

**OCCUPATIONAL SAFETY AND HEALTH  
ADMINISTRATION**

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

**DAY 1 – MARCH 31, 2015**

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Frances Perkins Building  
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**ACCSH MEMBERSHIP ROSTER**

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
Jim Maddux	Director, Directorate of Construction, US Department of Labor-OSHA	Alternate Designated Federal Official
Damon S. Bonneau	ACCSH Coordinator, Alternate DFO, Office of Construction Services, Directorate of Construction, US Department of Labor-OSHA	Committee Contact
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Lisa Wilson	ACCSH Counsel, Office of the Solicitor, US Department of Labor	Committee Solicitor Contact

## **OPENING REMARKS & INTRODUCTIONS**

**MR. STAFFORD:** Good morning, everyone. If you could find your seats, please, I would appreciate it. Well, good morning. Looks like we have a quorum of ACCHS members so I'd like to go ahead and call the meeting to order. My name is Pete Stafford. I am a labor representative, chair of ACCSH. I'd like to welcome all of you here today.

This is a special meeting of our advisory committee to look specifically at the OSHA Cranes and Derrick Standard, specifically OSHA's proposal of opening the new rule to address the operator qualification issue.

We will only be talking about cranes and derricks today. I'd like to remind everyone, while we encourage you to sign up in the back, if you already haven't, and we already have quite a substantial list of folks that have signed up to comment this morning, I would encourage you to sign up in the back if you are not on the list and would like to make comments. We'll do it in a very orderly fashion, I hope, and try to get through all of the comments today, if we can.

If not, we'll reconvene tomorrow morning.

Tomorrow morning, we're scheduled to meet for just a half-a-day. Primarily, that is for this body to deliberate on what we hear today from OSHA and with respect to the proposed rule, what we hear today from the stakeholders and any questions this committee has either to OSHA or the stakeholders.

With that, this is not a stakeholders meeting. We're not going to be entertaining questions from the stakeholders to OSHA staff. ACCSH will be asking the questions of OSHA, and ACCSH will be asking questions of the stakeholders who comment. With those ground rules, I'd like to, again, welcome you.

We'll go around the room and introduce ourselves, first to the committee, and then I would like to go around the back so that we all know who's in the room today. Then I think after that, we'll have Jim Maddux, the Director to the Directorate of Construction is going to open up the meeting. Then we'll go right into our agenda, which I assume everyone has by now.

Actually, I've noticed there's not a break on the agenda. Depending on the flow and the timing, we will

probably take a break after OSHA provides us their presentation and listens to our questions. Then we'll start. I think, depending on how it goes, we'll take a short break and then start with the stakeholder comments.

With that, I'd like to have the committee introduce themselves, starting with Kevin on my right.

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

**MR. BETHANCOURT:** Jeremy Bethancourt, Public Rep.

**MR. RIVERA:** Jerry Rivera, Employer Rep.

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

**MS. DAVIS:** Tish Davis from the Massachusetts Department of Public Health, Public Records.

**MR. STRIBLING:** Chuck Stribling, Kentucky Labor Cabinet, representing the state plan programs. Go Cats.

[Laughter]

**DR. BRANCHE:** Christine Branche, NIOSH, Federal Rep.

**MS. SHADRICK:** Good morning, Laurie Shadrick, Employee Rep., United Association of Plumbers and Pipe Fitters.

**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:** Okay. Thank you. I'd like to  
remind the committee if you have any questions or comments,  
I know we get sometimes carried away in our questions and  
comments, but it's important that we identify who we are  
for the court reporter. Let's go ahead and do  
introductions in the back, starting over on my left corner,  
please. Damon?

**[SPEAKER INTRODUCTIONS NOT ON MICROPHONE]**

**MR. BONNEAU:** Damon Bonneau, Directorate of  
Construction, OSHA.

**MR. BRANCH:** Garvin Branch, OSHA Construction  
Standards and Guidance.

**MR. ROLFSEN:** Bruce Rolfsen, Bloomberg BNA  
Occupational Safety and Health Reporter.

**MR. MADDUX:** Jim Maddux, Directorate of

Construction.

**MS. SOIZA:** Anne Soiza, State of Washington  
Department of Labor, DOSH.

**MR. HEADLEY:** James Headley, CEO of Crane  
Institute Certification.

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

**MR. WORRELL:** Jim Worrell, retired, representing  
American Society of Civil Engineers, Construction Safety.

**MR. GREENEE:** Good morning, Steve Greene with the  
National Center for Construction Education and Research,  
NCCER out of Gainesville, Florida.

**MR. EGGENBERGER:** Good morning. Michael  
Eggenberger, Training Safety Manager at Bay Limited, A  
Berry Company, Corpus Christi, Texas.

**MR. RYAN:** Chris Ryan, Boh Brothers Construction  
Company, New Orleans, Louisiana.

**MR. BOLTEN:** Roy Bolten, Cianbro Corporation. I'm  
the Crane Operator, Training Coordinator.

**MR. SMITH:** Bill Smith, NationsBuilders Insurance  
Service, Baltimore, Maryland.

**MR. SICKLESTEEL:** Tom Sicklesteel, Sicklesteel  
Cranes, Mount Vernon, Washington.

**MR. BRENT:** Graham Brent, National Commission for the Certification of Crane Operators, NCCCO, Fairfax, Virginia.

**MR. WALSH:** Pete Walsh, Walsh Construction, Chicago.

**MR. EBBET:** Bill Dudley [phonetic], Corporate Trainer and Instructor.

**MR. WAGNER:** Troy Wagner, I'm Vice President of Safety for Maxim Crane Works.

**MR. CAMERON:** John Cameron, National Grid, Safety Manager.

**MS. ABRAMS:** Adele Abrams, American Society of Safety Engineers.

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

**MR. IANNELLI:** Jason Iannelli, Electrical Training Alliance, Upper Marlboro, Maryland.

**MS. FOLEY-HERING:** Lynn Foley-Hering, Matrix North American Construction. I'm their Training Coordinator for training and I'm also here for TAUC, The Association of Union Constructors.

**MR. HERING:** Bill Hering, Safety Manager, Matrix

North American Construction and I'm also here wearing the other hat, representing The Association of Union Constructors.

**MR. WEISS:** I'm Rob Weiss, Vice President of Cranes, Inc., New York City.

**MR. JUHREN:** Peter Juhren, Morrow Equipment.

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

**MS. NADEAU:** Liz Nadeau, Attorney representing the Operating Engineers.

**MR. CALLAHAN:** Jim Callahan, General President, Operating Engineers.

**MR. TREML:** Chris Treml, Director of Construction Training, Operating Engineers.

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

**MR. PETERSON:** Patrick Peterson, Local 15, New York City, Training Director.

**MR. GORDON:** Thomas Gordon, Local 14, New York City.

**MR. COOKE:** Chuck Cooke, Corporate Safety Manager, W.O. Grubb, crane demolitions.

**MR. GROSS:** Jim Gross, from HCSS representing AGC National Safety and Health Committee.

**MR. CALDARERA:** Mike Caldarera, National Propane Gas Association.

**MR. MASARICK:** John Masarick, Independent Electrical Contractors.

**MR. THOMAS:** Glenn Thomas, Great Lakes Dredge & Dock.

**Mr. MCNICHOLAS:** Matt McNicholas, OSHA Region 5, Chicago.

**MR. HOPKINS:** Larry Hopkins, Director of Training.

**MR. LESLIE:** Jim Leslie, Executive Director of Operating Engineers Certification Program.

**MR. MARTIN:** Brad Martin, Kiewit Company.

**UNIDENTIFIED MALE SPEAKER:** [inaudible].

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

**MR. FASALO:** Pete Fasalo (ph), Directorate of Construction.

**MR. OWEN:** Paul Owen [phonetic].

**MR. BAIRD:** Ed Baird [inaudible].

**MR. JOHNSON:** Dan Johnson, SFI Compliance, Inc.

**MS. DUGGAN:** Martha Duggan [inaudible].

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

**MR. WILLIAMS:** Chris Williams [inaudible].

**[INAUDIBLE - REMAINING SPEAKER INTRODUCTIONS NOT ON MICROPHONE]**

**MR. STAFFORD:** Is that it? I stopped hearing after about two-thirds down the aisle there. We've got to make sure that everyone's had -- Damon, say something to me so I can hear you back there. [Laughter] All right. Steve Hawkins joined us. Steve, do you mind introducing yourself?

**MR. HAWKINS:** Steve Hawkins, State Claim Representative, Tennessee OSHA.

**MR. STAFFORD:** Okay. Anyone on the phone? No, okay. All right. Again, welcome. One last reminder, well, not a last reminder. I will probably be reminding you a few times. I have a total of 18 folks that are on the list for comment. To get through the comments, we would like to limit comments to 15 minutes per commenter. I recognize some of you may not have 15 minutes, and that's not a bad thing.

Fifteen minutes is the maximum we can allow to be sure that we get everyone in, and we want to do that. Obviously, this is a very important issue to OSHA, to the industry and to this committee. If you're not on the list, please feel free to sign up in the back. As we go through the order, we will take you this afternoon if we can get you in. If not, I'll talk to OSHA staff, and we'll try to get you tomorrow morning, if we can't get all comments in today.

But I'm hopeful that if we can stay on schedule and limit within the 15 minutes per presenter that we'll be able to accomplish that task today. With that, I'd like to, I think, introduce Jim Maddux. Jim is the Director of the OSHA Directorate of Construction, to kind of give us some background on what OSHA's done. I think for this committee, I'm certainly -- we were provided the briefing materials. There's no doubt, Jim, that OSHA has done their due diligence in trying to get stakeholder feedback on the issue of this particular discussion that we're going to have today.

What we do with that information, of course, is a different matter but we certainly appreciate your diligence

in trying to get the stakeholder input on this issue so with that, welcome.

**MR. MADDUX:** Thanks, Pete. I just wanted to kind of reinforce a few of the things that you brought up. First, I'd like to thank everybody who's worked with our staff as they've done site visits and interviews around the country. I know a lot of committee members have been involved in those, and a lot of the folks in the audience have participated. That information is a key part of our work, and it is the information that we used to develop the draft rule that you're going to be remarking on today.

Our goal is to explain the draft rule to the committee members and then allow the public to present their views to you. After today's presentations, then tomorrow morning, we'll be focused on your recommendations for OSHA as we move forward on this important issue. I want to remind you that this is a public meeting of the committee. It's not a consensus meeting, like we would use for a negotiated rule-making, and it's not an informal public hearing that may occur later in the rule-making process.

This is the very beginning of the process. For

example, there's no cross-examining or that sort of thing that we would see when we get to the public hearing stage. The focus is on this committee, making sure that you get the information that you need to make informed recommendations to the agency.

As Pete said, after Paul and Ed present our thinking on the subject, you're going to hear from 18 different members. Other people may sign up so it's very important that we try to keep this thing on schedule and that people are reasonably brief, and the members also need to be mindful when they're asking clarifying questions.

We certainly want you to ask clarifying questions of people so that you really understand the information that you're getting. I would say some ACCSH members may not be as familiar with the crane industry as others. We all have our different levels of expertise, and stakeholders oftentimes wear many hats, as we've just heard as we went around the room.

So I would really appreciate it if speakers would identify the organizations that they represent or that they're a part of as they're making their remarks so that you understand the context of those remarks. With that,

I'd like to thank each one of you for your help on this issue for taking the time and energy to consider it.

I'd especially like to put a big thank you to our staff that have been working on this issue for the last couple of years. I know that often times it doesn't appear to the public that there's anything going on because we're not making public statements or out making big remarks, but there's been a tremendous amount of work that our staff has done to get us to this point. I'm just really, really thankful for everything that they've done.

Thank you. I think it will be a very interesting day, and I'm looking forward to it.

**MR. STAFFORD:** Thanks, Jim. Any questions or comments from anyone on the committee?

**MR. CANNON:** Kevin Cannon, Employer Rep, AGC, and it's just a procedural question. In regards to recommendations that ACCSH will make based on our review and analysis of the draft rule as well as the public presentations and comments, is OSHA open to making any recommended changes to the draft language as a result of our recommendations?

**MR. MADDUX:** The rulemaking process is an open-

minded process. We make adjustments, depending on the information that we receive as we are going through the process. We will be receiving, hopefully, the recommendations of this committee tomorrow. Then we'll have to go back into our offices and figure out how we want to deal with those recommendations.

Likewise, we are still open to doing public visits or interviews with members of the industry that may have views that they want to share with OSHA. We will also be considering those as we move forward. The way that the process works is that we're pretty free to talk to anybody about anything, up until the moment that we propose a standard.

We will be continuing with that process. I believe that Paul and his staff have already done over 40 site visits and interviews. I don't think we'll do 40 more, but there probably will be more.

**MR. CANNON:** Okay. Thank you.

**MR. STAFFORD:** Any other questions or comments for Jim? Anybody? All right, Jim, thank you.

**MR. MADDUX:** Okay. Thank you.

**MR. STAFFORD:** Lisa, any announcements, comments?

Dean?

**MR. MCKENZIE:** No.

**MR. STAFFORD:** Okay. Paul, you ready?

***PRESENTATION ON OSHA'S PROPOSED RULE TO REVISE THE  
CRANE OPERATOR QUALIFICATION REQUIREMENT IN THE CRANES  
AND DERRICKS IN CONSTRUCTION STANDARDS (29 CFR PART  
1926, SUBPART CC)***

**MR. BOLON:** Good morning, everybody and the committee. I'm Paul Bolon. I'm the Director of the Standards Office and the Director of Construction here at OSHA.

**MR. BAIRD:** I'm Ed Baird. I'm the counsel for Safety Standards in the Solicitor's Office.

**MR. BOLON:** I would also just like to thank -- I was really impressed by the people in the audience that have come from around the country and states and employers and all kinds of safety people. I look forward to hearing what they have to say and also talking with them as we have breaks and things like that.

I have a PowerPoint that we're going to go through that basically is going to review how we got here and then

hit the big points, the summary points of the reg text that I think everybody has had for about a month.

**MR. STAFFORD:** Can everybody see that all right? Can you see that, Christine? Okay.

**MR. BOLON:** I think you have the PowerPoint printed out in your packages, too, if you want to follow that.

This is the outline of what I'm going to go through. Basically, it's a background of how we got here, the commentary stakeholder meetings we had, the three-year extension rule we did, the research that we've done. Then I'll go through just the broad brushstrokes of the standard that you've been looking at.

The Cranes Final Rule was published back in 2010. The key things that we're dealing with today is that it required crane operators to be certified by November of 2014. Until that date, it has an employer duty to ensure the operators were competent, until that would be replaced by certification, also in 2014. That is the employer duty was phased out.

After the Final Rule was published, we were talking to the testing organizations quite a bit, and there

were some public meetings. It was at that point that we begin to hear that a lot of people in the construction industry and also the crane industry had reservations about certification, that it really was enough to ensure that operators would be fully safe.

That certainly got our attention, and I should also mention we were dealing with the problems of having capacity as part of the certification. We had some stakeholder meetings in April of 2013. Generally what we heard at stakeholder meetings was what we had heard informally before, that there were concerns about certification and that capacity, we found out, was a much more complex factor than we were aware of and also that most operators were holding certifications without a capacity factor in it.

At that point, we decided we needed to act quickly. The first thing we did was a rulemaking that extended the employer duty and the certification date by three years, to November 2017. Then we had already begun the research that Jim mentioned, too, before then. Basically what we did is we went out and talked to the industry.

In the crane industry, we did more than 40 site visits or interviews. With this list of different stakeholders: construction employees and labor, crane rental companies, testing organizations, insurers, state governments, trade associations and crane manufacturers.

Basically, we were trying to find out what people were doing to train and qualify their operators, how they regarded certification testing and how the certification and qualification fit into their business model, what part of the construction activity they did at a work site.

So far, we have 26 of these drafted up into reports. We just did another one in the last couple of weeks. As Jim said, we're still talking to everybody. We're still listening to everybody. We'll continue to do some site visits as we go forward. Our standard procedure on the site visits is we visit; we draft them up, and we send them to the stakeholder that we interviewed to check them for accuracy and see if there are any additions they want to make.

The lessons learned from the site visits was, first of all, that no employer permitted an operator just to run a crane if they showed up with a certification card.

Most general contractors require verification that operators are certified. They also observe operators and they intervene if operators are unsafe.

This was true for crane rental companies as well as for general contractors and any contractor that would hire a crane service. We also learned that there is a great deal of similarity between the way crane rental companies and construction employers selected, trained and qualified their crane operators. One of the things that certainly jumped out to me was that all employers who owned their own cranes and had long-term employees took a great deal of care in selecting and training and qualifying their operators. Operators were uniformly assessed on the equipment that they were going to operate.

If they moved onto a different piece of equipment, usually larger, sometimes a different type, they would go through some training and reassessment, again. This is continued lessons learned. The training that we heard from employers consisted of formal classroom. There was always an initial skills evaluation. There was skills training, a great deal of on-the-job experience and learning on all of these things that are crane-related activity, like driving,

set-up, maintenance, rigging, ground conditions, inspections and familiarization with the crane and its controls, operating system and so forth.

This is still lessons learned. There was two basic modes of finding, training and qualifying operators. There's new operators and there were experienced. This slide deals with the new operators. After the training that was mentioned before, the classroom, the skills and everything, they were usually what used to be called oilers but are now, I think, usually called crane assistants.

They were be mentored by experienced operators. They would get practice in various places, either at a construction site or in a storage yard. They'd start on smaller cranes, shorter boom lengths. When they were actually in the crane and beginning to perform work, they would be on simple, low-priority jobs and lifts.

Typically, it took anywhere from one to three years to fully qualify a crane operator, depending on the person, because everybody advances at a different rate, and the equipment used. It also just depends on whether they needed a new operator, in that they would often have a number of assistants in training and when they got a new

crane or a position opened up, then they would be advanced. They were evaluated and assessed all along the way.

The second mode of finding, training, qualifying operators was when an experienced operator was hired, there would be an interview, a test in the cab, maybe in some cases, a written test. They would see if they were certified. They would ask for experience on similar cranes and check references.

In continuing with the experienced operators, the evaluations were always conducted by experienced operators. There was usually one or more designated experts who really was in charge of the training and evaluation of operators. Especially when they had a new experienced operator in their cab, they looked for feedback from performance of jobs.

Then we found employers often tracked incidents in training and since so many of the operators are in the IOE, they would also be aided by training at the IOE. Again, assessment for crane operators was ongoing. It's people stay in touch with their crane operators and how they're performing.

For certification, it was fairly universal that

everyone we talked to valued it. They valued it because it verified basic skills like reading load charts, recognizing basic crane hazards, having knowledge of the regulations and familiarity with basic crane functions. Some of the employers were less enthusiastic about the practical test because it was limited. It wasn't actually lifting loads. It wasn't actual construction work.

Now I'm just going to go through and give an overview summary of the reg texts that you've had for a month or so. Again, the reg texts that we developed really, as Jim mentioned, it grew out of what we learned from the industry. It grew out of our site visits. The text basically includes a training and evaluation responsibility for employers. It requires certification or licensing by state government. That's basically unchanged from what we have now.

There's a new provision for controlling contractor's responsibilities. Generally, all operators must be trained, certified, licensed and evaluated by employers before operating the crane. If there is an operator in training, they can also run a crane, as long as they're under supervision. Again, that's similar to what

we have now in our Final Rule.

Let me get mine. That's pretty small type. In regards to the evaluation by the employer, the operators have to be evaluated on the equipment they're going to operate. To us, this was a way to resolve the issue of capacity for certification. The evaluation consist of looking at skills, operational aids and any software that the crane would have, the size and configuration of the crane, using load charts and the type of hoisting activities.

It also includes having practical knowledge of signaling, set-up, assembly, disassembly, and the evaluation must include observation on the equipment assigned. The proposed language requires documentation to be supplied to the operator and onsite. There's provisions for an annual reevaluation, which I think we characterize as a review and re-evaluation if there's some reason, if there's an accident or near miss or some bad habits, then that would be required.

In regards to certification, there's one significant change. That is that certification still includes the written and practical exam, but certification

would need only be by the type of crane, not by capacity.

The state and local government certification licensing requirements are basically unchanged. As you may know, there is an option in the current standard for an employer to have an audited employer program option. We've left that in, also, basically unchanged.

We've written a paragraph for operator training and that training must consist of formal and practical instruction. It has to cover the same topics as the written certification exam, which I believe is in Appendix C. It has provisions for operators in trainings. They can run cranes on worksites with stipulations; that is they're being monitored, they don't do things beyond their abilities and so forth. Training is also required to be documented.

We wrote in a provision for controlling entities. A contractor who hires the crane service has several options to satisfy what's in the draft text that you have. The first is to check the operator's documentation to ensure that the operator's qualified with respect to the equipment and the job. By far, we think that is the one that almost all of the time that a contractor would avail

themselves of.

If the operator happens to be an operator in training, then they would just have to have the normal constant supervision. There is also an option that if, for some reason, this doesn't work out, they could evaluate the operator themselves. Last slide, why are we considering a provision for controlling contractors? Well, the employers on our site visits told us in their interviews that they were doing this because a crane service, a crane on a site, is not just a service like installing tile in a bathroom.

A crane affects usually a number of employees and sometimes employees of other employers on the site. That is, it brings risk to a number of people, so that was the basis for us having a provision on controlling contractors. Our next steps are we're here, of course, to listen to ACCSH and your recommendations and public comments.

As Jim said, we'll be taking those under consideration. We'll also be thinking about alternatives, as we always do, for our standards. Then, after that, it should be normal steps in rulemaking. We'll draft a preamble. There's a review process with the solicitors and Ed, as well as within OSHA, the Department of OMB and then

publish a proposal are the normal next steps in rulemaking.

**MR. STAFFORD:** Thank you, Paul. Ed, do you have anything to add?

**MR. BAIRD:** No.

**MR. STAFFORD:** No, okay. Good. Thank you. Any questions or comments for Paul? We'll start over here, Jerry and then Kevin. Go ahead, Jerry.

**MR. RIVERA:** Yes. Paul, first of all, thank you very much for the hard work that your team put together to come up with this draft. I think it's commendable and an immense task that you guys took on, but you've done a great job at it.

I was looking on Page No. 9. It says, "Proposed regulatory text, general requirements." It kind of jumped out at me that it said, "Operator in training may run crane while under continuous supervision."

When I see the language supervision on the slide and I go to the text, the proposed draft, it doesn't say continuous supervision. It says "trainer." It uses the reference of trainer instead of supervision. Which one are we considering in the final draft? The supervision as being the one who's going to be in the line of sight of the

operator in training or a trainer to the in the line of sight of the operator?

I can tell you the section now if you need to know the section. This is actually the slide.

**MR. BOLON:** Well, the pertinent words that we're using right now are the ones that are in your draft text. I mean monitoring supervision, I think the word supervision's in the text.

**MR. RIVERA:** Okay. I just wanted to make clear because on, let me bring it up here, it says the --

**MR. BOLON:** Oh, where it says to be in the line of sight?

**MR. RIVERA:** Yes, the actual term used is trainer, not --

**MR. BOLON:** Supervisor?

**MR. RIVERA:** -- not supervision. I think that's pivotal because when you look at -- actually, when I think about a trainer, I think of somebody who was in the process of teaching somebody something. When you're thinking of supervision, they have a role in evaluating how that operator is performing, but I just captured that, the difference between the slides and the proposed regulatory

text so just a minor observation there.

**MR. BOLON:** But you're saying that where we talked about them being continuously monitored by a trainer --

**MR. RIVERA:** Yes.

**MR. BOLON:** -- you think that would be more appropriately a "supervisor?"

**MR. RIVERA:** Yes.

**MR. BOLON:** I see.

**MR. RIVERA:** I actually like the language on the slide more than what's actually on the draft. But, again, I noticed a difference between the two terms in what was being proposed in the draft and what's on the actual slide.

**MR. STAFFORD:** All right. Thanks, Jerry. What Jerry is suggesting then to change the word in the proposed text from trainer to supervisor, right? Is that what you're asking to consider?

**MR. RIVERA:** I'll make a note of that for when we get into the discussion, but there's a difference between both right now so as we're looking at them.

**MR. STAFFORD:** No, I understand, but that's your suggestion. Okay. Thank you. Kevin?

**MR. CANNON:** Kevin Cannon, Employer Rep, AGC.

Again, as Jerry said, thanks, Paul for all of the work on this. I just have a couple of questions for clarification purposes.

First, in the training, you outlined several provisions and criteria that must be met for the trainers, but what, I guess, I'm trying to understand is how do you treat the new operator versus the experienced operator? It just seems like with the proposed draft, they all are being treated the same, as operators in training.

**MR. BOLON:** That wasn't our intent, really. Our intent was not that if you're hiring an experienced operator that you go back and put them through your entire training regimen and evaluation. Typically, they will have been qualified somewhere else by another employer. If that's the case, they'll be certified. They will have been qualified. You will know that they would have received training, although from someone else.

You're going to evaluate their capabilities. They're going to be in the cab. There's going to be conversations. One of our site visits was to a major company, and their mode was they had crane experts. They were a major builder, and their crane experts would spend

anywhere from up to two days with one individual evaluating them, making sure that they had the knowledge, the skills the background, there might be some tests.

It was one-day to two-days. That was the way they evaluated. Others I don't think -- then once they were evaluated qualified, they were good to go. It was usually not that intense for others that hired experienced operators. It was like that, but they would be in the cab. There would be conversations. They would check the references. It took some time. They would usually be observed. They would usually also not start on the most difficult jobs they had.

That is, even though they were experienced, they usually brought them in slowly. But our intent was not that experienced operators need to go through the entire gamete of training and evaluation again. They'll be evaluated, but not like when they're new.

**MR. CANNON:** Okay. I just couldn't differentiate between the two based on the readings. Another question regarding Paragraph J with controlling entity responsibilities. In your PowerPoint, you suggest that most verified certification or they interviewed and

observed. As the language is written and reads in Paragraph J, it seems as though it goes a little further than just a simple interview and verification process and more along the lines of the general contractor or controlling entity somewhat validating that individual's experience and skill level without having any knowledge of what their employer has put them through.

**MR. BOLON:** Well, what we described in the presentation was what employers told us and what that they did. What is actually in the standard is really very simple. A controlling contractor only has to look at the documentation, which is Appendix D, which really I think it's going to be a one-pager with information on back and front, stuck probably in a lamination.

All they have to do is look at that and see that they were qualified by their employer, that there's a signature and that they have certification and that they've been qualified on that particular equipment they're going to operate and so forth. All they have to do is check that documentation. A controlling contractor doesn't have to do more than that.

**MR. CANNON:** I understand, but it just seems like

by them checking off on the Appendix D, it's saying, "We agree with how your employer has evaluated you."

**MR. BOLON:** No, they don't have to evaluate anything. They just have to check the documentation. At least that's what we tried to write because we've heard often that a general or others won't have expertise themselves so that they're relying on the expertise of a company and the operator. The provision here just asks them to check the documentation. They don't have to interview them. They don't have to do an evaluation themselves.

**MR. STAFFORD:** Any questions? So on the evaluation, Paul, how would that work specifically? I mean what would an employer have to document to OSHA that they have done their due diligence in evaluating a trainee?

**MR. BOLON:** Really, I think the proof there is in providing the documentation in Appendix D. It asks for the type of equipment. It has some check-offs for some of the on-the-job-training. It asks for the type of hoisting operations they've been trained in or done. That's it. We're really relying on the crane experts, the industry itself, to evaluate and train and assure themselves that

the operators are competent and safe.

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

Yes, Jerry, go ahead.

**MR. RIVERA:** Just one brief one. During the research that you conducted, you mentioned 40 companies. Were any of those, besides subcontractors, like a user? What I'm actually referring to is often times you have a GC who brings a tower crane onsite, but the electricians, the mechanicals, the pipe fitters, they all use it.

Did you consider some input from those type of users during the research? Because I think that's important in recognizing what role those individuals will play moving forward, especially what Kevin brought to perspective, the controlling entity, at what point does that electrical contractor when he's having a generator lifted, have some controlling obligations on that end?

**MR. BOLON:** No, actually, we didn't. I mean we saw a huge variation. We saw general contractors who were there with a tower crane, and they hire all the subs. We saw employers who brought in rental companies. It was all their employees and subs. But just to your point, in terms of other trades, plumbers, electricians working around

cranes, no we didn't actually talk to them.

**MR. RIVERA:** I think it's important moving forward to consider one of those. If we have to identify a location close by for you to see the role that we typically play as subcontractors, it's important to know because that's 90 percent of the people who are probably using it onsite. While they go through the vetting process with the GC initially, the folks who are using it on the ground might be that subcontractor that's having a generator picked up, material day-in and day-out. It'd be interesting to see their perspective moving forward.

**MR. BOLON:** Yeah. No, we would like to talk to some contractors working around the crane. We certainly heard from a lot of employers that I think everyone on the construction site knows the capability of the crane operator. If you're a laborer, electrician, everybody knows, they know if they're good and they get a lot of feedback from the other contractors on site.

**MR. STAFFORD:** Thank you. Cindy?

**MS. DEPRATER:** Cindy DePrater, Employer Rep. Paul, first of all, thank you for the work that you all have done on this. It's close to being a really good

standard here. On the research, I just have a question in terms of what was shown on Page 6, the training of new operators.

I'm curious if your research looked into the trainers themselves and when they talk about mentoring by experienced operators, practice in cabs at job yards, indicates that they're doing on-the-job-training. So the trainers themselves, what makes them qualified? How do they ultimately decide, "This operator is good to go; we're going to turn them loose in the field"? How do you do that?

**MR. BOLON:** Yeah. We had a lot of conversations about that. I don't want to say construction people are not the most verbal people in the world, but you would ask them, "Well, how do you know they're good enough?" They say, "Well, you can just tell after you watch them after about 90 seconds, you can tell whether they're, you know, in the ballpark." So we just didn't think we could ever capture that in a regulation.

**MS. DEPRATER:** Okay.

**MR. BOLON:** Maybe somebody else can. Maybe they can make it objective. But then in terms of your first

part of your question, how do companies assure themselves that they're safe; that they're good, they're competent, I don't really have a good answer to that. Again, we saw such a range of situations. We saw a company that started out as a construction company and evolved into a crane company because that was really what they were good at, was finding and training and qualifying individuals.

We saw crane companies that owned their own cranes and were very careful about who they let in the cab and the extensive training and qualifications. We saw a lot of things. Everyone always had -- we talked to some owner-operators, but most were multiple crane companies and they had one or two people who they had been promoted and had the expertise and judgment to do the evaluation and training. I don't know how you would -- I'm sure there are people in the audience that know how you would look between companies, but we weren't going to get very far there.

**MS. DEPRATER:** Okay.

**MR. STAFFORD:** That's a fair enough answer. **MR. HAWKINS?**

**MR. HAWKINS:** I was just thinking about what Jerry was saying. Steve Hawkins, State Plan Representative.

When that happens, an electrician calls for a generator to be brought up on the fourth floor, it's common that that person would also be the signaler.

**MR. RIVERA:** Could be. Yeah, could act as the signal person.

**MR. HAWKINS:** Yeah.

**MR. RIVERA:** In that particular role, when they're doing the lifts for material, typically, the company will provide a rigger and say, "We'll rig the pallet; you take it up." But special moves, they're require us to be the signal person.

**MR. HAWKINS:** Yeah. Of course, typically with us, when everything goes fine, there's nothing. And then but when something goes wrong, somebody loses a load, then who are we looking at? Are we looking at the crane operator, the signal person --

**MR. BOLON:** The rigger.

**MR. HAWKINS:** -- responsibility. That's an interesting interface that doesn't look like it's --

**MR. RIVERA:** Now, that's not always the case. A generator's an expensive piece of equipment. Typically, what happens is you do buy a package and say, "We're going

to hire the riggers and a special piece of equipment to make the lift." Now, there are circumstances where the generator might be smaller in nature, where we'll say, "Hey, this is a pick that's within boundaries of the tower crane."

