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

ADVISORY COMMITTEE ON CONSTRUCTION
SAFETY AND HEALTH
MEETING

WEDNESDAY, APRIL 14, 2010

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

EMPLOYEE REPRESENTATIVES:

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

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

EMMETT M. RUSSELL, Director,
Department of Safety & Health,
International Union of Operating
Engineers
EMPLOYEE REPRESENTATIVES (cont'd):

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

EMPLOYER REPRESENTATIVES:

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

THOMAS SHANAHAN, Associate Executive
Director, National Roofing Contractors
Association

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

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

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

STATE REPRESENTATIVES:

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

PUBLIC REPRESENTATIVES:

THOMAS A. BRODERICK, Executive Director,
Construction Safety Council

JEWEL ELIZABETH ARIOTO, Elizabeth Arioto
Safety & Health Consulting Services
FEDERAL REPRESENTATIVE:

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

DESIGNATED FEDERAL OFFICIAL:

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

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

COMMITTEE SOLICITOR CONTACT:

SARAH SHORTALL, ACCSH Counsel, Office of the
Solicitor, U. S. Department of Labor
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8:10 a.m.

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

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

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

Also the work groups. On Friday, we'll do all
the work group reports, and you see on your -- the
agenda, the list of them? I'd like to do them in order,
so everybody should be ready. Because that's the only
day we're going to be doing work group reports. And
tomorrow, the -- there will be a lunch at the Summit, so
you don't have to worry about that, but tomorrow, like I
said, get downstairs 8, 8:15, something like that, so we
can get over there.

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

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

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

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

MR. THIBODEAUX: Mike Thibodeaux, NAHB,
Wimberley, Texas, and I apologize that this weather is
not as great as what it normally is in D.C., but we'll
just have to deal with it.
MR. JONES: Walter Jones, Laborers' Health and Safety Fund, employee rep. The weather is fantastic.

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

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


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


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

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

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

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

CHAIR MIGLIACCIO: Frank Migliaccio with the Iron Workers International, an employee rep.
Start here, please, with the public. State your name and who you're with.

UNIDENTIFIED SPEAKER: (inaudible) with ISO.

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

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


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

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

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

MR. WHEATER: Gerald Wheater (phonetic), Directorate of Construction, OSHA.

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

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

MR. PARSONS: Bill Parsons, Acting
Director for OSHA, Directorate of Construction.

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

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

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


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


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

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

CHAIR MIGLIACCIO: Thank you, Sarah. I
I have one more announcement. On Friday, as you know, it's a travel day, so casual dress for the board members.

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

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

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

Next up on the agenda is getting through OMB. I anticipate getting comments back from them around the beginning of May. We have to send the regulatory
analysis over, and paperwork package, and I figure
that's where their focus is going to be from this point
on.

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

Primarily, next up would be our compliance
standard. The most -- for lack of better words, the
most difficult to put together has been our residential
construction directive. That's of interest to many
folks in the industry. That's a long time coming. We
recognize it's going to have a big splash in the
industry as far as compliance. The -- it's gotten the
Solicitor's Office attention, definitely. So from our staff's perspective, providing background information since about 1994 on to the present to explain the things that we've done, the activities of ACCSH, the letters of support that we've gotten over the years, it's been -- been challenging. We had to go back into the docket to look at the comments that came in in 1999 when we put out an E & PR to reevaluate some of those, and the -- the validity of them as they stand today. Yesterday, we sent it back up to the Solicitor's Office, and they believe that we have something that can go forward.

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

    Second, we've had some difficulties with a directive that we issued to rescind two questions that were answered in a previous directive for steel erection. Several organizations (inaudible) that we've rescinded a diminimus policy, or two diminimus policies that allow employers to do something different than what was in the regulation. Right now, I really can't talk
too much on that, because there's an open -- it's open
litigation right now. But we are taking all sides in
consideration in looking at all the different options.

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

In the process of doing the directives and the
rules, we put the interpretations on the back burner.
Since Bill Parsons became our Director, he brought those
back to the forefront, and we've been trying to knock as
many of those out a week as we possibly can. As an
Office Director, I didn't get time -- as Office Director
and Project Director on two of the standards, I didn't
get an opportunity to work on those as much as I would
like to, but now that Michael Buchet will be taking over
those responsibilities, I will be more involved in that
process and we probably can speed it up even more.

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

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

The aerial lift standard, 1926.453 of subpart
et al, allows the employer -- or requires the employer
to use a body belt and a lanyard to tie off to the boom.
Many people think that that means you can use just an
aerial -- just tie off, it doesn't have to meet any
particular requirements.
That's not true. The intent of that standard is to protect the employee from -- from a fall from the bucket. You can do that two ways -- at least two ways: You can tie off such that you can't be ejected from the bucket, which would be a fall restraint. We have guidance for what the requirements of fall restraint is.

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

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

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

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

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

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

CHAIR MIGLIACCIO: Any questions from the committee?

MR. HAWKINS: Just one.

CHAIR MIGLIACCIO: Steve Hawkins?

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

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

MR. HAWKINS: Right, I understand that.

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

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

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

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

MR. HAWKINS: Okay.

CHAIR MIGLIACCIO: Tom Broderick.

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

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

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

MR. BRANCH: It depends how it's rigged. If it's rigged such that the nurse reel engages fairly quickly, then, you know, you will be -- the arrested fall will start a lot faster. But if it's rigged such
that it's going to take a while for that thing to kick
in, then, yes, you know, there's a -- there's an
elevated risk that you may fall further than what you
think.

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

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

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

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

MR. BRANCH: But the easy fix with that,
especially in the smaller buckets, is fall restraint.

MR. HAWKINS: Thank you.

CHAIR MIGLIACCIO: Any other questions of the committee?

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

MR. BRANCH: Right.

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

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

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

Our grandfathering requirement didn't catch everything, as we anticipated that it would, but it
didn't give it a clean cut. It -- I mean, I wish I could tell you that, you know, it's going to be something definitive. Might be something that you'd want to, you know, ask the Assistant Secretary when we get him here. But as far as I see, there's still a lot of options being evaluated right now.

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

MR. BRANCH: The standard.

CHAIR MIGLIACCIO: Following the standard as of now.

MR. BRANCH: We're following the standard.

CHAIR MIGLIACCIO: Thank you. Emmett?

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

MR. BRANCH: Yes. Right now, if -- the OMB usually doesn't go past their 90 days unless they have some major issue, but we don't anticipate that it will have any major issues with it. If they take all of their 90 days, they should be completed by the end of June; therefore, we have all of July to get it to the Federal Register and published, which is a lot of editing and things to get it in the Federal Register format. So we have a couple of weeks of wiggle room
still in the process, knock on wood, (knocks on the
table). We put a lot of effort into keeping this thing
on track.

CHAIR MIGLIACCIO: Thank you.

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

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

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

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

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

CHAIR MIGLIACCIO: Any other questions?

Okay. Mike?

MR. BUCHET: You may have noticed over the
last couple of years that the personnel in the
Directorate of Construction have moved around quite a
bit. It is, as Garvin has told you, a small
directorate. We are responsible for a subset of OSHA's
construction safety regulations. For instance, all
health regulations are with Doherty -- Dorothy Doherty, who's here at the work group. We also rely heavily for fire, electricity and electrical outside of our shop. That being said, the crew that Garvin has been leading and the one that I am simply following in his footsteps with, has done an incredible piece of work putting that crane standard together and getting it out as fast as they've gotten it out.

