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UNITED STATES DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
- - -
MEETING OF THE ADVISORY COMMITTEE ON
CONSTRUCTION SAFETY AND HEALTH
- - -

Thursday, April 16, 2009
Room And-3437A
Frances Perkins Building
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C.

The meeting was convened at 8:35 a.m.,
MICHAEL J. THIBODEAUX, Chairman, presiding.

1 PRESENT:

2 EMPLOYEE REPRESENTATIVES:

3 WALTER JONES

4 THOMAS L. KAVICKY

5 FRANK L. MIGLIACCIO, JR.

6 EMMETT M. RUSSELL

7 JAMES R. TOMASESKI

8 EMPLOYER REPRESENTATIVES:

9 MICHAEL J. THIBODEAUX, Chairman, presiding

10 WILLIAM R. AHAL

11 SUSAN G. BILHORN

12 THOMAS R. SHANAHAN

13 DANIEL D. ZARLETTI

14 STATE REPRESENTATIVES:

15 KEVIN D. BEAUREGARD

16 STEVEN D. HAWKINS

17 PUBLIC REPRESENTATIVES:

18 THOMAS A. BRODERICK

19 JEWEL ELIZABETH ARIOTO

20 FEDERAL REPRESENTATIVES:

21 MATT GILLEN

22

1 DESIGNATED FEDERAL OFFICIAL:

2 NOAH CONNELL

3 ALSO PRESENT:

4 VENETTA CHATMON

5 CHARLES W. HIGDON

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

2 (8:35 a.m.)

3 OPENING REMARKS, AGENDA, SELF-INTRODUCTIONS

4 CHAIRMAN THIBODEAUX: Let's call the
5 meeting of the Advisory Committee on Construction
6 Safety and Health to order. My name is Mike
7 Thibodeaux. I'm Chairman.

8 We'll start with introductions and then
9 we'll go through the agenda and any other
10 administrative items that we have.

11 MS. SHORTALL: My name is Sarah Shortall
12 and I'm the counsel for ACCOSH.

13 MR. KAVICKY: My name is Thomas Kavicky.
14 I'm with the United Brotherhood of Carpenters and
15 Joiners of America. I represent the employee.

16 MS. ARIOTO: Elizabeth Arioto, Elizabeth
17 Arioto Safety and Health Consulting Company. I'm for
18 the public.

19 MS. BILHORN: Susan Bilhorn with Jacobs
20 Technology, representing the employer.

21 MR. TOMASESKI: Hi. I'm Jim Tomaseski.
22 I'm with the International Brotherhood of Electrical

1 Workers, representing the employee.

2 MR. JONES: Walter Jones, Laborers' Health
3 and Safety Fund, representing the employee.

4 MR. HAWKINS: Steven Hawkins with Tennessee
5 OSHA, representing state safety agencies.

6 MR. AHAL: Joe Ahal with Alberici
7 Constructors of St. Louis, representing ABC.

8 MR. MIGLIACCIO: Frank Migliaccio,
9 representing the Iron Workers International. I'm
10 representing the employees.

11 MR. ZARLETTI: Dan Zarletti, Kenny
12 Construction Company, Chicago, representing the
13 employer on ACCOSH.

14 MR. BRODERICK: Tom Broderick, Construction
15 Safety Council in Chicago.

16 MR. BEAUREGARD: Kevin Beauregard, North
17 Carolina Department of Labor, representing the state
18 agencies.

19 MR. GILLEN: Matt Gillen, NIOSH
20 Construction Program Coordinator, federal
21 representative.

22 MR. RUSSELL: Emmett Russell with the

1 Operating Engineers Union, representing the employee.

2 MR. CONNELL: Noah Connell, Deputy
3 Director, OSHA's Directorate of Construction.

4 MR. FAIRFAX: Richard Fairfax, Acting
5 Director of Construction and Director of Enforcement
6 Programs for OSHA.

7 CHAIRMAN THIBODEAUX: Start in the
8 audience, please.

9 (Audience members introduced themselves.
10 Those off-mike were untranscribable.)

11 MR. ROSSERT: Mike Rossert, Corporate
12 Safety Services.

13 MR. PARSONS: Bill Parsons, OSHA's
14 Directorate of Construction.

15 MS. ROONEY: Sarah Rooney, also Directorate
16 of Construction.

17 MR. SCOGLAND: Blake Scogland, Directorate
18 of Construction.

19 MS. LEGAN: Kathy Legan, Directorate of
20 Construction.

21 MR. SCHLICHTER: Levon Schlichter,
22 Directorate of Construction.

1 MR. FOGERTY: Tom Fogerty, Construction
2 Safety Council.

3 MR. MASARYK: John Masaryk, Independent
4 Electrical Contractors.

5 MR. GIANRODINO: Marco Gianrodino,
6 Associated General Contractors of America.

7 MR. CANNON: Kevin Cannon, also with AGC.

8 MR. HELMAND: Greg Helmand, Bureau of
9 National Affairs.

10 MR. PARSONS: Travis Parsons, Labor Health
11 and Safety Fund of North America.

12 MR. CRESS: Wayne Cress of the Association
13 of Union Constructors.

14 MR. KENNEDY: George Kennedy, National
15 Utility Contractors Association.

16 MR. HUTCHISON: Russ Hutchison, Association
17 of Equipment Manufacturers.

18 MR. KURTZ: John Kurtz, International
19 Staple, Nail, and Tool Association.

20 MR. BYRD: Charlie Byrd, Balford Beatty
21 Construction.

22 CHAIRMAN THIBODEAUX: Thank you.

1 We have quite a full agenda today. We're
2 going to welcome an OSHA update from the Acting
3 Assistant Secretary, Mr. Jordan Barab. Then Mr.
4 Fairfax, seated to my right, will give us a DOC
5 update; NIOSH-NORA update.

6 Are you going to give this Office of the
7 Solicitor of Labor?

8 MS. SHORTALL: No, we're going to have a
9 special guest.

10 CHAIRMAN THIBODEAUX: Okay, to give us FACA
11 for Advisory Committee members. And we'll have some
12 work group reports: Trench Protective Systems, and
13 then a break.

14 Now, there should be a sign-in list for
15 members of the public to sign up for our public
16 comment period, which will be later on this
17 afternoon. So if you wish to address the committee
18 today or tomorrow, if you'll just sign up. It's back
19 on the table back there, and there are and will be
20 handouts throughout the day, I'm sure, for you to
21 pick up and take back with you to your
22 constituencies.

1 Our last meeting was December 4th and 5th
2 of last year. Those meetings have already been
3 certified and put in the record. Is that correct?

4 MS. SHORTALL: Yes.

5 CHAIRMAN THIBODEAUX: That's a new process
6 that we're doing, rather than having the committee
7 just approve them. If you would explain that, Sarah.

8 MS. SHORTALL: The General Services
9 Administration, who is the Federal Government's
10 overseer on all federal advisory committees, is now
11 requiring that all minutes of advisory committee
12 meetings be certified as accurate within 90 days of
13 the meeting. Since our committee does not
14 necessarily meet every 90 days, we're going to have
15 to use a different process.

16 I know in the past what we've done is send
17 out the minutes to everybody, you can come up with
18 what corrections you see, and then we bring them to
19 the attention of the chair when the minutes are
20 discussed at the next meeting. Instead, what we'll
21 need to have you do is when the minutes are sent out
22 to you, just look them over immediately and send any

1 changes you think are necessary back to Mike Buchet
2 and the Chair, with copies to everyone on the
3 committee, so that those changes can be made and the
4 minutes certified within 90 days.

5 So it will be very important for you now to
6 look at that when it does come to you. I know I tend
7 to wait on it until probably the night before and
8 look them over to see if I think there's anything.
9 So I'll have to give myself better attention to that
10 as well.

11 So that's a new process to keep in
12 compliance with the GSA requirements. Any of you
13 have any questions about that?

14 (No response.)

15 MS. SHORTALL: Okay, thank you.

16 CHAIRMAN THIBODEAUX: Is there anyone on
17 the committee that has any comments concerning the
18 agenda today or any other thing for the good of the
19 committee?

20 (No response.)

21 We also have a sign-in sheet that's going
22 to be going around. So if you'll please remember to

1 sign in, put all the information.

2 I see everyone got a copy of the minutes.
3 We'll take a few minutes to go through that, and if
4 you see anything that you believe is incorrect or
5 should be corrected, we'll address that now.

6 (Pause.)

7 CHAIRMAN THIBODEAUX: Has everybody had
8 time to look through there? Does anyone see anything
9 that was either omitted or needed to be modified or
10 changed?

11 (No response.)

12 CHAIRMAN THIBODEAUX: Okay.

13 Mike, do we know Mr. Barab's -- is he going
14 to be here at 9:00 or should we get started?

15 MR. BUCHET: The last word we got was that
16 he would be here between 9:00 and 9:30, probably
17 around 9:20.

18 CHAIRMAN THIBODEAUX: We'll ask Mr. Fairfax
19 to give the DOC update. Thank you.

20 DIRECTORATE OF CONSTRUCTION UPDATE

21 MR. FAIRFAX: Good morning and welcome,
22 everybody. I'm very glad to be here. As I

1 mentioned, I'm the Acting Director in Construction,
2 recently appointed.

3 Mr. Bayab, just so you know -- I think
4 three days a week the Secretary has what's called a
5 huddle on the second floor, where all the assistant
6 secretaries get together and update on things. It
7 starts at 9:00 o'clock, and one of those days is
8 today. So he'll be at that until it's over, and
9 usually it runs 25, 30 minutes, and then he's going
10 to head up here.

11 So I'll go ahead and give you an update on
12 DOC, and then at some point after I'm done he will
13 arrive.

14 Let me go over first on the American
15 Recovery and Reinvestment Act, the whole stimulus
16 package. For the last probably two months, the
17 agency, OSHA, has been very focused on a lot of
18 activities in this. Our intent and goal is that,
19 while all this money is going out there for
20 construction, for restructuring work, for
21 infrastructure work, the work that will affect a lot
22 of the supporting industries and everything, our job

1 is to make sure while all these individuals are going
2 out and doing the work and getting our economy back
3 together and stuff, that they also are working
4 safely, their health is protected, and at the end of
5 each work day they're able to go home safe and sound.

6 So what we've been doing in OSHA, and I've
7 been working with all the regional administrators and
8 the Department's very involved, is putting together a
9 lot of information, outreach materials. We've been
10 developing across the board, across all ten of our
11 regions, local emphasis programs to focus on
12 enforcement and providing guidance and assistance out
13 there for all the work that's going to be going on.

14 We're monitoring a lot of the web sites and
15 we anticipate in everything we've seen that there
16 will be a lot of work on road building, bridge work,
17 building restructuring, infrastructure work, a lot of
18 work on green energy and developing those sources.

19 So what each of our regions are doing,
20 depending on the work they anticipate in their areas,
21 is they are developing local targeting systems to
22 focus inspection activity on those areas, and then

1 also -- it's not just inspection, but a lot of
2 outreach and training and compliance assistance in
3 providing information. We're doing a lot of work
4 with the different consulates around the country for
5 the immigrant and migrant workers that are going to
6 be anticipated being in there.

7 One of the things we're I guess concerned
8 about is, obviously the unemployment rate's
9 increasing and stuff. We don't want a situation
10 where essentially anybody with a hammer can get hired
11 onto a construction site to do work. We want them to
12 make sure they're trained, have the proper equipment,
13 the employers are meeting all of their obligations
14 under the OSHA Act and the construction standards.

15 We're also carrying this a little bit
16 forward into manufacturing and general industry,
17 because with all the work that we anticipate going on
18 in construction there will be a lot of support
19 industry work -- foundries, steel work,
20 manufacturing, that sort of thing, to supply a lot of
21 this. So we're extending our activity over into
22 those areas as well.

1 So we're starting to roll some of this out.
2 It will be rolled out further later this month. One
3 of the things we need the help of the advisory
4 committee on is that as we roll forward -- this is an
5 ongoing project. It's probably going to last 18
6 months or longer. We certainly need the input,
7 advice, suggestions from you folks on the committee.

8 I personally would like to see several work
9 groups maybe put together as part of your charge to
10 come up and make recommendations back to us. I was
11 just talking with Matt and I think that's something
12 NIOSH and OSHA are going to want to get together on
13 to work. So we'll need your support. We'll need
14 your advice, and we expect a lot of work going on in
15 this area and there will be a lot of work with OSHA,
16 and of course the state plan states will be heavily
17 involved on their end with OSHA.

18 That's on the stimulus stuff. As far as
19 DOC itself, on staffing, I just wanted to mention:
20 We're gearing up. We're finally able to do some
21 hiring. We just hired a new construction engineer
22 with good experience. Has he started yet?

1 MR. GILLEN: Yes.

2 MR. FAIRFAX: He has started, okay.

3 As of last week, we hired two individuals
4 out of the construction industry to work in our
5 construction services office. I think they each have
6 probably 25, 30 years of experience in construction
7 apiece, so we're getting some good experience.

8 We're getting ready to hire a construction
9 safety education person that will help put together a
10 lot of our programs on construction safety and a lot
11 of our training and provide guidance to us and I
12 would think work real closely with our OSHA Training
13 Institute and even this committee on developing
14 things.

15 On our standards front, we have two major
16 standards we're working on: confined space; and of
17 course I think all of you know, cranes and derricks.
18 On the confined space front, a hearing was had,
19 actually a re-hearing was held, last July 2008, and
20 that record was closed in October of last year. What
21 we're doing now is -- most of our effort has been on
22 cranes and derricks and we do have a small group

1 working on compiling the comments and the input we
2 received on the confined space standard. So that's
3 moving forward; slowly, but it is moving.

4 On cranes and derricks, I think most of you
5 are probably aware, the comment period closed in
6 January of this year. A hearing was conducted last
7 month, March 17 through the 20th. The post-hearing
8 record will close on June 18th of this year, so
9 people who participated in the hearing will have that
10 period of time to get additional comments in. We've
11 got already a lot of comments. We've already got the
12 testimony and we are working through compiling all
13 that information, and as more information comes in
14 we'll keep working on that.

15 So we're not just sitting back and waiting
16 for everything to close and coming in. We've got a
17 lot of information now and we're working on that.

18 On the crane initiative, I anticipate there
19 will probably be a number of questions on that, with
20 the classes last year and the crane and derrick
21 standard going forward now that we're working on it.
22 We have essentially a three-phase approach that we're

1 working on. I think most of you are aware of that.
2 Phase one will provide information and outreach to
3 the construction industry. Basically, I guess that's
4 our outreach phase that we're working on, and then
5 we'll provide that to our stakeholders and interested
6 parties.

7 Phase two, OSHA will work on our internal
8 folks: training, education of our own people. Then
9 phase three will be the launching of a national
10 emphasis program to actually go out and start
11 enforcing and doing inspections.

12 As far as where we're at right now, we're
13 pretty much right in the middle of phase one on that,
14 putting together materials, providing information,
15 working on outreach.

16 We have a number of guidance documents that
17 are in various stages of development. I'll just list
18 them to you: one on masonry work; one on skylights;
19 one on elevators; a guidance document on demolition
20 projects; personal protective equipment; electrical
21 work; and then underground construction. Those are
22 the guidance projects. Many of these tie right into

1 the American Reinvestment and Recovery Act work
2 that's going on.

3 The last thing I wanted to talk about is
4 the field operationa manual and kind of give you an
5 overview of that. That was put together by people in
6 my other office, the Directorate of Enforcement
7 Programs. I guess a little background and history.
8 When I started with OSHA we had a document that was
9 essentially the bible for doing compliance work in
10 the field, called the field operations manual. That
11 manual was essentially set aside in 1994 and the
12 agency issued the field information and reference
13 manual. We just used to call it the FIRM.

14 A lot of people thought the old field
15 operations manual was cancelled. It was never
16 cancelled. The field information manual pretty much
17 became the guiding document of what we use for
18 inspection and the old field operations manual, many
19 of the chapters were incorporated into the FIRM and
20 so those chapters in the old manual were eliminated.
21 But there were probably six chapters that stayed in
22 the old field operations manual and were in effect

1 and never changed or cancelled. A lot of people
2 thought they were.

3 What we've done with the new field
4 operations manual is the old FIRM manual is cancelled
5 and the old FOM, field operations manual, is
6 cancelled. So both of those documents are closed
7 out. What we've done is taken the new field
8 operations manual and incorporated everything from
9 those manuals into that document. It's now a 16-
10 chapter manual, compared to four chapters in the
11 field information reference manual.

12 If you haven't looked at it, it is posted
13 on our web page, and it went in effect probably about
14 a month ago. I think it's a really good document.
15 I'm actually quite proud of it because for the first
16 time it actually follows the inspection process very
17 closely. So if you are a compliance officer, it
18 takes you through from your preparation for your
19 inspection, the documentation you need to prepare,
20 what you need to do at the opening conference, what
21 you need to do on the inspection, all the stuff
22 you're supposed to look at, what you're supposed to

1 do, and it goes into this post-inspection process,
2 developing the case file, preparing the violations,
3 issuing the violations, informal conferences,
4 contests, all that. It just covers it step by step.

5 The other thing we did which is really nice
6 is we were able to eliminate quite a few other
7 directives out there that disseminated OSHA policy,
8 and we were able to eliminate a lot of field
9 memorandums that guided information, how we did work.
10 What we're trying to do with this manual is roll
11 everything into one document.

12 So for instance, there was a document on
13 complaints. There was a document on fatality and
14 inspections. There was a document on penalties. All
15 those have been rolled into the new FOM, or field
16 operations manual.

17 If you haven't gone on the public page and
18 looked at it, I would suggest if you're interested
19 that you do because it's all hyperlinked, and so if
20 you come across a section and you want to go to the
21 original document, you can point and click and it'll
22 take you back to the original document so you can see

1 the base information on it.

2 With the FOM, or the field operations
3 manual, I'm planning to make it kind of a living
4 document. In the past whenever we've made a policy
5 change we issued another directive. What this manual
6 will do is I want to update it every 6 months to a
7 year, and as things change or policies change or we
8 add different information to it, it will be rolled
9 into the field operations manual and then it will be
10 re-issued.

11 The idea behind that is I wanted a document
12 that you could pick up one manual and have everything
13 in it and not have to thumb through three or four
14 directives or three or four other memorandums or
15 anything trying to figure out what's what.

16 So it's up there and it's on our web page.
17 It is in use now by our compliance officers, and I
18 anticipate our next change or our first revision or
19 update of the manual will probably be in the fall.
20 We're already working on that. I would ask the
21 committee if they have a chance to look at it, to
22 please do so. If you folks have comments or

1 suggestions, then I'm very interested in hearing it
2 because the first update will be in the fall.

3 There's a small section on -- I will tell
4 you, there's a small section on construction. I do
5 not anticipate or expect making changes to a lot of
6 the manuals and directives in construction. They're
7 stand-alone documents as they are, for instance the
8 lock-out, tag-out -- not lock-out, tag-out; the
9 multi-employer policy.

10 But there is a small chapter in there in
11 the FOM that deals with construction. That's on hold
12 right now because we're updating it and I want to
13 make sure we have all the references to the
14 construction information in that and that it's
15 accurate. But that should be included in the new
16 manual with the first update in the fall.

17 So, Mike, that's it.

18 CHAIRMAN THIBODEAUX: Thank you.

19 Is there anyone on the committee that has
20 questions? Frank?

21 MR. MIGLIACCIO: Frank Migliaccio,
22 representing employees.

1 Sir, you had mentioned that you're looking
2 for a person to give advice on the construction
3 training. In what areas will you be looking for that
4 person to come from?

5 MR. FAIRFAX: We're getting ready to hire a
6 person in construction to work on a variety of
7 training information, training areas in construction.

8 MR. MIGLIACCIO: So you've already made
9 your mind up on who you're hiring?

10 MR. FAIRFAX: No, no. We are in the
11 process.

12 MR. MIGLIACCIO: That's what I'm trying to
13 find out. What areas are you looking at? Are you
14 looking for somebody from training in construction?
15 Are you looking at colleges? Where are you looking?

16 MR. FAIRFAX: Noah.

17 MR. CONNELL: You mean where are we
18 planning on recruiting? Well, the position is -- the
19 title of the position will be education specialist.
20 So the kinds of skills that will be needed are
21 someone who is basically a professional type trainer
22 and develops presentations, someone who's really

1 going to be able to do effective outreach and
2 training.

3 This will be in our Office of Construction
4 Services, and for those positions we very much try to
5 encourage especially people in the construction
6 industry to apply for those positions. We've just
7 hired two individuals, as Rich mentioned, who both
8 have individually 25, 30 plus years of construction
9 experience. That's really what we most like to get
10 for our Office of Construction Services positions,
11 including this upcoming position, because that's who
12 this person's going to be working with. So that's
13 what we're hoping for.

14 MR. MIGLIACCIO: Has the announcement been
15 put out yet?

16 MR. CONNELL: It hasn't been posted yet.

17 MR. MIGLIACCIO: Will you let the committee
18 members know when that's going out.

19 MR. CONNELL: Definitely.

20 MR. MIGLIACCIO: Thank you.

21 CHAIRMAN THIBODEAUX: Kevin.

22 MR. BEAUREGARD: I was just wondering if

1 you could expand a little bit about how you're
2 planning to target the stimulus sites and the legal
3 basis that you're using to target them. I know the
4 states have been asked to join in on that effort and
5 I'm trying to get a little bit more information on
6 that.

7 MR. FAIRFAX: We're doing it actually a
8 couple ways. There is a number of web pages that are
9 government web pages where anyone getting money from
10 the government to work on projects are posting the
11 jobs that they're doing, the locations, and what type
12 of work is being done.

13 Also, under the American Recovery and
14 Reinvestment Act, tied in with the University of
15 Tennessee for the Dodge Reports, there's a connection
16 there and job sites that are being done under that
17 stimulus money are being logged in through the
18 University of Tennessee and being coded as such. So
19 what we're doing is taking local emphasis programs --
20 obviously, we have to follow the neutral selection
21 criteria and all that. But we're compiling lists of
22 sites and establishments where the work is going on,

1 and then under the emphasis program we will go out
2 and inspect those sites as the jobs come up.

3 It's pretty much going to be just like we
4 identify normal sites for construction and inspect
5 under normal construction operations. But these will
6 be targeted in this area. Most of the work we
7 anticipate initially will be on roads, road work,
8 bridge work, and highway work. But there's quite a
9 few other areas.

10 Does that help?

11 MR. BEAUREGARD: It does. Is there
12 somebody that we can contact, the states can contact,
13 to kind of steer us towards the sites that you're
14 looking at?

15 MR. FAIRFAX: Yes. Me.

16 CHAIRMAN THIBODEAUX: Any other questions
17 from any members of the committee for Rich? Yes?

18 MR. RUSSELL: I'd like to ask a question or
19 at least for consideration: As an ACCOSH member,
20 sometimes we don't always understand who works for
21 the Directorate of Construction or really understand
22 all of the different parts of construction. I think

1 it would be a good thing if in some meetings, ACCOSH
2 meetings, we might take a division and actually bring
3 some of the people who work at that division in to
4 the committee and just talk about some of what they
5 do.

6 I think it would actually help us if we
7 were to know exactly who made up the construction
8 division and what are the different departments in
9 the construction division and what the people in each
10 of those departments might do. So could you consider
11 that as a possible agenda item, you know, where at
12 each committee meeting you bring in a division and
13 actually have that division just talk to the
14 committee about some of the things they're doing,
15 because I think it would help us in terms of better
16 helping OSHA.

17 MR. FAIRFAX: I think it's a really good
18 idea. I'm more than happy to set that up, and we can
19 probably do it, if the committee agrees, at the next
20 meeting. There's a number of divisions in the
21 Construction Office. You may not be aware of it, but
22 in my other office, which is the Directorate of

1 Enforcement Programs, the health component for
2 construction is with me in that directorate. It's
3 not over in this directorate.

4 So we could certainly have the different
5 groups in the Construction Directorate come forward
6 and present what they do, and then I'd be more than
7 happy to bring in the people that work in
8 construction on the health side in my office, in my
9 other office, in to do that, give a presentation to
10 you, too.

11 I think it's a good idea. We'd be more
12 than happy to do that.

13 CHAIRMAN THIBODEAUX: Tom.

14 MR. KAVICKY: Mr. Fairfax, to go along with
15 what Emmett just said -- Tom Kavicky, employee rep
16 with the carpenters -- having Bill Parsons part of
17 each work group this past week has been really
18 beneficial, adding direction to each work group on if
19 you get stuck, if you have issues, comments,
20 questions. "My office door is open," that's his
21 policy. And I'll tell you what, Liz and I took
22 advantage of it, and we had a very good meeting and I

1 see a lot of good things happening.

2 Thank you.

3 MR. FAIRFAX: That's nice. Thank you.

4 Good.

5 CHAIRMAN THIBODEAUX: Anyone else on the
6 committee have any questions of Richard?

7 (No response.)

8 CHAIRMAN THIBODEAUX: I have one. You had
9 said with the stimulus, new work from the stimulus
10 package, etcetera, that you were going to have a lot
11 more activity, obviously, and we hope so; and that
12 you wanted ACCOSH to assist as far as some new work
13 groups. Do you have any suggestions in that or are
14 you going to utilize the work groups we have now to
15 further that?

16 MR. FAIRFAX: Actually, I was hoping to
17 leave it to you folks. I mean, if your work groups
18 you have now cover it that would be great. If we
19 think we need other work groups, then I'd like to
20 have a conversation about it.

21 CHAIRMAN THIBODEAUX: Okay.

22 MR. FAIRFAX: I think for the next couple

1 years there's going to be a tremendous amount of work
2 going on in this area. We'll be shifting our
3 resources in OSHA to cover it. In my mind, if we're
4 going to do it right we certainly need the input of
5 this group. I just want to make sure the outreach
6 materials we have, any sort of training that we're
7 doing, our focus areas for enforcement are in line
8 and appropriate with what the committee thinks.

9 CHAIRMAN THIBODEAUX: Thank you.

10 Susan.

11 MS. BILHORN: Following up on that thought,
12 because we only meet formally maybe another three
13 times this year, and because this is a very fast-
14 moving --

15 MR. FAIRFAX: It's very fast-moving.

16 MS. BILHORN: -- activity, I'm wondering
17 how we might be able to make sure that we're closer
18 aligned. For example, we just met this whole week
19 and I think this might have been a good subject for
20 us to be talking about in some of our sessions, but I
21 don't think we --

22 MR. FAIRFAX: Yes, we've been pretty much

1 working straight out for the last maybe month and a
2 half, two months.

3 One of the things we're doing that might
4 help and I think would help the committee is, it's
5 not up yet, but I think it will be up probably by the
6 end of this month, is what our goal is. There's
7 going to be on our public web page, there will be
8 everything we're doing, planning, and developing will
9 be posted there. That's part of the whole President
10 Obama's transparency issue, so everything we're
11 working on, everything we've developed, everything
12 we've put together, everything we are using, our
13 emphasis programs, they'll be posted up on that at
14 that point.

15 Everything will be up there, so I think
16 that's probably a starting point to look at. We can
17 see what we're doing. If people have individual
18 comments or at the next meeting we can put together a
19 group or something, whatever.

20 MS. BILHORN: Well, maybe I can suggest
21 that also if there are some specific things you think
22 about to be able to --

1 MR. FAIRFAX: Yes.

2 MS. BILHORN: -- pull something in between
3 at any point.

4 MR. FAIRFAX: Definitely.

5 CHAIRMAN THIBODEAUX: Is there anyone else
6 on the committee has any questions?

7 (No response.)

8 CHAIRMAN THIBODEAUX: Just a comment. Bill
9 Parsons at his comments to each of our work group
10 meetings was making the suggestion that in between
11 meetings that it might be appropriate for some of us
12 on our work groups and him to get together on
13 conference calls, so if there's any kind of issues
14 that come up in your directorate that would probably
15 be a real good way to get something started before
16 our next formal meeting, and we could work towards
17 that ahead of time.

18 MR. FAIRFAX: That would be great.

19 CHAIRMAN THIBODEAUX: Okay. Anything else?

20 (No response.)

21 CHAIRMAN THIBODEAUX: Thanks, Richard.

22 MR. BUCHET: Mr. Chairman.

1 CHAIRMAN THIBODEAUX: Yes, sir.

2 MR. BUCHET: We have a speaker from DCSP,
3 Ms. Cathy Oliver, who can jump in if you give us a
4 minute to put the Power Point up.

5 CHAIRMAN THIBODEAUX: Okay, thank you.

6 (Pause.)

7 CHAIRMAN THIBODEAUX: Please introduce
8 yourself.

9 CONSTRUCTION COOPERATIVE PROGRAM UPDATE

10 (Screens.)

11 MS. OLIVER: My name is Cathy Oliver. I'm
12 speaking on behalf of the Directorate of Cooperative
13 and State Programs. Our director is Mr. Steven Witt,
14 and it's a pleasure for me to be here and represent
15 the office and give you a brief update on our
16 cooperative programs and the activities, focusing
17 specifically on the activities in the construction
18 industry.

19 We have many years of experience and lots
20 of data to back up that our cooperative programs are
21 having an impact on reducing fatalities, injuries,
22 and illnesses in the work place, and I hope to

1 highlight some of those today. Our programs continue
2 to reach thousands of employers and actually over a
3 million employees. Some of you here at this table
4 have been part of some of our cooperative program
5 successes and I want to thank you for that.

6 Today I'm going to talk about five key
7 areas, again very briefly, but: our voluntary
8 protection programs; our OSHA strategic partnership
9 program; our alliances program; and our consultation
10 SHARP initiative in construction; and also our newest
11 cooperative program, OSHA challenge.

12 Most of you are familiar with the VPP.
13 It's based on trilateral cooperation of labor,
14 management, and government. It is a proven model.
15 It's not just about companies with really good
16 programs applying for VPP and getting recognition.
17 It's about companies who want to turn their safety
18 and health program around using the VPP model and
19 then after 18 months or 3 years being recognized for
20 that.

21 We're really proud that recently the
22 Department of Defense actually selected the VPP model

1 to reduce injuries and illnesses across all the
2 services in the Department of Defense. In fact, they
3 have 135 sites currently working on VPP, with 300
4 more in the pipeline. They've actually funded a VPP
5 center of excellence to improve their safety and
6 health and work on this particular initiative.

7 We do have over 2200 participants in the
8 program right now and we're approaching covering
9 900,000 employees with just this program. Our 2007
10 evaluation continues to demonstrate that participants
11 in the program have injury and illness reductions
12 more than 50 percent below the BLS averages for their
13 respective industries.

14 We've had some growth in VPP in the
15 construction industry and I think that's mainly
16 because originally we had a site-based approach and
17 now we've expanded that and have an approach where
18 construction companies with mobile work forces
19 working at a variety of locations and on short-term
20 projects can actually apply for VPP. So we now have
21 107 construction participants, and 39 percent of
22 those have union representation.

1 I think the next statistic is really
2 interesting and compelling, in that the construction
3 industry that's used the VPP model are seeing TCIR
4 reductions and DART reductions more than 60 percent
5 below the national averages. If you take the
6 National Safety Council estimate of \$39,000 per DART
7 injury, those particular companies that have
8 participated in VPP have saved about \$9 million.

9 Based on almost ten years of experimenting
10 and piloting programs with construction and VPP, we
11 actually made a change in our recent Federal Register
12 notice for VPP which was published January 9th and
13 will become effective in May. It gives again those
14 companies opportunities with mobile work forces to
15 apply, and they can apply in what we call a
16 designated geographic area, which means they go to
17 the region and they work with the regional
18 administrator and, based on the work they're
19 performing in that particular region, they can get a
20 designated geographic area anywhere from an area
21 office to a region-wide designation.

22 Then we do a two-phased VPP on-site review

1 process: one on the safety and health management
2 system of the company's safety and health management
3 system within that designated geographic area; and
4 then we follow up with other on-site evaluations for
5 work that's actually being performed in that
6 designated geographic area. Once approved, then all
7 of the work performed within that designated
8 geographic area then attains a VPP status.

9 Another opportunity for construction in our
10 recent VPP Federal Register notice is what we call a
11 corporate option. I want to make sure it's clear
12 this doesn't mean that you apply and all of the work
13 performed in the United States by that corporation
14 becomes VPP. That's not what this means. It
15 actually means that you can apply; we review your
16 corporate safety and health management system; and if
17 you make a significant commitment to VPP to bring in
18 at least ten sites or designated geographic areas
19 within a five-year period, we review your safety and
20 health management system and then the sites that come
21 in or the designated geographic areas that come in
22 under that corporate can give us streamlined

1 paperwork.

2 One of the comments that we sometimes get
3 from the construction industry on VPP is the
4 documentation requirement to get into the program.
5 We think we've addressed that with this process.

6 Again, it's a two-phase evaluation. We
7 actually have three current construction companies
8 that are participating under our corporate option
9 right now, and we have another one that's actually
10 applied.

11 So that's kind of our VPP update. Moving
12 on to our OSHA strategic partnership program, we're
13 in our tenth year of the OSHA strategic partnership
14 program. In those ten years we've had over 600
15 partnerships, 74 percent in the construction. So the
16 construction industry is really using this model to
17 improve safety and health.

18 There is actually two models I just want to
19 focus on really quickly. One is the model that's
20 really site-based and actually over 50 percent of the
21 big sports complexes that have been constructed in
22 the United States over the past ten years have been

1 done through the OSHA strategic partnership program.

2 The other model -- and Jim's here and I
3 hope he'll back me up on this, but we have a great
4 partnership with the electrical transmission and
5 distribution industry, and this particular program
6 allows us to really leverage our opportunities to
7 reduce fatalities, injuries, and illnesses in the
8 workplace, because in that particular partnership
9 we've got 70 percent of the industry at the table and
10 we've got seven major companies, associations, the
11 unions at the table, working on improving safety and
12 health in that particular industry.

13 Through that partnership, we've developed
14 best practices, specific training programs for this
15 industry, and also shared best practices.

16 Another one that's used, that we've been
17 able to leverage through the partnership program, is
18 our tower erector partnership with the Association of
19 Tower Erectors. Last year there were 97 participants
20 in that program and they were able to reduce their
21 injury and illness performance by more than 35
22 percent from the previous year by being involved in

1 the partnership. They also have been able to put
2 together other things, like PSA announcements and
3 news alerts, so that when there's a fatality in an
4 industry and there's a root cause that's defined,
5 that information is shared through the partnership.

6 As of March 31, 2009, we have 168 active
7 partnerships, again 82 percent in construction, and
8 30 percent of our partnerships have union
9 signatories. This is just some
10 examples of some of the folks that we've been
11 partnering with through our strategic partnership
12 program. As you can see, we have both industry and
13 union representation.

14 The impact. Each year we're getting more
15 and more data from our partnership program. Last
16 year we had 60 percent of our partnerships giving us
17 information, or between 60 and 70, on their TCIR and
18 DART rates. You can see that they are achieving
19 results below the industry averages.

