UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH
ADMINISTRATION

ADVISORY COMMITTEE ON CONSTRUCTION
SAFETY AND HEALTH

MEETING

THURSDAY, JULY 30, 2009

The meeting convened at 8:30 a.m.
in Room N-3437 A-C of the Frances Perkins
Building, 200 Constitution Avenue, NW,
Washington, DC, Frank Migliaccio, Chair,
presiding.

EMPLOYEE REPRESENTATIVES:

FRANK L. MIGLIACCIO, JR., Executive Director
Safety & Health, International
Association of Bridge, Structural,
Ornamental & Reinforcing Iron Workers

WALTER R. JONES, Associate Director,
Occupational Safety & Health, Laborers
Health & Safety Fund of North America

EMMETT M. RUSSELL, Director,
Department of Safety & Health,
International Union of Operating
Engineers

THOMAS L. KAVICKY, Safety
Director/Assistant to the President,
Chicago Regional Council of Carpenters
EMPLOYER REPRESENTATIVES:

MICHAEL J. THIBODEAUX, President, MJT Consulting, for the National Association of Homebuilders

THOMAS R. SHANAHAN, Associate Executive Director, National Roofing Contractors Association (via teleconference)

WILLIAM R. AHAL, President, Ahal Preconstruction Services, LLC, for the Associated General Contractors

DANIEL D. ZARLETTI, Vice President, Safety, Health & Environment, Kenny Construction Company

STATE REPRESENTATIVES:

KEVIN D. BEAUREGARD, Assistant Deputy Commissioner, Assistant Director,

Division of Occupational Safety & Health, North Carolina Department of Labor

STEVEN D. HAWKINS, Assistant Administrator,

Tennessee Occupational Safety & Health Administration

PUBLIC REPRESENTATIVES:

THOMAS A. BRODERICK, Executive Director,

Construction Safety Council

JEWEL ELIZABETH ARIOTO, Elizabeth Arioto Safety & Health Consulting Services

FEDERAL REPRESENTATIVE:

MATT GILLEN, Construction Program Coordinator/Senior Scientist, Office of the Director, CDC-NIOSH
DOL STAFF PRESENT:

JORDAN BARAB, Deputy Assistant Secretary of Labor for Occupational Safety and Health and Acting Assistant Secretary

MICHAEL M.X. BUCHET, Project Officer, Office of Construction Services, Directorate of Construction, Alternate Designated Federal Official

SARAH SHORTALL, ACCSH Counsel, Office of the Solicitor
### Table of Contents

<table>
<thead>
<tr>
<th>Agenda Item</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Welcome and Opening Remarks</td>
<td>8</td>
</tr>
<tr>
<td>Introductions</td>
<td>9</td>
</tr>
<tr>
<td>Construction Update</td>
<td>15</td>
</tr>
<tr>
<td>Construction Services/Construction Standards and Guidance Updates.</td>
<td>46</td>
</tr>
<tr>
<td>Silica Work Group Report</td>
<td>59</td>
</tr>
<tr>
<td>The Diversity Women in Construction Work Group Report</td>
<td>72</td>
</tr>
<tr>
<td>Welcome and OSHA Update</td>
<td>78</td>
</tr>
<tr>
<td>Training and Education (OTI) Work Group Report</td>
<td>105</td>
</tr>
<tr>
<td>Construction Enforcement - the Legal Perspective</td>
<td>162</td>
</tr>
<tr>
<td>ROPS Work Group Report</td>
<td>198</td>
</tr>
<tr>
<td>Multilingual Issues on Construction Work Sites Work Group Report</td>
<td>208</td>
</tr>
<tr>
<td>Regulatory Compliance Work Group Report</td>
<td>218</td>
</tr>
<tr>
<td>McGraw-Hill Construction Data</td>
<td>231</td>
</tr>
<tr>
<td>OSHA Construction Enforcement - The Field Perspective</td>
<td>276</td>
</tr>
<tr>
<td>McGraw-Hill Construction Stimulus Update</td>
<td>327</td>
</tr>
<tr>
<td>Public Comment</td>
<td>344</td>
</tr>
</tbody>
</table>
E-X-H-I-B-I-T-S

<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Agenda for the July 30-31 ACCSH meeting</td>
</tr>
<tr>
<td>3</td>
<td>April 16-17 ACCSH meeting minutes</td>
</tr>
<tr>
<td>4</td>
<td>Hard copy of the presentation on the roles and functions of OCSG</td>
</tr>
<tr>
<td>5</td>
<td>Approved Silica Work Group Report from the July 29 work group meeting</td>
</tr>
<tr>
<td>6</td>
<td>Approved Diversity Women in Construction Work Group Report from the July 28th, 2009 meeting</td>
</tr>
<tr>
<td>6.1</td>
<td>Hard copy of a PowerPoint entitled, &quot;Women in Construction Medical Issues&quot; presented by Jack Longmire from OSHA's Office of Occupational Medicine</td>
</tr>
<tr>
<td>6.2</td>
<td>BLS Fatality Occupational Injury Report from 2007, Looking at Worker Characteristics Event and Exposure</td>
</tr>
<tr>
<td>6.3</td>
<td>BLS, CFOI Injuries from 2003 Forward</td>
</tr>
<tr>
<td>6.4</td>
<td>Household Data Annual Averages for Employed Persons Detailed by Occupation, Sex, Race and Hispanic or Latino Ethnicity</td>
</tr>
<tr>
<td>6.5</td>
<td>OSHA letter of interpretation from June 7th, 2002 regarding mobile crew access to toilet facilities</td>
</tr>
<tr>
<td>Exhibit No.</td>
<td>Description</td>
</tr>
<tr>
<td>------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>6.6</td>
<td>February 23, '05 OSHA letter of interpretation on providing toilet facilities at construction</td>
</tr>
<tr>
<td>6.7</td>
<td>May 17, '06 OSHA letter of interpretation on sanitation requirements for toilet facilities at construction job sites</td>
</tr>
<tr>
<td>6.8</td>
<td>Draft Women in Construction Quick Card.</td>
</tr>
<tr>
<td>6.9</td>
<td>Draft Women in Construction Fact Sheet.</td>
</tr>
<tr>
<td>7</td>
<td>PowerPoint presentation on the OSHA's Directorate of Training and Education.</td>
</tr>
<tr>
<td>8</td>
<td>May 7, 2009 Memorandum for Cabinet Secretaries from Hilda Solis, Secretary of Labor on OSHA Work Place Activities Related to the American Recovery and Reinvestment Act of 2009</td>
</tr>
<tr>
<td>9</td>
<td>ACCSH list of work groups, the co-chairs and OSHA staff liaises.</td>
</tr>
<tr>
<td>10</td>
<td>Approved Roll Over Protective Structures Work Group Report</td>
</tr>
<tr>
<td>10.1</td>
<td>ACCSH Roll Over Protective Structure proposed edits document on compact excavators.</td>
</tr>
<tr>
<td>11</td>
<td>Approved minutes of the Multilingual Issues on Construction Work Sites Work Group Report from the July 28, 2009 meeting</td>
</tr>
<tr>
<td>Exhibit No.</td>
<td>Page</td>
</tr>
<tr>
<td>-------------</td>
<td>------</td>
</tr>
<tr>
<td>11.1</td>
<td></td>
</tr>
<tr>
<td>Segments of the &quot;Construction Chart Book,&quot; published by Center for Construction and Research Training along with Center for Protection of Worker Rights</td>
<td>215</td>
</tr>
<tr>
<td>11.2</td>
<td></td>
</tr>
<tr>
<td>An article entitled, &quot;Safety, the Universal Language, Literacy and Language Challenges in the Work Place&quot; by Mark Lies and Elizabeth Ash</td>
<td>216</td>
</tr>
<tr>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Approved Regulatory Compliance Work Group Report from the July 29, 2009 meeting</td>
<td>230</td>
</tr>
<tr>
<td>13</td>
<td></td>
</tr>
<tr>
<td>PowerPoint presentation on the McGraw-Hill Construction Data, Dodge Report, presented by Dan Palmer</td>
<td>273</td>
</tr>
<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>PowerPoint presentation on Construction Enforcement - The Field Perspective presented by Darlene Fossum</td>
<td>326</td>
</tr>
<tr>
<td>15</td>
<td></td>
</tr>
<tr>
<td>CD entitled, &quot;Roadway Safety,&quot; plus a Road Construction Industry Consortium Training Program</td>
<td>327</td>
</tr>
<tr>
<td>16</td>
<td></td>
</tr>
<tr>
<td>PowerPoint presentation, McGraw-Hill Construction's Stimulus Report by Dan Palmer</td>
<td>344</td>
</tr>
</tbody>
</table>
CHAIR MIGLIACCI: Good morning.

I'd like to welcome everybody to the hot city of Washington, D.C. It is a little warm and the humidity is up high.

Opening remarks, we'll do, and then the agenda for this morning. We have the construction update by Bill Parsons. We have construction services/construction standards and guidance updates by the Office of Construction Services. And then we have work group reports from education and training (OTI) and silica.

Before I go any further, I'd like to do a little housekeeping. Fire drills, make sure, it the fire drill goes off, you use the stairways, not the elevators. Shelter in place is in this room and the restrooms are right out the doors around to the right. Women's right in the corner, men's just down the hall a little ways. And to the left.
1 There's also restrooms to the left.

2 Cell phones, if you have them, if you could either turn them off or put them on vibrate, we'd appreciate it.

3 We'll do self-introductions at this time. Start with Sarah to my left.

4 MS. SHORTFALL: Hi, I'm Sarah Shortall. I'm ACCSH counsel from the Office of the Solicitor here at Department of Labor.

5 MR. KAVICKY: Tom Kavicky, United Brotherhood of Carpenters and Joiners of America, employee representative of ACCSH.

6 MS. ARIOTO: Elizabeth Arioto, Safety & Health Consulting Services, public member ACCSH.

7 MR. AHAL: Bill Ahal, APS, St. Louis, Missouri, representing AGC employers.

8 MR. RUSSELL: Emmett Russell with Operating Engineers International Union, representing employees.

9 MR. JONES: Walter Jones with the Laborers Health & Safety Fund, representing
the employees.

MR. BRODERICK: Tom Broderick, Construction Safety Council and I am a representative of the public.

MR. THIBODEAUX: Mike Thibodeaux, NEHB, employer/member.

MR. ZARLETTI: Dan Zarletti, employer representative, Kenny Construction, Chicago.

MR. BEAUREGARD: Kevin Beauregard, North Carolina Department of Labor, state representative.

MR. HAWKINS: Steve Hawkins, Tennessee Department of Labor, state plan representative.

MR. GILLEN: Matt Gillen, federal representative, representing NIOSH and the NIOSH Construction Program.

MR. BUCHET: Michael Buchet, designated federal official.

MR. PARSONS: Bill Parsons, Directorate of Construction.
CHAIR MIGLIACCIO: And, Frank Migliaccio with the Iron Workers International representing employees.

If the public will start with Susan.

MR. SHANAHAN: Tom Shanahan's here, too.

CHAIR MIGLIACCIO: I'm sorry.

MR. SHANAHAN: With NRCA.

CHAIR MIGLIACCIO: We do have Tom Shanahan on the phone. I'm sorry.

(Off-mic comment.)

MR. LENZ: T.J. Lenz, with the National Institute of Occupational Safety and Health.

MS. FOSSUM: Darlene Fossum, I'm the area director for OSHA office in Fort Lauderdale, Florida.


MR. THURMAN: Sean Thurman, Associated Builders and Contractors.

MS. WARE: Pat Ware, BNA's occupational, safety and health reporter.

MR. NOSAL: Thad Nosal, the Insurance Services Office.

MS. DOUMA: Jessica Douma, Directorate of Construction.

MR. PONCE: Mikhail Ponce, Directorate of Construction.

MS. ROONEY: Sarah Rooney, Directorate of Construction.

MR. MCKENZIE: Dean McKenzie, DoC.

MR. BOOM: Jim Boom, director of co-op and state programs.

MS. HAUTER: Nancy Hauter, OSHA health enforcement.

MR. PASCALE: Blaise Pascale, American Wind Energy Association.
MS. MYERS: Michele Myers,
American Wind Energy Association.

MR. CANNON: Kevin Cannon, The
Associated General Contractors of America.

MR. WILLIAMS: Chris Williams,
Associated Builders and Contractors.

MR. ROSSER: Mike Rosser,
Corporate Safety Services of Colorado.

MR. DRESSLER: Dick Dressler,
Association of Equipment Manufacturers.

MS. HANSEN: Heidi Hansen,
American Society of Safety Engineers.

MS. KHAN: Alyah Khan, inside
OSHA.

MS. MADDEN-THOMPSON: Teresa
Madden-Thompson, University of Texas at
Arlington, Region VI OSHA Education Center.

MR. PUBAL: Daniel Pubal, Patton &
Boggs Law Firm here in D.C.

MR. DOUGHERTY: Fran Dougherty,
Directorate of Construction.

MS. QUINTERO: Danezza Quintero,
Directorate of Construction.

MR. GLUCKSMAN: And last but not least, Dan Glucksman, International Safety Equipment Association.

CHAIR MIGLIACCIO: Thank you. If anybody in the public would like to sign in in the back with your email address so you can be kept up to what's going on with the committees and so forth, we'd appreciate it.

And also the public comment sign-in sheet in the back. If anybody would like to speak this afternoon, it's in the back of the room. Sign up and we'll have you on this afternoon for public comments.

Before we go any further, I'd like to personally thank Mike Thibodeaux for the service he actually provided to this committee as the past chair.

Mike, thank you very much.

(Appause.)

CHAIR MIGLIACCIO: I'd also like to commend Tom Shanahan for his commitment to
this committee, calling in today from his sick
bed.

Thank you, Tom.

MR. SHANAHAN: You're welcome.

CHAIR MIGLIACCIO: All right. At
this time we'll go ahead and start with the
construction update by Bill Parsons.

MR. PARSONS: Good morning, everyone. I'd like to say that it's my
sincere pleasure to be here today to speak
with you on behalf of the Directorate of
Construction and the Office of Construction
Standards and Guidance.

I'd like to begin by addressing
the actions that have been taken to bolster
the staff within the Directorate of
Construction, specifically this morning the
Office of Construction Standards and Guidance,
and begin by saying that since our last
meeting we've hired four new people for the
Office of Construction Standards and Guidance
who will begin working with the Directorate in
September of this year. We've also advertised and will be interviewing next week for three more people. So we have a total addition to the Office of Construction Standards and Guidance of seven people between now and the end of September, which will provide us some help that we need in working on some of these standards, as well as a primary function of providing support for ARRA activities.

We're going to have some additions to -- we've had some additions to OCS, the Office of Construction Services and Danezza Quintero will be talking about that later and having those folks introduce themselves.

Having said that, one of the recommendations of the Committee at our last meeting was you would like for folks from the different offices to talk about what we do in the Office of Construction Standards and Guidance, the Office of Construction Services and Engineering Services. To that end, I'll have a couple folks come up in a few minutes
and talk about the different things we do
within the Office of Construction Standards
and Guidance and Danezza Quintero will be
talking about activities of the Office of
Construction Services.

Before we begin that, however, I'd
like to talk just a little bit about standards
activities, and of course begin by saying that
as everyone knows, we're working on cranes on
derricks. We've been working on cranes and
derricks and we'll be working on cranes and
derricks until we're finished with cranes and
derricks. And our staff is putting in a lot
of long hard hours to that end. You know,
before the question comes out, it's our number
one priority and we'll be finished when we're
finished. We'd like to be finished tomorrow.
I say that because right now 90 percent of my
staff is assigned to cranes and derricks. And
when 90 percent of your staff is assigned to
cranes and derricks, but we're still getting
100 percent of the work from all areas, it
tells you that something's got to give. And right now a lot of things are waiting because we're still moving forward on cranes and derricks.

So we're really looking forward to getting these new people, getting some support on some of the activities that we've kind of been away from for a few months now. And just trust me when I say that we're working as hard as we can to get that out and I think that will be reinforced by some of the folks that I'm going to have introduce themselves to you in a little bit.

In the meantime, while we're working on cranes and derricks we're also doing things like doing the work associated with rescinding questions 23 and 25 of the Steel Erection Compliance Directive. We're also working on the Confined Spaces in Construction Standard and we've got one person on staff that is continuing to work on that while essentially everyone else is working on
cranes and derricks. Once we're able to free
up people from the cranes and derricks
rulemaking process, then we're going to start
adding folks to confined spaces, and that's
our next agenda item following cranes and
derricks, is we're going to work on getting
that rule out.

Having said that, regarding cranes
and derricks and confined spaces in
construction, you'll also remember that a few
months ago I said that we're working on a lot
of other things as well. We're continuing to
work on a lot of these other things.
Occasionally we'll get to a point with a
document that we're working on in cranes and
derricks where we have a little free time,
meaning we're waiting for an answer and we'll
have a day or two. And when that occurs,
we're working on things such as the masonry
construction safety guidance documents,
Skylights and Open Floor Holes Quick Card,
Elevator Construction Guidance Document,
Demolition Operations Quick Card Series,
Sanitation on Construction Sites Quick Cards,
Construction Electrical Safety Quick Card Series, Underground Construction Guidance Documents, and I can go on. The bottom line is we're staying very busy. And I think if you tag any person on our staff in any of our offices, we're doing a lot of work. And you're getting your money's worth out of this group of Government employees. All right? Not implying that you're not in other areas. Okay? That's my disclaimer.

So the bottom line with all this, folks, is that we are staying very busy. It's my pleasure to work with the ACCSH Committee. I think all of you know that I truly enjoy working with you.

And I'm going to have a couple of other presentations real quick before I take questions, because you may have questions about something that's said.

If you will, please, Sarah and
1 Mikhail, if you're come on up to the table.

2 While they're doing that, if I

3 have other staff members from OCSG in here,

4 I'd like for you to stand up, introduce

5 yourself and just a summary of what you're

6 working on right now. Begin with you Jessica.

7 MS. DOUMA: All right. My name is

8 Jessica Douma. I've been with the Office of

9 Construction Standards and Guidance for close

10 to five years now. I've had the distinct

11 pleasure of preparing some of the preamble

12 section for the cranes and derricks final

13 rule, including; and I'm not sure if I should

14 say this out loud, the operator's

15 certification and qualifications that they

16 produce. Clearly taking up a significant

17 portion of my time, it's a very complicated

18 section and we want to make sure that it's

19 done right. In addition to that, I help

20 facilitate the processing of documents we

21 receive from other directorates to make sure

22 that there is no conflict with anything that
we do in our directorate and in those
documents. And obviously working on some of
those guidance documents that we handled
earlier, answering E-Correspondence, answering
phone calls from anybody the government
approves. You know, anything to appease the
client. That's about me.

MR SCHLICHTER: My name is Levon
Schlichter. I'm primarily working on the
confined spaces rule, evaluating the comments
and figuring out how to move forward with
that. I am also helping to draft the fall
protection, working around skylights guidance
document that Bill just talked about, our
Quick Card. And I'm involved in numerous
other interpretations that are in various
stages of the document review.

MS. LEGAN: Hi, I'm Cathy Legan
with the Office of Standards and Guidance.
I've been with the office for about four
years. Currently my number one priority, of
course, is cranes and derricks. I also, in
addition to doing the kind of day-to-day work on cranes and derricks, I'm the co-project manager on that. Also my second priority issue is that I'm the SIG case coordinator for enforcement cases that are 100,000 dollars that come from the directorate. So I am kind of oversight. And of course all my other duties.

MR. PARSONS: Okay. Thank you, folks. Today is Kelly's last day, folks. She's been with us all summer. Did a fantastic job for us and we're really going to miss her.

So, thank you, Kelly.

Mikhail?

MR. PONCE: Well, good morning, everyone. My name is Mikhail Ponce and today, along with Sarah Rooney, we're going to be talking about the role and functions of the Office of Construction Standards and Guidance. Just to follow up on whatever everyone else is doing, like most of the people in our office,
I'm working primarily on the cranes and derricks rule. I've been trying to straighten out the fall protection section in that rule. And, other than our normal duties providing guidance and interpretations, right now I'm working on assisting our area office from Guam with one of their proposed significant cases.

MS. ROONEY: And I'm Sarah Rooney as Mikhail announced, and I am working on cranes and derricks, specifically the assembly and disassembly sections. I also do a lot of the control correspondence, which is typically correspondence that is sent into the Secretary, or the Assistant Secretary, or maybe Congressional inquiries and things like that. I am also the person working on rescinding the two questions in the Steel Erection Directive. I'm also working on a SIG case and I'm also doing the masonry construction guidance document.

MR. PONCE: Okay. So to begin, just to give you a quick overview of what
we're going to be talking about, I'm going to
give you some brief background information
about our office. And then I'm going to hand
the presentation over to Sarah. She's going
to discuss some of our office's activities in
relation to the construction standards. She's
going to turn things back over to me and I'm
going to talk about our guidance activities
and then Sarah's going to wrap things up and
we'll be available to answer any questions you
might have.

So this is just a real basic
background. For those of you who may not
know, Office of Construction Standards and
Guidance is one of three offices within the
Directorate of Construction, the other two
being the Office of Construction Services and
the Office of Engineering Services.

And the OSHA itself is divided
into multiple directorates based around their
activities and areas of expertise. As you
might have guessed, the Directorate of
Construction is the directorate primarily responsible for handling matters related to construction.

One last thing, I just wanted to share with you, this is our mission statement for our office and as you'll see later on when we start talking about our activities, our activities really are geared towards fulfilling what this mission statement is. I'd just like to read it to you now.

It's, "To provide workplace construction standards and regulations to ensure safe and healthful working conditions in conjunction with providing for the development of comprehensive compliance programs for internal and external stakeholders applicable to the construction industry."

Now, with that, I'm going to turn things over to Sarah and she's going to talk about some of our standards activities.

MS. ROONEY: Okay. In terms of
standards activity, I guess we have it broken
down into three separate general areas that we
handle. First being, development and
implementation of policy and plans for
construction standards and regulations. We
advise and assist the director by gathering
relevant information and performing analysis
of current and proposed standards and
regulations.

I guess this next one would
probably be the most familiar to you. We are
responsible for developing all new and
modifying any older standards that need
modification. We do all the drafting and all
the updates necessary. We also are
responsible for shepherding these standards
through the entire promulgation process. That
would include identifying any standards which
need modification. We draft the new rules, we
evaluate and respond to the public comments
and then we issue the final rule.

In addition, we do technical
review of variances, petitions,
interpretations that impact the construction industry. We review agency actions that affect construction standards to ensure that they are handled in a manner consistent with OSHA's policies and that they result in workplace conditions at least as safe as those provided by the standards. Typically that would include reviewing variance requests, letter of interpretation, other policy documents drafted by other OSHA offices that incorporate construction-related issues. I guess now we'll be moving onto our guidance-related activities.

MR. PONCE: Okay. So in terms of guidance, we provide consultation and information internally to all of OSHA, and that goes to our people on the ground, out in the field, all the way up to in our national office, all the way up to the Assistant Secretary's office. And what that means is, you know, for example, our compliance officers
in the field may go out on an inspection and
they're uncertain with this particular set of
circumstances. They may not know which would
be the most appropriate standard to apply.
We're available to provide them support and to
address that, and to assist them in
identifying what standards apply to which
situations, whether or not there is a
violation.

Secondly, we provide technical
assistance and compliance. We provide
guidance basically to the public in the forms
of technical assistance, compliance
guidelines, interpretations and
clarifications. And most of our means of
interacting with the public come in the form
of letters of interpretations, what we call e-
correspondence, which are basically emails
that we receive through OSHA's web site, or
phone calls. And so our office is available
either by phone or by fax, or electronically,
like I said, through our web site. And what
we do is we will provide assistance. We'll help identify which standards may apply in your situation and point you in the right direction in terms of compliance, how it would be best to comply with the standards.

Primarily, a lot of what we do is the writing of interpretations where it may not be immediately clear what the circumstances would require under the standards, and so we provide that interpretation.

And lastly, we're also responsible for developing OSHA enforcement programs specific to the construction industry. An example would be development of the National Emphasis Program that we have on excavations, which was borne out of a significant number of trenching accidents that were occurring across the nation.

I guess the most prominent feature that will be forthcoming is we're adding a chapter to the Field Operations Manual specifically tailored to constructions.
that Field Operations Manual, in case you
don't know, is basically a guideline for our
people on the field, how do they go out and
conduct inspections, basically how do they
carry out all of their functions. And we're
helping draft the guidelines tailored to the
construction activities.

So with that, I'm going to turn
things back over to Sarah.

MS. ROONEY: Okay. In conclusion
and in summary, OCSG is an office within the
Directorate of Construction that's focused on
standards and guidance. We provide general
support related to the development and
implementation of standards and we provide
guidance to OSHA and to the public.

I guess at this point we'll take
any questions anybody has.

CHAIR MIGLIACCIO: Any questions?

Kevin?

MR. BEAUREGARD: I'm not sure if
you're the one to answer this question, but it
sounds like it may be up your alley. I'm the co-chair of the work group for regulatory compliance. And my esteemed co-chair gave me some questions to ask the Directorate.

And one of them has to do with in our meeting yesterday one of the participants brought up that some years ago there was a construction enforcement targeting task force. And I'm not familiar with it, but they said there was a task force. And they were wondering if there was a task force, if any of the results of the task force were available and if they were implemented. This might be something that you're implementing in your FOM chapter, I don't know. I don't know if you have any knowledge of a task force or not.

MS. ROONEY: I'm not sure about the task force. I am doing the FOM chapter. That's another one of my responsibilities. But I am unaware of the task force, so I'm not implementing that with the FOM chapter at this point.
MR. PARSONS: I'll add to that.

We're currently evaluating different activities for task forces, as well as other activities relating to the enforcement of construction standard. And at this particular point, I think most of those activities are under some scrutiny. And to say that we have an active task force program, I know that we have new programs that are being rolled out that will be addressed by others this morning. And beyond that, I don't think I can say anything about it. I'll certainly be open to discussion with it later today.

MR. BEAUREGARD: Okay. Thank you.

Yes, the reason I think the group was interested in it is one of the things we're looking at is different ways that OSHA targets construction activity to see if we could perhaps give any suggestions or recommendations. And one of the members indicated that there was some previous task force within OSHA that may have looked at
that. And so we were interested in seeing if
in fact there was, what they came up with and
if any of it was implemented. Thank you.

CHAIR MIGLIACCIO: Any other
questions from the Committee?

MR. GILLEN: I had a question.

CHAIR MIGLIACCIO: Matt?

MR. GILLEN: The group sure has a
lot on your plate, so that's pretty
impressive.

As far as thinking long term, I
was wondering about if you thought a little
bit about the idea of some of the standards
that have a lot of letters of interpretation,
like sub-part M. And I was just wondering if
it might be interesting to think about or talk
to some of the stakeholders. Would it be
valuable to perhaps consolidate them into sort
of a report, so there would be one place to
sort of update it for that time period what
the latest interpretations are for a
particular standard? Which would then be a
one place to look, as opposed to each of the
letters and then something like that might be
done every five years, or 10 years, or
something like that. Might be something that
would facilitate people being able to
understand some of the complex issues with
some of the letters, some of the standards
that have a lot of letters of interpretation.
So, I was wondering if it's something you
might think about, or what your response would
be, if you think that might be interesting to
pursue.

MR. PARSONS: I think everybody
that searches for letters of interpretation
and trying to determine if there's a letter of
interpretation on a given issue, unless you
work with letters of interpretation regularly,
it's difficult to navigate those letters. I
think we'd certainly be open to a
recommendation on something like that.

MR. GILLEN: Thank you.

CHAIR MIGLIACCIO: Liz?
MS. ARIOTO: Yes, thank you. Liz Arioto.

Bill, you mentioned about the sanitation guidance info.

MR. PARSONS: Yes.

MS. ARIOTO: Does this include special sanitation needs of a new construction site?

MR. PARSONS: It does not.

MS. ARIOTO: Do you think it can be addressed in that?

MR. PARSONS: I think we need to address it in other areas before we address it in a Quick Card. You know, typically when we're talking about a Quick Card, we're trying not to put out anything that's boldly new, but rather guidance on what's already there, suggestions on doing it better. While I think you and I agree that there is certainly some validity to your point, I just don't think a Quick Card's the best place for us to do that.

I think what we're going to have to see is
some sort of more well thought out recommendation from the Committee for us to move forward on something like that.

MS. ARIOTO: How far along are you on this Quick Card?

MR. PARSONS: The draft is completed.

MS. ARIOTO: Is completed?

MR. PARSONS: Yes.

CHAIR MIGLIACCIO: Any other questions from the Committee?

Tom Shanahan, do you have any questions?

Okay. Go ahead Tom. I was just trying to see if Tom had any.

MR. BRODERICK: How long does it take for a variance to be issued, assuming a request for a variance comes in --

MR. SHANAHAN: No, I don't.

CHAIR MIGLIACCIO: Thank you, Tom.

MR. BRODERICK: -- with a properly structured, well thought out, easily
1 understood request for a variance?

2           MR. PONCE: Well, just what I can
3 tell you, to address what our office's role is
4 in the variance, OSHA actually has a
5 directorate that is responsible for the
6 handling and the processing of the variances.
7 Our role in the variance process is when these
8 requests come in, we basically put it side-by-
9 side with the standards that are there to make
10 sure that whatever this proposed alternative
11 system that the employer would like to use
12 provides a level of safety that's as least as
13 safe as what are standards provide. So our
14 office's role in that whole process is more
15 based on the standards itself.
16
17 In terms of getting it out and
18 getting it processed as soon as possible, I
19 can tell you that I myself have spent a great
20 deal amount of time working on variances,
21 particularly for the chimney construction
22 industry is what I've worked with most. And
23 we do try and get them out as fast as we
possibly can. By the time they reach our
office, what we're basically doing is just,
like I said, comparing it to the standards.
A lot of times the ones that we get are the
same issues that have come up before in the
past, so we just do a quick check and send it
along the way on the process.

But in terms of how long it takes,
I can't really give you a clear answer on
that.

MR. PARSONS: I think we can say
though that certainly since I've been here
I've not seen a simple one. You know,
sometimes they come in and from all
appearances the first read is like, geez, this
is going to be a pretty simple one to handle.
And by the time we have a couple volleys of
questions to the people that submit the
request for the variance, they end up getting
quite involved and it turns out not to be
nearly as simple as we anticipated. So
frankly, I don't think we've seen a simple
CHAIR MIGLIACCIO: Any other questions, the Committee?

And also the Committee members, please state your name and who your represent for the record, please.

MS. ARIOTO: Elizabeth Arioto. I represent the public.

Bill, you said that the draft was for sanitation is complete. Is there any way you can hold up on that until our work group may be able to give you some information?

MR. PARSONS: Well, I think what we agreed to do was to provide the drafts of these to the Committee. We didn't have it ready in time to submit it to the Committee prior to this meeting, so I decided to hold it and we'll submit it soon. And you'll have an opportunity to comment, get it back to me, and we're not going to produce this document until we get your comments and ideas on it. So we'll certainly include those.
1     MS. ARIOTO: Thank you, Bill.
2     CHAIR MIGLIACCIO: Kevin?
3     MR. BEAUREGARD: I have one more
4     question for Bill, and again this is a work
5     group question, and I'm not sure exactly who
6     would be the appropriate person to address.
7     Kevin Beauregard, state planner.
8     Had the Directorate of
9     Construction or the Directorate of Enforcement
10    had any types of activities or collaboration
11    with fellow agencies, like Wage and Hour, or
12    Elevator, to initiate referrals if they see
13    something in their activities that may be
14    something that pertains to OSHA more than
15    their agency?
16     MR. PARSONS: Could be possible,
17    but I'm not aware of any. You may pose that
18    question to Mr. Fairfax if he stops in this
19    afternoon or tomorrow.
20     MR. BEAUREGARD: Thank you.
21     CHAIR MIGLIACCIO: Any other
22    questions of the Committee members?
I just have one question. Frank Migliaccio with the employees.

Sarah, you had mentioned the rescinding of two questions on sub-part R, which is very dear to my heart.

MS. ROONEY: Yes.

CHAIR MIGLIACCIO: Could you explain what the two were to the Committee and what had taken place?

MS. ROONEY: One is the shear studs, and we're no longer going to have the de minimis policy. If you wear 100 percent fall protection, you could use shop-installed shear connectors. You'll no longer be able to do that.

And the other had to do with planks or nets. And if you had 100 fall protection, you no longer had to do the nets or the decking. I think it was every two stories you were required to have nets or decking. You won't have the de minimis policy in that. If you wear 100 percent fall
protection, you'll still be required to do that. Before if you had 100 percent fall protection, you were no longer required to do that. It was considered a de minimis violation.

CHAIR MIGLIACCIO: And do you have any idea when the two of them will take place? I know the shear connectors will be down the road a ways because of fabrication, but how about the two floors or 30 feet, whichever is less?

MS. ROONEY: I'm working on it. I can't give you a real -- it's an involved process to do that. A lot of different offices are involved in addition to myself, so I can't really give you a definite deadline as to when that's going to happen.

CHAIR MIGLIACCIO: Okay. Thank you.

Any other questions? Sarah?

MS. SHORTALL: I have a real quick question.
Sarah, Mikhail, could you please provide me with a hard copy of your PowerPoint presentation so I can enter it into the record for this meeting?

MR. PONCE: Sure.

MS. SHORTALL: Thank you so much.

CHAIR MIGLIACCIO: Bill?

MR. PARSONS: Courtney Goodwin just came into the room. She's also a Construction Standards and Guidance staff member. And I'd like for her to just do a summary about what she's working on right now, without going too much into detail.

I know I've put you on the spot, but I know you can handle it.

MS. GOODWIN: Hi. Again, my name is Courtney Goodwin. Right now my biggest project is working on the cranes and derricks rule. My sections are on tower cranes, ground conditions. I'm trying to think off the top of my head what the other ones are. But those are my two biggest ones. So right now that's
what I'm focusing on.

Another thing that I'm working on that we talked about the last time you were meeting, I spoke with you about the underground construction guidance document that I'm working on. That's sort of been put on the back burner for the cranes and derricks, obviously. But that's still in the works.

