatalities that are
20 on the rise, so I feel that that support will certainly be
21 hand in hand with our goal.

22 MR. JEFFRESS: I'd like ask a question, if I

1 could borrow just five more minutes of your time, to help
2 me understand this issue a little bit. The case and
3 demographic data that the Bureau of Labor Statistics
4 produces has historically been the information that OSHA
5 and other researchers have used to identify the cause of
6 accidents and fatalities.

7 That data has been viewed as more representative
8 and broader than what OSHA collects, so OSHA data has not
9 previously been viewed as the best source of information,
10 or precisely what causes fatalities.

11 But, obviously, there is some concern in the
12 workgroups that, in fact, Form 170s could give better data
13 than BLS. I'd like to hear a little bit more about that.

14 MS. WILLIAMS: I could sum it up by giving you a
15 very quick, if I may, paragraph. This is the University
16 of Tennessee Construction Research and Analysts Report
17 that was given to our workgroup, which Mr. Zettler has
18 been extremely helpful in getting us to where we were.

19 MR. JEFFRESS: Yes.

20 MS. WILLIAMS: And this is an example of what
21 Form 170 isn't doing. "Of the 604 fatal events in 1997,
22 121 were coded by OSHA as having been associated with

1 steel erection and construction operations.

2 To verify the coding, CRA randomly selected and
3 reviewed 25 fatal events so coded by reading the narrative
4 description of the event and determining whether or not it
5 was related to steel erection. Nineteen, or 76 percent,
6 were found not to be related to steel erection, while only
7 6, 24 percent, were found to be related.

8 Further analysis of these 25 events indicated
9 the errors seemed to be randomly distributed by region,
10 federal/state programs."

11 So, again, it's been confirmed that the data is
12 being entered wrong. You're getting false messages from
13 the review. Plus, the form itself isn't conducive to help
14 you get the appropriate data anyway.

15 So the Form 170 workgroup, chaired by Mr. Cooper
16 and I'm the co-chair, have started to very aggressively
17 look at what we can change. Data collection had the same
18 concern, because they want the output data for looking at
19 where your fatalities are occurring, as well as for the
20 targeting process.

21 We combined several meetings so we would all be
22 on the same path and get a document much sooner, much more

1 aggressively. That's where we are now with that issue.
2 So, that's what we're trying to provide and we're working
3 with the Directorate very closely. That's why we would
4 sort of like to have that support.

5 MR. JEFFRESS: I'm happy to give the support.
6 The reason I mentioned the BLS data as being superior, is
7 that the Form 170 reflects only the deaths that OSHA
8 investigates. A high percentage of deaths, independent
9 contractors, self-employed people, we don't investigate.
10 So, I have felt, traditionally, that the BLS is a better
11 source of causes of fatalities than the OSHA 170, I think.

12 MS. WILLIAMS: BLS has joined our workgroup, and
13 they are working with us to interface their coding system
14 --

15 MR. JEFFRESS: Good.

16 MS. WILLIAMS: -- that it could be mirrored with
17 the Form 170 in the transition.

18 CHAIRMAN BURKHAMMER: Mr. Cloutier?

19 MR. CLOUTIER: Charles, I want to have to re-
20 echo, I think we're under siege on the sanitation issue.

21 (Laughter)

22 MR. CLOUTIER: But I think we're under siege

1 right now in this country on fatalities, and the agency
2 needs to raise the bar up again on some level of
3 awareness. I think we have a good opportunity, if you've
4 gotten additional funds for the enforcement program, and
5 the outreach program, and your information technology
6 systems, that every fat-cat report that goes out, and
7 every investigation that's generated -- we used to have a
8 tool that came out on a regular basis, the Fatal Facts,
9 and it's kind of gone by the wayside.

10 I would think, during the process of the
11 investigation, that there should be a template that a
12 Fatal Facts could be generated every time we go and do a
13 fat-cat report, and it can go on the web site immediately.
14 The numbers I have in the first five months of this year,
15 there were 654 construction workers killed.

16 I know last week in North Carolina, on Friday,
17 there were three killed in a tower incident; there were
18 six fire fighters killed over the weekend; there were 13
19 migrant workers killed in an automobile accident.

20 Fatalities. We're under siege. We're under
21 siege on the Port-o-Johns, but we're under siege with
22 these fatalities. I think every time that we do an

1 investigation, part of the investigation should generate
2 that Fatal Facts, it should go on the web site, and you
3 guys can generate one every day, five a day, on a regular
4 basis.

5 It should be part of the investigation, because
6 you're going to fill in the blank, put the information
7 down, and get it out to folks, because it's a good
8 training tool that will reach employers, employees, the
9 industry, broad-based. And we share in this horrible loss
10 in Worcester, Massachusetts over the weekend. It's just
11 unreal.

12 MR. JEFFRESS: Right.

13 MR. CLOUTIER: I'm deeply concerned about it. I
14 know my company's had an incident this year, and we're
15 refocused. We've covered all the bases, and we still had
16 one and don't like it.

17 MR. JEFFRESS: I appreciate your comment on
18 that. I have heard from others that, in fact, that kind
19 of short summary, this is what killed somebody, is a good
20 reminder and a good educational tool.

21 MR. CLOUTIER: This one that happened in North
22 Carolina last Friday was a family. It was a father, a

1 stepson, a friend of the stepson.

2 MR. JEFFRESS: Right.

3 MR. CLOUTIER: The wife was there. It's a small
4 painting contractor.

5 MR. JEFFRESS: They were riding a line.

6 MR. CLOUTIER: They were riding a line.

7 CHAIRMAN BURKHAMMER: I, along with Steve, am
8 absolutely appalled at the fatalities. For employers to
9 place employees in a position where they can get killed,
10 is also appalling to me.

11 We had a couple of subcontractors this year who
12 had fatalities, and our chief operating officer sent an
13 absolutely blistering letter to the various presidents of
14 the 132 Bechtel entities.

15 They got the message real quick, that he is
16 absolutely adamant that we will not tolerate any employees
17 being placed in positions where they could potentially
18 injure themselves or injure someone else. When the CEO of
19 the company blisters his presidents, it trickles down.

20 If more employers like Steve and myself, and I
21 know Steve's CEO does the same thing, they get the message
22 pretty soon of what the company believes in, and if they

1 get that message, they start believing in the same thing.
2 I think we need more of that in America today.

3 MR. JEFFRESS: Yes. I would encourage you all
4 to encourage your companies to make those kinds of
5 messages public so some other construction companies could
6 see what you all are doing.

7 CHAIRMAN BURKHAMMER: Marie?

8 DR. SWEENEY: I meant to talk about something
9 else, but let me just reiterate the issue of the tower
10 fatalities. OSHA and the National Association of Tower
11 Erectors have, I guess, just issued some guidelines, or
12 are on their way to issuing guidelines.

13 MR. JEFFRESS: Yes.

14 DR. SWEENEY: I would encourage the agency to
15 get those guidelines out as fast as possible and to make
16 sure, through your education, training, and outreach
17 program that you, in fact, get to the small mom-and-pop
18 tower erector groups, because the fatalities just keep on
19 occurring. Three a month is too many.

20 MR. JEFFRESS: Okay. Actually, those guidelines
21 were put out last year and we agreed to review them after
22 a year's use. The time is coming up to do that very

1 shortly.

2 CHAIRMAN BURKHAMMER: Only to point out that, as
3 tragic as the situation was in North Carolina, it does
4 appear that it was maintenance, and what we're doing right
5 now --

6 MR. JEFFRESS: And not a recommendation. That's
7 a good point.

8 CHAIRMAN BURKHAMMER: -- would not penetrate or
9 have alleviated that situation. I agree that maintenance
10 people ought to be using the same guidelines.

11 DR. SWEENEY: Absolutely. Absolutely.

12 MR. JEFFRESS: And that's a good point. The
13 guidelines for erection are out, but we've not done that
14 for maintenance. Maybe that's your point.

15 DR. SWEENEY: Right.

16 MR. JEFFRESS: Maybe we should do this for
17 everybody.

18 DR. SWEENEY: Right. Really. Exactly.

19 MR. JEFFRESS: Right. Good point.

20 DR. SWEENEY: The other issue, not to belabor
21 the point on the 170, is that the OSHA information that is
22 put into the 170 augments that which is put in by BLS,

1 because there is a narrative. There is more information
2 about the fatality.

3 You can say, well, BLS does have a good
4 recording system, but I think what OSHA has is added
5 value. It also helps in the prevention and intervention
6 area a lot better than what BLS is, which is more just
7 counting.

8 MR. JEFFRESS: Okay. Thank you.

9 CHAIRMAN BURKHAMMER: Well, we've certainly
10 taken more of your time than you've allowed us.

11 MR. JEFFRESS: My time is your time.

12 (Laughter)

13 CHAIRMAN BURKHAMMER: Again, I guess this is the
14 first meeting you've really had to just sit here and
15 listen to the beautiful noise on sanitary and heat.

16 (Laughter)

17 MR. JEFFRESS: No. Actually, I heard it once
18 before, but I heard it much louder and clearer this time.

19 CHAIRMAN BURKHAMMER: That's good. That's good.
20 Yes?

21 MR. McCLEES: Mr. Chairman, you very graciously
22 allowed members of the public to comment at various times.

1 I represent a national group and I would like the
2 opportunity, before Mr. Jeffress leaves, to speak words of
3 encouragement to him, if appropriate, if you so deem.

4 CHAIRMAN BURKHAMMER: Mr. Jeffress, would you
5 like to hear some beautiful noise other than sanitation?

6 (Laughter)

7 MR. JEFFRESS: Oh, no. This is sanitation. I
8 know Joe well.

9 (Laughter)

10 CHAIRMAN BURKHAMMER: Joe, please come up and
11 identify yourself.

12 MR. McCLEES: Mr. Jeffress and I come from the
13 same state. My name is Joseph McClees. I represent the
14 Portable Sanitation International Group. We have been at
15 all the meetings in which the Sanitation Subcommittee
16 held.

17 Our role is to assist in technical questions.
18 We represent 630 businesses in the United States, which is
19 more than 70 percent of the industry, which is a
20 tremendous amount. We have tried to provide the technical
21 stance for all the committee members.

22 We're proud of where we've gone. We would just

1 like to encourage my friend from North Carolina to
2 reconsider his position and to elevate the status of
3 sanitation in which Jane so notably did.

4 Thank you, Mr. Chairman.

5 CHAIRMAN BURKHAMMER: Thank you, Joe. We
6 appreciate that.

7 MR. JEFFRESS: I stand with my friends; what can
8 I say?

9 CHAIRMAN BURKHAMMER: Well, thank you very much
10 for coming. We appreciate it.

11 Prior to the break, I'd like to do two things.
12 One, is review the agenda. So if you'd get out the
13 agenda, we have some changes. The next thing we'll do,
14 will be approval of the September minutes. So if you'll
15 add that to the agenda.

16 Then after the break, we'll start with a liaison
17 report from Jane Williams. Jane is our liaison to NACOSH,
18 and she'll give a report on the NACOSH meeting. Also,
19 we've added an agenda item, ACCSH Guidelines. Jane has a
20 motion to make on the ACCSH guidelines.

21 This afternoon, we're going to switch the public
22 comment period and the ACCSH planning session, so we're

1 going to start the ACCSH planning session at probably
2 3:00, and then the public comment period will be after the
3 ACCSH planning session.

4 For tomorrow, the Safety and Health Program
5 Standard Report is 9:30 to 9:45, not 10:45. Steve can't
6 talk that long. Then we'll have the public comment period
7 prior to adjourning tomorrow. So, if you'll make those
8 corrections.

9 One more thing, Mr. Cooper, then we'll break.
10 If you'll get out the minutes of the September 2-3
11 meeting, it's in your green packet. Quickly take a look
12 at those. If you have any changes or revisions, please
13 note.

14 (Pause)

15 CHAIRMAN BURKHAMMER: Mr. Edginton?

16 MR. EDGINTON: Mr. Chairman, only because it's a
17 matter that this is the formal record, it has come to my
18 attention that my last name continues to be misspelled
19 throughout these minutes.

20 CHAIRMAN BURKHAMMER: You hadn't recognized that
21 before?

22 MR. EDGINTON: Well, I had.

1 (Pause)

2 CHAIRMAN BURKHAMMER: We will so make that
3 correction, and apologize for the misspelling of your name
4 in the minutes.

5 MR. EDGINTON: Personally, I've sort of given up
6 on it long ago.

7 CHAIRMAN BURKHAMMER: But it's worth a try, huh?

8 MR. EDGINTON: I've lived through it my whole
9 life.

10 (Pause)

11 CHAIRMAN BURKHAMMER: Any other comments or
12 changes?

13 (No response)

14 CHAIRMAN BURKHAMMER: Hearing none, do I hear a
15 motion to approve the minutes?

16 VOICE: So moved.

17 CHAIRMAN BURKHAMMER: Second?

18 VOICE: Second.

19 CHAIRMAN BURKHAMMER: Moved and seconded. Any
20 discussion?

21 (No response)

22 CHAIRMAN BURKHAMMER: Hearing none, all in favor

1 of approval of the minutes, signify by saying aye.

2 (Chorus of ayes)

3 CHAIRMAN BURKHAMMER: Opposed?

4 VOICE: No.

5 CHAIRMAN BURKHAMMER: Minutes approved.

6 We'll now take a break and return at 10:20.

7 (Whereupon, at 10:05 a.m., the meeting was

8 recessed.

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AFTER RECESS

(10:15 a.m.)

CHAIRMAN BURKHAMMER: The first item on the agenda now is Jane and her liaison report to the NACOSH meeting.

Jane?

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LIAISON REPORT FROM NACOSH MEETING

By Jane Williams

MS. WILLIAMS: Mr. Chairman, I have provided a copy of my report to you in each of the members' packets.

Just in summary, I won't go into the detail, Joann is no longer here. Joann Gudel had some conversations with me as a public representative, and it was voiced that for quite some time the NACOSH, which is the other sister committee to ACCSH, would like to have some liaison work in between the two committees.

It just happened that this committee meeting had several issues that ACCSH had, in fact, either addressed

1 or was addressing, so I was asked if I could attend that
2 meeting, and you graciously allowed me to do so.

3 So I did attend. I really was very amazed at
4 the issues that we are both facing. They had been asked
5 to review issues very specifically that ACCSH had, in
6 fact, reviewed, one being the certification elimination of
7 documents.

8 I was very delighted that NACOSH totally
9 supported -- they did not realize that it was our
10 recommendation, but theirs ended up being exactly the same
11 as ACCSH, that these documents have a very specific
12 meaning, and it really was very desirable to remain in
13 place to provide training for our workers.

14 They had behavioral safety issues, worker injury
15 discipline issues, worker involvement, consistency,
16 strategic plans, and so forth, many, many ACCSH issues.

17 The new term with Mr. Orton. And Mr. Orton
18 really welcomed the relationship between ACCSH and NACOSH,
19 acknowledged several comments that we had had. Actually,
20 it was a very good structural meeting. I really did enjoy
21 it. They have invited me to attend their next meeting,
22 which is in January.

1 The only thing that I would bring to you, which
2 I thought was quite interesting, was Mr. Jeffress started
3 the meeting with Linda Rosenstock, just as he does with
4 ACCSH, and gave his agency update.

5 But at the conclusion of their meeting, which
6 was a day-and-a-half, two-day meeting, he came back to the
7 committee and they summarized all of their discussions, or
8 if any issues came up, and told him of additional issues
9 that were not able to be discussed with him prior. I
10 thought that was very effective.

11 I know in our own cases, we've had issues that
12 we've had to rely on the Directorate to bring back to his
13 attention, and sometimes we don't get a feeling if it's
14 done or not.

15 So, I would like to recommend that maybe the
16 Chair consider his feelings on that issue, and see if that
17 would be something that Mr. Jeffress would consider doing
18 with ACCSH, just as he is doing with NACOSH.

19 CHAIRMAN BURKHAMMER: So noted. Thank you.

20 Any comments or questions for Jane on the NACOSH
21 meeting?

22 DR. SWEENEY: Mr. Chairman?

1 CHAIRMAN BURKHAMMER: Marie?

2 DR. SWEENEY: I've been instructed by my
3 division director that I will be attending NACOSH
4 meetings. If, in fact, Jane can't attend, I would happily
5 take her place, if need be. Be a replacement.

6 CHAIRMAN BURKHAMMER: Oh. Thank you very much.
7 Now that you're back with us again, participating fully,
8 which we're all excited about.

9 Thank you, Jane.

10 **ACCSH WORKGROUP REPORTS**

11 CHAIRMAN BURKHAMMER: Now, our first workgroup
12 report, Musculoskeletal Disorders, Michael and Marie.

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MUSCULOSKELETAL DISORDERS

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By Dr. Sweeney

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DR. SWEENEY: Thank you, Mr. Chairman.

19

Our meeting was held on Tuesday, December 7th.

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We actually had an extremely good turnout, between 25 and

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30 people at the meeting. We had extremely good

22

participation.

1 In the first part of the meeting, we decided to
2 go over all the activities and charge of the workgroup,
3 and some of the activities that we plan on doing in the
4 future.

5 We also polled the various participants and
6 attendees of the meeting and asked them what kind of
7 activities they or their organization are engaging in to
8 prevent musculoskeletal disorders on their site, or what
9 are they doing to enhance performance through good
10 ergonomics. We had some very good feedback. You will
11 find that information in the report in your packets.

12 In addition, we want to thank Mr. Berrien
13 Zettler for sitting in at the meeting, and explaining the
14 agency's position on what will happen with the draft
15 document that was submitted to OSHA from ACCSH last
16 meeting. That's the brochure that was developed. He
17 really discussed at length that this was not intended to
18 be an enforcement document, it is entirely for educational
19 purposes.

20 As Mr. Jeffress said this morning, that is
21 specifically holding to the party line. As a note from
22 the co-chair, I hope more will be done in terms of

1 education, in terms of construction ergonomics.

2 Finally, we had a presentation by Dr. Laura
3 Welch, who is currently with the Washington Hospital
4 Center. She is formerly with the George Washington
5 University and was funded through the Center to Protect
6 Workers' Rights by NIOSH to do research on construction
7 ergonomics. And one of the studies that she has done over
8 the last 10 years is to look at musculoskeletal disorders
9 in sheet metal workers.

10 She explained some of the results of that
11 research, and then also talked at length with the group on
12 issues of intervention and solutions that had been
13 discussed with folks who were doing sheet metal work, the
14 HVAC community. I think, in general, those people who
15 attended enjoyed and were informed by this lecture and by
16 the discussion that ensued afterwards.

17 Michael Buchet, my co-chair, and I have agreed
18 that what we would like to do is bring more people in to
19 describe the research and the activities, the solutions
20 and interventions that have been identified to reduce
21 musculoskeletal disorders in construction work. We're
22 beginning to accrue a list of people we would like to

1 bring in.

2 We know a lot of the researchers in academics,
3 but we would also like to have contractors and folks from
4 the industry come in and explain to us their needs, and
5 also some of the things that they have been doing.

6 One invitation that was put forward, was that
7 there be a meeting or a round table at the Chicago Land
8 Construction Conference in February. We had spoken to a
9 couple of individuals who thought they might be able to
10 bring in some contractors to discuss in a round table
11 forum some of the issues related to construction
12 ergonomics.

13 Michael, would you like to add anything to this?

14 MR. BUCHET: I have nothing.

15 DR. SWEENEY: That concludes my presentation.

16 Thank you.

17 CHAIRMAN BURKHAMMER: Thank you.

18 We're basically targeting four workgroups for
19 Chicago: MSDs, Multi-Employer, Fall Protection, and Safety
20 and Health Program Standards. The concept I have, and you
21 need to think about this between now and this evening when
22 we go through the agenda, but each of you would get two

1 hours on Monday. Each workgroup would get two hours on
2 Monday, so all the attendees who wished to participate
3 could attend all four of the workgroup sessions.

4 I know there is not a lot of time in two hours
5 to accomplish a whole lot, but I think if we structure it
6 right and spend the majority of the two hours soliciting
7 input from the participants that come to the sessions, we
8 would benefit greatly from that. So think about that, and
9 we'll discuss it later today.

10 Any questions or comments on MSD on Marie's
11 report?

12 (No response)

13 CHAIRMAN BURKHAMMER: Hearing none, thank you.

14 Data Collection. Mr. Buchet?

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DATA COLLECTION

By Michael Buchet

MR. BUCHET: Mr. Chairman, thank you.

Data Collection met yesterday. We had planned a fairly aggressive agenda and managed to accomplish one item.

A gentleman by the name of Don Peterson, who has retired from the Bureau of Labor Statistics in their San Francisco office, kindly came and gave us a presentation that generated so many questions, that we used up the whole of our time discussing them. I'll give you a brief outline of what he had to say.

He has some interesting ideas on how to assist OSHA in this quandary over targeting, how to maximize the use of resources on work sites where we will find things that need to be corrected to make the site safer, as opposed to going out on work sites where they basically get a check and OSHA has to walk away and say, well, here's another site that's in compliance.

His ideas revolved greatly around the use of

1 experience modification rating systems and Worker's
2 Compensation. We had an instructive review of the
3 Worker's Comp mod system and some of the organizations
4 that captured that data, the availability of the data, and
5 how the data does or does not compare with incident rates,
6 how we might be able to compare state-based data, which
7 the EMRs are, across state borders.

8 We found that we have many, many more questions
9 for Mr. Peters and many more questions for the workgroup,
10 a number of them surrounding BLS's telling us a great deal
11 about how they do their construction sample in the annual
12 survey, and then some about how OSHA does its data
13 initiative, although it's not covering construction, if it
14 might cover construction, and then also looking some more
15 at the use of Work Comp data and how to find the Work Comp
16 data.

