

## UNITED STATES OF AMERICA

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## DEPARTMENT OF LABOR

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## OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

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ADVISORY COMMITTEE ON CONSTRUCTION SAFETY AND  
HEALTH

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FRIDAY,  
JANUARY 25, 2008

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The meeting came to order at 8:30 a.m. in room N3437 of the Frances Perkins Building, 200 Constitution Ave, NW, Washington, DC. Linwood Smith, Chairman, presiding.

## PRESENT:

LINWOOD SMITH, Chairman  
FRANK L. MIGLIACCIO, JR., Employee Representative  
DALE DAVID HAGGERTY, Employee Representative  
ROBERT KRUL, Employee Representative  
EMMETT M. RUSSELL, Employee Representative  
THOMAS L. KAVICKY, Employee Representative  
MICHAEL J. THIBODEAUX, Employer Representative  
THOMAS R. SHANAHAN, Employer Representative  
DANIEL D. ZARLETTI, Employer Representative  
DAN MURPHY, Employer Representative  
KEVIN BEAUREGARD, State Representative  
STEVEN D. HAWKINS, State Representative  
ELIZABETH ARIOTO, Public Representative  
MATT GILLEN, Federal Representative  
STEVEN F. WITT, Designated Federal Official

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

2 8:32 a.m.

3 MR. SMITH: Good morning.

4 (Chorus of "Good morning")

5 MR. SMITH: I think everyone's, I  
6 believe I saw Thomas earlier. Tom Broderick  
7 had to fly back home last night or this  
8 morning. Thank you Veneta. Okay. Excuse me.

9 Thank you very much. As I was saying, we've  
10 got Tom Broderick's not here, he had to leave  
11 and Thomas, I think he's here, he just --  
12 he'll probably be back in just a second.

13 First, did everyone had a good time  
14 last night? It was a lot of fun. I think  
15 everybody enjoyed it. And even Stew probably  
16 enjoyed it. He's not big into that kind of  
17 thing, but I think he enjoyed it.

18 We'll go straight into our  
19 presentation this morning. Opening remarks, I  
20 don't have a lot other than to welcome you.  
21 And our goal today is maybe to finish a tad  
22 earlier, earlier than the agenda if that will  
23 not make anyone upset.

24 We don't want to upset anyone now,

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1 but that will be our goal. So we'll move  
2 right along and move right into our opening  
3 comments by the National Frame Builders  
4 Association and I'm going to ask you if you  
5 would please introduce yourself and look  
6 forward to your presentation.

7 MR. KNIGHT: I sure will. My name  
8 is Tom Knight. I'm president of the National  
9 Frame Building Association. We're  
10 headquartered out in Lawrence, Kansas.

11 And just on behalf of the industry,  
12 yes it's shining right in your eyes there, we  
13 certainly appreciate having the opportunity to  
14 address the committee this morning and  
15 appreciate you having myself.

16 To talk a little bit about the  
17 post-frame construction industry, post-frame  
18 construction is likely, I would think, an  
19 industry that might not be on your radar  
20 screen. It might be a little obscure to you  
21 out there.

22 So, when I tell people I'm with the  
23 National Frame Building Association, they kind  
24 of look at me cross-eyed. Does that mean

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1 picture frames or what does that mean? This  
2 is a very unique type of construction.

3 And so I'd like to show you a  
4 little bit about that as we go through this  
5 presentation. Some of you have seen this  
6 before, so please bear with me. But again, we  
7 are the National Frame Building Association.

8 We're relatively a young  
9 organization founded just in 1970 because this  
10 industry is actually fairly young. In fact,  
11 the first patent on post-frame construction  
12 was given in 1949, so it's just not that old.

13 Our industry organization is  
14 vertically integrated. We represent builders,  
15 industry suppliers, distributors, et cetera,  
16 everyone in the industry. To give you all an  
17 idea of what post-frame is all about, it  
18 really -- you might have heard that term pole  
19 barn somewhere in your history.

20 Basically, the post-frame  
21 construction industry grew up on the farm,  
22 building barns, livestock storage. We used to  
23 call it shade and shelter on the farm a barn,  
24 machinery storage, things like that.

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1           Today, the old pole farm has  
2 evolved into what is today called post-frame  
3 construction, highly engineered structure  
4 compared to the first buildings that were  
5 built around pre-soaked poles like a telephone  
6 pole, you know back in the '40s.

7           And today, when you driving  
8 certainly in the rural landscape most of the  
9 buildings that you see on the farm, et cetera,  
10 our post-frame construction. This industry  
11 pretty much controls the ag construction  
12 marketplace.

13           You know, again, barns, livestock  
14 storage, machine storage, workshops, the like.

15        Okay. And that's really the new method of  
16 choice on the farms. And, excuse me, that  
17 remains a primary markets served by the  
18 industry today.

19           Now, I mentioned that the post-  
20 frame building, the first pole barn was  
21 patented and 1949. Now the reason, that this  
22 type of construction evolved in the first  
23 place was because Congress in World War II  
24 came down with an edict that demanded that --

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1 or set forth their rule that you could not  
2 build a barn that was greater than \$1,500 in  
3 cost.

4 So some innovative guys in Illinois  
5 tried to figure out how they could do that and  
6 they started putting poles in the ground to  
7 which a sidewalk and a roof truss system in  
8 that time rafters were attached. And that  
9 became a pole barn.

10 So that's how the -- that's where  
11 the industry really came from and it has  
12 evolved from there. But today, post-frame  
13 resembles residential construction albeit a  
14 simpler method of construction, typically  
15 pretty simple buildings.

16 The vast majority of these  
17 buildings are, they're wood framed, number  
18 one, they are wood framed buildings, they are  
19 single story, they are built on grade, they  
20 have no basements and are very similar, again,  
21 to residential homes although these designs,  
22 again are generally much simpler than a  
23 residential home.

24 This is a typical example in this

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1 picture right here. This would be a suburban  
2 garage. And that represents a large part of  
3 the industry today as well.

4 Okay, I mentioned that these are  
5 wood framed buildings. And you can see in  
6 this photo that these are vertical wood  
7 columns that act as the main structural  
8 component of a post-frame building.

9 These posts are embedded in the  
10 ground, four or five feet below the frost  
11 level and spaced anywhere from six to 12 feet  
12 apart in to which the side walls and roof  
13 system are attached.

14 So, it provides a non-conventional  
15 foundation. Again, there's no concrete  
16 foundation. There's concrete in and around  
17 and underneath these posts, but we have the  
18 absence of an absolute foundation.

19 Lots of these buildings too don't  
20 even have a floor in them. You know, they're  
21 just built on, you know, dirt and earth, if  
22 they're for that type of storage, machinery  
23 storage and that type of thing.

24 So, in post-frame again, these

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1 horizontal, what we call walled girts are  
2 attached to wood posts at regular intervals  
3 around the circumference of this building and  
4 that provides the primary structural component  
5 to which the roof trusses are also attached.

6 These buildings feature pre-  
7 manufactured wood trusses and so forth in the  
8 vast majority, probably 99 percent of the  
9 cases and roof purlins give stability to  
10 trusses and so forth.

11 Typically, as you can see in these  
12 pictures, people work from ladders on these  
13 buildings. They are not excessively high off  
14 the ground et cetera. Again, these posts  
15 extend to the full sidewall height of the  
16 building, roof trusses attached to those posts  
17 and so forth. And the wall cladding and roof  
18 cladding complete that building envelope.

19 This is kind of a step by step.  
20 The building perimeter's laid out by hand,  
21 posts are pressure treated to prevent decay  
22 and insect infestation, holes are dug by power  
23 auger and the posts are generally set in  
24 concrete or on a pre-cast concrete block.

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1                   And there are a number of  
2 alternative types of foundations today that  
3 are also utilized in post-frame construction  
4 but they all involve a post or a column in the  
5 ground. That column sometimes is -- and could  
6 be concrete.

7                   Roof trusses lifted by crane in  
8 some cases. This is a home, a post-frame home  
9 going up. I mentioned that horizontal girts  
10 generally two by four conventional lumber  
11 attached at regular intervals to the pole  
12 height at the sidewall that you can see and  
13 then roof purlins provide that stability we've  
14 talked about before.

15                  Roof trusses are generally 412  
16 pitch or less in post-frame construction and  
17 crew members are typically not more than eight  
18 to 12 feet above the ground. These are small  
19 crews. I want to emphasize this.

20                  These are typically three and four  
21 person crews that come in and build a building  
22 and this building is probably erected in a  
23 week or less in the majority of cases.

24                  So it's very efficiently or quickly

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1 constructed. Very much unlike a home in that  
2 regard, very much simpler.

3           These are examples of homes here.  
4 And again, constructed in just a few days.  
5 More elaborate buildings such as this one,  
6 obviously are going to take more time, but  
7 again, you can see there's a lot of  
8 resemblance to a residential home here.  
9 Single story, that type of thing, pretty  
10 simple roof system et cetera.

11           But today, post-frame has moved off  
12 the farm. And they're being selected as a  
13 construction method of choice in a wide  
14 variety of light commercial buildings.

15           These buildings again, are  
16 economical, they're efficiently constructed  
17 wood frame, these are adaptable to an enormous  
18 variety of architectural styles, they're  
19 durable, they're appealing et cetera. They're  
20 not only economical to erect, they're  
21 economical to operate because they're very  
22 easily insulated and that type of thing.

23           So we're seeing an increase use of  
24 post-frame construction in a variety of

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1 markets that weren't there 20 years ago when  
2 we were just building on the farm. So today,  
3 we are certainly in light commercial  
4 construction.

5 We think when we get into larger  
6 buildings that certainly conventional fall  
7 protection, you know, should be employed.  
8 When we're talking about up to 100 foot clear  
9 spans in buildings, you're obviously going to  
10 be working at a great heights when you're at  
11 the -- not only at the eave but at the ridge  
12 line of those kinds of buildings.

13 Well, few people would suspect that  
14 this country club is a post-frame building.  
15 What I'm saying is, when you go down this road  
16 today, many of the buildings that you  
17 previously didn't recognize and you would  
18 never recognize perhaps, are post-frame.

19 You might think it's another type  
20 of conventional construction, stud frame, you  
21 know, masonry, whatever it might be, but these  
22 are post-frame buildings and they're  
23 increasing in use around the countryside  
24 today. You're seeing more and more of them

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1 and you probably just don't recognize them.

2 Well, in these cases, conventional  
3 fall protection is difficult if not impossible  
4 to create. And it's a unique nature of post-  
5 frame, it presents -- works with exactly the  
6 same challenges that are faced by workers in  
7 the residential home construction industry.

8 These are small companies. These  
9 companies are -- the backbone of the industry  
10 will probably be a company that does \$1  
11 million of business a year. We have maybe a  
12 half a dozen companies that do 50 million or  
13 more, but the vast majority of them are small  
14 a million, less a million to 2 million, that  
15 type of thing.

16 So they're building lots of these  
17 buildings very quickly and moving on to the  
18 next job. There are today, over 8,000 post  
19 frame contractors and about 35,000 employees  
20 involved in the post-frame construction  
21 industry.

22 It is about a \$12 billion industry  
23 in the United States today. So it's a lot,  
24 even though it's obscure and people don't

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1 recognize it, it's a lot more industry out  
2 there then you might realize.

3 But what we have found in our  
4 statistical studies and our organization  
5 represents about 1,000 companies of the 8,000  
6 that are out there, but the reason we don't  
7 represent more is that those other 7,000 are,  
8 if you will, a fellow with a pick up and a  
9 ladder and a couple of crew member helpers.

10 And we're not going to get that guy  
11 to get organized and get involved in the  
12 organization. We do, however, reach that  
13 audience completely because we have two  
14 industry publications that go to 35,000 people  
15 every single month.

16 So we know who they are, et cetera.  
17 We survey them as much as we possibly can.  
18 And what we have found is that we have  
19 virtually a complete absence of injuries from  
20 falls.

21 We do have -- we can't trace any  
22 fatalities from falls. If anybody has any  
23 different information, we'd certainly like to  
24 hear that, but we can trace absolutely none.