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

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

(Applause.)

CHAIR MIGLIACCIO: Garvin, thank you very much.

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

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

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

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

Dr. Branche?

CHAIR MIGLIACCIO: At this time, Matt

Gillen.

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

Dr. Branche previously served as the acting NIOSH director when John Hyatt was on his unscheduled sabbatical. And her background is in epidemiology and injury research.

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

So please join me in welcoming Dr. Christine Branche.

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

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

Our aim is to gather information, to conduct research and then to translate that information in a way that can be of practical use to the construction workers or their employers.
NIOSH organized a construction program in 1990, so this is our 20th year. I think it's interesting that Dr. Howard, at the turn of the year to our 20th anniversary, would want to create an Office of Construction Safety and Health.

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

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

To the right of the slide, we also fund extramural research. So when an investigator has an idea that they think is interesting and compelling, they'll apply through our -- through the portal that's available to them, and if it's found to be of merit, then it will be funded by NIOSH.
For our national construction center, CPWR was again awarded the designation in our August competition -- rather, in the competition that was completed in August, and they are, again, our center for -- National Construction Center, CPWR, the Center for Construction Research and Safety. And they preside over our industry characterization, applied research, our key industry liaison, intervention and also research-to-practice.

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

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

By design, the agenda is ambitious. It's not meant for any one organization, not even NIOSH, to be able to take on all components. But it is meant to have enough -- I'll use the word that Garvin said -- enough wiggle room for people to be able to see their key
issues involved and to be able to complement
or have an activity in NORA and see their issue of
interest come to life.

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

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

And we don't see enough of that. And so with
Dr. Howard's re-emergence from, as Matt said, his
unscheduled sabbatical, we are having to push more and
more for research-to-practice. NIOSH is doing that in
two ways: We've reorganized our research-to-practice
office, our R-to-P office, and that is now -- those
staff are now located in our Office of Health
Communication, and I think that's the right place for them. Not only are they presiding over or consulting on research-to-practice activities that researchers within NIOSH are owing as they design their research efforts, but they also are making themselves available to the NORA -- the various NORA committees.

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

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

The other area I want to tell you that we're working on heavily and where research-to-practice, I think, has a key aim or a key role, is in green jobs. And I think this illustration is interesting, because the taxpayer dollar does have a key role in how we identify green jobs. Our colleagues in environmental safety and health have won the day in being able to move
forward the issue of green jobs, but that doesn't mean that we can't ask and shouldn't ask -- and Dean McKenzie did a very good presentation in the Green Jobs work group meeting yesterday in asking the question, "Are Green Jobs Safe for Workers?"

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

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

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

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

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

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

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

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

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

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

I've offered to you, in the body of the slide,
our website. You can get to that website actually
through different elements. If you're already
accustomed to answering our construction activities
through what mechanism that you enter our website, you
can get to our blog to be able to offer your own
comments, your own suggestions or alterations to these
six elements that we've suggested in how to integrate
worker safety and health into green.
But we do think that green and safety can be combined, and I offer to you this contact information for Matt Gillen and me, and I'll take your questions.

CHAIR MIGLIACCIO: Does the committee have any questions?

Seeing none --

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

DR. BRANCHE: Yes. The source.

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

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

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

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

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

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

DR. BRANCHE: Yes.

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

DR. BRANCHE: Right.
MR. ZARLETTI: -- at some point, and then

now we've got this other thing that's going to go on
until we're all long gone, and it comes without that
same element.

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

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

I don't want to be overly optimistic or overly
pessimistic about the engagement that we've had with the
U.S. Green Building Council, and I do mean to make a
wide arc when I say "we." We've been working with some
researchers, we've been talking to our colleagues in the
Directorate of Construction, and so when we -- as well
as people from the staff and colleagues from the
Prevention through Design cross-sector as well as what
we're doing in construction. The idea is to be able to
raise the specter of worker safety and health issues
with them.
I don't think we've tried to be overly aggressive, but certainly, the fact that we've even talked about or raised the issue of the omission of worker safety and health has got a few people nervous. But overall, the U.S. Green Building Council has allowed us to put forward abstracts for key meetings that are coming up starting in May, but also one that's coming up in the fall. And we invited some of their architects. They have participated in our workshop in December. Some have a sympathetic ear.

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

But I think it was Emmett Russell yesterday said, "We can't take anybody off the table right now. I think we have to approach this" -- "to be able to hear as many perspectives and even to be able to have an opportunity to ask, quite openly, people from the U.S. Green Building Council how their" -- "how their idea germinated and what path they took to get to the place where they are now."
MR. ZARLETTI: Because it makes so much sense, and the rest of what we do in manufacturing in this country is build in what you want as a final product. If you build a car, you don't put air conditioning on it after it shows up at the dealership, you put it on on the assembly line. You build a home, same thing. Components go in as the construction goes on. Now, it seems like we're spending more time and effort and energy to take a -- to put back in what never was -- what wasn't originally planned; and as a result, I think there's a huge -- there's going to be a huge dollar amount on this to get this thing to work, and I'm disappointed to see that.

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

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

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

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

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

MR. AHAL: I think that -- I hope they'll certainly do that. I just want to make sure we don't set ourselves up for a false expectation of what they might be able to do for us.
CHAIR MIGLIACCIO: I'm going to stop this right now, and we're going to resume. Dr. Michaels has come into the room, and I know he's on limited time. Christine, if you could just hold on, we'll come right back to you.

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

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

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

So let me formally and on behalf of my office welcome you and thank you for your great work. You probably want to know what's going on at OSHA. We've heard a lot from the terrific staff who I've gotten to know, and first, let me thank the OSHA staff who's
been -- who supports this committee, who really are
spearheading our work in construction and -- and also
from Sarah, from the Solicitor of Labor's Office,
working very hard and trying to make great progress.

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

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

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

There are many, many things I could cover. I'm
going to talk for about ten or fifteen minutes, give you
a couple of updates, some of which, I'm sure, will not
be news to you, some of them will be, perhaps, and maybe
we can answer some questions.
You know, we're moving forward with cranes and
derricks. I think the end is in sight. Great to get
that out. And we're pushing forward on a new rule on
Confined Spaces in Construction.

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

We're very much focused on enforcement, and I
think I read that we had a very successful what we call
the sweep here in Austin last year. I don't know if you
talked about that some, but it was before I got here. I
read about it in the paper. Being here in Texas, I've
gotten some reports, talking to people who tell me
that -- and you can probably -- you probably know this
more than I do, but if you drive through Austin now, you
no longer see workers on roofs without fall protection,
that that sort of high-publicity enforcement activity
has a big deterrence effect. Because as you know, our
enforcement activities are not only aimed at the
specific employers who put workers at risk -- which
we -- when we go and inspect them, we obviously are
focusing on them immediately to try to get hazards
abated, but we have to do our enforcement in a way that
impacts on other employers as well, because we don't
have enough inspectors to visit every work site. So we have to model our enforcement activity to have the maximum deterrent effect, and I think that's been a useful model and we're very pleased it was successful in Austin.

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

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

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

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

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

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

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

And among other things, I think the (inaudible)
past would raise the ceiling on OSHA penalties. It
would just essentially allow them to go up the same way
as inflation has since 1990. But we also would increase
criminal penalties and criminal liability for employers
who knowingly endanger workers. That's a very big
change. It would strengthen whistleblower protections
and expand the rights of workers and the families of
workers who die on the job for families to be more
involved in OSHA investigations.

