

TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF:)
)
ADVISORY COMMITTEE ON)
CONSTRUCTION SAFETY AND)
HEALTH, (ACCSH))

Pages: 1 through 195
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UNITED STATES DEPARTMENT OF LABOR
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

IN THE MATTER OF:)
)
 ADVISORY COMMITTEE ON)
 CONSTRUCTION SAFETY AND)
 HEALTH, (ACCSH))

Room N-3437
 Frances Perkins Building
 200 Constitution Avenue, N.W.
 Washington, D.C.

Monday,
 April 25, 2016

The parties met, pursuant to the notice, at
 1:03 p.m.

ATTENDEES:

ACCSH Committee:

PETE STAFFORD, Chair
 North America's Building Trades Union

JEREMY BETHANCOURT
 Arizona Construction Training Alliance

KEVIN CANNON
 The Associated General Contractors of America

CINDY DePRATER
 Turner Construction Company

STEVEN HAWKINS
 Tennessee Occupational Safety and Health
 Administration

PALMER HICKMAN
 Electrical Training Alliance

ATTENDEES: (Continued)

ERIC KAMPERT
Occupational Safety and Health Administration,
Construction Services

THOMAS MARRERO, JR.
OTS Holdings

DONALD PRATT
Construction Education and Consultation Services
of Michigan

STEVEN RANK
International Association of Bridge, Structural,
Ornamental, and Reinforcing Iron Workers

JERRY RIVERA
National Electrical Contractors Association,
Washington, D.C. Chapter

CHARLES STRIBLING
Kentucky Labor Cabinet, Department of Workplace
Standards

LISA WILSON, Esquire
Office of the Solicitor, Department of Labor

PUBLIC:

DAN JOHNSON
SFI Compliance

WES SCOTT
National Safety Council

WILLIAM MOTT
Hunt Construction Group

DONNA FILE
L. F. Driskoll, Inc.

NIGEL ELLIS
National Safety Council, Occupational Safety and
Health Administration Alliance, Ellis Fall
Safety Solutions, LLC

ATTENDEES: (Continued)

RODD WEBER
PENTA Building Group

TRAVIS PARSONS
Laborers' International Union of North America

EVE STOCKER
Occupational Safety and Health,
Office of the Solicitor

BILL HERING
Matrix North American Construction,
The Association of Union Constructors

WAYNE CREASAP
The Association of Union Constructors

SCOTT SCHNEIDER
Laborers' Health and Safety Fund of North America

CHELSEA VETICK
National Association of Home Builders

GEORGE KENNEDY
National Utility Contractors Association

LEE COLE
Oldcastle Materials

HOWARD MARKS
National Asphalt Pavement Association

NICK CARR
Occupational Safety and Health Administration,
Directorate of Safety and Guidance

CARL HEINLEIN
American Contractors Insurance Group

WESLEY WHEELER
National Electrical Contractors Association

MICHELE MIHELIC
American Wind Energy Association

ATTENDEES: (Continued)

JOSH FLESHER
Occupational Safety and Health Administration

TROY ARMSTEAD
Department of Defense, Air Force

BRUCE ROLFSEN
Bloomberg BNA

BRUCE LUNDEGREN
Small Business Administration,
Office of Advocacy

LUKE GEORGE
National Safety Council

DAVE REYNOLDS
Inside OSHA Newsletter

MARK HAGERMANN
Occupational Safety and Health Administration,
Directorate of Standards and Guidance

JENS SVENSON
Occupational Safety and Health Administration,
Construction Services

BLAKE SKOGLAND
Occupational Safety and Health Administration,
Directorate of Standards and Guidance

DAMON BONNEAU
Occupational Safety and Health Administration,
Construction Services

JENNIFER LAWLESS
Occupational Safety and Health Administration,
Construction Services

DANEZZA QUINTERO
Occupational Safety and Health Administration,
Construction Services

ROBERT MATUGA
National Association of Home Builders

ATTENDEES: (Continued)

WILLIAM ZETTLER
Occupational Safety and Health Administration,
Directorate of Standards and Guidance

MARK HAGERMANN
Occupational Safety and Health Administration,
Directorate of Standards and Guidance

GARVIN BRANCH
Occupational Safety and Health Administration,
Directorate of Construction

COURTNEY MURRAY
Occupational Safety and Health Administration,
Directorate of Construction

LOLITA OLIVER
Occupational Safety and Health Administration,
Directorate of Construction

P R O C E E D I N G S

(1:03 p.m.)

1
2
3 MR. STAFFORD: Good afternoon. I am Pete
4 Stafford. I'm the Chair of ACCSH. Welcome to the
5 ACCSH Committee. This is a special ACCSH meeting
6 dealing specifically with Safety and Health Management
7 Program Guidelines. For that reason we're going to
8 change our meeting format a little bit.

9 Typically we would have stakeholders comment
10 at the end of our meeting if we have time for
11 meetings. But because we're together for a day and a
12 half and you folks sitting in the room as stakeholders
13 are obviously very interested in the issue, as long as
14 we can have a -- I don't want to say controlled
15 conversation, but a conversation that we could involve
16 stakeholders to the extent that you would like to
17 comment on your views on a guideline that would be
18 specific to the construction industry, we're going to
19 try to do that.

20 I mean this is a meeting of the Advisory
21 Committee, not a stakeholder meeting. But in this
22 case because we're here and want to hear your input
23 we're going to take stakeholder comments as we go
24 through the process.

25 The process itself, I mean, we have been --

1 this Committee has been charged specifically to take
2 the document that OSHA put out in November of last
3 year, a document, a guideline for all industries,
4 including construction, and I'm sure most of you have
5 read the draft guideline. I don't know if many of you
6 have gone through the docket and looked at the
7 comments that the stakeholders submitted to the
8 guideline, but we are in a position here I think, that
9 ACCSH is going to try to develop a guideline using the
10 master guideline.

11 Our exercise will be to go through the OSHA
12 guideline, identify what areas or what action items
13 for each section that we think are appropriate for
14 construction. If we don't think that they're
15 appropriate for construction we're going to say that
16 we don't think it's appropriate, for construction and
17 why. And then our mission, our charge is to offer up
18 recommendations on action items that we do believe are
19 appropriate for construction.

20 You know, if you've been to these meetings,
21 I've got 15 minutes here to do an intro. I'm not
22 going to take that because we're going to get into
23 this, but let me just say this. If you look at the
24 feedback that OSHA got from the industry you'll see
25 two spectrums of comments.

1 On the one hand we had folks that were very
2 interested in the construction industry saying: this
3 is OSHA's opportunity after 26 years of updating this
4 guideline to really take hold of some things that have
5 developed over the last 25 years and use this as an
6 opportunity, for example, to do more in the area of
7 prevention through design; to do more in the area of
8 looking at health hazards and construction; other
9 things that we think the industry thought would be
10 appropriate, and this was an advantage for us to take
11 advantage of this guideline and develop construction-
12 specific.

13 On the other end of the spectrum you could
14 see comments that were back, that were fed back to the
15 Agency that this totally does not apply to the small
16 employer in the construction industry. Our employers
17 aren't as advanced in this. We shouldn't be talking
18 about management systems, we should be talking about
19 management programs. There should be very basic
20 things that we could do that aren't in these
21 guidelines that would be more appropriate for small
22 employers.

23 So, this is really, and this is going to be
24 an interesting day-and-a-half special meeting, we have
25 to strike a balance, I think, on what is good. On the

1 one hand if this really is an opportunity to develop a
2 guideline for our industry to push something like
3 prevention through design. Other comments were, this
4 is a real opportunity to get owners, not owners of
5 construction companies, but construction owners' users
6 more involved in the process.

7 I mean, I think that's a little bit more
8 far-fetched, but we know, and I think all the industry
9 knows if you have an owner that's really on top of
10 safety and health, and as an owner is engaged and you
11 see a difference in performance on projects, so it's
12 something not to take lightly in this case, and we
13 have to figure out that balance.

14 So, with that said I would like to go around
15 the table, first introduce the Committee. Then we'll
16 introduce the stakeholders in the room, and then Eric,
17 our designated government official, I think, will give
18 us a briefing, and then, Lisa, if you have anything
19 from the solicitor's office, we will start there.

20 So, please, Kevin, go ahead.

21 MR. CANNON: Kevin Cannon, Employer Rep.,
22 Associated General Contractors of America.

23 MS. DePRATER: Cindy DePrater, Employer
24 Rep., Turner Construction Company.

25 MR. BETHANCOURT: Jeremy Bethancourt, Public

1 Representative.

2 MR. RIVERA: Jerry Rivera, Employer Rep.,
3 Washington, D.C. DECA.

4 MR. MARRERO: Tom Marrero, Employer Rep.,
5 OTS Holdings.

6 MR. STRIBLING: Good afternoon. Chuck
7 Stribling, State Representative, Kentucky Labor
8 Cabinet.

9 MR. HICKMAN: Palmer Hickman, Employee Rep.,
10 Electrical Workers.

11 MR. RANK: Good afternoon. Steve Rank, Iron
12 Workers International.

13 MR. HAWKINS: Steve Hawkins, Tennessee OSHA,
14 State Plan Representative.

15 MS. WILSON: Lisa Wilson, ACCSH counsel.

16 MR. KAMPERT: Eric Kampert, Alternate
17 Designated Federal Official.

18 MR. STAFFORD: Thank you. Nigel, why don't
19 you get us started in the back left.

20 MR. ELLIS: Good afternoon. Nigel Ellis.
21 What am I today? I am representing the National
22 Safety Council as part of the OSHA Alliance.

23 MR. FLESHER: Josh Flesher, Acting Deputy
24 Director, Directorate of Construction.

25 MR. WEBER: Rod Weber, PENTA Building Group.

1 MR. PARSONS: Travis Parsons with Laborers'.

2 MS. STOCKER: Eve Stocker, Office of the
3 Solicitor.

4 MR. ROLFSEN: Bruce Rolfsen, a writer at
5 Bloomberg BNA.

6 MR. HERING: Bill Hering, Matrix North
7 American Construction, also representing the
8 Association of Union Constructors.

9 MR. CREASAP: Wayne Creasap, the Association
10 of Union Constructors.

11 MR. SCHNEIDER: Scott Schneider with the
12 Laborers'.

13 MR. WHEELER: Wes Wheeler, National
14 Electrical Contractors Association.

15 MR. SVENSON: Jens Svenson, Directorate of
16 Construction.

17 MR. SKOGLAND: Blake Skogland, Directorate
18 of Construction.

19 MR. JOHNSON: Dan Johnson, Safety
20 Consultant, SFI Compliance.

21 MS. VETICK: Chelsea Vetick, National
22 Association of Home Builders.

23 MR. MATUGA: Ron Matuga, National
24 Association of Home Builders.

25 MR. KENNEDY: George Kennedy, National

1 Utility Contractors Association.

2 MR. COLE: Lee Cole, Oldcastle Materials.

3 MR. MARKS: Howard Marks, National Asphalt
4 Pavement Association.

5 MR. SCOTT: Wes Scott, National Safety
6 Counsel.

7 MR. MOTT: Bill Mott, the Hunt Corporation,
8 an AECOM Company.

9 MR. ARMSTEAD: Troy Armstead, Department of
10 Defense, Air Force.

11 MR. CARR: Nick Carr, Directorate of Safety
12 and Guidance.

13 MR. ZETTLER: Will Zettler, Directorate of
14 Standards and Guidance.

15 MR. HAGERMANN: Mark Hagermann, Directorate
16 of Standards and Guidance.

17 MR. BRANCH: Garvin Branch, Directorate of
18 Construction.

19 MR. MURRAY: Courtney Murray, Directorate of
20 Construction.

21 MS. OLIVER: Lolita Oliver, Directorate of
22 Construction.

23 MR. HEINLEIN: Carl Heinlein, American
24 Contractors Insurance Group.

25 MS. MIHELIC: Michele Mihelic, American Wind

1 Energy Association.

2 MR. LUNDEGREN: Bruce Lundegren. Office of
3 Advocacy, U.S. Small Business Administration.

4 MS. QUINTERO: Danezza Quintero, Directorate
5 of Construction.

6 MS. LAWLESS: Jennifer Lawless, Directorate
7 of Construction.

8 MR. BONNEAU: Damon Bonneau, Directorate of
9 Construction.

10 MR. STAFFORD: All right, thank you very
11 much. I'm going to turn it over to Eric Kampert, our
12 designated federal official for background. Eric,
13 please.

14 MR. KAMPERT: All right, thank you, Pete.

15 Again, my name is Eric Kampert. I'm the
16 designated federal official today. Dean McKenzie is
17 not able to be here today. He greatly misses this
18 meeting. He did a lot of work with, he and Jim Maddux
19 on the input for the safety guidelines, so he misses
20 this meeting, wishes he could be here.

21 So, to repeat a lot of things that Pete said
22 as well, I prepared my remarks. I'm not as eloquent a
23 speaker as Pete so, I'll kind of go through, read some
24 of it. A lot of it's repetitive.

25 So, the background discussion on the Safety

1 and Health Program Management Guidelines, so the
2 Occupational Safety and Health Administration is
3 updating its Safety and Health Program Management
4 Guidelines. It was first published in 1989. The
5 guidelines are being updated to reflect changes in the
6 workplace, modern safety practices, and current
7 consensus standards.

8 The guidelines are intended to help
9 employers establish safety and health programs at
10 their workplaces. The key principles include finding
11 and fixing hazards before they cause injury and
12 illnesses, and making sure that workers have a voice
13 in safety and health. The updated guidelines are
14 designated to be particularly helpful to small and
15 medium-size businesses. They also address ways in
16 which multiple employers at the same work site can
17 coordinate efforts to make sure that all workers are
18 protected.

19 So, the public comment period closed for
20 these guidelines on February 22, 2016, for these
21 guidelines. In those public comments there was
22 significant and substantial comments from construction
23 stakeholders, many that are here, stating that there
24 should be separate guidelines for the construction
25 industry due to, among other things, the unique nature

1 of construction employment, including the mobile and
2 temporary nature of construction work sites.

3 So, there was a public meeting held at OSHA
4 on March 10, 2016, to obtain public input on these
5 draft guidelines. It was clearly stated at the
6 beginning of that meeting that it was simply to
7 discuss the general industry and maritime guidelines,
8 and that comments regarding construction were not
9 going to be discussed since there was going to be a
10 separate discussion to help develop these guidelines.
11 Thus, the ACCSH meeting is being held, which brings us
12 to the purpose of this meeting.

13 Specifically, the purpose of this special
14 ACCSH meeting is for the Committee to develop draft
15 safety and health guidelines, management guidelines
16 for the construction industry that will be presented
17 to OSHA for consideration.

18 So, of special note on this topic OSHA has
19 already -- OSHA already requires safety and health
20 programs under the general safety and health
21 provisions of 29 CFR 1926.20(b). Those requirements
22 are further explained in a directive that was issued
23 in 1987, Standard 3-1.1, and that was in June 22,
24 1987. Because construction activities were already
25 covered under Subpart C of 29 CFR 1926, the 1989

1 guidelines that are being revised did not address the
2 construction industry. So, at this time it's unclear
3 how these new safety and health guidelines that ACCSH
4 is developing will fit into OSHA's enforcement
5 policies under 1926.20(b).

6 We encourage open discussion among the ACCSH
7 members during this meeting to ensure that these
8 guidelines that are prepared address the issues
9 related to construction work sites and the
10 construction employment.

11 MR. STAFFORD: Thank you.

12 MR. KAMPERT: That's a mouthful. Hopefully
13 it's all in the record.

14 MR. STAFFORD: Yes, of course it's all in
15 the record.

16 Any questions or comments from the
17 Committee? Lisa?

18 MS. WILSON: No.

19 MR. STAFFORD: Good. Okay. All right. So,
20 now this is where we split. We're going to start this
21 meeting. If you have any comments with your views
22 from the industry as we get ready to embark on this
23 exercise here, if you would like to say anything now
24 about what you think about the guidelines, what you
25 like about it, what you don't like about it to get us

1 started this is your chance. So, if anyone has any
2 comments right out of the gate this is your time.

3 Yes, sir.

4 MR. JOHNSON: I do have comments.

5 MR. STAFFORD: Pardon me.

6 MR. JOHNSON: I do have some comments.

7 MR. STAFFORD: Okay, great. Why don't you
8 come to the table.

9 MR. JOHNSON: Do you want comments on the
10 OSHA guideline or the draft you passed out?

11 MR. STAFFORD: On the OSHA guideline.
12 Please re-introduce yourself for the record.

13 MR. JOHNSON: Dan Johnson, SFI Compliance.

14 First off, I want to thank the Chairman and
15 the Committee for allowing me to speak today. I
16 appreciate the opportunity to express my comments and
17 comments of my clients in this setting. I've got some
18 specific issues and thoughts that I would like the
19 Committee to take into consideration when drafting
20 some specific guidelines for the construction
21 industry.

22 In Subpart C of the 1926 standards, it has
23 long been required for employers to provide safety
24 programs for the purposes of accident prevention.
25 Specifically, the standard says that it shall be the

1 responsibility of the employer to initiate and
2 maintain such programs as may be necessary to comply
3 with this part. It then goes on to say that such
4 programs shall provide for frequent and regular
5 inspections of the job sites, materials, and equipment
6 to be made by competent persons designated by their
7 employers.

8 I truly believe that further clarification
9 of these requirements could greatly aid employers in
10 properly administering these programs, and also aid
11 the Agency in their enforcement efforts.

12 I've been working in the construction
13 industry with safety since 1994, and we've always
14 promoted safety programs, including frequent and
15 regular inspections as required by the standard.
16 Recently I've seen a lot of enforcement activities and
17 citations written under 1926.20(b)(2) about frequent
18 and regular inspections.

19 I personally had six clients cited since
20 December of 2015. All of these have been in Colorado,
21 with most of them coming out of the Englewood area
22 office. I wanted to share a few facts about these
23 cases to express the need for further clarification.

24 All but one of these inspections started
25 because of a complaint or an imminent danger

1 situation. All of these contractors that were cited
2 do have written safety programs in place, and all of
3 them were the general contractor on the job site. All
4 of them conduct regular safety inspections. The
5 frequency of these inspections varies. Most have an
6 informal inspection system where the superintendents
7 conduct daily inspections. The value of these
8 informal inspections can be debated as it will vary
9 per superintendent. They also have a formal safety
10 inspection progress which varies from a minimum of
11 twice per month to once per week.

12 There is actually one contractor who had
13 more-than-weekly inspections conducted due to some
14 site circumstances.

15 For each of these citations an informal
16 conference was held. During these informal
17 conferences it was requested by the general contractor
18 for some guidance on what frequent and regular
19 entails. Each of these contractors works to keep safe
20 sites and is willing to improve their programs when
21 necessary.

22 Updated guidelines by OSHA would help
23 greatly in the situation, as the response these
24 contractors received from OSHA, both the compliance
25 officers and assistant area director, were confusing

1 and not consistent. Some of the comment were: that
2 the contractor should conduct daily inspections on
3 each house. This contractor was a home builder. This
4 contractor has conducted more than weekly inspections
5 on a community where about 60 houses were under
6 construction. This was said not to be good enough
7 because the inspections were not frequent enough and
8 not done per address or per individual house as
9 required by OSHA. We asked for where this requirement
10 is and we were told it is in the definition of an
11 establishment.

12 In another case we were told that the
13 framers on the job site should be afraid not to be
14 tied off. When asked for explanation of what that
15 means we were told that the inspection should be
16 frequent enough and enforcement strong enough so as no
17 worker would ever not work safe.

18 It was also continually mentioned by OSHA
19 that the inspections must be effective. It was stated
20 that this is implicit in the standard. However, no
21 guidance on what makes inspections effective was
22 offered except that the workers should be afraid.

23 When we asked if weekly safety inspections
24 were enough the assistant area director state that
25 would be a waste of time. You should base your

1 inspections on hazards and that may mean to conduct up
2 to four inspections per day when framing, sheathing
3 and roofing activities are taking place.

4 The Multi-Employer Work Site Policy
5 addresses the requirements for the controlling
6 employer. All of my clients were the controlling
7 employer in this case, and as you know the controlling
8 contractor -- controlling employer must exercise
9 reasonable care to prevent and detect violations on
10 the site. The extent of the measures that a
11 controlling employer must implement to satisfy the
12 duty of reasonable care is less than what's required
13 of an employer with respect to protecting its own
14 employees. This means that the controlling employer
15 is not normally required to inspect for hazards as
16 frequently or have the same level of knowledge as the
17 applicable standards or of trade experience as the
18 employer that was hired.

19 Many organizations such as ANSI, American
20 National Standards Institute, or the American Society
21 of Mechanical Engineers states that frequent
22 inspections can range from daily to monthly. In the
23 November 2015 draft by OSHA of the OSHA Safety and
24 Health Program Management Guideline period inspections
25 are called out in multiple sections. Periodic

1 inspections are usually considered to be one per
2 month.

3 Since a controlling employer is not required
4 to inspect as frequently as the exposing employer it
5 would make sense that this should be less than daily.
6 We should not have to inspect daily.

7 Safety program guidelines created by OSHA
8 should give some thought and consideration to what
9 frequent means. There is not a one-size-fit-all
10 answer, but I think some guidelines per type of
11 employer as identified by the Multi-Employer Work Site
12 Policy will be a good starting point. If that occurs
13 I feel OSHA and the industry will have a much better
14 chance being on the same page and more focus can be
15 put towards actually keeping the work site safe.

16 The construction industry has many unique
17 challenges, and although I understand in the November
18 2015 draft of the Safety and Health Program Guidelines
19 attempts to address the communication issues for the
20 Multi-Employer Work Site Policy, I applaud OSHA's
21 efforts to create guidelines specific to the
22 construction industry.

23 In conclusion, I would like OSHA to consider
24 more clarity and guidance as to what "frequent and
25 regular" means in regards to inspections. As I

1 mentioned before, this is not a one-size-fits-all
2 solution. However, I feel we can come up with an
3 equitable solution for all. We need to remove
4 arbitrary rulings and make this a level playing field
5 for all.

6 Thank you for your time.

7 MR. STAFFORD: Thank you, Dan. Any
8 questions or comments from the Committee for Dan?
9 Yeah, Jeremy.

10 MR. BETHANCOURT: Will we be able to get a
11 copy of his comments?

12 MR. STAFFORD: Lisa, are we going to --

13 MR. WILSON: If you would like to accept
14 them, you certainly can.

15 MR. STAFFORD: You want them? Yeah, I think
16 so. Anybody else?

17 So, I guess, Dan, just to summarize, for you
18 the clarification for us on the frequency inspections
19 is like a takeaway, Dan, of what you think would be
20 important for this Committee to do?

21 MR. JOHNSON: Yeah, yeah. Like I said, I
22 don't think it's a one-size-fits-all solution, but I
23 think there should be some guidance as to what that
24 means.

25 MR. STAFFORD: Okay. All right, thank you

1 again.

2 Wes Scott from NSC.

3 MR. SCOTT: Good afternoon. I'm Wes Scott
4 from the National Safety Council. Thank you very much
5 for this opportunity to address the body this
6 afternoon on behalf of National Safety Council. I'd
7 just like to make a few general comments that we'd
8 like to share on behalf of NSC.

9 The first one is we definitely think it's a
10 great idea to break out or call out construction-
11 specific guidelines, and while we look at the Safety
12 and Health Program Management Guidelines as being
13 great for small to medium-size businesses, it is our
14 opinion that it fits a lot better with medium to
15 large-size businesses in the construction industry.

16 When we look at small to medium-size
17 employers we find that their resources are much more
18 limited and that this would be much more of a program
19 than specific management system guidelines for them.

20 It is clear that management leadership
21 remains a critical element no matter how this is
22 framed and requires a level of training for leaders to
23 help them understand what the rules and
24 responsibilities would be in this crucial element in
25 order to gain support from the employees. Continuous

1 communication to the employees from the first day to
2 their last day of employment on a job site should be
3 expected and should be spelled out in the guidelines
4 and construction-specific guidelines.

5 Worker engagement at a meaningful level
6 should be inclusive of hazard recognition and
7 participation in activities that identify job site
8 hazards should be in place before and during jobs, and
9 to accomplish the hazard identification and risk
10 analysis, skill-building with minimal levels of
11 training should be identified and called out, and
12 should be expected across the board.

13 This framework is in the mindset of
14 continuous improvement, should be tied to program
15 levels of inspections, and this should include doing
16 surveys and measurements that include some leading
17 indicators, but I think we need to spell out what
18 those leading indicators ought to look like. And from
19 a multi-employer standpoint we need to make it clear
20 who is going to be responsible for the communication
21 throughout and who manages that part of the process.

22 And then our last general comment is, is
23 that we need to look specifically to health hazards
24 that are specific to the construction industry and are
25 sure that they are addressed in this document.