17 I will end my report with that. We had more
18 questions than answers out of this session, though it was
19 a very productive session.

20 Thank you, Mr. Chairman.

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DATA COLLECTION (Continued)

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By Marie Haring Sweeney, Ph.D.

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DR. SWEENEY: I have one thing to add, Mr.

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Chairman. We also discussed the need to bring in somebody

12

from BLS to talk about the annual survey and what they do

13

with construction, because a lot of questions were brought

14

up as to the sampling methods, the representativeness of

15

the various companies that come in the sample.

16

So maybe not at the Chicago meeting, but in May,

17

we'll bring in somebody from BLS to talk to us about the

18

annual survey. I imagine there will be a lot of people

19

who will be interested.

20

CHAIRMAN BURKHAMMER: Thank you.

21

Felipe?

22

MR. DEVORA: Michael, let me ask you about the

1 modifier information that you're talking about. Are you
2 representing that they're going to be able to draw some
3 statistical information from Worker Comp mods, is that it?

4 MR. BUCHET: The presentation suggested that,
5 with some kind of manipulation, that that could be done.
6 But the workgroup had some reservations on how well that
7 would serve OSHA's targeting purposes.

8 MR. DEVORA: Yes. I have the same questions
9 about mods. You're right, manipulation comes --

10 MR. BUCHET: Yes. We had all sorts of questions
11 about what would be done once you got the mod. It's a
12 three-year average and it's old information. The mod goes
13 to the employer's main address, not necessarily to a
14 specific work site. OSHA is looking at a work site, not
15 necessarily the employer.

16 There's no way of guaranteeing, once you got
17 that, that the employer is still in business. I mean,
18 there were a whole series of things that we needed to
19 resolve before we can make a recommendation on this topic.

20 MR. SMITH: Mr. Chairman?

21 CHAIRMAN BURKHAMMER: Owen.

22 MR. SMITH: I wasn't there; I wish I had been.

1 But I think the information coming from those comp
2 carriers is pretty good because they capture every
3 accident. They ask how the accident happened, whether
4 there's a death or not. Those guys have very good
5 information.

6 Even though they may re-rate you every year,
7 they drop off one year. So the mod determines how much
8 you're paying, but they know every accident. The
9 employers all report it, because if you don't report it,
10 you end up paying for it out of your pocket.

11 CHAIRMAN BURKHAMMER: Michael?

12 MR. BUCHET: We've recognized that. But we also
13 recognize that, within a state, that may be a fairly
14 useful tool. But if you go across the state line, one,
15 there is no guarantee that the information -- the data
16 sources that Mr. Peterson was discussing captures the same
17 information about the same group of employers across state
18 lines.

19 So for OSHA's purposes, nationally, there would
20 be no way of comparing your experience in California,
21 though California is a bad example. There would be no way
22 at the moment of comparing two federal/state employers in

1 different states where OSHA has jurisdiction.

2 The other thing is, there is no guarantee that
3 all the employers are in this data. Self-employeds are
4 not in the data.

5 CHAIRMAN BURKHAMMER: OCCPs are not in the data.

6 MR. BUCHET: OCCPs. Yes. There are several
7 groups of people who are not in the data. One of the
8 questions that we had for this gentleman was, do you know
9 what part of the construction industry you can't capture
10 any data on? Don't know. There are problems with the
11 classification systems. I'm using the word problems.
12 There would be issues with the classification system.

13 Work Comp data is not necessarily based
14 precisely on the sick codes that BLS and OSHA are using,
15 they're based on the insurer's some kind of occupational
16 classification system. So there are a lot of little
17 things that would have to be tweaked to make this even an
18 approachable system. At least, that's what we're dealing
19 with at this point.

20 CHAIRMAN BURKHAMMER: Bob?

21 MR. MASTERSON: Not only that, a lot of the data
22 that the insurance company is going to have is going to be

1 very subjective data, based on what the employer has
2 reported or what the employee reported. I found that a
3 lot of the data that I get back from the insurance company
4 doesn't even resemble what went into the system.

5 MR. BUCHET: We also discussed the fact that the
6 EMR is a number developed with, we're not sure, 20, 25
7 plus discrete bits of data that go into the compilation.
8 Only one or two of those may actually reflect the number
9 of injuries for a particular employer during a particular
10 time frame.

11 So you can have an EMR that is sky high, and
12 because of many other factors you may actually be average
13 in that population, but because you have a sky-high
14 incident rate, you might be somebody that OSHA really
15 would want to look at, in which case that EMR wouldn't
16 drive OSHA to look at those people because they all struck
17 an average, which was an extremely high rate.

18 CHAIRMAN BURKHAMMER: Harry?

19 MR. PAYNE: Since 1993, we have tried to use the
20 EMR as a system of targeting in addition to the other
21 methods. We have found that half the people who go to
22 work in North Carolina do not do so in an environment with

1 a published EMR.

2 We have found also that it is skewed against the
3 smaller business in terms of, if a 12-person business has
4 a third party accident, and pending the resolution of the
5 accident they've got a strangely high claim and we end up
6 showing up in places we don't need to be, we also have
7 experienced coding problems with the Worker's Comp system,
8 that they code things back, neck, you know. It doesn't
9 tell us much.

10 So we're moving more to a claims made basis,
11 looking at frequency in the population as a better
12 predictor. It's not perfect, but it's more current.

13 CHAIRMAN BURKHAMMER: One thing, Michael, you
14 and Marie might share if you want to, is some of the
15 percentages that he showed yesterday of incident rates of
16 ex-contractors whose lost work day case rate is 16 and up,
17 and what percentage of them. I mean, I thought that was
18 unbelievable. Do you have that? Did you bring it?

19 MR. BUCHET: I didn't bring it.

20 CHAIRMAN BURKHAMMER: Marie, did you bring it?

21 DR. SWEENEY: No, but that was with the OSHA
22 initiative data.

1 CHAIRMAN BURKHAMMER: Right. Right.

2 DR. SWEENEY: Okay. It's not with the NCCI
3 data. Let me just try to recall. But, in general, the
4 OSHA initiative data takes like 80,000 employers, and
5 those 80,000 employers do not include construction. If
6 you look at what they represent over all industries in the
7 United States, it only represents 1.6 percent of all
8 employers in private industry.

9 So it really is probably under representing. It
10 more than likely is under representing the "high hazard"
11 industries because it doesn't include construction. I'm
12 not sure if it includes mining. It probably doesn't
13 include agriculture. But this is what a third party was
14 saying about the OSHA initiative data and, in fact, we
15 probably, at the next meeting, should, in fact, have
16 somebody come and explain that data set to us.

17 CHAIRMAN BURKHAMMER: One of the things I
18 commented on, BLS samples -- at the end of the year, when
19 you get your BLS form, they send out 220,000 of those,
20 50,000 of them are construction-related forms, that go to
21 construction-related employers. So that's 50,000 out of
22 340,000 active construction employers in the United States

1 that are sampled.

2 So, on the basis of that, even using the co-
3 efficient factors that they say they factor in -- and
4 Michael brought up an excellent comment yesterday about a
5 small employer in Florida using the same co-efficient as
6 an employer in Alaska and not even taking into account the
7 frigid weather conditions, the slippery conditions that
8 you would find with an Alaskan contractor that you
9 certainly wouldn't fine with a Florida contractor, but
10 they use the same co-efficient to determine the sampling
11 level.

12 So a 50,000 sample is even times the co-
13 efficient, it's my opinion, and has been for years, that
14 they're not getting the true numbers. So when you see the
15 published incident rates for SIC Code 16, 15, or 17,
16 depending on which of the three you're in, I think those
17 are skewed terribly.

18 In my personal opinion, they're skewed low. I
19 think a lost work day case rate in America for SIC Code 16
20 is somewhere in the neighborhood of 12, not somewhere in
21 the neighborhood of 5. But, again, that's my personal
22 opinion.

1 DR. SWEENEY: So what we're talking about here,
2 is that construction is probably unrepresented, or not
3 represented well, by either BLS and not represented by the
4 OSHA initiative data. I think we really need to see how
5 we can better work with BLS and work with OSHA to better
6 get representation of construction companies.

7 CHAIRMAN BURKHAMMER: That might be a
8 consideration for the May agenda.

9 Bruce, would you like to comment?

10 MR. SWANSON: Yes. Just a couple of quick
11 comments. The targeting system that OSHA is using in
12 general industry, obviously intentionally, excludes
13 construction. The mobile work site issue is a problem.

14 What we want to do, is do site-specific
15 inspections and inspect those employers at those sites
16 where the employer is four times above the national
17 average for its SIC code, and we take these 80,000. We
18 went through the general industry SICs and picked those
19 SICs which our experience indicates are the most hazardous
20 for the American worker.

21 Then we took 80,000 employers off that list and
22 mailed to them inquiring as to their OSHA 200s, and that

1 indicates that you're dealing with a certain size class
2 employer. But it is not fatal in the general industry, as
3 it would be in the construction industry, where 80 percent
4 of the employers are not required to keep OSHA 200 logs.

5 Marie is absolutely right. It obviously
6 excludes the mining rates. That's an MSHA issue. It
7 excludes agriculture for other reasons, but largely
8 because of the way employment works in the agricultural
9 industry, although there are some exceptions, particularly
10 when you get into processing, the step beyond agriculture.

11 But OSHA feels that the targeting system that it
12 is using for general industry is quite successful. We
13 believe it is doing a better job putting us where we
14 should be and providing us the data that we need to obtain
15 search warrants on those occasions where an employer has
16 indicated that he's not going to open the door for our
17 inspection, we have a basis.

18 In the construction industry, you're all
19 familiar with the long-ago Barlow case, and we have to
20 target from a neutral source document. We use the Dodge
21 report, which tells us where activities are under way in
22 construction.

1 But it tells us absolutely nothing about the
2 experience of the employer by name who is on that job
3 site. Then large employers will have different
4 experiences, as several at this table can attest, from
5 site to site across the country for various reasons.

6 So don't shoot Mr. Peterson yet. Anything that
7 we can obtain that is a better indicia than reaching into
8 the bean jar and scheduling our inspections on a random
9 basis, like the Dodge report now does, would be an
10 improvement.

11 Of course, we do, as everyone at the table again
12 knows, a lot of local emphasis programs, special emphasis
13 programs, where we attempt to enhance our presence in
14 those industries where we know that we are having problems
15 with fatalities and injury rates.

16 Again, there are people at the table, such as
17 Mr. Masterson, who could indicate that there are areas in
18 the country where we have a local emphasis program going
19 on in a particular industry because we know that's a
20 problem. That is still not a finite tool, however.

21 To go to a job site because they fall within a
22 particular SIC still does not indicate that OSHA is making

1 the best use of its very limited resources because
2 employers within a given SIC run a whole range of cultures
3 as well as to how much attention they pay to safety and
4 health of their employees. So, in closing, let me say
5 once more, don't shoot Mr. Peterson just yet. Thanks.

6 MR. BUCHET: We didn't shoot Mr. Peterson. In
7 fact, we invited him to continue the discussion and asked
8 him some questions that he said he would provide us
9 further answers on. He's interested in continuing the
10 discussion.

11 CHAIRMAN BURKHAMMER: Marie?

12 DR. SWEENEY: One more comment on just another
13 topic related to data collection. We were handed, I don't
14 know if it was a Federal Register notice, but from the
15 Bureau of Labor Statistics, that the Office of Management
16 and Budget now has changed the standard occupational
17 classifications starting in January of 2000, and that
18 construction and mining occupations are going to be in the
19 same classification. So, it's construction and
20 extraction.

21 Please be aware that, if you're looking at that
22 whole classification, you are dealing with people who are

1 roof bolters in addition to folks who are pipe fitters.

2 So I don't know what that effect is going to be
3 in the data. I don't know if Bruce has any information.
4 We might have to, again, talk to Bureau of Labor
5 Statistics because that fact may change how you look at
6 the data, the fatality and injury data.

7 CHAIRMAN BURKHAMMER: Including mining will
8 certainly drive the number up.

9 DR. SWEENEY: Up.

10 CHAIRMAN BURKHAMMER: Mr. Cloutier. I knew
11 you'd have a comment on record keeping.

12 MR. CLOUTIER: I think there's another area that
13 OSHA could tap into, and we've talked about it on and off
14 for a number of years. That's looking at building
15 permits, whether they're issued locally, geographically,
16 by the state, by the local folks.

17 It's another potential resource to identify
18 structural projects. Of course, I've always said, when
19 all else fails, get out of the office and drive around
20 town, you can find a whole lot of work going on.

21 But I think that's an area, when you guys are
22 talking with BLS and you're talking about EMRs, that maybe

1 we ought to look at that avenue as well, and that's the
2 permitting of construction projects as a potential
3 database to reach out as a source. We know the Dodge
4 reports only capture 60, 65 percent of the work in the
5 country, or less.

6 MR. SWANSON: And let me be brief. But several
7 area offices are using the local licensing facilities,
8 building permits, et cetera, to target. It's a patchwork
9 system because sometimes you have a cooperative
10 municipality and sometimes you don't.

11 I know you were being facetious when you
12 suggested, drive around and look for where the work is
13 being done, because that would violate what the Supreme
14 Court has told us we can do. We never do that, Steve.

15 MR. CLOUTIER: I understand that, Mr. Swanson.
16 But that seems to be how we generate a lot of referrals.

17 MR. SWANSON: That's an entirely different
18 matter, sir.

19 CHAIRMAN BURKHAMMER: Moving right along. Any
20 other comments on data collection? Mr. Buchet.

21 MR. BUCHET: Maybe it would be instructive to
22 have another presentation on how the Dodge report system

1 works.

2 CHAIRMAN BURKHAMMER: How the Dodge report
3 system doesn't work would be the better way to say it.

4 MR. BUCHET: Well, whichever way, half full or
5 half empty. It is a system that is working that a lot of
6 us lose our comprehension of routinely, and then we start
7 the discussion all over again.

8 My understand was, part of the Dodge report
9 process was to scour the country for building permits and
10 that they have whatever number thousand of operatives it
11 is all over the country doing precisely that so it's being
12 collected in some form.

13 I also think they claim to represent a whole lot
14 more coverage of the construction industry than some of us
15 think it has. I don't know what the number is any more,
16 but I've heard from 50 to 90.

17 CHAIRMAN BURKHAMMER: There's a dollar value
18 amount.

19 MR. BUCHET: Well, we've heard that discussion
20 before. Depending on what you pay them to give you, they
21 will go down to -- I believe they captured down to 50,000
22 bucks, but again, that's my remembrance of a particular

1 presentation. So we could do it in data collection again
2 and see if we could get a firmer understanding of where
3 the process exists now and work from that.

4 CHAIRMAN BURKHAMMER: Let's seriously take a
5 look, at the May meeting of next year, at having a lot of
6 this general discussion on what we talked with Charles
7 about this morning, about the flow process of standards
8 from the time we pass on a recommendation and where it
9 goes to the end.

10 Let's take a look at the record keeping and the
11 data collection and bringing in some of those people so
12 the whole committee can hear. I thought the presentation
13 from Peterson yesterday was fantastic. He could tone it
14 down a little bit, but I mean other than that it would be
15 a good thought.

16 And Marie, maybe someone from NIOSH that is
17 involved in data, let's put maybe a half a day on that.
18 So think about that, and we'll move on. Okay.

19 Cranes. Mr. Edginton?
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SUBPART N - CRANES

By Mr. Edginton

MR. EDGINTON: Thank you, Mr. Chairman.

The Subpart N workgroup met yesterday afternoon. We continue to have good representation from all parties of interest. We had representatives there from crane users, crane manufacturers, crane operators, crane certifiers, crane operator/certifiers. We have a real good cross section of participation and I'm glad to see that continue.

We are moving forward, as we've said before, in

1 taking a look at the subpart. One area we've been working
2 on is attempting to develop scope language. We think
3 that's important.

4 The current subpart is somewhat deficient in
5 that regard, and we think that is an important first step.
6 We're sort of attempting to define what equipment we're
7 talking about, what's really in, what's clearly out, those
8 types of things.

9 To assist us in that, we have, of course, been
10 looking at the NCP 30 and their thoughts on that. We have
11 also begun to look at Canadian Z150. What they've been
12 doing up there, we find to be somewhat instructive.

13 One thing we've been struggling with, and we'll
14 continue to work on, is what to do about helicopters as
15 lifting devices. They're currently included in the
16 subpart.

17 I, myself, have had a brief conversation with a
18 representative of one of their trade associations and I
19 was somewhat surprised to learn that he didn't understand
20 that there were OSHA regulations applicable to helicopters
21 when they were used as lifting devices.

22 I mean, their whole organizational focus had

1 been on Department of Transportation, FAA regulatory
2 activities, and really had never looked at the safety
3 aspects of lifting.

4 So we can't quite decide yet what to do with
5 those beasts. I think we're going to be reaching out to
6 them somewhat more to get their thoughts on that, because
7 we recognize that we don't have that expertise in the
8 circle yet on a regular basis.

9 One of the things that clearly has come forward
10 to the subgroup, is that people believe that this is
11 important. That it's important that OSHA have a state-of-
12 the-art, if you will, standard with respect to the
13 operation and maintenance of cranes.

14 There is some level of frustration in the
15 workgroup regarding the pace, if you will, of our work.
16 People would like to move faster than we have been. We're
17 going to attempt to do a better job of rescheduling
18 meetings, or scheduling meetings more frequently. We will
19 be so advising the Chair that we may be meeting at times
20 other than in conjunction with the ACCSH meetings, because
21 we want to get moving on that.

22 But one of the things that came out in the

1 latter part of yesterday's meeting, again, in the interest
2 of trying to provide the agency with a state-of-the-art
3 recommendation, is how best that could be accomplished.

4 There was a very strong feeling from workgroup
5 participants that they recommended to both Jane and myself
6 yesterday, is that ACCSH give consideration to
7 recommending through the Directorate to OSHA that this be
8 a subject area for negotiated rule making.

9 What I would like to do is distribute sort of
10 the thoughts of the group yesterday, and talk about them a
11 little bit. I might add, I know we have a couple of our
12 workgroup members in the audience this morning,
13 representing both users and manufacturers.

14 Their thinking yesterday seemed to be along
15 these lines, Mr. Chairman. And that is that the subpart,
16 in its current form, is about 30 years old. As such,
17 those of us who work in the industry recognize that there
18 has been considerable change in work processes and
19 considerable technological change in craning.

20 As a matter of fact, there are now cranes out
21 there on the road that are used predominantly within the
22 industry that simply didn't exist when this subpart was

1 adopted.

2 There is a strong feeling amongst all the
3 parties of interest that this deficiency neither enhances
4 or promotes worker safety or helps employers in
5 understanding what their operation and maintenance
6 obligations are under the Act, nor does it provide
7 sufficient guidance to OSHA compliance staff.

8 Again, these are points that are being made by
9 the parties of interest, to say, look, this is really
10 important. Cranes are the consequences of accidents or
11 improper maintenance of cranes contributing to accidents
12 plays an important role in the safety of the construction
13 workplace.

14 Moreover, there was a concern expressed with
15 respect to the ACCSH work process. We think we have the
16 right people at the table. We might want to cast our net
17 somewhat more broadly, as I said, but we think we can
18 produce a quality work product.

19 However, given, again, this stated deficiency,
20 there is some question as to whether or not the ACCSH work
21 group process is the most effective process to bring about
22 the timely change which the parties believed.

1 So what they had requested Jane and myself to do
2 this morning, was to introduce this motion with the clear
3 understanding that it's the intention of the workgroup to
4 continue to meet and work while the agency considers this
5 request.

6 Jane, do you have any additional comments or
7 thoughts?

8 MS. WILLIAMS: No. I think, Larry, you covered
9 it quite well.

10 CHAIRMAN BURKHAMMER: We have a motion presented
11 by the Subpart N workgroup. Is there a second, for
12 discussion?

13 MS. WILLIAMS: Yes, there is.

14 CHAIRMAN BURKHAMMER: Motion and second. Open
15 to discussion. Mr. Buchet?

16 MR. BUCHET: I would like to congratulate Mr.
17 Edginton for, once again, bringing up field sanitation. I
18 believe he said they spent a lengthy amount of time
19 discussing soap recommendations. This is a joke. I
20 realize it was SOP.

21 CHAIRMAN BURKHAMMER: Anything to get sanitation
22 back on the table.

1 Felipe?

2 MR. DEVORA: With that thought in mind, what
3 were your expectations of the near future?

4 MR. EDGINTON: We were very tempted to say,
5 look, we want an answer back by the next ACCSH meeting.

6 MR. DEVORA: Yes. That's what I'm saying.

7 MR. EDGINTON: But at the same time, we
8 recognize that their agenda may not necessarily be our
9 agenda at the moment. There's got to be some give and
10 take, though. Clearly, the sense was sooner than later.

11 MR. DEVORA: Years or months?

12 MR. EDGINTON: Months.

13 MR. DEVORA: Months. Okay.

14 CHAIRMAN BURKHAMMER: In helping to better
15 understand this, steel erection was an ongoing revision
16 for about five or six years back and forth to ACCSH, to
17 OSHA, back and forth, back and forth.

18 Then when they reached, I guess, a point of no
19 return, may be a term to use, they recommended negotiated
20 rule making. The Assistant Secretary formed SENRAC
21 because they had reached a point in the workgroup, and
22 within OSHA, I would think, where it was unresolvable.

1 I think that's what negotiated rule making is
2 more intended for, is when it gets to the point where
3 industry, labor, and OSHA come to an unresolvable dispute
4 or get to a point where they need something like
5 negotiated rule making. I'm not sure your workgroup has
6 had enough time to get to that point.

7 MR. EDGINTON: Well, we have begun to bump upon
8 that, when we talked about scope, for example, in terms of
9 what equipment should or should not be considered to be a
10 lifting device, or a hoisting device.

