

U.S. DEPARTMENT OF LABOR

ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND HEALTH
(ACCSH)

Thursday, December 4, 2014

Frances Perkins Building
200 Constitution Avenue, N.W., Room N-4437
Washington, D.C.

PRESENT:

Pete Stafford (Chair)
Christine Branche
Cindy DePrater
Charles Stribling
Dean McKenzie
Donald Pratt
Jeremy Bethancourt
Jerry Rivera
Kevin Cannon
Letitia Davis
Laurie Shadrick
Lisa Wilson
Palmer Hickman
Roger Erickson
Sarah Coyne
Steve Hawkins
Thomas Marrero
David Michaels
Jim Maddux
Val Schaeffer
Lauren Goodman
Heather Phillips
Charles Harvey
Travis Parsons
Scott Schneider
Erik Kampert

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1 P R O C E E D I N G S [9:00 a.m.]

2 OPENING REMARKS

3 MR. STAFFORD: It looks like we have a quorum
4 present, so I'd like to go ahead and call the meeting
5 to order.

6 Welcome, everyone, to OSHA's Advisory
7 Committee on Construction Safety and Health. My name
8 is Pete Stafford. I'm the Chair of ACCSH. Welcome to
9 the meeting this morning. I'm the Labor
10 representative, and we're happy to have all of you
11 here.

12 We have David Michaels in the saddle, so I
13 wanted to be sure that we got started on time, and I
14 appreciate David being here with us this morning, as
15 always.

16 So, let's start the meeting by doing self-
17 introductions. We'll go around this table first, and
18 then we'll go to the audience.

19 I'd like to remind ACCSH members to please
20 speak clearly into the microphone for our recorders.
21 Also, when we get into the discussion, if you have a
22 point to make, or a question, please state your name

1 prior to speaking for the benefit of the court
2 reporter.

3 Thank you.

4 So, with that, let's do introductions,
5 starting to my right.

6 Lisa?

7 MS. WILSON: Lisa Wilson, ACCSH counsel.

8 MR. CANNON: Kevin Cannon, employer rep,
9 Associated General Contractors of America.

10 MR. MARRERO: Tom Marrero, employer rep with
11 Tradesmen International.

12 MR. HICKMAN: Palmer Hickman, employee rep.

13 MS. DAVIS: Tish Davis, public rep from the
14 Massachusetts Department of Public Health.

15 MR. RIVERA: Jerry Rivera, employer rep,
16 Power Design.

17 MS. SHADRICK: Hi, Laurie Shadrick, employee
18 rep, United Association of Plumbers and Pipefitters.

19 MR. STRIBLING: Good morning. Chuck
20 Stribling, state representative, Kentucky Labor
21 Cabinet.

22 DR. BRANCHE: Christine Branche, Federal rep,

1 NIOSH.

2 MR. HAWKINS: Steve Hawkins, state rep,
3 Tennessee OSHA.

4 MR. PRATT: Don Pratt, employer rep, and also
5 representing National Association of Homebuilders.

6 MR. BETHANCOURT: Jeremy Bethancourt, public
7 representative.

8 MS. DePRATER: Cindy DePrater, employer rep,
9 Turner Construction Company.

10 MR. ERICKSON: Roger Erickson, employee rep,
11 International Brotherhood of Boilermakers.

12 MS. COYNE: Sarah Coyne, employee rep,
13 International Union of Painters and Allied Trades.

14 MR. MCKENZIE: Dean McKenzie, OSHA.

15 (Audience introductions.)

16 MR. STAFFORD: Good morning again, everyone.

17 I'd like to remind you we have a full agenda
18 today, and as always, we welcome public comment. We
19 set aside time at the end of the meeting for public
20 comment, and I ask that you please sign in, the signup
21 sheet in the back, if you're interested in making
22 comments to the committee.

1 Usually we'll try to slot the last half-hour
2 or so for public comments, but of course, it has to be
3 fluid, depending on how we get through the agenda.

4 I think Damon at some point will be passing
5 around, if not already, a sign in sheet for the folks
6 that are here in the audience, so please be sure to
7 sign that, as well.

8 Dean, any announcements?

9 MR. MCKENZIE: No, sir.

10 MR. STAFFORD: Lisa?

11 MS. WILSON: No.

12 MR. STAFFORD: Okay. We're good to go.

13 Dr. Michaels, it's good to see you. It's
14 always great that you can take the time and come and
15 talk to our committee.

16 ASSISTANT SECRETARY'S AGENCY UPDATE AND REMARKS

17 DR. MICHAELS: Thank you so much. It's a
18 pleasure to be here. Let me begin by thanking all of
19 you for your great service, both on the ACCSH but also,
20 you know, in your every-day lives, the commitment that
21 you all have to safety is really very important. It's
22 a model for all of us.

1 And I'm pleased we have a good crowd here
2 today, as well. It's a testimony to the importance of
3 this workgroup.

4 I want to welcome a few members, new members.
5 I'm really pleased you could join us.

6 Cindy DePrater of Turner Construction, thank
7 you for joining us.

8 Palmer Hickman, International Brotherhood of
9 Electrical Workers, thank you.

10 And I'm really pleased the -- one of
11 America's really leading experts in construction safety
12 and has done -- made a tremendous contribution,
13 Christine Branche, who is representing NIOSH, and we're
14 really pleased that you could join us on this
15 committee.

16 I understand you had some very successful
17 workgroup meetings yesterday, and thank you all. We're
18 looking forward to your reports.

19 You know, as many of you know, one of the
20 issues that we've been focused on for the last year,
21 two years, really, is around temporary workers, and I
22 think you had -- you've done some excellent work in

1 that.

2 The charge I gave to you, and you have a
3 workgroup working on this, is to help develop
4 recommended practices for employers for safety to
5 include temporary workers -- contractors,
6 subcontractors -- to essentially focus on the changing
7 nature of the American workplace.

8 In the construction industry, that isn't as
9 new as other places, but certainly, in sites of
10 employment where you have employers -- several
11 different employers providing workers is often a
12 challenge for safety.

13 The growth of the temporary staffing agency
14 workforce is somewhat new. They're not that new in the
15 United States but one that we're focused on, and I very
16 much look forward to your report.

17 I want to give a shout out to Tom Marrero,
18 who has really helped us a great deal on this. As many
19 of you know -- if you don't know, we've been -- we have
20 an alliance with the American Staffing Association.

21 We work closely with a number of staffing
22 agencies and the association to help identify the

1 recommended practices that we think should be followed
2 by host employers and staffing agencies to ensure the
3 safety of workers, and many people on this workgroup
4 contributed to that publication.

5 We have more publications coming down the
6 line, and we look forward to your input, as well.

7 As you all know, while it's very -- we're
8 eager to be working with the staffing association and
9 with -- with Tom's organization and with other staffing
10 agencies.

11 The bottom line is that the host employer has
12 to provide a safe workplace. I mean, all employers
13 have that responsibility, but we have to make sure that
14 host employers fulfill their responsibility to protect
15 every worker at the worksite that they control.

16 And so, we have to work through this and make
17 sure that everybody is covered, that the staffing
18 agencies are involved, contractors, subcontractors.

19 We certainly are concerned about all
20 employees whether or not they're correctly or
21 incorrectly classified as independent contractors.
22 Everybody needs to be safe, and we really appreciate

1 your work on that, and so, let's see where that goes,
2 and I think, over the next couple of years, we will
3 continue to work on that, but I think we've made great
4 progress, and I think part of that progress is really
5 your contribution.

6 So, thank you on that.

7 I want to update you on another topic that's
8 come up here that I think we've made some progress on,
9 as well, which is the protection of workers involved in
10 cell towers, both in constructing cell towers, in the
11 maintenance of cell towers, and increasingly we see the
12 -- the refurbishment of cell towers to make them able
13 to carry heavier transmitters and other equipment.

14 In the past couple of years, we've seen a
15 spike in fatalities of workers involved in cell towers.

16 It's very disconcerting. We think it's an issue that
17 needs to be addressed, and we've gotten some help from
18 many of you.

19 As I think most of you know, we had a very
20 successful meeting -- we held a very successful meeting
21 jointly with the Federal Communications Commission just
22 a couple of months ago where the chair of the FCC, Tom

1 Wheeler, and Secretary Tom Perez, the Labor Secretary,
2 together, called a meeting.

3 We had representatives from all the major
4 carriers, the cell phone carriers, the folks who build
5 cell towers, ones who maintain cell towers, the unions
6 involved, talking about how we needed a joint industry-
7 wide commitment to safety.

8 We can't have anymore falling workers.

9 We continue to work with the FCC on some best
10 practices guidance. We have a regular call with them,
11 and I think it's -- it really has raised this issue to
12 a higher level.

13 We're now in the final stages of reviewing a
14 request for information that we'll put out in the
15 Federal Register on communications towers, and we want
16 to get the input of any people on ways we can move
17 forward to make sure workers are safe.

18 We have made, also, progress on an area I
19 think that many of you have been involved with for too
20 many years, which is the confined space in construction
21 regulation, and I know, you know, we've been focused on
22 that, really, for, I'm embarrassed to say decades, but

1 in fact, decades.

2 You know, last month, November 13th, we
3 submitted our final rule to the Office of Management
4 and Budget for internal review, and we've already had
5 some discussions with the OMB staff.

6 You know, I can never predict exactly when a
7 rule will be published, but within the next few months,
8 we will see a final rule.

9 You know, during the comment period, we -- we
10 were told by many, many of our folks who participated
11 in our process that our rule should be more like the
12 general industry rule, and so, we've listened to their
13 comments.

14 So, the final rule reflects a lot of the
15 comments. It's somewhat different than the rule that
16 we proposed. Everyone will see that.

17 We can't talk more about it, because we're in
18 the regulatory process, but hopefully we'll see it
19 soon, and I think everybody will be pleased with it.

20 January 1st begins implementation of a new
21 set of regulations around notification of OSHA when
22 injuries occur, severe injuries occur, and again, this

1 is something that, while we've talked about it a great
2 deal for a while, it finally is happening in January.

3 We'd like your help getting the word out,
4 because we now have a requirement that when a worker is
5 severely injured, one worker is severely injured, the
6 employer must notify OSHA.

7 By "severely injured," in this case, we mean
8 a worker who is hospitalized, not just taken to the
9 hospital for observation but admitted to the hospital,
10 or when a worker has a part of their body amputated,
11 cut off, or when they lose an eye.

12 Now, some states already have rules very
13 similar to this. I'm looking at Chuck Stribling, who -
14 - Kentucky has very similar rules. California has some
15 similar rules.

16 So, this isn't totally new, but previously
17 OSHA's requirement was only that we would be notified
18 when there was a fatality or when three workers were
19 admitted to a hospital. That's a very high bar.

20 We were not informed of many, many, you know,
21 serious injuries, and we often found when we -- when
22 we'd investigate after a fatality or, you know, a very

1 serious injury that we heard about, that if we had
2 gotten there earlier, you know, that there had been
3 previous serious injuries at that workplace.

4 We look at this from the public health point
5 of view as sort of a sentinel health event. If a
6 worker is injured to the point of being hospitalized or
7 loses a piece of their body, we know that there's
8 something going on at that workplace that needs some
9 intervention.

10 It's telling us there is a -- not only are
11 there serious hazards at this workplace but they've
12 already hurt someone.

13 Now, there may be rare exceptions where
14 that's not the case, and of course, you know, that can
15 happen, but in many cases, we will see workplaces where
16 there are very hazards and intervention needs to be
17 done.

18 But OSHA isn't going to be able to inspect
19 all those workplaces. You know, by law, we inspect
20 after fatalities, and we will continue to do that, but
21 you know, the Federal OSHA does about 40,000
22 inspections a year.

1 Our state partners -- you know, Chuck is
2 here, and then we have Steve from Tennessee -- our
3 state partners do about 50,000 inspections a year.
4 Ninety thousand inspections all together.

5 There are well over 90,000 amputations and
6 hospitalizations every year, and obviously, we have to
7 do inspections of things otherwise, as well.

8 So, we are not going to inspect -- Federal
9 OSHA will not inspect every workplace after we've been
10 informed of an amputation or a worker being
11 hospitalized. We can't. We just don't have the staff.

12 By the way, this regulation goes into effect
13 January 1st only in Federal states. It doesn't go into
14 effect January 1st in state plan states. The states
15 have six -- up to six months to adopt their
16 regulations.

17 They have to be at least as effective as
18 ours, and so, we'll work -- we'll work with the states
19 that need to get there. Some states, as I said, are
20 already there.

21 So, the question I think many people are
22 asking is what will we do when we get these

1 notifications, and in many cases, we will have a
2 conversation with the employer, and we'll ask the
3 employer what they plan to do, what sort of an incident
4 investigation they will undertake to identify why this
5 worker was injured and what needs to be done to make
6 sure additional workers aren't injured.

7 And this is -- this is new to us, and I think
8 what we do January 1st won't be the same as what we do
9 May 1st or January 1st next year, cause we'll learn as
10 we go, but it will establish a new relationship between
11 OSHA and many employers who previously didn't have
12 contact with OSHA, and our objective is to help them.

13 We want to take different approaches and use
14 our different tools to make sure that if one worker is
15 injured, that that's the last worker injured at that
16 workplace, and I think far too often, as I said in the
17 past, workers were injured, we didn't hear about it,
18 nothing was done, and then another worker was injured
19 and then another worker was injured until it became so
20 obvious that we heard about it and went in there. We
21 don't want that to occur. We think these are teachable
22 moments.

1 After a worker is badly hurt, everybody in
2 that workplace is tremendously impacted, and there's no
3 one who has ever worked in a place where a worker has
4 been killed or badly hurt that doesn't recognize what -
5 - what change that results in.

6 So, we want to take that moment, that
7 terrible moment where people realize that there was a
8 serious hazard here that wasn't addressed, and help the
9 employer make sure that no other worker is hurt.

10 So, we're moving forward on that. We'd love
11 your help on that, as well. As we develop things, you
12 know, we will certainly be interacting with you.

13 We'll talk about what sort of approaches
14 we're taking and see if we -- what we can do to make
15 sure that when we have that initial conversation, set
16 of conversations with employers, after a worker has
17 been hurt, out of that comes meaningful change at the
18 workplace to protect workers in the future.

19 We're eager, as I said, to get the word out,
20 to make sure employers know to call us. I know the
21 National Association of Homebuilders has a great tool
22 kit on their website about worker -- notifying OSHA

1 when -- if one of their members has a worker that's
2 hurt. Take a look at that.

3 We will have a new website up by January 1st
4 so people can notify us online, but they could always
5 call the local area office or call 1-800-321-OSHA.
6 That's our 800 number, 24 hours a day, when they notify
7 us. So, we really want to get the word out.

8 So, today is actually an important day in
9 safety and health. Today is the day that the Bureau of
10 Labor Statistics is releasing the Survey of
11 Occupational Injury and Illnesses.

12 Now, I can't actually tell you what the SOY,
13 as it's called, says, because it's embargoed until
14 10:00 o'clock, and we take our embargoes very seriously
15 here.

16 You know, the Labor Department has a lot of
17 data we never discuss until it's formally released, and
18 it will be released in about 45 minutes, and we will
19 get -- make sure you get the information that it says,
20 but I want to talk about the SOY and injuries in
21 general.

22 You know, the BLS takes a survey of -- a

1 sample of employer logs, the OSHA 300 logs that are
2 kept, and the 301 logs. They are collected by the
3 Bureau of Labor Statistics. They are coded by states.

4 I think Tish Davis is very much involved in
5 this in Massachusetts, and she could probably talk more
6 about the process.

7 But out of that, the BLS estimates how many
8 workers are injured every year in many different
9 sectors of the economy. This is the first of their
10 releases.

11 There will be another one in a few weeks that
12 will give a lot more case information, that will talk
13 about aspects of -- different aspects of it, the days
14 away from work, the job transfers.

15 That's included, to some extent, in today's
16 release. There will be more coming up.

17 But this is important for two reasons. One
18 is it helps us and helps industries understand bigger
19 patterns. It helps us focus.

20 If we see that injury rates are going up in a
21 sector or going down in a sector, it tells us that's an
22 area that needs some assistance from us, and not just

1 from us but from NIOSH and others. It gives us the big
2 picture where things are going.

3 But injury logs are really more important
4 tools for employers. I think everybody here knows
5 that. The injury log is, you know, secondarily a tool
6 for all of us to understand what's going on in the
7 country, but more importantly they're for employers.

8 Employers need to have an accurate
9 understanding of what's going on in the workplace, and
10 an injury log is sort of the minimum.

11 I think every employer who is involved here
12 knows that they look at hazards beyond what simply
13 shows up on their injury logs.

14 I mean, the employers who really understand
15 safety and health investigate injuries, but they also
16 investigate near-misses and other sorts of incidents.
17 But they look at their injury logs, and the injury
18 logs, as I said, are sort of the absolute minimum to
19 understand what's going on in the workplace, and
20 they're obviously what BLS uses to help us figure out
21 what's going on in all workplaces, in all industries
22 across the United States.

1 So, you're going to hear a presentation today
2 from Lauren Goodman about one of the -- one of our
3 upcoming regulations, which is a clarification of the
4 employer's continuing obligation to maintain accurate
5 records, and this is really about making sure these
6 OSHA logs are accurate and complete.

7 We've had a longstanding position, you know,
8 really, since -- you know, this is over 40 years --
9 that it's the employer's duty to record an injury or
10 illness, and that duty continues for the full duration
11 of the record retention period.

12 That's about five years, five years after the
13 end of the calendar year within which the injury
14 occurred, and we -- we held this position -- we
15 enforced it for four decades. The OSHA Review
16 Commission upheld this.

17 But a couple of years ago, the Circuit Court
18 issued a decision reversing that, and so, we need to
19 clarify what the employer's obligation is, and so,
20 we're going to hear a presentation about that.

21 To us, this is important, because it's about
22 accuracy, and every employer really needs accurate

1 records. They need complete records. They need
2 accurate records.

3 We need those when we go into a workplace.
4 BLS needs those to understand what's going on in the
5 workplaces across the country.

6 And so, we want to make sure records that are
7 kept by employers are as accurate and complete as
8 possible.

9 So, we're going to talk about that a little
10 later today, and I think you'll find that very
11 interesting. It's obviously something of great
12 importance to us.

13 So, those are sort of the updates I wanted to
14 give you. I decided to spare you my Power Point today.
15 But I'm happy to answer any questions, and again,
16 thanks for everything you do.

17 MR. STAFFORD: Thank you, Dr. Michaels.

18 Any questions or comments for Dr. Michaels?

19 MR. CANNON: Hello, Dr. Michaels. Kevin
20 Cannon, employer rep, AGC of America.

21 You, of course, can't say much, but as far as
22 silica is concerned, can you give us -- you didn't

1 mention anything, but can you give us sort of a
2 projected timeline as to what the agency is shooting
3 for?

4 DR. MICHAELS: Yeah. We're aiming to get
5 this out -- yeah, that's a great question. We held our
6 silica hearings earlier this year. Many people here
7 were involved. They were terrific hearings. We had
8 several weeks of hearings.

9 We have thousands and thousands of pages of
10 submissions of -- there are records of the testimony
11 where many people got up and gave very important
12 testimony and then answered questions, because you
13 know, we know our system -- anybody who gives testimony
14 has to answer questions from other people who give
15 testimony.

16 So, we've gathered that. We have a
17 tremendous amount of information that we're now trying
18 to deal with. We're going through every comments that
19 we received, and we received thousands of comments, and
20 every page of testimony.

21 Our objective is to issue the -- the silica
22 standard in final form in early 2016. I think we'll

1 get there. We have a terrific staff working on that.
2 We can't talk about the specifics, because we're in
3 this regulatory process.

4 But we appreciate everybody's contribution to
5 this, and we're moving forward.

6 In the meantime, though, it's worth noting,
7 especially in the construction industry, there is no
8 one who doesn't think our current standard is out of
9 date, and you know, one thing we developed in the --
10 you know, for the rulemaking procedure is that -- our
11 table that said, if you follow certain procedures, you
12 will not be in violation of the standard, and we
13 developed that to say you will not be in violation of
14 the proposed standard, which is, you know, 20 percent
15 of the -- of the current standard in construction, 50
16 instead of 250.

17 So, we certainly want to encourage employers
18 in the construction industry to follow that table now.

19 It's not a regulatory requirement at all, and we
20 certainly cannot enforce it, but if you want to make
21 sure your employees are safe, take a look at that
22 table, and if you follow that table, and you know, if

1 you're working less than four hours, you have to do
2 "X", if more than four hours a day, you do "Y",
3 depending on the specific job, you know you're going to
4 be safe.

5 So, we'd like to encourage employers and
6 trade associations to tell their members. That's an
7 easy way to go. You certainly don't have to measure.

8 We've done -- you know, there have been so
9 many studies of workers exposed to silica in the
10 construction industry, we know more or less how much
11 exposure occurs if you're doing certain types of
12 activities, if you're grinding, if you're cutting with
13 masonry saws, if you're doing, you know, pointing, that
14 sort of thing.

15 We know enough, and so, we're encouraging
16 employers to take a look at that table and follow those
17 suggestions.

18 So, thanks for that question.

19 Mr. STAFFORD: Any other questions or
20 comments?

21 (No response.)

22 MR. STAFFORD: I have one comment, David.

1 At one of our workgroup meetings on outreach
2 and training yesterday, we had a report of the numbers
3 on the National Falls Fatalities Campaign, and I just
4 wanted to thank you for OSHA's commitment to that
5 campaign, and I think, in the first year of the stand-
6 down, it looks like we've touched about 1.5 million
7 construction workers, and I really appreciate the
8 agency's support and the resources you've put into it.

9 DR. MICHAELS: Well, thanks to all of you,
10 and certainly thanks to NIOSH and Christine. They were
11 one of our many partners.

12 We all partnered together on this, and NIOSH
13 did a really important job, and our staff and Jim
14 Maddux and -- led by Jim Maddux and Dean McKenzie --
15 worked tirelessly on that, and I think there were --
16 virtually everybody in this room had some involvement
17 in this.

18 It was a great collective activity, and you
19 know, we think we should do more things like this. So,
20 thank you for reminding me of that, as well.

21 MR. STAFFORD: I'm assuming we'll be talking
22 more about that as a part of Jim's report and our

1 plans, hopefully, for the future campaign in the next
2 stand-down.

3 And one final observation for you. You know,
4 the temporary worker issue is obviously something that
5 goes across all industries, and while we tried to have
6 a formal joint ACCSH/NACOSH meeting, with the
7 schedules, that didn't quite work out, but we did have
8 some ACCSH participation in the workgroup yesterday, as
9 I understand it, and I don't know if this is me as
10 Chair or if this is on the agency or is a FACA legal
11 thing, but I really would encourage us to figure out
12 how we could work more closely with the other OSHA
13 advisory committees that are dealing with kind of
14 parallel issues, and temporary workers is really, I
15 think, an excellent example of that.

16 DR. MICHAELS: That's a great suggestion.
17 We'll see if we can make that work.

18 Let me also -- you know, I neglected to thank
19 Lisa Wilson for -- the Solicitor of Labor's
20 representative on this committee, who really plays a
21 very important, if, you know, quiet, role in making
22 sure this committee accomplishes what it needs to

1 accomplish.

2 So, thank you, Lisa.

3 MR. STAFFORD: She kicks me a lot under the
4 table.

5 DR. MICHAELS: That's her job.

6 MR. STAFFORD: Anymore questions or comments
7 for Dr. Michaels?

8 (No response.)

9 MR. STAFFORD: Okay. Well, David, thank you
10 very much.

11 DR. MICHAELS: Well, thank you.

12 (Applause.)

13 MR. STAFFORD: Mr. Maddux. Are you going to
14 be sparing us a Power Point presentation, as well?

15 MR. MADDUX: No, I'm not going to give you
16 that much of a break.

17 MR. STAFFORD: Okay.

18 MR. MADDUX: Just one of us will give you
19 that break today.

20 DIRECTORATE OF CONSTRUCTION REGULATORY UPDATE

21 MR. MADDUX: Thanks, everybody. Really
22 appreciate everybody's work here. As Dr. Michaels

1 said, you know, this is very important to OSHA and, of
2 course, for our Directorate of Construction as we work
3 on our projects and try and improve safety and health
4 in the industry.

5 I'll talk a little bit today about some
6 statistics, a regulatory update, demolition, some of
7 our outreach products that we've published since the
8 last time we spoke, and a little bit about the fall
9 prevention stand-down and campaign that Pete mentioned.

10 So, I just wanted to highlight some of the
11 statistics that David was talking about. The
12 fatalities continue to be a huge number in
13 construction.

14 We saw a great decline, you know, when we had
15 the recession and we had such a downturn in
16 construction activity. Now we're at a time where
17 construction is picking up, and unfortunately,
18 fatalities have picked up with it.

19 These 2013 numbers -- I would just caution
20 people -- the way that the fatality numbers work at
21 BLS, the process, is that it's a census.

22 The bureau collects information on each and

1 every fatality that occurs across the United States,
2 and then, in their preliminary results, and their final
3 results, as well, they -- they list only those
4 fatalities that have been verified through three
5 separate sources of information.

6 They have, I think -- is it, Tish -- about a
7 dozen different sources that they look at, something
8 like that, and so, there's a preliminary number that
9 comes out, and then there's a final number that comes
10 out.

11 So, when we look at the 796 number compared
12 to the 2012 806, that's only a difference of 10. When
13 the final numbers come in, it's actually quite likely
14 that that will not be a decline at all, that it will be
15 an increase in fatalities from '12 to '13.

16 So, I've seen several news articles kind of
17 talking about how great it is that fatalities have
18 declined, and of course, that's always a great thing,
19 but we need to remember how these statistics work and
20 whether it's a real decline or whether we just haven't
21 got the whole story yet.

22 The leading causes of fatalities -- as you

1 can see, our focus on four that we've had for many
2 years, and these categories are actually all up from
3 2012 in the preliminary data.

4 So, these will go even higher when we get
5 final data.

6 This is just our top 10 violations in
7 construction. A lot of these are the ones that we've
8 seen for years and support the ongoing need to be
9 concerned about fall protection in the industry.

10 We need to have fall protection -- scaffolds,
11 ladders, fall protection training.

12 We also continue to see -- I think we're
13 seeing a slightly fewer number of violations, but
14 simple head protection, PPE issues, you know, that are
15 a little disconcerting, that, you know, such basic
16 things are still an issue in our industry.

17 So, confined spaces. Dr. Michael spoke about
18 that. I don't have much to add there except just to
19 say, you know, how thankful that I am to our staff for
20 -- for doing all of the work to finally get this thing
21 moving and get it into the clearance process.

22 We're just very happy that it's moving along

1 and are looking forward to publishing the final rule
2 and working on the rollout and the implementation
3 phase.

4 It's really been a long time coming, and it
5 will be great when construction workers have the same
6 protections from confined spaces as workers in other
7 industries.

8 A little bit about cranes. We still have a
9 lot of activity going on here. We did publish our
10 directive earlier this year, which is a big plus. It's
11 a big complicated standard, so we had a big complicated
12 directive to go with it, but it seems to be going
13 pretty well.

14 We also reached a settlement, finally, with
15 the American Association of Railroads on the standard,
16 and that settlement requires us to issue a proposed
17 rule to deal with how the crane standard covers some of
18 the railroad equipment.