But those are the two biggest things I'm working on.

MR. PARSONS: Thank you.

MS. GOODWIN: You're welcome.

CHAIR MIGLIACCIO: Emmett?

MR. RUSSELL: Yes, I'd like to make one compliment to Bill. I had made a request that it would be good if the ACCSH Committee knew what the different offices in the Directorate of Construction was doing, and my compliments to you that you've done a -- again, Emmett Russell, employee representative. But my compliments to you
that this is exactly what I was looking for, because before you never had a clue who was actually working in any of the offices, and further, not a clue as to what they were doing. But again, my compliments. Good job.

MR. PARSONS: Thank you.

CHAIR MIGLIACCIO: Anything else?

Bill, do you have more?

MR. PARSONS: No, at this point I think Danezza Quintero wants to speak on behalf of the Office of Construction Services.

MS. QUINTERO: Good morning.

Danezza Quintero, acting director for the Office of Construction Services. I would like to thank each of you for being here and your time, and your dedication.

To go over a little bit, Emmett, also about the things that we do in the Office of Construction Services, we provide support to stakeholders. We deal with alliance, partnership, Voluntary Protection Program. Basically we provide the technical support to
all those different preparative programs.

In addition of that, we are responsible to prepare everything related to ACCSH. We evaluate every time that every two years your term expires. We receive all those applications. We evaluate. We submit that information to the Assistant Secretary.

At the present time we are working with the Susan Harwood Grants. An incredible amount of applications this year. We have received an incredible amount, around 80 applications for this $6.8 million, an average of $250 per grantee. So we're really, really overwhelmed at the present time.

We evaluate a lot of publications, guidelines, documents that have been developed, not just by the standard, to make sure that everything that they develop really applied to the real world. And in addition of that, sometimes we disseminate that information and share that information with some of you that are here, members of ACCSH,
to receive your feedback and your input. So that's also always done through our office.

We provide a lot of support to the OSHA Training Institute or the Training Education Center in Chicago. We're going to be working with steel erection training. There are going to be quite a few steel erection trainings in the next few months around the nation and we do presentations in different kinds of conventions for safety and health organizations, like the ASSE, Construction Safety in Chicago, National Safety Council, World Concrete, etcetera, etcetera. So all of those are developed in my office and usually we're the one providing that support and those presentations.

In addition of that, at the present time there is a crane safety initiative and we're working with a lot of new products in the way of a Quick Card, and all those products at the present time are under development.
In addition, we used to have just four individuals to do all this in the office. And at the present time we have two positions open, one is a safety and health specialist, GS-13 and the other one is the construction safety education specialist, also a GS 13. They're open at the present time for whoever is interested or if you know anyone that might be interested. I think these two positions are a great opportunity and we're desperate of getting new people with a lot of skills and knowledge.

We are really lucky at the present time. We hired two new safety and health specialists with a lot of years of experience and I really would like to introduce my new two colleagues, Fran Dougherty and Dean McKenzie. You have seen him in some of the work groups.

And I really would like, Dean, if you can say a few things.

MR. McKENZIE: Good morning,
folks. I've seen most of you around the last couple of days. My name is Dean McKenzie. I'm a construction professional. Been in the business for 34 years. Started out in steel mills in Indiana. I've done hotels in the Caribbean, industrial work, power plants, hydro power plants, breweries, maintenance constructions. Three months ago I had 70 iron workers, millwrights and carpenters at Golden Colorado in the Coors Brewery. So our task is to try to bring some current real world expertise to the department and so far it's been a good adventure.

MS. QUINTERO: Francis?

MR. DOUGHERTY: Hi, Fran Dougherty. Approximately the same amount of experience. About 30 years in the industry. Started off as a carpenter. I'm a carpenter by trade, Local 1107 out of Kenilworth, New Jersey. I've worked in -- my primary specialization is residential and commercial construction, mostly the metropolitan area of
New York, New Jersey and Pennsylvania where I've worked on everything from bomb shelters to high rises.

MS. QUINTERO: So now you guys know that in addition of Michael, we have two great individuals that can provide you any assistance that you guys need.

Any question at the present time?

CHAIR MIGLIACCIO: Any questions from the Committee members?

Tom Shanahan? Question. Tom, are you still there?

Any other questions of the Committee?

Sarah?

MS. SHORTALL: I would just like to say that Ms. Quintero has not given the full picture of all the duties that the Construction Services has to do with regard to ACCSH.

Although ACCSH was statutorily created, which means the Sunshine Act that
would close us down does not apply. We still have an incredible amount of paperwork that must be done in order to have the Committee operating according to the General Services Administration Regulations. And if you want to see some of that paperwork, you can always go to GSA's web site and see everything that has to be placed on that. In addition, we have reports that have to be provided to the Library of Congress for permanent archiving. All of these things have to be cleared by the department, which in and of itself is quite a feat.

So when you come and come to a flawless ACCSH meeting, there has been an awful lot of work that's gone behind the scenes and you don't even see half of the work that's gone behind the scenes. So I just didn't want time to pass without ACCSH knowing how much additional work this particular group in DoC must do to keep this committee up and functioning according to law.
MS. QUINTERO: Thank you, Sarah.

CHAIR MIGLIACCIO: Tom?

MR. KAVICKY: Tom Kavicky, employee representative of OSHA, ACCSH.

I'd just like to comment, Danezza, your staff makes our life a heck of a lot easier when we come here. I know for one we generate a tremendous amount of paperwork from the work groups and we appreciate all the work you guys are doing. Thank you very much.

MS. QUINTERO: Thank you.

(Applause.)

MS. QUINTERO: Thank you.

MR. PARSONS: If I may, I see Mohammed Ayub just walked in to the room. I'm going to put him on the spot and ask him to do two or three minutes and give a quick briefing about what his office does for the Directorate of Construction. Thank you, Mohammed.

MR. AYUB: Good morning. My office is in fact a, shortly speak, a resource for structural engineering in national OSHA
office and in all division offices, and all
field offices. Any time there is a need for
some innovative method of construction, any
time there is a catastrophic collapse of a
building, or a bridge, or a tunnel, or a tower
during the construction, then my office will
extend its engineering assistance to the field
and we will be writing a report which in most
cases become a basis for the field offices to
issue the citations.

Once the citations are issued and
if they are not accepted by the contractor, in
most instances and they are not, then we will
be asked to appear as an expert witness in the
case defending the basis of the citations. We
will only provide the engineering basis and
the supporting data of how we have reached the
conclusions and how have we arrived at the
findings.

Essentially speaking, we are
interacting with all the directorates of the
national office. And any time there's an
issue that will involve engineering,
particularly geo-technical engineering and structural engineering, we will be in the forefront.

We are also a leading component of the National Structural Response Team. This team was formed in the wake of the disaster that took place in 2001 and we take a lead in it and we engage -- there is a team of about eight structural engineers there and we take a lead in the team, and we train all the team members and we do some field exercises just to simulate that in case, God forbid, if there is, you know, another event, how we are going to respond to it, how we will react to it and how we will let the first responders enter into the building. Our responsibility will be to make sure that the first responders are safe. They go in a building where there's no other collapses that could take place.

And we also interact with national engineering associations in order to convince
them that when they write the code and the
design guidelines, they should incorporate
safety in it. And we have in fact started on
a program which is called PTD, Prevention
Through Design. And we like to go and to
address the engineering associations and make
sure that they understand the safety.
Unfortunately, engineering schools here are
not very much conducive to safety issues.
They just teach them engineering,
architecture, finite element analysis, but not
much attention is given to safety. And I go
there and I talk to them that unfortunately
1,100 construction employees die every year at
the site, there eyes are open, that was is
going on here? So this is one of our tasks is
to talk to the engineering community's code
writing bodies so that they can incorporate
safety in it.

And anything that has to do with
engineering, the buck ends here. Thank you so
much.
CHAIR MIGLIACCIO: Thank you.

Any questions of Mohammed?

Seeing none, thank you, Mohammed.

MS. SHORTALL: Mr. Chair, I'd like to take care of a couple of related housekeeping items at this time.

I would like to mark OSHA-2009-0020 as Exhibit 2, the agenda for the July 30-31 ACCSH meeting.

(Whereupon, the document was marked as Exhibit 2 for identification.)

As Exhibit 3 the minutes of the April 16, April 17 ACCSH meetings certified by both Mr. Migliaccio and Mr. Thibodeaux.

(Whereupon, the document was marked as Exhibit 3 for identification.)

And as Exhibit 4, the hard copy of the presentation on the roles and functions of OCSG.

(Whereupon, the document was
marked as Exhibit 4 for identification.)

CHAIR MIGLIACCIO: Thank you.

All right. Are there any other questions of Bill before we -- please?

Bill, I'd like to thank you on an excellent presentation by you and your staff.

Listening to the young ladies and young men, and a couple of the older men, looks like we're going in the right direction. Thank you, all.

(Applause.)

CHAIR MIGLIACCIO: At this time, while we're checking on Jordan Barab, we'll go ahead and start with the work groups.

I know that the OTI work group has a little bit more work to do. Okay. So we'll postpone that one. That is silica.

MR. JONES: We're ready.

CHAIR MIGLIACCIO: Silica? All right. If we can have your --

MR. JONES: The Advisory Committee
met yesterday, I believe, around noon. We had a full house and before I begin reading the minutes, I want to thank the folks from Standards and Guidance for coming over and giving us an update.

Walter Jones, employee rep.

Yes, and we want to thank them for coming over and really being amenable to questions and everything else.

Speaker 1, as I was mentioning, was David O'Conner of the OSHA Directorate of Standards and Guidance. They provided a status report and description of the next steps for development of the proposed rule for silica in construction. And they also gave us an update on silica guidance developments, document developments. In terms of the proposed rule, the health hazard and risk assessment portion of this rule is currently undergoing external peer review by OMB.

OSHA is expediting or truncating the process by merging the peer review section
into the informal hearings that will follow
the publication of the rule. Basically, the
expected process is the peer reviewers will
provide comments back to OSHA, OSHA will
incorporate the comments as appropriate into
the proposal. Then afterwards, OSHA will
publish a proposed rule. Then informal
hearings for the public comment will include
a specific portion about the peer review and
the peer reviewers will be present at the
comment phase to hear public comments about
the review. Peer reviewers can amend their
comments to OSHA based on public comments and
OSHA will consider amended comments along with
other comments in the finalizing of the rule.
The process also includes additional
consultation with advisory committees, but the
nature and schedule have not been set yet.
David said that additional
information is available on the OSHA web site
peer review page.

In terms of guidance documents,
OSHA is developing worker and contractor materials from the recent silica construction guidance document and handed out some copies of their solutions fact sheet, for lack of a better word, and has asked for comments from the committee, which we plan on forwarding at our next meeting.

In response to questions, Mr. O'Conner indicated that the OSHA's expected the peer review process to be completed shortly. He's looking at September-October 2009.

Second topic was Henry Cramer of the bricklayer's union, vice-president and chair of the Building and Constructions Trade Department, Silica Subcommittee, provided a hand out and described five key positions that the BCTD had on any proposed silica regulatory standard.

First, the PEL should be 50 micrograms per cubic meter of air consistent with the NIOSH REL and should include an
action level of 25 micrograms per cubic meter.

Two, abrasive blasting using materials containing greater than one percent silica should be prohibited and banned.

Three, written exposure assessment and control plans are needed for silica dust-causing tasks.

Four, which got a lot of discussion, methods of compliance, which is currently set up such as in OSHA's draft table 1, need to be clarified or restructured as follows: (1) clarify that respirators should be viewed as an interim measure -- the use respirators should be viewed as an interim measure as controls are developed and implemented; (2) permit reliance on scientifically-objective data or equivalence to OSHA's draft table number 1, developing an alternative table that incorporates options for a two-hour, four-hour and eight-hour task length conditions, providing mechanism for adding new tasks to table 1, and make it clear
that if employers do not follow the task controls they can receive citations related to both (1) not using the controls; and (2) not providing the monitoring is happening.

And the fifth key point was clarify that medical information on the health status of employees is not to be shared with employers.

Topic three, and this goes back to the Committee's work with developing a guidance document, a living web document similar to the OSHA's draft table 1. Hillary Schubert from the Georgia Tech described a matrix too that they have been using in consort with Georgia Consultation Program. The matrix lists tasks with information provided for each task on uncontrolled exposures, then offers the types of controls they can use and then what exposures would be using the controls and what types of recommended PPE would be needed using controls or not using controls.
And then additionally it provides photos of tools, tasks and talks about ancillary hazards associated with using whatever controls or associated with the task. The matrix information includes full shift and task measurement information collected by and for the Consultation Program.

The matrix tool was basically developed to help contractors understand what to do. They're on the forefront, the folks down in Georgia, of responding directly to contractor's needs of we don't need to look at what's in the standard. Tell us what we need to do so that we can do it to comply.

Experience to date suggests that the contractors have found this helpful. Ms. Schubert has shared her basic observations with us on OSHA's current proposed table 1. And based on her experience, field conditions, factors and techniques such as water flow rates and air flow rates for local exhaust ventilation for using controls can
significantly affect protection offered by the
controls resulting in reductions being less
than predicted. Contractors ask about the
details and in our -- let me reread this --
and so because of the fact that although table
1 may say use water, or it may say use local
exhaust, because there are variations in how
folks are using water or how close they're
using their local exhaust, the matrix still
recommends the use of filter and face piece
for all attacks.

I suggest everyone take a look at
this matrix because it's probably the future
of where we're going to go in terms of task-
based approaches to controlling these types of
hazards or as in another name called control
banding. The matrix is available on the
outreach page of the Georgia Tech's folks.

It's at www.oshainfo.gatech.edu.

Fourth topic, moving along on this
same ideal of providing contractors with means
of protecting workers from exposures to silica
dust, Jim Platner for the Center of
Construction Research and Training reiterated
the need to provide information to contractors
on what they need to do to get it done and
describes the CPWR's control solutions
database, a web tool that currently includes
basic information for all tasks currently
listed on proposed OSHA's table number 1.
The tool can be found and this is long, www.cpwr.com, and I'm sure it will have
a button that will help you, but if you use
the URL, .com/rp-constructionsolutions.html.
Features include coverage of all types of
hazards; not just silica, but organization by
work activity, which is especially helpful to
the contractors and workers, inclusion of
vendor information, return on investment
calculators, ability for the users that are
plugging into the database to rank the
helpfulness of the solutions and the ability
for other folks to submit solutions.

And the fifth speaker yesterday
was Rashad Johnson. He's a technical consultant working with the Mason Contractors Association and described the consistent standard ASTM E2625, titled, "Standard Practice for Controlling Occupation Exposure to Respirable Crystalline Silica for Construction and Demolition Activities." This standard, which is available at the ASTM web site, astm.org/Standards/E2625.htm, uses an exposure limit, the current exposure limit for general industry of 100 micrograms per cubic meter and includes task-based features similar to what Georgia Tech and what the OSHA's table 1 are using. Their task-based recommendations are based on NIOSH and other published objective data, along with some contractor data. The standard is intended to be a living document and will be updated as better and more information becomes available. Limited information is available on contractor use of the standard. Basically it just passed a couple of months ago, so it
really hasn't been rolled out yet. And ASTM is trying to get word out about the standard to get specifiers to refer to it. Each of the speakers responded to a number of questions and a variety of issues were discussed. Potential items identified for possible recommendations, but the sense of the group at this time is that we need further discussion and review of information provided by the speakers before we can begin to make recommendations for ACCSH on what the thinking and thoughts of its subcommittee is on a proposed silica standard. At the end, Matt and I thanked the speakers for their time and great presentation. And we went over time; it was so involved. And the meeting adjourned at 2:20. Gave out a bunch of handouts. And that's about it. Thank you.

CHAIR MIGLIACCIO: Matt, do you have anything to add?

MR. GILLEN: No, I think Walter
1 did a great job. I think maybe just one
2 clarification that would be important for OSHA
3 is I think Walter said that the peer review
4 was by OMB, but it's per their requirements
5 that peer reviewers are actually other folks
6 other than OMB. They're different scientists.
7 Just to clarify that.
8 CHAIR MIGLIACCIO: Okay. Do we
9 have any questions for the work group?
10 MS. SHORTALL: I have one question
11 for Mr. Jones.
12 If I heard you correctly and read
13 the minutes, there were a number of handouts
14 that were distributed.
15 MR. JONES: Yes, there were.
16 MS. SHORTALL: Would you like
17 those handouts also to be entered into the
18 record and put on OSHA's web site?
19 MR. JONES: I would.
20 MS. SHORTALL: All right.
21 MR. JONES: And I'll have to bring
22 them forward.
MR. GILLEN: Can we get copies of those to you later, or by tomorrow?

MR. JONES: Yes, tomorrow. We would have to pull them all together.

MS. SHORTALL: All right. That would be fine.

MR. JONES: Okay.

CHAIR MIGLIACCIO: Tom?

MR. SHANAHAN: Can you guys hear me?

CHAIR MIGLIACCIO: Yes.

MR. SHANAHAN: Walter, is it possible you could email me those forms? You guys did sound like you did a lot of terrific work. I'd really like to see that.

MR. JONES: For the silica?

MR. SHANAHAN: Yes.

MR. JONES: Yes, I'll forward everything to you.

MS. SHORTALL: Mr. Shanahan, everything will be put on the web site and in regs.government within the next few days. So
you can also access it directly from your computer.

MR. SHANAHAN: Terrific. Thanks a lot, Sarah.

CHAIR MIGLIACCIO: At this time, seeing no other questions, I'll entertain a motion to accept this report.

MR. THIBODEAUX: I move for the acceptance.

CHAIR MIGLIACCIO: Mike Thibodeaux. Seconded by Bill Ahal.

Any questions or discussion?

All in favor, say aye.

(Chorus of ayes.)

CHAIR MIGLIACCIO: Opposed?

(No audible response.)

CHAIR MIGLIACCIO: Ayes have it.

MS. SHORTALL: Mr. Chair, then I would like to enter into the record as Exhibit 5 in the previously mentioned docket the approved Silica Work Group Report from the July 29 work group meeting.
(Whereupon, the document was marked as Exhibit 5 for identification.)

MS. SHORTALL: And I will enter into the record subsequent handouts tomorrow.

CHAIR MIGLIACCIO: Thank you.

At this time we're going to move forward to the diversity work group's report. And if Jordan shows up, we'll stop you, Tom, and --

MR. KAVICKY: Okay. Thank you, Mr. Chairman.

The Diversity Women in Construction Work Group met on July 28th from 8:15 to 9:45.

Tom Kavicky, ACCSH employee rep.

Liz Arioto and I co-chair that committee, that work group. We had 14 attendees present. The work group reviewed the minutes of the April 14th, 2009 meeting.

We distributed handouts and discussed with the work group the BLS Fatality Occupational
Injuries by Worker Characteristics and Event or Exposure 2007, the BLS Census of Fatal Occupational Injuries from 2003 forward, the Household Data Annual Averages for Employed Persons by Detailed Occupation, Sex, Race and Hispanic or Latino Ethnicity, the OSHA letter of interpretation dated 06/07/2002, "Mobile Crews Must Have Prompt Access to Nearby Toilet Facilities," The OSHA letter of interpretation dated 02/23/2005, "Providing Employees With Toilet Facilities on a Construction Job Site," and the OSHA letter of interpretation dated 05/17/2006, "Whether Toilets at Construction Job Site Must be in a Sanitary Condition to Meet the Requirements of 29 CFR 1926.51(c)."

After the handouts were passed, discussion points included the need to provide separate toilets for women in construction when practical. Access and availability of portable toilets at a construction site and also tower crane operator access to portable toilets.
A discussion followed and the work group was made aware to a product called Brief Relief. This product is being used by some operators of tower cranes that may not have immediate access to portable toilet facilities. The product helps prevent biohazard issues. We cover it all.

A PowerPoint presentation titled, "Women in Construction Medical Issues" was given by Dr. Atkinson Longmire, M.D., Office of Occupational Medicine. The presentation included total working women fatalities, construction-related reproductive hazards, ergonomic concerns such as tools, equipment and materials, lack of toilet and hand cleaning facilities, unsanitary conditions of toilets, urinary tract infections, cultural issues such as hostility toward women by men, feeling of isolation, job insecurity for reporting safety and health concerns to their employer, and then also psychological stress.

Forty percent of women reported ill-fitting
PPE.

After the PowerPoint presentation, Kevin Beauregard presented to the work group a draft copy that he was tasked to work on over the past couple of months, Women in Construction Quick Card and a Women in Construction Fact Sheet his staff developed per the work group request of April 14th.

After discussion, the work group reached a consensus on concentrating the focus of the Quick Card to employee information. The fact sheet will focus information that is important to the employer and his responsibilities. The work group was tasked by the co-chairs to study the two documents and provide further comments of feedback to Mr. Beauregard before the next ACCSH work group meeting in September 2009.

A suggestion was made to seek new information from tool manufacturers regarding any proposed future changes to tools and equipment used in construction. The
The work group is searching for information on various size tools, lighter weight and better ergonomically-designed tools to help accommodate women in construction. The focus was then redirected from not only women in construction, but for all workers of various sizes, limitations and challenges.

The work group is in the process of developing a supplier list for women's PPE. We should have the list ready to present to the work group by the September 2009 work group meeting. We have invited a representative from the ISEA, or the Industrial Safety Equipment Association, to speak to the work group regarding PPE for women in construction.

The work group asked for a status report from Danezza Quintero on the April 14th, 2009 work group meeting recommendation to OSHA that it would include more photographs of women in the construction industry in their literature and posters. Ms. Quintero
explained the process of photographing women
on construction sites and how it would consume
valuable time that the Agency cannot afford to
give currently. She explained the legal
challenges in acquiring permission from the
individuals to use their photographs on its
brochures and posters.

Suggestion was made by Ms. Quintero to have the work group members
acquire photos and the necessary permission
from the women so the Agency can use the
photographs. She will email all members the
necessary paperwork to acquire this
permission.

No further business, the work
group adjourned at 9:45 a.m.

CHAIR MIGLIACCIO: Okay. Thank
you.

Liz, before we go into your --
anything you'd like to add, I see Jordan's
entered the room. If you'd like to hold off
on the rest of your report?
MS. ARIOTO: I'll hold off on --
CHAIR MIGLIACCIO: Okay. All right. At this time I'd like to have Jordan Barab come down and give us a presentation of what's been going on.

MR. BARAB: Well, thank you for inviting me. Welcome, all of you. Some of you I've seen, but most of you I haven't -- this meeting was kind of special for me last time I came here. I think it was my second day on the job, and although I did know my way around here, at least how to get to the room, I was still a little bit shell-shocked. Now, I'm suffering from post-traumatic stress disorder. I'm not sure I'm in better shape now than I was then.

But it is good to be here. I really enjoy talking to ACCSH, because you all are, you know, obviously, as you know, very active and really make a very real contribution to this Agency's work. And I really appreciate the time you put into it.
A lot has happened since I first got here, pretty much all of it good, too.

Let me just start with some things that are of most interest to you all. We are actively searching for a new director of the Construction Directorate. We'll be conducting interviews and meetings and things throughout August and hope to come to a conclusion on that, end of August, beginning of September sometime. So that will be good. We've got some good candidates to look at.

You probably also all have heard that we finally have a nominee for Assistant Secretary, Dr. David Michaels, who's at George Washington University. If you don't know David, he's a great guy. I've known him and we've been friends for a number of years, worked together on a number of issues. He was previously, during the Clinton Administration at Department of Energy running their Occupational Safety and Health Administration Program. So he's got a lot of experience with
1 occupational safety and health, is very
2 familiar with OSHA, good management
3 experience. Because he is so good and so
4 effective, I would be surprised if there's
5 some opposition. There will certainly be a
6 hearing. All that means basically that we're
7 not quite sure when he'll be arriving here.
8 We're keeping his chair warm, and we again
9 look forward to his arrival sometime hopefully
10 early this fall.
11 Now let me run through a few
12 things that we've been doing. And again, some
13 of these you may have heard, most of them
14 probably, because they have been written about
15 in the trade press. As you're probably aware,
16 we received some criticism earlier this year
17 about our enhanced enforcement program. We
18 are now in the final stages of revamping and
19 renaming that program. It will be the Severe
20 Violator Enforcement Program. And again, the
21 basic model will be the same. We're going to
22 be doing extensive examinations of employers,
inspection history. Where they meet the
criteria under the program, that will trigger
additional mandatory inspections. Again,
we're mostly going after the large companies
that have a number of different subsidiaries
and enterprises and, you know, making sure
that when they have a health and safety
problem, when they've discovered a health and
safety problem, or when we've discovered a
health and safety problem in one part of the
company, that they also address that problem
throughout the company and that they keep
addressing it. Obviously, as with everything,
there are additional complications with
construction, but we're going to try to
integrate that as well.

Probably one of the more exciting
things I think we've done is, as you know, we
have a construction focus going on in Texas.
Texas has the dubious distinction of having by
far the highest number of fatalities of any
state in the country, not just fatalities,
construction fatalities and immigrant worker fatalities. And things did not seem to be getting any better. In fact, we'd launched this shortly after three construction workers were killed as a scaffold collapsed in Austin. Again, we not only find that number of fatalities inexcusable, but we're bound and determined to go after that and to really try to develop OSHA and OSHA's enforcement capacity into a much more flexible operation where we can actually make this type of thing not an exception, but actually something that we do more regularly. In other words, when we see any kind of hot spots, particularly with fatalities, that we will have the capacity and the capability to move in and address it. And we're again in the midst of that right now in Texas and we'll see what the results are. So far, I think, from what I hear, we've been finding a lot of problems, which isn't unexpected and we will be addressing that through our normal enforcement mechanisms.
One of the things that's going to allow us to implement that action plan, that new flexibility, the capacity to really move where the problems are is our budget for 2010. The President, much to our pleasure, has requested over a 10 percent increase for OSHA, which is much more than anybody can pretty much remember, certainly in recent years. And that will include 130 new inspectors.

Now, of course this hasn't made it through the House or the Senate yet, but there were some cutbacks in the House. We'll see. I'm not sure what's coming out of the Senate at this point, but we're hoping anyway we'll get the vast majority of that increase. Also new staff and standards, new staff in Whistleblower and some others here and there. I think we talked about last time the additional funding, that we're getting additional inspectors; 35 this year, I think 35 or 40 next year under the Recovery Act. And we're looking at a number of initiatives there to
really use the Recovery Act to focus in on safety in those projects, but, you know, most of those projects are construction. I think that will also have benefits throughout the country and throughout the industry and not just with stimulus projects.

All right. So those are probably some of the main initiatives since last I spoke to you. A lot more simmering that we haven't been able to announce yet, but we're very actively working on any way we can to move this agency forward, particularly in terms of the Secretary's priorities, one of which again is enforcement. And, you know, this is one area among many where we very much value your suggestions and your comments on what we're doing.

The Secretary's other priority is, as you know, to move forward on the regulatory front. And obviously the main construction standard now, as it was last time we met, and is unfortunate, it probably will still be next
time we meet, is cranes and derricks. We are putting almost all of our resources into that and moving forward as fast as we can. As you know, it's a big standard, lot of history there to go through and we want to make sure it's good. So we are focusing on that. And I'm sure Noah, if he hasn't yet, will fill you in in a bit more detail on how that's going.

Following shortly behind that will be confined spaces in construction, also, you know, very important and also something we're putting resources into.

We have made some changes in some of our enforcement of some of those standards and compliance directives, one of which I know has come up in these meetings quite a bit and which is the Steel Erection Compliance Directive, which we've been working with the iron workers. I think it's been an issue with the iron workers and others for a long time, but we made that a priority to work on and we actually did change or were in the process of
changing; I don't know if we've actually put it out yet, the directive especially was -- I think questions 23 and 25; I never quite remember what the names are. But in any case, we'll get rid of the exemption to do decking two stories down in exchange for 100 percent fall protection. Of course we are very much in favor of 100 percent fall protection, but we're also very much in favor of enforcing the standards that we issued and in the way that they were issued. So again, that's in the process of being changed.

We're also going to address -- I've told the staff to get rid of the exemption in the Residential Construction Directive that's been I think plugging our enforcement efforts in residential construction for a number of years. So that's also underway. And in the months to come, you know, we will be looking at, you know, other standards and how we're doing enforcement and seeing if we can improve that anywhere. And
as I keep repeating here, we need your advice on that. It's been very valuable in the efforts that we've done.

So, that's pretty much it kind of on the standards, enforcement, interpretation-type front.

On our other leg, the cooperative programs. There's been quite a bit of activity there as well. You're probably aware of the GAO report that was issued, I guess it's been at least a couple of months now. It was very critical of the way we operate our Voluntary Protection Program, particularly the way we're monitoring the program. A lot of inconsistencies with the way the program's being run between regions. Inadequate follow-up where VPP members have had fatalities, where their injury rates have gone up. So we are in the process, and actually in the final stages of revamping how we operate the VPP program.

We're also not only trying to
address that GAO report, but also a 2004 GAO report that really looked at all of our cooperative programs, VPP alliances and our other programs and asked us to evaluate those programs, how they function and also how they fit within OSHA's overall budget and OSHA's overall mission, particularly considering the considerable resources that we've put into those programs. We are engaged in doing that review. It will be something that we are going to do both internally as well as externally, welcoming stakeholders in to discuss the future of these programs, particularly VPP and the alliances, given again, you know, the resources that go into those programs and the resources that OSHA has to use for other purposes as well. So this will be a good year-long process that we're engaged in. We'll see what comes out the other end. Of course, you know, the VPP program has been expanding to challenging construction, so we're going want your input
into that as well.

All right. What else do we have going on here? Those are probably all the major issues that we're doing.

Again, in the longer term I think, or the less concrete but more important longer term, you know, a number of issues that we are going to want your help on that we're thinking about. You know, generally, obviously we've got a number of issues with construction.

Small employers, how to go after small employers, particularly where they are not in compliance with the law, not that we're going to stop going after large employers who are not in compliance with the law.

And, you know, again stopping, probably not just reducing, but really stopping some of the really unnecessary fatalities, not that any fatalities are necessary, but, you know, every time I see a trenching fatality or even a fall fatality, you've got to kind of wonder why these are
still happening, what we can do. You know, we're looking at higher penalties. Rich may talk to you about that. We are exploring how to raise our penalties within the confines of OSHA's Act. I mean, there's only a certain amount we can do within the confines of our Act. But we do have a number of automatic fine reduction mechanisms and we're doing a top to bottom review of how we set our penalties, at the same time, you know, be cognizant of the economic conditions in this country, being cognizant of special concerns of small businesses. So we are trying to take that into account. But also trying to send the message out even more strongly than we have that we will not tolerate violations of OSHA standards. We will not tolerate fatalities and injuries that come in violation of our standards.

One other thing I think we're again the midst of, which again contributes to everything I've been talking about, is the
Susan Harwood Grant Program. We announced a new round a little while back. I guess the deadline has passed. We got a large number of applications. I can't remember what the figure was, but it struck me as much larger than we have normally gotten, which is good. Shows there's certainly not only a demand, but a growing demand for this program. And we've been very pleased with the output of that program in the past with the products that have been produced and we're trying how to figure out how to expand the effect of that program, how to make sure that these products are not just limited to the grantees, but really are able to be used throughout the industry to really, again, promote safety and promote some of the novel approaches that I think the grantees have been developing. So, you know, we will be also looking at this grant.

This grant program, I mean, the grant round that's out now was literally
sitting on my desk when I arrived. We did
manage to expand it from a one-year program to
a two-year program, but with the next round we
will probably make some more changes, more
significant changes. And again we're really
looking at different ways that we can make the
grant program effective. So again, if you all
have suggestions in that area as well; I know
a lot of you are grantees, we'd be happy to
hear that as well. And I think you'll be
hearing from Hank Payne later on, if you
haven't already, about what we're doing in
terms of training efforts, both within the
grants, the 10-hour, 30-hour course, some of
the changes we're making there as well.

And finally, I just want to say,
you know, again we're looking for the future.
We're looking for different things we can do
and particularly innovative concepts in
construction. You know, prevention through
design has been discussed a lot, not
particularly implemented. You know, we talk
about it a lot. I talk about it a lot. You know, something that we really should be moving forward more on. Issues that I again brought up before and we're exploring to a certain extent through our stimulus funding. I mean, how to use the contracting procedure, particularly the public contracting procedure, to encourage contractors to adopt better safety programs. There are a number of things in the current laws that haven't been enforced. We're looking at expanding our activity around health and safety programs. As you know, quite a bit of the work that's done, especially by -- well, smaller and larger companies are done, if not under federal contracts, then under state contracts or local municipal contracts. Lot of potential leverage there for pushing safety among the contractors.

So let me wrap up there and see if you have any questions.
of the Board?

MR. SHANAHAN: Frank, this is Tom.

I have a question.

CHAIR MIGLIACCIO: Oh, go ahead,

Tom.

MR. SHANAHAN: I'm sorry. It's obviously a little difficult to hear, so at one point you had mentioned the interim guidelines, the fall protection guidelines for residential construction. And I was wondering if you could repeat a little bit louder what you said about that?

MR. BARAB: I'm sorry, the residential housing guidelines, you said? Is that what you were asking about?

MR. SHANAHAN: Yes.

MR. BARAB: Yes, okay. All right. Yes, I don't have a whole lot to say. As you know, there's a compliance directive that we issued a number of years ago that kind of exempted a lot of enforcement in that area.

And we went back and we looked at that and
decided that really wasn't justifiable and we are in the process of basically rescinding that. And again, this is a decision we just recently made, so I don't have anything yet in more detail really to talk to you about on that.

MR. SHANAHAN: The point that I want to make with that, and I realize that ACCSH has made a recommendation to support the rescinding of that document, however, our residential work group has been working on a recommendation, for lack of a better word, of a bridge to kind of, well, bridge the gap between now the plain regulation and what the interim guidelines were attempting to do. And I just wanted to just bring that up, because like I said, that work group is working pretty hard on that. And I wanted you to know that we are so that before maybe anything formal is done you could refer back to what the work group is doing and the suggestions that it's developing.
MR. BARAB: Yes, I think that's a good idea. I was actually not aware of the residential work group. You know, Noah will be heading this up, so yes, I will talk to him, but I'm sure you'll be talking to him, too. And we'll make sure that your input is certainly taken into account there.

