

U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

ADVISORY COMMITTEE ON
CONSTRUCTION SAFETY AND HEALTH (ACCSH)

Friday, December 11, 2009

8:45 a.m.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Room N-3437 A/B/C

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

2 CHAIRMAN MIGLIACCIO: All right. We'll go
3 ahead and get started. In the back of the room is the
4 sign-in sheet for anybody who would like to make public
5 comments later on this morning.

6 Before we get into our agenda, if the
7 Committee will look in front of them, you'll see a
8 sheet of paper that says ACCSH work groups. It lists
9 the eight work groups down the left-hand side: An
10 employer co-chair, employee co-chair, state public.

11 (Discussion was held off the record.)

12 CHAIRMAN MIGLIACCIO: Oh, okay. Forget that
13 one we gave you. We're going to be using a different
14 one.

15 (Laughter.)

16 CHAIRMAN MIGLIACCIO: The government comes in
17 late, and then they change.

18 MR. KAVICKY: He must have got a new printing
19 cartridge.

20 (Laughter.)

21 (Discussion was held off the record.)

22 CHAIRMAN MIGLIACCIO: All right. You looked

1 down the left-hand side, and it's got the old work
2 group, the new work group's name, and it's got the old
3 co-chairs.

4 Over in the right hand, just put in there your
5 name and what group you represent for each, wherever
6 you'd like to be.

7 We'll get them all together, and then we'll
8 look and see and make sure every work group's covered.
9 And if it's not, then we'll assign.

10 But if we get that done, you know, relatively
11 before the first break, we'll collect them, and go from
12 there.

13 (Discussion was held off the record.)

14 CHAIRMAN MIGLIACCIO: Okay. And there's model
15 charges being prepared for each one that are being
16 reviewed, to give you an idea what it looks like. And
17 then the co-chair will have to come up with their
18 charge.

19 Yes --

20 MR. BRODERICK: We're supposed to pick two,
21 then?

22 CHAIRMAN MIGLIACCIO: Two. Yes, Dan.

1 MR. ZARLETTI: Oh, I see.

2 CHAIRMAN MIGLIACCIO: All right.

3 MR. RUSSELL: Bill?

4 (Discussion was held off the record.)

5 CHAIRMAN MIGLIACCIO: Hold on please, one at a
6 time. Dan?

7 MR. ZARLETTI: If you've been a co-chair,
8 that's been inactive, you just sign up to --

9 CHAIRMAN MIGLIACCIO: Sign up for any other
10 two you'd like to be on. And then we'll move there.

11 Susan?

12 MS. BILHORN: Shouldn't we actually do three,
13 because when you blend people, you're going to probably
14 have to move them around?

15 CHAIRMAN MIGLIACCIO: Yeah. Do three. That's
16 a good idea. Thank you, Susan. That's a good idea.
17 We'll put your name for three of them, and then, like I
18 said, we'll have to move people around.

19 (Discussion was held off the record.)

20 CHAIRMAN MIGLIACCIO: All right. This
21 morning, we're going to go through the work groups'
22 reports, and we'll start with ROPS.

1 Are you prepared?

2 MR. RUSSELL: Yes.

3 CHAIRMAN MIGLIACCIO: All right.

4 (Discussion was held off the record.)

5 CHAIRMAN MIGLIACCIO: So, all right, we'll
6 start with ROPS. And who's going to give the
7 presentation? Emmett?

8 MR. RUSSELL: Yes.

9 CHAIRMAN MIGLIACCIO: All right. Emmett will
10 be doing the presentation.

11 (Pause.)

12 (Discussion was held off the record.)

13 CHAIRMAN MIGLIACCIO: Go ahead, Emmett.

14 ROLLOVER PROTECTION STRUCTURES

15 MR. RUSSELL: Okay. I'm Emmett Russell, with
16 Operating Engineers Union. I'd like to make the report
17 for the ROPS Committee.

18 The meeting was held December 9th. We have
19 the list of attendees. The co-chair is Emmett Russell.
20 Dan Zarletti opened the meeting.

21 The work group reviewed a report from Mike
22 McCann, through CPWR, the Center for Construction

1 Research and Training, titled Construction Tractor
2 Deaths 1992 through 2007.

3 The report reflected 50 construction tractor
4 deaths occurred during this time frame, which averaged
5 three per year. The major causes of these fatalities
6 were: Not wearing seat belts; tractor on an incline or
7 steep bank; pulling a load that may have contributed to
8 the overturn; tractor was being loaded or unloaded off
9 a trailer.

10 The absence of rollover protective structures,
11 rops, or seat belts was not noted in most cases.

12 The work group reviewed a picture and
13 specifications of the Challenger, a new type of
14 tractor, on rubber tracks, capable of speeds of almost
15 25 miles per hour.

16 The potential speed of this equipment exposes
17 workers to a complete new set of work site hazards.

18 The work group discussed one of the major
19 causes of fatalities in conjunction with the equipment
20 overturn, which is loading and unloading equipment from
21 trucks and trailers.

22 Some of the hazards are: Steel ramps with

1 steel compact wheels, steel on steel, very little
2 traction or control; the lack of proper training;
3 utilizing employees other than the qualified operator,
4 such as the truck driver, supervisor, or other workers;

5 Ramps with ice water, mud, oil, or grease;
6 ground, ramps, truck and/or loading surfaces not level
7 or stable; ramps not proper for the equipment being
8 loaded or unloaded; or ramps too steep.

9 In the next work group meeting, there will be
10 a presentation on the use of power winches installed on
11 trucks or trailers to load and unload equipment.

12 The use of this technology has the potential
13 to be one of the safest methods to load and unload
14 equipment, best avoiding the major cause of equipment
15 overturns and fatalities.

16 There was some discussion on equipment without
17 an operator's station, where the operator stands to
18 operate, which should not have rops.

19 Examples of this equipment would be some large
20 asphalt rollers, and asphalt planers on milling
21 machines.

22 The work group did a brief overview of its

1 original task, which was to examine compactor
2 overturns, and rollover protective structures. A
3 report with recommendations was generated and presented
4 to the ACSSH Committee.

5 The work group also explored rollover,
6 tipover, and other hazards on skid stair loaders and
7 compact excavators. It was agreed the OSHA regulations
8 on this equipment should be changed to include this
9 equipment and further modified to address the
10 additional hazards explored/discussed by the Committee.

11 It was agreed the Committee would generate a
12 final report to ACCSH OSHA in its next meeting. With
13 this report, the Committee feels its purpose and tasks
14 will be completed.

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

16 CHAIRMAN MIGLIACCIO: Dan, do you have
17 anything to add?

18 MR. ZARLETTI: Nothing additional.

19 CHAIRMAN MIGLIACCIO: Okay.

20 Questions of this work group? Do I have a
21 motion to accept the work group?

22 //

1 M O T I O N

2 MR. RUSSELL: So move.

3 CHAIRMAN MIGLIACCIO: Mike Thibodeaux?

4 MR. THIBODEAUX: Second.

5 CHAIRMAN MIGLIACCIO: Second?

6 Questions or discussion? All in favor say

7 aye?

8 (Chorus of ayes.)

9 CHAIRMAN MIGLIACCIO: Opposed?

10 (No response.)

11 CHAIRMAN MIGLIACCIO: The ayes have it.

12 MR. RUSSELL: And I'd also like to submit a
13 sign-in sheet and some additional pictures, which was
14 explored in the work group discussion.

15 CHAIRMAN MIGLIACCIO: Sarah?

16 MR. BRODERICK: Mr. Chair?

17 CHAIRMAN MIGLIACCIO: Yes?

18 MR. BRODERICK: Just a question. We list ROPS
19 on here as one of the prospective work groups. But I
20 think yesterday Mr. Russell said that it could be at
21 our next meeting, which may be a telephone meeting,
22 that everything could be tidied up with this?

1 Is that right?

2 MR. RUSSELL: It's actually off the list, Tom.

3 CHAIRMAN MIGLIACCIO: No, it's --

4 MR. BRODERICK: Pardon?

5 CHAIRMAN MIGLIACCIO: If you look in the
6 column under new work groups, it's not there as "new
7 work group." It's blank.

8 MR. BRODERICK: Oh, I'm sorry. Okay.

9 (Discussion was held off the record.)

10 MR. RUSSELL: So we've already done that.

11 CHAIRMAN MIGLIACCIO: All right.

12 MS. SHORTALL: Mr. Chair?

13 (Discussion was held off the record.)

14 CHAIRMAN MIGLIACCIO: Yes?

15 MS. SHORTALL: At this time, I'd like to mark
16 as Exhibit 17 an -- approve Rollover Protection
17 Structures, Work Group Meeting report from the December
18 9, 2009 meeting.

19 And as Exhibit 17.1, the following handout
20 called "Smooth the Challenge," that was distributed at
21 the work group meeting, Mr. Russell, I have a question
22 regarding the sign-in sheet.

1 On your report, you have a list of -- persons
2 attending and their affiliation. The only thing that
3 this adds to that is there's personal identifying
4 information such as phone numbers, and e-mails. Do you
5 want that into the record?

6 MR. RUSSELL: No, it's not necessary.

7 MS. SHORTALL: Okay. Then I'll give this to
8 Mr. Buchet, who's keeping the lists of the continuing
9 contact of any members.

10 MR. RUSSELL: Thank you.

11 (Discussion was held off the record.)

12 CHAIRMAN MIGLIACCIO: Okay. Next work group,
13 Regulatory Compliance. Susan, are you going to give
14 the presentation?

15 MS. BILHORN: Sure. I actually don't have a
16 printout of the -- Did you get the printouts? I sent
17 them to you on Wednesday.

18 (Discussion was held off the record.)

19 MS. BILHORN: Ah, there we go. Okay. Yeah, I
20 see it here.

21 (Discussion was held off the record.)

22 //

1 REGULATORY COMPLIANCE

2 MS. BILHORN: It's a three-page document.

3 Okay. We started the meeting at 8:00. Kevin
4 was here -- with 25 participants. I was on the phone.
5 We did any production of participants, and I restated
6 the original charge of the work group, as I understood
7 it, in attempt to clarify whether we were ready to
8 move, if we had addressed the original charge.

9 So as we understood it, was one, how uniformly
10 are focused inspections being conducted; and two, are
11 there real or perceived issues of fairness in the use
12 of focused inspections?

