

**OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION**

**ADVISORY COMMITTEE ON CONSTRUCTION
SAFETY AND HEALTH
(ACCSH)**

DAY 2 – APRIL 1, 2015

Room N-4437, A/B/C/D
Frances Perkins Building
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ACCSH MEMBERSHIP ROSTER

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|-------------------------------------|--|---------------------------------------|
| Sarah M. Coyne | Executive Assistant Director, International Union of Painters and Allied Trades/Finishing Trades Institute | Employee Representative |
| Roger Erickson | MOST Administrator, International Brotherhood, of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, & Helpers, AFL-CIO | Employee Representative |
| Palmer Hickman | Director of Safety Code Training & Curriculum Development, Electrical Training ALLIANCE | Employee Representative |
| Laurie A. Shadrick | S&H National Coordinator, United Association of Plumbers and Pipefitters | Employee Representative |
| Erich J. (Pete) Stafford (Chairman) | Director of Safety and Health Building and Construction Trades Department of the AFL-CIO; Executive Director of CPWR - The Center for the Construction Research and Training | Employee Representative |
| Kevin R. Cannon | Director of Safety and Health Services; The Associated General Contractors of America | Employer Representative |
| Cindy DePrater | Vice President, Director Environmental, Health and Safety - Turner Construction Company | Employer Representative |
| Thomas Marrero Jr. | National Safety Director Tradesman International Inc. | Employer Representative |
| Donald L. Pratt | President and CEO, Construction Education and Consultation Services of Michigan | Employer Representative |
| Jerry Rivera | National Director of Safety Power Design Inc. | Employer Representative |
| Charles Stribling | OSH Federal-State Coordinator Kentucky Labor Cabinet, Department of Workplace Standards | State Representative |
| Steven D. Hawkins | Administrator, Tennessee Occupational Safety and Health Administration | State Representative |
| Letitia K. Davis | Director, Occupational Health Surveillance Program, Massachusetts Dept of Public Health | Public Representative |
| Jeremy Bethancourt | Co-Owner and Program Director, Arizona Construction Training Alliance | Public Representative |
| Christine M. Branche | Principal Associate Director, and Director, Office of Construction Safety & Health CDC-NIOSH, Office of the Director | Federal Representative |
| Dean McKenzie | Deputy Director, Directorate of Construction, US Department of Labor-OSHA | Designated Federal Official |
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| Lisa Wilson | ACCSH Counsel, Office of the Solicitor, US Department of Labor | Committee Solicitor Contact |

DAY 2 - WELCOME AND INTRODUCTIONS

MR. STAFFORD: Welcome everyone to round two of our discussion on what we're going to do about our Crane and Derrick Standard issue. I really appreciated all the participation yesterday from our stakeholders. We had 18 folks comment, and I think that we gleaned a lot from those comments, both from our stakeholders and from OSHA.

So here's what we're going to do today to try to move this process forward. Based on what we heard yesterday and OSHA staff, OSHA has developed a fact sheet for us, that I'm going to call it, with certain bullets on what they've heard with suggestions, based on what they heard, on what they're thinking about doing.

This committee is going to take action and is going to recommend, one way or the other, whether we believe, based on what we heard from you and from OSHA, whether they're on the right track or not in their concepts.

If we can get to the point where we think that we're all in agreement on a certain provision within the proposed rule that we can believe that we can take action

on recommending to OSHA specific language that we would like to see in the proposed rule when it comes out, then we're going to attempt to do that. And in the end, I think Paul and Garvin will try to get through all of your list and then continue on with any discussions maybe that we feel necessary that aren't included in here. So that's fair enough.

As always, this meeting is open to the public. You're welcome to sign up for public comments at the end of the meeting. We're not going to take any more comments from stakeholders now on this particular issue. At the end of the meeting, if you feel compelled to say something about what we have done or the actions we've taken, you're obviously free to do that. But I think at the end, OSHA intended for public comments to more address other issues that we're not going to have a chance to entertain because of this specific topic that we've been on for this particular meeting. So please feel free to sign up. I'll take you at the end of the meeting in order, up until we can take no more.

So with that, I'd like to go ahead and do introductions. Just like yesterday, we're going to

introduce the ACCSH members, and we'll go back and introduce the folks in the room, and then we'll get started.

Excuse me, Damon. Is there anyone on the phone?

MR. BONNEAU: I have been checking dial in, there's nobody there now.

MR. STAFFORD: Okay. All right. So let's go ahead. Starting on my right, Kevin, please.

MR. CANNON: Kevin Cannon, Employer Rep, AGC of America.

MR. BETHANCOURT: Jeremy Bethancourt, Public Representative.

MR. RIVERA: Jerry Rivera, Employer Rep.

MR. MARRERO: Tom Marrero, Employer Rep with Tradesmen International.

MS. DAVIS: Tish Davis. I'm a Public Rep.

MR. STRIBLING: Chuck Stribling, Kentucky Labor Cabinet, State Planning Representative.

DR. BRANCHE: Christine Branche, NIOSH, Federal Rep, and for the record, Damon rocks.

MS. SHADRICK: Hi. Laurie Shadrick, employee rep, United Association of Plumbers and Pipefitters.

MR. HAWKINS: Steve Hawkins, State Plan Representative from Tennessee OSHA. I agree with Dr. Branche, Damon rocks.

MS. DEPRATER: Cindy DePrater, Employer Rep, Turner Construction Company.

MS. COYNE: Sarah Coyne, Employee Rep, International Union of Painters and Allied Trades.

MS. WILSON: Lisa Wilson, ACCSH counsel.

MR. MCKENZIE: Dean McKenzie, Designated Federal Official.

MR. STAFFORD: Thank you. Are we going to entertain a motion that Damon rocks or is this -- all right? Let's go back to the left, please, and start the introductions in the back.

MR. BAIRD: Ed Baird from the Solicitor's Office.

MR. BONNEAU: Damon Bonneau, OSHA.

MR. SICKLESTEEL: Tom Sicklesteel, Sicklesteel Cranes.

MR. RYAN: Chris Ryan, Boh Brothers Construction Company.

MR. IAFOLLA: Robert Iafolla, Bloomberg BNA.

MR. HEADLEY: James Headley, Crane Institute of

America.

MR. BROWN: Tony Brown, AD Brown & Company.

MR. GREENE: Good morning again. Steve Green, National Center for Construction Education and Research or NCCER.

MR. WORRELL: Jim Worrell with Lift-Think, LLC representing the Crane Safety Subcommittee of the Construction Institute of the American Society of Civil Engineers.

MR. EGGENBERGER: Michael Eggenberger, Bay Limited, a Berry Company, Corpus Christi, Texas.

MR. MARTIN: Brad Martin, Kiewit.

MR. WALSH: Pete Walsh, Walsh Construction.

MR. DUDLEY: Jeff Dudley, Archer Western Construction.

MR. SCALA: Nick Scala with the Law Office of Adele Abrams on behalf of the American Society of Safety Engineers.

MR. NEILES: Bill Neiles, National Utility Industry Training Fund.

MR. IANNELLI: Jason Iannelli, Electrical Training Alliance.

MR. WEISS: Robert Weiss, Cranes, Inc. New York City.

MR. JUHREN: Peter Juhren, Morrow Equipment Company.

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

MR. FIDLER: Eric Fidler, Manitowoc Cranes.

MR. YAKSICH: Nick Yaksich, Association of Equipment Manufacturers.

MR. WOLCOTT: Mike Wolcott, Air Force Safety Center.

MR. LESLIE: Jim Leslie, Operating Engineers Certification Program.

MR. HOPKINS: Larry Hopkins, Operating Engineers Local 12, Southern California.

MR. BRIGHTUP: Craig Brightup, The Brightup Group. I'm here on behalf of the Coalition for Crane Operator Safety.

MS. VETICK: Chelsea Vetick, National Association of Homebuilders.

MR. JOHNSON: Dan Johnson, SFI Compliance.

MR. CALDARERA: Mike Caldarera, National Propane

Gas Association.

MS. NADEAU: Liz Nadeau, attorney for the
Operating Engineers.

MR. GORDON: Tom Gordon, Operating Engineers Local
14, New York City.

MR. PETERSON: Patrick Peterson, Operating
Engineers Local 15, New York City.

MR. BOOTH: Chip Booth, Operating Engineers,
Safety and Health.

MR. COLSTON: Donnie Colston, IBEW.

MR. FRICCHIONE: Carlo Fricchione, United States
Air Force.

MR. KRAUSE: Russ Krause, United States Air Force.

MR. MCNICHOLAS: Matt McNicholas, OSHA, Chicago,
Region 5.

MS. MIHELIC: Michele Mihelic, American Wind
Energy Association.

MR. HERING: Bill Hering, safety manager, Matrix
North America and Construction. I'm also here representing
the Association of Union Constructors from Arlington,
Virginia.

MR. GLUCKSMAN: Hi. Dan Glucksman, International

Safety Equipment Association.

MS. MEJIAS: Hi. I'm Melissa Mejias,
International Association of Drilling Contractors.

MR. SKOGLAND: Blake Skogland, Directorate of
Construction, OSHA.

MR. PRESTON: Vernon Preston, Directorate of
Construction, OSHA.

MS. BRIEFEL: Ashley Briefel, Directorate of
Construction, OSHA.

MR. HOLCOMB: Sid Holcomb, OSHA Office of
Communications.

MR. FASALO: Pete Fasalo [phonetic], Directorate
of Construction.

MS. FOLEY-HERING: Lynn Foley-Hering, Matrix North
American Construction.

MR. CORTNEY: Bob Cortney [phonetic], Meyer
[phonetic], Construction.

MR. PAYNE: Michael Payne, Directorate of
Construction.

MR. STAFFORD: Good morning everyone.
Dr. Michaels will be joining us at some point this morning,
so we're going to be a little bit fluid. Paul and Garvin,

I will have to cut you off when David gets here, and then we'll come back. And so you'll just have to bear with us on that.

So let's get started. So again, I'd like for you to go through your list, and one by one, Paul will ask questions of the committee and then make recommendations one way or the other as we go through this list, I think will be the best way to handle it, so that we can get through all the issues and be very specific about and clear about what it is that we're taking action on.

MR. BOLON: Okay. I'm Paul Bolon. I'm from the Directorate of Construction Standards Office. And with me is --

MR. BRANCH: Garvin Branch.

MR. BOLON: Garvin was the main staff person really on the Final Rule that was published on cranes in 2010.

MR. STAFFORD: Welcome.

REVIEW OF LIST OF TOPICS

MR. BOLON: So after the meeting yesterday, just

to help us and help the committee digest what we heard and get into some form that you could work on it, I prepared this one pager. And I think there are copies on the back table, and I tried to hand it out to everybody in the audience. So again, this is the list of topics, and just tried to record what was said.

And the first one was just a very -- was directly on the employer duty and that is we heard that OSHA should just insert a simple duty for employers to qualify operators and delete the capacity factor for certification. And I inserted a note here just that there's not a great deal of dispute on the latter point on capacity and that we had an employer duty really since the inception of OSHA that employers had a duty to make sure that their employees were trained on the equipment they were going to operate and be competent. That was a general requirement, and it had no specifics or no requirements for documentation. And part of the, I guess you would say, I said failure here but that was not sufficient, and that was one reason, I think, that the construction industry and the crane industry want to develop certification and also wanted to move ahead with an OSHA standard was that that wasn't sufficient.

And again, I would just mention, on the employer duty in the Final Rule, the employer duty was phased out when certification kicked in. So certification would be the primary way that for OSHA's standard that operators would be found to be competent.

So the second item that got a lot of attention yesterday was on the evaluation. The basic evaluation paragraph is Paragraph (b). And what we heard yesterday from some commenters here is that some crane companies have a lot of cranes and that many of their operators operate all of the cranes or many different kinds of cranes, and actually, that was something that we didn't hear on our site visits very much at all. In our site visits, most of the people we talked to were careful not -- they didn't jump people around from crane model to crane model. They liked to keep people in the same crane or in the same type of crane just so they would be familiar with it.

But if employers are qualifying operators for many, many cranes, and the comment was that that would be burdensome to evaluate them on all -- especially if they had to evaluate them on all the configurations and other things. But I think every -- what I heard was that

most -- was that people -- commenters agreed that yeah, any particular operator should be competent to operate the crane and do the kind of hoisting activity that they were going to be doing that day.

There were a couple of side issues on the evaluation. One was questioning the prescriptive list of competencies in (b)(2)(iv). Another one was that the requirement to reevaluate or reacquaint an operator if they've been out of the seats for six months was not very workable. Either it was too short, or it raised a question of if they had been -- if they were just changing cranes, would that not count as working time.

Another comment on those focused on the content and form of Appendix D which in the draft proposed text is the basic document that an operator would have that shows that they've been qualified and had training and so forth. There was an idea to accept other MSHA documents as being sufficient or to revise that appendix or to make it non-mandatory.

Another area that got a lot of attention in the commenters yesterday was the annual reevaluation. And what we heard from most of the commenters and we also heard on

our site visits is that assessment or feedback is really an ongoing process. So a number of commenters questioned the value of having an annual reevaluation that would be kind of artificial, since assessment and feedback is ongoing.

And I also think a lot of the commenters thought that the reevaluation would be like a full evaluation under Paragraph (b), although we had written it -- I think we just said the word "review." That was not our intention, but that was the way that a number of commenters responded to it.

So if there is going to be an annual reevaluation, we heard several things. If it's cursory, the provision needs to be rewritten. OSHA should consider whether this is really necessary at all or, if it is, just to put it on the same five-year cycle as recertification.

Another topic that got a fair amount of comment was on the trainer, whether the trainer should be certified, or some suggested they should be certified and qualified. But then this speaks to monitoring the operator in training. Should it be a trainer, or should it be a supervisor?

Another topic that got a fair amount of comment

was on the controlling contractor. There was a lot of confusion, and I think we ended up fairly muddled about who the controlling contractor is. So OSHA needs to clarify that, and several just suggested deleting the controlling contractor.

The Washington State standard was mentioned, and I looked at it last night, and in terms of operator qualification, I didn't see an employer duty for qualification in there, but instead it really relied on certification. But for uncommon cranes, that is, the cranes that were not mentioned in the tables where experience was required, there the employer did have a duty for training, evaluation and testing.

And finally, the tables that identified the cranes and the minimum number of hours, those were very appealing. Here at OSHA, we carry around with us -- our things have to clear through OMB, and OMB has been extremely resistant to specifying hours for certification. So that's just an approach that would be difficult probably for us to get through OMB.

And I think it was also mentioned CCO used to have an experience requirement for sitting, and I think the IUOE

has a requirement for sitting for their certification. So CCO dropped it, and also the Advisory Committee on the NegReg didn't bring the experience time through to its draft to us, and we didn't carry it through the standards. So it's an appealing concept, but it's not one that's -- it presents challenges.

So that's a summary of the major points that we heard, and I tried to represent what people said.

MR. STAFFORD: I appreciate that.

Garvin, do you have anything to add or --

MR. BRANCH: No. He did a very good job.

MR. STAFFORD: Okay. All right. Paul rocks, so that's good. All right.

So I think that -- and I'm going to open it up to the committee -- it sounds like you've captured a lot of what we heard as well in one way or the other. So I think this is to the point where we go back through this list now and start talking about specific things we do.

In other words, if you suggest that maybe you heard that we might eliminate the annual refresher, the question becomes do we take action to specifically recommend, make a motion that OSHA eliminate the one-year

refresher. And I think we need to go down this list and be very specific about whether we're recommending or heading in the right direction or, like I said earlier, specific language that we would offer up that you should consider based on the conversation yesterday. Is that fair enough?

MR. BOLON: That's fair enough. And I think there's one just overarching question, and that is I think there's general agreement, by all parties, that OSHA needs to move ahead and identify what employer duty is for qualification. I think there's pretty widespread agreement on that.

So in terms of the rulemaking fixing that, I think most people and commenters just would agree with that. How that's done gets to the different points. But moving ahead in the rulemaking, I think, was fairly clear or it was to me.

MR. STAFFORD: All right. Yeah. I'm going to open that up. I mean, I agree. I mean, I think that was pretty clear that we're talking about, you know, that we want third-party certification, and we want the employer to be responsible to make sure their operators are qualified. That's what we would like. It sounds like that's what the

industry would like.

So they'll be third-party certified, and then it's employer's responsibility to ensure that they are qualified to operate that piece of equipment, unless the committee has heard something different. I mean, that's what I heard loud and clear from every stakeholder that spoke to us yesterday so --

Steve?

MR. HAWKINS: I think that captures it exactly.

MR. STAFFORD: So I guess the question becomes, and this is where I'm going to lean on Dean and our solicitor's office, now do we need to make a specific recommendation essentially to that effect? Is that helpful to the agency?

MR. BOLON: Sure because we're here for your recommendations. I mean, that's -- so --

MR. STAFFORD: All right. So can anybody frame up what I just said into a form of a motion?

MR. HAWKINS: You said it so well and I liked it but --

MR. CANNON: Kevin Cannon, employer rep. Should we go through this and make specific recommendations before

we make the broader recommendation to move forward? It's up to you.

MR. STAFFORD: If you want. I mean, I'm fine with that. I just want to try to get forward and start getting -- concretely knock this thing out here. But if you want to talk about that first, I'm fine if That's what the committee would like to do.

MS. DEPRATER: Cindy DePrater, employer rep. Does it make sense to do them in succession? Does it make more sense to move forward without confusing issues? Go in the order. Make the motion that you recommended, and then start down through the list. I like that order better.

MR. STAFFORD: Yes, Jerry.

