

TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF:)
)
MEETING OF THE ADVISORY)
COMMITTEE ON CONSTRUCTION SAFETY)
AND HEALTH (ACCSH))

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BEFORE THE U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION
OFFICE OF COMMUNICATIONS

IN THE MATTER OF:)
)
MEETING OF THE ADVISORY)
COMMITTEE ON CONSTRUCTION SAFETY)
AND HEALTH (ACCSH))

Room N-3437
Frances Perkins Building
200 Constitution Avenue, N.W.
Washington, D.C.

Thursday,
December 1, 2016

The parties met, pursuant to the notice, at
9:00 a.m.

BEFORE: ERICH J. (PETE) STAFFORD, Chair

ATTENDEES:

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P R O C E E D I N G S

(9:00 a.m.)

1
2
3 CHAIRMAN STAFFORD: Good morning. Welcome
4 to the second day of ACCSH. Appreciate it. We're
5 going to go around like yesterday and do
6 introductions, introduce the audience as well. As
7 always, if you would like to make public comment
8 there's a sign-up sheet in the back. Please sign up.

9 We're going to be a little bit fluid on the
10 schedule, just like we were yesterday. I think
11 yesterday was the first time in my tenure as chairman
12 that we actually wrapped up a couple hours early.
13 We're on the docket to go until 5:00 today. If we get
14 through our business we probably won't be going there,
15 so if you want to sign up or you know someone that
16 wants to sign up and think they're going to be waiting
17 until 4:30 or 5:00 to make public comment, they may be
18 doing it to an empty room, so that anyone who wants to
19 make comment be sure that you get on the list so that
20 we can get started and get your comments.

21 So with that said, let's go around and first
22 introduce the committee. We'll introduce folks in the
23 audience. I believe, Dr. Branche, you have something
24 you would like to say at the beginning of the meeting,
25 and then we'll get into the first presentation. So,

1 Eric?

2 MR. KAMPERT: Eric Kampert, OSHA DFO.

3 MS. DAVIS: I'm Tish Davis from the
4 Massachusetts Department of Public Health, a public
5 representative.

6 MR. CANNON: Kevin Cannon, AGC of America,
7 employer rep.

8 MR. MARRERO: Tom Marrero, Safety Director
9 with OTS Holdings, employer rep.

10 MS. DePRATER: Cindy DePrater, Turner
11 Construction Company, employer rep.

12 MR. PETERS: Andy Peters, AECOM, employer
13 rep.

14 MR. RIVERA: Jerry Rivera, Washington, D.C.
15 NECA, employer rep.

16 MR. STRIBLING: Good morning. Chuck
17 Stribling, Kentucky Labor Cabinet, state plan
18 representative.

19 DR. BRANCHE: Dr. Christine Branche, NIOSH,
20 federal rep.

21 MR. SOKOL: Ron Sokol, Safety Council of
22 Texas City, public representative.

23 MR. HICKMAN: Palmer Hickman, employee rep.

24 MR. RANK: Steve Rank, Iron Workers
25 International, labor rep.

1 MR. BELTRAN: Alex Beltran, International
2 Union of Painters and Allied Trainers, employee rep.

3 MR. HAWKINS: Steve Hawkins, Tennessee OSHA,
4 state plan representative.

5 MS. WILSON: Lisa Wilson, ACCSH counsel.

6 CHAIRMAN STAFFORD: Okay. Thank you.
7 Scott, do you want to get us started?

8 MR. SCHNEIDER: Scott Schneider, the
9 Laborers.

10 MS. BRAAM: Annette Braam, Directorate of
11 Training and Education, OSHA.

12 MR. MCKENZIE: Dean McKenzie, Directorate of
13 Construction.

14 MR. CREASAP: Wayne Creasap, the Association
15 of Union Constructors.

16 MR. HERING: Bill Hering, Division Safety
17 Manager, Senior Electrical, for Matrix North American
18 Construction. I'm also here representing the NMA and
19 TAUC.

20 MR. PARSONS: Travis Parsons with the
21 Laborers' International.

22 MR. WEBER: Rodd Weber, PENTA Building
23 Group, Las Vegas, Nevada.

24 MR. STREALY: Alden Strealy with AGC of
25 Oregon.

1 MS. SHAH: Nazia Shah, AGC of America.

2 MR. CALTA: Alan Calta, Director of Product
3 Safety, Elliott Equipment Company.

4 MR. STURTECKY: Brian Sturtecky, Directorate
5 of Construction.

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

8 MR. HEINLEIN: Good morning, everyone. Carl
9 Heinlein, American Contractors Insurance Group.

10 MR. KELLY: Chuck Kelly representing
11 Consolidated Edison of New York.

12 MR. MULLEN: David Mullen, Director of
13 Safety & Health for the International Brotherhood of
14 Electrical Workers.

15 MR. PAYNE: Michael Payne, OSHA, Directorate
16 of Construction.

17 MR. BUCHET: Michael Buchet, Directorate of
18 Construction, Office of Construction Standards &
19 Guidance.

20 MR. BRANCH: Garvin Branch, Directorate of
21 Construction.

22 MR. BONNEAU: Damon, DOC.

23 CHAIRMAN STAFFORD: All right. Again, good
24 morning. Thanks, everyone. Christine, do you want to
25 make a statement for the record you said?

1 DR. BRANCHE: Right.

2 CHAIRMAN STAFFORD: Okay. Please.

3 DR. BRANCHE: In followup to my presentation
4 yesterday and during which I made a reference to
5 NIOSH's upcoming noise app, I wanted to make sure that
6 you were aware that I have sent to Eric, Damon and our
7 chair -- I didn't have the email for our attorney -- a
8 copy of a journal article that provides some
9 additional information asking that it be made
10 available to the committee, and I thank Scott
11 Schneider at the Laborers for getting me this quick
12 link. Thank you very much.

13 CHAIRMAN STAFFORD: Thank you, Christine.
14 Lisa, anything?

15 MS. WILSON: Nothing.

16 CHAIRMAN STAFFORD: You're good? Okay.
17 Well, let's get on with the first presentation. We
18 heard I think from all the presenters yesterday. Dr.
19 Michaels and Dean and Christine all talked about the
20 falls fatality campaign and specifically the
21 stand-down, and I think for all of us around the table
22 that have been involved and those of you in the
23 audience are I think really pleased about the way the
24 campaign has progressed over time.

25 And one of the things that CPWR and my

1 organization, and I'm not quite sure how that
2 happened, but we got involved in doing the data
3 analysis for the folks that have come to OSHA
4 primarily, and that's the primary source that printed
5 off their participation certificate.

6 And Jessica Bunting that works with us at
7 CPWR in our Research To Practice Department was the
8 lucky soul that was appointed to do the analysis of
9 the OSHA data. And I guess, Jess, this is your third
10 year doing it? So this is Jessica's third year of
11 doing the analysis, so Jess is here to mostly talk
12 about the participation based on what we know about
13 the last stand-down more than talking about plans for
14 the next stand-down. That will be for future
15 meetings.

16 And I think for the purposes of this
17 committee we recognize and Mr. McKenzie said yesterday
18 that the numbers Jess shows are we believe it's not
19 the total of folks that we know that have
20 participated. And I think one of the things that we
21 need to think about moving forward, and I think Dean
22 mentioned this yesterday as well, is what we can do to
23 continue to track, assess the uptake and the
24 participation and the stand-down.

25 I'm assuming, and I don't know that, the

1 contractors that participated in the earlier
2 stand-downs wanted the Department of Labor
3 participation certificate, but the next year or the
4 next year that may not be so much an incentive, and
5 we're I think pretty sure that folks are
6 participating, but just not going and printing out the
7 certificate like they may have done in the previous or
8 the early years.

9 So we had talked yesterday, Dean, about OSHA
10 now in the Twitter business, and Alex had mentioned to
11 me as we were talking maybe somehow we can kind of
12 build that technology in and get people tweeting about
13 participation and that could be another source of
14 tracking participation in the stand-down.

15 So with that, Jessica Bunting, welcome. You
16 have plenty of time, Jess, but you don't need to fill
17 the time so you don't have to feel pressured about
18 that. And we thank you for being here, Jess.

19 MS. BUNTING: All right. Thank you, and
20 thank you, everyone, for having me again. I think
21 most or many of you have seen me present on this data
22 for the last two previous years as well. So just as
23 in years past, I am presenting on, as Pete said, a
24 portion of the participants of the campaign, so mainly
25 just those who went to get certificates.

1 So I do have to start, and maybe this was
2 discussed yesterday, by saying that there was a glitch
3 where OSHA's main website and database collection were
4 down for about two weeks, two or three weeks, during
5 and after the stand-down. So for the majority of that
6 time they had a backup database set up which required
7 an email interface so we still were collecting
8 information, but we know, based on the number of hits
9 to the certificate page, that we can see that number
10 is far higher than the number of people who actually
11 went through the process of submitting an email and
12 taking the time to get the certificate.

13 So because of that you can see that the
14 numbers look significantly smaller this year as far as
15 the number of responses compared to 2015 and 2014. We
16 don't think that that actually means fewer people are
17 participating. And as Pete was saying and probably
18 was discussed yesterday, we've heard a lot anecdotally
19 that people who got their certificate in the past
20 don't feel the need to go back and get another one,
21 even though they are participating in subsequent
22 years.

23 And so you can see I did do a little
24 comparison based on company name for those who
25 participated and got a certificate and how many years

1 they did so. Only 167 did it all three years. Seven
2 hundred and forty-three did come back for two
3 different years, and you can see that was a
4 combination mostly for people doing it in 2014 and
5 2015 back-to-back, but we did have some that got it in
6 2014, skipped 2015, came back and got it again in
7 2016. So you can see those numbers there, but the
8 majority were once and done at least as far as, you
9 know, assuming we got all of the information.

10 We do have a lot of comments that I pulled,
11 just some quotes showing that backing up the numbers
12 we know that while some people this was the first time
13 getting their certificate, we also know that some
14 people it was their first time participating, and I
15 think that's really important. You know, as we're
16 unable to collect the same amount of data as we were
17 initially, it's just important to see these comments
18 that we are still reaching new workers every year.
19 It's still worthwhile.

20 Everyone who said it was their first year
21 said it was a success, and we also had a good amount
22 of repeat participants writing things in like this is
23 my third time, we do this every year, it's always a
24 success, it's getting better every year. We had
25 comments like this is the best year yet, keep doing

1 it. So I think, you know, what we know anecdotally
2 and what we're seeing in the write-in portion of these
3 certificates shows that this is a success and that we,
4 you know, have plenty of momentum to keep it going.

5 Looking at the frequency and amount of
6 presentation, this also backs that up. Despite there
7 being a glitch in the system where we didn't collect
8 as much information, we can look at the percentages
9 this year and see that, you know, the number of
10 companies who participated on more than one job site -
11 so this could just be, you know, two job sites nearby
12 each other. This could be nationwide in multiple
13 states. That hit 17 percent this year, which was an
14 all-time high, and then the number of companies who
15 mentioned participating every, single day for the
16 entire week also hit a high at 4.5 percent this year.

17 We have the breakdown by type of
18 construction as we have in past years so you can see
19 the comparison between the three years. Now, this is
20 self-reported, so they pick from a drop-down box when
21 they fill out the information on the certificate and
22 so they're limited to their options.

23 And we don't really know what's going on in
24 their head when they select government, for example.
25 We know sometimes it's a government contractor who is

1 doing construction. We know that the Air Force has
2 filled out the certificate and identified themselves
3 as government. So we see that's the biggest growing
4 area, but we're not 100 percent sure exactly what that
5 includes.

6 And we also can see in 2016 that the amount
7 of other construction and nonconstruction is growing,
8 and we're seeing a lot in the comments every year
9 about how general industry is interested and they want
10 more materials and, you know, don't limit it just to
11 construction, so we can see that they are
12 participating as well. And then this is the
13 breakdown. So that was the individual responses or
14 stand-downs and now this is the breakdown or workers
15 reached by type of construction, and as you can see by
16 far the largest numbers here are in government.

17 All right. And I'm sure you all remember.
18 We've talked about this plenty in the past, but
19 originally the falls campaign was set up with a goal
20 in mind to reach small residential contractors, so we
21 always try to sort of gather what information we can
22 without specifically asking company size and things
23 like that.

24 So looking at the small stand-downs, which
25 means either 25 or fewer workers or 10 or fewer

1 workers were in attendance at the stand-down. So it's
2 not a comment on how many employees are with the
3 company; it's just specifically how many were at the
4 event. But we can see one interesting thing. The
5 numbers haven't varied too much, the percentage rates,
6 but if you look into 2016, 25 percent of the
7 residential construction industry entry stand-downs
8 had 10 or fewer workers, which in the past it's been
9 less than 2 percent, so maybe making some progress
10 there.

11 I did a breakdown by OSHA region. I also
12 have the state numbers. I'm not presenting that
13 today, but if anyone is interested in those I do have
14 them. The variation here is pretty minimal, total
15 stand-downs by OSHA region. We've seen a bump in --
16 let's see, sorry; I was going to say three -- wherever
17 Virginia is because of the government. Three.

18 VOICE: Three.

19 MS. BUNTING: Okay. So we've noticed
20 specifically the State of Virginia and the increase in
21 government participation have coincided and therefore
22 bumped up regional numbers. You can see here for the
23 workers reached it's 41 percent in Region 3 for 2016,
24 and a lot of that is because of Virginia.

25 All right. Looking at the activities

1 conducted most frequently, this is just based on
2 mentions in the comments, so whenever somebody
3 mentioned we did a training or we held a meeting that
4 goes into this. It's pretty similar to past years,
5 nothing really new here. If we look at the top five
6 stand-down activities every year they're a little bit
7 swapped around, but pretty similar. If you looked at
8 number six in 2016 it would be demonstrations, the
9 same as number five in 2015.

10 I did single out a couple comments that I
11 thought just came from interesting or creative
12 stand-downs. We had one company write in that they
13 did a poster development contest, and then once they
14 selected the winners they hung the posters on their
15 job sites and they used the insurance company as the
16 judge, external judge for the contest.

17 We had a lot of mentions of having a more
18 open conversation with employees and taking
19 suggestions, and one of them is this second quote that
20 said basically based on the crew's suggestion we're
21 going to suggest using aerial lifts more frequently,
22 and it even talked about having to plan in their
23 budget for it. So I just thought it was really great
24 that we're seeing more mentions of having a two-way
25 conversation and really engaging with the workers.

1 I have not checked out this app yet, but
2 apparently there's a new Harness Hero app that someone
3 mentioned playing on their smartphone and having a
4 conversation around that. We had a lot of mentions
5 about trying to make it relevant to people's personal
6 lives, and one company printed off coloring sheets for
7 the workers to take home to their kids and discuss
8 safety, and then they brought back the drawings and
9 coloring that their kids did and then hung them around
10 the job site and office to remind them that safety is
11 personal. So stuff like that supposedly really
12 resonates.

13 And then we had another company that
14 mentioned they worked in a focus of use of ladders at
15 home because they knew many of their employees also
16 worked at heights at home, and they wanted to, you
17 know, make sure that they addressed that as well.

18 Some repeat feedback that we've seen
19 year-to-year, more materials for general industry,
20 more materials in other languages, more new materials
21 in general. People that are participating every year
22 would like to see new videos in particular, but new
23 materials in general so that they don't have to use
24 the same materials year-to-year.

25 I think that we are doing a really great job

1 of promoting this earlier and earlier every year, but
2 we still got some comments saying that we need to
3 advertise better, promote better, promote earlier.
4 One suggestion was OSHA creating an email that just
5 has information about the stand-down or events like it
6 that people can subscribe to separately from a
7 newsletter. We always get the suggestion to do more
8 of these on different topics. And then another one
9 which we are in the process of working on with Twitter
10 and everything is using more social media.

11 And then just a few new comments that I
12 noticed were again the importance of creating an open
13 conversation for employees, a lot of mentions of this
14 improving overall safety culture and the way that
15 contractors communicate with their workers around
16 safety, many mentions specifically on training on the
17 fall protection regulations on Subpart M. We've heard
18 some mention of that in the past, but there seemed to
19 be more of a focus on that this year.

20 We had some people who decided to
21 participate for two weeks or even a month, even though
22 we went back to one week this year. There was a lot
23 of involvement from insurance companies. We saw a lot
24 of insurance companies that went to get a certificate
25 and held their own stand-downs. We saw a lot of

1 companies describe their stand-down as having someone,
2 an expert from the insurance company, come present, so
3 there just seemed to be a lot more involvement from
4 them this year.

5 There was a focus on the importance of daily
6 equipment inspections. When people talked about the
7 training that they were doing they talked a lot about
8 going over with their workers what they need to check
9 every day, and on that note there were requests for
10 additional materials on how to conduct inspections and
11 what issues to look for specifically on harnesses and
12 lanyards and basically beyond ladders.

13 And then another comment that came up is the
14 fact that for both requests people would like the
15 ability to do it electronically through OSHA and DOL.
16 I don't know how possible that is, but versus faxing.

17 And then that is it for the certificate
18 data, but I do have a few additional numbers to
19 present to you. When I presented here on the data
20 last year, Tom Whitacre from Harness Safety, an app
21 company in Canada, was in the audience and approached
22 us about wanting to do a stand-down app based on the
23 information that we provide through
24 stopconstructionfalls.com. So we created this app.

25 Unfortunately, the amount of time that it

1 took to go through the process and everything, it
2 wasn't really ready for download until maybe two weeks
3 before the actual stand-down so we didn't have a lot
4 of time for promotion. There was also the issue that
5 it was run by a private company versus CPWR or someone
6 who's not collecting the information for marketing
7 purposes, but we still got numbers on almost 200
8 different registrants, and it just is taking sort of a
9 different look, asking different questions than the
10 certificate database was.

11 So we asked in the registration process what
12 trade they were associated with. The majority
13 selected other, general contractor, but then we did
14 see high numbers for roofing and plumbing/HVAC. We
15 did ask company size here instead of just stand-down
16 size, so the majority or half were over 100, which is
17 pretty much what we expected and is in line with the
18 certificate data, but we did get 24 that were 11 to 25
19 and 23 that were 10 and below, so at least a quarter
20 are in what we are considering smaller companies. And
21 then respondent job titles, mainly safety managers, as
22 you would expect, and then other and foremen or
23 supervisors were the main ones coming in using the
24 app.

25 All right. And as Pete mentioned and as I

1 guess you may have discussed more yesterday, we've
2 been talking about the need for additional data
3 collection. So a few things that we've been
4 brainstorming, one is the possibility of doing a
5 social network analysis, which is essentially an
6 interview process that leads to mapping and measuring
7 relationships between people, organizations, social
8 media networks, any type of node or network that could
9 be involved in disseminating information or knowledge
10 transfer.

11 So the idea would be to reach out to
12 everyone who is involved in promoting the campaign at
13 a higher level and start finding out about their
14 networks, how the campaign is being promoted, what
15 makes it successful, you know, and what types of
16 networks are crucial to this widespread participation
17 that we've been getting.

18 And then Eric Kampert actually suggested a
19 photo contest in conjunction with the certificate,
20 which in past years we've been getting a lot of
21 feedback that people want to share pictures of what
22 we're doing and we don't really have the mechanism for
23 them to do that, so the idea behind the photo contest
24 would be that they still supply the same information
25 that they would through the certificate database so we

1 get the same exact information, but they get to
2 instead of just getting a certificate, which may not
3 have any value, they get to participate in a bigger
4 way and be seen.

5 Better use of social media. Again still
6 figuring that out, but hopefully Twitter will really
7 come into play. And then focus on individual states.
8 I believe this was Tish's suggestion at our technical
9 advisory board meeting, but the idea would be to focus
10 on states that have been really successful both with
11 high numbers of participation and then also with
12 strong involvement with organizations, state agencies,
13 people at a higher level that we can connect with that
14 are promoting this event and may be able to help us
15 collect data about the state and what has made it
16 successful.

17 So, if anyone has suggestions in addition to
18 these, they are very, very welcome. Again, I think
19 that we, you know, know that this is a success.
20 That's not really in question. And I think we know
21 that it's worthwhile, but as far as being able to do
22 the actual evaluation and to learn some more lessons
23 beyond just collecting the data on how this can be
24 replicated and what makes it successful is really
25 important.

1 I think that's all that I have. Does anyone
2 have any questions?

3 CHAIRMAN STAFFORD: Thank you, Jessica.
4 Yeah, Steve Rank?

5 MR. RANK: Well done. I've always
6 appreciated what you're doing, and I think it's really
7 making a difference on the awareness and getting
8 people to understand they do have a responsibility and
9 duty to address fall protection in the workplace.

10 Also a lot of the building trades, I know
11 the Iron Workers donated their training facilities to
12 help facilitate the stand-down meetings all across the
13 country. Our training facilities have structural
14 steel mockups that we use to put different types of
15 fall arrest systems on.

16 And I know like in Nevada, Arizona and
17 other, California, we use our training facilities, and
18 many other building trades did too, to help facilitate
19 getting in the employers, so I'd like to reach out to
20 them as much as possible too to use these big
21 locations. It makes it easier to access.

22 CHAIRMAN STAFFORD: Yeah. That's great,
23 Steve. I'm not so sure that we know much about that,
24 so we're not --

25 VOICE: Yeah.

1 CHAIRMAN STAFFORD: -- getting that
2 information.

3 MR. RANK: Oh, really?

4 VOICE: Yeah.

5 MS. BUNTING: I think, yeah, there are a few
6 comments about it --

7 MR. RANK: Wow.

8 MS. BUNTING: -- in the certificate
9 database, but I don't think we're aware as to the
10 extent to which that is happening.

11 MR. RANK: Yeah.

12 MS. BUNTING: Yeah.

13 MR. RANK: In fact, people from OSHA called
14 us to see if they could use our facilities to house us
15 because we have big parking lots. We have the
16 training apparatuses there. And so it worked out just
17 -- it was seamless. It just worked out very well,
18 so --

19 MS. BUNTING: Well, if you don't mind maybe
20 I'll reach out to you and --

21 MR. RANK: Sure.

22 MS. BUNTING: -- we can write up a little
23 success story about that just to show --

24 MR. RANK: Certainly will.

25 MS. BUNTING: -- other people that this is

1 something they can do, you know.

2 MR. RANK: Certainly will. Also I'm glad
3 that you mentioned aerial, expanding it to deal with
4 aerial lift equipment. Aerial lift equipment is used
5 in many cases, but it's only as good as the surface
6 it's sitting on, and we have a huge problem with
7 aerial lift equipment to try to solve fall protection
8 issues. But in fact we had a lot of fatalities and
9 disabling injuries because of the site conditions,
10 because of vehicles running around this aerial lift
11 equipment and knocking them over when you're up there
12 at 60 feet in the air.

13 We have problems with this aerial lift equipment
14 going from site-to-site that's not calibrated on the
15 hydraulic units and it's bleeding off by the time he
16 gets on his site. It's not holding. And there's a lot
17 of problems, not to mention aerial lift equipment we
18 use a lot to access work points that you can't get to
19 by a man basket, by a ladder or to build a scaffold,
20 and there's many cases where we have to exit that
21 basket using fall protection, of course, tying to the
22 structure, getting out of the basket. We use the fall
23 protection, but that's a real issue, you know, that
24 we've got to address is the proper use of this and all
25 these other sideline issues with aerial lift

1 equipment.

2 But the bottom line is I'm really glad that
3 you're going to focus on it. You do such a good job
4 of -- if you focus on this like you do everything else
5 it'll be a great, great project, so I'll work with you
6 on that as well if I could.

7 CHAIRMAN STAFFORD: Thank you, Steve. Any
8 other questions? Chuck, and then Andy?

9 MR. STRIBLING: Yeah. Same here. Well
10 done. It was great to see you mention focus on
11 individual states. We've been heavily, heavily
12 involved in the stand-down campaign since its
13 inception, but unfortunately this year OSHA couldn't
14 give us numbers of how many people from Kentucky
15 registered on their site so we really have no idea
16 other than the activities we were actively engaged in.
17 So if you have that, that would be great. It would be
18 I think very beneficial if individual state plan
19 numbers could be provided to DOC and DOC push it out
20 to all the state plans so they see coming from here
21 how many people in their state participated maybe to
22 encourage the states to take an active role like I
23 know Tennessee does.

24 One of the things that we did, just a
25 thought, is in the past we asked people to register

1 with us, but then we found over the past years when
2 OSHA sent the data they were also registering with
3 OSHA for the certificates so they were sort of getting
4 double counted, but what we did ask people to do is
5 just tell us a little, brief something of what you're
6 going to do.

7 CHAIRMAN STAFFORD: So in Kentucky, so I
8 understand, Chuck, they get a commonwealth, some kind
9 of state certification?

10 MR. STRIBLING: No. We didn't do a
11 certificate because OSHA was, so we decided not to go
12 down that route and not have to deal with all the tech
13 issues and everything, so --

14 CHAIRMAN STAFFORD: Okay.

15 MR. STRIBLING: But what we did is we asked
16 them to tell us a little something of what you're
17 doing, and if they would tell us something we would
18 list them on our web page as a partner in the
19 stand-down campaign. So that might be something that
20 DOC might be interested in looking into. It's just a
21 little recognition in some small way --

22 CHAIRMAN STAFFORD: Right.

23 MR. STRIBLING: -- that they can get up
24 there and have their company name put up there with a
25 little snippet of the activity they're doing.

1 CHAIRMAN STAFFORD: Right. Yeah. Andy?

2 MR. PETERS: Andy Peters. Great report and
3 analysis, Jessica. Thank you very much. I think what
4 a wonderful example of collaboration between the
5 Agency, the employer, the employee community and
6 construction support organizations like yours, and I
7 think we need to find more ways to have more of this
8 type of thing.

9 Stand-downs domestically and internationally
10 are best practice. Many, many projects do this on a
11 daily basis, weekly basis, monthly basis. They have a
12 profound impact on the craft, and that's obviously our
13 goal is to get into their hearts and minds and have
14 them focus more on the hazards and be able to avoid
15 and mitigate hazards out on the job site.

16 So you certainly have our support. Cindy
17 and I sit with the National Construction Safety
18 Executive Group. It's the top 30 design engineering
19 construction firms in the U.S. I know in the past
20 we've mentioned this activity, and we'll continue to
21 push to get more and more member support because we
22 really believe in this initiative and, like I
23 mentioned, would really like to see more collaborative
24 efforts like this because they have a tremendous
25 impact.

1 CHAIRMAN STAFFORD: Thank you, Andy. Any
2 other? Yeah, Ron?

3 MR. SOKOL: Ron Sokol, public
4 representative. I know within our region a lot of the
5 VPP sites participated, but they're so engaged in the
6 process I don't think they provided much data into the
7 system. So maybe if we could have some collaboration
8 with VPP and those that are part of Star and SHARP and
9 all of those to be able to make a comment with them to
10 be able to make sure that they give us some data.

11 Because they're doing safety on a regular
12 basis, but they are taking a week out and they're
13 really further emphasizing it on their sites, but
14 we're probably not capturing maybe what they're doing
15 as well, and that's probably a lot of people that
16 we're missing.

17 CHAIRMAN STAFFORD: Thank you, Ron. Steve,
18 and then back to Chuck?

19 MR. HAWKINS: Jessica, this is Steve Hawkins
20 with Tennessee OSHA. If you would provide me those
21 state plan numbers on behalf of OSHPA I will send them
22 to all of our state plan states, so --

23 MS. BUNTING: Okay.

24 MR. HAWKINS: -- if you can send those to
25 me?

1 CHAIRMAN STAFFORD: Okay. Cindy?

2 MS. DePRATER: Cindy DePrater, employer rep.
3 And, Steve, I just first of all want to echo I think
4 the aerial lifts and the scissor lifts, the
5 articulated and the all-terrain, we've got to add that
6 because they are such fall hazards that do lead to
7 deaths, and we want to make sure that that's a part of
8 this campaign. I would also like to ask, you know, if
9 there's a way beyond just the stand-down of capturing
10 this type of material. How do we capture the value of
11 realization? I mean, what does that look like beyond
12 the stand-down? How do we measure impact? And
13 there's got to be something that we can come up with
14 that we can actually measure it. You know, once it's
15 done we start counting the numbers.

16 CHAIRMAN STAFFORD: Right.

17 MS. DePRATER: But let's figure out where
18 the impact is coming from, from the workers'
19 perspective beforehand.

20 MS. BUNTING: And I think, I mean, that's a
21 great point. If we are able to successfully pursue a
22 social network analysis it will involve actually
23 talking to people on the ground who have participated
24 or actively interviewing, and I think that would be a
25 great opportunity to ask the question because I may

1 have shared the quote in here. We had one company
2 that shared that information that, you know, since
3 we've been participating in this campaign for the past
4 four years we haven't had a single incident and, you
5 know, this is the impact on our job site.

6 So we can get anecdotally or maybe even
7 number-wise that information from these people. How
8 we do it on a larger scale, that is where we sort of
9 haven't figured that out yet, so any suggestions that
10 you have for --

11 MS. DePRATER: And I think it will come down
12 to finding one platform, but if you start trying to
13 build three or four different platforms for capturing
14 information it's going to get diluted and watered down
15 and really not meaningful.

16 So if we can find a common platform that
17 captures the information if there are statistics, and
18 Andy is right. You know, we hold stand-downs in the
19 industry after holidays, before holidays, after
20 incidents, before incidents, and the list goes on and
21 on and on. You know, before high risk activities
22 there's a lot of stand-downs that go on in this
23 industry. And we do have data that will show that
24 there are a large number of incidents that happen
25 before and after holidays.

1 So we do capture data that says we've been
2 able to trend the information to reduce and minimize
3 and eliminate risk. So I think if we can arrive on
4 one platform and one set of data points that we want
5 to gather we can streamline it and lead the process
6 and then just make sure that we're getting credible
7 data over the long term as it matures because the
8 first year it won't tell you much, but the second and
9 third year you should be able to trend some data
10 that's meaningful, credible and tells us that this is
11 actually having an impact.

