

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

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ADVISORY COMMITTEE ON CONSTRUCTION
SAFETY AND HEALTH

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MEETING

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THURSDAY, JULY 30, 2009

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The meeting convened at 8:30 a.m.
in Room N-3437 A-C of the Frances Perkins
Building, 200 Constitution Avenue, NW,
Washington, DC, Frank Migliaccio, Chair,
presiding.

EMPLOYEE REPRESENTATIVES:

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

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

EMMETT M. RUSSELL, Director,
Department of Safety & Health,
International Union of Operating
Engineers

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

EMPLOYER REPRESENTATIVES:

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

THOMAS R. SHANAHAN, Associate Executive
Director, National Roofing Contractors
Association (via teleconference)

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

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

STATE REPRESENTATIVES:

KEVIN D. BEAUREGARD, Assistant Deputy
Commissioner, Assistant Director,
Division of Occupational Safety &
Health, North Carolina Department of
Labor

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

PUBLIC REPRESENTATIVES:

THOMAS A. BRODERICK, Executive Director,
Construction Safety Council

JEWEL ELIZABETH ARIOTO, Elizabeth Arioto
Safety & Health Consulting Services

FEDERAL REPRESENTATIVE:

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

DOL STAFF PRESENT:

JORDAN BARAB, Deputy Assistant Secretary of
Labor for Occupational Safety and Health
and Acting Assistant Secretary

MICHAEL M.X. BUCHET, Project Officer, Office
of Construction Services, Directorate
of Construction, Alternate Designated
Federal Official

SARAH SHORTALL, ACCSH Counsel, Office of the
Solicitor

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

2 8:39 a.m.

3 CHAIR MIGLIACCIO: Good morning.

4 I'd like to welcome everybody to the hot city
5 of Washington, D.C. It is a little warm and
6 the humidity is up high.

7 Opening remarks, we'll do, and
8 then the agenda for this morning. We have the
9 construction update by Bill Parsons. We have
10 construction services/construction standards
11 and guidance updates by the Office of
12 Construction Services. And then we have work
13 group reports from education and training
14 (OTI) and silica.

15 Before I go any further, I'd like
16 to do a little housekeeping. Fire drills,
17 make sure, if the fire drill goes off, you use
18 the stairways, not the elevators. Shelter in
19 place is in this room and the restrooms are
20 right out the doors around to the right.
21 Women's right in the corner, men's just down
22 the hall a little ways. And to the left.

1 There's also restrooms to the left.

2 Cell phones, if you have them, if
3 you could either turn them off or put them on
4 vibrate, we'd appreciate it.

5 We'll do self-introductions at
6 this time. Start with Sarah to my left.

7 MS. SHORTFALL: Hi, I'm Sarah
8 Shortall. I'm ACCSH counsel from the Office
9 of the Solicitor here at Department of Labor.

10 MR. KAVICKY: Tom Kavicky, United
11 Brotherhood of Carpenters and Joiners of
12 America, employee representative of ACCSH.

13 MS. ARIOTO: Elizabeth Arioto,
14 Safety & Health Consulting Services, public
15 member ACCSH.

16 MR. AHAL: Bill Ahal, APS, St.
17 Louis, Missouri, representing AGC employers.

18 MR. RUSSELL: Emmett Russell with
19 Operating Engineers International Union,
20 representing employees.

21 MR. JONES: Walter Jones with the
22 Laborers Health & Safety Fund, representing

1 the employees.

2 MR. BRODERICK: Tom Broderick,
3 Construction Safety Council and I am a
4 representative of the public.

5 MR. THIBODEAUX: Mike Thibodeaux,
6 NEHB, employer/member.

7 MR. ZARLETTI: Dan Zarletti,
8 employer representative, Kenny Construction,
9 Chicago.

10 MR. BEAUREGARD: Kevin Beauregard,
11 North Carolina Department of Labor, state
12 representative.

13 MR. HAWKINS: Steve Hawkins,
14 Tennessee Department of Labor, state plan
15 representative.

16 MR. GILLEN: Matt Gillen, federal
17 representative, representing NIOSH and the
18 NIOSH Construction Program.

19 MR. BUCHET: Michael Buchet,
20 designated federal official.

21 MR. PARSONS: Bill Parsons,
22 Directorate of Construction.

1 CHAIR MIGLIACCIO: And, Frank
2 Migliaccio with the Iron Workers International
3 representing employees.

4 If the public will start with
5 Susan.

6 MR. SHANAHAN: Tom Shanahan's
7 here, too.

8 CHAIR MIGLIACCIO: I'm sorry.

9 MR. SHANAHAN: With NRCA.

10 CHAIR MIGLIACCIO: We do have Tom
11 Shanahan on the phone. I'm sorry.

12 (Off-mic comment.)

13 MR. LENZ: T.J. Lenz, with the
14 National Institute of Occupational Safety and
15 Health.

16 MS. FOSSUM: Darlene Fossum, I'm
17 the area director for OSHA office in Fort
18 Lauderdale, Florida.

19 MR. BROWN: Tony Brown with -
20 Associates here in Woodbridge.

21 MR. KENNEDY: George Kennedy,
22 National Utility Contractors Association.

1 MR. KURTZ: Judd Kurtz,
2 International Staple Mill and Tool
3 Association.

4 MR. THURMAN: Sean Thurman,
5 Associated Builders and Contractors.

6 MS. WARE: Pat Ware, BNA's
7 occupational, safety and health reporter.

8 MR. NOSAL: Thad Nosal, the
9 Insurance Services Office.

10 MS. DOUMA: Jessica Douma,
11 Directorate of Construction.

12 MR. PONCE: Mikhail Ponce,
13 Directorate of Construction.

14 MS. ROONEY: Sarah Rooney,
15 Directorate of Construction.

16 MR. McKENZIE: Dean McKenzie, DoC.

17 MR. BOOM: Jim Boom, director of
18 co-op and state programs.

19 MS. HAUTER: Nancy Hauter, OSHA
20 health enforcement.

21 MR. PASCALE: Blaise Pascale,
22 American Wind Energy Association.

1 MS. MYERS: Michele Myers,
2 American Wind Energy Association.

3 MR. CANNON: Kevin Cannon, The
4 Associated General Contractors of America.

5 MR. WILLIAMS: Chris Williams,
6 Associated Builders and Contractors.

7 MR. ROSSER: Mike Rosser,
8 Corporate Safety Services of Colorado.

9 MR. DRESSLER: Dick Dressler,
10 Association of Equipment Manufacturers.

11 MS. HANSEN: Heidi Hansen,
12 American Society of Safety Engineers.

13 MS. KHAN: Alyah Khan, inside
14 OSHA.

15 MS. MADDEN-THOMPSON: Teresa
16 Madden-Thompson, University of Texas at
17 Arlington, Region VI OSHA Education Center.

18 MR. PUBAL: Daniel Pubal, Patton &
19 Boggs Law Firm here in D.C.

20 MR. DOUGHERTY: Fran Dougherty,
21 Directorate of Construction.

22 MS. QUINTERO: Danezza Quintero,

1 Directorate of Construction.

2 MR. GLUCKSMAN: And last but not
3 least, Dan Glucksman, International Safety
4 Equipment Association.

5 CHAIR MIGLIACCIO: Thank you. If
6 anybody in the public would like to sign in in
7 the back with your email address so you can be
8 kept up to what's going on with the committees
9 and so forth, we'd appreciate it.

10 And also the public comment sign-
11 in sheet in the back. If anybody would like
12 to speak this afternoon, it's in the back of
13 the room. Sign up and we'll have you on this
14 afternoon for public comments.

15 Before we go any further, I'd like
16 to personally thank Mike Thibodeaux for the
17 service he actually provided to this committee
18 as the past chair.

19 Mike, thank you very much.

20 (Applause.)

21 CHAIR MIGLIACCIO: I'd also like
22 to commend Tom Shanahan for his commitment to

1 this committee, calling in today from his sick
2 bed.

3 Thank you, Tom.

4 MR. SHANAHAN: You're welcome.

5 CHAIR MIGLIACCIO: All right. At
6 this time we'll go ahead and start with the
7 construction update by Bill Parsons.

8 MR. PARSONS: Good morning,
9 everyone. I'd like to say that it's my
10 sincere pleasure to be here today to speak
11 with you on behalf of the Directorate of
12 Construction and the Office of Construction
13 Standards and Guidance.

14 I'd like to begin by addressing
15 the actions that have been taken to bolster
16 the staff within the Directorate of
17 Construction, specifically this morning the
18 Office of Construction Standards and Guidance,
19 and begin by saying that since our last
20 meeting we've hired four new people for the
21 Office of Construction Standards and Guidance
22 who will begin working with the Directorate in

1 September of this year. We've also advertised
2 and will be interviewing next week for three
3 more people. So we have a total addition to
4 the Office of Construction Standards and
5 Guidance of seven people between now and the
6 end of September, which will provide us some
7 help that we need in working on some of these
8 standards, as well as a primary function of
9 providing support for ARRA activities.

10 We're going to have some additions
11 to -- we've had some additions to OCS, the
12 Office of Construction Services and Danezza
13 Quintero will be talking about that later and
14 having those folks introduce themselves.

15 Having said that, one of the
16 recommendations of the Committee at our last
17 meeting was you would like for folks from the
18 different offices to talk about what we do in
19 the Office of Construction Standards and
20 Guidance, the Office of Construction Services
21 and Engineering Services. To that end, I'll
22 have a couple folks come up in a few minutes

1 and talk about the different things we do
2 within the Office of Construction Standards
3 and Guidance and Danezza Quintero will be
4 talking about activities of the Office of
5 Construction Services.

6 Before we begin that, however, I'd
7 like to talk just a little bit about standards
8 activities, and of course begin by saying that
9 as everyone knows, we're working on cranes on
10 derricks. We've been working on cranes and
11 derricks and we'll be working on cranes and
12 derricks until we're finished with cranes and
13 derricks. And our staff is putting in a lot
14 of long hard hours to that end. You know,
15 before the question comes out, it's our number
16 one priority and we'll be finished when we're
17 finished. We'd like to be finished tomorrow.
18 I say that because right now 90 percent of my
19 staff is assigned to cranes and derricks. And
20 when 90 percent of your staff is assigned to
21 cranes and derricks, but we're still getting
22 100 percent of the work from all areas, it

1 tells you that something's got to give. And
2 right now a lot of things are waiting because
3 we're still moving forward on cranes and
4 derricks.

5 So we're really looking forward to
6 getting these new people, getting some support
7 on some of the activities that we've kind of
8 been away from for a few months now. And just
9 trust me when I say that we're working as hard
10 as we can to get that out and I think that
11 will be reinforced by some of the folks that
12 I'm going to have introduce themselves to you
13 in a little bit.

14 In the meantime, while we're
15 working on cranes and derricks we're also
16 doing things like doing the work associated
17 with rescinding questions 23 and 25 of the
18 Steel Erection Compliance Directive. We're
19 also working on the Confined Spaces in
20 Construction Standard and we've got one person
21 on staff that is continuing to work on that
22 while essentially everyone else is working on

1 cranes and derricks. Once we're able to free
2 up people from the cranes and derricks
3 rulemaking process, then we're going to start
4 adding folks to confined spaces, and that's
5 our next agenda item following cranes and
6 derricks, is we're going to work on getting
7 that rule out.

8 Having said that, regarding cranes
9 and derricks and confined spaces in
10 construction, you'll also remember that a few
11 months ago I said that we're working on a lot
12 of other things as well. We're continuing to
13 work on a lot of these other things.
14 Occasionally we'll get to a point with a
15 document that we're working on in cranes and
16 derricks where we have a little free time,
17 meaning we're waiting for an answer and we'll
18 have a day or two. And when that occurs,
19 we're working on things such as the masonry
20 construction safety guidance documents,
21 Skylights and Open Floor Holes Quick Card,
22 Elevator Construction Guidance Document,

1 Demolition Operations Quick Card Series,
2 Sanitation on Construction Sites Quick Cards,
3 Construction Electrical Safety Quick Card
4 Series, Underground Construction Guidance
5 Documents, and I can go on. The bottom line
6 is we're staying very busy. And I think if
7 you tag any person on our staff in any of our
8 offices, we're doing a lot of work. And
9 you're getting your money's worth out of this
10 group of Government employees. All right?
11 Not implying that you're not in other areas.
12 Okay? That's my disclaimer.

13 So the bottom line with all this,
14 folks, is that we are staying very busy. It's
15 my pleasure to work with the ACCSH Committee.
16 I think all of you know that I truly enjoy
17 working with you.

18 And I'm going to have a couple of
19 other presentations real quick before I take
20 questions, because you may have questions
21 about something that's said.

22 If you will, please, Sarah and

1 Mikhail, if you're come on up to the table.

2 While they're doing that, if I
3 have other staff members from OCSG in here,
4 I'd like for you to stand up, introduce
5 yourself and just a summary of what you're
6 working on right now. Begin with you Jessica.

7 MS. DOUMA: All right. My name is
8 Jessica Douma. I've been with the Office of
9 Construction Standards and Guidance for close
10 to five years now. I've had the distinct
11 pleasure of preparing some of the preamble
12 section for the cranes and derricks final
13 rule, including; and I'm not sure if I should
14 say this out loud, the operator's
15 certification and qualifications that they
16 produce. Clearly taking up a significant
17 portion of my time, it's a very complicated
18 section and we want to make sure that it's
19 done right. In addition to that, I help
20 facilitate the processing of documents we
21 receive from other directorates to make sure
22 that there is no conflict with anything that

1 we do in our directorate and in those
2 documents. And obviously working on some of
3 those guidance documents that we handled
4 earlier, answering E-Correspondence, answering
5 phone calls from anybody the government
6 approves. You know, anything to appease the
7 client. That's about me.

8 MR SCHLICHTER: My name is Levon
9 Schlichter. I'm primarily working on the
10 confined spaces rule, evaluating the comments
11 and figuring out how to move forward with
12 that. I am also helping to draft the fall
13 protection, working around skylights guidance
14 document that Bill just talked about, our
15 Quick Card. And I'm involved in numerous
16 other interpretations that are in various
17 stages of the document review.

18 MS. LEGAN: Hi, I'm Cathy Legan
19 with the Office of Standards and Guidance.
20 I've been with the office for about four
21 years. Currently my number one priority, of
22 course, is cranes and derricks. I also, in

1 addition to doing the kind of day-to-day work
2 on cranes and derricks, I'm the co-project
3 manager on that. Also my second priority
4 issue is that I'm the SIG case coordinator for
5 enforcement cases that are 100,000 dollars
6 that come from the directorate. So I am kind
7 of oversight. And of course all my other
8 duties.

9 MR. PARSONS: Okay. Thank you,
10 folks. Today is Kelly's last day, folks.
11 She's been with us all summer. Did a
12 fantastic job for us and we're really going to
13 miss her.

14 So, thank you, Kelly.

15 Mikhail?

16 MR. PONCE: Well, good morning,
17 everyone. My name is Mikhail Ponce and today,
18 along with Sarah Rooney, we're going to be
19 talking about the role and functions of the
20 Office of Construction Standards and Guidance.
21 Just to follow up on whatever everyone else is
22 doing, like most of the people in our office,

1 I'm working primarily on the cranes and
2 derricks rule. I've been trying to straighten
3 out the fall protection section in that rule.
4 And, other than our normal duties providing
5 guidance and interpretations, right now I'm
6 working on assisting our area office from Guam
7 with one of their proposed significant cases.

8 MS. ROONEY: And I'm Sarah Rooney
9 as Mikhail announced, and I am working on
10 cranes and derricks, specifically the assembly
11 and disassembly sections. I also do a lot of
12 the control correspondence, which is typically
13 correspondence that is sent into the
14 Secretary, or the Assistant Secretary, or
15 maybe Congressional inquiries and things like
16 that. I am also the person working on
17 rescinding the two questions in the Steel
18 Erection Directive. I'm also working on a SIG
19 case and I'm also doing the masonry
20 construction guidance document.

21 MR. PONCE: Okay. So to begin,
22 just to give you a quick overview of what

1 we're going to be talking about, I'm going to
2 give you some brief background information
3 about our office. And then I'm going to hand
4 the presentation over to Sarah. She's going
5 to discuss some of our office's activities in
6 relation to the construction standards. She's
7 going to turn things back over to me and I'm
8 going to talk about our guidance activities
9 and then Sarah's going to wrap things up and
10 we'll be available to answer any questions you
11 might have.

12 So this is just a real basic
13 background. For those of you who may not
14 know, Office of Construction Standards and
15 Guidance is one of three offices within the
16 Directorate of Construction, the other two
17 being the Office of Construction Services and
18 the Office of Engineering Services.

19 And the OSHA itself is divided
20 into multiple directorates based around their
21 activities and areas of expertise. As you
22 might have guessed, the Directorate of

1 Construction is the directorate primarily
2 responsible for handling matters related to
3 construction.

4 One last thing, I just wanted to
5 share with you, this is our mission statement
6 for our office and as you'll see later on when
7 we start talking about our activities, our
8 activities really are geared towards
9 fulfilling what this mission statement is.
10 I'd just like to read it to you now.

11 It's, "To provide workplace
12 construction standards and regulations to
13 ensure safe and healthful working conditions
14 in conjunction with providing for the
15 development of comprehensive compliance
16 programs for internal and external
17 stakeholders applicable to the construction
18 industry."

19 Now, with that, I'm going to turn
20 things over to Sarah and she's going to talk
21 about some of our standards activities.

22 MS. ROONEY: Okay. In terms of

1 standards activity, I guess we have it broken
2 down into three separate general areas that we
3 handle. First being, development and
4 implementation of policy and plans for
5 construction standards and regulations. We
6 advise and assist the director by gathering
7 relevant information and performing analysis
8 of current and proposed standards and
9 regulations.

10 I guess this next one would
11 probably be the most familiar to you. We are
12 responsible for developing all new and
13 modifying any older standards that need
14 modification. We do all the drafting and all
15 the updates necessary. We also are
16 responsible for shepherding these standards
17 through the entire promulgation process. That
18 would include identifying any standards which
19 need modification. We draft the new rules, we
20 evaluate and respond to the public comments
21 and then we issue the final rule.

22 In addition, we do technical

1 review of variances, petitions,
2 interpretations that impact the construction
3 industry. We review agency actions that
4 affect construction standards to ensure that
5 they are handled in a manner consistent with
6 OSHA's policies and that they result in
7 workplace conditions at least as safe as those
8 provided by the standards. Typically that
9 would include reviewing variance requests,
10 letter of interpretation, other policy
11 documents drafted by other OSHA offices that
12 incorporate construction-related issues.

13 I guess now we'll be moving onto
14 our guidance-related activities.

15 MR. PONCE: Okay. So in terms of
16 guidance, we provide consultation and
17 information internally to all of OSHA, and
18 that goes to our people on the ground, out in
19 the field, all the way up to in our national
20 office, all the way up to the Assistant
21 Secretary's office. And what that means is,
22 you know, for example, our compliance officers

1 in the field may go out on an inspection and
2 they're uncertain with this particular set of
3 circumstances. They may not know which would
4 be the most appropriate standard to apply.
5 We're available to provide them support and to
6 address that, and to assist them in
7 identifying what standards apply to which
8 situations, whether or not there is a
9 violation.

10 Secondly, we provide technical
11 assistance and compliance. We provide
12 guidance basically to the public in the forms
13 of technical assistance, compliance
14 guidelines, interpretations and
15 clarifications. And most of our means of
16 interacting with the public come in the form
17 of letters of interpretations, what we call e-
18 correspondence, which are basically emails
19 that we receive through OSHA's web site, or
20 phone calls. And so our office is available
21 either by phone or by fax, or electronically,
22 like I said, through our web site. And what

1 we do is we will provide assistance. We'll
2 help identify which standards may apply in
3 your situation and point you in the right
4 direction in terms of compliance, how it would
5 be best to comply with the standards.

6 Primarily, a lot of what we do is the writing
7 of interpretations where it may not be
8 immediately clear what the circumstances would
9 require under the standards, and so we provide
10 that interpretation.

11 And lastly, we're also responsible
12 for developing OSHA enforcement programs
13 specific to the construction industry. An
14 example would be development of the National
15 Emphasis Program that we have on excavations,
16 which was borne out of a significant number of
17 trenching accidents that were occurring across
18 the nation.

19 I guess the most prominent feature
20 that will be forthcoming is we're adding a
21 chapter to the Field Operations Manual
22 specifically tailored to constructions. And

1 that Field Operations Manual, in case you
2 don't know, is basically a guideline for our
3 people on the field, how do they go out and
4 conduct inspections, basically how do they
5 carry out all of their functions. And we're
6 helping draft the guidelines tailored to the
7 construction activities.

8 So with that, I'm going to turn
9 things back over to Sarah.

10 MS. ROONEY: Okay. In conclusion
11 and in summary, OCSG is an office within the
12 Directorate of Construction that's focused on
13 standards and guidance. We provide general
14 support related to the development and
15 implementation of standards and we provide
16 guidance to OSHA and to the public.

17 I guess at this point we'll take
18 any questions anybody has.

19 CHAIR MIGLIACCIO: Any questions?
20 Kevin?

21 MR. BEAUREGARD: I'm not sure if
22 you're the one to answer this question, but it

1 sounds like it may be up your alley. I'm the
2 co-chair of the work group for regulatory
3 compliance. And my esteemed co-chair gave me
4 some questions to ask the Directorate.

5 And one of them has to do with in
6 our meeting yesterday one of the participants
7 brought up that some years ago there was a
8 construction enforcement targeting task force.
9 And I'm not familiar with it, but they said
10 there was a task force. And they were
11 wondering if there was a task force, if any of
12 the results of the task force were available
13 and if they were implemented. This might be
14 something that you're implementing in your FOM
15 chapter, I don't know. I don't know if you
16 have any knowledge of a task force or not.

17 MS. ROONEY: I'm not sure about
18 the task force. I am doing the FOM chapter.
19 That's another one of my responsibilities.
20 But I am unaware of the task force, so I'm not
21 implementing that with the FOM chapter at this
22 point.

1 MR. PARSONS: I'll add to that.
2 We're currently evaluating different
3 activities for task forces, as well as other
4 activities relating to the enforcement of
5 construction standard. And at this particular
6 point, I think most of those activities are
7 under some scrutiny. And to say that we have
8 an active task force program, I know that we
9 have new programs that are being rolled out
10 that will be addressed by others this morning.
11 And beyond that, I don't think I can say
12 anything about it. I'll certainly be open to
13 discussion with it later today.

14 MR. BEAUREGARD: Okay. Thank you.
15 Yes, the reason I think the group was
16 interested in it is one of the things we're
17 looking at is different ways that OSHA targets
18 construction activity to see if we could
19 perhaps give any suggestions or
20 recommendations. And one of the members
21 indicated that there was some previous task
22 force within OSHA that may have looked at

1 that. And so we were interested in seeing if
2 in fact there was, what they came up with and
3 if any of it was implemented. Thank you.

4 CHAIR MIGLIACCIO: Any other
5 questions from the Committee?

6 MR. GILLEN: I had a question.

7 CHAIR MIGLIACCIO: Matt?

8 MR. GILLEN: The group sure has a
9 lot on your plate, so that's pretty
10 impressive.

11 As far as thinking long term, I
12 was wondering about if you thought a little
13 bit about the idea of some of the standards
14 that have a lot of letters of interpretation,
15 like sub-part M. And I was just wondering if
16 it might be interesting to think about or talk
17 to some of the stakeholders. Would it be
18 valuable to perhaps consolidate them into sort
19 of a report, so there would be one place to
20 sort of update it for that time period what
21 the latest interpretations are for a
22 particular standard? Which would then be a

1 one place to look, as opposed to each of the
2 letters and then something like that might be
3 done every five years, or 10 years, or
4 something like that. Might be something that
5 would facilitate people being able to
6 understand some of the complex issues with
7 some of the letters, some of the standards
8 that have a lot of letters of interpretation.
9 So, I was wondering if it's something you
10 might think about, or what your response would
11 be, if you think that might be interesting to
12 pursue.

13 MR. PARSONS: I think everybody
14 that searches for letters of interpretation
15 and trying to determine if there's a letter of
16 interpretation on a given issue, unless you
17 work with letters of interpretation regularly,
18 it's difficult to navigate those letters. I
19 think we'd certainly be open to a
20 recommendation on something like that.

21 MR. GILLEN: Thank you.

22 CHAIR MIGLIACCIO: Liz?

1 MS. ARIOTO: Yes, thank you. Liz
2 Arioto.

3 Bill, you mentioned about the
4 sanitation guidance info.

5 MR. PARSONS: Yes.

6 MS. ARIOTO: Does this include
7 special sanitation needs of a new construction
8 site?

9 MR. PARSONS: It does not.

10 MS. ARIOTO: Do you think it can
11 be addressed in that?

12 MR. PARSONS: I think we need to
13 address it in other areas before we address it
14 in a Quick Card. You know, typically when
15 we're talking about a Quick Card, we're trying
16 not to put out anything that's boldly new, but
17 rather guidance on what's already there,
18 suggestions on doing it better. While I think
19 you and I agree that there is certainly some
20 validity to your point, I just don't think a
21 Quick Card's the best place for us to do that.
22 I think what we're going to have to see is

1 some sort of more well thought out
2 recommendation from the Committee for us to
3 move forward on something like that.

4 MS. ARIOTO: How far along are you
5 on this Quick Card?

6 MR. PARSONS: The draft is
7 completed.

8 MS. ARIOTO: Is completed?

9 MR. PARSONS: Yes.

10 CHAIR MIGLIACCIO: Any other
11 questions from the Committee?

12 Tom Shanahan, do you have any
13 questions?

14 Okay. Go ahead Tom. I was just
15 trying to see if Tom had any.

16 MR. BRODERICK: How long does it
17 take for a variance to be issued, assuming a
18 request for a variance comes in --

19 MR. SHANAHAN: No, I don't.

20 CHAIR MIGLIACCIO: Thank you, Tom.

21 MR. BRODERICK: -- with a properly
22 structured, well thought out, easily

1 understood request for a variance?

2 MR. PONCE: Well, just what I can
3 tell you, to address what our office's role is
4 in the variance, OSHA actually has a
5 directorate that is responsible for the
6 handling and the processing of the variances.
7 Our role in the variance process is when these
8 requests come in, we basically put it side-by-
9 side with the standards that are there to make
10 sure that whatever this proposed alternative
11 system that the employer would like to use
12 provides a level of safety that's as least as
13 safe as what are standards provide. So our
14 office's role in that whole process is more
15 based on the standards itself.

16 In terms of getting it out and
17 getting it processed as soon as possible, I
18 can tell you that I myself have spent a great
19 deal amount of time working on variances,
20 particularly for the chimney construction
21 industry is what I've worked with most. And
22 we do try and get them out as fast as we

1 possibly can. By the time they reach our
2 office, what we're basically doing is just,
3 like I said, comparing it to the standards.
4 A lot of times the ones that we get are the
5 same issues that have come up before in the
6 past, so we just do a quick check and send it
7 along the way on the process.

8 But in terms of how long it takes,
9 I can't really give you a clear answer on
10 that.

11 MR. PARSONS: I think we can say
12 though that certainly since I've been here
13 I've not seen a simple one. You know,
14 sometimes they come in and from all
15 appearances the first read is like, geez, this
16 is going to be a pretty simple one to handle.
17 And by the time we have a couple volleys of
18 questions to the people that submit the
19 request for the variance, they end up getting
20 quite involved and it turns out not to be
21 nearly as simple as we anticipated. So
22 frankly, I don't think we've seen a simple

1 one.

2 CHAIR MIGLIACCIO: Any other
3 questions, the Committee?

4 And also the Committee members,
5 please state your name and who your represent
6 for the record, please.

7 MS. ARIOTO: Elizabeth Arioto. I
8 represent the public.

9 Bill, you said that the draft was
10 for sanitation is complete. Is there any way
11 you can hold up on that until our work group
12 may be able to give you some information?

13 MR. PARSONS: Well, I think what
14 we agreed to do was to provide the drafts of
15 these to the Committee. We didn't have it
16 ready in time to submit it to the Committee
17 prior to this meeting, so I decided to hold it
18 and we'll submit it soon. And you'll have an
19 opportunity to comment, get it back to me, and
20 we're not going to produce this document until
21 we get your comments and ideas on it. So
22 we'll certainly include those.

1 MS. ARIOTO: Thank you, Bill.

2 CHAIR MIGLIACCIO: Kevin?

3 MR. BEAUREGARD: I have one more
4 question for Bill, and again this is a work
5 group question, and I'm not sure exactly who
6 would be the appropriate person to address.

7 Kevin Beauregard, state planner.

8 Had the Directorate of
9 Construction or the Directorate of Enforcement
10 had any types of activities or collaboration
11 with fellow agencies, like Wage and Hour, or
12 Elevator, to initiate referrals if they see
13 something in their activities that may be
14 something that pertains to OSHA more than
15 their agency?

16 MR. PARSONS: Could be possible,
17 but I'm not aware of any. You may pose that
18 question to Mr. Fairfax if he stops in this
19 afternoon or tomorrow.

20 MR. BEAUREGARD: Thank you.

21 CHAIR MIGLIACCIO: Any other
22 questions of the Committee members?

1 I just have one question. Frank
2 Migliaccio with the employees.

3 Sarah, you had mentioned the
4 rescinding of two questions on sub-part R,
5 which is very dear to my heart.

6 MS. ROONEY: Yes.

7 CHAIR MIGLIACCIO: Could you
8 explain what the two were to the Committee and
9 what had taken place?

10 MS. ROONEY: One is the shear
11 studs, and we're no longer going to have the
12 de minimis policy. If you wear 100 percent
13 fall protection, you could use shop-installed
14 shear connectors. You'll no longer be able to
15 do that.

16 And the other had to do with
17 planks or nets. And if you had 100 fall
18 protection, you no longer had to do the nets
19 or the decking. I think it was every two
20 stories you were required to have nets or
21 decking. You won't have the de minimis policy
22 in that. If you wear 100 percent fall

1 protection, you'll still be required to do
2 that. Before if you had 100 percent fall
3 protection, you were no longer required to do
4 that. It was considered a de minimis
5 violation.

6 CHAIR MIGLIACCIO: And do you have
7 any idea when the two of them will take place?
8 I know the shear connectors will be down the
9 road a ways because of fabrication, but how
10 about the two floors or 30 feet, whichever is
11 less?

12 MS. ROONEY: I'm working on it. I
13 can't give you a real -- it's an involved
14 process to do that. A lot of different
15 offices are involved in addition to myself, so
16 I can't really give you a definite deadline as
17 to when that's going to happen.

18 CHAIR MIGLIACCIO: Okay. Thank
19 you.

20 Any other questions? Sarah?

21 MS. SHORTALL: I have a real quick
22 question.

1 Sarah, Mikhail, could you please
2 provide me with a hard copy of your PowerPoint
3 presentation so I can enter it into the record
4 for this meeting?

5 MR. PONCE: Sure.

6 MS. SHORTALL: Thank you so much.

7 CHAIR MIGLIACCIO: Bill?

8 MR. PARSONS: Courtney Goodwin
9 just came into the room. She's also a
10 Construction Standards and Guidance staff
11 member. And I'd like for her to just do a
12 summary about what she's working on right now,
13 without going too much into detail.

14 I know I've put you on the spot,
15 but I know you can handle it.

16 MS. GOODWIN: Hi. Again, my name
17 is Courtney Goodwin. Right now my biggest
18 project is working on the cranes and derricks
19 rule. My sections are on tower cranes, ground
20 conditions. I'm trying to think off the top
21 of my head what the other ones are. But those
22 are my two biggest ones. So right now that's

1 what I'm focusing on.

2 Another thing that I'm working on
3 that we talked about the last time you were
4 meeting, I spoke with you about the
5 underground construction guidance document
6 that I'm working on. That's sort of been put
7 on the back burner for the cranes and
8 derricks, obviously. But that's still in the
9 works.

10 But those are the two biggest
11 things I'm working on.

12 MR. PARSONS: Thank you.

13 MS. GOODWIN: You're welcome.

14 CHAIR MIGLIACCIO: Emmett?

15 MR. RUSSELL: Yes, I'd like to
16 make one compliment to Bill. I had made a
17 request that it would be good if the ACCSH
18 Committee knew what the different offices in
19 the Directorate of Construction was doing, and
20 my compliments to you that you've done a --
21 again, Emmett Russell, employee
22 representative. But my compliments to you

1 that this is exactly what I was looking for,
2 because before you never had a clue who was
3 actually working in any of the offices, and
4 further, not a clue as to what they were
5 doing. But again, my compliments. Good job.

6 MR. PARSONS: Thank you.

7 CHAIR MIGLIACCIO: Anything else?
8 Bill, do you have more?

9 MR. PARSONS: No, at this point I
10 think Danezza Quintero wants to speak on
11 behalf of the Office of Construction Services.

12 MS. QUINTERO: Good morning.
13 Danezza Quintero, acting director for the
14 Office of Construction Services. I would like
15 to thank each of you for being here and your
16 time, and your dedication.

17 To go over a little bit, Emmett,
18 also about the things that we do in the Office
19 of Construction Services, we provide support
20 to stakeholders. We deal with alliance,
21 partnership, Voluntary Protection Program.
22 Basically we provide the technical support to

1 all those different preparative programs.

2 In addition of that, we are
3 responsible to prepare everything related to
4 ACCSH. We evaluate every time that every two
5 years your term expires. We receive all those
6 applications. We evaluate. We submit that
7 information to the Assistant Secretary.

8 At the present time we are working
9 with the Susan Harwood Grants. An incredible
10 amount of applications this year. We have
11 received an incredible amount, around 80
12 applications for this \$6.8 million, an average
13 of \$250 per grantee. So we're really, really
14 overwhelmed at the present time.

15 We evaluate a lot of publications,
16 guidelines, documents that have been
17 developed, not just by the standard, to make
18 sure that everything that they develop really
19 applied to the real world. And in addition of
20 that, sometimes we disseminate that
21 information and share that information with
22 some of you that are here, members of ACCSH,

1 to receive your feedback and your input. So
2 that's also always done through our office.

3 We provide a lot of support to the
4 OSHA Training Institute or the Training
5 Education Center in Chicago. We're going to
6 be working with steel erection training.
7 There are going to be quite a few steel
8 erection trainings in the next few months
9 around the nation and we do presentations in
10 different kinds of conventions for safety and
11 health organizations, like the ASSE,
12 Construction Safety in Chicago, National
13 Safety Council, World Concrete, etcetera,
14 etcetera. So all of those are developed in my
15 office and usually we're the one providing
16 that support and those presentations.

17 In addition of that, at the
18 present time there is a crane safety
19 initiative and we're working with a lot of new
20 products in the way of a Quick Card, and all
21 those products at the present time are under
22 development.

1 In addition, we used to have just
2 four individuals to do all this in the office.
3 And at the present time we have two positions
4 open, one is a safety and health specialist,
5 GS-13 and the other one is the construction
6 safety education specialist, also a GS 13.
7 They're open at the present time for whoever
8 is interested or if you know anyone that might
9 be interested. I think these two positions
10 are a great opportunity and we're desperate of
11 getting new people with a lot of skills and
12 knowledge.

13 We are really lucky at the present
14 time. We hired two new safety and health
15 specialists with a lot of years of experience
16 and I really would like to introduce my new
17 two colleagues, Fran Dougherty and Dean
18 McKenzie. You have seen him in some of the
19 work groups.

20 And I really would like, Dean, if
21 you can say a few things.

22 MR. MCKENZIE: Good morning,

1 folks. I've seen most of you around the last
2 couple of days. My name is Dean McKenzie.
3 I'm a construction professional. Been in the
4 business for 34 years. Started out in steel
5 mills in Indiana. I've done hotels in the
6 Caribbean, industrial work, power plants,
7 hydro power plants, breweries, maintenance
8 constructions. Three months ago I had 70 iron
9 workers, millwrights and carpenters at Golden
10 Colorado in the Coors Brewery. So our task is
11 to try to bring some current real world
12 expertise to the department and so far it's
13 been a good adventure.

14 MS. QUINTERO: Francis?

15 MR. DOUGHERTY: Hi, Fran
16 Dougherty. Approximately the same amount of
17 experience. About 30 years in the industry.
18 Started off as a carpenter. I'm a carpenter
19 by trade, Local 1107 out of Kenilworth, New
20 Jersey. I've worked in -- my primary
21 specialization is residential and commercial
22 construction, mostly the metropolitan area of

1 New York, New Jersey and Pennsylvania where
2 I've worked on everything from bomb shelters
3 to high rises.

4 MS. QUINTERO: So now you guys
5 know that in addition of Michael, we have two
6 great individuals that can provide you any
7 assistance that you guys need.

8 Any question at the present time?

9 CHAIR MIGLIACCIO: Any questions
10 from the Committee members?

11 Tom Shanahan? Question. Tom, are
12 you still there?

13 Any other questions of the
14 Committee?

15 Sarah?

16 MS. SHORTALL: I would just like
17 to say that Ms. Quintero has not given the
18 full picture of all the duties that the
19 Construction Services has to do with regard to
20 ACCSH.

21 Although ACCSH was statutorily
22 created, which means the Sunshine Act that

1 would close us down does not apply. We still
2 have an incredible amount of paperwork that
3 must be done in order to have the Committee
4 operating according to the General Services
5 Administration Regulations. And if you want
6 to see some of that paperwork, you can always
7 go to GSA's web site and see everything that
8 has to be placed on that. In addition, we
9 have reports that have to be provided to the
10 Library of Congress for permanent archiving.
11 All of these things have to be cleared by the
12 department, which in and of itself is quite a
13 feat.

14 So when you come and come to a
15 flawless ACCSH meeting, there has been an
16 awful lot of work that's gone behind the
17 scenes and you don't even see half of the work
18 that's gone behind the scenes. So I just
19 didn't want time to pass without ACCSH knowing
20 how much additional work this particular group
21 in DoC must do to keep this committee up and
22 functioning according to law.

1 MS. QUINTERO: Thank you, Sarah.

2 CHAIR MIGLIACCIO: Tom?

3 MR. KAVICKY: Tom Kavicky,
4 employee representative of OSHA, ACCSH.

5 I'd just like to comment, Danezza,
6 your staff makes our life a heck of a lot
7 easier when we come here. I know for one we
8 generate a tremendous amount of paperwork from
9 the work groups and we appreciate all the work
10 you guys are doing. Thank you very much.

11 MS. QUINTERO: Thank you.

12 (Applause.)

13 MS. QUINTERO: Thank you.

14 MR. PARSONS: If I may, I see
15 Mohammed Ayub just walked in to the room. I'm
16 going to put him on the spot and ask him to do
17 two or three minutes and give a quick briefing
18 about what his office does for the Directorate
19 of Construction. Thank you, Mohammed.