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1           The injuries that we're having are  
2 cuts and abrasions and pulled muscles and  
3 backs and that type. These guys are working  
4 with sheet metal and that type of thing. So  
5 those are the types of injuries that we're  
6 encountering.

7           We certainly talk about and try to  
8 educate our people on fall protection at every  
9 opportunity, but most of that 8,000 again are  
10 people that are not necessarily going to  
11 industry events, conventions and trade shows  
12 and regional meetings and that type thing.

13           So, we have to try to educate those  
14 people through our publications and via our  
15 website and that type of thing. But the  
16 emphasis is that these are small companies out  
17 there.

18           So in summary, again, post-frame is  
19 wood frame construction, it features posts  
20 embedded in the ground with a non-traditional  
21 foundation, quickly constructed by three to  
22 five man crews, single story structures, the  
23 feature of these buildings feature pre-  
24 manufactured trusses, three and 412 pitch

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1 roofs are the rule in these particular  
2 buildings.

3 Workers are generally only eight to  
4 12 feet off the ground and we just feel that  
5 post-frame should come under the residential  
6 fall protection guidelines and exemption.

7 Here's a problem we have, in post-  
8 frame we have some area offices that apply the  
9 commercial construction fall protection rules  
10 and in the next county, another office will be  
11 applying the residential rule.

12 So, we've got a lack of uniformity  
13 that we would certainly like to have addressed  
14 at the same time. And that's really another  
15 message I really want to give you here. I  
16 think there's confusion in the field among  
17 area compliance officers and area offices  
18 about what standard should apply to this type  
19 of construction.

20 For many, many years, again, this  
21 type of construction was obscured. These guys  
22 were building on the farm out on the north 40  
23 they were invisible. They were never seen.  
24 Today that's changed and we're building, you

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1 know, we're building, you know, strip malls  
2 and churches, McDonald's restaurants, you  
3 know, post-frame.

4           And so they become, you know,  
5 certainly more visible. And we don't argue  
6 the fact that in those, you know, larger  
7 commercial projects, there's no question,  
8 conventional fall protection has to be  
9 employed.

10           This is another example, so we're  
11 striving to have the same fall protection  
12 guidelines that apply to residential  
13 construction apply to us, see these guys  
14 working off of ladders. And then in these  
15 larger buildings, you know, they're going to  
16 have a manlift and so forth.

17           Again, I would emphasize that a lot  
18 of these buildings are built on a regular  
19 grade on the farm, so it's somewhat difficult  
20 to have a manlift and so forth, you know, take  
21 these people up and down on the side of a  
22 building. But this kind of gives you a pretty  
23 good idea of how these -- some of these  
24 buildings are going up.

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1           This happens to be a little bit  
2 larger building here. All of these are post-  
3 frame buildings, these are homes. And so  
4 again, many of them rurally, you know, rurally  
5 situated post-frame homes.

6           Okay. So, again we're asking for  
7 this and would like for the committee to make  
8 a recommendation to OSHA include us in the  
9 definition of what is residential  
10 construction. That's what we're asking. But  
11 we're asking for it in limited situations.  
12 Okay?

13           And these are what we have come up  
14 with that we think is justified. And those  
15 would be buildings that would have an eave  
16 height of 16 feet or less or that are 4,000  
17 square feet or less or that feature  
18 residential roof system, very simply, okay?  
19 Those things.

20           And you know, we just feel that  
21 when buildings certainly become larger than  
22 that, higher than that, et cetera, then  
23 certainly conventional fall protection should  
24 and must apply.

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1           But these buildings, these guys are  
2 coming in and working there days on a building  
3 or four days and then they're moving on to the  
4 next, and they're raising trusses in many  
5 cases by hand with guys on a ladder and  
6 setting it up, you know, without even the  
7 benefit of a crane or a job site, it's very,  
8 very difficult for them to employ conventional  
9 fall protection systems.

10           And we're just not seeing accidents  
11 and injuries and certainly not deaths from  
12 falls on this type of construction. So that's  
13 the message.

14           MR. WITT:     I have a question,  
15 clarification. You are suggesting that if one  
16 of these three criteria apply the residential  
17 fall protection directive should apply in the  
18 situation or all three criteria?

19           MR. KNIGHT:   Yes. Any one of the  
20 three.

21           MR. WITT:     Any one of the three?

22           MR. KNIGHT:   Either or. Either or  
23 is what we're suggesting to you. Thomas?

24           MR. WITT:     So if it's 4,000 square

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1 feet or less to be that large building, two  
2 slides before, that was going to be about 20  
3 to 25 feet high?

4 MR. KNIGHT: Yes. That would --

5 MR. WITT: How would you consider  
6 that one residential?

7 MR. KNIGHT: Yes. About a 50, you  
8 know, 50 by what 80, 80 foot length, 50 foot  
9 wide, that would be a 4,000 square foot  
10 building. Many of these buildings are just  
11 rectangular building, you know, they're not  
12 going to feature a lot of wings and that sort.

13 MR. SMITH: For my clarification,  
14 Mike and Thomas, your subcommittee report  
15 yesterday and the motion that we passed on  
16 residential fall protection, does it address  
17 this issue?

18 MR. KAVICKY: No. We only talked  
19 about the definition.

20 MR. SMITH: Okay. Did you all come  
21 to a consensus in your workgroup on post-  
22 frame?

23 MR. THIBODEAUX: I just have some  
24 questions if I may.

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1 MR. SMITH: Okay, sure.

2 MR. THIBODEAUX: Okay. Mike  
3 Thibodeaux. Why are you proposing 16 feet or  
4 less an eave height when you said the guys  
5 normally don't get up above eight or 12 feet?

6 MR. SMITH: Well, again, when  
7 they're setting something at 16 feet, they're  
8 on a ladder at probably at 12 foot high, you  
9 know, and four feet high they're putting the  
10 truss on.

11 MR. THIBODEAUX: Okay. So, what  
12 are they doing now when they're building a  
13 building like this? Are they still working  
14 off ladders and why is that --

15 MR. SMITH: They are. They are.  
16 That's exactly what they're doing, they're  
17 working off of ladders.

18 MR. KAVICKY: The concern -- Tom  
19 Kavicky with the Carpenters Union.

20 MR. SMITH: Yes.

21 MR. KAVICKY: The concern that I  
22 had was what we're doing is we're going in  
23 there and we're reopening it up because in the  
24 directive, Steve, please correct me if I'm

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1 wrong, but it talks about a small attachment  
2 to a building, to a structure, a commercial  
3 structure like an entrance way roof or  
4 something like that.

5 We're talking about a whole  
6 building now being covered. So, you know, we  
7 addressed it in the workgroup, we are taking a  
8 look at it, but we're not ready to make any  
9 recommendations right now.

10 MR. SMITH: Okay. Okay. It seems  
11 to me that, you know, I mean, the gentleman  
12 has a good discussion item on the fact that it  
13 is residential type of construction. You  
14 know, that would be hard to -- hard for me to  
15 dispute anyway. Daniel?

16 MR. ZARLETTI: This is Dan Zarletti  
17 at County Construction. Two questions or two  
18 points. One is I think your issue on how OSHA  
19 is handling the compliance issues based on  
20 what standard and what county is the way I  
21 think you put it.

22 MR. KNIGHT: Yes.

23 MR. ZARLETTI: Like across county  
24 line, one office can see it represented

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1 differently than another.

2 MR. KNIGHT: Right.

3 MR. ZARLETTI: I think that's an  
4 issue between you and the RA that handles both  
5 of those counties or if in fact the state line  
6 draws a line between two RAs I think that  
7 needs to be resolved between them because  
8 that's a compliance issue.

9 And if they're not seeing it eye to  
10 eye, then they need understand why not and  
11 then if they come to an agreement and your  
12 compliance should be equal for either side of  
13 the county line.

14 MR. KNIGHT: Right. Okay.

15 MR. ZARLETTI: So that would be  
16 just one suggestion. The other is, the way I  
17 work on this kind of a thing is I always try  
18 to look for feasibility. You know, does fall  
19 protection make sense? Well, let's ask that  
20 question, but let's ask if it's feasible,  
21 let's ask if it creates a greater hazard to  
22 have it than not to have it.

23 Those are the kinds of things that  
24 are going through my mind when you were

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1 speaking. There are products that we probably  
2 all have seen, you know, at various times  
3 where there are products out there that are  
4 designed specifically for providing anchorage  
5 points so that fall protection can be afforded  
6 on buildings under construction.

7 I'm just not sure how much you've  
8 exhausted that because you didn't bring that  
9 part up.

10 MR. KNIGHT: You know, I heard a  
11 presentation day before yesterday from the  
12 Home Building Industry Contractors from  
13 Arizona and so forth that was pretty  
14 enlightening. Because we have struggled with  
15 that -- this question.

16 How do we provide fall protection  
17 on these structures. It's been a major issue  
18 and one that nobody's been able to really  
19 solve. That was a very enlightening  
20 presentation and you know, I think that has an  
21 awful lot of merit and so forth.

22 It's something we can explore. The  
23 problem that I'm going to have is that, again,  
24 with those thousands of builders out there

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1 that are, you know, doing all of those  
2 buildings, reaching those guys and teaching  
3 them about that, we'll do the best job we can,  
4 certainly if we can come up with some -- and  
5 I'm hoping to get some more information on  
6 that system from these guys.

7 And we'll certainly share that as  
8 much as we can. But the education process I  
9 think is very difficult for us because these  
10 guys are so obscure in many cases and hard to  
11 reach and so forth.

12 And then getting them to change the  
13 way they've done things for 50 years, you all  
14 know what that's all about too. Very, very  
15 difficult for us to do.

16 MR. KRUL: Bob Krul with the  
17 roofers. Tom, you know, I understand the  
18 problem you're having and I think Dan's  
19 suggestion to you is probably a very sound  
20 one, but, you know Emmett and I were just  
21 looking at the difference between residential  
22 and light commercial is clear.

23 I mean, residential is residential,  
24 light commercial is light commercial and if

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1 the point that Steve made that any one of  
2 those three criteria would apply I could see  
3 the whole fall protection standard getting  
4 turned on its head just because there's a  
5 residential type roof on a building.

6 I mean, we could be talking about a  
7 huge commercial structure that just because it  
8 has a residential roof on it is now exempt  
9 from fall protection coverage.

10 I understand the dilemma you're  
11 facing because of this new type of  
12 construction and entering the market, but it  
13 would be -- I could see it being very -- I  
14 think that's why Steve asked this question.

15 It would be very, very difficult to  
16 -- I mean we would be making exceptions to the  
17 fall -- the current fall protection standard  
18 that would probably create more confusion out  
19 in the field than doing solving.

20 MR. KNIGHT: Well, perhaps the  
21 criteria that we've come up with is just too  
22 loose and needs to be tightened up. We're  
23 certainly amenable to looking at that,  
24 absolutely. I happen to think your point is a

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1 good one.

2 MR. SMITH: Okay. Thomas and then  
3 --

4 MR. SHANAHAN: Yes. Tom and I  
5 understand what you're trying to -- I'm sorry.  
6 Tom Shanahan. Tom, I understand what you're  
7 -- the gist of this whole thing too. I think  
8 it definitely merits discussing it.

9 I, the question I had for you is  
10 just to clarify to follow up on Steve's  
11 question is, so when you said -- and the three  
12 criteria there is or, so in other words, if  
13 you had a 3,000 square foot building that was,  
14 you know, 75 feet off the ground then it would  
15 still fall under residential? Just to try to  
16 be extreme about it.

17 MR. KNIGHT: Well, I guess you  
18 could, you know, that would probably be a good  
19 point. It should be and.

20 MR. SHANAHAN: Right. So I want to  
21 make sure that's clear --

22 MR. KNIGHT: It should be and.

23 MR. SHANAHAN: -- I think because I  
24 think that's confusing as you look at the

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1 whole thing. I think you meant and.