13 The charge had been broadened to include the
14 topic of regulatory compliance and issues related to
15 that in April.

16 At this point, we believe that the original
17 charter had actually been accomplished. So the group
18 discussed the 1994 OSHA issue guidance to regulatory
19 administrators, entitled Guidance to Compliance
20 Officers for Focused Inspections in the Construction
21 Industry.

22 Bill Ahal pointed out that he believed that

1 one of the original purposes of the focus construction
2 policy was to better focus OSHA's resources on the four
3 areas that were likely to cause death or serious
4 injury.

5 Previous meeting discussions resulted in the
6 conclusion that whether an individual compliance
7 officer proceeded with a focused inspection on a
8 particular construction site appeared to vary
9 considerably, or at least there was an appearance among
10 the working group participants that this was the case.

11 The working group also previously concluded
12 that there was not a clear understanding when a
13 comprehensive inspection would occur, and when a
14 focused inspection would occur, on a construction site.

15 It was previously recommended that OSHA insure
16 all compliance officers are adequately trained on focus
17 construction policies to better insure consistent
18 nation-wide application.

19 It was further recommended that per the 1994
20 guidelines that OSHA publicized, to the maximum extent
21 possible, so as to encourage contractors to establish
22 safety and health programs and concentrate on the four

1 leading hazards prior to being inspected.

2 Kevin Beauregard distributed an OSHA-provided
3 handout that depicted construction projects inspected
4 by OSHA from 2004 through 2008, that met focused
5 inspection criteria. The data indicated a significant
6 decline in focus construction inspections.

7 Based on that, the work group requests -- and
8 I guess ill motion this at the end, I'll motion all the
9 requests at the end -- but we requested that ACCSH
10 request the following information from OSHA:

11 What was the original intent of the focus
12 construction initiative?

13 Does OSHA feel the focus inspection initiative
14 has been successful; If so, how is success of this
15 policy measured?

16 And third, what does OSHA believe is the
17 reason for the significant reduction from 2004 to 2008,
18 in the number of construction sites that meet the
19 qualifications for focused inspections?

20 Based on brief review of the work group
21 accomplishments in calendar year '09, the work group
22 members request that ACCSH request from OSHA the status

1 of the Quick Card that was recommended by ACCSH at the
2 last meeting.

3 So by doing this, we actually reflected on the
4 prior charter, as well as FY09 accomplishments, then
5 moved into a discussion of where the committee might
6 focus.

7 So the work --

8 (Interruption to the proceedings.)

9 CHAIRMAN MIGLIACCIO: We have -- breakdown?

10 MS. BILHORN: Was it something I said?

11 (Laughter.)

12 (Discussion was held off the record.)

13 MS. BILHORN: Okay.

14 The work group next discussed AARA-funded
15 construction activities. A handout was provided to the
16 work group members, that depicted AARA activities in
17 state plan stage.

18 The work group members requested that ACCSH
19 request the following additional information from OSHA:

20 National, state, and federal AARA inspection
21 statistics for FY -- actually that needs to be 2009.

22 Yeah, 2009, preferably with the data broken down by

1 industry, code, type, and number of violations, and
2 magnitude of proposed penalties;

3 Second, OSHA's analysis of the AARA inspection
4 statistics, including whether the findings indicate
5 significant safety and health differences on AARA sites
6 versus other construction sites.

7 We do know that that information is being
8 collected. So that's why we were looking to see what
9 it's saying.

10 The discussion of the work group shifted to
11 potential focus areas for calendar year 2010. Topics
12 that were discussed included revisions to OSHA's
13 record-keeping regulation, which were before us;
14 revisions to OSHA's approach to VPP and potential
15 impacts on enforcement and compliance; OSHA
16 record-keeping national emphasis program, safety
17 performance on stimulus projects, assuring equivalent
18 protection in state plan programs in OSHA
19 jurisdictions, and green jobs.

20 A long discussion regarding the pros and cons
21 of the federal VPP program, versus increased compliance
22 activity took place. Many valid points were made that

1 supported maintaining the current level of VPP
2 activity, as well as supporting a greater emphasis on
3 compliance activity.

4 Items of discussion included whether or not
5 OSHA could/should justify committing limited resources
6 on the best of the best, employers in lieu of focused
7 resources on additional compliance activity.

8 Although some felt that this might not be the
9 best use of resources, many also felt that there were
10 definite benefits derived from recognition in outreach
11 programs, such as VPP, Sharpp, and Consultative
12 Services.

13 These programs help to develop an open
14 partnership between OSHA on the regulated community,
15 promote the sharing of best practices between
16 employers, and present valuable real-world training
17 opportunities for OSHA staff.

18 OSHA should work towards supporting both the
19 strong enforcement presence, and continuing with strong
20 recognition in outreach programs.

21 If resource utilization becomes a larger
22 issue, maybe OSHA should rely more heavily on using

1 SGEs for VPP, and other non-enforcement-related
2 activities.

3 One participant in the work group suggested
4 that OSHA should consider not limiting SGEs for VPP.
5 And SGE stands for what?

6 (Simultaneous conversation.)

7 MS. BILHORN: Okay. Special Government
8 Employees.

9 We actually even talked about whether there
10 are some corporate VPP members that might be able to
11 support as well, which wouldn't be, I guess SGEs.
12 Right?

13 (Discussion was held off the record.)

14 MS. BILHORN: If corporate VPP participants,
15 as individuals of companies, could those be considered
16 SGEs?

17 CHAIRMAN MIGLIACCIO: They can become one.

18 MS. BILHORN: They can, for the purpose of,
19 okay, thank you.

20 (Discussion was held off the record.)

21 MR. RUSSELL: Well, they have to go through a
22 process to be considered an SGE.

1 MS. BILHORN: Yeah, but --

2 CHAIRMAN MIGLIACCIO: To become an SGE
3 individually, yes. But there is a process.

4 MS. BILHORN: Okay. That answers the
5 question. Because the discussion included, you know,
6 using non-governmental people. So.

7 So suggests the OSHA should consider not
8 limiting SGEs for VPP to only those safety and health
9 professionals affiliated with current VP, he sites.

10 The worker would like to recommend that ACCSH
11 ask OSHA the following questions: How does the current
12 OSHA administration view VPP and other recognition
13 outreach programs? What are future plans for these
14 programs? And does OSHA envision shifted resources
15 from the programs to support greater emphasis on
16 enforcement activities?

17 While the subject of green jobs in
18 construction was only briefly discussed, due to time,
19 the work group agreed that this topic would be
20 appropriate to take on, moving into calendar year '10.

21 Due to time limitations, a request was made
22 for participants to e-mail any additional potential

1 topics for this work group to either Susan or Kevin.
2 And neither of us received any additional -- Kevin, you
3 didn't receive any?

4 (Discussion was held off the record.)

5 MS. BILHORN: If input from others and
6 responses to questions recommended to the ACCSH to ask
7 OSHA do not result in significant substance for the
8 work group on regulatory compliance to address in the
9 near term, then the work group recommends that ACCSH
10 put on hold the subject of regulatory compliance, and
11 create a new work group to consider and provide advice
12 on green jobs and construction.

13 The work group also suggests that ACCSH
14 recommend to OSHA that they solicit nomination of a new
15 member with specific construction and safety management
16 experience with green energy projects to become a
17 member of ACCSH when the go out for membership.

18 The meeting was closed at 9:45 a.m.

19 So I'd like to then make a motion on these
20 questions.

21 M O T I O N

22 CHAIRMAN MIGLIACCIO: All right. Before we go

1 any further, I want to see if your co-chair has
2 anything to add.

3 MR. BEAUREGARD: The only thing I would add is
4 for those that aren't aware of the SGEs that Susan
5 brought up, currently OSHA in some state plan states
6 utilize these SGE positions to supplement their
7 activity associated with VPP activities.

8 And what they basically do is if a current
9 employer who is in the VPP program has a qualified
10 safety or health professional, they go through an
11 application process through OSHA.

12 And they have go through some training and
13 some other things. And then they're put on the team
14 that would go in and evaluate a site. I think the
15 condition is they can't evaluation their own site, and
16 there can't be some type of competing issue, so they
17 wouldn't go in and evaluate one of their competitors,
18 or something.

19 But there's a process. And they utilize that
20 due to resources. And I think Steve Hawkins told me
21 Tennessee has on occasion used an SGE. And I know
22 we're looking into it right now.

1 But it's a way to be able to utilize the
2 private sector to help in a non-compliance mode for
3 some type of recognition program, like VPP or other
4 areas.

5 And that's why were suggesting that if there
6 looks like there's going to be a significant shift away
7 from VPP, perhaps that's one thing that can be utilized
8 to help supplement it, and continue on with that
9 program.

10 MS. BILHORN: And it is the varied benefit of
11 doing that, because you know, there is exposure for the
12 individuals during the work as well as for, you know,
13 the dialogue that goes on, you know, with OSHA, et
14 cetera.

15 I know that we've supported -- members of our
16 company have actually supported when OSHA has gone over
17 to, like Ireland to consult with the potential
18 formation of a VPP program.

19 So I'm assuming we were an SGE when we did
20 that.

21 MR. BEAUREGARD: And I mean, SGE, I think, is
22 a broad category. That's one way that I know that OSHA

1 utilizes SGEs. There may be other ways where they
2 utilize SGEs.

3 But I do know that they're utilized in the VPP
4 program.

5 MS. BILHORN: Okay.

6 CHAIRMAN MIGLIACCIO: Okay. Susan, before we
7 make any motions, this is for the work group to agree
8 to: To have an enforcement update of AARA from OSHA,
9 have them come in and do an update for you. Number
10 one.

11 And number two, could we have the Director of
12 Cooperate State Programs give us an update for the
13 Cooperatives and Outreach Programs?

14 MS. BILHORN: Could you repeat that, again?
15 I'm sorry.

16 CHAIRMAN MIGLIACCIO: Have that Director of
17 Cooperative State Programs to come in and give an
18 update of the cooperative outreach programs.

19 MS. BILHORN: And when they did that, that
20 then they would answer these questions, as part of the
21 process?

22 CHAIRMAN MIGLIACCIO: Yeah, that's what it is,

1 rather than every one of those questions put in there
2 like that.

3 If that's okay with the work group.

4 MS. BILHORN: That would be fine, as long as
5 these questions are addressed during those briefings.
6 You know, because these are very specific things we
7 were looking at, you know.