12 CHAIRMAN STAFFORD: Thanks, Cindy.
13 Christine?

14 DR. BRANCHE: Cindy -- Christine Branche,
15 NIOSH - you and Andy are making I think some salient
16 points, but are you willing to allow us to work with
17 you and take a look at the data that you have sort of
18 as a case study so that we can try it out? Because,
19 you know, we are limited in our resources that we can
20 lend to this. To be able to work with even a small
21 network of you to examine the data that you collect
22 and see how that works would be really a good move in
23 the right direction I think in being able to pinpoint
24 the data points that make sense to try to collect.

25 MS. DePRATER: And I do think that, that's

1 something that we can talk about for sure.

2 DR. BRANCHE: Thank you.

3 MR. PETERS: I second that as well. We have
4 projects all over the country that we manage that are
5 very significant, and we have partnered with NIOSH in
6 the past on ergonomic studies at the Savannah River
7 nuclear decommissioning facility, but would love to
8 open up other projects to NIOSH and OSHA also to
9 perform studies to help the industry.

10 CHAIRMAN STAFFORD: Thank you. Any other
11 questions? Yeah, Chuck? Please.

12 MR. STRIBLING: Chuck Stribling, Kentucky
13 Labor Cabinet. So, Mr. Rank, just to let you know,
14 one of the things in Kentucky the stand-down is only
15 one week of a fall campaign, fall prevention campaign
16 -- it lasts about nine weeks -- and aerial lift safety
17 has a week dedicated to it.

18 MR. RANK: Great.

19 MR. STRIBLING: And, knock on wood, it's
20 worked great. And then to Mr. Sokol's point of the
21 VPP, SHARP and so forth, in our state if you're going
22 to be in one of those partnerships with us you have to
23 participate in the stand-down. It's just flat-out
24 required or you're not going to be in SHARP or VPP
25 with us. That's just the way it works. And we can do

1 that because we're a state plan.

2 CHAIRMAN STAFFORD: Right.

3 MR. STRIBLING: And it might be the Agency
4 looking at instead of register to get a certificate
5 you just register to let us know you're participating
6 through some type of similar mechanism so they can
7 simply collect numbers. I didn't even know about the
8 app, but we'll definitely be pushing that. Does the
9 app give back numbers that help you?

10 MS. BUNTING: It gives back the registration
11 information that you present on and then there is an
12 activity reporting capacity to it, but we didn't
13 really get people that reported on that. So the same
14 way the certificate speaks specifically to a
15 stand-down activity, there is a portion in the app
16 where people can upload photos and report on the
17 activities and who participated.

18 CHAIRMAN STAFFORD: Any other? Yes. Go
19 ahead, Andy.

20 MR. PETERS: Andy Peters, employer rep.
21 This is another tremendous opportunity to engage the
22 client and owner community, so I'd suggest reaching
23 out to employer associations, CURT, and gain the
24 client support, one, to allow the stand-down, which
25 it's their particular project -- they own the property

1 -- and have their support and encouragement. I'd just
2 like to make a comment. When we have really strong
3 stakeholder alignment with our owner and client
4 community, safety performance really can excel. So
5 this is another collaboration that I think if we can
6 engage the client and owner community to participate
7 more on the safety side that we'll just get fantastic
8 results.

9 CHAIRMAN STAFFORD: Yeah. I think that
10 would be great, Andy. Again, I think the CURT group
11 is a perfect example, but if you have any kind of
12 inroads with them or could make that connection that
13 would be very helpful because I think that, that is a
14 group that we need to get to, but we don't necessarily
15 -- some of us around this table don't have that
16 relationship to try to get in that door with them.

17 Any other questions or comments? Yeah,
18 Steve? Please.

19 MR. RANK: Steve Rank with the Iron Workers.
20 I sit on the CURT safety committee, and with your
21 consideration I would like to submit your name as one
22 of the special guest speakers at the next meeting --
23 it'll be in Chandler, Arizona -- to help bring this
24 idea both from your organization and us about
25 expanding this to the CURT. They're very open to this

1 and, as Andy indicated, most of the nation's largest
2 owners are at that table, so --

3 CHAIRMAN STAFFORD: Okay. That would be
4 fine, Steve. I mean, this is kind of a collaboration
5 between --

6 MR. RANK: Sure.

7 CHAIRMAN STAFFORD: -- a lot of folks, but
8 if we could get in that door between --

9 MR. RANK: Sure. Your organization and
10 ours.

11 CHAIRMAN STAFFORD: We could figure out who
12 could go to that meeting.

13 MR. RANK: Yeah.

14 CHAIRMAN STAFFORD: So that would be very
15 well.

16 MR. RANK: I'll be glad to contact them and
17 let them know there's an interest.

18 CHAIRMAN STAFFORD: All right. Jess, you
19 probably wouldn't mind going to Arizona maybe for a
20 trip.

21 MR. RANK: It's in July. Do you want to go
22 there in July? No. It's February.

23 CHAIRMAN STAFFORD: Any other questions or
24 comments?

25 (No response.)

1 CHAIRMAN STAFFORD: All right. Jessica,
2 thank you very much. It was really good. Thanks.

3 (Applause.)

4 CHAIRMAN STAFFORD: All right. Next on our
5 agenda is to talk about the alignment of work groups,
6 and I've had a discussion with DOC staff in planning
7 this meeting and, you know, over time our work groups
8 have kind of ebbed and flowed, and for those of you
9 that work with us, you know, the work groups really is
10 where a lot of our work gets done at ACCSH. And we are
11 to the point I think that we need to revisit our work
12 groups and so instead of having three work group
13 meetings at this meeting we thought it would be
14 prudent just to have an open, frank discussion with
15 the full ACCSH committee about your thoughts about
16 work groups. I wish Dean was here or Brian, but
17 hopefully someone from DOC could pitch in on this
18 discussion because I think it's important that we kind
19 of align our work groups in such a way that it fits
20 within the priorities of what OSHA would like for this
21 committee to do as an advisory committee.

22 In my time I think for -- I don't know; my
23 time, four years or five years when I first started on
24 this committee I think we had seven work groups.
25 We're now down to three. I'm not sure what the right

1 balance of work groups is, but clearly I think seven
2 was too many because it stretched the DOC staff and it
3 frustrated folks on ACCSH because the work groups
4 would get together and we would make recommendations,
5 and it just wasn't aligned with what the priorities of
6 the Agency were so there wasn't a lot happening in
7 between work groups.

8 So I think we've done a good job of paring
9 it down. With the FACA regulations, paring it down
10 has created some problems because in three work
11 groups, and we're all here in town, it ended up most
12 of ACCSH was participating in the work groups, and in
13 my mind that was great, but on the negative side of
14 that we were having -- and Lisa can jump in here.
15 Essentially the borderline is we were having almost
16 full ACCSH meetings, but we weren't engaging the
17 public enough.

18 And so because of that we've had issues in
19 between work group meetings where a lot of work gets
20 done where we've kind of been butting up, you know,
21 against this problem of we have a work group
22 conference call and how we notify people and get folks
23 involved and that has become a problem and so what's
24 happened? We all have day jobs and we go back to our
25 daily work and the DOC goes back to their work -- and

1 I'm going to take a big hit -- and as the chair we
2 kind of became remiss in following up on our work
3 group recommendations between meetings.

4 And so now as we look at it, and I'm very
5 glad Annette is here because one of the issues we had,
6 and I think I'm pretty confident in saying one of our
7 work groups is the training and outreach work group,
8 and whatever we do I think the training and outreach
9 work group is going to continue because there's no
10 doubt that training is important to all of us.
11 Whether you're a state rep, an employer rep or an
12 employee rep, that's something that we can all get our
13 arms around is training. And things have changed now,
14 and with Annette here, and it's great to have Annette.
15 For a long time our training and outreach work group
16 would come together, talk about, make recommendations
17 about what the construction industry wants to see in
18 training, and we would have no one from the
19 Directorate of Training and Education being involved
20 in those discussions. And so now we've got that in
21 the form of Annette Braam who's here today, and it's
22 great to have you.

23 So I would like for Annette, even though
24 this is not time for public comments, but when we
25 start talking about training and outreach with respect

1 to how your perspective on how ACCSH could work more
2 closely with DTE and align ourselves on the training
3 side of the industry, we'd love for your input on
4 that. So I'm going to open the discussion. Right now
5 our three work groups are training and outreach. Our
6 training work group I think has made some
7 accomplishments. Jerry and Kevin and Roger done a
8 great job of that. You know, the foundations for
9 safety leadership I'm very happy to say that's come
10 through this committee, has been accepted now and will
11 be launched the first week of January, and that's the
12 work of CPWR, the research end of it.

13 But the work of this committee that we now
14 have an approved two and a half hour elective in the
15 OSHA 30 that we think is all welcome in this industry,
16 and it's a result of the work of this committee. We
17 went through a very laborious process of going
18 slide-by-slide through the OSHA 10 intro. That's been
19 -- I don't know -- a couple years ago now. We started
20 the process of dealing with requirements for the 502
21 refresher. There's been some changes in that. So we
22 have made progress.

23 Our other work group is health hazards and
24 emerging issues. Our colleague, Matt Gillen, when he
25 left the committee three years ago, two or three years

1 ago, he offered up a challenge for us and OSHA to
2 think about a focus for health, recognizing that more
3 needs to be done in the construction industry looking
4 at our risks or exposures to health hazards.

5 And I think we all kind of like that idea,
6 but we've been struggling, and I'm just setting up the
7 conversation. This is just my perspective as being a
8 member, a colleague of yours, is that we've struggled
9 with what that really means. And because we have, we
10 haven't gotten very far as a focus for health. What
11 is that? Is that an educational campaign? Is that an
12 enforcement campaign? Is that a training activity?
13 Is that a public relations campaign? What does it
14 mean and what it is that ACCSH should be doing to
15 recommend or what does the Agency want this committee
16 to do to advise them on what they do to end health
17 hazards in the construction industry.

18 The other part of that group, we've been
19 talking a lot about prevention through design, DEM,
20 all of these other type of things that are I guess
21 tagged as emerging issues, and I think those are
22 important and I think that there are different roles.
23 We all see that those are important things, but the
24 question becomes what do we want ACCSH or, even more
25 to the point, what do we want ACCSH to do on

1 prevention through design? What are we suggesting
2 that the Agency does on prevention through design and
3 how we can help push that along?

4 Our third work group, temporary worker work
5 group, I think in the last couple years they've done
6 an excellent job, and it's the first time that I know
7 that our ACCSH has worked closely with the National
8 Advisory Committee on that issue, and Tom Marrero and
9 Jeremy Bethancourt were kind of the leads on that with
10 us. But, you know, NACOSH has now finished their work
11 on temporary workers and they've moved on, and we have
12 a work group. I'm not sure, even though I recognize
13 that it's a problem, what we need to do, so what would
14 the charge be for ACCSH or what do we want at this
15 stage of the game for the DOC to do on temporary
16 workers? And so that's a hypothetical question. I
17 don't know the answer to that and I don't know if we
18 continue with that, but that's the point of this
19 discussion just to get the committee's thoughts, DOC's
20 thoughts on what it is that you would like for our
21 work groups to tackle and what it is that at the end
22 of that tackling, what's the products that we would
23 have to help advance construction safety and health.
24 If we're not dealing with regulations at every
25 meeting, which Congress developed this committee to

1 deal with standards, regulation and policy.

2 And those ebb and flow, and so while we meet
3 two or three times a year when we don't have a lot of
4 regulations to deal with the question is what could
5 this committee do to help the Agency move forward in
6 construction safety and health. So I open that up to
7 a frank discussion amongst us about what you think the
8 work group should look like and what we should be
9 tackling. So, Tom?

10 MR. MARRERO: Tom Marrero, employer rep.
11 What I would like to see from this work group is
12 potentially putting a work group dedicated to
13 preventing falls. That's our number one problem in
14 our industry. This is citation-wise, fatality-wise, I
15 feel that that's one of those topics that should
16 always be on the table here at ACCSH, so --

17 CHAIRMAN STAFFORD: Okay. Thanks.

18 MR. MARRERO: Yeah.

19 CHAIRMAN STAFFORD: I'll start to my right
20 and go around. So, Andy? Please.

21 MR. PETERS: Andy Peters, employers rep. So
22 I think the work groups are really important. Dean
23 gave a really great presentation yesterday. What was
24 telling to me is that the fatality rate has gone up
25 and hasn't gone down. So I think those topics that we

1 select I think need to have an impact on that.

2 Personally I think the industry is doing a
3 good thing by looking at serious incident prevention.
4 Outstanding owners and contractors in the industry can
5 have low recordable rates, but they could still have
6 fatalities, so I think this is one of the areas that a
7 work group could look into. There's some really great
8 best practice that are out there in the industry that
9 need to become more well known and widespread, and
10 those techniques can be transferred to the contractor
11 community for implementation.

12 CHAIRMAN STAFFORD: So then, Andy, it would
13 be like an industry best practices work group? Is
14 that --

15 MR. PETERS: Yes.

16 CHAIRMAN STAFFORD: Okay.

17 MR. PETERS: Yeah.

18 CHAIRMAN STAFFORD: Okay. Well, you have to
19 wait, Cindy.

20 MS. BRANCHE: Okay.

21 CHAIRMAN STAFFORD: I'll come back around.
22 Jerry, please?

23 MR. RIVERA: Yes. Jerry Rivera, employer
24 rep. Mr. Chairman, I guess I'd have two observations
25 on the safety and health work group. I know that in

1 the past we had recommended potential resources on a
2 website the employer community could have access to,
3 so maybe an update from OSHA whether those recommended
4 are being worked on, if there's been a final product.
5 I can't recall if there was a final product on that,
6 but I think that was something that addressed the
7 safety and health issues, prevention through design.
8 They weren't regulatory in nature. They were more
9 guidance documents on that end.

10 The other observation is we did hear
11 yesterday about trenching excavations experiencing
12 also higher fatalities so, I mean, I don't know if
13 it's a work group dedication or somewhat of a task
14 group internally, but maybe looking at those numbers,
15 why they increase and should we be doing something on
16 our end to tackle that moving forward. I know Tom
17 mentioned the falls, but maybe it's taking an analysis
18 of what's driving some of the fatalities or serious
19 injuries and trying to address those as a committee.

20 CHAIRMAN STAFFORD: All right. Thank you,
21 Jerry. Christine?

22 DR. BRANCHE: Christine Branche, NIOSH. So,
23 you know, Tom, I appreciate and I agree with you that
24 falls is a very important problem. I don't agree that
25 another work group is necessary. My friendly amendment

1 to that is that given the importance of falls in this
2 industry that perhaps on every single agenda of our
3 meeting that falls is addressed because I think
4 there's a lot of opportunity for anyone on this
5 committee -- sorry, on this -- yeah, on this committee
6 -- and elsewhere to participate in the deliberations
7 that are currently underway in the interaction between
8 NIOSH, CPWR and OSHA, and anyone can participate in
9 that and weigh in, and that actually is getting us to
10 a place called there.

11 Having a work group on this, just in light
12 of the fact that, you know, the criticism is that it's
13 not really clear what the work groups are doing or
14 what the end is and given the productivity of what
15 we're doing on falls, I actually would suggest that we
16 do something like that. So my specific request, is
17 that instead of a work group that we just ask that the
18 issue of falls appear on every single agenda for
19 ACCSH.

20 MR. MARRERO: I would be okay with that as
21 long as we have focus on it on a regular basis, you
22 know.

23 CHAIRMAN STAFFORD: Okay. Thanks. Ron?

24 MR. SOKOL: Ron Sokol, public
25 representative. I think the work groups are a great

1 idea. I think we have to kind of get to the number
2 that we can manage effectively and make some impact. I
3 think, as Andy said, the serious injury and fatality
4 is one that we really need to address because we seem
5 to be stuck at some levels and even losing ground, and
6 these are life altering events for construction
7 workers around this nation, for their families,
8 themselves, some being permanently and totally
9 disabled. So I think we really need to identify that
10 on what we can do to move that needle. The second area
11 to consider I think even a work group is small
12 business.

13 And, you know, we sit here, and the majority
14 of construction companies, somewhere the data up to 90
15 percent are 20 people or less. And we really have to
16 come up with some solutions to help small business,
17 small construction contractors that don't have a lot
18 of resources and safety management systems to help
19 them. So I think we really need to look at that to
20 protect the American construction worker. And then
21 lastly, this would almost be an emerging issue that
22 would come in, but the ability to be able to work
23 through a prescriptive type system to a risk
24 management system in construction safety. And, you
25 know, I think through what the Corps of Engineers do

1 in their risk matrix to be able to start to utilize
2 that more and have supervisors and workers understand
3 that to be able to ensure that they know where they
4 are in that risk matrix to protect themselves for the
5 work that they're doing.

6 CHAIRMAN STAFFORD: Thank you, Ron. Palmer?

7 MR. HICKMAN: Thank you. Palmer Hickman,
8 employee rep. Mr. Chairman, I'm not suggesting that
9 you've suggested that the training work group go away,
10 but I will speak in support of the training work
11 group. It's a pretty big umbrella. It encompasses a
12 lot of the things that we would need to do, and
13 certainly the interface with DTE is logical and I
14 think that dialogue should continue through that work
15 group, so that's my recommendation that we continue a
16 training work group.

17 CHAIRMAN STAFFORD: Okay. I appreciate
18 that. Yeah. I wasn't suggesting and I must have
19 mis-spoke if the impression was --

20 MR. HICKMAN: No, no.

21 CHAIRMAN STAFFORD: -- that I didn't want
22 the training work group to continue, Palmer, because I
23 think that's important. Thank you. Steve Rank?

24 MR. RANK: Steve Rank, Iron Workers, labor
25 representative. Mr. Chairman, I'm glad that you asked

1 for input on the health issues in the construction
2 industry. It is a big issue, and I think as a
3 committee one of the things that we really need to
4 emphasize and support is the Agency updating the 1971
5 PELs and threshold limit values for known carcinogenic
6 type of airborne exposures. Just one in particular,
7 manganese, and I know that the CPWR did a great, great
8 study on the adverse effects of manganese alone
9 through welding fumes. And I think that after seeing
10 several disabling injuries, called manganism, and the
11 adverse effects that that has over long-term
12 exposures, even low exposures over 20 years can
13 produce this type of neurological disorder.

14 I know, Ms. Branche, I'm speaking in your
15 area here, but you know this very well, but I think we
16 need to really urge the Agency to update those 1971
17 PELs because of the confusion of theirs versus what's
18 on the safety data sheet on the back of those welding
19 tins is 25 times more stringent than what's the whole
20 number of five that OSHA has in their PEL for
21 manganese, for example. So we need to really press on
22 that as a committee to get the Agency, number one, to
23 update those PELs so that everyone is on the same page
24 with the manufacturers and what these dangerous levels
25 really are. So from a health side, I hope that we can

1 make some difference there.

2 CHAIRMAN STAFFORD: Thank you, Steve. Alex,
3 do you have anything?

4 MR. BELTRAN: Yeah. Alex Beltran. Maybe
5 it'll work.

6 CHAIRMAN STAFFORD: No. You're good.

7 MR. BELTRAN: Alex Beltran, International
8 Union of Painters and Allied Trades, employee rep. I
9 agree with Steve on health hazards. I know in our
10 finishing trades we're dealing with a lot of silica
11 issues, especially in the drywall finishing trade, and
12 some of the glazing trades where you're drilling
13 through concrete and whatnot. I think health hazards
14 is very important. I know the new silica rule is out,
15 and I also believe that we need to focus on that, as
16 well as not just the rule being out, but helping get
17 some enforcement out and some data collected on that
18 to see if there's been any changes since the new rule
19 is out. To me, that's very important, health hazards,
20 because there's a lot more than that besides silica
21 and whatnot.

22 CHAIRMAN STAFFORD: All right. Thanks,
23 Alex. Back around, Kevin?

24 MR. CANNON: Yeah. I was just going to speak
25 to, you know, the health hazards issue that both you -

1 - well, you know, we were just speaking about. And I
2 think, you know, when Matt left, during his last
3 meeting he was talking about identifying like a Focus
4 Four for the health side, but I think what we
5 struggled with was trying to identify what the Focus
6 Four was. You know, Steve mentioned manganese. You
7 know, that wasn't even discussed during that, you
8 know, work group or whatever, so I think, you know,
9 one of the things that I was thinking was how do we
10 identify what the top priorities should be and then
11 come up with a game plan, as you said, you know,
12 develop resources or outreach and whatnot.

13 CHAIRMAN STAFFORD: Okay. Cindy?

14 MS. DePRATER: Cindy DePrater, employer rep.
15 Sometimes it's good to go last because you get to hear
16 all of the ideas, and they're all good. I think there
17 is some merit to the health hazards, you know. And
18 you're right, Kevin. We've got to identify what the
19 top four are and then tackle them one-by-one. But I
20 also, you know, think we have to have some focus
21 around the high risk activities, whether that's
22 excavations, whether that's falls, whether that's
23 noise permit, confined space and areas like that.

24 If we can agree that the fatalities and the
25 serious injuries are where we need to focus then we

1 can start to define those high risk activities. We
2 can look to what the risk mitigation and strategies
3 should be and then really work to identify what
4 critical safe behaviors would be within that. And if
5 you can start to boil that down to something
6 meaningful to the workers that they can take and use,
7 use the technology to video, you know, and making use
8 of all of this great technology that we have out there
9 and marrying that with some critical safe behaviors
10 that people can actually measure and watch, I think we
11 can have an impact on those fatalities and serious
12 injuries.

13 CHAIRMAN STAFFORD: Okay. Thank you, Cindy.
14 Andy?

15 MR. PETERS: Andy Peters, employer rep. I'd
16 like to follow up on Ron's comments. I think the
17 industry has somewhat of a perfect storm of employees
18 entering the industry that may not have the proper
19 training and skills and has a recognition to identify
20 risk and mitigate risk and work in a safe manner,
21 coupled with the fact that supervisors in many cases
22 truly are not competent in understanding of the
23 construction safety and health standards. So you have
24 an inexperienced employee and a supervisor that may
25 not have the skill and competency based in the law of

1 our industry guiding them on a job site.

2 Why do I feel this way? Well, I was
3 fortunate to spend 11 years in the mining industry, a
4 year and a half as a miner and six years as a face
5 boss, and I took a crew underground. So before I could
6 work one day underground for the U.S. Steel Mining
7 Company, I had to take a 40 hour orientation that
8 taught me what working underground was going to be all
9 about, and on my first shift underground I was
10 assigned to a journeyman miner and I was apprentice
11 and I wasn't allowed outside of their beam of light
12 for an entire year, and that person probably saved me
13 100 times over that year from serious injury or death,
14 right? What happens in our industry? Well, we can
15 bring on a new employee from the service industry or
16 is inexperienced, and we can provide them with a new
17 hire orientation that may last anywhere from eight
18 hours to less than a week obviously -- it may be a
19 half hour -- and they're out on an 80-story building
20 or they're working in an excavation and they really
21 may not understand that risk.

22 So there's a big difference between the two
23 industries. So as I progressed in my mining career, I
24 was required to take a six-hour examination before I
25 could take a crew underground to load coal.

1 Demonstrating my knowledge of the federal and state
2 mining law, and I was held accountable for that
3 federal/state mining law every day and signed and
4 attest to the conditions in my particular section of
5 the coal mine. So there's very high accountability.
6 So I think these are things that we need to look at in
7 terms of risk assessment that Ron talked about,
8 serious incident prevention. I think it kind of all
9 ties together, and if we're going to have an impact on
10 the industry of reducing the fatality rate we need to
11 train workers better and we need to assure better
12 competency of supervision.

13 CHAIRMAN STAFFORD: Thank you, Andy.
14 Christine?

15 MS. BRANCHE: To the comments about -- from
16 both Mr. Cannon and Ms. DePrater, when Matt Gillen
17 left he gave us the gift of not just suggesting a
18 health focus potentially, but also data to support
19 what topics would be selected. So that's not to say
20 that we need to select those topics, but the committee
21 has toyed with a couple of different means by which
22 we'd select what the top four are. That's not the
23 problem. I think Mr. Stafford identified it very
24 clearly. What do we do? Is it going to be a
25 campaign? Is it going to be something that becomes

1 the focus for regulatory action by the Department?

2 That's where the interface with the DOC
3 staff is I think really key because we sat around for
4 a lot of meetings talking about what it could be, but
5 making it relevant to DOC specific activities, what
6 their plans are, is really where I think the sweet
7 spot needs to be with what happens with focusing on
8 whatever these top four topics are.

9 CHAIRMAN STAFFORD: Okay. Yeah, Tish?

10 MS. DAVIS: Tish Davis. Just my response to
11 that, having listened to the discussion, is that what
12 we do or what OSHA needs to do and the community needs
13 to do depends on the target health hazard. I mean,
14 manganese is at a stage where we need to get data that
15 would support advancing the regulation. Silica we
16 have a new standard, and maybe that's an outreach
17 campaign, you know. I mean, so it's very different
18 depending on what you do. It's really pretty
19 dependent on that.

20 DR. BRANCHE: Exactly, but there needs to be
21 a better handshake between --

22 MS. DAVIS: Right.

23 DR. BRANCHE: You know, because manganese
24 really doesn't rise to the top four, believe it or
25 not.

1 MS. DAVIS: Right.

2 DR. BRANCHE: But that doesn't mean that
3 because there's a specific need that you divert your
4 attention from an important topic where there's going
5 to be a potential for regulatory or other action. I
6 don't think the committee is at a loss for what it
7 could do. It just needs to have a place for which
8 we're aiming.

9 MS. DAVIS: I agree.

10 CHAIRMAN STAFFORD: Yeah, Chuck?

11 MR. STRIBLING: Thanks. Just from a
12 structural standpoint with regard to work groups, not
13 about a specific topic, but there's only two
14 representatives for state plans, myself and my
15 distinguished colleague from the lesser State of
16 Tennessee.

17 (Laughter.)

18 MR. STRIBLING: But, so and we represent 27
19 state plan states and territories, which is more than
20 OSHA. We're the majority now. So when there's three
21 work groups going on at the same time, just by our
22 numbers we can't participate in all those, in at least
23 one of those work groups. And it's important for us
24 because we do take this back and we report to the
25 members at our OSHPA meetings in private -- OSHA is

1 not in the room -- and it's good for us to be able to
2 tell them the rationale of how things got to where
3 they were and the discussions that centered around it.
4 Of course, we have the minutes, but, you know, the
5 minutes really don't capture everything. And I guess
6 the same holds true for our public representatives
7 too.

8 So just from, you know, a scheduling
9 standpoint so that everybody can be involved that
10 might need to be considered with work groups going
11 forward because, you know, in the old days everybody
12 participated in every work group, but --

13 CHAIRMAN STAFFORD: Right.

14 MR. STRIBLING: -- that doesn't exist
15 anymore.

16 CHAIRMAN STAFFORD: Right.

17 MR. STRIBLING: Thanks.

18 CHAIRMAN STAFFORD: Okay. I appreciate
19 that.

20 VOICE: It's a violation of --

21 CHAIRMAN STAFFORD: Yeah. That was the FACA
22 issue that we were essentially having full ACCSH
23 meetings because we were all together talking about
24 the issues. Well, Annette, I am pleased that you're
25 here. It's great to have someone with DTE. I think

1 that you've heard the conversation, and whatever we
2 end up doing on some of these other issues I think
3 it's safe to say that our training and outreach work
4 group is going to continue.

5 MS. BRAAM: Good.

6 CHAIRMAN STAFFORD: We all feel it's
7 important. So from your perspective on how we could
8 work more closely with DTE and your office and how we
9 could align what we're doing and what you would like
10 for this committee as an advisory committee
11 representing industry stakeholders and what kind of
12 input you would like from us to help you out with your
13 perspective would be appreciated.

14 MS. BRAAM: Okay. First of all, I wanted to
15 maybe -- I hope you can hear me because I can't hear
16 myself. Just a little bit about when you were
17 talking, Mr. Rivera brought up about materials and
18 having training materials available for people to be
19 able to use. One of the programs that I oversee is the
20 Susan Harwood grant, and all of those materials that
21 are developed. We reach thousands of workers through
22 the organizations that receive those grants, but also
23 those materials go onto our website and are available
24 for anyone to use. So, we know that there's thousands
25 and thousands of workers out there and employers who

1 are taking those materials and using them.

2 For the past year and a half the person that
3 handled that has retired and the position has been
4 empty, and I now have somebody who is in my office who
5 will be able to once again start putting those
6 materials together to get onto the website. The first
7 area that we're taking focus on is the falls so that
8 for the falls campaign we'll have all of the falls
9 materials that have been developed over the last three
10 years on our website. And that's an area where a lot
11 of people don't even realize that those materials are
12 there. I receive hundreds of calls from employers who
13 say I have to conduct training and I don't even know
14 where to start. How do I find this material? And I
15 send them to the Harwood site and they will call me
16 afterwards and say this is wonderful, I didn't even
17 know this was here. So ways in which we can get that
18 information out to people.

19 The other concern that we have, especially
20 when you're talking about temporary workers and the
21 Harwood grants, we try to reach what we consider
22 hard-to-reach workers, and temporary workers are one
23 of those. Well, an issue that we have found within
24 the outreach program, and I'm sure many of you have
25 heard of this, is that you're all aware that the 10

1 and 30 hour program is a voluntary program from OSHA's
2 perspective, but there are cities and states that have
3 put it into their statutes and made it a requirement.
4 And in those states in particular we have seen an
5 increase of fraudulent activity not by our trainers,
6 but by individuals who advertise on Craigslist that if
7 you want a job and the only way you can get a job is
8 to take this 10 hour course and we're going to charge
9 you anywhere from \$100 to \$650 a pop, and then that
10 worker tries to go onto a job site. It's not our
11 card. It was not an OSHA authorized outreach trainer.
12 And I have had workers calling on the phone crying
13 because they got duped and they did not know, and many
14 of these individuals are immigrants.