MR. SHANAHAN: Thank you very much.

CHAIR MIGLIACCIO: For the record, that was Tom Shanahan with the employer's representative.

Mike Thibodeaux?

MR. THIBODEAUX: Mike Thibodeaux, employer rep. Remember last time you got out without any questions.

MR. BARAB: Did I? How did I do that? I don't know.

MR. THIBODEAUX: Well, we -- you know, two days on the job.

MR. BARAB: Oh, you were going soft on me?
MR. THIBODEAUX: You had said in Texas that you were finding a lot of problems. Can you give us an idea of the kind of problems that your compliance --

MR. BARAB: Well, I actually don't have the details. All I know is that, you know, the inspections have been finding a lot of issues on violations. I haven't gotten an actual breakdown. This is just the report back.

MR. THIBODEAUX: Okay. Well, I know that over the last four or five months they've had some on the high rise in Austin, high rises in Austin and some in Houston, that they've had some serious problems with their scaffolding.

MR. BARAB: Yes. Yes.

MR. THIBODEAUX: And I was wondering if --

MR. BARAB: Yes, and again, I don't have any specific information about where the violations are.
MR. THIBODEAUX: Okay.

MR. BARAB: But, you know,
certainly scaffolding is one of the major
areas we're looking at. We would be looking
at it anyway, but particularly considering
those three fatalities in Austin.

MR. THIBODEAUX: All right. Thank
you.

CHAIR MIGLIACCIO: Any other
questions? Seeing none.

MR. BARAB: Getting out early and
easy again.

CHAIR MIGLIACCIO: Thank you,
Jordan.

MR. BARAB: All right. Well,
thank you very much. Keep up the good work
and we'll be hearing from you.

CHAIR MIGLIACCIO: All right. At
this time we'll go ahead back.

Liz, do you have anything to add
to the --

MS. ARIOTO: Women in Construction
1 Work Group?

2 CHAIR MIGLIACCIO: Yes.

3 MS. ARIOTO: One thing I would like to add would be that I would love to see a toilets be available for women, a separate toilet to be available for women at job sites.

4 CHAIR MIGLIACCIO: Any questions of the work group?

5 Okay. Seeing none, I'd like to entertain a motion to accept this?

6 MR. THIBODEAUX: Move that it be accepted.

7 CHAIR MIGLIACCIO: Mike Thibodeaux. Second?

8 MR. GILLEN: Second.

9 CHAIR MIGLIACCIO: Matt Gillen, second. Questions? Discussions?

10 All in favor say aye.

11 (Chorus of ayes.)

12 CHAIR MIGLIACCIO: Opposed?

13 (No audible response.)

14 CHAIR MIGLIACCIO: The ayes have
MS. SHORTALL: Mr. Chair, I'd like to enter the following into the record. It was a very handout-intensive meeting yesterday.

As Exhibit 6 the approved Diversity Women in Construction Work Group Report from the July 28th, 2009 meeting.

(Whereupon, the document was marked as Exhibit 6 for identification.)


(Whereupon, the document was marked as Exhibit 6.1 for identification.)

MS. SHORTALL: As Exhibit 6.2, the BLS Fatal Occupational Injury Report from 2007, Looking at Worker Characteristics Event
and Exposure.

(Whereupon, the document was marked as Exhibit 6.2 for identification.)

MS. SHORTALL: As Exhibit 6.3, the BLS, CFOI Injuries from 2003 Forward.

(Whereupon, the document was marked as Exhibit 6.3 for identification.)

MS. SHORTALL: As Exhibit 6.4, the Household Data Annual Averages for Employed Persons Detailed by Occupation, Sex, Race and Hispanic or Latino Ethnicity.

(Whereupon, the document was marked as Exhibit 6.4 for identification.)

MS. SHORTALL: As Exhibit 6.5, OSHA letter of interpretation from June 7th, 2002 regarding mobile crew access to toilet facilities.

(Whereupon, the document was marked as Exhibit 6.5 for
MS. SHORTALL: As Exhibit 6.6, the February 23, '05 OSHA letter of interpretation on providing toilet facilities at construction job sites. (Whereupon, the document was marked as Exhibit 6.6 for identification.)

MS. SHORTALL: As Exhibit 6.7, the May 17, '06 OSHA letter of interpretation on sanitation requirements for toilet facilities at construction job sites. (Whereupon, the document was marked as Exhibit 6.7 for identification.)

MS. SHORTALL: As Exhibit 6.8, the draft Women in Construction Quick Card. (Whereupon, the document was marked as Exhibit 6.8 for identification.)

MS. SHORTALL: And as Exhibit 6.9, the draft Women in Construction Fact Sheet.
(Whereupon, the document was marked as Exhibit 6.9 for identification.)

CHAIR MIGLIACCIO: Okay. Thank you.

All right. At this time we're going to take our break. And our next speaker will be Hank Payne with the OTI.

So we'll take a 15 minute break. Be back here at 10:30, please.

(Whereupon, the above-entitled matter went off the record at 10:18 a.m. and resumed at 10:35 a.m.)

CHAIR MIGLIACCIO: Liz, you had something you wanted to --

MS. ARIOTO: Yes, I'd just like to add, the reason I made the comment about one toilet for women --

COURT REPORTER: Name, please?

MS. ARIOTO: Pardon?

CHAIR MIGLIACCIO: Identify yourself for the record.
MS. ARIOTO: Oh, I'm so sorry.

Liz Arioto. It was just I'd like to address the issue of having one toilet for women, at least one toilet on site.

In the report, the PowerPoint presentation given by the Dr. Longmire yesterday, one of its presentation parts was -- and I'd like to read this: "Even though OSHA standards require appropriate facilities for sanitation, 80 percent of women still report there's no toilet or dirty toilets and there's no hand washing facilities." And what's really, really important to me is that because of this, women will hold their bladders and they are more apt to have bladder infections and kidney infections from holding the urine. And there is disease associated with no hand washing facilities.

I was on the standards board in California and we passed a regulation where women would have a toilet, their own separate toilet. There was no big to-do and it went
very smoothly and the women love to have this
toilet. So I think all toilets should be
clean and well-supplied. But I think women
get the greatest benefit of the issues that
can have, like the urinary tract infections.
So that's what I wanted to happen. Thank you.

CHAIR MIGLIACCIO: Thank you, Liz.

All right. At this time Hank Payne, Director of Training and Education, or
OTI, we welcome you here today.

MR. PAYNE: Thank you, Frank.

I was asked to kind of a general
overview of the Directorate of Training and
Education. For those of you who don't know,
we've only been a directorate for about two
years. Prior to that, we were an office
within the Directorate of Cooperative and
State Programs. So, we were pulled out, made
a separate directorate. So what I'm going to
basically do is kind of run through the kind
of organization setup and the functions and
responsibilities that we currently have as a
directorate. And if you have questions, you can pose them as we go. My presentation won't be any better or worse if you interrupt me, so don't worry about it.

As you know, OSHA's mission is basically to assure the safety and health of America's workers. And, you know, what we do in that mission, we're the arm of the Agency that basically provides OSHA's training programs. We provide training programs to not only federal compliance officers, but also state compliance officers, state consultants, employers, employees and other people who are engaged in the work of the Act such as people who do college training and those kinds of things. So, we have a very broad responsibility in fulfilling our part of the Act. And our directorate's mission is to help fulfill the Act by improving the skill and knowledge levels of people engaged in work relating to the Act. That comes directly from our mission statement.
Basically, our main functions, we develop and implement OSHA's training and education policies and programs. And at the Institute, our primary focus is on training federal and state compliance officers. Although we do have other programs, the majority of our resources, the majority of our personnel and the majority of our effort is focused on ensuring that federal and state OSHA have qualified and competently trained compliance officers.

We also work on identifying competencies for compliance officers. About five years ago we developed a competency model that identified the competencies that compliance officers needed to have to do their job. And the training at the OSHA Training Institute is based on the competencies contained in that model. And we're currently circulating that model back around through the Agency to get feedback on have there been any changes over the past few years that we need
to incorporate into our training. And then we basically design, develop and conduct the training that we do, either in-house through the Training Institute or through other entities such as the OTI Education Centers or the outreach trainers. And I'll get into more of those programs a little bit later.

This is our current organizational structure. We have three offices plus the OSHA Training Institute. I apologize to those of you in the back. This is kind of an eye test chart for those of you in the back. I'm sure it's hard to read. But we basically have an office of training and educational programs. They're responsible for the Susan Harwood Grant Program, the OTI Education Center Program, and the Outreach Training Program, which is I guess more affectionately known as the OSHA 10 and 30-Hour Card Program, plus a few other responsibilities. We have an Office of Training and Educational Development who do the training
development for all of our internal and
external training programs. We have an Office
of Administration and Training Information.
That's our administrative arm. They handle
registration, they handle classrooms, they
handle printing and duplication, they handle
shipping and receiving, they handle
contracting, and just about any other
administrative issue that comes up for our
organization.

And then there is the OSHA Training Institute, and it is broken into two
organizations. One is the Office of Safety and Health Training and the other is the
Office of Construction Training. And that is not a typo. We currently have 56 authorized
FTE positions, only 15 of which are instructors in the OSHA Training Institute.

Again, as I said, the OTI is split into two offices. OTI has over 80 courses
that they conduct. Some courses are conducted multiple times each year. Some courses are
taught every two years. And we have a few
that we do every three years, and it's based
on demand. We do courses both in resident at
the OSHA Training Institute's location in
Arlington Heights, Illinois and we do courses
out in the regions and the states, as
requested by the states or the regions, and as
we have resources available to do that.

We also have instituted over the
last two years, we've been doing a number of
webinars on timely topics. For example, this
past Monday we just finished a webinar on
record keeping to prepare the compliance
officers for the National Emphasis Program
that is getting ready to come out on record
keeping. We did the same thing right after
the explosion down in Georgia at the sugar
processing plant. We did a Combustible Dust
Training Program. So we've been using the
live webinars for very timely, quick-hitting,
up-to-date, train-everybody kinds of programs
that they did. They typically last about an
hour-and-a-half, although the one Monday was kind of a marathon. It was a three-hour one, which is not the preferred way to do it. But we had a lot of information to cover on record keeping. And then we record the webinars and put them up so they're in a archived version. So if you can't see the webinar live, you do have the opportunity to go in a later date and view the recorded version yourself.

And as I said earlier, OTI basically trains OSHA's professional and technical people, and our federal and state compliance officers, our state consultants. And we have a couple of courses specifically designed for people from other federal agencies who have a safety and health responsibility. And we have one of those courses on-line. We have one of those courses that we do live in person. And we also make that training available through the OTI Education Centers.

This shows kind of the
schizophrenic training numbers that we've had from the OSHA Training Institute over the years. And a lot of the ups and downs are specifically related to budget issues and to priorities within the Agency. The big jump in 2008 is directly attributed to us developing and implementing a scheduled program of live webinars. We average about 750 participants in every webinar, so it doesn't take a whole lot of webinars to jump that number up. In-person training that OTI does for compliance officers, they average somewhere between three and four-thousand people a year on a normal year.

Two-thousand-and-six, the reason the number is so low, that was the year we went through the competitive sourcing process and half the instructors decided to go work elsewhere. And so we had a lot of turnover and turnaround at the Institute and it resulted in us having to reduce the number of courses that we offered because we just didn't
I have the people to do it.

The next office probably of interest here is the Office of Training and Educational Programs. That office manages the OTI Education Center Program, the Outreach Training Program, the Susan Harwood Training Grants Program, and the Resource Center Loan Program.

I'm sure many of you are aware that back in the early '80s and into the mid and late '80s OSHA became pressed by Congress to make its training available to the private sector on a greater frequency. We did not have the in-house staff or facilities to open classes up to the public. So the Agency decided to create an OTI Education Center Program aimed primarily at making OTI courses available through these organizations to the public so it would take the pressure off of the Institute and the Institute could focus primarily on compliance officers and consultants. And the program started back in
1992. Originally there were only four ed centers and they were national ed centers. The program evolved over the years to where it's now a regionally-focused ed program; and that is, ed centers are selected to serve a region, not the nation. And we currently have 25 education centers spread throughout 44 different organizations all across the country. There is at least one OTI Education Center in every region and some regions have as many as five.

The education centers, as you can see, train a large number of private sector, primarily safety and health or small employers. They train very few actual workers. They really do focus on the safety and health professionals or the small employers. And last year they trained over 29,000 students, which was an all-time high through that program. And the majority of the training that they do is in support of the Outreach Training Program.
The ed centers also help OSHA fulfill its mission by helping us with a lot of the initiatives that come down the road. For example, we asked the ed centers to help us reach out and train non-English-speaking workers across the country. And they put training in place to train non-English-speaking trainers to go out and train these populations. We asked them to help us with youth programs. We think the sooner we can get people thinking about safety and health, even if they're doing their after school part-time job or their summer job, that it's never too soon to get them thinking about working safe on the job. They've helped us put on conferences and seminars. If you remember a few years ago OSHA did a number of ergonomics conferences across the country. Those were put on and sponsored by the OTI Education Centers.

A lot of the education centers have taken the courses we've authorized them
to offer and bundled them into either
certificate programs or tied them actually
into degree programs that their university
offers. A number of the universities have
gone through the process so their students can
get college credit for taking OTI courses.
They do help us with developing new courses
when we need subject matter expertise. And
they are the primary source that help train
the trainers that are in the Outreach Training
Program.

The Outreach Training Program, also known as the 10-Hour and 30-Hour Card Program, is a program that OSHA has had since 1971. It began shortly after the Agency began with the purpose primarily of educating workers about OSHA was, what OSHA was, and the workers' rights under OSHA, and to provide a general overview of hazards in either the construction industry or general industry. It's a voluntary program, it is not required by any OSHA standard or regulation, and it
does not relieve the employer of any training responsibility under any current OSHA standard or regulation. So it's a totally voluntary program.

Over the years the program has started to grow as situations change. Right after 9/11 and all of the work that OSHA was involved with and in cooperation with the Center to Protect Workers Rights, we developed a Disaster Site Worker Training Program. We launched it back in 2004. It doesn't train a lot of people every year; about 2,500-2,600 people go through the program annually, so it's not a huge program. But it is a program designed for pre-event. It is a pre-event training program. It is not something that you would want to use after an event, or to get people into a site where there's been a event.

In 2007, the maritime industry approached us and basically said that they didn't feel either the construction program or
the general industry program really met their needs. They worked with us to develop a separate program in the maritime industry. We worked with them, we did that and we launched that program last year. So we currently now have a program in the maritime industry.

Again, through this program trainers become authorized by completing an outreach trainer course, primarily through an ed center. Although we do offer the courses at the OSHA Training Institute and we will be offering more of them again, we've had to cut back for various reasons recently, but in the coming years we'll be offering more trainer courses.

MS. SHORTALL: Could I ask for a clarification, please, on how you have defined maritime? Does it include all three sectors? Ship building --

MR. PAYNE: Yes, ma'am.

MS. SHORTALL: All right.

MR. PAYNE: Yes, ma'am.
MS. SHORTALL: Ship building, longshoring and marine terminal?

MR. PAYNE: I just happen to have the expert here who can answer your maritime question.

MR. BARNES: The answer is yes, it does cover all three. In fact, for this maritime program we have segmented worker courses in 10 and 30-hour for each of the three different standards for the maritime.

MS. SHORTALL: Thank you.

CHAIR MIGLIACCIO: Can you state your name, please?

MR. BARNES: Jim Barnes.

CHAIR MIGLIACCIO: Thank you.

MR. PAYNE: And one of the things, the 10 and 30-hours course are hazard awareness and recognition courses. They're not intended to teach the standards to the workers. We believe workers need to know more about what the hazards are, what they look like, how to recognize them and avoid them.
than to know what particular standard actually covers it. So they really are hazard-focused. If you want to be a trainer, you have to complete, as I said, a one week trainer course. After you take the course and pass the test you become authorized to teach either the 10 or 30-hour course on behalf of the Agency.

Some of the benefits that we see from the program is that this program really does target workers. It is a program in place for workers. And in a lot of organizations, the trainers are either fellow workers from the workplace or trainers from their workplace. So it's people they know, people that they can relate to. We also have a lot of trainers who are authorized who speak multiple languages. We have a lot of people who can do this training in this Spanish. We have people who are authorized in Russian and numerous others.

As the trainers complete the
training, they receive a 10-hour card. It's a sense of accomplishment for them. It's something that they now have that says that they've completed the training. And it really is an opportunity through these youth programs to start getting the value of safety and health into the workers, that it is something they should value and that there's nobody better on that site to make sure they're working safe than themselves. Their employer is responsible, but the employer isn't always seeing everything that's happening. And the more hazards they can recognize, the safer they can be.

This is a program that has literally exploded over the past few years. When I arrived in 1998, they were celebrating an all-time high and every year we've been saying, well, it won't continue; it'll level off. And you can see, as of last year we issued just 680,000 cards. This has created some growing pains for the program, needless
to say. This growth is, I would say, contributed primarily to the acceptance of the program by the construction industry. Most of the labor unions provide the training to their members. Many employers require this training for employees who work for them. Eight states and the City of New York require this training on municipal construction facilities at different costs and heights, and what have you. So the program is growing. We don't see the program kind of slowing down any time soon.

And unfortunately as the program has started to be required by statute in some states, we've seen an increase in the instances of fraud and non-compliance from some of the outreach trainers. That probably culminated in a series of newspaper articles last February in the New York Daily News which highlighted some of the activities of some of the authorized trainers. OSHA put together an executive work group that has identified a
number of activities that we have completed
and that we are working on to tighten up on
the program and to improve the integrity, and
to basically put a process in place to go
after these trainers.

For those of you haven't been on
our web site lately, or the outreach trainer
web site lately, we recently have posted the
investigation procedures that we're using now
to investigate all complaints about alleged
impropriety in the Outreach Training Program.
And as we find trainers who are failing to
follow the program guidelines, if what they do
reaches a certain level, we will either
suspend their authorization or we will revoke
their authorization to be an outreach trainer.
And this past week we posted what we call a
watch list on our web site and that list has
the names of four individuals, three of whom
who have had their trainer authorization
revoked and one of which who has his suspended
pending the outcome of a trial for selling
cards.

So OSHA is serious about tightening up on these people. As we find them, we will conduct investigations. The solicitor's office worked with us diligently to develop this process. They work with us on reviewing a lot of the information that we get and the responses that we make to these individuals. Unfortunately, as Jim here says, the fraud business is good. We have probably somewhere between 25 to 30 ongoing investigations and we seem to be receiving more daily. So we're out there and we're going to find them. We're going to remove them from the program.

One of the other programs that we administer is the Susan Harwood Training Grant Program. And basically, this is a program through which we provide grant money to non-profit organizations to conduct safety and health training programs on behalf of the Agency. And we identify the topics. The
organizations submit applications through grants.gov, which is an electronic application process that the Federal Government uses for grants. Every year we announce the availability of the funding through the Federal Register notice.

As Jordan said earlier, it closed this past Friday, this year's round. The application period closed Friday. We received 329 applications, which is an all-time record for the Harwood Grant Program. That's going to create some review issues for us, but we're getting a lot of help from the other directorates in the Agency to get all of these reviewed. And we're scheduled to meet with Jordan on August 28th to make the recommendations from the consolidated reviews on which grants to be selected.

The OSHA training grants materials, this was brought up in the work group yesterday, and we discussed this. We get a lot of training material through the
grant program. Although we had two years
where we did focus on developing of materials,
historically and since those two years the
purpose of the grants is to provide
occupational safety and health training
primarily to workers, but to small employers
as well. So they're training grants, not
training material development grants.

The grantees are allowed to
copyright any material they develop, but OSHA
can use it for its internal purposes. But
we've not been able to find a way and Jim and
I agreed with the meeting that we'd go back to
the solicitor's office and have further
discussions about how we can either not let
them copyright the material or how we can
modify the agreement to allow us to make this
material available on a wider group of people.
And because a lot of the material is a very
good, but I will tell you, a lot of the
material is very targeted to very specific
groups, doing very specific work. So some of
it wouldn't have broad application, but some
of it would.

As we find out from the regions
and the grantees where they're doing training
through this program, we have been posting
those opportunities in OSHA's newsletter, the
QuickTakes Newsletter. So we're trying to
help the grantees advertise the training. One
of the things we've been finding over the past
couple years is that the grantees are having
trouble training all of the people they had
planned to train which has resulted in grants
being extended beyond -- we go through a no
cost time extension, which is one reason in
talking with Jordan this year, we're going to
a two-year time period for the grants awarded
this year. And hopefully we can avoid going
through the paperwork process that we do to
formally extend the grants for a second year.

This year, some of the notable
topics we have on the list; there are 26
topics this year, which is a very broad number
of topics; we don't usually don't do that many, included the focus Foreign Construction, pandemic flu, work zone safety and combustible dust.

As you can see, we probably average training somewhere around 70,000, 65,000 people a year through this program. Some years we've trained a few more, and that had to do with how the grants were done, and then changes in the grant program. We used to award grants non-competitively for a second year, and we would give 75 percent of the funding for a second year of funding. For some reason, in 2002, we were told we couldn't do that anymore, that that was a non-competitive grant award and we would have to go through a procurement review board to do that. And as we looked at the process, there wasn't any justifiable reason in this process that we could use for a second year of funding non-competitively. So we haven't been able to do that since 2002.
We like this program. We were able to work with organizations that allows us to target some of the harder-reach workers, some of the community-based organizations that team with organizations that do safety and health training and have had some really good success under this program.

Another program that we have and administer out through Arlington Heights is what we call the Resource Center Loan Program. This is a program through which we have training materials, primarily videos, on hand at the Institute and we loan them out to eligible borrowers. And you can see the list there of people who are eligible to borrow. And it's a pretty successful program.

We're also in the process of automating the ordering on this. So it's kind of like if you go on-line and you want to buy a book, you know, you can check the book you want. You can check it out and put your information in electronically and what have
1. We're going to a similar kind of system, so we don't have so many faxes, because paper does occasionally get lost. And it will make it easier, because also as a borrower it will let you know if that item is already checked out. So it makes it easier for you to see what you can get immediately and what you may have to wait a few weeks for. So this program is used primarily by the outreach trainers, but it is used by a number of other people as well.

The Office of Training and Education Development, basically they are the office that develops curriculum for the OSHA Training Institute, the OTI Education Centers, the Outreach Training Program. They also work with a national office program such as Alliances. We've worked with a number of Alliance partners to help in development of materials. It's a good group. It's a small group. And they handle a lot of what I would call our special projects that come down,
either from the Secretary's office or from the Assistant Secretary's office. For example, the Secretary sent a memo to all the cabinet members on the ARRA funding kind of reminding them that safety and health was a priority and offering training for the people who oversee their contracts through the OSHA Training Institute.

So we worked with the national office and the education centers to put together this particular course for people from other federal agencies, and basically it focuses on the hazards in the construction industry and it also focuses on the elements of what we would call a safety -- they call it an accident prevention plan in the FAR. We now refer to it as a safety and health management plan, or management system. And we've offered that training. We put that together as a two-day overview for these people. And then in the training they're going to get a bunch of resources that they
I can use and refer to to help them better perform their contracting responsibilities in terms of making sure that these contractors have plans.

And just recently, and you heard Jordan mention this, we have gotten an agreement through the Federal Acquisition Institute, which is the Government agency that trains all of the contracting officers and all of the contracting officers' technical representatives. Contracting officers and contracting officer technical representatives have mandatory training requirements; some are annual, some are every two years, that they have to go through. And we're going to work with the Federal Acquisition Institute to develop a course for these contracting people on the hazards and what a good, in their terms, accident prevention plan would look like, what the components are, how they can evaluate it. And a different course probably for the technical representatives who are the
1 people who would actually go on site
2 occasionally and monitor the work itself.
3 We think this is a good inroad for us. It's
4 an opportunity to start seeing that in federal
5 contracts that safety and health is written
6 into a much, much stronger degree than it is
7 now.

8 Program evaluation. It's been one
9 of the things I've pushed since I've been
10 there. We have an evaluation program that
11 evaluates courses that we do at the OSHA
12 Training Institute. It also goes out and spot
13 checks the OTI Education Centers to make sure
14 that their courses are following the
15 curriculum and that they're following all of
16 their requirements for reporting and record
17 keeping that are set forth in their non-
18 financial agreements with us. They also go
19 out and sit through Outreach Training Program
20 10-hour courses and 30-hour courses.
21 We actually have stepped up the
22 number of unscheduled monitoring visits we've
been doing under the Outreach Training Program. And those will continue to increase over the next few years as we get more elements in place to help us identify that training up front.

The Susan Harwood Training Grant Program is also an element that we send out our evaluation folks as requested by the regions. Occasionally the regions will have issue with a grantee and they will ask us to come help them evaluate what the grantee is doing and we do that.

As we've instituted this program, we've really gone after Kirkpatrick's four levels of evaluation. We currently do levels one and two for all our ed center courses. We currently do levels one and two for site visits. And, you know, level one kind of deals with how did they react to the training? You know, did they like it? Were there things they didn't like about it? Level two really kind of evaluates did they learn anything?
It's the class evaluation, per se. In terms of knowledge, what did they learn? Level three evaluation, we are currently working on implementing level three for OTI courses. This is what impact did the training have? So maybe you learn something at the class. You pass the test, you learn something. But six months later you're not applying it. Well, why not? Are you being punished if you do it? Is there some impediment to you doing it?

So we want to see what the impact of our training programs are. And that's in line with a lot of the questions that we've been seeing through the budget process coming back from the Department and the Office of Management and Budget, is what are the impacts? You know, what impact are these programs having? If we're going to continue to give you millions of dollars for a grant program, what's the impact? And we have training evaluations that say people are learning in the class, but we're struggling
with that impact after they go back on the job. So you'll see more emphasis from our office and through the Harwood Grant Program on these impact evaluations in future years.

That pretty much covers an overview of the Directorate of Training and Education. If you've got questions, I'll be happy to defer them to Jim.

CHAIR MIGLIACCIO: All right.

Questions, Committee? Kevin?

MR. BEAUREGARD: Kevin Beauregard, state plan representative.

I don't have a question. I just wanted to express my appreciation for you and your staff, particularly over the webinars. At a time when funding is an issue for all the state plan states, the regular webinars that you're doing is allowing us to make sure that our staff stays up to date in a lot of different areas. And I've gotten very positive feedback from the quality of instructors that you've tapped to do the
various sets. And so I just wanted to let you know that we do appreciate it and we have a lot of people attending.

MR. PAYNE: Thanks, Kevin.

CHAIR MIGLIACCIO: Bill, go ahead.

MR. AHAL: Bill Ahal, a board representative. So far in this fiscal year do you see a trend in the amount of trainings? Has it gone down with the economic situation? Has it remained the same? Has it increased?

MR. PAYNE: What I've seen at the OSHA Training Institute is we've had a drop. And I think we can attribute that drop primarily to the budget situations in the states. A lot of states have restricted travel for their people. So we have seen it drop in the number of people at the OSHA Training Institute.

Through the OTI Education Center Program, through the month of July, which is the latest we have a complete month of reporting on, if they continue on track in
August and September, they will set a new record high for the number of people trained. And through the Outreach Training Program, while we trained around 680,000 people through the Outreach Program last year, we're on track to hit 760,000 people this year. So I would say through the ed centers and the Outreach Program, we're not seeing a drop, but at the Institute we have. And I think Kevin can kind of second this. All of the states are really having financial hard times right now and we're going to be trying to do more electronically to help them. But in terms of the other programs, we just haven't seen the drop off yet. Yet. Now it may come, but we're not experiencing it yet.

MR. AHAL: Now, do you keep any statistics on where the workers come from? In other words, are they new workers entering the work force and are they repeat, getting additional training? And where I'm going with this, if you don't, would that not be valuable
to determine the impact of stimulus funds on training?

MR. BARNES: Yes, the education centers keep the records on their own students. We don't retain those records. For the Outreach Training Program, the trainers, who are all private sector independent contractors so to speak, they retain their own records. In the training work group yesterday, I mentioned the process we have to go through to get approval to collect any type of information and the security levels that IT has established in terms of storing information. So I think it would be enlightening to have that type of information, but to date we haven't collected it because of the hurdles that we face and resource issues in terms of collecting and maintaining it.

MR. AHAL: Thank you.

MR. HAWKINS: Steve Hawkins, state plan representative.

Hank, I just wanted to echo what
Kevin said. We have really enjoyed the opportunity to bring our staff into a conference room for half a day and participate in a webinar. And by and large they're very well done and very informative. And that works really well. There's no travel authority, there's no TAs to complete. So we appreciate that.

I just wanted to ask you, where exactly is the list of disbarred, rogue, whatever you called those trainers? Where exactly is that on the web site?

MR. BARNES: If you go to the osha.gov web site, there's a tab for training.

MR. HAWKINS: Yes.

MR. BARNES: On the tab for training it talks about the OSHA Training Institute, the Education Center Program, the Outreach Program. And if you click on the link for construction and general industry, which is on the same page, I believe, on there there's an announcement box on the top right
which we highlight the procedures and the watch list. But on that same page below the narrative, there's also links at the bottom that will take you to each of those as well.

MR. HAWKINS: Okay. And one other question I have is, is there a way to access the list of approved trainers?

MR. BARNES: Not at this time. We don't have a cumulative list. Each of the education centers maintains the list of their respective trainers that they've authorized through their classes. We collect separate lists from each of them. So you could request an active trainer list, but it would be by education center. So it's somewhat fragmented at this point in time. We're currently in the process of trying to develop a means to have a cumulative national database for all authorized trainers.

There is a web site, outreachtrainers.org, that has established a vehicle for trainers who want to register.
themselves. You can sort by zip code and find
a trainer that might be in your local area.
Many of them also have listed their scheduled
courses on that same site. Now, some of these
courses are done on-demand, by-request basis.
So they don't all have scheduled courses on
there. But I think last count, there was over
1,000 trainers listed on the
outreachtrainers.org site.

So as far as the efficiency of it,
that's probably the most efficient way to find
a trainer in your local area. But again, each
education center would have a list of their
trainers. And we do collect those, but
they're all segmented by education center at
this point.

MR. HAWKINS: You know, I am
somewhat concerned that as we see the demand
for this training just keeps going up, almost
like, you know, some demand for some illicit
drug, and so there's this money to be had,
okay, it's almost like you got a drug problem
going here. You got this great demand. If it
outstrips the availability of bona fide
trainers, I'm a little bit concerned that
we'll get people to start to advertise
themselves, do the training, and give the
cards that are completely below the radar
screen. It's one thing to have a rogue
trainer that's registered, but what about
people -- or are we aware of anybody has
provided this training who's not authorized to
at all?

MR. PAYNE: Well, we're not aware.
If we were, we would be working with Sarah's
shop to go after them.

But there are currently over
16,000 at the outreach trainers. Okay? Our
definition of active is they've done at least
two courses in the past 12 months. So what we
find is, for the students who go through and
complete the trainer course, successfully
complete the trainer course, only about one-
third of them actually become active. So
there -- estimates probably between 45 and
50,000 actual authorized trainers today, but
only about a third of them are actually active
out there doing training.

MR. HAWKINS: Well, I do know a
lot of people go to that training just to
educate themselves and to do a job. I know
I've had a couple of opportunities where
people called and said, you know, "I've just
been given this responsibility. I'm an
attorney and I'm going to represent this new
manufacturer as they bring this plant on line
and I need to some OSHA instruction." And
they went and took the 40-hour class, which
would allow them to be an outreach trainer,
but they only took it for their personal
knowledge.

MR. PAYNE: And we're also aware
of certain companies who send their outreach
trainers every four years to become
reauthorized to do the training, who train the
employees in the plants, but they do not
submit for cards. And the trainers tell us
the employer doesn't want to give the
employees cards so they can walk across the
street and being employable at their
competitor. So they get the training, but
they don't submit for the cards.

MR. HAWKINS: True.

CHAIR MIGLIACCIO: Walter?

MR. JONES: Thank you. Walter

Jones, employee rep.

At our meeting yesterday at OTI,
the OTI meeting, appreciate you guys coming
and giving us your thoughts on some of the
issues that we were discussing. And I want to
echo your comments earlier on the Harwood
Grant. We think it is important that a
depository of materials be developed and we
begin examining these copyrighting issues that
many folks don't reinvent the wheel and we
make this product available to many
construction contractors who need this
information.
And secondly, I want to also put in a plug like we did yesterday about the need for supervisor training and providing contractors with -- well, as you were saying, closing this loop where we're sending all these workers out there that are trained, but to close the loop by also providing management and supervisor training, and that it goes beyond identifying what a hazard is, but how to create safety culture on a job site, how to conduct an accident investigation, how to conduct a job safety analysis. You know, how to address issues such as when productivity meets safety. Instead of throwing safety out of the window, how do we manage that as a manager so that the folks that are coming to the work site, their training could be more effective on the work site. So we're looking forward to working with you in developing supervisor materials or either adding additions to the current 30-hour course, or expanding to a new topic.
CHAIR MIGLIACCIO: Okay. Thank you.

Matt?

MR. GILLEN: Matt Gillen, NIOSH.

Thanks for all the great work you're doing. It was really an impressive presentation.

I had two questions. One was say I'm a compliance officer and I'm on a job and, you know, interviewing employees and there's somebody that has like a 30-hour card, but you know it really doesn't seem like they really know much at all about construction safety. Can I like take down the number and is there a way for me to go back and contact your office and find out who was the trainer and maybe make a referral if I'm concerned? I mean, you know what I mean? As a compliance officer he doesn't seem to make sense and it makes sense to check it out.

MR. PAYNE: As I said, due to the increased problems we had and the newspaper
articles, OSHA established an executive work
group and we've come up with a number of
actions and activities that we're taking. And
one of the things that we're currently working
on is we want to establish a national database
for the Outreach Training Program. Now don't
get excited.

MR. GILLEN: Okay. I won't get
excited.

MR. PAYNE: Don't get excited.