11 For example, one of the things we were talking
12 about yesterday has to do with the use of excavators as
13 lifting devices, and when they're used as lifting devices,
14 whether or not their operation and maintenance should be
15 covered by this subpart.

16 It's a practice that is found throughout the
17 industry, but there was a wide disparity of opinion in the
18 group, particularly from underground contractors saying,
19 no way. But these are the kinds of things that we think
20 could be worked through through the negotiated rule making
21 process.

22 Again, the issue of helicopters, should they be

1 in or out. The concern was that, as we work through this
2 as a work group, Mr. Chairman, one recommendation was,
3 look, maybe what we do is identify areas of concern which
4 we are unable to reach a consensus on. But the concern of
5 many of the workgroup members was, well, if we have done
6 that, what have we gained?

7 CHAIRMAN BURKHAMMER: Jane?

8 MS. WILLIAMS: Just to add a little comment on
9 that, and maybe Sarah or Bruce could inform me because I
10 don't have all this, but I'm under the impression that the
11 negotiated rule making brings together very specific
12 participants and that they can arrange schedules, meet
13 more often, and truly address very specific issues that
14 would include OSHA participation as well as everybody else
15 who needs to come to that table in a very timely and
16 effective method with the ACCSH process.

17 We can't garner that many participants, and
18 those who do spend a tremendous amount of time and
19 financial output to participate. We felt this would be an
20 extremely good way of bringing to the table those persons
21 that certainly would know the issue, and having OSHA
22 participate with us at the level of persons that could

1 make a difference in the process.

2 Am I misunderstanding the negotiated rule
3 making, or can you provide some additional information,
4 Sarah, Bruce, or whomever?

5 CHAIRMAN BURKHAMMER: Bruce?

6 MR. SWANSON: I'd be happy to provide you
7 additional information. Some general comments, again, on
8 management of expectation levels. The SENRAC
9 negotiations, which were started some four years ago, or
10 thereabouts, in 18 months, the committee was able to
11 produce a reg text.

12 The reason they were able to do that, is because
13 of the advantages that committee process has over a
14 committee such as this which meets several times a year,
15 or even there was more expertise available than OSHA
16 itself was able to provide through a standards office.

17 But, as I've heard the Assistant Secretary share
18 with this group before, the reg text gets you about 10
19 percent of the way home. And once you have the reg texts,
20 there is then the economic analysis of its impact on the
21 regulated community to do, and there's the writing of the
22 preamble, and there's the various levels of review, and

1 there's the issue of further hearings in other settings
2 such as SBREFA hearings that other federal legislation
3 might require us to go through.

4 Everything after the 10 percent of getting the
5 reg text done, everything else then competes for more
6 limited resources in house, where we can't draw upon the
7 expertise of the community at-large, such as doing an
8 economics assessment, and how is this going to impact on
9 the regulated community.

10 So I am neither encouraging nor discouraging any
11 conversation about having neg reg on cranes. But if you
12 do have neg reg on cranes, and two years or three years
13 from now you have a reg text, then you are going to run
14 into the bottlenecks that were alluded to this morning by
15 the Assistant Secretary, and then that year's sanitation
16 standard will be put on a side track so that we can do the
17 economic analysis. So it helps, but it only helps part
18 way. It's not a total solution.

19 MS. WILLIAMS: But all those additional
20 processes, they would have to occur regardless, would they
21 not?

22 MR. SWANSON: Correct.

1 MS. WILLIAMS: So we would be gaining the
2 ability of getting the process with a much more controlled
3 method and a timely effect.

4 MR. SWANSON: Yes. But all I'm trying to do is
5 manage expectations here. It will speed up a part of what
6 gets done. I believe that the 18 months in writing a reg
7 text by the SENRAC committee, although Mr. Cooper is not
8 here, although others will tell you it's not the fastest
9 thing they've ever seen done, it was a real benefit over
10 relying on us to do it ourselves. But it only got us part
11 way home, and then people got anxiety ridden over the
12 intervening three years when the other steps were gone
13 through.

14 MS. WILLIAMS: Understood.

15 MS. SHORTALL: I would add one thing. It may,
16 but not for sure, eliminate one step. That is, the SBREFA
17 process. That's the Small Business Regulatory Enforcement
18 Fairness Act. Where you have a significant impact on
19 small employers, we're required to go through this process
20 in the proposed rule making.

21 However, where there are assurances made to the
22 Small Business Administration that, in fact, we have

1 achieved good input and participation among small
2 businesses, sometimes they release us from that process.
3 In fact, they did release us from that process in steel
4 erection. But it is not a guarantee.

5 MS. WILLIAMS: Thank you.

6 MR. EDGINTON: Mr. Chairman, I think there was a
7 clear understanding amongst workgroup participants, and
8 certainly in myself and Jane yesterday as we were kicking
9 around this idea, it certainly was not viewed as a silver
10 bullet, that in six months we'll have some language and in
11 a year we'll have the change. We never envisioned that.
12 It was clearly never anyone's understanding. However,
13 clearly, people felt that it was better to be 10 percent
14 down the road in a year or 18 months than something far
15 less than that through the ACCSH workgroup process.

16 That was a concern that was being expressed, is
17 we will develop an ACCSH workgroup recommendation, that
18 then will get put into the mill along with everybody else,
19 and we're fighting for time then.

20 We thought that perhaps it was better to have
21 the conversation with the agency about the priorities with
22 respect to this other 90 percent of the work than it is

1 even trying to get it in the loop for the first 10
2 percent.

3 CHAIRMAN BURKHAMMER: Michael?

4 MR. BUCHET: I have the privilege of still
5 sitting on a negotiated rule making committee, and it does
6 work very well, but it is certainly not the panacea that
7 we might be expecting it to be. Nobody is paid to go to
8 it. You sometimes have to depend on the kindness of the
9 people who volunteered to attend to show up.

10 In the shipyard one that I'm on, we manage to
11 meet maybe four times a year, and try to move it around
12 the country to get to the small businesses. That becomes
13 a real problem, to make sure that you do the outreach
14 necessary.

15 One of the things that became apparent, is if we
16 had done more homework before we got there, we would have
17 been able to do more of the reg text creation up front
18 than we did.

19 So I encourage the workgroup to continue
20 negotiating as hard as you can in the workgroup and then
21 come forward with as much of everybody's position marked
22 out as possible.

1 I don't know if all neg regs are done the same
2 way, but there is usually a third party facilitator who
3 cracks the whip and tries to get everybody to come to
4 consensus. It's an interesting process.

5 CHAIRMAN BURKHAMMER: Bruce?

6 MR. SWANSON: A generic comment on neg reg. The
7 Department of Labor, at its highest level, is on record as
8 endorsing the process. The big advantage is seen by its
9 advocates as one of quality rather than speed, and if
10 there is a time saving, it is a time saving over the
11 experiences of the 1970s, where it was, every standard was
12 followed by 10, 15, or 20 years of litigation, and let's
13 get that out of the picture.

14 CHAIRMAN BURKHAMMER: Bear in mind, also, on a
15 negotiated rule making group or body, as Michael can
16 attest, and Steve, you have a very broad-based
17 representation, where in the ACCSH workgroup you have a,
18 for lack of another word, narrow-focused workgroup.

19 If the narrow-focused workgroup feels they
20 cannot come to a uniform consensus of developing
21 something, just imagine what a wider-ranged focused group,
22 some of whom may not have the expertise that your

1 workgroup might have. If SENRAC took four years, take a
2 guess.

3 MR. EDGINTON: Mr. Chairman, we talked about
4 that yesterday. Again, I think it was the sense of the
5 group that, yes, they understand that, for lack of a
6 better way of putting it, there's this inherent danger
7 that you talk about when you cast the net a little more
8 broadly and bring in parties of interest, for lack of a
9 more charitable way of putting it, real or imagined, that
10 there is some inherent danger to that.

11 But at the same time, people said, look, that's
12 going to happen through the rule making process
13 nonetheless, and we would rather attempt to address the
14 concerns that everyone has, try to pick from the best
15 ideas, again, with the goal of trying to create something
16 state of the art for the agency. Yes, we may take a few
17 lumps along the way in doing that, but I think that was
18 clearly understood.

19 CHAIRMAN BURKHAMMER: Michael?

20 MR. BUCHET: A point of clarification. How does
21 ACCSH continue studying a subject and make recommendations
22 to the agency while the agency has a negotiated rule

1 making that it is undergoing, and faced with creating the
2 real text?

3 How would ACCSH, in this particular case, if we
4 continue discussing cranes and we come up with a
5 recommendation, after a negotiated rule making committee
6 is founded, how does the agency put the two
7 recommendations together, or does the agency have the
8 ability to put them together to everybody's benefit?

9 CHAIRMAN BURKHAMMER: When SENRAC came to be,
10 Steve Cooper was chair of the Steel Erection workgroup.
11 We suspended -- and Steve, correct me if I'm wrong, but I
12 think we suspended workgroup activities and deferred to
13 SENRAC, because at the end of SENRAC, their finished
14 product comes back to ACCSH anyway.

15 So it's a moot point of having a workgroup at
16 the same time. It's not accomplishing anything. So I
17 assume, if we approve this motion, we would suspend the
18 Crane Subgroup pending --

19 MR. BUCHET: That's my question, Mr. Chairman.
20 Because I understood the presentation, that we were going
21 to continue the workgroup, as well as suggest the
22 negotiated rule making.

1 MR. EDGINTON: Mr. Chairman, so we're clear on
2 this, what the workgroup discussed yesterday -- again, I
3 cannot emphasize enough, that the participants feel that
4 it is extremely important to continue the work on this,
5 because they didn't want the message communicated to
6 either ACCSH or to the Directorate that it was the
7 intention of the workgroup to stop work until such time as
8 there's an up or down given to the notion of whether or
9 not it's suitable for negotiated rule making.

10 Now, having said that, it certainly was not the
11 intention of the workgroup to have a dual track on this,
12 is that we're going to keep a workgroup going at the same
13 time we have negotiated rule making going. That's
14 certainly not the intention. But until such time that
15 that decision was made one way or the other, the workgroup
16 wishes to continue to meet.

17 CHAIRMAN BURKHAMMER: Okay.

18 Steve?

19 MR. CLOUTIER: Mr. Chairman, what would happen,
20 the workgroup would move forward and continue forward.
21 And once ACCSH got the word yea or nay, and let's say it's
22 yea that there would be reg neg on Subpart N - Cranes,

1 then the workgroup would forward their product to the
2 negotiated rule making procedures.

3 CHAIRMAN BURKHAMMER: Like we did before.

4 MR. CLOUTIER: Just like we did before. ACCSH
5 would be represented on the committee, plus anything that
6 the reg neg came back through would come back to ACCSH one
7 or two times, at least.

8 CHAIRMAN BURKHAMMER: Michael?

9 MR. BUCHET: Could I, for the purposes of
10 discussion, suggest a slight modification to the motion?
11 That, instead of the period after the end, we say take the
12 period out and put, "based on up-to-date workgroup
13 output," so that there is no doubt that we're feeding the
14 workgroup's output into the neg reg process?

15 CHAIRMAN BURKHAMMER: Is that change suitable
16 with the second and the maker of the motion?

17 MR. EDGINTON: That's fine.

18 MS. WILLIAMS: Fine.

19 CHAIRMAN BURKHAMMER: You want to say that
20 again, Michael?

21 MR. BUCHET: Remove the period after the capital
22 N, and insert the words "based on up-to-date workgroup

1 output."

2 CHAIRMAN BURKHAMMER: ACCSH workgroup.

3 MR. EDGINTON: Up-to-date or current?

4 MR. CLOUTIER: Current.

5 CHAIRMAN BURKHAMMER: ACCSH current workgroup
6 output.

7 MR. BUCHET: Yes.

8 CHAIRMAN BURKHAMMER: Further discussion?

9 (No response)

10 CHAIRMAN BURKHAMMER: We have a motion and a
11 second. The motion now reads, after the addendum, "The
12 ACCSH Subpart N workgroup requests that ACCSH recommend,
13 through the Construction Directorate, that OSHA take
14 appropriate action(s) in the near future to initiated a
15 negotiated rule making process to revise/update Subpart N
16 based on up-to-date ACCSH current workgroup output."

17 All in favor of the motion, signify by saying
18 aye.

19 (Chorus of ayes)

20 CHAIRMAN BURKHAMMER: Opposed?

21 (No response)

22 CHAIRMAN BURKHAMMER: The motion carries. The

1 motion will be forwarded to OSHA. Thank you, Larry.

2 Jane, would you like to give your ACCSH
3 guidelines?

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ACCSH GUIDELINES

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By Jane Williams

10 MS. WILLIAMS: Yes. Thank you, Mr. Chairman.

11 I was approached by the Directorate of
12 Construction's Office regarding the advisory committee
13 posting documents on the ACCSH web page.

14 They presented me with some language that would
15 give ACCSH members the ability, one, to provide the data
16 that could go on our web site, and more importantly, the
17 manner in which it should, in fact, come, PDF versus HTML,
18 and all kinds of interesting other things here. They
19 can't do certain things with Power Point. There are other
20 ways that it has to be accomplished.

21

So the recommendation that I have from Mr.

22

Zettler and Camille, who is our -- I call her the computer

1 guru; I'm sure she has a much more appropriate title. Is
2 that we incorporate this language into our advisory
3 committee guidelines so that all our members would have
4 the knowledge and provide documents in accordance with
5 these guidelines.

6 Therefore, I would move that we revise the ACCSH
7 guidelines to include procedures for posting documents on
8 the ACCSH web site, as presented to me.

9 CHAIRMAN BURKHAMMER: Is there a second to the
10 motion, for discussion?

11 MR. BUCHET: Second.

12 CHAIRMAN BURKHAMMER: Motion seconded.
13 Discussion? Marie?

14 DR. SWEENEY: Can you be a little more specific
15 as to what the guidelines are?

16 MS. WILLIAMS: My intent would be to draft these
17 up and issue a formal document for the committee to
18 review, and draft revision. But it's basically stating
19 that, if the documents to be posted have been created in
20 any other major word processing applications, they will
21 not remain in their original format. They need to be
22 translated, or we can provide them in the PDF typical

1 format and they will end up on our ACCSH screen.

2 It's more or less the form of the documents and
3 the software they need to be in so they can, in fact, be
4 placed on the web site. If Camille is here, and I don't
5 know that she is, she certainly could address this.

6 CHAIRMAN BURKHAMMER: So you're referring to the
7 guidelines document that we all are bringing with us to
8 every meeting?

9 MS. WILLIAMS: Yes. Which I do have.

10 CHAIRMAN BURKHAMMER: Where here, Jane, in this
11 are you looking at revising?

12 MS. WILLIAMS: Well, the document currently does
13 not contain any process for us to provide information for
14 a web site because the web site issue was in creation at
15 the point of time of the guideline adoption.

16 So what they're asking us, is to get this
17 information in the document so that all of our members
18 would know the standard formats that they need our
19 information to be submitted electronically, so they can
20 achieve the posting on our web site.

21 There's a one-page suggestion, which I'm sure I
22 could have Mr. Boom or whoever make copies, but primary

1 this just says they need it in PDF file, and how we are to
2 submit it on a disc, and what's going to happen to it if
3 we do anything differently. It's very simplistic in the
4 manner in which we give them the data to go on the disc.

5 DR. SWEENEY: Jane, I don't understand. There's
6 a lot of work that has to go into putting even a Word
7 Perfect or a Word document into HTML or PDF. I would like
8 to see the motion in writing before I vote on it.

9 CHAIRMAN BURKHAMMER: Can I make a comment,
10 Jane? On page 2 of the guidelines, if you'd all open your
11 guidelines to page 2, "Presentation of Workgroup Reports."
12 I assume, and maybe I'm assuming incorrectly and that is
13 quite possible, to include procedures for posting
14 documents.

15 "The only documents that would be postable would
16 be once ACCSH votes on a motion from a workgroup, and that
17 motion is approved and we forward a document to OSHA.
18 Then that document becomes postable.

19 Prior to that, a workgroup report is a draft
20 report at the time of its presentation to the ACCSH
21 committee and is not distributed to the public, therefore,
22 would not be posted." Correct?

1 MS. WILLIAMS: That is correct in the product.
2 However, there are working documents that we have had in
3 multiple workgroups that we allow people to edit as part
4 of the participants, and they have been made available to
5 each of the workgroup members, our minutes of our meeting,
6 our action summaries of the workgroups, and these are the
7 types of items they wish to be placed, as an interim
8 product, on the ACCSH web site, as I understand it, and
9 has been requested of the Directorate to do, so that
10 people have more access to the process and to the
11 workgroup preliminary process. Once we adopt a final
12 draft product, that's the one that is, in fact, frozen and
13 goes through the normal process, as I understand it.

14 CHAIRMAN BURKHAMMER: I think, even with that
15 answer, we're contradicting ourselves. If a workgroup has
16 internal documents that they're working on as a workgroup,
17 and those internal documents are passed around to the
18 workgroup participants, that's up to the workgroup chair.

19 MS. WILLIAMS: Right.

20 CHAIRMAN BURKHAMMER: The people that are
21 entitled to those products are the workgroup members.
22 Posting a workgroup in-progress document on the ACCSH web

1 page is a direct disagreement with what we've agreed to in
2 posting or handing out material.

3 I think if you put something on the ACCSH web
4 page, it's pretty much public knowledge to anybody that
5 wants to go in there and get it, and that's not the intent
6 of workgroup documentation.

7 Again, I may be incorrect, but I'm reading from
8 our document that we approved. It said the only things
9 distributed to the public are final documents approved by
10 the full ACCSH committee and turned over to OSHA. That
11 would be what would be posted, not internal working
12 documents of a workgroup.

13 MS. WILLIAMS: This report that was handed to me
14 by Mr. Zettler, and Bruce, maybe you can help me out here,
15 it says, "During the past few months, several documents
16 have been received for posting at the Advisory Committee
17 on Construction Safety and Health Internet site.

18 The OSHA personnel and contractors that maintain
19 the OSHA Internet site have recommended the following
20 protocols be followed for efficient processing of these
21 documents."

22 I'm not sure, other than the meeting minutes, or

1 attendance notices, or things of this issue, our workgroup
2 meeting dates and stuff, of any postings other than those.
3 But I don't know that. Truthfully, I really do not.
4 Bruce, or Berrien, or anyone who's here maybe can give me
5 some insight, but this was what was presented to me.

6 CHAIRMAN BURKHAMMER: Michael?

7 MR. BUCHET: Some of the things that we've tried
8 to get to members of the workgroup are very hard to e-
9 mail. So in the case of like the 170 form flow chart, I
10 wondered if that could be put at a place where it could be
11 downloaded, and that may have generated some of this
12 conversation.

13 In that particular case, getting comments from
14 the workgroup is, to me, the most important thing, and how
15 we get it there is secondary. But there certainly are
16 places where the concern of what goes completely public
17 and what goes to the workgroup is worthy of consideration.

18 CHAIRMAN BURKHAMMER: My problem is, if you post
19 information that is ongoing, or work-in-progress, or
20 material that is a draft of any type of nature and you
21 post it on a web page, sometimes it is construed as, boy,
22 this is it, baby, let's take it and run, or this is what

1 they're going to do.

2 We've recently incurred that with the
3 musculoskeletal disorders document. Once burned, twice
4 shy. So I think, from that perspective, I would not look
5 kindly on posting draft workgroup documents on the web
6 page.

7 MS. WILLIAMS: Could we work with the
8 Directorate to provide that document to them for mailing
9 or providing to the committee, or would you want the co-
10 chairs to do that function?

11 CHAIRMAN BURKHAMMER: I think the co-chairs need
12 to get with Jim or their liaison member and work out the
13 appropriate way to do this. I don't think it's the full
14 ACCSH's job or charge to tell the workgroup chairmen how
15 to distribute their material.

16 Felipe?

17 MR. DEVORA: Certainly in what we already have
18 now, what I've seen on the web page, are the listings of
19 the workgroups, who those participants are, and how to get
20 hold of us. So by my way of thinking, if there was
21 someone that had a particular interest in an issue of
22 where we were at, they could contact someone on those

1 workgroups.

2 CHAIRMAN BURKHAMMER: And if there's
3 documentation that is ongoing in the workgroup, and
4 revisions are being made, and all that kind of stuff, it's
5 up to the workgroup chairs and the liaison to make the
6 determination of how to get that material out to the
7 members of the workgroup prior to the next meeting.

8 Michael?

9 MR. BUCHET: Part of the discussion at some
10 point was how to control access to the information that we
11 put up on the web page, because it would be a lot easier
12 to upload a 50-page document that you want people to
13 comment on and have them download it than it is to e-mail
14 it or Xerox it and mail it.

15 I don't know that there's any ability to give
16 passwords to all the ACCSH members so we could use part of
17 the site that way, but --

18 CHAIRMAN BURKHAMMER: I appreciate your comment
19 about easiness, but sometimes easiness is not the right
20 way to do business.

21 MR. BUCHET: Sure.

22 CHAIRMAN BURKHAMMER: Marie?

1 DR. SWEENEY: Mr. Chairman, there are two issues
2 here. One, is what goes on the ACCSH web site, and the
3 second one, in Jane's motion, is what the format is,
4 whether it's an HTML, or PDF, or whatever the other folks
5 need. I don't think, and not having read the motion, it
6 deals with what goes on in the web site. Not that this is
7 not an important thing to be discussed, because it should
8 be, but I don't think Jane's motion deals with that, does
9 it?

10 MS. WILLIAMS: The motion, as was requested of
11 me by the Directorate, was that, evidently, this is, in
12 fact, occurring. So from what I'm reading here, this was
13 something that has happened and that they need it in very
14 specific format to accomplish their end result.

