

Capital Reporting Company
U.S. Department of Labor ACCSH Meeting 08-23-2013

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U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH
(ACCSH)

Friday, August 23, 2013

Frances Perkins Building
Room C-5515
200 Constitution Avenue, NW
Washington, DC 20210

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

2 MR. JONES: Welcome, everyone. I would like
3 to reconvene the ACCSH meeting for August 23rd. I'm
4 Walter Jones. I represent the Laborers' Health and
5 Safety Fund. I'm an Employee Rep. And I would first
6 like the table here to introduce themselves, and then
7 we'll do the folks on the phone, and then afterwards
8 we'll do the folks in the audience.

9 So if I could start with Tom.

10 MR. MARRERO: Tom Marrero, Employer Rep.

11 MR. GILLEN: Matt Gillen, NIOSH Rep.

12 MS. COYNE: Sarah Coyne, Employee Rep.

13 MR. MCKENZIE: Dean McKenzie, OSHA DFO.

14 MS. SHORTALL: Sarah Shortall, ACCSH Counsel.

15 MR. BOLON: Paul Bolon. I'm in the
16 Directorate of Construction, in the Office of
17 Standards.

18 MR. ECKERSON: Dayton Eckerson, also in the
19 Directorate of Construction of OSHA.

20 MS. SHADRICK: Hi. Laurie Shadrick, Employee
21 Rep.

22 MR. CANNON: Kevin Cannon, the Associated

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1 General Contractors of America, Employer Rep.

2 MR. RIVERA: Jerry Rivera, Employee Rep.

3 MR. STRIBLING: Good morning. Chuck

4 Stribling, Kentucky Labor Cabinet, State

5 Representative.

6 MR. JONES: Jeremy?

7 MR. BETHANCOURT: Good morning. Jeremy

8 Bethancourt, ACTA Safety, Public Representative.

9 MR. ERICKSON: Roger Erickson, MOST Programs,

10 International Brotherhood of Boilermakers, Employee

11 Representative.

12 MS. BARBER: Good morning. Kristi Barber,

13 Employee Representative.

14 MR. JONES: Steve? Okay.

15 Scott?

16 MR. SCHNEIDER: Scott Schneider, Laborers'

17 Health and Safety Fund.

18 MS. WILSON: Lisa Wilson, the Office of the

19 Solicitor.

20 MR. COLE: Chris Cole, Inside OSHA.

21 MR. ARMSTEAD: Troy Armstead, Air Force

22 Safety.

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

3 MR. RANDELL: Tom Ransdell, OSHA.

4 MR. KAMPERT: Eric Kampert, OSHA.

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

7 MR. MADDUX: Jim Maddux, with OSHA.

8 MR. HARVEY: I'm Chuck Harvey, with OSHA.

9 MR. PAYNE: Michael Payne, with OSHA.

10 MR. MARUD (ph): Courtney Marud, OSHA.

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

13 MR. ROLFSEN: I'm Bruce Rolfsen, with BNA,
14 Occupational Safety and Health Reporter.

15 MR. JONES: Okay. I want to thank everyone
16 for attending again today. We're just going to start
17 with Paul Bolon. He's going to go over the SIPs
18 information for us that he supplied. I believe there
19 are handouts in the back of the information they're
20 supplying.

21 Okay, back to you, Paul.

22 MS. SHORTALL: I just have a couple of quick

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1 things to go over.

2 MR. JONES: Oh, I'm sorry.

3 MS. SHORTALL: One, I would like to mark and
4 put into the record as Exhibit Number 4 the OSHA
5 Training and Outreach Program Evaluation questions
6 developed by the ACCSH OTI Workgroup, and as Exhibit 5,
7 Introduction to OSHA Course Recommendations, also
8 developed by the OTI Workgroup.

9 And then on a personal, for those members who
10 have served with Daniel Zarletti on this committee, his
11 brother passed away very suddenly last month. I'm sure
12 all of you were regaled with the stories about his
13 brother's singing career. And if you want to send
14 condolences, just send me an e-mail because I have his
15 home address.

16 Thank you.

17 MR. BOLON: Good morning. I'm Paul Bolon.
18 Again, I'm in the Directorate of Construction in the
19 Office of Standards and Guidance. And next to me is
20 Dayton Eckerson. He is the main staff person who is
21 working on the Standards Improvement Project, Phase IV,
22 which is the full name of what we abbreviate as SIPs

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1 IV. We're going to go through the SIPs candidate ideas
2 that are in the table that you've got, and so we'll
3 follow the order that's here. It's not exactly the
4 order that was in the agenda, but it has all the items.

5 And I'll just mention a couple of things
6 before we start out with the first one. At the end --
7 this isn't on your table, but at the previous committee
8 meeting, we had presented an idea on replacing the
9 decompression tables in the underground construction
10 subpart, and we've been asked by the committee to
11 follow up on that, and so we're going to mention that
12 to you again, if the committee wants to make a
13 recommendation on that.

14 And also near the end of this table that you
15 have are a couple of items on x-rays, both of when
16 they're done and storage of them. Those were also
17 considered last time, and the committee had asked OSHA
18 to look at a few more things, so we're going to present
19 them again.

20 And, again, just to refresh everybody's
21 memory about what the Standard Improvement Projects
22 are, this is the fourth one, and they're not a full

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1 OSHA 6B rulemaking. We usually don't get into risks,
2 we don't have new costs. It avoids that kind of
3 lengthy analysis. And so what we're trying to do -- and
4 this one is focused on the construction industry -- is
5 to simplify regulations, clarify them, allow new
6 methods or technology, reduce paperwork, reduce burdens
7 on employers so long as we're not reducing employee
8 safety. Some of the items generally are cost savings,
9 and as I said before, they're not new costs because we
10 don't get into a feasibility analysis and
11 determination. And sometimes we pick up things that
12 are more predictive that don't have new costs. So
13 those are the criteria.

14 And we published an RFI back in December. We
15 had a lot of ideas from there and a number of the ideas
16 in this table are from there, and also the ones that we
17 presented to ACCSH at the May meeting.

18 So with that, we have about 10 or 12 to go
19 through here, and we'll go through the table that
20 you've got.

21 The first candidate was to revise the
22 definitions of "employer" and "employee." And we

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1 wanted to propose using simpler definitions of
2 "employer" and "employee" than the lengthy ones that
3 we've got, which are lengthy and confusing. The
4 definitions that we're proposing are consistent with
5 the OSH Act definitions and they're consistent with
6 what's in the general industry definition. And again
7 our intent here is just to simplify and make these
8 definitions consistent so that everyone understands who
9 is covered and what they need to do.

10 Are there any comments or any questions?

11 MR. JONES: Paul, how would you like us to
12 handle this? Would you like for us to go through the
13 entire document and then accept it in whole or make
14 motions on each change? It would probably be easier if
15 we went through one-by-one, I guess.

16 MR. BOLON: Yeah, but, you know, there might
17 be some that are not --

18 MR. JONES: Controversial?

19 MR. BOLON: No, not controversial. You might
20 cover all of those in a recommendation, and if the ones
21 that are --

22 MR. JONES: All right. That's what we'll do.

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1 MR. BOLON: All right.

2 MR. JONES: Any comments?

3 Chuck?

4 MR. STRIBLING: Good morning.

5 MR. JONES: Introduce yourself, Chuck.

6 MR. STRIBLING: Chuck Stribling, State
7 Representative. The proposed definitions give me
8 significant concern, and I spoke to Mr. Hawkins, which
9 --

10 Are you on the line, Steve?

11 MR. JONES: No, he's not.

12 MR. HAWKINS: I'm here.

13 MR. JONES: Oh, he is.

14 MR. STRIBLING: And I also ran it by our
15 counsel, and they're very concerned about the proposed
16 definitions here for "employee" and "employer." So I
17 think maybe -- you know, I don't want to spend a lot of
18 time on this because I know we have a lot to cover, or
19 if you do want to spend a lot of time on it, it's
20 however you choose to proceed, but this is one that I
21 know I can't support, and I don't want to speak for
22 Steve, but he may not be able to as well.

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1 MR. HAWKINS: Can you hear me, Chuck, okay?

2 MR. JONES: We hear you well, Steve.

3 MR. HAWKINS: Okay. I want to say hello to
4 pretty Ms. Sarah there.

5 (Laughter.)

6 MS. SHORTALL: Hi, Steve.

7 MR. HAWKINS: I'm sorry I don't get to be
8 there in person. I also would like to complement
9 Walter for the wonderful job he's done in Pete's place
10 there.

11 MR. JONES: Thank you, Steve.

12 MR. HAWKINS: You know, many of the states --
13 some states do everything uniquely, and then some
14 states like pretty much Tennessee and Kentucky pretty
15 much pattern Federal OSHA, and we adopt the OSHA
16 standards every 6 months. We have a procedure that we
17 follow and we do it twice a year to make sure that we
18 adopt all of the standards that OSHA adopts and that
19 we're always within 6 months of them because that's a
20 requirement of our grant. And so we do this in a
21 wholesale fashion.

22 And this section that is proposed to be

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1 amended is a section that we adopt in this wholesale
2 manner, and the definition of "employer," because it
3 specifically says it doesn't include states and local
4 governments as well as the United States, is a problem
5 for us because if we adopt it in this wholesale manner
6 that we're accustomed to and I think many other states
7 are accustomed to, we could conceivably lose our
8 protection of state and local government employees.

9 And so I did raise it to Doug Kalinowski and
10 a couple of other folks in OSHPA, which is, of course,
11 you all know what that is, that's the Association of
12 State Plan States, but I couldn't help -- Chuck and I
13 discussed it, and we couldn't help but bring it up at
14 this opportunity in case this is like one of the few
15 opportunities we actually get to object to it, but that
16 is a problem for us because when we adopt that
17 language, it could give us some problem, and I think it
18 could give a lot of other states problems, and they may
19 not realize it at this point, and it would be nice to
20 get this fixed before it got too far. So thank you.

21 MR. JONES: Thanks, Steve.

22 Paul?

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1 MR. BOLON: Yeah. I'm not quite sure if this
2 language is adopted, then it essentially would be
3 giving you jurisdictional problems because it's taking
4 you out of your own authority or something? Is that
5 it?

6 MR. HAWKINS: Well -- this is Steve Hawkins
7 again -- every 6 months we adopt that language and we
8 adopt the language that's in this standard number --
9 what is it? I think it's 1910.3 or 1904.3. I don't
10 remember the exact number. I can't pull it up on my
11 screen because I have you all on my screen, but
12 whatever that standard number is, Paul, is included in
13 the range of standards that we adopt every 6 months.
14 And so if we adopted this -- let's say this change goes
15 through and that standard does indeed change and it's
16 worded like the proposal is worded, we would be
17 adopting a document that says we don't have
18 jurisdiction over state and local governments, and it's
19 something that we do have jurisdiction over. So we
20 don't understand why the necessity to have that
21 language in there. I mean, if there is some compelling
22 reason why it has to be, I guess we'll have to look at

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1 other ways around it, but in the long run, we're
2 concerned it could cause us some kind of legal trouble
3 with jurisdictional issues in the future.

4 MR. BOLON: Lisa, do you -- Lisa Wilson is
5 from the Solicitor's Office. She is a solicitor on the
6 SIPs project. Do you have any --

7 MR. JONES: One second, Lisa.

8 MS. WILSON: Thank you. Again, I'm Lisa
9 Wilson, with the Solicitor's Office. I understand the
10 state's concern. The proposed new language would be,
11 "'Employer' means a person engaged in a business
12 affecting commerce who has employees but does not
13 include the United States or any State or political
14 subdivision." Obviously, that is language that is
15 applicable to the Federal OSHA but that would exclude
16 obviously state coverage. I think what OSHA is trying
17 to do here is this language does come from what's in
18 1910.2, which states have adopted as appropriately
19 adapted to meet -- okay, you have a different
20 definition. Okay. I understand the concern the states
21 want to adopt things without making changes. OSHA is
22 trying to make this language consistent with the

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1 general industry language and really fully make it
2 clear to employers the coverage of the Construction
3 Act. I think perhaps we could later explore a way to
4 make this clear within OSHA without burdening the state
5 plans because obviously you can't lose jurisdiction
6 over all the employees that you cover, and that was not
7 OSHA's intent obviously to deprive anyone of any
8 jurisdiction.

9 MR. GILLEN: Matt Gillen, from NIOSH. I
10 would just like to say that I looked up the BLS
11 statistics here and it shows that in 2011 there were 43
12 construction workers who worked for either the state,
13 local, or federal government who were killed, and so
14 this looks like it says that those workers don't get
15 protection from the OSHA construction standards in a
16 way if you read it, if they're not employers. That's
17 what I would worry about, is a change like that that
18 then excludes some workers that look like they deserve
19 protection because they're construction workers. And
20 so to me that's the fundamental question I have.

21 MR. JONES: Chuck.

22 MR. STRIBLING: Thank you. Your point is

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1 well taken, and just for the matter of record, in the
2 Commonwealth of Kentucky, we do not adopt the general
3 industry definition for "employer" and "employee." We
4 would most certainly not adopt this proposed text. We
5 think it could be a problem. We do adopt the present
6 definition of "employer" and "employee," and we don't
7 run into that issue of an employer not knowing that
8 they're covered under the act, it's well settled, so
9 maybe we're not having the same problem you're having.

10 And with regard to the definition of
11 "employee," we talked yesterday about some issues with
12 regard to independent contractors, temporary workers,
13 day laborers, et cetera. The old definition makes it
14 pretty clear it includes everybody. The new definition
15 for "employee" makes it sound like you must be employed
16 by the employer, and in fact it would hurt us in our
17 enforcement efforts where we do consider employees to
18 be -- they're to be in an employer-employee
19 relationship, we go by the 13-part United States
20 Supreme Court test, but this sort of makes it look like
21 you must be employed, directly employed, by this
22 definition. So it's also a problem for us as well.

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1 MR. JONES: Thank you. Any other comments?

2 MR. BOLON: So, I mean, you don't have any
3 alternative language here to resolve the issue. Is it
4 more complicated than that or --

5 MR. STRIBLING: More complicated than what?

6 MR. BOLON: Well, than just, you know,
7 suggesting some alternative language here to what we
8 have or --

9 MR. STRIBLING: Yeah. I mean, I would
10 suggest the current definitions are well settled, and,
11 granted, they don't match up identical to general
12 industry, but they're two different industries. In
13 construction, we run into a much broader spectrum when
14 it comes to the employer-employee relationship than we
15 typically do in general industry. So I applaud the
16 agency for trying to be as consistent as possible
17 between the two, but this may be an instance where well
18 is good as it is, and we can just leave it be because
19 it is different in construction. So, no, I don't have
20 a specific alternative to offer.

21 What I would do, if the agency would like an
22 alternative, is at the next OSHPA meeting, I would send

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1 this out and seek time on the agenda for all the states
2 to address this since that's who I represent, and see
3 if we could come to a consensus that the group would --
4 and also poll the states to find out how many currently
5 do adopt the present definition and how many would not
6 adopt the proposed text.

7 MR. BOLON: Okay. When is the next OSHPA
8 meeting?

9 MR. STRIBLING: Steve?

10 MR. HAWKINS: I think the 19th, 18th and 19th
11 of October. Give me one second and I'll pull it up
12 here, 22nd and 23rd of October in Nashville actually.

13 MR. JONES: Steve, do you have any suggested
14 language or addendums to this proposal that could make
15 it more palatable?

16 MR. HAWKINS: No, just as Chuck said, just to
17 leave the language as it is because it's more broad
18 than the amended language.

19 MR. JONES: Thank you.

20 MR. GILLEN: Matt Gillen, NIOSH. I don't
21 have any language. It's hard work to do this, but I
22 could think of four points that would be helpful to

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1 think about if OSHA wants to consider changing it. One
2 would be to not exclude any workers currently covered
3 by the existing definition, you know, unless there is a
4 really compelling rationale, and, two, reflect the
5 current complex picture in construction with temporary
6 employees and independent contractors to try to have it
7 be as relevant as possible to today's construction
8 picture. Three, not create any unintended issues for
9 state plans. And, four, not create any inconsistency
10 with other key employee definitions used by the
11 Department of Labor or the IRS, because they're big on
12 this employee definition, that's a big issue there, so
13 just checking on all those other employee definitions,
14 it's really kind of complicated.

15 MR. BOLON: Yeah. Our intent was not to
16 rattle the jurisdictional precedence and fences, and it
17 certainly was not to remove protections from any
18 employee that's currently covered, but we appreciate
19 what we're hearing. And also what was the other?

20 MR. GILLEN: That was it.

21 MS. SHORTALL: I have a couple of questions
22 to ask, Mr. Stribling. Were you indicating then that

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1 you would like OSHPA to consider this issue and they
2 independently would make a recommendation to the agency
3 or were you thinking that you wanted to get OSHPA's
4 viewpoints and then at the next ACCSH meeting bring it
5 up again?

6 MR. STRIBLING: Thank you. And just for the
7 record, I know that you weren't trying to do anything
8 like that excluding any of the states or anything like
9 that, it was just one of those unintended consequences,
10 things that we saw could be a problem. If the agency
11 felt strongly about changing these definitions, I would
12 go to OSHPA and get their feedback and then bring it
13 back to the next committee meeting if the agency wants
14 to proceed, but, I mean, I think what you have is good.

15 Just as a point -- and maybe your solicitor
16 here might be able to think about it -- it says an
17 "'Employer' means a person engaged in a business,"
18 well, our government's business. The word "business"
19 in and of itself is a problem. And then the whole
20 other part of the language becomes a problem. But the
21 current definition says a "contractor or
22 subcontractor," and our counsel has indicated to us

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1 that it's well established that a government who has an
2 employee, they may not be a business, but they are
3 contracting with that person through employment, so
4 just the word "business" in and of itself is a problem.

5 MS. SHORTALL: And I also have a question for
6 Ms. Wilson. In the proposed language for employer, is
7 part of the rationale for the language about not
8 including the United States or any state or political
9 subdivision because this is giving information out to
10 not only state plan states but other states as well?

11 MS. WILSON: I'm sorry, Ms. Shortall, I
12 didn't quite understand the question.

13 MS. SHORTALL: Is this language here, "but
14 does not include the United States or any State or
15 political subdivision of a State," is that language
16 applicable to any state that doesn't have a state plan?

17 MS. WILSON: If a state doesn't have a state
18 plan, then federal OSHA is in that state doing the
19 enforcement.

20 MS. SHORTALL: All right. So this language
21 may have wanted to reflect both state plan and non-
22 state plan states. The mechanism you use to come out

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1 from underneath this is you file for state plan status.