This is OSHA. We have a number of issues in
terms of going through -- because we're in the
process of identifying what data we want to
collect, because we got to go get permission
to collect it. And then we've got to work
with IT to figure out a way how we make this
data available without somehow violating
people's right to privacy.

But our kind of vision is that we
would have a national database where, like
Steve said, if he was looking for a trainer,
he could log in there and by city and state
pull up the names of people who are currently authorized trainers. Or, in your case, if you had the name as an employer. If I came in with a 10-hour card and said, hey, I want to go to work and I have a 10-hour card, you the employer could go to the web site, enter my name and my card number, because all cards are now numbered, and it would tell you whether that card was valid or not. So if somebody's tried to falsify -- so if I, you know, as we heard yesterday, went to a web site, downloaded the card and put my own name on it, it would let you know that card was not valid. And the same with the trainer. If a guy shows up at your doorstep and says, hey, I'm a authorized outreach trainer, you can ask him for his trainer card number and you can go on line and two things. Number one, you can verify that he's an authorized trainer. Number two, you can also verify that he's not on the watch list and that we've yanked his authorization.
So that's the plan, is to get that database built. Currently segments of that database are kept in 44 different places, so it's a matter of figuring out first of all what we want to collect, getting the permission to collect it, and then figuring out a way to get all this data sorted and merged into one big database. And then the controls on who has access, how you can access it and what data you see. So it's a work in progress. We think it's going to have a lot of value for this program. And, you know, we're hoping we can get it sometime early to mid-next year, get it actually on line.

MS. SHORTALL: Before you go to your next question, Sarah Shortall, ACCSH counsel, I'd like to have Mr. Payne clarify what you mean by getting permission. Is this permission from OMB?

MR. PAYNE: Yes, ma'am. Go through the Paperwork Reduction Act requirements.
MS. SHORTALL: Any time the Agency collects information, the same information for more than nine persons, we have to get permission from the Office of Management and Budget to collect the information. So that's what he is referring to there.

Thank you.

MR. GILLEN: My second question was about an area that seems like a gray area, but it's very important for construction and its competent persons. And, you know, they're so important. There are so many small employers. I mean, you know, competent persons play an important role in many of the construction standards. But it seems like there's a lot of variation in training, even like defining the capabilities that they need to have.

Is that an issue that you guys have thought about putting on your long list of things to work on or think about?

MR. PAYNE: I'll be honest with
you. No one's ever approached us about that.

So if that's a recommendation that you all
would have, I mean, we would certainly be
willing to work with either the sub group, or
I mean the work group or what's a larger group
or a different group on something like that.

MR. GILLEN: Thanks.

CHAIR MIGLIACCIO: Tom Broderick.

MR. BRODERICK: Tom Broderick. I

just wanted to respond to Kevin's anecdote
about an attorney who just wanted to get
additional information on construction safety.
And I want to make sure that my friends from
the Office or the Directorate of Training know
that I've been paying attention over the last
year or two.

What we would hope, and my
organization is a part of an Education Center
in Region V. What we would hope is that
people who are looking for that kind of
information would be going to the OSHA 30-hour
course rather than the OSHA 500 course. And
we would also hope that we had a filter system in place when people call to register that find out whether or not the person who wants to take the 500 course meets the current requirements of five years of construction safety experience and the requisite educational underpinning for it.

CHAIR MIGLIACCIO: Okay. Any other questions?

MS. SHORTALL: Could I ask Mr. Payne to clarify one other thing for the record?

And that is, you mentioned the degree to which you are using the webinar as a way to reach out on training where budgets have constraints. Could you clarify whether you're using webinars for the outreach training and at ed centers as well as the COSHO training?

MR. PAYNE: Currently, we have been using it for compliance officer training almost exclusively. I think as we move into
2002, we will look at doing some events for the public. The challenge we have is any service or training that we provide for the private sector we're supposed to charge tuition for. And we haven't quite come up with the way to figure out if we're doing a nationwide webinar and you get 1,000 people registered how we would collect a fee for attending that webinar from 1,000 people.

We're not set up that way.

And the other thing I'll remind the group is, one of the reasons we went to an education center program is we're required to charge, so we charge the private sector tuition, but I cannot use the tuition to offset my costs. The only thing I can do with OTI tuition, by Congressional mandate, is put it in the Susan Harwood Training Grant Program. So if I collect $200,000 worth of tuition, that doesn't pay instructor salaries, printing costs, anything like that. What it means is, instead of $10 million for Harwood
Grants, I have 10.2 million for Harwood Grants. So it's kind of a disconnect in that we have one regulation that requires us to collect tuition and we have a specific formula to make sure that we're not charging too much or too little, because we can only collect what are costs, but yet I can't use it to cover the costs. So welcome to our world.

CHAIR MIGLIACCIO: Any other questions? Mike?

MR. BUCHET: Michael Buchet, Directorate of Construction.

Hank, we've had some questions phoned in the last few weeks about the Outreach Training Inspector Programs and their appearance or lack of appearance on the Internet.

Can you give us an update on where we're going with the 500 on the Internet? I understand there was --

MR. PAYNE: You want to answer that one, Frank?
CHAIR MIGLIACCIO: Yes. Frank Migliaccio with the employees.

Before I took over the chair of this committee, I was the co-chair of the workers group on the OTI. And the 500, we noticed that was more and more 500s being offered online and we were questioning both Hank and Jim about first how they can make sure the person that's actually online is the person that's going to get this card. And we had asked, because of the cost and so forth like that, who was doing the training, but we also wanted them removed. We just didn't think it was a good way to go.

Now, I notice there have been some that have been taken off. I noticed there were a couple --

MR. PAYNE: No, all the 500 online courses have been taken down.

CHAIR MIGLIACCIO: Oh, they have been now?

MR. PAYNE: They have been taken
down. The OTI Education Centers who were
doing this online training, when the trainer
course was revised, there were a number of new
requirements, new objectives in the course.
We gave them kind of a grace period to revise
their courses to meet the objectives and they
didn't do it. So we had them take them down.
We specifically have asked them how -- because
the class requires that the student actually
do training. I mean, this is a trainer
course, so they actually have to develop and
conduct training in a class, get feedback from
their peers and from the trainer. And we
asked them how they were going to do that
online and they came back and said they're
going to change the course from being all
online to being a blended course with part of
it online and part of it being required to be
in person.

And the second thing we asked them
was to tell us how they were going to verify
that I don't register for the course, log in
and then have Frank come around here and do
the work for me so I can get through the
training and get to the part where all I have
to do is show up for a day or two and do the
face-to-face stuff. And we're still waiting
to hear back from them collectively on how
they're going to do that. So it's not moving
fast.

CHAIR MIGLIACCIO: Nothing does.

Any other questions?

MR. BUCHET: This is Mike Buchet
again, a follow-up. And for the refreshers.
Renewals. Take the 500 four years --

MR. BARNES: We've also revised
the learning objectives for the update course.

MR. BUCHET: Right.

MR. BARNES: Both the 502 for
construction and 503 for general industry.
And both of those also include a teach back
component at this time. So we haven't
authorized any of the update courses for
online delivery at any point in time.
MR. BUCHET: Thank you.

CHAIR MIGLIACCIO: Any other questions?

I just have two things. They're really not questions. One's a forecast. With the way the economy is, I think you're going to see the numbers on the 10 and especially the 30 hours grow. I know it is at our international, because if the people are out of work, they're coming in to take the 30 hours; not the 10 anymore, the 30.

The other thing is OSHA, just like MSHA, works for the Department of Labor or works under the Department of Labor. Just an idea. You say you can take the trainers off that's either giving cards or not doing the training, or whatever, and you can take them off or rescind their right to train. You might be able to go one step further, like MSHA, because I do a lot of work with MSHA, the mine safety. They actually put their instructors in jail for fraudulent. Might be
something you might want to look into.

Because you start getting people's attention when they know they're going to go for a vacation in a cell.

MR. PAYNE: One of things that we're now requiring or will be requiring after we get through the Paperwork Reduction Act process is all new trainers will have to sign a certification statement where they certify that they will follow the Outreach Program. And it has several regulatory citations in there, one if which is the criminal one for submitting false information to OSHA. And every time they submit paperwork to get cards, they have to resign that statement that the information they're submitting for this particular course -- so if the Agency or the Department decided to go forward and prosecute, the people have been forewarned that that exists and can happen. And in New York State, one of the individuals that was investigated actually sold 30-hour cards to
undercover state OIG people and he's currently pending trial.

CHAIR MIGLIACCIO: Good.

MR. PAYNE: And so he probably is going to go to jail for that. But that was the State of New York who actually caught him and then let us know.

CHAIR MIGLIACCIO: That's a good idea. Appreciate that.

Any other questions?

Well thank you very much for a very informative presentation, both of you. Thank you.

MR. PAYNE: Thanks, Frank.

MS. SHORTALL: Mr. Chair, at this time I'd like to mark as Exhibit 7 in the previously mentioned docket the PowerPoint presentation on the OSHA's Directorate of Training and Education presented by Hank Payne, director.

(Whereupon, the document was marked as Exhibit 7 for
identification.)

CHAIR MIGLIACCIO: Okay. At this time we'd like to have Construction Enforcement, the legal perspective from the Office of Solicitors of Labor, Ann Rosenthal, please.

Welcome.

MS. ROSENTHAL: Thank you. I tend to not do slides, because I need the light to see my notes.

I was asked to talk about the relationship of the Construction Safety Act to the OSH Act. What we're doing, how they relate to each other, how they relate to what will be done under the current stimulus or ARRA Act, and some information on Barlow's and what that means. And I heard that Mike told several people yesterday when they asked questions at the enforcement session that I'd be here to answer them today. So, I didn't get the details of what those questions were, so I don't know if I'm super prepared. And I
was also told to leave a fair amount of time
for questions.

We're starting a little bit late,
but in fact Hank covered part of what I was
going to say about the Stimulus Act
activities, so that should balance out fine.

To start with the relationship of
the Construction Safety Act and the OSH Act,
it's kind of interesting, and when I started
to try to actually look up more details than
I know, I learned it's kind of hard to find
out, too. But the Construction Safety Act was
passed in 1969 and it required federal or
federally-funded construction projects to
comply with certain safety standards, or with
safety standards and it authorized the
Secretary of Labor to promulgate those
standards in conjunction with an advisory
committee, which is all of you, or was a
different group of you in 1969. So the
Secretary began that.

Before the enforcement though
could get really underway, the next year
Congress passed the Occupational Safety and
Health Act, or the OSH Act, which applies not
only to construction but to all industry and
it does not only apply to work being done
pursuant to federal money. It applies to all
employers in the country.

One of the things that that Act
did was it called for the adoption of existing
federal standards as OSHA standards and some
of those standards were the standards that
were, actually as they passed it, in the
process of being promulgated under the
Construction Safety Act. And as soon as the
OSH Act was enacted, the Construction Safety
Act standards were adopted as OSHA standards.

But another thing that the OSH Act did is it
said that all future standards adopted under
the OSH Act would also be Construction Safety
Act standards, that standards adopted under
either act would basically be standards under
both. And what that means for your purposes,
as I'm sure I don't really need to tell you,

is that you guys need to be involved in the

promulgation of all OSHA standards applying to

construction.

But despite the fact that the two

acts have the same standards, they are very
different. The OSH Act is enforced through

citations and penalties and, you know, in very

rare cases imminent danger orders. But you

know, for the most part OSHA inspectors go

out, they look around. If they see a

violation, they go back to their office. OSHA

issues the citation, proposes the penalty and

the employer either theoretically abates the

violation and pays the penalty, or contests

the citation and gets a hearing before the

Occupational Safety and Health Review

Commission, etcetera.

Under the Construction Safety Act,

the primary remedy that the Department has is

debarment of the federal contractor for repeat

violators. This has not generally been used.
I think part of the reason it hasn't been used, and this is my speculation; I can't say I really know, is because the OSH Act was passed the next year and enforcement under that act is a lot faster and lot more in the Department's control because there are a number of other statutes that the Department administers that deal with federal contracts or federally-funded contracts and the Department does do debarment proceedings under those. However, that's a really long process and I think the general feeling is that OSHA enforcement works faster.

But the Act still exists. And one of the ways that it exists, and I think Hank alluded to this, is that all federal construction contracts have to require compliance with the Act. They have to contain an accident prevention plan, which is, you know, the safety and health management system, as we call it here. They also have to have special provisions for protection if they're
high dollar contracts and if they're
particularly hazardous or if they take place
in the vicinity of where federal employees are
working, because then the Government seems to
have an extra incentive to protect its own
employees. But the enforcement of all that is
left the contracting agency. And some
agencies take those responsibilities more
seriously than others, and some do a pretty
good job.

I was telling Hank the last time
we spoke that I had heard that the Department
of Defense, or certain components of the
Department of Defense anyhow, send their
COTRs, the contracting officer technical
representatives, to the 10 and 30-hour courses
so that they will know what they're doing.
And they have an extra kind of enforcement
mechanism that OSHA doesn't have, which you
know, many people in OSHA think is pretty
nifty, which is that they can stop work until
the contract is complied with and the contract
calls for compliance with OSHA standards.

Well, that's really great, except one of the things that we recently learned is, you know, they don't know a lot about what OSHA standards are.

And when the stimulus package was passed, we started looking into this. And one of the things that we discovered is, you know, there are these provisions out there, but nobody really knows how to deal with them. So Hank's people developed this two-day course that he talked about which the OTI is offering, or the training centers will be, or are offering; I think it's already in existence, to contracting personnel and other agencies.

The other thing that happened is as we were examining all this, we learned that there is this Federal Acquisition Institute, and so we've started talking to them. I think Hank said we have an agreement, and I think that might be a slight overstatement. We are
in active discussions with them and they're very interested in providing this training as part of the training they need to provide their contracting personnel. Apparently one of the things that I learned from one of the Labor Department contracting officers in doing this is that, you know, the contracting officers have to get 80 hours of training a year. Well, FAI doesn't have quite that many courses. So if somebody's been a contracting officer for 20 years, they're taking the same classes over again. So they were really excited about the thought that they could have new classes and they could actually learn new things. So, you know, we're hopeful that those things will help.

Also, as part of that process, and Hank alluded to this, on May 7th the Secretary sent a memo to all of the other cabinet officers reminding them that in awarding funds and awarding contracts under the Stimulus Act, there are these requirements in federal
contracting law and saying that OSHA, you know, was ready to provide assistance, not only the courses, but you know, specific contact personnel that they could call. And one of the things that OSHA is gearing up to do is to provide extra assistance to these other agencies. One example that we've talked about, and I don't think OSHA's done it yet, but I know it's being planned, are things like demonstration safety and health management systems that would apply to specific kinds of work. For example, if you're doing bridge repainting, it would include information on lead abatement, fall protection, things like that. Whereas if you're doing high rise construction, it would include other information on crane safety so that the contracting officers would know what to look for in these accident prevention plans that they have to see. They won't just be doing, as one contracting officer described it, as looking and saying, oh, yes, they've got a
five-page accident prevention plan, so I guess they comply.

And there's a few other ideas we've had. Some of them are still in the conceptual stage, but there is a lot of potential we think for, you know, OSHA to cooperate with the other agencies. And, you know, to the extent that the other agencies are willing and certainly this is something that the Administration believes they should be doing. So we're hopeful that they will be willing to do it to sort of leverage both of the agencies in any given cases authority.

If, for example, a COTR is out at a construction site for say the Department of Transportation; I've chosen that one at random, because there's a lot of highway construction, and is having a problem and has not learned what its contractors need to do to do the work safely and is having a problem actually getting them to do it. The COTR will be able to contact OSHA. OSHA will be able to
send somebody out there. Or if OSHA goes out
and, you know, sees somebody and really has a
problem getting them to comply, they can
contact the COTRs and get them to come in.
You know, we don't expect that there actually
will be any stop work orders issued, but I
think the threat of them is likely to go
pretty far to assuring compliance, if we can
reach this level of cooperation. But we are
pretty hopeful at this point that we will be
able to do it.

The other thing that Mike asked me
to talk about is sort of how we do inspections
and Barlow's. Barlow's, if anybody doesn't
know, is a Supreme Court case that came down
in the first days of the OSH Act. Because
despite the fact that the Act has what's
called a right of entry provision that allows
the Secretary to -- let's see, I'll read the
exact language, "Is authorized to enter
without delay and at reasonable times any
factory, plant, establishment, construction
site or other work place area on environment where work is being performed." The Supreme Court held that employers still have a right of privacy and that the 4th Amendment to the Constitution requires OSHA to have a warrant if the employer objects.

There are a few exceptions. OSHA doesn't always need a warrant. If something is in plain view, you don't need a warrant to see it. That's particularly important in the construction context. There's something in 4th Amendment law known as the open fields doctrine. If you can see something in plain site, you're authorized to go look at it. I've noticed just in my own practice that a lot of trenching violations are found that way by COSHOs driving along and seeing an un-shored trench with people working in it, then they'll stop. Well, you know, the employer there doesn't have any right to say you're not allowed to look at this trench because it's in public view on a public street.
The other time, and this would we think possibly be of particular importance in the stimulus-funded projects, is if the owner of the project gives consent. We've had cases, one of the very cases I worked on 20 years ago, I hate to say how long I've been doing this stuff, was a case involving an Army Corps of Engineers-funded project along the Mississippi. And the employer was really resistant to letting OSHA into the site to look at things that were not in plain view. And the Army Corps contracting representative said of course you can come in. And, you know, we actually had to litigate whether that was valid, and, yes, of course it is valid because the contractor was just there because it had been hired by the Corps.

When OSHA does need a warrant, we have not found this to be a particularly onerous requirement. First of all, the vast majority of employers let OSHA in within a warrant. I don't think we in our office, and
I have not been doing the litigation for several years, but I don't think we've had a warrant case that has gone to the Court of Appeals in at least five years. And I think that's good. Because what that means is that everybody realizes that when OSHA gets warrants, it does it right. And the ways OSHA can get a warrant, basically there are two kinds of evidence that it can present to a federal magistrate to show that it has, in legal terms, probable cause to perform the inspection.

The first kind is what's called specific evidence of a potential violation, and that's really very easy. If there's a complaint from a worker at the site, a media report that said that, you know, there was an accident here or whatever, that said anything that showed that there was a problem, or a referral from anybody else. There have been some cases where we've dealt with city building inspectors and they will call and
1 say, you know, these people are just not doing
2 this right and can you go out and do something
3 about it? And all of those count as specific
4 evidence and the magistrate will give them a
5 warrant.
6
7 The other way to do it is what's
8 called a neutral administrative plan, and
9 that's a very old term. It's about 100 years
10 old, I guess. And it's the way that
11 regulatory agencies can go and inspect sort of
12 generally sites under their jurisdiction.
13 It's used by city building inspectors and it's
14 used by OSHA. And what that means is that you
15 have to ensure that the actual officials of
16 the agency don't have what the Supreme Court
17 calls unbridled discretion. Essentially, you
18 know, you could say I don't like Hank. I'm
19 going to go and inspect OTI, because I'm
20 really mad at him. He did something.
21 Obviously it wouldn't be OTI, because that's
22 a public site. But you get the point. And
23 OSHA's come up with a lot of ways that, you
1 know, do very well at establishing that its
2 plans are neutral.
3
4 One of the ones that you're
5 probably most familiar with, and I'll just
6 talk about construction here, are the Dodge
7 Report lists. Those are randomly generated.
8 OSHA has no control over what's on the lists.
9 It gets the lists and it inspects those sites.
10
11 There are other things that can be
12 done. You can use kinds of random number
13 table computer programs if you have a more
14 complete list and, you know, can look at it.
15 I've actually seen something that one OSHA
16 area office has done to try to capture a lot
17 of very small construction projects that won't
18 be showing up on Dodge Reports, which is it
19 uses a kind of random number table to select
20 zip codes and then it performs a street-by-
21 street, you know, survey of that zip code and
22 inspects every single construction site it
23 finds there. And that works too, because
24 there isn't any discretion. The zip code was
chosen randomly and every site in that zip
code has to be selected.

And then this also means, because
I gather you're talking about targeting that,
that you can't do targeting. Within any of
those systems OSHA can do whatever kind of
targeting it decides is most appropriate. It
could target sites that present specific
hazards, sites where cranes are being used,
sites where there's exposure to lead, sites
that there are a lot of fall protection
problems. Or it can target sites that do
specific kinds of work, bridges, high rise
buildings, something like that. And right now
OSHA has made a commitment to perform a
certain number of stimulus project inspections
and it's looking for those sites. That's
actually so far been a little bit frustrating,
because most of the sites, as you all probably
know, are not active yet, so OSHA is getting,
for example, a specialized Dodge Report
dealing with ARRA sites and they go out to
them and 95 percent of the time there's no work going on. But that will all be changing we expect in the next couple of months pretty rapidly, from what I understand. By September and October a vast amount more work will be being done.

OSHA's also doing, I think to help with that, and I'm not familiar with all the details, but our office will be working with them on exactly how this is done to make sure that it's totally fair -- it is looking at recovery.gov to target the sites and to discover where the sites are if they don't shop up in Dodge Reports.

And that basically covers what my planned comments were, because Mike said leave lots of time for questions, and so I will leave you lots of time for questions.

CHAIR MIGLIACCIO: Okay. Thank you.

Questions by the Committee?

Kevin?
MR. BEAUREGARD: Kevin Beauregard, state plan representative. I'm one of the regulatory work group representatives, and I think a lot of my representatives bailed on me today. So I'm trying to capture -- you covered a lot of the information that we actually had questions on, and I appreciate it. I think that will help us as a work group. I have a couple of items for clarification. Earlier when you were describing a couple of different methods that you're looking at as far as working with the Federal Acquisition Institute and Hank Payne's two-day course for the contracting personnel, another issue you covered was OSHA's going to provide extra assistance and you indicated like a demo of safety management systems. How are they going to go about that?

MS. ROSENTHAL: I'm not completely sure, because we are at a very preliminary stage. I know one way that they're talking...
about doing it is through the courses that are
being offered both through the education
centers and we hope through FAI, and also just
to have them available. Because one thing
that OSHA is planning on doing -- and I'm not
sure how, because all of this, you know,
happened really suddenly and it's getting
g geared up pretty fast. I'm not sure exactly
where we are in all of this, but in the memo
to cabinet secretaries there were points of
contact and OSHA will have those and will be
able to distribute them. You know, one thing
we've talked about is seeing if there can be
some other kind of general communication to
the agencies. At one point we thought about
doing something with OMB's guidance on using
ARRA funds. Unfortunately, we were not able
to move fast enough to get into the last
general guidance that they issued. There was
some discussion that they were going to do
more, but now they've decided they're going to
use some other mechanism to get information
out to the agencies. And we're not, you know, quit sure what it is, but we know that we want to be involved in it, and they know that we want to be involved in it. So I think that will happen and that will be one way to do it.

MR. BEAUREGARD: Okay.

MS. ROSENTHAL: And if you guys have any other ideas, I mean, you know, we're willing to listen.

MR. BEAUREGARD: Well, one of the things that our work group wanted to find out is what you were already doing. Because we really weren't fully aware of the different activities you were doing.

Earlier you mentioned something, and I don't know if I misunderstood you or it was the terminology I wasn't aware of, but I thought you said something about COTRs.

MS. ROSENTHAL: COTRs are -- Hank just called them the technical reps for contracting officers. Here in the Government we tend to call them COTRs and it's fewer
syllables, so I'm more like to say it. It's contracting officer technical rep. I don't know where the "ah" sound came from. Maybe because we can't say COTRs that easily.

They are the people who actually administer most federal contracts. After they're awarded, they're the ones who sort of ride herd on the contractors. With some agencies and some construction projects, they're there all of the time. With others they're there less.

MR. BEAUREGARD: Okay.

MS. ROSENTHAL: But they're the ones who actually know what's going on. And they're also important in awarding the contracts. I learned so much about federal contracting in the last few months, you have no idea. But when contracting officers are reviewing bids to decide who to award a contract to and, you know, their financial types and procurement types, and they don't necessarily know the specifics of any
contract. So if it's a construction contract, they will go to their construction COTR and say you need to review this. And a computer contract will go their IT COTR and tell them to review it. So that's how that works.

MR. BEAUREGARD: Okay. I figured it was an acronym. I just had no idea what it was.

MS. ROSENTHAL: Yes, it's C-O-T-R and I don't think there's another letter in there. That's just what it's called.

MR. BEAUREGARD: And I have one final question, and then some of the other work group members may have some additional questions. It's not necessarily a question from a work group, but coming from a state plan program where we also do targeting.

MS. ROSENTHAL: Oh, right. I was going to mention.

MR. BEAUREGARD: I'm curious about -- I know OSHA is targeting stimulus projects sites.
MS. ROSENTHAL: Yes.

MR. BEAUREGARD: I'm aware of that, and we've got the directive. What's the legal basis? I mean, you know, generally when we do a targeting, it's based on a high-hazard industry or a specific operation, or an emphasis program. But in this case there's money be allocated for projects.

MS. ROSENTHAL: Right.

MR. BEAUREGARD: So what's the legal basis for targeting that?

MS. ROSENTHAL: The legal basis is partly that, you know, there are local emphasis programs that are focused on Recovery Act projects. And within those, and I think I started to allude to this at the end, there's still going to be a requirement of some kind of neutral selection within that. Or, if you're in an area that has very few projects, you could decide to do them all. But, you know, otherwise you'll still have the same requirement not to just pick and choose
the ones that you want to go inspect. Does
that answer your question?

MR. BEAUREGARD: It kind of does.

I mean, we know like in our state we've been
provided a list of ARRA sites.

MS. ROSENTHAL: Yes.

MR. BEAUREGARD: And we're trying
to determine how we're going to work that into
our rotation. Some of these sites would have
been inspected anyway based on our other
emphasis programs. But it sounds like OSHA is
primarily wanting to do pretty much all of the
ARRA sites.

MS. ROSENTHAL: No, I don't think
it's all of them, but I think OSHA has come up
with a percentage, and I'm not going to say
it, because I've heard a couple knocked around
and I don't know what the final decision was.
For what its goal is, of its total
construction inspections that would be ARRA
sites, they don't want to do them all because
then they wouldn't be doing anything else.
And that doesn't really send a very good message either. But within that, there will still be the same kind of targeting. Or you can target a hazard and say, you know, you want a list and the list has to include 10 percent ARRA projects.

One thing that I actually just forgot to mention is -- I was talking about the contracting requirements in federal contracts. Of course a lot of the Recovery Act money is going to the states, which are awarding their own contracts, and that work is being done under state contracts, not federal contracts. The Construction Safety Act still applies because it's federal money. But the regulatory basis is a little bit different.

There's something called Federal Acquisition Regs, the Federal Acquisition Regulations, familiarly known as the FAR; that's another term you may hear, which includes the requirements that I mentioned. There are other grant rules which are called the Uniform
Rule, because every department has the same rules for giving out grants. So it's uniform across all the federal departments, which have similar but not identical requirements that the states have to agree to in accepting grants so that they have to agree to certain safety provisions in the construction contracts that they're awarding.

MR. BEAUREGARD: Thank you very much.

MS. ROSENTHAL: You're welcome.

CHAIR MIGLIACCIO: Frank Migliaccio with the employees.

When Kevin was asking about targeting the stimulus jobs, could it have something with its federal tax payers' dollars getting put into it?

MS. ROSENTHAL: It's federal tax payers' dollars and that imposes the extra requirement that you have to be complying with the Construction Safety Act and you have the extra provisions there. I don't think it gets
you out of the 4th Amendment to the extent that it's not actually a federal site.

On the other hand, you know, certainly it's a requirement of complying or that you have to comply with the safety and health laws. That's in the general guidance. And so I think it's pretty likely that whoever the contracting agency is, whether it's a federal or a state agency, should be cooperative. I mean, you know, when you're dealing with state agencies, politics come into play in a lot of ways and, you know, you don't know exactly how that will work. But the mere fact that it's federal money doesn't -- you know, if a private entity is awarded federal money; for example, the training centers, to do something, it doesn't necessarily give any federal agency the right to go in and inspect them without a warrant.

CHAIR MIGLIACCIO: Okay. Thank you. Any other questions?
MR. GILLEN: I have a question.

CHAIR MIGLIACCIO: Matt?

MR. GILLEN: Matt Gillen, NIOSH.

You know, there's sometimes like when we talk in the Trenching Work Group about perhaps a small percentage of employers who might be kind of resistant or who seem to have violations again and again, so what are some of the legal constraints for targeting those groups, or having a separate watch list for companies that have a record of not following --

MS. ROSENTHAL: Well, that's actually something that we're working on. I think you may all have heard of OSHA's EEP, the Enhanced Enforcement Plan, which came into being a couple of years ago. That's in the process of being revised to something called the SVEP, the Severe Violators Enforcement Plan. SVEP is the right acronym. I believe I gave the right name. And that has not yet been finalized, but there are certain things
that, you know, OSHA is planning to do with it
and it's meant to target exactly those people.
And like the EEP, but we hope more effectively
it will say that if you've got somebody who
has this kind of history or show signs of just
being particularly recalcitrant or
particularly unwilling to comply, then one of
the things that OSHA will do is inspect other
sites where they're working. And, you know,
there will be communication among the
different OSHA offices so that even if they're
not working in the same place, they'll be able
to be inspected.

And even under the EEP OSHA was
doing this to a limited extent. There were
EEP alerts that OSHA issued to its regions for
certain employers and said, okay, if you, you
know, come across this employer doing any work
in your region, it's an EEP employer and you
need to inspect them. And that's okay again,
because, you know, there are certain criteria
they met, they fell into those criteria, they,
you know, met those criteria and so OSHA can
inspect them.

But the final plan I think is expected to be out by September, although probably don't quote me on that, because I'm not rich and I can't actually say.

MR. BUCHET: Jordan alluded to it, but he didn't predict when.

MS. ROSENTHAL: Yes, okay.

MS. SHORTALL: Sarah Shortall, ACCSH counsel.

Anne, during the Regulatory Compliance Work Group yesterday, several people were referring to the memo that was sent out by Secretary Solis to the other agencies. And although one member of the work group had obtained it off a public web site, he didn't have a copy. And if you have a copy of that memo, I think it would be very helpful to put it into the record.

MS. ROSENTHAL: Sure.

MS. SHORTALL: All right. Thanks
so much.

MS. ROSENTHAL: There you go.

CHAIR MIGLIACCIO: Any other questions?

I just have one question. Would your office or your group be the one that would be contacted for contractors say not paying the penalty or the interest, or would go to the Department of Justice?

MS. ROSENTHAL: We'd be contacted initially. The way collection works, actually it wouldn't be us initially, OSHA has a collection agency, a collection office. And they have certain procedures which I believe include private collection agencies. If that doesn't work, then the case is referred -- I think it's technically referred to the Department of the Treasury, because then all of the different agencies who may have cases against -- you know, because usually if somebody's not paying OSHA penalties, they may be not paying taxes, they're not paying other
fees that they owe. And so they'll consolidate all of that and then they will refer it to the Department of Justice which will then file an action.

And that's something I've actually become aware of recently in the context of another kind of work that we do involving what we call enforcement orders, 11(b) enforcement orders. If we have an employer that refuses to correct a violation, we can obtain a court order and get into all the details of that. But they can then be held in contempt of the court order, which opens up a much wider variety of sanctions in fact. And one of the things we realized was that there was not the kind of coordination that we needed with the collection people. We had one case where we were seeking to enforce one order and the Justice Department was seeking to collect penalties from prior violations. And there was sort of these two cases going on. It was the court that noticed that we had two cases
against the same employer at the same time.
And we did work with them and worked it out.
But it's one of the many things on my list of
trying to arrange coordination earlier.

CHAIR MIGLIACCIO: Okay. Thank
you.

Any other questions?

Seeing none, I'd like to thank you
for an excellent presentation. I learned a
lot myself today.

MS. ROSENTHAL: Good.

CHAIR MIGLIACCIO: So, thank you.

MS. ROSENTHAL: I have to confess
I volunteered to do this because I have never
been to a meeting of this Committee before and
I thought this would be a good reason to say
that I would come.

CHAIR MIGLIACCIO: You did an
excellent job.

MS. SHORTALL: Mr. Chair, at this
time I would like to mark as Exhibit 8 the May
7, 2009 Memorandum for Cabinet Secretaries

(Whereupon, the document was marked as Exhibit 8 for identification.)

MS. SHORTALL: And I know there were several members yesterday who were anxious to get their hands on this. I can make copies at lunch. Would you indicate if you -- sounds like everyone wants one. I'll come this afternoon with all of them.

CHAIR MIGLIACCIO: Okay. Thank you.

CHAIR MIGLIACCIO: Off the record.

(Whereupon, the above-entitled matter went off the record at 12:12 p.m. and resumed at 12:13 p.m.)

CHAIR MIGLIACCIO: The public comment sign up sheets are located in the back of the room for anybody who would like to address the Committee this afternoon. If
you'd like to, sign up. We'll do that at, I think it's at 3:45.

Any questions? Tom, were you getting ready to say something?

MR. KAVICKY: No.

CHAIR MIGLIACCIO: Oh. All right.

At this time, we'll break for lunch and reconvene at 1:30.

(Whereupon, the hearing was recessed at 12:13 p.m. to reconvene at 1:30 p.m.)
A-F-T-E-R-N-O-O-N  S-E-S-S-I-O-N

1:34 p.m.

CHAIR MIGLIACCIO: All right.

We're going to have the ROPS Work Group up first this afternoon.

Emmett?

MS. SHORTALL: Mr. Chair, while Mr. Russell gets ready, I'm going to pass out in both directions the memo that the ACCSH members requested.

CHAIR MIGLIACCIO: Thank you.

All right, Emmett.

MR. RUSSELL: Okay. Ready?

CHAIR MIGLIACCIO: Yes.

MR. RUSSELL: Emmett Russell, employee representative.

I'm going to make the Roll Over Protective Structures Work Group, or ROPS Work Group report.

We did welcome, self-introductions and we reviewed the proposed edits submitted to OSHA; I have OSHA, but it should be ACCSH
-- to the OSHA regulations on ROPS on skid loaders which we presented at the last meeting. Presented and reviewed a draft of the proposed edits to OSHA regulation on tip over protective structures on compact excavators, and mini excavators prepared by the Association of Manufacturers representative. And we discussed the proposed edits.

