

1 UNITED STATES OF AMERICA

2 DEPARTMENT OF LABOR

3 OCCUPATIONAL SAFETY AND HEALTH

4 ADMINISTRATION

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6 ADVISORY COMMITTEE ON CONSTRUCTION

7 SAFETY AND HEALTH

8 + + + + +

9 MEETING

10 + + + + +

11 WEDNESDAY, APRIL 14, 2010

12 + + + + +

13 The meeting convened at 8:10 a.m. in the  
14 Bluebonnet B Room, Holiday Inn Crowne Plaza Hotel, 1700  
15 Smith Street, Houston, Texas, 77002, Frank Migliaccio,  
16 Chair, presiding.

17  
18 EMPLOYEE REPRESENTATIVES:

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

23  
24 WALTER R. JONES, Associate Director,  
25 Occupational Safety & Health, Laborers  
Health & Safety Fund of North America

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

1 EMPLOYEE REPRESENTATIVES (cont'd):

2 THOMAS L. KAVICKY, Safety  
3 Director/Assistant to the President,  
4 Chicago Regional Council of Carpenters

5 EMPLOYER REPRESENTATIVES:

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

9 THOMAS SHANAHAN, Associate Executive  
10 Director, National Roofing Contractors  
11 Association

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

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

18 SUSAN G. BILHORN, Senior Vice President of  
19 Operations, Jacobs Technology

20 STATE REPRESENTATIVES:

21 STEVEN D. HAWKINS, Assistant Administrator,  
22 Tennessee Occupational Safety & Health  
23 Administration

24 PUBLIC REPRESENTATIVES:

25 THOMAS A. BRODERICK, Executive Director,  
Construction Safety Council

JEWEL ELIZABETH ARIOTO, Elizabeth Arioto  
Safety & Health Consulting Services

1 FEDERAL REPRESENTATIVE:

2 MATT GILLEN, Construction Program Coordinator/  
3 Senior Scientist, Office of the Director,  
4 CDC-NIOSH

5 DESIGNATED FEDERAL OFFICIAL:

6 BILL R. PARSONS, Acting Director,  
7 Directorate of Construction,  
8 U. S. Department of Labor-OSHA

9 MICHAEL M. X. BUCHET, Project Officer, Office  
10 of Construction Services, Directorate of  
11 Construction

12 COMMITTEE SOLICITOR CONTACT:

13 SARAH SHORTALL, ACCSH Counsel, Office of the  
14 Solicitor, U. S. Department of Labor  
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EXHIBITS

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NO.	PAGE	DESCRIPTION
2	68	PowerPoint presentation on NIOSH construction programs presented by Dr. Christine Branche
3	89	PowerPoint presentation, A Data Overview on the Stimulus-Funded Work by Keith Goddard, Director of Evaluation Analysis

## 1 P R O C E E D I N G S

2 8:10 a.m.

3 CHAIR MIGLIACCIO: Like to call the  
4 meeting to order. I have a few announcements to make on  
5 housekeeping.

6 If there's a fire drill, go out these doors  
7 here, down the steps. You go out the front or the back  
8 of the hotel. The rest rooms, men's and ladies' rooms  
9 are right out the door here. Please turn off your cell  
10 phones or at least put them on vibrate. Back of the  
11 room, there will be a sign-in sheet for public comment,  
12 and today, the shuttle to the Hilton, if you need to use  
13 the shuttle, go to the front desk and they'll take you  
14 over to the Hilton, the Summit. It will carry 13 people  
15 at a time. Especially today, it might be wise to get  
16 lunch here quickly, then get to the front desk and get  
17 over there. Takes about 20 minutes to get over there,  
18 I'm told.

19 The Summit tomorrow will begin at 8:45, so I  
20 would recommend everybody be down probably between 8 and  
21 8:10 to go over there. It says 8:45 on mine. Says  
22 8:45.

23 Also the work groups. On Friday, we'll do all  
24 the work group reports, and you see on your -- the  
25 agenda, the list of them? I'd like to do them in order,

1 so everybody should be ready. Because that's the only  
2 day we're going to be doing work group reports. And  
3 tomorrow, the -- there will be a lunch at the Summit, so  
4 you don't have to worry about that, but tomorrow, like I  
5 said, get downstairs 8, 8:15, something like that, so we  
6 can get over there.

7 Okay. I was just given another one here for  
8 Thursday. The -- says 8:30 on this Thursday,  
9 April 15th, says 8:30, and on mine says 8:45. Well,  
10 then be downstairs by 8 o'clock, get a shuttle over  
11 there. One thing is, lunch will be there.

12 All right. Also, we'll go ahead with the self  
13 introductions. Start to my left.

14 MS. SHORTALL: Good morning. My name is  
15 Sarah Shortall. I'm from the -- good morning. My name  
16 is Sarah Shortall. I'm from the Office of the  
17 Solicitor, Department of Labor, and I'm the ACCSH  
18 counsel.

19 MR. KAVICKY: My name is Tom Kavicky. I'm  
20 with the United Brotherhood of Carpenters and Joiners of  
21 America, employee rep.

22 MR. THIBODEAUX: Mike Thibodeaux, NAHB,  
23 Wimberley, Texas, and I apologize that this weather is  
24 not as great as what it normally is in D.C., but we'll  
25 just have to deal with it.

1                   MR. JONES: Walter Jones, Laborers' Health  
2 and Safety Fund, employee rep. The weather is  
3 fantastic.

4                   MR. AHAL: Bill Ahal, Ahal Preconstruction  
5 Services, LLC, St. Louis, Missouri.

6                   MR. SHANAHAN: Tom Shanahan with the  
7 National Roofing Contractors, employer representative.

8                   MR. BRODERICK: Tom Broderick of the  
9 Construction Safety Council, Chicago, public  
10 representative.

11                  MR. HAWKINS: Steve Hawkins, Tennessee  
12 OSHA. I'm a state plan representative.

13                  MS. ARIOTO: Liz Arioto, Arioto Safety and  
14 Health Consulting Services. I'm the public  
15 representative.

16                  MR. ZARLETTI: Dennis Zarletti with Kenny  
17 Construction Company, Chicago. Employee rep of ACCSH.

18                  MR. RUSSELL: Emmett Russell with  
19 Operating Engineers International Union, employee rep.

20                  MR. GILLEN: Matt Gillen, NIOSH, federal  
21 rep.

22                  MR. BUCHET: Michael Buchet, alternate  
23 federal official, OSHA Directorate of Construction.

24                  CHAIR MIGLIACCIO: Frank Migliaccio with  
25 the Iron Workers International, an employee rep.

1           Start here, please, with the public. State  
2 your name and who you're with.

3           UNIDENTIFIED SPEAKER: (inaudible) with  
4 ISO.

5           DR. BRANCHE: Christine Branche, NIOSH  
6 Office of Construction Safety and Health.

7           MS. EPSTEIN: Barb Epstein, Epstein  
8 Environmental Resources, Atlanta.

9           MR. KURTZ: John Kurtz, International  
10 Staple, Nail and Tool Association.

11          MR. ELLENBERGER: Don Ellenberger, CPWR,  
12 The Center for Construction Research and Training.

13          MR. DOHERTY: Fran Doherty, Directorate of  
14 Construction, OSHA.

15          MS. QUINTERO: Danezza Quintero,  
16 Directorate of Construction, OSHA.

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

19          MR. WHEATER: Gerald Wheeler (phonetic),  
20 Directorate of Construction, OSHA.

21          MR. HARBIN: Eric Harbin, Directorate of  
22 Construction, OSHA.

23          MR. MCKENZIE: Dean McKenzie, Directorate  
24 of Construction, OSHA.

25          MR. PARSONS: Bill Parsons, Acting



1 Director for OSHA, Directorate of Construction.

2 MR. ROSSER: Mike Rosser (phonetic),  
3 Corporate Safety Services, Denver.

4 MS. MYERS: Michelle Myers, American Wind  
5 Energy Association.

6 MR. TROUDER: Tom Trouder, Winchester  
7 Homes, Bethesda, Maryland.

8 MR. ODORIZZI: Marco Odorizzi, National  
9 Association of Home Builders, Washington.

10 MR. MATUGA: Rob Matuga, National  
11 Association of Home Builders.

12 MR. MASTERSON: Bob Masterson, The Ryland  
13 Group.

14 MS. SHORTALL: I have two quick  
15 announcements to make. The first one is, if you don't  
16 have it, I will give you a copy of the workshops that  
17 you've signed up to attend at the Latino Summit on  
18 Wednesday and Thursday.

19 And my other announcement is Kevin Beauregard  
20 and Jim Tomsecky are not here today. They indicated  
21 that they wanted to have their proxy vote held by Walter  
22 Jones, in the case of James -- and let me see. Who do  
23 we have? Oh, and Steve Hawkins in the case of Kevin  
24 Beauregard.

25 CHAIR MIGLIACCIO: Thank you, Sarah. I

1 have one more announcement. On Friday, as you know,  
2 it's a travel day, so casual dress for the board  
3 members.

4 Okay. We will get started. Garvin, will  
5 you -- Garvin Branch will give us an update on -- the  
6 construction update.

7 MR. GARVIN: Good morning. I've had the  
8 pleasure of being the Acting Office Director for  
9 Construction Standards and Guidance since January 18th.  
10 Our primary goal was to get the cranes and derrick  
11 standard over to OMB. That was accomplished on April  
12 the 6th. That took a monumental effort to get it out  
13 the door.

14 I'd like to thank the Solicitor's Office for  
15 putting the resources into getting that done. There  
16 were many nights that I woke up in the middle of the  
17 night to start working, and shot an e-mail out to the  
18 Solicitors hoping to get it to them this morning, and I  
19 got an immediate response. So they were up with me at 2  
20 and 3 in the morning to work on this. So that's one of  
21 our monumental achievements so far in the -- in the  
22 office this year.

23 Next up on the agenda is getting through OMB.  
24 I anticipate getting comments back from them around the  
25 beginning of May. We have to send the regulatory

1 analysis over, and paperwork package, and I figure  
2 that's where their focus is going to be from this point  
3 on.

4 The second rule that we're working on is  
5 confined spaces in construction. There were many  
6 comments during the rule-making process for us to use  
7 the general industry standard. We are seriously taking  
8 a look at that option. We right now have redirected our  
9 staff from working on the cranes and derricks standard  
10 to confined spaces standard, and we anticipate getting  
11 that ruling as well. We haven't set a -- a long-term  
12 goal as far as the rule coming out, but depending on  
13 which track we take determines how fast that thing will  
14 get out. Hopefully, I'm planning on getting something  
15 going as soon as possible. That's the best I can say.  
16 When we did the cranes and derrick standard, our entire  
17 office was devoted to getting that out, so we put some  
18 things on the back burner.

19 Primarily, next up would be our compliance  
20 standard. The most -- for lack of better words, the  
21 most difficult to put together has been our residential  
22 construction directive. That's of interest to many  
23 folks in the industry. That's a long time coming. We  
24 recognize it's going to have a big splash in the  
25 industry as far as compliance. The -- it's gotten the

1 Solicitor's Office attention, definitely. So from our  
2 staff's perspective, providing background information  
3 since about 1994 on to the present to explain the things  
4 that we've done, the activities of ACCSH, the letters of  
5 support that we've gotten over the years, it's been --  
6 been challenging. We had to go back into the docket to  
7 look at the comments that came in in 1999 when we put  
8 out an E & PR to reevaluate some of those, and the --  
9 the validity of them as they stand today. Yesterday, we  
10 sent it back up to the Solicitor's Office, and they  
11 believe that we have something that can go forward.

12           Once the Solicitor's Office signs off on it, we  
13 send it out to the field and again off to the  
14 Solicitor's Office for a two-week -- they get two weeks  
15 to review it. We get comments back in to them and  
16 address those comments and then take it from there. So  
17 there is no set effective date on that, but it cleared a  
18 monumental hurdle last week.

19           Second, we've had some difficulties with a  
20 directive that we issued to rescind two questions that  
21 were answered in a previous directive for steel  
22 erection. Several organizations (inaudible) that we've  
23 rescinded a diminimus policy, or two diminimus policies  
24 that allow employers to do something different than what  
25 was in the regulation. Right now, I really can't talk

1 too much on that, because there's an open -- it's open  
2 litigation right now. But we are taking all sides in  
3 consideration in looking at all the different options.

4 We also have a communications towers directive  
5 that needs a little revision. I would anticipate that  
6 would be the first one out, being that it's the -- it's  
7 the least troublesome. We also have a directive to put  
8 together for the cranes and derrick standards, but based  
9 on, most of the time, directives that accompany  
10 standards, the questions are generated during training  
11 sections and any outreach that we provide to the  
12 industry, and we capture as much interpretive questions  
13 in those directives as possible. So we anticipate, you  
14 know, starting some outreach around July and August on  
15 into when the move becomes effective, that is going --  
16 again, we have a very limited staff, so we're shifting  
17 our resources as we come to the -- as we come to these  
18 challenges and knock them out.

19 In the process of doing the directives and the  
20 rules, we put the interpretations on the back burner.  
21 Since Bill Parsons became our Director, he brought those  
22 back to the forefront, and we've been trying to knock as  
23 many of those out a week as we possibly can. As an  
24 Office Director, I didn't get time -- as Office Director  
25 and Project Director on two of the standards, I didn't

1 get an opportunity to work on those as much as I would  
2 like to, but now that Michael Buchet will be taking over  
3 those responsibilities, I will be more involved in that  
4 process and we probably can speed it up even more.

5 We did have a problem with one interpretation  
6 letter in particular. Out of -- you can send out a  
7 million interpretations, but all it takes is one to  
8 really eat up all of your time. And I would just like  
9 to take the opportunity right now to clarify that, just  
10 for the office perspective on what the standard was  
11 supposed to mean.

12 The question that came in regarded whether or  
13 not -- when a manufacturer's recommendations must be  
14 complied with regarding fall protection. In this  
15 particular case, a manufacturer recommended that you not  
16 use their fall protection at any height less than  
17 18 feet when you're in a bucket truck. Seemed like a  
18 simple question. We had interpretations on the web  
19 already that addressed the use of fall protection.

20 The aerial lift standard, 1926.453 of subpart  
21 et al, allows the employer -- or requires the employer  
22 to use a body belt and a lanyard to tie off to the boom.  
23 Many people think that that means you can use just an  
24 aerial -- just tie off, it doesn't have to meet any  
25 particular requirements.

1           That's not true. The intent of that standard  
2 is to protect the employee from -- from a fall from the  
3 bucket. You can do that two ways -- at least two ways:  
4 You can tie off such that you can't be ejected from the  
5 bucket, which would be a fall restraint. We have  
6 guidance for what the requirements of fall restraint is.

7           And you can also protect the employee if they  
8 fall out of the bucket by fall arrest. Now, one of the  
9 requirements of an effective fall arrest pattern is that  
10 you don't impact a lower level. Now, there are all  
11 sorts of ways of providing engineering so that you don't  
12 impact the lower level. Many people try to, for  
13 compliance sake, try to make it as easy as possible.  
14 That's why we require it to be designed and installed  
15 under the supervision of a competent person.

16           That letter basically said that. It was -- it  
17 could be read -- and we acknowledge the letter was  
18 squirrely in the very beginning. It could be read in  
19 the letter that anytime you use a fall arrest system  
20 with a 6-foot lanyard, that you can't comply with the --  
21 the fall protection -- you can't rig it such that you  
22 won't impact the lower level at less than 18 feet.

23           Now, that manufacturer built in a safety factor  
24 on top of the safety factors that was built into the  
25 standard the way it was written if you comply with the

1 standard.

2           So just for clarification, you know, the folks  
3 that you have influences with, you can explain that to  
4 them. It didn't just outright outlaw the use of 6-foot  
5 lanyards in aerial lifts. And that's been the -- the  
6 most troublesome, time-consuming letter that we had to  
7 deal with since probably -- I say sometime last summer.

8           We are pressing forward with getting our  
9 delinquent letters up to date. We apologize for that.  
10 We have a very small office, and we shift our resources  
11 as -- as necessary.

12           At this time, do you have any questions about  
13 any particular other issues?

14           CHAIR MIGLIACCIO: Any questions from the  
15 committee?

16           MR. HAWKINS: Just one.

17           CHAIR MIGLIACCIO: Steve Hawkins?

18           MR. HAWKINS: Garvin, did you say the  
19 letter about the use of a -- would that require the use  
20 of a body harness?

21           MR. BRANCH: Well, you can use a body belt  
22 in a fall restraint system.

23           MR. HAWKINS: Right, I understand that.

24           MR. BRANCH: Because you don't -- you're  
25 not arresting the fall. That's why I said -- I just



1 quoted the standard.

2 Now, if you're going to use a fall arrest  
3 system, you have to use a harness.

4 MR. HAWKINS: And a 6-foot lanyard -- I  
5 guess I didn't understand how you -- unless you had a  
6 rip-stitch lanyard or a shock-absorbing lanyard, is that  
7 the concern, that it was a rip-stitch lanyard or a  
8 shock-absorbing lanyard that would let you --

9 MR. BRANCH: It was a 6-foot lanyard with  
10 rip stitch in its design.

11 MR. HAWKINS: Okay.

12 CHAIR MIGLIACCIO: Tom Broderick.

13 MR. BRODERICK: So retractable wasn't a  
14 part of that discussion?

15 MR. BRANCH: In that particular system, I  
16 believe they did discuss a little bit about  
17 retractables, but you can use a retractable system  
18 effectively in a well-designed fall arrest system, but  
19 not in all cases, and that --

20 MR. BRODERICK: That would just add to  
21 the --

22 MR. BRANCH: It depends how it's rigged.  
23 If it's rigged such that the nurse reel engages fairly  
24 quickly, then, you know, you will be -- the arrested  
25 fall will start a lot faster. But if it's rigged such

1 that it's going to take a while for that thing to kick  
2 in, then, yes, you know, there's a -- there's an  
3 elevated risk that you may fall further than what you  
4 think.

5 MR. BRODERICK: Right. But it just -- it  
6 would add -- by virtue of the size of it, it would add  
7 onto -- if you had a rip-stitch lanyard, then the total  
8 distance would be a little bit --

9 MR. BRANCH: That's right, and a competent  
10 person would have to take that -- well, the person who  
11 designed the system, which is usually the manufacturer,  
12 that's who we -- we recommend that you talk to when  
13 you're going to use a system to -- to provide protection  
14 in any situation.

15 But the competent person should be able to  
16 design a system as -- I mean, to have it installed the  
17 way it's designed, but not -- in all cases, you can't --  
18 you just can't assume that you, you know, put on a  
19 lanyard and a harness and you're safe. It depends how  
20 it's designed.

21 MR. HAWKINS: And not if you're 10-foot  
22 off the ground, it's a 6-foot lanyard, you weigh  
23 250 pounds, it's going to stretch out, rip out another 6  
24 or 8 foot, and then you just --

25 MR. BRANCH: But the easy fix with that,

1 especially in the smaller buckets, is fall restraint.

2 MR. HAWKINS: Thank you.

3 CHAIR MIGLIACCIO: Any other questions of  
4 the committee?

5 I just have one question on it. My ears sort  
6 of perked as soon as you said "steel erection."

7 MR. BRANCH: Right.

8 CHAIR MIGLIACCIO: Any idea how long  
9 before we get this figured out again?

10 MR. BRANCH: Not really. I do know --  
11 personally, I've been in at least one meeting, and I  
12 know of another meeting with the Solicitors as far as  
13 evaluating options of how we can address this. It's not  
14 going to be easy. We're not going to be able to make  
15 everybody happy, it looks like, in this situation. So  
16 we're just going to have to decide which is going to be  
17 best, safety-wise.

18 I -- I also -- the litigation is for the -- the  
19 steel -- the 30-foot steel decking below the steel  
20 erection, but I've been in contact with state  
21 representatives from DOT who have concerns about the  
22 shear stud side of it as well. So it's not going to be  
23 an easy issue to deal with.

24 Our grandfathering requirement didn't catch  
25 everything, as we anticipated that it would, but it

1 didn't give it a clean cut. It -- I mean, I wish I  
2 could tell you that, you know, it's going to be  
3 something definitive. Might be something that you'd  
4 want to, you know, ask the Assistant Secretary when we  
5 get him here. But as far as I see, there's still a lot  
6 of options being evaluated right now.

7 CHAIR MIGLIACCIO: Okay. So at the  
8 present time, what are we following, the standard?

9 MR. BRANCH: The standard.

10 CHAIR MIGLIACCIO: Following the standard  
11 as of now.

12 MR. BRANCH: We're following the standard.

13 CHAIR MIGLIACCIO: Thank you. Emmett?

14 MR. RUSSELL: Garvin, you mentioned cranes  
15 and derrick. Are we still on track for possible release  
16 this year?

17 MR. BRANCH: Yes. Right now, if -- the  
18 OMB usually doesn't go past their 90 days unless they  
19 have some major issue, but we don't anticipate that it  
20 will have any major issues with it. If they take all of  
21 their 90 days, they should be completed by the end of  
22 June; therefore, we have all of July to get it to the  
23 Federal Register and published, which is a lot of  
24 editing and things to get it in the Federal Register  
25 format. So we have a couple of weeks of wiggle room

1 still in the process, knock on wood, (knocks on the  
2 table). We put a lot of effort into keeping this thing  
3 on track.

4 CHAIR MIGLIACCIO: Thank you.

5 MR. HAWKINS: Just one more follow-up on  
6 the steel erection: Are you saying that currently,  
7 federal OSHA is not following the directive and is  
8 following what's written in the standards?