8 So if in the enforcement update there is a
9 discussion in analysis AAR and inspection activities,
10 which I assume there would be, but I don't want to make
11 an assumption. So --

12 CHAIRMAN MIGLIACCIO: Well --

13 MS. BILHORN: If these questions are answered
14 in that briefing, that would be great.

15 CHAIRMAN MIGLIACCIO: Okay. Could we get --

16 MS. BILHORN: Because what we're attempting to
17 do with the questions was to really decide, is there
18 something that we could maybe look at and provide some
19 advice on?

20 CHAIRMAN MIGLIACCIO: The Committee can
21 certainly ask the specific questions. Again, they go
22 to the Agency as a recommendation, and the formulation

1 of the answer will be up to the director that has the
2 information or hasn't got the information for it.

3 So we'll give you what we can give you.

4 MS. BILHORN: And I understand you can't give
5 anything that you can't give. I understand that,
6 Michael.

7 What I just want to make sure is that the
8 intention of that briefing -- you know, the
9 intention -- is just clear to whoever's briefing. So
10 that they can actually prepare it in a way that we
11 might be able to see that information.

12 That's just the only way we're --

13 (Discussion was held off the record.)

14 CHAIRMAN MIGLIACCIO: That's what we'll do,
15 we'll have this list given to the Office --

16 MS. BILHORN: Wonderful --

17 CHAIRMAN MIGLIACCIO: Or to have them come in
18 and actually address each one of them. And then you'll
19 have the list.

20 So if it's not addressed, that you can
21 actually question them on it.

22 MS. BILHORN: Yeah. I just hate, you know, as

1 long as they have the list, so they can be prepared --

2 CHAIRMAN MIGLIACCIO: Oh, no --

3 MS. BILHORN: Because I just hate to ask
4 questions if they didn't. Yeah.

5 CHAIRMAN MIGLIACCIO: That's what it
6 is -- prepared.

7 MS. BILHORN: Yeah.

8 CHAIRMAN MIGLIACCIO: Okay. Yeah, that's
9 fine.

10 MS. BILHORN: That would be great.

11 CHAIRMAN MIGLIACCIO: Your motion, you were
12 getting ready to say something?

13 MS. BILHORN: So then the motion would be for
14 these -- you actually wrote the motion, or wrote it
15 down. I find a move like you said. If you could
16 repeat it?

17 (Discussion was held off the record.)

18 MS. BILHORN: Kevin, I should ask you, are you
19 fine with that?

20 MR. BEAUREGARD: I think that, in looking at
21 these questions, there's probably different
22 directorates that are going to have the information. I

1 don't think they're all -- like the VPP certainly I
2 think Steve Witt's group would have that.

3 But I'm not sure that they would have the
4 statistical information having to do with AARA-funded
5 sites. That may come out of Keith Goddard's group. I
6 don't know where they would come out of.

7 CHAIRMAN MIGLIACCIO: Yeah. The main thing
8 is, yeah, Mike would find out what group in this
9 organization would handle each one of these areas, and
10 have both of them give them the list, and then they
11 would come in and give a presentation.

12 You would question, you know, you would be
13 here to question them. If you didn't get an answer,
14 you could just delve into it more.

15 MS. BILHORN: Okay.

16 MR. BUCHET: It might be simpler to say, ask
17 the Agency to come in and discuss the two following
18 broad topics, including see the lists --

19 MS. BILHORN: Okay --

20 MR. BUCHET: Rather than ask the Director
21 at -- in case the information is not necessarily
22 theirs.

1 (Discussion was held off the record.)

2 CHAIRMAN MIGLIACCIO: Well, we don't need a
3 motion to have them come in. We're just going to
4 recommend or request them to come in.

5 MS. BILHORN: Okay.

6 CHAIRMAN MIGLIACCIO: Yeah, we're just going
7 to invite them.

8 MS. BILHORN: Okay.

9 CHAIRMAN MIGLIACCIO: Okay.

10 Do we have any questions of this work group?
11 Any questions?

12 M O T I O N

13 All right, I need a motion to accept?

14 (Discussion was held off the record.)

15 CHAIRMAN MIGLIACCIO: Second?

16 (Discussion was held off the record.)

17 CHAIRMAN MIGLIACCIO: Okay. Elizabeth.

18 Discussion, questions?

19 All in favor say aye.

20 (Chorus of ayes.)

21 CHAIRMAN MIGLIACCIO: Opposed?

22 (No response.)

1 CHAIRMAN MIGLIACCIO: The ayes have it.

2 MS. SHORTALL: Mr. Chair, there is something
3 I'd like to enter into the record as Exhibit 18, the
4 Approved Regulatory Compliance Work Group Report for
5 the December 8, 2009 meeting.

6 And I'd like to ask the co-chairs the
7 following. During the work group meeting, there were
8 three documents that were distributed to people. Was
9 it your intention that those documents be entered into
10 the record?

11 MR. BEAUREGARD: I think it was the intention
12 that the document entitled Construction Projects
13 Inspected that Met Focus Construction Criteria be
14 entered.

15 What are the other two documents that you had?

16 MS. SHORTALL: State Plan ARRA Enforcement
17 Activity?

18 MR. BEAUREGARD: That doesn't need to be
19 entered in.

20 MS. SHORTALL: That should not be put into the
21 document?

22 MR. BEAUREGARD: No, that doesn't need to be

1 entered.

2 MS. SHORTALL: And then the final one was
3 OSHA's Guidance to Compliance Office for Focused
4 Inspections in the Construction Industry.

5 MR. BEAUREGARD: I don't think that needs to
6 be entered, because it's already on the OSHA website.

7 MS. SHORTALL: All right -- Exhibit 18.1, the
8 table on Construction Projects Inspected, that Met
9 Focused Inspection Criteria 2004 to 2008.

10 It was distributed at the meeting, Mike.

11 (Discussion was held off the record.)

12 CHAIRMAN MIGLIACCIO: All right. So what we
13 want then, Mike, is to have whatever group in this
14 organization that would be able to come in and give a
15 presentation on those two areas, invited to the next
16 meeting.

17 Mike?

18 MR. BUCHET: We understand that you would like
19 to hear an enforcement presentation updating the Agency
20 on the AARA enforcement experience, referring to
21 specific questions in the minutes of this regulatory
22 compliance work group, and that you would like an

1 update on cooperative and state programs.

2 And by that, we're including VPP, alliances,
3 partnerships, and other forms of outreach, also
4 referring to the minutes of this work group meeting.

5 And we will make those invitations.

6 MS. BILHORN: That's great.

7 (Discussion was held off the record.)

8 CHAIRMAN MIGLIACCIO: All right. We have
9 Diversity-Women in Construction. Who's giving the
10 presentation? Okay.

11 MS. BILHORN: Frank, I do want to mention we
12 also asked about the Focus Construction Initiative.

13 CHAIRMAN MIGLIACCIO: Okay. Like I said, the
14 main thing is I want to make sure they get those
15 questions we're asking to the right people --

16 MS. BILHORN: Yeah, because it's kind of three
17 topic areas.

18 CHAIRMAN MIGLIACCIO: All right. Everybody
19 hold on, this gentlemen's still having trouble
20 recording.

21 Yes, I will make sure that's done.

22 MS. BILHORN: Okay. Great.

1 CHAIRMAN MIGLIACCIO: That we get those
2 questions out to the right people, so they can do --

3 All right. Okay, any time.

4 DIVERSITY, WOMEN IN CONSTRUCTION

5 MS. ARIOTO: Okay. Liz Arioto, Arioto Safety
6 and Health Consultant Services. Mr. Tom Kavicky is my
7 co-chair on the Diversity-Women in Construction Work
8 Group.

9 The meeting was held on December 9th. We had
10 self-introductions of 26 attendees. Minutes of the
11 July 29, 2009 meeting were distributed for comments. A
12 presentation was given by Ms. Karen Shapiro of the
13 Bureau of Women, Department of Labor.

14 She presented information on green jobs,
15 sanitation issues, and an update to the 1999 Health and
16 Safety Women in Construction, the HAZWIC study.

17 Topics she discussed were: Limited training,
18 PPE issues, sanitation issues, lack of green jobs,
19 stereotype of women in construction, child care issues,
20 and transportation issues.

21 A presentation was given by the International
22 Safety Equipment Association, the ISEA President, a Mr.

1 Daniel Shipp. He presented information to the work
2 group on his Association members that supplied PPE for
3 women in construction.

4 Research was done by the ISEA in 2001 and 2004
5 regarding PPE use. The research found that the
6 principal workers did not wear PPE was that the
7 supervisors did not require or enforce usage.

8 Mr. Shipp recommended that the PPE language in
9 the 1926 construction standard mirrored the 1910
10 general industry standard for proper selection and fit.

11 He provide the work group with the ISEA
12 website that contractors, workers, and committee
13 members can access for a listing of supplies of women's
14 PPE needs.

15 The site is www.safetyequipment.org. Mr.
16 Shipp stated that he and the Association members would
17 work closely with the work group in supplying the list
18 of suppliers and links to these suppliers.

19 He informed the work group of the current
20 effort to update that ANSI standard 107, 2008. He
21 mentioned that the committee members wishing to provide
22 comments could forward those comments to the ISEA.

1 At this time, I'd like to pass out the package
2 that Mr. Shipp gave the work group. Okay?

3 (Discussion was held off the record.)

4 MS. ARIOTO: This will go into the
5 documentation, right.

6 A recommendation was made by a work group
7 member that ISEA color-code personal protective glove
8 sizes. The work group informed ISEA issues regarding
9 the many complaints by workers of improper fit and the
10 availability of protective work clothing.

11 Handouts of Cal/OSHA standards for toilets and
12 washing facilities were given to the work group by a
13 member, the co-chair, myself.

14 I'd like to pass these out at the present
15 time.

16 (Discussion was held off the record.)

17 MS. ARIOTO: That would be two. One on the
18 toilets and one on --

19 CHAIRMAN MIGLIACCIO: You need a copy,
20 correct?

21 (Discussion was held off the record.)

22 CHAIRMAN MIGLIACCIO: Jim, if you'll make sure

1 he gets a copy also?

2 MS. ARIOTO: Okay. A comment was made
3 regarding the ANSI Z-4.3 standard, and its requirements
4 for the number of toilets to a number of workers on a
5 job site.