2 MR. KNIGHT: That's certainly not  
3 what we're looking for.

4 MR. SHANAHAN: Right.

5 MR. KNIGHT: We're looking for this  
6 single story.

7 MR. SHANAHAN: So, and just the  
8 idea that you're amenable to us looking at  
9 that --

10 MR. KNIGHT: Oh, absolutely.

11 MR. SHANAHAN: -- I mean that's  
12 what we want to do.

13 MR. KNIGHT: Certainly, absolutely.

14 MR. SHANAHAN: I just want to  
15 clarify that.

16 MR. SMITH: Steve?

17 MR. HAWKINS: I would just like to  
18 say that I think it would benefit our  
19 committee here if you would go back and look  
20 at your and take the CPL for residential fall  
21 protection and set it aside and look at the  
22 requirements for the standard.

23 Because in a vast majority of the  
24 state planned states that Kevin and I

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1 represent on this committee, there's a large  
2 number of those who haven't even adopted that  
3 CPL.

4 So what you'd be, you would be  
5 buying your members one thing on one side or  
6 getting for them for just about half of the  
7 states and the other half of the states are  
8 not going to follow that. So I think you  
9 would be best served to try to look at this  
10 approach from the standard.

11 And when you go to the standard,  
12 you're going to see that it's going to ask you  
13 to look at the feasibility of fall protection.

14 I don't think there's anyway that this group  
15 and I don't want to speak for everybody I'll  
16 just speak for myself.

17 There's no way that I would  
18 consider your request without having some  
19 evidence of feasibility like Tom said and Mike  
20 said. So, put the CPL aside because it could  
21 change. As you know with OSHA, it's much more  
22 likely that it could change than the actual  
23 standard itself could change.

24 So, put that aside and look at the

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1 requirements of the residential exemption for  
2 conventional fall protection when it's in  
3 feasible and then you work under a plan.

4 If you could develop a play because  
5 these buildings are different shapes and  
6 configurations, but I personally have built  
7 pole barns myself with my father in law. So,  
8 it's not rocket science, it's pretty straight  
9 forward honestly.

10 And I think there are lots of  
11 opportunities and having done that myself  
12 where you can use fall protection. So perhaps  
13 you could also narrow your focus to the areas  
14 or the time -- those times in that  
15 construction process when you can't use  
16 conventional fall protection and try to narrow  
17 that down.

18 Because what you've asked for, I  
19 think from my standpoint personally would be  
20 overly broad and at this point couldn't really  
21 be justified because you haven't given us any  
22 evidence that somebody's taking a real  
23 meaningful look at the feasibility of  
24 conventional fall protection.

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1                   And you saw the presentation.  
2           Difference between conventional and then  
3           feasible is your knowledge of what's  
4           available.       And you know, you think  
5           something's impossible and then you see a  
6           presentation like we saw in our workgroup that  
7           obviously, you know, there's a lot of products  
8           out there and if -- I tell contractors  
9           sometimes pretend like somebody was paying you  
10          to tie off, what would you do?

11                   You know, sometimes that kind of  
12          gives them something to think about.

13                   (Laughter)

14                   MR. HAWKINS:   And there have been a  
15          few occasions they said well, yes, if they're  
16          paying me I could do it.   And I said well you  
17          probably shouldn't have said that, but now --

18                   (Laughter)

19                   MR. HAWKINS:   So, that would be my  
20          recommendation and I do appreciate your  
21          presentation, it's very important.

22                   MR. SMITH:   Okay.   Kevin?

23                   MR. BEAUREGARD:  I just want to add  
24          on what Steven Hawkins said.   This is Kevin

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1 Beauregard from the North Carolina Department  
2 of Labor. I think that you could also  
3 probably get some assistance.

4 I know if you had members in North  
5 Carolina or even if you don't have members in  
6 North Carolina, if you contact our technical  
7 assistance bureau, they'll be glad to help  
8 work with you to look at feasible approaches  
9 to fall protection.

10 And I'm sure OSHA or the other  
11 state plans probably have a similar type of  
12 service. So if you indeed want to look at  
13 whether or not its feasible, we'll be glad to  
14 take a look at it.

15 MR. KNIGHT: Okay. Well, I  
16 appreciate that.

17 MR. WITT: Now let me add to what  
18 Dan's already said. This is Steven Witt.  
19 OSHA, we have 68 area offices across the  
20 country and 10 regional offices.

21 If there are questions about  
22 consistency of enforcement of the fall  
23 protection standard, or feasibility of means  
24 of fall protection, we have compliance

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1 assistance specialists in every one of our  
2 area offices that would be more than happy to  
3 work with any of your members or non-member  
4 companies about fall protection and what is  
5 feasible.

6 MR. SMITH: What we're going to do,  
7 and we thank you very much for your  
8 presentation, but what we're going to do at  
9 this point is just refer this back our  
10 subcommittee.

11 We appreciate them taking the time  
12 to look at this and they'll also be willing to  
13 work with you and if they have any  
14 recommendations for the full committee, we'll  
15 consider them. But we'll refer it back to  
16 them.

17 And we would, any recommendations  
18 on this subject will come through the  
19 subcommittee. Okay?

20 MR. KNIGHT: Thank you very much.  
21 I appreciate it.

22 MR. SMITH: Thank you very much.  
23 Very good presentation.

24 MS. SHORTALL: Can I add something

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1 here?

2 MR. SMITH: Sure.

3 MS. SHORTALL: I just wanted to add  
4 that OSHA workgroups are always open to any  
5 member of the public to come and participate  
6 in the meeting. And to the extent possible,  
7 those meetings, if they're going to be  
8 concurrent with an ACCSH meeting are announced  
9 in the Federal Register Notice announcing an  
10 ACCSH meeting.

11 MR. SMITH: Okay. Okay. Talking  
12 about ACCSH meetings has everyone given their  
13 schedule to -- everybody's shaking his head.  
14 Now if you would, try looking at your  
15 calendars this morning and --

16 MR. WITT: Excuse me. Just to  
17 clarify a little what we asked for yesterday.

18 When you look at your schedules and you give  
19 your availability to Michael Buchet, if you  
20 look at the last two weeks in April and the  
21 first three weeks in May, that is the first  
22 three weeks before Memorial Day, we'd like --  
23 it's very difficult to coordinate the  
24 schedules of the 15 members and make sure

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1 OSHA's available to support the committee.

2 So if you would look at the last  
3 two weeks in April, first two weeks in May, it  
4 is our intention to have a meeting during that  
5 five period -- that five week period. Thanks.

6 MR. SMITH: Okay. Also, just a  
7 little bit of housekeeping here. The posters  
8 in the back of the room that Stew was given  
9 last night as retirement, most of us have  
10 already signed it, but if by chance you're in  
11 the room and you haven't signed it, we would  
12 like for you to sign it. Just wondering if  
13 you would. We would appreciate that. And  
14 try to say something nice.

15 (Laughter)

16 MR. SMITH: We appreciate it. He's  
17 got -- remember he's got grandchildren and  
18 they might look at it.

19 (Laughter)

20 MR. SMITH: So keep it family  
21 related. Thank you. But look at -- take a  
22 minute and look at your schedules if you  
23 would. Let's go ahead and do that if you can,  
24 if you have that accessibility with you.

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1 Because once we get back, we'll get busy and  
2 it will take two weeks to get that information  
3 in.

4 MR. MIGLIACCIO: Let me ask a  
5 question.

6 MR. SMITH: Okay.

7 MR. MIGLIACCIO: Are we looking at  
8 Wednesday, Thursday, Friday or it doesn't  
9 matter?

10 MR. SMITH: Just whatever days  
11 you're available.

12 MR. MIGLIACCIO: Okay.

13 MR. SMITH: During those weeks.

14 MR. SHANAHAN: This is Tommy. Do  
15 workgroups always meet before or do they meet  
16 separately?

17 MR. SMITH: Yes.

18 MR. SHANAHAN: Okay.

19 MR. SMITH: Yes. Yes. We would  
20 let the chairmen of the workgroups plan those  
21 meetings and the times. Everybody knows what  
22 year it is right? Yes, sir Thomas?

23 MR. KAVICKY: Mr. Chairman, I just  
24 have a point of clarification. I'm a little

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1 confused as to what happened in this specific  
2 issue here.

3 MR. SMITH: Okay.

4 MR. KAVICKY: When someone comes to  
5 OSHA and asks about residential fall  
6 protection, exemptions, things like that,  
7 they're normally funneled through the  
8 workgroup, in this case it was funneled into  
9 the workgroup and put on the full ACCSH  
10 committee meeting. I was wondering why.

11 And if somebody comes to me, I want to  
12 make perfectly clear that I give them the  
13 right direction. So if you could clarify that  
14 for me. I'd sure appreciate it.

15 MR. SMITH: I want -- I'll give you  
16 my thoughts and then I'll defer to somebody  
17 else. But being the -- being we have a  
18 workgroup that is meeting on this subject  
19 then I, you know, and you all heard the  
20 presentation, you all gave a report and had an  
21 opportunity to -- and I'm sure ask more  
22 questions and discuss it more extensively than  
23 we did.

24 And you also heard other

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1 presentations that may or may not impact and  
2 the other discussions may or may not impact.

3           So it's my belief that, you know,  
4 being you're specifically looking at these  
5 issues and you're, you know, you're the one  
6 that changed the definition on residential  
7 fall protection that, you know, I would  
8 personally defer, you know, to your  
9 recommendations on this subject.

10           But now, how that works as far as  
11 the whole committee is concerned, could you  
12 give us some clarification?

13           MR. WITT: There's no, Tom, there's  
14 no hard and fast rule. There was a lot for  
15 the residential workgroup to do this time. We  
16 thought it would be helpful for everyone to  
17 hear this, maybe it should have gone to the  
18 workgroup first.

19           I didn't believe that there would  
20 be -- that the committee would react and be in  
21 a position to make a recommendation or move  
22 forward on this. This is just a short general  
23 presentation.

24           It's now referred to the workgroup.

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1 I'm not -- it may -- even if we did present  
2 to the workgroup on Wednesday, I think we'd be  
3 in the same position today. So it's  
4 subjective.

5 MR. KAVICKY: Okay.

6 MR. WITT: In retrospect, maybe we  
7 should have put it on the workgroup. But we  
8 knew we had the other presentation and the  
9 workgroup had other significant work they were  
10 going to consider.

11 MR. KAVICKY: Very good. Thank  
12 you.

13 MR. SMITH: Thank you. Thank you  
14 for the hard work that you did. Good  
15 question. Any other questions or comments at  
16 this time? Is anyone else ready at this  
17 point? Okay.

18 MR. CARNEY: Let me set up here.

19 MR. SMITH: Super. Who's he?  
20 Stonesmith Patented Systems? Okay.

21 MR. CARNEY: Someone needs to get  
22 their face out of the picture.

23 MR. SMITH: If I move you'll be in  
24 good shape. At this time, we have another

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1 presentation from Stonessmith Patented Systems,  
2 Incorporated on concrete and masonry unit  
3 construction safety prevention.

4 And we appreciate your being with  
5 us today, and if you would introduce yourself  
6 please.

7 MR. CARNEY: My name is David  
8 Carney, I'm the General Manager for Stonessmith  
9 Patented Systems, Inc. And we developed and  
10 brought masonry products to the masonry  
11 industry with the idea of focusing on  
12 innovation and safe work practices.

13 And so the presentation today has  
14 to do with safety and injuries, accidents in  
15 the masonry industry. So I have copies of the  
16 presentation on your desk and some  
17 information, product related information in  
18 the back where you registered.

19 Okay. I'd like to spend just a  
20 couple of seconds to focus on the opening and  
21 then I'll go into the main body of the  
22 presentation. Let me go back here.

23 MR. SMITH: Well we can leave --  
24 turn the ones in the back on.

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1 MR. CARNEY: The construction  
2 industry, especially masonry industry, is a  
3 very physically demanding profession. And  
4 nothing that we're going to discuss today will  
5 be new to you, and I think that's what the  
6 real issue is.

7 But it's not new, it's been around  
8 for decades. And while we made some  
9 significant improvements that have been made  
10 in safety, particularly in fatality  
11 prevention, the masonry industry continues to  
12 face the same issues that they have for  
13 decades.