19 So, we're working on that. That will
20 probably be -- I don't know -- sometime next year.

21 We also have a number of cranes and derricks
22 amendments that we're working on. We've talked about

1 those in the past. The primary things that are of
2 interest here are how we deal with forklifts,
3 insulating links, and proximity alarms.

4 So, that's probably a little ways off, but
5 it's getting close to getting into clearance.

6 And then we have, of course, the crane
7 operator qualification and certification issue. We
8 published our three-year extension in February to give
9 us time to take another look at this issue and to make
10 sure that the standards actually require crane
11 operators to be qualified to operate cranes safely.

12 And so, we're working very hard. We would
13 like to move even faster than that three years if we
14 can figure out how to do that. You know, we still have
15 all the usual regulatory processes that we need to
16 follow, but we are going to do what we can.

17 In the meantime, we do have the general
18 requirement in the standard that employers are required
19 to ensure that crane operators are competent to operate
20 that crane safely, and if they're not competent, then
21 the employer needs to make sure that they get training.

22 So, that's kind of our requirement in the

1 interim until we do something more on the issue.

2 MR. STAFFORD: I'm sorry, Jim. What's the
3 mechanism for that, then, on the certification issue?
4 Over the next three years, you're going to be --

5 MR. MADDUX: It's going to be a rulemaking.
6 So, we are right now developing regulatory text.

7 We'll be, you know, developing a preamble,
8 economics, and so forth, and we need to think about the
9 process that we'll be going through moving forward.
10 You know, whether or not we need to have a small
11 business panel is under discussion right now.

12 Certainly, you know, when we have a proposal
13 and we're getting to a point where we feel like we know
14 where we want to go, we'll be coming to this committee
15 to discuss it, like we do with all standards projects,
16 and it will be going through the regular proposal
17 notice and comment, hearings that we do on any other
18 standard.

19 MR. STAFFORD: Thank you.

20 Go ahead, Jerry.

21 MR. RIVERA: Yes, Jim, a quick question.

22 Jerry Rivera, employer rep.

1 I see here that it says, if not competent,
2 trained. You know, would employers who train their
3 operators be deemed today as meeting the intent of the
4 rule as it's written, and then what is -- what
5 constitutes, you know, I guess, adequate training for
6 this in the interim?

7 I know this changes, but I think employers
8 are really concerned about what that actually means.

9 MR. MADDUX: And it is a very general
10 requirement. It is the requirement that has been in
11 effect since 2010 when the crane rule was published.
12 So, this is not new.

13 This is exactly what the rule has had for the
14 last four years, and what it means is that -- you know,
15 it's a general requirement.

16 We haven't really done any interpretation of
17 it at this point, but the employer is responsible for
18 making sure that that crane operator is competent to do
19 the job, and so, you know, I don't know how much they
20 need to do to do that.

21 Certainly, if they've had training, that's a
22 plus. If they've actually done some sort of an

1 assessment, maybe an interview with the crane operator,
2 what's your experience, how did you get trained, how
3 did you get here, have you been on this crane before,
4 something like that might be helpful just to know where
5 the guy is coming from.

6 Subpart B was done, of course, by our
7 Directorate of Standards and Guidance, and so, we
8 published that standard and we're in lawsuit settlement
9 talks right now with the Edison Electric Institute.

10 You know, there are a lot of very detailed
11 issues in the standard that we're trying to work
12 through, and we're, you know, hoping to get through
13 that, hopefully, before the next time that we meet,
14 we'll have a settlement and be able to discuss that.

15 David talked a lot about communication
16 towers. You know, we had a big spike in 2013 in
17 fatalities, and we've continued to have a very large
18 number of fatalities in '14. I know Chuck had one in
19 Kentucky that was a particularly awful incident.

20 We have had no fatalities or serious injury
21 reports for the last couple of months, which is, you
22 know, heartening. We're very hopeful that maybe we've

1 got the attention of the industry and that we're seeing
2 some improvements here.

3 We have added communication towers to the
4 regulatory agenda, and we are planning to publish a
5 request for information, as David spoke about, and
6 looking forward to comment on that to see, do we need
7 to do some specific regulatory actions to deal with
8 these problems.

9 And I will say it's not always what you
10 think. In 2013, a large number of the fatalities were
11 simple falls and no fall protection.

12 Particularly, we saw, I think, about 70
13 percent of the cases where people had a harness on but
14 they were not tied off to an anchorage, and of course,
15 we all know how much good a harness does without an
16 anchorage. None.

17 In 2014, this year, that has shifted, and we
18 have seen just a few of the fatalities have been that
19 pattern of falls, and the remainder have actually been
20 entire towers collapsing because there was maintenance
21 or construction work going on on them that was not
22 being done in a way that maintained the stability of

1 the structure, and rigging incidents, where we have
2 rigging failures, either cable breaks or anchorage
3 breaks, you know, for the rigging.

4 So, we've definitely seen this issue continue
5 to evolve. We're keeping a very close eye on it,
6 investigating incidents, enforcing the standards that
7 we have, and we've issued a series of general duty
8 clause citations this year to try and deal with some of
9 these incidents.

10 MR. STAFFORD: Jerry, please go ahead.

11 MR. RIVERA: Jim, you mentioned that there's
12 kind of a shift in some towers actually coming down,
13 and one thing that I remember clearly is that some of
14 these towers, you know, to a certain degree, the
15 structural integrity of them at the design stage was
16 not at certain points built to sustain the weight.
17 Some of them you can actually shake with your body,
18 depending on the different type of towers.

19 So, that's something to keep in mind, that
20 even those where employers were trying to do their due
21 diligence to actually tie off, it might be misleading,
22 and that might be the reason why you're seeing, yeah,

1 guys are tying off, but now towers are coming down.

2 So, that needs to be closely -- whether we're
3 creating a broader hazard by actually mandating that
4 they tie off without knowing the structure --

5 MR. MADDUX: We haven't seen any of them
6 where it appears that the person being tied off was the
7 cause of a collapse. The causes of the collapse have
8 been much more straightforward.

9 We had one where they were removing diagonal
10 members from the tower, to replace the diagonals in
11 order to make the tower stronger so that it could hold
12 more and heavier antennas. They had removed too many
13 diagonals at the same time, weakening the structure,
14 and it came down.

15 We had another incident where they were
16 performing demolition on the structure, where they were
17 lowering an antenna to salvage the antenna, and they
18 had a rigging failure, and the rigging failure dropped
19 the antenna, which then pulled over the entire
20 structure, which then landed on top of the new tower
21 that had been built to replace it, and brought that
22 tower down, as well.

1 You know, so none of these have been due to
2 somebody tying off to the structure. They've been due
3 to basic errors in construction.

4 MR. STAFFORD: Please, Don, go ahead.

5 MR. PRATT: Thank you.

6 I'm Don Pratt, representing employers.

7 Jim, good morning.

8 MR. MADDUX: Hi.

9 MR. PRATT: The question I have -- has OSHA
10 worked with the International Code Council regarding
11 that issue you're talking about with tower failures to
12 -- to make sure that our codes in this country are --
13 are set so that we don't have these kinds of failures?

14 I mean, I understand, if somebody is taking
15 off bracing, that's one thing, but on the other hand,
16 if there is a flaw in the commercial code from ICC,
17 maybe we need to look at that at the ICC level with a
18 little nudging from OSHA to be able to do that, and if
19 you're going to be at the International Builders Show
20 this year, it may give us an opportunity to talk to
21 some of the folks at ICC about that issue.

22 MR. MADDUX: I am not aware of the ICC

1 having any standards for these structures.

2 Primary engineering standards and so forth,
3 ANSI standards, are covered by the TIA standards, and
4 there are several of those, and there are several more
5 that are in the works, and what we've actually seen is
6 that the incidents that we've seen, people were not
7 following those standards, you know, but most of those
8 are actually oriented more towards the actual design
9 and stability of the structure and not as much towards
10 how to maintain, rebuild, demolish the structure.

11 But it's a good point. We should take a look
12 at the codes. There may be local codes that come into
13 play, as well.

14 MR. STAFFORD: I don't know how you do this.

15 I mean, how would you go about impacting or making a
16 change or instituting a code working with ICC?

17 MR. MADDUX: I don't know. I never tried it
18 before.

19 MR. STAFFORD: Yes, Don, and then Cindy.

20 MR. PRATT: Pete, you would submit a
21 proposed code change that would then be reviewed by the
22 building committee for ICC, and then it would go

1 through a public hearing process, just -- very similar
2 to what we do at OSHA.

3 MR. STAFFORD: Cindy.

4 MS. DePRATER: Cindy DePrater, employer rep.

5 Mine is more of a comment along your line,
6 Donald.

7 Any type of demolition should have a good
8 engineering plan, and so, that probably should be part
9 of the code to assure that an engineer stamps the
10 demolition or redesign or maintenance so that there is
11 a plan that can be followed which includes safety.

12 MR. MADDUX: Of course, the OSHA standards do
13 require that engineering plan, and it's actually, in
14 demolition, the most common citation that we have, is
15 that people have not done the planning to do the work
16 safely.

17 Thank you.

18 We're also continuing to work with the
19 states. We've been providing engineering support.

20 Mohammed Ayub -- I think everybody on this
21 panels knows -- has been out helping our field folks.
22 He is not here today. He's actually in North Carolina

1 helping to investigate a bridge collapse.

2 We also have tried to use media here. We've
3 had several social media outreach things, trying to get
4 the attention of the industry, done some news releases.

5 We developed a tower safety web page. Dr.
6 Michaels did a speech, a video speech, to the National
7 Association of Tower Erectors. We put that on the web
8 page.

9 And we did something sort of interesting
10 here. This is actually Dr. Michaels' idea. We put an
11 email address directly on the web page so that people
12 could send us information about tower safety if they
13 had an interest in that.

14 And so, we did actually get, in the early
15 days of it, several interesting emails and some
16 interesting research on climber fatigue and how fatigue
17 comes into play as an issue, not only in terms of
18 having the endurance to actually climb the tower but
19 then having enough oxygen going to your brain to then
20 be able to do the work safely and capably. You know, I
21 mean, this is very, very demanding work.

22 And we also heard from several victims'

1 families and from people like that. We got a lot of
2 good information. That's kind of shifted now. It
3 seems to be mostly people who want to sell something,
4 but that's the nature of the world.

5 We've also developed, I think, a very good
6 relationship with NATE and other industry stakeholders
7 who are helping us to get the word out. You know, when
8 we have things to say, they're helping to get that to
9 their memberships, and doing outreach.

10 We sent a letter to the companies -- the top
11 100 companies that own towers, trying to get their help
12 in this matter.

13 In many cases, especially with these
14 collapses, this is their property. You know, they need
15 to be taking care of it, and they need to make sure
16 that they know who is on it and what they're doing
17 while they're on there.

18 And then, of course, David talked about the
19 FCC workshop, which has been a wonderful collaboration
20 to try and help get the carriers involved, as well, so
21 that we're trying to get everybody in the chain here,
22 from the people who use the towers, who are -- who are

1 hanging their antennas on them, to the people who own
2 the towers, to the people that work on the towers. So,
3 you know, an across-the-board approach.

4 And of course, we issued our directive for
5 accessing towers by hoist. This was an old directive.

6 It deals, actually, just with the narrow issue of
7 raising people on the tower using gin poles and
8 hoisting devices.

9 There's actually -- the amount of activity
10 that is going on like this is declining. The three
11 largest tower owners are really, really controlling
12 this activity.

13 Many of the incidents that we've seen, for
14 example, on rigging are when they were rigging gin
15 poles and other devices to try and be able to hoist
16 antennas and so forth up to the tower, and so, the
17 tower owners have figured out that this is a major
18 problem on their towers, and they are implementing some
19 very strict controls on the use of these devices.

20 A couple of fact sheets that we put out since
21 the last time we spoke, on scaffolds, on tube-and-
22 coupler scaffolds, on planning and design, and the

1 other one on actually erection and use.

2 One of the things that we discovered a few
3 years ago -- we were doing a review of all of our
4 guidance products to see, you know, what should be
5 retired, what should be fixed, what we needed to do
6 new, and we discovered that we actually had very, very
7 little guidance on scaffolds, and we know that
8 scaffolds are a really serious problem.

9 You know, in the fall campaign, it's one of
10 our major issues. We see a lot of scaffold violations
11 when we're out doing inspections and so forth.

12 So, we're actually very happy to finally get
13 out some additional guidance on scaffolds that will
14 help people with this ongoing, day-to-day issue.

15 This is our demolition page that we put up.
16 I just wanted to chat a little bit about demolition.
17 Aside from the communication tower demolition incident
18 that we saw out in Kansas, we are continuing to see a
19 lot of demolition incidents.

20 This obviously came onto our radar screen in
21 a very dramatic way in the Philadelphia collapse, where
22 buildings were being torn down and a wall fell onto a

1 Salvation Army thrift store, killing a couple of
2 workers in that thrift store and some people shopping,
3 horrific, horrific incident.

4 But we continue to see demolition problems.
5 We've got to figure out some way to get the word out
6 about having an engineering plan, about following the
7 engineering plan, about doing demolition in a much
8 smarter way than we're doing it now.

9 Unlike the communication tower folks, this is
10 sort of a difficult industry to reach through outreach
11 programs and so forth, because it's not just people
12 that are classified in demolition NAICS codes that are
13 doing demolition.

14 It's people in every construction code that
15 are doing demolition. General contractors. You know,
16 people in all -- you know, just general construction
17 firms and so forth that are doing this work.

18 So, this is actually a collapse that just
19 happened last weekend in New York, on Staten Island,
20 where this gentleman was killed in a fatality. They
21 were demolishing an old automobile dealership.

22 They built a new auto dealership, and they

1 were taking down the old one, and the roof fell, killed
2 this man and seriously injured four others, five days
3 ago.

4 This was a November 5th collapse in Bristol,
5 Pennsylvania. This was actually a historic structure
6 that was being rebuilt, and so, as part of the
7 rebuilding, they were changing the floor joists.

8 You cannot take out all of the floor joists
9 and then start putting in new floor joist. They had
10 taken too many floor joists out. It weakened the
11 structure. It fell, killing one worker.

12 So, we're continuing to see these incidents
13 just on an ongoing basis. It's just regular as
14 clockwork, and so, we're trying to figure out how to do
15 a little bit more in terms of getting some outreach on
16 demolition.

17 Yes, Tish.

18 MS. DAVIS: Jim, we work closely with our
19 building permit offices throughout the state. I
20 presume that large demolition projects need permits.
21 Code probably differs from city to city.

22 We can disseminate information through our --

1 cause they have to give the permits. We could train
2 our building permit --

3 MR. MADDUX: Absolutely. And that's one of
4 the things that we saw as one of the follow-ups in
5 Philadelphia, you know, where -- where the -- the
6 incident earlier this year was really a dramatic thing
7 for the city.

8 And you know, Philadelphia is a city where
9 there is a lot of rehabilitation building going on
10 right now, and a lot of demolition associated with
11 that, and as part of that, we actually developed a much
12 closer relationship with their building permit folks
13 and with their building inspection folks.

14 And so, we've been doing a lot of referrals
15 back and forth, one to the other, to try and make sure
16 that, if we see something, we let them know, and vice
17 versa, and we've had several incidents where -- I mean,
18 you never know if the building would have fallen down
19 or not, but we've had several interventions at
20 demolition sites since then that may have saved
21 somebody's life.

22 So, certainly, the local permitting, local

1 inspection folks are key allies in this.

2 MS. DAVIS: So, we should bring this to the
3 state public health programs that work with them. We
4 have a meeting next week.

5 MR. MADDUX: You know, one of the things on
6 our project list -- we refreshed our web page and did
7 some work there, and then we're trying to work with the
8 National Association of Counties, National League of
9 Cities to get some targeted articles in some of their
10 newsletters and so forth, to try and get to some of the
11 city and county folks who also have some oversight
12 responsibilities in this area, but as you said, the
13 requirements vary pretty widely from state to state and
14 city to city.

15 MR. STAFFORD: Just let me ask, Chuck or
16 Steve, any issues in your states or how you deal with
17 this in Kentucky or Tennessee, working with permit
18 offices?

19 Steve.

20 MR. HAWKINS: Steve Hawkins, state plan rep.
21 Nothing but to echo what Jim said.

22 It seems like, at least in our relatively

1 small state, we have a demolition fatality almost every
2 year, and what Jim said -- Jim was extremely kind about
3 who does this.

4 A lot of times it's somebody goes out and
5 just hires three or four people and -- you know,
6 everybody thinks they can tear something down. I mean,
7 I specialized -- as a child, I could tear up lots of
8 stuff. I never could put it back together, but I could
9 tear it up.

10 And so, you think there's no expertise
11 required, and there's really a great deal of expertise
12 required, and so, I would just echo what Jim says. I
13 mean, it's -- I wrote it down.

14 I think what Tish was saying, and Jim, if
15 there was a way to integrate the engineering plan in
16 the process of receiving a permit to demolish a
17 structure, that would probably go a long way in -- and
18 you know, you get ready to build a building, you submit
19 plans, right? Always.

20 So, you know, it seems really logical. That
21 might really be a possibility.

22 But we just see the same problems.

1 MR. STAFFORD: Thank you.

2 Jeremy?

3 MR. BETHANCOURT: Jeremy Bethancourt, public
4 rep.

5 I wonder, addressing it to Chuck and Steve,
6 if that's something that might be brought up at OSHPA
7 as maybe some way to -- to think about reaching out in
8 the states to try and see if there's a way to get the
9 building permit folks involved.

10 It's been my experience that building safety
11 doesn't mean safety. It's completely absent, in fact,
12 in many instances. So, I think that might be a good
13 initiative for any of us, perhaps, to look into.

14 MR. HAWKINS: I think, when we give our
15 report to OSHPA, we will certainly mention that.

16 MR. STAFFORD: Cindy?

17 MS. DePRATER: Cindy DePrater, employer rep.

18 This is really more of a comment. As you
19 move forward with this, please assure you put some
20 training and education in for whoever is going to be
21 doing the inspections from OSHA, because it's one thing
22 to inspect construction safety, as you say, but

1 demolition is very, very different, and it takes a
2 different set of eyes and expertise and knowledge to be
3 able to understand how that building is coming down.

4 MR. MADDUX: Yeah, it really does. I've
5 found myself, over the last year, you know, on the rare
6 occasions when I actually see something that is being
7 demolished, paying a little more attention to what's
8 going on and making sure that I have the phone number
9 of our local OSHA area office plugged into my
10 telephone, and have made a couple of referrals myself
11 where I saw some things going on that didn't look quite
12 right to me.

13 MR. STAFFORD: There's got to be, I would
14 imagine, a demolition contractors association.

15 MR. MADDUX: There is, yeah, and they've
16 actually got some wonderful guidance products. We've
17 been trying to initiate a conversation with them, but
18 like I said, the problem is that they are such a tip of
19 the iceberg of the demolition work that you're just not
20 getting to probably the larger part of the problem.

21 Any efforts that people can make to try and
22 get the word out, to get some changes on this

1 demolition, I think, would just be huge for the
2 industry.

3 So, shifting to something maybe a little less
4 grim -- and that's the stand-down that Pete and Dr.
5 Michaels were chatting about earlier. We had, I think,
6 a wonderful report.

7 Jessica Bunting, on the CPWR staff, did a
8 very nice analysis of our data that we picked up on the
9 OSHA website from people getting certificates of
10 recognition for participating in the stand-down, and
11 that accounted for over three-quarters of a million
12 workers that participated in the stand-down.

13 We know from the Air Force, from Bill
14 Parsons, who is here today, that the Air Force has
15 650,000 workers who were involved in the stand-down,
16 getting us up to almost 1 1/2 million, which is way,
17 way beyond anything that we ever thought was possible
18 with this kind of an outreach program.

19 So, we're just extremely pleased with how
20 well it went this year. It definitely resonated with
21 the public and with the construction community, and
22 beyond that, we wound up -- in the weeks leading up to

1 the stand-down, after we had announced it and we were
2 starting to sort of put on our heavier publicity blitz
3 and so forth, we had a couple of things that happened.

4 One of them was that we started getting a lot
5 of phone calls from people who were asking, I'm not in
6 construction, can I stand down, too, and of course,
7 there was only one logical answer too that, was of
8 course you can.

9 And so, we went into our little certificate
10 page and added a category for industry that said I'm
11 not in construction, realizing that that might be
12 larger than what we had anticipated.

13 Then we started getting a few emails. We had
14 set up the same thing -- we had set up an email box on
15 the stand-down web-page and we started picking up some
16 email chatter. I'm not in the United States, but I
17 would like to stand down, is that okay?

18 We said of course it's okay, and so, we went
19 into our drop-down box on the certificate page where we
20 had all the states listed, and we put in another entry
21 for not in the United States.

22 And so, it turned out that we had impact far

1 beyond what we would imagine. We wound up, actually,
2 with some 2 percent of the stand-downs were held
3 overseas, and about a quarter of them were not in the
4 construction sector at all.

5 So, impact not only in construction but
6 beyond that hopefully will do a little bit of good in
7 the world. Hundreds and hundreds of incidents, lots of
8 publicity, you know, overall, really, really happy with
9 how it went.

10 I know a lot of people in this room did
11 things in their local areas. I know Tish and Jeremy
12 and others did a lot. Steve and Chuck had some
13 activities in their states, and I think -- I have yet
14 to hear, actually, any sort of a complaint about this
15 project.

16 I think it's the first one in my 25-year
17 career with OSHA that I can say that about. Somebody
18 is always upset with whatever it is that we're doing.

19 So, you know, it's gone so well that we plan
20 on doing it again in the coming year, so in 2015, and
21 you know, we would really like for everybody to come
22 out and join us and work on this again. I think we

1 learned a lot of lessons from last year's campaign to
2 try and improve it and to do things even better.

3 People also had ideas in yesterday's
4 workgroup where we were talking about this, and so,
5 we're just trying to figure out how to make it bigger
6 and better.

7 These are just some of the stand-down
8 moments.

9 We wound up with a huge collection of
10 photographs that people just spontaneously sent to us
11 through the email drop box that we had set up and from
12 our field folks that attended stand-downs and so forth,
13 and they all kind of look like this, a bunch of people
14 with hardhats and reflective vests.

15 So, you can pretend that that was your stand-
16 down if you'd like.

17 And kind of an interesting development, you
18 know, the stand-downs -- when people got certificates,
19 they told us how many people were in their stand-down.

20 So, we don't know exactly how that relates to
21 the size of the firm, but what we do know is that a lot
22 of the certificates, almost half of them, were for

1 stand-downs that had 25 or fewer workers, and I know,
2 for example, I was at a stand-down at a residential
3 site up in Silver Spring during that week that the
4 homebuilder sponsored, and there were like 60 workers,
5 I think, involved in that stand-down, and I believe 7
6 different contractors.

7 So, I think that while we can't really get a
8 hard-and-fast number, it appears that the stand-down
9 was able to get to some smaller employers that we've
10 been trying to get to on this issue for years and
11 years.

12 So, I'd be happy to answer any questions,
13 anything you might have.

14 MR. STAFFORD: Thanks, Jim.

15 Chuck and then Kevin.

16 MR. STRIBLING: Good morning.

17 Just a follow-up on the stand-down. Has a
18 date been set for the 2015 stand-down?

19 MR. MADDUX: Not yet. We're in discussion
20 on that right now, and we're going to try and brief Dr.
21 Michaels in the next couple of weeks to lock that in.

22 MR. STRIBLING: Thank you.

1 Of course, from our perspective, and with the
2 other states, the sooner we know and can start making
3 preparations, it helps a lot.

4 MR. MADDUX: Yeah. I think that that was
5 one of the pluses last year, was that we did a lot of
6 advance planning and talked to a lot of people way
7 ahead of time so that when things started happening,
8 you know, it was just a question of implementing the
9 plan. It was ready to go.

10 MR. CANNON: Kevin Cannon, employer rep.
11 Just a -- I have a follow-up question on your cranes
12 update in regards to the type of capacity and
13 qualification of operators.

14 As I understand it, you're saying that
15 whatever is being developed, drafted, and proposed will
16 be presented to ACCSH for comment and feedback, and you
17 know, in regards to timing, you know, based on our
18 schedule, I would say that might be springtime unless
19 you convene a special ACCSH meeting, as you've done on
20 crane issues in the past. So, what we're looking at is
21 -- spring is --

22 MR. MADDUX: It would have to be sometime, I

1 think, yeah, spring/summer next year that we would have
2 to get moving.

3 MR. STAFFORD: Before you would be ready to
4 come to ACCSH.

5 MR. MADDUX: I think it's possible that we
6 could be coming to ACCSH in that timeframe.

7 MR. STAFFORD: Steve?

8 MR. HAWKINS: Jim, the slides that you had -
9 - Steve Hawkins, state plan representative. The slide
10 that you had about fatalities that we -- that are
11 investigated or, you know, that occurred, rather --
12 have you ever seen any numbers or any data on how many
13 of those OSHA actually has jurisdiction over?

14 MR. MADDUX: I do recall an incident -- an
15 analysis of that years ago. You know, I think that we
16 actually wind up -- wind up with coverage of somewhere
17 around half, but I haven't done an analysis. We could
18 do that fairly easily.

19 Really, pretty much, what you're doing is
20 kind of taking the occupational fatalities and
21 subtracting out over-the-road automobile incidents,
22 which we rarely -- rarely look into, and homicides,

1 which we have been a little more involved with some
2 workplace violence issues but not very much. That gets
3 you pretty close.

4 MR. HAWKINS: The self-employed would come
5 out, as well.

6 MR. MADDUX: Yes. Yeah, cause the BLS data
7 also includes self-employed on fatalities.

8 MR. HAWKINS: So, I looked at that for our
9 state, and we weren't even at 50 percent. We were at
10 about 35 to 40 the last 2 or 3 -- the last 3 years.

11 I looked at the last 3 years and worked with
12 our local BLS person as much as he was able to from the
13 confidentiality of the nature of collecting that data,
14 and I just think it's interesting to note that, you
15 know, we're somewhere around 40 percent, your, you
16 know, seat-of-the-pants answer is about 50 percent,
17 certainly in the ballpark.

18 That means there's a lot of people not -- a
19 lot of fatalities.

20 I think people automatically see fatalities
21 and look at -- at our agencies and say, well, you know,
22 how are you affecting this, and if you take out

1 automobile accidents, like you said, workplace violence
2 and the self-employed, we have a lot of people still in
3 non-state plan states. Public sector workers are not
4 even covered.

5 So, you know, there's -- I think that's an
6 interesting facet of the fatality gross numbers as well
7 as the rates, is OSHA has, probably, jurisdiction over
8 less than half of those.

9 MR. MADDUX: Yeah, I think that's a very
10 legitimate point, you know, and it also really calls to
11 the need to be thinking about things like automobile
12 safety and, you know, what other agencies with more
13 jurisdiction over those issues are doing.

14 I mean, there are a lot of things. There are
15 things -- for example, the rulemaking by the National
16 Highway Transportation Safety Administration earlier
17 this year to require backup cameras on all light
18 vehicles, you know, 10,000 pounds gross vehicle weight
19 or less, I think, has huge implications for workplace
20 safety.

21 MR. HAWKINS: I think so, too.

22 We had two fatalities on a single jobsite on

1 two different occasions by being backed over, and in
2 both cases -- I've shared this with our workers before
3 -- both cases had backup alarms, functional backup
4 alarms, and the events -- the fatalities still
5 occurred.