20 MR. AYUB: Good morning. My
21 office is in fact a, shortly speak, a resource
22 for structural engineering in national OSHA

1 office and in all division offices, and all
2 field offices. Any time there is a need for
3 some innovative method of construction, any
4 time there is a catastrophic collapse of a
5 building, or a bridge, or a tunnel, or a tower
6 during the construction, then my office will
7 extend its engineering assistance to the field
8 and we will be writing a report which in most
9 cases become a basis for the field offices to
10 issue the citations.

11 Once the citations are issued and
12 if they are not accepted by the contractor, in
13 most instances and they are not, then we will
14 be asked to appear as an expert witness in the
15 case defending the basis of the citations. We
16 will only provide the engineering basis and
17 the supporting data of how we have reached the
18 conclusions and how have we arrived at the
19 findings.

20 Essentially speaking, we are
21 interacting with all the directorates of the
22 national office. And any time there's an

1 issue that will involve engineering,
2 particularly geo-technical engineering and
3 structural engineering, we will be in the
4 forefront.

5 We are also a leading component of
6 the National Structural Response Team. This
7 team was formed in the wake of the disaster
8 that took place in 2001 and we take a lead in
9 it and we engage -- there is a team of about
10 eight structural engineers there and we take
11 a lead in the team, and we train all the team
12 members and we do some field exercises just to
13 simulate that in case, God forbid, if there
14 is, you know, another event, how we are going
15 to respond to it, how we will react to it and
16 how we will let the first responders enter
17 into the building. Our responsibility will be
18 to make sure that the first responders are
19 safe. They go in a building where there's no
20 other collapses that could take place.

21 And we also interact with national
22 engineering associations in order to convince

1 them that when they write the code and the
2 design guidelines, they should incorporate
3 safety in it. And we have in fact started on
4 a program which is called PTD, Prevention
5 Through Design. And we like to go and to
6 address the engineering associations and make
7 sure that they understand the safety.
8 Unfortunately, engineering schools here are
9 not very much conducive to safety issues.
10 They just teach them engineering,
11 architecture, finite element analysis, but not
12 much attention is given to safety. And I go
13 there and I talk to them that unfortunately
14 1,100 construction employees die every year at
15 the site, there eyes are open, that was is
16 going on here? So this is one of our tasks is
17 to talk to the engineering community's code
18 writing bodies so that they can incorporate
19 safety in it.

20 And anything that has to do with
21 engineering, the buck ends here. Thank you so
22 much.

1 CHAIR MIGLIACCIO: Thank you.

2 Any questions of Mohammed?

3 Seeing none, thank you, Mohammed.

4 MS. SHORTALL: Mr. Chair, I'd like
5 to take care of a couple of related
6 housekeeping items at this time.

7 I would like to mark OSHA-2009-
8 0020 as Exhibit 2, the agenda for the July 30-
9 31 ACCSH meeting.

10 (Whereupon, the document was
11 marked as Exhibit 2 for
12 identification.)

13 As Exhibit 3 the minutes of the
14 April 16, April 17 ACCSH meetings certified by
15 both Mr. Migliaccio and Mr. Thibodeaux.

16 (Whereupon, the document was
17 marked as Exhibit 3 for
18 identification.)

19 And as Exhibit 4, the hard copy of
20 the presentation on the roles and functions of
21 OCSG.

22 (Whereupon, the document was

1 marked as Exhibit 4 for
2 identification.)

3 CHAIR MIGLIACCIO: Thank you.

4 All right. Are there any other
5 questions of Bill before we -- please?

6 Bill, I'd like to thank you on an
7 excellent presentation by you and your staff.
8 Listening to the young ladies and young men,
9 and a couple of the older men, looks like
10 we're going in the right direction. Thank
11 you, all.

12 (Applause.)

13 CHAIR MIGLIACCIO: At this time,
14 while we're checking on Jordan Barab, we'll go
15 ahead and start with the work groups.

16 I know that the OTI work group has
17 a little bit more work to do. Okay. So we'll
18 postpone that one. That is silica.

19 MR. JONES: We're ready.

20 CHAIR MIGLIACCIO: Silica? All
21 right. If we can have your --

22 MR. JONES: The Advisory Committee

1 met yesterday, I believe, around noon. We had
2 a full house and before I begin reading the
3 minutes, I want to thank the folks from
4 Standards and Guidance for coming over and
5 giving us an update.

6 Walter Jones, employee rep.

7 Yes, and we want to thank them for
8 coming over and really being amenable to
9 questions and everything else.

10 Speaker 1, as I was mentioning,
11 was David O'Conner of the OSHA Directorate of
12 Standards and Guidance. They provided a
13 status report and description of the next
14 steps for development of the proposed rule for
15 silica in construction. And they also gave us
16 an update on silica guidance developments,
17 document developments. In terms of the
18 proposed rule, the health hazard and risk
19 assessment portion of this rule is currently
20 undergoing external peer review by OMB.

21 OSHA is expediting or truncating
22 the process by merging the peer review section

1 into the informal hearings that will follow
2 the publication of the rule. Basically, the
3 expected process is the peer reviewers will
4 provide comments back to OSHA, OSHA will
5 incorporate the comments as appropriate into
6 the proposal. Then afterwards, OSHA will
7 publish a proposed rule. Then informal
8 hearings for the public comment will include
9 a specific portion about the peer review and
10 the peer reviewers will be present at the
11 comment phase to hear public comments about
12 the review. Peer reviewers can amend their
13 comments to OSHA based on public comments and
14 OSHA will consider amended comments along with
15 other comments in the finalizing of the rule.
16 The process also includes additional
17 consultation with advisory committees, but the
18 nature and schedule have not been set yet.

19 David said that additional
20 information is available on the OSHA web site
21 peer review page.

22 In terms of guidance documents,

1 OSHA is developing worker and contractor
2 materials from the recent silica construction
3 guidance document and handed out some copies
4 of their solutions fact sheet, for lack of a
5 better word, and has asked for comments from
6 the committee, which we plan on forwarding at
7 our next meeting.

8 In response to questions, Mr.
9 O'Conner indicated that the OSHA's expected
10 the peer review process to be completed
11 shortly. He's looking at September-October
12 2009.

13 Second topic was Henry Cramer of
14 the bricklayer's union, vice-president and
15 chair of the Building and Construction Trade
16 Department, Silica Subcommittee, provided a
17 hand out and described five key positions that
18 the BCTD had on any proposed silica regulatory
19 standard.

20 First, the PEL should be 50
21 micrograms per cubic meter of air consistent
22 with the NIOSH REL and should include an

1 action level of 25 micrograms per cubic meter.

2 Two, abrasive blasting using
3 materials containing greater than one percent
4 silica should be prohibited and banned.

5 Three, written exposure assessment
6 and control plans are needed for silica dust-
7 causing tasks.

8 Four, which got a lot of
9 discussion, methods of compliance, which is
10 currently set up such as in OSHA's draft table
11 1, need to be clarified or restructured as
12 follows: (1) clarify that respirators should
13 be viewed as an interim measure -- the use
14 respirators should be viewed as an interim
15 measure as controls are developed and
16 implemented; (2) permit reliance on
17 scientifically-objective data or equivalence
18 to OSHA's draft table number 1, developing an
19 alternative table that incorporates options
20 for a two-hour, four-hour and eight-hour task
21 length conditions, providing mechanism for
22 adding new tasks to table 1, and make it clear

1 that if employers do not follow the task
2 controls they can receive citations related to
3 both (1) not using the controls; and (2) not
4 providing the monitoring is happening.

5 And the fifth key point was
6 clarify that medical information on the health
7 status of employees is not to be shared with
8 employers.

9 Topic three, and this goes back to
10 the Committee's work with developing a
11 guidance document, a living web document
12 similar to the OSHA's draft table 1. Hillary
13 Schubert from the Georgia Tech described a
14 matrix too that they have been using in
15 consort with Georgia Consultation Program.
16 The matrix lists tasks with information
17 provided for each task on uncontrolled
18 exposures, then offers the types of controls
19 they can use and then what exposures would be
20 using the controls and what types of
21 recommended PPE would be needed using controls
22 or not using controls.

1 And then additionally it provides
2 photos of tools, tasks and talks about
3 ancillary hazards associated with using
4 whatever controls or associated with the task.
5 The matrix information includes full shift and
6 task measurement information collected by and
7 for the Consultation Program.

8 The matrix tool was basically
9 developed to help contractors understand what
10 to do. They're on the forefront, the folks
11 down in Georgia, of responding directly to
12 contractor's needs of we don't need to look at
13 what's in the standard. Tell us what we need
14 to do so that we can do it to comply.

15 Experience to date suggests that
16 the contractors have found this helpful. Ms.
17 Schubert has shared her basic observations
18 with us on OSHA's current proposed table 1.
19 And based on her experience, field conditions,
20 factors and techniques such as water flow
21 rates and air flow rates for local exhaust
22 ventilation for using controls can

1 significantly affect protection offered by the
2 controls resulting in reductions being less
3 than predicted. Contractors ask about the
4 details and in our -- let me reread this --
5 and so because of the fact that although table
6 1 may say use water, or it may say use local
7 exhaust, because there are variations in how
8 folks are using water or how close they're
9 using their local exhaust, the matrix still
10 recommends the use of filter and face piece
11 for all attacks.

12 I suggest everyone take a look at
13 this matrix because it's probably the future
14 of where we're going to go in terms of task-
15 based approaches to controlling these types of
16 hazards or as in another name called control
17 banding. The matrix is available on the
18 outreach page of the Georgia Tech's folks.
19 It's at www.oshainfo.gatech.edu.

20 Fourth topic, moving along on this
21 same ideal of providing contractors with means
22 of protecting workers from exposures to silica

1 dust, Jim Platner for the Center of
2 Construction Research and Training reiterated
3 the need to provide information to contractors
4 on what they need to do to get it done and
5 describes the CPWR's control solutions
6 database, a web tool that currently includes
7 basic information for all tasks currently
8 listed on proposed OSHA's table number 1.

9 The tool can be found and this is
10 long, www.cpwr.com, and I'm sure it will have
11 a button that will help you, but if you use
12 the URL, [.com/rp-constructionsolutions.html](http://www.cpwr.com/rp-constructionsolutions.html).
13 Features include coverage of all types of
14 hazards; not just silica, but organization by
15 work activity, which is especially helpful to
16 the contractors and workers, inclusion of
17 vendor information, return on investment
18 calculators, ability for the users that are
19 plugging into the database to rank the
20 helpfulness of the solutions and the ability
21 for other folks to submit solutions.

22 And the fifth speaker yesterday

1 was Rashad Johnson. He's a technical
2 consultant working with the Mason Contractors
3 Association and described the consistent
4 standard ASTM E2625, titled, "Standard
5 Practice for Controlling Occupation Exposure
6 to Respirable Crystals Silica for
7 Construction and Demolition Activities." This
8 standard, which is available at the ASTM web
9 site, astm.org/Standards/E2625.htm, uses an
10 exposure limit, the current exposure limit for
11 general industry of 100 micrograms per cubic
12 meter and includes task-based features similar
13 to what Georgia Tech and what the OSHA's table
14 1 are using. Their task-based recommendations
15 are based on NIOSH and other published
16 objective data, along with some contractor
17 data. The standard is intended to be a living
18 document and will be updated as better and
19 more information becomes available.

20 Limited information is available
21 on contractor use of the standard. Basically
22 it just passed a couple of months ago, so it

1 really hasn't been rolled out yet. And ASTM
2 is trying to get word out about the standard
3 to get specifiers to refer to it.

4 Each of the speakers responded to
5 a number of questions and a variety of issues
6 were discussed. Potential items identified
7 for possible recommendations, but the sense of
8 the group at this time is that we need further
9 discussion and review of information provided
10 by the speakers before we can begin to make
11 recommendations for ACCSH on what the thinking
12 and thoughts of its subcommittee is on a
13 proposed silica standard.

14 At the end, Matt and I thanked the
15 speakers for their time and great
16 presentation. And we went over time; it was
17 so involved. And the meeting adjourned at
18 2:20. Gave out a bunch of handouts. And
19 that's about it. Thank you.

20 CHAIR MIGLIACCIO: Matt, do you
21 have anything to add?

22 MR. GILLEN: No, I think Walter

1 did a great job. I think maybe just one
2 clarification that would be important for OSHA
3 is I think Walter said that the peer review
4 was by OMB, but it's per their requirements
5 that peer reviewers are actually other folks
6 other than OMB. They're different scientists.
7 Just to clarify that.

8 CHAIR MIGLIACCIO: Okay. Do we
9 have any questions for the work group?

10 MS. SHORTALL: I have one question
11 for Mr. Jones.

12 If I heard you correctly and read
13 the minutes, there were a number of handouts
14 that were distributed.

15 MR. JONES: Yes, there were.

16 MS. SHORTALL: Would you like
17 those handouts also to be entered into the
18 record and put on OSHA's web site?

19 MR. JONES: I would.

20 MS. SHORTALL: All right.

21 MR. JONES: And I'll have to bring
22 them forward.

1 MR. GILLEN: Can we get copies of
2 those to you later, or by tomorrow?

3 MR. JONES: Yes, tomorrow. We
4 would have to pull them all together.

5 MS. SHORTALL: All right. That
6 would be fine.

7 MR. JONES: Okay.

8 CHAIR MIGLIACCIO: Tom?

9 MR. SHANAHAN: Can you guys hear
10 me?

11 CHAIR MIGLIACCIO: Yes.

12 MR. SHANAHAN: Walter, is it
13 possible you could email me those forms? You
14 guys did sound like you did a lot of terrific
15 work. I'd really like to see that.

16 MR. JONES: For the silica?

17 MR. SHANAHAN: Yes.

18 MR. JONES: Yes, I'll forward
19 everything to you.

20 MS. SHORTALL: Mr. Shanahan,
21 everything will be put on the web site and in
22 regs.government within the next few days. So

1 you can also access it directly from your
2 computer.

3 MR. SHANAHAN: Terrific. Thanks a
4 lot, Sarah.

5 CHAIR MIGLIACCIO: At this time,
6 seeing no other questions, I'll entertain a
7 motion to accept this report.

8 MR. THIBODEAUX: I move for the
9 acceptance.

10 CHAIR MIGLIACCIO: Mike
11 Thibodeaux. Seconded by Bill Ahal.

12 Any questions or discussion?

13 All in favor, say aye.

14 (Chorus of ayes.)

15 CHAIR MIGLIACCIO: Opposed?

16 (No audible response.)

17 CHAIR MIGLIACCIO: Ayes have it.

18 MS. SHORTALL: Mr. Chair, then I
19 would like to enter into the record as Exhibit
20 5 in the previously mentioned docket the
21 approved Silica Work Group Report from the
22 July 29 work group meeting.

1 (Whereupon, the document was
2 marked as Exhibit 5 for
3 identification.)

4 MS. SHORTALL: And I will enter
5 into the record subsequent handouts tomorrow.

6 CHAIR MIGLIACCIO: Thank you.

7 At this time we're going to move
8 forward to the diversity work group's report.
9 And if Jordan shows up, we'll stop you, Tom,
10 and --

11 MR. KAVICKY: Okay. Thank you,
12 Mr. Chairman.

13 The Diversity Women in
14 Construction Work Group met on July 28th from
15 8:15 to 9:45.

16 Tom Kavicky, ACCSH employee rep.

17 Liz Arioto and I co-chair that
18 committee, that work group. We had 14
19 attendees present. The work group reviewed
20 the minutes of the April 14th, 2009 meeting.
21 We distributed handouts and discussed with the
22 work group the BLS Fatality Occupational

1 Injuries by Worker Characteristics and Event
2 or Exposure 2007, the BLS Census of Fatal
3 Occupational Injuries from 2003 forward, the
4 Household Data Annual Averages for Employed
5 Persons by Detailed Occupation, Sex, Race and
6 Hispanic or Latino Ethnicity, the OSHA letter
7 of interpretation dated 06/07/2002, "Mobile
8 Crews Must Have Prompt Access to Nearby Toilet
9 Facilities," The OSHA letter of interpretation
10 dated 02/23/2005, "Providing Employees With
11 Toilet Facilities on a Construction Job Site,"
12 and the OSHA letter of interpretation dated
13 05/17/2006, "Whether Toilets at Construction
14 Job Site Must be in a Sanitary Condition to
15 Meet the Requirements of 29 CFR 1926.51(c)."

16 After the handouts were passed,
17 discussion points included the need to provide
18 separate toilets for women in construction
19 when practical. Access and availability of
20 portable toilets at a construction site and
21 also tower crane operator access to portable
22 toilets.

1 A discussion followed and the work
2 group was made aware to a product called Brief
3 Relief. This product is being used by some
4 operators of tower cranes that may not have
5 immediate access to portable toilet
6 facilities. The product helps prevent
7 biohazard issues. We cover it all.

8 A PowerPoint presentation titled,
9 "Women in Construction Medical Issues" was
10 given by Dr. Atkinson Longmire, M.D., Office
11 of Occupational Medicine. The presentation
12 included total working women fatalities,
13 construction-related reproductive hazards,
14 ergonomic concerns such as tools, equipment
15 and materials, lack of toilet and hand
16 cleaning facilities, unsanitary conditions of
17 toilets, urinary tract infections, cultural
18 issues such as hostility toward women by men,
19 feeling of isolation, job insecurity for
20 reporting safety and health concerns to their
21 employer, and then also psychological stress.
22 Forty percent of women reported ill-fitting

1 PPE.

2 After the PowerPoint presentation,
3 Kevin Beauregard presented to the work group
4 a draft copy that he was tasked to work on
5 over the past couple of months, Women in
6 Construction Quick Card and a Women in
7 Construction Fact Sheet his staff developed
8 per the work group request of April 14th.

9 After discussion, the work group
10 reached a consensus on concentrating the focus
11 of the Quick Card to employee information.
12 The fact sheet will focus information that is
13 important to the employer and his
14 responsibilities. The work group was tasked
15 by the co-chairs to study the two documents
16 and provide further comments of feedback to
17 Mr. Beauregard before the next ACCSH work
18 group meeting in September 2009.

19 A suggestion was made to seek new
20 information from tool manufacturers regarding
21 any proposed future changes to tools and
22 equipment used in construction. The

1 information the work group is searching for is
2 various size tools, lighter weight and better
3 ergonomically-designed tools to help
4 accommodate women in construction. The focus
5 was then redirected from not only women in
6 construction, but for all workers of various
7 sizes, limitations and challenges.

8 The work group is in the process
9 of developing a supplier list for women's PPE.
10 We should have the list ready to present to
11 the work group by the September 2009 work
12 group meeting. We have invited a
13 representative from the ISEA, or the
14 Industrial Safety Equipment Association, to
15 speak to the work group regarding PPE for
16 women in construction.

17 The work group asked for a status
18 report from Danezza Quintero on the April
19 14th, 2009 work group meeting recommendation
20 to OSHA that it would include more photographs
21 of women in the construction industry in their
22 literature and posters. Ms. Quintero

1 explained the process of photographing women
2 on construction sites and how it would consume
3 valuable time that the Agency cannot afford to
4 give currently. She explained the legal
5 challenges in acquiring permission from the
6 individuals to use their photographs on its
7 brochures and posters.

8 Suggestion was made by Ms.
9 Quintero to have the work group members
10 acquire photos and the necessary permission
11 from the women so the Agency can use the
12 photographs. She will email all members the
13 necessary paperwork to acquire this
14 permission.

15 No further business, the work
16 group adjourned at 9:45 a.m.

17 CHAIR MIGLIACCIO: Okay. Thank
18 you.

19 Liz, before we go into your --
20 anything you'd like to add, I see Jordan's
21 entered the room. If you'd like to hold off
22 on the rest of your report?

1 MS. ARIOTO: I'll hold off on --

2 CHAIR MIGLIACCIO: Okay. All
3 right. At this time I'd like to have Jordan
4 Barab come down and give us a presentation of
5 what's been going on.

6 MR. BARAB: Well, thank you for
7 inviting me. Welcome, all of you. Some of
8 you I've seen, but most of you I haven't --
9 this meeting was kind of special for me last
10 time I came here. I think it was my second
11 day on the job, and although I did know my way
12 around here, at least how to get to the room,
13 I was still a little bit shell-shocked. Now,
14 I'm suffering from post-traumatic stress
15 disorder. I'm not sure I'm in better shape
16 now than I was then.

17 But it is good to be here. I
18 really enjoy talking to ACCSH, because you all
19 are, you know, obviously, as you know, very
20 active and really make a very real
21 contribution to this Agency's work. And I
22 really appreciate the time you put into it.

1 A lot has happened since I first
2 got here, pretty much all of it good, too.
3 Let me just start with some things that are of
4 most interest to you all. We are actively
5 searching for a new director of the
6 Construction Directorate. We'll be conducting
7 interviews and meetings and things throughout
8 August and hope to come to a conclusion on
9 that, end of August, beginning of September
10 sometime. So that will be good. We've got
11 some good candidates to look at.

12 You probably also all have heard
13 that we finally have a nominee for Assistant
14 Secretary, Dr. David Michaels, who's at George
15 Washington University. If you don't know
16 David, he's a great guy. I've known him and
17 we've been friends for a number of years,
18 worked together on a number of issues. He was
19 previously, during the Clinton Administration
20 at Department of Energy running their
21 Occupational Safety and Health Administration
22 Program. So he's got a lot of experience with

1 occupational safety and health, is very
2 familiar with OSHA, good management
3 experience. Because he is so good and so
4 effective, I would be surprised if there's
5 some opposition. There will certainly be a
6 hearing. All that means basically that we're
7 not quite sure when he'll be arriving here.
8 We're keeping his chair warm, and we again
9 look forward to his arrival sometime hopefully
10 early this fall.

11 Now let me run through a few
12 things that we've been doing. And again, some
13 of these you may have heard, most of them
14 probably, because they have been written about
15 in the trade press. As you're probably aware,
16 we received some criticism earlier this year
17 about our enhanced enforcement program. We
18 are now in the final stages of revamping and
19 renaming that program. It will be the Severe
20 Violator Enforcement Program. And again, the
21 basic model will be the same. We're going to
22 be doing extensive examinations of employers,

1 inspection history. Where they meet the
2 criteria under the program, that will trigger
3 additional mandatory inspections. Again,
4 we're mostly going after the large companies
5 that have a number of different subsidiaries
6 and enterprises and, you know, making sure
7 that when they have a health and safety
8 problem, when they've discovered a health and
9 safety problem, or when we've discovered a
10 health and safety problem in one part of the
11 company, that they also address that problem
12 throughout the company and that they keep
13 addressing it. Obviously, as with everything,
14 there are additional complications with
15 construction, but we're going to try to
16 integrate that as well.

17 Probably one of the more exciting
18 things I think we've done is, as you know, we
19 have a construction focus going on in Texas.
20 Texas has the dubious distinction of having by
21 far the highest number of fatalities of any
22 state in the country, not just fatalities,

1 construction fatalities and immigrant worker
2 fatalities. And things did not seem to be
3 getting any better. In fact, we'd launched
4 this shortly after three construction workers
5 were killed as a scaffold collapsed in Austin.
6 Again, we not only find that number of
7 fatalities inexcusable, but we're bound and
8 determined to go after that and to really try
9 to develop OSHA and OSHA's enforcement
10 capacity into a much more flexible operation
11 where we can actually make this type of thing
12 not an exception, but actually something that
13 we do more regularly. In other words, when we
14 see any kind of hot spots, particularly with
15 fatalities, that we will have the capacity and
16 the capability to move in and address it. And
17 we're again in the midst of that right now in
18 Texas and we'll see what the results are. So
19 far, I think, from what I hear, we've been
20 finding a lot of problems, which isn't
21 unexpected and we will be addressing that
22 through our normal enforcement mechanisms.

1 One of the things that's going to
2 allow us to implement that action plan, that
3 new flexibility, the capacity to really move
4 where the problems are is our budget for 2010.
5 The President, much to our pleasure, has
6 requested over a 10 percent increase for OSHA,
7 which is much more than anybody can pretty
8 much remember, certainly in recent years. And
9 that will include 130 new inspectors.

10 Now, of course this hasn't made it
11 through the House or the Senate yet, but there
12 were some cutbacks in the House. We'll see.
13 I'm not sure what's coming out of the Senate
14 at this point, but we're hoping anyway we'll
15 get the vast majority of that increase. Also
16 new staff and standards, new staff in Whistle-
17 blower and some others here and there. I
18 think we talked about last time the additional
19 funding, that we're getting additional
20 inspectors; 35 this year, I think 35 or 40
21 next year under the Recovery Act. And we're
22 looking at a number of initiatives there to

1 really use the Recovery Act to focus in on
2 safety in those projects, but, you know, most
3 of those projects are construction. I think
4 that will also have benefits throughout the
5 country and throughout the industry and not
6 just with stimulus projects.

7 All right. So those are probably
8 some of the main initiatives since last I
9 spoke to you. A lot more simmering that we
10 haven't been able to announce yet, but we're
11 very actively working on any way we can to
12 move this agency forward, particularly in
13 terms of the Secretary's priorities, one of
14 which again is enforcement. And, you know,
15 this is one area among many where we very much
16 value your suggestions and your comments on
17 what we're doing.

18 The Secretary's other priority is,
19 as you know, to move forward on the regulatory
20 front. And obviously the main construction
21 standard now, as it was last time we met, and
22 is unfortunate, it probably will still be next

1 time we meet, is cranes and derricks. We are
2 putting almost all of our resources into that
3 and moving forward as fast as we can. As you
4 know, it's a big standard, lot of history
5 there to go through and we want to make sure
6 it's good. So we are focusing on that. And
7 I'm sure Noah, if he hasn't yet, will fill you
8 in in a bit more detail on how that's going.

9 Following shortly behind that will
10 be confined spaces in construction, also, you
11 know, very important and also something we're
12 putting resources into.

13 We have made some changes in some
14 of our enforcement of some of those standards
15 and compliance directives, one of which I know
16 has come up in these meetings quite a bit and
17 which is the Steel Erection Compliance
18 Directive, which we've been working with the
19 iron workers. I think it's been an issue with
20 the iron workers and others for a long time,
21 but we made that a priority to work on and we
22 actually did change or were in the process of

1 changing; I don't know if we've actually put
2 it out yet, the directive especially was -- I
3 think questions 23 and 25; I never quite
4 remember what the names are. But in any case,
5 we'll get rid of the exemption to do decking
6 two stories down in exchange for 100 percent
7 fall protection. Of course we are very much
8 in favor of 100 percent fall protection, but
9 we're also very much in favor of enforcing the
10 standards that we issued and in the way that
11 they were issued. So again, that's in the
12 process of being changed.

13 We're also going to address --
14 I've told the staff to get rid of the
15 exemption in the Residential Construction
16 Directive that's been I think plugging our
17 enforcement efforts in residential
18 construction for a number of years. So that's
19 also underway. And in the months to come, you
20 know, we will be looking at, you know, other
21 standards and how we're doing enforcement and
22 seeing if we can improve that anywhere. And

1 as I keep repeating here, we need your advice
2 on that. It's been very valuable in the
3 efforts that we've done.

4 So, that's pretty much it kind of
5 on the standards, enforcement, interpretation-
6 type front.

7 On our other leg, the cooperative
8 programs. There's been quite a bit of
9 activity there as well. You're probably aware
10 of the GAO report that was issued, I guess
11 it's been at least a couple of months now. It
12 was very critical of the way we operate our
13 Voluntary Protection Program, particularly the
14 way we're monitoring the program. A lot of
15 inconsistencies with the way the program's
16 being run between regions. Inadequate follow-
17 up where VPP members have had fatalities,
18 where their injury rates have gone up. So we
19 are in the process, and actually in the final
20 stages of revamping how we operate the VPP
21 program.

22 We're also not only trying to

1 address that GAO report, but also a 2004 GAO
2 report that really looked at all of our
3 cooperative programs, VPP alliances and our
4 other programs and asked us to evaluate those
5 programs, how they function and also how they
6 fit within OSHA's overall budget and OSHA's
7 overall mission, particularly considering the
8 considerable resources that we've put into
9 those programs. We are engaged in doing that
10 review. It will be something that we are
11 going to do both internally as well as
12 externally, welcoming stakeholders in to
13 discuss the future of these programs,
14 particularly VPP and the alliances, given
15 again, you know, the resources that go into
16 those programs and the resources that OSHA has
17 to use for other purposes as well. So this
18 will be a good year-long process that we're
19 engaged in. We'll see what comes out the
20 other end. Of course, you know, the VPP
21 program has been expanding to challenging
22 construction, so we're going want your input

1 into that as well.

2 All right. What else do we have
3 going on here? Those are probably all the
4 major issues that we're doing.

5 Again, in the longer term I think,
6 or the less concrete but more important longer
7 term, you know, a number of issues that we are
8 going to want your help on that we're thinking
9 about. You know, generally, obviously we've
10 got a number of issues with construction.

11 Small employers, how to go after small
12 employers, particularly where they are not in
13 compliance with the law, not that we're going
14 to stop going after large employers who are
15 not in compliance with the law.

16 And, you know, again stopping,
17 probably not just reducing, but really
18 stopping some of the really unnecessary
19 fatalities, not that any fatalities are
20 necessary, but, you know, every time I see a
21 trenching fatality or even a fall fatality,
22 you've got to kind of wonder why these are

1 still happening, what we can do. You know,
2 we're looking at higher penalties. Rich may
3 talk to you about that. We are exploring how
4 to raise our penalties within the confines of
5 OSHA's Act. I mean, there's only a certain
6 amount we can do within the confines of our
7 Act. But we do have a number of automatic
8 fine reduction mechanisms and we're doing a
9 top to bottom review of how we set our
10 penalties, at the same time, you know, be
11 cognizant of the economic conditions in this
12 country, being cognizant of special concerns
13 of small businesses. So we are trying to take
14 that into account. But also trying to send
15 the message out even more strongly than we
16 have that we will not tolerate violations of
17 OSHA standards. We will not tolerate
18 fatalities and injuries that come in violation
19 of our standards.

20 One other thing I think we're
21 again the midst of, which again contributes to
22 everything I've been talking about, is the

1 Susan Harwood Grant Program. We announced a
2 new round a little while back. I guess the
3 deadline has passed. We got a large number of
4 applications. I can't remember what the
5 figure was, but it struck me as much larger
6 than we have normally gotten, which is good.
7 Shows there's certainly not only a demand, but
8 a growing demand for this program. And we've
9 been very pleased with the output of that
10 program in the past with the products that
11 have been produced and we're trying how to
12 figure out how to expand the effect of that
13 program, how to make sure that these products
14 are not just limited to the grantees, but
15 really are able to be used throughout the
16 industry to really, again, promote safety and
17 promote some of the novel approaches that I
18 think the grantees have been developing. So,
19 you know, we will be also looking at this
20 grant.

21 This grant program, I mean, the
22 grant round that's out now was literally

1 sitting on my desk when I arrived. We did
2 manage to expand it from a one-year program to
3 a two-year program, but with the next round we
4 will probably make some more changes, more
5 significant changes. And again we're really
6 looking at different ways that we can make the
7 grant program effective. So again, if you all
8 have suggestions in that area as well; I know
9 a lot of you are grantees, we'd be happy to
10 hear that as well. And I think you'll be
11 hearing from Hank Payne later on, if you
12 haven't already, about what we're doing in
13 terms of training efforts, both within the
14 grants, the 10-hour, 30-hour course, some of
15 the changes we're making there as well.

16 And finally, I just want to say,
17 you know, again we're looking for the future.
18 We're looking for different things we can do
19 and particularly innovative concepts in
20 construction. You know, prevention through
21 design has been discussed a lot, not
22 particularly implemented. You know, we talk

1 about it a lot. I talk about it a lot. You
2 know, something that we really should be
3 moving forward more on. Issues that I again
4 brought up before and we're exploring to a
5 certain extent through our stimulus funding.
6 I mean, how to use the contracting procedure,
7 particularly the public contracting procedure,
8 to encourage contractors to adopt better
9 safety programs. There are a number of things
10 in the current laws that haven't been
11 enforced. We're looking at expanding our
12 activity around health and safety programs.
13 As you know, quite a bit of the work that's
14 done, especially by -- well, smaller and
15 larger companies are done, if not under
16 federal contracts, then under state contracts
17 or local municipal contracts. Lot of
18 potential leverage there for pushing safety
19 among the contractors.

20 So let me wrap up there and see if
21 you have any questions.

22 CHAIR MIGLIACCIO: Any questions

1 of the Board?

2 MR. SHANAHAN: Frank, this is Tom.

3 I have a question.

4 CHAIR MIGLIACCIO: Oh, go ahead,

5 Tom.

6 MR. SHANAHAN: I'm sorry. It's
7 obviously a little difficult to hear, so at
8 one point you had mentioned the interim
9 guidelines, the fall protection guidelines for
10 residential construction. And I was wondering
11 if you could repeat a little bit louder what
12 you said about that?

13 MR. BARAB: I'm sorry, the
14 residential housing guidelines, you said? Is
15 that what you were asking about?

16 MR. SHANAHAN: Yes.

17 MR. BARAB: Yes, okay. All right.
18 Yes, I don't have a whole lot to say. As you
19 know, there's a compliance directive that we
20 issued a number of years ago that kind of
21 exempted a lot of enforcement in that area.
22 And we went back and we looked at that and

1 decided that really wasn't justifiable and we
2 are in the process of basically rescinding
3 that. And again, this is a decision we just
4 recently made, so I don't have anything yet in
5 more detail really to talk to you about on
6 that.

7 MR. SHANAHAN: The point that I
8 want to make with that, and I realize that
9 ACCSH has made a recommendation to support the
10 rescinding of that document, however, our
11 residential work group has been working on a
12 recommendation, for lack of a better word, of
13 a bridge to kind of, well, bridge the gap
14 between now the plain regulation and what the
15 interim guidelines were attempting to do. And
16 I just wanted to just bring that up, because
17 like I said, that work group is working pretty
18 hard on that. And I wanted you to know that
19 we are so that before maybe anything formal is
20 done you could refer back to what the work
21 group is doing and the suggestions that it's
22 developing.

1 MR. BARAB: Yes, I think that's a
2 good idea. I was actually not aware of the
3 residential work group. You know, Noah will
4 be heading this up, so yes, I will talk to
5 him, but I'm sure you'll be talking to him,
6 too. And we'll make sure that your input is
7 certainly taken into account there.

8 MR. SHANAHAN: Thank you very
9 much.

10 CHAIR MIGLIACCIO: For the record,
11 that was Tom Shanahan with the employer's
12 representative.

13 Mike Thibodeaux?

14 MR. THIBODEAUX: Mike Thibodeaux,
15 employer rep. Remember last time you got out
16 without any questions.

17 MR. BARAB: Did I? How did I do
18 that? I don't know.

19 MR. THIBODEAUX: Well, we -- you
20 know, two days on the job.

21 MR. BARAB: Oh, you were going
22 soft on me?

1 MR. THIBODEAUX: You had said in
2 Texas that you were finding a lot of problems.
3 Can you give us an idea of the kind of
4 problems that your compliance --

5 MR. BARAB: Well, I actually don't
6 have the details. All I know is that, you
7 know, the inspections have been finding a lot
8 of issues on violations. I haven't gotten an
9 actual breakdown. This is just the report
10 back.

11 MR. THIBODEAUX: Okay. Well, I
12 know that over the last four or five months
13 they've had some on the high rise in Austin,
14 high rises in Austin and some in Houston, that
15 they've had some serious problems with their
16 scaffolding.

17 MR. BARAB: Yes. Yes.

18 MR. THIBODEAUX: And I was
19 wondering if --

20 MR. BARAB: Yes, and again, I
21 don't have any specific information about
22 where the violations are.

1 MR. THIBODEAUX: Okay.

2 MR. BARAB: But, you know,
3 certainly scaffolding is one of the major
4 areas we're looking at. We would be looking
5 at it anyway, but particularly considering
6 those three fatalities in Austin.

7 MR. THIBODEAUX: All right. Thank
8 you.

9 CHAIR MIGLIACCIO: Any other
10 questions? Seeing none.

11 MR. BARAB: Getting out early and
12 easy again.

13 CHAIR MIGLIACCIO: Thank you,
14 Jordan.

15 MR. BARAB: All right. Well,
16 thank you very much. Keep up the good work
17 and we'll be hearing from you.

18 CHAIR MIGLIACCIO: All right. At
19 this time we'll go ahead back.

20 Liz, do you have anything to add
21 to the --

22 MS. ARIOTO: Women in Construction

1 Work Group?

2 CHAIR MIGLIACCIO: Yes.

3 MS. ARIOTO: One thing I would
4 like to add would be that I would love to see
5 a toilets be available for women, a separate
6 toilet to be available for women at job sites.

7 CHAIR MIGLIACCIO: Any questions
8 of the work group?

9 Okay. Seeing none, I'd like to
10 entertain a motion to accept this?

11 MR. THIBODEAUX: Move that it be
12 accepted.

13 CHAIR MIGLIACCIO: Mike
14 Thibodeaux. Second?

15 MR. GILLEN: Second.

16 CHAIR MIGLIACCIO: Matt Gillen,
17 second. Questions? Discussions?

18 All in favor say aye.

19 (Chorus of ayes.)

20 CHAIR MIGLIACCIO: Opposed?

21 (No audible response.)

22 CHAIR MIGLIACCIO: The ayes have

1 it.

2 MS. SHORTALL: Mr. Chair, I'd like
3 to enter the following into the record. It
4 was a very handout-intensive meeting
5 yesterday.

6 As Exhibit 6 the approved
7 Diversity Women in Construction Work Group
8 Report from the July 28th, 2009 meeting.

9 (Whereupon, the document was
10 marked as Exhibit 6 for
11 identification.)

12 MS. SHORTALL: As Exhibit 6.1, a
13 hard copy of a PowerPoint entitled, "Women in
14 Construction Medical Issues" presented by Jack
15 Longmire from OSHA's Office of Occupational
16 Medicine.

17 (Whereupon, the document was
18 marked as Exhibit 6.1 for
19 identification.)

20 MS. SHORTALL: As Exhibit 6.2, the
21 BLS Fatal Occupational Injury Report from
22 2007, Looking at Worker Characteristics Event

1 and Exposure.

2 (Whereupon, the document was
3 marked as Exhibit 6.2 for
4 identification.)

5 MS. SHORTALL: As Exhibit 6.3, the
6 BLS, CFOI Injuries from 2003 Forward.

7 (Whereupon, the document was
8 marked as Exhibit 6.3 for
9 identification.)

10 MS. SHORTALL: As Exhibit 6.4, the
11 Household Data Annual Averages for Employed
12 Persons Detailed by Occupation, Sex, Race and
13 Hispanic or Latino Ethnicity.

14 (Whereupon, the document was
15 marked as Exhibit 6.4 for
16 identification.)

17 MS. SHORTALL: As Exhibit 6.5,
18 OSHA letter of interpretation from June 7th,
19 2002 regarding mobile crew access to toilet
20 facilities.