2 Okay.

3 MR. JONES: Jerry?

4 MR. RIVERA: Jerry Rivera, Employer Rep. I
5 guess I want to speak in support of the public
6 representatives. Maybe we should afford some time for
7 that group to review the proposed language. You know,
8 I guess our intent is to help and not harm, and it
9 clearly has been articulated today that this could
10 potentially harm some of our public representatives.
11 So I would like to support that.

12 MR. STRIBLING: This is Chuck Stribling
13 again. Just thinking through what you were asking
14 awhile ago, Ms. Shortall, I guess maybe if the agency
15 would let us know, let the Chair know, and he could let
16 the committee know, if they strongly feel that they
17 need to move forward with new definitions or if they're
18 comfortable leaving it like it is, and then we can
19 decide a course of action from there.

20 MR. BOLON: Yeah. I think we've heard enough
21 that I really think we should set this one aside, we
22 should table it, and OSHA should have a conversation

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1 with itself, and if we really think that the
2 clarification is a good and strong thing to do, we
3 should figure out the language that's necessary and
4 then engage OSHPA, and they can consider an October
5 meeting and get some feedback to us. But this one has
6 gotten snagged, which certainly wasn't our intention.
7 So we need to look at it and think about it some more.

8 MR. STRIBLING: Thank you.

9 MR. JONES: Scott?

10 MR. SCHNEIDER: I was just wondering. I
11 mean, it even says employer means a person engaged in a
12 business, and employers aren't necessarily people,
13 corporations aren't people necessarily, or people
14 aren't necessarily corporations.

15 MR. JONES: All right. Next?

16 Do you want to start?

17 MR. ECKERSON: Yeah. This next one, it's
18 Number 2 in the handout here. It's regarding the
19 definition of work-relatedness with respect to
20 recordkeeping in terms of hearing loss. Specifically
21 Section 1904.10(b)(6), as it currently is, is worded --
22 does leave arguably a little bit of ambiguity in terms

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1 of which standards you apply. We actually don't think
2 that there is a very good case for saying there is any
3 ambiguity there at all, but for purposes of removing
4 any possibility of ambiguity, we are proposing to add
5 this additional language that specifically points to
6 the standards set out in 1904.5 regarding the criteria
7 for work-relatedness so there is no doubt in anybody's
8 mind with respect to what criteria you use when you
9 determine if a particular hearing loss is work-related.

10 MR. JONES: Any comments?

11 Kevin?

12 MR. CANNON: Thank you.

13 MR. JONES: Introduce yourself, Kevin.

14 MR. CANNON: Kevin Cannon, Employer Rep. I
15 think the first part where you're identifying the rules
16 to be followed is good and it pretty much maintains
17 what's in the existing response to the question, but I
18 do -- and I'll say in consulting with my members, we
19 have a problem with the second half of what's being
20 inserted in the highlighted, and the way we read and
21 interpret this is pretty much saying that you're
22 ignoring any other contributing factors, whether it's

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1 hobbies, hunting, riding bikes, or whatever the case
2 may be, you're just totally dismissing that, and we all
3 know that noise is not the only source of --

4 MR. GILLEN: Did you mean work?

5 MR. CANNON: Yeah. Well, I'm sorry?

6 MR. GILLEN: Did you mean work?

7 MR. CANNON: No, sorry. Work is not the only
8 source of high noise exposure, and this pretty much
9 says regardless of any event, it's the employer's fault
10 for an employee suffering some sort of hearing loss.

11 MR. BOLON: Well, not exactly. It just means
12 that it's recordable.

13 MR. CANNON: Then we own it.

14 (Laughter.)

15 MR. CANNON: Then we own it. Once it goes on
16 the log, it's yours.

17 MR. BOLON: But all of that that's in the
18 second part there about, "If an event," that's in the
19 standards now, that's in 1904.5 now. This isn't new.
20 There is nothing new here. It is just what it is
21 somewhere else.

22 MR. CANNON: Current regulatory text in the

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1 left and then proposed, so to me that sounds like it's
2 being expanded upon.

3 MR. BOLON: But it's already in 1904.5. It
4 is the language that's already in here. I understand
5 your concern, I really do. I know this is a
6 complicated area that's fraught with problems, but it's
7 new here, but it's in 1904.5 now.

8 MR. JONES: It's in the standard already.

9 MR. STRIBLING: Yeah.

10 MR. JONES: Go ahead, Chuck.

11 MR. STRIBLING: Chuck Stribling. And to Mr.
12 Cannon's point, I hear you loud and clear. I hear you
13 loud and clear, but that's how we enforce it, and what
14 this is doing, it's just letting an employer see that
15 when they read this paragraph, and so if they missed it
16 over on this paragraph, and they thought, well, I
17 didn't know I had to record it because he already had a
18 hearing loss, but then they had more threshold shift,
19 this lets them see that if it contributed, it's like
20 Mr. Bolon said, it's already in the standard.

21 MR. CANNON: Well, this states that it comes
22 from the compliance directive and not the standard.

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1 MR. BOLON: Yeah, I apologize for that. It
2 really is also in the standards. Can we find it,
3 Dayton?

4 MR. ECKERSON: Yeah. I mean, essentially it
5 is condensing what is in the standard now. If you look
6 at the standard 1904.5, they've got a flowchart and
7 they've got about three pages of text, but this
8 essentially captures what that means.

9 MR. BOLON: Yeah, right in 1904.5(a), it
10 gives this language, and the last part of that says,
11 "Work- relatedness is presumed for injuries and
12 illnesses resulting from events or exposures occurring
13 in the work environment unless there is an exception,"
14 and there is a list of exceptions, which we don't
15 really need to get into. But it's a very low bar. So
16 if the licensed health care professional who is doing
17 this, they're supposed to evaluate the work-relatedness
18 of standard threshold shift, and there is a strong
19 presumption that if there was a contribution from
20 employment, then it becomes recordable.

21 MR. ECKERSON: And there is a table there
22 that have specific exclusions for exposures that are

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1 outside the scope of the employee's duties.

2 MR. BOLON: Yeah.

3 MR. ECKERSON: You see this table here that
4 has a very explicit list of exactly the types of things
5 you were expressing concerns about.

6 MR. CANNON: And what I want to point out and
7 if you give me time, I would like to find this language
8 in here where it says it is not necessary for work to
9 be the sole cause, the predominant cause, or even a
10 substantial cause of the hearing loss, any contribution
11 from work makes the case work-related, and I think
12 that's where we're having the issues.

13 MR. BOLON: Yeah, I can understand that, but
14 I would only say it is in the standards now. There is
15 a presumption that if there is a contribution from work
16 exposure, that that would make it recordable.

17 MR. HAWKINS: This is Steve Hawkins.

18 MR. JONES: Go ahead, Steve.

19 MR. HAWKINS: We have been actually kind of
20 in the throes of this of late with a couple of
21 employers, and I did really discover through the work
22 we've done that just because something goes on the log,

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1 at least in Tennessee, does not make it compensable
2 under the workers' comp statute. As a matter of fact,
3 the workers' comp law in Tennessee was recently
4 reformed, and now for something to be compensable, it
5 has to be a preponderance of the evidence. So in this
6 issue, we discussed at length recently with a case and
7 whether or not -- we kind of got into the workers' comp
8 around a little bit, and while if it contributes to --
9 if a hearing loss contributed -- if work exposure
10 contributed to hearing loss, it would go on the log,
11 but in Tennessee, for it to be a compensable injury
12 under workers' compensation, the employee would have to
13 be able to demonstrate that it was preponderance of the
14 evidence, which I guess you could sum as more than
15 likely, 51 percent, the evidence would have to show 51
16 percent that it was caused by work.

17 And so the bar for going on the log is much
18 lower than the bar for being compensable under the
19 workers' comp statute. And I think we all know this,
20 workers' comp statutes are state laws, and they vary
21 considerably from state to state, and our state just
22 recently reformed theirs. As far as I'm aware, there

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1 is not any federal statute that oversees workers' comp,
2 you don't seek federal approval, it's a state law and a
3 state program, and so just to add that to the
4 discussion, just because it goes on your log doesn't
5 necessarily mean it's compensable under the workers'
6 comp statute.

7 MR. JONES: Thank you.

8 Any further comment?

9 (No audible response.)

10 MR. JONES: Do you want to go to the next
11 one, Paul?

12 MR. BOLON: Okay. The next one, down at the
13 bottom, mentions the potable water issue. We had a
14 number of people recommend that we fix this in the
15 construction regs, but it actually was already fixed in
16 SIPs III, so we don't need to take it up again.

17 Then with Item Number 3 in your table, it
18 deals with the strength of lifelines, lanyards.

19 MR. ECKERSON: Yes. We were specifically
20 looking at 1926.104(c). This particular regulation
21 really is a holdover from the pre-Subpart M Fall
22 Protection standard, and for the break-strength

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1 requirement, it uses 5,400 pounds instead of the 5,000
2 pounds. So we're proposing given that the Fall
3 Protection standard across the board has 5,000 pounds
4 as their break-strength requirement, that ANSI and ASSE
5 standards have across the board the 5,000 pound break-
6 strength requirement, and also the fact that we've
7 looked through a bunch of supply catalogs, and
8 virtually everybody puts out their lanyard
9 specifications, and they're all 5,000 pounds. So I
10 think if you were even trying to find a lanyard that's
11 5,400 pounds instead of 5,000 pounds, you probably
12 wouldn't be able to buy one. So for that reason, we are
13 proposing for sake of consistency to change this one
14 section to 5,000 pounds.

15 MR. BOLON: Any comment? Questions?

16 (No audible response.)

17 MR. JONES: I want to entertain a motion to
18 accept this recommendation.

19 MR. STRIBLING: So moved.

20 MR. JONES: Where is Sarah?

21 MR. RIVERA: Second.

22 UNIDENTIFIED MALE SPEAKER: Ms. Shortall.

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1 MR. JONES: We'll come back in a bit.

2 MS. SHORTALL: I do apologize. We're going
3 to get that on the record.

4 (Laughter.)

5 MS. SHORTALL: I do apologize.

6 MR. JONES: No problem. Yeah, like I say,
7 we're going to come back to a couple of the ones that
8 we still may want to debate. Let's try to get the ones
9 that we are in full agreement on out of the way. It
10 would appear to me that we might be in some sort of
11 agreement on Number 3. I don't want to be
12 presumptuous, so I've asked for a call to motion on
13 accepting SIPs Number 3.

14 MS. SHORTALL: He already made that motion.

15 MR. JONES: Yeah, he already did. You were
16 otherwise disposed. I'm trying to get you caught up.

17 MS. SHORTALL: I'm sorry. Thank you, Mr.
18 Rivera.

19 MR. JONES: Or, no, it was Chuck, he
20 proposed, and I think Jerry seconded?

21 MS. SHORTALL: Okay.

22 MR. JONES: All right. So now we're

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1 discussing. Any comment?

2 (No audible response.)

3 MR. JONES: All in favor?

4 (Chorus of ayes.)

5 MR. JONES: All against?

6 (No audible response.)

7 MR. PRATT: This is Don Pratt on the phone.

8 I accept that.

9 MS. SHORTALL: You have to poll the people on
10 the phone.

11 MR. JONES: Okay. I'm new at this here. So
12 I'm told that I have to poll the people on the phone
13 separately. So I'm asking everyone on the phone, all
14 in favor of accepting SIPs recommendation for a motion
15 Number 3.

16 MR. HAWKINS: This is Steve Hawkins. I
17 accept that. I agree.

18 MR. ERICKSON: Roger Erickson, MOST Programs.
19 I accept.

20 MS. BARBER: Kristi Barber. I accept.

21 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

22 MR. JONES: Okay. Is Don Pratt on?

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1 MR. PRATT: Yes. I accept.

2 MR. JONES: Okay. Good. So I think that's
3 so moved and passed. Right?

4 All right, let's move on. Number 4?

5 MR. BOLON: Okay. Number 4 looks at the
6 table of permissible exposure limits in the
7 construction standard. And what we're doing here, it
8 really just had some things that were language errors,
9 like we still had threshold limit value, which is a
10 holdover from the ACGIH term where it's really
11 permissible exposure limits. We were eliminating some
12 language that sounds advisory, we were eliminating some
13 confusing language, and correcting a couple of the
14 footnote errors in the table. So again there is
15 nothing substantive here. We're trying to make the
16 language that should be there be there and correct some
17 of the terms. We're not changing any PELs or --

18 MR. JONES: I'm going to go to Chair
19 privilege and table that one for now. We're going to
20 move on to Number 5.

21 MR. BOLON: Okay.

22 MR. ECKERSON: Yes. This next one relates to

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1 the excavation standard, specifically 1926.651(j)(1).
2 This particular standard -- actually, the origin of the
3 standard dates back to 1971, and it was pretty clear
4 there that the burden was on employers to keep loose
5 dirt and fill materials away from the edge of
6 excavations. And in 1989, there were some revisions of
7 this particular provision, and it did create some
8 ambiguity in that it made it appear that not only did
9 the employer -- in order to have a violation of this
10 section, not only did OSHA need to show that there was
11 loose fill or rock soil but also that OSHA needed to
12 show that there was a hazard created by that.

13 So what we're proposing to do in this
14 revision is to go back to the idea of the excavation
15 standard as it stood originally in 1971 and make it
16 clear that there is not a separate hazard finding that
17 specifically needs to be made, that any loose soil or
18 material near the excavation is a violation of this
19 particular provision.

20 MR. JONES: Any comments?

21 MR. BETHANCOURT: This is Jeremy Bethancourt.
22 So is the reason that you're doing that because it's

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1 implied that the loose soil is a hazard? Is that why
2 you're making the clarification?

3 MR. BOLON: That's basically it. We're
4 trying to clarify that any equipment or loose fill next
5 to an excavation is a hazard because the language as it
6 is, is somewhat ambiguous.

7 MR. BETHANCOURT: I understand. Thank you.

8 MR. HAWKINS: This is Steve Hawkins.

9 MR. JONES: Go ahead, Steve.

10 MR. HAWKINS: You know, not to pick at words
11 here, but the language is really not -- I guess it
12 doesn't appear to me to be ambiguous. It says if it's
13 a hazard, you have to protect, and the revision makes
14 the assumption that any loose rock or soil is a hazard
15 and that you have to do something to protect the
16 employees from it. Do we have any basis for that or
17 who made that call or what we're kind of basing that
18 assumption going from the wording in the original,
19 which says adequate protection has to be provided to
20 protect employees from loose rock or soil that could
21 fall -- cause a hazard by falling into the face, to
22 this one that says for loose rock or soil, employers

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1 must scale it -- and, Don, I've got a separate question
2 about that -- is there some background information that
3 you could explain to the committee about how we made
4 that change right there? I don't want to call it a
5 leap, but let's call it that step in that direction?

6 MR. BOLON: Well, it's not based on research
7 or empirical. I mean, we went back and looked at what
8 the original version was, and we come across
9 enforcement cases, and there is confusion about whether
10 -- because the language is ambiguous as to whether
11 something could or could not pose a hazard, and we
12 looked at the original language that we had, and we
13 thought it was much clearer, that we thought all
14 materials should be kept back from the edge of an
15 excavation, that we don't expect the employer to sit
16 there and make an evaluation case-by- case, you know,
17 in this particular case, yeah, we can just stack the
18 spoil pile right next to the excavation or equipment,
19 have equipment, right next to the excavation. We just
20 think putting pressure on the side walls of an
21 excavation does create a hazard and we want to take the
22 ambiguity out of the language.

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1 MR. JONES: Jerry?

2 MR. HAWKINS: Paul -- I'm sorry.

3 MR. JONES: No, go ahead, Steve.

4 MR. HAWKINS: Paul, I would submit that the
5 one we're talking about here doesn't have anything to
6 do with the extra weight. It's talking about the loose
7 soil or rock that might be on the face of the
8 excavation, and we still have the 2-foot requirement
9 that we're going to talk about next, I guess, right
10 here, but I don't think that this has anything to do
11 with the extra weight on the side wall, the one we're
12 talking about now, does it?

13 MR. ECKERSON: Well, the soil and loose
14 material would put extra weight. It doesn't talk about
15 equipment, that's a separate issue, but to the extent
16 that loose soil weighs anything, it does put extra
17 weight. I don't think that's arguable.

18 MR. BOLON: Yeah. I don't think it's the
19 loose soil or rocks that are in the face, I mean, it's
20 what's up on the edge of the excavation.

21 MR. HAWKINS: No. The original wording
22 that's in there now says, "Adequate protection shall be

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1 provided to protect employees from loose rock or soil
2 that could pose a hazard by falling or rolling into the
3 excavation --

4 MR. BOLON: Oh, you're right, from an
5 excavation face.

6 MR. HAWKINS: From an excavation face. So
7 we're just really talking about the face of the
8 excavation, right? We're not talking about on top.
9 We're talking about the face, right?

10 MR. BOLON: Right. You're right.

11 MR. BETHANCOURT: That's the way I -- that
12 was my thought. This is Jeremy Bethancourt. Steve,
13 you're right on what some of my thoughts were about why
14 we're changing that.

15 MR. HAWKINS: And, you know, I guess I'm a
16 little bit concerned about this in that anytime you dig
17 an excavation, a person could pretty well always argue
18 that there is some amount of loose dirt, soil
19 particles, on the face of that excavation. In other
20 words, when you dig it, unless you're somewhere way
21 down in Georgia with really, really cohesive clay, you
22 could argue that there is always -- when you disturb

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1 soil, there is always some amount of loose soil on the
2 face of that excavation. I mean, you could dig a
3 trench, especially in dry weather like, you know, in
4 the summertime, and you could take a stick or something
5 and wipe across the face of that excavation, and there
6 would always be some amount of soil that would fall.

7 So are we a little bit concerned that if we
8 change this wording like this, it would mean you would
9 have to always put some kind of barrier on the face of
10 that excavation possibly because now we haven't said --
11 you know, if it's in cohesive clay, there is going to
12 be some amount of loose soil there, but not enough that
13 it's going to cause you -- in most cases, not enough
14 that it's going to cause a hazard to an employee
15 because the amount that could fall in is like I'm
16 talking cupfuls here, I'm not talking about a big chunk
17 because you already have to have protection from
18 collapse, so we're not talking about collapse here,
19 we're just talking about rocks or soil that might be
20 present that could fall in, into that excavation. If
21 it's a very small amount of dirt, a cupful or two that
22 might just sprinkle off the side, that's not really a

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1 hazard to the employees.

