

DEPARTMENT OF LABOR
ACCSH ADVISORY COMMITTEE MEETING

Wednesday, July 17, 2019

Frances Perkins Building
200 Constitution Avenue, N.W.
Room N-5437
Washington, D.C. 20210

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1 with the mission of protecting the men and women in
2 construction, by way of helping OSHA and the director
3 of construction.

4 So, again, just want to welcome everyone here,
5 new members, re-appointees, as well as our guests in
6 the back.

7 So, with that, we're going to do
8 introductions, and I'll start to my right here with
9 Scott.

10 MR. KETCHAM: My name is Scott Ketcham. I'm
11 the designated Federal official for OSHA. I am the
12 acting director within the Directorate of Construction.

13 A little bit about my background: I've been
14 with OSHA for 21 years. The last two of them have been
15 here in the national office, within the Directorate of
16 Construction.

17 I'm pleased to be here, and I'm happy to
18 welcome our new members. Thank you.

19 MR. MULLINS: Good afternoon, everyone.

20 My name is Mark Mullins. I'm with the
21 Elevator Constructors Union out of West Virginia. I am
22 a national coordinator.

1 Some of my duties is I serve on the North
2 American Building Trade Safety Committee, the AFL-CIO
3 Safety & Health Committee. I am the chairman of the
4 Elevator/Escalator Safety Foundation, and I'm also on
5 several OSHA committees with the alliance agreement.

6 It's a pleasure to be here today.

7 MR. KETCHAM: This is Scott. Just one
8 additional -- when we introduce ourselves and we go
9 back in the audience, I want to make sure that people
10 know that we need to speak into the audience -- speak
11 into the microphone. This is being recorded. Thank
12 you.

13 MR. WHEELER: My name is Wes Wheeler. I'm the
14 director of safety for the National Electrical
15 Contractors Association, been with them now, in D.C.,
16 now for six-and-a-half years.

17 Prior to that, I was an industrial safety
18 director and trainer for a large electrical contractor
19 in north Florida.

20 I also represent NECA on the electrical
21 transmission and distribution partnership with OSHA and
22 the strategic partnership, and look forward to working

1 with OSHA and look forward to working with the
2 additional members here on ACCSH in the future to help
3 OSHA with their mission.

4 Thank you.

5 MR. SOKOL: Good afternoon.

6 I'm R. Ronald Sokol. I'm the public
7 representative. I'm a re-appointee from the 2016-2018
8 ACCSH committee.

9 I serve as president and CEO of the Safety
10 Council, Texas City. It's a nonprofit safety training
11 and risk management firm located in the Houston, Texas,
12 area, principally serving contractors in the
13 petrochemical industry.

14 MR. FOUGHT: Good afternoon.

15 My name is Chris Fought. I am the other
16 public representative to ACCSH. This is my first
17 appointment.

18 I have 25 years of construction safety
19 experience, currently transitioning careers from
20 General Motors, as the North American construction and
21 contractor safety manager, to a new position with
22 another employer I'll announce at a later time.

1 I also chair the safety subcommittee for the
2 Construction Users Roundtable. They're otherwise known
3 as CURT.

4 I have 25-plus years of experience in
5 construction safety background.

6 MR. SIZEMORE: Good afternoon. My name is
7 Greg Sizemore. I'm the vice president of Health,
8 Safety & Environment for Associated Builders and
9 Contractors. I've been in the role about five years.
10 Prior to that, I was in the industrial construction
11 space for about 35 years.

12 It's my first appointment to ACCSH. I'm
13 looking forward to advancing the causes that are making
14 and ensuring our workers are safe every day on our
15 projects.

16 MR. MABRY: My name is Scott Mabry. I'm with
17 the North Carolina Department of Labor. I'm a state
18 representative on the committee, the assistant deputy
19 commissioner of labor, and looking forward to working
20 with the group.

21 MR. STRIBLING: Good afternoon.

22 My name is Chuck Stribling. I'm the ICE

1 Federal-state coordinator for the Kentucky Labor
2 Cabinet Department of Workplace Standards, representing
3 state and -- sorry -- safety and health state agencies.

4 MR. EARNEST: I'm Scott Earnest. I'm the
5 deputy director for the Office of Construction, Safety,
6 and Health at NIOSH, been with NIOSH for about 27
7 years, and spent about half of that working on
8 construction safety and health research.

9 MR. COMBS: Hi. My name is Fravel Combs. I
10 am the corporate manager of health and safety with M.A.
11 Mortenson Company, based out of Minnesota; 24 years
12 with Mortenson and 38 years in the industry; and look
13 forward to seeing what we can do to help move this
14 committee forward.

15 MR. HICKMAN: I'm Palmer Hickman, employee
16 representative. I'm director of safety codes and
17 standards with the Electrical Training Alliance.

18 MR. KROCKA: I'm Randy Krocka. I'm an
19 employee representative with the Sheet Metal Workers
20 and administrator of the Sheet Metal Occupational
21 Health Institute Trust for sheet metal workers. I've
22 been in the construction trade for almost 40 years now,

1 and originally from Wisconsin, now live in Virginia,
2 and the second time appointed to this committee and
3 looking forward to working on it.

4 MR. TESSIER: Good afternoon.

5 I'm Richard Tessier, employee representative,
6 35-year member of the United Union of Roofers,
7 Waterproofers, and Allied Workers, currently safety
8 director and director of curriculum development. I sit
9 with some of these guys on the North American Building
10 Trade Safety Committee, and am a member of the ANSI A10
11 committee.

12 MS. CAIN: Hi. My name is Chris Cain. I'm an
13 employee representative on behalf of North America's
14 Building Trade Team.

15 MR. GILLILAND: I'm Joey Gilliland. I am a
16 attorney in the Solicitor's Office here in the OSH
17 Division, and I'm serving as ACCSH counsel.

18 MR. CANNON: All right.

19 Next we're going to start in the back with the
20 audience introductions.

21 So, as Scott mentioned, speak into the
22 microphone, and just tell us your name and the

1 organization that you're with.

2 MS. SHAH: Nazia Shah, AGC of America.

3 MS. FLETCHER: M.K. Fletcher.

4 MR. PARSONS: Good afternoon. Travis Parsons
5 of the Labor Health & Safety Fund of North America.

6 MS. LIVINGSTON: Karen Livingston, Associated
7 Builders & Contractors.

8 MS. CARRAHAN: Hello. Mary Ann Carrahan at
9 NIOSH, detailed to NIOSH from OSHA.

10 MS. FOLEY-HERING: Hello. Lynn Foley-Hering
11 with Matrix North American Construction out of New
12 Jersey.

13 MR. HERING: Bill Hering. There's a
14 relationship, as you notice. I am the safety and
15 health manager in the northeast for Matrix North
16 American Construction, a past member of this committee
17 from 2011 to 2013, and also I'm here today to represent
18 the Association of Union Constructors and the National
19 Maintenance Agreement Policy Committee, and last but
20 not least, 53 years a member of the IBW.

21 MS. GONZALEZ: Hi. Gloria Gonzalez with
22 Business Insurance Magazine.

1 MR. SAUNDERS: Mike Saunders, safety director
2 for Balfour Beatty Construction.

3 MR. WALTZ: I'm Bruce Waltz, and I'm a
4 reporter at Bloomberg BNA, also known sometimes as
5 Bloomberg Law.

6 MR. BROWN: Tony Brown with A.E. Brown
7 Company.

8 MR. BRENT: Good afternoon. I'm Graham Brent
9 with the National Commission for the certification of
10 crane operators and the NCCCO Foundation.

11 MR. BODDY: Good afternoon. I'm Andrew Boddy
12 with the Solicitor's Office here at the National Office
13 of the Department of Labor.

14 MR. BOZEK: Good afternoon. Rich Bozek with
15 Edison Electric Institute.

16 MS. WALTER: Simone Walter, Office of Public
17 Affairs with the Department of Labor.

18 MS. BRAXTON: Hi. Denisha Braxton, Department
19 of Labor, Office of Public Affairs.

20 MR. EWING: Bryan Ewing, OSHA, BOC.

21 MR. LU: Alan Lu, OSHA, Department of Labor.

22 MR. VISSCHER: Gary Visscher with the law

1 office of Adele Abrams.

2 MR. SVENSON: Jens Svenson with OSHA, director
3 of construction.

4 MS. DARBY: I'm Kimberly Darby. I'm with
5 OSHA's Office of Communications.

6 MR. MATUGA: Rob Matuga, National Association
7 of Homebuilders.

8 MR. CULLIGAN: Christian Culligan, National
9 Association of Homebuilders.

10 MR. LEE: Joey Lee, OSHA Alliances.

11 MS. GIDDINS: Sharease Giddins, OSHA Outreach.

12 MS. NIEVES: Lana Nieves, director of
13 enforcement programs.

14 MR. TINDALL: Nick Tindall with the
15 Association of Equipment Manufacturers, representing
16 the off-road equipment industry.

17 MR. MENON: Gopal Menon, OSHA, Directorate of
18 Construction.

19 MR. BONNEAU: Damon Bonneau with the Office of
20 Construction Services.

21 MS. CHAPMAN: Vannetta Chapman, Directorate of
22 Construction.

1 MR. CANNON: I just want to say they're
2 working on the feedback issue here, so just bear with
3 us for a little bit.

4 I also want to make sure everyone signed in.
5 There's two binders in the back, one to record your
6 attendance, and then there is another binder in the
7 back that is for -- if you're interested in making
8 public comments at the end of the meeting.

9 So, with that, we'll get into the agenda. We
10 have a pretty full agenda for the rest of the
11 afternoon.

12 We have a couple of directorate updates, and
13 then one policy issue to discuss.

14 So, first up would be Scott Ketcham with the
15 Directorate of Construction to provide us with an
16 update.

17 (Pause.)

18 STAFF: Okay. Just for a few minutes, I want
19 to talk about, in the event emergency -- and we always
20 hope that there's not one, but just in case there is,
21 we will exit the building the same way you came in,
22 right in front of the water fountain, fountain plaza.

1 We will assemble there.

2 So, the best way to do that is to go out, go
3 to this exit on the right, go all the way down to the
4 plaza floor, go out those emergency doors, and you will
5 be in the plaza, where the fountain is.

6 Hang out there for us. We're going to
7 assemble, and then we're going to go down Third Street,
8 past the -- in between the D.C. courts and the
9 municipal building, in front of the steps that's in
10 that area.

11 If there's anybody in the overflow room, exit
12 the building, come around to the front, on the Third
13 Street side, to the fountain plaza, and do the same
14 thing.

15 Go down Third Street and go down C Street, in
16 between the municipal building and the courthouse, and
17 we'll be assembling there.

18 But with those things said, hey, listen, if
19 you see OSHA going, follow us, right? And we'll take
20 you to where you need to go and we'll keep you safe,
21 okay?

22 Another thing, we have facilities on this

1 floor. You go out here, we have men's and women's
2 restrooms to the left and the right where everybody can
3 go.

4 Also, just by a matter of security, you
5 probably noticed when you came in, some of you had to
6 be escorted. They're tightening up. That means that,
7 the whole time you're here, you basically have to be
8 escorted, except when you go to the restroom. We don't
9 want to go with you.

10 But if you need to go anywhere else, let us
11 know, and then we'll escort you in the building. They
12 just don't want folks running around the building,
13 going different places, okay?

14 So, please, any questions, any concerns, let
15 us know, and we will take care of them for you. Thank
16 you.

17 (Pause.)

18 MR. KETCHAM: We're having a technical moment
19 here.

20 (Pause.)

21 MR. KETCHAM: While we're getting the
22 presentation able to move forward, first of all, I'd

1 like to welcome everyone here to our ACCSH meeting,
2 with the reconstituted ACCSH, and on behalf of the
3 Secretary of Labor and the Acting Assistant Secretary
4 for OSHA, welcome to this meeting, and hopefully, in a
5 moment, I will start with my DOC update.

6 (Pause.)

7 MR. KETCHAM: Can we have folks -- if you have
8 your cell phone on or if you're recording this on your
9 cell phone, that could be providing some of the
10 feedback.

11 MR. CANNON: While we're waiting to get the --

12 MS. DEPRATER: Hi. I apologize for being
13 late. Flights and taxis.

14 I'm Cindy DePrater. I am an employer
15 representative with Turner Construction Company.

16 MR. KETCHAM: For the purposes of moving this
17 forward, can you hit the next slide for me? We'll just
18 move this forward the old-fashioned way.

19 (Slide.)

20 MR. KETCHAM: Okay. As you all know, the
21 construction industry is primarily -- consists of -- or
22 has a large majority of small employers. Many of them

1 are 20 or less, and a lot of the worksites that the
2 Directorate of -- that OSHA enforces our standards on
3 are multiemployer worksites.

4 So, it adds to a very diverse workplace for us
5 to evaluate.

6 I'd also like to point out that about 51
7 percent of all of OSHA's inspections are done -- over
8 half, in fact, are done -- performed in construction
9 sites.

10 Next slide.

11 (Slide.)

12 MR. KETCHAM: Okay. So, as you all know -- or
13 if you're not aware, the number and rate of fatal work
14 injuries by industry sector for construction is pretty
15 high in the 2017 BLS.