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

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

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

In the investigation, if they find that another worker was involved in that injury somehow, they'd be fired. And the foreman for that -- for their crew, if there was more than one OSHA-recordable injury on that crew, no matter what the cause, they'd be fired. It's a very effective way to get around the OSHA recordable injury rate, but we think that's simply wrong. Fortunately, in this case, I think the -- the oil
company recognized it was wrong and got rid of that
project manager, withdrew the memo, and actually, the --
the head of safety for that construction company
actually called me to let me know that -- that that
company disavows the memo and wanted to make sure that
we knew that they weren't behind it.

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

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

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

We should be able to do this work
electronically more rapidly, not because -- not just for
the sake of doing it electronically, but in fact,
tracking injuries is very important in understanding why
injuries occur. And so we're very much hoping to encourage tools and to move us into the electronic system where OSHA gets information much more rapidly and electronically, but also, employers get information in a way they can use it to investigate what causes injuries and how to prevent them.

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

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

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

We're also very much committed to listening to our stakeholders and having increased constructive
interaction with them. Last month in Washington, we held a day-long forum for stakeholders. We called it "OSHA Listens." It was really -- the basic thing was how can OSHA do a better job.

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

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

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

Another speaker at the forum raised concerns about injuries associated with nail guns in residential construction. Actually, we talked about that with several of the speakers, and this scientist asked OSHA
to follow your recommendations to revise and enforce the standards for nail guns. And we're going to look at her testimony and recommendations from your -- from you and your nail gun working group. So we're very interested in seeing where are you going with this and what can we do?

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

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

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

Now, obviously, we're here in Houston rather than somewhere else because of the National Action Summit for Latino Worker Health and Safety, which is this afternoon across town. So far, we've got more than 900 people registered, and there are about 60
presentations planned, and I appreciate your coming here
and also your participation over there.

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

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

CHAIR MIGLIACCIO: Any questions of the
committee? Steve?

MR. HAWKINS: Dr. Michaels, I would just
like to, of course, thank you for coming and -- would
like to just state that it's been really interesting to
have this meeting outside of Washington, D.C. for the
diversity of attendees we've had. We've had much
greater participation in our work groups from a very
diverse group of employers and employee representatives
that we don't always see when we have it in Washington,
and I would like to encourage OSHA to have this at other locations throughout the United States as opposed to just always having it in Washington, D.C. I think it's been really refreshing for the meeting.

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

CHAIR MIGLIACCIO: Questions? Susan?

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

DR. MICHAELS: I did.

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

DR. MICHAELS: That's a great question. We want to encourage our federal brother and sister
agencies to move forward in the same way that we want private industry to. And certainly, VPP is one of those areas. And we can talk about VPP as well, but we think there are a lot of opportunities to do this.

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

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

DR. MICHAELS: No.

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

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

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

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

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

CHAIR MIGLIACCIO: Yes, Mr. Jones?

MR. JONES: I want to follow up on the VPP and the consultative services alliances and things like that. A lot of times, these are groups that are investigated the best. They provide the leadership and direction for the rest of many employers in terms of safety and health. Is there any way that we can use VPP and the alliances as a laboratory to test some of these ideas? Like if we looked at something like Design for Safety and Prevention through Design, by Design? Many of these companies like Washington Group, Jacobs and others and Conoco Phillips and others, they're already
doing loads of preplanning, designing safety directly
into -- designing safety and control directly into work
practices.

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

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

But I'd love to do that, and if we can pursue
that, we should. Let me know -- especially if you think
there's a specific project we should work on, I will
make sure OSHA gets involved, because that -- that --
coming up with those new approaches and showing they
work -- or showing they don't work, which is useful,
too -- it is a high priority with us.

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

CHAIR MIGLIACCIO: Any other questions?

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

DR. MICHAELS: No, we should. Obviously,
you know, I think on lots of levels, states are sort of
little laboratories for these activities, and we should
look harder. I'm not that familiar with those programs, but I'd love to learn more.

MS. ARIOTO: Thank you.

CHAIR MIGLIACCIO: Any other questions?

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

DR. MICHAELS: Yes.

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

DR. MICHAELS: I'd love to see that. You know, I don't know the -- the structure of how that training goes, but I'll certainly look into it. I mean, it's -- you know, with Earth Day coming up, it's really sort of made me think about this question. We have great interest in the country in green jobs, in, you know, natural products, sustainable development. You know, everybody wants to buy, you know, grass-fed beef and free-range eggs and free-range chickens, but we care more about the chickens than we do about the workers. And we have to figure out how to incorporate all these things. And certainly, the LEED program, we should be
able to do that. My understanding is there is no worker safety program in there, and I'd like to see how we can leverage our strength if we could help do that.

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

CHAIR MIGLIACCIO: Any other questions?

(None heard.)

CHAIR MIGLIACCIO: Thank you, Michael.

Thank you very much --

DR. MICHAELS: Thank you very much.

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

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

(Applause.)

CHAIR MIGLIACCIO: Christina?

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

CHAIR MIGLIACCIO: Okay. Any other questions? Mike?

MR. THIBODEAUX: Mike Thibodeaux. I heard what Bill talked about, and you know, that they don't direct these things. You tell them, "Here's the thing you need to do," not how to do it. I just find it a little difficult that the council can't even put a statement that, "Whenever you are doing whatever you need to do to get these points, you must incorporate safety for the worker in your plans." I mean, that seems like a very simple statement and very easy to do. You're still not telling them how to do it, but you've got to do something to protect the worker, and I just find it hard to believe that a council would say, "Well, yeah, we need to discuss that." To me, that's not a -- DR. BRANCHE: We -- well, where you stand sometimes depends on where you sit, and I can't speak for them. I can certainly say that asking for a statement much like what you just articulated is not something that we've put on the table because we're just in the opening relationship, we're just opening the doors for the relationship that we're trying to forge with them. And up to this point, our discussion has been about this integration issue, and not simply
resigning ourselves -- and I don't mean to make it sound like a resignation -- but we haven't even talked about, well, we don't want to do that, but this is -- this is the alternative that we'll seek.

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

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

And as Dr. Branche mentioned, we did put in a proposal for a panel to present at the November meeting -- which, by the way, is going to be in Chicago, of the Green Building Council. And for example, a moderator of that panel is an architect who's on the board of directors for the Green Building Council. So we're trying to sort of find strategic ways to do
outreach to that community, and his advice was to not
hit people over the head with the issue, but sort of
work with them. So we are trying to make some inroads.

CHAIR MIGLIACCIO: Bill?

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

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

CHAIR MIGLIACCIO: Steve?

MR. HAWKINS: You know, there's no reason
not to pursue some integration of employee safety and
health into LEEDS, but I think it's also important to
acknowledge that there's a lot of buildings built every year that are not LEEDS-certified, and we need to pursue some kind of certification that it's a safely built building for those -- for, what do you think, 95 percent that are not LEEDS? I mean, I don't know how many LEEDS-certified buildings are built, but I read about one in the newspaper, it's a pretty big splash, and I read -- you know, the list is not very long, at least in Nashville, Tennessee, of LEEDS-certified buildings, so I think it does bear us trying to pursue that opportunity to have a safety and health component in LEEDS, but certainly, there needs to be some program or certification for other buildings where people would fly that flag of a safely-built building from the design all the way through to incorporate -- as Bill said, you know, Safety by Design -- through the end product, and that it would be certified in a similar manner to LEEDS. And I think people would respond to that. And I think the interest over the last 20 years or so in the VPP process proves that people are involved in having some kind of authentication or stamp of a job well done, so I think it needs to be pursued perhaps on parallel tracks. Thank you.