6 So, the backup cameras make a huge
7 difference.

8 The other thing on those -- on those numbers
9 and jurisdictions, we still have the farm exemption
10 for, you know, funding from Congress with less than 10
11 -- 10 or fewer workers, are not actually covered by our
12 standards either, and that's some pretty hazardous
13 work.

14 I think maybe the states can lead the change
15 there with state funding, possibly, but that's another
16 pretty big hole in our coverage.

17 MR. MADDUX: It is a big hole in coverage.
18 We're also seeing increased issues -- aside from the
19 small farm exemption, there's also an exemption from
20 programmed inspections for employers that are in NAICS
21 codes where the injury rate is less than half of the
22 national average, and we're encountering more and more

1 frequently on our inspections construction employers
2 who fall into that category.

3 And they are typically general contractors,
4 and so, what we're winding up with is that our program
5 inspections cannot -- cannot include the general
6 contractor, who probably bears the greatest
7 responsibility for maintaining safety and health
8 conditions across the site.

9 MR. HAWKINS: And what they actually do
10 onsite varies greatly. Some general contractors may
11 have two people onsite and exercising oversight.
12 Others -- they have a pretty big workforce there
13 actually doing some work.

14 So, then you're kind of -- well, are they
15 1542 or, you know, what are they, exactly?

16 MR. MADDUX: Getting the right code is
17 always a challenge.

18 MR. STAFFORD: Tish Davis.

19 MS. DAVIS: Yeah. I just want to report --
20 we actually publish this data every year -- and OSHA
21 reviews every case with us, and it's about 34 percent.
22 We've published this since 1991, the percent of

1 fatalities investigated by OSHA.

2 You've got to exclude, in Massachusetts, the
3 public sector workers, the self-employed, Federal
4 aviation, railroad workers, fishermen at sea.

5 I mean, there's a whole series of things that
6 you need to exclude that are clearly outside of
7 jurisdiction, and then you get into the on-the-road
8 traffic safety and homicide, which are not entirely
9 outside of OSHA jurisdiction.

10 It's just that OSHA doesn't take the lead,
11 historically, in investigating those.

12 MR. MADDUX: I always look at that number so
13 intently, and then you realize you only have the
14 ability to affect about 35 percent of that number, and
15 it takes a little wind out of your sail, frankly.
16 You'd like to have more tools to affect that number in
17 a larger way.

18 MS. DAVIS: You know, the self-employed is
19 really outside of everyone's jurisdiction, but from a
20 public health perspective, a lot of the information
21 that we generate, for example, on falls, a lot of those
22 falls in self-employment. So, from a public health

1 perspective, it's really important to reach that
2 community, as well.

3 MR. MADDUX: We see a fair number of
4 construction incidents that fall outside of our
5 jurisdiction, trenching incidents where it's a self-
6 employed individual falls, demolition. It's very
7 common.

8 MR. STAFFORD: Palmer?

9 MR. HICKMAN: Thank you, Pete. Palmer
10 Hickman, employee representative with the IBW.

11 Jim, I just wanted to double back one more
12 time, follow up on Kevin's question.

13 For the crane operator certification, as I
14 understand it, there's two big questions. I want to
15 make sure there's nothing more than I'm not aware of
16 that you're going to try to accomplish.

17 Certainly, does certified equal qualified, or
18 what role will certified have in qualification, and the
19 second is, I think, the question that Kevin asked, was
20 type and capacity -- will those both be required? Is
21 there anything else besides those two larger questions?

22 MR. MADDUX: I think that there's actually a

1 very large question about whether or not the standard
2 should have more explicit training requirements, you
3 know, and you know, I mean, if you look, for example,
4 at powered industrial trucks and the training
5 requirements that we have for forklifts and other types
6 of construction equipment, why would you have any fewer
7 training requirements for crane operators?

8 MR. STAFFORD: Any other questions or
9 comments?

10 (No response.)

11 MR. STAFFORD: Mr. Maddux, thank you.

12 (Applause.)

13 MR. STAFFORD: Let's take our break. We'll
14 reconvene at 10:30.

15 (Recess.)

16 MR. STAFFORD: We'll go ahead and call the
17 meeting back to order, please.

18 For ACCSH members and the public, there has
19 been information -- Dr. Michaels is good to the words.
20 There's been information passed out on the new BLS data
21 that's on the table, and I think, for the folks in the
22 audience, there's copies in the back for your interest.

1 Lisa, I think, probably, we would have to put
2 this in the exhibit for the meeting.

3 MS. WILSON: Thank you. Yes, I'd like to
4 designate the slides from the Directorate of
5 Construction updates as Exhibit 5 and the BLS news
6 release with the injury and illness data as Exhibit 6.
7 Thank you.

8 MR. STAFFORD: Thank you, Lisa.

9 I'd like to remind again those folks in the
10 public that have come in later, since the meeting
11 started, if you're interested in making public
12 comments, please sign up. There's a signup sheet in
13 the back of the room.

14 Typically, we try to carve out the last half-
15 hour or so, depending on how we can get through the
16 agenda, for public comment, and we welcome folks to
17 comment at that time.

18 Dr. Schaeffer, it's a pleasure to see you,
19 and thank you very much for being here with us.

20 Our next issue -- we have three issues that
21 we're going to try to get through this morning that
22 OSHA has asked us to take a look at with respect to

1 proposed rules.

2 The first one is on quantitative fit testing
3 protocol and the respiratory standard. The ACCSH has
4 been provided briefing materials, Dr. Schaeffer, about
5 the proposal and what you plan on doing.

6 So, this is not totally in the dark to us,
7 but we appreciate you being here and your presentation,
8 and thank you. The floor is yours.

9 NEW QUANTITATIVE FIT TESTING PROTOCOL: AMENDMENT TO THE
10 FINAL RULE ON RESPIRATORY PROTECTION

11 DR. SCHAEFFER: Thank you for that
12 introduction. Since you do have the materials, I'll --
13 I plan to be brief and move through the slides quickly.

14 By way of background, OSHA's respiratory
15 protection standard was promulgated in 1998 and
16 requires employers to establish and maintain a
17 respiratory protection program to protect workers
18 wearing respirators.

19 The standard is wide ranging and covers a lot
20 of provisions, but the focus here is on the requirement
21 that employees must be fit tested prior to wearing
22 tight-fitting respirators, and the fit test must be

1 administered using a OSHA-accepted fit test protocol.

2 The respiratory protection standard
3 recognizes that improved fit test methods would likely
4 be developed in the future and has mandatory -- has a
5 mandatory Appendix A, Part 2, that outlines the
6 procedure that allows individuals to submit new fit
7 test protocols for a notice in proposed -- notice and
8 comment rulemaking under Section 67 of the OSH Act.

9 The new test protocol applications must be
10 supported by either a dependent government research
11 laboratory or a publication in a peer-reviewed
12 industrial hygiene journal verifying the protocol's
13 accuracy and reliability.

14 So, OSHA has already -- has several accepted
15 fit test protocols, including a PortaCount protocol
16 that can quantitatively measure the amount of ambient
17 aerosol that leaks across the respirator face piece.

18 TSI, Incorporated, which is a major
19 manufacturer of real-time particle monitors for fit
20 testing, submitted three new fit test protocols: a
21 fast full method for elastomeric full face piece
22 respirators, a fast half method for elastomeric half

1 mask respirators, and a fast FFR for filtering face
2 piece respirators.

3 The TSI's application included three articles
4 that were published in the Journal of International
5 Society for Respiratory Protection, which describes the
6 protocols and explains how the test data support the
7 protocol's accuracy and reliability.

8 MR. STAFFORD: Is fast an acronym or -- I'm
9 sorry. I missed your slide. Is it an acronym for
10 something, or does it just mean it's fast?

11 DR. SCHAEFFER: Fast means that -- that the
12 protocol is -- is shorter than the existing protocol.
13 They've reduced the -- the test duration, and
14 therefore, they call it fast, and I'll get to in a
15 minute how they've done that, in a couple of slides.

16 So, they've submitted -- so, as I was saying,
17 the -- the TSI's 2014 application included three
18 articles that were published in the Journal of
19 International Society for Respiratory Protection, which
20 described the test data support the protocol's accuracy
21 and reliability.

22 The next slide -- so, here, I think it

1 explains the fast part.

2 So, the existing OSHA-approved PortaCount
3 protocol has a standard set of seven exercises, calls
4 for a series of fit factor measurements, and sets a
5 minimum fit factor pass/fail value.

6 The new TSI protocols differ from the
7 existing protocol in two ways.

8 One, it has -- it includes only four test
9 exercises instead of seven, and secondly, it reduces
10 the exercise duration from 60 seconds to 30 seconds,
11 thereby reducing the total test duration time from 7 --
12 a little over 7 minutes to 2 1/2 minutes.

13 So, that's the -- that's the reason, I think,
14 for the fast part of this.

15 Anyway, the benefit, of course, is that the
16 reduced test duration will result in a reduction of fit
17 testing burden on the industry.

18 MR. ERICKSON: Roger Erickson, employee rep.

19 Did you say four exercises? I see here on
20 the printout, it's three exercises.

21 DR. SCHAEFFER: So, three of the exercises
22 are ones that already -- they've added a jogging in

1 place to make four.

2 So, all of these methods have the four
3 exercises, and all of the methods reduce the exercise
4 duration of each exercise from 60 seconds to 30
5 seconds.

6 Here's the fast half method. It uses the
7 same exercises and exercise duration as the fast full
8 method.

9 The next slide shows the -- just quickly --
10 shows the fast FFR method, and it differs from the fast
11 full and the fast half by including a slightly
12 differently set of exercises, but again, it achieves
13 the same total test duration reduction from 7.2 to 2.5
14 minutes.

15 So, TSI used the sequential paired test
16 approach recommended in the ANSI Z8810-2010 annex,
17 criteria for evaluating new fit test methods.

18 This scientifically accepted method,
19 developed by the American Industrial Hygiene
20 Association, allows the performance of the modified
21 PortaCount protocols to be compared to a selected
22 reference method in the same respiratory donning

1 session with the same individuals.

2 TSI selected the OSHA-accepted PortaCount
3 protocol minus the grimace exercise for the reference
4 comparison for their study.

5 According to the statistical procedures
6 utilized in the study, TSI found all three modified
7 protocols met the required acceptance criteria.

8 For test sensitivity, that's the false
9 positive rate, predicted value of a pass, predicted
10 value of a fail, test specificity -- that refers to the
11 false negative rate -- and kappa statistic was just an
12 overall statistical measure of how well the two methods
13 agreed.

14 Next slide shows how the modified protocols
15 compare to the ANSI criteria for the four statistical
16 criteria.

17 As you can see, all the protocols fairly
18 convincingly exceeded the AIHA criteria, indicating
19 that faster methods are at least as effective as the
20 reference methods in these studies.

21 So, this is not the first time that TSI has
22 submitted a new PortaCount fit test protocol under

1 Appendix A. TSI submitted two previous PortaCount
2 quantitative fit test protocols to OSHA in July 2006.
3 OSHA initiated a notice of proposed rulemaking,
4 soliciting public comments on the protocols.

5 OSHA concluded that the protocols were not
6 sufficiently accurate or reliable to include among the
7 OSHA-accepted protocols. As a result, the proposed
8 rulemaking was withdrawn in January 2010.

9 In their new proposed protocols, TSI appears
10 to address some of the deficiencies in their previous
11 application.

12 So, what is the agency position?

13 We believe that the TSI application meets the
14 criteria outlined in Appendix A, Part 2, to initiate a
15 rulemaking under Section 6(b)(7) of the OSH Act. OSHA
16 plans to initiate a notice of proposed rulemaking and
17 ask for public comment, as required by the respiratory
18 protection standard.

19 Some of the key issues will be whether the
20 proposed protocols reliably identify respirators with
21 an unacceptable fit, whether the TSI study is
22 appropriately conducted according to accepted

1 experimental design, and the results appropriately
2 interpreted, did TSI choose an appropriate set of test
3 exercised for their modified protocols, were the bases
4 of the selection adequately explained?

5 Our staff is still examining the TSI studies
6 and beginning to prepare the notice of proposed
7 rulemaking. Our scheduled target is to have the notice
8 of proposed rulemaking ready by March 2015.

9 We plan to seek assistance in reviewing the
10 TSI studies by our Federal partners, especially NIOSH,
11 and as required under agency statute, OSHA is seeking a
12 recommendation from the committee to proceed with
13 notice and comment rulemaking under Section 6(b)(7) of
14 the OSH Act in order to seek public comment on
15 incorporating the modified fit test protocols into
16 Appendix A of the respiratory protection standard.

17 Thank you for your attention, and I will take
18 questions.

19 MR. STAFFORD: Are there any questions or
20 comments?

21 Let's start with Tish and we'll work our way
22 around.

1 Please, Tish, go ahead.

2 MS. DAVIS: Yeah, I just have one question.
3 You mentioned NIOSH, cause I know they have a whole
4 respiratory protection program. Have they been
5 consulted on this?

6 DR. SCHAEFFER: Not at this point. But
7 certainly, as we proceed through the TSI submissions,
8 we certainly plan to engage NIOSH. They have a
9 national personal protection -- NPPTL -- and we have,
10 you know, good rapport with that group and certainly
11 plan to engage them.

12 MR. STAFFORD: Thank you.

13 Kevin?

14 MR. CANNON: One question. This proposal
15 would just add three new options, and the existing
16 option would remain in place?

17 DR. SCHAEFFER: Yes, I should have made that
18 clear.

19 So, this is not to replace the existing OSHA-
20 accepted PortaCount protocol; it's to add these three
21 additional -- if approved, it would add these three
22 additional -- three additional protocols. Thank you

1 for that.

2 MR. STAFFORD: Dr. Schaeffer, as I understand
3 it, this is all about making it faster versus the
4 quality of the protocol itself in terms of the testing
5 of respirators for workers.

6 DR. SCHAEFFER: You have it right. This is
7 about making the test protocol more efficient by -- by
8 reducing the amount of exercise and times, but without
9 -- the intent is, of course, without sacrificing
10 reliability and accuracy of the method.

11 We will have to evaluate whether they were
12 able to demonstrate that and seek public comment from
13 the public on whether they were able to demonstrate
14 that.

15 MR. STAFFORD: Chuck.

16 MR. STRIBLING: The prior effort -- did it
17 get to the point where there was -- you went into the
18 rulemaking process and you took your public comment and
19 then had to withdraw it, correct?

20 DR. SCHAEFFER: Yes. I wasn't around during
21 that time, but yes, that's how I understand it.

22 MR. STRIBLING: So, if I understand it right,

1 the agency still needs to read through everything
2 they've submitted and come to a determination, and you
3 still need to do that with NIOSH, as well. Are you
4 going to do that with NIOSH?

5 DR. SCHAEFFER: There's kind of two steps to
6 this.

7 The way the standard is written, as I
8 understand it, this Appendix A, step one is to make a
9 determination whether they've followed the requirements
10 of this Appendix Part 2, which means that they
11 submitted to us a protocol that had been either
12 developed by a testing laboratory or, in this case,
13 published in a peer-reviewed journal and therefore had
14 been peer-reviewed for scientific quality, and that the
15 results of that study showed that it met some accuracy
16 and reliability relative to the existing -- at least as
17 effective as the existing -- that's number one, and
18 then, if they've met that, then we go -- we are
19 obligated to go forward with a notice of proposed
20 rulemaking.

21 We then collect public comments, okay? And
22 then we review those public comments. I think we'll

1 consult NIOSH before we go forward, but we'll consult
2 them afterwards, too. I'm sure they will submit
3 comments.

4 And at that point, we go through an
5 evaluation of whether we feel the new protocols meet
6 the necessary -- are sufficient to include and approve.

7 Does that help explain the process?

8 MR. STAFFORD: Christine and then Don.

9 DR. BRANCHE: Christine Branche, Federal
10 representative, NIOSH.

11 NIOSH's staff of the National Personal
12 Protective Technology Lab is very familiar not only
13 with the original protocol that was submitted by this
14 particular organization but familiar, as well, with
15 this package that we were sent for review.

16 NIOSH commends the proposed approach that
17 OSHA wants to take on this, including publishing this
18 in the Federal Register, the notice of proposed
19 rulemaking, and we are looking forward to working with
20 OSHA in this. We really do hope that you will approach
21 our NPPTL lab to participate and review this with you.

22 So, NIOSH is supportive of this particular

1 approach.

2 But I think basically the point -- I see a
3 lot of quizzical looks. The idea is to see if -- if
4 this particular test developer has proposed something
5 that is -- the new test method -- we need to assure
6 that it's no less discriminating in rejecting
7 respirators not achieving a good fit than the existing
8 test.

9 So, it has to be as good as what's out there
10 now. What's out there now will still be available, and
11 this would be an additional option, but this particular
12 protocol has to be examined to make certain that it
13 will meet at least the standard that's there now.

14 DR. SCHAEFFER: Thank you for that.

15 One of the key issues, as DR. BRANCHE
16 mentioned, is the test sensitivity. So, this method --
17 we don't want this method to pass a test that would
18 have failed the existing one.

19 So, that's a very important -- test
20 sensitivity is a very important issue here that we want
21 to be sure that this method meets.

22 MR. STAFFORD: I appreciate that.

1 Don and then Cindy and then Jerry.

2 MR. PRATT: Don Pratt, employer rep.

3 Dr. Schaeffer, I'm just curious on if you can
4 tell this committee what is your timeframe? Best/worst
5 scenario that you can come up with. What are we
6 looking for in the near future?

7 DR. SCHAEFFER: Best scenario, I think, is to
8 meet the timeline that we have, and that is to have an
9 -- be able to have a notice of proposed rulemaking
10 available and on the street in March 2015. That, I
11 believe, is the date that's in the current regulatory
12 agenda.

13 In order to do that, of course, we will have
14 to develop the NPRM. We'll have to get it through
15 internal agency review. We'll have to also put it up
16 for review by the Office of Management and Budget, OMB,
17 and get it through that.

18 That's, I think, a challenging timeframe, and
19 we're hoping to achieve that.

20 Did that help answer your question? The
21 challenge is next spring.

22 MR. STAFFORD: Okay. Appreciate that.

1 Cindy?

2 MS. DePRATER: Cindy DePrater, employer rep.

3 Dr. Schaeffer, if the new fit test protocols
4 were approved -- let's just jump ahead to approval --
5 and confirmed, and they are in addition to the original
6 rules, who makes the determination on which ones to use
7 and what guidelines would there be for when you can use
8 the fast fit protocols?

9 DR. SCHAEFFER: I believe -- I'm fairly sure,
10 once it's approved by the agency, it becomes a test
11 protocol that's available to the employer to use.

12 The test methods already, I believe -- and
13 I'll have to -- I'll have to look further into the
14 actual test -- already make it clear the type of
15 respirators that they would apply to.

16 So, we have a method for the full face piece.
17 We have a method for a half face piece. We have a
18 method for the filtering face piece.

19 So, right there, it specifies the kind of
20 respirator that any particular protocol would address,
21 but I think that's a good question, and I think we'll
22 have to make clear what -- just exactly what

1 respirators would be -- which protocol would be applied
2 to which respirators.

3 I think that's a very good observation.

4 MR. STAFFORD: Thank you, Cindy.

5 DR. SCHAEFFER: Thank you very much for that.

6 MR. STAFFORD: Jerry?

7 MR. RIVERA: Yes, this is Jerry, employer
8 rep.

9 I guess what I'm confused with is that we
10 want to get -- you guys want to get the support of --
11 to put out in the proposed rulemaking, but based on the
12 questions that have been asked, and the responses, it
13 seems like the intent of the notice of proposed
14 rulemaking is to find out if these test methods confirm
15 if they do work, indeed, or are as effective in -- I
16 don't know. There's a lot of confusion on how to use
17 them, what respirators would it apply to.

18 So, I don't know. I guess maybe I'm thinking
19 maybe you should talk to NIOSH now, you know, instead
20 of putting this out to kind of scout for that
21 information, because it's going to create more
22 confusion.

1 DR. SCHAEFFER: That's the plan. The plan is
2 to consult NIOSH. I think we want, ourselves, OSHA
3 wants to get our arms around the method itself, and
4 understand it, before we go to NIOSH.

5 MR. STAFFORD: I appreciate the comment, but
6 we're trying to understand the order, Dr. Schaeffer.

7 It seems that if you're asking -- and that's
8 what the agency is asking us -- to make a
9 recommendation to proceed with a notice of proposed
10 rule before talking to NIOSH, then we're recommending
11 to proceed without knowing the benefit of having any
12 idea what NIOSH has to say or not about the efficacy of
13 this new protocol.

14 So, it's an issue of timing, and I'm
15 struggling with what it is exactly -- why it is that
16 NIOSH hasn't already been engaged if you're asking to
17 proceed with the proposed rule.

18 DR. SCHAEFFER: I'll try to answer that. So,
19 we got the protocol in July 2014, just recently, not
20 that long ago.

21 We have -- we ourselves have to -- have to
22 evaluate the -- would like to evaluate the protocol

1 before we engage NIOSH so we can be able to talk --
2 both agencies talk -- both have a clear understanding.

3 MR. STAFFORD: This may be my ignorance, and
4 I'm thick -- why can't OSHA and NIOSH do an evaluation
5 before you come and ask us to recommend that you
6 proceed with the proposed rule?

7 DR. SCHAEFFER: Well, I thought this was an
8 opportunity -- December -- I don't know how often this
9 committee meets, but we felt this was an opportunity to
10 consult you now.

11 I don't know when the next meeting would be,
12 and whether it would be before we went forward with the
13 notice of proposed rulemaking. I guess that would be
14 my answer.

15 MS. WILSON: Dr. Schaeffer, Lisa Wilson,
16 ACCSH counsel.

17 I think some of the confusion may be that the
18 process for approving these fit protocols and the
19 regulatory process is somewhat different than OSHA's
20 usual standards. As I understand it, you are required
21 in your appendix, if a submitted protocol meets the
22 criteria, just facially meets them, then you -- you are

1 obligated to publish the proposed rulemaking --

2 DR. SCHAEFFER: That's correct.

3 MS. WILSON: -- and so, then -- so, you must
4 do that sooner than OSHA normally would in a regulatory
5 process, and then does further evaluation with the
6 public comment after the proposal is published.

7 MR. STAFFORD: Christine.

8 DR. BRANCHE: Dr. Branche, NIOSH.

9 So, thank you, Ms. Wilson, for clarifying
10 that, and I would say that, given that there is a
11 different order than what you're accustomed to, I will
12 say, also, that based on my consultation with the staff
13 at NPPTL, I believe that when OSHA formally approaches
14 NIOSH to review the information and consult together, I
15 expect that that process will be -- will proceed
16 quickly and within the timeframe.

17 The only thing I want to make sure that I
18 mention is that, in the notice for proposed rulemaking,
19 that it's very clear to any reader that OSHA would want
20 to get feedback from workers, employers, and industrial
21 hygienists, so that even though the decision in the
22 field would be up to the employer, that there is

1 sufficient information from all potential audiences as
2 to how they've been behaving with this particular
3 protocol.

4 DR. SCHAEFFER: I appreciate that, and I
5 would agree.

6 MR. STAFFORD: Jeremy?

7 MR. BETHANCOURT: So, let me see if I
8 understand. Forgive me for having to think in lay
9 terms, but you're asking us to provide a recommendation
10 based on that we don't quite know whether or not the
11 protocols are going to work correctly and you have to
12 interact with NIOSH with that first?

13 DR. BRANCHE: Dr. Branche again.

14 Dr. Schaeffer provided in his review that
15 there was an earlier effort when TSI submitted a
16 protocol earlier that OSHA had gone through this same
17 procedure, and as they assessed, including getting
18 comments from the public, withdrew it, and so, I think
19 what we've seen is that OSHA's methodology is
20 sufficient -- it works -- so that if they find
21 deficiencies or if you -- if, in the opportunity for
22 the public to comment, there are deficiencies, they

1 would withdraw it again.

2 DR. SCHAEFFER: Could I say something? I
3 think, to add on that, what we really need to determine
4 right now -- like I said, it was two processes --
5 whether the submitter met the procedure that's laid out
6 in the respiratory protection standard, in Appendix A,
7 and that is, have they had their protocol published in
8 a peer-reviewed journal, so it has received some --
9 some review there, and whether they met the well-
10 established criteria for reliability and accuracy, and
11 they clearly have based on the results they presented
12 in those publications.

13 So, it already has begun to be -- OSHA would
14 not be coming to you if those steps had not been done.

15 MR. BETHANCOURT: So, then, now it is
16 appropriate for us to say, okay, go to this next step.

17 DR. SCHAEFFER: We're asking whether we can
18 go to this next step.

19 MR. STAFFORD: Palmer and then Tish.

20 MR. HICKMAN: Thank you.

21 Palmer Hickman, employee representative.

22 I think maybe at first people would seem to

1 think OSHA is endorsing this by the fact they're
2 putting it out for proposed rulemaking.

3 I think that's what OSHA would expect. They
4 would want the rule to go through if they put it out
5 for public rulemaking, but your comments here in the
6 slide, if we can take them as accurate, is to seek
7 public comments.

8 We do this in the National Electric Code many
9 times. We'll put it out for public comment so we get
10 comment back.

11 We don't actually intend it ever to go into
12 the code. But this process is not the same. We are
13 going to get feedback.

14 So, I think that's what we're getting asked
15 to do, is to take it to the next step. They have met
16 the threshold for what they need to do. I hate to say
17 this is just a formality, but you know, OSHA clearly
18 has brought it to us.

19 This is the time to take it to the next step.
20 They have to bring it to us -- not that we're
21 rubberstamping it. We are endorsing getting comments
22 on this from the public, not endorsing the rule as it

1 stands.

2 DR. SCHAEFFER: I appreciate your confusion,
3 because like Ms. Wilson said, it's not our normal --
4 this is -- normally when we -- I know in other areas,
5 we usually go forward with a notice of proposed
6 rulemaking once we've made some determinations.

7 This is a little different. This is, you
8 know, a notice of -- notice for public comment, and
9 it's -- really, we're following what had already been
10 laid out for us in the respiratory protection standard,
11 and that's what's, I think, a little confusing.

12 MR. STAFFORD: We're not as confused as we
13 normally are.

14 So, let's go with Tish and then Chuck, and
15 then we're going to wrap this discussion up.

16 Tish?

17 MS. DAVIS: My understanding, based on what
18 Lisa said, is that you actually -- this is the
19 necessary next step -- obligated to go forward with
20 this next step and that we have the opportunity to get
21 input from NIOSH, your experts, and the public experts
22 prior to any decision-making. So, I would move in

1 favor of it.

2 MR. STAFFORD: Okay. Thank you.

3 Chuck?

4 MR. STRIBLING: I'm not going to beat a dead
5 horse, but I was thinking the same thing, Jeremy.
6 Well, why don't you do your homework first, cause it
7 doesn't look like they've done their homework, but the
8 agency is compelled by the appendix to initiate the
9 rulemaking process.

10 So, with that being said, I would recommend
11 that the committee make such a recommendation to
12 proceed.

13 MR. STAFFORD: Okay. Let's put that, then,
14 in the form of a motion so we could take action on it.
15 So, would you do that, Chuck?

16 MR. STRIBLING: So moved. I would recommend
17 that the committee --

18 MR. STAFFORD: -- make a motion --

19 MR. STRIBLING: -- for the agency to proceed
20 with the rulemaking.

21 MR. STAFFORD: For the notice of proposed
22 rule. Okay. The motion has been made. Do we have a

1 second?