20 Also, our partners continue to tell us in
21 our evaluations that they appreciate the improved
22 relationship with the agency and they also seem to

1 get improved relations between employers and
2 employees that are involved in the partnerships.

3 Our alliance program is really going
4 strong. We have 483 active alliances. Many of them
5 are in our regional areas, where the rubber meets the
6 road.

7 I see our new Acting Assistant Secretary is
8 here, so I'm going to pause for a moment.

9 MR. BARAB: You can finish.

10 MS. OLIVER: That's okay.

11 CHAIRMAN THIBODEAUX: Welcome.

12 WELCOME AND OSHA UPDATE

13 MR. BARAB: Thank you. I guess I'm on
14 here. I just wanted to thank you for coming down. I
15 am Jordan Barab. I think I know a lot of you. Some
16 of you I don't know. But I'm happy to be here.
17 Actually, I'm happy you guys are all meeting the
18 first week I'm here because I'm trying to get to know
19 everybody and get to know what all the committees are
20 doing.

21 I want to bring greetings on behalf of
22 Secretary Solis, who is I think still out of town

1 today. But she and I both want to thank you for all
2 the energy you've put into this committee. It's very
3 important to us.

4 I also want to start -- I know there's been
5 some confusion here, but I want to start by thanking
6 Mike Thibodeaux for serving as the Chairperson. I
7 haven't met you actually yet. The remarks that were
8 written for me say that you're an expert in
9 residential construction safety. My only personal
10 impression is that everybody I've talked to about you
11 says you're a great guy. So I'll believe them.

12 CHAIRMAN THIBODEAUX: Thank you.

13 MR. BARAB: And hopefully we'll be getting
14 to know you. I mean people from both labor and
15 industry, so that speaks well.

16 But as you're all aware, with the American
17 Recovery and Reinvestment Act we're going to be --
18 the Federal Government, the economy, is going to be
19 putting a lot of emphasis on infrastructure projects,
20 such as highway construction, energy construction.
21 OSHA's going to need to get the best expertise and
22 leadership in that specific area. So in light of

1 this new focus, we as of the end of this meeting, we
2 are going to be switching the chairmanship from Mike
3 to Frank Migliaccio as the new Chair.

4 I know there's been some confusion here
5 about when that change was going to take place and,
6 although we are highly trained professionals here,
7 sometimes the bureaucracy gets the best of even us,
8 so things don't always happen when they're originally
9 supposed to happen.

10 But again, I do want to thank Mike for
11 doing a great job as chair of this committee and we
12 want to welcome Frank, we will welcome Frank, for the
13 next meeting.

14 As I said, I want to thank all of you for
15 serving on this committee. I know it's a major
16 investment of your time and energy. From what I
17 hear, that major investment of your time and energy
18 hasn't been completely appreciated over the last
19 several years. But I do want to make very clear to
20 you, both coming from me and from Secretary Solis,
21 that we do put a lot of value on good information and
22 assistance from the advisory committees, because we

1 think you are the experts out there. You know what's
2 best. You know what's going on outside of these
3 walls. You know what's going on in the workplaces in
4 the United States.

5 I have told the staff here and I will
6 continue to tell them to treat advisory committees as
7 if they are actually committees of advisors. We want
8 your advice, we want your assistance. We think that
9 OSHA will produce a better product with your advice
10 and American workplaces will be safer. That's why we
11 again ask you to come in here and invest your time
12 and energy in this.

13 Let's move on to some bigger issues here.
14 It's no secret to anyone, least of all to you, that
15 this country's facing some difficult economic times.
16 Secretary Solis over the last several weeks has been
17 traveling around with President Obama to talk about
18 the crisis and also talk about how we're going to use
19 the federal funds that are intended to have an impact
20 on not only the employment situation in this country,
21 but also, especially from our concern, how that work
22 is done.

1 As we all know, the last couple years have
2 been rough for construction workers. This whole
3 country witnessed the two disastrous construction
4 crane collapses in New York and the resulting deaths
5 from those. There was also a lot of attention paid
6 to the fatalities in Las Vegas, and there was a
7 hearing held on both of those, quite a bit of press
8 converage to both of those.

9 But as usual, what Americans don't see are
10 the 20 construction workers that are killed every
11 week on the job here in the United States. They, as
12 you all know, die one by one and basically go
13 unnoticed except for their friends, their family, and
14 their coworkers. These are the tragedies that we
15 really need to bring to light in the United States,
16 for the people of the United States, and these are
17 the people we're really working for here.

18 Now, as rough as these past few years have
19 been with the recession, problems in the economy, my
20 fear is -- and I think, talking to a lot of you, this
21 is true -- that things threaten to get worse in terms
22 of health and safety. When economic ties are bad,

1 workers are much more reluctant to complain about
2 health and safety conditions because they're more
3 afraid of losing their jobs. With tighter budgets,
4 you'll see more and more companies sacrificing. The
5 first thing they cut are their safety budgets, their
6 training budgets, their health and safety people.

7 You look at what the experts say, there's
8 already a reporting problem out there in terms of
9 reporting injuries and illnesses. Bad economic times
10 put even more pressure on companies to save those
11 insurance costs, some of them that are inclined to
12 not report honestly in the first place. Maintenance
13 gets deferred. Machinery that should be retired or
14 repaired doesn't get retired or repaired.

15 All of those can lead to more health and
16 safety problems. So what we are trying to do here at
17 OSHA is really focus on how to address that, I mean,
18 how to address the problems that are already
19 existing, and particularly how to address the
20 problems that will be coming up. You'll be hearing
21 much more about that in the coming weeks.

22 You'll need to, we will need to, you will

1 need to intensify your efforts to monitor the health
2 and safety of the men and women that are doing the
3 recovery work, that are working on our bridges and
4 our roads and doing that important work to put
5 America back to work and to rebuild America.

6 You also have another responsibility. You
7 all, the people here representing the workers and the
8 labor unions, have a responsibility to make sure that
9 your members are educated and empowered to insist on
10 safe workplaces. Management members, the same token.
11 You here I think are without a doubt the best of the
12 best out there in terms of your health and safety
13 programs, but, as you're well aware, there are a lot
14 of companies out there that aren't quite as dedicated
15 to health and safety as you are, and it's going to be
16 up to you to really set that example and take that
17 message to companies all across America that health
18 and safety needs to be a first priority.

19 One of the things -- again, we will be
20 working on programs and try to help in that effort
21 and try to really push that effort forward. We will
22 be announcing some of that program, maybe all of that

1 program, on Workers Memorial Day, which is April
2 28th. That's the day, as probably all of you know,
3 when we recognize and honor those who have been
4 injured and killed on the job and redouble our
5 efforts to make sure that these tragedies don't
6 happen again.

7 To commemorate Workers Memorial Day there
8 is going to be a special ceremony in Silver Spring at
9 the National Labor College. There'll be a
10 groundbreaking ceremony for a new workers memorial.
11 There'll be a lot of faculty, probably hundreds of
12 students, rank and file workers and union members out
13 there. Rich Fairfax is going to be out there. He's
14 going to be doing a panel on enforcement. And
15 Secretary Solis has also been invited to speak out
16 there.

17 The plans right now are to take advantage
18 of that ceremony and that day to unroll a number of
19 products and new programs that will be associated
20 with the stimulus package. Some of these include a
21 quick card on nail gun safety, some detailed
22 guidelines on silica exposures in construction, some

1 Spanish translations of some safety and health
2 instruction bullets, compactor rollover hazards, and
3 hazards associated with operating skid steerloaders.
4 So you'll see some activity then around April 28th
5 and hopefully some important announcements as well.

6 All right, let me just get to some other
7 details here, some of the announcements. I'm going
8 to admit that a lot of these have been written for
9 me, so I'm going to go through some of them and I'm
10 going to also allow some time for questions on these,
11 and I'm going to probably answer very few of your
12 questions because I've only been here a few days and
13 probably don't know all the detailed answers, but
14 will be glad to defer to the other staff here who
15 actually do have the answers.

16 I want to first start off by announcing,
17 which all of you know, that Rich Fairfax has taken on
18 new responsibilities as the Acting Director of the
19 Construction Directorate. I for one am very happy
20 that he's doing that. He's doing a great job so far.
21 But we will be working also on finding a real
22 permanent director. Obviously, construction safety

1 is an extremely important part of this organization
2 and we do need to find a dynamic, new, energetic
3 director for that directorate, and we will be working
4 on that.

5 There's a new field operations manual which
6 has some construction-related aspects to it. Rich
7 Fairfax will make a presentation on that later.

8 You're all aware we just finished hearings
9 on the crane safety standard. We will be going over
10 the comments made at that hearing. May 19th is the
11 deadline for hearing participants to submit
12 supporting data. June 18th is the deadline for those
13 testified to file written comments and briefs. As
14 usual, we will be going over all of those and trying
15 to move forward as rapidly as possible in getting a
16 final standard out.

17 Confined spaces in construction, again, as
18 you know, the hearings ended in June of 2008. The
19 deadline for submitting information was in October.
20 We're combing through those comments as well and then
21 will hopefully move forward quickly on that as well.

22 There's a trenching presentation later this

1 morning that will look at the expanded availability
2 and useability of trench protection systems, which --
3 I may want to come over and take a look at that.
4 Would somebody talk to me after that? I personally,
5 as many of you know, just am infuriated weekly, on a
6 weekly basis, when people get killed in trench
7 collapses. There's as far as I'm concerned no
8 excuse, and I think some of this technology will mean
9 there are even less than no excuses for people
10 getting killed in trench collapses.

11 Several new publications -- elevator
12 construction, underground construction, masonry
13 construction -- a couple of new quick cards, and
14 we'll be asking for your feedback on those as well.

15 There are some course revisions, and I
16 guess Hank Payne has already talked to you about some
17 of those and will continue to talk to you about some
18 of those.

19 We're going to be making a new announcement
20 on Susan Harwood training grants hopefully in the
21 next 30 days. I need to go through some of those,
22 but there is a lot of emphasis on construction in

1 those. So that'll put a little more money out there
2 to do that kind of training.

3 Finally, I just want to thank you all
4 again. Again, your expertise is much valued around
5 here and we will be taking advantage, full advantage
6 of you, both the work you do on these committees and
7 especially the work you do even before this meeting
8 in terms of the work groups and things like that. So
9 keep up the good work.

10 I am, as well as -- "as well as." Under
11 President Obama's leadership, we are dedicated here
12 as well to increasing the openness in government.
13 Whatever we can do within whatever legal restrictions
14 we have to let you know what we're doing and get your
15 input, we will do.

16 So again, thank you for coming. I'll take,
17 although I'm not sure I'll answer, any questions you
18 have.

19 CHAIRMAN THIBODEAUX: Thank you for being
20 here this morning. We appreciate it.

21 Are there any questions from the committee
22 of the Assistant Secretary?

1 (No response.)

2 CHAIRMAN THIBODEAUX: You got off really
3 easy this morning.

4 (Laughter.)

5 CHAIRMAN THIBODEAUX: I think it's because
6 you put you're only here this week, you were only
7 here this week.

8 MR. BARAB: Right. Next time I shouldn't
9 expect such a --

10 (Laughter.)

11 MR. BARAB: Well, thanks a lot.

12 CHAIRMAN THIBODEAUX: Thank you for being
13 here.

14 MR. BARAB: Feel free to get in touch.

15 CHAIRMAN THIBODEAUX: We know you have a
16 busy schedule. We appreciate it.

17 MR. BARAB: Thanks.

18 CHAIRMAN THIBODEAUX: Would you like to
19 finish up your presentation? Thanks for deferring.

20 MS. OLIVER: Oh, no problem.

21 Well, thank you. I just briefly went
22 through our VPP and our strategic partnership

1 program, and I think I was just getting started on
2 the alliance program. This is very important in
3 terms of the impact that it's having on worker safety
4 and health in terms of getting stakeholders together
5 to discuss key issues, come up with tools and
6 products and processes that can be shared with the
7 industry.

8 Of our 61 national partnerships, 15 of them
9 -- and there are only 9 of them listed on the slide -
10 - but 15 of them are actually in construction. So
11 we're very proud about that.

12 We have two construction-related national
13 alliances. Let me go back just a minute on the slide
14 here. One is with the National Association of Home
15 Builders. I just wanted to highlight that for just a
16 minute. Its focus is on limited English proficiency,
17 fall, electrical, struck-by, and caught-in-between
18 safety hazards. The National Association of Home
19 Builders has actually conducted a how to build a
20 house seminar for OSHA federal-state plan and on-site
21 consultation representatives. So that's helping
22 expand our knowledge and it focuses on safety

1 hazards, trade contractors, and materials and
2 construction methods.

3 Another one of our alliances we're very
4 proud of was started in 2003 and renewed in 2007, as
5 was the one with National Association of Home
6 Builders. They've actually developed a safety and
7 health manual and also a site-specific plan which
8 focuses on prevention and provides checklists for
9 construction sites.

10 25 products have been developed under the
11 alliance program related to the construction
12 industry, and I'm just going to mention a couple of
13 them. But these are all available on the web site
14 and I hope you've had an opportunity to take a look
15 at some of them. One of them was developed through
16 our roadway work zone safety and health coalition,
17 and they developed an internal traffic control plan
18 brochure and steps for controlling the flow of
19 vehicles within the construction work site.

20 Also, one with our Association of Equipment
21 Manufacturers did a bulletin on preventing rough
22 terrain forklift accidents and best practices and how

1 to prevent overturns and run-over accidents.

2 So all of these products we think are
3 useful, and hopefully the construction industry is
4 making use of those.

5 Because we had so many alliances in the
6 construction industry, they wanted to get together as
7 a group and in 2004 there was a construction
8 roundtable was formed. Under this roundtable there
9 are four key work groups: one, the design for safety
10 work group; the second is the fall protection work
11 group; a strains and sprains subgroup; and a case
12 study and success story subgroup.

13 Some of the products developed under this
14 is the prevention of falls, fatalities, and injuries
15 in the construction industry. That's a slide
16 presentation out of the design for safety work group.
17 They've also created a design for safety web site and
18 public presentations on design for safety. Under the
19 fall protection work group, there have been tip
20 sheets developed for employers and employees to
21 describe the general safety tips to prevent fall-
22 related injuries in the workplace, and also

1 presentations and toolbox talks that get very
2 specific, like on ladder safety.

3 I just want to mention that in terms of our
4 consultation program, two states, Vermont and
5 California, are piloting programs on a SHARP, which
6 is a safety and health management system-based
7 program where we're trying to develop and recognize
8 employers with effective safety and health management
9 systems in small businesses. They are actually
10 piloting that program, and we'll be reviewing the
11 results of that really soon, so we're hopeful that in
12 small business there will also be an opportunity to
13 recognize employers in the construction industry with
14 good safety and health management systems.

15 I just want to close with our OSHA
16 challenge program. It's one of our newest programs.
17 It actually was developed to provide a three-stage
18 road map to developing and implementing a safety and
19 health management system. In that road map we
20 identify for each of those three stages what actions
21 need to be taken, what results need to be achieved,
22 and what documentation needs to take place. It's

1 really having quite an impact on helping employers
2 who look at the entire safety and health management
3 system and kind of don't know where to start. It's a
4 great gap analysis tool. It is an on-line tool
5 that's easy to use.

6 We now have 202 participants in the program
7 and 50 percent of those are actually in the
8 construction industry and 45 percent are unionized.
9 There's a lot of information on the web site with
10 that.

11 We do have good results from the people
12 that have participated in this program. They're
13 getting injury and illness reductions in the first
14 year of their participation of more than 30 percent.
15 I just want to mention as a success story Thomas and
16 Marker, one of the general contractors who use this
17 program, and they actually were able to reduce their
18 injuries and illnesses by more than 50 percent and
19 also drop their workers compensation costs by 99
20 percent. In 2007 they had no lost time claims. So I
21 think that really speaks for the value of the
22 program, and we're looking forward to having more

1 participants in that program.

2 So with that, I think I just want to close
3 with I think our cooperative programs do have a place
4 alongside our strong performance, our strong
5 enforcement programs, in reducing injuries and
6 illnesses. We look forward to working with you and
7 hearing from you about your ideas on how we can make
8 improvements and improve the impact of these programs
9 across the country for our workers.

10 Thank you.

11 CHAIRMAN THIBODEAUX: Thank you.

12 Are there any questions from any members of
13 the committee of Ms. Oliver concerning her
14 presentation? Frank?

15 MR. MIGLIACCIO: Cathy, you said -- I just
16 want to talk about just the VPP program. Would you
17 have an idea of the size or the number of employees
18 average for the members of that group, what the
19 average size is? Any idea?

20 MS. OLIVER: Yes. I believe it's between
21 about 150 and 200 employees. But I can get that
22 specifically for you.

1 MR. MIGLIACCIO: If you could do that.

2 What would you think would be the largest?

3 That's the average. What would be the largest and
4 the smallest groups that you have in these?

5 MS. OLIVER: We have sites as small as like
6 nine employees and we also have a site of 18,000
7 employees. So it's quite a range.

8 MR. MIGLIACCIO: Thank you.

9 CHAIRMAN THIBODEAUX: Anyone else having
10 any questions?

11 MS. SHORTALL: I have a request. Cathy,
12 could you email me a copy of your Power Point
13 presentation so I can get that entered in the record?

14 MS. OLIVER: Sure.

15 MS. SHORTALL: Thanks so much.

16 CHAIRMAN THIBODEAUX: Yes, Jim?

17 MR. TOMASESKI: I'd like to make a comment.
18 Cathy mentioned the strategic partnerships that were
19 involved with the major line contractors, power line
20 construction contractors in the United States, both
21 union and non-union. We've been at this now from the
22 first day we started talking about it until today for

1 a little over four years. We've had the opportunity
2 to make some remarkable progress that we would have
3 never had the opportunity to do, things like we're
4 doing now, that's affecting the industry both in the
5 union sector and the non-union sector, but really
6 affecting the safety of the work, that in some cases
7 goes well beyond what current OSHA regulations
8 require and even what some of the proposed
9 regulations that we're working on require.

10 We had a difficult time getting started.
11 It took us almost, what, two years to get even the
12 agreement ironed out and signed. But I think what
13 happened in the long run was the industry finally
14 convinced the attorneys that we were doing a good
15 thing and we really wanted to do this. I know all
16 the language had to be right and everything, but we
17 finally got it to where we were able to, like I said,
18 do some good things.

19 One of the I think the issues that are a
20 little different with this strategic partnership and
21 maybe others also is anything that we produce in the
22 way of best practices or anything else like that, the

1 agreement requires each one of the employers to
2 implement these. That goes a long way, because we
3 have some -- in this type of work, face it, any time
4 you work around energized electrical circuits, and
5 especially on some of the high voltage circuits that
6 we work on, the likelihood of accidents occurring is
7 high. There's just no question about it.

8 We have good regulations. We have good
9 work rules. But there is always chances for errors.
10 But one of the other unique things is, depending upon
11 what part of the you're from, is how that work gets
12 done. In some parts of the country one thing is
13 acceptable; in another part of the country that same
14 work practice has never been acceptable.

15 So to be able to get the employers
16 together, the union together, the non-union employers
17 together, and the ability to affect how this work
18 gets done with all of these other issues that are at
19 hand, and finally to get to the point where each one
20 of the employers in every part of the country has
21 implemented these work rules, has just been
22 phenomenal. And we wouldn't have been able to do it

1 without using this opportunity that we had with the
2 strategic partnership.

3 CHAIRMAN THIBODEAUX: Thank you, Jim.

4 MS. OLIVER: Thank you, Jim.

5 CHAIRMAN THIBODEAUX: Anyone else? Susan?

6 MS. BILHORN: I just wanted to mention, I
7 think the emphasis that we've seen, our company has
8 seen, over the last -- with the defense side and even
9 NASA, the relationships, where they're actually
10 moving toward VPP, has been extremely positive. I
11 encourage that to happen with municipal entities as
12 well, because frankly it's kind of surprising to see
13 sometimes, with our broad base of clients, commercial
14 and public sector, that sometimes it's kind of
15 disappointing to find the stronger emphasis in the
16 commercial side and a reduced emphasis on the federal
17 and municipal.

18 So it's really good to see that in the
19 federal side. It would be really good to see more
20 and more of that pushed on the municipal side. We
21 have some clients who still have an emphasis that
22 they really don't want us to care about safety or to

1 focus on safety because it introduces greater
2 liability to them, and that's really not the way
3 we're going to get things done.

4 MS. OLIVER: Thank you for that comment.

5 CHAIRMAN THIBODEAUX: Any other comments or
6 questions?

7 (No response.)

8 CHAIRMAN THIBODEAUX: Okay.

9 MS. OLIVER: Thank you so much.

10 CHAIRMAN THIBODEAUX: Cathy, thank you very
11 much for your presentation.

12 MS. SHORTALL: Mr. Chair, at this time I'd
13 like to request entering a few items into the record
14 of this meeting. First is Exhibit 0002, the BLS 2007
15 data on fatal occupational injuries by industry and
16 event exposure -- which, for those in the audience
17 who don't have a copy, would be Table A-1 on BLS's
18 web site.

19 As Exhibit 0003, the BLS 2000 incident
20 rates for non-fatal occupational injuries and
21 illnesses by industry and case types, which would be
22 Table 1.

1 As Exhibit 0004, the U.S. Census Bureau
2 2006 census of U.S. businesses by employment size.

3 And as Exhibit 0005, a hard copy of the
4 Power Point presentation on construction cooperative
5 programs by Cathy Oliver. These will all be entered
6 into OSHA Docket No. OSHA-2009-0001.

7 CHAIRMAN THIBODEAUX: So entered.

8 Mr. Buchet, do you have anything to offer
9 before we take a break?

10 MR. BUCHET: Mr. Chairman, how much do you
11 want to advance the schedule? I'm sure that Mr.
12 Gillen from NIOSH would be willing to jump in and
13 start his presentation, and we can pick up with the
14 Solicitor's representative when he arrives. He isn't
15 going to be here for a few minutes. Or we can take a
16 break.

17 CHAIRMAN THIBODEAUX: Matthew, are you
18 ready?

19 All right, thank you.

20 NIOSH NORA UPDATE

21 (Screens.)

22 MR. GILLEN: All right. Good morning,

1 everybody. I wanted to provide a NIOSH update to
2 focus on developments since our December ACCOSH
3 meeting.

4 The first thing was to report that the
5 National Academies published the construction
6 research at NIOSH report, so we discussed the actual
7 recommendations in the report at the December
8 meeting, so I won't do that. But I did bring
9 published copies for the ACCOSH members who don't
10 have a copy yet, and I'll provide those during the
11 break so that everybody has a copy.

12 The other thing is I wanted to describe
13 that NIOSH, which has a large construction center
14 that's part of our program, that goes in five-year
15 increments, we've put out an announcement for the
16 next five-year cycle. So in February we put out this
17 construction center funding announcement, what we
18 call an RFA, request for applications. It invites
19 cooperative agreement research proposals for the next
20 five-year period.

21 So the applications will come in in May,
22 and the proposals will be reviewed over the summer

1 and there will be award in September of 2009 for the
2 next five-year cycle.

3 So the RFA includes in it -- it calls for
4 projects to target the NORA national construction
5 agenda outcome goals. It includes calls for projects
6 targeting the NORA contributing factor goals, things
7 related to culture, training, prevention through
8 design, etcetera. It also calls for research-to-
9 practice research projects so that we can learn more
10 about how best to do this in construction, some for
11 outcome goals and some for contributing factor goals.

12 It includes support for projects that
13 address some of the National Academy's
14 recommendations. It leaves room for emerging issues
15 that might come up in construction over the five-year
16 period as well.

17 So the bottom line is that by fall we'll
18 have a construction center in place that will have a
19 new crop of projects that are focusing on the NORA
20 national construction agenda topics.

21 Another thing I wanted to provide as a
22 reminder is that NIOSH is partnering with the Hearing

1 Conservation Association to recognize construction
2 organizations' successes on hearing loss programs.
3 So there is a specific award for a successful
4 construction hearing loss program or an innovation.
5 So I wanted to encourage folks on the committee who
6 know of companies or programs that are doing
7 innovative work on hearing loss in construction to
8 consider applying for this award. You can see
9 applications are due in August.

10 As far as some new publications that have
11 come out since December, we've had three new
12 workplace solutions reports. These really describe
13 exposure controls for silica, and the target audience
14 is safety and health professionals, contractors, and
15 workers. So we have one that describes controls that
16 could be used to reduce exposures for operator cabs.
17 We have one that describes controls that can be used
18 for grinding concrete. And we also have one that
19 describes controls that can be used for rock
20 drilling.

21 A couple of other new publications is,
22 we've updated, revised and updated our electrical

1 safety and health manual for electrical trade, which
2 has been a pretty popular item that's been used
3 pretty widely. We also have a new
4 publication that was a performance evaluation of two
5 overhead power line proximity warning devices.

6 A couple of other things is we have some
7 new web pages, so we have a new abrasive blasting web
8 page and we have a new web page on welding fumes,
9 which is a topic of great interest in construction.
10 This web page includes journal citations, NIOSH
11 health hazard evaluations addressing welding. It
12 includes a lot of links as well. So people might
13 find that helpful.

14 Another thing is we're trying to create
15 more Spanish language materials. So here, for
16 example, are the two previous workplace solutions.
17 The ones in jackhammers and tuck pointing are now
18 available as Spanish language versions.

19 We have also created Spanish language pages
20 for falls, confined spaces, for example. Here's one
21 on home contamination, take-home toxics. There's a
22 Spanish language page for hearing loss. It includes

1 a lot of the materials in Spanish. Motor vehicle
2 safety, asphalt, musculo-skeletal disorders,
3 ergonomics, shift work. These are some examples.

4 Finally, I wanted to describe that the NORA
5 construction sector council had a great meeting last
6 week, and we're fortunate to have three of the ACCOSH
7 members on the NORA sector council as well: Tom
8 Broderick, Emmett, and Frank. So it helps keep us
9 coordinated with ACCOSH as well.

10 We discussed implementing the national
11 construction agenda and items for engaging the
12 construction community. We began having
13 presentations on particular projects, did an overview
14 of certain projects. We came up with ideas for doing
15 outreach to folks who do surveillance, who track
16 injuries and illnesses, researchers, and also the
17 construction practitioner community.

18 There is overlap between some of the NORA
19 goal topics and some of the ACCOSH work groups.
20 That's something that we're interested in doing as
21 well, is involving researchers as appropriate. As an
22 example, the new nail gun or power fastening tool

1 work group has started up, and we helped facilitate
2 having a researcher come, Dr. Hester Lipscomb, to
3 present some research findings there to help --
4 really, it's research to practice. Where there is
5 research that's relevant to the discussions, we want
6 to try to involve the researchers in the ACCOSH work
7 groups as appropriate.

8 So again, that's a quick update on some
9 developments since our last meeting from NIOSH.
10 Thanks, and if there's any questions.

11 CHAIRMAN THIBODEAUX: Any questions of the
12 committee for Matt?

13 (No response.)

14 MR. GILLEN: All right.

15 CHAIRMAN THIBODEAUX: Thanks, Matt.

16 MR. GILLEN: Sure.

17 CHAIRMAN THIBODEAUX: Unless there's
18 anything further, let's take a break and be back in
19 here at 10:15.

20 (Recess from 9:58 a.m. to 10:19 a.m.)

21 MS. SHORTALL: Mr. Chair, at this time I'd
22 like to enter into the record the hard copy of the

1 Power Point presentation on NIOSH-NORA update by Matt
2 Gillen, as Exhibit 0006; and as Exhibit 0007 the 2009
3 review of construction research programs at NIOSH.

4 CHAIRMAN THIBODEAUX: So entered.

5 Mr. Joe Click is here from the Solicitor of
6 Labor to give us a presentation.

7 FACA FOR ADVISORY COMMITTEE MEMBERS

8 MR. CLICK: Thank you. Good morning,
9 everybody. My name is Joe Click. I'm the counsel
10 for Freedom of Information Act, Federal Advisory
11 Committee Act, and Privacy Act at the Department of
12 Labor. I'm here just to give you a quick little
13 briefing on the requirements of the Federal Advisory
14 Committee Act and some of your roles and
15 responsibilities in the agencies.

16 To give you a little bit of background, the
17 FACA was enacted in 1972 to control the growth of
18 committees, boards, commissions that were providing
19 advice to the government and to make sure that there
20 was sunshine on the process. There was a recognition
21 that agencies needed to get outside advice, needed to
22 bring people together, but at the same time there was

1 concern that it was being done without people, the
2 public, really knowing what was going on, who was
3 providing advice, who the agencies were listening to.

4 So when the law was passed, it was passed
5 to establish rules for operating, terminating
6 committees, giving advice and recommendations to the
7 Executive Branch. The purposes included providing
8 relevant advice, acting promptly, and making sure
9 that there was accountability through cost controls
10 and recordkeeping requirements.

11 It also is intended to ensure that the Congress
12 and the public are kept informed about the activities
13 of advisory committees by making the process very
14 transparent.

15 The Act has a number of requirements.
16 Committees have to be established either by statute,
17 by presidential directive, or they have to be
18 authorized by statute. In this case, this is a
19 statutory committee specifically authorized by
20 statute.

21 The committee has to be chartered. The
22 General Services Administration oversees committee

1 management for the entire government. There are
2 reporting requirements that we have to comply with.
3 They issue regulations that we have to follow.

4 Membership has to be balanced, and balance
5 means a couple of different things depending on why
6 the committee is brought together. It can be
7 representational balance of different points of
8 views, or it can be a balance of functions and
9 expertise, or some combination of those two things,
10 just depending again on what the intention of the
11 government in establishing the committee is.

12 Meetings are public, as you're all aware.
13 The public can be permitted to file written
14 statements with the committee before or within a
15 reasonable time following the meeting and, time
16 permitting, depending, the chair may permit people to
17 speak, and you can set up rules for how that's done
18 and whether it's done.

19 There are minutes that have to be kept and
20 they must be certified by the chair within 90 days
21 after the meeting. We also ask that there aren't
22 substantive discussions outside the meeting because

1 of the requirements for sunshine.

2 In general -- and I assume this is true
3 here -- if there are media inquiries, if any of the
4 members get inquiries, we ask that you refer those to
5 the chair or the DFO. Is that the way you guys
6 operate? Okay.

7 Committees, unless they're statutory,
8 terminate after two years, and the charters
9 regardless have to be renewed every two years. That
10 allows the agency to sort of look at the direction of
11 the committee. You might want to change the focus a
12 little bit, things like that.

13 There are a number of agency
14 responsibilities, just so you know. The statute
15 actually creates a couple of positions. Mine isn't
16 one of them. I just provide legal advice. But every
17 agency, Department of Labor included, has a committee
18 management officer. That person controls and
19 supervises the establishment, procedures, and details
20 the accomplishments of committees, makes sure the
21 reports and recordkeeping requirements are met, and
22 makes sure that the agencies who have the committees

1 appropriately respond to FOIS requests for committee
2 records.

3 Within each committee there is a Designated
4 Federal Official. I understand Noah Connell is
5 yours. That person is charged by statute with
6 approving and calling meetings, approving the agenda,
7 is supposed to attend, has the power to adjourn a
8 meeting if he or she determines it's in the public
9 interest. So for example, not that this would ever
10 happen here, but if a committee were ever to get way
11 off track on something that wasn't really what it was
12 about, the Designated Federal Official could shut the
13 meeting down.

14 In some instances, the DFO chairs
15 committees, obviously not here. That person is
16 responsible for maintaining records on costs and
17 membership, maintains the records for public
18 availability, is charged with ensuring that the
19 committee operates efficiently, and provides
20 committee reports. There's actually a database that
21 GSA runs that has to be updated and kept current,
22 that the public and Congress look at, that meets

1 reporting requirements.

2 GSA requires an annual report of committee
3 activity. You guys never close meetings. You guys
4 never close your meetings, right? Okay. There are a
5 couple committees who do. They mainly deal with
6 national security type issues, things like that.
7 There's a requirement that there be reports on what's
8 going on in closed committees.

9 Background materials and reports have to be
10 filed with the Library of Congress. So all the work
11 that's done actually winds up in the Library of
12 Congress.

13 The last couple of years, just so you know,
14 there's also been some GAO activity around FACA
15 committees. They've just sort of been looking at
16 what agencies are doing.

17 I should also mention that there is a bill
18 in Congress to amend the Advisory Committee Act.
19 It's going to increase reporting requirements. I'm
20 not going to go into any details, but just be aware
21 that it might happen this year, and if it does we may
22 have to come back to committees and explain what the

1 new rules are. Since you guys don't
2 close meetings, I'm not really going to get into
3 that. There are very limited circumstances under
4 which you can close meetings.

5 Briefly, talking about subcommittees, I
6 know you guys have really active work groups who do a
7 lot of your work. You open them to the public, as I
8 understand it, even though there's no formal
9 requirement that you do that. You have to be careful
10 to make sure that the work group work is reported
11 back to the parent committee. Otherwise it becomes
12 its own FOIA committee and there can be problems
13 there. The agency has the approval of all the work
14 groups. That's an agency call.

15 A question we get a lot is what kind of
16 activities don't have to take place in meetings.
17 Although it sounds like you guys do a lot of this in
18 the open, but preparatory work, pulling together
19 background material, things like that, don't have to
20 occur in public. Administrative matters don't have
21 to be discussed in the open, things like what room
22 are you going to be in next time, stuff like that.

1 Lastly, I just wanted to touch on the
2 public availability of records. Obviously, the whole
3 thrust of the Federal Advisory Committee Act is
4 transparency. So records, transcripts, minutes,
5 appendices, working papers, drafts, studies, agendas,
6 and other documents that are made available or
7 prepared for the committee or by the committee are
8 supposed to be available for public inspection.

9 There is some recognition of FOIA here, but
10 it's very limited. Basically, material that OSHA
11 might prepare and give to you we can look at for FOIA
12 exemptions, but that's a very, very limited
13 exception. Again, the work of subcommittees is not
14 subject to the open requirements except to the extent
15 that you're putting material to the committees.

16 Any questions on any of that?

17 (No response.)

18 Sarah, do you have anything you want to
19 add?

20 MS. SHORTALL: I'd like to add a couple of
21 things. First of all, ACCOSH is for the Department
22 of Labor and probably across the Federal Government,

1 it's a very special advisory committee. Not only has
2 it been statutorily created, so the charter that we
3 do every two years is more a formality. Until
4 Congress were to decide that ACCOSH should not meet,
5 ACCOSH will continue to meet. But it also included
6 one thing of special note in the Construction Safety
7 Act that created ACCOSH, and that is that whenever
8 OSHA puts out a proposed rule that would affect the
9 construction industry, before doing they must bring
10 it forward to this committee to seek your
11 recommendations and review of it.