16 The fatality rate for construction was 9.5,
17 only to be eclipsed by agriculture, forestry, fishing,
18 and hunting, which had a much higher rate, but
19 nevertheless, the construction industry fatality rate
20 is pretty high at 9.5; hence, a lot of the focus on
21 this.

22 Next slide.

1 (Slide.)

2 MR. KETCHAM: As a resultant of the high
3 injury and fatality rate, OSHA started up with a
4 construction focus back in the early 2000s, and we have
5 continued on with that for quite a while, and on that,
6 we were focusing on falls, electrocutions, struck-bys,
7 and caught-in-betweens, and you can see that this data
8 from 2016 shows that the percentage of the fatal
9 incidences as of 2016 -- we're going to update this
10 slide. You'll see the trends continue into 2017, as
11 well.

12 But we are doing -- continuing our
13 construction focus on the issues that are highly likely
14 to cause fatal incidences in construction.

15 Next slide.

16 (Slide.)

17 MR. KETCHAM: One of the things that OSHA
18 worked on in the past that we continue to point people
19 to is on our webpage.

20 We have common tools that you can use to base
21 focused training on for the Focus Four. If you're not
22 aware of it, we would certainly make you aware of that

1 through this venue here, that there is toolbox talks
2 and information on the fatal four that will be very
3 helpful to the construction industry, and I think many
4 of the sites, from my time out in the field with OSHA,
5 are utilizing those Focus Four outreach training
6 program information to conduct toolbox talks, and I
7 think they're very helpful.

8 Again, one of the major issues facing the
9 construction trade is falls from one level to another,
10 and it is a major cause of fatalities.

11 In FY 2017, there were 713 fatal falls, and if
12 you look at this data, you will see that, from 50 feet
13 on down to less than 6, there were 43 percent of -- or
14 over 40 percent of fatal falls occurred less than 15
15 feet.

16 Relative to our inspection processes, you can
17 see that OSHA has maintained in the last couple of
18 years around 32,000 inspections.

19 The dark blue number on the right, or the dark
20 blue graph, is our equivalent units, and that is
21 something that OSHA was running in parallel, and we're
22 looking at moving that forward here in the new future.

1 As far as construction inspection data, as I
2 mentioned before, we're doing about 32,000 inspections,
3 and construction is roughly -- in FY '18, was 52
4 percent of all those inspections.

5 So, we're maintaining a little bit more than
6 half in the construction industry trades.

7 You can see overwhelmingly the numbers of
8 safety inspections with 15,766, as opposed to 968
9 health inspections. We're doing quite a bit of safety
10 inspections.

11 Of those 968 regarding health inspections,
12 there was an uptick in 2018 in inspections regarding
13 our crystalline silica standard, and so, that can
14 explain some of those health numbers, and you can see
15 that, overall, we get about 2,000-2,200 complaints a
16 year that we investigate.

17 Our top 10 violations -- these include general
18 industry, as well as construction. These are combined
19 numbers, are as follows, and you can see a trend there,
20 with fall protection being number one, hazard
21 communications, scaffolding, respiratory protection.
22 I'm not going to read it all out to you, but we found

1 it important to note what it was, the top 10 that we're
2 finding in the construction industry trades, which is
3 on the next slide, and highlighted in red, you will see
4 all the standards in the top 10 that were relative to
5 fall hazards in construction.

6 So, you have your general requirements of 1926
7 501. You have scaffolding, which obviously has a
8 potential fall hazard involved in it. Ladders, 1926,
9 1053. Fall protection training, aerial lifts, and then
10 the systems, criteria, and practices for fall
11 protection.

12 So, you can see, 6 out of those top 10 items
13 have a component that may be related to falls in the
14 industry.

15 We also have some PPE provisions under there
16 for eye and face protection, head protection, and
17 hazard communication has been in the top 10 for
18 construction and -- both for construction and general
19 industry -- for quite some time.

20 Now, showing the data, the top 10 violations
21 in construction, again, for FY 2018, just putting them
22 out there, how many violations OSHA has found -- and

1 this information is from OIS.

2 You can see that fall protection is the number
3 one citation cited.

4 It also leads in the percent and the number of
5 willful violations that OSHA issues, followed by
6 ladders, eye and face protection, fall protection
7 training, head protection, aerial lifts, scaffolding,
8 the general safety and health requirements for having a
9 program in construction, and the training requirements,
10 1926 21.

11 Lastly on there, as you are all aware of, I'm
12 sure, that OSHA has put a emphasis on trenching over
13 the last two years, with it being our agency priority
14 goal.

15 You can see that 1926 652 is the 10th item on
16 there, which is the requirements for providing
17 protection systems for employees working inside the
18 trenches, and there were -- you can see that there were
19 serious violations, willful violations issued on that,
20 as well, and that's something we're putting quite a
21 focus on as an agency in the last two years.

22 I want to point out that we're an enforcement

1 agency; we all know that. We are doing our job in
2 regards to enforcing standards, and some of that is to
3 indicate that, you know, the numbers of sig cases --
4 these are just construction sig cases.

5 We've had 26 sig cases that we've worked
6 through this year, and what we call a significant case
7 is a significant enforcement action where willful
8 violations and/or a combination of willful and serious
9 add up to a significant penalty amount.

10 So, the total number of significant cases
11 involving falls is -- out of those 26, is 19. So, 19
12 out of those 26 cases that we've issued that have been
13 sig cases involved falls, and 5 of them, for a total of
14 24 out of 26, involved trenching.

15 So, these are -- it is showing that we are
16 looking at -- as far as on the enforcement side for
17 these -- for these cases that present themselves before
18 us, we are having some significant activity involving
19 falls and trenching that we are focusing on.

20 As an example of this, there was a case out of
21 New England that we recently issued, 13 egregious,
22 willful fall protection citations, with a proposed

1 penalty of almost \$1.8 million, issued this June.

2 It's a big case, and this particular case
3 involved a fatal fall.

4 Regulatory activities. We are working -- for
5 the reg agenda, we are working on standards. I can say
6 from the directorate's -- from our position, we are
7 working in concert with the proposed -- with the reg
8 agenda that is out.

9 So, a few of the items that I wanted to cover
10 were railroad cranes. We're currently working through
11 that right now.

12 We did a proposed rule. We're working on a
13 final rule. We're resolving scope issues involving the
14 Federal railroad administration and us, and some of
15 those issues will be resolved here, hopefully, very
16 shortly.

17 It also took quite a bit of a look at the
18 exemptions provided for cranes and crane operations
19 involving railroad activities. That's something that
20 we're going to focus on and getting out in a final rule
21 here in the near future.

22 Deck amendments is basically -- we're working

1 on, I believe, 30 different standards that have
2 corrections that need to be updated on it, and in these
3 -- we are correcting misprints, typographical errors,
4 errors of omission that need to be corrected, outdated
5 reference, and mainly, it is a standard that corrects
6 the record and corrects in certain cases where
7 misprints were made between us and the actual standard
8 being printed.

9 So, this is a project that we've been working
10 on for quite a while, and it doesn't involve -- it
11 involves mainly just misprints and things in the
12 standard that we need to correct.

13 So, crane amendments is something that we're
14 working on, as well, with the advent of subpart CC in
15 2010.

16 We immediately became aware of some issues
17 that needed to be resolved, where subpart CC didn't
18 address some issues or correct some issues with other
19 standards, and that's something that we are working
20 through now, and it is going to correct, also, some
21 regulatory text corrections that need to be made.

22 It will also provide revised definitions. It

1 will improve compliance assistance. We've received
2 many comments from the industry over things that needed
3 to be -- in their perception, needed to be clarified,
4 and crane amendments is the process that we're working
5 through on that.

6 We have not -- we have not done a proposed
7 rule on that. We should be working on -- we are
8 working on that right now, and hopefully, we'll have
9 something out on that here in the future, as well. I
10 don't want to say "near future," but in the future.

11 Something that we're going to talk about today
12 is welding -- not today but tomorrow -- welding in
13 confined spaces.

14 We did put out on the reg agenda that we want
15 to do a notice for proposed rulemaking regarding adding
16 the definition of a confined space into the welding
17 standard, so Part J, and that's something that's
18 something that we're going to talk about tomorrow, is
19 an issue brought before the ACCSH.

20 Construction PPE fit is also a proposed rule
21 that we want to move forward, and that's something we
22 are going to discuss today with the advisory committee,

1 and in that, the construction PPE fit was very similar
2 to our recent efforts under the standard improvement
3 process IV where we had an addition in there for
4 requiring PPE to fit in construction.

5 We thought about it. We felt that it might be
6 a better venue to bring it up through a proposed
7 rulemaking and get notice and comment on that, and so,
8 we are going to discuss that as an ACCSH today, and
9 we're looking forward to that discussion.

10 We also obligated to and completed a SBREFA
11 for the towers, communication towers. That was
12 completed last October. We received comments from
13 that, and we're closing that out at this point.

14 There has not been a decision by the
15 department as to our position moving forward with that
16 at this time.

17 So, crane operator qualification was one of
18 the big things that we accomplished this last year,
19 since it's been over a year or two since we've met as
20 an ACCSH.

21 Crane operator qualification came out in
22 November 9th and was a final rule, all parts of it, in

1 April of this year.

2 We do have -- I did want to point out, many
3 times we get questions immediately after a rule comes
4 out about how this applies to us and, you know, could
5 you help us determine where we move forward with
6 particular issues.

7 So, we've been updating frequently asked
8 questions to our webpage.

9 So, if any of you have questions in regard to
10 the crane operator standard, those are being updated,
11 and I believe we have one more revision coming up here
12 very soon that will be added, as well, and as issues
13 come up, we're going to be adding them on to our
14 frequently asked questions, so people are advised to
15 what our thoughts are regarding the standard on that.

16 Again, right now, employers must ensure
17 operators are trained, certified, licensed, and
18 evaluated, and any operator not certified, licensed,
19 and evaluated is an operator in training.

20 So, that's where we are with that, and that is
21 a final rule, as we all know, and we're looking forward
22 to good things from that standard in protecting the

1 workforce.

2 (Pause.)

3 MR. KETCHAM: As you probably are all aware,
4 standards improvement process, SIP IV, was finalized
5 this year. It was published on May 14th, and that rule
6 is now a final rule.

7 Fourteen standard sections were updated and
8 revised.

9 Some highlights from that: Many of our
10 standards required Social Security numbers and other
11 data that was personal, identifiable information that
12 we didn't need as part of the record. So, that was
13 certainly something that we could update in regards to
14 those standards and updating them.

15 The requirements for recordkeeping and the
16 hearing loss provisions as far as letting the
17 professionally licensed healthcare professional know of
18 the requirements for recordability were part of that.

19 Low capacity signs for residential,
20 residential structures, was updated and removed, and it
21 also updated our standard -- one of many -- updated
22 the standard that required us to have x-rays on file.

1 Many times, hard copy x-rays now are all digital, and
2 so, we needed to update our standard to make sure that
3 we included other means of collecting that data.

4 There were various construction standards that
5 were affected by that, and so, if you need some more
6 information on that, we certainly can provide that.

7 I wanted to bring up issues and trends.

8 Opioid deaths in construction is something
9 that we are aware of. We know that it is affecting the
10 construction industry trade, as well as suicides in
11 construction, and you know, we're looking forward to
12 getting input from this advisory committee on those
13 types of issues, and it's something that certainly has
14 been brought to our attention and we're aware of, and
15 we certainly wanted to say we're going to do what we
16 can in regards to looking at that and giving advice to
17 the industry or, you know, compliance assistance type
18 efforts that we can do to bring this issue to a head so
19 that people are aware of it. We're going to do
20 whatever we can to help out with that.

21 The second issue that I have on there is dual-
22 rated equipment, and I probably shouldn't say dual-

1 rated, but equipment that is manufactured under more
2 than one consensus standard is an emerging issue, and
3 it's something that we're looking at as an agency.
4 We're trying to find out more information regarding
5 equipment that might be certified as a crane is also
6 certified as a aerial device. That's one example, but
7 there's many.

8 As technology improves out there, or as
9 technology moves forward, I should say, there are many
10 pieces of equipment out there that may be designed
11 under more than one consensus standard, and that's
12 something that we want to take a look at and we're
13 certainly aware of, and it's something that we're
14 paying note to.

15 Our trenching initiative is something that we
16 have really been pushing, as I mentioned before.
17 Conditions like this, in this particular case pictured
18 before you -- that is a superintendent, a supervisor
19 looking folks working in a trench.

20 These are just without protection. This is a
21 classic example of things that, you know, we are
22 looking at, you know, that shouldn't happen in the

1 construction industry trades, but they do, we recognize
2 that. It's certainly something that we're putting in
3 enforcement effort, as well as an educational effort
4 on, as well, to make sure that folks get the compliance
5 assistance, as well as the enforcement, where we need
6 to.

7 Our goals on this are obviously to educate, if
8 we can, to prevent something before it becomes an
9 issue, before people are exposed to a hazard, but if we
10 -- we will enforce -- as I mentioned earlier, we're an
11 enforcement agency. We will enforce these standards.
12 But we're also trying to spread the idea that there are
13 proven methods to protect employees from this.