2 Lisa, you can figure out who seconded that.

3 So, it's been moved and seconded. All those
4 in favor, signify by saying aye.

5 (Chorus of ayes.)

6 MR. STAFFORD: Any opposed?

7 (No response.)

8 MR. STAFFORD: Dr. Schaeffer, thank you.

9 DR. SCHAEFFER: Thank you.

10 MR. STAFFORD: We've accomplished what you've
11 asked us to do. It was a little complicated to get
12 there, but --

13 DR. SCHAEFFER: I'm very impressed.

14 MR. STAFFORD: I appreciate you being here.
15 Thank you very much.

16 Do we have Lisa Wilson in the house and
17 Dayton Eckerson?

18 The next item on the agenda -- again, we were
19 provided -- the committee was provided a table to look
20 at with respect to what OSHA is asking us with coke
21 emissions.

22 Lisa, go ahead, please.

1 REMOVAL OF COKE OVEN EMISSIONS CONSTRUCTION STANDARD IN
2 STANDARDS IMPROVEMENT PROJECT IV RULEMAKING

3 MS. WILSON: Thank you.

4 Just before I start, I'd like to designate
5 the slides on the fit testing protocols as Exhibit 7
6 and the memo you received on that topic as Exhibit 8,
7 and then I will talk to you for a second not as the
8 ACCSH counsel but as an attorney working with OSHA on
9 this rulemaking related to coke ovens.

10 So, this coke oven proposal is part of the
11 Standards Improvement Project.

12 For the new members of the committee,
13 Standards Improvement Project is a notice and comment
14 rulemaking that OSHA does, but it's really a collection
15 of small-scale improvements to several different rules,
16 and the current proposal is Standard Improvement
17 Project Phase IV.

18 OSHA has done three versions of this
19 previously, and most of the other provisions that will
20 be in the rule have been before this committee
21 previously, and so, this is a final item that we are
22 bringing to the committee for recommendation today, and

1 it's on the coke oven emissions.

2 You know, coke oven emissions are a hazardous
3 thing, and there's a very important general industry
4 standard regulating this, and the current construction
5 standard refers to the general industry standard.

6 However, the general industry standard really
7 doesn't fit construction work. It's really just not
8 applicable in construction.

9 You know, the standard has a lot of
10 engineering and administrative controls, and then it
11 really regulates what's called the regulated area.
12 That regulated area is very limited to, really, the
13 coke battery and its equipment itself. It doesn't
14 cover, really, even the area around it, it's just the
15 equipment, and OSHA has said that -- in a previous
16 interpretation issued in the '70s, which was when the
17 original standard was issued, that even just walking
18 past coke ovens does not fall under the provisions of
19 the regulated area.

20 So, you have to be actually doing --
21 operating the coke ovens to be covered, and anyone
22 actually operating a coke oven would be doing general

1 industry work and so wouldn't be covered by the
2 construction standard.

3 This is an issue -- this is kind of an
4 existing standard that's really un-applicable, but
5 attached to the short presentation we get, it was an
6 interpretation OSHA issued back in 1999.

7 It was signed by the then-assistant secretary
8 stating that the construction coke emissions standard
9 is invalid and would be deleted from the Code of
10 Federal Regulations.

11 So, OSHA has looked back. There have not --
12 obviously, because of this -- there haven't been any
13 citations issued under the construction rule since
14 1997.

15 There were actually a couple issued in the
16 '90s, shortly after this was added to the construction
17 rules. I don't know the circumstances of that, but it
18 hasn't happened in over 15 years.

19 So, just as a matter of cleaning up this, you
20 know, outstanding commitment to delete this provision,
21 we've proposed to actually go ahead and delete the coke
22 oven provision now, and it's not going to be any

1 reduction in protection to any employees, because it's
2 not actually protecting, you know, construction
3 employees right now.

4 Any questions?

5 MR. STAFFORD: Jeremy?

6 MR. BETHANCOURT: So, if I understand this
7 right, OSHA is actually going to reduce a regulation
8 that currently is on the books, right? They're going
9 to remove a regulation, right?

10 I just wanted to say that in public comment, just
11 to have that written there, that we're removing a
12 regulation. Of course, it's not needed.

13 MS. WILSON: Yes, we would be removing a
14 requirement from the construction standards, right.

15 MR. STAFFORD: Any other questions or
16 comments?

17 (No response.)

18 MR. STAFFORD: So, I guess the question,
19 then, Lisa, is you're asking for a recommendation to
20 include this as part of SIP IV.

21 MS. WILSON: Yes.

22 MR. STAFFORD: Okay.

1 MR. BETHANCOURT: I'd like to make a motion
2 to remove this particular standard from the 1926
3 standard as written, remove the 1926 1129 coke oven
4 emissions from the construction standard.

5 MR. STAFFORD: A motion has been made. Do we
6 have a second?

7 MR. ERICKSON: Second.

8 MR. STAFFORD: A motion has been made and
9 seconded.

10 All those in favor, signify by saying aye.

11 (Chorus of ayes.)

12 MR. STAFFORD: Any opposed?

13 (No response.)

14 MR. STAFFORD: The next issue is the
15 clarification of employer obligation for record
16 keeping. Dr. Michaels mentioned this issue in this
17 comments this morning.

18 Who do we have here? Lauren and Heather from
19 the Office of the Solicitor. Welcome. Thank you very
20 much. It's nice to have you here. We've been provided
21 the briefing documentation and the background, so we
22 know what you're doing and why it is that you would

1 like to do it, and I think it's clear, and again, this
2 is a question for this committee after your
3 presentation on a recommendation whether you should
4 proceed with the amendment of the record keeping
5 standard or not, so we understand that, and so, with
6 that, I'd like to turn it over to you.

7 Thank you.

8 CLARIFICATION OF EMPLOYER'S CONTINUING OBLIGATION TO
9 MAKE AND MAINTAIN ACCURATE RECORDS OF EACH RECORDABLE
10 INJURY AND ILLNESS

11 MS. GOODMAN: Good morning. My name is
12 Lauren Goodman. I'm a senior attorney in the Division
13 of Occupational Safety and Health in the Solicitor's
14 Office, and this is Heather Phillips. She is our
15 acting deputy, as well as one of our counsels for
16 appellate litigation.

17 You know, as Dr. Michaels, I believe, noted
18 this morning, complete and accurate injury and illness
19 records serve a very important role in assuring the
20 health and safety of American workers.

21 OSHA records are designed to be used by
22 employers, employees, as well as the government, so

1 that they can learn about the injuries and illnesses
2 that are occurring in American workplaces.

3 Accurate records enable employers to identify
4 and then correct hazardous conditions in their
5 workplaces.

6 They allow employees to learn about the
7 hazards they face where they work, and they also permit
8 the government to determine where and why injuries and
9 illnesses are occurring so that appropriate regulatory
10 or enforcement measures can be taken.

11 The proposed rulemaking is designed to ensure
12 that employers are maintaining complete and accurate
13 records of the illnesses and injuries occurring in
14 their workplaces, and as I'll discuss in more detail,
15 the proposed rule simply clarifies OSHA's longstanding
16 position about employers' duty to record.

17 The rule would not add any new compliance
18 obligations and would not require employers to make
19 records of any injuries or illnesses for which records
20 are not already required.

21 I'd like to start with just a little
22 background about the record keeping rules. OSHA issues

1 the first record keeping regulations at Part 1904 in
2 1971, and in 2001, OSHA made significant revisions to
3 the regulations in an effort to improve the quality of
4 injury and illness records by making OSHA's record
5 keeping system easier to use and easier to understand.

6 The record keeping regulations require
7 employers to record information about certain injuries
8 and illnesses occurring in their workplaces and to make
9 that information available to employees, employee
10 representatives, and to the government, namely OSHA and
11 the Bureau of Labor Statistics

12 Each recordable injury or illness must be
13 recorded on what's called the OSHA log or the OSHA 300
14 form, and for each case recorded on the OSHA log, the
15 employer must also prepare what's called a incident
16 report form or a 301 form that contains additional
17 detail about each case on the log.

18 Employers have to retain both the OSHA log as
19 well as the incident report forms for a period of five
20 years following the end of the calendar year that those
21 materials cover.

22 At the end of each calendar year, the

1 employer must review the 300 log to ensure that the
2 entries on the log are complete and accurate, and at
3 that time, the employer must correct any deficiencies
4 identified in the log.

5 Also at the end of each year, the employer
6 must create, post, and certify an annual summary of the
7 cases listed on the 300 log.

8 The existing regulations state that, during
9 the five-year record retention period, the 300 log must
10 be updated to include newly discovered recordable
11 cases, as well as to show changes to either the
12 classification, description, or outcome of cases that
13 have previously been recorded.

14 The regulations do not require employers to
15 update either the annual summary or incident report
16 forms.

17 So, why do we need to do a rulemaking?

18 OSHA's longstanding position has been that an
19 employer's duty to record an injury or illness
20 continues for the full duration of the five-year record
21 retention period; in other words, for five years after
22 the end of the calendar year in which the injury or

1 illness first became recordable.

2 This means that if an employer initially
3 fails to record a recordable case, the employer still
4 has an ongoing duty to record that case. The
5 obligation to record does not expire simply because the
6 employer failed to record the case when first required
7 to do so.

8 The review commission has consistently upheld
9 OSHA's position in that regard.

10 In 1993, the commission issued two decisions,
11 General Dynamics and Johnson Controls, both standing
12 for the proposition that a citeable record keeping
13 violation exists at any point during the five-year
14 retention period when the employer's records are
15 incomplete or inaccurate, and more recently, in 2011,
16 the commission again upheld OSHA's position on the
17 continuing nature of record keeping requirement.

18 Now, in that recent case, the employer
19 appealed the commission's decision to the D.C. Circuit,
20 and on April 6, 2012, the Circuit Court issued a
21 decision reversing the commission's longstanding
22 precedent and rejecting OSHA's position about the

1 continuing nature of record keeping obligations.

2 That decision, which we refer to as the Volks
3 case, has led to a need for OSHA to revise the record
4 keeping regulations to more clearly state the agency's
5 position with respect to employers' obligations.

6 Specifically, the goal of the proposal is to
7 clarify that the duty to make and maintain accurate
8 records of work-related injuries and illnesses is an
9 ongoing obligation.

10 With respect to the content of the proposed
11 rule, OSHA would amend the record keeping regulations
12 of part 1904 to clarify that employers have a
13 continuing obligation to make and maintain records of
14 all recordable injuries and illnesses.

15 It would also clarify that that obligation
16 continues for as long as the employer is required to
17 keep records for the year in question, and it does not
18 expire if the employer fails to create a record when
19 first required to do so.

20 This clarification would be consistent with
21 decades-long OSHA policy and would be consistent with
22 the way employers understood the record keeping

1 regulations prior to the court's decision in *Volks*.

2 The proposal is not meant to impose any new
3 or additional obligations on employers covered by Part
4 1904, and as I think I stated earlier, the proposal
5 would not require employers to make records of any
6 injuries or illnesses for which records are not
7 currently required.

8 The proposed rule would clarify with respect
9 to the 300 log specifically that employers must record
10 every recordable injury or illness on the log and that
11 that obligation continues throughout the retention
12 period, and would also clarify the employer's duty to
13 update the log by adding newly discovered cases and by
14 showing changes to previously recorded cases.

15 With respect to the 301 incident report
16 forms, the rule would clarify that employers have to
17 prepare a 301 form for each new recordable illness or
18 injury, and that that obligation, too, continues for
19 the duration of the retention period.

20 The rule would also clarify that employers
21 are not required to update 301 forms to show changes to
22 any cases that have previously been recorded on those

1 incident report forms.

2 And finally, with respect to the year-end
3 records review and the annual summary, the rule would
4 clarify that those tasks must be performed at
5 particular times of each year and that those are not
6 continuing obligations.

7 I believe the memo we prepared for the
8 committee detailed all of the very specific revisions
9 that we are intending to make. I'm not going to go
10 over them again. I'm happy to take questions on them
11 from the committee.

12 With respect to the burden of this proposal,
13 the agency does not believe that the proposal would
14 impose any new cost burden on employers.

15 It simply reiterates and clarifies what are
16 existing obligations.

17 It would not require employers to record any
18 cases that they do not already have to record, and the
19 costs for all of these record keeping obligations were
20 assessed in the economic analysis contained in the 2001
21 rulemaking.

22 The agency did a supplemental analysis making

1 some conservative assumptions even if the rule -- you
2 know, the agency does not expect this to result in the
3 recording of any new cases.

4 If it does, even using very conservative
5 assumptions, the agency doesn't expect costs of more
6 than 2.2 million per year across all affected
7 employers.

8 So, in conclusion, we are here to request a
9 recommendation from the committee as to whether the
10 agency should proceed with the proposed amendments to
11 the record keeping regulations.

12 I'm happy to take questions.

13 MR. STAFFORD: Thank you, Heather.

14 Let's start with Christine.

15 DR. BRANCHE: Christine Branche, Federal rep,
16 NIOSH.

17 Ms. Goodman, is it my understanding that,
18 with what -- with the proposed action by OSHA, it would
19 address the comments that occurred in court in the
20 reversal? I don't speak legalese, so -- by virtue of
21 these changes, would you be addressing the issues that
22 came up in the Volks case with the -- with -- when the

1 -- when the court rejected OSHA's argument?

2 MS. GOODMAN: The idea is to lend clarity
3 where we believe clarity was needed as a result of the
4 Volks decision.

5 DR. BRANCHE: Specifically that.

6 MS. GOODMAN: Yes.

7 MR. STAFFORD: I'm going to rephrase that in
8 just a bit different way, and I don't want to get into
9 the legalities of this, but in the end of the day, the
10 Volks decision determined that employers' recording
11 obligation was what?

12 MS. GOODMAN: The Volks decision -- you're
13 more familiar with the case than I am.

14 MS. PHILLIPS: Well, there's always the same
15 recording obligation. It's just a matter of at what
16 point in time OSHA could cite for a violation, a
17 reporting violation.

18 MR. STAFFORD: I see.

19 MS. PHILLIPS: The record obligations remain
20 the same. Even after the Volks decision, all employers
21 need to record the specified injuries and illnesses,
22 regardless. So, that had no impact on that obligation.

1 MR. STAFFORD: All right. Thank you.

2 MS. PHILLIPS: Hopefully that answered your
3 question. So, it simply affected when OSHA could cite.

4 DR. BRANCHE: Christine Branche, NIOSH.

5 So, what changed or what did this court's
6 decision -- how did it affect the timeframe for OSHA to
7 cite?

8 MS. PHILLIPS: That OSHA could cite within
9 six months of when the obligation arose.

10 MR. STAFFORD: All right. Kevin and then
11 Tom.

12 MR. CANNON: Kevin Cannon, employer rep.

13 So, to help me better understand, I have a
14 few questions.

15 So, this continuing duty that this proposal
16 is intended to address would apply even -- this
17 continuing duty would apply even if an employer had not
18 received any new information that a recordable injury
19 or illness had occurred, right?

20 MS. GOODMAN: That's correct.

21 MR. CANNON: And so the continuing duty
22 would be triggered by the same information that would

1 have triggered the original duty to record, correct?

2 MS. GOODMAN: Right. Ultimately, the
3 employer has a duty to assess each case and determine
4 whether it's recordable, and if they don't do that on
5 day one, then the obligation continues.

6 MR. CANNON: And so, say, for instance --
7 I'm going to use a hypothetical situation here. Say an
8 employer mistakenly fails to record an injury or
9 illness within the seven-day period, as required. They
10 don't get any new information that would suggest that
11 this was a recordable injury or illness, and nothing
12 else ever happens with that particular case. So, based
13 on what you're saying, is that they could be cited for
14 that full -- during that five-year retention period --
15 for that -- for that -- missing that initial seven-day
16 period.

17 MS. GOODMAN: That's correct.

18 MR. STAFFORD: Steve.

19 MR. HAWKINS: Steve Hawkins, state plan rep.

20 By that same question that Kevin asked, if an
21 employer became aware -- let's say an employee goes out
22 with an illness and it's difficult to -- to diagnose

1 and the employer gets information six months after they
2 went out that it was actually a work-related illness,
3 then OSHA could not compel the person to record that.
4 If they missed that by more than six months, then no
5 action would be taken by the agency?

6 MS. GOODMAN: I'm confused by the question.
7 Are you talking about under -- under the proposal or
8 under --

9 MR. HAWKINS: Well, as it is today with this
10 Volks decision.

11 MS. GOODMAN: I'm not sure that Volks
12 addresses the situation in which new information
13 becomes available. So, I'm hesitant to -- you know, I
14 think if new information becomes available --

15 MR. HAWKINS: Then your six months would
16 start again.

17 MS. GOODMAN: Yes.

18 MR. STAFFORD: Don?

19 MR. PRATT: Don Pratt, employer rep.

20 I was very disturbed when I saw this proposal
21 that we were going to be discussing today, and just to
22 let you know who I am, I'm Don Pratt, and I represent

1 the National Association of Homebuilders.

2 We have about 140,000 members across the
3 country, both builders and subcontractors, with
4 thousands of construction workers.

5 I, myself, am a builder and developer, and
6 have, from time to time, actually had hundreds of
7 employees, off and on.

8 The OSHA summary request -- I have a few
9 questions on it, and I'm going to ask those now, and
10 hopefully get good responses from you.

11 My understanding is that the OSHA log form
12 says that at the time it takes to record the case,
13 which would refer to the time that it takes for
14 research of the data and also to review the
15 instructions to record. Is that a correct statement on
16 the form itself?

17 MS. GOODMAN: I actually don't know. I'd
18 have to go back and look.

19 MR. PRATT: Okay. Well, I have, and it's on
20 there, and in fact, there is a .38-hour estimated time
21 to -- that is referred to, and you haven't mentioned it
22 in your comments, but it's in the information that we

1 have here in front of us, that that timeframe would be
2 to consider whether a case is recordable or not. Is
3 that true?

4 MS. GOODMAN: Let me first be clear that that
5 .38 figure is part of the agency's kind of secondary
6 analysis. The agency does not believe the rule will
7 impose any new burdens on employers.

8 That .38 figure is a figure that has been
9 used in other OSHA record keeping rulemakings, and we
10 have used it here, as well, to do the supplemental
11 analysis to say, even if -- although the agency does
12 not anticipate that this is going to result in the
13 recording of any cases that wouldn't otherwise be
14 recorded, even if it does, the agency used that .38
15 figure to do an analysis to say, even if a certain
16 percentage of all recordable injuries and illnesses are
17 recorded as a result of this rulemaking, and then
18 multiply that by the .38 figure.

19 So, the .38 figure is something we have used
20 previously. I believe it does account for all of those
21 things that you mentioned, and it's, you know,
22 something that the agency has looked at, like I said,

1 in other rulemakings, but here it is used solely for
2 purposes of the supplemental or secondary analysis.

3 The agency's, you know, firm position here is
4 that they don't believe this rule will result in any
5 new cost burden on employers.

6 MR. PRATT: Okay, I appreciate what you're
7 saying, okay? But my question is, is this the time
8 that you feel or the agency feels that it's going to
9 take to consider whether something is a recordable case
10 or not?

11 MS. GOODMAN: Yes, I believe that's
12 accurate, and that's something that we have said
13 previously, as well, in other rulemaking.

14 MR. PRATT: Okay. I understand that. So,
15 that's the only thing I have to go by, okay?

16 Please understand, you know, I don't have a
17 crystal ball, so -- and it further says in the summary
18 that was submitted to this committee by email that the
19 cost of this proposed rule change would be nominal. Is
20 that correct?

21 MS. GOODMAN: That's with reference to the
22 supplemental analysis that we did that came out with a

1 maximum cost burden on employers of \$2.2 million a
2 year.

3 MR. PRATT: Okay. And that's peanuts.

4 So, then, the employer would not have to
5 reconsider the facts and the regulation for every
6 unrecorded case each and every day. Is that correct?

7 MS. GOODMAN: Well, I'm slightly confused by
8 your question. If the question is, they do an
9 assessment on day one, determine that it's not
10 recordable, and then, at day two and day three, do they
11 have to reassess that case? The answer is no.

12 If they have not done that assessment on day
13 one, the duty to do that assessment continues.

14 MR. PRATT: Okay. Can we pick an example
15 here, and maybe I can get some clarity for myself and
16 also for the committee?

17 Let's say that there is a recordable case by
18 the employer and he reaches the wrong conclusion about
19 the recordability of that particular case, and he did
20 not record by the eighth day, which is what it
21 stipulates now.

22 You're saying that the employer would have to

1 consider re-recordability again, let's say, on the
2 ninth day.

3 MS. GOODMAN: That is not what we're saying.

4 MR. PRATT: That is not what you're saying.

5 MS. GOODMAN: No.

6 MR. PRATT: Well, then what you saying?

7 MS. GOODMAN: We are saying, if you do not
8 do the assessment, if you do not evaluate the
9 recordability of the case on day one, you have an
10 ongoing duty to evaluate the recordability of that case
11 and make a determination.

12 We are not saying that determination needs to
13 remade on every day during the retention period.

14 MR. PRATT: But using the Volks case, if
15 that scenario happened and six months went by, by what
16 you just said, would the employer then have to record
17 that illness or injury?

18 MS. GOODMAN: Under the Volks case?

19 MR. PRATT: Well, under the condition that
20 exists today, without the rule change.

21 MS. GOODMAN: I mean, I think what's getting
22 confused is there's a difference between the obligation

1 to record and what the agency can cite. The agency's
2 position is that that obligation to record exists. The
3 obligation is to keep and maintain accurate records.

4 MR. PRATT: I appreciate that.

5 MS. GOODMAN: What can be cited is a
6 separate legal question.

7 MR. PRATT: Okay. I appreciate that, all
8 right? But my question is really that, if something
9 slips through the cracks and it's not recorded, is that
10 employer on the hook for up to five years?

11 MS. GOODMAN: Under the proposal?

12 MR. PRATT: Under the new proposal. Under
13 the new proposal.

14 MS. GOODMAN: Under the new proposal, yes,
15 there is an obligation to maintain accurate records for
16 the duration of the five-year retention period.

17 MR. PRATT: Okay. And I did a little math,
18 if you would please bear with me here for a moment,
19 okay?

20 Let's say that the remaining days were 1,818
21 days, which I arrived at by taking a year, 365 days,
22 times 4 years, and then adding the last year, which was

1 a little bit less, because it's missing the 7 days,
2 came to 1,818 days.

3 Then multiply the 1,818 days by .38 man hours
4 per day, per case, this would add up to 690 man hours
5 per unrecorded case over the 5-year period. Is that
6 correct?

7 MS. GOODMAN: I mean, the math be correct, I
8 don't know.

9 MR. PRATT: Trust me, it is.

10 MS. GOODMAN: Ultimately, the -- you know,
11 that is premised on the assumption that the agency is
12 expecting the employer to reassess every case every
13 day, which we -- is not the agency's position and would
14 not be the agency's position under the new rule.

15 MR. PRATT: So, you're telling me that the
16 new rule would not require the employer to reassess
17 each case each day.

18 MS. GOODMAN: Correct.

19 MR. PRATT: That's contrary to what I read.
20 I don't have it right here. I took some notes and --

21 MR. HAWKINS: Sounds like church in the
22 south. I've got it here if I can just find it.

1 MR. PRATT: There's folks in here that can
2 address that issue. The question, though, is if there
3 is that kind of a burden, which I believe there is, on
4 a small businessman, small builder, small contractor,
5 that is excessive.

6 That's burdensome, in my opinion, and I just
7 think that we should not react on this so quickly
8 without looking at all of the facts that I have been
9 able to dig out in a very short period of time, by the
10 way.

11 So, I think we need to re-look at this,
12 revisit this. I am not in favor of this going through
13 today.

14 MR. STAFFORD: All right. Thank you.

15 Cindy?

16 MS. DePRATER: Cindy DePrater, employer rep.

17 The question is why isn't six months long
18 enough to look at the recordability issue? Why must it
19 be extended to five years? That does not make any
20 sense.

21 The obligation, if Donald's math is right,
22 and I'll assume that it is, would put a tremendous

1 burden, tremendous burden on every employer in the
2 United States to have to manage this every single day
3 to define recordability and track it.

4 So, why isn't six months long enough?

5 MS. GOODMAN: I guess I'm confused. When you
6 say -- are you talking about the employer's obligation
7 to assess recordability or are you talking about --

8 MS. DePRATER: The citation, that OSHA could
9 cite up to five years beyond why someone didn't get the
10 recordability right, because typically, at the end of a
11 year, you close everything out. You do.

12 You close it and you do not go back and look
13 at it, and I feel like we're -- we're right there at
14 the top of recording everything, in fact probably
15 overly so, but at the end of the year, it's closed and
16 we don't look at it again, because that year is closed.
17 If we can't determine that in a year, there's something
18 wrong.

19 MS. GOODMAN: If who can't determine that in
20 a year?

21 MS. DePRATER: An employer.

22 MS. GOODMAN: Like I said earlier, there is

1 no -- under the proposal, the employer would not --

2 MS. DePRATER: You're talking about citing
3 for up to five years.

4 MS. GOODMAN: Citing the employer for failing
5 to have accurate records on-hand, not for failing to
6 reassess a particular case every time.

7 MS. DePRATER: That's not the way I read it.
8 It's all too confusing at this point. It's not
9 definitive enough.

10 MR. STAFFORD: Steve?

11 MR. HAWKINS: As an administrator of a
12 program that does this -- and actually, I guess we are
13 fortunate in Tennessee, because we -- the way our
14 statute was written, this decision doesn't affect us,
15 according to our attorneys, but it's been --

16 MR. STAFFORD: It's nice to be in Tennessee.

17 MR. HAWKINS: From a practical matter, I mean
18 it seems like we're going from the practical to the
19 absurd with this argument. What you're talking about
20 is if -- if you did find out that a person had an
21 injury -- let's say it was six months and two days.

22 It's your position that you don't think OSHA

1 should be able to penalize you said the hell with it,
2 I'm not going to record this, cause I don't have to.

3 MS. DePRATER: No, I said we true it up at
4 the end of a year.

5 MR. HAWKINS: So, let's say you find, at the
6 end of a year and a day, and you say, well, there's no
7 penalty for not doing this, so I'm not going to do it?

8 MS. DePRATER: If you acted in good faith and
9 you -- you treated the individual and you got them back
10 to work, there should not be the opportunity for OSHA
11 to cite you for this.

12 MR. HAWKINS: Even if you failed to record
13 it. And that's been the rule that we've had in -- I
14 mean, that's the way we've operated as long with the
15 program in Tennessee, and that's 28 years.

16 So, you would say OSHA should not be able to
17 compel you in any way to go ahead and put that on your
18 OSHA 300.

19 MS. DePRATER: No, not after a year.

20 MR. HAWKINS: I'd have to respectfully
21 disagree with that.

22 MR. STAFFORD: I do, as well.

1 Palmer.

2 MR. HICKMAN: Palmer Hickman, employee
3 representative.

4 It seems like a reasonable assumption that
5 OSHA is making here. Quite frankly -- maybe this is a
6 bad analogy, but I'll use the IRS. If you don't pay
7 your taxes and they determine three years later that
8 you didn't pay your taxes, the taxes are due, it seems
9 reasonable they should be able to make you pay your
10 taxes.

11 So, if you, for whatever reason, don't record
12 -- you're supposed to retain those records for five
13 years -- well, it seems that those records should be
14 available and they should be able to cite for that
15 period where you should have retained them even though
16 you didn't establish them.