15 English is their second language. And they
16 want to go to work. And in many cases the job that
17 they thought they were going to get, their communities
18 doesn't even require the 10 hour. So what we would
19 like to try to do this year is to do some outreach to
20 reach those communities, and we're having a difficult
21 time reaching them. We are looking at community and
22 faith-based organizations and employers and trying to
23 find ways in which we can get out to those workers and
24 tell them, explain to them about the outreach program
25 and how to find an authorized outreach trainer.

1 So any information, so any help, assistance,
2 ideas that you have for us and how we can potentially
3 reach those individuals would be of great help to us
4 because that's where we really are struggling right
5 now.

6 CHAIRMAN STAFFORD: All right. I appreciate
7 that. In listening to the conversation, we have a
8 training and an outreach group, and it almost seems
9 like to me that maybe we have a training work group
10 and we have a separate work group specifically on
11 outreach, because almost everything that we're hearing
12 how we can take best practices from the large
13 contractors and get that down. Ron's comment that we
14 talk about almost everything that we talk about here,
15 it always boils down how do we take, you know, that
16 information and push it out particularly to the small
17 employers in the industry.

18 I mean, a good example is just yesterday
19 after the work of this committee OSHA has come out
20 with their program guidelines, safety and health
21 guidelines for the construction industry. What could
22 we collectively do to make sure that our populations
23 and the industry know that those guidelines are out
24 there and they could be, you know, helpful to them?
25 You know, my organization, not wearing my building

1 trades hat, but my CPWR hat, we have the same issue as
2 you do. We have the NIOSH funded National
3 Construction Research Center, 26 years of history of
4 developing what I think are excellent products for the
5 industry, and we continually have the issue. It's not
6 that it's not there. How do we make the industry
7 aware that it's there?

8 And so I think maybe that outreach is
9 something, and we and Jessica, we've talked about, you
10 know, how we could push out the campaign in the social
11 media. You know, I'm in the generation where I don't
12 tweet or twitter, but I recognize the power of that
13 and so I think that almost everything that we talk
14 about in terms of getting the word out, it seems to me
15 that outreach is something that we could have a
16 separate committee on to try to get at this issue and
17 particularly the small employer issue. I think it
18 would be important. I don't know what you think about
19 that. Yeah, Tish?

20 MS. DAVIS: I think that's actually a great
21 idea. I was really struck by the recommendation about
22 reaching small employers. I'm Tish Davis from
23 Massachusetts. I'm glad you're here, and I was
24 excited to hear about your work trying to reach the
25 vulnerable workers. I work within the public health

1 system, so I work at the state health department, and
2 vulnerable workers, vulnerable populations, are a
3 priority for everything we do. We fund community
4 organizations.

5 We certify community health workers. We
6 are doing a survey right now on community health
7 workers on whether they're aware of access for health
8 and safety resources in the state, so they can serve
9 as kind of focal points on health and safety
10 resources. So I would love to explore with you working
11 within the public health system to use some of our
12 public health networks that serve these communities as
13 a way of getting information to people, our community.
14 You know, we fund the community health centers. We
15 work closely also with the worker centers, but I'm
16 sure you're working with the worker centers. But it
17 would be exciting to think about ways we could do
18 that.

19 MS. BRAAM: Thank you. I'll keep that in
20 mind because, like I said, this is new for us this
21 year. We're really going to try to -- right now we're
22 in the planning stages of how do we do this and so
23 that's a wonderful idea.

24 MS. DAVIS: We have a Spanish blog. We have
25 a health and safety site on our blog. We have, you

1 know, ethnic media contact lists for radio -- well,
2 print, radio and out, you know, mail -- and a lot of
3 state health departments do, so it's --

4 MS. BRAAM: Fantastic. Thank you.

5 CHAIRMAN STAFFORD: Yeah, Chuck? Please.

6 MR. STRIBLING: Chuck Stribling, Kentucky
7 Labor Cabinet. So, it's really great to hear that
8 you're going to launch an outreach with regard to the
9 fraudulent 10- and 30-hour instructors and cards.
10 Anything you develop -- anything -- please, please,
11 please send it to Steve or I so we can push it out to
12 the states. And I suspect you might have that planned
13 anyway, but we have a pretty good contact with some of
14 the immigrant communities in our state and would be
15 more than happy to help disseminate that information.

16 MS. BRAAM: Thank you.

17 CHAIRMAN STAFFORD: Is Dean here? Dean,
18 you've heard the conversation, I mean, kind of the
19 issues that we've been talking about. Does any of
20 that resonate? Are any of these areas something that
21 DOC would like us to work on, or do you have thoughts
22 about how we should form our work groups and the
23 topics we should take on to help you?

24 MR. MCKENZIE: So much for trying to sit in
25 the back.

1 CHAIRMAN STAFFORD: You're the director now,
2 man. You can't hide in the back.

3 MR. MCKENZIE: I think the outreach idea and
4 issue is huge. You know, what we don't know is what
5 the new Administration's priorities will be.

6 (Laughter.)

7 MR. MCKENZIE: We can suggest that it may
8 be, you know, outreach intensive, and it is an issue
9 that we have all faced in so many areas, and since I
10 came to OSHA the how do we reach small employers has
11 been a number one question in every issue, every
12 topic, you know, everything. We talked about trenching
13 yesterday in a small employer. We had another
14 issue/incident yesterday. A guy wasn't killed, but he
15 was severely injured in a trench collapse.

16 We had another one yesterday. So I think
17 the outreach is certainly a wonderful idea for a work
18 group. And I would like to entertain the idea, like
19 Tish's, with the public health, you know, and Chuck
20 has talked about the states have better connections to
21 the public health systems in those states than federal
22 OSHA does. You know, I think that's a wonderful idea.
23 That and the training is the only work groups that I
24 caught conversation on. I was at another meeting. I
25 didn't hear about any other work groups.

1 CHAIRMAN STAFFORD: Well, so to summarize,
2 and if we're in agreement, and I don't know. Maybe we
3 do for the record need at some point to put this in a
4 form of a motion so we have it on the record what we
5 decide. I'm not going to put it in the form of a
6 motion now because I'm not sure exactly what it is.
7 But it seems like to me as we pare through this I feel
8 like we're all thinking that we have an outreach work
9 group, a training work group, and it seems like to me
10 maybe we have a health/hazards work group, but I'm
11 still not quite sure what it is that's going to be
12 doing. I mean, I don't really know if we have a work
13 group meeting tomorrow on the health/ hazards work
14 group around this table what it is that we're going to
15 be talking about, you know.

16 MS. DAVIS: This is Tish Davis. One thought
17 that I had in thinking about this is that as the
18 outreach group moves forward it might be interesting
19 to think about of identifying, you know, the new
20 silica standard or a health topic that becomes a focus
21 of outreach, you know.

22 CHAIRMAN STAFFORD: Right.

23 MS. DAVIS: So, I mean, that's one kind of
24 potential cross section.

25 CHAIRMAN STAFFORD: Right.

1 MS. DAVIS: I also wanted to follow up on
2 the severe injury because I'm really interested in
3 this issue, and what I would like is to see -- you may
4 have it within industry whether the correlation
5 between fatality and severe injury, but I would love
6 to see the data on the severe injury reporting from
7 OSHA. We can also look at the BLS data with the more
8 serious lost time. I'm an epidemiologist and what I do
9 is track these injuries and try to figure out what's
10 going on, but a big issue in the BLS data has been
11 lack of severity information. They also do have
12 hospitalization information in the BLS data set, which
13 they haven't really published. So I think there's some
14 ways we could actually try to get data that enables us
15 to really pinpoint severe injuries that may differ
16 from some of our fatalities.

17 I think that's a really important
18 distinction, so I'd just put that on the agenda. I
19 don't know how it speaks to a work group at this
20 point, but I think we need more information.

21 MR. MCKENZIE: At the end of December we'll
22 have our second year of severe injury report data --

23 MS. DAVIS: Right.

24 MR. MCKENZIE: -- and I'm certain that we
25 will be, you know, publishing a report again on it and

1 we'll have enough data to start looking at. I mean,
2 two years' worth isn't a lot, but --

3 MS. DAVIS: Right.

4 MR. MCKENZIE: -- it's a start, and we have
5 found trends already.

6 MS. DAVIS: And I actually think we can look
7 at the BLS data more closely and see some. I should
8 say we're right now doing a study on under reporting
9 or the percent reporting of amputations by employers
10 comparing with our workers' comp data, so that'll be
11 out pretty soon, those findings we've shared with our
12 Region 1 OSHA.

13 CHAIRMAN STAFFORD: Okay. So I think, Tish,
14 what you just suggested is we had an outreach work
15 group and there was a specific thing that we wanted to
16 do on health that it could be addressed under that
17 work group, and I would say that the outreach work
18 group could also deal with the issue of constantly
19 thinking in the back of our minds on the small
20 employer issue. I'm not sure we need a separate small
21 employer group, but if the outreach work group is
22 thinking about pushing out the small employer, that
23 might handle that. Scott, I keep seeing you raise your
24 hand, but you're going to have to sign -

25 MR. SCHNEIDER: I signed up.

1 CHAIRMAN STAFFORD: Okay. Thank you. All
2 right. Yeah, Steve Rank? Please.

3 MR. RANK: I have a quick question. Steve
4 Rank. On the small employers, and provide the number
5 if you could please, somebody, Dean or Eric. What is
6 the number of employees that's exempt from the Act?
7 Is it five or eight or 10 that an employer is exempt
8 from --

9 VOICE: No.

10 CHAIRMAN STAFFORD: No, no, no.

11 VOICE: Nobody is exempt from it.

12 CHAIRMAN STAFFORD: Nobody is. It's just on
13 some record keeping.

14 VOICE: Just record keeping.

15 CHAIRMAN STAFFORD: Yeah, just a record
16 keeping issue.

17 MR. RANK: Okay. Because I thought there
18 was something in the appropriations bill that said if
19 you have a certain amount of employees or less you're
20 exempt from --

21 VOICE: Record keeping.

22 CHAIRMAN STAFFORD: Record keeping. That's
23 it.

24 MR. RANK: Okay. That's it. Okay.

25 CHAIRMAN STAFFORD: That's the idea.

1 MR. RANK: Because we have a real problem
2 with, you know, the smaller guys not doing anything.

3 CHAIRMAN STAFFORD: Right.

4 MS. DAVIS: And that's a common
5 misunderstanding.

6 MR. MCKENZIE: Yeah.

7 MR. RANK: Yeah. I just wanted to clarify.

8 VOICE: Except for farmers.

9 VOICE: Yeah. I was going to say farmers
10 that are self-employed.

11 MR. MCKENZIE: The appropriations memo has
12 exemptions for certain NAICS codes that are listed as
13 being below industry average for injuries and
14 fatalities.

15 MR. RANK: Right.

16 MR. MCKENZIE: That's published every year.
17 We just put it out a week or so ago. And those, they
18 are exempt from programmed inspections.

19 MR. RANK: Right.

20 MR. MCKENZIE: Only the programmed
21 inspections. They're not exempt from, you know,
22 fatality, catastrophe.

23 MR. RANK: Complaint.

24 MR. MCKENZIE: Complaint.

25 MR. RANK: Right. Okay.

1 CHAIRMAN STAFFORD: Right. Yeah. Okay.

2 Yeah, Cindy?

3 MS. DePRATER: Cindy DePrater, employer rep.
4 Question. Are public entities exempt from OSHA
5 oversight? So cities and municipalities, would their
6 construction workers that work directly for the
7 cities? And then if so, how do the fatality and
8 serious injury data break out from those groups?

9 CHAIRMAN STAFFORD: Yeah, Steve?

10 MR. HAWKINS: This is something that Chuck
11 and I know a lot about. In all the state plan states,
12 public workers are covered and so that's one of the
13 advantages of having a state plan program for workers
14 in that state. In federal states, public workers don't
15 have any coverage unless they're federal workers.
16 Then of course they do, but state workers, local
17 workers, county workers, municipalities, most utility
18 districts would not have any, would not have any
19 coverage. And in federal states that don't have public
20 sector only programs, if one of those workers is
21 killed there's no one who goes and investigates that.
22 So as we would say in the south, you could drive a
23 truck through that hole. It's a huge gap in coverage,
24 and it's a real problem.

25 MR. STRIBLING: All right. Chuck Stribling.

1 MR. HAWKINS: Thank you.

2 MR. STRIBLING: Chuck Stribling, Kentucky
3 Labor Cabinet. There are a few public sector only
4 states that are federal private jurisdiction, but
5 there are state public jurisdiction -- Illinois, New
6 York, New Jersey. There are six. I can't name all
7 six, but --

8 MR. MCKENZIE: Is Maine in there?

9 MR. STRIBLING: Yeah, Maine.

10 MS. DAVIS: This is --

11 CHAIRMAN STAFFORD: All right. Yeah, Tish?

12 MS. DAVIS: -- Tish Davis. There's some
13 variability in the federal states because
14 Massachusetts passed legislation last year extending
15 OSHA protections to the state agency workers in our
16 executive branch, and we have legislation pending
17 sending it to municipal workers, and our state
18 department of labor does reference the OSHA standards
19 in their ongoing enforcement activities.

20 MR. HAWKINS: Are they going to apply for
21 it?

22 MS. DAVIS: Yes. We are positioning
23 ourselves hopefully to apply, but I'm just saying, you
24 know, it is a huge gap. I mean, it's a significant
25 gap --

1 CHAIRMAN STAFFORD: Thank you, Tish. Any
2 other --

3 MS. DAVIS: -- but there's variability.

4 CHAIRMAN STAFFORD: Sorry. Any other
5 questions or comments?

6 (No response.)

7 CHAIRMAN STAFFORD: So, where does this
8 leave us?

9 VOICE: A break.

10 CHAIRMAN STAFFORD: I know we're going to
11 take a break, but we're going to knock this out first.
12 Two work groups then, training and outreach? I guess
13 that gets to your point too, Chuck, that you and Steve
14 can cover it.

15 MR. STRIBLING: Yeah. Well, I'm sorry.
16 Chuck Stribling. I didn't mean to suggest limiting
17 the number of work groups, but maybe something might
18 have to be looked at in the way they're scheduled so
19 that both the public and the state representatives can
20 participate in all the work groups or at least one
21 member could.

22 CHAIRMAN STAFFORD: Yeah. I think that if
23 we just had two work groups, if that's okay with DOC,
24 that we can do them consecutively and then, you know,
25 we'll have to deal -- I'm kind of looking out the

1 corner of my eye -- with Lisa because you could
2 imagine that if we have two work groups and we have
3 consecutive meetings that we're going to be back to
4 most of the ACCSH members will be participating in
5 that and, you know, that's --

6 MR. MCKENZIE: I may have to have a couple
7 of you stand in the hall.

8 CHAIRMAN STAFFORD: Well, if that's what it
9 takes.

10 MR. MCKENZIE: But I think the motion is
11 valid. DOC generally supports the idea of the two and
12 we will present it to the new Administration as we
13 learn it.

14 CHAIRMAN STAFFORD: All right. So do we
15 need then would you like a formal motion and
16 recommendation -- it's on the record now -- or do you
17 want us to make it in the form of a motion?

18 MR. MCKENZIE: I'm fine with it as we are
19 now. It's up to the committee. If you would like to,
20 you know, formalize it you can. You know, the work
21 groups are at the discretion of the Agency, and we
22 know what the idea is.

23 CHAIRMAN STAFFORD: All right. Well, let's
24 formalize it then. And so I make a motion that ACCSH
25 proceed with two work groups starting at its next

1 meeting, whatever that is, in spring 2017. That's one
2 really bad motion. Let me back up. I move that ACCSH
3 establish two work groups, one on training and one on
4 outreach.

5 MS. DePRATER: I will second that motion.
6 Cindy DePrater, employer rep.

7 CHAIRMAN STAFFORD: Any other discussion?

8 (No response.)

9 CHAIRMAN STAFFORD: All in favor?

10 (Chorus of ayes.)

11 CHAIRMAN STAFFORD: Any opposed?

12 (No response.)

13 CHAIRMAN STAFFORD: Okay. Thanks. Yeah.
14 Go ahead, Kevin.

15 MR. CANNON: I was going to say, would it be
16 appropriate to ask Ms. Annette what progress has been
17 made through the current outreach on the outreach
18 programs, if she could give an update?

19 CHAIRMAN STAFFORD: Annette?

20 MS. BRAAM: Sure.

21 CHAIRMAN STAFFORD: Did you hear that?

22 MS. BRAAM: Yes, I did.

23 CHAIRMAN STAFFORD: Okay.

24 MR. STRIBLING: I didn't. I didn't hear
25 that.

1 CHAIRMAN STAFFORD: Kevin just asked for an
2 update on some of the activities --

3 MR. CANNON: Progress through the training
4 and outreach.

5 MS. BRAAM: Okay. The first is the
6 leadership module, which we're very excited about, for
7 the 30-hour construction as an elective that our
8 education centers have -- we had to redo some of our
9 learning objectives for the update course and the 500,
10 the train-the-trainer course, and so we have done
11 that. Our education centers have been provided with
12 all of the materials. In fact, a representative from
13 CPWR came and spoke two weeks ago at our education
14 center directors meeting to also talk about this, so
15 they are ready. They will have the materials. The
16 trainers will be provided with the materials when they
17 take the course, and they will also be able to contact
18 their education centers.

19 Our plan is that those materials will be
20 available on our outreach page, but we have a little
21 glitch because they're not 508 compliant, which means
22 they're not ADA complaint, and we're unable to put
23 those materials on the website until that time. But
24 CPWR is working on that right now, so as soon as
25 that's finished we'll have those materials up there.

1 So we're excited. It's a great module and, as I
2 explained to Mr. Stafford, my problem is going to be
3 when general industry and maritime want to know why
4 isn't it out there for them, and he wasn't willing to
5 do a whole new program for general industry and
6 maritime.

7 CHAIRMAN STAFFORD: I think that's your
8 problem.

9 MS. BRAAM: Yes. I didn't want to say that.
10 The second thing is we looked at we have for some time
11 wanted to look at our update, the trainer courses for
12 the construction, the general industry and the
13 maritime, and we have reviewed, done a review. We
14 have chosen to not require the performance test.
15 Education centers can still do the performance test if
16 they would like, but it won't be a requirement.

17 What we're doing instead is really moving
18 towards a more activity- and workshop-based course, a
19 more of a true what we consider train-the-trainer
20 update course. The education centers are in the
21 process right now. They have a project team that will
22 be collecting from the education centers right just to
23 start with different types of activities that can be
24 used in the classroom. Those activities will help
25 trainers on how to train their workers, and also those

1 activities will be available for the trainers to take
2 with them out into the field.

3 And our hope is that over in the next few
4 years we'll have many more activities that the
5 authorized trainers will be able to take out into the
6 field with them to give their students a more viable,
7 hands-on type of training, of which we know that with
8 looking at adult learners there is an increased
9 ability to retain that information when you're
10 actually doing some type of activity. So that is how
11 we are in the process of updating and making changes
12 to the update course.

13 The next thing is the intro to OSHA, the two
14 hour. As you know, a few years ago our curriculum
15 side at DTE made some changes. We piloted it with our
16 outreach trainers, including some trainers from CPWR,
17 and at the end it still was close to two hours. So we
18 are going back to the drawing board and we're going to
19 look at reviewing it and trying to find if there isn't
20 a way that we can get that decreased more to
21 potentially have it as an hour, which would allow for
22 an additional hour of elective topics if we were to
23 reduce the intro to OSHA. Our hope is that by third
24 or fourth quarter of 2017 that that will be ready to
25 pilot.

1 So I think those are the three areas in
2 which there were questions.

3 CHAIRMAN STAFFORD: I think so, Annette. I
4 appreciate that. Right, Kevin?

5 MR. CANNON: Right.

6 CHAIRMAN STAFFORD: Those were the three
7 things we took on? Right. All right. Yeah, Palmer?
8 Please.

9 MR. CANNON: Thank you, Mr. Chairman.

10 MR. HICKMAN: Palmer Hickman, employee rep.
11 Since you're here and since --

12 MS. BRAAM: Yes, sir.

13 MR. HICKMAN: -- we've already opened the
14 conversation, I just have one followup question. You
15 mentioned the performance test. Is that for the 500?
16 For the 502?

17 MS. BRAAM: The 500 will continue to have a
18 written test and a performance test, which both have
19 to be passed in order to become an authorized trainer.
20 The update courses, probably five, six years ago they
21 instituted a performance test as a requirement. That
22 will no longer be a requirement in the update course.

23 MR. HICKMAN: Perfect. Thank you. That was
24 what I gathered from it from what I knew.

25 MS. BRAAM: Yes, sir.

1 MR. HICKMAN: The other is, is there any
2 opinion on online providers, opening it up to others,
3 or keep it closed to the current online providers.

4 MS. BRAAM: I am afraid at this point in
5 time I'm unable to discuss that with you. We are
6 looking at our options.

7 MR. HICKMAN: Thank you.

8 CHAIRMAN STAFFORD: Thank you. Any other
9 questions or comments?

10 (No response.)

11 CHAIRMAN STAFFORD: All right. Well,
12 Annette, thank you.

13 MS. BRAAM: Thank you very much --

14 CHAIRMAN STAFFORD: Yeah.

15 MS. BRAAM: -- for letting me be here today.

16 CHAIRMAN STAFFORD: No. We look forward to
17 seeing you at the next meeting I hope.

18 MS. BRAAM: Thanks.

19 CHAIRMAN STAFFORD: Okay. Thank you. All
20 right. Let's go ahead. Damon, we're going to go
21 ahead and take a break. I'm not sure. We probably
22 don't need to break until 11:00. We'll take about a
23 15 minute break. Have you heard?

24 MR. BONNEAU: We'll try to bring them in.
25 I'll try to get them.

1 CHAIRMAN STAFFORD: All right. So what time
2 is it?

3 MR. BONNEAU: So let's just go with --

4 CHAIRMAN STAFFORD: Yeah. What the hell.
5 We'll make it 11:00. That's fine. All right.

6 (Whereupon, a short recess was taken.)

7 CHAIRMAN STAFFORD: Okay. Thank you.
8 Amanda, we appreciate you being here and being
9 flexible with us. We got a little early on you, but
10 we appreciate you coming down. So next on our agenda
11 we're going to have a report from the Directorate of
12 Technical Support and Emergency Management. Amanda
13 Edens is with us. It's on your agenda. This is my
14 first time I think I've met you, Amanda, so it's a
15 pleasure to meet you.

16 MS. EDENS: Thank you.

17 CHAIRMAN STAFFORD: I don't know if the
18 other committee members may know you or not. But
19 anyway, Amanda is the Director of the Directorate of
20 Technical Support and Emergency Management. Thanks
21 for being with us.

22 MS. EDENS: Okay. Thanks a lot. I think
23 most of you may have the handout hopefully. So just
24 by way of introduction I'll show you our org chart.
25 We like to call it tech support. I think at its heart

1 that's what we do for the Agency, both inwardly and
2 outwardly.

3 You'll see we have nine different offices
4 that make up our directorate. They cover a wide span
5 of different activities. We just recently added two
6 new offices within the last year and a half, Office of
7 Statistical Analysis and Office of Evaluations, which
8 were formerly under the Directorate of Evaluation and
9 Analysis. So, you know, like I said, we cover lots of
10 different things. I won't make any attempt to try to
11 cover all those things today. Some of them are very
12 inwardly focused like our Salt Lake and Cincinnati
13 technical centers.

14 They do a lot of, you know, buying of
15 equipment for our field and calibrating it, repairing
16 it. We do all the industrial hygiene sampling
17 analysis. We have a health response team that goes
18 out in the fields and assists with evaluations. We
19 have physicians that run our medical program for our
20 compliance officers. But we do, do some things I will
21 touch on today that are outwardly focused as well, and
22 the first one I'll start with is our Office of Science
23 and Technology assessment. And so one of their things
24 is to do inward stuff. We do the tech manual chapter,
25 which is, as it says, a technical manual that COSHAS

1 can rely upon to help them with certain technical
2 issues that they may run into in the field.

3 But we also do some outwardly focusing
4 things. And some of them are twofers, like we do post
5 our technical manuals on the web so people from the
6 public could use them, even though they're primarily
7 designed for our compliance officers. But we also do
8 lots of things that some of our other directorates do
9 like hazard alerts and guidance documents. But we also
10 do more I think unique to our directorate things like
11 fatal facts or safety and health information bulletins
12 that sometimes they come up from the field. They may
13 see a fatality in the field. They may see a
14 particular hazard that they think needs highlighting
15 to the public, and so we'll do these kinds of
16 documents to make the general public more aware of
17 things that our compliance staff are seeing in the
18 field.

19 And so this little screen shot will just
20 show you sort of the span of a lot of the different
21 things that we do, everything ranging from purging of
22 hydrogen gas electric generators to electric arc
23 furnace explosions. We've done some fatal facts on
24 methylene chloride refinishing, you know, where they
25 took methylene chloride to refinish bathtubs. We've

1 looked at skyline carriages, zipline workers, scissor
2 lifts. So it really does run the gamut of lots of
3 different hazards out there. At the same time, we're
4 trying to update what we have. We've looked back.

5 For those of you who have been around long
6 enough, you may remember things like HIBs and TIBs,
7 which are different names for SHIBs. Why the
8 difference I don't know, but there are a lot of them
9 that are quite old and so we did an effort to go back
10 and look at a lot of these and sort of develop a place
11 where we could archive some and then figure out how we
12 would go about updating a number of them, and we
13 worked with some of our colleagues across the Agency
14 to tap into their technical experience to do that.
15 Part of it has been looking at our e-tools. We have a
16 number of e-tools, about 38 or so. Some of them are
17 very dated. Some of them used very detailed logic and
18 programming that might take a little bit more effort,
19 but some we've been able to look at. One I think that
20 touches upon construction is our scaffolding e-tool.
21 So we're looking at that.

22 We're constantly trying to update what we have as
23 well as, you know, generate new information. We also
24 have some things that are in the pipeline. We're
25 working on some other chapters on heat stress,

1 combustible dust, confined spaces. We've got some
2 SHIBs out there on wire rope hazards, horizontal
3 directional drilling, ototoxicants and noise,
4 forklifts, falls in grain bins. So again, just
5 hitting all kinds of different hazards and using
6 different kinds of formats, whether fatal facts, SHIBs
7 or tech manual chapters or hazard alerts where we feel
8 they're appropriate.

9 One of the things we just teamed up with,
10 with NIOSH recently was what we called Hear and Now.
11 It was a noise safety challenge. So we got together
12 with NIOSH and MSHA and said, you know, what are some
13 of the hazards that we think we would like to push
14 technology? Dr. Michaels wanted us to think about
15 what role can OSHA, along with some of our colleagues,
16 figure out how we can get people to start to think
17 innovatively about how they might solve common
18 occupational problems, and the one we decided to focus
19 on was noise. And so what we did was a little bit of
20 our OSHA version of a shark tank, and so what we did
21 is we got people. We wanted to tap into innovators
22 that might not just be the run of the mill, you know,
23 occupational engineers, but some people who may be
24 thinking or good innovators, but really hadn't been
25 thinking about occupational safety.

1 So we put out a call. We got about 28 of
2 them. We brought 10 of the top in and we allowed them
3 to pitch their event to some investors. And also we
4 exposed them to some coaches who helped them sort of
5 learn how to pitch their product and also we exposed
6 them to the Patent Office, so that if these people
7 really want to get a patent out there they could
8 figure out kind of the loops that you have to go
9 through to get that. And so it was a fairly well -- it
10 was a small group, but I think it was an interesting
11 and very dynamic group. We had some winners.

12 There was one group that was called EERS,
13 and basically what they did is they had an earpiece
14 that uses an ear microphone that allows two-way
15 communication and continuous fit testing. So they're
16 hoping to get some people to invest in that. The Heads
17 Up Display was a visual warning system that hooks to
18 the safety glasses so they can see the protection
19 levels required for that worker in real time. And then
20 we had the Otogear, which basically is sort of a thing
21 you put like your favorite team or something to sort
22 of encourage people to wear their ear protection so it
23 looks kind of cool, you know, like you've seen safety
24 glasses now. I think people have a hard time keeping
25 people from walking off the site with them now because

1 they look kind of cool. So I think the idea behind
2 that was to make ear protection look interesting, as
3 well be functional.

4 So that was an interesting thing, and I
5 think we're looking to partner again with NIOSH's
6 Research to Practice -- they helped us a lot on this
7 -- to maybe do some other safety challenges to really
8 get people thinking innovatively. I think we may be
9 thinking about sort of the robotics area next if
10 that's a possibility. Our directorate over the last
11 four to five years, and we've sort of transitioned
12 over to our Communication Office, but we've been doing
13 the heat campaign for a number of years, and one of
14 the things that we did was the heat app. And so it's
15 been challenging to sort of keep up with it because
16 every time there's a new Apple version or a new Droid
17 version, you have to go back and reprogram the whole
18 app to make it work, and constantly we're trying to do
19 it.

20 It takes quite a bit of money because of the
21 way the app was designed. A very good app, and it's
22 been downloaded I think close to 400,000 times since
23 it was released. But what we've been doing is we've
24 sort of updated as we can, but the plan now is to
25 transition it over to NIOSH, who has a little more

1 experience and is getting into the field of app
2 development some more and has maybe some more flexible
3 ways to keep these things updated.

4 So the goal here is to get it to NIOSH and
5 maybe even to CDC because the White House now, through
6 our emergency preparedness committees and things like
7 that, sees it as a good tool for just public health
8 awareness in general, not just the occupational
9 environment. So we're hoping that the tool will get
10 even more broadly used because it has been fairly
11 successful in our heat campaigns. You know, heat is
12 not the only outdoor hazard that we have that's sort
13 of a severe weather, so what we've been doing now is
14 we've become a weather ready ambassador in partnership
15 with NOAA. So not only are we interested in heat;
16 we're interested in cold weather. We're interested in
17 lightning. We're interested in tornados.