14 And if you go back through the  
15 injury and illness data, you'll find that for  
16 years we have faced these same issues. And  
17 it's not necessarily restricted to the masonry  
18 trades, most of the construction trades are  
19 the same.

20 But it's perhaps because the masons  
21 represent such a small portion of the  
22 construction industry or because they  
23 predominantly learn their trade on the job.  
24 There are apprentice programs, but the

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1 majority of the masons learn their trade on  
2 the job from their boss, their mentor.

3 It seems that innovation in work  
4 practices and safety practices that alleviate  
5 the exposure to injury has been sort of not  
6 been on the top of the heap from an innovation  
7 perspective.

8 If you look at advances in  
9 products, if you look at advances in safety  
10 equipment, the masonry industry has had few  
11 and it's pretty much done the way it's been  
12 done since the pyramids have been built.

13 But it's only been in recent years  
14 that we've seen a lot of significant  
15 improvement that would ease the mason's  
16 burden. And now that we've begun to see some  
17 inroads into innovation and product  
18 development, we find that adaptation is  
19 painfully, painfully slow. And no pun  
20 intended on the pain.

21 The construction industry, as you  
22 well know, has the highest injury accident  
23 rate of all industry sectors and has the most  
24 fatalities of any sectors, up 6 percent from

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1 2005.

2 One area that is becoming prominent  
3 is the number of injuries and illness to  
4 Hispanic workers in the construction injury,  
5 it's up by 7 percent since 2005 and fatalities  
6 among Hispanic workers in 2006 is the highest  
7 that's been recorded since the reporting  
8 started in 1992.

9 Now, one anomaly of that, depending  
10 on how you like to look at data is that the  
11 rate is lower. And the reason the rate is  
12 lower is the population in the construction  
13 industry is much higher.

14 Some of the workgroups addressed  
15 this, excuse me, Wednesday in terms of culture  
16 and diversity, but language and cultural  
17 differences significantly impact communication  
18 to workforce safety and impact insurance  
19 costs.

20 Had an interesting opportunity to  
21 talk with some of the Latin American countries  
22 about products. And their basic question to  
23 me was, let's talk productivity, we don't need  
24 to bother with safety. If we need more

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1 people, we go get more people.

2 Another anecdote is one I really  
3 enjoyed. My wife is with a company, they went  
4 over to the Mediterranean area and were doing  
5 some work in the Mediterranean area when it  
6 became too dangerous for the back hoes and the  
7 cranes to work, they put people in the trench.

8 Equipment's expensive, people  
9 aren't. So as we get an influx of multi-  
10 cultural workforce, not only do we have a  
11 difference in language, we have a difference  
12 in culture and a difference in value of people  
13 and value of safety of people.

14 So as we do our training and work  
15 on areas like that, we really need to look at  
16 the cultural differences as the workforce  
17 begins to change. Another area, and I know  
18 we've gone one in here that's addressed in his  
19 work light is the lack of warm-up, muscle  
20 warm-up.

21 And I'm going to come back to that  
22 in a moment. Musculoskeletal disorders, if  
23 you'd like to look at the injury data, which  
24 I'm going to present some of it,

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1 musculoskeletal disorders are muscle tendons.  
2 They're basically aches and pains that you  
3 and I have every day and they're not  
4 associated with acute events.

5 So we don't have a traumatization  
6 of the workforce, we don't have to deal with  
7 the grieving family who just lost a parent, a  
8 father, a husband. They just nag at us day  
9 after day.

10 And while they decreased a little  
11 bit in 2006, musculoskeletal disorders cost us  
12 two days greater in the media and lost time  
13 and injuries.

14 What's not included when you look  
15 at the musculoskeletal disorder data is if a  
16 person is transferred from one job to another  
17 because they had an injury, so today they are  
18 a mason, tomorrow they're driving a truck,  
19 those don't get counted or they have  
20 restricted activities. So 40 percent of all  
21 injuries are MSDs.

22 When we take a look at the injury  
23 and illness data within the construction  
24 industry versus the masonry industry, the mason

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1 industry has done well in the fall fatality  
2 area.

3 Protruding rebar has always been a  
4 major issue, it's been an exposure not only to  
5 masons but anyone not on the work site through  
6 slips, trips and falls. You don't have to  
7 fall from a very high level to have an  
8 impalement from an exposed rebar.

9 The rebar caps certainly limit the  
10 amount of fatalities and in some cases they  
11 increase in size the whole when you fall. The  
12 lost time injury case, we're doing much better  
13 in that area, but within the masonry industry,  
14 masons still continue to be above the overall  
15 construction case rate at 6.1 in 2006 versus  
16 5.9.

17 Now they've closed the gap a little  
18 bit, they were at 7.5 when the industry was at  
19 6.8 in 2003, but the new data out shows that  
20 they're closing the gap.

21 Liberty Mutual does a great amount  
22 of work with injury and illness data and  
23 presented that chart. It's not a minor matter  
24 that we're dealing with when we talk about

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1 injuries in the workplace. It's a \$50 billion  
2 business, has been a \$50 billion business for  
3 the last several years.

4 The same three causes of injuries  
5 and illness, overexertion falls in the same  
6 level and bodily reaction. And I'm going to  
7 come and talk about bodily reaction here in  
8 just a moment. They have been the same top  
9 three. And the top 10, while they've changed  
10 in relationship a little bit, have been the  
11 same since '98.

12 When you think about a \$50 billion  
13 business a year in cost to the industry, then  
14 you have your employer cost that can make that  
15 up in the 80 or 100 billion. That's actually  
16 more than A-Rod makes in a year and so it's a  
17 fairly significant amount.

18 The other thing that I think is  
19 interesting and it may not be a question that  
20 we want to ask, but maybe something of  
21 interest to NIOSH, is this is the annual cost.

22 When you look around the room here  
23 we're all moving toward a period in our life  
24 where we're not going to be working. The

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1 effective cumulative trauma disorders and  
2 musculoskeletal disorders that nag and nag and  
3 nag at you is what happens when we end up on  
4 Medicare.

5 What's the life cycle cost of  
6 musculoskeletal disorders? They're not as  
7 exciting to investigate as fatality. They're  
8 really annoying on the workplace. But what is  
9 the life cycle cost of a musculoskeletal  
10 disorder.

11 And when we look at insurance costs  
12 to the industry, and this comes from the State  
13 of Washington within the masonry industry, the  
14 insurance rates were going up at 23 percent.

15 Industry and talking to the  
16 insurance companies because we believe that if  
17 we do some more safe work practice and get the  
18 multiples down, the insurance costs would be a  
19 huge savings for contractors.

20 The insurance perspective of those  
21 that I talked to had been yes, you can bring  
22 your multiple down, it's a three year average  
23 so it's going to take a while to pull your  
24 multiple down and during that same period,

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1 even though your multiple is going down, the  
2 cost of insurance is going up, and so the  
3 contractor may not see a decrease in insurance  
4 rates because the annual costs are going up.

5 What they see is they don't spend  
6 as much and if you don't reduce the actual  
7 bill you pay each month, then the contractors  
8 often don't see that as a savings and they  
9 look for other areas than safety and reducing  
10 the multiple as ways to save on their  
11 construction costs.

12 When I take a look at industry  
13 comparisons between masons and the rest of  
14 construction, masonry fatalities are  
15 disproportionately to population. Now, I said  
16 a few minutes ago that the fatalities have  
17 come down significantly but they're still 3 to  
18 4 percent while the population represented is  
19 only one and a half percent of the  
20 construction industry.

21 So, almost double, their  
22 representation in the population in terms of  
23 fatalities. They're the highest risk group  
24 for non-traumatic musculoskeletal disorders in

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1 the back arms and legs and they have the  
2 highest loss time rate of anyone in the  
3 industry.

4 I often thought that it had to do  
5 with well, we're brining in lower salaried  
6 people and this is a nice entryway. So I did  
7 project the wages and they're right in, the  
8 median wages are right in line with other  
9 skilled workers.

10 But we have a lot that come in  
11 through the vocational tech schools and coming  
12 in as mainly helpers. With the rise in the  
13 Hispanic workforce, in 2006 the Spanish  
14 workforce represented over 40 percent of the  
15 overall construction, excuse me, 40 percent of  
16 the masonry workforce and that was up from 29  
17 percent just three years ago.

18 So we looked at the impact of the  
19 changing diversity of the masonry workforce  
20 with a segment of that population that has a  
21 higher accident illness injury rate, that the  
22 ability to continue to pull these numbers down  
23 over the long haul may in fact reverse itself  
24 and it may begin to go back up.

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1           So I wanted to talk about work  
2 products that the masons work with. Four  
3 basic products, the block, the rebar, the  
4 cement and the aggregate. And this gives you  
5 an idea of the weight that they have to deal  
6 with on a daily basis, eight inch block is 40  
7 pounds.

8           I was able to bring enough copies  
9 of the presentation for each of you, but I was  
10 not able to bring enough blocks for each of  
11 you. So, in order to have you get a sense of  
12 what the mason has to face everyday and I know  
13 a lot of you that have handled this yourself,  
14 the mason has to handle, this is an eight inch  
15 block, this is the little one.

16           So, I'd like you to pass that  
17 around and just get a sense of both the feel  
18 of the block and the weight of the block.  
19 Then after you move it along a little bit --

20           MR. THIBODEAUX: You're assuming  
21 I'm strong enough to lift it.

22           MR. CARNEY: Yes. After you move  
23 it along a little bit, just put the glove on.

24           Now let me show you just before you pass it

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1 on, let me show you the proper way to --

2 MR. KAVICKY: If I hurt my back who  
3 do I --

4 MR. CARNEY: You lift it by the  
5 web. So, and if you don't want to lift it by  
6 the web that's fine. But, the point of the  
7 demonstration is lift it by hand and then lift  
8 it with the glove, you will feel a difference  
9 between lifting with the hand and lifting with  
10 the glove and I'm going to come back to that  
11 because that contributes to injuries.

12 The second thing that the masons  
13 deal with is rebar.

14 MR. ZARLETTI: We get the idea, you  
15 don't have to do this.

16 MR. CARNEY: The other thing that  
17 they deal with is rebar. Now this is one of  
18 these rebars known as little bar, not used in  
19 nearly as much as number five bar. If you  
20 were handling a 16 foot rebar, number four,  
21 this would only be 10, 11 pounds, but you're  
22 dealing with it at the, usually at the end of  
23 the bar as opposed to the middle.

24 Now when I showed you a slide about

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1       bodily reaction, that's fairly key.    It's a  
2       simple sort of thing, you go up and you say to  
3       your helper, go get a rebar.    And most of us  
4       are at an age where we remember pick up sticks  
5       right?

6                        So the forklift loads it, and dumps  
7       it into the lay down area and we have a pile  
8       of rebar similar to what we see.    You send  
9       your helper to get one, he goes over and he  
10      picks up the top one.    But, and again, I'll  
11      send this for tactical reasons, the ribbing,  
12      the ribbing catches and what he thinks he's  
13      doing is pulling out a rebar very simply and  
14      it doesn't move.

15                      And you've got a strong pull on the  
16      muscles and now, I'm exerting not -- I'm not  
17      picking up a 16 pound object, I'm dealing with  
18      an extremely strong resistance to that object.

19      Again, just to get the feel because a lot of  
20      the injuries will come off rebar.

21                      And when you hold it, you can pass  
22      that around, the concrete is -- cement is 94  
23      pounds and if you're not dealing with  
24      aggregate --

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1 MR. BUCHET: Let's go Frank.

2 MR. CARNEY: -- delivery and handle  
3 by wheelbarrow, you're dealing in 50 to 100  
4 pounds. So, now if you need to understand  
5 that, Frank, what rebar is, we can talk later.

6 MR. MIGLIACCIO: I'm not sure what  
7 it is, I just like it.

8 MR. CARNEY: So the issues that I  
9 want to talk today are splice overlap, working  
10 around rebar, repetitive motions and lifting  
11 because this is what costs the industry money.

12 The type of movements, and again,  
13 these are not necessarily restricted to just  
14 those of masons, the type of movements are the  
15 bending and the stretching, lifting and  
16 pushing heavy weight, twisting and working in  
17 awkward positions.