12 I don't know of any other committee across
13 the Federal Government that has that special role.
14 So I hope you understand how unique and how special
15 that is, Congress saying for this group we want to
16 make sure that the experts we are bringing in several
17 times a year also have a chance to give their
18 recommendation on the policy via rules and
19 regulations that the agency might be proposing. So
20 that's number one.

21 Number two, the thing that I'd like to add
22 is that our work groups, since they are the group

1 that sort of helps develop the recommendations that
2 eventually ACCOSH will make to the committee, the GSA
3 requirements do say that they need to be publicized
4 to some extent. Now, whenever we have work groups
5 happening in conjunction with ACCOSH we include the
6 meeting times and dates in our Federal Register
7 notice of the parent ACCOSH meeting.

8 My understanding is that the work groups
9 are going to be even more active between meetings via
10 teleconference. It's going to be very important for
11 that that you keep sign-in sheets and contact
12 information for members of the public who decide to
13 participate, so when they do call a teleconference
14 meeting you also let those persons know about the
15 meeting so that if they wish to participate in the
16 work group they could do so.

17 There is no requirement to say that we have
18 to do a Federal Register notice for the
19 teleconference, but I encourage you as a result to
20 keep records of your sign-in sheets and use that for
21 notifying people via email of telecom meetings.

22 The third thing is, our committee

1 management officer of the Department also has to
2 answer to the General Services Administration and
3 they've been pushing down pretty hard and heavy on
4 all the advisory committees, dotting all the i's and
5 crossing all the t's. One of the requirements is
6 when an advisory committee makes a substantive -- I'd
7 say policy substantive, probably not procedural
8 substantive -- recommendation to the Department, that
9 then the Department has a requirement to write up
10 that recommendation for the agency head or the
11 Secretary of Labor, whichever person to which it's
12 directed, and those materials are also going to have
13 to, because they've been considered by the agency
14 official, be put in the Library of Congress as well,
15 so that they will see over time what the committee
16 has been recommending and how the agency has dealt
17 with that recommendation.

18 MR. CLICK: Again, it's all part of the
19 openness.

20 The other thing, and this is more sort of a
21 warning to my federal friends on the other end of the
22 table here, the other thing that we've really cracked

1 down on is the requirement for notice of meetings,
2 the 15 days. We actually had a situation in the
3 Department a couple months ago where we cancelled a
4 called meeting because the notice didn't get in the
5 Federal Register in time.

6 MS. SHORTALL: And it wasn't ACCOSH --

7 MR. CLICK: It wasn't in OSHA. It was in
8 another part of the Department. But that's something
9 that we're really being looked at hard on, too. It's
10 just an example of a real push to make this as open
11 and as participatory as possible.

12 MS. SHORTALL: And it certainly created a
13 lot of work for the Department when Secretary Solis
14 decided that that meeting would have to be cancelled.
15 The Secretary also required that there be a
16 notification in the Federal Register of the
17 cancellation of the meeting.

18 MR. CLICK: Right.

19 MS. SHORTALL: Then they had to do a new
20 notice to put in to the Federal Register for the
21 meeting that would be held after that. It costs
22 money to print in the Federal Register, so it was an

1 additional expenditure of several thousand dollars to
2 accomplish that. So they are very serious about
3 that.

4 I would add one other thing. One of the
5 things that we do in updating our charter every two
6 years is update what the costs are for having the
7 advisory committee. That's also printed in the
8 charter as well. So you can understand the agency is
9 investing a significant amount of its resources
10 specifically because they want to get your advice and
11 experience.

12 CHAIRMAN THIBODEAUX: Michael.

13 MR. BUCHET: So that you realize the
14 meeting is being held in front of a Designated
15 Federal Official, I'm the alternate.

16 MR. CLICK: That's fine. I assumed that
17 was taken care of.

18 MR. BUCHET: We didn't want it on the
19 record that --

20 CHAIRMAN THIBODEAUX: Yes, Walt.

21 MR. JONES: I have one question. As a
22 follow-up on Mr. Fairfax and Mr. Barab's requests for

1 this committee to provide advice and assistance with
2 the stimulus rollout -- OSHA's response to the
3 stimulus rollout, I should say -- is there any
4 special requirements when we get involved in
5 conference calls, meetings, participation and
6 decisions that are made?

7 MS. SHORTALL: I think it's going to be the
8 same thing as is happening now. One, you have to let
9 the members of the public know. What we have sort of
10 decided is those persons who have already been
11 participating in those committee meetings we will
12 consider the members of the public who want to
13 participate. So making sure that they have an
14 opportunity to participate. Teleconference meetings
15 also need to keep records of anything and would also
16 have to bring whatever recommendations they have
17 before the parent ACCOSH. It would not be the
18 committee that makes the final decision, but just in
19 essence doing the research, crafting out some
20 alternatives, potential recommendations to bring to
21 ACCOSH, and it would have to be ACCOSH that would
22 have to consider them.

1 I don't think there would be any danger at
2 this point that ACCOSH will ever hold a
3 teleconference meeting because the requirements of
4 doing that are just so onerous.

5 CHAIRMAN THIBODEAUX: Joe, what we have
6 been doing in the past, in the back of the room there
7 is a sign-up sheet for people who would like to be
8 put on an email list. The current email list is
9 about 150 people. What we have not been doing, but
10 will start, is taking the information by work groups,
11 so that we can identify if you want to participate in
12 a teleconference with a work group we'll get to you.

13 MR. CLICK: Right.

14 CHAIRMAN THIBODEAUX: We send the Federal
15 Register notice out once it's printed to the big
16 email list, because we're required, I believe, to use
17 Federal Register and other means. That's what we've
18 been doing.

19 MR. CLICK: That sounds fine. Clearly,
20 everybody is sort of trying to figure out with
21 respect to technology and the ability to do
22 teleconferences. I don't know of anybody that's

1 using a webinar for FACA, but I can see it happening
2 at some point, how to notify the public and things
3 like that to allow them to participate. So it sounds
4 like what you guys are doing is fine.

5 Just any way you can reach out to the
6 public who might want to participate, and I think
7 you're taking those steps.

8 CHAIRMAN THIBODEAUX: Are there any
9 questions or comments from the committee?

10 (No response.)

11 CHAIRMAN THIBODEAUX: The next item on the
12 agenda are work group reports. Is the multi-lingual
13 work group ready to present?

14 MR. KAVICKY: He just stepped away.

15 CHAIRMAN THIBODEAUX: All right, we'll skip
16 over that. Power fastening tools, nail guns?

17 MR. KAVICKY: Yes, we are.

18 WORK GROUP REPORTS:

19 POWER FASTENING TOOLS (NAIL GUNS)

20 MR. KAVICKY: The power fastening tools,
21 nail guns, work group meeting met on April 14th from
22 12:30 p.m. to 2:00 o'clock p.m., Co-chairs myself and

1 Elizabeth Arioto. We had in excess of 15
2 participants that attended this work group meeting.

3 After a brief welcome, self-introductions,
4 and opening comments going over the agenda, we got
5 into the meat and potatoes of the work group meeting.
6 It's the first work group meeting that we have on the
7 nail gun issues. A Power Point presentation titled
8 "Nail Gun Injuries in Residential Construction" was
9 given by Heather Lipscomb, Ph.D., of the Division of
10 Occupational and Environmental Medicine, Duke
11 University Medical Center. The study was done with
12 the cooperation of the Carpenter's District Council
13 of Greater St. Louis and Vicinity, the Home Builders
14 Association of Greater St. Louis, and North Carolina
15 and the Carpenters Joint Apprenticeship Programs of
16 St. Louis and Southern Illinois.

17 The research activity focused on injury
18 data using the contact trip trigger and sequential
19 trigger pneumatic nail guns during residential
20 construction activities. The injury data showed that
21 apprentice carpenters had greater than three times
22 more injuries than the journeyman carpenter per

1 200,000 hours worked. Nail gun injuries accounted
2 for more than 14 percent of all injuries sustained on
3 a residential job site.

4 In 2005 44 percent of the total 347
5 carpenter apprentices experienced a nail gun injury.
6 Injury rates by trigger mechanism per 10,000 hours of
7 tool use were contact trip trigger 3.6 versus
8 sequential trigger 1.6 rate. The contact trip
9 trigger nail gun carried twice the risk of injury
10 even after accounting for training and experience.

11 The study identified that framing nail guns
12 should have sequential triggers, based on the public
13 hierarchy of controls, which includes, number one,
14 design out the danger first; two, guard against the
15 danger; and finally, train the workers how to deal
16 and avoid the danger.

17 After Ms. Lipscomb's presentation, a Power
18 Point presentation titled "Power Fastening Safety,"
19 was given by John Kurtz, Executive Vice President of
20 the International Staple, Nail, and Tool Association,
21 ISNTA. ISNTA recommends training and education in
22 the proper use of pneumatic nail guns. Productivity

1 advantages and ergonomic factors are reasons that
2 tool users prefer having actuation systems options.
3 ISNTA believes mandating use of a particular
4 actuation system is not the optimal approach for
5 improving safety, for the following reasons:

6 One, fails to recognize needs of different
7 jobs and applications;

8 Two, fails to recognize the role of
9 productivity and ergonomics;

10 Three, doubtful acceptance;

11 Four, invites enforcement problems;

12 Five, generates safety problems;

13 And sixth, the way to improve safety is to
14 improve education and training.

15 A very lively discussion followed the two
16 presentations. It was decided by the work group to
17 make three recommendations to the full ACCOSH
18 committee:

19 Number one, continue the power fastening
20 tool work group and meet at the next scheduled ACCOSH
21 meeting;

22 Two, invite Len Walsh, CAL-OSHA, to give a

1 presentation to the work group on how California OSHA
2 is dealing with nail gun safety issues and to discuss
3 their new standard for pneumatic nail guns. We will
4 also reach out to the manufacturers of pneumatic nail
5 guns and contractors to present more detailed
6 information on both the contact trip and sequential
7 trigger devices.

8 Number three, look at how to improve
9 training of pneumatic gun safety based on the current
10 data and risks.

11 The work group adjourned at 2:00 p.m. And
12 I will submit both presentations to the Chair.

13 CHAIRMAN THIBODEAUX: Are there any
14 questions or comments concerning the report from the
15 work group?

16 MR. GILLEN: Yes. At the end of the
17 meeting I had suggested that in addition that the
18 work group look at what the current regulations are
19 for nail guns, to evaluate what we know about risk
20 compared to what the regulations, what they currently
21 say about nail gun use. That wasn't mentioned in the
22 third one. It just talked about training. Is there

1 a reason for that?

2 MR. KAVICKY: Matt, I missed that. I'm
3 sorry. I apologize.

4 CHAIRMAN THIBODEAUX: Matt, are you making
5 a motion to add that?

6 MR. GILLEN: Yes. I'm suggesting that we
7 add that as a fourth recommendation.

8 MR. KAVICKY: Yes, go ahead.

9 MR. GILLEN: That was the intent of the
10 discussion yesterday, basically to say we have some
11 information about risks and training and let's
12 compare that to what our current regulations say
13 about nail gun use.

14 CHAIRMAN THIBODEAUX: We have a motion to
15 modify the work group report from Matt Gillen. Do I
16 hear a second?

17 MR. MIGLIACCIO: I second.

18 CHAIRMAN THIBODEAUX: A second. Do we have
19 any discussion?

20 (No response.)

21 CHAIRMAN THIBODEAUX: The way I understand
22 it is you want the group to look at the current regs

1 and see how they can -- how they would work as far as
2 these new engineering concepts and whether or not
3 having just one option would make a difference from
4 having two options?

5 MR. GILLEN: Basically, you have some
6 research on some risk factors and some possible
7 interventions, training, trigger changes, things of
8 that sort, information there. It just seems like one
9 of the values that our committee can present is to
10 advise OSHA, here's what information's out there,
11 here's what people in the industry are doing; and if
12 there's a gap in either regulations or guidance, that
13 we can help advise OSHA.

14 MR. KAVICKY: Matt, I take it you're saying
15 compare the risks to current regulations and identify
16 gaps?

17 MR. GILLEN: If there
18 are any gaps that need to be filled. If there aren't
19 gaps, then it becomes an implementation issue like
20 when we talk about trenching. If we feel the
21 regulation does cover all that we know about risks
22 and it's really just let's get people to follow the
regs, then --

1 CHAIRMAN THIBODEAUX: Any other discussion?

2 (No response.)

3 CHAIRMAN THIBODEAUX: All in favor of that
4 amendment to the work group report signify by saying
5 aye.

6 (Chorus of ayes.)

7 CHAIRMAN THIBODEAUX: All opposed, same.

8 (No response.)

9 CHAIRMAN THIBODEAUX: All right. That will
10 be carried.

11 Do we have a motion to accept the work
12 group report?

13 MR. KAVICKY: I make a motion to accept the
14 report.

15 CHAIRMAN THIBODEAUX: The motion has been
16 made. Seconded?

17 VOICE: Second.

18 CHAIRMAN THIBODEAUX: Any discussion?

19 (No response.)

20 CHAIRMAN THIBODEAUX: All in favor of
21 accepting the work group report on nail guns, please
22 signify by saying aye.

1 (Chorus of ayes.)

2 CHAIRMAN THIBODEAUX: All opposed, same.

3 (No response.)

4 CHAIRMAN THIBODEAUX: All right, that
5 report is accepted.

6 MS. SHORTALL: Mr. Chair, at this time I'd
7 like to enter into the record as Exhibit 0008 the
8 approved advisory committee report on power fastening
9 tools from the April 14, 2009, meeting; and the "Nail
10 Injuries and Residential Construction" hard copy of a
11 Power Point presented by Heather Lipscomb, Ph.D.,
12 Duke University, as Exhibit 0009; and a hard copy of
13 the Power Point on power fastening safety by ISNTA as
14 Exhibit 0010.

15 CHAIRMAN THIBODEAUX: All right, so
16 accepted.

17 The next report, are you ready on your
18 multi-lingual work group?

19 MR. BRODERICK: I'm sorry, Mr. Chairman. I
20 had a little trouble with technology, so I just need
21 to put my jump drive into a computer and print it
22 out.

1 CHAIRMAN THIBODEAUX: We can defer that.

2 Emmett, are you ready on the ROPS report?

3 MR. BUCHET: Mr. Chairman, if I might. If
4 you're giving us documents, please save them
5 backwards to Microsoft Office 2003. We do not have a
6 translator for 2007 and we have to scramble to find
7 them in the IT department.

8 WORK GROUP REPORT: ROPS

9 MR. RUSSELL: First I'd like for everyone
10 who has a copy of the work group report to make a
11 change. The meeting was held on April 14th instead
12 of April 13th, please. That was a typo or an error;
13 if you can make that, please.

14 There were 13 participants in the meeting.
15 We did welcome, self-introductions. The co-chairs
16 were Emmett Russell and Dan Zarletti. We reviewed
17 the history of the work group. We reviewed NIOSH
18 safety recommendations for skid steer loaders. We
19 presented and reviewed a draft of proposed edits to
20 OSHA regulations on ROPS on skid steer loaders. We
21 made changes, modifications, and additions to the
22 proposed edits and had a discussion on those.

1 We had a lengthy discussion on general
2 safety recommendations for skid steer loader, which
3 included ROPS, side screens on those ROPS, restraint
4 bars, brakes, inspections, and proper maintenance of
5 that equipment, securing the equipment, backup
6 alarms, hazards involved in loading and unloading
7 equipment, use of machines on slope, and on training
8 operators in the safe use of that equipment.

9 The work group agreed a number of the
10 topics discussed would apply as general safety
11 recommendations for all material handling equipment
12 and for now they should concentrate on issues
13 surrounding ROPS on the skid steer loader.

14 We had a discussion on next steps for the
15 ROPS work group. We'd like to make recommendations
16 to OSHA to develop a safety and health information
17 bulletin for skid steer loader hazards similar to
18 that developed for compactor rollover hazards.
19 There's a copy attached and I passed that copy out so
20 you would have an idea of what OSHA developed for
21 compactor rollover hazards.

22 The committee offered its assistance to

1 work with OSHA in the development of that product.

2 Review industry standards for the skid
3 steer loader; complete the deliberations or
4 recommendations for ROPS on skid steer loaders;
5 complete the deliberations, recommendations for
6 rollover, tipover hazards involving mini-excavators;
7 and to look at rollover hazards related to farm
8 tractors and different types of industrial,
9 commercial tractors. To give an example, there is a
10 Challenger, which is a tractor which tracks instead
11 of wheels used in construction.

12 Look at ROPS hazards for other equipment used in
13 construction. An example might be the asphalt
14 milling machine.

15 The work group might look at general safety
16 requirements for all material handling equipment if
17 ACCOSH were to charge the work group with that task
18 when rollover recommendations for construction
19 equipment are completed.

20 The meeting adjourned at 11:30 a.m.

21 CHAIRMAN THIBODEAUX: Thank you.

22 Does anyone have any questions or comments?

1 MR. MIGLIACCIO: I have a question for
2 Emmett. Emmett, correct me if I'm wrong, but does
3 OSHA have jurisdiction over farm equipment?

4 MR. RUSSELL: Farm equipment used in
5 construction, yes, they do.

6 MR. MIGLIACCIO: Oh, so when you say farm
7 tractors you're saying but it would be used in
8 construction?

9 MR. RUSSELL: Yes. When farm equipment is
10 used in construction, then OSHA does have regulation,
11 and the committee would have to take a look at it.

12 MR. MIGLIACCIO: Thank you.

13 CHAIRMAN THIBODEAUX: Any other questions
14 pertaining to the work group's report or comments?

15 (No response.)

16 CHAIRMAN THIBODEAUX: Do we have a motion
17 to accept the work group report?

18 MR. MIGLIACCIO: Motion to accept.

19 CHAIRMAN THIBODEAUX: We have a motion. Do
20 we have a second?

21 VOICES: Second.

22 CHAIRMAN THIBODEAUX: Any discussion?

1 (No response.)

2 CHAIRMAN THIBODEAUX: All in favor of
3 accepting the ROPS work group report of April 14th,
4 signify by saying aye.

5 (Chorus of ayes.)

6 CHAIRMAN THIBODEAUX: All opposed signify
7 by the same sign.

8 (No response.)

9 CHAIRMAN THIBODEAUX: It is so accepted.

10 MR. RUSSELL: Mr. Chairman, I have a couple
11 of other comments if I may.

12 CHAIRMAN THIBODEAUX: Sure.

13 MR. RUSSELL: We would like to thank OSHA
14 for the committee support, which we feel continues to
15 improve. That's Mike Buchet and additional OSHA
16 staff. I have to say they've been doing a good job
17 in terms of providing us with assistance, as well as
18 participating to a level where it helps the
19 discussion on the issues.

20 Also, I'd like to compliment OSHA on the
21 new format. Previously we've ran two work groups at
22 the same time, in which case a person has to decide

1 which work group committee to attend. Now they've
2 actually reformulated where we hold one work group at
3 a time, and I think it has increased participation,
4 and the increased participation has actually enhanced
5 the level of discussion at the work groups. So again
6 I do want to thank OSHA for making that change
7 because I think it has been a major asset to the work
8 group and work group chairs.

9 CHAIRMAN THIBODEAUX: Thank you.

10 MS. SHORTALL: Mr. Chair, at this time I'd
11 like to enter into the record the approved work group
12 report on rollover protective structures from April
13 14th as Exhibit 0011; and as Exhibit 0012 the
14 compactor rollover hazards safety and health
15 information bulletin by OSHA.

16 CHAIRMAN THIBODEAUX: So admitted.

17 Yes, ma'am?

18 MS. GABRY: I'm Deborah Gabry. I just
19 wanted to mention that OSHA has on its web site a
20 pretty new publication on skid steer loaders that was
21 just published end of January. It doesn't focus on
22 ROPS, but it focuses on the hazards of bypassing

1 safety features. You may want to look at that to
2 just include the recommendations that we were talking
3 about for skid steer loaders and ROPS. That would be
4 a good starting point. I just wanted to bring it to
5 your attention.

6 MR. RUSSELL: Thank you.

7 CHAIRMAN THIBODEAUX: Thank you very much.

8 All right, Mr. Lamberson. Keith Lamberson
9 is going to present, give us a presentation on trench
10 protective systems. He is a member of the Trench,
11 Shoring, and Shield Association.

12 TRENCH PROTECTIVE SYSTEMS:

13 TECHNOLOGY/USABILITY UPDATE

14 MR. LAMBERSON: Mr. Chairman and committee
15 members: I appreciate this opportunity to make this
16 presentation. Again, my name is Keith Lamberson and
17 I'm the chairman of the Trench, Shoring, and
18 Shielding Association, which is a committee of the
19 AEM, Associated Equipment Manufacturers.

20 (Screens.)

21 This presentation today is used in a number
22 of places and it gives you an opportunity to preview

1 what we do with industry, what we even do with fire
2 rescue teams, what we do in the marketplace to train
3 people. This is a very condensed, short version of
4 that type of training, that type of presentation.

5 The intent of this course specifically and
6 toward the end is as it pertains to the fire rescue
7 teams, but in order to get to that point we need to
8 do some overview. Just if you'll pardon me, but
9 we're going to go through some quick definitions,
10 some dynamics of cave-ins, and some of the things
11 that may duplicate knowledge already with some of the
12 committee members, but might be fresh to some of the
13 others.

14 When we get in the marketplace and we make
15 presentations to them, one of the first things is we
16 want OSHA or OSHA's point of view to come across to
17 them, that sc work is considered one of the most
18 dangerous types of construction activities that takes
19 place. Within that dangerous activity, construction
20 workers make up 5 percent of the ACCOSH work force,
21 but they account for more than 26 percent of the
22 worker deaths and injuries.

1 From that, we give them a graphic. If you
2 take a copy of the standard that can be rather
3 daunting to a lot of the audiences, so we try and
4 simplify this and teach it much like a 55-mile-an-
5 hour speed limit. We don't debate whether you can
6 successfully get home at 60 miles an hour. We say
7 this is what the law says, 55.

8 But to this, let's explain. You've got 100
9 percent of the work force, 5 percent are the
10 construction workers, but 26 percent of the deaths
11 are coming from there.

12 The death rate from trench collapse,
13 though, is two and a half times more likely than any
14 other type of construction-related accident. When we
15 get that across to them, a lot of times they go: It
16 is? And they start thinking back to the times they
17 hear about it through the media. We discussed this
18 in the work group. There's hardly a trench collapse
19 that doesn't get into the major media and draw lots
20 of attention.

21 Why do people get hurt in excavations? We
22 spend a lot of time trying to get to the heart of

1 this issue. Since digging in the dirt doesn't appear
2 to be as dangerous as other activities, they tend to
3 be less cautious and they throw the dice and it's a
4 crap shoot.

5 There's not a test here today, but a quick
6 question is: What side of the trench box does this
7 fellow belong on, the inside or the outside? People
8 go: Well, yeah, that makes sense; he probably ought
9 to be inside the protective system that's being
10 provided.

11 Familiar excuses that we hear and that we
12 see -- and everybody's got examples of it -- I've
13 done it before, so I'm sure you'll be okay as well.
14 This idea that it'll only happen to the other guy.
15 It takes too much time to follow all the rules, is a
16 misconception. It costs too much. We have people
17 standing on the side of a ditch saying they're
18 smarter in fact than dirt, which seems to be an
19 interesting phenomenon.

20 OSHA and how they look at this issue, they
21 say that cave-ins are: first, predictable; cave-ins
22 are preventable; and therefore any injury from a

1 cave-in is not in fact an accident. If you can
2 predict it, if you can prevent it, it can't be an
3 accident by definition.

4 In the picture on the right, the
5 interesting thing about that is that the workers in
6 the cave-in that took place happened without hard
7 hats on, it happened without that bracing system in
8 place, but that was introduced by the fire rescue
9 teams that were doing the recovery effort. As they
10 came in, the first thing we do is put a hard hat on
11 the victim, on ourselves, let's get some braces in
12 and start doing the recovery. But that was not in
13 place and there was a supplemental cave-in.

14 Fire rescue teams need the contractor
15 marketplace and the industry to help reduce injuries
16 and save lives. Who do you call when there's a cave-
17 in? The fire rescue guys. They're frankly fairly
18 frustrated and tired of doing the recoveries, because
19 every time they come on site they treat that rescue
20 almost like the first time they've ever done it. The
21 conditions are different, the soils are different,
22 the digging depth. So they have to start from fresh

1 every time they come out.

2 What they're asking the contractor and the
3 marketplace is to accept responsibility to protect
4 their friends and employees, avoid the emotional
5 trauma that goes with either injury or death,
6 protects earning potential, and it avoids disability,
7 disfigurement. There's a lot of things in play.

8 On the left is a typical rescue scene, the
9 old support systems, be they timber, aluminum
10 hydraulic. You can see a lot of activity there.
11 There's crossing utilities in that rescue. They
12 become very complex and with that complexity it
13 becomes slow. That slow rescue attempt becomes very
14 frustrating to the contractor, to the families
15 involved. But the fire rescue teams don't want to
16 expose their firemen to the same hazard that got the
17 contractor in trouble in the first place.

18 Options available in the OSHA standard,
19 which gives options and options and options, include
20 shields, shoring, benching, sloping, and support
21 systems. The challenge for AEM's TSSA and the
22 manufacturer members is to get that point across in

1 simple language to the marketplace. I believe even
2 with programs like this that we're doing so. very
3 simple definitions for the marketplace to start to
4 learn what the toe of an excavation is, the
5 sidewalls, the slope, spoil piles, ground level.

6 If you gather up the people that are in the
7 ditches, they don't always have the highest level of
8 education. If we describe things in engineering
9 terms as friction coefficients or angle of repose, a
10 lot of times that is beyond their comprehension. So
11 all the manufacturers, all the training that's
12 available today, is to take it down to a real
13 straightforward and get them to understand what's
14 going on out there.

15 Real quickly, we want to look at cave-in
16 signals and what takes place. When we do this in the
17 marketplace, it's not to convey that it's a huge
18 massive amount of dirt, but in fact it's quite the
19 opposite. What we want to convey is how little dirt
20 it takes to get hurt.

21 For instance, 12 inch by 12 inch by 12
22 inch, one cubic foot, weighs an average of 100

1 pounds. It may weigh up to 120 pounds for that cubic
2 foot depending on moisture content and a lot of other
3 things. When a cubic yard of material, which is 3
4 foot by 3 foot by 3, that's 2700 pounds, upwards to
5 3,000 or more, so basically a ton and a half.

6 In the typical cave-in, that cave-in will
7 yield between three and four yards of soil. That is
8 not a lot of dirt that's fallen in, but it has the
9 weight equivalent of 9,000 to 12,000 pounds. In the
10 marketplace with contractors we tell them: That's
11 the same as your pickup truck times two, and try and
12 bring that back to something that they're familiar
13 with that they can equate to.

14 The dynamics of a trench cave-in: The
15 weakest area of the trench is in fact the belly.
16 You've got pressures from the top combined with the
17 lack of support on the sidewalls due to the
18 excavation process in place. You may have additional
19 pressures from the surcharge load or the spoil pile
20 being placed up on top. But that belly becomes one
21 of the weakest areas.

22 We have a number of people on job sites

1 say: Well, I'm going to put a spotter up there who's
2 going to look for these cracks and look for these
3 signs. But in fact the cave-in happens much too
4 quickly for human response to set out a warning,
5 somebody to respond to that warning, and move on.

6 A typical cave-in, you have tension cracks
7 that may be hidden by the spoil pile, pressures again
8 exerted from the top and the sides. You have this
9 bulge that begins to take place and form on the
10 sidewalls, and it's already under way. There's no
11 stopping it at that point, that cave-in, and it's
12 almost done. The sidewalls fall, the trench follows,
13 the edge of the spoil pile, possibly equipment that's
14 fallen in as well. In a matter of seconds -- we tell
15 them seconds, but in truth it's only milliseconds
16 that all this takes place and they're dead.

17 Most of the cave-ins statistically we're
18 seeing are in the 8 to 12-foot range. The big, heavy
19 contractors, utility contractors, with their
20 associations are very aware of these, these
21 potentials and these statistics. They for the most
22 part are compliant. What we see is that there's a

1 small and middle market that is absolutely unaware
2 that when they start digging that they're exposing
3 their people and their companies to these hazards.

4 An additional item is parallel trenches
5 that are manmade dangers and what we watch for. In
6 all the improved and all the municipal areas,
7 somebody else has already dug a ditch before you and
8 you have an older existing trench line that runs
9 parallel to the one you're installing. So that
10 column of dirt that exists between the two becomes
11 very unstable.

12 There are ways to tell where that previous
13 work has been done. You can contact the one-call
14 centers. You can look at the as-built plans. You
15 can look at manhole markings on the surface. But the
16 marketplace has to be taught that these are the
17 things that they have to be aware of, so that they
18 can eliminate that potential for danger.

19 Another danger is when we have a bell-
20 bottom trench and you have harder soil sitting on top
21 of softer soils. When that softer soil, at the point
22 where they meet they start to bell-bottom out. You

1 can see there, it'd make a lousy foundation for a
2 trench wall up on top of it.

3 That same situation where you have moisture
4 even makes it worse, because the moisture is starting
5 to wash out the glue. We call it glue. In the
6 engineering community they call it clay, and the
7 silts and the fines that hold the marbles together,
8 the "marbles" being the sand and the grit and the
9 larger particles.

10 But all of this is what has to get out into
11 the marketplace to get the people to understand that
12 every time they open that trench -- the standard says
13 five foot and deeper -- they have to provide a
14 protective system, but if there's potential for a
15 cave-in less than five foot they still have to
16 comply, have to have a competent person, and have to
17 have everybody who's exposed to that hazard properly
18 trained in it.

19 We're going to move on to real quickly take
20 what the dynamics of a cave-in are and look at some
21 of the protective systems that are available and some
22 of the things that have changed most recently. Real

1 quickly, employees have to be protected, again, from
2 all the possibilities of cave-in by an adequate
3 protective system. That protective system has to be
4 able to resist without failure all the loads that can
5 be reasonably expected to be put upon it.

6 I've got a photo of this guy and he's
7 wondering, is he doing anything right. That
8 photograph is only about a year, year and a half old,
9 and that type of job condition can be found all
10 across America. We've got a guy in the tee shirt
11 working between crossing utilities. We've got
12 layered soils, all types of things wrong.

13 Like so many things, when you do an
14 accident analysis it's usually not one single thing
15 that was done improperly, but it was a combination of
16 two or three. Whatever it is, even in a traffic
17 accident, he may be speeding, he didn't have his seat
18 belt on, and the person was following too close. In
19 excavation safety, we say the same type of thing:
20 They weren't trained, they didn't have a protective
21 system, plus they had their equipment too close,
22 adding vibration to the sides of the excavation

1 walls.

2 Quickly, with the protective systems, rules
3 on shields. Let me go back real quickly. In the old
4 days, first was to slope everything. After we
5 sloped, we started people cutting down trees,
6 bringing in timbers and timber supports. Timber is
7 very heavy. It typically is a single use and is
8 pretty much left behind as an old system for trench
9 support.

10 After that was aluminum hydraulics.
11 They're reusable, but they do have to put active
12 support against the sides of the excavation in order
13 to work adequately.

14 Trench shields and boxes is pretty much the
15 modern technology that's out there. You are allowed
16 to carry them up to two feet off the bottom of an
17 excavation if that bottom is stable and no potential
18 for an accident. You can slope above it. So when we
19 hear in the marketplace, well, there's nothing
20 available, again OSHA's set out what the options are.
21 Each of these is available in some form or fashion.
22 Maybe they can't slope because they have crossing

1 utilities, but there are other systems in place that
2 can be utilized.

3 One of the things, when using trench boxes
4 you have to control the lateral movement and that's
5 where a box would shift or tip sideways and in a way
6 trap that worker against the work that was in
7 process. OSHA does not make a specification of how
8 to do that. That's left up to the contractor and the
9 properly trained competent person to make those
10 decisions on the job site. So lateral movement has
11 to be controlled when you're using a trench box.

12 Vertical movement, when the box is coming
13 in and out of the ditch -- you're not allowed to get
14 under a suspended load. No how, no way; you're not
15 allowed under suspended loads. So you have to not be
16 in a position where you're in that danger.

17 When the box is actually moving down the
18 length of a ditch or what we call horizontal
19 movement, you are allowed to stay in the trench box
20 and follow that box as work progresses.

21 I need to find the next one. I'm going to
22 ask you, Michael, to pull up my next set here.

1 What we have in the marketplace -- some
2 people have very sophisticated understanding of the
3 dangers and of the protective systems that are
4 available. But there are also many that just don't
5 have any idea. Again, they go to these familiar
6 excuses that exist: I've seen other guys do it; it
7 must be all right for me.

8 This next section is what we call the good,
9 the bad, and the ugly. Down in the bottom right was
10 again that first slide we saw where the guy wasn't
11 using anything. The rescue teams come in with a
12 bracing system and started to do a recovery.

13 The middle picture, where we've got a fully
14 engaged rescue with all the assets they have, very
15 slow; and up on top is lightweight shields that are
16 available from a number of the manufacturer members
17 of the TSSA.

18 I don't want to beat a dead horse. I know
19 we're all on the same team here. But this is what's
20 going on on the job site. What do we see that's
21 wrong? There's no vest on this guy, there's no hard
22 hats. The adjacent utilities are too close. There's

1 vibration from the de-watering equipment. There's
2 vibration from traffic.

3 If you look at the dynamics of an
4 excavation collapse, the two biggest enemies we have
5 are vibration that sets the particles in motion and
6 moisture. Moisture starts to move and wash out those
7 components of the soil that hold it together.

8 A lot of job sites -- we just finished a
9 couple days of rainy weather right here in this city,
10 and it would be precarious to be digging immediately
11 after that. But when you bring vibration into it and
12 you start those particles in motion; as one of our
13 friends says: The trench is going to collapse; we
14 just don't know when.

15 Anyway, this is not an uncommon scene on a
16 job site. It's a multitude of things that are being
17 done improperly. This type of a situation, what side
18 of the trench box does this guy belong in?
19 Obviously, they brought a system out, they put it in
20 place, and these guys are outside of it, between the
21 danger zone and the box that's there to protect them.

22 Michael, I see you leaning into it. We

1 didn't dummy that picture up.

2 Up on the sidewalls you can see some
3 fracturing that's taking place. It's a very granular
4 soil. It's a C soil, which is the worst category.
5 And here is this guy has put them in the absolute
6 worst place to be.

7 This is an interesting picture in that,
8 like contractors do, there's actually a protective
9 system on site. Up on the right-hand side is a
10 traditional trench box. Guys are standing there.
11 The spoil pile appears to be two foot back from the
12 edge of the excavation, but if you look down in the
13 bottom of the ditch there are a couple workers down
14 there, 15, 16 feet deep. And yet the contractor
15 company has made the effort to have protective
16 systems on site, but they're not bridging the gap
17 with decisionmaking at the job site level to put it
18 in place.