2 Let's say that it's also got a small amount
3 of river gravel mixed in on the side that could fall
4 in, but the particles are so small that they're not
5 going to cause a hazard to an employee, but if we
6 change this wording, the hazard consideration goes out,
7 and it just says for any amount of loose rock or soil,
8 you have to scale it or put up a protective barrier to
9 keep it from falling in no matter how small if you read
10 that in the strictest terms. That looks like that
11 might could be problematic somewhere down the line to
12 me.

13 MR. BOLON: Do you have less problem with
14 protection from the rocks?

15 MR. HAWKINS: Well, what we've done, if we go
16 up to an excavation and there's -- and this happens
17 sometimes in Tennessee, Tennessee really varies a lot
18 from one of the state. We go from the Mississippi
19 Delta in Memphis all the way to the Smoky Mountains, so
20 you all are familiar with both of those kind of areas,
21 and they are vastly different, but when you get into
22 middle Tennessee and into east Tennessee, you can dig

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1 an excavation a lot of times, and it will be one of two
2 ways. You'll have to blast it and you'll have just
3 pretty much it's homogenous, and so it's all rock, or
4 you can be digging in an area where the rock is very
5 weathered and you can have large rocks sticking out of
6 the side of the excavation. When we see that, we will
7 cite this standard and tell the employer, even though
8 you have laid this back on the required angle, and that
9 angle, even a 45 actually looks pretty steep when
10 you're standing there even though it will measure to be
11 a 45, and if we see a large rock that doesn't appear to
12 be, from what you can see, connected to anything and
13 it's sticking out, we tell the employer, "You've got to
14 move that rock, you can't leave that rock because that
15 rock weighs several hundred pounds, and if that rock
16 comes loose from this bank, it's going to fall on
17 employee and could kill him." And so we would require
18 that employer to remove that rock. Now, if the
19 employer is sitting there and he grabs ahold to the
20 rock with his backhoe and starts winching and pulling
21 and jerking and the rock won't budge, then that rock is
22 probably connected to a shelf and it's not loose and

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1 it's not going to fall, but a lot of times it's just a
2 big chunk rock like, say, oh, that might fill up a
3 pickup bed on like a mini truck, a little Nissan or
4 whatever, and so if it's a rock like that and it's
5 sticking out of the side, we tell the employer, "You
6 have to move that," but when you take away this
7 requirement for the hazard -- what if it poses a
8 hazard? -- then you're talking about what if it's just
9 the loose soil that's on the face of an otherwise
10 cohesive material on the face of that excavation? are
11 we saying every one of those has to be or only if it's
12 enough sufficient dirt to pose a hazard to the
13 employees?

14 I understand why -- you know, what's
15 ambiguous I would say, Paul, is not the language, what
16 can be ambiguous is whether or not that soil poses a
17 hazard or not. The wording I don't think is ambiguous;
18 making the decision may be, but the wording itself is
19 not in the original standard.

20 MR. BOLON: Okay.

21 MR. JONES: Thank you, Steve.

22 Jerry?

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1 MR. RIVERA: Jerry Rivera, Employee Rep. I
2 speak in opposition for the proposed language. In many
3 regards, I'm looking at the language that's existing,
4 and I think it provides more direction on what is
5 expected especially when there is a hazard, and based
6 on the conversation that we've heard so far, it leads
7 me to believe that again the original language provides
8 further clarity versus the proposed language.

9 MR. JONES: Thank you, Jerry.
10 Any further comments?

11 MR. HAWKINS: Walter, this is Steve again. I
12 hate to keep going on this. I agree with what Jerry
13 said. What I actually like better is a combination of
14 the old language and the new language. I think we
15 should recommend to OSHA that they keep the language
16 about whether or not it's a hazard or not because
17 that's really true. OSHA pretty much always has to
18 prove there is a hazard to issue a citation anyway, so
19 that's kind of implied no matter which way the language
20 goes. I like the proposed clarification in the bottom
21 about must use scaling to remove the loose material and
22 provide barricades on the face to stop any material or

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1 use other methods that provide equivalent protection.
2 I like the clarifications that are made there with
3 those additional words that are highlighted in yellow,
4 but I personally think we should keep the thing that
5 says -- the first part of the old one that says if it
6 presents a hazard. I kind of like some kind of
7 marriage between those two that keeps the hazard
8 language and goes about that says, okay, once you
9 determine it's a hazard, you have to do these things,
10 scale it to remove loose material, put barricades up on
11 the face to stop it from falling in or some equivalent
12 protection like driving piles or something.

13 MR. BETHANCOURT: This is Jeremy Bethancourt.
14 Steve, I appreciate all that you've said because that's
15 kind of what I was thinking about when I asked, are we
16 assuming it's a hazard? And so I like the fact that --
17 or I like if we would include the language with the old
18 language, so I would have to support your thoughts on
19 that.

20 MR. JONES: Is that a motion, Steve?

21 MR. HAWKINS: Well, you know, Walter, to
22 really put it in a motion, I would have to think a

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1 little more about how to state that, but if you started
2 with the original wording in the old standard, the
3 standard that's in place now, "Adequate protection
4 shall be provided to protect employees from loose rock
5 or soil that could --," and I like the word "could," I
6 don't think it must -- "that could pose a hazard by
7 falling or rolling from an excavation face," and then
8 go to "such protection" right there kind of switch to
9 the other proposed wording, and then it says -- even if
10 you just went with that, where it says "such
11 protection," if you went, "for loose," and you go to
12 the proposed one, "for loose rock or soil, employers
13 must use scaling to remove loose material, install
14 protective barricades at intervals as necessary on the
15 face to stop and contain falling material or use other
16 means that provide equivalent protection." I think it
17 would be helpful if that were what followed the first
18 sentence of the existing standard.

19 MR. JONES: We have Ms. Sarah working on that
20 right now.

21 MR. HAWKINS: That's a good thing.

22 (Laughter.)

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1 MR. JONES: Chuck.

2 MR. STRIBLING: Thank you. Chuck Stribling.

3 I would just also suggest change the word "must" to
4 "shall."

5 MR. HAWKINS: "Shall" is much more consistent
6 with the standard. That's a good -- I agree with that,
7 Chuck.

8 MS. SHORTALL: Actually, the agency has been
9 moving to using the word "must" in recent years.

10 MR. JONES: And that's the direction standard
11 organizations are now moving towards, away from "shall"
12 and towards "must."

13 What about the second -- before we move on
14 this, as Sarah puts it together, the second
15 recommendation for Number 5? Is there any comment on
16 that?

17 I'm sorry. Jerry?

18 MR. RIVERA: Jerry Rivera, Employer Rep. I'm
19 okay with that second language. You know, right now as
20 it's worded, it sounds funny, so I guess there is some
21 editing that needs to happen, but I'm okay overall.
22 I'm okay with it.

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1 MR. JONES: So I'm looking for a motion to
2 accept OSHA's recommendations for Number 5 on the SIPs,
3 and amending their proposal for 1926.651(j)(1) to --

4 MS. SHORTALL: I'm not -- what I'm suggesting
5 here is that ACCSH recommends retaining the original
6 language at the start of 1926.651(j)(I) (sic), along
7 with the changes OSHA proposes for the remainder of the
8 section.

9 MR. HAWKINS: Yeah, and, Ms. Sarah, I agree
10 exactly what you said. It's actually just the first
11 sentence of the original standard that we're talking
12 about, but that would make it a little more clear,
13 retain the first sentence and then add what OSHA is
14 proposing.

15 MR. JONES: I need a second.

16 MR. PRATT: Yeah, this is Don Pratt. I would
17 second that.

18 MR. JONES: Discussion?

19 MS. SHORTALL: Do you want me to reread that
20 motion then? Steve Hawkins moves that ACCSH recommends
21 retaining the original language in the first sentence
22 of 1926.651(j)(I) (sic) along with the changes OSHA

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1 proposes for the remainder of the section.

2 MR. PRATT: Sarah -- this is Don Pratt again
3 -- that's not an "I," that's a "1."

4 MS. SHORTALL: I'm sorry, excuse me. "1."
5 Thank you.

6 MR. JONES: All in favor on the phone.

7 MR. BETHANCOURT: This is Jeremy Bethancourt.
8 Aye.

9 MR. PRATT: Don Pratt. Aye.

10 MS. BARBER: Kristi Barber. Aye.

11 MR. HAWKINS: Steve Hawkins. Aye.

12 MR. JONES: All in favor at the table -- oh,
13 I'm sorry. No, Kristi said aye.

14 All in favor at the table, denote by saying,
15 "Aye."

16 (Chorus of ayes.)

17 MR. JONES: All opposed?

18 (No audible response.)

19 MR. JONES: Abstains?

20 (No audible response.)

21 MR. JONES: All right. Let's go to Number 6.

22 MS. SHORTALL: Did we actually pass (j) (2)?

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1 UNIDENTIFIED MALE SPEAKER: No.

2 MS. SHORTALL: You haven't done --

3 MR. JONES: We didn't do -- I thought I
4 included that. No?

5 MR. STRIBLING: That was (j)(1). She
6 specifically read (j)(1).

7 MR. JONES: I thought -- all right. Okay.
8 All right. We'll pull back.

9 I would like to entertain a motion to accept
10 the second proposal by OSHA for Number 5 for
11 1926.651(j)(2) to accept that recommendation. I'm
12 entertaining a motion.

13 MR. STRIBLING: So moved.

14 MR. JONES: A second?

15 MR. PRATT: Don Pratt. Second it.

16 MR. JONES: All in favor on the phone?

17 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

18 MR. PRATT: Don Pratt. Aye.

19 MS. BARBER: Kristi Barber. Aye.

20 MR. HAWKINS: Steve Hawkins. Aye.

21 MR. JONES: All in favor at the table, please
22 denote by saying, "Aye."

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1 (Chorus of ayes.)

2 MR. JONES: All opposed?

3 (No audible response.)

4 MR. JONES: Abstentions?

5 (No audible response.)

6 MR. JONES: All right. So moved.

7 Let's move to Number 6. I think we have
8 guests for this one?

9 MR. BOLON: Yeah. Mr. Chairman, Rebecca
10 Reindel and Chris Brown from the Directorate of
11 Standards and Guidance need to come up and address. We
12 need to skip to Number 10, I believe, on the cancer
13 screening. So they'll come up and walk us through
14 there.

15 MR. BROWN: Hi. My name is Chris Brown. I'm
16 from the Directorate of Standards and Guidance.

17 MS. REINDEL: I'm Rebecca Reindel. I'm also
18 from the Directorate of Standards and Guidance.

19 MR. BROWN: We previously presented to the
20 committee on OSHA's plans for revising a number of
21 standards where chest x-ray requirements were included
22 in either initial or periodic medical evaluation

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1 provisions in the standards. The committee requested
2 that we consult with NIOSH on this issue before moving
3 forward. Since the last meeting, we held discussions
4 with NIOSH and believe that we have come to a consensus
5 on the issue. We just wanted to provide you a brief
6 update.

7 We intend to revise regulatory text for five
8 standards: cadmium, cadmium in construction, coke oven
9 emissions, acrylonitrile, and inorganic arsenic, the
10 last of which, plus the construction cadmium standard
11 are the two that are of interest to the committee.
12 We're going to revise those and remove both initial and
13 periodic chest x-ray requirements, so employers will
14 not be required to provide chest x-rays to employees
15 upon initial job placement or during annual medical
16 exams. We are also going to be revising our asbestos
17 standards, and Rebecca will update you on that.

18 MS. REINDEL: So the asbestos standard will
19 be a little different. Instead of removing the chest
20 x-ray requirement completely, we would revise the
21 asbestos standard to explicitly recognize digital
22 radiography as an alternative to traditional chest x-

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1 rays. And this would also allow the digital reference
2 images from the ILO to be included as references for
3 the digital radiography.

4 And this proposal would also discuss and seek
5 comment on the use of CAT scans as a screening tool for
6 lung cancer, but OSHA would not necessarily propose to
7 allow them, it would just open the discussion for that.

8 And one other item is storage of chest x-rays
9 that would already exist, and there is a standard,
10 1910.1020, and this requires employers to maintain all
11 medical records including records of chest x-rays
12 previously administered, and this requirement -- even
13 if the requirement is removed from the standards, so
14 even if chest x-rays are not required anymore for
15 initial and periodic exams, they would still be
16 required to be -- any previous ones that have been
17 taken would be required to remain stored.

18 And that's about it.

19 MR. JONES: Any comments?

20 Chuck?

21 MR. STRIBLING: A question from our
22 distinguished colleague from NIOSH. Are we good here?

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1 MR. GILLEN: Sure. We had some good
2 discussions and it turns out that some of the evidence
3 about the chest x-rays is that they really aren't that
4 good at picking up some of these things, and so the
5 science sort of pushes us in that direction.

6 MR. STRIBLING: Thank you.

7 MR. JONES: I entertain a motion to accept
8 recommendation Number 10.

9 MR. BETHANCOURT: Jeremy Bethancourt. Move.

10 MR. JONES: I'm looking for a second.

11 MR. MARRERO: I'll second it. Tom Marrero.

12 MR. JONES: All in favor on the phone?

13 MR. ERICKSON: Roger Erickson --

14 MS. BARBER: Aye.

15 MR. PRATT: Don Pratt. Aye.

16 MR. HAWKINS: Steve Hawkins.

17 MR. JONES: All in favor at the table signify
18 by saying, "Aye."

19 (Chorus of ayes.)

20 MR. JONES: All opposed?

21 (No audible response.)

22 MR. JONES: Abstentions?

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1 (No audible response.)

2 MR. JONES: So moved.

3 All right. Thank you.

4 MR. BROWN: Thank you.

5 MS. REINDEL: Thank you.

6 MR. JONES: Paul, where do you want to go
7 next?

8 MR. BOLON: I think we'll go back to the next
9 item that was coming up after the loose soil, and
10 that's the standard on Process Safety Management. Once
11 upon a time, before there was the internet, the agency
12 tried to put all of the possible standards that might
13 affect construction in 1926. The Process Safety
14 Management standard I think was published in '92 or
15 '93. It has some effect on construction. By far the
16 great effect is when construction employers go into a
17 site that is a process safety site, like a refinery or
18 a chemical manufacturer, and do construction
19 activities. It's extremely rare for a construction
20 employer to actually be a PSM employer.

21 So we wanted to reduce and simplify our regs
22 by just putting a reference over to the Process Safety

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1 Management standard in 1910. We do this for other
2 standards. As I think we mentioned here, the PPE
3 standard we do this for. The PSM standard completely
4 applies to 1926, it's just that it is so rare and
5 unusual for a construction employer to be an actual PSM
6 employer, to have a site, their own site, that is a PSM
7 site, that it just doesn't seem very useful to have it
8 here.

9 MR. JONES: Thank you, Paul.

10 Any comments?

11 (No audible response.)

12 MR. JONES: I entertain a motion to accept
13 the recommendation.

14 MR. MARRERO: I'll motion.

15 MR. JONES: Thank you, Tom.

16 Second? Thank you, Sarah.

17 All in favor on the phone for accepting this
18 recommendation?

19 MR. PRATT: Don Pratt. Approved.

20 UNIDENTIFIED MALE SPEAKER: Yes.

21 MR. JONES: That's two.

22 MR. ERICKSON: Roger Erickson. Yes.

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1 MS. BARBER: Kristi Barber. Yes.

2 MR. HAWKINS: Steve Hawkins. Yes.

3 MR. JONES: All at the table, please signify
4 by saying, "Aye."

5 (Chorus of ayes.)

6 MR. JONES: All in oppose, opposition, say,
7 "Nay."

8 (No audible response.)

9 MR. JONES: Abstentions?

10 (No audible response.)

11 MR. JONES: So moved. That was beautiful.

12 MS. SHORTALL: I'm assuming that accepting
13 the recommendation, what you intend by that is that
14 OSHA recommends that OSHA proceed with that particular
15 --

16 MR. JONES: ACCSH.

17 MS. SHORTALL: That ACCSH -- excuse me --

18 MR. JONES: Recommends.

19 MS. SHORTALL: That's what you're --

20 MR. JONES: Yeah.

21 MS. SHORTALL: Okay. That's what the motion,
22 the language of the motion, will reflect then.

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1 MR. JONES: Okay. Now Number 6 is it?

2 MR. BOLON: Seven. Number 7. This is Vernon
3 Preston from the DOC staff. He's the main staffer
4 that's on the revision to the Rollover Protection
5 Standard, or ROPS.

6 MR. PRESTON: Good morning. My name is
7 Vernon Preston. With regards to Subpart W, Rollover
8 Protective Structures, there is a lot of technical
9 information in the standard that is really more
10 relevant to manufacturers than employers, so what we
11 would like to do is remove a lot of that technical
12 language and replace it with a consensus standard,
13 particularly ISO 3471 Earthmoving Machinery Rollover
14 Protective Structures, Laboratory Tests, and
15 Performance Requirements. This way we would be
16 replacing a significant portion of the standard with a
17 reference to the consensus standard that is more up to
18 date and covers we think the same information that we
19 currently do have in the standard.

20 MR. BOLON: So just to add a little bit, we
21 would keep -- there are two source standards for the
22 current ROPS provisions, and we would keep those two

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1 references for all existing equipment, and we would
2 recommend applying the existing ISO standards to
3 equipment, to new equipment, that is acquired after the
4 standard takes effect. I think the ISO requirement, I
5 believe they're at least in their second generation. I
6 think they've been around for at least 10 or 12 years.
7 The earlier standards, the source standards, they've
8 actually been withdrawn, and if you go on the website
9 and look for them, they direct people to go to the ISO
10 standards as well.

11 Then there is one other small issue. I think
12 in 2009, ACCSH considered -- and it deals with the
13 scope. Right now, skid-steer loaders and compactors are
14 not within the scope of the ROPS. I know in -- I think
15 it's in our notes here -- I think in 2009, ACCSH
16 recommended that we pick up equipment, especially --
17 was it compactors?

18 MR. PRESTON: Yes, compactors and rubber-
19 tired skid-steer loaders.

20 MR. BOLON: That we pick these up and have
21 them covered under ROPS. So that is another thing that
22 the committee could consider, whether we should also

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1 expand the scope.

2 So there are really three parts here. There
3 is removing all the manufacturer specification data and
4 replacing it with the source standards. The second
5 thing is picking up ROPS for new equipment with the ISO
6 standards. And then the third thing is expand the
7 scope to include skid-steer loaders and compactors.