MR. RIVERA: I'll suggest language, kind of a motion to move forward with approving the draft with comments as attached or provided by the committee, and then that will get us going in approving the draft with the comments --

MR. STAFFORD: What draft? What draft?

MR. RIVERA: The draft that we're looking at with comments, and we'll discuss the comments as we go along.

MS. DEPRATER: The OSHA prepared comments.

MR. STAFFORD: OSHA's draft of bullets? Okay.

MR. HAWKINS: Looks like we just have to decide whether we want to approve the principal employer qualification to operate a crane. The certification piece is long done, as we heard yesterday, long, long done. But do we want to entertain that motion first and then discuss recommendations for each section of this, or do we want to save that until last?

MR. STAFFORD: I'm up for knocking out the big one first, but you know, this is a committee, and so if you guys would rather go --

MS. SHADRICK: Yeah. I agree.

MR. STAFFORD: -- the back end and work your way up, I'm fine with that. I could go either way.

MS. SHADRICK: Chair, I agree with you. I think we should go through these and not confuse the issues, and do them one at a time.

DR. BRANCHE: Well, make a motion.

MS. SHADRICK: So I make a motion that we go through these one at a time, and deal with the issue at hand instead of getting these issues confused.

MR. RIVERA: And the motion would be --

MR. STAFFORD: No, no, no. I would prefer not to have process motions. I would like a motion essentially to say what I have already said, if you folks agree to it.

MS. SHADRICK: Okay. I'll make a motion, Chair, that the OSHA -- we would recommend to OSHA that we would have third-party certified and employer qualified operators.

MR. BETHANCOURT: Second the motion, if that's the correct motion that you're looking for, Mr. Chairman.

MR. STAFFORD: Hold on. Steve, go ahead. We need --

MR. HAWKINS: I think we might want to amend what Laurie said to say employer qualified. So third-party certified and employer qualified.

MS. SHADRICK: That's what I said.

MR. HAWKINS: You didn't say employer.

MS. SHADRICK: Oh, I'm sorry. I wrote it down but I didn't --

MR. HAWKINS: So that's what I thought. So can she change her own motion?

MR. STAFFORD: Of course she can. So hold on.
Lisa --

MS. WILSON: Either of you can amend a motion that has been made.

MS. SHADRICK: I'm sorry. I meant to say that we would recommend to OSHA that we would have third-party certification and employer qualification for the crane operators.

MS. COYNE: I second that.

MR. STAFFORD: All right.

MS. WILSON: Okay. Sarah seconds.

MR. STAFFORD: So we have a motion and a second. All in favor -- I'm sorry.

MR. STRIBLING: Question.

MR. STAFFORD: Yes.

MR. STRIBLING: The current rule also allows for employer certified programs. Would this motion exclude that? An employer can set up their own certification program if they get certified to do so.

MR. MCKENZIE: Dean McKenzie, Designated Federal Official. The existing rule includes states, you know, the states and municipality licensing, military as well as, you know, employer. Those are not looked at to be changed. There's nothing that includes them.

MR. BOLON: I think what Dean is saying is that if you only say third party that would be too restrictive. I mean, you just need to require -- I think you want to say that they require certification by one of the means in the standard and then also the employer qualification.

MR. STAFFORD: Lisa, frame that up for us so that we have something in writing that we can take action on, what Paul just said.

MS. WILSON: Okay. A recommendation that OSHA move forward with certification under one of the means in the standard, by one of the means in the standard and employer qualification of operators.

MR. STAFFORD: Please, Steve, go ahead.

MR. HAWKINS: Mr. Chairman, I would like to amend the motion.

MR. STAFFORD: Okay. Yes, please, Steve. Go ahead.

MR. HAWKINS: Mr. Chairman, I would like to amend the motion that ACCSH recommend that OSHA move forward with certification by means in the existing standard and pursue employer qualification of operators.

MS. DEPRATER: And I'll second that motion.

MR. STAFFORD: Okay. So we have a third or fourth amended motion and a second. And I appreciate that everyone. Any further discussion?

(No audible response)

MR. STAFFORD: All those in favor, signify by saying aye?

[AYES INDICATED]

MR. STAFFORD: Opposed?

(No audible response)

MR. STAFFORD: Okay. All right. Paul and Garvin, we'll excuse you while Dr. Michaels -- I see him in the back of the room. And then we'll come back and start going through the nitty-gritty of the particulars here.

Good morning, Dr. Michaels.

DR. MICHAELS: Good morning.

MR. STAFFORD: Welcome.

DR. MICHAELS: Thank you. Well, it's great to see all of you. If I can just start, I'll do that.

MR. STAFFORD: Certainly. I don't think you need an introduction though.

DR. MICHAELS: No, no, I don't. And I think I have met all of you at this point.

MR. STAFFORD: Okay.

ASSISTANT SECRETARY'S AGENCY UPDATE AND REMARKS

DR. MICHAELS: Well, let me begin first by thanking all of you for your continued commitment, your dedication, your willingness to serve. I know this is not a paid position, and we appreciate you coming in. Pete, I particularly appreciate your leadership, you know, Dean's work supporting this and Lisa Wilson as the solicitor's person on this, it's really great. This committee is a very important committee. Its work makes a huge difference. It impacts what OSHA does but impacts what happens in worksites across the country, and we're really grateful for what you've done.

And I also very much appreciate our collaboration with NIOSH and Christine being here. We actually shared a podium a week or two ago at a big session on construction safety in New York City.

So I wanted to just give you an update on some of the things we're doing, and obviously, I'll take some questions at the end. You've spent a lot of time already

at this meeting on the whole question of crane operator certification. So I don't need to add anything to that other than just to reassure you, as you obviously know, this is a very important issue to us. We understand your concerns. We heard a great deal of information yesterday. There will be a longer discussion, and we really think we're going to be able to come to a very important conclusion to this discussion within, you know, this term of the Obama Administration because we know how important it is. And these standards save lives, and crane certification is a really important question. And so we're going to keep working with you on that. But again, I appreciate all of your input.

And also let me say to the audience, it's very gratifying to see such a big crowd here showing an interest in the functioning of this committee and in construction safety, and all the people who came specifically for that, welcome and thank you for helping us address this very important issue of crane certification.

So let me talk about some of the things you haven't talked as much about and just -- first, I'll go through a couple of the regulatory initiatives that are,

you know, essentially on our plate right now that we hope to either finish or move forward in the next two years. And then I'll talk about some of the other initiatives we're doing.

So in relationship to our Crane and Derrick Standard, we have some additional amendments that we're working on. Specifically, what we're thinking about now is clarifying the applicability of the standard to multipurpose machines and forklifts. We're looking at revising requirements for insulating links and proximity detectors near power lines. And we're also reconsidering the feasibility of a requirement for instruments for stabilizers on small articulating cranes. So that will be a proposed rule.

These were all sort of additional amendments to the Cranes and Derricks Standards that you've all seen and you're all deeply aware of, and we hope we'll get your input on those. We'll go through the normal process, but we think these are ones we could move through pretty quickly. And hopefully, you'll help us get there.

Moving away from cranes but still some of the same issues we're concerned about in terms of communication

towers. And this remains an area of great concern to us. There have been more than a dozen fatalities the last several years. This year, we've already had a number of fatalities. It's a small industry, a relatively small number of workers and a very, very high fatality rate. It's hard to calculate exactly the fatality rate because we don't know the denominator so well. But it's certainly among the highest fatality rates of any occupational group in the country, and it shouldn't be that way.

We are putting together a request for information, which we think will be published very soon, asking many questions about how we can move forward with regulation. I think what's unusual about this RFI, in addition to asking some of the questions that you might have predicted in terms of the approaches to regulation, approaches to enforcement, we also ask about the structure of the industry because this is different than many industries. I mean, construction and construction jobs always involve many employers. And we're used to dealing in these multi-employer situations.

But work on cell towers is a little bit different, and you have involvement of the major carriers, you know,

the folks who we pay every month for our cell phones.

There are tower owners. There are various companies that contract the maintenance contracts for these towers, and there are often subcontractors who do work for any one of those.

And so the question of how safety cascades down through this chain is a very complex one, and we've seen all too often that workers who are hurt are not working for any of the big names, the owners of the towers; they're not working for the carriers, but they're working for a subcontractor of a contractor to do maintenance work. And so who's responsible for that? And so we ask a lot of questions about the structure of the industry and how we can play a role in ensuring that all of the different levels of this industry are involved in, you know, finding a solution.

And we've been moving in this direction for a while. I think we discussed last time we were here a meeting that we had with the FCC, we held at the FCC headquarters, where chairman of the FCC Tom Wheeler and Secretary of Labor Tom Perez together sort of convened this meeting, and we're continuing to work with the FCC very

closely. We meet with them on a very regular basis. We together issue a publication on recommended practices to ensure safety in tower construction and maintenance.

So we have a lot going on. We hope to get your input on that as well. We think it's an area in which we need some additional work because too many workers are dying either in the maintenance or construction of cell towers.

I don't need to tell you about our efforts on silica. We had a huge set of hearings and I think a lot of people had some input. We're now still working through all the comments and all the submissions. But the thing I want to say about that is I think we know a great deal about how to protect workers from silica exposure. And we know our standard is wildly out of date. And so while we're moving toward a new standard, what we're strongly recommending to everybody involved in the construction industry is to protect workers now. Certainly don't use the old standard, which is way out of date. Voluntarily step up to the plate here and protect workers.

Now in our proposal, in our NPRM, we have a Table 1, and the final Table 1 may not look exactly like the

proposed Table 1, but that Table 1 has a great deal of information on how to protect workers now. And if you follow Table 1, you know your workers will be safe. And so why wait to see, you know, for us to issue a silica final standard, people should be protecting workers now. And so that's the message we want to get out and we hope everybody in the construction industry recognizes that. Don't wait for people to get sick, and don't wait for us to issue a standard. Move quickly now to protect workers, so we hope people do that.

We have an open docket which we'd love your comments on, on eye and face protection rules. So we've issued an NPRM, a notice of proposed rulemaking. It's essentially update. It's not controversial, but we do need your input. Take a look at it. If you agree with it, great. If you don't, let us know. It takes some of the consensus standards out there, the NC standard, and puts that into regulation. So it's open now. Go to regulations.gov and give us your input.

We've been working for more than a few years on the confined spaces in construction standard. I think the effort began sometime in the 1990s, and I think we

are -- I'm comfortable saying we are very close to issuing it. I can't tell you exactly when. I can never predict. But it will be soon, and once it comes out, really the work just begins. You know, once we issue a standard, then the question is how do we implement that standard? How do employers take what we now require and use that information, use those requirements to protect workers?

So when we do issue our final standard, we'll issue a lot of materials with it to help workers understand the standard, to help employers understand the standard and move forward to protect workers in confined spaces in construction. So that will be soon and certainly, I believe, before your next meeting. So that will all be coming out. We'll make sure we'll get that information out and we want to see that disseminated as much as we can. So those are some of the relevant pieces on our regulatory agenda that we hope will be moving along fairly quickly, and I wanted to give you some background on that.

But let me talk about some of the other things we're doing. You know, as I think all of you know, our severe injury reporting rule went into effect January 1, and it's really been quite remarkable. Just to review

briefly, if anyone has been asleep for the last few years in the audience perhaps, I know not at the table here, we now require employers to notify OSHA not only if there's a fatality, but if a single worker is hospitalized or loses a part of their body, has a part of their body amputated or loses their eye. So we're getting hundreds of these every week, hundreds of these reports. And it's taking us to places we didn't know about and wouldn't have known about without these calls.

I was in Pittsburgh recently, and our Pittsburgh area director, Chris Robinson, was telling me that a sawmill had an amputation and their workers' comp carrier said you know, you have to tell OSHA about that. You've got to notify OSHA.

And we went there, and even though it was a sawmill, we didn't know it existed, it wasn't on any of our inspection lists, and we found very significant hazards.

Now unfortunately, we got there too late for that one person who had the amputation. But hopefully, as a result of us being notified of that amputation, we've prevented a few in the future. Because all too often in the past we would have a fatality or an amputation and when

we heard about it, we would learn that was the third or fourth or fifth serious injury at that worksite. So now we're getting there a little bit earlier.

It's interesting. The workers' comp insurance industry is very interested in this and actually helping us in encouraging employers to contact us because that's the law. But in these discussions we had, we've also learned that now the -- maybe not just now but the carriers, when they underwrite a policy, they're going on our website and looking to see what the results of our inspections have been. But now, also, they said they were very eager for us to put the information we've gotten from this severe injury reporting program on the web as well because they want to know if they're issuing workers' comp policies to employers, what sort of injuries they've had in the past.

We're not yet at the point where we're putting this information up on the web. We will but we're still trying to work out some of the kinks as we get the information and as we analyze it.

So what we're seeing, though, that is interesting for us is we're not seeing as many reports from the construction industry as we'd expect. Now we're seeing

large numbers of reports, and I have, you know -- the numbers we're seeing, every sector of construction are reporting. The largest group are commercial and institutional building construction operations, and we do this by NAICS code. So that's our largest number within the construction trade of reports. We're getting reports from electrical contractors, from roofing contractors, highway, street and bridge construction, across the board, not surprisingly. But we expect to see more.

Now maybe it's, you know, in winter things were a little slower in the north and the central states. But compared to other industries, I think the construction industry may not be as aware of these rules, so we hope we get that information out.

What's important to remember, though, is we're not inspecting every one of these worksites after we get this report. We don't want to. We couldn't if we wanted to. They're coming in at the rate of about, you know, right now it's 10,000 cases a year or a little more than that actually. We do 40,000 inspections. We couldn't do all those if we wanted to. But we don't want to. We want to use them as the opportunity to engage with employers, and

we're inspecting right now about 40 percent of the notifications that we get.

Obviously, fatalities we are going out there immediately. There are a lot of very serious injuries where when we get the report, we think about them, and we say this should really be inspected quickly. But we're triaging them, and for a significant portion, we're starting what we call a rapid response investigation where we're engaging the employer; we're saying we think you should do an instant investigation, and we have materials for them. We want them to go and find the root causes of the injury, of the incident, and get back to us with what they learned and what they plan to do about what they learned. How are they going to make changes as a result?

The idea here is we will then be able to impact a larger number of employers than we would have with just simply doing inspections. And we'll see how that goes. I mean, we're very early in the process. But it is putting us in contact with employers we never had contact with before. It's also, I think, raising the visibility, the importance of workplace injuries to some employers because after all, it's a terrible thing when a worker is

hospitalized because they've been hurt so badly or when they've had a finger cut off or a couple of fingers cut off, and we've seen those over and over again.

But now also, those employers are notifying us, and they know they're on our radar screen, and they know we want to work with them to make sure that never happens again in their worksites. And so we're working hard on this, and we're grateful for your help in getting this information out to people.

As I think all of you know, there was just very recently a true catastrophe in North Carolina, in Raleigh. There was a collapse of a mast climbing scaffolding system, and four workers fell to their deaths. And they were all Hispanic workers. This was in downtown Raleigh across the street from, you know, some of the major official buildings in Raleigh.

We sent an engineering expert down there to help investigate, to figure out what the cause was. We've also offered North Carolina OSHA our assistance in reaching out to the Hispanic community and the families and others who are concerned about that. But obviously, this raises great concerns. We don't have standards on mast climbing

scaffolds directly. This is a fairly new technology.

We hope to learn from this investigation information that other employers can use to make sure these are safe. But we want to remind employers who are using these mast climbing scaffolding systems to be very careful, to look at all the requirements, to learn to follow exactly the required procedures because we can't let this happen again. This was a terrible, terrible event.

We continue to work on our activities around temporary workers, and we continue to issue new publications jointly with NIOSH, and we're very grateful for NIOSH's assistance. If you haven't seen our materials, you probably have, but if you haven't seen our materials, our recommended practices, which I know a number of people here have commented on, and we're grateful for your comments, we've just issued new bulletins or fact sheets on personal protective equipment, on whistleblower protection. I think they've come out. I don't know, they have the list of the new ones.

But we continue to put out new materials on recommended practice, and they're really aimed at host employers. And this is another area we appreciate your

help on. I think the staffing agencies now recognize that this is a very important issue, and there have been dozens of examples where we've been at worksites where we found hazards facing both permanent employees and employees paid by a staffing agency but working under the supervision of the host employer. And we've issued citations against both of them because we expect them to collaborate in ensuring the health and safety of workers.

But we find many host employers haven't figured this out yet. And they're often the ones who are most responsible. They control the work environment, so we want them to understand that, you know, the basic principles that all workers under their supervision need to be protected. They have that responsibility, and they can't provide required training, for example, for their own employees and not for temporary workers who are facing the same hazards.

So we've told our inspectors that when they go to a worksite, they need to ask in every case whether there's a temporary employee at the site. Actually, I just realized Tom is on the panel here. He's been incredibly helpful, not just as employer representative, but I have to

tell you, some of the staffing agencies have been phenomenally helpful in putting this together and helping with this outreach. And they've told me that it's made a difference in terms of their getting information out to host employers to make sure the host employer does the right thing in these cases.

So we've told our inspectors when they go out to worksites, they have to ask are there temporary employees here? And are they exposed to violations or volatile conditions? And in that case we will look to see who's responsible for those and, when necessary, we will issue citations against both employers. But we really want to make sure that the host employer recognizes that these workers absolutely must be provided the same level of protection as their own host employers' employees. And we think that message has gotten out quite a bit.

All of you have been helpful in the past in our preventing heat illnesses campaigns. We've done this every summer since -- it's now, I think, coming on our fourth or fifth summer. We have a smartphone app, as I think most of you have seen. It's almost up to 200,000 downloads.