18 And so basically in partner with them we get
19 our message out about a lot of different kinds of
20 severe weather events. One of the examples we did in
21 partnership with NOAA was lightning safety, and we
22 think this is fairly important because, you know,
23 about 50 people a year die and several others or many
24 others get injured through lightning strikes and it's
25 really something that's quite preventable. And this

1 sort of segues into our, you know, emergency
2 preparedness. Some of these events like tornados and
3 hurricanes are obviously, you know, more catastrophic
4 events sometimes. So we try to make sure that we are
5 poised to help our staff, provide compliance
6 assistance in these kinds of events when they happen,
7 as well as help the public know how to be prepared, so
8 we're constantly trying to update our website so that
9 they have the things that I just mentioned. Severe
10 weather events, as well as other kinds of just general
11 preparedness.

12 This is an example of one of our websites,
13 the hurricane preparedness website. You know, like
14 most of our materials it tells people how to be
15 prepared, what are the different hazards around some
16 of the events, and many of these, you know, in a
17 hurricane end up being construction related. You have
18 lots of people trying to repair roofs, trying to, you
19 know, repair downed wires. They're using generators
20 and lots of basic safety hazards out there that people
21 just need to think about and so we try to get these
22 materials out to them so that they are prepared in
23 those kinds of events. At the national office we do
24 these kinds of things. Most of the actual compliance
25 assistance occurs at the local level with the area

1 offices, but what we do in the national office is to
2 make sure we're coordinated with folks like NIOSH, the
3 rest of our federal partners, and get information like
4 this into our compliance officers and employers and
5 employees' hands.

6 We still have been involved a lot in merger
7 response with infectious diseases. In the past we've
8 had, you know, support when there's the H1N1 virus,
9 the Middle East respiratory syndrome when that sort of
10 was getting warmed up and, you know, most recently we
11 had a lot of activity around Ebola. And so now the
12 infectious disease of the moment is Zika. I won't go
13 into a lot of detail about this unless there's, you
14 know, some real need. You can ask me some questions,
15 but basically I think most people probably have seen
16 this in the news, in the popular press. But
17 basically, you know, it's a mosquito transmitted
18 disease, but there are places where like in
19 laboratories there could be blood-borne transmission
20 and aerosol, and there is sexual transmission.

21 You know, for most people that get infected
22 it's fairly mild. It's not really that difficult for
23 them to endure, but of course the symptom that is of
24 concern, of most concern to folks, is the reproductive
25 effects that are seen in pregnant women and maybe

1 people who have sexual partners who have been
2 infected. They can transmit the disease that way as
3 well. And so that's a very serious effect and they're
4 still studying sort of the long-term effect of this in
5 many countries, and we'll probably see more
6 information about this as time goes on and we see sort
7 of the impact of these infections over time. I would
8 note though it's not just pregnant individuals or
9 individuals who are partners or couples that are
10 seeking to be pregnant.

11 There are some other neurological disorders
12 called -- I don't know if you have heard of it before
13 -- Guillain-Barre, which can be a fatal disease. It
14 can occur in anybody, not just individuals who are
15 pregnant. I just thought I'd give you a quick update
16 on where we are with the Zika outbreak. You know, the
17 majority of cases in the continental United States are
18 from people who acquired it outside the United States,
19 but we do have some areas of local transmission where
20 it's occurring here. You probably have seen Florida
21 was impacted a few months back. They had about 182
22 cases. And just this week we learned of a case in
23 Texas that is currently being investigated by CDC.

24 Now, outside of the U.S. territories of
25 course you probably heard about Puerto Rico. They

1 have sort of a lot of cases here and ongoing
2 transmission. So while it started to kind of curb a
3 little bit outside of the United States, it still is
4 an area of concern which we'll continue to track. What
5 we did is, like I said, just for our tornadoes and
6 kind of natural disasters we do technical support to
7 the field and to employers. We work with the federal
8 partners. We have the White House domestic response
9 resilience group, which OSHA sits on with a number of
10 other groups, and we try to make sure that as we're
11 doing preparedness for the federal government that
12 they make sure that, you know, the occupational safety
13 is always in their mind as well. And then when we
14 have areas of some of our regions that are impacted
15 like Region 4, Florida, or Region 2 in Puerto Rico to
16 make sure that they have the tools they need to help
17 the employees/employers that are in those areas.

18 This is a screenshot of one of the fact
19 sheets we did with another project we worked on with
20 NIOSH. It has different, you know, facts about the
21 disease, as well as ways to protect workers. It's
22 mainly geared towards outdoor workers. We did a quick
23 card that accompanies it, and we've done them in
24 Spanish and in English. At the federal level there was
25 some concern about federal employees that might be

1 working in these impacted areas where there's ongoing
2 transmission, so we worked with some of our colleagues
3 at OPM and EEOC. We did the piece -- we created a job
4 hazard analysis that federal employers could use to
5 sort of look at the risk for different kinds of
6 workers that they might have and choose appropriate
7 types of protections based on the hazard that they
8 had, and then OPM and EEOC were looking at sort of
9 workers' rights to either refuse work and what were
10 their flexibilities in terms of, you know, telework or
11 flexiplace and things like that. So they came all out
12 at the same time.

13 Taking sort of a different tack, I had
14 mentioned we have occupational physicians, and a lot
15 of the work that they do is across the board. We have
16 our own COSHAs of health that we look at, we have
17 medical access orders, but we also help and do
18 consultations on individual inspections. And that's
19 pretty good, but what happens is what we like to do
20 and what the office is doing now is not only just do
21 these individual consultations, but when we have a
22 whole series of heat fatalities or we look at oil and
23 gas and we see a lot of these tank gauging fatalities
24 we can look at them across the board and see where
25 there are their common factors and what are things

1 that we can do to sort of see where there are gaps in
2 knowledge or where there are tools that we could do to
3 help prevent these things.

4 So in heat we're looking at all the
5 inspections, the consults that we did. We're looking
6 at the severe injury reports and any fatality and
7 catastrophe reports that are out there and try to
8 learn from, you know, multiple events. And so what
9 we're finding is that it's not just the external
10 environment we have to work about, but it's sort of
11 the exertional portion of heat stress that we have to
12 be concerned about too because it's not -- while the
13 heat index is a nice measure of what the hazard is,
14 sometimes you can have a fairly low heat index, but if
15 you have a lot of PPE or if you're carrying or
16 exerting a lot, you might be carrying a lot of
17 shingles here and there, that can contribute to the
18 overall heat stress.

19 A lot of other things we learned is that,
20 you know, acclimatization is a factor in a number of
21 these cases and that often we see employers don't
22 really have adequate programs in place. And one
23 question we were maybe thinking to sort of push out to
24 the ACCSH is, you know, could it be that competent
25 persons on construction sites could be trained to use

1 things like wet bulb globe thermometers and be trained
2 about how to help identify heat hazards and, you know,
3 make sure their employers or their employees are
4 climatized and have appropriate breaks and they're
5 taking full consideration of exertion when they plan
6 their programs.

7 Measurement. Like I said, the heat index is
8 pretty good, but we still need to collect some data
9 because sometimes the heat index, you're getting it
10 from a source that's not right where you are. All of
11 the heat app follows you. The heat app is taking this
12 heat index not necessarily from where you are all the
13 time. Sometimes they're getting it from a weather
14 tower and so and sometimes when COSHAs or employers do
15 it they don't always have the most relevant right at
16 their site. And so we're trying to figure out to look
17 at the data what are some other things. NIOSH has a
18 criteria document that has some equations, but
19 sometimes even those don't have all the relevant
20 information like radiant heat. Maybe you're working
21 alongside of a concrete wall that's actually radiating
22 heat that absorbed, you know, the day before. So
23 there are a lot of things that go into this.

24 I think as we go and analyze we'll hopefully
25 learn more and be able to create better tools. Another

1 area we're studying -- I don't have a lot of results
2 yet, but we're looking at -- are granite slab deaths.
3 We've had about 46 of these in the last 10 years.
4 Fifty percent of those were not caused by the person
5 who was actually killed. And so we're trying to
6 learn, you know, what were the causes behind these.
7 And some of it is, you know, when you look at them a
8 lot of questions that might help you figure out what
9 happened are not being asked. We're trying to think
10 are there some tools that we can devise to help people
11 ask more thoughtful questions when they see these
12 fatalities other than, you know, the granite slab fell
13 off and crushed the guy, you know.

14 Why did it fall off? And if it fell off,
15 you know, what caused that to happen? Some other
16 things that we're working on are what we call My
17 Doctor and Me. We did some of this in occupational
18 asthma, but basically the concept is employees have
19 information, medical information. They're going to
20 their private physician. It's helpful to have a guide
21 not only for the physician, but for them to sort of
22 understand what the health effects are and the
23 occupational component of it, because unfortunately we
24 may have a lot of physicians; we don't have a lot of
25 physicians with occupational experience. And so we

1 think these guides could help the employee be more
2 educated when they're going to their private
3 physician.

4 So some of the areas we're looking at doing
5 those are for silica, lead and noise. Now, most of
6 these I didn't give you the office that was
7 responsible, but this is our most least understood
8 office because most people look at the title and they
9 have no idea what that means, and then when I tell
10 them it's the NRTL office they still have no idea what
11 that means. But I'll say that, you know, this is a
12 program that covers the world. We have NRTL
13 facilities in Asia, in Europe and in the United
14 States, and there's about \$500 billion worth of
15 product that goes through these laboratories. And it
16 covers a gamut of many different kinds of things. The
17 vast majority are electrical equipment, but also
18 there's scaffolding equipment.

19 There's service station dispensing
20 equipment, industrial trucks and hazardous
21 atmospheres, and I think you've talked about
22 insulating links maybe earlier in the day or
23 yesterday. So there are NRTLs. There currently
24 aren't any NRTLs that are testing insulating links,
25 but I won't get into that right now.

1 CHAIRMAN STAFFORD: Yeah. Thank you.

2 MS. EDENS: And the variance program also is
3 a fairly big program. We're more of an administrator
4 than doing a lot of technical work. A lot of times
5 some of the variance requests, it may be a technical
6 tunneling thing. We'll work with our construction
7 folk. It may be a diving thing. We'll work with the
8 maritime, but I think there's a sense that OSHA
9 doesn't grant any variances, and when you look at the
10 number that we've posted on our page there are a vast
11 number that don't get accepted, but a lot of times
12 they're asking for things that are just not possible.
13 Like, I don't want to be covered by the standard.

14 Well, we know a variance is not to get
15 exempted from the standard, and we can't really when
16 you're in the middle of contesting a citation. We
17 wait until that goes away. Then you can always come
18 back. And a lot of them, they just don't understand
19 the amount of information it takes to get a variance.
20 This is not something that OSHA grants lightly. We're
21 willing to consider it and we do give them, but there
22 is a lot of information. If anybody has read the
23 variance that was issued in the *Federal Register* for
24 tunneling, it's a lot of data. It is all about
25 hyperbaric chambers and there's lots of things,

1 because we need to be convinced that what they're
2 doing really is as safe as what the standard requires.
3 And sometimes it's because the standard is out of
4 date, but they still have to sort of prove their
5 point.

6 We've done them for chimney variances.
7 We've done them in a lot of tunneling projects that
8 are coming up now, and we've even done it on lockout/
9 tagout. So I think, you know, we're willing to look
10 at them, but you do have to be willing to sort of put
11 the work in to get them. Now I will go to maybe
12 everybody's favorite topic -- I saved it until last --
13 is record keeping, and I brought Dave Schmidt with me
14 because I never go anywhere and talk about record
15 keeping when he's not in reach. So the first thing is
16 about our severe injury reports. This is where, you
17 know, we expanded sort of what needed to be reported,
18 the amputations, in-patient hospitalization, loss of
19 an eye.

20 This was just about two years ago, and I
21 just thought I might share with you a couple things on
22 this, just the recent. This is through October of
23 this year, and this gives you sort of the total number
24 of reports and how it breaks down by construction and
25 nonconstruction. The vast majority are not

1 construction, but there's about 3,500 in construction.
2 You sort of see how it breaks out between the number
3 that are getting inspected. Of the 3,494 we had, 38
4 percent got inspected and 62 were these rapid response
5 investigations. Most of that is not done in my
6 directorate. We wrote the rule and sort of looked at
7 the data, but Enforcement is the one that sort of
8 determines sort of the policies around the number that
9 are inspected and the number that do these rapid
10 response investigations.

11 So I just thought I think most people are
12 probably familiar with this because it's been out a
13 couple years. I just wanted to give you some updates
14 on that. And what Dave put together too is that I
15 wanted to show you one of the things that we're doing
16 is we've coded a lot of this data so that it can be
17 searched. And so what we do know is we have on our web
18 you can download some of these text files, and up
19 through now it's through June of this year and it's
20 for federal data, but you can kind of get a sense a
21 little of what's going on, and if you look at the
22 files you'll get the event, the employer, where they
23 were, the NAICS code and inspection number if in fact
24 an inspection was done. And these, I'll just go
25 through a few examples.

1 You can ask it, you know, questions like,
2 you know, what were the most reported injuries in a
3 certain NAICS code and it'll give you the event code
4 and the number of injury reports in there. You can
5 start to drill down on some of them. Another example
6 would be if you wanted to know sort of what kind of
7 hand power tools led to injuries you can see those
8 different sorts of things. You might have an interest
9 in, you know, a certain kind of construction firm in a
10 certain state and so that sort of -- it's just I kind
11 of X'd it out because I didn't necessarily want to
12 pick on any particular employer. You can search that
13 any way you want, but basically it would give you the
14 NAICS code, the employer and their address for certain
15 types of injuries.

16 And then if you wanted to drill down even
17 further for a particular company you could look at
18 some of the narrative around any individual event. So
19 I just put that out there to let you know that is on
20 our web and it is searchable. Now, as the reports get
21 in and we code them we'll put them up.

22 CHAIRMAN STAFFORD: How long does that
23 process take? How current is this data?

24 MS. EDENS: Dave? Did you hear the
25 question? You can just sit right here. He sat in the

1 back. You notice that?

2 CHAIRMAN STAFFORD: Yeah. He's got that
3 Dean McKenzie syndrome going.

4 MR. SCHMIDT: Can you repeat the question?

5 CHAIRMAN STAFFORD: No.

6 MR. SCHMIDT: No? Okay.

7 CHAIRMAN STAFFORD: No. I was just asking
8 how current the lag time in the data so when we go --

9 MR. SCHMIDT: Oh, okay. Yeah. We're
10 catching up very quickly. So we started probably six
11 months after we were amassing data, so we have all the
12 way up through June, and we're probably doing a month
13 every two, three weeks I would say.

14 CHAIRMAN STAFFORD: Okay.

15 MR. SCHMIDT: So I think we'll be caught up,
16 you know, by the end of the year maybe, and then we'll
17 just do it as an ongoing basis.

18 CHAIRMAN STAFFORD: Okay. That's great.
19 Yeah, Chuck? Did you?

20 MR. STRIBLING: Any plans to incorporate
21 state plan data into those numbers?

22 MR. SCHMIDT: There are plans for that, yes.
23 So once we've caught up with all the federal data
24 we're going to go back and start the state plans data.

25 CHAIRMAN STAFFORD: Okay. Any other data

1 questions while we have Dave still? Or why don't you

2 --

3 MS. EDENS: I'm not going anywhere.

4 CHAIRMAN STAFFORD: Okay. You stay.

5 MS. EDENS: I still have four slides.

6 CHAIRMAN STAFFORD: All right. All right.

7 Let's go on then, Amanda. Sorry.

8 MS. EDENS: So anyway, that's the severe
9 injury reporting.

10 CHAIRMAN STAFFORD: Amanda, I'm sorry.
11 Cindy had a question.

12 MS. DePRATER: Cindy DePrater, employer rep.
13 I don't know whether this is an Amanda or Dave
14 question, but is there opportunity to track the
15 activity that was happening at the time of the
16 incident, the scope of work, so to speak?

17 MR. SCHMIDT: So there's a couple of sources
18 of information. One is the initial report that we
19 take in, and that's what we're cleaning and coding and
20 putting up on the website. And then, you know, in the
21 inspection process or the ROI process further
22 information is collected at the area office level and
23 there's some information that's put into our OIS
24 system about the corrective actions, and that would
25 include a little bit more detail, but I think for the

1 details that you're talking about that probably
2 resides at the area office level right now. It really
3 isn't as easily accessible as the other two things.

4 MS. DePRATER: I would tell you it's
5 beneficial if we can track something like that. It
6 helps us fine tune the type of activity and then how
7 you mitigate or eliminate the risk in that specific
8 activity.

9 MR. SCHMIDT: Right.

10 MS. DePRATER: So if there's a trend, we
11 would need to know that.

12 MR. SCHMIDT: Yeah, definitely. And I think
13 in the corrective action part of this is where we
14 would get the most details out of, you know, what was
15 happening and what the employer did to correct or
16 abate the hazard, so that is a potential.

17 CHAIRMAN STAFFORD: Okay, Amanda.

18 MS. EDENS: All right? So I'm going to wrap
19 it up with this is the improved tracking of workplace
20 injuries and illnesses. This is a rule we proposed
21 back in 2013, just became final May of this year, and
22 I put the timeline in it just to sort of explain. The
23 first proposed rule was really mostly about electronic
24 submission of records, and then during the public
25 meeting there was some concerns raised about records,

1 maybe illnesses not being reported for fear of
2 retaliation. And so we put a supplemental notice out,
3 and then in the final rule we did include some anti-
4 retaliation provisions or worker rights provisions,
5 which I'll touch upon in a couple minutes. So that's
6 sort of the timeline of it up to the final. And so the
7 first point is it doesn't change what's recordable and
8 doesn't change who has to record it.

9 The people who had to record it before still
10 have to record, and so it really is the point of it is
11 to have employers submit that electronically to OSHA.
12 So that's the main purpose of the rule. So here it
13 goes and it's dependent by size, so if you're the 200
14 to 249 employees the only data that they have to
15 submit would be the summary data, and for those of you
16 familiar with the OSHA data initiative that is very
17 similar to what we did then, although this will cover
18 a fair amount more people than the ODI did.

19 CHAIRMAN STAFFORD: Okay. Hold on one
20 second, Amanda. Go ahead, Jerry. Do you have a
21 question on this point?

22 MR. RIVERA: Jerry Rivera, employer rep.
23 Just got a question on the obligation to transmit this
24 electronically. Has that website, is it live as we
25 speak or is there a projected time frame where that

1 will be live, and is there any plans to roll something
2 out where the employer becomes familiar with that
3 online portal for submission prior to that effective
4 date?

5 MS. EDENS: Let's see. No, yes, no. So it
6 is not live at the moment. It is being worked on, and
7 the hope and the goal is that it will be in place
8 early this year so that there is time before the
9 deadline, which I'll show some of the deadlines now.
10 It's not until July I think of this coming year, 2017.
11 So the goal would be for this first set of data, which
12 is a little bit less granular than the one I'll go for
13 in the next slide, that that would all be functional
14 and up in enough time to give people, you know, at
15 least from, you know, I think the target here is end
16 of January, February, and then you'll have, you know,
17 several months to get that in by July.

18 The next phase of reporting is for those
19 with 250 or more, and here you get more the more
20 detailed data, you know, the incident reports, the log
21 form. And so they also have to do the summary data,
22 but this is the much more, which I'll use the term
23 granular for lack of a better word, the more specific
24 data about the injuries that are occurring. And so
25 here is the timeline. The first part for the summary

1 data is due this July of 2017, and that's for this
2 year, and then 2018 the more granular data will have
3 to come in by July, and then in the years beyond that
4 they'll be due in March. And I think we did this to
5 sort of align with the BLS needs. The other dates,
6 which were high to give us some time to get our
7 websites up and functional, but in the proceeding
8 years you would be starting -- you know, people could
9 do it as early as January, and then it would be due by
10 March.

11 So now onto the employee rights or, as other
12 people call them, the anti-retaliation provisions. So
13 the focus of these provisions was to make it a
14 violation for employers to discourage employees from
15 reporting injuries and illnesses because we feel that,
16 that would make them less accurate if they felt they
17 would be retaliated against if they reported an injury
18 or illness. So basically they have to inform their
19 employees about their rights, and one of the more
20 simpler ways to do this is just to post the new OSHA
21 poster, and that would be a simple way to do it
22 because everybody, you know, needs to know that they
23 do have the right to report their injuries and
24 illnesses.

25 In the rule it was implicit, but we made it

1 I guess more explicit that these reporting procedures
2 have to be reasonable and so we've got some guidance
3 out now that's on our web to further explain and give
4 some examples of what we think is reasonable, but
5 basically the concept is you can't have them jump
6 through lots of different hoops to try to get to
7 report it. You can't have them go long distances that
8 might be unreasonable, or they have to have time to
9 have the injury actually build up to where they know
10 they have an injury that needs to be recorded or
11 reported. So those are sort of the concepts behind
12 that.

13 Also we make it a violation to retaliate,
14 and we discussed in the preamble a number of places
15 where this concern came about. They were in
16 disciplinary programs or incentive programs or drug
17 testing programs where these might be used in a way to
18 retaliate. And I think the message on this slide I'd
19 like to emphasize is that we are not banning incentive
20 programs, and we are not banning drug testing programs
21 and we're not banning disciplinary programs. It's the
22 manner in which they use if they are purely
23 retaliatory in nature in which it would be a
24 violation. So you could have, you know, drug testing
25 programs if they were used in a way that doesn't deter

1 people from reporting injuries and illness, and
2 incentive programs could also be.

3 We have, like I said, some outreach
4 materials. We just recently posted these. The anti-
5 retaliation provisions actually became effective
6 August the 10th. We delayed enforcement until
7 November the 1st, and we were asked by the Court to
8 delay it a month, to today, because they had an
9 injunction on the anti-retaliation provisions under
10 consideration. Just this week they decided not to
11 enjoin these provisions, so we will be commencing with
12 enforcement starting today. Well, I don't know about
13 that. I mean, it would come into effect today. I
14 don't know if they're going to actually --

15 VOICE: Tomorrow.

16 MS. EDENS: Well, tomorrow. But at any
17 rate, they were not delaying those provisions in terms
18 of our field activities anymore and you can -- like I
19 said, there are some sheets that explain our rationale
20 a little bit further under these different provisions.
21 Mostly it's in the anti-retaliation piece. I would
22 point out that just because they didn't enjoin it
23 doesn't mean that the case has been dismissed. The
24 case is still at the Court, and it will go through the
25 process of being deliberated and reviewed. So I think

1 I wrapped that up pretty much on time with maybe a few
2 minutes left for questions.

3 CHAIRMAN STAFFORD: That was excellent.
4 Thank you very much. Any questions? Yeah. Okay.
5 We'll start. Okay. Go ahead, please. Kevin?

6 MR. CANNON: Kevin Cannon, employer rep.
7 And my question is in regard to the anti-retaliation
8 provisions that go into effect today and specifically,
9 you know, one of the biggest things that caught our
10 members' attention was the drug testing discussion.
11 So, you know, one of the things that we've learned is
12 that most of these drug testing policies are part of a
13 broader, more comprehensive program, you know, pre-
14 employment suspicion for cause and post-incident drug
15 testing, but you have in your slide that employers
16 cannot create drug testing policies or practice that
17 are designed to deter injury or illness reporting.

18 So I have two questions. One, can you
19 provide an example of, you know, what that type of
20 policy might look like? And then the second part is
21 again with the effective date being today, our members
22 are looking for guidance and so, you know, what I've
23 been instructing is if you, you know, have a
24 comprehensive program such as a drug free workplace
25 program and you consistently apply it then you should

1 be on safe grounds. So I guess, you know, is that
2 sound guidance? And then two, you know, what types of
3 programs do you have in mind or examples of that would
4 be specific to deterring reporting?

5 MS. EDENS: I guess because we've worked
6 hard on some examples for our guidance and put them on
7 the web I'm sort of hesitant to sort of put my own
8 spin on it because we did kind of craft that word,
9 those examples, to make sure that people kind of
10 understood the different parameters around. We have
11 some that are -- if you look on the web you'll see. I
12 think there's two or three or four examples like, you
13 know, yes/no, would this be and why it would. So I
14 think I would sort of direct you to those rather than
15 me just sort of I don't like to give on-the-spot, you
16 know, interpretations. Lisa might stop me. I don't
17 know.

18 But at any rate, I mean, I think what you've
19 articulated is sort of, you know, it's only when it's
20 used to deter. I mean, if you only deter the people
21 that are reporting injuries, you know, we'd have to
22 look at that case, but I think every case is going to
23 be, you know, fact specific and we'd have to look at
24 the different parameters around it, and I think that's
25 what our enforcement folks will be looking at about

1 the different things, how it was used, what was the
2 whole program, and then unfortunately we'll have to
3 kind of look at, you know, whatever the events are
4 there.

5 But I think in general if you look at our
6 guidance I would tend to think that something, just a
7 very comprehensive program that does test everybody,
8 you know, that's not geared towards those that
9 probably it might be, but look at the examples I would
10 say.

11 MR. CANNON: So to the second question,
12 you're not sure?

13 MS. EDENS: Well, I wouldn't say I'm not
14 sure. I'm just saying I don't want to give you on the
15 spot like, you know, a blanket yes or no. I think
16 some of them you have to look at the specifics of the
17 case. I think, you know, there is an example in there.
18 I just don't want to -- you know, I'm trying to
19 remember it off the top of my head, but there's one
20 where, you know, it's pretesting, post-testing. It's
21 not only the person that reported the injury; it's all
22 the people involved in the incidents.

23 When you have that kind of comprehensive
24 thing that doesn't look sometimes, and you'd have to
25 look at the specifics of the case, but on its face it

1 might not look like you were just targeting people who
2 reported injuries, so -- but I think, you know, look
3 at the example because I think it's getting at what
4 you're suggesting right now.

5 MR. CANNON: Thank you.

6 CHAIRMAN STAFFORD: Tom, and then Jerry?

7 MR. MARRERO: Mine is along the same lines
8 as Kevin's, but I'm just kind of curious too because,
9 you know, a lot of companies have all these post-
10 incident drug testing regardless of what the incident
11 is so, you know, we're all a little confused with this
12 new rule here. So, I guess we'll be looking more at
13 the examples that were given, but we're all looking at
14 this and wondering okay, how do we have to change our
15 policies now, so --

16 CHAIRMAN STAFFORD: Jerry?

17 MR. RIVERA: Jerry Rivera, employer rep.
18 Again, my question goes back to the online reporting
19 portal. Are there any plans to conduct webinars
20 before that website comes live to walk employers
21 through the process of what to expect, you know, once
22 they access that link or that website?

23 MR. SCHMIDT: There's no plans to conduct a
24 webinar at this time, but what the application itself
25 will have, we'll have, you know, help sections which

1 will do step-by-step procedures, and really in my mind
2 it's not very complicated. You know, it's going to
3 take some registration and then just filling out the
4 web forms is going to be the easiest method, and we
5 think that the online help section will help. And then
6 in addition to that there will be, you know, email
7 links where you can submit questions on how to go --
8 you know, if you don't understand any of the
9 procedures you can submit questions and then we do
10 some follow back to the user.

11 MS. EDENS: And the goal is to have it
12 there, you know, well before the July deadline so that
13 if you're having difficulties you'll be able to go to
14 these help desks and we could help individuals figure
15 out how to submit it.

16 CHAIRMAN STAFFORD: Steve?

17 MR. HAWKINS: You know, you asked, Amanda,
18 those questions about drug testing. So, Steve Hawkins
19 with the Tennessee state plan. I've actually
20 participated in a lot of discussions with contractors
21 and manufacturers in our state about this issue, and
22 so I'm probably not as reluctant to give examples. And
23 I understand why you've already got your examples out,
24 but the problem is it's so easy to retreat and go this
25 is ridiculous like you've heard. I know you've heard

1 those comments. I've heard those comments. But we
2 actually talked to some contractors who only test
3 post-injury. That's all they do, and they only test
4 the person who was injured. Well, that's just not
5 logical.

6 If your true intent is to keep employees
7 from using drugs on the workplace or in the workplace
8 or prior to coming to the workplace, that's insane,
9 right? That makes no sense. And so the people who
10 said that's what they do, we said to them that's
11 insane. That doesn't make any sense. And it's really
12 not a defensible position when you're talking about
13 drug testing. So then we talked to some other people
14 who said we do initial before you're hired. We do
15 randoms. We do post-incident. We test the person who
16 was injured, and we also test the other people who
17 were involved in the incident. And so that starts to
18 make a lot more sense. That starts to look like you
19 intend to keep drug use out of your workplace.

20 And so I think obviously this issue has
21 gotten a lot of attention, a lot of comments, a lot of
22 people interested, but I think sometimes we don't come
23 to the table honestly about what we're doing here. We
24 just want to say oh, we test because it's easy to test
25 the person that's injured. They're easy to identify.

1 But if the person was on a construction site and they
2 were walking through a corridor and somebody dropped a
3 board from the third story and hit them in the
4 shoulder and we're going to send them off and get them
5 drug tested, but we didn't go up to the third floor
6 and see what the heck was going on. Do we really want
7 to control drug use and see how it's impacting our
8 workplace or are we just trying to do what's easy?
9 It's easy to identify who got injured, right?

10 And so in our state we have a state workers'
11 comp law, the Tennessee Drug Free Workplace, that has
12 an education component. It does require that
13 everybody be drug tested after an injury, and
14 certainly there's going to be people who are going to
15 be drug tested where their impairment was probably not
16 at question, but the state law requires it. But it is
17 a multifaceted program that includes all of these
18 components, as well as an educational component and
19 resources available for people if they come forward
20 who may have a drug use problem. And so we actually
21 have a summit next month where we're going to bring
22 all those people together in Nashville. The workers'
23 comp folks as well as Tennessee OSHA folks are going
24 to participate in that. But I think that we know what
25 to do, and I think most contractors know what to do.