14 If you slope, shore, shield, or bench, in most
15 cases, that is enough to protect employees, and these
16 are proven methods, and in many of the cases where we
17 are enforcing those things, those four issues are not
18 being done, and it's something that we certainly wanted
19 to educate the public about, employers about, and move
20 forward, and we've certainly done quite a bit, as I
21 noted earlier, about enforcement.

22 We've put out quite a bit of compliance

1 assistance information out on trenching as part of our
2 initiative. We've put drafts out there indicating the
3 trends that indicating that more people during the
4 period of 2015 and '16 were dying in trenches, it was a
5 spike, and we put our focus on that, and we've been
6 focusing on that now for the last two years, and
7 hopefully we'll see a reduction in the future in
8 regards to that.

9 We're also putting out new posters, new
10 compliance assistance information out there to help
11 employers and associations, as well, and as I mentioned
12 before, it is our agency priority goal.

13 Trenching and excavation is the agency
14 priority goal for FY 2017 -- or '18 and '19. So, the
15 end of our goal period is at the end of this fiscal
16 year, and hopefully we'll see some numbers in there
17 that will indicate that we've made some impact.

18 Again, we are doing this through two methods.
19 We're using all the tools in our toolbox. We're doing
20 enforcement, as well as doing compliance assistance.

21 One thing that we did a little bit differently
22 in the last year was we updated the national emphasis

1 program for trenching and included compliance
2 assistance. There was no compliance assistance
3 requirement under the previous NEP that was in effect
4 since 1985.

5 So, we added that in there to ensure that we
6 were doing our job in regards to informing, as well as
7 enforcement.

8 So, there's a couple different data sources
9 that I mentioned on that, that we are retrieving it
10 from.

11 Our state plan partners are working in concert
12 with us on the agency priority goal. So, their work
13 efforts are being counted as far as correcting hazards
14 in trenching, as well as the Federal agency and OSHA
15 consultation, which was a little bit different.

16 Adding in consultation was something new that
17 OSHA had never done before, and we wanted to make sure
18 that we are including all of our tools of outreach, as
19 well as enforcement, to make sure that we get all
20 avenues looking at this issue.

21 So, our progress on that: You can see that,
22 as of the third quarter, we've made 1,537 corrections

1 out in -- between all three of those parties:

2 consultation, state OSHA, and Federal OSHA. Our goal
3 is 2,572, so we've got a little bit over 1,000.

4 But what I would tell you is that, towards the
5 end of the year, a lot of these inspections happen in
6 the timeframe of -- you know, in the -- the prime time
7 is between April and probably September or October, and
8 so, we expect a lot of those numbers to come back up in
9 the fourth quarter. It happens every year when we look
10 at this, so we're very hopeful that we'll achieve that
11 goal of 2,572.

12 As I mentioned before, we rewrote an NEP, put
13 it out last year. That national emphasis program is in
14 full effect now.

15 Just to go over a few of the violations, you
16 can see that the number one violation that we're
17 finding in trenching is, unfortunately, still, as I
18 mentioned before, 652(a)(1), which is the protection of
19 employees, and that is the -- overwhelmingly, the
20 highest cited standard that we have in regards to that.

21 You can see that ladders and ease of egress or
22 ramps is number two. Number three was inspections of

1 excavations. Those are just the top three.

2 Again, the resources that we have out there
3 have been updated -- new poster, new fact sheets -- and
4 we've also been working with partners out there that
5 have tool kits, such as the NEHBs, that's been helpful
6 to us, as well.

7 We've also been involved in trenching safety
8 stand-downs, which happened this last June, June 17th,
9 the week of June 17th, and I visited a couple sites
10 that were participating in the trench safety stand-
11 down, and they were pretty cool.

12 You know, you can see that we've been working
13 with the industry here to make as much impact, as well.
14 We've worked with NAXSA, NUCA, the homebuilders, as
15 well as the Trench Shoring and Shielding Association to
16 get impact, and hopefully that pays off.

17 This started as a grassroots operation. When
18 I say that, NUCA began the trenching safety stand-down,
19 and it's their -- initially, they started it, and this
20 last year, it went from a couple thousand people
21 participating to, last year, over 50,000 people
22 participated.

1 So, it is growing. It's something that we
2 certainly support, and we're glad to be working with
3 industry components to move this forward.

4 There's also outreach materials that we have
5 on the website. This particular website picture here
6 is for silica. So, the provisions under Table 1 --
7 there are fact sheets for each one of those, and if you
8 haven't looked at those, we've worked with industry on
9 that to complete those.

10 I was on the workgroup that helped produce
11 those, and they're out there, and hopefully you're
12 using them, if you haven't, in regards to silica, but
13 we've got other compliance assistance and outreach
14 information that's out there on our website that we
15 think is very helpful.

16 Again, we just finished the national safety
17 stand-down to prevent falls in construction back here
18 in May. It was a very successful event again, and
19 that, as Scott Earnest mentioned, from NIOSH, we've
20 worked together with our friends in NIOSH and with the
21 industry and CPWR to work on making this an emphasis,
22 and it's been highly successful.

1 This last year, nearly one million workers
2 were affected by that. Those were people that we could
3 count, actually that participated and let us know.
4 It's probably much higher than that, but that's what we
5 know of right there, and as a reminder, you know, those
6 certificates are a way that we count them. We don't
7 you by your name, we just count you by the certificate,
8 and it's something that we certainly want to move
9 forward and let you know that that's something
10 important.

11 Some people don't do the certificate, and it's
12 just something that helps us to get an idea of our
13 successes, and it also allows us to get some feedback.

14 Example of a stand-down event: This was out
15 for a sign company out in the field, and it's something
16 that they sent to us. Just wanted to give an example.

17 And that's my presentation, my update for the
18 Directorate of Construction.

19 Thank you.

20 MR. CANNON: Any questions for Scott?

21 MR. HICKMAN: Director Ketcham, excellent
22 presentation. I just have one question. The early

1 data that you showed -- I just want to confirm that
2 that is Federal data, not state plan data, the
3 inspections, the injuries and illness data?

4 I know the latter part, under the trenching
5 focus included state plan data. I just wanted to
6 confirm that the early part of your presentation was
7 just Federal, or did it include Federal and state
8 plans?

9 MR. KETCHAM: That was Federal data.

10 MR. HICKMAN: Thank you.

11 MR. CANNON: Anymore questions for Scott?

12 I have one, Scott. You know, you mentioned
13 the PPE was something that was under the 6-4 and now
14 it's rolled out into the more formal type rulemaking.
15 There's also one that I think, you know, at least
16 caught our members' attention. That was the trenching
17 revisions that were being proposed in there. Is there
18 a plan to do the same as you're doing with PPE as far
19 as issuing a more formal type rulemaking to update
20 that?

21 MR. KETCHAM: It is not on the reg agenda.

22 MR. CANNON: All right.

1 MS. CAIN: The numbers that are in the slides
2 say that overdose deaths occurred on the job --
3 increased 30 percent between 2015 and 2016. So, those
4 are numbers of actually happening on the jobsite?

5 MR. KETCHAM: I can't say for certainty right
6 now. I will get an answer to you on that.

7 MS. CAIN: You know, thinking about that, I
8 don't know that the Directorate of Construction has any
9 kind of vision as far as what OSHA should be doing
10 about opioids and suicides. I don't know if have a
11 stand on that or were looking for ideas.

12 MR. KETCHAM: We see our role is to share
13 information, and there are groups out there working on
14 these issues that we want to share information through.
15 We see ourselves as a good conduit to share information
16 from a compliance assistance or even just from a
17 viewpoint of people come to our website and want to
18 find out things that are affecting the construction
19 industry trade. We would be a good resource to put
20 information that would be helpful to get this out
21 there, and that's where we see ourselves at this
22 point.

1 MR. SOKOL: Ron Sokol, public representative.

2 Scott, I see in the inspections that you're
3 doing for the trenching, the third quarter, fiscal year
4 ending 2019, the state plan states are doing almost as
5 much as the Federal.

6 The Federal is doing 674. The state plan
7 states are 604. There's less state plan states.

8 So, what is your office planning to do to
9 maybe increase the Federal emphasis on it to maybe a
10 proportionate level, and have you looked at an analysis
11 of where the fatalities are occurring in state plan
12 versus Federal to be able to even shift more resources
13 to the Federal inspections?

14 MR. KETCHAM: Thanks, Ron.

15 What I would say in reference to that is that
16 the numbers reflected on there are abatements, not
17 necessarily inspections.

18 OSHA has increased our inspections by quite a
19 bit, greater than 10 percent. So, I would say that
20 first and foremost.

21 We are putting a focus on that, on increasing
22 the amount of corrections that we're getting out there

1 on trenches.

2 As far as comparing us to the state programs,
3 at this time I would say that I applaud our state plan
4 partners for what they're doing, and we're also
5 encouraging our field, among the many other things that
6 they're focusing on, to do more trench inspections.

7 MR. SOKOL: Do you feel like the relationships
8 that the state plans have with their employers in their
9 states to provide consistent consulting services on a
10 regular basis where they're -- an employer is more apt
11 to call up the state consultant, safety and health
12 consultant, versus the Federal, just based upon how
13 they've developed their relationships within their
14 states, and is there anything that the Federal
15 government can do to be a partner in an outreach to
16 kind of mirror the effectiveness that the state plan
17 states seem to be having?

18 MR. KETCHAM: Our message has been consistent
19 with all partners regarding excavation hazards, and
20 that includes our Federal offices, our state plan
21 partners, and state consultations, as well. So, our
22 message has been very clear to all three parties that

1 -- about the focus and it being the agency priority.

2 As far as the efficacy of how that's moving
3 forward, I can't tell you at this point. That may be
4 something that we can address at a later point.

5 MR. CANNON: I think I was along the same
6 lines as Ron in thinking these were inspections
7 numbers, but you're saying it's abatements. Can you
8 kind of clarify, what do you mean by -- as far as
9 abatement is concerned, abatement versus inspection,
10 what is the difference?

11 MR. KETCHAM: Well, when I say abatements, I
12 mean abated hazards, hazards where an employee was
13 pulled -- or asked to -- where a hazard was identified,
14 OSHA issue a citation, and the employer corrected it,
15 and those don't always add up to the number of
16 inspections.

17 So, you may have inspections, because this is
18 our emphasis program, that may be in compliance, where
19 we go and we look at a site and they're doing
20 everything right.

21 That still counts towards the overall number
22 of inspections. Abatements is counting hazards that we

1 identify that employer corrected.

2 MR. CANNON: Anymore questions for Scott?

3 Thanks, Scott.

4 Our next item on the agenda -- and we're a
5 little bit ahead of schedule -- is an update by Ms.
6 Amanda Edens, and although we are ahead of schedule, I
7 do see Amanda in the back. So, I think we can just
8 pick up and move on with our agenda.

9 Ms. EDENS: All right. So, first I want to
10 start off giving you a little bit about what the
11 Directorate of Technical Support and Emergency
12 Management is.

13 So, in terms of the national office, tech
14 support is the largest directorate, in large part
15 because we have two technical centers that resident
16 outside of the metropolitan area, one in Salt Lake and
17 one in Cincinnati, but sort of at the core of this
18 directorate's mission is a little more inwardly
19 focused, I would say, than some of the other national
20 office directorates, where one of our primary functions
21 is to give technical support to folks who are doing
22 either enforcement or compliance assistance, and when

1 you look at centers like, you know, Salt Lake Technical
2 Center, you know, every time a COSHO takes a sample,
3 they have to send it somewhere to get it analyzed.

4 So, this is where all the silica samples get
5 analyzed. This is where all the soil samples from the
6 trenching inspections get analyzed. And Cincinnati is
7 where we have our staff who calibrate all the
8 equipment.

9 Most of you may have, on occasion,
10 participated in a rulemaking at OSHA, and you may have
11 used our technical data center to submit your
12 information to the docket.

13 In fact, most of the material at this
14 particular proceeding will go into the docket, and we
15 run that for the different pieces of the agency that do
16 either rulemaking or advisory committees.

17 And then, within the national office here in
18 D.C., we have a lot of occupational physicians that
19 help out and consultants on inspections.

20 We have technical experts in our health
21 response team at Salt Lake City and here in the
22 national office that help develop things like, you

1 know, manual chapter that our staff use as they go
2 about doing their inspections or outreach to the public
3 on compliance assistance.

4 So, lot of what we do is sort of not going out
5 to the public, but on occasion, stuff that we do for
6 the field is also available for the public, and so, we
7 do have some outwardly focusing things.

8 In particular, in the last few years -- like
9 three years ago or so -- there was a small
10 reorganization within OSHA, and we got the Office of
11 Statistical Analysis.

12 That's the part of OSHA that does a lot of the
13 recordkeeping activities. We did the rulemakings on
14 activities -- that office did the rulemaking activities
15 for a number of different recordkeeping rules.

16 They are the entity that sort of sorts through
17 the severe injury data, the 300(a) data that you
18 probably are familiar with. We also do a lot of
19 recordkeeping interpretations and things of that sort.