9 MR. BRANCH: Yes. That's current policy.

10 MR. BUCHET: Can you refresh everybody's  
11 memory when we rescinded those two parts? Last fall?

12 MR. BRANCH: I don't -- it was sometime  
13 last fall, I believe, or it was late summer.

14 MR. BUCHET: Formerly, the Agency  
15 rescinded the two questions and answers in the directive  
16 that everybody's referring to. It's the fallout after  
17 that that we're working on.

18 CHAIR MIGLIACCIO: Any other questions?

19 Okay. Mike?

20 MR. BUCHET: You may have noticed over the  
21 last couple of years that the personnel in the  
22 Directorate of Construction have moved around quite a  
23 bit. It is, as Garvin has told you, a small  
24 directorate. We are responsible for a subset of OSHA's  
25 construction safety regulations. For instance, all

1 health regulations are with Doherty -- Dorothy Doherty,  
2 who's here at the work group. We also rely heavily for  
3 fire, electricity and electrical outside of our shop.  
4 That being said, the crew that Garvin has been leading  
5 and the one that I am simply following in his footsteps  
6 with, has done an incredible piece of work putting that  
7 crane standard together and getting it out as fast as  
8 they've gotten it out.

9 The Microsoft Word document -- trust me, I  
10 know -- is 1,074 pages long. I'm trying to read that  
11 before we go to work Monday. Garvin has pored over it  
12 and pored over it and pored over it. When he said 2 or  
13 3 in the morning, he's not telling you how many 2 or 3's  
14 in the morning he or other people in that shop have  
15 worked to make these deadlines. And many thanks to the  
16 Solicitor's Office. We have worked cooperatively with  
17 them to try and get this document to the stage where it  
18 goes to OMB for review.

19 I would like my thanks and our thanks to go to  
20 Garvin for running that shop and getting that process to  
21 the place that it's in. Thank you.

22 (Applause.)

23 CHAIR MIGLIACCIO: Garvin, thank you very  
24 much.

25 MR. BRANCH: You're welcome.

1                   MR. BUCHET:  If somebody can try and find  
2     out where Dr. Goddard is, it would be helpful.  For  
3     those of you who may or may not realize it, the Summit  
4     has a life of its own, and a number of our presenters  
5     are working in preparation for the Summit, and what I'm  
6     doing now --

7                   DR. BRANCHE:  Mike, I'm ready to go.

8                   MR. BUCHET:  You're ready to go?  We got a  
9     volunteer.  What I'm doing now is looking for -- and  
10    Dr. Branche, we'll give you a couple minutes while I  
11    explain why I'm looking at this.

12                   I'm not ignoring everybody.  Because Dr. Payne  
13    couldn't be here this morning, he did give me some notes  
14    in response to other questions that the committee asked  
15    DTE to answer; and if you remember, when he was here at  
16    the work group yesterday, he only went through a few of  
17    them, so I can look for my notes if you want to...  
18    Dr. Branche?

19                   CHAIR MIGLIACCIO:  At this time, Matt  
20    Gillen.

21                   MR. GILLEN:  I'm happy to introduce  
22    Dr. Christine Branche to ACCSH members.  Dr. Howard made  
23    a decision in November of 2007 to create a NIOSH Office  
24    of Construction Safety and Health to elevate our program  
25    efforts (inaudible), naming Christine to serve as Acting

1 Director and naming me to serve as Deputy Director.  
2 Dr. Branche previously served as the acting NIOSH  
3 director when John Hyatt was on his unscheduled  
4 sabbatical. And her background is in epidemiology and  
5 injury research.

6 She previously served with CDC's National  
7 Injury Center. She has a long interest in construction.  
8 She did her Ph.D. on construction work and falls.

9 So please join me in welcoming Dr. Christine  
10 Branche.

11 DR. BRANCHE: Good morning, and I'll just  
12 say that I am not related to Garvin. We have the same  
13 last name. There's an E on the end of mine. So when  
14 I'm rich and famous, I'll be Branche (Bronch).

15 It is a pleasure to be with you all today, to  
16 give you an update on our new offices and some of our  
17 key activities. The mission of our construction  
18 program, among other comments, is to provide leadership  
19 to prevent work-related illness, injuries, the whole  
20 gamut of problems that can occur for construction  
21 workers.

22 Our aim is to gather information, to conduct  
23 research and then to translate that information in a way  
24 that can be of practical use to the construction workers  
25 or their employers.



1           NIOSH organized a construction program in 1990,  
2           so this is our 20th year. I think it's interesting that  
3           Dr. Howard, at the turn of the year to our 20th  
4           anniversary, would want to create an Office of  
5           Construction Safety and Health.

6           One of his key reasons for wanting to do so was  
7           so that we could have deliberate and frequent contact  
8           with our colleagues in the Directorate of Construction  
9           in OSHA that supports, as well, his wish to have his  
10          office placed in Washington, D.C., which is where Matt  
11          and I both are located. However, we do have a  
12          constellation of activities for construction across the  
13          institute.

14          To your left, for intramural research, we have  
15          activities for -- they run from basic research,  
16          surveillance -- which here, I mean data collection and  
17          data monitoring -- exposure assessments, applied  
18          research and research-to-practice, which I'll cover in a  
19          little bit more detail in a moment.

20          To the right of the slide, we also fund  
21          extramural research. So when an investigator has an  
22          idea that they think is interesting and compelling,  
23          they'll apply through our -- through the portal that's  
24          available to them, and if it's found to be of merit,  
25          then it will be funded by NIOSH.

1           For our national construction center, CPWR was  
2 again awarded the designation in our August  
3 competition -- rather, in the competition that was  
4 completed in August, and they are, again, our center  
5 for -- National Construction Center, CPWR, the Center  
6 for Construction Research and Safety. And they preside  
7 over our industry characterization, applied research,  
8 our key industry liaison, intervention and also  
9 research-to-practice.

10           At NIOSH, we have a host of researchers: A  
11 variety of engineers, industrial hygienists,  
12 epidemiologists, experts for noise and injury, chemists  
13 and communication researchers -- and actually,  
14 communication research is going to be important in just  
15 a moment.

16           Matt previously has shared with you our  
17 National Occupational Research Agenda, NORA, and the  
18 fact that, in fact, many of you either on ACCSH or here  
19 in the room, assisted or presided over or had a role in  
20 creating our construction research agenda.

21           By design, the agenda is ambitious. It's not  
22 meant for any one organization, not even NIOSH, to be  
23 able to take on all components. But it is meant to have  
24 enough -- I'll use the word that Garvin said -- enough  
25 wiggle room for people to be able to see their key

1 issues involved and to be able to be able to complement  
2 or have an activity in NORA and see their issue of  
3 interest come to life.

4 The idea is for opportunities to work together  
5 to make a difference, and I would also add, the  
6 opportunity to -- for NIOSH, working with all of you, to  
7 get a return on the taxpayer's investment. And I say  
8 that to get into my next topic, which is research-to-  
9 practice, and our wish to have more partners engaged in  
10 our NORA activities.

11 In 2004, as -- as NIOSH was entering into its  
12 second decade of NORA, Dr. Howard implemented his whole  
13 concept of research-to-practice. I'm sure this is not  
14 alien to any of you here, but I do want to emphasize  
15 again, that it's an opportunity not for just NIOSH-  
16 generated research, but research that's done under the  
17 entire umbrella of NORA to get from the laboratory or  
18 the paper to practice.

19 And we don't see enough of that. And so with  
20 Dr. Howard's re-emergence from, as Matt said, his  
21 unscheduled sabbatical, we are having to push more and  
22 more for research-to-practice. NIOSH is doing that in  
23 two ways: We've reorganized our research-to-practice  
24 office, our R-to-P office, and that is now -- those  
25 staff are now located in our Office of Health

1       Communication, and I think that's the right place for  
2       them. Not only are they presiding over or consulting on  
3       research-to-practice activities that researchers within  
4       NIOSH are owing as they design their research efforts,  
5       but they also are making themselves available to the  
6       NORA -- the various NORA committees.

7               And actually, I'm very pleased to tell you that  
8       we've been told that for the construction sector, we  
9       have the most experienced of the research-to-practice  
10       staff. And I owe that to the fact that many of you,  
11       working with Matt, helped to create and move forward the  
12       construction NORA agenda in such a careful way. Because  
13       we're so far ahead, the demand for us to have the most  
14       talented individuals working with us is key.

15               We want to make certain that relevant research  
16       is acknowledged, that it's designed for needs, and then  
17       can be used by organizations such as many of you around  
18       the table.

19               The other area I want to tell you that we're  
20       working on heavily and where research-to-practice, I  
21       think, has a key aim or a key role, is in green jobs.  
22       And I think this illustration is interesting, because  
23       the taxpayer dollar does have a key role in how we  
24       identify green jobs. Our colleagues in environmental  
25       safety and health have won the day in being able to move

1 forward the issue of green jobs, but that doesn't mean  
2 that we can't ask and shouldn't ask -- and Dean McKenzie  
3 did a very good presentation in the Green Jobs work  
4 group meeting yesterday in asking the question, "Are  
5 Green Jobs Safe for Workers?"

6 NIOSH hosted a workshop in December of last  
7 year, asking that very question, knowing that the answer  
8 is, not always are green jobs safe for workers.

9 Green jobs do cover not just construction  
10 issues as it concerns erection -- steel erection or  
11 otherwise -- but we've got weatherproofing, wind  
12 turbines -- and actually, you can see, some of these  
13 slides, I don't know if Dean stole mine or I stole  
14 Dean's, but we ended up with the same cache of  
15 photographs.

16 But the other issue I want to raise -- and this  
17 came up not only in the Green Jobs work group meeting,  
18 but also, in the Prevention by Design; and that is, the  
19 push for the leadership and energy in environmental  
20 design or LEED, and how that does not -- those are  
21 design elements. Those design elements have nothing to  
22 do with -- with worker safety. Bill Ahal raised that  
23 whole issue of the design elements yesterday in our  
24 discussion in that work group meeting.

25 We've been working with John Gambatese and

1 colleagues to deal with this issue to ask ourselves  
2 important questions. And the quote that's at the top of  
3 the screen -- and I'll read that, because I'm not  
4 certain that it's clear for everyone in the room. It  
5 says, "A more holistic view of green construction is  
6 needed, one that addresses safety and health over the  
7 entire life cycle of a constructed building. Where LEED  
8 concerns itself with the delivery of an environmentally  
9 sound building, we're asking the question not only about  
10 the role of worker safety during the construction, but  
11 end user safety once the building has been delivered to  
12 the" -- "to the person who's contracted for it."

13 And more specifically -- and this is where I'll  
14 bring something up that I think Steve Hawkins raised  
15 very clearly. While some people are asking to integrate  
16 worker safety and health issues into LEED, I thought  
17 that Steve raised a -- a kind of eloquent statement: We  
18 shouldn't be running -- I'm not going to be able to  
19 quote you, Steve, but we shouldn't be chasing the  
20 coattails of people in environmental safety and health,  
21 begging for worker safety and health to be included, but  
22 rather, John Gambatese and colleagues are actually  
23 working on an alternate rating system that allows for  
24 the environmental design elements to be included, as  
25 well as worker safety and health and end user

1 components.

2           And I -- and I think we at NIOSH are trying to  
3 be very supportive of the activities in which they're  
4 engaged. I'm please with their progress. It's a little  
5 premature to share with you the exact elements, but  
6 ACCSH may want to -- indeed, as this work group explores  
7 this issue -- may want to invite Gambatese and  
8 colleagues to participate in their efforts.

9           The way, at NIOSH, that we think is important  
10 for us to be able to do this integration of -- in worker  
11 safety and health into green is taking advantage of yet  
12 another work group, which is Prevention through Design.  
13 For ACCSH, we call it Prevention by Design. At NIOSH,  
14 we're calling it Prevention through Design. It's one of  
15 our NORA cross-sector activities.

16           As you all are probably aware, Prevention  
17 through Design takes into account all elements, the  
18 entire life cycle of the production of an item or all  
19 elements of a workplace. I'm going to show you this  
20 illustration on the hierarchy of controls, because --  
21 excuse me -- Prevention through Design administrative  
22 controls and PPE could never be used alone, they have to  
23 be complementary or adjunct to elements that are higher  
24 in the hierarchy of control.

25           Some of the early conclusions that we've had is

1 that green jobs can be made safe. But three key  
2 elements are important: There has to be an awareness  
3 that green is not always safe for workers. We have to  
4 obtain information about the barriers and promoters of  
5 integrating green and workers -- worker issues together,  
6 and that was a main element in our work -- our workshop  
7 that we hosted in December. And then we have to  
8 anticipate hazards and then design them out or control  
9 them.

10 We've offered six elements that could be taken  
11 into account as we consider integrating green -- sorry,  
12 worker safety and health into green. This is our draft.  
13 By no means are we suggesting that this is the end-all,  
14 do-all. We know in government, we can offer -- sound as  
15 if we make declarative statements, but we aren't meaning  
16 to do that.

17 I've offered to you, in the body of the slide,  
18 our website. You can get to that website actually  
19 through different elements. If you're already  
20 accustomed to answering our construction activities  
21 through what mechanism that you enter our website, you  
22 can get to our blog to be able to offer your own  
23 comments, your own suggestions or alterations to these  
24 six elements that we've suggested in how to integrate  
25 worker safety and health into green.



1           But we do think that green and safety can be  
2 combined, and I offer to you this contact information  
3 for Matt Gillen and me, and I'll take your questions.

4           CHAIR MIGLIACCIO: Does the committee have  
5 any questions?

6           Seeing none --

7           MR. ZARLETTI: This is Dan Zarletti. I  
8 had just had a question as to the -- the source of LEEDS  
9 as we know.

10          DR. BRANCHE: Yes. The source.

11          MR. ZARLETTI: The source being who  
12 originally came up with the concept and the -- the drive  
13 that required or that has now resulted in certification  
14 of the LEED process?

15          DR. BRANCHE: Honestly, I can't tell you  
16 the source or where the idea was first germinated, but  
17 the U.S. Green Building Council presides over LEED.  
18 They're the ones that offer the designation, they're the  
19 ones who have stewardship over the elements that are  
20 included. And we have been -- we've been trying to --  
21 we've approached the U.S. Green Building Council, and  
22 they've been at least going to give us an ear. Doesn't  
23 mean -- they certainly have been more receptive to some  
24 of our ideas.

25          Now, our ideas at this point have not been a

1 hard push for and thou shalt change LEED, but we  
2 certainly have had -- opened some conversations with  
3 them about the fact that worker safety and health  
4 elements are not included, and how an integration might  
5 be accomplished, even if it isn't a redesigning of LEEDS  
6 specifically. But I'm quite pleased with the fact that  
7 they've been actually willing to meet with us.

8 MR. ZARLETTI: Well, I am, too, but I  
9 guess my -- my last question was simpler than the first  
10 one, is: How on earth did they get anything started  
11 that had to do with building construction without an  
12 element of health and safety from its origination?

13 DR. BRANCHE: I really don't know that.  
14 There might be people in the room, including members of  
15 ACCSH, who have had some experience with LEED who might  
16 be able to answer that. I don't know. That's a very  
17 good question.

18 MR. ZARLETTI: Well, because it was clear  
19 from the Secretary of Labor that there was going to be  
20 an element of safety requirement in the ARRA funding --

21 DR. BRANCHE: Yes.

22 MR. ZARLETTI: -- that was going to  
23 construction, and so we're putting it on the front of  
24 the -- front burner, if you will --

25 DR. BRANCHE: Right.

1                   MR. ZARLETTI: -- at some point, and then  
2                   now we've got this other thing that's going to go on  
3                   until we're all long gone, and it comes without that  
4                   same element.

5                   DR. BRANCHE: Well, AAR -- excuse me, the  
6                   stimulus package money certainly does allow the  
7                   Department of Labor to put its own imprimatur on this  
8                   issue, and I actually celebrate the fact that Secretary  
9                   Soliz has already articulated a wish to do so.

10                  I think that while we play catch-up, the fact  
11                  that funding can be tied to the desires the Department  
12                  wants is a very good impetus for being able to push  
13                  through -- push through this issue. And so I -- I think  
14                  that's cause for celebration.

15                  I don't want to be overly optimistic or overly  
16                  pessimistic about the engagement that we've had with the  
17                  U.S. Green Building Council, and I do mean to make a  
18                  wide arc when I say "we." We've been working with some  
19                  researchers, we've been talking to our colleagues in the  
20                  Directorate of Construction, and so when we -- as well  
21                  as people from the staff and colleagues from the  
22                  Prevention through Design cross-sector as well as what  
23                  we're doing in construction. The idea is to be able to  
24                  raise the specter of worker safety and health issues  
25                  with them.

1           I don't think we've tried to be overly  
2       aggressive, but certainly, the fact that we've even  
3       talked about or raised the issue of the omission of  
4       worker safety and health has got a few people nervous.  
5       But overall, the U.S. Green Building Council has allowed  
6       us to put forward abstracts for key meetings that are  
7       coming up starting in May, but also one that's coming up  
8       in the fall. And we invited some of their architects.  
9       They have participated in our workshop in December.  
10      Some have a sympathetic ear.

11           Now, how that will actually manifest in a  
12      system or grading element that allows worker safety and  
13      health to be included is still an issue that I think is  
14      going to take a little further discussion and probably  
15      some negotiation. And that's why I say that the  
16      prospect of coming up with an alternate scheme may be  
17      our best bet.

18           But I think it was Emmett Russell yesterday  
19      said, "We can't take anybody off the table right now. I  
20      think we have to approach this" -- "to be able to hear  
21      as many perspectives and even to be able to have an  
22      opportunity to ask, quite openly, people from the U.S.  
23      Green Building Council how their" -- "how their idea  
24      germinated and what path they took to get to the place  
25      where they are now."

1                   MR. ZARLETTI: Because it makes so much  
2 sense, and the rest of what we do in manufacturing in  
3 this country is build in what you want as a final  
4 product. If you build a car, you don't put air  
5 conditioning on it after it shows up at the dealership,  
6 you put it on on the assembly line. You build a home,  
7 same thing. Components go in as the construction goes  
8 on. Now, it seems like we're spending more time and  
9 effort and energy to take a -- to put back in what never  
10 was -- what wasn't originally planned; and as a result,  
11 I think there's a huge -- there's going to be a huge  
12 dollar amount on this to get this thing to work, and I'm  
13 disappointed to see that.

14                   MR. AHAL: I think we've got to keep in  
15 mind, before we get ourselves set up for disappointment,  
16 I hope the USGBC would encompass the message that  
17 safe -- safe jobs, it's part of a green job, or a green  
18 job needs to be safe, et cetera.

19                   And I -- I totally agree, but we can't lose  
20 site of the fact that the USGBC does not dictate how or  
21 what you do. They'll say, "If want an (inaudible)  
22 energy atmosphere, for instance, you should use low VOC  
23 materials," but they don't say which one. "If you want  
24 to go on and appoint a contractor for waste recycling  
25 programs during construction, here's what you" --

1 "here's where you separate the materials, and you don't  
2 take them over so many miles away."

3           So they -- this comes back to what was started  
4 yesterday about -- about the Prevention in Design. The  
5 architect of the job is the one who's going to dictate,  
6 then, what that means in terms of using certain  
7 materials, or if you want to get a point for -- for the  
8 daylighting, okay -- or several points in that category,  
9 they don't -- the USGBC just says you have to provide so  
10 many people in the building access or -- visibility to  
11 the outside. How you do that, skylights, windows, they  
12 don't -- they don't dictate that.

13           So I think we -- I hope we can get their  
14 endorsement of safety and its importance in every  
15 project, period, but I don't think we want to set  
16 ourselves up to think that they are going to dictate a  
17 safe job. That's going to fall back to the people that  
18 are going after the certifications.

19           MR. ZARLETTI: I'm not looking for  
20 branding recommendations, I was looking for sharing the  
21 DNA of this program, and that's what I'm looking at.

22           MR. AHAL: I think that -- I hope they'll  
23 certainly do that. I just want to make sure we don't  
24 set ourselves up for a false expectation of what they  
25 might be able to do for us.

1                   CHAIR MIGLIACCIO: I'm going to stop this  
2 right now, and we're going to resume. Dr. Michaels has  
3 come into the room, and I know he's on limited time.  
4 Christine, if you could just hold on, we'll come right  
5 back to you.

6                   DR. MICHAELS: Thank you. Hi. Thanks  
7 very much. I'm sorry to interrupt your proceedings  
8 here.

9                   I'm on a very hectic schedule today because, as  
10 you know, you'll be -- Tom, you'll be joining about a  
11 thousand people over at the other hotel. I've got,  
12 needless to say, several different meetings to attend  
13 this morning.

14                  So for those of you who don't know, I'm David  
15 Michaels, I'm the Assistant Secretary of Labor for  
16 Occupational Safety and Health. This is my second  
17 appearance before this distinguish group. My first  
18 appearance was on my first day on the job. So I think  
19 on that day, I had very little to say. Now, I probably  
20 have too much to say.

21                  So let me formally and on behalf of my office  
22 welcome you and thank you for your great work. You  
23 probably want to know what's going on at OSHA. We've  
24 heard a lot from the terrific staff who I've gotten to  
25 know, and first, let me thank the OSHA staff who's

1     been -- who supports this committee, who really are  
2     spearheading our work in construction and -- and also  
3     from Sarah, from the Solicitor of Labor's Office,  
4     working very hard and trying to make great progress.