1 I think in a lot of cases we are going to
2 stick our head in the sand and just blow this issue
3 off. It is a real issue. And I was surprised when I
4 polled several groups of people and asked them what
5 they thought about just the act of submitting to a
6 drug test, and I was surprised. I was surprised how
7 many people really find that somewhat insulting. I
8 was surprised. I don't. I've done it a couple times.
9 I certainly do it every time I go to the doctor. When
10 you're in your fifties you're going to take that test
11 every time you go to the doctor, so I think I'm pretty
12 used to it now. But I guess not that Amanda needs
13 defending obviously, but --

14 MS. EDENS: Yes, I do.

15 MR. HAWKINS: You know? No. No.

16 MS. EDENS: You go ahead. No.

17 MR. HAWKINS: This issue doesn't really have
18 to be defended. People know what they're doing, and
19 if the only thing you're doing is testing the person
20 who's injured and that's the only person you're
21 testing you've got a problem, and it's bigger than a
22 potential OSHA citation. You think you're doing
23 something to affect drug use on your site or in your
24 company and you're not. I don't know what you're
25 doing. I don't even know why you're wasting your

1 money frankly, because in our state you don't -- even
2 if the person tests positive you don't gain anything.

3 The only thing you gain in our state is a
4 discount if you're in the full-blown Tennessee Drug
5 Free Workplace program that again is multifaceted.
6 You get a discount on your premium, and there's a
7 rebuttable assumption or rebuttable presumption that
8 drug use contributed if you test positive. And that
9 is fairly weak because it is rebuttable. And so, you
10 know, I was one of the early detractors when OSHA
11 first came out and started talking about this several
12 years ago. I was just like a lot of people. Oh,
13 that's crazy. I guess OSHA wants you to use drugs in
14 the workplace. You know, that's your initial instant
15 reaction until you give it more thought.

16 So I think that people say they want more
17 information, but I don't know what -- and I'm not
18 picking on you, Kevin, at all. They want more
19 information, but it's pretty clear what your intention
20 is, and that's what OSHA has said. And you correct me
21 if I'm wrong, Ms. Amanda, but your intention is pretty
22 clear based on what you're doing. If you're not doing
23 pre-employment and pretty heavy randoms, if you're
24 just waiting until somebody gets hurt and then drug
25 test them, why would you do that, you know?

1 I think this whole approach to drug use in
2 the workplace as a result of this, I think people are
3 going to take a harder look at it and we might wind up
4 at a better place. We might decide let's use our
5 money on randoms and pre-employment more than post-
6 injury because at that point it's too late. As an old
7 man told me one time, the damage has done been did at
8 that point, and so really let's put our money and our
9 thought on the front end of how to proactively keep
10 drugs out of our workplace and not stick our head in
11 the sand and say oh, we'll just test them after they
12 get hurt. Sorry I took so long. Thank you.

13 CHAIRMAN STAFFORD: No. Thank you. Steve?

14 MS. EDENS: I would say, I mean, I
15 appreciate those comments, but, I mean, OSHA is
16 listening to people's concerns over this issue. We
17 realize some people have some serious concerns and
18 issues and we've been trying to talk to people, and in
19 talking to those folks that's how we crafted our
20 examples. And we'll continue as we learn more and we
21 think more guidance is necessary we can, you know,
22 amend those examples and add more, but I think we have
23 been listening and folks are trying. We understand
24 some people are confused. We're trying to make our
25 position more clear with better examples, but we're --

1 I appreciate being defended, but that's not the worst
2 I've ever been done to.

3 MR. HAWKINS: Me either.

4 MS. EDENS: So I appreciate everybody's
5 comments, because we do want to hear if --

6 VOICE: Right.

7 MS. EDENS: -- there's some real confusion
8 because our goal is not to confuse people. It is to
9 really make our provision understandable and
10 implementable, so I thank you for your comments.

11 CHAIRMAN STAFFORD: Okay. Cindy, and then
12 Andy?

13 MS. DePRATER: Cindy DePrater, employer rep.
14 And I would tell you, Steve, I very much appreciate
15 that. If you have an example that is that true and
16 that clear that's what we need because there is a lot
17 of confusion around us in the entire industry. So
18 speak it as truly and clearly in your example as what
19 Steve did and there will be no more confusion.

20 CHAIRMAN STAFFORD: Thank you. Andy?

21 MR. PETERS: Andy Peters, employer rep.
22 Thanks, Steve, also. Obviously we can think of other
23 scenarios, and we're hoping that the Agency
24 understands this as well. So one would be a front-end
25 loader operator backs into a fire hydrant and knocks

1 it over. There's nobody else around. I have a pre-
2 employment and I do random. I do post-incident. I'm
3 not going to go be looking for four or five other
4 people to drug test in a single act like that, right?

5 MR. HAWKINS: Agreed.

6 MR. PETERS: Right. Same with maybe a fall
7 from height where the person was working
8 independently. So just understanding that there are
9 incidents where there's a sole person, a sole event.
10 I do appreciate the clarification also.

11 I think the other thing that's important to
12 note, you mentioned that there isn't a lot to gain. I
13 might disagree with that in some respects. I
14 understand it's very difficult in today's climate with
15 workers' compensation in trying to win cases to have
16 cases thrown out because of drug use. There's a lot
17 of Judges that will provide a pass on that type of
18 thing. But, there is a violation of the terms of
19 employment that that employee signed that they would
20 not use drugs in our workplace, and it makes it a lot
21 easier to discharge those types of people that create
22 an unsafe work environment on our construction sites,
23 right?

24 So we may not get the financial benefit, but
25 we get the benefit of removing somebody that doesn't

1 have the safety in mind of his fellow workers and
2 himself, right, obviously. And the other thing on the
3 employer side is, you know, companies like mine and
4 others, you know, we face huge deductibles on workers'
5 comp where we pay the first \$1 million per workers'
6 compensation claim and we may pay the first \$10
7 million if we injure a member of the public or a
8 subcontractor employer and we're found to be guilty of
9 that type of charge.

10 That's a tremendous impact on companies, so
11 that's why there's so much concern about this
12 particular issue when you're bidding jobs at 1.5,
13 4 percent profit and all your profit on a project can
14 be wiped out by one individual selfish act of a person
15 abusing drugs. That's why we're sensitive to this,
16 right? And we want clarity and we want to make sure
17 that when the Agency comes to our job site to inspect
18 this type of case, I mean, we're going to be prepared
19 to defend our position.

20 MR. HAWKINS: Well, in response to that, and
21 I appreciate everything you said, but if you waited
22 until the person was injured you've already spent your
23 deductible or potentially spent whatever the
24 deductible is, but the public did so --

25 MR. PETERS: But I did say I did

1 pre-employment. I did random.

2 MR. HAWKINS: Yeah. Right.

3 MR. PETERS: Right. So I'm following the
4 protocols of consistency.

5 MR. HAWKINS: Right. Right. And what
6 hasn't been said, and I don't think it's been
7 determined yet, so in our state if you are in the drug
8 free workplace OSHA said in their regulation and we've
9 said as well that you're good if you're following all
10 those because it does all those things. What has not
11 been said by us or anyone else at this point is if
12 you're doing those things but you're not in a state
13 sanctioned program, but you're doing those things,
14 could a person have a valid whistle blower claim if
15 they were tested post-injury like you're describing.

16 We are 90 percent down the road of saying if
17 you're in the Tennessee drug free workplace or if your
18 program is patterned after that -- in other words, it
19 looks like a duck, it quacks, you know, that kind of
20 thing. We haven't said that definitively. OSHA
21 hasn't said it. But the one thing, the thing that
22 needs to be said is if you're doing all those things
23 is your intent noble?

24 And so the one, if you're in the state
25 program it's okay because that's what everybody said,

1 but what if you're not in that program for whatever
2 reason you chose to, but you're doing all those same
3 things -- pre-employment, education, randoms and then
4 post-injury and as well as post-injury not just the
5 person that was injured, but if there was two people
6 and it was a narrow miss for one and the other and
7 they did something that looks like it was less than
8 brilliant that day that we're going to test both of
9 those.

10 If you're doing all those things, I believe
11 the way I would interpret it for our state you have
12 met the intent of you're trying to eliminate and
13 control drug use in your facility, but OSHA hasn't
14 really said that.

15 VOICE: No pass.

16 MR. HAWKINS: And that's the part that needs
17 to be --

18 VOICE: Yeah. The other concern --

19 CHAIRMAN STAFFORD: Okay. Hold on, hold on,
20 hold on.

21 VOICE: Okay.

22 CHAIRMAN STAFFORD: We're going to go to
23 Ron, who had his hand up, and then Palmer, and then
24 we'll come back over here.

25 MR. SOKOL: Ron Sokol, public

1 representative. I just want to make sure and get on
2 the record that when OSHA talks about this they're
3 including alcohol as well, to be able to breath
4 alcohol people after an incident. So when they say
5 drugs and alcohol, they're including not only illegal
6 use of drugs, but synthetics and alcohol within this
7 policy.

8 MR. SCHMIDT: That's correct.

9 MR. SOKOL: Thank you.

10 CHAIRMAN STAFFORD: Palmer?

11 MR. HICKMAN: Thank you, Mr. Chairman.
12 Palmer Hickman, employee rep. So far I've heard
13 discussion I think that centers around something
14 happened and we're going to test then.

15 CHAIRMAN STAFFORD: Yeah.

16 MR. HICKMAN: But what about the employee
17 that would be reluctant to report? They didn't know
18 that it happened. You know, it's obvious when it
19 happened. That's what I hear being discussed to this
20 point. Would someone be more reluctant to report an
21 incident if they knew the policy was everybody on the
22 job site or everyone involved in the incident would be
23 drug tested? I didn't hear that addressed where it
24 wasn't obvious that something happened would somebody
25 be reluctant to come forward. So I'll review the

1 examples. Is that type of example provided there?

2 CHAIRMAN STAFFORD: Right.

3 MR. HICKMAN: Again, so far I've heard
4 something happened. We know who it was. They were
5 tested or them and their co-workers were tested. But
6 would someone be more reluctant to report something
7 because of peer pressure or what have you knowing that
8 everybody is going to be drug tested? Would they
9 still report it even if no one knew that something
10 happened at that particular point in time?

11 CHAIRMAN STAFFORD: Yeah. I mean, I think
12 that's a very different question --

13 VOICE: Yeah, it is.

14 CHAIRMAN STAFFORD: -- as opposed to the 2x4
15 in Steve's example. If someone has a laceration and
16 it's not obvious to everyone and they decide well,
17 shoot. If I go and, you know, report this then I'm
18 going to be drug tested. Is that a disincentive from
19 reporting an injury?

20 MR. HICKMAN: Or my co-workers as well,
21 whatever my policy is. Yeah.

22 MR. SCHMIDT: For 1904.35(b)(1)(iv), which
23 is the retaliation piece, to apply there has to be
24 retaliation against an employee that exercised his or
25 her right to report the injury. So for this to kick

1 in, the report has to be made. I'm not positive if
2 that answers your question or not. So, you know, if
3 they're hiding it and never report it then the
4 retaliation hasn't occurred and that little section
5 doesn't apply.

6 VOICE: Well, there it is.

7 MR. SCHMIDT: But if I can I'd like to just
8 address the thing that Steve had brought up that we do
9 in our scenarios that are up in the compliance
10 assistance materials that we just put up.

11 We do address the situation where employers
12 will have a program where they don't formally
13 participate in the state program, but they have the
14 same provisions. We do say that, that is okay. It's
15 not in compliance with our 1904.35(b)(1)(iv). So we
16 have addressed that situation.

17 CHAIRMAN STAFFORD: Okay. Andy, and then
18 we'll go back to Jerry and back up the table.

19 MR. PETERS: Andy Peters, employer rep. The
20 question I have is we work for a number of clients
21 that require substance abuse testing programs, so
22 whether we want to have a program or not we're
23 compelled by our contract to run a program. How is
24 that addressed?

25 MR. SCHMIDT: We also have a scenario up

1 there that talks about -- it doesn't talk about the
2 contractual requirements, but it talks about
3 bargaining, and the answer is, is that you can't
4 contract your way out of the obligation. I'll defer
5 to Lisa if she wants to kick in here, but just because
6 you have that provision in the contract it doesn't
7 relieve you of the obligations of the rule.

8 MR. PETERS: So, I could be in violation of
9 my contract with my client or be in conflict with
10 OSHA.

11 MS. WILSON: Yes. Every employer has an
12 obligation to comply with the OSHA Act and the
13 standards under the Act, and so if you agreed to
14 something that's in violation of the Act if you do it
15 you are liable for that.

16 MS. EDENS: And that's not just for
17 recordkeeping.

18 MS. WILSON: And that's not just
19 recordkeeping. That's for any standard.

20 CHAIRMAN STAFFORD: All right. So, let me
21 see. Jerry, did you have another comment?

22 MR. RIVERA: Yes. Jerry Rivera, employer
23 rep. You mentioned examples of those provisions of a
24 drug free workplace if we follow somewhat of a model.
25 Now, there might be different spins to it from state

1 to state or different requirements. Do you guys have
2 or plan on putting up on the website what maybe those
3 core elements would be instead of just leaving it out
4 to say look, you know, if you're following one or the
5 other which might miss one component or two?

6 MR. SCHMIDT: Well, we haven't.

7 MR. RIVERA: Okay.

8 MR. SCHMIDT: We have not. Mandy and I can
9 talk about it.

10 MS. EDENS: I mean, I think within the
11 examples you'll sort of see common elements coming out
12 in them, whether you call it a core element or not,
13 and almost every example that you've given today there
14 is an example that reflects what your question was on
15 the web. So I would, you know, suggest you might want
16 to look at those and, you know, if the committee finds
17 things that they think are not clear and you want to
18 suggest some things to the Agency, we're more than
19 willing to hear those. The intent was to have them
20 clear, sort of the basic concepts of what we're trying
21 to get after.

22 We don't have every, single scenario that
23 could happen. That's just not even possible. But,
24 you know, if there are certain core things that you
25 think that are confusion among many employers we

1 certainly would like to correct that confusion, so
2 we're more than willing to add things or edit things.
3 That's why we're here. So I'd please go, you know,
4 take a look at them, and we'll try to clear up any
5 confusion where we can.

6 CHAIRMAN STAFFORD: I appreciate that. All
7 right. Two more, and then we're going to close this
8 down. Palmer, and then Kevin?

9 MR. HICKMAN: All right. Thank you. Palmer
10 Hickman, employee rep. So what I was specifically
11 asking about, and I understand that Lisa will identify
12 which exhibit this is on, but on page 18 of what we
13 just went through, the top slide there, it says
14 modifications to 1904.35 make it a violation for an
15 employer to discourage employee reporting. So that
16 wording certainly is rather gray.

17 VOICE: Right. There you go.

18 MR. HICKMAN: So the rule is probably
19 written pretty tight and --

20 VOICE: No.

21 MR. HICKMAN: -- I'll certainly review that,
22 but in the context of what I'm reading here that was
23 the basis for my question. It would be pretty hard to
24 determine are you discouraging them from reporting.
25 That means they haven't reported and they would have

1 maybe. I don't know. So that to me is a bit vague.

2 MR. SCHMIDT: Yeah. I'd like to clear that
3 up a little bit.

4 MS. EDENS: Okay.

5 MR. SCHMIDT: The violation is for taking
6 retaliation against an employee for reporting an
7 injury. So that's the violation. That's what OSHA
8 would have to establish to issue a violation. When
9 we're talking about adverse actions, we define an
10 adverse action as something that's punitive that would
11 discourage a reasonable employee from reporting, so I
12 think that's where the --

13 VOICE: Right.

14 MR. SCHMIDT: -- language may have gotten --

15 MS. EDENS: Yeah. And we try to give
16 examples of that, and this in some ways it's not
17 totally different from what we do in the whistleblower
18 world.

19 MR. SCHMIDT: Right.

20 MS. EDENS: And sort of the concepts that
21 have to be proven there from retaliation carry over
22 into this as well. So we're not trying to create, you
23 know, new things in terms of, you know, trying to
24 prove that a retaliation hasn't in fact occurred.

25 MR. SCHMIDT: I mean, that's a very

1 important point that this is not new. This is taking
2 what was prohibited under 11© and putting it into
3 1904.35.

4 CHAIRMAN STAFFORD: Kevin, the word is
5 yours.

6 MR. CANNON: Yes. Two things. First in
7 response to -- Kevin Cannon, employer rep. To Palmer,
8 first, you know, if you read what the regulatory
9 language says I think anybody would come away
10 regardless if they have a program or not and think
11 they're in good shape until you start looking at
12 examples and discussions in the preamble because it's
13 not very straightforward. It doesn't even say anything
14 about drug testing. It doesn't say anything about
15 safety incentive programs as far as the regulatory
16 text is concerned, correct, Dave?

17 MR. SCHMIDT: That's correct.

18 MS. EDENS: The preamble doesn't.

19 MR. CANNON: So an employer who has not seen
20 the examples or read the preamble would not know that
21 there is a connection between their reporting policies
22 and drug testing. But also to follow up on Andy's
23 question or comment about, you know, contracts, and
24 you said you can't contract your responsibilities
25 away, but, you know, these contracts don't just say,

1 you know, you must do post-accident drug testing.
2 They have all of the components that Steve had
3 mentioned.

4 So I guess my question is if the contract
5 language states, you know, pre-employment, random,
6 post-incident drug testing for cause or suspicion, it
7 sounded like that still could subject a contractor to,
8 you know, enforcement.

9 MS. EDENS: Well, I don't think we're going
10 to look at people's contracts necessarily. I mean,
11 what we're going to look at is did a retaliation
12 occur, and then we're going to look at the specific
13 facts around that retaliation. I think what David is
14 just trying to say is just because you've written into
15 a contract something if it violates an OSHA rule, no
16 matter if it's record keeping or silica or any other
17 standard we have, it's not a defense.

18 MR. CANNON: No. I understand.

19 MS. EDENS: Yeah.

20 MR. CANNON: But, you know, the contract is
21 pretty much a program that he would have in place
22 regardless of the contract. Am I right, Andy?

23 MR. PETERS: Yes.

24 MR. SCHMIDT: Yeah. The program is the
25 important part, and how it's used will determine

1 whether it's in violation of the new requirements or
2 not. And really, you know, it comes down to the post-
3 accident, the post-incident testing.

4 MR. CANNON: Okay.

5 MR. SCHMIDT: All the other things are kind
6 of off the table. It's whether the post-incident
7 testing is done in a manner that retaliates against an
8 employee who reported an injury.

9 MR. CANNON: So then we could also assume
10 the same would apply to collective bargaining
11 agreements as long as they're consistently applied
12 without the intent for retaliation.

13 MR. SCHMIDT: Well, again bargaining
14 agreements are the same, you know, are the same as the
15 contract.

16 MR. CANNON: Exactly.

17 MR. SCHMIDT: You can't bargain your way out
18 of the obligations in 1904.35.

19 CHAIRMAN STAFFORD: All right, Amanda and
20 Dave. Thank you very much for your time. This is a
21 very interesting discussion, and I appreciate you
22 hanging in there with us. We are going to break for
23 lunch. I don't even know what time it is. We're
24 probably a little bit late. So we'll reconvene at
25 1:00.

1 (Whereupon, at 12:10 p.m., the meeting in
2 the above-entitled matter recessed, to reconvene at
3 1:00 p.m. this same day, Thursday, December 1, 2016.)
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1 that would be appropriate as long as we can do it in a
2 controlled fashion.

3 I looked in the back of the room, and I
4 think so far three folks have signed up so it seems
5 like to me that that would be reasonable, and we're
6 going to give it a try. So with that, Mr. Schneider?

7 MR. SCHNEIDER: Okay. Thank you. I'm
8 thinking of starting the Association of Ex-ACCSH
9 Members, so when you guys get off the committee you'll
10 be contacted.

11 CHAIRMAN STAFFORD: And you'll be the chair,
12 I'm sure.

13 MR. SCHNEIDER: If I get voted chair.

14 CHAIRMAN STAFFORD: Right.

15 MR. SCHNEIDER: No. I wanted to comment.
16 Thanks. I appreciate the opportunity. I have to go
17 to another meeting this afternoon. But when you had
18 the discussion about work groups, I mean, I've been on
19 work groups for the last -- I don't know what -- 30
20 years or so, and, you know, I think the work groups
21 are not just to sort of give OSHA advice about
22 regulations. There's a lot of things OSHA can and
23 should be doing beyond just sort of regulations and
24 enforcement. And some of the things, and I was telling
25 Pete one of the reasons that Matt talked about doing

1 the Focus Four for health was we focus so much in
2 construction on fatality prevention, but fatalities
3 are really just the tip of the iceberg. The bulk of
4 what we have to be concerned and should be concerned
5 about are injuries and illnesses.

6 I mean, there's so many more injuries, you
7 know, from sprain and strain injuries, slips and trip
8 injuries, and the illnesses is a huge problem for the
9 industry. You know, people getting injured or getting
10 sick and not being able to -- you know, retiring at
11 age 55 and can't do the work, and then we have a labor
12 shortage and we're losing experienced people. So, I
13 think it is important to think about these bigger
14 picture issues like how to prevent sprains and
15 strains, how to prevent hearing loss, and Matt and I
16 are working on an American Industrial Hygiene
17 Association publication on the Focus Four for health.

18 And the four that we focused on were noise
19 and hearing loss, temperature extremes, sprain and
20 strain injuries, and the last was we lumped all the
21 respiratory hazards together, respiratory and dermal
22 hazards, looking at anything that's inhaled, you know,
23 whether it's silica, manganese, whatever, because the
24 prevention for those is pretty much similar. So those
25 are the four that we did, and I think it is important

1 to try to attack those bigger issues, but I also
2 wanted to mention on the outreach piece in addition to
3 outreach to small contractors that the outreach to
4 owners, as we pointed out, is important, but also
5 outreach to designers, the design community. If we're
6 going to really be serious about prevention through
7 design we should talk about outreach to the design
8 community.

9 And one of the things, we've had similar
10 discussions at the Construction Alliance meetings that
11 I've been part of, and one of the things that we did
12 was we developed a dozen fact sheets on prevention
13 through design for fall prevention in construction.
14 And they're on the OSHA Alliance web page, but we were
15 saying well, why couldn't OSHA package these together
16 as a booklet and say here's 12 things that all
17 designers should include in all their projects to
18 prevent falls in construction, and market those to the
19 owner community and the design community and say, you
20 know, we want to get people to pledge to use these 12
21 design elements, things like that, putting up
22 parapets, et cetera.

23 So those are the kinds of things I think
24 that could be very useful. And we also at the
25 Alliance Program Roundtable we developed a small

1 business report, which is on the Alliance Roundtable
2 web page, talking about how do we reach out to small
3 businesses. And we gave it a lot of thought, and I
4 would encourage you to circulate that and look at it
5 as well. So those are the kinds of things that I think
6 that work groups could do is talk about those kinds of
7 things and like how do we get people to use best
8 practices. And in terms of like we did, and I'll
9 circulate -- I will when I get back to my office today
10 circulate -- this report we did from the excavation
11 work group back, you know, 15 years ago, and we talked
12 about things like using permitting processes.

13 You know, in Massachusetts they're going to
14 be using the permit offices to educate people about
15 trenches, excavation safety, but also enforcement
16 policy like if you see a trench and someone is down in
17 the trench and it's not properly shored and you see a
18 trench box right next to it that's an automatic
19 willful, or it should be at least. They knew there
20 was a problem that should have been shored and bam,
21 you know. So things like that really made a
22 difference, and that's why the number of trench
23 fatalities went from 100 down to about 10 and now it's
24 back up to about 20, but it really made a difference,
25 the stuff we had recommended and OSHA implemented,

1 even though we didn't recommend any new standards. So
2 anyway, that's all I wanted to say. Thank you for the
3 time.

4 CHAIRMAN STAFFORD: Yeah. I appreciate it,
5 Scott. Thank you.

6 MR. SCHNEIDER: Okay.

7 CHAIRMAN STAFFORD: Absolutely. All right.
8 So next on the agenda, let's get into the crane issue.
9 We have Garvin, you're on the agenda, but it looks
10 like Ashley is going to go first, right? So there's
11 Ashley.

12 MS. BRIEFEL: Hi.

13 CHAIRMAN STAFFORD: Welcome.

14 MS. BRIEFEL: Hi. Is this all right? I'm
15 Ashley Briefel. I'm a regulatory analyst. I work
16 with Garvin in the Office of Construction, Standards &
17 Guidance, and I'm the project officer for the cranes
18 amendments. As we've talked about I think over the
19 last day and a half, we have currently multiple cranes
20 related projects in motion right now that are
21 rulemaking projects and so this is one of I guess the
22 three, four if you include some technical amendments,
23 that will also include some changes to the crane
24 standard. So there's the operator qualification
25 rulemaking. Again, as we discussed yesterday, it's

1 not before ACCSH at this particular meeting. ACCSH
2 already made recommendations on that.

3 There's the railroads amendments, which
4 you're going to be hearing from Mike Buchet on next,
5 and then the cranes amendments are sort of that catch-
6 all, everything else rulemaking that includes mostly
7 technical, but also some somewhat more substantive
8 clarifying amendments to the crane standard. Once the
9 crane standard was published in 2010, you know, we
10 immediately started finding things that maybe were
11 inaccurate -- typos, that sort of thing -- and so that
12 list has kind of built over the years, and this
13 committee has considered our amendments to the crane
14 standard in this particular rulemaking at three
15 different points in 2013 and in 2014. And so we
16 received recommendations from ACCSH at that point, at
17 all three of those points, and those recommendations
18 are certainly part of our rulemaking record and we've
19 been considering them, and all of those amendments
20 that we've presented to ACCSH in the past, none of
21 those are what we're here to discuss today.

22 Since 2014, there are four additional issues
23 that OSHA determined the best way to address these
24 issues that needed clarification in the crane standard
25 would be through the rulemaking process, and so those

1 four items are the ones that I'm here to share with
2 you. Before this meeting we had materials sent out,
3 sort of a bulleted explanation of those amendments,
4 and so that may be helpful if that's in your packets
5 to follow along. I'm just going to kind of walk
6 through what these amendments are about. They're
7 pretty technical, so at the end of my presentation
8 I'll be happy to take any questions on, you know,
9 anything that isn't clear, but I'll try to simplify it
10 as much as possible. So the first amendment OSHA is
11 intending to propose would be changes to the
12 definition of hoisting in the crane standard.

13 Hoisting, the verb to hoist, the noun hoist,
14 these are words that are used frequently throughout
15 the crane standard. And so our original definition,
16 the definition currently in the standard is that
17 hoisting is the act of raising, lowering or otherwise
18 moving a load in the air with equipment covered by the
19 standard. And I think, what we recognized is that this
20 definition isn't sufficiently clear with hoisting
21 activities that don't necessarily have a load that's
22 free-swinging in the air. So this would be the case
23 then, for example, a tilt-up operation, so if like a
24 piece of concrete is being raised by a crane, but
25 maybe the base of it is always on the ground.

1 This would also come into play in cases
2 where a crane is being used to like stabilize a
3 structural component like in a bridge building, bridge
4 demolition operation, something like that. You may
5 need a crane to keep a beam that's not sufficiently
6 supported in place while you're adding support or
7 taking it apart. So in those cases, employees that are
8 working in the vicinity or in the fall zone of that
9 load, even though that load is attached to something
10 else they're still subject to the same hazards. If
11 the crane hoist line was to break, you know, that
12 bridge would collapse on that person underneath. That
13 concrete slab would fall on the worker that's in the
14 fall zone.

15 And so we realized that the standard should
16 really be clarified so that it's clear that we
17 consider those sort of lifting activities to also be
18 hoisting activities covered by the crane standard and
19 so as you can see on the PowerPoint presentation, the
20 language that we're proposing to add here is: Hoisting
21 is the act of raising, lowering or otherwise moving a
22 load with equipment the standard covers. It also
23 includes any operation in which the load exerts
24 tension or force on the crane, even if the load
25 remains in contact with the ground, structure or other

1 object or is held in a stationary position. As used
2 in the standard, a suspended load means a load that is
3 hoisted, and hoisting can be done by means other than
4 wire rope, hoist drum equipment.

5 So that is the first amendment that we're
6 putting in front of ACCSH today.

7 CHAIRMAN STAFFORD: Do you, Ashley, want
8 questions for each, do you want to get through all
9 four, or how do you want to do this?

10 MS. BRIEFEL: I had thought go through all
11 four, but if the committee would rather handle it
12 piece-by-piece. Do you have a preference?

13 CHAIRMAN STAFFORD: Do you want to do it one
14 at a time? It seems like that.

15 MS. BRIEFEL: Okay. That's fine.

16 CHAIRMAN STAFFORD: So let's.

17 MS. BRIEFEL: Sure. Does anyone have
18 questions about the first amendment? Here. I can go
19 back to it.

20 MR. RANK: I do.

21 MS. BRIEFEL: Yes?

22 MR. RANK: Under hoisting --

23 MS. BRIEFEL: Yes?

24 MR. RANK: -- I have a problem with the
25 wording that says "or is held in a stationary

1 position." There's many times where we dog that crane
2 off and then we have to be able to move on a load.
3 Yes, it's suspended, but it is not moving and there's
4 a big difference. So I strongly object to that wording
5 because we as part of the steel erection process, we
6 put two bolts in one end of the beam, and OSHA is
7 already aware of this, that it's not riding a
8 suspended load when we have a beam with two bolts in
9 one end and a connector has to go across that beam to
10 connect that other, make that other beam to column
11 connection.

12 Yes, it is suspended from the load, but it
13 is not moving. So under your current definition that
14 would throw a whole wrench into the steel erection
15 process in making beam to column connections that's
16 never been in question before, so I've just got to
17 make clear here that when it comes to making beam to
18 column connections and traversing over suspended
19 members that that would be an exception to this
20 revised definition, okay? I know the Agency already
21 has multiple letters. Does it constitute riding a
22 load when you put two bolts in one end of the beam and
23 you go across the beam to make that other connection?
24 And OSHA had said no, that doesn't constitute riding a
25 load because the load is suspended, but it's not

1 moving.

2 So I'm very concerned here that the way you
3 got this worded it would completely reverse everything
4 that we've had in the past, and there's not been any
5 trends, incident trends, that this has been a problem,
6 so I don't want to open up a can of worms here on this
7 revised definition. Thank you.