1 So, thank you very much.

2 MR. STAFFORD: Thank you, Mr. Scott. Any
3 questions or comments from the Committee? Okay, thank
4 you very much, Mr. Scott.

5 And I don't see him, but Bill Mott is signed
6 up. Bill, are you here? Where is he? Oh, there he
7 is.

8 MR. MOTT: Thank you for the opportunity to
9 speak with you. I'm Bill Mott with Hunt Construction
10 Group, an AECOM company. I'm not speaking on behalf
11 of AECOM, but as Hunt Construction.

12 We've reviewed these documents and a number
13 of attachments and, Pete, your information we've
14 looked at, and some of the comments have already been
15 made here, specifically the most recent speaker.
16 Certainly our concern is from a controlling employer
17 standpoint that these documents are advisory
18 informational; that they don't leak back into the
19 enforcement criteria.

20 We understand controlling employers are
21 already out there in a policy forum. It's already in
22 two standards -- the steel erection and cranes, and we
23 understand that. But this is very general in nature.
24 It's very comprehensive on what the Agency is trying
25 to do and that's a positive endeavor. There's no

1 question about that.

2 So many of the provisions that are
3 throughout here are general, in a sense they have to
4 be, and I think we all know in our industry that many
5 of the things that are in here are already being done
6 on the projects, very specifically, you know, types of
7 things.

8 But I do believe -- you know, I was
9 challenged with what is small and medium-size
10 contractors. And, you know, if the statistics are
11 correct that, I don't know, Kevin, 90 percent of the
12 contractors have fewer than 40 or something -- some
13 statistical data, which in our world doesn't exist
14 except on a third-tier contractor.

15 So, many of these programs from a project
16 perspective, either owner-mandated or our company as a
17 whole, many of these things are already being
18 addressed. Obviously something -- a document that can
19 be used by these smaller contractors by whatever
20 definition is ultimately determined, is from what I've
21 read, basically announces where they go to find more
22 stuff, you know.

23 I mean, you can't write the big book. We
24 all know that the bigger the book, the longer it stays
25 on the shelf. And we've been challenged with that

1 forever from our industry of having these beautiful
2 books and guidelines that has to be transmitted into
3 the field, and it's more of a communicative thing than
4 an item by item.

5 There was a checklist, I observed, and,
6 Pete, it might have been something you put together.
7 That I thought was good. Of course, there are
8 numerous checklists out there and everything.

9 Also, in proceeding, which was announced
10 earlier also, is to -- obviously our association will
11 be very concerned in what type of -- even though it's
12 informational -- what type of potential liability we
13 have in getting involved. Not that we're not
14 involved, but many of these things on a project where
15 it's not just a contractor working directly for a
16 general industry entity, employer, but on a group, on
17 a multi-employer that to what level are we involved in
18 sustaining that employer's -- the smaller contractor's
19 program, and then there's always the idea of this
20 program, this is a starting point.

21 So, the re-evaluation by the contractor of
22 his own program, or his or her program, and proceeding
23 with more in depth development of the program is an
24 ongoing thing, and so what point -- how does this --
25 how is this going to stay away from the regulatory

1 arena in some fashion because as we know even in a
2 regulatory world a lot of it is subjective analysis is
3 what you see -- what was enough, how did you do. The
4 whole essence of the controlling employer, what was
5 the reasonable duty and care.

6 So, we obviously are concerned, although
7 we're certainly, you know, not opposed to anything
8 that will help our industry, so we want to make that
9 clear. But when I look through this it's a starting
10 point, I think, but I think that's part of the meeting
11 here today is to analyze those. I think there are
12 vast differences between general industry and
13 construction, although you could have a multiple
14 number of subcontractors or union contractors on a
15 general industry facility, so, you know, they can be
16 mixed. There's no question about that.

17 But we as a construction manager, general
18 contractor, are the host employer as listed in here.
19 We know that. We know that that's a potential, and we
20 know that we, you know, can be cited under controlling
21 player for numerous situations. But on an informative
22 and advisory level these are obviously general in
23 nature and there's a lot of different ways to build on
24 the suggested material that's in here.

25 I think the key is one of the, it was

1 referenced earlier about communication, who
2 communicates it. And the issue with this program, to
3 me, the positive aspect is something a contractor --
4 again the small, or the reference is upgraded to
5 medium -- if this is a document they have to work
6 with, they should be coming to our projects with more
7 information and a better program than just coming
8 under our site and adopting our site-specific program.
9 So it's one of education that they can bring their own
10 to the table and it blends in with whatever programs,
11 overall programs on a project.

12 So, from that standpoint I think it's a
13 positive move, but from as far as how involved we will
14 be, and keep in mind a contractor comes on site
15 there's a very short time period for that contractor
16 to envelop all of the things that they're supposed to
17 do. So, that's the advantage of having this document
18 in some form, to kind of prep them for when they go on
19 a project, because when they come on ours it's a real
20 learning curve.

21 And then you take the fact that if it's a
22 union project particularly, every project is going to
23 be different people who are coming from day one. So,
24 there's a tremendous on-site start up, that if we take
25 the long-term of educating this in communication and

1 trying to do these things when a job starts tomorrow
2 this all comes to a head immediately, and the learning
3 curve, the time period for the learning curve is very,
4 very short, and it continues throughout the job as
5 contractors come and go, and as workers come and go.

6 So, as a host employer, obviously my concern
7 is that, you know, our participation that we do now on
8 projects to try and help subcontractors and keep the
9 job safe there's no question, but we would be opposed
10 to any additional liability. If this is truly
11 advisory, truly informational, then that's a starting
12 point for us, in my opinion. This is my opinion. A
13 starting point to have a working document.

14 MR. STAFFORD: Thank you very much, Bill.

15 To your comment, one of the things in my
16 view is missing here, I was just wondering off your
17 opinion about, should there be something in this
18 document construction-specific that would provide some
19 guidance on how employers pre-qualify subcontractors
20 based on safety and health performance, not just their
21 MOD rates, but looking at some leading indicators, and
22 information that would be helpful so that you know
23 that these folks are up to speed when they come to
24 your job site.

25 MR. MOTT: Well, conceptually, yes, that

1 should be considered, and it is being considered by a
2 lot of owners. However, most of the pre-
3 qualifications have rested on the experience modifier
4 rate or their OSHA-300 over a period of three years,
5 and, you know, that is the one or two single criteria.
6 Of course, there has always been bonding, previous
7 experience in that field, all those traditional
8 construction things. From a safety standpoint it's
9 basically been the lagging indicators which are the
10 easiest to verify.

11 MR. STAFFORD: Right.

12 MR. MOTT: You know, the leadings are out
13 there, and I think that the resistance there on pre-
14 qualifications, I think eventually it's going to come
15 from owners, in some magnitude, as to who they want on
16 their projects. Hunt, for example, has a large group
17 of contractors that follow us all over the country,
18 and when we see one that is what we considering having
19 problems with safety, then we deal with them on a one-
20 to-one basis.

21 But to have something that would state that
22 we can't use this contractor anymore, from a
23 government regulatory standpoint I think that would
24 not be acceptable to our industry.

25 MR. STAFFORD: Okay.

1 MR. MOTT: Self-regulating is the way to go.
2 And if we don't do it the owners will do it.

3 MR. STAFFORD: Okay, I appreciate it. It
4 was several years ago now, Bill, but around this table
5 we were talking about the time and how a work group
6 under this committee for a safety and health program
7 standard that, you know, didn't go very far in this
8 administration. As we had large and medium and small-
9 size employers come through our committee,
10 particularly the largest ones would point to the way
11 that they go about pre-qualifying their subcontractors
12 as one of the most important things in their program.
13 It's one of the reasons that they excel, in their
14 view.

15 That's why I asked the question if we had,
16 you know, something in here that would provide a
17 simple checklist that we developed under that exercise
18 for a contractor just as a resource if you want to,
19 you know, you want to pre-qualify a sub, leading
20 indicators in Appendix A is a checklist you might want
21 to look at.

22 MR. MOTT: Well, and some of that is done
23 with companies on an individual basis, we know that
24 now. Contractors that we had follows with before,
25 we've had lawsuits, whatever, but also on federal jobs

1 and state jobs you may not have a say-so at all.

2 MR. STAFFORD: Right.

3 MR. MOTT: That is totally out of our
4 control.

5 MR. STAFFORD: Okay. Yes, Steve.

6 MR. RANK: Mr. Chairman. Bill, I just
7 wanted to clarify. I thought I heard you say that
8 this program management guideline could help you in
9 the long term with employers showing up to your job
10 site already understanding some of the fundamental
11 things that they have to do, versus you having to try
12 to get them straightened out when they arrive to your
13 job.

14 So, I think I heard you say that it could be
15 a benefit to you in the long run, in general, for all
16 the good work that you do at Hunt than any
17 subcontractors would already have this ingrained in
18 their safety and health programs and it could actually
19 benefit you down the road to where you don't have the
20 learning curve on teaching them all this; that they'll
21 just have this as a function of their company
22 operations. Did I hear that right?

23 MR. MOTT: In part, yes. Anything that a
24 contractor can be more knowledgeable for safety when
25 they come on our job site obviously is beneficial.

1 MR. RANK: Um-hmm.

2 MR. MOTT: And I think, you know, this is a
3 very complex issue, simply because it's not uncommon
4 for us to have four tiers of subcontractors on a
5 project. Our first tier may be superior, may be
6 super. The second tier maybe. The third and fourth
7 tier, you know, they're coming in with a concrete saw
8 for two days or something.

9 MR. STAFFORD: Right.

10 MR. MOTT: So, there's constant vigilance on
11 the site. But I think it's like anything else. You
12 know, if you're going to go hunting you better have a
13 gun with bullets in it, and I think the basic -- the
14 basic program that contractors could look to, and I
15 noticed also, Pete, you know, in the material all the
16 references that OSHA has that you can go to to
17 complement what's in here already in the draft, you
18 could go to the OSHA website.

19 You know, there's a few of us here
20 millennials here, not many. I just found out I'm not
21 even -- I'm a war baby. I was born in '45, not '46,
22 so I don't even meet that generation, you know. And
23 our millennials in the office I told them I had read
24 some White Papers on how to deal with millennials,
25 about 30 of them just in my area. A couple of weeks

1 later one of the gals came in. She said, "Mr. Mott,
2 we've been looking for how to deal with old people and
3 we can't find anything."

4 (Laughter.)

5 MR. MOTT: So, I took them to lunch.

6 (Laughter.)

7 MR. MOTT: Because we talk in our generation,
8 they go on the Internet. So, the young people coming
9 in the industry can look at the Internet, and look at
10 the OSHA website, and look at all these programs. You
11 don't hand them a handwritten copy, in the old days.
12 So, they're more likely to look at that information.

13 On our job sites, obviously all of our job
14 sites have computers and everything, but for those of
15 you who have been on a job site it's helter-skelter
16 for 12 hours a day. And so you've got to have
17 something that when you come to the job, you already
18 know it. You don't take the book and say, "Do I go
19 left, do I go right." So, it has to be something that
20 is elementary enough that gives them the basics, but
21 information on how to get smarter on the basics.

22 MR. STAFFORD: Right.

23 MR. MOTT: And they have to do that on their
24 own. Nobody can make them do that.

25 Now, pre-qualification obviously would help,

1 and so on and so forth. But I think this document is,
2 when they put it together, a lot of the elements that
3 are already out there. There's nothing -- not new
4 science. It's just put together under a communication
5 mode we didn't have before.

6 MR. STAFFORD: Right.

7 MR. MOTT: So, certainly from our
8 associational standpoint, and I can't speak for AGC,
9 but as a member of AGC, this is my 42nd year so I'm
10 not a millennial, that's for sure, that, you know,
11 we're certainly willing to look and assist to the
12 degree we can in having something that's workable,
13 something that allows us to participate without taking
14 on the regulatory obligation and create additional
15 liability.

16 MR. STAFFORD: Right. Okay. I appreciate
17 that. Go ahead, I'm sorry. Go ahead, Steve.

18 MR. RANK: I just had a comment on your
19 comment, Pete, on pre-qualification of contractors,
20 because it's been a very long-term problem. And it
21 really frustrates people in the safety industry, when
22 all the people are bidding with safety in it and all
23 of a sudden a low bidder comes up, maybe could be from
24 out-of-state. And we kind of scratch our heads and
25 say there's absolutely no way they can erect this

1 building, do all the fall protection, all the
2 training, and all this stuff. Because the local
3 people have the real number of what it really takes.

4 So, whatever happened to the term "lowest
5 responsible bidder" when it comes to the pre-
6 qualification of contractors? But usually that's not
7 in our hands, is it, Bill? Someone else that gives
8 contract administration and they don't give safety the
9 credit, and then we find out afterwards that you may
10 not get the subcontractor that you really want. So, I
11 think that's a big issue, it's pre-qualification.

12 MR. STAFFORD: Right. We'll have to take a
13 look at it. And I agree with you, Bill, I mean, back
14 to the resources. I mean, in my mind one of the
15 advantages of updating this document after, well, it
16 came out in 1989, is there's so much good material,
17 resources out there that has been developed after the
18 last 25 years, that if we could make this in such a
19 way that the document becomes a resource for the
20 employers we're trying to reach.

21 I mean, really good stuff, free stuff, lots
22 of things that are available. If we could just make
23 the employers, particularly the small one, understand
24 it, and in my mind this guidelines is a way to help
25 spread the word about what's out there for them.

1 MR. MOTT: The key point, and even our own
2 company now, the key point, we're so large that
3 operations, say the safety guys do the safety, and
4 operations build the projects, and, you know, there's
5 that dichotomy. Even with a small contractor, there's
6 very few management people, for example, five or six
7 members or whatever. And it's very easy for one of
8 them to get charged with being in charge of safety.
9 The other four go about their particular duties.

10 And so the program needs to be that they can
11 all understand the basic concepts and the
12 communication down line because we all know that
13 accidents and injuries happen on the job site. And
14 most often for us, not our employees, somebody else's,
15 some second, third-tier people.

16 And so how do you -- how does a small or
17 medium contractor take this information and then blend
18 it down to his supervisory, his or her supervisory
19 staff and make it a part of their job?

20 The job description today in construction on
21 a job site, with exceptions, of course, is the
22 superintendent does superintendent project manager,
23 the project engineer does this, the project manager is
24 supposed to make sure everybody does the right thing
25 and it's on schedule.

1 And now, you know, for example, you blend
2 the safety component into each one of those person's
3 job. it's very difficult for that to be priority for
4 them each time. So, it is a communication thing and
5 it's a commitment. You know, you finally come to the
6 point where an owner has to say to his employees, his
7 management people, "You're either going to do this or
8 you won't be here."

9 And I can tell you from past experience once
10 the top guy tells you if you don't do this you're not
11 going to be here they do it. Now, that sounds
12 Draconian, but many times there's so many loopholes of
13 not being able to get to this because you're trying to
14 do your job, and your job you're held very much
15 accountable for as an engineer or a superintendent.
16 When it comes to safety it's a shared responsibility,
17 and sometimes when it's shared by all it becomes
18 nobody's responsibility in the mind.

19 So, we've worked on that very, very
20 studiously with Hunt of trying to get our
21 superintendents -- you know, you go back 35-40 years I
22 didn't have any safety people. The safety profession
23 hadn't really hit construction like it had general
24 industry, and so the superintendents were my safety
25 people.

1 When safety came along guess what? It's a
2 hand off. Got a safety guy now. Safety guy does it,
3 and we've battled that for the last 25 years.

4 MR. STAFFORD: Right.

5 MR. MOTT: Because when you have full-time
6 safety people then, hey, we've got a safety guy so
7 it's got to be the team. He's just the coordinator,
8 he or she's the coordinator. It's an everyday
9 challenge. Every job's different. But a document,
10 we're certainly willing, as Kevin and I talked this
11 morning, obviously to look at -- I assume there will
12 be revisions or in some cases a regurgitation of this
13 draft, and we certainly look forward to looking at
14 that.

15 MR. STAFFORD: Okay, thank you. I was going
16 to say Bill, but since you're a war baby I'll modify
17 that and say Mr. Mott, thank you very much for your
18 comments.

19 (Laughter.)

20 MR. STAFFORD: Just one point. You know,
21 your data was close. I think in the construction
22 industry 90 percent of our employers have 20 employees
23 or less. And there's a small percentage of employers
24 that put in a heck of a lot of work, but there is 90
25 percent of our employers that have 20 employees or

1 less. So maybe to put this in context as we think
2 about it are we trying to develop a parallel, a
3 companion document to this big document targeting
4 employers that have 20 employees or less, or what is
5 the number? I mean, we have to define what we're
6 thinking about a small employer.

7 I don't know if an employer takes a look at
8 this guideline and if you have 50 employees, and you
9 have an excellent program, that this is stuff that
10 you're already doing, and most of it applies, or what
11 the threshold is. But if you only have 20 employees,
12 this is way over your head, or 30 employees or five
13 employees. That's really what I'm struggling with as
14 I'm trying to figure out what applies to our best
15 contractors in the industry to, you know, how do we
16 carve that down to the smaller contractors in the
17 industry.

18 MR. MOTT: Well, I have set with a number of
19 small contractors that come on the job with 8-10
20 people in smaller jobs, and some are union, some are
21 non-union, and the issue is the same.

22 The owner of the company shows up. He's got
23 a few people, let's say a painting contractor, and,
24 you know, I was at the OSHA hearings in '69 so I've
25 been around for a long time. He's never seen the OSHA

1 regulations. I mean, this is how distant they are.
2 That's not meaning a negative so much, not that they
3 don't intend to, but they've never had to. They've
4 never been exposed to a lot of these conditions, and
5 they've never basically been required to by upper-tier
6 contractors in some cases.

7 And when we set this gentleman down here
8 about a month ago, because we'll go through and walk
9 the job for other reasons too. Davis-Bacon,
10 everything else, but he said, "What do you want? I
11 have a truck. I do my own accounting. I write
12 personal checks for my people, and all of this, and
13 you want me to do safety too."

14 So, it's got to be something that they can
15 take and digest conceptually. And to me it's got to
16 be something that you're not going to put it all in
17 one book, you're just not. You've got the OSHA
18 regulations for that.

19 But not just the OSHA regulations, if you're
20 not in the safety professional field for a long time,
21 you know that the regulation, there's a preamble that
22 might alter that regulation. There's a court case
23 that might alter that regulation. There's
24 interpretations of that standard that might alter when
25 you read out of the book verbatim it may not mean what

1 it says, and there's no way you're ever going to
2 educate these people on this. That's a life-long
3 journey.

4 But in terms of the basic things to come on
5 a job site, and to get their people to think safety,
6 to me that's the starting point for this. When you go
7 to learn to fly you don't put them in a jet; put them
8 in a single engine, and I think that's what we need to
9 strive for.

10 MR. STAFFORD: Thank you. Any other
11 questions or comments? Thank again, Mr. Mott,
12 appreciate it.

13 MR. MOTT: Thank you.

14 MR. STAFFORD: Mr. Ellis.

15 MR. ELLIS: Yes.

16 MR. STAFFORD: Nigel, you signed up. Do you
17 want to say anything?

18 MR. ELLIS: Okay.

19 MR. STAFFORD: You don't have to. Thank
20 you, Nigel.

21 MR. ELLIS: Thank you, team. So, I've been
22 studying the document, right, the last few weeks, and
23 it occurred to me one thing may be missing because I
24 haven't read every word of it right now, I stand
25 corrected. On page 22.

1 MR. STAFFORD: Hold on, Nigel.

2 MR. ELLIS: Action Item Number Three.

3 MR. STAFFORD: Does the Committee have the
4 document? Everyone have a copy? Can you put this on
5 the screen, page 22 here so everyone can see.

6 (Pause.)

7 MR. STAFFORD: Action Item Number Three on
8 page 22.

9 MR. ELLIS: Yes.

10 MR. STAFFORD: So, Nigel, can I assume that
11 up to page 22 that you like everything you see in this
12 document?

13 MR. ELLIS: Love it. Love it. No, no.

14 (Laughter.)

15 MR. ELLIS: This is as far as I got. I'm
16 just presenting a concept which I think needs to be
17 mentioned. I hear about the magic words in Europe
18 more than I hear it in the United States, so if we're
19 going to do a Safety and Health Program Management
20 Guidelines for not only general industry, but also for
21 construction as well; it occurred to me that there
22 might be another bullet point that could be added, and
23 it's a very simple one. I'll give an example after
24 I've given it.

25 The bullet point under how to accomplish it

1 could be worded as follows: "Seek out relevant
2 published data -- published research to help improve
3 safety methods." So, again, "Seek out relevant
4 published research to help improve safety methods."

5 And I want to give an example of it, but not
6 specify the example in the wording here. Leave it
7 very general in terms of research. And that is that
8 it has been proven without a doubt in the last 10
9 years that if you hold something horizontally you get
10 a lot better performance than if you hold it
11 vertically. It's time to work this into advice,
12 that's what I'm calling it, than a regulation or
13 things like that because you can't really enforce
14 that. But you need to have somewhere where in fact we
15 are holding horizontal items.

16 Obviously, rungs of a ladder as opposed to
17 side rails would be an example most of us would agree
18 to, but there are many other things. It follows the
19 design of off-the-road vehicles, for example, or
20 cranes, might also incorporate that principle as well.
21 So, that's my idea.

22 The research that I'm referring to is Justin
23 Young and Kurt Beschorner. Beschorner is from the
24 University of Pittsburgh, and Justin Young is from
25 University of Michigan. And once we see the research,

1 then maybe we can introduce those items into our work
2 methods. That's the length and breadth of the idea.
3 It's just very simple, okay, concept.

4 But do not mention hand holds in the actual
5 unless you think it's a good idea.

6 MR. STAFFORD: All right. Seek out relevant
7 published research.

8 MR. ELLIS: Yes.

9 MR. STAFFORD: All right, I'm going to ask
10 you this question based on the conversation we just
11 had with Mr. Mott. Do you think that that is a
12 feasible recommendation for a small, four employee
13 employer that we're directing them to go and look in
14 the body of literature on what's written on this
15 topic?

16 MR. ELLIS: I have to answer yes.

17 (Laughter.)

18 MR. ELLIS: Because it's got to go
19 somewhere. We need to do research. We need to fund
20 research more. You know, we need to support NIOSH
21 more, and its research in the construction area. So,
22 yes. If one did take note of holding horizontal as
23 opposed to vertically, why wouldn't there be some
24 acceptance of that idea? So, that's my comment.

25 MR. STAFFORD: All right. No, I appreciate

1 that. I agree with you. Palmer.

2 MR. HICKMAN: Thank you, Mr. Chairman.

3 Palmer Hickman, Electrical Workers, Employee Rep.

4 It's not this speaker in particular, but I'm
5 really having trouble hearing things that are
6 specifically recommendations for construction. I'm
7 hearing testimony that seems to be related to what
8 should have been had in previous hearings quite a bit.
9 So, maybe I'm hearing it wrong, but it would be
10 helpful, at least to me, for the purposes of this
11 meeting with the limited time that we have to focus it
12 on recommendations for construction.

13 I think that's what the meeting is for, this
14 document as it relates to construction, and with an
15 emphasis maybe to small/medium employers. Is that --

16 MR. STAFFORD: That's exactly is what the
17 meeting is for.

18 MR. HICKMAN: Okay, yeah.

19 MR. STAFFORD: Correct, yeah.

20 MR. HICKMAN: To me I'm hearing broader
21 things for other industries as well, so it would be
22 helpful to hear a sharper focus on construction as it
23 applies to this document, at least that's my wish.

24 MR. STAFFORD: Okay. No, I appreciate that,
25 Palmer, but we're not controlling public comment here.

1 MR. HICKMAN: Right.

2 MR. STAFFORD: So they're free to say what
3 they believe. In this particular case, I think Nigel
4 is saying that an action item is in this particular
5 issue, you should take a look at the research and see
6 what it says about it, right?

7 MR. ELLIS: Let me add a point maybe counter
8 to what Palmer is saying, including a counter. That,
9 you know, even though billions of dollars of fall
10 protection have been purchased in the last 10 years;
11 we have no change in the statistics on fall incidents,
12 fall fatalities, none.

13 So, it occurs to me that while we have
14 trigger heights in fall protection, how you hold what
15 you hold, climbing up to that height whether it's a
16 piece of scaffolding or whether it's a piece of
17 construction equipment is critically important. And
18 I'm not mandating it here. I'm saying it is part of,
19 it's a broad point but it certainly can be applied to
20 construction.

21 Just think of the billions of exposures
22 there are daily with climbing up to 10-foot or 6-foot
23 trigger point height. Just think how many -- wouldn't
24 that be served better if we can give some advice,
25 assuming the research is accurate and true, that we

1 ask people to hold horizontal items, and then design
2 it so they can do it, construction design?