5             As many of you know, there are some personal  
6     changes in the department we're going through. Eric  
7     Harbin has joined as the new Director -- is the new  
8     Director of the Office of Construction Services. Before  
9     joining us at the national office, he was the director  
10    of OSHA's Austin, Texas, area office.

11            Effective last week, Rich Fairfax became the  
12    new career Deputy Secretary of Labor, and Bill Parsons,  
13    we're very proud, has been Acting Director of  
14    Construction. Tom Galassi, who many of you know, has  
15    become the Acting Director of Enforcement Programs, and  
16    he remains as Director of Technical Support and  
17    Emergency Management.

18            So I'm looking forward to working with all of  
19    them, and I want to thank them for all their great work,  
20    and I know you'll be working with them as well.

21            There are many, many things I could cover. I'm  
22    going to talk for about ten or fifteen minutes, give you  
23    a couple of updates, some of which, I'm sure, will not  
24    be news to you, some of them will be, perhaps, and maybe  
25    we can answer some questions.



1           You know, we're moving forward with cranes and  
2           derricks. I think the end is in sight. Great to get  
3           that out. And we're pushing forward on a new rule on  
4           Confined Spaces in Construction.

5           We're also in the process of canceling our  
6           enforcement policy that allowed employers to perform  
7           certain residence construction activities to use certain  
8           types of alternative fall protection methods.

9           We're very much focused on enforcement, and I  
10          think I read that we had a very successful what we call  
11          the sweep here in Austin last year. I don't know if you  
12          talked about that some, but it was before I got here. I  
13          read about it in the paper. Being here in Texas, I've  
14          gotten some reports, talking to people who tell me  
15          that -- and you can probably -- you probably know this  
16          more than I do, but if you drive through Austin now, you  
17          no longer see workers on roofs without fall protection,  
18          that that sort of high-publicity enforcement activity  
19          has a big deterrence effect. Because as you know, our  
20          enforcement activities are not only aimed at the  
21          specific employers who put workers at risk -- which  
22          we -- when we go and inspect them, we obviously are  
23          focusing on them immediately to try to get hazards  
24          abated, but we have to do our enforcement in a way that  
25          impacts on other employers as well, because we don't

1 have enough inspectors to visit every work site. So we  
2 have to model our enforcement activity to have the  
3 maximum deterrent effect, and I think that's been a  
4 useful model and we're very pleased it was successful in  
5 Austin.

6 We've also had -- we're looking at our most --  
7 really, the most heartbreaking cases and look -- in  
8 certain situations, issuing egregious citations where we  
9 think something really terrible has happened. And last  
10 year, OSHA issued four egregious -- had four egregious  
11 cases. The first half of this year, we've already had  
12 nine. So we're doing more of them. A lot of them are  
13 in construction.

14 You probably read about the case in Pittsburgh  
15 where a fellow got a job -- essentially bid on a hotel  
16 roofing job. He hired a number of people to work on  
17 this. Carl Beck was one. He was a 29-year-old man  
18 working next to his cousin, Michael. Michael stood up  
19 on the roof, he looked around and he didn't see Carl.  
20 He looked over the edge. Carl had gone down over the  
21 edge and died. We discovered that Carl, Michael and  
22 eight others were working on a pitched roof, had asked  
23 their employer repeatedly for harnesses and other fall  
24 protection. The equipment was sitting right there on  
25 the roof in bags and boxes, but the employer didn't let

1       them put them on. And that was equipment that would  
2       have saved Carl's life.

3               We find that contractor tended -- we cited him  
4       for ten egregious, willful violations, one for each  
5       unprotected worker, with penalties totaling more than  
6       half a million dollars.

7               I'm going to skip through some of these  
8       extended remarks because it's no news to you.

9               But -- so we're looking at ways to enforce our  
10       regulations much more stridently. We're looking at our  
11       penalty structure. We believe our penalty structure is  
12       inadequate. It's only in very unique situations do we  
13       get up to those huge penalties.

14              We don't believe our penalty structure is  
15       adequate to really force -- to incentivize employers to  
16       do the right things in some cases.

17              But I think change is in the air. Congress is  
18       considering the Protecting America's Workers Act. There  
19       were hearings last month, and on worker's memorial day  
20       in two weeks, will be more hearings, I think to address  
21       some of these issues.

22              And among other things, I think the (inaudible)  
23       past would raise the ceiling on OSHA penalties. It  
24       would just essentially allow them to go up the same way  
25       as inflation has since 1990. But we also would increase

1 criminal penalties and criminal liability for employers  
2 who knowingly endanger workers. That's a very big  
3 change. It would strengthen whistleblower protections  
4 and expand the rights of workers and the families of  
5 workers who die on the job for families to be more  
6 involved in OSHA investigations.

7 We're also very interested in this question of  
8 what I think of as injury tracking, reporting and  
9 retrofitting reporting of injuries to OSHA. Studies  
10 have -- by the General Accounting -- General  
11 Accountability -- Government Accountability Office and  
12 others have reported that there are safety programs that  
13 reward workers for reporting no injuries, and those  
14 programs essentially discourage workers, as a result,  
15 from reporting real injuries and illnesses.

16 BusinessWeek about three weeks ago had an  
17 article I highly recommend you reading, called,  
18 "Caution: Stats may be slippery." There's a picture up  
19 there, sort of slippery -- you know, road may be  
20 slippery, and the basic idea is that OSHA statistics  
21 really are very problematic, and we -- we use -- we rely  
22 so much on statistics, on information we get through the  
23 OSHA value initiative, information the Bureau of Labor  
24 Statistics collects through its surveys, but it turns  
25 out there are lots of reasons those statistics are

1 either inaccurate or incomplete.

2           It's quite unfortunate, but we know there are  
3 some companies that suspend or fire workers if they  
4 report an injury on the job. They transfer blame to  
5 workers instead of the employer, who's legally  
6 responsible for worker protection, and frankly, that's  
7 intolerable. We learned not long ago, just a few weeks  
8 ago, of a -- construction workers at an oil refinery  
9 project were warned in a memo that came from -- not from  
10 the construction company, but from the project manager  
11 of the oil company who was building this that any worker  
12 requiring medical treatment for a recordable injury --  
13 in other words, if they came in with an OSHA-  
14 recordable -- not with an injury, but an OSHA-recordable  
15 injury -- a worker with an OSHA-recordable injury would  
16 be fired, subject to investigation, but only the very  
17 top person could overturn that.

18           In the investigation, if they find that another  
19 worker was involved in that injury somehow, they'd be  
20 fired. And the foreman for that -- for their crew, if  
21 there was more than one OSHA-recordable injury on that  
22 crew, no matter what the cause, they'd be fired. It's a  
23 very effective way to get around the OSHA recordable  
24 injury rate, but we think that's simply wrong.  
25 Fortunately, in this case, I think the -- the oil

1 company recognized it was wrong and got rid of that  
2 project manager, withdrew the memo, and actually, the --  
3 the head of safety for that construction company  
4 actually called me to let me know that -- that that  
5 company disavows the memo and wanted to make sure that  
6 we knew that they weren't behind it.

7 I'm very pleased that that happened, that they  
8 called me, because we want to put the word out. That is  
9 not acceptable, and we'll come down very hard and we'll  
10 take a hard look at programs like this.

11 We obviously want safety programs where workers  
12 are incentivized to work safely, but if there's a  
13 program that clearly discourages people from reporting  
14 injuries, we think that's a big problem, and we're going  
15 take that very seriously.

16 We're also very interested, though, in moving  
17 OSHA -- OSHA-related injury tracking, injury tracking  
18 done by employers, into the 21st century. For many  
19 employers, it's still a paper-based system where you get  
20 the pencil out, count the number of workers, number of  
21 hours, number of injuries and divide by 200,000.

22 We should be able to do this work  
23 electronically more rapidly, not because -- not just for  
24 the sake of doing it electronically, but in fact,  
25 tracking injuries is very important in understanding why

1 injuries occur. And so we're very much hoping to  
2 encourage tools and to move us into the electronic  
3 system where OSHA gets information much more rapidly and  
4 electronically, but also, employers get information in a  
5 way they can use it to investigate what causes injuries  
6 and how to prevent them.

7 Obviously, compliance assistance will remain --  
8 remains as -- will remain an important component of our  
9 arsenal. We seek compliance assistance, though, as a  
10 critical support, not a replacement for standards and  
11 enforcement.

12 And so we are looking for your ideas for more  
13 compliance assistance materials. We especially want to  
14 reach out to workers. We understand that employers have  
15 many sources for information on how to provide safe  
16 workplaces. We want to help small employers, but  
17 particularly, we need to help workers who have no other  
18 source of information.

19 We'd like to get good materials around,  
20 especially materials that are not in English. We'll put  
21 it on our website. We'll circulate it. We'd like you  
22 to do the same, and we'd love to work together to do  
23 that.

24 We're also very much committed to listening to  
25 our stakeholders and having increased constructive

1 interaction with them. Last month in Washington, we  
2 held a day-long forum for stakeholders. We called it  
3 "OSHA Listens." It was really -- the basic thing was  
4 how can OSHA do a better job.

5 I think it energizes the OSHA staff by having  
6 much more contact with people like you, especially the  
7 staff who don't get to work with advisory committees  
8 like this. I think it raised the expectations for  
9 stakeholders, which is a good thing, because they have  
10 high expectations of us.

11 Many speakers traveled long distances to  
12 participate in the forum, including family members of  
13 workers who had been killed on the job. And the  
14 testimony of these family members was very moving. It  
15 drove home the point that we have to find ways to work  
16 together to insure that no one in America should fear  
17 dying on the job just to earn a paycheck.

18 Tom Broderick testified, was -- he  
19 participated. It was very succinct and useful  
20 testimony, I think, and I'm very grateful that you did  
21 that. Thank you for coming.

22 Another speaker at the forum raised concerns  
23 about injuries associated with nail guns in residential  
24 construction. Actually, we talked about that with  
25 several of the speakers, and this scientist asked OSHA



1 to follow your recommendations to revise and enforce the  
2 standards for nail guns. And we're going to look at her  
3 testimony and recommendations from your -- from you and  
4 your nail gun working group. So we're very interested  
5 in seeing where are you going with this and what can we  
6 do?

7           Actually, over at the conference Tom -- today  
8 or Tom, we'll actually hear from a worker who was  
9 severely injured with a nail gun event, and then  
10 actually returned to Mexico for convalescence and came  
11 back here. Sort of an interesting story.

12           Two of the themes we're thinking about, what to  
13 do with nail guns and also what to do about immigrant  
14 workers who are injured here and don't necessarily have  
15 access to the service they need.

16           OSHA Listens was part of President Obama's Open  
17 Government initiative, and we will do much more of this,  
18 and we're eager for your participation and your  
19 suggestions on how to do that, how to learn more from  
20 you.

21           Now, obviously, we're here in Houston rather  
22 than somewhere else because of the National Action  
23 Summit for Latino Worker Health and Safety, which is  
24 this afternoon across town. So far, we've got more than  
25 900 people registered, and there are about 60

1 presentations planned, and I appreciate your coming here  
2 and also your participation over there.

3 So those are among the things I really wanted  
4 to talk about. There are about a thousand more. But  
5 mostly, I would like to say this committee is incredibly  
6 useful, it's proactive, it's helpful to us, it's putting  
7 us in great directions. It's helping us come up with  
8 important ideas, and it really serves as a way that we  
9 can get information to and learn from all aspects of the  
10 construction community.

11 And so again, I'm grateful for your help. So I  
12 have a -- I have to leave here by 9:30. I've got to  
13 meet with the Secretary at 9:45, so I can stay for a few  
14 minutes, and I'd love your thoughts, your questions,  
15 your comments, your criticisms. Go at it.

16 CHAIR MIGLIACCIO: Any questions of the  
17 committee? Steve?

18 MR. HAWKINS: Dr. Michaels, I would just  
19 like to, of course, thank you for coming and -- would  
20 like to just state that it's been really interesting to  
21 have this meeting outside of Washington, D.C. for the  
22 diversity of attendees we've had. We've had much  
23 greater participation in our work groups from a very  
24 diverse group of employers and employee representatives  
25 that we don't always see when we have it in Washington,

1 and I would like to encourage OSHA to have this at other  
2 locations throughout the United States as opposed to  
3 just always having it in Washington, D.C. I think it's  
4 been really refreshing for the meeting.

5 DR. MICHAELS: I appreciate hearing that.  
6 Obviously, we'll work with you on that.

7 CHAIR MIGLIACCIO: Questions? Susan?

8 MS. BILHORN: Susan Bilhorn, Jacobs.  
9 Thank you, again, also, for being here. I know you also  
10 were meeting with the national construction safety  
11 executives as well.

12 DR. MICHAELS: I did.

13 MS. BILHORN: Colleagues of ours. So I  
14 have just have a question: Since the federal and --  
15 federal government set some precedent in the work that  
16 they do and how they make decisions, my question is --  
17 and, you know, I'm really glad to see, for example, the  
18 Air Force and NASA and other federal agencies that are  
19 moving towards the VPP programs, et cetera, which is --  
20 trying to move their game up a bit from a holistic  
21 standard. But my question is, how is it that OSHA can  
22 possibly reflect what -- what's going on in industry  
23 also within the federal agencies?

24 DR. MICHAELS: That's a great question.  
25 We want to encourage our federal brother and sister

1 agencies to move forward in the same way that we want  
2 private industry to. And certainly, VPP is one of those  
3 areas. And we can talk about VPP as well, but we think  
4 there are a lot of opportunities to do this.

5 We have a little less leverage in the public  
6 sector than we do -- you know, OSHA covers all federal  
7 employees through an Executive Order. By the way, that  
8 would change with -- the Protect America's Workers Act  
9 would change it. It would -- actually, it would give  
10 real coverage, legislative coverage to -- not -- it's  
11 real now, but leg -- it would cover by legislation  
12 rather than by Executive Order. So we are working with  
13 them, and I don't have specifics to give you, because,  
14 frankly, it isn't an area that I focused on too  
15 carefully, but I will look at it.

16 MS. BILHORN: Not just federal, it would  
17 also be state and municipal, because we actually find  
18 that -- since we work across the range of that, we  
19 actually find it kind of interesting not to be --

20 DR. MICHAELS: No.

21 MS. BILHORN: -- that there are different  
22 standards.

23 DR. MICHAELS: There are -- and frankly,  
24 let me say if you're in situations with other federal  
25 agencies that you don't see are doing the right thing,

1 you should let us know.

2 Now, the OSHA aficionados will follow this, but  
3 we actually do not have jurisdiction over state and  
4 local employees. State plans have -- there are, I  
5 think, 21 states with state plans, and those state  
6 plans, by law, cover both -- they cover -- if a state  
7 decides to cover private-sector employees, they got to  
8 cover their state and local employees. So they do cover  
9 it. They are supposed to be at least as effective as  
10 OSHA, and we'd like to think they are, but we're going  
11 to be taking a very hard look at state OSHA programs  
12 now, following the events in Nevada last year where a  
13 number of construction workers were killed, and it was  
14 thought that the Nevada OSHA response wasn't adequate.  
15 And we looked very hard at that. We've seen  
16 deficiencies in the state program, and we've looked at  
17 other state plans as well.

18 There are three states -- at least three  
19 states, New York, New Jersey, Illinois, that have  
20 federally-approved state OSHA programs for public-sector  
21 employees. So they can -- so they -- we oversee them in  
22 the same way. But there are 25 or so states where there  
23 is no coverage for state and local employees by law --  
24 by OSHA law. There are programs out there, but in those  
25 cases -- and especially in construction jobs, there is

1 no -- you know, we have no leverage and there are no  
2 laws that protect those workers.

3 That leads to some interesting problems. I  
4 just saw an article in the St. Louis Post Dispatch two  
5 weeks ago about the family of a worker who died in a  
6 trench cave-in was awarded \$6 million. The lawsuit was  
7 against a city in Missouri that ran that construction  
8 job. And Missouri workers -- Missouri state and local  
9 workers have no OSHA coverage, and so there are costs to  
10 no OSHA coverage. And so that's one of the things,  
11 obviously, that we're interested in and we're looking  
12 at, and we hope, at some point, that there's uniform  
13 coverage of all workers across the country.

14 CHAIR MIGLIACCIO: Yes, Mr. Jones?

15 MR. JONES: I want to follow up on the VPP  
16 and the consultative services alliances and things like  
17 that. A lot of times, these are groups that are  
18 investigated the best. They provide the leadership and  
19 direction for the rest of many employers in terms of  
20 safety and health. Is there any way that we can use VPP  
21 and the alliances as a laboratory to test some of these  
22 ideas? Like if we looked at something like Design for  
23 Safety and Prevention through Design, by Design? Many  
24 of these companies like Washington Group, Jacobs and  
25 others and Conoco Phillips and others, they're already

1 doing loads of preplanning, designing safety directly  
2 into -- designing safety and control directly into work  
3 practices.

4 How can we use -- as a part of being part of  
5 VPP or these alliances -- them to spread this  
6 information? Because they're the laboratories of what's  
7 good going on and -- you know, and there would be an  
8 opportunity for those in the middle that want to do  
9 better but just don't know how.

10 DR. MICHAELS: I think we should. I mean,  
11 I think it's each -- I don't know how we formalize that  
12 other than we look at some specific projects and think  
13 about that; but you know, another opportunity -- to get  
14 back to Susan's question -- is, the federal government  
15 has some very, very large construction jobs, and maybe  
16 those are ones we could look at because we have more  
17 ability to step in those and say, "Can we do" -- "Can we  
18 incorporate Prevention," you know, "by Design in those  
19 jobs because the feds are paying for it?" And they tend  
20 to be VPP and they tend to be -- you know, they're  
21 alliances, anyway.

22 But I'd love to do that, and if we can pursue  
23 that, we should. Let me know -- especially if you think  
24 there's a specific project we should work on, I will  
25 make sure OSHA gets involved, because that -- that --

1 coming up with those new approaches and showing they  
2 work -- or showing they don't work, which is useful,  
3 too -- it is a high priority with us.

4 And I think -- I'm sorry, I can't speak for  
5 NIOSH. NIOSH has been incredibly supportive in all of  
6 these efforts. I appreciate Dr. Branche being here,  
7 participating at the very high level that she's doing  
8 this. She really is -- you know, it's great you're here  
9 and (inaudible), has been tremendous, and if we could  
10 work with you on this as well, it would be great.

11 CHAIR MIGLIACCIO: Any other questions?

12 MS. ARIOTO: Liz Arioto. Thank you,  
13 Mr. Michaels. I'm from California, so I've been working  
14 with the VPP and the SHARP Program there, and it seems  
15 to be having a really good impact on even the smaller  
16 contractors. So in a general (inaudible) legislative  
17 contractors on site, they actually involve them in depth  
18 in the program. And I see these smaller contractors,  
19 five or ten or twenty actually working, and it does  
20 help. So I'm not sure if we would actually look at  
21 other states' programs in comparison or working together  
22 through the different states' programs.

23 DR. MICHAELS: No, we should. Obviously,  
24 you know, I think on lots of levels, states are sort of  
25 little laboratories for these activities, and we should



1 look harder. I'm not that familiar with those programs,  
2 but I'd love to learn more.

3 MS. ARIOTO: Thank you.

4 CHAIR MIGLIACCIO: Any other questions?

5 MR. GILLEN: Thank you. The Department of  
6 Labor has got a lot of programs where they are providing  
7 training funds for green construction.

8 DR. MICHAELS: Yes.

9 MR. GILLEN: As you came in, we were  
10 discussing issues of green construction. And do you  
11 think there's any possibility for discussions of having  
12 some worker safety aspects added to Department of Labor-  
13 funded training for green jobs?

14 DR. MICHAELS: I'd love to see that. You  
15 know, I don't know the -- the structure of how that  
16 training goes, but I'll certainly look into it. I mean,  
17 it's -- you know, with Earth Day coming up, it's really  
18 sort of made me think about this question. We have  
19 great interest in the country in green jobs, in, you  
20 know, natural products, sustainable development. You  
21 know, everybody wants to buy, you know, grass-fed beef  
22 and free-range eggs and free-range chickens, but we care  
23 more about the chickens than we do about the workers.  
24 And we have to figure out how to incorporate all these  
25 things. And certainly, the LEED program, we should be

1 able to do that. My understanding is there is no worker  
2 safety program in there, and I'd like to see how we can  
3 leverage our strength if we could help do that.

4 You know, I think it may be more effective to  
5 try and do that on a state level, but I don't know. But  
6 we certainly would be happy to work with you on that.

7 CHAIR MIGLIACCIO: Any other questions?

8 (None heard.)

9 CHAIR MIGLIACCIO: Thank you, Michael.

10 Thank you very much --

11 DR. MICHAELS: Thank you very much.

12 CHAIR MIGLIACCIO: -- for taking time out  
13 of your busy schedule.

14 DR. MICHAELS: I wish I could spend half a  
15 day with you. I really do. I would learn a lot. But  
16 thank you all for your work.

17 (Applause.)

18 CHAIR MIGLIACCIO: Christina?

19 DR. BRANCHE: (inaudible) the high  
20 endorsement that Dr. Michaels gave to try to work  
21 together on this, so -- about the green jobs issue, and  
22 I was really pleased with Matt's question and  
23 Dr. Michaels' reply about the Department of Labor  
24 actually trying to make inroads in this with the  
25 training that they offer.