8 CHAIRMAN STAFFORD: Jerry?

9 MR. RIVERA: Yes. Jerry Rivera, employer
10 rep. I kind of want to echo the same remarks, but a
11 slightly different spin maybe to ask what's the
12 motivator? What's driving that clarification or
13 expansion of the definition?

14 MS. BRIEFEL: Yeah. I can --

15 MR. RIVERA: You know, is there any data
16 that, you know, we should consider? I mean, I see
17 some of the examples of why all the additional
18 supplements --

19 MS. BRIEFEL: Yep.

20 MR. RIVERA: -- but, again it does open up
21 an entire can of worms that I'm not sure we're
22 familiar with.

23 MR. RANK: Mr. Chairman?

24 CHAIRMAN STAFFORD: Sure.

25 MR. RANK: I have one last comment. We also

1 have to hoist and suspend large rebar cages that could
2 be 60, 80 feet tall, nine foot in diameter, and once
3 we get those in position we have to hold them there
4 and we have to have workers access that to be able to
5 put the couplers on the rebar to couple the sections
6 together. And so we have letters of interpretation on
7 that. That, that's not considered riding a load or
8 moving a load and that would also be another very
9 specific condition that would be in violation of this
10 new definition, so I got to make sure that I'm on
11 record that this would completely upset the work that
12 we're doing. So, thank you.

13 CHAIRMAN STAFFORD: All right. Steve?

14 MR. HAWKINS: Is there someone, Ashley or
15 Garvin or Dean or Michael, anybody? Can you tell the
16 committee, and I don't have the crane standard in
17 front of me. I know you all probably have it
18 memorized. Does it say workers are prohibited from
19 being on a suspended or hoisted load? I understand
20 exactly what Steve is talking about. What does the
21 standard actually say? Because this, changing the
22 definition is not going to change.

23 VOICE: No.

24 MR. HAWKINS: Just changing the definition
25 doesn't change anything. What part of the rule is

1 Steve talking about that says you can't be on a
2 hoisted load and now this says it includes a
3 stationary load?

4 MS. BRIEFEL: Yes.

5 MR. HAWKINS: Can you show us the part of
6 the --

7 MS. BRIEFEL: Yes. Yes.

8 MR. HAWKINS: -- standard that's a problem?

9 MS. BRIEFEL: Should I go ahead and clarify?

10 CHAIRMAN STAFFORD: Yes, please.

11 MS. BRIEFEL: Would that be most helpful?

12 Okay. So under the crane standard, 1431 covers
13 hoisting personnel. And so you're precluded from
14 riding, you know, the ball, that sort of thing there.

15 MR. RANK: Or the load.

16 MS. BRIEFEL: In addition, you're only
17 allowed to be hoisted by a crane if several
18 circumstances are met, including establishing that,
19 you know, that's really the safest way to do the job,
20 and generally it needs to be done using a personnel
21 hoist or a personnel platform. Actually there's
22 another revision related to that, that we'll get to
23 here in a bit. And I think I understand that concern,
24 and to be honest I think that the potential for that
25 to come into play wasn't something that we fully

1 considered.

2 The real impetus here is our concern about
3 those that are in the fall zone being exposed to the
4 same kinds of hazards, and the way that hoisting is
5 defined, and the way that load is defined in terms of
6 that which is being hoisted has the effect of
7 precluding those or it insinuates that those
8 requirements may not apply to employees that are in
9 the fall zone and so that's really our -- that was the
10 direction of concern I think for this, so --

11 MR. HAWKINS: I think that answers the --

12 MS. BRIEFEL: Primarily focusing on the
13 requirements in 1417 and 1425, which are keeping clear
14 the loading operation dealing with the hazards related
15 to falling loads.

16 MR. HAWKINS: But once it looks like that
17 you've included a beam that's about to be connected to
18 a column or that's connected on one end and now got
19 the crane still hooked to it --

20 MR. RANK: Right.

21 MR. HAWKINS: You've got one end connected.
22 It's stationary --

23 MR. RANK: That's correct.

24 MR. HAWKINS: -- but the cable is
25 theoretically and in actuality still under tension.

1 MR. RANK: Yes, it is.

2 MR. HAWKINS: You've walked on that --

3 MR. RANK: Right.

4 MR. HAWKINS: -- and now it looks like
5 you're under 1431 --

6 MR. RANK: Correct.

7 MR. HAWKINS: -- and you're not really.

8 MR. RANK: Correct.

9 MR. HAWKINS: And you don't want to see that
10 go forward.

11 MR. RANK: Absolutely right.

12 MR. HAWKINS: That must be why they put you
13 on here.

14 MR. RANK: Well, I'm glad you understand.

15 MR. HAWKINS: Yeah. I mean, that's a
16 real --

17 MR. RANK: Yeah.

18 MR. HAWKINS: Sorry to be the slowest person
19 in the room, but --

20 MR. RANK: No.

21 MR. HAWKINS: -- I understand that.

22 MR. RANK: No.

23 MR. HAWKINS: That's real.

24 MR. RANK: And I understand, Ashley, that
25 this would be an unintended consequence of the

1 standard. So I don't want to impede progress here,
2 but I do want an exception put under this that this
3 shall not apply to other things. And I'm sure Dean
4 could work something up. I don't want to miss the
5 majority of the people that you're trying to target
6 here and clarify it, but I don't want to get caught in
7 90 percent of the work that we do that we have to do
8 in order to erect buildings and bridges when there's
9 no other way to do it. I don't want to get hamstrung
10 by someone to say, as Steven said, well, we have this
11 standard over here on the crane standard that you're
12 not allowed on this because it still has tension on it
13 --

14 MR. HAWKINS: It's hoisting.

15 MR. RANK: -- or it's hoisting. And we're
16 going to argue no. Look at these old letters that I
17 have from the Directorate of Construction and under
18 state plans that this is not considered "riding the
19 load."

20 MR. HAWKINS: It would be better to fix it
21 here than to fix it with letters.

22 MR. RANK: Absolutely. So at this point I
23 would have to at least strike off "or is held in a
24 stationary position" for me to go forward on the
25 definition as proposed.

1 CHAIRMAN STAFFORD: All right. So we just
2 need to change the language. So, Kevin, and then
3 Chuck?

4 MR. CANNON: I just have a question or maybe
5 asking clarification regarding the last sentence where
6 it says: As used in the standard, a suspended load
7 means a load that is hoisted, and hoisting can be done
8 by means other than wire rope hoist drum equipment. I
9 guess my question is does that now bring back into
10 like forklifts and excavators as we had discussed
11 before, you know, trying to get that clarified?

12 MS. BRIEFEL: Okay. Sorry. I think I
13 wasn't speaking loudly enough. That last part, that
14 hoisting can be done by means other than wire rope
15 hoist drum equipment, that's already part of the
16 standard --

17 MR. CANNON: Oh, okay.

18 MS. BRIEFEL: -- first of all. And second
19 of all, I don't think that, you know, in terms of the
20 scope and what's in and what's out, I think that's
21 what's set forth in 1401 and that wouldn't be impacted
22 I don't think by the statement. I don't think that
23 this would broaden the meaning of hoisting in that
24 sense. And also the amendments that we presented
25 related to forklifts --

1 MR. CANNON: Right.

2 MS. BRIEFEL: -- previously, those are still
3 also -- you know, our plan is to include those also in
4 the proposed crane amendments.

5 MR. CANNON: So that one would be okay.

6 MS. BRIEFEL: So I hope that answers your
7 question.

8 MR. CANNON: It looks like that would be
9 okay.

10 VOICE: Yeah. Right.

11 MR. CANNON: I just wanted to make sure.

12 CHAIRMAN STAFFORD: Chuck?

13 MR. STRIBLING: Chuck Stribling, Kentucky
14 Labor Cabinet. In consideration of Mr. Rank's
15 comments, I would just ask DOC is there a way to
16 reconcile his concern with the definition?

17 MS. BRIEFEL: I would only note that, you
18 know, looking at the language I don't think that just
19 striking that language would necessarily achieve that
20 end. You know, I think I appreciate this like other
21 perspective of how it might impact other things and
22 that's, you know, certainly something we can take a
23 look at, but in terms of being held in a stationary
24 position, I think our concerns still about the
25 employees within the fall zone would still hold true

1 even if the load wasn't moving at the moment.

2 CHAIRMAN STAFFORD: Garvin, do you have
3 something to add?

4 MR. BRANCH: We want to note too that the
5 steel erection standard is the vertical standard in
6 this particular situation, so --

7 MR. RANK: Yeah.

8 MR. BRANCH: -- it wouldn't even apply here.

9 CHAIRMAN STAFFORD: Go ahead, Steve.

10 MR. RANK: Mr. Chairman, yeah. I agree with
11 that, but when you're put on the defensive and you
12 have a job that's shut down because someone is looking
13 at your standard and says, A, it has tension on it
14 and, B, it's stationary, it's under the crane
15 standard, then we're faced with a job shutdown, very
16 costly, potential litigation, unnecessary litigation,
17 maybe some citations and everything else that follows.

18 So that's why this wording is very, very
19 important that we revisit this, and I would ask that
20 before we decide on this that we carefully consider
21 this and make a motion what this committee's position
22 is on its wording as far as stationary and being held
23 in a stationary position --

24 VOICE: Right.

25 MR. RANK: -- and tension.

1 CHAIRMAN STAFFORD: Well, I mean, do we --
2 okay. Go ahead, Steve.

3 MR. HAWKINS: Steve Hawkins. It may be that
4 a note, because we have notes in standards now that
5 are actually a good thing. It could be that a note --

6 VOICE: Yeah.

7 MR. HAWKINS: -- right there that says
8 connecting beams is covered by Subpart R. Is that
9 right? Does somebody remember that?

10 VOICE: Right.

11 MR. HAWKINS: And that might be all it
12 takes, and then you haven't changed anything. You
13 haven't made any substantive changes here. You've
14 just gotten Steve out of a hard spot potentially and
15 helped compliance officers. You know, that's the
16 other part.

17 VOICE: Yeah.

18 MR. HAWKINS: If you look at Chuck and I and
19 look at a lot of what we do from the compliance
20 officer standpoint, and while we all know about the
21 vertical standard we all know we've probably got
22 employees working in all of our agencies that don't
23 fully grasp vertical standards versus horizontal
24 standards at this point in their career, so it might
25 be we can do something like that or recommended that

1 something like that be done.

2 CHAIRMAN STAFFORD: So, I mean, in terms of
3 recommendations that sounds like to me a relatively
4 easy fix, Ashley. Oh, go ahead, Chuck.

5 MR. STRIBLING: Just and I would agree with
6 what Mr. Hawkins said, and also suggest that the note
7 address the rebar cages that Mr. Rank brought up
8 because the steel erection standard would apply there.

9 VOICE: Because that's steel erection too.
10 Yep.

11 MR. RANK: Mr. Chairman?

12 CHAIRMAN STAFFORD: Yes?

13 MR. RANK: One last comment. It's just a
14 minor correction here. There's nothing under the
15 Subpart R steel erection that says that connectors
16 can't put bolts in one beam and traverse them. That's
17 not under Subpart R. It's under letters of
18 interpretation where that constitutes riding a load.
19 And this has been decided by an Administrative Law
20 Judge both in the state approved OSHA plan and under
21 federal OSHA, one in Ohio and one in the State of
22 California, and I can get you those cases, that said
23 this does not constitute "riding a load" because it's
24 not moving.

25 And so we've hung our hat on that and

1 there's been no problems over the years. I've just
2 got to make certain that this proposed language
3 doesn't open that can of worms unintentionally, okay,
4 to create havoc in the workplace. So I would move
5 that it not be included in there unless of course, as
6 Steven has suggested and Charles, that there's a big
7 note at the bottom in bold letters, okay?

8 MS. BRIEFEL: You'll have to take that one
9 up with the *Federal Register*.

10 MR. RANK: I will.

11 VOICE: They don't like bold.

12 CHAIRMAN STAFFORD: Okay. So let's move on
13 to the next one, or do you want a motion now? It
14 seems like to me that maybe we need to take action on
15 each one of these individually, particularly if we're
16 going to suggest that you do something differently
17 than what you're proposing. So, Mr. Rank, I'd like
18 for you to put together a motion --

19 MR. RANK: Okay.

20 CHAIRMAN STAFFORD: -- on what we want to do
21 with this proposed amendment with your and Steve and
22 Chuck's suggestion that we add a note to clarify what
23 this means to you.

24 MR. RANK: Okay. I would have to in lieu of
25 striking the words "or is held in a stationary

1 position" -- that would be my first choice, okay? My
2 first choice would be to strike those words, and that
3 takes care of all the note and all the months and
4 months it would take to clarify the note. So what's
5 easier, to strike out those five words or the note?

6 MS. BRIEFEL: I would say if you'd like to
7 ask the committee, you know, which you think would be
8 the best option, but you should make that decision
9 before an actual --

10 VOICE: Okay. We're just still discussing
11 it.

12 MR. RANK: Okay. I would say if you're
13 asking for an amendment it would be a motion, if
14 that's what you're --

15 CHAIRMAN STAFFORD: Hold on. So are you
16 suggesting, Steve, do you have -- give me the sentence
17 that you want to hear.

18 MR. RANK: I'll have to write it. Okay. I
19 would say, first of all, to strike that out unless
20 that's just completely off the table, and we can
21 discuss that.

22 VOICE: Are we just discussing the whole
23 thing?

24 CHAIRMAN STAFFORD: We're discussing, yeah.
25 Right. Okay. Yeah. First Palmer, and then back to

1 Steve.

2 MR. HICKMAN: Thank you. Palmer Hickman,
3 employee rep. I'm going to make a case that striking
4 those words, "held in a stationary position," neither
5 adds to the rule or takes away because, Steve, I would
6 make the argument that the load would still be
7 exerting tension or force whether or not stationary or
8 moving, so I don't know if that would fix it removing
9 those words because that load is still exerting
10 tension on the crane.

11 MR. RANK: That's true.

12 CHAIRMAN STAFFORD: Go ahead, Steve.

13 MR. HAWKINS: So there's logic to why you've
14 included this language and it's for being exposed to
15 the load beneath it and so I would say that I wouldn't
16 think we want them to remove this. We want to add a
17 note of clarification here because what's here was
18 never intended to apply to what Steve has discussed,
19 but it clearly could, even though it's unintentional.
20 So I think we should add a note that employees on a
21 stationary beam with fall protection -- somehow we've
22 got to fix this with --

23 MR. RANK: Okay.

24 MR. HAWKINS: -- a note or some
25 clarification that appears in the standard, but not

1 necessarily take these words out because that too
2 would have unintended consequences. These didn't just
3 appear on the page. They have some logic behind them
4 as well, so --

5 MR. RANK: Got it.

6 CHAIRMAN STAFFORD: Okay. Mr. Sokol?

7 MR. SOKOL: Ron Sokol, public
8 representative. I'd like to just call our attention
9 to the very next slide on there where there is a note
10 used where on the pile driving it says, "See exception
11 for pile driving requirements in paragraph...", and
12 then it goes on --

13 MR. HAWKINS: Good example.

14 MR. SOKOL: -- so that that similar example
15 would be used there for this definition where it says
16 exception, and then it would just have it for the
17 steel erection to take care of Mr. Rank's concerns.

18 CHAIRMAN STAFFORD: Okay. So we don't
19 necessarily then, Ashley. I think it sounds like that
20 what we would like to do is take action on your
21 proposal, and the action would be that we'd move to
22 support with a note that clarifies. I'm not sure that
23 you're asking the committee specifically what the
24 language in the note should be, but we're suggesting
25 that you add a note to clarify this, and Steve is very

1 I think adamant that that's in the record that a note
2 be added if we move on this.

3 MR. RANK: I concur, and I even have some
4 suggested note for the committee's consideration for
5 the motion.

6 CHAIRMAN STAFFORD: All right. That sounds
7 good. All right.

8 MR. RANK: Okay.

9 CHAIRMAN STAFFORD: Well, let's hear what
10 you got.

11 MR. RANK: Here we go. It's short. Note --

12 VOICE: That's not acceptable.

13 VOICE: That's good.

14 MR. RANK: This definition does not apply to
15 steel erection or reinforcing steel hoisting
16 operations.

17 CHAIRMAN STAFFORD: Everybody all right with
18 that? Okay. We'll go to Andy and then back to
19 Palmer.

20 MR. PETERS: I just had a question for
21 Steve. You know, we've thought of two instances,
22 right, and I'm in agreement with you. Have we thought
23 about everyone? I'd hate to think that there are
24 other circumstances that we're not thinking of
25 currently where the same condition could exist.

1 MR. RANK: I agree. There could be many
2 other conditions, but I know one thing; about 99
3 percent of work is doing exactly what I explained, and
4 that's suspending it, getting on it, securing it and
5 then releasing it from the hoist line. That makes up
6 99 percent of the work. And as stated right here, that
7 would throw a big wrench in the work that we do and
8 how we do it. Somehow we need to come to an agreement
9 on the wording on the note, and maybe that's not the
10 right wording, but I'm looking for more.

11 MS. BRIEFEL: Steven, would you mind reading
12 that language again?

13 MR. RANK: Yes.

14 MS. BRIEFEL: Would that be all right?
15 Sorry.

16 MR. RANK: Sure.

17 MS. BRIEFEL: Thank you.

18 MR. RANK: And it's open to amendments,
19 Ashley.

20 MS. BRIEFEL: Yeah.

21 MR. RANK: Note: This definition does not
22 apply to steel erection or reinforcing hoisting
23 operations.

24 CHAIRMAN STAFFORD: Chuck?

25 MR. STRIBLING: Chuck Stribling, Kentucky

1 Labor Cabinet. And I appreciate the effort Mr. Rank
2 made writing up some proposed language, but I'm not
3 really comfortable dictating specific language to the
4 Agency because this has to go through the solicitors.
5 So, you know, they're going to change it. You can
6 mark my words. They will change it, whatever we
7 propose. So I think something that you suggested
8 earlier, you know, a motion in favor of the definition
9 with a direction to OSHA to insert a note that
10 addresses the concerns brought forth by the committee
11 might be the best way for them to have the latitude to
12 do this because it's got to be cleared through the
13 Agency.

14 CHAIRMAN STAFFORD: All right. I appreciate
15 that. Christine?

16 DR. BRANCHE: Christine Branche, NIOSH. I
17 hear what you're saying, but I also want to make
18 certain. I think it's important for the committee to
19 make its sentiments known, so just saying that it's a
20 suggested language, all of it's going to go through
21 the solicitors and anything we do is just a
22 recommendation.

23 MR. STRIBLING: Right.

24 CHAIRMAN STAFFORD: No. I concur with that.
25 I mean, so Steve's suggested language is on the record

1 and, as you say, Chuck, the Solicitor's Office will
2 take a look at that and they're going to do what
3 they're going to do. So let's do that. Look, if you
4 have a question or comment, speak up.

5 MR. CANNON: I just had a question, yeah, to
6 Andy's point where this could be applicable outside of
7 just steel erection. I mean, could you be more
8 general in the language, you know, structural
9 components or, you know, something that would capture
10 not only steel erection activities, but other, you
11 know, examples that are not applicable to Subpart R?

12 CHAIRMAN STAFFORD: Alex?

13 MR. BELTRAN: Why can't we throw in and/or
14 other vertical standards --

15 MS. BRIEFEL: When you're --

16 MR. BELTRAN: -- because the vertical
17 standards are the ones that they've got to refer to
18 anyway, so --

19 MS. BRIEFEL: Yeah.

20 MR. BELTRAN: -- they should be included in
21 the note.

22 MS. BRIEFEL: If I may just to clarify also
23 from my perspective of making sure that I totally
24 understand your concerns? I mean, the big concern is
25 about the workers that need to be on the elements of

1 the structure that are being --

2 VOICE: Right.

3 MS. BRIEFEL: -- hoisted or supported by the
4 crane, correct?

5 VOICE: Right.

6 MR. RANK: Yes.

7 MS. BRIEFEL: So I would think maybe in that
8 direction is also kind of --

9 MR. RANK: Good.

10 MS. BRIEFEL: But I also wanted to note our
11 counsel reminded me that I think the *Federal Register*
12 is looking less favorably on things like notes. So,
13 you know, as you pointed in this one, you know,
14 instead of doing that as a note it's actually a
15 provision.

16 So just in terms of, you know, I think
17 Chuck's recommendation about doing something that
18 achieves the objectives of the committee, but not kind
19 of narrowing us down to specific language. We often
20 try to do notes, but sometimes notes are looked not as
21 favorably, you know, because it's questionable whether
22 it's truly part of the standard or not, so if that
23 makes sense. We've been kind of leaning away towards
24 doing notes. We're more inclined to kind of put the
25 provision right there so it's, you know, clearly a

1 requirement in some cases.

2 CHAIRMAN STAFFORD: Go ahead, Steve.

3 MR. RANK: Mr. Chairman, Ashley, I
4 appreciate that you clearly understand our situation,
5 and I appreciate that. I think it's going to take
6 some work to work through this. But as written I would
7 have to strongly object to this as written as going
8 forward to be on the record because I cannot subject
9 our industry to this kind of maybe unintended
10 misinterpretation in the field where 99 percent of our
11 work is doing exactly what I described, but I really
12 appreciate that you understand the situation. We just
13 have to try to work this out, so --

14 CHAIRMAN STAFFORD: Well, I mean, you're
15 suggesting that we're not going to work this out here,
16 so, you know --

17 MR. RANK: Okay.

18 CHAIRMAN STAFFORD: -- I think at the end of
19 the day that we're not going to make a motion on
20 this --

21 MR. RANK: Okay.

22 CHAIRMAN STAFFORD: -- but basically we've
23 deliberated and it sounds like to me there's a
24 sufficient enough concern, unless you want a motion
25 that's not passed, that we're going to pass on this

1 amendment until it's straightened out. Is that fair?

2 MS. WILSON: Well, I think that OSHA needs a
3 motion that concerns the four different elements of
4 this. Certainly --

5 CHAIRMAN STAFFORD: But we'll take them one
6 at a time though.

7 MS. WILSON: -- you know, you can do them
8 one at a time. You could do a motion that covers all
9 four. You can approve, you can disapprove, or you
10 could approve with, you know, a suggestion of a
11 modification.

12 CHAIRMAN STAFFORD: Right. So we've decided
13 I think up front Lisa, we're going to take one at a
14 time. We're on number one out of four, and it sounds
15 like to me that we don't have a motion that says that
16 we approve this proposed language.

17 MR. RANK: Correct.

18 MS. BRIEFEL: Okay. And, I mean, I think,
19 you know, there's always the possibility of having a
20 motion kind of similar to what Chuck discussed, that,
21 you know, states the objectives that the committee
22 would like to see achieved through an amendment or a
23 change to the amendment --

24 CHAIRMAN STAFFORD: Well, I mean, I think
25 the easy answer was -

1 MS. BRIEFEL: -- without necessarily
2 spelling out language.

3 CHAIRMAN STAFFORD: -- it sounded like the
4 note was the appropriate thing until we're told you no
5 longer like notes, so that kind of blew that one up,
6 right, so what's the alternative?

7 MS. BRIEFEL: Well, it could be called an
8 exception, right? Right.

9 CHAIRMAN STAFFORD: Okay.

10 MS. BRIEFEL: Adding an exception.

11 MS. WILSON: And it could use the same
12 language.

13 MS. DePRATER: Cindy DePrater, employer rep.
14 Did you say that we can actually disapprove this
15 through a motion?

16 VOICE: Yes.

17 CHAIRMAN STAFFORD: Yes.

18 MS. WILSON: Yes. I mean, a committee can
19 recommend that OSHA not proceed with something OSHA
20 proposes, yes.

21 MS. DePRATER: Okay.

22 MR. RANK: I'll make that motion.

23 VOICE: We're not ready to do that, are we?

24 CHAIRMAN STAFFORD: I don't think so.

25 MS. DePRATER: I just think there are things

1 that we haven't thought about in terms of, you know,
2 we've got Steve's points, but there are a lot of
3 broader issues in terms of mechanical equipment, large
4 air handlers, and boilers, and things that have to be
5 suspended and held until they can be set down
6 properly, and it goes beyond what Steve is talking
7 about here.

8 CHAIRMAN STAFFORD: Right. No. I'm clear.
9 Steve is very, very, very narrow minded on his
10 industry, and I appreciate that. So it still comes
11 back that we think we all agree with what you're
12 trying to do, but we're not comfortable with the
13 language, and so I think there needs to be a note or
14 an exception, something that we could say that if you
15 want action on this that we approve what you're doing,
16 but we need clarification in some form of what we're
17 talking about here. Tish, then Steve, then Ron?

18 MS. DAVIS: Can we improve the intent of
19 this amendment to protect workers who are under these
20 suspended loads -- I mean, that's the intent; it's not
21 approving this --

22 VOICE: Right.

23 MS. DAVIS: -- with addressing the concerns,
24 Steve's concerns or even more broadly workers who need
25 to be on top of them? Is there a way of improving the

1 intent or not? I don't know.

2 CHAIRMAN STAFFORD: I don't know. Steve,
3 and then Ron? We'll get back to that, Tish.

4 MR. HAWKINS: Just not in the form of a
5 motion, but just as an additional point of discussion.
6 Could we have a motion, or how might we change this
7 that said ACCSH recommends to the Agency that this
8 definition be clarified or modified or an exception
9 added to make clear that employees would not
10 specifically be prohibited from using stationary loads
11 as a walking/working surface?

12 VOICE: That's good.

13 VOICE: I like that.

14 CHAIRMAN STAFFORD: Just hold onto that for
15 one second. Let's get through the discussion. Ron?

16 MR. SOKOL: Ron Sokol, public
17 representative. If we go by the format that you said
18 the Agency doesn't like notes or we're moving away
19 from notes to language of an exception, if we use the
20 example in the pile driving anti two-block and said:

21 Exception: For steel erection work or other
22 work activities covered by a vertical standard, the
23 definition of hoisting in Section 1926.1401 does not
24 apply.

25 MS. BRIEFEL: Is that language you're

1 suggesting? Sorry.

2 MR. SOKOL: Yes.

3 MS. BRIEFEL: And, I mean, it could also
4 probably just be part of the definition as, you know,
5 the definition --

6 MR. HAWKINS: But that --

7 CHAIRMAN STAFFORD: Hold on.

8 MS. BRIEFEL: -- already has several
9 sentences that clarify.

10 CHAIRMAN STAFFORD: Steve, and then
11 Christine?

12 MR. HAWKINS: Sorry. The problem with what
13 Ron stated is that goes too far, in my opinion,
14 because now it said this doesn't apply at all. This
15 definition doesn't apply. The issue we've got is we
16 just want it clarified that a load under tension in a
17 stationary position, that employees could access that,
18 and this definition doesn't prohibit that, and doesn't
19 kick you over to 1431. That's really what we're
20 trying to accomplish, whether it be steel erection or
21 a boiler that's being held in place and now you've
22 gone up and accessed it --

23 MR. HICKMAN: Roof trusses.

24 MR. HAWKINS: -- with a ladder. There's a
25 million different scenarios -- there really is -- the

1 more we sit here and think about this.

2 So, I think if we said something like what
3 we said here to make it clear that this doesn't
4 prohibit an employer or employees from accessing the
5 suspended stationary load and use the word
6 walking/working surface, I think we could. I think
7 the Agency would certainly take that and do what --
8 they would hear what we're saying in the form of a
9 motion.

10 CHAIRMAN STAFFORD: Okay. I think that's --

11 MR. HAWKINS: Because we're not standards
12 writers, and nobody expects that out of this
13 committee.

14 CHAIRMAN STAFFORD: Right. Christine, and
15 then Paul?

16 DR. BRANCHE: Christine Branche, NIOSH. So
17 reversing what I said earlier, a little bit earlier, I
18 actually think where Steve and actually Chuck was
19 trying to get us in this direction to begin with, I
20 think if we say sort of the spirit of what our
21 sentiments are that's going to take us on the best
22 path of getting through these.

23 MR. HAWKINS: I think so too.

24 DR. BRANCHE: Because even language that the
25 Solicitor, who's making recommendations now, by the

1 time two weeks from now and certainly two months from
2 now, this could certainly change. So I would hate to
3 think that we never go on record with generally where
4 our objections and where our sentiments are on these
5 because if we try to think through every possible
6 scenario we're not getting out of here today.

7 CHAIRMAN STAFFORD: Correct. Smart people
8 have been thinking about this for how many years now,
9 so we're not going to be doing that. Palmer, you're
10 the last comment on this.

11 MR. HICKMAN: Thank you, Mr. Chairman.
12 Palmer Hickman, employee rep. So as Kevin spoke, I
13 immediately thought of roof trusses. So my question
14 is does the Agency specifically intend to prohibit
15 people from being on roof trusses, rebar cages, or did
16 they not intend that, and I think this is a fair
17 point. So I don't think we can think of everything
18 here. We certainly have plenty in the public record,
19 you know, here. This is a transcribed meeting. And
20 so I think I heard a motion that seemed reasonable --

21 VOICE: Yeah. I think Steve --

22 MR. HICKMAN: -- that he didn't make that I
23 would second if it was made.

24 CHAIRMAN STAFFORD: Well, we're going to
25 make that now.

1 MR. HICKMAN: Thank you.

2 CHAIRMAN STAFFORD: All right. So, Steve, I
3 would like for you to form that up again in the form
4 of a motion. You did it once very, very good.