19 Probably the reason they did so is because
20 of the issue of a crossing utility directly above
21 their head. In that case they need to put a trench
22 box on one side of the utility, put a trench box on

1 the other side, and make sure that the work is being
2 done from the protected area of those trench boxes.

3 This big piece right in front of us is
4 actually a vibratory plate compactor that goes on the
5 back of a backhoe to add that vibration to achieve
6 compaction for the specifications of the ditch. But
7 again, that vibration also brings our biggest hazard
8 to the trench wall stability.

9 We were talking about a spotter who's going
10 to look for cracks. This is to bring a little humor
11 into this process. But the point is that the
12 standard's very clear: Five foot and deeper, you
13 have to have a protective system. Less than five
14 foot, if the potential exists for injury, death,
15 illness, you also have to protect in that case. This
16 guy's only three, four feet deep, but he has all of
17 his vital organs below the edge of that excavation
18 and in fact there is potential for injury.

19 Quickly to go into some of the changes and
20 the solutions that are taking place out in the
21 marketplace. The fire service particularly is moving
22 from the timber systems, the hydraulics, to a more

1 recent technology. Instead of hydraulics, they're
2 moving to air struts. They have pressurized air
3 systems on their rigs. The air strut has been around
4 now for quite some time in the fire rescue business.

5 The next move is going to be to lightweight
6 shields, and the lightweight shields, there's no
7 special equipment required to move them around. They
8 assemble with ease. What we've been told by a couple
9 teams is that that buys them instant time to develop
10 a more comprehensive plan by getting that box in
11 around a potential victim.

12 The reason I went back through the slides
13 and showed you we have to control lateral movement,
14 they get rather creative in the fire rescue.
15 Everything's of the moment. They may put a backhoe
16 bucket down next to that box to keep it from shifting
17 sideways. They may fire some of their air struts
18 from that box back against the trench wall.

19 But the industry and the companies out
20 there think that all trench boxes and shoring are 8
21 foot high, 16 foot long, and weigh 7 to 8, 9,000
22 pounds. In fact, there's a number of manufacturers

1 with lightweight systems that can accomplish the same
2 thing rather quickly.

3 First, to the contractor market, it
4 addresses their needs in the shallower depths,
5 handling them with rubber-tired backhoes. Also, with
6 the increase in the use of mini-excavators, much
7 smaller excavators doing work, this shoring is now
8 better suited for those type of job sites. But the
9 fire rescue teams are also doing the thing, and the
10 fire rescue teams are using them as well with vacuum
11 excavation.

12 Yes, Michael?

13 MR. MIGLIACCIO: Do the air struts come in
14 sort of adjustable ranges?

15 MR. LAMBERSON: Exactly. The air strut
16 uses pneumatic pressure to fire the strut and then
17 there's a mechanical pin that turns it back into a
18 mechanical strut. Typically, 20 to 30 inches, a size
19 30 to 40. Because it's just a single ram inside a
20 collar, you can't go from 2 foot to 8 foot. But they
21 have struts of all different sizes.

22 The thing with these lightweight boxes is

1 they can advance down an excavation if they don't
2 know specifically where an injured, injured
3 hopefully, or even a recovery is to take place. So
4 you can move the boxes. But they do have to comply
5 with the lateral movement of the box. They're
6 dropping them in, in many cases dropping fin form and
7 some of their bracing to accomplish a quicker access
8 to that victim.

9 There are other issues. The fire rescue
10 teams know it, like end closure, and they say, guys,
11 we're doing the best we can, protecting our
12 firefighters while at the same time trying to do a
13 rescue rather than a recovery of a body; and we take
14 our training very seriously; we do the best we can at
15 the moment.

16 But here is an example of a box fairly
17 tight in the ditch. They've extended the height and
18 even below that box with some of the other materials
19 that they have on the rescue trucks: wider
20 spreaders, adjustable oversleeves, ways to
21 accommodate it. But also, they have a ditch here
22 that's not continuous in a straight line, that in

1 fact bends around. The older, traditional bracing
2 systems are hard to accommodate.

3 After you have a cave-in you no longer
4 typically have a straight wall and you have a lot of
5 uneven surfaces that you're going to work from. So
6 the lightweight shields help accomplish a faster
7 response. As one guy said, it guys them time to
8 develop a more comprehensive plan.

9 That's just two people.

10 Here's a couple guys smiling. They had a
11 fun day at their training exercises.

12 What we're trying to take to the
13 marketplace as an association, as members, as
14 manufacturers, is for these people to understand that
15 safety in excavation is really simple to comply with.
16 I think there's a misnomer and a perception that
17 somehow it's very complex, but it's not at all. They
18 can be simple, they can be safe, and they can make
19 the right decisions on the job sites to do their
20 work.

21 I hope that's beneficial to you.

22 CHAIRMAN THIBODEAUX: Thank you.

1 Anyone from the committee have any
2 questions for Keith concerning his presentation?

3 Yes, Frank.

4 MR. MIGLIACCIO: I just have one question.
5 You said that the person working in the trench can't
6 be under the box as it's being placed in, but they
7 allow the person to be in the trench as it's being
8 moved horizontally?

9 MR. LAMBERSON: That is correct.

10 MR. MIGLIACCIO: Aren't you putting the
11 person in danger by moving it horizontally when in
12 your diagram you are lifting it up, maybe the person
13 falls, the box slips, comes down, cuts their leg?
14 Shouldn't that person always be out of that trench?

15 MR. LAMBERSON: I'd say -- I see what
16 you're saying and there would be opportunities, I
17 think, for that. There's different systems of
18 spreader bars. There's different types of shoring.
19 So that would fall on the competent person on that
20 job site. If you were working and you had a four-
21 inch sewer line and there was not potential, is the
22 thing the competent person is looking for, to be

1 injured, that's different than if you were
2 straddling, for instance, a 36-inch RCP concrete pipe
3 and there is potential.

4 So even though those are the general rules
5 for trench boxes and the use of it, the competent
6 person still has to make the right decision. If that
7 box was not carried to the full height and there was
8 spoil material that could still come in over the top,
9 certainly removing the employee may be an option that
10 has to be done on the job site.

11 But as a blanket statement, they do -- OSHA
12 does allow for that movement to take place if the
13 competent person sees it's still a safe activity.

14 MR. MIGLIACCIO: By the accidents we've
15 seen out there, a lot of times that competent person
16 is not making the correct decisions.

17 MR. LAMBERSON: Or there's not a person
18 trained as the competent person in fact.

19 MR. MIGLIACCIO: Thank you.

20 CHAIRMAN THIBODEAUX: Bill.

21 MR. AHAL: Bill Ahal, Alberici
22 Constructors.

1 What is your association doing as far as
2 any outreach to -- obviously, you're offering up some
3 training there. What are you doing for the rural and
4 smaller fire protection districts that don't have the
5 resources to individually train or have this kind of
6 equipment?

7 MR. LAMBERSON: Well, that is a topic of
8 discussion for the work group. It's also a topic of
9 discussion of the TSSA, which met in March, is how
10 can we take that out to the next level, companies
11 like yourself. The majors are doing it. They
12 understand the risks. But the mid-market, the
13 smaller markets, are a challenge.

14 Many of the manufacturers now participate
15 in some of the plumber type shows, the sanitary, the
16 sewer, what we call the pumping and cleaning
17 industry. As we talked with fire service, some of
18 those guys are volunteer fire departments. When
19 they're not working on the fire, they're also the
20 guys running the backhoes themselves. They're not
21 surgeons and they're not attorneys that are on the
22 fire rescue teams that volunteer.

1 CHAIRMAN THIBODEAUX: Yes, Steve.

2 MR. HAWKINS: One thing I'd ask to share
3 that you shared with the work group is how completely
4 inexpensive it is to rent this equipment. Could you
5 just touch on that a minute for the benefit of the
6 full ACCOSH?

7 MR. LAMBERSON: Sure, certainly. The
8 question -- let me build just a little bit of the
9 background for it -- was that of the manufacturers
10 that serve the market, we believe we're serving
11 somewhere between 20, maybe 30 percent of the market
12 as far as compliance, job site and that. So as a
13 businessman, when I look at my model I look at how do
14 I capture the noncompliant marketplace. That's the
15 biggest opportunity that's out there.

16 That noncompliance just seems totally
17 unaware that the product's available. The major
18 rental companies are having it, from United Rentals
19 to the Sunbelts to the Neffs to the Hertzses.
20 Companies like myself rent product. We have training
21 available.

22 We have product available for rental rates

1 as low as \$50 a day. Sometimes it might be \$70 a
2 day. So these decisions to keep their exposure so
3 high when it can be mitigated at a cost of 50, \$70 a
4 day, it doesn't add up. It's a challenge for the
5 work group, for the TSSA, for all of us, to close
6 that gap and get that message across.

7 But, Steve, that's exactly right. It's a
8 very small economic decision to make at \$50, \$70 a
9 day.

10 There's a couple motivating factors that we
11 do with the marketplace. First, there's certainly
12 the humanitarian. Nobody likes death, injury, these
13 type of things. There is the financial, elimination
14 of fines, legal expenses, all the costs that are
15 associated with it.

16 But a third one is what we call narrow
17 trench technology. You can dig a trench straight up
18 and down and put proper protective system for far
19 less than if you were to slope that at a proper one
20 and a half to one. That dirt that's coming out is in
21 fact the cheaper dirt. The most expensive is what
22 has to go back and backfill. The surface restoration

1 takes place. The contractor has to warrant that and
2 hold retainage against it. And all those things --
3 and the contractors tell us: No, I'll just keep
4 digging; I'll slope it out. I said: You can slope
5 that for \$50 today?

6 Or they'll take one box, but they'll be
7 deeper and they'll slope the top above it, and they
8 won't take a stacking section. I go: I'll give you
9 a stacking section; if you use it, you owe me; if
10 it's still sitting there tomorrow, I'm going to put
11 it on the bill.

12 But it's really a tough sales job to some
13 of these people.

14 CHAIRMAN THIBODEAUX: Any other questions?
15 Yes, Mike.

16 MR. BUCHET: Keith, in addition to that,
17 can you talk about the availability and the ease of
18 use of the lightweight systems? What does it take to
19 transport them, for instance, or handle them from the
20 ground into the trench and move them along the
21 trench?

22 MR. LAMBERSON: Well, as some of these

1 pictures showed, in depths up to maybe six foot deep,
2 one and two people can handle it. If you're going to
3 stack them, you can stack them rather easily,
4 certainly within the lift capacities of the mini-
5 excavators, the rubber-tired backhoes that are on
6 site. Some can be transported now on the back of
7 pickup trucks, certainly on a small utility trailer.

8 Because they're light, they can even be
9 shipped LTL truckloads. Put it on your favorite
10 commercial carrier. I can say that we serve about a
11 500-mile radius from each of our rental stores. Most
12 of the rental stores will do it. They'd be happy.
13 There's google, there's faxes, email, there's web
14 sites. You know who you're dealing with.

15 The idea that I'm only going to deal with
16 locals is not the case any more. Everybody's going
17 across state lines. The nature of construction work
18 is rather transient. The workers are moving, the job
19 sites are moving. Well, the shoring can easily move
20 from job site to job site. There's large
21 concentrations of vendors, particularly the West
22 Coast, Texas, and the Gulf Coast, up the Eastern

1 Seaboard. The middle of America may have some gaps
2 in some of the Mid-America states, but to me a 500-
3 mile radius is only a one-day trip. And if it costs
4 you rent for that one day, \$50 while it's on the
5 truck, I still think it's an inexpensive solution.

6 MR. BUCHET: Thank you.

7 CHAIRMAN THIBODEAUX: Any other questions
8 or comments?

9 (No response.)

10 CHAIRMAN THIBODEAUX: All right, Keith.
11 Thank you very much for your presentation.

12 MR. LAMBERSON: Thank you all.

13 CHAIRMAN THIBODEAUX: Very informative.

14 MS. SHORTALL: Mr. Chair, at this time I'd
15 like to enter into the record as Exhibit 0013 a hard
16 copy of the trench protective systems Power Point by
17 Keith Lamberson of the Trench, Shoring, and Shielding
18 Association.

19 CHAIRMAN THIBODEAUX: So admitted.

20 All right, we still have some time before
21 our lunch break. So is the trench work group report
22 ready to present theirs?

1 MR. RUSSELL: Yes.

2 CHAIRMAN THIBODEAUX: Excellent. If you
3 would, please.

4 WORK GROUP REPORT: TRENCHING

5 MR. RUSSELL: Mr. Chairman, we had an
6 excellent turnout to the trenching work group
7 committee, which was held April 15th. Co-Chairs were
8 Emmett Russell and Dan Zarletti. We did the welcome,
9 self-introductions, and we opened the meeting with a
10 presentation by Keith Lamberson of the Trench Shoring
11 Services, a member of the Trench, Shield, and Shoring
12 Association, a division of our AEM.

13 While competitors in the industry can share
14 safety information, safety and noncompliance is
15 common to the total industry. On a given day, 75
16 percent of the market might be in some form of
17 noncompliance. Small to mid-sized contractors using
18 mini-excavators and rubber-tired backhoes are the
19 major safety problems for the industry.

20 80 percent of the market is now using
21 rental trench protection products, compared to years
22 ago when the market was rent to own. The shoring

1 rental-dealer network consists of those who rent the
2 large excavators and now rent trench shields. Where
3 you rent your excavator, you can rent your shoring.

4 Rental agreements are key to providing
5 adequate, well-maintained equipment and accessories.
6 A number of states, such as Texas and Florida,
7 mandate a line bid item in bid packages for trench
8 shoring for state-funded work. A number of
9 contractors will bid trench jobs low without having
10 the proper shoring factored in the job.

11 Fatalities in the homebuilding industry are
12 primarily trenches as opposed to excavation, which is
13 the area around a house foundation and basement used
14 for waterproofing and other items.

15 The industry provides free and-or low-cost
16 trench training. It remains a problem to get
17 contractors at greatest risk to attend training
18 sessions. Training is provided through the rental
19 companies, industry associations, and educational
20 institutions.

21 Fatalities in the industry have been
22 falling as a result of industry education and

1 awareness. Most fatalities are the result of what
2 some consider a short-term exposure, where it is
3 considered a worker can get in and out quickly with
4 no protection. In many cases protection may be on
5 the job, but not in use, or workers may be working in
6 trenches outside the protected areas. Many
7 contractors just take the chance until they get
8 caught by a fatality or OSHA. Near-misses seem to
9 have little impact on unsafe work practices.

10 The work group discussed methods to impact
11 the small and mid-sized contractors. It was agreed
12 we would attempt to assemble video and pictures of
13 trench accidents and fatalities -- YouTube might be a
14 possible source -- get copies of public service
15 announcements on trench safety, and develop impact
16 messages and-or slogans; develop a list of target
17 contractors, rental houses, plumbers, and plumbing
18 supply houses, fire rescue teams, and attempt to
19 contact and impact with safety materials.

20 We'll look at the one-call system as a
21 possible source to distribute trench safety
22 information. As information is accumulated, use the

1 OSHA web site and other distribution methods to get
2 information to target audience.

3 The goal of the work group was defined:
4 further reducing industry fatalities through
5 education and awareness directed to the small and
6 mid-sized contractors.

7 The work group meeting adjourned at 2:15
8 p.m.

9 CHAIRMAN THIBODEAUX: Does anyone have any
10 questions concerning the trench work group report?
11 Yes, Frank.

12 MR. MIGLIACCIO: Not on the report, but:
13 Keith, you said the cost to rent. What's the cost of
14 purchasing? On that \$50 rental, what would be the
15 cost to purchase?

16 MR. LAMBERSON: That might be a \$3,000
17 purchase, a 70, 80, \$90 a day rental. Traditional
18 steel might be 8 to \$10,000 purchase, but
19 lightweight aluminum can easily be 2500 to \$4,000
20 to purchase.

21 MR. MIGLIACCIO: You would think the
22 contractors would just purchase -- if they don't want

1 to rent it, if they think they're going to be using
2 it over and over and over, why don't they buy it? I
3 mean, it doesn't make sense.

4 MR. LAMBERSON: Agreed.

5 CHAIRMAN THIBODEAUX: Do I have a motion we
6 accept the trench work group report.

7 MR. MIGLIACCIO: Make the motion to accept.

8 CHAIRMAN THIBODEAUX: A second?

9 VOICE: Second.

10 CHAIRMAN THIBODEAUX: Any discussion,
11 comments? Yes, sir?

12 MR. BUCHET: OSHA has been exploring for
13 some time and is working on language to create an
14 alliance with the Trench, Shoring, and Shielding
15 Association. So the Director of Cooperative and
16 State Programs, the Director of Construction, and
17 TSSA are putting together language which we will run
18 through the process, and hopefully we will have an
19 alliance signed before the end of the year. We have
20 discussed working on these outreach projects, and
21 hopefully we can coordinate them between the alliance
22 side and the ACCOSH side, so that we build on each

1 other instead of stepping on each other's toes.

2 MR. MIGLIACCIO: Duplicating efforts, in
3 other words. Thank you.

4 CHAIRMAN THIBODEAUX: All in favor of
5 accepting the trenching work group report, signify by
6 saying aye.

7 (Chorus of ayes.)

8 CHAIRMAN THIBODEAUX: All opposed, by same.

9 (No response.)

10 CHAIRMAN THIBODEAUX: Okay.

11 MS. SHORTALL: Mr. Chair, I'd like to mark
12 the approved trenching work group meeting report as
13 Exhibit 0014.

14 MR. RUSSELL: Mr. Chairman, I'd also like
15 to say a special thank you to Keith Lamberson. He
16 was very helpful to the committee in terms of
17 generating discussion and helping us focus on what we
18 should be doing next as a committee. Again, I did
19 want to say a special thank you to him.

20 CHAIRMAN THIBODEAUX: Thank you again,
21 Keith.

22 Do we have the regulatory compliance? Are

1 you ready yet?

2 MS. BILHORN: No. It'll be printed out
3 after lunch.

4 CHAIRMAN THIBODEAUX: Okay, that's fine.
5 That's fine.

6 MR. JONES: I'm ready.

7 CHAIRMAN THIBODEAUX: Silica. Okay, Walt.

8 (Pause.)

9 WORK GROUP REPORT: SILICA

10 MR. JONES: Thank you, Chair. The
11 committee met yesterday and I guess we had about 20
12 folks attending. The meeting was called to order at
13 2:20. I passed out the minutes, so you can follow
14 along. All present introduced themselves and for
15 such a large group I was surprised at the near-
16 unanimity we had on many of the directions and goals
17 that we chartered for ourselves.

18 The co-chairs reviewed the objectives
19 established by the work group over the last couple of
20 meetings. In particular, there were two areas of
21 emphasis that we've been working on: creating a
22 matrix that identifies silica exposures and

1 activities and try to use the matrix to reduce and
2 eliminate them. The second thing we've been working
3 on is building awareness of silica exposures.

4 The co-chairs distributed the agenda and
5 reviewed it. I began the discussion regarding the
6 first objective, the matrix, and basically backed off
7 our work that we've been working on and offered a
8 suggestion that we suspend it and ask OSHA to
9 initiate a new approach with the group's support.

10 The work product suggestion was changed
11 from a typical linear written document or publication
12 to a lateral web-based tool that would allow users to
13 drill down into the specifics of hazards, exposure
14 data, and abatement options. This tool we hoped
15 would allow for easy updating and be user-friendly to
16 help people find information that would be of
17 particular interest.

18 The development of the web tool will be
19 based on the table 12 of the OSHA's draft proposed
20 silica standard and fleshed out similar to the matrix
21 developed by the University of Georgia Tech for the
22 Georgia OSHA consultation office. Copies of each

1 were submitted at the prior ACCOSH meeting.

2 We had a very good discussion and the
3 topics and requests that emerged are the following:
4 educating construction designers and manufacturers so
5 their projects are specified in a manner to reduce or
6 eliminate the need for precut semi block and other
7 silica-based products to be cut. This could
8 significantly reduce job site cutting to only the
9 most tailored needs.

10 Two, regarding the draft standard, the work
11 group attendees were interested in finding out its
12 status.

13 Three, there was discussion on raising the
14 profile for controlling exposures at the source
15 because of potential environmental exposures in
16 addition to occupational exposures. For example, in
17 dense urban settings dust blooms from tuck pointing
18 and roll work can travel and expose or frighten
19 adjacent communities. It was suggested that the
20 subgroup try to expand participation with its
21 activities to representatives from the Mason
22 Contractors Association of America, the Concrete

1 Sawing and Drilling Association, and other related
2 associations and equipment manufacturers for input
3 and assessment.

4 The subgroup would like to request -- in
5 addition, the subgroup would like to request to have
6 CPWR provide a presentation to the subgroup on web-
7 based -- on its web-based silica matrix at the next
8 meeting.

9 In response to the Chair's request, the
10 ACCOSH Chair's request, Mike's request, to define the
11 subgroup's necessity, purpose, goal, and time line on
12 our activities, the work group basically affirmed the
13 need to continue to meet to achieve the following
14 goals over the next two years:

15 One, assisting OSHA with paving the way for
16 successful acceptance and compliance with protecting
17 workers from silica in construction standard;

18 Two, creating a web-based matrix tool that
19 identifies silica exposure activities and techniques
20 to reduce and eliminate them;

21 Three, to be a conduit for industry to
22 bring forth information on unique exposure scenarios

1 and remedies.

2 I've added a fourth in response to
3 discussion today regarding the stimulus. The chairs
4 will get involved with the stimulus activities that
5 OSHA is planning on getting involved in.

6 So in summary, the work group agreed to
7 formally ask ACCOSH to: one, consider a formal
8 request to ask OSHA to work with the subgroup to
9 develop a web-based protection tool from the silica
10 in construction guidance matrix. The two would
11 supplement and, if appropriate, be linked to the
12 anticipated OSHA silica standard.

13 We'd like to also ask the group to consider
14 having OSHA give a detailed update on the status of
15 the silica standard both to the subgroup and to this
16 main group.

17 The third request was to ask ACCOSH if we
18 could at the subgroup -- can review the OSHA
19 guidance, controlling silica exposures in
20 construction, before it's released to the public, in
21 order to comply with our statutory obligation to give
22 OSHA advice and input on the appropriateness of the

1 document.

2 Four, the work group wants to review the
3 proposed silica standard OSHA is considering to
4 publish. It was noted that the draft standard was
5 issued some five years ago and that this request is
6 even more pertinent if the draft has been changed in
7 any way over the years.

8 The meeting was adjourned at 3:30.

9 CHAIRMAN THIBODEAUX: Thank you, Walt.

10 Does anyone have any questions of Walter
11 concerning his report?

12 (No response.)

13 CHAIRMAN THIBODEAUX: Do I have a motion to
14 accept the silica work group's report?

15 MR. MIGLIACCIO: I make the motion.

16 CHAIRMAN THIBODEAUX: The motion is made.
17 Do I have a second?

18 VOICES: Second.

19 CHAIRMAN THIBODEAUX: The motion has been
20 made that we accept the work group, silica work group
21 report. Are there any comments or questions
22 concerning the work group's recommendations to ACCOSH

1 and to OSHA?

2 MS. SHORTALL: I have a question for Mr.
3 Jones. In the third bullet, the third or second
4 bullet, the third bullet of the summary, where you
5 speak about the statutory obligation, is this just a
6 general obligation to give OSHA advice and input --

7 MR. JONES: Correct.

8 MS. SHORTALL: Okay, and not on --

9 MR. JONES: Correct.

10 MS. SHORTALL: To give it on proposed
11 rules, but not on guidance. Okay.

12 Then the second thing is the last bullet,
13 and that was a draft standard was issued. Is the
14 appropriate word there "was made public"? OSHA did
15 not issue the proposed standard.

16 MR. JONES: Okay, then, we will strike
17 "issue" and put in "made public."

18 CHAIRMAN THIBODEAUX: Anything further?

19 MS. SHORTALL: Yes. Do you have the
20 language then for your fourth goal for the next two
21 years?

22 MR. JONES: It's in scratch right here, but

1 I can swork on it and submit it later on. Basically,
2 we want to respond to Richard Fairfax and Jordan's
3 request for our advice to OSHA's response to the
4 stimulus, and since that's happening at an
5 accelerated pace and, as Susan mentioned earlier,
6 much will be going on in the intervening months
7 before our next meeting, the chairs would like the
8 prerogative to move forward with meeting with or
9 contacting Rich to see where we can provide advice
10 and get in where we fit in, if appropriate.

11 CHAIRMAN THIBODEAUX: Basically, advice and
12 assist OSHA in the areas of construction for the
13 stimulus project.

14 MR. JONES: Basically. If they're coming
15 out with guidance documents to help with
16 infrastructure building, we just want to review and
17 help them to make sure it's going in the right
18 direction. Any advice and decisions that we assist
19 OSHA with we will report back to the committee at our
20 next meeting and then report back to the main
21 committee at the next meeting. But we just want to
22 be on record as asking for permission, I guess you

1 would say, to be involved and making everyone aware
2 and transparent with our intentions.

3 CHAIRMAN THIBODEAUX: Okay.

4 Does anyone on the committee have any
5 comment?

6 (No response.)

7 CHAIRMAN THIBODEAUX: All in favor of
8 accepting the silica work group report signify by
9 saying aye.

10 (Chorus of ayes.)

11 CHAIRMAN THIBODEAUX: All opposed, signify
12 by the same.

13 (No response.)

14 MR. JONES: If I may add, Tom Shanahan, who
15 has not been able to make it today, but he did co-
16 chair the meeting with me, has asked to -- I don't
17 know, I guess you would say resign or step down from
18 co-chairing. He wants to move in some other
19 directions. I would like to nominate Matt Gillen as
20 a co-chair. I'm not sure how the process goes from
21 here.

22 CHAIRMAN THIBODEAUX: The way I understand

1 it is, if Mr. Gillen is willing -- and Tom did talk
2 with me about not having -- he didn't feel he had
3 enough expertise in the silica area to be of a lot of
4 assistance, so he would like to direct his energies
5 elsewhere.

6 If Matt is willing to accept that co-chair
7 on the silica work group --

8 MR. GILLEN: I'd be willing to -- happy to
9 work with Walter on that.

10 CHAIRMAN THIBODEAUX: Then we'll designate
11 Matt as your co-chair on the silica work group.

12 MR. JONES: Very good.

13 Thank you.

14 Any other questions or comments before we
15 adjourn for lunch?

16 (No response.)

17 CHAIRMAN THIBODEAUX: The meeting is
18 adjourned. Back at 1:30.

19 (Whereupon, at 11:48 a.m., the meeting was
20 recessed, to reconvene at 1:30 p.m. the same day.)

21

22

1 recommend that OSHA give a detailed --

2 MR. JONES: Duly noted.

3 CHAIRMAN THIBODEAUX: We have a motion
4 made, and do we have a second, with that amendment?
5 Okay, thank you.

6 Any discussion by the committee on that
7 motion?

8 (No response.)

9 CHAIRMAN THIBODEAUX: None. All right.
10 All in favor signify by saying aye.

11 (Chorus of ayes.)

12 CHAIRMAN THIBODEAUX: All opposed, same.

13 (No response.)

14 CHAIRMAN THIBODEAUX: It passes.

15 MR. JONES: I motion that ACCOSH recommend
16 that OSHA works -- designates someone to work with
17 the subgroup to help develop a web-based protection
18 from silica in construction guidance matrix, a tool
19 that will supplement and, if appropriate, be a link
20 to the anticipated ACCOSH silica standard.

21 CHAIRMAN THIBODEAUX: We have a motion on
22 the floor. Is there a second?

1 MS. ARIOTO: I'll second it.

2 CHAIRMAN THIBODEAUX: We have a second. Is
3 there any discussion of the motion made?

4 (No response.)

5 CHAIRMAN THIBODEAUX: No discussion. All
6 in favor signify by saying aye.

7 (Chorus of ayes.)

8 CHAIRMAN THIBODEAUX: All opposed, signify
9 the same.

10 (No response.)

11 MR. JONES: The third motion is ACCOSH
12 recommends that the work group review any proposed
13 silica standard that they're considering to publish.
14 It was noted that the draft standard that was made
15 public, we believe five years ago, was reviewed, but
16 if it was significantly changed we are proposing to
17 review it.

18 MS. ARIOTO: I'll second that.

19 CHAIRMAN THIBODEAUX: Thank you. We have a
20 motion and a second. Is there any questions or
21 discussions concerning that motion?

22 (No response.)

1 CHAIRMAN THIBODEAUX: No discussion. All
2 in favor of the motion signify by saying aye.

3 (Chorus of ayes.)

4 CHAIRMAN THIBODEAUX: All opposed, signify
5 the same.

6 (No response.)

7 CHAIRMAN THIBODEAUX: The motion is passed.

8 MR. JONES: All right. The last motion
9 here, Jordan made reference to it this morning, or
10 Mr. Barab made reference to it this morning, but
11 still, we'd still like to move forward on asking
12 ACCOSH to recommend that the work group review the
13 OSHA guidance on controlling silica exposures in
14 construction before it is released to the public.

15 CHAIRMAN THIBODEAUX: Do we have a second?

16 MS. ARIOTO: I'll second.

17 CHAIRMAN THIBODEAUX: We have a motion and
18 a second. Any questions or discussion concerning the
19 motion? Steve?

20 MR. HAWKINS: Mr. Chairman, did Mr. Barab
21 say that that was going to be released on Workers
22 Memorial Day?

1 MR. JONES: Yes, he did.

2 MR. HAWKINS: So if we don't meet again how
3 can we request to review it, if we're not here to
4 review it before April the 28th? I'm just curious.

5 MS. ARIOTO: Can we not review it and have
6 comments provided by the members? Is there not a
7 process that we can do that?

8 MR. HAWKINS: We have a little over 20 days
9 until that date.

10 CHAIRMAN THIBODEAUX: Less than that.

11 MR. HAWKINS: About 18 days. I would just
12 ask that if our motion is actually for the work group
13 to see that before the 28th, I think it ought to be -
14 -

15 MR. JONES: Well, why don't we amend --

16 MR. HAWKINS: -- the motion ought to be
17 amended to state that, that we're asking the agency
18 to send that to the members of the work group before
19 the 28th for their review and possible comment.

20 MS. SHORTALL: The other thing is, if the
21 work group review it, the only place it can make
22 recommendations to is the ACCOSH, and in turn move

1 that ACCOSH make recommendations to the agency. The
2 work group does not give independent advice to the
3 agency. They are simply doing the work of ACCOSH,
4 and ACCOSH is the only group that is authorized to
5 give recommendations --

6 MR. JONES: Okay.

7 MS. SHORTALL: -- directly to the agency.

8 MR. JONES: So then I want to amend the
9 motion to say that this subgroup is asking to review
10 the document, period.

11 MR. ZARLETTI: Don't stop there, because
12 you're going to get it on the 27th and you won't have
13 time to respond.

14 MR. JONES: Well, we're not going to have
15 time to respond in any case. We'll review the
16 document and we will make whatever comments we make
17 to it.

18 MR. ZARLETTI: Well, what if there's --

19 MR. JONES: Well, it's too late. We'll
20 just make whatever comments we have to the ACCOSH
21 main group at our next meeting.

22 CHAIRMAN THIBODEAUX: The way I understand

1 it, the motion is that the work group would like to
2 review the OSHA guidance, controlling silica
3 exposures in construction, and would like for OSHA to
4 provide that to the silica work group; is that
5 correct?

6 MR. JONES: Correct.

7 CHAIRMAN THIBODEAUX: Allk right. We have
8 a motion. Do we have a second?

9 VOICE: Second.

10 CHAIRMAN THIBODEAUX: We have a second.
11 Any other discussion or comments?

12 MR. FAIRFAX: I have a comment.

13 CHAIRMAN THIBODEAUX: Yes, sir?

14 MR. FAIRFAX: I'm not positive, but I'm
15 pretty sure that when you were referring to reviewing
16 the proposed standard on silica five years ago, what
17 you reviewed was this document five years ago. I
18 think the group has reviewed it.

19 MS. BILHORN: We understand that there's
20 guidance -- we were informed that there is guidance
21 on silica that is going to be published. But we've
22 never seen the guidance, and the last comment was

1 that period was on a standard, a proposed standard,
2 that was five years ago. So we were presuming that
3 there's been some changes since it's been five years,
4 and that if there's guidance coming out that's not
5 the standard, because we were understanding that to
6 be a different document.

7 MR. FAIRFAX: Yes, there's a standard and
8 there's the guidance document.

9 MS. BILHORN: But we've never seen that,
10 and we just thought that that's missing an
11 opportunity. Where we're concerned is that that be
12 released and that then we come back; and that doesn't
13 look like we're serving you very well to come back
14 after the fact.

15 MR. FAIRFAX: I understand.

16 CHAIRMAN THIBODEAUX: Any other comments,
17 questions? Frank?

18 MR. MIGLIACCIO: Even though we get to
19 review it, it still gets released. I mean, I don't
20 know if there's a way of coming -- I mean, you come
21 back to our whole group here and give us what you
22 think about it. But I'm not sure if it's going to

1 make any difference.

2 MS. BILHORN: Maybe the thought here is
3 that if we see something in a quick review, that we
4 might come back and say we might suggest a fuller
5 review because there is something in here that we
6 think is going to cause you problems. It may be
7 more of a fatal flaw review. I think our concern
8 is that it comes out and that then after the fact
9 we say something and it causes great embarrassment,
10 both on our part because we haven't had an
11 opportunity to review to provide the support we're
12 supposed to, and secondarily that it might cause
13 problems for OSHA.

14 It may be fine.

15 MR. JONES: Or we may be able to say what a
16 great document it is.

17 MS. BILHORN: Yes, we might be able to
18 really support it.

19 MR. JONES: Well, are we suggesting that if
20 something like that were to occur that OSHA would
21 stop the release?

22 MS. BILHORN: Well, if we identified a

1 fatal flaw that they thought they wanted to stop the
2 release, then that would be their prerogative.

3 MS. SHORTALL: Well, except you will not be
4 -- the work group would see this prior to -- if the
5 work group sees this prior to the 28th, it's not
6 their role to report anything directly to the agency.
7 They need to bring that to the attention of the
8 ACCOSH group.

9 MS. BILHORN: I understand that. I think
10 what he's recommending though is that ACCOSH, the
11 group, have a concern, that members of ACCOSH have a
12 concern, so that ACCOSH could express a concern. But
13 we just haven't seen it and we haven't had the
14 opportunity to give advice on it.

15 We're not trying to hobble anything.

16 MR. JONES: We could recommend to see it
17 today and get it back to you tomorrow, if that was
18 the problem.

19 CHAIRMAN THIBODEAUX: The only way you're
20 going to catch an ACCOSH meeting is tomorrow, prior
21 to the 28th. What is the modification -- if it were
22 to be released and there would need to be a

1 modification, is there a modification procedure?