**MR. HAWKINS:** Oh, yeah. That's what I'm talking about. I'm talking about the routine things.

**MR. RIVERA:** That's probably the more dangerous ones, when you have the bigger, heavier loads, you tend to focus in and say, "Okay. We need to think about this one." But sometimes, it's under estimated when you do the smaller loads.

**MR. HAWKINS:** Back to his question, though, actually, we understand the controlling contractor to be the general contractor, Paul. Then, of course, he would check your credentials and say, "Okay. We've brought a crane rental company onsite. They've set up a crane." Let's don't say it's a tower crane. Let's say it's a regular conventional crane. We have the crane onsite. I've checked his qualifications, and then the electrician on the job site, the electrical contractor --

**MR. RIVERA:** The plumber.

**MR. HAWKINS:** The who?

**MR. RIVERA:** The plumber. [Laughter]

**MR. HAWKINS:** The plumber. We're going to make somebody mad. The plumber asks for a lift to be brought up to the third floor. I think part of Jerry's question, and mine too, is would there be any assumption of the role of a general contractor. In other words, now is the plumber going to have to check that documentation to see that this crane operator is trained?

**MR. BOLON:** No, the plumber wouldn't.

**MR. HAWKINS:** He doesn't assume the role of the general contractor or the controlling contractor because he doesn't have overall control of the site as defined in the multiemployer worksite policy.

**MR. RIVERA:** See, and this is even more complex than what we're bringing. Typically when we have those lifts done, the crane is being used by everybody on the site.

Now, there's an indemnification that everybody signs so even though we were not part of the selection process of that crane operator, if something happens, the crane operator or it could be the signal person or anybody

fails, we are now -- again, it might not be an OSHA deal, but we're now caught in the mix of having to represent in a legal battle that crane operating company.

So again, it's we're not part of the selection process. We are required to use it or we can carry it up the stairs, 20-30 floors up the stairs. The tradeoff is pretty simple. You end up being hijacked to sign something that you probably might not have control of.

**MR. STAFFORD:** So I understand you, you are suggesting that you are a part of the selection process?

[Laughter]

**MR. RIVERA:** Let me think about that.

**MR. STAFFORD:** We can add that.

[Laughter]

**MR. RIVERA:** When we do special lifts, we're definitely part of that selection process. But when we bring a tower crane that's used by everybody in there on the jobsite, it's typically available to everyone.

But we might be held accountable, based on what's being written here today, for something that we don't have control of. Should we be part of it? If we're part of the process and we're expected to be, maybe, there might be

circumstances.

**MR. BOLON:** I think if you're a sub on the site, I don't think you have responsibility under this standard to OSHA.

**MR. STAFFORD:** Okay. That's the response I wanted.

**MR. RIVERA:** Just wanted to make sure.

**MR. STAFFORD:** No, I appreciate that. We have Kevin and then Sarah. Kevin?

**MR. CANNON:** Kevin Cannon, Employer Rep, AGC. I just have a question, Paul, on Paragraph B, evaluation, but specifically four and five. You said you did 40 or so site visits. How many of these folks were actually doing annual reevaluations? The second part is was it consistent amongst those you've engaged with that they did reevaluations when the operator was not in the seat at least six months?

Because I've not heard, from my discussions with AGC members and others, that this is a common practice. Then even going a little further, some folks have asked, "What out there suggests that an operator's skills diminish within a six-month timeframe or year to suggest that

reevaluation is needed?"

**MR. BOLON:** Well, the first part of your question, I don't remember all of the site visits, but it was -- I don't know if it was 100 percent, but almost everyone did an annual review. Our thinking is that's what the annual reevaluation is. In fact, we use the word review. We don't expect you to go out -- I mean crane operators are monitored. They're observed by everyone.

**MR. CANNON:** I agree.

**MR. BOLON:** Good companies, they're up on how their people are performing. The annual reevaluation, it's really just review. Most people get a review every year salary is considered, and other things. And it's just, it's part of that process. Let's see, the other part of your question. Oh, the six months. Yeah, I've had some comments in the last month, people calling me up and saying, "It's not that unusual for crane operators to be idle for six months."

We did hear from some of our site visits that when somebody was out of a crane for a while, they'd get them back in the cab and work with them for a while to make sure they still had their skills and everything. The six months

is the kind of thing we'll be considering alternatives on.

**MR. CANNON:** So --

**MR. STAFFORD:** So - go ahead, I'm sorry Kevin.

**MR. CANNON:** Just for clarification on (b)(4), if you look at Appendix D, it says that I have reevaluated this individual in accordance with Section 4. Section 4 ticks off a lot of things, signaling, configuration and what not. It sounds or reads to me that they're to go through that whole Appendix D exercise again for the annual reevaluation or review.

I mean if you look at Appendix D on the backside, I have reevaluated, the operator, on equipment, A, B, C, D and have determined that he or she is competent in the areas specified in Item (4). If you look at Item (4), it's signaling, set-up, assembly, disassembly, driving, inspection, maintenance, operational age, shut down. So it just sounds like you have to go through that whole process again.

**MR. BOLON:** I would say that's not our intent. Again, the people we spoke to, they're up-to-date with how their people are performing. I think people are going to have Appendix D on their computer. They're going to update

the date and sign it. They don't need to go through and check their signaling. It's not meant to do that. If our words do that, then we need to amend them or we'll address that in the preamble. But it's a review. It's not a retraining.

**MR. CANNON:** Okay.

**MR. STAFFORD:** And I think we'll need to do that, Paul, clearly. I mean if there's some conclusion and it's not your intent, then we need to be sure that we're clear on what OSHA's intent is and we'll be glad to work with you on that.

Sarah?

**MS. COYNE:** Sarah Coyne, Employee Rep., Painters Union. I just had kind of a follow-up to Cindy's question as it pertained to the trainer qualification. As we work with third party certification entities, so to speak, the written portion of the certification, in my opinion, can really be proctored by anyone.

But as you state in the section, excuse me --

**MR. BOLON:** I think it's Paragraph (f), operator training.

**MS. COYNE:** The certification by an accredited

crane operating testing organization.

**MR. BOLON:** Oh, okay.

**MS. COYNE:** Section (c), Part (3), it says, "Under this section, a testing entity is permitted to provide the training as well as testing services, as long as -- " and so forth and so forth. My question to you and to the committee is do you think that it would be in our best interest to have those who are providing the hands-on testing and evaluations hold the same certification in which they're testing on? So you have a qualified individual who is holding the certification in which they're testing on.

**MS. DEPRATER:** Absolutely.

**MS. COYNE:** Again, I mean a written exam is simple. Anybody can really proctor that. It's just rules and processes and regulations --

**MR. BOLON:** Yeah, I believe.

**MS. COYNE:** -- but as it pertains to the certification and evaluation, the individual providing such service, should that person hold that certification themselves?

**MR. STAFFORD:** I guess that's a question directed

at you, Paul.

**MR. BOLON:** Well, just to be clear, first of all, I believe the current standard and then this language, it creates a wall between the training part and the testing part. They're supposed to be separate and distinct.

**MS. COYNE:** Should the person providing the training as well hold the same certification in which they're training?

**MR. BOLON:** Good question. We'll think about that. We'll take that under advisement.

**MS. COYNE:** I mean it's two-fold.

**MR. STAFFORD:** Maybe someone who's going to be commenting will address that issue, hopefully.

Yes, Steve?

**MR. HAWKINS:** I thought in the original crane standard there was specific requirements that the third party testing entity had to meet, that the test had to be developed according to a particular standard. I thought that was --

**MR. MCKENZIE:** Accredited by --

**MR. HAWKINS:** -- I don't see it here, but yeah. I thought it was pretty extensive.

**MR. MCKENZIE:** Right.

**MR. HAWKINS:** So What Sarah's asking for may already be covered in a different way.

**MR. BOLON:** I believe the same language is here. It does have to have its methods and tests and so forth approved by an accredited nationally recognized accrediting agency.

**MS. COYNE:** It's in Appendix C, yeah.

**MR. BOLON:** Yeah, and it's also in Appendix.

**MR. STAFFORD:** Now that we resolved that, Sarah, any other questions or comments?

Yeah. Tish, please?

**MS. DAVIS:** Yeah, it seems like the language on the controlling entity is that they have to check the evaluation and certification and, I assume, licensing. Then it references the Appendix D, but the Appendix D document only speaks to the issue of the evaluation, not necessarily certification or licensing. That just seems to need to be cleared up but maybe we can swap.

**MR. BOLON:** Well, in one of our drafts, I guess we had certification on the documentation, but it's not on this Appendix D now. That's something we need to think

about again.

**MS. DAVIS:** I mean shouldn't the controlling entity, if they're checking, check into the state license certification? I don't know. I mean that's what I'll put on the table. If this was intentional not to include it, that's what --[inaudible].

**MR. STAFFORD:** Right. Jeremy and then Chuck?

**MR. BETHANCOURT:** Paul, I have a question. In the homebuilding industry, a lot of times, they use cranes, mobile cranes quite often and they're very quick in turnaround. Let's say that I'm a plumber, which would be hard to believe, right? Okay. Let's say I'm a framing contractor, and so I'm going to hire a crane.

I would become the controlling contractor for that particular portion. Now let's say I'm not the framing contractor, what is my responsibility as the homebuilder? Am I then responsible to have to come in and then also verify that the crane company that the framing contractor is using is also certified and has the correct credentials? Are there two controlling contractors for the purposes of the way the standard is being set up?

**MR. BOLON:** No, our draft reg text really just

refers to the controlling contractor as the contractor that brought in the crane that hired the crane. I mean I just -

-

**MR. BETHANCOURT:** So I as the homebuilder am not going to be responsible, as the controlling contractor, correct? Okay.

**MR. BOLON:** Not responsible.

**MR. BETHANCOURT:** But the framer is,

**MR. CANNON:** That's the way --

**MR. BOLON:** Not under the language in the draft proposal. I was just talking to someone two weeks ago, we did another site visit. They were in exactly that position. They do the framing. They actually provide the materials and they actually hire a subcontractor for labor to do the framing labor.

The subcontractor hires the crane. So they're a general contractor in that situation, but they do what our talk says. They'll have a conversation often when the crane arrives. They'll have a conversation with the operator, and they will observe them. They'll make sure they can do set up right and they know what they're doing.

That general, they've sent cranes off the site,

but to your question, this draft proposed language is only concerned with the contractor that hires the crane services.

**MR. BETHANCOURT:** Is that spelled out then, clearly that that's what we're saying the controlling contractor is for purposes of the standard or will that be in a memorandum, potentially?

**MR. BOLON:** That's something we would address in the preamble, to make that more clear.

**MR. BETHANCOURT:** The preamble. Thank you.

**MR. STAFFORD:** Chuck?

**MR. STRIBLING:** Chuck Stribling, State Representative. I had a question on the first page, on (a) (3). It says, "Operator certification/licensing."

**MR. BOLON:** Yes.

**MR. STRIBLING:** I really don't -- as a state plan, I don't know if my colleague from the lesser state of Tennessee would agree, but I really don't like that term licensing because I know we're not going to issue any licenses for crane operators, and there is a requirement for certification. We're not going to do the certification.

I understand there are people who do licensing. You see where I'm going with this? It's just sort of -- be careful with the term licensing, I would suggest.

**MR. BOLON:** Okay. There are a fair number of states that license crane operators.

**MR. STRIBLING:** Yes.

**MR. BOLON:** There are a couple of local governments that really their license is really a certification, and they're different.

**MR. STRIBLING:** Yeah, but I mean I think it's easy for some in the regulating community to get the impression that OSHA is doing a licensing.

**MR. BOLON:** Oh, that OSHA is? If the licensing is equivalent to certification, then that's what allows them to do a certification that is consistent with the standard. If the licensing is just a business license, it's not.

**MR. STAFFORD:** Any other? Yeah Steve, please?

**MR. HAWKINS:** Steve Hawkins, State Planning Representative. Back to Jeremy's question, let me make sure I understand this correctly. Jeremy is a homebuilder and he is generally the general contractor. He generally would be assumed to be the controlling entity on that site

under the multiemployer worksite policy, right? He's the GC building a large house.

**MR. BOLON:** Yeah, you can have a general contractor who contracts out major portions of the building to another contractor who then hires subs.

**MR. HAWKINS:** And they become -- that second tier really becomes the controlling entity in this definition?

**MR. BOLON:** I think in this definition, the control entity is the one that hires the crane; that hires the crane rental service and brings that onsite.

**MR. HAWKINS:** Okay. You okay with that? Okay.  
Thank you.

**MR. STAFFORD:** Chuck, please?

**MR. STRIBLING:** Chuck Stribling. I forgot to mention, on Page 6, earlier Jerry brought up the point about trainer versus supervisor, which is pretty straightforward. But when you get to Page 7 and you're talking about controlling entities, day two, an operator in training will be continuously monitored by a trainer. Okay. If you change that to supervisor, whose supervisor? I think that needs to be clear.

**MR. STAFFORD:** Go ahead, Steve.

**MR. HAWKINS:** I don't think that actually needs to be changed. I disagree with Kevin because the definition of a trainer is then given: "Each trainer must be an employee of the operator. In trainings, employer have knowledge training and experience necessary to direct the operator in training on the equipment used and perform not task that diminishes their ability to perform that duty." We can call them whatever we want to.

**MR. STRIBLING:** Right.

**MR. HAWKINS:** But no matter who they are, they still need to meet this definition.

**MR. STRIBLING:** Right. So I would presume you would change that word trainer to supervisor if you went that route. So that supervisor would have to meet the same criteria.

**MR. HAWKINS:** Right. So it doesn't much matter what you call that person.

**MR. STRIBLING:** Well, when you get to the controlling entity provision, whose supervisor? Right now, it says trainer. I'm just saying if OSHA looks at changing it, I think it could get cloudy as to whose supervisor, if it's not specified.

**MR. BOLON:** That would be the crane company's, not the controlling contractor.

**MR. STRIBLING:** Thank you.

**MR. HAWKINS:** Because the trainer is defined as "a person who works for the crane company, has knowledge and ability to do the training and doesn't have any other duties assigned." I mean I heard what Kevin said. I don't care which one we call it, but this definition is very important.

**MR. STAFFORD:** Right.

**MR. HAWKINS:** You can't have a trainer and then just say, "Okay. Laurie, you go out and supervise him today." And Laurie's like, "Well, okay." But she's not a person who's qualified and meets these definitions.

**MR. STAFFORD:** Right. Point well taken. Any other questions or comments for Paul? Anyone? Last chance. No.

Paul, again, thank you very much. We appreciate your time.

**MR. BOLON:** Thank you. I would just like to say to the committee and also to the audience, reiterate what Jim said originally, we are still talking to people. If

you would like to talk with us, we'd very much like to talk with you and get more input on what people are doing.

**MR. CANNON:** Paul, I'm sorry, real quick. If we have more questions based on presentations and further review, is there a chance for us to have this back-and-forth again tomorrow?

**MR. BOLON:** Garvin and I are going to be up here again tomorrow, Garvin Branch.

**MR. CANNON:** Okay.

**MR. STAFFORD:** Yeah, you've got to stay with us until the end.

[Laughter]

**MR. BOLON:** Yes. We're here. We haven't proposed anything and we can talk to anybody any time, not a committee, not a formal committee, but any individual group and so forth.

**MR. STAFFORD:** Thank you. Yes, Damon, what are you saying to me?

**MR. BONNEAU:** Mr. Chair can you ask when folks go on the break, if they could sign if they have not signed in. To please sign in.

**MR. STAFFORD:** Did anyone not hear what Damon just

said? Please sign in if you have not. We're going to take a break. What time is it? 10:05? We'll reconvene at 10:20. Thank you.

**[Recess]**

**MR. STAFFORD:** All right. Let's go ahead and reconvene, please. We're going to start the process of going through the list of public comments, but first, Ed, I understand you have a clarification for us with respect to the responsibility in our multiemployer site, which sounds like a very important clarification so please.

**MR. BAIRD:** Thanks, Pete. One of the real values of this process is you get people thinking about texts that you write up, and that raises questions. Through that process, you can really clarify and be more precise about what you mean.

There was a number of questions that revolved around the question of the controlling contractor. In particular, the scenario of a homebuilder, a GC that hires a framing contractor, which in turn, hires a crane company. The question was, "What does the standard require in that situation?"

Paul said what OSHA's intent here is correctly,

which is that the framing contractor in that situation would be what we're calling the controlling entity here. That is they would have the duty to check the paperwork or do their own evaluation if they wanted to.

He also said that the general contractor wouldn't be a controlling entity, and that's right for the purposes of the language that we're talking about here, but he wasn't talking about sort of other duties that the ACCSH Act might impose for controlling contractors.

All we're talking about right here is the proposal that we're talking about here. Is that what you understand, Dean?

**MR. MCKENZIE:** Yes. That --

**MR. STAFFORD:** Yes. I mean that's the way I understood it. Is there any questions or comments? Are we clear on OSHA's intent here?

**MR. BETHANCOURT:** No, I think that makes my question clearer. That it's not removing any of the other control. Jeremy Bethancourt. It's not removing any of the other responsibilities of the GC who hired -- the framer who hired the crane. It's just on verifying the training of --

**MR. STAFFORD:** The evaluation review.

**MR. MCKENZIE:** Dean McKenzie. Depending on the facts specific to that jobsite, that controlling entity can still be responsible under this operator qualification. But it's very fact specific. It is not our design to get to them, but we cannot say carte blanche, he's off-the-hook; he's not involved.

**MR. HAWKINS:** Because he's the controlling contractor.

**MR. MCKENZIE:** He is the controlling entity of that jobsite. So we don't want to imply that there's an "out" in crane operator certification here for that employer. It depends on the specific facts of that project.

**MR. STAFFORD:** Okay. Thanks, Dean.

Yes, Steve, please?

**MR. HAWKINS:** Steve Hawkins, State Plan Rep. I think we understand the question now pretty well. I'm not sure that exactly how this is worded really addresses well what we're speaking of.

**MR. STAFFORD:** I agree, Steve.

**MR. HAWKINS:** I think our intention or OSHA's

intention here is that we have a general contractor, and let's say he's somewhat hands-on. He's on the site, he's managing the project, and the HVAC company who's going to set a unit on the roof decides -- let's say they kind of looked at it and they thought they could get it up there without a crane, but as it turns out, we think it's most efficient to use a crane.

The general contractor's sitting in his office trailer. The HVAC contractor calls a crane service and says, "I need a mobile crane for two hours to set two units on this hotel." They say, "That's fine. We'll have somebody out there at 8:00." Here they come, the flatbed's sitting here with the two units. Are we saying that the GC checks that crane operator certification, the laminated thing that we said? Or are we saying that the HVAC contractor who hired this crane company, ABC Crane Company, to come and lift these two units, that they check it?

I think the answer we were given is the HVAC contractor who hired them checked it.

**MR. CANNON:** At that point.

**MR. HAWKINS:** But the HVAC guy actually went over to the office trailer and says, "Hey, bud. Is it okay with

you if I call this crane company? We think it's best to use a crane to get these units on the roof." He says, "Fine." As soon as he says fine, it looks like he's the controlling contractor who authorized the equipment to be used on the job.

[Interposing Speech]

**MR. HAWKINS:** Reading this, I know what the answer we get, but if you're just an OES compliance officer in the field and you say, "Well, it says the controlling entity who authorized this equipment, who authorized this equipment?" Jerry says, "Well, I hired them, but I checked with Jeremy and Jeremy said it was fine to bring them, and he's the GC." It starts to look like Jerry is the person.

If we don't want it to be, it should say, "The person who hires this company to come onsite." Or maybe they both, but I don't think that's exactly clear here. It doesn't seem clear to me.

**MR. STAFFORD:** Point well taken. Go ahead, Ed.

**MR. BAIRD:** Well, I just want to say I think that's a great point, and it's something that we can develop more as we go through the comments. We definitely would want more input from the stakeholders on that point.

**MR. STAFFORD:** Right. And with respect to the multiemployer plan, I mean at what role -- even if we agree that it's the HVAC person that's the controlling contractor for that particular crane and lift, what role does the GC controlling contractor have in communicating with the other subs on that job that's happening?

**MR. BAIRD:** That's right. That's the other part of the rationale for the --

**MR. STAFFORD:** That's the other part of the equation.

**MR. BAIRD:** Right. That's right.

**MR. STAFFORD:** Right. All right. Thank you.

**MR. HAWKINS:** Personally, I think they should both look at the certificate. The HVAC company as well as Jeremy sitting in the job trailer, they should both make sure that they are. That's what I think.

**MR. STAFFORD:** Okay. All right. Then we can come up with some recommended language to that effect. Any more questions or comments for Ed?

Ed, thank you. We appreciate that.

Okay. I have 18 folks that have signed up for public comment. I think that the rules of engagement was

that we would limit the 18 folks to a maximum of 15 minutes. Hold on.

**DR. BRANCHE:** A maximum of 15 minutes each.

**MR. STAFFORD:** Each, right. Fifteen minutes, all 18 of you got 15 minutes. You better hurry up. No, I'm sorry. Fifteen minute each. I understand that there is a few of you that may not need that amount of time.

Again, if anyone else that's not on my list that would like to make public comment, please sign up in the back and we'll take you in order to get through the list. Yes, sir?

**MR. EGGENBERGER:** Those of us that submitted a request to speak online two or three weeks ago, do we have to sign up?

**MR. STAFFORD:** No, you're good. I have your list. If there's any discrepancy, if I call someone from an organization that is not here, but another representative from that organization is taking their place, that's fine. We can be flexible with that. We just want to be sure that everyone that makes public comment has an opportunity to do so.

So with that -- also, I don't think that this is

the case, although Damon mentioned our last speaker today, Kevin O'Shea, which is now going to be represented by Laurie Webber, does have a PowerPoint. If anyone making public comment has a handout or any PowerPoint slides that you're going to use, we ask that you let me know, and I'll have OSHA staff make the appropriate amount of copies.

These will all be in the docket, as you know, in public record as a part of this meeting. With that, we're going to go through the list. We're going to about 12:00 noon. We'll take a one-hour lunch break, and we'll come back and go through the list until we get through the list of folks that would like to address this committee.

Yes, I'm sorry. Dean?

**MR. MCKENZIE:** Lisa has some exhibits.

**MR. STAFFORD:** Oh, Lisa has -- okay. I'm sorry, Lisa.

**MS. WILSON:** Thank you, Mr. Chairman. I'd just like to briefly designate the exhibits from the OSHA presentation. I'd like to designate the presentation itself as Exhibit 1. The overview of the draft text as Exhibit 2. The description of OSHA's research as Exhibit 3, and the draft proposed text as Exhibit 4. Thank you.

## ***PUBLIC COMMENTS***

**MR. STAFFORD:** Thank you, Lisa. Okay. The first person on the list is Chuck Cooke. I have him on my sign-in sheet as a private citizen. Chuck, I know you're in the room. I believe you are. There you are.

**MR. COOKE:** Good morning.

**MR. STAFFORD:** Good morning. Welcome.

**MR. COOKE:** Thank you. Chuck Cooke, I'm with W. O. Grubb Crane Rental just south of here a little ways, a little small crane company that's got a big interest in the Mid-Atlantic region. Listening to the dialogue of the committee this morning. Good morning, committee, by the way, ladies and gentleman. A lot of the questions that I had is already up for discussion in a variety of ways.

Licensing, I'd like to start out with A, and I'm going to be as short as I can this morning. Trained, certified and licensed. I know you all talked about this, I'm not going to beat that. That's a question that's come about from state plan states to states that require a license versus certification and certification.

At the onset of this, it was the thought process of qualifying operators. How do we qualify operators? It's up to the employer to qualify the operators for certain cranes, and this thing's grown a life of its own and gotten way far more complex than what it really needs to be, in my mind. It's simplistic that I've got a 550 ton crane, I'm not going to just put anybody in it.

We're going to fully qualify them. That's up to us. That is up to us as an employer, being the conscientious and professional company that we are, to make sure that they are dully qualified, even to the smallest boom truck, a little carry deck crane. Like I said, this has grown a life all its own.

Now, if you flip over to number four on the annual reevaluation, in crane rental, it's always ongoing. These guys are in these cranes more so than they are their own private vehicles. They're operating cranes day-in and day-out. They're being evaluated by multitudes of people on jobsites, by the employer, just a variety of people.

I'd like to see that tweaked, changed or deleted on the annual reevaluation. Then the operator's not operating equipment within six months. All right. We're a

union contractor. We have a hiring hall. I go into a chemical facility this morning. It turns out I need a night shift tonight. I call the hall, "I need an operator coming in." All right. He's going to come in 6:00, start a 7:00 shift.

How am I going to abide by Appendix D? That's going to tie into that. Appendix D, I would really like to see a non-mandatory, would be a real good item on that because we've already got enough checks and balances in as to how we evaluate them. We called the hall. We pretty much know who we're getting out of the hall to put in these cranes. They've been with us before.

Within six months I've got -- let me give you a simple breakdown. I've got over 150 operating engineers on the payroll right now. We've got over 214 cranes to date in our fleet. We have probably 100 operating engineers can run any crane in our fleet from day to day to day. Now that doesn't necessarily mean they're going to run it every six months, every type that we've got.

I went through this when we started all of this. We've got seven different manufacturers, so many different cranes. Crawler cranes, all terrain cranes, truck cranes,

rough terrain cranes. It's going to be a logistical nightmare to keep up with this one every six months.

That comes back to employer qualification that the people are qualified for their particular piece of equipment. Now, if this does go about, if we can get this non-mandatory, but if it stays as a mandatory document on Appendix D, will other documents say we're an MSHA regulated company as well?

We also have MSHA documents, how we task train employees. If this is going to stay mandatory, which I hope it doesn't, can we have some kind of language that recognizes other government entities' documentation to support what we're doing so I don't have a foot tall stack of papers on one operator to comply with two government entities?

The next, like I said, it goes back to Appendix D. I'd like to see that as a non-mandatory document. If the general contractor or somebody wants to see it, it can be provided. Not necessarily carried on the individual's person; produced within 24 hours. I mean that's a reasonable request right there. That sums up basically what I've got on this.

Now, I would like to mention that I would like you to give deep consideration to what the operating engineers had to say as well as the AGC. I just got AGC's document last night and read it. It's well worded. I like what it does. I think it'll fit our industry as a whole, but I'd like to get it on record that we started out simplistically to qualify the operators, employers' responsibility to do that and it's just grown a life of its own.

**MR. STAFFORD:** All right. Thank you, Chuck. Any questions? Yes, Christine?

**DR. BRANCHE:** A point of clarification, Mr. Cooke, thank you. I'm Christine Branche from NIOSH, Federal Rep. If I understand you, you're saying for Evaluation (b), Item (4), annual reevaluation, if I heard you correctly, you said that because the operator's performance is evaluated on so many occasions throughout a job --

**MR. COOKE:** It's an ongoing process.

**DR. BRANCHE:** It's an ongoing process, but you think the annual reevaluation is superfluous?

**MR. COOKE:** Exactly.

**DR. BRANCHE:** Okay. Thank you.

**MR. STAFFORD:** Annual evaluation is what,

Christine?

**DR. BRANCHE:** Superfluous. Unnecessary.

**MR. STAFFORD:** Superfluous. Okay, I'm sorry.

**MR. COOKE:** I'll look that word up in a minute.

[Laughter]

I'll Google it.

**DR. BRANCHE:** You said you wanted to amend it. You said you wanted it tweaked, amended or deleted. I think you're saying because it's unnecessary?

**MR. COOKE:** Exactly.

**DR. BRANCHE:** Okay. Thank you.

**MR. STAFFORD:** All right. Any other questions or comments for Chuck?

Steve, please, go ahead?

**MR. HAWKINS:** Just on that point, in your case, it's superfluous, but for another crane operator company who doesn't do that ongoing evaluation, it wouldn't be. Would you agree with that? The annual evaluation?

**MR. COOKE:** Yes and no. There's not too many crane companies out there that that operator is not running a crane on a regular basis, more than once, twice, half-a-dozen times in six months. In our rental fleet, these guys, this is

their home day-in and day-out, day-in and day-out.

You'll find that of most crane operators. Now, like I said, we work out of the hiring hall, out of the operating engineers. I call and get an operator to run a night shift, I know his qualifications, know what crane his is, he's worked with us before, but coming in, he's not going to have that document.

The same thing if contractor --

**MR. HAWKINS:** We're talking about the reevaluation, not the other so just stay on that.

**MR. COOKE:** Okay. Reevaluation. That is an ongoing basis. When you see an operator in the seat, you will know in a matter of minutes, right there, whether he's qualified to run it or not, and you'll pull his behind out of the seat and say, "No, you've got to go."

It's as simple as that. Without having the language in there, it's anybody on the jobsite already recognizes that. It's evaluation as you go and your performance as you go. Like the old saying is, "Can you be any rougher?" "Just wait a minute. Watch me do this." That's an old operator saying, but that is evaluated on the jobsite as they go. It's continual. It's ongoing, and to

have documentation of this would just be, like I said, a logistical nightmare.

**MR. HAWKINS:** Why would that be a logistical nightmare? Because you're doing it constantly, so once a year, you'd have to say, "This is my time where I'm going to meet this requirement."

**MR. COOKE:** Like I said, I've got multiple government entities that I'm working with. I've got MSHA over here that I've got to do this annually. I'm already doing it here. Now I'm going to jump on and OSHA's going to put this in, which is going to double my paperwork, double what I have so I can stay with the intent and the spirit of the regulation as its whole because, as you all well know, MSHA and OSHA's like oil and vinegar here. They're oil and water, however you want to put it.

They don't mesh. They don't recognize one another. That's why if we're going to stick with this, if we could have language that a recognized government entity that has such an item could be recognized instead of having this Subpart D in their hand.

**MR. HAWKINS:** Have you compared Appendix D to what you do for MSHA? Do you know what the differences are?

**MR. COOKE:** Not that much. Because MSHA says you're going to task train them to be competent to run the piece of equipment, and by signing this, if something happens and they're not competent, you going to go to jail. They're much more stringent than what OSHA is.

**MR. HAWKINS:** Do you think OSHA should have a provision like that?

**MR. COOKE:** No, I don't, honestly. [Laughter]

**MR. HAWKINS:** Okay.

**MR. COOKE:** I'm hanging out on this one side over here. I'm saying it's --

**MR. HAWKINS:** You're hung out all you want to be?

**MR. COOKE:** Exactly. I don't have enough to give anybody else.

**MR. STAFFORD:** So Chuck, on a point of clarification for me, though, if we could work this out or OSHA works this out, if you have your MSHA evaluation paperwork that OSHA would accept that as your documentation, would that satisfy the concern?

**MR. COOKE:** That's what I'm asking you. I can't ask you all questions, but that is my point on this. If we have our MSHA documentation; granted this is probably a

small amount of crane companies represented here that work on a mine site, but seeing how we're already doing it for one entity, a government agency, why can't it suffice for another? Why can't they have a cross-reference? That's my point. If we cannot make this Appendix D non-mandatory.

**MR. STAFFORD:** Okay. I appreciate that. Steve, go ahead.

**MR. HAWKINS:** You would be okay with the annual reevaluation and reevaluation requirement if this specific document wasn't required because then you could say, "I've done my reevaluations and here's the proof that I did for MSHA."