20 So, that's sort of new to tech support within
21 the last three to four years.

22 So, today, I was going to try to just focus on

1 a few things that are a little more outwardly focusing
2 and maybe somewhat timely, given some recent events in
3 the weather.

4 So, we just Hurricane Barry pass through, you
5 know, Louisiana and Mississippi, and so, one of the
6 major technical support things that our directorate
7 does is to help the field in the aftermath of some sort
8 of emergency event.

9 It might be a natural disaster, like a
10 hurricane. We've had a lot of tornadoes. We have --
11 recently, we've had earthquakes, had mudslides. In the
12 last few months, we've had a lot of incredible flooding
13 out in the Midwest.

14 So, we have a presence to develop materials so
15 that when our compliance officers are out there either
16 doing interventions, which is sort of what we do right
17 in the aftermath of an emergency, and then segue away
18 to enforcement, we want to have them have the tools
19 they need to protect the workers that are trying to
20 help people recover from whatever event that has just
21 happened.

22 It's important to remember that, you know,

1 OSHA staff are not first responders.

2 One of the first things we do, just like
3 everyone else does, is we have staff out there that
4 have family, we want to account for our own people, and
5 once sort of the emergency/first responders have
6 handled the very emergent part of the event, then we go
7 out and try to do these interventions.

8 We try to help people do safely things like
9 put rooves back on houses, you know, get power
10 restored, remove debris. So, we have a lot of
11 materials. If you go to our emergency response
12 website, you'll see these.

13 A couple of the ones that are more recent --
14 we have a radiation website. So, this -- you know,
15 like many of our sites, it tries to sort of describe
16 what the hazard is, describe some ways to prepare for
17 this.

18 This radiation can be anywhere from a small
19 event like, you know, somebody makes a spill, all the
20 way up to something, you know, maybe more catastrophic
21 or nefarious like a detonation, and so, it goes through
22 the different kinds of workers, different kinds of

1 things that can be done to prevent and plan sort -- to
2 sort of notice what an event might be, how to plan for
3 it, how to train for it, and how to maybe even exercise
4 for it.

5 The newest one we have -- it's a little more
6 focused on healthcare, not so much in construction --
7 is the measles safety and health topics page.

8 What we've tried to do a lot of in this
9 particular area, not just measles but infectious
10 disease in general, is try to be ahead of the curve.
11 We look around -- we're a part of the national, you
12 know, partners that we've worked with -- NIOSH, CDC,
13 HHS, DHS, those kinds -- and we sit on a domestic
14 resilience group at the White House, where we're all
15 constantly planning, as Federal entities, to sort of be
16 able to respond in the event of an event. So, we're
17 trying to be ahead of things.

18 So, we already had seen the measles uptick,
19 and we were already working on a measles safety and
20 health topics page.

21 We did the same thing when we started to see
22 Zika cases, you know, in the Caribbean, starting to

1 crop up, and we did the same thing with Ebola. Even
2 though Ebola never fully really got here, OSHA and our
3 Federal partners were really ramped up to figure out
4 what would we do if a lot more of these cases started
5 to get in, into our healthcare system, and how could we
6 plan to protect our workers?

7 So, a lot of what we do, fortunately, is not
8 responding and giving technical support in the
9 aftermath of these but preparing for it, and I think,
10 you know, hopefully, we're doing a pretty good job of
11 that.

12 Now sort of moving into another area, also
13 very timely for those of you who didn't sort of, you
14 know, somehow miraculously just appear into the
15 Department of Labor, you probably had to walk out in
16 the heat today. It's very hot.

17 Most of you probably know -- I notice some
18 faces around the room. You are familiar with OSHA,
19 you've been around a while.

20 We started a heat campaign back in 2012, I
21 believe, is when we first launched it, and then we have
22 been continuing that every year. We do a lot of

1 outreach. We do enforcement, not my directorate, but
2 out in the field, they do enforcement.

3 And so, what we've tried to do, especially in
4 the Office of Occupational Medicine and Nursing -- they
5 do a lot of consults, and sometimes they see fatalities
6 or heat illnesses, and rather than just sort of focus
7 on that one event, you know, trying to help a
8 particular inspection or a particular outreach product,
9 we try to look at these events across time and see what
10 are some of the commonalities, how might we improve our
11 outreach and in what we do and the tools we build to
12 help people understand heat exposure?

13 So, we looked across things. We look at not
14 only inspections, we look at severe injury data, we
15 look at the literature, and I think, which most people
16 realize, is that one of those big things is the lack of
17 a climatization, and so, this can happen because people
18 maybe are away from work for extended periods of time,
19 or it might be because they are a new worker and they
20 are just recently to a job, or maybe they're still a
21 current worker but they're put in a job that now has
22 more heat exposure than they had before, and sometimes

1 you might even have just all these sudden kind of --
2 although there's not a real definition for it -- a heat
3 wave, where it has been relatively mild, and all of the
4 sudden, you have a real extreme increase in heat, you
5 may have some problems with the climatization.

6 So, we're trying to incorporate that into our
7 messaging and how we try to help people understand how
8 to prevent heat stress.

9 The other thing we noticed is sometimes
10 there's not a very good documentation of the workload.
11 So, today, if you go outside, it's pretty clear, it's
12 hot and it's going to be a problem.

13 Now, if you go outside tomorrow and it's 80,
14 everybody going to go great, this is great. I'm going
15 to go out, pull out the cooler, and have a nice sit
16 out in the sun.

17 But if you don't take into account your
18 metabolic heat that you're generating when you're
19 working, you may underestimate what the true risk of
20 heat risk -- your true heat risk is, and you know,
21 construction -- it sounds like it's a pretty mild day
22 until you put on your work clothing and you put 40

1 pounds of tools and you're trying to carry them
2 somewhat. Now you're generating some internal heat,
3 which adds to the environmental heat.

4 So, that's an important thing that needs to be
5 looked at.

6 The other thing is, you know, personal risk
7 factors. We've seen a lot of cases where, you know,
8 obesity or cardiac disease or even personal risk
9 factors of medical conditions that exist in them or
10 that they're taking medications and that might
11 exacerbate the impact that heat might have on those
12 individuals.

13 So, we're trying to get these things sort of
14 modified, you know, modify our heat campaign and the
15 things that we try to look at when we go into
16 inspections and see what might have caused an event to
17 happen.

18 We do different kinds of tools, like we have
19 an online wet bulk load temperature estimator, because
20 some of the things sometimes is -- sometimes it's very
21 easy to figure out what the heat risk is, but sometimes
22 you have to back-calculate. Maybe you're trying to do

1 -- not just for an OSHA person doing an inspection, but
2 maybe you're trying to look at your own data and
3 understand why someone got heat exhaustion or
4 something, you know, more serious like heat stroke, you
5 want to say what happened, and you have to look back in
6 time at what that temperature was, and sometimes just
7 looking at, you know, Underground Weather is not going
8 to help you, because that thing to measure the weather
9 might not be at your worksite, and so, there are a lot
10 of things you have to figure out when you're trying to
11 figure out what is the heat risk.

12 It might be, you know, a concrete wall that
13 got heated up the day before. It might be in a micro-
14 climate.

15 And so, you know, while it's always best to be
16 sort of at the site and take the temperature on the day
17 of the risk, sometimes it's not always possible and
18 you're going to have to sort of interpolate.

19 So, we're trying to figure out ways to help
20 people figure out what was the heat risk on the day an
21 event happened.

22 And then, finally, what we're hoping to do in

1 the not-too-distant future here -- it's in the latter
2 stages of clearance -- is to update our health and
3 safety topics space, so we can have sources readily
4 available so that people can see the different kinds of
5 things and resources that we have, some of the
6 information that I just went through, some of the
7 literature that's out there, some of the information
8 that NIOSH has, that ACDIH has, as well as, you know,
9 looking at some of the data that's being published in
10 the literature, some of which my staff has actually
11 contributed to.

12 So, I will move on to the next thing.

13 Sometimes we do some different pieces of
14 guidance development. This is a safety and health
15 information bulletin. That's gone through different
16 names. Depending how long you've been around OSHA,
17 it's had different kind of jargons, but basically, it's
18 a sort of information fact sheet that describes a
19 particular type of hazard.

20 Sometimes these percolate up from the field.
21 They might have a very interesting inspection and say,
22 hey, we think this is -- might be a problem across the

1 country, and they might recommend that.

2 This one actually happened. Acting Assistant
3 Secretary Sweatt actually had seen some information
4 about some law enforcement officers who had cams on
5 their body, and they actually -- with a lithium battery
6 -- had a runaway event and caused a fire to kind of
7 happen on the individual's clothing and they got badly
8 burned, and so, we worked to do SHB on lithium
9 batteries, to help people understand how to recognize
10 when they might be going bad, how to properly handle
11 them, and even how to properly charge them, because
12 sometimes people just, you know, go to Radio Shack and
13 get another charger, and that's not always the best
14 thing, because sometimes the manufacturer's charger
15 knows when to stop, so it doesn't overcharge, whereas
16 other charges don't necessarily understand that.

17 So, anyway, hopefully that's some information
18 that, as you see more lithium batteries being used on
19 different kinds of devices, you can handle those a
20 little bit more safely.

21 Another thing that we did, primarily for -- I
22 won't say "primarily for," but it was helping our

1 COSHOs, because we had so many different pages that
2 looked at, you know, our sampling analyses, some
3 information on toxicity, some information on how to get
4 the right equipment to sample with, and so, we worked
5 with our partners in Standards and Guidance, I think,
6 in the construction and enforcement programs, to put
7 all this information in one place that would be easily
8 searchable.

9 So, now we have all the information. You can
10 get the toxicity information.

11 You can get the same kind of information
12 that's available on the annotated PELs table, which
13 gives you not only OSHA PEL, the ACGIH TLV, the NIOSH
14 REL, and I think the CAL OSHA of admissible exposure
15 limits.

16 So, right there, you can search easily. You
17 know, for COSHOs, they can look to see about any
18 particular sampling, things they need to consider when
19 they're sending samples in for analysis, and so, it
20 gives them a nice kind of easy-to-use, streamlined
21 database, and it's available to the public, so if you
22 needed information on PELs or types of analyses, you

1 know, if you're going to take a particular kind of
2 sample.

3 Another one I was going to bring up, because I
4 get so many questions, on occasion, about OSHA's
5 variance program, and there's always generally a lot of
6 misinformation about what it is and how OSHA uses it,
7 and there's different types, but basically, you know,
8 sometimes people will ask for an interim order so they
9 can do something that's maybe not in alignment with the
10 standard but is as safe as what the standard does, and
11 so, they can request this from the agency.

12 Now, it's a little bit frustrating, folks, I
13 know, because it is a notice and comment process. So,
14 we can't just sort of like hand them out and just deal
15 with the person requesting it.

16 We actually have to propose it, have a comment
17 period, and then issue a final, but at the same time,
18 there's always generally a lot of information that's
19 needed, and so, you'll see the data there. It doesn't
20 seem like we do it very much.

21 We've got a lot of requests, and we really
22 don't -- we have about 13 in effect. We have a lot of

1 chimney variances, and I'll show you a slide in a
2 minute about all the tunneling variances we have, but a
3 lot of them do get turned down, and a lot of times,
4 it's because they're asking for something that's really
5 not set for a variance, like they want to be exempted
6 from the standard.

7 Well, that's not really a variance, and it's
8 not going to happen, and so, generally, we'll just
9 reject it out of hand.

10 And the other one probably is the one that
11 they just don't really demonstrate that -- either they
12 don't give us a proposed alternative -- they can't just
13 tell us, we can't do this, it's not feasible. That's
14 not a variance.

15 You have to come with me and say what are you
16 going to do as an alternate and show me why it is as
17 safe as, and a lot of times, it requires documentation,
18 and a lot of documentation, but it is possible. We've
19 had a number of them, and we do have a number of
20 tunneling variances.

21 Most of these are not around sort of the
22 hazards of digging but the hazards of being in a

1 decompression chamber. When you go down deep enough,
2 you have to be under compressed air, and so, there's
3 some hazards associated with that, and so, we worked
4 out a lot of these, and so, we've seen in the recent
5 years a lot of folks coming in that are doing these
6 really big tunneling projects that are going really
7 deep. They're coming in for variances.

8 And by and large, if they, you know, are
9 following -- the original one was a little bit hard,
10 because we had to sort of work through the new guide
11 tables and things like that, but we have been granting
12 these variances where they're doing these tunneling
13 projects.

14 So, it is possible to get a variance. It is
15 an amount of work. And I think what I tell people
16 generally is, you know, it takes years to do a
17 standard, and so, you know, it's not realistic to think
18 that OSHA is just going to hand these out very easily
19 when a lot of work has gone into the standard to just
20 show why it's necessary and feasible.

21 We want an equal amount of information, maybe
22 not equal, but a fair amount of information to see why

1 people should get out of some of those requirements and
2 why they're doing something that is as safe as what the
3 standard would provide them.