The work group approved the request to submit as proposed to OSHA regulations modifying the existing regulations on tip over protective structures.

We had a discussion on the next steps for the ROPS Work Group and that would be to look at roll over hazards related to farm tractors and different types of industrial commercial tractors. Example would be the Challenger, which is a tractor with rubber tracks used in construction. Pictures of the Challenger tractor will be presented at the next meeting. A number of work group
members agreed to research and supply accident and fatality data on this equipment. And the work group would like to make a formal request to OSHA for the same.

The work group would also look at overturn hazards for other equipment used in construction. An example might be the asphalt milling machine. A request would be made to OSHA to review accident and fatality data on asphalt milling machines. The work group discussed the impact, or safety, of this equipment with no operator seat, no ROPS, and operator controls on both sides of this equipment. A video of the asphalt milling machines in operation will be presented at a future meeting.

The work group held a discussion on stimulus money projects and the possibility of getting contractors on this work to purchase and/or use safety equipment on these jobs. And that is equipment with ROPS and seat belts installed. A specific request
would be made to OSHA on this possibility.

The meeting adjourned at 11:20 a.m.

Also, I passed out our proposed edits to OSHA as it related to roll over protective structures or tip over protective structures on compact excavators. And for the sake of time, I'd like to turn to additional committee recommendations starting on page 2. And naturally we're requesting that any of this equipment manufactured in the United States have a tip over protective structure, and I will explain. The tip over protective structure on this equipment replaces the ROPS. Because of the design of the equipment, the equipment's not expected to roll over. It is expected to just tip over. And again, I'll start reading.

"With the high probability of serious injury or fatality resulting from the overturn of a compact excavator when not equipping with a tip over protective structure
and a seat belt, the Committee further recommends: (1) for machines manufactured after September 1, 1972 and before the implementation of a new or modified standard for which TOPS are required, tip over protective structures and seat belts shall be installed; (2) TOPS shall be evaluated by ISO 12117, earth moving machinery, and tip over protective structures for compact excavators, laboratory tests and performance requirements. This international standard establishes a consistent and pre-productive means of evaluating the load carrying characteristics of tip over protective structure under static loading and prescribes performance requirements of a representative specimen under such loading; (3) training shall be provided for safe loading, transporting and unloading of compact excavators; (4) for compact excavators with TOPS and seat belts installed, training shall be developed for operators, employers, equipment manufacturers.
and equipment rental companies on the importance of operators wearing seat belts, provide seat belts that fit properly and force the proper wearing of seat belts, replace worn or damaged seat belts and the use of appropriate PPE; (5) tip over protective structures," and this is a definition, "is a system of structural members whose primary purpose is to reduce the opportunity of an operator, held by seat belt system, being crushed should a machine tip over. Note the structural members include any sub frame, bracket, mounting, socket, bolt, pin, suspension, flexible shock absorber used to secure the system to the swing frame, but excludes mounting provisions that are integral with the swing frame; (6)," this is a definition of a compact excavator, "an excavator having an operating mass of 6,000 kilograms or less. An excavator is a self-propelled machine on crawler, wheels or legs having and upper structure capable of a 360-
1 degree swing with mounted equipment and which
2 is primarily designed for excavating with a
3 bucket without movement of the undercarriage
4 during the work cycle."

CHAIR MIGLIACCIO: Dan, do you
6 have anything to add?

MR. ZARLETTI: No, I'm good.

CHAIR MIGLIACCIO: Any questions
9 from the Committee?

All right. Seeing none, I'd like
11 to entertain a motion to accept this.

MR. THIBODEAUX: So moved.

MS. ARIOTO: Second.

CHAIR MIGLIACCIO: Mike Thibodeaux
15 first and Liz seconded.

Any questions or discussion?

All in favor say aye.

(Chorus of ayes.)

CHAIR MIGLIACCIO: Opposed?

(No audible response.)

CHAIR MIGLIACCIO: Ayes have it.

MS. SHORTALL: I have a question
to ask.

CHAIR MIGLIACCIO: Okay.

MS. SHORTALL: And that is you've approved the work group report. Is this one for ACCSH now to be recommending to OSHA?

MR. RUSSELL: Yes.

MS. SHORTALL: So this would require a second motion.

CHAIR MIGLIACCIO: All right.

I'll entertain a motion on the work group's ROPS/TOPS on compact excavators. Any motion?

Question?

MR. THIBODEAUX: Yes, I had a question now.

CHAIR MIGLIACCIO: Okay.

MR. THIBODEAUX: Is it this entire document that you're talking about recommending for the full committee?

MR. RUSSELL: Well, let me explain maybe just a little, if I can.

Again Emmett Russell, employee rep.
What we tried to put in this document is the recommended changes to the OSHA regulation to accommodate what we consider to be tip over protective structures on mini excavators. Right now the current OSHA regulation does not even have tip over protective structure in it. So the whole regulation would actually have to be reworked to include tip over protective structures and specifically to include mini excavators, which mini excavators are not mentioned now. As a matter of fact, when the regulation was written, mini excavators were not even a tool or a piece of equipment that was out there. So again, this is what we consider to be the modifications necessary to include mini excavators in the regulation, as well as tip over protective structures in the regulation.

CHAIR MIGLIACCIO: Okay. I'll entertain a motion to accept this report to the report.

MS. SHORTALL: I might give you
some potential language for that. It sounds like what ACCSH wants to do is recommend that OSHA revise the standard on material handling equipment consistent with the proposed edits of the ACCSH ROPS Work Group.

CHAIR MIGLIACCIO: Technical difficulty. Hold on please.

MS. SHORTALL: To accomplish the goal that you're hoping to do, it would be suggested that someone move that ACCSH recommend that OSHA revise the standard on material handling equipment consistent with the proposed edits document of the ACCSH ROPS Work Group as it relates to compact excavators.

CHAIR MIGLIACCIO: Mike Thibodeaux gave us a motion. Second?

MR. ZARLETTI: Second.

CHAIR MIGLIACCIO: Dan Zarletti seconded.

Questions? Discussion?

All in favor say aye?
(Chorus of ayes.)

CHAIR MIGLIACCIO: Opposed?

(No audible response.)

CHAIR MIGLIACCIO: Ayes so have it. Thank you.

MS. SHORTALL: Mr. Chair, then I would propose or I'd like to mark as Exhibit 10 the approved Roll Over Protective Structures Work Group Report from their July 29, 2009 meeting as Exhibit 10.

(Whereupon, the document was marked as Exhibit 10 for identification.)

MS. SHORTALL: And as Exhibit 10.1 the ACCSH Roll Over Protective Structure proposed edits document on compact excavators.

(Whereupon, the document was marked as Exhibit 10.1 for identification.)

CHAIR MIGLIACCIO: Okay. Thank you.

All right. The next work group
we'll hear from is Multilingual with Tom

Tom?

MR. BRODERICK: Tom Shanahan is the co-chair. I think that he was going to handle -- are you still on, Tom?

MR. SHANAHAN: I'm here, but I didn't quite hear what you said.

MR. BRODERICK: I said that Tom Shanahan is the new co-chair. I said he'll handle the reading of the minutes. And then I remembered you're not really with us.

CHAIR MIGLIACCIO: He's pulling your leg, Tom.

MR. BRODERICK: We had a good turnout for this committee meeting. There were 11 people interested in multilingual issues on construction work sites.

The work group met at 10:00 on July 28th, 2009. Tom Shanahan, employee representative, will assume the duties of co-chair of this committee. At the next meeting
the mission of the work group will be
restated.

Danezza Quintero reported on the
status of OSHA's internal task force on
Hispanic worker safety. Danezza reported that
the group is still in place and it was
suggested that our work group should request
that we give the task force a briefing on our
activities and offer assistance with their
important work.

Harwood programs that have been
done in Spanish should be located on the OSHA
web site as well as any current training
opportunities that are available. The OSHA
Training Institute Work Group will be asked to
make this issue an agenda item.

And I just wanted to
parenthetically talk about the OSHA Training
Institute presentation that we had this
morning. And I think Hank Payne and Jim
Barnes did a good job of updating us on why
this might be problematic, because I
remembered when they went over it that in fact
the copyright does reside with the developer
of the materials.

I would hope that people who do
get the Harwood Grants and develop materials
in Spanish would be willing to share those
materials. And I think that given the large
number of Latino workers that are injured and
killed on job sites that it's kind of
incumbent on us to see if we would have
Harwood-funded projects that have been done in
Spanish that could be given to OTI to make
available on their web site or in hard copy
form.

The work group will also
investigate the effectiveness of universal
symbols on signage and labels. It was noted
that AEM, the Equipment Manufacturers
Association, has done some good work in this
area and we will seek their assistance with
this item and encourage their participation on
this work group. We will move on our work
group developing a Quick Card on this issue and present it to ACCSH and OSHA for review and publication.

The increase in Hispanic worker fatalities was discussed and the visibility given to the issue by a front page article in USA Today that underscored the urgent need to turn around the 76 percent increase in fatalities among Latino workers.

"The Construction Chart Book" prepared and published by the Center for Construction Research and Training, or CPWR, has many segments relating to Latino construction workers in the U.S. construction work force. It was determined that this work group will ask CPWR to consider publishing these sections as a stand-alone document. The group also agreed to seek permission to develop a document based on this publication for publication by OSHA as a Quick Card or other OSHA document.

Finally, an article by Mark Lies,
Esquire, an attorney with the law firm of Seyforth Shaw outlining employers' duties under the OSHA Act was reviewed by the group. The work group agreed to take charge of authoring a Quick Card highlighting the employers' duty to provide safety training in a manner that is understood by all workers. So this could include providing not only the Anglo workers safety instruction and orientation in English, but any other language that their work force might have. And I know that this seems like a very difficult task because not every contractor has someone on staff that is bilingual or multilingual, but it is something that is required and a failure to do it is a violation. And I think especially with regard to the Latino workforce there are more and more materials that are out there that would help employers meet this obligation.

So I will be happy to provide a copy of this letter and also the "Construction
Chart Book" for entering into the record.
Thank you.

CHAIR MIGLIACCIO: Any questions?
Any questions of members of the Committee?
Okay. Seeing none, entertain a motion at this time to accept this report.

MR. THIBODEAUX: So moved.

CHAIR MIGLIACCIO: Mike Thibodeaux made the motion. Second?

MR. GILLEN: Second.

CHAIR MIGLIACCIO: Matt Gillen seconded.

Questions? Discussion?
All in favor say aye.

(Chorus of ayes.)

CHAIR MIGLIACCIO: Opposed?

(No audible response.)

CHAIR MIGLIACCIO: Ayes so have it.

MS. SHORTALL: Mr. Chair, please excuse me. I turned away a moment and I did not catch who made the motion to approve.
CHAIR MIGLIACCIO: Mike Thibodeaux.

MS. SHORTALL: Okay. A Mike Thibodeaux day.

Okay. Mr. Chair, at this time then I would like to mark a couple of exhibits.

As Exhibit 9; I realize I'm jumping backwards, the list of ACCSH list of work groups, the co-chairs and OSHA staff liaises as Exhibit 9.

(Whereupon, the document was marked as Exhibit 9 for identification.)

MS. SHORTALL: As Exhibit 11, the approved minutes of the Multilingual Issues on Construction Work Sites Work Group Report from the July 28th, 2009 meeting.

(Whereupon, the document was marked as Exhibit 11 for identification.)

MS. SHORTALL: As Exhibit 11.1,
segments of the "Construction Chart Book," published by Center for Construction and Research Training along with Center for Protection of Worker Rights.

(Whereupon, the document was marked as Exhibit 11.1 for identification.)

MS. SHORTALL: And as Exhibit 11.2, a copy of the article entitled, "Safety, the Universal Language, Literacy and Language Challenges in the Work Place" by Mark A. Lies and Elizabeth Leifel Ash.

(Whereupon, the document was marked as Exhibit 11.2 for identification.)

CHAIR MIGLIACCIO: Okay. All right. Our next presentation will be by McGraw-Hill Construction Data. They're setting up right now.

MS. SHORTALL: Might I ask Mr. Broderick a question while we're getting them set up?
Mr. Broderick, do you happen to know whether the article by Mr. Lies was copyrighted, or were you able to just simply take it off their web site?

MR. BRODERICK: No, he makes mention of his distribution of it.

MS. SHORTALL: Okay.

MR. BRODERICK: For the use of -- well, I don't want to try to even paraphrase his --

MR. ZARLETTI: Wasn't it for educational purposes?

MR. BRODERICK: Yes, I believe it's for educational purposes. But he makes note of the latitude he gives to share this.

MS. SHORTALL: All right. And the "Construction Chart Book," I guess this would be both to you and Ms. Trahan. And I see that it is copyrighted. Do you know whether the Center for Protection of Worker Rights wants to have us put this on the online docket for ACCSH?
PARTICIPANT: I'll send you my
version as a PDF if that helps.
MS. SHORTALL: That would be fine.
Thank you so much.

CHAIR MIGLIACCIO: While Mike's
getting them set up, I'll take this
opportunity to also announce again that the
public sign-in sheet is in the back of the
room. Anybody who would like to address the
Committee this afternoon, please sign in.
All right. Do you want to go
ahead, Kevin?

MR. BEAUREGARD: I will try to get
through it.
CHAIR MIGLIACCIO: All right.
We'll go ahead with Kevin's work group on
regulatory compliance.
Go ahead, Kevin.

MR. BEAUREGARD: Thank you. Kevin
Beauregard, state plan representative. I'm
the co-chair of the Regulatory Compliance
Group. Susan Bilhorn couldn't make it, so I
I passed out the notes. I'm not going to read them verbatim, but just kind of give you the highlights of what we did in your meeting.

The first thing we did is we reviewed the status of some requests that both our work group and/or ACCSH asked OSHA at our earlier meeting in April. And as a result of that, one of the issues that we asked for was an update on the OIS, the OSHA Information System, and that is scheduled I believe for tomorrow. So I think Bob Pitulej who's heading that up is going to give an update. And that's the replacement system for the database and data entry system that both state plans and federal OSHA use in compliance and consultation, etcetera. They've been working that replacement effort some time and I think he's going to give us an update and let us know where that is.

The reason that our work group was
interested in it is one of the issues that was brought up in your work group was maybe to try to find some ways that it would be more efficient for compliance officers and other staff members to do their jobs, to hopefully free up some resources so they could go out and do different types of activities. And so we were interested to find out where that was as a group. And that is scheduled.

The next bullet on there has to do with an update on the dialogue from the acting director of construction, Richard Fairfax, regarding the emphasis and outreach activities being done in regards to the ARRA funding. Richard did do that. We had a conference call probably about a month or so ago for the work group members and anybody else that was interested. He provided an update to our group as to where things were with that. And then part of that led to the discussion that we had from the legal section that was here earlier letting us know about their legal
targeting and other issues that they have as
can far as targeting. And so that was kind of
worked in as a result of the work on the
regulatory compliance, and we appreciate that.

Another item that was requested
from your group at the last work group meeting
was they asked Steve Hawkins and myself to
poll the various state plan programs to find
out what, if anything, they're doing in
construction targeting that may be different
than on the federal level. We did hear back
from several different states. And in our
meeting we went over a North Carolina
directive that concentrates on construction
activities in what's called high-activity
counties. And also construction activities in
counties that have more than one fatality in
a given fiscal year. And that's one of the
means that we use in North Carolina to
identify where we're going to send our limited
resources. We have other programs as well.

Puerto Rico provided some
information. It was more on an outreach type
of basis on how they're doing some outreach in
the construction area.

And then Alaska provided some
information which apparently they have some
type of report that's generated in the State
of Alaska for construction activity which is
one of the things that they use for targeting
construction activity. And they have a name
for it, and I can't remember the name exactly,
but we call them drive-bys where you drive by
a construction site, you see something, you go
ahead and address it. And they have a similar
type of program there as well.

So those were some of the things.

And our group just got that
information and is looking over it. And there
may be something that could be used elsewhere;
there may not be. But our task was to find
out what different areas were doing in an
effort to try to utilize their resources and
get both the compliance and other resources
out to where it needed to be, particularly associated to construction.

The two questions that came out of some of our discussions earlier, one of them had to do with the legal perspective. And you heard the presentation earlier that I thought, at least for myself, did an excellent job of explaining a little bit more about what OSHA comes up to on the legal side of things when they're doing targeting.

And then one of the things that I was asked to do is to ask OSHA if they could request somebody from the Directorate of Enforcement attend the next work group meeting to kind of give a field perspective on enforcement activities. And so I'll formally request that through Michael or somebody else on the directorate. But there was an interest in that.

There were several different questions that came out as a result that the group wanted me to ask, and I asked several of
those earlier today. And there's a couple of bullets on page 2, and one of them had to do with whether or not there was a previous targeting task force and if so, you know, what were the results of that. And I think what we heard was that the current group is not familiar with that. We're not sure whether there was or wasn't a task force. But we did hear a lot of the activities about how they're going about targeting the ARRA sites and some of the information that they're using in order to get to those other federal agencies that are contracting out. And I also know what a COTR is now, so that was very beneficial.

The other question that I was asked to convey was whether or not they had any referral initiatives under way, and I think we're going to wait and Richard Fairfax, when he comes, to see what if any type of activities they may have with fellow internal agencies like Wage and Hour, or some of the other agencies to see if they see something in
their daily working routine, if there's a mechanism in place to get those referrals over to OSHA.

And I think it was Sarah, and, Sarah, I don't mean to put you on the spot, but I think you mentioned that there is some type of survey currently going on in regards to under reporting, or barriers to under reporting. And the suggestion was maybe the Office of Statistical Analysis could give us an update maybe at the next ACCSH meeting on how that is going and exactly what they're looking at.

MS. SHORTALL: The Office of Statistical Analysis gave a report on that project to the National Advisory Committee on Construction Safety and Health when they met earlier this month. So you can certainly ask Dave Schmidt who did that presentation to make a similar one to you. There are some issues about how they -- the issues they would have about how to address construction and getting
to the issue of is there under reporting going on and what the barriers might be.

In addition, the PowerPoint presentation of his presentation was put into the docket for the NACCSH meeting. So it should already be posted. You should be able to obtain it on www.regulations.gov, as well as the transcript from that meeting. So you could listen to what Mr. Schmidt explained to NACCSH.

MR. BEAUREGARD: So I guess we can discuss it as an organization whether or not that's some type of presentation this group might want to see in the full group, or maybe something that we might want to see in the work group, and we can decide on that.

We also reviewed our notes from the working group conference call that I indicated that occurred in May. And there were two major things that came out of that. One was the development of either a guidance document or a Quick Card document for guidance
on contractor selection from a safety perspective. A document was drafted during our working group meetings. There were a lot of suggestions made and recommendations made for some changes. I think I have incorporated all those changes into that document. And what I'd like to do is see if I can get copies made for the membership so you can review later on today or this evening and perhaps have a discussion tomorrow on that. And if there seems to be any type of agreement on that, then I may ask for a motion as to forward that onto OSHA. But I want you to have an opportunity to look at it before I do any such thing. So I'll try to get a copy of that made. And if there are a lot of questions or issues with it, I may shelve it until the next meeting. We'll just have to see how it goes tomorrow. But I do have it complete and I'll try to get a copy of that to you.

We already discussed the memo, and
I think arrangements are being made to make copies of the memo.

MS. SHORTALL: I passed them out right at the start of this afternoon.

MR. BEAUREGARD: Okay. So most of you should have a copy of the memo in front of you.

And to sum it all up, there are three things that we're looking to pursue right now. One is requesting the full body of ACCSH to look at the guidance document that I was talking about and possibly making a recommendation that OSHA work on that. Originally it was called a Quick Card; I think we've heard Quick Cards a lot, but the suggestion was that first of all there may be too much stuff to include on a Quick Card. Secondly, the vetting process may be a little different for a Quick Card versus a guidance document. And our recommendation would be more or less for OSHA to look at developing something along the lines of what we provide,
not necessarily verbatim, word-for-word, what
we have in that document.

The other issue I think has been
addressed, and I will try to fill in and brief
the rest of the work group members that
weren't able to make it today, regarding the
different types of things that OSHA is looking
for in regards to safety and health guidance
that's going along with these ARRA funds.

And then the last thing is to try
to get somebody from Enforcement to attend the
work group meetings.

And with that, I guess I'll turn
it over if there's any questions or discussion
points, or if there's somebody else in the
work group maybe that remembers something that
I didn't cover.

CHAIR MIGLIACCIO: Okay. At this
time any questions for some members of the
Committee?

Anybody like to add to it?

Okay. I'd like to entertain a
motion to accept this work group's minutes.

MR. THIBODEAUX: So moved.

PARTICIPANT: Second.

CHAIR MIGLIACCIO: Mike Thibodeaux.

MS. SHORTALL: Yes. Thank you.

CHAIR MIGLIACCIO: All right.

Questions? We have a second, don't we?

Questions? Discussions?

All in favor say aye accepting.

(Chorus of ayes.)

CHAIR MIGLIACCIO: Opposed?

(No audible response.)

CHAIR MIGLIACCIO: Hearing none,

ayes have it.

MS. SHORTALL: Then I would like to mark as Exhibit 12 the approved Regulatory Compliance Work Group Report from the July 29, 2009 meeting as Exhibit 12.

(Whereupon, the document was marked as Exhibit 12 for identification.)
CHAIR MIGLIACCIO: Thank you.

All right. At this time we have

our technical difficulty problems straightened out. I'd like to take this time to introduce


McGraw-Hill Construction is the leading provider of construction information in the industry. McGraw-Hill Construction connects people, projects and products from Dodge Suites, Architectural Records, Engineering News Record, regional publication and economic forecasting services.

Dan Palmer is a 23-year veteran of McGraw-Hill. He got his career as a reporter and has held various management positions throughout his career. Headquartered in Pittsburgh, Dan is currently responsible for the news gathering operations in the Midwest and Eastern portions of the country, as well as the national permit gathering operations, U.S. Census relationship and the Canadian news
operation relationship. Dan has a degree in journalism, communications and a master's in organizational management.

Dan, the floor is yours.

MR. PALMER: Thank you very much for having me. Today I was invited to present an overview of Dodge Editorial, which will basically describe how it is that we gather the news that ends up being Dodge Reports and ends up being in the statistics and ends up being on our network.

The presentation should take approximately 20 minutes or so and I will leave time for questions at the end. Or if you have any questions during, just certainly call my name or raise your hand; it can be interactive. Okay?

Basically, part of the description you heard in my introduction covers this. This is what we do. We provide news and plans and specifications in order for our clients to then analyze the information and/or act
proactively on that day. If it's out for bid or if it's in planning, they can involve themselves in the project from the early planning stages. We do cover construction from the early preplanning stages, meaning before an architect is selected, all the way through the planning stages and design, through the bidding stages, through the award stage when contractors are selected. We serve the entire United States, and as you heard, also Canada, all market sectors within the marketplace across the country from small projects to big projects, to individual trades. And we've been doing this for well over 110 years across the United States.

Here's our current organization. I know it might be a little hard to see from behind. I'll give you a short description. My title is senior director. There are two of us. I am headquartered in Pittsburgh, Pennsylvania. My counterpart Cliff Brewis is in San Francisco. And then we break the
country -- we say east and west. It doesn't end up being east and west. It ends up being approximately half, half the people, half the direct reports, half the states, half of the construction news. So it's broken up more than an east/west. It's broken up by areas of the country.

And the square boxes that you see around the country are our regions. We have 10 regional offices around the country which includes our 10 regional managers. We have offices in Bedford, Massachusetts; Pittsburgh, Pennsylvania; Hightstown, New Jersey; Atlanta, Georgia; Dallas, Texas; Monrovia, California; Seattle, Washington; and in Cincinnati, Ohio where we actually have two regions which cover that center part where you see the sort of light blue and the dark brown. They're all headquartered out of Cincinnati, Ohio.

We also have a national permit center, which covers approximately 3,000 of the largest permit issuing offices around the
country for construction activity at the start stage. And our manager for that is headquartered in Hightstown, New Jersey.

Our organization is broken up by editorial reporters, plan room operations and permit operations. I'm often asked how many people are responsible for gathering the news. On any given day, approximately maybe every given month, it's between 900 and 1,000 people on a daily basis are gathering construction news for Dodge Editorial. Approximately 250 of those are full time reporter positions in the United States, headquartered in those 10 regions and/or in home offices across the country, still with a local market presence. We have not done any type of consolidation that would put everyone in one place using the phone. We still have local market presence for well over 100 of our full-time reporters. We have 109 plan room associates. Basically what that means is we have 109 plan rooms across the United States. And the plan
1 rooms are responsible for gathering the plans,
2 specifications and addenda for all bidding
3 construction projects. They are broken up by
4 market place and prioritized by location of
5 the construction project. Based on the
6 location of the project, they are then placed
7 during the bidding cycle in one of these 109
8 plan rooms.

9 The permit operation, as we
10 discussed just a second ago, for these 3,000-
11 plus permit offices, we have 600 permit
12 representatives going to these individual
13 offices on a weekly, biweekly or monthly basis
14 gathering all the residential and commercial
15 construction permits that are issued by these
16 offices. They go in, they gather from month-
17 to-month the permits that are issued. They
18 are then transferred either electronically or
19 via the mail system into our offices in
20 Hightstown and then we use those to update the
21 database and/or for statistical purposes for
22 construction activity. It measures what
regions of the country are up or down, or staying put.

Yes, sir?

MR. BUCHET: Yes, Michael Buchet, Directorate of Construction.

Let's take a case of a permit office that's largely paper-driven.

MR. PALMER: Yes.

MR. BUCHET: What kind of time lag is there between the visit of your person and your getting it in Hightstown?

MR. PALMER: We'll use the example of a 30-day cycle for a permit representative. That would be the easiest one. Our responsibility that we've developed over the years is to have that into our system to be counted for analysis and obviously for customers to act upon within 45 days of the issuance of the permit. So every 30 days. Let's use the first of the month as the example. On July 1st, they went in and issued everything from the last visit, which was June
1 1st. They send those in. And then so
2 hopefully using your thought, if a permit was
3 issued on June 2nd, the day after our rep was
4 there, and we get it on July 1st, we then have
5 that two-week window to have that process de-
6 duped, put into the system and then it could
7 be used accurately. Otherwise, after 45 days,
8 especially for smaller permits and/or
9 residential permits, it's past its useful
10 time. So it's a 45-day window.
11
12 Okay. So they go in as we
13 described and they process these permits
14 across the country. And some of our permits
15 are sent overseas to India. We have 10 people
16 over there doing strict data entry. These are
17 permits that come in, they are scanned over to
18 India on a daily basis and then entered on a
19 daily basis into our system. These are
20 single-family home permits and any general
21 building permit under a value of $200,000.
22 Anything over $200,000 is de-duped and
23 verified, the sources are called.
The reporting responsibilities are broken up as you see here. We have reporters in the field. Those are approximately the 100 reporters that I mentioned. And we have them broken up by specialty. I'm not going to go through all of them, but basically we have reporters who are responsible for certain types of sources. Large architects are covered by our architecture specialists across the country. Large general contractors are covered, as you might guess, by our general contractor specialists. We have public information coordinators. And their main responsibility, the easiest way to describe it is to get private, early construction news from public agencies across the country. Anyone who's going to do construction has to go in for some sort of approval from planning and zoning offices and then up to the permit stage. So these public information coordinators are responsible for getting that, what we would call a construction lead, early
in the cycle so that our reporters can then
track it all the way through as we described
earlier from the planning and bidding and
construction stages.

We have government reporters, as
you might guess what that is. That's
reporters that are responsible for government
agencies in their territory making sure that
everything we get is on a timely basis. There
are some agencies for example who will not
provide the bid result information on a
construction project without you actually
being at the bid opening. And so we have
reporters all across the country who are
responsible for going to these bid openings,
gathering this information so that we're able
to report bid results and construction awards
on a timely basis.

And then what we have is hybrids.
We also have a group of hybrids that sort of
have, based on their territory, possible
responsibilities for any of these. They could
cover some large architects. They could cover some large contractors and so forth. And this way, we make sure we have local direct industry involvement and that the local presence is still available for us to visit the sources face-to-face and develop relationships.

You see the term REOC up there. Basically what that means, these are Regional Editorial Operation Centers. Those are the 10 offices I mentioned at the beginning of the presentation. And basically what happens is as that field group is responsible for the large types of sources in their marketplace, the REOC reporters are responsible for the next tier. So if an architecture specialist in the D.C. Area has 100 of the largest architects in the D.C. Area, then the construction information specialist; as you see there we call them the CINS, are responsible for the next couple of hundred based on activity. So they'd be doing most of
there's by phone. There would be most of those by phone contact.

And then we break that down into what we call a news technician. They're responsible for the gathering of the news off of the Internet and inputting things on a timely basis, mostly out-for-bid information.

The bid news coordinators then take over and responsible for updating the project through the bidding cycle, making sure we have all the prospective bidders listed, making sure we have the correct bid date, making sure we have addenda issued on any projects where we have the plans and specifications. And then in the end making sure we have the bid results in a timely manner and then an award shortly after.

And then also, as you might guess, the hybrids, same thing. Based on territory size, they may be responsible for any or all of these roles.

Again, these are inside people.
These are on those ten regional offices which probably have 20 or so in each office and they're responsible for gathering most of the news via phone, the fax, the Internet, email. Anything that would be needed in person in the local market would then be turned over to their field counterparts who would take those responsibilities.

Plan rooms. We have two groups of people in the plan rooms. These are our coordinators and these are our supervisors. These are the folks that on a daily basis deal with the public most likely. These are our customers that come into plan rooms and want to see plans, specifications and addenda. And they are also responsible for reporting information out to the industry. They have contact with customers. They're the ones that take direct calls. The reporters usually don't. Reporters are dealing usually with the sources of information whereas the plan room more often deals with the actual customers of
the information who might have follow-up questions and need more information.

The types of reports that McGraw Construction reports on are broken into engineering, general building and residential. These are the projects. When we say project, that means we have trades usually into three or more. So if it's an individual trade, it's a roofing project, it's electrical work, it's painting work. I'll show in the next slide how we break things, and we call those items. Individual trades. Equipment and material. These are projects. These are the general building projects where they're building something new. They're putting an addition on. They're renovating a building.

Outside work. Engineering. The description we use is without walls. So any types of roads, bridges, site work, paving. We cover all those types of projects in our engineering category.

And then we also cover
The majority of the residential work is at the permit stage, although we do cover some master plans in the planning and bidding stages. We do not cover residential as deeply in the planning stages as we do general building and engineering work.

The items. These are what we talked about. If a bid is going out for a particular piece of material, like rock salt or something like that, or if it's an individual trade like painting or roofing, it's just one single trade, we call those items. Individual trade, equipment or materials. And we follow those all the way. We do not issue items in planning. You will only see those at the bidding and award stage.

We are quite often asked where do we get our information? We have a few bullet points here where you can follow through.

Our reporters are responsible for making direct contact with architects, owners, general contractors, civil engineers, public
agencies, public approvals, any type of planning notice, permit offices. We'll take basically anyone who is a source of information, has anything to do with construction. We will take that and convert that into a Dodge Report.

We'll verify information. We talk to many sources everyday. We get many leads that aren't from owners, architects, GCs or civil engineers. These are what we call direct factors. But then we take that lead we get from whomever, maybe a planning notice or a colleague or a call in from a customer and then we contact those main factors, the architects, etcetera, and turn those into confirmed Dodge Reports. All information in the Dodge network system is confirmed information. There is no information that goes in our system without being confirmed by a source. The only non-call that is made are residential permits under $200,000. Those all go in based on the impression that the public
 agency has got accurate information from their contractors in the residential marketplace. And so that information goes directly into the service.

We also have software that we use to scrape the web for any type of construction information. Currently we have well over 25,000 newspaper sites and periodicals that are searched nightly and then put directly onto reporters' desks the next day. Also we look for bidding information, legal notices, anything doing with construction. So between the two, we have well over 40,000 sites looking for either planning or bidding information on a daily basis and those are then transferred, formatted automatically and on the desk top of every reporter based on region and territory every day.

Yes?

MR. BUCHET: And then they're confirmed by the reporter?

MR. PALMER: Absolutely. Yes,
that's what we would call leads. And then we use those as leads and then confirm those by the reporter, yes.

We also subscribe to newspapers who aren't publishing their information on the Internet as of yet. That changes every day. We drop subscriptions and add Internet sites on a daily basis. But surprisingly, there still are hundreds, if not thousands, of newspapers who aren't publishing their bid advertisements, for instance, and their local construction opportunities on the Internet. So we do continue to subscribe to those so we make sure that the database is complete with that information.

And we go to Internet sites of all those architects and owners and engineers. And we have Googles and Google alerts on any time any type of our sources are mentioned in an type of articles. Any place that could possibly provide us a lead to start or could to turn into a construction project, we do.
Customer leads. Also obviously they're out there in the industry. They know what's going on. They hear about another project. They want to find out more. They call us and we turn those into a complete Dodge Report.

These are the players in the industry. These are the names that I just mentioned. I won't go through those again.

All of those are sources. All the government agencies from state, local and federal, certainly deal with the military through FedBizOpps and other sources and then all our private sources of information.

The phases of the project. We don't need to go through these. But basically our strongest category and the way that the overwhelming majority of construction projects are still built is in the design, then bid and then build cycle. I'm sure that in the industry you've heard a lot about design build. That is currently approximately 20
1 percent of what is done, but the still
2 overwhelming majority is still done, you
3 design it, you bid it and then you build it.
4
5 Yes, sir?
6
7 MR. BUCHET: This is Mike Buchet, Director of Construction.
8
9 How do you measure the 20 percent?
10 Dollar value?
11
12 MR. PALMER: There's different ways of measuring.
13
14 MR. BUCHET: Number of projects?
15
16 MR. PALMER: Yes. It's both.
17
18 There are different ways our analytics team can turn that information around. The 20 percent number I'm using is the number of projects that are using that method of construction.
19
20 Now dollar volume, it could be slightly different. It could be smaller or different. It could be a big project. I mean, I know the Government is doing a lot of design build work with contracts, you know,
well over $10 million, well over 20, well over $50 million. My 20 percent figure is the number of projects.