8 I'll just mention one more thing. In 2009,
9 when the ACCSH considered this, there was a report, and
10 I'm pretty sure it was from NIOSH, and what it did was
11 collect -- there were a great number of rollover
12 accidents with skid-steer loaders, and that was one
13 reason that the committee recommended that we pick up
14 skid-steer loaders in the ROPS scope.

15 MS. SHORTALL: I have a question here, and
16 that is, do you have proposed reg text for this third
17 issue about expanding the scope?

18 MR. BOLON: I don't. We don't have reg text
19 here. We would just --

20 MS. SHORTALL: Okay. But you would be
21 including it in the scope section of 1910, that
22 language in the scope of 1926.1000(a)(2)?

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1 MR. BOLON: Yes. Right now there is actually
2 kind of a placeholder paragraph in there that says that
3 when ROPS were devised that apply to skid-steer
4 loaders, it's anticipated that we will pick them up.
5 So we would just add the term "skid-steer loader and
6 compactors" to the scope.

7 MR. JONES: Any comments or questions?

8 (No audible response.)

9 MR. JONES: All right. I would like to take
10 these in three parts then. I'll start with the last
11 one. Is the committee prepared to propose a
12 recommendation that OSHA -- that we recommend to OSHA
13 they -- consistent with the recommendations of prior
14 efforts of this committee to expand the scope to
15 include skid loaders and compactors?

16 MR. GILLEN: Yes.

17 MR. JONES: Second?

18 MS. COYNE: Second.

19 MR. JONES: Second? All in favor on the
20 phone of expanding the scope to include skid loaders
21 and compactors?

22 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

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1 MR. JONES: All against on the phone?

2 MR. HAWKINS: Steve Hawkins. Aye.

3 MS. BARBER: Kristi Barber. Aye.

4 MR. ERICKSON: Roger Erickson. Aye.

5 MR. JONES: Thank you.

6 All at the table --

7 UNIDENTIFIED FEMALE SPEAKER: Don Pratt?

8 MR. JONES: Oh, Don Pratt? I thought he said
9 yeah.

10 MR. PRATT: Sorry about that. I had it on
11 mute.

12 (Laughter.)

13 MR. JONES: Oh. We heard you anyway.

14 (Laughter.)

15 MR. JONES: I'm sorry.

16 All in favor at the table, aye?

17 (Chorus of ayes.)

18 MR. JONES: All opposed?

19 (No audible response.)

20 MR. JONES: Abstentions?

21 (No audible response.)

22 MR. JONES: All right. So the last -- we

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1 just recommended that OSHA expand the scope.

2 Now, your other two requests here, you're
3 asking us to accept your language to remove the
4 manufacturer reference information and just reference
5 the ANSI -- or the ISO standards.

6 MR. BOLON: We're going to just reference --
7 there are actually two source standards in the subpart
8 now, and rather than listing out all the contents of
9 those source standards, we're just going to reference
10 the standards, and then there are a couple of
11 provisions in there which do not apply to
12 manufacturers, and we would keep those, which says -- I
13 know one of them is if you take off the rollover
14 protection, you have to put back as good a roll -- so
15 there are just a couple of things that don't apply to
16 manufacturers, but all the ones that do specifically
17 apply -- and, again, these just tell the manufacturers
18 the testing procedures, and there is no other direct
19 thing on construction employers.

20 MR. JONES: All right. I'm looking for a
21 motion to accept the recommendation to remove that
22 information and reference the source --

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1 MR. BOLON: The source standards.

2 MR. JONES: Right.

3 MR. GILLEN: So moved.

4 UNIDENTIFIED FEMALE SPEAKER: Second.

5 MR. JONES: Second? All right.

6 All in favor on the phone?

7 MS. BARBER: Kristi Barber. Aye.

8 MR. PRATT: Don Pratt. Aye.

9 MR. ERICKSON: Roger Erickson. Aye.

10 MR. HAWKINS: Steve Hawkins. Aye.

11 MR. JONES: Thank you. All in favor -- oh,
12 I'm sorry.

13 Jeremy?

14 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

15 MR. JONES: All right. All in favor at the
16 table signify by saying, "Aye."

17 (Chorus of ayes.)

18 MR. JONES: All opposed?

19 (No audible response.)

20 MR. JONES: And abstentions?

21 (No audible response.)

22 MR. JONES: All right. So that passed.

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1 Now, the last that you're asking of us is
2 ROPS for new equipment?

3 MR. BOLON: Right.

4 MR. JONES: How should I propose that in --
5 is it just as the language is proposed here?

6 MR. BOLON: It would be very close. I mean,
7 because it says for equipment manufactured on or after
8 the effective date of revised schedule -- of revised
9 standard, we need some other -- there are a few phrases
10 missing here that these are the standards that the
11 equipment must meet when they're tested, but --

12 MR. JONES: I need language. Okay, so then I
13 will be entertaining a motion to what exactly?

14 MS. SHORTALL: ACCSH recommends OSHA proceeds
15 with revising Subpart W to add requirements for
16 compliance with ISO standards for new equipment.

17 MR. MCKENZIE: Specifically ISO 3471 and
18 3449.

19 MS. SHORTALL: I can put those specific ones
20 in here.

21 MS. COYNE: So moved.

22 MR. JONES: A second. I need a second.

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1 MS. SHADRICK: Second.

2 MR. JONES: Sarah made the motion. Laura
3 made the second.

4 All in favor on the phone?

5 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

6 MR. PRATT: Don Pratt. Aye.

7 MS. BARBER: Barber. Aye.

8 MR. ERICKSON: Roger Erickson. Aye.

9 MR. HAWKINS: Steve Hawkins. Aye.

10 MR. JONES: All in favor at the table?

11 (Chorus of ayes.)

12 MR. JONES: And with that, I'm going to put
13 us on break. We'll come back at 11:35.

14 (Break.)

15 MR. JONES: Back on record now. Okay. I
16 hope to start off where we left off, Paul, and I think
17 that would be on Number 8?

18 MR. BOLON: That's right. We're going to do
19 Number 8, which is 911 service, Number 9, low limits
20 posting, then the decompression table, and then I think
21 we're coming back to the hearing loss issue, Number 2.

22 MR. JONES: Right.

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1 MR. ECKERSON: Yes. With regard to the 911
2 service, we are seeking to update this provision here.
3 Currently, the provision provides that in areas where
4 911 service is not available, the telephone numbers of
5 the physicians, hospitals, or ambulances shall be
6 conspicuously posted. There is virtually no place in
7 the United States now where landlines don't have 911
8 service; however, with the advent of wireless
9 technology, at many construction sites it's the cell
10 phones that are the vehicle to contact emergency
11 information, and there is an ongoing problem with 911
12 service with respect to wireless, and particularly with
13 respect to areas that are very rural or very heavy
14 forestation, and we've looked pretty extensively at
15 this issue, and FCC has been wrestling with how to deal
16 with this issue for the last several years, and what
17 they have come down with is that they require all cell
18 carriers who are processing 911 calls to provide to the
19 emergency responder, emergency response office, the
20 exact location of the origination of the call.

21 Now, the problem is in very rural and
22 forested areas in the country, there is not an ability

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1 for the cellular companies to triangulate, they don't
2 have enough cell towers to be able to triangulate with
3 any certainty the exact location of the call
4 originator, so in those cases the FCC has created a
5 registry and created a process whereby cellular
6 providers in those areas that don't have the physical
7 capabilities of giving exact information to apply for
8 an exemption from this requirement and then they can
9 apply either for an entire county or a portion of a
10 county, and in that instance, that provider is exempted
11 from having to provide the emergency information.

12 So when we were looking at how we would
13 reword this, essentially we've tied into the FCC
14 process and said whatever communication system is used
15 by an employer to make an emergency 911 call must
16 ensure that it's effective providing contact
17 information for the ambulance service, and in those
18 instances where it's a particular location that has
19 been exempted by the FCC from providing exact location
20 information, that the employer in those particular
21 instances must either post conspicuously the latitude
22 and longitude of the worksite or must have access to a

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1 landline that has 911 service that can provide the
2 exact location of the originating call. So if you look
3 at the language, that's kind of the concept we've
4 captured in trying to update this whole regulation with
5 respect to contacting emergency 911 service.

6 MR. JONES: What did we do before cell
7 phones?

8 MR. ECKERSON: Before cell phones, we relied
9 on the landline 911 service, and --

10 MR. JONES: In rural areas, what did we do?

11 MR. ECKERSON: Oh. We said in areas where
12 911 service wasn't available, such as rural areas, that
13 they had to provide -- they had to post the telephone
14 numbers of physicians, hospitals, or ambulances.

15 MR. BOLON: So you had to get to a landline.

16 MR. ECKERSON: Yeah.

17 MR. JONES: Kevin?

18 MR. CANNON: The only thing I would say --
19 and it's kind of along the lines when you're working in
20 some of these areas, is if you could potentially expand
21 just beyond longitude and latitude if there is a
22 physical address available and some of our contractors

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1 who do highway work, you know, they're constantly
2 moving, and some way of identifying their precise
3 locations where the work is being performed.

4 Some of the things that we kicked around, and
5 I understand that they're not available in all areas,
6 you know, mile markers or things of that nature when
7 you're doing highway work, but as I've heard from our
8 members, sometimes when they're working in the most
9 remote places, they don't have -- but just giving other
10 options besides just longitude and latitude here.

11 MR. ECKERSON: Okay. So we could add
12 language saying or other identifying information that
13 will adequately provide --

14 MR. CANNON: Yes.

15 MR. ECKERSON: Okay.

16 MR. JONES: Chuck?

17 MR. STRIBLING: Thank you. Yeah, I would
18 echo that. Some of them won't know their latitude and
19 longitude. If I don't have a GPS on me, I may not know
20 it. And the other thing is right now the proposed text
21 is when an employer uses a combination system for
22 contacting necessary ambulance service, I'm just sort

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1 of questioning, why is it just ambulance service?

2 MR. JONES: EMS, right?

3 MR. STRIBLING: Pardon?

4 MR. JONES: Are you thinking EMS?

5 MR. STRIBLING: Well, I'm thinking you're
6 trying to call 911.

7 UNIDENTIFIED MALE SPEAKER: Emergency
8 service.

9 MR. STRIBLING: Yeah, so it's an emergency
10 service. They might be trying to call the county
11 rescue squad or the fire department or something like
12 that.

13 MR. BOLON: So just for necessary emergency
14 services? Something like that?

15 UNIDENTIFIED MALE SPEAKER: Mm-hmm.

16 MR. JONES: Jerry, did you have something?

17 MR. RIVERA: No.

18 MR. JONES: Matt?

19 MR. GILLEN: No.

20 UNIDENTIFIED MALE SPEAKER: The phone?
21 Anybody on the phone?

22 MR. JONES: You folks on the phone, any

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1 comment?

2 MR. PRATT: Yeah. This is Don Pratt. I'm
3 concerned about this. I think that a lot of our guys
4 that are building in rural areas, obviously, they're
5 not going to have latitude and longitude available to
6 them, just like was already mentioned. Obviously, for
7 our members, a physical address is probably going to be
8 the best way to find somebody. However, if you're
9 working on a road crew or something like that, it could
10 be a problem. So I don't know that we can blanket this
11 whole thing with one statement. I think we have to
12 spend more time in looking at, what do we really want
13 to accomplish and how do we get there the best way?

14 MR. HAWKINS: This is Steve Hawkins. Just
15 certainly I understand what OSHA is trying to do here,
16 and it does -- I mean, we understand it, it makes
17 sense, but really when I'm starting to think about
18 remote worksites, logging some things like that, in
19 Tennessee and I think probably certainly out West, I
20 think there are lots of places where there is no cell
21 phone service. I know there is in Tennessee. I know
22 places right now where I go where I just don't have

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1 service, and they're not as small, they're not little
2 pockets like you might think, sometimes it's a pretty
3 big area. What are we expecting of an employer who
4 might be working in an area where there is not cell
5 phone service and certainly they're working in an area
6 where there is not a landline, you can't tap into a
7 landline, what do we actually expect of that employer
8 right now?

9 MS. SHORTALL: I think it depends upon the
10 standard. Login you just specifically mentioned,
11 that's one of the reasons why they require login, that
12 all persons be trained and certified to provide first
13 aid.

14 MR. HAWKINS: Right, and we've got that same
15 standard in the construction industry, too, basically,
16 right? That you've got to have people there to render
17 first aid. I guess we do. I never really thought
18 about it. I'm assuming that we do. But as far as
19 summoning -- you know, first aid is one thing, but
20 that's not the same as having an ambulance, you know,
21 medical professionals there on their way. I guess if
22 that's the case, there is nothing we can really do

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1 about it.

2 MR. JONES: Steve, I was in Palm Spring
3 desert about, I don't know, 3 or 4 weeks ago on a big
4 solar farm, and what our contractor was doing there was
5 giving workers stickers with their longitude and
6 latitude GPS numbers on their hard hats because the big
7 issue was snakes, and every trench we built, every
8 pallet we sat down created shade, which would then
9 create homes for critters, and so they would put these
10 on the hard hats because you only have about 30 to 45
11 minutes for rescue. So when the helicopter was coming
12 out, we could pinpoint employees, and that's what we
13 were using out in Palm Springs, but we were relying on
14 cell phones to call the helicopter, the Flight for Life
15 helicopter service.

16 MR. HAWKINS: Okay. So I think the comment
17 that was made earlier about using latitude or longitude
18 or if you actually had a street address, the street
19 address is probably more useful to the EMS 911 folks in
20 that county than maybe your latitude and longitude is.
21 So I guess we need to open up the language, like was
22 said earlier, where it's whatever the most effective

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1 method would be, whether it's having the address or --
2 because I think all the cities in Tennessee, I think
3 Tennessee has this now, where every municipality had to
4 go through and decide what the name of all the roads
5 were, which would be a bigger job than you might think
6 because some people called a road one thing all their
7 life, and now the city has named it something else, put
8 up road signs, and assign house numbers. And so if you
9 were in a rural area where you didn't have cell phone
10 service but you did have a physical address, that would
11 be probably the method that would bring you quicker
12 service than the latitude and longitude possibly, but
13 then out West, like Walter is talking about, the
14 latitude and longitude is probably for sure the best
15 way there, right?

16 MR. JONES: Yeah, it was the only way.

17 MR. HAWKINS: Yeah.

18 MR. ECKERSON: Okay. If I may take a stab
19 then at addressing that, I would say that on Page 9
20 where we say, "Conspicuously post the latitude and
21 longitude of the workplace," I propose we add, "or
22 other identifying information which will enable

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1 emergency responders to readily locate the worksite."

2 MR. HAWKINS: Yeah. Something like that
3 seems like it might be a good idea. Since these
4 opportunities to fix stuff like this only come around
5 so often, and that might be some good wording there. I
6 think that sounds good.

7 MR. JONES: Can you reread that, please?

8 MR. ECKERSON: So, "Conspicuously post the
9 latitude and longitude of the workplace or
10 conspicuously post other identifying information which
11 will enable the emergency responders to readily locate
12 the worksite," the workplace, I guess.

13 MR. MCKENZIE: Dean McKenzie, with OSHA.
14 Should we add something like "effective" or any
15 alternative, post an effective means, whether it's a
16 radio, whatever it is, you have an effective means to
17 reach your emergency services that is tested?

18 MR. PRATT: This is Don Pratt. What if you
19 don't have an effective means?

20 MR. JONES: Get one.

21 MR. STRIBLING: Well --

22 MR. JONES: Chuck?

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1 MR. STRIBLING: This is Chuck Stribling.
2 This standard only applies when it -- it says when an
3 employer uses a communication system. If you're out in
4 the boonies and you don't have the service, you don't
5 have the service. You're not using a communication
6 system. You might simply get on the CB radio, which is
7 still done in parts of Eastern Kentucky, and local
8 police monitor that. There's an emergency channel,
9 Channel 9. So it only applies when you use a
10 communication system, as proposed.

11 MR. JONES: Kevin?

12 MR. CANNON: I just had a question because I
13 have not had this experience, but how do you know when
14 you're in one of these areas?

15 MR. STRIBLING: You don't have cell phone
16 service.

17 MR. BOLON: You don't have any bars.

18 (Laughter.)

19 MR. BOLON: Actually, that's not quite true.

20 UNIDENTIFIED MALE SPEAKER: Or it might say
21 no service.

22 MR. BOLON: For a cell phone, for them to

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1 locate you --

2 MR. JONES: Yeah, they're talking about the
3 locator portion.

4 MR. BOLON: -- they need -- I believe they
5 need either two -- three? Two or three cell tower
6 fixes on where you're at to fix you. Otherwise, I
7 mean, you might get voice, but you wouldn't get --

8 MR. CANNON: So conceivably you could have
9 cell phone use but not the locator capabilities.

10 MR. BOLON: Yeah. Yeah.

11 MR. CANNON: So that's what I'm saying, how
12 do you know when you're in that?

13 MR. ECKERSON: The FCC maintains a registry
14 of all those locations in the country that are exempted
15 from this, so to find that out, you would have to go to
16 the FCC.

17 MR. BOLON: But to find out where you are,
18 you can get a handheld GPS. They work everywhere, and
19 they don't cost that much.

20 MR. STRIBLING: To answer Kevin's question,
21 when you call 911, the dispatcher will instantly know
22 where you're calling from or not, and if they don't --

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1 MR. CANNON: Then you know you're in --

2 MR. STRIBLING: They'll ask. And even when
3 they do know, they'll ask to confirm.

4 MR. JONES: Sarah?

5 MR. BETHANCOURT: This is Jeremy Bethancourt.
6 I think to the point that was just mentioned about the
7 handheld GPSs, and I don't know how -- if it would even
8 be something that included any language, but, I mean,
9 our -- darn it -- our GPSs for our automobiles, the
10 handheld ones, those, even when they don't have any
11 roads or anything like that, or maps, they still know
12 where the longitude and latitude is. At least I found
13 out here in Arizona where I sometimes don't get cell
14 service, as was said by Steve. So there we are, that's
15 what I had to say about that.

16 MS. COYNE: This is Sarah. On the very last
17 part of your rewrite, could you read the very last
18 sentence again, please?

19 MR. ECKERSON: Okay, "or other effective
20 identifying information which will enable the emergency
21 responders to readily locate the workplace."

22 MS. COYNE: Is that what we want it to say?

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1 Because the job sites I've been on have been huge, so
2 should there be additional language or a comma,
3 workplace and employee?