2 MR. BUCHET: It's easy to go back and make
3 edits. We haven't sent it to a printers yet or
4 anything, I don't believe. So the process would be
5 whoever wrote the document would look at the comments
6 and if they agree with the comments and they're minor
7 comments or minor edits we would make those. But if
8 they were significant, the document would be
9 basically dead in the water for a while while it went
10 around entirely internally for a reapproval if there
11 were major comments on it.

12 MS. BILHORN: That's not what we would
13 like. We're hoping that it's a great document.

14 MR. FAIRFAX: It is.

15 (Laughter.)

16 VOICE: I have a question. Is the document
17 that is scheduled for release on the 28th ready now?
18 I mean, if today was the 28th would it be gone, or is
19 it still being dressed for release?

20 MR. FAIRFAX: It's still going through some
21 internal review.

22 VOICE: So there really isn't anything to

1 see.

2 MR. FAIRFAX: There's a draft and it's
3 basically done, but there are still additional
4 internal clearance procedures it goes through. It's
5 in those things now.

6 CHAIRMAN THIBODEAUX: Any other questions
7 or comments?

8 MR. JONES: Exactly what's the motion we
9 have?

10 (Laughter.)

11 MS. SHORTALL: I have it's the motion that
12 ACCOSH recommend that OSHA allow the silica work
13 group to review the silica in construction guidance
14 document and provide comments to ACCOSH at its next
15 meeting.

16 VOICE: Could I interject? It might be
17 appropriate if the agency can at least give the
18 ACCOSH committee -- I mean, for a minute let's put
19 aside the work group -- if the agency could get to
20 the ACCOSH committee a copy of the document for the
21 committee's review, would that be appropriate, an
22 appropriate request, if that makes sense, if that

1 could happen before the end of the day or even some
2 time in the morning tomorrow or something?

3 MR. FAIRFAX: No.

4 VOICE: Okay.

5 MR. FAIRFAX: That's about all I can say is
6 no.

7 VOICE: Okay.

8 MS. BILHORN: Well then, I guess we'll see
9 it when it's released.

10 CHAIRMAN THIBODEAUX: Well, we have a
11 motion on the floor. It's been seconded. We've had
12 discussion. Is there any more discussion or comments
13 or questions?

14 VOICE: I think the motion on the floor
15 needs to be withdrawn now.

16 MS. BILHORN: Yes, it sounds like it.

17 VOICE: Doesn't it?

18 CHAIRMAN THIBODEAUX: Well, that's up to
19 Mr. Jones.

20 MR. JONES: I will withdraw.

21 MS. BILHORN: I'll second the withdrawal.

22 CHAIRMAN THIBODEAUX: The next thing we

1 have on the agenda are more work group reports:
2 Regulatory Compliance.

3 WORK GROUP REPORT: REGULATORY COMPLIANCE

4 MS. BILHORN: I'm giving that report, Susan
5 Bilhorn. I guess I need to pass these out. This is
6 a draft that's already been revised to reflect the
7 full participation. I didn't have the membership
8 list when I got that copied. Frank's passing out a
9 document that's referenced here as well.

10 So I'm going to skip the first two
11 paragraphs of the summary because it goes back to it
12 in the end and highlight our discussion. We started
13 at 8:30 yesterday morning. We had 21 participants
14 there, including 11 members of ACCOSH. Frank and I
15 were the co-chairs for that session.

16 So we basically started with just going
17 around the room to introduce everyone, and then
18 opened it with the charge that the chair gave us to
19 look at what -- or the request to look at the charge
20 of the committee. So we stated the previous charge,
21 which was to gather information concerning the
22 contractor compliance with focused comprehensive

1 inspections.

2 We spent a considerable amount of time
3 discussing how to focus inspection resources on the
4 poor-performing contractors and where the hazards
5 are. We came up -- there were a lot of ideas that
6 were suggested and best practices, including using
7 the permitting process to have early notification
8 when construction activities were beginning. We
9 talked about North Carolina, for example, having more
10 compliance officers focused on counties where they
11 experienced greater fatalities or other issues.

12 We talked about encouraging public
13 reporting of hazardous conditions, being able to get
14 the public to notify us, notify OSHA or state OSHA
15 entities, when they saw things. We talked about the
16 complications that that could also present.

17 We talked about trying to tie GCs or site
18 supervisors, if they'd had experience with numerous
19 injuries. So any time you'd know they were going to
20 be out on a site that you could actually try to hone
21 in. So we talked about some of the complications of
22 those activities as well.

1 We were reminded of the CPWR report. And
2 forgive me, I don't actually know how to spell out
3 that acronym. It would be the -- anyone? Oh,
4 actually it's here. This is this document that's
5 just been passed out here. So it was making OSHA
6 inspections more effective, alternatives for
7 improving inspection targeting in the construction
8 industry. This was published June 2004, with the
9 author David Weel from Boston University of School of
10 Management. So this was referenced, and I had not
11 seen it. A number of us had not.

12 So we decided what we want to do is
13 circulate this. So Frank took the action to get it
14 and he's already accomplished that, to be able to
15 look at it and say where we could look at it.

16 But then as we finished that conversation,
17 we actually came to the point where we said we
18 weren't really sure that it was an issue of focusing
19 inspections, because where inspectors have gone out
20 there's been a considerable amount of issues that
21 have been identified and been able to be addressed.
22 What we thought was more of a concern is actually

1 getting people with feet on the ground at sites to be
2 able to identify things.

3 So it was really more of how do you get the
4 resources to do that, as opposed to are you finding
5 anything when you get there, are you looking at the
6 right places.

7 So with that, we talked about that the
8 focus of this group -- we started going back to the
9 charge and saying maybe the focus of this group
10 really ought to be more on how to effectively use
11 resources and efficiently use resources to enable
12 compliance officers to spend more time in the field,
13 rather than report writing.

14 We discussed the opportunity for ACCOSH to
15 encourage greater funding for compliance activities,
16 but after we talked about that we said that we
17 thought that was a bit -- that we probably could have
18 more positive effect by emphasis on efficiency of
19 existing resources than we could on trying to get
20 more money for staffing of compliance officers.

21 We also talked about a concern that we
22 focus too much on compliance and not look at the

1 balance of compliance with consultation and training.
2 So we agreed that focusing on how you can make more
3 efficient use of compliance resources could actually
4 enable more -- would include more time on the ground,
5 as well as a greater investment in outreach
6 activities.

7 So that's where we want to focus. So our
8 charge as we rewrote it is -- to restate our charge,
9 to advise OSHA on methods and means to target
10 construction enforcement and outreach efforts, to
11 increase effectiveness and efficiency in the use of
12 OSHA resources. That's what we'd like the charge of
13 this committee to be.

14 I don't know if I need to have a motion for
15 that, but you can let me know when we get to the end
16 of this.

17 After the discussion with Richard Fairfax
18 here and the Assistant Secretary, with the emphasis
19 on construction activities associated with economic
20 stimulus spending, the co-chairs recommend that -- so
21 this was outside of the subcommittee -- recommend
22 that we convene a conference call of the subcommittee

1 to identify focus areas to support, with the support
2 and participation of Richard, so that we can actually
3 talk about where we can engage from the compliance,
4 the regulatory compliance side.

5 So I guess that's probably another motion I
6 need to make.

7 Then the subcommittee also recommends to
8 ACCOSH that we make requests to OSHA for a couple of
9 things for the next meeting. One is an update of the
10 IMIS, what the objectives and progress is. I
11 probably spelled his name wrong, but there's a Bob
12 Betula, Betuli. How do you spell that?

13 VOICE: P-e-p-u-l-j.

14 MS. BILHORN: U-l-j. Thank you.

15 And also that we request an update and
16 dialogue with you, Richard, for specific emphasis on
17 enforcement and outreach activities; and that we also
18 ask OSHA for information on best practices for
19 targeted inspections for federal and state programs.
20 Both Steve Hawkins and Kevin Beauregard volunteered
21 that from a state's perspective they would pulse
22 their counterparts for the same.

1 As we are concluding the meeting, Kevin was
2 nice enough to volunteer to be a co-chair, since
3 Frank's opening comments to me yesterday was that he
4 is no longer going to be the co-chair because he's
5 being proposed as the chair.

6 Then we convened at 10:00. So that's the
7 end of my report, and I need some help in making sure
8 I understand what I need to propose, motion.

9 MR. MIGLIACCIO: Just a point of
10 clarification. The attendance list does not reflect
11 this ACCOSH member's attendance there.

12 MS. BILHORN: It does now. The draft that
13 I had wasn't complete. So it is now complete. But
14 thank you.

15 MR. MIGLIACCIO: Thank you.

16 MS. BILHORN: Thank you.

17 MR. BUCHET: Can I make one more spelling
18 correction?

19 MS. BILHORN: Sure, please.

20 MR. BUCHET: Our Acting Assistant
21 Secretary, Jordan Barab, his last name is spelled B-
22 a-r-a-b, Barab.

1 MS. BILHORN: Thank you very much. I
2 appreciate that.

3 CHAIRMAN THIBODEAUX: I guess the first
4 thing is as far as Frank's not being the co-chair
5 since he'll be assuming the chairmanship, and Kevin
6 being the other co-chair for this committee. She
7 said you accepted that.

8 MS. BILHORN: He volunteered.

9 MR. BEAUREGARD: I was volunteered.

10 CHAIRMAN THIBODEAUX: Volunteered, okay.
11 Well, then thank you very much. We'll designate you
12 and Susan as co-chairs of this committee.

13 The second --

14 MS. BILHORN: Michael, by the way, one of
15 the reasons I asked Kevin was because I thought it
16 would be really good to have a state person around
17 this subject.

18 CHAIRMAN THIBODEAUX: Absolutely right.
19 Absolutely right.

20 The second thing is just to ask the co-
21 chairs if you have made the motion or made the
22 request about the restatement of the charge of this

1 committee, and I would just direct that you go ahead
2 and utilize that as your charge for this committee if
3 that's what you wish to do. I think it's
4 appropriate.

5 MS. BILHORN: Good.

6 CHAIRMAN THIBODEAUX: Now, the other
7 issues. We can take them up individually or we can
8 take them up all together as far as your
9 recommendations to ACCOSH. Let's just do it
10 individually. That makes more sense, rather than
11 combined.

12 Your first motion would be? You tell me.

13 MS. BILHORN: My first motion is that we
14 convene a conference call in the near term of the
15 subcommittee. So that would -- I understand would be
16 noticed to all the people who participated in the --
17 sat through the session we were in, so this attendee
18 list; that we would have a conference call in the
19 near term with Richard Fairfax's participation, to
20 talk about -- to try to focus in on some areas
21 associated with this economic stimulus spending,
22 where the advisory committee might support.

1 CHAIRMAN THIBODEAUX: We have a motion on
2 the floor. Is there a second?

3 VOICES: Second.

4 CHAIRMAN THIBODEAUX: Second. Any
5 discussion or comments or questions concerning the
6 motion?

7 (No response.)

8 CHAIRMAN THIBODEAUX: All in favor of the
9 motion signify by saying aye.

10 (Chorus of ayes.)

11 CHAIRMAN THIBODEAUX: All opposed, the
12 same.

13 (No response.)

14 CHAIRMAN THIBODEAUX: The motion passes.
15 The second one?

16 MS. BILHORN: The second one is that a
17 request to OSHA that at our next meeting to have an
18 update on the IMIS -- once again the acronym evades
19 me.

20 MR. BEAUREGARD: Integrated Management
21 Information System. I believe the new system is
22 actually called OIS.

1 MS. BILHORN: Is it OIS?

2 MR. BEAUREGARD: OSHA Information System.

3 MS. BILHORN: Okay. OSHA Information
4 System.

5 MR. BEAUREGARD: Integrated Management
6 Information System.

7 MS. BILHORN: Okay. So my motion then is
8 that at our next meeting we have an update on the
9 OIS, the objectives and progress of that, at the next
10 subcommittee; and specifically that Bob Petulj
11 provide that.

12 CHAIRMAN THIBODEAUX: We have a motion. Do
13 we have a second?

14 VOICES: Second.

15 CHAIRMAN THIBODEAUX: Motion and second.
16 Do we have any discussion or comment?

17 (No response.)

18 CHAIRMAN THIBODEAUX: All in favor of that
19 motion signify by saying aye.

20 (Chorus of ayes.)

21 CHAIRMAN THIBODEAUX: All opposed, by the
22 same.

1 (No response.)

2 CHAIRMAN THIBODEAUX: The motion passes.

3 MS. BILHORN: The next motion is to request
4 OSHA to provide at the next meeting or our next
5 subcommittee meeting -- actually, both of these could
6 be at the next subcommittee. Is that our intention,
7 the next subcommittee? Yes. Okay, so the next
8 subcommittee meeting, to have Richard join us and to
9 have a dialogue about those areas that we should at
10 that time have already be progressing because of the
11 conference call; so that he join us for our next
12 subcommittee meeting.

13 CHAIRMAN THIBODEAUX: We have a motion. Do
14 we have a second?

15 VOICE: Second.

16 CHAIRMAN THIBODEAUX: Motion and second.
17 Any questions, comments?

18 (No response.)

19 CHAIRMAN THIBODEAUX: All in favor of
20 Susan's motion signify by saying aye.

21 (Chorus of ayes.)

22 CHAIRMAN THIBODEAUX: All opposed, signify

1 the same.

2 (No response.)

3 CHAIRMAN THIBODEAUX: The motion passes.

4 MS. BILHORN: The final one is to request -
5 - a request to OSHA for information they have or
6 could gather on best practices for targeted
7 inspections that are used by federal and state
8 programs.

9 MS. SHORTALL: Is there a certain date that
10 you want this information provided by?

11 MS. BILHORN: Before the next meeting,
12 please.

13 CHAIRMAN THIBODEAUX: We have a motion. Is
14 there a second?

15 VOICE: Second.

16 CHAIRMAN THIBODEAUX: Any discussion or
17 questions or comments?

18 (No response.)

19 CHAIRMAN THIBODEAUX: All in favor of the
20 motion signify by saying aye.

21 (Chorus of ayes.)

22 CHAIRMAN THIBODEAUX: All opposed, the

1 same.

2 (No response.)

3 CHAIRMAN THIBODEAUX: Motion passes.

4 The regulatory compliance minutes should be
5 entered of record.

6 MS. BILHORN: I will send --

7 CHAIRMAN THIBODEAUX: Do I hear a motion to
8 accept the minutes of the regulatory compliance --

9 MR. MIGLIACCIO: Make the motion to accept.

10 CHAIRMAN THIBODEAUX: The motion is made.

11 Second?

12 VOICE: Second.

13 CHAIRMAN THIBODEAUX: Any discussion?

14 MS. BILHORN: I will send an update with
15 those tweaks, including the correct names.

16 CHAIRMAN THIBODEAUX: All in favor of
17 approving the minutes of the regulatory compliance
18 work group signify by saying aye.

19 (Chorus of ayes.)

20 CHAIRMAN THIBODEAUX: All opposed, signify
21 by the same.

22 (No response.)

1 CHAIRMAN THIBODEAUX: That is accepted.

2 MS. SHORTALL: Mr. Chair, at this time I'd
3 like to enter into the record as Exhibit 0016 the
4 revised and approved work group report from
5 regulatory compliance meeting of April 15th, 2009. I
6 would request that Susan please send me by email the
7 revised report so I can get it into the docket, and
8 my email address is on the membership contact sheet.

9 And as Exhibit 0017, "Making OSHA
10 Inspections More Effective: Alternatives for
11 Improved Inspection Targeting of the Construction
12 Industry," by David Weel, dated June 2004.

13 I'd like to make one comment on this. This
14 is a copyrighted document. The copyright is held by
15 the Center to Protect Worker Rights. So before you
16 turn around and make copies of it you probably need
17 to contact the Center for Worker Rights to get their
18 permission to do so. Until I receive their
19 permission to do so, this will be in the docket for
20 OSHA, but not up on its web site.

21 MR. MIGLIACCIO: Do you want that in
22 writing? Because we do have their permission.

1 MS. SHORTALL: We need to have it in
2 writing.

3 MR. MIGLIACCIO: Okay.

4 MS. SHORTALL: And I can contact them.

5 MR. MIGLIACCIO: Yes, they gave it to us
6 this morning.

7 MS. SHORTALL: Oh, yes. We just want to
8 protect their interests.

9 MS. BILHORN: Good.

10 CHAIRMAN THIBODEAUX: The next work group,
11 diversity, women in construction.

12 WORK GROUP REPORT:

13 DIVERSITY (WOMEN IN CONSTRUCTION)

14 MS. ARIOTO: Yes. Elizabeth Arioto, public
15 representative. I'm sending out three documents here
16 or three sections, and I'll pass this around. And
17 also the minutes of our meeting, our work group.

18 Our meeting was held on April 14th at 8:15
19 a.m. in the morning and we had 14 attendees. Five of
20 those attendees were ACCOSH members, which I truly
21 appreciated joining our group. We went through the
22 welcome and self-introductions. We reviewed the

1 minutes of the December 2, 2008, work group meeting.
2 A brief description followed the meeting, including
3 comments regarding following:

4 Lack of clean sanitation facilities and too
5 few or no wash stations at job sites; poor-fitting
6 personal protective equipment and workplace sexual
7 harassment that can eventually lead to poor safety
8 and health issues at the job site.

9 Dr. Rosemary Sokas discussed the many
10 findings of the 1999 study, which was listed as
11 "Women in Construction Workplace: Providing
12 Equitable Safety and Health Protection." Included in
13 her comments were the following: Not much has
14 changed concerning women's issues in construction
15 since the original study. It is impossible for
16 female construction workers to feel contractor
17 support when sexually explicit calendars, tool
18 supplier posters, and suggestive drawings are allowed
19 to exist in job site trailers and portable toilets.

20 CPWR's chart makes reference to an
21 insignificant change to the number of female workers
22 in construction. There continues to be a very small

1 percentage of women on construction sites holding
2 supervisory positions.

3 Other discussion points generated during
4 the work group meeting included: The work group
5 should use the original findings of the 1999 study as
6 a reference point and not pursue the ideal of
7 developing a new study, since nothing significant has
8 changed. OSHA should update compliance officer
9 training to include the ability to identify potential
10 diversity-related issues that may exist at the job
11 sites, by conducting more diverse worker population
12 interviews during inspections. Employers should
13 communicate job-specific training and gender-
14 segregated training at job sites.

15 The fit of clothing and some PPP has
16 improved for women involved in construction.
17 However, getting the contractors to purchase these
18 articles continues to be an issue.

19 Employers, unions, and apprenticeship
20 programs should make certain that their supervisory
21 personnel, instructions, and representatives receive
22 adequate training and guidance to ensure the safety,

1 health, and equitable treatment of female workers,
2 members, trainees, exists at the job site. This
3 would include knowledge of the issues addressing
4 sexual harassment, prevention, and leadership
5 training.

6 The attendees raised two questions that
7 were directed to OSHA: Why does the general industry
8 standard 1910.132 include the language that specifies
9 that the employer select PPE that properly fits each
10 affected employee, and the construction standard 1926
11 subpart E does not contain similar language? Could
12 the general industry language be inserted into the
13 construction standard?

14 Number two: There has been any action
15 taken to follow up to the recommendations that were
16 given -- has there been any action taken or follow-up
17 to the recommendations that were given by the
18 Advisory Committee on Occupational Safety and Health
19 in June of 1999 entitled "Women in Construction
20 Workplace: Providing Equitable Safety and Health
21 Protection."

22 Specific action steps recommendations for

1 OSHA and stakeholders included the following topics:
2 workplace culture, sanitation facilities, ergonomics,
3 reproductive hazards, training, injury and illness
4 data research, and general recommendations to OSHA.

5 Recommendations of our work group to
6 present to the full ACCOSH board committee includes:
7 One, compile a list of vendors and suppliers that
8 handle PPE, women's PPE, and ergonomically designed
9 tools;

10 Two, OSHA should develop visual materials,
11 such as posters and training materials, that
12 incorporate images of women in construction, to
13 promote the concept of a diverse workplace;

14 Three, OSHA should look into the
15 possibility of changing the language found in the
16 construction standards to match the general industry
17 language, specifically the employer select PPE that
18 properly fits each affected employee.

19 Number four, develop OSHA quick cards to
20 raise the employers' and employees' awareness of
21 hazards associated with ill-fitting PPE.

22 I would like to give special thanks to Dr.

1 Rosemary Sakas -- Sokas, I'm sorry, Sokas. I think
2 she gave an excellent presentation.

3 I would like to thank Michael Buchet for
4 sending me a lot of information on women in
5 construction. And a very special thanks to Bill
6 Parsons, who after our meeting my co-chair, Tom
7 Kavicky, and I went and addressed some of these
8 recommendations to him, and he's been extremely
9 helpful on our committee going forward on this. So I
10 don't know if Bill is here right now, but a very
11 special thanks to him.

12 That's the end of my -- let me just explain
13 the papers I handed out to you. The one that says
14 "Fatal occupational injuries by worker
15 characteristics," this one here, I'm sorry, but this
16 is for all industries. It states that there were 417
17 fatalities.

18 The second handout, that was to demonstrate
19 that there are 923,000 women in construction in the
20 workplace right now. That's probably compared to
21 approximately 11 million men workers.

22 So those are my handouts.

1 CHAIRMAN THIBODEAUX: Do we have a motion
2 to accept the work group report on women in
3 construction?

4 MR. KAVICKY: Motion to accept.

5 CHAIRMAN THIBODEAUX: Do we have a second?

6 VOICE: Second.

7 CHAIRMAN THIBODEAUX: Any discussion,
8 comments, or questions?

9 (No response.)

10 CHAIRMAN THIBODEAUX: No discussion. All
11 in favor of accepting the work group report signify
12 by saying aye.

13 (Chorus of ayes.)

14 CHAIRMAN THIBODEAUX: All opposed, signify
15 the same.

16 (No response.)

17 CHAIRMAN THIBODEAUX: The report is
18 accepted.

19 Do you have any particular motions you wish
20 to make concerning your report? You had some
21 recommendations to the full ACCOSH. If you do, fine.
22 If you don't, fine.

1 MS. ARIOTO: Motion for ACCOSH to recommend
2 that OSHA should develop visual materials, such as
3 posters and training materials that incorporate
4 images of women in construction, to promote the
5 concept of a diverse workplace, number one.

6 Number two, OSHA should look --

7 CHAIRMAN THIBODEAUX: Let's do one at a
8 time.

9 MS. ARIOTO: Oh, I'm sorry.

10 CHAIRMAN THIBODEAUX: It'll be easier.

11 We have a motion. The motion is as noted
12 on item 2, the second page of the report. Do we have
13 a second?

14 MR. TOMASESKI: Second.

15 CHAIRMAN THIBODEAUX: We have a motion and
16 a second. Do we have any discussion or questions or
17 comments?

18 (No response.)

19 CHAIRMAN THIBODEAUX: Okay.

20 MR. JONES: I have one.

21 CHAIRMAN THIBODEAUX: Yes, Walter.

22 MR. JONES: Are we saying here that --

1 you're basically saying that the materials they're
2 already developing just, instead of just using men
3 all the time, incorporate women into the material
4 that they already are using, or create new material?

5 MS. ARIOTO: I think it would be to create
6 new material.

7 MR. KAVICKY: Both things. When we talked
8 to Bill about the possibilities, I know they're
9 putting some posters together right now and the idea
10 that we bring to OSHA is that, take a look at the
11 materials that are in development now and in the
12 future, making sure that's a more diverse --
13 representative of a more diverse work group.

14 CHAIRMAN THIBODEAUX: Okay. Any other
15 discussion?

16 (No response.)

17 CHAIRMAN THIBODEAUX: We have a motion and
18 a second. All in favor of this motion signify by
19 saying aye.

20 (Chorus of ayes.)

21 CHAIRMAN THIBODEAUX: All opposed, signify
22 the same.

1 (No response.)

2 CHAIRMAN THIBODEAUX: Motion carries.

3 MS. ARIOTO: I have a motion that ACCOSH
4 recommend to OSHA that OSHA should look into the
5 possibility of changing the language found in the
6 construction standards to match the general industry
7 language. Specifically, the employers select PPE
8 that properly fits each affected employee.

9 CHAIRMAN THIBODEAUX: A second?

10 VOICE: Second.

11 CHAIRMAN THIBODEAUX: We have a motion and
12 a second. Do we have any discussion? Frank.

13 MR. MIGLIACCIO: Can you restate that? I
14 didn't quite catch what you were saying.

15 MS. ARIOTO: OSHA should look into the
16 possibility of changing the language found in the
17 construction standards to match the general industry
18 language, specifically the employer select PPE that
19 properly fits each affected employee.

20 CHAIRMAN THIBODEAUX: Walter?

21 MR. JONES: Do we want to amend it to say
22 reflect general industry standard 1910.132, instead

1 of the general industry?

2 MS. ARIOTO: Yes.

3 MR. JONES: I motion to amend it to say to
4 include -- to match general industry language from
5 1910.132.

6 CHAIRMAN THIBODEAUX: Do we have a second?

7 VOICE: Second.

8 CHAIRMAN THIBODEAUX: The amendment as --
9 the amendment to the recommendation, OSHA should look
10 into the possibility of changing the language found
11 in the construction industry -- construction industry
12 -- the general industry language of 1910.132,
13 specifically the employer select PPE that properly
14 fits each affected employee, and apply it to the
15 construction standards.

16 MS. BILHORN: Second.

17 CHAIRMAN THIBODEAUX: Any other comments or
18 discussion?

19 (No response.)

20 CHAIRMAN THIBODEAUX: All in favor of that
21 motion, signify by saying aye.

22 (Chorus of ayes.)

1 CHAIRMAN THIBODEAUX: All opposed, signify
2 the same.

3 (No response.)

4 CHAIRMAN THIBODEAUX: The motion passes.

5 MS. SHORTALL: That was on the amendment.

6 MR. JONES: That was on the amendment.

7 CHAIRMAN THIBODEAUX: Yes.

8 MR. JONES: Now we've got to vote on the
9 motion.

10 CHAIRMAN THIBODEAUX: Well, I just read the
11 whole thing, the whole motion anyway.

12 All right, that was on the amendment and I
13 do stand corrected. The motion is --

14 MS. SHORTALL: Oh, wow. ACCOSH recommends
15 that OSHA look into the possibility of revising the
16 language of -- revise language of construction
17 standards to general industry standard 1910.132,
18 specifically that employer select PPE that properly
19 fits each affected employee, and apply that to the
20 construction standards. It's not artful.

21 (Laughter.)

22 CHAIRMAN THIBODEAUX: Yes, Frank?

1 MR. MIGLIACCIO: It says OSHA should look
2 into the possibility. Can we strike that
3 "possibility" and put "OSHA should look into
4 changing," not the "possibility."

5 MS. ARIOTO: Recommends that they change.
6 The word be changed, the verbage.

7 CHAIRMAN THIBODEAUX: Is that a motion?

8 MR. MIGLIACCIO: Yes.

9 VOICE: Second.

10 MS. SHORTALL: If the maker of the motion
11 and the person who seconded it would accept that
12 language, it doesn't have to be a -- it would be that
13 OSHA recommend -- that ACCOSH recommend that OSHA
14 change --

15 CHAIRMAN THIBODEAUX: Look into changing.

16 MS. SHORTALL: I thought he then upgraded
17 the language. Frank, are you saying that you want
18 the language to be that "ACCOSH recommend that OSHA
19 change" the language, or "look into changing the
20 language"?

21 MR. MIGLIACCIO: I'd say "change."

22 MS. SHORTALL: Okay.

1 MS. BILHORN: Second.

2 CHAIRMAN THIBODEAUX: Everybody understand
3 the motion? No further discussion?

4 (No response.)

5 CHAIRMAN THIBODEAUX: All in favor of the
6 motion signify by saying aye.

7 (Chorus of ayes.)

8 CHAIRMAN THIBODEAUX: All opposed, signify
9 the same.

10 (No response.)

11 CHAIRMAN THIBODEAUX: The motion passes.

12 MS. ARIOTO: My final motion is for ACCOSH
13 to recommend that OSHA develop quick cards to raise
14 the employers' and employees' awareness of hazards
15 associated with ill-fitting PPE.

16 CHAIRMAN THIBODEAUX: Do we have a second?

17 VOICES: Second.

18 CHAIRMAN THIBODEAUX: We have a motion and
19 a second. Any discussion, questions, or comments?

20 (No response.)

21 CHAIRMAN THIBODEAUX: No discussion. All
22 in favor of the motion signify by saying aye.

1 (Chorus of ayes.)

2 CHAIRMAN THIBODEAUX: All opposed, signify
3 the same.

4 (No response.)

5 CHAIRMAN THIBODEAUX: The motion passes.

6 Thank you very much, Liz.

7 MS. ARIOTO: Thank you.

8 CHAIRMAN THIBODEAUX: Tom, are you ready?

9 MR. KAVICKY: Yes, I am.

10 CHAIRMAN THIBODEAUX: Fall protection work
11 group.

12 MS. SHORTALL: Before we start, Mr.
13 Chairman, at this time I would ask that the approved
14 work group report on women in construction meeting
15 from April 14th be entered in the record as 0018;
16 that the BLS table on fatal occupational injuries by
17 worker characteristics and event or exposure for 2007
18 be entered into the record as 0019; and as Exhibit
19 0020 the handout on employment hours and earnings of
20 women in construction from the current statistics
21 survey.

22 CHAIRMAN THIBODEAUX: So admitted.

1 WORK GROUP REPORT: FALL PROTECTION

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

3 Going report of the residential fall protection work
4 group meeting of April 14th. Co-chairs, myself and
5 Steven Hawkins. We had 22 participants during the
6 work group meeting. We had the welcome and self-
7 introductions and the review of the December 2, 2008,
8 work group meeting minutes.

9 During those, during the work group from
10 December, we had tasked some volunteers of the
11 committee to develop a fall protection hazard
12 assessment and guidance document for specific tasks
13 on fall protection and fall protection plans in the
14 event that the STD 3.01A is rescinded by OSHA. A
15 checklist guidance was developed for use by employers
16 to perform hazard assessment.

17 There was a need to define "infeasible" and
18 "greater hazard" that was identified during the work
19 group meeting. If STD 3.01A is rescinded, this
20 should compel contractors to perform a hazard
21 assessment of that residential site.

22 Many issues of concern by the attendees

1 were discussed after the committee presentation. The
2 work group has no recommendations to ACCOSH at this
3 time during this meeting. The attendees were
4 encouraged to review the guidelines and be prepared
5 to make presentations at the next work group meeting
6 on their thoughts on the guidelines and how they felt
7 we should move on that document.

8 We received a communication from Jeremy
9 Bethancourt from LeBlanc out in Arizona, and he
10 wanted us to take a -- to be enlightened by an
11 article that was put in AZ At Work newsletter by
12 their workers comp carriers out there. The article
13 specifically, "The Fight Over Falls," it's about an
14 incident that took place on an Arizona residential
15 home site of LeBlanc's where a worker was killed and
16 where a worker was injured and the baggage that goes
17 along with that. So we'd like to put these two
18 documents on record.

19 CHAIRMAN THIBODEAUX: Any questions
20 concerning the residential fall protection work group
21 report? Frank.

22 MR. MIGLIACCIO: Was there any minutes --

1 or what you just read --

2 MR. KAVICKY: Oh, handouts. Sorry. I'm
3 not like my co-chair. Sorry about that.

4 CHAIRMAN THIBODEAUX: Do we have a motion
5 to accept the minutes of the fall protection work
6 group.

7 VOICE: So moved.

8 CHAIRMAN THIBODEAUX: So moved. Do we have
9 a second?

10 VOICE: Second.

11 CHAIRMAN THIBODEAUX: Any questions of co-
12 chairs from the residential fall protection work
13 group, or discussion?

14 (No response.)

15 CHAIRMAN THIBODEAUX: All in favor of
16 accepting that work group report signify by saying
17 aye.

18 (Chorus of ayes.)

19 CHAIRMAN THIBODEAUX: All opposed, signify
20 the same.

21 (No response.)

22 CHAIRMAN THIBODEAUX: The report is

1 accepted.

2 Tom, go ahead.

3 MR. KAVICKY: Mr. Chairman, when it's
4 appropriate the work group does have a question to
5 ask OSHA for response on the STD. When would that be
6 appropriate?

7 CHAIRMAN THIBODEAUX: How about right now?

8 MR. KAVICKY: That's great. Out of our
9 work group meeting, this ACCOSH body did approve a
10 recommendation several meetings ago, I believe it was
11 the September '08 meeting, to make a recommendation
12 to rescind STD 3.01A. My question is, has OSHA moved
13 on the recommendation that came out of the work group
14 and was approved by ACCOSH to rescind the STD 3.01A?

15 MR. FAIRFAX: You want an answer?

16 MR. KAVICKY: I'd love an answer, Mr.
17 Fairfax.

18 MR. FAIRFAX: Right after you had the
19 meeting in September, I think you know Ed Falk
20 resigned. We have briefed, actually just this week,
21 Jordan Barab on the issue, and we will be briefing
22 him again on it. But that will have to be brought

1 forward to the new Assistant Secretary. But it's on
2 our radar screen, if you will, and we did take the
3 step this week to start conversations with Jordan
4 about it and advise him that we need to bring it up
5 to the Assistant Secretary when we get one and that
6 this is a recommendation of ACCOSH.

7 MR. KAVICKY: Great.

8 MR. FAIRFAX: We're aware of it, we know
9 it. We just sort of are kind of in between
10 leadership right now.

11 MR. KAVICKY: Thank you, Mr. Fairfax.

12 CHAIRMAN THIBODEAUX: Thank you.

13 MS. SHORTALL: Mr. Chairman, at this time
14 I'd like to mark as Exhibit 0021 the approved
15 residential fall protection work group meeting report
16 from April 14, 2009; as Exhibit 0022 the article from
17 AZ Work, "The Fight Over Falls"; and as Exhibit
18 0022.1 the letter, communique, from SCF Arizona
19 granting OSHA permission to distribute a copyrighted
20 article."

21 CHAIRMAN THIBODEAUX: So admitted.

22 Tom, are you ready to give a report or

1 would you like a little break?

2 MR. BRODERICK: Oh, I'm all set.

3 CHAIRMAN THIBODEAUX: You're all set?

4 MR. BRODERICK: I'm ready to roll.

5 Couldn't be readier.

6 CHAIRMAN THIBODEAUX: Good. If you would,
7 please.

8 WORK GROUP REPORT: MULTILINGUAL

9 MR. BRODERICK: Yesterday at 2:30 p.m. we
10 had a meeting of the multilingual work group, a work
11 group that's had a fairly long and storied past.
12 This is deviating slightly from entering the agenda
13 into the minutes of the meeting and then the report.
14 I have prepared the minutes and I'm going to review
15 the minutes and with each of the bullet points that
16 represents a discussion item try to give a recap of
17 the outcome of each of the discussions.