17 It seems reasonable.

18 MR. STAFFORD: Thank you.

19 Jerry.

20 MR. RIVERA: Jerry Rivera, employer rep.

21 Thank you so much for taking it for the team.

22 Looking at this, as well, it just says that

1 it's to clarify, and you know, I'm struggling with it,
2 because to me, it seems like a clear change of what was
3 originally intended, and what's even more puzzling to
4 me is that the court already acted on this, and you
5 have the Volks case, and they made a determination, and
6 I'm thinking that, you know, the ACCSH committee, who
7 are we to rescind that decision that the court already
8 determined?

9 I mean, that's -- as far as I'm concerned,
10 this is closed. Six months is what the court decided.
11 That's what we should stick by.

12 It is not clarifying anything, it's changing
13 it. So, if you want to change it, we'll consider it,
14 but let's not put down on a paper that it's clarifying.

15 So, I speak against the motion.

16 MR. STAFFORD: Any other comments?

17 MR. HAWKINS: Generally, we all do what
18 we're required to do, and if we're not required to do
19 it, who's going to do it?

20 So, if -- I mean, what this court did is --
21 you know, I respect what you said, Jerry, but what the
22 court decision did was basically reverse policy that

1 had been policy for over 30 years or more of recording
2 these incidences when you find out about them, and now,
3 as it is, you know, after six months, you have no
4 impetus to do so, really.

5 There's nobody who can, quote, "make" you do
6 it. You can just thumb your nose and say we're never
7 going to update our records if it's been more than six
8 months, and we didn't get caught, and lucky us. That
9 doesn't seem like a good way to operate, because these
10 records are important.

11 When my investigators go in, they review the
12 OSHA 300 log to look for trends, and they go back --
13 always go back three years, always go back three years.

14 So, now what they're going to be looking at
15 may or may not be reliable past six months, and so, I
16 think it's pretty important that an employer have an
17 obligation to continue to maintain accurate records.

18 I understand there can be cases where, you
19 know, five years sounds like a long time, but it's only
20 based on their knowledge, and after they have
21 knowledge, they have to go back and fix it, and that
22 obligation continues during the whole period. It seems

1 reasonable to me.

2 MR. STAFFORD: Tish.

3 MS. DAVIS: First of all, I think OSHA has
4 made it clear that this is not changing any of the
5 recording obligations. It is only changing the
6 timeframe within which OSHA can cite.

7 So, to think that it's changing recording
8 obligations, it's not happening. That's not what is
9 proposed here.

10 I think it's really crucial to look at the
11 purpose of record keeping. The purpose of record
12 keeping is to provide data that employers can use and
13 workers can use, unions can use, we in government can
14 use to target effective prevention programs.

15 You want that data to be as accurate as
16 possible. If you get new information, you should want
17 to include that on your OSHA logs, and you want to see
18 patterns over time. You want your data to be accurate
19 as possible.

20 So, I think that's what this is about. I
21 think letting employers off the hook to making sure
22 that their data is accurate, should new information

1 come to their attention, letting them off the hook is
2 tantamount to saying it's okay for them to
3 knowledgeably report inaccurate data at the end of the
4 year.

5 That's not right. That's not good for you.
6 It's not good for the employers. It's not good for
7 anyone concerned.

8 So, I support this proposal.

9 MR. STAFFORD: Thank you, Tish.

10 Christine?

11 DR. BRANCHE: Tish, with great clarity and
12 erudition, raised the issue that I was going to, that I
13 think there's been confusion about what's on the table
14 here. It's not about the reporting obligation; it's
15 about the penalty time. So, thank you.

16 MR. STAFFORD: Go ahead, Tish.

17 MS. DAVIS: I will raise another point,
18 because you asked why more than six months? I can tell
19 you that we in public health departments, in many state
20 health departments, work-related conditions are
21 reportable to the health department.

22 We use many data sources to track work-

1 related illnesses and injuries. We use emergency
2 department -- we have physician reports coming in on a
3 daily basis. I interview injured workers on a daily
4 basis.

5 Many of those data systems that we use do not
6 come into our office until several months after the
7 incidents, and we make our judgment, and we refer cases
8 to OSHA.

9 So, I think some of the data sources and
10 information coming into OSHA about incidents don't come
11 in within the six months timeframe.

12 So, that would be another argument to make
13 why it's important for OSHA to be in a position to cite
14 after the six months period, because for many of them,
15 in many cases, information about the incidents are not
16 going to come to their attention until after that time
17 period.

18 MR. STAFFORD: Thank you.

19 Jeremy?

20 MR. BETHANCOURT: What Tish is saying -- it
21 seems to -- the issue that I'm thinking about is --
22 we're only discussing whether or not it's new

1 information that's coming out, whether or not the
2 employer knows and learns of the information, not
3 whether or not there was a mistake that was made four
4 years and six months down the road, cause if that's
5 what we're talking about, I would have a problem with
6 that.

7 If we're talking about an employer who makes
8 an error and puts it away four years and six months
9 ago, and then they're cited for, oh, your OSHA log is
10 not accurate. You know, holy cow, that was a long time
11 ago. I don't remember that, four years and six months
12 ago.

13 If we're only talking about citing when new
14 information comes out, when we learn of new
15 information, don't we have an obligation to go, oh,
16 shoot, you know what, we learned about this new
17 information, let's -- because we want that information.

18 So, I wouldn't have a problem with new
19 information, but if this manifests into something that
20 turns into errors, which everybody makes, that would be
21 my concern, is if this manifested into something where
22 we're going to go after for five years for an error,

1 which I have made, straight up. I have made errors and
2 gone through and went, oh, shoot, how did I miss that?
3 Darn it.

4 So, that's what I have to say about that.

5 MS. GOODMAN: I do want to clarify that it
6 is not simply about new information. This is about
7 errors on the record, meaning that, for the duration,
8 you do not have the accurate records that the agency
9 calls for for the duration of that period.

10 You know, I think it's important to step back
11 and recognize that, in most instances, OSHA is not out
12 there issuing hundreds of thousands of dollars in
13 citation for these record keeping violations.

14 These are typically other than serious
15 citations with nominal penalties, the idea being that
16 we are recognizing errors happen.

17 We are not, you know, in most cases, issuing
18 heavy -- willful penalties for your run-of-the-mill,
19 you know, record keeping violations, but there is an
20 obligation to have accurate records on-hand for the
21 duration of that period, and that's a determination
22 that OSHA made not in this rulemaking but in prior

1 rulemakings when it determined that five years was the
2 period for which it expected employers to keep those
3 records and to keep those records accurate.

4 MS. PHILLIPS: The five-year period is not
5 new. That's been since the inception of the rule.

6 MR. STAFFORD: That's what's confusing me. I
7 mean, the employers seem to be very upset about
8 something that has been in place now for 40 years.

9 Kevin.

10 MR. CANNON: Kevin Cannon, employer rep.

11 I think what Jeremy said is really what the
12 concern amongst the employer representatives -- you
13 know, what we were trying to articulate, but he did a
14 better job, I think, in saying we make mistakes, and to
15 be held accountable for mistakes that were made 4 1/2,
16 5 years ago, where, as Cindy says, we closed the books,
17 we screwed up, we didn't put an entry on the log, but
18 you know -- and we don't revisit, but then to say that,
19 you know, this could come back to haunt us 4 1/2 to 5
20 years later is where the concern is raised on our side.

21 MR. STAFFORD: Go ahead, Tom.

22 MR. MARRERO: Tom Marrero, employer rep.

1 You know, regardless, it's a citation
2 nonetheless, regardless of the severity of the
3 citation, and as an employer, we take pride in trying
4 not to get citations, you know, so if there is a small
5 error on our end, you know, we're going to get cited
6 for it?

7 You know, I find that hard to swallow.

8 Another point, you know, to piggyback on what
9 Jerry was saying earlier, you know, the court has
10 already decided on this. Why is this even being
11 brought to the table?

12 MR. STAFFORD: We're not here to reverse the
13 Volks decision. This is not a legal proceeding. The
14 question is, with the Volks decision, OSHA has come to
15 us and asked, do we believe that they should clarify
16 the obligations for employers to keep accurate records?
17 That's what the question is.

18 So, in other words, the Volks decision has,
19 to the agency, created confusion about what the record
20 keeping obligations are, and that's what we've been
21 asked to address.

22 There's a lot of things that happen in court

1 that end coming back around this table.

2 MS. GOODMAN: I just wanted to follow up on
3 that point. I mean, it isn't unusual for the agency to
4 react to judicial opinions through rulemaking.

5 I mean, that is, oftentimes, what is done
6 when a court looks at our rules and identifies some
7 confusion or lack of clarity or interprets it in a way
8 that is not how we intended it to be interpreted. They
9 can be clarified through rulemaking, and this is not
10 the first instance in which the agency has taken that
11 approach.

12 MR. STAFFORD: Sarah?

13 MS. COYNE: The only thing that I just
14 really want to say is that there's roles, there's
15 responsibilities, there's penalties for everything in
16 life.

17 I mean, I made an error once, and four years
18 later, it cost me 25 grand with the IRS. Well, you
19 know what? It happens.

20 I think that this is really kind of blown out
21 of proportion and the focus is on, oh, my god, if I
22 make a tiny little error and OSHA comes in and reviews

1 my records, that I'm going to get hit with a \$25,000
2 find or they're going to shut me down. That's not the
3 case.

4 The case is, you know, you folks here are the
5 top employers. You do things right. But you also make
6 mistakes. But it's not about you. It's about the
7 people that are out there that aren't good employers,
8 that may make a decision to not jot down my injury.

9 So, to me, I just think that this thing is
10 like way blown out of proportion.

11 We've got to look at what it is, bottom line,
12 be responsible, and you know what, if you're not
13 responsible or if you make a human error and OSHA does
14 come in and reviews your records, well, you know what,
15 they're going to call you out and they're going to give
16 you a fine, but you're going to have an opportunity to
17 fix it, like all the other fines, and then it's going
18 to be reduced.

19 It's not going to shut anybody down. It's
20 about accountability and following the rules set forth
21 by OSHA, and I support it.

22 MR. STAFFORD: Okay. Thank you, Sarah.

1 Palmer?

2 MR. HICKMAN: Thank you. Palmer Hickman,
3 employee representative.

4 Speaking again in support of the
5 recommendation from OSHA, I'll springboard off of
6 Lauren's comments. I think it's a logical next step
7 for OSHA, after something like the Union Tank Car
8 decision and employer payment for PPE.

9 For years and years and years, decades,
10 you've been enforcing something a certain way, and
11 then, all of a sudden, out of nowhere, it would seem,
12 something contrary, 180 degrees opposite, happened.

13 So, this is a logical next step that OSHA
14 would do just like the employer payment for PPE,
15 clarify the rule, maybe even better. It seemed clear
16 to everyone until some court decides that it's not
17 clear.

18 So, again, I don't see a change in the rule;
19 I see clarification in the rule.

20 Thank you.

21 MR. STAFFORD: Thank you.

22 Jerry?

1 MR. RIVERA: Yes. Jerry Rivera, employer
2 rep.

3 Again, I think we're -- the request seems
4 modest, but in reality, it does -- in application, when
5 we face these conditions on the ground, you know, the
6 CSHO who is chartered with following the letter of the
7 law is not going to give an employer who has made an
8 error the flexibility, and it might not mean nothing to
9 anybody as far as a citation, but in today's business,
10 it does.

11 Now, those employers are evil employers that
12 are not recording, you know, they're out there, we know
13 that, but the people who are here today and who we
14 represent, we take our due diligence and making sure
15 that the records are done correctly, and we will be
16 tugged into these scenarios where an error is made.

17 Now, again, Jeremy made a good point. Do we
18 go back to it if we find out if something has
19 drastically changed and modify it?

20 We'll probably do it, yeah, absolutely, but
21 you know, the way it appears is that there is that
22 continuous reevaluation of that occurrence that

1 occurred once to evaluate multiple times throughout the
2 course of the five-year period.

3 It does take us away from the people on the
4 ground who are trying to protect the workers and ensure
5 safety and healthful working conditions on the ground.
6 It does distract us to be -- record keeping is
7 challenging enough.

8 To throw this in the mix is going to tug us
9 away from the field.

10 Is that what the committee wants to
11 recommend? I don't know what to say, but it seems
12 simple.

13 MR. STAFFORD: We'll take a motion at some
14 point on that, and I'm really perplexed on why it is
15 that you're so adamantly against this when it's been
16 the way it has been for 40 years.

17 Steve, please.

18 MR. HAWKINS: That was actually my question.

19 I mean, for the employers who are upset about
20 this, how much time did you spend prior to this 2012
21 decision reviewing these records over and over again
22 like Don's math suggests? I'm just curious, because

1 that was -- the requirement was the same then as it
2 would be if OSHA is successful in changing the rules.

3 How much time did you spend reviewing all
4 these records 4 years and 364 days back to make sure
5 they were all still accurate? Were you doing that
6 prior to this Volks decision?

7 The employers at the table seem upset that if
8 OSHA changes this rule, they would have to spend an
9 inordinate amount of time reviewing their records, and
10 my question is, prior to 2012, were you spending an
11 inordinate amount of time reviewing your records before
12 this decision?

13 MR. RIVERA: I think I'm going to capitalize
14 on what Cindy said. You know, we report the initial
15 occurrence, and at the end of the year, we close out
16 the books. If something has changed in that period,
17 you know, we'll modify it, but beyond that, you put it
18 to the side and you move on.

19 MR. HAWKINS: And that's what you were doing
20 prior to 2012? You're not going to change the way
21 you're doing this because of this new rule, right?

22 MR. RIVERA: We will have to.

1 MR. HAWKINS: Are you going to be doing it
2 differently now than you were in 2010?

3 MR. RIVERA: The way the language is put
4 forward, we would have to reevaluate -- if we get new
5 information, we have to evaluate whether recordability
6 applies or not. That's my challenge with this.

7 You know, the five-year period as far as
8 maintaining the records, fine, but the accuracy when
9 you miss something -- and again, a lot of people around
10 this table, employers, are not going to miss something
11 maliciously. It just happens sometimes.

12 MR. HAWKINS: So, it gives a bye -- it
13 basically would give a bye to your competitors who are
14 not as diligent as you are, who don't keep their
15 records, and then, after six months passes, nothing
16 happens to them.

17 It almost seems like you would support the
18 change back to how it was before.

19 MR. STAFFORD: Christine?

20 DR. BRANCHE: Christine Branche, NIOSH.

21 I think just about everybody has spoken.

22 May I move that we take a vote on the

1 recommendation that OSHA formally request -- I guess
2 that we submit a recommendation on whether the agency
3 should proceed with the proposed amendments to the
4 record keeping regulations in 29 CFR Part 1904? We
5 can't move that yet?

6 MS. WILSON: I'm sorry. Just to clarify --
7 you can definitely make a motion now. Are you making a
8 motion that we take on vote on making a recommendation
9 or are you moving that the committee recommends that
10 OSHA proceed?

11 MR. STAFFORD: Christine?

12 DR. BRANCHE: I don't really know. I'm
13 trying to move us along. I guess I'm pushing it to a
14 vote, yes.

15 MR. STAFFORD: We're going to wrap this up,
16 because we do need to make a formal motion.

17 MR. ERICKSON: I will make that
18 recommendation on the agency proceeding with the
19 proposed amendments to the record keeping regulations
20 in 29 CFR.1904.

21 MR. STAFFORD: So, we have a motion, and it's
22 been seconded, that we recommend that the agency

1 proceed with this proposed rulemaking on this
2 particular standard.

3 All those in favor, signify by saying aye.

4 MS. WILSON: Could you please raise your
5 hands for this vote?

6 MR. STAFFORD: All those in favor, signify by
7 saying aye or raise your hand.

8 (Show of hands.)

9 MS. WILSON: I count 9 yays.

10 MR. STAFFORD: Nine yays. Ten yays.

11 All those opposed, please signify.

12 (Show of hands.)

13 MS. WILSON: I count five no's.

14 Any abstentions?

15 (No response.)

16 MR. STAFFORD: Okay. Lauren and Heather,
17 thank you very much. We appreciate your time.

18 We will adjourn for a lunch break until 1:00
19 o'clock.

20 (Whereupon, at 11:55 a.m., a luncheon recess
21 was taken.)

22

1 A F T E R N O O N S E S S I O N

2 MR. STAFFORD: We'll call the meeting back to
3 order, please.

4 Our next presentation this afternoon is going
5 to be on subpart V, electric power generation,
6 transmission, and distribution, but before we get to
7 that, I'd like to turn it over to Lisa for a
8 clarification on the last action the committee took
9 before lunch.

10 MS. WILSON: Thank you. I'm sorry. I just
11 wanted to clarify, the vote on the previous motion on
12 the record keeping proposal was actually 10 in favor
13 and 5 against. The motion still passes, but I
14 previously miscounted as nine in favor.

15 And if I may, I would like to also designate
16 exhibits. I'd like to designate the coke oven
17 presentation as Exhibit 9 and the memo on the record
18 keeping proposal as Exhibit 10.

19 Thank you.

20 MR. STAFFORD: All right. Thank you.

21 Mr. Harvey is with the Directorate of
22 Enforcement Programs.

1 Mr. Harvey, it looks like you have a Power
2 Point for us this afternoon.

3 MR. HARVEY: Yes, I do.

4 MR. STAFFORD: Okay. The floor is yours.
5 Thank you for being here.

6 MR. HARVEY: Okay. Thank you.

7 PRESENTATION ON 29 CFR PART 1926, SUBPART V, ELECTRIC
8 POWER GENERATION, TRANSMISSION AND DISTRIBUTION

9 MR. HARVEY: As Pete said, I'm Chuck Harvey
10 from the Directorate of Enforcement Programs to talk to
11 you briefly, give you an overview of subpart V, and
12 also, we'll talk about 1910.269. They're really the
13 same thing now.

14 It also includes 1910.137 and 1926.97, which
15 are electrical protective equipment. These are things
16 like rubber gloves, insulating blankets, insulating
17 sleeves that workers will use, the standards on that
18 now, as well.

19 I'll begin the presentation talking about why
20 the standard was revised. As you can see there, the
21 first standards for electrical power distribution,
22 transmission, and construction were issued in 1972.

1 Needless to say, there's been a few changes
2 since then, and they've been working on this for about
3 10 years now, and finally it was promulgated in July of
4 this year -- actually, April. It became effective July
5 of this year.

6 1910.269 was a little bit newer, was put out
7 in 1994, and it's not really substantially changed. In
8 fact, if you look at 1910.269, the old version and the
9 new version, you'd be hard pressed to find a lot of
10 differences. They're almost identical.

11 There's very few differences, mostly with
12 arc-rated gear and minimum approach distance, which
13 we'll talk about here briefly.

14 And also, the new standard now will provide
15 additional protection and it makes the standards the
16 same. So, the CSHO or just about anybody else, any
17 other stakeholder in this industry, won't have to worry
18 about following the standards for maintenance and
19 following standards for construction differently.
20 They're the same, essentially, now. The only
21 difference is line clearance and tree trimmers and
22 power generation are only in 1910.269.

1 Who is affected by this? It's any firms that
2 operate, control power transmission distribution,
3 obviously utilities.

4 There are some companies, manufacturing
5 firms, that have their own power distribution system.
6 They get power from the gate, so to speak, and
7 distribute it around their facility. They'd be
8 affected by this rule, as well.

9 Some that co-generate also affected by this
10 rule, and the contractors that are hired by electric
11 utilities are also affected, and there's a host
12 contractor revision now in the new rule that basically
13 says the contractor is supposed to know about certain
14 things before they begin their work. I'll talk about
15 that briefly, as well.

16 And also, of course, naturally, the line
17 clearance, tree trimmers are also affected by this.

18 The biggest changes are here on this slide.
19 There's four big changes. The biggest, minimum
20 approach distance, requirements for host contractor
21 provision, information transfer, essentially, revise
22 fall protection requirements and revised the

1 requirements for protection from wired electric arcs,
2 basically arc flash, which is a term probably everybody
3 is familiar with.

4 Protection for that now is standardized, and
5 it's in the rule. It actually begins anytime there's a
6 hazard that's equal to or greater than 2 calories per
7 centimeter squared. It's just an arc rating. I'll get
8 more into that in a second.

9 This slide just depicts what electric power
10 system is in the graphic and where the standards apply.

11 As you can see, looking at this, 1910.269
12 pretty much covers the gamut, and 1926, subpart V, the
13 construction standard, would apply whenever there is
14 construction of a new transmission line or distribution
15 line, as you can see by this graphic, and in the
16 houses, where the power distribution ends, where the
17 transmission line ends, the transmission connection, if
18 you will, to the structures, is where subpart K and
19 subpart S would apply.

20 Minimum approach distance, the first of the
21 big four significant changes, have to do with the
22 amount of time or, I should say, the amount of space

1 that's needed from an energized part for a worker.

2 This includes the movement of the worker within that or
3 near that space.

4 It's termed a ergonomic factor that has to be
5 added in to -- to the calculation now.

6 As you can see, on the bottom of the slide,
7 too, it's got -- there's some standards listed there
8 that apply to the particular standard that's being
9 discussed.

10 With minimum approach distance, the employer
11 now has to use the tables in the standard. The old
12 subpart V, it was basically look at the voltage that
13 you're operating on, then look at the distance. You
14 just follow the table, it's simple.

15 Well, the new rule is not that much more
16 complicated. Now you have to know the voltage you're
17 working on, obviously, but then you look at the
18 distance, look at the chart, look at the elevation, and
19 do some simple math, and it depends on the voltage,
20 naturally, and you figure out what your minimum
21 approach distance is.

22 For any voltages that are over 72 1/2,

1 72.5kv, you have to include maximum transient over
2 voltage in that calculation, and all that really is is
3 a factor from 1.8 to 3.5 that you would multiply that
4 distance by, essentially, but it's a lot more
5 complicated than that.

6 The transient over voltage has to do with a
7 lot of phenomena on the line where there's a switching
8 going on or there's a surge, but just -- it's important
9 for employers to know that they have to use that if
10 they have anything over 72.5k that they're working on.

11 The information transfer is the next big
12 section, and this really just deals with two groups,
13 the employers talking to their employees through the
14 job supervisor, and the contractors that a utility
15 might hire to come and do something.

16 There is information that they need to know
17 about now.

18 This is a formalized process.

19 This and most of the stuff in the new
20 standard is something that the consensus standards in
21 FBA, ANSI, IEEE have had in place for years, and most
22 employers are following them, and now it's in OSHA

1 standards, essentially.

2 Just a definition of hosting contractor --
3 who is a host, who is a contractor? The host obviously
4 operates the lines, owns the lines. The contractor, of
5 course, coming in to do some work, that's covered by
6 this standard as far as this standard is covered on
7 that work.

8 Information transfer. There's a couple of
9 sections here that basically talks about what needs to
10 be talked about in the information transfer, things
11 like the voltage in the line, the transient over
12 voltage, any opportunities for induced current.

13 We had a case recently that I looked at where
14 a lineman was killed from induced current. They were
15 working on a line that was adjacent to a 345kv line
16 that was energized, and they knew it, but something
17 fell apart and induced currents on the line of about
18 14,000 volts, and it killed a lineman.

19 There's a number of things that weren't done
20 correctly there, but induced current is a big hazard,
21 and it doesn't normally present itself when you have a
22 de-energized line. You wouldn't realize that there is

1 such a thing as induced current. That's why there's
2 provisions in the standard now for testing before
3 workers go up and do anything, grounding, other things
4 like that.

5 Host contractor provisions and job briefing.
6 Job briefing requirements are basically that. An
7 employer needs to make sure that his employee in
8 charge, that their employees in charge of any job or
9 any crew knows certain information.

10 The duty is on the employer, not the employee
11 in charge, but the employee in charge's duty is to make
12 sure they brief the crew on the hazards of the job, and
13 there are some specifics, not a lot, but there are some
14 specifics in the standard about job briefing that needs
15 to be covered at a minimum.

16 They can cover anything they want, but
17 there's minimum requirements to cover certain things.

18 For instance, here on this slide, existing
19 characteristics is something that's going to be covered
20 in information transfer from the host to the
21 contractor, voltage on the line, maximum over voltage,
22 presence of any grounds, locations of circuits and

1 equipment, conditions of the installation, such as
2 conditions of grounds or poles.

3 Are there any poles out there that shouldn't
4 be climbed, or is there anything that, you know, the
5 contractor needs to be aware of, any environmental
6 conditions, as well.

7 With the job briefing, the standard, again,
8 talks about the specifics that need to be covered. The
9 employer really -- his task is to make sure the
10 employee in charge knows about this and covers those
11 things.

12 Those are the two biggies on this slide right
13 here, existing characteristics and existing conditions.

14 Fall protection is the third of the floor,
15 substantial changes with fall protection. We've talked
16 about three different types, essentially, work
17 positioning equipment, fall restraint, and fall arrest,
18 which really is what is covered in the standard.

19 As you can see by the slide here, it kind of
20 depicts, pretty much, those three right there.

21 Fall restraint is supposed to be rigged so
22 that the employee has zero fall, they can't get to the

1 fall, essentially, there's no way for the employee to
2 reach the fall.

3 This depiction on this slide is not probably
4 subpart V work.

5 For the most part, our fall restraint talks
6 about -- in the standard -- about aerial lifts, when
7 you use bucket trucks and things like this, is where
8 the fall restraint is one of the two options they have
9 when they're working out of a bucket truck.

10 Work positioning equipment usually is
11 designed to work on a vertical surface where the
12 employer has given the employee the equipment to work
13 in a vertical surface where his hands are free.

14 They're able to move around, take things,
15 install things, etcetera.

16 This example here has got the lineman. He's
17 got his gaffs in the pole and he's got the pole strap
18 around the pole. It's actually on another graphic
19 here. This is a form of fall protection, as well.

20 Work positioning -- the pole strap actually
21 squeezes the pole if the employee was to fall, his gaff
22 were to cut out or whatever.

1 You'll see this on a slide coming up.
2 There's a little bit better illustration of this device
3 he's using.

4 And fall arrest, which everyone knows about.
5 The requirement in fall arrest obviously, everybody
6 knows, it should be less than a six-foot fall, six-
7 foot-or-less fall, should be rigged for that, and in
8 this case, as is shown on here in the slide, the
9 individual is working out of a bucket truck. They have
10 fall restraint and fall arrest, are the two options
11 when you're working out of an aerial lift.

12 On poles or towers, beginning April 1, 2015,
13 this standard kicks in for poles and towers and any
14 similar device that an employee needs to have fall
15 protection if they're more than four foot off the
16 ground, 1.2 meters.

17 That's when the standard kicks in as far as
18 the requirement goes, anything over four foot, then
19 they would use the appropriate fall protection, whether
20 it be work positioning, fall restraint, or fall arrest.

21 This is the pole strap that I was mentioning
22 earlier that the lineman would use to, you know, engage

1 around the pole. So, if he was to fall out, this
2 actually squeezes the pole.

3 It's work positioning equipment. It does two
4 functions. It lets them work with their hands free, as
5 well as provides them fall protection in the event
6 their gaff were to give out or something like that.

7 This, along with all the other fall
8 protection stuff, is effective April 1, 2015.

9 Electric arc protection is the fourth of the
10 four, substantial changes. An arc flash is something
11 that's a common hazard, everybody knows about. Now
12 it's in our standard that they have to be protected
13 anytime they're at 2.0 calorie per centimeter squared
14 hazard level or greater.