4 UNIDENTIFIED MALE SPEAKER: Or injured party?

5 MS. COYNE: Or injured party?

6 MR. CANNON: But that's such an unknown. You
7 don't know where it might happen.

8 MR. JONES: What she's saying is that you
9 want to locate the employee, you don't want them to
10 locate the worksite. You can get to the worksite and
11 it still be a 5-mile worksite, but you need to find the
12 employee.

13 MR. CANNON: The incidents are unpredictable,
14 so how are you going to -- because it has to be posted.
15 You see where I'm going?

16 MS. COYNE: I've been on worksites where the
17 ambulances showed up and the jobsite was so big, it
18 took forever. I mean, the ambulance showed up on the
19 jobsite like that; locating the worker is what was
20 difficult. And I would imagine that the challenge would
21 be 10 times more difficult in an area, rural, that
22 we're referring to.

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1 MR. CANNON: I mean, I do totally understand,
2 but I'm saying as far as posting. This is saying you
3 have to post it, and then being able to post where --

4 MS. COYNE: So noted.

5 MR. CANNON: Do you see what I mean?

6 MR. BOLON: I think this provision mostly is
7 directed -- I mean --

8 MS. COYNE: So noted.

9 MR. BOLON: -- I think your point about
10 finding the employee is good, but I guess the original
11 thing is just directed towards getting the emergency
12 service there.

13 MS. COYNE: So noted. Thank you.

14 MR. JONES: Jerry?

15 MR. RIVERA: Yes. Jerry Rivera, Employee
16 Rep. I think a lot of the questions as far as locating
17 the actual employee could be best addressed maybe in
18 the emergency action plan, and this is more broad in
19 nature.

20 The other aspect, more or less my comment is
21 on the latitude, you know, it was interesting to hear
22 the discussion of, well, the only way you find out

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1 about whether you have the ability for longitude or
2 latitude is if you call 911 and they tell you or they
3 ask you, or just because you have three bars, it
4 doesn't mean you have it. I guess my challenge here
5 is, how can we expect that employer to be able to
6 identify that? I mean, if I know construction folks,
7 they say, "I've got a signal, I'm good to go, I'm in
8 compliance," when in reality they might not be. So I
9 just want to make sure that the language you are
10 proposing, it's kind of tough to articulate it, but we
11 don't want to put them in a place where they don't know
12 where the virtual boundaries are at.

13 MR. BOLON: Could you reference the FCC
14 registry in some form or fashion?

15 MR. ECKERSON: Yeah. It is referenced on
16 Page 8. Maybe we can provide a link to that site or
17 something, or I don't know if we can do that in reg
18 text, but we say in counties or portions of counties
19 where the U.S. Federal Communications Commission
20 exempts wireless carriers. There is like a docket
21 number or --

22 MS. SHORTALL: I guess I have a question to

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1 ask concerning that, and that is, is the FCC going to
2 long term keep those exemption areas, or is that as
3 there are more cell towers going up, is that being
4 revisited? In other words, are you trying to get at
5 the FCC ones or are you just trying to get at for
6 whatever reason there is no 911 service?

7 MR. ECKERSON: Well, for cellular phones,
8 everyone -- every carrier has to have 911 service
9 unless they apply to this FCC registry and are accepted
10 and are listed on a publicly available location.

11 MS. SHORTALL: I realize that, but --

12 MR. ECKERSON: Over time, I don't know what
13 period of time FCC revisits that, but I would imagine
14 that each year the area that doesn't have 911 service
15 shrinks probably pretty significantly. So I imagine
16 this whole issue will be moved in 5 years or so.

17 MS. SHORTALL: Okay. And so is it important
18 that we reference FCC here or just reference the notion
19 that there isn't currently 911 service or just period?

20 MR. ECKERSON: The reason I think it's
21 important to reference it is the FCC, that's the only
22 way you can really determine whether or not you have

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1 911 service in a particular area.

2 MS. SHORTALL: Is that language that is
3 mostly put into regulations or language that you would
4 normally find in a preamble to more fully explain a
5 regulation?

6 MR. ECKERSON: Yeah, that probably would be
7 appropriate, more appropriate, in preamble language.

8 MR. JONES: That's not -- then do you believe
9 it's necessary in this case then, or is this --

10 MR. ECKERSON: No, I was just addressing the
11 point about the evolution of 911 service.

12 MR. JONES: Yeah, okay.

13 MR. ECKERSON: I think what language we have
14 here we would believe it would be best to be in the reg
15 text, but any talk about what happens in 5 years from
16 now with the increase in cellular technology, I think
17 we could address that in preamble language.

18 MR. JONES: Don, where are you at on this?
19 I'm not sure. Where are you at on this? Have the
20 responses made you more comfortable?

21 MR. PRATT: Are you asking me?

22 MR. JONES: You said you had some strong

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1 concerns about this.

2 MR. PRATT: Yeah. I think if we give an
3 option to the employer, I think that that will take
4 care of most of the concern that I have.

5 MR. JONES: Okay. All right. Then I'm
6 looking for a motion --

7 MS. SHORTALL: What you've got to do at this
8 point is you've got several motions that are going to
9 be necessary. One is going to be the language you're
10 discussing here about expanding and identifying
11 information that you can use. The second one is going
12 to be if you want to suggest that there be something
13 broader used than "ambulance." And then third, whether
14 you support the notion of revising or recommending that
15 OSHA proceed with revising this particular section of
16 1926.

17 MR. JONES: All right. Let's take the first
18 one, expanding the language here.

19 UNIDENTIFIED MALE SPEAKER: So moved.

20 MR. JONES: So we're looking at expanding it
21 to include other location identifiers?

22 MS. SHORTALL: Other types of identifying

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1 information employers may use where there is no 911
2 service.

3 MR. ECKERSON: Right.

4 MR. JONES: One moment.

5 Solicitor?

6 MS. SHORTALL: But this, we need a motion for
7 it.

8 MR. JONES: Before I entertain a motion, I
9 would like to hear a comment from the audience.

10 MS. WILSON: I apologize, Ms. Shortall. Just
11 in your summary, the other means of providing the
12 location and identifying information, that does apply
13 in situations where there is 911 service, it's simply
14 that the phone does not automatically provide the
15 location to the service providers.

16 MS. SHORTALL: Okay. Then what about if we
17 just were to have a motion that said expand the types
18 of identifying information employers may use in an
19 emergency situation? Would that be broad enough?

20 MR. ECKERSON: Beyond latitude and longitude
21 you mean, that issue.

22 MS. SHORTALL: Uh-huh.

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1 MR. ECKERSON: Yeah, I think that would
2 capture it.

3 MR. JONES: To include or beyond? All right.
4 Okay. Are we good? So moved by --

5 MS. SHADRICK: So moved.

6 MR. JONES: All right. Second?

7 MR. PRATT: Second. Don Pratt. Second.

8 MR. JONES: All right. All in favor?

9 (Chorus of ayes.)

10 MR. MCKENZIE: The phone.

11 MR. JONES: On the phone, all in favor?

12 MR. BETHANCOURT: Aye.

13 MR. PRATT: Don Pratt. Aye.

14 MR. ERICKSON: Roger Erickson. Aye.

15 MR. JONES: Kristi?

16 MR. HAWKINS: Steve Hawkins. Aye.

17 MR. JONES: Steve Hawkins. I didn't hear
18 Kristi.

19 All not in favor on the phone?

20 MS. BARBER: I had my mute on. Dang it.
21 Kristi Barber. Aye.

22 MR. JONES: Aye. Okay. All right, at the

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1 table here --

2 UNIDENTIFIED FEMALE SPEAKER: You didn't have
3 Jeremy Bethancourt.

4 MR. JONES: Oh. Jeremy, are you in or out?

5 UNIDENTIFIED MALE SPEAKER: He said aye I
6 think.

7 MR. BETHANCOURT: I said aye. Jeremy
8 Bethancourt. Aye.

9 MR. JONES: I'm sorry. That's what I
10 thought. Okay. Back to the table here, all in favor
11 say, "Aye."

12 (Chorus of ayes.)

13 MR. JONES: All opposed.

14 (No audible response.)

15 MR. JONES: Abstentions?

16 (No audible response.)

17 MR. JONES: Okay, so moved to expand
18 information sources.

19 MS. SHORTALL: And then Roger Erickson I
20 believe was the one who brought up the issue of
21 ambulance, or was it someone else?

22 MS. SHADRICK: Chuck.

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1 MS. SHORTALL: It was what?

2 MS. SHADRICK: Chuck.

3 MS. SHORTALL: Oh, Chuck. Okay.

4 MR. ERICKSON: It was not me. I'm Roger.

5 MS. SHORTALL: Oh, sorry.

6 Chuck, you brought up the ambulance. Do you
7 have a motion you would like to make?

8 MR. JONES: Emergency services?

9 MR. STRIBLING: Yeah. I would suggest or
10 make a motion that the agency change that text to read
11 something along the lines broader than ambulance
12 service.

13 MR. JONES: Second?

14 MR. CANNON: I'll second it.

15 MR. JONES: Thank you. All in favor on the
16 phone?

17 MS. BARBER: Kristi Barber. Aye.

18 MR. PRATT: Don Pratt. Aye.

19 MR. ERICKSON: Roger Erickson. Aye.

20 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

21 MR. HAWKINS: Steve Hawkins. Aye.

22 MR. JONES: Thank you, guys.

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1 All in favor at the table?

2 (Chorus of ayes.)

3 MR. JONES: Opposed?

4 (No audible response.)

5 MR. JONES: Abstentions?

6 (No audible response.)

7 MR. JONES: All right. So moved.

8 And now the third motion would be what, Ms.

9 Sarah?

10 MS. SHORTALL: ACCSH recommend that OSHA
11 proceed with revising Section 1926.50(f) with the
12 revisions ACCSH has adopted.

13 MR. JONES: I'm looking for a motion to
14 accept.

15 MS. COYNE: So moved.

16 MR. JONES: Okay. Second?

17 MS. BARBER: Second.

18 MR. JONES: Kristi seconds.

19 All in favor on the phone?

20 MR. PRATT: Don Pratt. Aye.

21 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

22 MR. ERICKSON: Roger Erickson. Aye.

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1 MS. BARBER: Kristi. Aye. Sorry, Steve.

2 MR. HAWKINS: Sorry, Kristi. I thought I was
3 waiting until the last. Steve Hawkins. Aye.

4 MR. JONES: Okay. All in favor at the table
5 say aye.

6 (Chorus of ayes.)

7 MR. JONES: I think that's all of us.

8 Okay. Now we're going to move down to Number
9 9, I believe it is, Paul?

10 MR. ECKERSON: Right. Yeah, this last one --

11 MR. BOLON: It's not last.

12 (Laughter.)

13 MR. ECKERSON: I'm sorry, the last -- near
14 the last. I'll say Number 9 is 1926.250(a)(2)
15 requirement presently requires the posting of safe-load
16 limits on floors within buildings and structures in
17 pounds per square foot. The intent of this regulation
18 is to ensure that contractors do not put unsafe loads
19 of materials and machinery on portions of the building
20 which could not withstand that load. We are proposing
21 in this particular provision to exempt this requirement
22 to post the load limits in single-family residences

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1 under construction. The main reason for that is that
2 most of the -- almost the overwhelming majority of
3 situations where this is an issue are not the single-
4 family residences, it's the larger construction sites
5 that have curing cement issues and have much larger
6 pieces of equipment and much heavier building supplies.
7 So in single-family residences, this really is a non-
8 issue and we think for that reason we're proposing to
9 put in the exemption for single-family houses.

10 MR. BETHANCOURT: This is Jeremy Bethancourt.
11 I have a comment regarding the single-family residence.
12 I would just think that it might be more prudent -- and
13 Don can chime in here -- if we define single-family
14 residence. And not to get into minutia, or maybe
15 perhaps we might reference a current definition because
16 I think that this definition would also or might also
17 be inclusive of some light commercial type structures,
18 what the industry recognizes as light commercial, which
19 is the standard means and methods, and I would just
20 want to make sure that there is not ambiguity in that.
21 So I don't know if less is more in this instance, and I
22 would be interested to hear what Don might think about

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1 that.

2 MR. PRATT: Yeah. This is Don Pratt. Yeah,
3 there are definitions of what a single-family dwelling
4 would be primarily in the code structure. There is
5 also -- I believe that we have one for OSHA on what a
6 single-family dwelling is, or maybe I'm thinking about
7 the proposal that we made for fall protection and what
8 would be defined as a single-family dwelling, and I
9 would probably like to go back to that one, that
10 definition. I would have to look it up, I don't have
11 it here at my fingertips, but it's very clear and it
12 does include a lightweight -- a light framing for some
13 commercial buildings, too. So that would probably be a
14 good suggestion.

15 MR. JONES: Okay. Is that -- any other
16 comments?

17 Jerry? Kevin?

18 MR. CANNON: No, I'm good.

19 MR. BOLON: I'm a little concerned about
20 light commercial just because that could be poured
21 concrete floors or steel or something. I tend to think
22 you might tend to have some materials that might be

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1 pretty heavy that could be stored in there. I mean, I
2 just don't know, whereas single-family homes --

3 MR. JONES: Yeah, I agree, I agree, but the
4 definition of -- is the definition of a single-family
5 home inclusive of light commercial, Jeremy?

6 MR. BETHANCOURT: Well, I guess -- it wasn't
7 that I was trying to be more inclusive and make it
8 apply, I just think it should be -- we just shouldn't
9 have any doubt, and on this particular issue, there
10 seems to be a continuing dialogue as to what actually
11 applies. Now, in my thoughts, I mean, if we're to
12 utilize the compliance directive that I think Don was
13 referencing that was put out in 2011, it does define a
14 single-family residence under the criteria for fall
15 protection, and that may assist industry in
16 understanding where this should apply and where it
17 shouldn't, not necessarily to light commercial, but
18 it's more of what is the construction material that's
19 very important, as your concern seems reasonable that,
20 yeah, some things could be quite heavy.

21 I guess where I see that there could be an
22 issue, for example, I hate to bring up the State of

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1 Arizona, where we're having some issues with that
2 currently still, but there is that extension that is
3 now into large apartment type structures that are
4 predominantly wood frame, clearly not a single-family
5 residence, it's a multi-family residence. So if that's
6 going to be the differentiation, then I guess this
7 definition that we have here would be okay, but there
8 is that discussion that's currently out there. And
9 maybe Don can add his thoughts in there, too. I just
10 think we really want to make sure, what is the
11 definition? And I don't know that we have that other
12 than from several different sources, as Don was trying
13 to think of what those words were, I think.

14 MR. PRATT: Yeah. This is Don again. Yeah,
15 I agree. I mean, if we're going to put this in here, I
16 think we really need to define what a single-family
17 residence is. I'm not trying to be difficult, but we
18 really need to get our arms around that.

19 MR. BETHANCOURT: Or at the very least,
20 reference it as it's already written somewhere else.

21 MR. PRATT: Yes.

22 MR. BETHANCOURT: You know? I mean, I just

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1 think we should do that. We owe it to the employers
2 that are going to want to make sure that they're
3 compliant, to be able to say, "Okay, you're saying
4 this, so what's the definition? Oh, okay, you're
5 telling me to go look here for that definition." Then
6 it's done, you know.

7 MR. PRATT: Yeah. This is Don again. As an
8 example, in townhouse construction, depending on where
9 the break is in the firewalls, each one of those
10 townhouses could be considered to be a single-family
11 dwelling, although we don't look at it that way, we
12 don't think about that. Okay? But a townhouse
13 obviously is no different than a single-family home
14 when it comes to this.

15 MR. BETHANCOURT: And that's why I would be
16 concerned about ambiguity, so, yeah, I think Don and I
17 would -- and maybe others, I think we want it to be
18 clear, not -- in my case, not that I'm objecting to it,
19 but I would want it to be clear for everybody.

20 MR. BOLON: Well, I think where we're at
21 right now is there is general approval for doing this
22 for at least what most of us commonly think of single-

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1 family homes, but we're hearing that we need a clear
2 definition for it, and I guess a couple of people have
3 suggested that it should be broader.

4 MR. JONES: Well, I think what I'm hearing --
5 and I agree, Paul, and correct me if I'm wrong, is this
6 is fine as long as we define what single-family
7 dwelling is, right?

8 MR. BOLON: Uh-huh.

9 MR. PRATT: Yeah, I'm not saying it should be
10 broader or more restrictive, I'm just saying it should
11 be defined clearer.

12 MR. JONES: Yeah, that's what I thought.
13 Chuck, jump in.

14 MR. STRIBLING: Thank you. Defining a
15 single-family residence has implications in other
16 parts of the 1926 standards. I would most certainly
17 want to see any proposed definition before it came out
18 as a proposed rule.

19 MR. PRATT: Sure enough.

20 MR. STRIBLING: And the reference to where it
21 might be defined in other -- you're talking about the
22 CPL. Not all states adopt that CPL. Some states don't

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1 recognize that definition, so that necessarily would --

2 MR. JONES: Can you explain CPL for some of
3 us that don't know?

4 MR. STRIBLING: Compliance directive. So
5 that definition necessarily wouldn't work for all the
6 state plan partners.

7 MR. JONES: So I'm looking at two
8 alternatives here. One, we could table it and come
9 back to this at another meeting when we have a better
10 definition of single-family dwelling. Or we could go
11 forward with this, inserting "single-family dwelling."
12 Is that what we're saying? Without defining it.

13 MR. BOLON: Yeah. I think that's where we're
14 at.

15 MR. JONES: Okay.

16 MR. BOLON: The next ACCSH meeting is in
17 December?

18 MR. JONES: Oh, I don't know. We've had
19 four. We may not get another one.

20 MR. BOLON: November, December.

21 UNIDENTIFIED MALE SPEAKER: It's a new fiscal
22 year.

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1 MR. JONES: It is a new fiscal year, right.

2 So I'm looking for some rope here, some help.

3 MR. MCKENZIE: We've got enough rope.

4 (Laughter.)

5 MR. JONES: What do we want to do? Do we
6 want to table this or do we want to go forward without
7 the definition?

8 MS. COYNE: I make a motion to table it.

9 MR. JONES: We have a motion to table this.

10 UNIDENTIFIED MALE SPEAKER: Second.

11 MR. PRATT: This is Don Pratt. Let me answer
12 the question. Go ahead. What was that?

13 MR. JONES: Excuse me. What did you say,
14 Don?

15 MR. PRATT: Well, I was just going to say
16 that if we went ahead and approved it with single-
17 family, what's the process that it would take to add a
18 definition or to change this at some date in the future
19 if in fact we needed to expand this?

20 MR. JONES: Well, we would only be able to
21 recommend --

22 MR. PRATT: Well, I understand that.

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1 MR. JONES: Okay.