I'm very pleased that very soon we'll be rolling

out our OSHA heat safety app 2.0 for the iPhone, at first anyway. I think you'll see it. It's a good app before, and I think this really makes it a terrific app. And so before it gets really hot here in the northeast, anyway, we hope to have this new app out. You know, this will automatically be updated, but others, it's a good opportunity to tell people about it. And hopefully, we'll be able to follow with other than iPhone platforms pretty soon, but we're starting with the iPhone. So thank you for your help on that.

Workers' Memorial Day is April 28. We'll be having an activity here in the building, and everybody here on the board is welcome to join us. We'll actually be talking, among other things, about some of the activities we've been doing to prevent fatalities in workers involving cell towers. And the mother of a worker -- young man who was killed in one of these events -- will be joining us. So if you want to join us that will be terrific.

So another area I want to mention to you that we've done recently is we've just issued, a few weeks ago, a report. I brought a copy if you haven't seen it, but it's downloadable from our website. It's called "Adding

Inequality to Injury: the Costs of Failing to Protect Workers on the Job." And really it's trying to extend the conversation that we have about the importance of prevention and preventing injuries from occurring because the impact of those injuries is huge, and it has an impact beyond just the immediate question of what's happened to that worker in the short run.

But what we see, and we've looked at the literature, and a lot of the literature is actually done by some of the great work at CPWR, showing that in the long run, workers who are injured and have permanent injuries are never made whole. Their income never gets up to what it would have been without that injury. Even though we have a workers' compensation system that supposedly makes workers whole, that's supposed to take care of their medical costs and take care of their lost wages, it doesn't happen.

The economic analyses show that the majority of costs associated with workplace injuries and illnesses are actually borne by workers and their families either directly because they're paying costs, you know, to pick up costs that people wouldn't be able to pick up with their

wages or through their private health insurance which really comes out of their pocket, comes out of their salary.

Only 21 percent of the costs of workplace injuries and illness is actually picked up by the workers' compensation system. And a significant portion is actually picked up by taxpayers through Social Security Disability Insurance, Medicaid and other social safety net programs.

Obviously, the most effective way to address that is to prevent these injuries from occurring in the first place. But when that doesn't happen, I think it's incumbent upon us to make sure that injured workers aren't permanently disadvantaged. It's just not fair, and the famous compromise of workers' compensation, which was that workers give up their rights to sue their employers in exchange for essentially being made whole by the workers' compensation system, that historic compromise is failing, and we have to figure out ways to look at this in a different way. And the Labor Department is trying to think about are there other ways we can look at this that will be effective in helping to alleviate those problems.

So this is on their website. If you haven't seen

it, please download it and disseminate it if you can.

So finally, I just want to just put in a plug and thanks to all of you for helping with our fall safety Stand Down. I mean, this is something that came together through the great work of NIOSH and many of the organizations that are here at the table. I think last year's was a terrific success. We're expecting to do even better this year. You'll hear more of this from Jim Maddux, but you know, it's May 4 through 15 will be a long period for the Stand Down. We had fabulous participation last year. We expect to do even better this year, and thank you for everything you're doing to make that happen.

So those are my comments in a nutshell. I'm happy to take some questions from you.

MR. STAFFORD: Thanks, Dr. Michaels.

Any questions or comments?

QUESTIONS AND ANSWERS ON AGENCY UPDATES AND REMARKS

MR. STAFFORD: First I want to thank you for OSHA's commitment to the campaign because it really has been great if you look at the numbers, and we're really very excited

about it. And your commitment and the resources you've put into it has really been terrific. And your office has been terrific, both communications and your Directorate of Construction on it. So it's really been good.

I've got two questions for you. You know, we have under this committee, when we have our normal meetings, we have three workgroups, one of which is the temporary worker issue. It seems like that you're moving along so well, and you're printing out great stuff. Is there anything specific that this committee, our workgroup, can now advise you on, on this particular issue moving forward?

DR. MICHAELS: Thank you for asking that. That's a good question. We have made great progress, and I think we've raised this issue to a national discussion in a way that is having a big impact. What I see right now is this question of how do we reach out to host employers so they understand this and take the steps necessary? Tom may be able to address this, but my sense is the staffing agencies have gotten the message, and they're actively involved in this. But there are many host employers who haven't figured this out, and I think that's particularly an issue in the construction trades. How do we reach them, and how

do we show them, you know, what we've learned and what they can do?

And so I think we less need help on putting together materials because I think we have some great materials now.

MR. STAFFORD: Right.

DR. MICHAELS: And in fact, there are some -- I know on ASA's, the American Staffing Association's website, there are some terrific model contract provisions which talk about shared responsibility and things like that that we like to get out. But how do we do that outreach to have the biggest impact? And that would be something I'd love to think about.

And then also, if there are specifics, if in the materials we're putting out, if some of them need to be applied differently or rethought for construction, that obviously would be very useful, too. We look at all employers and there are some times, as you know, differences in the construction industry, things that apply there that don't really -- have less relevance elsewhere, and there are things that have relevance elsewhere, have less relevance in the construction trade. So if there are

things we could think about that way that would be really helpful, too.

MR. STAFFORD: Okay. Well, I'll yield to Tish and Tom and the others on the --

DR. MICHAELS: Yeah.

MR. STAFFORD: Go ahead, Steve. Yeah. Go right ahead, Steve.

MR. HAWKINS: Dr. Michaels, I just have --

DR. MICHAELS: Yeah. Nice to see you.

MR. HAWKINS: Nice to see you, sir. Two items. The first is I wonder if you have any thoughts on how we can educate the public that driving a dune buggy in the desert is not the same as sandblasting at a job all day long.

DR. MICHAELS: Red silica?

MR. HAWKINS: I was so upset to see that in the paper and just wondered if you saw it and if you have any thoughts about it.

DR. MICHAELS: Yeah. I didn't see it, but people have mentioned this to me. Yeah. It's very interesting, the question of sand versus respirable crystalline silica, they're different things, obviously. We're talking about

particles that are one-one hundredth the size of a grain of sand. And we certainly will think about that, if you could give us advice on that issue, that we're not talking about sand and we're not talking about lifeguards on the beach. That this is silica that is often produced by power tools and by activities rather than simply freestanding sand. They're different things. And I see your concern and we're happy to work with you. If you have suggestions for us, I'd certainly be open to them as well.

MR. HAWKINS: I have one other thing just quickly. I promised a person at the local Costco in Nashville, Tennessee that I would tell you his story.

DR. MICHAELS: Please.

MR. HAWKINS: He was a temporary worker when he was 18. He's now 35. I noticed he was limping one day when he went to put tires on my car, and I said what happened to your foot, like we all do because you're thinking I wonder if this happened at work? He said when he was 16 years old, he went to work for a temp service. He had been on the job for two hours, he was given a sledgehammer and told to knock down a block wall. He succeeded, and it cut off the front part of his foot and

he's had a prosthesis and he's limped for the rest of his life.

And I told him I was excited to hear his story, tragic that it is. Of course, you know, he didn't lose his life, but certainly it raises the exact thing that the agency has been talking about, temporary workers. He was given absolutely no safety gear, no instruction, just a sledgehammer, knock down this block wall. And I told him someday I will tell your story to Dr. Michaels because he loves these kinds of stories.

DR. MICHAELS: Well, I love them, but yeah.

MR. HAWKINS: Yeah. But you want to know.

DR. MICHAELS: That's right. We need to know them.

MR. HAWKINS: These things really happen and when you were talking about your remarks about the long-term impacts and who bears the cost, who bore that cost is this young man. I say young man. He's thirty-something now, but I'm fifty-something, so he looks pretty young. And he's bore this his entire life.

DR. MICHAELS: All his life.

MR. HAWKINS: He says it hurts and it gets raw

and, you know, and he settled that whole thing, his lifetime disability at age 16, for \$2,000.

So I promised him someday I would tell you that, and I've made good because I think, you know, we talk about statistics, but we also talk about stories, and you are very good at telling stories. And I just wanted to relay that story because that really is what we're up against with some employers who just call for a temporary worker, and give him a sledgehammer and say knock that block wall down.

DR. MICHAELS: Boy. No. You've reinforced several of the points of things we work on here. You know, I can tell people that there's a study in Washington State from the comp system. You know, Washington State is an exclusive state plan and they get all their records. Temporary workers in the construction trades are twice as likely to be injured or twice as likely to file a workers' compensation claim for injury than the non-temporary worker. And that's probably an underestimate because a lot of temporary workers are afraid to file for workers' comp.

But that doesn't mean as much as hearing the story of, you know, one young man who two hours into his job

essentially had a life-changing event as a result of being a temporary worker without given the proper training or precautions taken. And you know, we know that.

You know, I learned from Irving Selikoff years ago. What he used to say was statistics are people with the tears washed off. And it's those stories that capture what we're talking about, much more than those statistics.

And you know, we need to make sure both that all workers get those same protections, that if you're a temporary worker, you're protected. And that's important because clearly the structure of the American workforce is changing. I think actually with the economy picking up, there may be less use of temporary workers, that some of those jobs may turn out to be permanent. We certainly hope people get permanent work, but the way the workforce is working now, it's changing all the time. And there are new relationships and we have to think about what those models are.

You know, in Australia, the safety and health legislation that passed a few years ago said that there's a duty of care. If you run a business, if your business can affect workers, it doesn't make a difference if they're

working for you or not, you're still responsible. It's a different model than we have and we have to think about those models because clearly, the workplace right now is very different than it was, you know, 44 years ago when the OSHAC was passed.

But we also have to make sure when workers are injured that, you know, they're taken care of. And even though that's not officially OSHA's purview, we all care about that, and we don't want to see that happen.

So thanks, Steve. Thank you so much for that story.

MR. STAFFORD: Any other questions or comments?
Tish?

MS. DAVIS: Hi, David.

DR. MICHAELS: Hi, Tish.

MS. DAVIS: I just want to thank you for the report on inequity. I think it's an incredible synthesis and really useful in our work in Massachusetts, where there's a lot of interest in issues of cost shifting in insurance, which is really important now as we're trying to pursue healthcare insurance for everybody. So anyway, I wanted to thank you for that.

One of the issues I want to raise that I'm really struggling with, and we're struggling in Massachusetts, is what happened to us in the snow, which is really a catastrophe; and we all, including myself, six feet of snow on our roofs and we're telling everyone to tie off. We had at least two people killed through skylights.

DR. MICHAELS: At least two, I know.

MS. DAVIS: At least. And we have at least six more, one was an 18-year-old who is very -- he was impaled on a coat rack, very seriously injured.

DR. MICHAELS: I've heard.

MS. DAVIS: I don't think we have the answers about how to deal with this. I think it's really complicated. You know, and I feel like I need to go to the north to Quebec or to Sweden to understand how you really build systems where you can kind of anticipate this happening and, you know, most people don't know where the skylights are on the roofs, you know.

Anyway, it's just a technical -- it's an issue that we're struggling with right now.

DR. MICHAELS: No. You raised a great point. You know, we have six or eight months to think about it, but

it's not unreasonable to expect that next winter we could be facing the same issues. And we can't just, you know, sit idly and just let the same thing happen to us again next year.

So any advice you could give us we'd be very grateful for, but I'm glad you raised that. And we certainly will think about that. And if you get over to Sweden, let us know what you learn. But no, you're absolutely right. Obviously, there are places which get, you know, six feet of snow every year, and they're used to it. And so how do they address these issues?

MR. STAFFORD: Any other questions or comments?

David, I have one consideration for you. It's great in your work with FCC on cell phone towers. We have a lot of trades of painters, roofers, sheet metal workers, electricians that are working on rooftops around these antennas constantly, not on the towers but antennas. And we have a huge gap in protection for these people, right. And as long as you're talking to FCC, this is a different nut for us to crack. I've been trying to get in the door of the FCC to talk about development of basic awareness program for our contractors and workers when they go up on

a building to do maintenance and I'm having a hard time getting in the door. So if I could piggyback on your efforts or if you could take that up we would greatly appreciate it.

DR. MICHAELS: Well we certainly can work with you on that. I mean, the FCC tells us that there are now a million of these transmission devices in use in the United States today and there are going to be more and more and more as we move to additional networks and the 4G networks. There's a lot of growth in that industry, and therefore, there are a lot of challenges for us to make sure workers are protected. So I'm glad you've raised that.

MR. STAFFORD: Okay.

DR. MICHAELS: Great.

MR. STAFFORD: Okay. Any other questions, comments? Yeah, please, Cindy.

DR. MICHAELS: Hey, Cindy.

MS. DEPRATER: Good morning, David. How are you?

DR. MICHAELS: Hey, Cindy.

MS. DEPRATER: Sort of piggybacking on this, drones. It's there. We're going to have to deal with it. You know, we're internally coming up with our own rules and

regulations, waiting on the FAA. But is there any consideration for safety around these pieces of equipment on our construction sites?

DR. MICHAELS: Well, Cindy, first let me thank you for all you've done for us, both for this committee and also I know you've been really helpful --

MS. DEPRATER: Just created more work for myself, didn't I?

DR. MICHAELS: -- in teaching us about how things can be done safely, and your operations are great. But I haven't ever thought about that question, and I'm glad you've raised it. And I'll ask folks who are much smarter than me on these issues to think about it.

MS. DEPRATER: Perfect.

DR. MICHAELS: You know, the future continues to come to us.

MS. DEPRATER: It does.

DR. MICHAELS: And you know, all these things that we hadn't thought about 10 or 20 years ago are quite relevant today.

MS. DEPRATER: Okay. Perfect.

DR. MICHAELS: So drones. Okay.

MS. DEPRATER: Everybody wants to use them on the sites.

DR. MICHAELS: Talking about the future, right?

MR. STAFFORD: Go ahead, Jeremy, please.

MR. BETHANCOURT: Dr. Michaels, Jeremy Bethancourt, Public Rep. I'd be remiss if I did not make a comment on the record and thank you and the agency for all the hard work they did to help re-establish the importance of safety fall protection for the workers in Arizona in our industry. And I just wanted to tell you thank you for that hard work. No doubt it took a lot of commitment and a lot of effort on behalf of the agency, and it was clearly controversial but thank you for that.

DR. MICHAELS: Well, no, and thank you for your support. But also, there are a lot of employers at the table, in the room and others who really were very supportive of our work in Arizona, and we're grateful for that. So I think everybody wants to make sure workers are protected from falls and to do the right thing.

MR. STAFFORD: Any other questions or comments?

(No audible response)

MR. STAFFORD: David, again, thank you for joining

us, and thank you for your work. We appreciate it. You've been great.

Why don't we, before we get back into Crane and Derrick, use this as an opportunity -- it might be a little bit early -- to take about a 20-minute break, and then we'll come back and get into the crane issue again. Thank you.

[Recess]

MR. STAFFORD: All right. If you'd find your seats, please, I'd appreciate it. All right. Let's continue on with the subject at hand. I appreciate Dr. Michaels coming down and talking with us.

Lisa, do you have any announcements?

MARKING OF EXHIBITS 15 THROUGH 19

MS. WILSON: Yes. Thank you, Mr. Chairman. I'd just like to announce the additional exhibits. I'd like to mark the statement from Beth O'Quinn with comments from her members as Exhibit 15, an email with additional Washington State plan regulations as Exhibit 16, the OSHA statement of

issues from the discussion yesterday as Exhibit 17. Also, ACCSH member Roger Erickson, who was not able to be here, but he submitted a statement that he has given his proxy vote to Chairman Stafford, and his statement is Exhibit 18. Also, member Palmer Hickman was not able to be here, and he has given his proxy also to Chairman Stafford. And that statement will be Exhibit 19. Thank you.

MR. STAFFORD: Lisa, just as a point of order for me, yesterday when we had a discussion with Graham Brent about the data that he had talked about from the Construction Safety Association in Ontario and Washington State I had asked for copies of that report.

MR. BOLON: That's actually in the docket, the Ontario.

MR. STAFFORD: It's already in the docket? Okay. All right. So I just wanted to be sure that that was. Okay.

MR. BOLON: Yeah. I don't know that there is a report from the California results. I've seen the California results appear on some websites, but I've never been able to track down a report, so we will get back to them about that.

**CONSIDERATION OF AND RECOMMENDATIONS ON OSHA'S PROPOSED
RULES**

MR. STAFFORD: Okay. Sounds good. All right. So let's get back to the issue at hand. So let's start that by going back and having Lisa reread the initial motion that we took and that will get us going, I think, moving forward in our next step. So Lisa, if you don't mind, I would appreciate that.

MS. WILSON: Sure. The motion was a motion that ACCSH recommend that OSHA move forward with certification by means in the current standard and pursues employer qualifications of operators.

MR. STAFFORD: I hate to do this, but are we talking about the concurrent standard or the proposed standard? Because I think that is important that we make that clarification. Kevin brought that up to me at the break.

DR. BRANCHE: I understood it to be the proposed language.

MR. STAFFORD: Okay. So I think then, again, Lisa, you're going to have to straighten us out on this. If we would like to change that one word from current standard to proposed standard, I guess I'm assuming we would have to take action to -- a motion --

MS. WILSON: I think we'd have to amend --

MR. STAFFORD: Amend it again.

MS. WILSON: -- and then re-vote on a new motion. I mean, we used the language about the current standard because **MR. STRIBLING** had raised the issue about the ways that people can be certified, whether a third party or potentially through an employer program.

MR. STAFFORD: Uh-huh.

MS. WILSON: And my understanding was that the committee did not wish to alter those aspects of certification.