3 MR. STAFFORD: Okay.

4 MR. ELLIS: Thank you.

5 MR. STAFFORD: Yeah, thank you, Nigel. Any
6 other questions or comments?

7 MR. HICKMAN: I just wanted to be clear. My
8 comments were not directed towards his, and I tried to
9 preface my remarks that way. It was more cumulative.

10 MR. STAFFORD: All right. Nigel is used to
11 getting beat up on here.

12 MR. HICKMAN: I certainly wasn't intending
13 to beat him up. It wasn't for anyone in particular.

14 MR. ELLIS: Thank you very much.

15 MR. STAFFORD: Don, you want to introduce
16 yourself for the record, please?

17 MR. PRATT: Don Pratt from Southeastern
18 Michigan representing employers.

19 MR. STAFFORD: Okay, thank you. Yes, Jerry.

20 MR. RIVERA: Mr. Chairman, this is Jerry,
21 Employer Rep.

22 I guess I can see what Palmer is trying to
23 illustrate because we're having a general -- I guess a
24 big picture discussion, and as I'm thinking about the
25 small employer it really is -- all the discussion

1 that's occurred so far, maybe even the document to a
2 certain degree, is shooting past me a lot of the
3 concepts, and maybe the remarks of the --

4 MR. STAFFORD: Say that again. The document
5 passed over you as far as the concepts in the draft,
6 is that what you're saying?

7 MR. RIVERA: Well, no, I think the general
8 discussion we're having is comments for the document
9 kind of feeds towards that illustration that maybe for
10 that smaller group, the medium and larger, this might
11 be a good starting point for the smaller contractor.
12 This might be beyond that level of comprehension.

13 So, I guess that's the way I perceive the
14 comments. That's maybe not what you meant, but the
15 discussion, the comments that are coming forward to
16 the Committee on the document. And thinking about the
17 smaller group, I can see that confusion occurring;
18 that these guys that were talking up here, and these
19 guys down here, we might just be shooting right over
20 their heads.

21 So, just a general comment on that, and I'm
22 sure that we'll get some good public input on
23 construction-specific that we can use as we move
24 forward, but again I didn't want to let that go
25 because I can see something of what Palmer just said,

1 particularly thinking about the small report.

2 MR. STAFFORD: Okay. No, I appreciate that.
3 Any other questions or comments? Steve.

4 MR. HAWKINS: Mr. Chairman, it seems like
5 we've got competing issues, and we probably don't have
6 time for those. To develop guidelines for -- safety
7 and health program guidelines for the construction
8 entity to use is a separate discussion from how to
9 reach small employers, whether they're construction or
10 any other small employer. That's a totally different
11 task.

12 So, if we're talking about developing
13 guidelines that an employer could use if they chose
14 to, whether they were small or large, that's one task.
15 Is that what we're going to work on?

16 MR. STAFFORD: That's the task.

17 MR. HAWKINS: Or are we going to be, in my
18 opinion, sidetracked into discussing whether this will
19 work for a guy with 10 employees.

20 It will work if he wants it too. If he
21 doesn't, you know, I don't know, what are we going to
22 say?

23 You know, I mean, OSHA can develop quick
24 cards for a small employer to use to understand the
25 concepts of leadership. You know, if you're going to

1 own this company you're going to be the leader. I
2 mean, you're probably going to have to wear a hard hat
3 when hard hats are appropriate. That's a totally
4 different discussion, and there's
5 no -- I think we ought to just go in and say right now
6 as a precondition to our moving forward, there's no
7 way to distill this to a person with 10 employees who
8 doesn't want to read it.

9 Forget it, or, you know, if you want it
10 we're trying to develop a guideline that says here's a
11 guideline to help you if you want it, and we're going
12 to make it appropriate for construction. But to try
13 to develop something that a person with 10 employees
14 who doesn't want to do it, can read it and get
15 something out of it, that's an impossible task.

16 So, I think we should try to move forward
17 and talk about how to make this document useful for a
18 construction entity with the desire to want to use it.
19 It they don't have the desire, then we have to move
20 past those folks. You know, you get as many people on
21 the bus as you can, and then you leave the station.

22 If they don't want to get on the bus, you
23 know, OSHA can make them, but that's what citations
24 are for. That's not really what this is for.

25 And I know it's a huge problem. Our war

1 baby gentleman, Mr. Mott, you know, I mean, he made
2 excellent points. Now, to Nigel's point, if you
3 actually made it to page 22 of this document that's a
4 great comment to put there, you know, if you made it
5 that far. But I guess maybe I've been doing this too
6 long, in some way, so if you don't want it we can't,
7 you know.

8 I think sometimes we make a mistake of
9 trying to oversimplify what we're trying to
10 accomplish. Safety is not always that simple. You
11 know, these are complex tools, complex processes, and
12 then you introduce people into that. You're not going
13 to fix that with a, you know, a quick card. If you
14 really want to make a safe workplace you've got 10
15 employees, these are all concepts you need.

16 So, if we're making a document to help them,
17 then that's what we're doing. I think there's any way
18 to take this and take it down to three or four pages.

19 I just don't see that. Thank you for
20 allowing me to speak.

21 MR. STAFFORD: No. Okay, I appreciate that,
22 Steve. I don't say that, you're right. That's the
23 exercise. The document that Mr. Mott was referring to
24 earlier was something that I sent out in an attempt to
25 get the Committee to think about action items as we go

1 through each section that might be more appropriate
2 for smaller employers, and that was the reason for
3 that, not that we were making --

4 MR. HAWKINS: I mean, I read your email
5 perfectly. That's not what I'm talking about, you
6 know. We may need to develop -- OSHA probably will
7 need to develop after they get this some kind of --
8 you know, when you go -- well, that's not even the
9 case much anymore, and I hate it. But, you know, one
10 time you brought a piece of electronics and you get an
11 owner's manual that was something like this, and then
12 you also got this fold-out thing that said the quick
13 guide.

14 Now just speaking strictly for myself, I
15 almost never went past that unless I wanted to. If I
16 bought a new camera and I really wanted to understand
17 how to use it, I'd get the manual out and read it. I
18 was just plugging up a computer, all I ever did was
19 open up the quick guide, and the cord said plug in
20 here, here and here.

21 So, when we get through we can probably
22 develop something that you can fold out and say, "Oh,
23 I understand, you know, management commitment, job
24 inspections, and those kind of things." But, you
25 know, you really need something for those who want to

1 go beyond that, you know, we'll need this.

2 You'll need a document that is this complex
3 really for those people to really to put flesh on the
4 bones of what a safety and health program is. And I
5 guess I'm starting to get somewhat passionate about it
6 because we have seen through the VPP program and the
7 SHARP program when people do that it creates results
8 that are phenomenal. They go so far beyond what
9 simple OSHA compliance would probably ever get you.
10 It's amazing when you actually see what a functioning
11 safety and health program will do.

12 And I've actually -- you know, which is to
13 my credit, I almost never do. I read this before the
14 meeting, the whole thing, and thought about it, and
15 there's really a lot of good stuff in here. And we
16 can't just say, "Well, you know, construction is too
17 complicated. We can't do this." If a person really
18 want to know this we've got to constructionize what we
19 have here, and then possible develop a get-started
20 guide for those because you don't, you know, you don't
21 start out with this probably if you're a small
22 employer.

23 You will need something like what you talked
24 about in your email to get them started, and then we
25 can point them to this, and as Mr. Nigel said you can

1 even point them even further than that in some
2 specifics.

3 MR. STAFFORD: Okay. No, I appreciate that.
4 Steve.

5 MR. RANK: Yes, Mr. Chairman. Steve Rank.

6 The Agency will not discriminate whether you
7 have 12 employees or 1,200. And I think that the
8 employers in the construction industry that I'm
9 concerned about if they're in business and they're
10 working on a job, Bill's job for an hour and a half
11 with three employee doing a cut saw, they'd better
12 know what the responsibilities are. And I think this
13 guide is a great thing. If I was a small employer, if
14 you gave this to me, I would know what the rules of
15 engagement are, and I would know that my company with
16 12 employees had better respond accordingly, okay.

17 And just a few days ago we had a choice on
18 April 15th to pay our taxes or file an extension, all
19 right? Well, you know, that's been a long thing where
20 we know what our responsibilities are, and I think
21 putting this out, Mr. Chairman, I think it's a good
22 thing that, it's a good thing to help the small
23 people. But I agree with Steve that we can't just
24 wait around and expect them to just, you know, bring
25 them along and they have to get with it and actually

1 take advantage of this, I believe. Good points in it.

2 MR. STAFFORD: I appreciate. Yeah, Jerry.

3 MR. RIVERA: Mr. Chairman, I want to echo
4 the comments of my peers as far as this being
5 available for everyone, but I think we need to think
6 back at the fundamental concept.

7 If you look on page 1, you know, the whole
8 intention of the guidelines is to be fitted for small
9 and medium-sized workplaces, so it does address the
10 small and medium employer. I'm not saying that we
11 should delete any of these concepts, but we do need to
12 keep in the back of our minds who are audience is, and
13 based on the guidelines as currently written, that
14 might be a change.

15 We might want to recommend, hey, look, you
16 know, here's an alternative. But as it's currently
17 written right now, and we're going to go through
18 them, it does address that the main intent of this
19 document is to address or be a resource towards small
20 and medium-type contractor, with the general
21 assumption that the larger ones might be doing some of
22 these already.

23 So, again just wanted to bring that into
24 perspective because that is an audience that this
25 document was primarily developed for.

1 MR. STAFFORD: Well, I mean, I think if you
2 look at it, I mean, we are going around in circles a
3 little bit, that document was, the draft was written
4 for all industries, right.

5 It's not written for small and medium-sized
6 employers in construction specifically, and it's
7 really targeted, like the '89 guideline and I'm sure
8 other industries had comments for the industrial
9 sector, right, so that there are things in there that,
10 you know, need to be updated generally. But that's
11 what the guideline was referring to when it was
12 talking about medium and small work sites. It's for
13 all industries.

14 MR. HAWKINS: Okay. Steve Hawkins.

15 To Jerry's point, that's the exact kind of
16 thing we need to address as the Committee because this
17 statement is not appropriate for something that was
18 stamped for construction, because it says small and
19 medium-size workplaces. That's really not who we're
20 trying to help here. We're trying to help those, but
21 we're also, would be trying to address small and
22 medium-size employers on tremendously large projects
23 like Mr. Mott talked about.

24 He's talking about a very complex
25 construction project, where a guy pulls up with a

1 concrete saw. And they've only hired him to do one
2 thing and that's to cut a trough across this concrete
3 slab because something got left out, and we're going
4 to have to fix that. And so we said, does anybody
5 have a concrete saw? No. Call somebody.

6 They get somebody and it's a fourth- or
7 fifth-tier that guy who comes in and so it's not for
8 small workplaces, but if we were going to edit this
9 for construction, we'd say this is for small and
10 medium-size employers on work sites of all sizes.
11 That's the kind of thing, that's what is actually
12 "wrong" with this document if we're going to stamp it
13 for construction.

14 MR. STAFFORD: Okay, appreciate that.

15 And I'm going to ask OSHA, Eric or Lisa, the
16 way this is going to go, I believe, that OSHA is going
17 to put out the '89 document and we're developing a
18 companion document. I think companion is the right
19 word that would be, that we're stamping construction-
20 specific. So it's going to look and feel like this
21 document, more or less, but it's going to be a
22 companion document. I don't know the timing of when
23 this is going to be published versus our construction
24 document. But this, it's going to be a very similar
25 document in the way it looks and feels and what we're

1 recommending by section, just to clarify.

2 MR. KAMPERT: I don't know -- Eric, OSHA
3 rep. I'm not sure if companion would be the right
4 word, or separate guidelines. I believe we've talked
5 about separate, so not as an appendices, but a
6 separate document is the understanding. That's what I
7 think. That was the feedback that we got in the
8 public comment period.

9 MR. STAFFORD: Right. Separate companion
10 document is what I'm calling it. Any other questions
11 or comments?

12 Okay, thanks. We're going to take a 15-
13 minute break and then we'll go back and we're going to
14 start on page 1 and start going through this document.
15 Thank you. Fifteen-minute break.

16 (Whereupon, a short recess was taken.)

17 MR. STAFFORD: All right, let's begin the
18 meeting. Thank you. All right, let's go ahead and
19 get started.

20 I appreciate the comments. I think Mr.
21 Hawkins, in closing, is right. Our mission is to
22 constructionize this document and that's what we're
23 going to do. And in order to do that, I think, to be
24 consistent so that we're consistent with the layout of
25 the main document for all industries, is for this

1 group to simply go through the document.

2 And as I said in my email to the Committee a
3 month or so ago when we started planning this meeting
4 is to go through the document, say what we think is
5 appropriate for construction, what we don't believe is
6 appropriate for construction, and suggest action items
7 in those places that we think are appropriate for
8 construction, and that's the exercise now.

9 You know, it's difficult to understand the
10 timing or how long this is going to take us. There
11 is, what, seven sections that we have to go through.
12 I was hoping that we could at least get through the
13 first two today. Perhaps three, but at least two to
14 give us plenty of time tomorrow to get through the
15 remainder.

16 You know, the front and the back matter will
17 take care of itself in the end, and I'll leave that up
18 to OSHA staff that we have to change, for example, how
19 to use these guidelines, et cetera. I'm not so
20 interested in taking that on at this meeting, but
21 basically recommending action items in each of those
22 core areas, I think, is the function. Unless, of
23 course, OSHA has specific questions they would like
24 for us to consider, but I do think the front and the
25 back matter will take care of itself. And we need to

1 start looking at the document starting with management
2 leadership.

3 So, unless there's any specific questions or
4 comments from the Committee, you know, Steve's got
5 this word "constructionize" in my mind now. If
6 there's anything that we think needs to be
7 constructionized in the introduction of this document,
8 if you've gone through it. I know a lot of our
9 Committee members have gone through the document. So,
10 if you've gone through and marked it up or had
11 specific suggestions, let's just do that very quickly
12 starting on page number one.

13 Yes, Don.

14 MR. PRATT: Don Pratt. Just to set
15 everything on the same playing field, I just need a
16 question answered, and I've read everything. Do we
17 have any idea what the intent of this document is
18 going to be at the end, because I think that would be
19 a very good place to start, rather than wait until we
20 get all over. Because that's going to make a big
21 difference on how I look at this document. What is
22 the intent for this document when we get done, for
23 small contractors?

24 MR. STAFFORD: Well, I mean, I would let
25 OSHA answer that if they would like to. I could give

1 you my perspective on it as Chair. In my mind this is
2 an attempt to help construction industry employers
3 that have an interest in continuous improvement and
4 building upon their programs. This is a guidance on
5 how they go about doing that; ways in which OSHA could
6 guide them if they're interested in program
7 improvements. In my mind that's the exercise.

8 MR. PRATT: Okay, Don Pratt again.
9 Guidance, I like, Mr. Chairman. Enforcement is
10 another issue. If this is going to be an enforcement
11 document, we've got a problem.

12 MR. STAFFORD: As I said, this is a guidance
13 document, and from my perspective we're going through
14 this exercise, Don, to provide something practical to
15 the industry that is interested in guidance on how to
16 improve their safety and health programs. Kevin.

17 MR. CANNON: Kevin Cannon, Employer Rep.
18 And it's kind of along the lines of what Don had
19 mentioned regarding enforcement, but it's, you know,
20 kind of specific to a comment that Eric made early on
21 as to his uncertainty as how the guidelines would be
22 used, and enforcement proceedings related to
23 1926.20(b).

24 I think Eric said he wasn't sure at this
25 point, and I'm not sure if that's something that you

1 could get clarification on, you know, with your
2 colleagues in DOE, just so that we have an
3 understanding. I know not today, but maybe tomorrow,
4 you know, comment, help us understand how this
5 because, again, it was mentioned that it was some
6 uncertainty there.

7 MR. STAFFORD: Okay, I appreciate that. Do
8 you have, Eric, any comment to that?

9 MR. KAMPERT: No, just that it is unclear at
10 this time, you know. These are set up to be
11 guidelines for the construction industry. That's the
12 purpose, you know. Falling off of the general
13 industry and maritime standards, these are the
14 construction ones. So, we're not sure how that fits
15 legally into enforcement under 20(b) right now. But,
16 you know, the intent of this meeting is to make
17 guidelines for construction that you guys are happy
18 with, and that will help construction employers, you
19 know, have a safe workplace.

20 Yeah, Steve Rank.

21 MR. RANK: Mr. Chairman, I believe that this
22 document, I mean, a small employer -- Kevin, to your
23 concern and Don's is -- that small employer is going
24 to take a hit whether they got this document or not.
25 If you have 12 employees on the payroll and you have

1 something bad happen, guess what? You know, they are
2 still under the Act. They still should have had
3 training. They still should have had workplace
4 inspections on a frequent and regular basis, even
5 that's an unclear point. So, you're under the hammer
6 anyway.

7 So, I think that this, I would like to be a
8 small employer, knowing that I have an organization
9 like you that could funnel this to me, and say do you
10 have these groups in place to help you. And I think
11 that would be a good benefit for one of your employers
12 being a small guy.

13 MR. STAFFORD: And Palmer.

14 MR. HICKMAN: Thank you, Mr. Chairman.
15 Palmer Hickman, Employee Rep.

16 All right, so you suggest that we start at
17 page one, but maybe we need to start at the first page
18 after the cover page and where OSHA says these
19 guidelines are advisory and informational in content.

20 So we said maybe we would count on OSHA to,
21 you know, do what they will with that, but we maybe
22 need to start there and say -- certainly answer Don's
23 question which is an important one: what would be the
24 recommendation or the purpose of the construction
25 guidelines if they're not the same. Maybe we need to

1 say ACCSH recommends that these also be guidelines
2 that are advisory and informational in content.

3 MR. STAFFORD: Okay.

4 MR. HICKMAN: So maybe we need to start on
5 that page rather than on page one to answer that
6 question.

7 MR. STAFFORD: Well, okay, so my page one --
8 let's get on this and start on the same page.

9 MR. HICKMAN: Yeah, right.

10 (Laughter.)

11 MR. STAFFORD: They're talking about
12 relationship to the 1989 guidelines and existing legal
13 requirements.

14 MR. HICKMAN: That's the fourth paragraph.

15 MR. STAFFORD: So does anyone on the
16 Committee have a look at these two paragraphs on the
17 purpose of these guidelines and have any questions or
18 comments or things that you think should be different
19 for construction in this -- whatever the hell page
20 this is? Relationship to the 1989 guidelines and
21 existing legal requirements.

22 I mean, I've got to confess I didn't read
23 this page. I skipped it. I went right to page one
24 when I went through this. So, I'll just take a
25 second.

1 MR. PRATT: I mean, that was my point, that
2 maybe we hadn't read it, all of us. Thank you.

3 MR. STAFFORD: Steve.

4 MR. RANK: Mr. Chairman, I believe that the
5 last paragraph on that inside page might answer Don's
6 question. "These guidelines are advisory and
7 informational in content. They are not standards or
8 regulations. They also do not create any new legal
9 obligations or alter existing obligations created by
10 OSHA standards."

11 MR. CANNON: I see that.

12 MR. STAFFORD: I mean, does that --

13 MR. CANNON: That's what was written but
14 that's not what was stated by Mr. Kampert. He said he
15 wasn't certain at this point in time, correct?

16 MR. RANK: Well, what's certain is what's
17 written right here that the Agency wrote.

18 MR. CANNON: That's not intended to be a
19 standard. Maybe we can get that.

20 MR. STAFFORD: Yes, we're going to have to
21 get to the guideline. I mean, ultimately I recognize
22 the employers are concerned with what this means for
23 enforcement and inspections. We've sat around this
24 Committee for many years talking about regulations and
25 standards we would like, only to hear from employers

1 we need to talk about consultation services and
2 guidance instead of standards.

3 Now we're talking about guidance, so let's
4 get on with the guidance.

5 MR. HAWKINS: Mr. Chairman, I make a motion
6 that ACCSH recommend to the Agency that they include
7 this wording in the final document.

8 MR. STAFFORD: Okay, I think that's -- I'm
9 not so sure we need a motion, Steve, although I would
10 certainly -- I would certainly entertain it.

11 (Laughter.)

12 MR. STAFFORD: I think that after looking at
13 it I think this answers the question. Unless we do
14 need a formal motion, I believe there's no edits to
15 this and that we want this language for our
16 construction guideline. It works for everybody. Fair
17 enough? Fair enough.

18 So, let's go to page one. We're on page one
19 now.

20 MR. HAWKINS: I'll withdraw my motion, Mr.
21 Chairman.

22 MR. STAFFORD: Okay.

23 MR. MARRERO: Not to muddy the waters or
24 anything but --

25 MR. STAFFORD: Yes, we wouldn't want to do

1 that.

2 (Laughter.)

3 MR. MARRERO: I saw this little handout in
4 our folder here, too, and it looks like it's a
5 breakdown on the guidelines. Is that something --

6 MR. STAFFORD: No, no, let me clarify.
7 Those were in order to, my attempt to bring a little
8 bit of order to the meeting, I took a stab at drafting
9 some action items that I thought this Committee
10 consider as we constructionize it and think more about
11 action items that would be appropriate for true
12 medium- and small-size employers in the industry.
13 It's just a draft thinking document. There's nothing
14 in that. It wasn't for the record. It was my attempt
15 to offer up some action items that might be helpful to
16 our discussion. So, that's what that is.

17 I know Mr. Mott has received it. There may
18 be others that received it in the audience, but it was
19 just an internal document -- it's now in the back --
20 to get us to think about other action items to
21 constructionize this document.

22 MR. RANK: Mr. Chairman, I think that your
23 draft here does constructionize this. I hope that,
24 you know, we could reference this as much as possible
25 to help streamline the process, because I think the

1 verbiage that you have here under the bullet points
2 actually I have already kind of taken into
3 consideration the draft by the Agency. You being in
4 the construction, you know, in-depth there have looked
5 at it. So, I really like your draft.

6 MR. STAFFORD: Okay. Well, I appreciate it.
7 I think as we go through -- again, let's, we're going
8 to get through two sections today if it kills us;
9 three, I hope.

10 But let's get started with the introduction
11 section. What I'd like to do is go to the main OSHA
12 document.

13 If you have in that draft I sent around, if
14 there's things in there that you think for management
15 leadership that that would be a good action item, that
16 it's something we can consider, that was the purpose,
17 let's just throw it out and say in the end that if we
18 have management leadership and there is six action
19 items for the construction industry, there will be
20 some combination of some of those that are probably
21 there, and maybe a few more that we think would
22 constructionize it, then that's the exercise.

23 We're not replacing them, necessarily, and
24 there's really a lot of good stuff in this document,
25 and so we're not replacing everything. We're trying

1 to just make it specific to our industry as we go
2 through that, and the draft things that I sent out
3 were just to help us get through that.

4 So, is there -- page one, introduction, any
5 of the Committee read the introduction page have any
6 specific suggestions or questions or edits that we
7 should consider? Yes, Cindy.

8 MS. DePRATER: I just have two and it's
9 right in the first paragraph. This is Cindy DePrater,
10 Employer Rep. "The guidelines provide employers,
11 workers, and workers' representatives with a sound
12 flexible framework for addressing construction safety
13 and health." -- so, I add the word "construction" --
14 "issues and diverse workplaces. They are intended for
15 use in the construction workplace," and that's the
16 last change. That makes this one good enough to
17 address construction.

18 MR. HAWKINS: I'd like to fix the last words
19 there. It says "small and medium workplace," it's
20 really. Because construction, sometimes you're a
21 small employer in a big space, and we want to fix
22 that, but we kind of talked about that already.

23 MR. STAFFORD: So, give OSHA some language,
24 Steve, that would help them.

25 MR. RANK: Oh, for small and medium-size

1 employers --

2 MR. STAFFORD: Construction projects.

3 MS. DePRATER: Right.

4 MR. STAFFORD: For small and medium-size
5 employers --

6 MS. DePRATER: On construction projects.

7 MR. RANK: If you need that. Okay?

8 MR. STAFFORD: Danezza, are you getting all
9 this? I don't have to write all this stuff down, do
10 I? I can rely on you?

11 MS. QUINTERO: Yes.

12 MR. STAFFORD: Promise?

13 MS. QUINTERO: Yes.

14 MR. STAFFORD: Okay. Any other questions or
15 comments on page 1 in the introduction section?

16 MR. MARRERO: You need a construction
17 picture.

18 MR. STAFFORD: Construction picture.

19 MR. MARRERO: I said that. That's a gate
20 going into a car plant, I'm almost sure.

21 MR. HAWKINS: It just needs to be
22 construction activity.

23 MR. MARRERO: Yeah.

24 MR. STAFFORD: Okay, Danezza? We'll find
25 you a good construction photo if you don't have one.

1 Okay, any other -- I'm sorry. We'll go to
2 Tom and then Palmer.

3 Just a suggestion here. Anywhere where it
4 says workplace, can we just swap that out with
5 construction project or workplace? Construction site.