2 MS. SHORTALL: Well, it does sound like Mr.
3 Stribling would want to see any definition of single-
4 family residence before he would want to --

5 MR. JONES: Vote in the affirmative.

6 MS. SHORTALL: -- vote on this provision.

7 MR. STRIBLING: Yeah. I think the states
8 would, yes, ma'am.

9 MR. BOLON: In terms of timing, I would hope
10 our proposal would be nearly finished by the time the
11 next ACCSH meeting has, but I think we could bring that
12 definition to you and try and slip it in under the wire
13 at the next one.

14 MR. BETHANCOURT: This is Jeremy Bethancourt.
15 I guess I have a question for Chuck. If we approve it
16 as it is written right now, I am thinking I am
17 understanding that it's ambiguous enough so that the
18 other states can interpret it under however their
19 language is?

20 MR. BOLON: They could --

21 MR. BETHANCOURT: If I'm understanding,
22 that's kind of what my thought is as well. We don't

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1 want it to be exclusive or inclusive, you know, it
2 should be on its face value and everybody should know
3 what that is for their particular area.

4 MR. BOLON: Right. I'll just remind
5 everybody, we're just moving to a proposal. We will
6 have a comment period, so we'll almost undoubtedly be
7 changing things subject to comment. So this is not
8 your last shot, your last crack, at this.

9 MR. PRATT: Okay, well, this is Don Pratt.
10 Then let's leave it the way it is and then we can
11 address this in the comment period.

12 MR. JONES: Okay. On the table, right now on
13 the table we have a motion to table this motion. I did
14 not get a second. Do you want to pull that and we go
15 to a vote on the original?

16 MS. COYNE: Yes.

17 MR. PRATT: Yes.

18 MR. JONES: All right. So that's been
19 rescinded.

20 Okay. Now we're going to go to a -- I want
21 to entertain a motion to accept the support and
22 recommend that OSHA move forward with Number 9, and I

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1 guess the caveat, if there is such, that you'll come
2 back to us with a definition on single-family housing.

3 MR. PRATT: Yeah. This is Don Pratt. I
4 would so move.

5 MR. BETHANCOURT: And I would second that.
6 This is Jeremy.

7 MS. SHORTALL: Provided that motion comes
8 back, or it's just --

9 MR. JONES: It will.

10 MR. BOLON: Yeah, this is something that we
11 would obviously at least have to explain this in the
12 preamble, provide a definition, if not in the reg text.

13 MS. SHORTALL: Okay. So proceed with
14 revising 1926.250(a)(2).

15 MR. JONES: Okay. Second? No, I've already
16 had a second. Let's go to a vote on the phone.

17 MR. PRATT: Don Pratt. Aye.

18 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

19 MR. ERICKSON: Roger Erickson. Aye.

20 MS. BARBER: Kristi Barber. Aye.

21 MR. HAWKINS: Steve Hawkins. Aye.

22 MR. JONES: All right. All at the table, all

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1 in favor say, "Aye," please.

2 (Chorus of ayes.)

3 MR. JONES: And opposed? Nays?

4 (No audible response.)

5 MR. JONES: Abstentions?

6 (No audible response.)

7 MR. JONES: So moved.

8 All right. Paul, before we go to 2 and 5, I
9 believe --

10 MR. BOLON: Actually, we were going to take
11 up quickly I hope the --

12 MR. JONES: Decompression?

13 MR. BOLON: The decompression table.

14 MR. JONES: That's where I want to go.

15 MR. BOLON: Okay.

16 MR. JONES: Okay. Is it 4? 4 is PELs.

17 Yeah, we're coming back to that definitely because
18 you've got to insert --

19 MR. GILLEN: It's 2 and 4, not 2 and 5.

20 MR. PRESTON: I'm Vernon Preston, from OSHA.

21 With regards to the decompression tables, we spoke
22 about this at the last ACCSH meeting, and we decided to

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1 table it to give us time to check out the availability
2 of the decompression tables, and I just wanted to
3 update you guys on that. First I'll say that NIOSH has
4 a website with regards to decompression illness, and on
5 their website they have a copy of the NIOSH tables, the
6 French tables, and the U.K. tables that we would like
7 to refer to in our underground construction standard.

8 There was another table, the German tables,
9 that we have had some trouble getting ahold of -- I've
10 spoken to some representatives from NIOSH. They know
11 that they exist, they know that they have them, but
12 they are I think old and it's difficult for them to
13 make them out, so they told me that they would look
14 into trying to find more up-to-date version of the
15 tables, and if they could do that, we would work on
16 including those also in the standard as well.

17 I think that's about it as far as the
18 availability goes. What I think our approach would be
19 is to include them in our standards by referring to
20 them in Appendix A of Subpart S, Underground
21 Construction, and giving the industry the opportunity
22 to use any of the tables that would be appropriate for

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1 the work that they would be doing.

2 MR. BOLON: Yeah. Just to add a bit,
3 recently we also thought there was a Brazilian table,
4 and we found that not to be the case. I think Vernon
5 found they were using the U.K. table.

6 MR. PRESTON: That's correct.

7 MR. BOLON: And again just a reminder, the
8 context here is that the current OSHA table is really
9 not sufficiently protective, and the other tables that
10 are available are all more protective, and this has
11 been discussed in the literature. So what we're
12 proposing to do is to remove the OSHA table and at
13 least for a proposal to permit the use of any of the
14 other four tables, which we found I think are all
15 available. They're available publicly.

16 MR. JONES: What is industry currently using?

17 MR. BOLON: My understanding is that most
18 commonly and most of the variances are for the French
19 table.

20 Go ahead.

21 MR. JONES: Microphone?

22 MR. BIERSNER: I'm Bob Biersner, with the

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1 Solicitor's Office. And we just issued a variance to
2 Traylor Brothers to do the Blue Plains construction
3 project here in Washington, D.C., digging a tunnel
4 under the Anacostia and the Potomac Rivers. We just
5 issued them a -- it's actually an interim order, which
6 is preliminary to issuing a variance, and in that
7 interim order we adopted the French tables, and OSHA
8 feels extremely comfortable with those tables as being
9 highly protective, and there is a great deal of
10 evidence available in the research literature to
11 support those tables. And I would encourage you -- I
12 mean, we're going to be issuing a proposed application
13 for this variance in the near future, and I would
14 recommend that you pay attention to that, and I would
15 highly recommend that at this point we look
16 particularly at the French tables.

17 MR. JONES: I would like to follow that up.
18 What is the difference between the U.K. and the French
19 and -- is it that big of a difference? And why don't
20 we just go with the French? Or is that problematic?
21 Can someone spell that out for me?

22 Chuck?

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1 MR. BIERSNER: I would like to say, too, that
2 Washington State -- Bob Biersner again -- Washington
3 State, Oregon, California, all state plan states, have
4 also adopted the French tables for tunneling work.

5 MR. JONES: Are they proprietary?

6 MR. BIERSNER: They are proprietary, and we
7 will look into that, but --

8 MR. JONES: But that's no different than
9 ANSI, right?

10 MR. BIERSNER: Yeah, right, it's the same
11 thing.

12 MR. JONES: Okay. Chuck?

13 MR. STRIBLING: Just as a point of
14 information, Kentucky has not adopted the French table,
15 but anyhow, it has to do with work under pressure is
16 the reason for the updated tables. And I
17 wholeheartedly agree the updated tables are much more
18 protective. So I think I brought this up at the last
19 meeting, I don't have an issue with replacing the
20 table, but how will the employer see the table? If we
21 tell them to go to a website --

22 MR. BOLON: I think we would -- well, we'll

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1 have to make provision for that.

2 MR. STRIBLING: Yeah.

3 MR. BOLON: I mean, one alternative is to
4 post it on our website if that's possible.

5 MR. JONES: But don't we do that already with
6 ANSI standards? We're always referencing ANSI
7 standards for ACGIH and they're all copyrighted --

8 MR. STRIBLING: Right, I understand, but now
9 you're taking away something that's in the standard
10 that they can see and you're telling them, "Well, there
11 is something else, but go over here and find it." So
12 would there be a way that it could be included in the
13 appendix?

14 And just so you know, I think I found the
15 German table in a U.K. study last night.

16 MR. JONES: One second.

17 Dean?

18 MR. MCKENZIE: Dean McKenzie, with OSHA.
19 There are French national tables that are available
20 publicly which are better than the OSHA tables. You
21 know, some of the other tables that Vernon has
22 identified are publicly available, and you can look at

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1 them. Now, the ones that will be an issue for us to --
2 a question for us to answer prior to publication will
3 be the George's Gordone (ph) proprietary French tables.
4 How would we reference those? Because they are for sale
5 and they come with George's Gordone services as a
6 company that sells them. We would have to address the
7 issue of OSHA recommending a single source provider.
8 Or it would be like us saying you've got to use
9 DBI/SALA fall protection equipment. We'll have to look
10 into that. But the publicly available tables could be
11 there. We do need to address how we handle the
12 proprietaries.

13 MR. JONES: That answers my question.

14 Any other comments? The phone?

15 (No audible response.)

16 MR. JONES: I would like to entertain a
17 motion to accept -- recommend OSHA proceeds with
18 updating the decompression tables to remove these
19 outdated ones we've been relying on -- I guess I
20 shouldn't say that -- and go forward with the French
21 public tables. And is there another -- the U.K.
22 tables?

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1 UNIDENTIFIED MALE SPEAKER: And NIOSH tables.

2 MR. JONES: And NIOSH tables.

3 MS. SHORTALL: Updated tables, if you want to
4 specify that.

5 UNIDENTIFIED MALE SPEAKER: Say updated.

6 MR. JONES: Updated tables.

7 MR. STRIBLING: Question on --

8 MR. JONES: Go ahead, Chuck.

9 MR. STRIBLING: You said remove the table.
10 Is OSHA intending to remove the table entirely so the
11 tables -- what table would there be for when you're
12 working not at pressurized, you're just doing regular
13 non-pressurized work?

14 MR. PRESTON: It's my understanding that the
15 tables that we currently have for decompression are for
16 pressurized work, so yeah.

17 MR. STRIBLING: So for non-pressurized work,
18 what table would you use?

19 MR. JONES: Do you need a table?

20 MR. BOLON: Do you need a table? I mean --

21 MR. JONES: Do you need a table for non-
22 pressurized work, like right today?

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1 UNIDENTIFIED MALE SPEAKER: We say not in
2 pressurized work.

3 MR. JONES: Yeah.

4 MR. STRIBLING: Okay. Okay. Never mind.
5 I'm thinking --

6 MR. JONES: Yeah.

7 MR. STRIBLING: Okay.

8 MR. BOLON: Again I just also mention a
9 couple things. There was an article published which we
10 think is pretty authoritative that compared the tables
11 about 8 or 10 years ago, and again the conclusion was
12 that the new tables are better than the current OSHA
13 table, that they all are. We were hoping not to try
14 and differentiate between the table because that would
15 be difficult, and since they're all better, we want to
16 get them all in. But since this will be a proposal and
17 have comment, if there are better tables, we can sort
18 that out in comment and rulemaking, so --

19 MR. JONES: I need a second for that, my
20 motion.

21 MR. STRIBLING: Second.

22 MR. JONES: All in favor on the phone.

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1 MR. PRATT: Don Pratt. Aye.

2 MS. BARBER: Kristi Barber. Aye.

3 MR. ERICKSON: Roger Erickson. Aye.

4 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

5 MR. HAWKINS: Steve Hawkins. Aye.

6 MR. JONES: All in favor at the table?

7 (Chorus of ayes.)

8 MR. JONES: And all against?

9 (No audible response.)

10 MR. JONES: So moved.

11 So now we'll go to Number 2. And where are
12 we left off on that one?

13 MR. ECKERSON: I think in speaking during the
14 break with Mr. Cannon, I think we've got a proposal
15 that we can live with and that is acceptable to him;
16 namely, if you look at Page 2 of the table, what we
17 would amend that proposal is we would keep the specific
18 -- we're looking at the middle box here in the table on
19 Page 2 -- we would keep the language which cross-
20 references specifically the 1904.5 criteria, but then
21 we would not include the language, the rest of the
22 language, that we were proposing to add after the

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1 sentence that ends with the OSHA 300 log. So what
2 we're proposing is that it now read -- that the amended
3 language, the first sentence, would read, "If a
4 physician or other licensed health care professional
5 determines, following the rules set out in 1904.5, that
6 the hearing loss is not work-related or has not been
7 significantly aggravated by occupational noise
8 exposure, you are not required to consider the case
9 work related or to record the case in the OSHA 300
10 log." End of provision.

11 MR. JONES: Jerry?

12 MR. RIVERA: I can support that.

13 MS. SHORTALL: Was that your motion then?

14 MR. RIVERA: Yes.

15 MR. JONES: Second?

16 UNIDENTIFIED MALE SPEAKER: I second it.

17 MR. RIVERA: I motion to accept the language
18 as currently proposed.

19 MR. JONES: Comments?

20 MR. BETHANCOURT: Do you need a second? This
21 is Jeremy.

22 MR. JONES: We got a second. For our

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1 discussion, I'm a little amazed here.

2 All in favor on the phone?

3 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

4 MR. PRATT: Don Pratt --

5 MR. JONES: Hold on, hold on. Let's back up.

6 We still have a question.

7 MR. GILLEN: So in your discussion during the
8 break, there was no language you could agree to?

9 Because it kind of talks about not -- if it's not work-
10 related and sort of left on balance there is nothing
11 about if it is work-related, it just talks about not.
12 So there is nothing to balance that at all.

13 MR. CANNON: Well, as I understand it, the
14 second portion of what's highlighted was pretty much
15 summarizing what's already in 1904.5, so just leaving
16 the reference or guiding the health care professional
17 back to 1904.5 takes care of that because 1904.5 is --
18 what is it titled? "Determining Work-Relatedness."

19 UNIDENTIFIED MALE SPEAKER: Yes.

20 MR. BOLON: Yeah, the way this question is --

21 MR. GILLEN: You could just say that, just
22 end after 1904.5.

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1 MR. BOLON: Yeah. The question in bold at
2 the first actually it's asking the negative. What do I
3 do if it's not work-related?

4 MR. GILLEN: Okay.

5 MR. BOLON: It really just speaks to that.

6 MR. GILLEN: All right. Thanks.

7 MR. JONES: All right. I'm sorry. We're
8 going to go back to the vote. Everyone in favor on the
9 phone say, "Aye."

10 MR. PRATT: Don Pratt. Aye.

11 MS. BARBER: Kristi Barber. Aye.

12 MR. ERICKSON: Roger Erickson. Aye.

13 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

14 MR. HAWKINS: Steve Hawkins. Aye.

15 MR. JONES: Okay. Before I say the table,
16 could you just reread that again for me? Because I
17 think I was walking when you said it the first time.

18 MR. ECKERSON: Okay, the sentence -- the
19 answer now reads -- this is 1904.10(b)(6) -- the answer
20 is, "If a physician or other licensed health care
21 professional," and then it's the acronym PLHCP in
22 parens, "determines, following the rules set out in

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1 1904.5, that the hearing loss is not work-related or
2 has not been significantly aggravated by occupational
3 noise exposure, you are not required to consider the
4 case work-related or to record the case on the OSHA 300
5 log." End of provision.

6 So in essence, we're only adding the words,
7 the phrase, "following the rules set out in 1904.5."
8 That's substantively the only change we're making to
9 the first sentence.

10 MR. JONES: Okay. All in favor at the table
11 signify by saying, "Aye."

12 (Chorus of ayes.)

13 MR. JONES: All not in favor?

14 (No audible response.)

15 MR. JONES: Abstentions?

16 (No audible response.)

17 MR. JONES: All right. So moved.

18 All right. Let's go to Number 4. I shut you
19 off in mid-discussion on this. Can we just take it
20 from the top, please, Paul?

21 MR. BOLON: We can take it from the top. All
22 of the changes that we're proposing are really -- they

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1 are only editorial in nature because some of the terms
2 -- some of the language and some of the footnotes
3 really -- they have editorial errors. We're changing
4 the phrase "Threshold Limit Values" because that is a
5 phrase that ACGIH uses, it's the American Conference on
6 Government Industrial Hygienists. And the table is
7 really full of OSHA PELs, Permissible Exposure Limits.
8 There is some language in there that makes it sound
9 like meeting the PELs is only advisory. That's
10 ambiguous and we would like to get rid of it. There is
11 some confusing language about root of exposure and
12 there are some errors in the footnotes. So we're not
13 changing any of the PELs, we're really just correcting
14 errors, I consider them editorial errors, in the table.

15 MR. ECKERSON: And also making it in the same
16 format that exists in the general industry tables.

17 MR. JONES: Was any thought given to maybe an
18 opportunity of updating PELs through this process or --

19 (Laughter.)

20 MR. BOLON: I started working on updating the
21 PELs in '93 and I think I've been through two teams on
22 it, and everyone is always searching for the "Holy

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1 Grail," the good direct way to do it. So I don't think
2 that's going to make it.

3 MR. JONES: All right. Do I have any
4 comments?

5 MR. GILLEN: Yeah, I would like to make some
6 comments on this. The language you came up with I
7 think is fine, but there is one thing that it does that
8 I think is really highly objectionable, and that is it
9 removes the reference to 1970 because these exposure
10 limits are 43 years old, and that's pretty old, and
11 unfortunately they're going to probably make it to 50,
12 and, you know, that at least tells somebody, an
13 interested employer or interested worker that these are
14 old and could be a little bit out of date, and without
15 that, they don't know that. So, you know, even though
16 we prefer to be talking about updating the PELs every
17 10 years and things like that, we should be
18 transparent, we should let people know that these are
19 old and we shouldn't remove language that does that.

20 And just to give you a few examples, I just
21 took a quick look at some of the 1970 TLVs and compared
22 them to the most recent 2013 TLVs just to see, and, you

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1 know, these are just some examples, it's not like there
2 aren't some of them that are the same, but there are
3 lots of examples, like carbon monoxide in 1970 that
4 limits 50 parts per million, and 25 parts per million
5 in 2013; or in hexane, which is a solvent, 500 parts
6 per million in 1970, it's 50 parts per million, 10
7 times lower. Hydrogen sulfide, 10 parts per million in
8 1970; 1 part per million today.

9 So, you know, the reason they changed these
10 is because evidence came out showing that those other
11 limits, health effects could happen at those limits.
12 Do you see what I mean? And so there really -- they're
13 not protective. And so we should let people know.