MR. CANNON: Right. But the current currently contains the word "capacity" in it which is --

MS. WILSON: Well, you could also just make a motion that you recommend OSHA delete, you know, the requirement for certification by capacity if you wish to do that. Yeah.

MR. STAFFORD: All right. So fair enough. That's the way we'll handle it then. Okay. All right. Now that we've got that straightened out. All right, Paul, so what's the next step? What is the next issue on the list? So we'll start going back. Start to the front and being with evaluation?

MR. BOLON: Right.

MR. STAFFORD: Tish, I'm sorry. Am I --

MS. DAVIS: Yeah. No. I just think that we should do the motion on capacity because that's the first bullet on his list and it's not anywhere else on his list.

MR. BOLON: No. There wasn't a lot of other comment about certification except I'll mention that Liz Nadeau gave me a note that on my write-up we didn't -- and Jim Leslie had made a recommendation about that we should define what type is because it might lead to some problems in the future.

And I would just like to say generally that the bullet point that we wrote up for ourselves and for the committee was mostly -- it was just to identify the large issues. There's a transcript of this meeting and OSHA will be reading it very carefully.

So anyone that presented an idea or an alternative, OSHA will be reading that and will be considering that if and when we do a proposal, and we've discussed these things in the preamble, and we present alternatives, it will be given due notice and we will heed everything that was said as well as the written things.

MR. STAFFORD: I appreciate that, Paul, but I still think that we have an obligation specifically to make specific recommendations as --

MR. BOLON: Sure. I don't --

MR. STAFFORD: -- an advisory committee to you. We respect the fact that the staff will go back and look at the minutes and --

MR. BOLON: Sure.

MR. STAFFORD: -- try to absorb all this. But I think that we need to get this on the record in terms of what we think about it.

MR. BOLON: Sure.

MR. STAFFORD: Fair enough. Okay. So with that, are we back to capacity? Do you want to make a motion on what we've agreed to or what we're thinking about agreeing to on the capacity issue, Tish?

MS. DAVIS: I guess the motion or at least that I put forward is that I move that we accept or support OSHA's proposal to delete the capacity requirement for certification in the draft. I mean, that's --

MR. STAFFORD: Steve?

MR. HAWKINS: Actually, I think there was some discussion about replacing capacity with type and capacity or simply type so that --

MS. DAVIS: Right. That's an option.

MR. HAWKINS: -- some of the bodies that were already accredited with the program that did lose both could continue that in the near future. So I think that was actually something discussed.

MR. STAFFORD: Okay. And I'm fine with that. I mean, this is my ignorance about the issue. I mean, I recognize that some bodies already test by capacity type and capacity. I assume that if we were to do the minimum that we're taking out capacity that you test by type, it wouldn't preclude folks from testing by type and capacity. It's another step that the employer can show that they're ensuring that the operator is qualified because they not only have tested for type but also for capacity.

Now I could be wrong about that, and I would like the clarification here. But if you think that I am, and OSHA will accept that it's either/or, then that's something that, you know, if we want to say by type and/or type and capacity, then --

MR. BOLON: Informally, just in our -- we haven't made a decision about that. I think the assumption has been if you have further restrictions on your certification that OSHA would not object. I mean, I think -- yeah.

MR. STAFFORD: Right. No. That's what I'm saying. I mean, it's like -- right. You could do above and beyond, right?

MR. BOLON: Right. That's right.

MR. STAFFORD: I mean, we're not saying. But on the other hand, if it relieves some angst and there's no issue with it then I have no problem with revising the motion to add that in, Tish. So if you don't mind --

MR. BOLON: I mean, the way this -- the repercussions of this is if we didn't do that then the organizations that do by type and capacity might have to revise their entire testing scheme. And we had not been thinking of doing that.

MR. STAFFORD: Okay. No. I appreciate it. If that's the case, that clarifies for me. So then I think it's important that we do that. So let's make the motion, and then we'll have a second and a final discussion, if needed.

Tish, do you mind?

MS. DAVIS: I'm trying to figure out. We move that we support or that OSHA clarified that -- I'm trying to figure out the wording. To qualify operators by type and capacity or --

MR. STRIBLING: Certify.

MS. DAVIS: Certify. Excuse me. Certify operators by type and capacity or type. And I don't know. But that's not the full -- I need a sentence. I need a full sentence.

MR. STAFFORD: Sound it again. I mean, Lisa, I'm going to give you a minute and this is where we're going to lean on the lawyer a little bit to make sure that we have the language straightened out so that we'll take our time and --

MS. DAVIS: And/or.

MR. STAFFORD: And/or type and capacity.

MS. DAVIS: Type and capacity.

MR. STRIBLING: You don't need and. You don't need and. It's or.

MR. STAFFORD: Or type and capacity.

UNIDENTIFIED FEMALE SPEAKER: Type or capacity.

MR. STRIBLING: Type and capacity.

MR. HAWKINS: No. It's type or type and capacity.

UNIDENTIFIED FEMALE SPEAKER: Type and capacity.

UNIDENTIFIED FEMALE SPEAKER: You need and be in one place.

MR. HAWKINS: Yeah. You don't need them both places. Just say or.

MS. WILSON: By type and/or. By type and capacity. That sound right?

MR. STAFFORD: All right. All right. I think it's a little redundant.

MS. WILSON: Okay. Tish, a motion that ACCSH supports that OSHA clarify the requirements for certification that it can be accomplished, certification by type and/or by type and capacity.

DR. BRANCHE: Second.

UNIDENTIFIED MALE SPEAKER: No, no, no. And.

MR. HAWKINS: No. That's right.

MS. DEPRATER: No, it's not.

UNIDENTIFIED MALE SPEAKER: No, it's --

MR. HAWKINS: No?

MR. CANNON: It's type and capacity or type.

MR. HAWKINS: Or type.

UNIDENTIFIED FEMALE SPEAKER: Type.

MR. HAWKINS: Isn't that what she said?

UNIDENTIFIED FEMALE SPEAKER: No. She said

and/or.

MR. STRIBLING: No. She said and/or.

MS. DEPRATER: Type and capacity or type.

UNIDENTIFIED MALE SPEAKER: Right.

MR. STAFFORD: I'm going to read it again. Again, I'm going to take time. We're going to understand. We're all going to be very clear. I mean, one little word here is significant.

MS. WILSON: Okay. I had it can be certification by type or by type and capacity.

MULTIPLE: Yes.

MR. STAFFORD: All right. So I want you to read the motion in full one more time, Lisa, and then we'll ask

for a second.

MS. WILSON: A motion that supports that OSHA clarify the requirement for certification that it can be certification by type or by type and capacity.

MR. HAWKINS: Second.

MR. STAFFORD: All right. So the --

MS. WILSON: Well, it was already seconded by Christine Branche.

MR. STAFFORD: All right. So a motion has been made and seconded by Christine. Is there any more discussion on it?

(No audible response)

MR. STAFFORD: All those in favor, signify by saying "aye."

[AYES INDICATED]

MR. STAFFORD: Any opposed?

(No audible response)

MR. STAFFORD: Excellent. All right. So now moving to evaluation.

MR. BOLON: Yeah. I guess in terms of reinstating the employer duty to qualify, the coalition's position is that we just simply put back a very, I think,

simple duty for that. And in contrast, I mean, we have a lengthier set of requirements for the employer to evaluate and train and document. So if you want to, you know, if you wanted to consider that, that would be something you could take a position on.

And then the comment we had on the lengthier one was that depending on how we require them to do the evaluation and documentation that it could be burdensome. So we didn't think it was, but we heard that it could be.

We did hear agreement that operators need to be competent to operate the crane there on that day and be capable of doing the hoisting task at that worksite. I think there was general agreement of that.

Then there were some other details about the documentation, whether we should accept MSHA, revise Appendix D, or just make it non-mandatory. The six-month out-of-seat reevaluation, there were questions about that.

So I think those are the issues on what the employer duty will be, how it will be presented. OSHA has -- the draft language, again, has more content, documentation and specifies some competencies they should have versus a very simple there's an employer duty to

qualify, which was handed out to you by the coalition, by William Smith.

MR. STAFFORD: Right. Yes, Steve, please.

MR. HAWKINS: Mr. Chairman, the first item on that that I think we could address is making some kind of recommendation to make it clear that OSHA should make it clear that there's not an expectation for the employer to qualify on every permutation and combination of a crane because it does, as it's written out, says the size configuration. It gives some examples of capacity boom lift, luffing jib, counterweight.

And when you couple that with number three at the bottom that says, "The evaluation must include an observation of the candidate operating the equipment," it appears to indicate, as it's written now, that you would have to put every possible link, every possible jib configuration, and that the employer would have to observe the person doing every one of those to meet this obligation the way it's -- I mean, I don't think there's really any other way to read it than that.

MS. WILSON: Right.

MR. HAWKINS: And so I think one, I would like to

make a motion that ACCSH recommend to the agency to reconsider the language that appears to require the employer visually observe the operation of the crane in each and every possible configuration. I don't think that's workable, and I think we should make a recommendation that OSHA consider rewording this so that that's not the intent because I don't believe that could be OSHA's intent. There's too many possible combinations, and we heard a lot of argument. So --

MR. STAFFORD: No. I agree. I mean, and Christine, I know you raised your hand. And I think in our discussion yesterday, Paul, you even indicated that that wasn't the intent, right, I mean, in this particular issues.

MR. BOLON: No. That's not really -- that's not the intent, and our thinking also is that the evaluation is done -- it's not that you don't erect a crane at your local headquarters. This would be observed while people are working the crane while they're an operator in training. They're evaluated as they learn and as they do.

MR. HAWKINS: But the way it's written is it does appear, and it could be construed to appear that the

employer has to observe each and every possibly combination of every boom link that that crane has, every jib. And so I think we should recommend to them that they work on that.

MR. STAFFORD: Okay. Christine?

DR. BRANCHE: So I think Steve makes a sound motion, which I'll second. Then once we deal with that, I'm going to recommend what language be substituted because we were provided it.

Yes. I second Steve's motion.

MR. STAFFORD: Okay. Sounds good. Steve, you know I hate to ask you to do this again. All right. Make the motion, Steve.

MR. HAWKINS: Okay. I make a motion that ACCSH recommend to the agency to reconsider the language that appears to require the employer visually observe the operation of the crane in each and every possible configuration.

MR. STAFFORD: Okay. The motion has been made. A second? Christine's already made it. Okay. Any other discussion?

MR. CANNON: And this is for Paul. Your response to Steven's initial statement or motion was suggesting that

that was only for operators in training?

MR. BOLON: Well, if you're hiring a new operator, evaluating you want to make sure that they're comfortable and familiar with the crane they're going to be operating. But you don't have to put on every attachment, every configuration and every -- that the crane can possibly have.

MR. CANNON: Right. I mean, but you were saying, you know, you would not expect them to erect the tower crane at their headquarters for the operator in training. And you know, making that statement, you know, kind of suggests that that provision is only for operators in training.

MR. HAWKINS: I think we're just in the evaluation section --

MR. CANNON: We're just in evaluation.

MR. BOLON: But if you're hiring an experience operator --

MR. CANNON: Right. That's what I'm getting at.

MR. BOLON: -- you are going to observe them. We don't tell you where and how you have to observe them to evaluate them.

MR. STAFFORD: So this applies to both is the answer not just the operator in training.

MR. BOLON: Yes, the answer is it applies to both, but the cases are very different.

MR. CANNON: Okay.

MR. STAFFORD: All right. Any other discussion?

(No audible response)

MR. STAFFORD: All right. We had a motion and a second. No further -- yes, Cindy. I'm sorry.

MS. DEPRATER: I do have a concern about Section (2) (5), you know, the issues brought up yesterday with demonstrated competency as well. I want to make sure that we revisit those because operators usually are not required to be competent in the setup, the assembly, the disassembly and the maintenance.

MR. CANNON: Right.

UNIDENTIFIED MALE SPEAKER: Right. Yeah.

MR. STAFFORD: I think what Steve's motion has done is it has got them --

MS. DEPRATER: Okay. Is it good enough?

MR. STAFFORD: -- to recognize that they need to look at this language and revise it.

MS. DEPRATER: Okay. I just want to make sure.

MR. STAFFORD: Okay. All right. So any other discussion?

(No audible response)

MR. STAFFORD: Okay. So we have a motion and a second. All those in favor signify by saying "aye."

[AYES INDICATED]

MS. WILSON: Any opposed?

DR. BRANCHE: I have a motion.

MR. STAFFORD: Any opposed?

(No audible response)

MR. STAFFORD: No. Okay. Christine?

DR. BRANCHE: And so as a substitute for the language that we just voted to strike, I recommend that we use the text submitted by William Smith yesterday. The first of the amendments, and we were distributed this morning a redline copy essentially. I'm recommending that we recommend that this -- I move that the text that William Smith submitted yesterday be the language that we consider be substituted for this language that we just recommended be stricken.

MR. STAFFORD: For this provision. Okay. Yes.

So this is exhibit for -- everyone should have this. It was exhibit whatever it was, Lisa, from yesterday that we were provided an additional copy with this morning that actually redlines the suggested change.

So I'm going to read it. So we're making a motion, and then you can clarify this, Christine. But I'm reading it for the benefit of not only us but the folks in the audience of what it is that we're recommending we're saying specifically.

The language is, "The employer must ensure that the operators of equipment covered in this standard meet the definition of a qualified person to operate the equipment safely." That would be item number (5). I'm not sure if that's still current, or (6), but it doesn't matter. What matters is the language.

And the second provision is, "Where an employee assigned to operate machinery does not have the required knowledge or ability to operate the equipment safely, the employer must train the employee prior to operating the equipment. The employer must ensure that each operator is evaluated to confirm that he/she understands the information provided in the training."

MS. DEPRATER: I second the motion.

MR. STAFFORD: All right. So we have a motion on this specific language and a second. Thank you. Any other conversation or discussion, Tish?

MS. DAVIS: I generally support this concept, but I'm trying to understand how OSHA then makes the assessment of a qualified -- whether this has been carried out.

MR. STRIBLING: It's defined.

MS. DAVIS: It's defined elsewhere so it's knowledge, experience and training.

MR. STAFFORD: Training.

UNIDENTIFIED MALE SPEAKER: Or experience.

MS. DAVIS: As long as that's clear to people because that's the first question.

MR. BOLON: I would just -- on number (6), which refers to training, we have a paragraph on training with the contents of training. I guess we can work out the language between them, but we do have extensive things on training in the draft.

MR. STAFFORD: Okay. We'll have to go back and look at that. Okay. So I think we should proceed then. I mean, this is on this, and if you incorporate language

after the fact, that's fine.

Okay. So we have a motion and a second. Is there any more discussion on this proposed revised language?

(No audible response)

MR. STAFFORD: All those in favor signify by saying "aye."

[AYES INDICATED]

MR. STAFFORD: Any opposed?

(No audible response)

MR. STAFFORD: Okay. Thank you. So now Paul will move on to annual reevaluation.

MR. BOLON: Right. This was definitely one of the hotspots from comments yesterday. I think a lot of people, when they read the draft standard, thought that this reevaluation was akin to an initial evaluation which is kind of from soup to nuts. And I can tell you our thinking on it was that it -- I think we used the word "review" in the text. We were not thinking soup to nuts. We were just thinking things are going well, no incidents, we're good to go. I mean, I think our thinking was like that and certainly not a complete reevaluation of the person setting up the equipment and so forth.

MR. STAFFORD: Right. This is, I think, another example, Paul, of what you were thinking and what folks view as the intent.

MR. BOLON: Sure.

MR. STAFFORD: Right.

MR. BOLON: But the discussion really raised the issue even if it is that little, does it really serve a good function? The comments being that people are evaluated, we get feedback on them all the time. We're not sure what --

MR. STAFFORD: Value that adds.

MR. BOLON: -- yeah, what a value that has. So should it be cursory? Should we rewrite it? Or should we just line up with the certification cycle which is every five years?

MR. STAFFORD: I'm open for discussion. Yes, Steve.

MR. HAWKINS: You know, would it be worthwhile to have the employer do the reevaluation every five years when the person is recertified by the governing body and actually have whatever is required for the initial evaluation. When you're recertified, you're reevaluated by

your employer, and it probably should include some kind of visual observation, as the text requires now.

So I think that's one thing we could certainly discuss here because it did sound like once a year would be too frequent the way that people interpreted what was written. And we've heard from Paul that that's really not what they were thinking at the time but just something to talk about.

MR. STAFFORD: No. Okay. No. I agree with that.

Yes, Jerry.

MR. RIVERA: Yeah. I'm kind of thinking on this end, based on what we heard yesterday, that the evaluation, especially from the Washington State and some other folks, that the data demonstrates that the certification itself has made significant improvements, and evaluation, we haven't seen any value on it.

But I see some language in the Washington State on the last page that says the employer must obtain documentation showing a crane operator's experience related, you know, with a type that can be used instead of having the actual evaluation, since most of, if not all of, the people who testified yesterday said they didn't want

it. So this language seems like a tradeoff if you look at it.

And basically, what it says is okay, to demonstrate, you know, you're going to provide the documentation and the employer must obtain documentation showing hours of crane operator experience, we'll strike out the hours, type, because it creates an issue, and crane-related experience for the type of crane.

That's on the Washington State, last page. I think it's number three. So with some minor modifications that might be a good tradeoff based on the input.

MR. BOLON: In our research, we came across a lot of different schemes. Some employers keep spreadsheets of all of the jobs that a crane operator works on. That tends to be true for construction companies or crane rental companies that are doing long-term projects. We talked to a Canadian province where they keep track of all of the operators in the province, and they log on via email to keep their logs up to date. So we saw a lot of different schemes.