1           So any other questions?

2           CHAIR MIGLIACCIO:   Okay.   Any other  
3   questions?   Mike?

4           MR. THIBODEAUX:   Mike Thibodeaux.   I heard  
5   what Bill talked about, and you know, that they don't  
6   direct these things.   You tell them, "Here's the thing  
7   you need to do," not how to do it.   I just find it a  
8   little difficult that the council can't even put a  
9   statement that, "Whenever you are doing whatever you  
10   need to do to get these points, you must incorporate  
11   safety for the worker in your plans."   I mean, that  
12   seems like a very simple statement and very easy to do.  
13   You're still not telling them how to do it, but you've  
14   got to do something to protect the worker, and I just  
15   find it hard to believe that a council would say, "Well,  
16   yeah, we need to discuss that."   To me, that's not a --

17          DR. BRANCHE:   We -- well, where you stand  
18   sometimes depends on where you sit, and I can't speak  
19   for them.   I can certainly say that asking for a  
20   statement much like what you just articulated is not  
21   something that we've put on the table because we're just  
22   in the opening relationship, we're just opening the  
23   doors for the relationship that we're trying to forge  
24   with them.   And up to this point, our discussion has  
25   been about this integration issue, and not simply

1 resigning ourselves -- and I don't mean to make it sound  
2 like a resignation -- but we haven't even talked about,  
3 well, we don't want to do that, but this is -- this is  
4 the alternative that we'll seek.

5 Right now, we're opening the door to talking  
6 about possible integration, and we're trying to see how  
7 far we get with that.

8 MR. GILLEN: I'd like to (inaudible) about  
9 that, too, because my -- there's a lot of different  
10 opportunities. For example, I noticed that NHB has  
11 developed its own green building program to compete with  
12 the LEED program for home building. And so there's an  
13 area that we have more connections with NHB to sort of  
14 raise similar questions for their program. And we are  
15 really trying to do outreach. For example, there's  
16 going to be a Good Jobs Green Jobs Conference in early  
17 May. NIOSH has arranged to put together some panel  
18 discussions about worker safety as it relates to green.

19 And as Dr. Branche mentioned, we did put in a  
20 proposal for a panel to present at the November  
21 meeting -- which, by the way, is going to be in Chicago,  
22 of the Green Building Council. And for example, a  
23 moderator of that panel is an architect who's on the  
24 board of directors for the Green Building Council. So  
25 we're trying to sort of find strategic ways to do

1 outreach to that community, and his advice was to not  
2 hit people over the head with the issue, but sort of  
3 work with them. So we are trying to make some inroads.

4 CHAIR MIGLIACCIO: Bill?

5 MR. AHAL: Bill Ahal. I think  
6 Christine -- Mike, what you said, and Christine, what  
7 you said about USGBC is what this Prevention by -- going  
8 back to the same -- this new work group, but the  
9 reason -- I think one of the reasons the USGBC hasn't  
10 incorporated impact with even a statement about safety  
11 is they are driven highly by the design community, who  
12 exonerate -- attempt to exonerate themselves because of  
13 the liability issue.

14 So I think this is the natural work with this  
15 work group, and to approach them in the same method we  
16 do a designer in general, in that it's not trying to  
17 shift liability, but it's trying to help you become part  
18 of the team. And that -- I think maybe that approach  
19 with the USGBC will be successful like it would be with  
20 an engineer and architect. And I hope that's where  
21 we're able to -- to get some traction.

22 CHAIR MIGLIACCIO: Steve?

23 MR. HAWKINS: You know, there's no reason  
24 not to pursue some integration of employee safety and  
25 health into LEEDS, but I think it's also important to

1 acknowledge that there's a lot of buildings built every  
2 year that are not LEEDS-certified, and we need to pursue  
3 some kind of certification that it's a safely built  
4 building for those -- for, what do you think, 95 percent  
5 that are not LEEDS? I mean, I don't know how many  
6 LEEDS-certified buildings are built, but I read about  
7 one in the newspaper, it's a pretty big splash, and I  
8 read -- you know, the list is not very long, at least in  
9 Nashville, Tennessee, of LEEDS-certified buildings, so I  
10 think it does bear us trying to pursue that opportunity  
11 to have a safety and health component in LEEDS, but  
12 certainly, there needs to be some program or  
13 certification for other buildings where people would fly  
14 that flag of a safely-built building from the design all  
15 the way through to incorporate -- as Bill said, you  
16 know, Safety by Design -- through the end product, and  
17 that it would be certified in a similar manner to LEEDS.  
18 And I think people would respond to that. And I think  
19 the interest over the last 20 years or so in the VPP  
20 process proves that people are involved in having some  
21 kind of authentication or stamp of a job well done, so I  
22 think it needs to be pursued perhaps on parallel tracks.  
23 Thank you.

24 CHAIR MIGLIACCIO: Emmett?

25 MR. RUSSELL: Emmett Russell. A couple

1 things I think were said. One, in your presentation,  
2 you mentioned that you're looking at two safety issues:  
3 One is worker safety, the other is end-user safety; and  
4 unfortunately, with this committee, we can look at  
5 worker safety, but we can't necessarily look at end-user  
6 safety.

7 And I think in Dr. Michaels' presentation, he  
8 also mentioned something important that we may be  
9 missing; and that is, that the federal government spends  
10 a lot of money on construction. And to some degree, we  
11 may be missing a point that we might be able to have  
12 some discussions on a leverage factor. And I would like  
13 to propose working with NIOSH, because, obviously, the  
14 whole scope of this is beyond what we can do at ACCSH.  
15 But I would like to have you think about teaming  
16 together ACCSH, DOL, the federal government in terms of  
17 their construction program and take a bigger look at  
18 this whole picture. Because I think the picture is a  
19 lot larger than maybe any of us are really looking at,  
20 but anytime the federal government invests money in  
21 construction, that money can be leveraged.

22 DR. BRANCHE: You've anticipated me.  
23 Actually, I went back to my slide where -- I didn't  
24 speak to this -- spend as much time on this, but the  
25 fact that the federal government, in making arrangements

1 to have a building constructed and seeking the LEED  
2 designation, we're in a position to use that as a  
3 leverage point, much like -- picking up on something  
4 Dr. Michaels said, it's municipalities and the federal  
5 government together that, in our own need for building  
6 renovation and -- and construction, I might be in a  
7 position to forge forward on this issue.

8 So you certainly anticipated me, so that's why  
9 I went back to that slide. I thought it was funny that  
10 you raised it right then.

11 CHAIR MIGLIACCIO: Walter?

12 MR. JONES: Walter Jones. I -- I have a  
13 question. At the December meeting you folks had on  
14 green jobs, there was a -- one of the breakout  
15 discussions, we talked about a solution, and what I --  
16 one folks were promoting was, I think, trying to get an  
17 Executive Order, whereas -- yeah, I believe it was Matt  
18 Gillen and some others that were promoting this idea of  
19 an Executive Order kind of like we already have with  
20 LEEDS. There's an Executive Order that the federal  
21 government will build on LEED -- LEED-based -- most of  
22 the building would be LEED-based, and then there's even  
23 a step-by-step process on how that would be done.

24 Is there any thought on how we, at NIOSH, OSHA,  
25 the Omni Group, this committee, can work at crafting



1 a -- some language that we can push upstairs to, you  
2 know, the West Wing or whatever in terms of trying to  
3 get an Executive Order on making sure that any federal  
4 building built for the next -- I don't know, 10, 20  
5 years, will have Prevention through Design concepts  
6 built in, and then we could fill in the skeleton on what  
7 that means in using the work of Gambatese and others to  
8 really have this -- this rating system that Steve is  
9 talking about, and by virtue of Executive Order,  
10 requiring federal buildings to build with Safety by  
11 Design built in would jump-start this whole process and  
12 would probably make (inaudible).

13 DR. BRANCHE: The idea of an Executive  
14 Order did -- was discussed in the construction breakout  
15 for our workshop in December, and I would say that any  
16 suggestion that ACCSH could offer for how that could be  
17 accomplished, it would be welcomed.

18 MR. GILLEN: I'm glad that the committee  
19 is getting to this point. If you -- you know, if you  
20 remember some of those statistics -- because they were  
21 in the presentation I gave, we talked about the Recovery  
22 Act originally, because I've been trying to plant this  
23 idea that this is really something that we should do.  
24 We should follow in the footsteps of what's being done  
25 in the green, and use these kind of approaches with the

1 federal government for leadership, because it's very  
2 influential on the rest of the industry, and we can  
3 really -- we can really make some progress if we do  
4 that. So if the ACCSH committee wants to make a motion  
5 or something like that, I -- it might be helpful.

6 CHAIR MIGLIACCIO: Any other questions?  
7 Tom.

8 MR. SHANAHAN: Tom Shanahan, National  
9 Roofing Contractors. Totally different question: You  
10 had mentioned up front about external and internal  
11 grants, and with the new office. I just was wondering  
12 if that's anything -- or what those particular grants  
13 were looking at -- I mean, typically, NIOSH is research-  
14 related, and I just was wondering if you had any  
15 specific focus for those -- that grants and those  
16 activities. It sounds look it's a new funding.

17 DR. BRANCHE: I didn't mean to make it  
18 sound like it's new funding. I would say that I did  
19 mean to emphasize that investigator-initiated  
20 opportunities are unaltered, so the schedule with which  
21 those -- those funding opportunities come open, that  
22 schedule is completely unchanged. If there is an  
23 alteration, it isn't so much that new money is made  
24 available for it, but I would say that Dr. Howard and I,  
25 in turn, we are putting a greater emphasis on Research

1 to Practice. We have so much information that we know.  
2 One of the reasons why -- in my 14 months as the Acting  
3 Director of NIOSH, the reason why this green jobs issue  
4 was so compelling for me in part was because we know a  
5 lot in occupational safety and health that can be lent  
6 to consider worker safety and health. It wasn't so much  
7 that a whole new initiative was needed. We certainly  
8 would take new money wherever it comes from. But we've  
9 learned a lot over the years not only in construction,  
10 but in other phases of worker safety and health that  
11 could be lent to green jobs readily, just applying it.

12 We know -- we know about lanyards, we know  
13 about safety for workers that was completely divorced  
14 from what was going forward in this juggernaut that is  
15 green jobs, in all aspects of it. And so that was the  
16 impetus for me, in part.

17 But, no, there -- so the research-to-practice,  
18 making certain that information doesn't sit idle in a  
19 journal article or idle in some sort of a -- proceedings  
20 documents, but rather, gets out to the people that need  
21 it, is a key thrust, but not necessarily with additional  
22 money.

23 MR. SHANAHAN: Okay.

24 (Inaudible.)

25 MS. SHORTALL: Mr. Chair, what I'd like to

1 do at this time is mark as Exhibit 2 in OSHA docket OSHA  
2 dash 2010 dash 0014, a PowerPoint presentation on NIOSH  
3 construction programs presented by Dr. Christine  
4 Branche.

5 CHAIR MIGLIACCIO: Done.

6 DR. BRANCHE: Mr. Chair, I would just  
7 offer that I've already spoken with Mr. Buchet about my  
8 offering a .pdf version of my PowerPoint. I think it  
9 would be easier in storage and so forth.

10 CHAIR MIGLIACCIO: Thank you. Thank you  
11 very much.

12 At this time, Dr. Goddard?

13 DR. GODDARD: Chairman, Counsel Shortall,  
14 Members, thank you for having me over. It's my pleasure  
15 to share information with you every opportunity that we  
16 get.

17 As you all know, or for those of you that may  
18 not know, I'm the Director in the Directorate of  
19 Evaluation and Analysis, and we do a lot of work in  
20 construction developing targeting list. So a lot of  
21 what we do in construction involves data collection. In  
22 terms of ARRA, we recently selected 20,000 data  
23 elements -- oh, Steve. How are you? Fine. Nice to see  
24 you. Haven't seen you in a while. Sorry. Old friends.  
25 We go way back.

1                   CHAIR MIGLIACCIO: State your name.

2                   DR. GODDARD: Keith Goddard. I'm the  
3 Director in the OSHA Directorate of Evaluation and  
4 Analysis. And again, my pleasure to be here.

5                   What I want to offer to you -- and I'll get to  
6 the additional data that I was just alluding to.

7                   What I want to offer to you is the opportunity,  
8 beyond this presentation -- this is sort of just data  
9 that I'm going to present to you in terms of the  
10 distribution of our inspections among highway-building,  
11 different SICs, you know, in terms of tighter  
12 construction, renovation, and where we've been seeing  
13 the ARRA projects and distribution in terms of how --  
14 state versus federal, how we've been inspecting those,  
15 and the timing as they went from shovel-ready to  
16 actually getting good hits on the (inaudible) website  
17 we've developed.

18                   So what we have developed is a prep system  
19 where we (inaudible) office is going. We use Dodge  
20 information through the University of Tennessee and the  
21 area office of (inaudible) randomly select a list of ten  
22 projects, and we flag them as being shovel-ready or  
23 started.

24                   So initially, we weren't getting the hits at  
25 all because a lot of these projects over the winter

1 never kicked up. And we got better hits as time went  
2 on, and I'll share some of those statistics with you.

3 Before I get into the presentation, I want to  
4 (inaudible) make you want to go through MICA (phonetic)  
5 any time to get expanded data, the offer is here, not  
6 just about ARRA, but construction in general. And so  
7 I'm at a little bit of a disadvantage, because I'm not  
8 sure what Dr. David Michaels has said with you, said --  
9 you know, what he's offered you or talked about in terms  
10 of his priorities, but I'll stay within what's -- what  
11 we're doing now and make adjustments as requested.

12 So if we could get started right away. We  
13 started ARRA inspections in 2009, and the Agency goal  
14 was to complete 2200 federal jurisdiction in fiscal year  
15 2010. The targeting methods are left at the regional  
16 level. When I say "at the regional level," that's what  
17 I was alluding to when I say that we provide that  
18 mutually randomly-selected list from the Dodge, and then  
19 the Area Director, based on his resources, how many  
20 complaints, how many -- how he's dividing up his  
21 resources, would choose from that top-ten list, and then  
22 I'll give him another top ten and refresh the list, so  
23 he stays within our corridor of randomly-selected  
24 neutral sites.

25 So this is not for our program. This is

1 program-inspected sites that we offer. So like I say,  
2 Dodge, if you go recovery dot gov, you can get a lot of  
3 ARRA information. That's where you can find our  
4 sources. And we use a lot of local reports as well.  
5 You know, most ARRA jobs have a requirement to put up  
6 signage. Unfortunately, a lot of it is paving, and  
7 we're not going to get much out of paving, but we use  
8 the local knowledge and news reports, as well, to  
9 determine where we might get lucrative inspections.

10 Construction inspections from May through  
11 March 2010: We've done 21,933 federal and 21,194 in  
12 state plan. That's overall construction inspections.  
13 We've done just about a thousand through March and 300  
14 in states -- federal and state in terms of ARRA.

15 In the federal jurisdiction, construction  
16 inspections through the same period, percent violations:  
17 67 percent have been all construction, with 83.3 percent  
18 violations cited as serious in all, with 69.8 for ARRA  
19 and 46 percent general.

20 So we've been getting pretty good hits in all  
21 construction. I don't think the ARRA is representative  
22 to draw some conclusion from the small differences that  
23 we see here between ARRA and general construction  
24 inspections.

25 Federal jurisdiction construction inspections

1 during the period. This is for specialty trades 17, 16  
2 would include the highway paving jobs we're doing, and  
3 15 would be building construction. And this is the  
4 distribution between what we're doing in general  
5 construction inspections as well as ARRA inspections in  
6 the darker navy blue. FYI, that's for your information  
7 by SIC code.

8 Like I mentioned before, we have quite a bit of  
9 the ARRA. You'll see SUMA (phonetic) talks about that  
10 is in paving, but -- you know, that on flagging and  
11 paving wouldn't be one that we would typically go after  
12 in terms of getting good hits for inspections.

13 The project characteristics, as defined by  
14 Dodge: There are 20,271 projects that have been  
15 identified as of March 2010. Of these, 11,000 are  
16 considered to be started. So like I said, we're getting  
17 better hits now. We have 11,000 that are actually  
18 active.

19 One of our challenges when we go through  
20 Tennessee is to determine where we are in the progress  
21 of the job. You know, we don't want to come in when the  
22 grading's going on if it's a new construction project,  
23 or when finishing is going on when they are hanging  
24 Sheetrock and painting. But you want to get that sweet  
25 spot where most of the trades are there, they're active,



1 and that's where the hazards are that need to be looked  
2 at.

3 So unfortunately, 17,000 are alterations or  
4 renovations. That makes it particularly difficult to  
5 get to the sweet spot. 3,000 are new construction.  
6 Those would be the ones that we would apply our  
7 economic -- econometric model that we use in Tennessee  
8 to determine, based on a start-to-finish, the dollar  
9 value, exactly when would be the most appropriate time  
10 to get most of the activity.

11 And approximately 1,500 new projects are  
12 identified each month. So we continue to add to our  
13 C target list.

14 In terms of the distribution that I've been  
15 linked to since I began, there are 4,000 in paving --  
16 this is the characteristics identified by Dodge -- 830  
17 in 1- to 3-story buildings; bridges are significant,  
18 730; military facilities; and water line work, where we  
19 would be looking for trenching violations.

20 In terms of the characteristics identified by  
21 Dodge but for project owner, we have quite a bit in  
22 government, federal and local. We have 1,500 in the  
23 military; 440 private; and an overwhelming distribution  
24 of state government spending, which is -- sort of fills  
25 into the theory of ARRA in terms of having state

1 projects and having money flow to the states from the  
2 federal government, about 6,486 projects identified.

3 When I say "state government," that doesn't  
4 necessarily just mean state by state, it's always state  
5 governments, even federal states as well.

6 So if you have private contractors working  
7 there, we would have jurisdiction over them; in other  
8 words, funded by a state government in a federal state.

9 I think that -- that's what we've been doing so  
10 far in ARRA. I want to divert a little bit and talk  
11 about what I've been doing in ARRA; and what I want to  
12 say is that when the whole ARRA thing began, we -- my  
13 directorate had some funding to collect some data on.  
14 This is where I want to hear from you guys a little bit.

15 We, at the end of the year 2009, collected  
16 20,000 data elements in construction. As you know, in  
17 our OSHA designation, we collect 80,000 -- we've been  
18 doing this for 15 years -- 80,000 elements annually from  
19 general industry. Construction has always been  
20 difficult in terms of sites versus establishments, fixed  
21 establishments. But this year, we used some ARRA  
22 funding to collect 20,000 data elements from  
23 construction contractors' home offices, okay?

24 Right now, I'm at a little bit -- I'm sort of  
25 rushed, but my next step, now that I have this data, is

1 two-fold. I have two steps: One is where we are going  
2 to probably program -- come up with some threshold --  
3 this is our mission for this year, take a cut-off  
4 threshold and take the -- those with the higher rates.  
5 Because we have the actual rates. We have the name and  
6 address. It's not like the BLS where it's just SIC code  
7 15 and I didn't know where you are. I know which ones  
8 are generals, which residential. I know -- I have your  
9 home office.

10 So we'll come up with a threshold. And I've  
11 been working with the Office of Construction and  
12 Enforcement to do -- we're looking at doing like 700 --  
13 cutting off under 700 inspections as part of our overall  
14 inspection program for 2010, and do an additional 200,  
15 so about 900 inspections, is what we're looking at  
16 within the 40,000. Not additional, okay? But in the  
17 average annual of 20,000 inspections that we do annually  
18 in construction.

19 I think the most important step -- that is not  
20 just selecting the data and targeting and doing the  
21 inspections, but coming up with some sort of analytical  
22 methodology for use of the data. Because unfortunately,  
23 this is a one-time spending. I've spent quite a bit of  
24 money getting these 20,000 data points. And I'm sitting  
25 there looking at them. My first step is going to be how

1 to target 750 of them initially, and then another 200.  
2 My next step is, how can I use this analytically to be  
3 of some use in the future?

4 And I look at this and tell -- take some BLS  
5 data and sort of compare them. As a one-time spending,  
6 it's -- I'm a little bit of a disadvantage to use this  
7 productively to come up with some methodology for future  
8 targeting, future interventions, not necessarily  
9 (inaudible) recurrence.

10 So I put that on the table to you. I have this  
11 huge dataset -- huge, very expensive dataset that I've  
12 gathered, 20,000 at the most. And I put that on the  
13 table to you if you want -- if you-all want to run  
14 suggestions through my -- I don't want to just make it  
15 publicly available yet. As you know, through open  
16 government, we put all our -- all the data for  
17 establishments on the web. It's publicly available.  
18 Eventually, these 20,000 will be become publicly  
19 available as well. But you can go on the web and look  
20 for open OSHA data and go back 15 years -- maybe it's 13  
21 years -- by establishment, their illness/injury rates.  
22 And we are publishing employment as well. So you could  
23 get the rates, and all that transfers in our  
24 transference initiatives under the new administration.

25 So I have that data out there, and I'll be open

1 to suggestion, if you want to think about it. I know  
2 that's not something you could just, on the spur of the  
3 moment, come up with. I just want to tell you that I  
4 have that out there. And I think this committee  
5 actually has some useful input, could have some useful  
6 input. I would be really happy to hear from you all if  
7 you had some ideas about how I could go about using  
8 this.

9 CHAIR MIGLIACCIO: Liz?

10 MS. ARIOTO: Are you going to continue to  
11 use the Dodge reports in the future for assistance to  
12 your targeting?

13 DR. GODDARD: Currently, I use? Is that a  
14 loaded question?

15 MS. ARIOTO: That's a loaded question.

16 DR. GODDARD: Yes, it is, isn't it? I --  
17 the Census of the United States of America says that  
18 that's the best information out there for construction  
19 activity.