CHAIR MIGLIACCIO: Emmett?

MR. RUSSELL: Emmett Russell. A couple
things I think were said. One, in your presentation, you mentioned that you're looking at two safety issues: One is worker safety, the other is end-user safety; and unfortunately, with this committee, we can look at worker safety, but we can't necessarily look at end-user safety.

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

DR. BRANCHE: You've anticipated me. Actually, I went back to my slide where -- I didn't speak to this -- spend as much time on this, but the fact that the federal government, in making arrangements
to have a building constructed and seeking the LEED
designation, we're in a position to use that as a
leverage point, much like -- picking up on something
Dr. Michaels said, it's municipalities and the federal
government together that, in our own need for building
renovation and -- and construction, I might be in a
position to forge forward on this issue.

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

CHAIR MIGLIACCIO: Walter?

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

Is there any thought on how we, at NIOSH, OSHA,
the Omni Group, this committee, can work at crafting
a -- some language that we can push upstairs to, you
know, the West Wing or whatever in terms of trying to
get an Executive Order on making sure that any federal
building built for the next -- I don't know, 10, 20
years, will have Prevention through Design concepts
built in, and then we could fill in the skeleton on what
that means in using the work of Gambatese and others to
really have this -- this rating system that Steve is
talking about, and by virtue of Executive Order,
requiring federal buildings to build with Safety by
Design built in would jump-start this whole process and
would probably make (inaudible).

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

MR. GILLEN: I'm glad that the committee
is getting to this point. If you -- you know, if you
remember some of those statistics -- because they were
in the presentation I gave, we talked about the Recovery
Act originally, because I've been trying to plant this
idea that this is really something that we should do.
We should follow in the footsteps of what's being done
in the green, and use these kind of approaches with the
federal government for leadership, because it's very influential on the rest of the industry, and we can really -- we can really make some progress if we do that. So if the ACCSH committee wants to make a motion or something like that, I -- it might be helpful.

CHAIR MIGLIACCIO: Any other questions?

Tom.

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

DR. BRANCHE: I didn't mean to make it sound like it's new funding. I would say that I did mean to emphasize that investigator-initiated opportunities are unaltered, so the schedule with which those -- those funding opportunities come open, that schedule is completely unchanged. If there is an alteration, it isn't so much that new money is made available for it, but I would say that Dr. Howard and I, in turn, we are putting a greater emphasis on Research
to Practice. We have so much information that we know. One of the reasons why -- in my 14 months as the Acting Director of NIOSH, the reason why this green jobs issue was so compelling for me in part was because we know a lot in occupational safety and health that can be lent to consider worker safety and health. It wasn't so much that a whole new initiative was needed. We certainly would take new money wherever it comes from. But we've learned a lot over the years not only in construction, but in other phases of worker safety and health that could be lent to green jobs readily, just applying it.

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

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

MR. SHANAHAN: Okay.

(Inaudible.)

MS. SHORTALL: Mr. Chair, what I'd like to
do at this time is mark as Exhibit 2 in OSHA docket OSHA dash 2010 dash 0014, a PowerPoint presentation on NIOSH construction programs presented by Dr. Christine Branche.

CHAIR MIGLIACCIO: Done.

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

CHAIR MIGLIACCIO: Thank you. Thank you very much.

At this time, Dr. Goddard?

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

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

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

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

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

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

So initially, we weren't getting the hits at all because a lot of these projects over the winter
never kicked up. And we got better hits as time went on, and I'll share some of those statistics with you.

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

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

So this is not for our program. This is
program-inspected sites that we offer. So like I say, Dodge, if you go recovery dot gov, you can get a lot of ARRA information. That's where you can find our sources. And we use a lot of local reports as well.

You know, most ARRA jobs have a requirement to put up signage. Unfortunately, a lot of it is paving, and we're not going to get much out of paving, but we use the local knowledge and news reports, as well, to determine where we might get lucrative inspections.

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

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

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

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

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

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

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

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

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

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

In terms of the characteristics identified by Dodge but for project owner, we have quite a bit in government, federal and local. We have 1,500 in the military; 440 private; and an overwhelming distribution of state government spending, which is -- sort of fills into the theory of ARRA in terms of having state
projects and having money flow to the states from the federal government, about 6,486 projects identified. When I say "state government," that doesn't necessarily just mean state by state, it's always state governments, even federal states as well. So if you have private contractors working there, we would have jurisdiction over them; in other words, funded by a state government in a federal state. I think that -- that's what we've been doing so far in ARRA. I want to divert a little bit and talk about what I've been doing in ARRA; and what I want to say is that when the whole ARRA thing began, we -- my directorate had some funding to collect some data on. This is where I want to hear from you guys a little bit. We, at the end of the year 2009, collected 20,000 data elements in construction. As you know, in our OSHA designation, we collect 80,000 -- we've been doing this for 15 years -- 80,000 elements annually from general industry. Construction has always been difficult in terms of sites versus establishments, fixed establishments. But this year, we used some ARRA funding to collect 20,000 data elements from construction contractors' home offices, okay? Right now, I'm at a little bit -- I'm sort of rushed, but my next step, now that I have this data, is
two-fold. I have two steps: One is where we are going
to probably program -- come up with some threshold --
this is our mission for this year, take a cut-off
threshold and take the -- those with the higher rates.
Because we have the actual rates. We have the name and
address. It's not like the BLS where it's just SIC code
15 and I didn't know where you are. I know which ones
are generals, which residential. I know -- I have your
home office.

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

I think the most important step -- that is not
just selecting the data and targeting and doing the
inspections, but coming up with some sort of analytical
methodology for use of the data. Because unfortunately,
this is a one-time spending. I've spent quite a bit of
money getting these 20,000 data points. And I'm sitting
there looking at them. My first step is going to be how
to target 750 of them initially, and then another 200. My next step is, how can I use this analytically to be of some use in the future?

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

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

So I have that data out there, and I'll be open
to suggestion, if you want to think about it. I know that's not something you could just, on the spur of the moment, come up with. I just want to tell you that I have that out there. And I think this committee actually has some useful input, could have some useful input. I would be really happy to hear from you all if you had some ideas about how I could go about using this.

CHAIR MIGLIACCIO: Liz?

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

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

MS. ARIOTO: That's a loaded question.

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

MS. ARIOTO: Thank you.

CHAIR MIGLIACCIO: Walter?

MR. JONES: I'm not sure, maybe, if you are the one to ask -- that I should ask this to, but I wanted to draw down on a couple of things you just talked about, this expanded data and this targeting.
A lot of times in construction, as you just mentioned, you want to go in and note -- if you're going to conduct inspections and you're targeting, you want to know where they're at in the process. You don't want to show up when there's just two people there or three people there. As importantly, in health issues, a lot of times in construction, they're referrals, you get a (inaudible) that shows up for safety. He observes a health issue. The next day, a health person comes out.

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

I don't know if I made myself clear.

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

In fact, I was just going through one of the other pieces this morning, and particularly, they've
said:  (Reading.)  "That data information used to
support the conclusions stated above, the (inaudible)
code shows (inaudible) local emphasis programs to
collect the number of health referrals made, number of
violations related to employee exposures above the
action levels, lead, silica and noise, number of
violations related to employee exposure to (inaudible),
number of employees exposed to Portland cement.  Okay?