Most employers, especially larger cranes, longer projects, keep track of it. But we didn't incorporate that

as a requirement at least in the draft language we gave you. We weren't sure how we would use that information or so forth.

MR. STAFFORD: Yeah. We'll start with Chuck and then go around. Go ahead, Chuck.

MR. STRIBLING: I would make a motion that OSHA delete the annual reevaluation text from the proposed reg that's in front of us.

MR. STAFFORD: Okay.

MR. RIVERA: I'll second.

MS. WILSON: I'm sorry. Who was the second to that motion?

UNIDENTIFIED FEMALE SPEAKER: Jerry?

UNIDENTIFIED MALE SPEAKER: One of these two.

MR. STAFFORD: All right. So we have a motion. Read it again, Lisa, or say it again, Chuck.

MR. STRIBLING: That OSHA delete the annual reevaluation text in the proposed reg that's before us.

MR. STAFFORD: Okay. We have a motion seconded by Jerry. Let's have some discussion on it. Sarah, Christine and then Tish.

UNIDENTIFIED MALE SPEAKER: Well, yeah, five

years.

MS. COYNE: In the deletion of the reevaluation, would that include deleting reevaluation?

MR. STRIBLING: That's not what my motion said.

MS. COYNE: The annual.

UNIDENTIFIED MALE SPEAKER: That's the second separate provision.

MS. COYNE: Just number four?

MR. STRIBLING: Correct.

MS. COYNE: Perfect. Thank you.

MR. STAFFORD: Christine?

DR. BRANCHE: I guess I'm concerned that while I appreciate this step-by-step approach, I think our intention is to provide substitute language; isn't that right? No, because of your motion. I got it. Thank you. Thank you.

MR. STAFFORD: Tish?

MS. DAVIS: No. I'm generally supportive, but the question I raise, is there something they should be doing annually? Do they have systems in place where they know certification is due? Because we find a lot of issues with other certification that employers are not keeping track of

and then they're months late. So is there anything that they should be doing on an annual basis, training or -- I don't know. That's the question I put on the table as opposed to a whole reevaluation of competencies on different things.

MR. STAFFORD: Go ahead, Steve.

MR. HAWKINS: Of course, we're talking about Chuck's motion, so I guess I want to go on record as I disagree with Chuck's motion, even though he practically saved my life last meeting when I had food poisoning.

But I really think it's a good idea to have the employer go on record and do an evaluation when that person's recertified to be reevaluated by the employer. We've already discussed that that evaluation would probably be amended to not be so onerous as to require every combination of jibs and cranes and boom links; but if we think there's value in recertification every five years, then it seems logical to me that there would be value in the employer doing a reevaluation of that person every five years. Five years is a long time. That's just what I think.

MR. STAFFORD: Okay. No, I agree with -- I think

Chuck's motion was to eliminate the annual specifically, not that there shouldn't be some kind of evaluation, but that was my understanding of it. So maybe we should do that --

MR. HAWKINS: I would like to offer an amendment to Chuck's motion and recommend to the agency that they consider an evaluation period that coincides with the certification period, if that's acceptable to Chuck.

MR. STAFFORD: Chuck, so we're recommending eliminating the language on annual reevaluation and that OSHA --

MR. HAWKINS: Consider.

MR. STAFFORD: -- consider an evaluation that coincides with the five-year certification.

MR. HAWKINS: That's correct. Yes, sir.

MR. STRIBLING: I don't disagree with the amendment. I would suggest that maybe that amendment might better be suited in the reevaluation paragraph that's number (5).

MR. HAWKINS: I thought we were discussing the reevaluation.

UNIDENTIFIED FEMALE SPEAKER: Uh-uh. No. That's

the --(Interposing Speech).

UNIDENTIFIED MALE SPEAKER: Annual reevaluation.

MR. HAWKINS: Well, annual reevaluation.

UNIDENTIFIED MALE SPEAKER: He just wants to take that paragraph out.

UNIDENTIFIED FEMALE SPEAKER: We want to delete it.

UNIDENTIFIED MALE SPEAKER: Wants to take it out.

MR. HAWKINS: Well, I can just hold my motion and do a separate one on the next paragraph.

UNIDENTIFIED FEMALE SPEAKER: Yeah.

UNIDENTIFIED FEMALE SPEAKER: There we go.

MR. HAWKINS: I withdraw my amendment,
Mr. Chairman.

MR. STAFFORD: Okay.

MR. MARRERO: I second that withdrawal.

UNIDENTIFIED FEMALE SPEAKER: Lisa's giving you the thumbs up.

MR. HAWKINS: Sorry, Chuck.

UNIDENTIFIED MALE SPEAKER: So we'll have to say both of them.

UNIDENTIFIED MALE SPEAKER: Yes.

UNIDENTIFIED MALE SPEAKER: Right.

UNIDENTIFIED MALE SPEAKER: Do we have a second?

UNIDENTIFIED MALE SPEAKER: I'll second it.

MR. STAFFORD: Okay. And we'll get to the -- Steve, just hold on and read -- be sure you've got that in mind.

So we have a motion and a second. Any more discussion on it?

(No audible response)

MR. STAFFORD: All those in favor signify by saying "aye."

[AYES INDICATED]

MR. STAFFORD: Any opposed?

(No audible response)

MR. STAFFORD: Okay. Now we're into the next issue. So Steve, please.

MR. HAWKINS: Okay. Mr. Chairman, I would like to make a motion that ACCSH recommend to the agency to consider a reevaluation that corresponds with the recertification to be completed by the employer.

MR. STAFFORD: All right. Say that -- corresponds with the five-year recertification.

MR. HAWKINS: With the five-year -- I didn't have that in there. Yeah, right. ACCSH recommends to the agency to consider a reevaluation to be completed every five years and correspond with the certification or the recertification.

MR. STAFFORD: Okay. So we have a motion. Do we have a second?

MS. WILSON: Do we have a second?

MS. DEPRATER: I will second. Cindy DePrater.

MR. STAFFORD: So we have a motion and second. So now we have a discussion. Chuck?

MR. STRIBLING: I'm wondering is the five-year component necessary? Do we know that all certifications are five years --

UNIDENTIFIED MALE SPEAKER: They are.

MR. STRIBLING: -- and will always continue to be five years? What if in the future the certification is only good for three years or a different timeframe?

MR. HAWKINS: Well, if OSHA changes that rule, they can change this one at the same time.

MR. STAFFORD: We'll have Paul pick that up in SIPS-V, yeah.

DR. BRANCHE: But Mr. Chair --

MR. STAFFORD: Go ahead, Christine.

DR. BRANCHE: -- I think my esteemed colleague from the great state of Kentucky raises a very important issue which is we are relying on what the certifying bodies are coming up with and I think our matching the periodicity with whatever the certifying bodies find to be appropriate now and in the future avoids having to revisit this in SIPS-IV or anything else.

MR. HAWKINS: Oh, I'm happy to do --

MR. STAFFORD: So we could --

MR. HAWKINS: -- I mean, we needed to take out the --

MR. STAFFORD: -- simply take out the five years and say that coincides with recertification.

DR. BRANCHE: Exactly.

MR. HAWKINS: Because that's the intent of my motion anyway.

MR. BOLON: The requirements for certification require five-year cycles. The five years for certification is in the standard.

DR. BRANCHE: Five years for certification is in

the standard?

MR. BOLON: Yes.

DR. BRANCHE: Oh.

MR. CANNON: Yes. It's currently in the standard. It's already language in the standard that says these certifications are valid for five years.

UNIDENTIFIED MALE SPEAKER: Mr. Chairman?

MR. STAFFORD: Hold on. We're going to go around the table -- wait a minute.

UNIDENTIFIED MALE SPEAKER: I'm sorry.

MR. STAFFORD: Go ahead, Cindy, and then we'll --

MS. DEPRATER: The only stipulation is I think there needs to be a reevaluation if the operator is incompetent or observed to not be safe or has an accident.

MR. BOLON: That's on the next one.

MR. CANNON: Exactly, because we did --

MS. DEPRATER: You say that's on the next one?

UNIDENTIFIED MALE SPEAKER: Yes, number (5).

MR. BOLON: That's on (5).

MR. CANNON: We skipped over it, and I was going to ask that we go back to that six-month deal.

MR. HAWKINS: The only motion we have now is that

reevaluation every five years, and then you make one that says you support this, and I'll second it, and we'll go from there.

MS. DEPRATER: Okay. Okay.

MR. STAFFORD: Kevin, do you have something to say?

MR. CANNON: No, Cindy said it. I was going to ask if we could back up because, you know, going through the list, it does appear as though we skipped over that six-month issue as far as reevaluation, but Cindy addressed that in our sheet here.

MS. DEPRATER: Yes.

MR. CANNON: You know, we're down to here, but the six-month issue was above, and I don't think we properly addressed that.

MS. DEPRATER: And I'm just following the --

MR. CANNON: The standard, yeah.

MS. DEPRATER: -- standard.

MR. STAFFORD: All right.

MS. WILSON: I'm sorry. Ms. DePrater, is that an amendment to this motion or should we consider that next?

MS. DEPRATER: We will consider that next.

MS. WILSON: Thank you.

MR. STAFFORD: All right. Jeremy then Jerry then Tish. Jerry.

MR. RIVERA: I guess where I'm confused is that we heard yesterday that the annual evaluation once they certify, the assumption is that that operator has been operating that piece of equipment for a period of time, so it makes no sense to evaluate him on a practical. Now maybe on that initial, you know, once he certifies for the initial time to evaluate him, yes. But every time he goes to recertify in every five years, the assumption is that he's been on that equipment for that period of time. So there's no need for that reevaluation.

Again, I'm just relaying what I heard yesterday from the certifying entities that that is redundant, maybe not necessary, because they've already had that seat time.

MR. STAFFORD: Tish.

MS. DAVIS: The question that I wanted to, or the issue I wanted to raise is there was a lot of confusion about what the evaluation process involved. And the intent was not to set up equipment and evaluate on each. So if we use this language about a periodic reevaluation to coincide

with certification, we need to be clear what we mean by that so that the intent is clear. So I don't know if we know what that is, to be honest.

MR. BOLON: Actually, the language that we have in the draft standard says the employer must review each operator's performance. It doesn't say reevaluate. It just says review their performance. So I suppose we could use -- there may be some simpler formulation than that. But we were clearly trying to say it's not the complete evaluation.

MR. STAFFORD: Right. Okay. Is there any heartburn with that? I mean, that seems like that's --

MR. BOLON: Well, if you're going to do something light and more frequently than you would do something like that, we had some people yesterday say that if you're going to do it, and it really is a reevaluation, then do it on the five-year cycle with certification. So it's kind of two ideas. Is it just a review of performance, or is it really a reevaluation that is deeper?

MR. STAFFORD: Yeah. I mean, it sounds like to me that is a big question. So we need to try to understand that and clarify because I think that we're mixing them up

which is obviously why our motions are mixed up here, I mean, right, I believe. So are we talking about a kind of informal review of performance in some way that's specified or some kind of detailed evaluation?

MR. BOLON: Sounds like a good question for rulemaking.

MR. STAFFORD: What's that?

MR. BOLON: It sounds like a good question for rulemaking. These are the kinds of issues that we propose and take comment and have alternatives on for rulemaking.

MR. STAFFORD: Well, maybe we back up. At the beginning, I said if we're --

Hold on one sec, Kevin. I'll get to you. I can see you.

That we're just making a specific recommendation that this is something that the agency has to clarify, the distinction and the difference between an observation of performance and some kind of, you know, real detailed evaluation. I don't know, but that's something to think about, not necessarily to try to come up with the right language for you.

Go ahead, Kevin.

MR. CANNON: And I was just going to say, you know, to further complicate it, you know, if you look at (6) --

MR. STAFFORD: And further complicate it?

MR. CANNON: No. It does say that the employer must document the annual reevaluation, so you're mixing words up here. Up front, you say it's just a review, but in Paragraph (6), you do call it an annual reevaluation.

MR. STRIBLING: We took annual off the table.

MR. CANNON: Right.

MR. STAFFORD: Annual is gone now.

MR. CANNON: Yeah. But it's still being considered in Paragraph (6) or Provision (6) as an evaluation or reevaluation.

MR. STRIBLING: Yeah. I thought we were on Paragraph (5) right now though, so --

UNIDENTIFIED MALE SPEAKER: That's what I thought as well.

MR. STRIBLING: -- we'll get to (6) when we get to (6).

MR. CANNON: Well, (4) and (6) are kind of linked together.

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

MR. STAFFORD: Yes, Jeremy.

MR. BETHANCOURT: Related to, I mean, to Kevin's point and even to Chuck. When we make a motion to remove certain language, are we implying that we're removing that same language as we continue through? I think that may be where some confusion and some of Kevin's point is, as I'm reading this as well, thinking that we've said that we recommend that we get rid of the annual. Does that mean by default, as we continue through the rest of this day, we are going to assume that it's that way? Or do we need to make that clear to OSHA that that's what we're recommending is that all of those annuals are removed throughout the rest of this? Maybe that was a question to counsel.

MR. STAFFORD: Well, I don't know if it's a question to counsel or not. I mean, you know, I think this is more a question to the staff. That's what I view. My view was that when we took the annual off the table, the annual is gone. I never want to see annual again.

MR. BOLON: We hear you.

MR. STAFFORD: All right then.

MR. STAFFORD: All right. Jerry, then Sarah.

MR. RIVERA: So just to bring this back in perspective, if annual is out, and we're on (5), we're talking about evaluation review. Is that where we're going on this?

UNIDENTIFIED MALE SPEAKER: No more annual.

MR. STAFFORD: Well, sorry, Jerry. Let's get through paragraph by paragraph.

MR. RIVERA: We're on Paragraph (5).

MR. STAFFORD: Right.

MR. RIVERA: So what we're addressing on Paragraph (5) at this point is the reevaluation -- the use of the term "reevaluation" or review, what is actually the intent. And basically, what we've heard today is that we're looking at a review, not necessarily a reevaluation.

MR. STAFFORD: I agree with that.

Okay. Sarah and then Steve and then Christine and Cindy.

MS. COYNE: And I'm not making a motion. I just want to make a suggestion and a comment. In my opinion, as we look at number (5), I don't believe that a reevaluation should be done at any time unless the operator operates the equipment in an unsafe manner, or there is an incident,

whatever the case may be on unsafe practices, period.

MR. RIVERA: Or supervision?

MS. COYNE: I don't believe that we need to put a burden on our employers and whoever to reevaluate if somebody hasn't used an equipment in six months. They're going to validate their skill set when they re-cert. So to bog someone down with additional paperwork I'm just not in favor for unless the equipment is operated by the operator in an unsafe manner.

MR. STAFFORD: Okay. I appreciate that.

Steve and then --

MR. HAWKINS: I think I have a motion on the table that said we would recommend to OSHA that employers do reevaluate their employees every five years after they're certified. The employer reevaluates them in the same manner that they did on the initial evaluation. And I'm happy for Sarah to vote no for that, but I think we ought to -- either I need to withdraw my motion, or we probably ought to vote on it and move on.

MR. STAFFORD: Well, okay. I agree.

MR. HAWKINS: Because we took the one year off the table.

MR. STAFFORD: Right.

MR. HAWKINS: Sarah has said she doesn't think they should ever reevaluate them unless there's an incident. And so I guess that's really -- we ought to discuss just that and then get to the next issue.

MR. STAFFORD: Okay. No, I -- Okay I appreciate that. I was trying to have a discussion on your motion so that we'd get through it and we kind of got carried away.

Yes, Christine.

DR. BRANCHE: And so as we get into this discussion further I have to say I had some trepidation that we would end up trying to do the language by committee which I think is not a good approach. And so offering what language ought to be as an alternative, if we don't already have something in stock that we can substitute, I really think we should just register our concerns what should be stricken, and then ask our colleagues at OSHA to offer -- I mean, I guess you're going to pass back to us what the modifications are, I hope. And so I don't think we should try to write what the language substitute is unless we have something already in hand.

MR. HAWKINS: Amen.

MR. STAFFORD: Thank you.

MR. HAWKINS: I agree with that.

MR. STAFFORD: Okay. Yes, Tish.

MS. DAVIS: Yeah. I just think there are semantic issues, and we have now taken the word "evaluation" out of the first part.

DR. BRANCHE: Annual.

MS. DAVIS: No. We've taken it out all this piece. All we have now is the employer must assure that operators covered by this standard meet the definition of a qualified person to operate the equipment safely. That's what we've replaced the whole discussion of evaluation with.

So the word "evaluation" is not -- it may be but kind of conceptually, we kind of deleted that concept. We replaced it with this broader, you know, assurance of competency. So if we say reevaluate, I'm just saying that this is something OSHA's going to have to deal with. We're not going to resolve it here. But I put that in the record that we have to -- it was --

MR. STAFFORD: All right. So --

MS. DAVIS: -- deal with what's meant by the

periodic performance assessments or whatever you call it.

MR. STAFFORD: All right. Don?

MR. PRATT: Mr. Chairman, I'm confused. What is the motion on the table that we're discussing?

MR. STAFFORD: Well, we've --

MR. PRATT: Because I'm confused.

MR. STAFFORD: All right. So welcome to the crowd. So Lisa?

MS. WILSON: Yes. The motion on the table is that ACCSH recommend to the agency that they consider reevaluations that coincide with the recertification period.

UNIDENTIFIED MALE SPEAKER: That's what we're discussing.

MR. STAFFORD: That's the motion. And now we've gone back and forth because we're jumping between paragraphs here. So that's what's happened. So we have a motion, and it was seconded. Does she need to read it again?