6 MR. HAWKINS: Construction work site.

7 MR. STAFFORD: All right, so that we don't
8 go through this, we hereby agree that it's all
9 construction work site, okay?

10 Palmer, thank you.

11 MR. HICKMAN: For fear of going one level
12 too high again, the title of the document, do we have
13 a recommendation that we change that to include
14 construction somewhere, or is that assumed?

15 MR. STAFFORD: In my draft I called it a
16 Safety and Health Program Guideline for Construction.
17 You can call it something else.

18 MR. HICKMAN: I like your addition.

19 MR. RANK: I move to go with the Chairman's.

20 MR. HICKMAN: I do, too.

21 MR. STAFFORD: I'll second it.

22 MR. HICKMAN: I'll second it, I'll third it.

23 MR. STAFFORD: I love this today.

24 (Laughter.)

25 MR. STAFFORD: Go ahead, Lisa. I'm sorry.

1 MS. WILSON: Okay. Is that a motion for the
2 Committee?

3 MR. STAFFORD: No, I don't think we need to
4 take that.

5 MR. HICKMAN: No, I withdraw my motion as an
6 unofficial official withdrawal.

7 MS. WILSON: Thank you.

8 MR. STAFFORD: We'll have plenty of time for
9 motions, I think, over the next day and a half.

10 MR. HICKMAN: Withdraw my motion.

11 MR. STAFFORD: Okay, so introduction,
12 anybody else? Everything's good. We're all agreed.
13 Construction photo, a few word changes in the intro.

14 Okay, now I skipped over, I'm on page 3.
15 "How to Use These Guidelines." Again, I think once we
16 get through this, this front matter may take care of
17 itself because in the end we don't know how many
18 action items there are going to be. We can go through
19 it now if you'd like, or once we get through the
20 sessions we can double back and take a look at the
21 introduction if you would like, however you want to
22 handle it. Anybody care?

23 MR. BETHANCOURT: Mr. Chairman, I have a
24 comment -- Jerry Bethancourt -- about this particular
25 page. Where it talks about improvements in production

1 process and service quality I'm not quite sure what
2 would be a good thing to put there, but the comments I
3 put it seems fine, but perhaps a sentence using
4 construction type terminology is what I wrote for
5 that.

6 MR. STAFFORD: Where are you?

7 MR. BETHANCOURT: We are on page 2 now. I
8 was just thinking that we need to have something
9 that's specific to construction type terminology so
10 that it seems applicable to folks. I'm not sure what
11 it would be, but I figured if I threw that out there
12 the Committee would probably digest that.

13 MR. HICKMAN: Well, I think, Mr. Chairman,
14 at this point, I mean, improvements in the first
15 bullet point, improvements in product, process and
16 service quality. I'm not sure that sounds
17 construction-like.

18 MS. DePRATER: I think the three we
19 typically use are productivity, quality, and safety.

20 (Simultaneous conversation.)

21 MR. STAFFORD: Improvements in safety,
22 quality, and productivity.

23 MS. DePRATER: That's our typical
24 terminology.

25 MR. STAFFORD: Okay, safety first, in this

1 instance. Is everyone okay with that? And the rest
2 of the bullets are fine?

3 MS. DePRATER: Cindy DePrater. I'd make one
4 recommendation to the last bullet as well. It says
5 "among customers, suppliers, and the community." I
6 would change that to be more specific to construction.
7 And maybe not customers and suppliers, but clients,
8 owners, contractors and, of course, the community
9 still counts.

10 MR. STAFFORD: That's fine, owners, clients,
11 contractors.

12 MS. DePRATER: Right.

13 MR. BETHANCOURT: I think we should retain
14 the community, though.

15 MS. DePRATER: And community.

16 MR. STAFFORD: Owners, clients, contractors,
17 and community. Okay.

18 MR. BETHANCOURT: Mr. Chair, I'm not sure
19 what the rest of the Committee would think, and I
20 don't know if we're being too detailed, but even in
21 the little, what do you call it? They're not really
22 quite stick figure there. They're more than stick
23 figures, but.

24 Perhaps we could put a hard hat on one of
25 them, something if we're going to make it specific to

1 construction. I'm not sure if that's going too far
2 but that would maybe something to think about.

3 Wearing a hat.

4 MR. PRATT: This guy is a teacher.

5 MR. BETHANCOURT: This guy is a teacher.

6 Well, he's wearing a vest.

7 MR. RANK: I think he's probably teaching
8 outside on a scaffold.

9 MR. BETHANCOURT: He's wearing a vest, Don.
10 He's right under a scaffold.

11 MR. PRATT: Okay.

12 MS. DePRATER: The 2.7 on the indirect cost,
13 can we relate that to construction, because I'm sure
14 this is an overall 2.7? I think we hear three to five
15 indirect cost for every dollar spent. It's three to
16 five in construction.

17 MR. STAFFORD: We should update that but I
18 don't have the numbers. We'll leave it up to OSHA.
19 We'll leave that up to OSHA to update that.

20 MR. HAWKINS: But made for construction.

21 MS. DePRATER: Yes.

22 MR. STAFFORD: Okay, Danezza.

23 MS. QUINTERO: The guy with a hard hat and
24 then after that?

25 MS. DePRATER: The 2.7, we're going to

1 update the 2.7 for construction.

2 MR. STAFFORD: Palmer.

3 MR. HICKMAN: Thank you, Mr. Chairman. Just
4 to this point, and I know we're very early, I haven't
5 heard anything that would make me say we need a
6 separate document. So we're going to get to something
7 substantive that says this document needs to do more
8 than just change the word "occupational workplace" to
9 "construction workplace." We better, better be a good
10 reason to do a different document. I'm sure we're
11 going to get to it. So far it's been editorial.

12 MR. STAFFORD: I think we will, as we get in
13 -- I think the most important thing for construction
14 is when we actually get in the section of the action
15 items. What are we recommending, I think, is going to
16 be the breakaway point. Kevin.

17 MR. CANNON: Kevin Cannon, Employer Rep.

18 And I don't know if, you know, the
19 introduction or the page four where it mentioned, you
20 know, relationship to the 1989 guidelines and existing
21 legal requirements. But would it be fitting to
22 include some language, either in the introduction or
23 in that, on that particular page that references the
24 focused inspection program. I mean, you know, that's
25 one of the benefits for construction employers of

1 developing and implementing a safety and health
2 program. Is that they're afforded, you know, the
3 focused inspection which focuses on the falls,
4 electrical and whatnot.

5 MR. HAWKINS: There's a little bit of a
6 problem, Kevin. Almost none of the states do it, so
7 it wouldn't be applicable in half of the
8 jurisdictions.

9 MR. STRIBLING: Over half.

10 MR. MARRERO: And OSHA's kind of backed away
11 from that.

12 MR. STAFFORD: I have not heard they moved
13 away from that.

14 MR. HAWKINS: Even if they did, you'd hate
15 to date that.

16 MR. STAFFORD: Okay.

17 MR. HAWKINS: I will say though all states,
18 and I know federal OSHA does, there are penalty
19 adjustments based on good faith. And in our state
20 it's whether you have an effective safety and health
21 program. So, you could mention that benefit.

22 But, of course, I don't really think stuff
23 like this is more to appeal to the altruistic nature
24 of an employer to want to do good, or I'll do this to
25 save a buck in the event that I get caught. I don't

1 know if we want to make that, you know.

2 But there might be a way to introduce, you
3 know. It could save money. It could save you on your
4 OSHA penalty. That's the last thing on the list. I
5 don't know if fortunately or unfortunately.

6 MR. STAFFORD: Why don't we just have as we
7 go through this, a tickler list of items that we might
8 want to consider and think about, Danezza, and that
9 will be one of them. Okay.

10 MR. HAWKINS: Opposed to a specific edit.

11 MR. STAFFORD: And we can come back to those
12 at the end. Sound fair enough?

13 MR. HAWKINS: Yes.

14 MR. STAFFORD: Is that okay with everybody?

15 MR. HAWKINS: This can be used to establish
16 good faith on the employer, and OSHA does look at good
17 faith when assessing penalties.

18 MR. STAFFORD: Assessing penalties.

19 MR. HAWKINS: And they do and they still do.

20 MR. STAFFORD: Right. Okay.

21 MS. DePRATER: Insurance as well.

22

23 MR. HAWKINS: Insurance.

24 MR. STAFFORD: All right, so now we're on
25 introduction page 3.

1 MR. HAWKINS: I did have one more comment.
2 It's kind of a tickler, Mr. Chairman. My review of
3 the document, I think for sure if we're going to make
4 this for construction the multi-employer work site
5 thing needs expanding, right, at some point in the
6 document. It may not necessarily be here but we want
7 to address that in a big way. And I think it is
8 mentioned again later on in the second.

9 MR. STAFFORD: Okay.

10 MR. HAWKINS: It's page 23, there's a whole
11 section.

12 MR. STAFFORD: Yeah, it should be.

13 MR. HAWKINS: I was looking at my notes as I
14 was going through.

15 MR. STAFFORD: Okay, any other questions or
16 comments on page 3 of the introduction page.

17 MS. DePRATER: Yes, yes. The third
18 paragraph down, where it says, "Injuries and illnesses
19 occur in all types of workplace settings from
20 manufacturing, and construction sites to hospitals and
21 health care facilities, offices, and other service
22 industries." I would say we strike that entire
23 sentence and start it with the, "The preventative
24 approaches described in these guidelines work well,"
25 strike, "across all industrial sectors."

1 So, it would say, "The preventative
2 approaches described in these guidelines work well for
3 small and large organizations."

4 MR. HAWKINS: "In the construction
5 industry."

6 MS. DePRATER: Yes.

7 MR. STAFFORD: Everyone okay with that? Any
8 problem with that? So read it again, Cindy, so I'm
9 sure we have it.

10 MS. DePRATER: So, that paragraph is going
11 to start with, "The preventative approaches described
12 in these guidelines work equally well for small and
13 large organizations like in the construction
14 industry."

15 MR. STAFFORD: Okay. Anything else on this
16 page? All good?

17 MS. DePRATER: Um-hmm.

18 MR. STAFFORD: Okay, page four, and this is
19 just the breakdown of what we're, really the meat of
20 it, seven sections that we're going to try to attach
21 construction action items to.

22 MR. HAWKINS: These are all good.

23 MR. STAFFORD: Yeah, there's nothing wrong
24 with them in my mind. Palmer.

25 MR. HICKMAN: Thank you, Mr. Chairman. The

1 last topic, coordination and communication on mid- and
2 multi-floor work sites specifically mentions in the
3 first bullet point, safety or health. That seems to
4 not be a common theme throughout the standard
5 guideline. It just seems to just talk about hazards
6 in general. Maybe a couple places here, like hazard
7 prevention and control, education and training, we
8 might spell out safety and health hazards to re-
9 emphasize that it's not just safety, it's really
10 safety and health.

11 So, the fact that it was pointed out once
12 and not other places I'd like, maybe we should think
13 about reenforcing, especially on construction sites
14 there seem to be, health hazards seem to be more.
15 Yeah, just a thought.

16 MR. STAFFORD: Okay. All right, so we can
17 think about health. Yes, Steve Rank.

18 MR. RANK: I like -- Mr. Chairman, I like
19 under management leadership there on page four on the
20 top, I like your first bullet point. It says, "Have a
21 written policy that clearly spells out." The first
22 two bullet points, they do not talk about written
23 policy. Okay, it says communicates to workers, but
24 having a policy is the first thing you're asked for
25 where the Agency is knocking at your door.

1 Do you have a policy regarding whatever it
2 is?

3 MR. STAFFORD: I think we'll get there,
4 Steve, when we get into management leadership.

5 MS. DePRATER: Yeah.

6 MR. STAFFORD: The actual action items.
7 This is just, basically, they're listing what's in the
8 document.

9 MR. RANK: Oh, okay. All right. Gotcha.
10 Sorry, Pete.

11 MR. STAFFORD: That's alright.

12 MS. DePRATER: Under worker participation,
13 bullet two.

14 MR. STAFFORD: Yes.

15 MS. DePRATER: Correct the spelling of
16 "effectively."

17 MR. STAFFORD: Say that again.

18 MS. DePRATER: Correct --

19 MS. QUINTERO: Correct the word
20 "effectively." We don't worry about those.

21 MS. DePRATER: Okay.

22 MR. STAFFORD: Okay.

23 MS. QUINTERO: Don't worry about that.

24 MR. STAFFORD: Okay, anything else on that.

25 MS. QUINTERO: It's a draft.

1 MR. STAFFORD: Jeremy?

2 MR. BETHANCOURT: You know, I'm wondering,
3 Mr. Chairman, if there's something we ought to do to
4 actually explain to people that this is actually about
5 the broad, like, parts of the document, so we've got
6 all these little bullet points that gives us a
7 summary, and believe it or not perhaps maybe saying,
8 "Hey, this is just the summary. These will be talked
9 about further."

10 MR. HAWKINS: And, you know, also when we
11 were talking about that quick guide, this would kind
12 of be it.

13 If you just really want to sit down, because
14 without a written document, if you were a small
15 employer you could read this and this would be a great
16 place to start, just these little three steps right
17 here under these headings.

18 MR. BETHANCOURT: Why don't we just call it
19 "summary."

20 MS. DePRATER: Just insert the word
21 "summary" before guideline.

22 MR. RIVERA: It looks like a fact sheet.

23 MR. STAFFORD: I guess, is that. I mean,
24 that's fine. I mean, it flows.

25 MR. RIVERA: Check points. It could be a

1 series of questions, where they're asking themselves.

2 MS. DePRATER: Right, Right.

3 MR. BETHANCOURT: To Steve's point earlier,
4 they won't read the rest of the document. This is all
5 they're going to want to look at.

6 MR. HAWKINS: Have to be careful, yeah.

7 MR. STAFFORD: So, are you suggesting that
8 in the intro the language just simply, "executive
9 summary of core elements of safety and health program
10 management guidelines"?

11 MR. BETHANCOURT: Don't use the exact terms
12 there that I'm --

13 MR. HICKMAN: Either that or Cliff Notes.

14 MS. DePRATER: I would just suggest "core
15 elements of the safety and health program management
16 summary guidelines."

17 MR. BETHANCOURT: Or "guidelines summary,"
18 summary of the guidelines.

19 MS. DePRATER: Summary of the guidelines.

20 MR. STAFFORD: We okay with that? "Core
21 elements of safety and health program" --

22 MR. HICKMAN: "Overview of core elements,"
23 maybe.

24 MS. DePRATER: Sure.

25 MR. HAWKINS: I think where this comes from

1 though in OSHA language we talk about the core
2 elements and they are the ones that are in these gray
3 boxes without the wording.

4 MR. STAFFORD: Without the words, uh-huh.

5 MR. HAWKINS: We're just talking about, when
6 I give speeches about the advantages of BBP and SHARP,
7 we talk about the core elements. We call them 425 and
8 200 because they call them 102. And so you -- these
9 kind of are the core elements listed. They're not
10 really a summary. They are just core elements right
11 there.

12 So, I mean, I don't know if it really makes
13 -- we have a lot of work to do to worry about that,
14 but.

15 MR. STAFFORD: Anybody feel strongly about
16 it? We'll leave it alone then, because it says what
17 it is. These are the core elements. I mean, we can
18 say that we're going to expound on this later, but all
19 you have to do is turn the page and see that we're
20 expounding on it later; right?

21 Scott Schneider, very quickly.

22 MR. SCHNEIDER: Why don't we just call them
23 essential element, instead of core elements?

24 MR. STAFFORD: Core elements, essential
25 elements. It doesn't matter. I don't care. I mean,

1 to me this is, you know, too far in the weeds. You
2 can call it what you'd like. I mean, it's all the
3 same.

4 MR. HICKMAN: As long as we add the word
5 construction in that, sort of, title.

6 MR. BETHANCOURT: Guidelines for
7 construction.

8 MS. QUINTERO: I'm sorry. What did you say?
9 Essential elements? I'm sorry, one person at a time.

10 (Pause.)

11 MR. STAFFORD: So what do you have?

12 MS. QUINTERO: Central elements of a good
13 safety program, as long as the word "construction" is
14 in there.

15 MR. STAFFORD: Let's go back to what it says
16 for now. The core elements of safety and health
17 program are construction, safety and health management
18 program guidelines. How about that? We can revisit
19 this later. We get bogged down on playing with words
20 we won't get through the introduction section.

21 MR. BETHANCOURT: I agree.

22 MS. DePRATER: Are we on to page five?

23 MR. STAFFORD: We are on page five.

24 MS. DePRATER: Does it make sense --

25 MR. RANK: Mr. Chairman, one little

1 observation on number four. Again, we can go both
2 ways, but where it says "hazard identification and
3 assessment," I don't know if we need assessment. What
4 we really mean is risk assessment. And on the last
5 one where it says "coordination and communication of
6 multi-employer work site" do we want to strike out
7 that "coordination and communication," and keep
8 "multi-employer work site," like recommended on this
9 summary?

10 I think the language is kind of more
11 friendly to the construction sites on that last one,
12 and the other one, as far as the inclusion of risk
13 assessment. It's just to kind of highlight that's
14 what we're trying to say or what kind of assessment
15 we're trying to specify.

16 MR. STAFFORD: So, hazard identification and
17 risk assessment. Does anyone have a problem with
18 that?

19 MS. DePRATER: I think it's perfect.

20 MR. HAWKINS: No.

21 MR. STAFFORD: Okay.

22 MS. QUINTERO: So, risk assessment, then the
23 second suggestion was?

24 MR. RANK: The second suggestion is to
25 strike out "coordination and communication" and just

1 keep "multi-employer work sites" as recommended in the
2 summary that was sent out.

3 MR. HAWKINS: You know, backing up just a
4 second, Mr. Chairman. When you're talking about
5 hazard identification assessment, really what this is
6 telling you to do is to identify the hazards and then
7 assess the hazards.

8 So, if you add risk, it implies that it's
9 something separate, and it's not. This is telling you
10 to identify the hazards and then assess those hazards
11 that you just identified. If you throw the risk in
12 there, it's like you're talking about two different
13 things, but really you're just talking about one.
14 Identify the hazards, and assess those hazards that
15 you identified. Right? So, I don't know that we want
16 to --

17 MR. STAFFORD: Add risk.

18 MR. HAWKINS: Well, I'm thinking something
19 different. I think hazard and risk are synonyms in
20 this, you know. If you want to do a slash you could
21 do hazard/risk identification. I think that would
22 make more sense than making risk assessment a
23 different line on this chart.

24 MS. DePRATER: You'll have to change the
25 first bullet though. "Procedures are put in place to

1 continue to identify workplace hazards and evaluate
2 risks." So, they are talking about both, right?

3 Okay.

4 MR. HAWKINS: So, if you want to do
5 hazard/risk you could do that.

6 MR. STAFFORD: I think that's a good way to
7 handle it. Are you okay with that, Jerry?
8 "Hazard/risk assessment identification and
9 assessment?" Yeah, Palmer and then Steve. Sorry,
10 Steve.

11 MR. HICKMAN: Thank you. I just wonder if
12 what we're doing is unique to construction, and that's
13 why we're changing it; or are we sort of recommending
14 that this should have been the way it was in the
15 existing standard as well?

16 While that question floats out there, I'm
17 not sure that this draft document recommended -- I
18 don't see it explained that we reduce the title
19 coordination and communication.

20 I think those are important action words. I
21 would speak against removing those words. I thought
22 maybe someone used shorthand. I wasn't involved in
23 the draft document drafting, but I don't know. Was
24 the intent really to -- because construction is
25 different that we want to just call it multi-employer

1 work sites and get out the action words coordination
2 and communication?

3 That doesn't seem to be the intent from the
4 explanation that's written there. I don't see any
5 reason why the title was shortened, other than maybe
6 just for brevity in drafting the document. Maybe
7 there was an intent that you needed to take out those
8 important words, "coordination and communication."

9 MR. STAFFORD: No. I mean, my impression
10 and, Jerry, you could say, I just assumed that there
11 was other action items in other sections dealing with
12 coordination and communication, is why you were
13 suggesting that. But obviously it's important on how
14 you coordinate and communicate on multi-employer
15 sites, right.

16 MR. HICKMAN: And I'm okay whichever we go.
17 Just a recommendation and kind of to tie it up to the
18 recommendation that was set forward as well.

19 MS. QUINTERO: I guess Scott previously
20 mentioned that it was important for coordination.

21 MS. LAWLESS: "Management leadership still
22 remains critical, continuous communication should also
23 be explained out." That's what Scott said earlier.

24 MR. STAFFORD: Say that again what Scott
25 said earlier.

1 MS. LAWLESS: "The management leadership
2 still remains critical. Continuous communication
3 should also be explained out." You're talking about
4 coordination and communication in this bullet
5 statement.

6 MR. STAFFORD: I'm sorry. I don't know what
7 you're talking about. What bullet statement?

8 MR. CANNON: The gentleman who spoke -- made
9 the public comment from National Safety Council.

10 MS. LAWLESS: Wes Scott, that comment
11 earlier when he sat here at the table, and he said
12 that continuous communication is critical.

13 MS. DePRATER: He did.

14 MS. LAWLESS: So now that we're talking
15 about this bullet statement does that make a
16 difference to keep coordination and communication?

17 MR. STAFFORD: I think we decided we're
18 going to go ahead and keep it in. I mean, we said
19 that that would stay, right?

20 MR. HICKMAN: Yes.

21 MR. STAFFORD: I thought you were talking
22 about Scott Schneider. Sorry about that.

23 MR. HICKMAN: I thought she was.

24 MR. STAFFORD: Okay.

25 MR. HICKMAN: I think we should save our

1 energies for when we get into these sections, as
2 opposed to --

3 MR. STAFFORD: Right.

4 MR. SCHNEIDER: Better start saving because
5 we ain't saving.

6 MR. STAFFORD: What's that, Scott?

7 MR. SCHNEIDER: I said better start saving
8 because we ain't saving so far.

9 MR. STAFFORD: Okay, that's true.

10 MR. SCHNEIDER: We're spending a lot of
11 energy on words.

12 MR. STAFFORD: We are. Wayne, one shout-out
13 very quickly.

14 MR. CREASAP: On your hazard identification
15 and assessment and your hazard prevention and control,
16 we need to constructionize it when talking about a job
17 safety analysis or JHA, and under hazard prevention
18 and control you could actually conduct pre-task plans
19 instead of having all the other language that's there.
20 Just kind of cut down.

21 MS. DePRATER: Mr. Chairman.

22 MR. STAFFORD: Yes, Cindy.

23 MS. DePRATER: Cindy DePrater. And I'll
24 reserve judgment until we get into some of the detail
25 of this. But I'm going to recommend that if this

1 document, as we read through it and we change to try
2 to constructionize it. If we don't come up with a
3 document that's at least 30 to 40 percent different
4 than this one, and we can all go back and say that
5 this document could be used in construction as is, why
6 are we trying to constructionize this?

7 Because we do have a lot of small
8 contractors that are working in the industry. They go
9 into retail spaces. They go into construction sites.
10 They go into industrial sites. They are going
11 everywhere. They are the builders, and we use this a
12 lot when we're building our own processes and
13 procedures with small contractors.

14 If they can show us a program that's
15 equivalent to what we have, you know, whether it's
16 five pages or 10 pages, if it's still meets the intent
17 we don't try to redo it into a 40-page document or
18 make it specific to us. So, I'm going to say if we
19 don't come up with something that's at least 40
20 percent different, which is our guideline in the
21 construction industry typically for the way that we
22 work, we shouldn't spend time trying to just
23 constructionize this when it could be used throughout
24 all industries.

25 MR. STAFFORD: Okay, appreciate that. Well,

1 we'll see where we -- once we get through this
2 exercise we'll see what percentage of this document is
3 changed and constructionized it or not. We've got to
4 go through it to understand that.

5 MS. DePRATER: We do.

6 MR. STAFFORD: Any other questions or
7 comments? Yes, Mr. Hawkins.

8 MR. HAWKINS: I think it's actually -- I
9 have tremendous respect for Cindy, but I think it
10 might be worth doing.

11 MS. DePRATER: Absolutely.

12 MR. HAWKINS: Just so a guy in a pickup
13 truck going, "hell, they wrote this for industry," and
14 throw it out the window. It might be worth doing just
15 for that because we all understand that these concepts
16 apply to everybody, but you know how some people are
17 turned off. It's like --

18 MS. DePRATER: I know, and ideally --

19 MR. HAWKINS: And my last point is, if you
20 use terms like jobs, JSAs. Because everybody in
21 construction really does that in pre-task planning, is
22 a much bigger part of safety and health -- of having a
23 safe workplace in construction than it is in industry.
24 Because usually industry that's already been done, but
25 in construction you walk up and it's a new day and a

1 new location, and you're at a site you've never been
2 before, so I do think that incorporating those terms.
3 But I don't know that we've got, today -- we don't
4 have time hardly to do that.