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

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

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

MR. JONES:  So we're going to be looking
at ways to go in and look at some more health issues --

DR. GODDARD: The model --

MR. JONES: The models --

DR. GODDARD: -- for that period. Right

now, I'm in the midst of developing base lines and

targets for those measures.

MR. JONES: We'd like for you to come back

and talk to us about that.

DR. GODDARD: That will become publicly

available September 30th, 2010. It goes into action.

But I don't ever preclude talking to an advisory

committee to get your feedback while it's still fluid.

April 30th is a huge milestone in terms of finalizing

those measures. Illinois could be on here in

construction.

MR. JONES: That's really important.

DR. GODDARD: Notice I said "could be."

So April 30th, I will know.

So that's timing. If the chairman would wish

to have me back at some point, is -- I'm (inaudible.)

MS. SHORTALL: I have a question about the

20,000 that you mentioned. What's this 20,000? Did you

obtain the OSHA 300 for them, or only the OSHA 300A, the

summary?

DR. GODDARD: I got the 300 as well.
MS. SHORTALL: So the 300 would give you a little bit more data --

DR. GODDARD: Yeah.

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

DR. GODDARD: Yes.

MS. SHORTALL: Okay.

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

CHAIR MIGLIACCIO: Susan?

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

DR. GODDARD: Okay.

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

DR. GODDARD: So maybe when I organize the
data, if you like. When is your next meeting?

MR. BUCHET: We have to decide.

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

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

DR. GODDARD: Yeah, okay.

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

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

And now we're going to be focusing a lot on (inaudible) and LEPs and those areas. And then what I'll do -- the other thing that we're talking about here
is the 20,000 and what I do with that dataset, which I'm
at liberty to get input from you on after -- how we
approach the (inaudible).

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

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

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

MS. BILHORN: Now, and the other thing
was, you know, it's a -- the information you're
presenting here is interesting. It's just the tip of
what appears to be a huge iceberg, just looking at the
616 and recognizing that it's over 50 percent --
54 percent versus 9 percent for ARR jobs, and 616 are
showing up with violations. Is it just, you know, as -- it just introduces, you know, a slew of other questions.

    DR. GODDARD: Yes.

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

    DR. GODDARD: So the LEPs ask for the three years when they go on an ARRA inspection, and they also ask for the safety and health programs the contractors would have. But then -- how many did I tell you, about 100 -- 1,068 were done federally and 300 in the state? That's just sitting there. That data doesn't become useful until I start thinking in terms of baselines and how I target the 700. Maybe I'll go back in there and start looking -- asking some of those questions so that I have some rationale for saying, "Okay. I didn't just use a cut-off threshold, but I was looking at these violations, and we found out the LP and NP to make some educated decision as to why we chose to
MS. BILHORN: Because I understand the ARRA is a blip in the screen, and it's only going to last for a certain period of time, presumably, right?

DR. GODDARD: Yes.

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

DR. GODDARD: Yeah, I think the 20,000 was a great opportunity to get the funding to collect it. And the thing about this business that we're in, I don't think it just -- other than because of the economy, that you see drastic shifts in the number of types of hazards. We know what the hazards are there. There are new emerging hazards, but we have a good sense. Capturing from one year doesn't say that the last 30 years have been different, or last 10, coming future are going to be that much different. We might be able to do some work with that, looking at BLS data that's coming in to draw some conclusions and inferences. It's -- it's more than one year's worth of data, anyway, I think you could do with it.
MS. BILHORN: The only differences are the speed at which some of these projects are being -- and the time frame that these are being let, you know, that it may make decision-making, selection of contractors, for example, different. And it also may mean there's a different population that is in the workforce in terms of their capabilities, et cetera. Because some of the -- it is a higher peak of the kind of work that often has been considered or demonstrated to be more hazardous as well. Some civil projects, et cetera.

DR. GODDARD: Yes. (Inaudible.)

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

DR. GODDARD: Okay.

CHAIR MIGLIACCIO: Any other questions?

Matt?

MR. GILLEN: I just had one question.

Thanks for the presentation.

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

DR. GODDARD: That's an interesting way to
describe it, an obstacle. Why don't you look at the --
a lot of the regulatory agenda coming up in the next
week so we can see something in that data that might
talk about that.

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

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

MR. GILLEN: Bottom line is, the injury
data is kept that way. It's according to NAICS code, so it makes comparisons.

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

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

DR. GODDARD: We use both right now, and I think you're going to see -- we're probably one of the last agencies that actually talk in terms of the SIC codes anymore. Everybody else is going to NAICS. But in the preamble of the record-keeping rule, the old record-keeping -- it's been in there all along, that would include from NAICS, from SIC to NAICS, so it's (inaudible).

MR. SHANAHAN: Tom, just a short question with regard to the SIC. Then in 15, 16 and 17, there are a lot of subcategories, so did I hear you correctly
that that's all broken out in the data itself or is it just lumped?

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

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

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

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

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

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

CHAIR MIGLIACCIO: Any other questions?

Sarah?

MS. SHORTALL: Yes, Mr. -- I would like to mark as Exhibit 3 the PowerPoint presentation, a data overview on the stimulus-funded work by Keith Goddard, Director of Evaluation Analysis.
DR. GODDARD: Thanks for the opportunity.

MS. SHORTALL: Thank you.

CHAIR MIGLIACCIO: Thank you, Dr. Goddard.

(Applause.)

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

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

Okay. What we're going to do now is, we're going to take a 15-minute break. It's 5 after now.

Please be back at 20 minutes after.

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

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

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

As of the 31st of March -- I'll give you some information on the status of the Agency's various cooperative programs. As of March 31, we have 2,348
active VPP sites and federal and state jurisdiction;  
1,548 SHARP sites -- these are sites that are recognized  
by the Agency's on-site consultation program. They're  
typically small businesses in high-hazard industries.  
We have 378 alliances, 228 Challenge program  
participants and 137 OSHA Strategic Partnership  
Programs. So that kind of sets the stage for activity  
in the programs right now. And I'm going to talk a  
little bit about particular issues related to these  
programs in my presentation.  

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

As of the end of March, there are 13 national
alliances that focus on construction issues, and we're very pleased to announce that next Monday, the 19th, OSHA Assistant Secretary, Dr. David Michaels, will sign the renewal of the OSHA National Homebuilders Association Alliance, which has been in place for a number of years now. We're very pleased that that renewal will take place in Washington next week.

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

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

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

And we're going to continue to look at our alliances as effective vehicles to help the Agency reach into local communities and provide employers, community, worker groups with training access, products and
services, especially for those hard-to-reach workers.

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

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

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

We're also looking to finalize Prevention of Strains, Sprains in Material Handling Industries and Construction slide presentation, and a toolbox talk on this topic as well. These should be finished in the early summer and will also be added to the Alliance Program product participant webpage.
The next meeting, we are hoping for the
Construction Round Table to get together sometime in
early summer. We're working on finalizing a date and
the details of an agenda. That information will be
coming out soon.

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

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

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

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

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

The VPP corporate approach, this is designed to -- as one of the avenues for the Agency to facilitate participation within companies that have multiple work sites that are interested in pursuing VPP to streamline their application review process somewhat. And
currently, we have a number of participants in VPP
corporate, several of which are in the construction
industry which I'll name now: the Washington division of
URS, Floor Corporation, Parsons Corporation. In
addition, Jacobs had an on-site review last autumn, and
we are looking forward to that approval being sent
forward shortly.