21 (Whereupon, the document was
22 marked as Exhibit 6.5 for

1 identification.)

2 MS. SHORTALL: As Exhibit 6.6, the
3 February 23, '05 OSHA letter of interpretation
4 on providing toilet facilities at construction
5 job sites.

6 (Whereupon, the document was
7 marked as Exhibit 6.6 for
8 identification.)

9 MS. SHORTALL: As Exhibit 6.7, the
10 May 17, '06 OSHA letter of interpretation on
11 sanitation requirements for toilet facilities
12 at construction job sites.

13 (Whereupon, the document was
14 marked as Exhibit 6.7 for
15 identification.)

16 MS. SHORTALL: As Exhibit 6.8, the
17 draft Women in Construction Quick Card.

18 (Whereupon, the document was
19 marked as Exhibit 6.8 for
20 identification.)

21 MS. SHORTALL: And as Exhibit 6.9,
22 the draft Women in Construction Fact Sheet.

1 (Whereupon, the document was
2 marked as Exhibit 6.9 for
3 identification.)

4 CHAIR MIGLIACCIO: Okay. Thank
5 you.

6 All right. At this time we're
7 going to take our break. And our next speaker
8 will be Hank Payne with the OTI.

9 So we'll take a 15 minute break.
10 Be back here at 10:30, please.

11 (Whereupon, the above-entitled
12 matter went off the record at 10:18 a.m. and
13 resumed at 10:35 a.m.)

14 CHAIR MIGLIACCIO: Liz, you had
15 something you wanted to --

16 MS. ARIOTO: Yes, I'd just like to
17 add, the reason I made the comment about one
18 toilet for women --

19 COURT REPORTER: Name, please?

20 MS. ARIOTO: Pardon?

21 CHAIR MIGLIACCIO: Identify
22 yourself for the record.

1 MS. ARIOTO: Oh, I'm so sorry.

2 Liz Arioto. It was just I'd like to address
3 the issue of having one toilet for women, at
4 least one toilet on site.

5 In the report, the PowerPoint
6 presentation given by the Dr. Longmire
7 yesterday, one of its presentation parts was
8 -- and I'd like to read this: "Even though
9 OSHA standards require appropriate facilities
10 for sanitation, 80 percent of women still
11 report there's no toilet or dirty toilets and
12 there's no hand washing facilities." And
13 what's really, really important to me is that
14 because of this, women will hold their
15 bladders and they are more apt to have bladder
16 infections and kidney infections from holding
17 the urine. And there is disease associated
18 with no hand washing facilities.

19 I was on the standards board in
20 California and we passed a regulation where
21 women would have a toilet, their own separate
22 toilet. There was no big to-do and it went

1 very smoothly and the women love to have this
2 toilet. So I think all toilets should be
3 clean and well-supplied. But I think women
4 get the greatest benefit of the issues that
5 can have, like the urinary tract infections.
6 So that's what I wanted to happen. Thank you.

7 CHAIR MIGLIACCIO: Thank you, Liz.

8 All right. At this time Hank
9 Payne, Director of Training and Education, or
10 OTI, we welcome you here today.

11 MR. PAYNE: Thank you, Frank.

12 I was asked to kind of a general
13 overview of the Directorate of Training and
14 Education. For those of you who don't know,
15 we've only been a directorate for about two
16 years. Prior to that, we were an office
17 within the Directorate of Cooperative and
18 State Programs. So, we were pulled out, made
19 a separate directorate. So what I'm going to
20 basically do is kind of run through the kind
21 of organization setup and the functions and
22 responsibilities that we currently have as a

1 directorate. And if you have questions, you
2 can pose them as we go. My presentation won't
3 be any better or worse if you interrupt me, so
4 don't worry about it.

5 As you know, OSHA's mission is
6 basically to assure the safety and health of
7 America's workers. And, you know, what we do
8 in that mission, we're the arm of the Agency
9 that basically provides OSHA's training
10 programs. We provide training programs to not
11 only federal compliance officers, but also
12 state compliance officers, state consultants,
13 employers, employees and other people who are
14 engaged in the work of the Act such as people
15 who do college training and those kinds of
16 things. So, we have a very broad
17 responsibility in fulfilling our part of the
18 Act. And our directorate's mission is to help
19 fulfill the Act by improving the skill and
20 knowledge levels of people engaged in work
21 relating to the Act. That comes directly from
22 our mission statement.

1 Basically, our main functions, we
2 develop and implement OSHA's training and
3 education policies and programs. And at the
4 Institute, our primary focus is on training
5 federal and state compliance officers.
6 Although we do have other programs, the
7 majority of our resources, the majority of our
8 personnel and the majority of our effort is
9 focused on ensuring that federal and state
10 OSHA have qualified and competently trained
11 compliance officers.

12 We also work on identifying
13 competencies for compliance officers. About
14 five years ago we developed a competency model
15 that identified the competencies that
16 compliance officers needed to have to do their
17 job. And the training at the OSHA Training
18 Institute is based on the competencies
19 contained in that model. And we're currently
20 circulating that model back around through the
21 Agency to get feedback on have there been any
22 changes over the past few years that we need

1 to incorporate into our training. And then we
2 basically design, develop and conduct the
3 training that we do, either in-house through
4 the Training Institute or through other
5 entities such as the OTI Education Centers or
6 the outreach trainers. And I'll get into more
7 of those programs a little bit later.

8 This is our current organizational
9 structure. We have three offices plus the
10 OSHA Training Institute. I apologize to those
11 of you in the back. This is kind of an eye
12 test chart for those of you in the back. I'm
13 sure it's hard to read. But we basically have
14 an office of training and educational
15 programs. They're responsible for the Susan
16 Harwood Grant Program, the OTI Education
17 Center Program, and the Outreach Training
18 Program, which is I guess more affectionately
19 known as the OSHA 10 and 30-Hour Card Program,
20 plus a few other responsibilities.

21 We have an Office of Training and
22 Educational Development who do the training

1 development for all of our internal and
2 external training programs. We have an Office
3 of Administration and Training Information.
4 That's our administrative arm. They handle
5 registration, they handle classrooms, they
6 handle printing and duplication, they handle
7 shipping and receiving, they handle
8 contracting, and just about any other
9 administrative issue that comes up for our
10 organization.

11 And then there is the OSHA
12 Training Institute, and it is broken into two
13 organizations. One is the Office of Safety
14 and Health Training and the other is the
15 Office of Construction Training. And that is
16 not a typo. We currently have 56 authorized
17 FTE positions, only 15 of which are
18 instructors in the OSHA Training Institute.

19 Again, as I said, the OTI is split
20 into two offices. OTI has over 80 courses
21 that they conduct. Some courses are conducted
22 multiple times each year. Some courses are

1 taught every two years. And we have a few
2 that we do every three years, and it's based
3 on demand. We do courses both in resident at
4 the OSHA Training Institute's location in
5 Arlington Heights, Illinois and we do courses
6 out in the regions and the states, as
7 requested by the states or the regions, and as
8 we have resources available to do that.

9 We also have instituted over the
10 last two years, we've been doing a number of
11 webinars on timely topics. For example, this
12 past Monday we just finished a webinar on
13 record keeping to prepare the compliance
14 officers for the National Emphasis Program
15 that is getting ready to come out on record
16 keeping. We did the same thing right after
17 the explosion down in Georgia at the sugar
18 processing plant. We did a Combustible Dust
19 Training Program. So we've been using the
20 live webinars for very timely, quick-hitting,
21 up-to-date, train-everybody kinds of programs
22 that they did. They typically last about an

1 hour-and-a-half, although the one Monday was
2 kind of a marathon. It was a three-hour one,
3 which is not the preferred way to do it. But
4 we had a lot of information to cover on record
5 keeping. And then we record the webinars and
6 put them up so they're in a archived version.
7 So if you can't see the webinar live, you do
8 have the opportunity to go in a later date and
9 view the recorded version yourself.

10 And as I said earlier, OTI
11 basically trains OSHA's professional and
12 technical people, and our federal and state
13 compliance officers, our state consultants.
14 And we have a couple of courses specifically
15 designed for people from other federal
16 agencies who have a safety and health
17 responsibility. And we have one of those
18 courses on-line. We have one of those courses
19 that we do live in person. And we also make
20 that training available through the OTI
21 Education Centers.

22 This shows kind of the

1 schizophrenic training numbers that we've had
2 from the OSHA Training Institute over the
3 years. And a lot of the ups and downs are
4 specifically related to budget issues and to
5 priorities within the Agency. The big jump in
6 2008 is directly attributed to us developing
7 and implementing a scheduled program of live
8 webinars. We average about 750 participants
9 in every webinar, so it doesn't take a whole
10 lot of webinars to jump that number up. In-
11 person training that OTI does for compliance
12 officers, they average somewhere between three
13 and four-thousand people a year on a normal
14 year.

15 Two-thousand-and-six, the reason
16 the number is so low, that was the year we
17 went through the competitive sourcing process
18 and half the instructors decided to go work
19 elsewhere. And so we had a lot of turnover
20 and turnaround at the Institute and it
21 resulted in us having to reduce the number of
22 courses that we offered because we just didn't

1 have the people to do it.

2 The next office probably of
3 interest here is the Office of Training and
4 Educational Programs. That office manages the
5 OTI Education Center Program, the Outreach
6 Training Program, the Susan Harwood Training
7 Grants Program, and the Resource Center Loan
8 Program.

9 I'm sure many of you are aware
10 that back in the early '80s and into the mid
11 and late '80s OSHA became pressed by Congress
12 to make its training available to the private
13 sector on a greater frequency. We did not
14 have the in-house staff or facilities to open
15 classes up to the public. So the Agency
16 decided to create an OTI Education Center
17 Program aimed primarily at making OTI courses
18 available through these organizations to the
19 public so it would take the pressure off of
20 the Institute and the Institute could focus
21 primarily on compliance officers and
22 consultants. And the program started back in

1 1992. Originally there were only four ed
2 centers and they were national ed centers.
3 The program evolved over the years to where
4 it's now a regionally-focused ed program; and
5 that is, ed centers are selected to serve a
6 region, not the nation. And we currently have
7 25 education centers spread throughout 44
8 different organizations all across the
9 country. There is at least one OTI Education
10 Center in every region and some regions have
11 as many as five.

12 The education centers, as you can
13 see, train a large number of private sector,
14 primarily safety and health or small
15 employers. They train very few actual
16 workers. They really do focus on the safety
17 and health professionals or the small
18 employers. And last year they trained over
19 29,000 students, which was an all-time high
20 through that program. And the majority of the
21 training that they do is in support of the
22 Outreach Training Program.

1 The ed centers also help OSHA
2 fulfill its mission by helping us with a lot
3 of the initiatives that come down the road.
4 For example, we asked the ed centers to help
5 us reach out and train non-English-speaking
6 workers across the country. And they put
7 training in place to train non-English-
8 speaking trainers to go out and train these
9 populations. We asked them to help us with
10 youth programs. We think the sooner we can
11 get people thinking about safety and health,
12 even if they're doing their after school part-
13 time job or their summer job, that it's never
14 too soon to get them thinking about working
15 safe on the job. They've helped us put on
16 conferences and seminars. If you remember a
17 few years ago OSHA did a number of ergonomics
18 conferences across the country. Those were
19 put on and sponsored by the OTI Education
20 Centers.

21 A lot of the education centers
22 have taken the courses we've authorized them

1 to offer and bundled them into either
2 certificate programs or tied them actually
3 into degree programs that their university
4 offers. A number of the universities have
5 gone through the process so their students can
6 get college credit for taking OTI courses.
7 They do help us with developing new courses
8 when we need subject matter expertise. And
9 they are the primary source that help train
10 the trainers that are in the Outreach Training
11 Program.

12 The Outreach Training Program,
13 also known as the 10-Hour and 30-Hour Card
14 Program, is a program that OSHA has had since
15 1971. It began shortly after the Agency began
16 with the purpose primarily of educating
17 workers about OSHA was, what OSHA was, and the
18 workers' rights under OSHA, and to provide a
19 general overview of hazards in either the
20 construction industry or general industry.
21 It's a voluntary program, it is not required
22 by any OSHA standard or regulation, and it

1 does not relieve the employer of any training
2 responsibility under any current OSHA standard
3 or regulation. So it's a totally voluntary
4 program.

5 Over the years the program has
6 started to grow as situations change. Right
7 after 9/11 and all of the work that OSHA was
8 involved with and in cooperation with the
9 Center to Protect Workers Rights, we developed
10 a Disaster Site Worker Training Program. We
11 launched it back in 2004. It doesn't train a
12 lot of people every year; about 2,500-2,600
13 people go through the program annually, so
14 it's not a huge program. But is a program
15 designed for pre-event. It is a pre-event
16 training program. It is not something that
17 you would want to use after an event, or to
18 get people into a site where there's been a
19 event.

20 In 2007, the maritime industry
21 approached us and basically said that they
22 didn't feel either the construction program or

1 the general industry program really met their
2 needs. They worked with us to develop a
3 separate program in the maritime industry. We
4 worked with them, we did that and we launched
5 that program last year. So we currently now
6 have a program in the maritime industry.

7 Again, through this program
8 trainers become authorized by completing an
9 outreach trainer course, primarily through an
10 ed center. Although we do offer the courses
11 at the OSHA Training Institute and we will be
12 offering more of them again, we've had to cut
13 back for various reasons recently, but in the
14 coming years we'll be offering more trainer
15 courses.

16 MS. SHORTALL: Could I ask for a
17 clarification, please, on how you have defined
18 maritime? Does it include all three sectors?
19 Ship building --

20 MR. PAYNE: Yes, ma'am.

21 MS. SHORTALL: All right.

22 MR. PAYNE: Yes, ma'am.

1 MS. SHORTALL: Ship building,
2 longshoring and marine terminal?

3 MR. PAYNE: I just happen to have
4 the expert here who can answer your maritime
5 question.

6 MR. BARNES: The answer is yes, it
7 does cover all three. In fact, for this
8 maritime program we have segmented worker
9 courses in 10 and 30-hour for each of the
10 three different standards for the maritime.

11 MS. SHORTALL: Thank you.

12 CHAIR MIGLIACCIO: Can you state
13 your name, please?

14 MR. BARNES: Jim Barnes.

15 CHAIR MIGLIACCIO: Thank you.

16 MR. PAYNE: And one of the things,
17 the 10 and 30-hours course are hazard
18 awareness and recognition courses. They're
19 not intended to teach the standards to the
20 workers. We believe workers need to know more
21 about what the hazards are, what they look
22 like, how to recognize them and avoid them

1 than to know what particular standard actually
2 covers it. So they really are hazard-focused.

3 If you want to be a trainer, you
4 have to complete, as I said, a one week
5 trainer course. After you take the course and
6 pass the test you become authorized to teach
7 either the 10 or 30-hour course on behalf of
8 the Agency.

9 Some of the benefits that we see
10 from the program is that this program really
11 does target workers. It is a program in place
12 for workers. And in a lot of organizations,
13 the trainers are either fellow workers from
14 the workplace or trainers from their
15 workplace. So it's people they know, people
16 that they can relate to. We also have a lot
17 of trainers who are authorized who speak
18 multiple languages. We have a lot of people
19 who can do this training in this Spanish. We
20 have people who are authorized in Russian and
21 numerous others.

22 As the trainers complete the

1 training, they receive a 10-hour card. It's
2 a sense of accomplishment for them. It's
3 something that they now have that says that
4 they've completed the training. And it really
5 is an opportunity through these youth programs
6 to start getting the value of safety and
7 health into the workers, that it is something
8 they should value and that there's nobody
9 better on that site to make sure they're
10 working safe than themselves. Their employer
11 is responsible, but the employer isn't always
12 seeing everything that's happening. And the
13 more hazards they can recognize, the safer
14 they can be.

15 This is a program that has
16 literally exploded over the past few years.
17 When I arrived in 1998, they were celebrating
18 an all-time high and every year we've been
19 saying, well, it won't continue; it'll level
20 off. And you can see, as of last year we
21 issued just 680,000 cards. This has created
22 some growing pains for the program, needless

1 to say. This growth is, I would say,
2 contributed primarily to the acceptance of the
3 program by the construction industry. Most of
4 the labor unions provide the training to their
5 members. Many employers require this training
6 for employees who work for them. Eight states
7 and the City of New York require this training
8 on municipal construction facilities at
9 different costs and heights, and what have
10 you. So the program is growing. We don't see
11 the program kind of slowing down any time
12 soon.

13 And unfortunately as the program
14 has started to be required by statute in some
15 states, we've seen an increase in the
16 instances of fraud and non-compliance from
17 some of the outreach trainers. That probably
18 culminated in a series of newspaper articles
19 last February in the New York Daily News which
20 highlighted some of the activities of some of
21 the authorized trainers. OSHA put together an
22 executive work group that has identified a

1 number of activities that we have completed
2 and that we are working on to tighten up on
3 the program and to improve the integrity, and
4 to basically put a process in place to go
5 after these trainers.

6 For those of you haven't been on
7 our web site lately, or the outreach trainer
8 web site lately, we recently have posted the
9 investigation procedures that we're using now
10 to investigate all complaints about alleged
11 impropriety in the Outreach Training Program.
12 And as we find trainers who are failing to
13 follow the program guidelines, if what they do
14 reaches a certain level, we will either
15 suspend their authorization or we will revoke
16 their authorization to be an outreach trainer.
17 And this past week we posted what we call a
18 watch list on our web site and that list has
19 the names of four individuals, three of whom
20 who have had their trainer authorization
21 revoked and one of which who has his suspended
22 pending the outcome of a trial for selling

1 cards.

2 So OSHA is serious about
3 tightening up on these people. As we find
4 them, we will conduct investigations. The
5 solicitor's office worked with us diligently
6 to develop this process. They work with us on
7 reviewing a lot of the information that we get
8 and the responses that we make to these
9 individuals. Unfortunately, as Jim here says,
10 the fraud business is good. We have probably
11 somewhere between 25 to 30 ongoing
12 investigations and we seem to be receiving
13 more daily. So we're out there and we're
14 going to find them. We're going to remove
15 them from the program.

16 One of the other programs that we
17 administer is the Susan Harwood Training Grant
18 Program. And basically, this is a program
19 through which we provide grant money to non-
20 profit organizations to conduct safety and
21 health training programs on behalf of the
22 Agency. And we identify the topics. The

1 organizations submit applications through
2 grants.gov, which is an electronic application
3 process that the Federal Government uses for
4 grants. Every year we announce the
5 availability of the funding through the
6 Federal Register notice.

7 As Jordan said earlier, it closed
8 this past Friday, this year's round. The
9 application period closed Friday. We received
10 329 applications, which is an all-time record
11 for the Harwood Grant Program. That's going
12 to create some review issues for us, but we're
13 getting a lot of help from the other
14 directorates in the Agency to get all of these
15 reviewed. And we're scheduled to meet with
16 Jordan on August 28th to make the
17 recommendations from the consolidated reviews
18 on which grants to be selected.

19 The OSHA training grants
20 materials, this was brought up in the work
21 group yesterday, and we discussed this. We
22 get a lot of training material through the

1 grant program. Although we had two years
2 where we did focus on developing of materials,
3 historically and since those two years the
4 purpose of the grants is to provide
5 occupational safety and health training
6 primarily to workers, but to small employers
7 as well. So they're training grants, not
8 training material development grants.

9 The grantees are allowed to
10 copyright any material they develop, but OSHA
11 can use it for its internal purposes. But
12 we've not been able to find a way and Jim and
13 I agreed with the meeting that we'd go back to
14 the solicitor's office and have further
15 discussions about how we can either not let
16 them copyright the material or how we can
17 modify the agreement to allow us to make this
18 material available on a wider group of people.
19 And because a lot of the material is a very
20 good, but I will tell you, a lot of the
21 material is very targeted to very specific
22 groups, doing very specific work. So some of

1 it wouldn't have broad application, but some
2 of it would.

3 As we find out from the regions
4 and the grantees where they're doing training
5 through this program, we have been posting
6 those opportunities in OSHA's newsletter, the
7 QuickTakes Newsletter. So we're trying to
8 help the grantees advertise the training. One
9 of the things we've been finding over the past
10 couple years is that the grantees are having
11 trouble training all of the people they had
12 planned to train which has resulted in grants
13 being extended beyond -- we go through a no
14 cost time extension, which is one reason in
15 talking with Jordan this year, we're going to
16 a two-year time period for the grants awarded
17 this year. And hopefully we can avoid going
18 through the paperwork process that we do to
19 formally extend the grants for a second year.

20 This year, some of the notable
21 topics we have on the list; there are 26
22 topics this year, which is a very broad number

1 of topics; we don't usually don't do that
2 many, included the focus Foreign Construction,
3 pandemic flu, work zone safety and combustible
4 dust.

5 As you can see, we probably
6 average training somewhere around 70,000,
7 65,000 people a year through this program.
8 Some years we've trained a few more, and that
9 had to do with how the grants were done, and
10 then changes in the grant program. We used to
11 award grants non-competitively for a second
12 year, and we would give 75 percent of the
13 funding for a second year of funding. For
14 some reason, in 2002, we were told we couldn't
15 do that anymore, that that was a non-
16 competitive grant award and we would have to
17 go through a procurement review board to do
18 that. And as we looked at the process, there
19 wasn't any justifiable reason in this process
20 that we could use for a second year of funding
21 non-competitively. So we haven't been able to
22 do that since 2002.

1 We like this program. We were
2 able to work with organizations that allows us
3 to target some of the harder-reach workers,
4 some of the community-based organizations that
5 team with organizations that do safety and
6 health training and have had some really good
7 success under this program.

8 Another program that we have and
9 administer out through Arlington Heights is
10 what we call the Resource Center Loan Program.
11 This is a program through which we have
12 training materials, primarily videos, on hand
13 at the Institute and we loan them out to
14 eligible borrowers. And you can see the list
15 there of people who are eligible to borrow.
16 And it's a pretty successful program.

17 We're also in the process of
18 automating the ordering on this. So it's kind
19 of like if you go on-line and you want to buy
20 a book, you know, you can check the book you
21 want. You can check it out and put your
22 information in electronically and what have

1 you. We're going to a similar kind of system,
2 so we don't have so many faxes, because paper
3 does occasionally get lost. And it will make
4 it easier, because also as a borrower it will
5 let you know if that item is already checked
6 out. So it makes it easier for you to see
7 what you can get immediately and what you may
8 have to wait a few weeks for. So this program
9 is used primarily by the outreach trainers,
10 but it is used by a number of other people as
11 well.

12 The Office of Training and
13 Education Development, basically they are the
14 office that develops curriculum for the OSHA
15 Training Institute, the OTI Education Centers,
16 the Outreach Training Program. They also work
17 with a national office program such as
18 Alliances. We've worked with a number of
19 Alliance partners to help in development of
20 materials. It's a good group. It's a small
21 group. And they handle a lot of what I would
22 call our special projects that come down,

1 either from the Secretary's office or from the
2 Assistant Secretary's office. For example,
3 the Secretary sent a memo to all the cabinet
4 members on the ARRA funding kind of reminding
5 them that safety and health was a priority and
6 offering training for the people who oversee
7 their contracts through the OSHA Training
8 Institute.

9 So we worked with the national
10 office and the education centers to put
11 together this particular course for people
12 from other federal agencies, and basically it
13 focuses on the hazards in the construction
14 industry and it also focuses on the elements
15 of what we would call a safety -- they call it
16 an accident prevention plan in the FAR. We
17 now refer to it as a safety and health
18 management plan, or management system. And
19 we've offered that training. We put that
20 together as a two-day overview for these
21 people. And then in the training they're
22 going to get a bunch of resources that they

1 can use and refer to to help them better
2 perform their contracting responsibilities in
3 terms of making sure that these contractors
4 have plans.

5 And just recently, and you heard
6 Jordan mention this, we have gotten an
7 agreement through the Federal Acquisition
8 Institute, which is the Government agency that
9 trains all of the contracting officers and all
10 of the contracting officers' technical
11 representatives. Contracting officers and
12 contracting officer technical representatives
13 have mandatory training requirements; some are
14 annual, some are every two years, that they
15 have to go through. And we're going to work
16 with the Federal Acquisition Institute to
17 develop a course for these contracting people
18 on the hazards and what a good, in their
19 terms, accident prevention plan would look
20 like, what the components are, how they can
21 evaluate it. And a different course probably
22 for the technical representatives who are the

1 people who would actually go on site
2 occasionally and monitor the work itself.
3 We think this is a good inroad for us. It's
4 an opportunity to start seeing that in federal
5 contracts that safety and health is written
6 into a much, much stronger degree than it is
7 now.

8 Program evaluation. It's been one
9 of the things I've pushed since I've been
10 there. We have an evaluation program that
11 evaluates courses that we do at the OSHA
12 Training Institute. It also goes out and spot
13 checks the OTI Education Centers to make sure
14 that their courses are following the
15 curriculum and that they're following all of
16 their requirements for reporting and record
17 keeping that are set forth in their non-
18 financial agreements with us. They also go
19 out and sit through Outreach Training Program
20 10-hour courses and 30-hour courses.

21 We actually have stepped up the
22 number of unscheduled monitoring visits we've

1 been doing under the Outreach Training
2 Program. And those will continue to increase
3 over the next few years as we get more
4 elements in place to help us identify that
5 training up front.

6 The Susan Harwood Training Grant
7 Program is also an element that we send out
8 our evaluation folks as requested by the
9 regions. Occasionally the regions will have
10 issue with a grantee and they will ask us to
11 come help them evaluate what the grantee is
12 doing and we do that.

13 As we've instituted this program,
14 we've really gone after Kirkpatrick's four
15 levels of evaluation. We currently do levels
16 one and two for all our ed center courses. We
17 currently do levels one and two for site
18 visits. And, you know, level one kind of
19 deals with how did they react to the training?
20 You know, did they like it? Were there things
21 they didn't like about it? Level two really
22 kind of evaluates did they learn anything?

1 It's the class evaluation, per se. In terms
2 of knowledge, what did they learn? Level
3 three evaluation, we are currently working on
4 implementing level three for OTI courses.
5 This is what impact did the training have? So
6 maybe you learn something at the class. You
7 pass the test, you learn something. But six
8 months later you're not applying it. Well,
9 why not? Are you being punished if you do it?
10 Is there some impediment to you doing it?

11 So we want to see what the impact
12 of our training programs are. And that's in
13 line with a lot of the questions that we've
14 been seeing through the budget process coming
15 back from the Department and the Office of
16 Management and Budget, is what are the
17 impacts? You know, what impact are these
18 programs having? If we're going to continue
19 to give you millions of dollars for a grant
20 program, what's the impact? And we have
21 training evaluations that say people are
22 learning in the class, but we're struggling

1 with that impact after they go back on the
2 job. So you'll see more emphasis from our
3 office and through the Harwood Grant Program
4 on these impact evaluations in future years.

5 That pretty much covers an
6 overview of the Directorate of Training and
7 Education. If you've got questions, I'll be
8 happy to defer them to Jim.

9 CHAIR MIGLIACCIO: All right.
10 Questions, Committee? Kevin?

11 MR. BEAUREGARD: Kevin Beauregard,
12 state plan representative.

13 I don't have a question. I just
14 wanted to express my appreciation for you and
15 your staff, particularly over the webinars.
16 At a time when funding is an issue for all the
17 state plan states, the regular webinars that
18 you're doing is allowing us to make sure that
19 our staff stays up to date in a lot of
20 different areas. And I've gotten very
21 positive feedback from the quality of
22 instructors that you've tapped to do the

1 various sets. And so I just wanted to let you
2 know that we do appreciate it and we have a
3 lot of people attending.

4 MR. PAYNE: Thanks, Kevin.

5 CHAIR MIGLIACCIO: Bill, go ahead.

6 MR. AHAL: Bill Ahal, a board
7 representative. So far in this fiscal year do
8 you see a trend in the amount of trainings?
9 Has it gone down with the economic situation?
10 Has it remained the same? Has it increased?

11 MR. PAYNE: What I've seen at the
12 OSHA Training Institute is we've had a drop.
13 And I think we can attribute that drop
14 primarily to the budget situations in the
15 states. A lot of states have restricted
16 travel for their people. So we have seen it
17 drop in the number of people at the OSHA
18 Training Institute.

19 Through the OTI Education Center
20 Program, through the month of July, which is
21 the latest we have a complete month of
22 reporting on, if they continue on track in

1 August and September, they will set a new
2 record high for the number of people trained.

3 And through the Outreach Training
4 Program, while we trained around 680,000
5 people through the Outreach Program last year,
6 we're on track to hit 760,000 people this
7 year. So I would say through the ed centers
8 and the Outreach Program, we're not seeing a
9 drop, but at the Institute we have. And I
10 think Kevin can kind of second this. All of
11 the states are really having financial hard
12 times right now and we're going to be trying
13 to do more electronically to help them. But
14 in terms of the other programs, we just
15 haven't seen the drop off yet. Yet. Now it
16 may come, but we're not experiencing it yet.

17 MR. AHAL: Now, do you keep any
18 statistics on where the workers come from? In
19 other words, are they new workers entering the
20 work force and are they repeat, getting
21 additional training? And where I'm going with
22 this, if you don't, would that not be valuable

1 to determine the impact of stimulus funds on
2 training?

3 MR. BARNES: Yes, the education
4 centers keep the records on their own
5 students. We don't retain those records. For
6 the Outreach Training Program, the trainers,
7 who are all private sector independent
8 contractors so to speak, they retain their own
9 records. In the training work group
10 yesterday, I mentioned the process we have to
11 go through to get approval to collect any type
12 of information and the security levels that IT
13 has established in terms of storing
14 information. So I think it would be
15 enlightening to have that type of information,
16 but to date we haven't collected it because of
17 the hurdles that we face and resource issues
18 in terms of collecting and maintaining it.

19 MR. AHAL: Thank you.

20 MR. HAWKINS: Steve Hawkins, state
21 plan representative.

22 Hank, I just wanted to echo what

1 Kevin said. We have really enjoyed the
2 opportunity to bring our staff into a
3 conference room for half a day and participate
4 in a webinar. And by and large they're very
5 well done and very informative. And that
6 works really well. There's no travel
7 authority, there's no TAs to complete. So we
8 appreciate that.

9 I just wanted to ask you, where
10 exactly is the list of disbarred, rogue,
11 whatever you called those trainers? Where
12 exactly is that on the web site?

13 MR. BARNES: If you go to the
14 osha.gov web site, there's a tab for training.

15 MR. HAWKINS: Yes.

16 MR. BARNES: On the tab for
17 training it talks about the OSHA Training
18 Institute, the Education Center Program, the
19 Outreach Program. And if you click on the
20 link for construction and general industry,
21 which is on the same page, I believe, on there
22 there's an announcement box on the top right

1 which we highlight the procedures and the
2 watch list. But on that same page below the
3 narrative, there's also links at the bottom
4 that will take you to each of those as well.

5 MR. HAWKINS: Okay. And one other
6 question I have is, is there a way to access
7 the list of approved trainers?

8 MR. BARNES: Not at this time. We
9 don't have a cumulative list. Each of the
10 education centers maintains the list of their
11 respective trainers that they've authorized
12 through their classes. We collect separate
13 lists from each of them. So you could request
14 an active trainer list, but it would be by
15 education center. So it's somewhat fragmented
16 at this point in time. We're currently in the
17 process of trying to develop a means to have
18 a cumulative national database for all
19 authorized trainers.

20 There is a web site,
21 outreachtrainers.org, that has established a
22 vehicle for trainers who want to register

1 themselves. You can sort by zip code and find
2 a trainer that might be in your local area.
3 Many of them also have listed their scheduled
4 courses on that same site. Now, some of these
5 courses are done on-demand, by-request basis.
6 So they don't all have scheduled courses on
7 there. But I think last count, there was over
8 1,000 trainers listed on the
9 outreachtrainers.org site.

10 So as far as the efficiency of it,
11 that's probably the most efficient way to find
12 a trainer in your local area. But again, each
13 education center would have a list of their
14 trainers. And we do collect those, but
15 they're all segmented by education center at
16 this point.

17 MR. HAWKINS: You know, I am
18 somewhat concerned that as we see the demand
19 for this training just keeps going up, almost
20 like, you know, some demand for some illicit
21 drug, and so there's this money to be had,
22 okay, it's almost like you got a drug problem

1 going here. You got this great demand. If it
2 outstrips the availability of bona fide
3 trainers, I'm a little bit concerned that
4 we'll get people to start to advertise
5 themselves, do the training, and give the
6 cards that are completely below the radar
7 screen. It's one thing to have a rogue
8 trainer that's registered, but what about
9 people -- or are we aware of anybody has
10 provided this training who's not authorized to
11 at all?

12 MR. PAYNE: Well, we're not aware.
13 If we were, we would be working with Sarah's
14 shop to go after them.

15 But there are currently over
16 16,000 at the outreach trainers. Okay? Our
17 definition of active is they've done at least
18 two courses in the past 12 months. So what we
19 find is, for the students who go through and
20 complete the trainer course, successfully
21 complete the trainer course, only about one-
22 third of them actually become active. So

1 there -- estimates probably between 45 and
2 50,000 actual authorized trainers today, but
3 only about a third of them are actually active
4 out there doing training.

5 MR. HAWKINS: Well, I do know a
6 lot of people go to that training just to
7 educate themselves and to do a job. I know
8 I've had a couple of opportunities where
9 people called and said, you know, "I've just
10 been given this responsibility. I'm an
11 attorney and I'm going to represent this new
12 manufacturer as they bring this plant on line
13 and I need to some OSHA instruction." And
14 they went and took the 40-hour class, which
15 would allow them to be an outreach trainer,
16 but they only took it for their personal
17 knowledge.

18 MR. PAYNE: And we're also aware
19 of certain companies who send their outreach
20 trainers every four years to become
21 reauthorized to do the training, who train the
22 employees in the plants, but they do not

1 submit for cards. And the trainers tell us
2 the employer doesn't want to give the
3 employees cards so they can walk across the
4 street and being employable at their
5 competitor. So they get the training, but
6 they don't submit for the cards.

7 MR. HAWKINS: True.

8 CHAIR MIGLIACCIO: Walter?

9 MR. JONES: Thank you. Walter
10 Jones, employee rep.

11 At our meeting yesterday at OTI,
12 the OTI meeting, appreciate you guys coming
13 and giving us your thoughts on some of the
14 issues that we were discussing. And I want to
15 echo your comments earlier on the Harwood
16 Grant. We think it is important that a
17 depository of materials be developed and we
18 begin examining these copyrighting issues that
19 many folks don't reinvent the wheel and we
20 make this product available to many
21 construction contractors who need this
22 information.

1 And secondly, I want to also put
2 in a plug like we did yesterday about the need
3 for supervisor training and providing
4 contractors with -- well, as you were saying,
5 closing this loop where we're sending all
6 these workers out there that are trained, but
7 to close the loop by also providing management
8 and supervisor training, and that it goes
9 beyond identifying what a hazard is, but how
10 to create safety culture on a job site, how to
11 conduct an accident investigation, how to
12 conduct a job safety analysis. You know, how
13 to address issues such as when productivity
14 meets safety. Instead of throwing safety out
15 of the window, how do we manage that as a
16 manager so that the folks that are coming to
17 the work site, their training could be more
18 effective on the work site. So we're looking
19 forward to working with you in developing
20 supervisor materials or either adding
21 additions to the current 30-hour course, or
22 expanding to a new topic.

1 CHAIR MIGLIACCIO: Okay. Thank
2 you.

3 Matt?

4 MR. GILLEN: Matt Gillen, NIOSH.

5 Thanks for all the great work
6 you're doing. It was really an impressive
7 presentation.

8 I had two questions. One was say
9 I'm a compliance officer and I'm on a job and,
10 you know, interviewing employees and there's
11 somebody that has like a 30-hour card, but you
12 know it really doesn't seem like they really
13 know much at all about construction safety.
14 Can I like take down the number and is there
15 a way for me to go back and contact your
16 office and find out who was the trainer and
17 maybe make a referral if I'm concerned? I
18 mean, you know what I mean? As a compliance
19 officer he doesn't seem to make sense and it
20 makes sense to check it out.

21 MR. PAYNE: As I said, due to the
22 increased problems we had and the newspaper

1 articles, OSHA established an executive work
2 group and we've come up with a number of
3 actions and activities that we're taking. And
4 one of the things that we're currently working
5 on is we want to establish a national database
6 for the Outreach Training Program. Now don't
7 get excited.

8 MR. GILLEN: Okay. I won't get
9 excited.

10 MR. PAYNE: Don't get excited.
11 This is OSHA. We have a number of issues in
12 terms of going through -- because we're in the
13 process of identifying what data we want to
14 collect, because we got to go get permission
15 to collect it. And then we've got to work
16 with IT to figure out a way how we make this
17 data available without somehow violating
18 people's right to privacy.

19 But our kind of vision is that we
20 would have a national database where, like
21 Steve said, if he was looking for a trainer,
22 he could log in there and by city and state

1 pull up the names of people who are currently
2 authorized trainers. Or, in your case, if you
3 had the name as an employer. If I came in
4 with a 10-hour card and said, hey, I want to
5 go to work and I have a 10-hour card, you the
6 employer could go to the web site, enter my
7 name and my card number, because all cards are
8 now numbered, and it would tell you whether
9 that card was valid or not. So if somebody's
10 tried to falsify -- so if I, you know, as we
11 heard yesterday, went to a web site,
12 downloaded the card and put my own name on it,
13 it would let you know that card was not valid.

14 And the same with the trainer. If
15 a guy shows up at your doorstep and says, hey,
16 I'm a authorized outreach trainer, you can ask
17 him for his trainer card number and you can go
18 on line and two things. Number one, you can
19 verify that he's an authorized trainer.
20 Number two, you can also verify that he's not
21 on the watch list and that we've yanked his
22 authorization.

1 So that's the plan, is to get that
2 database built. Currently segments of that
3 database are kept in 44 different places, so
4 it's a matter of figuring out first of all
5 what we want to collect, getting the
6 permission to collect it, and then figuring
7 out a way to get all this data sorted and
8 merged into one big database. And then the
9 controls on who has access, how you can access
10 it and what data you see. So it's a work in
11 progress. We think it's going to have a lot
12 of value for this program. And, you know,
13 we're hoping we can get it sometime early to
14 mid-next year, get it actually on line.

15 MS. SHORTALL: Before you go to
16 your next question, Sarah Shortall, ACCSH
17 counsel, I'd like to have Mr. Payne clarify
18 what you mean by getting permission. Is this
19 permission from OMB?

20 MR. PAYNE: Yes, ma'am. Go
21 through the Paperwork Reduction Act
22 requirements.

1 MS. SHORTALL: Any time the Agency
2 collects information, the same information for
3 more than nine persons, we have to get
4 permission from the Office of Management and
5 Budget to collect the information. So that's
6 what he is referring to there.