20 MS. ARIOTO: Thank you.

21 CHAIR MIGLIACCIO: Walter?

22 MR. JONES: I'm not sure, maybe, if you  
23 are the one to ask -- that I should ask this to, but I  
24 wanted to draw down on a couple of things you just  
25 talked about, this expanded data and this targeting.

1           A lot of times in construction, as you just  
2 mentioned, you want to go in and note -- if you're going  
3 to conduct inspections and you're targeting, you want to  
4 know where they're at in the process. You don't want to  
5 show up when there's just two people there or three  
6 people there. As importantly, in health issues, a lot  
7 of times in construction, they're referrals, you get a  
8 (inaudible) that shows up for safety. He observes a  
9 health issue. The next day, a health person comes out.

10           Are there any models being developed now by you  
11 folks, or is there a manner in which we can collect data  
12 where we can get a better idea on the staging of  
13 construction projects such that we can capture more  
14 health data on exposure issues when -- instead of going  
15 out on projects?

16           I don't know if I made myself clear.

17           DR. GODDARD: Yeah, very clear, because  
18 that's a current issue and a current problem. I  
19 mentioned to you that there were two local emphasis  
20 programs run out of Region 5 for ARRA construction  
21 projects. So ARRA has become an opportunity for us to  
22 be a little bit more (inaudible) than the general  
23 construction.

24           In fact, I was just going through one of the  
25 other pieces this morning, and particularly, they've

1 said: (Reading.) "That data information used to  
2 support the conclusions stated above, the (inaudible)  
3 code shows (inaudible) local emphasis programs to  
4 collect the number of health referrals made, number of  
5 violations related to employee exposures above the  
6 action levels, lead, silica and noise, number of  
7 violations related to employee exposure to (inaudible),  
8 number of employees exposed to Portland cement. Okay?

9 So in these local emphasis programs, we've  
10 made -- we've made a specific effort to get to some of  
11 these hard-to-reach violations to sort of build more  
12 data, like you suggest, on health violations in  
13 construction.

14 MR. JONES: As we find this data, are we  
15 developing a model -- because, like you say, a lot of  
16 this is a one-time shot, so are we developing a model  
17 that could be useful next year or, you know, in the year  
18 after that we can now follow to go after health  
19 violations? Because right now, I get the -- I feel in  
20 construction, that it's just not happening.

21 DR. GODDARD: I might not be at liberty to  
22 share the measures of the 2010-2016 DOL strategic plan,  
23 but there are construction health issues built into  
24 those, not just general industrial.

25 MR. JONES: So we're going to be looking

1 at ways to go in and look at some more health issues --

2 DR. GODDARD: The model --

3 MR. JONES: The models --

4 DR. GODDARD: -- for that period. Right  
5 now, I'm in the midst of developing base lines and  
6 targets for those measures.

7 MR. JONES: We'd like for you to come back  
8 and talk to us about that.

9 DR. GODDARD: That will become publicly  
10 available September 30th, 2010. It goes into action.  
11 But I don't ever preclude talking to an advisory  
12 committee to get your feedback while it's still fluid.  
13 April 30th is a huge milestone in terms of finalizing  
14 those measures. Illinois could be on here in  
15 construction.

16 MR. JONES: That's really important.

17 DR. GODDARD: Notice I said "could be."  
18 So April 30th, I will know.

19 So that's timing. If the chairman would wish  
20 to have me back at some point, is -- I'm (inaudible.)

21 MS. SHORTALL: I have a question about the  
22 20,000 that you mentioned. What's this 20,000? Did you  
23 obtain the OSHA 300 for them, or only the OSHA 300A, the  
24 summary?

25 DR. GODDARD: I got the 300 as well.



1 MS. SHORTALL: So the 300 would give you a  
2 little bit more data --

3 DR. GODDARD: Yeah.

4 MS. SHORTALL: -- than you would have  
5 under the summary, which might be helpful when garnering  
6 more data points about health issues as well.

7 DR. GODDARD: Yes.

8 MS. SHORTALL: Okay.

9 DR. GODDARD: Right now, I'm culling it,  
10 I'm sorting it. I'll have a column row data that I  
11 could (inaudible). If I got some input. I have my own  
12 ideas what I want to do with it, but it might be years.

13 CHAIR MIGLIACCIO: Susan?

14 MS. BILHORN: Two things -- thank you.  
15 Two things: One, I was following on Walter's comments  
16 that I think we might be able to -- I don't think it  
17 would hurt if you could expose us to these things before  
18 they come out, like --

19 DR. GODDARD: Okay.

20 MS. BILHORN: Because we can at least take  
21 a look at it, and that's kind of -- I understand it's --  
22 part of the intent of our committee is to give you some  
23 input representing a broad range of people. So we'd  
24 love to see what you're coming up with.

25 DR. GODDARD: So maybe when I organize the

1 data, if you like. When is your next meeting?

2 MR. BUCHET: We have to decide.

3 DR. GODDARD: Because this thing gels and  
4 turns concrete pretty quick. Right now, it's gelling  
5 already.

6 MS. BILHORN: Hopefully, we would have  
7 another one within three to four months.

8 DR. GODDARD: Yeah, okay.

9 MS. BILHORN: So that might provide a good  
10 opportunity.

11 DR. GODDARD: So two things you're talking  
12 about here: One is the strategic plan. I don't know  
13 how much liberty I have to share that with you, but I  
14 think it would be good if you knew what we were talking  
15 about in terms of reducing exposures of major -- because  
16 it may be public knowledge, but one of the potential  
17 measures out there is looking at fatalities in the fall  
18 groupings for the fall, hit by, struck by. So that's  
19 relevant to you, I'm saving base lines and topics for  
20 that now I would love to share with you in terms of what  
21 we're going to be doing, because that will drive our  
22 targeting. Okay?

23 And now we're going to be focusing a lot on  
24 (inaudible) and LEPs and those areas. And then what  
25 I'll do -- the other thing that we're talking about here

1 is the 20,000 and what I do with that dataset, which I'm  
2 at liberty to get input from you on after -- how we  
3 approach the (inaudible).

4 So I'll be more than happy, when I organize it,  
5 to bring the final level of detail to see what we have,  
6 what we've got. Because I'm really concerned that, you  
7 know, how -- the transient nature of employees in these  
8 firms. You know, I went to the head offices and got  
9 this data, but every six months, they could be going,  
10 picking on them, dropping, falling off their employment.  
11 I'm not sure how I could use this at (inaudible) by  
12 recommendation or what other findings might be. But  
13 I'll organize it and then we'll talk about it.

14 MS. BILHORN: So do we need to make a  
15 motion to ask that to be on the agenda for next time, or  
16 can I just --

17 MS. SHORTALL: I don't think you probably  
18 need -- I think the Chair is hearing the issue, and  
19 he -- he works with OSHA's DFO to set the agenda.

20 MS. BILHORN: Now, and the other thing  
21 was, you know, it's a -- the information you're  
22 presenting here is interesting. It's just the tip of  
23 what appears to be a huge iceberg, just looking at the  
24 616 and recognizing that it's over 50 percent --  
25 54 percent versus 9 percent for ARR jobs, and 616 are

1 showing up with violations. Is it just, you know, as --  
2 it just introduces, you know, a slew of other questions.

3 DR. GODDARD: Yes.

4 MS. BILHORN: And I don't know if the data  
5 answers it or not, but questions (inaudible.) So like  
6 are -- while the violations are being seen, are we  
7 finding any, you know, extensive number of injuries? Is  
8 there a greater injury rate or not? You know, is --  
9 question as to how those are being -- those contracts  
10 are -- what kind of safety requirements are in the --  
11 those contracts. I mean, it's just like -- you know, I  
12 think we could probably come up with 120 questions.

13 DR. GODDARD: So the LEPS ask for the  
14 three years when they go on an ARRA inspection, and they  
15 also ask for the safety and health programs the  
16 contractors would have. But then -- how many did I tell  
17 you, about 100 -- 1,068 were done federally and 300 in  
18 the state? That's just sitting there. That data  
19 doesn't become useful until I start thinking in terms of  
20 baselines and how I target the 700. Maybe I'll go back  
21 in there and start looking -- asking some of those  
22 questions so that I have some rationale for saying,  
23 "Okay. I didn't just use a cut-off threshold, but I was  
24 looking at these violations, and we found out the LP and  
25 NP to make some educated decision as to why we chose to

1 go through those establishments and those employers."

2 MS. BILHORN: Because I understand the  
3 ARRA is a blip in the screen, and it's only going to  
4 last for a certain period of time, presumably, right?

5 DR. GODDARD: Yes.

6 MS. BILHORN: But we are collecting data  
7 in a more -- in a fast period of time, so I think there  
8 are things that come up there will -- that I think we'll  
9 be able to see things that can help us in the future,  
10 regardless of whether it's ARRA or New York or not. I'd  
11 just love to see us mine that information.

12 DR. GODDARD: Yeah, I think the 20,000 was  
13 a great opportunity to get the funding to collect it.  
14 And the thing about this business that we're in, I don't  
15 think it just -- other than because of the economy, that  
16 you see drastic shifts in the number of types of  
17 hazards. We know what the hazards are there. There are  
18 new emerging hazards, but we have a good sense.  
19 Capturing from one year doesn't say that the last 30  
20 years have been different, or last 10, coming future are  
21 going to be that much different. We might be able to do  
22 some work with that, looking at BLS data that's coming  
23 in to draw some conclusions and inferences. It's --  
24 it's more than one year's worth of data, anyway, I think  
25 you could do with it.

1 MS. BILHORN: The only differences are the  
2 speed at which some of these projects are being -- and  
3 the time frame that these are being let, you know, that  
4 it may make decision-making, selection of contractors,  
5 for example, different. And it also may mean there's a  
6 different population that is in the workforce in terms  
7 of their capabilities, et cetera. Because some of  
8 the -- it is a higher peak of the kind of work that  
9 often has been considered or demonstrated to be more  
10 hazardous as well. Some civil projects, et cetera.

11 DR. GODDARD: Yes. (Inaudible.)

12 MS. BILHORN: But I think it just -- it's  
13 the tip of an iceberg. It's got to be very interesting  
14 to see what more can come out of that information.

15 DR. GODDARD: Okay.

16 CHAIR MIGLIACCIO: Any other questions?  
17 Matt?

18 MR. GILLEN: I just had one question.  
19 Thanks for the presentation.

20 I noticed you used the SIC codes for the  
21 industry organizations, and I wondered if you used the  
22 NAICS code, the National Industry Classification System,  
23 because BLS, the injury data is (inaudible) or is there  
24 obstacle for you to do that?

25 DR. GODDARD: That's an interesting way to

1 describe it, an obstacle. Why don't you look at the --  
2 a lot of the regulatory agenda coming up in the next  
3 week so we can see something in that data that might  
4 talk about that.

5 MS. SHORTALL: Can I add something here  
6 about the NAICS code? The NAICS code has been  
7 particularly good at giving us more detailed data in the  
8 manufacturing industry, but in some of the non-  
9 manufacturing sectors, instead of it becoming more  
10 helpful, they group together items into codes. So it's  
11 very difficult to find out or really figure out what the  
12 injuries and illnesses are, you know, what group they're  
13 attributable to.

14 I'll give you example. Used to be that the  
15 tree care industry and landscaping were two different  
16 SIC codes, and now they're put into one. So how do you  
17 know? Did you get hurt when you were cutting the grass  
18 or did you get hurt because you, you know, fell out of a  
19 tree? Now, that would be a little bit more  
20 distinguishable. But it's very difficult. Sometimes  
21 the older data on certain types of industry ends up  
22 being more discrete than the NAICS code data does,  
23 because the NAICS code was looking primarily at  
24 manufacturing.

25 MR. GILLEN: Bottom line is, the injury

1 data is kept that way. It's according to NAICS code, so  
2 it makes comparisons.

3 MS. SHORTALL: It is kept that way, but if  
4 you have groups to -- if you have several groups put  
5 together and there's no way of distinguishing, you don't  
6 know what group within that sustained the injury. And  
7 in some types of injury and illnesses, you might be able  
8 to assume or make predictions, but in others, it becomes  
9 very difficult.

10 So I know our economists, as a result,  
11 sometimes do try to look at the SIC code, because it can  
12 provide more discrete data so they don't end up either  
13 overestimating or underestimating the projections and  
14 estimates that they have to make.

15 DR. GODDARD: We use both right now, and I  
16 think you're going to see -- we're probably one of the  
17 last agencies that actually talk in terms of the SIC  
18 codes anymore. Everybody else is going to NAICS.

19 But in the preamble of the record-keeping rule,  
20 the old record-keeping -- it's been in there all along,  
21 that would include from NAICS, from SIC to NAICS, so  
22 it's (inaudible).

23 MR. SHANAHAN: Tom, just a short question  
24 with regard to the SIC. Then in 15, 16 and 17, there  
25 are a lot of subcategories, so did I hear you correctly



1 that that's all broken out in the data itself or is it  
2 just lumped?

3 DR. GODDARD: Those categories right now,  
4 we have them lumped into those categories.

5 MR. SHANAHAN: Is it possible to get the  
6 (inaudible) --

7 DR. GODDARD: Yeah, for special entries  
8 and 16 and 17, we can bring it up because we know what  
9 highways are, we want them to succeed.

10 MR. SHANAHAN: And 17 has a whole slew of  
11 different (inaudible) --

12 DR. GODDARD: Yeah. Right, right. But we  
13 haven't done -- like this is -- this is the front end of  
14 on what we do, inspections. You know, it's not the --  
15 (inaudible), which we want to do a little bit more.

16 MR. SHANAHAN: I was getting to Susan's  
17 point about the tip of the iceberg, trying to mine that.  
18 That would be helpful, I think, to be looking at some of  
19 this stuff.

20 CHAIR MIGLIACCIO: Any other questions?  
21 Sarah?

22 MS. SHORTALL: Yes, Mr. -- I would like to  
23 mark as Exhibit 3 the PowerPoint presentation, a data  
24 overview on the stimulus-funded work by Keith Goddard,  
25 Director of Evaluation Analysis.

1 DR. GODDARD: Thanks for the opportunity.

2 MS. SHORTALL: Thank you.

3 CHAIR MIGLIACCIO: Thank you, Dr. Goddard.

4 (Applause.)

5 CHAIR MIGLIACCIO: All right. We're just  
6 checking on our next people right now.

7 Don't forget, for the public comments, please  
8 sign up in the back of the room so we have public  
9 comment.

10 Okay. What we're going to do now is, we're  
11 going to take a 15-minute break. It's 5 after now.  
12 Please be back at 20 minutes after.

13 (Short break 10:05 to 10:20 a.m.)

14 CHAIR MIGLIACCIO: At this time, I'd like  
15 to invite Lee Anne Jillings -- she's the Deputy Director  
16 of Cooperative and State Programs.

17 MS. JILLINGS: Sure. Good morning. Lee  
18 Anne Jillings, the Deputy Director and the Director of  
19 Cooperative and State Programs, and I'm happy to be here  
20 this morning to give an update on the Agency's  
21 cooperative program activity, as well as information on  
22 some state program activity as well.

23 As of the 31st of March -- I'll give you some  
24 information on the status of the Agency's various  
25 cooperative programs. As of March 31, we have 2,348

1 active VPP sites and federal and state jurisdiction;  
2 1,548 SHARP sites -- these are sites that are recognized  
3 by the Agency's on-site consultation program. They're  
4 typically small businesses in high-hazard industries.  
5 We have 378 alliances, 228 Challenge program  
6 participants and 137 OSHA Strategic Partnership  
7 Programs. So that kind of sets the stage for activity  
8 in the programs right now. And I'm going to talk a  
9 little bit about particular issues related to these  
10 programs in my presentation.

11 The Alliance Program, you are -- I'm sure, I  
12 think we've talked about this before at ACCSH meetings,  
13 we, this last summer, conducted as part of our overall  
14 Agency review of cooperative programs and their  
15 implementation, we conducted a review of the Alliance  
16 Program last summer to identify alliances that, one, are  
17 meeting the goals and are supporting the initiatives of  
18 the current administration; and then also, those that  
19 were not doing so. And after this review, more than a  
20 hundred regional and office area alliances were  
21 concluded. We've also concluded several national  
22 alliances. But as you heard, we still have over 300  
23 that are meeting their objectives and supporting the  
24 initiatives the Agency now is focusing on.

25 As of the end of March, there are 13 national

1 alliances that focus on construction issues, and we're  
2 very pleased to announce that next Monday, the 19th,  
3 OSHA Assistant Secretary, Dr. David Michaels, will sign  
4 the renewal of the OSHA National Homebuilders  
5 Association Alliance, which has been in place for a  
6 number of years now. We're very pleased that that  
7 renewal will take place in Washington next week.

8 We anticipate additional national alliances  
9 will be renewed as well as the development of new  
10 national alliances in the coming months ahead.

11 As we -- as I mentioned, we have been reviewing  
12 the program and are aligning it with the OSHA priorities  
13 at this time, specifically looking to increase the role  
14 and the focus of alliances in addressing workers' voice  
15 in the workplace and providing safe, secure and healthy  
16 workplaces.

17 We'll be looking at how we can insure an  
18 increased worker involvement in the development and  
19 implementation of the alliance agreements and including  
20 the project work groups as they proceed with meeting the  
21 agreement goals and objectives.

22 And we're going to continue to look at our  
23 alliances as effective vehicles to help the Agency reach  
24 into local communities and provide employers, community,  
25 worker groups with training access, products and

1 services, especially for those hard-to-reach workers.

2 The Alliance Construction Round Table continues  
3 on. This group, you may recall, began in 2004 at the  
4 suggestion of the construction-related alliances at the  
5 time to bring the like-minded industry participants  
6 together to focus jointly on construction-related  
7 products and projects.

8 The fall protection design for safety work  
9 groups were established and continued to meet. We have  
10 several projects under way out of these work group  
11 efforts. We anticipate finalizing six construction  
12 workplace design solution documents. Topics that will  
13 be addressed in these includes skylights, parapets, roof  
14 edges, roof hatch access and non-moving vehicles.

15 We're also looking to finalize construction  
16 workplace design solution documents, and both of these  
17 documents will be included with the other Alliance  
18 Program, participant-created products on our webpage, on  
19 the OSHA website.

20 We're also looking to finalize Prevention of  
21 Strains, Sprains in Material Handling Industries and  
22 Construction slide presentation, and a toolbox talk on  
23 this topic as well. These should be finished in the  
24 early summer and will also be added to the Alliance  
25 Program product participant webpage.

1           The next meeting, we are hoping for the  
2           Construction Round Table to get together sometime in  
3           early summer. We're working on finalizing a date and  
4           the details of an agenda. That information will be  
5           coming out soon.

6           And again, we are pleased to have the Alliance  
7           Program be one of the vehicles to support the efforts of  
8           this Agency to address worker safety and health in the  
9           construction industries. And it certainly continues to  
10          be part of the Agency's efforts to support Labor  
11          Secretary Hilda Soliz' focus on good jobs for everyone.

12          And to end, I want to talk a little bit more  
13          about some of our other cooperative programs. The VPP  
14          is still being a supported program within the  
15          administration. It's a valuable component of what OSHA  
16          does. It's important to recognize those companies that  
17          go above and beyond safety and health practices in the  
18          workplace and serve as a model to other employers here  
19          in this country.

20          One of the issues the Agency is faced with,  
21          however, is limited resources; and to that end, the  
22          Agency is seeking alternative-funding vehicles to  
23          support the VPP program. And those discussions are  
24          ongoing, and we are engaging with our stakeholders to  
25          identify alternate and innovative funding sources for

1 VPP.

2 The VPP, you may recall, about a year and four  
3 months ago, we had a couple of changes to the programs  
4 that were announced in the Federal Register. These are  
5 ongoing right now, being implemented as of last May.  
6 And basically, the Federal Register notice in January of  
7 2009 announced three ways to participate. Now in the  
8 VPP, there's a mobile workforce option; a site-based  
9 option, which is the traditional one of many years; as  
10 well as the corporate process for application.

11 And the mobile workforce option in particular,  
12 I know, is of interest to those in the construction  
13 industry, and we've seen considerable growth in  
14 construction participation in this program effort. In  
15 2008, for instance, there were 40 -- actually, 2007,  
16 there were 18 participants in mobile workforce. This  
17 rose up to 40 in 2008, and as of March 31 of this year,  
18 there are 45 participants in OSHA's mobile workforce  
19 construction effort. And we anticipate this -- you  
20 know, this effort continuing to draw lots of interest.

21 The VPP corporate approach, this is designed  
22 to -- as one of the avenues for the Agency to facilitate  
23 participation within companies that have multiple work  
24 sites that are interested in pursuing VPP to streamline  
25 their application review process somewhat. And

1 currently, we have a number of participants in VPP  
2 corporate, several of which are in the construction  
3 industry which I'll name now: the Washington division of  
4 URS, Fluor Corporation, Parsons Corporation. In  
5 addition, Jacobs had an on-site review last autumn, and  
6 we are looking forward to that approval being sent  
7 forward shortly.

8           One of the other areas that I understand the  
9 committee is interested in is OSHA's Special Government  
10 Employee Program. This program was begun in 1994, at  
11 the time as an avenue to enhance the ability of OSHA to  
12 have VPP sites continue to be -- to grow the number of  
13 VPP sites, and participants continue to grow while also  
14 looking at seeking alternate or innovative ways to have  
15 the on-site teams staffed. Special government employees  
16 are individuals who are qualified safety and health  
17 professionals and industry employees at VPP companies or  
18 their work sites. They go through a training program  
19 and have a number of other requirements that they have  
20 to meet to get in to become a special government  
21 employee.