4 Now, I'll go into sort of the latter part of
5 my talk, which is going to be around recordkeeping.

6 The first part, I want to talk to you a little
7 bit about the severe injury reports. This started back
8 in 2015, where we sort of changed the criteria. We had
9 severe injury reports before, but we changed the
10 criteria in terms of the timing, and so, here you'll
11 see -- these are not the fatalities but the
12 hospitalizations and amputations, and it's probably not
13 surprising that a lot of these -- almost 75 percent --
14 are around the inpatient hospitalizations and you have
15 amputations, and the others are mostly either loss of
16 eye or where someone has not really classified what --
17 they reported something but didn't include one of the
18 categories of what it was.

19 I just want to show you a breakdown in terms
20 of hospitalizations and amputations. This is
21 hospitalizations, and it's not surprising to many,
22 wasn't surprising to me, that when you look at the top

1 four or five of these, you'll see that construction is
2 sort of in the top tier there; same thing with
3 amputations.

4 So, moving on to the 300(a) data: So, as most
5 of you know, we had a rule in 2016 that had several
6 provisions, one of which was that a certain subset of
7 employers covered by the recordkeeping rule were
8 required to electronically submit their 300(a) data,
9 which is the summary data that they're required to post
10 at their worksite every year, from February to April.

11 So, we just completed our third cycle of
12 collecting the data, and as most of you probably know,
13 it's collected through an electronic system called the
14 Injury Tracking Application.

15 We just completed, like I said, collecting the
16 2018 year data. We do it by calendar year, because
17 that's kind of how recordkeeping works, not on fiscal
18 years, on calendar years. The due date was last March,
19 and the ITA will be still open until the end of this
20 year.

21 So, typically how it work is, if it's 2019, we
22 will open the ITA portal for 2018 data on January the

1 1st, and we will close it on December the 31st.

2 So, even if you passed the compliance date of
3 March, you'll still be able to submit data, and some of
4 that might be employers that forgot and he's still
5 trying to put it in there and he can good faith if a
6 COSHO shows up, or as a part of an inspection, if a
7 COSHO comes, he will know whether or not this person
8 has submitted their electronic data. They could
9 probably abate it there, and the system will still be
10 up to do it.

11 However, you can't do it for any other
12 calendar year. So, you can't go in now and add the
13 2016 data or the 2017 data. It's only open for the
14 2018 data.

15 So, if you look at the three years, these are
16 broken down by Federal and state. Our state plan
17 partners wanted to use our ITA system so that all the
18 states will submit it to our ITA and then we give the
19 states access to the data through a link that they can
20 get their own state's data to look at. This is all the
21 submissions.

22 The next slide is the actual in-scope

1 submissions. So, these are -- what that means is that
2 some of the people who gave it to us were not required
3 to give it to us.

4 So, you have to look at, one, there's a lot
5 of people covered by the recordkeeping standard. So,
6 you have to be covered to begin with to be in this
7 electronic submission, and there are certain people
8 that are exempt for the recordkeeping standard, and
9 then within the scope of the electronic submissions,
10 you have people that have to have a certain size
11 parameter.

12 So, you have to have 20 or more employees
13 anytime during that calendar year. So, some of these
14 people may not have met that size cutoff, or they may
15 have been exempted, because where you're in the
16 category from 20 employees up to 250, it's only in
17 certain industries, and then in 250-plus, it's all the
18 industries.

19 So, some of these people are putting it in
20 when they're not required to, and so, what we've been
21 doing is trying to contact these folks and tell them
22 you're not required to send it to them, so they don't

1 keep sending it to us.

2 That doesn't mean that they're not required to
3 keep it at their establishment. So, they're still --
4 even though they might be -- and I think maybe that's
5 where some of the confusion is, that they have it at
6 the site and they're thinking they have to send it to
7 us. Because they're not one of these size groups, they
8 don't actually have to electronically send it. They do
9 have to keep it and they do have to post it.

10 As you may know, the original rule in 2016 had
11 three basic provisions. One was for sending in the
12 300(a). The other was for sending in the 300 and the
13 301. And the other was anti-retaliation provisions
14 that were added.

15 So, this year, we issued a new rule, and what
16 that rule does is that it eliminates the requirement
17 for establishments with 250 or more employees to submit
18 their 300 and their 301.

19 That provision only ever applied to that group
20 anyway. So, that is the group that no longer has to do
21 that.

22 The other thing that it did is it added a

1 employer identification number, along with their injury
2 and illness data, and the reason that was done is one
3 of the issues that came up in the 2016 rule and also
4 came up in this rule is that some folks were concerned
5 that there was overlap between what BLS requests and
6 what OSHA requests, and there was some desire to try to
7 minimize that overlap so that maybe -- you know, maybe
8 BLS could use the OSHA data, so they wouldn't have to,
9 like, go out and have an establishment submit it twice.

10 Unfortunately, it's hard for -- BLS cannot
11 give their data to OSHA. They have a -- by law, there
12 is a confidentiality requirement that prevents them
13 from sharing their data with us. There is no such
14 thing for OSHA to share. We're quite willing to share
15 it to BLS.

16 The problem is they can't match. They can't
17 figure out where the overlap is without some
18 identifier, and this employer identifier number would
19 be the first start, which they would be able to match
20 what they have with what we have to figure out where
21 they might minimize any duplicative effort. So, that's
22 sort of the basic rationale behind adding the EIN.

1 And as I said, what has not changed is that
2 folks still have to submit their 300(a) by March 2nd of
3 every year. Going forward, that's going to be the
4 date.

5 I think that's a pretty good date, because it
6 sort of aligns with when they're collecting the 300(a)
7 data anyway and posting it at their establishments.
8 So, it's not going to be like an extra burden to pull
9 that information together, other than electronically
10 submitting it.

11 It doesn't affect the requirement to keep the
12 300 and the 301. Just because you don't have to
13 electronically send it doesn't mean you don't have to
14 keep it at your establishment. OSHA will still be able
15 to access that when we do inspections at different
16 kinds of establishments.

17 And it doesn't change, at this time, the anti-
18 retaliation provisions that were added in 2016.

19 So, I think that sort of wraps it up. I
20 figured I'd end it up with the stuff that you might
21 have the most questions about.

22 MR. CANNON: Thank you, Mandy. Very good

1 presentation.

2 I have a question on the heat work you were
3 talking about. Construction is one that is really
4 impacted by the high temperatures, and you mentioned a
5 couple of things.

6 One is the personal risk factors. But also in
7 your slide it has weak documentation of workload, and
8 you know, you talk about metabolic workload and things
9 of that nature.

10 In my opinion, if you go to, you know, a
11 foreman and say what is that individual's metabolic
12 workload, they look at you like what is that?

13 As far as the heat campaign, is there a way
14 that you can kind of help people understand what that
15 and how to calculate that, because that is combined
16 with the overall heat index, correct?

17 MS. EDENS: The heat index is a little bit
18 different.

19 MR. CANNON: I mean, when someone looks at it,
20 they --

21 MS. EDENS: I'm talking about the risk for
22 heat, and then there's -- the app has a heat index.

1 That's only temperature and humidity that gives you the
2 heat index.

3 MR. CANNON: Right. And it doesn't take into
4 account that other part.

5 MS. EDENS: Yeah. And so, there are tools
6 that -- ACGH has work-rest cycles. The NIOSH has a --
7 I think, in 2016, they updated -- I'm pretty sure they
8 updated -- where's NIOSH? You guys updated your
9 recommended standard for heat. And they have actual --
10 you know, some categories of things where you can go
11 down tables and say, you know, what's moderate work,
12 what's heavy work, and so, there are some things out
13 there in the literature and ACGH and NIOSH, and I think
14 we might have some in our tech manual chapter, that you
15 can go through.

16 You know, it's kind of ballpark, but it will
17 give you -- I think even the NIOSH has -- I was looking
18 at it the other day -- has a little more sophisticated
19 things to calculate, but there are some tools out there
20 that people can understand, sort of incorporate those
21 in to figure out what the -- to add the metabolic heat
22 to the environmental heat.

1 I think some of those are even good for, you
2 know, indoor work, as well. So, some of our stuff,
3 like -- some of the temperature calculators are only
4 good for outside.

5 I would welcome people to look at those
6 things, because there are things out there, and they've
7 been out there for a while. It's not something like
8 super new.

9 MR. CANNON: Any questions for Mandy?
10 Ron?

11 MR. SOKOL: Ron Sokol, public representative.
12 Thank you, Amanda, for a lot of statistics.

13 So, I do have some questions about the
14 recordkeeping.

15 With 90 percent of construction employers less
16 than 20 people, and many of those do not have full-time
17 safety and health representatives, some of the aspects
18 of recordkeeping can be very confusing for them. Do I
19 need to comply, not comply?

20 Does the agency have a tool that would make it
21 easier for them, similar to like an analysis page that
22 they could put in their identification code for the

1 type of employer that they are, the number of
2 employees, and then be able to kind of just click a go
3 and no-go. Yes, you're required to submit. No, you're
4 not. Or yes, you must submit to Washington, or you
5 must keep onsite. To give them, you know, one quick
6 and easy tool that would let them know what their
7 responsibilities are to be able to do a better job of
8 compliance?

9 MS. EDENS: Some of the things we're trying to
10 do are around the application itself, so that it would
11 not enable people that meet certain characteristics to
12 be able to submit their data, because what we're
13 finding it, you know, like -- just like the COSHOs have
14 dropdown menus, if some of the things aren't there,
15 they're not allowed to actually keep going forward with
16 the submission. So, that is one of the ways.

17 We try to do, you know, compliance outreach,
18 you know, using our consultation program, folks who are
19 going to the smaller kind of individuals or worksites,
20 so they understand sort of what the requirements of our
21 rule are.

22 We have -- if you go to the web on the ITA,

1 you have some pretty simple to follow kind of rationale
2 about who is required to do it and who is not, and
3 they're always welcome to call the area offices or
4 call, you know, our office, who can answer any
5 questions if there are some concerns.

6 Generally the questions aren't around so much,
7 you know, should I submit -- a lot of times, more of
8 the questions we get are like -- where, I think, truly,
9 it does get a little more complicated, is should the
10 injury be recorded on the log, and those are the ones
11 they get -- I think, where we get the more questions
12 and, I think, where we're trying to reach out to the
13 small business partners and try to help them understand
14 when something is recordable and when it's not, because
15 the submission part -- that's not as hard to me, and
16 it's pretty laid out on our webpage about who is --
17 what the NAICS code is.

18 We have a chart, and if they don't know their
19 NAICS codes, I guess they could ask our area office or
20 ask us, because sometimes people don't really know
21 their NAICS code either.

22 But we're working on that.

1 MR. SOKOL: I have a follow-up on that. So,
2 you just kind of piqued my mind about creating an app
3 that small employers could utilize to say, first of
4 all, the recordkeeping is one thing. Am I required to
5 submit, yes/no. But then also an app that would -- if
6 you would put in an injury type, that would say, you
7 know, high probability that this is reportable.

8 I know that, you know, OSHA has worked very
9 hard to put different definitions -- yes, this is
10 reportable; no, it's not -- to put that into an app
11 that can be utilized so small employers would be more
12 effective in their submission of data and not subjected
13 to penalties that could be there and use technology as
14 a way to assist them.

15 MS. EDENS: I think the app might be easier if
16 it's just like a yes/no, is it required to be
17 electronically submitted, because that's basically are
18 you in a certain NAICS code, are you a certain size,
19 and if you don't do those, you don't have to submit, so
20 it's a little bit easier.

21 If you're going to tell me what type of injury
22 -- because there's lots of injuries that would need to

1 be recorded. The issue is, is it work-related, and you
2 know, does it meet some of the criteria that make it to
3 be recordable, you know, loss of consciousness.

4 And so, it might be kind of complicated in
5 some senses to get an app that would get all those
6 different kind of parameters in it, and it is
7 difficult, and I understand small businesses have
8 challenges, but I think that's where, you know, our
9 compliance assistance groups -- we have a small
10 business office -- or, you know, focus small business
11 efforts, and we try to get out things.

12 But if we have some work to do and this
13 committee has some suggestions, you know, how we could
14 help people better understand the recordkeeping
15 regulations, we would certainly, you know, welcome that
16 kind of input.

17 We try to make our FHUs and our fact sheets
18 helpful for people to understand, and sometimes it may
19 be, in some of these cases -- because we do get complex
20 questions, even from people who are not small
21 businesses, they're large businesses, and don't
22 completely understand, you know, what is first aid and

1 what's beyond first aid, and so, we get a lot of those
2 interpretations that we have to look at, you know, the
3 facts of the case, and those are the kinds of things
4 that make it hard to do an app, because you don't want
5 to give them some false sense of security that I
6 followed what was on the app and now you're citing me.

7 So, there's always that kind of tension about
8 how to build a compliance app. In my view, apps are
9 really good as a screening tool.

10 Like, we have a heat app. If someone were to
11 say, hey, I've got the heat and I'm good to go for
12 heat, I'd go, like, no, that's part of a heat program.
13 You need a program, and maybe the heat app will get you
14 to say, hey, this is -- I'm getting to the place where
15 I need to implement my program.

16 So, apps only go so far. There's all kinds of
17 noise apps out there. I would not use -- have my
18 COSHOs use it for compliance, but it might get you to
19 say, hey, I'm in the range of when I need to start
20 implementing my noise program.