7 Thank you.

8 MR. GILLEN: My second question
9 was about an area that seems like a gray area,
10 but it's very important for construction and
11 its competent persons. And, you know, they're
12 so important. There are so many small
13 employers. I mean, you know, competent
14 persons play an important role in many of the
15 construction standards. But it seems like
16 there's a lot of variation in training, even
17 like defining the capabilities that they need
18 to have.

19 Is that an issue that you guys
20 have thought about putting on your long list
21 of things to work on or think about?

22 MR. PAYNE: I'll be honest with

1 you. No one's ever approached us about that.
2 So if that's a recommendation that you all
3 would have, I mean, we would certainly be
4 willing to work with either the sub group, or
5 I mean the work group or what's a larger group
6 or a different group on something like that.

7 MR. GILLEN: Thanks.

8 CHAIR MIGLIACCIO: Tom Broderick.

9 MR. BRODERICK: Tom Broderick. I
10 just wanted to respond to Kevin's anecdote
11 about an attorney who just wanted to get
12 additional information on construction safety.
13 And I want to make sure that my friends from
14 the Office or the Directorate of Training know
15 that I've been paying attention over the last
16 year or two.

17 What we would hope, and my
18 organization is a part of an Education Center
19 in Region V. What we would hope is that
20 people who are looking for that kind of
21 information would be going to the OSHA 30-hour
22 course rather than the OSHA 500 course. And

1 we would also hope that we had a filter system
2 in place when people call to register that
3 find out whether or not the person who wants
4 to take the 500 course meets the current
5 requirements of five years of construction
6 safety experience and the requisite
7 educational underpinning for it.

8 CHAIR MIGLIACCIO: Okay. Any
9 other questions?

10 MS. SHORTALL: Could I ask Mr.
11 Payne to clarify one other thing for the
12 record?

13 And that is, you mentioned the
14 degree to which you are using the webinar as
15 a way to reach out on training where budgets
16 have constraints. Could you clarify whether
17 you're using webinars for the outreach
18 training and at ed centers as well as the
19 COSHO training?

20 MR. PAYNE: Currently, we have
21 been using it for compliance officer training
22 almost exclusively. I think as we move into

1 2002, we will look at doing some events for
2 the public. The challenge we have is any
3 service or training that we provide for the
4 private sector we're supposed to charge
5 tuition for. And we haven't quite come up
6 with the way to figure out if we're doing a
7 nationwide webinar and you get 1,000 people
8 registered how we would collect a fee for
9 attending that webinar from 1,000 people.
10 We're not set up that way.

11 And the other thing I'll remind
12 the group is, one of the reasons we went to an
13 education center program is we're required to
14 charge, so we charge the private sector
15 tuition, but I cannot use the tuition to
16 offset my costs. The only thing I can do with
17 OTI tuition, by Congressional mandate, is put
18 it in the Susan Harwood Training Grant
19 Program. So if I collect \$200,000 worth of
20 tuition, that doesn't pay instructor salaries,
21 printing costs, anything like that. What it
22 means is, instead of \$10 million for Harwood

1 Grants, I have 10.2 million for Harwood
2 Grants. So it's kind of a disconnect in that
3 we have one regulation that requires us to
4 collect tuition and we have a specific formula
5 to make sure that we're not charging too much
6 or too little, because we can only collect
7 what are costs, but yet I can't use it to
8 cover the costs. So welcome to our world.

9 CHAIR MIGLIACCIO: Any other
10 questions? Mike?

11 MR. BUCHET: Michael Buchet,
12 Directorate of Construction.

13 Hank, we've had some questions
14 phoned in the last few weeks about the
15 Outreach Training Inspector Programs and their
16 appearance or lack of appearance on the
17 Internet.

18 Can you give us an update on where
19 we're going with the 500 on the Internet? I
20 understand there was --

21 MR. PAYNE: You want to answer
22 that one, Frank?

1 CHAIR MIGLIACCIO: Yes. Frank
2 Migliaccio with the employees.

3 Before I took over the chair of
4 this committee, I was the co-chair of the
5 workers group on the OTI. And the 500, we
6 noticed that was more and more 500s being
7 offered online and we were questioning both
8 Hank and Jim about first how they can make
9 sure the person that's actually online is the
10 person that's going to get this card. And we
11 had asked, because of the cost and so forth
12 like that, who was doing the training, but we
13 also wanted them removed. We just didn't
14 think it was a good way to go.

15 Now, I notice there have been some
16 that have been taken off. I noticed there
17 were a couple --

18 MR. PAYNE: No, all the 500 online
19 courses have been taken down.

20 CHAIR MIGLIACCIO: Oh, they have
21 been now?

22 MR. PAYNE: They have been taken

1 down. The OTI Education Centers who were
2 doing this online training, when the trainer
3 course was revised, there were a number of new
4 requirements, new objectives in the course.
5 We gave them kind of a grace period to revise
6 their courses to meet the objectives and they
7 didn't do it. So we had them take them down.
8 We specifically have asked them how -- because
9 the class requires that the student actually
10 do training. I mean, this is a trainer
11 course, so they actually have to develop and
12 conduct training in a class, get feedback from
13 their peers and from the trainer. And we
14 asked them how they were going to do that
15 online and they came back and said they're
16 going to change the course from being all
17 online to being a blended course with part of
18 it online and part of it being required to be
19 in person.

20 And the second thing we asked them
21 was to tell us how they were going to verify
22 that I don't register for the course, log in

1 and then have Frank come around here and do
2 the work for me so I can get through the
3 training and get to the part where all I have
4 to do is show up for a day or two and do the
5 face-to-face stuff. And we're still waiting
6 to hear back from them collectively on how
7 they're going to do that. So it's not moving
8 fast.

9 CHAIR MIGLIACCIO: Nothing does.
10 Any other questions?

11 MR. BUCHET: This is Mike Buchet
12 again, a follow-up. And for the refreshers.
13 Renewals. Take the 500 four years --

14 MR. BARNES: We've also revised
15 the learning objectives for the update course.

16 MR. BUCHET: Right.

17 MR. BARNES: Both the 502 for
18 construction and 503 for general industry.
19 And both of those also include a teach back
20 component at this time. So we haven't
21 authorized any of the update courses for
22 online delivery at any point in time.

1 MR. BUCHET: Thank you.

2 CHAIR MIGLIACCIO: Any other
3 questions?

4 I just have two things. They're
5 really not questions. One's a forecast. With
6 the way the economy is, I think you're going
7 to see the numbers on the 10 and especially
8 the 30 hours grow. I know it is at our
9 international, because if the people are out
10 of work, they're coming in to take the 30
11 hours; not the 10 anymore, the 30.

12 The other thing is OSHA, just like
13 MSHA, works for the Department of Labor or
14 works under the Department of Labor. Just an
15 idea. You say you can take the trainers off
16 that's either giving cards or not doing the
17 training, or whatever, and you can take them
18 off or rescind their right to train. You
19 might be able to go one step further, like
20 MSHA, because I do a lot of work with MSHA,
21 the mine safety. They actually put their
22 instructors in jail for fraudulent. Might be

1 something you might want to look into.
2 Because you start getting people's attention
3 when they know they're going to go for a
4 vacation in a cell.

5 MR. PAYNE: One of things that
6 we're now requiring or will be requiring after
7 we get through the Paperwork Reduction Act
8 process is all new trainers will have to sign
9 a certification statement where they certify
10 that they will follow the Outreach Program.
11 And it has several regulatory citations in
12 there, one of which is the criminal one for
13 submitting false information to OSHA. And
14 every time they submit paperwork to get cards,
15 they have to resign that statement that the
16 information they're submitting for this
17 particular course -- so if the Agency or the
18 Department decided to go forward and
19 prosecute, the people have been forewarned
20 that that exists and can happen. And in New
21 York State, one of the individuals that was
22 investigated actually sold 30-hour cards to

1 undercover state OIG people and he's currently
2 pending trial.

3 CHAIR MIGLIACCIO: Good.

4 MR. PAYNE: And so he probably is
5 going to go to jail for that. But that was
6 the State of New York who actually caught him
7 and then let us know.

8 CHAIR MIGLIACCIO: That's a good
9 idea. Appreciate that.

10 Any other questions?

11 Well thank you very much for a
12 very informative presentation, both of you.
13 Thank you.

14 MR. PAYNE: Thanks, Frank.

15 MS. SHORTALL: Mr. Chair, at this
16 time I'd like to mark as Exhibit 7 in the
17 previously mentioned docket the PowerPoint
18 presentation on the OSHA's Directorate of
19 Training and Education presented by Hank
20 Payne, director.

21 (Whereupon, the document was
22 marked as Exhibit 7 for

1 identification.)

2 CHAIR MIGLIACCIO: Okay. At this
3 time we'd like to have Construction
4 Enforcement, the legal perspective from the
5 Office of Solicitors of Labor, Ann Rosenthal,
6 please.

7 Welcome.

8 MS. ROSENTHAL: Thank you. I tend
9 to not do slides, because I need the light to
10 see my notes.

11 I was asked to talk about the
12 relationship of the Construction Safety Act to
13 the OSH Act. What we're doing, how they
14 relate to each other, how they relate to what
15 will be done under the current stimulus or
16 ARRA Act, and some information on Barlow's and
17 what that means. And I heard that Mike told
18 several people yesterday when they asked
19 questions at the enforcement session that I'd
20 be here to answer them today. So, I didn't
21 get the details of what those questions were,
22 so I don't know if I'm super prepared. And I

1 was also told to leave a fair amount of time
2 for questions.

3 We're starting a little bit late,
4 but in fact Hank covered part of what I was
5 going to say about the Stimulus Act
6 activities, so that should balance out fine.

7 To start with the relationship of
8 the Construction Safety Act and the OSH Act,
9 it's kind of interesting, and when I started
10 to try to actually look up more details than
11 I know, I learned it's kind of hard to find
12 out, too. But the Construction Safety Act was
13 passed in 1969 and it required federal or
14 federally-funded construction projects to
15 comply with certain safety standards, or with
16 safety standards and it authorized the
17 Secretary of Labor to promulgate those
18 standards in conjunction with an advisory
19 committee, which is all of you, or was a
20 different group of you in 1969. So the
21 Secretary began that.

22 Before the enforcement though

1 could get really underway, the next year
2 Congress passed the Occupational Safety and
3 Health Act, or the OSH Act, which applies not
4 only to construction but to all industry and
5 it does not only apply to work being done
6 pursuant to federal money. It applies to all
7 employers in the country.

8 One of the things that that Act
9 did was it called for the adoption of existing
10 federal standards as OSHA standards and some
11 of those standards were the standards that
12 were, actually as they passed it, in the
13 process of being promulgated under the
14 Construction Safety Act. And as soon as the
15 OSH Act was enacted, the Construction Safety
16 Act standards were adopted as OSHA standards.
17 But another thing that the OSH Act did is it
18 said that all future standards adopted under
19 the OSH Act would also be Construction Safety
20 Act standards, that standards adopted under
21 either act would basically be standards under
22 both. And what that means for your purposes,

1 as I'm sure I don't really need to tell you,
2 is that you guys need to be involved in the
3 promulgation of all OSHA standards applying to
4 construction.

5 But despite the fact that the two
6 acts have the same standards, they are very
7 different. The OSH Act is enforced through
8 citations and penalties and, you know, in very
9 rare cases imminent danger orders. But you
10 know, for the most part OSHA inspectors go
11 out, they look around. If they see a
12 violation, they go back to their office. OSHA
13 issues the citation, proposes the penalty and
14 the employer either theoretically abates the
15 violation and pays the penalty, or contests
16 the citation and gets a hearing before the
17 Occupational Safety and Health Review
18 Commission, etcetera.

19 Under the Construction Safety Act,
20 the primary remedy that the Department has is
21 debarment of the federal contractor for repeat
22 violators. This has not generally been used.

1 I think part of the reason it hasn't been
2 used, and this is my speculation; I can't say
3 I really know, is because the OSH Act was
4 passed the next year and enforcement under
5 that act is a lot faster and lot more in the
6 Department's control because there are a
7 number of other statutes that the Department
8 administers that deal with federal contracts
9 or federally-funded contracts and the
10 Department does do debarment proceedings under
11 those. However, that's a really long process
12 and I think the general feeling is that OSHA
13 enforcement works faster.

14 But the Act still exists. And one
15 of the ways that it exists, and I think Hank
16 alluded to this, is that all federal
17 construction contracts have to require
18 compliance with the Act. They have to contain
19 an accident prevention plan, which is, you
20 know, the safety and health management system,
21 as we call it here. They also have to have
22 special provisions for protection if they're

1 high dollar contracts and if they're
2 particularly hazardous or if they take place
3 in the vicinity of where federal employees are
4 working, because then the Government seems to
5 have an extra incentive to protect its own
6 employees. But the enforcement of all that is
7 left the contracting agency. And some
8 agencies take those responsibilities more
9 seriously than others, and some do a pretty
10 good job.

11 I was telling Hank the last time
12 we spoke that I had heard that the Department
13 of Defense, or certain components of the
14 Department of Defense anyhow, send their
15 COTRs, the contracting officer technical
16 representatives, to the 10 and 30-hour courses
17 so that they will know what they're doing.
18 And they have an extra kind of enforcement
19 mechanism that OSHA doesn't have, which you
20 know, many people in OSHA think is pretty
21 nifty, which is that they can stop work until
22 the contract is complied with and the contract

1 calls for compliance with OSHA standards.
2 Well, that's really great, except one of the
3 things that we recently learned is, you know,
4 they don't know a lot about what OSHA
5 standards are.

6 And when the stimulus package was
7 passed, we started looking into this. And one
8 of the things that we discovered is, you know,
9 there are these provisions out there, but
10 nobody really knows how to deal with them. So
11 Hank's people developed this two-day course
12 that he talked about which the OTI is
13 offering, or the training centers will be, or
14 are offering; I think it's already in
15 existence, to contracting personnel and other
16 agencies.

17 The other thing that happened is
18 as we were examining all this, we learned that
19 there is this Federal Acquisition Institute,
20 and so we've started talking to them. I think
21 Hank said we have an agreement, and I think
22 that might be a slight overstatement. We are

1 in active discussions with them and they're
2 very interested in providing this training as
3 part of the training they need to provide
4 their contracting personnel. Apparently one
5 of the things that I learned from one of the
6 Labor Department contracting officers in doing
7 this is that, you know, the contracting
8 officers have to get 80 hours of training a
9 year. Well, FAI doesn't have quite that many
10 courses. So if somebody's been a contracting
11 officer for 20 years, they're taking the same
12 classes over again. So they were really
13 excited about the thought that they could have
14 new classes and they could actually learn new
15 things. So, you know, we're hopeful that
16 those things will help.

17 Also, as part of that process, and
18 Hank alluded to this, on May 7th the Secretary
19 sent a memo to all of the other cabinet
20 officers reminding them that in awarding funds
21 and awarding contracts under the Stimulus Act,
22 there are these requirements in federal

1 contracting law and saying that OSHA, you
2 know, was ready to provide assistance, not
3 only the courses, but you know, specific
4 contact personnel that they could call. And
5 one of the things that OSHA is gearing up to
6 do is to provide extra assistance to these
7 other agencies. One example that we've talked
8 about, and I don't think OSHA's done it yet,
9 but I know it's being planned, are things like
10 demonstration safety and health management
11 systems that would apply to specific kinds of
12 work. For example, if you're doing bridge
13 repainting, it would include information on
14 lead abatement, fall protection, things like
15 that. Whereas if you're doing high rise
16 construction, it would include other
17 information on crane safety so that the
18 contracting officers would know what to look
19 for in these accident prevention plans that
20 they have to see. They won't just be doing,
21 as one contracting officer described it, as
22 looking and saying, oh, yes, they've got a

1 five-page accident prevention plan, so I guess
2 they comply.

3 And there's a few other ideas
4 we've had. Some of them are still in the
5 conceptual stage, but there is a lot of
6 potential we think for, you know, OSHA to
7 cooperate with the other agencies. And, you
8 know, to the extent that the other agencies
9 are willing and certainly this is something
10 that the Administration believes they should
11 be doing. So we're hopeful that they will be
12 willing to do it to sort of leverage both of
13 the agencies in any given cases authority.

14 If, for example, a COTR is out at
15 a construction site for say the Department of
16 Transportation; I've chosen that one at
17 random, because there's a lot of highway
18 construction, and is having a problem and has
19 not learned what its contractors need to do to
20 do the work safely and is having a problem
21 actually getting them to do it. The COTR will
22 be able to contact OSHA. OSHA will be able to

1 send somebody out there. Or if OSHA goes out
2 and, you know, sees somebody and really has a
3 problem getting them to comply, they can
4 contact the COTRs and get them to come in.
5 You know, we don't expect that there actually
6 will be any stop work orders issued, but I
7 think the threat of them is likely to go
8 pretty far to assuring compliance, if we can
9 reach this level of cooperation. But we are
10 pretty hopeful at this point that we will be
11 able to do it.

12 The other thing that Mike asked me
13 to talk about is sort of how we do inspections
14 and Barlow's. Barlow's, if anybody doesn't
15 know, is a Supreme Court case that came down
16 in the first days of the OSH Act. Because
17 despite the fact that the Act has what's
18 called a right of entry provision that allows
19 the Secretary to -- let's see, I'll read the
20 exact language, "Is authorized to enter
21 without delay and at reasonable times any
22 factory, plant, establishment, construction

1 site or other work place area on environment
2 where work is being performed." The Supreme
3 Court held that employers still have a right
4 of privacy and that the 4th Amendment to the
5 Constitution requires OSHA to have a warrant
6 if the employer objects.

7 There are a few exceptions. OSHA
8 doesn't always need a warrant. If something
9 is in plain view, you don't need a warrant to
10 see it. That's particularly important in the
11 construction context. There's something in
12 4th Amendment law known as the open fields
13 doctrine. If you can see something in plain
14 site, you're authorized to go look at it.
15 I've noticed just in my own practice that a
16 lot of trenching violations are found that way
17 by COSHOs driving along and seeing an un-
18 shored trench with people working in it, then
19 they'll stop. Well, you know, the employer
20 there doesn't have any right to say you're not
21 allowed to look at this trench because it's in
22 public view on a public street.

1 The other time, and this would we
2 think possibly be of particular importance in
3 the stimulus-funded projects, is if the owner
4 of the project gives consent. We've had
5 cases, one of the very cases I worked on 20
6 years ago, I hate to say how long I've been
7 doing this stuff, was a case involving an Army
8 Corps of Engineers-funded project along the
9 Mississippi. And the employer was really
10 resistant to letting OSHA into the site to
11 look at things that were not in plain view.
12 And the Army Corps contracting representative
13 said of course you can come in. And, you
14 know, we actually had to litigate whether that
15 was valid, and, yes, of course it is valid
16 because the contractor was just there because
17 it had been hired by the Corps.

18 When OSHA does need a warrant, we
19 have not found this to be a particularly
20 onerous requirement. First of all, the vast
21 majority of employers let OSHA in within a
22 warrant. I don't think we in our office, and

1 I have not been doing the litigation for
2 several years, but I don't think we've had a
3 warrant case that has gone to the Court of
4 Appeals in at least five years. And I think
5 that's good. Because what that means is that
6 everybody realizes that when OSHA gets
7 warrants, it does it right. And the ways OSHA
8 can get a warrant, basically there are two
9 kinds of evidence that it can present to a
10 federal magistrate to show that it has, in
11 legal terms, probable cause to perform the
12 inspection.

13 The first kind is what's called
14 specific evidence of a potential violation,
15 and that's really very easy. If there's a
16 complaint from a worker at the site, a media
17 report that said that, you know, there was an
18 accident here or whatever, that said anything
19 that showed that there was a problem, or a
20 referral from anybody else. There have been
21 some cases where we've dealt with city
22 building inspectors and they will call and

1 say, you know, these people are just not doing
2 this right and can you go out and do something
3 about it? And all of those count as specific
4 evidence and the magistrate will give them a
5 warrant.

6 The other way to do it is what's
7 called a neutral administrative plan, and
8 that's a very old term. It's about 100 years
9 old, I guess. And it's the way that
10 regulatory agencies can go and inspect sort of
11 generally sites under their jurisdiction.
12 It's used by city building inspectors and it's
13 used by OSHA. And what that means is that you
14 have to ensure that the actual officials of
15 the agency don't have what the Supreme Court
16 calls unbridled discretion. Essentially, you
17 know, you could say I don't like Hank. I'm
18 going to go and inspect OTI, because I'm
19 really mad at him. He did something.
20 Obviously it wouldn't be OTI, because that's
21 a public site. But you get the point. And
22 OSHA's come up with a lot of ways that, you

1 know, do very well at establishing that its
2 plans are neutral.

3 One of the ones that you're
4 probably most familiar with, and I'll just
5 talk about construction here, are the Dodge
6 Report lists. Those are randomly generated.
7 OSHA has no control over what's on the lists.
8 It gets the lists and it inspects those sites.

9 There are other things that can be
10 done. You can use kinds of random number
11 table computer programs if you have a more
12 complete list and, you know, can look at it.
13 I've actually seen something that one OSHA
14 area office has done to try to capture a lot
15 of very small construction projects that won't
16 be showing up on Dodge Reports, which is it
17 uses a kind of random number table to select
18 zip codes and then it performs a street-by-
19 street, you know, survey of that zip code and
20 inspects every single construction site it
21 finds there. And that works too, because
22 there isn't any discretion. The zip code was

1 chosen randomly and every site in that zip
2 code has to be selected.

3 And then this also means, because
4 I gather you're talking about targeting that,
5 that you can't do targeting. Within any of
6 those systems OSHA can do whatever kind of
7 targeting it decides is most appropriate. It
8 could target sites that present specific
9 hazards, sites where cranes are being used,
10 sites where there's exposure to lead, sites
11 that there are a lot of fall protection
12 problems. Or it can target sites that do
13 specific kinds of work, bridges, high rise
14 buildings, something like that. And right now
15 OSHA has made a commitment to perform a
16 certain number of stimulus project inspections
17 and it's looking for those sites. That's
18 actually so far been a little bit frustrating,
19 because most of the sites, as you all probably
20 know, are not active yet, so OSHA is getting,
21 for example, a specialized Dodge Report
22 dealing with ARRA sites and they go out to

1 them and 95 percent of the time there's no
2 work going on. But that will all be changing
3 we expect in the next couple of months pretty
4 rapidly, from what I understand. By September
5 and October a vast amount more work will be
6 being done.

7 OSHA's also doing, I think to help
8 with that, and I'm not familiar with all the
9 details, but our office will be working with
10 them on exactly how this is done to make sure
11 that it's totally fair -- it is looking at
12 recovery.gov to target the sites and to
13 discover where the sites are if they don't
14 shop up in Dodge Reports.

15 And that basically covers what my
16 planned comments were, because Mike said leave
17 lots of time for questions, and so I will
18 leave you lots of time for questions.

19 CHAIR MIGLIACCIO: Okay. Thank
20 you.

21 Questions by the Committee?
22 Kevin?

1 MR. BEAUREGARD: Kevin Beauregard,
2 state plan representative.

3 I'm one of the regulatory work
4 group representatives, and I think a lot of my
5 representatives bailed on me today. So I'm
6 trying to capture -- you covered a lot of the
7 information that we actually had questions on,
8 and I appreciate it. I think that will help
9 us as a work group. I have a couple of items
10 for clarification.

11 Earlier when you were describing a
12 couple of different methods that you're
13 looking at as far as working with the Federal
14 Acquisition Institute and Hank Payne's two-day
15 course for the contracting personnel, another
16 issue you covered was OSHA's going to provide
17 extra assistance and you indicated like a demo
18 of safety management systems. How are they
19 going to go about that?

20 MS. ROSENTHAL: I'm not completely
21 sure, because we are at a very preliminary
22 stage. I know one way that they're talking

1 about doing it is through the courses that are
2 being offered both through the education
3 centers and we hope through FAI, and also just
4 to have them available. Because one thing
5 that OSHA is planning on doing -- and I'm not
6 sure how, because all of this, you know,
7 happened really suddenly and it's getting
8 geared up pretty fast. I'm not sure exactly
9 where we are in all of this, but in the memo
10 to cabinet secretaries there were points of
11 contact and OSHA will have those and will be
12 able to distribute them. You know, one thing
13 we've talked about is seeing if there can be
14 some other kind of general communication to
15 the agencies. At one point we thought about
16 doing something with OMB's guidance on using
17 ARRA funds. Unfortunately, we were not able
18 to move fast enough to get into the last
19 general guidance that they issued. There was
20 some discussion that they were going to do
21 more, but now they've decided they're going to
22 use some other mechanism to get information

1 out to the agencies. And we're not, you know,
2 quite sure what it is, but we know that we
3 want to be involved in it, and they know that
4 we want to be involved in it. So I think that
5 will happen and that will be one way to do it.

6 MR. BEAUREGARD: Okay.

7 MS. ROSENTHAL: And if you guys
8 have any other ideas, I mean, you know, we're
9 willing to listen.

10 MR. BEAUREGARD: Well, one of the
11 things that our work group wanted to find out
12 is what you were already doing. Because we
13 really weren't fully aware of the different
14 activities you were doing.

15 Earlier you mentioned something,
16 and I don't know if I misunderstood you or it
17 was the terminology I wasn't aware of, but I
18 thought you said something about COTRs.

19 MS. ROSENTHAL: COTRs are -- Hank
20 just called them the technical reps for
21 contracting officers. Here in the Government
22 we tend to call them COTRs and it's fewer

1 syllables, so I'm more like to say it. It's
2 contracting officer technical rep. I don't
3 know where the "ah" sound came from. Maybe
4 because we can't say COTRs that easily.

5 They are the people who actually
6 administer most federal contracts. After
7 they're awarded, they're the ones who sort of
8 ride herd on the contractors. With some
9 agencies and some construction projects,
10 they're there all of the time. With others
11 they're there less.

12 MR. BEAUREGARD: Okay.

13 MS. ROSENTHAL: But they're the
14 ones who actually know what's going on. And
15 they're also important in awarding the
16 contracts. I learned so much about federal
17 contracting in the last few months, you have
18 no idea. But when contracting officers are
19 reviewing bids to decide who to award a
20 contract to and, you know, their financial
21 types and procurement types, and they don't
22 necessarily know the specifics of any

1 contract. So if it's a construction contract,
2 they will go to their construction COTR and
3 say you need to review this. And a computer
4 contract will go their IT COTR and tell them
5 to review it. So that's how that works.

6 MR. BEAUREGARD: Okay. I figured
7 it was an acronym. I just had no idea what it
8 was.

9 MS. ROSENTHAL: Yes, it's C-O-T-R
10 and I don't think there's another letter in
11 there. That's just what it's called.

12 MR. BEAUREGARD: And I have one
13 final question, and then some of the other
14 work group members may have some additional
15 questions. It's not necessarily a question
16 from a work group, but coming from a state
17 plan program where we also do targeting.

18 MS. ROSENTHAL: Oh, right. I was
19 going to mention.

20 MR. BEAUREGARD: I'm curious about
21 -- I know OSHA is targeting stimulus projects
22 sites.

1 MS. ROSENTHAL: Yes.

2 MR. BEAUREGARD: I'm aware of
3 that, and we've got the directive. What's the
4 legal basis? I mean, you know, generally when
5 we do a targeting, it's based on a high-hazard
6 industry or a specific operation, or an
7 emphasis program. But in this case there's
8 money be allocated for projects.

9 MS. ROSENTHAL: Right.

10 MR. BEAUREGARD: So what's the
11 legal basis for targeting that?

12 MS. ROSENTHAL: The legal basis is
13 partly that, you know, there are local
14 emphasis programs that are focused on Recovery
15 Act projects. And within those, and I think
16 I started to allude to this at the end,
17 there's still going to be a requirement of
18 some kind of neutral selection within that.
19 Or, if you're in an area that has very few
20 projects, you could decide to do them all.
21 But, you know, otherwise you'll still have the
22 same requirement not to just pick and choose

1 the ones that you want to go inspect. Does
2 that answer your question?

3 MR. BEAUREGARD: It kind of does.
4 I mean, we know like in our state we've been
5 provided a list of ARRA sites.

6 MS. ROSENTHAL: Yes.

7 MR. BEAUREGARD: And we're trying
8 to determine how we're going to work that into
9 our rotation. Some of these sites would have
10 been inspected anyway based on our other
11 emphasis programs. But it sounds like OSHA is
12 primarily wanting to do pretty much all of the
13 ARRA sites.

14 MS. ROSENTHAL: No, I don't think
15 it's all of them, but I think OSHA has come up
16 with a percentage, and I'm not going to say
17 it, because I've heard a couple knocked around
18 and I don't know what the final decision was.
19 For what its goal is, of its total
20 construction inspections that would be ARRA
21 sites, they don't want to do them all because
22 then they wouldn't be doing anything else.

1 And that doesn't really send a very good
2 message either. But within that, there will
3 still be the same kind of targeting. Or you
4 can target a hazard and say, you know, you
5 want a list and the list has to include 10
6 percent ARRA projects.

7 One thing that I actually just
8 forgot to mention is -- I was talking about
9 the contracting requirements in federal
10 contracts. Of course a lot of the Recovery
11 Act money is going to the states, which are
12 awarding their own contracts, and that work is
13 being done under state contracts, not federal
14 contracts. The Construction Safety Act still
15 applies because it's federal money. But the
16 regulatory basis is a little bit different.
17 There's something called Federal Acquisition
18 Regs, the Federal Acquisition Regulations,
19 familiarly known as the FAR; that's another
20 term you may hear, which includes the
21 requirements that I mentioned. There are
22 other grant rules which are called the Uniform

1 Rule, because every department has the same
2 rules for giving out grants. So it's uniform
3 across all the federal departments, which have
4 similar but not identical requirements that
5 the states have to agree to in accepting
6 grants so that they have to agree to certain
7 safety provisions in the construction
8 contracts that they're awarding.

9 MR. BEAUREGARD: Thank you very
10 much.

11 MS. ROSENTHAL: You're welcome.

12 CHAIR MIGLIACCIO: Frank
13 Migliaccio with the employees.

14 When Kevin was asking about targeting
15 the stimulus jobs, could it have something
16 with its federal tax payers' dollars getting
17 put into it?

18 MS. ROSENTHAL: It's federal tax
19 payers' dollars and that imposes the extra
20 requirement that you have to be complying with
21 the Construction Safety Act and you have the
22 extra provisions there. I don't think it gets

1 you out of the 4th Amendment to the extent
2 that it's not actually a federal site.

3 On the other hand, you know,
4 certainly it's a requirement of complying or
5 that you have to comply with the safety and
6 health laws. That's in the general guidance.
7 And so I think it's pretty likely that whoever
8 the contracting agency is, whether it's a
9 federal or a state agency, should be
10 cooperative. I mean, you know, when you're
11 dealing with state agencies, politics come
12 into play in a lot of ways and, you know, you
13 don't know exactly how that will work. But
14 the mere fact that it's federal money doesn't
15 -- you know, if a private entity is awarded
16 federal money; for example, the training
17 centers, to do something, it doesn't
18 necessarily give any federal agency the right
19 to go in and inspect them without a warrant.

20 CHAIR MIGLIACCIO: Okay. Thank
21 you.

22 Any other questions?

1 MR. GILLEN: I have a question.

2 CHAIR MIGLIACCIO: Matt?

3 MR. GILLEN: Matt Gillen, NIOSH.

4 You know, there's sometimes like
5 when we talk in the Trenching Work Group about
6 perhaps a small percentage of employers who
7 might be kind of resistant or who seem to have
8 violations again and again, so what are some
9 of the legal constraints for targeting those
10 groups, or having a separate watch list for
11 companies that have a record of not following
12 --

13 MS. ROSENTHAL: Well, that's
14 actually something that we're working on. I
15 think you may all have heard of OSHA's EEP,
16 the Enhanced Enforcement Plan, which came into
17 being a couple of years ago. That's in the
18 process of being revised to something called
19 the SVEP, the Severe Violators Enforcement
20 Plan. SVEP is the right acronym. I believe
21 I gave the right name. And that has not yet
22 been finalized, but there are certain things

1 that, you know, OSHA is planning to do with it
2 and it's meant to target exactly those people.
3 And like the EEP, but we hope more effectively
4 it will say that if you've got somebody who
5 has this kind of history or show signs of just
6 being particularly recalcitrant or
7 particularly unwilling to comply, then one of
8 the things that OSHA will do is inspect other
9 sites where they're working. And, you know,
10 there will be communication among the
11 different OSHA offices so that even if they're
12 not working in the same place, they'll be able
13 to be inspected.

14 And even under the EEP OSHA was
15 doing this to a limited extent. There were
16 EEP alerts that OSHA issued to its regions for
17 certain employers and said, okay, if you, you
18 know, come across this employer doing any work
19 in your region, it's an EEP employer and you
20 need to inspect them. And that's okay again,
21 because, you know, there are certain criteria
22 they met, they fell into those criteria, they,

1 you know, met those criteria and so OSHA can
2 inspect them.

3 But the final plan I think is
4 expected to be out by September, although
5 probably don't quote me on that, because I'm
6 not rich and I can't actually say.

7 MR. BUCHET: Jordan alluded to it,
8 but he didn't predict when.

9 MS. ROSENTHAL: Yes, okay.

10 MS. SHORTALL: Sarah Shortall,
11 ACCSH counsel.

12 Anne, during the Regulatory
13 Compliance Work Group yesterday, several
14 people were referring to the memo that was
15 sent out by Secretary Solis to the other
16 agencies. And although one member of the work
17 group had obtained it off a public web site,
18 he didn't have a copy. And if you have a copy
19 of that memo, I think it would be very helpful
20 to put it into the record.

21 MS. ROSENTHAL: Sure.

22 MS. SHORTALL: All right. Thanks

1 so much.

2 MS. ROSENTHAL: There you go.

3 CHAIR MIGLIACCIO: Any other
4 questions?

5 I just have one question. Would
6 your office or your group be the one that
7 would be contacted for contractors say not
8 paying the penalty or the interest, or would
9 go to the Department of Justice?

10 MS. ROSENTHAL: We'd be contacted
11 initially. The way collection works, actually
12 it wouldn't be us initially, OSHA has a
13 collection agency, a collection office. And
14 they have certain procedures which I believe
15 include private collection agencies. If that
16 doesn't work, then the case is referred -- I
17 think it's technically referred to the
18 Department of the Treasury, because then all
19 of the different agencies who may have cases
20 against -- you know, because usually if
21 somebody's not paying OSHA penalties, they may
22 be not paying taxes, they're not paying other

1 fees that they owe. And so they'll
2 consolidate all of that and then they will
3 refer it to the Department of Justice which
4 will then file an action.

5 And that's something I've actually
6 become aware of recently in the context of
7 another kind of work that we do involving what
8 we call enforcement orders, 11(b) enforcement
9 orders. If we have an employer that refuses
10 to correct a violation, we can obtain a court
11 order and get into all the details of that.
12 But they can then be held in contempt of the
13 court order, which opens up a much wider
14 variety of sanctions in fact. And one of the
15 things we realized was that there was not the
16 kind of coordination that we needed with the
17 collection people. We had one case where we
18 were seeking to enforce one order and the
19 Justice Department was seeking to collect
20 penalties from prior violations. And there
21 was sort of these two cases going on. It was
22 the court that noticed that we had two cases

1 against the same employer at the same time.
2 And we did work with them and worked it out.
3 But it's one of the many things on my list of
4 trying to arrange coordination earlier.

5 CHAIR MIGLIACCIO: Okay. Thank
6 you.

7 Any other questions?

8 Seeing none, I'd like to thank you
9 for an excellent presentation. I learned a
10 lot myself today.

11 MS. ROSENTHAL: Good.

12 CHAIR MIGLIACCIO: So, thank you.

13 MS. ROSENTHAL: I have to confess
14 I volunteered to do this because I have never
15 been to a meeting of this Committee before and
16 I thought this would be a good reason to say
17 that I would come.

18 CHAIR MIGLIACCIO: You did an
19 excellent job.

20 MS. SHORTALL: Mr. Chair, at this
21 time I would like to mark as Exhibit 8 the May
22 7, 2009 Memorandum for Cabinet Secretaries

1 from Hilda Solis, Secretary of Labor on OSHA
2 Work Place Activities Related to the American
3 Recovery and Reinvestment Act of 2009.

4 (Whereupon, the document was
5 marked as Exhibit 8 for
6 identification.)

7 MS. SHORTALL: And I know there
8 were several members yesterday who were
9 anxious to get their hands on this. I can
10 make copies at lunch. Would you indicate if
11 you -- sounds like everyone wants one. I'll
12 come this afternoon with all of them.

13 CHAIR MIGLIACCIO: Okay. Thank
14 you.

15 CHAIR MIGLIACCIO: Off the record.

16 (Whereupon, the above-entitled
17 matter went off the record at 12:12 p.m. and
18 resumed at 12:13 p.m.)

19 CHAIR MIGLIACCIO: The public
20 comment sign up sheets are located in the back
21 of the room for anybody who would like to
22 address the Committee this afternoon. If

1 you'd like to, sign up. We'll do that at, I
2 think it's at 3:45.

3 Any questions? Tom, were you
4 getting ready to say something?

5 MR. KAVICKY: No.

6 CHAIR MIGLIACCIO: Oh. All right.

7 At this time, we'll break for lunch and
8 reconvene at 1:30.

9 (Whereupon, the hearing was
10 recessed at 12:13 p.m. to reconvene at 1:30
11 p.m.)

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1 -- to the OSHA regulations on ROPS on skid
2 loaders which we presented at the last
3 meeting. Presented and reviewed a draft of
4 the proposed edits to OSHA regulation on tip
5 over protective structures on compact
6 excavators, and mini excavators prepared by
7 the Association of Manufacturers
8 representative. And we discussed the proposed
9 edits.

10 The work group approved the
11 request to submit as proposed to OSHA
12 regulations modifying the existing regulations
13 on tip over protective structures.

14 We had a discussion on the next
15 steps for the ROPS Work Group and that would
16 be to look at roll over hazards related to
17 farm tractors and different types of
18 industrial commercial tractors. Example would
19 be the Challenger, which is a tractor with
20 rubber tracks used in construction. Pictures
21 of the Challenger tractor will be presented at
22 the next meeting. A number of work group

1 members agreed to research and supply accident
2 and fatality data on this equipment. And the
3 work group would like to make a formal request
4 to OSHA for the same.

5 The work group would also look at
6 overturn hazards for other equipment used in
7 construction. An example might be the asphalt
8 milling machine. A request would be made to
9 OSHA to review accident and fatality data on
10 asphalt milling machines. The work group
11 discussed the impact, or safety, of this
12 equipment with no operator seat, no ROPS, and
13 operator controls on both sides of this
14 equipment. A video of the asphalt milling
15 machines in operation will be presented at a
16 future meeting.