22           Currently, there are over 1,100 active special  
23 government employees in this country, and 77 percent of  
24 VPP on-site evaluation teams include at least one  
25 special government employee. So we see this as



1 something that's been helpful over the years to staff  
2 and implement the program from the on-site review aspect  
3 of it.

4 Last June, the general -- Government  
5 Accountability Office issued a report on the VPP, and  
6 the key results of the study found that the VPP has  
7 steadily grown since 1982; however, the -- it identified  
8 several areas which OSHA's internal controls could be  
9 strengthened to ensure the quality and qualifications of  
10 participation and also operational consistency for the  
11 Agency.

12 And as a result, OSHA has issued not only a  
13 Statement of Executive Action to the GAO in response to  
14 the study, but also has issued a series of  
15 administrative memorandums which have outlined measures  
16 that the Agency is moving forward to address the  
17 concerns raised by the GAO.

18 These actions include enhanced oversight of  
19 OSHA's fatalities and significant events when they occur  
20 at VPP sites, procedures to follow when VPP sites no  
21 longer meet program requirements, improved processes for  
22 obtaining medical access orders in advance of a VPP  
23 on-site being conducted, as well as eliminating modified  
24 application processes that were being instituted -- or  
25 implemented, rather, in the field.

1           So we're continuing as an ongoing effort to  
2 look at how we can improve the VPP program  
3 administration as part of our overall efforts.

4           OSHA Challenge: This is a pilot program. It's  
5 a three-stage road map which is designed to help  
6 employers' work sites effectively implement -- develop  
7 and implement a safety and health management system.  
8 There are two tracks: There's a general industry track,  
9 which currently has 113 participants, as well as a  
10 construction track, which currently has 115  
11 participants.

12           We have identified more than 120,000 workers  
13 who have been impacted since this pilot began; and as of  
14 the 31st of March, we have 27 administrators, 122  
15 coordinators and over 100,000 active workers who are  
16 being impacted by the Challenge process.

17           37 percent of Challenge Program participants  
18 are unionized, and we've seen many of the participants  
19 in Challenge who have graduated, have chosen to go on to  
20 participation in other OSHA-recognition programs.

21           So this has been a wonderful avenue for the  
22 Agency, using minimal resources, given that these are  
23 third-party administrators who actually work with these  
24 work sites to develop and implement their safety and  
25 health management system to foster and encourage

1 advancement of worker protections in the workplace.

2 OSHA Strategic Partnership Program: This  
3 program also has undergone a recent review by the  
4 Agency. We're right now going over the responses that  
5 we've received from the -- not only the national office  
6 review, but also the regions and area offices as they  
7 looked at -- similarly to their alliances last fall,  
8 they've recently looked over their Strategic Partnership  
9 agreements. And we anticipate out of this finding some  
10 avenues to further strengthen the Strategic Partnership  
11 Program.

12 As of March 31, there are 634 partnerships that  
13 have been formed since this program began. 142 are  
14 currently active, 137 at the regional level and 5  
15 National Strategic Partnerships are in place. So we  
16 continue to see that program being of benefit. And  
17 also, we found that many of these partnerships,  
18 especially out in the regions and area offices, are ones  
19 that impact the construction industry. And so we see  
20 that as a -- a continuing positive trend.

21 Finally, I want to talk a few minutes about  
22 OSHA state plan activities. In fiscal year 2009, the  
23 total of just over 61,000, 61,016 inspections were  
24 conducted by OSHA state plan states. Of those,  
25 79 percent were safety-related inspections, and

1 21 percent were health. Just over 129,000 violations  
2 were issued out of these inspections; and of those 129,  
3 363 violations that were issued. Forty-three percent of  
4 those were serious.

5 And so that's our fiscal year '09 data. We  
6 don't have anything for fiscal year 2010 at this time.

7 An issue that I understand the committee was  
8 interested in was state plan area grant activity, so  
9 I'll touch on that briefly before I conclude.

10 All state plans are encouraged to inspect  
11 ARRA-funded projects and related industry. However,  
12 only seven states last year accepted the additional  
13 funding that was provided for this purpose. The purpose  
14 of the funding was to support enhanced enforcement  
15 efforts at ARRA-funded construction, infrastructure and  
16 green industry projects and related manufacturing  
17 support industries. The period for this enhanced  
18 enforcement effort was to begin on July 1st, 2009 and go  
19 through September 30 of this fiscal year, 2010.

20 The funding that was initially made available  
21 to the 26 state plans -- this was prior to Illinois'  
22 final public-sector approval program -- was  
23 3.75 million, and as I mentioned, seven of the state  
24 plans accepted a total of 1.5 thousand -- just over  
25 1.5 million, rather, dollars. Those seven states were

1 California, Michigan, Minnesota, New Mexico, New Jersey,  
2 Oregon and Tennessee. These were equally matched funds.

3 The -- April 22, 2009, all states, including  
4 those that did not accept ARRA funding, were asked to  
5 code ARRA inspections and outreach and technical  
6 assistance activities. So whether or not a state  
7 accepted the money, they were asked to track activities  
8 related to ARRA efforts.

9 As far as what kind of reporting the seven  
10 states that did accept the money are required to do, it  
11 is quarterly reports following each quarter within 10  
12 calendar days. And the reports cover ones that go to a  
13 centralized -- federalreporting.gov, it's a centralized  
14 website. They also are required to turn in financial  
15 status reports on how they're spending the monies; and  
16 then finally, they submit, in a narrative program  
17 report, additional description of their activities.

18 The regions conduct quarterly financial and  
19 program monitoring of grant recipients. These include  
20 at least two on-site visits. So what is the inspection  
21 status that we've seen so far? Seven recipients, the  
22 seven states that took the monies, they projected 1,223  
23 inspections. As of March 31 of this year, recipient  
24 states have coded and conducted 674 inspections and 207  
25 no inspections.

1           Since approximately 734 inspections were  
2 projected through March 31, the states appear to be on  
3 track at this time. Many recipient states have  
4 experienced challenges in identifying and verifying  
5 sites with ARRA funding, as well as active sites, among  
6 those identified. I think this is a common problem,  
7 actually, across the country.

8           And as of March 31, only nine non-recipient  
9 states -- these are nine states that did not take  
10 money -- had conducted and coded 146 inspections and 37  
11 no inspections.

12           We also have some updates that two of the  
13 states that had initially taken -- accepted funding for  
14 ARRA are de-obligating money. And California and  
15 Tennessee will be -- have informed the Agency that they  
16 will be de-obligating just over \$444,000. Tennessee is  
17 no longer participating at all, whereas one recipient,  
18 Oregon, they accepted an additional \$75,000 to support  
19 their efforts in ARRA activities.

20           And that concludes my report on the activities  
21 of Cooperative and State Programs. If there are any  
22 questions, I'd be happy to take those at this time.

23           CHAIR MIGLIACCIO: Questions? Liz.

24           MS. ARIOTO: Yes, Liz Arioto. Thank you  
25 very much for your presentation. It was very good.

1           I do have a -- you mentioned one thing, that  
2           there was more involvement with the union contractors  
3           compared with nonunion. It was like -- am I correct on  
4           what you said on that?

5           MS. JILLINGS: In --

6           MS. ARIOTO: Programs or VPP programs?

7           MS. JILLINGS: No, in the -- in the VPP,  
8           there's approximately -- overall, about 35 percent of  
9           the work sites that are in VPP have union  
10          representation. Many of those work sites that have  
11          union representation are quite large, so the overall  
12          percentage of workers covered by VPP which are unionized  
13          is actually higher than that figure.

14          MS. ARIOTO: Are you working on getting  
15          any more involvement with nonunion contractors to be  
16          involved with these programs?

17          MS. JILLINGS: Outreach in general through  
18          our cooperative programs is more focused on targeting  
19          how we can support especially high-hazard industries and  
20          those that are identified as areas of emphasis within  
21          the Agency's plans going forward, so we don't  
22          individually target, per se, but certainly, as those --  
23          not necessarily in VPP, but in our other programs, our  
24          Strategic Partnership Program, our Alliance Program, as  
25          they come in, we're going to be looking for ones that

1 help us best reach workers in the front line and provide  
2 resources to support them.

3 MS. ARIOTO: Thank you.

4 HEARING OFFICER: Walter?

5 MR. JONES: Hi, Walter Johnson. I'm not  
6 sure if you were here for my comments to Dr. Michaels,  
7 but -- on the VPP program, but as I understand it, VPP  
8 has always been about signing up the best of the best  
9 for the great work that they've been doing reducing  
10 injuries and keeping a safe work site.

11 Is there a -- as the program evolves, is there  
12 a development of a -- a more global vision of VPP, where  
13 it can become a laboratory of best practices upon which  
14 we can then spread throughout the rest of industries?  
15 For instance, if we can use -- since these are the best  
16 of the best and they're going beyond OSHA minimum  
17 requirements -- OSHA statutory requirements, and most of  
18 their safety and health practices are best practices  
19 throughout industry, if we can use these companies  
20 and -- as a laboratory of what works and what doesn't  
21 work, what's efficient and what's not efficient, what  
22 makes sense in terms of cost and what doesn't, you know,  
23 how preplanning -- you know, most of these folks that  
24 are in VPP, they go through -- they design their  
25 projects out ahead of time. They design controls into



1 just about every task. They do preplanning. They do  
2 pre-jobs, JSAs, they do lots of different things to  
3 create a safe work site.

4 Is there any thought in your office about how  
5 we could take all of this wealth of information and  
6 begin to spread it out so that when we get to these  
7 other arguments about what the usefulness of preplanning  
8 or designing for safety or to the usefulness of toolbox  
9 talks, that these companies could then come in and say,  
10 "They are useful. They are efficient. They do save us  
11 money and that's why we are in the VPP program"?  
12 Besides just saying, "We're VPP and everything we do is  
13 proprietary."

14 MS. JILLINGS: Right. I think certainly  
15 one of the key -- the key attributes and things that the  
16 Agency recognizes VPP is important for is that it does,  
17 indeed, recognize models and provide the OSHA staff who  
18 are involved in the on-site as well as just general  
19 program implementation with access awareness to best  
20 practices that are being put in place by employers and  
21 by workers.

22 So to that end, it's a fundamental facet of the  
23 program. I think there are -- certainly one of the  
24 things that we're looking at is, how we can continue to  
25 expand and raise awareness of the model practices that

1 are identified by these -- by OSHA staff, whether  
2 they're on site, or by the employers. And that's  
3 something that, through our website, we try to post, you  
4 know, model practices, success stories, and we're always  
5 looking at avenues on how to further expand that  
6 awareness and sharing of information. I think that's  
7 something that --

8 MR. JONES: I think it's important that --  
9 because it's still somewhat controversial, and all  
10 these -- are we keeping it? Are we going to expand it  
11 or not? I think one way to get more support for your  
12 program would be to show how this is being -- I don't  
13 want to say a trickle-down to other industry, but it's  
14 important for you to show the viability of these  
15 practices and the reason for being a VPP.

16 MS. JILLINGS: Thank you.

17 CHAIR MIGLIACCIO: Tom?

18 MR. SHANAHAN: Tom Shanahan. Just had a  
19 question. You had mentioned -- you said that VPP is  
20 still supported, but you're looking for other alternate  
21 funding sources for that? I kind of wanted to get the  
22 context of that. That feels a little ominous. I was  
23 wondering what that meant.

24 MS. JILLINGS: Well, we're still exploring  
25 and considering multiple avenues of alternate funding,

1 nongovernmental funding mechanisms for it. It's still  
2 very early or preliminary review stages, but one of the  
3 things that -- that has been stated is public agent --  
4 OSHA, like other government agencies, is faced with  
5 limited resources, and the Agency intends to focus its  
6 limited resources on those employers that are in greater  
7 need of them due to their...

8 MR. SHANAHAN: So is there a concern of it  
9 not growing, as a result, or that the fund will be not  
10 there in the future?

11 MS. JILLINGS: So I think the Agency is  
12 looking at alternate funding vehicles in order to  
13 sustain the program further, but also recognizing that  
14 the Agency's resources that it has are limited --

15 MR. SHANAHAN: Right, right.

16 MS. JILLINGS: -- and wanting to direct  
17 them to avenues that it feels supports their -- the  
18 initiatives.

19 CHAIR MIGLIACCIO: Susan?

20 MR. GILLEN: Thank you, Miss Jillings.  
21 Susan Bilhorn.

22 One -- a follow-on to that, have you -- are you  
23 also considering different approaches that may actually  
24 relieve some funding needs? Now, thinking, for example,  
25 that -- and maybe you're already doing this, but because

1 the VPP program is something that looks more broadly at  
2 safety, not just necessarily violations, it's how  
3 management is framed, how you've been engaging  
4 employees, et cetera, some of your inspectors going  
5 through that process to get a greater awareness of how,  
6 you know, real safety is done on sites, it would seem to  
7 me, would be a great educational experience to have them  
8 rotate through to bolster up their capabilities.

9           Also, in addition -- and just another thought,  
10 would be companies -- like I know our company, Jacobs,  
11 has -- has supported a push on things like going over to  
12 Ireland and talking to them about how they might do  
13 cooperative programs or (inaudible) program using other  
14 companies planted in -- and I understand there would be  
15 a -- a real need to look at that carefully, but there's  
16 a -- I think there would be a great advantage of having  
17 companies that are maybe in your corporate pilot  
18 programs or whatever, be able to be seeded in to support  
19 some of those VPP inspections, et cetera, or would  
20 certainly help those companies, as well as help other  
21 companies, from learning from each other.

22           MS. JILLINGS: I think the Special  
23 Government Employee Program is definitely one that is  
24 designed to have VPP safety and health professionals  
25 from VPP work sites go out and assist with the on-site

1 reviews of VPP facilities, both at the new and renewal  
2 stages.

3 I think your other idea is certainly one we'll  
4 take back and consider how we can -- how we can  
5 incorporate that into our review of the program.

6 CHAIR MIGLIACCIO: Any other questions?

7 (None heard.)

8 CHAIR MIGLIACCIO: Sarah? All right.

9 Thank you.

10 MS. JILLINGS: Thank you.

11 CHAIR MIGLIACCIO: At this time, we'll  
12 have Bill Parsons.

13 MR. PARSONS: Good morning, everyone.

14 Today I am the Acting Director for OSHA's Directorate of  
15 Construction.

16 (Laughter.)

17 MR. PARSONS: I'm glad you folks see as  
18 much humor in that as I do.

19 On April 4th, however, April 4th of last year,  
20 in this very hotel, we had a roofer fall off the roof  
21 and die. One year ago this month. He was working for a  
22 roofing company that was hired by this hotel, and the  
23 investigation revealed that he had fallen from one of  
24 the lower levels, a three-story portion of the  
25 structure, and suffered massive head injuries and died.

1 He was 28 years old.

2           Those are the kind of things that drive me.  
3 They're why I'm in the business, and I think they're why  
4 many of you are in the business as well. And I wanted  
5 to say that over the past several months, I've observed  
6 some very hard work performed by you folks, and we've  
7 done a lot of things together, and I want you to know  
8 that I appreciate it and I think construction workers of  
9 America are safer because of the work that you folks do  
10 here. And I wanted to assure you -- and I think Mike  
11 and, unfortunately, the folks that just had to leave  
12 from the Directorate of Construction, would echo this  
13 when I say that they're busier today than they've been  
14 in years, and we don't have staff that are working on a  
15 project. We have staff that are working on ten,  
16 fifteen, twenty projects at any given time, and I  
17 couldn't even begin to ask -- ask Mr. Buchet how many  
18 projects he's working on now, because I'm not sure that,  
19 if we gave him the day, he could add them all up.  
20 It's -- it's that much work that we're doing.

21           All of us, in the Directorate of Construction,  
22 are very concerned about what's happening in the  
23 construction industry across the United States when it  
24 comes to occupational safety, and the fact that a lot of  
25 the information that is developed by groups like this,

1 by other organizations, NIOSH, CPWR, many organizations  
2 across the country, are -- they seem not to find their  
3 way to people that need it in the field. You know, we  
4 put a lot of time and effort into developing products,  
5 and one of our weaknesses is getting that product out  
6 there to the person that really needs it.

7 And I've talked about this recently in other  
8 meetings with different organizations, and I want to  
9 continue to echo the fact that we need ideas,  
10 suggestions and advice on any way that we can get that  
11 out.

12 And I don't think there's one answer. I think  
13 that there's many answers. We are working on what we  
14 call the big-box initiative, where we're trying to  
15 get -- get in the doors of places like Lowe's and Home  
16 Depot and Menard's and so on to spread the word.

17 We're trying to do things like go through some  
18 of the smaller organizations, because we believe that  
19 many of the folks that need this message that we're  
20 trying to send aren't in some of these large  
21 organization meetings. They aren't in some of these  
22 groups that get free training and get the other things.

23 You know, we were talking with the folks from  
24 Filipas (phonetic) yesterday, offering free training,  
25 and they can't get the folks to come in for free

1 training. And I know that the workers want the  
2 training. The problem is, it comes down to dollars and  
3 cents to the owner, and most people -- many owners,  
4 rather, since I've been there with them, many owners  
5 can't -- don't really get the point that a well-trained  
6 worker is a safer worker, and that a safer worker not  
7 only protects himself, but he protects the company and  
8 saves the company money. That's an education that a lot  
9 of these folks don't receive, a lot of the owners don't  
10 receive.

11 So I ask you to continue to advise us and help  
12 us in that area of getting the message out, and we're  
13 open to any and all suggestions on that.

14 As Dr. Michaels said a little bit earlier,  
15 nobody should have to die to earn a living. I was -- I  
16 was saying that in 1974, when I got my first safety job,  
17 that it was unfortunate that people had to die to earn a  
18 living. I have a family of brothers, a father and  
19 grandfather who were all seriously injured in  
20 construction work accidents. I have their picture on  
21 the wall in my office to remind me every day that  
22 whether it's employee misconduct, whether it's not being  
23 trained or an employer that doesn't care about the  
24 workers, people are dying and being seriously injured  
25 every day.



1           We don't learn a lot about the numbers of  
2     people that are injured, and we haven't done very well  
3     in using data to drive us to where we need to be with  
4     many of our program elements. And one of the things  
5     that we're trying to do through working with NIOSH and  
6     CPWR is get better at using those numbers. And other  
7     organizations -- I'm not going to limit it to only that.  
8     Anybody that has good data, that's what we need. And  
9     that's what we should be using to drive the -- the  
10    machine here.

11           We've established a lot of goals within the  
12    Directorate of Construction over the past few months.  
13    Many were established for us many, many years ago.  
14    First, of course, is the cranes and derricks rule, which  
15    you've heard this morning, we're still projecting a  
16    publication date of July.

17           Some of the things that you may not know about  
18    are the letters of interpretation that -- that we get in  
19    every day. We receive requests from someone asking to  
20    us to interpret what's been written. And I inherited a  
21    very tall stack of those a couple of months ago, and  
22    we've been putting them out two, three, four a week  
23    since that time. So if you check the most recent update  
24    on OSHA's website, you'll find that we now have quite a  
25    few new letters of interpretation that have been issued,

1 many that were sent to us back in 2004, 2005, 2006, so,  
2 you know, we're moving forward. We're working. We're  
3 staying busy and we're trying to maintain some of these  
4 things while we're taking on new projects and  
5 initiatives.

6 Another thing is that, on a daily basis, we  
7 receive letters from Congress or other stakeholders,  
8 asking us about certain projects. That becomes a  
9 priority when it comes to the Directorate of  
10 Construction.

11 We have also our ongoing confined space rule  
12 which now we've added additional people to, and -- and  
13 they're working very diligently to get a draft together  
14 on this. And I'm not going to give you a date because I  
15 don't know what date it's going to be out. All I know  
16 is, we're going to get it out as soon as we can get it  
17 out. And we want the product to be the very best  
18 product that we can develop. And it does not look like  
19 the product that was proposed. I will tell you that,  
20 that we have made some modifications to it. It does  
21 fall within the requirements of the proposed rule, and  
22 we have lots of comments that we're using to support  
23 what we're doing with it, but I think most people will  
24 be very pleased with the final product.

25 Ongoing activities on guidance documents, Quick

1 Cards, everything ranging from skylights to elevator  
2 construction, masonry construction, job-site sanitation,  
3 we've been talking about that off and on throughout this  
4 week. We have those probably four or five that are  
5 ready to -- to go out. And -- and by "go out," I mean  
6 we'll be e-mailing them to you and asking for your  
7 comment before we go out to the area -- or excuse me,  
8 the regional offices.

9           We also have updates to our website. As recent  
10 as Monday, we had an update to the construction portion  
11 of OSHA's website. We're trying to make it more user-  
12 friendly, and we're going to link to some of this data  
13 that we've been talking about. You know, we have the  
14 freedom to do that. Of course, when you click on it,  
15 it's going to tell you you're leaving an OSHA website  
16 and so on, but we want to make it more user-friendly and  
17 we want to make it actually contain more information  
18 that you and the folks in the field will actually be  
19 able to use.

20           We're working with Hank Payne and his folks on  
21 developing a course for -- that will be offered by OTI,  
22 the training institute in Chicago, on the new cranes and  
23 derricks rule. We've been working on that for a few  
24 weeks now; and we're also, at the same time, working on  
25 a webinar that will be presented to compliance officers

1 about the same time the final rule is published in July.