15 The employer's challenge is to assess the
16 workplace, determine where the hazards are out. More
17 than likely, that's been done already.

18 It's been in consensus standards for years to
19 determine what your incident energy level is for your
20 environment, and it's probably already done, but now,
21 again, it's in the standard. It's required that they
22 do that.

1 Prohibit certain types of clothing. Melttable
2 clothing, obviously, is not good if there's an arc
3 flash hazard, so employees are not to wear that stuff,
4 and the employer is charged with making sure the
5 employee is not wearing any clothing that could melt in
6 an arc, and the standard talks about -- gives a long
7 list of the types of materials that are prohibited.

8 And then it requires FR clothing when we're
9 at 2.0 calories per centimeter squared or greater, and
10 the employer should select clothing with a rating
11 that's greater than or equal to the hazard level.

12 There are some differences in the standard
13 for protection of the head and the face and the hands
14 and the feet. The body coverage is determined by the
15 2.0 cal per centimeter squared hazard or greater.

16 The head and the face are different.
17 Protection for the head is only required if we're going
18 to be equal to or greater than 9 cal, and it's a
19 single-phase arc in air, which means basically one
20 phase, one wire, open air, like a line, like a
21 distribution line, and requires 5 cal for all the
22 other exposures, equal to or greater than 5 cal.

1 So, if it was a situation where you have
2 three phases, which you normally do on a line, they
3 would need to use the 5 cal.

4 Protection for the hands -- that kicks in
5 whenever they are not wearing heavy-duty leather work
6 gloves. The weight of heavy-duty leather work gloves
7 will protect them from an arc if it's less than or
8 equal to 14 cal, and if they're wearing rubber gloves
9 and protectors, obviously they don't need to wear any
10 other additional arc protection.

11 And then, for the feet, heavy-duty work boots
12 or shoes are considered to be protective against the
13 arcs.

14 Compliance deadlines. Right now, the
15 compliance deadlines are set for incident energy
16 estimates. They must begin by January the 1st, a
17 couple of weeks from now, and then fall protection --
18 the wearing of arc-rated clothing, and the minimum
19 approach distances have to all go into effect on April
20 1, 2015.

21 The key on the minimum approach distance is,
22 if there's any over 72.5k exposure, they need to have

1 their transient over voltage known.

2 And that's essentially my presentation. Are
3 there any questions?

4 MR. STAFFORD: Thank you, Mr. Harvey.

5 Are there any questions or comments?

6 Jerry.

7 MR. RIVERA: Mr. Harvey, thank you so much
8 for the informative presentation. I think this has
9 been long overdue. However, there's a couple of areas
10 that maybe I'm seeking a little bit more clarity on
11 with the compliance date upon us.

12 You know, with the incident energy estimates
13 that are being required now of the employer, who needs
14 to provide that incident energy estimate? Does it fall
15 in the hands of the utility, contractor?

16 I mean, I know there's an exchange of
17 information, or sometimes, you know, thinking back into
18 the industry, it doesn't happen that quickly, you know.
19 So, I'm just trying to figure out, where does that fall
20 into the obligation to provide the incident energy
21 estimate, at least the initial information?

22 MR. HARVEY: Right.

1 The employer has a couple of options. I
2 would think information transfer is where they're going
3 to get it. I know you mentioned that, but I think that
4 part of the work, if an employer is going to go out and
5 perform a job of some sort that's covered by this
6 standard, they need to know what that incident energy
7 is.

8 If they don't know, then, you know, that
9 should be something that they could calculate on their
10 own.

11 Of course, that would require them to have
12 knowledge that's given, like the voltage clearing time,
13 exposure of, you know, distance away from the line,
14 that incident energy is calculated at. They need to
15 get that information from the host.

16 I mean, it's got to be transferred from the
17 host.

18 MR. RIVERA: Mr. Harvey, I truly believe in
19 this, you know, protecting the workforce, linemen. You
20 know, they -- they go out at night, under storm --
21 under adverse weather conditions, you know, to supply
22 power to the grid.

1 You know, we sometimes take that for granted.
2 So, we owe them, you know, some level of protection,
3 but sometimes when I'm looking at this, you know, in
4 consultation with some of the partnership members,
5 looking at the arc-rate clothing, as well, sometimes
6 when you're in storm work, you know, you're chartered
7 to respond to the needs of, you know, that community,
8 sometimes you don't have that information available as
9 far as the incident energy levels, you know, the exact
10 ones.

11 Our contractors make the due diligence to get
12 some estimates of what they're anticipating, but the
13 accuracy, sometimes it's not precise.

14 Does the rule provide some flexibility to,
15 you know, have somewhat of a initial assessment that
16 could apply to, you know, let the work going on in one
17 particular area?

18 MR. HARVEY: Right. There is a -- there is
19 an exception as far as they don't need to assess every
20 individual hole, if you will, every transformer bank,
21 every capacitor bank. They can make estimates over a
22 broad area. They absolutely can.

1 That's in the standard. That's written in
2 the standard, almost verbatim as what I just said. So,
3 they can do that.

4 And in response to your storm work scenario,
5 a lot of times these people that -- other than a
6 hurricane where they have, you know, mutual aid, if you
7 will, come in from other areas, if it's in the area
8 that they're at, these are the people that work the
9 lines anyway.

10 So, they would probably be aware of, you
11 know, these incident energy levels and other things
12 like that.

13 MR. RIVERA: Because of the trade, they have
14 a certain level of knowledge. Obviously, these are
15 qualified individuals. But to kind of say that it's an
16 actual assessment in great detail -- that would be
17 misleading under those circumstances, and it's not only
18 storm work sometimes. You know, it's just going to an
19 area to make a repair, which is, you know, limited
20 time.

21 I have another question here that -- on fall
22 protection.

1 When you look at fall protection, you know,
2 you've got the buck squeeze. When the lineman goes out
3 into the horizontal brace, what's the fall protection
4 expected at that level? Is it the same if you utilize
5 the buck squeeze, or is there somewhat of a way that
6 the standard addressing conquering obstacles?

7 MR. HARVEY: Are you meaning if he's working
8 on a transmission tower and he has to lean out,
9 something like that?

10 MR. RIVERA: Sure, that could be a scenario.
11 Or a pole.

12 MR. HARVEY: Yeah. I would think that the
13 same standard would apply.

14 MR. RIVERA: What standard?

15 MR. HARVEY: Work positioning.

16 MR. RIVERA: Okay. The next one that I have
17 -- job briefing, last question, I promise. Is it
18 considered a component of training when you conduct
19 that job briefing? Is OSHA considering that -- since
20 it is site-specific -- to be considered training in
21 itself?

22 MR. HARVEY: The way that the job briefing

1 rule is written -- it says, before every job or before
2 every shift, there's supposed to be a job brief.
3 That's the way the rule is written.

4 So, I think if you just said, well, they've
5 been briefed, because we gave them training, it may not
6 apply to the conditions of the situation at that time.

7 So, I think that it may require that the job
8 briefing always be done, per the standard, unless it's
9 repetitive work. The standard says that. If they're
10 doing the same thing over and over again, we don't need
11 to brief them if they did this yesterday and they're
12 doing the same thing today.

13 MR. RIVERA: And just one last comment. I
14 would recommend, in those four key areas, maybe you
15 should -- you know, the Directorate of Construction can
16 reach to the ET&D Partnership to try to figure out -- I
17 know they're trying to work through some of these
18 issues, they're trying to comply with it, but there's
19 some areas, like the fall protection, going into
20 horizontal, there's confusion, the incident energy
21 levels. They have the intent of meeting these by the
22 deadline date, but I think, as an industry, we're still

1 trying to figure that out.

2 MR. HARVEY: Right.

3 MR. RIVERA: So, that's the last thing I
4 have to say about that one.

5 MR. HARVEY: Right. If I could just add to
6 that, there is a process right now where OSHA is not
7 actually enforcing the standard until right now. It's
8 scheduled for beginning of -- January 1st, cause we
9 have extended our temporary enforcement memo, which you
10 may or may not have seen. It came out in June, said
11 that we wouldn't enforce, basically, most of the
12 standard until October 31st, after October 31st. That
13 got extended to December 31st.

14 So, right now, they're in settlement talks
15 with a couple of the different groups. I think Jim
16 Maddux alluded to this this morning, briefly.

17 So, right now, there isn't any enforcement of
18 the new standard, if you will, from the standpoint of
19 this is what you have to be held to.

20 Right now, the enforcement is of the old
21 1910.269 for all work, whether it be construction or
22 maintenance.

1 If they're violating that, then they're cited
2 under the new standard, because the new standard is law
3 now. You can't cite the old standard, but you can use
4 that as a compliance requirement.

5 MR. RIVERA: Thank you.

6 MR. STAFFORD: Any other questions or
7 comments?

8 (No response.)

9 MR. STAFFORD: Mr. Harvey, I just have a
10 question, basically from my own ignorance. On the
11 information transfer, you explained very well what
12 information needs to be transferred. Does it stipulate
13 how? Is that in writing? Is that just in briefings?
14 Is that in both? What about tiers of subcontractors
15 that may be working for the contractor? How is that
16 addressed?

17 MR. HARVEY: Right. That question has come
18 up quite a bit in settlement discussions. There isn't
19 a process defined in the standard of how that
20 information is to be transferred.

21 Some employers have said could we do it via
22 our website, and that's problematic in some areas,

1 cause you know, the information they don't want
2 released.

3 Could they do it via some kind of a contract,
4 and it could be done that way.

5 There isn't a set means in the standard that
6 says this is how you will transfer that information.
7 It only says that this is the transfer -- that
8 information that has to be transferred.

9 As far as a subcontractor to a sub to a sub,
10 the host contractor still has the requirement to get
11 those guys the knowledge, and they have to work that
12 process through somehow.

13 MR. STAFFORD: The host employer or host
14 contractor?

15 MR. HARVEY: The host employer.

16 MR. STAFFORD: So, the owner.

17 MR. HARVEY: The owner/operator of the
18 system.

19 MR. STAFFORD: Jeremy?

20 MR. BETHANCOURT: My question is how much
21 outreach has OSHA been doing with this particular
22 standard to reach all the folks so that they understand

1 what it is, where there's doubt or just confusion? Is
2 there any guidance documents that are coming out or
3 planned for that sort of thing?

4 MR. HARVEY: Yes, there's a lot of stuff
5 planned. There's a compliance directive in the works.
6 There's been probably 10 to 12 different webinars and
7 briefings. We briefed our people, our CSHO's in the
8 field, on it.

9 There's a lot of stuff planned. We have some
10 fact sheets that we plan on getting out.

11 MR. BETHANCOURT: Any idea on a timeframe on
12 those fact sheets? Cause I know folks that have been
13 asking to have some clarification, and we've sent some
14 -- you know, I've sent some emails to Jim to kind of
15 get some questions back and forth, and we've looked at
16 the question and answers on the website, but just more
17 clarification seems to be -- people are asking for more
18 kind of guidance on it.

19 MR. HARVEY: Absolutely. I understand. And
20 I answer questions almost every other day on the
21 standard. So, we're taking those. There isn't any
22 kind of stipulation that says you can't ask, and it

1 sounds like you have been asking. So, we'll try to
2 answer those as they come in.

3 But there are some things planned, like the
4 compliance directive. I can't give you a date on that.
5 The standard itself, when they come to be enforced,
6 which, right now, unless it's extended, is January 1st
7 -- that memo will go out and everybody will see that
8 and know that now we have to -- you know, now it's in
9 force, now it's in effect, if you will.

10 I know that there's plenty of stuff in the
11 pipe. It's going to take some time to get it out, and
12 in the meantime, ask the questions and get them --
13 we'll get them answered.

14 The person that was responsible for most of
15 this, for writing this, our guy that -- electrical
16 engineer that retired from OSHA, is still kind of
17 available to us.

18 So, we've got a real tough question, we go to
19 him.

20 So, we'll get answers for you.

21 MR. STAFFORD: Any other questions or
22 comments?

1 (No response.)

2 MR. STAFFORD: Mr. Harvey, thank you.

3 MR. HARVEY: Thank you.

4 All right. Now we're going to get into our
5 workgroup reports. I'm going to change the order a
6 little bit. I think the health hazards workgroup needs
7 to get their minutes still typed up. So, we'll try to
8 get a Temporary Worker Workgroup report in.

9 I don't know -- Tish or Jeremy or Tom -- how
10 you are going to handle this.

11 TEMPORARY WORKER WORKGROUP REPORT

12 MS. DAVIS: We have a couple pages. We
13 weren't all at the meeting yesterday, so we took fairly
14 extensive notes for our colleagues on the committee.

15 So, present were Jeremy, Tom, and myself from
16 ACCSH, OSHA staff, and the -- and a number of members
17 of the public, and we're attaching a list of attendees.
18 There were several phone-in participants, Michelle
19 Walker from OSHA and three people from NACOSH, Mark
20 Carlson, Jim Johnson, and Bill Bunn.

21 So, just to note that several members of the
22 NACOSH temporary worker group participated in the

1 meeting. Peg Seminario of NACOSH was also, you know,
2 present at the meeting.

3 The meeting was chaired by Tom Marrero.
4 Workgroup co-chairs, Jeremy and myself, took notes.

5 The meeting was largely devoted to a
6 discussion with two construction company
7 representatives, i.e. host employers, regarding their
8 practices and experiences working with temporary
9 agencies and temporary agent workers.

10 Kevin Potter is vice president of Morton's
11 Building, which is a large commercial construction firm
12 that specializes in pole barn and similar structures.
13 They have 136 facilities in 38 states.

14 Karl Ballwanz works with Clark Building
15 Solutions, a large general contractor in the D.C. and
16 Maryland area.

17 Mr. Potter reported that Morton's Building
18 uses temporary agencies in two different ways, first to
19 engage workers for specific project needs on the bigger
20 projects, and two, as a way -- they enlist temporary
21 agencies to assist in hiring new candidates. They
22 engage workers through their temporary agency for an

1 initial 90-day trial period and then make a
2 determination about proceeding with hiring.

3 Mr. Ballwanz reported that his experience is
4 on large projects in which the project subs need to
5 hire temporary labor to keep the project on schedule,
6 and in these cases, all the tiered subs operate under
7 the GC policies, and they often have these wraparound
8 insurance liability and workers compensation policy,
9 which the GC covers comp for all workers onsite,
10 including the temporary agency workers, and on large
11 projects, the temp workers can be there for several
12 months.

13 So, then, Mr. Potter and Mr. Ballwanz
14 responded to a number of questions from ACCSH members
15 and other meeting participants.

16 When asked about what they expect from
17 temporary agency workers in terms of training, the
18 responses were quite different.

19 Mr. Potter reported that Morton's expects
20 only that the temporary agency worker have the basics
21 of carpentry. Morton's Building takes care of the
22 safety training.

1 They have their own internal video production
2 and training group that tailors training to their
3 company. They have a series of six training videos
4 that the temp workers watch, they need to watch, and
5 there is a test at the end.

6 The foremen onsite then have responsibility
7 to assure that the work is done safely.

8 The first video is an orientation or
9 introduction about the company, about who they are
10 working for. It covers what the company does, what are
11 basic worker health and safety rights,
12 responsibilities, and emergency procedures, and it's
13 intended to set the tone regarding the company's
14 commitment to safety.

15 Their main training focus is on fall
16 production, so subsequent videos cover ladder safety,
17 fall protection on framing, fall protection in roofing,
18 PPE, and accident reporting.

19 Workers are informed to report unsafe
20 conditions, as well, to their foremen.

21 The videos are in English, but company
22 employees are assigned to help with translation as

1 needed. Many of the foremen are bilingual. Some, but
2 not all, safety documentation provided to employees is
3 bilingual.

4 Mr. Potter stressed that Morton's Buildings
5 didn't want to assume that the temp agency had provided
6 orientation and training. They prefer to do this
7 themselves.

8 Mr. Potter also reported that they address
9 safety using a weekly planning tool, which includes a
10 job hazard analysis that is updated each day as needed.

11 Every task is assigned a risk. This is
12 reviewed with all workers, including temp workers
13 onsite, and all workers, including temp workers, sign
14 off on the weekly planning tool, and he stressed that
15 it is important that temp workers become part of the
16 team.

17 Next we heard from Mr. Ballwanz, who reported
18 that their subs use temporary agencies to engage a
19 range of skilled tradesmen -- for example,
20 electricians, plumbers, steamfitters.

21 The temporary workers need to bring
22 certificates of qualifications for their trade and

1 evidence of training to prove that they are qualified.
2 Clark Builders Group relies heavily on the temp agency
3 to provide skilled workers who have had health and
4 safety training, e.g. hazard communication, hazard
5 recognition, and so, they really rely on written
6 documentation of training.

7 Every new employee to the jobsite includes
8 temporary agency workers. They all go through an
9 onsite safety orientation, and this includes
10 information about how to report both injuries and
11 hazards and emergency evacuation.

12 They require that there be an interpreter on
13 the jobsite at all times. Temp workers, like
14 employees, are involved in daily huddles and weekly
15 toolbox talks.

16 The weekly toolbox talks need to be provided
17 in language that workers understand and be documented.

18 The temporary agency, in his case, usually
19 provides the PPE and fit testing. The temp agency
20 makes routine visits to the site to check on their
21 people and addresses PPE maintenance. That was in
22 response to the question, if the temp agency is

1 provided PPE, who is assuring the maintenance, and in
2 some cases, however, he said the host employer provides
3 everything.

4 Mr. Potter, on the other hand, reported that
5 Morton Buildings provides PPE with the exception of
6 prescription lens goggles for temporary workers.

7 Tom Marrero reported that Tradesmen's
8 International provides basic PPE goggles, hardhats, but
9 more specific PPE issues are laid out in the contract
10 between the temp agency and the host employer.

11 Both of the employers there reported that
12 respirator use in their business is rare and is really
13 treated as a special issue and focused on.

14 If an accident occurs, information about the
15 injury and the accident investigation is shared with
16 the temp agency.

17 Both Mr. Potter and Mr. Ballwanz reported
18 that when an incident occurs, they do investigations
19 with all the parties involved, including the temp
20 agency, if possible.

21 Tom Marrero reported that, if a temp agency
22 is not there to go out on the investigation, which

1 often happens, they will, at the very least, get the
2 report.

3 In response to a question about the value of
4 temporary agencies, both Mr. Potter and Mr. Ballwanz
5 reported that the use of temporary agencies and workers
6 is a crucial part of their business.

7 Health and safety responsibilities are
8 included in the contract with temp agencies. It was
9 not clear, however, whether these kind of contractual
10 arrangements and kind of best practices were laid out
11 in the written company health and safety program
12 documentation.

13 When asked about challenges with temporary
14 workers, Mr. Potter reported that it was a lack of
15 commitment to the company. He also identified the
16 problems that workers who are hired out of the
17 residential construction sector are not familiar with
18 fall protection and there really needs to be clear
19 communication about the need for fall protection and
20 training.

21 Acknowledging the need for shared
22 responsibility and communication, Mary Lynn of OSHA

1 asked the host employers about temporary agency
2 involvement after the temporary workers come to the
3 sites.

4 Mr. Ballwanz reported that they usually see
5 the temporary agency staff onsite at least once a week
6 to monitor their employees.

7 Mr. Potter reported that they work on over
8 6,000 sites per year; it's hard to get temporary
9 agencies onsite, since the crews travel long distances
10 throughout the country, and that it's difficult at
11 times to coordinate jobsite visits.

12 Scott Schneider suggested that it would be
13 useful to have a model template for what should be
14 included in the initial health and safety orientation
15 that would focus us on policies, rights and
16 responsibilities, reporting, and company philosophy
17 rather than hazard-specific training in the initial
18 orientation.

19 Both employers acknowledged that temp workers
20 are treated differently onsite and that it can be
21 challenging to integrate them into the team, as it with
22 all new employees, and they acknowledge that there are

1 challenges for both the full-time workers and the temp
2 workers.

3 In response to a question about OSHA 10
4 cards, Mr. Potter reported that they ideally strive to
5 have all their workers have OSHA 10 cards, but it is
6 sometimes challenging to keep this up.

7 They have internal trainers and their
8 regional managers all have OSHA 30 training.

9 Mr. Ballwanz reported that they do offer OSHA
10 10 free of charge. The drawback to the temp agency
11 workers, as well as their own workers, the drawback is
12 that the temporary agency has to pay for the time,
13 which sometimes they do.

14 Morton's Buildings pays workers to take the
15 OSHA 10. Morton's Building reported that they actually
16 cover the time and pay workers who are taking the OSHA
17 10.

18 There was further discussion about how OSHA
19 10 is important, but it covers only the basics and is
20 not enough.

21 When asked about hazard reporting, Mr. Potter
22 reported that temp workers were actually more likely to

1 report hazards than permanent workers. One reason, he
2 felt, was that because they're working for a different
3 employer, they're not likely to jeopardize their
4 bonuses.

5 Other reasons given were recent training on
6 hazard reporting and lack of familiarity with hazards
7 and standard operating procedures.

8 After this discussion, the workgroup
9 addressed several additional topics and potential next
10 steps.

11 Eric Kampert of OSHA read the request from
12 Dr. Michaels that the workgroup -- it's really a charge
13 that the workgroup provide recommendations to OSHA on
14 what additions need to be made to OSHA's guidance on
15 illness and injury prevention programs on protecting
16 temporary workers or subcontractors.

17 Peg Seminario suggested that the workgroup
18 really work -- proceed to develop specific language
19 that could be included in OSHA's guidance on illness
20 and injury prevention programs, and this would be a
21 very concrete task for the group to pursue.

22 NACOSH has also been asked to work on this,

1 and the two temporary workgroups should collaborate
2 through emails and conference calls before the next
3 meeting, and it was suggested that this be raised as a
4 recommendation for the full ACCSH group to consider.

5 It was suggested that we start by reviewing
6 the section on contract workers and the ABSI Z10
7 standard as an example of incorporating language on
8 temporary workers and health and safety program
9 guidance.

10 Tish Davis raised the need for better data on
11 temporary workers, stating that ideally our record
12 keeping rules could be changed to include additional
13 information the employment status of injured workers
14 and clarify what denominator data should be used in
15 generating annual recordable injury rates.

16 It was suggested then that OSHA's new record
17 keeping rule requiring reporting of hospitalizations
18 and amputations would be a good opportunity to pilot
19 collecting data on the employment status of injured
20 workers.

21 This could be collected both in the online
22 reporting and phone reporting system.

1 The need to include BLS in discussions about
2 how to improve data on temporary workers and
3 subcontracted workers and other work arrangements was
4 also raised.

5 Peg Seminario reiterated, I guess, the need
6 for shorter translated versions of temporary agency
7 materials geared -- that would be geared for workers
8 rather than the current materials which are geared for
9 employers.

10 Mary Lynn of OSHA reported that they are
11 working on a piece specifically for workers, and she
12 also indicated that OSHA is interested in any
13 suggestions regarding ways to get information out about
14 record keeping requirements to both temp agency and
15 host employers.

16 I'm coming to an end.

17 Jeremy Bethancourt underscored the need to
18 broaden the temporary worker initiative to address
19 other misclassified workers on construction sites. For
20 example, piece workers and phase workers on a site
21 where they do only one portion of a job and leave.
22 They are not independent contractors, nor are they

1 employees of a temporary employment agency. They are
2 actually hired as employee by the contractor but
3 treated as though they are an independent contractor,
4 which is an issue for wage and hour, OSHA, and workers
5 compensation, and stressed that OSHA does have a role
6 in this issue.

7 The need to involve the DOL wage and hour
8 division in the temporary worker workgroup was also
9 raised because of the misclassification of workers who
10 are in reality temporary worker of a contractor and
11 that the work duration is temporary.

12 Where contractors misclassify may very well
13 be an issue for wage and hour, but it is OSHA who
14 should be working to ensure that there is safety and
15 training provided to those same workers.

16 And Peg Seminario suggested that this could
17 be a good opportunity for OSHA and Wage and Hour to
18 work together.

19 We ended the meeting, you know, extending our
20 thanks to Mr. Potter and Mr. Ballwanz for their
21 willingness -- it was a very open and, you know, honest
22 discussion, we felt, and that -- for their willingness

1 to participate in the meeting and the information they
2 provided.

3 MR. STAFFORD: Thank you.

4 Anything to add, Tom or Jeremy?

5 MR. BETHANCOURT: No, I think Tish -- we
6 covered it all. We really wanted to make sure that the
7 notes were extensive, because we did recognize that all
8 members were not going to be in the workgroup. So,
9 that's why we really focused on making -- a lot of
10 information.

11 MR. MARRERO: I just have one suggestion,
12 that for future meetings, that we have more than just
13 two hours. I mean, that meeting easily could have went
14 four hours yesterday and been very, very meaningful,
15 you know, so -- I mean, it was meaningful, but --

16 MS. DAVIS: Yeah, if we're going to have
17 these breakout groups where we're not all going to a
18 meeting, it's silly to come into Washington for two
19 hours for the day. We could have spent more time in
20 our workgroup, working on, you know, some of the issues
21 that we wanted to proceed with.

22 MR. STAFFORD: Okay.

1 MS. DAVIS: I do think there are several --
2 for the record, there are several recommendations or
3 motions we'd like to make that kind of evolved out of
4 the first one, and the first, I would move -- Jeremy
5 and Tom, chip in -- is that the ACCSH Temporary Worker
6 Workgroup proceed to develop specific language on
7 protecting temporary workers that can be incorporated
8 in the OSHA guidance on illness and injury prevention
9 programs and that we work with the NACOSH temporary
10 worker workgroup in this effort.

11 MR. BETHANCOURT: We thought that we could
12 do, you know, conference calls and things like that in
13 between the next in-person meeting to try to develop a
14 little bit ahead of time documents. That's something
15 we're able to do.

16 MR. STAFFORD: Well, I think, Lisa -- I mean,
17 I'm sure that we can have -- they can coordinate
18 meetings between now and the next meeting with NACOSH's
19 workgroup, or at least the co-leads, right? There's no
20 problem with that.

21 MS. WILSON: Lisa Wilson, ACCSH counsel. I
22 think OSHA said yesterday that they could definitely

1 explore coordinating with NACOSH.

2 MR. STAFFORD: Okay.

3 So, Tish, that was in the form of a motion.

4 MS. DAVIS: Yes.

5 MR. BETHANCOURT: I second.

6 MR. STAFFORD: What she just said.

7 All right. So, do we need to reframe that

8 for you, Lisa?

9 MS. WILSON: I think I got it.

10 Letitia moved that the ACCSH Temporary Worker
11 Workgroup proceed to develop language on temporary
12 workers for the I2P2 guidance and work with the NACOSH
13 workgroup on temporary workers.

14 MR. STAFFORD: Jeremy Bethancourt seconded.

15 So, we have a motion and a second.

16 All those in favor, signify by saying aye.

17 (Chorus of ayes.)

18 MR. STAFFORD: Any opposed?

19 (No response.)

20 MR. STAFFORD: Did you say there was another?

21 MS. DAVIS: There's two more. The second

22 recommendation which we referred to is that, in

1 implementing the new reporting requirement for work-
2 related amputations and hospitalization, OSHA should
3 pilot collecting information on the employment status
4 of injured workers.

5 So, that was a recommendation, that as long
6 as they're collecting these new reports, if they try to
7 get information as to whether or not the injured worker
8 is a employee of a temporary agency, a subcontractor,
9 or an employee.