14 And so we just talked -- we just reviewed a
15 standard that said note to Paragraph (f)(2) was part of
16 the discussion about the wireless, and so I would like
17 to suggest that we have a similar note and would say
18 note to Paragraph A, and it would say these required
19 limits originally provided by the American Conference
20 of Governmental Industrial Hygienists, ACGIH, date from
21 1970. Current ACGIH and NIOSH exposure limits for many
22 of these substances are now lower, and the 1970 limits

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1 may not be sufficiently protective of worker health.
2 Employers are encouraged but are not required to
3 consider more up-to-date limits when taking steps to
4 control construction worker exposures. I think that
5 just sort of gives people that honest message that
6 these are kind of old and that they may -- in good
7 practice, if they're having a problem with a chemical,
8 that they should get another opinion and look about
9 that. It's not at all to change the requirements but
10 just to be more transparent about the fact that these
11 are pretty old and many of the individual limits are
12 out of date.

13 So that's the proposal I would like to put
14 out.

15 MR. JONES: Is there a second?

16 MS. SHADRICK: I'll second it. Laurie
17 Shadrick. I second it. I think it's a wonderful idea
18 to put that note in there. And, again, these tables
19 are from 1970. Everybody should be aware of that.
20 That's a great suggestion, Matt.

21 MR. JONES: And the studies for these are
22 probably from the '50s, right?

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1 MR. GILLEN: Some of them are, yeah.

2 MR. BOLON: If there were studies.

3 (Laughter.)

4 MR. JONES: Okay. So I guess we're in the
5 discussion phase of this question. I still have --
6 there were two issues you brought up. There is the
7 1970s and your note. Your motion is only dealing with
8 the note.

9 MR. GILLEN: The motion would provide a note
10 that would remedy -- it would just go on the end of the
11 language they have, and it reinstates the fact that
12 they're from 1970.

13 MR. JONES: Okay. All right. I just wanted
14 to make sure we got that.

15 MR. GILLEN: And it just explains it a little
16 more explicitly what it means.

17 MR. JONES: So our recommendation is on -- I
18 mean, the recommendation is on the floor. Those in
19 favor on the phone, please signify by saying, "Aye."

20 MS. BARBER: Kristi Barber. Aye.

21 MR. PRATT: Don Pratt. Aye.

22 MR. ERICKSON: Roger Erickson. Aye.

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1 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

2 MR. HAWKINS: Steve Hawkins. Aye.

3 MR. JONES: At the table, all in favor say,
4 "Aye."

5 (Chorus of ayes.)

6 MR. JONES: Opposed?

7 (No audible response.)

8 MR. JONES: I didn't see that one coming.
9 All right. Good deal. I did not see that coming.

10 MS. SHORTALL: This was the motion for
11 including that.

12 UNIDENTIFIED MALE SPEAKER: Right.

13 MS. SHORTALL: And now we come to the motion
14 for the whole recommendation.

15 MR. JONES: Oh, yeah. That's true, too.

16 (Laughter.)

17 UNIDENTIFIED MALE SPEAKER: And I'll oppose
18 that one.

19 (Laughter.)

20 MR. JONES: I'm looking for a motion to
21 accept this recommendation from OSHA and to support it
22 and OSHA move forward on cleaning up this rule.

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1 MS. SHORTALL: With ACCSH's accepted
2 language.

3 MR. JONES: Including the proposed language.

4 MS. SHADRICK: So moved.

5 MR. JONES: Second?

6 MR. GILLEN: Second.

7 MR. JONES: All in favor on the phone?

8 MS. BARBER: Kristi Barber. Aye.

9 MR. PRATT: Don Pratt. Aye.

10 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

11 MR. HAWKINS: Steve Hawkins. Aye.

12 MR. ERICKSON: Roger Erickson. Aye.

13 MR. JONES: All right. All in favor at the
14 table, signify by saying, "Aye."

15 (Chorus of ayes.)

16 MR. JONES: And all opposed?

17 (No audible response.)

18 MR. JONES: That was awesome. That was the
19 best stuff we did this week, seriously.

20 Okay. Where are we at now?

21 MR. ECKERSON: Excavation.

22 MR. JONES: Thank you, Paul. It was

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1 fantastic working with you guys on this one. I'm
2 elated, as you can see, at the outcome. I did not
3 think we were going to get what we got.

4 MR. BOLON: Yeah, I think this will be the
5 last batch of SIPs candidates we bring before ACCSH.
6 We might have something to follow up on the single-
7 family home residence definition. I've worked on most
8 of the SIPs projects, and I don't think any of them
9 have gone through a review by ACCSH or somebody
10 outside. I just think it's been very beneficial to
11 have ACCSH review these and provide comment. I think
12 it's helped us quite a bit. So thank you for that.

13 MR. JONES: Thanks, Paul. Great.

14 Okay. What I want to go to next is our work
15 group before I lose Thomas. I only got him for a
16 couple of minutes, I guess. Thomas and Jeremy, Thomas
17 Marrero and Jeremy Bethancourt, are the co-chairs of
18 the Temporary Worker Work Group, and they have a work
19 group report to present to us.

20 Thomas, before you go, do you want to jump
21 up?

22 MR. MARRERO: Okay. Jeremy Bethancourt and I

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1 had several discussions yesterday regarding some
2 suggestions we would pose to ACCSH for discussion as
3 well as eventually to make OSHA as the agency moves
4 forward with the temporary worker initiative.

5 First, we believe the initiative should be
6 more inclusive of issues which are prevalent in the
7 industry insofar as how workers are brought onto work
8 sites and viewed by host and controlling employers.

9 Second, we believe that the committee has a
10 greater responsibility and opportunity to assist more
11 workers in the industry by furthering OSHA's definition
12 of the host employer relationship and thereby
13 responsibility to worker safety by establishing a
14 guidance document. We suggest the language of the
15 document can be crafted over the next few ACCSH work
16 group meetings. As a starting point for a guidance
17 document, we could integrate select portions of the IRS
18 Darden Factor language. The only differences that we
19 suggest that the language be inclusive regarding
20 relationship of host employers versus exclusive as it
21 relates to employees versus independent contractors.

22 If the whole point of the initiative is to

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1 increase worker safety through the delegation of
2 responsibility among several employers, then we must
3 define the true relationship in no uncertain terms
4 between the exposing and controlling employers. It is
5 well-known across industry and a common practice that
6 the employees of any subcontractor can be removed by
7 any controlling contractor and thereby under the
8 control of the general contractor. Accordingly, should
9 not the safety responsibility for any such employees
10 also be shared by the controlling employer irrespective
11 of any indemnity language imposed by general
12 contractors to subtier contractors?

13 Attached on the following page is some of the
14 language that we believe is a starting point for
15 guidance language for this initiative.

16 So our motion to the committee is as follows:
17 That ACCSH recommend that OSHA expand its temporary
18 worker safety initiative to be more inclusive whereby
19 all employees are provided protection under the
20 continuing trend of our Nation's employers to utilize a
21 temporary style/like workforce. The focus of the
22 initiative should be not only on employees assigned to

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1 host employers through staffing firms but also those
2 employees employed to jobs via alternative work
3 arrangements to include, but not limited to, the use of
4 independent contractors, construction contractors and
5 subcontractors, part-time employees, and other work
6 arrangements that are a variation from the standard
7 workday, workweek, or work location, and the standard
8 employer-employee relationship.

9 MR. JONES: Okay. Let's do two things. I
10 want to get a motion to accept the Work Group report
11 first.

12 MS. BARBER: Motion.

13 MR. JONES: All right. Second?

14 MR. GILLEN: I second it.

15 MR. JONES: All right. All in favor say,
16 "Aye."

17 MS. BARBER: Aye.

18 MR. GILLEN: Aye.

19 MR. JONES: All in favor on the phone say,
20 "Aye."

21 UNIDENTIFIED MALE SPEAKER: Aye.

22 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

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1 MR. JONES: Very good.

2 MR. ERICKSON: Roger Erickson. Aye.

3 MR. JONES: I got that right. Okay. I am
4 now looking at a motion from the Temporary Work Group.
5 I am not going to reread it. It's as stated verbatim I
6 guess, as Tom just said, at the bottom of the paper
7 that we're looking at.

8 Sarah, is that fine?

9 MS. SHORTALL: Sure.

10 UNIDENTIFIED MALE SPEAKER: Will the
11 committee discuss that?

12 MR. JONES: Yeah, I'm going to definitely do
13 that.

14 I'm looking for a second to Thomas' motion.

15 MS. SHADRICK: I'll second it.

16 MR. JONES: Laurie seconds.

17 Let's talk about it.

18 Dean? Kevin?

19 MR. CANNON: No, Dean first, please.

20 MR. MCKENZIE: Dean McKenzie, with OSHA. The
21 initiative to expand this into every subcontractor all
22 these other tiers on an initiative level is a whole

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1 different creature than what the agency is set out to
2 right now, and defining those relationships has been a
3 work in progress for 43 years to do. To suggest that
4 we're going to do this through this motion is
5 optimistic at best. I would like to see the work group
6 consider that and try to put a little bit better
7 definition to that.

8 MR. JONES: I'll be right with you, Kevin.

9 When you say that, Dean, what do you find
10 problematic? Independent contractors? Construction
11 contractors? Day laborers? What exactly are you
12 saying?

13 MR. McKENZIE: Expanding its temporary worker
14 initiative to be more inclusive, and then when you go
15 on down beyond staffing firms, but also alternative
16 work arrangements but not limited to these, or
17 independent contractors, construction contractors, and
18 subcontractors, you've just included all your
19 construction.

20 MR. CANNON: Exactly. That's where I was
21 going, that right there is everybody. You're calling
22 everybody a temporary --

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1 MR. MCKENZIE: That's how construction works.

2 UNIDENTIFIED MALE SPEAKER: Right.

3 UNIDENTIFIED FEMALE SPEAKER: Yeah, I
4 underlined it.

5 UNIDENTIFIED MALE SPEAKER: Yeah.

6 MR. JONES: Kevin?

7 MR. CANNON: I've said it. I mean, I'm
8 pretty much to the point that Dean was making, that
9 when you include the second half of the second
10 sentence, that's pretty much calling everybody a
11 temporary worker.

12 MR. MARRERO: How would you revise it? Do
13 you have any suggestions or --

14 MR. CANNON: I don't have any suggestions
15 right now, I'm just commenting. I think we just leave
16 it to the definition that we were provided yesterday.

17 MR. JONES: What was that definition?

18 MR. CANNON: Oh, geez. You would.

19 MR. JONES: Sorry.

20 MR. STRIBLING: I'm sorry.

21 MR. JONES: Chuck?

22 MR. STRIBLING: Chuck Stribling. That was

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1 just for temporary workers, wasn't it?

2 UNIDENTIFIED MALE SPEAKER: Yeah.

3 MS. SHORTALL: The definition was paid by a
4 staffing agency --

5 MR. STRIBLING: Staffing, right.

6 MS. SHORTALL: -- and working at a host
7 employer worksite.

8 MR. JONES: Yeah, I don't recall a
9 definition. I do remember the point of emphasis was
10 going after staffing agencies.

11 MR. MCKENZIE: The point -- Dean McKenzie,
12 with OSHA. The existing temporary worker initiative
13 includes temporary workers paid by a staffing agency
14 physically working at a host employer.

15 MR. JONES: Yeah. That's what I mean. They
16 were aimed at staffing agencies, and what you are
17 saying, you want them to expand that beyond staffing
18 agencies.

19 MR. MARRERO: As Jeremy Bethancourt pointed
20 out yesterday, too, with the piece workers, any type of
21 alternative work arrangement, in essence it's temporary
22 work. The Bureau of Labor and Statistics data that was

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1 included in the initial memorandum that went out stated
2 that there were 562 fatalities in 2011 of temporary
3 workers when in actuality, when it comes down to
4 staffing, that's less than 1 percent of staffing. So
5 if that makes sense. There was only, I believe, like
6 27 fatalities out of that 562, and for the agency to
7 put focus on the staffing industry, I think we're
8 limiting the resources when the problem is much bigger,
9 so --

10 MR. JONES: How would you define it if you
11 had to -- I guess you've already done it. You're
12 defining the whole construction industry.

13 MR. MARRERO: I would say any type of
14 variation from a standard employer-employee
15 relationship.

16 MR. GILLEN: Is it fair to say that
17 independent contractor is the biggest piece of that
18 that would be useful to discuss?

19 MR. JONES: Or is day laborers an issue?

20 MR. MARRERO: I would say so, yes.

21 MR. CANNON: I guess the other question is,
22 aren't some folks that are classified independent

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1 contractors really independent contractors?

2 MR. GILLEN: Yes, some are.

3 MR. CANNON: Yeah.

4 MR. BETHANCOURT: Some are.

5 MR. GILLEN: Some are misclassified.

6 MR. CANNON: I understand that as well, but -

7 -

8 MR. STRIBLING: Mr. Chair?

9 MR. JONES: Yes, Chuck, I'm sorry.

10 MR. STRIBLING: Would the co-chairs be
11 acceptable to maybe making a recommendation for the
12 committee to consider that maybe OSHA take a look at
13 expanding the scope of their initiative and then maybe
14 report back to us at the next ACCSH meeting on the
15 feasibility of that?

16 MR. MARRERO: I would be okay with that.

17 MR. BETHANCOURT: This is Jeremy Bethancourt.
18 I think that would be great.

19 MR. JONES: Yeah. I think that's what most
20 of us are feeling. We feel that we don't know where
21 this should go. We know it should be broader than just
22 staffing. Day laborers, independent contractors, is

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1 where we see a lot of the issue, and how that could be
2 addressed, I don't know if any of us at this table
3 know, but we would like OSHA to address that. So
4 working with Ms. Sarah and I, does anyone have a motion
5 we could throw on the table?

6 MS. SHORTALL: Well, I have that Mr.
7 Stribling is moving that ACCSH recommend that OSHA I
8 guess take a look or revisit the definition of
9 temporary work.

10 UNIDENTIFIED MALE SPEAKER: Put the mic on.

11 MR. JONES: I'm sorry.

12 MS. SHORTALL: That ACCSH recommends that
13 OSHA take a look at expanding the definition to
14 temporary worker and report back to ACCSH at its next
15 meeting.

16 MR. STRIBLING: Well, two things. I wasn't
17 making that motion, I was asking if the co-chairs would
18 be okay with such a motion. I would let them make the
19 motion since it's their work group. And I really
20 didn't mean definition, I don't think -- if that's what
21 I said, I'm sorry -- I meant maybe look at expanding
22 the scope of the initiative.

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1 MS. SHORTALL: The scope. Okay.

2 MR. BETHANCOURT: This is Jeremy Bethancourt.
3 And after discussing with Tom quite a while yesterday,
4 I wouldn't be opposed with that. I think really the
5 whole point of our motion, being that OSHA could either
6 accept it or not accept it anyway, was simply to get
7 them to look at it beyond the temp agency relationships
8 because more and more it is prevalent that what would
9 be classified as a subcontractor are really in fact
10 acting in the same manner as the traditional temp
11 worker agency relationship, and so they're actually
12 supplying a workforce in the construction industry in a
13 similar manner.

14 So, Tom, I have no issue with that. If Tom
15 thinks that that sounds reasonable, as do I.

16 MR. MARRERO: Yeah, I think that's
17 reasonable, Jeremy.

18 MS. SHORTALL: Which is reasonable? Chuck's
19 suggested --

20 MR. MARRERO: Yes.

21 MS. SHORTALL: Okay. So --

22 MR. MARRERO: With expanding the scope.

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1 MR. JONES: Do we have to rescind his first
2 motion?

3 MS. SHORTALL: No.

4 UNIDENTIFIED MALE SPEAKER: We have a motion.
5 Do we have to --

6 MS. SHORTALL: If the maker and the seconder
7 of the motion will simply accept that, we don't have to
8 do anything else.

9 MR. MARRERO: I would accept that.

10 MS. SHORTALL: All right. And the seconder.

11 MR. BETHANCOURT: Thank you.

12 MS. SHORTALL: All right.

13 MR. JONES: So we're back to --

14 MS. SHADRICK: I accept that.

15 MR. JONES: Oh, okay.

16 MS. SHORTALL: You made the motion?

17 MR. JONES: No --

18 MS. SHADRICK: No, I seconded it.

19 MS. SHORTALL: Okay. I'm sorry. Got it.

20 Okay. Got it.

21 MR. JONES: Jeremy just didn't know he was on
22 the line.

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1 MS. SHORTALL: All right.

2 MR. JONES: All right. So the new motion is

3 --

4 MS. SHORTALL: Tom Marrero moves that ACCSH
5 recommend that OSHA take a look at expanding the scope
6 of the temporary worker initiative and report back to
7 ACCSH at their next meeting.

8 MR. JONES: Discussion.

9 MR. BETHANCOURT: Tom?

10 MR. MARRERO: Yes.

11 MR. BETHANCOURT: You know, I sort of like
12 where that's going, but my thought is that we recommend
13 to OSHA that they look into expanding it to include to
14 be more reflective of how the industry currently
15 utilizes workforce. And I don't know if that's just
16 minutia at that point or if that's implied in what the
17 motion says.

18 I guess, Ms. Sarah, is that what your
19 thoughts are on that?

20 MR. JONES: I'll tell you my thoughts. I
21 would say that's kind of what's implied, but I don't
22 know for sure. That's the gray area that becomes

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1 difficult.

2 Any other thoughts?

3 MR. STRIBLING: Yeah. OSHA is in the room
4 and I think they're hearing our discussion, so they
5 hear this, and I would hope when they report back to
6 the committee they would include what we're talking
7 about here. But you've got to remember the staffing in
8 this initiative, its in its infancy, barely in its
9 infancy. There is still data maturing, and so I expect
10 and I fully support what you're saying here, but for
11 the agency to take on a broader scope on this, they've
12 got to plan this out a little bit, so I would like to
13 give them some time to think about if they can come up
14 with an effective strategy before we tell them to go do
15 it, you know, they're --

16 MR. JONES: Yeah, that's where I'm at because
17 I have a couple of thoughts on this. One, I don't know
18 when we look at some of our union halls, if they didn't
19 have labor up front, how different would that look at a
20 staffing agency in many cases? And on and on and on.
21 And then, as Kevin pointed out, our original motion
22 pretty much says all of construction, and I'm not sure

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1 that I'm ready for that either. I think David Michaels
2 and his crew have had a pretty good handle on this
3 temporary issue since its emergence, and I like the
4 guidance that we've talked through in the last 15
5 minutes. I don't know that we need to get ahead of
6 ourselves, in my opinion. So I'm happy with the
7 motion. I would like to hear from Steve and Matt.