5 MR. RANK: Can I have 30 seconds?

6 CHAIRMAN STAFFORD: Yes.

7 MS. BRIEFEL: And just as a reminder, you
8 know, this rule is in the developmental phase. It's
9 going to be a proposed rule. There'll be an
10 opportunity for comment and further refinement of the
11 language, you know, through the rulemaking process as
12 well. And, you know, kind of echoing what Christine
13 said, you know, I think something in the spirit of Mr.
14 Hawkins' recommendation that kind of gives us the
15 latitude to find the language that achieves the I
16 think very valid concerns that I'm hearing members of
17 this committee raise and that we didn't fully consider
18 when we developed this language, something along those
19 lines, but specific to those concerns about not
20 kicking people in 1431, but at the same time, you
21 know, gives us room to find the language that would be
22 sufficient. That I would think would work well, but -
23 -

24 CHAIRMAN STAFFORD: Okay. All right. Thank
25 you. So back, Steve. Are you -- do you need --

1 MR. RANK: I think so.

2 CHAIRMAN STAFFORD: Okay. So back to my
3 original when we started this conversation. Before we
4 take action in the form of a motion on this particular
5 provision, did anyone sign up for public comments to
6 talk specifically about this issue?

7 (No response.)

8 CHAIRMAN STAFFORD: Okay. So, Steve, please
9 proceed with the motion.

10 MR. RANK: So, Mr. Chairman, the motion is
11 ACCSH recommends that OSHA proceed with rulemaking and
12 requests OSHA clarify, modify or add an exception to
13 make it clear that the standard would not specifically
14 prohibit workers from using a stationary suspended
15 load as a walking/working surface.

16 CHAIRMAN STAFFORD: All right. So we heard
17 the motion. Is there a second?

18 DR. BRANCHE: Second.

19 VOICE: Second.

20 CHAIRMAN STAFFORD: And we have a second.
21 All those in favor signify by saying aye?

22 (Chorus of ayes.)

23 CHAIRMAN STAFFORD: Any opposed?

24 (No response.)

25 CHAIRMAN STAFFORD: All right. One down.

1 MS. BRIEFEL: Thank you. I think the next
2 one is hopefully a little easier to understand. It's
3 kind of like a graph.

4 VOICE: Yeah. Right.

5 MS. BRIEFEL: And, I mean, I do want to say
6 I really appreciate the perspective that we got out of
7 this and, you know, this is what ACCSH is all about,
8 so --

9 CHAIRMAN STAFFORD: Okay. Yeah.

10 MS. BRIEFEL: -- that was very helpful to us
11 too.

12 CHAIRMAN STAFFORD: Okay. Thank you,
13 Ashley.

14 MS. BRIEFEL: Okay. So, operational aids.
15 Section 1926.1416, that section essentially includes a
16 list of operational aids that cranes must be equipped
17 with and instructions on what to do when those
18 operational aids aren't functioning, and two of these
19 operational aids are the anti two-blocking devices and
20 the load weighing device or similar device.

21 And the anti -- sorry. The anti -- here.
22 Do you need a second?

23 CHAIRMAN STAFFORD: Oh, that's all right.

24 MS. BRIEFEL: All right. The anti
25 two-blocking device, it goes at the boom tip of the

1 crane, and the purpose of that device is to provide a
2 warning to the operator of the crane if the load block
3 is approaching, you know, coming in contact with the
4 boom of the crane. And if that contact occurs it can
5 cause the load line to break and the load to fall, so,
6 you know, it's an important aid.

7 The load weighing device is going to give
8 the operator a warning about the weight of the load
9 and if, you know, the boom is getting overextended,
10 that sort of thing, to prevent a tipover when the
11 crane becomes overloaded.

12 So during pile driving, pile driving
13 operations can cause a forceful -- its forceful
14 repetition or vibration is caused by pile driving, and
15 that causes the crane to vibrate and it can have an
16 effect of damaging the anti two-block device and also
17 damaging load weighing equipment.

18 And OSHA already partially recognized this in its
19 requirements in 1416. Under the anti
20 two-blocking devices during pile driving for lattice
21 boom cranes, cranes do not need to be equipped with an
22 anti two-blocking device. However, OSHA recognizes
23 that sometimes other cranes perform pile driving
24 operations, and OSHA also did not exclude the
25 requirements for the load weighing devices in the

1 crane standard.

2 And so this proposal would basically broaden
3 that exception to allow employers to not equip their
4 crane or not have an anti two-blocking device during
5 pile driving when using telescoping boom cranes and
6 also during load weighing and similar or during pile
7 driving not to have a load weighing or a similar
8 device on their crane. And so, that's basically the
9 extent of the amendment. I'm not sure if anyone has
10 any questions about that.

11 CHAIRMAN STAFFORD: Any questions or
12 comments? This is pretty straightforward.

13 (No response.)

14 CHAIRMAN STAFFORD: Anyone sign up for
15 public comment on this issue specifically? Yeah?
16 Come on up.

17 MR. TREML: Thank you, Mr. Chair, members of
18 the committee. My name is Chris Treml. I'm
19 representing the operating engineers. The one
20 clarification that we see with the load weighing
21 equipment and the two-blocking is it's more not with
22 the ground penetration when you're driving the piles
23 or you're driving the sheets. It's more with the
24 retraction and the removal. If you have a lattice boom
25 crane, most of the time -- all the time -- they are

1 over capacity. The telescopic cranes, if you try to
2 withdraw a sheeting, a piece of sheeting or a pile,
3 and, you know, you're stressing you don't know what
4 the stress is on that boom if your load moment
5 indicator is not working. So that's one particular
6 issue.

7 A lot of times with these hydraulic cranes,
8 the rough terrains and the all-terrain cranes, they're
9 on the job. They're doing multipurpose work. They're
10 moving sheets, moving piles. We would like to see
11 clarification that when the machine goes back into its
12 normal scope of work that those load moment indicators
13 or those load weighing devices and two-blocking
14 devices go back into service, and that would include
15 removing piles and removing sheets. You know, just so
16 they know, I mean, the last thing you want to see is a
17 boom failure.

18 If you're pulling on a sheet that's buried
19 underground, you don't know how much force you have on
20 that sheet or that pile while you're pulling on it, so
21 that's our clarification issue.

22 CHAIRMAN STAFFORD: Okay. I appreciate
23 that, Chris. Are there any comments about that? I
24 mean, it sounds reasonable to me.

25 (No response.)

1 CHAIRMAN STAFFORD: So, Ashley, I guess
2 we're back to this discussion of maybe clarification
3 on this issue to address that point that after the
4 pile driving operation -- maybe it's implied. It's
5 implicit maybe, but, you know, it sounds like that we
6 might need to make it explicit.

7 MS. BRIEFEL: Yeah. A few notes. First of
8 all, I forgot to mention that under our proposed
9 amendments we would also require employers to comply
10 with the temporary alternative measures that are
11 already set out in 1926.1416. So, basically the
12 standard has temporary alternative measures for each
13 operational aid like if the device is broken, if it's
14 being repaired. And so those same measures that we had
15 already established for anti two-blocking equipment
16 and load weighing equipment, employers would be
17 required to implement those measures if they were not
18 using their anti two-block or load weighing equipment
19 during pile driving.

20 So, for the anti two-blocking that's going
21 to be marking the cable so that the operator can see
22 where they need to stop hoisting and also using a
23 spotter during boom extension. For load weighing,
24 that's basically going to be, you know, traditionally
25 determining the weight of the load and providing the

1 information to the operator. So that may involve like
2 a load calculation. That might be involving
3 information from, you know, the manufacturer of the
4 pile driving equipment what that load is.

5 I'm not sure that, that would fully address
6 your concern about removing the piles and removing the
7 sheets, but in addition I think that we would consider
8 the removing of the piles probably part of the pile
9 driving activity, so I'm not sure that your concern
10 would be fully addressed there. You know, I think we
11 considered our language to sufficiently encompass the
12 idea that when pile driving work is over, you know,
13 you're kind of back in just general crane operation.
14 I mean, I think, you know, it's only during pile
15 driving work that this exception applies, but it's
16 sounding to me like your concern about the piles and
17 the sheets would still kind of be --

18 MR. TREML: There's still the point --

19 MS. BRIEFEL: Okay.

20 MR. TREML: -- as you're driving piles there
21 are situations where the pile might not go in
22 correctly and you have to remove it and start over
23 again.

24 MS. BRIEFEL: And you're saying that load
25 weighing equipment is important during that part of

1 the work.

2 MR. TREML: If that pile has any type of
3 tension on it and the tension you're putting on that
4 pile is more than -- outside the crane's capacity,
5 you're going to have a boom failure.

6 MS. BRIEFEL: And so under our temporary
7 alternative measures essentially the employer would
8 have the duty to determine what that, you know,
9 tension would be.

10 MR. TREML: He would have the duty to put
11 those load weighing and two-block devices back into
12 effect any time there's a removal operation or the
13 crane goes back to its normal scope of work.

14 MS. BRIEFEL: Right. That's your
15 suggestion --

16 MR. TREML: Yes.

17 MS. BRIEFEL: -- as opposed to what I'm
18 saying. Under the current standard it would just be
19 that the employer would have the duty to, you know,
20 know what essentially that tension, that weight would
21 be.

22 MR. TREML: The big thing was it's not in
23 there, anything about removal. That's the big thing
24 because that's the big --

25 CHAIRMAN STAFFORD: Okay. Steve?

1 MR. TREML: -- part of pile driving, putting
2 them in, taking them out after the fact.

3 CHAIRMAN STAFFORD: Right. Okay. Steve?

4 MR. HAWKINS: Let me make sure I understand.
5 So a lot of the sections have temporary provisions
6 for --

7 MS. BRIEFEL: So it's vibrating during the
8 removal too. Sorry.

9 MR. HAWKINS: That's okay. A lot of the
10 standards have temporary --

11 MS. BRIEFEL: Okay. Go ahead.

12 MR. HAWKINS: Okay. So a lot of the
13 standards have temporary provisions like you pointed
14 out. In this case we're saying that a person who's
15 doing pile driving can do the temporary alternative
16 measure the whole time and not be in a temporary
17 position. That's just what they can do is mark their
18 cable and have a spotter.

19 MS. BRIEFEL: While pile driving. Correct.

20 MR. HAWKINS: While pile driving. So I
21 don't understand. We're saying that you can pile
22 drive without your anti two-block device by marking
23 the cable and having a spotter unless a piece goes in
24 crooked and you go to pull it out, and then you can no
25 longer use this exception?

1 MR. TREML: At that point you have it
2 disconnected. You have your load weighing device
3 disconnected.

4 MR. HAWKINS: Your what?

5 MR. TREML: The load moment indicator. The
6 computer in the crane is no longer --

7 MR. HAWKINS: But that's not what this says.
8 This doesn't say you have it disconnected, right? Am
9 I missing something?

10 MS. BRIEFEL: You're not required to have
11 it.

12 VOICE: Right.

13 MS. BRIEFEL: So I think in some cases that
14 would involve, you know, basically a disconnection, so
15 that damage wouldn't be caused by that.

16 MR. HAWKINS: But all this is saying is if
17 you're not going to use your anti two-block device
18 you're going to paint your cable and have a spotter,
19 and I don't see how that relates to what this
20 gentleman is talking about.

21 VOICE: The second part of it.

22 CHAIRMAN STAFFORD: The second part.

23 MR. HAWKINS: Sorry. I just don't. I don't
24 want to vote unless I understand. Okay. So we really
25 haven't gotten to this one and we went ahead. I'm

1 sorry.

2 MS. BRIEFEL: So to clarify, so OSHA
3 recognizes that there is obviously a hazard of not
4 using these operational aids, and I think our
5 preliminary conclusion going into this rulemaking
6 again at the proposed rulemaking phase is that the
7 risk of damage to these pieces of equipment outweighs
8 the benefit of having the equipment there because it's
9 our understanding that, you know, the vibration during
10 the pile driving operation is causing these devices to
11 malfunction.

12 So it's kind of a weighing of hazards here,
13 not, you know, a total elimination. Not having them
14 in place during pile driving does present some risk,
15 but we believe that risk is outweighed by the risk of
16 ruining the equipment.

17 MR. HAWKINS: And also by following the
18 temporary alternative measures that are set out on
19 this third slide, right?

20 MS. BRIEFEL: The temporary alternative
21 measures would be a way of mitigating that risk. So,
22 even though we would be allowing employers to not use
23 their anti two-block and load weighing equipment
24 during the operation, we would have the temporary
25 alternative measures in place to hopefully mitigate

1 some of the risk of not having those operational aids
2 activated.

3 MR. HAWKINS: Which is what you would have
4 to do if you had an older crane anyway that didn't
5 have this device, right?

6 MS. BRIEFEL: If you had a crane, right,
7 that wasn't required to have the device, if you had a
8 crane -- actually, no. I believe that there's no
9 requirement to follow if it's an older crane. So, if
10 it's a piece of equipment that's manufactured before
11 the operational aid is required I don't believe we
12 have any requirements for that equipment.

13 MR. HAWKINS: So, maybe the DOC can answer
14 this question. If you're worried about damage, are we
15 talking about turning this circuit off, or are we
16 talking about going and unbolting something from the
17 crane somewhere so it doesn't get damaged? That's
18 what --

19 MS. BRIEFEL: Our understanding is that
20 people have requested variances to remove the parts
21 that can be damaged.

22 MR. HAWKINS: Okay.

23 MS. BRIEFEL: Physically remove them from
24 the crane.

25 MR. HAWKINS: During pile driving.

1 MS. BRIEFEL: Yes.

2 MR. HAWKINS: Which is a violent use of a
3 crane where I've seen it.

4 MS. BRIEFEL: And these are concerns that,
5 you know, were raised and considered during the cranes
6 rulemaking too, and also in the arena of floating
7 cranes the standard actually exempts employers from
8 using both of those pieces of equipment in pile
9 driving and other activities that kind of have
10 similar --

11 CHAIRMAN STAFFORD: Ron, and then Cindy?

12 MR. SOKOL: Ron Sokol, public
13 representative.

14 MS. BRIEFEL: Yes?

15 MR. SOKOL: As I understand the gentleman's
16 concern, if we would look at the load capacities or
17 the load weighing in similar devices, the temporary
18 alternative, it seems to me that that temporary
19 alternative only deals with the weight of the load,
20 and you have concern about the forces on the boom --

21 VOICE: And friction.

22 MR. SOKOL: -- as well as crane hoisting
23 activities once returned to service. So, it would
24 seem to me if we would just expand the alternative
25 measures to include those provisions and then they

1 must be determined by a source recognized by industry
2 or a calculation method then that would ensure that
3 the integrity of the crane would be maintained while
4 these safety devices are inoperative. Is that
5 correct? Would that satisfy your concerns?

6 MR. TREML: As long as there would be a way
7 that the operator would know how much force he's
8 applying on that machine. There's no way. If you
9 don't have your load weighing device turned on or
10 activated, you don't know how much force you're
11 putting on that boom.

12 MR. SOKOL: Okay. All right.

13 MR. HAWKINS: I've got a question for you,
14 Pete.

15 CHAIRMAN STAFFORD: Hold on, Steve. Cindy,
16 and then we'll go back to Steve.

17 MR. HAWKINS: All right.

18 MS. DePRATER: Cindy DePrater, employer rep.
19 And this is a question. If they take those out of
20 service, are you suggesting there is a way to keep
21 them in service so that as they're pulling the
22 sheeting or the piling you could still tell what the
23 load is?

24 MR. TREML: If they turned it off there
25 should be a method or something -- something, some

1 type of clarification -- that if they have to go back
2 to this particular type of operation they have to use
3 their load weighing device. They can't still run the
4 crane without having that load weighing device be
5 ineffective.

6 MS. DePRATER: So are you asking that OSHA
7 consider adding a provision that keeps those in
8 service the entire time no matter what operation is
9 going on?

10 MR. TREML: No.

11 VOICE: No.

12 MS. DePRATER: All right.

13 MR. TREML: Just during removal. We
14 understand the violence of putting piles in. It's
15 just during the removal operation, or if they went
16 back and took -- just mostly during the removal
17 operation.

18 MS. DePRATER: So you're asking OSHA to add
19 a provision that says if you're pulling, sheeting, or
20 piling --

21 MR. TREML: Yes.

22 MS. DePRATER: -- and you've turned off your
23 indicators, at the end of that operation you must turn
24 those immediately back on and test them?

25 MR. TREML: Yes.

1 CHAIRMAN STAFFORD: That's what Chris is
2 suggesting. All right. Steve, and then Kevin?

3 MR. HAWKINS: So, two questions. The first
4 question is if the Agency is correct in understanding
5 that variances have been asked for to physically
6 remove it you're talking about physically bolting it
7 back on, pulling a sheet that just went in crooked,
8 unbolting it --

9 MR. TREML: No. I didn't realize that they
10 were talking about physically removing it. I'm
11 talking about having it turned off at the time.

12 MR. HAWKINS: Well, that's a big difference,
13 right, whether you unbolt it or whether you just turn
14 the switch on and off.

15 MR. TREML: Uh-huh.

16 MR. HAWKINS: If it's a matter of turning
17 the switch off, nobody would disagree with what you're
18 saying, right? I wouldn't.

19 MR. TREML: In most cases I wouldn't see
20 them disconnecting it and taking it out of the cab.

21 MR. HAWKINS: Okay. Then my second question
22 is what does a crane operator do who's operating a
23 crane that was manufactured in 1990 that doesn't have
24 that device? A prudent crane operator.

25 MR. TREML: A prudent crane operator? In

1 most cases they would not be driving piles with a
2 telescopic crane. This is something the newer cranes
3 on the jobs today are doing, the rough terrain cranes
4 and the all-terrain cranes.

5 MR. HAWKINS: But if they were doing it with
6 an old, conventional crane what are they going to
7 consult?

8 MR. TREML: They still have load weighing
9 devices inside the crane prior to 1990.

10 MR. HAWKINS: Well, there's a bunch of
11 cranes out there that don't. I mean, we will see them
12 mostly on bridge jobs by bridge contractors that are
13 really old, conventional cranes, you know, Bucyrus
14 Eries.

15 MR. TREML: Well, that's conventional
16 cranes.

17 MR. HAWKINS: Yeah.

18 MR. TREML: I'm talking this was addressing
19 hydraulic boom cranes.

20 MR. HAWKINS: I understand that, but the
21 hazard is the same. You're saying under these
22 alternatives you can't estimate the load based on just
23 its weight. You also have the friction of the pile as
24 it's pulled out of the ground. And I'm asking you if
25 you use an old, conventional crane that doesn't have

1 that device anyway how does that person -- how does a
2 prudent crane operator estimate that load or determine
3 that load? Well, he can't, right?

4 MS. BRIEFEL: Just to quickly clarify also,
5 the amendment for the anti two-block would only be to
6 the telescoping boom cranes because we already have
7 this exception for lattice boom cranes, but for the
8 load weighing and similar devices this would be a new
9 exception for all cranes. So that would be new for
10 lattice boom as well. That provision applies for
11 equipment other than derricks and articulating cranes,
12 so all other kinds of cranes this would apply for,
13 just to clarify, not just telescoping boom.

14 MR. CANNON: Ashley just answered my
15 question that I was going to ask, what's currently
16 being done with lattice boom cranes.

17 CHAIRMAN STAFFORD: Okay. So any other
18 questions or comments?

19 (No response.)

20 CHAIRMAN STAFFORD: So do we have a form of
21 a motion on this? So first, Chris, thank you.

22 MR. TREML: Yes.

23 CHAIRMAN STAFFORD: I think we understand
24 your concerns, and I know OSHA has heard that as well.
25 So, do we want to make a motion for the record that we

1 approve this proposed amendment?

2 VOICE: I'm okay to make that.

3 CHAIRMAN STAFFORD: All right. Then someone
4 make it.

5 DR. BRANCHE: So move. Please specify the
6 motion.

7 CHAIRMAN STAFFORD: Yeah. We need to form a
8 motion.

9 MR. HAWKINS: Mr. Chairman, I would make a
10 motion that ACCSH recommend to OSHA to proceed with
11 rulemaking on was it Section 1926.416, Operational
12 Aids, (d)(3), and Operational Aids, (e)(4). That's
13 the two that we just discussed.

14 CHAIRMAN STAFFORD: Is there a second?

15 MS. DAVIS: I'll second.

16 CHAIRMAN STAFFORD: Okay. Is there any more
17 discussion?

18 MR. HAWKINS: I don't know. Of course, we
19 can have more discussion.

20 VOICE: They agreed with that.

21 MR. HAWKINS: Well, can I amend my motion?

22 CHAIRMAN STAFFORD: Yes.

23 MR. HAWKINS: And recommend to the Agency to
24 consider the use of load weighing and similar devices
25 as was discussed in this forum.

1 CHAIRMAN STAFFORD: Do that again. I'm
2 sorry.

3 MR. HAWKINS: Okay. Recommend that ACCSH
4 recommend to OSHA to proceed with rulemaking on
5 1926.146(d)(3) and (e)(4), and consider the use of
6 load weighing and similar devices as discussed during
7 this meeting.

8 CHAIRMAN STAFFORD: Thank you, Steve. Is
9 there a second to the motion?

10 DR. BRANCHE: Second. I'll second it.

11 CHAIRMAN STAFFORD: Okay. So we have a
12 motion and a second. Is there any more discussion on
13 this?

14 (No response.)

15 CHAIRMAN STAFFORD: All those in favor
16 signify by saying aye?

17 (Chorus of ayes.)

18 CHAIRMAN STAFFORD: Any opposed?

19 (No response.)

20 CHAIRMAN STAFFORD: Okay. Thank you. Now,
21 for the next motion we're going to make someone else
22 other than Steve Hawkins is going to formulate it.

23 MR. HAWKINS: Thank you.

24 CHAIRMAN STAFFORD: Okay.

25 MR. HAWKINS: I don't think the chairman

1 likes my motions.

2 CHAIRMAN STAFFORD: No. I love your
3 motions.

4 MS. BRIEFEL: All right. Next up, boom
5 attached personnel platforms. I told you we were
6 going to talk about 1431. So, as I had mentioned
7 earlier when this came up, the crane standard has
8 pretty limited circumstances under which cranes can be
9 used to hoist personnel. They allow employers to use
10 cranes to hoist workers only when other methods are
11 more hazardous or not possible. And then the rest of
12 1926.1431 spells out specifically all the criteria for
13 doing those lifts. You know, these are pretty
14 dangerous, pretty important lifts to get right since
15 personnel are being hoisted.

16 And a lot of the provisions of 1431 are
17 coming from the American Society of Mechanical
18 Engineers consensus standard. That's B30.23. And
19 these include criteria not only for, you know, testing
20 and doing practice lifts and, you know, work practices
21 surrounding the lift, but also criteria for the
22 personnel platforms themselves. And one of these
23 criteria is that the personnel platform itself,
24 including the guardrail system and personal fall
25 arrest system anchorages, must be capable of

1 supporting without failure its own weight and at least
2 five times the maximum intended load, so that's
3 essentially what we would say a safety factor or I
4 guess a design factor of five. I'm not an engineer.
5 I've worked very hard to understand the engineering
6 concepts surrounding this issue, so if I mis-speak I
7 apologize.

8 Anyway, the American Society of Mechanical
9 Engineers, the ASME, standard actually differentiates
10 between boom mounted personnel platforms and suspended
11 personnel platforms, and these are very different
12 kinds of personnel platforms. Essentially the
13 suspended one is attached to the load line, so it's
14 like a load, right? The crane is lifting it like it
15 would lift anything else. The boom attached personnel
16 platform is like an attachment of the boom. So, that's
17 going directly onto the boom, and in most cases these
18 are, you know, platforms that are manufactured to be
19 compliant with very specific pieces of equipment.
20 Specific cranes go with specific personnel platforms.

21 And so under the ASME requirements for boom
22 attached personnel platforms that are constructed of
23 ductile materials, which is most are constructed of
24 ductile materials so it's like not cast iron
25 basically, they are required only to have a safety

1 factor of two, not five, and this has been the
2 industry norm for a long time and our understanding is
3 that's how these platforms are manufactured. The way
4 that they're marketed, you know, the manufacturer is
5 going to give the end user a rated capacity, and
6 they're also going to have a stamp on there that says
7 it meets the ASME B30.23 standard. That's the
8 information that the employer is going to get about
9 how their personnel platform is made.

10 And one thing about the ductile material
11 platforms is they stretch. If they're wearing out, if
12 they need to be taken out of service, there's going to
13 be visible signs of wear and tear. And part of the
14 crane standard requires that, you know, before each
15 lift and at other intervals there's a pretty thorough
16 inspection requirement for the employer to be looking
17 at these platforms, looking for these signs of wear
18 and tear, taking them out of service. There's
19 practice lifts, you know. There's lots and lots of
20 protections in place here.

21 So, essentially our proposal is to amend the
22 standard to bring it in line with the ASME standard.
23 So, in general personnel platforms would still comply
24 with that factor of five safety factor, which is also
25 consistent with the ASME standard, but for the boom

1 mounted personnel platforms constructed of ductile
2 material we would also make that then consistent with
3 the consensus standard by making that a safety factor
4 of two. Does that make sense to everyone?

5 CHAIRMAN STAFFORD: Any questions?

6 MS. BRIEFEL: So that's this amendment.

7 CHAIRMAN STAFFORD: Any questions or
8 comments? Yes, please. Alex?

9 MR. BELTRAN: Alex Beltran, employee rep.

10 MS. BRIEFEL: Yep?

11 MR. BELTRAN: My concern is I just want to
12 make sure I understood you right. You said the
13 manufacturers, it's always been that way, two times
14 the --

15 MS. BRIEFEL: For a long time.

16 MR. BELTRAN: -- rated capacity. But how
17 could they manufacture something under current OSHA
18 standards of five times? That's my first question.

19 My second question is, you know, when you
20 lower the safety factor most times even out on a
21 construction site as the normal construction worker we
22 don't think about wind as a factor when they look at
23 well, that looks like it'll support it. I've yet to
24 see any consideration under wind, or any issues where
25 you can justify how strong that wind actually is on a

1 given day-to-day basis when you have maybe five mile
2 an hour winds with 20 mile an hour gusts.

3 We're talking about hoisting people, and
4 we're supposed to be protecting them. I definitely
5 have a problem with the two times the factor. I think
6 it needs to stay at five.

7 MS. BRIEFEL: Okay. So to your point, under
8 the new crane standard is the first time that OSHA has
9 regulated boom attached personnel platforms.
10 Previously, OSHA had only regulated or only provided I
11 guess a written safety factor requirement for the
12 suspended personnel platforms and through
13 interpretation had deferred to the ASME standard, and
14 I'm not sure that this divergence from ASME was
15 something that was fully considered through the
16 rulemaking process.

17 In terms of wind being a factor, I'm not
18 sure that I make the connection of how that impacts
19 the need for a higher safety factor, but we are aware
20 that most -- that many, if not all -- existing boom
21 mounted personnel platforms have been and continue to
22 be manufactured to meet the consensus standards, not
23 the OSHA standard. I'm not even sure to the extent
24 the industry is fully aware that this change happened
25 in the rule, so -

1 CHAIRMAN STAFFORD: Do you want to follow up
2 on that, Alex?

3 MR. BELTRAN: Yeah. You know, again we just
4 talked about, you know, equipment and hydraulic
5 failures and different failures, and I don't
6 personally feel comfortable with the two times. And
7 with wind, wind creates an additional force on
8 anything. So if you're talking about wasting personnel
9 and their tools, I mean, a sheet of plywood, I mean,
10 most of us know how much additional force that could
11 be. So it's just a concern I have, and I'm not for
12 sure if anyone else has it, but I definitely have a
13 concern.

14 MS. BRIEFEL: And I think OSHA in analyzing
15 this issue has had to lean very heavily on its
16 engineering, in-house engineering expertise, and I
17 personally can't, you know, speak from a position of
18 knowing, but I know that our engineering staff feels
19 like again with the way that ductile material works
20 and, you know, the capacity to kind of continually
21 inspect it for signs of deterioration, it would be
22 showing visible evidence of deterioration long before
23 there would ever be a catastrophic failure.

24 So compliance with the standard would ensure
25 that boom mounted personnel platforms would be taken

1 out of service before they would present the danger
2 of, you know, basically falling apart.

3 CHAIRMAN STAFFORD: Go ahead, Chuck.

4 MR. STRIBLING: Chuck Stribling, Kentucky
5 Labor Cabinet. It may be very elementary and not
6 needed, but is there a definition for ductile
7 material?

8 MS. BRIEFEL: There is in the consensus
9 standard. Actually I don't believe that there's one
10 in the ASME standard, but after speaking to people
11 that have served on the ASME committee, I was able to
12 kind of reconstruct the history of the development of
13 the standard, and the standard came into existence in
14 the '90s and it was pulled from lots of other
15 standards, including the aerial platform standard, and
16 in that standard ductile is defined. And so, you know,
17 it would certainly be something OSHA could consider if
18 we felt that we needed to include a definition. I
19 think we felt like the term was generally understood
20 in the industry, but it's open to discussion.

21 CHAIRMAN STAFFORD: Do you think that's
22 necessary, Chuck?

23 MR. STRIBLING: I don't know. I was just
24 considering if it might help Mr. Beltran's concerns if
25 it was clearly defined what ductile material is

1 considered, so that you know the right type of
2 platform is being used when the safety factor now has
3 gone from five to two and there's no -- hopefully that
4 would help alleviate any kind of confusion that an
5 operator may -- but it may be so elementary it may not
6 be necessary, but --

7 MS. SHORTALL: I'd like to add one
8 additional thing. My name is Sarah Shortall. I'm the
9 project attorney on this. I'd like to add one other
10 thing that might help you understand how it went on
11 this approach and why we do believe this will be
12 providing effective protection for workers, and that
13 is, we do have the injury information that indicates
14 that ductile material, because it stretches and that,
15 will give you an indication well in advance of any
16 failure that there is some wear and tear. That is not
17 the only issue we're relying on. We're adding that to
18 the fact that every time you have a use of a crane you
19 must inspect it, so you will have sort of like this
20 backup system that will look. Has there been anything
21 that's happened since the last time we used this crane
22 that we need to take in consideration or may indicate
23 there needs to be some repair before we use the crane?

24 Given those together, we thought this was
25 going to provide adequate protection. So it's not

1 just the ductile material alone. It was almost in
2 combination with the appropriate work practices at the
3 site.