**MR. COOKE:** Yeah.

**MR. STAFFORD:** Right. I mean and that sounds like it's reasonable to me. Any other questions or comments?

Just I have one more. Before I let you go, Chuck, I recognize that you're a union contractor and you're getting your operators out of the IUOE and so you expect a certain amount of qualification. What about on the other side where you're a nonunion company and you bring someone in the middle of the night? What would you say about ensuring that they're --

**MR. COOKE:** I've been with those union contractors since 1978 so I cannot speak to the nonunion side of things.

**MR. STAFFORD:** Okay. Fair enough.

**MR. COOKE:** I'm an operating engineer by trade, 35 years in Local 147.

**MR. STAFFORD:** Okay. Thank you. Anyone else?  
No. All right. Thank you, Chuck.

**MR. HAWKINS:** Good job.

**MR. STAFFORD:** Okay. Next on my list, I want to make sure I have Troy Wagner with Maxim Crane Works.

**MR. WAGNER:** Thank you. It's Troy Wagner, Vice President of Safety with Maxim, M-A-X-I-M, Crane Works.

**MR. STAFFORD:** Good morning.

**MR. WAGNER:** Real quick, I'd like to start off, I appreciate the opportunity to speak to the committee on the proposed crane qualification of the operators. Obviously, in conjunction, we've had a lot of talks with Garvin and Paul leading up to this. We've taken great strides in making the workplace more safe. The big first step for us is a great step, is the requiring the licensing of the operator. We've been doing that at Maxim Crane for long

years, as part of the prerequisite to be an operator for us.

Some of the areas of concern that we have in the proposed standard basically goes to the evaluation process. We're a little bit larger crane company. We've got in excess of about 1,400 pieces of equipment and anywhere from 1,400 to 1,600 employees on any given day.

With the evaluation process as it's currently proposed, you can see the significant financial burden that the evaluation process and the reevaluation process will have on us. We have the same type of operators as any other company does that doesn't operate just one particular machine. Some of our operators when they get into particular types of cranes, the all-terrain multi-axle cranes, they can run 10-15 different ones.

So to have an evaluation in the cost of that machine, the fueling of that machine, the set-up cost when you get into crawler cranes of a large size, 800-ton class, that takes about 55 loads on tractor trailers to actually assemble and in excess of probably \$100,000 of freight and everything else to assemble that particular crane.

You can see the financial burden that the

evaluation process will have on a company of our size. Also along with that, we see what this could potentially create is a monopolization of the crane manufacturing companies. We have what we call "bare rental" situations where an HVAC company will call us to rent a crane on what we call "bare rental." It's like renting a car from AVIS. They just want the machine. They'll take care of it for a week or whatever; then we'll go pick it back up.

In that particular case, with their operators, only having a small number of operators in this evaluation process as it's written, that operator would only be qualified and evaluated on one particular piece of machinery. That will create itself. They will call, "I need it to be brand, type, size specific. If you don't have it, you don't get the job. So we'll go to another company."

What that will eventually create that we can envision is that companies will start being brand specific. That will ultimately alleviate a lot of crane companies from going away.

Another area of concern is the reevaluation process. I know we've been hitting on that a little bit.

If it does become a requirement, we only see that a reevaluation would be necessary if a crane is operated in an unsafe manner.

Crane operators are routine guys and gals. They continue to operate all day. They're continually being scrutinized by contractors, evaluated, if you want to use that term, on a daily basis. The reevaluation process isn't necessary in our opinion, unless there is an unsafe condition: there was an incident, accident, citation, something along those lines.

Also the documentation, I know the previous speaker talked about the documentation. We see it if it is going to be required, that it actually be made readily available and not required to be onsite. We could have a crane onsite for six, eight months. And it's like, "The dog ate my homework." Right? If something goes missing, it gets misplaced, the operator has it hanging wherever, somebody has to move it, it could be creating a hazard in the actual operator's cab that gets moved. They can't find it. There was an OSHA audit of some sort. It becomes a finable offense and a citable offense.

When I can present it to you within a matter of

minutes, hours or whatever. We just think it's critical that that's the only vehicle presenting that documentation is be on site. We're trying to move more electronic age with databases and things like that versus paper copies.

The evaluation process itself, if it does become a requirement, and based on everything that I talked about before with the financial burden and the multiple evaluations, we don't have what we call yard cranes. All of our cranes are out. If they're in the yard, they're not generating revenue. We don't really have a vehicle or a mechanism to have all of these different types of cranes as trainers to do multiple evaluations of 1,400 to 1,600 employees. It just kind of seems to be excessive.

If the evaluation's due, a proposal would be that if an evaluation does come up, it goes by the type of crane. In a more complex, whether it's a larger crane, I know we want to stay away from the word capacity, but a larger crane would suffice for something of a smaller nature.

I came out of the aviation industry, and we do some different things out of the military side, which is very similar to that. Then the burden would be on the

crane owner or the crane user to be able to evaluate that employee on that process, to alleviate the multiple evaluations that would be required for machines of a less complexity.

If we do decide that a competency reevaluation is required, we think it should mirror the licensing and certification requirement of five years; that would be a potential. I don't want to beat the dead horse on the controlling entity, but I definitely think that needs some clarification, especially under the multiemployer clause.

We definitely don't want any of the burden of the controlling entity going to the crane owner. I think it has to go to the crane user to coin that phrase. Thank you for your time.

**MR. STAFFORD:** All right. Thank you, Troy.

Yes, Christine?

**DR. BRANCHE:** Mr. Wagner, Christine Branche. So I'm glad that you said your background is in the aviation industry. I understand and I appreciate your laying out what the financial burdens would be, but I just want to make sure I understand what you're saying: that the reevaluation not be necessary unless a crane has been

operated in an unsafe manner?

But then I would ask if the unsafe manner manifested in injury or death, then why wouldn't a preventative effort have been warranted in your reasoning, through an evaluation? I think the evaluation is a way of correcting behaviors that have been adopted that were not safe so that you avoid the potential for a crane being operated in an unsafe manner.

**MR. WAGNER:** Right. What I wanted to clarify, was it a six-month reevaluation or an annual evaluation? I think if an evaluation becomes true, that, that will suffice for the paper side of it. But as an operator is continually scrutinized in their daily activities, that continual evaluation is there.

But to go through Appendix D or some sort of a structured evaluation every six months because an operator hasn't ran that particular crane, six months isn't the magic number where their skillset diminishes. I mean that's an ongoing thing. Did I answer your question?

**DR. BRANCHE:** I think you did, and if I heard you in something that you said later on, you said every five years is what you would suggest?

**MR. WAGNER:** Right.

**DR. BRANCHE:** Unless the crane was operated in an unsafe manner? Thank you.

**MR. WAGNER:** Right. That's the requirement now for CCO recertification, it's a five-year.

**MR. STAFFORD:** Thank you. Any other questions or comments? Anyone? Okay. Thank you for your time.

**MR. WAGNER:** Great. Thank you very much.

**MR. STAFFORD:** We appreciate it.

Michael Eggenberger, are you here?

**MR. EGGENBERGER:** Good morning. I want to thank you all for, obviously, your hard work and certainly, I want to let you know that I'm thankful you're letting me speak today. I'm going to talk mainly on operator certification as it pertains to capacity. Okay. But today, the waters are so muddied.

By way a brief background because there's a lot of new faces in this room, this has been going on for 25 years. Let me start at the beginning. Back in 1992, OSHA sent out a proposal. It was Docket NS400, requesting information on crane operator certification qualification. I answered that in nine pages, which was public record.

Then in 1999, I was invited to be on an ACCSH workgroup committee, for which I was full term for four years. I missed one meeting because of a death in the family. When we left the workgroup committee, we submitted to OSHA, one of the main elements was crane operator certification. We put strong language in there for the employer to certify and qualify their crane operators.

From there, OSHA sent it to CDAC. I attended two meetings with CDAC. It became obvious that this third party certification came about. I'm not opposed to that, but I always questioned how they were going to do it. I got involved with NCCCO, worked with them for nine years. At the same time, I was involved as a subject matter expert on different issues with the NCCER, for which they rolled me over -- well, I rolled myself over into their crane operator certification programs.

At that time, both of those programs when they were finished included a crane operator certification licensing, and the word licensing started showing up. Once again, both of those programs included capacity with their licensing program. NCCER continues today, as well as one other, CIC, that includes capacity for their crane

operators.

I want to pass out to this committee, and it's in black and white, I work for a company that we still don't have color copiers. [Laughter] What you have before you is a -- if we're going to license our crane operators by type, and if their license says telescopic boom crane, what you have in front of you is a telescopic boom crane. Okay.

This is a small crane. They're not even manufactured anymore, but it's manufactured by Dresser Industries. It's known as a Galion 15-ton. This crane has a maximum capacity of 15 tons, boom lengths of 60 and 70 feet. Okay. A pretty small crane. Yet, my license is going to say I can operate a telescopic boom crane.

Now I want to pass out to you another pass out. Now I'm speaking from a private employer who has a private certification program within our company. It's private. It's not portable. But what I'd like to see is when a prospective employee -- and we don't hire out of the hall, and I worked out of the hall. I worked out of Local 324 in Detroit. I worked out of Local 450 in Houston, Texas.

We hire privately. When the perspective crane operator comes to see me, I will ask him if he has a

license, "license." He hands me his license. I look at the license. I can go online and I can see the capacity of crane that this candidate can operate. On two of these certifying agencies who are represented in this room today. One, I cannot.

But the advantage of having capacity on that license tells me instantly where I can go to issue our in-house testing procedure, no matter who comes in our door, they're going to pass our written exam and our practical exam.

But if it comes down to we have to have a license, I can't imagine someone carrying a crane operator's license in his pocket that is not definitive. Now how do you do that? Sir, you can pass out the next pass out. By the way, while he's passing that out, I do have a question -- not a question, but a comment.

We're talking about a written exam. I'm evolving into electronic testing, computer-based testing where the written test that we currently have is being transferred to electronically. Questions pop up; he selects an answer. I do get a paper printout of his score sheet. Is electronic testing in compliance with "a written exam"? I'm pretty

sure I think it is, but there's something that the committee might want to think about.

Now in front of you is an in-house license. This is a plastic license. It's got two sides. It's got the man's picture on it. It's our in-house private certification program that we have had since 1991. Now the picture thing is only about eight years old. Prior to that, we had a written paper license. Like I said, we've been doing this since 1990 or 1991.

We test all of our crane operators for safety on the capacity of the crane he can operate. Now I understand there's an issue of attachments on these cranes. Okay. I got that. We test on that, too. But by rule, it's not based on the testing mechanism that we use to determine the capacity that this crane operator can read.

By the way, the second pass out was a 550-ton crane. If the man walks into my office with a crane license; says he can operate a telescopic boom crane, do you put him on the 550-ton just because he's got a license that says he can operate a telescopic boom crane? Maybe he can operate it; maybe he can't. I understand the employer's responsibility, but my point is if we go all the

way back to ACCSH 1999, that's where we left it, was the employer's responsibility. Once again, I'm not opposed to a third party license, but we have to know how to do it.

Right now, one of the entities that I'm still involved with, there's two of them out there that require capacity, I firmly believe that the capacity is a strong argumentative issue that should be included in any third party licensing. That's all I have. Thank you.

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

Yes, Sarah, go ahead. Oh, you, Kevin? Go ahead, Kevin.

**MR. CANNON:** No, I was going to just say and how would the certifying bodies go about it? Say, for instance, certifying somebody by capacity on this 500-ton Liebherr that you presented to us?

**MR. EGGENBERGER:** Since you asked the question, I'm a Certified Practical Examiner with the National Center for Construction Education and Research. I've been affiliated with those people for over 20 years. I am the Certifying Practical Examiner. I will put that candidate on the crane that he is going to operate, with or without

another license in his pocket.

**MR. STAFFORD:** So to make sure that I'm clear, you're suggesting that in this proposed new regulatory text, OSHA has taken out capacity because they're hearing from the industry that you should be certifying by type, and what you're suggesting specifically is that you believe that capacity should be put back into the language?

**MR. EGGENBERGER:** Yes, sir. Based on the examples that I passed out to you.

**MR. STAFFORD:** Okay. I just wanted to make sure of that.

Sarah, did you have a question or comment?

**MS. COYNE:** Sarah Coyne, Painters, and bear with me, I am a painter by trade, not an operator/engineer. But on your recommendations, is there a range that you would recommend the testing for, like five to ten tons, ten to fifteen tons, 200 to 500 tons?

**MR. EGGENBERGER:** Yes. If you look on the back of the license that I passed out, it has crane designations. I'm sorry.

**MS. COYNE:** Oh, okay.

**MR. EGGENBERGER:** It's got them listed.

**MS. COYNE:** I didn't see that.

**MR. EGGENBERGER:** I'm sorry.

**MS. COYNE:** So you think that the testing should be based on this type of variation?

**MR. EGGENBERGER:** I would like to see that.

**MS. COYNE:** Not so specific to the brand?

**MR. EGGENBERGER:** Right. It's not what I think, I think it's what the industry needs.

**MS. COYNE:** But I'm speaking to you, so thank you.

**MR. EGGENBERGER:** Right.

**MS. COYNE:** I just needed that clarification.

**MR. STAFFORD:** Thank you. Any other questions or comments?

Yes, Kevin, go ahead.

**MR. CANNON:** I appreciate the efforts that you go through, but I don't think everyone is set up to conduct the practicals (sic) in such a manner. I think that's what we got from stakeholders meetings and whatnot, that I guess the normal practical does not lend itself to setting up the model specific operations as you do. I think what OSHA has done is put the responsibility back on the employer to make sure that maybe not exactly how you do it, but employers

are doing some of the same things that you're doing.

I think that makes it easier for everyone, regardless of whether they've got their certification through two of the bodies that have capacity or the one that does not. I think as far as AGC folks are concerned, I think we are more than satisfied with capacity being removed and having the employer make sure that the individual is checked out by the size of the crane instead of having that done by a practical examiner.

**MR. EGGENBERGER:** Well, my point, if the employer, now by law, and it's always been in the law, since 1970, the OSHA Act that the employer certify that the person operating the equipment is qualified to operate it. My point is, and I'm not opposed to third party licensing.

I think it's a great tool for my little toolbox, but based on what you just said, with all of the responsibilities that the employer has, and I accept those responsibilities, we have over 150 cranes, four states, if the employer's got to do everything mandated in the standard, why do I need a third party certifier?

**MR. CANNON:** Good question. Good point.

**MR. EGGENBERGER:** Or not even a certifier, he's a

qualifier.

**MR. CANNON:** Right. Good point. But I'm speaking as to what we are currently dealing with as far as the regulatory language is concerned.

**MR. EGGENBERGER:** Yeah, and we heard a gentleman who hires out of the hall. I've hired out of the hall. One of the first jobs they hired me to do was go to run a Manitowoc 4100. I had only run a small 50-ton conventional crawler crane. Fortunately, I was smart enough to tell my employer, "I can't run that."

Another issue, that little 15-ton Galion pays like \$25 an hour. That 550-ton Liebherr pays \$35 an hour. All of the sudden, my guy walks in my office with his third party telescopic boom crane license. He sees that that crane pays \$35, \$40 an hour, all of the sudden, "Man, I can operate that crane."

**MR. CANNON:** Then it's up to you to make that decision whether he's qualified to do so or not.

**MR. EGGENBERGER:** That's exactly right. There's a lot of instances where I turn him away.

**MR. STAFFORD:** Any other questions or comments? Anyone. Okay. Mr. Eggenberger, thank you very much for

your comments.

**MR. EGGENBERGER:** Thank you for your time. I appreciate it.

**MR. STAFFORD:** Thank you very much.

General President Callahan with the Operating Engineers?

**MS. WILSON:** Mr. Chairman?

**MR. STAFFORD:** Yes, I'm sorry. Yes, please, Lisa.

**MS. WILSON:** Thank you. I'd like to designate the exhibits from the last presentation. The picture of the Galion 15-ton as Exhibit 5. The photo of the Liebherr 500-ton as Exhibit 6, and the Bay Limited private license as Exhibit 7. Thank you.

**MR. STAFFORD:** Thank you, Lisa.

President Callahan?

**MR. CALLAHAN:** Good morning. Thank you for having me this morning.

**MR. STAFFORD:** Thank you.

**MR. CALLAHAN:** My name is James Callahan. I'm the General President of Operating Engineers. I represent over nearly 380,000 members through North America, including Canada. I have 123 training programs, and I don't want to

be redundant here today because a lot of the speakers before me have touched on a lot of subjects, but the one thing I think that's not being recognized here is that in our employer community with labor, we have joint apprentice programs that they both do input in.

It's not only just apprentice programs. It's training programs. With the way these things are set up now for us to train on every application, I don't want to get into capacity or syntax on that, for every application, it's a five-fold burden on the employer and also our training programs. For us to have every application that could be there, which we normally do partner up with our Maxims and our Cranes Incorporated, just to name a few that do bring in experts to train and retrain at our sites around North America, it would be a burden on anyone.

Quite frankly, it doesn't add one bit of safety to a jobsite. As we all know, around the municipalities, when, God forbid, there is an accident, the first thing they ask for is, "Where's your certification," when they come on the site. That's the first thing they do when they get up on the crane.

I just want to address what the gentleman said

about the trainer as opposed to the supervisor. I mean I think that could be misleading where you think like the supervisor on the job -- in the construction terms, a super on a job is someone who facilitates the job, not just the crane operation. Another shortsightedness, and maybe from the labor side, was that through economics, the term oiler or assistant operator has kind of gone away. It costs money to put somebody on the job here.

I know I'm jumping around a lot, but the one application that will not work is that a lot of these crane companies, and the gentleman from Maxim touched on it, to set up these million dollar pieces of equipment in a yard where they may only have three acres on a certain municipality area to put these things together. I mean you have all of these restrictions. You're not going to be putting these things together just to have a guy or a few fellows come in and get checked out on.

It's really not a practical operation. If I can end this, and I know like someone said before, construction guys, we talk very little; we try and get it done. But I would request, respectfully is that if you could just recognize maybe four entities as far as a management

entity, a training entity, a labor entity that can kind of mine through this stuff with you to help you give a better comment.

Because I know that people went out and got comments from different portions, but I really think that the people that are the end users and the people that have their hands on it and, quite frankly, in all due respect, in most terms, when there is a fatality, it's an operating engineer or an operator that it -- and usually when there is a fatality, that operator rides that thing into the ground to make sure that there's public safety there. So it's not like these people are coming to jobs just looking for an extra couple of dollars in their pocket. They are really well-trained and concerned people. Thank you.

**MR. STAFFORD:** Any questions or comments?

Yes, Jerry, please.

**MR. RIVERA:** Yes, Mr. Callahan, thank you very much for your comments. I think your comments are very important to the committee. You hit on one area there, it's confusing to me, and maybe you can help clarify this.

**MR. CALLAHAN:** Sure.

**MR. RIVERA:** It is on the operating and training.

To understand how this evolves, within your model, does the operator in training, is he continuously monitored by a trainer? What I'm talking about, when he goes out to a job and he's an operator in training, is he continuously monitored by a trainer, a supervisor?

When I say supervisor, I guess it is confusing --

**MR. CALLAHAN:** We're talking syntax, right?

**MR. RIVERA:** -- but you know what I mean? There might be another operator that is senior, that's a supervisory role.

**MR. CALLAHAN:** Well, normally, like I said, the economics of the situation was in an altruistic world, you had a crane operator and an oiler or someone in training. That was your supervision. What would happen is the lesser important picks -- if a guy's lifting a generator, a megaton generator to the roof of a building, of course, your most experienced guy who went out with the crane is there. His oiler, who's around the equipment all day checking safety features, maintaining equipment, when you have a smaller aspect in construction parlance, if he's shaking out rebar for an area and separating it around, it's just as important, but there's not that much of a

safety conscious thing around it.

That's how he kind of gets his training. Then, of course, you graduate to a bigger pick or a bigger application. That's been the nomenclature in our business since cranes have been around is that that's how you graduate into it.

**MR. RIVERA:** The last question is an operator who's in the process of becoming qualified --

**MR. CALLAHAN:** Correct.

**MR. RIVERA:** -- how do you treat that individual? Is he, once again, under the constant supervision of a trainer or/supervisor? How does that currently occur within your procedure?

**MR. CALLAHAN:** Well, I think that does fall back on the employer community.

**MR. RIVERA:** On the employer?

**MR. CALLAHAN:** Yeah, because the fact of the matter is that there's an economic end to it.

**MR. RIVERA:** Once it falls back into the employer, it would be typically a -- how can I say this, a supervisor who kind of has a crane background, not a trainer, per se, because see here's where I'm having a tough time. Training

occurs in a classroom, and I'm thinking apprenticeship. It also occurs on the job. But when you talk about a trainer, the way I'd envisioned it is he's teaching somebody how to do something.

**MR. CALLAHAN:** Let me give you a scenario. Maybe this will clarify.

**MR. RIVERA:** Sure.

**MR. CALLAHAN:** As those who are in the owner community know, these things evolve. They go from telescoping. They go to hydraulics. These things are completely evolving all the time. You no longer have a cable machine, as they call it. You know, the wire rope that you would be familiar with.

As these things evolve, of course, they spend hundreds of thousands to millions of dollars on this piece of equipment. They would then bring in those persons to check out on the machine to qualify because at the end of the day, he's got a million dollars on the street. He's probably got a note on it. He's not putting me in that thing, I've not operated a crane and wore a tie for the last 20 years.

I mean that's just the nature of the beast. So he

does make the qualification, but I mean I don't want to overburden it to say that it has to be done every year. He knows his stable of your people. If I, as a union rep send him someone, there's an old saying, I'm only as good as the last guy I sent you. Because if, God forbid -- and to address your fatalities, we don't want that on our conscience.

Like I said, we're going to those wakes, and we know those families because, unfortunately, a lot of times when there is a fatality, it's the operator.

**MR. STAFFORD:** All right. Thank you.

Sarah?

**MS. COYNE:** Mr. Callahan, thank you for addressing the committee today. I think it's just a play on words, when you're talking about a trainer, the first thought I think is that a man or woman who's teaching at the JATC.

**MR. CALLAHAN:** Right.

**MS. COYNE:** But as we go through apprenticeship on the jobsite, it's usually a one-on-one, an apprentice with a journey person on that jobsite. It's basically the same thing. I believe that you're paired up with a seasoned veteran on the jobsite who's providing additional hands-on

training during the course of his tenure learnings. Am I wrong? There's that mentoring process that continues on the jobsite, an operator in training?

**MR. CALLAHAN:** Yes, within the company.

**MS. COYNE:** So may I ask you what would be your recommended title in the standard for that individual on the jobsite? Would it be supervisor? Would it be trainer? How would you describe --

**MR. CALLAHAN:** I would say trainer before supervisor because I think there's a misnomer, like I said, in the construction parlance, a supervisor is a management representative.

**MR. HAWKINS:** You like trainer better?

**MS. DEPRATER:** But it may not be someone that's on the site all the time?

**MR. CALLAHAN:** Correct.

**MS. DEPRATER:** The trainer, I don't know how the trainer could be there 100 percent of the time.

**MR. CALLAHAN:** If we're talking --

**MS. COYNE:** -- multiple people --

**[Interposing Speech]**

**MR. STAFFORD:** All right. Hold on. Hold on.

Come on.

**MR. CALLAHAN:** If we're talking real life, who's paying them? So is the crane company paying them? Is the managing entity paying them? If you're regulating that the person has to be there, there has to be an economic end to it.

**MS. COYNE:** It could change day-to-day.

**MR. CALLAHAN:** But if I can go back to your employer has complete faith in who he puts in the seat, and I think not only does he have an economic end, he also has a liability end, God forbid someone gets hurt or damaged.

**MR. STAFFORD:** Right. So it comes back to the employer being sure that he's qualified, him or her is qualified to operate that piece of equipment.

**MR. CALLAHAN:** He is, but it's onerous on the fact on how we're applying it.

**MR. STAFFORD:** Right.

**MR. CALLAHAN:** I don't think the employer community, and I'm not going to speak for them, but I don't think that they're completely adverse to having any kind of -- making those calls, but there's also it can be onerous on them as far as --

**MR. STAFFORD:** For financial reasons, right.

Okay. Any other quick -- Cindy?

**MS. DEPRATER:** I'm just going to say it has to be something. I just think we're struggling with trainer/supervisor or some other word. I just think we have to figure that out without getting wound around the axle here.

**MS. COYNE:** Designated trainer or designator.

**MR. STAFFORD:** Okay. Thank you, Mr. Callahan.

Okay. Larry Hopkins, IUOE Local 12?

**MR. HOPKINS:** Good morning.

**MR. STAFFORD:** Good morning.

**MR. HOPKINS:** First of all, I want to thank the ACCSH Committee for their work on this, trying to get this thing right. I think it's important that we spend the time necessary to make sure that when this law is finally put into place that it's where we need to go to provide a safer crane environment. I appreciate your hard work on this and the opportunity to allow me to speak on it.

On evaluation of an operator seems to be big buzz word of today's meeting. Although I support that the employer's ultimately going to be responsible for

evaluating their operators, I'm not so sure that in the language it was written in this proposal maybe go a little deep for what their real needs are.

I think Mr. Cooke in the beginning gave you a very realistic synopsis of how the crane business works, whether it be 30 cranes or 300 cranes. Nobody is putting people in the seat of their cranes that aren't qualified to be there, unless they've just got some sort of a going out of business wish or liability risk that they're looking forward to taking, it just doesn't make good sense.

However, it'd be important that they evaluate the skills and the knowledge that a particular operator possesses on a particular machine and in a particular configuration and let's not forget the most important is on a particular job configuration because they change all the time. General President Callahan hit on a point that is something that the committee needs to understand very clearly. We cannot possibly simulate every job situation that we will see in the industry.

We have cranes on barges. We have cranes working in rock quarries. We have cranes elevated. We have one right now we're setting up in Los Angeles on an 88-story

building. It happens to be a tower crane and a cantilever platform several stories above the ground.

They're all over the place as far as configurations go. And to try and generalize that as though any one particular training method or any one particular evaluation method is going to catch all of those areas that will slide through the cracks, it's exactly what's going to happen. They're going to slide through the cracks.

I think that it's important that we look at the fact that it's important an operator be evaluated. However, these contractors, for the most part are pretty good at what they do when it comes to keeping their cranes right-side up and their people safe. I do think that there should be a mandate; that it be done. And I think that that's probably how we got to crane certification to begin with was that the accident rate was high enough to throw it up on the radar of many of us throughout the country. And why we're here, this is my third or fourth year here discussing this with you, to try and get this right so we can put it into play.

I think that it's important that the employer

evaluate, there again, their skills of a particular crane, a particular configuration that he or she may be operating and that they are familiar with the erection/dismantle procedures to put it in or take it out of that particular configuration, which is where a lot of our injuries and fatalities happen. And that it's very imperative that the operator be given the time to be familiar with the operating manual of that particular machine. They vary substantially.

Even from the same crane manufacturer to a different model, there can be substantial differences in the way weights are calculated or what's considered a deduction or any variety of setup issues that may occur. That's also very important.

I think there should be some sort of documentation, but it doesn't have to be so onerous that the employer spends a large amount of their time trying to document that this person is qualified when it's obvious to those of us in the industry in about 15 minutes whether or not you're qualified in most cases. It doesn't mean that this evaluation can't be ongoing and so forth, and maybe some sort of a general record of safety review or something

along that lines be done.

But for us to continue to duplicate and reduplicate and try and duplicate again the process of certification to make sure that this person is absolutely, without a doubt, the one that should be running this crane, I think is, to use a word I heard Christine use earlier, superfluous and unnecessary to continue down the lines of what they've probably already seen two or three times and now we're talking about doing it every year.

When we put timelines on things, for instance, this six-month timeline that says if they haven't run a crane in six months, then they have to go through this reevaluation process all over again, you put a timeline on something and I think you create an area of loopholes for us to say, "Well, if I put them on there at five-and-three-quarter months and let them run the crane again, I should be good for another six months." What good did that do?

I think that we need to really think this out and think about what's reasonable for an employer to evaluate the skills necessary for a crane operator. And as they should be doing all along, the ongoing, changing, ever-changing environments, as we build buildings or even in the

grading world or anything we do in construction, one thing you have to understand about our industry is it changes sometimes on a daily basis.

The risks change. The hazards obviously change. The personnel change. More machines; less machines. Different operations may be requiring different configurations. It's just not something you can put down on a piece of paper and be clear about. Therefore, I think that maybe a generalized safety review not of some sort from the employer saying that they have observed these things and documentation to where if down the road, OSHA wanted to view safety files and so forth just as the due diligence that any employer should be showing.

Quite frankly, I think that your biggest enforcer of crane safety, and I've said this all along, is not necessarily OSHA, it's going to be the insurance company. The insurance company refuses to underwrite you, it doesn't matter what OSHA says, you're out of business. There are a lot of controlling factors in here besides the law that are going to control this, and I think you've heard it from many, many experts today and throughout the last couple of years that we're not talking about operating go-carts here.

We're talking about operating multimillion dollar pieces of machinery.

We don't typically just turn those loose on the street, find somebody who we think will fit in the seat and wish them the best of luck. There's a lot more to it than that, and I think everybody knows that. As far as the trainer goes, let me back up just a little bit.

I've been listening to the supervisor debate up here, and if I could make a recommendation that maybe we just keep it simple and go back to the B30.5 standard of person in charge of the lift, whoever that may be, would be the supervisor for that particular pick, whether it be the air conditioning company that the reference was brought up about lifting air conditioners on top of a roof, that contractor would be the person in charge of the lift.

It would be up to them to be responsible to make sure that that lifting procedure is done properly or that the company they've hired have followed the guidelines and that their people are qualified and the crane is properly outfitted and set up and it goes pretty deep. But it comes down to a matter of the buck stops somewhere, and it's not going to be with the operator, and it typically wouldn't

make sense to lay it 100 percent on the crane company because, in many cases, as the situation that you explained, the owner is not going to be coming out with a crane to set a couple of air conditioners.

There may not even be a supervisor. There may be a crane operator and an oiler to help him assemble the crane and disassemble the crane, and rig the loads. Ultimately, the person in charge of the lift, whoever that may be would be the supervisor, however you want to categorize that. I think a lot of the homework is already done for us.

Beyond that, I think the training is the only other issue I'd like to bump on just a bit. I've done this in the past at stakeholders meetings and so forth.

I'd just like to point out that if you're going to have a trainer supervising somebody who is training, that trainer should be qualified above and beyond the person that they're training to do so. For instance, and I use this because it gets a lot of our attention, especially as we leave here and go jump on an airplane today or tomorrow to go out of here, in many cases. I hope that they guy in the left seat, if he's a trainee, is not being supervised

by somebody who just passed the test and understands how to manipulate the controls, and that's the trainer in the right seat or vice-versa.

I hope that somebody in there is actually qualified and certified in case things go wrong. As we always say, when things go right, anybody's an operator. It's when things go wrong the operator comes into play. I would like to make sure that we keep that at the forefront of our topics for safety. If we're going to be training somebody, it should be a certified operator who's training.

If it's not a certified operator who's training them, then we have, there again, given ourselves, the industry, an area to circumvent certified operator altogether. I don't need a certified operator as long as one's a trainer and one's a trainee. To me, that seems a little bit ludicrous, considering all of the time and effort we've put into safety and training. I'll end my comments at that. Thank you.

**MR. STAFFORD:** Thank you, Mr. Hopkins. Any questions or comments.

Yes, Jeremy?

**MR. BETHANCOURT:** Mr. Hopkins, Jeremy Bethancourt,

Public Representative. Thank you for coming and providing your comments. I have a question in reference to what you were stating about the supervisor, whoever's supervising the lift should be the responsible party. I wanted to get some clarification because when we go back to the controlling employer discussion that we had earlier, everything kind of relates to itself in many ways.

Are you implying that the supervisor in charge of lift is an employee of the crane company or the person who hired the crane company?

**MR. HOPKINS:** I'm saying the person who is in charge of the lift is just that, the person who's in charge of that particular lift. Who their employers of is irrelevant. The reason I say that is because if we said the crane company is responsible for supervision of that lift, then we would have to realize that the crane company's going to have to send a supervisor out with every lift they do, which is not likely going to happen, especially with smaller picks.