17 The work group held a discussion
18 on stimulus money projects and the possibility
19 of getting contractors on this work to
20 purchase and/or use safety equipment on these
21 jobs. And that is equipment with ROPS and
22 seat belts installed. A specific request

1 would be made to OSHA on this possibility.

2 The meeting adjourned at 11:20
3 a.m.

4 Also, I passed out our proposed
5 edits to OSHA as it related to roll over
6 protective structures or tip over protective
7 structures on compact excavators. And for the
8 sake of time, I'd like to turn to additional
9 committee recommendations starting on page 2.
10 And naturally we're requesting that any of
11 this equipment manufactured in the United
12 States have a tip over protective structure,
13 and I will explain. The tip over protective
14 structure on this equipment replaces the ROPS.
15 Because of the design of the equipment, the
16 equipment's not expected to roll over. It is
17 expected to just tip over. And again, I'll
18 start reading.

19 "With the high probability of
20 serious injury or fatality resulting from the
21 overturn of a compact excavator when not
22 equipping with a tip over protective structure

1 and a seat belt, the Committee further
2 recommends: (1) for machines manufactured
3 after September 1, 1972 and before the
4 implementation of a new or modified standard
5 for which TOPS are required, tip over
6 protective structures and seat belts shall be
7 installed; (2) TOPS shall be evaluated by ISO
8 12117, earth moving machinery, and tip over
9 protective structures for compact excavators,
10 laboratory tests and performance requirements.
11 This international standard establishes a
12 consistent and pre-productive means of
13 evaluating the load carrying characteristics
14 of tip over protective structure under static
15 loading and prescribes performance
16 requirements of a representative specimen
17 under such loading; (3) training shall be
18 provided for safe loading, transporting and
19 unloading of compact excavators; (4) for
20 compact excavators with TOPS and seat belts
21 installed, training shall be developed for
22 operators, employers, equipment manufacturers

1 and equipment rental companies on the
2 importance of operators wearing seat belts,
3 provide seat belts that fit property and force
4 the proper wearing of seat belts, replace worn
5 or damaged seat belts and the use of
6 appropriate PPE; (5) tip over protective
7 structures," and this is a definition, "is a
8 system of structural members whose primary
9 purpose is to reduce the opportunity of an
10 operator, held by seat belt system, being
11 crushed should a machine tip over. Note the
12 structural members include any sub frame,
13 bracket, mounting, socket, bolt, pin,
14 suspension, flexible shock absorber used to
15 secure the system to the swing frame, but
16 excludes mounting provisions that are integral
17 with the swing frame; (6)," this is a
18 definition of a compact excavator, "an
19 excavator having an operating mass of 6,000
20 kilograms or less. An excavator is a self-
21 propelled machine on crawler, wheels or legs
22 having and upper structure capable of a 360-

1 degree swing with mounted equipment and which
2 is primarily designed for excavating with a
3 bucket without movement of the undercarriage
4 during the work cycle."

5 CHAIR MIGLIACCIO: Dan, do you
6 have anything to add?

7 MR. ZARLETTI: No, I'm good.

8 CHAIR MIGLIACCIO: Any questions
9 from the Committee?

10 All right. Seeing none, I'd like
11 to entertain a motion to accept this.

12 MR. THIBODEAUX: So moved.

13 MS. ARIOTO: Second.

14 CHAIR MIGLIACCIO: Mike Thibodeaux
15 first and Liz seconded.

16 Any questions or discussion?

17 All in favor say aye.

18 (Chorus of ayes.)

19 CHAIR MIGLIACCIO: Opposed?

20 (No audible response.)

21 CHAIR MIGLIACCIO: Ayes have it.

22 MS. SHORTALL: I have a question

1 to ask.

2 CHAIR MIGLIACCIO: Okay.

3 MS. SHORTALL: And that is you've
4 approved the work group report. Is this one
5 for ACCSH now to be recommending to OSHA?

6 MR. RUSSELL: Yes.

7 MS. SHORTALL: So this would
8 require a second motion.

9 CHAIR MIGLIACCIO: All right.
10 I'll entertain a motion on the work group's
11 ROPS/TOPS on compact excavators. Any motion?
12 Question?

13 MR. THIBODEAUX: Yes, I had a
14 question now.

15 CHAIR MIGLIACCIO: Okay.

16 MR. THIBODEAUX: Is it this entire
17 document that you're talking about
18 recommending for the full committee?

19 MR. RUSSELL: Well, let me explain
20 maybe just a little, if I can.

21 Again Emmett Russell, employee
22 rep.

1 What we tried to put in this
2 document is the recommended changes to the
3 OSHA regulation to accommodate what we
4 consider to be tip over protective structures
5 on mini excavators. Right now the current
6 OSHA regulation does not even have tip over
7 protective structure in it. So the whole
8 regulation would actually have to be reworked
9 to include tip over protective structures and
10 specifically to include mini excavators, which
11 mini excavators are not mentioned now. As a
12 matter of fact, when the regulation was
13 written, mini excavators were not even a tool
14 or a piece of equipment that was out there. So
15 again, this is what we consider to be the
16 modifications necessary to include mini
17 excavators in the regulation, as well as tip
18 over protective structures in the regulation.

19 CHAIR MIGLIACCIO: Okay. I'll
20 entertain a motion to accept this report to
21 the report.

22 MS. SHORTALL: I might give you

1 some potential language for that. It sounds
2 like what ACCSH wants to do is recommend that
3 OSHA revise the standard on material handling
4 equipment consistent with the proposed edits
5 of the ACCSH ROPS Work Group.

6 CHAIR MIGLIACCIO: Technical
7 difficulty. Hold on please.

8 MS. SHORTALL: To accomplish the
9 goal that you're hoping to do, it would be
10 suggested that someone move that ACCSH
11 recommend that OSHA revise the standard on
12 material handling equipment consistent with
13 the proposed edits document of the ACCSH ROPS
14 Work Group as it relates to compact
15 excavators.

16 CHAIR MIGLIACCIO: Mike Thibodeaux
17 gave us a motion. Second?

18 MR. ZARLETTI: Second.

19 CHAIR MIGLIACCIO: Dan Zarletti
20 seconded.

21 Questions? Discussion?

22 All in favor say aye?

1 (Chorus of ayes.)

2 CHAIR MIGLIACCIO: Opposed?

3 (No audible response.)

4 CHAIR MIGLIACCIO: Ayes so have
5 it. Thank you.

6 MS. SHORTALL: Mr. Chair, then I
7 would propose or I'd like to mark as Exhibit
8 10 the approved Roll Over Protective
9 Structures Work Group Report from their July
10 29, 2009 meeting as Exhibit 10.

11 (Whereupon, the document was
12 marked as Exhibit 10 for
13 identification.)

14 MS. SHORTALL: And as Exhibit 10.1
15 the ACCSH Roll Over Protective Structure
16 proposed edits document on compact excavators.

17 (Whereupon, the document was
18 marked as Exhibit 10.1 for
19 identification.)

20 CHAIR MIGLIACCIO: Okay. Thank
21 you.

22 All right. The next work group

1 we'll hear from is Multilingual with Tom
2 Broderick.

3 Tom?

4 MR. BRODERICK: Tom Shanahan is
5 the co-chair. I think that he was going to
6 handle -- are you still on, Tom?

7 MR. SHANAHAN: I'm here, but I
8 didn't quite hear what you said.

9 MR. BRODERICK: I said that Tom
10 Shanahan is the new co-chair. I said he'll
11 handle the reading of the minutes. And then
12 I remembered you're not really with us.

13 CHAIR MIGLIACCIO: He's pulling
14 your leg, Tom.

15 MR. BRODERICK: We had a good
16 turnout for this committee meeting. There
17 were 11 people interested in multilingual
18 issues on construction work sites.

19 The work group met at 10:00 on
20 July 28th, 2009. Tom Shanahan, employee
21 representative, will assume the duties of co-
22 chair of this committee. At the next meeting

1 the mission of the work group will be
2 restated.

3 Danezza Quintero reported on the
4 status of OSHA's internal task force on
5 Hispanic worker safety. Danezza reported that
6 the group is still in place and it was
7 suggested that our work group should request
8 that we give the task force a briefing on our
9 activities and offer assistance with their
10 important work.

11 Harwood programs that have been
12 done in Spanish should be located on the OSHA
13 web site as well as any current training
14 opportunities that are available. The OSHA
15 Training Institute Work Group will be asked to
16 make this issue an agenda item.

17 And I just wanted to
18 parenthetically talk about the OSHA Training
19 Institute presentation that we had this
20 morning. And I think Hank Payne and Jim
21 Barnes did a good job of updating us on why
22 this might be problematic, because I

1 remembered when they went over it that in fact
2 the copyright does reside with the developer
3 of the materials.

4 I would hope that people who do
5 get the Harwood Grants and develop materials
6 in Spanish would be willing to share those
7 materials. And I think that given the large
8 number of Latino workers that are injured and
9 killed on job sites that it's kind of
10 incumbent on us to see if we would have
11 Harwood-funded projects that have been done in
12 Spanish that could be given to OTI to make
13 available on their web site or in hard copy
14 form.

15 The work group will also
16 investigate the effectiveness of universal
17 symbols on signage and labels. It was noted
18 that AEM, the Equipment Manufacturers
19 Association, has done some good work in this
20 area and we will seek their assistance with
21 this item and encourage their participation on
22 this work group. We will move on our work

1 group developing a Quick Card on this issue
2 and present it to ACCSH and OSHA for review
3 and publication.

4 The increase in Hispanic worker
5 fatalities was discussed and the visibility
6 given to the issue by a front page article in
7 USA Today that underscored the urgent need to
8 turn around the 76 percent increase in
9 fatalities among Latino workers.

10 "The Construction Chart Book"
11 prepared and published by the Center for
12 Construction Research and Training, or CPWR,
13 has many segments relating to Latino
14 construction workers in the U.S. construction
15 work force. It was determined that this work
16 group will ask CPWR to consider publishing
17 these sections as a stand-alone document. The
18 group also agreed to seek permission to
19 develop a document based on this publication
20 for publication by OSHA as a Quick Card or
21 other OSHA document.

22 Finally, an article by Mark Lies,

1 Esquire, an attorney with the law firm of
2 Seyforth Shaw outlining employers' duties
3 under the OSHA Act was reviewed by the group.
4 The work group agreed to take charge of
5 authoring a Quick Card highlighting the
6 employers' duty to provide safety training in
7 a manner that is understood by all workers.
8 So this could include providing not only the
9 Anglo workers safety instruction and
10 orientation in English, but any other language
11 that their work force might have. And I know
12 that this seems like a very difficult task
13 because not every contractor has someone on
14 staff that is bilingual or multilingual, but
15 it is something that is required and a failure
16 to do it is a violation. And I think
17 especially with regard to the Latino workforce
18 there are more and more materials that are out
19 there that would help employers meet this
20 obligation.

21 So I will be happy to provide a
22 copy of this letter and also the "Construction

1 Chart Book" for entering into the record.

2 Thank you.

3 CHAIR MIGLIACCIO: Any questions?

4 Any questions of members of the Committee?

5 Okay. Seeing none, entertain a
6 motion at this time to accept this report.

7 MR. THIBODEAUX: So moved.

8 CHAIR MIGLIACCIO: Mike Thibodeaux
9 made the motion. Second?

10 MR. GILLEN: Second.

11 CHAIR MIGLIACCIO: Matt Gillen
12 seconded.

13 Questions? Discussion?

14 All in favor say aye.

15 (Chorus of ayes.)

16 CHAIR MIGLIACCIO: Opposed?

17 (No audible response.)

18 CHAIR MIGLIACCIO: Ayes so have
19 it.

20 MS. SHORTALL: Mr. Chair, please
21 excuse me. I turned away a moment and I did
22 not catch who made the motion to approve.

1 CHAIR MIGLIACCIO: Mike

2 Thibodeaux.

3 MS. SHORTALL: Okay. A Mike

4 Thibodeaux day.

5 Okay. Mr. Chair, at this time

6 then I would like to mark a couple of

7 exhibits.

8 As Exhibit 9; I realize I'm

9 jumping backwards, the list of ACCSH list of

10 work groups, the co-chairs and OSHA staff

11 liaises as Exhibit 9.

12 (Whereupon, the document was

13 marked as Exhibit 9 for

14 identification.)

15 MS. SHORTALL: As Exhibit 11, the

16 approved minutes of the Multilingual Issues on

17 Construction Work Sites Work Group Report from

18 the July 28th, 2009 meeting.

19 (Whereupon, the document was

20 marked as Exhibit 11 for

21 identification.)

22 MS. SHORTALL: As Exhibit 11.1,

1 segments of the "Construction Chart Book,"
2 published by Center for Construction and
3 Research Training along with Center for
4 Protection of Worker Rights.

5 (Whereupon, the document was
6 marked as Exhibit 11.1 for
7 identification.)

8 MS. SHORTALL: And as Exhibit
9 11.2, a copy of the article entitled, "Safety,
10 the Universal Language, Literacy and Language
11 Challenges in the Work Place" by Mark A. Lies
12 and Elizabeth Leifel Ash.

13 (Whereupon, the document was
14 marked as Exhibit 11.2 for
15 identification.)

16 CHAIR MIGLIACCIO: Okay. All
17 right. Our next presentation will be by
18 McGraw-Hill Construction Data. They're
19 setting up right now.

20 MS. SHORTALL: Might I ask Mr.
21 Broderick a question while we're getting them
22 set up?

1 Mr. Broderick, do you happen to
2 know whether the article by Mr. Lies was
3 copyrighted, or were you able to just simply
4 take it off their web site?

5 MR. BRODERICK: No, he makes
6 mention of his distribution of it.

7 MS. SHORTALL: Okay.

8 MR. BRODERICK: For the use of --
9 well, I don't want to try to even paraphrase
10 his --

11 MR. ZARLETTI: Wasn't it for
12 educational purposes?

13 MR. BRODERICK: Yes, I believe
14 it's for educational purposes. But he makes
15 note of the latitude he gives to share this.

16 MS. SHORTALL: All right. And the
17 "Construction Chart Book," I guess this would
18 be both to you and Ms. Trahan. And I see that
19 it is copyrighted. Do you know whether the
20 Center for Protection of Worker Rights wants
21 to have us put this on the online docket for
22 ACCSH?

1 PARTICIPANT: I'll send you my
2 version as a PDF if that helps.

3 MS. SHORTALL: That would be fine.
4 Thank you so much.

5 CHAIR MIGLIACCIO: While Mike's
6 getting them set up, I'll take this
7 opportunity to also announce again that the
8 public sign-in sheet is in the back of the
9 room. Anybody who would like to address the
10 Committee this afternoon, please sign in.

11 All right. Do you want to go
12 ahead, Kevin?

13 MR. BEAUREGARD: I will try to get
14 through it.

15 CHAIR MIGLIACCIO: All right.
16 We'll go ahead with Kevin's work group on
17 regulatory compliance.

18 Go ahead, Kevin.

19 MR. BEAUREGARD: Thank you. Kevin
20 Beauregard, state plan representative. I'm
21 the co-chair of the Regulatory Compliance
22 Group. Susan Bilhorn couldn't make it, so I

1 got drafted for this task.

2 I passed out the notes. I'm not
3 going to read them verbatim, but just kind of
4 give you the highlights of what we did in your
5 meeting.

6 The first thing we did is we
7 reviewed the status of some requests that both
8 our work group and/or ACCSH asked OSHA at our
9 earlier meeting in April. And as a result of
10 that, one of the issues that we asked for was
11 an update on the OIS, the OSHA Information
12 System, and that is scheduled I believe for
13 tomorrow. So I think Bob Pitulej who's
14 heading that up is going to give an update.
15 And that's the replacement system for the
16 database and data entry system that both state
17 plans and federal OSHA use in compliance and
18 consultation, etcetera. They've been working
19 that replacement effort some time and I think
20 he's going to give us an update and let us
21 know where that is.

22 The reason that our work group was

1 interested in it is one of the issues that was
2 brought up in your work group was maybe to try
3 to find some ways that it would be more
4 efficient for compliance officers and other
5 staff members to do their jobs, to hopefully
6 free up some resources so they could go out
7 and do different types of activities. And so
8 we were interested to find out where that was
9 as a group. And that is scheduled.

10 The next bullet on there has to do
11 with an update on the dialogue from the acting
12 director of construction, Richard Fairfax,
13 regarding the emphasis and outreach activities
14 being done in regards to the ARRA funding.
15 Richard did do that. We had a conference call
16 probably about a month or so ago for the work
17 group members and anybody else that was
18 interested. He provided an update to our
19 group as to where things were with that. And
20 then part of that led to the discussion that
21 we had from the legal section that was here
22 earlier letting us know about their legal

1 targeting and other issues that they have as
2 far as targeting. And so that was kind of
3 worked in as a result of the work on the
4 regulatory compliance, and we appreciate that.

5 Another item that was requested
6 from your group at the last work group meeting
7 was they asked Steve Hawkins and myself to
8 poll the various state plan programs to find
9 out what, if anything, they're doing in
10 construction targeting that may be different
11 than on the federal level. We did hear back
12 from several different states. And in our
13 meeting we went over a North Carolina
14 directive that concentrates on construction
15 activities in what's called high-activity
16 counties. And also construction activities in
17 counties that have more than one fatality in
18 a given fiscal year. And that's one of the
19 means that we use in North Carolina to
20 identify where we're going to send our limited
21 resources. We have other programs as well.

22 Puerto Rico provided some

1 information. It was more on an outreach type
2 of basis on how they're doing some outreach in
3 the construction area.

4 And then Alaska provided some
5 information which apparently they have some
6 type of report that's generated in the State
7 of Alaska for construction activity which is
8 one of the things that they use for targeting
9 construction activity. And they have a name
10 for it, and I can't remember the name exactly,
11 but we call them drive-bys where you drive by
12 a construction site, you see something, you go
13 ahead and address it. And they have a similar
14 type of program there as well.

15 So those were some of the things.

16 And our group just got that
17 information and is looking over it. And there
18 may be something that could be used elsewhere;
19 there may not be. But our task was to find
20 out what different areas were doing in an
21 effort to try to utilize their resources and
22 get both the compliance and other resources

1 out to where it needed to be, particularly
2 associated to construction.

3 The two questions that came out of
4 some of our discussions earlier, one of them
5 had to do with the legal perspective. And you
6 heard the presentation earlier that I thought,
7 at least for myself, did an excellent job of
8 explaining a little bit more about what OSHA
9 comes up to on the legal side of things when
10 they're doing targeting.

11 And then one of the things that I
12 was asked to do is to ask OSHA if they could
13 request somebody from the Directorate of
14 Enforcement attend the next work group meeting
15 to kind of give a field perspective on
16 enforcement activities. And so I'll formally
17 request that through Michael or somebody else
18 on the directorate. But there was an interest
19 in that.

20 There were several different
21 questions that came out as a result that the
22 group wanted me to ask, and I asked several of

1 those earlier today. And there's a couple of
2 bullets on page 2, and one of them had to do
3 with whether or not there was a previous
4 targeting task force and if so, you know, what
5 were the results of that. And I think what we
6 heard was that the current group is not
7 familiar with that. We're not sure whether
8 there was or wasn't a task force. But we did
9 hear a lot of the activities about how they're
10 going about targeting the ARRA sites and some
11 of the information that they're using in order
12 to get to those other federal agencies that
13 are contracting out. And I also know what a
14 COTR is now, so that was very beneficial.

15 The other question that I was
16 asked to convey was whether or not they had
17 any referral initiatives under way, and I
18 think we're going to wait and Richard Fairfax,
19 when he comes, to see what if any type of
20 activities they may have with fellow internal
21 agencies like Wage and Hour, or some of the
22 other agencies to see if they see something in

1 their daily working routine, if there's a
2 mechanism in place to get those referrals over
3 to OSHA.

4 And I think it was Sarah, and,
5 Sarah, I don't mean to put you on the spot,
6 but I think you mentioned that there is some
7 type of survey currently going on in regards
8 to under reporting, or barriers to under
9 reporting. And the suggestion was maybe the
10 Office of Statistical Analysis could give us
11 an update maybe at the next ACCSH meeting on
12 how that is going and exactly what they're
13 looking at.

14 MS. SHORTALL: The Office of
15 Statistical Analysis gave a report on that
16 project to the National Advisory Committee on
17 Construction Safety and Health when they met
18 earlier this month. So you can certainly ask
19 Dave Schmidt who did that presentation to make
20 a similar one to you. There are some issues
21 about how they -- the issues they would have
22 about how to address construction and getting

1 to the issue of is there under reporting going
2 on and what the barriers might be.

3 In addition, the PowerPoint
4 presentation of his presentation was put into
5 the docket for the NACCSH meeting. So it
6 should already be posted. You should be able
7 to obtain it on www.regulations.gov, as well
8 as the transcript from that meeting. So you
9 could listen to what Mr. Schmidt explained to
10 NACCSH.

11 MR. BEAUREGARD: So I guess we can
12 discuss it as an organization whether or not
13 that's some type of presentation this group
14 might want to see in the full group, or maybe
15 something that we might want to see in the
16 work group, and we can decide on that.

17 We also reviewed our notes from
18 the working group conference call that I
19 indicated that occurred in May. And there
20 were two major things that came out of that.
21 One was the development of either a guidance
22 document or a Quick Card document for guidance

1 on contractor selection from a safety
2 perspective. A document was drafted during
3 our working group meetings. There were a lot
4 of suggestions made and recommendations made
5 for some changes. I think I have incorporated
6 all those changes into that document. And
7 what I'd like to do is see if I can get copies
8 made for the membership so you can review
9 later on today or this evening and perhaps
10 have a discussion tomorrow on that. And if
11 there seems to be any type of agreement on
12 that, then I may ask for a motion as to
13 forward that onto OSHA. But I want you to
14 have an opportunity to look at it before I do
15 any such thing. So I'll try to get a copy of
16 that made. And if there are a lot of
17 questions or issues with it, I may shelve it
18 until the next meeting. We'll just have to
19 see how it goes tomorrow. But I do have it
20 complete and I'll try to get a copy of that to
21 you.

22 We already discussed the memo, and

1 I think arrangements are being made to make
2 copies of the memo.

3 MS. SHORTALL; I passed them out
4 right at the start of this afternoon.

5 MR. BEAUREGARD: Okay. So most of
6 you should have a copy of the memo in front of
7 you.

8 And to sum it all up, there are
9 three things that we're looking to pursue
10 right now. One is requesting the full body of
11 ACCSH to look at the guidance document that I
12 was talking about and possibly making a
13 recommendation that OSHA work on that.
14 Originally it was called a Quick Card; I think
15 we've heard Quick Cards a lot, but the
16 suggestion was that first of all there may be
17 too much stuff to include on a Quick Card.
18 Secondly, the vetting process may be a little
19 different for a Quick Card versus a guidance
20 document. And our recommendation would be
21 more or less for OSHA to look at developing
22 something along the lines of what we provide,

1 not necessarily verbatim, word-for-word, what
2 we have in that document.

3 The other issue I think has been
4 addressed, and I will try to fill in and brief
5 the rest of the work group members that
6 weren't able to make it today, regarding the
7 different types of things that OSHA is looking
8 for in regards to safety and health guidance
9 that's going along with these ARRA funds.

10 And then the last thing is to try
11 to get somebody from Enforcement to attend the
12 work group meetings.

13 And with that, I guess I'll turn
14 it over if there's any questions or discussion
15 points, or if there's somebody else in the
16 work group maybe that remembers something that
17 I didn't cover.

18 CHAIR MIGLIACCIO: Okay. At this
19 time any questions for some members of the
20 Committee?

21 Anybody like to add to it?

22 Okay. I'd like to entertain a

1 motion to accept this work group's minutes.

2 MR. THIBODEAUX: So moved.

3 PARTICIPANT: Second.

4 CHAIR MIGLIACCIO: Mike

5 Thibodeaux.

6 MS. SHORTALL: Yes. Thank you.

7 CHAIR MIGLIACCIO: All right.

8 Questions? We have a second, don't we?

9 Questions? Discussions?

10 All in favor say aye accepting.

11 (Chorus of ayes.)

12 CHAIR MIGLIACCIO: Opposed?

13 (No audible response.)

14 CHAIR MIGLIACCIO: Hearing none,

15 ayes have it.

16 MS. SHORTALL: Then I would like
17 to mark as Exhibit 12 the approved Regulatory
18 Compliance Work Group Report from the July 29,
19 2009 meeting as Exhibit 12.

20 (Whereupon, the document was
21 marked as Exhibit 12 for
22 identification.)

1 CHAIR MIGLIACCIO: Thank you.

2 All right. At this time we have
3 our technical difficulty problems straightened
4 out. I'd like to take this time to introduce
5 Daniel R. Palmer, Senior Director of Editorial
6 Operations from McGraw-Hill Construction.
7 McGraw-Hill Construction is the leading
8 provider of construction information in the
9 industry. McGraw-Hill Construction connects
10 people, projects and products from Dodge
11 Suites, Architectural Records, Engineering
12 News Record, regional publication and economic
13 forecasting services.

14 Dan Palmer is a 23-year veteran of
15 McGraw-Hill. He got his career as a reporter
16 and has held various management positions
17 throughout his career. Headquartered in
18 Pittsburgh, Dan is currently responsible for
19 the news gathering operations in the Midwest
20 and Eastern portions of the country, as well
21 as the national permit gathering operations,
22 U.S. Census relationship and the Canadian news

1 operation relationship. Dan has a degree in
2 journalism, communications and a master's in
3 organizational management.

4 Dan, the floor is yours.

5 MR. PALMER: Thank you very much
6 for having me. Today I was invited to present
7 an overview of Dodge Editorial, which will
8 basically describe how it is that we gather
9 the news that ends up being Dodge Reports and
10 ends up being in the statistics and ends up
11 being on our network.

12 The presentation should take
13 approximately 20 minutes or so and I will
14 leave time for questions at the end. Or if
15 you have any questions during, just certainly
16 call my name or raise your hand; it can be
17 interactive. Okay?

18 Basically, part of the description
19 you heard in my introduction covers this.
20 This is what we do. We provide news and plans
21 and specifications in order for our clients to
22 then analyze the information and/or act

1 proactively on that day. If it's out for bid
2 or if it's in planning, they can involve
3 themselves in the project from the early
4 planning stages. We do cover construction
5 from the early preplanning stages, meaning
6 before an architect is selected, all the way
7 through the planning stages and design,
8 through the bidding stages, through the award
9 stage when contractors are selected. We serve
10 the entire United States, and as you heard,
11 also Canada, all market sectors within the
12 marketplace across the country from small
13 projects to big projects, to individual
14 trades. And we've been doing this for well
15 over 110 years across the United States.

16 Here's our current organization.
17 I know it might be a little hard to see from
18 behind. I'll give you a short description.
19 My title is senior director. There are two of
20 us. I am headquartered in Pittsburgh,
21 Pennsylvania. My counterpart Cliff Brewis is
22 in San Francisco. And then we break the

1 country -- we say east and west. It doesn't
2 end up being east and west. It ends up being
3 approximately half, half the people, half the
4 direct reports, half the states, half of the
5 construction news. So it's broken up more
6 than an east/west. It's broken up by areas of
7 the country.

8 And the square boxes that you see
9 around the country are our regions. We have
10 10 regional offices around the country which
11 includes our 10 regional managers. We have
12 offices in Bedford, Massachusetts; Pittsburgh,
13 Pennsylvania; Hightstown, New Jersey; Atlanta,
14 Georgia; Dallas, Texas; Monrovia, California;
15 Seattle, Washington; and in Cincinnati, Ohio
16 where we actually have two regions which cover
17 that center part where you see the sort of
18 light blue and the dark brown. They're all
19 headquartered out of Cincinnati, Ohio.

20 We also have a national permit
21 center, which covers approximately 3,000 of
22 the largest permit issuing offices around the

1 country for construction activity at the start
2 stage. And our manager for that is
3 headquartered in Hightstown, New Jersey.

4 Our organization is broken up by
5 editorial reporters, plan room operations and
6 permit operations. I'm often asked how many
7 people are responsible for gathering the news.
8 On any given day, approximately maybe every
9 given month, it's between 900 and 1,000 people
10 on a daily basis are gathering construction
11 news for Dodge Editorial. Approximately 250
12 of those are full time reporter positions in
13 the United States, headquartered in those 10
14 regions and/or in home offices across the
15 country, still with a local market presence.
16 We have not done any type of consolidation
17 that would put everyone in one place using the
18 phone. We still have local market presence
19 for well over 100 of our full-time reporters.

20 We have 109 plan room associates.
21 Basically what that means is we have 109 plan
22 rooms across the United States. And the plan

1 rooms are responsible for gathering the plans,
2 specifications and addenda for all bidding
3 construction projects. They are broken up by
4 market place and prioritized by location of
5 the construction project. Based on the
6 location of the project, they are then placed
7 during the bidding cycle in one of these 109
8 plan rooms.

9 The permit operation, as we
10 discussed just a second ago, for these 3,000-
11 plus permit offices, we have 600 permit
12 representatives going to these individual
13 offices on a weekly, biweekly or monthly basis
14 gathering all the residential and commercial
15 construction permits that are issued by these
16 offices. They go in, they gather from month-
17 to-month the permits that are issued. They
18 are then transferred either electronically or
19 via the mail system into our offices in
20 Hightstown and then we use those to update the
21 database and/or for statistical purposes for
22 construction activity. It measures what

1 regions of the country are up or down, or
2 staying put.

3 Yes, sir?

4 MR. BUCHET: Yes, Michael Buchet,
5 Directorate of Construction.

6 Let's take a case of a permit
7 office that's largely paper-driven.

8 MR. PALMER: Yes.

9 MR. BUCHET: What kind of time lag
10 is there between the visit of your person and
11 your getting it in Hightstown?

12 MR. PALMER: We'll use the example
13 of a 30-day cycle for a permit representative.
14 That would be the easiest one. Our
15 responsibility that we've developed over the
16 years is to have that into our system to be
17 counted for analysis and obviously for
18 customers to act upon within 45 days of the
19 issuance of the permit. So every 30 days.
20 Let's use the first of the month as the
21 example. On July 1st, they went in and issued
22 everything from the last visit, which was June

1 1st. They send those in. And then so
2 hopefully using your thought, if a permit was
3 issued on June 2nd, the day after our rep was
4 there, and we get it on July 1st, we then have
5 that two-week window to have that process de-
6 duped, put into the system and then it could
7 be used accurately. Otherwise, after 45 days,
8 especially for smaller permits and/or
9 residential permits, it's past its useful
10 time. So it's a 45-day window.

11 Okay. So they go in as we
12 described and they process these permits
13 across the country. And some of our permits
14 are sent overseas to India. We have 10 people
15 over there doing strict data entry. These are
16 permits that come in, they are scanned over to
17 India on a daily basis and then entered on a
18 daily basis into our system. These are
19 single-family home permits and any general
20 building permit under a value of \$200,000.
21 Anything over \$200,000 is de-duped and
22 verified, the sources are called.

1 The reporting responsibilities are
2 broken up as you see here. We have reporters
3 in the field. Those are approximately the 100
4 reporters that I mentioned. And we have them
5 broken up by specialty. I'm not going to go
6 through all of them, but basically we have
7 reporters who are responsible for certain
8 types of sources. Large architects are
9 covered by our architecture specialists across
10 the country. Large general contractors are
11 covered, as you might guess, by our general
12 contractor specialists. We have public
13 information coordinators. And their main
14 responsibility, the easiest way to describe it
15 is to get private, early construction news
16 from public agencies across the country.
17 Anyone who's going to do construction has to
18 go in for some sort of approval from planning
19 and zoning offices and then up to the permit
20 stage. So these public information
21 coordinators are responsible for getting that,
22 what we would call a construction lead, early

1 in the cycle so that our reporters can then
2 track it all the way through as we described
3 earlier from the planning and bidding and
4 construction stages.

5 We have government reporters, as
6 you might guess what that is. That's
7 reporters that are responsible for government
8 agencies in their territory making sure that
9 everything we get is on a timely basis. There
10 are some agencies for example who will not
11 provide the bid result information on a
12 construction project without you actually
13 being at the bid opening. And so we have
14 reporters all across the country who are
15 responsible for going to these bid openings,
16 gathering this information so that we're able
17 to report bid results and construction awards
18 on a timely basis.

19 And then what we have is hybrids.
20 We also have a group of hybrids that sort of
21 have, based on their territory, possible
22 responsibilities for any of these. They could

1 cover some large architects. They could cover
2 some large contractors and so forth. And this
3 way, we make sure we have local direct
4 industry involvement and that the local
5 presence is still available for us to visit
6 the sources face-to-face and develop
7 relationships.

8 You see the term REOC up there.

9 Basically what that means, these are Regional
10 Editorial Operation Centers. Those are the 10
11 offices I mentioned at the beginning of the
12 presentation. And basically what happens is
13 as that field group is responsible for the
14 large types of sources in their marketplace,
15 the REOC reporters are responsible for the
16 next tier. So if an architecture specialist
17 in the D.C. Area has 100 of the largest
18 architects in the D.C. Area, then the
19 construction information specialist; as you
20 see there we call them the CINS, are
21 responsible for the next couple of hundred
22 based on activity. So they'd be doing most of

1 theirs by phone. There would be most of those
2 by phone contact.

3 And then we break that down into
4 what we call a news technician. They're
5 responsible for the gathering of the news off
6 of the Internet and inputting things on a
7 timely basis, mostly out-for-bid information.

8 The bid news coordinators then
9 take over and responsible for updating the
10 project through the bidding cycle, making sure
11 we have all the prospective bidders listed,
12 making sure we have the correct bid date,
13 making sure we have addenda issued on any
14 projects where we have the plans and
15 specifications. And then in the end making
16 sure we have the bid results in a timely
17 manner and then an award shortly after.

18 And then also, as you might guess,
19 the hybrids, same thing. Based on territory
20 size, they may be responsible for any or all
21 of these roles.

22 Again, these are inside people.

1 These are on those ten regional offices which
2 probably have 20 or so in each office and
3 they're responsible for gathering most of the
4 news via phone, the fax, the Internet, email.
5 Anything that would be needed in person in the
6 local market would then be turned over to
7 their field counterparts who would take those
8 responsibilities.

9 Plan rooms. We have two groups of
10 people in the plan rooms. These are our
11 coordinators and these are our supervisors.
12 These are the folks that on a daily basis deal
13 with the public most likely. These are our
14 customers that come into plan rooms and want
15 to see plans, specifications and addenda. And
16 they are also responsible for reporting
17 information out to the industry. They have
18 contact with customers. They're the ones that
19 take direct calls. The reporters usually
20 don't. Reporters are dealing usually with the
21 sources of information whereas the plan room
22 more often deals with the actual customers of

1 the information who might have follow-up
2 questions and need more information.

3 The types of reports that McGraw
4 Construction reports on are broken into
5 engineering, general building and residential.
6 These are the projects. When we say project,
7 that means we have trades usually into three
8 or more. So if it's an individual trade, it's
9 a roofing project, it's electrical work, it's
10 painting work. I'll show in the next slide
11 how we break things, and we call those items.
12 Individual trades. Equipment and material.
13 These are projects. These are the general
14 building projects where they're building
15 something new. They're putting an addition
16 on. They're renovating a building.

17 Outside work. Engineering. The
18 description we use is without walls. So any
19 types of roads, bridges, site work, paving.
20 We cover all those types of projects in our
21 engineering category.

22 And then we also cover

1 residential. The majority of the residential
2 work is at the permit stage, although we do
3 cover some master plans in the planning and
4 bidding stages. We do not cover residential
5 as deeply in the planning stages as we do
6 general building and engineering work.

7 The items. These are what we
8 talked about. If a bid is going out for a
9 particular piece of material, like rock salt
10 or something like that, or if it's an
11 individual trade like painting or roofing,
12 it's just one single trade, we call those
13 items. Individual trade, equipment or
14 materials. And we follow those all the way.
15 We do not issue items in planning. You will
16 only see those at the bidding and award stage.

17 We are quite often asked where do
18 we get our information? We have a few bullet
19 points here where you can follow through.

20 Our reporters are responsible for
21 making direct contact with architects, owners,
22 general contractors, civil engineers, public

1 agencies, public approvals, any type of
2 planning notice, permit offices. We'll take
3 basically anyone who is a source of
4 information, has anything to do with
5 construction. We will take that and convert
6 that into a Dodge Report.

7 We'll verify information. We talk
8 to many sources everyday. We get many leads
9 that aren't from owners, architects, GCs or
10 civil engineers. These are what we call
11 direct factors. But then we take that lead we
12 get from whomever, maybe a planning notice or
13 a colleague or a call in from a customer and
14 then we contact those main factors, the
15 architects, etcetera, and turn those into
16 confirmed Dodge Reports. All information in
17 the Dodge network system is confirmed
18 information. There is no information that
19 goes in our system without being confirmed by
20 a source. The only non-call that is made are
21 residential permits under \$200,000. Those all
22 go in based on the impression that the public

1 agency has got accurate information from their
2 contractors in the residential marketplace.
3 And so that information goes directly into the
4 service.

5 We also have software that we use
6 to scrape the web for any type of construction
7 information. Currently we have well over
8 25,000 newspaper sites and periodicals that
9 are searched nightly and then put directly
10 onto reporters' desks the next day. Also we
11 look for bidding information, legal notices,
12 anything doing with construction. So between
13 the two, we have well over 40,000 sites
14 looking for either planning or bidding
15 information on a daily basis and those are
16 then transferred, formatted automatically and
17 on the desk top of every reporter based on
18 region and territory every day.

19 Yes?

20 MR. BUCHET: And then they're
21 confirmed by the reporter?

22 MR. PALMER: Absolutely. Yes,

1 that's what we would call leads. And then we
2 use those as leads and then confirm those by
3 the reporter, yes.

4 We also subscribe to newspapers
5 who aren't publishing their information on the
6 Internet as of yet. That changes every day.
7 We drop subscriptions and add Internet sites
8 on a daily basis. But surprisingly, there
9 still are hundreds, if not thousands, of
10 newspapers who aren't publishing their bid
11 advertisements, for instance, and their local
12 construction opportunities on the Internet.
13 So we do continue to subscribe to those so we
14 make sure that the database is complete with
15 that information.

16 And we go to Internet sites of all
17 those architects and owners and engineers.
18 And we have Googles and Google alerts on any
19 time any type of our sources are mentioned in
20 an type of articles. Any place that could
21 possibly provide us a lead to start or could
22 to turn into a construction project, we do.

1 Customer leads. Also obviously
2 they're out there in the industry. They know
3 what's going on. They hear about another
4 project. They want to find out more. They
5 call us and we turn those into a complete
6 Dodge Report.

7 These are the players in the
8 industry. These are the names that I just
9 mentioned. I won't go through those again.
10 All of those are sources. All the government
11 agencies from state, local and federal,
12 certainly deal with the military through
13 FedBizOpps and other sources and then all our
14 private sources of information.