6 The standard states a contractor is required
7 to furnish one toilet per ten workers, if cleaned once
8 per week, and/or one toilet per 15 workers, if cleaned
9 more than once a week.

10 A work group member explained that several
11 years ago, ACCSH member, Jane Williams, wrote and
12 proposed a sanitation standard to OSHA. A request was
13 made by the work group regarding the status of that
14 proposed standard.

15 A request was made to Danezza Quintero, to
16 provide the work group with copies of the proposed
17 standard for the next work group meeting. Danezza
18 Quintero provided the work group with copies of the
19 OSHA graphic standard for photography and the photo
20 release form.

21 These forms will be used by work group members
22 to provide OSHA with photographs of women working on

1 construction sites.

2 These photographs can be used by OSHA to
3 highlight the current diversity of construction workers
4 for future brochures, training materials, and
5 documents.

6 Kevin Beauregard provided the work group with
7 an update in the development of Women in Construction
8 Fact Sheet. Kevin reported he will have a final draft
9 of the work group to review by the next ACCSH work
10 group meeting.

11 He hopes to also have a final draft to the
12 OSHA Quick Card by the next meeting. Comments and
13 suggestions for the two documents by the work group
14 were requested by Kevin.

15 The work group requested that OSHA during the
16 full ACCSH committee meeting give a status report to
17 the work group on the recommendation made to OSHA at
18 the April 15, 2009 ACCSH meeting, regarding the
19 possibility for OSHA to change the language found in
20 the 1926 construction standards to match the 1910
21 general industry standard language, specifically select
22 PPE that properly fits each affected employee.

1 This work group was adjourned at 2:40. This
2 issue actually was addressed by Bill Parsons, the
3 Director of Office of Construction Standards and
4 Guidance, yesterday at the full ACCSH meeting.

5 He stated that this issue is presently under
6 consideration.

7 CHAIRMAN MIGLIACCIO: Okay.

8 Tom, do you have anything to add?

9 MR. SHANAHAN: No.

10 MS. ARIOTO: Oh, I'd like a copy of the Women
11 in Construction Fact Sheet. We'll be handing this out.
12 Okay?

13 (Discussion was held off the record.)

14 MS. ARIOTO: Yeah, this is a draft of it, yes.

15 CHAIRMAN MIGLIACCIO: All right. Questions of
16 this work group by the Full Committee?

17 (No response.)

18 CHAIRMAN MIGLIACCIO: No questions. I need a
19 motion to accept. Mike Thibodeaux?

20 M O T I O N

21 MR. THIBODEAUX: I move.

22 CHAIRMAN MIGLIACCIO: Second? Jim Tomaseski

1 will second it.

2 Questions and discussion?

3 MR. KAVICKY: Mr. Chairman? I would like to
4 thank Kevin Beauregard, Tom Kavicky, Employee Rep. I
5 would like to thank Kevin Beauregard and his staff for
6 all the work that they're doing on that draft fact
7 sheet and OSHA Quick Card.

8 Thank you, Kevin.

9 MR. BEAUREGARD: Thank you.

10 CHAIRMAN MIGLIACCIO: The motion's been made.
11 All in favor say aye?

12 (Chorus of ayes.)

13 CHAIRMAN MIGLIACCIO: Opposed?

14 (No response.)

15 CHAIRMAN MIGLIACCIO: Ayes so have it.

16 MS. SHORTALL: Mr. Chair, at this time I'd
17 like to mark an entrant to the record as Exhibit 19,
18 the approved Diversity of Women in Construction Work
19 Group Report from the December 9, 2009, meeting.

20 As Exhibit 19.1, ISEA's comments on PPE for
21 woman in construction is 19.1.

22 As 19.2, California Code of Regulations, Title

1 8, Section 1526, Toilets at Construction.

2 As 19.3, California Code of Regulations, Title
3 8, Section 1527, Washing Facilities, Food Handling, and
4 Temporary Sleeping Quarters for Construction Industry.

5 As Exhibit 19.4, Women in Construction Fact
6 Sheet Draft.

7 And I have a question for the co-chairs.
8 There were two other documents handed out at the
9 meeting, concerning getting more pictures of women in
10 construction.

11 MS. ARIOTO: The release form.

12 MS. SHORTALL: The release form, and the
13 graphic standards. Did you want that entered into the
14 record, or not?

15 MR. SHANAHAN: I don't think so.

16 MS. ARIOTO: No, I don't think that's
17 necessary at all.

18 CONSIDERATION OF/RECOMMENDATIONS

19 CHAIRMAN MIGLIACCIO: Okay.

20 All right, at this time, we're going to have
21 to consider in the recommendations the following:
22 Revisions to the OSHA Occupational Injury Illness

1 Recording and Reporting the Record-keeping Regulation;
2 Proposed Rule on Occupational Exposure to Crystalline
3 Silica; and the Proposed Rule on the Standards
4 Improvement Project 3 to .

5 Yesterday you were given three separate
6 handouts, and I guess we'll just go right down the line
7 with them.

8 The first one, if you'll recall -- and there
9 were questions asked to the group that were in
10 here -- they would like to put a third column in there
11 for the ergonomic, or the muscatel -- yeah, whatever.

12 (Laughter.)

13 CHAIRMAN MIGLIACCIO: Musculoskeletal injuries
14 at the far right-hand column.

15 (Laughter.)

16 CHAIRMAN MIGLIACCIO: Get that out.

17 All right. Let's open discussion on that
18 first. Anybody?

19 (Discussion was held off the record.)

20 CHAIRMAN MIGLIACCIO: We'll start with that
21 discussion first. Does anyone see a problem with
22 adding that on the there? Or would the group like to

1 make a recommendation to have it put on?

2 Dan?

3 MR. ZARLETTI: I don't know if this will be a
4 problem or not. But I think in the definition that was
5 supplied to us yesterday, it's covering a lot of
6 musculoskeletal injuries and body parts, areas, things,
7 you know, we're talking back injuries will show up on
8 that.

9 You know, once it's defined, it's going to be
10 reacted upon. But I think that definition has to be
11 made public before that happens.

12 I think because we're in this room, we know
13 what that is now. But I think there will be a ripple
14 effect as it gets out of this room, that that would be
15 a possibility.

16 So that's my only concern.

17 CHAIRMAN MIGLIACCIO: Okay.

18 MR. ZARLETTI: Because it does add a lot of,
19 there would be a lot of checks in that column, and if
20 it's done according to the definition that we get this
21 week.

22 CHAIRMAN MIGLIACCIO: Okay. The group that

1 gave the presentation, if you can come up front here
2 and --

3 (Discussion was held off the record.)

4 CHAIRMAN MIGLIACCIO: And just to clarify any
5 question we might have here. Bill first.

6 MR. AHAL: Bill Ahal. I agree completely with
7 what Dan says, and I would go further to say that there
8 needs to be a clear definition on the form -- and
9 there's no reason it couldn't on the form along with
10 the other notes -- of exactly what you want to see
11 there.

12 So that you get what you want, and it doesn't
13 get clouded. And I think it has to be that way.

14 CHAIRMAN MIGLIACCIO: Okay.

15 MR. ZARLETTI: Mr. Chairman? I'm sorry, did
16 you have a hand up? I didn't see --

17 CHAIRMAN MIGLIACCIO: No. Walter was first,
18 then you're next.

19 MR. ZARLETTI: Oh, go ahead.

20 CHAIRMAN MIGLIACCIO: Walter, go ahead.

21 MR. JONES: Do you want to go, Dan?

22 MR. ZARLETTI: I was just going to spin off of

1 that, but go ahead.

2 MR. JONES: Well, I think I had asked a
3 question yesterday of Jim to clearly let us know
4 whether he was expanding the definition of MSDSs.

5 And I think at that time he said no, he said
6 that these injuries are already being captured.
7 They're just further defining them.

8 And if you could speak to that right now, in
9 response to Dan and Bill's concern?

10 MR. ZARLETTI: Well, that was the question I
11 was going lead into. Maybe I could ask this question,
12 then you could answer that.

13 I'm holding a document that we received
14 actually prior to this meeting, and then again
15 yesterday. It's December 3rd of '09. The memo is for
16 ACCSH from Dorothy Doroughty.

17 MR. JONES: Right.

18 MR. ZARLETTI: In that it lists -- proposed
19 rule uses the same definition of MSD that was in the
20 2001 regulation, which BLS has used for many years.
21 And then it's three bullet-points down that explains
22 the whole thing.

1 If that is, in fact, the definition, that's
2 what we need to know. It says in here it's carried
3 over since 2001.

4 MR. MADDUX: Yes, if you come back further in
5 the handout, you could see the actually regulatory
6 text.

7 (Simultaneous conversation.)

8 MR. MADDUX: And in the second-to-the-last
9 page, under B(1), it has the exact definition that we
10 are planning to propose.

11 CHAIRMAN MIGLIACCIO: Yeah, we got that.

12 MR. ZARLETTI: Okay. And that's what we
13 thought. And then that goes back to why I said I think
14 there's going to be a lot of inter-discussion on that,
15 because that's going to cover a lot of entries.

16 That column will be well used.

17 MR. MADDUX: I think that if I look at the BLS
18 data now -- which you can only get this type of data
19 for cases that result in days away from work, which is
20 a little bit less than half of all injuries and
21 illnesses -- that you'll see that about 30 percent of
22 those injuries are considered MSDs.

1 So it's quite possible that as many as a third
2 of all of the injuries on your logs could receive that
3 check.

4 MR. ZARLETTI: That was the point I was
5 leading to.

6 MR. MADDUX: Okay.

7 MR. ZARLETTI: Okay.

8 MR. MADDUX: The point that Walter is going to
9 is: Does this mean that there are going to be more
10 injuries and illnesses recorded?

11 MR. JONES: Yeah, that's what I thought
12 secondary.

13 MR. MADDUX: Okay. And I think that the
14 answer to that is that this change does not change the
15 criteria for what gets recorded at all.

16 MSDs get recorded just like any other injury
17 or illness.

18 MR. JONES: Right.

19 MR. MADDUX: You know, so it doesn't have any
20 impact that way; but it does change the distribution of
21 check marks over these other categories.

22 So right now, they're being put into injuries

1 or all other illnesses, and those are going to shift,
2 then, into this MSD column to some degree.