However, to put it in perspective of the example that was given, if we had a couple of air conditioners setting here on the street ready to go up on a roof and

assuming we have the HVAC company setting there to do the rigging and to do this installation, when that crane shows up, they would be briefed on what they're going to ask them to do and where they're going to go.

They need to know radiuses. They need to know the way of the air conditioning units they're going to be lifting; where their setup area is. They should be able to point out any hazards or at least have the crane operators evaluate the area for any hazards or proper setup and so forth. In that case, that would not be the owner of the crane; that would be the person who has called for the crane.

There are -- and we could go on for literally 15 or 20 minutes on changing person in charge of the lift back and forth. It depends on that particular situation.

**MR. STAFFORD:** Okay. Steve and then Laurie. Laurie, then Steve.

**MS. SHADRICK:** Thank you, Mr. Chairman. I just have one question. Wouldn't the crane operator be in charge of the lift? Because if he doesn't want to do it and it looks unsafe, he can say no?

**MR. HAWKINS:** Ultimately, the crane operator would

be the last say-so. As ASME, which as you know, ASME is the standard in crane industry simply because of the people involved with putting this together. These are crane experts from all over the country who have come together with a census of how safety should be attained.

The crane operator certainly has the final say-so of whether he makes a lift or not. But it's spelled out, for instance, that the crane operator is not responsible for calculating the weight of a load, only for having that information prior to making it. Somebody else is responsible for providing that weight to him. If somebody tells him an air conditioner weighs 8,000 pounds and he goes on that assumption and in turn, it weighs 16,000 pounds because they missed something, how could the crane operator -- I think you're taking him out of his realm of expertise to determine the weight of an air conditioner.

**MR. STAFFORD:** Okay. So Steve?

**MR. HAWKINS:** The HVAC company, who called for a crane and an operator to come and make that pick and set those units on the roof would have really no knowledge about how to properly supervise the lifting of that unit and placing it on the roof. That would have to be the

crane operator. They could say, "Well, here's the lowboy or the flatbed trailer that the units are sitting on. It's sitting over here. I need you to pick that up and put it on the roof."

The crane operator looks at his load chart and says, "Well, I can't. You going to have to move that trailer closer to me because I can't make that radius at that weight and put that on the roof for you." In that scenario, it seems obvious to me that the crane operator's the person who's overseeing that lift. I understand what you're saying. He doesn't have a set of scales. He can't weigh the unit. He's got to go to the packing slip, and they're going to come and tell him, "Well, the unit weighs 8,000 pounds." And he says, "Well, how do you know that?" He says, "Well, here's the manufacturer's information."

But I certainly don't see -- I mean I think people call a crane company and an operator because they want that expertise of how to do this safely and properly. I can't imagine, in my mind, that the HVAC contractor who called for this is going to be the person that's technically competent to design and oversee a lift in that scenario. That seems absurd to me.

**MR. HOPKINS:** And in that case, that's where they would call somebody like myself or somebody who is affiliated with a crane company, which they all have them, an engineer maybe at the crane company, who would make sure that that lift is safe to make. I'm not saying that the operator ultimately can't make that decision in many cases.

**MR. HAWKINS:** Wouldn't he on an average, on a daily basis over and over again, he'd be the one that looks at his chart and says, "Well, you're going to have to get this here, and I'm going to have to come at it from this angle." Is he going to pull up and say, "Well, tell me where to set my crane," and somehow put on blinders or I mean not even blinders but a blindfold and he just does what they tell him? I don't think that's how it works in practice. That's not my --

**MR. HOPKINS:** Well, let me give you an example of the real world. In operating a crane on a construction site, there are all kinds of hazards, not only visible but hidden. There's underground construction going on. There are areas that may or may not have been backfilled and properly compacted. There are a lot of issues there that would not be the crane operator's responsibility and he

would not have the ability without the help of the person in charge of the lift or in charge of that site to determine whether or not it's safe.

Secondly, best case scenario is the one you used, which is an example where the argument could go either way on whether or not a crane operator could safely make that lift. I'm not arguing that he can't. What I'm saying is ultimately the responsibility would lay in the hands of whoever is directing that lift.

For instance, that air conditioner, I've done it myself, could be picked from the blind. How can I be liable for something I can't even see? So now it comes to the responsibility of somebody else.

**MR. HAWKINS:** If you haven't established good communication with the person who's going to direct you in the blind, then that is on you.

**MR. HOPKINS:** But if you put me in charge of the lift and I can't see it, how can I be in charge of that lift?

**MR. HAWKINS:** How can you not be? You've got be sure you've got somebody that you have confidence in with a walkie-talkie on the other end that's telling you what to

do.

**MS. WILSON:** Yeah. Ultimately --

**MR. HAWKINS:** How can he be in charge when he's not in the seat of the crane, looking at the load rating chart and the radius chart?

**MR. HOPKINS:** When you're operating a crane in the blind, at that point, you're a lever puller. He is operating the crane.

**MR. HAWKINS:** But he's really not, he's in the blind visually, but he still has to get the weight, and he still has to look at his charts. And he still has to say, "Okay. I'm going to come straight up. I'm not going to extend my radius. My radius is going to get smaller because I'm reaching over and picking up and coming back this way."

He is in the blind visually, that's when he has a spotter on the other side, a signal person to talk to, but he's not really blind of what's going on. He's as much an active participant in engineering that lift as the other person on the other side who's got the microphone in his hand, who's telling him, "Okay. Lower it a little more," or, "Go up," or whatever.

**MR. HOPKINS:** Well, I respectfully disagree with that opinion.

**MR. HAWKINS:** So you think the crane operator can sit there in the blind and no matter what they tell him to do, he just goes ahead and does it? That surely can't be your opinion.

**MR. HOPKINS:** No, I didn't say that. I said that when an operator is operating in the blind, that he is dependent on somebody else to help him control that machine.

**MR. HAWKINS:** Well, that's stating the obvious.

**MR. HOPKINS:** And when you're telling me to hoist

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**MR. HAWKINS:** I don't think there's any disagreement there.

**MR. HOPKINS:** Let me give you an example, Irvine, California. When the operator is being told to hoist by the person who is directing the lift and the load catches on an eave because the operator couldn't see it because he was on the other side of the building and the person who is signaling didn't see it because he wasn't looking in the right place, he was talking on the radio, telling him to

hoist and inadvertently wound up getting caught underneath an eave, putting tension on the crane and then that tension released and a tower crane from 240-feet in the air came apart in midair.

And fortunately, they all walked away, somehow. The crane went completely down, with the exception of the vertical tower, and the operator came down from 240-feet high, but dropped both the jib and the counter jib. That's not the operator's fault.

**MR. HAWKINS:** And they lived?

**MR. HOPKINS:** They all walked away, but that doesn't always happen, as we know.

**MR. HAWKINS:** Well, I mean I think what this discussion says to me is that it's got to be a combination.

**MR. HOPKINS:** There you go.

**MR. HAWKINS:** And a communication of all people looking out --

**MR. HOPKINS:** I will concede to a combination of responsibilities.

**MR. HAWKINS:** Yeah. That's what it looks like to me.

**MR. HOPKINS:** Yes.

**MR. STAFFORD:** Right. We'll have to figure out what the language is.

Cindy and then Tish and then Jeremy.

**MS. DEPRATER:** Cindy DePrater, Employer Rep, and, again, I think this is more of just a statement of practicality than anything. Typically, what we see in the industry is when a crane is going to be rented, with an operator or without an operator, there's a call that's made between the person renting and the crane people.

You can say, "I want a 50-ton crane," but typically, the crane company will say, "Well, tell me what you're lifting. Tell me what you're lifting because --." And sometimes you'll get the back-and-forth, "Look, no, I just need a 50-ton crane." "We're not renting you that crane until you tell me what you're lifting."

So the back-and-forth typically happens before that crane or that operator show up so the crane operator and the company renting know exactly what they're getting and how that's going to work on the job. Typically, the crane company will also ask, "What are my circumstances?" High winds, electrical lines, setup of the crane, soil conditions. Those conversations typically happen well

before that crane shows up or should.

Then when the crane does show up at the project, it really is a coordinated effort of preplanning that tells you how that crane is going to operate it. Again, I don't want us getting too bound up in this and running down rabbit trails. We really should just work this through and figure out what that person is called and then maybe it's a combination of people that are supervising or looking at this operation as it moves forward.

**MR. STAFFORD:** Steve and then --

**MR. HAWKINS:** And what we're talking about here is really just the qualifications for the crane operator. We're talking about logistics on the jobsite, which isn't really even a part of this proposal.

**MS. DEPRATER:** They're not, but --

**MR. HAWKINS:** Except for, and not to say that, I'm not saying that --

**MS. DEPRATER:** Yeah, I know.

**MR. HAWKINS:** -- I'm saying except for the fact that the controlling entity has to check the qualifications of the crane operator.

**MR. STAFFORD:** Right.

**MR. HAWKINS:** We're really, we're struggling with that and struggling a little bit with the training, the on-the-job training person and their qualifications.

But we had this great discussion about who's really in control of the load. It's not even part of this proposal that we're really considering. I think it's important, but really, this is just the general contractor or perhaps the general contractor and the person who called and said, "I need a 50-ton crane," and, "What are you going to pick?" Maybe they answered it so they sent the 50-ton crane because it was appropriate. We're really just talking about here who's going to check the credentials of the person in the seat.

**MS. DEPRATER:** Right.

**MR. HAWKINS:** We talked earlier, I don't even see that it's required to be constantly on the jobsite, right? This is what has to be -- it has to be checked and it would have to be there for that day, but there's not a requirement if he's going to be there six months that that placard stay, that his credentials that were checked constantly be onsite. I don't think I see that.

**MS. DEPRATER:** I think that's the confusion. Does

the person have to be on the site 100 percent of the time?  
I think that's the confusion that I seem to be hearing.

**MR. HAWKINS:** Right. And does this documentation have to be on there?

**MS. DEPRATER:** Right.

**MR. STAFFORD:** Right.

**MR. HAWKINS:** But who controls the -- and I'd have to look at the ASME, I guess that's what you're speaking of, to understand that better. But for sure, it has to be a communication. They're both in charge of their parts of it.

**MR. HOPKINS:** I think for the purposes of this discussion, that person in charge of the lift would probably suffice for checking credentials and making sure that they have what they need.

**MR. HAWKINS:** Yeah, for our discussion, it is --

**MR. HOPKINS:** Now when we get into the expertise or engineering a lift, that may be a whole different discussion.

**MR. HAWKINS:** And that really might be -- the pick the blind, the rigger is a huge part of it. The signal person is a huge part of it. The signal person and the

communication method between the crane operator and that signal person is paramount, as you pointed out in that incident that you described in California. I guess what I'm envisioning is that they both have veto rights. That the rigger says, "I can't do this safely." He rigs it and says, "Hey, I'm good to go. I've got these slings on just right." You know, it's coming up to a nice D ring, everything's good and then the crane operator looks at his load grading chart and says, "I can't do it."

I guess I'm hoping that they both have veto power, but it's really not a part of our discussion today.

**MR. STAFFORD:** Tish, Jeremy, Christine.

**MS. DAVIS:** Just a point of clarification, if there's an operator in training onsite, would they have a designated person who is their supervisor or trainer? Or could it vary by lift? Could they, could one person, you know are they tied to a journeyman like an apprentice?

**MR. HAWKINS:** Operator in training.

**MS. DAVIS:** There's one person or would they vary, you know, could have different people.

**MR. HOPKINS:** If you're talking about could they have a different one tomorrow than they had today,

possibly. Could they have multiple trainers on the same day? I would call that highly not recommended.

**MR. HAWKINS:** Unlikely.

**MS. DAVIS:** It just was a point of clarification.

**MR. STAFFORD:** All right. So answer that again,

**MR. HOPKINS.** You have an operator in training, who's directing that person daily on the job?

**MR. HOPKINS:** The trainer.

**MR. STAFFORD:** The trainer.

**MR. HOPKINS:** The trainer is following the direction or assisting that trainee and following the direction of whoever's directing the lifts. That could be a multitude of supervisors on the job. Ultimately, the trainee is working at the direction of the trainer. My question is how qualified is the trainer if he's not required to be a certified crane operator?

**MR. STAFFORD:** Right. Well, you're supposed to have the answers, not ask the questions.

**MR. HOPKINS:** I did, if you'll write them down.

[Laughter]

**MR. STAFFORD:** All right. Hold on. We had Jeremy and then Christine.

**MR. BETHANCOURT:** This is just a follow-up to my question, before we had that great discussion about supervision and all of those things. My question about the supervision that you were talking about is directly related to -- because that was the conversation where the discussion between a trainer and a supervisor on an operator who is not yet qualified. So I'm trying to understand that's what the topic was about supervisor versus trainer, and that's what this whole topic of conversation about that was, that's what that was about.

What I want to find out what your thought is, are you saying that the crane company is not necessarily the one that's going to have a supervisor out there for that particular crane operator in training? Because that's what the language is that I think we're having here, and that's the discussion. Should it be called a supervisor? Should it be called a trainer? Should it be called a supervisor trainer?

**MR. HOPKINS:** I'll do my best to answer that. The trainer would be the one directly hands-on with the trainee.

**MR. BETHANCOURT:** With which organization?

**MR. HOPKINS:** With the crane company.

**MR. BETHANCOURT:** Okay.

**MR. HOPKINS:** And it would make sense to me if it were my crane company, the supervisor would refer to the supervisor of the crane company if I have a trainee and a trainer operating that crane. First of all, if I have a trainee operating the crane and I believe the standard says the trainer has to be an employee of the crane company. I think that speaks for itself. The supervisor would be from the crane company, not necessarily one of the trades or one of the entities on the job, per se.

I think there's a lot of different supervisor evaluations going on here. You go on a construction site, there are 30 supervisors. I think we're getting wrapped around the axle on all of the supervision and maybe it's just semantics, but I'm referring to the supervisor of the crane company who would be responsible.

**MR. BETHANCOURT:** And I think that's what Jerry is saying is we don't want to be confused by that particular word. Several folks have said, "We don't want to be confused by saying supervisor." We want to be very specific that it's somebody for the crane company, for an

unqualified or I shouldn't say unqualified, an operator in training.

**MR. HOPKINS:** Right. I believe that the trainer, I believe it's in the standard or even in the proposed language that the trainer has to be an employee of the organization training.

**MR. STAFFORD:** Correct. Okay.

**MR. HOPKINS:** So it makes sense to me.

**MR. STAFFORD:** Right. Thank you.

Christine? No.

Any other questions or comments? Yes, Steve, please.

**MR. HAWKINS:** Just real quick. Under the trainer qualifications, it says, "The trainer must have the knowledge, training and experience necessary to direct the operator in training on the use of the equipment."

Do you think that definition is sufficient to alleviate your concerns about the person doing the training should be a certified operator?

**MR. HOPKINS:** No.

**MR. HAWKINS:** No. Okay. Thank you.

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

One last thing, **MR. HOPKINS**, we've heard and obviously evaluation is an issue, and we understand the economic burden evaluation, but it seems like, to me, it's almost intuitive in the industry, you're saying that we wouldn't have an operator in the seat if he wasn't qualified. I mean this is an expensive piece of equipment. It's like a no-brainer for the industry.

What would you have OSHA do if it's recognizing that to come in and what would be the question that they would ask to ensure that the operator is qualified when they come out to take a look at the jobsite? We can't just say, "Trust me, we wouldn't have that operator in the seat because that's an expensive piece of equipment."

**MR. HOPKINS:** I haven't put a whole lot of thought into that, how to fix it. I would say that I would certainly recommend some sort of documentation, whether it's as arduous as Appendix D, probably not. But I think that there could be something and probably should be something that shows that the employer is doing their due diligence to provide proof of those evaluations.

As Mr. Cooke had said earlier, they do MSHA's. Some of you may or may not be familiar with, MSHA's pretty

stringent in their guidelines on certain issues to do with mining. In that case, he could probably show you a form, would probably suffice with reasonable surety that they're doing something above and beyond or at least equal to what you're requiring. I think the important thing here is that the employer ultimately is responsible to make sure they're qualified.

Now the question is: how do we do that without making it so arduous and unnecessary to where we are just creating mountains of paperwork that likely is not going to be read and kind of circumvents the real issue here, which is making sure your people are qualified and capable of doing what they're supposed to be doing.

I don't have the answer, but next time we meet, I'll try and do better on that.

**MR. STAFFORD:** Okay. Well, I appreciate the response. Yes, one last comment.

**MS. COYNE:** One last comment. Sarah Coyne with the Painters Union. In the industrial painting world, contractors can be what's referred to as QP1 certified. And with that, the industry standard has X amount of CAD certified workers that must be on that specific job that

the QP1 contractor received. With that in mind, do you think that as it pertains to this trainer on the jobsite and so forth, obviously, the person running the crane is a certified operator, do you think that there should be a percentage of workers on the job who have that certification so that they can be the mentors for the operators in training, always?

**MR. HOPKINS:** I think that would probably be overboard.

**MS. COYNE:** It would probably be? I did not hear you.

**MR. HOPKINS:** I think that would probably be overboard if I understood you right, as to have multiple certified operators on the site?

**MS. COYNE:** Or one. On the ground, not running the crane.

**MR. HOPKINS:** Yeah, I would say that we're not talking about something that would have to be monitored on a fulltime ongoing basis, but more of something that's done as a cursory check, so to speak. You already know that the operator is qualified who is sitting in the seat of, let's assume, a two or three million dollar crane. There is

supervision within the crane organization that wanders all over these jobsites.

I think that this is something that doesn't require any extra measure of requirement to necessarily do that. Would it be a bad idea? It certainly wouldn't hurt, but I think that the evaluations, there again, they shouldn't be quite that arduous.

**MR. STAFFORD:** Mr. Hopkins, thank you again for your time. We appreciate it. Any last comments, questions?

Okay. I think we're to the point where we should probably go ahead and take our break. We'll adjourn until 1:00 p.m. Thank you.

**[Whereupon, at 11:57 a.m., a luncheon recess was taken.]**

**MR. STAFFORD:** Let's reconvene the meeting, please. It looks like we've got ACCSH members back in the saddle. Thank you, Lisa.

All right. We're going to proceed with public comment. We've had one addition, and I'm going to move around the order to accommodate someone that has to leave early today, but with that said, we'll continue on with the

list that was provided by staff this morning.

The next on deck is Jim Leslie with the Operating Engineer Certification Program. Jim, are you here?

**UNIDENTIFIED MALE SPEAKER:** I saw him upstairs.

He's not in yet so now may be a good time to --

**MR. STAFFORD:** This will be a good time to rotate.

With that, I'm going to call on Laurie Weber, who is representing Kevin O'Shea, a private citizen.

Laurie, are you ready?

**MS. WEBER:** Yes.

**MR. STAFFORD:** You have your handouts?

**MS. WEBER:** I do.

**MR. STAFFORD:** Okay.

**MS. WEBER:** Damon said he would pass these out.

**MR. STAFFORD:** Damon's unreliable. You have to watch out on him.

[Laughter]

Where is he?

[Interposing Speech and Laughter]

**MS. WEBER:** As he's passing out the handouts, good after morning, as Kevin O'Shea would say. He sends his apologies for not being here. He had to go somewhere else.

Mr. Chairman, thank you for moving us up on the agenda, and everyone else in the room for not getting irate because we were moved in front of everyone else.

My name is Laurie Weber. I'm with the Scaffold and Access Industry Association. Clint Bridges is with me. He's on the Mastclimber Council of SAIA and also represents the manufacturer of a Mastclimber Equipment in Tennessee.

The handout that you have is what I'm going to read on behalf of the Mastclimber Industry. This is a proposal to revise OSHA's crane operator qualification requirement and the Cranes and Derrick Standard as it affects Mast-Climbing Work Platforms. The Mast-Climbing Work Platforms industry represented here today through OSHA's Alliance partner, the Scaffold and Access Industry Association would draw the committee's attention to our particular challenges in the implementation of OSHA's crane operating training requirement as per the Final Rule on the Cranes & Derricks in Construction.

Sorry, it's two-sided. Our industry offers robust training courses for operators of Mast-Climbing Work Platforms and their associated material lifts, which include safe operation and level 1 signaling and rigging.

When the Final Rule was introduced, the material hoist was the subject of a letter of interpretation resulting in the industry being unable to achieve compliance with the training requirements for operators and without a route to attain compliance.

The current Final Rule requires qualification through recognized certification vehicles such as NCCCO. NCCCO and other relevant certification bodies do not recognize our material hoist as a crane, leaving our industry with no route to compliance. Without the current deferment for Operator Certification to November 2017, our operators would not only be unable to obtain certification, but additionally would be unable to receive training through our manufacturers or industry bodies, effectively creating a situation where no compliant training could take place.

The definition of this equipment is further confused by its similarity to other types of hoist. The hoist itself more closely resembling hoist defined in ASME B30.16, the standard for Overhead Hoists. North Carolina State regulations have specifically excluded the Mast-Climbing Work Platform material hoist, stating, "This piece

of equipment would not fall under the scope of 13 NCAC 07F.0901. The more applicable standards would be 29 CFR 1926.554 and various sections of 1926.451." It appears the hoist design is an integral part of the scaffold.

Current industry operator training on Mast-Climbing Work Platforms using material hoist includes inspection, operation of both the Mast-Climber Platform and the hoist, load distribution, load placement, identification and abatement of hazards, level 1 signaling and rigging. The current industry training is both robust and comprehensive, and the industry believes that its training on material hoists is wholly appropriate and significant for the effective control of risk.

We want to highlight a few facts about the material hoist. The 'material hoist' is attached to the Mast-Climbing Work Platforms. It cannot be used in any other way, except as a 'mounted' unit on Mast-Climbing Work Platforms. The hoist is tested, inspected and serviced according to manufacturer's and ANSI guidelines. It is attached to the Mast-Climbing Work Platforms during the erection process by trained installers. The installers have been trained to assess the ground conditions under the

unit and, therefore, have selected the ground conditions for the use of the hoist.

When it's handed over to the operator, it can only do two things: lift a load vertically in a predetermined fixed position and can be moved from the fixed vertical position to the fixed leaning position.

The main areas of risk that we traditionally have reacted to as an industry are misuse, malfunction of either hoist or cable, incorrect setup on a jobsite, incorrect use, maneuvering load onto the platform at height, lifting excess load and falling load.

The Mast-Climbing Work Platform material hoists are an integral part of the Mast-Climbing Work Platform. They are specifically designed to be used only on the Mast-Climbing Work Platforms under strictly controlled circumstances and are operated by appropriately trained operators and are set up by appropriately trained installers.

The introduction of the Final Rule effectively eradicates any opportunity to appropriately train operators according to the rule. Industry certification organizations do not recognize Mast-Climbing Work Platform

hoists as a crane, nor do general contractors or some city and state regulators. The industry currently provides quality guidelines and training for the Mast-Climbing Work Platform hoist that is specifically designed for use with the Mast-Climbing Work Platform and cannot deviate from its intended loads and positions.

Therefore, we respectfully request a variation decision from OSHA or some similar solution to exempt the Mast-Climbing Work Platform material hoist from the Final Rule on cranes and derricks.

**MR. STAFFORD:** Okay. Thank you, Laurie.

Do you have anything to add?

**MR. BRIDGES:** No, not yet.

**MR. STAFFORD:** Just a pretty face, huh?

[Laughter]

**MS. WEBER:** He's here to answer any technical questions we may have.

**MR. STAFFORD:** Okay. Any questions or comments from anyone?

**MS. WEBER:** Wow.

**MR. STAFFORD:** Looks like you're off the hook. I don't either.

Go ahead, Kevin.

**MR. CANNON:** Kevin Cannon, Employer Rep, AGC. What exactly is it that you're asking?

**MR. STAFFORD:** They want to be exempt.

**MS. WEBER:** We're asking that right now, the way that it reads, that the Mast-Climber Work Platform falls says that we need to be trained under the Cranes and Derricks Standard, but yet, there's no one that will offer us the training because it doesn't fit into what they're doing for the crane training. Does that make sense?

**MR. STAFFORD:** So that's not a crane?

**MR. CANNON:** I mean I guess, Mr. McKenzie, does it meet the definition as defined in Subpart CC?

**MR. MCKENZIE:** This is Dean McKenzie, the Designated Federal Official. The mastclimbers are included through a letter of interpretation because they meet the functional definition in the Crane Standard that was provided by the negotiated rulemaking committee.

Cranes on a monorail, you can raise, lower and move horizontally at suspended levels. That's why they're included. There are certain types of mastclimbers with a jib arm, I'll call it, that can pivot, besides just the

monorail in and up. They're in because of the scope of the definition. A solution would be an enhancement. We had no option by the reg texts but to include those in the standard.

**MR. STAFFORD:** Go ahead, Jeremy.

**MR. BETHANCOURT:** Jeremy Bethancourt, Public Rep., so are you asking that you not be included?

**MS. WEBER:** The Mast-Climber Work Platform, yes.

**MR. STAFFORD:** All right. So how is training done now in your industry?

**MS. WEBER:** Go ahead.

**MR. BRIDGES:** Training is provided by the manufacturers as to the use. I mean the one thing about the hoist, the reason the crane guys, they have to be familiar with the mastclimbing to be able to set up the scaffold, to put the hoist on it and that's where the gap is. So we have to, from that point, when we do our training and installation of the mastclimbers and we train people to install that and to use that, when they're using the hoist on there, then it pertains to the hoist as well. So the training continues to the hoist and that's provided by the manufacturers.

**MR. STAFFORD:** Kevin?

**MR. CANNON:** I was just going to ask has there been any discussions between your organization and maybe some of the groups that do certification in regards to developing such a specialized training and classification to meet your needs?

**MS. WEBER:** Absolutely. Yes, there have, and that's where we started discussing there was a letter of interpretation, but there was a conversation with the certifying organization and they even said, "Well, the scope of what we're offering, we can't reach your needs."

I know that we've been in discussions about having a third party accreditation do mastclimbing training certifications, but at this point, we're just not that -- we don't know if there's a compliance opportunity between now and 2017, I guess.

**MR. STAFFORD:** So in your training, so I understand, when the manufacturer trains the operator, are they deemed qualified by the manufacturer, certified by the manufacturer? Competent by the manufacturer?

**MR. BRIDGES:** They are deemed qualified.

**MR. STAFFORD:** Qualified, okay.

Jeremy?

**MR. BETHANCOURT:** I guess my question would be to Dean, in a way, to his point. Paul discussed about alternatives that were potentially being looked at. Would that be something that OSHA would be looking at as far as an alternative to what's existing in the standard where they can't get that from a third party? Or would that be the third party?

**MR. MCKENZIE:** At this point, it hasn't been. The purpose of this rulemaking is to look at operator certification under the context of 1427 and the mastclimbing issue is more of a scope issue.

**MR. BETHANCOURT:** Okay.

**MR. MCKENZIE:** And we've not tried to get into the scope here.

**MR. BETHANCOURT:** I understand. Thank you.

**MR. STAFFORD:** Okay. Any other -- yes, Steve?

**MR. HAWKINS:** So would this be something like a digger derrick? We had digger derricks were in; then they weren't?

**MR. MCKENZIE:** And a laundry list of others that would like to be something. [Laughter]

**MR. HAWKINS:** I will have to say, though, if it's not being done like this, it's done with a forklift, and they're going to set the blocks up. What is the capacity, the maximum capacity of one of these, generally?

**MR. BRIDGES:** The maximum capacity of some manufacturers is 4,000 pounds, usually between 2,500 and 4,000 pounds.

**MR. HAWKINS:** When a crane is 2,000.

**MR. STAFFORD:** Sarah?

**MS. COYNE:** Maximum capacity's 4,000?

**MR. BRIDGES:** Yes.

**MS. COYNE:** Period?

**MR. BRIDGES:** Period.

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

**MS. COYNE:** I have one more question, just out of curiosity. Sarah with the IUPAT, sorry. How many certification entities have you discussed potential training with?

**MS. WEBER:** We have only discussed it with the NCCCO, I'm sorry.

**MR. HAWKINS:** Pete?

**MR. STAFFORD:** Steve, yes, please.

**MR. HAWKINS:** This is generally operated by the mason on a site, a foreman or something who somebody sets the pallet of blocks at the base of the scaffold, rigs it; you drop this down, pull it up, trolley it over. Set it on the scaffold. Distribute the blocks among the masons and go to work.

**MR. BRIDGES:** That's correct.

**MS. COYNE:** I do have one last question. How high can a mastclimber go?

**MR. BRIDGES:** They can go anywhere from 300 feet to probably higher as well. I don't know what the highest is, 500, maybe 800 feet. I think the highest one is about 1,000 feet right now.

**MS. COYNE:** One-thousand feet, 4,000 pounds being pulled all the ways up to the top?

**MR. BRIDGES:** Yeah. Don't know at that point that we would use a hoist, but the thing about using the hoist with the mastclimber is it limits people from trying to use a forklift, where the hoist is a safer alternative. It's all built within the realm of the scaffold. We're already looking at the foundation because we're putting the mastclimber there. We're already securing a scaffold to

the building. When you're building the mastclimber correctly, the hoist is already built in within those specifications.

And basically, you're taking it from one point to the next. You're not moving the hoist from different areas of the scaffold as well. You basically have two pick points: up and then on the scaffold, and that's it. It really limits the opportunity for -- there is basically no opportunity to alter it once it's been installed by the installer.

**MR. STAFFORD:** Okay. Thank you? Any other questions or comments? All right. Thank you very much. We appreciate your time.

**MS. WEBER:** Thank you.

**MR. BRIDGES:** Thank you.

**MR. STAFFORD:** Go ahead. Is Jim Leslie in the house? **MR. LESLIE** is with the Operating Engineer Certification Program. Welcome.

**MR. LESLIE:** Thank you. I'm going to keep this brief. This is Jim Leslie with the Operating Engineer Certification Program. I'm going to keep this brief. Everybody seems to be saying the same thing.

I want to applaud the board for how swiftly they handled writing the draft. The draft, as far as I'm concerned, is very well-written. I think there's some things that need to be tweaked or changed in it. I think, again, the concerns about the evaluation and review, I think these are things that our contractors are doing already.

I think if your intent was to -- as they said when they started the meeting, was to document it, I think that there may be better ways of doing that than the Appendix D. But I think that most of the contractors that I deal with and that I talk to on a daily basis, they're reviewing their operators. They're qualifying their operators. I think this was one of the big problems that we had with the standard.

Everybody kind of touts type and capacity. I think we're through that issue, right? In certifying by type, which even with type, I think we need to maybe center on some of the definitions of what type is going to be. But this review process, this annual review, I think the way it's written is going to put an undue burden on all of the contractors, the way it's written.

I think they're already doing it. If it was the intent of being a cursory look, to make sure that operators are certified, that operators are qualified, I think that there might be a better way of writing it up, if we all put our heads together. Other than that, as far as trainers, I believe that trainers should be certified. I think they should have all of the qualifications that the operator in training is seeking.

Again, I've only been in the Operating Engineers for 36 years, and when I wanted to be a crane operator, I was an oiler. So I was an operator in training as an oiler. I put my time in. The operator got confidence in me. I worked my way into getting seat time. I got experience that way. Nowadays, I think certification puts a lot of those operators back at that same point where they still need to get experience, and they still need to be out there. They need to be under the direct supervision of a certified operator or a qualified person. That goes for proctors, too, on the third party testing. That's all I have to say.

**MR. STAFFORD:** Thank you, Mr. Leslie. Any questions or comments?

Jerry, please?

**MR. RIVERA:** Just one quick question. Based on your experience, do you know kind of a timeline that somebody's becoming qualified has to have as seat time? Is in hours, years?