15 The phases of the project. We
16 don't need to go through these. But basically
17 our strongest category and the way that the
18 overwhelming majority of construction projects
19 are still built is in the design, then bid and
20 then build cycle. I'm sure that in the
21 industry you've heard a lot about design
22 build. That is currently approximately 20

1 percent of what is done, but the still
2 overwhelming majority is still done, you
3 design it, you bid it and then you build it.

4 Yes, sir?

5 MR. BUCHET: This is Mike Buchet,
6 Directorate of Construction.

7 How do you measure the 20 percent?
8 Dollar value?

9 MR. PALMER: There's different
10 ways of measuring.

11 MR. BUCHET: Number of projects?

12 MR. PALMER: Yes. It's both.

13 There are different ways our analytics team
14 can turn that information around. The 20
15 percent number I'm using is the number of
16 projects that are using that method of
17 construction.

18 Now dollar volume, it could be
19 slightly different. It could be smaller or
20 different. It could be a big project. I
21 mean, I know the Government is doing a lot of
22 design build work with contracts, you know,

1 well over \$10 million, well over 20, well over
2 \$50 million. My 20 percent figure is the
3 number of projects.

4 So what we basically do is we
5 follow it, as we described before, through the
6 design stage, through the bid stage to the
7 build stage. And there are different reasons
8 why we do that. Different customers and
9 different stages of the project are interested
10 in that project. The earlier the better for
11 people who want to get their projects spec'ed,
12 for instance. They want to get involved in
13 financing. There are some people that only
14 want it at the bidding stage. They're
15 subcontractors who are going to bid only to
16 the general contractor. They don't
17 particularly need to see it earlier than that.
18 And then there are some folks who get involved
19 later in the project when it's being built.
20 It's those on-site services that want to know
21 about who's been awarded the project and has
22 it started. And that's when they get

1 involved.

2 So we cover it at all stages.

3 There are different needs and assessments that
4 are done. There are different customers that
5 want that information at different stages.

6 Certainly at the build stage, which we call
7 the start stage, that's when a lot of the
8 analytics work is done as to where in the
9 country construction projects are starting.

10 I have a section here, just a
11 slide for you on the quality and coverage.

12 How do we know how well we are doing? We
13 measure ourselves with an independent agency.

14 It's a data quality management system service
15 who are outside of editorial's responsibility
16 who look at every single report down to the
17 individual reporter level and then measure
18 that for quality of the work. When we say
19 quality, we are talking about locations,
20 listed properly. We're talking about contact
21 people. We're talking about timeliness.

22 Completeness of the information, meaning how

1 much detail is on a project. So we measure
2 those obviously at the national level. We
3 measure at the 10 regional levels and then all
4 the way down into the reporter level. And
5 then we use that as training tools, reverse it
6 from reporter level up to the regional and
7 then up to the national level.

8 So we have approximately 40
9 different measurements that are measured down
10 to the reporter level every single day. And
11 that is always rolled up to a monthly report.
12 Find out how things are going on a monthly
13 basis, on a national basis. So we can measure
14 anything along the lines of timeliness, bid
15 results, completeness of addendum, contact
16 people down to the general contractor level,
17 including email addresses and phones and
18 faxes.

19 So there isn't much that we don't
20 measure about ourselves, so we are usually our
21 own worst critic and we try to use all of
22 those tools for continuous improvement.

1 MR. JONES: How much are you
2 capturing? How much of industry is getting
3 captured?

4 MR. PALMER: We have a contract
5 with the United States Census Bureau and they
6 audit us. And I can tell you that basically
7 what they do is they go to the same permit
8 offices that we do and then they send them to
9 us and say give us the Dodge Report on this.
10 So it's a way that we then can measure
11 ourselves internally. Depending on the value
12 of the project, under \$10 million/over \$10
13 million, it's approximately 80 percent of the
14 national construction database that we have in
15 our service before the permit is issued and
16 the Census Bureau comes to us and asks us
17 where the project is. So on a national basis,
18 it's give or take a month, give or take a
19 market place, because they go to 12 different
20 regions around the country.

21 MR. JONES: Right.

22 MR. PALMER: And what they

1 basically do is they say, okay, San Francisco,
2 send us every permit you issued over \$75,000
3 last June. They then get it in. They send it
4 to us and say here's San Francisco's from June
5 2008. Tell us every project that matches
6 these permits. And then they go into the
7 database and find out when it was issued. And
8 if it was after June, that's not good. If
9 it's before June, that is good. And then they
10 give us a ranking and that's how our contract
11 is with them. So it's give or take the
12 marketplace in value. Because 10 million
13 projects, we're well into the '90s where many
14 months were at 100 percent. Under \$100,000,
15 it's a little more difficult to get. But
16 overall it's usually approximately 80 percent.

17 CHAIR MIGLIACCIO: For the record,
18 that was Walter Jones that asked that
19 question.

20 MR. JONES: Thank you.

21 MR. PALMER: This goes to what you
22 were talking about, how much do we cover and

1 what is the quality of that reporting. The
2 metrics measure what I was taught as a
3 reporter or what we still learn today; there's
4 three things. It's the completeness of the
5 report, it's the timeliness of the report and
6 it's the accuracy of the report. And those
7 three things are identified here.

8 The completeness of the report is
9 what you just asked about. How much do we
10 cover of the total universe? And then we
11 measure ourselves on that every single month.
12 We have different ways of doing it internally.
13 And then externally the Census Bureau does the
14 audit. So we measure ourselves internally.
15 Basically we're measuring how many reports
16 when they hit start did we have in the system
17 before they hit start. And so we measure
18 every region in the country internally.

19 Timely. Obviously we want to make
20 sure that our customers who want the
21 information early, whether they want it in
22 planning or bidding, have enough lead time to

1 do something with it. It certainly isn't very
2 good if you're a bidding contractor to get the
3 information on the day that it bids. So we
4 measure ourselves on the ability to give them
5 at least two weeks to act upon any bidding
6 report.

7 And then accurate. Obviously
8 looking at things like cost estimates. If we
9 tell the customer that it's a million dollar
10 construction estimate and it either comes in
11 at \$100,000 or \$10 million, that makes a
12 difference to them. Because they may be a
13 contractor that only bids on projects over \$10
14 million. We tell them it's a million, they
15 don't bother to bid on it and they find out
16 later it's \$10 million, they're not very happy
17 with us. So we certainly measure our ability
18 to give an estimate and then we compare that
19 to the contract award. And then we measure
20 that obviously down to the reporter level and
21 we use that to help them learn and how to
22 question sources for accurate cost estimates.

1 That's just one example.

2 We talked about this, as your
3 question. This is exactly what we do. We use
4 the permit data to measure our total universe.

5 We also measure incompleteness.

6 We also consider the details of a building.

7 Square foot, framing, construction. They're

8 all responsible for doing this on every

9 individual construction project that's either

10 a new or an additional piece of work on a

11 construction project that already exists.

12 So we measure all these core details.

13 Factors, as we talked about.

14 We're talking about owners, architects,

15 consulting engineers, contractors. We need

16 individual contact people with email

17 addresses, etcetera. We measure those on

18 every individual report and try and

19 continually improve that number.

20 Timeliness. This is what we

21 talked about. When do we list it out for

22 bids? How quickly do we get the bid results?

1 These are all very important to different
2 segments of the marketplace.

3 And then accuracy. Cost accuracy.

4 Do we have the low bidders? One of the big
5 issues that we sometimes have a problem with
6 is we report the low bidders to the industry
7 and whoever was the low bidder was not on our
8 bidder's list. Not a very good situation for
9 a customer who wants to provide their price to
10 all the bidders. And if we didn't list the
11 low bidder, then obviously they didn't get a
12 chance to submit that price to that low
13 bidder. So we try and overcome that by
14 following up on bidder's lists up until three
15 days before the job bids. Sometimes someone
16 will slip in there two days before and come
17 get the plans and make the bid and be the low
18 bidder. But we have found that within 72
19 hours the overwhelming majority have already
20 picked up their plans and started preparing
21 their bids. And we limit the cases where we
22 actually don't provide the low bidder as one

1 of the bidders on a report. But that's one we
2 really work hard on, because if we aren't
3 given everyone the total list of bidders, then
4 they're not able to provide a bid to all the
5 bidders.

6 How do we do this continuous
7 improvement? We deal with our customers
8 through our product and sales department. We
9 want to make sure that we hear from our
10 customers what they want us to do. As I often
11 say to anyone who listens, editorial does not
12 decide what we report on. It's our product
13 and our sales people and our customers tell us
14 what they want and then we try to figure out
15 a way to do it, and then we try and figure out
16 a way to measure it so that we can drive
17 improvement. So you will see some things that
18 are different. Some markets in the country
19 will go after different types of plans and
20 specifications, for instance, to deal with
21 certain customers.

22 Yes, sir?

1 MR. BUCHET: Michael Buchet,
2 Directorate of Construction.

3 And the Department of Labor is one
4 of those customers?

5 MR. PALMER: Yes.

6 MR. BUCHET: And what sort of
7 information do you provide out of all that you
8 capture that comes through to OSHA through the
9 University of Tennessee?

10 MR. PALMER: I would be more than
11 happy to turn that over to Mr. Kerr, who is
12 our representative on what we actually provide
13 to any individual customer. So if you would
14 like to turn it to Jim.

15 MR. BUCHET: If he's got a minute.

16 CHAIR MIGLIACCIO: State your
17 name, please.

18 MR. KERR: James Kerr. With the
19 Department of Labor, we provide data to OSHA,
20 to WHD, which the data is taken, and then also
21 to OS CCP, which is compliance.

22 For OSHA, they get a regular

1 listing of projects that are gone through an
2 econometric model that's managed by the
3 University of Tennessee Business School to
4 target projects for inspection based on
5 different types of activities happening on the
6 site. Trench work, cranes going up,
7 scaffolding, basically the high-risk times on
8 these projects. And as I say, that's done by
9 an econometric model. It's monthly. It goes
10 into the OSHA system and goes out to the
11 regional offices.

12 The other type of information we
13 supply, and we just started doing it literally
14 within the last two or three months, is we
15 supply them a weekly feed of ARRA stimulus
16 projects. They're required to apparently go
17 out on every one of those and be able to
18 inspect them. So that's a new and separate
19 feed and it includes all the ARRA projects.

20 MR. JONES: What's the dollar
21 value of the projects you're providing to DoL?

22 MR. KERR: For the --

1 MR. JONES: The limit, I should
2 say. What's the floor?

3 MR. KERR: There is no floor on
4 the monthly.

5 MR. JONES: So smaller projects
6 are listed as well?

7 MR. KERR: Small projects as well
8 as large projects.

9 CHAIR MIGLIACCIO: For the record,
10 Walter Jones asked the question.

11 MR. JONES: Okay.

12 CHAIR MIGLIACCIO: Bill?

13 MR. AHAL: Bill Ahal, employee
14 representative.

15 So tell me where this project I'm
16 going to give you -- and by the way, I have
17 used Dodge for 28 of my 33 years in this
18 industry.

19 MR. KERR: Great.

20 MR. AHAL: It is an excellent
21 product. But let me give you a scenario and
22 tell me where this falls, if it's the 20

1 percent. You have a private owner, which I've
2 had many, many, many times, that absolutely
3 says if you left this information to Dodge,
4 you're off the project, because you get a lot
5 of calls. I mean, that's what it's about, but
6 a lot of owners don't. So there's gag on
7 information. So all you can pick up would be
8 the building permit. That's the only thing
9 that would ever tell anybody that job was
10 there, unless you knew about it, even if it's
11 a five-story building, you know?

12 Does that fall in the 20 percent
13 that you don't get any information on, or do
14 you count that even though all you ever say
15 there's a project at this location? All you
16 know is when the building permit was issued.
17 Where does that fall, in the 80, or 20?

18 MR. PALMER: Very good question.
19 The 20 percent number that isn't covered is
20 because the Census Bureau only counts prior to
21 the permit being issued did we have it in our
22 service. As you stated, if they did it all

1 the way to the date they sent us; they sent it
2 today and said go back to June 1st, we would
3 have 100 percent, because we'd have the same
4 permit. The 20 percent is did we have it
5 before the permit was issued, and that's
6 really what they want to try and measure us on
7 at the site.

8 MR. AHAL: So in the case of this
9 project I just made up, the general contractor
10 or construction manager would not be -- I
11 wouldn't give you any information. Engineers
12 were told, you know, on the same team cannot
13 give you information, and the owner wouldn't
14 take the call. So you don't know about it
15 until the permit comes out?

16 MR. PALMER: Using your example,
17 then no. But with a group of 400 or so full
18 time reporters who take an incredible amount
19 of pride in overcoming the idea that someone
20 won't tell us, we find out about it almost
21 anyhow, because it's in the newspaper.

22 MR. AHAL: Admittedly, right.

1 MR. PALMER: It's at the planning
2 and zoning office. We have subcontractors who
3 say I know that they don't want to tell you,
4 but I need the prices. I need to find out.
5 I mean, we don't get every single project. I
6 do not claim that we do have it in the
7 planning stages or bidding stages. Put it
8 this way, to answer your question this way, we
9 do not settle for the fact that someone says
10 no to us.

11 MR. AHAL: Well, I understand
12 that. And you just don't want to be the one
13 that gets tagged on who gave the information
14 out.

15 MR. PALMER: Oh, no. We're like
16 the Washington Post. We do not --

17 MR. AHAL: And I've been an
18 informant for you on some --

19 MR. PALMER: We are covered by all
20 laws. We don't tell anybody what our source
21 is.

22 MR. AHAL: Right.

1 MR. PALMER: So you can talk to me
2 any time you like.

3 MR. AHAL: Right. So that
4 particular project that you really can't find
5 out a lot about, subs don't have much on it,
6 it's a closed list, we got it all negotiated,
7 does that small amount of information on that
8 project, does that go to OSHA at some point,
9 but it's just a small amount of information?

10 MR. PALMER: Are you saying --

11 MR. AHAL: As well as one that you
12 know everybody, the bidder, who's got the
13 drywall or who got the painting and
14 everything?

15 MR. PALMER: You only answer that,
16 but the answer is yes. But you're saying if
17 we just it at the permit stage, that's the
18 only time we issue is that one time, this
19 project in the permit stage, would you guys
20 get it?

21 MR. AHAL: That will go at some
22 point whenever it's turned to go to OSHA. So

1 they do find out about it, but they won't know
2 nearly as much on that one obviously as one
3 which you --

4 MR. PALMER: As one that we
5 followed through the whole stage cycle that I
6 showed earlier. Absolutely right?

7 MR. AHAL: Okay. Thank you.

8 MR. PALMER: You're welcome.

9 MR. GILLEN: Question?

10 CHAIR MIGLIACCIO: Question.

11 MR. GILLEN: Matt Gillen, NIOSH.

12 I'm trying to understand if what
13 you have in your system is just the price
14 information for the bids, or if it's some of
15 the more other information. So for example,
16 say OSHA or say of OSHA in partnership with
17 NIOSH was interested in finding out what
18 percent of bids include safety specifications
19 as part of them. Is that something that could
20 be done, because you have more of that
21 information beyond the price, or just the
22 price?

1 MR. PALMER: From the editorial
2 perspective we are reporting the actual low
3 bid construction agency or firm, the CM or GC,
4 submitted on the job. We do not break it down
5 by individual product or what makes up that
6 total bid.

7 MR. GILLEN: Okay. Thanks.

8 MR. KERR: You know, having said
9 that though, we do collect plans and
10 specifications on between 60 and 70,000
11 projects per year. Those are fully
12 searchable. So if in the specifications there
13 is safety equipment or regulations included,
14 we can search for them, find them and give you
15 a percentage of how often it appears.

16 MR. GILLEN: Okay.

17 MR. KERR: And, I mean, as
18 specific as you want to get.

19 CHAIR MIGLIACCIO: Steve?

20 MR. HAWKINS: Steve Hawkins, state
21 plan.

22 Can you tell me more about the

1 ARRA information that would be directly
2 available to OSHA? I mean, I might need to
3 ask OSHA about that, but this is the first
4 I've heard that that's going to come through
5 the Dodge Reports.

6 MR. PALMER: I'll answer your
7 question for the group. I'm supposed to talk
8 again in about a half-hour with a full ARRA
9 presentation. So I mean I can wait that half-
10 hour to do that.

11 MR. BUCHET: Please do because
12 right after you right now we have an area
13 director from Florida.

14 MR. PALMER: Oh, okay. Good.

15 MR. BUCHET: Darlene Fossum, who
16 is going to come and talk about --

17 MR. PALMER: So if you're still at
18 3:30 --

19 MR. BUCHET: -- how she uses your
20 information to do enforcement in the field.

21 MR. PALMER: All right. Good.

22 MR. BUCHET: And then we're going

1 to ARRA.

2 MR. PALMER: Good, good, good.

3 Thank you.

4 Okay. And I only have like one or
5 two more slides, I think, and that should do
6 it.

7 So basically, when you get a Dodge
8 Report, this is what is required to create a
9 Dodge Report, whether it be at the permit
10 stage or earlier on. You have to have a
11 title, you have a location and you have to
12 have at least one factor, meaning the owner or
13 the contractor or the architect. And we use
14 those to start and build a Dodge Report. And
15 then from then on, through the whole life
16 cycle we turn it into descriptions, more
17 factors, engineers, contractors, more details.
18 But you have to start out with those main
19 things. What is, where it is and who's
20 planning the building. And that's the initial
21 sort of building block of a Dodge Report,
22 whether it's from a permit at the end or a

1 preplanning Dodge Report at the beginning.
2 So if we have those four pieces of
3 information, as you see there, we'll turn it
4 into a full Dodge Report that we'll follow all
5 the way through.

6 Okay. So that's my last slide.
7 As we like to say, we're a resource for
8 anyone. You can always ask us questions. You
9 can ask me questions. You can contact your
10 local planner or representative. And
11 hopefully if we work together we'll both be
12 successful. Thank you very much. I
13 appreciate it.

14 CHAIR MIGLIACCIO: Thank you. Any
15 questions? I got a real quick question.

16 Can we get a copy of your
17 presentation?

18 MR. PALMER: Yes. It's on your
19 hard drive. So just to answer that, I'm going
20 to leave it there and if you could email it to
21 each other, or to a certain place it needs to
22 go. That's fine. You can certainly email it.

1 MS. SHORTALL: How about if I do
2 this right now, Mr. Chair; and that is, I'd
3 like to mark as Exhibit 13 the PowerPoint
4 presentation on the McGraw-Hill Construction
5 data, Dodge Report, presented by Dan Palmer.
6 It will be in the record and everyone can take
7 it down from regulations.gov.

8 (Whereupon, the document was
9 marked as Exhibit 13 for
10 identification.)

11 CHAIR MIGLIACCIO: Okay. Any
12 other questions?

13 MR. JONES: I just have one.

14 MR. PALMER: Yes.

15 MR. JONES: I'm new to this,
16 granted. Walter Jones. And as you can see,
17 I'm new at this. But my question is, most of
18 this data is front end. And do you collect
19 back end data, cost overruns?

20 MR. PALMER: No, sir.

21 MR. JONES: No.

22 MR. PALMER: Not in editorial. We

1 take it through the construction stages,
2 including sub-bidding. I mean, after a
3 contract is awarded, construction starts and
4 the contractor is taking prices on jobs, parts
5 of the job later on, we will cover that. But
6 no, we don't go back and do cost overruns. We
7 don't go back and do, you know, sort of -- if
8 it's an office building, say like tenant
9 percentages, no. Editorial is more
10 specifically geared to the construction.

11 MR. JONES: I mean, you say
12 editorial. Is there a Dodge product that
13 would look at back end, like cost overruns?

14 MR. PALMER: I'd have to ask Jim.
15 Do they have anyone that does any of the back
16 end?

17 MR. KERR: Yes, we can do what's
18 called as-installed and whether it's for a
19 product, whether it's for a service, whether
20 it's for update.

21 MR. JONES: So if I wanted to look
22 at like fatalities or injuries, or cost

1 overruns, or work comp issues, or --

2 MR. KERR: We have the ability to
3 identify the projects and then we also have a
4 research department that, yes, can go back and
5 do that type of work.

6 MR. JONES: Thank you.

7 CHAIR MIGLIACCIO: Any other
8 questions? Sir?

9 MR. BUCHET: In the discussion
10 that's going on, and apparently increasing, of
11 a sort of life cycle approaches to
12 construction projects, is Dodge looking at;
13 and I noticed you kept stressing new or
14 additions, demolition projects?

15 MR. PALMER: Yes, absolutely.
16 Yes. We call it demolition. That's a single
17 trade.

18 MR. BUCHET: Okay.

19 MR. PALMER: So your
20 knowledgeability to then build something new
21 or knowledgeability to clear a site,
22 absolutely. Again, we will not cover that in

1 the planning stages that someone's planning to
2 demolish something.

3 MR. BUCHET: Right.

4 MR. PALMER: But when it does go
5 out for bid, we certainly provide that
6 information.

7 CHAIR MIGLIACCIO: For the record
8 that was Mike Buchet from the Directorate of
9 Construction.

10 Any other questions?

11 Thank you very much, Dan.

12 We'll go and take a 15-minute
13 break until five minutes after 3:00. Remember
14 back in the back there's a sign-in sheet. For
15 anybody who wants to do public comments to the
16 Committee, sign in, please. That will be
17 happening this afternoon.

18 (Whereupon, the above-entitled
19 matter went off the record at 2:51 p.m. and
20 resumed at 3:06 p.m.)

21 CHAIR MIGLIACCIO: All right. Our
22 next presentation will be on the OSHA

1 enforcement field perspective. the
2 presentation will be done by Darlene Fossum.

3 The floor is yours.

4 MS. FOSSUM: Well, thank you.

5 Good afternoon. I want to thank everybody for
6 having me here. I got the news from your
7 regional office that you had some questions
8 for me. So before I get you to ask questions,
9 I'd like to give you a little bit of
10 background about my office, my area of
11 jurisdiction and some of the major concerns
12 that we have with regard to enforcement in
13 South Florida.

14 First off, South Florida, of
15 course everybody knows all about Miami.
16 That's one of my largest areas in there. The
17 growth in Miami has caused me some serious
18 concerns with regard to construction. Since
19 the '70s until today, the boom has just been
20 unbelievable. I took a trip down A1A, which
21 is our major coastal highway, and I counted 54
22 tower cranes in the boundaries between Miami

1 and Homestead, which is the bottom of the
2 Keys. So we've had a lot of construction
3 going on in that area.

4 My jurisdiction covers 10 southern
5 counties. These are the ones that we have,
6 and that gives you an idea of my population.
7 We have approximately 6,388 people that live
8 within those 10. And what you're going to see
9 here is how it's divided. As you can see,
10 Miami is the crux of my population. It's a
11 very congested area. Broward County, which is
12 where the area office is situated is the
13 second highest, and of course Palm Beach after
14 that. We have a lot of agricultural in the
15 other areas. We deal with sugar crops,
16 orchards, so on and so forth. So it's more of
17 a rural community.

18 One of the major issues that I
19 think we should all be aware of with regard to
20 South Florida is my Hispanic population. This
21 is one of the big concerns that we have down
22 there and one of the issues that I've tried to

1 address in the last three years. Miami-Dade's
2 population is 62 percent Hispanic. So what I
3 end up having to do is having to deal a lot
4 with a different type of a culture in that
5 area, which also impacts how our enforcement
6 activities go.

7 These are my top five industries.
8 As you can see, construction, warehousing and
9 distribution, metal fabrication, maritime and
10 retail service industry. It's not heavy-
11 equipment-type of a situation. However, with
12 the construction, residential seems to be the
13 largest flux of the type of construction
14 activity that's going on, anywhere from high-
15 rise condominium-type projects to single-
16 family homes.

17 This is the best team in the OSHA
18 agency. This is Team Fort Lauderdale. They
19 consist of some of the greatest, most
20 energetic and most passionate compliance
21 officers you'd ever want to meet. Industrial
22 hygienists, engineers. I've got safety

1 compliance officers or safety officers in
2 there, as well as my administrative staff.

3 I thought it would be really
4 important for you to understand the breakdown,
5 because in the breakdown it's going to help
6 you to understand how enforcement actually
7 works and what we're trying to do and how
8 we're going to target specific industries.

9 Of course there's me. I have
10 three assistant area directors and they run
11 three teams. I have a construction response
12 team, a non-construction response team and a
13 strategic response team. I have four
14 industrial hygienists currently and I've just
15 hired three new ones. They should be on line
16 August through September. I have 12 safety
17 compliance officers with two new ones coming
18 on at the same time. I only have one
19 compliance assistant at this time. Now that's
20 a very, very key thing when you see some of my
21 concerns.

22 A compliance assistant, basically

1 their job is non-enforcement. Theirs is
2 education, training and outreach to my
3 stakeholders. So it's very, very important
4 that I have good dedicated people that can
5 help me to generate programs and projects that
6 are going to help me to get information out to
7 my stakeholders to help to educate them on the
8 laws and what they need to do to protect their
9 employees.

10 We have two program managers.
11 They're my administrative assistants. I can't
12 live without either one of them. And then I
13 have a technical assistant that helps me with
14 computers, because I know absolutely nothing
15 about them.

16 Indicators. Always the big thing.
17 This is what drives me to make determinations
18 as to what kind of programs, what kind of
19 emphasis that I want to place people within
20 enforcement, and when it comes to my outreach
21 activities. Right now my goal is 836 for
22 fiscal year '09. Currently, I'm at 780, which

1 means 105 inspections above goal.

2 We have a safety and health
3 inspection number breakdown for you. Safety-
4 wise we do 726, and health 54. Percentage of
5 construction inspections is 72 percent. I
6 think that's very important for you to
7 realize. That's how much construction drives
8 my enforcement activity in South Florida.

9 One of the things I would like to
10 say, and you're going to see when I talk about
11 concerns is, I want to put more emphasis into
12 our health field with regards to construction.
13 We are in the process with the increase in the
14 number of health compliance officers that
15 we're going to be bringing on that we are
16 going to be able to target more health aspects
17 or health hazards within the industry so that
18 we can start providing more coverage, more
19 protection for your workers.

20 Everybody understands what a
21 significant case is here, \$100,000 or more.
22 We had one this year so far, Apex/Morganti.

1 It was a construction double fatality. This
2 was a situation where we had a slab collapse
3 at the Key West Airport and killed two of our
4 contractors there. We ended up actually
5 settling this last week. So we did finally
6 settle the case.

7 We currently have one in maritime
8 going on right now. This one will be a big
9 one. I won't go into that since this does not
10 necessarily pertain to you, but we're in the
11 process, we're looking at 319 to \$450,000
12 fines for them.

13 Here's some information. I love
14 this slide because it's the first time I ever
15 did one, so I'm really proud of it.

16 The goals. It shows where our
17 goals have been for the last three years and
18 what our projected goal for fiscal year '10
19 is. You're going to see that we're going to
20 have an increase. Of course that is based on
21 the fact that we have an increase in the
22 number of employees that we're going to be

1 having, or enforcement employees we're going
2 to be putting out into the field.

3 You see the dark blue. That shows
4 you what your inspections were for that year.
5 As you can see, and I take great pride; I have
6 the best team in the United States, we have
7 surpassed our goal for the previous two years
8 and we will also bypass for fiscal year '09.

9 The construction, which is kind of
10 like the aqua, is really important, because it
11 shows you how much of my inspection activity
12 is actually based on the construction fields.
13 So we have always had a high level of
14 construction inspection activity within the
15 South Florida office.

16 Complaints. We're pretty much
17 complaint-driven. Would like to change a lot
18 of that. To me, when we're dealing with
19 complaints, I'm being reactive, not proactive.
20 One of my goals is going to be for the field
21 office is to become much more proactive, try
22 to get there before I have the complaints, get

1 there before the accidents actually occur. So
2 we're going to be doing some modification of
3 how we're going to be targeting probably for
4 the fiscal year '10.

5 University of Tennessee. You can
6 see we don't have a lot on here. One of the
7 reasons for that is because the fact that I am
8 so complaint-driven. They're very, very
9 intensive when we do them. They're
10 comprehensive inspections. And what that
11 means is I'm going to be taking a compliance
12 officer or two and tying them up for a long
13 period of time. Because this is the type of
14 inspection where they go through and they look
15 at everything. Everything from programs, all
16 the way to what they're keeping into their
17 gang boxes. This is an opportunity for us to
18 evaluate the type of contractors we have out
19 there, to provide more outreach for them, make
20 sure that all the areas where hazards may be
21 occurring can actually be addressed. Instead
22 of going out on a complaint where I'm focused

1 and limited to what I'm actually able to
2 address, this is my opportunity to go out,
3 provide more additional assistance and ensure
4 that the company is actually enforcing the
5 standards as they're applied.

6 MR. BUCHET: Darlene?

7 MS. FOSSUM: Yes?

8 MR. BUCHET: Michael Buchet,
9 Directorate of Construction.

10 Have you got a slide or can you
11 talk a little bit about you choose between or
12 prioritize between complaint-driven and a
13 Dodge Report-selected inspection?

14 MS. FOSSUM: I'm not quite sure I
15 understand what you're looking for, Mike.

16 MR. BUCHET: Well, the number
17 shows that you have a huge number of
18 complaint-driven inspections and relatively
19 few come off the Dodge Report.

20 MS. FOSSUM: Programs, yes.

21 MR. BUCHET: The program. In the
22 program, the list, I understand Dodge gives

1 you, what is it, 10?

2 MS. FOSSUM: Ten at a time.

3 MR. BUCHET: Ten at a time. How
4 does an area director choose between taking
5 one off the list for the month of July 2009 or
6 answering four complaints?

7 MS. FOSSUM: Well actually, we
8 have figured out how to do this. When I get
9 further into how I'm actually dedicating
10 resources, Mike, I might be able to address
11 that. But I want you to understand also with
12 Dodge's, since that's a programmed inspection,
13 I also have general industry and maritime. My
14 general industry is also strategically
15 targeted. And there are very, very specific
16 guidelines and requirements for me in general
17 industry that I have to meet with regards to
18 how many and which ones that I actually
19 address. So I do have that competition all
20 the time.

21 Yes, ma'am?

22 MS. SHORTALL: Sarah Shortall,

1 ACCSH counsel. I have a question, since these
2 are your entire inspection lists and not only
3 construction.

4 When I look at the percentage of
5 inspections based on complaints, is that
6 relatively the same in all five of our top
7 areas; for example, in construction? Is that
8 mostly complaint-driven, or not?

9 MS. FOSSUM: Yes, probably because
10 most of my work activity is in the
11 construction field. A majority of my
12 complaints that do come in are construction-
13 related.

14 MS. SHORTALL: That's an important
15 piece of information, because in the
16 Regulatory Compliance Work Group meeting there
17 was a question raised about whether complaints
18 have actually decreased or increased recently.
19 And so what you're saying is they're still at
20 the same level as in past years?

21 MS. FOSSUM: But to very fair, I
22 think it is based upon each area office is

1 different.

2 MS. SHORTALL: Okay.

3 MS. FOSSUM: You know, you may go
4 into let's say Cleveland, Ohio. I was the
5 construction team leader up in Cleveland
6 before I came to Fort Lauderdale. Our
7 complaint process or the number of complaints
8 that we addressed were different, were lower
9 than what I'm actually seeing in the Fort
10 Lauderdale office. So each area director is
11 having to take this kind of data to determine
12 how I'm going to allocate resources towards
13 programs, response to complaints, accidents,
14 and so on and so forth.

15 Yes, sir?

16 MR. JONES: Walter Jones, employee
17 rep.

18 MS. FOSSUM: Good for you, Walter.

19 MR. JONES: Sort of a running joke
20 here.

21 But my question is, in your
22 complaints is there a difference between the

1 value of the project? Are we looking at small
2 contractors or large contractors? Are you
3 looking at union or non-union?

4 MS. FOSSUM: Okay. A complaint is
5 a complaint. We don't look at the cost or the
6 issue. I can have a complaint talking about
7 sanitary conditions on a work site, or I can
8 be looking at a fall protection issue at a
9 high rise. They're both counted as equals.
10 We don't look at how large the site is or how
11 small it is, or if it's general industry or
12 maritime.

13 Everything is geared off of two
14 things with a complaint. It's either formal
15 or non-formal. The only person that can give
16 you a formal complaint is an employee. That
17 employee must be current; he must be currently
18 an employee, and he must be willing to sign
19 for the complaint. They're the only people
20 under the Act that are authorized to order
21 OSHA to do an inspection. I can have somebody
22 that says there's no toilet paper on the third

1 floor of this high rise, I'm an employee and
2 I'm demanding that you go out and do it. If
3 he signs for that, I must go out and do that
4 inspection.

5 A non-formal would be other people
6 that possibly are on the job site but they're
7 not employees of that contractor. They're not
8 willing to sign or they're anonymous. We even
9 take anonymous calls. At that point there are
10 two ways that we're going to handle the
11 complaint. Because of the seriousness of the
12 hazard and emphasis programs that are
13 established by the Agency, I would have the
14 authority to appoint somebody to go and do an
15 inspection of that, or we're going to address
16 it as a phone and fax. Am I going too far on
17 this, Mike?

18 Okay. A phone and fax basically
19 means this: As soon as I get the information,
20 if it doesn't fall under the jurisdiction of
21 a national or local emphasis program, or an
22 imminent danger, we are going to fax that

1 information to the controlling contractor.
2 We're asking them to look into the matter and
3 to provide me evidence within five days as to
4 actually what they've done to abate the hazard
5 or the problem. We do not have an enforcement
6 agent that actually goes out.

7 Now, if somebody under phone and
8 fax does not respond to us within that amount
9 of time, then I am going to appoint somebody
10 or a compliance officer to go out into the
11 field and to find out what that is to ensure
12 that that hazard or that health issue has been
13 abated.

14 MR. JONES: Wow. Thank you.

15 MS. FOSSUM: I didn't mean to get
16 that long-winded.

17 MR. JONES: I needed that --

18 MS. FOSSUM: Mike will tell you
19 you got to kick me in the leg to shut me up.

20 This is the saddest slide I have.

21 Oh, I'm sorry. Yes, sir?

22 CHAIR MIGLIACCIO: Tom?

1 MR. BRODERICK: Tom Broderick,
2 public representative.

3 Along the same lines as Walter's
4 question, but a little different.

5 I know that you don't keep any
6 statistics on this, but you do have someone
7 who can answer the phone and speak Spanish, I
8 assume.

9 MS. FOSSUM: We pray. I cannot or
10 I do have non-speaking Spanish people in my
11 office; I don't speak Spanish, I'm ashamed to
12 say, but we do have the majority. Last
13 statistic I had, and I'm hiring every day --
14 my last statistic was I think 56 percent of my
15 employees spoke Spanish.

16 We have what we call a duty
17 officer. That duty officer is a rotation of
18 all of my enforcement officers within that
19 office. At any one time I could have somebody
20 on that phone that does not speak Spanish.
21 However, we always have somebody in the office
22 that does speak Spanish. So if and when

1 somebody calls in and we need that speaker,
2 then we'll put him on that call.

3 MR. BRODERICK: Okay. Well then
4 part two of that question is; again, I know
5 that you wouldn't have scientific answer for
6 this, but just your gut feeling, is how many
7 of these complaints do you feel are coming
8 from Latino workers? Five percent? Twenty
9 percent?

10 MS. FOSSUM: Oh, no, no, no. More
11 than 50 percent.

12 MR. BRODERICK: More than 50?

13 MS. FOSSUM: Yes. For my office.

14 MR. BRODERICK: So the number of
15 complaints is somewhat consistent with the
16 number of Latino workers?

17 MS. FOSSUM: Yes.

18 MR. BRODERICK: Okay.

19 MS. FOSSUM: Plus, we make a very,
20 very concerted effort through outreach to get
21 down into the communities, to try to give them
22 information with regard to 11(c) protection

1 under the Act, and to help them to get
2 information. Every type of brochure that I
3 send out is also published in Spanish. We do
4 everything that we possibly can to get that
5 information and data out to them.

6 MR. BRODERICK: Well, it would
7 seem like you're doing a very good job then.
8 Because I think there are other parts of the
9 country where the injuries and fatalities are
10 consistently high and the number of non-
11 English-speaking workers who call in with
12 complaints is relatively low.

13 MS. FOSSUM: I don't want to show
14 you my next slide now.

15 MR. BRODERICK: Okay. Well.

16 CHAIR MIGLIACCIO: Mike?

17 MS. FOSSUM: That's my fatality.

18 MR. BUCHET: Michael Buchet,
19 Directorate of Construction.

20 Does your office use that 800
21 number dial-in for a translator?

22 MS. FOSSUM: Yes.

1 MR. BUCHET: And an aside is, I
2 know you're up here to try and recruit Danezza
3 back, and you can't have her.

4 MS. FOSSUM: I know, but she knows
5 everybody. She'd fit perfectly.

6 Yes, we do use that. I don't have
7 to use it as often, Mike, because I'm so
8 fortunate to have so many. A lot of times
9 also they'll just call into my office and
10 they'll just say, you know, hey, is Juan there
11 or something? Can he translate for me?

12 MR. BUCHET: Thank you.

13 MS. FOSSUM: But we use that, too.

14 I would like to say that this is
15 not realistic, but it is. My fatality rate is
16 the highest in Region IV. Florida actually
17 dominates the fatalities in Region IV by more
18 than 60 percent. Sixty percent of Region IV's
19 fatalities come out of Florida. That's a
20 pretty scary thing.

21 As you can see here, we had 53.
22 And the reason I'm using 2006 through 2008 is

1 because that's when I came in. So hopefully
2 it will show you. And that should be 2007,
3 2008 and 2009. I'm sorry. I was working on
4 this thing very late last night.

5 MR. GILLEN: I have a question.
6 Matt Gillen, NIOSH.

7 You just said fatality rates, but
8 isn't it easier the numbers?

9 MS. FOSSUM: These are actually
10 fatalities.

11 MR. GILLEN: Because the thing is,
12 as terrible as fatalities are, they just go up
13 and down. A lot of that's due to the amount
14 of work being done. I wish we had rates,
15 because that would be a more accurate way for
16 you to know about effectiveness. And I
17 wonder, do you think about that as far as how
18 to use these numbers to tell you whether your
19 efforts are good or bad? It's so difficult
20 just having numbers without rates.

21 MS. FOSSUM: Well, I think a lot
22 of it is I guess it's my perspective on

1 fatalities. One fatality is too many. I have
2 a zero tolerance policy in my office; I don't
3 care if it's a rate or not.

4 The 2008 should be 2009. We
5 believe that a lot of the reason for that
6 decrease is because of the fall in the
7 economic structure of our construction.
8 However, if you look at construction-related
9 fatalities, our ratio is still higher. And
10 that's because we are going to be working with
11 a lot of small employers. You're going to see
12 that data in just a couple of minutes. I
13 wanted to give you a perspective of what we
14 deal with and what we're actually all about
15 down there, because I think it's really
16 important. Because this is the information
17 that actually gets me to the point of
18 determining how I'm going to allocate
19 resources.