4 MR. BELTRAN: Thank you.

5 CHAIRMAN STAFFORD: Does that help, Alex? I
6 mean, does that --

7 MR. BELTRAN: Yeah.

8 CHAIRMAN STAFFORD: -- relieve your angst?

9 MR. BELTRAN: Well, I just don't understand
10 lowering something.

11 CHAIRMAN STAFFORD: Right.

12 MS. SHORTALL: But you do raise an excellent
13 question, and that was truly, you know, what we're
14 thinking about because, you know, we are supposed to
15 look at the standards to find and provide the most
16 effective that we can. We did honestly believe after
17 doing this whole discussion and putting everything
18 together, we have provided effective protection for
19 employees.

20 CHAIRMAN STAFFORD: Yeah. Go ahead, Steve.

21 MR. HAWKINS: Also, wind is discussed in the
22 personnel lifting section. It talks about 20 mile an
23 hour winds. Anything in excess of that, a qualified
24 person has to determine in light of those wind
25 conditions if it's safe or not to lift personnel. If

1 not the lifting operations must not begin or must be
2 suspended. So, it does address wind and the use of
3 the equipment. Twenty miles an hour is what it talks
4 about.

5 MR. BELTRAN: Yeah. It's just the unknown
6 because you never know when it picks up --

7 VOICE: Right.

8 MR. BELTRAN: -- and when it's coming and
9 everything else.

10 CHAIRMAN STAFFORD: Okay. Ron?

11 MR. SOKOL: Ron Sokol, public
12 representative. I just want to make sure that I have
13 an understanding that when you're talking about this
14 we're talking about the platform itself, not the
15 hoisting ability of the crane.

16 MS. BRIEFEL: Correct. Yes.

17 MR. SOKOL: So we're just looking at --

18 MS. BRIEFEL: That is correct.

19 MR. SOKOL: -- what the manufacturer has
20 determined that platform can hold, but to Alex's point
21 if someone would take that platform and cover it with
22 a material like a Visqueen, or something like that for
23 whatever reason to maybe even protect the material in
24 the basket now you're taking kind of an open-faced
25 surface where wind can flow through into one that has

1 very different loading just like what you would do in
2 closing a scaffold.

3 So again, that would be a situation where
4 that wind and then the application of those materials
5 would greatly impact the loading on the machine and
6 what it can hold. I don't know how it would affect
7 the platform, but it would affect the machine, and I
8 think that's under your concern that you may have.

9 MR. BELTRAN: Yeah. Absolutely. I mean,
10 I'm not trying to take away from what we're trying to
11 do here. You know, we just lost somebody last week in
12 New York from platform failure. You know, it's
13 definitely a concern, especially when we talk about
14 two times where maybe if it was five times that
15 failure might have not have happened.

16 MS. BRIEFEL: And this was a case of
17 platform failure?

18 MR. BELTRAN: Yep.

19 CHAIRMAN STAFFORD: Any more questions or
20 discussion?

21 (No response.)

22 CHAIRMAN STAFFORD: So what do you think
23 about this? Is this something that we want to
24 approve? Oh, yeah. Thanks. Is there anyone that
25 signed up for public comment that wants to speak

1 specifically to this issue?

2 MR. BROWN: Yes. My name is Tony Brown, and
3 when I worked with OSHA I was involved in the original
4 exemption for working on personnel platforms. Before
5 that most of the platforms were job made, so we came
6 up with some requirements. I also have worked on the
7 B30.23 committee, and there's been extensive
8 engineering research on this issue. Plus you're
9 talking about winds. There are wind requirements just
10 like aerial lifts, you know. Wind gets up to 20, 30,
11 40 miles an hour, you're not going to be working on a
12 platform.

13 So I just wanted to clarify that or mention
14 that, that it has gone through many years, the B30.23,
15 of improvements, and the members of the committee
16 represent the manufacturers, crane companies and also
17 users and trainers. So, I think this is a very good
18 amendment.

19 CHAIRMAN STAFFORD: Thanks for your
20 comments, Tony. Any other questions or comments?

21 (No response.)

22 CHAIRMAN STAFFORD: Does someone want to
23 make a motion? Go ahead, Ron. Please.

24 MR. SOKOL: I make a motion that we approve
25 the language that's in the current standard

1 recommended.

2 CHAIRMAN STAFFORD: All right. So the
3 motion is made that we approve the recommended
4 proposed amendment language for this section. Is
5 there a second?

6 MR. RIVERA: I'll second it.

7 CHAIRMAN STAFFORD: The motion is seconded.
8 Any more discussion?

9 (No response.)

10 CHAIRMAN STAFFORD: All those in favor
11 signify by saying aye?

12 (Chorus of ayes.)

13 CHAIRMAN STAFFORD: Any opposed?

14 (No response.)

15 CHAIRMAN STAFFORD: Thank you. Coming
16 around the bend, to the home stretch, Ashley.

17 MS. BRIEFEL: I'm sorry for the railroad
18 people. Okay. So this next amendment or I guess two
19 amendments really would be, and I have to note there
20 is a note in this proposed language, and contrary to
21 my statement, which is absolutely true that the
22 *Federal Register* has been looking unfavorably on
23 notes, in this case we think it's best to try a note.
24 So, you know, maybe a note is the answer in the other
25 standard too, but -

1 CHAIRMAN STAFFORD: Maybe it'll turn us
2 around on you would recommend no note.

3 MS. BRIEFEL: Right. To clarify, though, I
4 wanted to put that out there because I figured someone
5 would notice pretty quickly. But anyway, on floating
6 cranes and cranes that are mounted on barges, the
7 walking/working surfaces on floating cranes is
8 obviously small. There's a limit to the size of the
9 deck. You know, if you have to get out of the shadow
10 of the load you can't really just jump overboard. So
11 for that reason, CDEC determined it wasn't feasible on
12 floating cranes and cranes on barges to comply with
13 requirements in the 1926.1425 keeping clear of the
14 load section. And that section includes requirements
15 about permitting only essential workers to be in the
16 fall zone, ensuring that workers are not directly
17 under hoisted loads, using hoisting routes that
18 minimize worker exposure and rigging the loads to
19 prevent them from falling on employees, and so that's
20 why that exemption was put in the standard.

21 So, first OSHA has realized it is ambiguous
22 and unclear and would like to clarify that for
23 employees that are working on surfaces adjacent to
24 these barge-mounted cranes, adjacent to these floating
25 cranes, 1926.1425 still applies. So, that would be

1 someone working on land, someone working on a dock,
2 someone working on an adjacent barge. They're not on
3 that deck space of that limited floating crane and,
4 you know, that infeasibility just doesn't exist. It's
5 totally feasible to follow those requirements.

6 And then second of all, OSHA is
7 reconsidering the requirements. Full exemption of the
8 requirements of 1926.1425 because 1425(a), which
9 requires employers to use hoisting routes where
10 available that minimize workers' exposures to loads
11 consistent with public safety, and 1425©, which
12 includes requirements for rigging, including requiring
13 that the materials are rigged to prevent load
14 displacement, that hooks with self-closing latches, or
15 equivalent are used and that a qualified rigger rigs
16 the load, both of those sets of requirements are not
17 only fully feasible, but really critical to be
18 complied with in this situation.

19 I think particularly the rigging
20 requirements, you know, it's all the more important
21 when you have a situation where your employees really
22 can't get out of that fall zone to make sure that the
23 rigging is done right. And so anyway, this proposed
24 amendment would, you know, put back in those
25 requirements, the 1425(a) and 1425©, and also clarify

1 that if employees are working from adjacent surfaces
2 they are required to comply with 1425 or their
3 employers are required to comply with 1425. Does that
4 make sense? Any questions?

5 CHAIRMAN STAFFORD: I think so, but then
6 again --

7 VOICE: Yeah.

8 CHAIRMAN STAFFORD: -- I'm not going to do
9 it. Any questions about this one?

10 (No response.)

11 CHAIRMAN STAFFORD: Any public comments on
12 this particular issue?

13 (No response.)

14 CHAIRMAN STAFFORD: Well, I think we finally
15 have one that's relatively straightforward, Ashley.
16 Congratulations. Okay. Sarah?

17 MS. SHORTALL: The standard as currently
18 written indicated that 1425 did not apply because we
19 thought it was infeasible and that's what we said in
20 the preamble. I don't know if we actually say that in
21 the standard itself, but we realized as we were
22 looking into it what was the definition or why was it
23 infeasible there just wasn't enough room. We just had
24 to cut that out.

25 Now we're discovering on some of these other

1 ones that the aspect of infeasibility that we came out
2 with wasn't really a concern. It didn't matter how
3 much room you had. You could still do those
4 particular things. So that's why we wanted to put it
5 back in. Then I want to rescue poor Ashley, who I
6 think has done an excellent job today. I was the one
7 who told her about the notes, and originally when Mr.
8 Rank wanted to put his notes in he wanted to say
9 something doesn't apply. Well, that's actually a
10 requirement and we're no longer allowed to put
11 requirements in a note, let alone in a note to a
12 definition, so that's what I was letting her know.

13 Exceptions are a little bit different. They
14 give us a little bit more mileage. So we could have
15 possibly gone with an exception, but not the note
16 telling you what to do. So I am the one who told her
17 that. If I've led you astray, I'm really sorry. And
18 then I'm going to take a point of personal privilege.
19 I was so excited to come here today and see, as my
20 little holiday present to myself, some wonderful faces
21 that I've seen for a long time on ACCSH, so thanks so
22 much.

23 CHAIRMAN STAFFORD: Thank you, Sarah. It's
24 good to see you as well. Palmer?

25 MR. HICKMAN: Thank you, Mr. Chairman.

1 Palmer Hickman, employee rep. I just want a point of
2 clarification if I may in (d)(2). It says do not
3 apply when the fall zone of this load is on or above
4 equipment. This section covers -- I'm trying to
5 understand the context of the word equipment here.

6 MS. BRIEFEL: So, equipment. Equipment is
7 used in the crane standard to refer to the crane, but
8 we're also talking about the deck of the crane so I
9 think the equipment covered by 1437. So you can think
10 about 1437 as kind of a vertical standard within the
11 crane standard, which is also a vertical standard. So
12 1437 really covers the whole thing, the crane and the
13 boat that it's mounted on, if that makes sense.

14 MS. SHORTALL: But it's also important to
15 understand what is Section 1437? Equipment the
16 standard covers are floating cranes and derricks and
17 land cranes and derricks on barges. That's the only
18 equipment that's covered by 1437.

19 CHAIRMAN STAFFORD: 1437.

20 MS. SHORTALL: So that's what it refers to.

21 CHAIRMAN STAFFORD: Go ahead, Palmer.

22 MR. HICKMAN: Thank you. And that's the
23 point of my question. I don't understand how that
24 equipment -- floating cranes, derricks -- could be on
25 or above. I'm reading that in the context of on or

1 above. When the fall zone -- how could the fall zone
2 be above this equipment?

3 MS. BRIEFEL: It would be above the deck of
4 the equipment or the body of the crane.

5 MR. HICKMAN: That's my --

6 MS. BRIEFEL: So we've got a boom. The load
7 is suspended from the boom. The load is over the deck
8 of the equipment, but the equipment refers to the
9 whole thing too. Does that makes sense? Yeah.

10 MR. HICKMAN: That's my point. I don't
11 think it's clear the equipment is because when it says
12 equipment and it was pointed out at 1437 I understand
13 what is the intent, but I don't think that's the way
14 it reads, at least in my opinion.

15 CHAIRMAN STAFFORD: Anyone want to respond
16 to that? Go ahead, Kevin.

17 MR. CANNON: Kevin Cannon, employer rep. I
18 guess, you know, the explanation that, you know, you
19 now recognize that some of the things that were
20 exempted are now feasible, but I guess my one question
21 is, is it still recognized that using hoisting routes
22 that minimize workers' exposures in these conditions
23 can sometimes still be challenging.

24 MS. SHORTALL: Could you repeat that again,
25 Mr. Cannon?

1 MR. CANNON: When you're using floating
2 cranes and barges, yeah, you've got workers and that's
3 your workspace. Sometimes trying to find that route
4 that minimizes workers' exposures can still be
5 challenging.

6 MS. BRIEFEL: I think to me that the
7 language minimize also kind of incorporates the
8 concept to the extent feasible, right?

9 MR. CANNON: Okay. Got it.

10 MS. BRIEFEL: I mean, minimizes is as good
11 as you can do.

12 MR. CANNON: Okay.

13 CHAIRMAN STAFFORD: Any other questions or
14 comments?

15 (No response.)

16 CHAIRMAN STAFFORD: Anybody want to form
17 this up in a motion?

18 DR. BRANCHE: I'll make an attempt, Mr.
19 Chair.

20 CHAIRMAN STAFFORD: Please.

21 DR. BRANCHE: Christine Branche, NIOSH. So
22 I move that we accept the language as proposed by our
23 colleagues -- I mean DOC.

24 CHAIRMAN STAFFORD: You don't have to go to
25 that detail. I think we just need a motion that we

1 accept the language as proposed.

2 DR. BRANCHE: We accept the language as
3 proposed.

4 MR. MARRERO: I'll second it.

5 CHAIRMAN STAFFORD: All right. We've got a
6 motion and a second. Any more discussion?

7 (No response.)

8 CHAIRMAN STAFFORD: All those in favor
9 signify by saying aye?

10 (Chorus of ayes.)

11 CHAIRMAN STAFFORD: Any opposed?

12 (Chorus of noes.)

13 MS. BRIEFEL: And I know it's the question
14 about the confusion over equipment. We'll think about
15 that too.

16 VOICE: I'm sorry, Palmer. What did you
17 say?

18 MR. HICKMAN: Aye.

19 DR. BRANCHE: He said aye for against.

20 MR. HICKMAN: Without the clarification.

21 CHAIRMAN STAFFORD: Yes?

22 MR. HAWKINS: Palmer, what you really want
23 to say is the equipment that's in use at the time, not
24 another crane that's covered by the standard. You're
25 talking about the one that's in use at the time of the

1 lift, right, Ashley? That's what this is talking
2 about.

3 MS. BRIEFEL: Well, I think he's also saying
4 the language equipment can be confusing because also
5 the boom that's above the deck is also part of the
6 equipment and also, you know, the line that's attached
7 to the load is part of the equipment.

8 So we were saying maybe we could just insert
9 like the language of the standard like the
10 barge-mounted crane or floating or, you know, we can
11 try some other language that's a little more clear. I
12 think I understand the gist of the confusion unless I
13 don't.

14 CHAIRMAN STAFFORD: Fair enough.

15 MS. BRIEFEL: Does it sound like I've got
16 what the -- okay. Okay. All right.

17 CHAIRMAN STAFFORD: Okay.

18 MS. BRIEFEL: Thank you so much.

19 CHAIRMAN STAFFORD: Ashley, thank you very
20 much. Who's the next victim here? Yeah, Dave?

21 THE REPORTER: Could we take a short break?

22 CHAIRMAN STAFFORD: What's that?

23 THE REPORTER: Could we take a short break?

24 CHAIRMAN STAFFORD: Why?

25 THE REPORTER: Restroom. A comfort break.

1 CHAIRMAN STAFFORD: Okay. Yes. We better
2 give the court reporter a short break. Ten minutes.
3 All right.

4 (Whereupon, a short recess was taken.)

5 CHAIRMAN STAFFORD: Okay. We'll reconvene,
6 please. I think this will be our last session here.
7 Lisa, do you have something to read for the exhibits?

8 MS. WILSON: Thank you, Mr. Chairman. I'd
9 just like to enter the exhibits so far today. I'd
10 like to mark the presentation of the analysis of the
11 2016 stand-down data as Exhibit 3, the update on the
12 Directorate of Technical Support and Emergency
13 Management as Exhibit 4, the slide presentation on the
14 cranes amendments that we just heard as Exhibit 5, and
15 the background material on those exhibits as Exhibit
16 6. Thank you.

17 CHAIRMAN STAFFORD: Thank you, Lisa. Okay.
18 I know you're not Garvin, Michael, so I guess, Garvin,
19 we're not going to see you up here, are we? You're
20 sitting in the background like Dean. Okay. All
21 right. So, Mike, I guess the floor is yours. Are you
22 starting on this issue? Okay. Thanks. Mike Buchet.

23 MR. BUCHET: My name is Michael Buchet,
24 Directorate of Construction. I would like to
25 introduce Garvin Branch.

1 VOICE: Go ahead.

2 MR. EWELL: I'm Richard Ewell with the
3 Solicitor's Office. So I'm here because this is
4 obviously settlement agreement and I can handle the
5 legal questions if there's any on those issues. I just
6 also wanted to add before we get into this, this whole
7 thing we do have a couple of people joining us from
8 the railroads if anybody feels the need to, you know,
9 have any other particular questions or anything, but
10 they aren't planning on speaking at this point. We
11 did also run all this stuff through the unions, the
12 major unions that would be affected, before we signed
13 the settlement agreement, so --

14 CHAIRMAN STAFFORD: Okay. I appreciate
15 that. Okay, Michael. The floor is yours.

16 MR. BUCHET: So the question occurs to me
17 why me, why now, and I thought well, I better look at
18 my extensive history of not holding a job and say I
19 have at least 10 years of railroad experience from the
20 time I was five until 15 -- Lionel, Marklin, HO. So
21 with that extensive background --

22 VOICE: Thank you. Very good.

23 MR. BUCHET: I'm also the person assigned to
24 putting the settlement agreement into proposed rule
25 language. Just as a little background, the railroads

1 are an extensive network across the country. There
2 are 500 some different railroads. Some of them own
3 the track they run on. Some of them don't. Some of
4 them borrow track. They have common issues. And way
5 back in 1910, the Association of American Railroads
6 filed a petition for review asking that OSHA expand
7 some of the exceptions in the crane standard that deal
8 with crane-like equipment working on track, railroad
9 roadway track work. We're not going to repeat that
10 phrase, but that's what we're talking about. We're
11 not talking about building bridges for railroad
12 roadway track. We're talking about working on the
13 track itself.

14 The suit brought together the Department of
15 Labor, OSHA and the AAR and our able attorneys, and if
16 we had more time I'd give you an attorney joke right
17 now, but I won't.

18 CHAIRMAN STAFFORD: We already know plenty.
19 Thanks, Mike.

20 MR. BUCHET: There's always time for one
21 more, you know, if there's time. Okay. And it was
22 agreed amongst the parties that a settlement would be
23 the quickest and the simplest and most efficient
24 method for solving this issue, so a settlement was
25 agreed to in 2014 and the Court recorded it, and I

1 believe you have a handout that may show you the
2 recording date as September 9th of 2014. It's taken
3 us that long to try and take the settlement and create
4 a proposed rule out of it, and that's what we're
5 updating you on now.

6 Basically the language in the proposal is
7 directly from the attachments to the settlement.
8 There are two attachments to this settlement. There's
9 an Attachment A, which we will discuss, and there's
10 Attachment B, which required OSHA to issue a letter of
11 interpretation within 60 days of September of 2014,
12 which we did, done and dusted. In principle, of course
13 -- you guys, can you read this thing down here?

14 VOICE: Yeah.

15 MR. BUCHET: All right. The settlement in
16 principle, I already said, expand the exemptions,
17 draft a letter of interpretation. That was done in
18 2014. AAR has provided us with the best available
19 data. That was part of their what to produce for the
20 settlement agreement that helps us understand what
21 equipment is being talked about in this request, where
22 it is, who operates it, and at some point after we
23 publish a final rule AAR will petition the Court to
24 remove their petition for review. Everybody hold your
25 breath. I'm not. It's not going to happen very

1 quickly, in other words.

2 Okay. We're initiating the rulemaking.
3 This is one of the steps we're required to use in the
4 rulemaking process, and I'm going to go through some
5 of these requirements more specifically, and we will
6 traipse along with the slide. When I get through
7 these first few slides you will see a succession of
8 pictures which will give you an idea of the
9 requirements. There are requirements in the standard
10 that seem to run contrary to how railroads work on
11 their track. It's not all level, so there are out-of-
12 level provisions that need to be adopted. Mobile
13 cranes on track, if you look at our standards,
14 traditionally you've got to clamp them down. No,
15 because some of these machines will lift track, welded
16 rail. If you can imagine, welded rail is like a piece
17 of spaghetti that may be a mile long, and as the crane
18 positions it, it moves along so we can't clamp it down
19 so that it can work on this piece of spaghetti that
20 it's placing in place of an old rail.

21 Ground conditions, modifications is a big
22 one. A lot of the equipment that they have is not
23 new, has been modified, and if you look at the crane
24 standard we have some requirements for modifications.
25 If you're going to modify it you have to get an

1 engineer. You have to get a registered professional
2 engineer. You have to get a qualified person to come
3 up with the modification procedure. Was that
4 retroactive? No, it's not retroactive, and we're
5 going to expand those exemptions -- not notes, but
6 exemptions -- going forward.

7 Depending on the package you have, Slides 7
8 and 8 or page 4 if you're on a two-up copy, are about
9 the letter that was written in 2014. And now if you
10 can see the equipment, the device in front of you is
11 called a flash-butt welding truck, and you can see the
12 arm coming out of the back of the truck, and in the
13 left-hand picture it's raised. It can be lowered, and
14 it lowers a workhead onto the rail, rides along the
15 rail and it welds -- how many welders we got in the
16 room -- butt joint? Okay. You guys don't do a lot of
17 butt joints though.

18 MR. RANK: We do in tunnels.

19 MR. BUCHET: So, that machine has to be
20 mobile. It runs along the track, as you can see. I
21 think this is something they call high rail. It was
22 actually designed to work on the road, but it's been
23 modified so it can work on railroad track. That's one
24 of the machines that will have an exemption provided
25 this rule goes into effect. Here is a good picture.

1 We were talking about rough terrain cranes earlier.
2 That's a pretty much cut-and-dried rough terrain crane
3 that's been modified to work on railroad track or off
4 track, but if you see that workhead off to its right
5 it is simply rolling along carrying the track and
6 moving it. It's not going to lift it very high. It's
7 not going to move it right or left very much, and they
8 would like an exemption for this. It beats a lot of
9 workers with a lot of crowbars or pinch bars going
10 like that to remove the rail.

11 Anybody have any trouble with the concept of
12 this one, a tie crane? Okay. Visual humor. If you
13 go to YouTube there are videos of this thing all over
14 the place. That's a fairly fancy one. There are some
15 that look like two motorcycles bolted together that
16 ride down the track and there's an operator there. It
17 grabs a tie, depending on what its operation is,
18 shakes it a bit and pulls it out from underneath the
19 rail, grabs a new tie, shakes it a bit and shoves it
20 back in under the rail. That's what it does.

21 Here you have what all of us B30.5 fans
22 consider a railroad crane. It looks like a flatcar
23 with a crane built on top of it. This one probably
24 has a clamshell. And what's it doing? It's
25 distributing ballast. Again, limited range of motion,

1 limited load and it needs to be able to travel. This
2 one is harder to see at a greater distance, but in
3 railroad repair and construction sometimes welded rail
4 is neat, sometimes panelized. Hey, Steve Rank?

5 MR. RANK: Yes?

6 MR. BUCHET: Steel erection word there.
7 Panelized joist, anchor at each corner. Anyway,
8 panelized rails are picked up in large sections by a
9 crane. Again, they don't have to get picked up high.
10 They're picked up from whatever their pile is.
11 They're swung into place, put down on the roadbed or
12 vice versa. And that looks like a lattice boom crane
13 riding on a flatcar. Clamshell at work clearing debris
14 from flooding. Same mobility, no high lifts, short
15 boom. This picture, another rough terrain crane
16 modified for rail work with a load under the hook that
17 is being used for rail maintenance.

18 I don't know what it's doing for rail
19 maintenance, but that load is going to stay there and
20 move along the rail as the crane moves along the rail.
21 So if these give you an idea, there are a couple more.
22 Yeah. On-road truck modified for rail work lifts and
23 loads things into the back into the truck or places it
24 alongside the track.

25 (Multiple voices.)

1 MR. EWELL: Just so you all know, this is
2 the one that is the most common for the railroad use.
3 This the one. Mostly they use it to lift buckets and
4 stuff to put it on there.

5 MR. BUCHET: You're two up? Page 9.

6 CHAIRMAN STAFFORD: Yes, sir?

7 MR. BUCHET: Yeah.

8 CHAIRMAN STAFFORD: Yes. Hold on. Yeah,
9 Steve?

10 MR. RANK: I make a motion that the Agency
11 proceed with rulemaking to settle this lawsuit as they
12 indicated they're doing.

13 CHAIRMAN STAFFORD: A motion is made. Is
14 there a second.

15 VOICE: Second.

16 MR. EWELL: Can I just clarify? We need the
17 motion with the proposed rule. We've already settled,
18 so we just need the --

19 CHAIRMAN STAFFORD: Okay. So change that,
20 Steve, so that the motion would be that we proceed
21 with the proposed language as presented here to us
22 today.

23 MR. RANK: I make a motion that the Agency
24 proceed with proposed rulemaking that's presented here
25 to us today.

1 MS. DAVIS: I second the motion.

2 CHAIRMAN STAFFORD: Yes? I can't hear,
3 Chuck. I'm sorry.

4 MR. STRIBLING: I think you had a motion
5 with a second that sort of needs to be withdrawn first
6 and then go to --

7 CHAIRMAN STAFFORD: Okay. So --

8 VOICE: You need to withdraw your original
9 motion.

10 MS. WILSON: Well, I think -- okay. I mean,
11 I think we could see it as an amendment of the initial
12 motion.

13 VOICE: Okay.

14 MS. WILSON: Okay? So you amend your
15 motion?

16 MR. STRIBLING: Can he restate?

17 MS. WILSON: So the revised motion, which is
18 seconded by Ms. Davis, is that ACCSH recommend that
19 OSHA proceed with the proposed rulemaking as presented
20 today.

21 CHAIRMAN STAFFORD: Does that take care of
22 it? Okay. So we have a motion and a second, right?
23 Was there a second to that new motion?

24 MS. WILSON: Yes.

25 VOICE: Tish.

1 CHAIRMAN STAFFORD: Tish did that? Any more
2 discussion?

3 (No response.)

4 CHAIRMAN STAFFORD: All those in favor
5 signify by saying aye?

6 (Chorus of ayes.)

7 CHAIRMAN STAFFORD: Any opposed?

8 (No response.)

9 CHAIRMAN STAFFORD: Okay. I believe that
10 you said that there was a couple railroad folks here
11 but did not want to comment, but if there's --

12 MS. YURASKO: I'm on the list. I might as
13 well talk.

14 MR. EWELL: They're indicating that they do
15 not wish to speak.

16 MS. YURASKO: No.

17 MR. EWELL: Oh, sorry. Sorry.

18 MS. YURASKO: Just very briefly, I'm Sarah
19 Yurasko with the Association of American Railroads. I
20 wanted to thank OSHA for holding this today and just
21 wanted to assure your group that the Federal Railroad
22 Administration, which is our primary safety regulator,
23 has extensive safety regulations addressing railway
24 roadway maintenance machines at 49 C.F.R., Part 214.

25 We are pleased with the settlement agreement

1 and just wanted to assure this group that we do intend
2 -- just responding to a comment from earlier, we do
3 intend to dismiss the petition after the final rule is
4 published.

5 CHAIRMAN STAFFORD: All right. Thank you
6 for your time. Okay. So now that takes care of the
7 agenda. Is there any public comment, any more folks
8 signed up for comment beyond the crane amendment
9 issue? Travis, just jump up there. By the time Damon
10 limps back there you'll be up and done.

11 MR. PARSONS: I'm signed up.

12 CHAIRMAN STAFFORD: But don't fall out of
13 your chair.

14 MR. PARSONS: First of all, I want to
15 commend everybody on the committee for the last seven
16 or eight years they've been on and the new members
17 here. Great job. The last two, three for some
18 people, but I just want to commend all the work we've
19 done over the last few years and welcome to the new
20 members here. And the biggest thing I want to address
21 is work zones. The last two days I haven't really
22 heard anything. I commend OSHA on the backover rule,
23 and continue to move forward with that and SBREFA and
24 all that that goes with it, but I haven't heard --
25 this is Construction and ACCSH, and I haven't heard

1 anything about work zones, whether we're talking about
2 crashes or work zone intrusions, besides the backover
3 issue, fleet safety.

4 A lot of workers out there that work in
5 construction are having a lot of issues while driving
6 and they're having a lot of issues with public
7 intrusion and unfortunately on our side of the barrels
8 backing over people. So I just wish ACCSH would
9 consider work zones back on their agenda if it's not
10 on there already. That's all I wanted to say.

11 CHAIRMAN STAFFORD: Thank you, Travis. I
12 appreciate that. Yeah. Okay. Damon?

13 MR. BONNEAU: Yes.

14 CHAIRMAN STAFFORD: Anybody else?

15 MR. BONNEAU: Nobody else.

16 CHAIRMAN STAFFORD: Final exhibits, Lisa?

17 MS. WILSON: Yes. Thank you, Mr. Chairman.
18 I would like to designate the slides about the
19 railroad settlement as Exhibit 7 and the background on
20 the railroad amendments as Exhibit 8. Thank you.

21 CHAIRMAN STAFFORD: Thank you, Lisa. Okay.
22 Well, then I guess we've concluded our business. I'd
23 like to thank the committee for your work over the
24 last couple days, for those folks in the audience.
25 We'll work out the schedule I guess for 2017 when the

1 next ACCSH will meet formally. Typically, I'm going
2 to guess it's going to be in the May time frame if
3 it's consistent with what it's been the last couple
4 years, but I don't know that. I would like to wish
5 everyone a happy holiday season and be safe and take
6 care. Thank you. Meeting adjourned.

7 (Whereupon, at 3:00 p.m., the meeting in the
8 above-entitled matter adjourned.)

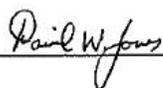
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REPORTER'S CERTIFICATE

DOCKET NO.: N/A
CASE TITLE: ACCSH Meeting
HEARING DATE: December 1, 2016
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the U.S. Department of Labor, Occupational Safety & Health Administration, Office of Communications.

Date: December 1, 2016



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