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

Currently, there are over 1,100 active special
government employees in this country, and 77 percent of
VPP on-site evaluation teams include at least one
special government employee. So we see this as
something that's been helpful over the years to staff
and implement the program from the on-site review aspect
of it.

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

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

These actions include enhanced oversight of
OSHA's fatalities and significant events when they occur
at VPP sites, procedures to follow when VPP sites no
longer meet program requirements, improved processes for
obtaining medical access orders in advance of a VPP
on-site being conducted, as well as eliminating modified
application processes that were being instituted -- or
implemented, rather, in the field.
So we're continuing as an ongoing effort to look at how we can improve the VPP program administration as part of our overall efforts.

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

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

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

So this has been a wonderful avenue for the Agency, using minimal resources, given that these are third-party administrators who actually work with these work sites to develop and implement their safety and health management system to foster and encourage
advancement of worker protections in the workplace.

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

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

Finally, I want to talk a few minutes about OSHA state plan activities. In fiscal year 2009, the total of just over 61,000, 61,016 inspections were conducted by OSHA state plan states. Of those, 79 percent were safety-related inspections, and
21 percent were health. Just over 129,000 violations were issued out of these inspections; and of those 129,363 violations that were issued. Forty-three percent of those were serious.

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

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

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

The funding that was initially made available to the 26 state plans -- this was prior to Illinois' final public-sector approval program -- was 3.75 million, and as I mentioned, seven of the state plans accepted a total of 1.5 thousand -- just over 1.5 million, rather, dollars. Those seven states were
California, Michigan, Minnesota, New Mexico, New Jersey, Oregon and Tennessee. These were equally matched funds.

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

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

The regions conduct quarterly financial and program monitoring of grant recipients. These include at least two on-site visits. So what is the inspection status that we've seen so far? Seven recipients, the seven states that took the monies, they projected 1,223 inspections. As of March 31 of this year, recipient states have coded and conducted 674 inspections and 207 no inspections.
Since approximately 734 inspections were projected through March 31, the states appear to be on track at this time. Many recipient states have experienced challenges in identifying and verifying sites with ARRA funding, as well as active sites, among those identified. I think this is a common problem, actually, across the country.

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

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

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


MS. ARIOTO: Yes, Liz Arioto. Thank you very much for your presentation. It was very good.
I do have a -- you mentioned one thing, that 
there was more involvement with the union contractors 
compared with nonunion. It was like -- am I correct on 
what you said on that?

MS. JILLINGS: In --

MS. ARIOTO: Programs or VPP programs?

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

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

MS. JILLINGS: Outreach in general through 
our cooperative programs is more focused on targeting 
how we can support especially high-hazard industries and 
those that are identified as areas of emphasis within 
the Agency's plans going forward, so we don't 
individually target, per se, but certainly, as those -- 
not necessarily in VPP, but in our other programs, our 
Strategic Partnership Program, our Alliance Program, as 
they come in, we're going to be looking for ones that
help us best reach workers in the front line and provide
resources to support them.

MS. ARIOTO: Thank you.

HEARING OFFICER: Walter?

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

Is there a -- as the program evolves, is there
a development of a -- a more global vision of VPP, where
it can become a laboratory of best practices upon which
we can then spread throughout the rest of industries?

For instance, if we can use -- since these are the best
of the best and they're going beyond OSHA minimum
requirements -- OSHA statutory requirements, and most of
their safety and health practices are best practices
throughout industry, if we can use these companies
and -- as a laboratory of what works and what doesn't
work, what's efficient and what's not efficient, what
makes sense in terms of cost and what doesn't, you know,
how preplanning -- you know, most of these folks that
are in VPP, they go through -- they design their
projects out ahead of time. They design controls into
just about every task. They do preplanning. They do pre-jobs, JSAs, they do lots of different things to create a safe work site.

Is there any thought in your office about how we could take all of this wealth of information and begin to spread it out so that when we get to these other arguments about what the usefulness of preplanning or designing for safety or to the usefulness of toolbox talks, that these companies could then come in and say, "They are useful. They are efficient. They do save us money and that's why we are in the VPP program"?

Besides just saying, "We're VPP and everything we do is proprietary."

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

So to that end, it's a fundamental facet of the program. I think there are -- certainly one of the things that we're looking at is, how we can continue to expand and raise awareness of the model practices that
are identified by these -- by OSHA staff, whether they're on site, or by the employers. And that's something that, through our website, we try to post, you know, model practices, success stories, and we're always looking at avenues on how to further expand that awareness and sharing of information. I think that's something that --

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

MS. JILLINGS: Thank you.

CHAIR MIGLIACCIO: Tom?

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

MS. JILLINGS: Well, we're still exploring and considering multiple avenues of alternate funding,
nongovernmental funding mechanisms for it. It's still very early or preliminary review stages, but one of the things that -- that has been stated is public agent -- OSHA, like other government agencies, is faced with limited resources, and the Agency intends to focus its limited resources on those employers that are in greater need of them due to their...

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

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

MR. SHANAHAN: Right, right.

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

CHAIR MIGLIACCIO: Susan?

MR. GILLEN: Thank you, Miss Jillings.

Susan Bilhorn.

One -- a follow-on to that, have you -- are you also considering different approaches that may actually relieve some funding needs? Now, thinking, for example, that -- and maybe you're already doing this, but because
the VPP program is something that looks more broadly at safety, not just necessarily violations, it's how management is framed, how you've been engaging employees, et cetera, some of your inspectors going through that process to get a greater awareness of how, you know, real safety is done on sites, it would seem to me, would be a great educational experience to have them rotate through to bolster up their capabilities.

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

MS. JILLINGS: I think the Special Government Employee Program is definitely one that is designed to have VPP safety and health professionals from VPP work sites go out and assist with the on-site
reviews of VPP facilities, both at the new and renewal stages.

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

CHAIR MIGLIACCIO: Any other questions?

(None heard.)

CHAIR MIGLIACCIO: Sarah? All right.

Thank you.

MS. JILLINGS: Thank you.

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

MR. PARSONS: Good morning, everyone.

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

(Laughter.)

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

On April 4th, however, April 4th of last year, in this very hotel, we had a roofer fall off the roof and die. One year ago this month. He was working for a roofing company that was hired by this hotel, and the investigation revealed that he had fallen from one of the lower levels, a three-story portion of the structure, and suffered massive head injuries and died.
He was 28 years old.

Those are the kind of things that drive me.

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

All of us, in the Directorate of Construction, are very concerned about what's happening in the construction industry across the United States when it comes to occupational safety, and the fact that a lot of the information that is developed by groups like this,
by other organizations, NIOSH, CPWR, many organizations across the country, are -- they seem not to find their way to people that need it in the field. You know, we put a lot of time and effort into developing products, and one of our weaknesses is getting that product out there to the person that really needs it.

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

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

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

You know, we were talking with the folks from Filipas (phonetic) yesterday, offering free training, and they can't get the folks to come in for free
training. And I know that the workers want the
training. The problem is, it comes down to dollars and
cents to the owner, and most people -- many owners,
rather, since I've been there with them, many owners
can't -- don't really get the point that a well-trained
worker is a safer worker, and that a safer worker not
only protects himself, but he protects the company and
saves the company money. That's an education that a lot
of these folks don't receive, a lot of the owners don't
receive.