**MR. LESLIE:** I can tell you from a couple of places. I came through a formal apprenticeship program, and I put my 6,000 hours on-the-job training in to become a journeyman operator. OECP, the Operating Engineer Certification Program, requires a minimum of 1,000 hours of crane-related experience before you're even eligible to take our test.

We bring that same experience to the table, as far as that goes, as well. I was in training for 25 years. But it's different for everybody to build their skillset.

**MR. STAFFORD:** Jeremy and then Sarah.

**MR. BETHANCOURT:** Jeremy, Public Representative. I have a question, and I don't think I've heard an answer actually from anybody. I don't know if anybody asked the question. We've heard from several folks that are talking about the recertification, the yearly recertification, that it's potentially onerous on industry. What recommendation

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[Interposing Speech]

**MR. STAFFORD:** Reevaluation, let's be clear on the semantics because that's very important, right?

**MR. BETHANCOURT:** No, it is.

**MR. STAFFORD:** Okay. All right.

**MR. BETHANCOURT:** The reevaluation. Thank you. What recommendation would you give this body? So let's hear that from somebody.

**MR. LESLIE:** I don't know that I have thought about it at that length, but I will tell you when I first read the draft, I thought, "Well, okay, they're asking the employers to do a cursory evaluation of this operator to make sure that they're continuing to be qualified. All right? Because that was the big issue, I think, when we had the meeting, I guess it was last May when we were here. We talked about type and capacity.

We talked about qualification versus certification. And I think it should be more than a cursory but not so invasive where they're going to have to stop, bring in equipment, allocate people to it. Most contractors do that on a regular basis now. They're

constantly bringing in big cranes.

I mean they brought in a huge crane down into -- it's one of the refineries down home. That company had to make sure that operator was qualified to run that big ringer crane that they brought in. Now, that's the company's responsibility. That was a certified operator. It's the company's responsibility to qualify that, how they do that.

Now they may never run that crane again. He may never run that big crane again, but he might go out and run a different crane. It's still the company's responsibility. How we have to document that, I don't know if I have the answer right off the top of my head.

**MR. BETHANCOURT:** As far as a timeframe?

**MR. LESLIE:** You know what? I think they do it on a continuous basis. I don't know any contractors who fail to make sure that their people, at least the union contractors that we're associated with, who fail to make sure that their people are qualified. That's an ongoing process, all the time. It's not something they do every six months. It's not something they do once a year. It's an ongoing thing. Yet, most of the union contractors, they

use the hiring hall. They call; they get somebody who can run that piece of equipment when they stipulate that, when they put the job order in.

They send them out. They put them on the machine. They talk to them. They interview them. If they can't run it, then there's an old saying in the operators, "If you can't do it, you can't stay."

**MR. STAFFORD:** Okay. Sarah and then Kevin and then Jeremy. We'll go around the table starting with Sarah.

**MS. COYNE:** Sarah Coyne with the Painters, and thank you for your comments. But I do have a quick question as it pertains to you said that you did your 6,000 hours through the apprenticeship --

**MR. LESLIE:** Yes.

**MS. COYNE:** -- but no one at your apprenticeship is allowed to take the test until they have 1,000 hours?

**MR. LESLIE:** Through OECP, you have to have 1,000 hours of crane-related experience.

**MS. COYNE:** My question is what test?

**MR. LESLIE:** The certification.

**MS. COYNE:** It's a certification?

**MR. LESLIE:** Yes, OECP, the Operation Engineer Certification Program. It's a nationally recognized certification program.

**MS. COYNE:** Okay. Thank you. I just wanted to be clear that I understood what you were saying. Then the other question I have is rather than doing the reevaluation, which you don't recommend, do you think a good solution might be so many CE hours per year to be eligible to re-cert after five?

**MR. LESLIE:** Again, that would be something to think about.

**MS. COYNE:** Or journeymen upgrades?

**MR. LESLIE:** All of the operators who are certified, whether they're through any of the programs, go through a recertification every five years, where most of them are doing classes and then they're taking a written examination and renewing their certification. That happens every five years.

**MS. COYNE:** The reason why I ask you is it seems to be the pattern so far, and I understand that there's some opposition to Appendix D, but I really haven't heard any input from the speakers on what solution.

So I'm asking, I mean I've asked the speaker before do you think that there should be somebody onsite that's certified or do you think that say 120 hours of continuing education over five years would be a better solution? I'm not hearing anybody provide us with their personal or professional opinion on how to justify a change. If we're not going to do the reevaluation, well then, what's --

**MR. LESLIE:** What I'm saying is the employers are reevaluating these guys and looking at these operators on a continual basis. All right. Most operators, there are a lot of -- it depends on where you are in the country. Some of them go to work for an outfit and they stay there for 30 years. A lot of operators are nomads. They go to work over here for two or three months.

They may change locations and go work over here for a year-and-a-half. Every time they change jobs, they're going to be evaluated. Really, it kind of takes that scope of the amount of people that would be looked at on an annual basis, it makes it smaller.

**MS. COYNE:** So without sounding like a jerk, which I'm not trying to, if they're constantly doing evaluations,

why would it be so difficult to document it?

**MR. LESLIE:** And I don't think it's difficult. I really don't. I don't know if this is the right --

**MS. COYNE:** The right document.

**MR. LESLIE:** -- the right document.

**MR. STAFFORD:** Right.

**MR. LESLIE:** I'm not against doing his, but I don't know if this is the right one. I don't know, like I said, the first time I read the draft, I thought, "Well, okay, they want the employers to do a cursory check and make sure annually that these guys or these operators are certified and they're qualified." And I use those two terms separately on purpose.

**MS. COYNE:** Yeah.

**MR. LESLIE:** Because the employer is the qualifier. I understand that, and I don't think that's the burden. I think the burden would be if you're going to ask them to be qualified on 30 different cranes because some of the crane barns will have 30 different cranes. So I'm going to have to stop operation and reevaluate these operators on 30 different cranes once a year. I don't know if that's the solution.

If it's a cursory look and they're just going to document that the cranes they are running, they're qualified, that's maybe a different story.

**MR. STAFFORD:** Okay. I appreciate it. You were done, Sarah. That's a six-part question. We'll come back to you later.

**MS. COYNE:** Yeah, I'm done. No, no, no. I'm done. I was saying thank you.

**MR. STAFFORD:** All right. Kevin?

**MR. CANNON:** She answered my question.

**MR. STAFFORD:** Jerry.

**MR. CANNON:** Well, clarification, Mr. Leslie.  
One-thousand hours of seat time before -

**MR. LESLIE:** A thousand hours of crane-related experience.

**MR. CANNON:** -- before recertification?

**MR. LESLIE:** Before -- and I can only speak for OECP.

**MR. CANNON:** OECCH.

**MR. LESLIE:** We have 1,000 hours of crane-related experience before you qualify to become certified with OECP. Then every five years, they have to have 1,000 hours

in each classification that they're going to recertify in, over the five-year period.

**MR. CANNON:** Okay.

**MR. LESLIE:** We are making sure that they have this experience that they're stating and maintaining their level of competencies.

**MR. CANNON:** Got it.

**MR. STAFFORD:** Jerry?

**MR. RIVERA:** Yes. We've heard throughout the morning that the reevaluation, it might not be feasible, but coming from somebody who runs the operator certification program, would you agree that they recertify every three to five years, would you agree that that would be sufficient time to lapse between evaluations, knowing that it happens on a continual basis?

Again, I'm just trying to see what the industry practice is and where we might fall.

**MR. LESLIE:** Again, five years would not be a bad thing, but most operators don't work for the same company for five years. Most operators will work over here, and then they'll go to another contractor and another. They may work for several contractors. There are a lot who work

for one crane barn their whole career, but they move around.

Every time they move around, that contractor or that employer is going to decide whether or not they're qualified to run those machines. To answer your question, every five years would be great. But it's something that goes on all the time. So if you're just asking to document it, I think it'd be great. I don't know that this is the language that I would use.

**MR. RIVERA:** I will just say this. I guess, yeah, that's what I'm thinking. If it's already continuously being monitored, that maybe every five years is kind of where you circle back again and double-check that. But my last question is, the 1,000 hours before they sit on a testing, that would be considered that individual who's running the crane between the 500 hours, trying to complete his 1,000 hours, that's an operator in training, right?

**MR. LESLIE:** It can be training or experience working with a crane.

**MR. RIVERA:** That individual, before he reaches those 1,000 hours, currently, how are you guys observing him? Is it through a trainer, evaluator, mentor, somebody?

**MR. LESLIE:** That's up to the individual. The candidates who apply for an OECF certification, they document their hours. They have to be verifiable. We call employers and we go back to all training sites and --

**MR. RIVERA:** Who signs off for their hours?

**MR. LESLIE:** The individual candidate signs off for it, and then our Certification Director verifies those hours.

**MR. RIVERA:** Okay.

**MR. STAFFORD:** Tish?

**MS. DAVIS:** Yeah. I just want a point of clarification. It seems to me that OSHA is asking that Appendix D be implemented when they first come onsite and then also annually, right? That's part six: Documentation. "Employer must document the completion of the evaluation," not the reevaluation but the first evaluation, "as specified in Appendix D." And then as well as the completion of the annual reevaluation.

Do you have concern about using Appendix D initially as well as part of the reevaluation process?

**MR. LESLIE:** You know, I'm looking at that document, and I'm just not sure that this is the exact

wording that I would have.

**MS. DAVIS:** Right.

**MR. LESLIE:** I know that I've been on both sides of the fence. I've been on the employer's side, and I've been on the union side, both. I was a Mine Superintendent, and as a mine superintendent, I would call the hall and get a crane operator. Bring him in, and I would talk to him, interview him, put him out on a machine. If he didn't cut it, I'd call the hall and get somebody different. I know that none of these employers want somebody to show up with just a certification and say that they're qualified with just a certification, right?

They're going to interview them. They're going to go out and put them in the seat, and you're going to know in a very short period of time whether that person is qualified or not.

**MR. STAFFORD:** Okay. Any other questions or comments?

**MS. DAVIS:** One more question since you said you were a mine operator. Earlier, we heard someone speak about MSHA requirements. Do you have any insight as to whether or not there is a way of coordinating -- I mean

that you could see that as something --

**MR. LESLIE:** To be honest with you, I haven't given it any thought in depth.

**MS. DAVIS:** Okay.

**MR. LESLIE:** Because this is the first time that discussion's come up in a long, long time.

**MS. DAVIS:** Okay. That's fine. Thank you.

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

**MR. LESLIE,** thank you for your time. We appreciate it.

**MR. LESLIE:** Thank you very much.

**MR. STAFFORD:** Beth O'Quinn, are you here?  
There's Beth. Beth, Specialized Carriers and Rigging Association.

**MS. WILSON:** Mr. Chairman?

**MR. STAFFORD:** Oh, yes, please. I'm sorry, Lisa.

**MS. WILSON:** Thank you, Mr. Chairman. I'd just like to designate the Scaffold and Access Industry Association Presentation as Exhibit No. 8. Thank you.

**MR. STAFFORD:** Thank you.

Hi, Beth. The floor is yours. Go ahead.

**MS. O'QUINN:** How are you?

**MR. STAFFORD:** Fine, thank you.

**MS. O'QUINN:** Good afternoon. My original thing said good morning, but we get to be afternoon now. For those of you that don't know me, I'm Beth O'Quinn, Vice President of Specialized Carriers and Rigging Association.

**MR. STAFFORD:** Beth, could you speak a little bit more in the mic? I think the people in the back can't hear you very well.

**MS. O'QUINN:** Is that better?

**MR. STAFFORD:** Yeah.

**MS. O'QUINN:** Our association's an international trade association, which represents 1,400 companies involved in crane and rigging operations, equipment rental, machinery installation and millwrighting.

This standard has been very near and dear to our members' core of who they are and what we do. Over the last 16 years, we've been very instrumental in being part of the original ACCSH subgroup. We had a member participate in the CDAC committee and have participated in everything along the way. We'd like to say in the beginning, out of the 42 things that were implemented, there was only one that everybody doesn't agree on, which

is crane operator certification.

We'd first like to say we understand OSHA did 40 site visits. Once we got the language, we sent it out to our members, sent it out to a sample of 30 companies. Ten didn't respond. Ten said things that I can't even repeat about the language that was provided, and then a few others said, "Absolutely, this makes sense, some of it, but not the language."

I just want to give a sample of three of the companies that responded to us of how they feel it would adversely affect their companies. Company A shared that they fail to see how such a proposal is even feasible, given the sheer number of cranes and models on the market. They're considered a small business and have 16 different makes and models of cranes, not even accounting for the different configurations possible with each. How can they be expected to evaluate each operator on every make and model in every configuration possible? I think you're hearing that constantly from everybody.

The other question was are their operators now going to be expected to carry 16 additional qualifications that state that they can operate those 16 different cranes

for every make and model and capacity? Again, from an administrative perspective, ensuring that each operator is reevaluated every year, that adds complexity to their already -- businesses as they're going along.

Their final concern raised is that such a regulation runs the risk of lost or inefficient work for their company. For example, if a specific crane is requested and they don't have an operator who has operated that piece of equipment specifically within the last six months available on the day the customer wants to do the job, the customer will have to wait while they reevaluate an operator to put them out on the job.

Or as we all know, that's not going to happen, and they'll lose the work. For them, that's a huge concern. How does the evaluation work for new crane models that are released? Is everyone considered an operator in training for new makes and models purchased by their company, even if they have been operating similar types and models for many years? Or would the manufacturer send out trainers after purchase and give out credentials to each operator or to the owner to distribute?

What would stop a crane owner from just printing

out cards whenever it's needed for a job opportunity? I think that's a risk that we run by saying you have to have these pieces of paper every time for a new crane. The people that we want to follow the rules are the ones that are going to find a way around it, and that's a concern.

Company B offered the following example. They said, "Imagine taking a day actually watching and witnesses from start to finish the assembly, operation and disassembly of any number of large AT cranes and the reconfiguration of every individual configuration that would be necessary to properly evaluate an operator." Again, this is based on the language as it's currently proposed. "This process would take approximately two to three weeks of agonizing assembly and disassembly of the crane, along with a subsequent evaluation of an operation on a large crane just to certify one or two operators."

"Multiply this times 100 operators in our Wisconsin operation alone and then start the process all over again a year later or soon if the operator hasn't operated that piece of equipment within the last six months. There are not enough evaluators, trainers and assembly/disassembly directors to perform and carry out the

requirements of the proposal, let alone service and support our normal customer base with qualified individuals.”

Finally, Company C states they “have an extensive operator qualification evaluation program and thinks it is good for the industry for the crane providers who have operator qualification and evaluation programs.” However, the problem is, again, the many hundreds of models and cranes and configurations. There’s just no way a company like theirs where they have over 50 different models of cranes and an annual evaluation is not possible as operators move from crane to crane and may not come back to a given crane for well over a year.

They have found themselves that operators retain their specific crane knowledge as most crane models are very similar. For example, they have many models of Liebherr All-Terrain Cranes that have almost identical control systems so it is easier for an operator to move between these cranes.

To move back to a crane that they worked on two years ago is as easy as they would have worked on similar equipment in the meantime. But again, with the regulation proposed text that’s come out, if they haven’t been on that

specific model in six months, they have to be reevaluated. For them, that's a concern. There is no difference, and it's not going to be lost. Their opinion, based on years of experience is that the OSHA requirement of an annual evaluation is just not feasible and does impart a significant unnecessary burden on their business without providing substantial safety aspects.

At the end of the day, again, you've heard this from I think everybody who keeps coming up here, operators are evaluated daily, not only by themselves but by their coworkers, their clients, other people that are on the jobsite and the ones that are not qualified to operate those cranes are weeded out, and they don't get to go back. They're even called to leave the jobsite.

The evaluation process includes that an operator has demonstrated competency in many areas, but I'll only highlight three that gave our members considerable concern: assembly, disassembly and maintenance. Many crane operators do not assemble the cranes and due to the increased amount of technology involved in cranes, they don't provide the maintenance on the cranes themselves.

However, that is part of the evaluation process.

If there's an issue, a lot of them have certified mechanics or technicians that come out themselves and look at the piece of equipment, that's not the operator. In the end, we appreciate and applaud OSHA for recognizing the errors in the current Standard, however, our question is why not make adjustments to the existing language that's already in there rather than proposing new language which was not initially considered during the original rulemaking or during the SBREFA process or anything else.

Our concern is that it's going to take another three years of regulatory wrangling, which will lead to more hearings and delays in ensuring safe crane operations. I think it's important to note the industry is not looking for a pass, but rather clear concise language that adds to overall safety, not just additional paperwork.

One last item is one of the things that we've heard a lot when the crane standard came out and the CDAC members would talk about their intent, "That was not our intent when we wrote it. It wasn't our intent to have that word interpreted that way." I think we heard this morning when OSHA was speaking, there were some questions from the committee and said, "Well, this is what it says."

And they said, "Well, that was not our intent. What we mean is for the words to say this." So I would just encourage you as a committee, I think we've all learned our lesson about intent, is to make sure that the words on the page are the words on the page, not what is intended by somebody else who may or may not be with the Directorate of Construction five years down the road, but let's make sure that the words state what they should state. I mean we've all had to live with the errors from the past. I thank you for your time.

**MR. STAFFORD:** Thank you, Beth.

Questions or comments for Beth?

**MR. BETHANCOURT:** Jeremy Bethancourt, Public Representative, will we be able to get any of those statements that you just discussed so that we could look at them?

**MS. O'QUINN:** Sure.

**MR. BETHANCOURT:** Would we be able to do that?

**MS. O'QUINN:** Yeah. I marked up my paper, but I can resubmit them. Yeah. I can bring a clean copy tomorrow to give them to you, if that's what I need to do.

**MR. STAFFORD:** Lisa? I mean she didn't use

anything. The question is, is that something that's going to be in the docket?

**MS. WILSON:** Mark it Exhibit 9.

[Interposing Speech - Off Microphone]

**DR. BRANCHE:** It's not the text of the remarks. It's the text of what she read from three of her member organizations.

**MR. BETHANCOURT:** That's correct. Statements from other employers.

**MS. WILSON:** Just those three examples?

**DR. BRANCHE:** Those three examples.

**MS. WILSON:** Right.

**MR. BETHANCOURT:** Thank you, Dr. Branche.

**MS. WILSON:** I'm sorry. So it would be just really a written text of what you've said today?

**MS. O'QUINN:** Right. If I understand correctly, what you want are the three examples.

**MR. BETHANCOURT:** No, excuse me. My question is she read some letters from employers that were responding -  
-

**DR. BRANCHE:** I agree.

**MR. BETHANCOURT:** -- and I thought those are what

are valuable, not her whole text of what she said up to that point or even after, but the letters from those employers, basically.

**MS. O'QUINN:** I can share those. Absolutely. No problem.

**DR. BRANCHE:** And that's what Pete's question is, can we get it?

**MR. STAFFORD:** That's the question.

**DR. BRANCHE:** Can we get it?

**MS. WILSON:** Yeah. Yeah, they can be entered if the committee wants to see them.

**MS. O'QUINN:** Okay. I can bring them tomorrow.

**MR. STAFFORD:** The answer we'd like, yes. We can be able to do that.

Any other questions or comments for Beth? So before you leave, Beth, what do you want? What do you want this to say? That we have third party certification and the employer's responsible to make sure the operator is qualified, right? That's what we want.

**MS. O'QUINN:** That is correct.

**MR. STAFFORD:** The question becomes, and this is, I think, what we've been getting around and we're going to

continue to have this discussion. And tomorrow, we're going to try to come up with some language that makes sense. You can't have a standard where it says, "Trust me, the operator is qualified." So we have to come up with something that when the OSHA compliance operator goes out there and says, "Let me see your documentation that this operator is qualified," what is that?

**MS. O'QUINN:** Well, I would ask what do they currently do? I mean the current standard, the duty has always been on the employer to ensure that their operator is qualified and trained for that piece of equipment.

**MR. STAFFORD:** Okay. So let's just assume that that's it. What are we asking OSHA to do when they walk out on the site and want to make sure that the operator is qualified? What is that compliance operator looking for?

**MS. O'QUINN:** Well, I think based on the current standard, you're going to have the certification. You're going to have -- and, again, everybody keeps referring to Appendix D. I think based on the way that the regulatory language is currently written, the proposed regulatory language is not something that the industry can live with.

However, I've spoken with a couple of people, and

they've said, "If it's a simple form that we have to fill out that states yes, they're qualified; we have checked this, this, and this, then absolutely." It's when you get into the request for have they been on this make, this model, this configuration, this many months. That becomes overly burdensome, and I think that that's a little more to ask.

**MR. STAFFORD:** Okay. All right. So you can appreciate what we're trying to do. We're trying to balance what we're hearing.

**MS. O'QUINN:** Right.

**MR. STAFFORD:** That this documentation is very burdensome for the industry versus OSHA needs to be looking at something.

**MS. O'QUINN:** Right. But I think OSHA also has the definition of a qualified person, and I believe that that is something that has been used in other standards. So SC&RA is part of the Coalition for Crane Operator Safety, and I know a couple of people behind me or the next individual plans on discussing that. There's ten organizations that have all participated.

We took the current regulatory text and not the

proposed and found a couple of places where we thought it puts the onus back on the owner, back on the employer to make sure that they're qualified. And part of it is using the definition that OSHA has always used as a qualified person.

**MR. STAFFORD:** Okay. I appreciate that.

Yeah, Cindy, please?

**MS. DEPRATER:** Cindy DePrater, Employer's Rep.  
Beth, just two questions.

**MS. O'QUINN:** Sure.

**MS. DEPRATER:** The evaluation is done at five years, right?

**MS. O'QUINN:** Yes, certification. Yes.

**MS. DEPRATER:** Okay. The certification.

**MS. O'QUINN:** Yes.

**MS. DEPRATER:** What does that look like currently?

**MS. O'QUINN:** Well, it's by type.

**MS. DEPRATER:** Okay, by type.

**MS. O'QUINN:** By type.

**MS. DEPRATER:** But I'm trying to -- it's a full written exam.

**MS. O'QUINN:** It's a written exam. It's a full

written exam and a practical exam.

**MS. DEPRATER:** And a practical observation, any observation?

**MS. O'QUINN:** Right.

**MR. CANNON:** Not necessarily.

**MS. DEPRATER:** Not necessarily. Okay.

**MR. STAFFORD:** All right. Who's answering the questions here? Kevin or Beth?

**MS. O'QUINN:** I was going to say -- well --

**MR. STAFFORD:** What's the discussion?

**MS. DEPRATER:** Well, the question is if it were to be a three-year versus your six-months or annual and the same type of evaluation with a written test, would that be acceptable?

**MS. O'QUINN:** Are you saying for qualification or for certification?

**MS. DEPRATER:** Certification or annual evaluation, instead of an annual, what if it were to go to every three years? I'm just trying to get a solution.

**MS. O'QUINN:** Right, no.

**MS. DEPRATER:** I'm trying to get people to think about what is the solution. If it's not an annual and it's

not six months, what is it?

**MS. O'QUINN:** Well, I think, like I said, certification is five years.

**MS. DEPRATER:** Right.

**MS. O'QUINN:** I don't think we're going to change certification itself. However, I think to do a reevaluation, I think five years would be comparable because it coincides with the certification. And again, the evaluation is ongoing.

**MS. DEPRATER:** And the same type of evaluation, ongoing?

**MS. O'QUINN:** Yes.

**MS. DEPRATER:** Okay. Thank you.

**MS. O'QUINN:** Thank you.

**MR. STAFFORD:** Thank you. Any other questions or comments for Beth? Beth, thank you.

**MS. O'QUINN:** Thank you.

**MR. STAFFORD:** Okay. Billy Smith, William Smith is representing as a private citizen today.

**MR. SMITH:** Mr. Chairman, for the record, I just want to make sure it's noted that Damon is back on par again and he's doing his job. [Laughter]

**MR. STAFFORD:** All right.

**MR. SMITH:** Damon, I'll put you back on the record.

Mr. Chairman and members of the committee, I want to thank you very much for the opportunity for myself and the rest of the public to speak. Many of the people in the audience know me and they consider me somewhat of a rebel. I think that it's more my passion and emotion for this industry that I've been a part of for 37 years that keeps me moving in the direction that I move into.

Because of that, I want to apologize a little bit, to the extent that 15 minutes, they'll also agree, is very hard for Bill Smith to put anything in content. So I had to write mine down. Damon's handing out not only my written testimony here but some other documents that we'll talk about towards the end of the presentation.

Just briefly, I wanted to give the committee a brief background of my -- and I'll quote it as knowledge training and experience in the crane industry, which underscores basically why I'm here, as well as many other capable individuals in this room. I started as a crane operator back in the '70s. Worked into the labor position

with the IUOE as the Safety and Training Director.

Then I moved over to the management side with a corporate safety director with Maxim Crane, which is where Troy Wagner now sits as well, who testified earlier. Then, actually, I moved over to the government side and I worked for Bruce Swanson and Noah Connell [ph] in the Directorate of Construction. And for the last 12 years, I've been in the insurance industry. And we insure crane companies as a specialty risk program provider of just that industry alone.

Additionally, I sat as a member of ACCSH Committee for about a dozen years, way before you guys, and it dates us all, that's for sure. Also, SENREC, which is the Negotiating Ruling Committee for Steel Directors; CDAC, which is the Cranes and Derrick Negotiated Rulemaking Committee that I sat on. And there's two other individuals in the audience coming up behind me that also sat as CDAC members.

NCCCO commissioner and B30.5 and B30 Committee for about 24 years now, which comprises my 37 years of being in the business and relatively my passion. I'm here today as a representative of our company and the insurance industry.

I see that there were insurers on there, and we are the largest insurer of the crane industry.

We are a program that just does cranes. We have over 900 crane companies we insure, and we've been the endorsed provider of insurance for the crane and lifting industry for more than 20 years with SCRA, with Beth's program behind us.

Let me start from the beginning for the members that may not know all of the history, but in '03, '04, the committee was formed, CDAC. They gave us 11 months. There was 23 of us, including OSHA that sat at the table every day in the Solicitor's Office to iron out a new rule that would change the existing rule that's been in effect since the act from 1970, which referenced B30, '68 version. That's how old it was. So it had a reference back to 1968. It was definitely long overdue and needed some work.

We carved out, after 11 months of meeting one-week every month for 11-months, with our employer's opportunity and giving us the time to do it, we carved out a new rule. There was 42 sections of a new rule. The old rule actually had seven. It had from Section (a) to Section (g). The new rule now has 42 sections; 41 of them sections have been

enacted and are in play since 2010.

There's one section that we're talking about today, Section 1427, about operator certification that got a four-year window of a stay. The reason being, at the time, back when we did it in '03, '04, by the way, we agreed to a four-year window, but in 2010, seven years later, it enacted, which started the four-year ticker. And the reason was is because we wanted the industry, the employers, the crane operators and the certification bodies to get up to speed, to be ready for the number of people.

Unfortunately or fortunately, that one rule came out, and here's where the challenge came in. When OSHA published the Small Business Entity Compliance Guidelines for all of the small business people, which 80 percent of the crane companies are, that was the first idea that we heard about, about what an interpretation would be based on what the words were.

Beth said it earlier. What they did was they said capacity was an issue. And here's how they worded it, they said, "They're going to be certified by type and capacity, and you can run cranes smaller than your capacity. You just can't run larger." That was the first thought that

all of us, including the other two, the three of us on CDAC really thought about the fact that we made a mistake because capacity, the one word, in all of the four certification elements, you have four options to be certified, that was the only one that had the word capacity in it.

The other three didn't have capacity, it just had type. If capacity was that important, it'd have been in all four. The committee made a mistake. It was an overlook. We missed it. So we saw the fact that capacity came out, but here's what we also saw. We saw the fact that OSHA then determined that if you were certified, you were, in their words, "Deemed to be therefore qualified." I can tell you from all of the CDAC members, both sides, and the fight that we had, none of us in that committee ever said, "Certification equals qualification." Nobody.

Now, if we'd have left that alone and we wouldn't have been pushing the way we've been pushing, every employer in this room and outside of this room would love the fact that all I have to do for my crane operators is get them certified. Therefore, I avoid any OSHA citation because they're automatically deemed to be qualified. That

in its sense from the 1970 Act, was a step backwards. It wasn't going forward, and we didn't work 11 months, a week a month, to get this thing to go backwards. We did it to move forward.

So we came forward and said to the committee, to OSHA, "Deemed to be certified is not right. That's not what we meant. That's not what we intended. We need to fix that. You all need to fix that because if that is what you intended and that's your interpretation, let's get it right."

Unfortunately, to be honest with you, we devaluated the certification in doing so because what we kept saying was, over and over again, to the government, "Certification is like a driver's license. It's your opportunity to get on the road. It's your opportunity to get in the crane. It's a foundation that we've never had ever before in the past." We've never had it. You couldn't as an employer know what a crane operator knew unless you put him on the seat of a crane because most of the time, your previous employers will do what? They won't tell you anything about the past.

Why? Because of litigation in the society we live

in. So you have to wing it on your own. We thought that certification was a great foundation. By the way, when I tell you that we devalued it, shame on us because you'll see from the certification bodies that'll testify, it is not easy for a crane operator to pass that test, not easy at all. In fact, to be honest with you, it's got a 30 percent fail rate. All right. It's difficult.

On the written side, it's difficult, and on a practical side, even though you're not in a work scenario, the real world, you've got people around you and everything else. You try to control a headache ball by itself with no load on it, because that's what you're doing, and not knock a 55-gallon drum over or not knock tennis balls off of posts that are only three-feet away from your ball and you've got to control that, it's not easy. None of us in this room could do it unless you're crane operator.

The challenge ended up being we wanted to move forward. What happened was this came out, and you'll see here on some of my concerns, I have the second handout. All right. What I've done is I've labelled all of the concerns of how erroneous, superfluous and how challenging this will be for the industry to try to move forward. When

they say an evaluation and a reevaluation, and you've heard it over and over again, look, as a crane operator, crane companies are going to get a phone call.

The phone call's going to be, "Next time I rent that crane from you, I want Bill Smith to be my operator." That's an evaluation. That's a great one from a customer. It could be, "You get this crane operator off this job right now." That's another evaluation. It's done every single day on every single job that every one of our cranes go. We're acting like this evaluation is so important, so detailed, so critical that owners of cranes and crane operators are at such a low level, we have to make it right for them.

That's what this is saying. They're not doing their job; we have to make it right. From the insurance industry, right, I'm the Vice President of Claims and Risk Management. And we talked about preventative, but I'm the Vice President of Claims and Risk. In the years I've seen, we've got 4,500 plus crane claims, accidents. I can tell you it's not crane operator error that are part of the accident.

You've got weather. You've got wind. You've got

ground conditions. You've got signal people that don't know what they're doing that are signaling cranes. You've got riggers that don't know how to rig. You've got improper rigging. You've got skillsets of individuals working around cranes that have no idea what the crane's going to do when it does it. All right? There's so many factors that go in. And, by the way, you've got pressure of the jobsite. Classic example for all of us that have seen it in years past, Big Blue.

What was Big Blue? That was at Milwaukee stadium. Why was that lift made after it was postponed by the operators five times over? You know why it was made? Because opening day had to occur, and if that roof truss of 450 tons wasn't set, it puts everything back. So you get jobsite pressures.

All right. That helps cause the fact that people are put into different positions to do things that they don't normally want to do. There's a lot of things that go into that crane accident.

In moving forward in some of my comments, there's a coalition that we formed now because we couldn't get the ear of the department enough to try to get it to understand

so there's a coalition. Beth said it earlier. It consists of ten groups. That is the industry that this is going to be regulatory of, right? There's AGC. There's the iron workers. There's the operators, part of this coalition. There's OECF, you just heard from earlier. National Center for Construction Education and Research, Steven right behind me. CCO program is part of it. AEM, Equipment Manufacturers. AED, dealers. Insurance. This coalition is labor; management, union; nonunion all coming together for the same purpose.