18 And that affects the carpenters, it  
19 affects the air conditioning folks, it affects  
20 the plumbers, but gripping and pinching and  
21 that's why when I pass the block the glove's  
22 important because it takes more pinching power  
23 if you're using a glove, significantly.

24 The physical positions are measured

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1 by OSHA in terms of positioning hands above  
2 the head, elbows above the shoulders, a back  
3 bent by more than 30 degrees. So if you're  
4 talking about a mason picking up a block, or a  
5 carpenter picking up lumber, and it's usually  
6 time and intensity related. The same thing  
7 with the neck bending, kneeling and squatting  
8 and pinching.

9           It's an amazingly light amount  
10 before you begin to get an impact pinching two  
11 pounds of weight, we have a 40 pound block.  
12 If that had been 12 inch block, it would have  
13 been 55 to 60 pounds. Gripping 10 pounds and  
14 lifting heavy objects, 75 pounds once a day,  
15 and that generally comes out of the nursing  
16 industry, a 55 block, 55 pounds more than ten  
17 times a day.

18           While most companies would go broke  
19 if a mason only did 12 inch block, 10 block a  
20 day, 25 pounds above the shoulders and below  
21 the knees and that's where the masons work is  
22 above the shoulders and below the knees in  
23 many cases.

24           So, again, if they're limited to 25

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1 pounds not a lot of money to be made. Lack of  
2 muscle warm-up and I know you see this on the  
3 construction sites that you're on. What  
4 happens with the worker? He drives up in his  
5 pickup right, jumps out and I was talking with  
6 the roofing, grabs a bundle of shingles,  
7 throws them on his shoulder and he runs up the  
8 ladder.

9           Masons have been sitting in their  
10 truck waiting for work to start, jump out of  
11 their truck and stage block. Immediately  
12 start lifting heavy objects. No warm-up. On  
13 a morning like this morning, you're staging  
14 your materials.

15           Think about the NFL games the other  
16 day, what would have happened if those guys  
17 had to play with no warm-up? What would the  
18 injury rate have been in the football games?  
19 Athletes spend a lot of time warming up.

20           And I know, at least one company  
21 has imposed a five minute warm-up period  
22 before the start of work. Five minute warm-up  
23 period after lunch. That's a fairly forward-  
24 looking sort of thing. It sounds silly, it --

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1 masons are a pretty macho bunch as are  
2 construction. Why do we need to warm up?  
3 We're young studs.

4 But you don't find many at 55, 60,  
5 65 still lifting block. They've long since --  
6 it's a young person's game, much like sports  
7 is a young person's game, but they don't make  
8 23 million a year because they have a short  
9 life work expectancy.

10 In a typical mason's work day, if  
11 he were able to lay 200 block a day and most  
12 of them don't, I think the standard up in  
13 Chicago was 150 that they would like to get  
14 to, most of them are lifting in the range of  
15 130, you'd be lifting over five tons a day.

16 We don't think much of it at 40  
17 pounds a lift, but when you're at the end of  
18 the day, you've lifted five tons or more. If  
19 you do your own staging, you're closer to 16  
20 tons that you lift. At five tons, that's more  
21 than an NFL lineman works, lifts when he is in  
22 full preparation to the season.

23 Other issues have to do with splice  
24 overlap. Now certainly, there is a structural

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1 piece to the splice overlap and my attempt  
2 today is not to address that, it's just the  
3 physical side.

4 But on the structural side, if you  
5 don't get a correct splice overlap, you have  
6 insufficient length, you can have longer but  
7 not shorter splices, and inadequate splice  
8 lengths lead to structural failure.

9 Most of the splice overlaps are  
10 eyeballed. Very seldomly you see them  
11 kneeling and doing the measuring are as they  
12 are in the left hand picture. So you affect  
13 the tensile strength, which then leads to over  
14 design needs in order to compensate for the  
15 expectation that you might short the overall  
16 splice.

17 That's certainly a significant  
18 issue in California where preventive seismic  
19 concerns are. Splicing is very manpower  
20 intensive and it takes two hands, usually has  
21 a helper. And then we get into the injury  
22 rate.

23 Splicing is usually accomplished  
24 with either a tie wire, you take the tie wire

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1 and you bring it around the bar and many of  
2 you have seen it, and you use a twister, a tie  
3 twister and you have the wrist action, or you  
4 have a reel of wire and you're twisting your  
5 pliers.

6 And the studies that have been done  
7 and they're NIOSH studies and they measure the  
8 mean velocity of the wrist in all planes.  
9 When you're twisting, you are way outside of  
10 the velocity rate for wrist safety.

11 The reason I asked that you grip  
12 the rebar, is gripping the hand action, again,  
13 is hand injury. When you get into tying above  
14 the waist or stooping and mending you're into  
15 the other musculoskeletal.

16 When you work with rebar, I think  
17 the upper left-hand picture is not an atypical  
18 work site. I go to lots of work sites and  
19 photograph the ones that I can when I'm there.

20 Now you notice that your -- the bar cap, the  
21 caps aren't there so they're already in  
22 violation.

23 But a lot of the job sites are like  
24 that. Twenty-seven percent of the non-fatal

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1 injuries come from slip, trips and falls in  
2 that area. The interesting thing is  
3 particularly as we work with more seismic  
4 related areas, eight percent of the non-fatal  
5 injuries are to eyes.

6 When you think about rebar set at  
7 four foot on center, you've got a little bit  
8 of work room. When you put them at -- in  
9 every other cell, you're really getting your  
10 face right into the bar as you approach the  
11 end of the bar.

12 Poking and apparel snagging are 12  
13 percent of the non-fatality injuries. What's  
14 not counted there, because it gets counted in  
15 another category is the human body reaction  
16 when you snag your clothing or you poke  
17 yourself and you jump back or you pull back,  
18 which may lead to a slip, trip or fall.

19 So, you're naturally going to react  
20 to the snagging and the minor scrapes, cuts  
21 and abrasions, which everybody deals with,  
22 represent over 10 percent. And most of the  
23 minor cuts, scraps and abrasions as you all  
24 know, never get reported. They're not

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1 considered injuries that you would tell your  
2 boss about.

3 In looking at the repetitive  
4 motion, I mentioned the hand and the plane and  
5 the middle left-hand side is the gripping and  
6 squeezing with a glove. It takes  
7 significantly more force, even though the  
8 gloves protect the hands from other sorts of  
9 interference with materials.

10 But the gripping and the twisting  
11 all lead to injuries. The hands represent  
12 about 13 percent of the masonry lost time  
13 injuries. When you get into the lifting, you  
14 get into the lifting sequence where your  
15 muscles stretch, tighten, compress then you  
16 get it at the rotator cuff and the upper arm  
17 strength.

18 So I want to look at this same  
19 slide from a muscle group. The ligaments, the  
20 back ligaments, the disc, herniated disc, the  
21 back and peck area, this just shows the back  
22 side of the muscle group that is most prone.

23 The rotator cuff area while you're  
24 holding block at an angle above your head with

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1 elbows above hands and above shoulders and the  
2 upper arm when you are holding block fully  
3 extended.

4 So the lifting cycle, you start  
5 with stretching, you start with twisting and  
6 we start with something that didn't translate  
7 from 2007 to 2003, tightening and compressing  
8 and stretching. But I believe it printed out  
9 correctly on your slides.

10 Twenty percent of them are back  
11 injuries and the upper arm is 27 percent. So  
12 what are we to do about that? One of the  
13 things is to look at the masonry culture.  
14 This is not uncommon throughout the industry,  
15 24.5 percent of all masons are self-employed,  
16 25 percent have 10 or fewer employees and 39  
17 percent have fewer than 20 employees.

18 We are in the small business arena.  
19 Some of those self employed do have  
20 employees, so you can't exactly add those  
21 numbers up, but we're in the range of 60 to 70  
22 percent based on reported data and of course,  
23 a lot of the small businesses don't report.

24 But, we're dealing with the one

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1 person, truck syndrome that we've talked about  
2 in several of the workgroups already. It's  
3 not out of line with the rest of the industry.

4 The rest of the industry is almost 65 percent  
5 have five or fewer employees, 26 percent have  
6 five to 10 employees industry wide.

7 So as OSHA is dealing with safety  
8 issues, if they don't get down to these small  
9 companies, it's very hard to reduce the injury  
10 rate. Within the industry, work practices are  
11 learned on the job, although there are some  
12 formal training.

13 It's always been that way as the  
14 norm, and when it comes to bidding, innovation  
15 is risky. And injury is part of the job, it's  
16 all in a day's business. The unsafe work  
17 practices get accepted as the norm and passed  
18 on.

19 So, we think about this in  
20 practice, if we don't get to leaders of the  
21 small organizations and get them safety  
22 oriented, their tradesmen will learn their  
23 skills.

24 I think about it in terms of

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1 sanitation, they used to do a lot in the  
2 sanitation area. It's great to give a lecture  
3 on sanitation, and then the chef comes in to  
4 taste the soup and he tastes it with the ladle  
5 and puts the ladle back in the soup. All  
6 training is lost.

7           When the boss comes on the work  
8 site and he walks past a safety problem and  
9 asks the worker about how the production rate  
10 is going, all safety lectures are lost because  
11 the boss just walked past a safety hazard and  
12 didn't make it be corrected on the spot.

13           So, leadership of organizations,  
14 even if it's a two person organization, cannot  
15 ignore the safety issue because the tradesmen  
16 learn from their boss or their mentor.

17           Within the masonry industry, a lot  
18 of the injuries are not reported. And as we  
19 change the ethnicity and the diversity, it  
20 becomes more of an issue. You don't want to  
21 be labeled accident prone. Real masons don't  
22 get hurt.

23           And if you get hurt on the job and  
24 it's a musculoskeletal, maybe it's not the

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1 result of today's job, but a year ago's job or  
2 two years ago job. And it just happened to  
3 get caught and reported on this job.

4 There are a lot of times, there are  
5 economic incentives in the contracts for days  
6 injury free, well, you certainly don't want to  
7 report an injury and if you're a two or three  
8 man shop, you want to get your economic  
9 incentive.

10 And there's also some concern in  
11 reporting that if you report the injury you  
12 get your head above the grass and your  
13 immigration status and employment status might  
14 be challenged. And as Marty mentioned, that  
15 multiples often decrease slower than the  
16 rising cost of insurance.

17 Within the small business and  
18 masonry culture, it's highly competitive and  
19 there are very few barriers to entry. And  
20 maybe there should be. There was some talk in  
21 the workgroup about how does one get a  
22 license, maybe it's in the licensing area or  
23 the permitting area or the design area, but  
24 there is no barrier.

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1           If you can afford a pickup truck,  
2 you can get into the masonry business just by  
3 going and getting your business license, and  
4 in our state it's \$50 and you're in business.

5           Often times, the masons are  
6 concerned about carrying other masons on their  
7 payroll, get them all trained up, treating  
8 them like an apprentice, giving them great  
9 skills because as soon as they get skills they  
10 break away and become one of the 24.5 percent  
11 self employed, they know all the customers,  
12 they know all jobs and they immediately go and  
13 bid their former employers jobs.

14           Because typically, like most  
15 construction crews, you staff up for the task  
16 at hand and you lay off. Only the big  
17 companies have the ability to carry the  
18 overhead of slack work, where you can redirect  
19 your employees to either training or other  
20 functions within the workplace.

21           When it comes to bidding, you don't  
22 want to bid innovation if it might cost you  
23 more because you don't know that everyone else  
24 is. So if you go out on a limb, you can get

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1 underbid. Most of the self-employed and small  
2 firms are multi-task. They work on the job  
3 site today, tonight they go home and work on  
4 the books, they work on their reports.

5 And as most of you know, small  
6 businesses struggle to make payroll, they  
7 struggle to get their taxes filed on time,  
8 they struggle to make administrative reports,  
9 and if they have to go back home and do a  
10 hazard analysis where they need to get on a  
11 Web site to Google around and find safe  
12 practices and innovations, not likely to do  
13 that. Six-pack abs have a different meaning  
14 in the industry.