3 CHAIRMAN MIGLIACCIO: So the numbers will
4 remain the same --

5 MR. MADDUX: Yes --

6 CHAIRMAN MIGLIACCIO: It's just that they're
7 going to be more defined on what area it's going to be.
8 And that's --

9 MR. ZARLETTI: They're going to be sorted
10 differently.

11 MR. MADDUX: Correct.

12 MR. JONES: The total will stay the same, just
13 they'd be sorted differently.

14 (Simultaneous conversation.)

15 MR. JONES: So it won't limit to an increase
16 because of this.

17 MR. ZARLETTI: And the definition of a
18 recordable will not change?

19 MR. MADDUX: Yes.

20 CHAIRMAN MIGLIACCIO: Okay. Does that answer
21 everyone's questions? Or any other questions of the
22 gentleman?

1 Okay. Thank you.

2 So, oh, Tom?

3 MR. BRODERICK: I just want to bring this up.
4 It's a comment, not really a question, for them.

5 I think one of the things that happened here
6 is both in the Federal Register announcement of this
7 meeting and in the agenda that was sent, the item that
8 was going to be discussed was changes in the
9 record-keeping.

10 And it really didn't speak to the issue of
11 musculoskeletal disease.

12 So even though we got a packet of information
13 very close to the time we, you know, packed up and came
14 here, so we did have a chance to know a little bit
15 ahead of time -- because it wasn't in the Federal
16 Register notice, or in the agenda that gets pretty
17 widely distributed before this meeting -- we really
18 haven't had any opportunity as ACCSH members, to hear
19 from our respective stakeholders, who we represent,
20 whether it be for me and the public, for the labor
21 representatives, or for the representatives of
22 business.

1 So I'm just sort of thinking out loud here
2 that perhaps the -- and I'd be interested to hear what
3 my colleagues have to say -- but perhaps this is
4 something that we ought to not give an opinion on at
5 this point, and get an opportunity to have some
6 feedback from our constituents before we come in to
7 either recommend that this is a good idea -- and
8 personally I think it's a fine idea.

9 We've often talked about wanting to help the
10 industry get better, or OSHA get better data. We'd
11 like to have better data for the industry, and this
12 would be helpful.

13 But I'm also sensitive to some of the things
14 that I think that Dan and Bill were scratching at, in
15 terms of hearing from the people we represent.

16 CHAIRMAN MIGLIACCIO: Walter?

17 MR. JONES: I understand exactly where you're
18 coming from, Tom, but I think this is a fantastic
19 opportunity for this Committee to move OSHA forward in
20 terms of collecting relevant data.

21 It's important for us to do our response to
22 issues out there. A lot of times -- I listened to

1 Susan request a lot of information this morning for a
2 focused inspection.

3 Is OSHA even collecting this type of
4 information? We have to create pathways for this
5 Agency to drill down on data they're already
6 collecting, so that we can come up with better ways to
7 respond to issues that are happening in the work place.

8 We already know that 30 percent of what's
9 being recorded is musculoskeletal disorders, so we need
10 to codify that, so that we can have an effective
11 response to the workers that are out there, suffering
12 these injuries.

13 If we're just going to lump them all into some
14 nebulous category of injuries, I don't think that
15 serves anyone's interests.

16 CHAIRMAN MIGLIACCIO: Dan?

17 MR. ZARLETTI: That's exactly where I was
18 going to take this. If we could take the definition
19 that we just discussed at B(1), my point would be this.

20 It's giving me several disorders in name:
21 Muscles, nerves, tendons, ligaments, joints,
22 cartilages, spinal disks, just to begin.

1 And then it says, "To include disorders caused
2 by slips, trips, falls, motor vehicle accidents, and
3 other similar incidents," and gives some examples.

4 I guess what I'm hearing from my colleague,
5 Walter, and what I'm thinking is, if we check that box,
6 we haven't really given you actually you don't already
7 have.

8 But if we check that box and use an entry from
9 a legend that gives you an ID to all of this -- like
10 let's say there's 26 things here, and every one of
11 those letters in the alphabet would correspond to one
12 of those?

13 Then in that box, you'd have a letter that
14 would tell you a lot of information; because then you
15 can cert by what's in that box to find out what part of
16 the 30 percent it represents.

17 MR. MADDUX: And so what you're talking about
18 is some sort of like an index system?

19 MR. ZARLETTI: Yes.

20 MR. MADDUX: Yeah, I believe actually that
21 there was as very old system that was used by the
22 National Safety Council, that used something exactly

1 like that.

2 I think that we thought that was probably a
3 little too unwieldy for the 300-log form, you know,
4 when we redesigned it back in 2001.

5 But, you know, that's the recommendation, it
6 is what it is.

7 MR. ZARLETTI: Well, I agree with that, but
8 when the record-keeping standard was revised, it came
9 out in, you know, numerous pages of education and
10 documentation.

11 So something on the log would have to refer
12 you to that place in the register, so that education
13 can be sought out, and that this can be something that
14 becomes then a legend -- fill out this form.

15 MR. MADDUX: As everybody knows, the 300 Log,
16 there's a package that was put together in 2001, that
17 has the examples, and the various definitions and so
18 forth.

19 And what we do is that, you know, when this
20 rule gets completed at some point, we would go in and
21 revise those instructions, so that it would reflect the
22 regulatory text and it would have the same definition

1 in the instructions, and maybe, you know, if necessary,
2 some further examples.

3 We're also thinking about what sort of an
4 outreach effort we will need to have in order to
5 implement the new form.

6 MR. ZARLETTI: Right.

7 MR. MADDUX: Obviously, there are, I think,
8 some 750,000 employers now that are using the OSHA 300
9 Log, and we would like for them all to be using the
10 same form.

11 And I can tell you, the BLS would really like
12 for them to be using the same form, because it causes
13 them no end of trouble, you know, when people are using
14 different versions of things.

15 So that's one of the things that's actually in
16 discussion with the Agency right now is how to do that
17 outreach. And any recommendations on that would be
18 greatly appreciated.

19 MR. BUCHET: Well, is that the next piece? Is
20 that --

21 CHAIRMAN MIGLIACCIO: Well, yeah, we've got a
22 few more questions. Sarah wanted to ask one question

1 on --

2 MS. SHORTALL: I wanted to ask Mr. Maddux a
3 question related to Mr. Zarletti's point. My
4 understanding is there is a significant amount of
5 coordination between OSHA and NIOSH in doing
6 record-keeping, since NIOSH does collect data from
7 representative employers each year, and OSHA borrows
8 heavily on the statistics they do.

9 The legend that Mr. Zarletti is suggesting to
10 have for each one of sort of like the individual types
11 of investees there, is that something that BLS would be
12 able to even do statistically? Or would that overwhelm
13 their statistical system?

14 MR. MADDUX: Yeah. I think you meant BLS.
15 You were talking about NIOSH for a while? Okay.

16 MS. SHORTALL: Yes, I meant BLS. Pardon me.

17 MR. ZARLETTI: Thank you for clearing that up.

18 MR. MADDUX: Yeah. I honestly don't know, you
19 know, what impacts that would have on the BLS data
20 collection system, you know.

21 The BLS already has different sorts of
22 breakdowns that they use with the existing data on

1 cases that involve days away from work, where they
2 classify them into different injury types and so forth.

3 But if we were to rearrange the columns that
4 way, I don't know what it would do to the statistical
5 validity, especially of the sample that they have.

6 They have a certain sample size that they draw
7 from in order to develop the statistics. And if you
8 start to subdivide the data too many ways, sometimes
9 that can have an impact that requires a larger sample.

10 So that's the only thing I can think of.

11 MS. SHORTALL: It is my further
12 understanding -- that one of the reasons BLS only
13 provides information on MSDs from days away from work
14 was because in trying to tease that data out of other
15 sources, or other types of information they collect.

16 But the only place they do case-characteristic
17 information and days away from work and compiling case
18 characteristics for all MSDs would overwhelm their
19 system?

20 MR. MADDUX: Well, it's really primarily, as
21 almost all statistical issues are, a matter of budget.
22 The BLS has a certain amount of money, with which they

1 conduct the survey.

2 And so in order get the most detailed
3 information that they can within that budget, they
4 focused on cases that have days away from work.

5 And you know, if they wanted to go out and
6 collect data on, for example, restricted work cases
7 where there are not days away from work, or all the
8 medical treatment cases, it would require a significant
9 greater budget to collect that additional data.

10 And just they don't have it.

11 MR. GILLEN: I'd like to say something. Matt
12 Gillen from NIOSH. I think there's a real fundamental
13 issue here, and that is that, you know, the injuries
14 now are sort of recorded in different places.

15 And what that means is there's not really a
16 clear national picture. And by having one column, it
17 sort of gives us all a better picture.

18 And as you know, a federal advisory committee,
19 we should be thinking about it that way. I mean, it's
20 an inability to see if a certain industry is getting
21 better or having a problem in an emerging issue.

22 It's what researchers would call "a

1 confounder," the way the statistics are. You know, you
2 can't really see what's going on.

3 And so this simple step sort of gives us all a
4 better national picture.

5 And you know, setting that aside, I mean, when
6 it's time to sort of have definitions or examples, I
7 mean, that's an issue that people can comment on later,
8 as far as how to report these things and the kind of
9 information that would be most useful for people on
10 understanding what the definition is.

11 But to me, that's kind of a separate issue
12 than the idea of having one big column, which I think
13 is really important.

14 CHAIRMAN MIGLIACCIO: Okay. I like the idea
15 of the column. Frank Migliaccio. I like the idea of
16 the column. But I like Dan's idea of assigning -- say,
17 okay, joints. Joints is "A". So in that column, you'd
18 put the check mark, and you'd put A.

19 That way, you would have a record that it
20 wasn't ligaments, it wasn't cartilage. It was a joint
21 injury. And each one of them would be giving something
22 with like that matrix on the side, or the whatever you

1 would like to call it.

2 But everyone of them, something would be
3 assigned a letter. I think you'd be able to get a lot
4 more information out of it.

5 And I think NIOSH would also, wouldn't they,
6 Matt? I mean, then you're getting a little bit more
7 specific, like Walter said. It's a good idea, it's
8 something we have, and you look at it and say, "Okay,
9 we know this is a joint."