15 If we're taking a different position, then we
16 just need to respond back to the Directorate, no, ACCSH
17 will not be doing this for these reasons, and we'll
18 continue to do business as we stated. And I would respond
19 to Mr. Zettler, being Mr. Swanson here, and tell them that
20 we cannot pursue this in this manner at this time, or we
21 need to talk about it more.

22 CHAIRMAN BURKHAMMER: All right. What I'm going

1 to ask you to do is take it back to the Directorate for
2 discussion.

3 MS. WILLIAMS: Okay.

4 CHAIRMAN BURKHAMMER: Get a clarification of
5 what the motion means. I agree with Marie, I think it
6 means something different than what you've said here.
7 Please take it back to the Directorate, get a
8 clarification, and if, indeed, you want to re-present this
9 tomorrow, I'll consider it then.

10 MS. WILLIAMS: Okay. Thank you.

11 CHAIRMAN BURKHAMMER: Michael?

12 MR. BUCHET: A practical concern. If we're
13 talking about the format for submitting documents, there
14 is the ability of -- not necessarily the ability of any
15 one of us to do the conversion.

16 What we're talking about is attempting to save a
17 couple of steps. If somebody who creates a document can't
18 turn it in in PDF or HTML, and it has to be posted, then
19 that conversion will have to take place somewhere.

20 MR. BUCHET: And that can take place at the
21 agency.

22 CHAIRMAN BURKHAMMER: Wait a minute. We're

1 talking about two different things here. The motion is
2 for development of procedures for posting documents. It's
3 not for text format.

4 MR. CLOUTIER: No, Mr. Chairman, I think you're
5 wrong.

6 CHAIRMAN BURKHAMMER: Yes. Please re-read the
7 motion.

8 MS. WILLIAMS: The motion was to revise the
9 ACCSH guidelines to include procedures for posting
10 documents on the ACCSH web site. The procedures --

11 CHAIRMAN BURKHAMMER: Ah. Ah. No. No.

12 MS. WILLIAMS: Wait a minute. The procedure,
13 though, as I read --

14 CHAIRMAN BURKHAMMER: No. Stop a minute. Site,
15 with a period after the motion. That's the motion,
16 period. There's no addition to it.

17 MS. WILLIAMS: But the procedure to develop
18 would be in the formats which I read, of HTML, PDF, or
19 whatever. I mean, it's not the procedure that I hand it
20 to Bruce and say, do it, it's that I've got to give him a
21 disc that's properly designed --

22 CHAIRMAN BURKHAMMER: Then that's why I'm asking

1 you to take it back to the Directorate for clarification.

2 MS. WILLIAMS: I think we've agreed --

3 CHAIRMAN BURKHAMMER: If you wish to represent a
4 motion tomorrow, please let me know and we'll do it.

5 MS. WILLIAMS: Thank you.

6 CHAIRMAN BURKHAMMER: Marie?

7 DR. SWEENEY: Nothing, Mr. Chairman.

8 CHAIRMAN BURKHAMMER: Very good. Okay.

9 It's 11:36. Why don't we adjourn now for lunch.
10 Be back here at 12:45, and we'll be starting 15 minutes
11 early. We're adjourned for lunch.

12 (Whereupon, at 11:36 a.m., the meeting was
13 recessed for lunch.)

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AFTERNOON SESSION

(12:45 p.m.)

CHAIRMAN BURKHAMMER: Marthe Kent is going to come in and talk to us about several of the standards. Prior to that, in discussions with Bruce and Berrien at lunch, prior to us leaving tonight, I want an Executive Session of the committee. So, we will try to have that prior to the 3:00 ACCSH planning session for Chicago.

Prior to Marthe getting here, Bob, are you prepared to give your report, please? We'll do the 2:00 report on Fall Protection.

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FALL PROTECTION

By Robert Masterson

MR. MASTERSON: Actually, the Fall Protection workgroup met yesterday and had presentations by pre-cast as well as the drilling people, the Drill Shaft Association. Particularly with the pre-cast, there was some fairly lively conversation.

We're going to continue to meet. We are tentatively scheduling another meeting on January 26th that Danny Evans has been more than gracious in offering to host.

With that, it's ongoing. We've got some information, but hopefully at the next ACCSH meeting we'll

1 be able to give you a much more in-depth update.

2 Felipe?

3 CHAIRMAN BURKHAMMER: Thank you, Bob.

4 Felipe?

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14 **FALL PROTECTION** (Continued)

15 By Felipe Devora

16 MR. DEVORA: What we tried to do at the meeting
17 yesterday, we were very successful in doing. The 10
18 issues that OSHA has put in the Federal Register, we've
19 tried to address them, and in our presentation to the
20 entire ACCSH we'll have those comments from these
21 associations.

22 One of the questions, obviously, yesterday dealt

1 with pre-cast, one of the issues. The other one dealt
2 with revisiting the need for fall protection for
3 operations around drilling shafts. Then the third one
4 talked about some manufacturers' equipment, body belts
5 being incorporated into full-body harnesses.

6 The manufacturers' association of safety and
7 fall protection equipment was there and they are going to
8 present us with written comments on these three issues.

9 So we feel like yesterday we got a good database
10 on 3 of the 10 issues. The largest issue, or actually two
11 of them, have to do with residential, and I think Bob is
12 going to address those.

13 Our hope is that, in the next -- we really don't
14 know. Hopefully, maybe even Chicago or the May meeting,
15 we'll have these comments and we'll have a position paper
16 and analysis of each one of these issues for ACCSH to vote
17 on and present to the agency.

18 Also, now, the official comment period to the
19 docket on these 10 issues, it was extended three months
20 ago. It is my understanding that the cut-off date for
21 comments to the docket are January the 24th, I believe, of
22 2000. We won't have our presentation finished by that

1 time.

2 That was going to be one of my questions to the
3 chair, was that, are we necessarily bound by that, to have
4 our presentation done by the time the comment period in
5 the docket is over? And maybe we need to ask Bruce about
6 this.

7 CHAIRMAN BURKHAMMER: No, we don't need to have
8 it done prior to the ending of the comment period,
9 however, we need to have it done shortly thereafter.

10 MR. DEVORA: Okay. You think the May meeting
11 would be too far after that?

12 CHAIRMAN BURKHAMMER: No, I think that would be
13 acceptable.

14 MR. DEVORA: Okay. Because our hope is to get
15 it out a month or two to the other members before we meet
16 in May to vote on it.

17 CHAIRMAN BURKHAMMER: Appreciating that, in
18 February, we hope to have a lot of input, right?

19 MR. DEVORA: Correct. Exactly.

20 CHAIRMAN BURKHAMMER: Okay.

21 MR. BUCHET: Mr. Chairman, I think if we
22 remember the earlier presentation on this by, I believe it

1 was Mr. Swanson, he recommended that anybody who wanted to
2 comment also comment directly to the docket as well as to
3 the whole group.

4 CHAIRMAN BURKHAMMER: Correct. We're not a
5 substitute for that comment.

6 MR. DEVORA: But we would appreciate your -- you
7 know, if you don't make the docket by that cut-off date
8 and there's some concern, certainly send it on to ACCSH
9 and we'll get your comments in our presentation to OSHA,
10 or conversely, even if you have sent comments to the
11 docket, we would appreciate them for our workgroup product
12 also.

13 CHAIRMAN BURKHAMMER: Thank you. Further
14 discussion?

15 (No response)

16 CHAIRMAN BURKHAMMER: Okay.

17 No Marthe yet, huh?

18 (No response)

19 CHAIRMAN BURKHAMMER: Jane, do you want to do
20 the OSHA 170 report or do you want to hold that until
21 after?

22 MS. WILLIAMS: The Diversified Workforce one

1 would be very quick. You want me to do that one?

2 CHAIRMAN BURKHAMMER: All right. Diversified
3 Workgroup is fine. Go ahead.

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3 **DIVERSIFIED CONSTRUCTION WORKFORCE INITIATIVES**

4 By Jane Williams

5 MS. WILLIAMS: The Diversified Construction
6 Workforce Initiatives workgroup met Monday afternoon, and
7 what we decided the best way was to approach this subject
8 is to list the topics that we had and then prioritize
9 them, so we didn't go to workgroup meeting after workgroup
10 meeting and do a splattering of everything, but focus on
11 particular issues.

12 So, in summary of that meeting, I can tell you
13 that the ranking that we have will be, 1) we will
14 concentrate on communications, language, and training
15 issues in signage; 2) personal protective equipment; 3)
16 age, the diversities of youth, displaced (inaudible)
17 workers entering the workplace; 4) complacency issues; 5)
18 health, sanitation, and accessibility; 6) interphase with
19 Musculoskeletal workgroup; 7) data collection and
20 recommendations on existing data available or request to
21 facilitate new data; and then when we get work done with
22 all that process, we will look at the intervention

1 strategies that we feel are necessary for recommendation
2 to target employers, labor, and associations to deliver
3 the product of the workgroup, recommendations to OSHA for
4 more effective enforcement of existing standards, and
5 participate in awareness activities that may not be
6 captured in specific regulatory language.

7 So this is definitely an ongoing workgroup
8 meeting which we'll be intermixing with various other
9 active workgroups, and we will just keep you posted. No
10 recommendations at this time.

11 CHAIRMAN BURKHAMMER: Okay. Discussion on the
12 report, comments?

13 (No response)

14 CHAIRMAN BURKHAMMER: Jane, do you see this
15 workgroup progressing or do you see it kind of just
16 circling the wagons?

17 MS. WILLIAMS: You know, I think now that we
18 have a priority, we weren't sure what to address first.
19 And after our discussions, I see it progressing. The only
20 thing that I see, I definitely see the need and the
21 interest, the participation is definitely needed in the
22 communications area.

1 The only concern, Stew, that I do have is that,
2 with our other workgroup assignments, is attracting
3 participants to be in this when we're competing against
4 other issues. Like, Phil is helping me on this one, and
5 we've got other things happening. So it's going to be a
6 time issue, is where we see the problem.

7 CHAIRMAN BURKHAMMER: One of the things that I
8 want to do before we leave tomorrow is go through the
9 workgroups. You all have in your packet a copy of the
10 workgroups, so peruse those and if you see some in there
11 that -- I mean, we haven't had reports from some of the
12 workgroups in a while, some are kind of on hold waiting
13 for OSHA to respond to us, some may be outdated.

14 So if you would take a look at those prior to
15 tomorrow, we'll discuss either closing some of those out,
16 or one of the discussions I want to have, and I've had
17 with Michael and Marie, is the combination of 170 and Data
18 Collection.

19 I see some paramount reasons why to do that, but
20 I also understand there are some differences in the
21 workgroups. So, think about all that as you look through
22 the list, and let's discuss it tomorrow.

1 Any other comments on Jane's report?

2 (No response)

3 CHAIRMAN BURKHAMMER: Thank you, Jane.

4 MS. WILLIAMS: You're welcome.

5 CHAIRMAN BURKHAMMER: Felipe, Multi-Employer.

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MULTI-EMPLOYER

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By Felipe Devora

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MR. DEVORA: The Multi-Employer workgroup. Dan and I were given the final copy of the policy that is going to be -- well, I have it, Danny. I haven't given it to you yet. I think Stew has your copy. But it's the final version, and it's my understanding that it has already been through the Solicitor's Office, and it is at publication now. That should be hitting the streets.

MR. ZETTLER: The document is in the hands of the people who are to publish it. They have told us that they will publish it as soon as they can. I am very hopeful that we will have it up on the net before this

1 meeting is over, and we can supply a copy to everybody.

2 MR. DEVORA: Great. That's the reason why in
3 Chicago, at the next ACCSH meeting, we wanted to have a
4 form that hopefully, between now and then when you see it
5 posted, or however you can get your hands on a copy of it,
6 that you can study it, take a look at it.

7 I was very pleased to see in this copy that the
8 format that we outlined in the ACCSH work product, that a
9 lot of the issues were addressed. As a matter of fact, a
10 lot of the issues were expanded on and went beyond the
11 scope of really my expectations, and I thought that was
12 great.

13 But one thing in reading through it, it really
14 is written in a teaching format for compliance officers.
15 So one of the comments I made to Mr. Jeffress this morning
16 about culture, I think it's a good step towards that
17 direction. It gives the compliance officer a step, a
18 thinking process to go through, before we actually cite on
19 multi-employer.

20 So, having said that, that's the reason for
21 wanting to convene a multi-employer session. I think it
22 won't be a session where we can probably change any of the

1 verbiage or anything, but it will be a good session, based
2 on the review beforehand, to discuss some of the issues
3 and what our expectations are of how this is put into the
4 firm, and how compliance officers are going to proceed
5 with this.

6 CHAIRMAN BURKHAMMER: One of the things I would
7 hope you get in Chicago, is a lot of attendance by people
8 that are actually going to have to implement this thing
9 and work with it on a job site so we can get some feel
10 from them.

11 MR. DEVORA: Yes. Absolutely.

12 CHAIRMAN BURKHAMMER: Michael?

13 MR. BUCHET: At the end of our MSD workgroup, we
14 had a discussion with a number of association
15 representatives about pulling together some forum in
16 Chicago to which they would commit to bring a number of
17 field representatives, working contractors. Maybe we need
18 to talk about that when we talk about the Chicago agenda.

19 CHAIRMAN BURKHAMMER: Yes. Yes. Please hold
20 that until 3:00. Yes.

21 Further discussion on Multi-Employer?

22 (No response)

1 CHAIRMAN BURKHAMMER: Okay. Thank you.

2 While we're waiting for Marthe --

3 MS. WILLIAMS: I can begin 170, if it will help.

4 CHAIRMAN BURKHAMMER: I don't want to start it
5 and then stop. I think there are some discussion items in
6 170 that will take us a while, and we don't want to hold
7 Marthe up either, because she is busy.

8 (Pause)

9 CHAIRMAN BURKHAMMER: As we speak, she enters.
10 Welcome, Marthe.

11 MS. KENT: Thank you.

12 CHAIRMAN BURKHAMMER: Bruce gave you a big build
13 up. He told us you're going to talk about every single
14 standard, and you know everything about every one. So,
15 please proceed.

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SPECIAL PRESENTATION

By Marthe Kent

MS. KENT: Okay. Actually, I was going to talk to you about four standards activities that are relevant to construction or are coming up fairly soon. I have the staff that is responsible for helping put those out with

1 me. Let me tell you what they are.

2 **PROCESS SAFETY MANAGEMENT STANDARD -**

3 **ADVANCED NOTICE OF PROPOSED RULE MAKING**

4 MS. KENT: The first one is an ANPR on PSM, on
5 the process safety management standard. That document, I
6 think you have been given a copy of it, am I correct?

7 CHAIRMAN BURKHAMMER: It should be by your
8 places when you came back from lunch.

9 MS. KENT: Okay. And that's undergone sort of a
10 metamorphosis because originally -- yes, you've got it.
11 We'd be very interested in hearing your comments about
12 that. It does affect construction. That is, the whole
13 regulation is incorporated into 1926, just as it appears
14 in general industry, so this would ultimately, if it goes
15 proposal final, be of interest to you.

16 CHAIRMAN BURKHAMMER: Do you have a date when
17 you would like to hear back from the committee?

18 MS. KENT: I'd like to hear back from you as
19 soon as I can about the ANPR. Now, I don't know. What
20 does that mean? You tell me what that means.

21 CHAIRMAN BURKHAMMER: As soon as you can would
22 be at the end of the February meeting.

1 MS. KENT: End of the February meeting. Okay.
2 All right.

3 CHAIRMAN BURKHAMMER: Which is the 10th through
4 the 18th in Chicago.

5 MS. KENT: Okay. Then if that's as soon as you
6 can, that's fine. That will be fine.

7 This is an ANPR, meaning it is an advanced
8 notice of proposed rule making. It is asking a lot of
9 questions about what direction we should go in. It is
10 not, as we originally envisioned, just making OSHA's PSM
11 standard agree with the EPA standard.

12 That was how we originally thought of this
13 project, and it has grown little legs and gone in a couple
14 of directions. You'll see in here that it has gone in two
15 directions that are particularly important.

16 One, is as a result of the Lodi tragedy several
17 years ago which killed five workers and involved reactive
18 chemicals that were actually low-grade reactives, NFPA 1s
19 and 2s rather than the 3s and 4s that are on the PSM
20 Hazardous Materials Appendix.

21 We went back and considered whether there were
22 other reactives that we should add to the PSM standards.

1 Should we include in the list of chemicals that are
2 covered NFPA 1 and 2 chemicals? You will see that that is
3 raised, and that's the big thrust here.

4 We've done a little analysis of accident data
5 drawn from five or six sources, including EPA source and
6 several others, and found, to our surprise, that in the
7 last 10 years or so, lots and lots of accidents have been
8 caused by those reactives, which we had thought of when we
9 did the original rule making as not being particularly
10 hazardous.

11 So this is asking the public, and we are now
12 asking you, to tell us whether you think we ought to do
13 that, and if so, why; if not, why?

14 I'll be blunt with you, it would change fairly
15 substantially the nature of the standard. It certainly
16 would increase by about 100 substances those covered by
17 the PSM standard. So, that's one thing we're asking for
18 comment on.

19 The other one, is whether or not we should --
20 let's see. I'm trying to think if I have anything more to
21 tell you on that. I don't think so. Okay.

22 There has been an issue in the field about

1 whether the exemption of flammable liquid storage tanks
2 that the rule allows should be altered to cover flammable
3 liquids in atmospheric storage tanks.

4 The field is telling us that, as a result of a
5 court case that we lost--the judge said, on the plain
6 language of it, the standard doesn't cover those
7 tanks--we have lost our ability to enforce in 40 to 50
8 percent of all PSM cases, and there have been several bad
9 accidents involving those tanks.

10 So this is a question, again, that the AMPR
11 raises, and I submit to you, are we losing valuable
12 protection as a result of that court case, and should we
13 try to do something about it through rule making? Those
14 are the issues in PSM.

15 I should tell you that I do have a very nice
16 draft of the ANPR. That's what you have. I hope you will
17 agree it's very nice. It is the work of one of the
18 regulatory teams, and I think they've done a really nice
19 job and I hope you agree with that. I'm looking forward
20 to your comments.

21 After we get and analyze the comments from the
22 ANPR, we would then go forward with a proposed rule. I

1 don't know what the shape will be. Depending on the
2 comments, it may or may not have those reactives in it, it
3 may or may not address the atmospheric storage tank issue.

4 It almost certainly will make our rule
5 compatible with EPA's rule. I mean, that, we really have
6 to do. But whether it will have these other aspects, I
7 don't know. It depends on what the comments are.

8 Stew, would you like people to ask me questions
9 now or wait till the end until I've gone through all four,
10 or what?

11 CHAIRMAN BURKHAMMER: It might be easier if we
12 take them one at a time, if it's all right with you.

13 MS. KENT: Okay. So that's the PSM situation.
14 Anybody got comments about that?

15 CHAIRMAN BURKHAMMER: Bill, do you have any?
16 Steve?

17 MR. CLOUTIER: It's premature to make comments
18 until I have a chance to read the document.

19 MS. KENT: Right. Right.

20 MR. CLOUTIER: I appreciate your providing this
21 to us.

22 MS. KENT: You're very welcome.

1 You should know that there has been some
2 congressional interest in the Lodi tragedy. I think you
3 are all aware of that, probably. It's taken us longer
4 than I would have liked to respond to that, but this is an
5 issue where it looks as though worker protection is not
6 really what it ought to be. So, I would be interested in
7 your views on that.

8 CHAIRMAN BURKHAMMER: I think, unlike previous
9 occasions, you've made the alternatives very simple to
10 read and understand.

11 MS. KENT: I hope so. I hope so. As I said,
12 the teams are doing incredibly good work, so it's a
13 pleasure. This has lovely maps and things in it.

14 CHAIRMAN BURKHAMMER: I looked at that, yes.

15 MS. KENT: Which I found really exciting. Yes.

16 **HEXAVALENT CHROMIUM**

17 MS. KENT: The second thing I want to talk
18 about, is hexavalent chromium, which is scheduled -- this
19 is a long way off yet, but I want to talk a little bit
20 about this rule making.

21 We're scheduling it for proposal in June of
22 2001. That's a long way off. Partly it's a long way off

1 because it is a very big rule making. It would cover
2 construction, maritime, and general industry.

3 We think it's going to be a difficult rule
4 making because there is, at least our preliminary risk
5 estimates suggest, significant risk at vanishingly low
6 levels, which will make feasibility even more important
7 than it usually is. It looks as though we have
8 significant as well about 100 times lower than our current
9 level.

10 OSHA has been trying to regulate hexavalent
11 chromium since I was here 20-some years ago, so it's about
12 time we got around to this one. We've been petitioned by
13 OCAW, which has now changed its name. Who knows what it's
14 name is now? PACE. PACE. Okay. Thank you.

15 And by Public Citizen Health Research Group in
16 1993 to do something on this standard. And we've been
17 doing that, but we've had several other changes in both
18 the rule making, the structure of the rule making teams,
19 and in priorities, and we haven't gotten this one done
20 yet, but we'd like to.

21 It's a substance that EPA, IARK, and NIOSH all
22 consider the chrome-6 version of this to be a human

1 carcinogen. We think there are lots of workers exposed,
2 over one million. Okay.

3 Health effects. We're talking about lung
4 cancer, skin problems, allergies, and nasal septum
5 perforation at high exposures, sustained exposures.

6 We think there are 100,000 workers in
7 construction exposed to this, mostly through spray
8 painting and welding. Those are the big uses, I think, in
9 construction, although I have a note here that says
10 "Unknown numbers in woodworking, carpentry, and
11 concrete/masonry." So, we don't have that nailed yet.
12 The wood handling. It's treated wood that we're talking
13 about.