18 The attendance was the largest attendance
19 that this group has had since I've been a co-chair on
20 the multilingual committee. I believe there were 12
21 people in attendance.

22 I would like to thank Vanessa Quintero for

1 attending this meeting. She's been very helpful in
2 organizing and at each meeting bringing forth
3 information about what's going on at the agency
4 regarding multilingual issues. So Vanessa did give
5 an update on activities that are happening around the
6 agency regarding multilingual issues. She indicated
7 that she will continue to support the committee in
8 that manner.

9 Also, the committee had expressed a couple
10 of times an interest in having someone come to update
11 us on the status of the agency's National Hispanic
12 Task Force, which is made up of regional
13 administrators and some of the Hispanic advisers in
14 each of the regions. I had the honor of being able
15 to attend one of these meetings in San Diego and it
16 was an excellent meeting, and with the mix of
17 regional administrators and Hispanic coordinators
18 there was a lot of excellent information sharing.

19 I would hope as we are changing into a new
20 government that the practice of having a group of
21 agency personnel take the time to have meetings to
22 discuss how OSHA can better reach non-English

1 speakers is a very important piece of business, and I
2 think as we progress and it becomes more apparent
3 that the number of people what are working in the
4 construction trades from countries other than the
5 U.S., whether they be people from Mexico or Central
6 America or South America or a number of the islands
7 in the Caribbean where Spanish is spoken, that the
8 Hispanic task force continue to meet and discuss how
9 area offices that serve the construction community in
10 each of those areas is coping with the difficulty of
11 assimilating non-English speaking workers into a
12 supervisory or a management work force that speaks
13 primarily English.

14 As we go forward, we will be exploring some
15 examples of organizations, in some cases contractors,
16 in some cases trade associations, who have brought in
17 consultants who have made a business of coming up
18 with creative ways to deal with this problem.

19 I will at the next work group meeting for
20 the multilingual work group, I will be trying to have
21 a person who is the CEO of a company that does
22 translations. She happens to have a Ph.D. in Spanish

1 and her organization came to my facility and gave a
2 pitch on allowing her people to come in and do a
3 demonstration of exactly how they approach getting
4 together with construction businesses, first with the
5 management team and then with the entire country
6 team, and doing fun exercises and speaking Spanish
7 throughout the entire day.

8 I would have thought that that would come
9 across as being kind of hokey. But as it happened,
10 we had to turn people away. We didn't have enough
11 room. We ended up running a second program. People
12 were extremely enthusiastic about it. So I think we
13 may have hit on a positive approach there. So the
14 record will note that at the next work group meeting
15 we will attempt to have that resource join us.

16 The work group also discussed the first, as
17 far as I know the only, national conference on the
18 issue of multilingual workplaces, that took place in
19 Florida a couple of years ago. I believe it was in
20 Orlando, and it was very well attended. There were
21 good sessions throughout the day and a meal was had
22 by all. I think that the feeling is that that ended

1 up being a one-shot deal in an administration that
2 was in office for eight years, and at the conference
3 there had been discussion about it and positive
4 feedback from the Labor Department as I understood
5 it, that this was a good idea, that people were
6 amazed at the turnout, and it is a subject that the
7 work group has not concluded that we are going to at
8 this meeting make a formal request to the agency to
9 pursue doing more of these events, until we get a
10 clearer picture of exactly what we would really like
11 to have.

12 One thing we discussed is having a meeting
13 such as this in a venue like Orlando, and Orlando
14 being the only event is probably not the best way to
15 get to the construction community, especially if
16 you're trying to get to the mom and pop shops. Now,
17 for people that, for instance, fly to Orlando from
18 Chicago, assuming one is not bringing one's family,
19 it was pretty easy to attend all of the sessions that
20 one could attend and visit with the exhibitors.

21 So to take that a step farther, I believe
22 the feeling of the work group was that we would

1 explore the concept of focusing on doing this type of
2 program and focusing on our industry exclusively and,
3 instead of doing one bit of flash in the pan, we
4 would choose perhaps a half a dozen venues and do a
5 series of these programs. Geographically, we
6 wouldn't necessarily pick Orlando. There are other
7 places in Florida where we could get a much more
8 representative group of construction folks, blue
9 collar workers.

10 But the format of the program was good and
11 we would work on developing an even better format for
12 this. It would be an initiative that we would like
13 to support from the Secretary of Labor and from OSHA
14 and perhaps other agencies, such as MSHA, who may be
15 faced with some of the same issues, and not let it
16 stop with just one in Florida, but look at one in
17 southern Mississippi or the Mobile, Alabama, area,
18 one or two in Texas, another one in New Mexico, and
19 then consider -- I think a given would be southern
20 California, the San Diego area, where there are a
21 large number of immigrant workers, and then either
22 the Tucson or the Phoenix area.

1 I understand that the government has money
2 issues, budget issues, and this could be, if left to
3 a consulting group that does conference planning,
4 could be very expensive. But I think we have the
5 wherewithal just among the intelligent and talented
6 people on this committee, we have the wherewithal to
7 do a lot of the groundwork to create this kind of a
8 day-long seminar.

9 I believe right now as we speak, in Mobile,
10 Alabama, there is a conference going on, free to the
11 people who come, and my organization is doing at
12 least one class in Spanish. We started this right
13 after Katrina. Ken Atha was the area director for
14 OSHA and he had the support of the regional
15 administrator for OSHA. We worked with a compliance
16 assistant for Mobile. He was able to get the
17 Southern Alabama Fairgrounds donated to us for use
18 for this program. Other organizations pitched in
19 with sound equipment. We had multiple volunteers
20 come forth and want to do a training session, not
21 only of a lecture type, but also demonstrations of
22 equipment, scaffolding, different kinds of lifts,

1 like scissor lifts, JLG type equipment.

2 This was a spontaneous, first-ever one
3 right after Katrina, just through word of mouth
4 advertising for this, and some minimal free
5 advertising from other local media outlets and
6 through the AGC and the ABC and electrical
7 contractors. There were several other groups that
8 helped to get the word out.

9 We had over 200 people show up on a sunny
10 weekday and they stayed through the entire day. The
11 gas company in Mobile brought out a wagon thing that
12 they use for fairs and special events and they cooked
13 hot dogs and sausages and put out bag lunches. It
14 was quite a good deal.

15 So I think this is something that we could
16 sponsor and actually make happen, and it's something
17 that I feel confident we could do after being
18 involved and seeing this actually getting done in the
19 area that we did it. So this is something
20 that, as the co-chair of this group, I feel very
21 positive that this is something that we could pull
22 off, and I think that it would be -- I think it would

1 be a very positive thing for the agency and for
2 ACCOSH.

3 So we will in our next several work group
4 meetings be developing this, turning it into a
5 proposal, and bringing it back to the agency with
6 recommendations and a step by step, here's how we
7 would proceed.

8 Another area that we discussed was the
9 Harwood grant program. Now, I don't know, there may
10 be someone in this room that knows, what's going to
11 happen with Harwood. I think we've seen that for the
12 last 8 years the Harwood funding we learned at the
13 eleventh hour was not in the budget for OSHA and
14 somehow political strings have been tugged on and the
15 funds have come back to do the Harwood program.

16 What we would like to discuss with the OSHA
17 Training Institute is a building in a factor that
18 would have positive points. Michael, I think you
19 indicated there might be five or six positive points
20 if you do a Harwood program and you do it in English
21 and Spanish. Is that correct?

22 MR. BUCHET: You'll have to wait and see

1 what this year's Federal Register notice tells you.
2 But if you've looked at the years past, there are
3 points required in the outline and how you fill in
4 the application, and one of the areas was
5 multilingual. If you did say, I have a multilingual
6 program, you got points for that sector. I don't
7 remember how many points. It may have been one, it
8 might have been up to five.

9 MR. BRODERICK: So that is another priority
10 for this particular work group, is to discuss how we
11 can help the agency come up with topics that would be
12 on target for all construction workers, including
13 those who may have marginal or no English speaking
14 skills.

15 The next discussion item also deals with
16 the Harwood grant program. Many Harwood grants have
17 been awarded over the last 15 to 20 years and a
18 number of them have included productions in both
19 English and Spanish, as well as the Boat People
20 International did some safety programs in Vietnamese.
21 So there has been an interest in supporting and
22 funding training program development in languages

1 other than English.

2 We would like to encourage the agency, as I
3 said before, to continue along those lines, but to
4 take it a step further. In the Harwood process, for
5 those of you who are not familiar with it, typically
6 in the June-July time frame OSHA puts an article into
7 the Federal Register announcing that the Harwood
8 grant funding is going to be available, and they list
9 the topics for that particular year, and they give
10 some of the details of how to apply, where you go to
11 get more information, and for the last couple of
12 years how to use the electronic grant application
13 system.

14 The thrust of what I'm trying to get across
15 here is that after one gets through the application
16 process and OSHA makes the picks, the organizations
17 who are granted the money set about to develop the
18 programs that they propose to do. A part of the
19 process is, an important one, is the development of
20 the training program.

21 The next important thing is doing some beta
22 testing of the new program, going to different parts

1 of the U.S. and delivering the program once it's been
2 approved by OSHA, and then the producers of it or the
3 people who are awarded the grant get feedback from
4 OSHA, if OSHA has any feedback. Also, we look at all
5 of the comments that have come in through our
6 evaluation component for the Harwood proposals.

7 Then for the balance of the time until the
8 grant period is over, the grantee would go out and do
9 training for the groups that they had indicated in
10 their proposals that were target groups.

11 That's all good. That's all good stuff
12 because the training is getting out. Unfortunately,
13 where things begin to break down is once the grant is
14 over and the extension, if the organization files for
15 an extension to try to get additional people through
16 the program and have the training be underwritten,
17 it's possible for there to be a second year where any
18 moneys not spent in the first year can be spent in
19 the second year to achieve the milestones that the
20 organization had laid out.

21 But it's our feeling that a lot of these
22 programs that have been developed, and a lot of money

1 has been spent developing them, that I'm sure a few
2 other organizations like ours, that once we develop
3 it it becomes one of our core courses. We teach the
4 course, we use the materials, and it helps our
5 nonprofit council.

6 I know of a number of organizations who
7 don't do that. Basically, when the funds run out the
8 program is over and an original copy of the program
9 resides at the OSHA Training Institute on a shelf.
10 Some of that product is available to outreach
11 instructors who are doing 10 and 30 hours to borrow
12 from the institute and use to help conduct a training
13 program.

14 What we discussed was having several people
15 from this committee, this work group, go to Hank
16 Payne's training institute with Hank Payne and Mr.
17 Shields and Cathy Cronin and some of the other folks
18 there, and work with them to uncover from the
19 archives, going back say five to eight years, take a
20 look at these programs and see how -- see if they're
21 still current, and if not see what it would take to
22 get them current, and breathe some light into these

1 programs, many of which would only have gotten to the
2 500 or 1,000 people that the grantee had indicated
3 that they were going to be -- that was their target
4 audience.

5 My thought would be that we would try to
6 get a ten or twentyfold increase in the number of
7 people that would be reached by these programs. And
8 we could also negotiate with the producers to allow
9 the program to be placed in the public domain. In
10 other words, if they're not selling them, if they are
11 collecting dust, then I think we could make a heck of
12 a case for mass producing those and having them be
13 available through the institute or through the ACCOSH
14 home page.

15 We do have a home page that has work
16 product on it, and it's pretty threadbare. I think
17 we have one or two work products, and I just feel
18 like, knowing we have this paucity of training
19 material and educational outreach material that is
20 not listed on the ACCOSH home page, I think we're
21 missing an opportunity there.

22 So that is another concept that we wanted

1 to float by the organization here at ACCOSH. We will
2 between now and the next meeting, we will be
3 discussing that further, and if it looks like it
4 would be beneficial to do that maybe Tom Kavicky and
5 I could take a ride up to the OSHA Training Institute
6 and talk to Dr. Payne and see if he would be amenable
7 to us doing that.

8 The last thing I wanted to mention -- and I
9 know I've taken up way more time than I should have -
10 - one of my staff members, Tom Fogerty, developed a
11 program that was Harwood funded, and we're just
12 rolling it out. It is a program that is designed to
13 train the kind of workers that we have been
14 discussing ad nauseam over the last I don't know how
15 many years, those people who are just very, very hard
16 to get, those people who fly under the radar, those
17 people who when they go to work, going to work means
18 they're going to a Home Depot or a Lowe's and they're
19 standing in the corner of the parking lot hoping that
20 somebody will come pick them up and drive them off to
21 who knows where, oftentimes to do construction work.

22 As I said, these people are difficult to

1 find. You can't advertise and having them come to a
2 facility and pay money. So we thought, okay, how
3 could we bring the training to them? If we have time
4 in public comment, I would like to have Tom just
5 spend five minutes talking about this program we have
6 developed. It was developed as a Harwood grant. He
7 can show us the deliverables. And if any of you
8 think that you can get these in the hands of -- I
9 talked to a couple people who are eager to do that.

10 This program is very simple to learn how to
11 deliver. We're not training people who are doctors
12 or lawyers. We're training people who are going to
13 be doing basic construction stuff and need to know
14 about stepping on nails and just the very most basic
15 stuff.

16 Our thought would be the best diffusion
17 mechanism for this could be a Catholic priest, or it
18 could be a community organizer or leader.

19 So that's my story and I'm sticking to it.

20 CHAIRMAN THIBODEAUX: So is Tom going to be
21 available this afternoon?

22 MR. BRODERICK: Yes.

1 CHAIRMAN THIBODEAUX: Okay, all right.

2 MR. BRODERICK: Yes, he is.

3 CHAIRMAN THIBODEAUX: Well, thanks for your
4 report, Tom.

5 Any questions or comments? Yes, sir.

6 MR. ZARLETTI: I'm just concerned that as
7 we go geographically throughout this country with
8 this kind of effort, that we keep in tune with the
9 different languages. Although albeit that the
10 Spanish language is far becoming the number one in
11 our concern, maybe even those in construction are
12 more representative of the people in the Latino
13 community, I don't know -- but there are a number of
14 others that -- I mean, in Chicago for sure we've got
15 Polish, a huge population of Polish people, where
16 they're doing most of their construction, it's kind
17 of like home building, which doesn't get into the
18 stuff we do.

19 But nonetheless, there are groups that
20 still will be dispatching --

21 MR. JONES: The Portuguese in New Jersey do
22 roads. MR. ZARLETTI: Yes.

1 MR. BRODERICK: Well, Dan, I'm so glad you
2 brought that up, because we have done it in Polish.

3 MR. ZARLETTI: Yes, it's been done in
4 Polish for Chicago.

5 The other thing that I'm probably equally
6 as concerned about is that when we've spent time --
7 we've done this. We've been not only advocates of
8 it, but victims of the same problem, is that we will
9 train people that come to our jobs because they may
10 be day laborers or just hired on by a contractor
11 that's going to do drywall taping or something like
12 that. They come to the job, they need to go through
13 an orientation. We find out they're all Spanish
14 speaking. We bring in a translator. We have a
15 Spanish program printed. We give them this two or
16 three, four hour deal, and they understand it because
17 it's in a version of Spanish which has been agreed to
18 be fairly fair across the board.

19 But then we walk them from that training
20 trailer to a job site, which is again predominantly
21 English signage and verbage, and they understand
22 everything we just told them in Spanish, but they

1 still don't -- they still are not back in their own
2 native country with that information going out to
3 work. They're in our country, and we're not getting
4 them signage or other things that are multilingual
5 either.

6 So I think we've been both an advocate to
7 train and a victim of training. And I think that
8 needs to be addressed, because otherwise you really
9 have to do another three or four-hour session on how
10 to convert from Spanish back to English, now that
11 they understand your concept.

12 CHAIRMAN THIBODEAUX: Thank you, Dan.

13 All right. Why don't we take about a 15-
14 minute break.

15 MR. MIGLIACCIO: Are you going to act on
16 his? Are you going to act on the motion to accept?

17 CHAIRMAN THIBODEAUX: The report is in the
18 record. He doesn't have a written report for us to
19 accept right now. Is that correct?

20 MR. BRODERICK: Right.

21 MR. KAVICKY: We can print it out and make
22 it available.

1 MR. BRODERICK: Actually, we didn't have
2 copies of it. It's written up as the agenda, so I
3 can tune it up tonight on a memory stick and hand it
4 up tomorrow morning.

5 CHAIRMAN THIBODEAUX: Fine, okay.

6 (Recess from 3:04 p.m. to 3:21 p.m.)

7 CHAIRMAN THIBODEAUX: The last work group
8 report is education and training, OTI. Frank.

9 WORK GROUP REPORT: EDUCATION AND TRAINING (OTI)

10 MR. MIGLIACCIO: I'm going to give the
11 report and then tomorrow when Tom gets back he has
12 the -- he'll having everything typed out. He just
13 didn't think he'd get back in time and we thought he
14 would. But it didn't work out that way.

15 Yesterday's meeting began at 10:15. We had
16 25 people in attendance, of which 12 were ACCOSH
17 committee members. We spoke about basically two
18 topics. One of them was the prerequisites for the
19 OSHA 500 train the trainer be the OSHA 510, not the
20 equivalent used today, and this was put forth by OTI.
21 The other topic we spoke about was the required
22 refresher for the OSHA 10-hour training with an

1 expiration date put on the card. I'll speak about
2 the second one first.

3 The OSHA 10-hour was -- and we discussed
4 this quite a bit. The OSHA 10-hour training is a
5 volunteer program and the question is how do you take
6 a volunteer program and make a refresher mandatory.
7 If one was mandatory, then I could understand having
8 the refresher mandatory. But it's not that way. It
9 just doesn't work that way.

10 But what was talked about was, instead of
11 the expiration making the card expire on a certain
12 day, like they said five years down the road, we
13 could take the card that's in play today, which has a
14 training date on the card already, and with the
15 training date already on the card any time a new
16 standard's put forth training could take place on
17 that part of it, and OSHA could require this.

18 Just to use an example, when the OSHA 10
19 cards are out there, the subpart R standard came into
20 effect long after a lot of our people were trained.
21 But there was certain things required in the standard
22 in training. So what the ironworkers did, we took

1 and made a separate training modular for just what
2 was required. There was eight units to it. And
3 there's a separate card with that.

4 So they have their OSHA 10 card, so they
5 already have this. Anybody else that wanted to train
6 on OSHA 10 and wanted that, they'd have to do a
7 separate training.

8 The CDAC, which we're hoping gets passed
9 soon, the crane and derrick, could work the same way.
10 When new standards are out there, new training
11 standards, the cards are already in play; you could
12 take the CDAC card or you could take the CDAC
13 training required and just train that, and the card's
14 still good. It's just you have to be retrained on
15 certain parts of it.

16 So we thought the expiration date was not a
17 real good idea, and the fact of using the training
18 date that's on there and then do training after.

19 Now, the other part of this whole situation
20 is contractors can require -- and that's what's
21 driving this, I think, is that contractors can
22 require you to have a refresher every two or three

1 years. And that's true, and if the contractor so
2 chooses to do so they can do that legally. If a
3 state has that requirement, it can happen.

4 A couple things we talked about. We had
5 two state planners or two state plans in there, from
6 North Carolina and Tennessee, and we asked them about
7 what the 10-hour card -- how do they recognize the
8 10-hour card. I don't want to put words in their
9 mouth. Yesterday they spoke on behalf of themselves.
10 I'd like Kevin to tell us what the card means to you,
11 the 10-hour card, what it does for you in the state
12 of North Carolina.

13 MR. BEAUREGARD: Like I was telling the
14 committee, we certainly promote and encourage
15 employers to go to 10-hour and 30-hour courses. We
16 think they can get very good training there.

17 As far as on the site when we're doing
18 compliance activity, we look more towards what we're
19 finding on the site and the hazards that we're seeing
20 on the site and whether or not they're actually
21 utilizing any of that, rather than whether or not
22 they have a card or not. If somebody comes to us and

1 hands us a card and says, well, despite what you may
2 see I've been through the ten-hour training, we say,
3 that's very nice, we like the piece of paper you
4 have, but let's talk about some of these things that
5 we're seeing here.

6 If they do have the ten-hour training and
7 in fact we're seeing compliance on the job site,
8 that's wonderful and it was probably effective
9 training. But if they have a card and we're seeing
10 numerous items out there and we're talking to the
11 employees and they don't seem to know how to utilize
12 the personal protective equipment, they don't know
13 the requirements for trenching and they're involved
14 in trenching work, and this was all allegedly covered
15 in the ten-hour course, it brings into question
16 what's happening there.

17 So it's not going to prevent an employer
18 from getting a citation, particularly if we're seeing
19 numerous issues out there. So sometimes there is a
20 disconnect, because sometimes we do go on the site
21 and numerous people have the ten-hour card, but we're
22 seeing an awful lot of problems out there, and other

1 times you may go on site and not see any problems and
2 nobody has a ten-hour card.

3 So it's not always a situation where you
4 can tie it. But we do encourage it. We actually
5 look at the job site and evaluate the job site and
6 talk to the employees, which is the key to any safety
7 program, is is it getting out to the employees.

8 MR. MIGLIACCIO: Thank you, Kevin.

9 Steve, what about Tennessee?

10 MR. HAWKINS: I'd say that the way Kevin
11 explained explained it is very much the way we look
12 at the ten-hour card as well. We believe in the
13 program so much that we teach the ten-hour class
14 ourselves with our own staff, and we have staff
15 members in Tennessee who have been through the 500
16 class and the 501, depending on which one it is, and
17 have the ability to issue cards ourselves, and we do
18 that.

19 But the person mostly who benefits from the
20 ten-hour training the most is the worker themselves.
21 The whole goal is so the worker has some knowledge to
22 protect themselves from hazards and they have the

1 knowledge to know what protection looks like.

2 Just like Kevin stated, we really evaluate
3 how well the person is trained based on what they're
4 doing and not whether or not they can produce a ten-
5 hour card or necessarily when the training took
6 place.

7 Another example, not about the ten-hour
8 card, but we've made trench inspections before where
9 a person would -- we'd ask them about being a
10 competent person, they would produce a card, maybe
11 even a NUCA card where they've been to a NUCA class.
12 And we might say, well, what type of soil type are
13 you working in? They'd say: Well, I don't know.
14 Well then, it doesn't really matter about the card;
15 you've just demonstrated that you're not functioning
16 as a competent person and indeed you're not
17 competent.

18 So just like Kevin said, the cards are
19 good, the training is excellent. It's probably one
20 of the most successful things as far as training and
21 outreach that OSHA has ever done. We fully support
22 it. But it's really just, it is what it is, and it's

1 just evidence that you went through ten hours of
2 training.

3 When you introduce the electives in there,
4 you're not even -- we can't be certain what subjects
5 were necessarily covered in the ten-hour besides the
6 core subjects. The electives vary widely. They're
7 as varied as the standard itself. So just like Kevin
8 said, we just -- it is what it is, and it doesn't
9 really prove anything. It's just we're glad you had
10 the training, we support it. We believe in it so
11 much that we do it ourselves.

12 But the value to one of our compliance
13 officers when they see that card, it does show good
14 faith on somebody's part that this person was
15 trained, but it's not really evidence directly of
16 anything as far as any other training requirements in
17 the standard are concerned.

18 MR. MIGLIACCIO: Thank you, Steve.

19 That brings up the next part of this, on
20 the ten-hour card, is to do a refresher you'd have to
21 almost know what they did the first ten hours. Now,
22 we know the core is there all the time, but we left

1 enough, like Lenwood used to call it, wiggle room so
2 that the instructor could take -- like if it's Jim
3 and it's electrical, he could put in a little bit
4 more electrical in time there. If it was Walter he
5 could put in something, housekeeping, something
6 laborers might do.

7 You look at just -- if you don't know what
8 that is, how could you require a refresher to come
9 up? So we like the idea, and I think OTI even said,
10 it would be a good idea for it to be maybe with the
11 training date left on the card without the expiration
12 date.

13 So I would recommend this. My first
14 recommendation would be that the ACCOSH committee
15 recommend to OSHA that the cards just stay the way
16 they are, with the training date and not an
17 expiration date. So that'll be my first
18 recommendation.

19 The second area we talked about, and this
20 was the most heated, was the prerequisites for the
21 OSHA 500 train the trainer be that OSHA's 510, not
22 the equivalents used today, be put in place. This,

1 there was a lot of debate on that. This goes back
2 four meetings, and of course this meeting here again
3 because of OTI happened to be at a meeting with the
4 outreach programs, the colleges and so forth that run
5 the outreach programs. They had meetings with them
6 in Texas, I think. So they couldn't actually be at
7 the meeting, so they called in on this one.

8 It's kind of hard to actually get a feel
9 when somebody calls in. This just happened, that
10 they couldn't make this meeting, and we understand
11 that. And we did the best we could with this.

12 What was put forth to us by OTI was that
13 starting April 1, without recommendations of this
14 committee, they would put into place the OSHA 510
15 only as the prerequisite. I'd say just about of the
16 25 people there, if there was anybody that was in
17 favor of that, nobody really spoke to that effect.
18 Everybody that was in that work group really didn't
19 go along with that. Now, if there could have
20 been somebody that didn't speak up, hopefully they'll
21 speak up today.

22 The other part was we asked several

1 questions of how this actually came about, why they
2 wanted to do this, and we knew that some of the
3 higher education areas that were doing the OSHA 500
4 and requiring -- wanted to require this 510, there
5 will be a substantial amount of money paid. It'll be
6 \$795 per person to take this course.

7 Now, it doesn't make any difference that if
8 you've already got this training before or through
9 another area. You're still going to take that 510.
10 We find that redundant training does not do it.
11 Especially, if the wheel's not broken why would you
12 want to fix it?

13 One question I had to ask as co-chair --
14 and like I said, Tom's not here now -- I asked the
15 question: Had this been put forth to the Acting
16 Secretary of Labor-OSHA yet? They said no. So my
17 second recommendation, even though they said they
18 were putting it in place with the board's vote
19 yesterday down there in Texas, my second
20 recommendation would be I would like the ACCOSH
21 committee recommend to OSHA that the changes
22 prescribed by the OTI concerning the prerequisites

1 for the OSHA 500 train the trainer be left as stands
2 until the new Assistant Secretary of Labor-OSHA has a
3 chance to review them.

4 After that, we ended our meeting at 11:55
5 and, like I said, there was much discussion. That
6 ends my report.

7 CHAIRMAN THIBODEAUX: Thank you, Frank.

8 Let's speak to the second recommendation
9 first.

10 MR. MIGLIACCIO: Okay.

11 MS. SHORTALL: Could you read that again?

12 CHAIRMAN THIBODEAUX: The minutes are on
13 the record. The report's coming tomorrow when it can
14 be formally accepted into the record.

15 MR. MIGLIACCIO: I would like the ACCOSH
16 recommend to OSHA that changes prescribed by the OTI
17 concerning the prerequisites for the OSHA 500 train the
18 trainer be left as stands until the new Assistant
19 Secretary of Labor-OSHA has a chance to review them.

20 CHAIRMAN THIBODEAUX: We have a motion.

21 VOICE: Second.

22 CHAIRMAN THIBODEAUX: We have a second.

1 Any discussion or questions or comments?

2 (No response.)

3 CHAIRMAN THIBODEAUX: All right. All in
4 favor of that motion signify by saying aye.

5 (Chorus of ayes.)

6 CHAIRMAN THIBODEAUX: All opposed, same
7 signify.

8 (No response.)

9 CHAIRMAN THIBODEAUX: Motion passes.
10 You said you had two?

11 MR. MIGLIACCIO: Yes. The first one was we
12 would like ACCOSH to recommend to OTI that the card
13 remain the same, the OSHA 10 and 30 cards remain the
14 same, with the training date stated on there rather
15 than an expiration date.

16 CHAIRMAN THIBODEAUX: Do we have a second?

17 VOICE: Second.

18 CHAIRMAN THIBODEAUX: Second. Any
19 discussion or comments?

20 MR. JONES: I have just two questions.
21 There's no expiration date on it currently, right?

22 MR. MIGLIACCIO: No.

1 MR. JONES: And there's only a training
2 date on there?

3 MR. MIGLIACCIO: The date of training, yes.

4 MR. JONES: So we're just saying to remain
5 like it is.

6 MR. MIGLIACCIO: Just remain like it is.

7 CHAIRMAN THIBODEAUX: Any other discussion?

8 (No response.)

9 CHAIRMAN THIBODEAUX: A motion and second.
10 All in favor of the motion signify by saying aye.

11 (Chorus of ayes.)

12 CHAIRMAN THIBODEAUX: All opposed, same
13 signification.

14 (No response.)

15 CHAIRMAN THIBODEAUX: Motion passes.

16 Thank you, Frank.

17 MR. MIGLIACCIO: Thank you.

18 PUBLIC COMMENT

19 CHAIRMAN THIBODEAUX: That concludes all of
20 our work group reports. Public comment. Mr. Tom
21 Fogerty, the Construction Safety Council, signed up
22 to make a public comment.

1 MR. FOGERTY: Maybe not so much a public
2 comment, but a pitch to one of the things that were
3 discussed. I'd like to thank the committee for
4 allowing me to take this time for you that are here
5 to kind of look at a project that was created through
6 a Susan Harwood grant, kind of described as a low
7 tech device to outreach and get training for those
8 who may not be able to receive it in their language.

9 As the group can see, it's formatted where
10 the individual who would provide the training or do
11 the instruction would get an 11 by 17 flip chart.
12 That flip chart would contain pictures or pictograms
13 of the topic, and on the back side of it the
14 instructor would have the training information along
15 with training notes to help him deliver, him or her
16 deliver the training, in that person's language.

17 The languages chosen for this project were
18 Spanish and Polish for our geographic region, giving
19 the person some ability to give basic training on
20 some of what we consider, or what I tried to do in
21 creating it was focus four-plus, so the four main
22 hazards that cause injury or fatality, plus some ones

1 on general employee safety, how to orient yourself to
2 a job site, things to look for, things you should
3 look out for; make sure that you're getting the
4 training right up front.

5 16 topics, even in training notes,
6 corresponding to certain topics that should be run
7 with others, because maybe somebody doesn't have all
8 16 hazards on their job. Maybe the job that they're
9 doing, maybe it's cleanup. But we could go PPE and
10 other places. And there's links in here that show
11 the instructor: If you're going to cover this one,
12 you should tie it into this one; if you use this one,
13 you should tie it into that one.

14 The other component that goes along with
15 the project would be student workbooks that are a
16 leave-behind for the student or whoever attended the
17 training, to have the same content that was delivered
18 available to them in their language or in English.
19 So both of these books, this one being the English-
20 Spanish version and this one being the English-Polish
21 version.

22 So it was designed to be something that

1 could be done on the back of a pickup truck. This
2 could be in the guy's truck. Pull it out, have a
3 group of five or six guys gather around, and
4 disseminate information so that those individuals
5 would at least get some level of training.

6 That came up during the conversation of
7 multilingual work group. I believe Dan mentioned
8 that, what about signage, what about other things
9 that are posted? Not that I can make a
10 recommendation, but maybe as an opportunity to say
11 something, is it possible that, like art work they
12 described for the women in construction, changing
13 pictures, to go to some signage that's more pictogram
14 type, where the person by picture -- instead of
15 "Danger, do not enter" or "Work above," there's some
16 type of pictogram that could affect signs, signals,
17 and barriers that go into the OSHA regulations, that
18 give a new classification to signs, so that -- the
19 guys that write "Live" on cardboard and and stick it
20 in a panel box, we know that's bad. But things that
21 would describe better the hazard through pictures.

22 I know some people go into just colors:

1 green, red, yellow. If it's green, anybody can go;
2 if it's yellow, it's caution, you ask somebody first;
3 if it's red and you haven't been told about it, you
4 don't go. So somewhere along those lines to create
5 an easier way to speak to the hazards, even though
6 you're not speaking.

7 So that's kind of an idea born out of this.
8 You see it, it's kind of spoken to you without
9 actually you knowing, I know I've got a bunch of guys
10 here that are going to pay attention to somebody
11 who's going to talk. As the pictures progress, it's
12 just the right way and the wrong way. This is what
13 it looks like if you're doing it wrong; this is what
14 we hope to have it look like if you're doing it
15 right.

16 With that being said, if anybody's got any
17 questions for me concerning the project or how you
18 can get your hands on it. If anybody's interested in
19 getting this, it has been decided that the rollout of
20 the program for anybody interested in presenting this
21 to a group of people, the kit would come with one
22 flip chart and ten books for students. More books

1 can be ordered, but it was decided that that would be
2 the limit in its first rollout. These would also be
3 available on line in pdf and you can print your own,
4 so that if somebody wanted to just download an Adobe
5 file pdf they could print out additional work books.

6 All that's required of the person who does
7 it would be to have the attendees fill in a sign-in
8 sheet so we could try to get to that goal or
9 milestone number of people trained to meet the
10 requirements of the grant. We'd love to exceed it,
11 but that's neither here nor there.

12 Any questions?

13 MR. HAWKINS: What's the cost?

14 MR. FOGERTY: This is free.

15 MR. HAWKINS: It is?

16 MR. FOGERTY: Yes. Anybody that wants it
17 through the grant can sign up and get this for free.
18 The only thing that we would keep track of is that
19 somebody as an instructor doesn't continue to sign
20 up, maybe as another name, and get more and more and
21 more and more of these. We're assuming that it was
22 built in a fashion to be pretty durable, highly

1 laminated stock. They shouldn't need a replacement.
2 Not saying that we wouldn't do it, but we just
3 wouldn't want somebody continually ordering and
4 expecting to get a flip chart and ten books every
5 time they order, knowing that they're going to get
6 this.

7 MR. BUCHET: Obviously, you put a lot of
8 thought into how it's delivered. Wearing bifocles
9 and sitting from here is not how you planned on
10 getting it delivered. Have you got any tips built
11 into this, like a small circle, sit on the ground,
12 tailgate of a pickup truck?

13 MR. FOGERTY: In the information sheet that
14 comes with it, the provided materials, it gives you a
15 description of the best way to deliver, that it
16 wouldn't be -- this (indicating) would be futile
17 because I'd have to have a 22 by 28 picture and that
18 flip chart would be cumbersome. So the design for it
19 and the instruction -- and there's also an
20 accompanying -- somebody would need a computer to see
21 the Power Point that accompanies this of how to do
22 it. But there's also a sheet that could be printed

1 out, or that also gets sent with this, that if
2 somebody did select this it would go step by step,
3 the room size, number of people. You wouldn't want
4 to exceed a group of five to seven people because
5 you'd have to set them up by height. It's kind of
6 described in the method of how to do it.

7 Who can use it, how it can be used, and then
8 what the prescribed method for using it would be.

9 Also to come with it, one thing I wanted to
10 mention is that sending back those sheets to us is
11 also free, a postage paid envelope marked to us
12 coming back, so that the person who got it would have
13 our address on it. All they'd have to do is put the
14 sheets in the envelope and it comes back to us. So
15 there is no cost other than the time of the person it
16 would take to try to get some information out to
17 people who need it.