20 Yes, ma'am?

21 CHAIR MIGLIACCIO: Liz?

22 MS. ARIOTO: Yes, Liz Arioto

1 representing the public.

2 Can you tell me what these people
3 that had the fatalities, what were they doing?
4 I mean, what kind of trades were they in?

5 MS. FOSSUM: Well, the
6 construction-related are all construction, a
7 lot of them falls. Electrocutions are a large
8 problem for me down there. We've had struck-
9 bys and caught-bys. Trenching doesn't seem to
10 be as big of an issue for me. Because of the
11 soil type down there, they're very aware of
12 the hazard. It's all type C soil down there.
13 And we're so close to the water lines, that I
14 have divers that are actually connecting --
15 they have to put plans together for barometric
16 chambers and the whole nine yards in some of
17 my deep trenches. So they're very aware of
18 the hazard of the trench.

19 But my falls, this is the labor
20 force that does not require a lot of education
21 or training. They're laborers mainly or
22 stucco contractors. These are the kind that

1 normally I have ending up in fatalities.

2 MS. ARIOTO: So is it falls from

3 -- I'm sorry, Liz Arioto.

4 MS. FOSSUM: It's a little bit of
5 both.

6 MS. ARIOTO: Both?

7 MS. FOSSUM: I've had people
8 falling off a balconies 120 feet in the air.
9 You know, just turning around and just
10 forgetting where they are and walking off of
11 balconies. There's all kinds of them.

12 MS. SHORTALL: Yes, on the
13 fatality reports here, what percentage are
14 Hispanic workers?

15 MS. FOSSUM: I did not pull that
16 data. I would have to say the majority,
17 though.

18 MS. SHORTALL: So is it even
19 higher than what the population rate is?

20 MS. FOSSUM: Yes.

21 MS. SHORTALL: So somewhere above
22 62 percent?

1 MS. FOSSUM: Yes.

2 MS. SHORTALL: Yes.

3 MR. HAWKINS: But that population
4 rate is not the population of construction
5 workers.

6 MS. FOSSUM: No.

7 MR. HAWKINS: Steve Hawkins, state
8 plan. I was assigned that job.

9 Do we know what percentage of
10 construction workers, because I would like to
11 know that. Have you ever seen any figures
12 about what percentage of the construction work
13 force is Hispanic in your area office?

14 MS. FOSSUM: I did not pull that
15 data for this slide. We could get that very
16 easily. I can also tell you how many of these
17 were Hispanic or considered to be Hispanic
18 workers.

19 MR. HAWKINS: That would be kind
20 of a rate that you could tell.

21 MS. SHORTALL: Could I add one
22 thing right here? I did speak with the

1 transcriber who indicates that every person
2 sitting at this table, he knows your name. So
3 if you don't want to mention your name every
4 time you speak up, it's not required. But I
5 held off saying that until we got Walter.

6 MR. ZARLETTI: That goes to
7 everybody in budget.

8 MS. FOSSUM: Along with
9 enforcement, one of the activities that I
10 think is very critical for my area is the
11 outreach activity. I am a very, very firm
12 believer in balance. And one of the things is
13 as important as strong enforcement is, I also
14 have to be able to provide my stakeholders, my
15 employees as employers, opportunities to
16 educate. So what I basically do is I try to
17 target associations, communities, schools,
18 things like this that will help me to do that,
19 to generate a base for me to be able to get
20 information about the standards, safety and
21 health programs out into.

22 I'm very proud of the two

1 partnerships that I have up there. In fact,
2 our two partnerships that started in South
3 Florida have now become statewide
4 partnerships. They're very, very active.
5 They have liaisons that meet with me on a
6 monthly basis. I go to every single one of
7 their meetings, or I'll have a representative
8 if I'm not available to go. So those would be
9 both of my AGC chapters down there. And we
10 just signed a partnership with Jacksonville
11 and Tampa so that they are covered through the
12 whole State of Florida with regards to this
13 partnership.

14 The beauty of this partnership,
15 what we're doing here and I'm very excited and
16 I'm very proud of them; I think we have done
17 some groundbreaking work, is we together, OSHA
18 with these chapters, are literally getting
19 together to put on training seminars for all
20 of the contractors, it's not just AGC members;
21 it's open to everybody, to put literature out
22 there and to actually put on exhibitions and

1 safety days for all employees to be able to
2 come free of charge to be able to learn more
3 about safety and health. The last safety fair
4 that we had, they had over 600 workers in the
5 Florida Area actually attend. So, I mean, it
6 was a wonderful turnout. Great training free
7 of charge to all of these workers. It was
8 quite an amazing thing. It was humbling for
9 me to see. They did a wonderful job.

10 The other area that we work with
11 is alliances. Now, we were talking about
12 cranes and they were talking about how cranes
13 is a number one issue. We have the only crane
14 alliance in the United States, and I'm very
15 proud of that. And it also has gone
16 statewide.

17 You're going to see the following
18 associations that are actually part of this
19 alliance. We've got ABC, we've got AGC, we've
20 got the Crane Owners Council, we've got the
21 Transportation Builders Association. All of
22 these people are coming together to try to

1 work as one to ensure safety with regard to
2 the cranes. A lot of this had to do with the
3 terrible catastrophe we had in Miami where,
4 believe it or not, it was safety that were
5 killed. I had two safety officers that were
6 killed in that accident and I had two that
7 were severely injured when a piece of the
8 crane fell onto a house that was housing their
9 office. So it was a pretty sobering time for
10 us.

11 The construction, we also have
12 alliances with the Construction Association of
13 South Florida. Here are some of the schools.
14 Now, I'm sure you all know that OSHA is a
15 right-to-work state. And because of that --

16 I'm sorry? Florida. Oh, God, I'm
17 all right.

18 Florida is a right-to-work state.
19 So I'm trying to get out into the technical
20 schools, trying to get involved with them,
21 trying to get them to introduce safety and
22 health standards to their students in some of

1 their curriculum. We've been very, very
2 successful in doing that. Not only have they
3 adopted and accepted that they would put on
4 the OSHA 10-hour courses, they have also asked
5 me to provide compliance officers to come to
6 certain courses or certain classes and
7 actually speak about the safety standards and
8 standard issues relative to that particular
9 trade. And that's working out very well.

10 My teen youth alliance in Indian
11 River State, this is our second year that
12 we've worked with them. That's going very,
13 very well. And to ensure that I'm actually
14 addressing some of my Hispanic communities,
15 we're currently working on alliances with all
16 of my Hispanic consulates in South Florida.
17 So hopefully that will give us some good
18 avenues to get information out.

19 All right. That gives you that.
20 This is my plan. Enforcement has to be my
21 number one; and that is, we need better
22 targeting. Like I told you, my whole goal is

1 to become more proactive, not reactive. In
2 doing that, what I am doing with my compliance
3 staff is I'm trying to put more visibility out
4 in the field. So every day I have four
5 compliance officers that do nothing but go out
6 and try to target and find construction work,
7 construction sites and just go by and make
8 sure that they are at least following
9 compliance or doing what they should be,
10 especially in falls and trenches.

11 We encourage referrals. I've just
12 finished up giving training to your county and
13 city building inspectors and emergency
14 response personnel, trying to tell them what
15 they should be looking for, how they can
16 contact OSHA if there are problems, getting
17 the response personnel to contact me even if
18 there's any kind of an accident on a
19 construction site. Because we all know that
20 an employer does not have to notify me until
21 there's a fatality or three or more people
22 have been hospitalized. So if I can get the

1 emergency response people to contact me when
2 they get called, that helps me to be able to
3 get out there and address the issue quicker,
4 before we actually have the fatality.

5 We are increasing the University
6 of Tennessee activity. Now one of the things
7 that I've done here is when I have my people
8 driving by or when they're out there, they
9 always have a U. Tenn. with them. By 12:00,
10 if they don't see an issue, they are to open
11 up a programmed inspection so that we're not
12 wasting time out there. I need to make sure
13 that we have got people that are actually
14 addressing hazards, not just looking for
15 hazards. So that's one of the ways that we
16 actually do that. So if I'm not seeing the
17 problem, then we're going to go out there and
18 we're going to actually go in and do
19 comprehensive and try to get into these sites
20 as best we can.

21 We're identifying and targeting
22 repeat and willful offenders. One of the

1 things we're doing in construction is if I've
2 got a contractor where I am issuing a repeat
3 citation or a willful citation, they are
4 tagged. What we will do then at that point is
5 during the informal settlement agreement, I am
6 going to be working with them to be able to
7 gather information as to future projects where
8 they will be working. What this basically
9 will do at that point, it will give me an
10 opportunity to monitor what they're doing and
11 ensure that they are complying with what they
12 need to do.

13 No questions on that, huh? I
14 thought for sure we would, Mike.

15 Zero tolerance on Focus 4. This
16 is my personal thing. If a contractor an
17 employer walks into my office and has been
18 cited for a fall, electrical, struck-by or
19 caught-between hazard, there will be no
20 penalty reduction.

21 I have also a very high contest
22 rate, Mike.

1 But, you know, my issue is this:
2 There's absolutely no reason why we continue
3 to see these four issues as serious hazards
4 anymore. The information's out there, the
5 education's out there. I need them to start
6 complying and ensuring that their people are.

7 So what we'll do, is they're come
8 in and that they want penalty reductions. The
9 only way that they're going to get a penalty
10 reduction is to show that financially they're
11 not able to do this, or they're going to have
12 to take it to the next step, and that's
13 contest, and we'll take it into the courts,
14 you know, for them to do that.

15 We're trying to put more emphasis
16 on health issues in construction. This is an
17 area I feel, because my background is
18 construction, has been very, very sorely
19 overlooked. Now that I have a full entourage
20 of health specialists, we're going to be
21 starting to address more noise, silica and
22 lead.

1 We just got through training all
2 of my compliance officers on how to use noise
3 dosimeters. So what they're going to be
4 required to do is, whenever they enter a
5 construction site, they will take readings for
6 noise. They have to put that in the OSHA 1A,
7 which is their work sheet, that they did this
8 and what the meter read. At that point, when
9 they come back, if and when we see that there
10 was an issue, they will make a referral to our
11 health specialists who will go out then and
12 then they will be targeting and sampling for
13 noise on those job sites.

14 Silica and lead, we just do hazard
15 assessment training with my people. Once a
16 quarter I put up pictures at my staff meeting
17 and say, okay, show me the hazards. We try to
18 put more and more health issues in there, like
19 clouds of dust, chemicals off to the side,
20 helping my safety compliance officers become
21 more familiar and comfortable with the
22 identification of health hazards.

1 Enhance settlement agreements.
2 Again, like I said, this is where I get
3 involved. We try to build more information or
4 get more out of the employer at this time. If
5 they're wanting me to amend a citation or
6 reduce a penalty, then they're going to give
7 me something in return. Your managers have to
8 attend 30-hour training. You're going to put
9 on a seminar for your industry and have OSHA
10 participate. I'm trying to use the settlement
11 as a method of getting more information out
12 and getting them to become more participative
13 on the correction of hazards within their
14 workplace.

15 I'm talking too much, aren't I?
16 Outreach activity. More
17 cooperation with current partners. When I
18 first got there, everybody was so proud to
19 tell me that they just completed 10 hours and
20 I'm looking at them like they're all crazy.
21 You know, that's an awareness. It's nothing
22 more than an awareness. We need to go

1 further. We need to push our employers to
2 take on more. One of my big concerns is, and
3 I tell my associations this all the time, we
4 fight complacency. I don't want them to
5 become complacent. Once you've gotten
6 everybody trained on 10, we need to be looking
7 at 30-hour. After 30-hour let's get into
8 technical and competency training. We should
9 always be pushing the envelope with them.
10 OSHA participates in a lot of training
11 programs with these, especially with my
12 associations.

13 Emphasis is important on safety
14 and health programs. This to me is the root
15 of all evil. If they don't have an effective
16 safety and health program, they are going to
17 continue to have hazards on that job site and
18 exposure to an employee.

19 So the most important thing I
20 think that I need to do is to help educate
21 them as to what actually constitutes an
22 effective safety and health program. We cite

1 for deficiencies in that program. I just went
2 through training that was also approved by our
3 solicitors with regards to how we're going to
4 cite them. My compliance officers have been
5 trained on how to evaluate them, and then
6 based upon that, determining the deficiencies
7 in the program. And when I cite a
8 1926.20(b)(1) standard, it is based on either
9 employee involvement, disciplinary
10 deficiencies, training deficiencies, whatever
11 it is that we found was their problem so they
12 can correct them, so we can get rid of the
13 hazards.

14 We also encourage mentoring
15 programs of my partners. What this is, is I
16 turn to my good guys, my good players and I'm
17 telling them, look, if you're that good, why
18 aren't you out there spreading the news? Why
19 aren't you out there helping others to get to
20 that point? So we encourage mentoring. So
21 whenever we go to an association meeting, we
22 make a big deal of having the new people that

1 are attending to stand up, talk to us. I
2 shake hands, we give out little diplomas or
3 certificates, welcoming into the safety
4 portion of that association.

5 Working in conjunction with
6 alliances, we open lines of communication.
7 That's the big thing. Getting the word out,
8 getting them to talk to me. Having a Hispanic
9 community and the culture there is they're
10 automatically very leery of us. So what I
11 need to do is I need to get out there more.
12 I need to be out there talking to them. We do
13 that through fairs. We always have compliance
14 officers that attend safety fairs, or any kind
15 of fair. It could be a picnic that they're
16 having. I'll have a booth out there and I'll
17 have one of my compliance officers, Hispanic
18 compliance officers talking to them.

19 We participate in all the training
20 activities. I'm always asking. When they put
21 on a 30-hour, I've got somebody there talking
22 about OSHA. We talk about the inspection

1 process. My whole issue and what I try to
2 tell them is, we don't keep secrets. OSHA
3 doesn't need to keep a secret. I'm going to
4 tell you how I do my inspections. I'm going
5 to tell you what I'm going to look for. If I
6 can educate them to that, they're going to
7 know how to go out there and do it so I don't
8 have to be there to do it. That's one of the
9 things that we try to push. We also provide
10 material information.

11 I'll try not to talk too much
12 about each one I'm going over.

13 Continued high fatality
14 statistics. We are the highest rate in a
15 region. Florida offices post approximately 50
16 percent of all the fatalities. A major number
17 of those victims are my Hispanic workers.
18 Over 85 percent of construction contractors
19 cited are small employers.

20 This is my biggest problem. How
21 do I get to them? How do I get to them?
22 They're in business one day, out the next. I

1 cite them. I can't find them. Right now I'm
2 doing a fatality investigation. Somebody went
3 to the Home Depot, picked up a day laborer,
4 put him up on a metal roof. The guy fell
5 through the metal roof and now I can't find
6 anybody. So I literally have a dead immigrant
7 worker and I have absolutely no way of finding
8 out who actually hired him to do that job to
9 hold them responsible.

10 MR. BUCHET: Darlene, what do you
11 mean by small?

12 MS. FOSSUM: For me, small is
13 anywhere 50 or less.

14 MR. BUCHET: Okay. Thank you.

15 MS. FOSSUM: So, I mean, these are
16 the kind of frustrating things that we
17 actually run into. Or, if I don't get a
18 compliance officer out immediately on some of
19 these job sites, by the time I do get somebody
20 out there, if it's within a day, I can't find
21 any of the witnesses. They're probably
22 illegals and they're going to run. So it's

1 very, very hard, it's very frustrating for me
2 to be able to work in this area.

3 Training and education challenges.
4 Hispanic employers and employees. Getting
5 that word out is always going to be one of my
6 number one challenges. Communication is
7 always difficult and they have cultural
8 differences. Some of their cultural
9 differences, they're very protective of their
10 own communities and they don't like outsiders.

11 Illegal immigrants. I have this
12 problem down in the Miami-Dade area. I can go
13 by any Home Depot at any time and see a group
14 of illegal immigrants waiting for somebody to
15 come and pick them up for work. And it's also
16 a very transient workforce.

17 Major concerns considered.
18 Standards and interpretations. Residential
19 construction is a definite problem for me, and
20 the reason for that is the STD does not apply
21 in South Florida. Try to tell that to my
22 roofers. They don't like this, but it's a

1 constant battle. And the reason for that is
2 they don't fit the definition of residential
3 construction, because we're all masonry work,
4 because of the hurricanes. So they are not
5 authorized to use the STD.

6 The crane standard, like I told
7 you, I've got cranes everywhere down there.
8 I'm waiting breathlessly for our new crane
9 standard. It's something we definitely need
10 down there.

11 Confined space. We're working
12 with a lot of confined space issues in
13 construction down there and we don't have a
14 standard that actually applies to it.
15 Lockout/tagout is the same thing. I've got
16 tagging. I've got a 416 for safety-related
17 work practices, my electrical standard, but it
18 doesn't actually require a contractor to lock
19 and tag out specific equipment when it's being
20 input into a new building.

21 Multi-employer, multi-employer,
22 multi-employer. I mean, I literally call

1 general contractors into my office and sit
2 them down. I've had fatalities where they
3 have the day laborers on their job sites.
4 Good guys, good contractors. My question to
5 them is, who employed this individual? They
6 have no idea. There are so many tiers of
7 contractors that they can't keep track of
8 them. So we all are trying to work together
9 to try to figure out and resolve that issue.

10 Availability of my solicitors'
11 resources. Unfortunately, we don't have
12 enough solicitors to actually address all of
13 my contests. So we're sometimes put into
14 positions where I have to do what I can to
15 settle a case, or it goes away. I mean, we
16 can't continue to do that.

17 Continuous training of compliance
18 staff. Budget's always going to be an issue
19 for me. For my guys to be kept up on the
20 standards, it's important. It's important if
21 they're going out and doing training. It's
22 important if they're going to go out and

1 identify hazards that they're competent and I
2 know that they're going to know what they're
3 looking for, and the diversity of their
4 knowledge.

5 Upcoming challenge is going to be
6 ARRA. Identifying sites and projects is a
7 problem. We're not expecting a lot in South
8 Florida. The money is mainly going up into
9 the Jacksonville area or into DoD in Florida.
10 So I am not expecting to see a lot of ARRA
11 money down in the South Florida Area.

12 MR. BUCHET: Is any of that money
13 going to the tunnel?

14 MS. FOSSUM: From what we've
15 understood, none of it is going to the tunnel.

16 MR. BUCHET: None? Okay.

17 MS. FOSSUM: It's going to be
18 private-funded.

19 MR. BUCHET: But that's a billion-
20 plus.

21 MS. FOSSUM: Yes, well, we also
22 have the Marlins stadium going up. That's

1 private. And Interstate 595 is going to be
2 privately-funded also.

3 I have an increase in staffing.

4 I've got six new hires that I have to
5 incorporate, which means that I've got to get
6 them up and running education-wise. So
7 they're not going to actually be in place and
8 be completely active even though they've
9 increased the inspection roll. So we're going
10 to have to buy in, we're going to have suck up
11 those extra inspections while we're in the
12 process of getting my new compliance officers
13 up and ready to go.

14 Specialized training. I'm always
15 looking at what I'm going to need. Right now
16 the safe work zones is a big issue for me,
17 because we do have some construction in road
18 construction that's going to be going on.
19 Pretty soon I'm going to have to be sending
20 some of my guys to tunneling, because we've
21 got the Miami Tunnel that's going to be going
22 in. I need to make sure I've got people that

1 are competent enough to go in there safely, as
2 well as to be able to identify hazards.

3 Okay. That's me when I retire.

4 Thank you very much for your attention.

5 CHAIR MIGLIACCIO: Liz?

6 MS. FOSSUM: Thank you.

7 MS. ARIOTO: Yes, Liz Arioto,
8 public. A couple of questions.

9 On the fatalities that you had,
10 what kind of training did the workers have, or
11 was there any training?

12 MS. FOSSUM: It depends. There is
13 training involved. How good the training is
14 has always been an issue, and the assessment
15 is sometimes very difficult. Like I said,
16 most of my employees don't want to really talk
17 to us. We always see deficiencies in the
18 training. I could show you pictures that
19 would just curdle your lunch. But it's always
20 deficient.

21 MS. ARIOTO: And there's another
22 question. These companies, are there X

1 modification rates? Do you get the X-mod
2 rates to see how well they're doing, if
3 they're below the average?

4 MS. FOSSUM: No.

5 MS. ARIOTO: Or have like a high
6 hazard --

7 MS. FOSSUM: You can look at the
8 300 logs for the companies, but that does not
9 necessarily address the specific hazards of
10 the site. According to the law, they can just
11 do it as a company, not as a site. So that
12 becomes an issue.

13 CHAIR MIGLIACCIO: Emmett?

14 MR. RUSSELL: Emmett Russell,
15 employee rep.

16 Excellent presentation, by the
17 way.

18 MS. FOSSUM: Thank you.

19 MR. RUSSELL: I would like to
20 offer you this road way safety, because it is
21 good for highway work.

22 MS. FOSSUM: Wonderful.

1 MR. RUSSELL: You can review it
2 and if you need additional copies, I'd like to
3 offer to supply you whatever you might need.

4 MS. FOSSUM: Thank you very much.

5 MR. RUSSELL: Also, I would like
6 to talk to you further about your crane
7 alliance to see what type of activities you're
8 having with that and if you are truly having
9 an impact, you know, to the contractors and to
10 the industry.

11 MS. FOSSUM: I'd love to talk to
12 you.

13 MR. RUSSELL: So, do you have a
14 business card that I might contact you later?

15 MS. FOSSUM: You bet. I'll make
16 sure you get it before I leave.

17 MR. RUSSELL: Thank you very much.

18 MS. FOSSUM: You're welcome.

19 CHAIR MIGLIACCIO: Any other
20 questions? I only have one question.

21 You said you had 12 safety
22 compliance officers. You had four hygienists?

1 MS. FOSSUM: Yes.

2 CHAIR MIGLIACCIO: Of the 12, how
3 many of them came from construction industry?

4 MS. FOSSUM: Six.

5 CHAIR MIGLIACCIO: Six? Where did
6 the other six come from?

7 MS. FOSSUM: General industry. I
8 have two that are maritime.

9 CHAIR MIGLIACCIO: Thank you.

10 MS. FOSSUM: Yes.

11 CHAIR MIGLIACCIO: All right. Any
12 other questions?

13 Okay. Thank you very much.

14 MS. ARIOTO: Just an excellent
15 presentation. Thank you very much.

16 MS. FOSSUM: Thank you very much.

17 MS. ARIOTO: No, thank you.

18 MS. SHORTALL: Mr. Chair, at this
19 time I'd like to mark as Exhibit 14 the
20 PowerPoint presentation on Construction
21 Enforcement - the Field Perspective presented
22 by Darlene Fossum, Area Director in Region IV.

1 (Whereupon, the document was
2 marked as Exhibit 14 for
3 identification.)

4 MS. SHORTALL: And as Exhibit 15,
5 the CD entitled, Roadway Safety, plus a Road
6 Construction Industry Consortium Training
7 Program.

8 (Whereupon, the document was
9 marked as Exhibit 15 for
10 identification.)

11 CHAIR MIGLIACCIO: Okay.

12 MS. SHORTALL: Thank you.

13 CHAIR MIGLIACCIO: Thank you.

14 Dan, if you could have your
15 questions at the end of your presentation, not
16 through the presentation. Thank you.

17 MR. PALMER: Yes, you got it.

18 We're thinking alike.

19 CHAIR MIGLIACCIO: Go ahead, Dan.

20 MR. PALMER: Okay. I'm going to
21 get right back at it. Thank you for having me
22 back. Once again, my name is Dan Palmer with

1 McGraw-Hill Construction. And I was also
2 asked on top of the editorial overview to give
3 an update on the McGraw-Hill Construction
4 database when it comes to stimulus, shovel-
5 ready or ARRA and the different terms and how
6 they're used, and what you'll see in the
7 database.

8 So I have a few slides. They're
9 pretty colorful and they're graphs and they're
10 maps, and so it's less wordy and hopefully
11 easily understood.

12 Okay. There are two terms that
13 McGraw-Hill Construction has used since we
14 first heard about a possible Stimulus Act back
15 in the fall, when the current administration
16 discussed what they might do if they became
17 the new administration.

18 And the first term that quickly
19 became used and then McGraw-Hill Construction
20 was shovel-ready. The original definition
21 basically was if local municipalities had
22 projects that were ready to go and upon

1 approval for funding would be ready to go and
2 be on the streets and start construction
3 within 90 days. That's slightly changed. The
4 money is going and coming out at different
5 phases than at the beginning; it now comes out
6 at the end. But basically that was the term
7 we used. The majority of the projects were
8 from the Conference of Mayors report, which
9 included very quickly put together
10 approximately 15,000 shovel-ready projects.
11 We also use what came from the state
12 governments, the departments of
13 transportation, federal agencies and so forth.
14 And all other sources that I discussed in our
15 last discussion.

16 The ARRA stimulus is the tag we
17 use for any project that our reporting staff
18 has verified and confirmed as being funded by
19 the American Recovery and Reinvestment Act.
20 So what that clearly points out, and you'll
21 see in a second, is that not all ARRA stimulus
22 projects were at once identified as shovel-

1 ready. And certainly clearly not all shovel-
2 ready projects have become or will become ARRA
3 stimulus projects. They were, in many
4 instances, a wish list for funding and an
5 overwhelming majority of those were not
6 funded. So they can get funded by other ways,
7 but just it will not be funded by the ARRA.

8 Currently in the McGraw
9 Construction database, I broke it up today
10 into planning and bidding and construction.
11 And you'll see the number of projects
12 currently in planning and the value of those,
13 and number of projects in bidding. Currently
14 right now, just for your information, there
15 are over 3,000 projects bidding that have been
16 confirmed as they will be funded by the ARRA,
17 with a value of close to \$22 billion.

18 The construction: this is what
19 many people have been talking about, when we
20 say construction, that means the work has
21 started. We have confirmed over 2,200
22 projects have already started construction,

1 that have been confirmed as ARRA-funded for a
2 total of about \$17 billion.

3 I heard a statistic on Monday and
4 in a discussion that when it comes to money
5 having been sent out to contractors in their
6 hands, it's 10 percent of the bill. Only 10
7 percent of the bill's money has been sent out
8 to contractors as of Monday. The reason that
9 is, is because, as I understand it, the
10 funding for projects is being given after the
11 work is completed. So you are going to be
12 approved. You get approved by your governor.
13 That gets sent to the Federal Government.
14 It's an approved project. The money will come
15 back to the contractor after the work is done.
16 They do the work, they send in for their
17 payment, their municipality and/or their state
18 or their county sends it to the Federal
19 Government. The Federal Government makes sure
20 that it was on the list and then they send the
21 check back. So that's why at this point,
22 although you have \$17 billion worth of work

1 under construction, only 10 percent of it has
2 actually made it back, because those projects
3 are done. They were smaller jobs that have
4 already been completed.

5 So, where is the money going? We
6 broke the country into what our analytics
7 group uses as 10 different groups. You can
8 see like in the top left corner of the map
9 it's the Pacific Northwest, then there's the
10 Pacific Southwest below that, the West South
11 Central, the West North Central and so forth.
12 So as you can see, the third column, which you
13 might not be able to see from the back, but
14 that is the funded projects. So for instance,
15 let's use the biggest one, the Mid Atlantic,
16 which includes New York and Pennsylvania, they
17 have 824 projects that are verified as funded.
18 And their value of either their funded work or
19 their shovel-ready work is \$30 billion.
20 That's just an example.

21 What we found mostly in that
22 particular area of the country is they had

1 fewer projects that were shovel-ready and they
2 have fewer projects that are being funded, but
3 there are big projects. On average -- their
4 average per project is highest in the country.

5 This is just a bar chart. The
6 blue, which is in the middle; if you can't see
7 the colors, it's the shovel-ready jobs. This
8 is what we were reporting. So from January to
9 February to March, April, May, June, you can
10 see how that's leveled out and starting to go
11 down. Certainly less projects now are going
12 to be reported as shovel-ready. As the orange
13 line which is on the bottom, more and more
14 start to get funded. That's just a chart that
15 just sort of points out that fact. And what
16 you'll probably see as August and September
17 and October come is that orange line on the
18 bottom will start passing up the blue line in
19 the middle, and the blue line will be going
20 down as more get funded.

21 This is an interesting map. It's
22 hard to see the numbers, and as I believe this

1 will be posted also, this presentation, you'll
2 be able to look at it more closely. What we
3 did was break it down by state as to how many
4 projects have been funded per state. I
5 believe the highest one, if I look over the
6 map real quick; you can correct me, but I
7 believe the highest one is Texas, followed
8 closely by Ohio, then California, Illinois and
9 Pennsylvania. And that's just a breakdown of
10 what projects have been actually approved for
11 funding across the country.

12 This is a density map. And on a
13 density map, it shows the darkness, meaning
14 more. So these are the projects down to the
15 county level across the country as to -- these
16 are recovery tracked. Now remember, this
17 particular slide includes all those shovel-
18 ready. So there were a lot of shovel-readies
19 that aren't becoming stimulus, and we'll look
20 at that in a second. But you can see the
21 projects that were going for funding and/or
22 have gotten funding. Certainly the darkest

1 part of this particular map is out West.
2 California and Arizona were ready and willing
3 and able to go for funding.

4 This is what we're reporting. You
5 can see how the weekly average is. It's
6 pretty steady through the middle. You get the
7 weekly average in orange. And the darker one,
8 if you can't see the colors, is blue. That's
9 the number of projects that we reported. We
10 went from April to May, end of May into June,
11 and you can see that big spike in the week of
12 June 26th. You can see how it really started
13 to go in the middle of June to the middle of
14 July. These are the number of projects that
15 began, actually getting funding. So you saw
16 a couple of months where some early work got
17 done. And then as everyone understood how
18 they had to go through it, we started to
19 report a lot more projects. That includes
20 those 3,000 or so that are currently out for
21 bid.

22 What type of projects are either

1 going for or being funded? As you can see,
2 about one-third of the way down the
3 overwhelming majority of projects that were
4 shovel-ready, the overwhelming majority of the
5 projects that have been approved for funding,
6 and the overwhelming majority of the money
7 being spent. Other than the general building
8 which has huge individual projects, it's the
9 engineering work. It's highways. Highways,
10 highways, highways. We have over 4,500
11 projects that have already been approved for
12 funding.

13 Okay. And we were talking earlier
14 about the plans and specifications. We are
15 digitizing any ARRA-funded project over
16 \$200,000 in construction value. We are
17 gathering the plans and we are digitizing them
18 and putting them on the Internet so they can
19 be fully searchable. Currently, we have over
20 3,700 projects which had been approved for
21 funding, have gone out for bid and have been
22 digitized. As you can see, nearly 3,000 of

1 those are engineering projects, which is the
2 overwhelming majority being highways worth
3 over \$13 billion. That's what happened the
4 quickest. That's what went the fastest. So
5 approximately \$24 billion worth of work has
6 been approved and digitized by us with
7 slightly over half of that being engineering
8 work. And all those projects, as we just went
9 through, they're in the database. They've
10 been sent out to all the customers. They're
11 in the network and they are in your feed to
12 the Department of Labor.

13 And there you go. Did I get you
14 back on track?

15 CHAIR MIGLIACCIO: Questions of
16 the Committee?

17 MR. PALMER: Any questions?

18 CHAIR MIGLIACCIO: Dan?

19 MR. ZARLETTI: Yes, this is Dan
20 Zarletti, employee rep.

21 Let me ask you; and this was a few
22 slides ago, but I know we were holding

1 questions, did you say the stimulus money is
2 being held until the job is complete in order
3 to be paid out? Somewhere I saw that or heard
4 that.

5 MR. PALMER: Yes. I don't know
6 that I used the word "held," but yes, the
7 money gets sent out to the contractor after
8 the work is completed.

9 MR. ZARLETTI: Wow. All right.
10 Now what happens to a contractor like us; I
11 represent a contractor, that does progress
12 payments? We pay the subs as paid by a
13 customer, let's say. Well no, in this case
14 it's the Government.

15 MR. PALMER: I think I know what
16 you're asking.

17 MR. ZARLETTI: Various facets of
18 the job are getting done at different times?

19 MR. PALMER: Yes.

20 MR. ZARLETTI: And when those
21 contractors are gone, you consider that done,
22 or does the job have to be done?

1 MR. PALMER: Okay. Here what I
2 would say, since we're officially on record:
3 I don't make the decision as to what I
4 consider.

5 MR. ZARLETTI: Well, I'm not
6 holding you to this. I just asked the
7 question.

8 MR. PALMER: But what I understand
9 is, yes, if a portion of the project is
10 completed, like a subcontractor's work is
11 completed, he can then apply for his funding.
12 And then the agency, meaning, say, the local
13 municipality or so forth can send in for the
14 portion of their funding for the
15 subcontracting work that is done. That is the
16 way I understand it.

17 MR. ZARLETTI: Well, I mean, a guy
18 comes in and puts a fence up around a site for
19 security.

20 MR. PALMER: Yes.

21 MR. ZARLETTI: He's done.

22 MR. PALMER: Yes, as I understand

1 it --

2 MR. ZARLETTI: We haven't dug a
3 hole yet, but he's done.

4 MR. PALMER: Right. As I
5 understand it, the fencing part of the
6 contract can be sent in for the funding and
7 they will be paid. Was what you were asking
8 if that was in a \$50 billion job that takes a
9 year --

10 MR. ZARLETTI: Yes.

11 MR. PALMER: -- would that fencing
12 guy who finishes today have to wait? As I
13 understand it, no, he does not.

14 MR. ZARLETTI: All right. Well,
15 all right. Okay. That's good.

16 CHAIR MIGLIACCIO: We're going to
17 try to get somebody to answer that question
18 for you.

19 Mike?

20 MR. THIBODEAUX: Mike Thibodeaux,
21 employer rep. Do you know what the time
22 period is from the time that they complete the

1 work and send in their request for payment
2 that they get paid?

3 MR. PALMER: I can give you one
4 specific example.

5 MR. THIBODEAUX: Okay.

6 MR. PALMER: In February I was at
7 the director of funding for the Federal
8 Highway Transportation Clinic. The chief of
9 funding I believe is -- I don't have his
10 official title. His name is David Winter.
11 And I was in his office and he explained to me
12 specifically how it would work. And he used
13 a real good example of (a) this extra \$35
14 billion that they were getting was on top of
15 the money they already had. He says, "I am
16 writing checks already. It's not as if I have
17 no money to spend if it weren't for the
18 stimulus. It's just this is more." So he
19 says, "In fact, before I met with you today,
20 I wrote two checks." He says, "The way it
21 will work is as soon as that comes in, because
22 it's already been approved, it will go right

1 back out." So I said, "You talking about
2 weeks, you're talking about" -- He says days.
3 He specifically said days.

4 MR. THIBODEAUX: Okay.

5 MR. PALMER: From request for
6 funding until check is ready.

7 MR. THIBODEAUX: Thank you.

8 CHAIR MIGLIACCIO: Any other
9 questions? Matt?

10 MR. GILLEN: Matt Gillen, NIOSH.

11 McGraw-Hill sometimes develops
12 their own categories for different types of
13 industries. I've noticed like in the top
14 contractors' list.

15 MR. PALMER: Yes.

16 MR. GILLEN: Sometimes they
17 categorize. Whereas pretty much all the data
18 we have to deal with is all organized by the
19 NAICS codes, the North American Industry
20 Classifications Systems. Do you sort of like
21 cross walk when you create those categories,
22 how they would fit with NAICS, because if not,

1 it makes it hard for us to sort of use your
2 categories and compare them to industry
3 incidence categories?

4 MR. PALMER: I'll leave that to
5 Jim.

6 MR. KERR: We've had that issue
7 for years with NAICS.

8 MS. SHORTALL: You need to come to
9 the microphone.

10 MR. KERR: I'm sorry. Yes, we've
11 had that issue for years. The NAICS codes and
12 the SIC codes do not really fit very well for
13 construction. You know, a subcontractor is a
14 subcontractor in NAICS, for example. And
15 we're trying to break it down by what kind of
16 subcontractor it is and so forth. So we
17 literally break it in our own way. Be happy
18 to supply or the whole Committee the way we
19 break down contracting.

20 MR. GILLEN: That would be really
21 helpful, if we can request that.

22 MR. KERR: I'll send it along to

1 you, Mike.

2 CHAIR MIGLIACCIO: Any other
3 questions?

4 MR. PALMER: Okay. Well, thank
5 you all very much.

6 CHAIR MIGLIACCIO: Thank you.

7 MS. SHORTALL: Mr. Chair, I'd like
8 to mark and enter into the record as Exhibit
9 16 the PowerPoint presentation, McGraw-Hill
10 Construction Stimulus Report by Dan Palmer.

11 (Whereupon, the document was
12 marked as Exhibit 16 for
13 identification.)

14 CHAIR MIGLIACCIO: Okay. All
15 right. We're at the point of the meeting with
16 public comments. We have Rob Matuga from the
17 National Association of Homebuilders.

18 MR. MATUGA: Good afternoon,
19 everyone. I'll make this short and sweet
20 because it looks like it's almost happy hour.

21 My name is Rob Matuga. I think
22 most of you all know me, but for the

1 transcriber that's M-A-T-U-G-A is the last
2 name. I'm with the National Association of
3 Homebuilders. I appreciate you all giving me
4 just a couple of minutes to address a concern
5 that came up yesterday while I was
6 participating in the subgroup or work group
7 meetings.

8 I think you guys have actually had
9 some good work group reports today and
10 obviously there's a lot of work that's being
11 done. I participated both on Tuesday and
12 Wednesday in the work group, and really there
13 was a lot of information that was exchanged,
14 a lot of good ideas, at times spirited debate.
15 My only issue is that several occasions I felt
16 really unprepared to address some issues that
17 had come up.

18 Also, in speaking with some of my
19 colleagues over the last day or so, some of
20 them didn't even participate in the meetings.
21 And I think the issue is really the agendas.
22 And many of them said, hey, if I would have

1 known that issue was on the agenda for a
2 particular meeting, they would have attended.

3 So really what I'm here is to ask
4 both the ACCSH Committee, OSHA and of the
5 subgroup chairs to provide the agendas two
6 weeks in advance, preferably in a suitable
7 format and means through the OSHA ACCSH
8 website. I think that this would be
9 standardized information also would be
10 included on the agendas, particularly what the
11 work group is, the date, the time, location.
12 And also other information including what is
13 being discussed, as well as if anyone's giving
14 a presentation, what the presentation's going
15 to be on, who's giving the presentation and
16 the affiliation.

17 I think that two weeks is a
18 reasonable time frame for having the agenda,
19 and I recognize that things change on the
20 agenda from time to time. We have many
21 meetings at our association and, you know,
22 really the agendas typically aren't finalized

1 until a couple weeks in advance. But even if
2 they're in draft format, I think that's going
3 to provide the stakeholders, you know, quite
4 a bit of information. And I think that
5 there's a couple reasons why this is
6 important.