10 It wasn't ligament, wasn't -- it was a joint
11 injury. That's my opinion.

12 Steve?

13 MR. HAWKINS: You know, Frank, the only
14 problem that I see with that -- and I agree that that
15 would be preferable, from a compliance officer's
16 standpoint, going to try to quantify those injuries.
17 But it would be difficult to total those.

18 And you know, a lot of what gets reported to
19 BLS is not the individual lines on the form, but the
20 totals at the end of the year.

21 And so if you had seven or ten categories,
22 you'd have to add seven or ten more totals to see how

1 many A's you have in that column and how many -- you
2 know, unless you wanted to -- I guess you could total
3 all the entries in that column, and then just count
4 them, whether there's A's, B's, C's, or D's for
5 tendinitis or -- or whatever.

6 (Discussion was held off the record.)

7 (Simultaneous conversation.)

8 CHAIRMAN MIGLIACCIO: Dan?

9 MR. ZARLETTI: I wrote a couple notes. This
10 is Dan Zarletti again from the Employer Representative.

11 I guess what I was seeing is that if BLS got
12 the raw data and NIOSH was doing the statistical
13 analyses, you wouldn't have to have BLS do anything
14 more than take on the data.

15 Because now you'd have the two groups doing
16 what they do best, their thing.

17 MR. GILLEN: Just to clarify, NIOSH uses the
18 information, but it's BLS that is really the one who
19 puts together the statistics and the annual summaries
20 that we all use.

21 CHAIRMAN MIGLIACCIO: All right. Mike Buchet?

22 MR. BUCHET: Yeah. I was going to invite Jim

1 Maddux to explain what actually is being asked here.
2 As I understand it, the Agency is saying, "We want to
3 change the look of the 300 Log."

4 Because the discussion now is getting into how
5 best to use the 300 Log. The 300 Log is used by
6 employers. It gets requested by BLS -- and Jim, jump
7 in -- by their survey.

8 It is not collected annually. It is not
9 collected nationally.

10 MR. MADDUX: Yeah. This is something that I
11 think is not well understood, the way that the BLS
12 survey works.

13 The BLS does not get copies of 300 Logs.
14 Okay? What the BLS does, is they select a sample of
15 employers in different size and industry
16 classifications, and they send them a form and ask them
17 to give BLS the summary data from the summary form.

18 So they don't get data on each and every
19 injury.

20 In order to do their case characteristics
21 data, they then further go to the certain employers,
22 and ask them to give them information on a sample of

1 their days away from work injuries.

2 So the employer gets the form; they transfer
3 the totals from the form, onto the survey. And then
4 they'll go and look at the more detailed 301 Form for
5 up to five cases, and pull the individual data on those
6 five cases and provide that to the BLS.

7 So it really is a true statistical exercise
8 where they do this sampling. They do not do any sort
9 of census gathering of information, where they grab it
10 all.

11 MR. SHANAHAN: So then that would preclude,
12 then, that breakdown that Dan was talking about,
13 because they're not really -- other than maybe for a
14 particular employer they would like to know --

15 MR. MADDUX: If there's some way that
16 breakdown on the summary form, then the BLS could
17 probably do some sort of reporting out on each of those
18 categories.

19 MR. SHANAHAN: Yes --

20 MR. MADDUX: But unless it really gets onto
21 the summary, it's not going to get automatically
22 transmitted into the BLS data.

1 MR. SHANAHAN: Right, right, right.

2 MS. SHORTALL: Mr. Maddux, would the data that
3 Mr. Zarletti suggests putting on the form be of use to
4 the individual establishment?

5 MR. MADDUX: Well, I think that it is of use
6 to individual establishments, for employers and for
7 workers at establishments.

8 And there are an awful lot of companies that
9 do very detailed breakdowns of all sort of injuries and
10 illnesses. You know, I personally know of several
11 companies, for example, that do fairly detailed
12 analyses of eye injuries, you know, that are very
13 common, you know, in certain environments.

14 And they will not only figure out how many eye
15 injuries, but then try and do further breakdowns of
16 where these eye injuries are happening in the plant,
17 you know, so they can make sure that they're really
18 implementing, you know, PPE and eye protection, and
19 dust control, and so forth, in those areas.

20 And that's really what the log is, it's
21 primary purpose is that people can use to try and
22 figure out what's happening, and then do something

1 about it.

2 And so people do all sorts of analyses that
3 work for them at their individual work places,
4 including these sorts of analyses of musculoskeletal
5 disorders.

6 I've seen, you know, extremely detailed
7 breakdowns that people are using to try and manage
8 their own safety programs.

9 CHAIRMAN MIGLIACCIO: Mike, Mike Thibodeaux?

10 MR. THIBODEAUX: Mike Thibodeaux. I noticed
11 on your regulatory text when we're talking about MSD,
12 in the second sentence you say, "MSDs do not include
13 disorders," and you list all of those.

14 And then you have "examples of." Wouldn't you
15 want to highlight with the examples of the MSD are, to
16 better, you know, channel those folks, to make sure
17 they're putting those in there?

18 They may look at "MSDs do not" and miss the
19 "not."

20 MR. MADDUX: Well, that is kind of the
21 approach that we're using, is the first sentence sort
22 of describes in general what MSDs are, that they're

1 disorders of the muscles, nerves, tendons, et cetera.

2 Then the second sentence is basically trying
3 to extract from that accidents that are caused by
4 slips, trips, and falls. You know, we're really not
5 trying to get broken arms here.

6 And then the third sentence includes some
7 examples to try and give an even better road map of
8 exactly what types of things are included.

9 Those could certainly be rearranged in some
10 other order.

11 MR. THIBODEAUX: Yeah, it would seem to make
12 sense. You're talking about MSDs, then you're defining
13 what they are. And then you're giving specific
14 examples.

15 It would seem to me that would be a lot easier
16 for someone to read, rather than having a knot in
17 between there. And then tell them at the bottom, you
18 know, "Do not include X."

19 MR. MADDUX: That could well be. And you
20 know, that's exactly the kind of the feedback that will
21 help us craft a better rule.

22 CHAIRMAN MIGLIACCIO: Okay. Tom Kavicky?

1 MR. KAVICKY: Tom Kavicky, United Brotherhood
2 of Carpenters and Joiners.

3 Mr. Chairman, couldn't we make the motion to
4 accept the proposal, and then add a recommendation for
5 including the index?

6 CHAIRMAN MIGLIACCIO: Sure.

7 MS. SHORTALL: The correct motion would not to
8 be accept the proposal. The correct motion would be
9 recommending that the Agency move forward --

10 MR. KAVICKY: Yes --

11 MS. SHORTALL: Or that the ACCSH supports the
12 proposed rule. And then making additional
13 recommendations for changes ACCSH might like to see to.

14 MR. KAVICKY: Yes.

15 CHAIRMAN MIGLIACCIO: Okay. Anymore
16 discussion or questions of the -- Tom?

17 MR. SHANAHAN: Yeah. Tom Shanahan with NRCA.

18 I just wanted to follow up on you. I
19 appreciate that description of how, the aggregating of
20 that information, statistically speaking.

21 So if we did do this, aside from the use that
22 I think employers would have from it, the good use that

1 they would have, you know, from having that breakdown
2 that Dan's talking about -- because I had the same
3 issue myself -- but to Walter's point, which I think is
4 in many ways maybe even more important, that this
5 information, I mean, just aggregating a box and saying
6 30 percent, when we know that there are so many, there
7 is such diversity among injuries in that 30 percent,
8 would BLS -- I don't know if you can even answer
9 this -- but would BLS, or could we make a
10 recommendation that if that was formally made in that
11 column, you know, where you would have this A, B, C, D
12 choices here, that they would indeed go out, and then
13 capture that information, statistically speaking, so
14 that when they did their statistical analysis, they
15 could find out that of all the MSDs, that, you know,
16 ligaments are the number one problem, or whatever?

17 MR. MADDUX: Right. Well, I obviously cannot
18 speak for the Bureau of Labor Statistics. And even if
19 they had somebody here, they would probably have to run
20 it up the flagpole in some way, before they could say
21 yes or no to something like that.

22 I would say that we have right now, the BLS is

1 publishing statistics on MSDs that result in days away
2 from work, that can provide a tremendous amount of this
3 detail. Okay?

4 And that data will continue, even after this
5 column is created. It would just be limited to that
6 smaller data set of days away from work cases.

7 And so I hope that people that are interested
8 in these sorts of breakdowns for the national
9 statistics, are going to the BLS and pulling that data
10 and working with it. Because there really is a
11 tremendous data set there.

12 Now I think that if there is any sort of data
13 that is on the summary form for the OSHA 300 Log, I'm
14 reasonably confident that the BLS would do everything
15 that they could to report that out in their national
16 statistics within the data that they're already
17 collecting, because this would not give them any
18 additional budget, and within their publication
19 criteria.

20 So they have certain criteria that the data
21 have to meet, that they're going to publish -- have to
22 meet certain sort of reliability characteristics in

1 terms of whether or not they're, you know, sample size,
2 and error, you know, reliability statistics.

3 And that sort of thing.

4 But I think that they would do what they could
5 with the information that was there.

6 CHAIRMAN MIGLIACCIO: All right. Jim first,
7 then Steve.

8 MR. TOMASESKI: Yeah, Jim Tomaseski with the
9 IBEW. Since we are talking about changing the look of
10 the form, in a sense, maybe one of the things we could
11 do to try to justify this, the ability to do what Dan's
12 talking about doing, is for us to take a look at the
13 form, and even come up with a recommendation to see if
14 it's going to work, what we're talking about doing.

15 CHAIRMAN MIGLIACCIO: Steve?

16 MR. HAWKINS: To make sure that I understand
17 what you said earlier: When the proposal would be to
18 add this check mark for MSD -- like Frank I'm not going
19 to try to say it -- but you're going to add that.

20 So BLS is going to request from an employer
21 their totals. They'll send a form, they'll tell the
22 employer it's required by law that you sum up

1 your -- which you should have already done -- do the
2 summation, the totals on your OSHA 300 Log, put it on
3 this form, mail it back to us.

4 And then in addition to that, BLS will ask an
5 employer, "We want to know about these particular
6 injuries in much greater detail, from your form, so
7 that we can also further define that."