(No audible response)

MR. STAFFORD: All right. Is there any more discussion on it? Tish?

MS. DAVIS: It has to have employer in there.

There's a lot of semantic issues, but it doesn't have the word -- you didn't say employer reevaluations, right? Did you mean employer?

UNIDENTIFIED MALE SPEAKER: Sure.

MS. WILSON: Okay. So that's an amendment to add employer reevaluations?

UNIDENTIFIED MALE SPEAKER: Friendly amendment?

MR. STAFFORD: Yeah.

MS. WILSON: Okay.

MR. STAFFORD: Okay. Any other discussion?

(No audible response)

MR. STAFFORD: All right. We have a motion and a second. There's no more discussion. All those in favor signify by saying aye.

[AYES INDICATED]

MR. STAFFORD: Any opposed?

(No audible response)

MR. STAFFORD: Okay. So Paul, that takes us to training.

UNIDENTIFIED MALE SPEAKER: Hold on.

DR. BRANCHE: Whoa, whoa, whoa. Are we doing

training?

UNIDENTIFIED MALE SPEAKER: Didn't you have number (5)?

MR. HAWKINS: I think we wanted to weigh in on the reevaluation in case you had an accident or did something wrong.

UNIDENTIFIED MALE SPEAKER: Yes. Exactly right.

MR. STAFFORD: Right. Okay.

MR. HAWKINS: Just affirming our support of that same --

MR. STAFFORD: All right. So Cindy, did you have that?

MS. DEPRATER: I did. Let me see if I can frame this into a motion. I would like to make a motion that the ACCSH committee recommend to OSHA that they consider adding a provision that if an employer operates or if the operator operates the equipment in an unsafe manner, they must be reevaluated --

MR. HAWKINS: Second.

MS. DEPRATER: -- by the employer.

MR. HAWKINS: By the employer.

MR. STAFFORD: Okay.

UNIDENTIFIED FEMALE SPEAKER: Second.

MR. HAWKINS: Second.

MR. STAFFORD: So we have a motion and a second.

I'm going to ask Lisa to read it again, as soon as she has it down.

UNIDENTIFIED MALE SPEAKER: Is there a second?

MR. STAFFORD: There will be as soon as we get the motion straightened out.

MS. WILSON: I have, and please correct me, a motion that ACCSH recommend to OSHA that it consider adding a provision for --

MS. DEPRATER: If the operator --

MS. WILSON: -- if the operator operates the equipment in an unsafe manner --

MS. DEPRATER: -- the equipment in an unsafe manner, they must be reevaluated by the employer.

MS. WILSON: Must be reevaluated by the employer.

MR. STAFFORD: Read it again.

MS. WILSON: A motion that ACCSH recommend to OSHA that it consider adding a provision that if the operator operates the equipment in an unsafe manner, the operator must be reevaluated by the employer.

MR. STAFFORD: Okay. So the motion has been made, seconded by Steve Hawkins. Now let's have the discussion. Jeremy.

MR. BETHANCOURT: Mr. Chairman, I mean, the language is already here in number (5). Wouldn't it be more appropriate just to reaffirm that particular part of that in number (5)?

UNIDENTIFIED MALE SPEAKER: That's what she just did.

MS. DEPRATER: That's what I just did.

MR. STAFFORD: She just did it, I think.

MR. BETHANCOURT: So that's what we're doing to this?

MR. STAFFORD: Yes. Kevin?

MR. CANNON: Hello. Should the motion suggest or mention striking (5)(ii) in the standard?

MR. HAWKINS: Why don't we talk about that next and get through this?

MR. CANNON: Okay. Well, it was all a part of that same provision.

UNIDENTIFIED FEMALE SPEAKER: It's all a part of (5).

MR. CANNON: Yeah. It's all a part of (5).

MR. HAWKINS: No. She just made a motion that we recommend to the agency that the operator be reevaluated if the operator operates the equipment in an unsafe manner. That's just a motion.

MR. CANNON: Yes.

MR. HAWKINS: It's not tied to these paragraphs. It's just a recommendation to the agency.

MR. CANNON: I guess my point was that it's already written in the proposed language in that very way where it says, you know, reevaluation. The employer must reevaluate the operator whenever the operator operates the equipment in an unsafe manner.

MR. HAWKINS: And we're telling OSHA we like that (interposing).

MR. STAFFORD: We're telling OSHA by the form of a motion that's good.

MR. CANNON: Okay. Got it.

MR. STAFFORD: We want that. Okay. That's what it sounds like.

Christine, did you have any other comment?

DR. BRANCHE: Probably not.

MR. STAFFORD: Is there any other comment on that?

Look, we're making motions here. We don't have to say this is what they say in line 42, and we're lining it up. We're giving you general directions. So let's not get caught up on specific paragraphs, okay? In the end of the day, they're going to deal with it. That's a staff function, as long as we tell them what we want.

So we have a motion and a second. Is there any more discussion?

(No audible response)

MR. STAFFORD: All those in favor signify by saying "aye."

[AYES INDICATED]

MR. STAFFORD: Any opposed?

(No audible response)

MR. STAFFORD: Okay. All right, Paul. Next on your list?

MR. BOLON: Well, next on my list were the comments on training. There really were not very many comments on most of the substance or the content of the training paragraph, but there were a couple of clear comments that the trainer should also be certified, and

other commenters yesterday were saying they should be certified and also a qualified operator. And this comes up in who monitors an operator in training, whether it be a trainer or a supervisor. It also comes up incidentally in the controlling contractor paragraph where it refers to a trainer.

MR. STAFFORD: Right. Has OSHA looked at the, on this issue, the Washington State language?

MR. BOLON: I did look at the Washington State for that issue.

MR. STAFFORD: I mean, if you haven't, I mean, this is one of the -- I don't know what exhibit number it was. But I mean, I think it would be something that the -- I'm not saying that we need to take an action or a motion, but it looks like that that's some pretty good language to me.

MS. DEPRATER: They do call that a supervising qualified crane operator in the Washington standard. So that might be something to consider for language.

MR. STAFFORD: To think about. Right.

Chuck?

MR. STRIBLING: Let me think a little bit.

MR. STAFFORD: Okay.

MR. BOLON: I would just mention that the final standard that's in effect right now that the trainer has to have passed the written part of the certification test.

MS. DAVIS: The written part?

MR. BOLON: Just the written part.

MR. STAFFORD: What do you think? Is there any more discussion on this or --

MS. DAVIS: Is there any history to why that's just the written part?

MR. BRANCH: Basically, they just wanted to make sure they had a baseline of knowledge that was verified by a third-party organization.

MR. STAFFORD: I'm sorry. I'm doing too many things here. Kevin and then Tish.

MR. CANNON: Just a statement. As far as the training is concerned, I think I asked the question yesterday. In my reading or interpretation, it just seems that this is more focused towards the operator in training, so if there could be some way that you could distinguish between, you know, what they should do as -- in regards to training of an experienced operator versus that of, you

know, the operator in training because in your training provision 1430, it says they must be trained in accordance with Paragraph (a) and (f), and (f), again, seems to speak heavily towards operator in training.

MS. DAVIS: Seems to me there was pretty uniform opinion yesterday that the operators in training should be certified on the job by a certified crane operator. Right?

MR. HAWKINS: Not certified to train, certified.

MS. DAVIS: Right. Yeah. Trained to certify --

MR. HAWKINS: You said certify and he can't certify.

MS. DAVIS: Yes, yes. Excuse me. Sorry.

MR. HAWKINS: Yes.

DR. BRANCHE: In fact, somebody offered the language "qualified observer."

MS. DAVIS: Right, qualified.

DR. BRANCHE: Mr. Trujillo said that at the end of yesterday.

MR. BOLON: Yeah. That was the gentleman from Miller & Long, and they were referencing how they handle monitoring or observing an operator in training.

DR. BRANCHE: How does OSHA feel about that

language, "qualified observer?" That's what I'm concerned about.

MR. BOLON: I think that for the operator in training, we have language in there, and I think it's also in the current language that the operator in training be continuously monitored. And I think that's going to get a lot of attention in the rulemaking.

What we heard in our site visits was when somebody is first in the crane and first doing work, they are monitored very closely. And obviously, as they gain experience and expertise, that is loosened somewhat. And in the final standard that we have right now, there were more details about this, and there were such that the person that was monitoring could take up to 15 minutes away. So it begins to be loosened.

So I think, again, in the rulemaking, I think we're getting a lot of comment on what continuous monitoring means in terms of how the operator in training develops. If an operator in training, if it goes over months and months, they're not going to have somebody there by them all the time. Is the supervisor on the site monitoring them, or is there, you know, is there a

qualified, experienced operator right by the cab all the time?

We say continuously monitored. I think we say by a trainer. But right now, that's all we have. I think what that is actually going to mean in practice we're going to find out as we get information in rulemaking.

MR. STAFFORD: All right. That's fair.

Chuck --

MR. STRIBLING: When I look at the regulatory text on page 6, line 2 says monitored by a trainer. We talked about that a lot yesterday, what that meant. And then (5) says each trainer must, and it has those three conditions.

So would it be too simplistic, or is it a bad approach or good approach to say "Each trainer must: (i), be an employee or agent of the operator in training's employer, and (ii), say be a qualified person, like we did earlier? And then you keep (iii), if you want to keep it or not keep it. You know, we went back and forth on this whole what's the trainer. It's a qualified person. It's in the standard so --

MR. BRANCH: We got away from using the term "qualified" because everybody kept asking what qualified

meant. Roman numeral (ii) is the definition of qualified person in here. So that's the only reason why we didn't use the term.

MR. STRIBLING: Just a thought.

MR. STAFFORD: No. I appreciate that. Kevin, yes?

MR. CANNON: Under that same section, if you look at Roman Numeral I or (i), "Each trainer must: be an employee or agent of the operator in training's employer" and I guess, you know, one of the questions that was raised by the folks that I consulted with was, you know, does this mean, you know, we have agency chapters that provide such training to employees or, you know, a service to our members as well as, you know, there's consultants out there that do the same. So this means that an employer cannot use, say, an agency safety and health professional or a third-party consultant to be the trainer?

MR. BOLON: That's what it means right now, but again, I think this is one of those topics in rulemaking that we're going to hear a lot of comment on. I mean, that is the way it's written right now, though, and they do have to be an employee of the employer.

UNIDENTIFIED MALE SPEAKER: Or an agent.

MR. CANNON: Well, it is an agent.

MR. BAIRD: Yeah. I think that's why we used the word "agent" to capture the circumstances you're talking about.

MR. CANNON: Okay. Got it.

MR. STAFFORD: Okay. So where does this leave us? I hate to admit as the chairman, I'm now a little bit confused on exactly what we're suggesting here.

You know, I don't understand this enough to know. I mean, if you're a steamfitter apprentice, you're out on the job, and you're being monitored and trained and mentored by the journeymen that you're working with. Is this not the same for an oiler that's coming out, and his partner is a qualified crane operator that's working with him?

I mean, is this different in any way? Are we talking about a qualified crane operator is the trainer for the trainee? And let's get off this agent crap. We're talking about an operator that's qualified that's working with his apprentice on the job, unless I'm missing it because that's the way it is on most other crafts.

MR. BOLON: That's what we heard when we talked to all of our site visits, interviews, that's the way it's done. Is they go out with an experienced operator, and at some point, if they advance and progress, they begin to get into the cab and do simple things, and they learn from that operator.

MR. STAFFORD: Okay. Are we in agreement with that?

UNIDENTIFIED FEMALE SPEAKER: Yes.

UNIDENTIFIED MALE SPEAKER: We think that's fine.

MR. STAFFORD: Okay. So you hear us, what we think. I don't think we need to make a formal motion that we --

MR. BOLON: Right. And in that case, that operator will be qualified, and they will be certified.

MR. STAFFORD: Right. And you know, for me, it's just word games at this point. I don't care if you want to call the qualified operator a trainer or a supervisor or an agent or whatever else you want to call him. What he is, he's a qualified person that's working with his apprentice. Right?

MR. BOLON: That's it.

UNIDENTIFIED MALE SPEAKER: Right.

MR. STAFFORD: Okay. Yes, Jerry.

MR. RIVERA: And I fully get what you explained exactly, and that's actually how I've been visualizing it the entire time. I just think that the term that is being used leads itself to confusion out there. So before it goes out, that term needs to be reconsidered. That's just my thought. You said it perfectly, and I understand that, but I don't think that's what is there and what people are going to understand and what is being enforced.

MR. STAFFORD: Okay. Yes, Christine.

DR. BRANCHE: I was simply going to say, Mr. Chair, that all of these comments have now been taken. I don't know. I don't think we need another motion on this. I think our comments are now on the record and our colleagues at OSHA will take this into consideration and offer an amendment when we see this again.

MR. STAFFORD: Are we okay with that? I mean, I don't think we need a formal motion, either. Paul, you're hearing this. I mean, I think that's the intent, what you're trying to do, if we can get back to the word of the intent. It looks like that we all agree with that, I mean,

what we're talking about. Just be sure that, you know, that it's reflected. Okay?

MR. BOLON: Okay.

MR. STAFFORD: So next is the issue that I found an interesting discussion on the controlling contractor and trying to define that. You know, I think in my mind, and I know this is Kevin Cannon's, one of his favorite topics about the controlling contractor is in control of the construction site. And I think that we need to make the distinction between a contractor that's in control of the entire jobsite versus the particular contractor that may be in control of a specific pick.

And I don't have it in front of me, but I think some of the stakeholders offered up maybe even that; the controlling contractor in this case is the one responsible for the lift or whatever that language was. But I think that's the distinction, that we're not talking about someone that's running the entire jobsite versus someone that's in charge of that particular operation.

MR. BOLON: That's right, although I think Ed gave us a talk after we had presented that in the multi-employer enforcement policy that a general contractor can have

controlling entity responsibilities. But for our purposes here, we are thinking about the contractor that hires and brings a crane service onto the site.

MR. STAFFORD: Right. Yeah, exactly.

I'm sorry, Tish, I didn't --

MS. DAVIS: So that's what should be said instead of the term "controlling entity."

MR. STAFFORD: Right. I agree. And I'll go to Jerry and then Laurie. It's not that the controlling contractor that's running the whole jobsite shouldn't be aware and communicate what's going on, you know, with the other subs when something is going on. So we don't want to, you know, and then multi employers, so we don't want to eliminate that, but we need to make the distinction. Okay.

MR. BOLON: I don't think you should forget, and we heard this from a number of the people we've talked with who at times are the general contractor. Sometimes they don't hire the crane service. They still send them off if they're not safe. They have the authority. They have authority over the site, and they will send them off, and they didn't hire them directly so --

MR. STAFFORD: Right, right. Okay. Was it Jerry

and then Laurie?

MR. RIVERA: Mr. Chairman, this is not a motion, but we did hear yesterday that the term "crane user," which is an ASME term that's well recognized within industry, could be substituted because I think that's really what we're trying to say, that crane user, that company who hires them to do that particular lift on that end. So that might be something to, you know, take a look at, the ASME definition of the crane user.

MR. BRANCH: The only distinction there is two employers could be using the crane. One owns the crane, and the other one's just using it to do whatever activity that they have to do. How do you make that distinction?

MR. RIVERA: It's the user. It's the user of the service. I mean, listen, I'll refer back to the definition, and I don't have it in front of me, but it was brought up, you know, the ASME definition might provide some clarity on that end.

MR. STAFFORD: All right. Laurie?

MS. SHADRICK: Thank you, Mr. Chairman. I'm agreeing with Jerry because we did hear that several times yesterday, using crane user. And if you go through the

Washington State ones, they define a crane user as the person who arranges the crane's presence on a worksite and controls its use there.

MR. BOLON: Pretty clear. Gets into the word "control" again, doesn't it?

MR. STAFFORD: Any other discussion on that then?

I think you're hearing us, you guys. I mean, we have to -- this is a bit confusing, and you have to come up with something that makes that distinction. Again, I don't think that we need to like come up with the exact language for you at this point, but you understand that this is something that we think is important.

Okay. What's next, Paul?

MR. BOLON: I don't think I have a next thing. We looked at the Washington State standard just to see what it said for employer qualification, and at least my reading of it, it's really a certification-based standard except for the odd equipment which then brings into the employer qualification.

MR. STAFFORD: Right. Okay. I hate to back up. Well, before I back up a little bit, Kevin, go ahead.

MR. CANNON: I can wait.

MR. STAFFORD: Tom, Chuck, someone have their hand raised over here? Yeah. Chuck, please.

MR. STRIBLING: Yeah. I did want to ask the agency about one thing that hasn't even come up. But when I was reading over this with some of my constituents, it's back to the proposed regulatory text on page 6, and it's Paragraph (h), Language and Literacy Requirements. And it says, "Tests under this section may be administered in any language." Okay. But, would maybe it be better if it said "must be administered in the language the operator candidate understands."?

MR. BRANCH: Okay. The history behind that is as the Department of Labor, we didn't want to have a reg that limited the language or dictated what languages had to be available, but they did want to make sure that the reg text allowed for the development of tests in other languages. So it was written rather loosely for a purpose.

MR. STRIBLING: Because we encounter many employees who have a primary language and a secondary language, and they can get by on the secondary language, but they don't really understand everything as well in that secondary language that they do their primary language.

MR. STAFFORD: Right.

