

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

MARITIME ADVISORY COMMITTEE FOR  
OCCUPATIONAL SAFETY AND HEALTH

Frances Perkins Building  
Conference Room S-4215, A, B & C  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Wednesday,

November 28, 2007

The meeting was convened, pursuant to notice,  
at 8:55 a.m., MR. JAMES R. THORNTON, Chairman,  
presiding.

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MR. DAVID WALLIS

COMMITTEE COUNSEL:

SUSAN SHERMAN, Esq.

MACOSH COORDINATOR:

VANESSA L. WELCH

ALSO PRESENT:

MR. EDWIN J. FOULKE  
Assistant Secretary  
U.S. Department of Labor  
OSHA

MR. JOSEPH DADDURA  
Acting Director  
Office of Maritime Standards  
OSHA

MS. DOROTHY DAUGHERTY  
Directorate of Standards & Guidance

MR. KEN ATHA  
OSHA  
Area Director  
Mobile, AL

MR. BILL PERRY  
Director  
Office of Chemical Hazards  
OSHA

MR. MIKE SEYMOUR  
Director  
Office of Physical Hazards  
Directorate of Standards and Guidance  
OSHA

DR. JOANNA SNYDER

MR. TOM GALASSI

ALSO PRESENT:

MR. DeWITT DAVIS, IV, CIH, CSP  
Certified Industrial Hygienist  
Marine Consultant & National Safety Council

MR. CURTIS SHAW  
APL/Eagle Marine Services

MS. SARAH HUFFORD  
Offshore Marine Service Association

MR. ROBERT MALLETTE  
TEEX - Professional Regulatory Trainers

MS. DOLORES ROSE PRICE  
TEEX - Professional Regulatory Trainers

MS. THERESA MORGAN  
Inside OSHA

MS. JOANNA SMAJDER  
OSHA

MR. BILL MATARAZZO  
OSHA

MR. PAUL COMOLLI  
OSHA

MR. PUAL ROSSI  
OSHA

MR. DAN HARRISON  
Hampton Roads Shipping Association

MR. IRA WAINLESS  
OSHA/Maritime Standards

MS. AMY WANGDAHL  
OSHA/DSG

MS. DANIELLE WATSON  
OSHA/DSG

MR. STEPHEN BUTLER  
OSHA/OME

MR. JEFF FACENDA  
Metro Machine Corp.  
Norfolk, VA

MR. MICHAEL SEYMOUR  
OSHA

MR. RICHARD ALVAREZ  
I.L.W.U. Coast Safety Commission  
Southern California

MR. JERRY YLONEN  
I.L.W.U. Coast Safety Commission

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DON/NAVSEA

MR. JIM RICHARDSON  
U.S. Navy  
Navy Crane Center

MR. ALAN TRAENKNER  
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San Francisco, CA

MS. ELLEN BYRUM  
BWA

MR. PETE FAVAZZA  
I.L.W.U. Coast Safety Commission

MR. DANIEL G. MIRANDA  
I.L.W.U. Coast Safety Commission

MR. LEO EDWARDS  
OSHA  
Norfolk, VA

MR. RANDY WHITE  
OSHA  
Portland, OR

MR. JOHN J. DEIFER  
OSHA  
Savannah, GA

MR. HSIANG-JEN YEN  
OSHA - OTI

MS. THRESA NELSON  
NSRP/Northrop Grumman

MR. GAVIN BURDGE  
BMT Designs and Planners

CAPT. SALVATORE AMADEO  
MTC - EDST

MS. DEBORAH GABREY  
OSHA - DSTM

MR. DAN HARRISON  
Director of Port Safety  
Hampton Roads Shipping Association

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P R O C E E D I N G S

WELCOME AND OPEN DISCUSSION

1  
2  
3 CHAIRMAN THORNTON: All right. I am James  
4 Thornton. I'm Chairman of the MACOSH, the Maritime  
5 Advisory Committee for Occupational Safety and Health.  
6 It's November 28, 2007. I am pleased to open the  
7 meeting for the MACOSH Working Group.

8 The first thing I'd like to do is to call  
9 roll, then I would like to also ask the public to  
10 identify themselves. Do we have a wireless mic or some  
11 way of -- how are we going to have the public identify  
12 themselves? Approach the mic. Okay.

13 So what I'd like to do, when it comes time to  
14 recognize the public, if you'd just kind of form a line  
15 and maybe pull the microphone over to the edge of the  
16 table there and speak into the microphone so we can get  
17 your affiliation as well.

18 So with that, let me call the roll.

19 James Thornton. I am here. James Burgin?

20 MR. BURGIN: Here.

21 CHAIRMAN THORNTON: Marc MacDonald?

22 MR. MacDONALD: Here.

23 CHAIRMAN THORNTON: Donald Raffo?

24 MR. RAFFO: Here.

25 CHAIRMAN THORNTON: Captain Teresa Preston?

1 CAPT. PRESTON: Here.

2 CHAIRMAN THORNTON: Stewart Adams?

3 MR. ADAMS: Here.

4 CHAIRMAN THORNTON: Steven Hudock?

5 (No response)

6 CHAIRMAN THORNTON: I did get an e-mail from  
7 Steve. Apparently there's been some money  
8 appropriated, and he's got a good problem because he's  
9 got some proposals to write for some NIOSH projects.  
10 So, we're sorry that he will be missed, but he's asked  
11 Marc to fill in in his absence and I know Marc's going  
12 to do a great job.

13 Charles Lemon?

14 MR. LEMON: Here.

15 CHAIRMAN THORNTON: Kenneth Smith?

16 MR. SMITH: Here.

17 CHAIRMAN THORNTON: Michael Flynn?

18 MR. FLYNN: Here.

19 CHAIRMAN THORNTON: David Tubman?

20 (No response)

21 CHAIRMAN THORNTON: I did get an e-mail from  
22 Dave, and he has a case coming up that requires some  
23 preparation. So, he gives his apologies as well.

24 John Castanho?

25 MR. CASTANHO: Here.

1 CHAIRMAN THORNTON: Warren Fairley?

2 (No response)

3 CHAIRMAN THORNTON: Someone said Warren was  
4 here yesterday. Did anyone see Warren? No? No.  
5 Okay. Well, I got a report that he was here. But the  
6 record will show, Warren is absent.

7 Robert Gleason?

8 (No response)

9 CHAIRMAN THORNTON: Absent.

10 And Ernie Whelan?

11 MR. WHELAN: Here.

12 CHAIRMAN THORNTON: Good.

13 Now, at this time I'm going to ask the public  
14 to identify themselves. We'll start. Show them how  
15 it's done. Set the bar right here. Go right up to the  
16 mic and maybe queue up behind so we can move this  
17 along.

18 CAPT. AMADEO: Captain Salvatore Amadeo,  
19 Marine Terminals Corporation, East Coast.

20 CHAIRMAN THORNTON: Thank you.

21 MR. HARRISON: Dan Harrison, Director of Port  
22 Safety, Hampton Roads Shipping Association.

23 CHAIRMAN THORNTON: Everyone should come up.  
24 So, Debra, come on up. Let's go in some kind of order  
25 here. Let's start over here. Dee, you'll be next, and

1 you'll be next. So let's move it. Okay.

2 MR. SHAW: I'm Curtis Shaw, American President  
3 Lines, Eagle Marine Services.

4 CHAIRMAN THORNTON: Thank you.

5 MR. DAVIS: DeWitt Davis, National Safety  
6 Council and independent marine consultant. Thank you.

7 MR. ATHA: Ken Atha, with OSHA.

8 MS. PRICE: Delores Price, OSHA Training  
9 Institute, Southwest Education Center, Region 6.

10 MR. MALLETT: Robert Mallette, TEEEX, out of  
11 Texas.

12 MS. HUFFORD: Sarah Hufford, Offshore Marine  
13 Service Association in New Orleans.

14 MR. BURDGE: Gavin Burdge, BMT Designers and  
15 Planners.

16 MS. NELSON: Thresa Nelson, NSRP, Northrop  
17 Grumman.

18 MS. GABREY: Deborah Gabrey, Director, Sign  
19 Technology Medicine, OSHA.

20 MR. YEN: Hsiang-Jen Yen, OSHA, OTI.

21 MR. DEIFER: John Deifer, OSHA, Savannah,  
22 Georgia.

23 MR. WHITE: Randy White, OSHA, Region 10.

24 MR. EDWARDS: Leo Edwards, OSHA, Norfolk,  
25 Virginia.

1 MR. TRAENKNER: Alan Traenkner, OSHA, San  
2 Francisco.

3 MS. BYRUM: Ellen Byrum, writer, BNA.

4 MR. FAVAZZA: Pete Favazza, I.L.W.U. Coast  
5 Safety Committee.

6 MR. MIRANDA: Danny Miranda, I.L.W.U.

7 MR. RICHARDSON: Jim Richardson, Navy Crane  
8 Center, Portsmouth, Virginia.

9 MR. DEPUIS: Jerry Depuis, Department of Navy,  
10 Naval Sea Systems Command.

11 MR. YLONIN: Jerry Ylonin, I.L.W.U.

12 MR. ALVAREZ: Richard Alvarez, I.L.W.U.

13 MR. PERRY: Bill Perry, Directorate of  
14 Standards and Guidance, OSHA.

15 MR. FACENDA: Jeff Facenda, Metro Machine.

16 MR. BUTLER: Steve Butler, OSHA, Maritime  
17 Enforcement.

18 MS. WANGDAHL: Amy Wangdahl, OSHA, Maritime  
19 Standards.

20 MS. WATSON: Danielle Watson, OSHA, Maritime  
21 Standards.

22 MR. WAINLESS: Ira Wainless, OSHA, Maritime  
23 Standards.

24 MR. COMOLLI: Paul Comolli, Maritime  
25 Enforcement.

1 MS. MORGAN: Teresa Morgan, Inside OSHA.

2 MR. MATARAZZO: Bill Matarazzo, Office of  
3 Maritime Enforcement.

4 MR. ROSSI: Paul Rossi, OSHA.

5 CHAIRMAN THORNTON: I didn't catch your name.

6 MR. ATHA: Ken Atha, with OSHA.

7 CHAIRMAN THORNTON: Ken, thank you for your  
8 assistance. That was great. I appreciate that.

9 And I have it on some authority, and my  
10 apologies to the Court Reporter, she was actually -- I  
11 don't know if this is a complete story, but in the  
12 Metro and the trains and she couldn't call. So I hope  
13 you're fine. I hope you're all right. So it's good.  
14 It's good. She had a good excuse.

15 Okay. Let's trace back. We were talking  
16 about a couple of things while we were off the record,  
17 but let's have some discussion about this on the  
18 record.

19 First, let me go and say, let's talk about the  
20 minutes. Now, in your packet were the minutes of  
21 August 1, 2007. That was our meeting in Oakland. So  
22 you've had a chance--I guess, the committee--to review  
23 the minutes. I would ask for a motion to approve at  
24 this time.

25 CAPT. PRESTON: So moved.

1 CHAIRMAN THORNTON: I'd ask for a second.

2 VOICE: Second.

3 CHAIRMAN THORNTON: All right. Any  
4 discussion, corrections, additions, deletions at this  
5 time?

6 (No response)

7 CHAIRMAN THORNTON: Hearing none, all in  
8 favor, signify by saying "aye".

9 (Chorus of Ayes)

10 CHAIRMAN THORNTON: Opposed?

11 (No response)

12 CHAIRMAN THORNTON: Thank you.

13 The next order of business is to just talk a  
14 little bit about the next couple of meetings. I  
15 reminded the committee while we were off the record  
16 that the official charter of this version of MACOSH  
17 ended on June 26th of next year. So we're looking, and  
18 staff and I have been talking and planning. What we  
19 are targeting, are a couple of meetings before the end  
20 of the charter.

21 Specifically, we're talking about, in the  
22 March time frame in New Orleans. We'll try to get  
23 details of that out to the committee in terms of dates  
24 and planning and we'll try to work within your  
25 schedules and do the best that we can to get the dates

1 defined early and get those dates that perhaps most  
2 people can attend, and we'll work to do that. Then  
3 we'll try for a meeting in June in the Boston area,  
4 same deal. Staff will work with us and we'll do the  
5 best we can and try to accommodate as many schedules as  
6 we possibly can.

7           So if you reflect back on where we've been, so  
8 we've kind of hit the four corners, if you will, of the  
9 country. We've moved around the country a little bit  
10 so as to try to give some exposure and opportunity for  
11 those that are traveling to make as many MACOSHs as  
12 they could. So I'm glad that we're able to do that.

13           The other thing I'd mention is, inasmuch as  
14 our charter does conclude officially on June 26th, we  
15 need to begin, I think, rechartering efforts at this  
16 time so as to hopefully avoid any gap or lapse in the  
17 committee service. Now, we'll commence that right  
18 away. My plan would be for me to draft something to  
19 petition for rechartering right away.

20           I'll run that through the committee for  
21 comment and surgery, et cetera, mark-up, and then we'll  
22 send that out. So, hopefully if we can get that into  
23 the hands of the administration as early and as quickly  
24 as possible, that will give them time them to work on  
25 that. So that will be on my "To Do" list going

1 forward.

2 Let's see. I was remiss -- I always do this,  
3 but I always forget our Designated Federal Official.  
4 Dave Wallis is here, and our attorney from the  
5 Solicitor's Office is Sue Sherman. Did I miss, of  
6 course, the esteemed -- the person we've come to know  
7 and mostly love --

8 (Laughter)

9 CHAIRMAN THORNTON: Joe Daddura, who is with  
10 the Office of Maritime Standards. So if I've missed  
11 anyone else, I apologize.

12 It's about 9:04. I'll tell you what let's do.  
13 Go off the record a second.

14 (Whereupon, at 9:04 a.m. the meeting went off  
15 the record and resumed back on the record at 9:05 a.m.)

16 CHAIRMAN THORNTON: What we're going to do,  
17 let me pause here and say, from the committee, we -- I  
18 can't remember. Did I go over the agenda on the record  
19 or off the record? Off the record. Let me do that,  
20 and then we'll come back.

21 So what we're going to do, is we've had sort  
22 of a welcome and open discussion and talked about the  
23 executive summary. The Assistant Secretary will come  
24 in. We're thinking he may be late. So wherever we are  
25 in our deliberations, we'll simply pause and hear from

1 him and do the photo session, and then we'll resume our  
2 normal agenda.

3 Our Longshoring Workgroup report will be  
4 first. There's been an adjustment. I'll call for the  
5 Outreach and Safety Culture Workgroup second. That  
6 will come, give or take, around 10:30. Around 11:15,  
7 that will be our Cranes and Falls Workgroup. Then at  
8 1:00 will be our Shipyards, right after lunch. The  
9 first session after lunch will be our Shipyard  
10 Workgroup.

11 We'll have a report following that from Bill  
12 Perry on the final rule for the PPE standard that just  
13 came out, an update from Dave Wallis then following  
14 that on Subpart S. Somewhere in there we'll take a  
15 break. Mike Seymour will be here to talk about  
16 ergonomics. After that, around 3:00 we'll have Tom  
17 Galassi's report on the enforcement update, about 3:00.  
18 I'm sorry, about 3:30. Then our Health Workgroup will  
19 come around 4:00. Marc MacDonald has graciously  
20 offered to stand in for Steve Hudock for that.

21 Then we'll have some open discussion, and  
22 finally closure at 5:00. That's our agenda.

23 What I'd like to do at this time, is ask of  
24 the committee, are there any comments, questions,  
25 adjustments to the agenda? Everything okay so far?

1 (No response)

2 CHAIRMAN THORNTON: Okay.

3 Let me also remind the public, there's a sign-  
4 up sheet in the back, I guess, or it's being passed  
5 around. I appreciate your singing in on that, and that  
6 will accompany your identification on the record as to  
7 your presence.

8 What I'm going to do at this time, I'm going  
9 to start in, okay, with the Longshoring Workgroup  
10 report.

11 Now, who's presenting that? Jim? Thank you.  
12 What I'd like you to do, Jim, is just dive into it. If  
13 the Assistant Secretary comes in, as I said, we'll  
14 simply pause and come back. I know I'm probably -- am  
15 I hitting you too cold? You're okay? So let me turn  
16 the floor over to Jim Burgin.

17 Before I do that, just for the public, let me  
18 explain to you a little bit about process, because I  
19 think that's important. The way we work the MACOSH is  
20 so as to get as much participation from everyone. We  
21 sort of make the sausage the day before we actually do  
22 the full committee meeting.

23 So in our workgroups, they're very informal.  
24 Anyone can participate. They're led by a member of  
25 this committee, each of the five workgroups. So the

1 day prior to the official meeting is when kind of the  
2 sausage gets made and we plow through the issues, we  
3 take comments. Then the committee -- good morning,  
4 Dorothy and Mr. Secretary.

5 We're at a good time, if you'd like to address  
6 the committee. I don't know what you're prepared to  
7 do, but you have the floor if you'd like.

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By Assistant Secretary Edwin J. Foulke, Jr.

ASSISTANT SECRETARY FOULKE: I have a comedy routine ready for you.

(Laughter)

CHAIRMAN THORNTON: A song and dance?

ASSISTANT SECRETARY FOULKE: That, too. We're doing "Dancing with the Stars" here.

(Laughter)

CHAIRMAN THORNTON: Great. Well, thank you, and welcome.

ASSISTANT SECRETARY FOULKE: We need a bigger room. I'm sorry, we don't have a big enough room for our dancing routine.

CHAIRMAN THORNTON: Well, I was dancing for a little while, Mr. Secretary. We had a little problem getting started. Our Court Reporter was involved in a subway accident. So, we know the drill.

ASSISTANT SECRETARY FOULKE: All right. Great. How are you?

CHAIRMAN THORNTON: I'm good. How are you?

ASSISTANT SECRETARY FOULKE: I'm doing well. Thank you for having me. I appreciate that. I appreciate Jim's, once again, chairing the committee and being involved with that. He's been actively

1 involved with the committee for a fairly long time. I  
2 appreciate your company's commitment, because they're  
3 very much involved with our PPP program, so we  
4 appreciate that very much, too.

5 And Dorothy told me -- which is Marc? Where's  
6 Marc? There's Marc down there. Okay. She really  
7 appreciated you all letting her do the crane thing. I  
8 mean, that's all I hear about, is cranes.

9 (Laughter)

10 CHAIRMAN THORNTON: That's all we hear about  
11 as well.

12 (Laughter)

13 ASSISTANT SECRETARY FOULKE: But I appreciate  
14 your hospitality. I'm sorry I didn't get to come to  
15 the last meeting out in Oakland, but I'm glad you all  
16 were here today.

17 The first thing, I'll just start off by just  
18 saying thank you to each and every one of you for being  
19 involved with this committee. I know that you all  
20 could be someplace else. You all have other jobs that  
21 require your attention that you actually probably get  
22 paid for. We don't pay these people, do we? Okay,  
23 good.

24 (Laughter)

25 ASSISTANT SECRETARY FOULKE: And --

1 CHAIRMAN THORNTON: Can we talk about that?

2 (Laughter)

3 CHAIRMAN THORNTON: I mean, can we discuss  
4 that?

5 ASSISTANT SECRETARY FOULKE: You can talk  
6 about it after I leave.

7 (Laughter)

8 ASSISTANT SECRETARY FOULKE: But, no. I  
9 appreciate the fact that you do this. It's important.  
10 I suspect you wouldn't be here unless you thought it  
11 was important. So, I just want to say thank you for  
12 that.

13 Now, Ken? There he is. Ken, you're new, I  
14 take it.

15 MR. ATHA: Yes, sir.

16 ASSISTANT SECRETARY FOULKE: Good. Well,  
17 welcome. They're actually a pretty nice group. I  
18 think you'll be all right. But, no. We're glad to  
19 have you on. I take it your first meeting was at  
20 Oakland?

21 MR. ATHA: Yes, sir.

22 ASSISTANT SECRETARY FOULKE: Okay. Good. But  
23 I appreciate your agreeing to serve on this committee,  
24 too, so we're really happy to have you.

25 You all bring a wealth of experience that

1 helps us in the maritime industry. This is clearly a  
2 very important area for us as we're trying to deal with  
3 the workplace safety and health issues. You deal with  
4 those issues on a day-to-day basis. You can help us.  
5 Once again, part of what I love about this job is that  
6 I deal with so many different groups, businesses, labor  
7 unions, associations, all of whom are all committed to  
8 safety and health and understand the importance of  
9 that.

10           What we're really talking about -- we might as  
11 well just get really to the bottom line. The bottom  
12 line is simple. The bottom line is, people go home  
13 safe and sound every night to their families and loved  
14 ones. I appreciate the fact -- and you know that,  
15 because you're doing this every day. The groups that  
16 you work with, you're allowing people to go home safe  
17 and sound.

18           These are people that you're not going to see.  
19 They're not going to know what you're doing here,  
20 helping us develop the policies, the best practices,  
21 the training programs, whatever, and providing the  
22 input to us and the expertise to us to help the  
23 maritime industry be safer and allow more people to go  
24 home safe and sound. They're not going to know. You  
25 know what? We're not going to know. If you prevent

1 someone from being injured, you never, ever know about  
2 it, that it would actually ever happen, when you think  
3 about it.

4 So you're all not going to get any credit for  
5 it, because no one is going to know about it. But I  
6 appreciate it, because I know the job you all are doing  
7 here, the fact that you're here is going to save people  
8 from being injured. And you know what? You may even  
9 save people from being killed on the job.

10 When you really think about that, what a  
11 tremendous legacy that is to leave here, when you think  
12 about it, because protecting someone from being killed  
13 -- man, that's just something else, because I've been  
14 there with respect to fatalities. I've probably  
15 handled more OSHA fatality investigations than any  
16 lawyer in the country, and I've seen that devastating  
17 effect. So, just allowing us to do that is just  
18 tremendous, so I just want to say thank you for  
19 volunteering your time for this important work.

20 I know you've probably been talking about the  
21 rechartering process. We are, at this time, preparing  
22 a *Federal Register* notice to solicit nominations to  
23 serve on MACOSH. Once we receive them, we'll screen  
24 them and the Secretary of Labor will--just as you know  
25 what the process is--make the selections and will do

1 that. But I would ask you just to keep that in mind,  
2 that your participating in MACOSH in working group  
3 meetings will be considered when we're rechartering the  
4 Advisory Committee.

5 I think one of the things we're going to do,  
6 is take a new photograph. I'm big on recording history  
7 type of things. I like to remember things of what I  
8 did and I like to be involved in the things I'm  
9 involved in. We do a lot of picture-taking around  
10 here, more so probably than we used to do, because I  
11 think it's important.

12 That's why we're going to take a new picture  
13 of this committee and it will be displayed downstairs  
14 in the OSHA conference room with the other three  
15 Advisory Committees, because I think it's important to  
16 recognize the people that are involved in these  
17 committees and also to kind of keep a record of what it  
18 is. We keep the old pictures, so we'll always have  
19 that record.

20 I thought I'd give you an update, a little  
21 bit, on some of the OSHA activities that have been  
22 going on for the past several months. I'm going to  
23 talk about kind of our new redesign publication page,  
24 some of the new and revised standards, a quick look at  
25 our enforcement and guidance efforts, our outreach

1 training activities, and also I'm going to talk a  
2 little bit about the Alliance programs that we've had  
3 in the maritime industry.

4 The first thing about the new publication page  
5 that we've put out, OSHA has unveiled last week its  
6 public Web site, a newly-formatted publication page.  
7 It was really intended to try to once again make  
8 everything as user-friendly as possible. We've got a  
9 lot of great materials.

10 I've always said in the past, before I even  
11 took this job, but since I took this job, I want OSHA  
12 to be the resource for safety and health. I want us to  
13 be leading the way. I honestly believe that our Web  
14 site is not only the best safety and health web site in  
15 the country, it's the best Web site in the world.

16 I get comments from other countries when I'm  
17 out visiting them, but also we get a lot of visitors  
18 from other countries here. Inevitably, at every one of  
19 those meetings, the members of that delegation will  
20 mention about the OSHA Web site and how they looked on  
21 the OSHA Web site in their country, and how they've  
22 used the OSHA Web site.

23 So, once again, your participation, your  
24 involvement, is helping us have those materials on that  
25 Web site in the maritime industry. You're helping

1 people, not only employees in the United States but  
2 also around the whole world, be safe. So we did this  
3 change because we really wanted to make sure that we  
4 had it user-friendly and it was easy to access, because  
5 if people can't get to the stuff -- if you have it but  
6 can't get to it, you'll need to have it. So we have  
7 over 300,000 visits every month to our Web site.

8 This is probably the most popular page about  
9 getting information on that. So we redesigned that to  
10 make it easier for people to find stuff. We also have  
11 enhanced the search engine. It now offers choices of  
12 five ways customers can look for different products: by  
13 publication number, by key word, alphabetically, by  
14 industry topic, and by type of publication. So it's  
15 all there. We just want to make sure that it was  
16 available to them.

17 We've also adopted some other popular features  
18 that you see on other Web sites. We put in a new  
19 component, like most frequently viewed OSHA  
20 publications and publications recommended by OSHA. So  
21 once again, we're just trying to figure out whatever we  
22 can do. This is a small change in the grand scheme of  
23 things, but once again, it's one step to try to help  
24 make safety and health information and resources  
25 available to people, make it easier to them.

1           So, we're trying to help employers prevent  
2 workplace accidents from happening in the first place.  
3 This is partly through our education, our compliance,  
4 and outreach. It all pays dividends, because in the  
5 long run, if they're using this material--and we've  
6 done surveys where we found they actually are looking  
7 at a lot of this stuff that they're using and aware of  
8 it, that ends up reducing people -- having companies  
9 having injuries and illnesses and fatalities. So, once  
10 again, it's helping us accomplish our mission.

11           Going into the standards area, on November 14,  
12 which was almost two weeks ago, OSHA published a final  
13 rule on an important workplace safety and health  
14 standard dealing with the employer-paid personal  
15 protective equipment standard. Under this rule, the  
16 employers will be required to provide personal  
17 protective equipment, or PPE, at no cost to the  
18 employees, except under specific circumstances.

19           The rule also clarified, or actually contains  
20 certain exceptions, for certain types of clothing and  
21 gear and it clarified OSHA's requirement to employees  
22 regarding payment for employee-owned PPE and  
23 replacement PPE. I understand Bill Perry, the Deputy  
24 Director of Standards and Guidance, is going to give  
25 you a full report on our new payment for PPE standard,

1 so I think you'll find that very interesting.

2           And I think you'll find, I thought Dorothy's  
3 group on Standards and Guidance did real good. I think  
4 it was a very balanced standard. For the most part, I  
5 think we've had comments on it. We really haven't been  
6 overly criticized on the standard. So, I think that  
7 shows that we really were sensitive to a balance as to  
8 all the comments that came in, so I think we did a good  
9 job on that.

10           Also during your meeting you're going to  
11 receive details on a number of other standards and  
12 guidance products that the Agency is developing for  
13 your industry. I will briefly mention them, but I know  
14 that the Standards and Guidance staff, with their  
15 expertise, will give you more specifics on the  
16 Standards and Guidance documents that we're working on.

17           One of the things that we are working on in  
18 shipyards, we recognize working in shipyards is one of  
19 the most hazardous occupations in the country. To  
20 reduce those risks, we're going to propose revising our  
21 standard on General Working Conditions in Shipyard  
22 Employment. That proposal is going to cover several  
23 workplace safety and health issues, although many  
24 provisions simply need to be updated and clarified on  
25 existing requirements. The proposed rule has cleared,

1 I understand, OMB and we're going to be getting that  
2 finalized to be able to publish that revised standard,  
3 hopefully in the very near future.

4 Subpart S. The final rule revising electrical  
5 installation requirements for general industry was  
6 published back in February of '07 and went into effect  
7 in August of '07 of this year.

8 The final rule contained a requirement to  
9 provide ground fault circuit interrupters for temporary  
10 wiring involved in certain activities. At your August  
11 1 meeting, MACOSH asked OSHA to delay enforcement of  
12 the GFCI provision under we could clarify the standard  
13 and its requirements. In response to your  
14 recommendations, we are clarifying the standard as it  
15 applies to shipyard employment. I guess we'll be doing  
16 that in this meeting here, to do a little bit more on  
17 that.

18 As part of our long-range review of all OSHA  
19 standards, OSHA is considering changes to the Maritime  
20 Industry Standard, specifically Parts 1915, 1917, 1918,  
21 and 1919. For example, in Subpart G of Section 1915,  
22 which covers gears and equipment for rigging and  
23 material handling, OSHA is considering revising the  
24 sling standard. OSHA is also considering adding  
25 definition to "ship stores" as part of 1917 and 1918.

1           In the guideline areas, because shipyard work  
2 is hazardous and physically demanding, we are  
3 developing proposed ergonomic guidelines for shipyards.

4       These guidelines will provide recommendations for  
5 shipyards to help reduce the number and severity of  
6 work-related musculoskeletal disorders, increase  
7 employer and employee awareness of risk factors,  
8 eliminate unsafe work practices, alleviate muscle  
9 fatigue, and increase productivity.

10           We issued these guidelines on September 11,  
11 2007, and the comment period is closing on November 13.  
12 OSHA will provide comments to the Health Workgroup for  
13 their review. Later this afternoon, I think Mike  
14 Seymour, with the Directorate of Standards and  
15 Guidance, will be giving a full report on the  
16 guidelines for your information there. So, we're going  
17 to work on that.

18           Another area that we've done a lot of work in  
19 over the last several years, is dealing with the issue  
20 of pandemic influenza guidance. The medical experts  
21 predict that a worldwide influenza outbreak in the  
22 coming years will cause disease to many people. Pretty  
23 much, the experts agree that it's not if a pandemic  
24 influenza will occur, it's when a pandemic influenza  
25 will occur.

1           So we really are trying to make sure that we  
2 have put in place all the information guidance that we  
3 need to have, employers need to have, the governments  
4 need to have to be able to continue operations. That's  
5 really the charge that we've had, as the White House  
6 has taken the lead on this particular issue, and really  
7 has said we want to make sure that we're prepared to  
8 handle this pandemic when it occurs.

9           Even though we don't have a pandemic right  
10 now, we want to be prepared for it. We want to make  
11 sure that the Federal Government continues to operate.  
12 We want to make sure that the State and local  
13 governments continue to operate. We want to make sure  
14 that businesses continue to operate during this thing.

15           So, that is what we've done. OSHA has  
16 prepared two major guidance documents on this, one for  
17 general industry practices, and then the other one, a  
18 more detailed one which deals with specific needs of  
19 employees working in the health care industry.

20           The guidance for general industry explains how  
21 the influenza is spread, how employers can maintain  
22 operations, how to protect employees, steps for low-  
23 medium- and high-risk workplaces, and tips for  
24 employees to stay safe and healthy while traveling or  
25 living abroad for work.

1           We have that information on our Web site, once  
2 again, and it links to the National Pandemic site, the  
3 White House Web site on the pandemic. So there's a lot  
4 of information there. Hopefully, I think you'll find  
5 that the stuff that we have prepared, the guidance  
6 documents that we've prepared, will be very helpful in  
7 allowing your businesses to continue in operation when  
8 a pandemic influenza hits the country.

9           Enforcement programs. I'm pleased to inform  
10 you that OSHA's goal that we set for 2007 of conducting  
11 37,700 inspections, we exceeded that goal by 4 percent,  
12 so we remained committed to a very strong enforcement  
13 program.

14           It's unfortunate, but there are still  
15 employers who think that exposing their employees to  
16 safety and health hazards is just a part of doing  
17 business. That's kind of a sad thing in this day and  
18 age, but it's true, because I see it pretty much every  
19 week. I may not see it every day, but I see it every  
20 week.

21           So we're going to continue to have strong  
22 enforcement. One of the things we are doing, is  
23 updating the training of our CSHO employees and making  
24 sure that they're full trained to be able to do  
25 comprehensive inspections. We have a number of

1 inspection emphasis programs that are going on right  
2 now. We added one for butter-flavored popcorn  
3 involving diacetyl. We've done a national emphasis  
4 program involving all the oil refineries. The diacetyl  
5 one involving popcorn, we intend to inspect all the  
6 facilities by the end of the year. The refinery  
7 national emphasis program, we're going to visit all the  
8 refineries in Federal and State programs.

9 Our goal is to get those completed in a two-  
10 year period to inspect all of them, a very specific  
11 program. We have a number of other emphasis programs  
12 that we're working on there and there will be some  
13 other ones that will be announced in the not-too-  
14 distant future, so we'll be working with them on those.

15 OSHA really is committed to maintaining up-to-  
16 date and accurate directives and other guidance  
17 materials. OSHA's maritime directives were issued in  
18 2005 and 2006. Revisions on two of these maritime  
19 directives are close to completion, and we expect to  
20 update directives on shipyard PPE and maritime  
21 jurisdiction in the spring of 2008. I think Tom  
22 Galassi is going to give a discussion about that.

23 Also, I want to talk a little bit about an  
24 important part of the mission to assist employers, and  
25 that's our outreach through training. We've been

1 looking at the needs of your industry and how we can  
2 support you through the Training Institute located in  
3 Chicago.

4 This year, Region 4 has completed and  
5 presented 10- and 30-hour Train the Trainer courses,  
6 and a 30-hour training course was designed for the  
7 maritime industry. I think we've got something coming  
8 up on that, too, if I remember. I might be able to  
9 look at that. But I understand, on the Region 4, the  
10 topics included shipyard employment, including ship  
11 repair, shipbuilding, and ship breaking, maritime  
12 terminals, and longshoring. So we're moving on that.

13 OSHA Directorate of Standards and Guidance  
14 Enforcement Programs and Training and Education are  
15 collaborating to redesign the Shipyard Process and  
16 Standards Course, course #2090. I think we'll be  
17 working very closely on that.

18 Also, as part of that redesign, too, I  
19 understand Leo Edwards -- is Leo here? There he is.  
20 Good to see you, Leo. He's our Director in Norfolk,  
21 Virginia. He's part of the redesign team. So, I  
22 appreciate him being involved with that group.

23 Finally, I would like to remind you that we  
24 have four national alliances with the maritime  
25 industry, and those include the American Shipbuilding

1 Association, the National Shipbuilding Research  
2 Program, the Shipbuilders Council of America, and the  
3 National Maritime Safety Association. Since the last  
4 MACOSH meeting in the summer, OSHA renewed two of these  
5 alliances agreements. We renewed the alliance with the  
6 American Shipbuilding Association on August 22nd, and  
7 our alliance with the National Shipbuilding Research  
8 Program on October 2nd.

9 Through all of our alliances, we are  
10 developing for the maritime industry a new fact sheet  
11 entitled "Safety Alert Involving Electrocutions". The  
12 safety alert has been designed to inform shipyards  
13 about electrical hazards, particularly about arc  
14 flashes. We're working on developing this fact sheet  
15 with the assistance of three of the alliance  
16 partnerships, along with two other alliance partners,  
17 the American Industrial Hygiene Association and the  
18 American Society of Safety Engineers.

19 We are also working on our marine industrial  
20 safety topics page on the OSHA Web site. It's being  
21 updated to reflect input from OSHA and our alliance  
22 partners. So, we've been working very diligently on  
23 that.

24 I guess I'll just finally say, once again, I  
25 know you've got a full agenda, so I don't want to keep

1 you all from that. I may try to stop in later on  
2 during your meeting. I wish I could stay here for the  
3 whole meeting, but unfortunately when I took this job I  
4 didn't know, my time is not my time. I get to go do  
5 things. But once again, I appreciate the work that's  
6 been put together.

7 I appreciate your time and commitment, because  
8 I know it's difficult, being away from your jobs for at  
9 least two, and possibly, some of you all, three days,  
10 some maybe four, just the travel time involved. But  
11 once again, like I say, it is important. Allowing  
12 people to go home safe and sound to their families and  
13 loved ones is a great legacy to be leaving behind. So  
14 I applaud your efforts on that and I appreciate your  
15 all being here and helping us out.

16 CHAIRMAN THORNTON: If I could, and I guess  
17 we're going to have some pictures here in just a  
18 second, speaking on behalf of the committee and really  
19 the maritime community, I think the maritime community  
20 feels very close to the Agency and the administration  
21 through a number of different areas, whether it is  
22 MACOSH, you alluded to some of the partnerships and  
23 alliances and some of the different areas.

24 So we interact and intersect in a number of  
25 ways which are all very positive. We agree mostly.

1 Sometimes we have to, you know, disagree, but we can  
2 disagree without being disagreeable, type of thing.  
3 But I feel, back to the point on behalf of the  
4 community, very close to the Agency. If we have got an  
5 issue, we feel we can come forward and discuss it  
6 openly and come to a reasonable decision on that.

7 To your point, I think we are making a  
8 difference out there. I think the products and  
9 services and the things that this committee is doing,  
10 as well as the efforts that perhaps we don't see, the  
11 ones that are not in this room, if you look at our  
12 injury rate reduction for our NACS or SSE code, it's a  
13 pretty good thing. If you compare that to, say,  
14 general industry, we're making a difference out there.

15 So, many more people are going home in the same  
16 condition as they came to work in than ever, and we  
17 pledge to continue those efforts.

18 I think the other thing, you alluded to the  
19 fact that it's the effect on the family unit and how  
20 devastating an industrial accident can be. All of that  
21 is very true. I think we are making a difference  
22 there.

23 But I think also we're making a difference  
24 financially in terms of reduction of Worker's Comp,  
25 which in turn allows us to have even more jobs

1 available for people. So if we can sort of get in that  
2 positive cycle, I think that's where we all are trying  
3 to get. On behalf of the people in this room, I do  
4 appreciate your personal support, and all of that of  
5 the Agency as well.

6 So, with that, thank you very much. I'm not  
7 sure. I'm going to turn this over now to the  
8 photographer, so he's got the floor. I'm sorry, may I  
9 say, we're off the record.

10 (Whereupon, at 9:36 a.m. the meeting was  
11 recessed and resumed back on the record at 10:02 a.m.)

12 CHAIRMAN THORNTON: We're back on the record.

13 There's a couple of administrative things we  
14 need to do before we go back to our agenda. The first  
15 is, I'll turn it over to Susan. We need to put the  
16 minutes, I guess, officially on the record. everybody.

17 MS. SHERMAN: Mr. Chairman, the committee  
18 approved the executive summary of the minutes.  
19 However, I'd like to offer them as Exhibit 1 into the  
20 record.

21 (Whereupon, the document referred  
22 to as Exhibit 1 was marked for  
23 identification and entered into  
24 the record.)

25 CHAIRMAN THORNTON: Thank you. And also,

1 someone reminded me again, I've been remiss. That is,  
2 when we're doing introductions and thank-yous, et  
3 cetera, I failed to mention the OSHA staff  
4 specifically, Vanessa Welch--and I'm probably missing  
5 people--Amy, and other people. Paul is no longer with  
6 us, right? Okay. Whoever they are, besides Vanessa.  
7 Is Danielle here? Don't forget Pat Strickland, also,  
8 for your reservations, et cetera. So thank you to all  
9 staff that helps us with all the details of these  
10 meetings, which are extremely hard to put together.

11 So, everybody okay? Ready to move into -- I  
12 guess we barely started the Longshore Workgroup report,  
13 so I'm going to once again turn it over to Jimmy  
14 Burgin, who's going to take us through the discussion  
15 here.

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1 you.

2 MR. BURGIN: What I would suggest that the  
3 committee do, and this will take a little bit of time,  
4 but we need to just about go through this page by page.  
5 I will try to highlight and do a treetop version of our  
6 discussion yesterday, but if you have questions, you  
7 may have to stop me, because once I get on a roll I  
8 might keep going.

9 CHAIRMAN THORNTON: All right. What I'm going  
10 to do, just to kind of keep some kind of order here, is  
11 I'm going to first take comments/questions from the  
12 committee, and then allow some time for any questions  
13 from the public. I hope not to cut anyone off, but I  
14 guess what I'm saying is, I'm going to kind of defer  
15 here and allow preference to the committee for  
16 questions, and then perhaps allow for a little  
17 discussion from the public.

18 MS. SHERMAN: Jimmy, in order to make the  
19 record clear, when you're referring to the smooth  
20 draft, please say so. When you're referring to the  
21 chart, please say so.