7 From a stakeholder perspective in
8 this economy there is so much pressure right
9 now on many of us on the resource perspective
10 that we're being asked to do more with less.
11 And I think that having this information from
12 the stakeholder's perspective about what's
13 going to be on the agenda can make really a
14 determination as to whether or not there's
15 something of interest that we want to attend
16 the work group. And I think secondly it
17 allows all the stakeholders to come to the
18 meetings really to be prepared and participate
19 in a meaningful way. And I think finally it
20 really gives that fair and balanced
21 perspective to everyone that's participating
22 in the stakeholders meeting.

1 So I would like to make this
2 request that two weeks prior to the work group
3 meeting, starting with the September meeting,
4 that the agendas be made in a public forum in
5 as much detail as known at the time so we
6 really could be more prepared and make those
7 decisions on participating in the subgroup
8 meetings.

9 If anyone has any questions, I'd
10 be more than happy to field those.

11 CHAIR MIGLIACCIO: Questions?
12 Comment?

13 MR. HAWKINS: Steve Hawkins, state
14 employees.

15 After agreeing to chair this
16 committee with Tom and after discussions with
17 Sarah about our role and were we allowed to
18 assign non-members any kind of task, I was
19 under the understanding that this work group,
20 would largely -- the activity and what took
21 place -- would largely be determined by who
22 showed up and what input they wanted to bring

1 to that committee. And so, you know, I
2 appreciate what Rob's saying, but I'm not sure
3 that you could expect that we would publish
4 the agenda and then it would very well mean
5 that if we publish the agenda a member of the
6 public show up and do some kind of
7 presentation of information that's not on the
8 agenda and your desire to know what's going to
9 happen ahead of time is of very little value
10 when whoever shows up can talk and speak to
11 the committee. So we could do an agenda, but
12 I mean, what most of what it's saying is
13 there's going to be a public meeting. I don't
14 know what we could --

15 MS. SHORTALL: -- address some of
16 these issues. First of all, as for the agenda
17 of ACCSH itself, you know, we do publish that
18 in the Federal Register notice, which is
19 available for anyone to see. And with the
20 exception of this last meeting, we do try to
21 make it as specific as possible. You know,
22 there's always the danger if we list something

1 on the agenda could fall off and someone came
2 to the meeting thinking it was going to happen
3 and it didn't happen, but I think we're going
4 to err on the side of, well, you might hear
5 other good things at the same time. And the
6 regulations are very specific that we have to
7 summarize fully and describe accurately the
8 items that are going to be on the ACCSH
9 meeting agenda.

10 As for the work groups, the work
11 groups are not covered under the Federal
12 Advisory Committee Act, therefore we wouldn't
13 have to do anything. But ACCSH has always had
14 a policy of trying to make the work group
15 meetings open to as many people as possible
16 because drawing on a large group will give a
17 broader depth to the information and
18 recommendations that a work group could bring
19 back to ACCSH.

20 But the question is, can a non-
21 member do something? Yes, a non-member could
22 be tasked with something. But we have to be

1 clear, the only ones who can actually vote, if
2 you do have a vote on a recommendation to come
3 back to ACCSH, would be the actual ACCSH
4 members who are on the work group.

5 Now, what Mike has been trying to
6 do, because there has been some interest in
7 moving to some teleconference meetings because
8 of tight budgets, and work groups are very
9 interested in doing things in between the
10 meetings, is make it really important for
11 people to sign the attendance sheet when they
12 come in so that we can notify people of the
13 work group meetings that occur in between our
14 ACCSH meetings. And, you know, the co-chairs
15 could certainly, if they would like to send an
16 agenda out to everyone, could do so. But
17 there is no requirement to do that.

18 Likewise, what is important that
19 anyone who's interested and their colleagues,
20 we can't possibly know every single person who
21 would like to attend. So it's very incumbent
22 on anyone to pass along the information at the

1 same time, because we have no requirement to
2 publicize that meeting. We do have a policy
3 of making them open to the public and trying
4 to get as much involvement as possible.
5 There's a limit to what we can do. We can't
6 put realistically an agenda in the Federal
7 Register notice since the work groups are not
8 required to do anything like that. We'd never
9 get a Federal Register notice out announcing
10 a meeting within the 15 days that we have to,
11 to give full notice. So I don't think it's
12 realistic to put it in the Federal Register.
13 Although all ACCSH work group meetings are
14 held in conjunction with -- an ACCSH meeting,
15 those meetings are included in our Federal
16 Register notice.

17 If your people are interested, on
18 ACCSH's web page is a list of every member of
19 ACCSH, as well as Mike Buchet. And now you
20 can see I put into the record, and we've put
21 into the record every time we have an updated
22 list, the co-chairs and the OSHA staff

1 liaisons for the work groups. Call. I mean,
2 I think there's only so much we can do to put
3 the time and effort into doing the agenda
4 that's not required versus the work of the
5 Committee. So if you have questions about
6 whats on an agenda and the co-chairs have
7 decided not to publish an agenda. Call them
8 and ask them what's going to be on the list.
9 Their names, numbers, emails are all on
10 ACCSH's web page. If, as I said, the co-
11 chairs of work groups would like to send out
12 what they know to be on the agenda, but other
13 items would be welcome, they could do so.

14 It's important to understand that
15 you should not have a finalized agenda for a
16 work group meeting published and not be able
17 to address other issues. Because the only way
18 you can filter the agenda items up here to
19 ACCSH as the committee, the parent committee,
20 is if they were discussed in the work group
21 previously. So the co-chair can't hear from
22 you later saying I wanted that agenda item and

1 just automatically elevate to ACCSH. That's
2 part of ACCSH's own operating procedures and
3 guidelines.

4 MR. MATUGA: Yes, just to clarify
5 what my request was, is that, you know,
6 certainly not publishing the work group
7 agendas in the Federal Register. That's not
8 what I asked for. What I asked for is that
9 many times the agendas are done, completed, at
10 least in draft form, two weeks prior to the
11 meeting. And if those could be made available
12 to the general public. So we recognize, and
13 you could put all the disclaimers on there
14 saying subject to change, but at least we have
15 a general knowledge about what topics will be
16 covered in each of the work group meetings.
17 And those either can be placed on the ACCSH
18 website, or, at a minimum, if it's agreeable
19 to the Chairman, you know, we can contact them
20 directly. I just think for the general public
21 if that information is going to be passed
22 around at meetings, you know, why isn't it

1 available prior to the meetings? And like I
2 said, I understand things change and, you
3 know, we can right subject to change on each
4 of those agendas as well.

5 MS. SHORTALL: The final analysis,
6 is going to be up to the work group chair.
7 What we're trying to do is everything possible
8 to make the work group meetings open as
9 possible. But it does seem at some point
10 there needs to be some, you know, initiative
11 by those who wish to attend to contact people
12 and say do you know what's going to be on the
13 agenda? You know, everybody on this Committee
14 is incredibly busy and, you know, they may not
15 have an opportunity two weeks ahead of time in
16 between reviewing all the materials that they
17 have to for coming to this meeting to prepare
18 an agenda. But they might be able to take a
19 phone call asking what seems to be on the
20 tentative list.

21 As far as putting it on the OSHA
22 ACCSH web page, there's a procedure we have to

1 follow to get approval to put things on. And
2 I don't think we'd be able to get them on
3 within the two-week situation. It would be
4 very difficult at this point.

5 But get your names on the
6 circulation email distribution list so
7 whatever goes out would also make it to you
8 and your colleagues.

9 MR. MATUGA: And one additional
10 comment. I don't think that, you know, as a
11 matter of course that the chairman of the work
12 group typically sends out the agendas to even
13 those individuals who have come and signed up
14 at the previous meeting.

15 So if it's not too much to ask
16 then, and if Michael Buchet or someone in the
17 Directorate of Construction agrees, if we can
18 actually have one point of contact where at
19 least all of the work group agendas come to
20 one central point and that those are available
21 as opposed to us remembering who's the
22 chairman, who's not. We might not have their

1 contact information. I mean, I don't want to
2 put additional work load on the OSHA staff,
3 but if we're trying to make this easier for
4 the stakeholders, which is arguably a larger
5 group than just this committee as well.

6 MR. BUCHET: If I get the work
7 group agenda, I can certainly send it out to
8 the email distribution list.

9 MR. MATUGA: Or even if just hold
10 it and, you know, those requests come directly
11 to you instead of, you know, to five different
12 individuals from five different work groups.

13 MR. BUCHET: Well, no, I mean the
14 reason the work group co-chairs' phone numbers
15 are publically available is because the public
16 is supposed to filter their approach through
17 them.

18 MR. MATUGA: All right.

19 MR. BUCHET: If you're interested
20 in a topic, call them.

21 MR. MATUGA: Let me modify my
22 request one final time. Will the work group

1 chairman agree to have at least a draft of
2 their agendas available should we contact them
3 two weeks in advance?

4 MS. SHORTALL: I think that's a
5 discussion that the members will have to
6 deliberate upon here. It's not your authority
7 or permitted for you to ask the committees to
8 agree or take a vote on anything.

9 MR. MATUGA: Okay. If you can
10 understand my frustration. Trying to add
11 something to these committee meetings and
12 essentially, you know, issues are coming up
13 where I haven't had time to bring issues that
14 are going to affect the members of the
15 National Association of Homebuilders. You
16 know, there are issues specifically on the
17 OSHA 10-hour and whether that should be
18 mandatory. And, you know, I participated in
19 the work group meeting and it sounded like the
20 work group meeting was ready to make a
21 recommendation to the full committee, and you
22 know, if I would have had advance notice that

1 that issue was going to be brought to the
2 table, I certainly could have gone to our
3 membership and asked them what their thoughts
4 and feelings were on this. But, you know, at
5 the time, without having any advance notice of
6 what was on the agenda, and obviously there
7 were many folks that were around the table
8 that, you know, knew what the discussion was
9 going to be and I just felt like, you know, I
10 was sort of left out there on my own. And I
11 had to raise the issue that I think that that
12 issue should have been put on the table until,
13 you know, I can ask my membership what they
14 think about this.

15 So, all right. I think you've
16 given me the answer.

17 CHAIR MIGLIACCIO: Walter, you had
18 a question first?

19 MR. JONES: At first I was going
20 to say I have no problem. We didn't have an
21 agenda for any of my subgroup meetings to give
22 out to begin with. We had general ideas of

1 what we wanted to talk about, what we were
2 going to discuss, which are pretty much what
3 we've been discussing and we were just making
4 sure we had professional folks available to
5 discuss the items.

6 And what I was going to say right
7 after your request was I have no problem, if
8 you give me your email, and I have no problem
9 sending to you an agenda. I don't know about
10 two weeks ahead of time or whatever, but as
11 soon as one is relatively finalized. I don't
12 know if that's an onerous request for myself,
13 but I don't want to make guarantees.

14 And secondarily, in terms of the
15 OTI mandatory OSHA-10 issue, again, I think
16 these are issues that are in continual
17 discussion and I think the work group worked
18 its way through the issue by that, as well as
19 the Silica Work Group where contentious issues
20 were tabled for further discussion, as is
21 what's appropriate with the way the committees
22 are run.

1 CHAIR MIGLIACCIO: Okay. Steve?

2 MR. HAWKINS: Well, a
3 recommendation coming out of a work group to
4 this Committee, I mean, here is where the
5 recommendation actually goes forth to the
6 Agency. So I think it would be very important
7 for you to come to these meetings. But to
8 know in advance, I mean, the way I understand
9 the work groups to work is there's supposed to
10 be a certain amount of spontaneity in that
11 room so that you can discuss any issue that
12 might be brought by anyone in this public
13 forum so that the work group can discuss it,
14 maybe discuss it that day and reach a
15 decision, or maybe that discussion may be a
16 protracted discussion and last several
17 meetings.

18 MR. MATUGA: Well, there's not
19 much spontaneity when people are flying from,
20 you know, different parts of the country to
21 attend these meetings to present information.
22 And, you know, we've got no other way to know

1 what they're going to present or who even is
2 presenting, and to be able to bring, you know,
3 our opinions as well.

4 MR. HAWKINS: That sounds like
5 spontaneity to me, Rob. When people fly all
6 over the country and you don't know what
7 they're going to say, that's pretty
8 spontaneous, I think. I mean, that's been my
9 experience. I'm only thinking of Tom and me
10 personally. I'm not sure. I mean, what would
11 we say about an agenda? We're going to issues
12 that are related to residential fall
13 protection. I don't think you'd want us to
14 make an agenda and then we'd be asking people
15 to come. I just don't see how, from a
16 practical standpoint, we'd be able to do that.
17 It seems very difficult, in a meaningful way.

18 MR. BUCHET: Michael Buchet,
19 Directorate of Construction.

20 If you look at the Federal
21 Register notice and take that as instructive,
22 the actual agenda for the ACCSH meeting is not

1 there, but topics of discussion are listed.
2 And that may be the most you're going to be
3 able to get from the work group co-chairs, is
4 that we're going to talk about, or we're
5 planning on talking about. If we make it
6 through all of them, we make it. If we don't
7 make it through all of them, we don't.

8 The other thing is, and the Agency
9 is working on this, is the work group reports
10 become part of the Committee record and they
11 get posted on the website. We are working to
12 make that happen more quickly. Hopefully, we
13 will also be able to get them out of regs.gov
14 and have them posted on the ACCSH web pages
15 more quickly. Then that will give anybody who
16 is interested a sense of what the discussion
17 was and what the leftover topics are for the
18 next discussion.

19 MR. MATUGA: I mean, topics for
20 discussion or agenda, I mean, it's the same
21 thing. It's conveying to us what the issues
22 are going to be.

1 MR. BUCHET: Well, it's the issue
2 of trying to give notice to the affected
3 industry members that you might want to have
4 a person in a seat in attendance who can say
5 something.

6 MR. MATUGA: And we would be happy
7 with that information in a timely manner. How
8 about that?

9 MR. BUCHET: Well, that's the best
10 we can do.

11 The other issue is that a lot of
12 people who sit in those seats do not represent
13 themselves. They represent a constituency and
14 constituencies all have a process to go
15 through to get an opinion. Now, some of these
16 opinions have been worked out ahead of time
17 and their representative here knows I can say
18 this about that. A lot of others don't have
19 that luxury.

20 CHAIR MIGLIACCIO: Tom Broderick?

21 MR. BRODERICK: Yes, I might be
22 going out on a limb here, Rob, but I think

1 that, as a long-time co-chair of a work group,
2 I would be thrilled if you or any of the other
3 trade associations would call me two or three
4 weeks before the ACCSH meeting and say I
5 really want to come to your work group and
6 here are some ideas I've been kicking around
7 that we could discuss. And I would love to
8 have help building the agenda. But from my
9 experience you can pretty much predict that,
10 especially for those work groups that you
11 follow, and I think that pretty much people
12 have selected the work groups that are of
13 their interest in an ongoing fashion, that you
14 can predict that unless something has been
15 resolved and the issue put before the full
16 ACCSH that it's going to continue to be on the
17 agenda. I know that's true for mine and I
18 think probably for most of them.

19 So that you could surmise. And
20 that which you would like to have on the
21 agenda you have an opportunity, because all of
22 us are listed on the OSHA website, how to get

1 a hold of us, and you know most of us anyway,
2 that you could get in touch with us and we'd
3 be delighted to have your input to build any
4 of the work groups' agendas.

5 MR. MATUGA: Yes, and obviously I
6 know many of you all, but there's many
7 individuals who don't know you all and would
8 be reluctant to call. And what we're really
9 just looking for is just timely notice of the
10 more specific issues that are going to be
11 addressed. Yes, we know generally what's
12 talked about at each of the meetings, but
13 oftentimes there's very specific and pointed
14 discussions that I think that, you know,
15 having some timely notice we can come prepared
16 to better bring our side of the issues and
17 better be able to inform the work group of the
18 issues that are going to be addressed that
19 could be very specific. Yes, we all know that
20 there's general information at each of the
21 work groups, but very, very specific and
22 narrow issues that could be defined that are

1 going to be on the agenda, I think it would be
2 nice to have notice of that. I think that's
3 all I'll say about this.

4 MR. RUSSELL: Just one comment. I
5 know for the work groups I'm a part of, I
6 would love someone from the public to come to
7 the work group and take some responsibility
8 and literally assist the co-chairs in the
9 direction of the work group. And I'd go so
10 far as to say if you were to take that
11 position, all of the issues you're raising
12 would completely disappear, because you would
13 be on the front line of the work groups that
14 you are really passionate about. And if
15 you're bringing something positive to the
16 table, trust me, the co-chairs would listen.
17 And you really wanted to run, they would give
18 you a whole lot of assignments that you could
19 run with.

20 MR. MATUGA: Certainly.

21 MS. SHORTALL: I guess I have a
22 final suggestion. One, if there's a work

1 group that you think your organization or
2 other stakeholders could possibly have any
3 issue that could come before, my suggestion is
4 you get your name on the distribution list and
5 you simply make it a policy to attend the
6 meetings and regularly read the work group
7 reports, which are put in the record within a
8 few days to within two weeks of each meeting,
9 which is well in advance, and will tell you
10 what items have been accomplished and what
11 will be addressed by the work group next.

12 But I do want to say that the
13 things that both these co-chairs do, as well
14 as ACCSH, are so far above what is required
15 under the Federal Advisory Committee Act, and
16 many other advisory committees limit their
17 work groups to only members and any technical
18 expert they want to invite. They do not
19 announce the meetings. They do not let anyone
20 in. Or if they let someone in, they don't
21 allow them to talk, only to listen. And they
22 aren't required to file written reports. Or

1 if they provide a report, that doesn't
2 necessarily have to go in the record. So the
3 things the Agency is doing here are so far and
4 beyond, you know, just to try to get
5 involvement. But I think it's important if
6 you think anything in residential fall
7 protection could be of interest to you, you
8 need to get involved at the beginning and take
9 the initiative. Because I think at this point
10 the things we're doing that are so far above
11 take a lot of time to accomplish.

12 MR. MATUGA: I think you guys have
13 given me enough time and I don't want to keep
14 anyone else. You know, I thought my request
15 was reasonable and not out of line.

16 Work group chairs, I'll be calling
17 you on a regular basis at least one month
18 prior to each of the meetings and will bug you
19 up until I get a copy of the agenda. Thank
20 you.

21 CHAIR MIGLIACCIO: Kevin?

22 MR. BEAUREGARD: As a long time

1 member of ACCSH, I did want to make a comment
2 on this. First of all -- and I've chaired or
3 co-chaired groups throughout the years -- the
4 work groups are all established by ACCSH for
5 various subjects and ventures. This group as
6 a body has determined these are the work
7 groups we're going to have. And as such, each
8 one is supposed to have a charge or a scope.
9 And so if you're an entity and you're
10 interested at all in that charge or scope, I
11 would encourage you to participate. And I'd
12 mirror what Emmett said and what Tom said, is
13 call up the co-chairs, call up any of the
14 ACCSH members and let them know if you have a
15 subject of interest that you want this group
16 to consider, because we all represent various
17 interests.

18 But with that being said, I know
19 from personal experience that oftentimes there
20 is not an agenda or there is not an agenda
21 until the night before, because a lot of times
22 we're getting information in from other people

1 about what they want us to talk about. It's
2 an ongoing discussion. And generally a new
3 item that's brought up in a discussion doesn't
4 immediately go up to ACCSH as a full body
5 because it's usually a work over many, many
6 meetings before something is prepared or a
7 direction is determined by the co-chairs as to
8 how it goes. But I do think it's a very open
9 process and anybody's invited to participate
10 and attend. And like Sarah said, we like full
11 participation and we like to hear from all the
12 affected people. But you know, just speaking
13 as myself for a co-chair, I can tell you it's
14 probably unlikely that I'll have an agenda two
15 weeks in advance for any particular meeting.

16 Now if anybody else does, that's
17 fine; I don't think there's anything wrong
18 with that, but it generally doesn't happen.
19 But I think the key is to contact individual
20 ACCSH members. If you or the people you
21 represent have a particular issue, there's a
22 lot of us members. You can contact one of us,

1 let us know. And if it happens to be one of
2 the things that we have a work group on, we'll
3 bring it up at the work group. If it's one of
4 the things we don't have a work group on,
5 we'll probably talk as a body and determine
6 whether or not we need to have a work group on
7 it.

8 CHAIR MIGLIACCIO: Matt?

9 MR. GILLEN: Yes, I just had a
10 comment. Everything you said might be true,
11 Sarah, but I think it's also true that ACCSH
12 values the input from the members of the
13 public after work group meetings. And
14 personally, I just feel like either if people
15 have an agenda perhaps one week before, if
16 it's a very simple agenda, especially if they
17 could just list if there are going to be
18 speakers, who those people are in a simple
19 description. If they don't, it just says that
20 an agenda was not available at this time. And
21 for something like that to be sent out, I have
22 no problem with that and I think it's actually

1 a more efficient use of my time than having to
2 field a lot of calls the week before the
3 meeting when I'm trying to get a lot of things
4 done because I know I'm not going to be in the
5 office the week of the ACCSH meeting. So I
6 mean, I think it's actually more efficient to
7 try to have a basic agenda to help us all do
8 this better. So, that's my two cents.

9 CHAIR MIGLIACCIO: Mike?

10 MR. BUCHET: Certainly OSHA values
11 the input of anybody that walks into the work
12 groups. There's no doubt about that. Some of
13 the work groups in the past have used a loose
14 consensus process. Some of them have taken
15 votes with dissenting votes recorded. And
16 that's up to the work group co-chairs. That
17 is captured in the report to ACCSH. A vote
18 was taken, a lot of people disagreed with the
19 vote, but it passed by a margin of one is very
20 interesting to the Agency. A recommendation
21 that comes to the Agency on a margin of one,
22 with major players in the industry, saying we

1 don't agree with it is not as strong a
2 recommendation as a recommendation that comes
3 in and says we have considered players
4 throughout the industry, and there is a
5 general consensus shown by this vote at the
6 table that this is a broadly-based and
7 accepted recommendation is a much stronger
8 recommendation for the Agency. And you heard
9 Darlene talk about how we prioritize and
10 that's one of the indicators to us.

11 But we certainly appreciate the
12 input of the work groups trying to make it
13 more efficient for the co-chairs is something
14 we'd look into. Trying to make it more
15 appealing to the public to engage them is also
16 something we will look into. As I said, if
17 you send me the agendas, I can email them out
18 to -- and we lost about 60 people last time I
19 sent it around. A lot of people aren't at
20 their old email addresses. So I'm going to go
21 through what we've got for people that signed
22 up and said let me know and we'll see what

1 we've gained. But the industry, at least
2 going by email contacts, is in turmoil.

3 MS. SHORTALL: I'd like to add one
4 thing to expand on what Mike is saying. I
5 think Mike is saying there's a process within
6 the work groups to try to see from an industry
7 whether there's a consensus. But I need to be
8 clear, FACA Act limits straight voting in work
9 groups to the members of the parent committee
10 as a whole. What Mike was talking was getting
11 a sense of where the work group is. But under
12 FACA and the FACA regulations, the only
13 persons permitted to vote are members of the
14 parent advisory committee.

15 CHAIR MIGLIACCIO: Okay. We have
16 one other public comment. George Kennedy from
17 NUCA.

18 MR. KENNEDY: George Kennedy from
19 the National Utility Contractors Association.

20 Listening to what Rob was saying,
21 I have to say that I'm one of the people that
22 would agree with him, that we need to have

1 some kind of an idea of what's coming out in
2 the work groups if you want participation.
3 Participation has gone down in a lot of these
4 work groups. Some have gone up, some have
5 gone down. You're getting representation, and
6 like Rob said, we don't sometimes come
7 prepared. We're not exactly sure. I mean,
8 the Trenching Work Group, there might be more
9 people there if they knew what the Trenching
10 Work Group was all about. You know, we'd
11 bring in suppliers, we might get more
12 suppliers interested. We might get more
13 people involved in the process. But they
14 don't have any idea. We do see the list on
15 ACCSH on Federal Register. I agree, it
16 doesn't have to be in the Federal Register.

17 We run meetings at NUCA all the
18 time. We put out some kind of an agenda.
19 It's a basic thing and it has new business.
20 So if we have something to add to it, we --
21 new business. But at least we have a basic
22 idea of what we're going to be discussing,

1 whether it be the OTI 10-hour mandatory
2 process that I heard about, but I didn't make
3 the OTI meeting yesterday because I got tied
4 up in the office. But quite frankly, had I
5 known that was on the table, I would have
6 untied myself from the office and got over
7 here. But the last meeting we had, we didn't
8 get into that. We didn't address it in any
9 real detail as much as we could.

10 So I just tend to agree that if we
11 had this in advance; I know we're not
12 required, we're not voting members. I know
13 that you are the voting members, that you make
14 the choices. But I've been on work groups for
15 God only knows, about 19 years now. And being
16 involved in those work groups, most of the
17 chairs do take a vote of the people who are in
18 the room, what do they think, that kind of
19 thing. Whether it's a vote that counts or not
20 doesn't matter, but we do have a say. And
21 ACCSH doesn't have to have these work groups
22 and doesn't have to invite the public, but you

1 have invited the public and you've invited us
2 as stakeholders to be there to participate, to
3 give you our input and our advice.

4 I've talked to Emmett about
5 trenching. He and I had a little discussion
6 before and I gave him my advice. This is what
7 I think. We had it in a meeting the other
8 day. I gave my advice. I mean, you want our
9 advice, then involve us and give us a little
10 opportunity to come a little more prepared.
11 Over the years I've come to work groups where
12 there have been speakers who have -- are
13 obviously on one side. Maybe there's another
14 side to that. Maybe we need to get an
15 opposing speaker, somebody to bring a second
16 opinion to that work group. I think that
17 sometimes, you know, it doesn't seem balanced
18 and we want to make this work. We want a
19 process that's going to work. We're all out
20 to save lives. We're not here, none of us are
21 here -- I don't waste NUCA's money coming
22 here. I come here with an objective and that

1 is to save lives, but to do it in a way that's
2 balanced so that we can help the workers and
3 the workers can help us, and we can have a
4 successful safety program out there.

5 So I do think that maybe there
6 should be some consideration, whether it be a
7 week in advance, two weeks in advance. Mike
8 has my email address. He always emails me the
9 ACCSH meeting, it's coming up. He lets me
10 know. I always call him before and I pester
11 him. Mike will testify to that. I pester
12 him, when's the meeting going to be? When the
13 meeting going to be? I have to get an ticket
14 and I want to do it at a reasonable price.

15 So anyway, that's the way I feel
16 and I just kind of back Rob up on that. I
17 know where he's coming from. I know how he
18 feels. I've been there. And if you look
19 around the room, there's a lot of association
20 representatives that are not sitting here any
21 longer. And I think that's something that
22 we're losing, that other side of the issue,

1 the other side of the coin.

2 So, that's my opinion. Any
3 questions, I'd be happy to answer them.

4 CHAIR MIGLIACCIO: Are there any
5 questions?

6 All right. Just the one thing I
7 can say, I sat on a lot of work groups, either
8 sat on them or chaired them. In all the years
9 I've been here, the first time I ever saw an
10 agenda was just yesterday that was actually
11 put on the table before we sat down and
12 talked. What I do recall, we always knew what
13 we talked about the last meeting and knew it
14 was coming forth again. The 10-hour you
15 talked about that went on at OTI yesterday,
16 was talked about at the previous meeting.
17 Hank Payne was on the phone about it and they
18 were suggesting having a mandatory refresher.
19 And we said, you know, you got to have a
20 mandatory 10-hour before. So I think the
21 progression constantly goes through until it
22 comes to this committee. Now, if people are

1 in the committee, if you were in a meeting two
2 months or two meetings ago, I don't think
3 things -- they don't move as fast as you'd
4 like them to, but I think it does constantly
5 keep going on.

6 Some of the things in ROPS and
7 before Emmett got on the committee as a member
8 of the committee here, even though I was co-
9 chair, Emmett was doing the work, because he
10 had the most knowledge of what was going on.
11 And the things that we talked about then, I
12 mean some of that has actually passed on, but
13 some of the stuff now, it's there still and
14 there's new stuff coming on. And like
15 everybody's saying, we need the public's
16 comment on this. But like I said, in all the
17 years I've been here, and I've been here for
18 a lot of years, I don't ever remember seeing
19 an agenda until yesterday. And it's the first
20 agenda I've actually seen on a work group.

21 MR. KENNEDY: Well, you know,
22 that's why we're asking. You know, we saw one

1 yesterday. Okay. We haven't seen it in
2 years. And you're right, maybe we do need
3 something to give us an idea of what's coming
4 down the pipe so we can prepare for
5 discussion. Maybe you've got something
6 specific on mind. I'm in the same boat Rob
7 is. Technically, I'm supposed to poll my
8 members for their opinion. Lots of times I
9 come in here and I'm like, okay, you're
10 getting George Kennedy's opinion. You're not
11 getting the group's opinion, because I didn't
12 have a chance to talk to any of my members to
13 get their feel on an issue. If I knew this
14 issue was coming up and it was going to be
15 something that was going to be a
16 recommendation to the work group, that maybe,
17 you know, we were coming to the end of a
18 discussion and we're going to make a
19 recommendation to the work group -- well, the
20 work group's going to make a recommendation to
21 ACCSH, then I might need to poll the members
22 and say, hey, guys, how do you really feel

1 about this? Let me tell them. I'll give it
2 our last shot and let them know where we
3 stand.

4 It's tough being an employee
5 representative when you represent 2,000
6 members and you don't have a chance to talk to
7 at least some of them. I mean, fortunately,
8 you know, I can make phone calls, but you
9 know, that doesn't always get me the opinion
10 I need. It's just an agenda makes a meeting
11 a better thing overall. You just said it,
12 first time you saw it, it was probably was a
13 more organized meeting. And it doesn't have
14 to be a formal agenda. It could be just, you
15 know, we're going to discuss this, this and
16 this. And give it to Mike, and Mike can --
17 you know, we can call him or he can send out
18 a list to the people that have emails and it
19 will get to us. You know, we'll do what we
20 have to do with it. It was just a request.
21 I think Rob is asking for a little help to
22 make things better.

1 MR. JONES: Like I said, I didn't
2 think it would be a problem, or even if Rob
3 came up to any one of us and said, hey, can I
4 get a heads up, even a phone call, what's
5 going on, I don't think anyone at this table
6 would have said no.

7 Speaking to your fairness, for the
8 Silica Subgroup Committee, I myself personally
9 have reached out to --

10 MR. KENNEDY: I wasn't there.

11 MR. JONES: I know. I'm just
12 informing you. I called MCAA up. They said
13 I need you guys involved in whatever we do
14 forward. I called up Rashod and their
15 president. They elected to have Rashod come
16 down. Rashod made a presentation. We had a
17 member from Georgia Tech academia make a
18 presentation on silica and we had a member
19 from CPWR, an employee, make a presentation.
20 So we are trying to be fair and present all
21 sides of the view. But I have to go back to
22 what Sarah said. Sometimes we're just busy

1 and I don't want to have a BS meeting where we
2 just sit around for an hour-and-a-half picking
3 our nose talking about whatever comes to our
4 mind and whatever our current gripe is.
5 Instead, I just invite people I think that
6 have something important to say about the
7 topic of what we're talking about.

8 And as Frank said, in terms of
9 OTI, again, I thought that was an ongoing
10 discussion that's been going on for some time,
11 especially in light of the explosion and
12 states making these requirements mandatory.
13 And is it time for OSHA to get its hands
14 around this because the inconsistencies in the
15 statutes and the inconsistencies in the
16 training and on and on and on? Should OSHA
17 get its hands around this and control it more.

18 That being said, contact me at any
19 time, you know, a couple weeks before. I
20 don't even have a distribution list, because
21 I don't want that type of responsibility.

22 MR. KENNEDY: Well, Walter, you

1 just said something that makes -- you don't
2 want to come to a meeting where we're just
3 going to flounder around and throw anything
4 out. If we had a few ideas of what the topics
5 of that meeting are going to be, the two,
6 three, four primary discussion items. And
7 they do change. They do change. You know, we
8 get in a meeting, all of a sudden something's
9 been added and we're caught off guard.

10 You know, you guys, the trenching
11 group, they invited a shoring person into the
12 meeting. And he was good. No problem with
13 him, but I could have probably got you two or
14 three others with different ideas and
15 different approaches if I knew they were going
16 to have some speakers on shoring there that
17 day. I didn't know that in advance.

18 CHAIR MIGLIACCIO: Then I would
19 recommend that you know in September we're
20 going to have another one. The work groups
21 will take place two days previous, too.

22 MR. KENNEDY: Yes.

1 CHAIR MIGLIACCIO: Get in touch
2 with the co-chairs of that work group and let
3 them know that you'd like to have a couple of
4 speakers come in and give another part. And
5 you can do that.

6 MR. KENNEDY: I can ask them, yes.

7 CHAIR MIGLIACCIO: I mean, that's
8 the whole --

9 MR. KENNEDY: I think we've
10 already covered it though. We got into it and
11 that guy covered it pretty well. But it would
12 have been helpful to have, you know, some
13 different slants or different equipment, or
14 something.

15 CHAIR MIGLIACCIO: Tom? Tom
16 Shanahan?

17 MR. SHANAHAN: Yes, I'm still
18 here. I know we're getting late. I just
19 wanted to weigh in on this, if it's okay, if
20 I'm not interrupting somebody.

21 CHAIR MIGLIACCIO: Go ahead.

22 MR. SHANAHAN: You know, I have to

1 say that from what I can hear the intent of
2 what George and Rob are asking for, you know,
3 I completely agree with. You know, Frank and
4 Walter, we really tried hard to get an agenda
5 put together for the OTI Work Group. And I
6 think probably because I ended up in the
7 hospital, we just didn't get it out in time.
8 But it was certainly my intention to have an
9 agenda put together and Walter and I worked on
10 it actually quite a bit. I don't think it's
11 too much to ask to do that, because I think
12 Rob and George are right. I mean, you know,
13 people have to spend time and money to come to
14 these meetings; I know I do from Chicago. And
15 if I know a certain thing is going to be or at
16 least planned to be discussed, that would
17 change one way or the other what I do. And I
18 think that the meeting itself would benefit
19 from that. So I realize that it hasn't been
20 done so in the past, but one of the reasons I
21 was trying to do that was for this very
22 reason. I mean, I really do feel it's a very

1 valid request, while I know it's something
2 that hasn't been done in the past.

3 So I just really wanted to weigh
4 -- you know, I mean, I realize a lot of you
5 have been on ACCSH a very long time; I've only
6 been on it for a year-and-a-half. But I do
7 think it's a very reasonable request and maybe
8 there's a halfway point or something.

9 CHAIR MIGLIACCIO: Well, I think,
10 Tom, what the halfway point that's been
11 suggested is that people contact the co-
12 chairs. I mean, if there's that much interest
13 with a group, they should contact the co-
14 chair, because if the co-chair was to contact
15 everybody on the list not knowing what was
16 going on --

17 PARTICIPANT: Or was left out --

18 CHAIR MIGLIACCIO: Yes, there's
19 going to be somebody left out. You know, I
20 don't know how you do the catchall. I mean,
21 I'm not sure how it works.

22 MR. KENNEDY: Isn't there a way

1 that -- you know, if the co-chairs just made
2 out that little agenda and got it to Mike that
3 Mike could put it on the ACCSH website, or on
4 the OSHA website under the ACCSH link that we
5 could just go to and say, oh, here's what the
6 work groups are coming up with this week?

7 CHAIR MIGLIACCIO: Okay. But then
8 again, how about if they did come up with the
9 agenda, say they did come up with this agenda,
10 and something happens -- somebody said
11 spontaneously, happened there and then it
12 wasn't on the agenda. Somebody's going to get
13 mad because you had it, you didn't tell us, we
14 didn't come because of that. But you know how
15 the work groups work, something, one thing
16 leads to another.

17 MR. KENNEDY: It happens.

18 CHAIR MIGLIACCIO: But then if
19 there's something on the agenda that you don't
20 get to and you're specifically --

21 MR. KENNEDY: You make it very
22 clear. This agenda is a rough draft of the

1 agenda, you know? That's all. It's subject
2 to change.

3 CHAIR MIGLIACCIO: Yes.

4 MR. KENNEDY: It's that simple.

5 CHAIR MIGLIACCIO: Like I said,
6 we'll try to work this out and through, I
7 guess, the chairs of the work groups.

8 MR. KENNEDY: Well, it's up to
9 you. Thank you.

10 CHAIR MIGLIACCIO: Okay. Thank
11 you, George.

12 All right. We're way over here.
13 That's public comments.

14 MR. AHAL: Mr. Chairman, I have
15 one question. I'll make it quick. I have a
16 question. This is Bill Ahal, employer
17 representative.

18 The recommendations that this
19 group made for instance in April there were
20 several recommendations, how are those tracked
21 and can we not cover those tomorrow, the
22 recommendations from April, like old business

1 would be in the meeting minutes? I am very
2 interested in certainly the recommendation
3 that I made, its current status. Even if it
4 hasn't even been looked at, that's fine, but
5 that's the status, so that we don't lose track
6 of old business? How's that done?

7 CHAIR MIGLIACCIO: Usually there's
8 a -- like if we have had the time here today,
9 we had the future meetings remarks and so
10 forth. And you're making a remark here; it's
11 going to be the same. We'll have that same
12 thing tomorrow. What I think you're asking is
13 what some of the recommendations that were
14 made and what their status is.

15 MR. AHAL: Correct. Old business,
16 as such.

17 CHAIR MIGLIACCIO: I think Bill
18 Parsons basically has an idea where these
19 things are and I think he was going to try to
20 give us a report today, but it never actually
21 happened.

22 MR. AHAL: I didn't see anything

1 on the general -- can we carve out just a
2 minute to -- I mean, again, some of them may
3 not have even gotten looked at, but that's the
4 status. And otherwise, I think they're going
5 to fall into the pit and they get lost and
6 what was a good idea in April never gets --

7 CHAIR MIGLIACCIO: Well, we'll see
8 if we can get Bill in here tomorrow just to
9 give us a briefing on what we actually spoke
10 about.

11 MR. AHAL: I know he said he has a
12 list.

13 CHAIR MIGLIACCIO: Okay.

14 MR. AHAL: Thank you.

15 CHAIR MIGLIACCIO: All right. At
16 this time, I would like to adjourn here. Can
17 I have a motion to adjourn today until
18 tomorrow?

19 MR. THIBODEAUX: So motioned.

20 CHAIR MIGLIACCIO: Mike
21 Thibodeaux.

22 MR. HAWKINS: Second.

1 CHAIR MIGLIACCIO: Second. All in
2 favor say aye.

3 (Chorus of ayes.)

4 CHAIR MIGLIACCIO: Opposed?

5 (No audible response.)

6 (Whereupon, the meeting was
7 adjourned at 4:56 p.m. to the following day.)

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