18 MS. SHORTALL: I have a question. Is the
19 flip chart and the two booklets there, are those
20 available for us to put into the record of this
21 meeting?

22 MR. FOGERTY: If you would like them, it's

1 less for me to carry home on the plane.

2 MS. SHORTALL: That would be great.

3 Now, I should let people know that the flip
4 chart will only be in the record, but it will not be
5 capable of being put on the web site because of the
6 unusual nature of it.

7 MR. FOGERTY: There's also a presentation
8 that was delivered to the work group yesterday.
9 That's in this machine. So if you wanted to enter
10 that into your record --

11 MS. SHORTALL: I guess tomorrow we'll --
12 would there be a hard copy of that presentation
13 available tomorrow?

14 MR. BRODERICK: I'll print it out or I'll
15 send it to you. I have it electronically.

16 MS. SHORTALL: So we'll enter it into the
17 record at the time. We'll take care of that.

18 CHAIRMAN THIBODEAUX: Is the pdf file on
19 the Internet?

20 MR. FOGERTY: Yes. If you went to our web
21 site at buildsafe.org, there is a link directly on
22 our home page to the information contained in this.

1 MS. SHORTALL: Okay.

2 MR. FOGERTY: We have pdf's of this
3 (indicating), the printed material. The images, our
4 IT is still working on compressing them so in a
5 digital format they can be used. But that's not at
6 this point done. These actually just got completed.
7 We just received these from the printer within the
8 last two weeks, so we've started to disseminate it.

9 But as those things come on line, they'll
10 be made available via the web site as well.

11 CHAIRMAN THIBODEAUX: Any other questions
12 of Mr. Fogerty?

13 (No response.)

14 MR. FOGERTY: You still want this stuff?

15 MS. SHORTALL: Yes, we'd like to have that.

16 Mr. Chair, at this time I'd like to mark
17 the flip chart, the BuildSafe flip chart, as Exhibit
18 0023; the workbook of English into Polish as 0024;
19 and the workbook of English to Spanish as 0025.

20 CHAIRMAN THIBODEAUX: So admitted.

21 Thanks, Tom, for that presentation. We
22 appreciate it.

1 CHAIRMAN THIBODEAUX: All right.

2 MS. ARIOTO: Liz Arioto, public member.

3 I'd like to just have some comments here.

4 First of all, I was very rude in not
5 introducing my co-chair, Tom Kavicky, for the women
6 in construction. I really do appreciate him working
7 with me on that. So I do apologize.

8 The second thing is on nail guns. I think
9 we should be on record. There were 37,000 plus nail
10 gun injuries between the year 2001 and 2005, and
11 these were recorded through the emergency rooms if it
12 was documented. What was stated was 40,000 were non-
13 work-related and 60,000 were work-related. So I
14 thought this would be interesting, for people to know
15 why I think the nail gun committee here is very
16 important for us to work on.

17 That's it.

18 CHAIRMAN THIBODEAUX: Thanks.

19 The next item is discussion.

20 MR. AHAL: Bill Ahal from Alberici,
21 representing employers.

22 I'd like to bring something up to the

1 committee or more of a question, I guess. We heard
2 about some stimulus money being available to OSHA,
3 and an obvious change in leadership we see in our
4 government has occurred, and then the inevitable
5 changes that will occur within the agency as a result
6 of that. I would like to ask this committee its
7 reaction and suggest perhaps a recommendation from
8 this committee that we get some assurance that the
9 current successes that OSHA has had in its outreach,
10 its training, and the resultant successes of that,
11 that the current levels of their commitments to
12 cooperative programs and outreach to the industry
13 will continue, because we all understand, and those of
14 us directly in the retail business in construction
15 understand, the economic conditions, but it'll affect
16 everyone no matter where you're at, if it hasn't
17 already.

18 I would like to suggest this committee
19 discuss getting a commitment from OSHA so we don't go
20 backwards in the areas of cooperative programs and
21 the resources available for cooperative programs to
22 the industry and hopefully ask for a commitment that

1 that will stay the same as we go forward with our new
2 leadership.

3 CHAIRMAN THIBODEAUX: Are you making that
4 in the form of a motion for this committee today,
5 Bill?

6 MR. AHAL: Well, I am prepared to do that,
7 but I would like to get a little discussion amongst
8 the committee. If not, I will make that a motion.

9 CHAIRMAN THIBODEAUX: All right, why don't
10 we just discuss what you just brought up.

11 MR. AHAL: Okay.

12 CHAIRMAN THIBODEAUX: And then after we've
13 had discussion among everyone, then if you wish to
14 make that motion then we'll do it.

15 MR. AHAL: Fair enough.

16 CHAIRMAN THIBODEAUX: Anyone have any
17 comments on what Bill said?

18 MR. GILLEN: I would just say I don't feel
19 fully informed that I know what the contribution to
20 the different elements are, how cooperative programs
21 versus training versus enforcement. I don't know
22 what the big picture is.

1 CHAIRMAN THIBODEAUX: I thought that was
2 part of what he was asking.

3 MR. AHAL: Well, I guess as a general
4 statement, and I'm not trying to sit down and list
5 all the accomplishments that OSHA as an agency has
6 done, but I feel that as being on the recipient end
7 of OSHA's efforts as far as cooperative programs,
8 that they have made quite a commitment in the past
9 and that's been a very positive commitment, that has
10 positive results.

11 And in order that we don't go backwards,
12 that we at least stay at that level; which is a
13 commitment today in the economic conditions, and the
14 fact that we know we have leadership changes and with
15 leadership changes will come subsequent changes in
16 the organization -- that's inevitable. I'm not
17 arguing with that. I'm not fighting that.

18 But what I hate to see is these changes
19 come around and everything that people at this table
20 have worked for and the agency has worked for in the
21 areas of cooperative programs and outreach, that
22 those resources that made that happen -- that we get

1 a commitment from the agency that they don't mess
2 with that, they don't take that apart, for whatever
3 reason, whether it's to apply it somewhere else. But
4 we need to maintain that so that all the good we've
5 got now stays there and we go from that level on,
6 rather than go backwards and try to come back, to
7 have to come back to where we were.

8 CHAIRMAN THIBODEAUX: Dan?

9 MR. ZARLETTI: I'm seeing this, in our
10 company at least, where we're trying to figure out
11 how to manage the same kind of personnel when
12 overhead is high and maybe revenue won't be sustained
13 as it was the year before. But my take on it is more
14 of a culture thing. Your culture can't suffer
15 because the work is coming out differently. You
16 don't have to go from cost-plus or hard dollar money
17 or something like that. It just has to be maintained
18 in a way that -- I don't know that we heard it this
19 morning, unless I misheard it, from the Deputy
20 Secretary that was in, saying that he realized people
21 are cutting back.

22 I think what I'm hearing is you may have to

1 cut back personnel at some point, but you don't want
2 to cut back the effort or the culture that got you
3 where you are through all the cooperative programs,
4 so that when things start to recover and we ramp back
5 up we've got something to ramp up to and from,
6 instead of starting from scratch and having this big
7 black hole in between with a bunch of injured people.

8 That's how I look at it.

9 CHAIRMAN THIBODEAUX: Anyone else have any
10 comments?

11 (No response.)

12 Bill, would you like to make that a motion
13 for the committee?

14 MR. AHAL: I'd like to motion that this
15 group make a recommendation to OSHA to maintain its
16 commitment of resources that have been in place in
17 the past towards outreach and cooperative programs,
18 that the commitment of resources and effort be
19 maintained going forward from today.

20 CHAIRMAN THIBODEAUX: We have a motion. Do
21 we have a second?

22 VOICE: Second.

1 CHAIRMAN THIBODEAUX: Do we have any other
2 discussion concerning this motion?

3 (No response.)

4 CHAIRMAN THIBODEAUX: All in favor -- oh,
5 I'm sorry.

6 MR. RUSSELL: One question. Are you making
7 the motion because you feel as though OSHA may be
8 reallocating funds or responsibilities in the future
9 in terms of locking in something that exists, or -- I
10 guess my question is do you have any definite feel
11 that OSHA is going to redirect moneys or resources in
12 other directions?

13 MR. AHAL: Yes, I do. I have a concern
14 that that could happen, because when times are what
15 they are now you have to do the same -- you have to
16 do the same with less. And if you can't do that, you
17 have to cut something or change something. I don't
18 want to see the positive parts of what's come out of
19 this cooperative program resources and effort, I
20 don't want to see that washed out and diluted.

21 MR. RUSSELL: I guess -- the only thing I'm
22 a little concerned about is that hopefully at some

1 point, if there's going to be some changes, we as the
2 committee would get a look at the big picture and see
3 what the future might look like from OSHA's
4 perspective. I'm a little concerned about locking in
5 portions of it without having a look at the big
6 picture. I'm a little concerned with that.

7 Not that I don't agree with what you're
8 saying. But again, I think we're voting on a part of
9 the picture without necessarily looking at the big
10 picture, is my concern.

11 MR. JONES: I agree with a lot of what you
12 said, but I don't understand why we have to put
13 resources in your proposal. I can understand
14 maintain the same level of commitment, but to say we
15 have to maintain the same level of resources strikes
16 me as different from what Dan just said, because if
17 the pie got smaller but that still has to say -- if
18 the pie gets smaller, every resource has to get
19 smaller, or if there's a redirection.

20 I just think that the level of commitment,
21 you'd find agreement among most of us that we'd like
22 to see OSHA's level of commitment to those remain the

1 same. But to then say the level of resources must
2 stay the same, it goes against the big picture
3 potentially.

4 MR. AHAL: Well, to me commitment is very
5 subjective, and I'm trying to get an objective
6 commitment from the agency that we're not going to
7 lose the ground that everybody here has worked for
8 over the last few years because of a change of
9 leadership. I had heard -- I've heard comments made
10 very recently that made me concerned that we may not
11 any longer place importance on cooperative programs,
12 and that bothers me because I think those have been
13 successful.

14 So if it's on the radar screen, the
15 recommendations from this group, they are taken in
16 sincerity by the agency, that they understand that we
17 place an emphasis and an importance on cooperative
18 programs and outreach both, and we don't think that
19 should be messed with, for lack of a better term at
20 the moment, in going forward, because things are
21 going to change and I'm looking for less of the
22 subjective and more of an objective commitment.

1 That's why I said it the way I said it.

2 CHAIRMAN THIBODEAUX: Susan.

3 MS. BILHORN: Could we possibly rephrase it
4 to express our concern that, with changes, which is
5 the administration, which is the stimulus package and
6 the emphasis on what's going on, a variety of things,
7 that we could just express our concern that there
8 would be a shift in prioritization away from the
9 cooperative programs and actually that the request
10 that we could make is that if there is a
11 reprioritization that we have an opportunity the
12 voice suggestions?

13 MS. SHORTALL: I think I probably need to
14 speak up right here, because the issue of OSHA's
15 budget is not entirely within the agency's control
16 since Congress does decide the agency's budget, both
17 in total and to some extent they do -- not line item,
18 but do say that you will spend this much on this and
19 this much on that.

20 So OSHA may not be in the position to honor
21 your request, and I think the more that you make a
22 request to be one that the agency in practicality is

1 not going to be honored, the more the agency is
2 likely to just not take any action on your
3 recommendation.

4 I don't know if you --

5 MR. AHAL: No, I understand. I wasn't at
6 all suggesting a budgetary breakdown. But the fact
7 is if the money were to be reduced, as a for-
8 instance, I would -- I'm wanting to see the
9 importance of cooperative programs maintained. Now,
10 if that means via Susan's comments that our concerns
11 are that those be -- that we get at least a comment,
12 to come back and say, look, we've got to cut 20
13 percent of all our people out and that's going to
14 take 20 percent out of this, this, this, and this,
15 maybe we'd have an idea.

16 Again, this is all stemming from the
17 importance I place on cooperative program standard
18 outreach. So your recommendation -- your
19 modification -- I'm not trying to suggest that the
20 agency has to get the same amount of money or they're
21 going to allocate. But I hate to see that portion of
22 their efforts diluted if changes are in the works in

1 the agency, because of the importance of that, not as
2 a management tool.

3 I'm willing absolutely to take suggestions
4 on ways to say that, but I just don't want to see
5 that slashed and then we lose the ground that's
6 gotten for everybody here.

7 MR. BEAUREGARD: I don't know the correct
8 way that you might want to do the motion, but we may
9 want to word it in such a manner that indicates that
10 ACCOSH members feel that education and training and
11 BPP and outreach are very important and we want to
12 make sure that it maintains a level of importance.

13 I don't disagree with what you said, but
14 I'm thinking back to my own state program, and we
15 have benchmark levels for compliance officers. We
16 don't have benchmark levels for VPP and we don't have
17 benchmark levels for other positions in education and
18 training. The fact of the matter right now is our
19 state is having some economic problems and we've been
20 -- we've received reduced funding, reduced state
21 funding, and we can't consider reducing the
22 enforcement side of things.

1 So that doesn't leave a whole lot of area
2 in our program that we can reduce, and it's going to
3 be education, training, and outreach or VPP, because
4 it's not going to come from compliance. So even if I
5 agree with you 100 percent, I can't make a commitment
6 that we're not going to make a reduction in a line
7 item for one of our items. So it's very difficult
8 for me.

9 I agree with you that the VPP is very
10 important. I agree with you that education and
11 training is very important. I brought those things
12 up in one of our committee meetings the other day,
13 but as far as a group saying we don't want to reduce
14 the spending on that, I don't know if we can -- we
15 can make a recommendation, but I'm not sure --

16 MR. AHAL: I wasn't suggesting a reduction
17 in spending. As I say, I'm not trying to make an
18 administrative amount or anything like that. But I'm
19 just saying that I want to emphasize the importance
20 of cooperative programs and outreach. Whatever
21 administrative decision may have to be made, the
22 importance of those, as this group may put an

1 importance, and I believe they do, that that remain
2 there in the sight, in plain sight, as any decisions
3 might be made.

4 MR. BEAUREGARD: And I agree with you
5 there. The only thing I'm saying is as a manager, I
6 manage a program, and if the governor is saying,
7 we're reducing your budget 10 percent, I can't reduce
8 it from the enforcement side. So that only leaves
9 the rest of my program. So if I'm given an edict
10 then I'm going to reduce it.

11 It very well may be very important to me,
12 but it's not going to factor into my decision because
13 I'm not going to be able to take it out of anywhere
14 else.

15 I don't know if I'm coming across clear on
16 that or not. That's the position I'm in as a manager
17 of a state program.

18 MR. AHAL: Well, can we get some help on
19 the words, Sarah, on how that should be properly
20 worded? No, I do not want to get something that's
21 going to get ignored because of the verbage that's
22 used to convey it.

1 CHAIRMAN THIBODEAUX: Bill, I was just
2 jotting something down. Maybe -- and you might want
3 to make this a little stronger -- your motion is that
4 ACCOSH recommend that OSHA give strong consideration
5 to continuing the outreach and cooperative programs
6 they have in the past, and if there are going to be
7 changes in that program that ACCOSH be advised.

8 I don't know if that's what you were
9 getting at.

10 MR. AHAL: Well, I think you hit a big
11 piece of it. I guess if you'll tag onto that
12 ACCOSH's importance that they place on those
13 programs, thus the rest of it. Again, I hope the
14 message that I'm trying to convey is clear to
15 everyone here. It's my opinions and my thoughts.

16 So I'll amend that motion then to the
17 importance, that ACCOSH places importance on
18 cooperative programs and outreach, and then, Michael,
19 would you put in your wording so I don't have to show
20 that my memory isn't the way it used to be?

21 CHAIRMAN THIBODEAUX: Again, I just jotted
22 down, so I may not have the words you want. Your

1 motion is that ACCOSH does believe the outreach and
2 cooperative programs are very effective and they
3 recommend that OSHA give strong consideration to
4 continuing those outreach and cooperative programs
5 going forward, and if changes are made that ACCOSH
6 will be advised before they're made.

7 MR. AHAL: I'll put that back on.

8 CHAIRMAN THIBODEAUX: Does that sound all
9 right?

10 MR. AHAL: Yes.

11 CHAIRMAN THIBODEAUX: I don't know the
12 particulars, but Bill just made my motion.

13 MS. SHORTALL: Okay. Well, you both sort
14 of made both of yours together.

15 MR. AHAL: I so move.

16 MS. SHORTALL: We had a motion already on
17 the floor and seconded. Do you want to accept his
18 friendly amendment?

19 MR. AHAL: Yes.

20 MS. SHORTALL: Does the seconder accept the
21 friendly amendment?

22 VOICE: I'll second.

1 CHAIRMAN THIBODEAUX: Okay.

2 MS. SHORTALL: No. Who seconded his
3 motion?

4 MR. MIGLIACCIO: I did.

5 CHAIRMAN THIBODEAUX: Frank did.

6 MS. SHORTALL: And you accept it?

7 MR. MIGLIACCIO: Yes.

8 CHAIRMAN THIBODEAUX: Okay, we have a
9 motion and a second. Do we want to have any more
10 discussion?

11 MR. RUSSELL: I just want to make sure that
12 that's a recommendation.

13 CHAIRMAN THIBODEAUX: Yes. Yes, that's
14 what I said.

15 MR. BUCHET: Could you repeat it one more
16 time, Mr. Chairman?

17 MS. SHORTALL: It's sort of this: that Mr.
18 Ahal moves that OSHA recognizes the importance of
19 outreach and compliance programs and therefore
20 recommends that OSHA give strong consideration to
21 maintaining its commitment to existing outreach and
22 cooperative programs; and that if OSHA needs to make

1 changes in its level of commitment that it bring that
2 before ACCOSH before those changes are implemented.

3 CHAIRMAN THIBODEAUX: Okay. Any questions
4 or comments?

5 (No response.)

6 CHAIRMAN THIBODEAUX: All in favor of the
7 motion signify by saying aye.

8 (Chorus of ayes.)

9 CHAIRMAN THIBODEAUX: All opposed, the
10 same.

11 (No response.)

12 CHAIRMAN THIBODEAUX: The motion passes.

13 MR. AHAL: Thank you, Mr. Chairman.

14 CHAIRMAN THIBODEAUX: Other business? Next
15 meetings. I think everyone was given a calendar of
16 proposed dates for our next meeting. I think we've
17 kind of eliminated May as too close. The calendar
18 shows June 15 or the week of July 13, the week of
19 June 15 or the week of July 13.

20 MR. MIGLIACCIO: Any like the 8th, 15th, or
21 the 22nd of June, any one of those three weeks I'm
22 available. But in July I'll be leaving on the 11th

1 and I will not be back until the 25th. I have two
2 previous. We have our training that we've been
3 talking about that we do for our instructors,
4 training in San Diego. And I train the MSHA
5 instructors.

6 Now, the week after, if we could move it
7 back to that July, the week of the 26th, 27th, 28th,
8 29th, 30th, 31st, if that's a possibility for
9 everybody, that could work.

10 CHAIRMAN THIBODEAUX: Well, why don't we do
11 it this way now. My understanding is that we know
12 these weeks are available for this office or these
13 rooms; is that correct?

14 MR. BUCHET: Well, we printed it.

15 CHAIRMAN THIBODEAUX: That was not the
16 answer I was looking for.

17 (Laughter.)

18 So why don't we do it this way. Let's go
19 through June and see how many are available for the
20 week of June 15th for the next meeting. All who are
21 available for June 15, please raise your hand.

22 (Show of hands.)

1 CHAIRMAN THIBODEAUX: 8. And I don't know
2 about Shanahan.

3 MR. BUCHET: I don't know either.

4 CHAIRMAN THIBODEAUX: I don't think that's
5 going to work. That's 8 and 7 that are not. 8 are
6 available and 7 are not.

7 MR. BUCHET: Right, so if one person slips
8 we have no quorum.

9 CHAIRMAN THIBODEAUX: Do you know whether
10 the week of July 27 would be acceptable?

11 MR. BUCHET: Let's just go through the
12 weeks and find the ones that are the most, and then I
13 will check for space at the inn.

14 CHAIRMAN THIBODEAUX: All right. The week
15 of July 13, folks that are going to be available that
16 week please raise your hand.

17 (Show of hands.)

18 MR. RUSSELL: Can I ask a question to make
19 sure? NCA-10, is that the 13th?

20 MR. JONES: It's 13 and 14.

21 MR. RUSSELL: And 14.

22 MR. JONES: It's 13 and 14.

1 MR. RUSSELL: Just the 14th is the main
2 group.

3 MR. JONES: Yes, the 14th would be a
4 problem for those on the NCA-10.

5 CHAIRMAN THIBODEAUX: All right. Well
6 then, let's try this. That doesn't seem like it's
7 going to work either. How about the last week in
8 July, the week of the 27th?

9 (Show of hands.)

10 CHAIRMAN THIBODEAUX: Susan, you and Jim
11 are not being very helpful.

12 11 -- 12. Well, that's a possibility. So
13 at least for now, the week of July 27 seems like when
14 most of the folks would be available. We have 12
15 have indicated they would be available that week.

16 MR. BUCHET: Everybody else is a hard no or
17 maybe things could shift around once we find out if
18 we have the space?

19 MS. BILHORN: I'm a hard no for the 27th
20 and 28th. The rest of the week I could.

21 CHAIRMAN THIBODEAUX: That's okay, that's
22 fine.

1 MR. MIGLIACCIO: A suggestion.

2 CHAIRMAN THIBODEAUX: Yes, sir?

3 MR. MIGLIACCIO: Because Susan wouldn't be
4 available the Monday or the Tuesday and we don't meet
5 Tuesday -- that would be the travel day -- and
6 because she does chair or co-chair one of the work
7 groups, could we make sure that -- her co-chair is a
8 Wednesday.

9 MS. ARIOTO: Wednesday afternoon.

10 MR. MIGLIACCIO: Yes, like we did this
11 time.

12 MR. BUCHET: We certainly have been good at
13 doing that when the number of requests don't
14 outnumber the slots.

15 MS. BILHORN: Right.

16 MR. TOMASESKI: But hers was first.

17 (Laughter.)

18 MS. BILHORN: Thank you, Jim.

19 CHAIRMAN THIBODEAUX: Anybody else have any
20 comments about the last week in July?

21 (No response.)

22 CHAIRMAN THIBODEAUX: Okay, so tentatively.

1 That'll be on Thursday and Friday for the meetings,
2 for the ACCOSH meetings. The work groups usually
3 meet on Tuesday and Wednesday.

4 MR. BUCHET: We still have space locked in.

5 CHAIRMAN THIBODEAUX: We have space locked
6 in in September, the week of the 21st.

7 MR. BUCHET: That was the time frame that
8 you requested last September.

9 MR. JONES: Say it again?

10 CHAIRMAN THIBODEAUX: The week of September
11 21st.

12 MR. JONES: I'm open.

13 CHAIRMAN THIBODEAUX: All right. All what
14 can be here that time?

15 (Show of hands.)

16 CHAIRMAN THIBODEAUX: Thank you.

17 Heaven forbid that this should happen, but
18 if we should have a fourth meeting this year, the
19 week of November 30, December 1, 2, 3, and 4, or the
20 week of December 7. Let's start with the November 30
21 date and see if folks would be available.

22 MR. RUSSELL: Thanksgiving is the 26th.

1 MR. BUCHET: That's travel the Monday after
2 Thanksgiving.

3 CHAIRMAN THIBODEAUX: I don't know. I'm
4 not too encouraged on that date. I've traveled then.

5 What about the week of December 7. Can I
6 see hands of folks who can be available. That's
7 assuming that we will have -- 7 December, the week of
8 7 December.

9 (Show of hands.)

10 All right. What I would request Mr. Buchet
11 to do is --

12 MR. BUCHET: I will do that.

13 CHAIRMAN THIBODEAUX: -- to follow up with
14 this.

15 MR. BUCHET: I might even be able to get
16 answers on availability and approval tomorrow. The
17 intent is to lock this stuff in.

18 CHAIRMAN THIBODEAUX: Are there any other
19 things we need to discuss today before we adjourn? I
20 know we've got a bunch of presentations tomorrow.
21 Yes, Frank?

22 MR. MIGLIACCIO: Are we going to talk about

1 work groups today or tomorrow?

2 CHAIRMAN THIBODEAUX: Do you want to do it
3 today? We can do it today, that's fine.

4 MR. BUCHET: It would leave the latitude
5 tomorrow, with the number of outside speakers coming
6 in and loading their stuff on that computer, not to
7 load tomorrow with other activities.

8 MR. TOMASESKI: Just the question, what
9 about Shanahan? Do you know what work group he wants
10 to go on?

11 CHAIRMAN THIBODEAUX: Yes.

12 MR. TOMASESKI: Okay.

13 MR. MIGLIACCIO: Tom would like to leave --
14 and we talked about that this morning. He's going to
15 leave silica. Matt's going to take that co-chair
16 with Walt, and we've already -- that was discussed
17 this morning. Of course, you probably weren't
18 listening, but that's okay. And I'll give up the
19 position on the OTI and Walter has agreed to take the
20 co-chair with Tom Shanahan on the OTI.

21 Then there was a couple other work groups I
22 know that we'd like to talk about actually putting

1 into place.

2 CHAIRMAN THIBODEAUX: Frank, you were on
3 regulatory.

4 MR. MIGLIACCIO: Yes, but we switched that
5 to Kevin. That was switched earlier. That was all
6 done earlier today also.

7 CHAIRMAN THIBODEAUX: That was earlier
8 today. I can't remember what I did ten minutes ago.

9 MR. MIGLIACCIO: Then there were two --
10 when we talked about work groups, there were a couple
11 with -- several people have discussed this -- about
12 two new work groups being put into place, one of them
13 being maybe wind energy; and if we put a work group
14 into wind energy, I know Bill Ahal would be willing
15 to be one of the co-chairs on that, and I know that
16 Walter has the design for safety was another one he'd
17 be a co-chair with. There's two more work groups.
18 Then Dan said he would also co-chair with the
19 employers.

20 We have to get another group for the co-
21 chair, but Dan would sit on it. He just couldn't co-
22 chair. So we'd need a couple people to co-chair

1 that.

2 MR. TOMASESKI: Mr. Chairman.

3 CHAIRMAN THIBODEAUX: Yes, Jim?

4 MR. TOMASESKI: We took strong notice of
5 the suggestion that scheduling work groups one after
6 the other was the preferred method. We have nine
7 work groups now. We started at 8:15 on the first
8 day, ran a work group an hour and a half, allowing
9 time for breaks and lunch. We ended up at 5:00
10 o'clock.

11 We had four work groups on Wednesday,
12 started a little later, and ended a little earlier.
13 If we add another work group we're going to have 8:15
14 to 5:00 and then 8:15 to 5:00. If we add another
15 work group, we you like to shorten the time frame or
16 do you not mind working past 5:00? We can start it
17 earlier, we can start it later, but I don't think you
18 are going to get much if you make it an hour work
19 group.

20 CHAIRMAN THIBODEAUX: Susan.

21 MS. BILHORN: I think there's a bigger
22 issue here than the timing, because the timing will

1 definitely be an issue. But I kind of wonder about
2 fracturing ourselves even more. What I would suggest
3 is we take a look at all of them and say, how many
4 can we do. Because, frankly, I think we've already
5 got nine and if we add two more we've got eleven.
6 I'm just wondering if it wouldn't be better suited to
7 say, which ones are really priorities for us?
8 Because I agree with those topics. I think they
9 really sound like great topics. But I wonder if we
10 aren't breaking ourselves up too much by having
11 almost one per member.

12 CHAIRMAN THIBODEAUX: Dan:

13 MR. ZARLETTI: I would tag along with Susan
14 and just say that as long as we're going to try to
15 meet four times a year, maybe we should rotate which
16 work groups are actually discussed, because we had
17 four meetings and if we pass on something the next
18 meeting it doesn't mean it's out; it just means it's
19 passed. But it means it's got to happen in the next
20 two meetings before the end of the year so that it
21 gets its due.

22 Because I think the more focus we put on

1 smaller activities, it's a better product at the end
2 than trying to shotgun the thing and just make sure
3 we hit all the bases, when all you did is hit the
4 bases. You know, you're still going out to the next
5 meeting and then we'll talk about it at the next
6 meeting.

7 Let's just get something done.

8 CHAIRMAN THIBODEAUX: Emmett.

9 MR. RUSSELL: I'd just ask the question --
10 I don't think it exists as a result of the reports,
11 but I would like to ask the question, are there any
12 work groups that have more or less run its course and
13 may be at the end of making maybe one more report,
14 and then the question would be whether that work
15 group needs to continue.

16 I'm just raising it as a question, because
17 that would create a space. Now, if everyone feels as
18 though all of the work groups still have an active
19 function moving forward, then that erases that
20 question. But I think that's a question we ought to
21 at least ask ourselves.

22 CHAIRMAN THIBODEAUX: That's a good point,

1 and that's one of the reasons we had that form for
2 the work groups, to tell us, what are you doing, what
3 are you planning on doing, etcetera, and each of the
4 work groups, at least the meetings that I attended,
5 indicated that they all wanted to continue and that
6 they felt that they had additional work to do over
7 the next year or 2 years.

8 Now, one thing we might want to consider if
9 it's possible; Are there any work groups that we
10 could merge some of these new products into? For
11 example, design for safety; do we want to -- we're
12 talking about power, power fastening tools, nail
13 guns. Design for safety power tools? I don't know.
14 I'm just throwing that out for the committee, because
15 you could accomplish a number of things in that work
16 group and not just regulate it to nail guns itself.

17 MR. JONES: Speaking --

18 CHAIRMAN THIBODEAUX: Walter, go ahead.

19 MR. JONES: No.

20 CHAIRMAN THIBODEAUX: Tom.

21 MR. KAVICKY: Speaking on behalf of the
22 power fastening work group, we had our first meeting

1 and out of that meeting it generated a tremendous
2 amount of discussion that's going to require staying
3 specific with those topics, because now we're going
4 to look at the manufacturer's comments, the
5 contractor comments, and safety on that.

6 I don't think a merge with design safety
7 would be good, at least at this point in time. We
8 just started that work group.

9 CHAIRMAN THIBODEAUX: I just used that as
10 an example. I wasn't suggesting that happen.

11 MR. KAVICKY: No, no, no, no.

12 CHAIRMAN THIBODEAUX: I'm saying I think we
13 as a group need to look at, are there some that we
14 can merge together and accomplish the same purpose?

15 MR. JONES: I don't think that anyone's
16 going to say their committee's no longer functioning.
17 Let's be honest. Everyone's going to say their
18 important is important and needs to keep going. And
19 I'm not saying that's not correct either.

20 But I think the design for safety work
21 group that I was interested in starting, I will
22 rescind that request.

1 MR. MIGLIACCIO: But to your point, though,
2 our ROPS thing is getting ready to provide OSHA a
3 recommendation from ACCOSH. Once that's done, how
4 much more do we need to do on the work group?

5 MR. JONES: Well, I think we're making a
6 recommendation to OSHA on the skid steer loader. I
7 think there were a couple of other pieces of
8 equipment that we might look at. But if the
9 committee were to want to give us a deadline to
10 complete our tasks, that's doable and I would not
11 have a problem taking that challenge and completing
12 the tasks.

13 MR. MIGLIACCIO: Well, I think it has to go
14 the other way. I think the co-chairs have to set the
15 goal of rt completion of their tasks and then bring
16 it to the committee. I don't think you're going to
17 go the other way.

18 MR. JONES: You can disband.

19 MR. MIGLIACCIO: Yes, they were going to
20 force that down their throat.

21 MR. RUSSELL: Well, I would not have a
22 problem with in our next committee meeting reviewing

1 an outline of the committee's tasks and then setting
2 a time goal to complete that task.

3 MS. SHORTALL: I have one suggestion that I
4 would like to make, since it seemed very clear from
5 the discussion today that ACCOSH wants to play a role
6 in providing recommendations, advice and assistance
7 to the agency on stimulus issues that are coming up.

8 It seems to me that if you are planning on
9 doing that, any of the work groups that you believed
10 to be stimulus product belated, I think it would be
11 the ones that you might want to give key priority to
12 right now, or you may miss your opportunity to be
13 able to provide the early advice and assistance that
14 you want to do.

15 CHAIRMAN THIBODEAUX: Frank.

16 MR. MIGLIACCIO: What I was saying -- and
17 that's why I recommended first the wind energy,
18 because the stimulus is there, you see the -- It
19 doesn't have to be winter. It could be energy. Then
20 it would encompass a lot more. It's just that it's
21 there, it's coming. We have to be prepared for it.
22 The reason I said like the wind energy is a factor.

1 I know right now OSHA is pulling and trying
2 to figure out where, what standard they're going to
3 put in, say, the erection of wood turbines. So
4 that's why I thought this committee or a subgroup
5 would work well there,

6 The other thing is I like Dan's
7 recommendation; we might be able to add the two more
8 committees and just rotate, like the next coming, the
9 next one coming up, maybe -- well, OTI will probably
10 meet. But I'm just saying, let's take residential
11 fall protection might not meet, the work group might
12 not meet, and one of the other ones that you're
13 proposing to come in.

14 We'd just do a rotation there. That way
15 you're covering it. It wouldn't be four times a
16 year, but you are covering it. And the stimulus
17 package, it's there.

18 MR. JONES: I think it would be worth
19 trying. You know, if we are going to meet four times
20 a year, the rotating of the different working groups.
21 Instead of having to meet once every three months,
22 once every six six months. Try it.

1 MR. RUSSELL: This may be a recommendation.
2 Being that the stimulus money is coming out, if we
3 could just call a temporary group a stimulus group,
4 and have that group at least meet, take a look at
5 what it could do. You're not limited by wind energy,
6 you're not limited by anything else. But I think
7 after one or two meetings the group could decide what
8 direction it wants to go in.

9 We do have clearly a slot for one
10 committee. Let that committee decide what its
11 direction is going to be, and I think at least let's
12 form the one committee, see what that direction is.
13 Then I think after that, then we can decide what else
14 we want to do. But I think that would at least put
15 one committee on the agenda, one new committee on the
16 agenda.

17 CHAIRMAN THIBODEAUX: Walter.

18 MR. JONES: I agree. But I think, like
19 stimulus, for example, there's going to be a lot of
20 emphasis on stimulus. That's going to be multi-
21 committee focused. There's going to be issues
22 associated with bilingual, with biodiversity, with

1 silica exposure, with fall protection. If we're
2 going to do weatherization of housing, we've got the
3 whole fall protection coming into play.

4 So I don't know that I want to buttonhole
5 stimulus into one committee. I think stimulus can
6 actually draw impetus for new activities in some of
7 these other committees that are probably rehashing
8 the same issues over and over and over again.

9 The point of the matter or the reason I did
10 bring up design for safety is because in construction
11 we have addressed most of the low-hanging fruit in
12 terms of safety and compliance. Right now we have
13 to, as occupational safety and health professionals,
14 begin to look to push safety upstream, because right
15 now safety sits on the backs of contractors and
16 workers, and owners and designers, who have more
17 control over the environment, have no responsibility
18 in safety.