21 So, I think they can be very good as screening
22 tools, but for compliance tools, I'm not so sure that

1 we're there yet, because there's just a lot of factors
2 to consider in trying to do that.

3 MR. SOKOL: From a compliance standpoint or
4 assistance standpoint, do people call the State of
5 North Carolina or the State of Kentucky and say, hey,
6 is this recordable, do you think? Do you have those
7 type of solid employee-employer relationships where
8 they're using you as a consultant to make those
9 determinations, so they could alleviate any type of
10 recordkeeping violation and make sure that they're
11 following the law as they understand it?

12 MR. MABRY: Scott Mabry, state representative.
13 The answer is yes. We get calls all the time,
14 across the board. Our whole department will get these
15 calls.

16 You know, I even get them at my desk, people
17 will call about reportables, because our phone number
18 is on the website, and there's a lot of confusion out
19 there, and we walk people through it, and we tend to
20 refer them to our education and training section.

21 We have a recordkeeping class that we offer
22 through our department, and it's very helpful from that

1 standpoint. It's actually online, if anybody wants to
2 go.

3 MS. EDENS: We also get a fair amount of e-
4 correspondence, where people can just type in, you
5 know, their question.

6 So, we get -- I mean, our staff is -- I think
7 we get a lot of people asking questions, and I think we
8 do a fairly decent job of helping people understand
9 what the requirements are and helping them to
10 understand if it's recordable or should they be
11 submitting to OSHA.

12 So, we get a lot of that. It's probably one
13 of the top e-cor we get out of all the e-cor that we
14 get.

15 MS. CAIN: Do you have any estimate on the
16 percentage of employers in the construction industry
17 or, you know, in general that are complying with the
18 requirement to submit?

19 MS. EDENS: Well, the problem with that is you
20 need to know the baseline. I mean, in the rule, we
21 estimated it was, you know, 300-plus, right? So, the
22 number that we're getting is fairly shy of what the

1 2016 rule had estimated we would get. It was 300,000-
2 plus. I can't remember the exact number, but if you go
3 into the preamble of the economic analysis or whatever,
4 you'll probably see -- but it was well over 300,000, we
5 think, and so, that's our estimate, looking at sort of
6 Dunn & Bradstreet and who we think has the
7 characteristics that we require.

8 So, you know, I can't tell you how many
9 percent of them are in compliance, because I can't give
10 you an exact number of who is actually required.

11 So, it's kind of -- you know, we're in -- when
12 we did the OSHA data initiative back a number of years
13 ago, we knew who was supposed to give it to us, because
14 we wrote them a letter and said you people have to give
15 it to us. So, we knew who didn't.

16 In this one, we're asking the regulated
17 community to understand that they may be required to
18 give it to us, and so, you know, how good is that
19 estimate?

20 I mean, Dunn & Bradstreet has served us well,
21 so it's kind of hard for me to -- I mean, I can tell
22 you the number, but I don't necessarily know what the

1 universe that really should be to give you an accurate
2 percentage.

3 MS. CAIN: Would you mind just reminding us of
4 the criteria for -- on the construction side of who is
5 required to submit the 300(a)? I don't have that.

6 MS. EDENS: I couldn't tell you NAICS, because
7 there's a bunch of them, but what it is -- I mean, in
8 general, you have to have 20 or more employees, and if
9 you're 20 or more and up to 250 in certain industries -
10 - and we have a chart, and you go click on that and you
11 see all the NAICS codes that apply, and then it's -- at
12 250-above, it's anybody that's covered by the rule.

13 So, you have to be -- you know, there are
14 certain people -- you have a universe of people, but
15 there's -- to start with, you have -- let me step back.
16 You have to be covered by the recordkeeping rule in
17 general.

18 There are a lot of people that aren't covered
19 by the recordkeeping rule except for the severe injury
20 data. There's an exemption. That's just the
21 recordkeeping rule to begin with.

22 Then, out of that proportion of people that

1 are covered, there's another subset that have to submit
2 electronically, and those are the two -- 20 to 50 range
3 in certain industries and 250 and above who are covered
4 by the rule itself.

5 MR. CANNON: Pretty much construction of 20 or
6 more has to provide that.

7 MS. EDENS: With the 300(a). Yeah, unless
8 they're 250 or more, because the 20 to 250 is in
9 certain industries, and if you go on our webpage, it
10 will say -- it will give you the provision and it gives
11 you a little link, when it says certain industries, and
12 you hit that link, you'll see the NAICS codes that have
13 to submit.

14 If you're 250-above, those are all the people
15 that are covered in general by the recordkeeping
16 standard, which aren't previously -- because when you
17 go to the recordkeeping rule -- let's forget electronic
18 recordkeeping for a moment.

19 You go, but it has some partially exempt
20 industries. But they're only partially exempt with
21 regards to severe injuries.

22 So, that's the universe of people covered by

1 recordkeeping, and then you have these other size
2 categories that have to submit.

3 MR. CANNON: There are no exemptions for
4 construction, right?

5 MS. EDENS: Unless they're in one of those --
6 somehow they're in one of those NAICS codes, but you'd
7 have to get somebody who's a little more savvy on
8 recordkeeping to answer these more in-the-weed things.

9 I mean, if you guys have some more specific
10 questions that you need answered around construction,
11 if you guys can outline them for me, I can certainly
12 get my guru, Valerie or Dave Schmidt to get you your
13 answer.

14 MR. CANNON: According to the agenda, we have
15 a break that was scheduled for 1:45 to 2:00. We're
16 quite a bit ahead of schedule, and I'm assuming that
17 Ms. Loren Sweatt is going to show up at 2:00 and not
18 ahead.

19 So, with that said, we're going to take an
20 extended break from now until 2:00 o'clock.

21 (Recess.)

22 MR. CANNON: We're about to resume with our

1 agenda, and before I introduce our next guest, I'd like
2 to remind those who are in attendance or in the
3 audience to please sign in for us in the binder in the
4 back of the room.

5 With that, I'm going to now introduce Ms.
6 Loren Sweatt, who is the Acting Assistant Secretary of
7 Labor for OSHA.

8 Loren?

9 SECRETARY SWEATT: Thank you.

10 My staff really hates it when they spend a lot
11 of time preparing talking points and then I don't use
12 them, but I'm warning you now, that's kind of where
13 we're headed.

14 So, I just wanted to say thank you to everyone
15 who has agreed to join the ACCSH and work on these very
16 important issues related to construction worker safety.
17 Your commitment and dedication to this is more than I
18 think we can say at the agency.

19 It's very important. It's close to my heart.
20 I think Kevin knows that from a lot of experience. And
21 congratulations on your recent Congressional testimony.
22 I think you did a good job.

1 I just can't say enough about how pleased I am
2 that we've reconstituted the committee and are starting
3 to move forward.

4 There's a lot of important work that's going
5 to go on. I know your agenda is very full, and it's
6 full of a lot of things that the construction folks
7 here, internally, have been working on and
8 prioritizing.

9 So, I think folks know, trenching, the
10 trenching initiative has been going on for more than a
11 year. It's our priority goal. It's something that
12 Scott and his folks have been working on.

13 Our regional people are very well aware of the
14 challenges, and so, as we proceed on all of the
15 different issues that you all have, if there are other
16 things that we can be doing and should be doing in this
17 area to try to get the message out, we are very
18 interested in how we send that message back out.

19 We obviously have multiple tools to do that,
20 one being enforcement. We're not shy to use that tool.
21 I think folks have seen that over the last couple of
22 years. But I think what we need to be doing is getting

1 folks before they get in that trench.

2 And so, we've tried really hard to focus on
3 quick cards and public service announcements and some
4 of the other things in that area.

5 If there's something else that we can be
6 doing, we're all ears, and so, I'm hoping that it's one
7 of the things that you all can talk about.

8 I was very pleased to participate in the
9 stand-down this year related to falls, and it was a
10 great opportunity.

11 For the one that I participated in, there was
12 a really great demonstration for the 1,600 construction
13 workers that were there, about tying off, tying off
14 properly, the idea that it's not just wearing your
15 lanyard and tying off but doing it in the right way,
16 depending on the height that you're at.

17 So, there's a lot of these technical issues
18 that I think you all see as a daily, hey, this is what
19 we do out. We go out, we put our stuff on, we tie off.
20 But you know, we need to get those new workers. We
21 need to get the complacent workers.

22 We need to really start working on together

1 making sure that folks at the beginning of the day are
2 in the right mindset to proceed with the work that
3 they're doing.

4 The work that they're doing is very important
5 and stressful and straining, and we want to make it as
6 easy as we can for folks to go forward and do the right
7 thing.

8 There's a lot of other items on your agenda
9 that I hope that you all can reach some consensus on as
10 we go forward.

11 I think there's some discussion of personal
12 protective equipment later down the road. I'll be very
13 interested in your thoughts as we address that issue.

14 Welding in construction is another on there,
15 tomorrow.

16 So, I'm happy to take questions and talk a
17 little bit more about what's going on, but I really
18 just think that this is a great opportunity for our
19 folks to hear what's on your mind and a great
20 opportunity to put a lot on the table.

21 If there are things on the agenda that we need
22 to consider, we need to start doing, you know, clearly,

1 doors are open to try and figure out how to resolve and
2 solve some of these problems, but I think this is very
3 important work, very important committee, and I welcome
4 you and thank you for accepting the invitation to join
5 the advisory committee, and I appreciate the folks in
6 the audience who also -- you know, participating in
7 keeping construction workers forefront and their safety
8 forefront in their mind.

9 I would be remiss if I didn't mention that we
10 are working in partnership, I guess, not in official
11 partnership, but to address the issue of suicide in
12 construction. We know that's also on your agenda.
13 It's very concerning.

14 I've made a couple of public speeches where
15 we've brought this up, and I'm hoping that -- it's
16 again a situation here at the agency where you'll never
17 know if you have touched a person, because something
18 bad did not happen, but I would really like to think
19 that, the more we can put out there, the more
20 information -- there's something on our website now --
21 that we can reach the person that's in crisis and, you
22 know, help those folks. So, we're going to continue to

1 work towards that, any other information that we can
2 put out on our website or in any of our other media
3 opportunities, be it our Quick Takes, Twitter -- we
4 have a pretty good Twitter feed.

5 So, you know, we're open and interested in
6 trying to help work to, you know, the goal of zero
7 here.

8 MR. CANNON: Thank you, Loren.

9 Any questions?

10 (No response.)

11 MR. CANNON: I just want to say thanks for
12 everything you do to support Scott and his group. I
13 think it's evident, you know, the support that you have
14 by reconstituting this committee.

15 As I mentioned -- I don't know if I said it
16 earlier, during my intro, but I think it's been, you
17 know, a little over two years since we had met in
18 person, so it's good to have the group back and
19 continue to work where we left off in 2017.

20 SECRETARY SWEATT: Yep. So, you guys are very
21 busy.

22 MR. CANNON: Yes.

1 SECRETARY SWEATT: I really appreciate the
2 opportunity, and I'm sorry, I do have to scoot, because
3 I have another meeting, but you know, I'm just down the
4 hall if there's something that needs to be discussed
5 with me, but otherwise, I think you're in good hands
6 with the folks that are here, and I wish you good luck.

7 MR. CANNON: Thank you.

8 SECRETARY SWEATT: And I don't know what's
9 wrong with the air conditioner, but I'm going to check.

10 MR. CANNON: It's warm.

11 SECRETARY SWEATT: Thank you.

12 MR. CANNON: All right.

13 So, we are plugging right along through the
14 agenda, and our next item is the presentation on
15 proposed rule to clarify the requirements for the fit
16 of personal protective equipment in construction.

17 I do see Garvin, and I'm not sure if Vernon is
18 going to join him, but I see both of them.

19 But one thing I want to announce -- and that's
20 for the attendees in the back -- is that we are doing
21 this a little bit different as far as the public
22 comments go. Yes, we will have the public comment

1 period at the end of the day, but we are also building
2 in a round of public comments after Garvin's
3 presentation and before the committee starts to debate
4 and discuss the issues that are presented.

5 So, basically what I'm saying is our attendees
6 will have an opportunity speak directly to what is
7 presented by Garvin prior to the full committee
8 debating the issue.

9 So, should they sign up in the back if they
10 want to do that?

11 MR. KETCHAM: Yes.

12 MR. CANNON: Okay. So, if you're interested
13 in, you know, speaking as a follow-up to Garvin's
14 presentation, please do sign in in the back.

15 MR. BRANCH: Actually, it's going to be
16 Vernon's presentation. We represent the Office of
17 Construction Standards and Guidance in the Directorate
18 of Construction. My name is Garvin Branch. I'm the
19 director.

20 Vernon Preston is the project officer on our
21 Standards Improvements Project No. 4.

22 This particular issue was presented in that

1 particular rulemaking, and he's been the project
2 officer on extracting it out and making it into a
3 proposed rule.

4 So, I'm going to turn it over to him.

5 MR. PRESTON: Thank you, Garvin.

6 As Garvin said, my name is Vernon Preston.
7 I'm from the Office of Construction Standards &
8 Guidance in DOC, here to talk about personal protective
9 equipment fit in construction.