22 MR. BURGIN: The document comparison.

23 MS. SHERMAN: Document comparison, whatever  
24 you want to call it, just so we'll be able to tell from  
25 the transcript.

1 MR. BURGİN: Okay.

2 MS. SHERMAN: Okay. Thank you.

3 MR. BURGİN: I think the best thing to do for  
4 everybody would be to look at the smooth draft version,  
5 which is just a plain Word document without columns. I  
6 would suggest that we enter that into the record, as  
7 well as the document comparison document.

8 MS. SHERMAN: Okay. Why don't we enter the  
9 smooth draft in the record as Exhibit 2, and the  
10 document comparison as Exhibit 3.

11 MR. BURGİN: Okay.

12 MS. SHERMAN: And I'll mark them and give them  
13 to the Court Reporter for inclusion in the record.

14 MR. BURGİN: Okay.

15 MS. SHERMAN: Thank you.

16 (Whereupon, the documents referred  
17 to as Exhibits 2 and 3 were marked  
18 for identification.

19 MR. BURGİN: Like I said before, I'm going to  
20 try to go through this quickly. Please follow along.  
21 If you have questions, please stop and talk to me.

22 As a brief history, the workgroup was given a  
23 draft earlier this year, the RO-RO Ship Dock Safety  
24 document, and was charged with providing feedback to  
25 OSHA on the draft. So, that's the purpose of what

1 we're doing here. So we have, during the conference  
2 calls, talked about the original OSHA draft. You see  
3 in the comparison document, on the right-hand side is  
4 the OSHA original language, and then the left-hand side  
5 of the document is called the "Discussion Draft,  
6 11/27/07".

7 The discussion draft is the product of the  
8 Longshore Workgroup. It's the language that the  
9 Longshore Workgroup suggests to OSHA. The discussion  
10 draft, in the left-hand column of the comparison  
11 document, is the very same language that's in the  
12 smooth draft version, so you can look at the smooth  
13 draft version or you can look at the discussion draft  
14 on the left-hand column of the comparison document, but  
15 it's the very same language. Okay.

16 So, going forward, I will highlight where the  
17 suggested changes were. The first paragraph, page 1,  
18 deals with some language that we suggested because the  
19 first language was a little bit too general. We  
20 suggested some more specific language and deleted the  
21 OSHA sentence that says "the work is fast-paced, is  
22 conducted around the clock, and often in inclement  
23 weather." The suggested language is a little bit more  
24 specific than what that language was.

25 The next paragraph, we deleted some adjectives

1 that were in the OSHA original document. The original  
2 document also talked about a group of workers, such as  
3 seamen, lashers, cargo handlers, et cetera. We better  
4 defined that particular list of workers, so that's what  
5 the workgroup did.

6 The next paragraph begins, "OSHA recommends  
7 that marine cargo handler employers..." That  
8 paragraph, we inserted the definition from 1918.86(a),  
9 which is the definition for traffic control systems.  
10 The workgroup recommends that the document use the word  
11 "traffic control systems" rather than "traffic control  
12 programs" that was in the original document. It makes  
13 it consistent with the 1918 standard and it also allows  
14 for the controls to be emphasized rather than a written  
15 program.

16 The next paragraph. The workgroup felt that  
17 references to ICHCA, which was in the original  
18 document, which is International Labor Organization and  
19 the International Cargo Handling Coordination  
20 Association, ICHCA. We felt like that should be taken  
21 out of the document to make it more United States-type  
22 operations friendly. Also, the workgroup added that  
23 the MACOSH has produced this document and has worked on  
24 this document.

25 The next paragraph is the same.

1           Going on into the introduction.

2           MS. SHERMAN: You're now on page 2?

3           MR. BURGIN: I'm at the bottom of page 1.

4           MS. SHERMAN: Okay.

5           MR. BURGIN: Bottom of page 1, in the  
6 "Introduction" section.

7           MS. SHERMAN: Okay.

8           MR. BURGIN: The workgroup expanded that  
9 paragraph to make it more descriptive of RO-RO vessels.  
10 We felt like that, overall, the document that OSHA  
11 produced was too broad of a document. We needed to  
12 define better the safety controls that would be  
13 applicable to the different types of vessels that  
14 handle roll on-roll off cargo, and also to the  
15 different type of cargo that's being handled on these  
16 vessels.

17           So you're going to see that coming through the  
18 document several times, because the problem with the  
19 original document was that it was too broad and it  
20 applied every safety rule as a general requirement or  
21 general guidance to all cargo and all vessels as a  
22 whole. So in the "Introduction" section, still on the  
23 bottom of page 1, we added a definition for RO-RO  
24 vessels, which is strictly straight out of 1918.2,  
25 which provides the definition for RO-RO vessels.

1           CHAIRMAN THORNTON: Let me stop you right  
2 here, if I could. But you're working from the  
3 landscape document right now, or are you going back and  
4 forth between the portrait document and the landscape  
5 document?

6           MR. BURGIN: My notes are on the landscape  
7 document, so I'm personally working from the landscape  
8 document.

9           MS. SHERMAN: May I also clarify, you've  
10 talked about the introduction on the bottom of page 1.  
11 However, on page 2 there is something that's titled  
12 "Introduction", so that's a little bit confusing.

13          MR. BURGIN: Okay. I suggest that everybody  
14 follow the portrait document, which is the smooth draft  
15 version. I suggest that you do that.

16          MS. SHERMAN: Okay. That's Exhibit 2.

17          MR. BURGIN: Okay.

18          CHAIRMAN THORNTON: That's helpful, because I  
19 got lost, myself. Okay.

20          MR. BURGIN: Sorry about that.

21                 So we are on the top of page 2, right  
22 underneath the words "Insert picture". There were  
23 several pictures in the original OSHA document. We can  
24 help supply pictures. The workgroup can get pictures  
25 and put them back into the document, if necessary.

1 MS. SHERMAN: Are you saying that you want  
2 different pictures than were originally there?

3 MR. BURGIN: Yes.

4 MS. SHERMAN: And why is that?

5 MR. BURGIN: To be more specific to the new  
6 language, possibly, that's in the workgroup-suggested  
7 language.

8 MS. SHERMAN: Okay.

9 MR. BURGIN: Okay.

10 The first main paragraph, the top of page 2,  
11 is the same, no change there.

12 The next change is the paragraph that deals  
13 with RO-RO operations. What we tried to do, is you see  
14 on page 2, it says "Each type of ship and each type of  
15 cargo presents different challenges." The reason that  
16 that's new language, the reason that we inserted that  
17 language, was to clarify that there are many, many  
18 different types of cargo and each type of cargo has its  
19 specific safety controls. There are many, many types  
20 of vessels, configurations of cargo holds in the RO-RO  
21 ships, and they have, in a sense, their own controls.

22 MS. SHERMAN: Let the record show that Mr.  
23 Burgin is referring to page 2, paragraph 3 of the  
24 smooth document.

25 MR. BURGIN: Okay.

1           Another item that we took out of the original  
2 document, was references to the Pacific Maritime  
3 Association's frequency rate in 1997. The original  
4 OSHA document stated that the frequency rate was: 7.1  
5 percent of all accidents in PMA-covered ports happened  
6 in RO-RO operations. The most recent statistics now  
7 reveal, in 2006, that only 0.028 percent of all  
8 accidents in PMA-covered ports happened on RO-RO type  
9 operations.

10           The workgroup has struggled with this. It was  
11 pointed out in a conference call that if that is -- the  
12 drastic reduction is great, but that only covers  
13 basically the West Coast ports, the PMA ports. So we  
14 asked OSHA yesterday, is that because there's such a  
15 drastic reduction in the accident frequency? Will that  
16 be a problem in getting the document to put out and  
17 eventually be made available to the public? So can we  
18 have that discussion again today? David, would you  
19 speak to that?

20           MR. WALLIS: I'd be glad to have that  
21 discussion. In, I'm not sure which year it was. I  
22 guess it was 2005. OMB published data quality  
23 guidelines that all agencies have to follow. We have  
24 to basically pull together our own and make sure all  
25 our guidance products are based on, basically, sound

1 science. So what we've had to do when we have put out  
2 a guidance product, is go back and make sure that all  
3 the statements we make in the documents are accurate,  
4 we have supportable information backing all these  
5 things up.

6 The other thing that the data quality  
7 guidelines require us to do, is to make sure that when  
8 we issue guidance, there's actually a need for it. It  
9 wouldn't make much sense for the government to put out  
10 a guideline on a subject that didn't pose some kind of  
11 a problem, depending on, in our case it would be an  
12 occupational safety problem. If there aren't any, or  
13 very few occupational injuries related to roll on-roll  
14 off operations, it would not be in the public's  
15 interest for the government to spend resources  
16 developing a document on that.

17 So one of our concerns is that the original  
18 PME number showed that roll on-roll off operations  
19 contribute significantly to employee injuries, and now  
20 we're hearing that that's no longer the case. That is  
21 a concern. What I've asked the workgroup to do, is to  
22 continue looking for data that will help us support the  
23 need for this document.

24 MR. BURGIN: Okay.

25 MR. ADAMS: Has there been any understanding

1 or looking into why there's been a change? Is it just  
2 a counting anomaly?

3 MR. BURGIN: I don't know that there's been a  
4 study. Maybe Marc could address that.

5 MR. MacDONALD: I think it comes down to, I  
6 think, one, improvements in safety, and then also,  
7 percentage-wise, just the growth in other forms of  
8 transportation, containerization, for the most part.  
9 So I think you're talking about, one, improvements, and  
10 you're talking about, one, just changes in the mix of  
11 cargo.

12 MR. WALLIS: I would like to add one thing. I  
13 didn't want to imply by my statement that we couldn't  
14 go forward with this. All I wanted to say is that the  
15 numbers were posing some problems for us. As Marc  
16 noted, these are percentages. Maybe if we could get  
17 data behind those percentages we would find out that  
18 the numbers of injuries were still very high, even  
19 though the percentage of accidents were lower.

20 MR. BURGIN: All right.

21 Let's go on to page 2, "Factors That  
22 Contribute to RO-RO Related Injuries". Nothing really  
23 to discuss there. It's pretty much standard.

24 The top of page 3 gets into training. This is  
25 another example where the original document painted all

1 training for all types of varieties of vessels and  
2 cargo with a big, broad brush. What we tried to do, is  
3 specify and clarify the training that would be applied  
4 to vehicles that are considered powered industrial  
5 trucks as opposed to cargo aboard the vessels, and  
6 cargo could be--and we spell this out in the document--  
7 automobiles, could be combines, could be farm  
8 equipment, could be a variety of different heavy  
9 equipment.

10 So what we tried to do is clarify using the  
11 standard, and the standards are referenced at  
12 1918.98(a), which would be designating operators by  
13 training or experience, and then, of course, the  
14 forklift, powered industrial truck operator training  
15 standard is listed there and that would apply only to  
16 powered industrial trucks, not to cargo. So, the  
17 workgroup felt strongly that we should make that  
18 clarification.

19 Going on to "Fatigue" on page 3. The  
20 workgroup felt like there was a quote in the original  
21 document that talked about, from the *Port of Baltimore*  
22 magazine, July of 2004, which we felt, again, was too  
23 broad of a quote. It said that employees need only 5  
24 to 8 minutes to move wheeled cargo on and off ships,  
25 and we felt like in some cases that's true, but not in

1 every case. So, we felt like that should be taken out  
2 of the document.

3 Under "Pedestrian and RO-RO Traffic Movement  
4 and Controls", we expanded that paragraph a little bit  
5 there. Again, the original OSHA language included a  
6 reference to systems. Again, we're trying to emphasize  
7 more controls that could be in place rather than  
8 systems.

9 We added that traffic control systems, and  
10 this is, again, under "Pedestrian and RO-RO Movement  
11 and Controls" at the bottom of page 3. Traffic control  
12 systems do not have to be written plans, however, they  
13 must be implemented through signage, tape, barriers, et  
14 cetera to define the intent for the employees of the  
15 control systems. Again, the language in 1918 uses the  
16 words, "traffic controls systems" rather than "traffic  
17 control programs". Okay.

18 Moving on to the top of page 4, the first  
19 bullet point, "Seat Belts" was referred to in the  
20 document. Seat belts should be worn by driving  
21 equipment covered by Power Industrial Truck, if so  
22 equipped, but the original OSHA document required any  
23 and all vehicles that had seat belts must be used.

24 The feedback from the workgroup was that some  
25 manufacturers of automobiles and other types of

1 equipment do not want persons driving the vehicles to  
2 use seat belts or to use any other accessories on the  
3 vehicle for fear of it getting dirty, damaged, and  
4 things like that. So we needed to clarify that,  
5 certainly on powered industrial trucks, yes, but maybe  
6 not so on cargo.

7 The top of page 4, the next bullet point, "RO-  
8 RO traffic should be controlled at all times using  
9 signage, barriers, signal persons..." That's not  
10 language and it's part of 1917.71.

11 Under "Speed Limits" in that same section,  
12 still at the top of page 4, the original language  
13 talked about, "designated parking on RO-RO traffic  
14 access routes should be prohibited except in suitable  
15 designated areas." We felt like designated areas on  
16 vessels, really, every part of the vessel is used as a  
17 parking place to stow cargo, so that was, again, too  
18 broad to really be applicable.

19 Going on to "Vehicle Operation" in that  
20 section there, again, this is when we tried to  
21 introduce the variety of the cargo that's handled and  
22 the unique characteristics from vessel to vessel. We  
23 suggested that language there, right underneath the  
24 heading of "Vehicle Operation".

25 Under "Cargo Weights", the OSHA document, the

1 original language says, "Cargo should not be operated  
2 or moved about the ship without a vehicle marshall or  
3 director present." The workgroup felt like that that  
4 is the role of superintendents and foremen on the  
5 vessel. It's not specifically called for in 1917 or  
6 1918. Since they're doing that from direction from  
7 their employer, again, it's not something that has to  
8 be done.

9 MS. SHERMAN: Excuse me. Which change did you  
10 make under "Cargo Weights"?

11 MR. BURGIN: There was a section in the OSHA  
12 original language that dealt with having a marshall or  
13 director present. We took that out.

14 MS. SHERMAN: So you omitted that language?

15 MR. BURGIN: Yes, ma'am. Yes.

16 MS. SHERMAN: Okay. Thank you.

17 MR. BURGIN: OSHA also, in their original  
18 language, had a phrase that says, in this same section,  
19 but it was taken out, "RO-RO, however, should not be  
20 backed without supervision from a vehicle director  
21 stationed to one side or to the rear of the vehicle  
22 being backed." When you're discharging automobiles,  
23 you have to go forward two feet, back up two feet, so  
24 there's a lot of movement back and forth.

25 To say in a guidance document that people

1 should be on one side or the other, watching, again, is  
2 a broad brush and we tried to make it a little bit more  
3 specific, again, going back to 1918.86(n), which deals  
4 specifically with moving backwards and forwards. It's  
5 more performance language to make sure people are not  
6 in the way of the vehicles doing that.

7 Another part of the OSHA original language  
8 that we had to take out stated "only one vehicle should  
9 travel on a ramp at a time unless the ramp is properly  
10 marked and equipped to handle more than one direction  
11 of travel." We took that out because generally cars  
12 will come off a vehicle at a good pace and there may be  
13 one car coming off the ramp when the next car is  
14 getting on the ramp, so ramps are big and there could  
15 be one or two cars on a ramp at a particular time. We  
16 went back to the standard, 1986(a), which deals with  
17 the traffic control system. That would handle how to  
18 have multiple cars on a ramp, if that were the case,  
19 given a particular operation.

20 The top of page 5. The original OSHA language  
21 stated that "Vehicles should not be operated in excess  
22 of designated speed limit." We changed the word  
23 "vehicles" to "cargo". And "designated speed limit",  
24 again, the OSHA standard is more performance language  
25 driven rather than having any designated speed limits.

1       There may or may not be a designated speed limit every  
2 single time, but that is up to the controls in place to  
3 monitor the speed of vehicles.

4               Going on to "Used Cargo", the original OSHA  
5 language used the term "unsafe cargo". We felt like  
6 that the cargo that we handle was not, by itself,  
7 unsafe, so we suggested that we go with "used cargo".  
8 OSHA also stated in their original language that  
9 "unusual or abnormal RO-RO cargo may need to be  
10 escorted directly on or off the ship", and we felt like  
11 that that could lead to injury. Employees could be  
12 struck by the cargo if they get too close to the cargo,  
13 so we suggested that we take that out.

14               Still under "Unusual or Over-sized Cargo", the  
15 sentence that says "Before loading or discharging  
16 unusual..." et cetera, et cetera, OSHA, in the original  
17 language, used the term "competent person". "Competent  
18 person" implies several things. "Competent person" is  
19 not listed in any of the 1917 and 1918 rules that apply  
20 to cargo handling, so we suggested we take that out.

21               Some of the language, continuing on to page 5,  
22 is new language. I will not go into too much of that.

23               Let's go into "Communication". Again, the  
24 OSHA language stated that "RO-RO operations require  
25 constant communication." It's impossible to do

1 constant communication if someone is in a vehicle  
2 driving it, so we felt like that we needed to be a  
3 little bit more specific, so we used the word  
4 "effective communication is a key element..." and you  
5 can read from there.

6 MR. CASTANHO: Jim, one question. Page 5,  
7 back up to the "Unusual or Over-sized Loads". The  
8 second bullet, "Ensure the RO-RO cargo is securely  
9 lashed to its transporter and is or safe to move." The  
10 word "or". Should that be in there or is that a typo?

11 MR. BURGIN: Probably a typo. Thank you.

12 MR. CASTANHO: All right.

13 MR. BURGIN: One thing that OSHA put in the  
14 original language was just a general statement that  
15 says "Mooring ropes should be adjusted as necessary".  
16 That's pretty much up to the vessel crew to do that,  
17 and they commonly do that anyway. The mooring ropes  
18 aren't that particular to cargo handling.

19 The "Ramps" section on the bottom of page 5.  
20 We tried to quote the standard that used the language  
21 in the 1918 standards.

22 Something I would like to point out on page 6,  
23 which is the first main paragraph on page 6 that  
24 begins, "Note that some mechanical cargo is driven..."

25 It's important to note that the last sentence of that

1 particular paragraph, that persons that have to operate  
2 the cargo using an umbilical cord type control are not  
3 considered pedestrians because they are mainly the  
4 operators of that equipment as it's driven on or off  
5 the vessel.

6 Under "Substance Abuse", the first sentence in  
7 the "Substance Abuse" section is a new sentence that  
8 was added by the workgroup. Under elimination, there  
9 was some rewording done. What the rewording tried to  
10 do, is stress that lighting is something that's  
11 provided by the vessel and it should be good.

12 The original OSHA language talked about using  
13 the sun visor in some cases. Again, the workgroup  
14 pointed out that a lot of the automobile manufacturers  
15 do not want the employees using any of the accessories,  
16 and a sun visor would be included in that.

17 Under "Walking and Tripping Hazards", the  
18 workgroup tried to make it more specific to the types  
19 of hazards that are in the vessel, keeping in mind that  
20 the workgroup felt like the tripping hazards can change  
21 by vessel, or even when the cargo is loaded on or off  
22 the vessel, so we try to make it a little bit more  
23 specific.

24 Under "Vehicle Stowage and Lashing/Unlashing"

25 --

1 MS. SHERMAN: This is on page 7?

2 MR. BURGIN: Yes.

3 CAPT. PRESTON: Jimmy, could we go back to the  
4 top of page 7?

5 MR. BURGIN: Okay.

6 CAPT. PRESTON: I think your language about  
7 traveling from areas with different lighting conditions  
8 to a bright location out-of-doors was probably supposed  
9 to go under "Illumination" and it ended up under  
10 "Walking and Tripping Hazards". The first sentence,  
11 top of page 7.

12 MR. BURGIN: Good. Thank you for pointing  
13 that out.

14 Under "Vehicle Stowage and Lashing/Unlashing",  
15 the second sentence there, the original OSHA language  
16 said that vehicles should not be operated until they  
17 are unlashed. I can't find exactly what the comment  
18 was, but again, we made that more specific to the  
19 operation where workers that are lashing or unlashing  
20 cargo are not in the vicinity of when the vehicle is  
21 moved, when the cargo is moved.

22 "Ventilation". No major change. Well, there  
23 were some changes, but I don't think they were real  
24 significant.

25 MR. RAFFO: I think you have a typo there.

1 MR. BURGIN: Okay.

2 MR. RAFFO: At the bottom of that sentence. I  
3 think it should be "persons competent in the use of  
4 test equipment".

5 MR. BURGIN: Okay.

6 MR. RAFFO: I'm assuming you're not testing  
7 cargo, right?

8 CHAIRMAN THORNTON: Wait a minute, Don. They  
9 didn't get that. Move closer to the mic.

10 MR. RAFFO: On the bottom of the first  
11 paragraph under "Ventilation", it said, "These tests  
12 must be made in the area which employees are working by  
13 persons competent in the use of test cargo..." I  
14 believe it should be "test equipment and procedures".

15 MR. BURGIN: Yes. Thank you. That's correct.  
16 It should be "equipment" instead of "cargo".

17 The remainder of the document deals with PPE.  
18 The remainder of the document pretty much quotes the  
19 1918 or applicable 1910 standards. So, really no need  
20 to go over those. Those are pretty cut and dry.

21 With the changes, the typo changes made today,  
22 the workgroup feels like that this is a very, very good  
23 document. The workgroup has worked very hard on this,  
24 has had a lot of input from a lot of different people  
25 that handle RO-RO cargo. We feel like it's a

1 comprehensive document to some degree, but at the same  
2 time it's consistent and specific to the cargo that's  
3 being handled and the vessels that are being handled  
4 with it. So we would like to, as a workgroup, suggest  
5 to MACOSH that this be given to OSHA as a  
6 recommendation that OSHA consider this for their  
7 language for the roll on-roll off ship dock safety  
8 guidance document.

9 MR. DADDURA: Jim, before we take a vote, I've  
10 got a couple of questions.

11 MR. BURGIN: Okay.

12 MR. DADDURA: You constantly refer to  
13 "vehicles", "cargo", "equipment". Can we come to one  
14 of what we're talking about, whether it's cargo --  
15 everything is considered cargo or -- because you're  
16 constantly back and forth, back and forth. That's one  
17 of the problems we had in developing the document.

18 MR. BURGIN: And we recognize that. We feel  
19 like that it should be specific between a vehicle,  
20 cargo, or equipment. A vehicle is basically -- whether  
21 it's a powered industrial truck, we need to specify  
22 between powered industrial truck and cargo. So to that  
23 extent, the workgroup feels strongly that we have to  
24 make that distinction.

25 MS. SHERMAN: Unless you're actually shipping

1 the powered industrial truck. Then it becomes cargo,  
2 right?

3 MR. BURGIN: Yes, it is cargo. Yes.

4 CHAIRMAN THORNTON: I'm going to stop right  
5 here for a second and make a couple of comments.  
6 First, is I guess at some point I will entertain a  
7 motion. Okay. But we have made, by my account, three  
8 adjustments to the text. Okay. So when you offer a  
9 motion, I think it should be made in the context of the  
10 adjusted, because we've made three adjustments in the  
11 text. Okay. So when we finalize this, we'll have a  
12 smooth document that indicates these changes. Correct?

13 MR. BURGIN: Yes.

14 CHAIRMAN THORNTON: Okay. Now, where we are  
15 in the process, is there's been a recommendation. I'm  
16 ready to entertain a motion, if there is one.

17 MR. WALLIS: May I make one comment?

18 CHAIRMAN THORNTON: Yes, you may.

19 MR. WALLIS: There's one thing I think that's  
20 missing here from your discussion. If you'll look at  
21 page 17 of the comparison document, there were a set of  
22 additional requirements. If you could provide a reason  
23 for the record why you did not include that  
24 information.

25 MR. BURGIN: Because they're covered

1 throughout the document.

2 CHAIRMAN THORNTON: Okay.

3 Is there a motion?

4 CAPT. PRESTON: So, I move that the document,  
5 as changed during our discussion, with the typos and  
6 movement of text, be submitted to OSHA for  
7 consideration as the text for the final guidance  
8 document.

9 CHAIRMAN THORNTON: Okay. I have a motion.  
10 Is there a second?

11 VOICE: I second the motion.

12 CHAIRMAN THORNTON: I have a motion and a  
13 second. It's discussion time. Discussion by the  
14 committee. Questions, comments, discussion by the  
15 committee?

16 MR. ADAMS: One question.

17 CHAIRMAN THORNTON: Yes?

18 MR. ADAMS: And this is mostly procedure. So  
19 if we make this recommendation and it goes forward to  
20 OSHA, and OSHA finds something they need to change in  
21 the document before they issue it, they won't have to  
22 come back to the MACOSH to discuss that change, will  
23 they? Or will they?

24 CHAIRMAN THORNTON: They will not have to. It  
25 becomes OSHA's--my word--property to consider and do

1 with as they wish. Is that right?

2 MR. WALLIS: Our normal process is to take the  
3 document, go through it. I noticed there was at least  
4 one more editorial question that I didn't note, but  
5 that we would need to make. Probably there are a few  
6 others. We would make those corrections, make any  
7 other adjustments we felt were necessary to get through  
8 our clearance process.

9 We would put a clearance cover page on it,  
10 pass it around to the other affected directorates in  
11 all our regions. They would get basically one chance  
12 to vote on it, so to speak. They could concur with the  
13 document, non-concur with the document with reasons, or  
14 provide a condition concurrence, again, with reasons.

15 We have to resolve the non-concurrences and  
16 the conditional concurrences to make sure that all the  
17 affected directorates -- that we have an acceptable  
18 document that's acceptable to the Agency. Most of the  
19 time when we make a change, it's because of specific  
20 Agency policy. Those are probably more or less cast in  
21 concrete. I'll give you an example. I'm making this  
22 as a hypothetical example, not an actual example.  
23 There was a -- I had the example and I forgot it.

24 But say, seat belts. Say there's a statement  
25 in here that you didn't have to use seat belts in

1 cargo. If it was our policy, an Agency policy  
2 somewhere, even if it was not a written policy but a  
3 field policy to do that, to cite employers for not  
4 wearing seat belts, we would not be able to keep that  
5 sentence in the document. So, things like that.

6 Then after it goes through the clearance  
7 process, then we have a document that we could publish.  
8 It would have to go through departmental approval and  
9 Assistant Secretary approval, but then we would have a  
10 document we could publish.

11 There may be opportunities for some documents,  
12 depending on the priority for the document, to bring it  
13 back to MACOSH. However, if we bring it back to MACOSH  
14 and you make substantive changes to it, the document  
15 would have to go back through the clearance process.  
16 So if you're adding a new sentence or changing  
17 something substantive in the document, we would have to  
18 go back through the clearance process a second time.

19 MR. ADAMS: Okay. Thank you.

20 MR. FLYNN: I just want to inquire, on the  
21 resources on the last page, is there a reason why all  
22 those other resources were eliminated? Specifically,  
23 on the ILO and the Sleep Foundation and the Small  
24 Business Consult.

25 MR. BURGIN: We just, again, feel like the

1 document -- I mean, they can be in there. The  
2 workgroup didn't go into a lot of detail about it, but  
3 we felt like the document basically stands on its own.  
4 If OSHA feels like that they need to put them back in  
5 there, then I'm sure they will.

6 CHAIRMAN THORNTON: Marc?

7 MR. MacDONALD: If I could just go down a  
8 couple of these a little bit more specifically. The  
9 first one was the ICHCA document. I think the working  
10 group felt that this is MACOSH and we wanted to focus  
11 on MACOSH input rather than ICHCA. Maybe that's just  
12 pride of ownership, I guess, but that is one of the  
13 reasons why that one was not recommended.

14 The ILO document is a very broad document.  
15 Again, like Jimmy says, this is specifically for RO-RO  
16 operations, so that's one of the reasons why, in my  
17 mind, that wasn't included.

18 On the field manual, Army runs their own RO-RO  
19 type operations, but they're not necessarily equivalent  
20 to commercial RO-RO operations. So in my mind, that's  
21 very specific, that's very specialized, and that's why  
22 that one wasn't recommended to be brought forth.

23 National Sleep Foundation. We could go on and  
24 on about fatigue, but there's a whole section on  
25 fatigue in here with the major, basic points on the

1 side-by-side on page 6 of what to look for, and stuff,  
2 on fatigue. For the general in-field use, I think that  
3 adequately covers it. I guess that's why that one  
4 wasn't offered.

5 OSHA consultant service. Certainly, we would  
6 encourage OSHA to put that in and continue the good  
7 work and interaction between the agencies there. But,  
8 in summary, those are some of the reasons the working  
9 group discussed as to why we didn't put in all these  
10 extra references, to try to keep the document tight,  
11 clean, focused, and useful.

12 CHAIRMAN THORNTON: Thank you.

13 MS. SHERMAN: Could I ask a question? Is  
14 there any time frame when you contemplate you would  
15 have pictures to suggest to add to your work product?

16 MR. BURGIN: Again, the workgroup did not  
17 specifically talk about that. I think it would depend  
18 on what the original language might even look like. If  
19 there's going to be a lot of changes, maybe if OSHA  
20 could show us that document, then we could put pictures  
21 in at that time. Is that possible? Getting pictures  
22 is not a problem.

23 MS. SHERMAN: I'd have to defer to David. But  
24 right now, I think we have the situation where you  
25 thought that the pictures in the OSHA document were too

1 general and you indicated that you could come up with  
2 more specific pictures. It would probably be a good  
3 idea, if it wouldn't be too much trouble, to come up  
4 with pictures now to support the document that you are  
5 discussing submitting to OSHA, so OSHA has something  
6 whole that they can act upon.

7 MR. WALLIS: Just one more thing to add to  
8 that. This is MACOSH's recommendation. We're not  
9 trying to push you in a particular direction here. But  
10 as long as you understand, if you approve the motion as  
11 it is you're sending it as a document without pictures,  
12 but you've got place holders for pictures.

13 So what that means is, we'll end up selecting  
14 pictures, you know, and the document may or may not  
15 come back before the committee. So as long as you  
16 understand that. If you want to provide us pictures,  
17 those will be among the ones that we can select from,  
18 but it won't be part of the MACOSH recommendation that  
19 way.

20 CHAIRMAN THORNTON: Let me just ask a  
21 question. So for recordkeeping purposes, we have two  
22 documents. We have a portrait document and a landscape  
23 document. With the exception of three or so changes  
24 that we have made, the document that you're asking and  
25 you're submitting for approval is? Let me just clarify

1 this. The landscape document, the left-hand column is  
2 identical to the portrait document. Is that correct?

3 MR. BURGIN: Yes. Yes, it is.

4 CHAIRMAN THORNTON: And so --

5 MR. WALLIS: There was one difference. You  
6 said "identical".

7 CHAIRMAN THORNTON: Okay. Thank you. I guess  
8 I'm trying to determine which document that we're  
9 working from and which document you're requesting  
10 approval on.

11 CAPT. PRESTON: Mr. Chairman, I made the  
12 motion and I am asking for approval of the smooth  
13 draft, the portrait document, as amended during this  
14 discussion.

15 CHAIRMAN THORNTON: All right. Okay. It  
16 looks like this?

17 CAPT. PRESTON: Yes, sir.

18 CHAIRMAN THORNTON: Okay.

19 MS. SHERMAN: So that the landscape document,  
20 which is marked as Exhibit 3, would merely be used as  
21 an illustration of the changes that have been made to  
22 explain the portrait document, which is Exhibit 2. Is  
23 that correct?

24 MR. BURGIN: That's correct. Yes.

25 CHAIRMAN THORNTON: Okay. So where we are,

1 there's been a motion, there's been a second, and we  
2 are in the committee discussion/question period. So,  
3 Stew, did you have something?

4 MR. ADAMS: Just on the pictures. This is  
5 back to the workgroup, primarily. Instead of trying to  
6 provide pictures to OSHA that they may or may not  
7 choose to use, would it suffice to say that the  
8 original pictures were too general and they need to go  
9 seek out and get more specific pictures and leave it to  
10 them?

11 MR. BURGIN: The pictures that were there, we  
12 would recommend that better pictures be inserted into  
13 the document.

14 CHAIRMAN THORNTON: Okay. I'm going to leave  
15 it like that, I think, because if we're going to vote  
16 for something we need a product to vote on. Okay. If  
17 we leave something kind of hanging open, okay, then  
18 we're not voting on anything. Am I making any sense?  
19 So, is that right?

20 MR. BURGIN: Yes.

21 CHAIRMAN THORNTON: Okay.

22 Questions/comments from the committee?

23 (No response)

24 CHAIRMAN THORNTON: Thank you.

25 I'm going to allow, if the public has

1 comments, please raise your hand so I get some sense of  
2 anybody that has a comment. I've got three. Okay.  
3 I'm going to allow a limited amount of this. Okay.  
4 So, please come up to the table. How are we going to  
5 do this? I'll leave it to the sound man. How are we  
6 going to do this? Approach the mic. There we go.  
7 Wait. I'm going to start from the left here. You're  
8 first, Mr. Davis is second, and I had somebody int he  
9 rear. Okay. On to the mic.

10 Would you identify yourself, please, sir?

11 CAPT. AMADEO: Yes, good morning. Captain  
12 Salvatore Amadeo, Marine Terminals Corporation, East.  
13 The comment I have is, I think this is a very good  
14 document. It's a very good best practices document.

15 The comment I have is, based on the 1997 PMA  
16 Injury Report numbers versus the 2005 Injury Report  
17 numbers, the industry has shown great improvements in  
18 personal safety for workers. So I have to wonder why  
19 we need to be regulated and put a document forward at  
20 all, given the trend as it currently stands. We're  
21 obviously producing our best practices, as on this  
22 document. So do we really need to move forward with  
23 this as a guidance document or a regulation?

24 Thank you.

25 CHAIRMAN THORNTON: Thank you.

1 Mr. Davis?

2 MR. DAVIS: I'm DeWitt Davis. I'm just  
3 seeking clarification on the definition of roll on-roll  
4 off. I'm aware of a case where a Hustler with a  
5 trailer and a load of lumber on it was going down a  
6 ramp either too fast or too steep, and the lumber  
7 crashed into the Hustler and somewhat injured the  
8 driver. Obviously this was a case of break bulk, but  
9 it could be also that there was roll on-roll off at the  
10 same time. Would this application apply? I notice  
11 there were comments that the cargo should be tied down,  
12 and there also were comments that the ramp should be --  
13 you mentioned about the loading of the ramp, but not  
14 the steepness of the ramp.

15 MR. BURGIN: That's a good point. It  
16 illustrates the issues that we're trying to bring out,  
17 is that it could be a break bulk ship that has a stern  
18 ramp, and in that case the cargo coming off the stern  
19 ramp would certainly be -- you know, this would apply  
20 to that particular part of that vessel load or  
21 discharge.

22 MR. DAVIS: So you could have a mixed load.

23 MR. BURGIN: Absolutely. Sure.

24 MR. DAVIS: Thank you.

25 CHAIRMAN THORNTON: Thank you.

1 In the rear?

2 MR. HARRISON: Do I need to identify myself?

3 CHAIRMAN THORNTON: Yes, you do.

4 MR. HARRISON: I'm Dan Harrison with the  
5 Hampton Roads Shipping Association. I'd just like to  
6 say, as a member of the NMSA Tech Committee, we work  
7 very hard at trying to look at these types of  
8 situations to prevent accidents as well. I think there  
9 is a lot of expertise that's gone into the rewrite of  
10 that document to try to improve it, and I would suggest  
11 to the committee that they consider accepting the  
12 wording as is and have it pending final approval on the  
13 attachments of the photos.

14 Thank you.

15 CHAIRMAN THORNTON: Thank you. Okay.

16 We've heard from the committee, we've heard  
17 from the public. Where we are in the process, unless I  
18 hear more from the committee, I'm ready to call the  
19 question here. Okay.

20 (No response)

21 CHAIRMAN THORNTON: Does everybody know what  
22 they're voting on? Anybody don't --

23 (No response)

24 CHAIRMAN THORNTON: Okay.

25 All in favor of the motion, please signify by

1 saying "aye".

2 (Chorus of Ayes)

3 CHAIRMAN THORNTON: Opposed?

4 (No response)

5 CHAIRMAN THORNTON: Thank you. And thank you  
6 for the work of the workgroup.

7 What I would like to do, is also have you have  
8 a final version, okay, with those changes, because  
9 we've made some here at the table, so that we have a  
10 final version to present. May I suggest, just to make  
11 sure we've captured it all, you run it through your  
12 workgroup?

13 MR. BURGIN: Sure.

14 CHAIRMAN THORNTON: What is the pleasure of  
15 the committee? You want to see what he does? Is it  
16 okay to vest this in the workgroup?

17 CAPT. PRESTON: Yes.

18 CHAIRMAN THORNTON: Okay. Thank you.

19 MS. SHERMAN: Mr. Chairman, I'd like to offer  
20 at this time as Exhibit 2 the document that has been  
21 referred to as the portrait document, or the smooth  
22 draft, into the record.

23 (Whereupon, the document referred  
24 to as Exhibit 2 was entered into  
25 the record.)

1 MS. SHERMAN: And as Exhibit 3, the comparison  
2 chart that has been referred to as the landscape  
3 document into the record. I have marked the changes  
4 that the committee has agreed to on these, although I  
5 understand that they will come up with a clean copy.

6 (Whereupon, the document referred  
7 to as Exhibit 3 was entered into  
8 the record.)

9 CHAIRMAN THORNTON: Thank you.

10 The next order of business?

11 MR. BURGIN: The next order of business is a  
12 review of the Traffic Safety guidance document. I'd  
13 refer everybody on the committee to this document,  
14 which is a three-column document. The far left column  
15 is the "Current Traffic Safety Guidance Document". The  
16 middle column is "Traffic Safety Guidance Document  
17 2001". The far right-hand column is comments that the  
18 Longshore Workgroup has made in the October 25, 2007  
19 conference call. So you should be looking at a three-  
20 column, side-by-side comparison.

21 CHAIRMAN THORNTON: Time out. Who has it on  
22 the committee? If you don't have that document, raise  
23 your hand.

24 (Showing of hands)

25 CHAIRMAN THORNTON: Okay. How can we get

1 copies?

2 MR. BURGIN: I believe it was in the blue  
3 binder.

4 CHAIRMAN THORNTON: It's in the binder? Wait  
5 a minute. Time out. Let's go off the record.

6 (Whereupon, at 10:58 a.m. the meeting was  
7 recessed and resumed back on the record at 11:00 a.m.)

8 CHAIRMAN THORNTON: Let's go back on the  
9 record. Okay.

10 Given that all the committee members don't  
11 have copies of the document that we're going to review,  
12 we're going to table this item and we're going to get  
13 copies for the committee. We're going to table it for  
14 the moment and come back to it.

15 Next item?

16 MR. BURGIN: The next item, which is a new  
17 item, deals with flat racks. John Castanho worked on a  
18 task statement which I would like to provide to MACOSH.

19 At this point, since this is a new item, we're just  
20 introducing this as a new item. The MACOSH committee  
21 does not need to -- this was handed out this morning,  
22 actually. Matter of fact, I handed it out at the very  
23 beginning of my workgroup report. Yes. Okay. This is  
24 a task statement that we are adding to our list of  
25 things that we're doing, so at this point that's the

1 extent of what MACOSH needs to do.

2 CHAIRMAN THORNTON: Okay. So just to be clear  
3 then, in other words, this is a draft that the  
4 committee is going to work on. Is that what I'm  
5 hearing?

6 MR. BURGIN: That the Longshore Workgroup is  
7 going to work on.

8 CHAIRMAN THORNTON: I'm sorry. The Longshore  
9 Workgroup is going to work on. Is that correct?

10 MR. BURGIN: Yes.

11 CHAIRMAN THORNTON: Okay. Thank you.

12 We had a question over here from Stew.

13 MR. ADAMS: What is a flat rack? I've heard  
14 this before, but I need to be reminded. What is a flat  
15 rack?

16 MR. BURGIN: A flat rack is a type of  
17 intermodal piece of equipment to handle cargo. You  
18 could say it's the same thing as a flat-bed truck,  
19 except the ends of the flat rack can be extended  
20 vertically and they have lifting points on those  
21 vertical connections on the ends. The ends can be  
22 folded down as well. So the issue here is taking empty  
23 flat racks on and off the vessel and how they're  
24 hoisted by the container crane. The issue is when you  
25 stack two or three together, how do you lock them? How

1 do you lock between the flat racks? That's the issue  
2 we're looking at.