2           And there's more, which I'm going to cover  
3 briefly, but you've heard a lot of these different  
4 things. How many people do we have currently in the  
5 Directorate of Construction? If you add administrative  
6 people and everyone else, we've got about 30 people  
7 there right now. When you figure that we've got a --  
8 and of those 30 people, probably one fourth of them have  
9 less than a year with OSHA. Then if you figure that  
10 we're spread even thinner by having people out with  
11 illnesses and other issues, suddenly we're down to not  
12 very many people doing a lot of work. And the  
13 unfortunate part is, is that our backlog is growing.  
14 You know, every new idea we come up with becomes a  
15 another block on this cart that we're pulling around.  
16 And so we have to take all these ideas and issues and  
17 prioritize them; and suddenly, you know, we're working  
18 on cranes and derricks or confined spaces or some of  
19 these big-ticket items, and all these others, in their  
20 own way, are equally as important. It's difficult to  
21 say what's more important than another one when your  
22 bottom line is you're trying to save lives.

23           We're also writing articles for magazines. We  
24 just had one about to be published. We've got another  
25 one that's going to be published in one of the Hispanic

1 magazines out of the D.C. area, and we also develop  
2 articles for association publications as well.

3 In addition, I and others have been working  
4 very hard to reaffirm and grow relationships with  
5 organizations such as the Army Corps of Engineers.  
6 They're down the street from us, they have a huge staff  
7 of safety professionals, and we haven't done very well  
8 at maintaining a positive working relationship with  
9 them. So I met with Richard Wright a few weeks ago, and  
10 we've agreed to have a quarterly meeting of our staffs  
11 so we can sit down and bounce ideas and so on off one  
12 another.

13 We're opening the lines of communication with  
14 the folks in the Safety Department with the Department  
15 of Energy up in Germantown to do the same thing. As  
16 Dr. Branche would tell you, that I think we're moving  
17 forward very well with the NIOSH folks. I'm really  
18 excited about the work we're doing together with them.  
19 The CPWR folks, I think will tell you that -- that we  
20 have a new fire, that we're working with these folks.

21 And I can go on and on. There's many  
22 organizations. I think many of the times, we're --  
23 we're all working in the same direction or on the same  
24 issue, but sometimes we're doing this (gesturing), and  
25 if we have a concerted effort, I think we all gain from

1 it, and that's what we're trying to do, is we're trying  
2 to pull some of that together.

3 Another major element of our directorate is  
4 based on the relationships with these organizations as  
5 well as the directorates, the regional offices and the  
6 area offices and the field personnel. The folks will  
7 tell you that working in these area offices and regional  
8 offices, that in the past, if they called in with a  
9 question, as an example, sometimes we'd answer the  
10 question right away, but many times, they'd go on the  
11 list of all other questions.

12 What we're trying to do is we're trying to give  
13 all these offices some priority when their questions  
14 come in now, because if -- if -- understand, that if an  
15 area office calls us, it's because they've already  
16 called the regional office and, for some reason, they  
17 couldn't answer that question. And we have people in  
18 the field that are depending upon that. Not necessarily  
19 because we're trying to cite somebody, but maybe  
20 somebody's trying do something right, and they're  
21 asking, "OSHA, how can we do this?" It's our job to  
22 provide that answer, and it's our job to provide that  
23 answer promptly, not to put it on a list someplace.

24 Since our last ACCSH meeting, the Directorate  
25 of Construction has also implemented a new training

1 program. I put together a training program a couple of  
2 months ago. I announced it a couple of weeks ago, and  
3 what we're going to do is, I'm calling it the  
4 Construction Immersion Program. Because we've been  
5 criticized for a long time about having people in the  
6 directorate that know nothing about construction. We're  
7 going to fix that. We're going to get construction  
8 training for some of these folks that are doing these  
9 things, and one month, it will be classroom training;  
10 and the next month, we're taking them to the field.  
11 We've got a 12-month agenda set up now. We're going to  
12 call in stakeholders, ask them to present topics for us,  
13 and many of you will probably be called upon to assist  
14 us in that. The bottom line is, I'm trying to educate  
15 the staff. I'm trying to bring them up to a level. Not  
16 all staff, because we have some staff that are very well  
17 qualified, but we have some staff that are new to the  
18 construction industry, and they need that basic  
19 understanding to help us grow.

20 I've heard the message of ACCSH and concerned  
21 stakeholders that the use of data needs to be there to  
22 help drive the Directorate of Construction, and I want  
23 you to understand that we're working with NIOSH and BLS  
24 and others to -- to get the data that we're looking for.  
25 It's been -- it's been a difficult job for us,

1 especially working with BLS -- not that they're hard to  
2 work with, but they only provide certain things, and --  
3 but they have agreed to work with us, to help us gather  
4 some of that other information and understand that we  
5 are moving forward on that.

6 Lot of talk about ARRA initiatives this  
7 morning. And what I want to say is, the Department of  
8 Labor, OSHA specifically, received money to do some  
9 things related to ARRA, and I'm going to identify a few  
10 of those proposed topics, that -- not just the  
11 Directorate of Construction, but we've teamed up with  
12 Dorothy Doherty, with Keith Goddard, with other folks in  
13 the Agency and their directorate so that we could work  
14 together on preparing some of these things. And they  
15 include a Controlling Silica in Construction document,  
16 some sort of fact sheet, fact sheets and Quick Cards to  
17 identify OSHA inspection items on stimulus projects,  
18 what we're finding. The top-ten hazards in construction  
19 fact sheet; a series of fact sheets and pamphlets on  
20 common construction hazards to include falls, confined  
21 spaces, cranes and derricks and so on; a lead in  
22 construction video supported by some fact sheets;  
23 controlling noise exposure at construction sites video  
24 and lesson plans; assessing needs for PPE at  
25 construction sites video and lesson plans.



1           Video on proper use of respirators in  
2           construction and healthcare environments. That's  
3           already under way by Standards and Guidance, which we  
4           provided some support through our staff. Controlling  
5           ergonomics hazards in construction operation guidelines.

6           And when I say that -- and as you can probably  
7           guess, some of these are very expensive items, and we've  
8           been allocated the funds, they're already in -- in there  
9           for us to do these things, so we're moving forward. And  
10          as we move forward, we're going to be calling upon the  
11          ACCSH committee to help us out in some of these areas.

12          Now, on Monday morning, Dorothy Doherty, the  
13          Director of Standards and Guidance, was kind enough to  
14          talk with us about several topics. One was being -- one  
15          being silica. As I set back in the back and listened to  
16          that presentation, I thought to myself, "Well, jeez,  
17          this working group is about health and construction  
18          issues. The Directorate of Standards and Guidance  
19          writes all health in construction standards. We really  
20          should have a representative from Dorothy's shop sitting  
21          in this work group each time." I talked with her, and  
22          she agreed to commit someone from her staff to sit in on  
23          that working group from this point forward. So I think  
24          that will be a positive move for us.

25          I'll sum up by saying that I've asked Mike

1     Buchet to take over the Directorate of Construction for  
2     a while -- or excuse me, Standards and Guidance for a  
3     while, and Mike's agreed to do so. You know, he's  
4     highly qualified in the area, and I know we've got a lot  
5     to do and we all have our hands full, and I just want to  
6     thank Michael for doing that for me, and I want to thank  
7     you all for the hard work that you do, and understand  
8     that I appreciate all the positive comments and the kind  
9     words that I've received from many of you. And we've  
10    got a lot to do. Keep pushing, because the unfortunate  
11    truth is, that probably what you bring to us is one of  
12    100 things that we're working on; and if you think it's  
13    more important than anything else, you need to let us  
14    know that you think it's more important and why;  
15    otherwise, it gets put on the list of thing to do, and  
16    six months from now, you're asking where it is and it's  
17    still on that list of things to do. Thank you.

18                   CHAIR MIGLIACCIO: Thank you. Any  
19    questions?

20                   MS. ARIOTO: Just a couple. Mr. Parsons,  
21    I really want to thank you personally. I think you're  
22    doing an outstanding job. Michael, same thing. I think  
23    the -- you know, we get a lot of help from both of you  
24    for this committee, and I know the sincerity that -- how  
25    you feel about worker safety. So on my behalf and on

1       behalf of the committee, too, we'd like to thank both of  
2       you.

3                       MR. AHAL:  Bill Ahal.  Bill, if -- I think  
4       we mentioned this in one of the work groups last two  
5       days:  Has your office -- specifically your office,  
6       because you seem to be the least movement of all in one  
7       direction or another.  Have you done anything with EPA  
8       to coordinate what they're doing right now with this  
9       lead-certified employee, when you're dealing with lead,  
10      since it -- it sounds like something OSHA would do, but  
11      then EPA's involved with it, and -- you know, so that  
12      there's no dead space in the middle that employees  
13      and/or contractors get caught in?

14                      MR. PARSONS:  No, not really, Bill.  The  
15      work that we've been doing with EPA as of late actually  
16      has involved wind energy issues, and it's certainly  
17      something that we'll be happy to take on.  We have a guy  
18      over in construction services that would be excellent in  
19      doing that, and I -- I'd be happy to address that issue.

20                      MR. AHAL:  You're familiar with what I'm  
21      talking about?

22                      MR. PARSONS:  Uh-huh.

23                      MR. AHAL:  So -- I -- I heard Dr. Michaels  
24      this morning mention that he had worked with brother or  
25      sister agencies in the government -- and I think this is

1 an example of where there may be overlap, there may be  
2 gaps, but there seems to be at least a question in my  
3 mind, are they doing something that isn't already there  
4 or why, and it's now, you know, the workers feel like  
5 they have to be looking over both shoulders because now  
6 the EPA is in an area that didn't used to see them  
7 there. So think about bringing that up later today.

8 MR. PARSONS: I certainly will, thank you.

9 CHAIR MIGLIACCIO: Emmett?

10 MR. RUSSELL: Yes, Emmett Russell. I  
11 would like to at least make a statement. Bill and I had  
12 some conversations. We had two work groups that were  
13 more or less put aside for right now. That was the  
14 trenching and ROPS, and as a result of conversations  
15 with Bill, I'd like to say that Bill and I have agreed  
16 that we're going to follow through on what should happen  
17 with the ROPS work group product.

18 I think the trenching was pretty good in terms  
19 of developing some products through OSHA, but again, I  
20 just wanted to compliment Bill for having that  
21 discussion and being willing to follow through on  
22 utilizing the ROPS work group product in some form or  
23 fashion. So hopefully at some later date, we'll be  
24 reporting to the committee how that product is going to  
25 be used. Thank you.

1                   CHAIR MIGLIACCIO: Any other questions?

2                   (None shown.)

3                   CHAIR MIGLIACCIO: Thank you. All right.

4 Michael?

5                   MR. BUCHET: As the conversations and  
6 presentations have gone on today, the central theme  
7 about what Hank Payne asked me to pass on that he didn't  
8 get covered yesterday has resounded. The question asked  
9 was, how does OSHA pick the Harwood grant topics? And  
10 as you've heard, data-driven, data-driven, data-driven;  
11 you've heard industry with hazards; identified segments  
12 of industry with hazards. And so there's not a lot I  
13 can add to the discussion except maybe to put it in  
14 perspective.

15                   To select the Harwood grant topics for a  
16 particular year, there is a process. The process  
17 involves listening to our stakeholders, you all. So  
18 certainly, fire away and put motions on the table or  
19 send a list to the Agency.

20                   We also listened to the regional administrators  
21 who collect the information from their area directors.  
22 We've listened to the national office staff who collect  
23 information from different areas than from the area  
24 directorate, so we might be looking at BLS data, we  
25 might be talking to NIOSH and looking at NIOSH data.

1           The bang-for-the-buck principle says that we  
2     address -- and this goes for more than just the Harwood  
3     grant. We address the hazards with the most exposures  
4     that we can get to and solve the problems in. So if --  
5     and most likely, a consensus committee, when you're  
6     developing a sinerack (phonetic). There may be some  
7     issues in steel erection that didn't get addressed  
8     because maybe one person in ten years got injured by  
9     that particular issue. We're looking for the ones where  
10    there are hundreds of people being injured, and  
11    unfortunately, some being killed.

12           So when stakeholders say, "Well, this is a  
13    great idea, and we need to have it as a Harwood grant  
14    topic," it's going to be filtered by us: We look at the  
15    amount of money we're given, we look at the possible  
16    number of applications. These are competitive  
17    applications for, "I want to teach fall protection  
18    safety, bridge construction in Arizona." That's a good  
19    topic. Somebody else comes in and says, "I want to  
20    teach fall protection safety including bridge  
21    construction in seven states and I'm going to hit three  
22    times as many people as the person in Arizona." Guess  
23    what? That topic -- more likely, the broader topic will  
24    be in the list for the Harwood grants.

25           Being in the list means it gets put in the

1 Federal Register, and the whole world is invited to  
2 respond. That's not quite technically correct. You  
3 have to be rated as a government contractor and have  
4 your Dun & Bradstreet done. There's a lot of up-front  
5 work that has to be done. Nonprofits primarily get to  
6 apply.

7 So if -- if that's of any help in the  
8 discussion about how we pick the topics, please don't  
9 let it stop you from suggesting a topic. But it's more  
10 helpful for us if the topic's in construction, where are  
11 our high-incident injury, fatalities, falls, being  
12 struck by, electrocutions, caught between.

13 MR. JONES: When is the deadline?

14 MR. BUCHET: Can't answer that. Bill?

15 MS. BILHORN: What's the question? When  
16 is the deadline for what, for getting input to him?

17 MR. JONES: No, for our application.

18 MR. BUCHET: But that, I can't answer. As  
19 far as --

20 MS. SHORTALL: There will be a request  
21 for -- they put the request for people to submit, you  
22 know, proposals in the Federal Register. And they also  
23 will include having a press release on OSHA's main  
24 webpage.

25 MR. JONES: No, my question is, so if we

1 have any suggestions, we have to make them at this  
2 meeting; otherwise, they're not going to make the cut  
3 for --

4 MR. BUCHET: If you make the suggestions  
5 at this meeting, more than likely, they'll be put in the  
6 pot for next year. I don't think there's a lot of  
7 adjustment room left in what we're planning on doing  
8 this year.

9 MR. JONES: Okay. Thank you, Susan.

10 MR. BUCHET: The only other news we have  
11 has nothing to do with training and education. The  
12 Federal Register notice noticing to the public to make  
13 nominations for appointments and reappointment for ACCSH  
14 members is theoretically published this morning,  
15 although I haven't looked at the Federal Register  
16 website.

17 UNIDENTIFIED SPEAKER: It was.

18 MR. BUCHET: I believe they gave 60-day  
19 response periods. So for those of you who have not been  
20 getting materials sent in, who would like to come back,  
21 or you know somebody who is interested in filling a seat  
22 on ACCSH, please tell them to read the Federal Register  
23 notice and look at the requirements for submitting  
24 nominations.

25 Right now, there's seven on the committee right



1 now that their terms are ending in November. So you've  
2 got your -- if you'd like to stay, you've got your  
3 notices, letters and so forth, you're backings in. If  
4 not, let somebody know that you -- I know that Kevin  
5 said that he was (inaudible). But he should send that  
6 in with a letter probably, too.

7 OSHPA has nominated a replacement for Kevin  
8 Beauregard. (Inaudible.)

9 CHAIR MIGLIACCIO: And Dan had a question,  
10 and Emmett.

11 MR. RUSSELL: Yeah, is there a difference  
12 for reapplying as a current member than there would be  
13 to applying for --

14 CHAIR MIGLIACCIO: Same thing.

15 MR. RUSSELL: Same thing, what?

16 MR. BUCHET: The Federal Register notice  
17 lays out the materials that you should submit. The  
18 Agency will look at those. We do a full briefing on  
19 them. We ended up with 60-some nominees the last time  
20 around. The more information you could submit, the  
21 better. And it's, "Here's my curriculum vitae, here's  
22 my experience, here's how much experience I have on  
23 advisory committees. I have 'x' number of people saying  
24 I can represent my particular interest group."

25 Dan, for you, that's employer interests, so if

1 an employer --

2 MR. RUSSELL: (Inaudible) because we  
3 already did that in the (inaudible).

4 MR. BUCHET: They have to be up to date.

5 MS. BILHORN: I don't think that was Dan's  
6 question. I think yours was more specific to members'  
7 continuation, wasn't it, Dan? Maybe you can restate it.

8 MS. SHORTALL: We do -- as part of FACA,  
9 we do require that everyone submit a nomination, whether  
10 they're seeking reappointment or they're first-time.  
11 What would be different in your package this time than  
12 the last time would be detailing for us or, you know,  
13 for those who will be the decision-makers, what have you  
14 done on ACCSH as a member so that the Agency can  
15 understand, you know, what value you've added to the  
16 process as well. So that would be one of the things  
17 that would be different between when you applied the  
18 first time and applying the second.

19 You know, it's still always helpful to have  
20 people who want to endorse your nomination, submit those  
21 letters, too. And all of that material will be placed  
22 in the -- the docket for the nominations.

23 CHAIR MIGLIACCIO: Emmett?

24 MR. RUSSELL: Emmett Russell. Frank, can  
25 you at least read the seven people? And I'm not sure

1 everyone has knowledge of who the seven are. Can you  
2 read the names, please?

3 MS. BILHORN: To add to that last list, it  
4 looks like they all expire in November.

5 (Simultaneous speakers.)

6 CHAIR MIGLIACCIO: You should all have  
7 this in your package. Myself, Tom, Tom Shanahan, Don  
8 Zarletti, Kevin Beauregard, Jewel Liz Arioto -- rodeo.  
9 I'm sorry. I think that's one, two, three, four.

10 MS. BILHORN: So you're doing the ones  
11 that expired in '09 versus expire in '10?

12 CHAIR MIGLIACCIO: Yeah, because the one's  
13 in '10 are still here. So only the ones that expired in  
14 November.

15 MS. SHORTALL: ACCSH also has a special  
16 regulation in 1912 that permits persons who are  
17 otherwise qualified to continue to serve on the  
18 committee until they would be either replaced or they  
19 would decide themselves not to be on the committee any  
20 longer, so you continue to serve even though your term  
21 has ended.

22 MR. ZARLETTI: Basically, the whole  
23 committee is expiring by this fall.

24 MR. BRODERICK: I was wondering about the  
25 timing so for those of us who expire -- no, those of us

1 whose terms expire in October -- (Laughter.) The  
2 Federal Register notice telling us to get busy is still  
3 to come?

4 CHAIR MIGLIACCIO: Yes. Yours is  
5 October 2010.

6 And Susan?

7 MS. BILHORN: I think there's half of us.  
8 That means there's half of us, since there's 15 members  
9 (inaudible).

10 MR. BUCHET: Yes, one of the regulations  
11 in 1912 Sarah just mentioned, asks the Agency to attempt  
12 to stagger the membership so there's continuity.

13 MS. BILHORN: Good idea.

14 CHAIR MIGLIACCIO: Any questions?

15 MS. SHORTALL: Yes. For those who have to  
16 be planning in the future, the nominations notice is  
17 about the same every time, and what is required to be  
18 submitted with the nomination is pretty much the same  
19 every time. So if you want to look at the nominations  
20 notice that is in the Federal Register today, you could  
21 already be preparing your materials for submission when  
22 the next nomination notice comes open. Just be ready.

23 CHAIR MIGLIACCIO: All right.

24 MR. BUCHET: One more. We're doing this  
25 back and forth. There is no prohibition against

1 self-nomination. There is no prohibition against  
2 self-nomination. That may be weaker than having  
3 somebody high-profile nominate you, but self-nomination  
4 that is supported by letters of support are certainly  
5 evaluated as any other nomination.

6 MR. ZARLETTI: I think -- Mr. Chairman, I  
7 think for the record, when you refer to Liz, so the  
8 record is appropriate, the pronunciation of her name is  
9 correct, because it was missed, and I don't think -- I  
10 don't know (inaudible).

11 MS. ARIOTO: Should I pronounce my last  
12 name.

13 CHAIR MIGLIACCIO: Please.

14 MS. ARIOTO: It's Arioto.

15 MR. AHAL: Mr. Chairman, Bill Parsons  
16 left. Are we going to get an update of our status of  
17 our previous recommendations? He typically gave that on  
18 the first day, but I know this thing is convoluted with  
19 the Summit being in the middle. Are we going to get  
20 recommendations, do you know? Update of where we are,  
21 where we're at? We've done that the last meeting.

22 MR. BUCHET: Bill Parsons will be sitting  
23 up here as the designated federal official Friday.

24 MR. AHAL: Okay. Thank you.

25 CHAIR MIGLIACCIO: There were no people

1 signed up for public comment, and what that's going to  
2 do is allow us to go right into the committee  
3 administration. We should be able to get out of here a  
4 little bit early for lunch so we can get over to the  
5 Summit.

6 On the committee administration, I'd like to  
7 bring up suggestions for a month and a date for our next  
8 meeting. This is April, middle of April. Any  
9 suggestions?

10 UNIDENTIFIED SPEAKER: Last week in July?  
11 26th.

12 MR. ZARLETTI: Wait a second. We also  
13 discussed the possibilities of being a part of some  
14 other meeting that we would join in order to raise up  
15 the membership and the participation of this group, so  
16 should we be looking at calendars to see where we can  
17 tag onto something, or do we just move ahead out D.C.  
18 and (inaudible)?

19 CHAIR MIGLIACCIO: Well, the suggestion --  
20 I know Steve said something this morning to Dr. Michaels  
21 about it's a great idea like to go to these other  
22 places, but you have to remember that we've always been  
23 told in the past, it's always been a money constraint.  
24 And the reason why I say that is, if it's in D.C., the  
25 government pays for the committee members to come into

1 the meeting. If it's outside of D.C., they pay for the  
2 committee members to go to it plus all their staff. So  
3 that's one thing, I know, that's -- I know they look at  
4 it. I like to go different places every time, just  
5 seems like it's better, you know. Get water and coffee  
6 and stuff here. But I'm just saying, this is something  
7 (inaudible).