So what we basically do is we follow it, as we described before, through the design stage, through the bid stage to the build stage. And there are different reasons why we do that. Different customers and different stages of the project are interested in that project. The earlier the better for people who want to get their projects specced, for instance. They want to get involved in financing. There are some people that only want it at the bidding stage. They're subcontractors who are going to bid only to the general contractor. They don't particularly need to see it earlier than that. And then there are some folks who get involved later in the project when it's being built. It's those on-site services that want to know about who's been awarded the project and has it started. And that's when they get
1 involved.
2 So we cover it at all stages.
3 There are different needs and assessments that
4 are done. There are different customers that
5 want that information at different stages.
6 Certainly at the build stage, which we call
7 the start stage, that's when a lot of the
8 analytics work is done as to where in the
9 country construction projects are starting.
10 I have a section here, just a
11 slide for you on the quality and coverage.
12 How do we know how well we are doing? We
13 measure ourselves with an independent agency.
14 It's a data quality management system service
15 who are outside of editorial's responsibility
16 who look at every single report down to the
17 individual reporter level and then measure
18 that for quality of the work. When we say
19 quality, we are talking about locations,
20 listed properly. We're talking about contact
21 people. We're talking about timeliness.
22 Completeness of the information, meaning how
much detail is on a project. So we measure those obviously at the national level. We measure at the 10 regional levels and then all the way down into the reporter level. And then we use that as training tools, reverse it from reporter level up to the regional and then up to the national level.

So we have approximately 40 different measurements that are measured down to the reporter level every single day. And that is always rolled up to a monthly report. Find out how things are going on a monthly basis, on a national basis. So we can measure anything along the lines of timeliness, bid results, completeness of addendum, contact people down to the general contractor level, including email addresses and phones and faxes.

So there isn't much that we don't measure about ourselves, so we are usually our own worst critic and we try to use all of those tools for continuous improvement.
MR. JONES: How much are you capturing? How much of industry is getting captured?

MR. PALMER: We have a contract with the United States Census Bureau and they audit us. And I can tell you that basically what they do is they go to the same permit offices that we do and then they send them to us and say give us the Dodge Report on this. So it's a way that we then can measure ourselves internally. Depending on the value of the project, under $10 million/over $10 million, it's approximately 80 percent of the national construction database that we have in our service before the permit is issued and the Census Bureau comes to us and asks us where the project is. So on a national basis, it's give or take a month, give or take a market place, because they go to 12 different regions around the country.

MR. JONES: Right.

MR. PALMER: And what they
basically do is they say, okay, San Francisco, send us every permit you issued over $75,000 last June. They then get it in. They send it to us and say here's San Francisco's from June 2008. Tell us every project that matches these permits. And then they go into the database and find out when it was issued. And if it was after June, that's not good. If it's before June, that is good. And then they give us a ranking and that's how our contract is with them. So it's give or take the marketplace in value. Because 10 million projects, we're well into the '90s where many months were at 100 percent. Under $100,000, it's a little more difficult to get. But overall it's usually approximately 80 percent.

CHAIR MIGLIACCIO: For the record, that was Walter Jones that asked that question.

MR. JONES: Thank you.

MR. PALMER: This goes to what you were talking about, how much do we cover and
what is the quality of that reporting. The
metrics measure what I was taught as a
reporter or what we still learn today; there's
three things. It's the completeness of the
report, it's the timeliness of the report and
it's the accuracy of the report. And those
three things are identified here.

The completeness of the report is
what you just asked about. How much do we
cover of the total universe? And then we
measure ourselves on that every single month.
We have different ways of doing it internally.
And then externally the Census Bureau does the
audit. So we measure ourselves internally.
Basically we're measuring how many reports
when they hit start did we have in the system
before they hit start. And so we measure
every region in the country internally.

Timely. Obviously we want to make
sure that our customers who want the
information early, whether they want it in
planning or bidding, have enough lead time to
do something with it. It certainly isn't very good if you're a bidding contractor to get the information on the day that it bids. So we measure ourselves on the ability to give them at least two weeks to act upon any bidding report.

And then accurate. Obviously looking at things like cost estimates. If we tell the customer that it's a million dollar construction estimate and it either comes in at $100,000 or $10 million, that makes a difference to them. Because they may be a contractor that only bids on projects over $10 million. We tell them it's a million, they don't bother to bid on it and they find out later it's $10 million, they're not very happy with us. So we certainly measure our ability to give an estimate and then we compare that to the contract award. And then we measure that obviously down to the reporter level and we use that to help them learn and how to question sources for accurate cost estimates.
That's just one example. We talked about this, as your question. This is exactly what we do. We use the permit data to measure our total universe. We also measure incompleteness. We also consider the details of a building. Square foot, framing, construction. They're all responsible for doing this on every individual construction project that's either a new or an additional piece of work on a construction project that already exists. So we measure all these core details.

Factors, as we talked about. We're talking about owners, architects, consulting engineers, contractors. We need individual contact people with email addresses, etcetera. We measure those on every individual report and try and continually improve that number.

Timeliness. This is what we talked about. When do we list it out for bids? How quickly do we get the bid results?
These are all very important to different segments of the marketplace.

And then accuracy. Cost accuracy.

Do we have the low bidders? One of the big issues that we sometimes have a problem with is we report the low bidders to the industry and whoever was the low bidder was not on our bidder's list. Not a very good situation for a customer who wants to provide their price to all the bidders. And if we didn't list the low bidder, then obviously they didn't get a chance to submit that price to that low bidder. So we try and overcome that by following up on bidder's lists up until three days before the job bids. Sometimes someone will slip in there two days before and come get the plans and make the bid and be the low bidder. But we have found that within 72 hours the overwhelming majority have already picked up their plans and started preparing their bids. And we limit the cases where we actually don't provide the low bidder as one
of the bidders on a report. But that's one we really work hard on, because if we aren't given everyone the total list of bidders, then they're not able to provide a bid to all the bidders.

How do we do this continuous improvement? We deal with our customers through our product and sales department. We want to make sure that we hear from our customers what they want us to do. As I often say to anyone who listens, editorial does not decide what we report on. It's our product and our sales people and our customers tell us what they want and then we try to figure out a way to do it, and then we try and figure out a way to measure it so that we can drive improvement. So you will see some things that are different. Some markets in the country will go after different types of plans and specifications, for instance, to deal with certain customers.

Yes, sir?
MR. BUCHET: Michael Buchet, Director of Construction.

And the Department of Labor is one of those customers?

MR. PALMER: Yes.

MR. BUCHET: And what sort of information do you provide out of all that you capture that comes through to OSHA through the University of Tennessee?

MR. PALMER: I would be more than happy to turn that over to Mr. Kerr, who is our representative on what we actually provide to any individual customer. So if you would like to turn it to Jim.

MR. BUCHET: If he's got a minute.

CHAIR MIGLIACCIO: State your name, please.

MR. KERR: James Kerr. With the Department of Labor, we provide data to OSHA, to WHD, which the data is taken, and then also to OSCCP, which is compliance.

For OSHA, they get a regular
listing of projects that are gone through an econometric model that's managed by the University of Tennessee Business School to target projects for inspection based on different types of activities happening on the site. Trench work, cranes going up, scaffolding, basically the high-risk times on these projects. And as I say, that's done by an econometric model. It's monthly. It goes into the OSHA system and goes out to the regional offices.

The other type of information we supply, and we just started doing it literally within the last two or three months, is we supply them a weekly feed of ARRA stimulus projects. They're required to apparently go out on every one of those and be able to inspect them. So that's a new and separate feed and it includes all the ARRA projects.

MR. JONES: What's the dollar value of the projects you're providing to DoL?

MR. KERR: For the --
MR. JONES: The limit, I should say. What's the floor?

MR. KERR: There is no floor on the monthly.

MR. JONES: So smaller projects are listed as well?

MR. KERR: Small projects as well as large projects.

CHAIR MIGLIACCIO: For the record, Walter Jones asked the question.

MR. JONES: Okay.

CHAIR MIGLIACCIO: Bill?

MR. AHAL: Bill Ahal, employee representative.

So tell me where this project I'm going to give you -- and by the way, I have used Dodge for 28 of my 33 years in this industry.

MR. KERR: Great.

MR. AHAL: It is an excellent product. But let me give you a scenario and tell me where this falls, if it's the 20
percent. You have a private owner, which I've had many, many, many times, that absolutely says if you left this information to Dodge, you're off the project, because you get a lot of calls. I mean, that's what it's about, but a lot of owners don't. So there's gag on information. So all you can pick up would be the building permit. That's the only thing that would ever tell anybody that job was there, unless you knew about it, even if it's a five-story building, you know?

Does that fall in the 20 percent that you don't get any information on, or do you count that even though all you ever say there's a project at this location? All you know is when the building permit was issued. Where does that fall, in the 80, or 20?

MR. PALMER: Very good question.

The 20 percent number that isn't covered is because the Census Bureau only counts prior to the permit being issued did we have it in our service. As you stated, if they did it all
the way to the date they sent us; they sent it
today and said go back to June 1st, we would
have 100 percent, because we'd have the same
permit. The 20 percent is did we have it
before the permit was issued, and that's
really what they want to try and measure us on
at the site.

MR. AHAL: So in the case of this
project I just made up, the general contractor
or construction manager would not be -- I
wouldn't give you any information. Engineers
were told, you know, on the same team cannot
give you information, and the owner wouldn't
take the call. So you don't know about it
until the permit comes out?

MR. PALMER: Using your example,
then no. But with a group of 400 or so full
time reporters who take an incredible amount
of pride in overcoming the idea that someone
won't tell us, we find out about it almost
anyhow, because it's in the newspaper.

MR. AHAL: Admittedly, right.
MR. PALMER: It's at the planning and zoning office. We have subcontractors who say I know that they don't want to tell you, but I need the prices. I need to find out. I mean, we don't get every single project. I do not claim that we do have it in the planning stages or bidding stages. Put it this way, to answer your question this way, we do not settle for the fact that someone says no to us.

MR. AHAL: Well, I understand that. And you just don't want to be the one that gets tagged on who gave the information out.

MR. PALMER: Oh, no. We're like the Washington Post. We do not --

MR. AHAL: And I've been an informant for you on some --

MR. PALMER: We are covered by all laws. We don't tell anybody what our source is.

MR. AHAL: Right.
MR. PALMER: So you can talk to me any time you like.

MR. AHAL: Right. So that particular project that you really can't find out a lot about, subs don't have much on it, it's a closed list, we got it all negotiated, does that small amount of information on that project, does that go to OSHA at some point, but it's just a small amount of information?

MR. PALMER: Are you saying --

MR. AHAL: As well as one that you know everybody, the bidder, who's got the drywall or who got the painting and everything?

MR. PALMER: You only answer that, but the answer is yes. But you're saying if we just it at the permit stage, that's the only time we issue is that one time, this project in the permit stage, would you guys get it?

MR. AHAL: That will go at some point whenever it's turned to go to OSHA. So
they do find out about it, but they won't know nearly as much on that one obviously as one which you --

MR. PALMER: As one that we followed through the whole stage cycle that I showed earlier. Absolutely right?

MR. AHAL: Okay. Thank you.

MR. PALMER: You're welcome.

MR. GILLEN: Question?

CHAIR MIGLIACCIO: Question.

MR. GILLEN: Matt Gillen, NIOSH.

I'm trying to understand if what you have in your system is just the price information for the bids, or if it's some of the more other information. So for example, say OSHA or say of OSHA in partnership with NIOSH was interested in finding out what percent of bids include safety specifications as part of them. Is that something that could be done, because you have more of that information beyond the price, or just the price?
MR. PALMER: From the editorial perspective we are reporting the actual low bid construction agency or firm, the CM or GC, submitted on the job. We do not break it down by individual product or what makes up that total bid.

MR. GILLEN: Okay. Thanks.

MR. KERR: You know, having said that though, we do collect plans and specifications on between 60 and 70,000 projects per year. Those are fully searchable. So if in the specifications there is safety equipment or regulations included, we can search for them, find them and give you a percentage of how often it appears.

MR. GILLEN: Okay.

MR. KERR: And, I mean, as specific as you want to get.

CHAIR MIGLIACCIO: Steve?

MR. HAWKINS: Steve Hawkins, state plan.

Can you tell me more about the
ARRA information that would be directly available to OSHA? I mean, I might need to ask OSHA about that, but this is the first I've heard that that's going to come through the Dodge Reports.

MR. PALMER: I'll answer your question for the group. I'm supposed to talk again in about a half-hour with a full ARRA presentation. So I mean I can wait that half-hour to do that.

MR. BUCHET: Please do because right after you right now we have an area director from Florida.

MR. PALMER: Oh, okay. Good.

MR. BUCHET: Darlene Fossum, who is going to come and talk about --

MR. PALMER: So if you're still at 3:30 --

MR. BUCHET: -- how she uses your information to do enforcement in the field.

MR. PALMER: All right. Good.

MR. BUCHET: And then we're going
MR. PALMER: Good, good, good.

Thank you.

Okay. And I only have like one or two more slides, I think, and that should do it.

So basically, when you get a Dodge Report, this is what is required to create a Dodge Report, whether it be at the permit stage or earlier on. You have to have a title, you have a location and you have to have at least one factor, meaning the owner or the contractor or the architect. And we use those to start and build a Dodge Report. And then from then on, through the whole life cycle we turn it into descriptions, more factors, engineers, contractors, more details. But you have to start out with those main things. What is, where it is and who's planning the building. And that's the initial sort of building block of a Dodge Report, whether it's from a permit at the end or a
preplanning Dodge Report at the beginning.

So if we have those four pieces of information, as you see there, we'll turn it into a full Dodge Report that we'll follow all the way through.

Okay. So that's my last slide.

As we like to say, we're a resource for anyone. You can always ask us questions. You can ask me questions. You can contact your local planner or representative. And hopefully if we work together we'll both be successful. Thank you very much. I appreciate it.

CHAIR MIGLIACCIO: Thank you. Any questions? I got a real quick question.

Can we get a copy of your presentation?

MR. PALMER: Yes. It's on your hard drive. So just to answer that, I'm going to leave it there and if you could email it to each other, or to a certain place it needs to go. That's fine. You can certainly email it.
MS. SHORTALL: How about if I do this right now, Mr. Chair; and that is, I'd like to mark as Exhibit 13 the PowerPoint presentation on the McGraw-Hill Construction data, Dodge Report, presented by Dan Palmer. It will be in the record and everyone can take it down from regulations.gov.

(Whereupon, the document was marked as Exhibit 13 for identification.)

CHAIR MIGLIACCIO: Okay. Any other questions?

MR. JONES: I just have one.

MR. PALMER: Yes.

MR. JONES: I'm new to this, granted. Walter Jones. And as you can see, I'm new at this. But my question is, most of this data is front end. And do you collect back end data, cost overruns?

MR. PALMER: No, sir.

MR. JONES: No.

MR. PALMER: Not in editorial. We
take it through the construction stages, including sub-bidding. I mean, after a contract is awarded, construction starts and the contractor is taking prices on jobs, parts of the job later on, we will cover that. But no, we don't go back and do cost overruns. We don't go back and do, you know, sort of -- if it's an office building, say like tenant percentages, no. Editorial is more specifically geared to the construction.

MR. JONES: I mean, you say editorial. Is there a Dodge product that would look at back end, like cost overruns?

MR. PALMER: I'd have to ask Jim. Do they have anyone that does any of the back end?

MR. KERR: Yes, we can do what's called as-installed and whether it's for a product, whether it's for a service, whether it's for update.

MR. JONES: So if I wanted to look at like fatalities or injuries, or cost
overruns, or work comp issues, or --

MR. KERR: We have the ability to identify the projects and then we also have a research department that, yes, can go back and do that type of work.

MR. JONES: Thank you.

CHAIR MIGLIACCIO: Any other questions? Sir?

MR. BUCHET: In the discussion that's going on, and apparently increasing, of a sort of life cycle approaches to construction projects, is Dodge looking at; and I noticed you kept stressing new or additions, demolition projects?

MR. PALMER: Yes, absolutely.

Yes. We call it demolition. That's a single trade.

MR. BUCHET: Okay.

MR. PALMER: So your knowledgeability to then build something new or knowledgeability to clear a site, absolutely. Again, we will not cover that in
the planning stages that someone's planning to demolish something.

MR. BUCHET: Right.

MR. PALMER: But when it does go out for bid, we certainly provide that information.

CHAIR MIGLIACCIO: For the record that was Mike Buchet from the Directorate of Construction.

Any other questions?

Thank you very much, Dan.

We'll go and take a 15-minute break until five minutes after 3:00. Remember back in the back there's a sign-in sheet. For anybody who wants to do public comments to the Committee, sign in, please. That will be happening this afternoon.

(Whereupon, the above-entitled matter went off the record at 2:51 p.m. and resumed at 3:06 p.m.)

CHAIR MIGLIACCIO: All right. Our next presentation will be on the OSHA
Good afternoon. I want to thank everybody for having me here. I got the news from your regional office that you had some questions for me. So before I get you to ask questions, I'd like to give you a little bit of background about my office, my area of jurisdiction and some of the major concerns that we have with regard to enforcement in South Florida.

First off, South Florida, of course everybody knows all about Miami. That's one of my largest areas in there. The growth in Miami has caused me some serious concerns with regard to construction. Since the '70s until today, the boom has just been unbelievable. I took a trip down A1A, which is our major coastal highway, and I counted 54 tower cranes in the boundaries between Miami
and Homestead, which is the bottom of the
Keys. So we've had a lot of construction
going on in that area.

My jurisdiction covers 10 southern
counties. These are the ones that we have,
and that gives you an idea of my population.
We have approximately 6,388 people that live
within those 10. And what you're going to see
here is how it's divided. As you can see,
Miami is the crux of my population. It's a
very congested area. Broward County, which is
where the area office is situated is the
second highest, and of course Palm Beach after
that. We have a lot of agricultural in the
other areas. We deal with sugar crops,
orchards, so on and so forth. So it's more of
a rural community.

One of the major issues that I
think we should all be aware of with regard to
South Florida is my Hispanic population. This
is one of the big concerns that we have down
there and one of the issues that I've tried to
address in the last three years. Miami-Dade's population is 62 percent Hispanic. So what I end up having to do is having to deal a lot with a different type of a culture in that area, which also impacts how our enforcement activities go.

These are my top five industries. As you can see, construction, warehousing and distribution, metal fabrication, maritime and retail service industry. It's not heavy-equipment-type of a situation. However, with the construction, residential seems to be the largest flux of the type of construction activity that's going on, anywhere from high-rise condominium-type projects to single-family homes.

This is the best team in the OSHA agency. This is Team Fort Lauderdale. They consist of some of the greatest, most energetic and most passionate compliance officers you'd ever want to meet. Industrial hygienists, engineers. I've got safety
compliance officers or safety officers in there, as well as my administrative staff.

I thought it would be really important for you to understand the breakdown, because in the breakdown it's going to help you to understand how enforcement actually works and what we're trying to do and how we're going to target specific industries.

Of course there's me. I have three assistant area directors and they run three teams. I have a construction response team, a non-construction response team and a strategic response team. I have four industrial hygienists currently and I've just hired three new ones. They should be on line August through September. I have 12 safety compliance officers with two new ones coming on at the same time. I only have one compliance assistant at this time. Now that's a very, very key thing when you see some of my concerns.

A compliance assistant, basically
their job is non-enforcement. Theirs is education, training and outreach to my stakeholders. So it's very, very important that I have good dedicated people that can help me to generate programs and projects that are going to help me to get information out to my stakeholders to help to educate them on the laws and what they need to do to protect their employees.

We have two program managers. They're my administrative assistants. I can't live without either one of them. And then I have a technical assistant that helps me with computers, because I know absolutely nothing about them.

Indicators. Always the big thing. This is what drives me to make determinations as to what kind of programs, what kind of emphasis that I want to place people within enforcement, and when it comes to my outreach activities. Right now my goal is 836 for fiscal year '09. Currently, I'm at 780, which
means 105 inspections above goal.

We have a safety and health inspection number breakdown for you. Safety-wise we do 726, and health 54. Percentage of construction inspections is 72 percent. I think that's very important for you to realize. That's how much construction drives my enforcement activity in South Florida.

One of the things I would like to say, and you're going to see when I talk about concerns is, I want to put more emphasis into our health field with regards to construction. We are in the process with the increase in the number of health compliance officers that we're going to be bringing on that we are going to be able to target more health aspects or health hazards within the industry so that we can start providing more coverage, more protection for your workers.

Everybody understands what a significant case is here, $100,000 or more. We had one this year so far, Apex/Morganti.
It was a construction double fatality. This was a situation where we had a slab collapse at the Key West Airport and killed two of our contractors there. We ended up actually settling this last week. So we did finally settle the case.

We currently have one in maritime going on right now. This one will be a big one. I won't go into that since this does not necessarily pertain to you, but we're in the process, we're looking at 319 to $450,000 fines for them.

Here's some information. I love this slide because it's the first time I ever did one, so I'm really proud of it.

The goals. It shows where our goals have been for the last three years and what our projected goal for fiscal year '10 is. You're going to see that we're going to have an increase. Of course that is based on the fact that we have an increase in the number of employees that we're going to be
having, or enforcement employees we're going
to be putting out into the field.

You see the dark blue. That shows
you what your inspections were for that year.
As you can see, and I take great pride; I have
the best team in the United States, we have
surpassed our goal for the previous two years
and we will also bypass for fiscal year '09.

The construction, which is kind of
like the aqua, is really important, because it
shows you how much of my inspection activity
is actually based on the construction fields.
So we have always had a high level of
construction inspection activity within the
South Florida office.

Complaints. We're pretty much
complaint-driven. Would like to change a lot
of that. To me, when we're dealing with
complaints, I'm being reactive, not proactive.
One of my goals is going to be for the field
office is to become much more proactive, try
to get there before I have the complaints, get
there before the accidents actually occur. So we're going to be doing some modification of how we're going to be targeting probably for the fiscal year '10.

University of Tennessee. You can see we don't have a lot on here. One of the reasons for that is because the fact that I am so complaint-driven. They're very, very intensive when we do them. They're comprehensive inspections. And what that means is I'm going to be taking a compliance officer or two and tying them up for a long period of time. Because this is the type of inspection where they go through and they look at everything. Everything from programs, all the way to what they're keeping into their gang boxes. This is an opportunity for us to evaluate the type of contractors we have out there, to provide more outreach for them, make sure that all the areas where hazards may be occurring can actually be addressed. Instead of going out on a complaint where I'm focused
and limited to what I'm actually able to
address, this is my opportunity to go out,
provide more additional assistance and ensure
that the company is actually enforcing the
standards as they're applied.

MR. BUCHET: Darlene?

MS. FOSSUM: Yes?

MR. BUCHET: Michael Buchet,

Directorate of Construction.

Have you got a slide or can you
talk a little bit about you choose between or
prioritize between complaint-driven and a
Dodge Report-selected inspection?

MS. FOSSUM: I'm not quite sure I
understand what you're looking for, Mike.

MR. BUCHET: Well, the number
shows that you have a huge number of
complaint-driven inspections and relatively
few come off the Dodge Report.

MS. FOSSUM: Programs, yes.

MR. BUCHET: The program. In the
program, the list, I understand Dodge gives
you, what is it, 10?

MS. FOSSUM: Ten at a time.

MR. BUCHET: Ten at a time. How does an area director choose between taking one off the list for the month of July 2009 or answering four complaints?

MS. FOSSUM: Well actually, we have figured out how to do this. When I get further into how I'm actually dedicating resources, Mike, I might be able to address that. But I want you to understand also with Dodge's, since that's a programmed inspection, I also have general industry and maritime. My general industry is also strategically targeted. And there are very, very specific guidelines and requirements for me in general industry that I have to meet with regards to how many and which ones that I actually address. So I do have that competition all the time.

Yes, ma'am?

MS. SHORTALL: Sarah Shortall,
1 ACCSH counsel. I have a question, since these
2 are your entire inspection lists and not only
3 construction.
4
5 When I look at the percentage of
6 inspections based on complaints, is that
7 relatively the same in all five of our top
8 areas; for example, in construction? Is that
9 mostly complaint-driven, or not?
10
11 MS. FOSSUM: Yes, probably because
12 most of my work activity is in the
13 construction field. A majority of my
14 complaints that do come in are construction-
15 related.
16
17 MS. SHORTALL: That's an important
18 piece of information, because in the
19 Regulatory Compliance Work Group meeting there
20 was a question raised about whether complaints
21 have actually decreased or increased recently.
22 And so what you're saying is they're still at
23 the same level as in past years?
24
25 MS. FOSSUM: But to very fair, I
26 think it is based upon each area office is
different.

MS. SHORTALL: Okay.

MS. FOSSUM: You know, you may go into let's say Cleveland, Ohio. I was the construction team leader up in Cleveland before I came to Fort Lauderdale. Our complaint process or the number of complaints that we addressed were different, were lower than what I'm actually seeing in the Fort Lauderdale office. So each area director is having to take this kind of data to determine how I'm going to allocate resources towards programs, response to complaints, accidents, and so on and so forth.

Yes, sir?

MR. JONES: Walter Jones, employee rep.

MS. FOSSUM: Good for you, Walter.

MR. JONES: Sort of a running joke here.

But my question is, in your complaints is there a difference between the
value of the project? Are we looking at small contractors or large contractors? Are you looking at union or non-union?

MS. FOSSUM: Okay. A complaint is a complaint. We don't look at the cost or the issue. I can have a complaint talking about sanitary conditions on a work site, or I can be looking at a fall protection issue at a high rise. They're both counted as equals. We don't look at how large the site is or how small it is, or if it's general industry or maritime.

Everything is geared off of two things with a complaint. It's either formal or non-formal. The only person that can give you a formal complaint is an employee. That employee must be current; he must be currently an employee, and he must be willing to sign for the complaint. They're the only people under the Act that are authorized to order OSHA to do an inspection. I can have somebody that says there's no toilet paper on the third
floor of this high rise, I'm an employee and I'm demanding that you go out and do it. If he signs for that, I must go out and do that inspection.

A non-formal would be other people that possibly are on the job site but they're not employees of that contractor. They're not willing to sign or they're anonymous. We even take anonymous calls. At that point there are two ways that we're going to handle the complaint. Because of the seriousness of the hazard and emphasis programs that are established by the Agency, I would have the authority to appoint somebody to go and do an inspection of that, or we're going to address it as a phone and fax. Am I going too far on this, Mike?

Okay. A phone and fax basically means this: As soon as I get the information, if it doesn't fall under the jurisdiction of a national or local emphasis program, or an imminent danger, we are going to fax that
information to the controlling contractor.
We're asking them to look into the matter and
to provide me evidence within five days as to
actually what they've done to abate the hazard
or the problem. We do not have an enforcement
agent that actually goes out.

Now, if somebody under phone and
fax does not respond to us within that amount
of time, then I am going to appoint somebody
or a compliance officer to go out into the
field and to find out what that is to ensure
that that hazard or that health issue has been
abated.

MR. JONES: Wow. Thank you.
MS. FOSSUM: I didn't mean to get
that long-winded.

MR. JONES: I needed that --
MS. FOSSUM: Mike will tell you
you got to kick me in the leg to shut me up.
This is the saddest slide I have.
Oh, I'm sorry. Yes, sir?
CHAIR MIGLIACCIO: Tom?
MR. BRODERICK: Tom Broderick, public representative.

Along the same lines as Walter's question, but a little different.

I know that you don't keep any statistics on this, but you do have someone who can answer the phone and speak Spanish, I assume.

MS. FOSSUM: We pray. I cannot or I do have non-speaking Spanish people in my office; I don't speak Spanish, I'm ashamed to say, but we do have the majority. Last statistic I had, and I'm hiring every day -- my last statistic was I think 56 percent of my employees spoke Spanish.

We have what we call a duty officer. That duty officer is a rotation of all of my enforcement officers within that office. At any one time I could have somebody on that phone that does not speak Spanish. However, we always have somebody in the office that does speak Spanish. So if and when
somebody calls in and we need that speaker,
then we'll put him on that call.

MR. BRODERICK:  Okay.  Well then

part two of that question is; again, I know
that you wouldn't have scientific answer for
this, but just your gut feeling, is how many
of these complaints do you feel are coming
from Latino workers?  Five percent?  Twenty
percent?

MS. FOSSUM:  Oh, no, no, no.  More

than 50 percent.

MR. BRODERICK:  More than 50?

MS. FOSSUM:  Yes.  For my office.

MR. BRODERICK:  So the number of
complaints is somewhat consistent with the
number of Latino workers?

MS. FOSSUM:  Yes.

MR. BRODERICK:  Okay.

MS. FOSSUM:  Plus, we make a very,
very concerted effort through outreach to get
down into the communities, to try to give them
information with regard to 11(c) protection
under the Act, and to help them to get
information. Every type of brochure that I
send out is also published in Spanish. We do
everything that we possibly can to get that
information and data out to them.

MR. BRODERICK: Well, it would
seem like you're doing a very good job then.
Because I think there are other parts of the
country where the injuries and fatalities are
consistently high and the number of non-
English-speaking workers who call in with
complaints is relatively low.

MS. FOSSUM: I don't want to show
you my next slide now.

MR. BRODERICK: Okay. Well.

CHAIR MIGLIACCIO: Mike?

MS. FOSSUM: That's my fatality.

MR. BUCHET: Michael Buchet,
Directorate of Construction.

Does your office use that 800
number dial-in for a translator?

MS. FOSSUM: Yes.
MR. BUCHET: And an aside is, I know you're up here to try and recruit Danezza back, and you can't have her.

MS. FOSSUM: I know, but she knows everybody. She'd fit perfectly.

Yes, we do use that. I don't have to use it as often, Mike, because I'm so fortunate to have so many. A lot of times also they'll just call into my office and they'll just say, you know, hey, is Juan there or something? Can he translate for me?

MR. BUCHET: Thank you.

MS. FOSSUM: But we use that, too.

I would like to say that this is not realistic, but it is. My fatality rate is the highest in Region IV. Florida actually dominates the fatalities in Region IV by more than 60 percent. Sixty percent of Region IV's fatalities come out of Florida. That's a pretty scary thing.

As you can see here, we had 53.

And the reason I'm using 2006 through 2008 is
because that's when I came in. So hopefully it will show you. And that should be 2007, 2008 and 2009. I'm sorry. I was working on this thing very late last night.

MR. GILLEN: I have a question.

Matt Gillen, NIOSH.

You just said fatality rates, but isn't it easier the numbers?

MS. FOSSUM: These are actually fatalities.

MR. GILLEN: Because the thing is, as terrible as fatalities are, they just go up and down. A lot of that's due to the amount of work being done. I wish we had rates, because that would be a more accurate way for you to know about effectiveness. And I wonder, do you think about that as far as how to use these numbers to tell you whether your efforts are good or bad? It's so difficult just having numbers without rates.

MS. FOSSUM: Well, I think a lot of it is I guess it's my perspective on
fatalities. One fatality is too many. I have a zero tolerance policy in my office; I don't care if it's a rate or not.

The 2008 should be 2009. We believe that a lot of the reason for that decrease is because of the fall in the economic structure of our construction.

However, if you look at construction-related fatalities, our ratio is still higher. And that's because we are going to be working with a lot of small employers. You're going to see that data in just a couple of minutes. I wanted to give you a perspective of what we deal with and what we're actually all about down there, because I think it's really important. Because this is the information that actually gets me to the point of determining how I'm going to allocate resources.

Yes, ma'am?

CHAIR MIGLIACCIO: Liz?

MS. ARIOTO: Yes, Liz Arioto
representing the public.

Can you tell me what these people that had the fatalities, what were they doing? I mean, what kind of trades were they in?

MS. FOSSUM: Well, the construction-related are all construction, a lot of them falls. Electrocutions are a large problem for me down there. We've had struck-bys and caught-bys. Trenching doesn't seem to be as big of an issue for me. Because of the soil type down there, they're very aware of the hazard. It's all type C soil down there. And we're so close to the water lines, that I have divers that are actually connecting -- they have to put plans together for barometric chambers and the whole nine yards in some of my deep trenches. So they're very aware of the hazard of the trench.

But my falls, this is the labor force that does not require a lot of education or training. They're laborers mainly or stucco contractors. These are the kind that
normally I have ending up in fatalities.

MS. ARIOTO: So is it falls from -- I'm sorry, Liz Arioto.

MS. FOSSUM: It's a little bit of both.

MS. ARIOTO: Both?

MS. FOSSUM: I've had people falling off a balconies 120 feet in the air. You know, just turning around and just forgetting where they are and walking off of balconies. There's all kinds of them.

MS. SHORTALL: Yes, on the fatality reports here, what percentage are Hispanic workers?

MS. FOSSUM: I did not pull that data. I would have to say the majority, though.

MS. SHORTALL: So is it even higher than what the population rate is?

MS. FOSSUM: Yes.

MS. SHORTALL: So somewhere above 62 percent?
MS. FOSSUM: Yes.

MS. SHORTALL: Yes.

MR. HAWKINS: But that population rate is not the population of construction workers.

MS. FOSSUM: No.

MR. HAWKINS: Steve Hawkins, state plan. I was assigned that job.

Do we know what percentage of construction workers, because I would like to know that. Have you ever seen any figures about what percentage of the construction work force is Hispanic in your area office?

MS. FOSSUM: I did not pull that data for this slide. We could get that very easily. I can also tell you how many of these were Hispanic or considered to be Hispanic workers.

MR. HAWKINS: That would be kind of a rate that you could tell.

MS. SHORTALL: Could I add one thing right here? I did speak with the
transcriber who indicates that every person sitting at this table, he knows your name. So if you don't want to mention your name every time you speak up, it's not required. But I held off saying that until we got Walter.

MR. ZARLETTI: That goes to everybody in budget.

MS. FOSSUM: Along with enforcement, one of the activities that I think is very critical for my area is the outreach activity. I am a very, very firm believer in balance. And one of the things is as important as strong enforcement is, I also have to be able to provide my stakeholders, my employees as employers, opportunities to educate. So what I basically do is I try to target associations, communities, schools, things like this that will help me to do that, to generate a base for me to be able to get information about the standards, safety and health programs out into.