5 MR. STAFFORD: No.

6 MS. DePRATER: Yeah.

7 MR. HAWKINS: Well, I'm assuming that the
8 Agency is going to work on that, so we should be
9 looking at big things like his point about, hey, OSHA,
10 be sure to incorporate terms like JSA, job hazard
11 analysis, job safety analysis, JSAs, JHAs, and pre-
12 task plan.

13 MS. DePRATER: Could you do --

14 MR. HAWKINS: I think all our
15 recommendations ought to be like that.

16 MR. STAFFORD: I agree, and I didn't say it
17 very well obviously at the beginning. I consider this
18 a front matter, and as we go through the meat of it,
19 the front and the back matter will change. We haven't
20 got to the meat of it yet. So when we go through and
21 talk about action items and do JSAs as an action item
22 for any size employer, then that would be something
23 that would go back in the intro and changing the front
24 matter once we change the content of the document.

25 MS. DePRATER: And I would agree with that.

1 I just think that, you know, with 90 percent of the
2 contractors being 20 or less; are you going to confuse
3 them with, "Which document do I use for this job?"
4 That's my only concern.

5 MR. STAFFORD: Okay, I appreciate that but
6 we need to get through it.

7 MS. DePRATER: It has to be that different.

8 MR. STAFFORD: Okay, so let's go through it.

9 All right, so we're done with introduction
10 then, so let's move on to management leadership.

11 I don't know what happened to the document
12 up on the television screen, but we all have it in
13 front of us. I don't know if everyone in the back has
14 a document or your screen is working back there. What
15 happened to ours?

16 MR. BONNEAU: Let's make sure. There are
17 handouts in the back if you don't have it. The screen
18 is just not working. Danezza needs another screen, a
19 computer screen to type.

20 MR. STAFFORD: Okay, so there are copies of
21 it.

22 MS. QUINTERO: Yes.

23 MR. BONNEAU: Does everybody have a copy?

24 MR. STAFFORD: Okay. So those of you on the
25 Committee that have read through it, management

1 leadership. This is the first section. And I'm not
2 going to go through it and read it. You know, I added
3 some additional potential action items to think about,
4 so let's go through this.

5 Action Item Number One: "Communicate your
6 commitment to safety and health program. A clear
7 written policy helps you communicate that safety and
8 health is a primary organizational value and is as
9 important as productivity, profitability, product or
10 service quality and customer satisfaction."

11 There's nothing wrong with that, in my mind.

12 "How to accomplish it." I said I wasn't
13 going to read it and here I am reading it.

14 (Laughter.)

15 "Establish a written policy signed by top
16 management describing the organization's commitment to
17 safety and health and pledging to establish and
18 maintain the safety and health program."

19 The second bullet: "Communicate the policy
20 to all workers and relevant stakeholders including, as
21 applicable, contractors, subcontractors, temporary
22 workers, labor unions, suppliers and vendors, other
23 tenants on multi-tenant building, visitors,
24 customers."

25 Is there any comment or any thought as to

1 why this particular action item should be different or
2 why it doesn't apply to construction? I see a lot of
3 head-nodding.

4 MR. HICKMAN: So, it was written with
5 construction in mind.

6 MR. STAFFORD: So everybody likes that
7 action item.

8 MS. DePRATER: Yes.

9 MR. STAFFORD: Action Item Number Two:
10 "Define program, goals and expectations. By
11 establishing specific goals and objectives management
12 sets expectations for workers and for the program
13 overall. The goals and objectives should focus on
14 specific actions that will improve workplace safety.

15 "How to accomplish it: Establish realistic,
16 attainable, and measurable goals that demonstrate
17 progress toward improving safety and health," sounds
18 fine to me. "Develop plans to achieve the goals by
19 assigning tasks and responsibilities to particular
20 individuals setting timeframes and determining
21 resource needs."

22 Sounds okay so far?

23 "Communicate the goals and plans to your
24 workers, as well as contractor, subcontractor, and
25 temporary staffing Agency workers." And that's Action

1 Item Number Two.

2 Any concerns? We're all good.

3 Action Item Number Three: "Allocate
4 resources. Management provides the resources needed
5 to implement the safety and health program, pursue
6 program goals, and address program deficiencies when
7 they are identified.

8 "How to accomplish it: Integrate safety and
9 health into planning and budgeting processes and align
10 budgets with program needs; estimate the resources
11 needed to establish and implement the program; allow
12 time and worker schedules for full participation in
13 the program; provide and direct resources (money and
14 staff time) to operate and maintain the program, meet
15 safety and health commitments, and pursue program
16 goals."

17 And the last bullet there is, "Make
18 arrangements to ensure that resources such as first
19 aid and medical treatment are available if a worker is
20 injured at work or suffers a work-related illness."

21 Yes, Don.

22 MR. PRATT: Mr. Chairman, Don Pratt. I just
23 don't see any -- I mean, obviously the last bullet
24 point I think is important. I just don't see a small
25 contractor doing this. I just -- I just don't.

1 So, again, I don't know how we're going to
2 use this document. We want them to use it, that's the
3 whole idea for developing it. But estimate the
4 resources needed to establish and implement program.
5 Just to implement the program. I don't know. This
6 whole allocate resources is very -- it's going to be
7 very strange to a small contractor. He's not even
8 going to know what it is.

9 MR. STAFFORD: Well.

10 MR. PRATT: Our industry -- the residential
11 industry is made up of probably 90 percent of the
12 builders out there are five or less employees. They
13 don't have this kind of sophistication. So, if we
14 want them to use something we've got to make it so
15 simple that it's going to be obvious. And this
16 requires a lot of work, number one, they're not
17 capable of doing, and they don't have the staff to do
18 it.

19 MR. STAFFORD: Okay, I appreciate that, Don.
20 Let's get the responses to that and we'll go Jeremy
21 and then I think Palmer had his hand up.

22 MR. BETHANCOURT: To some of the thoughts
23 regarding small employers. As I read this document a
24 lot of the comments that I provided were specifically
25 to, how was what I think of this as a small employer,

1 and so on this particular one it isn't even the action
2 items that I thought we needed to stress more.

3 Directly related to cost, here I made little
4 sticky notes, you know, somehow I would stress a lot
5 more at the beginning of the document. Many small
6 employers are aware of costs, focus on getting free
7 help from consultations. What else did I say here in
8 my -- way back? Consultation services might put them
9 at ease; might make them more willing to engage the
10 concepts within this document if they understood more
11 about the free consultation.

12 My own experience dealing with OSHA enabled
13 me as I started learning about safety and health as a
14 small employer was getting that consultations from
15 OSHA helped me to learn the importance of a document
16 like this. It's the chicken before the egg I suppose
17 concept, so that's what I thought would be important
18 as I read this particular part.

19 You see that on the notes sheet at the very
20 back. It's a paragraph. There's a paragraph that
21 says "Note" and it's really small type set. Maybe
22 need two glasses. Right, and at the end of that right
23 on this page it says on-site -- people look at it
24 really close, it's so small and just somehow put that
25 at the beginning, front-load it.

1 MR. HAWKINS: Actually I think you're
2 exactly right.

3 MR. BETHANCOURT: You've got to --

4 MR. HAWKINS: For it to make sense you
5 almost need to read the note first.

6 MS. DePRATER: You do.

7 MR. BETHANCOURT: Which says -- I mean --

8 MR. HAWKINS: This may be overwhelming to
9 you, right.

10 MR. BETHANCOURT: Right.

11 MR. HAWKINS: Budget.

12 MR. BETHANCOURT: If we wanted to read it,
13 tell them. "This is free."

14 MR. HAWKINS: Right.

15 MR. BETHANCOURT: "Let's help you with
16 this." I think that's a really important part to say,
17 to Bob's point, to my own experience. Let's help them
18 out. Don't know where to put that or how we might do
19 that but that's so -- and it's an afterthought, here
20 in this document.

21 MR. STAFFORD: Well, it could go under when
22 it says allocate resources before you get to what you
23 do.

24 MR. BETHANCOURT: Right.

25 MR. STAFFORD: That's what you're

1 suggesting, is that note needs to be the intro to the
2 section, right? Does that sound reasonable?

3 MR. BETHANCOURT: Something. Yeah, there
4 you go.

5 MR. STAFFORD: Is everyone okay with that?

6 MS. DePRATER: Yes.

7 MR. HAWKINS: It makes it make a lot more
8 sense.

9 MR. STAFFORD: Okay. Jeremy, you're good
10 for something.

11 MR. BETHANCOURT: I'm done for the day.

12 (Laughter.)

13 MR. STAFFORD: Okay, Action Item Four.

14 "Expect performance. Management leads the program
15 effort by establishing roles and responsibility,
16 setting a good example and providing an open
17 environment for communicating about safety and health.

18 "How to accomplish it. Define or
19 communicate responsibilities and authorities for
20 implementing and maintaining the program and hold
21 people accountable for performance; (2) ensure the top
22 leadership and local management share the same safety
23 and health performance goals and priorities; (3) set
24 an example for workers by following the same safety
25 procedures you expect them to follow; and (4)

1 establish ways for management and all workers to
2 communicate freely and often about safety and health
3 issues, without fear of retaliation."

4 Any issues? Any issues related to Action
5 Item Number Four?

6 MS. DePRATER: Is there opportunity to talk
7 about the competent person here? And I'm just
8 throwing it out as a -- the competent person -- only
9 because there are 38 places in the standards that do
10 require competent persons, so I'm thinking that under
11 the first bullet, "how to accomplish it." When you
12 talk about defining and communicate responsibility
13 such as, you know, the competent person, whoever else.
14 It could be the safety manager on the job, you know, a
15 safety representative on the job, something like that.

16 MR. CANNON: And that would be in the
17 allocate resources?

18 MS. DePRATER: Yeah, under the define and
19 communicate responsibilities.

20 MR. RANK: Mr. Chairman.

21 MR. STAFFORD: Hold on one second, Steve.

22 MR. RANK: Yeah.

23 MR. STAFFORD: So you're suggesting that we
24 do something on competent person under Action Item
25 Four?

1 MS. DePRATER: Just mention it only because,
2 again, it goes to specifically to Jeremy's point,
3 pointing out a couple of things that they can do along
4 the way to help themselves because if you say
5 communicate responsibilities to who.

6 MR. BETHANCOURT: And that's something a lot
7 of folks in construction know, competent persons.

8 MS. DePRATER: Correct, they know that
9 terminology.

10 MR. BETHANCOURT: We know that term a lot.
11 We hear that a lot.

12 MR. STAFFORD: And so what do you want to
13 say and where, Cindy?

14 MS. DePRATER: I would say, "define and
15 communicate responsibilities such as competent
16 person, comma" --

17 MR. RANK: Qualified person.

18 MS. DePRATER: -- qualified person, safety
19 manager, safety representative?

20 Just use the two, "competent person and
21 qualified person."

22 MR. RANK: Yeah.

23 MS. DePRATER: And their authorities for
24 implementing and maintaining the program and hold
25 people accountable for performance.

1 MR. STAFFORD: Define and communicate
2 responsibilities to competent and qualified --

3 MS. DePRATER: Such as -- "Define and
4 communicate responsibilities such as: competent
5 person and qualified person, and their authorities,"
6 enter the word "their," "for implementing and
7 maintaining the program and hold people accountable
8 for performance."

9 MR. BETHANCOURT: I would almost say "but
10 not limited to."

11 MS. DePRATER: But not limited to.

12 MR. BETHANCOURT: I would --

13 MS. DePRATER: Okay, that's fine.

14 MR. BETHANCOURT: I would almost say that.

15 MR. PRATT: Such as.

16 MR. BETHANCOURT: Such as.

17 MR. PRATT: Okay, we're wordsmithing.

18 MS. DePRATER: Well, I'm trying to add some
19 construction type phrases here that give them better
20 definition.

21 MR. BETHANCOURT: Because they're going to -
22 - it's not a small part to say who.

23 MR. PRATT Oh, I agree, I agree.

24 MR. STAFFORD: Okay. Steve Rank.

25 MR. RANK: I think just a quick reference to

1 competent and qualified people would be good to pepper
2 this document whenever it's appropriate. Because
3 they're going to be asked, you know, they need to know
4 who they designate, a competent person with authority,
5 or a qualified person that was just trained. So, this
6 is something that they really need to know.

7 MS. DePRATER: Agreed.

8 MR. HAWKINS: And you can really flesh it
9 out when you get to education --

10 MS. DePRATER: Right.

11 MR. HAWKINS: -- and training.

12 MS. DePRATER: Right.

13 MR. RANK: Yeah, I agree.

14 MR. STAFFORD: Any other questions or
15 comments? So, we're essentially, with a little bit of
16 wordsmithing, we're keeping the same action items --

17 MS. DePRATER: Yes.

18 MR. STAFFORD: -- for construction that are
19 in the main document.

20 MS. DePRATER: Yes.

21 MR. PRATT: Don Pratt. I'm going to say it
22 and we don't have to spend time on it, I just want it
23 on the record.

24 Holding people accountable in small
25 contracting companies is going to be very, very

1 difficult for someone to do. They're lucky to get
2 workers right now, and to try to hold somebody
3 accountable, how do you hold them accountable? Well,
4 you can deduct money from their wages. I don't think
5 we're going to do that. You can fire them. Well,
6 right now we can't find enough workers.

7 This is, like, an ideal document for a
8 company that really has got their act together, and
9 I'm concerned that -- thank you, thank you -- I'm
10 concerned that we're using terminology in here that
11 they're going to look at and they're going to just
12 laugh about it.

13 so, I mean, I'm not saying take it out. I'm
14 just saying I want everybody aware of the fact that
15 that's going to be an issue to have people to use this
16 document. I've said my piece.

17 MR. STAFFORD: Okay. No, I appreciate that.
18 So, for you to understand we're referencing competent
19 person as a --

20 MR. PRATT: Accountable.

21 MR. STAFFORD: -- hardship for a small
22 employer.

23 MR. PRATT: Yes, how do you hold -- how do
24 you hold somebody in a small contracting company
25 responsible for those actions if they don't do it?

1 Are you going to fire them? Because that's really all
2 you could do.

3 MR. STAFFORD: Well, in this case we're
4 talking about leadership and that's the management,
5 right?

6 MR. PRATT: I understand.

7 MR. STAFFORD: Okay, it's not the guy at the
8 business end of the shovel. It's his boss that's the
9 leader, right?

10 MR. PRATT: Yes. Okay, enough said.

11 MR. STAFFORD: Okay. So, we're staying with
12 the same four. I suggested a few others in my email
13 but we don't need those. We'll move on, so we have
14 the same four.

15 Next section is worker participation.
16 Anybody have any comments on the intro section for the
17 worker participation?

18 MR. CANNON: I just have -- Kevin Cannon,
19 Employer Rep. Again, it's better to -- help me better
20 understand if you look at, as we start to get into the
21 bullet point as far as worker participation, and it
22 states, "That means that all workers, including
23 contractors, subcontractors, temporary staffing,
24 Agency workers," in the first bullet have
25 opportunities to participate through our program

1 design and implementation.

2 I guess, you know, what exactly does that
3 mean as far as --

4 MS. DePRATER: I think you could actually
5 end that, have opportunities to participate period,
6 and take out "throughout program design and
7 implementation."

8 MR. CANNON: Design and implementation.

9 MR. HICKMAN: I like that.

10 MR. STAFFORD: Yeah, Palmer.

11 MR. HICKMAN: Thank you.

12 MR. CANNON: So, again, I'm trying to frame
13 this in the context of, this document is okay as it
14 exists out there for general industry and maritime and
15 all the other industries, but for some reason for
16 construction we don't want to have this input -- we
17 don't want to have this clarity design and
18 implementation. I have to see a reason why that's
19 coming out.

20 MR. STAFFORD: No, I think in this
21 particular case I actually agree with it, and it may
22 be different, Palmer, but I think the reality of it
23 for host employers that are bringing temporary workers
24 in they don't obviously engage those folks in the
25 design of the job site, which is what that means and

1 the practicality of it, in my mind. I mean that's
2 where --

3 MS. DePRATER: This actually might be the
4 place to put your job hazard analysis and pre-task
5 plan. Have opportunities to participate in such
6 activities as job hazard analysis, pre-task plans,
7 daily huddles. That's their participation.

8 MR. HICKMAN: It's probably going to flesh
9 itself out in these action items, you know, "how do I
10 accomplish this," but, yes, Cindy's got a good point.

11 MR. CANNON: Yes.

12 MR. HICKMAN: I just wanted to ask -- point
13 out one thing. Under the note, Mr. Chairman, it talks
14 about the effects of mandatory drug testing. But in
15 our state our workers' compensation actually gives
16 employers a discount on their premium by law if they
17 have mandatory drug testing policy. So this is kind
18 of a political thing right here that there are two
19 sides to that. I don't know that it has to be in a
20 document like this. That doesn't really seem
21 appropriate to be here to me here. I mean.

22 MR. CANNON: Yeah, and I have that
23 highlighted as well. I was going to ask that question
24 next.

25 MR. STAFFORD: So, you're suggesting then,

1 Steve, that we take the note out.

2 MR. CANNON: Make sure we clarify which
3 note.

4 MR. HAWKINS: The point about the drug
5 testing. Programs can have these. You don't hear
6 much debate about that. There's still a lot of debate
7 about whether companies should have mandatory drug
8 testing. And, in our state they're offered a premium
9 and we have a pretty large participation in the drug-
10 free workplace initiative that our state has, and yet
11 this is a document that appears to indicate that
12 somehow that's not a good idea. I think that
13 something the Agency ought to really about before they
14 put it in a guideline like this.

15 MR. STAFFORD: Okay. Any other -- wait a
16 minute, Scott. Any other questions or comments from
17 the Committee on that? I think that's right.

18 MR. CANNON: What did we decide on that
19 first comment?

20 MR. STAFFORD: So, I think going back to
21 have opportunities to participate throughout the
22 program period was the recommendation I heard.

23 MR. CANNON: Yes, okay.

24 MR. STAFFORD: For the first bullet.

25 MR. CANNON: Yes.

1 MR. STAFFORD: Danezza, take out design and
2 implementation, and then I think we will get, Cindy,
3 into the JSAs and others as we get into the action
4 items that will come.

5 The second bullet, "Have access to
6 information they need to participate effectively in
7 the program." Third bullet, "Are encouraged to
8 participate in the program and feel comfortable
9 reporting safety and health concerns." That's fine.

10 Now, Scott, go ahead real quick.

11 MR. SCHNEIDER: Well, I just want to point
12 out that the section on drug testing only refers to
13 drug testing after an accident, not drug-free workers'
14 programs --

15 MR. HAWKINS: But that's a component of
16 Tennessee's drug-free workplace that you're required
17 to do. You're required to do it.

18 MR. SCHNEIDER: I know. Okay.

19 MR. HAWKINS: It's an element of the drug-
20 free workplace program that you participate in.

21 MR. STAFFORD: All right. We've already
22 gone -- we've already decided, right? We're taking
23 that out.

24 MR. HAWKINS: Thank you.

25 MR. STAFFORD: Okay.

1 MS. QUINTERO: So, on the note that Jim,
2 point systems that penalize workers for reporting, all
3 that is going to be taken out.

4 MS. DePRATER: Point systems, yes.

5 MR. HAWKINS: That's what we think.

6 MS. QUINTERO: From there, all the way --
7 oh, the whole note?

8 MR. STAFFORD: Just the "as can mandatory
9 drug testing, not the reporting.

10 MS. QUINTERO: Oh, here, an adverse effect.

11 (Simultaneous conversation.)

12 MR. STAFFORD: Okay.

13 MS. DePRATER: Right, it's just the last
14 clause of the sentence that starts with systems.

15 MS. QUINTERO: Okay.

16 MR. STAFFORD: Go ahead, Rodd.

17 MR. WEBER: Pete, were you going to -- on
18 your handout that you had, were you going to go back
19 and reference that later and look and see if there's
20 anything --

21 (Overlapping conversation.)

22 MR. STAFFORD: I think so, that would be a
23 good connection site.

24 MR. WEBER: Some of these bulleted items
25 that you put as accomplished are very construction-

1 specific. It would be great additions to this
2 document.

3 MR. STAFFORD: Well, I asked -- I offered it
4 up and we've gone through the first management
5 leadership and the committee decided not to use any of
6 those, so that's the way I'm going. I mean, we.

7 MR. STAFFORD: Steve and then Palmer, yes.

8 MR. RANK: I was in hopes that we could
9 continue to do what we're doing, as well as I was
10 going to recommend that we submit this to the Agency
11 for consideration for inclusion when they prepared
12 this document. I was thinking we were doing one or
13 the other. There's great stuff in this. I think the
14 Committee should offer this --

15 MS. DePRATER: Yes.

16 MR. RANK: -- to OSHA officially in a part
17 of our -- you know, in the last day when we kind of
18 get through, as well as work on what we're doing.

19 MR. PRATT: And then correlate it with this
20 packet.

21 MR. STAFFORD: Okay. All right. You guys
22 are hurting my feelings not using the stuff I sent.

23 MS. DePRATER: You told us --

24 (Overlapping conversation.)

25 MS. DePRATER: But if we submit this, in

1 its entirety, will it be considered?

2 (Overlapping conversation.)

3 MR. STAFFORD: All right, we'll match them
4 up, okay, at the end of the day. Okay.

5 MS. DePRATER: Do we need a motion on that?

6 MR. STAFFORD: Not yet. Okay.

7 MR. HAWKINS: Action Item One.

8 MR. STAFFORD: Action Item One, under worker
9 participation. I think we got through the intro part.
10 "Encourage workers to report safety and health
11 concerns. Workers are often in the best position to
12 identify safety and health concerns and program
13 deficiencies such as emerging workplace hazards on
14 safe conditions, unsafe conditions, close calls/near
15 misses and actual incidents by encouraging reporting
16 and following up promptly on all reports. Employers
17 can address issues before someone gets hurt or becomes
18 ill.

19 "How to accomplish it. Establish a process
20 for workers to report injuries, illnesses, close
21 calls/near misses and other safety and health
22 concerns; respond to reports promptly. Reporting
23 processes may have an anonymous component to reduce
24 any fear of reprisal."

25 Bullet two: "Empower all workers to

1 temporarily suspend or shut down any work actively or
2 operation they feel is unsafe."

3 Next bullet: "Involve workers in finding
4 solutions to reported issues."

5 And the final bullet: "Emphasize that
6 management will use reported information only to
7 improve workplace safety and health, and that no
8 worker will experience retaliation for bringing such
9 information to management's attention."

10 Any questions or concerns, comments on that
11 action item? Jeremy.

12 MR. BETHANCOURT: Mr. Chairman, the notes
13 that I have written here on the action item talks
14 about empowering workers to temporarily suspend or
15 shutdown any work activities or operation.

16 The notes that I put when I was reading
17 through this is, and I'll just read what I wrote,
18 this is where we could provide some additional
19 guidance. This is a difficult obstacle to deal with
20 in the residential industry as well as any light
21 commercial industry, and it's best, definitely best
22 when the GC is the one that sets the stage.

23 If the GC starts off by encouraging the
24 activity with respect to a schedule conflict then the
25 workers tend to be more willing to get involved. If

1 the GC is silent regarding safety taking precedence
2 over productivity, this is when things may not be
3 done.

4 And so I think what we might be able to
5 discuss this as a group is, is there a way to provide
6 a recommendation in this document that helps the
7 employer trying to use this document understand how
8 they might engage with the controlling or host
9 employer if that's who happens to be using this
10 document.

11 And since we're talking about two guys in a
12 pickup truck who have decided they want to use this
13 document how might we best -- and this is a question
14 that I thought the group might be able to chew up or
15 not, if they decide not to on that particular bullet
16 item. Because people are going to be afraid to think
17 or not even know that they can stop work. How do we
18 get a company to understand how they can instill that
19 into a worker?

20 And that's what I had to say about that.

21 (Laughter.)

22 MR. STAFFORD: Any questions or comments to
23 that?

24 MR. BETHANCOURT: I wrote down those
25 thoughts.

1 MR. STAFFORD: I don't really know what to
2 say to that, Jeremy. I mean, I -- I mean, I think,
3 you know, to empower workers so that they understand
4 that they can report hazards or stop work without
5 being discriminated against is what we're talking
6 about when we talk about an organizational safety
7 culture or job site safety climate, right.