The purpose is to fix what's broken. Remember I said we, CDAC, made a mistake by leaving capacity in? The government also made a mistake by saying certification is deemed to be qualification. If we fix just them two areas alone, just the two areas, we fix them, right? This 1427 can move forward quickly. And what I mean by quickly is this. We have been forever, think about it, you heard Mike Eggenberger say 1992. You know why 1992 is the date? Because of the tower crane that fell down in San Francisco and landed on a school bus.

And OSHA said, "We're going to give you an advanced notice of proposed rulemaking." That was in '92.

That's a pretty good advanced notice that we're going to change the rule because we're in 2015, and we're still not there yet. And there's still two more years behind this if we don't get it right. Sadly, you look at California, you look at Washington State, you look at other places that have moved forward with either certification the way it was, right? Excluding some tweaks because they've tweaked it, and licensing in other states, but you can see drastically the numbers of crane-involved accidents in California dropping since they implemented this.

You go to the province of Ontario, which is where a lot of this started, and the data that we gathered in CDAC in '03, '04, and in the province of Ontario, they've got 40 plus years of watching over accidents prior to certification of crane operators and afterwards. Literally, they went from a scale this high down to nothing. They had years of no fatalities and no injuries because they enacted it.

We're still dragging our feet on this section. Time is of the essence to get it done and get it done right. What I've also given you is a letter from the Hill, hoping that OSHA continues to move forward with us and the

industry. The very last thing, as you'll see it, is a recommended changes by the Coalition of Crane Operator Safety.

This is the actual language that you all have in front of you that's proposed. And I don't know, somebody said they had a company that doesn't print in color. Did the government print this in color by any chance? Or is it all black and white? Black and white? There's only a handful, and I apologize. I have a couple more.

**MR. STAFFORD:** Which one are you referring to, Billy?

**MR. SMITH:** You'll see it at the top. Damon, when you copied, did you copy? Now, that's the letter. That's the letter. Yeah. It must be attached. You'll see at the top, "29 CFR, Part 1926, Recommended Changes by the Coalition of Crane Operators Safety." It just has color. You can go right to the only changes. I'm sorry they copied in black and white. But basically, here's what we're saying, "capacity" is out. The government's already agreed to that. That's the first fix of the first error.

Take out "deemed to be qualified" and put in just these words, just like it has been, Pete, forever, "The

employer must ensure that operators of equipment covered by the standard meet the definition of a qualified person to operate equipment safely. Where an employee assigned to operate machinery does not have the required knowledge or ability to operate equipment safely, the employer must train that employee prior to operating the equipment. The employer must ensure that each operator is evaluated to confirm that he or she understands the information provided in the training."

Trainers, trainers are operators. I'm an apprentice. When I learn how to run a crane, I've got a little bit of training in the class through my apprenticeship, but here's what I've got, I've got tons of OJT. OJT is under the direction of an operator. He's the one that's telling me, "Let me tell you how to run this."

Back in my day, when you showed up, it was Lever A and Lever B, and you'd Lever B until they tell you. All right. So that's how we were taught. The operator really taught you the fact that he showed you how to run that particular crane and he gave you hints on it.

There's no person out there on a jobsite that's another person that's sitting there watching everything you

do. It's an operator that's teaching an operator in training how to run it. We do it now with the big cranes. When you get a brand new big crane coming in, you'll get your 250-ton crane operator that'll move up to the 500. He'll go with the 500-ton operator for whatever time that takes, depending on the previous guy's experience, knowledge and training. And it might be a day, and it might be a week or it might be a month.

It all depends on what they're willing to do to get him ready to run that 500-ton. By the way, training of an operator is not how to control the load and how to slowly swing it and how to boom it. We got that already. It's just training the little idiosyncrasies of that particular crane, the nuances. How to boom it up; boom it down, the attachments that might be with it. That's what we're trained on.

We're not trained on how to run the crane. We already know how to run the crane. It's the old thing, if you rode a bike, it's like riding a bike. I've been out of the seat for many, many years. You set it up, because I don't set them up with all of the computers, you set it up, I'll run it. All right. We can run them. It's just the

little nuances that go with it to try to figure out that particular crane.

I akin it to the fact of the way the employers do it now, and I've used this over and over again, but it's like a driver's license. When your 16-year-old son or daughter, whoever it is, turns 16, what do they want? The first thing they want. Driver's license. Independence, right? We go down and we get them their driver's license and they take it in the smallest car we've got, a Honda Civic, right? They want to pass the test.

Now they don't go out on the road. They do it in a little controlled environment with somebody, and they do the written first and then they pass. Then then they make it to their practical side and they do this little left turn, right turn, stop, whatever. They don't go out on the road, at least in my state, they don't get on there.

But you get your driver's license, right? And they come home and your son or daughter and they do this, "Hey Dad, I'm going to take," or, "Hey, mom," rather. I'll use this scenario. "I'm going to take Dad's F250 four-door six-speed diesel across the country because I've got my driver's license." Now, I don't care if it's across the

country or down the street, they ain't driving my six-speed diesel because they just took the test on a Honda Civic.

But they've got a license to drive. The class that fits in that category. Okay. And me as their parent become their employer. I say to them, "You're not qualified. You're not even qualified to go on a highway, much less go across the state lines or anything." So we do that. All right. And as simplistic as that may sound, we do it also in all of the other industries that are out there where journeymen that make it through the apprentice level to the journeymen stage, and they go out and do their journeymen job.

Iron worker, carpenter, plumber, painter, all of them, we trust that they've got to the point where they're ready to go do what they do. All right. Truck drivers, I've got a Class A CDL. That means I can drive anything out there. I've got my bus and I've got my motorcycle. I've got it all. But for an employer to take that, that's my foundation, but I've never driven doubles and triples over the road. Right? I might have taken my test on a single-axle with a 15 or 20-foot trailer.

Now I'm qualified to go run that dual axle tractor

with three trailers behind it because my license says that. That's up to the employer to determine. What we're asking for, Pete, is just like OSHA has been doing for years, and like they do with every other craft that's out there and every other trade that's out there, you show up now. The new law says you've got to be a certified operator, meeting national accreditation standards. That's a good thing.

By the way, there was a lot of people in ACCSH or in CDAC, two for sure, that didn't like that. They didn't want that. They wanted the employer only to be the entity that certifies the crane operator. We fought hard, guys, for a long time to get that changed. You know why? We wanted everybody on the same page. Level playing field. We didn't want the fox in the hen house.

So we asked for certified crane operators to be implemented. Capacity was a mistake, but then when you deem them to be qualified, no, we don't want that. But here's what we do want. Just like they do every other craft, you come in and you say, "Let me see your certification that's good for five years and it's valid, you're not out of certification." And under the competent person definition that's existed since 1970 and what you do

for every other craft, let me see the knowledge, the training and the experience that Bill Smith had as a crane operator with your company.

You know what I expect? I expect the company to have, "Bill Smith has run this crane for five years, five months, five days." Right? Or I've been with the company for three days or 30 years. But I've got all of my documentation and my training that I've had for you with Manitowoc, Grove, Liebherr, rigging, whatever.

I've got knowledge based on the fact that I've been there and I've got my certification, and I've got my experience. Knowledge, training and experience is what you guys should be looking for. Trust me, it can't be in a list, and it can't be so prescriptive. Here's the other thing, we put so much burden on the certified operator in a nationally accredited standards test to get operators to that level and then we ask an evaluator to evaluate them and all he has to have is knowledge, training and experience and he doesn't have to be certified.

Not only that, the evaluator that's evaluating it's totally subjective to whatever he wants it to be. That's where it falls apart. It's a false sense of

security. I don't want to say this because it's another government entity, but it's like the TSA. We go through the line and we're safe to fly. We feel good about it, but there's a lot of things that make it through the baggage claim, and we've seen them.

My point about the false sense of security is just simply this, you've got all of this criteria on an annual evaluation done by somebody that you believe is what you call qualified through knowledge, training and experience, but there's no criteria after that. So Bill Smith can take my company with 20 people and all I'm going to do is set up a crane and I'm going to tell them to boom up, boom down; swing left, swing right and that's it. You're done. You're good. That's my evaluation. Steven might take them and put them through 100 different tasks to be evaluated, but it's all subjective to whatever the evaluator wants it to be.

Our biggest challenge with the way it's written, everybody has said it, this would require a SBREFA panel again because it is a huge economic burden on this industry to do make, model, crane configuration, attachment, setup, maintenance, inspection that was never ever anticipated in

the economic impact of the rule, ever.

If this committee moves this forward the way it's written, this crane certification that's now 13 years behind schedule will take another five or six years or more once it goes through the SBREFA process.

We're begging of the committee to recommend to OSHA to continue to work with the industry, to keep modifying the language to get it right, to get it safe. And listen, I'm from the insurance industry, right? I don't want to see claims. I don't want to see injuries and fatalities because we pay. We pay a lot of money.

If I thought for any one reason that this would be a savior or a preventative maintenance, as you said earlier, Christine, where this would prevent or stop, all this does is take a lot of time, a lot of money and a lot of effort to put a lot of paper in the files. But it's not going to change the individual because every day, that individual is judged. Trust me when I tell you as a crane operator, you get one or two phone calls, you're out of here.

You don't make it as a crane operator if you get called in on. You won't make it as a crane operator. My

companies that put out millions of dollars for cranes would be foolish to think that they could put a fly-by-night or, as we call it, "meat in the seat" just to get the job done because when they turn that \$3 to \$4 million crane over and the liability goes with it, they're out of business. They can't afford the insurance that I'm going to have to charge them.

Mr. Chairman, thank you, and I hope that the committee looks at our changes and recommendations to tweak just two areas. As I said, if OSHA uses the definition that's already been in existence forever for every other craft, including operators and looks at knowledge, training and experience documentation, along with certification, that's the best place that we could ever take this, get this thing done. Get it in print. Get it on the street and get people protected, just like California and Ontario and the rest of them have done. Thank you.

**MR. STAFFORD:** All right. Thank you very much Billy for your time.

Any questions or comments for Billy? Good.  
Thanks, Bill. We appreciate your time.

**MS. WILSON:** Mr. Chairman?

**MR. STAFFORD:** Yes, please, Lisa?

**MS. WILSON:** Thank you, Mr. Chairman. I'd like to designate the exhibits from this presentation. The NBIS Testimony as Exhibit No. 9. The Statement of Concerns as Exhibit No. 10. The congressional letter to Dr. Michaels as Exhibit 11 and the recommended changes as Exhibit 12. Thank you.

**MR. STAFFORD:** All right. Thank you, Lisa.

Next on the list is Thomas Sicklesteel. Am I saying that right, Tom?

**MR. SICKLESTEEL:** Yes. Thank you, Mr. Chairman.

**MR. STAFFORD:** Thank you. Welcome.

**MR. SICKLESTEEL:** My name is Tom Sicklesteel. I'm an owner of a crane rental company in Washington State who actually does have certification going at this point. Our whole state required that in 2010. It's from that perspective that I kind of wanted to address some of these items.

I guess what I'd like to do is kind of talk specifically about different areas and solutions. I would agree with Mr. Smith that simpler is better. Nothing against crane owners or crane operators, but simpler is

always better. I believe clear rules make safe worksites, and when you have a lack of clarity, it is a bad thing. I also believe that arbitrary timelines are not healthy and they just create costs, and prescriptive lists always leave something out.

With that, I was a member of the SBREFA committee that reviewed the CDAC proposal and evaluated the economic analysis. I can tell you that at no point did we consider the impacts of crane configuration, setup, disassembly and all of those items.

The pitch that I made, specifically to SBREFA, was that national certification was a cheaper alternative than what currently is happening because it's standardized and each company does not have to make up its own process. Specifically going to 1926.1427 B(2)(i), the issue there is somewhat like a truck and trailer. If this was a DOT requirement, the DOT requirement would say something along the lines of, "You have to test the employee based on the length of trailer, the type of trailer, the model of truck, the type of diesel and all of these other details."

So by getting as prescriptive as we have, specifically in the section that says the size and

configuration of the equipment, including its lifting capacity, boom length, luffing jib and counterweight, I believe that that needs to be struck. The reason is, is because capacity and configuration is not truly defined. Configuration can mean bigger things, such as does it have a luffing jib; does it have certain other elements.

But it could also be interpreted to mean things such as a rooster sheave, whether that swings around or little details of the crane. It's a big word that means a lot of different things to a lot of different people. I would suggest the boom length and counterweight are some elements that are irrelevant. The reason they're irrelevant is because what happens when you make a prescriptive list such as this is does that mean that they couldn't operate a crane with 20 more feet of boom.

Now, in some cases, that changes how the crane is configured. In other cases, it doesn't. Again, the rule is not clear; the proposal's not clear. Counterweight, in many circumstances, doesn't change the operating characteristics of the crane at all. In other cases, you have huge attachments behind the crane that could totally modify how the crane operates and moves. But again, no

clarity. I think a lack of clarity is really concerning when you're trying to get that prescriptive of a list.

I, again, believe, much like Mr. Smith said, that identifying what we want as a qualified person and what that means is more important and allowing judgement of both OSHA and the employer on those items is a good way to get there.

I heard an interesting comment earlier today from OSHA that talked about transportability between employers and I wanted to address that a little bit. They said if an operator has gained some kind of experience and is experienced on that certain crane that he could then go to another employer, and there was some reference, I believe, that there was some lesser evaluative process that the employer had to go through. I don't see that in the document.

Further, I wouldn't want that. I think each and every employer needs to stand on their own two legs and not rely on other employers to qualify or deem their people qualified. I think that's a trap. I also heard a comment about experienced versus new, that there's different levels of qualifications that we can do. Again, other than the

operator training, I don't see that.

If I have an operator that has been around my company for 20 years and he leaves and goes to another company; he comes back three years later, I get to start all over. It seems kind of interesting to me. If I move to Section (b)(5), there's a list -- and, again, we have another prescriptive list. I wanted to raise some of the issues just to show you how a prescriptive list can create problems.

So setup, setup is kind of a new term, that's Item (b). It's a new term that came out in the Compliance Manual, and previously, it was the term assembly/disassembly. The reason setup was added is to relieve the industry of some assembly/disassembly director responsibilities for certain configurations. And I would be opposed to that. Item (c), the AD director, one of the biggest areas of accidents that were evaluated by OSHA was the assembly and disassembly of cranes, so much so that OSHA created a whole section that is already in effect that requires an assembly/disassembly director who's both competent and qualified to lead that whole process.

As stated earlier by a number of other people,

that's not necessarily always the operator. Sometimes it is. In a tower crane, it's not. In a big crane, it's not. So having an operator learn or be able to demonstrate that process seems to be misaligned. Driving, Item (d). I don't know what that means. Is that on the jobsite? Is that on the road? Is that erected? Is that with the load? What does driving mean? How do we get there?

Inspection. In our state, we require cranes to be certified. That is a form of inspection. It's an annual inspection. Is that the same requirement we're requiring for an operator to be able to do an annualized? Or is it more the frequent or the shift inspection? What's required?

Maintenance. We've already heard people say that there's a section within the current OSHA rule that says the maintenance, individuals have to be qualified to do their maintenance things. Now we're asking the operator to test out on a practical kind of exam over these items that we've already allocated to other people. It doesn't make sense.

Now to the big area, (b) (4), the annual reevaluation. Well, just before I go there, what I would

say is that we need to either clarify those previous items I was discussing. I would highly encourage striking anything like (c), (d) and (f) that are already defined in other places in the document, and already in the rule.

Now to (b) (4). Reevaluation, I don't understand the process. I don't understand the basis of it. I understand on a written exam that we need to go through a process to reevaluate on that. It's a certification. Certification bodies are accredited. They have timelines. I also understand that rules and processes change a lot, right? How does the operation of a crane change? How does the operator change? What you're testing is the employer's knowledge of what the operator can and can't do.

That's what this is about. At that point, what has changed? I would be completely in favor of if the employer hears anything about unsafe acts or anything like that to reevaluate. I would also be in favor of if there's any changes in the controls or systems of the crane, which is not in the standard. I think in either one of those items, it would be important to say, "Hey, I need to stop. I need to reevaluate."

The overall evaluation concept is a good one. The

beginning one is a good one. I just think it's too prescriptive. Let me give you a couple of ideas on cost. I have about 86 cranes. We have right now about 125 operators. About 30 of those can run anything that I've got. We went through a schedule, laid out a training schedule and we have those top 30 operators would be in training 12 months a year in order to operate two tests on every configuration for every crane in the fleet.

They would spend their entire time in training so it's not practical. I would recommend striking the annual reevaluation section. I think that there's a balance that has to be made between the frequency of inspection or re-inspection or reevaluation and the depth. You can't have both. You either have to have a really detailed deep one, once every five to ten years or you can be more frequent, but can't be as in depth. It simply can't be done. Because the burden and just the capability of doing it is impossible.

I would also say that we have operators -- moving into Section (b) (5). We have operators who try to get jobs that are long. At the end of a 10-month job, under this, the way we read it is that that would be the only crane and

configuration that that operator would be qualified to run. That's crazy.

It doesn't take into consideration anything that he could run that's similar, any past experience he has or what my knowledge base is of what he's done for me and his background. I would also say that related to Section (b) (5) (2), the six-month renewal, again, I think that this whole section should be modified to be just based on the two items. Is there a safety item that has come up? Or is there a change in controls and a change in systems? I think it would be better.

Item (b) (6), gets real interesting related to the requirements when you start putting in things like luffing jib, super lifts, new equipment, I'm unclear as to what detail is needed there. A lot of times, luffing jibs, you can run a 400-ton luffing jibs, you can run a 400-ton luffing jib and a 200-ton luffing jib for a similar crane manufacturer. You could run that as well. This appears not to allow you to do that.

F, so there's been a lot of talk about the trainer and with all due respect, I do believe that the trainer for the oiler that's coming up should be a certified operator.

I believe the rule's clear on that. There's one scenario that's different, and that scenario is when you bring a new crane into the environment. In that case, you may not have a certified operator, you'd have a manufacturer representative.

In those cases, I think the manufacturer representative would have to then show a certified operator how to do the things on the crane, not one in training. I always think that there has to be a certified operator somewhere in there, but sometimes the manufacturer has to show the certified operator how to run the new crane because there's no one else to do that.

My last two items is Item (j), controlling entity. I don't think that's a controlling entity. And, for me, I get confused when we talk about "controlling entity GC" versus "controlling entity subcontractor" versus "controlling entity down the pike." ASME uses the phrase "crane user." Crane user is the person who arranges and controls the use of the crane on the jobsite. I think that's who we're talking about is the crane user.

Lastly, Appendix D, I think it's an okay document. I don't like the words boom length. I don't like the

prescriptiveness in there. I would encourage to make it non-mandatory. I think that there are some employers that are going to excel at what documentation they're going to have, and you'd hate to have them trim it back just because you have a mandatory requirement. There's others that need to step up, and they need to be cited for not having enough documentation. As an employer, I can probably say that. Thank you, sir.

**MR. STAFFORD:** All right. Thank you very much.

Any questions or comments for Mr. Sicklesteel?

Anyone? Yes, please. Go ahead, Steve.

**MR. HAWKINS:** Sir, you talked about the evaluations and your concern about assembly/disassembly, driving and maintenance. But at the top of that list, it says, "Demonstrated competency in the following areas as applicable." If you don't ask your crane operator to assemble and disassemble, you have a separate team that does that for the larger cranes, would you agree that since it says as applicable, that wouldn't apply since you don't ask him to do that?

**MR. SICKLESTEEL:** I think it creates an area of conflict in an area that is unclear. Operators typically

can participate sometimes in the assembly/disassembly process, but they're led by the assembly/disassembly director. So I think it creates a lack of clarity.

**MR. HAWKINS:** Okay. Thank you.

**MR. STAFFORD:** Other questions or comments?

Yeah, Christine?

**DR. BRANCHE:** Christine Branche, NIOSH. Mr. Sicklesteel, thank you very much for your very specific comments. And because you read from notes, I was writing something else when you were referring to (j).

**MR. SICKLESTEEL:** Yes.

**DR. BRANCHE:** Could you say again what you were saying about what you liked? I think you were very pithy about what you thought ought to change about (j), please.

**MR. SICKLESTEEL:** Sure. I think instead of the words "controlling entity," it should be "crane user." Crane user's defined by ASME as the person who arranges and controls the crane on the jobsite and controls its work there.

**DR. BRANCHE:** Thank you.

**MR. STAFFORD:** Is that what the definition in the Washington State rule, crane user?

**MR. SICKLESTEEL:** Yes.

**MR. STAFFORD:** Okay. Any other questions or comments?

**MR. HAWKINS:** Yes.

**MR. STAFFORD:** Yes, Steve. Go ahead.

**MR. HAWKINS:** Considering Washington has their own standard, are you familiar with Washington's standard?

**MR. SICKLESTEEL:** I am very much so.

**MR. HAWKINS:** Do you think it is better than what's proposed here?

**MR. SICKLESTEEL:** Well, we have it so that's the first thing. I mean we're certified.

[Laughter] I think that we have -- I mean the number of accidents that happen in the construction industry dropped incredibly. It wasn't just because there wasn't work there because it actually started after the work started picking up. We need certification. We need to get this thing done. Part of going through all of the SBREFA and all of the new stuff that this may potentially do, it just scares me.

**MR. HAWKINS:** Because it'll push it way in the future?

**MR. SICKLESTEEL:** Yeah.

**MR. HAWKINS:** Do you think the committee should look at Washington's standard?

**MR. SICKLESTEEL:** Personally, I think Washington did it right, but that's up to the committee. [Laughter]

**MR. STAFFORD:** Well, I think it would be useful to do that if we could to see that. Just so I'm clear then, the Washington State standard calls for third party certification.

**MR. SICKLESTEEL:** Yes, sir.

**MR. STAFFORD:** And the employer be qualified, makes sure the operator is qualified, period. That's it.

**MR. SICKLESTEEL:** Yeah. There's an hours table in it that has how many hours the operator would need to have in his seat by type of crane and how many hours of crane exposure they have, but it's the employer's responsibility.

**MR. STAFFORD:** Right. Okay. Fair enough.

Tom and then back to Christine.

**MR. MARRERO:** Okay. Tom Marrero, a tradesman here. Real quick, with what you were just saying just now with the -- I just lost my train of thought here.

**MR. STAFFORD:** That's all right, Tom. You think

about it and we'll go to Christine and come back to you.

**MR. MARRERO:** Yeah.

**MR. STAFFORD:** Christine, go ahead.

**DR. BRANCHE:** Christine Branche, NIOSH. Mr. Chair, given the comments about the Washington State standard, could we dig that up for our discussion tomorrow?

**MR. STAFFORD:** Yeah, I think OSHA will be able to provide that for us, I believe, for our discussion.

**DR. BRANCHE:** Thank you.

**MR. STAFFORD:** Tom, go ahead.

**MR. MARRERO:** Tim, thank you again for your outstanding presentation there. The employers in Washington State, how do they go about qualifying all of their individuals? Is it like a one-time qualification and then you're through and then the constant reevaluating out on the jobsite? Not the documented, like in Appendix D or whatnot, but how do they go about that? Is there a documented one-time evaluation?

**MR. SICKLESTEEL:** In Washington State, there's the certification requirement.

**MR. MARRERO:** Right.

**MR. SICKLESTEEL:** Then there's the hours of

familiarity. That's either in the declaration or resume or some form where they declare that. Then beyond that, it's the department holds the employer responsible to make sure that their individuals meet those requirements as a qualified person. It leaves the department a great flexibility, which the employers were really worried about initially, but it also gives the employers the ability to have flexibility as well. So it's a win-win.

**MR. MARRERO:** Okay. Thank you.

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

All right. Thanks again for your time.

**MR. SICKLESTEEL:** Thank you.

**MR. STAFFORD:** You guys want to take a quick break or you want to keep plowing through? A break. All right. We're going to take a very quick ten-minute break and then we'll come back and continue. Thank you.

**[Recess]**

**MR. STAFFORD:** All right. Let's go ahead and reconvene. I think we have a quorum of ACCSH members back. Who was that? Nobody. That's a nobody?

Graham, where's Graham? Are you ready, Graham?

All right. Come on up.

Welcome, Graham. Graham is with the NCCCO, one of the third party certification bodies. Graham Brent.

Welcome.

**MR. BRENT:** Thank you, Mr. Chairman.

**MR. STAFFORD:** Thank you.

**MR. BRENT:** Thank you members of ACCSH. My name is Graham Brent, and I'm the chief executive officer of the National Commission for the Certification of Crane Operators, NCCCO or CCO, as we're known for brevity's sake. We were formed in 1995 as a nonprofit organization to develop effective performance standards for safe crane operation to assist construction and general industry.

Our mission was and remains today to provide a thorough independent assessment of operator knowledge and skill and to enhance lifting equipment safety, reduce workplace risk, improve performance records, stimulate training, but not provide it and give due recognition to the profession skill of crane operation.

We've had a lot of comments here today from people in the field. We consider ourselves to be of the industry, formed by industry and responding to industry needs. But my comments here today will be in the capacity as a

certification body.

**MR. STAFFORD:** Using that word capacity, huh?

[Laughter]

**MR. BRENT:** I'm sorry?

**MR. STAFFORD:** I said you're using capacity.

**MR. BRENT:** Well, for the record, I would like to say that that's a very appropriate use of the word capacity, Mr. Chairman.

[Laughter] And that we've not always seen that. That's about all I'm going to say about capacity, by the way. Actually, that's not true because there are a couple of things that we do need to, for the record, make clear.

But just by way of background, since we began testing 20 years ago this month, as a matter of fact, NCCCO has issued over 280,000 CCO certifications to 100,000 individuals through almost 900,000 written and practical exams in one or more of 20 certification categories in all 50 states.

We were accredited in 1998. We were formally recognized by Federal OSHA in 1999, and we've been adopted by almost all of the 17 states that have a requirement for some form of licensing or certification. We've reviewed

OSHA's draft proposal to revise OSHA's crane operator qualification requirement in the Cranes and Derricks in Construction Standard. We'd like, first of all, to commend OSHA for listening to crane users, manufacturers and certification bodies alike and taking the advice to remove crane capacity, Mr. Chairman, from the crane operator certification requirement.

We were pleased to be one of the interviewees, one of the bodies that was interviewed as part of Mr. Bolon's and his team's 40 or so interviews. Industry experts have repeatedly stated, since OSHA first declared its intention to interpret the CDAC language in the way that they did, that crane operator skill is simply not determined by crane capacity in and of itself.

In addition to being psychometrically unsupportable, to require crane operator certification to be driven by the capacity of the crane would be unduly burdensome to employers and operators alike and more importantly would contribute nothing to achieving improved crane safety.

We would also like to applaud OSHA for accepting the expert opinion of both the construction industry and

certification experts that certification, while a very powerful tool in the employer's toolbox, cannot be expected to rise to the level of determining qualification as defined by OSHA. The almost infinite variety of crane models, the array of configurations that they can be used in and the variety of environments in which they are deployed, quite simply, make this administratively unachievable for any national certification program.

As we've stated on numerous occasions, including at the OSHA hearing on the proposed rule held almost exactly six years ago to this day, certification, as powerful as it can be in revealing a lot about operators' knowledge and skill, is not a panacea, and it does not relieve an employer of his or her responsibility of determining whether or not a particular individual is qualified to operate a particular piece of equipment on a particular day in a particular environment.

How that determination is done, however, leads me to my next point. One major proposed addition to the rule, according to the language that we've had an opportunity to review, is that of a greatly expanded role for evaluation of the operator by the employer. While evaluation is not

certification, both involve the assessment of an operator's hands-on skills.

In the same spirit of cooperation and advice that we've brought to this debate over the past dozen years or more, since the CDAC committee was formed, we'd like to offer the following observations on this proposed additional requirement.

The employer evaluation process proposed by OSHA appears to require evaluation by make and model of crane, as well as by capacity. As we previously commented, there is ample testimony on the record from manufacturers and users alike that there is no justification for evaluation on a piece of equipment simply because it's of a higher or lower capacity than another.

As for boom length, how much longer does a crane boom have to be before OSHA would expect a new evaluation to be conducted? And as you've heard from others before me, the same could probably be said of counterweight. As long as we're talking about capacity, I'd just like to clarify something for the record, ACCSH members were provided with photographs this morning of what I believe were, although we didn't see them in the audience, of a 15-

ton crane and a 500-ton crane. There was a suggestion made that certification bodies would simply issue the same certification for anyone that's certified on either one of those.

I can't speak for the other three certification bodies, but I can certainly assure you that that is not the case for NCCCO. If you take a closer look at those photographs, you'll notice that one is a rotating cab crane, and the other one is a fixed cab crane. And there's a reason why we have different certifications for those two categories of cranes, and that is because the skillset required for operating a fixed cab crane versus a rotating crane is different.

**MR. STAFFORD:** You're fine, Graham. That's just the phones. Please continue.

**MR. BRENT:** So again, we're not certifying because of capacity per se, even though there's a difference in capacity between those two cranes, quite obviously.

**MR. STAFFORD:** Excuse me. Just turn that thing off. Yeah. Forget it. We're not going to take any votes today. Thank you.

**MR. BRENT:** Just to be clear, it's not the

capacity that drives the certification, the difference in certification category in the example of use. It's the fact that the skillset has been determined by industry experts to be different between what's commonly called a neck breaker or a fixed cab crane in the industry and a rotating crane.

I just wanted to make sure the record was clear on that. Now if a skillset does change, then we would certainly go ahead and create a separate category. Unless that skillset changes, there's actually a very strong argument, in the certification world at least, for further testing to be unnecessary. That's why certification bodies, certainly again, I would just speak for CCO certification, do not require a practical exam retest at recertification, if the certified individual can attest to the fact that he or she has been using that skill during the course of the five years.

The basis being that if that skill is being used, then there's nothing to be gained from additional testing. A guiding precept of certification is that no testing should ever be done unnecessarily. You only ever test, again, when there is a reason to do so. Anything that

could be challenged as testing for testing's sake would not pass the accreditation threshold that we have to meet as a certifying body. We're accredited through the American National Standards Institute, and ANSI would not tolerate in their very rigorous review if we were simply testing multiple categories for no justifiable reason.

In the context of a certification observation, we simply request that OSHA, with OSHA's proposal in this regard, would follow the same requirements. Another point, and this has been raised earlier this morning, the emphasis OSHA appears to be placing on evaluation also raises the question of how the evaluator is selected. OSHA states in the draft proposed language that evaluations are to be conducted by, "An individual who has the knowledge, training and experience necessary to assess equipment operators."

This should be added, "And to determine competency," since the evaluator must attest to this on the evaluation form contained in Appendix D. That is a tall order for both the employer and the person whom that employer designates as an evaluator. How does a person become competent to determine the competency of another?

And how is the employer to achieve that?

In the certification world, again, the practical examiners that NCCCO trains to conduct the CCO practical exams must successfully participate in a rigorous three-day examiner workshop, pass a written examiner's exam and then pass the practical exams themselves.

If this is deemed necessary by ANSI, as NCCCO's accrediting body to authorize examiners to conduct practical exams necessary for a certification that OSHA has characterized as nothing more than a learner's permit, which of course, we would contest, what steps are an employer to take to satisfy OSHA's requirement to determine competency by make, model and configuration of crane?

We also have reservations about the frequency with which these evaluations will be required. What, for instance, is the basis for the one-year and the six-month time periods identified in the evaluation process? Do skills really atrophy to the point where a reevaluation would be required at six-monthly intervals?

In the world of certification, such periods have to be justified, either by a reference to established certification protocols or by independent studies. Without

such cooperating evidence, such time periods could easily be judged as arbitrary. You heard from the previous two speakers that I have the privilege to follow that with respect to other studies that exist in other examples to look at around the country. In view of those, one does question whether or not OSHA's proposed evaluation would really achieve the safety goal that they intend.