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

As Dr. Michaels said a little bit earlier,
nobody should have to die to earn a living. I was -- I
was saying that in 1974, when I got my first safety job,
that it was unfortunate that people had to die to earn a
living. I have a family of brothers, a father and
grandfather who were all seriously injured in
construction work accidents. I have their picture on
the wall in my office to remind me every day that
whether it's employee misconduct, whether it's not being
trained or an employer that doesn't care about the
workers, people are dying and being seriously injured
every day.
We don't learn a lot about the numbers of people that are injured, and we haven't done very well in using data to drive us to where we need to be with many of our program elements. And one of the things that we're trying to do through working with NIOSH and CPWR is get better at using those numbers. And other organizations -- I'm not going to limit it to only that. Anybody that has good data, that's what we need. And that's what we should be using to drive the -- the machine here.

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

Some of the things that you may not know about are the letters of interpretation that -- that we get in every day. We receive requests from someone asking us to interpret what's been written. And I inherited a very tall stack of those a couple of months ago, and we've been putting them out two, three, four a week since that time. So if you check the most recent update on OSHA's website, you'll find that we now have quite a few new letters of interpretation that have been issued,
many that were sent to us back in 2004, 2005, 2006, so, you know, we're moving forward. We're working. We're staying busy and we're trying to maintain some of these things while we're taking on new projects and initiatives.

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

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

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

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

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

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

We're also writing articles for magazines. We just had one about to be published. We've got another one that's going to be published in one of the Hispanic
magazines out of the D.C. area, and we also develop
articles for association publications as well.

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

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

And I can go on and on. There's many
organizations. I think many of the times, we're --
we're all working in the same direction or on the same
issue, but sometimes we're doing this (gesturing), and
if we have a concerted effort, I think we all gain from
it, and that's what we're trying to do, is we're trying to pull some of that together.

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

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

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

I've heard the message of ACCSH and concerned
stakeholders that the use of data needs to be there to
help drive the Directorate of Construction, and I want
you to understand that we're working with NIOSH and BLS
and others to -- to get the data that we're looking for.
It's been -- it's been a difficult job for us,
especially working with BLS -- not that they're hard to
work with, but they only provide certain things, and --
but they have agreed to work with us, to help us gather
some of that other information and understand that we
are moving forward on that.

Lot of talk about ARRA initiatives this
morning. And what I want to say is, the Department of
Labor, OSHA specifically, received money to do some
things related to ARRA, and I'm going to identify a few
of those proposed topics, that -- not just the
Directorate of Construction, but we've teamed up with
Dorothy Doherty, with Keith Goddard, with other folks in
the Agency and their directorate so that we could work
together on preparing some of these things. And they
include a Controlling Silica in Construction document,
some sort of fact sheet, fact sheets and Quick Cards to
identify OSHA inspection items on stimulus projects,
what we're finding. The top-ten hazards in construction
fact sheet; a series of fact sheets and pamphlets on
common construction hazards to include falls, confined
spaces, cranes and derricks and so on; a lead in
construction video supported by some fact sheets;
controlling noise exposure at construction sites video
and lesson plans; assessing needs for PPE at
construction sites video and lesson plans.
Video on proper use of respirators in construction and healthcare environments. That's already under way by Standards and Guidance, which we provided some support through our staff. Controlling ergonomics hazards in construction operation guidelines.

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

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

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

CHAIR MIGLIACCIO: Thank you. Any questions?

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

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

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

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

MR. PARSONS: Uh-huh.

MR. AHAL: So -- I -- I heard Dr. Michaels
this morning mention that he had worked with brother or
sister agencies in the government -- and I think this is
an example of where there may be overlap, there may be
gaps, but there seems to be at least a question in my
mind, are they doing something that isn't already there
or why, and it's now, you know, the workers feel like
they have to be looking over both shoulders because now
the EPA is in an area that didn't used to see them
there. So think about bringing that up later today.

MR. PARSONS: I certainly will, thank you.

CHAIR MIGLIACCIO: Emmett?

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

I think the trenching was pretty good in terms
of developing some products through OSHA, but again, I
just wanted to compliment Bill for having that
discussion and being willing to follow through on
utilizing the ROPS work group product in some form or
fashion. So hopefully at some later date, we'll be
reporting to the committee how that product is going to
be used. Thank you.
CHAIR MIGLIACCIO: Any other questions?

(None shown.)

CHAIR MIGLIACCIO: Thank you. All right.

Michael?

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

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

We also listened to the regional administrators who collect the information from their area directors. We've listened to the national office staff who collect information from different areas than from the area directorate, so we might be looking at BLS data, we might be talking to NIOSH and looking at NIOSH data.
The bang-for-the-buck principle says that we address -- and this goes for more than just the Harwood grant. We address the hazards with the most exposures that we can get to and solve the problems in. So if -- and most likely, a consensus committee, when you're developing a sinerack (phonetic). There may be some issues in steel erection that didn't get addressed because maybe one person in ten years got injured by that particular issue. We're looking for the ones where there are hundreds of people being injured, and unfortunately, some being killed.

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

Being in the list means it gets put in the
Federal Register, and the whole world is invited to respond. That's not quite technically correct. You have to be rated as a government contractor and have your Dun & Bradstreet done. There's a lot of up-front work that has to be done. Nonprofits primarily get to apply.

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

MR. JONES: When is the deadline?

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

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

MR. JONES: No, for our application.

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

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

MR. JONES: No, my question is, so if we
have any suggestions, we have to make them at this
meeting; otherwise, they're not going to make the cut
for --

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

MR. JONES: Okay. Thank you, Susan.

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

UNIDENTIFIED SPEAKER: It was.

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

Right now, there's seven on the committee right
now that their terms are ending in November. So you've
got your -- if you'd like to stay, you've got your
notices, letters and so forth, you're backings in. If
not, let somebody know that you -- I know that Kevin
said that he was (inaudible). But he should send that
in with a letter probably, too.

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

CHAIR MIGLIACCIO: And Dan had a question,

and Emmett.

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

CHAIR MIGLIACCIO: Same thing.

MR. RUSSELL: Same thing, what?

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

Dan, for you, that's employer interests, so if
an employer --

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

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

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

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

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

CHAIR MIGLIACCIO: Emmett?

MR. RUSSELL: Emmett Russell. Frank, can you at least read the seven people? And I'm not sure
everyone has knowledge of who the seven are. Can you
read the names, please?

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

(Simultaneous speakers.)

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

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

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

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

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

MR. BRODERICK: I was wondering about the
timing so for those of us who expire -- no, those of us
whose terms expire in October -- (Laughter.) The Federal Register notice telling us to get busy is still to come?

CHAIR MIGLIACCIO: Yes. Yours is October 2010.

And Susan?

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

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

MS. BILHORN: Good idea.

CHAIR MIGLIACCIO: Any questions?

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

CHAIR MIGLIACCIO: All right.

MR. BUCHET: One more. We're doing this back and forth. There is no prohibition against
self-nomination. There is no prohibition against
self-nomination. That may be weaker than having
somebody high-profile nominate you, but self-nomination
that is supported by letters of support are certainly
evaluated as any other nomination.

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

MS. ARIOTO: Should I pronounce my last
name.

CHAIR MIGLIACCIO: Please.

MS. ARIOTO: It's Arioto.

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

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

MR. AHAL: Okay. Thank you.

CHAIR MIGLIACCIO: There were no people
signed up for public comment, and what that's going to do is allow us to go right into the committee administration. We should be able to get out of here a little bit early for lunch so we can get over to the Summit.