8 So, I'm not sure how you -- what would you
9 say in a guideline to make management be sure that --
10 other than what's here on how you need to empower your
11 workers so that they feel like, that they can stop the
12 job without getting fired.

13 MR. BETHANCOURT: That was my question. Do
14 we need to say more, or is this clear enough to
15 everybody? That was the comment that I wrote here,
16 because the next, the last bullet point kind of
17 addresses that, right? The last bullet point
18 emphasizes that, and I guess that was my question to
19 the Committee even, is just, have we said enough? Did
20 we say enough that everybody knows that it is
21 important that an employee be able to do that?

22 If it is and everybody else's opinion thinks
23 so, well then --

24 MR. STAFFORD: I'm going to open it up, I
25 mean, to what the Committee thinks.

1 MR. PRATT: I don't think it's necessary.

2 MR. STAFFORD: Pardon me?

3 MR. PRATT: I don't think that's necessary.

4 MR. STAFFORD: I think it says enough,
5 personally. I don't know what else you would need to
6 say. In the end it just becomes words after awhile,
7 right?

8 MR. BETHANCOURT: I'm not saying it is or
9 isn't enough. I'm just saying, I wanted to make sure
10 that we did -- I guess. I don't know, establish.

11 MR. STAFFORD: I'm going to ask the
12 Committee any thoughts on it, do you think this is
13 enough.

14 MR. CANNON: Everyone thinks it's --

15 MS. DePRATER: It probably is.

16 MR. STAFFORD: Okay.

17 MS. DePRATER: It probably is.

18 MR. PRATT: Sorry, Jeremy.

19 MR. BETHANCOURT: No, no, no apologizes. It
20 was truly -- I just wanted to put it out there, so we
21 did make sure we thought it was good enough.

22 MR. STAFFORD: Okay. So --

23 MS. DePRATER: I think it actually belongs
24 in a different place.

25 MR. STAFFORD: We need one conversation.

1 MS. DePRATER: I think it belongs in a
2 different place.

3 MR. STAFFORD: What belongs in a different
4 place?

5 MS. DePRATER: This one bullet. I think it
6 belongs more in leadership, not worker -- I mean, it's
7 important in worker participation, but this is really
8 more of a statement that you should be empowering all
9 of your workers through management. Because if you
10 set that tone, then your workers will feel more
11 empowered. But it has to be set at the leadership
12 level for it to be effective, and we haven't said that
13 in the management leadership portion, I don't believe.

14 MR. HAWKINS: All these sections is for
15 management.

16 MR. STAFFORD: It's all management.

17 MS. DePRATER: Sure.

18 MR. STAFFORD: There's a lot of overlap. I
19 mean, we could have one section with everything in it.

20 MS. DePRATER: Okay. Okay, fine. Fine.

21 MR. STAFFORD: Yes, Palmer.

22 MR. HICKMAN: Thank you, Mr. Chairman. When
23 I read this worker participation this is not really
24 written so the worker can read it and understand what
25 their rates are. This is management's --

1 MS. DePRATER: Right.

2 MR. HICKMAN: So, are you saying that by
3 encouraging workers to participate, I would say that
4 we maybe if we put it somewhere it could come in,
5 Action Item Two, and bullet point three, "encourage
6 workers to make suggestions about safety and health,
7 including when to stop work," perhaps something along
8 those lines.

9 I mean, we're really talking about things
10 that are almost legitimate defense. The things you
11 had to do to not get a citation, that you would have
12 to remove your workers from the hazard; you know just
13 -- but to that point I think it could be here. I
14 don't think this is really written for the worker to
15 read.

16 It's where it's a conversation that the
17 manager has to have in mind to why it makes sense to
18 involve workers.

19 MS. DePRATER: Yeah.

20 MR. HICKMAN: That's all I have to say, Mr.
21 Chairman. Thank you.

22 MR. STAFFORD: That's Palmer. Steve.

23 MR. RANK: Mr. Chairman, I'm looking at the
24 four bullet points on the second handout. I know that
25 we're not supposed to be working off that one, but

1 this really helps to soften it a bit, I believe. And
2 there's a lot of good stuff in these under worker
3 participation under the four bullet points, and I
4 think it helps soften it, okay, after hearing the
5 other questions and concerns.

6 MR. HAWKINS: We're going to move at some
7 point to be included in the record for this meeting
8 and send it to the Agency.

9 MR. RANK: Yeah, I just think that does
10 help. It softens it and makes it more readable.

11 MR. STAFFORD: So at the end of the day,
12 Steve, and I appreciate that. So, if we made such a
13 motion, and we're looking at worker participation, and
14 we have four bullets now, and then we're going to move
15 to add four more, if we're comfortable and the Agency
16 is comfortable with eight action items.

17 MR. BETHANCOURT: Are we restricted on the
18 number of items, or action items?

19 MR. RANK: I'd just say replace the Agency's
20 bullet with the one on the handout.

21 MS. DePRATER: One, two, three, four, five,
22 six, seven, eight, nine right there. I think we
23 should add it.

24 MR. STAFFORD: Okay. No, I'm just -- we've
25 never gotten any kind of --

1 MR. HICKMAN: Or we could delete some of
2 those from this draft out, because that makes it more
3 universal acceptable to both management and the
4 workers that are reading the same document.

5 MR. STAFFORD: Okay. Yes, Eric.

6 MR. KAMPERT: So, I think the Agency would
7 benefit through -- if we're going to just include this
8 at the end I'd like to have some discussion. The
9 Agency would like to have some discussion on if all
10 these points are valid, which ones to include, a
11 discussion as we go.

12 I mean, we can still include the whole
13 document but maybe the specifics.

14 MR. STAFFORD: Okay. Well, then maybe as we
15 go through the exercise --

16 MR. HICKMAN: Maybe we could take this up
17 when we finish this.

18 MR. STAFFORD: Let's go through this and
19 we'll go back and take that up. And you know, this
20 is --

21 And I'm going to call on you in just a
22 minute, Wes.

23 I mean, some of these action items on this
24 document were developed through with Scott Schneider,
25 who started this process with the NORA Sector Council

1 taking our work on the safety climate worksheets and
2 trying to make it applicable to smaller employees.
3 So, these are lots of questions that have been shared
4 coming through the sector council, so a lot of folks
5 have taken a look at this for whatever that's worth.

6 Yes, Palmer.

7 MR. HICKMAN: Oh, well, I might have
8 forgotten what I was talking about, what I wanted to
9 speak to, after that. Mention. I thought you were
10 going to call Wes next so I kind of --

11 MR. STAFFORD: Well, you being the
12 distinguished Committee members, before the peanut
13 gallery, at the back, ok, Wes.

14 MR. HICKMAN: Well, what I do want to say I
15 don't really want to soften this. Quite frankly, I
16 would say construction is where this needs to be
17 brought to more attention, so I don't think we really
18 have to -- maybe I misunderstood what "soften this"
19 means -- that we have to make it more palatable to
20 construction employers. They may need to hear this
21 message more, if not at least the same as other
22 employers.

23 MR. STAFFORD: Okay. No, I appreciate that.
24 Yeah, Kevin.

25 MR. CANNON: And I'd say I took Steve's

1 comment to mean that soften means more understandable,
2 more relatable to the --

3 MR. STAFFORD: Yes

4 MR. CANNON: Not softening, and taking
5 things away, but.

6 MR. RANK: Yeah, I just, it just reads --
7 some of the stuff there they wanted to use terminology
8 like JSA and that. I like that. It makes it more
9 construction-related, too.

10 MR. STAFFORD: Go, Wes.

11 MR. SCOTT: I'm just going to make -- Wes
12 with the National Security Council.

13 I was just going to make a comment based on
14 the action items that you have here, that you've
15 listed in the handout. If we're going to take a
16 document, which is universally acceptable with the
17 general industry and maritime OSHA has headed this to
18 the public to basically receive comments based on
19 that, and we're going to get an updated version of
20 these guidelines at some point in time.

21 So, to address the construction industry
22 issues that you've identified here in the bullet
23 points you've added to each one of these sections, to
24 make it a construction document you basically need to
25 add each one of these.

1 MR. STAFFORD: Right.

2 MR. SCOTT: As a construction action item
3 at the end of each section. Because that's one of the
4 ways construction is going to be able to read this
5 document, see and understanding from the JSAs, from
6 the, you know, written policy, everything that's here.
7 That's going to be how you add to this initial
8 document, to make this specific for construction.

9 Going through trying to change its words and
10 phrases and, you know, stuff here, I do agree with
11 some places it says workplace should be construction
12 sites. But from the general, looking at the general
13 side, if you were to add the specific items that we're
14 talking about here that you have listed as an action
15 item for construction in each one of the sections
16 that's listed, I think you can accomplish the tasks
17 that you've listed.

18 MR. STAFFORD: All right, I think that's
19 what we're going to go back and do at the end of the
20 day. I believe it still needs deciding. I appreciate
21 your comments, Wes.

22 Anything else on this?

23 MS. DePRATER: Which one are we on, talking
24 about Action Item One?

25 MR. STAFFORD: We're moving on to Action

1 Item Two, in worker participation.

2 Look, this is as grueling as I thought it
3 was going to be. If you all have any suggestions on
4 how we get through this, I'm open. I mean, I'm not
5 going to, you know, sit up here and, you know, read a
6 40-page document to you unless I have to.

7 You know, OSHA has asked us to develop
8 something specific for construction. That's what
9 we're attempting to do. I can see that there's a lot
10 of, of numbness understanding or, you know, questions
11 about why we're doing this, or not doing this, and
12 what's different about construction versus other
13 industries. And we have a charge here, and that is to
14 develop something that works for our industry, and
15 that's what we're trying to do.

16 But I'm very open to doing that in a way
17 that the Committee feels like it's most productive and
18 efficient way to do it. And since we haven't sat
19 around and read through the document together and
20 shared what we thought about it up-front until we're
21 sitting here in this public forum we haven't had that
22 opportunity.

23 And I am not inclined to sit here and go
24 back and forth about why we're doing this and why
25 construction is different. We already know why

1 construction is doing. Even if we didn't think that
2 construction was different the Agency has asked us to
3 do this.

4 So, if you have a better suggestion on how
5 we go through this. I mean, my thought was, and gets
6 to Wes's comments, that this Committee would say
7 point-blank, "Action item in section four doesn't
8 work for construction, and we need to kick that out."
9 So far that hasn't happened. What's happened is
10 everything works for construction. We just have to
11 add more bullets to it to make it applicable.

12 And if that's the case, if you all have read
13 this document and there's not one action item that you
14 don't think is appropriate, then let's not go through
15 the exercise.

16 I'm going to back up and say, of these eight
17 sections is there any action item in here that you
18 think should not be included for the construction
19 industry? Anyone that's read through it? This is not
20 something that's so far off that, you know, that we
21 just don't need in construction?

22 Because, I'm only getting to this point
23 because, for me to sit here and read each action item,
24 and for all of you to nod your head and say, "yes,
25 that's good," or "let's change this word or that

1 word," when what we really want to do is get at some
2 action items that we think would be more appropriate
3 to construction then we can cut to the chase and go
4 through each section and say what action items we
5 think would help the construction industry, or are
6 more applicable to the construction industry.

7 Steve and then Palmer.

8 MR. RANK: Mr. Chairman, if we're cutting to
9 the chase I would -- I really like the supplemental
10 draft, because it's got, peppered with construction
11 and construction-related terms throughout the
12 document. So, that will be the last time I recommend
13 that, but I really like this because constructionizes
14 this document. Okay, that's all I'm saying.

15 MR. STAFFORD: Thank you. Palmer.

16 MR. HICKMAN: Thank you, Mr. Chairman.
17 Well, I would say that the fact that OSHA has asked
18 that this Committee meet to talk about this issue, the
19 fact that you spent considerable time, what you
20 considered some important differences, maybe OSHA --
21 can they share with us what the significant public
22 comment they have, that warranted this?

23 I mean, apparently it's justified or we
24 wouldn't be here for a day-and-a-half meeting. I
25 think clearly from what you've put together, you

1 certainly as the Chairman of this Committee feel there
2 is significant differences. I think that speaks
3 volumes.

4 I heard that we -- Eric has an exhibit to
5 OSHA to consider, but can OSHA share with us the, I
6 guess, significant comments they got? I mean, there
7 was a lot of comments about a lot of things I'm
8 guessing. I remember seeing comments about the drug
9 policy being in there; did not have post-incident drug
10 policy, and I'm sure people commented on that.

11 So, what was -- can you just capture maybe,
12 Eric, the essence of what got us here as ACCSH
13 committee to consider a separate document for
14 construction? I'm thinking it wasn't just, "Oh, by
15 the way, construction's different enough. Maybe we
16 should think about it." There had to be, I think,
17 convincing evidence.

18 MR. KAMPERT: Right. So, through the public
19 comment there was several, and I have several of them
20 in front of me here, that talked about just the need
21 -- six, eight, you went through a little bit more,
22 Pete, through the docket, there was just several
23 commenters saying that construction needs its own
24 guidelines, because of the different nature of
25 construction.

1 MR. STAFFORD: What I know about it, right.
2 There were, like, 22 documents submitted to the docket
3 that were construction-specific, thereabouts.

4 And me going through them, and I'm sure some
5 of the Committee went through the documents as well.
6 What I tried to say at the beginning is that we had a
7 lot of organizations that would suggest that this is
8 an opportunity for OSHA and our industry to develop
9 something specific to construction. And we should use
10 this opportunity to do even more than what these
11 guidelines say.

12 For an example, and I thought I said it at
13 the beginning but maybe I did not, this is a perfect
14 opportunity for you folks to be talking more about how
15 you can incorporate prevention through design, to get
16 the industry to think about prevention through design.
17 This is a perfect opportunity for OSHA and the
18 Advisory Committee to talk about how this industry can
19 look more at health hazards, not just safety hazards.

20 This is a perfect opportunity to figure out
21 how the industry can engage the owner/user community
22 in the process even though OSHA doesn't regulate them.
23 Anyone that's worked in construction knows that the
24 buyer of the services are serious about construction
25 safety and health. Guess what, the general contractor

1 gets pretty serious about it too, right? That's a
2 very powerful message. Whether we could use this
3 document to do those kinds of things, is what's in
4 question.

5 The other end of the spectrum is, we've had
6 comments from many associations and organizations
7 saying these guidelines do not work for the
8 construction industry. They are way over the head of
9 our industry. Our mom and pop contractors don't
10 understand this. They don't want to understand this.
11 There's other things out there that are easy and
12 simple, and this just doesn't hit the mark.

13 So, we're walking into this Committee
14 meeting with two different views from the industry.
15 Some, "This is really a good start. More needs to be
16 done." And others saying, "This is a really bad
17 start, and it doesn't hit the mark."

18 So, we are stuck with the process of how we
19 can in my mind reconcile it to either, you know,
20 develop some action items that would get to those
21 contractors that -- there is Turner, a stellar
22 construction employer that does in my mind everything
23 right when it comes to safety and health. Is there an
24 OSHA guideline that would be helpful to Turner as an
25 excellent employer, that would help you get more into

1 prevention through design? Do you need that as a
2 stellar employer?

3 MS. DePRATER: No, we do not, but I will
4 tell you that that culture assessment that CPWR put
5 together, we utilize that. Because it does get to a
6 lot of the elements that are in here, already.

7 MR. STAFFORD: Right, and there's a lot of
8 employer groups, Cindy, in this room, I was just
9 talking to our friend from -- contractor from Vegas
10 about it, and they're using it as well. When I first
11 looked at this I thought, geeze, we already have the
12 document. It's just a rating tool.

13 You can go through our safety plan and
14 assessment tool that has the same eight, instead of
15 leader -- management leadership, it's management
16 commitment.

17 They're basically the same things, just a
18 little different words. And that's why when I put out
19 to the Committee when we were thinking about this. If
20 we had seven action items under management leadership
21 maybe we could somehow say this action item applies to
22 large, this one to medium, this one to small or all of
23 the above and have some kind of rating tool. We're
24 doing it now, we're not doing it or we could do it,
25 you know, and that's the way I was thinking about it.

1 Here's my email to you folks about that,
2 wherever the hell it is. I don't have it in front of
3 me. But it was to kind of -- this thing, to come up
4 with a rating tool that comes right off of our sketch.
5 But I think, and I'm going to ask the lawyers to help
6 me here, that that's very different. It doesn't -- it
7 doesn't feel and look and smell like this document.

8 And if we get too far away from this
9 document, I think we're going to have major issues
10 getting a construction document out as part of -- is
11 what I'm groping with as the Chair to try to figure
12 out how to get us through this next day and a half.

13 So, hold on. We're going to start with
14 Palmer because he's very talkative today. Then we're
15 going to go back to Steve, and then go over to Kevin.

16 MR. HICKMAN: I just want to say thank you,
17 Mr. Chairman. You answered my question. You asked us
18 the question, "Do we need to keep going?" I think
19 you've answered, I know she's answered, yes, we do
20 need to keep going. We've had enough public input
21 that say we need a construction document, and there's
22 plenty of evidence that we do. So, thank you for
23 that. I think we just needed to help you -- the
24 reinforcement that we needed to keep pushing forward.
25 Thank you.

1 MR. STAFFORD: Okay, Palmer. Steve.

2 MR. RANK: Mr. Chairman, I believe the
3 supplemental document that you put up has not strayed
4 away too far from --

5 MS. DePRATER: It doesn't.

6 MR. RANK: -- from a document -- from the
7 Agency's document, and I read that once again last
8 week, that we need to take it.

9 MR. STAFFORD: We're going to -- Steve, you
10 have to make a motion on that to get --

11 MR. RANK: A strong looking at.

12 MR. STAFFORD: Yes, Kevin.

13 MR. CANNON: I guess my question is, I
14 guess, for Eric, and I heard there were some other
15 folks from standards and guidance in here, but do we
16 know what these future tools look like that are
17 identified in the back in Appendix A? If you look at
18 Appendix A it says Safety and Health Program
19 Management Implementation Checklist, Safety and Health
20 Program Management Self-Evaluation, Safety and Health
21 Program Management Audit Tool. Do we know what those
22 look like?

23 MR. STAFFORD: I have to let OSHA -- this is
24 my opportunity, like I said to Mr. Mott earlier, I'm
25 thinking because the guideline hasn't been updated in

1 26 years, in my mind this becomes almost like as much
2 as a guideline a resource guide. Because I would love
3 to load up these appendices with all of the available
4 resources. CPWR is what you were just talking about,
5 and that's our safety climbing worksheet, our safety
6 climbing assessment tool, the home builders guide to
7 operation. There's a lot of really good stuff

8 MR. CANNON: Yeah, and that's, I guess, my
9 point. You know, there's a lot like this, could be
10 used, what you put together.

11 MR. STAFFORD: Yeah, something I would love
12 to put it in.

13 MR. CANNON: Because it sounds like they're
14 thinking about it, but it's just not something that
15 was --

16 MR. STAFFORD: No, I think this is an
17 opportunity of a table of contents for resources that
18 are available to the industry to put in the back, OSHA
19 stuff and other stuff, yeah.

20 All right, so where are we?

21 MR. PRATT: We need direction.

22 MR. STAFFORD: We're going to go through --
23 we're going to get through worker participation.

24 MR. PRATT: Mr. Chairman, are we -- Don
25 Pratt. Maybe what we should be doing is going through

1 your document first, and maybe last.

2 MR. STAFFORD: Well, that's what I was
3 trying to get at. If you all have read this, and
4 there is nothing in here, any action items that you
5 don't think are not --

6 MR. PRATT: I think that's what we need to
7 do.

8 MS. DePRATER: There's word tweaking, but
9 that's it.

10 MR. STAFFORD: Okay. There's not -- I
11 wanted to give the Committee an opportunity, and I
12 think OSHA did too. If there was action items that we
13 thought were totally out of the ballpark for
14 construction, that the exercise was to go through
15 worker participation, and if there is five action
16 items, say, "these two are good, these two aren't so
17 good, and here's three that we think would be better."

18 MR. HAWKINS: Mr. Chairman.

19 MR. STAFFORD: Yes, Steve.

20 MR. HAWKINS: Perhaps we should go through
21 these side-by-side then. Read what OSHA has, read
22 what this document has, and then discuss it.

23 MR. STAFFORD: Well, I was -- all right, so
24 I thought we were going to do that and we went through
25 Section 1 in this other document didn't come out. I

1 thought we were just dismissing that. And I was happy
2 to do that, because these are just like thinking
3 points.

4 MS. DePRATER: I see these more as
5 individual additional action items.

6 MR. STAFFORD: All right.

7 MS. DePRATER: As long as we not duplicate,
8 I think you've already worded it the way it needs to
9 be which is an additional. So after Action Item Three
10 on training and education, it now becomes Action Item
11 Four.

12 MR. STAFFORD: All right, so let's do that
13 then if we all agree with that. So let's start with
14 that premise. There is not one action item in this
15 document that we do not think applies to construction.

16 MR. PRATT: Correct.

17 MR. STAFFORD: So there's no point to go
18 through. We can work out with OSHA if there is
19 specific word changes. If you have any word changes,
20 then we could do that later.

21 So, let's not go through the exercise of
22 reading through the existing action items, if we all
23 think that those apply. And just talk about
24 additional action items that we think might be more
25 appropriate for construction.

1 MS. DePRETER: Yes.

2 MR. STAFFORD: What time is it?

3 MS. DePRATER: We take 15 minutes?

4 MR. STAFFORD: Ten minutes.

5 MS. DePRATER: Ten minutes.

6 MR. STAFFORD: All right, 10 minutes. We're
7 going to start all over and we're going to get through
8 these two before we leave. All right, 10 minutes.

9 (Whereupon, a short recess was taken.)

10 MR. STAFFORD: All right, let's call the
11 meeting back to order, please.

12 Lisa, do you want to read exhibits?

13 MS. WILSON: Yes. Mr. Chairman, thank you.

14 I'd like to enter the exhibits for the
15 meeting. I would designate the agenda for the meeting
16 as Exhibit 1; the comments from Dan Johnson of SFI
17 Compliance as Exhibit 2; the OSHA draft Safety and
18 Health Program Management Guidelines as Exhibit 3; and
19 the Chairman's Safety and Health Program Management
20 Guidelines for Construction as Exhibit 4. Thank you.

21 MR. STAFFORD: Okay, thank you, Lisa.

22 All right. So, we're going to back up, as
23 much as I hate to do that, and we're going to go back
24 to management leadership.

25 I think we've all agreed now, other than the

1 few word changes that we have based on the action
2 items that were already recommended in the document.
3 We will go back to management leadership and talk
4 about some specific action items or bullets that we
5 think we would consider, or would like the Agency to
6 consider adding that would be construction-specific.
7 Is that fair enough, everyone? That's kind of where
8 we're at, right? Okay.

9 So, in the, I guess, Exhibit 4 according to
10 Lisa you have a document. I think it's on the back,
11 and again, these are -- in full disclosure here, these
12 are things that were drafted for what we considered
13 some action items that may be more appropriate for
14 medium and small employers in the industry, and it
15 started with an exercise at the NIOSH NORA Sector
16 Council, and it's a sector council that drives the
17 safety and health research agenda for construction.

18 My organization had developed a safety
19 climate document, a worksheet, and then ultimately a
20 second document called Safety Climate Assessment Tool
21 that the NORA Sector Council thought might be over the
22 heads of small employers. So they went to the
23 exercise of starting the process of trying to develop
24 a new assessment tool for small employers.

25 And they never got to the end of that

1 exercise, but based on that discussions there was some
2 action items for small employers that I pulled in to
3 make, you know, as a part of this discussion for a
4 guideline in construction. So, that's what that
5 document is.

6 So, if we go back to management leadership
7 we've all agreed that the four action items that OSHA
8 has in the existing document for all industries apply
9 to construction with a few minor changes that we've
10 talked about, Danezza.

11 Now let's talk about some specific action
12 items in management leadership in the second draft
13 document, this parallel document if you will. First,
14 for the Committee's thoughts about which of these
15 items we would suggest at this meeting, and once we
16 come up with them I think that's when we will have a
17 formal action, a motion that these X items be adopted.
18 I think that would be the appropriate way to handle
19 it.

20 So, with that, unless anyone wants to jump
21 in, action items under management leadership there's a
22 total of -- actually, there are several of them on
23 this, five of them, I believe, four, or four. Again,
24 I could read them if you would like. The Committee
25 has already had a chance to look at them, the

1 documents in the back. So I'm just going to open it
2 up of these action items, do you think that any, we
3 should suggest we use, throw away, what is your
4 pleasure about these additional action items?