3 Yes. John does have pictures.

4 MR. CASTANHO: Yes. Stew, I have five  
5 pictures I can pass around the table, so those who  
6 don't know what we're talking about can have a look and  
7 have a better idea of what we're developing here.

8 CHAIRMAN THORNTON: Thank you.

9 Next item?

10 MR. BURGIN: The next item is to report on the  
11 overall progress of the workgroup. As I said before,  
12 the workgroup has devoted a lot of time in looking at  
13 the RO-RO document. It also has devoted a lot of time  
14 in providing comments on the Marine Terminal Traffic  
15 Safety document. So while we have not gone through  
16 every single item that was originally given to us when  
17 this charter started, we have been diligent in doing a  
18 lot of work.

19 Just to briefly go through what's been done.  
20 The Radio Communication document, communication between  
21 persons on board a vessel and crane operators, has been  
22 completed. The Traffic Safety document. It's still a  
23 work in progress. You'll get a report on that in a  
24 little bit. That will be finished by the end of the  
25 charter. The RO-RO document is almost completed and

1 will be done by the end of the charter. It's  
2 completed. I wanted to point out that that's something  
3 that has been accomplished.

4           There was a topic about marine terminal  
5 pedestrians and powered industrial trucks. That is  
6 being covered through the Marine Terminal Traffic  
7 Safety documents, so that's another thing that will be  
8 taken care of, will be finished. On-dock rail is  
9 something that we have not addressed specifically, but  
10 the workgroup will address that before the end of the  
11 charter.

12           MS. SHERMAN: What is that?

13           MR. BURGIN: On-dock rail operations.

14           MS. SHERMAN: Thank you.

15           MR. BURGIN: Okay. Suspended loads and  
16 hatches is another item that was on our original list,  
17 and that will be taken care of and addressed in some  
18 manner before the end of the current charter. The same  
19 situation with chassis maintenance and repair. The  
20 workgroup will look at that as well and produce some  
21 type of a document or recommendation back to MACOSH.

22           The two items that were given to the Health  
23 Workgroup were container screening technologies and  
24 VACIS. I know the Health Workgroup is working on a  
25 fact sheet on those two items.

1           Another item that was on our list was IMO ship  
2 design standards, and that has been discussed at every  
3 workgroup conference call. We've gotten updates from  
4 Ken Smith on what's going on with the IMO standards.  
5 So there's not anything that the workgroup is bringing  
6 to MACOSH to -- well, the workgroup would like to urge  
7 OSHA to continue to be involved in IMO issues when  
8 they're talking about design of vessels to make vessels  
9 safer to work on. So that is one recommendation that  
10 the workgroup will make. We may not make it today, but  
11 we'll make that recommendation.

12           Another item on our list was vessel crew  
13 safety. We feel like that should be taken off because  
14 we're more turned to stevedoring safety rather than  
15 vessel crew safety.

16           Break bulk cargo handling safety is another  
17 topic that we may or may not look at, so that's an  
18 uncertainty. We may or may not get to that topic  
19 before the end of the charter.

20           Maintenance and repair cross-training. That  
21 is another topic that is a big topic that we may or may  
22 not get to. So I want to categorize those between the  
23 ones that we will finish, the ones we will not finish  
24 before the charter, and the ones that we have completed  
25 as of this date.

1 CHAIRMAN THORNTON: Thank you.

2 Any more items at this time?

3 MR. BURGIN: No, sir.

4 CHAIRMAN THORNTON: Thank you.

5 One of the things, in constructing the letter,  
6 the Agency appears to be going forward on rechartering  
7 the committee, but I think it's important to get sort  
8 of a place order on the record. So in constructing a  
9 letter from myself petitioning for rechartering, it  
10 would be helpful, and we talked about this a little bit  
11 on our conference call, to identify those things that  
12 had been accomplished, and then the work to be done.

13 So I would appreciate -- thanks for kind of  
14 setting the mark here, sort of an executive summary,  
15 about what you've done and where you've planned to go,  
16 because I would appreciate that from each of the  
17 workgroup chairs. That would assist me in helping  
18 constructing this draft. So, I appreciate that. Okay.

19 Let's do this. Any more from the Longshore  
20 Workgroup, or any questions from the committee?  
21 Except, we tabled the one item. We're going to have to  
22 come back to that. But we've got to use our time now.

23 Susan?

24 MS. SHERMAN: Yes. Jimmy, what did you want  
25 the committee to do with this task statement on flat

1 racks? You are doing a "for your information", or  
2 what?

3 MR. BURGIN: It's for the full committee's  
4 information only.

5 MS. SHERMAN: Okay.

6 MR. BURGIN: It's a new --

7 MS. SHERMAN: So we don't need to add it to  
8 the record. They're just going to consider it and  
9 maybe we'll talk about it at some future meeting?

10 MR. BURGIN: Exactly. Yes.

11 MS. SHERMAN: Okay. Thank you.

12 CHAIRMAN THORNTON: Good.

13 MR. FLYNN: One question.

14 CHAIRMAN THORNTON: Yes, Mike?

15 MR. FLYNN: What was the other item besides  
16 the VACIS that you sent to the Health Committee?

17 MR. BURGIN: It was called New Container  
18 Screening Technologies. I'm not sure where that phrase  
19 came from, but that's it.

20 MR. FLYNN: Okay. Thank you.

21 MR. CASTANHO: Jim?

22 CHAIRMAN THORNTON: Yes, John?

23 MR. CASTANHO: If I may clarify that. I think  
24 people get mixed up with that misnomer. VACIS is a  
25 brand name. So I think the new technologies simply

1 referred to whatever is going to be coming down the  
2 pipeline or off the assembly line after VACIS. It'll  
3 have a different name, and we don't have those names  
4 here.

5 MR. FLYNN: So it's one item, actually?

6 MR. CASTANHO: Yes. It's kind of an emerging  
7 technology and it's going to be its own separate item.  
8 I think that was the idea.

9 CHAIRMAN THORNTON: It's the generic versus  
10 the brand name. Is that right?

11 MR. CASTANHO: Yes. It's Pepsi versus Coca-  
12 Cola.

13 CHAIRMAN THORNTON: Got you. All right.  
14 Any more from the Longshore Workgroup?

15 MR. MacDONALD: Mr. Chairman?

16 CHAIRMAN THORNTON: Yes.

17 MR. MacDONALD: Jim made mention of the work  
18 at IMO with the cargo security. That is pretty  
19 complex. There's been a lot of changes in the proposed  
20 draft annex that have undergone -- it's probably not  
21 enough time to look at that here. But I would think,  
22 if I could suggest, that we take time in maybe one of  
23 the future meetings to put on the agenda, just to  
24 update everybody in more or less detail on what's going  
25 on there.

1           I, for one, was a little bit discouraged. We  
2 worked hard to put in comments on that. A lot of  
3 people around the world have worked hard to put in  
4 comments on that. The draft has changed significantly  
5 since the delegation meeting that the Coast Guard held,  
6 and industry and OSHA attended at the advice of this  
7 committee last time. I think at some point we just  
8 need to regroup and reconnect with the realities of  
9 what's going on with the international discussions with  
10 the drafts.

11           CHAIRMAN THORNTON: Thank you.

12           Anything more, remembering we've tabled one  
13 item and we'll come back to it?

14           (No response)

15           CHAIRMAN THORNTON: Okay.

16           I'm ready, I think, now to move on. Are you  
17 ready?

18           CAPT. PRESTON: Yes.

19           CHAIRMAN THORNTON: Okay. The floor is yours.  
20 We're going to move to the Outreach and Safety Culture  
21 Workgroup report. Captain Preston?

22

23

24

25

1                   OUTREACH AND SAFETY CULTURE WORKGROUP REPORT

2                   By Captain Teresa Preston

3                   CAPT. PRESTON: Thank you. I'm going to end  
4 my report with a presentation by Ken Atha from our  
5 Mobile Area Office on the results of the efforts of the  
6 Mobile Region 4 alliance on the OSHA Train the Trainer  
7 10- and 30-hour courses. Ken advised me to do this so  
8 that he doesn't eat up too much time.

9                   So we do have two issues that are ready to go  
10 before committee to move on back to OSHA that are on  
11 our task sheet. The first one, we took from the  
12 Shipyard Committee, which was the Ships document. Our  
13 tasking was to determine what to do with the ergo  
14 sections and/or the entire document.

15                  We went back and forth on this. We had some  
16 people that were advocates of "more is better" and felt  
17 like the document should go forward as it was  
18 originally drafted. However, that would put it through  
19 a whole new review process at OSHA and hold it up even  
20 longer. So we have reluctantly -- I'm saying  
21 reluctantly. It's not that the information isn't out  
22 there.

23                  The guidance document that Mr. Seymour came up  
24 with is going to fill the hole. We have a  
25 recommendation ready to go on the floor and I am going

1 to go ahead and make it as a motion, that the  
2 Shipfitting Ships be published, with the following  
3 changes:

4 Change #1: Page 1, under "Musculoskeletal  
5 Disorders MSDs". That paragraph should be removed in  
6 its entirety.

7 CHAIRMAN THORNTON: One second. Let's go off  
8 the record a second.

9 (Whereupon, at 11:10 a.m. the meeting was  
10 recessed and resumed back on the record at 11:12 a.m.)

11 CHAIRMAN THORNTON: Let's once again table  
12 that. I would ask somebody help us, staff wise, to get  
13 copies of this. Okay. The next item? Back on the  
14 record. Thank you.

15 CAPT. PRESTON: Okay.

16 Next item, "Translating E-Tools into Spanish".  
17 On our non-English speaking workers tasking, we  
18 narrowed it down to recommendations to OSHA as to the  
19 priority of the top four or five e-tools for  
20 translation. The workgroup is moving that the full  
21 committee recommend to OSHA that the following e-tools  
22 be translated into Spanish first, in this order of  
23 preference by us: the Ship Prepare E-Tool; the  
24 Longshore Tool Shed Document; the Ship Construction E-  
25 Tool; and the Shipbreaking E-Tool. So that's a motion

1 on the floor to recommend to OSHA that those e-tools be  
2 translated first.

3 CHAIRMAN THORNTON: In that order?

4 CAPT. PRESTON: In that order.

5 CHAIRMAN THORNTON: Thank you.

6 I have a motion on the floor. Do I have a  
7 second?

8 MR. FLYNN: Second.

9 MR. MacDONALD: Second.

10 CHAIRMAN THORNTON: I have a second. I'm not  
11 sure whether Mike or Marc was first, but between the  
12 two, they had the second. Okay.

13 Discussion by the committee?

14 (No response)

15 CHAIRMAN THORNTON: Hearing none, limited  
16 discussion by the public. If you have something you'd  
17 like to add, raise your hand.

18 (No response)

19 MS. SHERMAN: I think that it would help us if  
20 Captain Preston or somebody on the committee could give  
21 us the rationale as to why you chose what you chose and  
22 why you prioritized them in the order that you  
23 prioritized them in.

24 CAPT. PRESTON: I'd be happy to. The four  
25 that we chose, we felt have the most broad-based

1 information for use by employees and employers. That's  
2 why we put them as the top four for translation. When  
3 we went out there and started looking at what OSHA has  
4 available in other languages right now, there's not a  
5 whole lot.

6 So when we looked at what we had out there for  
7 the shipyard community and the longshore community,  
8 there's a lot of stuff out there that could have been  
9 translated. So we looked at the products that you got  
10 out there for us now and tried to select the products  
11 that we felt we'd get the most bang for the buck in  
12 terms of translation.

13 As far as the order of the four, we tried to  
14 go based on employee population. So we figured that  
15 the ship repair probably would, across the board, small  
16 and large business, hit the most people with the  
17 biggest need first, and then the other three, we just  
18 kind of tried to divvy them up based on what we thought  
19 would be the most logical sequence, with the same thing  
20 in mind, which is that most people that could benefit  
21 from it would be the priority. We're not set in stone  
22 on that priority. We just were asked to give a  
23 priority, so we did.

24 MS. SHERMAN: Do you happen to know if there  
25 are any employers who have decided to translate OSHA

1 documents themselves for distribution to their  
2 employees?

3 CAPT. PRESTON: What I know about from the  
4 shipyard employment segment, is that they are actually  
5 translating their own procedures and/or their own  
6 safety instructions, but they are not translating the  
7 OSHA documents that back those up. So we feel like,  
8 from the standpoint of guidance for the non-English  
9 speaking employees, it would be nice for OSHA to kind  
10 of go along with the trend and give the backup  
11 documentation as well.

12 CHAIRMAN THORNTON: Okay. Anything more from  
13 the committee?

14 (No response)

15 CHAIRMAN THORNTON: Nothing more from the  
16 public?

17 (No response)

18 CHAIRMAN THORNTON: I'm ready to call the  
19 question.

20 All in favor of the motion, please signify by  
21 saying "aye".

22 (Chorus of Ayes)

23 CHAIRMAN THORNTON: Opposed?

24 (No response)

25 CHAIRMAN THORNTON: Thank you.

1 Next item?

2 CAPT. PRESTON: Leading indicators. We have  
3 looked at a number of leading indicators. We started  
4 out thinking we really weren't going to go very far on  
5 this, but we found more. This will remain a working  
6 topic. We have narrowed down, what we're going to  
7 provide OSHA is some guidance on what leading  
8 indicators are out there in successful businesses right  
9 now in terms of safety success.

10 Then we will seek OSHA's guidance on where  
11 they would like us to go with those indicators: would  
12 they like us to do it just on a guidance document or a  
13 fact sheet or something like that that can get it out  
14 to the public to be able to find that information? So  
15 that will be completed by the end of the charter, we  
16 feel confident, it just won't happen this meeting.

17 Training for new --

18 CHAIRMAN THORNTON: Let me stop you here. Is  
19 there anything on that from the committee?

20 (No response)

21 CHAIRMAN THORNTON: Okay. Thank you.

22 CAPT. PRESTON: Training for new technology.  
23 Between Oakland and now, we forgot that we said we  
24 couldn't complete it so we worked on it.

25 (Laughter)

1           CHAIRMAN THORNTON: Makes sense.

2           CAPT. PRESTON: What we have done right now,  
3 is identified new technologies that we feel are  
4 somewhat lacking in having training available to each  
5 and all. The training may be available in the  
6 different workplaces, but we thought these things might  
7 be areas where some sort of OSHA guidance document  
8 might be appropriate. We're developing that list and  
9 coming up with a little fleshing out of the whys, and  
10 we expect that that will also be complete by the end of  
11 the charter, but we are not ready to report out on  
12 anything other than that we are working on it at this  
13 meeting.

14           CHAIRMAN THORNTON: Thank you.

15           Any questions, comments on that one from the  
16 committee?

17           (No response)

18           CAPT. PRESTON: Although we said we couldn't  
19 work on the courses for OSHA, the shipyard and  
20 longshoring courses, OSHA took the initiative to do it  
21 on their own. We had a report out on the success of  
22 the OSHA 2060 training course that was given a couple  
23 of weeks ago, that it was extremely well received and  
24 extremely well attended. However, one of the people  
25 that attended was told that they were not going to be

1 offering these courses very often.

2 The discussion came up in committee yesterday  
3 and OSHA said they'll offer them as often as we like.  
4 So we would just like to note that OSHA took the  
5 initiative to do this without our assistance and thank  
6 them for that, and encourage them to continue offering  
7 these courses. We will assist in getting them around  
8 the country so that we can increase the attendance by  
9 industry.

10 CHAIRMAN THORNTON: Thank you.

11 CAPT. PRESTON: The substance abuse. We  
12 talked about tabling it. We do not feel like we're  
13 making good progress, but we're going to give it one  
14 more shot. We'll have a final decision with what we're  
15 going to do at the next meeting.

16 E-tools and training programs for longshoring.  
17 NMSA, through their alliance, have suggested 10 fatal  
18 fact accident descriptions to OSHA, and OSHA has taken  
19 those for action. That's just a report-out, it's not a  
20 committee action.

21 We did have a request based on actually what  
22 Jimmy is going to discuss when he comes back to that  
23 table, that a lot of these outreach products, we, as a  
24 MACOSH committee, have taken ownership of, so to speak,  
25 in terms of trying to make them go through. It felt

1 like we put a lot of effort into them. We do know that  
2 they go through a review process.

3 Sometimes that review process changes them  
4 significantly. We would like to move that when  
5 significant changes--i.e., of the actual substance of  
6 the text--are made, that OSHA bring them back before  
7 the MACOSH committee just so that we have an  
8 opportunity to comment on them before the final draft  
9 goes out.

10 CHAIRMAN THORNTON: You made that in the form  
11 of a motion?

12 CAPT. PRESTON: As a motion. I did.

13 CHAIRMAN THORNTON: Okay.

14 Do I have a second to the motion?

15 MR. BURGIN: Second.

16 CHAIRMAN THORNTON: Okay.

17 Discussion on the motion by the committee?

18 CAPT. PRESTON: Let me just clarify a little  
19 more on why this motion is being made.

20 CHAIRMAN THORNTON: All right.

21 CAPT. PRESTON: This is being made -- we  
22 really feel uncomfortable in one respect because we  
23 constantly are pushing OSHA to make things go faster  
24 and faster, and complaining about the time it takes to  
25 move things through.

1           However, with the products that we've put a  
2 lot of work into, we feel like it is necessary, for the  
3 people that did put that effort in, to have a chance to  
4 look at them one more time. So that's kind of where  
5 we're coming from on this, is we don't want to slow the  
6 process any more than it has to be slowed, but we would  
7 like some participatory effort at the end.

8           CHAIRMAN THORNTON: Thank you.

9           Other comments? Jimmy?

10          MR. BURGIN: I think that the discussion that  
11 we had was, we would just like a last-look review, a  
12 quick review, maybe give us two weeks to e-mail the  
13 document around to a specific workgroup, and if the  
14 comments aren't made within that two-week deadline,  
15 then it goes with it. It's not to say that we would  
16 make a lot of changes. I'm going to point out some  
17 things in this Marine Terminal Traffic Safety document  
18 that really need to be changed, and that's the prime  
19 example for this recommendation.

20          CHAIRMAN THORNTON: Susan?

21          MS. SHERMAN: Jimmy, just to speak to one of  
22 the points you made, I think that -- I'm sure David  
23 will address this also, but I think he pointed out some  
24 of the problems yesterday in the workgroup. But let me  
25 just say that if OSHA were to make significant changes

1 in a document it would not be enough for them to just  
2 resubmit it to the workgroup, because if MACOSH is to  
3 act on something it would have to be the full  
4 committee. So what this does, is we could give it to  
5 the workgroup, but then the workgroup would have to  
6 report out to the full committee at the next meeting,  
7 which would be whenever. So, just as long as you  
8 understand that in terms of procedure.

9 MR. BURGIN: Okay.

10 CHAIRMAN THORNTON: Are you going to --

11 MR. WALLIS: I think that the motion -- I  
12 mean, it's a nice motion and I understand the  
13 committee's desire to have us send the documents back  
14 to the committee so that they can get one more bite at  
15 the apple. I understand that desire. On the other  
16 hand, OSHA has a process for getting the documents out.  
17 If you want us to do this, in the first place I don't  
18 think we could do it with every document, but to the  
19 extent we can, there are a number of different ways we  
20 could do it. I don't think the motion has addressed  
21 this at all.

22 One way we could do it, is after we've gotten  
23 all the comments back from the clearance process we  
24 could provide the comments. One option -- I'm not  
25 saying this is what I would do, I'm just saying it's

1 one option. One option would be to bring the comments  
2 back to the committee, have the committee make a  
3 recommendation on the comments, and give those  
4 recommendations back to the Agency formally. That  
5 would be one option.

6 A second option would be, after the clearance  
7 process is finished, we've gotten the comments, we've  
8 incorporated them, we've gotten the document cleared  
9 through all the directorates -- oh. I guess I should  
10 go back and give you the advantages and disadvantages.  
11 The first method, the advantage is, you would get an  
12 opportunity to have some solid input in the clearance  
13 process.

14 The disadvantage is that you would not get to  
15 see -- there's still a negotiation process between the  
16 comments we get in and the final work product. Using  
17 the first mechanism, you would not -- there's no way we  
18 can involve the committee in that process, so you would  
19 be outside that process, so to speak. Even though you  
20 made recommendations, it could still go back. If the  
21 Director of Enforcement Programs said, this is our  
22 policy, this is what we do, it's got to stay this way,  
23 then that's what would happen. So that's the  
24 disadvantage.

25 The next approach would be to do what we do,

1 get agreement with all the directorates, give it back  
2 to the committee with the clear understanding you could  
3 make your recommendations, but if we're going to make  
4 significant changes it's got to go back out for  
5 clearance and you could have the same route.

6 Also, the other disadvantage to that process  
7 is, it would add significantly to the delay in getting  
8 the documents out. Both of those would, by the way. I  
9 mean, either way you would need another committee  
10 meeting before the document could go forward, and I  
11 think that's why I said it's probably not going to  
12 happen for every document.

13 My recommendation to the committee would be,  
14 if you have a preference for one or the other or you're  
15 willing to take either one, you should include that as  
16 part of your motion.

17 MR. BURGIN: I prefer the second alternative  
18 that you mentioned.

19 CAPT. PRESTON: Yes. I think we recognized  
20 that. That's why I said we reluctantly bring this  
21 motion to the floor, because we recognize that we're  
22 delaying the process even more. So, you know, for us,  
23 this is -- but there are some members that feel very  
24 strongly that we probably should do it that way. I  
25 mean, if we're going to put our signature on it as

1 assisting in developing these products, then we feel  
2 like we should have one last bite at the apple.

3 CHAIRMAN THORNTON: Stew?

4 MR. ADAMS: There's a piece here, though.  
5 We're supposedly an advisory committee. What we  
6 produce, as long as we communicate our concerns and our  
7 desires and what we feel it should be like, it's up to  
8 OSHA to go do it. If they choose not to do it, that's  
9 their choice. So we shouldn't have a final stamp. We  
10 just advise.

11 CHAIRMAN THORNTON: Did you have something?

12 MS. SHERMAN: By the way, I agree with what  
13 you just said, Stewart. I think that OSHA takes your  
14 recommendations very seriously, but they are  
15 recommendations. I was also going to suggest that  
16 perhaps Captain Preston would consider modifying her  
17 motion, because it may not be that every guidance  
18 product has the same degree of concern for the  
19 committee and there may just be some special  
20 circumstances where the committee would feel that they  
21 would want it to come back to them, such as we did  
22 yesterday with the ergonomics business.

23 CAPT. PRESTON: So how could I modify the  
24 motion? I mean, what we did yesterday with ergonomics  
25 is kind of what we were looking for. It's just at the

1 close of the comment period. It's just ready to go  
2 out. All we did was make suggestions to the authors as  
3 to what we thought -- we actually discussed the public  
4 comments and endorsed and/or advised on them. So  
5 what --

6 MS. SHERMAN: Well, that was perhaps an  
7 unusual case in that the committee had a lot of work  
8 into it, and the Agency had made the commitment in  
9 advance to do that.

10 CAPT. PRESTON: Okay.

11 MS. SHERMAN: But I'm not so sure the Agency  
12 would be in a position to make the commitment in  
13 advance on each and every document.

14 CAPT. PRESTON: Well, I guess what I'm asking  
15 you, Susan, is what are you suggesting we revise our  
16 motion to say?

17 MS. SHERMAN: Well, perhaps --

18 CAPT. PRESTON: Or should we do anything? I  
19 mean, should we even put something on the record?

20 MS. SHERMAN: I can't advise you on that. If  
21 you feel strongly about it, of course you can put it on  
22 the record. But I guess I would make it less of a  
23 blanket recommendation then, just in certain cases  
24 where perhaps you can request it because of serious  
25 concerns, or something along those lines.

1 CHAIRMAN THORNTON: We're getting a little --  
2 okay. Mike?

3 MR. FLYNN: Well, just one comment on that. I  
4 think it sounds like this would be a motion that would  
5 be appropriate on a case-by-case basis on a specific  
6 item.

7 CAPT. PRESTON: Yes.

8 MR. FLYNN: Like the RO-RO. Like, you want to  
9 see that again. So I would suggest, make it as the  
10 items come up.

11 CAPT. PRESTON: I withdraw my motion.

12 CHAIRMAN THORNTON: Okay.

13 Who was the second? Do you withdraw?

14 MR. BURGIN: Yes.

15 CHAIRMAN THORNTON: Okay. So the slate is  
16 clean.

17 What is it you wish to do, if anything?

18 CAPT. PRESTON: We have got the one issue  
19 tabled on ships. I would like to move forward with Mr.  
20 Atha's presentation.

21 CHAIRMAN THORNTON: All right.

22

23

24

25



1 endeavors were working so well. In the interim, while  
2 we were doing this, ATN approached us, Alabama  
3 Technology Network. They had received a grant for some  
4 shipbuilding training and wanted to do something even  
5 more formal than what we had already been doing in the  
6 Gulf Coast. That began some pretty in-depth  
7 discussions about what we can do and how we can make  
8 this something substantial for the maritime industry.

9 In general industry and in construction, there  
10 is an OSHA 10-hour and 30-hour course that is highly  
11 well-known and recognized by the industry and something  
12 that's been around for a while and has been very  
13 successful. So with that endeavor, with that in mind,  
14 we sought out to developing the maritime 10-hour  
15 course.

16 (Changing of slides)

17 MR. ATHA: We sought to get approval of that  
18 through OTI, which we did attain. Began working with  
19 OTI, also our national office, and industry, collecting  
20 numerous training information that is out there to  
21 develop this 10-hour course.

22 In the interim, we were trying to plan the  
23 first course. This is probably going to be a six-month  
24 or one-year project. When the OSHA Training Institute  
25 approached us and said, well, before you can teach a

1 10-hour you've got to have authorized trainers, that  
2 began for us the need to look at a Train the Trainer  
3 course, which is a very in-depth process.

4           If you look at the original courses, it's two  
5 years to three years to develop. It takes a lot of  
6 resources to develop those courses. So we began to  
7 look for additional support to do this. We also want  
8 to do a 30-hour besides the 10-hour. We had to ask for  
9 additional commitments from our alliance members. We  
10 had to go out nationwide, started pooling more  
11 resources. Of course, we formed workgroups to handle  
12 all the extra work.

13           (Changing of slides)

14           MR. ATHA: The University of South Florida did  
15 step up. They are an Education Center. There are  
16 numerous--over 20--Ed Centers nationwide. They are the  
17 ones that stepped up with the willingness to do this  
18 free of charge. They'll help us build the Train the  
19 Trainer course. ATN then joined our alliance to sort  
20 of make it more cohesive, to keep it within the  
21 alliance. Now, we did actually mail out 150 of our  
22 original packages of maritime information to industry.

23           (Changing of slides)

24           MR. ATHA: The success is--and I'll get to the  
25 point here--we did have the pilot course for our Train

1 the Trainer at the end of September. A very successful  
2 endeavor. We had industry there, labor. We had OSHA  
3 representatives there from the West Coast and East  
4 Coast, including individuals from Puerto Rico as well.

5 We validated that trainer course. A lot of hard work  
6 went into collecting the input from each of the  
7 members. After the course was done, we continued to  
8 collect the inputs. Those have been collated and put  
9 into the new course. Matter of fact, just last week I  
10 think they were finalizing the updates.

11 During the course, we reviewed the 10-hour and  
12 30-hour curriculum, which I'll cover here quickly.  
13 Each person that came received a CD which covers the  
14 10- and 30-hour Power Points. They also got the new  
15 MannCom Maritime book and a binder.

16 (Changing of slides)

17 MR. ATHA: That's the group that came out  
18 there. If you're in the industry, you'll recognize a  
19 lot of the faces up there. Sort of hard to see. But  
20 again, a very diverse group up there and a lot of  
21 knowledge came to us, so we were very fortunate to have  
22 them.

23 (Changing of slides)

24 MR. ATHA: This is really a success. The 5400  
25 now is a course at OTI. It's not offered at OTI. It's

1 going to be done through all the Ed Centers. USF is  
2 currently the only Ed Center capable of doing it. They  
3 also will have a 5402 update course. As you can see,  
4 the 10- and 30-hour course numbers are there, 7615,  
5 7617, 7618. Those are the 10 hours. Then the 7635,  
6 7637, 7638, those are the 30 hours.

7 (Changing of slides)

8 MR. ATHA: The trainer course is a one-week  
9 course, 27 modules. Really, at that point you're  
10 taking experts from industry and you're validating  
11 their credentials and you're also ensuring that they  
12 can teach a 10-hour and a 30-hour. So they're not  
13 learning a lot about maritime, they're really going  
14 over the hazards and leading into the standards that  
15 OSHA has to become an authorized trainer. Again, these  
16 will be taught by the Ed Centers.

17 (Changing of slides)

18 MR. ATHA: The one thing that we did that was  
19 different than the current general industry and  
20 construction courses, is there's some additional  
21 requirements as far as to be a train the trainer, as  
22 well as the expiration date on the certification. So,  
23 two years of industry experience is needed, as well as  
24 two years safety and health experience, or a degree in  
25 safety and health, or a certification. That's to be a

1 trainer.

2 (Changing of slides)

3 MR. ATHA: And you will have to take an update  
4 course every four years as well to be certified.

5 (Changing of slides)

6 MR. ATHA: Now, that's a sample of what the  
7 trainer card would look like. So if folks are out  
8 there and they've taken this course, they'll have a  
9 trainer card that shows they're authorized. If  
10 somebody wants to hire this individual, that's the card  
11 that they would have. It's something that they could  
12 check with OTI or OTE on. It will have an expiration  
13 date.

14 (Changing of slides)

15 MR. ATHA: The back of the card has a  
16 disclaimer, but also gives you a clear understanding of  
17 what this card really is.

18 (Changing of slides)

19 MR. ATHA: The 10- and 30-hour. That's really  
20 where my heart was at, where we wanted to focus on as  
21 an alliance because we wanted individuals out there in  
22 maritime to have the opportunity to take this kind of  
23 10-hour and 30-hour training, so they have a requisite  
24 knowledge of hazards. It's not an OSHA standard  
25 course. They're not going to learn about OSHA

1 standards. They're going to learn about hazards in  
2 these particular industries, something that will be  
3 able to come to industry employers with some knowledge,  
4 some basic knowledge that will help further them as  
5 they get into work.

6 (Changing of slides)

7 MR. ATHA: The same topics for the 10- and 30-  
8 hour. Again, the length of time is what's really  
9 critical. Of course, the 10-hour is going to be a very  
10 good overview, and the 30-hour is going to be more in-  
11 depth. In the general industry construction, typically  
12 you see a lot of workers taking the 10-, and then  
13 supervisors taking the 30-hour course.

14 (Changing of slides)

15 MR. ATHA: There are some minimum requirements  
16 that we put in to the 10-hour. One of the things that  
17 industry really pushed, is they didn't necessarily  
18 think they could get 10 hours in a day done. It's hard  
19 for small employers to get their employees pulled away  
20 for that length of time. So we do have a grace period,  
21 so you can teach it in segments up to six months.

22 (Changing of slides)

23 MR. ATHA: But that's the overview of the  
24 course. You can see, there's a mandatory, an optional,  
25 and an elective section. It's different for shipyards.

1       They have, on the bottom left-hand corner, more  
2       required courses to be taught during the 10-hour than  
3       in shipyards or than in the other maritime industries,  
4       longshoring and marine terminals.

5               Intro to OSHA of course, is mandatory in all  
6       the 10-hour, so that stays; the walking work resurface  
7       PPE, et cetera. But again, I can get this information  
8       to you. We just wanted to make sure that you're aware  
9       that this course is out there.

10              (Changing of slides)

11             MR. ATHA: The 30-hour. As I said, two hours  
12       minimum per topic. It's going to be more in-depth  
13       coverage. It gives a little more flexibility in the  
14       elective sections. You could spend a lot of time on  
15       one particular topic in the 30-hour if necessary.

16              (Changing of slides)

17             MR. ATHA: And again, you can see a similar  
18       format again: same topics, more time in the areas,  
19       again, shipyard being a little bit different.

20              (Changing of slides)

21             MR. ATHA: The student cards expire after five  
22       years. That's very different, because in general  
23       industry construction there's folks carrying cards from  
24       the early '80s, and we know the industry has changed.  
25       So this is going to give industry an opportunity to

1 provide feedback to the OTI and Ed Centers on how that  
2 update course is going to be structured and what  
3 information we want in it. So the information we're  
4 talking about today, the guidance documents, as those  
5 things change, that update course is going to change as  
6 well. So, somebody carrying a card is going to have  
7 fairly recent updates to their training. Again, this  
8 will be given out by whoever is qualified.

9 (Changing of slides)

10 MR. ATHA: Again, similar format. Again, this  
11 will specifically say whether it's shipyard,  
12 longshoring, or the marine terminals.

13 (Changing of slides)

14 MR. ATHA: There's the 7617.

15 (Changing of slides)

16 MR. ATHA: Again, it will have the expiration  
17 date on the back. Again, it will have a disclaimer,  
18 recognizing that this is 10 or 30 hours of training.  
19 This is not, a qualified individual can go out and work  
20 in an industry and do the job. It's just recognizing  
21 that they have had the requisite hazard recognition  
22 training for your industry.

23 (Changing of slides)

24 MR. ATHA: Lastly, I want to make note that  
25 the first official Train the Trainer course is the 10th

1 through 13th in Clearwater, Florida. You can see there  
2 are other ones already planned by USF. In December,  
3 there will be about 10 other Ed Centers from around the  
4 nation attending that first course.

5           Once they attend that first course, they'll be  
6 able to go back and develop curriculum for their Ed  
7 Centers and we can see more Train the Trainer courses  
8 being tied across the nation. More trainers out there  
9 means more 10-hour and 30-hour courses available to the  
10 industry and available to folks to take. So, I  
11 encourage you to look at that and take those.

12           I really appreciate having the opportunity to  
13 come before the committee. Thank you.

14           CHAIRMAN THORNTON: Thank you, Ken. We  
15 appreciate that. You mentioned perhaps providing these  
16 to the committee. I don't know whether that would be  
17 in the form of a Power Point, or whatever you can  
18 provide the committee.

19           MR. ATHA: Yes.

20           CHAIRMAN THORNTON: And then, Ken, this is a  
21 question. Can we offer, in advance, his slides? Can  
22 we do that?

23           MS. SHERMAN: Off the record.

24           (Whereupon, at 11:44 a.m. the meeting was  
25 recessed and resumed back on the record at 11:47 a.m.)

1 CHAIRMAN THORNTON: Back on the record.

2 MS. SHERMAN: Mr. Chairman, I would like to  
3 submit the presentation that we just had as Exhibit 4,  
4 and ask the Court Reporter to number each slide as  
5 follows: 4-1, 4-2, 4-3. I understand that the Court  
6 Reporter is being given a CD of the presentation that  
7 we just heard.

8 CHAIRMAN THORNTON: Thank you.

9 (Whereupon, the document referred  
10 to as Exhibit 4 was marked for  
11 identification and entered into  
12 the record.)

13 CHAIRMAN THORNTON: Back over to Captain  
14 Preston.

15 CAPT. PRESTON: Okay. Other than the tabled  
16 issue, the workgroup's report-out on progress to date  
17 that you requested is that, of the original taskings we  
18 have had, we have completed the recommendation on  
19 industry pocket guides; we have completed the  
20 recommendation on translation of e-tools; we have  
21 reported out on the alliance 10-hour course and the new  
22 training opportunities available; we're working new  
23 technology and safety; we are working the substance  
24 abuse; we are working on the leading indicators; we  
25 have tabled root cause analysis for this committee

1 charter because of the SCA effort having stopped. So  
2 we basically have, when we complete the business today,  
3 two issues that we are working which we expect to have  
4 complete by the end.

5 CHAIRMAN THORNTON: Thank you.

6 Questions by the committee? Thank you for the  
7 report. Questions from the committee for Captain  
8 Preston?

9 (No response)

10 CHAIRMAN THORNTON: Anything from the public?  
11 Mr. Davis?

12 MR. DAVIS: I am DeWitt Davis.

13 I wanted to bring two points to the attention  
14 of the committee. There's a significant effort going  
15 on in workforce development. That means that local  
16 activities are developing training for shipfitters,  
17 welders, electricians in Norfolk or Hampton Roads under  
18 the Virginia Ship Repair Association. We have  
19 completed a rather comprehensive introductory welding  
20 program, with the assistance of Northrop Grumman in  
21 Newport News, and with cooperation of the smaller yards  
22 in the area.

23 We're aware that this is being done on the  
24 West Coast and down in Florida. The NSRP is funding or  
25 working on developing workforce development. This is a

1 time that safety principles ought to go into that.  
2 Now, that doesn't mean that the committee should have a  
3 big discussion on it, but it should be aware of it.

4 Materials that it develops should be provided  
5 or should open some kind of channel to these groups  
6 that are doing the workforce development. That's the  
7 future of our program and the things that we're on the  
8 leading edge of developing here. They should be  
9 getting to the younger workers that are coming into the  
10 industry as soon as possible.

11 The second item I had on the leading  
12 indicators, there are a number of people that have  
13 provided, and work has been done, on leading  
14 indicators. Even OSHA's own statistics group could be  
15 consulted more. The Bureau of Labor Statistics will  
16 provide information, privately or individually, for  
17 certain types of comparisons.

18 One of the things that was brought up  
19 yesterday, is there may be a certain ratio between near  
20 misses and actual incidents. Then the National Safety  
21 Council, of which I am a representative, has a full-  
22 blown statistic department and they work very closely  
23 in this safety statistics world.

24 In addition to that, the Coast Guard has  
25 significant safety resources. There has been a lot of

1 effort made in transportation statistics, and an  
2 alliance between the Department of Transportation and  
3 the Cambridge research, and also in coordination with  
4 NTSB. Each of these databases has its own foibles and  
5 difficulties, but it does require reaching out to them,  
6 often sitting right next to the operators, to get the  
7 statistics you really need. So, I commend that to the  
8 committee in terms of leading indicators.

9 In addition to that, there is some basic  
10 research that ought to be looked at. The National  
11 Safety Council -- Fred Manuel's written a treatise on  
12 the fact that serious fatalities don't always correlate  
13 with the number of minor incidents. That may or may  
14 not be true, but there was this theory in the past that  
15 the more little accidents you have, the more bigger  
16 ones you're going to have.

17 I think maybe when you get into this area, you  
18 kind of have to bring in that basic research. I'm sure  
19 that our statisticians at the Safety Council will help,  
20 and also the experts at the BLS certainly have been  
21 treating me personally in providing statistics. So, it  
22 is a great source that can be used. A lot of times we  
23 sort of say, well, BLS never comes out until it's too  
24 late, and you can't publish it because it's too unique,  
25 or something. But there is data. It can be used. I

1 commend the committee to those resources, even here at  
2 OSHA. Thanks.

3 CHAIRMAN THORNTON: Thank you. And just to  
4 kind of piggyback on that, if you have information to  
5 that extent, bringing that information to the  
6 workgroups for consideration is always helpful as well.  
7 So, thank you very much.

8 The document that we didn't have, we have now.

9 CAPT. PRESTON: And even though the document  
10 is large, the action is small. I think we can get it  
11 done before lunch.

12 CHAIRMAN THORNTON: Okay. Just hold that  
13 thought.

14 MS. SHERMAN: Yes. Mr. Chairman, I'd like to  
15 correct myself. I misspoke before. The CD that I  
16 referred to is actually a CD of the course. We will  
17 provide to the Court Reporter a paper copy or one of  
18 those zip drive things of the presentation that was  
19 given. I'm sorry.

20 CHAIRMAN THORNTON: Thumb drive.

21 MS. SHERMAN: Thumb drive.

22 CHAIRMAN THORNTON: Okay.

23 I want to go off the record a second.

24 (Whereupon, at 11:50 a.m. the meeting was  
25 recessed and resumed back on the record at 11:52 a.m.)