14 CHAIRMAN BURKHAMMER: I think some of that
15 pertains to the plywood bonding, too, probably.

16 MS. KENT: Okay. Okay.

17 CHAIRMAN BURKHAMMER: We have a workgroup, a
18 long-established workgroup, for this. Bill Rhoten and
19 Owen Smith are the co-chairs.

20 MS. KENT: Good.

21 CHAIRMAN BURKHAMMER: They've never had an
22 opportunity to do anything, but now they do.

1 MS. KENT: Now you do. And we'd be very happy
2 to meet with you. We do not have a regulatory text yet,
3 but we would be very happy to meet with you, with the
4 working group, to talk about our thoughts about it and how
5 to go about it, especially for construction.

6 I'm trying to be very careful, very sure that
7 what we do for construction in these health standards is
8 appropriate for construction, which it can be a problem,
9 as you know. So we would love to meet with you if any of
10 you would like to meet with us.

11 CHAIRMAN BURKHAMMER: One thing, Marthe, you
12 might want to consider. Each one of the workgroups that
13 we have has a Construction Directorate liaison. In this
14 particular case, one of yours might be better than Doug
15 Ray, so we could have a health liaison to the workgroup.
16 So if you could think about that and --

17 MS. KENT: That would be lovely. Okay.

18 CHAIRMAN BURKHAMMER: -- consider appointing
19 somebody to work with Bill and Owen's workgroup, that
20 would be great.

21 MS. KENT: Okay. We'd love to do that.

22 CHAIRMAN BURKHAMMER: Larry?

1 MR. EDGINTON: That was sort of along the lines
2 of the question I had, Mr. Chairman. My recollection was
3 we had formed the workgroup in response to the
4 directorate, saying that they were working on a standard
5 for construction. Sort of a parallel track with general
6 industry, my recollection was.

7 CHAIRMAN BURKHAMMER: No, I think they've been
8 waiting for Marthe.

9 MR. EDGINTON: Then I heard this, and it looks
10 like we're talking about one standard for everything.

11 CHAIRMAN BURKHAMMER: I think they've been
12 waiting.

13 MS. KENT: My understanding, at least at the
14 present time, is that the Health Standards Directorate is
15 doing the health standards, but with construction
16 representatives on the regulatory group and with as much
17 outreach and information as we can get and review as we
18 can get for the construction portions. So that is, I
19 think, how we're doing it.

20 I do not believe the Directorate is -- Berrien,
21 you would know. They're not developing their own rule. I
22 mean, for heaven's sakes, Berrien, tell me if they are.

1 (Laughter)

2 CHAIRMAN BURKHAMMER: I don't think so.

3 MR. RHOTEN: I've had some communication with
4 the Center to Protect Workers' Rights, and they've got a
5 great interest in this.

6 MS. KENT: Great.

7 MR. RHOTEN: They've got some people there that
8 have a lot of expertise in it, so I expect that they'll be
9 participating fully.

10 MS. KENT: That would be wonderful. We'd love
11 that.

12 MR. RHOTEN: Owen and I do, too, because they
13 know more about it than we do.

14 MS. KENT: Of course. Of course. We attend
15 their meetings regularly, and I'd love to do that. So,
16 we'd be happy to do that.

17 CHAIRMAN BURKHAMMER: Maybe the two of you could
18 meet with Marthe and some of her people prior to the
19 February meeting so you can --

20 MS. KENT: Sure.

21 MR. RHOTEN: Yes. We can work that out.

22 MS. KENT: That's great.

1 CHAIRMAN BURKHAMMER: And report to us.

2 MS. KENT: That would be very nice.

3 DR. SWEENEY: Mr. Chairman?

4 CHAIRMAN BURKHAMMER: Marie.

5 DR. SWEENEY: Marthe, I understand that folks
6 from NIOSH are working with you.

7 MS. KENT: Oh, they're being wonderful. I was
8 just going to read that.

9 DR. SWEENEY: Okay. But one of my questions is,
10 are they doing work in construction?

11 MS. KENT: Yes.

12 DR. SWEENEY: My discussion with Margie was that
13 it was minimal, but there was something there.

14 MS. KENT: Yes. They are doing some work in
15 construction. Okay. NIOSH is helping us by doing some
16 sort of extensive exposure and feasibility -- not really
17 regulatory feasibility, but what are people doing, what
18 are the levels, what additional controls could be used.

19 And Margie Wallace at NIOSH is doing that work
20 for us. Most of it is centered, as Marie says, in general
21 industry, but some of it is in construction. But I have a
22 note from her. It says she "very much needs exposure data

1 in residential construction for the four activities listed
2 above," which would be welding, spray painting, and
3 carpentry. Anybody know of a scrap of data in any of
4 those activities for residential construction?

5 MR. SMITH: There's not much rolling in
6 residential.

7 CHAIRMAN BURKHAMMER: Do you know of any, maybe
8 through the Painters Association?

9 MR. SMITH: No. I'll tell you, we use a lot of
10 respirators with that stuff anytime we're spraying, so
11 I'll have to find out.

12 MS. KENT: Okay.

13 CHAIRMAN BURKHAMMER: Bob, do you?

14 MR. MASTERSON: I don't know of any available
15 data.

16 CHAIRMAN BURKHAMMER: Michael?

17 MR. BUCHET: Would it be possible for the agency
18 to give us a hint what construction materials we will find
19 the chemicals in? Is it in the adhesives and plywoods, or
20 is it primarily treated lumber, or --

21 MS. KENT: Okay. It's CCA treated lumber, which
22 is chromium arsenate. What is that? It's lumber that you

1 treat to resist bugs, and so on, and so forth.

2 MR. BUCHET: We can certainly try and ask, but I
3 think we need to pin down what we're asking for.

4 MS. KENT: Okay. We can get some more
5 information to you, what we have. We do have a little
6 bit. We spent a little time on this.

7 DR. SWEENEY: And you're interested only in
8 chrome-6, not chrome-3?

9 MS. KENT: Only in chrome-6.

10 DR. SWEENEY: Okay. Although there is some data
11 that suggests that chrome-3 may actually --

12 MS. KENT: It turns itself into chrome-6 just
13 like that.

14 DR. SWEENEY: Right.

15 MS. KENT: It does that. Yes. I'm not exactly
16 sure. I mean, heavens, I don't ever turn down data. If
17 you have chrom-3 data, by all means, share.

18 CHAIRMAN BURKHAMMER: Felipe?

19 MR. DEVORA: Not having a chemistry background
20 like Marie, and only being a contractor, heaven help me,
21 but I don't know what the question is to ask. If I were
22 to tell a supplier, what information do you have on

1 hexavalent chromium, after he looked at me like I was
2 nuts, I wouldn't know where to go from there. So how can
3 I --

4 MS. KENT: How about if we give you a crib
5 sheet?

6 MR. DEVORA: That would work. That would work.

7 MS. KENT: Okay.

8 MR. DEVORA: But what are we looking at? Is
9 this a chemical, is it a process, is it a --

10 MS. KENT: The chemical gets released when you
11 work on wood that has been treated with it, for example.
12 So if you saw the wood and it's been treated with it, you
13 get the chromium off the wood. It is a bad thing to get -
14 -

15 MR. DEVORA: Is this something that shows up on
16 the MSDS for treated lumber?

17 MS. KENT: For treated lumber, yes.

18 MR. DEVORA: That would get me started.

19 MS. KENT: Right. Okay. Okay. But we can
20 help. We can do more than we've done so far to help.

21 And for spray painting, I mean, chromium is an
22 ingredient in some paints that are used. So when you use

1 those paints, it would be an issue.

2 MR. SMITH: Yellow.

3 MS. KENT: That's right, yellow. Chrome yellow,
4 traffic paints. It's not around. Someone told me that
5 they're still using chrome yellow to paint school buses.
6 I don't know. Just thinking about that didn't do a lot
7 for me.

8 MR. SMITH: Those are being painted in
9 factories, and then you have --

10 MS. KENT: Right. Right. The kids don't
11 actually get -- it's just somehow juxtaposing the two that
12 doesn't feel good. Okay.

13 So maybe when I get you some more information on
14 how it's used in construction activities, you could help
15 me and NIOSH by suggesting other operations and activities
16 that NIOSH should be paying attention to when it's doing
17 this extent of exposure study. Okay. That would help.
18 That would help us a lot. Okay.

19 We are hoping to have stakeholder meetings, to
20 which you will all be invited, sometime in the year 2000.
21 I don't know whether it will be the middle of the year. I
22 can't tell; we haven't scheduled it yet.

1 But sometime in that year we will come out to
2 stakeholders to tell you about our preliminary thinking,
3 and it will be very preliminary, but we hope to have
4 interactions with stakeholders in 2000 on this one.

5 CHAIRMAN BURKHAMMER: Felipe?

6 MR. DEVORA: Do we have any exposure limit
7 information on this?

8 MS. KENT: No. We don't have an exposure limit
9 yet because we haven't done the feasibility analyses and
10 we don't have the risk data yet. But, as I said, the
11 preliminary risks look as though the limit we have is very
12 much too high in terms of protecting workers from cancer.

13 MR. DEVORA: So are we reacting to future
14 research, or are we -- I guess my question is, are we
15 getting into the regulation process based on some
16 assumptions, is that what we're doing?

17 MS. KENT: We think there's no question that the
18 limit will drop. I mean, I can tell you right now, the
19 limit is going to drop. I don't know how far it's going
20 to drop and I won't know that until we have the exposure
21 data that lets us do the feasibility analysis that will
22 decide where that limit should be set.

1 MR. DEVORA: I guess my fear is that we're
2 reacting as an industry to something that we think is bad,
3 or we are reasonably sure is bad, but we don't know how
4 we're going to react to it.

5 MR. PERRY: I think maybe I can address that.
6 I'm Bill Perry out of Health Standards. The evidence for
7 hexavalent chromium being a human carcinogen is very
8 strong. The International Agency for Research on Cancer
9 has classified it as a Group I carcinogen.

10 And there are only a few dozen substances that
11 have that classification. There are epidemiology, there
12 are human studies, in a wide variety of industries that
13 show excesses of lung cancers, lung cancer mortality among
14 workers that are exposed to hexavalent chromium.

15 I couldn't say offhand that those are
16 construction trades. Mostly those are electroplating and
17 other types of industrial processes, chromate production,
18 et cetera. But the evidence is very, very strong.

19 In addition, we have been working with a group
20 in NIOSH/Morgantown for the last 18 months, supporting
21 some of their research into the mechanisms by which
22 hexavalent chromium is causing these effects in people,

1 and some of their findings are going to have a direct
2 impact on how we evaluate the risks to come up with an
3 exposure limit. That work is going to continue into at
4 least the next year.

5 MR. DEVORA: My follow-up is just that, before
6 we rush to regulation with this issue, let's get a little
7 education, because obviously to say that something is a
8 carcinogen, that's fine, we understand what that means.
9 But how it affects us as an industry, there needs to be a
10 little more process in there.

11 CHAIRMAN BURKHAMMER: Well, you mentioned the
12 magic word: epidemiologist. And our resident
13 epidemiologist, Dr. Sweeney, would like to speak.

14 DR. SWEENEY: Felipe, I can sit down with you
15 and talk about it.

16 MR. DEVORA: I'm sure we will.

17 DR. SWEENEY: You know what might be really
18 good? If somebody sat down with the whole group and gave
19 them a synopsis of those studies. From my understanding,
20 the data from chrome-6 is that it's a very strong
21 carcinogen, but we haven't seen anything in construction
22 because we haven't looked. So chrome factories, which

1 don't exist anymore in the United States, and in
2 electroplating. So we really need to do some work in
3 construction.

4 My question to Bill is, do we have the data from
5 Morgantown out yet, and is it published?

6 MR. PERRY: No, it's not. At least, the
7 Morgantown group, Dr. Seeds, Ed Svinscaster, Enovis Group
8 out there, they have published a tremendous amount already
9 on chromium. The work that they've been doing for us is
10 not in published form yet, and we are not in receipt of
11 any detailed data that they've generated.

12 We've gotten some information from them, but
13 it's still sort of at an informal stage. They have to do
14 some more experimentation over the next few months before
15 we can nail down certain aspects of what they're finding.

16 DR. SWEENEY: Okay. I'd like to have that.

17 CHAIRMAN BURKHAMMER: Marie, could you talk to
18 them, NIOSH to NIOSH?

19 DR. SWEENEY: I have it down here. I will.

20 CHAIRMAN BURKHAMMER: Okay.

21 MR. PERRY: Again, Marie, I just want to be sure
22 that we're comparing apples to apples here and that we're

1 not going to look at a scenario of how we did things in
2 the past and back when use of this product was very, very
3 prevalent.

4 But nowadays, perhaps, we don't use as much or
5 use it in that form any more, but we're not using that
6 data from the past to compare it to the situation today.

7 MS. KENT: That's one reason why NIOSH is
8 helping us with current exposure data, and we're coming to
9 you. In addition to that, we have other contractors who
10 are looking. So, we're trying to get current data.

11 MR. SMITH: Marie, as long as you guys are
12 looking at it, and I would suspect that with respect to
13 the spray paint, that it's probably on buses, because
14 that's about the only place you see that yellow any more.

15 I think that that stuff is all done in
16 factories. They have water curtains, and respirators, and
17 an air recovery system that cleans the air before they can
18 emit it, and all those kinds of things. So I would
19 suspect that, when you do it, that you would also consider
20 the way that they supply. You don't see it much in paint
21 any more, architecturally.

22 DR. SWEENEY: Right. I have been in an

1 automotive or motor vehicle manufacturing process plant
2 about 10 years ago, and they were using water curtains and
3 electrostatic precipitation, where actually people didn't
4 get exposed. But that's in a manufacturing setting. I
5 don't know about construction, and we really need to do
6 some more work on that. If there's anything we can do to
7 help, Marthe, let's try.

8 But if you could get us a sheet, a kind of a
9 crib sheet that people can look for scenarios in their own
10 industries, in their own sites --

11 MS. KENT: Right. That would be great. I'd
12 really welcome working with you on that.

13 CHAIRMAN BURKHAMMER: Yes. If you can get the
14 crib sheet to Berrien, Bruce, or Jim, and they can get it
15 out to the committee.

16 MS. KENT: Right. Okay. That's great.

17 **HEARING CONSERVATION IN CONSTRUCTION**

18 MS. KENT: Another thing that we're going to be
19 doing, is putting out an advanced notice of proposed rule
20 making on noise in construction. Have you heard that
21 rumor? Okay. I thought the answer was going to be yes.

22 CHAIRMAN BURKHAMMER: You missed this morning's

1 session with Charles.

2 MS. KENT: Oh. You didn't give him a hard time,
3 did you?

4 CHAIRMAN BURKHAMMER: Sort of.

5 MS. KENT: You wouldn't do that to Charles. So
6 he talked about this?

7 CHAIRMAN BURKHAMMER: And we talked to him about
8 that.

9 MS. KENT: Aha. You are going to share, aren't
10 you? Because sometimes it's hard for us to coordinate.

11 CHAIRMAN BURKHAMMER: I think it would be better
12 if he shared.

13 MS. KENT: Oh. Okay.

14 CHAIRMAN BURKHAMMER: That way we'd know if he
15 got it.

16 MS. KENT: Okay.

17 Well, do I continue, or what?

18 CHAIRMAN BURKHAMMER: Basically, the committee
19 told him that we feel that sanitation is a more important
20 issue to be addressed than noise in construction.

21 Now, NIOSH certainly disagrees with that, and
22 I'm sure there are a lot of reasons why. Because when you

1 look at the facts, we have more and more people suffering
2 hearing loss in construction every day and we do not have
3 a lot of people suffering whatever else they would get
4 from sanitation problems.

5 We're not getting a lot of people reporting to
6 construction first aid facilities or nurses on our job
7 sites complaining of that, we're getting more complaints
8 of hearing loss.

9 But, that aside, I think Jane brought up a very
10 passionate point this morning, and if you wouldn't mind
11 repeating that for Marthe, I think she'd like to hear it
12 also. The comments you made about workers in America and
13 the sanitation problems and stuff. I'll defer to you.

14 MS. WILLIAMS: The primary question that we
15 continually do, is in relation to the overall department
16 strategic plan that called for changes they were trying to
17 -- we find it very difficult for us to make some of these
18 additional level changes that you're requiring by standard
19 making when we cannot even facilitate the workers in our
20 industry with sanitation needs that they have to have.

21 It's becoming more and more complicated with
22 women entering the market. We already know that there are

1 increases. And we don't have substantive data, but we
2 know that there are definitely occurrences of bladder
3 infections.

4 MS. KENT: Sure.

5 MS. WILLIAMS: We don't want to be in a position
6 of waiting for some epidemic to run through the
7 construction, dwindling forces that we have, and then have
8 to be reactive to try to come up with something.

9 What they need now is accessible toilet
10 facilities, hand washing facilities, and allow our work
11 force to function in the guidelines of normal industries.
12 Every other industry has it.

13 I invited Charles, and I'll extend the
14 invitation to you to come to Arizona in 116 degree weather
15 in August, and I'd love to show you some of these
16 facilities.

17 MS. KENT: I can't imagine.

18 MS. WILLIAMS: We don't have enough. They're
19 not accessible. It is a number one problem and concern
20 for our work force, and we definitely have to have that
21 address.

22 We feel very strongly, this committee, and I

1 think every worker will tell you, it means a lot more for
2 them to be able to go relieve themselves than to worry
3 about hexavalent chromium, or silica, or anything that's
4 affecting them. Certain workers, certainly, and we all
5 agree that, but it's certainly not affecting each and
6 every worker on a construction work site.

7 MS. KENT: I'm at a disadvantage here, so you're
8 going to help me, I know. How does it get linked to the
9 noise?

10 (Laughter)

11 CHAIRMAN BURKHAMMER: Well, we're very happy you
12 asked that.

13 MR. SMITH: You make noise when you can't find a
14 clean facility.

15 MS. KENT: I'm not trying to be funny.

16 (Laughter)

17 MS. KENT: What I mean is --

18 CHAIRMAN BURKHAMMER: It kind of got linked to
19 noise, Marthe, because I made a comment, when Charles was
20 listening to, I think, every single member comment about
21 the seriousness of sanitation.

22 My comment was, you're hearing a lot of

1 beautiful noise on the sanitation problem. So I think
2 maybe there was a conclusion drawn there that I was
3 against noise, which is not true at all. I think Charles
4 may ask the committee--may ask the committee--if we want
5 sanitation moved up as an agenda item, what we propose he
6 take off in order to allow us to move that one up.

7 Now, the committee hasn't discussed that. The
8 hearing was just something I threw out. It's not a
9 committee, it's a personal thing.

10 MR. RHOTEN: I think the way the committee
11 feels, you could take anything off as long as you've got
12 that on the top of the list.

13 CHAIRMAN BURKHAMMER: Well, that's an excellent
14 point. I think, when the question does come back to us,
15 we will, as a group, make a decision on it.

16 MS. KENT: Why don't you point to a maritime- or
17 general industry-exclusive standard?

18 CHAIRMAN BURKHAMMER: Well, I'd love to pick the
19 maritime one on there, but a very good friend of mine is
20 the safety director for NESCO in San Diego and he would
21 violently disagree with me that I should remove that from
22 the list.

1 MS. KENT: Whatever priorities you work out with
2 Charles, we will absolutely -- I also think that
3 sanitation is very important and am very happy to work
4 with the Directorate of Construction and put it anyplace
5 on the agenda that you all agree on. So, I hear that.
6 But I do want to emphasize that noise is an awful problem
7 in construction, and construction workers have been
8 waiting for 20 years for --

9 CHAIRMAN BURKHAMMER: How long?

10 (Laughter)

11 MS. KENT: -- protection. I'm uncomfortable
12 trying to weigh the two.

13 DR. SWEENEY: You're not speaking loud enough,
14 Marthe.

15 (Laughter)

16 MS. KENT: Anyway, if Charles does work with
17 you, Berrien and I will work together to put it wherever
18 it needs to be.

19 CHAIRMAN BURKHAMMER: Great.

20 DR. SWEENEY: Maybe I'm the lone person on the
21 committee to say that noise should not be removed.

22 CHAIRMAN BURKHAMMER: No. I said NIOSH would

1 disagree.

2 DR. SWEENEY: And NIOSH will disagree.

3 Sanitation notwithstanding, it is an important issue. But
4 when you look at the data relative to hearing loss and
5 construction workers, again, you would be appalled.
6 Because when you look at the data, even construction
7 workers who have been in the industry for five years, they
8 have substantial hearing loss compared to non-construction
9 workers.

10 When you get to age 50, more than 50 percent of
11 them have hearing loss. Somewhere between 25 and 30
12 percent have significant hearing loss, which means that
13 you drive your spouse nuts when you watch TV. I mean, we
14 can go on, and on, and on, but there's a lot of data out
15 there that shows that construction workers need to be
16 protected from it.

17 In fact, last week I was on the stadium
18 construction site in Cincinnati, and there were painters
19 who were no more than 10 feet away from a huge generator
20 that was putting out, I swear, 95 to 100 DB, and these
21 guys had no hearing protection. And they were on that
22 site at least for eight hours, if not more.

1 So I want to voice my opinion as somebody who
2 does health and safety in construction, but also voice
3 NIOSH's opinion, that we think this is an important
4 standard to go forward with.

5 CHAIRMAN BURKHAMMER: Felipe?

6 MR. DEVORA: Again, I just want to point out,
7 our rush to these issues and priorities, certainly, are
8 very important. But I don't want us to lose track, and
9 I'll keep reiterating this, and certainly there are
10 specific examples and you can go to any construction site
11 and see them, like the one you just saw, but certainly
12 when we're measuring and using our data as a criteria of
13 how we did things in the past, it's not a true picture of
14 how the industry as a whole is moving towards doing things
15 differently.