5 MS. DePRATER: Can I start?

6 MR. STAFFORD: Yes, Cindy.

7 MS. DePRATER: Cindy DePrater. I would also
8 not forget that the introduction is a good piece that
9 we need to go back on and put these two paragraphs
10 that you have in there because it does make it very
11 specific. But under management --

12 MR. STAFFORD: Okay. Why you said -- I
13 intended to write that introduction as an introduction
14 to the whole document, not just management leadership.

15 MS. DePRATER: Okay, right.

16 MR. STAFFORD: It may not --

17 MR. HAWKINS: That's the way I read it.

18 MS. DePRATER: That's what I'm saying.

19 MR. STAFFORD: Okay.

20 MS. DePRATER: It needs to go back to the
21 introduction.

22 MR. STAFFORD: Okay.

23 MS. DePRATER: But under management
24 leadership, I will tell you that everyone of these is
25 very specific to the construction industry. I would

1 say that this entire section gets moved to action one,
2 because without this one first where you develop the
3 written program, you know, and you talk about some of
4 these items, to me this whole -- this is action number
5 one.

6 MR. STAFFORD: Yes.

7 MR. HAWKINS: I think that's the way he
8 intended to.

9 MS. DePRATER: Okay, and these are how to
10 accomplish action one, and then action one moves to
11 the number two, three, four, and five. Does that make
12 sense?

13 MR. STAFFORD: You'll have to say that
14 again.

15 MS. DePRATER: Somebody else take it.

16 MR. HAWKINS: I think, Mr. Chairman, the
17 document that we have in front of us instead of going
18 Roman Numeral IA, number one, you've moved back one
19 step and just instead of having the action levels you
20 have put the action items as bullets of how to
21 accomplish it.

22 MR. STAFFORD: Yes.

23 MR. HAWKINS: So, you simplified it by about
24 one order, and I think that's fine. I don't think
25 that's a problem.

1 MR. STAFFORD: Okay. So, Action Item One in
2 the current document is a clear written policy helps
3 you communicate. My action item is, have a written
4 policy that clearly spells out, et cetera, et cetera,
5 et cetera. I mean, there's -- I don't know if you're
6 saying, Cindy, in your case that this bullet is better
7 than Action Item Number One bullet in the document.

8 MS. DePRATER: I think -- well, I think
9 these all move down.

10 MR. STAFFORD: So that's --

11 MS. DePRATER: This gets inserted, this
12 comes over and it starts here and then Action Item One
13 becomes two, three, four. So, Action Item One is
14 company leadership and expectations for a program,
15 whatever you want to call it. It's important for
16 company leadership, so instead of saying "a clear
17 written policy helps you communicate" Action Item One
18 now becomes, "It's important for company leadership no
19 matter the size to demonstrate to workers how you
20 accomplish that written programs. All management reps
21 conduct conducts safety."

22 Action Item Two, "Communicate your
23 commitment to a safety and health program."

24 MR. PRATT: Mr. Chairman.

25 MR. STAFFORD: Okay. Yes, Don.

1 MR. PRATT: Don Pratt. I think that's
2 redundant.

3 MS. DePRATER: Okay.

4 MR. PRATT: I like what you've got in here,
5 Pete, and I think this should replace Action Item One,
6 Two, and Three and Four.

7 MS. DePRATER: No, I --

8 MR. PRATT: I think that's what you
9 intended.

10 MR. STAFFORD: Well.

11 MR. PRATT: Now, maybe there might be a
12 bullet point missing, but we can go back and add that.

13 MR. STAFFORD: You know, I struggle with it,
14 because I think someone said it earlier, it may have
15 been Palmer, that if we have two different documents
16 it's going to --

17 MR. PRATT: No, no.

18 MR. STAFFORD: -- create all kinds of
19 confusion. And in this document I think we've already
20 decided management leadership, the four action items
21 they have works. I mean, there's nothing wrong with
22 it, and so these are additional as opposed to
23 substitutes, is the way I thought I heard it.

24 But when I was writing it, I was thinking
25 that if the industry is going to look at this, and

1 this is a companion document more for small employers
2 as a, you know, it's a second parallel companion,
3 whatever the words are, then it would have been
4 separate action items, and that's what I kind of went
5 back and forth in my own mind.

6 MR. PRATT: First of all, I don't think we
7 should have two documents. Okay, that's number one.
8 Number two, I think you've encapsulated the essence of
9 what is in this document. I'm not saying that every
10 bullet point is covered by you. But I think it's
11 there. I don't know why we just don't take your
12 document, insert it into this space, for action items
13 one, two, three, and four, and then if you want to add
14 something to it we can.

15 MS. DePRATER: I don't think we can get rid
16 of all.

17 MS. QUINTERO: No. What's the difference
18 between the action one, that introduction, and bullet
19 one, Pete's bullet one?

20 MR. PRATT: Exactly.

21 MS. QUINTERO: What's different between
22 those two? So, the OSHA, I guess --

23 MR. STRIBLING: What's -- I'm sorry.

24 MR. STAFFORD: Yes, Chuck.

25 MR. STRIBLING: I'll take a stab at this.

1 I've kept quiet most of the day.

2 I don't agree with taking out what's there.
3 To answer your question, what's different is in the
4 current OSHA document it talks about having a policy.
5 In the document prepared by the Chair it talks about
6 distributing it.

7 So, in my mind that first bullet point could
8 be incorporated into Action Item One with some
9 wordsmithing, add in the distribution. And in my mind
10 the second and third bullet point that the Chair put
11 together could go into Action Item Four, under "expect
12 performance," and I haven't gotten to the next page
13 yet, so I'm done, on the last bullet.

14 I just see it as where to add them
15 appropriately.

16 MR. STAFFORD: All right, and I kind of like
17 that.

18 MR. BETHANCOURT: I agree.

19 MR. STAFFORD: All right. So, I'm sorry,
20 Chuck, say that one more time then we'll be sure we
21 have this captured. Then you're saying.

22 MR. STRIBLING: The first bullet point could
23 go into the first action item, and it just needs to be
24 wordsmith. Because the current OSHA how to accomplish
25 it first bullet point talks about establishing a

1 written policy. The bullet point you put together
2 does the same, but it also talks about distributing
3 that policy.

4 MR. STAFFORD: So, then in the document
5 itself, so we would have how to accomplish it, how the
6 language, the first bullet that OSHA already has. And
7 then add the second bullet under that. Is that what
8 you're saying?

9 MR. STRIBLING: Well, I think you can sort
10 of incorporate it into the first bullet point.

11 MR. STAFFORD: I'm sorry?

12 MR. STRIBLING: I think you could maybe
13 incorporate it into that first bullet point or you
14 could do it separately. You don't need to be
15 redundant and say have a written policy again. What
16 you're talking about in your bullet point is
17 distributing that policy.

18 MS. DePRATER: So, it would be have a
19 policy, "establish a written policy signed by top
20 management describing the organization's commitment to
21 safety and health, pledging to establish and maintain
22 a safety and health program."

23 Bullet number two: "Distribute the program
24 to all workers when they first come onto the site."

25 Now, do you want to add "it doesn't have to

1 be long." I would say no, don't add that portion but
2 I would say "Utilize the resources available," this is
3 still part of bullet two, "Utilize the resources
4 available, construction employers, such as sample
5 written policies and programs, including in appendix,"
6 and will flesh out the appendix. That would be bullet
7 number two.

8 Bullet number three is as is --

9 MR. STAFFORD: Hold on. Wait one second,
10 Cindy.

11 MS. DePRATER: Don't ask me to repeat that.

12 MR. STAFFORD: I was just going to say can
13 you say that again, Cindy. No, I'm just kidding.

14 MR. HAWKINS: Is there really a big
15 difference between communicate and distribute?
16 Because if you say distribute --

17 MS. DePRATER: How do you want to say it?

18 MR. HAWKINS: -- you're going to think about
19 handing somebody a piece of paper --

20 MR. STAFFORD: Yeah.

21 MR. HAWKINS: -- and say communicate it, so
22 usually --

23 MS. DePRATER: Communicate is fine.

24 MR. HAWKINS: -- you can do it that way.

25 MR. STAFFORD: Yeah, I think communicate is

1 better actually. I mean, that's the intent. I mean
2 you communicate it out, right?

3 MS. DePRATER: Distribute it when they first
4 come onto the site.

5 MR. STAFFORD: So, I'm going to ask Danezza.
6 Do you have that? Is that --

7 MS. QUINTERO: Okay. What I have is bullet
8 one, "Establish a written policy." Bullet two,
9 "Distribute it to all workers when they first come on
10 the site." And then utilize --

11 MS. DePRATER: Utilize the resources.

12 MS. QUINTERO: And that's the third bullet,
13 right?

14 MS. DePRATER: It's still part of the same.

15 MS. QUINTERO: Part of the sentence. "and
16 then utilize resources available to construction
17 workers." Yeah.

18 MS. DePRATER: Change "distribute" to
19 "communicate."

20 MR. HICKMAN: Well, that's a problem because
21 you already have communicate in here. It's the second
22 bullet under Action Item One.

23 MR. HAWKINS: I think that's the one where
24 going to kind of substitute this before, I thought. I
25 thought it was.

1 MS. DePRATER: You can do that. Communicate
2 policy to all workers when they arrive on-site and
3 relevant stakeholders.

4 MR. STAFFORD: Before I call on you, do we
5 have that? I'm not writing it. I'm not writing. this

6 MS. QUINTERO: First establish, then
7 distribute.

8 MS. DePRATER: Then distribute and then
9 communicate.

10 MS. QUINTERO: Oh, okay. So, rather than
11 utilize resources available? We're not going to do
12 that.

13 MR. STAFFORD: Yes.

14 MS. DePRATER: Yes, we are going to keep
15 that in there. We are going to keep --

16 MS. QUINTERO: And then the word
17 "communicate" goes where?

18 MS. DePRATER: Okay. So, here's what we're
19 going to --

20 MS. QUINTERO: Oh, rather than distribute
21 it's communicate.

22 MS. DePRATER: Communicate the policy,
23 however you want to word it. Communicate the policy
24 to all workers when they first come on the site. Do
25 you want to distribute it first, and then communicate

1 it or is it one and the same?

2 MR. HAWKINS: These are workers that -- this
3 is my policy and they work for me and I'm not going to
4 do it when they come on site. I'm going to do it when
5 they come to work for me.

6 MS. DePRATER: Okay.

7 MR. HAWKINS: That might not be on the site.
8 I think you might just be thinking about what you
9 would do at Turner. You might do that with Turner
10 when these subs come. But if I'm preparing my safety
11 and health program, I'm going to communicate this
12 probably at a meeting after work or -- not when they
13 come on site because --

14 MS. DePRATER: I think we are talking about
15 two different things because you're right. You would
16 have -- you would have a company program --

17 MR. HAWKINS: Yeah, this is not --

18 MS. DePRATER: But then there is the site-
19 specific that they would have to be informed of when
20 they come onto a project site.

21 MR. HAWKINS: That's what your -- that's
22 usually we would --

23 MS. DePRATER: That's where I was headed,
24 but you have to have both.

25 MR. HAWKINS: -- Turner telling me as a

1 sub --

2 MS. DePRATER: Yeah, you have to have both.

3 MR. HAWKINS: So if I'm at my program and
4 Lisa is one of my employees and, you know, we sit down
5 as a group, the six of us and I say, okay, here's our
6 policy. We're going to do whatever, dah-dah-dah-dah-
7 dah, and I communicate that at the office, and then
8 I'm sending them to do concrete cutting at your site,
9 you may communicate something then.

10 MS. DePRATER: Right.

11 MR. HAWKINS: But I'm done.

12 MS. DePRATER: No, you're not, you have
13 to, I mean, whatever I --

14 MR. HAWKINS: I've communicated my policy.

15 MS. DePRATER: Whatever you've signed up
16 for, contractually, you would still have to
17 distribute, yeah, you'd still have to distribute.

18 MR. HAWKINS: I've already signed the
19 contract but I'm sending you to do the work. I'm not
20 coming, because I'm at the office getting the next
21 group ready.

22 MS. DePRATER: No. That's a gap.

23 MR. HAWKINS: (Laughing.) Well, are they
24 expecting -- if they're going out to do concrete
25 cutting at your site, and I've already signed a

1 contract, and I've given you a copy of my written
2 safety and health program.

3 MS. DePRATER: And we've given you the
4 owner's site-specific program now, which may be
5 different than your main program.

6 MR. HAWKINS: And I've communicated that to
7 them before they left, so, I don't --

8 MS. DePRATER: We have to close that gap.
9 We have to close the gap.

10 MR. HAWKINS: I'm just worried about on the
11 site. This is our general safety and health program.

12 MS. DePRATER: We're talking about two
13 different things but we have to get them both.

14 MR. HAWKINS: And if I have to communicate
15 when they come on-site.

16 MR. STAFFORD: Well, I mean, I think that we
17 almost -- we need to make a distinction. If we're
18 talking about our own program policy, I think that
19 you're right. And I think what you're talking about,
20 Cindy, we probably need to get in, too, when we 're
21 talking about coordination and communication to multi-
22 employer sites because that's --

23 MR. HAWKINS: It's here.

24 MR. STAFFORD: That's where it is.

25 MR. HAWKINS: Communication --

1 MR. CANNON: It's on page 24, provide copy
2 of the safety and health policy --

3 MR. STAFFORD: Right.

4 MR. CANNON: -- from all contractors and
5 subcontractors.

6 MR. STAFFORD: Okay.

7 MS. DePRATER: So that closes the gap.

8 MR. HAWKINS: That's where you catch it.

9 MS. DePRATER: Yeah.

10 MR. STAFFORD: Right.

11 MR. HAWKINS: Multi-employer work site
12 communication.

13 MR. CANNON: Right, the communications
14 piece.

15 MR. STAFFORD: Okay. So, just to -- I'm
16 almost -- I hate to have you read it again, Danezza,
17 if you don't have it.

18 I would like to ask your staff though,
19 Damon, if you can tomorrow morning when we come to
20 these two sections, I would like to have the specific
21 action items for each of these sections written up on
22 these flip charts or somewhere, where we could all see
23 it in writing if that's possible.

24 MR. BONNEAU: That's the goal with the IT.

25 MR. STAFFORD: Okay. Well, you know, we'll

1 use crayons if we have to. I mean, I'll be glad to
2 come in early and do it myself as long as we have it.
3 But I think it would be important that we all see the
4 action items in writing that we're comfortable with
5 what we're recommending.

6 Yes, Chuck, and then back to Steven.

7 MR. STRIBLING: No, that's okay.

8 MR. STAFFORD: Go ahead, Steve.

9 MR. RANK: If they do have the A/V working
10 tomorrow could you get your document and wordsmith
11 them so that they could kind of cut and paste and move
12 it over?

13 MS. LAWLESS: That's what we were already
14 doing.

15 MR. STAFFORD: Yeah, they have it.

16 MS. LAWLESS: Yeah, that's what we do.

17 MR. RANK: Oh, okay.

18 MR. STAFFORD: They have it.

19 MR. RANK: I'm sorry.

20 MR. STAFFORD: Okay. So then back to the
21 action item.

22 MS. DePRATER: So, in that case since we're
23 fleshed this out I think you stick with the two that
24 we have and you don't change them.

25 MR. CANNON: That's the existing.

1 MS. DePRATER: The existing ones that we
2 started with, because going around all of this now we
3 have the written policy. It's written policy, written
4 policy. It's distributed, it's communicated. The
5 only piece missing is whether you want to put
6 something about available resources for construction
7 employers into this bullet, but otherwise I think
8 we've landed on it stays the same.

9 MR. STAFFORD: Okay. So, we're back to --
10 I'm having a difficult time with this for some reason.
11 We're back to Action Item One.

12 How to accomplish it, we're not changing a
13 thing that's not already in the OSHA document, is that
14 what you just said, Cindy?

15 MS. DePRATER: I think that's exactly what I
16 said.

17 MS. WILSON: Well, I, hi, Lisa Wilson. I
18 would suggest, I mean there is a little difference in
19 tone here --

20 MS. DePRATER: There is.

21 MS. WILSON: -- as the Chairman suggested
22 and, you know, a written policy clearly spelling out
23 safety is as opposed to a written policy signed by,
24 you know, top management.

25 I mean, it's kind of an issue of phrasing

1 and it's a written program.

2 MS. DePRATER: But it says the same thing.
3 It just depends whether you want to wordsmith it and
4 change the phrasing.

5 MR. STAFFORD: All right. So, what does the
6 Committee think?

7 MS. DePRATER: Talk about tone.

8 MR. STAFFORD: We've gone full circle here a
9 couple of times.

10 MR. HAWKINS: I think if we're doing
11 anything meaningful, we're going to have to read this,
12 OSHA's document, read what you have written, like that
13 one right there, and note these differences.

14 Because if we're really trying to write this
15 for construction, if that's what the Agency wants us
16 to do, apparently it is. What you've written here
17 about how to accomplish it for the written program, it
18 is more applicable to what I believe the construction
19 environment to be, as opposed to establish a written
20 policy signed by top management, and you've written
21 the -- a written policy clearly spells out important
22 and distribute it to all workers. Doesn't have to be
23 long.

24 Lisa is exactly right. The tone is
25 different and this is more appropriate. So, we would

1 recommend to the Agency that they change that first
2 bullet to read more like your bullet. I think that's
3 what we're going to have to do. It's just going to be
4 slow.

5 MR. STAFFORD: Talking to Hawkins.

6 (Laughter.)

7 MR. PRATT: If we, Pete, if we had it up on
8 the screens it would be so much easier because then
9 they could cut and paste. I mean, we've got it on the
10 computer. Can we get some tech people in here
11 tonight?

12 MS. LAWLESS: We are cutting and pasting.

13 MS. QUINTERO: We're doing --

14 MR. RANK: I know you're doing it. You're
15 doing exactly what I'm proposing.

16 Oh, so now it's up there instead of on your
17 screen

18 MS. QUINTERO: I'm sorry. Then I can't see
19 it in here.

20 MR. RANK: Where's a tech at?

21 (Simultaneous conversation.)

22 MR. STAFFORD: All right. I apologize to
23 you all. Really I feel like I'm letting you down as
24 Chair here, because we are going in circles. We've
25 done two different things. Once at the beginning of

1 this session we said we were going to keep all of
2 these the same. Because we agree with them all, and
3 now we're adding more, and now we're back to maybe
4 changing what's in here.

5 MR. HAWKINS: Mr. Chairman.

6 MR. STAFFORD: And it doesn't matter to me.
7 It's really what the Committee's pleasure is. I'm
8 really -- I'm sorry because it seems like we are going
9 in circles, and I'm having a hard time getting us
10 unwound here and online. Yes, Steve.

11 MR. HAWKINS: I think what it is is we like
12 the OSHA document. We just like your wording better.

13 (Laughter.)

14 MR. HAWKINS: I mean really I think that's
15 what it --

16 MR. RANK: I agree.

17 MR. HAWKINS: I mean, these action items are
18 good. What OSHA has here is right. I mean, it really
19 is modern thinking. This is really how things are
20 going now. But if we're going to constructionize it
21 when you start talking about, we know 90 percent are
22 small contractors signed by a top management official,
23 that means a whole lot different in a general industry
24 plant environment than it does -- I mean, when a
25 construction guy, one of these 90 percent we're

1 talking about, he reads that, it's kind of laughable.

2 But if you read what you've written, have a
3 written policy that spells out how important safety
4 is, and communicate it to all your workers when they
5 first come on-site that -- it says what this says, but
6 it's just so much better. This wording is so much
7 better than what OSHA has here for the people we think
8 we're trying to help with this document.

9 MR. STAFFORD: All right. So, we're back
10 to, then, thinking about not saying that we're going
11 to accept all of these and talk about some alternative
12 language that I started that we can come up with some
13 action items that are construction-specific. To make
14 it different than this document.

15 Because in the end we'll come back to
16 Palmer's original question, and that is why are we
17 doing this, if it applies to construction like it does
18 to every other industry, what's different about this
19 document that we're working on.

20 MR. HAWKINS: What's different is we were
21 asked to do that, right? That's what the Agency asked
22 us to do.

23 MR. STAFFORD: Correct.

24 MR. HAWKINS: They paid us our expenses
25 coming up here.

1 MR. STAFFORD: Not mine, but yours is.

2 (Laughter.)

3 MR. STAFFORD: Chuck.

4 MR. STRIBLING: I don't know that we'll have
5 to do that for every action item, because I think the
6 next three action items in your document can simply be
7 added to OSHA's document.

8 I think this first action item in your
9 document probably is better-suited for what we're
10 trying to do than what OSHA has, but the other three I
11 see as an addition, not as a replacement.

12 MR. STAFFORD: Okay.

13 MR. STRIBLING: And I see them being added
14 into Action Item Four. This is just my opinion.

15 MR. STAFFORD: Okay. No, I appreciate that.
16 You're further ahead than I am, Chuck, on that.

17 So, let's go back to management leadership
18 then. Are we thinking that we could use the language,
19 the alternative language that was drafted out to
20 replace what's in the existing document then? Is that
21 what you're thinking if it's more -- as Steve Rank
22 says softer, as Kevin says applies more to small
23 employers, or Jeremy, is that what we're thinking
24 about doing. Which I'm fine with if that's what you
25 want to do.

1 MR. RANK: And I didn't mean softer to mean
2 less in content or quality, but just reader user
3 friendly, that's all.

4 MR. HAWKINS: More understandable.

5 MR. RANK: Yes, that's all.

6 MR. STAFFORD: Okay. So, let's go through
7 this. So, Action Item One now. "Communicate your
8 commitment to a safety and health program," and we're
9 going to strike the OSHA language and we're going to
10 insert in there instead, "It's important --

11 MR. HAWKINS: Yes.

12 MR. STAFFORD: -- "to have company
13 leadership, no matter company size, to demonstrate to
14 workers, et cetera, et cetera, et cetera. How to
15 accomplish it." And then the first bullet is "Have a
16 written policy."

17 MR. HAWKINS: We're going to substitute your
18 wording in the general for what's here.

19 MR. STAFFORD: For Action Item Number One
20 across the board.

21 MR. HAWKINS: That's what I think.

22 MS. DePRATER: But then you do away with
23 number two.

24 MS. LAWLESS: This bullet point, right?

25 MR. CANNON: Our thought is intro

1 underneath.

2 (Simultaneous conversation.)

3 MR. STAFFORD: Okay, so say it again. I'm
4 sorry, you guys. Steve, what did you say?

5 MR. HAWKINS: Your paragraph that says,
6 "It's important for company leadership, no matter the
7 size, to demonstrate to workers that safety is
8 essential, and the company will not only support them
9 but encourage them to raise safety concerns." I think
10 we should insert that when the general little blurb
11 right below --

12 MR. STAFFORD: The intro. Right, right.

13 MR. STRIBLING: Just add it.

14 MR. STAFFORD: Okay, I agree. And then How
15 to --

16 MR. HAWKINS: Go to the next aisle.

17 MR. STAFFORD: So, Danezza, so How to
18 accomplish it? "And establish a written policy,"
19 we're going to strike that, and instead we're going to
20 have the other language "have a written policy that
21 clearly spells out, et cetera, et cetera."

22 MR. HAWKINS: Maybe prepare.

23 MR. STAFFORD: Okay.

24 MR. HAWKINS: Prepare a written policy that
25 clearly spells out --

1 MS. DePRATER: There we go.

2 MR. HAWKINS: -- and communicate it to all
3 workers.

4 MR. STAFFORD: And communicate it to all
5 workers when they first come on the site. We're going
6 to take out, "it doesn't have to be long." But as
7 Cindy said, we can keep in there the reference to the
8 available resources in the appendix.

9 MR. HAWKINS: Okay.

10 MS. DePRATER: So does that get to bullet
11 number or --

12 MR. HAWKINS: Bullet number one, you replace
13 it for what's here now.

14 MS. DePRATER: That's it. So you get one
15 bullet.

16 MR. STAFFORD: Yes.

17 MR. HAWKINS: Well, no, we might have more,
18 but that's going to be the first bullet.

19 MS. DePRATER: Okay.

20 MR. HAWKINS: His first bullet is going to
21 be the first bullet on this page, and replace the
22 bullet that's here.

23 MS. DePRATER: Okay.

24 MR. STAFFORD: So the lead-in paragraph
25 under management leadership is being replaced, and

1 then the first bullet is being replaced.

2 MR. STRIBLING: No. The lead-in paragraph,
3 I thought it was being added.

4 MR. HAWKINS: No, it's going to replace
5 what's here.

6 MR. STRIBLING: Okay.

7 MR. STAFFORD: All right, so how to
8 accomplish it, have a written policy, blah-blah-blah,
9 we've got that. Then, second bullet --

10 MS. DePRATER: You don't need it.

11 MR. HAWKINS: Your first bullet becomes --
12 your first bullet becomes the first bullet under, "How
13 to accomplish it."