1           CHAIRMAN THORNTON: Let's go back on the  
2 record.

3           CAPT. PRESTON: What I'm passing out right now  
4 is the SHIPS that was given to us, and marked up by us,  
5 for recommendation for the full committee. The second  
6 page that you're getting is the handwritten recommended  
7 language to replace the language on page 1.

8           So, going back to my original motion, I'm  
9 moving -- if you open your document to page 2, what  
10 they're calling cover page 1, page 2, under  
11 "Introduction", there is a paragraph marked  
12 "Musculoskeletal Disorders" that you will see we are  
13 moving that that paragraph be removed and replaced with  
14 the text that you see on this second handout.

15           CHAIRMAN THORNTON: For the record, read the  
16 text of the paragraph, please.

17           CAPT. PRESTON: "This document does not  
18 address ergonomic exposures. Extensive research has  
19 been done on ergonomic exposures and possible solutions  
20 in shipyard employment. This information is available  
21 from the National Shipbuilding Research Program, NSRP,  
22 NIOSH, and OSHA."

23           CHAIRMAN THORNTON: Thank you. All right.  
24 You still have the floor.

25           CAPT. PRESTON: We are recommending -- as you

1 page through your document, you will note that pages 3  
2 through 16 have been X'd through. We are recommending  
3 that those pages be removed from the document. They  
4 are all ergonomic-specific. They are all covered in  
5 other references. Then we discussed page 17, because  
6 contact stress can go either way. If you're an  
7 ergonomist you're going to say it's an ergonomic issue,  
8 if you're not, you're going to say it's a different  
9 kind of safety issue.

10 If this is an issue for getting the document  
11 published, the committee is not married to this page,  
12 so if OSHA wishes to withdraw that, that's fine. But  
13 we are recommending in this motion that all the rest of  
14 the X'd out pages be withdrawn. Then, finally, the  
15 rest of the document will go forward as printed.

16 CHAIRMAN THORNTON: Okay. So the motion is to  
17 accept the document, as amended?

18 CAPT. PRESTON: Correct.

19 CHAIRMAN THORNTON: Okay. With the changes  
20 that have been provided here, stated and provided.

21 CAPT. PRESTON: Correct.

22 CHAIRMAN THORNTON: Okay.

23 Do I have a second?

24 MR. MacDONALD: Second.

25 CHAIRMAN THORNTON: I do have a second. Okay.

1 Discussion on the document? Again, we're on  
2 the process, Shipfitting Ships document. Okay.

3 (No response)

4 CHAIRMAN THORNTON: Hearing no discussion from  
5 the committee, if you have some discussion from the  
6 public would you raise your hand?

7 (No response)

8 CHAIRMAN THORNTON: Hearing none, I'm going to  
9 call the question.

10 All in favor, signify by saying "aye".

11 (Chorus of Ayes)

12 CHAIRMAN THORNTON: Opposed?

13 (No response)

14 CHAIRMAN THORNTON: Thank you. Motion  
15 carried.

16 CAPT. PRESTON: Just to close out this  
17 discussion, as we were looking at this document and  
18 preparing it to come back to OSHA, it was mentioned, if  
19 you'll notice on this document it's dated December,  
20 2005. There were five other SHIPS developed since this  
21 one that are sitting in the office waiting for someone  
22 to review them. So, we are requesting that we go ahead  
23 and start moving through those reviews so that OSHA can  
24 get those documents out.

25 CHAIRMAN THORNTON: Okay.

1 MS. SHERMAN: Mr. Chairman, I would like to  
2 offer the Shipfitting document, as amended, into the  
3 record as Exhibit 5-1 and the handwritten addendum to  
4 the document that was read into the record as Exhibit  
5 5-2.

6 CHAIRMAN THORNTON: Thank you.

7 (Whereupon, the documents referred  
8 to as Exhibits 5-1 and 5-2 were  
9 marked for identification and  
10 entered into the record.)

11 MR. WALLIS: One question for Teresa. When  
12 you said we need to start getting those reviews, you  
13 mean "we" the committee or "we" at OSHA?

14 CAPT. PRESTON: Either way. We just found out  
15 they're sitting there. The impression we --

16 MR. WALLIS: They're sitting in OSHA?

17 CAPT. PRESTON: They're sitting in OSHA.

18 MR. WALLIS: Okay.

19 CAPT. PRESTON: And the impression we were  
20 given -- "we", the workgroup, were given was that you  
21 are waiting on us to review them. If that's the case,  
22 we're happy to start reviewing.

23 MR. WALLIS: Okay. I understand. Thank you.

24 CHAIRMAN THORNTON: Okay.

25 Do you have anything more?

1 (No response)

2 CHAIRMAN THORNTON: Okay. A similar thing.  
3 I'd like a little bit of a summary, even if it's a one-  
4 pager, kind of outlining where you are and the TBD, to  
5 be done, I guess, thing, so we can kind of keep score.

6 One administrative thing. Someone, like me,  
7 has torn their temporary badge, so if you leave the  
8 building you're probably going to have a problem. So  
9 if it looks like that, they all look alike.

10 Okay. We're right at 12:00. I'm going to  
11 break here. Our break is scheduled for one hour, to  
12 come back at 1:00. I'm going to do that, but let me  
13 urge you to be on time because we've got a lot to cover  
14 here. So we'll start promptly at 1:00. We'll do  
15 Jimmy's item, then we'll come back to the Cranes  
16 Workgroup. Okay.

17 We're in recess until 1:00.

18 (Whereupon, at 12:00 p.m. the meeting was  
19 recessed.)  
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## 1 AFTERNOON SESSION

2 [1:06 p.m.]

3 CHAIRMAN THORNTON: All right. We've got a  
4 lot to cover here in the afternoon session, so I'd like  
5 to go ahead and get started.

6 I guess the first thing we want to do, is  
7 complete the work from the Longshore report. I  
8 understand we do have some copies. The OSHA copier, I  
9 understand, blew up or something like that. Is that  
10 right? Is there any truth to that?

11 MR. WALLIS: It didn't blow up, but it --

12 CHAIRMAN THORNTON: Okay. It did fail. I  
13 think we've got enough.

14 (Pause)

15 CHAIRMAN THORNTON: All right. Let's move  
16 along. If I could call everybody to order, let's get  
17 started.

18 Jim, please take the lead.  
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1                   LONGSHORING WORKGROUP REPORT (Continued)

2                   By Mr. James Burgin

3                   MR. BURGIN: Okay. The committee should have  
4 a copy of the Traffic Safety Guidance Document side-by-  
5 side comparison table. If you have a copy that's got  
6 the grayed-in text in this first column and you can't  
7 read it, this one's a little better if you can't read  
8 it. That's the last copy that I have.

9                   OSHA put on their Web site, in July of '07, a  
10 Terminal Traffic Safety Document. The document was a  
11 result of a draft copy that was provided to OSHA in  
12 2005 by the MACOSH charter at that time. Then in '07,  
13 OSHA put the document on their Web site.

14                   To look at the three columns on the side-by-  
15 side comparison table, the current Traffic Safety  
16 Document is in the far left column. The middle column  
17 is the Traffic Safety Guidance Document 2000. That  
18 should really say 2005 instead of 2001. So, 2005.

19                   The far right-hand column is the comments from  
20 our October 25, '07 conference call. There are  
21 comments in there, and sort of the rationale behind the  
22 comments or why the comments are proposed.

23                   What this side-by-side does, it compares what  
24 we turned in in the previous MACOSH charter to what  
25 OSHA published. We felt like there needed to be some

1 clarification. The Longshore Workgroup is asking the  
2 full MACOSH committee to look at our comparisons and  
3 our rationales for changes.

4 We realize, since this is 31 pages, that in  
5 order for the full committee to approve this  
6 recommendation to OSHA, which I'll make in a minute,  
7 that you need more time to do this. What we're  
8 suggesting is, right now I'll hit some of the  
9 highlights, about 10 or so points. We would ask the  
10 committee to take it with you and read it and come back  
11 at our next full meeting with comments. At that next  
12 full meeting, we will make a determination or a  
13 recommendation on what to do with the comments that the  
14 workgroup has made.

15 CHAIRMAN THORNTON: Let me ask for a  
16 clarification to that. So if I'm hearing you right,  
17 you're going to hit the high spots?

18 MR. BURGIN: Yes, sir.

19 CHAIRMAN THORNTON: Okay. And you're asking,  
20 then, the full committee to take with them this draft  
21 copy. And are you requesting them then in the interim,  
22 that is, between meetings, to feed you comments or are  
23 you asking them to come to the next meeting prepared to  
24 comment?

25 MR. BURGIN: Good point. I would ask that

1 they feed me comments between meetings, with the  
2 understanding that we will, at the next meeting, do  
3 something about this, discuss it and get it off of our  
4 table, so to speak.

5 CHAIRMAN THORNTON: Yes. I'd like to  
6 recommend that we do do that so as to make us more  
7 efficient. If they can feed you comments in between  
8 meetings, and you come back next time with a revised  
9 draft --

10 MR. BURGIN: Yes.

11 CHAIRMAN THORNTON: -- and then we deliberate  
12 on that.

13 MR. BURGIN: Okay.

14 CHAIRMAN THORNTON: Good.

15 MR. BURGIN: I'll start. Again, this is just  
16 the highlights.

17 Page 2, at the bottom, the bottom block down  
18 there. The OSHA document came back with an incident  
19 that happened where pipe fell off a flat-bed truck and  
20 the pipe landed on an over-the-road truck driver and it  
21 killed. Unfortunately, it was a fatality. That  
22 incident is a materials handling incident. It's not a  
23 marine terminal traffic incident.

24 So we went back and we found or we report that  
25 the bottom block, a "real-life" incident that

1 unfortunately happened, I think within the last 16 or  
2 18 months in Tacoma. So we suggest that that incident  
3 be substituted to the one that OSHA put in the  
4 document. So all that's in writing at the bottom of  
5 page 2 and the top of page 3.

6 Also, on page 3, the Traffic Safety Program.  
7 Again, the workgroup suggests that we get to, traffic  
8 safety controls be used, again, for the same rationale  
9 that we used in the RO-RO document.

10 Yes?

11 MS. SHERMAN: Traffic safety controls or  
12 traffic safety system?

13 MR. BURGIN: I'm sorry. Traffic safety  
14 system. Yes. Thanks.

15 Let's go to page 7. You see in the far right-  
16 hand column some additional language which expands the  
17 OSHA language, cell phones and electronic equipment.  
18 We wanted to make that a little bit more specific.  
19 Also, on page 7 as well, to make it more specific in  
20 the "Improper Parking" section there, the OSHA document  
21 omitted a very important point, which is goosenecks,  
22 which is the fronts of chassis that may stick out from  
23 a row of parked chassis. That is a serious hazard if a  
24 vehicle could strike one of those and cause a bad  
25 injury. So, that should be put back into the document.

1           Going to the bottom of page 8, we suggest a  
2 little bit more language concerning the phenomenon of  
3 accidents occurring at the end of shifts or just before  
4 a meal hour break. It seems to happen on a frequent  
5 basis, so we suggest more language along those lines.

6           MR. CASTANHO: Can I make a comment on that?

7           CHAIRMAN THORNTON: Yes.

8           MR. CASTANHO: Jim's right. A prime example  
9 of that is a fatality we recently had in Oakland, where  
10 our brother, Reginald Ross, was killed aboard the  
11 *Stuttgart Express* while he was lashing. The accident  
12 happened approximately at 4:40 in the afternoon,  
13 basically less than half an hour before the end of the  
14 day shift.

15           So, these are real incidents. Unfortunately,  
16 in this case it was a fatal incident. We're still  
17 looking into it, but it was that last half hour where  
18 that could definitely have been avoided, but did  
19 happen, unfortunately.

20           CHAIRMAN THORNTON: Yes. Thank you.

21           MR. BURGIN: Page 9, "Substance Abuse". The  
22 OSHA language, we just expanded that by including not  
23 only vehicle language which is in the OSHA language,  
24 but to pedestrian and vehicle accidents on marine  
25 terminals. So we wanted to get across that it's more

1 pedestrian-related as well, not just vehicle-related  
2 incidents.

3           Then the bottom of page 9, "Independent Work",  
4 which is in the middle column, was in the original  
5 language submitted to OSHA and left out, and that is a  
6 big point that drivers of vehicles are not immediately  
7 supervised. They're on their own, so to speak, driving  
8 around the terminal. So, that should be put back in.

9           I'm just hitting the highlights, like I said.

10          If anyone else on the workgroup feels like I didn't  
11 hit the right highlight, then you're more than welcome  
12 to jump in.

13           Page 15. Page 15, in the left-hand column,  
14 begins several bullet points concerning safe driving  
15 techniques. The top of page 16--and this may be shaded  
16 in on your copy--the third major bullet point down is a  
17 new bullet point that was added to the OSHA document  
18 that is not practical, and we suggest that be taken  
19 out. It reads, "Do not turn a yard tractor when  
20 backing up." Yard tractors have to turn in order to  
21 back up, so that's got to be taken out.

22           Page 18, under "Fatigue", the shaded part on  
23 the top of page 18. "In addition, employers should  
24 learn about alternative methods to transport  
25 dangerously fatigued or drowsy employees home at the

1 end of their shift." Again, we felt like that would be  
2 impossible to carry out uniformly and the workgroup  
3 feels that should be taken out as well. It is, of  
4 course, not in the original language submitted through  
5 the previous MACOSH.

6 Page 21, the shaded points. One of the bullet  
7 points says, "Avoid placing items on rolling or moving  
8 equipment." You can see, on page 20, in the far right-  
9 hand column, the last paragraph down -- I'm sorry.

10 Page 20, the top of the third column. One of the  
11 things that the workgroup felt strongly about, and the  
12 previous MACOSH felt strongly about, was employees  
13 should not place personal articles on the exterior of  
14 powered industrial trucks on terminals because that's  
15 just one more opportunity for them to walk up to a  
16 powered industrial truck while it's being operated.  
17 When the original language was put in, that was clear.

18 Then when OSHA came back with the language on  
19 the top of page 21, it says, "Avoid placing items on  
20 rolling or moving equipment. Loose items can fall off  
21 the equipment and strike someone." That's the wrong  
22 hazard. The hazard is that employees should not walk  
23 up to machines that are being operated to get or place  
24 their personal items on the machines, so we felt like  
25 that should be clarified as well.

1           Then the next bullet point, "Swing Radius of  
2 the Rear Wheels of the Forklifts." The suggested  
3 language is on page 20 for that one. It talks more  
4 about the bite of the machine, so we suggest more  
5 specific language for that.

6           I think that's it as far as the top items in  
7 the overall document, unless someone else on the  
8 workgroup feels like we need to highlight something  
9 else.

10           (No response)

11           CHAIRMAN THORNTON: Okay. So I guess what I'm  
12 hearing is, the action is for the committee members to  
13 take under consideration and review this document,  
14 provide comments, if any, to you.

15           MR. BURGIN: Yes, sir.

16           CHAIRMAN THORNTON: To you, between now and  
17 the next meeting. Then the next meeting, you will have  
18 assembled those comments and then come back to us with  
19 what would be considered to be a final draft for  
20 consideration?

21           MR. BURGIN: Yes. Any comments I receive from  
22 the committee will be brought up and discussed in the  
23 Longshore Workgroup, and the Longshore Workgroup will  
24 come back at the next committee with a recommendation.

25           CHAIRMAN THORNTON: Very good. Thank you.

1 That's great.

2 So for now, I guess, are we going to receive  
3 this, then?

4 MS. SHERMAN: Mr. Chairman, I think that we  
5 should submit this into the record to make the  
6 transcript clearer, and I'd like to propose that we  
7 submit the Traffic Safety Guidance Document side-by-  
8 side comparison table as Exhibit 6.

9 CHAIRMAN THORNTON: Thank you.

10 (Whereupon, the document referred  
11 to as Exhibit 6 was marked for  
12 identification and entered into  
13 the record.)

14 MR. BURGIN: May I make one more Longshore  
15 Workgroup item recommendation?

16 CHAIRMAN THORNTON: What if I said yes?

17 (Laughter)

18 MR. BURGIN: Thank you. The Longshore  
19 Workgroup recommends that when OSHA finishes their  
20 comments or their process of going through the RO-RO  
21 Safety Guidance Document, that that document, at that  
22 time, be brought before MACOSH again just to have a  
23 last-look opportunity.

24 CHAIRMAN THORNTON: Okay.

25 Any comments from the committee on the Traffic

1 Safety Guidance Document at this time?

2 (No response)

3 CHAIRMAN THORNTON: Any comments from the  
4 public? Yes, sir?

5 MR. MIRANDA: My name is Danny Miranda,  
6 I.L.W.U. I just have one clarification. On the items  
7 you're talking about putting in the equipment, you're  
8 also talking about equipment, not just personal  
9 equipment. You're talking about also equipment that we  
10 might be using, like a crowbar? When you talk about --

11 MR. BURGIN: A crowbar?

12 MR. MIRANDA: Yes. Because a lot of times in  
13 our industry, what we do, we put equipment on our  
14 forklifts when we're moving around. So if you're going  
15 to not allow personal items, is that --

16 MR. BURGIN: It makes sense, yes.

17 MR. MIRANDA: Okay. I just wanted to make  
18 sure that's clear. Thank you.

19 MR. BURGIN: Okay.

20 CHAIRMAN THORNTON: Thank you.

21 Mr. Davis?

22 MR. DAVIS: DeWitt Davis. I seek a little  
23 clarification here. The area of traffic on a terminal  
24 is really a multi-employer workplace. In some cases,  
25 the terminal operator and the port authority have

1 sovereign immunity because they're some function of the  
2 state, and in some cases they don't. So it all sort of  
3 ends up with the stevedores to try to keep things  
4 straight.

5 Also, many traffic devices are established by  
6 the port, the port police, or other functionaries that  
7 get into this. So, I see a difficulty in implementing  
8 this totally with all of the employers or working  
9 functions in a terminal included. So, the stevedores  
10 may be at the mercy of the insufficient traffic pattern  
11 or police control, or all kinds of things that are  
12 going on at the terminal. I think that some  
13 recognition of it has to be made.

14 I didn't see the comments that were made, but  
15 the general overall picture is, I think everybody  
16 should be responsible for safety and the other  
17 authorities should not be able to run from  
18 responsibility and leave it with the stevedores.

19 CHAIRMAN THORNTON: Thank you.

20 Any other comments from the public?

21 (No response)

22 CHAIRMAN THORNTON: Do you have any other  
23 items?

24 MR. BURGIN: Yes, sir.

25 CHAIRMAN THORNTON: You do?

1 MR. BURGIN: Just that other recommendation.

2 CHAIRMAN THORNTON: Oh. Oh. Okay.

3 MR. FLYNN: Was that a motion?

4 MR. BURGIN: Yes.

5 MR. FLYNN: I'll second that motion.

6 CHAIRMAN THORNTON: Wait just a minute. What  
7 was the motion?

8 MR. BURGIN: The motion is that when OSHA goes  
9 through their review process of the RO-RO Safety  
10 Guidance Document that we talked about this morning,  
11 that MACOSH be afforded the opportunity to get a last  
12 look of that document before it's made available to the  
13 public.

14 CHAIRMAN THORNTON: Okay. So I have a motion  
15 and a second.

16 MR. FLYNN: Second.

17 CHAIRMAN THORNTON: Okay.

18 Discussion by the committee? David?

19 MR. WALLIS: I have one question. There are  
20 multiple points in our review process where the  
21 committee could look at it. Basically, the staff of  
22 the Office of Maritime takes the document from MACOSH,  
23 does whatever it needs to do, cleans up grammatical  
24 errors and does some other things where they feel there  
25 is additional information that needs to be inserted to

1     comply with our good guidance guidelines, for example,  
2     we would do that. So that would be one point, after  
3     we've done the clean-up at the staff level.

4             That would be one place you could look at it.

5     The second place would be, as I said before, after it  
6     goes through the clearance process, before we go  
7     through the comments, after it goes through the  
8     clearance process, after we've processed the comments.

9             And like I said, each of those carries its own  
10    burden. If it's done at the end, we would need to re-  
11    clear it and basically you won't get the last bite.  
12    The clearance process will get the last bite.

13            MR. BURGIN: I understand.

14            MR. WALLIS: So if you have a recommendation  
15    at which point, that should be in your motion.

16            MR. BURGIN: Yes. At some point, we want to  
17    look at it again. I mean, I just can't say exactly  
18    when based on your procedures.

19            MR. FLYNN: How about, whatever point they're  
20    at when we meet again?

21            MR. BURGIN: Well, it depends on how much  
22    they're going to work on it between now and March.

23            MR. BURGIN: Just at some point --

24            MR. WALLIS: You're talking about RO-RO,  
25    right?

1           MR. BURGIN: Yes. When OSHA feels like  
2 they've made any changes to it at some point. I think  
3 we would look to OSHA at some point to give it back to  
4 us.

5           MR. WALLIS: I understand.

6           MR. BURGIN: I'm sorry to be so vague. But,  
7 yes.

8           CHAIRMAN THORNTON: John?

9           MR. CASTANHO: Well, just for clarification on  
10 the document, two areas. The first one is page 6. The  
11 far right-hand side, bottom box, makes reference to the  
12 1917.123 for lighting. There should be a letter "a" in  
13 parenthesis after 123 as a correct reference. And on  
14 page 16, far right-hand side, lower box, second  
15 sentence, there should be a letter "a" after 1917.156.  
16 There should be the letter "a" and then the number  
17 "5", and 1917.156(a)7.

18           MS. SHERMAN: Both places?

19           MR. CASTANHO: That was my first note. But  
20 let me make sure that I'm giving you the right one.  
21 Yes, that's correct. The letter "a" goes after both of  
22 those. It's page 134 and page 135 in the Longshoring  
23 Industry book.

24           CHAIRMAN THORNTON: Noted. Thank you. Okay.

25           So where we are, is we have a motion on the

1 floor, we have a second. The effect of the motion was  
2 that once the RO-RO document becomes as close to final  
3 as final can be, that the committee/workgroup be  
4 afforded--my word--a last look at it. Is that the  
5 essence of it?

6 MR. BURGIN: Yes, sir.

7 CHAIRMAN THORNTON: Okay.

8 I had a motion and a second and we're in  
9 discussion. Is there any more discussion on the  
10 motion? Yes, Ken?

11 MR. SMITH: Mr. Chairman, I have a question.  
12 I guess it relates to the issue that we're talking  
13 about here. But in this specific document I noticed  
14 it's a little bit different than some of the other  
15 documents that we've created in that we specifically  
16 call out MACOSH as being a contributory member. So I'm  
17 kind of wondering if that statement about MACOSH having  
18 an active role in developing that policy, if that  
19 statement wasn't in there, would that make any  
20 difference to the committee with regards to allowing  
21 OSHA to move forward?

22 As was already mentioned by Mr. Adams, we are  
23 an advisory committee and OSHA can do whatever it wants  
24 with the information that we give them. So I'm kind of  
25 wondering, are we holding back from allowing OSHA to

1 move forward because we've basically put the MACOSH  
2 stamp of approval within the document? That's  
3 basically my question.

4 MR. BURGIN: It's my opinion that MACOSH has  
5 done a lot of work on this, and they did it in the  
6 previous charter. Doesn't it help MACOSH to be  
7 rechartered if it's mentioned in the documents? I  
8 think that's one of the reasons it's in there,  
9 possibly.

10 MR. MacDONALD: Mr. Chairman, if I may?

11 CHAIRMAN THORNTON: Yes, Marc?

12 MR. MacDONALD: I think, from my perspective,  
13 anyway, we would like to take a last look at the RO-RO  
14 document just so there's no glaring errors, like in  
15 Traffic Safety. We find ourselves in the situation  
16 there where we are asked to make comments on a guidance  
17 document that's already out on the Web.

18 So, I think that's the procedural thing we're  
19 trying to avoid there, is to try to make sure that any  
20 changes that were made are logical and reflect current  
21 practices in industry and they have good,  
22 representative examples so that we don't have a  
23 situation where we're then asking to go back to a  
24 published document and make subsequent changes.

25 CHAIRMAN THORNTON: Okay. You're going to

1 weigh in?

2 MR. ADAMS: Just one nice aspect of all this,  
3 if you consider it. Since we are an advisory  
4 committee, if we say we want to see it again, that  
5 doesn't mean, if something comes up where it's not  
6 appropriate, they don't have the time or, for whatever  
7 reason, they're not locked into that.

8 MR. BURGIN: I understand.

9 CHAIRMAN THORNTON: Okay. Where we are, is  
10 we've got a motion on the floor and a second, and we're  
11 in the discussion phase.

12 Other comments?

13 (No response)

14 CHAIRMAN THORNTON: Okay. I'm ready to call  
15 the question.

16 All in favor of the motion, please signify by  
17 saying "aye".

18 (Chorus of Ayes)

19 CHAIRMAN THORNTON: Opposed?

20 (No response)

21 CHAIRMAN THORNTON: Thank you.

22 MR. BURGIN: I'm done. Thank you.

23 CHAIRMAN THORNTON: Thank you.

24 I'm going to turn it over. Now we're going to  
25 move and switch gears, literally, and go into the

1 Cranes and Falls Workgroup report. Stew Adams is going  
2 to lead us through this discussion.  
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1                   CRANES AND FALLS WORKGROUP REPORT

2                   By Mr. Stewart Adams

3                   MR. ADAMS: Some of you may already have the  
4 two pages that are going around. I know the working  
5 group was provided it. I do, too. Good. Okay.

6                   So let's start. I have three areas to report  
7 out on from the working group, Mr. Chairman. The first  
8 one is the *Athena 106* accident. If you'll recall, at  
9 Oakland, the National Transportation Safety Board came  
10 to the MACOSH meeting and gave a presentation on this  
11 accident, including their conclusions and  
12 recommendations.

13                   They had basically two recommendations to  
14 OSHA: one was geared to OSHA and the U.S. Coast Guard,  
15 to go work on their MOU; another recommendation was to  
16 OSHA and the MACOSH, to develop a fact sheet to get the  
17 word out on this particular event, so people know the  
18 hazards involved in the locking pins on spuds. Then  
19 also to develop a guidance document dealing with these  
20 types of barges as far as what's expected from  
21 occupational safety and health.

22                   So we had a lot of interesting turns on this.  
23 We had two meetings in our working groups and did quite  
24 a bit of research on this one to go track this one  
25 down. The first comment I should make on this, if you

1 put this in consideration, this was brought to the  
2 MACOSH, the maritime part of OSHA. But if you go look  
3 at all the OSHA rules that the Maritime Directorate  
4 controls, none of them really apply to the barge in  
5 question. It's not shipbuilding, ship repair, ship  
6 construction, it's not marine terminals, it's not  
7 marine gear; none of the standards apply. The  
8 standards that would apply are over in the 1926, the  
9 construction industry standard.

10 But if you go look at those--that's where work  
11 barges and barges in navigable waterways falls in the  
12 OSHA regulations--standards, most of those standards  
13 don't apply also. So the conclusion that we discussed  
14 yesterday was, there really are no specific industry  
15 regulations to these work barges that were discussed in  
16 the *Athena 106* event.

17 You can see both of those conclusions, if you  
18 will, from the standpoint of the citation that was  
19 cited from OSHA was a 5(a)(1) citation where they  
20 didn't cite a specific standard, and the SIC code for  
21 the company that was cited was a construction industry.

22 So, that kind of ties it together.

23 CHAIRMAN THORNTON: Can I interrupt and ask  
24 one question on your workgroup?

25 MR. ADAMS: Sure.

1           CHAIRMAN THORNTON: Was there--I'm not trying  
2 to put anybody on the spot--an OSHA representative  
3 working in the workgroup?

4           MR. ADAMS: Yes.

5           CHAIRMAN THORNTON: In other words,  
6 jurisdictionally, not trying to put the Agency on the  
7 spot, but they were in agreement with your analysis?

8           MR. ADAMS: Not totally. I was trying to be  
9 very careful in the words, because there are specific  
10 standards. We discussed these yesterday also, such as  
11 for a mobile crane on a barge.

12          CHAIRMAN THORNTON: Okay.

13          MR. ADAMS: There are standards in the  
14 construction industry that apply to the mobile crane,  
15 even if it's on the barge. There are also standards,  
16 the 1904 standards, for counting injuries and  
17 illnesses. Those would apply to that industry too, or  
18 that group of people. So I was trying to be very  
19 careful, as there are standards applied, but it gets  
20 really hard for a safety professional--not so much the  
21 lawyer part of it--going down to one of these barges  
22 and saying, here's a ladder. What does this ladder  
23 have to comply with? Or, I'm an employer. What do I  
24 have to do for this ladder?

25          The Coast Guard doesn't necessarily regulate

1 it, and OSHA, in their workplace conditions, doesn't  
2 really regulate it. So it's an interesting point. How  
3 that plays into this we'll get into as we go, but that  
4 was kind of a starting off point.

5 Now, the document I provided you as the OSHA  
6 fact sheet, this was prepared and sent to me by Joe  
7 Daddura for the workgroup to review as answering the  
8 question or response to the recommendation from the  
9 NTSB. It is a fact sheet on the spud, specifically  
10 associated with spud barges, addressing the issues of  
11 the locking pins. It's very accurate. It's detailed  
12 where it needs to be detailed and it's general where it  
13 needs to be general, and it does relate the necessary  
14 information to let people know, you really do need to  
15 put these pins in place on these barges when you're  
16 using them. So that's one piece, and we'll come back  
17 to that one in a moment.

18 The other piece of this puzzle is guidance on  
19 what you would expect for barge safety. By saying  
20 "barge safety", I'm trying to express that in terms of  
21 working for the employees there.

22 Now, there's another document. This was  
23 handed out earlier.

24 MR. BURGIN: I've got it. I have a question.

25 MR. ADAMS: Okay. I'm sorry. This document

1 is an outline, if you will, of a guideline that the  
2 Maritime Directorate is going to go work on if we agree  
3 that this is the right approach to take. They've put  
4 this together. They've looked at it and said, here's  
5 what we need to relate. This is what is guidance,  
6 these are the pieces the guidance document should have  
7 in it. If you don't have a guidance document, they're  
8 going to go work on it.

9 The other interesting aspect of this situation  
10 or this event is, the members of the MACOSH committee,  
11 and correct me if I'm wrong, anybody, but I have little  
12 or no experience on barges of this type and I don't  
13 believe anybody at the table really can reach out and  
14 touch somebody immediately that has these kind of work  
15 barges.

16 Yes, sir?

17 MR. SMITH: Stew, I can tell you that from  
18 Coast Guard Headquarters' perspective, we have enough  
19 resources to reach out and we can be of assistance in  
20 regards to this matter, working with OSHA, through  
21 MACOSH. I know Captain Preston has probably got some  
22 comments that she could make. I think that we'd have  
23 industry comments as well. But I do believe that this  
24 is a good document. I think it's a good starting  
25 place. I think that although many people might feel

1 that these vessels are uninspected, they're not totally  
2 uninspected.

3 No vessel that sails out there is completely  
4 uninspected. That goes for the recreational boats as  
5 well. There are minimum standards of lifesaving and  
6 firefighting that they have to meet. But specifically  
7 with regard to this type of construction activity on a  
8 vessel that operates on inland waters, the Coast Guard,  
9 and I don't believe OSHA, has specific standards that  
10 apply. So, this is a good first step. I think MACOSH,  
11 more than anything, given the collective maritime  
12 backgrounds of the people, would be best to kind of  
13 address this type of a document.

14 MR. ADAMS: And perhaps I misspoke, because I  
15 chuckled whenever Ken raised his hand, because the  
16 Coast Guard could have people to reach out that could  
17 touch people on these barges. But beyond that, from  
18 the shipyard perspectives that I work in, we don't have  
19 these barges. I don't believe, from the Union's side  
20 of the world, whether you have members that do this  
21 type of work. You do. So we do have some. That's  
22 good. That helps a lot.

23 Now, one other piece of the puzzle that came  
24 in to OSHA. That letter was not circulated. It was  
25 from OMSA. They are an association with approximately

1 250 companies and they do represent people that do this  
2 kind of work. They were expressing a desire to work  
3 with the Coast Guard and OSHA as OSHA develops these  
4 documents, or as OSHA develops this, which is a  
5 positive aspect.

6 So, having said all that, that's kind of where  
7 this issue lies. A fact sheet has been prepared. OSHA  
8 has asked the MACOSH to look at it and tell them if we  
9 believe it meets what the NTSB wanted and was meaning,  
10 and if it serves its purposes. The working group  
11 believes that it does, and I believe, after you finish  
12 reading it, that you'll come to the same conclusion.

13 So the first recommendation of this is that  
14 MACOSH accepts the OSHA fact sheet that's been  
15 prepared, and recommended OSHA issue it.

16 CAPT. PRESTON: I second.

17 CHAIRMAN THORNTON: I have a motion to accept  
18 the fact sheet, as prepared by OSHA, and a second. Is  
19 that correct?

20 MR. ADAMS: Yes. To accept and issue it. And  
21 that OSHA issues it.

22 CHAIRMAN THORNTON: Accept and?

23 MR. ADAMS: For OSHA to issue it.

24 CHAIRMAN THORNTON: Accept for issuance.

25 MR. ADAMS: Yes.

1 CHAIRMAN THORNTON: Okay. Recommend that OSHA  
2 issue the fact sheet. How about that?

3 MR. ADAMS: That's a good one.

4 CHAIRMAN THORNTON: Is that better?

5 MR. ADAMS: That's better.

6 CHAIRMAN THORNTON: Do you second that?

7 CAPT. PRESTON: I second it.

8 CHAIRMAN THORNTON: Okay.

9 The recommendation is that OSHA issue the fact  
10 sheet as presented before you. Okay. Can I have a  
11 second?

12 CAPT. PRESTON: Perhaps we should identify the  
13 fact sheet and offer it into the record as Exhibit 7.

14 CHAIRMAN THORNTON: Very good. So I've got a  
15 motion, second. Discussion by the committee? Marc?

16 MR. MacDONALD: I have absolutely no problem  
17 with this fact sheet. The only question or concern  
18 that I would like to bring up, is this. We're focusing  
19 on these securing pins as being able to hold these spud  
20 links in an emergency situation, in case the wire  
21 breaks on the spud winch. The only thing I'd say is,  
22 this is a 5-ton leg and it looks like a 3/4- or 1-inch  
23 pin.

24 So I think you've got to be careful that you  
25 say, okay, we'll use these pins, and that pin may or

1 may not hold that leg up depending on if that wire  
2 breaks and you've got three or four inches or some  
3 distance for that thing to fall, and whack. So it's  
4 one of those things where you've got to look at the  
5 design and engineering part.

6 So while I don't disagree at all with the  
7 caution of this, I would point out that we're going  
8 ahead with this without any kind of engineering to say  
9 that that's adequate or not.

10 CHAIRMAN THORNTON: So I guess your point is,  
11 the reliance on a pin is almost a fail-safe and the  
12 real fix, I guess, is prevention of it to fall. Or am  
13 I hearing -- no, I'm not hearing?

14 MR. MacDONALD: Not exactly.

15 CHAIRMAN THORNTON: Okay.

16 MR. MacDONALD: All my point is, a pin could  
17 be a very, very good item to keep that spud link from  
18 breaking, but I think it's got to be engineered  
19 properly and it may have to be lowered gently and  
20 resting in the supported position rather than having it  
21 like a guillotine, where you're perhaps having that  
22 wire break and then it will come down hard on that pin  
23 and shear it. That's my engineering analysis, back of  
24 the napkin.

25 CHAIRMAN THORNTON: I understand.

1 Captain Preston?

2 CAPT. PRESTON: I don't disagree for a minute  
3 with what Marc's saying. But I think if you read the  
4 way the fact sheet is presented, the pin is presented  
5 as a fail-safe, not as the primary securing device.  
6 NTSB, in their investigation, said had the pin been in  
7 place with the brake set, that it probably would have  
8 prevented. So I think we have enough expert testimony  
9 to back up going forward with this fact sheet.

10 CHAIRMAN THORNTON: Ernie?

11 MR. WHELAN: Just one comment I want to allude  
12 to. In our industry, we have one of the largest  
13 excavator dredges on the East Coast. It's a LeBaron  
14 996, and the spud is 99 tons, the pin is the size of a  
15 man's arm. So, there are varying sizes. But that is a  
16 very common practice. We deal with these spud welds  
17 every day, hundreds of men or sizes to be considered.

18 CHAIRMAN THORNTON: I'm not trying to lead  
19 this in any direction. So the motion on the floor is  
20 to accept this document as written. We've had some  
21 other comments that say, pay attention to the pin size  
22 and making sure it can support the load, if needed. So  
23 I guess mine is more of a question. Do you wish to  
24 modify this document in light of some of these  
25 comments? Can I yield to Ernie and Marc, I guess, to

1 say, do we need to simply have this discussion on the  
2 record? Is it your pleasure, is it your comment that  
3 some note needs to be made on the fact sheet?

4 MR. MacDONALD: Mr. Chairman, I think I'm  
5 comfortable with just putting the note into the record.  
6 But if OSHA takes that note in the record and does  
7 something with it, I'm not going to object to that  
8 either.

9 CHAIRMAN THORNTON: Well, I think it's part of  
10 the record. I think OSHA can choose to do so if they  
11 wish. So I think it's a very effective way of noting a  
12 concern. Okay.

13 Jimmy?

14 MR. BURGIN: I have a concern, too. The  
15 second bullet point on page 2. Did the workgroup  
16 consider the type of towing vessel? Did the workgroup  
17 consider using the term "commercial uninspected towing  
18 vessel", to clarify that vessel? Because the master of  
19 the vessel -- I'm getting the impression that we're  
20 getting out of OSHA jurisdiction if it's any kind of  
21 vessel.

22 So if we're talking about aiming something at  
23 a master of a towing vessel, we need to clarify what  
24 type of towing vessel, and is that towing vessel under  
25 OSHA's jurisdiction. If not, I would recommend that

1 this fact sheet, especially that bullet point, be sent  
2 to the Marine Towing Advisory Committee of the Coast  
3 Guard to let them comment on this.

4 CHAIRMAN THORNTON: Response from the  
5 workgroup?

6 MR. SMITH: I can comment on that. Thank you.  
7 It just so happens that my office is working on that  
8 towing vessel regulation project. In regards to that  
9 statement, I can tell you officially, that is not  
10 incorrect and that the towing vessel regulations that  
11 are being considered, and even the regulations that are  
12 in place now, rely heavily upon masters making sure  
13 that their vessels are safe to sail. So I think this  
14 was an NTSB recommendation.

15 I personally don't feel that it's incorrect.  
16 It would not be inconsistent with the thought of what  
17 is being discussed, or at least considered, for the  
18 proposed rules that are being made with regard to  
19 towing vessels and the rules that exist currently with  
20 regard to other vessels and the way masters are kind of  
21 viewed with the responsibility.

22 MR. BURGIN: That's a good point. But I think  
23 my point also is, are we getting out of OSHA  
24 jurisdiction and getting into Coast Guard jurisdiction  
25 with that second bullet point? Don't worry about it?

1 Good.

2 MR. WHELAN: Jim, I just have one additional  
3 comment.

4 CHAIRMAN THORNTON: Ernie?

5 MR. WHELAN: On bullet point 3, one comment I  
6 have to make is that, in our experience, we have had  
7 spuds dropped and they've ripped out the spud well,  
8 resulting in the sinking of a vessel. We've had spuds  
9 dropped that sheared off and created -- we actually had  
10 two men killed, where a spud was sheared, fell on deck,  
11 and killed two of our personnel. So in bullet point 3  
12 where it says "a spud must be lowered to stop the barge  
13 in an emergency situation", I think that has to be an  
14 extreme situation to be considered.

15 I think the language is correct. I fully  
16 endorse the document. I think it's the first one we've  
17 seen on spuds barge safety. But again, there are  
18 considerations that must be considered on lowering of a  
19 spud on a moving vessel.

20 CHAIRMAN THORNTON: Thank you. Okay.

21 We have a motion on the floor. We're in the  
22 discussion period. I guess the essence of the motion  
23 is for OSHA to publish this fact sheet before us.  
24 We've had some discussion, some comments.

25 Other comments?

1 (No response)

2 CHAIRMAN THORNTON: Any comment from the  
3 public?

4 (No response)

5 CHAIRMAN THORNTON: Thank you.

6 I'm ready to call the question on the motion,  
7 which is to approve or to recommend that OSHA publish  
8 the fact sheet before you.