DR. BRANCHE: That's the understanding part. But that's exactly the point that the candidate understands. OSHA may want to take a closer look at what the word "understand" versus proficiency. "Proficiency" may be a better word or a tag-on. Understands and is proficient in, something -- I'm not going to try to wordsmith it but --

MR. MCKENZIE: There's a further provision in the standard, though, that will require the documentation in the crane to be in the language of the test of the certification. So that creates another challenge if you're only proficient in any given language, you've got to be able to have a manual or the instruction in the crane of that same language because that's what you've been tested to be proficient on.

MR. BOLON: Yeah. I think that's an issue because in other parts of the standard they would have to be able to read and use and apply the manuals which have the load charts and other setup things. So that's the link from the test back to the language and their ability to be proficient.

MR. STAFFORD: Okay. Chuck?

MR. STRIBLING: I don't seek a motion or anything. I was just asked to bring it up, so I've done that on behalf of the group I represent.

MR. STAFFORD: Okay. No. I appreciate that. Yeah, Jerry.

MR. RIVERA: Yeah. It is not a motion either. It's just bringing it up as far as I know we've used the term of "operator in training," but you know, to consider those who are in the process of becoming qualified. I mean, there's a lot of folks who go through apprenticeship programs or learning on the job, and it seems like, you know, the way the language is currently written, you know, it's probably too restrictive before a guy actually gets on a crane.

And again, the Washington State language provides a starting point if we want to take a look at that. But those who are seeking to become qualified, at least to authorize those guys and give them flexibility to sit on that seat.

MR. BOLON: I'm not sure. Are you suggesting we use a different term that gives them more flexibility to get involved in training, but they're not an operator in

training?

MR. RIVERA: No. I think as we start outlining the draft rule, what the operator in training must have as training, and it goes into all this detail, there is a process of them going through that to become qualified.

So obviously, they're not going to have all the training available. They're just going to be, you know, be trained on that particular task or scope of what they're doing. So I think it needs to be a little bit more clear so that we acknowledge those folks who are learning on the job. And right now on the draft, it seems very loosely written.

MR. BOLON: When we think of operator in training, I mean, we're including those people. I mean, obviously, until they're qualified, they're still learning stuff, they're still absorbing, they're still being evaluated and observed.

MR. RIVERA: Yeah. But that would trigger constantly being monitored and things like that.

MR. BOLON: Only if they're in the crane seat. I mean --

MR. RIVERA: That's my point, you know.

MR. BOLON: But if they're doing rigging, if they're doing setup, if they're doing all the other things --

MR. RIVERA: Sure.

MR. BOLON: -- you know, they're not --

MR. STAFFORD: Any other discussion on that?

(No audible response)

MR. STAFFORD: Okay. I wanted to back up because I just want to be clear, and I don't know that we had this discussion or not on the assessment or evaluation or observation of an operator who is going back and hasn't operated a piece of equipment for six months. And I don't know that, you know, we've kind of left that out here, and I just want to kind of re-circle back and see what we think about that or what we're suggesting to you.

MR. BOLON: Well, we heard it. I mean, we heard some sharp comments. I mean, I know when we were debating this, I think we heard from some of our site visits that we heard that sometimes when people go out, and they come back, they check them out in the seat. And that's what we were alluding to there. We heard six months doesn't work. We heard it yesterday, and I've heard it from other people,

that it's not unusual in slack times to be out of the seat in the construction cycle for six months.

Do they really need to be fully reevaluated? We were, you know, I don't want to say this was a note to everyone, but just obviously if you're out of the seat for a long time, you need to get familiar again, and you need to be checked out. That's what we were trying to do with that. Whether six months is right or not, I don't know, or whether all the language is right. I think it's just another one of those many topics in this rule that we'll get a lot of comment on, and we'll think about what really is necessary.

MR. STAFFORD: What's the right amount? Yeah, Sarah, did you have a comment on this, on the six-months?

MS. COYNE: Just on the question, I mean, we heard many scenarios yesterday from public comments where an individual may be dispatched for 10 or 12 months on a particular crane. And there's so many different variations of cranes. Again, my concern is bogging down the employer on doing these constant reevaluations.

I'm not saying that a reevaluation isn't a good thing, but six months for every operator on every piece of

equipment that he or she haven't utilized is a little excessive, in my opinion.

And I don't know if it should be for the smaller cranes. Actually, I don't think it should be for the smaller cranes. Maybe when you're talking about a tower crane, if they haven't utilized or run a tower crane in six months or a year, then, well, yeah. But every piece of equipment or, you know, or maybe not. I'm not sure that we want to have that in the standard as it's currently written and wouldn't be opposed to striking it.

MR. BOLON: Well, we hear you. I mean, maybe it should say any equipment. I don't think we were thinking if you're moving from a 30-ton to a 50-ton that that's a substantial difference but --

MS. COYNE: Then I'd like to make a motion to remove or strike Section (5), Paragraph (ii).

MR. BETHANCOURT: I would second that.

MR. STAFFORD: Tom?

MR. MARRERO: I just want to bring this up for discussion. I heard one of the speakers say yesterday that maybe for reevaluation, or whatever we want to call it, maybe to include changing system of controls as technology

advances. You know, a lot of these operating systems tend to be a little bit different, too. So maybe that could be replaced with (ii) or maybe in addition to something in there.

MS. COYNE: Well, to comment on that, if I may?

MR. STAFFORD: Certainly.

MS. COYNE: I believe that if the technology does change, that the manufacturer and the employer will ensure that people are familiar with whatever minimal change there's going to be. So again, to mandate, in my opinion, is unnecessary.

And I also believe that when each individual operator comes up for recertification, one, that any changes that are done to the equipment our third-party certifications are going to ensure that that's part of the training because that's part of the compliance that they have to do. And again, it just seems redundant.

MR. STAFFORD: Jerry?

MR. RIVERA: Mr. Chairman, I speak in favor of the motion. I think what Tom's remarks are related to what we acted on, Cindy's portion, which is, you know, if there is any unsafe or maybe an incident or an accident or changes,

that should be all covered, but staff will handle that. But I support the motion on the floor to strike out six months.

MR. STAFFORD: All right. So we have a motion -- Lisa, if you would read it again -- and a second.

MS. WILSON: The motion is that ACCSH recommends that OSHA remove Paragraph (b) (5) (ii) of the proposed text.

MR. STAFFORD: All right. So we have a motion and second. Any more discussion on it?

(No audible response)

MR. STAFFORD: Well, this would maybe be the first time I would think about voting nay on a motion. I have a problem with it because I think, you know, in my mind, I've never operated a crane in my life, and there's a lot of people in here that know a hell of a lot more about it than I do. I would think that the comments that would come into the agency in terms of what they think about not operating a particular piece of equipment for three months or six months or a year or whatever it is, is really better served by the folks that actually do operate the cranes, and I'm not one of those.

But with that said, we have a motion, we have a

second. We've had the discussion, so all those in favor --

MR. HAWKINS: I want discussion before we vote.

MR. STAFFORD: Okay.

MR. HAWKINS: My feeling is six months is probably just too short. But I don't feel comfortable just throwing out the concept that a person might lay dormant for 4 1/2 years. And then they were certified and evaluated by their employer, they laid out for 4 1/2 years because they won the lottery; they spent all their money, said damn, I'm going to have to go back to work, and they showed up, and everybody's good with that. I'm not comfortable with voting yes on that motion, and I'm going to vote no so --

MS. COYNE: Is there a suggestion from the committee on a timeframe?

MR. STAFFORD: Yeah. Cindy and then Steve, and then we'll go back over to this side.

MS. DEPRATER: As a contractor, I can land on both sides of this. But I'll also -- maybe it's not a great analogy but, you know, how many different types of vehicles do you drive? Usually one, but every once in a while you change to a brand new vehicle, and that might be at three years or five years or six months, and the controls are

different and everything's different. But I don't have to go get a new driver's license or re-qualify on that vehicle to be able to drive it.

So these cranes are very standard, and I agree with Jerry's comment that the manufacturer of a new crane that has new controls is going to require some sort of reevaluation by the individual before they put them in that million-dollar piece of equipment. I also heard yesterday from a lot of the audience that they're continually evaluating, the contractors that hire these people are continually evaluating their progress, and it may not be as formal as what we're looking for, but on the opposite side, I agree.

Maybe six months isn't the answer but what is? You know, is it at two years or three years? And I think that's something that maybe further clarification from OSHA through some further conversations with contractors and stakeholders and crane operators could assist with.

MR. STAFFORD: That's what I was trying to say, Cindy -- and I know Steve is next -- that in the end, when you open this rule back, you're going to get feedback from the folks that operate the cranes. What you're hearing

from us is we don't like six months, and I'm not so sure that we know what to prescribe to you, that it should be every year, every other year, five years, whatever it is. I just think that from our perspective is that you need to look at this, and we think six months probably is not right, but we're not sure what to tell you.

Steve?

MR. HAWKINS: Ditto what you said. That's all I was going to say.

MR. STAFFORD: Who else, Tish?

UNIDENTIFIED FEMALE SPEAKER: Do you want to withdraw your motion and ask --

MR. STAFFORD: Okay.

UNIDENTIFIED FEMALE SPEAKER: -- and ask for OSHA to give further --

MR. STAFFORD: So Jeremy, and then we'll come back.

MR. BETHANCOURT: Since I seconded her motion, then perhaps the amendment to the motion needs to be to say that we think six months is not necessarily the answer; it is too short. And that potentially needs to be the motion, that OSHA go back and review a more reasonable -- I don't

know what word to use.

UNIDENTIFIED FEMALE SPEAKER: Realistic.

MR. BETHANCOURT: -- timeline that will coincide with what the industry believes is an acceptable time where you might be, you know, not using a particular piece of equipment, and maybe stakeholders as well. That's just an idea.

MR. STAFFORD: Okay. Sarah?

MS. WILSON: I'm sorry. Is that an idea, or is that an amendment?

UNIDENTIFIED MALE SPEAKER: Yeah. I was going to say, that's a long amendment.

UNIDENTIFIED FEMALE SPEAKER: It's going to be amended.

MR. STAFFORD: A long idea, too.

MR. BETHANCOURT: We need to talk about amending her motion.

UNIDENTIFIED FEMALE SPEAKER: Yes.

MS. WILSON: Okay.

MR. BETHANCOURT: For discussion, for further discussion.

MR. STAFFORD: Again, I'm not in favor of this

motion. I don't understand why we have to make a formal recommendation to say that we don't like six months, but we don't know what to offer up in its place. In my mind --

MR. HAWKINS: Because it's so much fun.

UNIDENTIFIED FEMALE SPEAKER: And you're so frustrated right now.

MR. STAFFORD: You're hearing us say that six months needs to be relooked. And if none of us here have an idea that we're going to say we want to strike six months and specifically in the form of a recommendation say that OSHA do it at every two years, then I really question why we need a motion. The agency is listening to us that you need to revisit this, right?

MR. BOLON: (Nods yes)

MR. STAFFORD: Yes.

MR. BOLON: Yes.

MR. STAFFORD: Yes, you're hearing that. Do you want a motion on it when we don't have anything to say other than --

MS. COYNE: Then I'll withdraw the motion, you know, as long as you're comfortable with knowing that OSHA will look into this further and make the appropriate

recommendation moving forward.

MR. STAFFORD: I'm absolutely comfortable that OSHA's going to look at this and address it and get feedback from the people that are operating these machines on what they think about the right timeframe is. Fair enough?

MS. COYNE: Fair enough.

UNIDENTIFIED MALE SPEAKER: Fair enough.

MR. STAFFORD: Strike the motion.

All right. Yes, Cindy.

MS. DEPRATER: Just Appendix D, can we discuss the Appendix D?

MR. STAFFORD: Yeah. Well, no. You know, I think what we heard yesterday on Appendix D, Paul, and I don't know if you have it in here or not, that it seems like that there was a lot of the stakeholders suggesting that if we're not, you know, we're kind of reassessing what we're telling you to do in terms of evaluation, that the Appendix D become a nonmandatory.

MR. BOLON: Yes. We heard nonmandatory, simplify it, consider equivalent documents if there's none from MSHA's. We heard that.

MR. STAFFORD: Right. Okay. And I don't know really enough about, I think, on the question of documentation. We had a few stakeholders that are also, you know, have to follow the regulations of MSHA, and therefore, require documentation on assessment or evaluation there on what the precedent is of an OSHA compliance officer walking in -- and I'll yield to our state folks -- and the employer producing the form that they do for MSHA; would that satisfy -- I mean, I don't know if there's a precedent for that, you know, between the two regulatory agencies that I'm doing this for MSHA so -- or vice versa. Does this count?

MR. BOLON: Yeah. I don't know of any precedent myself where they're identical. But we're not trying to create paperwork. Sometimes once you get into things, having a uniform document is very useful for everyone. But this will be an active part of rulemaking. We'll get a lot of comment, and again, we're not trying to generate paperwork. We were trying to simplify it by offering what we hoped was a good document for showing that qualification had occurred.

MR. STAFFORD: Okay. Yes, Steve.

MR. HAWKINS: I think that several of the people that I talked to, it sounded like it was a good idea, and there's lots of employers who do like something that's provided by OSHA. So if the appendix were nonmandatory, it would probably be very helpful to lots of smaller employers. And I think that's kind of the message we should send to the agency.

MR. STAFFORD: Okay.

MR. HAWKINS: But not in the form of a motion.

MR. STAFFORD: All right. It's so much fun.

All right. Any more -- Kevin?

MR. CANNON: Not on Appendix D. There was very little, if any, discussion yesterday on Appendix C. So if you could help me understand who is Appendix C speaking to, in particular, Part A. I understand Part B to be addressing, you know, the written third-party certifications, but I just can't really fully understand who Part A is speaking to. And if I remember correctly, Part A was not in the existing standard.

MR. BRANCH: Part A was actually under 1427(j).

MR. CANNON: Okay. You just moved it to Appendix C.

MR. BRANCH: We just moved it.

MR. CANNON: And who is that --

MR. BRANCH: That's to the employer. Basically, these are the minimum requirements that an operator has to have prior to certification. And certification basically verifies that this training has taken place.

MR. CANNON: Yeah. So what you're saying, and basically, so Part A(1) is speaking to me as a contractor, what I should do? Is that what you're saying?

MR. BRANCH: Well, we can't -- we don't regulate the testing organizations. You as an employer have to make sure that, one, you provide that training that's already required under 1427(j).

MR. CANNON: So I guess my question is that, you know, where it says, "A determination through a written test." So I would have to develop a written test to -- I mean, it says, "A determination through a written test that:"

MR. BRANCH: That's the certification body.

MR. CANNON: Yeah. That's what I was saying. I can't --

MR. BRANCH: Right. But as far as -- we don't

regulate the certifying bodies so we have to make it clear to the employers that if you're going to use an accredited, that option, that it has a written test.

MR. CANNON: Okay. All right. So you're telling me that whomever I certify my operator through, they must administer a written test.

MR. BRANCH: There you go.

MR. CANNON: Okay.

MR. BRANCH: There you go.

MR. CANNON: Got it. So yeah. The way I was reading it, I just, you know, and again, sounds like I was totally wrong. But I was just reading it as though I was going to have to develop a test, and after I conducted the training, they would have to sit down and, you know, pass this test that I --

MR. BOLON: We need to check the language if it was ambiguous, but we don't think there's anything new in Appendix C that isn't in the existing standard, no. We were just trying to organize it, and put it there for comprehension.

MR. CANNON: Got it.

MR. STAFFORD: All right. Paul and Garvin, thank

you very much. Is there anything else we can do to help you?

[Laughter]

MR. BOLON: It's been a pleasure.

MR. STAFFORD: All right. Steve?

MR. HAWKINS: I did have one more thing. The lady who spoke yesterday about that very unique hoist that's mounted on a mast climbing scaffold. So I looked at the standard really closely last night, and Washington State does make an allowance for certifying when there is no one to certify you on a unique device like that, that you have to be trained.

And I think we should recommend to OSHA that they consider some kind of similar language to address people who find themselves in this no-man's land of we've got a hoist that's 4,000 pounds, and what do we do? If the standard says you'll do on something that's similar, but I can't think of any crane certification that's similar to a 4,000-pound hoist on a manual climbing device. And it's just probably something we should address so that people don't find themselves in a donut hole like that.

MR. BRANCH: Yeah. We have language that says or

certification that's similar. But as the technology goes the way it's going, we're going to have to have more guidance, you know, regarding what we would consider similar, what the industry would consider similar. But right now, we don't have an answer for that right now.

MR. HAWKINS: There's really not anything that I think would be similar to that little 4,000-pound hoist that NCCCO or anybody like that would have. What would a person do if they found themselves unable to comply with that standard? Where does that --

MR. BRANCH: I mean, we even ran into that with like when they were saying that they didn't have certifications for digger derricks and, you know, other unique pieces.

MR. HAWKINS: We fixed that.

MR. BRANCH: Yeah, we did.

MR. HAWKINS: Just something you should think about. That's all I'm --

MR. BRANCH: We don't have an exact answer to every piece of equipment out there, and it would be crazy to say that you did. But we will be reevaluating as we get closer before this becoming effective.

MR. HAWKINS: Well, the language in the Washington State law was pretty good because it did address unique pieces of equipment and said you'll get training from the manufacturer, I think. And so you still get training, but you just can't get a certification to meet the exact standard. That would be something to consider.

MR. BRANCH: You have powered booms that you can mount to just about anything out there, you know. Just the actual boom and hoist itself fits into the definition. So regardless of what you put it on, you're going to be subject to Subpart (cc) unless we interpret you out.

MR. HAWKINS: Figure something out, yeah.

MR. BRANCH: Right.

MR. HAWKINS: Because it would be really odd for a guy who operates that device and picks up a load of scaffold to be at NCCCO taking a crane certification because it's the closest thing to his little hoist on his little scaffold. So that would be bizarre.