Take for example, and Bill Smith certainly referred to this, the multi-decade study by the Construction Safety Association of Ontario. This study conclusively demonstrated the dramatic and positive effects of both training and certification on the construction-related accident rate in the province.

Or CAL-OSHA, closer to home, they published a study in 2008 that charted six years of fatality and injury data attributable to crane operations, and they noticed an 80, 8-0, percent decrease in deaths associated with cranes as well as a 57 percent decrease in injuries since their accredited crane operator certification requirement was mandated in the state.

The point is this, neither Ontario nor California require the type of employer evaluation proposed by OSHA,

and yet, both have clearly saved lives and reduced injury. I would add that none of the 17 states, of which Washington State is one, that license or require certification require this evaluation either.

Finally, we would request that OSHA take another look at the proposed timeframe for the certification requirement. Under the draft proposed language, the extended date of November the 10<sup>th</sup>, 2017 would remain unchanged while all other changes would apparently take effect on the effective date of the rule. Five years after the Final Rule was published and fully 12 years since CDAC presented its final draft to this committee, we see no reason for this continued delay.

In the September 26, 2014 Final Rule that extended the certification deadline by a further three years, OSHA stated the following, "OSHA notes it is not constrained to use the entire three years to take action on this issue. OSHA will address the issue of operator qualification as quickly as it can, meaning the agency could determine the appropriate regulatory action and implement it in less than three years. In that case, the agency could impose an earlier deadline."

Mr. Chairman, we urge OSHA to so do. So in closing, I'd just like to thank you, the committee and Federal OSHA for the opportunity to provide these observations in support of the effort to improve safety on worksites wherever lifting equipment is used. NCCCO continues to stand prepared to lend its expertise in assisting OSHA achieve its safety mission.

**MR. STAFFORD:** Thank you, Graham. We appreciate your time.

Questions or comments for Graham? Anyone? All good. Tish?

**MS. DAVIS:** Yeah. You mentioned that when you recertify, you don't do the field test again, but you actually ask about hours. Do crane operators routinely keep track of their hours? Is that something that's part of the --

**MR. BRENT:** Well, I think the honest answer is some do and some don't. In order to assist operators to do that, we do provide them when they first certify with a logbook, which we suggest that they use to track their hours. It's not a mandatory item, but again, it's just trying to be useful. I think it depends on the environment

that the operator's working in and, like you've already heard, the OECF program, I believe it's similar, that we require an attestation from the operator, which is routinely audited.

But frankly -- and we've been there, trust me. In 20 years, we've tried a number of different things. Some of which didn't work very well, and one of them was really trying to drill into where those 1,000 hours were, how they were accumulated, who actually employed that person during that time. Even, indeed, whether the certified operator was gainfully employed for those 1,000 hours. It's very hard to track. It's a challenge.

But if the operator is attesting to the fact that he's had that experience, then with the audit process that backs that up, we're comfortable that it's working.

**MR. STAFFORD:** Thank you. Any other questions or comments for Graham?

**MR. CANNON:** I just have one. What percentage of your operators have to go through the practical again? Do you know that?

**MR. BRENT:** I don't know that off-hand, but I will tell you that since the program expanded to beyond, if you

will -- if you believe the country has a core group of crane operators, and as the program begins to get traction around the country and that it becomes absent a federal rule, of course, which we still don't have, it simply becomes a way of doing business.

It draws in folks who maybe have less opportunity to practice their skill. California actually is a good example of that where a lot of -- California rule, by the way, is very wide-ranging. It's the most comprehensive in terms of its breadth because it effectively pulls in general industry as well as construction. So you have a lot of folks who are maybe working for water entities or cities and so forth or DOTs around the state who don't get the 1,000 hours.

They may have opportunities, maybe it's even just matters of hours a month or every six months. They are coming back through. I can certainly get that information, but the short answer is that the percentage is increasing because of that.

**MR. STAFFORD:** Any other questions or comments for Graham? Graham, do you have the studies available from California and CSAO about fatality and injury reductions?

**MR. BRENT:** Certainly, yes.

**MR. STAFFORD:** I'd very much like to --

**MR. BRENT:** We can certainly make that available to the committee tomorrow, if you would like.

**MR. STAFFORD:** Right.

**MR. BRENT:** And I do have copies of my prepared remarks here, if I could enter those into the record and distribute those to the committee.

**MR. STAFFORD:** Okay. Sounds good. Appreciate your time, again, Graham. Thank you very much.

**MR. BRENT:** All right.

**MR. STAFFORD:** Okay. J. Chris Ryan, private citizen? Pardon me?

[Inaudible, Off Microphone]

**MR. STAFFORD:** I don't know if you go by J. or Chris or J. Chris, but welcome, Mr. Ryan.

**MR. RYAN:** You're going to have to take that up with my mother and my father. They couldn't agree.

[Laughter]

Good afternoon, and before your eyes glaze completely back in your heads, I guess I could just say me too, and walk away, huh?

[Laughter]

But I think not. My name is Chris Ryan. I've been 40 years in the construction business with a very large regional contractor, heavy civil, same company; 35 years in equipment management; 25 years in crane safety standards and 20 years with certification.

With all of that, in the 1980s, we on our own, before we read it in the headlines, discovered that we had a lot of trouble with operators not being able to read load charts, making mistakes they shouldn't make, hurting people, causing property damage, and it just was not acceptable. As a result, we engaged in training for operators. Then when we heard about an initiative starting that would include certification for operators in the early 90s, we became part of that.

In the mid-90s, our first third party certified crane operators came into existence. First of all, I'd like to thank all of you for your time and your patience this afternoon. I want to commend the consensus work that has taken place. As I said, I've been with consensus standards now for 25 years, and I never realized how important experience was until I got some.

My experience with consensus standard was frustration, aggravation because I've always been a Type A personality and I just want to throttle something. Sometimes your head wants to explode when you listen to other people talk, like your head's probably ready to explode right now. But I do recognize the work that you all have done, and it's been significant.

And to remove capacity was a monumental task. I as an end user appreciate that and thank you for your efforts.

**MR. STAFFORD:** I just need to go on the record. I appreciate that comment, but OSHA did that. ACCSH, our committee has not done that. In fairness.

**MR. RYAN:** You know see, well from my level of things, they all look the same.

**MR. STAFFORD:** Okay. I appreciate that, too.

[Laughter]

**MR. RYAN:** All you government guys look the same to me, you know?

**MR. STAFFORD:** Okay.

**MR. RYAN:** Okay so having said that, there are a couple of concerns that we do have. This is going to come

as a surprise, but the evaluations. I know you haven't heard it today and probably won't hear it again, but I think that this entire section could be replaced by simply a statement of you put the onus on the employer, ensure the individual is qualified. That covers the whole ball of wax. I've heard a lot today said about that B30 standard. I know a little bit about it. I just happen to have a copy here with me.

I think it might be helpful for you all to look at the pages that relate to responsibilities. It took about five years to complete, and it's like making a lift is not making a lift. There are lifts and then there are lifts. There are critical lifts. There are daily lifts. We started certifying operators in the 90s. We started seat checking operators in the early 2000s. The idea came from the DOT. Again, another regulation that you hated to see come down the road, but I will tell you that in the end, it did all of us a lot of good, the Department of Transportation Rules for Truck Drivers, CDL drivers.

And just like this initiative, the certification of operators is a good move, and it will save lives, and it will save property, but it doesn't need to be so complex.

We don't need to make the cake, put the icing on it through training, supervised operation and then certification and then come back and make another cake again.

Just merely tell us, "You're responsible. You are the one that has to make sure that that individual is, in fact, qualified to perform the task on the crane that you have for them in the configuration that you have to do the work that you have for them. It's nothing more difficult than that. I hear this, that and the other about communication.

Well, signaling is a big deal. That's another change. There have been three major changes in B30 since the year 2000. One of them was the signal standard was changed. I could see why, just listening to the conversation back and forth across the table. I heard some excellent questions, and I heard some excellent interaction. But the communication cannot be questionable between the operator and that one signal person. I remember when I was 17 years old and working in a shipyard, and there was a crane operator on one of these railroad truck cranes. I was giving him this that and the other and finally pulled the levers, jumped down from the crane. He

said, "What in the, are you trying to tell me?" "Well, I wanted you to move over here just a little bit." He said, "That's not the signal."

So we didn't communicate very well. It doesn't matter who signals them. I hear we talk about, "Well, the tower crane is going to lift for the plumbers today, the carpenters tomorrow, the iron workers later this afternoon." It doesn't matter. If the thing falls down and goes boom, we're all going to get a letter, aren't we?

And it won't be Merry Christmas. That portion of it is very, very important, that signal portion and the responsibility therein lies in those responsibilities. We feel like the seat check is discrete event. It happens once. It happens once on every machine, every time that operator goes to a new machine, we want to seat check him. We want to do the walk around inspection. We want to test him on what he's absorbed when we walked around, did the inspection.

We want to do the mechanical inspection, that is we want to see if there's loose fan belts, if the radiator's plugged, is there water in the radiator, is there oil in the engine, is there oil in the tort

converter? Simple things, not maintenance items. We're talking about simple checks that we want him to do daily.

In addition to that, our seat check, easy for you to say, includes safety checks, prestart and post-start. Prestart, you want them to get into the crane. We want to make sure that he can set up the LMI, the load moment indicator if it's so equipped. The post-start inspection, make sure all of the functions are operating correctly. And then obviously, at the end of the day, we want to see him run the crane.

We want to see if he can, in fact, do what he said he could do. I've got a good friend who was doing work in Houston once. They hired a guy. Put him on a cherry picker, a big 60-ton cherry picker on the interstate. The guy was running the crane for about 30 minutes and he turned it over on its nose. He came out and he said, "My God," he said, "What? I thought you -- what are you doing?" He said, "What were you doing yesterday?" He says, "I was cutting meat." "You were cutting meat?" He said, "Yeah." He said, "Well, why in the, did you apply for crane operator?" "Well, you weren't hiring meat cutters."

[Laughter]

But he came with a recommendation, his own, that he could run that crane. I think I see the same thing. We would not feel comfortable with someone coming in with a certification and we would be less than responsible if we didn't put someone in the seat and see if they could, in fact, walk the walk. We can all talk the talk. But we want to make sure that you can walk the walk.

Other than that, I could talk about some of those other peculiar items, but I think they've already been listed ad nauseam and I don't want anybody to fall out of the chair with boredom. That's all I've got. Thank you very much for your time.

**MR. STAFFORD:** No, I appreciate it, Mr. Ryan. Thank you for your comments.

Yes, Kevin, please go ahead.

**MR. CANNON:** Thank you, Mr. Ryan. I just have two questions about your seat check.

**MR. RYAN:** Yes, sir.

**MR. CANNON:** How long is that process or does it depend?

**MR. RYAN:** It depends on the crane. Sometimes it

can take a day. Sometimes it can take two days. We have in the fleet everything from eight-ton carry deck cranes to a 650-ton ringer mounted on a barge. Obviously, the barge mount is going to take a little while longer. Of course, we don't throw someone out there green. Depending on the nature of the machine and the nature of the lifts is going to determine how long we put someone with an experienced operator. "Oh, bad ah," I wanted to say that.

Again, I heard us go back and forth, back and forth, "What should the person be?" He should be a qualified operator. He should be a certified operator. When we do the seat check, we actually have a certified operator that is an accredited examiner because we want him to have a little more breadth of knowledge.

We want to have -- let's see, how is it the letter writers put it? Do what's reasonable and prudent. We want to make sure that we have some sort of third party support for what we're doing.

**MR. CANNON:** Just to follow up on that, the second part of my question, what warrants a new seat check by you and your company?

**MR. RYAN:** If the operator has not been in that

class of machine, knowing that many of the classes, even though they may have different capacity have the same controls, the same operational characteristics. If we move them to a new machine, we want to have a record that they have, in fact, been seat checked.

**MR. CANNON:** Okay.

**MR. RYAN:** Because some of the electronics will change.

**MR. CANNON:** Got it.

**MR. STAFFORD:** That kind of leads into my question then in terms of your documentation for seat checks, what is that? Is that something in the file?

**MR. RYAN:** It's not a lot different than what you've got here, but one I see that we attest to the person's judgment. I don't know how to do that on a one-day item. I don't know how to attest to their judgment and that's on that form.

At the same time, though, just as a seat check is a discrete item, we think that evaluation and training are ongoing, every day. I'm not going to wait for six months to come by to run somebody off if they're not sending in their daily inspection reports, if they're not keeping the

crane up. If I get complaints from the field that this guy doesn't know what he's doing, they're coming off the crane and we are not shy about sending them back for certification on their own dollar.

If we paid for the first time, you're paying for the second time. So there is a record of the seat check for every operator on every machine.

**MR. STAFFORD:** Okay. No, I appreciate that.

**MR. RYAN:** Okay.

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

Yes, Jeremy, please.

**MR. BETHANCOURT:** Jeremy Bethancourt. So I want to make sure I understand. Are you of the opinion, if I understand correctly, that you're saying that the reevaluation is not necessarily needed?

**MR. RYAN:** That's correct. I would say the reevaluation would be coincident with the five-year recertification, right.

**MR. BETHANCOURT:** Unless there's an issue?

**MR. RYAN:** Unless there's an issue, and then we pull them off and they go through the whole thing again.

**MR. BETHANCOURT:** Then you're also saying about

the qualified person?

**MR. RYAN:** The qualified person should be a certified operator, minimum. Is that what you were asking?

**MR. BETHANCOURT:** Yeah. So what are you saying about how to determine whether they're a qualified person? Utilizing the information from OSHA or just utilizing the definition by saying somebody --

**MR. RYAN:** The operator being a qualified person?

**MR. BETHANCOURT:** Right. Versus certified. What are you asking?

**MR. RYAN:** Well, certified is the floor level. They have to come with a certification. You have to have - - we think that the process is training, controlled operation under supervision and then certification. Once they have those things, now we're ready to employ them. If we want to put them on a crane doing minimal things as a trainee, we'll put a certified operator with them and be very specific about the items that they can or can't do.

If they're shaking out steel on the side of the job as opposed to making a lift in the blind over the edge of a building. So we don't want to baptize them with fire.

**MR. STAFFORD:** Okay. Any other questions,

comments? Thank you, Mr. Ryan. We appreciate it.

**MR. RYAN:** You're welcome.

**MR. STAFFORD:** Dan Johnson?

**MS. WILSON:** Mr. Chairman?

**MR. STAFFORD:** Yes, please, Lisa. Go ahead.

**MS. WILSON:** I'd just like to designate the testimony of Graham Brent as Exhibit No. 13. Thank you.

**MR. STAFFORD:** Thank you.

Welcome, Mr. Johnson, representing a private citizen.

**MR. JOHNSON:** Yes, thank you. Yeah. My name is Dan Johnson. I'm with SFI Compliance. We're a safety consulting firm, and I also sit on the NAHB Safety and Health Committee. I'm not going to take too much time this afternoon. Most of the comments have kind of been made. I do want to clarify or give a couple of comments to Paragraph (j) on the controlling entity.

It has been discussed quite a bit that the intent was to say the contractor, the controlling contractor that actually hired the crane. In fact, in the PowerPoint, it even said, "A controlling contractor who hires a crane." I believe that that is still a very confusing language being

used, to call it a controlling entity. I represent a lot of small and midsized contractors, both general contractors and homebuilders. I believe they see the word controlling entity and they think that automatically applies to them from a general contracting standpoint.

I do feel that some of the subcontractors who may actually meet the controlling entity standard would not feel that they are the controlling entity because for many, many years, they have been told the general contractor is the controlling entity. I do feel like that statement needs to be clarified or changed.

Moving forward in that same paragraph, having the controlling or the crane operator provide Appendix D or whatever that ends up being may seem like a simple process. I wonder though, however, if the controlling entity, however we're going to describe that, receives that Appendix D, are they going to have the knowledge that this crane operator has not operated that crane with that configuration in the last six months. Are they going to have the knowledge that it's required annually?

I would be concerned that are they, by taking that form, taking on any additional responsibility to evaluate

the form to make sure that that meets the requirements. Most of the time, a general contractor, a homebuilder or even a subcontractor hiring a crane company has hired them for their expertise. They're hiring them because they are the experts in that field. And to have somebody, such as a homebuilder or a subcontractor, evaluating that crane operator is probably not the best thing for the industry.

I believe that Appendix D should be non-mandatory, and I also believe overall that Paragraph (j) should be stricken because I think it adds too much confusion to who is responsible and when are they responsible. I agree with a lot of the other comments on the evaluation, but we don't need to go into that. That's all I have for this afternoon. Thank you.

**MR. STAFFORD:** Okay. Yeah. Thank you very much. Any questions or comments? Anyone? Okay. Thank you.

**MR. JOHNSON:** Thank you.

**MR. STAFFORD:** Hold on. You're not off the hook so easy.

Go ahead, Tish.

**MS. DAVIS:** Sorry. No, do you think it should be taken out, stricken or change the terminology because what

it says is that the person hiring, bringing the crane onto the site needs to check the certification. That doesn't seem unreasonable.

**MR. JOHNSON:** It does not seem unreasonable if Appendix D is a form that would be -- I think made more sense than it does currently. I believe if it does stay in, probably the terminology needs to be changed. I know the crane user was brought up before. I think that makes a little more sense.

I guess the reason I believe it should be stricken is it would add a lot of confusion the way it's currently written. If it is modified, maybe it would make some sense.

**MR. STAFFORD:** Fair enough. Okay.

**MS. DAVIS:** Thank you.

**MR. STAFFORD:** Thank you.

**MR. JOHNSON:** Thank you.

**MR. STAFFORD:** Peter Juhren? I know you're here. I talked to you earlier. Again, representing private citizens.

**MR. JUHREN:** Good afternoon, everybody.

**MR. STAFFORD:** Good afternoon.

**MR. JUHREN:** I guess there's an advantage and a disadvantage to being late in the afternoon.

**MR. STAFFORD:** More disadvantages.

**MR. JUHREN:** The disadvantage is you've heard enough already and lunch is probably kicking in. The advantage is I've been able to listen to all of my other colleagues and kind of ratify some of the things that they've said. I came here with my notes prepared, and those are going to go out the window, and I'm going to shoot from the hip.

My name is Peter Juhren. I'm the Corporate Service Manager from Morrow Equipment. We're the third largest distributor of tower cranes in the world. I also sit on B30 Main committee. I chair the ASME B30.3 Tower Crane subcommittee. I sit on the ISO TC96 for International Crane Standard Globalization. I'm a board member for NCCCO, and in my spare time, I'm responsible for global operations for my company.

I also sat on the CDAC committee, and I spent 11 months basically in this room, one week a month hammering out the rules that we have before us today. It kind of pains me that 11 years later we still do not have crane

certification. It is such an important part of the safety of workers out there in the environment.

When Bill Smith was talking, and if Bill Smith had gone first, we probably could've wrapped up about 10:00 this morning because he hit on all of the key points that really the entire thing is all about. With tower cranes, and for those of you that are unfamiliar with a tower crane, those are the ones you see all around Washington D.C. that are on top of buildings. We do mostly a lot of high-rise construction, also.

When you take a look at some of the requirements in what's been written by OSHA, they're impractical in how a tower crane is configured. Basically, when they state in there that a reconfiguration of the crane requires that the operator be evaluated again, in some cases, and probably over half the tower cranes in the United States, these cranes raise up with the building.

Every time the crane is raised, that's a reconfiguration. In essence, on a 12-month project, on a 500-foot high building, you could have five evaluations that are required for that operator. Now, if you take a look at what I consider to be the standard cost to have an

operator evaluated at about \$2,000 a piece, that's \$30 million a year of cost to this industry. The other issue you're going to find with a tower crane is you might have two tower cranes on a job. They're both identical.

One has a boom length of 180-feet. The other one is 200-feet. The operator on the 200-foot one or the 180-foot one calls in sick. He wants the operator to go over to the other crane and run it. He can't because he's not evaluated. So when you start taking a look at the evaluation process, this is where the process that's in place now, where the controlling entity or the construction manager, he is the one that evaluates if the operator is capable of running the crane.

I can tell you from my company's perspective, I fear the litigious society we live in way more than I do an OSHA citation. The chances of an unqualified operator being in the seat of one of our cranes that we have control over the operator of are about zero because the owners are not going to allow it. The users are not going to allow it. The workers that are on the ground rigging and working around the crane, they're going to walk off the job.

The checks are already there in place. One of the

things that I want to close with that I think is very, very important is I live on statistics. I think statistical data is the only way you can truly evaluate something. We talked about the 80 percent reduction in crane fatalities in California; 51 percent in Ontario.

These are statistics. They're proven numbers. And my questions, and I have two questions that I want you to ask yourselves as you deliberate individually and as a group, is one, what statistical data have you been presented with that shows an accident has been caused by an operator who was unqualified to run the crane he was on? That's question number one.

Question number two is do you not think that 23 experts sat in this room, present company excluded, if they thought this was important, would they have not addressed it at that time when the certification was written?

Those are the questions that I would ask you, and with that, I have no further comments above everything else that's been said today.

**MR. STAFFORD:** Thank you, Mr. Juhren. We appreciate your time.

Any questions or comments? So I'm assuming that

you're with the majority that we've heard that your biggest issue right now is the evaluation component?

**MR. JUHREN:** Yeah. I fully support and agree with the proposal that Bill Smith had put before you all earlier, with the verbiage that he supplied. I believe that as written previously, with the exception of capacity, it was a valid standard that would go forward, and I urge all of you to move on this as quickly as you can because here we are 11 years later and safety is the issue. It's been proven that crane safety makes a huge difference when the operators are certified.

**MR. STAFFORD:** And we understand that. We appreciate that.

Any questions or comments? Okay, Mr. Juhren, thank you very much for your time.

**MR. JUHREN:** Thank you.

**MR. STAFFORD:** We appreciate that.

Robert Weiss? Another private citizen.

**MR. WEISS:** Thank you very much. I'm actually tempted to take this and rip it up, too, because it's probably repetitive, but I wrote it so I will read it.

[Laughter]

First of all, I want to thank you for giving me the opportunity to be here and address you.

My name is Robert Weiss. I'm Vice President of Cranes Inc., which is a 75-year-old family-owned crane rental company in New York City. I am also an original member of CDAC so I want to apologize because our group's simple, inadvertent use of the word capacity in the regulatory text lead us to where we are today.

My problem here is similar to Peter's. It seems to me that both OSHA and industry have failed to see the forest for the trees now, and we've gotten bogged down in minutia. I think in the process, we've derailed the most important part of the new crane standard. To me, could it be we've forgotten the most basic of tenants: operator certification saves lives. Now, everyone's brought up these studies done by Ontario and California.

I'm actually going to quote the preamble to Subpart (cc) because it's right there in black and white. "The Canadian study supports CDAC's conclusion that third party certification is an effective means of promoting safe crane operations. The rulemaking record contains additional support for CDAC's conclusion. A study of crane

accidents in California, both before and after that state adopted a mandatory certification requirement shows a significant drop in crane-related fatalities and injuries after the certification requirement went into effect on May 31<sup>st</sup>, 2005.

The California data supports that from Ontario and demonstrates significant safety benefits can be expected from a requirement for third party certification." No evaluation, third party certification. As an industry, we reacted to OSHA's intention to enforce capacity testing as a mandatory condition of certification by petitioning the Department of Labor and the Small Business Administration to try and force OSHA's hand to change their interpretation.

That wasn't our intent. We heard it wasn't our intent. And our arguments were well-founded. The Ontario program, which was the subject of the Canadian study we relied on did not test by crane capacity. Still produced remarkable safety improvements. The practical exams administered by the certification bodies only test candidates with a light load on the hook, using a single part line, which dramatically reduces maximum rated

capacity of the crane.

And clearly, testing agencies cannot be expected to produce a 100-ton test load if they're testing on 100-ton capacity crane. Finally, there were other elements that are far more important than capacity when evaluating the skills of an operator, such as long booms, luffing jibs, heavy lift attachments. But it's just not feasible, both physically or economically for testing agencies to procure such equipment. Unfortunately, it was that last argument that got us into trouble.

In a way, I think our sales pitch was too good. You see, OSHA did listen, and what they are now proposing makes sense if you consider what we as an industry have been saying for the last few years. Think about it from their perspective. If configuration of the crane being operated is so important, yet it cannot be feasibly tested by a third party certification body, it must fall on the employer to do it.

Furthermore, if it's so important, as the industry has been claiming, then why shouldn't the most stringent evaluation and documentation requirements that have ever been seen in a proposed OSHA regulation be implemented? I

could go on at length why OSHA's proposed language is overly burdensome and unworkable, so now will be some repetition. I'm sorry, but the requirement that operators be reevaluated every year would, in essence, deny the opportunity to actually make a living for the operator.

Per OSHA's proposal, and specifically mandatory Appendix D, operators would have to demonstrate competency on the setup assembly, driving inspection and so forth of every crane in every configuration they will operate. In order to properly demonstrate competency in the setup of a crane, the operator would actually have to assemble and disassemble the machine.

To put this in perspective, a Liebherr LR 1400/2 crawler crane has five different main boom systems, four different fixed jib systems, two luffing jib systems and two derrick systems.

Assuming an average of one week to assemble and disassemble each configuration, it would take a crane company 13 weeks just to evaluate one operator on the assembly and disassembly of one crane. As another example, a Liebherr LTM 1,500 8.1 mobile crane has three different boom systems, two fixed jib systems, a luffing jib system

and a super lift system.

Again, assuming an average of one week to assemble and disassemble each configuration, it would take a crane company seven weeks just to evaluate and operate on the assembly and disassembly of this machine. In crane rental fleets, operators need to jump to multiple different cranes at any time, either because the work is of a taxing nature or because they have to fill in for a sick colleague.

If they are forced by OSHA to be evaluated on each and every crane they may run in each and every possible combination, operators will spend most of the year being evaluated, only to have to do it again. But you've heard that.

The cost to comply with the above requirement is astronomical and far beyond what was contemplated by the Small Business Administration and OMB when they first reviewed the CDAC proposal. In New York City, 13 weeks with a crew of 10 men, which is what would be necessary to do the work, would cost a crane company like mine about \$1 million in labor. Add to that the lost rental of the crane and you're looking at a total cost of roughly \$1.25 dollars to evaluate one operator on the assembly and disassembly of

just one machine.

As you've heard also, Section 1926.1404 requires assembly and disassembly of a crane to be supervised by an AD director, someone who meets the criteria of both a competent and qualified person. It's not always necessary for an operator to demonstrate competency in the setup of a crane.

In conclusion, I think OSHA needs to take a step back and remember the big picture. If they insist on the proposed language, Section 1926.1427 will be bogged down in bureaucracy, economic reviews and lawsuits for years to come, and all that will result is that operator certification, now 11 full years after being proposed by CDAC will continue to remain an elusive dream. We can't allow that to happen.

Ladies and gentlemen, let me propose that the language of 1926.1427 as original enacted be maintained with the removal of all reference to capacity and certification equaling qualification, and with the changes proposed by the Coalition for Operator Safety. Thank you very much.

**MR. STAFFORD:** Thank you, Mr. Weiss.

Any questions or comments?

**MR. HAWKINS:** Can he just repeat his recommendation?

**MR. STAFFORD:** Yes, please repeat it.

**MR. WEISS:** Yes, my recommendation is that we go back to the original text of 1427 as enacted by CDAC 11 years ago, with the removal of all reference to capacity and all reference to certification equaling qualification. And we incorporate the language that Bill Smith had mentioned earlier that the Coalition for Crane Operator Safety that you have be adopted.

**MR. STAFFORD:** That's in one of the handouts that Bill gave us?

**MR. WEISS:** Yes, Bill Smith had handed that out, yes.

**MR. HAWKINS:** Thank you.

**MR. STAFFORD:** Okay. Any other questions or comments? Again, thank you very much for your time.

**MR. WEISS:** Thank you. Appreciate it.

**MR. STAFFORD:** No, thank you.

Okay. James Headley, Crane Institute of American Certification.

**MR. HEADLEY:** You know, this reminds me of having to testify in court as an expert at 4:00 on Friday evening. I'm sitting and looking at the jury, and I mean don't you just love being in a meeting at 4:00.

[Laughter]

I've been doing this a long time. I was just thinking that I'm 49 years in this crane industry. Right out of high school, in the union as an oiler a few years. Set my book up to journeymen. Going to college, working at night. Loving cranes, you know? Good at it. Get out of college. Still operating cranes for a couple of years. Praying about what I need to do in the future. My wife and I, in Alabama and then a training job, somehow, I went to a guy that helps you write resumes because I thought maybe that's what -- it was the recession we were in in the 1980s. But I was wanting to change jobs and maybe sell cranes or something like that.

He said, "There's a company in Florida that would hire you in a minute if they had an opening." "Really?" "Yeah." "What do they do?" "Well, they inspect cranes and do training and so forth." "Well, I've been operating cranes," this was in my 16<sup>th</sup> year and the only training I

got was what I got one operator to the other. By the way, that is very, very valuable because you cannot -- you get experience one day at a time.

You can't get that by reading a book. Anyway, I called them up and got a job and moved down there. I loved it. Then a few years later, started the Crane Institute of America. That was going on 28 years ago. We created the first operator certification program, my partner did that we knew of.

This was back in the very middle 80s. Then started writing some books and things like that. Then got involved with CCO, the development of CCO. Then later on, started CIC, Crane Institute of America Certification.

One of the four accredited operator certifications. I've been doing this a long time, training, operator qualification, evaluation. Been through the accredited certification process. I'm the CEO of both companies. We need to get to the certification issue resolved. It originally had -- by the way, this is about type of equipment that the standard covers, not just about cranes.

The standard originally had that operators had to

be certified by type and capacity of the equipment covered by the regulation. We at CIC, we saw that and I think NCCER did as well. We developed our certification program based on type and capacity. We had different capacity bands or levels.

Then we had this -- there was resistance to that, and certain people wanted to take out capacity, which I'm not necessarily opposed to since we're having such an emphasis on training and evaluation. But we do need to get the certification issue resolved. Now, I'm a simple guy from Alabama. It seems like, to me, since the standard currently has operators of the equipment covered by the standard, be certified by type and capacity, it's already in there, that we leave that in there and just add "or type of equipment."

Therefore, you satisfy all parties involved. That would be my recommendation. As far as the qualification and evaluation -- by the way, I was here at the stakeholder meeting, I think they called it, and I think everybody involved agreed that certification does not equal qualification.

I remember saying that, "Well, certification will

get you off of the sidewalk into the house, but it won't get you out of the house in the backyard where the crane is." That's sort of metaphorical, I guess, but it's a picture I think that we can understand. I think that you're going down the right road on this. I think that you're not there yet. We're not there yet, but training.

By the way, a lot of people agree with me on this, the biggest thing that certification did is it sort of forced people to go to training classes. That's my opinion. It really did. I think the evaluation is probably a little bit too stringent, but I sort of think of this like you're going to sell a car, so what do you do? You jack the price up a little bit higher than what you know the value really is. And so I think that as we struggle and work with this, I think we'll end up at the right place.

I've been doing this a long time. I've got opinions on everything in here, but that would take up longer than my 15 minutes. But I basically said what I wanted to say. It doesn't seem like this would be a hard thing to do to get certification pushed on down the road. As far as the rest of it, I'd be glad to answer any

questions you have.

**MR. STAFFORD:** I appreciate that, Mr. Headley.

Any questions or comments? Just to clarify, you're suggesting that the capacity not come out; that we talk about certification by type and/or type and capacity?

**MR. HEADLEY:** That's correct.

**MR. STAFFORD:** That's your suggestion.

**MR. HEADLEY:** Yes, sir.

**MR. STAFFORD:** Okay. I just wanted to be sure that I heard that correctly.

Any other questions or comments? Thank you very much for your time.