14 MR. STAFFORD: Right.

15 MR. HAWKINS: Then we got to.

16 MR. STAFFORD: Okay, so what is the second
17 bullet?

18 MS. DePRATER: There isn't one.

19 MR. STRIBLING: I think the second bullet
20 would be best suited in action four.

21 MR. STAFFORD: Okay, but -- back to the
22 "communicate the policy," that's already taken care
23 of.

24 MR. HAWKINS: We don't need that.

25 MR. STAFFORD: That's all struck. That's

1 gone.

2 MR. BETHANCOURT: You need the one bullet
3 listing who it is, including is applicable. That was
4 Jeremy Bethancourt.

5 MR. STAFFORD: No, I think we already
6 decided, Jeremy, that we're going to deal with how you
7 communicate this to contractors and subs and temporary
8 workers in the multi-employer piece. We're just
9 talking about my own little company's program.

10 MR. BETHANCOURT: Okay. So, to that point
11 also so Danezza is not confused, we're not just taking
12 it word for word, "you have a written policy." To
13 Steve's point when we were talking about the
14 difference between on a site and when they first come
15 to work on the job site. So, I heard him say that. I
16 want to make sure that Danezza doesn't just copy it,
17 because I think that was the gist of your point,
18 Steve, and I agree completely.

19 We want to say when they first come to work
20 for you or however that's said --

21 MR. HAWKINS: When they first come to
22 work --

23 MR. BETHANCOURT: To work.

24 MR. HAWKINS: -- as opposed to a person on-
25 site.

1 MR. BETHANCOURT: Site.

2 MS. DePRATER: So, prepare a written policy
3 that clearly spells out how important safety is and
4 communicate it to all workers when they first --

5 MR. HAWKINS: Start employment.

6 MR. BETHANCOURT: -- to work, when they
7 first come to work, when they work.

8 MS. DePRATER: Come to work. Got it. And
9 then the second sentence is --

10 MR. BETHANCOURT: Or begin employment.

11 MS. DePRATER: -- there are resources
12 available.

13 MS. QUINTERO: Can you repeat that?

14 MS. DePRATER: So, the second sentence of
15 this is, "There are a lot of resources available,"
16 right, "to construction employers, such as sample
17 written policies and programs included in Appendix,"
18 and then we'll fill that out. So, it's one bullet.

19 MR. STAFFORD: Yes.

20 MS. DePRATER: That's it.

21 MR. STAFFORD: That's it for Action Item
22 One. Action Item Two, in the OSHA document, "Define
23 program goals and expectations." We said earlier that
24 there's nothing wrong with that --

25 MS. DePRATER: No.

1 MR. STAFFORD: -- so we're keeping that.

2 Everybody good with that?

3 We said before all these action -- Action
4 Item Three, "Allocate resources," even though, Don, I
5 know you took exception to that, put in "small
6 employers," but for now it's in. We talked about
7 moving the note up front in that.

8 MR. PRATT: Yes.

9 MR. STAFFORD: So the note becomes the lead
10 in paragraph for that.

11 MR. PRATT: Yeah.

12 MR. STAFFORD: And then expect performance.
13 So those are the action items under management
14 leadership. I have four bullets -- three bullets left
15 in the draft I sent out. Do you want to add those?

16 MS. DePRATER: Yeah, we're working. Keep
17 going.

18 MR. STAFFORD: Keep going. All right.

19 MR. BETHANCOURT: Action Item Four.

20 MS. DePRATER: We're on four.

21 MR. STAFFORD: All right, so, "Expect
22 performance. Management leads the program effort."
23 That's out of the old OSHA document. So, we're
24 talking about an Action Item Five now?

25 MS. DePRATER: No.

1 MR. BETHANCOURT: No. Just add a --

2 MS. STRIBLING: We're talking about adding
3 your bullets into four.

4 MR. BETHANCOURT: Expect performance, add
5 your bullets.

6 MR. STAFFORD: I see. All right. So under
7 action item for, "Expect performance," we now have
8 three bullets, and so the Committee is suggesting that
9 we add --

10 MS. LAWLESS: We have four existing.

11 MR. HAWKINS: No, no, no. There's only
12 three left. There's only three left. No, four
13 existing in the document.

14 MS. DePRATER: Four existing.

15 MR. HAWKINS: Oh, yes, yes, yes.

16 MR. STAFFORD: So there's four existing.
17 We're adding four. No, we're not, we're adding three.

18 MR. HAWKINS: Correct.

19 MR. RANK: Your number three.

20 MR. STAFFORD: Right. So, the three that
21 we're adding under my bullets are the bullet that
22 starts, "All management reps on the site, owners,
23 supervisors, foremen, must follow all safety rules."
24 The second bullet, "Conduct weekly or daily toolbox
25 talks on safety and health." And then the third

1 bullet we're adding is, "Every worker should get an
2 orientation when they first come onto the job site."

3 MR. HAWKINS: Yes.

4 MS. DePRATER: Yes.

5 MR. STAFFORD: All right, so that takes care
6 of management leadership.

7 MR. HAWKINS: Yes, it does.

8 MR. BETHANCOURT: Now, I do have one thing.

9 MR. STAFFORD: Yes.

10 MR. BETHANCOURT: The first sentence of that
11 one we just added I think is good, but I'm not sure
12 about -- the Committee wouldn't want to recommend a
13 new training resource foundation for safety leadership
14 has been developed for the construction industry. We
15 don't --

16 I know it's good, but are we actually
17 telling them we think you ought to put this in this
18 document?

19 MR. CANNON: Should we add it to the
20 appendices.

21 MR. BETHANCOURT: No, that was something
22 that went to the end to add as a resource.

23 MR. HAWKINS: Can we just put a footnote
24 after the resource page.

25 MR. RANK: For that FSL. I think I wrote

1 that down as well. I did have one point.

2 MR. PRATT: Wait, wait, wait. Where did
3 that start, Steve?

4 MR. RANK: What's that.

5 MR. PRATT: A new training resource.

6 MR. RANK: New training resource had that as
7 a resource.

8 MR. PRATT: okay, got it.

9 MR. STAFFORD: Where is that, Steve?

10 MR. RANK: It's in the second bullet, last
11 sentence, where it starts, "A new training resource."

12 MR. STAFFORD: Oh, yes.

13 (Pause.)

14 MR. STAFFORD: Just ensure that top
15 leadership, take out local management.

16 So, if you're all okay with that in Action
17 Item Four, Kevin and Cindy just pointed out that under
18 that bullet number four is that we're going to delete
19 "local management." "Ensure that top leadership share
20 the same safety and health performance goals and
21 priorities," not "top leadership and local
22 management."

23 Okay, so we have finished management
24 leadership, and we have seven bullets total. And
25 starting tomorrow morning we'd like to have them all.

1 I'll come in, Damon, and put them up if I need to, so
2 I want the Committee to see the seven action items
3 somewhere in writing so that we can all look at it
4 together.

5 MR. CANNON: I'll print it, or something.
6 I'll print it.

7 MR. STAFFORD: So that we all have it.

8 (Simultaneous conversation.)

9 MR. STAFFORD: As long as we all have it in
10 writing so that we could see, because we're not seeing
11 it now. That's part of the disconnect.

12 (Simultaneous conversation.)

13 MR. HAWKINS: Mr. Chairman.

14 MR. STAFFORD: Hold on. Yes, Steve.

15 MR. HAWKINS: The part about getting
16 everyone to follow the same make sure that top local
17 leadership, that's already in number four: set an
18 example, how to accomplish it, set an example by
19 following the same procedures you expect others to
20 follow. That's really duplicative with your number
21 two.

22 MR. RANK: So get rid of theirs.

23 MR. STAFFORD: Let's take it out altogether.

24 MR. RANK: Get rid of theirs.

25 MR. HAWKINS: Or strike theirs, that's fine.

1 Strike that.

2 MR. RANK: Strike that.

3 MR. STAFFORD: So, we're striking -- sorry
4 to go back and forth on you. So, we're taking that
5 bullet out altogether.

6 MS. LAWLESS: The ensure --

7 MS. DePRATER: No, the set an example, the
8 third bullet.

9 MR. RANK: The third bullet under OSHA's
10 document.

11 MR. HAWKINS: We're going to strike that
12 one, because it's already said in this other one that
13 we've set out. Yeah. All management reps on the
14 site, owners, supervisors, foremen, must follow the
15 same safety rules.

16 MR. STAFFORD: Right.

17 MS. LAWLESS: Okay, so just to summarize we
18 have -- the first bullet is going to start out,
19 "Define and communicate." The second bullet is
20 "Ensure local management," we're removing the "set an
21 example" bullet. And we're going back to, we're
22 keeping the "established ways for management now,"
23 blah-blah-blah, and then we're inserting your second,
24 third, and fourth bullet that you had on your paper.

25 MR. RANK: Yes.

1 MR. CANNON: And ensure, strike local
2 management.

3 MR. STRIBLING: Yeah, ensure that top
4 leadership.

5 MR. RANK: She said that, I think.

6 MS. LAWLESS: Ensure the top leadership,
7 okay.

8 MR. CANNON: And then you strike "and local
9 management."

10 MR. PRATT: Aren't the two that are out
11 there "ensure" and "set an example"? Those are both
12 covered in your second bullet point there. You could
13 almost insert yours and take out their two.

14 MR. HAWKINS: You almost could take both of
15 them out.

16 MR. PRATT: Put his right in there too.

17 MR. HAWKINS: So what if we took out both
18 bullets one and two, and kept the bullet here about
19 all management representatives on site?

20 MR. STAFFORD: Okay. Sorry. So we're going
21 to --

22 MS. LAWLESS: Who's on first?

23 (Laughter.)

24 MR. STAFFORD: Who?

25 MS. LAWLESS: So. we're taking out "define

1 and communicate" and "ensure top"

2 MR. PRATT: No, no.

3 MS. LAWLESS: No.

4 MR. PRATT: You're leaving "define and
5 communicate" in.

6 MS. LAWLESS: Okay.

7 MR. PRATT: You're taking out "ensure the
8 top leadership."

9 MS. LAWLESS: And "set."

10 MR. PRATT: And "set." You're going to
11 leave in "establish ways" and then you're going to add
12 "Exhibit 4, three bullet points.

13 MS. QUINTERO: So, we have "Ensure top
14 leadership" --

15 MR. STAFFORD: That's out.

16 MS. QUINTERO: Ensure top leadership --

17 (Simultaneous conversation.)

18 MR. STAFFORD: All right. So, we've got it,
19 management leadership. We've got one more to knock
20 out here. So, we have seven -- in the end seven
21 action items. Five action items. Three -- five --
22 I'm going to shut up, I'm confusing everyone.

23 (Simultaneous conversation.)

24 MR. STAFFORD: All right, so let's move on
25 then, worker participation.

1 Let's try to get through it real quick,
2 otherwise I'm afraid we're going to struggle.

3 So, worker participation then, again we
4 started out by saying all of the items in the OSHA
5 document were fine. I'm going to the other document
6 now and, Chuck, you looked at this already I thought
7 you said.

8 So, do you want to keep what we have and I
9 guess maybe just to see if there's any bullets in this
10 other document under worker participation that we
11 should add to action items in addition to the --

12 MR. BETHANCOURT: Mr. Chairman.

13 MR. STAFFORD: -- four action items, five
14 action items that OSHA already had?

15 MR. BETHANCOURT: Mr. Chairman, Jeremy
16 Bethancourt, if I may.

17 MR. STAFFORD: Sure, Jeremy.

18 MR. BETHANCOURT: Are we saying that -- make
19 sure I got this correct. So your worker participation
20 portion where you have the introduction, are we going
21 to substitute the one that you have here, which
22 essentially says very close to the same things that
23 are going on here under the Action Item One, because
24 this is softer, it seems more the way we would speak
25 in construction?

1 MR. STAFFORD: I don't know where you soft
2 people on construction come from.

3 (Asides.)

4 MR. STAFFORD: Yeah, Palmer.

5 MR. HICKMAN: Thank you. If we are going to
6 keep the second sentence in Exhibit 4 there on
7 organization, I think that's a pretty strong
8 statement. "They will spot hazards before you do." I
9 would say "may" is probably better than "will." You
10 just assigned an identification to the worker.

11 MR. HAWKINS: No. I think we ought to keep
12 what OSHA has. I think the thing about the drug
13 testing needs to be thought about, and then I think
14 we're talking about your introduction has words -- has
15 some stuff in it that we ought to consider maybe
16 making some of these bullet points. That's what I
17 think.

18 Like "Your workers are you first line of
19 defense, they spot hazards before you do." That
20 really goes under -- and this thought about encourage
21 workers to report safety and health concerns, and it
22 probably should need to be included.

23 So, I think where we are is we move down to
24 Action Item One and we talk about what you've got in
25 your introduction --

1 MR. CANNON: Yes.

2 MR. HAWKINS: -- as well as a couple of
3 these bullet points --

4 MR. PRATT: Yes.

5 MR. HAWKINS: -- of things to replace down
6 here in their bullets, in the original document's
7 bullets.

8 MR. PRATT: Exactly.

9 MR. STAFFORD: All right, so -- all right,
10 so I'm trying to look at the workers are often in the
11 best position -- so, do you want to replace it
12 altogether or do you want to just add that language?

13 MR. HAWKINS: Augment it.

14 MS. DePRATER: I think you augment the one
15 that says empower all workers, wouldn't you, Steve?

16 MR. HAWKINS: You could start there.

17 MS. DePRATER: Yeah.

18 MR. HAWKINS: Because what the document has,
19 the OSHA document, "workers are often in the best
20 position to identify safety and health concerns,
21 hazards really, and program efficiencies." They're
22 really not. That's not a true statement even.
23 Workers are not in the best position to identify
24 program deficiencies. They're in the best position to
25 recognize hazards. That's what you've said in your

1 document right?

2 MR. STAFFORD: Yeah.

3 MR. BETHANCOURT: Mr. Chairman.

4 MR. STAFFORD: Yeah, sorry, Jeremy. I'm
5 trying to read and talk all at the same time.
6 Obviously, I'm not doing a very good job at it.

7 Yes, Jeremy, go.

8 MR. BETHANCOURT: So, back to the empower
9 all workers bullet, the part that I like about your
10 introduction, your workers are your first line of
11 defense, would that be something that should be put
12 right there before empower all workers to temporarily
13 suspend their operations. Your workers are your first
14 line of defense. Empower them to do something.

15 MR. STAFFORD: Yeah, it could be. I mean,
16 there's nothing wrong with that. I'm just trying
17 to --

18 MR. BETHANCOURT: Mr. Hawkins, what are your
19 thoughts on that?

20 MS. DePRATER: That would be my take on it
21 is to put it -- start with that empowering, redo that.

22 MR. BETHANCOURT: If we're going to include
23 some of those key points that Pete has made, key
24 bullets.

25 MR. PRATT: You want to keep bullet number

1 one in the OSHA document.

2 MR. HAWKINS: I hate to say this. I haven't
3 even got to bullet number one, because I want to take
4 this out about program deficiencies. I want it to say
5 "Workers are often in the best position to identify
6 safety and health hazards," and then say "such as
7 unsafe conditions, close calls, near misses and acts
8 of incidents," or something.

9 MR. STAFFORD: That's fine.

10 MR. HAWKINS: What I really want to say is
11 they're in the best position to see what's wrong, and
12 want to report it. The first thing is to acknowledge
13 that they're in a great position to see what's wrong,
14 in this paragraph --

15 MR. STAFFORD: So are you --

16 MR. HAWKINS: In the introductory paragraph
17 for Action Item Number One.

18 MR. STAFFORD: So, Steve, do you think that
19 the worker -- the introductory paragraph in the draft
20 document I sent out, do you think that would work? Do
21 you want to think about replacing that or just
22 modifying that and just adding that, or we could bust
23 it up as Jeremy suggests and add that to --

24 MR. HAWKINS: I like your introductory
25 paragraph better than I like the introductory

1 paragraph that's under Action Item One.

2 MR. STAFFORD: Is the Committee okay with
3 that? All right, so what we're going to do is Action
4 Item One is going to be the new introductory paragraph
5 in my draft.

6 MR. HAWKINS: That's right.

7 MR. STAFFORD: Okay?

8 MR. STRIBLING: That's with the word "will"
9 changed to "make"?

10 MR. HAWKINS: To "may."

11 MR. STAFFORD: To "may."

12 MR. STRIBLING: So, it would be "Your
13 workers are the first line of defense. They may spot
14 hazards before you do," et cetera, et cetera. That's
15 going to be the new introductory paragraph under
16 Action Item One.

17 MR. HAWKINS: Okay. And it's not that -- so
18 we all understand. It's not likely that OSHA is going
19 to use that exact wording right there, but what we
20 want to do is we want to recommend them that this
21 wording would work really well right here, and they
22 might improve upon it.

23 MR. STAFFORD: Oh, yeah.

24 MR. HAWKINS: But that's what we're trying
25 to do here, right?

1 MR. STAFFORD: Right. Yes.

2 MR. PRATT: Bullet number one.

3 MR. HAWKINS: Right.

4 MR. STAFFORD: All right. So, we have a new
5 introductory paragraph. How to accomplish it, the
6 bullet that exists now, "Establish a process," blah-
7 blah-blah. Do you want to use any of the bullets that
8 I had in mine, or are you comfortable with what --

9 MS. DePRATER: Some of these actually are
10 better placed in Action Item Three involve employees
11 in all aspects of the program.

12 MR. HAWKINS: The first bullet on this.

13 MS. DePRATER: Analyzing, documenting,
14 conducting.

15 MR. STAFFORD: Okay.

16 MR. PRATT: You're talking about Exhibit 4's
17 bullet points.

18 MR. STAFFORD: All right. So, Action Item
19 One the only thing we're doing is rewriting the
20 introductory paragraph.

21 (Simultaneous conversation.)

22 MR. STAFFORD: Hold on.

23 MR. PRATT: But I didn't know which ones you
24 were talking about.

25 MR. HAWKINS: Okay. Sorry. This whole

1 action item is talking about encouraging workers to
2 report safety and health concerns. You have to
3 establish a way for them to do that, so that first
4 bullet needs to stay.

5 MS. DePRATER: Where?

6 MR. HAWKINS: Right where it is.

7 MR. BETHANCOURT: How to accomplish, how do
8 you accomplish, that first bullet.

9 MR. HAWKINS: How do you accomplish
10 encouraging workers to report safety and health
11 concerns. You've got to tell them how.

12 MR. STAFFORD: Yes.

13 MR. HAWKINS: If you're a larger company you
14 can tell them here's the 800 number. How do you want
15 to report it needs to be an action item.

16 MR. STAFFORD: Yeah, I think all these are
17 good, actually.

18 MR. STRIBLING: Yeah, they're good. We're
19 not taking those out.

20 MR. STAFFORD: Yeah, these are all good
21 bullets.

22 MR. PRATT: What Cindy was saying Exhibit
23 4's bullet point should be put somewhere else in the
24 document. That's what she was saying.

25 MR. STAFFORD: Yeah, right. Okay. No, I

1 got that.

2 MR. STRIBLING: I think we're looking at
3 Action Item Three to put those in.

4 MR. STAFFORD: Okay, so --

5 MR. STRIBLING: At least that first one.

6 MR. STAFFORD: All right. Sorry. So,
7 Action Item Two, "Encourage workers to participate in
8 the program."

9 MR. HAWKINS: That's fine.

10 MR. STAFFORD: All right.

11 MR. HAWKINS: I agree with you, Cindy.
12 Number three.

13 MR. STAFFORD: So, these actually all need
14 to make it easy, God forbid, that we could -- I think
15 these other bullets would go pretty nicely under
16 Action Item Three.

17 MR. PRATT: Right. Right, that's exactly
18 what Cindy was saying.

19 MR. STAFFORD: Cindy?

20 MS. DePRATER: I think they all fit now, or
21 they could fit.

22 MR. PRATT: So, any changes in Exhibit 4's
23 bullets.

24 So, we could have at least for now drafting
25 OSHA's -- so we would have develop the program,

1 reporting hazards, analyzing hazards, defining,
2 conducting, developing, these could just be -- we
3 could just combine these or just add these.

4 MR. PRATT: Right. You could either add 13
5 or you can combine them.

6 MR. STAFFORD: For now, right?

7 (Asides.)

8 MR. PRATT: One little correction and it's
9 all the way through your document, Pete, so I'm going
10 to pick on you a little bit. In your action item
11 number, or three where it says, "For particularly
12 hazardous task the job safety analysis," that should
13 be capitalized, Job Safety Analysis, and then it
14 should say, "(JSA)." Then you can re-use JSA all the
15 way through your document.

16 MR. STAFFORD: Okay.

17 MS. LAWLESS: Are we removing the "or," and
18 putting in paren?

19 MR. PRATT: Yes, yeah, remove the "or"

20 MS. LAWLESS: Okay, got it.

21 MR. STAFFORD: And we did it. We got
22 through two sections.

23 MR. WEBER: I think your bullet point number
24 four of your document talks about accidents --

25 MR. BONNEAU: We need an identification for

1 the reporter.

2 MR. STAFFORD: I'm sorry. Take a microphone
3 and identify yourself, Rodd.

4 MR. WEBER: Okay. I'm Rodd Weber with
5 PENTA.

6 Your bullet point number four where it talks
7 about accidents and the factors being used to prevent
8 future incidents could fit under Action Item One,
9 bullet point number one, two, three, four, which is,
10 "Emphasize that management will use reported
11 information only to improve workplace," you know, then
12 "no retaliation." Yours -- probably you could fit
13 your bullet point there into that, or maybe merge the
14 two. Just augment that if you wanted to.

15 MR. STAFFORD: For which bullet, Rodd? I'm
16 sorry.

17 MR. WEBER: Your bullet point number four in
18 your document under worker participation, "When
19 accidents do happen it's important to understand all
20 factors contributed to it in order to prevent future
21 incidents." You could probably incorporate that more
22 into the safety and health concerns under bullet point
23 four in the OSHA document, "Emphasize that manager
24 will use reported information," because I think you --
25 that's almost the same point, but your wording is a

1 little more easily understood, so.

2 MS. DePRATER: I don't think so.

3 MR. STAFFORD: Okay, we appreciate the
4 comment, Rodd. You disagree, Cindy?

5 MS. DePRATER: Nope, I don't necessarily
6 disagree. I just think that under Action Item Three,
7 bullet number one, two, three, four, five, six, seven,
8 number seven, "Participating in incidence and close
9 call/near miss investigations." I think this bullet
10 just replaces that one because it is still about
11 getting them involved in the accident investigation
12 process.

13 MR. WEBER: But you're saying replace it,
14 not add. I thought you were just adding those to the
15 list there under three.

16 MR. HAWKINS: That's actually what we're
17 doing. We're adding these bullets so the Agency for
18 them to consider inclusion and they will do the
19 wordsmithing.

20 MS. DePRATER: They will do the
21 wordsmithing.

22 MR. WEBER: Okay.

23 MR. HAWKINS: I don't think we're expected
24 to do that.

25 MR. WEBER: Right. Okay.

1 MS. DePRATER: Are we expected to do that?

2 MR. STAFFORD: No, we'll help them to the
3 extent that we can, but, yes, we --

4 MS. DePRATER: I think your Exhibit 4,
5 bullet number four still belongs with Action Item
6 Three.

7 MR. STAFFORD: Right, that's where it's
8 going to go for now. Right. Okay, thank you.

9 MS. LAWLESS: Can you summarize that now, so
10 we have it up on the board?

11 MR. STAFFORD: We're going to put in the --
12 in Action Item Three we're putting the last three
13 bullets in my -- in the worker participation document,
14 adding it to Action Item Three.

15 MR. HAWKINS: And if they're redundant,
16 we're asking you to fix that when you go through the
17 document, which they will anyway.

18 MR. STAFFORD: Which they will anyway,
19 right.

20 MR. HAWKINS: Goes without saying.

21 MR. STAFFORD: Okay, I appreciate it. We
22 got through two and that was the goal. Three would
23 have been helpful, but I think now we know what we're
24 going through, and so hopefully tomorrow will be a
25 little smoother as we go.

1 We'll adjourn. Thank you, stakeholders.

2 We'll be back in the same room starting tomorrow

3 morning at nine a.m. Thank you.

4 (Whereupon at 5:03 p.m., the meeting in the

5 above-entitled matter was recessed, to reconvene at

6 9:00 a.m. on Tuesday, April 26, 2016.)

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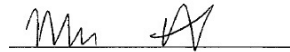
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REPORTER'S CERTIFICATE

DOCKET NO.: None
CASE TITLE: ACCSH Meeting
HEARING DATE: April 25, 2016
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the United States Department of Labor.

Date: April 25, 2016



Maya Hester
Official Reporter
Heritage Reporting Corporation
Suite 206
1220 L Street, N.W.
Washington, D.C. 20005-4018