16 I think there's probably more ear protection or
17 noise protection safeguards being used today than there
18 were when the 50-year-old folks that you're using their
19 data were doing that kind of work when they were 25 years
20 old.

21 I guess what I'm saying is, we still need to
22 understand that the processes are changing, the

1 technologies are changing. The motors are quieter now.

2 DR. SWEENEY: Not this one.

3 MR. DEVORA: Well, maybe, maybe not. But I just
4 don't want us to be reactive by using statistics of how
5 things were done 25 or 30 years ago. I think you can
6 point out the differences from five years ago of how we're
7 doing things differently.

8 So I don't want this group to jump or react to
9 hexavalent chromium and then change our priorities with,
10 like, sanitation, and sanitation is one of those things --
11 there's really no debate on sanitation, as far as I'm
12 concerned.

13 CHAIRMAN BURKHAMMER: Larry?

14 MR. EDGINTON: Thank you, Mr. Chairman.

15 Clearly, we're not being asked at this moment
16 what our priorities are. I think it's fair to say that,
17 at some point in time, we might. This morning you heard
18 me speak very passionately about sanitation, but I must
19 tell you, I'm equally prepared to speak with such fervor
20 about hearing loss.

21 I can tell you that, yes, much of today's
22 equipment is quieter than it's ever been that's operated

1 by my members, but I can also tell you that we've got
2 members who are 25 to 30 years old who are suffering
3 hearing loss now, even when operating some of the newer
4 equipment. PPE is available. We try to educate our
5 people as best we can.

6 We have yet, I think, to develop some effective
7 means for intervention, really causing people to use it.
8 We're continuing to struggle with it. But I think we
9 should not diminish the seriousness of the problem, and it
10 makes good sense for everybody to figure out how we get a
11 handle on this. So let's not beat a quick retreat on it,
12 I guess, is my point. Let's figure out how we balance
13 these interests, because I think it is fair.

14 We can't just say to the agency, do it all and
15 do it all now. But at the same time, these are worthy
16 things and I think they are important. These are some of
17 the issues that are important to construction workers.

18 CHAIRMAN BURKHAMMER: Jane?

19 MS. WILLIAMS: Marthe, the final comment that I
20 would make, to show you the seriousness that I believe of
21 the issues, is we know we're losing 250,000 workers a year
22 out of the construction industry, minimal.

1 We know that the sanitation conditions are a
2 primary focus in talking with new entrants coming in. Why
3 do I want to subject myself to this? I agree, hearing
4 loss is a critical issue.

5 If I heard Mr. Jeffress this morning correctly,
6 he stated that, "Maybe I should be looking at additional
7 resources to the Directorate so that we could accomplish
8 some other priorities." Something to that effect, is
9 what I believe was on the record, and I'll get that
10 transcript.

11 However, my point is, if we need additional
12 resources to hit those type of issues, we need to do that
13 and not replace one issue with the other. But certainly
14 we have to look at getting the workers in or we're not
15 going to have to worry about your exposures, we're not
16 going to have the industry maintained to do what we need
17 to do.

18 CHAIRMAN BURKHAMMER: Marthe?

19 MS. KENT: Okay. I just want to make something
20 clear about the competition between the two, and bear with
21 me here for a second. The sanitation proposal is coming
22 out of the Directorate of Construction. The ANPR for

1 noise in construction is coming out of Health Standards.
2 It is close.

3 This is an ANPR, so this is essentially a
4 request for information document. It does not have an
5 economic analysis, it doesn't have tech fees, it doesn't
6 have any regulatory text.

7 When you get to do an ANPR, it's a piece of cake
8 just because you don't have to go through all of those
9 things. If people could hear me say it's a piece of cake
10 they'd probably kill me, but compared to what we usually
11 have to live through.

12 The ANPR simply says, here's the data we have.
13 By the way, the data we have shows that hearing protector
14 use in U.S. construction industry is about 15 percent of
15 workers who are way exposed above our current PEL.

16 So the combination of high noise levels and very
17 low levels of use of hearing protectors is scary in
18 construction. I'm speaking as a health professional now.
19 It's scary.

20 The ANPR is not competing. I'm sorry I wasn't
21 here to hear what Charles said, even though it's like
22 this. It is not competing for resources. Those are

1 totally different resources. Those are Berrien's
2 resources developing the proposal for sanitation, those
3 are my health standards people who have already largely
4 developed the safety standards, the ANPR for noise. There
5 are no economics with it, there are no tech fees.

6 Eventually, sanitation will come to me for tech
7 and EC fees. That's a different story. But it isn't
8 competing for resources. So you can have an ANPR for
9 noise in construction and not jeopardize sanitation,
10 because it's totally different groups that are doing it.
11 So if that wasn't made clear this morning, let me make it
12 clear now.

13 CHAIRMAN BURKHAMMER: Great. Thank you.

14 Any other discussion on noise?

15 MS. KENT: You want any more information on
16 noise? I actually have a couple of pages here, if you're
17 interested.

18 CHAIRMAN BURKHAMMER: No. Go ahead, please.

19 MS. KENT: Okay. Five million construction
20 workers. We think about 15 percent of them, almost 1
21 million, are exposed to noise levels above 85 DBA.
22 Exposure varies by the type of construction work and the

1 trade. Again, unlike general industry, it's not usually
2 exposure to a steady level all day, it's peaks and
3 valleys.

4 An operator of a light-duty dozer is exposed to
5 between 93 and 101 DBA of noise. That is a very high
6 level, indeed. A tower crane operator, on the other hand,
7 who has got a cab that's closed, is much lower.

8 Construction workers experience more hearing
9 loss than the rest of the population. Some studies have
10 found permanent threshold shifts in more than one-quarter
11 of workers in certain occupations. I already mentioned
12 that the use of hearing protectors was really poor.

13 The issues that we're raising in the ANPR. How
14 closely should a construction noise standard parallel the
15 general industry noise standard? We think there are
16 significant differences, but that's an issue, what should
17 those differences be? We'll be coming back to you with an
18 issue like that, obviously.

19 Then we have all the usual special problems in
20 construction: how do you craft a standard that will
21 accommodate those? The role of engineering and
22 administrative controls versus hearing protection in

1 construction is a bigger issue even than it was. It was a
2 pretty big issue in general industry, it's an even bigger
3 one in construction.

4 A huge issue that is very important in
5 construction is, how can you protect the hearing of
6 workers while at the same time allowing them to hear
7 warning signals and instructions? There's a big safety
8 component here which we did not deal with in the general
9 industry standard.

10 There is an issue, in general, about whether
11 OSHA should be considering lowering the existing PEL for
12 noise. Most of us think that 90 is too high. Those
13 issues will get raised in the ANPR.

14 Please, there's a long time between the ANPR and
15 a proposal, but those issues are going to be raised, as
16 will issues about the exchange rate, whether you need to
17 correct audiograms for aging, all sorts of important
18 issues, like how best to measure noise, are going to be
19 raised in the ANPR simply because it's the first time
20 we've been out there in 20 years on noise, and those are
21 the issues that are hot now.

22 So that is the schedule. We are hoping to hold

1 stakeholder meetings after we've done the ANPR and gotten
2 responses in and shared the information we've gotten with
3 people in the construction industry. I don't want to
4 commit to a month for that, but we're looking at 2000 for
5 that as well.

6 After that, we have a long road. We have to
7 develop a proposal, we'll have to have a SBREFA panel,
8 probably, put out the NPRM, live through OMB review, a
9 variety of things like that, and publish.

10 MS. WILLIAMS: Do you have a date when the ANPR
11 is coming out?

12 MS. KENT: The ANPR is actually fairly close. I
13 think you should look for it in the next month, two
14 months. No economic data, just questions.

15 CHAIRMAN BURKHAMMER: Marie?

16 DR. SWEENEY: This may seem a little silly, but
17 can you give us a little more time than you did for
18 ergonomics in terms of response? Because there's a lot of
19 data in here and -- just don't make it February in terms
20 of wanting responses back.

21 MS. KENT: Okay. No, that's fine. That isn't
22 going to be a problem.

1 DR. SWEENEY: Okay.

2 MS. KENT: I mean, we'll have a fairly decent
3 comment period on that ANPR.

4 DR. SWEENEY: Because I think ergonomics seems
5 to be a really short comment period for the amount of data
6 we need.

7 MS. KENT: More than twice the statutory limit,
8 but never mind.

9 DR. SWEENEY: Well, it's over before --

10 MS. KENT: I know. I know. Okay.

11 **SILICA**

12 MS. KENT: The last thing I wanted to talk to
13 you about is silica, which is on track and moving quickly.
14 Can you join us, Loretta? Is Dr. Silica in this agency?
15 I'm sure you know that silica is one of the top priority
16 items in the agency's strategic plan. It's a big hitter
17 under Goal 1.

18 We are committed to reducing exposures here by
19 15 percent over the next couple of years, so we are
20 pulling out all the stops and going after silica through
21 enforcement, through training, through consultation, and
22 through rule making.

1 The rule making team has done a great deal of
2 work on this standard. It will apply to construction,
3 maritime, and general industry. Obviously, in
4 construction, abrasive blasting is a big issue, but there
5 are lots of other tuck pointing. I mean, there's a whole
6 bunch of other operations where exposure is a problem.

7 Again, NIOSH is helping us with an extent of
8 exposure study and an engineering control study and is
9 doing site visits in construction workplaces to get
10 exposure data.

11 We have been active. We've been out there doing
12 stakeholder meetings and the construction industry has
13 been very active in those stakeholder meetings. We've
14 done quite a few. We're going to do another one in March,
15 and I'm very much looking forward to your participation in
16 those meetings.

17 So we're going to share with you our stakeholder
18 meetings. Before the March meeting we'll share with you
19 the materials that we're sending out there so you can be
20 better prepared to participate.

21 We think you'll have lots of information about
22 where we're going with the standard. We do not think

1 you'll have the PEL at that time. The reason is because
2 we are still working on the risk assessment, so I don't
3 know exactly where the PEL will be.

4 Again, this is an area--and I know I'm going to
5 hear from you, Felipe--where preliminary risk estimates
6 show that the PEL is way out of line with the risk
7 estimates.

8 Again, feasibility concerns are going to be
9 major, for your industry and for other industries as well.
10 So we need good feasibility data so that we can put the
11 risk data and the feasibility data together and set a PEL
12 that people can meet with some energy.

13 We think, undoubtedly, this will have a SBREFA
14 panel, so we're going to panel this this year. When the
15 panel happens this year, that means the draft that we're
16 working from will be out and be made public. The SBREFA
17 panel drafts are not the proposed rule, they are a draft
18 that is put out there for comment from small businesses,
19 and construction will play a big part in that and you'll
20 have a crack at it then.

21 Then we retreat and we adjust the proposal to
22 respond to those comments. Then we go to OMB. So we're

1 talking about a proposal the end of, or sometime late, in
2 2000, probably.

3 It's a full 6B5 standard, so this is your
4 regular OSHA health standard that you all know and love.
5 Exposure monitoring, medical surveillance, the whole ball
6 of wax. Industrial hygiene facilities.

7 However, we are looking at different provisions
8 for construction that might be, for example, operation-
9 based that might limit the kind of exposure monitoring you
10 have to do because there's a problem in construction of
11 getting samples back and having them do meaningful --
12 because the operation is over by the time you're done.

13 So we have a couple of other standards, like
14 lead in construction and asbestos that have taken a
15 different approach, a work practices approach, and that
16 looks promising to us.

17 We do think it will have a big impact in
18 construction. That is, all kinds of dusty jobs are
19 associated with high levels of exposure to silica. We
20 think that wet methods or other things are likely to be
21 part of this standard. That's just very preliminary, you
22 understand. You may come in and tell us that that's not a

1 good approach.

2 So that is essentially the approach that we're
3 thinking of taking in construction. We'll talk more about
4 it at the stakeholder meetings in March. Dry-cutting of
5 masonry, block, brick, and stone is an issue, dry-cutting
6 of concrete is an issue, grinding, drilling, polishing,
7 chipping, and other operations in your industry are a
8 problem.

9 We know those are problems and we're trying to
10 get data that are specific to the task and the job and
11 figure out a way to protect workers while being
12 reasonable, and so on.

13 Let's see. We're thinking of putting on the
14 medical surveillance requirements something that says, if
15 you're above the PEL or an action level, then you'd have
16 to provide things like X-rays and other kinds of medical
17 provisions. So, keep your eye on the web around March.
18 Actually, we'll get it out to you.

19 CHAIRMAN BURKHAMMER: Then we'll have eye strain
20 to deal with.

21 Steve?

22 MR. CLOUTIER: Who do you think is going to pay

1 for all this?

2 MS. KENT: Who do we think? Well, we hoped that
3 you were.

4 MR. RHOTEN: This meeting is 12 years away, so
5 you don't have to worry now.

6 MS. KENT: I do want to suggest to you that the
7 rule making process, in my corner, has speeded up a lot.
8 You do understand that we got that proposal out for
9 ergonomics in very short order and that we're going final
10 next year.

11 So just so that you all understand, rule making
12 is on a whole other track now. So I wouldn't say it's
13 going to be a couple of years. Silica? No.

14 CHAIRMAN BURKHAMMER: Jane?

15 MS. WILLIAMS: Marthe, we sat through several
16 sessions on the aftermath of the respiratory standard.
17 You have said the stakeholder meetings will be in March.

18 MS. KENT: Right.

19 MS. WILLIAMS: Will they be in D.C.?

20 MS. KENT: Yes. Now, we've had stakeholder
21 meetings in Chicago, San Francisco, and Washington
22 already. So we've had how many? Sixteen stakeholder

1 meetings. We're going to have four more in March in
2 Washington.

3 Then there will be a SBREFA panel. The SBREFA
4 panel will actually see draft reg text, see the economic
5 information, figure out who's going to pay for it, figure
6 out how much it's going to cost, and you'll get a chance
7 to come in and tell me that my cost estimates are nuts.
8 Okay?

9 MS. WILLIAMS: What I was getting to was, when
10 we had the meeting with the respiratory people after the
11 fact, there were so many wrong assumptions that had been
12 made, and we tried to impress upon them the impact that it
13 was having on us, tremendous impact. This is another one
14 that will be a very tremendous impact.

15 I don't know how to propose this, but if there
16 is any way you can be communicating with this committee,
17 because we have got to work with you on its development
18 beforehand or this will be a major impact to the industry.

19 MS. KENT: Okay. Let me say, there isn't
20 anything I'd like better on any of these rules that impact
21 construction, to work with you, to bring my economists.

22 I mean, whatever I can do to get information to

1 understand how it works for your industry, all you have to
2 do is ask. I mean, we're here, we're really eager to do
3 it, I will help any way I possibly can. I mean, this
4 matters a lot to me.

5 The stakeholder process is supposed to be doing
6 that. Somehow, if it's not reaching the right people or
7 something, if anybody wants to come to those stakeholder
8 meetings, all I need is a name and you're on the list, and
9 you're probably on the list for the rest of your natural
10 life. You will probably hear about every stakeholder
11 meeting we have on any topic. But we're very careful
12 about that.

13 CHAIRMAN BURKHAMMER: We have a Silica workgroup
14 also that's been around forever. Marie and Larry co-chair
15 the Silica workgroup.

16 MS. KENT: Okay.

17 CHAIRMAN BURKHAMMER: I'm sure they'd be more
18 than happy to work with you.

19 On the respirator issue, Jane, I think
20 respirator is a minor part of the cost. The major part of
21 the cost is the physicals.

22 MS. WILLIAMS: That's what I was getting to,

1 Stew.

2 CHAIRMAN BURKHAMMER: The X-rays, the bloods,
3 the time of the guy going to get the physical.

4 MS. WILLIAMS: Right.

5 CHAIRMAN BURKHAMMER: Or the lady going to get
6 the physical. If they find a problem in the sampling
7 data, then you have to send your sampling to a certified
8 lab to make sure we get the right reads, and that's not
9 cheap. You have the problem of employees spiking the
10 sample if they're not a happy camper.

11 Then the job is done by the time we get all the
12 stuff back, and the employees, most of them now, are
13 travelers because everybody is off the books and everybody
14 is working, so you've got to go find them.

15 And their address is P.O. Box 6, Trailer City,
16 in a lot of cases for the travelers that come to the job
17 sites, because that's how they move around, is they bring
18 a trailer and they live there, they work there, and they
19 move on to the next job. It's very difficult for a single
20 employer to go find the guy because you have no idea where
21 he is.

22 MS. KENT: Right.

1 CHAIRMAN BURKHAMMER: So there's a lot of those
2 things that add up the cost that you may not have
3 considered, other than just purchasing a respirator or
4 sending them to your local doctor for a 15 and 95
5 physical.

6 MS. KENT: Well, I'm not going to talk about the
7 respirator standard because that was done under a
8 different system. I mean, we proposed that, I guess, in
9 '88 or something. But I'm real willing to work with you,
10 and cost is absolutely fair game.

11 I mean, I will tell you what the assumptions are
12 we're using, I'll show you, we say it's going to take two
13 people this many hours to do X, and you tell me, no, that
14 assumption isn't right, it would take six hours, or
15 whatever. I mean, I would love to do that.

16 CHAIRMAN BURKHAMMER: Steve?

17 MR. CLOUTIER: Part of the problem with the
18 assumption basis is the agency assumes that every
19 contractor has these bodies to do all this. Everybody
20 that I know is doing one, two, three, and four jobs now,
21 but we don't have these extra bodies. So that's a wrong
22 assumption from the agency.

1 The second thing, is your stakeholder meetings
2 need to get down to Atlanta, they need to go to Florida,
3 they need to go to Texas. We always go to Chicago,
4 Boston, and San Francisco. Let's get down to where the
5 rest of the working folks are in the world, go to the --

6 MS. KENT: Okay. What's the best city for
7 construction? Tell me, seriously.

8 CHAIRMAN BURKHAMMER: Atlanta, right now, is
9 booming.

10 MR. CLOUTIER: Atlanta is booming and has been
11 for 10 or 15 years now.

12 CHAIRMAN BURKHAMMER: Las Vegas is another one.

13 MR. CLOUTIER: Las Vegas is wide open.

14 CHAIRMAN BURKHAMMER: Phoenix is another one.

15 MS. KENT: Okay. Who's taking notes for me?
16 Phoenix, Las Vegas, Atlanta.

17 MR. CLOUTIER: Atlanta.

18 CHAIRMAN BURKHAMMER: Houston.

19 MS. KENT: Houston. Okay.

20 MR. CLOUTIER: Orlando. Orlando's wide open,
21 has been for a number of years.

22 MS. KENT: Now, you can't have five. You just

1 can't. You can't have five.

2 (Laughter)

3 MS. KENT: But I'm glad to know that. Let me
4 tell you, that's the kind of information -- I didn't know
5 that. So we've been scheduling these stakeholder meetings
6 sort of, well, let's hit three places in the country. If
7 that's not good for construction, we need to know that,
8 and that's great.

9 MR. CLOUTIER: And can you send your economists
10 out to a construction site other than what's here in the
11 District? Can we get outside the Beltway to a real
12 construction site?

13 MS. KENT: Yes, I can. I can send my
14 contractors, too, but I don't do it very often. I need an
15 invitation. He needs to know he's coming back whole.

16 CHAIRMAN BURKHAMMER: Just ask, we'll be happy
17 to --

18 (Laughter)

19 MS. KENT: But, seriously, the economists work
20 for me as well. I'm very happy to have the assumptions,
21 and so on, to work with you on those because it matters to
22 me that they be right, and it certainly matters to OMB

1 that they be right.

2 Now, will it look exactly the way you want it?

3 No. But will it be much better? Yes.

4 CHAIRMAN BURKHAMMER: Felipe?

5 MR. DEVORA: I want to follow up on something
6 that Larry was talking about a while ago. As a contractor
7 viewpoint, you know, I look at these studies, and I look
8 at the data, and I look at these regulations and what I
9 call real life that is going to actually touch the worker
10 that they will know about, and I've certainly put
11 sanitation and hearing into those. Those are very real,
12 tangible things that they can touch and feel and we can
13 explain for.

14 The technical standards, regulations, or
15 studies, like for hexavalent chromium and silica that is
16 only in certain processes in construction, those are
17 harder for a company-type situation like Steve was talking
18 about, and myself, for me to get the resources to do these
19 explanations and explain PELs to the people out in the
20 field and implement these kinds of things.

21 But, by and large, we're not as large as Steve's
22 company, but, by and large, it's companies like ourselves

1 that will take the time to even recognize that there's a
2 difference in these kind of standards.

3 MS. KENT: Right.

4 MR. DEVORA: But the hole in the net gets bigger
5 the smaller the contractor gets.

6 MS. KENT: I agree.

7 MR. DEVORA: Unfortunately, I think we miss so
8 much of that data because I can tell you, there are
9 painting contractors right now. There are good painting
10 contractors that have been around for a long, long time,
11 but they're not the biggest in town and they probably will
12 never have a conception of what hexavalent chromium
13 actually is unless there's more outreach and more
14 education.

15 I've always been a proponent of education
16 instead of regulation, so these issues, I kind of put them
17 in two different categories, the technical data collection
18 and the real-life, I-can-go-out-and-touch-the-worker type.
19 I put sanitation and hearing in those two, and silica and
20 hexavalent chromium in the other.