9 All in favor of the motion, please signify by  
10 saying "aye".

11 (Chorus of Ayes)

12 CHAIRMAN THORNTON: Opposed?

13 (No response)

14 CHAIRMAN THORNTON: Thank you.

15 MR. ADAMS: The next piece of this puzzle is  
16 the guidance document for barge safety. The document  
17 hasn't been prepared. This is the basic structure of  
18 what it's going to be. There may be additions and  
19 deletions from the areas that are addressed as it goes  
20 forward, so I don't believe we should say "this is it"  
21 as far as the big areas. But I do believe that we  
22 should recommend that OSHA pursue developing and  
23 issuing this document. So, that's where we're at now  
24 with it. The working group agreed on it. It is a  
25 tough issue, and just how this fits into the MOU

1 between the Coast Guard and just how all of this fits,  
2 and it's best left to the people that write these  
3 rules.

4 Now, one other piece of the puzzle that helps  
5 a lot, at least it helped in the working group  
6 yesterday, is OMSA wants to be of assistance. They  
7 will be through the Coast Guard. Ken gave that  
8 assurance yesterday. So, I recommend that OSHA develop  
9 a guidance document for barge safety and that that be  
10 pursued by OSHA, and that the MACOSH recommends that.

11 CAPT. PRESTON: Don't we want to assist them  
12 in that development?

13 MR. ADAMS: The MACOSH's charter is up on June  
14 26th. This will span two MACOSHs. The specifics and  
15 the details of this will really be worked out--this is  
16 just my opinion--between the Maritime Directorate, the  
17 Coast Guard, and with input from the associations that  
18 really are affected here. So I don't necessarily  
19 because we should be directly involved in the  
20 developing of this document. The workgroup didn't come  
21 up with that conclusion yesterday.

22 CHAIRMAN THORNTON: Let me ask a couple of  
23 questions of clarification, because this particular  
24 document doesn't have a header on it, and perhaps it  
25 should. Is this the work of the workgroup, this

1 outline?

2 MR. ADAMS: No. This outline was prepared by  
3 Joe Daddura's group.

4 CHAIRMAN THORNTON: Okay. So is the workgroup  
5 recommending that OSHA pursue development of a guidance  
6 document around this outline?

7 MR. ADAMS: Yes.

8 CHAIRMAN THORNTON: That is the  
9 recommendation?

10 MR. ADAMS: That is the recommendation.

11 CHAIRMAN THORNTON: Okay. Is that in the form  
12 of a motion?

13 MR. ADAMS: I so move.

14 CHAIRMAN THORNTON: All right.

15 MR. RAFFO: Second.

16 CHAIRMAN THORNTON: I had a second over here.  
17 I've got a motion and a second, the effect of which is  
18 that MACOSH recommend to OSHA the development of a  
19 guidance document around barge safety, consistent with  
20 the outline that has been presented. I think you'd  
21 better mark this, right?

22 MS. SHERMAN: Yes. Actually, I will mark this  
23 outline for guidance document on barge safety as  
24 Exhibit 8, and at this time let me also make sure that  
25 we get the OSHA fact sheet on spud barge safety into

1 the record as Exhibit 7.

2 (Whereupon, the document referred  
3 to as Exhibits 7 and 8 were marked  
4 for identification and entered  
5 into the record.)

6 CHAIRMAN THORNTON: Okay. So where we are, is  
7 we have a motion on the floor. We have a second.  
8 We're in the discussion period. Any discussion on the  
9 motion? Jimmy?

10 MR. BURGIN: Can we clarify the name of this  
11 outline document? Because "barge safety" is too  
12 general.

13 MR. ADAMS: That's a really good point. It  
14 was brought up and discussed a little bit. If we say  
15 "spud barges", then we're limited to spud barges. If  
16 we say "uninspected barges", then we're in the world of  
17 uninspected barges. But specifically, the NTSB  
18 recommendation was for spud barge. Should it extend  
19 beyond the single spud barge to other types of barges?  
20 That's a good question.

21 MR. BURGIN: If it's open-hopper barges or  
22 flat-deck barges that are handling cargo, that's  
23 something different than I think happened here.

24 MR. ADAMS: That's true.

25 MR. BURGIN: I would suggest, we need to have

1 a better title and make it more focused.

2 MR. ADAMS: Okay.

3 MR. BURGIN: Because if we go into other  
4 things, we're getting into some 1918 issues.

5 MR. ADAMS: So if we amend it to spud barge  
6 safety --

7 CAPT. PRESTON: Construction barge safety.

8 MR. ADAMS: Construction barge safety? Okay.

9 CHAIRMAN THORNTON: I'm going to ask -- wait  
10 just a minute. I'm going to ask for -- hang with me.  
11 Who seconded that motion? I'd like to respectfully  
12 request that you withdraw, and you withdraw, because if  
13 we're going to have a new motion, I'd prefer we have a  
14 new motion rather than try to fix this one. That's  
15 where I'm coming from. Is that acceptable?

16 MR. ADAMS: Yes, sir.

17 CHAIRMAN THORNTON: Thank you very much.

18 Now, before we make a motion, did you want to  
19 speak?

20 MR. WALLIS: Yes. My feeling is, I think the  
21 working group has talked about the scope issue but they  
22 haven't determined what the scope is yet. I think  
23 you're better off leaving it broader, with the  
24 understanding that the workgroup will determine what  
25 the scope is and figure that out, and will present that

1 maybe at the next meeting. I'm a little bit concerned  
2 about limiting it to just spud barges, and I'm even  
3 more concerned about calling them construction barges.  
4 This is MACOSH, not FACOSH.

5 CHAIRMAN THORNTON: But the effect of the  
6 original motion was to encourage OSHA to develop a  
7 guidance document. I guess I didn't hear -- did I hear  
8 correctly that it wasn't the intent of the workgroup to  
9 draft, if you will, that guidance document?

10 MR. ADAMS: That's correct.

11 CHAIRMAN THORNTON: That's a slightly  
12 different twist, is it not?

13 MR. ADAMS: Yes, it is a twist. Yes.

14 CHAIRMAN THORNTON: Okay.

15 MR. ADAMS: And the reason it is framed that  
16 way, is because the recommendation from the NTSB was  
17 for the MACOSH to develop the guidance document, and  
18 OSHA is going to develop the guidance document.

19 CHAIRMAN THORNTON: I understand. So where we  
20 are now, is we have a clean slate right now. Okay.  
21 I'm going back to the workgroup and I'm asking, what,  
22 if anything, do you want to do with this document?

23 MR. BURGIN: Change the name.

24 CHAIRMAN THORNTON: I have a recommendation to  
25 change the name.

1           MR. BURGIN: It's too broad. It's just too  
2 broad.

3           MR. ADAMS: How about, there's a couple of  
4 possibilities. We've heard these possibilities: spud  
5 barge might be too limiting; construction barge might  
6 infringe upon a different directorate; if you don't say  
7 "uninspected barge", then perhaps you could infringing  
8 upon the Coast Guard for their inspected vessels. So  
9 what if you said "working barges" and let the people  
10 developing the guidance document sort out the  
11 jurisdiction?

12           MR. BURGIN: Working barges (non-cargo  
13 barges). I'm just real concerned about getting that  
14 cargo aspect in. There's not a need to, in my opinion,  
15 do this for cargo.

16           MR. ADAMS: And you're right. In 1926, the  
17 construction industry standard, cargo barges and barges  
18 that carry cargo are addressed and there are standards.

19           CHAIRMAN THORNTON: What do you want to do?

20           MR. ADAMS: What if we just said "non-cargo  
21 barges"?

22           CHAIRMAN THORNTON: We can say anything we  
23 want. All I'm trying to do is to get us to say  
24 something.

25           (Laughter)

1 CHAIRMAN THORNTON: That's all I'm trying to  
2 do. Okay.

3 MR. ADAMS: Let's change the guidance document  
4 in its draft form to "non-cargo working barges."

5 (Laughter)

6 CHAIRMAN THORNTON: All right. Now, just a  
7 minute. You've entered this into the record. Okay.

8 MS. SHERMAN: Yes. If the committee makes the  
9 decision, I will change it. I will change the  
10 designation on the exhibit.

11 MR. ADAMS: Okay.

12 CAPT. PRESTON: Can I make a suggestion?

13 CHAIRMAN THORNTON: Absolutely.

14 CAPT. PRESTON: The recognized delineation is  
15 "inspected" and "uninspected", and the recognized  
16 delineations in terms of use, you then get into work  
17 barges and/or other barges, which could be  
18 construction, cargo-carrying, whatever. So how about  
19 we title the guidance document "uninspected work barge  
20 safety"?

21 MR. ADAMS: That doesn't solve the -- a piece  
22 of this -- maybe we're getting too detailed here.

23 CHAIRMAN THORNTON: Don't forget, all of this  
24 discussion is main chapters. All of the background  
25 stuff, okay, that we've been talking about is on the

1 record and will be considered with whatever decision is  
2 made. So let's not forget that.

3 MR. ADAMS: The fundamental issue here is that  
4 the MACOSH agree, or not agree, that a guidance  
5 document is needed for work barges similar to those  
6 that were involved in the *Athena 106* accident.

7 CHAIRMAN THORNTON: Right. I understand.  
8 Yes.

9 MR. ADAMS: So it's not so much what the  
10 outline is or what it is not, it's the fact that we  
11 agree, as MACOSH, that OSHA needs to develop a guidance  
12 document for barges that were similar to those that  
13 were involved in the *Athena 106*.

14 CHAIRMAN THORNTON: Okay.

15 MR. BURGIN: And Terri's solution is good.

16 CHAIRMAN THORNTON: What would you like to do,  
17 Mr. Workgroup Chairman?

18 MR. ADAMS: Let's do two things. Since they  
19 didn't this framed correctly to start with, we've got  
20 to undo one thing. We've got to correct the title.  
21 Let's correct the title on this guidance document  
22 that's been admitted as an exhibit.

23 CAPT. PRESTON: Uninspected work barge safety.

24 MR. ADAMS: So, I recommend that we amend the  
25 guidance document title to "Uninspected Work Barge

1 Safety".

2 CHAIRMAN THORNTON: Wait. So on the copy  
3 before us, it would read: "Guidance Document:  
4 Uninspected Work Barge Safety". Is that correct?

5 MR. ADAMS: Yes.

6 CHAIRMAN THORNTON: Okay. So that's a  
7 recommendation, that we change that?

8 MR. ADAMS: Yes.

9 CHAIRMAN THORNTON: All right. And we can do  
10 that.

11 MR. ADAMS: Okay. But you need a second.

12 CHAIRMAN THORNTON: Wait. It wasn't a motion,  
13 it was a recommendation.

14 MR. ADAMS: I move that we do so.

15 CHAIRMAN THORNTON: Hey, see, that's  
16 different.

17 CAPT. PRESTON: I second.

18 CHAIRMAN THORNTON: I have a motion to change  
19 the title of the document to: "Guidance Document:  
20 Uninspected Work Barge Safety". You have a motion and  
21 a second. We're in discussion.

22 (No response)

23 CHAIRMAN THORNTON: None from the committee.  
24 Are there any comments from the public?

25 (No response)

1 CHAIRMAN THORNTON: Thank you very much.

2 I want to call the question. All in favor of  
3 the motion, please signify by saying "aye".

4 (Chorus of Ayes)

5 CHAIRMAN THORNTON: Opposed?

6 (No response)

7 CHAIRMAN THORNTON: All right.

8 MS. SHERMAN: I would like to enter an amended  
9 Exhibit 8 into the record to show that the title should  
10 be "Uninspected Work Barge Safety".

11 CHAIRMAN THORNTON: Thank you.

12 (Whereupon, the document referred  
13 to as Exhibit 8, as amended, was  
14 marked for identification and  
15 entered into the recorded.)

16 CHAIRMAN THORNTON: Would you like to do  
17 something else?

18 MR. ADAMS: Yes. So, following the discussion  
19 we've just had, I move that we recommend that OSHA move  
20 forward in developing a guidance document to address  
21 barges similar to those involved in the *Athena 106*  
22 accident.

23 CHAIRMAN THORNTON: Okay. There's a motion.  
24 Do I have a second?

25 MR. LEMON: Second.

1 CHAIRMAN THORNTON: I have a second.

2 Discussion on the motion?

3 MR. LEMON: Call for the question.

4 CHAIRMAN THORNTON: All right.

5 All in favor of the motion, please signify by  
6 saying "aye".

7 (Chorus of Ayes)

8 CHAIRMAN THORNTON: Opposed?

9 (No response)

10 CHAIRMAN THORNTON: Thank you.

11 MR. ADAMS: Whew. That was the easy one.

12 CHAIRMAN THORNTON: That was the easy one?  
13 Give us a hard one. We can handle it.

14 MR. ADAMS: Okay. Those were the two basic  
15 recommendations that we came up with in the working  
16 group.

17 The other issues. I am just going to report  
18 out where we're at on the issues. Please pipe up as I  
19 raise the issues as this goes forward, because this is  
20 going to get complicated.

21 Working under suspended loads. This has been  
22 a topic since day one for whenever we developed the  
23 working groups. OSHA asked us, as MACOSH, to address  
24 working under suspended loads. OSHA believes it's an  
25 issue. We've had several conference calls. We have

1 also discussed it in each of the MACOSH meetings we've  
2 had and had public input on it in the working groups.

3 Yes, it is an issue: people in shipyards to  
4 work under suspended loads. At the Oakland MACOSH, we  
5 showed a video entitled, "Destroyers Forged in Steel",  
6 which showed such an operation going on in a place  
7 where people were working and around a suspended load,  
8 a large hull section that was being placed onto a ship.  
9 So where we've kind of defined and focused the issue  
10 now, as we've been discussing it, it's an issue for  
11 shipbuilding, it's an issue for ship repair, it's an  
12 issue for ship dismantlement. It's not an issue for  
13 longshoring.

14 CHAIRMAN THORNTON: Keep going.

15 MR. ADAMS: The other piece of this issue is,  
16 how do you frame this, working under a suspended load?  
17 Are we talking about the large hull section, major  
18 components? Are we talking about small pieces? The  
19 conclusion of the group is that we could try to limit  
20 it only to new construction of major hull sections, but  
21 the reality of it is, the issue of working under a  
22 suspended load is anytime you're underneath a suspended  
23 load, regardless of how large it is.

24 So the standard in the shipyard industry is  
25 very specific and it really doesn't matter how big that

1 load is: if you're under it, you're under a suspended  
2 load. So we, as a working group, did not believe that  
3 it should be restricted in a section of the industry or  
4 to a type of lift, that it goes across the board.

5 Now, where we left this at the Oakland  
6 meeting, is to go off and try to define some type of  
7 parameters of when it would be okay to work under a  
8 suspended load. It's an interesting point when you  
9 consider that the standard doesn't allow that now at  
10 all by the wording.

11 So what we've identified, and we identified  
12 this with the assistance of some individuals in NAVSEA,  
13 is that there is an alternate standard approved by OSHA  
14 for NASA. I need to explain that process real quick.  
15 NASA is a Federal agency. As a Federal agency, they  
16 comply with 29 CFR 1960, the Federal Agency Programs of  
17 OSHA.

18 The Federal Agency Programs allow a specific  
19 and unique situation or possibility, and that's for an  
20 alternate standard to be developed by the Federal  
21 agency, submitted to OSHA for approval, and for OSHA to  
22 approve. When approved, the alternate standard is the  
23 standard that the Federal agency uses and it is there  
24 instead of the OSHA-issued Federal regulation.

25 In NASA's case, they have such a standard for

1 working under suspended loads. NASA's situation,  
2 again, the alternate standard replaces, is used in lieu  
3 of, the 1910 standards that prevent you from working  
4 underneath a suspended load. So this standard doesn't  
5 apply to the maritime industry, this standard doesn't  
6 apply to the private sector, but it is an example, if  
7 you wanted to go someplace and look at, what would I  
8 have to do if I did want to work under a suspended load  
9 safely.

10 Well, there is an alternate standard that OSHA  
11 has approved for NASA to use that lists 15 things that  
12 have to be done by NASA to ensure the safety of people  
13 that are working underneath the suspended load. It  
14 doesn't apply to contractors, private sector  
15 contractors working for NASA. It only applies to NASA  
16 employees themselves.

17 There are words in the standard that say that  
18 OSHA will consider a private contractor working to the  
19 standard a de minimis violation, but I'm not  
20 necessarily sure those words are OSHA's choice of words  
21 there, maybe NASA's.

22 So what we posed in our last conference call  
23 of the working group is, okay, here is a standard.  
24 It's, don't use it as -- well, let's go use this. But  
25 here's 15 things that if you do, OSHA has already

1 jumped up in at least one context to say that if you do  
2 these things and you do it properly, you've ensured the  
3 safety of your employees while you're doing it, which  
4 is the goal. So that's the starting point, now. We  
5 have a focus. We know the hazards, we know the  
6 situations, we've got our limits to the industries.

7 The next piece of the puzzle is how to go  
8 forward. The three options that were on the table  
9 yesterday were was a proposed rule, which would be to  
10 recommend a revision to the existing standard; the  
11 second option would be a variance, which we determined  
12 in pretty short order wouldn't work because it would be  
13 every shipyard, every ship preparer industry having to  
14 submit a document to OSHA and request approval; and the  
15 third option would be an enforcement alternative, such  
16 as the CPL, which I mentioned in Oakland.

17 Of the three options, the working group felt  
18 that going ahead and drafting language and identifying,  
19 if these 15 things really are the right things to do,  
20 maybe there's one more, maybe there's one less as we go  
21 through this process of drafting a proposed rule that  
22 would have an exception to working under a suspended  
23 load: don't work under suspended loads, however, if it  
24 must be done, these things must be accomplished. So,  
25 we're off to write that proposal now.

1 CHAIRMAN THORNTON: Good.

2 MR. ADAMS: Working group members, did I miss  
3 anything from that conversation?

4 (No response)

5 MR. ADAMS: Okay. So I expect, by the next  
6 meeting, that we will have a formal proposal on this  
7 issue, if we can all agree on what the 15 things are,  
8 if you will. So, more to follow there.

9 CHAIRMAN THORNTON: Good.

10 MR. ADAMS: Okay.

11 The next topic, and last topic I'm going to  
12 report out on specifically that we discussed, was the  
13 aerial work platforms issue. Aerial work platforms are  
14 AWP's. We've also referred to them by brand name.  
15 People do refer to them by brand name, where JLG is a  
16 brand name. The OSHA standards that apply to these  
17 refer to them as "Vehicle Mounted Elevating and  
18 Rotating Work Platforms". It's the 1910 standard. So,  
19 these are the devices we're talking about.

20 The question at hand to the working group is,  
21 when you're working over water, which is not addressed  
22 in the 1910 standard, do you wear a PFD or do you tie  
23 off to the basket? During our discussions in the  
24 working group, I just took it to the point where it's  
25 probably the right point. Now, I can tell you right

1 now, the Navy's policy is, use a PFD. The Naval  
2 shipyards use PFDs, and they do that based upon input  
3 from the local area OSHA offices.

4 We talked to Steve Butler from the compliance  
5 side during yesterday's meeting and asked him what the  
6 current position is on OSHA, and his response was that  
7 still internally they have not made an agreement on  
8 what the right approach is. Perhaps I didn't use the  
9 right words on that. They're still discussing it.  
10 It's because the 1910 standard doesn't address working  
11 over water at all. That's fundamentally the issue.

12 So I'll just pose to the working group the  
13 point, and we'll leave it at that for now, that if  
14 you're over land, the reason that you would use a  
15 safety harness and tie off to the basket of the aerial  
16 work platform is that it prevents you from being  
17 ejected as the aerial work platform bounced and moved  
18 around from the accumulation of the hydraulic systems  
19 or the boom. That's why you tie off in these baskets.

20 Now, the standard, the 1910 standard, doesn't  
21 say that either. Okay. But when you get in one of  
22 these devices and go up in your basket, you have to do  
23 certain things. You have to assure the stability of  
24 the platform when you're up in the air, because if you  
25 get outside of the envelope of one of these machines,

1 it will tip over. There's no doubt about it. It  
2 happens regularly. These aerial work platforms do tip  
3 if the proper concerns aren't addressed.

4 Over water, we're telling people to wear a  
5 PFD, because if the platform tips over and you go into  
6 the water, you will be tied to an anchor at the bottom  
7 of the lake, or river, or ocean. That's why people put  
8 PFDs on. The concerns of being ejected are identical,  
9 if not exacerbated when you're working over water.

10 An example would be if you're on a barge, then  
11 if the barge starts rocking, there's another motion  
12 that you wouldn't have on land. So you have the same  
13 concerns with being ejected. A PFD -- people have  
14 different numbers, but a PFD at heights doesn't provide  
15 much protection from the impact force on the water.

16 So the point in all of that statement is, you  
17 would not allow somebody to get into an aerial work  
18 platform on land if it was not stable. Why would you  
19 allow anybody to get into an aerial work platform and  
20 work over water if your concern was it was not stable?

21 So the reality of this is, you probably should be tied  
22 off whether you're over water or over land. If you're  
23 working over water, you might need a little extra care  
24 in ensuring the stability of your platform. So, the  
25 working group will prepare a recommendation on that

1 topic and a point paper delineating everything I just  
2 said in much more detail.

3 A problem that exists, and Captain Preston  
4 pointed this one out, is the employees, the people that  
5 are doing this work. There's a perception, when they  
6 move from land to over water, that they have a  
7 different hazard and they want to put the PFD on also.

8 So, there is communication and education. If  
9 the MACOSH goes forward with this, that over water you  
10 have to be tied off, then there will have to be an  
11 education and communication tool developed, such as a  
12 fact sheet, to explain why you want to do this. So,  
13 there will be quite a bit of education, as a matter of  
14 fact.

15 Terri?

16 CAPT. PRESTON: One of the things, we talked  
17 about making a recommendation. Frankly, after the  
18 discussion that we had, the recommendation would be for  
19 OSHA to enforce the law, because that's the way it's  
20 written right now, is that you're supposed to be tied  
21 off. We really know this is a dilemma. It's not just  
22 a dilemma amongst our employees and some of the  
23 employers, but it's a dilemma involving different OSHA  
24 areas.

25 So we're going to continue to talk about this

1 and work with our OSHA contacts to determine whether or  
2 not we need to make any kind of a motion. But at this  
3 stage of the game, if we stick with the way the law is  
4 written, then we are going to probably come back with a  
5 motion to develop a fact sheet, some sort of a training  
6 tool so that employees can understand why they ought to  
7 be tied off over water.

8 CHAIRMAN THORNTON: So it sounds like that  
9 it's still a work in progress.

10 MR. ADAMS: Yes.

11 CHAIRMAN THORNTON: You're necking down a  
12 little bit. You're not quite there, but you're getting  
13 there.

14 MR. ADAMS: Yes.

15 CHAIRMAN THORNTON: Is that right?

16 MR. ADAMS: That's a very true statement for  
17 these two issues.

18 Now, I'd like to spend a few minutes and just  
19 run through the list of items that we started with and  
20 where we're at with these.

21 CHAIRMAN THORNTON: Okay.

22 MR. ADAMS: We've covered working under  
23 suspended loads. Other issues that we've been dealing  
24 with. The aerial work platforms and PFDs. Inflatable  
25 PFDs, which we completed at the Baltimore meeting with

1 a recommendation, we still have scaffolding erection  
2 and disassembly on the list which we have not even  
3 started, and most likely won't start because that's a  
4 very detailed issue.

5 Lashing platforms was left to Longshoring on  
6 the first meeting. Marine travel lifts, which we will,  
7 as we pursue these other two items, pick up for our  
8 next meeting. It's primarily a straightforward,  
9 question: should they be regulated by OSHA? Currently,  
10 beyond the powered industrial trucks, there are few  
11 standards associated with it.

12 Crane operator certification, we have not  
13 addressed. ZPMC cranes, I believe we've completed  
14 with. Crane bypass switches have not been addressed.  
15 Lifting personnel with cranes. This is the 1915  
16 standards. Currently there are very detailed rules in  
17 the construction industry standard, very limited rules  
18 in the shipyard industry standards, or the maritime  
19 standards. That's not true. The longshoring standard  
20 is very detailed, also.

21 Those are the issues that we still have before  
22 us. Many of those, we'll move on to the next time. I  
23 expect our working group will have recommendations for  
24 us at our March meeting on the working under suspended  
25 loads and aerial work platforms, and we will be moving

1 into a couple of these other issues then.

2 CHAIRMAN THORNTON: Thank you.

3 Any questions or comments from the committee  
4 on the Cranes and Falls Workgroup?

5 (No response)

6 CHAIRMAN THORNTON: Any comments from the  
7 public? One. Yes, sir?

8 MR. BURDGE: If I could comment on Stew, who  
9 eloquently --

10 CHAIRMAN THORNTON: I'm sorry. You need to  
11 identify yourself.

12 MR. BURDGE: Oh, sorry. Gavin Burdge, BMT  
13 Designers and Planners. Just one comment, that Stew  
14 eloquently described with working on the work platform.  
15 The problem is not to address the behavior of the  
16 employee to tie off or not to tie off, to wear the PFD  
17 or not to wear the PFD. The problem is with using it  
18 in the design of the equipment itself so that it  
19 doesn't create the hazard in the first place.

20 CHAIRMAN THORNTON: Thank you.

21 MR. BURDGE: So if OSHA can address that, or  
22 somehow the committee can address that.

23 CHAIRMAN THORNTON: Thanks very much. Of  
24 course, you're free to join the workgroup when it  
25 convenes at the next time and provide input as well, as

1 is anyone.

2 Any more for the Cranes and Falls?

3 MR. ADAMS: Just one comment, or one question,  
4 or to request one thing.

5 CHAIRMAN THORNTON: Yes?

6 MR. ADAMS: And it's best left for the end.  
7 But over the past year and a half now as we're starting  
8 approaching our last six months as a committee, is we  
9 have made recommendations and I believe we should be  
10 considering asking OSHA to come back at some point  
11 along the line and tell us what their intentions are  
12 right now, anyway.

13 CHAIRMAN THORNTON: Yes. What I would see--  
14 and I'm not speaking for the Agency here--if we  
15 assemble from the workgroups our listing of what is  
16 completed and then what is to be completed in one spot,  
17 we can ask the Agency collectively, you know, what  
18 about this, what about this, what about this? So I  
19 could see multiple uses from this compendium of  
20 actions, and we can do just that.

21 MR. ADAMS: Thank you.

22 CHAIRMAN THORNTON: Okay.

23 Hearing none, any more?

24 (No response)

25 CHAIRMAN THORNTON: I'm going to move on here.

1 We're a little bit late, but we knew this. This  
2 happens at a wonderful time because I guess Bill Perry  
3 has a conference call at 3:00, so I know he'll be done  
4 by 2:55 anyway. So, Bill, you've got all the time you  
5 need, okay?

6 (Laughter)

7 CHAIRMAN THORNTON: And he's going to talk to  
8 us a little bit about the final rule for employer-paid  
9 PPE. Are you using that?

10 MR. PERRY: I do have some slides. They  
11 aren't essential to the discussion. I just thought it  
12 might make it a little bit easier.

13 CHAIRMAN THORNTON: It's completely optional.  
14 Vanessa is saying we should move, so we will.

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1                   REPORT ON FINAL RULE FOR EMPLOYER-PAID

2                   PERSONAL PROTECTIVE EQUIPMENT

3                   By Bill Perry

4                   (Showing of slides)

5                   MR. PERRY: I appreciate the opportunity to  
6 address the committee and talk about our recently  
7 issued standard for employer payment for personal  
8 protective equipment. I know it's a rulemaking that's  
9 been of intense interest to many employers and  
10 employees.

11                   What I would like to do, is I'll just recap  
12 the history as to why we did this standard very  
13 quickly--I know a lot of you are familiar with it, it  
14 goes back a ways--and then just go through the  
15 provisions and the requirements of the standard that  
16 were issued earlier this month and hopefully leave a  
17 few minutes, in the event that there are any questions  
18 from committee members.

19                   The reason why we're here and why we engaged  
20 in this rulemaking is because of an adverse Review  
21 Commission decision in 1997 dealing with a citation  
22 issued by the Agency for failure of the employer to pay  
23 for certain kinds of PPE. I believe it was welding PPE  
24 and metatarsal protection. That was the Union 10 case  
25 in 1997.

1           Basically, it called into question a memo  
2 issued three years earlier by OSHA to the field stating  
3 the Agency's policy that employers were required to pay  
4 for personal protective equipment, with a couple of  
5 exceptions.

6           As you know, most of our personal protective  
7 equipment standards don't specify who is to pay for the  
8 personal protective equipment. They either specify  
9 that employers are required to provide the equipment or  
10 that employers are required to ensure that such  
11 equipment is used by employees in order to protect them  
12 from workplace hazards.

13           So the only remedy in response to this adverse  
14 decision was really to engage in Notice and Comment  
15 rulemaking and put out a clear policy as a result of  
16 that. So, of course we proposed a rule back in 1999,  
17 received about 250 comments, went through a public  
18 hearing process.

19           (Changing of slides)

20           MR. PERRY: We had a limited reopening in 2004  
21 to address a specific issue that was raised in the  
22 original record, mostly regarding employee-owned  
23 personal protective equipment or what some rulemaking  
24 participants termed "PPE as a tool of the trade", and  
25 I'll talk a little bit more about that as I get into

1 describing the final rule for you.

2 (Changing of slides)

3 MR. PERRY: We were sued this past January by  
4 the AFL-CIO and the United Food and Commercial Workers  
5 Union, basically for failure to complete the  
6 rulemaking, since by then it had been over seven years  
7 since the original proposal was issued.

8 (Changing of slides)

9 MR. PERRY: We asked, or the Secretary of  
10 Labor asked, the court in March to hold the lawsuit in  
11 abeyance pending publication of a final rule in  
12 November, and the Union basically, and the court,  
13 agreed to do this. So they granted us the abeyance and  
14 we did publish a final rule on November 15.

15 (Changing of slides)

16 MR. PERRY: The scope of the final rule is  
17 very broad. It covers all major industry sectors and  
18 amends general PPE requirements in all of the parts of  
19 29 CFR that contain personal protective equipment  
20 standards. So it does cover shipyards, marine  
21 terminals, and longshoring, those three parts, as well  
22 as general industry and construction.

23 CHAIRMAN THORNTON: Hey, Bill, could I ask a  
24 quick question? This will demonstrate my ignorance,  
25 maybe. But agriculture. Are they still treated

1 separately?

2 MR. PERRY: Yes, that is true.

3 CHAIRMAN THORNTON: Okay.

4 MR. PERRY: This is not covered.

5 CHAIRMAN THORNTON: This did not apply to  
6 agriculture.

7 MR. PERRY: It does not amend any part of the  
8 agricultural standards. That's correct.

9 CHAIRMAN THORNTON: Thank you.

10 MS. SHERMAN: The agricultural standards, I  
11 don't believe have any PPE --

12 MR. PERRY: Yes. Just to make clear for the  
13 record, the agricultural standards, or that part, does  
14 not have general personal protective equipment  
15 requirements.

16 It is important, in looking at the scope of  
17 this rule, to understand that this rule only deals with  
18 the issue of who pays for personal protective  
19 equipment. It does not address when personal  
20 protective equipment is required by certain standards  
21 or what kind of PPE is required by certain standards.  
22 It does not change what is or is not a violation of a  
23 particular PPE requirement, so we don't address that.

24 If, by reason of a Review Commission decision  
25 or a court decision or interpretations issued by the

1 Agency over the years it's unclear whether a certain  
2 kind of PPE is required to comply with a certain  
3 standard, this final rule does not address that  
4 situation. Okay. So, just to make clear, this is only  
5 about payment for personal protective equipment.

6 (Changing of slides)

7 MR. PERRY: The rule also does not apply to a  
8 number of items that we received questions on in the  
9 record, things like uniforms, caps, other clothing worn  
10 to identify people, items or clothing worn for sanitary  
11 purposes, just to keep people clean, but otherwise is  
12 unrelated to protecting workers from safety or health  
13 hazards, and items worn to protect products being  
14 produced or to protect consumers of the products being  
15 produced, for example, hair nets for food servers or  
16 latex gloves for food servers.

17 None of those kinds of things are within the  
18 scope of this rule, since none of those things function  
19 as protective equipment that would be required by an  
20 OSHA standard. Their job is not to protect the  
21 employee from injury or hazardous exposure.

22 (Changing of slides)

23 MR. PERRY: The regulatory text, at least in  
24 the three parts of the CFR that are of interest to this  
25 committee, we added a new Paragraph F to the existing

1 1915.152 for shipyards that deals with the payment  
2 requirements, and then longshoring added a new section,  
3 1917.96, which immediately follows the general PPE  
4 requirement .95, and marine terminals added a section,  
5 1918.106, which immediately follows that part's general  
6 PPE requirement.

7 Other than internal references to various  
8 paragraphs within each of these parts, the paragraphs  
9 and the requirements are identical in every case. So  
10 what I will do, is just quickly go through the  
11 paragraphs in the 1915 part. Okay. But they're  
12 exactly the same from the marine terminal and the  
13 longshoring parts as well.

14 Before I get into the specific paragraphs,  
15 those of you who remember what we proposed, which was  
16 basically that employers would be required to pay for  
17 all personal protective equipment required by OSHA  
18 standards, with the exception of ordinary safety-toe  
19 shoes and prescription safety eye wear under certain  
20 conditions, will note that there are a number of new  
21 paragraphs in the final rule that did not appear in the  
22 proposal and were not discussed in the preamble to the  
23 proposal.

24 These extra additional paragraphs were put in  
25 to address certain issues raised by the rulemaking

1 participants who requested clarification with respect  
2 to things like ordinary clothing or weather-related  
3 gear, and you'll see additional paragraphs for that.

4 Those are not really additional exceptions in  
5 the sense that the final rule does not exempt from an  
6 employer payment requirement any protective equipment  
7 above and beyond what we originally proposed. So the  
8 final rule really reflects the intent behind OSHA's  
9 proposal and the Agency considers the final rule to be  
10 as protective as what we proposed as a result, but you  
11 will see some additional language incorporated in the  
12 final.

13 So the basic requirement is--except as  
14 provided by these exceptions, various exceptions that I  
15 will discuss in a moment--personal protective equipment  
16 that is used to comply with this part shall be provided  
17 to the employee at no cost. You see a section of the  
18 language underlined here. That is just for emphasis,  
19 because the rule only requires employers to pay for  
20 personal protective equipment that is required by other  
21 OSHA standards.

22 (Changing of slides)

23 MR. PERRY: And you see that here in this  
24 slide, that this is a really important point. If the  
25 PPE is required by an OSHA standard, it falls within

1 the scope of this rule, if it is not otherwise accepted  
2 by this rule. Okay. If the PPE is not required by an  
3 OSHA standard, then there's no obligation on this rule  
4 for the employer to provide that PPE at no cost to  
5 employees.

6 (Changing of slides)

7 MR. PERRY: The second paragraph deals with an  
8 exception from the payment requirement for what is  
9 called non-specialty safety-toe protective footwear--  
10 this includes what's commonly called steel-toed shoes  
11 or steel-toed boots--and non-specialty prescription  
12 safety eye wear, provided that the employer permits  
13 these items to be worn off the job site. This is  
14 similar to what we had proposed in 1999 to exempt these  
15 particular items from an employer payment requirement,  
16 but we simplified the language.

17 If you'll recall, in 1999 there were a set of  
18 three conditions that had to be met before the PPE was  
19 exempt from the payment requirement. Really, what all  
20 of those criteria -- the bottom line was, if employees  
21 could take the equipment off the job site, then it was  
22 exempted. So, we just simplified the language. We  
23 hope to make the intent behind our proposal clearer to  
24 everybody.

25 Note, if the employer requires employees to

1 keep these items--the safety-toe protective footwear  
2 and prescription safety eye wear--at the workplace,  
3 then the employer is required to provide these items at  
4 no cost to the employee.

5 (Changing of slides)

6 MR. PERRY: In addition, what we mean by "non-  
7 specialty" safety-toe footwear or prescription eye wear  
8 is that there's no other feature designed in the  
9 protective equipment to provide additional protection  
10 from some other hazard. Basically, you see a couple of  
11 examples here: prescription eyeglass inserts for SEBA,  
12 or a full facepiece respirator. Since those are  
13 important to ensure the proper functioning of the  
14 respirator, that's considered integral to the  
15 protective equipment or to the respirator and has to be  
16 provided at no cost. Another example would be slip-  
17 resistant or non-skid footwear, would be within the  
18 scope of the rule. An employer would be required to  
19 pay for these things.

20 (Changing of slides)

21 MR. PERRY: Now, the third paragraph addresses  
22 metatarsal protection, which was raised by a number of  
23 rulemaking participants as well. Currently, there are  
24 two kinds of metatarsal protection that are acceptable  
25 to OSHA where this kind of protection is required.

1 One, is use of a removal metatarsal guard that's worn  
2 over a safety-toe shoe or boot, the other, of course,  
3 is an integrated shoe or boot that's got the metatarsal  
4 protection built into it.

5 We recognize that a number of employers  
6 provided metatarsal guards, and in that case this  
7 paragraph makes clear that where metatarsal guards are  
8 provided at no cost to employees but employees request  
9 to use shoes or boots with built-in metatarsal  
10 protection, that the employer is not required to pay  
11 for the shoe or the boot in that case. The employer  
12 will have been deemed to have met their obligation by  
13 providing metatarsal guards at no cost. So, this is a  
14 paragraph that simply clarifies that, since there are  
15 two kinds of metatarsal protection.

16 (Changing of slides)

17 MR. PERRY: However, if there is an instance  
18 where an employer requires employees to use integrated  
19 metatarsal protection or to use shoes or boots with  
20 integrated equipment, then the employer would be  
21 required to pay for that since the employer is  
22 requiring that form of equipment. Again, all this is  
23 provided that the metatarsal protection is required by  
24 OSHA standards.

25 (Changing of slides)

1           MR. PERRY: The fourth paragraph. This really  
2 clarifies, again, what was OSHA's intent in the  
3 original proposal, and in fact what's been, I think,  
4 longstanding Agency policy, that the employer is not  
5 required to pay for everyday clothing, including long-  
6 sleeved shirts, long pants, street shoes, ordinary work  
7 boots, things of that nature.

8           Of course, many employers do require employees  
9 to wear certain kinds of clothing, in part, at least,  
10 for protection against abrasions, splinters, cuts, or  
11 protection from maybe hot material splashing on naked  
12 skin. So, even though such clothing may provide a  
13 protective function, we felt that this was something  
14 that should be exempted from an employer payment  
15 requirement.

16           (Changing of slides)

17           MR. PERRY: Similarly, employers are not  
18 required to pay for ordinary clothing or skin creams  
19 used solely for protection from weather, so this would  
20 include winter coats, gloves, hats, rain coats,  
21 sunglasses, and sunscreen. Okay.

22           (Changing of slides)

23           MR. PERRY: If weather conditions are such  
24 that really extraordinary clothing is required, maybe  
25 clothing with heating elements built in or things of

1 that nature, this would not be considered to be  
2 ordinary weather gear and, thus, the employer would be  
3 required to provide that kind of extraordinary weather  
4 protection at no cost to the employee.

5 (Changing of slides)

6 MR. PERRY: Note, also, that we're only  
7 talking about weather with respect to this fourth  
8 paragraph. Any kind of protective clothing that is  
9 required to protect employees from artificially  
10 generated hot or cold environments -- oh, I just lost  
11 the slides.

12 CHAIRMAN THORNTON: I think you're done, Bill.

13 (Laughter)

14 MR. PERRY: I'll press on. It's going into  
15 hibernation mode here. Okay. I'll press onward.

16 We're talking about artificially generated hot  
17 and cold environments where protective clothing, in  
18 that case, would have to be provided at no cost.

19 The fifth paragraph deals with who has to pay  
20 for replacement protective equipment, and under what  
21 conditions. This paragraph was added to the final rule  
22 in response to a number of comments from employers who  
23 were concerned about having to pay for protective  
24 equipment that was frequently lost or intentionally  
25 damaged or misused.