I'm very proud of the two
partnerships that I have up there. In fact, our two partnerships that started in South Florida have now become statewide partnerships. They're very, very active. They have liaisons that meet with me on a monthly basis. I go to every single one of their meetings, or I'll have a representative if I'm not available to go. So those would be both of my AGC chapters down there. And we just signed a partnership with Jacksonville and Tampa so that they are covered through the whole State of Florida with regards to this partnership.

The beauty of this partnership, what we're doing here and I'm very excited and I'm very proud of them; I think we have done some groundbreaking work, is we together, OSHA with these chapters, are literally getting together to put on training seminars for all of the contractors, it's not just AGC members; it's open to everybody, to put literature out there and to actually put on exhibitions and
safety days for all employees to be able to come free of charge to be able to learn more about safety and health. The last safety fair that we had, they had over 600 workers in the Florida Area actually attend. So, I mean, it was a wonderful turnout. Great training free of charge to all of these workers. It was quite an amazing thing. It was humbling for me to see. They did a wonderful job.

The other area that we work with is alliances. Now, we were talking about cranes and they were talking about how cranes is a number one issue. We have the only crane alliance in the United States, and I'm very proud of that. And it also has gone statewide.

You're going to see the following associations that are actually part of this alliance. We've got ABC, we've got AGC, we've got the Crane Owners Council, we've got the Transportation Builders Association. All of these people are coming together to try to
work as one to ensure safety with regard to the cranes. A lot of this had to do with the terrible catastrophe we had in Miami where, believe it or not, it was safety that were killed. I had two safety officers that were killed in that accident and I had two that were severely injured when a piece of the crane fell onto a house that was housing their office. So it was a pretty sobering time for us.

The construction, we also have alliances with the Construction Association of South Florida. Here are some of the schools. Now, I'm sure you all know that OSHA is a right-to-work state. And because of that -- I'm sorry? Florida. Oh, God, I'm all right. Florida is a right-to-work state. So I'm trying to get out into the technical schools, trying to get involved with them, trying to get them to introduce safety and health standards to their students in some of
their curriculum. We've been very, very successful in doing that. Not only have they adopted and accepted that they would put on the OSHA 10-hour courses, they have also asked me to provide compliance officers to come to certain courses or certain classes and actually speak about the safety standards and standard issues relative to that particular trade. And that's working out very well.

My teen youth alliance in Indian River State, this is our second year that we've worked with them. That's going very, very well. And to ensure that I'm actually addressing some of my Hispanic communities, we're currently working on alliances with all of my Hispanic consulates in South Florida. So hopefully that will give us some good avenues to get information out.

All right. That gives you that. This is my plan. Enforcement has to be my number one; and that is, we need better targeting. Like I told you, my whole goal is
to become more proactive, not reactive. In doing that, what I am doing with my compliance staff is I'm trying to put more visibility out in the field. So every day I have four compliance officers that do nothing but go out and try to target and find construction work, construction sites and just go by and make sure that they are at least following compliance or doing what they should be, especially in falls and trenches.

We encourage referrals. I've just finished up giving training to your county and city building inspectors and emergency response personnel, trying to tell them what they should be looking for, how they can contact OSHA if there are problems, getting the response personnel to contact me even if there's any kind of an accident on a construction site. Because we all know that an employer does not have to notify me until there's a fatality or three or more people have been hospitalized. So if I can get the
emergency response people to contact me when they get called, that helps me to be able to get out there and address the issue quicker, before we actually have the fatality.

We are increasing the University of Tennessee activity. Now one of the things that I've done here is when I have my people driving by or when they're out there, they always have a U. Tenn. with them. By 12:00, if they don't see an issue, they are to open up a programmed inspection so that we're not wasting time out there. I need to make sure that we have got people that are actually addressing hazards, not just looking for hazards. So that's one of the ways that we actually do that. So if I'm not seeing the problem, then we're going to go out there and we're going to actually go in and do comprehensive and try to get into these sites as best we can.

We're identifying and targeting repeat and willful offenders. One of the
things we're doing in construction is if I've

got a contractor where I am issuing a repeat
citation or a willful citation, they are
tagged. What we will do then at that point is
during the informal settlement agreement, I am
going to be working with them to be able to
gather information as to future projects where
they will be working. What this basically
will do at that point, it will give me an
opportunity to monitor what they're doing and
ensure that they are complying with what they
need to do.

No questions on that, huh? I
thought for sure we would, Mike.

Zero tolerance on Focus 4. This
is my personal thing. If a contractor an
employer walks into my office and has been
cited for a fall, electrical, struck-by or
c caught-between hazard, there will be no
penalty reduction.

I have also a very high contest
rate, Mike.
But, you know, my issue is this:

There's absolutely no reason why we continue to see these four issues as serious hazards anymore. The information's out there, the education's out there. I need them to start complying and ensuring that their people are.

So what we'll do, is they're come in and that they want penalty reductions. The only way that they're going to get a penalty reduction is to show that financially they're not able to do this, or they're going to have to take it to the next step, and that's contest, and we'll take it into the courts, you know, for them to do that.

We're trying to put more emphasis on health issues in construction. This is an area I feel, because my background is construction, has been very, very sorely overlooked. Now that I have a full entourage of health specialists, we're going to be starting to address more noise, silica and lead.
We just got through training all of my compliance officers on how to use noise dosimeters. So what they're going to be required to do is, whenever they enter a construction site, they will take readings for noise. They have to put that in the OSHA 1A, which is their work sheet, that they did this and what the meter read. At that point, when they come back, if and when we see that there was an issue, they will make a referral to our health specialists who will go out then and then they will be targeting and sampling for noise on those job sites.

Silica and lead, we just do hazard assessment training with my people. Once a quarter I put up pictures at my staff meeting and say, okay, show me the hazards. We try to put more and more health issues in there, like clouds of dust, chemicals off to the side, helping my safety compliance officers become more familiar and comfortable with the identification of health hazards.
Enhance settlement agreements.

Again, like I said, this is where I get involved. We try to build more information or get more out of the employer at this time. If they're wanting me to amend a citation or reduce a penalty, then they're going to give me something in return. Your managers have to attend 30-hour training. You're going to put on a seminar for your industry and have OSHA participate. I'm trying to use the settlement as a method of getting more information out and getting them to become more participative on the correction of hazards within their workplace.

I'm talking too much, aren't I?

Outreach activity. More cooperation with current partners. When I first got there, everybody was so proud to tell me that they just completed 10 hours and I'm looking at them like they're all crazy. You know, that's an awareness. It's nothing more than an awareness. We need to go
1. We need to push our employers to take on more. One of my big concerns is, and I tell my associations this all the time, we fight complacency. I don't want them to become complacent. Once you've gotten everybody trained on 10, we need to be looking at 30-hour. After 30-hour let's get into technical and competency training. We should always be pushing the envelope with them.

OSHA participates in a lot of training programs with these, especially with my associations.

Emphasis is important on safety and health programs. This to me is the root of all evil. If they don't have an effective safety and health program, they are going to continue to have hazards on that job site and exposure to an employee.

So the most important thing I think that I need to do is to help educate them as to what actually constitutes an effective safety and health program. We cite
for deficiencies in that program. I just went
through training that was also approved by our
solicitors with regards to how we're going to
cite them. My compliance officers have been
trained on how to evaluate them, and then
based upon that, determining the deficiencies
in the program. And when I cite a
1926.20(b)(1) standard, it is based on either
employee involvement, disciplinary
deficiencies, training deficiencies, whatever
it is that we found was their problem so they
can correct them, so we can get rid of the
hazards.

We also encourage mentoring
programs of my partners. What this is, is I
turn to my good guys, my good players and I'm
telling them, look, if you're that good, why
aren't you out there spreading the news? Why
aren't you out there helping others to get to
that point? So we encourage mentoring. So
whenever we go to an association meeting, we
make a big deal of having the new people that
are attending to stand up, talk to us. I shake hands, we give out little diplomas or certificates, welcoming into the safety portion of that association.

Working in conjunction with alliances, we open lines of communication.

That's the big thing. Getting the word out, getting them to talk to me. Having a Hispanic community and the culture there is they're automatically very leery of us. So what I need to do is I need to get out there more. I need to be out there talking to them. We do that through fairs. We always have compliance officers that attend safety fairs, or any kind of fair. It could be a picnic that they're having. I'll have a booth out there and I'll have one of my compliance officers, Hispanic compliance officers talking to them.

We participate in all the training activities. I'm always asking. When they put on a 30-hour, I've got somebody there talking about OSHA. We talk about the inspection
process. My whole issue and what I try to
tell them is, we don't keep secrets. OSHA
doesn't need to keep a secret. I'm going to
tell you how I do my inspections. I'm going
to tell you what I'm going to look for. If I
can educate them to that, they're going to
know how to go out there and do it so I don't
have to be there to do it. That's one of the
things that we try to push. We also provide
material information.

I'll try not to talk too much
about each one I'm going over.

Continued high fatality
statistics. We are the highest rate in a
region. Florida offices post approximately 50
percent of all the fatalities. A major number
of those victims are my Hispanic workers.
Over 85 percent of construction contractors
cited are small employers.

This is my biggest problem. How
do I get to them? How do I get to them?
They're in business one day, out the next. I
cite them. I can't find them. Right now I'm doing a fatality investigation. Somebody went to the Home Depot, picked up a day laborer, put him up on a metal roof. The guy fell through the metal roof and now I can't find anybody. So I literally have a dead immigrant worker and I have absolutely no way of finding out who actually hired him to do that job to hold them responsible.

MR. BUCHET: Darlene, what do you mean by small?

MS. FOSSUM: For me, small is anywhere 50 or less.

MR. BUCHET: Okay. Thank you.

MS. FOSSUM: So, I mean, these are the kind of frustrating things that we actually run into. Or, if I don't get a compliance officer out immediately on some of these job sites, by the time I do get somebody out there, if it's within a day, I can't find any of the witnesses. They're probably illegals and they're going to run. So it's
very, very hard, it's very frustrating for me

to be able to work in this area.

Training and education challenges.

Hispanic employers and employees. Getting
that word out is always going to be one of my
number one challenges. Communication is
always difficult and they have cultural
differences. Some of their cultural
differences, they're very protective of their
own communities and they don't like outsiders.

Illegal immigrants. I have this
problem down in the Miami-Dade area. I can go
by any Home Depot at any time and see a group
of illegal immigrants waiting for somebody to
come and pick them up for work. And it's also
a very transient workforce.

Major concerns considered.

Standards and interpretations. Residential
construction is a definite problem for me, and
the reason for that is the STD does not apply
in South Florida. Try to tell that to my
roofers. They don't like this, but it's a
constant battle. And the reason for that is they don't fit the definition of residential construction, because we're all masonry work, because of the hurricanes. So they are not authorized to use the STD.

The crane standard, like I told you, I've got cranes everywhere down there. I'm waiting breathlessly for our new crane standard. It's something we definitely need down there.

Confined space. We're working with a lot of confined space issues in construction down there and we don't have a standard that actually applies to it. Lockout/tagout is the same thing. I've got tagging. I've got a 416 for safety-related work practices, my electrical standard, but it doesn't actually require a contractor to lock and tag out specific equipment when it's being input into a new building.

Multi-employer, multi-employer, multi-employer. I mean, I literally call
general contractors into my office and sit them down. I've had fatalities where they have the day laborers on their job sites. Good guys, good contractors. My question to them is, who employed this individual? They have no idea. There are so many tiers of contractors that they can't keep track of them. So we all are trying to work together to try to figure out and resolve that issue.

Availability of my solicitors' resources. Unfortunately, we don't have enough solicitors to actually address all of my contests. So we're sometimes put into positions where I have to do what I can to settle a case, or it goes away. I mean, we can't continue to do that.

Continuous training of compliance staff. Budget's always going to be an issue for me. For my guys to be kept up on the standards, it's important. It's important if they're going out and doing training. It's important if they're going to go out and
identify hazards that they're competent and I know that they're going to know what they're looking for, and the diversity of their knowledge.

Upcoming challenge is going to be ARRA. Identifying sites and projects is a problem. We're not expecting a lot in South Florida. The money is mainly going up into the Jacksonville area or into DoD in Florida. So I am not expecting to see a lot of ARRA money down in the South Florida Area.

MR. BUCHET: Is any of that money going to the tunnel?

MS. FOSSUM: From what we've understood, none of it is going to the tunnel.

MR. BUCHET: None? Okay.

MS. FOSSUM: It's going to be private-funded.

MR. BUCHET: But that's a billion-plus.

MS. FOSSUM: Yes, well, we also have the Marlins stadium going up. That's
private. And Interstate 595 is going to be privately-funded also.

I have an increase in staffing. I've got six new hires that I have to incorporate, which means that I've got to get them up and running education-wise. So they're not going to actually be in place and be completely active even though they've increased the inspection roll. So we're going to have to buy in, we're going to have suck up those extra inspections while we're in the process of getting my new compliance officers up and ready to go.

Specialized training. I'm always looking at what I'm going to need. Right now the safe work zones is a big issue for me, because we do have some construction in road construction that's going to be going on. Pretty soon I'm going to have to be sending some of my guys to tunneling, because we've got the Miami Tunnel that's going to be going in. I need to make sure I've got people that
are competent enough to go in there safely, as
well as to be able to identify hazards.

Okay. That's me when I retire.

Thank you very much for your attention.

CHAIR MIGLIACCIO: Liz?

MS. FOSSUM: Thank you.

MS. ARIOTO: Yes, Liz Arioto,

public. A couple of questions.

On the fatalities that you had,

what kind of training did the workers have, or

was there any training?

MS. FOSSUM: It depends. There is

training involved. How good the training is

has always been an issue, and the assessment

is sometimes very difficult. Like I said,

most of my employees don't want to really talk
to us. We always see deficiencies in the

training. I could show you pictures that

would just curdle your lunch. But it's always
deficient.

MS. ARIOTO: And there's another

question. These companies, are there X
modification rates? Do you get the X-mod rates to see how well they're doing, if they're below the average?

MS. FOSSUM: No.

MS. ARIOTO: Or have like a high hazard --

MS. FOSSUM: You can look at the 300 logs for the companies, but that does not necessarily address the specific hazards of the site. According to the law, they can just do it as a company, not as a site. So that becomes an issue.

CHAIR MIGLIACCIO: Emmett?

MR. RUSSELL: Emmett Russell, employee rep.

Excellent presentation, by the way.

MS. FOSSUM: Thank you.

MR. RUSSELL: I would like to offer you this road way safety, because it is good for highway work.

MS. FOSSUM: Wonderful.
MR. RUSSELL: You can review it and if you need additional copies, I'd like to offer to supply you whatever you might need.

MS. FOSSUM: Thank you very much.

MR. RUSSELL: Also, I would like to talk to you further about your crane alliance to see what type of activities you're having with that and if you are truly having an impact, you know, to the contractors and to the industry.

MS. FOSSUM: I'd love to talk to you.

MR. RUSSELL: So, do you have a business card that I might contact you later?

MS. FOSSUM: You bet. I'll make sure you get it before I leave.

MR. RUSSELL: Thank you very much.

MS. FOSSUM: You're welcome.

CHAIR MIGLIACCIO: Any other questions? I only have one question.

You said you had 12 safety compliance officers. You had four hygienists?
MS. FOSSUM: Yes.

CHAIR MIGLIACCIO: Of the 12, how many of them came from construction industry?

MS. FOSSUM: Six.

CHAIR MIGLIACCIO: Six? Where did the other six come from?

MS. FOSSUM: General industry. I have two that are maritime.

CHAIR MIGLIACCIO: Thank you.

MS. FOSSUM: Yes.

CHAIR MIGLIACCIO: All right. Any other questions?

Okay. Thank you very much.

MS. ARIOTO: Just an excellent presentation. Thank you very much.

MS. FOSSUM: Thank you very much.

MS. ARIOTO: No, thank you.

MS. SHORTALL: Mr. Chair, at this time I'd like to mark as Exhibit 14 the PowerPoint presentation on Construction Enforcement - the Field Perspective presented by Darlene Fossum, Area Director in Region IV.
(Whereupon, the document was marked as Exhibit 14 for identification.)

MS. SHORTALL: And as Exhibit 15, the CD entitled, Roadway Safety, plus a Road Construction Industry Consortium Training Program.

(Whereupon, the document was marked as Exhibit 15 for identification.)

CHAIR MIGLIACCIO: Okay.

MS. SHORTALL: Thank you.

CHAIR MIGLIACCIO: Thank you.

Dan, if you could have your questions at the end of your presentation, not through the presentation. Thank you.

MR. PALMER: Yes, you got it.

We're thinking alike.

CHAIR MIGLIACCIO: Go ahead, Dan.

MR. PALMER: Okay. I'm going to get right back at it. Thank you for having me back. Once again, my name is Dan Palmer with
McGraw-Hill Construction. And I was also asked on top of the editorial overview to give an update on the McGraw-Hill Construction database when it comes to stimulus, shovel-ready or ARRA and the different terms and how they're used, and what you'll see in the database.

So I have a few slides. They're pretty colorful and they're graphs and they're maps, and so it's less wordy and hopefully easily understood.

Okay. There are two terms that McGraw-Hill Construction has used since we first heard about a possible Stimulus Act back in the fall, when the current administration discussed what they might do if they became the new administration.

And the first term that quickly became used and then McGraw-Hill Construction was shovel-ready. The original definition basically was if local municipalities had projects that were ready to go and upon
approval for funding would be ready to go and be on the streets and start construction within 90 days. That's slightly changed. The money is going and coming out at different phases than at the beginning; it now comes out at the end. But basically that was the term we used. The majority of the projects were from the Conference of Mayors report, which included very quickly put together approximately 15,000 shovel-ready projects. We also use what came from the state governments, the departments of transportation, federal agencies and so forth. And all other sources that I discussed in our last discussion.

The ARRA stimulus is the tag we use for any project that our reporting staff has verified and confirmed as being funded by the American Recovery and Reinvestment Act. So what that clearly points out, and you'll see in a second, is that not all ARRA stimulus projects were at once identified as shovel-
ready. And certainly clearly not all shovel-ready projects have become or will become ARRA stimulus projects. They were, in many instances, a wish list for funding and an overwhelming majority of those were not funded. So they can get funded by other ways, but just it will not be funded by the ARRA.

Currently in the McGraw Construction database, I broke it up today into planning and bidding and construction. And you'll see the number of projects currently in planning and the value of those, and number of projects in bidding. Currently right now, just for your information, there are over 3,000 projects bidding that have been confirmed as they will be funded by the ARRA, with a value of close to $22 billion.

The construction: this is what many people have been talking about, when we say construction, that means the work has started. We have confirmed over 2,200 projects have already started construction,
that have been confirmed as ARRA-funded for a total of about $17 billion.

I heard a statistic on Monday and in a discussion that when it comes to money having been sent out to contractors in their hands, it's 10 percent of the bill. Only 10 percent of the bill's money has been sent out to contractors as of Monday. The reason that is, is because, as I understand it, the funding for projects is being given after the work is completed. So you are going to be approved. You get approved by your governor. That gets sent to the Federal Government. It's an approved project. The money will come back to the contractor after the work is done. They do the work, they send in for their payment, their municipality and/or their state or their county sends it to the Federal Government. The Federal Government makes sure that it was on the list and then they send the check back. So that's why at this point, although you have $17 billion worth of work
under construction, only 10 percent of it has actually made it back, because those projects are done. They were smaller jobs that have already been completed.

So, where is the money going? We broke the country into what our analytics group uses as 10 different groups. You can see like in the top left corner of the map it's the Pacific Northwest, then there's the Pacific Southwest below that, the West South Central, the West North Central and so forth. So as you can see, the third column, which you might not be able to see from the back, but that is the funded projects. So for instance, let's use the biggest one, the Mid Atlantic, which includes New York and Pennsylvania, they have 824 projects that are verified as funded. And their value of either their funded work or their shovel-ready work is $30 billion. That's just an example.

What we found mostly in that particular area of the country is they had
fewer projects that were shovel-ready and they have fewer projects that are being funded, but there are big projects. On average -- their average per project is highest in the country. This is just a bar chart. The blue, which is in the middle; if you can't see the colors, it's the shovel-ready jobs. This is what we were reporting. So from January to February to March, April, May, June, you can see how that's leveled out and starting to go down. Certainly less projects now are going to be reported as shovel-ready. As the orange line which is on the bottom, more and more start to get funded. That's just a chart that just sort of points out that fact. And what you'll probably see as August and September and October come is that orange line on the bottom will start passing up the blue line in the middle, and the blue line will be going down as more get funded.

This is an interesting map. It's hard to see the numbers, and as I believe this
will be posted also, this presentation, you'll be able to look at it more closely. What we did was break it down by state as to how many projects have been funded per state. I believe the highest one, if I look over the map real quick; you can correct me, but I believe the highest one is Texas, followed closely by Ohio, then California, Illinois and Pennsylvania. And that's just a breakdown of what projects have been actually approved for funding across the country.

This is a density map. And on a density map, it shows the darkness, meaning more. So these are the projects down to the county level across the country as to -- these are recovery tracked. Now remember, this particular slide includes all those shovel-ready. So there were a lot of shovel-readies that aren't becoming stimulus, and we'll look at that in a second. But you can see the projects that were going for funding and/or have gotten funding. Certainly the darkest
part of this particular map is out West. California and Arizona were ready and willing and able to go for funding. This is what we’re reporting. You can see how the weekly average is. It's pretty steady through the middle. You get the weekly average in orange. And the darker one, if you can't see the colors, is blue. That's the number of projects that we reported. We went from April to May, end of May into June, and you can see that big spike in the week of June 26th. You can see how it really started to go in the middle of June to the middle of July. These are the number of projects that began, actually getting funding. So you saw a couple of months where some early work got done. And then as everyone understood how they had to go through it, we started to report a lot more projects. That includes those 3,000 or so that are currently out for bid. What type of projects are either
going for or being funded? As you can see, about one-third of the way down the overwhelming majority of projects that were shovel-ready, the overwhelming majority of the projects that have been approved for funding, and the overwhelming majority of the money being spent. Other than the general building which has huge individual projects, it's the engineering work. It's highways. Highways, highways, highways. We have over 4,500 projects that have already been approved for funding.

Okay. And we were talking earlier about the plans and specifications. We are digitizing any ARRA-funded project over $200,000 in construction value. We are gathering the plans and we are digitizing them and putting them on the Internet so they can be fully searchable. Currently, we have over 3,700 projects which had been approved for funding, have gone out for bid and have been digitized. As you can see, nearly 3,000 of
those are engineering projects, which is the overwhelming majority being highways worth over $13 billion. That's what happened the quickest. That's what went the fastest. So approximately $24 billion worth of work has been approved and digitized by us with slightly over half of that being engineering work. And all those projects, as we just went through, they're in the database. They've been sent out to all the customers. They're in the network and they are in your feed to the Department of Labor.

And there you go. Did I get you back on track?

CHAIR MIGLIACCIO: Questions of the Committee?

MR. PALMER: Any questions?

CHAIR MIGLIACCIO: Dan?

MR. ZARLETTI: Yes, this is Dan Zarletti, employee rep.

Let me ask you; and this was a few slides ago, but I know we were holding
questions, did you say the stimulus money is
being held until the job is complete in order
to be paid out? Somewhere I saw that or heard
that.

MR. PALMER: Yes. I don't know
that I used the word "held," but yes, the
money gets sent out to the contractor after
the work is completed.

MR. ZARLETTI: Wow. All right.

Now what happens to a contractor like us; I
represent a contractor, that does progress
payments? We pay the subs as paid by a
customer, let's say. Well no, in this case
it's the Government.

MR. PALMER: I think I know what
you're asking.

MR. ZARLETTI: Various facets of
the job are getting done at different times?
MR. PALMER: Yes.
MR. ZARLETTI: And when those
contractors are gone, you consider that done,
or does the job have to be done?
MR. PALMER: Okay. Here what I would say, since we're officially on record: I don't make the decision as to what I consider.

MR. ZARLETTI: Well, I'm not holding you to this. I just asked the question.

MR. PALMER: But what I understand is, yes, if a portion of the project is completed, like a subcontractor's work is completed, he can then apply for his funding. And then the agency, meaning, say, the local municipality or so forth can send in for the portion of their funding for the subcontracting work that is done. That is the way I understand it.

MR. ZARLETTI: Well, I mean, a guy comes in and puts a fence up around a site for security.

MR. PALMER: Yes.

MR. ZARLETTI: He's done.

MR. PALMER: Yes, as I understand
MR. ZARLETTI: We haven't dug a hole yet, but he's done.

MR. PALMER: Right. As I understand it, the fencing part of the contract can be sent in for the funding and they will be paid. Was what you were asking if that was in a $50 billion job that takes a year --

MR. ZARLETTI: Yes.

MR. PALMER: -- would that fencing guy who finishes today have to wait? As I understand it, no, he does not.

MR. ZARLETTI: All right. Well, all right. Okay. That's good.

CHAIR MIGLIACCIO: We're going to try to get somebody to answer that question for you.

Mike?

MR. THIBODEAUX: Mike Thibodeaux, employer rep. Do you know what the time period is from the time that they complete the
work and send in their request for payment
that they get paid?

MR. PALMER: I can give you one
specific example.

MR. THIBODEAUX: Okay.

MR. PALMER: In February I was at
the director of funding for the Federal
Highway Transportation Clinic. The chief of
funding I believe is -- I don't have his
official title. His name is David Winter.
And I was in his office and he explained to me
specifically how it would work. And he used
a real good example of (a) this extra $35
billion that they were getting was on top of
the money they already had. He says, "I am
writing checks already. It's not as if I have
no money to spend if it weren't for the
stimulus. It's just this is more." So he
says, "In fact, before I met with you today,
I wrote two checks." He says, "The way it
will work is as soon as that comes in, because
it's already been approved, it will go right
back out." So I said, "You talking about weeks, you're talking about" -- He says days. He specifically said days.

MR. THIBODEAUX: Okay.

MR. PALMER: From request for funding until check is ready.

MR. THIBODEAUX: Thank you.

CHAIR MIGLIACCIO: Any other questions? Matt?

MR. GILLEN: Matt Gillen, NIOSH.

McGraw-Hill sometimes develops their own categories for different types of industries. I've noticed like in the top contractors' list.

MR. PALMER: Yes.

MR. GILLEN: Sometimes they categorize. Whereas pretty much all the data we have to deal with is all organized by the NAICS codes, the North American Industry Classifications Systems. Do you sort of like cross walk when you create those categories, how they would fit with NAICS, because if not,
1 it makes it hard for us to sort of use your
2 categories and compare them to industry
3 incidence categories?
4             MR. PALMER: I'll leave that to
5 Jim.
6             MR. KERR: We've had that issue
7 for years with NAICS.
8             MS. SHORTALL: You need to come to
9 the microphone.
10             MR. KERR: I'm sorry. Yes, we've
11 had that issue for years. The NAICS codes and
12 the SIC codes do not really fit very well for
13 construction. You know, a subcontractor is a
14 subcontractor in NAICS, for example. And
15 we're trying to break it down by what kind of
16 subcontractor it is and so forth. So we
17 literally break it in our own way. Be happy
18 to supply or the whole Committee the way we
19 break down contracting.
20             MR. GILLEN: That would be really
21 helpful, if we can request that.
22             MR. KERR: I'll send it along to
you, Mike.

CHAIR MIGLIACCIO: Any other questions?

MR. PALMER: Okay. Well, thank you all very much.

CHAIR MIGLIACCIO: Thank you.

MS. SHORTALL: Mr. Chair, I'd like to mark and enter into the record as Exhibit 16 the PowerPoint presentation, McGraw-Hill Construction Stimulus Report by Dan Palmer.

(Whereupon, the document was marked as Exhibit 16 for identification.)

CHAIR MIGLIACCIO: Okay. All right. We're at the point of the meeting with public comments. We have Rob Matuga from the National Association of Homebuilders.

MR. MATUGA: Good afternoon, everyone. I'll make this short and sweet because it looks like it's almost happy hour.

My name is Rob Matuga. I think most of you all know me, but for the
transcriber that's M-A-T-U-G-A is the last name. I'm with the National Association of Homebuilders. I appreciate you all giving me just a couple of minutes to address a concern that came up yesterday while I was participating in the subgroup or work group meetings.

I think you guys have actually had some good work group reports today and obviously there's a lot of work that's being done. I participated both on Tuesday and Wednesday in the work group, and really there was a lot of information that was exchanged, a lot of good ideas, at times spirited debate. My only issue is that several occasions I felt really unprepared to address some issues that had come up.

Also, in speaking with some of my colleagues over the last day or so, some of them didn't even participate in the meetings. And I think the issue is really the agendas. And many of them said, hey, if I would have
known that issue was on the agenda for a particular meeting, they would have attended.

So really what I'm here is to ask both the ACCSH Committee, OSHA and of the subgroup chairs to provide the agendas two weeks in advance, preferably in a suitable format and means through the OSHA ACCSH website. I think that this would be standardized information also would be included on the agendas, particularly what the work group is, the date, the time, location. And also other information including what is being discussed, as well as if anyone's giving a presentation, what the presentation's going to be on, who's giving the presentation and the affiliation.

I think that two weeks is a reasonable time frame for having the agenda, and I recognize that things change on the agenda from time to time. We have many meetings at our association and, you know, really the agendas typically aren't finalized
until a couple weeks in advance. But even if they're in draft format, I think that's going to provide the stakeholders, you know, quite a bit of information. And I think that there's a couple reasons why this is important.

From a stakeholder perspective in this economy there is so much pressure right now on many of us on the resource perspective that we're being asked to do more with less. And I think that having this information from the stakeholder's perspective about what's going to be on the agenda can make really a determination as to whether or not there's something of interest that we want to attend the work group. And I think secondly it allows all the stakeholders to come to the meetings really to be prepared and participate in a meaningful way. And I think finally it really gives that fair and balanced perspective to everyone that's participating in the stakeholders meeting.
So I would like to make this request that two weeks prior to the work group meeting, starting with the September meeting, that the agendas be made in a public forum in as much detail as known at the time so we really could be more prepared and make those decisions on participating in the subgroup meetings.

If anyone has any questions, I'd be more than happy to field those.

CHAIR MIGLIACCIO: Questions?

Comment?

MR. HAWKINS: Steve Hawkins, state employees.

After agreeing to chair this committee with Tom and after discussions with Sarah about our role and were we allowed to assign non-members any kind of task, I was under the understanding that this work group, would largely -- the activity and what took place -- would largely be determined by who showed up and what input they wanted to bring
to that committee. And so, you know, I appreciate what Rob's saying, but I'm not sure that you could expect that we would publish the agenda and then it would very well mean that if we publish the agenda a member of the public show up and do some kind of presentation of information that's not on the agenda and your desire to know what's going to happen ahead of time is of very little value when whoever shows up can talk and speak to the committee. So we could do an agenda, but I mean, what most of what it's saying is there's going to be a public meeting. I don't know what we could --

MS. SHORTALL: -- address some of these issues. First of all, as for the agenda of ACCSH itself, you know, we do publish that in the Federal Register notice, which is available for anyone to see. And with the exception of this last meeting, we do try to make it as specific as possible. You know, there's always the danger if we list something
on the agenda could fall off and someone came to the meeting thinking it was going to happen and it didn't happen, but I think we're going to err on the side of, well, you might hear other good things at the same time. And the regulations are very specific that we have to summarize fully and describe accurately the items that are going to be on the ACCSH meeting agenda.

As for the work groups, the work groups are not covered under the Federal Advisory Committee Act, therefore we wouldn't have to do anything. But ACCSH has always had a policy of trying to make the work group meetings open to as many people as possible because drawing on a large group will give a broader depth to the information and recommendations that a work group could bring back to ACCSH.

But the question is, can a non-member do something? Yes, a non-member could be tasked with something. But we have to be
clear, the only ones who can actually vote, if
you do have a vote on a recommendation to come
back to ACCSH, would be the actual ACCSH
members who are on the work group.

Now, what Mike has been trying to
do, because there has been some interest in
moving to some teleconference meetings because
of tight budgets, and work groups are very
interested in doing things in between the
meetings, is make it really important for
people to sign the attendance sheet when they
come in so that we can notify people of the
work group meetings that occur in between our
ACCSH meetings. And, you know, the co-chairs
could certainly, if they would like to send an
agenda out to everyone, could do so. But
there is no requirement to do that.

Likewise, what is important that
anyone who's interested and their colleagues,
we can't possibly know every single person who
would like to attend. So it's very incumbent
on anyone to pass along the information at the
same time, because we have no requirement to publicize that meeting. We do have a policy of making them open to the public and trying to get as much involvement as possible. There's a limit to what we can do. We can't put realistically an agenda in the Federal Register notice since the work groups are not required to do anything like that. We'd never get a Federal Register notice out announcing a meeting within the 15 days that we have to, to give full notice. So I don't think it's realistic to put it in the Federal Register. Although all ACCSH work group meetings are held in conjunction with -- an ACCSH meeting, those meetings are included in our Federal Register notice.

If your people are interested, on ACCSH's web page is a list of every member of ACCSH, as well as Mike Buchet. And now you can see I put into the record, and we've put into the record every time we have an updated list, the co-chairs and the OSHA staff
liaisons for the work groups. Call. I mean, I think there's only so much we can do to put the time and effort into doing the agenda that's not required versus the work of the Committee. So if you have questions about what's on an agenda and the co-chairs have decided not to publish an agenda. Call them and ask them what's going to be on the list. Their names, numbers, emails are all on ACCSH's web page. If, as I said, the co-chairs of work groups would like to send out what they know to be on the agenda, but other items would be welcome, they could do so.

It's important to understand that you should not have a finalized agenda for a work group meeting published and not be able to address other issues. Because the only way you can filter the agenda items up here to ACCSH as the committee, the parent committee, is if they were discussed in the work group previously. So the co-chair can't hear from you later saying I wanted that agenda item and...
just automatically elevate to ACCSH. That's part of ACCSH's own operating procedures and guidelines.