8 MR. AHAL: We're going to cut the carpet  
9 out and take it up.

10 CHAIR MIGLIACCIO: I'm just saying that's  
11 one thing, but just -- if we had to sit and wait in the  
12 back and look and see what's coming up that might  
13 interest, say, the majority of this group here, we  
14 should at least have some dates on something to be  
15 looking at right now.

16 MS. BILHORN: Maybe to ask the question a  
17 different way, is there anything in the June, July,  
18 August time frame that relates to what we in OSHA will  
19 be doing, like meetings upcoming? Is there anything  
20 that we know of? Because if we don't know of it, then  
21 it's not going to be relevant.

22 MR. JONES: May, there's a lot going on.

23 MR. ZARLETTI: I know for a fact in July,  
24 there's an annual meeting for the Scaffold Industry  
25 Association. They're in alliance with OSHA. Scaffold

1 is always on the top-ten list.

2 MR. GILLEN: When and where?

3 MR. ZARLETTI: Philadelphia. And it's the  
4 20 -- I have to look it up. I think it's the 21st to  
5 the 25th of July. (Inaudible.) Sort of that last week.  
6 I'm on their board. I'm sure I can get us a piece of  
7 whatever we need there.

8 MS. BILHORN: Real estate?

9 MR. JONES: Is it a big conference? Has  
10 it already shut down the city or -- in terms of hotel  
11 spaces?

12 MR. ZARLETTI: No, no. I mean, they'll  
13 have 900 people there.

14 MR. JONES: Okay.

15 MR. ZARLETTI: That's not going to shut  
16 Philly down. Regardless --

17 UNIDENTIFIED SPEAKER: That's a good week.

18 (Simultaneous speaking.)

19 MR. ZARLETTI: It goes into the weekend,  
20 so I think it's going to go like whatever --

21 MR. JONES: Wednesday to Saturday?

22 MR. ZARLETTI: 21st to the 24th or  
23 something.

24 MS. BILHORN: So, Dan, what is it called?  
25 I'll Google it.



1                   MR. ZARLETTI: Scaffold Industry  
2 Association Annual Convention.

3                   (Simultaneous speaking.)

4                   MR. ZARLETTI: It's just a suggestion, but  
5 I know for that week, that's a fact. So I don't know of  
6 other groups.

7                   CHAIR MIGLIACCIO: Dan, theirs is for four  
8 days, is that what you're thinking?

9                   MR. ZARLETTI: Actually, theirs goes for  
10 five, but we could be -- ours will go for four, and we  
11 can be in the front end of it, the tail end of it,  
12 whichever we choose.

13                   MR. BUCHET: What dates -- traditionally,  
14 ACCSH has met Tuesday, Wednesday, Thursday, half-day  
15 Friday. Monday is travel to and Friday afternoon is  
16 travel home.

17                   MR. ZARLETTI: They have exhibitions, so  
18 there will be two days of an exhibit deal. I can get  
19 you the full -- the full thing on it, if you want.

20                   MR. BUCHET: That's going to take a lot of  
21 work, and the more information we have is better. The  
22 other thing is, what level of participation are we going  
23 to get from their attendees at the ACCSH meeting and  
24 what level of participation will ACCSH members get at  
25 their meetings?

1                   MR. ZARLETTI: I think a lot, because when  
2 I sat through their committee member meetings, which  
3 were here in Houston about a month ago, there was a lot  
4 of interest in how they get themselves off the top-ten  
5 list. There's a lot of interest in the fall protection  
6 with aerial work platforms and aerial lifts.

7                   MR. JONES: But how relevant is that? I  
8 mean, we don't have an auditorium full of Hispanics.  
9 Some of the folks here were supporting this one, so...

10                  MR. BUCHET: So the question is, what's  
11 the advantage of moving ACCSH to Philadelphia if nobody  
12 from that conference walks in the door, at this point?

13                  MR. ZARLETTI: I think it's an Alliance  
14 partner, though.

15                  MR. BUCHET: I understand that, but at  
16 this point, they've already planned their stuff and now  
17 we're -- we're --

18                  MR. ZARLETTI: All right.

19                  MR. BUCHET: Let's see what we can find  
20 out.

21                  MR. JONES: Let's say yes before we say  
22 no.

23                  MR. BUCHET: But you-all are going to have  
24 to -- Dan, you're going to have to work on that, and  
25 we'll try and go through the Alliance. ACCSH's request,

1 if I understand this correctly, is to meet what day of  
2 the week?

3 CHAIR MIGLIACCIO: The 20th would be --  
4 19th would be the travel day, 20th, 21st, 22nd, 23rd,  
5 half day Friday.

6 MS. BILHORN: By the way, it's the 21st  
7 through 24th in Philadelphia.

8 MR. BUCHET: Wednesday, Thursday, Friday  
9 Saturday. Dan, any idea about registration for that  
10 conference?

11 MR. ZARLETTI: Yeah, actually, what I  
12 would do is, I'll make one call to the -- to the  
13 association office. The lady's name is Lorie Weber, she  
14 handles all of the function activities and everything.  
15 In fact, they just sent me, before I got here, a full  
16 agenda for Philly just so I could plan what I'm going to  
17 do, and maybe what I should do is send that to you and  
18 you can broadcast it to everybody so you can kind of see  
19 what -- like you said, they already have their plans set  
20 and we could get -- we could be part of some -- some  
21 piece of this or vice versa. Them coming into ours.

22 CHAIR MIGLIACCIO: Michelle, do you have  
23 something to add to this?

24 MS. MYERS: Yes, I am also going to make  
25 an offer -- two offers, actually. We have our -- the

1 American Wind Energy Association has our national  
2 convention in Dallas at the end of May, which may be a  
3 little too tight and a little too close. In October,  
4 we're also having our health and safety workshop where  
5 we have approximately 500-plus safety and health  
6 professionals within the wind industry. That will be in  
7 Austin. It's the last week of October. So perhaps for  
8 the fall meeting, if that is something that you are  
9 interested in, I'm just in the very beginning stages of  
10 preparing that workshop, so I can secure locations.  
11 Just throwing it out there. And you know, maybe you get  
12 to see a wind turbine.

13 MR. BUCHET: Great job.

14 CHAIR MIGLIACCIO: Thank you. The one in  
15 May is just really too soon, because there's no way you  
16 could even get it in the Register.

17 MS. BILHORN: Austin in October sounds  
18 good.

19 CHAIR MIGLIACCIO: (Inaudible.)

20 MR. GILLEN: That's Austin. Austin is the  
21 one that's in October.

22 (Simultaneous speaking.)

23 CHAIR MIGLIACCIO: So what we're looking  
24 for right now, though, is probably the week of the 18th  
25 in July, regardless where.

1                   MR. BUCHET: But as a point of assisting  
2 the Agency in doing its planning, ACCSH has gone out of  
3 D.C. with limited frequency for years, and Tom Broderick  
4 certainly knows, because he's been kind enough to host  
5 us, but I was wondering if you can illuminate how the  
6 drafting of those combined schedules takes us some time  
7 and what we need to get it going, because I'm sure it's  
8 going to be the same with any other association that has  
9 a conference.

10                   MR. BRODERICK: I think in the past, we  
11 had -- Tom Broderick. In the past, the coordination, I  
12 don't think, has been very intensive. It's -- I think  
13 it's pretty much when people find a spot in our agenda  
14 for the conference, that they're not particularly  
15 interested in a session or a couple of sessions, that  
16 they leave the conference and then go over to the  
17 facility that's holding the ACCSH meeting. And we also,  
18 I think, have had the ACCSH meeting extend beyond -- the  
19 full committee meeting has met beyond the last day of  
20 the conference, allowing people, then, to stay over on  
21 that Friday morning and see at least a half day of a  
22 full ACCSH meeting.

23                   MR. BUCHET: Additionally, I don't want to  
24 say you've stacked the deck, but you've managed to have  
25 ACCSH or OSHA staff involved in your conference?

1                   MR. BRODERICK: Yes. And that works quite  
2 well.

3                   CHAIR MIGLIACCIO: Susan?

4                   MS. BILHORN: I'd just like to suggest if  
5 we do this -- which I actually see some merit to it --  
6 maybe every other meeting or something like that,  
7 because there is advantage, also, to being in D.C., not  
8 just from an economic standpoint, but people that  
9 actually represent commodities close to that  
10 participate. But I would just say that if we do that,  
11 that we actually put on our agenda somebody who is  
12 instrumental in that -- or some subject related so that  
13 there's actually a speaker on our -- on our formal  
14 agenda that kind of encapsulates what the vision is of  
15 that entity or issues that they think are relevant,  
16 something that we really are marrying the two as opposed  
17 to just having them co-located for the convenience of  
18 people moving back and forth.

19                   MR. BUCHET: One of the big losers in the  
20 people that we can get to come and address ACCSH is the  
21 Agency staff. Generally speaking, if Dr. Michaels isn't  
22 in the same city or passing through the city to come  
23 speak to ACCSH, it's unlikely that he'd be able to fly  
24 out and fly back. And Tom, you've seen that happen. So  
25 certainly, the idea of marrying the two is -- is very

1       beneficial.

2                   CHAIR MIGLIACCIO:  Anything else?

3                   MR. ZARLETTI:  I'm going to make a call  
4       just to see if it's even doable.  If it's not, then  
5       we'll go on with subjects in other cities.  I'll find  
6       out.

7                   CHAIR MIGLIACCIO:  Anything else on the  
8       administration part here?  (Inaudible.)

9                   MR. BUCHET:  It would be helpful, at least  
10      for planning purposes -- and we all know those things  
11      change, to try and lay out -- got July's target date.  
12      Let's lay out something for fall, early fall, early  
13      December.  That's probably the best way to get more  
14      meetings in this year.

15                   October is a troublesome month.  The main  
16      reason October is troublesome, it's the start of the  
17      fiscal year.  We can't obligate your travel funds or pay  
18      for hotels with 2010 money and spend it in 2011.  And if  
19      we don't end up with a budget, we end up with a  
20      continuing resolution, we won't know how much money we  
21      have, if we have.

22                   MR. JONES:  Just suggest something.

23                   CHAIR MIGLIACCIO:  Excuse me?

24                   MS. BILHORN:  Just suggest when we should  
25      meet, then.

1                   MR. JONES:  Why don't you suggest when we  
2                   should meet and we'll move on?

3                   MR. BUCHET:  The end of the fiscal year,  
4                   September, it's much easier for the Agency to plan on  
5                   than October.

6                   MR. JONES:  Everything else is not doable,  
7                   then.

8                   MS. BILHORN:  So end of July and  
9                   September, so two months later.

10                  MR. BUCHET:  If you want to get that many  
11                  meetings, we'll jump to November and --

12                  CHAIR MIGLIACCIO:  I don't think that's it  
13                  at all.  I think the fiscal year, you can't plan  
14                  something for October because they don't have the money.  
15                  How you going to do it?

16                  MR. JONES:  That's what I'm saying;  
17                  therefore, the option is, give us the options on what's  
18                  available instead of us picking our brains, trying to go  
19                  with the green jobs or with (inaudible) jobs, say, "Hey,  
20                  these are the openings.  Because we just had our meeting  
21                  in April, May is not good.  We'd like to do it in July.  
22                  October sucks because -- doesn't work because these  
23                  reasons."  I mean, give us some advice instead of  
24                  throwing out options and saying no.

25                  MR. BUCHET:  I'm trying to.  After the



1 beginning of October, if there is no budget, the  
2 planning cycle only goes as long as the continuing  
3 resolution, which means if it's a month, we probably  
4 cannot accomplish a Federal Register notice, get you  
5 travel arrangements and --

6 MR. JONES: Yeah, so I mean, that's fair.  
7 We all understand that. Just say, "Well, these are your  
8 options. What do you guys think of these?"

9 UNIDENTIFIED SPEAKER: So November is  
10 usually safe?

11 MR. BUCHET: Certainly in the last ten  
12 years, November been problematic because there's been a  
13 series of continuing resolutions.

14 UNIDENTIFIED SPEAKER: That pushes us to  
15 December.

16 MS. BILHORN: I think there was a  
17 suggestion for September. How about the last week of  
18 September, the week of the 27th? Because like the  
19 federal government, we're actually on a fiscal year,  
20 which means September is a difficult month because we're  
21 actually manning the next year and getting all that  
22 straight. So the last week of September is the 27th.

23 CHAIR MIGLIACCIO: That would be a short  
24 meeting.

25 MR. KAVICKY: And I can't do that.

1 MS. BILHORN: And por que?

2 MR. KAVICKY: Friday is the first --

3 MS. BILHORN: So you can't go on --

4 CHAIR MIGLIACCIO: That's what I'm saying,  
5 you have to --

6 UNIDENTIFIED SPEAKER: You have to all be  
7 home by midnight -- by 11:59 p.m. on the 29th -- 30th.

8 CHAIR MIGLIACCIO: So how about the week  
9 before that? Week before the 20th?

10 MR. BRODERICK: When is Congress?

11 UNIDENTIFIED SPEAKER: Has no bearing on  
12 this.

13 MR. HAWKINS: Does have bearing on getting  
14 hotel rooms, though.

15 MR. BRODERICK: That's usually the  
16 stumbling block.

17 UNIDENTIFIED SPEAKER: We're looking at  
18 moving up to July. Can we just look at something the  
19 first week of December, because I don't think it's going  
20 to be practical to stack the meetings too close.

21 MR. BUCHET: Yes. We certainly can. We  
22 can look at a number of suggestions.

23 MR. BRODERICK: The first week of  
24 December, I would submit, has been pretty traditional  
25 for this committee.

1 MR. BUCHET: First week of December.

2 CHAIR MIGLIACCIO: What did you find out,  
3 Dan?

4 MR. ZARLETTI: Voicemail. They'll get  
5 back to me right away, though, I'm sure.

6 CHAIR MIGLIACCIO: We're trying to figure  
7 out a -- either September before the fiscal year ends  
8 for the government, or first full week of December.  
9 That's a long time.

10 MR. SHANAHAN: Mike, is there a schedule,  
11 like how many we should be meeting in a year, three or  
12 four?

13 MR. BUCHET: The -- there is no schedule.  
14 The charter, which we are redrafting now, will say two  
15 to four meetings a year.

16 MR. SHANAHAN: My only feeling -- Emmett,  
17 I hear what you say, but having meetings so far apart,  
18 you get going with our committee meetings, we got so  
19 many things going on with what's going on, and we just  
20 lose steam. I'd rather -- personally, I guess I would  
21 rather -- I wouldn't mind having it in September and  
22 December.

23 CHAIR MIGLIACCIO: Through September, try  
24 to find something in September. We can always plan  
25 that first -- other one in December.

1 MR. SHANAHAN: How does the week of  
2 September 13th look for everybody?

3 MR. KAVICKY: September 20th?

4 MR. HAWKINS: (Inaudible.) They're both  
5 good.

6 CHAIR MIGLIACCIO: Both good with Steve.  
7 Okay.

8 MS. ARIOTO: They're both good for me.

9 CHAIR MIGLIACCIO: 20th is not good for  
10 you?

11 MR. KAVICKY: 20th, good for me.

12 MS. BILHORN: I won't know, because we do  
13 our whole business planning that month, and that week is  
14 a potential that that would be a conflict. I won't  
15 know.

16 MR. AHAL: I'd rather do the earlier week  
17 in September. The 20th, I've already got several things  
18 already.

19 MR. THIBODEAUX: Not available on the week  
20 of the 13th.

21 MR. KAVICKY: Not available on the 13th or  
22 20th.

23 (Simultaneous speaking.)

24 CHAIR MIGLIACCIO: Emmett?

25 UNIDENTIFIED SPEAKER: I've got to look.

1 CHAIR MIGLIACCIO: Dan?

2 MR. ZARLETTI: 13 and 20 is good, and  
3 27th's not.

4 MS. ARIOTO: I'm fine both.

5 CHAIR MIGLIACCIO: We can do 20. That's  
6 fine. So 13th -- let's go -- we'll get an e-mail out  
7 for the week of the 12th and the 19th for September, and  
8 let's also put in there that December 5th, and try to  
9 get e-mails out, see what our people's availability is  
10 for December. That way, we can get one planned before  
11 the end of the year, and let's look at that.

12 Dan, you'll get back to Mike on availability  
13 about the scaffolding in Philadelphia?

14 MR. JONES: You said we do the July as  
15 well?

16 CHAIR MIGLIACCIO: Oh, yeah, we're still  
17 trying to work the July.

18 MR. JONES: All right.

19 MR. SHANAHAN: Mike, one other question:  
20 Do you know -- just for process standpoint, do you know  
21 the Federal Register notice coming out now, would  
22 those -- potentially, would our slots be filled by the  
23 July meeting, so this could be our last meeting or --

24 MR. BUCHET: Thank you for the word  
25 "potentially." Potentially, yes.

1 MR. SHANAHAN: Doesn't matter.

2 MR. BUCHET: But it's highly unlikely. I  
3 wish Sarah were here, because she's (inaudible) the  
4 draft. I think after I did -- I believe it's the 60-day  
5 response period. So we're April, May, middle of June.  
6 It's possible.

7 MR. SHANAHAN: Right.

8 MR. BUCHET: Not likely.

9 CHAIR MIGLIACCIO: So let's go with  
10 finding out about the week of July 18th, the  
11 scaffolding. We'll have two weeks to look at, September  
12 the 12th and the 19th. And we have the week of the 5th  
13 in December to look at. (Inaudible.)

14 MR. THIBODEAUX: That's what my question  
15 was going to be, the last week in July, also?

16 CHAIR MIGLIACCIO: The last week in  
17 July.

18 MR. BUCHET: We can certainly add it to  
19 the -- we'll work --

20 MR. ZARLETTI: Don't worry about it. If  
21 the scaffolding --

22 MR. BUCHET: If the scaffolding doesn't  
23 work, we'll put that in there, too.

24 CHAIR MIGLIACCIO: Christine?

25 DR. BRANCHE: Christine Branche. If I

1 could make a suggestion, given that you are trying to  
2 consider having meetings that are not necessarily in  
3 D.C., and given that trying to schedule a meeting in  
4 D.C. and getting hotels rooms could be a problem, I  
5 would suggest that the designated federal official and  
6 the Chair solicit suggestions of meetings during 2011  
7 for which meetings that are on the calendar -- because  
8 people plan national, international meetings well a  
9 year -- more than a year in advance. So having those  
10 dates secured where you may want to start working with  
11 meetings that are in conjunction, that's the first  
12 thing.

13 The second thing is, if you can come to the  
14 next meeting with dates that you're proposing for 2011,  
15 then your committee members can then check their  
16 calendars and begin to get back to you as to whether or  
17 not those dates will work. And it's a little less  
18 fluffy.

19 MR. BUCHET: ACCSH is a little different  
20 in that the committee is supposed to drive itself more  
21 than we're supposed to drive it. And we certainly had  
22 tried to do the out-year planning, and the history has  
23 been, it changes so much by the time we get there, that  
24 it -- it's tough. We have had luck trying to hold ACCSH  
25 meeting with things like a National Safety Council with

1 Tom Broderick's -- but those are scheduled within a few  
2 weeks of each other every year and about the same  
3 fashion.

4 And it's certainly good advice and we certainly  
5 invite ACCSH to come forward with recommendations, but  
6 OSHA doesn't have the latitude to go to an association  
7 and say, "We would like to hold an ACCSH meeting in  
8 conjunction with you." SIA, because we have an  
9 alliance, we can work that way. We're --

10 MS. BILHORN: But your suggestion is good  
11 for us as a committee. So I mean, we can certainly come  
12 next time with a bit more ideas. And so when we come to  
13 the next meeting -- let's all just check what we see is  
14 going on in 2010, and decide how to go.

15 CHAIR MIGLIACCIO: 2011.

16 MS. BILHORN: 2011.

17 CHAIR MIGLIACCIO: Yeah, right. Any other  
18 administration? Break for lunch?

19 MR. BUCHET: Public comments.

20 CHAIR MIGLIACCIO: Is there anybody in the  
21 room with public comments?

22 (None heard.)

23 UNIDENTIFIED SPEAKER: Is there anybody in  
24 the room?

25 MR. SHANAHAN: Thanks, you guys, for



1 hanging around.

2 CHAIR MIGLIACCIO: Break for lunch. We'll  
3 reconvene here Friday at 8 o'clock.

4 (Meeting adjourned at 11:48 a.m. to reconvene  
5 April 16, 2010 at 8:00 a.m.)

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## 1 REPORTER'S CERTIFICATE OF PROCEEDINGS

2 U.S. DEPARTMENT OF LABOR

3 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

4 ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH

5 MEETING APRIL 14, 2010

6 I, Susan T. Baker, Certified Shorthand Reporter in  
7 and for the State of Texas, certify that the above and  
8 foregoing contains a true and correct transcription of  
9 all proceedings conducted in the above-referenced  
10 meeting, all of which was reported by me.

11 I further certify that I am neither related to,  
12 nor employed by any parties to the meeting in which  
13 these proceedings were conducted, nor do I have a  
14 financial interest in the proceedings.

15 Certified to by me on this the 28th day of April,  
16 2010.

17 \_\_\_\_\_  
Susan T. Baker, RDR, Texas CSR #1561

18 Expiration: 12/31/11

Notary Public, State of Texas

Commission Expires: 1/7/14

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