15 They also have limited budgets for  
16 training. And one of the areas that again you  
17 all may affect is safety and fines and  
18 penalties for a violation are frequently  
19 smaller than the penalty for delay of product  
20 delivery.

21 So if you hold up the construction  
22 site because you want to be more safe and you  
23 have to pay a delay penalty or assess the  
24 delay penalty, that may be a better risk.

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1           In looking at some of the open  
2 literature, Ohio had a very good guidance for  
3 safe work environment. And I think if any of  
4 us were to sit down and write a plan, it would  
5 look a little bit like that. Real change  
6 starts at the top.

7           We need to develop good company  
8 rules, we need to get all the supervisors and  
9 safety coordinators and employees together,  
10 get their input, get their buy-in then we need  
11 to train all the employees, we need to develop  
12 and implement written safety plans.

13           I think almost any organization you  
14 go to, you'd find this guidance, it's good  
15 guidance on how to develop a safety program.  
16 But 24.5 percent of all masons are self-  
17 employed. Another, or 24.5, 25 percent have  
18 10 or fewer employees and 39 percent have 20  
19 or fewer employees.

20           How often have you seen a one to  
21 five person company have a written plan that  
22 they review with their employees. We need to  
23 get it down to where it's pragmatic for safety  
24 to be a practice.

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1           There have been some industry  
2 efforts, I have mentioned that innovations are  
3 coming a lot faster.       The adjustable  
4 scaffolding really does a lot to put you in  
5 the optimal lifting range.    The optimal  
6 lifting range, as you know, is between your  
7 knees and your pecks.

8           One, you get higher productivity  
9 out of that range, you also get fewer  
10 injuries.   It's a capital cost.   It's more  
11 expensive than standard scaffolding.

12           The industry has come up with A and  
13 H block, open end CMUs to address lifting over  
14 rebar.   Lightweight CMUs, ultra light block  
15 have come along arrogated, concrete block and  
16 two person lift teams that several states have  
17 imposed, particularly the State of Washington.

18           And then this is where the  
19 parochial thing can come in, there's another  
20 new product called the BarTarget and we have -  
21 - I can talk to that about later.

22           The interesting thing about the  
23 lower right-hand picture is women constitute  
24 only 1.6 percent of the masonry workforce.   A

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1 lot of it has to do with the lifting weights.

2 I believe it's three of the last four years  
3 women have won the Spec Mix 500 Bricklaying  
4 Contest, they are good masons, they handle  
5 brick extremely well, they've been sort of  
6 kept out of the block business because of the  
7 weight.

8 And most of the 1.6 women in the  
9 masonry workforce are in the block -- or in  
10 the brick world. If you don't have to lift  
11 over your shoulders, you open a whole new  
12 workforce.

13 And those of you who look at the  
14 masonry workforce and you see it also in your  
15 workforces and the other trades, we're an  
16 aging workforce. As we age out and get into  
17 the 50's and 60's, we've got to find new  
18 sources of employees.

19 This is just a quick commercial on  
20 how to build a wall without rebar. You put it  
21 in, you build the wall, that's the mason's  
22 view then you insert rebar like that, that's  
23 the inside view. Then you can pour your grout  
24 and continue to build on. And I can talk with

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1 anyone who's interested later about that.

2           What we've found, and I opened with  
3 is that adaptation of innovation has been  
4 slow. "We've always done it that way"  
5 culture, the cost of innovation usually rests  
6 with the masons and that's a cost barrier to  
7 buy-in to something like scaffolding that's  
8 adjustable.

9           There's a lack of confidence that  
10 there will in fact be the productivity gains  
11 that are claimed. And if you're not sure  
12 anybody else is using the new stuff, you're  
13 not going to use it.

14           There was a study done by Dr.  
15 Jennifer Hess at the University of Oregon that  
16 thought that one-third of the workforce must  
17 adopt a new practice before it begins to take  
18 hold in the industry. That's a lot in any  
19 industry to take one-third of your industry.

20           And there's little -- most of the  
21 small companies have limited time to invest in  
22 learning new practices. So the reliance is on  
23 engineers to drive and architects to drive  
24 from the spec top down. It's too hard to push

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1 from the bottom up.

2 I got a call the other day from a  
3 guy who wanted some help. He said, I can't  
4 pour grout until the inspector look at my  
5 joints, my lap joints to see how I've tied  
6 them. What can you do to help me to get where  
7 I can pour before he gets here.

8 I said, I'm not sure I understand  
9 the problem. There should be no fear of  
10 looking at your lap splices before you pour.  
11 And good on that inspector because the lap  
12 splice length is important.

13 But he sat down with his engineers  
14 and his inspectors and his architects and  
15 after several hours, they came to some  
16 agreements, but it took time that he wasn't  
17 out with his crew. Change pushed from the  
18 bottom up is hard.

19 So in summary, from the masonry  
20 trade perspective, the multiple  
21 musculoskeletal disorders, the lifting, the  
22 repetitive motion and lifting over rebar are  
23 the dangers they face.

24 It's hard work, never going to

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1 eliminate physical stress, but we can  
2 significantly reduce it. And if it's true  
3 that our -- in our industry that people are  
4 our most valuable resource and in other  
5 construction industry, then we shouldn't  
6 expose them to the risk.

7 It really impacts masonry  
8 recruiting because I can go to McDonald's for  
9 almost the same price as I can become a  
10 masonry helper and ask if you want fries with  
11 this and not expose myself. So it's a  
12 recruiting problem as well when the injury  
13 rates are up.

14 We can take time to warm up. The  
15 youngsters are used to warming up for sports,  
16 why not let them warm-up for work. And then I  
17 believe that the real process is to drive  
18 safety adaptation from the top down by the  
19 industry leaders.

20 If we're going to get to the small  
21 companies, we need to institutionalize and  
22 reward and have the big firms, the A&E firms  
23 to spec safety or work enhancing products as  
24 part of their design and build safety into the

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1 design when we license and permit, require  
2 safety to be part of the qualifications for  
3 being in the industry.

4 With that, I thank you very much.  
5 I have added at the end, the references  
6 because I rely heavily on the Bureau of Labor  
7 Statistics, their open database is wonderful,  
8 which you all know, NIOSH reports and then  
9 some of the others.

10 I did not do it in an academic  
11 bibliography type list, but I did want to get  
12 credit to where I had draw. Thank you for the  
13 opportunity to present, I'll answer questions.

14 MR. SMITH: Thank you. Very  
15 informative. Yes, Dan.

16 MR. MURPHY: In your -- Dan Murphy  
17 with Zurich. In your analysis, you had 10 or  
18 fewer or 20 or fewer employees and that was a  
19 large percentage of the workforce. Was there  
20 any difference in the makeup of that  
21 workforce? Was there more, for example,  
22 Hispanics in 10 or less or did you look at  
23 that?

24 MR. CARNEY: We did not do a heavy

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1 analysis of that, but you're seeing the  
2 Hispanic workforce all the way through. But  
3 the small companies are very oriented that  
4 way.

5 MR. MURPHY: Okay. Thank you.

6 MR. CARNEY: A lot of the small  
7 companies are multi-culturally diverse.

8 MR. SMITH: Dan?

9 MR. ZARLETTI: Well, I would be the  
10 first to tell you that I'm the new guy on the  
11 block here so I'm a little bit confused as to  
12 the intent here. I didn't hear you ask the --  
13 this committee anything to consider doing  
14 toward the assistance of your concerns in your  
15 presentation.

16 So, you didn't really drop the  
17 sales shoe. I'm still waiting for the -- I  
18 got the pitch, I just didn't hear if I want to  
19 buy it.

20 MR. CARNEY: Well I think there are  
21 two things from the industry. One,  
22 musculoskeletal disorders and cumulative  
23 trauma disorders aren't the jazzy thing.  
24 They're there every day. And I believe that

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1 often they get short shifted because of that.

2 It takes a lot of work to get  
3 marginal decreases in this area. And as you  
4 do your funded research, as you do your safety  
5 training, I think musculoskeletal disorders  
6 and bodily cumulative traumas warrant the same  
7 type of emphasis as fall fatality, arrest  
8 protection.

9 So my request to the committee  
10 would be, don't relegate that off and say this  
11 is too hard, this is world hunger. I think  
12 you need to keep the emphasis on the kinds of  
13 things that are trades based every day and not  
14 relegate that to a less important.

15 MR. ZARLETTI: Well, I would agree  
16 with that --

17 MR. CARNEY: I think that's one  
18 request. The second request I believe is for  
19 the ACCSH and the construction directorate to  
20 champion the specifying of safety products,  
21 work enhancement products that take less of  
22 the strain from the body.

23 And I think it can only be driven  
24 from the top down from an organization such as

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1 this. The local A&E's aren't going to do it.

2 MR. SMITH: Tom? Thomas?

3 MR. KAVICKY: Tom Kavicky with the  
4 Carpenters Union. I guess I would ask the  
5 question as how would you rather than, you  
6 know, we all know the exposures, we all know  
7 the MSDs, we've got the iron workers tying  
8 their rebar, we've got the carpenters working  
9 on form work things like that, the masons  
10 doing their thing.

11 I guess more importantly is, how  
12 would you build a wall without the protruding  
13 rebar, without the lifting, without the  
14 snagging? I would almost expect a new way of  
15 doing the job rather than, you know, what we  
16 already know.

17 MR. CARNEY: Within the masonry  
18 world, there is that capability to have less  
19 exposure. There are a number of ways to  
20 achieve the splicing, there are a number of  
21 ways to achieve the reduced lifting. And  
22 those often are left to choice.

23 There are ways to use delivery  
24 systems at the cost of the bid. I think those

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1 kinds of things could be specified. Grout  
2 handling systems, mechanical delivery systems.

3 Those do not get left to the bidding  
4 contractor as their choice of handling.

5 You have the same thing in the  
6 carpentry industry in terms of material  
7 handling. If safe handling practices were  
8 allowable costs and encourage supported cost,  
9 they would become the cost of the product.

10 And I think those are things that  
11 in the project proposal, the management plan,  
12 the safety plan, those can be required. And  
13 then everybody bids to use that equipment.

14 MR. SMITH: Okay. Steve?

15 MR. HAWKINS: Mr. Chairman, I think  
16 the answer to Dan's question is we're being  
17 requested to consider an ergonomic standard  
18 for the masonry trades, is that correct?

19 MR. CARNEY: I think an ergonomic  
20 standard would be a good thing to have. But  
21 ergonomics is not -- doesn't always play well  
22 in its pundit support.

23 MR. SMITH: Okay. Dan?

24 MR. ZARLETTI: If I might. I

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1 watched your slide presentation and you were  
2 showing slides that you were explaining to be  
3 non-compliant. You know, rebar's not -- rebar  
4 not covered, housekeeping not right.

5 So I'm looking at this and saying  
6 that most jobs are understaffed, non-compliant  
7 and they're under reporting injuries to stay  
8 above the watermark and I'm wondering if  
9 you're asking the folks at OSHA here to come  
10 up with the ergonomic standard or to look  
11 away?

12 MR. CARNEY: No, I did not intend  
13 to imply that most jobs are non-compliant and  
14 under standards. I believe what I was trying  
15 to say is that the nature of this industry and  
16 not necessarily in isolation of this industry  
17 is that the day to day grind on the body,  
18 there are ways to minimize that and we should  
19 do that.

20 Certainly the picture I showed of  
21 the rebar not being capped, I would hope is  
22 the exception as opposed to the rule. I would  
23 hope that a compliance officer would catch  
24 that, I would hope that a foreman would catch

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1 that or a lead mason would catch that.

2 My intent was not to imply that all  
3 work sites are unsafe and you ought to -- OSHA  
4 ought to look away. What I was trying to  
5 suggest is that there are practices that exist  
6 in goods and they exist well, generally in  
7 large firms who really focus on this have the  
8 safety officers, have the site reviews, bring  
9 inspectors onsite.