**MR. HEADLEY:** Thank you.

**MR. STAFFORD:** No, we've got two more, three more.

[Inaudible, Off Microphone]

**MR. CANNON:** No Chip is not here.

**MR. STAFFORD:** Oh, Chip's not here? Tony? Tony Brown is here.

**MR. CANNON:** And Chip's not.

**MR. STAFFORD:** And Chip is not and then we had one person that signed up. Tony is also a private citizen today.

Hello, Tony.

**MR. BROWN:** Hello. I appreciate Mr. Chairman and the committee for taking the time to listen to all of us as we kind of present our opinions. I have a company, AD Brown Company, Safety Consultants. I worked for OSHA for about 12 years in the Construction Directorate.

Got my start, show my age a little bit, in the construction industry back in the 70s, early 70s with some international construction companies. Retired from OSHA. Then worked for a couple of companies. Been doing consulting for seven or eight years. I have a couple of clients in the entertainment business, and they have a question and it may be a unique position. As you can understand in sports stadiums and music festivals and different sets that are built, they use cranes.

There's not one person in that industry that I am aware of that knows anything about cranes. This would make it great for me. I could hire a bunch of people to go around and evaluate the cranes that they use, but getting back to the employer, the controlling entity, they -- we'll say a sports event or a music festival. The company that puts that on is a controlling entity.

They would hire a scaffold company. They would hire a crane to move platforms and so on. Their concern was are they considered a controlling entity and part of the evaluation process. I don't expect an answer from you right now, but I'm just giving you a different example, rather than the construction example you heard today. The other point I wanted to make --

**MR. STAFFORD:** So what is their opinion on that? Are they the controlling entity?

**MR. BROWN:** They consider themselves the controlling entity because they're calling the shots. I mean they're saying, "I want this platform 50 feet up here on this scaffolding. I want a design or a sign over here." In a music festival, they're building stages, different sizes, different configurations and cranes are used. They're calling the shots. I explained to them that, in my opinion, they were the controlling entity so they're not sure.

**MR. STAFFORD:** Okay. I mean it's interesting. So you prefaced it by saying they don't know a thing about cranes, but they would consider themselves the controlling --

**MR. BROWN:** When I say controlling entity, about the project, the site.

**MR. MARRERO:** Putting their stages together.

**MR. BROWN:** Yeah. Some of the conversations today, the rental company that they would use, they would do the evaluation. It's just one of those issues that they're a little unclear on at the moment.

The other thing I wanted to speak to and that is the CDAC and, again, showing my age, I started with OSHA in 1988 through 2000. The crane accident that Bill referred to earlier, that was kind of the emphasis that started all of this. Again, as he said, it was a tower crane that the boom fell and hit a school bus. But fortunately, the driver had just let the students off so there was no one -- the driver was hurt.

But it wasn't an operator error. It was a jumping error problem. There was a female reporter that asked the compliance officer about license, did the operator -- and she, for some reason, zeroed in the operator, "Does he have a license?" And the compliance officer said, "No." "You mean my hair dresser has to have a license and this operator doesn't?"

Well, that hit Capitol Hill and Congress, you know, it goes downhill to OSHA, to the Directorate of Construction, "Find out what's going on." Again, this was in the early 90s. We found that there were a few states that had licenses. Connecticut and the city of Chicago were kind of the premiers at the time, but very few.

Most of them were just revenue generation. They had no real requirements. There were a number of committees formed before CDAC to address this issue. The emphasis for certification evolved. As Graham mentioned, the first certification was developed.

I helped author that first letter for OSHA's recognition of certification because prior to that, the compliance officer would go onsite, I'm not saying they did it all the time, but you would have to ask for training records for this operator and documentation for the operator's qualifications.

We really thought by this letter of recommend -- at least this is my opinion, that at the time, having certification would alleviate the compliance officer from going through all of that paperwork, and it was accepted. I guess looking back at it now, maybe originally

certification did equal qualifications. At least in people's minds.

Well, obviously, that whole mindset has changed. I just wanted to give you some background. Also, I support Jim and his suggestion, and I've made it for the last couple of years, that this whole capacity, type thing, there are half the certification groups that have type and capacity and half just have type. Well, they applied for their accreditation based on their certification so they had to cross those Ts and dot those Is to get accredited.

Either say just it should be certified by an accredited group or both because either way you go, your certification groups are going to have to make some major changes, I think. I don't think we're in a position to -- I don't think we should force that just because they're accredited and they have the documentation, they've gone through the hoops and expense of getting accredited that say either, say or type. Accredited by type or type and capacity. That's my comments.

**MR. STAFFORD:** Thank you, Tony.

Any questions or comments? Yes, Tish?

**MS. DAVIS:** I really appreciate the comment about

the entertainment industry not having the expertise, but according to what's said here in Section (j), that company doesn't have to qualify or evaluate the crane operator. It has to check their credentials. That's essentially what it says.

**MR. BROWN:** But some of them, they read this and they were not clear. That's part of why I'm here.

**MS. DAVIS:** Yeah. No, there is an evaluation that's ambiguous still.

**MR. BROWN:** Right.

**MS. DAVIS:** But at a minimum, it's like when I as a homeowner hire a roofer, I look to see his worker's compensation.

**MR. BROWN:** Then it goes on to who's evaluating it. Does the person that's evaluating --

**MS. DAVIS:** It's not the entertainment industry.

**MR. HAWKINS:** His employer -- [Inaudible, Off Microphone].

**MR. BROWN:** Yeah.

**MS. DAVIS:** It's the crane company that you give some sense of evaluation.

**MR. BROWN:** Thank you.

**MR. STAFFORD:** Yeah, thanks. Any other questions or comments? All right, Mr. Brown. Thanks, Tony.

**MR. BROWN:** Thank you.

**MR. STAFFORD:** Appreciate it. Next on my list, although I think Kevin said he wasn't here, I have Chip Pocock is not here.

Francisco Trujillo with Miller and Long, are you here?

**MR. TRUJILLO:** Good afternoon.

**MR. STAFFORD:** Good afternoon. Good to see you again.

**MR. TRUJILLO:** Yeah, good to see you. Following some pretty big heavy-hitters here, so I'll keep it pretty brief. I'm with a construction company here in town. We've got about 1,500 guys, about 30 tower cranes, crawlers, hydros, lattice booms. And really, we just wanted to have a little bit of input on this thing and make sure we can comply.

We haven't been involved with the process from the beginning so our questions came upon reading this document recently. Just to keep it brief, we had obviously a question with the evaluation, which we find we're not alone

in that. We obviously don't think it's -- we have the same arguments that everybody before us had so I'll just leave it at that.

There is a suggestion that we had about the trainer language, the person doing the evaluation. There was trainer. There was supervisor. We would throw out there an option of qualified observer, somebody who is qualified to make an evaluation about the competency of a crane operator.

That's based on the thought process that when we would bring a new crane operator into the field and try to get him trained to where he could pass the test and have the competencies required, that in the beginning that person would be very closely observed by a certified crane operator or an assembly/disassembly director, somebody who was very intimately familiar with the cranes.

As the process continued and you started to establish that you had that basic competency level, of course, he would be studying to pass his CCO, as all of our operators are trained. Then he would start getting more and more of the leash. So saying that the person had to be a CCO person I think is accurate in the beginning. Towards

the end of the process, as they start to become established CCO, experienced operators, that supervision might be an experienced field supervisor who can advise the trainer and the evaluators on his performance.

That might not be what some of the people in the room had in mind, but that's certainly how we feel would be a way to implement this idea and it not be necessarily a CCO operator 100 percent of the time, eyes on, in the cab even, as a feasible solution to make sure this person is ready to be able to operate a tower crane on their own, which is mainly what we use.

There was some language in there that kind of worried us. Under (5)(3)(i), it said that this trainer, supervisor, qualified observer, whatever you want to call them that would perform no task that diminished the ability to monitor the operator in training. That's a little ambiguous. I don't know what would be something that would diminish that ability. Would taking a phone call diminish that ability?

Would having to go check something in the job trailer diminish that ability? I think we could all agree that anything that obviously removed their ability to have

any kind of evaluation on that person would be bad, but what does that mean? What's the limit there?

The other thing is that the operator in training must be in the direct line of site of the trainer. We've already heard some conditions where there might be blind picks. Somebody setting an air conditioning unit up on a building where that person may be there on the building and can't see. We're looking at this from a compliance standpoint and a practicality standpoint.

I mean I'd hate to be evaluating an operator and then have somebody walk up and say, "Hey, you can't see him. Here's your citation," and we were in the full intent. Anyway, I hope I'm not reading something wrong here. That's just a couple of ideas we had that I wanted to get out there. If there's any questions, feel free to let me know.

**MR. STAFFORD:** I appreciate that, Mr. Trujillo, and I think that there is, starting with Steve.

**MR. HAWKINS:** You know, I think perhaps I'm being confused by your remarks. Are you talking about the evaluation of the person in the evaluation section?

**MR. TRUJILLO:** I'm sorry.

**MR. HAWKINS:** Or are you talking about training?

**MR. TRUJILLO:** The person in training.

**MR. HAWKINS:** A person in training.

**MR. TRUJILLO:** You're right. I didn't transition that well. The person in training.

**MR. HAWKINS:** You switched back and forth a couple times.

**MR. TRUJILLO:** Yeah, you're right. You're right. I apologize for that.

**MR. HAWKINS:** So in just taking about the person in training, you don't think it's necessary for the person who's training them to be a certified crane operator?

**MR. TRUJILLO:** I think it's definitely important at the beginning stages of the process, absolutely.

**MR. HAWKINS:** Okay.

**MR. TRUJILLO:** As he becomes more established and you start to see some competencies there, do you need to employ a fulltime certified crane operator to stand over that guy's shoulder? To what point is what I'm saying.

**MR. HAWKINS:** Until you as the employer decide that you think he's qualified to operate on his own, and then you've decided that he's certified and qualified. And

then you cut him loose.

**MR. TRUJILLO:** That sounds great.

[Interposing Speech]

**MR. TRUJILLO:** But there was some discussion about maybe requiring a fulltime crane operator, some options were given earlier about having a fulltime certified crane operator to be that person, and I just wanted to throw it out there that maybe we weren't seeing it the same way.

**MR. STAFFORD:** So we get back to this issue of documentation and so in your Miller and Long's example, you have a certified qualified operator that's looking over the shoulder of a trainee operator. That person deems finally that that trainee is up and ready to go on their own, you as the employer, it's that certified employer that strokes the pen that says, "I certify that this person is now ready to go on his own." You'd do that as the safety director or how does that work?

**MR. TRUJILLO:** Well, I'm going to kind of reiterate what was said before, which was the certification of qualification is a daily, ongoing process. So there's not going to be a form, in my opinion, that you fill out and say, "This guy is good for the next year, six months,

five years," whatever you guys decide.

It could happen that on any given day, there might be a condition where maybe he's not. I mean in real life, out there in the field, we could have a guy that I evaluate today; put in the crane. He goes home and has a family issue. Dives in a 24-pack of Budweiser and comes back to the jobsite 3:00 in the morning. He's back in the cab, I never see him. He might not be qualified that day. We need to talk to him, evaluate him and everything he does to make sure that this daily process -- and I'd hate to rely on a form that was filled out last week to say this guy's good today when, in fact, as I've heard a lot of people say, it's a daily evaluation, constant process to make sure these guys are competent.

**MR. STAFFORD:** Steve and then Jerry. Go ahead.

**MR. HAWKINS:** I don't think that's what we're talking about. I think we're talking about an operator in training and you, as his employer, decide he's qualified to operate a tower crane going forward, not that he got drunk last night. We're talking about this guy's in training or this lady's in training and they have completed our training.

Our person who did the training, your qualified operator comes to you or whomever at your firm and says, "Look, this person, I've put them through the paces. They're good. They can operate it. They've got their certification from one of the four certification bodies, and I've been with them now on this job for a week. I've observed them. I've taught them the intricacies of this particular crane. They're good to go." That's what we're talking about what happens at your firm when that is completed.

**MR. TRUJILLO:** Okay. Then the person who's observing -- thank you for clarifying.

**MR. HAWKINS:** Okay.

**MR. TRUJILLO:** The person that would do that evaluation would document it in some way, say that they sat with that person. We don't have a standard form like Appendix D that we currently use, but it is documented.

**MR. HAWKINS:** You put them on a list and say, "Steve is no longer a trainee. He's now a crane operator."

**MR. TRUJILLO:** Right.

**MR. HAWKINS:** Something has to happen.

**MR. TRUJILLO:** Right.

**MR. HAWKINS:** You've got to keep up with it somehow.

**MR. TRUJILLO:** It does. It gets kept by our crane superintendent on record saying that this person was observed on this day, on this crane, on this job. But as far as a reevaluation period, I'm just being honest --

**MR. HAWKINS:** No, no --

**MR. TRUJILLO:** -- this is what we do.

**MR. HAWKINS:** -- I'm not worried about the reevaluation. I'm just talking about the initial.

**MR. TRUJILLO:** Right.

**MR. HAWKINS:** I mean initially, I assume that you have people that come to work for you that say, "I really want to be a crane operator," but they're not a crane operator yet.

**MR. TRUJILLO:** Correct.

**MR. HAWKINS:** So you pair them up and you put them through your program to get them --

**MR. TRUJILLO:** They go in a cab with a --

**MR. HAWKINS:** -- to where they are bonafide.

**MR. TRUJILLO:** Right. And there was one thing early in the process we kept going on was the whole chicken

and the egg discussion. It was like they've got to have a CCO, but how do they get the CCO? How do they get the qualifications? Because we've got to be careful. I mean we could put somebody in the tower crane in Maryland and they get a free residency to the state if they're not a CCO operator, they could be arrested for running a tower crane in Maryland without being certified.

It's really to have something that allows there to be a process is great, as far as an operator in training description.

**MR. STAFFORD:** Jerry?

**MR. RIVERA:** Jerry Rivera, Employer Rep., and Mr. Trujillo, I think I understand. Maybe you can elaborate if I'm reading it correctly. You said that there needs to be somebody who's a trainer at the initial stage and then there's kind of a transition into where that operator in training continues to be evaluated. And I'm starting to see that visually, which means that you might bring somebody who wants to be a crane operator; I go, you get your trainer. He goes through the training. He's evaluated to a certain degree on certain equipment.

They sign off. "Hey, he's going to go off." Now,

I'm under the direct supervision of a -- I'm not going to say a qualified operator, let's just say it that way, where he's going supervise my daily activities until I achieve those X amount of hours, whether that's the approach or not or he feels comfortable that I already achieved that qualification. So I see the cutoff where there's a qualified trainer evaluating that operation initially, maybe even teaching the guy certain things, here and there, and then that transitioning happening by giving it to the qualified operator that's going to supervise those activities that he's doing day-in and day-out, and he's going to probably give the seal of approval. Is that what you're looking at more or less?

**MR. TRUJILLO:** It would be a whole series of people would be doing this. I mean it would start off with, obviously, a certified crane operator who could -- he would be typically in the cab with this person because you've got to get that.

**MR. RIVERA:** Okay.

**MR. TRUJILLO:** In our opinion, you've got to get that stick, sort of the seat check idea that was going on earlier. And then that would also have an evaluation from

the safety department and from the operations vice presidents and the superintendents. I mean it's a continuous feedback loop on this person to figure out whether they're capable of doing this job.

A lot of people really want it. It pays great, and you train them and you put them in the seat. And you've got them up there pulling the levers, and the sad day comes where you say, "Hey, man, it's not for you. It's too dangerous. You're having issues with depth or you're having issues with controlling the crane in high winds," or whatever it is.

Yeah, whatever the issue might be, and you just have to say, "Hey, you're going to have to go back to being a carpenter." Or, "You have to go back to being an engineer," or whatever he was. But you gave him that opportunity. But you have to be selective. It's just too dangerous otherwise. To say it's one person or they hold one certification, I'd say it's by committee, largely for the entire company making sure. There's too much at stake to not have everybody's input on it.

**MR. STAFFORD:** Okay. Thank you. Any other questions or comments?

Okay, Mr. Trujillo. Thank you very much.

**MR. TRUJILLO:** Okay.

**MR. STAFFORD:** Okay. I think unless someone signed up on the back, I think that concludes our public comments. Is anyone here that --

**MR. EGGENBERGER:** Mr. Chairman, can I address the committee on a rebuttal of a statement that was made earlier?

**MR. STAFFORD:** A rebuttal?

**MR. EGGENBERGER:** Yes.

**MR. STAFFORD:** You can make a comment, yes.

**MR. EGGENBERGER:** I'm Mike Eggenberger of Bay Limited, Corpus Christi. Earlier, I passed out illustrations of a small crane and a large crane. The only comparison was that they were both telescopic boom cranes, not because one was a fixed cab; one was a rotating cab. The location of the cabs are irrelevant based on the illustration I gave you, what it was meant to be.

The fact of the matter is that Liebherr can be operated from a Blue Tooth panel on the ground. I just wanted to rebuttal an earlier statement. Thank you, sir.

**MR. STAFFORD:** Okay. I appreciate that. Okay.

All right. Unless there's any other comments, we're going to adjourn for the day. I thank all of you for your participation. I'm sorry. Yes, yes, yes. Damon, what?

**MR. BONNEAU:** Mr. Chairman, I'm going to pass out -- I have the Washington State Operator Qualifications.

**MR. STAFFORD:** Excellent. Okay. So you're not going to be here tomorrow, Anne, is that what you're saying? All right. Why don't you come on up?

So we have a little bit of time. We're still in session so we have a little bit of time, Anne. We appreciate you being here.

Anne is the chairman of the National Advisory Committee, as I understand it, for OSHA and also is one of the state plans that has a regulation that seems to be very effective so we're going to take advantage of your participation just to open up to see if any of the committee has any questions about the requirements in Washington State, your views on how it's working, your experience. We should take advantage while you're here to try to understand better what's happening in Washington.

**MS. SOIZA:** So for the record, Anne with an E, Soiza, S-O-I-Z-A. I'm the Assistant Director of the State

of Washington Department of Labor and Industries, and I oversee essentially the OSHA state plan operations there.

Washington State has had a crane rule in effect, including the topic of a very long day today, for over five years. So the rule that you have in front of you has been in effect over the last five years. Just two comments. I struggle with the controlling employer piece. That is a legal analysis that we apply on a case-by-case basis in Washington State.

So I'm not sure how we would handle that if we were to adopt the rule as we go forward. That's usually done on a case-by-case spec basis. So it's interesting that OSHA would put that actually in a rule, one, and two, it's almost changing the meaning of controlling employer in this particular case. Perhaps maybe using other words to achieve the goal would be better. I'd just put that out there. Crane user or something like that.

**MR. STAFFORD:** So what is your language, Anne, if you don't -- I'm not familiar --

**MS. SOIZA:** You know what? I am the Assistant Director so I'm actually an IH chemist. I'm not exactly up on all of the ins and outs of this rule. But I think that

it might be crane use -- I don't know if we just say controlling employer for a variety of issues, not just who contracts for the crane. When we have inspectors and consultants who go out to consult on crane operations, we are looking at the individual contracted, worksite specific operation.

The controlling employer can be different in every case. I would recommend that OSHA think a bit about that and maybe the committee would offer up some words because think about what you're really trying to achieve there.

The other issue that I would like to point out is that in the past five years, we've actually not had any trouble when it comes to actual worker safety and health in Washington State and we don't have annual evaluation and this six-month thing. We don't need it. We haven't needed it so far. We require the certification only and then we place the burden on the employer to handle their business.

**MR. STAFFORD:** Okay. I appreciate that. All right. Thank you. Any questions of Anne or comments? Anyone? Okay.

Tish?

**MS. DAVIS:** If something happened and the employer

said, "Well, the crane operator was certified," that wouldn't necessarily be enough. You might look at the work practices, the records of training or whatever. You know what I --

**MS. SOIZA:** If we're talking about an inspection and the incident occurred --

**MS. DAVIS:** Yes.

**MS. SOIZA:** -- our job is to investigate what are the contributing root causes to the incident. Certification lets you know that they know a certain set of information. They were certified in a certain area. Whether that had anything to do with the root cause for the incident is what the inspector evaluates. We would expect that an employer would -- for example, if they're certified -- I mean we haven't had a situation like this, but I would like to also add I agree with the past commenter that any of the incidents recently that we've inspected didn't have to do with operator error. Okay. That's one thing.

**MS. DAVIS:** That was my --

**MS. SOIZA:** Back to the other issue, if an employer were to actually assign a crane operator to do X and they were not certified to do X, like operate a certain

level of crane but they were certified in other things, the employer didn't do their due diligence about what that certification was for.

Of course, there would be some liability from an OSHA DOSH standpoint in that case, but we haven't run into that because I think the liability concerns that the general contractor and the associated subcontractors and the people who ensure the cranes, the system that oversees crane safety, OSHA DOSH jurisdiction is just a small piece of why people try to do the right thing.

**MR. STAFFORD:** Okay. Jeremy?

**MR. BETHANCOURT:** I wanted to ask as far the controlling contractor where you made the suggestion that perhaps we would have it say the user. Oh gosh, what was my question?

[Laughter]

Been a long day. Forgive me.

**MS. SOIZA:** Yeah. No, I know it has been. It's quite warm in here, too, isn't it?

**MR. STAFFORD:** It is now. [Laughter]

**MR. BETHANCOURT:** I'm curious -- wow.

**UNIDENTIFIED MALE:** Crane user.

**MR. BETHANCOURT:** Crane user. So the crane user as far as the evaluation, not whether or not they were qualified, but it has to do with the evaluation and verifying that they have an evaluation. Do you have something like that in Washington State where, for lack of a better way of saying it, there's a controlling contractor? Is there nothing in there where you're looking at the user of the crane on what burden they might've had to have to verify that the crane operator was qualified?

**MS. SOIZA:** In Washington State case law, we look at who is controlling the actual job, who's controlling the actual lift and what ownership are individuals taking on, what is their job task assigned by their employer and who is their employer. And because that can switch on every job, it is a case-by-case specific situation. The controlling employer, certainly the GC, right, or even the building owner itself, like if you have the State of Washington Department of Transportation who owns all of the property and everything, I mean at the highest levels, they're controlling employer, to some extent.

But I think the purpose of the use of the word controlling employer in this rule is much more narrow, and

that's why I'm suggesting that maybe the wording should be switched to something, putting in the word crane somehow in there. I mean I don't -- I'm sorry.

**MR. STAFFORD:** We had a good suggestion earlier, and I forgot what it was.

**MR. BETHANCOURT:** Crane user.

**MS. SOIZA:** Yeah. Again, controlling employer is a legal analysis and it switches even within the same jobsite, depending on what the hazard is that we're evaluating as inspectors. That's why it's just a little bit unusual that we would use that in the rule.

**MR. BETHANCOURT:** And I didn't want to get hung up on the controlling contractor language.

**MS. SOIZA:** Yeah.

**MR. BETHANCOURT:** It was more to the point of is the end user being the definition. Okay. Let's say that that is the word that would be chosen. That's the part that I'm curious if Washington State has case law or had cases where it was the end user that needed to do something, as it seems it is in this proposed rule. I guess I'll get to read it today, anyway.

**MS. SOIZA:** Okay. How we apply it is probably

more applicable than what's actually on paper, maybe.

**MR. BETHANCOURT:** Right.

**MS. SOIZA:** How we apply it, which I don't think is any different than CAL-OSHA or Federal OSHA down the road, would be who is -- you always want to put the responsibility as a regulating agency on the employer who's most responsible for the individual actions that they are either contractually responsible for or the ones they took on themselves because of their actual actions. Then you go up the chain with less and less responsibility oversight because the specific action should be mostly responsible at the subcontractor level. The details, the day-to-day operations, the actual lift, the actual operations, you want most of that responsibility to go over the employer of the employee who was doing it, right?

Or if it wasn't the employee's fault but it was there was a rigging failure or something like that, then who did the rigging, right? You want to look at the training records for those employees, that kind of thing. In regulating these kind of situations, we want to make sure that the responsibility goes to the best employer who had the most control over the situation. I don't know if

that answers your question.

**MR. BETHANCOURT:** No, you are. Thank you.

**MR. STAFFORD:** So I mean I think -- and I appreciate your comment. We need to make the clarification or OSHA does --

**MS. SOIZA:** Right.

**MR. STAFFORD:** -- in a multiemployer setting, who's the controlling contractor for the job versus who's in control of the lift is what I think we're trying to grope with.

**MS. SOIZA:** That's what I would recommend.

**MR. STAFFORD:** That's the way I view the question, and that's something that we're going to have to look at. I appreciate that.

Any other questions or comments?

**MR. MADDUX:** I wanted to make a closing comment, if I could.

**MR. STAFFORD:** Wait, before you close, let's finish up the questions.

**MR. HAWKINS:** Steve Hawkins with State Plan, the hours here --

**MS. SOIZA:** Yes.

**MR. HAWKINS:** -- those are lifetime hours, I assume, like you just have to make this qualification once, not over a period of time and so you would have to be certified by one of the four, when I'm reading the rule, and then you'd also have to have these number of hours in the seat to be able to operate solely.

**MS. SOIZA:** We are more strict than even the proposed rule, yes.

**MR. HAWKINS:** So you would have to have both?

**MS. SOIZA:** Yes.

**MR. HAWKINS:** And I'm assuming that somewhere in this regulation, somewhere in your regulation, you have to have this, plus the employer has to say you're authorized.

**MS. SOIZA:** Yeah.

**MR. HAWKINS:** They have to evaluate you as well?

**MS. SOIZA:** Right. Well, just generally speaking --

**MR. STRIBLING:** The bottom of the last page.

**MR. HAWKINS:** The bottom of the last page? Okay. So the part that's listed right under the national certification or the certified, this describes what is going to be in the certified evaluation. This is not in

addition to being certified that you have to pass a written test?

**MS. SOIZA:** We require certification by one of the four certifying bodies.

**DR. BRANCHE:** And I would say in very plain language.

**MS. SOIZA:** We accept it just straight across. Again.

**MR. HAWKINS:** So the stuff that's listed below that is not in addition to being certified by a national?

**MS. SOIZA:** That would be correct.

**MR. HAWKINS:** Okay.

**MS. SOIZA:** Of course, I don't have it in front of me, and I don't have it memorized. But I can just say generally we accept the certification --

**MR. HAWKINS:** You want that copy?

**MS. SOIZA:** -- by the certifying bodies, as the certification level and then we place the rest of the burden for qualification on the employer.

**MR. HAWKINS:** On the employer, yeah. Including keeping up with these hours?

**MR. STAFFORD:** Right.

**MR. HAWKINS:** Good deal.

**MR. STAFFORD:** Yeah, I think so, too.

**MR. HAWKINS:** Second.

**MR. STAFFORD:** Knock this out right now.

**MS. SOIZA:** It's been a long day, you guys.

You've been troopers.

**MR. STAFFORD:** All right. Anne, thank you? Any other questions or comments for Anne?

Thank you, Anne. We appreciate you actually staying with us for the whole meeting.

**MS. SOIZA:** Yeah.

#### ***DAY 1 - CLOSING REMARKS & DAY 1 ADJOURNMENT***

**MR. STAFFORD:** And it's great to have you.

**MR. MADDUX,** closing comments?

**MR. MADDUX:** Yeah. Well, I just wanted to, as Anne said, congratulate everybody on getting through a long day with an awful lot of information and a lot of information from different viewpoints. So the challenge now, and I think that it is a difficult one, is tomorrow morning coming back and actually turning that information

that you have and your own personal views about the subject and turning that into recommendations.

What I would suggest, as a process anyway, is probably a series of recommendations. I think that you've heard today probably, by my count, about at least eight to ten different concerns with the standard, some of them with suggestions for moving forward, and that you might think about just in the order of trying to keep things a little bit separated, kind of beginning with the discussion of overall is this the right direction to go. And then going down into different levels of detail on each one of these subjects that has come up so that you can kind of work through them in some systematic way.

If there's anything that we can do to help you organize your thoughts or anything on that, we'll be happy to do that, but I think now it is difficult. I mean you have heard a lot of different views.

**MR. STAFFORD:** I'll go back and look at what I've scribbled down here. Eight seems a lot to me. I mean it seems like to me, we've heard two or three and eight or ten different opinions about the same issues.

**MR. MADDUX:** Yeah.

**MR. STAFFORD:** I may be wrong about that.

**MR. MADDUX:** Could be.

**MR. STAFFORD:** But it would be helpful to me if  
OSHA --

**DR. BRANCHE:** I think it was three --

**MR. STAFFORD:** -- if OSHA could put down the list  
of issues that you think that you've heard and that would  
help us kind of guide our discussion in the morning about  
how to narrow in on that.

**MR. MADDUX:** We'll try to have that for you first  
thing in the morning.

**MR. STAFFORD:** Okay. Thank you. Yes, I'm sorry.  
Go, Chuck, please.

**MR. STRIBLING:** While you're at the table, because  
it will help me with my thinking tonight when I solve  
everything at happy hour [Laughter], I don't know without  
getting Mr. Bolon back up, I don't know OSHA's reasoning  
for the reevaluation component that we have here, but how  
strongly does the agency feel about that?

**MR. MADDUX:** Quite honestly, I'm not sure for the  
purposes of your deliberations that that matters. What we  
want from you are your ideas on what we put out on the

table. We will have to evaluate, depending on the recommendations that we get, how we want to move forward.

Do we want to change the regulatory text that we have now before we propose? Do we want to keep the regulatory text the way that it is and the recommendation leads to some kind of a series of questions that would make sense to ask in the proposal or exactly what approach that we want to take on each one?

**MR. STAFFORD:** Right. I think that's fair, Jim, but for a point of clarification, it's my understanding after these 40 meetings or getting stakeholder input that the recommendation of the proposed language on evaluation and reevaluation was driven by input OSHA received from stakeholders.

**MR. MADDUX:** That's correct.

**MR. STAFFORD:** Although, there's not one stakeholder in this room that would get up and support evaluation and reevaluation.

**MR. MADDUX:** But I have heard a lot of stakeholders get up here and say that they're evaluating them every day.

**MR. STAFFORD:** Um-hmm.

**UNIDENTIFIED SPEAKER:** [Inaudible, Off  
Microphone].

**MR. STAFFORD:** Right.

**MR. MADDUX:** So what we have now, it's an amalgam of all the different things that we've pulled together in all of these site visits and discussions and so forth.

**MR. STAFFORD:** Okay.

**MR. MADDUX:** And I think that we need to consider now, okay, what do we get serious about actually putting into a proposed rule?

**MR. STAFFORD:** Okay.

**MR. MADDUX:** And how are we going to explain why we're doing what we're doing?

**MR. STAFFORD:** All right. So I just want to be sure that I'm clear because I've asked two or three commenters today that it seems like it's intuitive to the industry that they don't put people in these seats that aren't qualified. They constantly evaluate and reevaluate. And, to me, the question becomes for you what do you do to document that?

**MR. MADDUX:** Yeah. I think the question becomes how often do you do it; how extensive is it, and how do you

document it?

**MR. STAFFORD:** Right.

**MR. MADDUX:** You know? Kind of in those three broad areas.

**MR. STAFFORD:** Fair enough. Okay. So for tomorrow morning, then, the staff will give us a list of the issues at least the staff thought that they heard and that'll help us tomorrow to go through --

**MR. MADDUX:** It'll at least get you a start, maybe just an initial discussion of this is the list might be helpful.

**MR. STAFFORD:** Okay. All right. Fair enough. Any other questions or comments? All right.

Yes, please, Lisa. I'm sorry.

**MS. WILSON:** And finally, I'd just like to designate the Washington State plan rule as Exhibit 14. Thank you.

**MR. STAFFORD:** Great. Thank you. Okay. We're adjourned until 9:00 a.m. tomorrow morning. Again, thank you everyone for participating.

**[Whereupon, at 4:29 p.m., the meeting was adjourned.]**