8 So what may work, how this might work, is if
9 they get columns, if they get checks for MSDs, they
10 very well may request the employer, "We want additional
11 information," and they'll go and get that cause of
12 entry and that additional information from the 301 or
13 their supplemental form.

14 And so they'll actually probably, likely will
15 further define these statistically from that other
16 information they request. So they're not going to need
17 a code to get that; they'll get it the other way.

18 Is that what you said?

19 MR. MADDUX: They're already doing that, but
20 they only do it for the cases that result in days away
21 from work.

22 So all that you would adding with these

1 additional indexes would be to get that information for
2 the remainder of the cases: The restricted work
3 without days away and the medical treatment without
4 days away.

5 Does that make sense?

6 MR. HAWKINS: Just say it one more time?

7 MR. MADDUX: Right now the BLS is collecting
8 exactly that type of information for cases that result
9 in days away from work.

10 MR. HAWKINS: Okay, stop right there one
11 second. So codes for days-away-from-work cases
12 wouldn't really benefit BLS?

13 MR. MADDUX: No, they would not add any
14 additional information for BLS.

15 MR. HAWKINS: Okay. So that's not -- because
16 we don't really fully understand how that they collect
17 that.

18 So for days-away-from-work cases, which are
19 the ones that we probably pay the most attention to,
20 anyway, it's not going to benefit anybody to have codes
21 for the checks that go in MSDs?

22 MR. MADDUX: That's right. It would only

1 benefit for those cases that do not result in days away
2 from work.

3 MR. HAWKINS: And that would be mild tennis
4 elbow, or tendinitis, or something where --

5 MR. MADDUX: Well, these are the cases you
6 see, you know, I mean, over half of them on your logs,
7 or that's what you see now. It's somebody that, you
8 know, they had a tennis elbow, and they had some sort
9 of prescription medication, and that solved the
10 problem, for example.

11 MR. HAWKINS: I wish it were that easy.

12 MR. MADDUX: Yeah. Me too (laughing).

13 CHAIRMAN MIGLIACCIO: All right. At this
14 point, I need a recommendation from the ACCSH
15 Committee, to recommend that they add the column. Just
16 that.

17 That's what I need right now. I need a
18 motion.

19 M O T I O N

20 MR. JONES: So moved.

21 CHAIRMAN MIGLIACCIO: Walter makes the motion.

22 Seconded?

1 MR. RUSSELL: Second.

2 CHAIRMAN MIGLIACCIO: Any discussion on just
3 what we said? We're just, we're making a
4 recommendation to allow them to add the column --

5 Any discussion? Questions?

6 MS. SHORTALL: Mr. Maddux, could you explain
7 how the proceeding had worked for OSHA moving forward
8 with the proposed regulation?

9 MR. MADDUX: Yes, of course. I mean, it's the
10 same process that we're all very familiar with. You
11 know, OSHA will propose a regulation.

12 The one thing that is slightly different with
13 this is that most of the things that we see are what we
14 call standards, whereas record-keeping is a regulation.

15 And the difference is that standards are
16 authorized under Section 6 of the OSHA Act, whereas
17 regulations generally deal with other legal
18 authorities.

19 Standards usually have direct safety and
20 health benefits; for example, the standards we're all
21 used to. You know, use fall protection when you're at
22 heights, and so forth; whereas, regulations generally

1 deal with matters of procedure or record-keeping.

2 So because this is a regulation and not a
3 standard, we would not have the normal public hearing,
4 is not required, that we're all familiar with.

5 We would most likely hold some sort of a
6 public meeting, you know, that would sort of allow the
7 same sort of opportunity for people to verbally express
8 their views.

9 You know, then we would have a record. People
10 would submit their comments into the record, whatever
11 they happen to be, for some period of time. And we
12 would close that record and analyze the comments, and
13 start to work on the final regulation, and try and put
14 that out.

15 The one thing that is a little bit unique
16 about the record-keeping regulation, as we all know:
17 The records are kept by annual year.

18 We start in January and we end at the end of
19 the year, and we summarize them up.

20 So any sort of changes that we make to the
21 form, we would want to have those go into effect on
22 January 1 of a certain year, so that it would be a mess

1 to there and do it any time in the middle of the year,
2 you know.

3 So what our goal would be, would be to try to
4 run through this process and issue a final regulation
5 in time to have the forms go into effect in January of
6 2011.

7 CHAIRMAN MIGLIACCIO: Okay.

8 We've had the motion. It's been seconded.
9 All in favor say "aye."

10 (Chorus of ayes.)

11 CHAIRMAN MIGLIACCIO: Opposed?

12 (No response.)

13 CHAIRMAN MIGLIACCIO: Ayes so have it.

14 Now, you also would like some recommendations
15 that the Committee might want to see added to, or to
16 help this column.

17 Is that correct?

18 MR. MADDUX: We are here to consult with the
19 Committee and you know, we will certainly try to think
20 about and accommodate whatever recommendations that you
21 have.

22 CHAIRMAN MIGLIACCIO: Okay. Does the

1 Committee have any recommendations they'd like to see
2 added? Steve?

3 MR. HAWKINS: I think what Mike Thibodeaux
4 suggested about highlighting the examples of MSDs and
5 maybe highlighting the word, "not," so it says "MSDs do
6 not include." You might consider highlighting that
7 word, because you know, from a practice matter in
8 dealing with employers, like we do in our office
9 frequently, people tend not to read things as closely
10 as they should sometimes.

11 And so as Mike pointed out, you might consider
12 highlighting the word, "do not," and then maybe
13 examples of, and highlighting all those examples.

14 And I would like to further add that if there
15 are other common examples of MSDs, that I don't think
16 it hurts anybody to list as many of the most common
17 ones as you can, so if there are others in addition to
18 these, that are common examples of medical diagnoses
19 for MSDs, I think you should consider listing those.
20 Because I think it helps the employer to not have to
21 think, "Is this or is this not?"

22 If the doctor comes back and it says it's

1 Zarletti Syndrome, then they just check it right there,
2 and they're good to go.

3 (Laughter.)

4 MR. MADDUX: Yes --

5 MR. HAWKINS: If you have them, I think you
6 should add them.

7 (Simultaneous conversation.)

8 CHAIRMAN MIGLIACCIO: All right. One at a
9 time, please.

10 MR. MADDUX: I think the list of examples does
11 help an awful lot.

12 MR. HAWKINS: Yes. And so if there are
13 others, I would like to recommend that you consider
14 adding as many as practically possible, to help
15 employers make good decisions.

16 CHAIRMAN MIGLIACCIO: Okay. Any other
17 recommendations?

18 MS. SHORTALL: Is Mr. Hawkins doing that
19 recommendation in the form of a motion, or his
20 individual recommendation?

21 CHAIRMAN MIGLIACCIO: I think it was just a
22 recommendation --

1 (Discussion was held off the record.)

2 MS. SHORTALL: You could do whatever you want.
3 You can have ACCSH support you, or it could be just the
4 motion of your own, and --

5 CHAIRMAN MIGLIACCIO: All right. Then we'll
6 just ask for a motion. Motion to -- ? If you'll make
7 the motion?

8 M O T I O N

9 MR. HAWKINS: Motion that the Agency consider
10 highlighting the words, "do not," include so that it's
11 clear to an employer that these are examples that are
12 not to be considered MSDs, including those slips,
13 trips, falls, et cetera.

14 And then to add as many as practically
15 possible additional examples of MSDs to help employers
16 correctly check the box that's being added.

17 CHAIRMAN MIGLIACCIO: Okay. Second?

18 MS. BILHORN: Second.

19 CHAIRMAN MIGLIACCIO: Mike Thibodeaux second?
20 Questions, discussion?

21 All in favor say "aye."

22 (Chorus of ayes.)

1 CHAIRMAN MIGLIACCIO: Opposed?

2 (No response.)

3 CHAIRMAN MIGLIACCIO: Ayes so have it.

4 Okay, great. Any other recommendations?

5 (No response.)

6 CHAIRMAN MIGLIACCIO: Okay. Seeing none,
7 let's move on to the proposed Standard Improvement
8 Project, Phase III, SIPS III.

9 The first one has to do with the definition of
10 potable water. It says, "OSHA proposes to revise
11 paragraph A(6) 1926.51 sanitation by updating the
12 definition of the term 'potable water' consistent with
13 the current EPA definition of the term.

14 "OSHA currently defines potable water as water
15 which meets the quality standard prescribed in the U.S.
16 Public Health Service Drinking Water Standard published
17 in 42 CFR Part 72, or water which is approved for
18 drinking purposes by the state or local authority
19 having jurisdiction.

20 "OSHA adopts the existing definition from the
21 Public Health Service code that is no longer in
22 existence. The proposed definition would read as

1 follows:

2 "Potable water means water that meets the
3 standard for drinking purposes of the state or local
4 authority, having jurisdiction over the work place or
5 water that meets the quality standards prescribed by
6 the U.S. Environmental Protection Agency's primary
7 drinking water regulation, as set forth in 40 CFR, Part
8 141."

9 Do we have any discussion on this? What
10 they're looking for is to just have this definition put
11 into play.

12 MR. JONES: Chair?

13 CHAIRMAN MIGLIACCIO: Yes?

14 MR. JONES: This is a procedural question. Is
15 it possible that maybe we can look at adopting all the
16 SIPs, or first getting a consensus if there's a problem
17 with any one that they want a step pullout, and then we
18 adopt the rest?

19 Because we've had opportunity to review this,
20 and they've already made a presentation to us, in terms
21 of, and given us an opportunity to respond.

22 And if there's any particular one of these

1 that any member has a problem with, we pull that one
2 out, and adopt the rest maybe in one vote?

3 I don't know, I'm just trying to get a feel of
4 the Committee here, and save your voice?

5 (Laughter.)

6 CHAIRMAN MIGLIACCIO: Thank you. I appreciate
7 that.

8 MR. GILLEN: I agree with that.

9 (Discussion was held off the record.)

10 CHAIRMAN MIGLIACCIO: Is that agreeable with
11 everybody on the Committee?

12 MR. GILLEN: Yeah.

13 CHAIRMAN MIGLIACCIO: All right. Does anyone
14 have any problem with potable water? Hand-drying
15 methods? Remember changing from taking out the word,
16 "warm," transferring "exposure" for medical records?