10 But you're only touching the tip of  
11 the manpower. You're certainly hitting the  
12 most of the dollars. That's where the big  
13 money is and maybe the little guy doesn't --  
14 may not be able to afford a fine. And if he  
15 gets fined, he closes and opens under another  
16 name, I don't know.

17 But, when you look at the numbers  
18 of people, they're in the little industries.  
19 And we need to do something to encourage them  
20 to be as compliant as the big industries who  
21 have time to develop programs. It may be the  
22 GC that develops the programs.

23 MR. WITT: Let me ask a follow-up  
24 question. Since one of the principal roles of

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1 this advisory committee is to make  
2 recommendations and to advise the Assistant  
3 Secretary in the area of construction in this  
4 country, what advice do you believe this  
5 committee should consider making to the  
6 Assistant Secretary in the area of masonry  
7 construction?

8 MR. CARNEY: The advice that I  
9 would suggest is where based, proven ergonomic  
10 factors can reduce the exposure to lost time  
11 injuries and illnesses that those be a  
12 requirement in design and construction  
13 planning.

14 And that small industries have some  
15 established injury requirement, whether it's  
16 in the licensing process where -- to enter the  
17 industry, you may have an OSHA training course  
18 that they should go through and maintain an  
19 awareness, just to be a qualified contractor  
20 or a qualified tradesman.

21 MR. SMITH: Okay. With that, we  
22 will thank you for your time being here with  
23 us and for your presentation.

24 And we're going to take a 10 minute

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1 break and let's try to keep it to 10 minutes  
2 if we can, come right back and we'll have  
3 another -- discuss the PortaCount issue.

4 (Whereupon, the foregoing matter went off the  
5 record at 10:03 a.m. and went back  
6 on the record at 10:19 a.m.)

7 MR. SMITH: Could we get your  
8 attention in the back of the room please, so  
9 we can start? In the back of the room.  
10 Thanks. Thank you very much. Okay. We're  
11 going to talk about the PortaCount issue.  
12 Would those folks come forward?

13 And also, the sign-up sheet in the  
14 back, if any of you publically want to make a  
15 comment. I didn't see the names on it. If  
16 anyone has signed it, please let us know. Or  
17 if anyone wishes to be heard, now's the time  
18 to sign up.

19 Thank you very much. Do you want  
20 to preface this, Steve?

21 MR. WITT: There was a presentation  
22 yesterday by John Steelneck on PortaCount.  
23 You have copies of the transcript language  
24 from last October's meeting related to this

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1 issue and you have a copy of the Federal  
2 Register Notice.

3 I'll ask John Steelneck and Bob  
4 Biersmer from the Solicitors office to take a  
5 couple minutes just to summarize the issues  
6 and what we like from the committee are any  
7 recommendations, any suggestions and a  
8 reaction to the Federal Register Notice and  
9 then get a sense of the committee on this  
10 issue as we move forward. John?

11 MR. BIERSMER: Can I introduce  
12 myself first?

13 MR. WITT: Sure.

14 MR. BIERSMER: I'm Robert Biersmer,  
15 B-I-E-R-S-M-E-R and I'm the project attorney  
16 for this PortaCount effort.

17 MR. STEELNECK: Good morning. I'm  
18 John Steelneck, I'm the project officer on  
19 OSHA's respirators team. I gave the  
20 presentation yesterday on the two new -- two  
21 proposed revised PortaCount fit test  
22 protocols.

23 What these are, are two new  
24 protocols that TSI, Incorporated, the

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1 manufacturer of the PortaCount fit test  
2 instrument has requested that OSHA consider  
3 for adding to the existing PortaCount test  
4 protocol that's already part of the OSHA  
5 respirator standard.

6 We have in Appendix A of our  
7 respirator standard, mandatory OSHA approved  
8 fit test protocols that have been evaluated  
9 and validated. And those are the ones that  
10 employers and respirator wearers need to  
11 follow when they perform respirator fit  
12 testing.

13 For new fit testing protocols there  
14 is a procedure and a standard to allow for  
15 Section 6.b.7 notice and comment rule making  
16 for adding new fit test protocols.

17 We really intended it for totally  
18 new unique ways of doing it, but it's also  
19 been used to adopt new protocols or change --  
20 slight changes to existing protocols. It's  
21 already been done for the controlled negative  
22 pressure fit test.

23 We have what's called a CNP  
24 Controlled Negative Pressure REDON fit test,

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1 which is an alternative protocol that was  
2 proposed and we went through public comment  
3 and has been adopted and is now part of the  
4 OSHA standard.

5 We have a new Bitrex abbreviated  
6 fit test protocol that has been requested by  
7 the manufacturers 3M, the manufacturers of the  
8 Bitrex bit test protocol that we presented to  
9 the advisory committee back in October of 2006  
10 that is now currently out for public comment,  
11 with public comment due by February 25<sup>th</sup> of  
12 this year.

13 And we have now two new protocols  
14 for the TSI PortaCount that PortaCount has  
15 requested that we take a look at. They have  
16 done what is required, they have done a peer  
17 review, industrial hygiene article on the  
18 evaluation of three new fit test protocols for  
19 the PortaCount.

20 They've only requested that two of  
21 those protocols be included. We have protocol  
22 one, which is the one, the first protocol that  
23 I talked about and a second protocol performs  
24 very well, it meets all of the ANSI Z8810 fit

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1 test criteria for evaluating new fit test  
2 protocol.

3 It meets and exceeds all the  
4 minimum criteria for a new fit test. The  
5 first protocol, protocol number one has a  
6 problem in that for sensitivity it's 91  
7 percent when 95 is the minimum passing value.

8 That raises a question for us and  
9 we have included that question -- those  
10 questions as part of our public announcement,  
11 as part of the notice of proposal that will go  
12 that seeks public comment. We've raised that  
13 as a question and asked for public comment  
14 back on how that problem should be addressed  
15 and should we possibly reject.

16 You know, how should we look at  
17 this first protocol and see what it -- see  
18 whether why it doesn't meet the ANSI criteria.

19 That, in part it's because in doing these new  
20 types of protocols, they don't do an extensive  
21 amount of testing.

22 They do the minimum amount of  
23 testing that ANSI requires for their -- for  
24 doing the evaluations. But in the past, they

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1 have done much larger fit test protocols when  
2 we evaluated the original PortaCount, the  
3 original Bitrex and others. They were really  
4 10,000 samples and more, a lot more sampling.

5 In these cases, you're down to a  
6 much smaller numbers of tests that were done.

7 And the problem with that is it makes even  
8 one false positive very hard to overcome. It  
9 will kill your statistics when you do your  
10 evaluation, and that's what it's done for the  
11 protocol number one.

12 But we -- what we are proposing to  
13 do is to bring them here before the advisory  
14 committee and seek your comments and then we  
15 will do the clearance process within the  
16 Department of Labor to send it over to OMB  
17 once we have your approval to go ahead.

18 And that's what we're looking for  
19 is to have you evaluate it and give us your  
20 comments and tell us to proceed. And then we  
21 will proceed to go over to OMB, have their --  
22 them look at it before we publish it as a  
23 notice of proposed rule making to seek public  
24 comment in a similar fashion as to the way

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1 we've done with Bitrex.

2 And depending on what we get as  
3 public comments, will determine whether or not  
4 OSHA will ultimately either adopt or not adopt  
5 these protocols.

6 MR. SMITH: Thank you. Comments or  
7 questions from committee? Bob?

8 MR. KRUL: Bob Krul with the  
9 Roofers. And I will throw this out as a  
10 comment, not in the form of a motion, Mr.  
11 Chairman.

12 The first thing that strikes me  
13 about what's being asked of us is there's only  
14 a few of us sitting around the table I think  
15 to make what amounts to be a snap decision  
16 regarding these tests and protocols. I don't  
17 include myself in that group.

18 The memorandum that was given to us  
19 by Dorothy Dougherty, has in its key issue on  
20 the second page, the key issue to be addressed  
21 in this rule making is whether the proposed  
22 PortaCount fit testing protocols would  
23 identify poor respirator fits at least as well  
24 as the OSHA accepted quantitative fit testing

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1 protocols already listed in Part 1C of  
2 Appendix A to the Respiratory Protection  
3 Standard.

4 And I see two serious issues that I  
5 don't feel the majority of this committee  
6 could make a decision on without professional  
7 and expert help. One is the shortened testing  
8 period that's being requested in the protocol.

9 And two is the failure and borderline failure  
10 as was mentioned in two of these tests.

11 Now, my understanding is that when  
12 an issue is presented to ACCSH that the  
13 committee has at least 90 days and an  
14 extension through a written request of the  
15 Assistant Secretary if more time is needed to  
16 act on these matters.

17 And my suggestion right now would  
18 be, I would not put it in a formal motion  
19 until everybody has a chance to speak on this.

20 But my suggestion would be that those of us  
21 on a committee can consult with the experts at  
22 NIOSH, with the experts at the center.

23 I'm sure the state agency  
24 representatives have experts that could look

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1 at this NPR and bring it back to the next  
2 meeting where after at least reason discussion  
3 with experts and professionals, this committee  
4 could make a better decision as to what the  
5 recommendation could be regarding the NPR.

6 MR. SMITH: Thank you. Other  
7 comments? Kevin?

8 MR. BEAUREGARD: Yes, Kevin  
9 Beuregard, North Carolina Department of Labor.

10 I concur with what Robert said. Back in the  
11 document that we got that is dated October 11,  
12 2006, back then when a protocol was being  
13 considered there was one that had a 15 second  
14 time limit.

15 And some of the stakeholders that I  
16 represent had some concerns at that time, it  
17 wasn't enough time for the people that have a  
18 higher sensitivity to go through that test and  
19 perhaps find a problem.

20 And I think when you look at the  
21 revised PortaCount protocol one, which is 30  
22 seconds I believe, what you're seeing is  
23 you're seeing a failure in the sensitivity  
24 area at 30 seconds. You're not seeing that in

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1 the revised protocol number two.

2 And so I would say I still have  
3 concerns about that area and I think some of  
4 these statistics are kind of leaning towards  
5 that area as well. But there may be an issue  
6 with shortening the time even to 30 seconds.

7 MR. SMITH: Okay. Other comments  
8 and/or concerns? Yes, Dave.

9 MR. HAGGERTY: David Haggerty with  
10 the International Brotherhood of Boilermakers.

11 Kind of to echo what Kevin says. I also have  
12 a concern about shortening the time period.

13 We all know if you've done or been  
14 involved with respirator fit testing over a  
15 period of time, people who are doing that test  
16 and find ways to short cut this. We already  
17 shortened this up to 30 seconds, then what are  
18 -- what kind of test results are you going to  
19 get for those people who are wearing a  
20 respirator.

21 The other thing that I have a  
22 question about too after reviewing this is the  
23 fact, the people, the number of tests that  
24 they perform to come up with the stat is a

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1 concern of mine. I think that that should be  
2 a larger group that is tested before they --  
3 we actually look at these results.

4 I agree with Mr. Krul, I don't  
5 think we have some people on this committee  
6 who do have the expertise to review this data  
7 and to see if it is and give us a  
8 recommendation whether it is appropriate or  
9 not.

10 I think over, looking and reviewing  
11 this, overnight period is not enough time to  
12 review this.

13 MR. SMITH: Okay. Matt?

14 MR. GILLEN: Matt Gillen. I just  
15 would actually like to say that NIOSH has  
16 subject matter to just work on respirator  
17 issues, International Personal Protected  
18 Technology Lab. And I had a sidebar with John  
19 and he indicated that NIOSH is preparing some  
20 comments.

21 So I, you know, I would feel more  
22 comfortable hearing from our NIOSH folks  
23 before I took a position on this as well about  
24 the underlying technical issues.

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1 MR. SMITH: Okay. Tom?

2 MR. KAVICKY: Thank you Mr.  
3 Chairman. Tom Kavicky with the Carpenters. I  
4 have to agree with Bob and the rest of the  
5 committee that has spoken already. I went on  
6 record in October of 2006 saying that the 15  
7 seconds was too short.

8 I have done fit testing and  
9 sometimes they don't break the seal until 45  
10 seconds into it or longer. And I would feel  
11 much more confident with recommendations  
12 coming -- and studies done from NIOSH than I  
13 do right now. Thank you.