UNIDENTIFIED FEMALE SPEAKER: Yeah.

MR. STAFFORD: Right.

MR. HAWKINS: So just wanted to throw that out.

MR. STAFFORD: No. Thanks, Steve. I appreciate

that.

Paul, again, thank you. Garvin, thank you very much.

I don't know if anyone signed up. I didn't go back in the back. Damon?

MR. BONNEAU: But Mr. Chair, I'd like to give you this first. Dr. Michaels sent this up for the committee, so we can pass these out.

MR. STAFFORD: Okay. So Damon?

MR. BONNEAU: Yes.

MR. STAFFORD: Do you have the sign-in sheet? A few other items. Yeah.

MR. BONNEAU: All crane related.

MR. STAFFORD: All crane related? We're about done on cranes here, I think. We were going to talk about some other things.

PUBLIC COMMENTS

MR. EGGENBERGER: It's still morning. Good morning. Mike Eggenberger of Bay Limited, Corpus Christi. Just a couple of things. On your internet poll, I did sign

up to speak both days. I didn't realize that you were going to finish up by noon the second day. However, I think I might have shortchanged myself yesterday with reference to experience. Once again, I am a crane safety manager, and I have been working with cranes for over 45 years. There is nothing I have not done with a crane.

We talked about the docket information from 1992, and how this has evolved over the years. I talked about being involved with three of the crane certifying agencies, quite heavily involved with three of the certifying agencies, NCCCO, CIC and NCCER. Two of those agencies, I kind of threw my hat in the ring with.

And with that said, I think it's a mistake to remove capacity from crane operator certification. But if two of the agencies want to devalue their program, that's fine. We call it dummy down in the industry. Bay Limited will continue to use crane capacity in our private employer certification program, and we will certainly work with the agencies that continue to use capacity in their certifying programs.

Also, I was going to talk about --

MR. STAFFORD: Just for clarification, Mike,

before you go, we didn't do that.

MR. EGGENBERGER: I understand.

MR. STAFFORD: We made a recommendation on type and type and capacity, or type and capacity.

MR. EGGENBERGER: And that leads to my next remark I wanted to make. Being involved with the creation of this, all the talk yesterday, all the talk today, sitting in Corpus Christi, getting ready to talk about what I was going to talk about on the second day, if you look at the current 1926.1427, Section (b), Paragraph (2), all we really needed to do in the third sentence, and I'll read this paragraph to you. "An operator will be deemed qualified to operate a particular piece of equipment if the operator is certified under paragraph (b) of this section for that type and capacity." I mean, we're going to lose capacity, it appears to me.

So we simply just needed to change the word "and" to "or," so it would read, "An operator will be deemed qualified to operate a particular piece of equipment if the operator is certified under paragraph (b) of this section for that type or capacity of the equipment." And then later down in the paragraph, where there's a forward slash

mark between type and capacity, just put the word "or" in there. Okay.

If you'd simply do that, the rest of this document is great. Okay. Because we've done away with the -- it looks like we're going to do away with the evaluation thing, the annual recertification. So when all that goes away, we're right back to this. Okay.

With that said, I have no further comment.

MR. STAFFORD: All right. Thank you. Any questions or comments?

(No audible response)

MR. STAFFORD: All right. Thank you, Michael.

I'm sorry. Jim Wordall or Wordell or is that -- I may be saying it wrong. I'm sorry, Jim.

MR. WORRELL: Jim Worrell, and my occupation since 1969, and doing nothing else, has been as a heavy lift engineer or as normally said as a rigging engineer. And we look at lifts with cranes, not just the crane or the people on it, but we look at the entire situation. We want to look at everything in that lift that could cause an accident. And this is whether you're doing a lift plan or reviewing a lift plan third party. And usually these are

for bigger, more costly lifts that we do this.

But we try to think everything in advance. We say what can go wrong here? Will each item of rigging fit? When he moves the crane or does this, what's going to happen?

What I want to do here is to share with the committee some of my observations from my viewpoint, which it's not a stakeholder because I'm basically retired now and have nothing to win or lose. But it's true that most of the crane accidents -- and I also like to study crane accidents as far as what the cause of it is. And it's true that the operator's error is a very small percentage. And most of the accidents that I review, it's either laziness, bad decisions, and bad decisions covers all of this, financial or schedule considerations, client pressure, and I've seen client pressure a lot, conflict of parties whether it be, say, who the signalman, the lift director or the operator, different employers, different states of mind between each other, or possibly poor setup.

And here, I talk about setup as not the same thing as assembly/disassembly. To me they're totally different where setup is -- especially for a mobile crane or even for

a tower crane -- it's where it's sitting, on a pad of gravel, of sand, aggregate, and the mats on top of it and everything involved with getting that crane that's already assembled ready to lift.

Jumping over to crane and lifting safety in general, OSHA has done such a good job that many people think that OSHA is the only thing that controls lift safety and all. There are several other factors that have a big effect on this, and one of these is the site safety crane standards or regulations that your larger CGs use or your larger manufacturers. If you go in to make a lift small or large, say at a Valero refinery or an Exxon refinery, they have rules that go way beyond the kind of rules that OSHA has which are really more crane related. These cover a larger area.

And these may be things like what defines a lift requiring further review, further engineering, whether it be weight, replacement cost, proximity to operating equipment, proximity to flare stacks or power lines. And these can be multipage. Some are poorly written, some aren't, but they all have a big bearing on crane safety.

And as a crane user or somebody making the lift,

you welcome these things, especially if they're well written because they tell you exactly what the owner or client wants to include in your lift plan and what any constraints are going to be. Do you have to de-rate the crane? Is there going to be a test inspection on the crane before it works? And again, all of these point toward that.

Another factor in crane safety, and it probably saves an innumerable number of accidents per year, and that's the five-to-one safety factor over breaking strength that's found on manufacturing rigging components. Also, the manufacturers do quite a good job of their fine print and how they want their crane to be operated.

There's another safety area that's not mentioned much because it's not onsite, and this involves truck cranes, whether lattice boom or telescopic boom. These are wide. Most of these are anywhere from 10 to 12 feet wide. Even back in the '70s, there's one particular type that was 13 foot wide. And when you consider the normal interstate lane of 12 feet, that's pretty wide. And also because they're high center of gravity which means when they get on narrow roads or roads with poor stability like unseen mud

holes, there's a propensity to turn over, and that's not counting just the accidents that these cranes have.

And who is driving these cranes? More often than not, the driver is your apprentice or your front-end man, as he's called in some areas, or the operator in training, which I would prefer to use there. But there are a lot of these accidents, but they're usually classified as a highway accident and not a crane accident. To me, they're a crane accident.

And it would be wonderful if everybody on the committee, just to get a feel for things, would be to actually take a tour bus somewhere all together, and get up on a large crane, say a big crawler crane with 2 to 300 feet of boom and a luffing jib, and stand there and watch the operator do a few simple movements, so you could really fully understand what that operator has to do and how totally huge and unmanageable this thing looks like when you're looking at it from his perspective.

And on that same line, I'd like for you to all realize also for some cranes how technical, how specific disassembly [sic] and disassembly can be. One misstep in an operation, and that step may be -- for a German crane --

it may be in metric terms. A lot of operators have not learned how to convert to metric, so they let it go. These are just some of them. Most of them are pretty swift and catch on to that.

But they're very detailed, and one slight change in the process of assembly/disassembly could cause an accident that would probably not hurt anybody, but it could, but it may cause anywhere from 50- to \$100,000 or more worth of property damage just due to the problems that occur with that boom section or a mast section or whatever is there.

Many disassembly or assembly operations required by the owner to be called critical lifts or lifts involving a higher degree of lift plan. This might be because of the proximity, because of the weights of components or any other factors that they deem to be required.

Switch it over quickly to one thing --

MR. STAFFORD: Very quickly, Jim. We're running out of time.

MR. WORRELL: Yeah, very quickly.

MR. STAFFORD: Okay.

MR. WORRELL: It was derricks. We mentioned

derricks. Derricks are almost anachronism now because very few people use them. I don't know why we even talk about derricks so much, and there are very few of us left that even know how to calculate a derrick. There's hardly any training for derricks, but they're still mentioned. I won't go there anymore.

Last thing is responsibilities, and from my experience, usually if it goes to court, settlement, arbitration, somebody else is going to make that decision as who the responsible party is. But in general, I would think that the person that hires a lift director, and the OSHA crane rules talk quite a bit about the lift director, that's the first person that I think one would look for for responsibility.

That's all I have, unless you have questions.

MR. STAFFORD: No. Thank you.

Any questions or comments?

(No audible response)

MR. STAFFORD: We appreciate that, Jim. I'm not so sure how much this bunch is going to get in a tour bus together, but we appreciate that recommendation.

MR. WORRELL: It's something worth seeing to get a

feel.

MR. STAFFORD: All right. Okay. Larry Hopkins? Larry here? There he is.

MR. HOPKINS: Larry Hopkins, Operating Engineers, Southern California. I'm the training director for Local 12 out there.

Couple of points, just a clarification that I wanted to put on the record to emphasize that we have still an issue with defining what crane type means in the certification law. And my recommendation would be that perhaps we research the B-30.2, 3, 4 and 5 standards to define what type of cranes we're talking about.

As the industry evolves and technology evolves, there are going to be cranes put out there that may not fit the definition of what we're accustomed to seeing. For instance, in mobile cranes, we now have spider cranes which are technically still a mobile crane, but are they? And so I think people are having issues defining between a type.

So ASME, as I recommended yesterday, has already done the work for us, and I would strongly recommend that we look that direction to get a definition of type. When we're asking to certify by type, we should probably define

in some absolute what that means.

Second point is to strongly emphasize that if this evaluator-evaluation process continues, I've heard a lot of -- I'm not sure what the motion was or if it was even made. I know that a motion was made and that some was taken off of the table and that others were made to reevaluate on a periodic time base, that it would probably behoove us to get some subject matter experts involved with determining what's reasonable on reevaluation process, and we could point out a lot of reasons for that. And I think putting a specific time limit on it --

MR. STAFFORD: That's why we deferred on that. I mean, I think we need to hear from the industry on what that --

MR. HOPKINS: Absolutely. No. And I think that's a good point so I just -- I had already written it down before you came up with it.

And then the person in charge of the lift, we talked about that yesterday. Once again, I would refer you to review the ASME standard on person in charge. You know, you've got hundreds of experts throughout the country who have spent countless time putting together these

definitions. It's already there.

I think for those of us in the industry who are subject matter experts, if we have a question, we'll default to that because it gives us that consensus, basically nationwide, of what the consensus of the experts are on responsibility. So why not go that direction for this law as well?

Other than that, I appreciate the opportunity to comment again, and thanks for all of your attention to this.

MR. STAFFORD: All right. Thank you, Larry.

Any questions or comments?

(No audible response)

MR. STAFFORD: All right. Thanks. We appreciate it.

Last sign-in, Robert Weiss. Last but not least, Robert Weiss.

MR. WEISS: I want to say last but not least. Peter Juhren had put his name down and crossed it out but wrote yes, I'd like to comment. So he might follow me, but I'm going to be quick. So thank you for seeing me again.

I was going to talk about Appendix D. It did come

up that, you know, that there was a lot of controversy on Appendix D, so you did address that.

One thing I noticed in Appendix D that I wanted to put in here was about training, and this is, you know, we have to separate training from evaluation. But when you talk about training, we heard a lot from the unions, and I come from a union environment. All my operators are union, and all my operators are union apprentice trained. And in order to operate in New York City, we have to get a license, and the license is based on certain amount of seat time, certain amount of experience, so forth.

But when I order an operator out of the hall, the operator comes with the requisite license to run that piece of equipment. He's been trained by the apprentice program. And we've heard this in signalman evaluation, in Subpart (r) we've heard about it. We need to be clear here, when you put in a form that candidate has done all the training in Appendix C, who did the training, the trainer's name, the date.

If this training was done by an apprenticeship program, I can't fill this out. So there has to be some sort of recognition that if the training was performed by

an apprenticeship program that that be recognized and not have to be documented who did it and when and how.

The other thing that is in here is it says the candidate has successfully completed training in all the topics in Appendix C. Appendix C is the training that's required for certification. So once they get that CCO card, they've proved that they had the training already. So just by having that card, the training of the topics in Appendix C was met. So I just want to make sure that that was on the record because I didn't think that was C --

MR. STAFFORD: I think that was Kevin was trying to clarify, right?

MR. WEISS: Okay. So that's what I have to say. Thank you very much. Appreciate it.

MR. STAFFORD: Okay. Yeah. Thank you.

Peter, you will be last but not least. Yeah.

MR. JUHREN: Thank you for listening to me one more time again and sitting here for a day and a half, that now I'm sure you're all crane experts and totally understand our industry.

I was listening to your deliberations on the timeframes you think for requalification, and you know,

when I was growing up, my mother always used to tell me use common sense. And I think when we take a look at this, Sarah was dead on when she said there should be no timeframe because when someone does something continuously for a long period of time, they get better at it. They don't get worse at it. And when you set a reevaluation period, somebody said let's just do it at five years with recertification, that's assuming that that operator is working for the same employer.

If you tell someone that when you recertify you have to be reevaluated, now you're putting the burden back onto the operator to go tell his employer, hey, I have to be requalified even though I just got recertified. And how many operators are general people that around the industry know the OSHA standards or the OSHA laws or ASME? Most of them really don't. They do study them for their tests, there's no doubt. But to understand them in detail is hard.

So I want to tell you that the reevaluation process, and if you look at the language that you unanimously voted on to inject into recommendations to OSHA, it specifically states in there that an operator has

to be a qualified person, and if he gets in the seat, and he doesn't know how to operate it, the employer must train him on how to operate it. So the evaluation process is a continuous, ongoing process, and I hope that that's considered without putting due burden on the operators themselves to have to follow and track their evaluation process.

And again, thank you for your time.

Yes, sir?

MR. HAWKINS: If you don't think there's value in requalification, do you think there's value in the five-year recertification that's in the statute?

MR. JUHREN: Yes, I do, because the number one thing in the recertification is it makes sure that the operators are more updated on recent OSHA changes, ASME standards. That's where a lot of the written testing comes into. So when there's changes in the industry, in technology, the recertification value makes sure that the operator is up on the latest technology standards and any changes that have come about.

MR. HAWKINS: Considering how fast technology is changing, is five years too long?

MR. JUHREN: Five minutes is probably not long enough in today's world, but I think of the recertification, when you take a look at all the recertification bodies, five years has been determined to be the adequate number to recertify. It takes into a lot of considerations the operator's qualifications, does he still understand the regulations that govern him and basic changes.

So I think five years, as far as a recertification, you know, that's basically twice as long as most states require for your driver's license. Most states require ten years for a driver's license. So I think five years for recertification for crane operator is, but the reevaluation process is a never-ending process.

MR. STAFFORD: Thanks, Peter.

Any other questions or comments?

(No audible response)

MR. STAFFORD: All right. Thanks again, Peter.

Appreciate it.

Jim Maddux, you want to close us out?

DAY 2 - CLOSING REMARKS

MR. MADDUX: Thanks everybody. I know it's been another long, hard day, even if it is just a half a day. The recommendation process is a lot of work. So thank you so much for sticking with that and doing all of that hard work.

I did just want to close up a little bit talking about something, not cranes at all, and that is the fall prevention campaign. And we've been on this now, this is our fourth year of the campaign. Pete had mentioned it. Dr. Michaels mentioned it this morning. We've really been very successful at really getting a lot of awareness out in the industry, and we're running the Stand Down again this year. Last year, we had, we can document, 1.4 million workers that participated in the Stand Down. This year, we're trying to go for 3 million. And I think that it's really quite doable.

A lot of people in this room and on this committee helped last year, and I hope you'll do so again. Damon just brought up, we have some of the materials in the back, promotional materials, posters, stickers, some of the

things that we're using. Please help yourselves to those. We're going to be kind of picking up our marketing starting next week, you know, doing more social media things. We've already been working with a lot of folks in the industry. We'll be putting up our events page on the internet pretty soon. So if you have events that are free and open to the public, you can get those into your regional coordinators, and get those up right now.

So if there's anything we can do to help you as you're doing that work, please let us know. And we're really looking forward to it.

MR. STAFFORD: Thanks, Jim. We appreciate all your work and your office's work on the campaign. It's really been great. It's been a great partnership, and Christine, too, with NIOSH. So we appreciate that.

Any other questions or comments for Jim?

Yes, Chuck.

MR. STRIBLING: [Inaudible].

MR. STAFFORD: Okay. Well, we'll open it up. We're getting ready to close out here.

MR. STRIBLING: Because I know you care, it's approximately 80 hours to tipoff. Go Cats.

MR. STAFFORD: Us guys from Kentucky have to stick together. All right. You know, go Cats. No kidding about it.

Okay. Unless there's any more questions or comments, we're adjourned.

MS. WILSON: Mr. Chairman?

MR. STAFFORD: Yes. I'm sorry. Sorry.

MARKING OF EXHIBIT 20 & ADJOURNMENT

MS. WILSON: Sorry. Thank you, Mr. Chairman. I just wanted to designate the OSHA report on inequality to injury as Exhibit Number 20. Thank you.

MR. STAFFORD: All right. Thank you, Lisa.

All right. We stand --

Oh, Tish?

MS. DAVIS: I just want to thank you for shepherding us through this.

MR. STAFFORD: All right. Thank you. Thank you. We're done.

[Whereupon, at 12:24 p.m., the meeting was adjourned.]