10 As Garvin stated, OSHA would like to propose a
11 notice of proposed rulemaking on our revisions to the
12 requirements for personal protective equipment in
13 construction.

14 (Pause.)

15 MR. PRESTON: I'll start with some background
16 information.

17 So, on December 6th of 2012, OSHA published a
18 request for information on the Standards Improvement
19 Project No. 4 or SIP 4.

20 The purpose of SIP 4 was to improve and
21 streamline OSHA standards by removing or revising
22 requirements that are confusing, that are outdated,

1 that are duplicative, or inconsistent with other OSHA
2 standards.

3 OSHA issued the request for information
4 seeking recommendations on what changes and what
5 revisions to make to OSHA standards.

6 OSHA received comments to this RFI from
7 stakeholders that asked OSHA to ensure that PTE fits
8 properly all construction employees.

9 There were two points, generally, that these
10 commenters made.

11 The first was that PPE that did not
12 appropriately or properly fit employees was not
13 protective and would not protect workers from hazards.

14 The second point is that they wanted OSHA to
15 harmonize their construction standard with requirements
16 that exist currently in the general industry standard
17 and in the maritime standard, which requires PPE to fit
18 properly.

19 With these comments, OSHA proposed a notice of
20 proposed rulemaking for SIP 4 on October 4, 2016. The
21 proposal included requirements for PPE used in
22 construction to fit properly. OSHA explained that

1 existing requirements for PPE to be adequate and to be
2 of a safe design precluded employers from using ill-
3 fitting PPE.

4 To make this requirement explicit, OSHA
5 proposed language that was similar to what exists
6 currently in general industry and in the maritime
7 standard.

8 OSHA received four comments on the proposed
9 changes to the PPE standard in construction.

10 Two of those comments supported the changes
11 completely. They were happy to see that OSHA was
12 coinciding its construction standard with the general
13 industry and maritime standards, and they were happy to
14 see that OSHA was requiring explicitly for PPE to fit
15 properly.

16 Another comment also supported the language
17 but included a caveat about cost and about the
18 availability of PPE.

19 And lastly, one comment submitted was opposed
20 to the language that OSHA proposed. That comment
21 stated that PPE is part of an assessment of what PPE is
22 needed, needed to fit appropriately, but ultimately,

1 the comment concluded that OSHA had not given enough
2 thought and consideration to how the revisions to that
3 language would affect the construction industry.

4 OSHA decided to take these comments and, in
5 the final rule, decided to withdraw the revisions to
6 the PPE standard in construction.

7 Instead, what OSHA would like to do is we'd
8 like to take that information and propose it in a
9 notice of proposed rulemaking.

10 OSHA believes that doing so will allow for
11 more robust comment and more stakeholder participation
12 on this particular issue.

13 (Slide.)

14 MR. PRESTON: So, on this slide, at the very
15 top, we have the current language that exists in the
16 PPE standard at 1926 95(c).

17 You can see that it says that, for -- that PPE
18 shall be of a safe design in construction for the work
19 performed.

20 Below that, we have the proposed regulatory
21 text that we would like to use.

22 We keep the same requirements regarding

1 design, but we add a section that says that the PPE
2 selected must properly fit the affected employee. This
3 is the same language that we use in the proposal for
4 the MPRM for SIP 4.

5 Here again we have the proposed regulatory
6 text that we would like to -- that we would like to
7 use.

8 At the very bottom, you can see that
9 highlighted in red, and at the very bottom of the
10 slide, we have the language that exists currently in
11 our general industry standard.

12 As you can see, the two are very similar, and
13 the point is to make sure that the language that is
14 used in construction standard is harmonized with the
15 general industry standards.

16 The language that's there in the general
17 industry standard exists exactly the same in the
18 maritime standard, as well.

19 I've kind of gone over this a little bit
20 already, but again, our rationale for proposing this
21 language -- it already exists in our OSHA standards,
22 and we were asked by stakeholders to make sure that

1 that language is harmonized in the construction
2 standards.

3 We also believe that we could implicitly
4 require that PPE properly fit by requiring it to be of
5 adequate and safe design. OSHA is simply making this
6 revision to make it clear and explicit that that PPE
7 must properly fit.

8 And lastly, OSHA has issued several guidance
9 documents that speak to the importance of PPE and
10 including the guidance documents that the PPE must fit
11 in order to protect workers from hazards.

12 So, in a nutshell, that is what we would like
13 to do.

14 I would be more than happy to try to answer
15 any questions that you have, and look forward to your
16 discussion and recommendation.

17 MR. CANNON: Thank you, Vernon.

18 Before the committee gets into our debate and
19 discussion, I'm going to ask once again if there's
20 anybody in the public that would like to make any
21 comments in response to their presentation.

22 (No response.)

1 MR. CANNON: All right.

2 You know, I think we -- I don't know if this
3 was 2011 or 2012, but I think we had a presentation
4 where it was borne out of one of our workgroups where
5 the focus the PPE or the discussion started where it
6 was like PPE for women out of the diversity workgroup,
7 and then I think it kind of evolved where, you know,
8 others in the committee said, well, wait, you know, it
9 may not be just an issue for women. It could be for
10 your, you know, smaller statured men or your larger
11 men.

12 So, I guess my question is, with this implicit
13 requirement, how has that been enforced, or have you
14 found it to be -- you know, have you enforced this
15 implicit requirement that PPE fits to this point, in
16 the absence of regulatory language?

17 MR. PRESTON: Again, we believe the implicit
18 requirement is there. If we were to look at
19 enforcement stats, you know, I'm not sure exactly what
20 we would find, but as part of preparing the rule,
21 that's one of the things that we are doing.

22 MR. CANNON: That's the only question I have.

1 Any questions?

2 MS. DEPRATER: Cindy DePrater, employer rep.

3 First of all, gentlemen, good job on the
4 presentation.

5 Do you have any statistics to show how this is
6 enforced in the general industry standard, because fit
7 is subjective, as we all know, and so, I'm just curious
8 as to how it is being enforced in maritime and general
9 industry and how you would train OSHA compliance
10 officers to understand what fit actually means.

11 MR. PRESTON: At this time, in preparing the
12 rule, that's one of the things that we are looking at.
13 So, we don't have any stats for you at this time.

14 But one thing I will say is that, in doing the
15 research, looking at our letters of interpretations and
16 things that people have asked, there are no questions
17 about this particular standard that I have come across.

18 So, it seems to be fairly clear, at least to
19 the industry, how they can meet the requirements of the
20 rule.

21 MS. DEPRATER: So, let me just make a
22 suggestion, as a follow-on, that maybe there do need to

1 be some visual management cues that you can use in
2 assessing what fit actually looks like and what you're
3 looking for through this standard.

4 Again, I think it's good, but I would like to
5 see something that gives your compliance officers or
6 the general public, when they're trying to determine
7 fit, just some guidelines.

8 MR. PRESTON: Sure.

9 MR. CANNON: Ron.

10 MR. SOKOL: Ron Sokol, public representative.

11 Thank you for bringing this issue to us.

12 I work in the petrochemical industry, where
13 you have contractors that are doing construction work
14 right alongside proprietary plant people that aren't
15 doing construction work that basically could be under
16 two different regulations or evaluations of the
17 regulations.

18 So, first off, I'd like to applaud your effort
19 to be able to have this congruent with that, and I'm
20 sure people in maritime would feel the same. You could
21 have a person in a vessel that is a construction
22 activity, and they wouldn't have to be checked for fit

1 other than -- you know, you've said that it's implicit,
2 but you know, the question Cindy has is, you know, are
3 your compliance officers going out there?

4 So, my question to you, do you envision,
5 through this, any different process on the part of the
6 employer to have to add a fit verification to their PPE
7 assessments where, if the compliance officer comes in
8 and says where is your fit verification? I've looked
9 at your worksite, you have some tall people, some
10 short people, you have women, you have men. I need to
11 see your fit verification that you made sure every
12 harness fits, every hardhat, as we progress to hardhats
13 that are now more designed for traumatic brain
14 protection.

15 As new things come on the market, what is the
16 vision of the agency on the part of the employer to be
17 able to say, yes, that's a compliance to the intent of
18 the law, or no, that's not.

19 You just can't look and size people up and do
20 kind of an evaluation in the morning. You all look
21 like you're the same size, have at it, versus, okay, I
22 have my fit for Ron done, I have my fit for Chris done,

1 where you're having to categorize every person to
2 ensure compliance with the standard.

3 MR. PRESTON: I'm not sure I can answer that
4 question completely, so I'll take a step back a little
5 bit.

6 One of the reasons why we included this in the
7 standards for -- the standard improvement project is
8 because we didn't see this as being something that
9 would change how we -- our policy on this or how we
10 would enforce it. So, we didn't anticipate making any
11 changes.

12 So, to your question about how an employer
13 would do their evaluation of whether the PPE is
14 appropriately fit would be kind of a vision that it
15 would still be a part of how they're doing their
16 process now for how PPE is appropriate for a particular
17 hazard.

18 So, hopefully, that kind of gets at what
19 you're asking.

20 MR. BRANCH: Also, the standards improvement
21 projects are just meant to harmonize the language such
22 that, you know, you don't get questions or

1 interpretations; you have different language here and
2 you have different language here.

3 As he said, it was not intended to incur any
4 extra burdens on employers.

5 However, as it got later in the review
6 process, we got feedback from our stakeholders that it
7 did, and once you get into changing provisions such
8 that they do incur burdens on the employer that we
9 haven't costed, then it's not really appropriate for a
10 standards improvement project.

11 So, that was the main reason why we took it
12 out and put into a notice of proposed rulemaking such
13 that they will have an opportunity to expand upon how
14 is this affecting you differently than how you were
15 doing it prior to, you know, the change of the
16 language?

17 So, you know, going forward, we did not
18 anticipate that we would change your work practices,
19 but apparently you are, so we're very interested in
20 finding how that is, some public comment.

21 MR. SOKOL: Just to kind of -- to close my
22 comments, I think it's a very good thing, because it

1 raises that issue where it may not be raised before,
2 and it's just one more thing to ask that question of,
3 are you sure everything fits and is appropriate, and
4 you know, just to be able to say it's adequate and safe
5 design probably is lacking for the aspect of making
6 sure that it will, in fact, do the intended protection
7 that it was assessed to do.

8 MR. BRANCH: And another advantage of getting
9 comments on the rule, we maybe will use some of that
10 information in the guidance that you suggest, so you
11 know -- and it's coming right from the industry.

12 We're very, very sensitive to your questions,
13 and we listen, so you know, we're doing what you asked
14 us to do.

15 MR. HICKMAN: Thank you.

16 Again, excellent present, and I -- Palmer
17 Hickman, employee representative.

18 I think many of us may envision different PPE
19 when we think about this.

20 So, I'll take it from an electrical
21 perspective.

22 We have rubber insulating gloves. I think

1 this is a very reasonable rule. I think, quite
2 frankly, doing something other than making sure it fits
3 properly is -- I don't even want to pick a word for
4 that -- reckless, maybe, but --

5 So, rubber insulating gloves. You have to
6 size them properly, because you need the dexterity.

7 So, there's one thing that folks may not think
8 about, so -- and our garments, arc flash suits, one
9 size does not fit all, and one size probably fits few.

10 So, we have -- I think, certainly, in the
11 construction industry, from the electrical industry, we
12 would certainly welcome this, and it's much needed, and
13 again, very feasible and reasonable, at least in my
14 opinion.

15 Thank you.

16 MR. WHEELER: Wes Wheeler, employer
17 representative, and also speaking to the electrical
18 industry, as well.

19 To follow up on Palmer's comments, I think one
20 of the concerns that we also have is how this is going
21 to be interpreted by the COSHO officers in a situation
22 where, say, the rubber goods may not be available from

1 the manufacturer.

2 We may have individuals working in the field
3 where the manufacturer may not have rubber insulating
4 gloves that would actually fit the employee to the
5 extent that they need them.

6 So, I think that, you know, maybe this is
7 bringing awareness to the industry, as well, especially
8 from the electrical industry, to let them know that,
9 you know, they may have a general sizing of these
10 rubber goods, but you're going to have to remember that
11 we have different classes based on the different
12 voltage levels, that the utility workers and the inside
13 electrical workers are doing, but if we have somebody
14 that has a small, you know, size 5 hand and the
15 manufacturer doesn't make something to that level
16 that's going to provide the electrical protection they
17 need, we need to ensure, before the employer is struck
18 through that says, hey, you know, you don't have it, we
19 need to make sure that that PPE is available for the
20 employer to actually provide to the employee in the
21 need in that particular point in time.

22 MS. CAIN: From something someone else said,

1 OSHA is not interested in proposing a new schema where
2 employers will have to document that they've
3 demonstrated that the PPE fits properly. Is that
4 correct?

5 MR. PRESTON: That's correct.

6 MS. CAIN: One of the issues that I've heard
7 about is that the fit could be subjective, and so, I
8 think that exists now, without any language change.

9 Any guidance as to -- I think a lot of people
10 are concerned that it would be an overzealous
11 enforcement activity, that the compliance officer may
12 come out and cite an employer if an employee claims
13 that something is somewhat uncomfortable, even if the
14 fit is adequate to do its intended function. So, I
15 think you need to be aware of that.