21 MS. KENT: Okay. I hear you.

22 MR. SMITH: Mr. Chairman, may I?

1 CHAIRMAN BURKHAMMER: Owen, please.

2 MR. SMITH: Yes. I'm a painter, and certainly
3 this silica thing would affect us. But I'm wondering, did
4 you guys ever consider that, at least with abrasive
5 blasting, that there are materials other than sand being
6 used and you don't --

7 MS. KENT: Yes.

8 MR. SMITH: It didn't seem to make much with
9 those respirators and the costs that they came up with
10 with that. I'm with this guy with the sanitation thing,
11 you know. This chromium, as a painter, I can't remember
12 when I last saw some. But everybody has a sanitation
13 problem every day.

14 MS. KENT: Okay. Again, they're not competing
15 for the same agency --

16 CHAIRMAN BURKHAMMER: But we want you to listen
17 anyway.

18 (Laughter)

19 MS. KENT: I want to listen. Okay. I
20 understand. I know it's important. I agree with you that
21 it's important. I bet you that Charles has Berrien and me
22 in there in no time at all. That's what I would predict.

1 We'll work together the way we always do to move it out.
2 But I hear what you're saying about these others, where
3 you don't see the direct effects quite as much. They're
4 harder to see.

5 CHAIRMAN BURKHAMMER: Jane?

6 MS. WILLIAMS: One of my concerns, too, with
7 silica, is take a demolition process. The small employer,
8 to reach, it's going to be extremely difficult to bring
9 them into compliance with this.

10 If you go get a one- or two-person company to
11 come in and do some of these demo processes and you tell
12 them they have to have this, they get on the job site and
13 they don't have a clue, there's a general contractor
14 sitting there holding the bag, and what do you do? So, an
15 awful lot of outreach is going to have to be involved in
16 this type of process.

17 MR. SMITH: Mr. Chairman?

18 CHAIRMAN BURKHAMMER: Owen.

19 MR. SMITH: You know, a small guy would probably
20 comply if you say you've got to have this kind of mask or
21 this kind of respirator because you've got this exposure.
22 What you're not going to get, is this monitoring.

1 It ain't gonna happen, because why should he,
2 that's going to be on a job for a few days, call some
3 engineer to come out or have somebody else monitor and
4 send something someplace? He's just not going to do it.
5 He's going to do his job and go on or he's not going to do
6 the job, period.

7 I'm telling you, the costs that you guys crank
8 into these things, like that respirator thing you talk
9 about, and it's only for a year -- every year you've got
10 to go through the same thing again. It's a killer.

11 CHAIRMAN BURKHAMMER: I think, Marthe, you see
12 there's some passion on this from --

13 MS. KENT: I'm picking that up.

14 CHAIRMAN BURKHAMMER: -- the workgroup. We
15 would certainly, I think, want to take you up on working
16 with you and your team and providing you with some real-
17 world input. The problem with having stakeholder meetings
18 in Washington, is you get a certain viewpoint that may or
19 may not be related to actual people working.

20 (Laughter)

21 MS. KENT: Okay. If you could only have one
22 -- I'll commit here to one stakeholder meeting in one of

1 those cities. I've already committed, and have limited
2 resources, to do more than another one. Where should it
3 be?

4 MR. CLOUTIER: Atlanta.

5 MS. KENT: Atlanta.

6 CHAIRMAN BURKHAMMER: If you get one choice, I'd
7 vote for Atlanta.

8 MS. KENT: Okay. We'll have stakeholder
9 meetings on silica in Atlanta.

10 DR. SWEENEY: Mr. Chairman, I have one other
11 suggestion.

12 CHAIRMAN BURKHAMMER: Marie.

13 DR. SWEENEY: Marthe, we appreciate your
14 flexibility on this. If, in the future, you have an issue
15 -- and you have been with the hexavalent chromium and with
16 some of the other issues, and noise, if you're going to
17 have stakeholder meetings that affect construction, maybe
18 we could know about that ahead of time and then we could
19 help you decide where. If you need to have them all over
20 the country, maybe we can help you with that ahead of
21 time.

22 MS. KENT: Okay. That's great. That's a

1 commitment and I'm really grateful for the help because we
2 don't know. So we'll definitely do that. I'll give you
3 my schedule of stakeholder meetings and you can help me
4 pick the place.

5 DR. SWEENEY: Put it on our web site.

6 MS. KENT: Okay. Yes. But I'm real serious
7 about workgroups and having an economist there, and you
8 can give them a rough time, and all those things.

9 CHAIRMAN BURKHAMMER: Great. Any other comments
10 for Marthe or her group?

11 (No response)

12 CHAIRMAN BURKHAMMER: Thank you very much.

13 MS. KENT: You're very welcome. Good seeing
14 you.

15 CHAIRMAN BURKHAMMER: We'll take a break and
16 return.

17 (Whereupon, at 2:00 p.m., the meeting was
18 recessed.)

19

20

21

22

1 AFTER RECESS

2 (2:15 p.m.)

3 ACCSH PLANNING SESSION FOR THE CHICAGO MEETING
4 IN FEBRUARY 2000

5 CHAIRMAN BURKHAMMER: Okay. We're now at the
6 part of the agenda where we're going to develop the ACCSH
7 meeting agenda for February in Chicago.

8 Michael?

9 MR. BUCHET: Are you doing 170 tomorrow?

10 CHAIRMAN BURKHAMMER: Yes.

11 MR. BUCHET: I talked to Tom Broderick and his
12 office is going to fax us information on the schedule of
13 their show and registration, so we should have that within
14 the next 10, 15 minutes.

15 CHAIRMAN BURKHAMMER: Okay. The information I
16 have, and Michael, correct me if I've got the wrong
17 information, Monday the 14th we're going to have workgroup
18 all day. As I indicated earlier, I was looking at two-
19 hour time slots for MSDs, Multi-Employer, Fall Protection,
20 and Cranes.

21 But now we've got some additional information
22 today, that PSM is one I don't think is worth having a

1 session on, but hearing or sanitation might be. I think
2 we could get a lot of input that backs up our sentiments
3 on sanitation, but maybe we don't need it either.

4 Go ahead, Bill.

5 MR. RHOTEN: I think we should just keep pushing
6 this, and pushing this, and pushing it until we get it
7 done. I mean, it's just a matter of decency. If people
8 in this building -- if they shut all this plumbing down
9 and put those outhouses out in the front here for a couple
10 of weeks, and they had to go down there and use them,
11 you'd find out that they'd shut this building down.

12 CHAIRMAN BURKHAMMER: It would get changed real
13 quick.

14 MR. RHOTEN: I mean, it's just a matter of
15 decency to keep pushing this until we get it done.

16 CHAIRMAN BURKHAMMER: Jane?

17 MS. WILLIAMS: Stew, I totally agree. I will be
18 there and I would love to do this. I'll talk to Mr.
19 Cooper.

20 CHAIRMAN BURKHAMMER: Michael?

21 MR. BUCHET: I'm just curious, after what we
22 heard this afternoon, if we can get a commitment that

1 sanitation will be moved along by the Directorate, and
2 whether we need to do anything in Chicago or not. If not,
3 then we certainly have to push as hard as we can.

4 MR. RHOTEN: Well, even if he's going to push
5 it, let's do this, is my point. I mean, I don't think we
6 should be meek about this at all. I think we gave them
7 the message that it's a top priority for everybody here.
8 I think we should continue on. We shouldn't be
9 embarrassed to take a position on something this serious.
10 I mean, not that we're embarrassed, but we can go ahead
11 and push it.

12 CHAIRMAN BURKHAMMER: Larry?

13 MR. EDGINTON: With respect to the Cranes
14 workgroup, we had decided at our meeting yesterday that
15 many of the participants said that the Chicago date was
16 not a particularly good date for them. We have selected a
17 couple of alternate dates for members to choose from. A
18 notice will be going out in the next, probably, week.
19 Each of those dates is actually before the Chicago date
20 that we're talking about.

21 CHAIRMAN BURKHAMMER: So you're offering to give
22 up your time slot to some --

1 MR. EDGINTON: Yes. We anticipate having a
2 meeting here in Washington, perhaps even an all-day
3 meeting, was the sense of the workgroup yesterday, and
4 we'll be surveying members in the next couple of weeks.

5 MR. BUCHET: Mr. Chairman, I will -- to Brother
6 Edginton. One of the things that Tom Broderick and I had
7 talked about is whether or not you guys were going to
8 discuss cranes out there, and I didn't have a chance to
9 chat with you and tell you that he thought there might be
10 some interest in having some of those contractors come in
11 and talk to the workgroup, maybe to find out what the
12 workgroup is doing.

13 MR. EDGINTON: That would be fine. Whether it
14 takes two hours, I don't know, but we certainly could
15 accommodate that. I'm just saying, as we said this
16 morning, this group is sort of anxious to get moving and
17 they've said we want to meet sooner and we want to meet
18 longer, so we're going to try to accommodate that.

19 CHAIRMAN BURKHAMMER: Marie, what have you and
20 Michael decided? Are we going to do MSDs as a panel or
21 are we going to do it as a workgroup?

22 MR. BUCHET: We have the option of doing both.

1 We have a commitment from the Construction Safety Council
2 for at least two time slots during their program, one of
3 which was going to be -- one of the presentations was
4 going to be what ACCSH is and what it was doing, and
5 another one that we offered them, and they have accepted,
6 though I'm sure we can change it, was going to be MSD.

7 The other part of that, is we want to do an MSD
8 workgroup because we want to keep the process alive and
9 keep the ACCSH process alive, and doing something inside
10 the conference is not open to the public.

11 We have tentatively gotten agreement from Dr.
12 Steve Brennan to come out and do a presentation on his
13 Stretch and Flex programs, and we're looking for somebody
14 else to do a short presentation, either giving some
15 evaluation of Stretch and Flex programs or bringing more
16 to bear on that sort of issue.

17 CHAIRMAN BURKHAMMER: Okay. So MSDs. Are we
18 all in agreement that we're going to do a workgroup and a
19 panel? Okay.

20 Multi-Employer. Felipe, what do you want to do?

21 MR. DEVORA: I was thinking, maybe with the
22 Directorate's help, we could get -- I don't know who's

1 going to be there, maybe Noah, to basically just do an
2 explanation and give a history of where we're at and how
3 we got there, and then we could discuss the process of why
4 we're there and why we think it's a good thing, and just
5 go from there.

6 At that point, I don't think any of the
7 discussion is going to change anything in the firm or in
8 the way that it's going to be. So it's really an
9 informational-type setting, I think, more than anything.
10 Question and answer, I guess.

11 CHAIRMAN BURKHAMMER: We would like, I think,
12 the agency, and I think some of us would like some
13 feedback, on how the people perceive they're going to
14 implement this thing. How are they going to do that and
15 get a feel for that?

16 MR. DEVORA: Yes. I don't want to just show up
17 and say, here it is, folks, ask me some questions.

18 CHAIRMAN BURKHAMMER: Yes.

19 MR. DEVORA: Certainly I don't want to do it
20 alone.

21 CHAIRMAN BURKHAMMER: All right. So we're all
22 in agreement that Multi-Employer should be one of the

1 workgroup sessions.

2 Fall Protection. Bob?

3 MR. MASTERSON: Yes. I had thought that it
4 would be a good idea to bring some of the people out of
5 the field, and that might be a good location to get some
6 of the multi-union carpenters involved to comment on some
7 of the questions you're dealing with.

8 CHAIRMAN BURKHAMMER: Okay. Everyone agree that
9 Fall Protection should be a workgroup?

10 MR. DEVORA: And we'll define fall protection as
11 those 10 specific issues.

12 CHAIRMAN BURKHAMMER: Yes. Right. No. The
13 ones that Bob had on the question things from the group.

14 MR. SMITH: Yes, that's a good place for it
15 because those are the guys that were working with local
16 OSHA, weren't they, that came up with some alternative
17 methods for the groups, and so forth, in Chicago.

18 CHAIRMAN BURKHAMMER: Is it Chicago that has the
19 partnership program?

20 MR. SMITH: Yes. Those are the guys.

21 MR. BUCHET: Yes. The Roofing Partnership is
22 Chicago.

1 CHAIRMAN BURKHAMMER: Could we contact them in
2 advance and maybe get somebody to come from that and talk
3 a little bit about the partnership? Oh. Are you going to
4 come to Chicago?

5 VOICE FROM AUDIENCE: Actually I'm -- someone
6 else from the program will be there.

7 CHAIRMAN BURKHAMMER: Oh, good. All right.
8 Yes, you would be happy to participate, right?

9 VOICE FROM AUDIENCE: Do you want the --

10 CHAIRMAN BURKHAMMER: Yes. Monday the 14th of
11 February at the Holiday Inn, Rosemont.

12 Michael?

13 MR. BUCHET: I'm sorry.

14 CHAIRMAN BURKHAMMER: You had your hand up.

15 MR. BUCHET: Yes. One of the things is, have we
16 decided how to coordinate getting people to attend the
17 ACCSH workgroups and the conference? We have a number of
18 association representatives here who have expressed
19 interest in the Construction Safety Council conference and
20 the ACCSH meetings. Has the agency gone out anywhere and
21 said, here, this is where we're going to be and we're just
22 waiting for the normal announcement process?

1 CHAIRMAN BURKHAMMER: Jim, do you want to take
2 that one?

3 MR. BOOM: We are coordinating our efforts with
4 the folks up in Chicago, Mr. Broderick, in particular. We
5 have decided to have the full meeting on the 17th and
6 possibly half a day on the 18th in the Holiday Inn.

7 The workgroups will be on the 14th also in the
8 Holiday Inn, and the Rosemont Convention Center is
9 directly across the street from the Chicago O'Hare Holiday
10 Inn. Preliminary organizational efforts on our part, we
11 felt that four workgroups on Monday may be appropriate.
12 We were talking about MSD, Fall Protection, Multi-Employer
13 --

14 CHAIRMAN BURKHAMMER: And sanitation.

15 MR. BOOM: -- and Sanitation --

16 (Laughter)

17 CHAIRMAN BURKHAMMER: So we've got MSDs, Multi-
18 Employer, Fall Protection, and Sanitation, are the four so
19 far that we have agreed to. If we get any more than that,
20 we're going to have to vote and see which ones we take.

21 Steve, did you want to have anything to say on
22 Safety and Health Program standards? Do you want a

1 workgroup?

2 MR. CLOUTIER: I think we're waiting on Mr.
3 Zettler to provide us with a copy of the draft document
4 that he's promised the first part of January -- to
5 workgroup members. Is the agency prepared to pay for
6 travel from Sunday through Friday?

7 CHAIRMAN BURKHAMMER: We haven't got that far
8 yet.

9 MR. CLOUTIER: But you're talking about MSDs,
10 Falls, Sanitation, and what was the other one?

11 CHAIRMAN BURKHAMMER: MSDs, Multi-Employer, Fall
12 Protection, and Sanitation.

13 MR. RHOTEN: The Safety and Health Programs, it
14 seems like the only issue left on there was the training,
15 if I recall. Is that correct?

16 MR. CLOUTIER: Well, it's one issue. But the
17 other issue, is they have this draft document, you've got
18 (inaudible), they've got an attorney, and we're ready to
19 give it to us the first part of January, and we're waiting
20 on that document to finish (inaudible) this point.

21 MR. RHOTEN: And then we set up another
22 committee just on training, I think.

1 CHAIRMAN BURKHAMMER: Yes.

2 MR. RHOTEN: It would seem like the
3 recommendation on that training would fall back under this
4 Safety and Health Program, or should be part of it.

5 MR. CLOUTIER: And we may want to talk about
6 combining those two workgroups.

7 CHAIRMAN BURKHAMMER: Yes.

8 MR. RHOTEN: Yes. It seems like that's where it
9 would belong, wouldn't it?

10 CHAIRMAN BURKHAMMER: It makes sense to me. Why
11 don't we bring that up tomorrow when we do the workgroups?

12 MR. CLOUTIER: Unfortunately, I have to be
13 missing the meeting tomorrow.

14 CHAIRMAN BURKHAMMER: That's right, you do.

15 MR. CLOUTIER: The Chairman, I'm sure, will
16 bring it up.

17 CHAIRMAN BURKHAMMER: I'll bring it up and I'll
18 remember your support of that. I don't think we're going
19 to have a problem. Okay.

20 Any other discussion on the Monday, four
21 workgroups?

22 (No response)

1 CHAIRMAN BURKHAMMER: All right. I'd ask the
2 co-chairs of those four workgroups to prepare an agenda in
3 advance so we can get it to both Jim and Broderick,
4 through Michael, I guess, or through Jim, either one. It
5 doesn't matter to me.

6 Either one of you can answer this. How is the
7 publicity for the ACCSH meeting coming in combination with
8 the publicity for the conference?

9 MR. BOOM: What we'd like to do, is certainly
10 publish notice on the ACCSH web page. It may be on the
11 news bulletin, through our Office of Public Affairs, and
12 get an early Federal Register notice out.

13 In order for us to do that, we'd like to get
14 some idea of an agenda and what we're going to cover
15 during the 17th before we can make that happen. And I
16 understand the construction safety folks in Chicago are
17 doing some billing, not necessarily for the meeting, but
18 our participation in a couple of the breakout sessions.

19 CHAIRMAN BURKHAMMER: All right. We have two
20 time slots during the program. Let's take a minute then.
21 One is going to be on MSDs, right?

22 MR. BUCHET: Well, we can certainly discuss

1 that. I mean, if that's the --

2 CHAIRMAN BURKHAMMER: We haven't filled those
3 two yet.

4 MR. BUCHET: The only one that we committed to
5 solidly was sort of an overview of what ACCSH is and does.

6 CHAIRMAN BURKHAMMER: Is that like the one we
7 did in Hawaii?

8 MR. BUCHET: Yes, except that we'd like to add
9 sanitation to it.

10 CHAIRMAN BURKHAMMER: Certainly would. All
11 right. So that's going to be a panel of us, some of us.

12 MR. BUCHET: Some of us.

13 CHAIRMAN BURKHAMMER: Okay. Four or five, three
14 or four?

15 MR. BUCHET: Well, I'm sure if what we're doing
16 is gathering information and giving information, we could
17 do 10 minutes on a number of topics and sort of make
18 everybody bleary-eyed, but they'd know.

19 CHAIRMAN BURKHAMMER: Well, in Hawaii we did a
20 10-minute overview on each of the workers.

21 MR. BUCHET: Yes. We could do that again.

22 CHAIRMAN BURKHAMMER: So we could ask one of the

1 co-chairs of each of the workgroups, and in some we have
2 combination co-chairs so we'd only have about five people,
3 and let each of them speak on their workgroup. Does that
4 make sense to everybody?

5 MR. DEVORA: And this is in addition to the
6 four.

7 CHAIRMAN BURKHAMMER: Yes. This will be
8 somewhere in the conference. Okay. So we have one other
9 one to fill.

10 Suggestions on how to fill that one? I guess
11 sanitation could be certainly a topic that we could fill a
12 time slot with. Multi-Employer, we could certainly fill a
13 time slot with.

14 MR. BUCHET: We could do half and half.

15 CHAIRMAN BURKHAMMER: MSDs, we could fill the
16 time slot with.

17 MR. BUCHET: Well, we can fill a time slot. I
18 don't know that we need to fill a time slot so much as we
19 need to get out there and tell people what we're doing and
20 ask them for comments, and again maybe we should do two or
21 three of them relatively condensed versions.

22 CHAIRMAN BURKHAMMER: They kind of have an open

1 forum workgroup.

2 MR. BUCHET: Breakout session.

3 CHAIRMAN BURKHAMMER: How long are the breakout
4 sessions?

5 MR. BUCHET: I'll have to call and find out. I
6 think, all told, we have 2 and a half hours between the
7 two sessions.

8 CHAIRMAN BURKHAMMER: Well, the overview
9 certainly could fill an hour and a half, anyway. So if
10 you use two subjects, like Multi-Employer, MSDs, or
11 Sanitation, or any combination of two of those three --

12 MR. BUCHET: I can go call. Tom's in the
13 office. I can call him and ask him exactly how much time
14 he can give us.

15 CHAIRMAN BURKHAMMER: Why don't you do that, and
16 see if the fax showed up.

17 This is to come in on Sunday, be prepared for an
18 all-day session on Monday, Tuesday, Wednesday, attend the
19 conference, present the sessions that ACCSH is going to be
20 doing in the conference, Thursday, and half-day Friday,
21 the ACCSH meeting, go home Friday afternoon.

22 We had talked briefly about the DesPlaines,

1 going over to Manny's shop and taking the tour. Could
2 that be the half-day Friday session?

3 MR. BOOM: Well, it was suggested that perhaps
4 you might want to consider doing that maybe on Wednesday
5 before the meeting, in the afternoon or something like
6 that.

7 It depends on how in-depth a show you guys want
8 from Manny's shop. Then possibly keep the meeting to one
9 day on Thursday and just leave Friday morning or travel
10 that evening. But that depends on how our agenda builds.

11 There is also a suggestion that we might want to
12 consider having public input during half a day, you know,
13 getting real workers and real, live contractors from the
14 different parts of the country to discuss their views and
15 ask questions of ACCSH. That was one suggestion.

16 MR. CLOUTIER: Mr. Chairman, that's not a bad
17 idea.

18 CHAIRMAN BURKHAMMER: What if we took a
19 Wednesday and spent a half a day, or a four-hour session,
20 on public input and an afternoon session at Manny's shop?

21 MR. CLOUTIER: Because isn't your public input
22 time going to take away from the conference?

1 MR. BOOM: Right. The whole reasoning behind
2 this is, if you hold it on Thursday -- I think Thursday is
3 kind of a -- not really an off day, but kind of the slow
4 day for the conference.

5 So, therefore, we had our meeting on conjunction
6 with their meeting or at the same time slot, and we
7 wouldn't be taking away from their show, so to speak.

8 CHAIRMAN BURKHAMMER: Danny?

9 MR. EVANS: A suggestion. May we start the
10 ACCSH committee meeting at noon on Wednesday and close it
11 at noon on Thursday, with the exception of four hours
12 Thursday afternoon for comment period, since it will be a
13 slow day for the conference?