1           So the new provision reads that the employer  
2 must pay for replacement PPE, except when the employee  
3 has lost or intentionally damaged the PPE. We did get  
4 some testimony in the record that this does occur.

5 It's a very rare occurrence, apparently, but it does  
6 happen. Basically, OSHA's intent here is to permit  
7 employers to establish reasonable policies to handle  
8 these kinds of situations where PPE is lost by an  
9 employee, damaged through misuse or abuse.

10           There's a very nice discussion in the preamble  
11 to the final rule regarding what kinds of disciplinary  
12 policies--and positive reinforcement approaches as  
13 well, I should add--that OSHA would find acceptable in  
14 these kinds of circumstances.

15           The sixth paragraph, which is the next-to-last  
16 paragraph in the rule, covers employee-owned PPE. This  
17 is a situation I'm sure that some, if not all of you,  
18 are familiar with where employees report to work and  
19 bring PPE that they have purchased themselves with them  
20 on the job. The final rule does permit this practice.

21           This is, in fact, the reason why OSHA reopened  
22 the record in 2004, was because we got testimony from a  
23 lot of employers in a number of different industry  
24 sectors speaking to a custom within their industry of  
25 employees reporting for work with PPE as part of their

1 tool kit, so therefore this term "tools of the trade"  
2 arose. It was not a term of art generated by OSHA, but  
3 came out of the record itself.

4 The practice seemed to vary considerably by  
5 industry, by geographic region of the country. There  
6 really wasn't any consistency across the nation that we  
7 could point to that might have convinced the Agency to  
8 allow people to continue the practice. But basically  
9 the final rule does permit employers to have employees  
10 bring their own PPE, and the employer is not required  
11 to pay for the PPE, either in entirety or on any pro  
12 rated basis, provided the employer has fulfilled their  
13 other obligations under the PPE standards, which is to  
14 make sure that it's effective PPE, that it's sanitary,  
15 and that it's going to protect the employee and that  
16 it's appropriate PPE for the job.

17 This paragraph also contains, or we included,  
18 explicit language to make clear that the employer,  
19 however, shall not require employees to provide or pay  
20 for their own PPE unless it's PPE that's been exempted  
21 by one of the other paragraphs specifically in the  
22 final rule. So, that's the ordinary clothing or the  
23 weather gear that we're talking about. There is a  
24 prohibition about requiring employees to provide their  
25 own in this case.

1           So the employee's use of his or her PPE must  
2 be completely voluntary. They can withdraw use of  
3 their own PPE at any time, and the employer, as I said,  
4 is still responsible for making sure the PPE is  
5 appropriate to the job.

6           The seventh and final paragraph of the  
7 regulatory text lays out the effective dates.  
8 Basically, the standard becomes effective on February  
9 13, but must be implemented by employers no later than  
10 May 15 of 2008. So, the May 15 date is the key date  
11 there. The Agency felt that that would be sufficient  
12 time for employers to implement either administrative  
13 procedures or whatever mechanisms it would have to  
14 implement in order to put payment procedures in place,  
15 and would also be sufficient time to address any  
16 collective bargaining provisions that might need to be  
17 examined in order to ensure compliance with the rule.

18           I will point out, too, while I'm on that  
19 topic, the preamble has, again, a very nice discussion,  
20 at least in my humble opinion, about all the different  
21 ways that are acceptable to OSHA for employers to  
22 provide PPE at no cost. You don't have to actually  
23 procure it and keep an inventory. Allowance systems  
24 are fine, and other kinds of approaches are okay, too.

25           So, there's a discussion in the preamble there that

1 would probably be of interest.

2 All of these amendments in all of the parts of  
3 29 CFR dealing with PPE payment contain a note to this  
4 last paragraph, that when the provisions of another  
5 OSHA standard specify who is responsible for paying for  
6 PPE, then the specific standard prevails over this  
7 general rule. We have a number of comprehensive  
8 chemical standards that specifically require payment  
9 for certain kinds of PPE.

10 We have some standards that exempt PPE from  
11 payment. For example, the logging boots in the general  
12 industry rules are not required to be provided at no  
13 cost to employees. So, anything in a specific standard  
14 will prevail over this general payment requirement.

15 That's about all I have to say in terms of  
16 what's in the standard itself. I guess, with the  
17 Chair's permission, if there are a few questions, we  
18 have some time.

19 CHAIRMAN THORNTON: Okay. Thank you, Bill.  
20 As soon as we get the light killed where I can see --  
21 there, that's better.

22 Let me, first, thank you for presenting that.  
23 We know this is hot off the press. We're all kind of  
24 reading through that and interpreting it, so we  
25 appreciate your appearing.

1 I'd open it up for questions to Bill from the  
2 committee.

3 (No response)

4 CHAIRMAN THORNTON: Hearing none, is there --

5 MR. BURGIN: Wait. I'm sorry. I wasn't quick  
6 enough.

7 CHAIRMAN THORNTON: It's okay.

8 MR. BURGIN: If a company gives a longshoreman  
9 a reflective vest and pays for it the first time, and  
10 this particular longshoreman doesn't come back to work  
11 for another 6 or 8 months, or 12 months or so and he  
12 doesn't bring his vest with him at that time and we  
13 require him to pay for that vest -- I know that if he  
14 loses it or damages it, then he has to pay for it.  
15 Right?

16 MR. PERRY: Yes. Yes, sir.

17 MR. BURGIN: Yes. Okay.

18 So what time period is allowable? Because in  
19 the longshoring industry, there are casual workers that  
20 may not work for extended periods of time. What this  
21 does, is it's going to make employers keep very good  
22 records of these casual workers, which I guess we can  
23 do. But is there a time frame where we don't have to  
24 continue to keep him on the books, so to speak?

25 MR. PERRY: No. In fact, we deliberated on

1 this issue rather extensively within the Agency because  
2 we thought, well, should there be time frames specified  
3 or some range of time frame specified for this, and  
4 found that that wasn't the best approach, first of all  
5 because different standards for PPE have different  
6 requirements for when the PPE has to be replaced.

7 I think that's the key. The question is,  
8 would the PPE have to have been replaced anyway or  
9 shortly thereafter? If the answer is no, then I think  
10 that would be something that you'd want to develop a  
11 policy on for how to handle that kind of situation. I  
12 can't say definitively yes or no. I don't know where  
13 else the person is working or if they're using that  
14 PPE, or what have you.

15 That can start to get complicated and would  
16 probably call for an interpretation from the Agency in  
17 that case. But as a general matter, the intent behind  
18 the final rule is if the PPE was lost or damaged  
19 significantly ahead of its expected life.

20 CHAIRMAN THORNTON: Stew?

21 MR. ADAMS: Just on the employee-owned PPE, if  
22 it's PPE that requires training -- if the employer's  
23 PPE is different than what the employee brings to work,  
24 yet it requires training on it, does the employer have  
25 an obligation to take care of that training?

1           MR. PERRY: I don't think there's anything in  
2 this final rule that would change an employer's  
3 obligation to ensure that employees are appropriately  
4 trained in the PPE that they're using. If an employee  
5 is bringing their own PPE to the work site, it's still  
6 the employer's responsibility to make sure that the PPE  
7 is appropriate for the job and that the employee is  
8 using it in a manner that's going to render it  
9 effective.

10           MR. ADAMS: Okay.

11           CAPT. PRESTON: Could I get a clarification?  
12 Did I hear you say--and it was after the computer died,  
13 so I didn't see it on a slide--if an employee chooses  
14 to bring his or her own PPE into the job site, that  
15 they can bring it on Monday, and then on Wednesday they  
16 can decide they're not going to use their own any more  
17 and you've got to be prepared to supply them with  
18 replacement PPE?

19           MR. PERRY: Yes, I believe that's what you  
20 heard. Basically, the final rule, as it is written,  
21 prohibits the employer from requiring an employee to  
22 provide their own PPE at their cost. Okay. So, yes.  
23 If an employee brings PPE to the job site and the  
24 employer is fine with them using it and it's in good  
25 shape and everything else is okay, two days later the

1 employee says I don't have PPE for the job, well, then  
2 the employer is required to provide the PPE if the PPE  
3 is required by an OSHA standard and if it's not  
4 something that was exempted by this final rule.

5 CHAIRMAN THORNTON: Susan?

6 MS. SHERMAN: But Bill, there is nothing in  
7 the rule that would prevent an employer from insisting  
8 that the employer provide the PPE. Correct?

9 MR. PERRY: I'm sorry. Say that again.

10 MS. SHERMAN: In other words, an employer can  
11 say, you can't bring your own PPE in here, I want to  
12 supply it.

13 MR. PERRY: Of course.

14 MS. SHERMAN: There's nothing in the rule that  
15 addresses that.

16 MR. PERRY: Yes. The employer is under no  
17 obligation to permit the employee to bring their own  
18 PPE or use PPE that they bring to the work site.

19 MS. SHERMAN: Okay.

20 MR. PERRY: The employer has to permit such  
21 use.

22 MS. SHERMAN: Thank you.

23 CAPT. PRESTON: Could I ask one more question  
24 on clarification?

25 MR. PERRY: Yes.

1           CAPT. PRESTON: In a multi-employer work site  
2 or a leased employee work site, which employer do you  
3 expect to provide the PPE?

4           MR. PERRY: There's actually a very extensive  
5 discussion in the preamble to this issue. Let me give  
6 you the simple bottom line. Our intent here--because  
7 we got a lot of comments in the record about that--was  
8 not to require, say, company A to provide and pay for  
9 the PPE for company B's employees if company B is a  
10 subcontractor, let's say.

11           Now, having said that, in any given case the  
12 issue of who is an employee and who's their employer is  
13 complex. It's not as simple as just who is issuing the  
14 paycheck. It has to do with who's controlling the  
15 work. That gets very complicated, legally speaking.  
16 In fact, we have some discussion of that in the  
17 preamble on that very issue.

18           I can't say it draws bright lines because it  
19 is a complex area and there is a lot of case law, but  
20 at least that was our intent, was that their prime  
21 contractor was not just expected to provide and pay for  
22 PPE for subcontractors, which was really what most of  
23 the people coming on the record were concerned about.  
24 But that's with the caveat I just mentioned.

25           CAPT. PRESTON: Well, actually the reason I

1 asked, is because our employees feel--the leased  
2 employees, i.e., temporary employees--get a real good  
3 deal, okay, at their expense because now I'm going to  
4 provide all their PPE to them at no cost, I'm paying a  
5 premium for them anyway, and they're getting everything  
6 that a company worker gets and then some.

7 MR. PERRY: Well, again, I think use of  
8 temporary labor, say, from a temporary labor provider,  
9 for example, is something that's discussed fairly  
10 extensively in the preamble.

11 CAPT. PRESTON: Okay.

12 MR. PERRY: So, I would refer you to that.

13 CHAIRMAN THORNTON: John?

14 MR. CASTANHO: I think I heard you say that in  
15 cases where an employer has to pay for PPE such as  
16 steel-toed boots, that PPE would have to remain on the  
17 job site?

18 MR. PERRY: It's actually the other way  
19 around, I think. If the employer requires ordinary  
20 safety shoes to be kept at the job site, for example,  
21 because of concern that they might have chemical  
22 contamination on them and you don't want people taking  
23 them home, in that instance, that's what triggers the  
24 payment obligation for the employer. Okay?

25 MR. CASTANHO: Okay. Then what about, like in

1 the longshoring industry, the workforce kind of  
2 migrates from ship to ship, if you will, so you may not  
3 have the same employee at the same terminal two days in  
4 a row. That individual's work boots. Are they going  
5 to be payable by the employer or is it still going to  
6 be coming out of his or her pocket?

7 MR. PERRY: First of all, these are steel-toed  
8 work boots, I assume?

9 MR. CASTANHO: Steel- or Kevlar-toed, yes.

10 MR. PERRY: Okay. In that case, is the  
11 employer requiring them to be kept at the job site? If  
12 the answer is no, then the employer is not required to  
13 pay for that under the exemption in the final rule.

14 MR. CASTANHO: Thank you.

15 MR. PERRY: Okay.

16 CHAIRMAN THORNTON: Any others by the  
17 committee?

18 MR. BURGIN: Is there any language in the  
19 preamble concerning, how would the employer determine  
20 intentional damage or how would OSHA determine that the  
21 employee -- that there was intentional damage?

22 MR. PERRY: Yes.

23 MR. BURGIN: There is? Okay. Good. Thank  
24 you.

25 CHAIRMAN THORNTON: And you can read that at

1 your leisure.

2 MR. BURGIN: I will.

3 (Laughter)

4 MR. PERRY: Again, I'm not going to promise  
5 bright line, clear definitions here. I think, though,  
6 the discussion in the preamble reflects that we expect  
7 employers to implement reasonable and fair policies  
8 regarding such instances. That's what I think we're  
9 looking for. But there is a nice discussion in the  
10 preamble of that.

11 CHAIRMAN THORNTON: We're coming up on -- yes?

12 MR. FLYNN: The employer policies. Are you  
13 expecting that to be in writing?

14 MR. PERRY: There's no specific requirement in  
15 the rule for written policies.

16 MR. FLYNN: Thank you.

17 CHAIRMAN THORNTON: Okay.

18 MR. PERRY: Thank you again.

19 CHAIRMAN THORNTON: You're not done.

20 MR. PERRY: Oh, I'm not done? Sorry.

21 CHAIRMAN THORNTON: No. You're almost done.  
22 He's got to run to a conference call. One question,  
23 real quickly.

24 MR. PERRY: Sure. Sure.

25 CHAIRMAN THORNTON: What about an MSDS which

1 refers to wearing some form of PPE that is not  
2 necessarily regulated by a specific OSHA standard?

3 MR. PERRY: Well, again, if PPE isn't required  
4 by an OSHA standard then it's not covered under this  
5 payment rule.

6 CHAIRMAN THORNTON: Okay.

7 MR. PERRY: Regardless of who else might be  
8 recommending such PPE be worn. Okay.

9 CHAIRMAN THORNTON: Okay. Thank you.

10 MR. FLYNN: One last question. That brings up  
11 the general duty clause.

12 MR. PERRY: Actually, the preamble is real  
13 specific on that. First of all, given that we have  
14 general PPE requirements in all of these parts, it's  
15 very unlikely we would need to invoke a general duty  
16 clause. But in the event that happens, the payment  
17 does not apply in that instance. So if OSHA were to  
18 cite 5(a)(1) for failure to use some kind of PPE, there  
19 would be no expectation on the Agency's part that the  
20 employer should pay for that. Okay.

21 CHAIRMAN THORNTON: Now we'll let you off the  
22 hook. Thank you, Bill.

23 MR. PERRY: Thank you.

24 CHAIRMAN THORNTON: We appreciate it. Hope  
25 your call goes well and you get there in time.

1 MR. PERRY: Thank you.

2 CHAIRMAN THORNTON: Thanks very much.

3 I'm going to do one more thing before  
4 breaking. We're just a little bit behind, but Dave  
5 promises to give a little time back. So with that, I'm  
6 going to open the floor up to Dave. He's going to give  
7 us a Subpart S update, and then we'll take a break  
8 after that.

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1                                    SUBPART S UPDATE

2                                    By Mr. David Wallis

3                                    MR. WALLIS: I'm going to go through this very  
4 quickly. I basically provided all--certainly most, if  
5 not all--of this information at the last meeting. I  
6 mostly wanted to respond formally to the committee's  
7 request for clarification on the GFCI rule.

8                                    So, I can give you a little background  
9 information. As I'm sure you're all aware at this  
10 point, we published our final rule revising our general  
11 industry electrical standards on February 14, 2007. In  
12 that standard we had a rule in Section 1910.304(b)(3)ii  
13 that employers provide GFCIs for certain temporary  
14 branch circuits for construction-like activities.

15                                    What I'm going to do, is I'm going to go  
16 through kind of like a Q&A. I'll talk about an issue  
17 that was raised and then our response to that issue,  
18 what we expect or what we intend the rule to require.

19                                    The first issue would be, what is the  
20 application of Section 1910.304(b)(3)ii? Today, I am  
21 only going to specifically address its application to  
22 shipyards because that's really the question here. In  
23 a marine terminal, there would be very, very little.  
24 It's conceivable you would have some application there,  
25 but I would expect it to be very rare. Most of the

1 time when you get to that point in a marine terminal,  
2 you're probably under the construction standards  
3 anyway.

4 In a shipyard facility, however, you're not  
5 under the construction standards, you're under the  
6 shipyard standards. So if you're doing shipbuilding,  
7 ship repair, ship breaking, OSHA would consider those  
8 activities as construction-like activities, so when  
9 you're using temporary wiring, GFCIs would be required.

10 A second issue. Does the provision apply to  
11 all receptacles or only those on branch circuits? In  
12 many typical temporary wiring installations, one of the  
13 wiring methods frequently used is a spider box type of  
14 installation where you've provided feeders -- a spider  
15 box will provide a feeder circuit that supplies  
16 downstream spider boxes.

17 The downstream receptacles from one spider box  
18 to another are at a higher voltage and current rating,  
19 and those receptacles aren't used directly to power  
20 tools and equipment, they're only used to power  
21 downstream spider boxes at different voltage and  
22 current ratings. Those are considered feeder circuits.

23 The receptacles on those feeder circuits are  
24 not branch circuit receptacles. Those receptacles do  
25 not require GFI protection, only the receptacles on the

1 branch circuit, which is basically the lowest rating in  
2 the lines.

3 If you have a line of spider boxes, when I  
4 take the lowest rating and I'm supplying utilization  
5 equipment or extension cords, or even more spider  
6 boxes, once I've reached the final rating, that would  
7 be considered to be a branch circuit. That's where you  
8 would need to provide the GFCI protection.

9 The next issue. Does the standard recognize  
10 all forms of ground fault protection devices or only  
11 ground fault circuit interrupters approved by  
12 nationally recognized testing laboratories, or NRTLs?

13 Basically, the standard requires ground fault  
14 circuit interrupters, and those devices have to be  
15 approved. So what that means is, in order for the GFCI  
16 to meet the rule, it would have to be NRTL approved.  
17 These devices have a trip level of approximately 5  
18 million amperes, and trip at as little as a 40th of a  
19 second.

20 There are other types of ground fault  
21 protection equipment. They're called ground fault  
22 protection for equipment, earth leakage detectors, and  
23 similar types of equipment. These are not acceptable  
24 substitutes and the standard doesn't require them. You  
25 might be able to find these devices at higher ratings

1 than you would normally find a GFCI, so the standard  
2 doesn't require you to use those when you couldn't find  
3 a normal GFCI at a certain current and voltage rating.  
4 So if I couldn't find a 480-volt GFCI but I could find  
5 a 480-volt earth leakage detection unit, that's not a  
6 device that meets the standard. You would not be  
7 required to use the GFCI. In that case, you would have  
8 to use a short grounding program instead.

9 And the last issue I have here is, does the  
10 standard require GFCIs to be used with branch circuits  
11 supplying temporary lighting? The standard requires  
12 GFCI protection for temporary circuits supplying  
13 lighting only when those circuits also supply  
14 receptacles, so one of the concerns is, if I put a GFCI  
15 on a temporary wiring circuit and that circuit supplies  
16 lighting, the GFCI trips, all the lights go out.

17 The standard doesn't require it for a lighting  
18 circuit. If there is only lighting and no receptacles  
19 on that circuit, you don't need a GFCI. So if that's  
20 your concern, you should be wiring the circuits and  
21 just providing lighting on one circuit and receptacle  
22 outlets on separate circuits.

23 That's the last clarification I have here.  
24 I'd be glad to take questions, if there are any. If I  
25 missed something that is a burning issue -- one other

1 thing I guess I should mention, is that you had  
2 requested us to stay the requirement. We did not  
3 formally stay the provision, however, we did ask our  
4 field staff to not issue citations. We expect to lift  
5 that informal stay sometime after this meeting. So  
6 you'll start seeing our compliance officers enforcing  
7 this provision. They haven't been up to this time.

8 One other thing. We had initially intended to  
9 issue a notice delaying the effective date. There were  
10 some internal discussions that pushed back that notice  
11 and we haven't actually decided now if we're going to  
12 bother publishing a notice. If we do provide a notice,  
13 it likely will contain the clarifications I've just  
14 made here at the meeting.

15 That's all I have.

16 CHAIRMAN THORNTON: All right. Questions from  
17 the committee on the Subpart S clarification?

18 (No response)

19 CHAIRMAN THORNTON: Hearing none, if you're  
20 from the public and you wish to -- oh.

21 MR. ADAMS: The assured equipment grounding  
22 protection for those circuits where GFCI is not  
23 protected above 125, the same answers?

24 MR. WALLIS: Yes.

25 MR. ADAMS: Okay.

1           CHAIRMAN THORNTON: If you're from the public  
2 and you wish to ask a question, let me see who's got  
3 questions, how many I've got. Okay.

4           MS. NELSON: Thresa Nelson, Northrop Grumman.  
5           Dave, could you explain just a little bit more  
6 the statement you made concerning, if I understood it  
7 correctly, you have temporary lighting plugged into a  
8 receptacle but there are no receptacles also included  
9 on that temporary wiring?

10          MR. WALLIS: I didn't say it that way. What I  
11 said was, if I have a branch circuit, the branch  
12 circuit supplies only lighting and no receptacles, then  
13 you don't need GFCIs. I guess your issue is, if I'm  
14 using spider boxes and I plug my lighting string into  
15 the spider box that's plugged into a receptacle,  
16 technically that requires a GFCI because it's got a  
17 receptacle. That's a receptacle outlet for a branch  
18 circuit.

19          MS. NELSON: Okay. Thank you.

20          CHAIRMAN THORNTON: Mr. Davis?

21          CAPT. PRESTON: Before he starts, I need you  
22 to re-clarify. So if we want to use temporary lighting  
23 that does not have a GFCI in the queue, so to speak,  
24 then we have to hard wire it into the spider box  
25 because we can't plug it into a plug because that would

1 constitute an outlet? I'm trying to understand.

2 MR. WALLIS: In the first place, you probably  
3 couldn't -- I certainly wouldn't want you to hard wire  
4 it into the spider box because you probably had to take  
5 the spider box apart and use some other unapproved  
6 mechanism for connecting to the circuits.

7 CAPT. PRESTON: That's what I heard, though.

8 MR. WALLIS: I understand. Technically,  
9 that's a receptacle outlet. I'm providing you with  
10 what our formal clarifications are. If you want a  
11 different answer to that specific question, that would  
12 probably need to be addressed to our enforcement folks.

13 There may be some mechanism for accommodating that  
14 situation.

15 CAPT. PRESTON: I'm trying to visualize what  
16 you said.

17 MR. WALLIS: The problem is, because it is a  
18 receptacle outlet, after all, if it's an outlet that an  
19 employee could use, I could unplug the string of lights  
20 and plug in a tool, then that outlet has no GFCI  
21 protection.

22 CAPT. PRESTON: Right.

23 MR. WALLIS: So, I mean, that's the Agency's  
24 concern. If there's a mechanism for you to ensure that  
25 only lighting is plugged into that outlet, it's

1 conceivable that that concern could be accommodated.

2 The rule, right now, does not recognize that.

3 CAPT. PRESTON: Okay.

4 CHAIRMAN THORNTON: Yes?

5 MR. ADAMS: I've just got to go for the gusto.

6 (Laughter)

7 MR. ADAMS: And the part in Subpart S where it  
8 says where 1915 doesn't address it, or where 1915  
9 addresses it, Subpart S doesn't apply? So where 1915  
10 addresses over-current protection and wiring circuitry  
11 for lighting, but doesn't address GFCI, we still have  
12 to do it?

13 MR. WALLIS: Because it doesn't address ground  
14 fault protection.

15 MR. ADAMS: Okay.

16 CHAIRMAN THORNTON: Mr. Davis?

17 MR. DAVIS: DeWitt Davis.

18 On the ship repair situation, there's kind of  
19 a competition for power. My experience has been,  
20 different coasts have different ways of creating this  
21 network. In one place they call it a "cow shed", I  
22 think, where power goes in and then spider boxes come  
23 from this cow shed. In other places they have it hard-  
24 wired without spider boxes. They don't trust spider  
25 boxes very much. So, it would seem to me -- and then

1 just what I heard now was a very narrow definition of  
2 what would be required, so I would recommend that you  
3 write up this description somehow, that it be published  
4 so that people could read and understand it. You're  
5 saying we should request an interpretation, I suppose.

6 MR. WALLIS: Well, if the committee would like  
7 to, I mean, you can offer us advice on how we should  
8 interpret that situation. If that's an issue that the  
9 committee chooses to take up, that would be a different  
10 mechanism other than asking for a letter of  
11 interpretation. But in the end, that will probably be  
12 handled by our enforcement folks rather than the  
13 standard folks.

14 MR. DAVIS: But it's kind of an overall --  
15 basically, I think whoever sets up the system should do  
16 a proper hazard assessment.

17 MR. WALLIS: That's correct.

18 MR. DAVIS: And a failure mode interpretation  
19 before they've got to sort of inject the power into  
20 this competitive system. I had a case where the  
21 welders didn't care for the ventilation so they kept  
22 turning it off because there was no power. There were  
23 two companies, the ventilation. The ventilation was  
24 being provided by one company and the welders were  
25 working for another company, and they kept shutting the

1 ventilation off. The result was, the total work site  
2 didn't have proper ventilation. So, I think that a  
3 good description that sort of deals with the operation  
4 would be good, too. Thanks.

5 MR. WALLIS: Thank you.

6 CHAIRMAN THORNTON: All right. We are a  
7 little behind. I want to take a break now until 3:30.  
8 Before I do, though, let me ask Mike and Tom, are you  
9 okay with that as far as schedule wise? Okay. Where  
10 is Tom at? I saw him.

11 MR. RAFFO: You didn't forget about us, right?

12 CHAIRMAN THORNTON: No. Oh, my heavens, I did  
13 forget. I did. Indeed, I did forget about you. Okay.  
14 Let me think here. Let's go off record a second.

15 (Pause)

16 CHAIRMAN THORNTON: Let's take a break till  
17 3:30.

18 (Whereupon, at 3:15 p.m. the meeting was  
19 recessed and resumed back on the record at 3:34 p.m.)

20 CHAIRMAN THORNTON: All right. Are you okay  
21 if I take these two reports and come back to you?

22 MR. RAFFO: Yes.

23 CHAIRMAN THORNTON: Is that all right? Okay.  
24 So then I'm going to turn the floor over to  
25 Mike Seymour, who's going to talk to us about the

1 report on ergonomics, prevention of musculoskeletal  
2 disorders, and specifically the guidelines for  
3 shipyards.

4 With that, Mike, you have the floor.  
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1           REPORT ON THE ERGONOMICS FOR THE PREVENTION OF  
2           MUSCULOSKELETAL DISORDERS: GUIDELINES FOR SHIPYARDS

3                           By Mr. Michael Seymour

4                   MR. SEYMOUR: Thank you, Mr. Chairman. Thank  
5 you for having us today.

6                   I'm Mike Seymour. I'm the Director of the  
7 Office of Physical Hazards in OSHA's Directorate of  
8 Standards and Guidance. With me today is Dr. Joanna  
9 Snyder, who is the primary author of these guidelines,  
10 and I thought it was important to have her at the table  
11 in case we had any very, very nitty-gritty questions.

12                   CHAIRMAN THORNTON: In other words, if you  
13 can't answer them, Dr. Snyder can?

14                   MR. SEYMOUR: Absolutely.

15                   CHAIRMAN THORNTON: Thank you.

16                   MR. SEYMOUR: Absolutely.

17                   To start off with a little bit of background,  
18 in April of 2002, Secretary Chao announced her four-  
19 pronged approach to ergonomics that included effective  
20 enforcement guidelines, which is what we're working on  
21 and talking about today, research, and compliance  
22 assistance. The Directorate of Standards and Guidance  
23 was assigned the task of developing the guidelines  
24 under that four-pronged approach.

25                   We have, to date, published three on nursing

1 homes, retail grocery stores, and poultry processing,  
2 and they were published in 2003 and 2004. The fourth  
3 in that series is the guidelines for shipyards. The  
4 cover art for the document is behind you on the easel  
5 and it looks very, very much like the cover art for the  
6 other three documents. So, these are published as kind  
7 of a series of guidelines that address ergonomics in  
8 various industries.

9 On September 11th of this year, we issued a  
10 draft document. We published a draft of this document  
11 for public comment. At that time we allowed the public  
12 60 days to provide comment on the document and we were  
13 pleased to see that we had a number of people write in  
14 and tell us what their concerns were, what their  
15 compliments were--fortunately there were a few of  
16 those--how we might improve the document when we go  
17 final with it.

18 One of the questions that you may have, and I  
19 probably ought to go ahead and answer, is it's taken us  
20 a long time to write this document. This document has  
21 been in the works for a while, and there's been a  
22 couple of reasons for that. Number one, it's a  
23 complicated document. You all work in a very complex  
24 environment. The shipyard environment is difficult in  
25 an ergonomic sense, given that there's many small,

1 cramped spaces, lots of awkward postures, lots of  
2 forces that need to be dealt with. So, it's a  
3 complicated document.

4 The other decision that we made, was we really  
5 couldn't do justice to portray this document and this  
6 environment without using photographs, which, frankly,  
7 are difficult to work with; getting the photographs  
8 that were right, that were worthy of the document was a  
9 difficult task.

10 In addition, we spent about a year after the  
11 other three documents--the nursing home, poultry, and  
12 grocery documents--were published, we received an  
13 information quality challenge under the Data Quality  
14 Act, and it took us about a year to answer that  
15 challenge and sort through that issue. It obviously  
16 made sense to put this on hold during that time until  
17 we had that resolved. But now that's resolved, those  
18 documents remain on our Web site and available to the  
19 public. We're ready to move forward with this  
20 document.

21 Let me go through the document very quickly,  
22 just on a very broad-brush level. This document really  
23 has two sections. The first section describes the  
24 process for protecting employees. It talks about the  
25 importance of providing management support to the

1 process. It talks about the importance of involving  
2 employees. It talks about providing training, talks  
3 about methods for identifying problems. It talks about  
4 implementing solutions. It talks about addressing  
5 reports of injury and it talks about evaluating  
6 progress. Evaluating progress is the last section in  
7 that process, but it is not, by any means, the least  
8 section. The evaluating progress is very important.

9           The second section describes various solutions  
10 to what we believe, based on our site visits, are  
11 common ergonomic issues that arise in shipyard  
12 operations. It is, by no means, a complete list of all  
13 the issues that might arise, but it is what we believe  
14 to be the common ones that occur in many shipyards. We  
15 saw examples of these kinds of issues that these  
16 solutions are addressed to in most of the site visits  
17 that we conducted.

18           It might be worthy of note that we actually  
19 did eight site visits to shipyards in preparing this  
20 draft document, including some of the smallest and some  
21 of the largest, so we really tried to, if you'll excuse  
22 the pun, cover the waterfront of the kinds of shipyards  
23 that exist.

24           But in the solutions, I think you'll find  
25 something in the neighborhood of 80-some photographs.

1 We did a before-and-after technique, where we've tried  
2 to show the worker in an awkward posture or with his  
3 arms over his head, or holding vibrating tools, those  
4 kinds of things. So we tried to show before-and-after  
5 photographs that would help sell the reader. And the  
6 reader that we're talking about here, the audience that  
7 we pitched this document to is the supervisor and his  
8 employees, so we tried to write this at a fairly basic  
9 level.

10 So we're trying to illustrate with these  
11 photographs the before-and-after, what's bad, and then  
12 what's better. In some of these photographs, I would  
13 actually say what's good. But we didn't always achieve  
14 that, because that's not always possible. But we have  
15 shown what we believe to be significant improvements in  
16 these risk factors.

17 In addition, for each of the solutions we gave  
18 a very brief description of what the solution is. We  
19 talked about the advantages and we talked about points  
20 to remember. For some of these solutions, as was  
21 pointed out yesterday in the workgroup that I spoke  
22 with, some of these solutions might actually cause  
23 other kinds of safety problems, like a pinch point or  
24 something like that. Those kinds of issues are  
25 addressed in these points, remember. We had one

1 comment that suggested that we bolster that, and we  
2 intend to do that.

3 Speaking of yesterday's meeting with the  
4 working group, we had a very good conversation. I  
5 suspect it lasted about an hour or so. We got some  
6 very good comments. What we tried to do, is go through  
7 the record that came in, the public comments that came  
8 in. We highlighted those comments that were most  
9 important. We discussed how we were going to address  
10 those comments. Again, we got the input of the people  
11 on the working group on approaches to addressing those  
12 issues that came in from the public.

13 It's our hope to take the information that  
14 came in from the public, evaluate it. The record on  
15 this closed, November 13th, I believe is the date, so  
16 it's about two weeks ago. So we've read the comments.

17 We're evaluating them in detail and are starting to  
18 work on revising the document to publish it in its  
19 final form.

20 When it's finalized, it will be available not  
21 only on the Internet site, on the Web site, but also in  
22 written form so that it can actually be passed out on  
23 work sites. We intend to print sufficient copies so  
24 that people can obtain copies and pass them out to  
25 their workers and have this document be a method for

1 communicating with employees, gathering their ideas.  
2 It's our intent that this document be a springboard for  
3 ideas on how to address specific issues on specific  
4 work sites.

5 So with that, I'd be happy to entertain any  
6 questions that you may have.

7 CHAIRMAN THORNTON: Questions of the  
8 committee? I know the guidelines were recently issued,  
9 and I guess some are still evaluating it. Some may  
10 have had a chance to go through, some not. But  
11 questions of the committee? Terri?

12 CAPT. PRESTON: This isn't really a question,  
13 it's a comment.

14 CHAIRMAN THORNTON: Okay.

15 CAPT. PRESTON: The document they put together  
16 is exactly what we asked for in terms of the audience,  
17 the presentation, the usability. I don't think, even  
18 going through the comments that they had, there was a  
19 whole lot that was offered as comments, even from the  
20 write-in public that was not just intended to improve  
21 the polish of the finished product. I just want to  
22 commend you guys. You did a good job.

23 MR. SEYMOUR: Thank you so much.

24 CHAIRMAN THORNTON: Yes. I think it was the  
25 pictures that did it.

1 (Laughter)

2 CHAIRMAN THORNTON: Just kidding. Just  
3 kidding.

4 Other comments/questions from the committee?

5 (No response)

6 CHAIRMAN THORNTON: Any comments/questions  
7 from the public? Yes, Mr. Davis? We're going to have  
8 to give Mr. Davis a microphone there, please.

9 MR. DAVIS: I reviewed the document with  
10 everybody else yesterday. I think it's very suitable  
11 and I was very impressed with the pictures. Most  
12 ergonomic things have a lot of formulas, lines, and  
13 drawings. In this case, it was very easy to  
14 understand.

15 However, I would like to say that the way it  
16 was presented, even though it was very accurate and  
17 very suitable, it was sort of a completed judgment. In  
18 other words, in the first section it urged people to  
19 have employee participation but it didn't really say  
20 how they should participate. In the second session,  
21 the results were given, but not the steps that defined  
22 it. In other words, if a worker was going to look  
23 around his work site and come up with a recommendation,  
24 how should he approach it?

25 The document just said "here it is, here are

1 points to remember, here's what it's going to cure",  
2 and that was it. There weren't enough white spaces in  
3 there for the reader to think about what he would do.  
4 So, I'm thinking that maybe a follow on to this would  
5 be a workbook format that maybe individual companies  
6 could develop so that it encouraged people to think in  
7 terms of hazard assessment rather than conclusions  
8 already made up.

9 Be that as it was, I feel the document out to  
10 get out there. The photographs are good to have. If  
11 we don't get something out there, then we won't be  
12 stimulating people to come in with new ideas and  
13 programs. So, I commend the group in getting it done.

14 I think all of us are happy with our own work, but we  
15 have to motivate others to do it, too. Thanks.

16 MR. SEYMOUR: Thank you.

17 CHAIRMAN THORNTON: Thank you.

18 Any additional comments/questions from the  
19 public?

20 (No response)

21 CHAIRMAN THORNTON: Thank you very much.

22 As far as I am concerned, I think it's a well-  
23 done document as well.

24 MR. SEYMOUR: Thank you, Mr. Chairman.

25 CHAIRMAN THORNTON: So, thank you very much.

1 Dr. Snyder, you're off the hook. Mike handled the hard  
2 ones. Thank you for coming along anyway. Thank you.  
3 All right.

4 Mr. Tom, are you ready? May I say, while  
5 you're handing the papers out, Tom, as I can tell, this  
6 is an even improved version of your normally splendid  
7 presentation because you changed the slide format. So,  
8 thank you. Thank you very much. It's a good thing.

9 Now, your challenge is to do this in 30  
10 minutes or less, okay?

11 MR. GALASSI: I will begin, and not surrender  
12 any time. If Steve can get this up and running, all  
13 the better.

14 CHAIRMAN THORNTON: If it will make it faster,  
15 make it run, Steve.

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1                                    DIRECTORATE OF ENFORCEMENT UPDATE

2                                    By Mr. Tom Galassi

3                                    MR. GALASSI: Let me begin by saying thank you  
4 for inviting Enforcement Programs to give their annual  
5 update. It is, I think, a very useful time to have  
6 this presentation because, in terms of the field  
7 activity, we basically look at our enforcement numbers  
8 in November, early November around election day.

9                                    So you're getting it hot off the presses, so  
10 to speak, just to see where OSHA has been with respect  
11 to our activities out in the field. We also pulled out  
12 the maritime/marine terminals activity on the list  
13 also.

14                                    So what I'd like to do, is I'll run through  
15 the numbers. I know it's late in the day. We'll do it  
16 quickly. You have the materials. I think you'll see  
17 this format is somewhat the same as we do from year to  
18 year. Then we will go into some of the activities that  
19 we've been engaged in since we last met. I think we've  
20 made some progress with respect to some of our  
21 enforcement programs.

22                                    The Assistant Secretary this morning talked  
23 about our enforcement being strong, and certainly we  
24 agree with that. We also used the term "fair". Part  
25 of fairness is consistent, and I think when you look at

1 the slides you'll see a consistency from year to year  
2 in our activities. If not, it's trending in the right  
3 direction. So, I think that's very encouraging.

4 We also believe we have geographic consistency  
5 to some extent. I won't run through all those slides,  
6 but we do try to make sure each region is consistent  
7 with the other region.

8 Why don't we go to, not page 1, but the first  
9 page that has the slides. It's entitled, "Inspections  
10 Conducted". As the Assistant Secretary indicated this  
11 morning, we had a 4 percent increase in inspections  
12 this year, 39,324. We're getting there. As you can  
13 see, over the last five years we have been in the arena  
14 of 38,000 to 39,000 inspections. We think this is a  
15 very effective area to be in. Our goal, based upon  
16 calculated number of FTEs, is 37,700 from year to year.

17 So we've been able to meet our other obligations in  
18 program areas, and yet exceed our goal out there in the  
19 field.

20 The next slide, entitled "Percent Programmed  
21 Versus Un-Programmed", here you'll see a movement  
22 towards programmed inspections. In the year 2000, if  
23 you looked at this graph it would have been 50/50,  
24 programmed versus unprogrammed. Currently, it's 59  
25 percent programmed, 41 percent unprogrammed.

1           There we go. Now this is going to be easy.

2           (Showing of slides)

3           MR. GALASSI: So, 59 percent programmed. We  
4 believe that any additional inspections that we are  
5 doing are going into the programmed arena, so basically  
6 we are not seeing more -- you can go to the next slide.

7           (Changing of slides)

8           MR. GALASSI: We're not seeing more complaint  
9 inspections. As you can see on this slide, we're at  
10 about 18 percent inspections. In fact, we're seeing a  
11 few less. But as a whole number, inspection complaints  
12 are pretty constant.

13           (Changing of slides)

14           MR. GALASSI: "Percent Inspections in  
15 Compliance". Obviously, this is an indicator we want  
16 to see go down, indicating that we're going to  
17 workplaces where there are hazards, there are  
18 violations, and where we should be.

19           (Changing of slides)

20           MR. GALASSI: "Total Violations Issued". This  
21 is one that we hope to see go up. Not that we want to  
22 see violations in the workplace, but that we should be  
23 inspecting workplaces that have violations.