19 If we start looking at preplanning -- and
20 that's another idea with the stimulus. Regardless of
21 the types of jobs there are, we already know the
22 hazards, and the big issue with this is preplanning.

1 If we preplan for these hazards, design in safety
2 abatements, so that when they get to the trench they
3 already know, you're going to rent an excavator, you
4 know you're going to have people in a trench. So we
5 preplan, what are we going to do with this excavator?
6 We're going to dit a trench. We're going to put
7 peopel in the trench. Well, now we need to look at
8 protecting those people, we need to look at -- but I
9 don't know that this committee is yet ready for that,
10 so that may be not a committee that we need to push
11 on. But that's why I think in terms of stimulus, I
12 think that should go to all the committees.

13 MR. RUSSELL: What I was looking at is just
14 call it stimulus for now, for the first one or two
15 meetings. The committee could decide what direction
16 it wants to go in, and actually it could be design
17 for safety, it could be wind energy, it could be
18 whatever. But for at least right now, let's just tag
19 the committee, let the committee decide what
20 direction might be best for itself, and go with it.

21 CHAIRMAN THIBODEAUX: Matt.

22 MR. GILLEN: I would just like to weigh in

1 to say I agree with Emmett. Especially after our
2 discussions tomorrow, there may be some things that
3 would really require a short-term effort or you sort
4 of lose your opportunity to influence it after
5 another 6 months or so, and that you'd really want to
6 focus on those things, not to take away from these
7 longer term projects.

8 The one other thing I wanted to say, it
9 might be that some of these issues like design which
10 are coming up, if we perhaps could have some input
11 into the chair and Mike Buchet for future meetings,
12 if there's an open slot to sort of put some things on
13 a list for our speaker or something like that. That
14 might be another option to sort of get some of the
15 topics before the committee.

16 MR. BUCHET: Certainly as far as speakers
17 go, we work with the chairs to come up with the
18 agendas for the meeting. The agency doesn't sit
19 there and say, okay, by the way, Mr. Thibodeaux, the
20 next meeting is going to consist of the following.

21 MR. GILLEN: No, and that's why I said to
22 work with the chair.

1 MR. BUCHET: We certainly work with the
2 chair.

3 MR. GILLEN: And sort of see if there's a
4 slot there.

5 MR. BUCHET: As far as the work groups go,
6 the agency appreciates all the work that you all put
7 in and realizes that you are committed and motivated.
8 We do have, however, the final say and whether a work
9 group will be constituted or not. And we appreciate
10 the recommendations and this discussion.

11 As far as slots go, it's not the agency
12 saying there is or isn't a slot. Simply we're saying
13 we have room at the inn for so many hours a day in
14 meeting days and you all can get here for maybe four
15 days once every three or four months. If you start
16 spreading that out, as you said, make hay while you
17 may. The stimulus package discussion may be gone
18 before we get two more meetings in, and if we spread
19 some and alternate some work groups we may never hear
20 from them when we come back for the stimulus
21 question.

22 MR. BRODERICK: Mr. Chairman.

1 CHAIRMAN THIBODEAUX: Yes, Tom.

2 MR. BRODERICK: Looking back over the last
3 several years and attending as many work groups as
4 possible, some work groups had three, four attendees
5 because there were overlapping work groups. I think
6 Mike and you did an excellent job by placing them one
7 after the other this time. The participation at
8 these past work groups was amazingly high, and the
9 input, the diverse input generated at these from the
10 experts around this table, and in addition to the
11 experts coming from out in the field to attend the
12 work group meetings, was like we've never had them
13 before.

14 I think keeping the format as is is a great
15 idea. I agree with Emmett, bringing a new work group
16 in that's manageable as that last slot is an
17 appropriate way to go until we find out what's going
18 on.

19 MR. RUSSELL: But we don't have to tag it
20 or title it. Just place it there and let there be a
21 meeting where the group can decide what's the best
22 direction for itself. I think there's a number of

1 topics on table and I think the group might choose
2 among those topics as to what it might best do to
3 advise OSHA.

4 CHAIRMAN THIBODEAUX: Susan, did you have
5 something to add?

6 MS. BILHORN: Yes. I'm sitting here
7 thinking. I was sitting here earlier thinking I sure
8 had wished that we had kind of had the thinking in
9 our minds about the activities around stimulus when
10 we started our subcommittee meetings, because then we
11 could have in each subcommittee meeting said, how
12 does that relate to us.

13 But I'm uncomfortable with forming, say,
14 another committee. I would say that this is a
15 special task force of the advisory committee, that we
16 actually -- that we don't know. Would it be best
17 divided into the subcommittees? Does it fit within
18 the activities, or -- right now we don't know. Or
19 would we rather consolidate it up and work as a
20 separate committee?

21 So what I suggest we do is that we -- and
22 maybe we do it as part of what we requested out of --

1 and I'm not saying -- I'm a regulatory committee. I
2 just am a new co-chair on that, so I don't have a lot
3 of history to feel like it has to stay there. But we
4 proposed having this meeting with Richard, conference
5 call, in the near term, and we could invite all of
6 the advisory committee members to it, and let's talk
7 about what's going on, where are the concerns, what
8 could we propose, and then decide how to break it up,
9 whether it's a special committee or whether some
10 pieces are embedded within our existing committees.

11 I don't think we know enough to be able to
12 say. And I don't want to leave it until our next
13 meeting in July.

14 MR. BUCHET: Sarah, can you speak to that,
15 because I believe that once it becomes a
16 recommendation it has to be debated publicly at the
17 meeting, so you can't do it --

18 MR. JONES: What has to be debated?

19 MR. BUCHET: The recommendation has to be
20 debated on public. You can have an informational
21 meeting with Mr. Fairfax or a member of the agency
22 and amongst yourselves. But as soon as you form the

1 recommendation and deliberate the recommendation --

2 MS. BILHORN: We're not formulating. We're
3 not proposing formulating a recommendation.

4 MR. BUCHET: You will not be able to make
5 the recommendation until it is deliberated in public
6 at the next publicly held meeting.

7 MS. BILHORN: I'm not sure what
8 recommendation we're talking about.

9 MR. BUCHET: You just said you were going
10 to make recommendations after talking with Mr.
11 Fairfax, and that becomes a FACA problem.

12 MS. BILHORN: Yes, but the recommendation
13 could be made at the next meeting, and we could all
14 think about it to decide how we think it might be
15 best suited. What I'm trying to say is between now
16 and then, in the absence of information, we'll be
17 back to the same point. Maybe we'll have a committee
18 formed by then, but we won't have had a chance to
19 think about how the best way to --

20 MR. BUCHET: You have all day tomorrow to
21 listen to the effects of the stimulus package on
22 sectors of construction.

1 MR. JONES: Didn't we already ask Mr.
2 Fairfax whether we could conference call with him?

3 MS. BILHORN: Yes.

4 MR. JONES: And didn't we already -- let me
5 finish. Didn't we already make that decision, that
6 we are going to make decisions -- or give them advice
7 over the phone?

8 MS. SHORTALL: No, no, no. There are two
9 FACA issues there. The only group that's authorized
10 to give the agency advice is the ACCOSH group itself,
11 not its work groups. You are -- the work group in
12 essence does the work of the committee and then comes
13 back to the committee, and it's the committee that
14 makes recommendations to the agency. That's FACA
15 issue number one.

16 FACA issue number two is, if everyone on
17 this committee participates in that conference call
18 it's an illegal meeting, because we haven't given
19 public notice. So I would rather us not take that
20 conference call and turn it into an illegal meeting.
21 What the recommendation was was that that work group
22 talk about the issues.

1 MR. JONES: So how does OSHA expect us to
2 give them advice on their stimulus direction, which
3 both of them have requested. Mr. Fairfax and Mr.
4 Barab specifically asked us for our advice on
5 stimulus. What are suggestions that you can give us
6 on how we are supposed to provide that advice?

7 MR. BUCHET: The advisory committee itself
8 is invited to debate the issue in a public forum, a
9 properly announced public meeting, create a
10 recommendation, vote on the recommendation, and
11 forward it to the agency. A work group can certainly
12 discuss and make recommendations to the full
13 committee, as was done today, including saying, here
14 is a motion for ACCOSH to recommend X, Y, Z to the
15 agency.

16 It's not fast, but that's the process.

17 MR. JONES: But it sounds hollow.

18 MR. BUCHET: No, that's the process.

19 CHAIRMAN THIBODEAUX: Walter, if I could.
20 I have a suggestion. We're talking about stimulus.
21 Although I have to leave early tomorrow, so I won't
22 be here for all of that, the remainder of the

1 committee can listen to all of these stimulus
2 presentations and find out maybe some of these
3 already fit into our committees, maybe they don't.
4 Then we can determine whether or not we want to have
5 this. MR. JONES: It just
6 seems to me that we're talking about the horse after
7 he left the barn right now. We're going to shut the
8 gate, but it's a done deal. Stimulus money is gone,
9 our ability to effectively address it will be July at
10 best, and probably September would be most effective,
11 after gathering members of OSHA to talk to them in
12 July and listening to our information, and either
13 make a recommendation then or a follow-up
14 recommendation in September. We're looking at almost
15 a year from when it was issued.

16 So I don't know that we can -- but okay.

17 MS. BILHORN: Unless we devoted all of the
18 next meeting.

19 MR. JONES: I think the horse has left the
20 barn.

21 MS. BILHORN: Or will have left the barn.

22 MR. BUCHET: Well, I think one thing we're

1 going to find out about the stimulus money is that a
2 good deal of it may have left the barn, but there is
3 supposed to be a second phase. There is fiscal year
4 2000-whatever the next one is, '11, money.

5 Unfortunately, the Advisory Committee Act requires
6 advisory committees to function in a certain way and
7 things caught up to us.

8 We appreciate the intensity of your desire
9 to give us information and we'd love to get it. But
10 we're required to hold the meeting the way it is.

11 MR. JONES: Oh, no, there's no argument
12 there. It's just that we might as well continue on
13 our other journeys. It doesn't seem possible to
14 address that.

15 MR. BUCHET: One of the things about the
16 stimulus package that quite a few people may not be
17 sure about is what impact it's going to have on
18 construction safety and health. The presenters
19 tomorrow have been asked to come in. I don't know if
20 your organization is coming; your organization is
21 coming. NIOSH is coming. CPWR is coming. The AGC
22 is coming, NAPA, ARTBA. They've been asked, take a

1 look at the stimulus funding, figure out where the
2 funding is going; is the increased funding going to
3 create novel problems in construction safety and
4 health or an increased frequency of problems we
5 already know? Is the rapidity of spending the money
6 and the urgency of spending the money or losing it if
7 you don't spend it right away going to create novel
8 problems in construction safety and health? So are
9 schedules going to be compressed, are materials going
10 to be dumped on the job site where you increase
11 handling because you got them today and they have to
12 be moved around 17 times, instead of bringing them in
13 in a flow?

14 We don't know. But those topics can fit
15 into some of the work groups that are existing. And
16 what impact the stimulus is having on it, we don't
17 know. We're asking you. The lead-off hitter
18 tomorrow is McGraw Hill Construction, who
19 theoretically has, through its Dodge Report system
20 and all its information gathering, an idea of where
21 the money is going, how much of it has already gone,
22 what types of projects are being started in what

1 parts of the country. Hopefully, that'll give us an
2 idea of the level of contractor involvement -- are
3 these big contractors that have safety programs going
4 to work, or is this a whole new batch of people
5 because all the good workers have been laid off? We
6 don't know that.

7 MR. GILLEN: Hopefully, the presentations
8 won't take a full half hour, so there'll be time for
9 discussion.

10 MR. BUCHET: Hopefully. You saw the
11 message: Please try and trip your presentation so
12 that in the half hour you have less than a half
13 hour's presentation and time for discussion. A lot
14 of people hinted that they would like more time.
15 Well, that's really kind of -- because it's a
16 publicly announced meeting, we can't let it run to
17 4:00 o'clock in the afternoon.

18 CHAIRMAN THIBODEAUX: Kevin.

19 MR. BRODERICK: Mike, I was just wondering.
20 Do you know when the -- I assume there's going to be
21 a directive coming out about the Emphasis program in
22 regards to stimulus from OSHA's perspective. We were

1 notified a couple weeks ago indicating that there is
2 one coming out and it's going to include enforcement.
3 I know that. I don't know if it's going to include
4 outreach or any other component.

5 But do you know when that document will be
6 out in draft form? And when it comes out in draft
7 form, can that be shared with the members of this
8 committee so we have an idea of what OSHA is working
9 on? Because you may already be working on a area
10 that we're thinking, hey, it would be a good idea if
11 you did this. But I think -- and part of the thingt
12 that I talked to Susan about real briefly is, we
13 really don't know, we don't have any of the details,
14 and so it's difficult for us to decide what kind of
15 advice to give the agency if we're not really sure
16 what the agency is already doing ir planning or
17 working on.

18 MR. BUCHET: We can certainly ask Mr.
19 Fairfax to give you some information on that. I
20 don't know.

21 MR. BRODERICK: I think that was the intent
22 of talking to Richard in the teleconference, is to

1 get some kind of idea, because we really don't know.

2 CHAIRMAN THIBODEAUX: Anybody else?

3 MS. SHORTALL: To me it seems like you've
4 put a number of good ideas out. Across the whole day
5 in talking about this, I've heard that, could we
6 devote the full agenda next time to ACCOSH, so that
7 when it does come up you don't have other things
8 dividing your attention. Number two, addressing
9 Walter's concern, is could ACCOSH, in light of the
10 stimulus issue, move the meeting up significantly,
11 like to early June?

12 The third issue I've heard, which was
13 raised earlier in the day: Is there any committee
14 that could meet you teleconference only between now
15 and the next ACCOSH meeting, so you could decrease
16 the number of committees that have to meet in person
17 next time?

18 CHAIRMAN THIBODEAUX: I think you threw
19 that at us too quick.

20 (Laughter.)

21 CHAIRMAN THIBODEAUX: What are you saying?
22 I'm sorry, Tom?

1 MR. TOMASESKI: I think there have been
2 good ideas put out. We do have quite a few options.
3 I just don't have enough information on what's
4 expected of us. I wouldn't have any problem meeting
5 earlier than June if it can be scheduled.

6 CHAIRMAN THIBODEAUX: Early June, the week
7 of the 1st.

8 MR. JONES: A stimulus ACCOSH meeting?

9 MR. BUCHET: Well, do you want to find some
10 -- late May is probably not good. The first week in
11 June, who's available?

12 CHAIRMAN THIBODEAUX: The first week in
13 June for an ACCOSH meeting; who would be available?

14 (Show of hands.)

15 CHAIRMAN THIBODEAUX: The first week in
16 June. June 1 through the 5th.

17 MR. JONES: I don't know. Maybe, maybe
18 not. Possibly.

19 CHAIRMAN THIBODEAUX: Travel is June 1st.

20 A show of hands.

21 MR. BUCHET: Three or four are holding
22 their hands up now.

1 CHAIRMAN THIBODEAUX: The first week in
2 June, June 1 through 5th.

3 A show of hands, first week of June? Let's
4 see.

5 (Show of hands.)

6 CHAIRMAN THIBODEAUX: Ten. What about the
7 week of June 8?

8 (Show of hands.)

9 CHAIRMAN THIBODEAUX: That's four, five,
10 six. Okay, thank you.

11 MR. BUCHET: From a practical standpoint,
12 if eight people say they're available the week of
13 June 1, one dropout, the quorum is lost, and we have
14 no meeting, and everybody comes to town and turns
15 around and goes home, basically.

16 MS. SHORTALL: Your first critical mass is
17 the week of July 27.

18 MR. BUCHET: Yes.

19 CHAIRMAN THIBODEAUX: We were getting an
20 indication of who was going to be available, and
21 since there aren't very many going to be available,
22 even though it would be a quorum, if somebody doesn't

1 show up we don't have a meeting.

2 MR. HAWKINS: So we need to save those
3 dates?

4 CHAIRMAN THIBODEAUX: No, I would not. I
5 would not.

6 MR. HAWKINS: What's the first date we
7 should actually try to hold?

8 CHAIRMAN THIBODEAUX: July, the week of
9 July 27.

10 MR. BUCHET: Yes, July 27, September 21,
11 and December 7 you should probably hold. By tomorrow
12 I should have the answer whether the agency approves
13 those dates.

14 MR. HAWKINS: Okay.

15 MR. BUCHET: There is space at the inn. We
16 have already reserved the rooms.

17 MS. ARIOTO: Is there any chance that you
18 could have a special meeting, a fall meeting for like
19 one day or two days, instead of the whole week, and
20 just address this one issue?

21 MR. BUCHET: The ACCOSH meeting is a day
22 and a half or two days or whatever you want. But

1 traditionally we do the work groups at the same time.

2 MS. ARIOTO: I was just wondering if you
3 could have just a special meeting.

4 MR. BUCHET: There are no special meetings.
5 There is a meeting, and we have to announce it. We
6 can't do anything less than announce it.

7 MR. ZARLETTI: I think what she means is a
8 meeting without work group meetings.

9 MS. ARIOTO: Just to discuss this.

10 MR. BUCHET: You mean a committee that
11 discusses it as a whole?

12 MS. ARIOTO: As a whole.

13 MR. JONES: An ACCOSH meeting just to
14 discuss stimulus for a day or whatever.

15 MR. BUCHET: We can certainly entertain
16 that idea. I'll ask you see if that's what we want
17 to do. But then when do you want to do that? Then
18 we end up with this.

19 MR. JONES: Well, it's a lot different if
20 we're just talking about a day, a day and a half,
21 than four.

22 MR. BUCHET: People have to fly in, it's a

1 day. They have to fly home.

2 MR. RUSSELL: The whole meeting tomorrow is
3 going to be on the stimulus, and after tomorrow I
4 think people will have a better idea as to whether we
5 need further discussion on it and where might we plug
6 in. But the meeting tomorrow is going to be on the
7 stimulus.

8 CHAIRMAN THIBODEAUX: Emmett's point is
9 well taken, that we should have a better idea after
10 hearing the presentations tomorrow whether or not any
11 of those things fit into our current work groups and,
12 if not, then what do we do going forward after that?

13 Yes?

14 MS. BILHORN: When we're finished with
15 that, I have one more stimulus package issue.

16 MR. BUCHET: If you remember the
17 Transportation Equity Acts, when they first came out
18 there was a great deal of discussion about what the
19 impact would be on construction safety and health.
20 We narrowed it down to a couple of hot topics. There
21 are more, but shift work and work zones.

22 Now we have a huge amount of money being

1 spread out, but a good deal of it's going to be doing
2 what? Bridges, roads. So do we anticipate that this
3 money is going to create a novel safety and health
4 environment? It's going to be work zones, it's going
5 to be shift work.

6 Do we need a group to discuss that again or
7 to remind the agency that maybe you should try to
8 ramp up your outreach and enforcement and your
9 placarding and stuff like that. There are some
10 places where this money hasn't been spent before --
11 transit, port construction, high-speed rail. I don't
12 think we know much about any of those.

13 Now, in the committee, you're talking about
14 percolating ideas. Think about it. What's the
15 safety and health impact going to be to the workers
16 doing that? Have workers been doing that kind of
17 work, so we're pulling back experienced people?
18 Probably not. We're probably dragging people out of
19 other sectors of employment into building high-speed
20 rail.

21 But some of that's fairly similar work: a
22 lot of earth-moving, a lot of grading. Building

1 high-speed rail, level crossings, protected
2 crossings. What's new about that? We don't know.

3 Offshore wind generation, new hazards.
4 Wind generation in oddball corners of California, the
5 mountain passes and stuff like that, access hazards,
6 new hazards. We don't know much about that. We're
7 waiting to hear about that.

8 I'm sure if we start thinking about it we
9 can chisel away at what the agency's wondering about.
10 Please realize, we're chiseling away on our side. As
11 Rich said, we've been working on this flat out for a
12 month and a half, and basically a lot of what we've
13 been doing is trying to identify, when the money goes
14 to this sector what kind of work is the result and
15 what kind of hazards? We try to list the types of
16 hazards. That is starting to help us think.

17 I'm pretty sure that if you did that
18 exercise you'll get the same list of hazards that we
19 come up with, and then we can start having a more
20 informed conversation.

21 CHAIRMAN THIBODEAUX: Susan, you had
22 something you wanted to --

1 MS. BILHORN: But this is such an
2 entertaining conversation --

3 (Laughter.)

4 MS. BILHORN: I just wanted to see -- and I
5 kind of polled a couple of you to see if this was
6 even appropriate. But because it is the horse and
7 the barn, how fast can you respond, and what really
8 are the differences, the one thing that it does seem
9 is that in all of the efforts to do the right thing
10 with the stimulus package, get it moving fast and all
11 the requirements to respond within 60 days or lose
12 the money and blah-blah-blah, in all these things
13 that are out there, I don't recall seeing any word in
14 there about making sure that all these efforts are
15 not going to injure people, or any concern that with
16 all these efforts to quickly go out and contract
17 people that that's not ignoring the very real
18 concerns.

19 So there may be a general statement out
20 there that says something about making sure
21 everything's in compliance with regulatory, there
22 might be. I'm not sure. I haven't read the package.

1 I understand it's probably bigger than I could carry.

2 But regardless, I think it would be -- if
3 we could as an advisory committee -- at least we've
4 talked about this, that with all these concerns
5 expressed by every member of this committee in terms
6 of what's going to happen with all this very fast-
7 paced work in a market that is kind of really flaky
8 right now, so you've got a lot of unemployed people,
9 etcetera, that are going to be coming out of the
10 woodwork for jobs that they may not be well trained
11 for.

12 So I think we've expressed enough concern
13 that as a piece of it, could we not express that
14 concern to OSHA and maybe make a suggestion to OSHA,
15 that OSHA communicate with the administration if they
16 have no already -- and presumably they probably are -
17 - some sort of suggestion that they make sure there's
18 language out there that not only does the money have
19 to be committed, but that money has to be committed
20 with an expectation, a clear, stated expectation that
21 the work be done safely?

22 The reason I say that also is because I

1 know that one of the things we find in our workplaces
2 all the time is that we state the expectation -- we
3 have safety topics, we state the expectation and put
4 out communications on a regular basis. However, when
5 we assign the work we find that sometimes our
6 supervisors forget to say, let's see how we can do it
7 safely. And in the mere fact that you do it --and
8 you say, well, we need to do it quickly or we need to
9 do it this way -- the mere fact that you forget to
10 consciously plan it, to say at that moment that
11 you're planning it, let's do it safely, it just
12 erodes the message of what you're trying to do.

13 So if there are other members that would
14 think it was okay to do this, because I'm not going
15 to put the motion on if you're going to kill it -- I
16 like to be a winner. So I would put a motion out
17 there that we request that OSHA, if they are not
18 already, make it very clear to the administration
19 that, coupled with the desire to stimulate the
20 economy and that money that's going out there for
21 that, that coupled with that there really should be a
22 stated expectation that that be done safely.

1 Is that outrageous?

2 MR. ZARLETTI: Well, I would just speak
3 briefly on the fact that I'm dealing with exactly
4 what Susan is bringing up in Detroit, where we
5 started a very large project. We have people coming
6 in as unemployed United Auto Workers, that have never
7 been on a construction site, and they don't have a
8 clue of where we're going. But they need work, and
9 we have to hire them because our guidelines there
10 require 51 percent of the work force from the city of
11 Detroit. And they don't have a clue and we do, which
12 puts us about this far apart the first day.

13 That's just going to go rampant. I mean,
14 Detroit just happens to be a hybrid because it's, no
15 pun intended, I guess, but it's by itself because
16 there are so many unemployed. But you're going to
17 have other people just come running at this money
18 without the -- they're going to come wanting to roof
19 without a hammer. They're going to want to come
20 digging without a shovel. They don't have a clue,
21 either, and that's the problem. And that's going to
22 be our problem.

1 So I agree with her, and I back that with a
2 second with emphasis.

3 MS. BILHORN: There's going to be a lot of
4 expectations for a lot of small business stimulus,
5 etcetera. And nothing, nothing wrong about it. It's
6 just that it does create an environment that's going
7 to be very difficult.

8 CHAIRMAN THIBODEAUX: We have a motion on
9 the floor and we have a second, all right. Now, do
10 we have any more discussion? Yes, Steve?

11 MR. HAWKINS: You know, I haven't read
12 enough, and I perhaps will find out more tomorrow,
13 but is there the expectation that there's going to be
14 more money in the construction system than has fallen
15 out as a result of the slowdown that's occurred? I
16 mean, are we talking about -- do we really -- I
17 understand Dan's point and he knows that he's got a
18 problem in that one place. But do we think -- does
19 anybody think, does OSHA think, that this increased
20 spending on public projects is going to bring new
21 workers out of other places? Or do we or does OSHA
22 anticipate that it's just going to be bringing back

1 people that are already laid off?

2 I just wonder if the agency knows or if
3 everybody's economic models have said we're fixing to
4 be bringing in people who used to be cafeteria cooks,
5 they're going to become roofers. Or do we think that
6 this money that's going to be spent on these public
7 projects is going to bring roofers off of the
8 unemployment rolls? Because I know in our state the
9 unemployment rolls have exploded, and a lot of it has
10 come out of the construction field. So it's just
11 hard for me to imagine, are we spending so much money
12 on these stimulus projects we're going to bring all
13 these laid-off construction workers back plus waiters
14 from restaurants.

15 MR. RUSSELL: The idea behind the stimulus
16 --

17 MR. HAWKINS: Does anybody know that?

18 MR. RUSSELL: No. The idea behind the
19 stimulus was to prevent further job losses. They
20 knew they were going to have massive job losses, so
21 they put money out there to prevent further massive
22 job losses.

1 MR. HAWKINS: To curtail?

2 MR. RUSSELL: Yes. So your point is
3 exactly right. It's to keep construction workers
4 working instead of being laid off. So it's not
5 necessarily going to be people from electronics
6 coming to construction. It's just to keep
7 construction workers working or whatever.

8 Then the targeted money, like in green or I
9 electrical, may be a little different. But the whole
10 stimulus, Mr. Obama said a ton of times, if we don't
11 enact the package there will be even more massive
12 layoffs. So it's just to steady the boat, not to
13 grow the economy.

14 MS. BILHORN: Yes, but, Walter, we've just
15 been going through our mid-year reviews and
16 everything, looking at what's happening in our
17 company.

18 MR. RUSSELL: I don't know. I was just
19 answering the question.

20 MS. BILHORN: So I'm saying what's
21 happening in our company. What we're seeing is that
22 we're seeing that, yes, it's making up for some, but

1 it's making up for it -- so you've had a loss of
2 jobs, so you have people who haven't -- so they've
3 lost their jobs, but they're not necessarily working
4 construction. And now you have job opportunities
5 that you're going to have a broader pool competing
6 for.

7 It's kind of like what we were finding with
8 everything that happened down in the Gulf Coast
9 region with Katrina. So you ended up having a lot of
10 people going to Katrina. So who was it we were
11 finding to do construction work? People came out of
12 Home Depot and were basically people who stocked
13 shelves.

14 So what I see happening -- I agree with you
15 -- in total you're not going to see a significant
16 difference in what's been lost. But you've got a
17 pool out there that's broader, that doesn't have the
18 kind of training and experience, all competing for
19 those jobs now.

20 MR. HAWKINS: But one would think when they
21 competed, if you came from the construction field you
22 would get the job. The thing about comparing that to

1 Katrina -- you would think that Katrina was huge and
2 people rushed from all over the country to make a
3 quick buck putting on blue tarps on roofs and putting
4 roofs on houses. A lot of people made money.

5 Do we think the stimulus package is so
6 large that it would create those kinds of reactions
7 like Katrina? Is that a real good comparison? And I
8 don't know, Susan. I'm just asking the question
9 because before we decide how important it is for us
10 to give input to the agency about how they're going
11 to respond to the stimulus money, are we really sure
12 that the stimulus money creates a new burden for OSHA
13 that they're not capable of responding to considering
14 how many people have been laid off and how many
15 people are going to come back off the layoff rolls to
16 do these projects?

17 Is it so large that it's going to be a net
18 increase? Are we still going to have lots of people
19 laid off? Because laid-off people are not a problem
20 for OSHA, you know. They're not on the job site.

21 That's just my question. I don't ask it
22 thinking I already know the answer. I just wish we

1 knew the answer before we debated how important it
2 was to us to give you our input so we know we've even
3 got a problem.

4 MR. BUCHET: I think we're wrestling with
5 the same pictures you're wrestling with. A laid-off
6 construction worker may be perfectly happy,
7 particularly in this time of year, until things start
8 going, to stay laid off. Well, if you're collecting
9 enough money on unemployment compensation, if you've
10 got it, there are certain disincentives to coming
11 back to work right away.

12 The issue of somebody being laid off and
13 finding another job and saying, do I want to go back
14 to work on a project that might last three weeks, six
15 weeks, versus keeping the job that I found now that's
16 paying my bills, that's another disincentive to
17 coming back. I don't think we know what the person
18 who lost the job will do.

19 As far as the impact goes in dollars, the
20 McGraw Hill folks tomorrow I think can draw those
21 comparisons. I mean, they keep track of dollars on
22 the books every year. There was a huge nose-dive and

1 the stimulus, depending on how they chop the sectors,
2 I think brings one or two of the sectors back to
3 where they were in the last couple of years. A lot
4 of other sectors, it's only starting to approach
5 maybe halfway back.

6 So that may be a net loss all around or
7 we're maintaining jobs there. But again, there's no
8 guarantee that the person what lost his job last
9 spring is going to be the one who's benefiting by the
10 stimulus funding, and I don't think we've been able
11 to figure out with any certainty how that's going to
12 happen. It may be up to the regional administrators
13 to try and put their feelers out to see if the work
14 force simply took a few months off and is coming
15 back to work, or if they took time off and it's a new
16 group of people coming in.

17 MR. HAWKINS: Well, given that, I think the
18 bigger concern, just my personal opinion, for a group
19 like this to give good advice is to go through the
20 stimulus package and look at the projects that are
21 going to be generated and find the ones that OSHA is
22 not well prepared to protect those workers. We saw a

1 precipitous amount of fatalities created when all of
2 a sudden cell phones went from doctors and lawyers
3 and rich people had them, and the next thing you know
4 I've got a 12-year-old daughter that's got a cell
5 phone. What did that do? That created cellphone
6 tower explosions, a fatality explosion, for lack of a
7 better term. There's lots of fatalities. And the
8 reason, because we didn't have good standards, we
9 didn't have good enforcement.

10 We already have great standards for bridge
11 building. We have people on the ground who know how
12 to protect bridge builders, and I personally am not
13 concerned about the agency's ability to protect
14 people on a bridge construction site. I am concerned
15 if there are new green projects that create ethanol
16 plants. We had an ethanol plant explode in
17 Tennessee. It had been shuttered and nobody was
18 there, but it exploded. We got a call from our
19 emergency management folks to come look at it.
20 Basically, they had used basement technology on an
21 industrial scale and built an ethanol plant. Thank
22 God they had shut it down for a while because they

1 were trying to sell it, and it exploded. And they
2 had no -- they never heard of PSM.

3 Those are the kind of projects that I
4 wonder, because I don't think we know, is the
5 stimulus money going to create new hazards? We've
6 got good standards for all of these, grading things.
7 Not that people follow them like they should. But
8 OSHA's not flat-footed in that regard, but we may be
9 flat-footed on some of these new projects, like
10 erecting offshore wind mills, farms, and those kind
11 of things.

12 I think, since we've got limited resources,
13 we need to there to glean those things from the
14 stimulus package and have workers to address them.

15 MR. BUCHET: Well, tomorrow you're going to
16 hear about green construction. I think the AGC are
17 planning to talk about it. Transit construction you
18 will hear about. Listen tomorrow. I think that's
19 why that section was put together the way it is.

20 MR. HAWKINS: I personally think we should
21 hold until tomorrow, after we've seen some of these
22 things and have a little bit more information. I

1 just don't like voting on things I don't think I know
2 about.

3 CHAIRMAN THIBODEAUX: Frank.

4 MR. MIGLIACCIO: I agree.

5 CHAIRMAN THIBODEAUX: We still have a
6 motion on the floor.

7 MS. BILHORN: Can we convert this? I think
8 the suggestion was that that motion be held until
9 tomorrow and then consider whether we want to
10 introduce it.

11 CHAIRMAN THIBODEAUX: Table it, is that
12 what you wish to do? Okay, the motion is tabled.

13 MS. SHORTALL: Mr. Chair, I have a couple
14 questions to ask, housekeeping items. I was handed
15 the agenda for the multilingual work group. Is this
16 going to be considered the work group report for that
17 work group?

18 MR. MIGLIACCIO: Yes, it is.

19 MS. SHORTALL: Then I'd like to -- well, I
20 guess then the group could consider it for approval,
21 and I would like to mark it as an exhibit at that
22 time.

1 CHAIRMAN THIBODEAUX: So do I have a motion
2 to accept the multilingual work group report?

3 MR. MIGLIACCIO: I make the motion to
4 accept.

5 CHAIRMAN THIBODEAUX: Second?

6 VOICE: Second.

7 CHAIRMAN THIBODEAUX: We have a motion and
8 second. Any discussion?

9 (No response.)

10 CHAIRMAN THIBODEAUX: All in favor say aye.

11 (Chorus of ayes.)

12 CHAIRMAN THIBODEAUX: All opposed, the
13 same?

14 (No response.)

15 CHAIRMAN THIBODEAUX: It is accepted.

16 MS. SHORTALL: Can I ask one other
17 question. I was looking down to write down the
18 motion and I didn't see who was the maker of the
19 motion for the multilingual.

20 CHAIRMAN THIBODEAUX: It was Frank.

21 MS. SHORTALL: Thank you, Frank.

22 Then I'd like to enter into the record at

1 this point as Exhibit 0026 the approved multilingual
2 work group report from their April 15 meeting. And
3 I'd like to mark as Exhibit 0027 the ACCOSH agenda
4 for this meeting.

5 CHAIRMAN THIBODEAUX: So received.

6 Is there anything else before we adjourn?

7 (No response.)

8 CHAIRMAN THIBODEAUX: The only thing I have
9 here is that I will not be here tomorrow, and I'm
10 going to ask -- I have to go home the first thing in
11 the morning. So I'm going to ask Mr. Migliaccio if
12 he will be the Acting Chairman tomorrow.

13 MR. RUSSELL: And I'd like for us to give
14 Mike a hand for doing a great job.

15 (Applause.)

16 CHAIRMAN THIBODEAUX: And for all of you
17 that I promised money for making all those nice
18 comments to the Assistant Secretary: I'm broke right
19 now, but see me later.

20 All right. Meeting adjourned.

21 (Whereupon, at 5:09 p.m., the meeting was
22 adjourned.)