MR. MATUGA: Yes, just to clarify what my request was, is that, you know, certainly not publishing the work group agendas in the Federal Register. That's not what I asked for. What I asked for is that many times the agendas are done, completed, at least in draft form, two weeks prior to the meeting. And if those could be made available to the general public. So we recognize, and you could put all the disclaimers on there saying subject to change, but at least we have a general knowledge about what topics will be covered in each of the work group meetings. And those either can be placed on the ACCSH website, or, at a minimum, if it's agreeable to the Chairman, you know, we can contact them directly. I just think for the general public if that information is going to be passed around at meetings, you know, why isn't it
available prior to the meetings? And like I said, I understand things change and, you know, we can right subject to change on each of those agendas as well.

MS. SHORTALL: The final analysis, is going to be up to the work group chair. What we're trying to do is everything possible to make the work group meetings open as possible. But it does seem at some point there needs to be some, you know, initiative by those who wish to attend to contact people and say do you know what's going to be on the agenda? You know, everybody on this Committee is incredibly busy and, you know, they may not have an opportunity two weeks ahead of time in between reviewing all the materials that they have to for coming to this meeting to prepare an agenda. But they might be able to take a phone call asking what seems to be on the tentative list.

As far as putting it on the OSHA ACCSH web page, there's a procedure we have to
follow to get approval to put things on. And I don't think we'd be able to get them on within the two-week situation. It would be very difficult at this point.

But get your names on the circulation email distribution list so whatever goes out would also make it to you and your colleagues.

MR. MATUGA: And one additional comment. I don't think that, you know, as a matter of course that the chairman of the work group typically sends out the agendas to even those individuals who have come and signed up at the previous meeting.

So if it's not too much to ask then, and if Michael Buchet or someone in the Directorate of Construction agrees, if we can actually have one point of contact where at least all of the work group agendas come to one central point and that those are available as opposed to us remembering who's the chairman, who's not. We might not have their
contact information. I mean, I don't want to put additional work load on the OSHA staff, but if we're trying to make this easier for the stakeholders, which is arguably a larger group than just this committee as well.

MR. BUCHET: If I get the work group agenda, I can certainly send it out to the email distribution list.

MR. MATUGA: Or even if just hold it and, you know, those requests come directly to you instead of, you know, to five different individuals from five different work groups.

MR. BUCHET: Well, no, I mean the reason the work group co-chairs' phone numbers are publically available is because the public is supposed to filter their approach through them.

MR. MATUGA: All right.

MR. BUCHET: If you're interested in a topic, call them.

MR. MATUGA: Let me modify my request one final time. Will the work group
chairman agree to have at least a draft of
their agendas available should we contact them
two weeks in advance?

MS. SHORTALL: I think that's a
discussion that the members will have to
deliberate upon here. It's not your authority
or permitted for you to ask the committees to
agree or take a vote on anything.

MR. MATUGA: Okay. If you can
understand my frustration. Trying to add
something to these committee meetings and
essentially, you know, issues are coming up
where I haven't had time to bring issues that
are going to affect the members of the
National Association of Homebuilders. You
know, there are issues specifically on the
OSHA 10-hour and whether that should be
mandatory. And, you know, I participated in
the work group meeting and it sounded like the
work group meeting was ready to make a
recommendation to the full committee, and you
know, if I would have had advance notice that
that issue was going to be brought to the table, I certainly could have gone to our membership and asked them what their thoughts and feelings were on this. But, you know, at the time, without having any advance notice of what was on the agenda, and obviously there were many folks that were around the table that, you know, knew what the discussion was going to be and I just felt like, you know, I was sort of left out there on my own. And I had to raise the issue that I think that that issue should have been put on the table until, you know, I can ask my membership what they think about this.

So, all right. I think you've given me the answer.

CHAIR MIGLIACCIO: Walter, you had a question first?

MR. JONES: At first I was going to say I have no problem. We didn't have an agenda for any of my subgroup meetings to give out to begin with. We had general ideas of
what we wanted to talk about, what we were going to discuss, which are pretty much what we've been discussing and we were just making sure we had professional folks available to discuss the items.

And what I was going to say right after your request was I have no problem, if you give me your email, and I have no problem sending to you an agenda. I don't know about two weeks ahead of time or whatever, but as soon as one is relatively finalized. I don't know if that's an onerous request for myself, but I don't want to make guarantees.

And secondarily, in terms of the OTI mandatory OSHA-10 issue, again, I think these are issues that are in continual discussion and I think the work group worked its way through the issue by that, as well as the Silica Work Group where contentious issues were tabled for further discussion, as is what's appropriate with the way the committees are run.
CHAIR MIGLIACCIO: Okay. Steve?

MR. HAWKINS: Well, a recommendation coming out of a work group to this Committee, I mean, here is where the recommendation actually goes forth to the Agency. So I think it would be very important for you to come to these meetings. But to know in advance, I mean, the way I understand the work groups to work is there's supposed to be a certain amount of spontaneity in that room so that you can discuss any issue that might be brought by anyone in this public forum so that the work group can discuss it, maybe discuss it that day and reach a decision, or maybe that discussion may be a protracted discussion and last several meetings.

MR. MATUGA: Well, there's not much spontaneity when people are flying from, you know, different parts of the country to attend these meetings to present information. And, you know, we've got no other way to know
what they're going to present or who even is presenting, and to be able to bring, you know, our opinions as well.

MR. HAWKINS: That sounds like spontaneity to me, Rob. When people fly all over the country and you don't know what they're going to say, that's pretty spontaneous, I think. I mean, that's been my experience. I'm only thinking of Tom and me personally. I'm not sure. I mean, what would we say about an agenda? We're going to issues that are related to residential fall protection. I don't think you'd want us to make an agenda and then we'd be asking people to come. I just don't see how, from a practical standpoint, we'd be able to do that. It seems very difficult, in a meaningful way.

MR. BUCHET: Michael Buchet, Directorate of Construction.

If you look at the Federal Register notice and take that as instructive, the actual agenda for the ACCSH meeting is not
there, but topics of discussion are listed.

And that may be the most you're going to be able to get from the work group co-chairs, is that we're going to talk about, or we're planning on talking about. If we make it through all of them, we make it. If we don't make it through all of them, we don't.

The other thing is, and the Agency is working on this, is the work group reports become part of the Committee record and they get posted on the website. We are working to make that happen more quickly. Hopefully, we will also be able to get them out of regs.gov and have them posted on the ACCSH web pages more quickly. Then that will give anybody who is interested a sense of what the discussion was and what the leftover topics are for the next discussion.

MR. MATUGA: I mean, topics for discussion or agenda, I mean, it's the same thing. It's conveying to us what the issues are going to be.
MR. BUCHET: Well, it's the issue of trying to give notice to the affected industry members that you might want to have a person in a seat in attendance who can say something.

MR. MATUGA: And we would be happy with that information in a timely manner. How about that?

MR. BUCHET: Well, that's the best we can do.

The other issue is that a lot of people who sit in those seats do not represent themselves. They represent a constituency and constituencies all have a process to go through to get an opinion. Now, some of these opinions have been worked out ahead of time and their representative here knows I can say this about that. A lot of others don't have that luxury.

CHAIR MIGLIACCIO: Tom Broderick?

MR. BRODERICK: Yes, I might be going out on a limb here, Rob, but I think...
that, as a long-time co-chair of a work group, I would be thrilled if you or any of the other trade associations would call me two or three weeks before the ACCSH meeting and say I really want to come to your work group and here are some ideas I've been kicking around that we could discuss. And I would love to have help building the agenda. But from my experience you can pretty much predict that, especially for those work groups that you follow, and I think that pretty much people have selected the work groups that are of their interest in an ongoing fashion, that you can predict that unless something has been resolved and the issue put before the full ACCSH that it's going to continue to be on the agenda. I know that's true for mine and I think probably for most of them.

So that you could surmise. And that which you would like to have on the agenda you have an opportunity, because all of us are listed on the OSHA website, how to get
a hold of us, and you know most of us anyway, that you could get in touch with us and we'd
be delighted to have your input to build any
of the work groups' agendas.

MR. MATUGA: Yes, and obviously I
know many of you all, but there's many
individuals who don't know you all and would
be reluctant to call. And what we're really
just looking for is just timely notice of the
more specific issues that are going to be
addressed. Yes, we know generally what's
talked about at each of the meetings, but
oftentimes there's very specific and pointed
discussions that I think that, you know,
having some timely notice we can come prepared
to better bring our side of the issues and
better be able to inform the work group of the
issues that are going to be addressed that
could be very specific. Yes, we all know that
there's general information at each of the
work groups, but very, very specific and
narrow issues that could be defined that are
going to be on the agenda, I think it would be
nice to have notice of that. I think that's
all I'll say about this.

MR. RUSSELL: Just one comment. I
know for the work groups I'm a part of, I
would love someone from the public to come to
the work group and take some responsibility
and literally assist the co-chairs in the
direction of the work group. And I'd go so
far as to say if you were to take that
position, all of the issues you're raising
would completely disappear, because you would
be on the front line of the work groups that
you are really passionate about. And if
you're bringing something positive to the
table, trust me, the co-chairs would listen.
And you really wanted to run, they would give
you a whole lot of assignments that you could
run with.

MR. MATUGA: Certainly.

MS. SHORTALL: I guess I have a
final suggestion. One, if there's a work
1 group that you think your organization or
2 other stakeholders could possibly have any
3 issue that could come before, my suggestion is
4 you get your name on the distribution list and
5 you simply make it a policy to attend the
6 meetings and regularly read the work group
7 reports, which are put in the record within a
8 few days to within two weeks of each meeting,
9 which is well in advance, and will tell you
10 what items have been accomplished and what
11 will be addressed by the work group next.

But I do want to say that the
12 things that both these co-chairs do, as well
13 as ACCSH, are so far above what is required
14 under the Federal Advisory Committee Act, and
15 many other advisory committees limit their
16 work groups to only members and any technical
17 expert they want to invite. They do not
18 announce the meetings. They do not let anyone
19 in. Or if they let someone in, they don't
20 allow them to talk, only to listen. And they
21 aren't required to file written reports. Or
if they provide a report, that doesn't necessarily have to go in the record. So the things the Agency is doing here are so far and beyond, you know, just to try to get involvement. But I think it's important if you think anything in residential fall protection could be of interest to you, you need to get involved at the beginning and take the initiative. Because I think at this point the things we're doing that are so far above take a lot of time to accomplish.

MR. MATUGA: I think you guys have given me enough time and I don't want to keep anyone else. You know, I thought my request was reasonable and not out of line.

Work group chairs, I'll be calling you on a regular basis at least one month prior to each of the meetings and will bug you up until I get a copy of the agenda. Thank you.

CHAIR MIGLIACCIO: Kevin?

MR. BEAUREGARD: As a long time
member of ACCSH, I did want to make a comment on this. First of all -- and I've chaired or co-chaired groups throughout the years -- the work groups are all established by ACCSH for various subjects and ventures. This group as a body has determined these are the work groups we're going to have. And as such, each one is supposed to have a charge or a scope. And so if you're an entity and you're interested at all in that charge or scope, I would encourage you to participate. And I'd mirror what Emmett said and what Tom said, is call up the co-chairs, call up any of the ACCSH members and let them know if you have a subject of interest that you want this group to consider, because we all represent various interests.

But with that being said, I know from personal experience that oftentimes there is not an agenda or there is not an agenda until the night before, because a lot of times we're getting information in from other people
about what they want us to talk about. It's an ongoing discussion. And generally a new item that's brought up in a discussion doesn't immediately go up to ACCSH as a full body because it's usually a work over many, many meetings before something is prepared or a direction is determined by the co-chairs as to how it goes. But I do think it's a very open process and anybody's invited to participate and attend. And like Sarah said, we like full participation and we like to hear from all the affected people. But you know, just speaking as myself for a co-chair, I can tell you it's probably unlikely that I'll have an agenda two weeks in advance for any particular meeting. Now if anybody else does, that's fine; I don't think there's anything wrong with that, but it generally doesn't happen. But I think the key is to contact individual ACCSH members. If you or the people you represent have a particular issue, there's a lot of us members. You can contact one of us,
let us know. And if it happens to be one of
the things that we have a work group on, we'll
bring it up at the work group. If it's one of
the things we don't have a work group on,
we'll probably talk as a body and determine
whether or not we need to have a work group on
it.

CHAIR MIGLIACCIO: Matt?

MR. GILLEN: Yes, I just had a
comment. Everything you said might be true,
Sarah, but I think it's also true that ACCSH
values the input from the members of the
public after work group meetings. And
personally, I just feel like either if people
have an agenda perhaps one week before, if
it's a very simple agenda, especially if they
could just list if there are going to be
speakers, who those people are in a simple
description. If they don't, it just says that
an agenda was not available at this time. And
for something like that to be sent out, I have
no problem with that and I think it's actually
a more efficient use of my time than having to
field a lot of calls the week before the
meeting when I'm trying to get a lot of things
done because I know I'm not going to be in the
office the week of the ACCSH meeting. So I
mean, I think it's actually more efficient to
try to have a basic agenda to help us all do
this better. So, that's my two cents.

CHAIR MIGLIACCIO: Mike?

MR. BUCHET: Certainly OSHA values
the input of anybody that walks into the work
groups. There's no doubt about that. Some of
the work groups in the past have used a loose
consensus process. Some of them have taken
votes with dissenting votes recorded. And
that's up to the work group co-chairs. That
is captured in the report to ACCSH. A vote
was taken, a lot of people disagreed with the
vote, but it passed by a margin of one is very
interesting to the Agency. A recommendation
that comes to the Agency on a margin of one,
with major players in the industry, saying we
I don't agree with it is not as strong a recommendation as a recommendation that comes in and says we have considered players throughout the industry, and there is a general consensus shown by this vote at the table that this is a broadly-based and accepted recommendation is a much stronger recommendation for the Agency. And you heard Darlene talk about how we prioritize and that's one of the indicators to us.

But we certainly appreciate the input of the work groups trying to make it more efficient for the co-chairs is something we'd look into. Trying to make it more appealing to the public to engage them is also something we will look into. As I said, if you send me the agendas, I can email them out to -- and we lost about 60 people last time I sent it around. A lot of people aren't at their old email addresses. So I'm going to go through what we've got for people that signed up and said let me know and we'll see what
we've gained. But the industry, at least

going by email contacts, is in turmoil.

MS. SHORTALL: I'd like to add one
thing to expand on what Mike is saying. I
think Mike is saying there's a process within
the work groups to try to see from an industry
whether there's a consensus. But I need to be
clear, FACA Act limits straight voting in work
groups to the members of the parent committee
as a whole. What Mike was talking was getting
a sense of where the work group is. But under
FACA and the FACA regulations, the only
persons permitted to vote are members of the
parent advisory committee.

CHAIR MIGLIACCIO: Okay. We have
one other public comment. George Kennedy from
NUCA.

MR. KENNEDY: George Kennedy from
the National Utility Contractors Association.

Listening to what Rob was saying,
I have to say that I'm one of the people that
would agree with him, that we need to have
some kind of an idea of what's coming out in
the work groups if you want participation.
Participation has gone down in a lot of these
work groups. Some have gone up, some have
gone down. You're getting representation, and
like Rob said, we don't sometimes come
prepared. We're not exactly sure. I mean,
the Trenching Work Group, there might be more
people there if they knew what the Trenching
Work Group was all about. You know, we'd
bring in suppliers, we might get more
suppliers interested. We might get more
people involved in the process. But they
don't have any idea. We do see the list on
ACCSH on Federal Register. I agree, it
doesn't have to be in the Federal Register.
We run meetings at NUCA all the
time. We put out some kind of an agenda.
It's a basic thing and it has new business.
So if we have something to add to it, we --
new business. But at least we have a basic
idea of what we're going to be discussing,
whether it be the OTI 10-hour mandatory
process that I heard about, but I didn't make
the OTI meeting yesterday because I got tied
up in the office. But quite frankly, had I
known that was on the table, I would have
untied myself from the office and got over
here. But the last meeting we had, we didn't
get into that. We didn't address it in any
real detail as much as we could.

So I just tend to agree that if we
had this in advance; I know we're not
required, we're not voting members. I know
that you are the voting members, that you make
the choices. But I've been on work groups for
God only knows, about 19 years now. And being
involved in those work groups, most of the
chairs do take a vote of the people who are in
the room, what do they think, that kind of
thing. Whether it's a vote that counts or not
doesn't matter, but we do have a say. And
ACCSH doesn't have to have these work groups
and doesn't have to invite the public, but you
I have invited the public and you've invited us as stakeholders to be there to participate, to give you our input and our advice.

I've talked to Emmett about trenching. He and I had a little discussion before and I gave him my advice. This is what I think. We had it in a meeting the other day. I gave my advice. I mean, you want our advice, then involve us and give us a little opportunity to come a little more prepared.

Over the years I've come to work groups where there have been speakers who have -- are obviously on one side. Maybe there's another side to that. Maybe we need to get an opposing speaker, somebody to bring a second opinion to that work group. I think that sometimes, you know, it doesn't seem balanced and we want to make this work. We want a process that's going to work. We're all out to save lives. We're not here, none of us are here -- I don't waste NUCA's money coming here. I come here with an objective and that
is to save lives, but to do it in a way that's balanced so that we can help the workers and the workers can help us, and we can have a successful safety program out there.

So I do think that maybe there should be some consideration, whether it be a week in advance, two weeks in advance. Mike has my email address. He always emails me the ACCSH meeting, it's coming up. He lets me know. I always call him before and I pester him. Mike will testify to that. I pester him, when's the meeting going to be? When the meeting going to be? I have to get an ticket and I want to do it at a reasonable price.

So anyway, that's the way I feel and I just kind of back Rob up on that. I know where he's coming from. I know how he feels. I've been there. And if you look around the room, there's a lot of association representatives that are not sitting here any longer. And I think that's something that we're losing, that other side of the issue,
the other side of the coin.

So, that's my opinion. Any
questions, I'd be happy to answer them.

CHAIR MIGLIACCIO: Are there any
questions?

All right. Just the one thing I
can say, I sat on a lot of work groups, either
sat on them or chaired them. In all the years
I've been here, the first time I ever saw an
agenda was just yesterday that was actually
put on the table before we sat down and
talked. What I do recall, we always knew what
we talked about the last meeting and knew it
was coming forth again. The 10-hour you
talked about that went on at OTI yesterday,
was talked about at the previous meeting.
Hank Payne was on the phone about it and they
were suggesting having a mandatory refresher.
And we said, you know, you got to have a
mandatory 10-hour before. So I think the
progression constantly goes through until it
comes to this committee. Now, if people are
in the committee, if you were in a meeting two
months or two meetings ago, I don't think
things -- they don't move as fast as you'd
like them to, but I think it does constantly
keep going on.

Some of the things in ROPS and
before Emmett got on the committee as a member
of the committee here, even though I was co-
chair, Emmett was doing the work, because he
had the most knowledge of what was going on.
And the things that we talked about then, I
mean some of that has actually passed on, but
some of the stuff now, it's there still and
there's new stuff coming on. And like
everybody's saying, we need the public's
comment on this. But like I said, in all the
years I've been here, and I've been here for
a lot of years, I don't ever remember seeing
an agenda until yesterday. And it's the first
agenda I've actually seen on a work group.

MR. KENNEDY: Well, you know,
that's why we're asking. You know, we saw one
yesterday. Okay. We haven't seen it in
years. And you're right, maybe we do need
something to give us an idea of what's coming
down the pipe so we can prepare for
discussion. Maybe you've got something
specific on mind. I'm in the same boat Rob
is. Technically, I'm supposed to poll my
members for their opinion. Lots of times I
come in here and I'm like, okay, you're
getting George Kennedy's opinion. You're not
getting the group's opinion, because I didn't
have a chance to talk to any of my members to
get their feel on an issue. If I knew this
issue was coming up and it was going to be
something that was going to be a
recommendation to the work group, that maybe,
you know, we were coming to the end of a
discussion and we're going to make a
recommendation to the work group -- well, the
work group's going to make a recommendation to
ACCSH, then I might need to poll the members
and say, hey, guys, how do you really feel
about this? Let me tell them. I'll give it our last shot and let them know where we stand.

It's tough being an employee representative when you represent 2,000 members and you don't have a chance to talk to at least some of them. I mean, fortunately, you know, I can make phone calls, but you know, that doesn't always get me the opinion I need. It's just an agenda makes a meeting a better thing overall. You just said it, first time you saw it, it was probably was a more organized meeting. And it doesn't have to be a formal agenda. It could be just, you know, we're going to discuss this, this and this. And give it to Mike, and Mike can -- you know, we can call him or he can send out a list to the people that have emails and it will get to us. You know, we'll do what we have to do with it. It was just a request. I think Rob is asking for a little help to make things better.
MR. JONES: Like I said, I didn't think it would be a problem, or even if Rob came up to any one of us and said, hey, can I get a heads up, even a phone call, what's going on, I don't think anyone at this table would have said no.

Speaking to your fairness, for the Silica Subgroup Committee, I myself personally have reached out to --

MR. KENNEDY: I wasn't there.

MR. JONES: I know. I'm just informing you. I called MCAA up. They said I need you guys involved in whatever we do forward. I called up Rashod and their president. They elected to have Rashod come down. Rashod made a presentation. We had a member from Georgia Tech academia make a presentation on silica and we had a member from CPWR, an employee, make a presentation. So we are trying to be fair and present all sides of the view. But I have to go back to what Sarah said. Sometimes we're just busy
and I don't want to have a BS meeting where we just sit around for an hour-and-a-half picking our nose talking about whatever comes to our mind and whatever our current gripe is. Instead, I just invite people I think that have something important to say about the topic of what we're talking about.

And as Frank said, in terms of OTI, again, I thought that was an ongoing discussion that's been going on for some time, especially in light of the explosion and states making these requirements mandatory. And is it time for OSHA to get its hands around this because the inconsistencies in the statutes and the inconsistencies in the training and on and on and on? Should OSHA get its hands around this and control it more.

That being said, contact me at any time, you know, a couple weeks before. I don't even have a distribution list, because I don't want that type of responsibility.

MR. KENNEDY: Well, Walter, you
just said something that makes -- you don't
want to come to a meeting where we're just
going to flounder around and throw anything
out. If we had a few ideas of what the topics
of that meeting are going to be, the two,
three, four primary discussion items. And
eye do change. They do change. You know, we
get in a meeting, all of a sudden something's
been added and we're caught off guard.

You know, you guys, the trenching
group, they invited a shoring person into the
meeting. And he was good. No problem with
him, but I could have probably got you two or
three others with different ideas and
different approaches if I knew they were going
to have some speakers on shoring there that
day. I didn't know that in advance.

CHAIR MIGLIACCIO: Then I would
recommend that you know in September we're
going to have another one. The work groups
will take place two days previous, too.

MR. KENNEDY: Yes.
CHAIR MIGLIACCIO: Get in touch with the co-chairs of that work group and let them know that you'd like to have a couple of speakers come in and give another part. And you can do that.

MR. KENNEDY: I can ask them, yes.

CHAIR MIGLIACCIO: I mean, that's the whole --

MR. KENNEDY: I think we've already covered it though. We got into it and that guy covered it pretty well. But it would have been helpful to have, you know, some different slants or different equipment, or something.

CHAIR MIGLIACCIO: Tom? Tom Shanahan?

MR. SHANAHAN: Yes, I'm still here. I know we're getting late. I just wanted to weigh in on this, if it's okay, if I'm not interrupting somebody.

CHAIR MIGLIACCIO: Go ahead.

MR. SHANAHAN: You know, I have to
say that from what I can hear the intent of
what George and Rob are asking for, you know,
I completely agree with. You know, Frank and
Walter, we really tried hard to get an agenda
put together for the OTI Work Group. And I
think probably because I ended up in the
hospital, we just didn't get it out in time.
But it was certainly my intention to have an
agenda put together and Walter and I worked on
it actually quite a bit. I don't think it's
too much to ask to do that, because I think
Rob and George are right. I mean, you know,
people have to spend time and money to come to
these meetings; I know I do from Chicago. And
if I know a certain thing is going to be or at
least planned to be discussed, that would
change one way or the other what I do. And I
think that the meeting itself would benefit
from that. So I realize that it hasn't been
done so in the past, but one of the reasons I
was trying to do that was for this very
reason. I mean, I really do feel it's a very
valid request, while I know it's something that hasn't been done in the past.

So I just really wanted to weigh -- you know, I mean, I realize a lot of you have been on ACCSH a very long time; I've only been on it for a year-and-a-half. But I do think it's a very reasonable request and maybe there's a halfway point or something.

CHAIR MIGLIACCIO: Well, I think, Tom, what the halfway point that's been suggested is that people contact the co-chairs. I mean, if there's that much interest with a group, they should contact the co-chair, because if the co-chair was to contact everybody on the list not knowing what was going on --

PARTICIPANT: Or was left out --

CHAIR MIGLIACCIO: Yes, there's going to be somebody left out. You know, I don't know how you do the catchall. I mean, I'm not sure how it works.

MR. KENNEDY: Isn't there a way
that -- you know, if the co-chairs just made
out that little agenda and got it to Mike that
Mike could put it on the ACCSH website, or on
the OSHA website under the ACCSH link that we
could just go to and say, oh, here's what the
work groups are coming up with this week?

CHAIR MIGLIACCIO: Okay. But then
again, how about if they did come up with the
agenda, say they did come up with this agenda,
and something happens -- somebody said
spontaneously, happened there and then it
wasn't on the agenda. Somebody's going to get
mad because you had it, you didn't tell us, we
didn't come because of that. But you know how
the work groups work, something, one thing
leads to another.

MR. KENNEDY: It happens.

CHAIR MIGLIACCIO: But then if
there's something on the agenda that you don't
get to and you're specifically --

MR. KENNEDY: You make it very
clear. This agenda is a rough draft of the
agenda, you know? That's all. It's subject
to change.

CHAIR MIGLIACCIO: Yes.
MR. KENNEDY: It's that simple.
CHAIR MIGLIACCIO: Like I said,
we'll try to work this out and through, I
guess, the chairs of the work groups.
MR. KENNEDY: Well, it's up to
you. Thank you.
CHAIR MIGLIACCIO: Okay. Thank
you, George.
All right. We're way over here.
That's public comments.
MR. AHAL: Mr. Chairman, I have
one question. I'll make it quick. I have a
question. This is Bill Ahal, employer
representative.
The recommendations that this
group made for instance in April there were
several recommendations, how are those tracked
and can we not cover those tomorrow, the
recommendations from April, like old business
would be in the meeting minutes? I am very interested in certainly the recommendation that I made, its current status. Even if it hasn't even been looked at, that's fine, but that's the status, so that we don't lose track of old business? How's that done?

Chair Migliaccio: Usually there's a -- like if we have had the time here today, we had the future meetings remarks and so forth. And you're making a remark here; it's going to be the same. We'll have that same thing tomorrow. What I think you're asking is what some of the recommendations that were made and what their status is.

Mr. Ahal: Correct. Old business, as such.

Chair Migliaccio: I think Bill Parsons basically has an idea where these things are and I think he was going to try to give us a report today, but it never actually happened.

Mr. Ahal: I didn't see anything
on the general -- can we carve out just a
minute to -- I mean, again, some of them may
not have even gotten looked at, but that's the
status. And otherwise, I think they're going
to fall into the pit and they get lost and
what was a good idea in April never gets --
CHAIR MIGLIACCIO: Well, we'll see
if we can get Bill in here tomorrow just to
give us a briefing on what we actually spoke
about.
MR. AHAL: I know he said he has a
list.
CHAIR MIGLIACCIO: Okay.
MR. AHAL: Thank you.
CHAIR MIGLIACCIO: All right. At
this time, I would like to adjourn here. Can
I have a motion to adjourn today until
tomorrow?
MR. THIBODEAUX: So motioned.
CHAIR MIGLIACCIO: Mike
Thibodeaux.
MR. HAWKINS: Second.
CHAIR MIGLIACCIO: Second. All in favor say aye.

(Chorus of ayes.)

CHAIR MIGLIACCIO: Opposed?

(No audible response.)

(Whereupon, the meeting was adjourned at 4:56 p.m. to the following day.)
Page 395

Neal R. Gross & Co., Inc.  
(202) 234-4433
| Page 410 | Neal R. Gross & Co., Inc. (202) 234-4433 |
Neal R. Gross & Co., Inc.  
(202) 234-4433
Page 432
reminding 131:4
169:20
remove 124:14
removed 156:13
renaming 80:19
Renewals 158:13
renovating 244:16
rental 203:1
REOC 241:8,15
rep 59:6 72:16
96:15 145:10
183:2 205:22
238:3 289:17
324:15 337:20
340:21
repainting 170:13
repeat 94:11
138:20 165:21
308:22 309:2
repeating 87:1
replace 203:4
replacement
219:15,19
replaces 201:14
report 4:8,10,13,15
4:17,19 5:8,10,15
6:19,25 7:9,12,21
34:19 54:8 59:13
71:7,21 72:8
76:18 77:22 87:10
88:1,2 97:9 100:8
100:21 104:5,11
175:17 177:6
178:21 198:19
205:4 206:20,21
208:9 214:6
215:17 222:6
225:15 230:18
240:17 246:6
249:6 252:16
253:11 254:9
256:5,5,6,8 257:6
258:18 259:6
260:1,12 271:8,9
271:14,21 272:1,4
273:5 286:19
329:8 335:19

344:10 369:1
373:17 392:20
reported 74:22
210:3,5 333:12
335:9
reporter 12:7
103:19 231:15
235:12 247:17,21
248:3 252:17
253:4,6,10 256:3
257:20
reporters 235:5,19
239:2,4,7 240:1,5
240:7,14 241:15
243:19,20 245:20
247:10 265:18
reporting 74:20
133:16 137:22
225:8,9 226:1
239:1 243:16
256:1 269:2
329:17 333:8
335:4
reports 8:13 52:9
177:16 179:14
232:9 234:4 244:3
244:4 246:16
256:15 270:5
300:13 345:9
363:9 368:7,22
Report-selected
286:13
represent 40:5,8
144:11 338:11
364:12,13 370:16
371:21 383:5
representation
376:5
representative 2:19
9:12 10:4,8,12,15
10:17 45:22 53:4
76:13 96:12
136:12 137:7
139:21 174:12
180:2 198:16
199:8 202:16
209:21 218:20

237:13 261:12
263:14 272:10
293:2 303:7
364:17 383:5
391:17
representatives
1:17 2:1,9,15
132:11,12,22
167:16 180:4,5
236:12 379:20
representing 9:17
9:20,22 10:17
11:3 299:1
reproductive 74:13
reps 182:20
request 37:18 38:1
39:19 45:17 75:8
141:13 199:11
200:3,8,22 210:7
223:13,17 341:1
342:5 343:21
348:2 354:5
357:22 360:7,12
369:14 383:20
389:1,7
requested 83:6
110:7 134:8
198:10 221:5
requesting 201:10
228:10
requests 28:9 38:8
219:7 357:10
require 30:9 104:9
122:5,7 166:17
205:8 299:20
319:18
required 42:20
43:1,3 116:21
122:14 154:13
157:18 163:13
202:5 213:15
262:16 271:8
302:4 311:4 352:8
353:4 368:14,22
377:12
requirement
174:20 185:17,22

188:20 189:4
351:17 352:1
requirements 6:6
69:4 73:15 102:11
132:13 133:16
150:22 153:5
157:4 169:22
187:9,21 188:4
202:10,16 287:16
385:12
requires 155:3
157:9 173:5
requiring 160:6,6
requisite 153:6
reread 65:4
rescind 159:18
rescinding 18:17
24:17 42:4 95:2
95:10
research 7:3 66:2
200:1 212:12
216:3 275:4
reside 211:2
resident 110:3
residential 50:21
86:15,17 94:10,14
95:11 96:3 236:14
238:9 244:5 245:1
245:1,4 246:21
247:2 279:12
318:18 319:2
362:12 369:6
resign 160:15
resistant 174:10
190:7
resolve 320:9
resolved 365:15
resource 53:21
113:7 129:10
139:17 272:7
347:9
resources 85:2,12
88:8,15,16 107:7
110:8 131:22
220:6 221:21
222:21,22 287:10
289:12 298:19

Neal R. Gross & Co., Inc.
(202) 234-4433

320:11
respective 141:11
Respirable 67:6
respirators 62:12
62:14
respond 27:20
55:15 152:10
292:8
responded 68:4
responders 55:16
55:18
responding 64:11
response 35:10
55:6 61:8 71:16
99:21 204:20
208:3 214:17
230:13 280:11,12
280:13 289:13
307:14,17 308:1
394:5
responses 124:8
responsibilities
32:19 75:14
105:22 108:20
132:2 167:8 239:1
240:22 243:8
responsibility
55:17 106:17
111:17 117:2
144:10 237:15
239:14 252:15
367:7 385:21
responsible 26:2
27:12,16 30:11
38:5 47:3 108:15
121:11 231:18
235:7 236:1 239:7
239:21 240:7,15
241:13,15,21
242:5,9,20 243:3
243:16 245:20
258:8 317:9
rest 77:22 229:5
restated 210:2
restricted 137:15
restrooms 8:19 9:1
restructured 62:11


TABLE 4.1

<table>
<thead>
<tr>
<th>U</th>
<th>T</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Neal R. Gross & Co., Inc.

(202) 234-4433
| 70  50:8  
| 70s 277:19  
| 70,000 128:6  
| 72  4:10 5:8 259:18  
| 726 282:4  
| 75  128:12  
| 750 112:8  
| 76  212:8  
| 760,000 138:6  
| 78  4:11  
| 780 281:22  
| 8  4:3 6:13 195:21  
| 8:15 72:15  
| 8:30 1:13  
| 8:39 8:2  
| 80  47:11 104:10  
| 800 295:20  
| 824 332:17  
| 836 281:21  
| 85  316:18  
| 9  4:4 6:17 215:8,11  
| 9/11 117:7  
| 9:45 72:15 77:16  
| 90  17:18,20 329:3  
| 908 255:13  
| 900 235:9  
| 95  179:1  
| 99  5:17  

Neal R. Gross & Co., Inc.  
(202) 234-4433