10 MR. STAFFORD: Okay.

11 MR. BETHANCOURT: We didn't even know if
12 that was something that they could do, which is why we
13 wrestled with the language, even, of saying pilot, it's
14 not mandatory, it's just trying to get information,
15 background as to why we chose the wording that we did.

16 MR. MARRERO: On a volunteer basis.

17 MR. BETHANCOURT: On a voluntary basis to try
18 to collect data.

19 MR. STAFFORD: Cindy, did you have a comment?

20 MS. DePRATER: Yes. Cindy DePrater, employer
21 rep. Was there any discussion around who would be
22 reporting that? Would it come from the temporary

1 agency?

2 MS. DAVIS: My understanding is, under the
3 OSHA record keeping, that it's the employer that's
4 responsible for maintaining the OSHA log that's
5 required to report. So, in most cases --

6 MS. DePRATER: -- it would be the temporary
7 agency.

8 MS. DAVIS: No. It's the host employer who
9 is responsible.

10 MS. DePRATER: Actually, I'll tell you, it's
11 different across the board where we hire temporary
12 workers. Depending on the supervision and the
13 insurance requirements, believe it or not, they -- a
14 lot ours report back to the temporary agency.

15 So, that's why I'm asking the question. Did
16 they discuss that?

17 MR. STAFFORD: Cindy, can you define what the
18 insurance requirements would be, because I mean, the
19 record keeping would be different from the insurance
20 requirements.

21 MS. DePRATER: Yeah, they're very different,
22 absolutely, they are, but certain jobs will require

1 that the temporary agency cover their workers for
2 workers compensation. It has nothing to do with record
3 keeping.

4 MS. DAVIS: So, the requirement to report
5 hospitalization and amputations applies to the
6 supervising employer, which in most cases, we heard at
7 our last meeting here, is going to be the host
8 employer.

9 In some cases, when the temporary agency --
10 Steve, I'm looking at you. You know all this. If the
11 temporary agency has a supervisor onsite, then the
12 reporting obligation shifts to the temporary agency.

13 But the idea is, when people are filling out
14 either a form online, reporting a hospitalization or an
15 amputation, or calling in that OSHA attempt, on a
16 voluntary basis, at least, to assess whether or not
17 it's a temporary worker, an employee, or a
18 subcontractor, so to try to collect that information,
19 cause we need more information.

20 MR. STAFFORD: Okay. So, we have -- as I
21 understand it -- I've kind of lost track here for a
22 second.

1 We have a motion and a second.

2 MS. WILSON: Who seconded Letitia's motion?

3 MS. DAVIS: I don't think --

4 MR. BETHANCOURT: I did the first one. I
5 shut my mouth this time, or at least I tried.

6 MS. WILSON: Okay. And the second motion on
7 the floor is that ACCSH recommend that, in implementing
8 the new reporting requirements for serious injuries and
9 illnesses, OSHA pilot including information on, you
10 know, the temporary or permanent status of the
11 employees -- employment status.

12 MR. STAFFORD: Jerry and then Palmer.

13 MR. RIVERA: Jerry, employer rep.

14 Just as a point of clarity, the new rule for
15 record keeping that's done -- are we recommending to
16 include that there or as a separate initiative? What's
17 the actual intent that we're trying to create a motion
18 on?

19 I just want to make sure that we're not
20 trying to -- I don't know if we can do it anyway, but I
21 don't think it's clear to me what we're trying to vote
22 on by capturing that data, since that part of the rule

1 has already been -- gone through the vetting process.

2 MS. DAVIS: That's why we used the word
3 "pilot," because I don't think OSHA can mandate that
4 employers report on the employment status of the
5 workers when they call in the cases, but nothing is to
6 stop OSHA from saying -- asking, you know, if you have
7 the information and willing to provide it, can you
8 respond to the following question, and that question
9 would be, is this a temporary worker?

10 MR. RIVERA: Like an initiative, maybe.

11 MR. STAFFORD: Palmer?

12 MR. HICKMAN: I think it would be useful to
13 those that weren't in the room to understand the
14 background that drove us to the motion.

15 It seemed to be the collective position of
16 the group there that it would be helpful to know if it
17 was a temporary worker that was injured or was a
18 permanent worker that was injured.

19 We also sort of got muddled with people that
20 are designated as contractors when they're really
21 employees of an employer, and that was where another
22 recommendation came, maybe to try to give Wage and Hour

1 -- to try to clarify, but I think the real intent of
2 this non-mandatory recommendation is put this in as a
3 category to be captured by phone, non-mandatory,
4 voluntary pilot program, not changing the rule, it
5 would be helpful to know the status of the worker,
6 temporary or permanent.

7 The language, as written, might be unclear to
8 somebody that's sitting by the phone saying what's the
9 status of your employment, I'm an employee, or
10 employed, you know, just -- we know what we meant and I
11 think we've had that discussion here, so maybe that
12 could be captured, permanent versus temporary worker.

13 MR. STAFFORD: Any other questions or
14 comments on that?

15 MR. MCKENZIE: Dean McKenzie with OSHA.

16 The idea of the pilot is interesting, but it
17 would require a complete -- a whole new paperwork
18 package to be submitted to OMB.

19 We can't -- you know, we had to do a
20 paperwork package on the stand-down to be able to get a
21 certificate to -- to do that. I think that would be an
22 interesting lift to do that.

1 MS. DAVIS: Well, I assume you wouldn't
2 suggest holding out moving forward. You know, I think
3 this is something that should be on the -- you know,
4 there is -- people are asking for new -- better data on
5 temporary workers and the experience of temporary
6 workers.

7 We need to explore ways to try to collect
8 that information, and this was seen as a potential
9 opportunity.

10 MR. HAWKINS: Tish, could you just restate
11 your motion as being that, as recommending to the
12 agency that they pursue ways to categorize injuries and
13 illnesses to temporary workers? I think that's really
14 what you're --

15 MS. DAVIS: You mean more broadly than
16 saying in the --

17 MR. HAWKINS: Exactly, yeah.

18 MS. DAVIS: I could.

19 MR. HAWKINS: I think that's something that
20 would probably pass better and give the more options,
21 too.

22 MR. STAFFORD: All right.

1 Well, let's help Tish come up with the
2 language, then. What's the motion?

3 MS. DAVIS: So, ACCSH recommends that OSHA
4 explore ways to collect better data on the employment
5 status of injured and ill workers.

6 MR. STAFFORD: So, that's the motion. Do we
7 have a second?

8 MR. HAWKINS: Second.

9 MR. STAFFORD: All right. So, we have a
10 motion.

11 MS. WILSON: ACCSH recommends that OSHA
12 explore ways to collect better data on the employment
13 status of injured and ill workers.

14 MS. DAVIS: I think the caveat is employment
15 status is temporary versus permanent.

16 MR. PRATT: Mr. Chairman, point of order.

17 MR. STAFFORD: Please.

18 MR. PRATT: Am I mistaken? Was there a
19 second to Tish's original motion?

20 MR. STAFFORD: Not the original, but Steve
21 seconded the latest motion, which I'm going to ask Lisa
22 to read again so that we're all clear on what the

1 motion is.

2 MR. PRATT: There was not a second -- so, we
3 don't have a motion on the table.

4 MS. WILSON: The motion is that ACCSH
5 recommends that OSHA pursue -- explore or pursue? --
6 explore ways to collect better data on the employment
7 status, i.e. temporary or permanent, of injured and ill
8 employees.

9 MR. STAFFORD: So, the motion is made. We
10 had a second from Steve. No more discussion. All
11 those in favor, signify by saying aye.

12 (Chorus of ayes.)

13 MR. STAFFORD: Any opposed?

14 (No response.)

15 MR. STAFFORD: Tish or Jeremy, one more
16 motion?

17 MR. BETHANCOURT: I'm not sure it's a motion
18 that anybody would think we should move forward on, but
19 I'll continue to point out that I think that the
20 temporary worker initiative does need to be broadened
21 into including those workers who are being
22 misclassified since those workers are not being

1 afforded the protections by a lot of employers, and so,
2 I'm not sure how we -- that's kind of where the
3 discussion might be, where we were talking about the
4 fact that, you know -- we said it right here.

5 I think we did a pretty good job in
6 explaining that we do have a misclassification of
7 workers, and while that is a wage and hour issue, it is
8 also a safety issue whereby those workers are not being
9 afforded safety that that they should be being
10 provided, and there should be some compulsion to get
11 that safety training to those workers, in addition to
12 wage issues, you know, cause we have workers comp
13 issues, and that's where it was suggested that perhaps
14 this would be a good opportunity for Wage and Hour and
15 OSHA to work together on something.

16 So, looking for any kind of thoughts on that
17 from the committee. We had several folks on the
18 committee that were there for that dynamic.

19 MR. STAFFORD: Tom.

20 MR. MARRERO: Tom Marrero, employer rep.

21 One of the particular examples that we put
22 here were piece workers, where these individuals are

1 given a dollar amount to put, you know, so many
2 fixtures, or however many, and truly, those individuals
3 have an incentive to cut corners and disregard safety,
4 because the faster they get it in, the faster they get
5 paid and the faster they get out of there.

6 MR. BETHANCOURT: They are not contractors
7 under the law. They aren't paying workers compensation
8 wages. They literally are employees of the contractor
9 who brings them in even for a temporary, finite time.

10 I know. We hire that type of worker, and we
11 provide that training.

12 MR. STAFFORD: But they're employees or
13 they're classified as independent contractors?

14 MR. BETHANCOURT: No, they are temporary
15 employees, but they don't work for a temporary agency,
16 so I guess that's where I think there might be an
17 opportunity for us to try to broaden this to help at
18 least provide information and guidance to the industry
19 to say, hey, guess what, those are actually employees.
20 They're piece workers, but they're employees that you
21 should be providing training to.

22 MR. STAFFORD: But in your instant, if you're

1 hiring them and they're part-time employees, I'm
2 assuming, then it's your obligation to ensure that
3 you're training them, correct? I mean, I'm not
4 understanding the point that we're trying to make.

5 MR. BETHANCOURT: But it doesn't occur. It
6 does with us.

7 MR. STAFFORD: Right.

8 MR. MARRERO: But they're treated as
9 independent contractors.

10 MR. BETHANCOURT: They're treated as
11 independent contractors.

12 MR. MARRERO: That's the problem there.

13 MR. BETHANCOURT: They're treated as
14 independent contractors, and they don't know any
15 better, because there's no -- I mean, but you know,
16 we've talked about the fact that, if they're going to
17 break the law, they're going to break the law anyway.

18 MR. STAFFORD: Cindy and then we'll go to
19 Kevin.

20 MS. DePRATER: Cindy DePrater, employer rep.

21 Jeremy, a question. If they're being paid by
22 the piece and then you take them under your umbrella

1 and you safety train them, who are they going to listen
2 to?

3 At the end of the day, are they still being
4 paid by the piece -- which they are, we know that. How
5 do you balance that? How do you balance that in
6 getting them to listen to your safety regulations, say
7 slow down, do the job right versus I need you to get
8 this in right now so you can get paid. I know it's a
9 dilemma. How do we balance that?

10 MR. BETHANCOURT: It's a never-ending
11 struggle, and that's why I was looking to the committee
12 to think about this dilemma that we do have in the
13 industry.

14 MS. DePRATER: Were there any thoughts from
15 the two contractors? Did that come up?

16 MR. BETHANCOURT: We didn't have enough
17 time. We could have had so much more discussion.

18 MR. MARRERO: That came up in the last five
19 minutes of meeting.

20 MR. STAFFORD: Kevin.

21 MR. CANNON: Kevin Cannon, agency employer
22 rep.

1 I was going to say, if I'm not mistaken, this
2 discussion has come up before, and I think it was
3 mentioned that it was outside of the scope of the
4 temporary worker initiative. Is that correct?

5 MR. MCKENZIE: Dean McKenzie.

6 It is out of the current scope on temporary
7 workers. There's a number of different types of
8 temporary workers. A union hand that's called out for
9 a two-day call is a temporary worker. You know, he's
10 not there for the duration of a project.

11 He comes out, does one circuit, does one
12 task, and moves on. You know, that's pretty temporary
13 in my eyes, but the emphasis of the current OSHA
14 initiative is strictly on, you know, these defined
15 parameters.

16 There's potential to expand it eventually,
17 but it has not been done yet.

18 MR. STAFFORD: Jerry.

19 MR. RIVERA: I guess I'm trying to see where
20 I saw that. Dr. Michaels recommends -- I must be from
21 the south.

22 (Laughter.)

1 MR. RIVERA: I thought I did see, you know,
2 Dr. Michaels addressed that group to consider for the
3 I2P2 not just the temporary subs. What's the other
4 term that he used?

5 MS. DAVIS: The direction was that we
6 consider guidance on illness and injury prevention
7 programs on protecting temporary workers or
8 subcontractors.

9 MR. RIVERA: I don't know if even the
10 workgroup is clear on the definition of that temporary
11 worker.

12 I mean, if we call it a staffing employee,
13 maybe we could pin that down, but I think there is
14 confusion still of what constitutes a temporary worker,
15 because Jeremy is right, there is what we call a 1099,
16 somebody comes onboard, you give him a 1099 for -- and
17 that's not being confined to the drywallers, which
18 that's what we saw in the past. It's been expanded to
19 all trades.

20 So, it's currently practice out there, even
21 though we don't want to admit it, but it is a big
22 sector.

1 MR. STAFFORD: Right. I mean, I think, in
2 the construction industry, there's two million workers
3 that are classified as independent, self-employed
4 people, and I think you're right.

5 I mean, I think the confusion in my mind --
6 I've always been looking at this discussion that we're
7 talking about, a temporary worker, in this instance, is
8 paid by someone but works for somebody else. It's not
9 the boilermaker that comes out of the hall for a couple
10 days to do a boilermaker job, that works for a
11 boilermaker employer.

12 That's how I've kind of separated it in my
13 mind. It may be the wrong way to look at it, but
14 that's -- you know, that's kind of what I thought we
15 were talking about, someone that's working for me that
16 is paid by Tom, is my definition of a temporary worker
17 and what we're talking about. Is that --

18 MR. BETHANCOURT: That's correct.

19 MS. DAVIS: I think that's what our
20 workgroup has been charged with looking at. I think
21 what Jeremy is saying, is bringing to the table, is not
22 letting us all forget that there is this whole other

1 group of people that needs to be addressed.

2 MR. STAFFORD: I agree. I mean, I think that
3 that's true. I think for the sake -- to keep our
4 sanity and try to get our arms around this, that
5 independent -- folks that are self-employed,
6 independent contractors are different than what we're
7 trying to deal with with the temporary worker issue.

8 MR. BETHANCOURT: In a lot of areas, too,
9 it's not just workers who are hired, and so, if we're
10 going to -- if we're going by the definition of
11 somebody who is hired by somebody else, there's
12 subcontractors, there's sub-sub-sub-sub tiers.

13 It just goes all the way down the line, where
14 the person who is the actual employer may not even be
15 onsite, and they may literally be acting like a temp
16 agency and they're not a temp agency. I mean, there's
17 a whole other pile of problems.

18 What I guess I was really pointing out with
19 this is this is my recommendation, that -- that OSHA
20 consider expanding the temporary worker initiative to
21 this, whether now, a year from now, but that they do --
22 they should look at this so we don't forget about that

1 other part of this. Maybe it's after we get our minds
2 wrapped around what we're doing.

3 MR. STAFFORD: It's up to the workgroup if
4 they would like to form a motion around that. I would
5 advise against it.

6 I think that, obviously, it's something that
7 we need to be cognizant of, but I don't know if we need
8 an official recommendation that we need to be doing
9 that.

10 MR. BETHANCOURT: It's on the record.

11 MR. STAFFORD: All right.

12 Yes, Tish.

13 MS. DAVIS: Can I just add one more thing?
14 I liked Scott Schneider's idea of working to craft what
15 are the elements of a good initial health and safety
16 orientation, whether it be by the host agency or by the
17 host employer or the temporary agency. We are working
18 on this in Massachusetts.

19 So, I just want to -- I don't want to make a
20 motion, but I think we shouldn't let it fall off our
21 agenda for the temporary worker group. I think it's a
22 good idea to try to craft what we think are key

1 elements that need to be addressed in an orientation.

2 MR. STAFFORD: Okay. There's one thing you
3 said in your notes, Tish, that I didn't understand,
4 just for my own edification. You said that one of the
5 employers yesterday said they use a temp agency or temp
6 worker for 90 days and then they hire that person full-
7 time?

8 MS. DAVIS: I mean, a lot of times, when you
9 hire with a temp agency, you sign something to say
10 you're not going to hire them, I mean at least in
11 office work, I know that.

12 MR. STAFFORD: Tom?

13 MR. MARRERO: I don't want to say we frown
14 upon that, but we make certain exceptions with our
15 clients. We work something out with them beforehand,
16 you know, so we typically don't operate in that way,
17 but we like to retain all of our employees for the long
18 duration. But we will make exceptions and we will
19 craft certain different contracts to do the temp-to-
20 hire for a particular client.

21 MR. STAFFORD: Thanks very much. It sounds
22 like you did have a nice discussion.

1 So, I think, in closing this discussion, we
2 need a motion to accept the workgroup report.

3 MR. MARRERO: I make the motion.

4 MR. STAFFORD: Do we have a second? We have
5 a motion and second to accept the Temporary Worker
6 Workgroup report. All those in favor, signify by
7 saying aye.

8 (Chorus of ayes.)

9 MR. STAFFORD: Any opposed?

10 (No response.)

11 MR. STAFFORD: Okay. Great. We will break
12 until 2:30.

13 (Recess.)

14 MR. STAFFORD: Call the meeting back to
15 order, please.

16 So, let's proceed with our workgroup reports.
17 The next workgroup to report out is the outreach and
18 training workgroup, co-led by Jerry and Kevin and Roger
19 and Cindy. I think Roger is going to be doing the
20 report?

21 //

22 //

1 TRAINING AND OUTREACH WORKGROUP REPORT

2 MR. ERICKSON: Roger Erickson, employee rep.

3 The Training and Outreach Workgroup met on
4 December 3, 2014, to receive an update on the 2014 fall
5 stand-down campaign, safety leadership module,
6 including an update on the safety climate workshop, and
7 Quick Takes promotion.

8 The members of the committee that were
9 present: employer representatives Cindy DePrater,
10 Jerry Rivera, Kevin Cannon; the employee
11 representatives were Pete Stafford and Sarah Coyne,
12 plus myself.

13 The Training and Outreach Workgroup meeting
14 was called to order by Jerry Rivera at 1:00 p.m. The
15 meeting commenced with self-introductions by Training
16 and Outreach group members and members of the general
17 public.

18 The first presentation was conducted by
19 Jessica Bunting from the Center for Construction
20 Research and Training, CPWR. The update was on the
21 2014 fall stand-down campaign.

22 Ms. Bunting reported that this was the second

1 year that the fall prevention campaign has been
2 conducted.

3 Based on the success of this year's campaign,
4 OSHA is recommending that the fall prevention campaign
5 be conducted in 2015.

6 The number of participants that reported
7 participation in the event were 770,193 employees.
8 This number does not account for the over 600,000
9 participants from the United States Air Force.

10 In addition, the largest participants
11 reported were in the commercial construction and other
12 construction categories.

13 Some of the activities reported during the
14 fall prevention stand-down were training, toolbox
15 talks, posters, and handouts.

16 The presentation was titled "Analysis of
17 OSHA's 2014 National Fall Stand-Down Certificate," and
18 it was available as a handout.

19 Discussion included:

20 Should this event be conducted simultaneously
21 with the 2015 Industry Safe Week, or should we continue
22 this as a separate event?

1 Can we conduct this type of campaign
2 quarterly rather than annually?

3 If we decide to do it quarterly, what topics
4 would be relevant and what title should we use so that
5 everybody understands the purpose of the activity?

6 The other bullet point was: Should
7 registration be accomplished with a mobile application?

8 Our second presentation was on safety
9 leadership.

10 This presentation was originally intended to
11 be presented by Mr. Wilson Yancy, vice president of
12 environmental health and safety for Quanta Service.

13 Due to an unforeseen circumstance, Mr. Wilson
14 could not present, and Mr. Jarrett Quoyale, director of
15 safety and health for Utility Service Group of MasTec
16 North America, conducted the presentation on the topic.

17 Mr. Quoyale gave a high-level review of the
18 OSHA strategic partnership agreement between OSHA and
19 ETD construction contractors, the IBEW, and Trades
20 Association Partner #325, specifically the safety
21 leadership curriculum.

22 The report revealed that over 300 instructors

1 and 6,500 supervisors have been trained.

2 That curriculum summary includes:
3 supervisors training on accident reduction technique,
4 also known as START; on the front line, foremen to
5 speak up, listen up; job hazard analysis techniques;
6 pre-job briefings; conducting effective safety
7 meetings; site inspections; and skills assessment.

8 More details are available on the handout
9 titled "Executive Summary, Supervisory Leadership Skill
10 Outreach Training Course."

11 On this same topic of the safety leadership
12 module, Mr. Pete Stafford gave a brief update on the
13 eight leading indicators of safety climate.

14 Mr. Stafford reported on the supervisory
15 leadership component goal of a possible three-hour
16 module being introduced into the OSHA 30-hour course.

17 The planned project activities are to
18 assemble the curriculum development team during the
19 first year; the second and third year would be used to
20 revise or update the modules.

21 The fourth and fifth years would be focused
22 on the development of train the trainer material.

1 More information is available on the handout
2 titled "Eight Leading Indicators of Safety Climate."

3 The Quick Takes promotion was conducted by
4 Jim Maddux, director of the Directorate of
5 Construction. Mr. Maddux reported that there are
6 currently 78,000 subscribers, but OSHA would like to
7 reach the milestone of 100,000 subscribers by the end
8 of 2015.

9 Mr. Maddux addressed the outreach and
10 training workgroup for the purpose of gaining support
11 on that initiative.

12 Members of the general public in attendance
13 was recorded via sign-on roster.

14 That concludes the Training and Outreach
15 Workgroup report. We adjourned at 3:00 p.m.

16 MR. STAFFORD: Thank you, Roger.

17 Any other comments from any of the co-leads?
18 Anything to add?

19 (No response.)

20 MR. STAFFORD: Any questions or comments to
21 the report?

22 Please, Don.

1 MR. PRATT: Not about the report, but I'm
2 just curious if there was any discussion about the
3 shortening up of the two-hour segment, the first
4 segment in the 10-hour training program that we
5 discussed the last time we were here, and I thought we
6 had agreed that we were going to follow up and have
7 further discussion and possibly a solution to reducing
8 the two hours to possibly an hour. What happened?

9 MR. STAFFORD: That was not on the agenda for
10 the workgroup yesterday, and I'll ask OSHA to clarify
11 if I'm misspeaking here, but OSHA is proceeding with
12 our recommendation to revise the two-hour intro and are
13 now in the process of piloting the program before they
14 would announce officially that that change has been
15 made.

16 So, as far as the committee is concerned, we
17 made the recommendation, OSHA has acted, they're
18 piloting the program, and we're waiting for them to
19 make the official announcement that that requirement
20 has now been modified.

21 MR. PRATT: Okay. Thank you for that.

22 Again, Don Pratt, employers.

1 Can we have some kind of a timeframe,
2 something that we can look at, because we're all out
3 there training, and it's really cumbersome to work with
4 that two-hour module.

5 MR. STAFFORD: I'm going to look to Dean, or
6 Jim's in the back.

7 I don't think we have anyone from OTI here to
8 tell us specifically, but I would ask, Jim, or if we
9 could -- if we could answer that question for Mr. Pratt
10 on when they're thinking about finalizing the --

11 MR. MADDUX: I'll see if I can get an
12 answer.

13 MR. PRATT: Thank you.

14 MR. STAFFORD: Yes, Palmer.

15 MR. HICKMAN: Palmer Hickman, employee
16 representative.

17 I just wanted clarification on that.

18 So, there was a push to reduce the amount of
19 time that you would cover things about OSHA and workers
20 rights and all that?

21 MR. ERICKSON: There was. It's the intro to
22 OSHA.

1 MR. HICKMAN: Could you tell me where that
2 push came from?

3 MR. STAFFORD: It came from -- through this
4 group, and it may have been others, but I don't know.
5 I mean, if the committee can help me out, this has been
6 a couple of years in the making.

7 But there was a push generally because there
8 was a thought amongst the industry for those folks that
9 are doing good training taking two hours to explain
10 your rights isn't necessarily, you know, required, as
11 long as you cover the learning objectives of what that
12 is.

13 Many of the instructors in the industry want
14 to move on and actually start training about the
15 hazards and not having to spend two hours to deal with
16 the intro module. That was the impetus, the time
17 change.

18 MR. HICKMAN: I'm not going to Monday
19 morning quarterback. I just was trying to understand
20 how those workers needed to know less about -- okay.

21 MR. STAFFORD: We'll go to Steve and then
22 Roger.

1 MR. HAWKINS: Palmer, I'm a card-carrying
2 person who delivers the training, and I think the
3 consensus when we made that recommendation, and I would
4 even agree with it -- I saw that. You can really tell
5 a worker what their rights are in less than two hours,
6 and I've done the training many times, and I believe
7 you can, effectively, and I think that was kind of the
8 consensus of it.

9 I think it was pretty much a unanimous
10 decision of the board that you could, but to keep those
11 tenets of that worker training place so that you did
12 cover discrimination, you did cover, you know, imminent
13 danger, whistleblower, you did cover all those things,
14 and that was missing before in the 10-hour, and then it
15 went to two hours, and so, that was kind of where we
16 came from.

17 MR. STAFFORD: Roger?

18 MR. ERICKSON: Roger Erickson, employee rep.

19 I concur with what the gentleman just said.
20 There were other components that are covered elsewhere
21 in the 10 hours, and that was another --

22 MR. STAFFORD: Kevin?

1 MR. CANNON: It's been covered.

2 MR. STAFFORD: Any other questions or
3 comments on the report?

4 Tish.

5 MS. DAVIS: Wasn't there a large discussion,
6 also, about the OSHA refresher course?

7 MR. STAFFORD: There was a discussion on
8 that.

9 We actually had put that on the agenda for
10 the workgroup, but we withdrew it, based on our
11 conversations with OSHA, and the rationale is this,
12 that OSHA has heard that -- our recommendation that
13 they go back and take a look at the 502, and they could
14 do that on a staff level in terms of figuring out how
15 that program would be modified and did not formally
16 need ACCSH to do a walk through each of the Power Point
17 slides in the 502 like we did on the intro, and they're
18 going to be handling that on the staff level.

19 With that said, we know this is important,
20 and this applies to anyone in the audience that's
21 interested in the 502 or has anything to say about it.
22 Jim Maddux has asked that anyone that has any opinions

1 about the 502, suggestions for how that could be
2 modified, please submit that directly to the DOC, to
3 Jim, and I'm looking at Jim to make sure that I'm not
4 misspeaking here, but that was the way it was left.

5 So, they've heard our recommendation and
6 they're proceeding at the staff level to take a look at
7 modifying the 502.

8 I just wanted to add, myself, you know, the
9 leadership training is -- that we are now developing
10 with what I view -- I haven't talked to anybody in the
11 industry that is not very supportive of developing a
12 leadership component embedded in the OSHA 30, because
13 whether we like it or not, the OSHA 30 is the standard
14 for supervisory training in this industry, and the
15 power of trying to embed something as an elective in
16 the OSHA 30 that the industry is already using anyway,
17 I think, has tremendous potential.