14 MR. SMITH: Okay. I think, we  
15 probably got a consensus that we don't feel  
16 qualified at this point to give you  
17 significant comments. I mean, you've heard  
18 some comments, but basically we're going to  
19 need some time to look at this and address it  
20 at our next meeting.

21 MR. BIERSMER: Bob Biersmer, I  
22 think that's fine. If you go ahead and during  
23 the interim period have people look at it that  
24 you want to look at it and come back to the

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1 next meeting prepared to give us your  
2 comments, we can do that. There's no problem.

3 MR. SMITH: Well, we'll be glad to  
4 and we'll certainly have that as an agenda  
5 item at the next meeting hopefully and be more  
6 prepared to give you information at that  
7 point.

8 I think in the future, we would  
9 request too that you, you know, maybe give us  
10 more time to look at areas if you could  
11 because we do need significant time to discuss  
12 this with our constituents, our stakeholders  
13 and talk to them about these issues and  
14 hopefully facilitate the purpose.

15 Can you give us a more of a sense  
16 of where the industry is?

17 MR. WITT: John, and you'll report  
18 back to the director or the sense of the  
19 committee on this issue?

20 MR. STEELNECK: Yes.

21 MR. WITT: Thank you.

22 MR. SMITH: Thank you very much.

23 MR. STEELNECK: Thank you.

24 MR. BIERSMER: Yes, thank you.

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1 MS. SHORTALL: John and Bob, will  
2 you be available during this interim period to  
3 answer questions from members of the committee  
4 about the proposal?

5 MR. STEELNECK: Yes.

6 MS. SHORTALL: Okay.

7 MR. BIERSMER: Please direct your  
8 questions to John on that subject matter --

9 (Laughter)

10 MS. SHORTALL: Well, I should have  
11 said John and Dr. Robert Biersmer, which is  
12 the fact.

13 MR. SMITH: Okay. Tom had a  
14 question.

15 MR. SHANAHAN: Tom Shanahan. I  
16 just had like a process question being the new  
17 guy. Is it because they've gotten this far  
18 with the whole thing, there's a draft of  
19 notice. I was just wondering, does it have to  
20 wait until then?

21 I mean can we have an assignment to  
22 get this done within a month and -- because  
23 I'd like to go to -- we have a long standing  
24 relationship with CNA insurance company and

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1 they have sense of IH department I just  
2 wondered if maybe we had to wait until the  
3 next meeting.

4 MS. SHORTALL: I need to answer  
5 that. Probably the most important purpose  
6 that ACCSH serves and established in the  
7 construction safety act many years ago was  
8 that this committee before OSHA can publish a  
9 proposed rule affecting the construction  
10 industry, has to come before this body and  
11 present it and allow you an opportunity to  
12 give your recommendations on that.

13 You'll notice in other proposals  
14 that we've done, there's always a section in  
15 the preamble that explains how did ACCSH  
16 react, what kind of recommendations they have,  
17 maybe additional questions they might want to  
18 have asked.

19 So that is your single most  
20 important purpose. Not only does a Federal  
21 Advisory Committee act, but also the  
22 regulations governing this particular body  
23 requires that meetings be on the record.

24 And so, even if we were to do

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1 something away from this meeting, it would  
2 have to be transcribed, minutes would have to  
3 be drawn up, it would have to be made  
4 available for the public to come listen, which  
5 is a requirement of the Federal Advisory  
6 Committee Act.

7 So trying to do all of that by a  
8 phone system would be almost impossible. So  
9 the reality is, you really almost have to do  
10 it in person. Okay.

11 MR. BEAUREGARD: Linwood I have --

12 MR. SMITH: Okay.

13 MR. BEAUREGARD: -- I just have one  
14 question and I promise that will be it.

15 (Laughter)

16 MR. BEAUREGARD: We got the memo  
17 from the directorate, we have a draft document  
18 that says do not say or quote so I'm assuming  
19 that you don't want us to disseminate that to  
20 folks as well. Do we have a copy of the study  
21 that this is based on or the draft references  
22 a journal article.

23 But I'm not a respirator expert,  
24 but I'm assuming when I bring these back to my

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1 people, they're going to want to take a look  
2 at some information of how you arrived at  
3 these numbers.

4 MR. STEELNECK: Well, if you need  
5 the article, I have copies.

6 MR. BEAUREGARD: So John, you will  
7 make copies available to the members of the  
8 committee.

9 MR. WITT: Ok, I'd like to ask --

10 MR. STEELNECK: We'll make copies  
11 and try and have that to the members before we  
12 leave this meeting.

13 MR. WITT: Thank you.

14 MR. SMITH: Okay. Good. Thank  
15 you. Any other questions or comments?

16 MS. SHORTALL: I have one in  
17 response to Kevin Beauregard. Because the  
18 draft proposal was formally given to the  
19 committee during an open meeting, we have had  
20 to make arrangements to put it into the  
21 docket.

22 So technically, persons who would  
23 want to will be able to view that as well as  
24 the memo. We're not going to put the

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1 transcript in, or I'm not going to put the  
2 transcript in because all the transcript is,  
3 is a small segment of something that's already  
4 in an earlier ACCSH docket.

5 MR. SMITH: Thank you. Thank you  
6 very much for your time and effort. We  
7 appreciate it. We look forward to seeing you  
8 next meeting.

9 (Laughter)

10 MR. STEELNECK: Thank you.

11 MR. KRUL: Mr. Chairman?

12 MR. SMITH: Yes, Robert.

13 MR. KRUL: Just for purposes of the  
14 minutes, would you like the tabling of this  
15 until the next committee as an official  
16 motion?

17 MR. SMITH: Yes, sir. It sounds  
18 good.

19 MR. KRUL: I would so move that we  
20 table this with the members of the committee  
21 using their own resources to get insight and  
22 input from experts and professionals on this  
23 and have it as an agenda item at the next  
24 meeting.

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1 My only question to Steve is, that  
2 the proposed meeting date may go beyond 90  
3 days does that -- or to Sarah, does that pose  
4 a problem?

5 MS. SHORTALL: There is no  
6 requirement that says that you must have 90  
7 days or anything like that.

8 MR. KRUL: Oh, okay.

9 MS. SHORTALL: That may have just  
10 been -- historically what has happened, you  
11 just must be given the opportunity to get a  
12 proposed rule to supporting information  
13 regarding that, that would give you enough  
14 knowledge to make a recommendation and during  
15 the course of a meeting, be allowed to make  
16 that recommendation.

17 MR. KRUL: Okay. I so move Mr.  
18 Chairman.

19 MR. HAGGERTY: Second.

20 PARTICIPANT: Second.

21 MR. SMITH: Motion and seconded.

22 Any more discussion? I've read this in the  
23 book, I was going to read it to you if I could  
24 find it. About the 90 days.

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1 MS. SHORTALL: Oh, well then I'm  
2 wrong.

3 MR. SMITH: Ninety days is in the  
4 book, I believe.

5 MS. SHORTALL: Well, I guess  
6 another thing you can say is since you haven't  
7 received -- since you haven't at this point  
8 received all the information necessary on  
9 which to base it, the 90 days has not began to  
10 run.

11 MR. KRUL: Super, thank you.

12 MR. SMITH: Thank you.

13 (Laughter)

14 MR. KAVICKY: That's an attorney's  
15 answer.

16 MR. SMITH: Okay. We have a motion  
17 and second. Thanks for saying that Bob. All  
18 in favor say aye.

19 PARTICIPANTS: Aye.

20 MR. SMITH: Thank you. All  
21 opposed?

22 (No response).

23 MR. SMITH: Motion carries. Okay.  
24 That -- I think commits to the agenda. We've

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1 got a couple of housekeeping items I think and  
2 any other comments that you all want to make.

3 MS. SHORTALL: I would like to at  
4 this time enter into the record for this  
5 meeting and into OSHA docket OSHA-2007-0082  
6 Exhibit number 0014, which is a presentation  
7 by the National Frame Building Association on  
8 Fall Protection for the Post-Frame  
9 Construction Industry.

10 And as Exhibit 0015, I would like  
11 to enter the Masonry Safety Presentation by  
12 Dave Carney from Stonemith Patented Systems,  
13 Incorporated.

14 MR. SMITH: Okay. And I need to  
15 ask one more time, anyone from the public sign  
16 up to speak? I don't see any hands so I'm  
17 going to assume they did not.

18 Okay. We have a few minutes, we're  
19 running early. I'm sorry.

20 MR. STEELNECK: Copies are coming.

21 MR. SMITH: Okay. Copies are  
22 coming. Anyone on the committee like to make  
23 a comment at this time or have a question or  
24 recommendation? Now's the time to speak.

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1           MR. BUCHET: I have one that I just  
2 wanted to ask, this may be more of a health  
3 thing, it's not really a recommendation I  
4 guess. Just personally I like to study, you  
5 know, prepare for things.

6           And I just wondered, and I realize  
7 the nature of the meeting this time was  
8 protracted because of all the other things  
9 going on, but I was wondering going in the  
10 future, if we could get things a little  
11 earlier and I would be happy to help.

12           If I just got the copy of it, I  
13 would be happy to distribute it out with, you  
14 know, use my staff or what because I know  
15 these guys are so busy. So anything that we  
16 could do, that I could do to help, I would  
17 love to do that to move it along.

18           MR. WITT: We note -- that's noted  
19 and we do intend to get things to the members  
20 as far in advance of a meeting as we're able,  
21 but we're dependent on the directives that are  
22 producing these documents and especially if  
23 we're relating to the presentation we just had  
24 in the Federal Register Notice. No, that's

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1 always our intention we intend to do that.

2 MR. BUCHET: Well if I could help -  
3 -

4 MR. WITT: Appreciate that, thank  
5 you Michael.

6 MR. SMITH: Thank you. Anyone  
7 else? Yes, sir Dan.

8 MR. ZARLETTI: I just had a  
9 question as to after we've bended around with  
10 these dates, have we come up with a number or  
11 a date on the next meeting?

12 MR. SMITH: Have we come up with a  
13 date yet?

14 PARTICIPANT: We are going to do  
15 that before we leave, you know.

16 MR. SMITH: Yes, we'll ask the --

17 MR. WITT: In fairness to Michael  
18 Buchet, we'll look at the dates first.

19 MR. SMITH: We'll look at the --

20 MR. BUCHET: Well, first you have  
21 to read the handwriting.

22 (Laughter)

23 MR. SMITH: Has everybody responded  
24 that's going to respond?

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1 MR. WITT: Please be pointing to me  
2 today, leave those dates with Mike.

3 MR. SMITH: Okay. We'll ask the  
4 directorate to get us that -- get us the  
5 meeting dates as soon as it's available so we  
6 can go ahead and book, nothing else books on  
7 top of it.

8 Okay. So we realize your  
9 schedules, that's the way it is today it might  
10 change. Thank you, good comments.

11 Any other questions about the  
12 order?

13 MR. MIGLIACCIO: Yes, the people  
14 sitting on the OTI subcommittee like to have,  
15 you know, a subcommittee meeting when we do  
16 plan this, when they come up with that date.  
17 And if we can, maybe Hank and them guys take,  
18 somebody from Hank's office we can maybe get  
19 that in here.

20 MR. SMITH: Yes, sir.

21 MR. BUCHET: Can we get requests  
22 like that emailed to us so that we can keep  
23 track of it?

24 MR. MIGLIACCIO: Yes, I just want

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1 to let everybody know here I was going to send  
2 you that, I'll make sure you get that.

3 MR. SMITH: Okay. Thank you. Anything  
4 else for our attention? If not we're going to  
5 call this meeting adjourned.

6 PARTICIPANT: I make a motion we  
7 adjourn.

8 PARTICIPANT: Second.

9 MR. BUCHET: Second.

10 MR. SMITH: Okay. I have it  
11 motioned and seconded we adjourn. All in  
12 favor stand up.

13 (Laughter)

14 (Whereupon, the foregoing matter was adjourned  
15 at 10:44 a.m.)

16

17

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