16 That being said, I think it's a positive
17 action to take.

18 The one thing, though, that I always go back
19 to is that my understanding is, unless there is some
20 type of explicit requirement or written assessment or
21 something of that nature, that compliance officers
22 would not cite an employer in the absence of a hazard.

1 So, isn't it true that a compliance officer would have
2 to demonstrate that poor fitting personal protective
3 equipment would create a hazard to actually cite them?

4 MR. BRANCH: Well, in general, we would have
5 to have a hazard before we would issue a citation, and
6 we would also have -- you know, during our informal
7 conferences, talk about what the compliance officer
8 really saw at the site.

9 So, there's plenty of opportunities to get at
10 what's really going on, and I've been in rulemaking for
11 20 years. Everything that we put in the standard, you
12 think the rogue COSHO is going to take out the ticket
13 book and just go out citing people.

14 That really wasn't the intent. It was just to
15 make sure that it's consistent throughout all of OSHA,
16 not just, you know, something -- a language change and
17 a language difference in the construction standard that
18 can be exploited in some way, you know.

19 We just wanted to make it consistent so
20 there's no confusion.

21 MR. CANNON: I mean, I guess to, you know,
22 Chris' point, as well as the issue that Wes raised,

1 that, you know, even though there's not an exact fit or
2 a perfect fit, it still provides the protection that it
3 is designed to provide, and then it's, you know, trying
4 to define what is proper fit, you know, and again, back
5 to a point that Chris made, again, it could be issued
6 and fitted properly, but it's just not comfortable to
7 me, and so, if you ask me, does it fit, I'm going to
8 say no.

9 So, I think those are the things that the
10 group is, you know, asking you to take into
11 consideration.

12 MR. KETCHAM: I'd like to add to that. I
13 noted in the very beginning that I spent 19 years in
14 the field. I've been a compliance, a COSHO. I've been
15 an assistant director and a director for over 10 years.
16 I have never issued a citation in absence of a hazard.
17 It's one of our prima facie elements that you have to
18 have in order to move forward with an apparent
19 violation of the act.

20 So, in regards to that, I'm speaking for me
21 personally, from my experience. I have not been aware
22 of any citations for -- the vast majority of the

1 citations -- better way of saying it -- is for lack of
2 PPE, not for ill-fitting PPE. We're just trying to
3 standardize this.

4 So, I will say I've been in six different area
5 offices, and I have not seen somebody, as Marvin
6 mentioned, the rogue COSHO, go out and issue a citation
7 that made it through the adjudication process of going
8 through an assistant director or a director that moved
9 forward in the absence of a hazard. I just wanted to
10 put that out there.

11 MS. CAIN: Just to follow up, there's a
12 definite need in our industry for more workers, more
13 skilled workers, and a greater pool of potential
14 workers to come in, and the apprenticeship programs of
15 the building trades are under a lot of pressure to
16 recruit people into the construction industry who don't
17 look like everyone looked 20-30 years ago. That
18 includes women and people of color and people of
19 different races.

20 So, when you look at that push that -- a lot
21 of it comes out of the same building -- to diversify
22 the workforce and meet certain criteria, bringing in

1 women, in particular, who may have smaller hands for
2 gloves and smaller statures and special needs for fall
3 harness equipment.

4 I think it's really timely that this agency
5 would be consistent with the Department of Labor vision
6 and requirements to address the diversity that is
7 needed more in the construction industry than we have
8 right now.

9 So, that's part of the reason that I think
10 this is an appropriate move for OSHA.

11 MR. COMBS: I just have a suggestion. I like
12 the idea of where this is going, but I would just ask
13 that you also look at -- several of the regulations
14 have very specific fit testing. Others don't. So,
15 let's give some more guidance on the ones that don't,
16 and that way, you know, everybody's on an even playing
17 field.

18 MR. EARNEST: Scott Earnest, NIOSH.

19 I just wanted to say, to me it makes perfect
20 sense to move forward on this. I applaud OSHA for
21 taking it on. It seems very reasonable.

22 There's been a lot of research over many years

1 on fit for personal protective equipment. I've had
2 numerous publications that have come out, specifically
3 the construction industry, where there are problems,
4 where issues with harnesses in the past, with women
5 wearing harnesses that didn't fit, and there were a lot
6 of changes made to make those fit.

7 And you know, have PPE that fits the worker is
8 extremely important, not only from a safety perspective
9 but also from a comfort perspective, and if the PPE is
10 more comfortable, it's more likely to be worn. So, I
11 think this is a very reasonable and appropriate move by
12 OSHA.

13 Thank you.

14 MR. TESSIER: Kind of along the line of what
15 Scott just said, but I'm going to take to a different
16 -- PPE is made to certain sizes and it may or may not
17 fit, but when we go to fall protection -- and if you
18 noticed earlier, fall protection, lack of training has
19 reached the top 10 in the last couple of years.

20 Remember, when somebody puts a harness on,
21 they must be trained in it first, which is already a
22 rule, and I think that what we're doing here can only

1 help that.

2 A properly fitted, correct size harness costs
3 the same as an improperly fitted harness. So, if the
4 training is done right and it's been worn properly, it
5 can only save people money, period.

6 So, if there's a cost worry here, I disagree
7 with that.

8 One of the four comments, you mentioned
9 somebody had an issue with cost. The contractor is
10 already buying this stuff, and most of them are buying
11 the right stuff.

12 The training is where some of the issues may
13 be. We need to teach better to wear it properly.

14 MR. CANNON: Anymore questions?

15 Ron.

16 MR. SOKOL: You know -- Ron Sokol, employer
17 representative -- or public representative, excuse me.

18 But you know, when we sit here and we think,
19 you know, what things could you face? You know, what
20 problems could you have? So, I just -- you know, if
21 you had a situation where a person had to wear a
22 protective garment that is the right size but causes a

1 rash, just contact dermatitis associated with it -- and
2 I go back to working in a chemical munitions job years
3 ago, and there were certainly people in the -- the Army
4 said you had to wear this garment. Everything else was
5 -- had to be thrown out. And it caused a huge
6 upheaval, because it was uncomfortable, other than one
7 -- one battalion said order given, no problem.

8 And so, the commanding officer asked, well,
9 how did you get your guys to all do that? They're
10 complaining all over the Army about dealing with these
11 chemical munitions. And he said it's the only garment
12 we've ever known. So, they just got used to it.

13 So, my thought, you know, this idea about fit
14 -- I'm just thinking, you know, what does that really
15 mean?

16 Does that mean, okay, I have the right size,
17 but if it now contacts a hazard or an illness like
18 contact dermatitis, because I'm allergic to it, is the
19 employer going to be required to continue to go through
20 multiple different types of garments in order to ensure
21 that that person has the protection that they need, and
22 where do we stop, you know, with that, associated with

1 it.

2 So, if that's not a fit issue, then that's a
3 whole other issue that doesn't get put here, but you
4 know, is that considered a fit when, you know, it
5 doesn't fit for that person's body chemistry, right?
6 As opposed -- when we think fit, we're just thinking of
7 size, but what about fit for that?

8 MS. CAIN: If the situation you're describing
9 doesn't exist now, I don't understand the connection to
10 this fit question. I mean, other committee members
11 have said -- I mean this is an issue now, regardless of
12 whether OSHA moves forward with the proposed rule.

13 MR. SOKOL: Well, my question is, you know, is
14 the expanded definition of -- you know -- and I'm
15 asking, Preston, you and maybe even Garvin, you know,
16 what does fit mean?

17 Does fit mean just for size, or does fit mean
18 for, you know, comfort? You know, what does the
19 definition of fit -- what if my body chemistry can't
20 tolerate that fabric? Then it doesn't fit for me. So,
21 with that, you know, is that expanding the definition
22 that you even thought about or when you're thinking

1 about fit, it's just dealing with the appropriate sizes
2 for an individual?

3 MR. PRESTON: Well, I can say that -- I can
4 say that we hadn't considered changing the definition
5 of fit, you know. That's not something that we had
6 envisioned when we did this for SIPs, and it's not
7 something that we had gone down the road with for this
8 NPRM at this point.

9 But I hear what you're saying. So, it's
10 something that we'll keep in our minds as we prepare
11 the rule to move forward.

12 MR. CANNON: I think, along the lines of
13 Chris, I don't think -- you know, those types of
14 situations exist now, where folks -- you know, their
15 body may not be compatible to whatever the material is,
16 wool or latex.

17 I think the employer then, you know, explores
18 other options to provide to that employee that would
19 still, you know, afford the same level of protection.

20 So, I don't think you're going down that route
21 as far as, you know, fit having to do with, you know,
22 somebody's body chemistry. You're more looking along

1 the sides of, you know, are the gloves too big or too
2 small or -- I think that's where you're going, correct?

3 MR. PRESTON: Right. Providing protection for
4 the hazard.

5 MR. WHEELER: Wes Wheeler, employer
6 representative.

7 I'll say the comment here that I think
8 everybody's concerned with, when we talk about fit and
9 garments, for instance, okay?

10 Well, the relationship that Ron mentioned,
11 too, is some of the arc-rated clothing that's developed
12 may have different processes by which it's created,
13 which could interfere with that, and yes, the employer
14 is going to research a proper solution to that, but I
15 think where the issue comes in about what's the cost
16 factor -- well, as a construction employer -- and we
17 represent construction employers all over the country
18 -- we have a transient workforce, and to Fravel's point
19 about having specific requirements in specific sections
20 may be appropriate when it comes to some of those
21 things, because you know, as we have to provide certain
22 specific PPE, say garments for arc-rated -- you know,

1 in situations, you know, we may be providing one
2 garment for that individual, for them to use, and we
3 may ask them or we may require them, per the
4 manufacturer's or ASM requirements, as far as the
5 proper care and maintenance of that particular garment,
6 because it's going to -- you know, their safety may
7 depend on it, so -- you know, if we invest in that.

8 So, if we've got a transient workforce, I
9 think one of the cost factors here is, you know --
10 it's, you know, right to work, where people are
11 leaving, and we have to replace employees.

12 So, we constantly have a changeover, and
13 that's where some of the impacts to construction
14 employers, especially smaller ones, and even larger
15 employers, you know, to that extent, where they're
16 going to have to have -- you know, they're going to buy
17 one set that they can get a -- you know, a deal on and
18 to be able to utilize and standardize on that.

19 So, yes, it wouldn't be a fit for comfort. It
20 would be a fit for, you know, performing the duties
21 required.

22 And I think that that's where you start

1 talking about how many different sizes do we have to
2 have? How many different, you know, garments do we
3 have to buy? How many garments do we have to replace
4 when it's going to be an impact on cost to the
5 employer?

6 And then, you know, because the employee is
7 then going to be asked to take care of it or provide
8 it, and then when we provide that to them and they quit
9 the next day, then we have to provide what? Something
10 new for somebody else.

11 So, those are some of the concerns when we're
12 talking about cost impacts related to that, from the
13 employer's perspective, and the employer has to incur
14 those costs, and maybe one of the points that was
15 brought up in some of the comments that you related.

16 MR. CANNON: Anymore questions, comments?

17 All right. So, I think we've, you know, heard
18 the presentation. We've discussed the issue.

19 So, I'm assuming what you're looking for from
20 us, Garvin and Vernon, is a recommendation to move
21 forward with official rulemaking.

22 MR. PRESTON: That's correct.

1 MR. CANNON: Okay. And with that, I think
2 that would require us to entertain a motion.

3 MR. SIZEMORE: I am Greg Sizemore, employer
4 representative.

5 I make a motion that OSHA move forward with
6 the proposed ruling that they have presented to us here
7 today with regards to PPE and fit.

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

9 (Chorus of ayes.)

10 MR. CANNON: Opposed?

11 (No response.)

12 MR. CANNON: All right.

13 I guess, you know, you guys can't predict, you
14 know, the timeframe, but I'm assuming this won't be
15 part of the fall regulatory agenda or it potentially
16 could be?

17 MR. BRANCH: Oh, we're working on it as we
18 speak. It's a priority.

19 MR. CANNON: All right.

20 Well, we've made the motion, and they're going
21 to move forward. So, that concludes our last
22 presentation for the day, and now we're into our public

1 comment period.

2 With no one available or the individual who
3 was interested to make public comments not in
4 attendance with us, I guess that concludes --

5 MR. GILLILAND: This is Joey Gilliland, ACCSH
6 counsel.

7 Before we adjourn, I'm just going to move some
8 of the exhibits into the record.

9 So, I'm going to designate the OSHA
10 construction update Power Point as Exhibit 1; the
11 Directorate of Technical Support and Emergency
12 Management update Power Point as Exhibit 2; and the
13 personal protective equipment in construction Power
14 Point as Exhibit 3.

15 I move those into the record.

16 MR. CANNON: As I was saying, I think we've
17 had a good meeting today, good information was
18 presented, and a good discussion from the group. So, I
19 thank you all, and we will start back up tomorrow
20 morning at 9:00 a.m., same room, and with that, the
21 meeting is adjourned.

22 (At 2:41 p.m., the meeting was adjourned.)