24           (Changing of slides)

25           MR. GALASSI: "Percent Violations Issued as a

1 Serious Violation", "serious violation" being one that  
2 could result in serious physical harm or death. Last  
3 year, or this year, we issued 76 percent of the  
4 violations as "serious".

5 (Changing of slides)

6 MR. GALASSI: In a like fashion, when you add  
7 in the "willful" designation, "repeat" and  
8 "unclassified", we're at about 79 percent of violations  
9 issued under those classifications.

10 (Changing of slides)

11 MR. GALASSI: "Percent Inspections Not in  
12 Compliance With Only Other Than Serious Violations  
13 Cited". This may be a slide only an accountant could  
14 like, but basically for those inspections where we find  
15 violations, how many are only other than serious? This  
16 is a number that we'd like to see go down.

17 (Changing of slides)

18 MR. GALASSI: "Percent Inspections With  
19 Violations Contested". Well, we believe that 7 percent  
20 is a healthy number. Obviously you don't want to see  
21 this number too high, but we think that employers  
22 should, to some extent, be exercising their rights to  
23 contest citations, and that 7 percent is a good number  
24 that we can kind of deal with. Then, also, contested  
25 citations are resources, too, that we have to put into

1 litigation, so we're pretty comfortable with that  
2 number.

3 (Changing of slides)

4 MR. GALASSI: "Average Penalty Per Serious  
5 Violation". This is inching up. As you may know,  
6 penalties are established by statute as far as maximums  
7 go, and the penalty policy ultimately is in our form  
8 document and we apply certain factors related to the  
9 size of the employer, good faith history, but also the  
10 severity of a violation. So, just a little bit up, but  
11 I don't know if that's really significant.

12 (Changing of slides)

13 MR. GALASSI: "Percent of Inspections in  
14 Construction". You will see a fair amount of  
15 consistency here as the Agency addresses the  
16 construction industry, an area that I guess we see a  
17 lot of issues come out of the BLS data every year in  
18 residential and commercial construction.

19 CHAIRMAN THORNTON: So, Tom, does this mean  
20 that roughly 6 out of 10 inspections then are  
21 construction-related?

22 MR. GALASSI: Yes. Yes. Industry.

23 CHAIRMAN THORNTON: Okay.

24 (Changing of slides)

25 MR. GALASSI: "Significant Enforcement Cases".

1 This is an item that we historically started tracking,  
2 and there are cases which are over 100,000 in penalty.

3 They can be that for a number of reasons, a lot of  
4 serious or a couple willful, but we do see a fair  
5 amount of consistency in this regard also. We're at  
6 107 this year.

7 (Changing of slides)

8 MR. GALASSI: I'll be talking about this  
9 program a bit more, the Enhanced Enforcement Program.  
10 This year we had 719 recorded employers under that  
11 program versus its inception year, so it has about  
12 doubled where we were.

13 (Changing of slides)

14 MR. GALASSI: "Fatality Investigations". One  
15 indicator we do want to see go down. In fact, we do  
16 try to use this as an indicator that we're affecting  
17 fatalities out there in industry. As you probably  
18 know, when BLS comes out with their numbers under CFLE  
19 and they look at, I think it was around 5,700, a lot of  
20 those areas are covered under state plans, perhaps, or  
21 under municipal workers or Federal -- not Federal, but  
22 jurisdictions where we don't have an impact. So we  
23 look at this as a number really that shows how many  
24 fatalities we inspect, therefore, how many fatalities  
25 we have jurisdiction over. This year it went down just

1 a little bit.

2 CHAIRMAN THORNTON: I did have one question.  
3 This is not "exactly a one-for-one". For example, if  
4 someone reported a heart attack which was reported to  
5 the Agency, that may or may not be investigated, so  
6 this doesn't necessarily mean a one-for-one. Is that  
7 approximately right or not?

8 MR. GALASSI: What it means, is the area  
9 director decided that there was enough information to  
10 proceed with an investigation.

11 CHAIRMAN THORNTON: Okay.

12 MR. GALASSI: So if it was, let's say, a  
13 random act of violation, we probably wouldn't go out on  
14 it. If it was an automobile accident that was under  
15 the jurisdiction of the Department of Transportation,  
16 we probably wouldn't go out on it. But these are ones  
17 where there's a work-relatedness to it.

18 (Changing of slides)

19 MR. GALASSI: This is the "General Industry  
20 Tally" that we do every year of the top 10. The cast  
21 is the same pretty much from year to year. The order  
22 changes a bit. HAZCOM has either one or two every  
23 year. So, there really are no surprises here.

24 (Changing of slides)

25 MR. GALASSI: In a like fashion, construction.

1 We usually see scaffolding, fall protection up there,  
2 excavations. Again, the order may change but the list  
3 is the same.

4 (Changing of slides)

5 MR. GALASSI: So now we're going to move into  
6 the area of more relevance to this group, ship and boat  
7 building and marine terminals.

8 The first slide is not the best graphic, but  
9 ship and boat versus marine cargo. Looking at FY '07,  
10 we did over 415 inspections in that arena, recognizing  
11 that this is about 1 percent of the Agency's inspection  
12 workload. However, as we all, I think, know, the  
13 inspections -- the area offices that deal with maritime  
14 issues, it is a significant part of their agenda, of  
15 their mission and focus, so for those offices, it does  
16 dominate a lot of their time.

17 (Changing of slides)

18 MR. GALASSI: Looking at programmed versus  
19 unprogrammed for the ship/boat industry, as you will  
20 recall, we are at, is it 59 percent for general  
21 industry? So this is somewhat consistent with the  
22 overall numbers.

23 (Changing of slides)

24 MR. GALASSI: "Marine Cargo Handling". The  
25 theory here is, we may not get as many complaints in

1 this arena. We just don't do as much unprogrammed  
2 activity. Much more of it is under the arena of an SST  
3 or local emphasis program.

4 (Changing of slides)

5 MR. GALASSI: "Total Violations". As you'll  
6 recall, the total for the Agency was about 88,000, so  
7 we have 827 for shipyards, 354 for marine cargo  
8 handling.

9 (Changing of slides)

10 MR. GALASSI: "Percent Issued as Serious".  
11 This is a bit below the slide we saw for overall  
12 inspections, which was around 76 percent: 61 percent  
13 ship/boat, and 55 percent marine cargo.

14 (Changing of slides)

15 MR. GALASSI: "Average Number of Violations  
16 Per Initial Inspection". It's 4.5 for ship/boat, 3.3  
17 for marine cargo. Our national average, I think, is  
18 about 3.2, so this is a little high for the ship/boat  
19 arena. If you look at the slide, the number of  
20 violations and extrapolate, I think you will see that  
21 we're finding more violations per inspection.

22 (Changing of slides)

23 MR. GALASSI: One of the mechanisms of doing  
24 inspections in a variety of industries is the site-  
25 specific targeting program, which I'll be talking

1 about. This year we did 2,794 SST inspections. When  
2 we get to shipyards, boatyards and marine cargo, as you  
3 see we have quite a drop-off, but we do have some  
4 activity in those areas.

5 (Changing of slides)

6 MR. GALASSI: This is "Average Penalty". I  
7 probably wouldn't put a lot of stock in this number  
8 because it's such a small number. The smaller the data  
9 sample the more variability you could have there. But  
10 it's kind of in line with the other national average.

11 (Changing of slides)

12 MR. GALASSI: "Top 5 for Boat Building".  
13 Somewhat similar to general industry.

14 (Changing of slides)

15 MR. GALASSI: "Marine Cargo Handling".

16 (Changing of slides)

17 MR. GALASSI: So that is a 4:00-in-the-  
18 afternoon run through the data so the eyes don't get  
19 too glazed over. If there are any questions, maybe  
20 I'll break now and raise them on this data.

21 What I'm going to move into next, is really  
22 focusing on some targeting programs that I think we've  
23 advanced since we last talked. So are there any  
24 questions on the data that come to mind right now?

25 CHAIRMAN THORNTON: John?

1 MR. CASTANHO: Yes, I had several. Page 2,  
2 you look in fiscal year '07, programmed inspections are  
3 up and unprogrammed are down. Why is that?

4 MR. GALASSI: When you look at the data and  
5 you start drilling into it, and I think there was  
6 another slide that indicated the percentage of  
7 complaints, probably what I should have done is a slide  
8 of number of complaints. What you'll see, is the two  
9 sources of inspection are unprogrammed, which are  
10 complaints, referrals, accidents, catastrophes, and  
11 complaints being the big driver in unprogrammed.

12 They are staying somewhat flat, so you're not  
13 seeing additional complaint inspections being done.  
14 What you're seeing are more inspections which are  
15 Enhanced Enforcement Program, more SST program, more  
16 NEP program, and particularly more LEP programs which  
17 are up there. So the additional inspections that we're  
18 seeing for the 39,000 inspections are programmed, so  
19 that's bumping up the percent of programmed  
20 inspections.

21 MR. CASTANHO: So you're saying that's because  
22 of fewer complaints?

23 MR. GALASSI: Well, I'm saying the complaints  
24 are flat, not fewer.

25 MR. CASTANHO: Okay.

1           My next question, page 4. What constitutes a  
2 "serious" violation?

3           MR. GALASSI: A serious violation is one in  
4 which the Agency can show there is the likelihood of  
5 serious physical harm or death as a result of that  
6 violation versus another violation.

7           MR. CASTANHO: All right.

8           My next question was on page 5. On the fines,  
9 the top picture there. Do you know what percentage of  
10 those fines were actually collected? I know there's an  
11 appeals process and sometimes the fines are reduced.

12           MR. GALASSI: Yes, there is. I don't know.  
13 Just for the committee's benefit, we propose penalties,  
14 or it's an initial penalty. The case goes through some  
15 sort of informal process where the company meets with  
16 their director and the penalties can be reduced, and  
17 then it can go into formal litigation where the  
18 penalties could be reduced further. I don't have those  
19 numbers of final order.

20           MR. CASTANHO: All right. I think I've got  
21 one more. Page 9. The bottom graph there. Why is  
22 that number for marine cargo so low, only 10 compared  
23 to 1,200 for manufacturing?

24           MR. GALASSI: How about if we hold that  
25 question, because I have a slide on the SST which will

1 talk about how you get in the program and it will give  
2 you pretty much a good overview of the program. But  
3 the very simple answer is, of the establishments that  
4 we sampled, we only found 10 that met the criteria of  
5 the SST program.

6 MR. CASTANHO: Okay. Thank you.

7 MR. GALASSI: Well, let's move into the next  
8 slide.

9 (Changing of slides)

10 MR. GALASSI: You may have heard me--I'm sure  
11 you've heard me--talk about this before, but I'll go  
12 through it again as far as, one of our programs that  
13 has been out now for four years, it's kind of nearing  
14 its end and we're about to launch a revision to this  
15 program. It's called the Enhanced Enforcement Program.

16 It had its origin September 30, 2003 when we launched  
17 it. Since then, we've done from 500 to 600 of these a  
18 year. I think you saw a slide where we did 719  
19 inspections one year.

20 The criteria at this time is, if you have a  
21 high-gravity, serious violation related to a fatality,  
22 three more high-gravity, serious that are classified as  
23 willful or repeat violation, or two or more failure to  
24 abate violations, you are in what's called the Enhanced  
25 Enforcement Program.

1 (Changing of slides)

2 MR. GALASSI: In that program, certain things  
3 can happen to you as an employer to make sure that you  
4 don't have violations, or serious violations in the  
5 future, and fatalities. That is an enhanced follow-up  
6 inspection. We target other establishments of that  
7 employer. We try to increase public awareness of the  
8 violations of the inspection. We seek enhanced  
9 settlement provisions, and we last, but not least,  
10 utilize Section 11(b) of the OSH Act. As I said, this  
11 has been around four years. You may have heard me talk  
12 about it before. The thing about it is --

13 (Changing of slides)

14 MR. GALASSI: -- when you look at what we  
15 found in the last four years, 2,129 EEP cases, 50  
16 percent in construction, 92 percent are fatality-  
17 related, 49 percent are fatalities in construction, and  
18 roughly 67 percent are small employers.

19 When Assistant Secretary Henshaw launched this  
20 program in 2003, his intend was that it address  
21 recalcitrant employers, employers who are indifferent  
22 to their obligations under the OSH Act who had a  
23 history of OSHA violations. What the data indicates is  
24 we probably captured those employers in this program,  
25 but we also probably captured some small employers who

1 had just one violation. So, there's a need to change  
2 the program and modify it, which we did.

3 (Changing of slides)

4 CHAIRMAN THORNTON: Can I stop you one second  
5 and ask--and this will demonstrate my ignorance with  
6 the program, which is not unusual--I see the criteria.  
7 You've already listed those. So, conceivably, a  
8 recalcitrant employer, after one inspection, if you  
9 will, would be if the employer met these criteria, then  
10 he could be entered into, whatever the verb is, the EEP  
11 program.

12 MR. GALASSI: Right.

13 CHAIRMAN THORNTON: Which would then subject  
14 him to the follow-up for the actions that you listed  
15 before.

16 MR. GALASSI: Right. Right. Right.

17 CHAIRMAN THORNTON: Okay. So I guess my point  
18 is, this would happen after an initial inspection.

19 MR. GALASSI: Right. Right.

20 CHAIRMAN THORNTON: As opposed to, "I got you,  
21 I just don't like you, you're in the EEP program."

22 MR. GALASSI: Right. We don't do that, Jim.

23 CHAIRMAN THORNTON: I know that, Tom. But I  
24 was just trying to help you out and help the Agency  
25 look good.

1 (Laughter)

2 MR. GALASSI: Thank you.

3 So as Jim said, yes. This happens after an  
4 event, after an inspection. The EP inspections are the  
5 next ones that occur to ensure that that employer is on  
6 the right road. This does apply to all industries,  
7 including maritime. It has been in place since 2003.  
8 So, based upon what we know today the purpose has not  
9 changed, we still would like to get recalcitrant  
10 employers, but we're revising the program to have  
11 greater emphasis on those employers who have a history  
12 of OSHA violations, so now it would be an employer who  
13 has a fatality with a serious violation, but also has a  
14 history of violations with the Agency, so it's more  
15 binary now that you have to have both. So that would  
16 be out on January 1 as an effective date. I think it  
17 is available on the Web to peruse right now. So, we'll  
18 be moving to that on January 1st.

19 (Changing of slides)

20 MR. GALASSI: Very quickly through the SST  
21 program. We're currently under SST '07. How we get  
22 our establishment sites, is we survey, every year,  
23 80,000 employers. We come up with a high hazard list.  
24 That list is roughly 14,000 high-rate employers. We  
25 then send those employers a letter telling them, you

1 know, we think you have high rates, you ought to get a  
2 consultant, or deal with your safety and health program  
3 issues.

4 This year, we launched the SST '07 in May of  
5 2007. This is the eighth iteration of that program.  
6 What it does, is it provides a safety targeting  
7 inspection list to the field to inspect, and these  
8 include manufacturing and non-manufacturing, including  
9 the shipyards and the maritime.

10 (Changing of slides)

11 MR. GALASSI: It creates a primary, secondary,  
12 tertiary list based on DART rates and DAFWII rates.  
13 Like, the national DART rate is 2.4, and 1.4 for  
14 DAFWII, and we have only got to inspect on a primary  
15 list those employers who have a rate of 11, or 9,  
16 respectively. So getting to your question about the  
17 longshoring and marine terminals, if they would be  
18 above 11 or 9, then they would be inspected.

19 MS. SHERMAN: Excuse me, Tom. Could you state  
20 for the record what DART stands for and what DAFWII  
21 stands for?

22 MR. GALASSI: Days away from work with  
23 restricted in transfer, and DAFWII is days away from  
24 work with injury and illness.

25 MS. SHERMAN: Thank you.

1 MR. GALASSI: This covers, as I said, the  
2 maritime industry and the post office. We look for  
3 about 4,300 sites every year. We delete certain sites,  
4 they're not in business, or whatever. We go about  
5 2,800. The rest of that, I think, is just kind of  
6 administrative things we do.

7 Well, the last one is worth noting. Because  
8 nursing homes drive the programs so greatly with their  
9 ergonomics issues, we only do 50 percent of them. So,  
10 we do make an adjustment in that regard.

11 (Changing of slides)

12 MR. GALASSI: Moving from the SST to other  
13 national emphasis programs, this is kind of the list  
14 for the Agency as far as what we have nationally. Lead  
15 has been around for about five, six years. Silica,  
16 trenching. Oil refineries, we launched this year in  
17 July. I'll be talking about that a little more.  
18 Amputations. Ship breaking, which is one we have had  
19 in place some time, since 2000, and has been a very  
20 successful program.

21 One we call "butter-flavored popcorn", and  
22 I'll be talking a little more about that. Combustible  
23 dust, which we needed to address as far as -- this is  
24 non-grain dust, but just dust in the workplace that can  
25 create an airborne hazard.

1           Then, any piece under development, dovetailing  
2 with our refineries. We're going to be looking at  
3 chemical plants, dovetailing with popcorn, looking at  
4 flavoring chemicals. We're going to revise lead, and  
5 revise silica.

6           (Changing of slides)

7           MR. GALASSI: Oil refineries. We launched  
8 this in July and I think it's quite an ambitious  
9 emphasis program out there. As a result of the high  
10 fatality rate in this industry, and probably the most  
11 dramatic with the Texas City BP explosion, the Agency  
12 has launched a program where we're going to inspect all  
13 refineries in the United States over two years.

14           This totals 81 petrochemical refineries. We  
15 devised a whole new approach to that using a team  
16 approach, three levels of training. It's different  
17 than our general PSM approach to things. This is  
18 basically looking at process safety management  
19 compliance regarding use of inspection priority lists.

20           We have one which is a static list in which  
21 the CSHO will ask a series of questions to ascertain  
22 compliance with PSM, and then he will have a dynamic  
23 list--or she--and that list will be changing from week  
24 to week so the industry can't predict what we're going  
25 to be looking at. We're going to prioritize. We

1 prioritize implementation of the programs over paper  
2 review, so the key is to get out there and see that  
3 things are in place as quickly as possible. As usual,  
4 we are encouraging our state plan states to participate  
5 because they have about 50 refineries out there also.  
6 So, this program is moving along. We're committed to  
7 do about 40 percent of the 81 this year, and I think  
8 we're moving well along that pace.

9 (Changing of slides)

10 MR. GALASSI: In a like fashion, when you're  
11 looking at process safety management, you have the  
12 refineries, but then you have all the other chemical  
13 plants that present highly hazardous chemicals. This  
14 universe can be quite large estimates, from 12,000 to  
15 20,000, depending where you go. We're looking at a  
16 national emphasis program that would focus on PSM.

17 One source of data would be the EPA chemical  
18 release data from, perhaps, targeting. The structure  
19 of the PSM focus would likely be similar to the oil  
20 refinery NEP. This obviously would be a fairly large  
21 effort and one the Agency probably would pilot and roll  
22 out somewhat cautiously. But we are committed to look  
23 at chemical plants in addition to petrochemical  
24 refineries.

25 (Changing of slides)

1           MR. GALASSI: This is an issue which has been  
2 in the press for some years. In the manufacture of  
3 microwave popcorn, NIOSH has identified that workers  
4 who package or who work in the mixing rooms have been  
5 experiencing obstructive lung disease, particularly  
6 called bronchiolitis obliterans, and it is believed  
7 that this is due to the volatile butter flavoring used  
8 in the manufacturing of this popcorn.

9           So in July of this year, the Agency launched a  
10 national emphasis program. That program hopes to  
11 target the locations where they manufacture this  
12 popcorn, and I think we have about 25 to 30  
13 establishments that we're looking at. It would give  
14 advice on engineering, work practice controls, PPE  
15 respirators, and also compliance assistance and  
16 outreach.

17           One of the difficult issues with this is,  
18 there is a belief of an association with the volatile  
19 butter flavorings in the disease, but no one is quite  
20 certain exactly what the agent that causes it is. You  
21 heard the chemical "diacetyl" thrown around a lot, and  
22 it may be diacetyl or diacetyl may be a marker. But we  
23 are proceeding with this national emphasis program to  
24 address this exposure in this industry and we are  
25 working on a flavorings national emphasis program to

1 look at the use of diacetyl and other flavorings more  
2 broadly.

3 (Changing of slides)

4 MR. GALASSI: Now getting to the more  
5 particular maritime projects. I'd like to commend  
6 Steve Butler, to my right here. He has very diligently  
7 updated and put out directives, I think, which have  
8 been very useful to the industry, shipyards, tool shed,  
9 and other directives. He's been very prolific in  
10 updating these directives.

11 This is kind of his priority list right now.  
12 He's been working on the OSHA Coast Guard authority  
13 over vessels jurisdiction directive. Also, now that  
14 the PPE standard is out there we'll be putting out the  
15 PPE for shipyard employment directive, so we hope to  
16 have those two out fairly soon.

17 Then we are working on an online database for  
18 the Part 1919 Ring Cargo Gear Certification Program to  
19 automate the OSHA 71-72 forms. I'm told that this may  
20 be of historical significance in that this may be the  
21 last Federal Government program that has forms with  
22 carbons.

23 (Laughter)

24 MR. GALASSI: So, this is significant.

25 (Changing of slides)

1 MR. GALASSI: With that, unless there are any  
2 questions, that's my update.

3 CHAIRMAN THORNTON: Terri?

4 CAPT. PRESTON: Tom, I just wanted to clarify.  
5 Is the EEP the only program in which you would target  
6 another site from a company based on inspection from,  
7 like, plant A to plant B, or are there other programs  
8 you use to target additional sites?

9 MR. GALASSI: Generally, there are not. I  
10 just say "generally" because there's always the  
11 specific way where we have an explosion, and let's say  
12 you don't have any fatalities or we don't know what's  
13 going on, but we happen to know that operation exists  
14 elsewhere, we're probably going to run out and look at  
15 that operation before they're ever in a program. But  
16 generally, yes. The only way we would use one location  
17 or one inspection to go out to another one would be the  
18 EEP program.

19 CAPT. PRESTON: And a follow-up question to  
20 that is, we talk about the emphasis programs, but have  
21 we walked completely away from programmed inspections  
22 on a time line basis as well, or do the area offices  
23 still generally do that?

24 MR. GALASSI: On a time line basis?

25 CAPT. PRESTON: Yes. Like, every three years,

1 every five years, every --

2 MR. GALASSI: Oh. Yes. The area offices  
3 basically address inspections through the various  
4 rationales I've indicated, which would either be as a  
5 hazardous industry or knowledge of hazardous operations  
6 in some area. But we don't have randomized lists, high  
7 hazard or cyclical lists that we go through every five  
8 years, or whatever. The SST provides you with a number  
9 of establishments every year, and then that list is  
10 replaced at the next year, and replaced with the next  
11 year. So you could have a company which would show up  
12 every other year if their rates were high.

13 CHAIRMAN THORNTON: John?

14 MR. CASTANHO: So, along the same lines as  
15 what Terri just asked, the EEP. In longshoring, you  
16 may have one company, a stevedoring company, that has  
17 operations at various sites, different terminals. So  
18 under the EEP, I guess my question would be, is it site  
19 specific or would it be company specific?

20 MR. GALASSI: It would be company specific.  
21 What we look for is, it would depend on the facts  
22 underlying their entry into the EEP. So whatever that  
23 operation was, we would look to that company and do our  
24 best to find out where else in that company they had  
25 that operation, and then we'd try to investigate.

1 MR. CASTANHO: Thank you.

2 CHAIRMAN THORNTON: Other questions of the  
3 committee for Tom?

4 (No response)

5 CHAIRMAN THORNTON: Hearing none, if you have  
6 questions from the public, if you would raise your hand  
7 so I'd get a sense of how many.

8 (No response)

9 CHAIRMAN THORNTON: Well, I do have a  
10 question, Tom, not to let you off the hook. Do you eat  
11 butter-flavored microwaveable popcorn?

12 MR. GALASSI: You know, I do. As you can see,  
13 I'm coughing.

14 (Laughter)

15 CHAIRMAN THORNTON: Thank you, Tom. Thank  
16 you, Steve. We appreciate that report.

17 MS. SHERMAN: Yes. I'd like to enter Tom's  
18 presentation as Exhibit 9.

19 (Whereupon, the document referred  
20 to as Exhibit 9 was marked for  
21 identification and entered into  
22 the record.)

23 MS. SHERMAN: Also, Tom, do you have a way of  
24 transferring your Power Point to the Court Reporter?

25 MR. GALASSI: Sure. It's on a Flash stick.

1 MS. SHERMAN: Oh. That would probably be  
2 better. Thank you.

3 CHAIRMAN THORNTON: Okay. Thank you very  
4 much, Tom, Steve.

5 Let's move on now. We've got two more  
6 workgroup reports. I do apologize for overlooking the  
7 Shipyard Workgroup. My deepest apologies. So, with  
8 that, let me turn it over to Don Raffo, who's going to  
9 lead us through the Shipyard Workgroup report-out.

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1 ago. Through these conference calls we have started  
2 out with the seed of an idea. It's grown to a bush,  
3 and now it's into a tree, I think.

4 When we started off, one of the initial issues  
5 that came out in the MACOSH discussion dealt with the  
6 paint standard, Subpart C, which is called "Surface  
7 Preparation and Preservation", and it appeared that  
8 there was a wide variation in the interpretation and  
9 implementation of the standard.

10 So we initially started out looking at a  
11 couple of specific areas of the standard where we felt  
12 that improvement could be made, interpretations  
13 differed, and it could be made better. As we started  
14 to move forward on this and make some recommendations,  
15 it became clear that we could not just tweak one  
16 section without tweaking another section, so we started  
17 out one, it grew to two, and three, and four, and five.

18 Some of the substantiation we used to start  
19 realizing that this is a bigger issue than we initially  
20 thought, was that paint solvents and coating  
21 formulations used in the marine industry, specifically  
22 in the shipyards, ship repair, ship building, are  
23 changing at a rapid rate. No longer do manufacturers  
24 put out the most toxic and flammable coatings to  
25 prevent the rusting of steel and stop marine growth on

1 hulls.

2           Some of our old coatings that we used to use,  
3 the Red Ledge, the coal tar epoxies that were very  
4 toxic and flammable, are no longer in use. Coatings  
5 have changed at a rapid rate. Part of the change has  
6 to do with the Clean Air Act, where they've tried to  
7 reduce VOCs in the paint, and that had an effect on the  
8 formulation.

9           Another thing that has changed on coatings are  
10 the application methods. Different methods have now  
11 been developed. No longer is the basic spray paint gun  
12 used in all applications. Some of the new applications  
13 and methods have resulted in, I would say, a less  
14 dangerous, less toxic application method or resulted in  
15 lower exposures.

16           In some cases, one of which was outlined, is  
17 called HVLP, High-Volume/Low-Pressure spray methods.  
18 In some areas of the country, that is required and they  
19 don't let you use the old-fashioned spray paint method  
20 because it reduces over-spray and basically puts more  
21 paint on the metal.

22           Also, construction methods have also changed.  
23 Modular construction, especially in shipbuilding, has  
24 now become the norm. Most of the shipbuilders now  
25 build hull sections and put them together, and you saw

1 that in that video that was presented at the last  
2 MACOSH meeting.

3           There are several areas of guidance that OSHA  
4 puts out, but the bottom line is that the committee  
5 struggled with it, but we felt that Subpart C needed to  
6 be reviewed and updated. This subpart is approximately  
7 30 years old. Once again, we did not take this lightly  
8 because we know it's a huge task. We started to tweak  
9 one part, then another part, and it required so much  
10 tweaking that we were almost starting to write the  
11 whole standard.

12           So with that, to try to cut to the chase, our  
13 recommendation, in way of a motion, to OSHA from the  
14 committee is, the MACOSH Shipbuilding Committee  
15 recommends to OSHA that Subpart C be reviewed and  
16 updated, with emphasis on Sections 1915 and 35 and 36.  
17 While the safety of the worker is a primary concern, a  
18 performance-based standard should be considered in  
19 subsections while maintaining some of the basic  
20 structure or requirements in other sections.

21           Many industry standards which take different  
22 options into account while maintaining safety should be  
23 reviewed and considered in an updated standard.  
24 Updating of the standard will be an ongoing challenge  
25 for both OSHA and MACOSH to work on, with a goal of

1 providing the safest, most cost-effective standard for  
2 the maritime industry.

3 The committee recommends that in the review of  
4 this standard, OSHA use experts in the industry when  
5 knowledge of the equipment, material, and methods are  
6 specific to the industry. An attached summary is  
7 provided by the committee that illustrates some of the  
8 specific issues and recommendations that the committee  
9 review for updating.

10 I'm not going to go over this spreadsheet line  
11 by line because we are not making these recommendations  
12 as a verbatim recommendation. Basically, we outlined  
13 some sections. If OSHA accepts this as a task, we  
14 would say that these certain sections should have an  
15 asterisk next to them as areas where industry has some  
16 difficulties and they should be looked at. We did put  
17 some proposals down, some thoughts. We don't plan on  
18 writing the standard, but there are some thoughts that  
19 we would ask you to look at.

20 I had a discussion with one of the audience  
21 members yesterday after this and they said, well, maybe  
22 this one could be written a little better or a little  
23 differently, or maybe you want it to say this. I  
24 agreed with her, which is why I'm not saying that these  
25 are the end-all, the be-all. We feel that it's OSHA

1 job to write the standard. We have given some  
2 suggestions, some thoughts, and some discussions behind  
3 our suggestions.

4 So, the committee got together yesterday. We  
5 voted unanimously that this should be presented as our  
6 recommendation to the full committee, that it be  
7 submitted to OSHA.

8 CHAIRMAN THORNTON: Let me just ask one  
9 clarifying question. Maybe it's just my version. But  
10 I've got two documents. One starts "Subpart C and D".  
11 But in my Subpart C package, it also has attached a  
12 Subpart D. Now, so it looks like I've got two Ds.

13 MR. RAFFO: You must. I don't have that.

14 CHAIRMAN THORNTON: Okay. You've got two Ds?  
15 Okay. What we have, just for clarification, is we have  
16 your C that you just went over, and then we have the D  
17 that you haven't gone over. Apparently they've been  
18 stapled together. Plus, we have another D.

19 MR. RAFFO: Right. There should be a  
20 spreadsheet on it that says "Subpart C".

21 CHAIRMAN THORNTON: Got you.

22 MR. RAFFO: That goes with Subpart C.

23 CHAIRMAN THORNTON: Got you.

24 MR. RAFFO: The one that says "Subpart D",  
25 that goes with Subpart D. I did not check.

1           CHAIRMAN THORNTON: I think in the copying  
2 we've got duplicated Ds. Is that not right? Okay.  
3 What you should have on C is, the last page should be  
4 number 6. Okay. The last page to the item that we're  
5 discussing now is page 6. Okay. So that's the item.  
6 I just want to make sure we're clear on that item. So,  
7 go back. Do you have a recommendation, do you have a  
8 motion?

9           MR. RAFFO: I made my recommendation in the  
10 way of a motion. But in order to summarize my motion,  
11 I would like the MACOSH Shipbuilding Committee to  
12 recommend to OSHA that Subpart C be reviewed and  
13 updated, with an emphasis on Sections 1915 and 36.

14          MR. FLYNN: Second.

15          CHAIRMAN THORNTON: We will get the paperwork  
16 straight back here. But I think we've got the right  
17 version here. If you have through page 6, you have the  
18 right one, I believe. Okay.

19                Now, I have a motion on the floor which  
20 basically restates the first sentence under Subpart C,  
21 on page 2 of Subpart C under the recommendation. Okay.

22                So we've got a motion, we've got a second.  
23 We're in the discussion of the motion. Okay. So,  
24 discussion on the motion by the committee?

25          CAPT. PRESTON: The summary basically says it

1 all.

2 CHAIRMAN THORNTON: Yes. I think this is --  
3 well, I won't weigh in at this time.

4 MR. RAFFO: Don't hold back.

5 CHAIRMAN THORNTON: I'm not. If the public  
6 has a comment, let me see how many we have so I can  
7 gauge.

8 (No response)

9 CHAIRMAN THORNTON: Okay. Good. All right.  
10 I'm ready to call the question then. All in  
11 favor of the motion, signify by saying "aye".

12 (Chorus of Ayes)

13 CHAIRMAN THORNTON: Opposed?

14 (No response)

15 CHAIRMAN THORNTON: Thank you.

16 MR. RAFFO: Okay. I'll move right into  
17 Subpart D. Subpart D is, once again, a similar  
18 parallel where we started off. Really, this section  
19 started off at the initial MACOSH meeting again with  
20 what's commonly known throughout the shipbuilding  
21 industry as the four-inch strip-back rule. We started  
22 working on that and we realized once again, well,  
23 that's going to affect this and it's going to affect  
24 other sections.

25 So, as we began to work on one we expanded it

1 to other sections of the standard, which is commonly  
2 called "Welding, Cutting and Heating", which is Subpart  
3 D. Once again, we did this through many conference  
4 calls. We had significant help and guidance from Mr.  
5 Daddura to try to get us through to a product that  
6 everybody could live with.

7 Subpart D was developed approximately 35 years  
8 ago. During this time, the shipbuilding alteration and  
9 repair industry was much different than it is today.  
10 At that time, the standard was developed to protect  
11 workers from airborne toxics during hot work. These  
12 toxics generally arose from steel used during  
13 construction and coating used to preserve the steel.

14 At that time, most of the steel that was  
15 coming into the shipyard came in in an uncoated  
16 condition. Most of the steels that are coming in today  
17 are coming into a shipyard coated or primed, ready to  
18 be used and welded right away. They don't come in in  
19 the raw condition anymore.

20 The type of steels that are used in the  
21 shipbuilding industry today are much different than the  
22 materials that were used or the components used 35  
23 years ago. A concerted effort has been made by  
24 industry to reduce the content of many toxic compounds  
25 in steel, such as lead, chrome, cadmium, and zinc.

1           Structural and chemical properties used in  
2 many of the shipbuilding steels today are now tightly  
3 controlled. It is generally well understood now and  
4 documented that employee exposure to metals containing  
5 toxic compounds in steels can have an adverse effect on  
6 workers' health, and this is tightly controlled.

7           As I spoke of before, the process of building  
8 a ship has changed. As I spoke before, modular  
9 construction, welding methods, welding processes have  
10 greatly changed. Welding methods that were rare 35  
11 years ago are now commonplace and used in big shipyards  
12 and little shipyards throughout the country. There  
13 have been significant changes in the welding methods.

14           The four-inch strip-back which initiated this  
15 whole discussion was initially put into the standard to  
16 protect workers from exposure to decompositions from  
17 heating coatings adjacent to hull butts during welding,  
18 and this has evolved to all areas of the ship. It has  
19 expanded from just hull butts, it's initial  
20 application.

21           So, once again, the challenge that developed  
22 to the committee was to develop a modern standard which  
23 both reflects the need to control worker exposure  
24 during hot work and to allow enhanced productivity to  
25 the worker. The difficulty is to publish a new

1 standard to find the wording which can be used that  
2 provides worker protection in all maritime activities,  
3 ranging from shipbuilding, ship repair, ship breaking.

4 Once again, there exists a wide variety of  
5 capabilities in the country to prevent worker exposure.

6 Some of the bigger shipyards in the country have  
7 industrial hygienists, have staff on site that can  
8 monitor worker exposure. Some of the small shipyards  
9 do not have that capability and want a different type  
10 of standard.

11 So, as a recommendation, once again we tried  
12 to work through a 35-year-old standard that applies to  
13 modern shipbuilding methods. We tried not to come to a  
14 general statement that says we need to review and  
15 update this, but that's what we had to do.

16 So our recommendation, which I will read, is:  
17 the MACOSH Shipbuilding Committee recommends to OSHA  
18 that the entire Subpart D be reviewed and updated.  
19 While the safety of workers is a primary concern, a  
20 performance-based standard should be considered in some  
21 sections while maintaining some of the basic structural  
22 requirement in other sections.

23 Many of the major shipyards in the nation have  
24 the ability, knowledge and equipment to monitor  
25 employee exposure. A performance-based standard would

1 allow them to protect worker exposure, while providing  
2 the flexibility to develop procedures which enhance  
3 productivity, while protecting the worker.

4 Many of the smaller yards, without the ability  
5 to perform employee exposure monitoring, may desire a  
6 standard which spells out a requirement so no  
7 interpretation is needed. A standard which will  
8 provide worker safety and enhanced productivity should  
9 be the goal of an updated standard. Providing a mix of  
10 a performance-based standard with one that contains  
11 fixed limits which permits flexibility to the industry  
12 may be the best outcome, but would present the biggest  
13 challenge.

14 Updating of the standard will be an ongoing  
15 challenge for both OSHA and MACOSH to work on, with  
16 once again the goal of providing the safest, most cost-  
17 effective standard for the maritime industry. Once  
18 again, we have an attached summary which outlines some  
19 of our initial concerns, some discussions, and some  
20 suggestions or thoughts to OSHA. Once again, if they  
21 decide to take this on, an asterisk should be placed  
22 next to those particular sections for an in-depth  
23 review.

24 So, in a nutshell, once again, my motion would  
25 be that the MACOSH Shipbuilding Committee recommends to

1 OSHA that the entire Subpart D be reviewed and updated.  
2 This was once again voted on by the committee  
3 unanimously yesterday to be put before the full  
4 committee as a product to OSHA.

5 CAPT. PRESTON: Second.

6 CHAIRMAN THORNTON: Okay. I have a motion and  
7 a second.

8 Discussion on the motion by the committee?

9 MR. CASTANHO: One question.

10 CHAIRMAN THORNTON: Yes, John?

11 MR. CASTANHO: Don, I had one question. On  
12 page 1 of the horizontal table.

13 MR. RAFFO: Which subpart?

14 MR. CASTANHO: Subpart D, we're on right now.

15 MR. RAFFO: Right.

16 MR. CASTANHO: On your proposal, the far  
17 right-hand side, towards the bottom you have some bold  
18 text there. It says "Suggestion for new definitions  
19 specific to the maritime industry". So are you looking  
20 at this new definition to appear in 1917 or are we --

21 MR. RAFFO: 1915.

22 MR. CASTANHO: 1915.

23 MR. RAFFO: Right. 1915.

24 MR. CASTANHO: Okay. The maritime industry.

25 MR. RAFFO: Right. Once again, that was sort

1 of a, I don't way to say a late edition, but we debated  
2 that yesterday and that was once again a late edition.  
3 Once again, I don't want these to be taken verbatim  
4 because they are merely suggestions. They're not a  
5 specific recommendation as to how we're telling or  
6 suggesting OSHA word these sections.

7 CHAIRMAN THORNTON: Okay. Other  
8 questions/comments from the committee?

9 (No response)

10 CHAIRMAN THORNTON: Hearing none, if the  
11 public has questions, if you'd raise your hand so I can  
12 see how many I have. Yes, sir?

13 MR. BURDGE: Gavin Burdge, BMT Designers and  
14 Planners. One of the standards addresses the removal  
15 of coatings. Was it the committee's intent to have  
16 Air-Line respirators equal to removal of the hazard?

17 MR. RAFFO: Once again, we're not, in a sense,  
18 making specific recommendations down to the word and  
19 the period. What we're saying is, initially, there is  
20 a blanket four-inch rule for coatings which started  
21 this discussion off a year and a half ago. We felt  
22 that there were other options out there ranging from  
23 monitoring employee exposure for shipyards that are  
24 capable of doing it, or for shipyards that are not  
25 capable of doing it, to maintain the potential use of

1 an Air-Line respirator. We are asking for a review of  
2 the standard, to update it and to allow some  
3 flexibility.

4 MR. BURDGE: Okay. Thank you.

5 CHAIRMAN THORNTON: Thank you.

6 Other questions/comments from the public?

7 (No response)

8 CHAIRMAN THORNTON: Hearing none, I'm going to  
9 call the question. All in favor of the motion, please  
10 signify by saying "aye".

11 (Chorus of Ayes)

12 CHAIRMAN THORNTON: Opposed?

13 (No response)

14 CHAIRMAN THORNTON: Thank you.

15 Next?

16 MR. RAFFO: Okay, Mr. Chairman. So we've  
17 moved basically two big items off our plate, but it  
18 doesn't mean the Shipyard Committee is on a diet.