8 Well, you guys are our guys.

9 MR. GILLEN: Okay. My view is that the nice
10 thing about what OSHA is doing now is there are
11 specific groups that they can talk to, the staffing
12 agencies, and they're having good discussions with
13 them, whereas it might be different groups involved
14 with expanding the concept. So I think they should
15 continue having those discussions with those groups to
16 make more progress because it sounds like they're doing
17 pretty good, but then they should build upon that to
18 maybe expand this issue because this issue isn't going
19 away as far as flexibility and working arrangements.
20 It's going to be an issue with us for years and years
21 and years, and so they should be thinking about that,
22 and we can encourage them to do that.

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1 MR. JONES: Hey, Steve, do you have any
2 comments?

3 MR. HAWKINS: I pretty much agree with what
4 Matt said really.

5 MR. JONES: Okay. So let's go to a vote --
6 do we need to go to a vote on this motion? Okay, so
7 we're going to go to a vote. Do you folks on the phone
8 need to hear it again?

9 MR. BETHANCOURT: Yes, please. Well, I think
10 -- this is Jeremy. We're keeping it basically as Sarah
11 originally -- we're not going to expand it, and that
12 was really all my point was, is just to have the
13 discussion, do we need to or is it good enough? And I
14 think Chuck basically addressed that. I guess if you
15 could restate it, that would be helpful.

16 MS. SHORTALL: The motion is Tom Marrero
17 moves that ACCSH recommend OSHA take a look at
18 expanding the scope of the temporary worker initiative
19 and report back to ACCSH at the next committee meeting.

20 MR. BETHANCOURT: Tom, are you all right with
21 that?

22 MR. MARRERO: Yeah, I'm all right with that.

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1 MR. JONES: And we got a second, Laurie,
2 already.

3 All in favor on the phone, please signify by
4 saying, "Aye."

5 MS. BARBER: Kristi Barber. Aye.

6 MR. PRATT: Don Pratt. Aye.

7 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

8 MR. ERICKSON: Roger Erickson. Aye.

9 MR. HAWKINS: Steve Hawkins. Aye.

10 MR. JONES: At the table, all in favor say,
11 "Aye."

12 (Chorus of ayes.)

13 MR. JONES: All disagree say, "Nay."

14 (No audible response.)

15 MR. JONES: Abstentions?

16 (No audible response.)

17 MR. JONES: All right. I think we are just -
18 -

19 MS. SHORTALL: We've got another group.

20 MR. JONES: Oh, that's right. We do. I'm
21 sorry, Jerry. We have another -- we do have -- we have
22 a group report here.

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1 Bring us up to date, Jerry Rivera, where
2 we're at and what group you're with and who your co-
3 chairs are.

4 MR. RIVERA: Mr. Chairman, Jerry Rivera, with
5 Employee Group, and our work group is the Training
6 Outreach Work Group composed of Kevin Cannon and Roger
7 Erickson. I would like, Mr. Chairman, based on the
8 information that we heard here yesterday from the
9 stakeholders, ACCSH, and some of the ACCSH members as
10 well, I would like to make the motion that the group
11 integrate some of the recommendations that were heard
12 here from the stakeholders, and in the interim, for us
13 to make this information accessible to the stakeholders
14 for input via virtual access. I think we heard from
15 Lisa London, that group, we failed to capture a great
16 portion of those instructors and that valuable input.
17 Now that the recommendations are out there, we might
18 get some significant input. So I move a motion to
19 bring this back to the next ACCSH committee meeting.

20 MR. CANNON: And if I can expand on that --

21 UNIDENTIFIED FEMALE SPEAKER: Separately.

22 MR. CANNON: Okay. Never mind.

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1 MR. JONES: Wait. I'm lost. When you say a
2 motion to take it back?

3 MR. RIVERA: To continue working --

4 MR. JONES: Oh, we don't need a motion for
5 that. That was just your report. Okay.

6 MR. RIVERA: That's right.

7 MR. JONES: And you're going to submit that
8 to Sarah so she can -- at some point.

9 MS. SHORTALL: That will be in the minutes.

10 MR. JONES: In the minutes. All right.

11 MR. RIVERA: Yeah, we don't have any --

12 MR. JONES: Okay. And, Chuck?

13 MR. STRIBLING: Yeah. I have a motion I
14 would like to bring before the committee to consider.
15 I would move that all ACCSH work group meetings,
16 whether held in person, electronically, or by
17 telephone, be open to all ACCSH members and members of
18 the public.

19 MR. JONES: Is there a second?

20 MR. RIVERA: Second.

21 MR. JONES: Discussion? When you say "be
22 open," what does that mean? Do you mean like everyone

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1 is told that there is a work group meeting? So you
2 want to say that maybe instead, that whenever there is
3 a work group meeting that all other ACCSH members are
4 informed?

5 MR. GILLEN: Informed by e-mail?

6 MR. JONES: Yeah. Go ahead.

7 MR. GILLEN: Informed by e-mail?

8 MS. SHORTALL: I think that's probably
9 implied by what "public" means. Public open meeting or
10 meeting that is open to the public implies that you've
11 had to let the public know that the meeting is
12 occurring.

13 MR. JONES: Okay. Then that's clear. That's
14 fine.

15 MS. SHORTALL: I mean, clearly, you would
16 have to understand that since, as Mr. Maddux said
17 yesterday, FACA does not specifically cover committee
18 meetings -- excuse me, subcommittee meetings, that
19 making something public would not require publishing a
20 Federal Register notice announcing a meeting, it would
21 be something like putting -- something on a webpage or
22 using e-mail for people who are interested.

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1 MR. JONES: Okay. That's fine.

2 Kevin, please?

3 MR. CANNON: I'm sorry. Kevin Cannon. And,
4 Ms. Sarah, if you could further help me understand. So
5 what we've done between May and now has been Jerry,
6 Roger, and myself with a few OSHA staff. Now if we
7 open this up and we invite Walter, Matt, Sarah, you
8 know, the rest of the ACCSH members, how does that --

9 MS. SHORTALL: Well, it would be less -- I
10 mean, it could be an invitation, but it also could be
11 just letting the public know, like people who were here
12 yesterday know, that a telephonic meeting would be held
13 and they could participate, and this is how they would
14 participate, usually by contacting Mr. Bonneau or Mr.
15 McKenzie so that they could get the pass code
16 information that was necessary. But I don't think it
17 would be anything beyond e-mailing people who had
18 indicated an interest, which, of course, would include
19 all ACCSH members, and then maybe putting something on
20 OSHA's ACCSH webpage.

21 MR. JONES: Okay. Go ahead.

22 MS. COYNE: So what you're recommending is

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1 open dialogue with everyone, or would the public just
2 be hearing only what the work group was doing? Or are
3 you saying that whoever is on the call has input?

4 MS. SHORTALL: I may be wrong. I mean, were
5 you anticipating people could participate in the
6 meeting? Of course, OSHA regulations, as well as FACA
7 regulations, would not permit any member of the public
8 to vote on any recommendation that came out of a work
9 group. The only persons who could vote would be
10 members of ACCSH to send something to the committee,
11 but I guess it would just be so you would hear their
12 input, you know, sort of like the work group meetings
13 that are held in public, it would be held in person.

14 MS. COYNE: Yeah. I understand.

15 MR. PRATT: This is Don Pratt. I would
16 highly, highly recommend that they only participate by
17 listening and not by participating. So I --

18 MS. COYNE: I agree.

19 MR. PRATT: I just think it would be terrible
20 to try to have a work group and get anything done if
21 everyone was trying to participate. So --

22 MR. BETHANCOURT: This is Jeremy Bethancourt.

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1 I tend to agree with you, Don. I mean, while I do
2 value I think the part where Chuck was saying all ACCSH
3 members should have an opportunity to be involved, and
4 with the meetings that we've had already with the women
5 in construction and the temporary workers, I don't
6 think that that would be a -- it would only add to the
7 discussion and to what we can do, and as this is still
8 sort of a new way to do things, I think that would be
9 beneficial to include all of us in the call, but, as
10 Don said, I don't know that we could ever get anything
11 done if the public actually got to contribute to it.

12 MR. JONES: Yeah, I was going to say
13 something, too.

14 Go ahead, Jerry, please.

15 MR. RIVERA: Yes. Jerry Rivera, Employer
16 Rep. Actually, I want to take a different angle to what
17 has been heard so far. While I see that it might be a
18 challenge to engage all stakeholders, I think in a
19 controlled fashion that during these virtual meetings
20 we should give access to the general public to provide
21 feedback. What control mechanisms, whether we silence
22 the mic, have people raise their hands, or through

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1 chat, I mean, I think it's important for us as a work
2 group goalies to gather that information and kind of
3 act on them. We don't need to vote on this, we just
4 need to hear the input. That's really what we need
5 when we're working on the work group, not being able to
6 have the discussions among ourselves.

7 MR. JONES: Hold on, Kevin.

8 Matt?

9 MR. GILLEN: What I was going to say, so our
10 experience has really been more with the face-to-face
11 meetings, and how that's worked is these generally
12 being a little bit of precedence, we sort of go around
13 the table and see if ACCSH members have something to
14 say to make sure we get to hear them first. But then
15 we do, we get a lot of good input from the public, so I
16 would hate to sort of go to a situation where they were
17 just listening and not providing input. But at the
18 same time, we've got to figure out how to make this
19 work on the phone, and there may be some thinking, how
20 do you do that with the phone? Let's hear from the
21 ACCSH members first, and the timing. So we just have
22 to think about it, but I think public input during work

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1 group meetings has really been helpful.

2 MS. SHORTALL: Can I just explain how we have
3 done things here as we've moved into the WebEx
4 generation, and this was decided by Jim earlier with
5 precisely that concern, which was we allowed anyone who
6 was interested to come to our meeting here, and as you
7 see, we've been having people called on. One thing you
8 could do -- in fact, you really need to do -- is for a
9 teleconference meeting, you would still have to have a
10 place in this building where part of it is held, so the
11 OSHA staff could be there, their liaisons, and that,
12 and you could, if you wanted to, say, "We will let
13 anyone talk if they're physically in the room for that
14 meeting, but if you're on the phone, at this point you
15 may have to listen and give input later," as an element
16 to control the traffic. There have also been meetings
17 that we've had where we've had an open discussion on
18 the phone and it hasn't been too bad. It's going to,
19 I'm sure, depend on how large that group would be.

20 Go ahead.

21 MR. JONES: Kevin, I'm sorry, I'm going to
22 interrupt. I think there are two different issues

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1 here, and I don't want to mix the two.

2 As I understand it, there is the first issue
3 that there were work group meetings that went on that
4 other members of the ACCSH knew nothing of and may have
5 wanted to participate in. That's one issue.

6 And then the second issue of work group
7 meetings and public participation.

8 So I think the first issue we may want to
9 deal with first is that whenever there is a work group
10 meeting, the work group chairs inform the rest of the
11 committee.

12 MR. GILLEN: And let people opt out.

13 MR. JONES: And let people opt out for not
14 going. I don't know that we need a motion. I'm just
15 saying that's something we just need to tell one
16 another here, that if you're a work group chair and you
17 are going to have a meeting, even though you're working
18 out with Jim and Damon, someone needs to inform the
19 rest of the members that there is going to be a work
20 group meeting, and I'll decide whether I'm going to be
21 there, and on and on and on and on and on. So that's
22 what I'm thinking.

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1 And then there is the secondary issue that's
2 the motion that's on the table. My feeling is I don't
3 have a problem with public input, but I could see it
4 being unruly at times as well. I've been in those
5 situations as well where I've been rolled by it. I
6 don't have an answer for that. That to me would be up
7 the chairs to decide whether they want to take public
8 input or not. I wouldn't want a blanket statement
9 saying they could listen but not input or they can talk
10 and I have to listen. I would rather it be a
11 situational issue.

12 But go ahead, Kevin, that was just me.

13 MR. CANNON: And I was just going to mention
14 like WebEx, we've all done webinars. The folks that
15 are on the phone, they're listening. If they have
16 something they want to input, they just send it to you
17 in a text, and then it's not deleted, you can print it
18 out, and boom, you can address whatever action items
19 you may have.

20 And the other part of it is, especially with
21 what we're doing, we'll never get done because every
22 time we come back and present here, there is going to

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1 be someone from the public that comes and says -- or an
2 ACCSH member, that says, "Wait a minute, what about
3 Slide Number 22?"

4 So we'll continue to make these adjustments
5 if we don't get these folks involved in advanced of
6 reporting and presenting here.

7 MR. PRATT: This is Don Pratt. I don't want
8 to interrupt, but I've got another conference call I've
9 got to get on. So I'm going to have to cut off.

10 MR. JONES: Well, I think we're about done
11 here, Don, so thanks for joining us.

12 MR. PRATT: Okay. You bet. Take care, guys.
13 Okay.

14 MS. SHORTALL: I do want to mention that the
15 Administrative Conference of the United States has been
16 exploring all these issues, moving into technology or
17 the advisory committee meetings, and what you said
18 there about WebEx with people participating by typing
19 in is one of the chief things they're recommending now.
20 In fact, not only could a meeting go on for the hour or
21 2 hours that you gather, you could keep the texting
22 open or the typing open for a longer period of time in

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1 order to gather comments. So that is a chief one that
2 the Administrative Conference is recommending now.

3 MR. GILLEN: Good going.

4 MR. BETHANCOURT: This is Jeremy Bethancourt.
5 I just want to make it clear that my intent in my
6 comments wasn't necessarily to preclude public comment,
7 but it was simply to the point that we would want to
8 find a way to not let it get unruly because, as Sarah
9 said, I've been involved in a few conversations, as
10 have others, on the phone where it was very productive
11 to have many people involved. But I guess, like Kevin
12 mentioned, having the ability to do the texting, that's
13 a valuable way to get public comment and have it on the
14 record. So I just wanted to put that out there.

15 MR. JONES: Yeah, no, I know where you're
16 going. I just would love to leave a little flexibility
17 for us without -- I think as Chair I'm going to leave
18 it as a discussion and I don't know that we need to do
19 a motion.

20 MS. SHORTALL: It was already a motion, and
21 it was seconded.

22 MR. JONES: It was seconded? Well, then we

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1 can vote on it then or we could rescind it, but we
2 could vote on it.

3 MR. GILLEN: What was the motion again?

4 MR. JONES: Yeah, it was -- I didn't like the
5 motion.

6 Do you want to reread the motion, Sarah?

7 MS. SHORTALL: I don't have it. Mr.
8 Stribling does.

9 MR. JONES: Chuck?

10 MR. STRIBLING: Yeah. While I'm getting my
11 glasses on here and getting the motion back out, I
12 mean, it's obviously a new time for the committee going
13 to in- person meetings and not in-person meetings, and
14 the motion that I made was just I thought maybe a good
15 position for ACCSH to take, that although our meetings
16 might not be face-to-face, they're still inclusive and
17 we still want all members involved as well as the
18 public. It can easily be administered like Kevin talked
19 about with WebEx and webinars, so it couldn't be -- it
20 would not necessarily have to be unruly.

21 MR. JONES: Yeah, I don't believe so either,
22 but all our meetings are not necessarily WebEx, a lot

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1 of our meetings are going to be phone calls between
2 about four or five of us.

3 MR. STRIBLING: Yeah, well --

4 MR. JONES: And that's going to be a lot of
5 our meetings.

6 MR. STRIBLING: But we're moving into a new
7 time and things have to change with the times, and if
8 this is going to become the norm, then we have to sort
9 of rethink maybe how things will be done.

10 MR. JONES: All right. Well, we've got a few
11 minutes left, so throw it at me.

12 MR. STRIBLING: To read that again, it said,
13 "I move that all ACCSH work group meetings, whether
14 held in person, electronically, or by telephone, be
15 open to all ACCSH members as well as members of the
16 public."

17 MR. JONES: All in favor on the phone say,
18 "Aye."

19 MR. HAWKINS: Steve Hawkins. Aye.

20 MR. ERICKSON: Roger Erickson. Aye.

21 MR. BETHANCOURT: Jeremy Bethancourt. Aye.

22 MS. BARBER: Kristi Barber. Nay.

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1 MR. JONES: Is that all of them?

2 UNIDENTIFIED FEMALE SPEAKER: Don Pratt is
3 gone, so --

4 MR. JONES: Don Pratt is gone.

5 At the table all in favor say, "Aye."

6 UNIDENTIFIED MALE SPEAKER: Aye.

7 UNIDENTIFIED MALE SPEAKER: Aye.

8 MR. JONES: All not in favor?

9 I abstain.

10 MS. COYNE: I abstain.

11 MS. SHADRICK: I do, too.

12 MR. JONES: Okay. Then it passes, right?

13 MS. SHORTALL: Yeah.

14 MR. JONES: All right. Okay.

15 I think we have one more announcement from
16 Jim Maddux.

17 MR. MADDUX: Thank you. It looks like we've
18 lost a lot of people unfortunately, but I did want to
19 make a short announcement that Dr. Michaels asked me to
20 bring to the committee. OSHA has just issued about 15
21 minutes ago a Notice of Proposed Rulemaking on silica.
22 The website went live, it should be live now, and so it

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1 includes the regulatory text and preamble to that
2 rulemaking, and I know that a lot of people are very
3 interested in this rulemaking. We certainly look
4 forward to your input and comments as we move forward.
5 You can comment both in writing and in person. We're
6 expecting about a 90-day comment period and a hearing
7 next spring on the subject.

8 I would recommend that you remember that this
9 is just a proposal, so the important thing right now is
10 to take comment and for everybody to provide their
11 views on the subject so that we can provide a final
12 rule that will adequately protect workers that's
13 feasible and that is based on the best available
14 evidence.

15 MR. JONES: Well, it looks like the fun is
16 beginning. Thanks, Jim.

17 (Laughter.)

18 MR. JONES: And with that, I adjourn.

19 (Whereupon, at 1:08 p.m., the U.S.
20 Department of Labor, Occupational Safety and
21 Health Administration, ACCSH Meeting was
22 adjourned.)

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1 CERTIFICATE OF COURT REPORTER

2 I, NATALIA THOMAS, the Court Reporter before
3 whom the foregoing proceeding was taken, do hereby
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8 related to nor employed by any of the parties to this
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I, DEBORAH ARBOGAST, hereby certify that I am not the Court Reporter who reported the following proceeding and that I have typed the transcript of this proceeding using the Court Reporter's notes and recordings. The foregoing/attached transcript is a true, correct and complete transcription of said proceeding.

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