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

UNIDENTIFIED SPEAKER: Last week in July?

26th.

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

CHAIR MIGLIACCIO: Well, the suggestion -- I know Steve said something this morning to Dr. Michaels about it's a great idea like to go to these other places, but you have to remember that we've always been told in the past, it's always been a money constraint. And the reason why I say that is, if it's in D.C., the government pays for the committee members to come into
the meeting. If it's outside of D.C., they pay for the committee members to go to it plus all their staff. So that's one thing, I know, that's -- I know they look at it. I like to go different places every time, just seems like it's better, you know. Get water and coffee and stuff here. But I'm just saying, this is something (inaudible).

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

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

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

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

MR. ZARLETTI: I know for a fact in July, there's an annual meeting for the Scaffold Industry Association. They're in alliance with OSHA. Scaffold
is always on the top-ten list.

MR. GILLEN: When and where?

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

MS. BILHORN: Real estate?

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

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

MR. JONES: Okay.

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

UNIDENTIFIED SPEAKER: That's a good week.

(Simultaneous speaking.)

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

MR. JONES: Wednesday to Saturday?

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

MS. BILHORN: So, Dan, what is it called?

I'll Google it.

(Simultaneous speaking.)

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

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

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

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

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

MR. BUCHET: That's going to take a lot of work, and the more information we have is better. The other thing is, what level of participation are we going to get from their attendees at the ACCSH meeting and what level of participation will ACCSH members get at their meetings?
MR. ZARLETTI: I think a lot, because when I sat through their committee member meetings, which were here in Houston about a month ago, there was a lot of interest in how they get themselves off the top-ten list. There's a lot of interest in the fall protection with aerial work platforms and aerial lifts.

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

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

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

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

MR. ZARLETTI: All right.

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

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

MR. BUCHET: But you-all are going to have to -- Dan, you're going to have to work on that, and we'll try and go through the Alliance. ACCSH's request,
if I understand this correctly, is to meet what day of
the week?

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

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

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

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

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

MS. MYERS: Yes, I am also going to make
an offer -- two offers, actually. We have our -- the
American Wind Energy Association has our national convention in Dallas at the end of May, which may be a little too tight and a little too close. In October, we're also having our health and safety workshop where we have approximately 500-plus safety and health professionals within the wind industry. That will be in Austin. It's the last week of October. So perhaps for the fall meeting, if that is something that you are interested in, I'm just in the very beginning stages of preparing that workshop, so I can secure locations. Just throwing it out there. And you know, maybe you get to see a wind turbine.

MR. BUCHET: Great job.

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

MS. BILHORN: Austin in October sounds good.

CHAIR MIGLIACCIO: (Inaudible.)

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

(Simultaneous speaking.)

CHAIR MIGLIACCIO: So what we're looking for right now, though, is probably the week of the 18th in July, regardless where.
MR. BUCHET: But as a point of assisting the Agency in doing its planning, ACCSH has gone out of D.C. with limited frequency for years, and Tom Broderick certainly knows, because he's been kind enough to host us, but I was wondering if you can illuminate how the drafting of those combined schedules takes us some time and what we need to get it going, because I'm sure it's going to be the same with any other association that has a conference.

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

MR. BUCHET: Additionally, I don't want to say you've stacked the deck, but you've managed to have ACCSH or OSHA staff involved in your conference?
MR. BRODERICK: Yes. And that works quite well.

CHAIR MIGLIACCIO: Susan?

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

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

CHAIR MIGLIACCIO: Anything else?

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

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

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

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

MR. JONES: Just suggest something.

CHAIR MIGLIACCIO: Excuse me?

MS. BILHORN: Just suggest when we should meet, then.
MR. JONES: Why don't you suggest when we should meet and we'll move on?

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

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

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

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

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

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

MR. BUCHET: I'm trying to. After the
beginning of October, if there is no budget, the planning cycle only goes as long as the continuing resolution, which means if it's a month, we probably cannot accomplish a Federal Register notice, get you travel arrangements and --

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

    UNIDENTIFIED SPEAKER: So November is usually safe?

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

    UNIDENTIFIED SPEAKER: That pushes us to December.

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

    CHAIR MIGLIACCIO: That would be a short meeting.

    MR. KAVICKY: And I can't do that.
MS. BILHORN: And por que?

MR. KAVICKY: Friday is the first --

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

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

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

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

MR. BRODERICK: When is Congress?

UNIDENTIFIED SPEAKER: Has no bearing on this.

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

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

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

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

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

CHAIR MIGLIACCIO: What did you find out, Dan?

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

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

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

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

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

CHAIR MIGLIACCIO: Through September, try to find something in September. We can always plan that first -- other one in December.
MR. SHANAHAN: How does the week of September 13th look for everybody?
MR. KAVICKY: September 20th?
MR. HAWKINS: (Inaudible.) They're both good.
CHAIR MIGLIACCIO: Both good with Steve.
Okay.
MS. ARIOTO: They're both good for me.
CHAIR MIGLIACCIO: 20th is not good for you?
MR. KAVICKY: 20th, good for me.
MS. BILHORN: I won't know, because we do our whole business planning that month, and that week is a potential that that would be a conflict. I won't know.
MR. AHAL: I'd rather do the earlier week in September. The 20th, I've already got several things already.
MR. THIBODEAUX: Not available on the week of the 13th.
MR. KAVICKY: Not available on the 13th or 20th.

(Simultaneous speaking.)
CHAIR MIGLIACCIO: Emmett?
UNIDENTIFIED SPEAKER: I've got to look.
CHAIR MIGLIACCIO: Dan?

MR. ZARLETTI: 13 and 20 is good, and

27th's not.

MS. ARIOTO: I'm fine both.

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

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

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

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

MR. JONES: All right.

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

MR. BUCHET: Thank you for the word "potentially." Potentially, yes.
MR. SHANAHAN: Doesn't matter.

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

MR. SHANAHAN: Right.

MR. BUCHET: Not likely.

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

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

CHAIR MIGLIACCIO: The last week in July.

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

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

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

CHAIR MIGLIACCIO: Christine?

DR. BRANCHE: Christine Branche. If I
could make a suggestion, given that you are trying to consider having meetings that are not necessarily in D.C., and given that trying to schedule a meeting in D.C. and getting hotels rooms could be a problem, I would suggest that the designated federal official and the Chair solicit suggestions of meetings during 2011 for which meetings that are on the calendar -- because people plan national, international meetings well a year -- more than a year in advance. So having those dates secured where you may want to start working with meetings that are in conjunction, that's the first thing.

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

MR. BUCHET: ACCSH is a little different in that the committee is supposed to drive itself more than we're supposed to drive it. And we certainly had tried to do the out-year planning, and the history has been, it changes so much by the time we get there, that it -- it's tough. We have had luck trying to hold ACCSH meeting with things like a National Safety Council with
Tom Broderick's -- but those are scheduled within a few weeks of each other every year and about the same fashion.

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

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

CHAIR MIGLIACCIO: 2011.

MS. BILHORN: 2011.

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

MR. BUCHET: Public comments.

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

(None heard.)

UNIDENTIFIED SPEAKER: Is there anybody in the room?

MR. SHANAHAN: Thanks, you guys, for
hanging around.

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

(Meeting adjourned at 11:48 a.m. to reconvene April 16, 2010 at 8:00 a.m.)
REPORTER'S CERTIFICATE OF PROCEEDINGS

U.S. DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH

MEETING APRIL 14, 2010

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

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

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

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