19 (Laughter)

20 CHAIRMAN THORNTON: I hope not.

21 MR. RAFFO: We had a lively discussion  
22 yesterday on Subpart S, the electrical standard. We  
23 had, I guess I would say, the benefit of having David  
24 present to us his discussion before our presentation  
25 today. During the break, I was sort of taken out to

1 the wood shed --

2 (Laughter)

3 MR. RAFFO: -- and said, based on his  
4 discussion, I guess it stirred up the hornet's nest.  
5 So, the Shipyard Committee at this point, we had it on  
6 our plate yesterday. We were trying to focus in on it.  
7 I think after discussion today, we are going to fine  
8 tune it and focus in on it. We are not ready, I don't  
9 think, right yet to make a recommendation, but we want  
10 to discuss with a possible potential recommendation for  
11 next time.

12 One request we had yesterday, and we talked to  
13 Joe about this, is we request OSHA provide MACOSH the  
14 proposed CSAC Subpart L for review, the electrical  
15 standard. Our discussion focused, I guess, essentially  
16 on, is a maritime electrical standard called for  
17 separately from the present standard, the defined one?  
18 That is, I think, our general task statement after  
19 today and after our discussions. I just don't feel  
20 that at this point we have a substantiation to make a  
21 recommendation, but we have a lot more questions, I  
22 guess, than we had before.

23 CHAIRMAN THORNTON: So to summarize, I guess,  
24 the workgroup wants to consider the information  
25 presented by Dave and whether or not it wishes to take

1 action, if any. Is that right?

2 MR. RAFFO: Yes. My guess is we'll take some  
3 action, yes, but we're not ready.

4 CHAIRMAN THORNTON: I'm not trying to lead  
5 you. I'm trying to understand what you're saying.

6 MR. RAFFO: Yes.

7 CHAIRMAN THORNTON: You're looking at it.

8 MR. RAFFO: We are looking at it. We are  
9 continuing to look at it. We are trying to sharpen our  
10 focus to come to a recommendation and we'll be working  
11 on that through our conference calls, hopefully for the  
12 next meeting.

13 CAPT. PRESTON: Well, I'd like to clarify  
14 that. Yes, we do want to take action. It's just  
15 whether or not we want to ask you guys to give us our  
16 own standard or whether or not we want to ask you guys  
17 for further clarification. But, yes, we do want to  
18 take action of some sort. Sorry.

19 CHAIRMAN THORNTON: So you want something.  
20 You're not sure what it is right now, but you're sure  
21 something's going to happen.

22 CAPT. PRESTON: Yes. Oh, yes.

23 MR. RAFFO: Yes.

24 CHAIRMAN THORNTON: Is that right?

25 CAPT. PRESTON: Oh, yes.

1 MR. RAFFO: Yes.

2 CHAIRMAN THORNTON: All right.

3 MR. RAFFO: Okay.

4 And finally, once again, we took on another  
5 task. OSHA has developed a shipbreaking draft  
6 document, which has already been done, but we would  
7 like to request that OSHA make the shipbreaking or ship  
8 scrapping document available for review by the shipyard  
9 group. I believe everybody in the group received that  
10 package this morning. We will be reviewing and  
11 commenting on that for, once again, another product.

12 So, a brief summary. We have pulled two big  
13 items that we've worked long and hard on off our plate  
14 today and submitted them as recommendations, and we've  
15 added a couple more, one that we've been working on and  
16 has been moved to the forefront a little bit, and  
17 another new item, the shipbreaking document.

18 CHAIRMAN THORNTON: I have two comments. One  
19 is, I want to commend the committee. I think you've  
20 done a lot of good work. I think the documents that  
21 have been presented are well organized and well stated,  
22 and I think, in keeping with the concept of perhaps  
23 explaining or clarifying positions of the workgroup  
24 such that the committee itself could make decisions or  
25 posterity will understand where the workgroup and the

1 committee is coming from is very good, so I want to  
2 commend you on that.

3 The second is, as with the other workgroups,  
4 we'd appreciate a bit of an executive summary to this  
5 effect so I can build this and put this into the  
6 rechartering draft.

7 MR. RAFFO: I will get you that.

8 CHAIRMAN THORNTON: Thank you.

9 MR. RAFFO: Thank you.

10 CHAIRMAN THORNTON: Any more from the Shipyard  
11 Committee, questions of Don?

12 (No response)

13 CHAIRMAN THORNTON: Thank you.

14 Now, last, but certainly not least, the Health  
15 Workgroup. Thank you, by the way, for standing in in  
16 advance for Steve Hudock, who could not make it, from  
17 NIOSH.

18 So, with that I'm going to turn it over to  
19 Marc MacDonald.

20

21

22

23

24

25



1 (Whereupon, the document referred  
2 to as Exhibit 12 was marked for  
3 identification and entered into  
4 the record.)

5 MR. MacDONALD: And I realize the audience  
6 does not have this. We discussed this yesterday in our  
7 workgroup and there were some suggestions on the  
8 document which I'd like to go over today. This is a  
9 proposed OSHA fact sheet.

10 As Susan has noted, it's entitled "Working  
11 Safely Around U.S. Customs and Border Protection  
12 Vehicle and Cargo Inspection Systems and Radiation  
13 Portal Monitors". It was brought up by members of the  
14 committee as a concern for workers as these new items  
15 appear on the terminals.

16 Let me just paraphrase the contents of the  
17 fact sheet. U.S. Customs and Border Protection employs  
18 several types of cargo inspection devices on marine  
19 terminals. The most common devices are radiation  
20 portal monitors and mobile vehicle and cargo inspection  
21 system units. This fact sheet provides a brief  
22 overview on the safety of the cargo inspection  
23 equipment. Again, this is intended to be an overview.  
24 It's intended to give people an idea of what Customs is  
25 doing, and the inherent or apparent dangers of that.

1           Radiation portal monitors do not emit  
2 radiation, but instead measure if containers are  
3 emitting any radiation. If a container is emitting  
4 radiation, the type of radiation is further analyzed to  
5 determine the source of the radiation, for example,  
6 ceramic tiles or fertilizers.

7           Mobile Vehicle and Cargo Inspection Systems,  
8 VACIS--and this is a trademark of the SAIC company--  
9 units use natural radiation sources such as cesium and  
10 cobalt. Rapiscan Eagle and Smiths units--and those are  
11 all trade names for those types of units and they're  
12 noted on the side of the unit when it's at the  
13 terminal--use X-rays to scan containers.

14           All of these devices allow the CBP to look  
15 through the container to see what's inside and to  
16 examine the contents of cargo containers at a marine  
17 terminal without unloading them. These devices all use  
18 similar safety systems.

19           There are three primary means used to protect  
20 marine terminal workers from radiation exposure during  
21 the operation of cargo inspection devices: 1) the  
22 radiation beam is directed away from workers; 2) some  
23 shielding is used to protect CBP workers who operate  
24 the equipment; 3) controlled areas/exclusion zones are  
25 established and patrolled by CBP around the machine to

1 prohibit exposure of marine terminal workers.

2           This third step takes advantage of the inverse  
3 square rule for radiation exposure. Stated simply,  
4 radiation exposure levels drop off very rapidly with  
5 distance. The radiation strength 10 yards from a point  
6 source will be 100 times less than the strength of  
7 radiation 1 yard away. The strength of radiation 20  
8 yards from the source will be 400 times less than the  
9 radiation strength at one yard.

10           CBP has established controlled areas around  
11 cargo inspection equipment so radiation levels outside  
12 the controlled areas are so small as to be virtually  
13 immeasurable. Even if a worker spent their entire  
14 shift just outside the edge of the control area for one  
15 year, the worker would receive much less radiation  
16 exposure from cargo screening activities than the  
17 worker would receive from one chest X-ray.

18           It has been estimated that receiving a chest  
19 X-ray at a hospital increases the risk of cancer by one  
20 million in a year. In other words, if one million  
21 people each got a chest X-ray, one of them will get  
22 cancer that they otherwise would not have in a year.

23           For comparison, here are some other activities  
24 that increase your risk of dying by one in a million  
25 per year. This is a list of one in a million

1 probabilities that was taken from R. Wilson, "Analyzing  
2 the Daily Risks of Life" in a *Technology Review*. For  
3 instance, smoking 1.4 cigarettes, drinking 17 ounces of  
4 wine, living two days in New York or Boston from air  
5 pollution --

6 (Laughter)

7 MR. MacDONALD: -- traveling 300 miles by car  
8 from an accident, flying 1,000 miles by jet from an  
9 accident, flying 6,000 by jet from cosmic radiation,  
10 and there are others in here.

11 So in comparison, the risk from the CBP's  
12 cargo screening activities is significantly less than  
13 the risk of smoking 1.4 cigarettes, taking one cross-  
14 country jet flight, or eating 100 charbroiled steaks.

15 Customs and Border Protection, a Federal  
16 agency, operates all cargo screening devices. CBP has  
17 determined safe operating procedures for their  
18 personnel and to ensure any exposure to other workers  
19 is kept to an absolute minimum, with a goal of being no  
20 exposure. CBP personnel are the only workers allowed  
21 within the controlled areas because of their special  
22 training and safety equipment.

23 CBP has determined the size of the controlled  
24 area at any given facility and is responsible for  
25 preventing unauthorized workers from entering the

1 controlled area when the cargo screening equipment is  
2 in use. The size of the controlled area is designed to  
3 ensure that the level of radiation at the edge of the  
4 controlled area should not be measurable. Therefore,  
5 if individuals stay outside of the controlled area  
6 there is negligible exposure. So, that's the fact  
7 sheet that our working group came up with. We had a  
8 number of people provide inputs to this, and I would  
9 recommend that we discuss it and recommend to OSHA to  
10 adopt it.

11 CHAIRMAN THORNTON: Okay. So saying it in the  
12 form of a motion then, are you offering this into the  
13 record and then your motion is to request that OSHA  
14 publish it?

15 MR. MacDONALD: Yes, Mr. Chairman. I make a  
16 motion that this be offered into the record. I think  
17 Ms. Sherman has already said this might be Exhibit 12.  
18 Then for the committee to recommend to OSHA that they  
19 publish a fact sheet on this topic.

20 VOICE: Second.

21 MS. SHERMAN: Just a point of clarification.  
22 Weren't there a couple of sentences in this draft that  
23 were changed by the workgroup and were incorporated in  
24 here?

25 MR. MacDONALD: That is correct.

1 MS. SHERMAN: So this document is not exactly  
2 what the workgroup received.

3 MR. MacDONALD: No, it is not. That's why we  
4 brought it back here to discuss with the full committee  
5 with the new date on it.

6 MS. SHERMAN: Okay. Could you briefly  
7 summarize for the committee the changes that the  
8 workgroup made?

9 MR. MacDONALD: Yes. In paragraph 3, we were  
10 using the term "VACIS" to include all kinds of vehicle  
11 and cargo inspection systems, where it was pointed out  
12 that VACIS is a trade name for SAIC. So we clarified  
13 that VACIS is an SAIC trade name, and it uses the  
14 natural radiation sources cesium and cobalt. We added  
15 in two other devices by name, Rapiscan Eagle and  
16 Smiths, which are X-ray type devices. As I noted, when  
17 they come on the terminal they'll have those names on  
18 the sides of the unit so people can identify them, and  
19 those units use X-rays. So, that was one main thing.

20 The other thing was, at the bottom of the  
21 first page and the top of the second page, there were  
22 some disjointed words there. We wordsmithed that  
23 paragraph, "CBP has established controlled areas around  
24 cargo inspection equipment so radiation levels outside  
25 the controlled areas are so small as to be virtually

1 immeasurable." I believe that sentence stayed the  
2 same.

3 Then we deleted one sentence and combined the  
4 next: "Even if a worker spent their entire shift just  
5 outside of the edge of the controlled area, the worker  
6 would receive much less radiation exposure from cargo  
7 screening activities than the worker would receive from  
8 one chest X-ray." So, those were two separate  
9 paragraphs, Susan, that were combined together, so  
10 that's one other change we made.

11 Then the third change focused on just the way  
12 the wording ended. It was, again, a little bit of  
13 redundant wording, so we just basically shortened up  
14 the last sentence: "Therefore, if individuals stay  
15 outside of the controlled area, there is negligible  
16 exposure..." It went on to say, "from Customs  
17 screening activities..." and stuff like that. But  
18 those are basically the three areas where the workgroup  
19 focused and recommended changes, and those are the  
20 three changes that were made.

21 MS. SHERMAN: Thank you.

22 CHAIRMAN THORNTON: Mike?

23 MR. FLYNN: Yes. The Customs and Border  
24 Control. You say "established control area". Is that  
25 a measured area? I mean, they measure it down to 1.4

1 cigarettes. I was wondering if they have a --

2 MR. MacDONALD: Yes. Basically, the best  
3 source for the public to know what those areas are are  
4 the environmental assessments that they publish based  
5 on the type of equipment they are using. In other  
6 words, the cesium and cobalt devices have one measured  
7 area. The X-ray devices, because they're more  
8 powerful, have a bigger measured area, but it is a  
9 defined measured area.

10 MR. FLYNN: So they have a defined --

11 MR. MacDONALD: Defined measured area. And  
12 the issue for the marine terminals, is that they put  
13 the dimensions around one container and then they ask  
14 you to line up 30 or 40 to do the surveys. So, the  
15 areas become larger because of that.

16 MR. FLYNN: For the cesium and the X-rays, are  
17 there different measured areas?

18 MR. MacDONALD: They are very nearly similar,  
19 so the areas for those are very similar. But the X-  
20 rays are larger, significantly larger.

21 CHAIRMAN THORNTON: John?

22 MR. CASTANHO: After our workgroup met  
23 yesterday I was asked two questions about this and I  
24 didn't have an answer for either one of them, so I want  
25 to ask now.

1           Both of them are on page 2. I guess this is  
2 just to clarify the document. The first question, is  
3 the second paragraph, the reference that "it has been  
4 estimated that receiving a chest X-ray at a hospital  
5 increases the risk of cancer by one in a million a  
6 year." Did we have a reference to that statement? Do  
7 we have a source we can quote on that?

8           CAPT. PRESTON: It's the same source.

9           CHAIRMAN THORNTON: You're having a side  
10 discussion. Can anyone answer John's question?

11           MR. MacDONALD: I can't answer it directly. I  
12 would assume it came from Wilson, but I don't know. In  
13 other words, what you're saying is, we should have a  
14 footnote on that.

15           MR. CASTANHO: Well, if it's the same person,  
16 maybe a footnote, yes. I think that would be something  
17 that would be worthwhile.

18           CHAIRMAN THORNTON: I think, if we can  
19 research it, typically footnotes -- you may start with  
20 double quotes and end with double quotes so you know  
21 where the reference actually started and stopped. If  
22 we can double check that, I think that's really your  
23 question, isn't it?

24           MR. CASTANHO: Correct.

25           CHAIRMAN THORNTON: Okay.

1 Do you understand, Marc?

2 MR. MacDONALD: Uh-huh.

3 CHAIRMAN THORNTON: Okay. Good.

4 MR. CASTANHO: The second question was the  
5 second-to-last paragraph. It starts, "So in  
6 comparison, the risk from CBP's cargo screening  
7 activities is significantly less than the risk of  
8 smoking," and it goes on, "smoking, jet flying, and  
9 eating 100 charbroiled steaks."

10 The question that was asked is, what is the  
11 measurement of risk that we're using in this  
12 comparison? Is it the exposure over eight hours? Over  
13 one year? It's not clear. You're making a comparison  
14 there but it's not clear what the exposure risk is that  
15 you're using as a base to compare to these other risks.

16 MR. MacDONALD: The wording was intended to  
17 make the base one year. In other words, even if a  
18 worker spent the entire shift just outside the edge of  
19 the control area for one year, the worker would receive  
20 much less radiation exposure from cargo screening  
21 activities than the worker would receive from one chest  
22 X-ray. And then following on from there, it was trying  
23 to relate it to the one in a million, which is one in a  
24 million per year. So, it is significant to one year.

25 MR. CASTANHO: That's one year, eight hours a

1 day, 365 days a year? I don't mean to nitpick this  
2 thing, but I've been asked this and I don't know.

3 MR. ADAMS: Let me help Marc out, if I can. A  
4 worker spends their entire shift just outside the edge  
5 of a control area for a year, so that's one year of  
6 work for a worker, an eight-hour shift--assuming an  
7 eight-hour shift. It doesn't say "eight-hour shift"--  
8 and one chest X-ray, he will receive less of an  
9 exposure than one chest X-ray. One chest X-ray falls  
10 into one million people, or one in a million will  
11 develop cancer because of that.

12 MR. CASTANHO: I understand all that. What  
13 I'm trying to determine is what a "year" is. Is it  
14 eight hours a day, 40 hours a week outside of this  
15 area? Or are we talking about standing outside of this  
16 area for 365 days?

17 MR. RAFFO: I would assume almost every study  
18 is based on an eight-hour day, 40-hour week. Right. I  
19 wouldn't think it would be 365 days times 24 hours.

20 CHAIRMAN THORNTON: Susan has a question.

21 MS. SHERMAN: Yes. In view of the questions  
22 that have been raised based on this document, I guess  
23 I'm not sure who the drafter of this document is, which  
24 directorate within OSHA, et cetera. Does anybody in  
25 the audience happen to know?

1 (No response)

2 MS. SHERMAN: Because we can consult with them  
3 for the answers to some of these questions.

4 MR. MacDONALD: The document was generated  
5 basically by the Health Workgroup. So I think what I'm  
6 going to do, is I'm going to retract my motion and just  
7 take it under advisement for these last-minute  
8 questions and then come back at the next meeting with  
9 the answers, and hopefully final wording.

10 MS. SHERMAN: Okay. So if I could understand,  
11 the Health Workgroup generated this document, but it  
12 says "OSHA Fact Sheet" because that's what they  
13 intended to present? Is that correct?

14 MR. MacDONALD: That's correct.

15 MS. SHERMAN: Okay. But this is not an OSHA  
16 product as of right now?

17 MR. MacDONALD: No. Not until OSHA reviews  
18 it, blesses it, and publishes it.

19 MS. SHERMAN: Okay. I just didn't quite  
20 understand.

21 CHAIRMAN THORNTON: I think, to clarify, I  
22 guess, my understanding is, the Health Workgroup  
23 prepared this document, ostensibly to be issued as an  
24 OSHA fact sheet. If the committee--full committee--  
25 had approved this at this time, it would be offered as

1 a template, as a draft for said fact sheet, I guess.  
2 Is that not correct?

3 MS. SHERMAN: That's my understanding.

4 CHAIRMAN THORNTON: Right. So what I also  
5 heard then, there have been some questions that have  
6 arisen here that the Health Workgroup needs to take  
7 under advisement, and Marc--and someone over here  
8 seconded--has agreed to withdraw the motion for  
9 approval of this draft, and needs a little more time to  
10 go and research these questions. Is that where this  
11 is?

12 MR. MacDONALD: Yes. I think the other thing,  
13 Mr. Chairman, I would solicit, since there are some  
14 questions that have come up that didn't come up in the  
15 workgroup, if there's other questions on this, people  
16 should bring them forward so that they can be addressed  
17 and we can finally get to a conclusion.

18 CHAIRMAN THORNTON: Okay. What I'd like you  
19 to do then, is take the questions that have come up  
20 from the floor here under advisement. Okay. If any of  
21 the committee--full committee--has questions, further  
22 questions, please get those to Marc. He will then work  
23 with Steve and take this then back to the Health  
24 Workgroup. But at this time I'm not hearing a motion  
25 for acceptance of this document. Okay. Fair?

1 MR. MacDONALD: Uh-huh.

2 CHAIRMAN THORNTON: All right.

3 MR. FLYNN: And, Mr. Chairman?

4 CHAIRMAN THORNTON: Yes?

5 MR. FLYNN: I would just like to add, I mean,  
6 I was under the impression this was an OSHA-authored  
7 document. These figures look kind of familiar. I  
8 don't know if it was from the salesmen on these  
9 machines.

10 (Laughter)

11 MR. FLYNN: But it's a 27-year-old quote.  
12 They're using data from 1979. I would just like to  
13 suggest that there may be more current data that can be  
14 used as a comparison than one that's 27 years old.

15 CHAIRMAN THORNTON: Okay.

16 Any more questions by the committee on this?

17 (No response)

18 CHAIRMAN THORNTON: Okay. I had one question  
19 from the public, I think. Mr. Davis?

20 MR. DAVIS: DeWitt Davis. When I looked at  
21 that list, it was rather long. I'm wondering how many  
22 cigarettes I should stay away from, the equivalent.  
23 Maybe it's two cigarettes, or one and a half  
24 cigarettes. So I think some of the comparisons are  
25 interesting, but they don't speak to the formulation of

1 what the risk is, which is rather technical. So I  
2 think your job of getting more current data is going to  
3 be a little harder than you think, but there is data  
4 that applies directly to ionizing and non-ionizing  
5 radiation. Those examples ought to be culled from that  
6 rather than how many glasses of wine, although I  
7 thought I preferred the wine than the radiation.

8 MR. MacDONALD: The dilemma that we had, if I  
9 can respond to that, is just how to put this into terms  
10 that the lay person can understand with regard to the  
11 risk. If you start getting into the technical side of  
12 it, you tend to lose people. I mean, we have had  
13 Customs and Border Protection address this committee  
14 before on this topic. There was a lot of skepticism, I  
15 guess is the word, if I may use that word, on the  
16 reaction to his presentation. I believe it was because  
17 nobody could relate to it directly. This fact sheet  
18 was an attempt to try to do that.

19 MR. DAVIS: Yes. I think you could use  
20 examples which are based on radiation rather than those  
21 examples, and they could be rather simpler.

22 MR. MacDONALD: Flying 6,000 miles by jet from  
23 cosmic radiation is --

24 MR. DAVIS: Well, that's a radiation example.

25 MR. MacDONALD: Living two months in a stone

1 or brick house from natural radiation.

2 MR. DAVIS: Yes. Those were good. But I just  
3 thought some of the others would be misleading and get  
4 you into trouble. How many drinks do you have to have  
5 to be equal?

6 MR. MacDONALD: The comment that this is a  
7 1979 document is well taken. We'll try to find  
8 something that's newer. But the table, if you will,  
9 was taken intact. It wasn't like we cherry-picked, is  
10 what I'm trying to say, so that's why you get some  
11 examples that you may not agree with.

12 MR. DAVIS: Yes. I think you'd get in trouble  
13 with that one. I think you need a new list.

14 CHAIRMAN THORNTON: Stew?

15 MR. ADAMS: Just to reiterate what Marc said,  
16 we were really searching to make something comparable  
17 so it could relate to somebody, whatever that somebody  
18 is.

19 MR. MacDONALD: Right.

20 CHAIRMAN THORNTON: Don?

21 MR. RAFFO: Once again, the Naval Nuclear  
22 Propulsion program that trains radiation workers  
23 throughout the country, to a much higher level of  
24 radiation than we're talking about here, uses the same  
25 concepts, trying to relate radiation exposure to the

1 hazards of everyday life. That's what we tried to  
2 illustrate in this fact sheet. Your exposure to  
3 radiation from these devices can be related to the  
4 effects or dangers, or compared to the dangers of  
5 everyday living. That's what our goal was, to try to  
6 teach the audience the dangers of exposure.

7 CHAIRMAN THORNTON: I'm going to declare the  
8 horse dead. The committee has been instructed to go  
9 back and get some more data. They've got the questions  
10 that they need to work through. I think they've got  
11 the sense of that. So, I'm going to respectfully  
12 request that you move on to your next item.

13 MR. MacDONALD: Thank you, Mr. Chairman. I  
14 will do so, because hopefully that will be an easier  
15 one.

16 (Laughter)

17 MR. MacDONALD: Item number 2 is ergonomic  
18 guidelines. My job reporting here was made much easier  
19 by Mr. Seymour and Dr. Snyder, who made an excellent  
20 presentation. They also made the presentation on their  
21 ergonomic guidelines for shipyards at the Health  
22 Workgroup Committee, and were very open in discussing  
23 and soliciting comments and discussing some of the  
24 comments that they had received to try to put them into  
25 perspective.

1 I think, to a person in the workgroup,  
2 everybody thought this was a very good document.  
3 Again, they've already been given some kudos and thanks  
4 for putting it together. I think I speak for everybody  
5 in the workgroup by saying that, again.

6 We would like to make a motion that the MACOSH  
7 group accept this document and forward it to OSHA, and  
8 recommend that it be published as an official OSHA  
9 document.

10 CHAIRMAN THORNTON: Do I have a second?

11 MR. ADAMS: Second.

12 CHAIRMAN THORNTON: Okay. Second.  
13 Discussion?

14 CAPT. PRESTON: I don't know that we need to  
15 do it quite that way. I think all we really need is a  
16 motion to endorse the document and encourage OSHA to  
17 get it out on the streets as quickly as possible. Yes?  
18 It's their document. Why are we giving it back to  
19 them?

20 MR. MacDONALD: I will defer to Captain  
21 Preston on that and will re-word that motion.

22 CHAIRMAN THORNTON: We have a motion, we have  
23 a second. We are in the discussion period. Okay. So,  
24 there's a motion on the floor, we have a second. If  
25 you want to withdraw or do something else, you've got

1 to withdraw and start over.

2 MR. MacDONALD: Mr. Chairman, I'll withdraw my  
3 motion and defer to Captain Preston.

4 CHAIRMAN THORNTON: Okay. The second and the  
5 first have withdrawn.

6 Is there another motion?

7 CAPT. PRESTON: I move that we endorse this  
8 document and encourage OSHA to publish it as soon as  
9 practical.

10 MR. ADAMS: I second it.

11 CHAIRMAN THORNTON: We have a motion and a  
12 second to endorse the document and encourage OSHA to  
13 publish this as soon as practicable. That's the  
14 essence of the motion.

15 Discussion on the motion by the committee?

16 (No response)

17 CHAIRMAN THORNTON: Anything by the public?

18 (No response)

19 CHAIRMAN THORNTON: Thank you very much. I'm  
20 going to call for the question. All in favor of the  
21 motion, please signify by saying "aye".

22 (Chorus of Ayes)

23 CHAIRMAN THORNTON: Opposed?

24 (No response)

25 CHAIRMAN THORNTON: Thank you.

1           Next item, please.

2           MR. MacDONALD: The next three items are just  
3 reports where there's been no real phone calls with our  
4 group. NIOSH noise studies. Mr. Hudock reported that  
5 there's nothing significant to report on those.

6           Diesel emissions. The studies there pend. No  
7 significant work has been done by the committee,  
8 however, we did in the workgroup discuss that a new  
9 study is out by the American Heart Association, and it  
10 was also noted that there's many, many new regulations  
11 that seem to be proliferating with regard to diesel  
12 engines.

13           On the AEDs, it was reported that a life had  
14 been saved on the West Coast by the quick action of co-  
15 workers and supervision using CPR and an AED that saved  
16 the life of a person on the West Coast marine terminal,  
17 so that was very good.

18           That concludes my report, Mr. Chairman. At  
19 this time I can go down as a summary of the status of  
20 where we are on the projects if you would like.

21           CHAIRMAN THORNTON: What is the pleasure of  
22 the committee? Do you want to hold on that? Would  
23 that be okay? What I'd like to have, though, is that  
24 be part of your executive summary that you or Steve  
25 will forward that sort of tells where the Health

1 Workgroup is, what work has been completed, what work  
2 is in progress, and we'll receive those along with the  
3 others. I will include that in my draft letter for  
4 recharter. How about that?

5 MR. MacDONALD: I will do that, Mr. Chairman.

6 CHAIRMAN THORNTON: Thank you.

7 Anything more from the Health Workgroup?

8 MR. MacDONALD: No, Mr. Chairman.

9 CHAIRMAN THORNTON: Thank you.

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OPEN DISCUSSION

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2 CHAIRMAN THORNTON: What I'd like to do, I  
3 know you have the soonest, I think, 6:55. Anyway,  
4 we're closing in, if we can just spend a couple of  
5 minutes kind of closing.

6 I'd like to do a couple of things. First, is  
7 this is kind of open mic. I always like to do this.  
8 I'm going to start on one side or the other.  
9 Particularly, I want to talk about process. I  
10 constantly want us to use our time -- our time is  
11 precious and valuable and I want to use this as  
12 efficiently as possible. So, I kind of want to go  
13 around the table and ask you to make comments on  
14 process, on anything you want to talk about in terms of  
15 our meeting and how we can make it better, or anything  
16 that you wish to add. I want to start over here with  
17 Ken.

18 MR. SMITH: Thank you, Mr. Chairman. I do  
19 have one comment that I'd like to make. I think that  
20 the meetings can be run a little bit more efficiently  
21 if, at the end of the first day, the committee is  
22 allowed to have in hand documents that they may be  
23 having to vote on on the following day. That way we  
24 can take them back to our rooms or homes and review  
25 them, and then come to the full meeting ready to

1 discuss rather than waiting till the next meeting.

2 Thank you, sir.

3 CHAIRMAN THORNTON: I agree with that. That  
4 was one of my notes. We need to work with staff and  
5 maybe figure out an arrangement so the work products of  
6 the workgroups, if we modify them, we can kind of do it  
7 on the run, so to speak, and come to the committee  
8 meeting with sort of a final, complete document. We'll  
9 work with the staff and we'll figure out how to do  
10 that. I think that's an excellent comment.

11 MR. SMITH: Thank you.

12 CHAIRMAN THORNTON: John?

13 MR. CASTANHO: I had just one brief comment, I  
14 guess. You touched on the sacrificing of time. On  
15 behalf of the committee, we'd like to thank you for  
16 being here, knowing that you just came from a funeral  
17 from your father-in-law, I believe it was, who just  
18 passed away. Anyone that's lost a family member knows  
19 that's tough. On behalf of this committee, we  
20 appreciate you taking the time away from your family to  
21 be here. So, we thank you.

22 CHAIRMAN THORNTON: Thank you very much.  
23 Thank you for saying so.

24 MR. WHELAN: I think, Jim, probably the only  
25 recommendation would be, once again we're missing a

1 couple of our labor representatives, particularly the  
2 I.L.A. representative. I think a phone call or a  
3 letter would be appropriate to encourage them to  
4 participate. They certainly should be here. That  
5 would be my only comment. The other one would be to  
6 everyone here: I hope everyone has a great holiday, and  
7 a happy holiday. Best wishes to everyone.

8 CHAIRMAN THORNTON: Thank you, Ernie.  
9 Jim?

10 MR. BURGIN: I was going to say what Ernie  
11 said. To speak to that real quickly, the NMSA Board of  
12 Directors is real close to the executives at the I.L.A.  
13 and they're doing their part to push them to get and be  
14 more active in this.

15 CHAIRMAN THORNTON: Well, any help would be  
16 appreciated.

17 Don?

18 MR. RAFFO: Just a brief comment. Once again,  
19 a lot of the work that we do here is sort of unseen by  
20 everyone during our conference calls. I appreciate the  
21 help from OSHA to sort of guide and direct us to an  
22 acceptable product that the committee can look at. I  
23 realize scheduling conference calls is much more  
24 difficult than I ever thought it would be, so it's a  
25 challenge to do that. Once again, a lot of the work

1 goes on behind the scenes that no one really sees here,  
2 so I want to thank everyone here.

3 CHAIRMAN THORNTON: Joseph?

4 MR. DADDURA: I'm fine.

5 CHAIRMAN THORNTON: Good.

6 Susan?

7 MS. SHERMAN: No comment.

8 CHAIRMAN THORNTON: David?

9 MR. WALLIS: I only have one comment. My big  
10 comment is, I want to thank the committee for coming  
11 here. You do a valuable job. For the two short days  
12 you're here, you're very productive and get a lot of  
13 work done.

14 My next item--my last one--is that I know the  
15 staff works very hard to keep these meetings running as  
16 smoothly as possible, but we're always open to any  
17 suggestions from all of you to improve what we do for  
18 you to help keep the meetings productive.

19 CHAIRMAN THORNTON: Marc?

20 MR. MacDONALD: Mr. Chairman, the only  
21 suggestion I've got is that we've got to use or rely on  
22 the conference calls almost more than the workgroup,  
23 because if you try to -- and I agree with Ken about  
24 getting the papers here so everybody has a chance to  
25 review them the night before. But in some cases, if

1 you're doing work on the fly in the workgroup, you're  
2 doing the corrections during the night and getting it  
3 back out the next day. So, I don't know.

4 There's a little bit of a conflict with that  
5 there. So I would stress that we should be trying to  
6 do as much as we can at the conference calls, so that  
7 when we get to the working groups, it's more pro forma,  
8 perhaps, and last-minute stuff rather than trying to do  
9 major editing and stuff like that.

10 CHAIRMAN THORNTON: Thank you.

11 Charles?

12 MR. LEMON: I would also echo on a lot of  
13 things that were already said, such as what Ken said,  
14 and Don. But I would mention that it is difficult to  
15 fly across the country right after a holiday. But  
16 other than that, it was an experience, anyway. Thank  
17 you.

18 CHAIRMAN THORNTON: Terri?

19 CAPT. PRESTON: I am amazed we get what we get  
20 done in two days. It's exhausting. I mean, it really  
21 is. I know the staff must be killing themselves to  
22 support us, because we just show up and do our thing.  
23 Thank you, guys, again. But I guess my only  
24 frustration, and I don't really know how to get around  
25 it, is we do a lot of the work in the workgroup the day

1 before, come prepared with a presentation to the  
2 committee, but then we want to go through all the same  
3 things we went through in the workgroup the day before.

4 So we just need to make sure we set the ground  
5 rules ahead of time so that we know what needs to be  
6 printed, what needs to be handed out, when it needs to  
7 go to the people, because there were some assumptions  
8 made, at least in my workgroup, that we were presenting  
9 something to the full committee to work on, but didn't  
10 necessarily need backup because they've had it in hand  
11 for months. So, you know, just set the ground rules so  
12 we all know ahead of time. That would be great.

13 CHAIRMAN THORNTON: Mike?

14 MR. FLYNN: Thank you. I just wanted to thank  
15 you. For my own personal reasons, I had to back off  
16 from leading the workgroup on the Shipyard, and I want  
17 to thank you for getting a very competent leader, and  
18 thank Don for stepping up and helping out. I  
19 appreciate it.

20 MR. RAFFO: Thank you.

21 MR. ADAMS: It never ceases to amaze me how  
22 much I learn when I come here and interact with  
23 everyone. Don did an awesome job in the two proposals  
24 associated that came out of the Shipyard Working Group,  
25 and he really took the leadership on putting those two

1 together, and all the different activities involved.  
2 It's a good model there as we probably ramp our pace up  
3 to finish those things we want to get done within our  
4 charter. We are going to be moving faster and we're  
5 going to have to be organized. So, it does wear you  
6 out.

7 CHAIRMAN THORNTON: Indeed.

8 Yes, Ken? We'll go around again.

9 (Laughter)

10 MR. SMITH: Thank you. I'd like to make a  
11 comment, and maybe a suggestion based on what Captain  
12 MacDonald and Mr. Lemon had said. Obviously there is  
13 that situation where working groups may need to revise  
14 at the end of the work day on the first day. If the  
15 correspondence group leaders could distribute the final  
16 draft version that the workgroups are coming to the  
17 meetings with to the whole group in advance, they could  
18 take a read on it before they get here and then kind of  
19 be made aware of any minor modifications that might  
20 have been made. That may be a solution, kind of like  
21 the way papers are submitted to the International  
22 Maritime Organization in advance. Countries get a  
23 chance to review them and make comment as they come in.

24 CHAIRMAN THORNTON: Thank you. Go around  
25 again? No? Anyone else?

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(No response)

1                                    CLOSING REMARKS AND ADJOURN

2                    CHAIRMAN THORNTON:  If you'll allow me, I'll  
3 have the final word.  First, I want to thank the  
4 committee.  Yes, I realize this is hard.  These seats  
5 do get hard.  Speaking of that, not only to the  
6 committee, but I'd like to thank the public, because I  
7 know those seats are equally hard out there.  Sometimes  
8 when you sit there, I know you may feel some source of  
9 frustration or wish you were involved more.

10                    But I want to thank you for being here, and  
11 your comments and participation.  We welcome that.  
12 Where we'd like to see you involved equally is in the  
13 workgroups.  We get a lot of work done and a lot of  
14 comments.  So, thank you for that.

15                    The second point.  I've been handed a  
16 calendar, and would just ask you to begin circling your  
17 calendars.  We have a little more granularity around  
18 our meeting schedule.  We're looking at the middle  
19 weeks of March, which are -- the Mondays are the 10th  
20 and the 17th, as possibilities.  So we're looking at  
21 the middle --

22                    MR. FLYNN:  That's Easter.

23                    CHAIRMAN THORNTON:  What did I say?

24                    MR. FLYNN:  Easter is, I think, the 16th.  
25 It's early.

1           CHAIRMAN THORNTON: There it is. It doesn't  
2 show the holidays.

3           MS. WELCH: March 23rd.

4           CHAIRMAN THORNTON: March 23rd. So, see  
5 there? Who said it was Easter? Anyway, so it isn't  
6 Easter. So just kind of look at those two weeks. The  
7 middle weeks in March, beginning with the 10th and the  
8 17th. The 10th and the 17th are Mondays. These are  
9 not final. Just kind of circle those two weeks. Just  
10 pencil it in. Then in June, the first three weeks in  
11 June, the Mondays are 2, 9 and 16. But these are TBD.  
12 Just to give you a little more sense of it if you're  
13 planning a vacation or something. We'll try to get  
14 some dates.

15           Why are you looking at me like that? Because  
16 I know that look. Did I say something wrong?

17           MS. WELCH: No.

18           (Laughter)

19           CHAIRMAN THORNTON: Okay. All right. So,  
20 circle those.

21           The last thing I will say in closing, to  
22 finish up my comments, were think about, when you do  
23 your summaries, what can you do in the remaining time?

24           Don't bite off more than you can chew. Look at how  
25 much time you have left, the tasks you have in front of

1 you, and plan your conference calls. I want to tell  
2 you, since the last meeting the conference call  
3 activity has picked up, the e-mail activity, all the  
4 communication between meetings has picked up, and I  
5 think it shows because we are able to do this meeting  
6 in one day because of the between-meeting work, the  
7 workgroup work, and all of that. So, I encourage you  
8 to continue to do that.

9           The other thing, back to Ken's and somebody  
10 else's point about the information. Yes, this should  
11 be an approval committee rather than making the  
12 sausage, but sometimes it is helpful and necessary to  
13 have some of the background information and why we  
14 thought why we thought, you know, kind of stuff on the  
15 record. I think it helps clarify why we move to do  
16 certain things, and motions to do certain other things.

17           So, yes, I agree with you completely, there  
18 should be an approval committee. Sometimes that needs  
19 to be accompanied by some discussion, just some  
20 rationale. Now, we could have the rationale in written  
21 form which would help even further, but that may help  
22 us be even more efficient.

23           I think, with that, that is all I have. It is  
24 possible, we need to think about this a little bit  
25 more. If you find that the workgroup -- if it helps

1 our discussions of we have a one-and-a-half or two-day  
2 workgroup meeting to even get more granular and maybe  
3 make the sausage even finer and better before final  
4 presentation to this full committee, we can consider  
5 that as well.

6 If you think that is time well spent, we can  
7 think about that. I mean, that may be something that  
8 we want to think about. We'll figure it out. But just  
9 keep that in mind. Does it make sense to add a little  
10 more time in the workgroup so that it makes the full  
11 committee work even more efficient? Maybe. Just think  
12 about it.

13 With that, is there anything else?

14 (No response)

15 CHAIRMAN THORNTON: If not, I'll call for a  
16 motion to adjourn.

17 VOICE: So moved.

18 CHAIRMAN THORNTON: All those in favor may  
19 leave. Thank you.

20 (Whereupon, at 5:32 p.m. the meeting was  
21 adjourned.)

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## C E R T I F I C A T E

1  
2 This is to certify that the foregoing  
3 proceedings of a meeting of the Maritime Advisory  
4 Committee on Occupational Safety and Health, held on  
5 Wednesday, November 28, 2007, at the U.S. Department of  
6 Labor, Frances Perkins Building, Washington, DC, were  
7 transcribed as herein appears, and this is the original  
8 transcript thereof.

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11 LISA DENNIS

12 Court Reporter  
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