18 There was one thing that I was a bit
19 frustrated about yesterday. We've gone out at great
20 lengths -- and Dr. Michaels said it this morning --
21 we're looking for a commitment and we're looking for a
22 commitment from OSHA, and I believe that I have the

1 commitment from OSHA, but it's very important that we
2 continue down this road to ensure that there is that
3 commitment, and we had Mr. Thompson on the phone
4 yesterday, and to try to be sure that that commitment
5 is made, we have put together a curriculum development
6 team that includes membership from the Directorate of
7 Construction and members from OTI, so as we're
8 developing this module, we're doing it hand in hand
9 with the agency.

10 So, at the end of the day, a year from now,
11 when we're ready to pilot this thing, I am convinced
12 that it will be effective, and we're going to go
13 forward in implementing this as an elective in the OSHA
14 30.

15 I don't want to hear, like I did yesterday,
16 that the OTI is going to think about it, they're going
17 to look at it, consider it, they might do it, and I'm,
18 again, looking to the folks in OSHA.

19 We've got this commitment up front that this
20 is going to happen, and I'm asking that -- and I've
21 asked this before.

22 We have not a lot of participation from the

1 folks at the OSHA Training Institute in these meetings,
2 but I'm viewing this, and I want this on the record,
3 that I've got a commitment from this agency that if
4 this elective is proven effective, that they are going
5 to incorporate it as an elective in the OSHA 30, and I
6 would hope that OSHA and the folks at DOC will help me
7 ensure that that's going to happen.

8 So, I needed to say that for the record,
9 because I don't want this wishy-washy, we might do it,
10 we might think about it kind of attitude. We're
11 looking for a commitment.

12 The industry, everybody around this table is
13 committed. I don't know anybody that's not committed
14 that I've talked to about the concept of doing this,
15 and we would like the commitment from OSHA, and so, I'm
16 going to leave it at that.

17 I want that on the record, that we're looking
18 -- that OSHA is not going to backpedal on us when we
19 have this thing developed. That's why we've gone to
20 great lengths to be sure that OSHA is closely involved
21 with us in the development of it.

22 So, I would just like to leave that and be

1 sure that it's on the record, and I would have this
2 separate conversation with Dr. Payne if he was here.

3 Maybe we'll get Hank to one of these meetings
4 sooner or later, at some point in time.

5 Any other questions or comments?

6 MR. MARRERO: This is Tom Marrero, employer
7 rep.

8 I just want to kind of throw this out to the
9 committee as a discussion topic, I guess.

10 I don't know if this has ever been brought up
11 in the past, but this was brought up in our workgroup
12 yesterday about potentially making the OSHA 10 almost
13 like -- like a license or a credential to even work in
14 the construction industry, and I just kind of wanted to
15 get everybody's kind of feedback and kind of just see
16 where -- what you guys' thoughts would be on possibly
17 doing something like that.

18 MR. STAFFORD: Making the voluntary program
19 mandatory?

20 MR. MARRERO: There's other industries --
21 you know, for instance, you know, if you want to be a
22 cosmetologist, you have to have a cosmetology license.

1 If you want to be in real estate, you have to have a
2 real estate license.

3 I think it would be of great value, you know,
4 for all parties involved, employers and employee reps
5 here, to have everybody in OSHA, you know, at a
6 minimum, a foundation of safety. Just throwing it out
7 there.

8 MR. STAFFORD: I appreciate that. You know,
9 I think, conceptually, that's something that I think
10 most of the industry is doing, whether it's mandatory
11 or not, but that would be an issue that would require,
12 I think -- and I'm looking to OSHA again -- that would
13 require some kind of separate proposed rulemaking, you
14 know, could be something potentially -- if OSHA was
15 going to proceed with the program standard -- I'm not
16 sure how to do that at this level, is what I'm saying,
17 Tom.

18 Don and then Eric.

19 MR. PRATT: In Michigan, we actually have a
20 simplified version of this. We have continuing
21 education requirements for our residential builder's
22 licenses.

1 So, if you're going to be a residential
2 builder, you have to have three hours of continuing ed,
3 which safety is one module of that. So, over a period
4 of a few years, you're going to be able to cover,
5 really, everything that's in the 10-hour, and we've
6 been very successful in doing that.

7 It's really the first time -- we started this
8 about five years ago. It's really the first time that
9 we've ever reached out and talked about safety to our
10 members, so -- and it's not just our members. It's
11 everybody that's licensed, all 64,000 licensees in the
12 State of Michigan. So, it's a huge undertaking.

13 In addition to that, we have a situation
14 where, in order to even sit to take your exam at the
15 state to become a builder, you must have eight hours of
16 education in safety, and of course, our safety would be
17 MIOSHA.

18 I happen to teach that class, and it's very
19 intense, it's very involved, and it's really much, much
20 better than the 10-hour OSHA training program, but it's
21 what we have, so -- but we've been -- we've been
22 working on that very diligently, and MIOSHA is really

1 onboard with us on developing these programs, because
2 -- and we've done it all with private funding.

3 We didn't use any government money, so -- but
4 states are -- some states are already doing this, if
5 they have licensing.

6 MR. STAFFORD: Thank you.

7 Roger?

8 MR. ERICKSON: Yes, Mr. Chairman. Roger
9 Erickson, employee rep.

10 Tom, in answer to your question, just an FYI
11 -- I can't speak for all of the crafts in the national
12 building construction trades, but the International
13 Brotherhood of Boilermakers has an exclusive referral
14 system for our field construction locals, and to ride
15 those applicable out-of-work list, that boilermaker,
16 for a referral, has to have the OSHA 10 and then the
17 OSHA 10 or the refresher every 5 years or they fall off
18 the list, just FYI.

19 MR. STAFFORD: It's not a statute, by law, by
20 OSHA, but it's really happening by the industry.

21 Yes, Tish.

22 MS. DAVIS: Isn't it, in Nevada, required

1 for --

2 MR. STAFFORD: Supervisors. Ten hours for
3 workers and 30 for supervisors.

4 MS. DAVIS: And do we know anything yet
5 about the -- how that's playing out?

6 MR. STAFFORD: I don't. That law was passed
7 in 2008.

8 Any other questions or comments?

9 (No response.)

10 MR. STAFFORD: Okay. We would like to
11 entertain a motion to accept the workgroup's report.

12 MR. ERICKSON: So moved.

13 MR. STAFFORD: We have a motion and second.
14 All those in favor, signify by saying aye.

15 (Chorus of ayes.)

16 MR. STAFFORD: Any opposed?

17 (No response.)

18 MR. STAFFORD: Thank you.

19 Our last workgroup report is health hazards
20 prevention through design and emerging issues.

21 Christine is going to be giving the report.

22 Thanks, Christine.

1 HEALTH HAZARDS, EMERGING ISSUES AND PREVENTION THROUGH
2 DESIGN WORKGROUP REPORT

3 DR. BRANCHE: Christine Branche, Federal rep,
4 NIOSH.

5 With apologizes -- this is my first time in
6 this capacity on this committee, and belatedly
7 understood that there were minutes expected. So, I
8 apologize for the brevity, but perhaps that's good at
9 this hour.

10 My colleagues Chuck Stribling, Donald Pratt,
11 and Steve Hawkins were in attendance, and we had two
12 other visitors with us during the session yesterday.

13 George Kennedy of the National Utility
14 Contractors Association did a very nice, lengthy, and
15 descriptive presentation on the hazards associated with
16 horizontal directional drilling.

17 It is our understanding that this particular
18 issue was placed on the agenda given that there are
19 problems that are emerging with directional drilling.
20 They seem to be outpacing -- I wasn't sure if it was
21 the regulations or the standards.

22 I don't remember what word was used in the

1 description, and George began -- Mr. Kennedy began his
2 presentation.

3 Basically, during our discussion, key issues
4 emerged concerning the locator -- that is, the
5 contractor who is tasked with locating the existing
6 utility lines before drilling or digging commences.

7 We discussed that -- had quite a bit of
8 discussion on that particular issue, and our discussion
9 closed with the workgroup and guests agreeing on the
10 following: that locators need better training, that
11 better and more detailed maps are needed for existing
12 utility lines, and that utility companies should step
13 up to the responsibilities of being able to share
14 information about where their lines are, and making
15 that known to municipalities and others in a way so
16 that contractors can have them readily available to
17 them.

18 Mr. Kennedy, further on, described that best
19 practices and other helpful information are available
20 at the website given here,
21 www.commongroundalliance.com.

22 Do you think that captures our discussion

1 about horizontal drilling?

2 MR. PRATT: Don Pratt, representing
3 employers.

4 Just a couple of things. Christine did a
5 great job, but the -- I learned a new term that I
6 wasn't even familiar with before, and it's called
7 potholes.

8 Now, in Michigan, potholes are things that we
9 find in the road that we hit our tires and blow them,
10 but now they have -- this term is to dig down and find
11 the line that you're going to be going underneath or
12 around or whatever.

13 Also, we learned that this is an 811 number.
14 It's a national call number that has to do with -- when
15 they get that number and somebody calls it, then they
16 direct them to the correct state where the work is
17 going to be done to relocate or locate, I should say,
18 the lines that are buried in the ground, the utility
19 lines.

20 Also, we talked about the industry developing
21 safety procedures that are lacking at this time. We
22 all felt that -- and George Kennedy emphasized this --

1 that we need to hold utility companies -- and Christine
2 mentioned this -- more accountable for locating their
3 lines that are buried in the ground, that sometimes we
4 don't know exactly where they are when we're
5 excavating.

6 So, that was a very important thing that he
7 had mentioned to us, and then we also -- he asked,
8 actually, us on this committee, the full committee, to
9 -- if there's any conversation or anything that's going
10 on out in the field that he or his organization should
11 be made aware of.

12 I was not aware of anything, at least in the
13 area that I represent. But is there anyone here that
14 would have any information on horizontal drilling that
15 is a concern for safety?

16 Now, what this whole thing is all about is
17 what happened in Kansas City, and also, I brought up
18 the fact yesterday that, in Royal Oak, Michigan, which
19 is a suburb of Detroit, about half-a-mile from my home,
20 they had an explosion where a house blew up because of
21 horizontal drilling, and it killed the occupant of the
22 home.

1 It blew out windows and structures within a
2 four-block radius around that home. It was a huge,
3 huge explosion. And what had had happened was that the
4 drilling company had gone and penetrated and nicked a
5 line.

6 It then -- the gas then followed the --
7 around the circumference of the pipe going into the
8 service, the gas service into the house, and the gas
9 started building up in the foundation, in the basement,
10 cause we all have basements, and when it reached a
11 level of where there was a flame, it exploded, killing
12 the occupant of the home immediately and causing a lot
13 of damage.

14 Matter of fact, this was probably a year-and-
15 a-half, two years ago. It still isn't back together
16 yet. They're still rebuilding some of these
17 structures.

18 Now, the unusual part about all of that
19 determination -- and I understand Kansas City was
20 different, but in Detroit, in Royal Oak, the Consumers
21 Energy people stepped to the plate immediately and took
22 responsibility for it, which I thought was remarkable.

1 They usually don't do that, but -- so, that
2 was a situation where we actually had them admitting
3 that they were wrong, and they did everything in their
4 power to correct the situation and rebuild that area.

5 So, the question I have for every, is there
6 anybody hearing any of this horizontal drilling, any
7 problems, any safety issues that we should be made
8 aware of?

9 (No response.)

10 DR. BRANCHE: We had a very brief
11 conversation about construction focus for health
12 hazards.

13 Questions emerged on how focus for health
14 could become confused with construction focus for
15 safety, and we agreed that this is something that -- we
16 agreed that marketing this would need to proceed
17 carefully, and we discussed briefly, also, what the
18 four health topics would be.

19 Would it need to be four? Could there be
20 another number?

21 Clearly we need to talk about this in more
22 depth at another meeting, but no decisions were made on

1 this particular topic.

2 MR. STAFFORD: All right. Thanks, Christine.

3 I think that's been our struggle, in talking
4 to Jim and the folks at DOC about this. I mean, this
5 was a concept our dear colleague and friend Matt Gillen
6 left the committee before he left, and I think we all
7 recognize that we would like to do more on health
8 hazards.

9 It's not a big enough focus in construction.
10 I'm personally struggling with what exactly it is that
11 we're talking about doing, and we had this conversation
12 the last time, trying to understand, if we're doing
13 something, is it an awareness campaign, is it an
14 enforcement campaign, is it a training campaign.

15 I really think that we need to have some
16 focus exactly what it is the agency would like us to
17 help them with and, really, where this workgroup is
18 going on the health hazards.

19 DR. BRANCHE: Mr. Chair, I will say that we
20 had a few challenges with our meeting yesterday.
21 Everybody was engaged, but I would say we had an
22 illness, one of our colleagues was slightly I'll and

1 was dismissed by me, and he feels better now, and so, I
2 think this is a topic where I didn't come with all of
3 my notes and I don't think we had Matt's original
4 premises to deal with, and what I would like to
5 recommend if my -- if my co-chairs agree is that
6 perhaps we have a conference call between now and the
7 next ACCSH meeting so that we can talk about this a
8 little bit more, so that we can come to our next
9 workgroup meeting with an agenda that's a little bit
10 better developed for how we're going to walk through a
11 couple of these topics so that we can have some
12 specific recommendations for the committee as a whole.

13 I'm willing to lead that discussion or at
14 least prepare for us to have a robust conversation if
15 we can do that in a conference call.

16 MR. STAFFORD: I think that would be great,
17 and I would like to participate in that, as well. I
18 know we're going to run into issues in terms of having
19 the full ACCSH on a call, planning this, I guess, but
20 we could have the workgroup co-leads have a conference
21 call to flesh out an agenda for the next workgroup
22 meeting.

1 MS. WILSON: A workgroup can convene, either
2 in person or by conference call, especially to plan a
3 next meeting.

4 DR. BRANCHE: Just a point of clarification.
5 So, if many members of ACCSH want to participate in
6 that planning discussion, would that be in violation of
7 FACA?

8 MS. WILSON: It's not necessarily a
9 violation of you are purely doing planning for your
10 next meeting and you're not making any decisions.

11 DR. BRANCHE: My proposal is that it be for
12 planning.

13 MR. STAFFORD: It sounds like the answer to
14 that is yes. Dean just said that, as long as we don't
15 have a quorum -- I mean, I think that we have to be
16 careful about this.

17 This is one of the reasons why we have
18 workgroups that were not consecutive but concurrent,
19 because of the issue of full ACCSH participating in
20 these things. It kind of got us in a FACA issue, and I
21 want to be sure, Lisa, that if 12 of us want to be on a
22 call because we're interested in figuring out what

1 we're going to do about health hazards, that that's not
2 a problem with the agency.

3 MS. WILSON: We encourage, certainly,
4 planning for your next workgroup, to make it better,
5 and you know, why don't you involve us, you know, DOL,
6 in planning that to make sure that there are no FACA
7 issues.

8 DR. BRANCHE: So, am I convening this
9 meeting?

10 MR. MCKENZIE: Let us know and we'll put it
11 together.

12 DR. BRANCHE: Thank you.

13 MR. STAFFORD: Any other questions or
14 comments?

15 (No response.)

16 MR. STAFFORD: Okay.

17 DR. BRANCHE: That concludes my report, Mr.
18 Chair.

19 MR. STAFFORD: Thank you, Christine.

20 MR. PRATT: Is there a motion?

21 MR. STAFFORD: Yeah.

22 MR. PRATT: Don Pratt. I will move to

1 accept the report.

2 MR. STAFFORD: We have a motion to accept the
3 report, and second. All those in favor, signify by
4 saying aye.

5 (Chorus of ayes.)

6 MR. STAFFORD: Any opposed?

7 (No response.)

8 MR. STAFFORD: Okay. Great. Thank you.

9 Lisa?

10 MS. WILSON: Thank you, Mr. Chairman. I'd
11 just like to enter some exhibits. I'd like to
12 designate the slides on subpart V as Exhibit 11, the
13 Temporary Worker Workgroup report as Exhibit 12, the
14 sign in sheet from that workgroup as Exhibit 13, and
15 the text of Dr. Michaels' charge to that workgroup as
16 Exhibit 14, the report of the Training and Outreach
17 Working Group as Exhibit 15, and the report of the
18 health hazards group as Exhibit 16. Thank you.

19 MR. STAFFORD: Thank you, Lisa.

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1 CHAIR REMARKS/PUBLIC COMMENTS

2 MR. STAFFORD: We have on the books two folks
3 that have signed up for public comment. Travis
4 Parsons. Where is Travis? Come on up, Travis. Travis
5 is with Laborers' Health & Safety Fund.

6 MR. PARSONS: Travis Parsons with Laborers'
7 Health & Safety Fund of North America, here in D.C.,
8 representing the Laborers Union, and really briefly, I
9 just wanted to piggyback on Jim Maddux, since
10 demolition came up.

11 A lot of people around the table may already
12 know and work on ANSI A10 standards, which is the ANSI
13 standards for the construction industry, that we are
14 reconstituting a demolition standard, A10.6, and I'm
15 going to be the chair, and I'm basically just, for
16 information purposes, letting ACCSH know that that's
17 happening, and anybody that wants to be on that
18 subcommittee, what that entails is maybe a conference
19 call or two, in-person meetings if you want to be
20 there, electronic communication.

21 I would love to get the expertise around the
22 table. Anybody that wants to participate, just give me

1 their card, and I'll be happy to add you to that
2 subgroup, and what has happened is that that subgroup
3 has been kind of stagnant, for lack of a better word,
4 for the last 8 to 10 years, and it was in jeopardy of
5 going obsolete.

6 ANSI rules -- you have to update them every
7 10 years. So, we just took over chair about six months
8 ago, and I'm reconstituting the committee, and we've
9 also reached out to the NDA.

10 That came up earlier, the National Demolition
11 Association, and they're very involved in the standard,
12 too. It's more of a solicitation, I guess, for your
13 help and encourage you to get on the committee. So,
14 just hand me your card if you want to be.

15 MR. STAFFORD: I appreciate that, Travis.
16 And what's the standard?

17 MR. PARSONS: A10.6. It's a demolition
18 standard within ANSI, and it's for the construction
19 industry and demolition.

20 MR. STAFFORD: Great. All right. Thank you,
21 Travis.

22 Next is Don Head, who is with Balfour and

1 wants to talk about temporary workers.

2 MR. HEAD: I attended the Temporary Worker
3 Workgroup yesterday, the session, which was, you know,
4 a phenomenal exchange of ideas. A couple comments that
5 I had --

6 Some of the differences that I think were
7 quite apparent in the two different gentlemen that came
8 to speak -- and I was thankful for them to come and
9 share with us.

10 One was Morton Buildings self-perform most of
11 their work. That was clear when Mr. Potter was
12 speaking, and then Clark Builders Group, obviously, is
13 a general contractor that subcontracts most of their
14 work.

15 So, we had two different perspectives that
16 were being presented there, and I think that's a great
17 thing. The more perspectives that we can bring into
18 play, you know, the better picture we're going to have
19 of how to try to effect some positive change.

20 I would also suggest that the workgroup --
21 respectfully suggest that they would engage with some
22 subcontractors, and I can't necessarily help with that

1 directly, but what I can do is offer a perspective from
2 a general contractor that does engage at times with
3 temporary workforce directly, and I don't think that
4 the workgroup heard anything, really, on that yesterday
5 from the two gentlemen.

6 It was mostly either self-performance or
7 subcontractor.

8 So, you know, I don't know how to do that
9 through the proper channels, but Kevin Cannon, Jerry
10 Rivera -- certainly, they can -- they know how to get
11 ahold of me very easily.

12 So, I'd offer to the workgroup, if there are
13 specific questions that they have that didn't get
14 addressed yesterday, please let me know and I'd love
15 to, you know, help out with that.

16 MR. STAFFORD: Thank you very much, Don.

17 Tish.

18 MS. DAVIS: I think we would welcome hearing
19 directly from a GC who hired temp agency directly at a
20 future meeting. That could be something on an agenda.

21 MR. STAFFORD: I'm sorry, Tish. The next
22 meeting, we bring in subcontractors that use temp

1 workers?

2 MS. DAVIS: This is a question for us. It
3 depends on, frankly, how long the meeting is. If we
4 have a four-hour meeting, you know, we might want to do
5 that. If we have a two-hour -- it really is going to
6 depend somewhat. But I think the idea put forward is
7 that we could hear from subcontractors or we could also
8 hear from a GC that hires temp agency workers directly.

9 The other piece that we haven't heard from in
10 this group is that -- we've talked about in the past --
11 is hearing from people who represent temp workers, as
12 well. That voice has not been at this table.

13 MR. STAFFORD: Go ahead, Jerry.

14 MR. RIVERA: Thank you to Don for making
15 yourself available for that, but you know, as we
16 continue that discussion on the subcontractor, that
17 will be kind of a vital component to kind of hear the
18 different type of contractors.

19 We heard the different type of GCs, but I
20 think maybe we can capitalize on Mr. Head's ability to
21 tie those groups together and bring examples of
22 different subs, of what we know as subs, because

1 apparently there is confusion of what is a sub, what is
2 an employee, what is a GC, and how we operate.

3 So, it will definitely spice up the
4 conversation.

5 MR. STAFFORD: That's just what we need, is a
6 spiced-up conversation.

7 All right. Thank you.

8 MR. MARRERO: Don, I, too, want to thank you
9 for bringing up the differences in the two individuals
10 and how they operate, because it was very apparent that
11 they operate completely different from one another, one
12 being especially self-performing and the other one
13 being a GC.

14 I would love to get more users or host
15 employers or subcontractors to come in to speak on
16 behalf -- but I just kind of want to throw it out there
17 that getting the two gentlemen here that we had
18 yesterday was a difficult task in itself.

19 I spoke with a lot of host employers that --
20 they were kind of afraid to come out here and speak on
21 behalf of them being users, because they thought there
22 might have been somewhat of a repercussion, per se,

1 because they use temporary workers.

2 MR. STAFFORD: Don, thank you very much for
3 being here, and your offer. I'm sure we'll take you up
4 for that.

5 Scott, you're not on the list, but -- hurry
6 up.

7 MR. SCHNEIDER: Scott Schneider with the
8 Laborers' Health & Safety Fund of North America.

9 I would have liked to go to the health
10 hazards workgroup yesterday, but because it was
11 concurrent, I went to the temporary workers group, but
12 I would like to be involved somehow in planning the
13 next one, cause I think there's a lot of issues that --

14 MR. STAFFORD: In terms of health hazards?

15 MR. SCHNEIDER: Yes, because the health
16 hazards workgroup -- I think there's two things that
17 are going on.

18 One of them is OSHA put out this request for
19 information about how do they handle -- how should we
20 handle chemical hazards in the workplace, including
21 construction, and you know, we're working on comments,
22 obviously, that's due in April.

1 But then, secondly, we just finished up the
2 ANSI Standard A10.49, which is all on how to handle,
3 how to address chemical hazards in construction, and I
4 think it's very innovative, and I think it could
5 engender a lot of discussion about health hazards and
6 chemical hazards, in particular, and so, I would like
7 to get that on the agenda or maybe be part of the
8 planning discussion.

9 And I don't know if that's feasible or
10 possible, I don't know, given the FACA requirements or
11 whatever, whether outsiders that are not members of
12 ACCSH are allowed on those conference calls, but I
13 would like to offer my availability to do that and help
14 out with that workgroup.

15 MR. STAFFORD: Okay. I appreciate that. I
16 don't see that that's a problem, but I'm looking at
17 Lisa again to make sure that it's okay. You're in,
18 Scott.

19 DR. BRANCHE: Christine Branche, NIOSH.

20 I understand one of the things that Mr.
21 McKenzie explained yesterday was that one of the
22 reasons why people who participate in the workgroup

1 meetings sign in is so that if there is so that if
2 there is a call or a meeting in between, that those
3 individuals can be contacted to participate, and I
4 expected that that would happen for this, and I think
5 that Mr. Schneider is simply letting us know that he
6 would like to be involved in that, as well, and I think
7 that's -- given that I offered to help start this under
8 DOC's direction, I think that's great to include Mr.
9 Schneider.

10 MR. STAFFORD: Okay. Sounds good.

11 Tish?

12 MS. DAVIS: I just want to follow up on the
13 temp worker issue of collaboration with the NACOSH temp
14 worker group, and if we can participate by phone in the
15 temp worker workgroup call next week -- I mean, they
16 were invited to participate in our meeting, and I think
17 it should be reciprocal.

18 MR. MCKENZIE: I don't know why you
19 couldn't.

20 MR. KAMPERT: Eric Kampert with OSHA.

21 I was told by Michelle that -- Michelle
22 Walker -- that you can participate in that, but in a

1 listen-only mode, because it's -- I'm going to get that
2 information to your workgroup, but it's going to be in
3 a listen-only mode.

4 MR. STAFFORD: So, you'll be sending call-in
5 information to our workgroup?

6 MR. KAMPERT: Correct.

7 MR. STAFFORD: Okay. And you can be seen but
8 not heard, Tish.

9 Thank you, Eric.

10 Okay. I think this wraps things up.

11 Just as a point of order for our next meeting
12 -- I've had a couple of members say this to me. You
13 know, this is the first meeting that we've had since
14 I've been chair that we have done the workgroups
15 concurrently and not consecutively, and I've had some
16 comments.

17 And this is just for OSHA staff to think
18 about, at the next meeting, which I think Dean is
19 telling me is probably going to be in April, our first
20 meeting in 2015, whether, since we are now doing this,
21 whether it makes sense to actually -- instead of doing
22 them all in two hours -- whether it makes sense -- I'm

1 not sure of the right number -- to say that the
2 workgroups would be meeting since we're doing them all
3 at once -- over a three-hour period or a four-hour
4 period?

5 I'm not sure what the right number is, but I
6 think -- and this is a decision, obviously, that we
7 don't have to make here today, but I'm just throwing it
8 out to the staff that, at the next meeting, since we're
9 doing them -- assuming that we're going to continue to
10 do them this way, that they're all at the same time,
11 whether or not we think about doing a three-hour
12 workgroup as opposed to a two-hour workgroup, since the
13 committee is here anyway.

14 I mean, for those of us that participated
15 before, when we were doing them concurrently, we were
16 going, you know, from four different -- so, we were
17 here for eight hours that day during the workgroups,
18 hitting all the meetings, and now we were just here for
19 two hours.

20 Yes, Don.

21 MR. PRATT: Don Pratt.

22 Mr. Chairman, I concur that it would be very

1 helpful if we could go to some of the other committee
2 meetings. I think it gives us a more rounded opinion
3 of what's going on.

4 And then the other thing I'd like to say is
5 that if we are going to have a meeting that is not
6 going to start until 1:00 o'clock, if we know about
7 that ahead of time, then that gives us the opportunity,
8 at least some of us, to come in that morning, rather
9 than spending an extra night here.

10 So, it would be very helpful, and I usually
11 book air flights within -- probably two months ahead of
12 time. I get better rates. It just works out better.

13 If we know that we're going to be able to
14 come in and we're not going to start until 1:00
15 o'clock, I won't come in until that morning.

16 So, we save -- I save the government money.
17 What a concept.

18 MR. STAFFORD: I appreciate. Well, it's
19 something to think about. I mean, I don't know what
20 the rest of the group things.

21 Any other questions or comments, closing
22 remarks? Appreciate everyone for being here.

1 Cindy, it's nice to have you aboard, and
2 Palmer, I wish all of you happy holidays, and we'll
3 adjourn.

4 (Whereupon, at 3:16 p.m., the meeting was
5 concluded.)

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