14 MR. BOOM: Well, if we held it on Wednesday, we
15 would definitely be interfering with the conference.

16 MR. CLOUTIER: Mr. Chairman, what happens if you
17 did it Thursday morning and held, not a typical ACCSH
18 meeting, but listening to public, to other contractors,
19 and associations, and unions coming back to ACCSH with
20 their comments, and then Thursday afternoon going forward
21 to DesPlaines, to the Training Institute. Then you can
22 still bail out Thursday night or Friday morning.

1 CHAIRMAN BURKHAMMER: Yes. But then you get no
2 ACCSH business done because there's no time slot for that.
3 If you have public input for four hours Thursday morning,
4 and then four hours over to Manny's shop, when is the
5 ACCSH meeting?

6 MR. CLOUTIER: Well, you're going to get ACCSH
7 business done on Monday with the workgroups. Is there
8 anything that truly needs to come to ACCSH on Thursday in
9 a formal meeting at that time? What's going to change in
10 the next 90 days?

11 (Pause)

12 CHAIRMAN BURKHAMMER: Sarah made a good point.
13 If we make the public comment period a two- or three-hour
14 part of the ACCSH meeting, we'll get taped minutes, a
15 transcript. Jane?

16 MS. WILLIAMS: I like that. Typically, many of
17 the public comments come as a result of hearing our
18 discussions, so if we briefly had our business, that might
19 stimulate some of those discussions, especially with an
20 agenda of the type of items that we would be covering.
21 That might really help stimulate that discussion.

22 MR. MASTERSON: I was going to say, one of the

1 other things that I encourage each of the chairs is to
2 look at whether or not they can invite as many of the
3 labor force as they can while we're out there to get them
4 into the workgroup meetings and comment there, so you can
5 get two areas where you can actually start soliciting
6 comment from the people in the field that actually have to
7 make these things happen.

8 The other thing, is I've got to ask the
9 question, is three or four hours really sufficient time
10 for a group this size to tour Manny's shop?

11 CHAIRMAN BURKHAMMER: Yes. Let me throw this
12 out for discussion. On Thursday morning, we start at 8:00
13 a.m., since we're all there and we're all in construction
14 and we all start early anyway.

15 We go from 8:00 to 10:00 and we have the ACCSH
16 agenda, like we normally have here with workgroup reports,
17 and we open it for public comment, have a break, then we
18 open it for public comment from 10:15 until lunch.

19 Then we go to lunch. We go over to Manny's in
20 the afternoon, then Friday morning we conclude the ACCSH
21 business for two hours or so until 10:00, then hit the
22 plane. You don't like that?

1 MR. CLOUTIER: No. I like the first part of it,
2 I don't like the last part. I can't sit here and commit
3 from Sunday through Friday, Mr. Chairman. I think if you
4 go around the committee, there's going to be a number of
5 us who can't.

6 CHAIRMAN BURKHAMMER: That's the problem?

7 MR. RHOTEN: That's the --

8 CHAIRMAN BURKHAMMER: So if we finish on
9 Thursday and everybody leaves Thursday night or --

10 MR. RHOTEN: Leave Friday morning, or leave
11 whenever you want to. It's just the space between the
12 workgroups and the actual ACCSH meeting. If they were,
13 boom, boom, you could get your business done and go.

14 MR. BOOM: It's easy to fly in and out of
15 Washington to Chicago, because the shuttle leaves every
16 hour. For some of you flying out to the west coast, or
17 something like that -- Chicago O'Hare --

18 CHAIRMAN BURKHAMMER: All right. Is it most of
19 the committee's flavor that we finish by the end of
20 Thursday night, or Thursday at 4:00, 5:00, whatever, and
21 that will be the end of it? Okay.

22 MR. DEVORA: Maybe make the trip to DesPlaines

1 optional.

2 CHAIRMAN BURKHAMMER: Don't push it.

3 MR. RHOTEN: They could get a video, maybe, to
4 show us.

5 (Laughter)

6 MR. BOOM: That was a recommendation in New
7 York.

8 CHAIRMAN BURKHAMMER: All right. So we'll
9 finish up no later than 4:00 or 5:00 on Thursday, and it's
10 up to you all. You can either go home that night, or
11 stay. Like Bill said, whatever you feel like. Okay. So
12 Monday we've got the four workgroups, Tuesday, Wednesday,
13 attend the conference, make the presentations to the two
14 sessions, hopefully.

15 Thursday morning, we'll have the ACCSH meeting
16 from 8:00 to 10:00, public comment from 10:00 to 12:00,
17 lunch, and then Jim, I guess, we'll have a single point of
18 transportation to get over to Manny's. A mini-bus or
19 something to tote the group, a van, or --

20 MR. BOOM: I think the Institute has a bus.
21 They've got a couple.

22 CHAIRMAN BURKHAMMER: They've got a couple?

1 Okay.

2 MR. BOOM: Yes. We can work that out.

3 (Pause)

4 CHAIRMAN BURKHAMMER: Okay. Sarah brought up an
5 interesting point. If the visit to Manny's shop is part
6 of the ACCSH agenda, the public is invited to attend. So,
7 we need to address that issue in the notice. I think we
8 can address it to the fact that, if they want to attend,
9 they need to let us know in advance so we don't have 250,
10 300 people going.

11 MR. CLOUTIER: Mr. Chairman, a couple of years
12 ago when we were in Spokane we did not take the public
13 over to the miner's building there where Emsall was. We
14 just did it as an afternoon event.

15 CHAIRMAN BURKHAMMER: Yes, but it was not a
16 formal part of the ACCSH meeting, it was a voluntary part
17 of the members to go to that. It wasn't a formal request
18 that they had to go.

19 MR. CLOUTIER: Let's make it a voluntary part
20 this time.

21 CHAIRMAN BURKHAMMER: That takes care of Felipe
22 getting out of going.

1 (Laughter)

2 MR. BUCHET: Collect \$50 a head and give it back
3 to them once they go through the tour.

4 CHAIRMAN BURKHAMMER: Jane?

5 MS. WILLIAMS: Mr. Chairman, I'm kind of
6 responsible for something here. I was the one who talked
7 to Jim about this tour, but my intent wasn't so much a
8 tour to see the facility, I thought it would be a great
9 time to talk to those folks about multi-employer
10 interpretations of the new document so they could deliver
11 the message we wanted them to have when they deliver it to
12 their compliance.

13 So I was kind of looking for a "hear it from us"
14 type of a scenario rather than go ooh and aah in the
15 building. So that's kind of where I was coming from.

16 MR. DEVORA: If we're afforded that opportunity,
17 I'll stay that Saturday.

18 MS. WILLIAMS: That was the intent. Now, if we
19 want to invite them in to the workgroup to deliver that
20 message, we may not be able to tour, but that was my
21 thought when I suggested it. I feel I ought to bail Jim
22 out on that.

1 MR. BOOM: We had an open discussion informally,
2 and somebody suggested it to her, for the new ACCSH
3 members that may have never gone to see our training
4 facility, and at the same time have a discussion, perhaps,
5 with Manny to see where they are on certain construction
6 issues, training programs, and things of this nature.

7 MS. WILLIAMS: That was my intent.

8 MR. BOOM: We're flexible. I mean, we can do
9 anything that you want to do. If you want to sit down and
10 talk with the folks out there, we can try to arrange that.
11 If you want a tour, we can do that, too.

12 MR. RHOTEN: How many people have seen the
13 facility here? How many people have already seen it, or
14 have been there?

15 (A showing of hands)

16 MS. WILLIAMS: I was looking at it purely to
17 talk multi-employer, sanitation and --

18 CHAIRMAN BURKHAMMER: All right. Why don't we
19 do this.

20 MR. RHOTEN: I was thinking, make them fight the
21 traffic and get to us.

22 MS. WILLIAMS: Come to us.

1 CHAIRMAN BURKHAMMER: Let's make the tour a part
2 of the Multi-Employer workgroup, and the purpose of the
3 tour will be for the Multi-Employer workgroup to share
4 with Manny and his team thoughts about the workgroup, and
5 any ACCSH member who wishes to attend that workgroup
6 session may go.

7 MR. RHOTEN: No wonder you're the chairman.

8 CHAIRMAN BURKHAMMER: I may not be the sharpest
9 pencil in the box, but I listen well.

10 (Laughter)

11 CHAIRMAN BURKHAMMER: Okay. Michael?

12 MR. BUCHET: Report from Rosemont. They, being
13 the Construction Safety Council, are in the process of
14 finishing their last promotional document. What they
15 would like from us is the title of the session that we're
16 going to do and a small blurb about each one.

17 The first session, 2:00 to 3:15, is the "this is
18 what ACCSH is and does," and 3:45 to 5:00 is the panel
19 session that I guess you decided what was going to be in
20 while I was out of the room.

21 CHAIRMAN BURKHAMMER: What day?

22 MR. BUCHET: That's a good question. I didn't

1 ask him that. Wednesday. They have also written in a
2 brief blurb on the full ACCSH meeting on the 17th, and if
3 we can provide a description of what we're going in the
4 workgroups on Monday the 14th, they will make one for that
5 in the same document. They need that, like, this
6 afternoon. In the meantime, they're doing up a one- or
7 two-page piece and sending that to us that we can hand out
8 here.

9 So do we know what two items we're going to talk
10 about on the second part of Wednesday afternoon?

11 CHAIRMAN BURKHAMMER: Well, the 2:00 to 3:15 is
12 the overview, right?

13 MR. BUCHET: Right. That's the ACCSH overview
14 and rundown on the committees. That's the generic blurb.

15 CHAIRMAN BURKHAMMER: And that's going to be,
16 we're going to do the overview of the workgroups, we're
17 going to have one workgroup chair of each workgroup there
18 to make that presentation.

19 MR. BUCHET: Well, I would hope the chairman
20 would do the overview.

21 MR. CLOUTIER: Not the sharpest pencil in the
22 box --

1 (Laughter)

2 CHAIRMAN BURKHAMMER: I have no problem with
3 that. Let's talk about 3:45 to 5:00.

4 MR. BUCHET: The intervening half hour is to go
5 visit the exhibits.

6 CHAIRMAN BURKHAMMER: Okay.

7 MR. BUCHET: That's where the soda, the coffee,
8 and the exhibits will all be.

9 CHAIRMAN BURKHAMMER: 3:45 to 5:00, you're not
10 going to get -- from my experience as vice president at
11 conferences for ASSC, the last session of each day is very
12 sparsely attended. So, knowing that --

13 MR. BUCHET: He pulls a good crowd all day.

14 CHAIRMAN BURKHAMMER: I know he pulls a good
15 crowd, but the year even I went to the Chicago conference
16 and was one of the speakers, the last -- you know, you get
17 maybe 50 percent of the morning attendance in the
18 afternoon. So if we put sanitation as one of them -- just
19 the reverse. If we put that as one as a hot topic, then
20 maybe we'll draw more people.

21 MS. WILLIAMS: Okay.

22 MR. BUCHET: MSD and Multi-Employer are probably

1 going to pull more contractors and sanitation.

2 MS. WILLIAMS: That's true. They're not
3 passionate on it.

4 MR. BUCHET: If we call it ergonomics. To
5 Regulate or Not, Ergonomics.

6 (Laughter)

7 MR. BUCHET: What do you think?

8 (Laughter)

9 CHAIRMAN BURKHAMMER: All right. Show me a show
10 of hands. How many think MSD should be one of the two in
11 the afternoon?

12 (A showing of hands)

13 CHAIRMAN BURKHAMMER: Seven. Okay, that's one.
14 How many think Multi-Employer should be the
15 other?

16 (A showing of hands)

17 CHAIRMAN BURKHAMMER: Seven. Okay. MSDs and
18 Multi-Employer.

19 Felipe, could you give Michael a quick little
20 blurb, a paragraph, and Michael and Marie can write the
21 one for MSDs quickly. Michael, you can fax those back to
22 Broderick today.

1 Do we need to draft the overview or can you
2 construct that one just like we did in Hawaii?

3 MR. BUCHET: Yes, I can do that. Okay.

4 CHAIRMAN BURKHAMMER: Now, on the four
5 workgroups for Monday, if each chairman could quickly
6 scribble down something for Michael, he can send that with
7 them. So MSDs. You can use pretty much the same one, and
8 we can slant it a little differently. Multi-Employer, you
9 could use the same one. We have a little different
10 directed for input. You've got something already, a
11 paragraph. Just give it to them.

12 Sanitation. Jane, do you have something you
13 could put together quickly for Michael?

14 MS. WILLIAMS: Yes.

15 CHAIRMAN BURKHAMMER: Okay. Yes?

16 MS. WILLIAMS: I have to ask. Are we talking
17 two-hour sessions?

18 CHAIRMAN BURKHAMMER: It's 2:00 to 3:15.

19 MS. WILLIAMS: 2:00 to 3:15.

20 CHAIRMAN BURKHAMMER: Oh, you mean the
21 workgroups? Oh. Two-hour sessions.

22 MS. WILLIAMS: Okay. And then the one on the

1 afternoon was 3:15 to --

2 CHAIRMAN BURKHAMMER: 3:45 to 5:00.

3 MS. WILLIAMS: Anybody want to split their time
4 with sanitation? I'm just asking.

5 MR. RHOTEN: Sanitation will take a long time,
6 won't it?

7 MS. WILLIAMS: I can talk fast.

8 CHAIRMAN BURKHAMMER: Jane, you're going to have
9 a chance to talk about sanitation in the 2:00 to 3:15 time
10 slot when your workgroup report is, and I'm sure Mr.
11 Cooper would be more than happy to allow you to give that
12 report as the chairperson.

13 MS. WILLIAMS: Okay.

14 CHAIRMAN BURKHAMMER: So why don't we just stay
15 with you doing that part. What I'd like from each of the
16 chairmen here is about an 8- to 10-minute sound bite, no
17 more than that. Because we're going to have some
18 feedback, and we can't run over the 3:15 because the
19 people are going to be going to the exhibits.

20 I would structure your remarks to maybe five or
21 six minutes and allow three or four for general comments.
22 I'll chair it and I'll move it along quickly, and I'll

1 watch the time and cut the comments if we're into the next
2 person's time. Okay.

3 For our agenda on Wednesday, we'll start at
4 8:00. We'll have opening remarks, introductions, approval
5 of the minutes from -- Thursday. I'm sorry. Thursday.

6 Workgroup reports. That will run us until
7 probably 9:30 to 9:45. We'll take a 15-minute break, then
8 we'll come back and we'll devote the entire time up until
9 12:00 to public comments.

10 Anybody disagree with that concept?

11 (No response)

12 CHAIRMAN BURKHAMMER: Okay. Any other comments
13 or questions about Chicago? I guess one is cost.
14 Berrien, I guess you and Bruce have to decide, if we're
15 going to be flying 13 people in there Sunday, you'll have
16 lodging Sunday, Monday, Tuesday, Wednesday, and some
17 Thursday. I think we need to let Berrien know how many
18 are staying Thursday night, so raise your hand if you're
19 staying Thursday night.

20 (A showing of hands)

21 MR. BOOM: We have a block of rooms at the
22 Holiday Inn at Chicago O'Hare right now.

1 CHAIRMAN BURKHAMMER: From what dates?

2 MR. BOOM: It would be the 13th through the
3 18th, is the block of rooms.

4 CHAIRMAN BURKHAMMER: So Sunday through
5 Thursday.

6 MR. BOOM: Yes.

7 CHAIRMAN BURKHAMMER: Okay.

8 MR. BOOM: Actually, it's -- yes, Sunday through
9 Thursday. Yes.

10 MS. WILLIAMS: Staying Thursday night and
11 leaving --

12 MR. BOOM: Yes, leaving Friday.

13 MS. WILLIAMS: Holiday Inn O'Hare?

14 MR. BOOM: Pardon me?

15 MS. WILLIAMS: Holiday Inn O'Hare?

16 MR. BOOM: Yes. In Rosemont, Illinois. It's
17 right across the street from the convention center.

18 CHAIRMAN BURKHAMMER: All right. So you need
19 from us when we're going to arrive so you'll know how many
20 rooms for Sunday night. It's not going to do us much good
21 to get there Monday unless you get there in time to make
22 the 8:00 start.

1 Then how many are leaving Thursday and how many
2 are leaving Friday, if you can get that to Jim within the
3 next week.

4 MR. SMITH: You said the first meeting on Monday
5 will be at 8:00.

6 CHAIRMAN BURKHAMMER: Yes. So we'll start out
7 and we'll have Fall Protection from 8:00 a.m. to 10:00 on
8 Monday, Multi-Employer, 10:00 to 12:00, Sanitation, 1:00
9 to 3:00, and MSDs, 3:00 to 5:00. So Bob will be first,
10 Felipe second, Jane third, and Michael and Marie, fourth.

11 MR. RHOTEN: Stew, I missed what the golf date
12 is.

13 CHAIRMAN BURKHAMMER: What?

14 MR. RHOTEN: Which is the golf day?

15 CHAIRMAN BURKHAMMER: Saturday.

16 MR. RHOTEN: Saturday.

17 CHAIRMAN BURKHAMMER: Yes. It's snow golf.

18 Snowshoes and mukluks.

19 Did you get that, Jim?

20 MR. BOOM: No. I missed the first part of it.

21 Fall Protection is first.

22 CHAIRMAN BURKHAMMER: Fall Protection is 8:00

1 a.m. to 10:00 a.m. Monday. That's the workgroup.

2 MR. BOOM: Okay.

3 CHAIRMAN BURKHAMMER: 10:00 to 12:00 is Multi-
4 Employer.

5 MR. BOOM: Okay.

6 CHAIRMAN BURKHAMMER: 1:00 to 3:00 is
7 Sanitation. There's a purpose for putting that right
8 after lunch. And 3:00 to 5:00 is MSDs.

9 MR. BUCHET: If we're going to publish this, why
10 don't we put 15 minutes in between each session?

11 CHAIRMAN BURKHAMMER: Okay. Then the training
12 center workgroup is on Wednesday from 1:00 to 4:00 or
13 4:30, whenever. We need to know how many are going to
14 make the trip so Jim can tell them how many buses are
15 going to need to come and bus us over.

16 MS. SHORTALL: Jim, I think since it is a
17 workgroup, the fact that we would announce when and where
18 it's being held might indicate you only need to provide
19 transportation for our members, and then those members of
20 the public who would be interested in attending would be
21 responsible for their own transportation.

22 (Pause)

1 CHAIRMAN BURKHAMMER: So when you get back to
2 Jim with the dates and times of your arrival and
3 departure, also indicate whether you're going to
4 DesPlaines or not, or to the Training Institute or you're
5 not.

6 MR. BOOM: Let me just clarify, we have a block
7 of rooms reserved, but you're going to call in your own
8 reservations. I will get you the phone number and the
9 contact person through the folks at Chicago of who to
10 contact.

11 Our Office of Public Affairs people have been
12 handling this and they have the proper meeting rooms and
13 all reserved as well. So I guess we're pretty well good
14 to go on that, but you will still need to make your own
15 personal reservations.

16 CHAIRMAN BURKHAMMER: We have a list of people
17 that have indicated they will be going to Chicago, and
18 Berrien has graciously indicated, if all those people want
19 to check in on Sunday and leave on Thursday, he'll assign
20 the rooms, he'll give you your room key when we get there,
21 and all that good stuff.

22 VOICE: Carry the luggage?

1 MR. ZETTLER: Now, that assumes, of course, that
2 you will check in before the credit card time is
3 necessary, because we can't use the government credit card
4 to do that, I don't believe. I think that would be beyond
5 what we can do. But if everybody checks in by 6:00, then
6 we can do that.

7 VOICE: So we don't have to call?

8 CHAIRMAN BURKHAMMER: You have to tell Jim
9 you're going, what day you're arriving, and if you want
10 him to make the reservation with the hotel with the block
11 or you want to make your own.

12 MR. RHOTEN: If you make it with block, then you
13 just pay that, or do you still need our credit card
14 number?

15 MR. ZETTLER: No, I think we can do that on a
16 requisition.

17 MR. RHOTEN: Just automatically.

18 MR. ZETTLER: Yes. Yes.

19 MR. RHOTEN: That would be nice.

20 CHAIRMAN BURKHAMMER: See, they're making it
21 easier for us all the time.

22 (Pause)

1 CHAIRMAN BURKHAMMER: Just give it to Jim before
2 we leave today and he'll make a note. Okay.

3 Everybody in agreement with what we've done?
4 Anybody who doesn't understand what we've done?

5 (No response)

6 CHAIRMAN BURKHAMMER: Anybody who will not be
7 prepared when it's their turn?

8 (Laughter)

9 CHAIRMAN BURKHAMMER: Okay. Then we're
10 adjourned for today and we'll meet back here tomorrow at
11 8:30.

12 Oh. Wait a minute. We had one person sign up
13 for public comment for tomorrow. Is there anybody that
14 would like to comment today?

15 (No response)

16 CHAIRMAN BURKHAMMER: Is there anybody who would
17 like to comment tomorrow, other than those who have signed
18 up?

19 (No response)

20 CHAIRMAN BURKHAMMER: Meeting adjourned until
21 8:30 tomorrow.

22 (Whereupon, at 3:05 p.m., the meeting was

1 recessed, to reconvene at 8:30 a.m. on Friday, December
2 10, 1999.)
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7 C E R T I F I C A T E

8 This is to certify that the foregoing
9 proceedings of a meeting of the Advisory Committee on
10 Constructive Safety and Health (ACCSH), Occupational
11 Safety and Health Administration, held on December 9,
12 1999, were transcribed as herein appears, and this is the
13 original of transcript thereof.
14

15 _____
16 SONIA GONZALES

17 Court Reporter
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