17 MR. GILLEN: I got a comment about that, when
18 we --

19 CHAIRMAN MIGLIACCIO: Okay. So that one will
20 probably be held out.

21 Trigger levels in lead standards?

22 MR. GILLEN: No.

1 CHAIRMAN MIGLIACCIO: Remember, there were a
2 lot of little changes in there, just changing words.
3 There's no problems there.

4 Respiratory protection? The lead standard?
5 I'm sorry, Matt?

6 MR. GILLEN: I had a comment I wanted to bring
7 up, related to the carcinogens.

8 CHAIRMAN MIGLIACCIO: Carcinogens.

9 MR. GILLEN: And the breathing air quality.

10 CHAIRMAN MIGLIACCIO: On which?

11 MR. GILLEN: That would be E(2) and (3) on
12 pages 6 and 7.

13 CHAIRMAN MIGLIACCIO: Okay. So we haven't got
14 that far yet.

15 MR. GILLEN: I'm sorry.

16 CHAIRMAN MIGLIACCIO: Okay. Yeah, we're on 5
17 right now --

18 (Simultaneous conversation.)

19 MR. GILLEN: It was lead standards --

20 CHAIRMAN MIGLIACCIO: Part of the respiratory
21 protection --

22 MR. GILLEN: I apologize.

1 CHAIRMAN MIGLIACCIO: All right. So we have a
2 problem with the respiratory protection one. All
3 right.

4 Let's move on to Appendix C, changing the
5 word, taking "fits" out and putting "seizures" in.
6 That's an appendix to it.

7 (Discussion was held off the record.)

8 MR. HAWKINS: No, that's the next one after
9 all those appendix are part of the one that --

10 CHAIRMAN MIGLIACCIO: Yeah. That's what I
11 thought -- okay.

12 All right, (f) is material handling, storage
13 use, and disposable slings. Anybody have a problem
14 with that one?

15 (No response.)

16 CHAIRMAN MIGLIACCIO: The next one has to do
17 with asbestos standards. Asbestosis standards. Any
18 problems?

19 (No response.)

20 CHAIRMAN MIGLIACCIO: (h) was cadmium
21 standards? (i) commercial diving operations standards.

22 (Discussion was held off the record.)

1 CHAIRMAN MIGLIACCIO: All right. So I need a
2 motion to make a recommendation that the ACCSH agrees
3 with (a) Definition of Potable Water, (b) Hand-Drying
4 Methods, (d) Trigger Levels in Lead Standards, (f)
5 Material Handling, Storage, Use, and Disposable Slings,
6 (g) Asbestos Standards, (h) Cadmium Standards, and (i)
7 Commercial Diving Operations.

8 M O T I O N

9 MR. JONES: So moved.

10 CHAIRMAN MIGLIACCIO: Okay. Walter? Seconded
11 by Tom Kavicky.

12 (Discussion was held off the record.)

13 MS. SHORTALL: -- that ACCSH recommended that
14 OSHA move forward on all elements of the SIPS proposed
15 rule, except for, it might be the easiest way to do it.
16 Except.

17 (Discussion was held off the record.)

18 CHAIRMAN MIGLIACCIO: Okay.

19 MR. GILLEN: Yeah.

20 (Simultaneous conversation.)

21 MR. JONES: No. We may end up asking to move
22 forward on the other items, too, though.

1 MR. HAWKINS: Could we just discuss the other
2 ones first, Frank?

3 MS. SHORTALL: Sure.

4 MR. HAWKINS: Maybe we can do them wholesale?

5 CHAIRMAN MIGLIACCIO: All right. Then we
6 could do that too.

7 MR. HAWKINS: It might be friendlier that way.

8 MS. SHORTALL: Yeah, that's true.

9 (Discussion was held off the record.)

10 CHAIRMAN MIGLIACCIO: All right. So the first
11 rule we want to discuss is (c) Transferring "Exposures"
12 of Medical Records.

13 It's opened up. Steve?

14 MR. HAWKINS: You know, I fully understand,
15 after the discussion yesterday about the rationale
16 behind this. I'm okay with voting to support it.

17 But I think the Committee should recommend to
18 OSHA that they explore ways to procure these records
19 from employers when they cease to do business.

20 Just that they explore that, just a
21 recommendation to the Agency that they look for ways to
22 capture this information, or preserve this information,

1 even if they don't have to have it.

2 That they consider some regulation that
3 compels an employer, when they go out of business, to
4 preserve those records, somehow, in the event that down
5 the road, some of these things turn out to be something
6 more than what we understand them to be now, and so
7 that a person that's 25 years old that's exposed to a
8 chemical now when he's 55, and the place that exposed
9 him to this chemical no longer is in business, and so
10 where are those records if his doctor might need them,
11 or you know, if he needs those exposure records
12 somewhere later in this life, and his employer went out
13 of business.

14 Perhaps maybe the Agency could even consider
15 some requirement that they, you know, place that with a
16 records-holding company. I don't know if are such a
17 thing.

18 But I just think the Agency should consider
19 looking for ways to preserve this information when
20 employers cease to do business.

21 And I understand why NIOSH doesn't need it or
22 want it, and it doesn't suit their purposes. And

1 that's why it's acceptable for me. But I think the
2 Agency should consider exploring ways to preserve those
3 records, or have them preserved.

4 CHAIRMAN MIGLIACCIO: Okay. Walter?

5 MR. JONES: Very quickly, I want to second
6 what Steve's saying. I understand, you know, we're
7 still doing a changing paradigm.

8 Records are not going to be kept on paper any
9 more. They're going to be all digitized. You can go
10 to Google Health, upload all your records, have your
11 doctor send your records to your Google Health Account,
12 have your employer send it.

13 And the agencies need to be looking forward in
14 terms of being able to facilitate those --

15 CHAIRMAN MIGLIACCIO: Technology --

16 MR. JONES: The changes in technology using
17 those types of benefits.

18 CHAIRMAN MIGLIACCIO: Matt?

19 MR. GILLEN: Matt Gillen, NIOSH. Just to add
20 to the concept, though. I mean, if employers are going
21 out of business, I mean, one thing to think about,
22 would there be value in having the employers provide

1 records to the employees?

2 MR. HAWKINS: Yeah, that's what I'm --

3 MR. GILLEN: Just something the agencies
4 should consider, I think.

5 CHAIRMAN MIGLIACCIO: I was just going to say,
6 the biggest problem -- like I had stated yesterday in
7 here -- as an employee representative, I don't
8 represent union or non-union, and neither do any of the
9 other employee representatives.

10 The organized side has a way of looking back,
11 where a person works and how to gather their work
12 records and histories.

13 And we have a way of getting that information
14 out to our members, saying "You have the right to have
15 your medical records." If you look at the other side,
16 the unorganized side doesn't have that capability.

17 So there's got to be something even a little
18 bit stronger, that says that the contractor, or the
19 owner, or company, or whatever you want to call
20 them --

21 MR. RUSSELL: Employer.

22 CHAIRMAN MIGLIACCIO: The employer has to make

1 every effort to get these records, these medical
2 records, to the individuals or their families.

3 Because if there was a sickness a person
4 gets -- and I'm just going back at the DOE side -- a
5 person gets sick there, they may have passed on, but
6 the family is still fighting this issue. And that
7 family might need those records.

8 So if this recommendation, you know, would
9 include something like that, I can agree with this.
10 Because, you know, we got to take care of all workers,
11 not just, you know, the ones were representing. We got
12 to take care of all them.

13 Emmett?

14 MR. RUSSELL: Frank, again Emmett Russell.

15 Clearly, the employees should be able to give
16 all employees their records. So, you know, every
17 effort would not fit for the employees. But anyone who
18 might not be there, or anyone who may have passed,
19 every effort needs to be made for other than the
20 employees --

21 CHAIRMAN MIGLIACCIO: That's what I mean --

22 MR. RUSSELL: But I think clearly, if we

1 mandate that the employer give any employees, you know,
2 copies of their medical records, I think that would be
3 appropriate.

4 CHAIRMAN MIGLIACCIO: Liz?

5 MS. ARIOTO: Liz Arioto. Just a question,
6 isn't this already in the labor law, that the, you
7 know, the employee can ask the employer for their
8 medical records?

9 That's already --

10 MR. HAWKINS: Oh, yeah, it's there. But this
11 is for when the employer's gone.

12 (Simultaneous conversation.)

13 MR. HAWKINS: See, there's nobody there to
14 ask.

15 MS. ARIOTO: So maybe that's just the one
16 issue we just address, then, you know --

17 MR. RUSSELL: This would put the burden on the
18 company that decides to go out of business on their own
19 accord, at their discretion, rather than employee
20 asking at their discretion.

21 They may not know that the employer five years
22 ago went out of business, is going to go out of

1 business.

2 MS. ARIOTO: Okay. That makes sense.

3 MR. RUSSELL: Or 20 years --

4 MR. HAWKINS: Or 20 years, yeah,

5 CHAIRMAN MIGLIACCIO: Any more discussion on?

6 So do we have an agreement with accepting (c) or

7 recommending (c) be accepted with stipulations?

8 MS. SHORTALL: I'm going to try to -- your
9 motion this way: That ACCSH recommend that OSHA move
10 forward with the proposed rule on Standards Improvement
11 Project and add two further recommendations.

12 And further recommends that OSHA explore ways
13 to preserve or procure employee medical records, or
14 require employers to give such records to employees or
15 their families when an employer goes out of business.

16 MR. HAWKINS: I think you can just keep a
17 running list until you finish that. I think that takes
18 us to where we are, in my opinion.

19 MS. SHORTALL: And then you may have a further
20 recommendation on the issues --

21 CHAIRMAN MIGLIACCIO: Okay. Yes, is that
22 agreeable?

1 MS. SHORTALL: Mm-hmm.

2 (Simultaneous conversation.)

3 CHAIRMAN MIGLIACCIO: All right. Let's move
4 to our next one. Okay, respiratory protection and -- I
5 think, Matt, you had --

6 MR. GILLEN: Yeah, that's on page 6 there.

7 CHAIRMAN MIGLIACCIO: Page 6.

8 RESPIRATORY PROTECTION

9 MR. GILLEN: And you know, again, these are
10 thirteen carcinogen standards. They're some of the
11 very first standards that OSHA put out in the early
12 '70s.

13 And their standards that really evolved about
14 work practices for these chemicals, many of which are
15 really potent carcinogens.

16 But there's no exposure limit for any of them.
17 It's all about work practices, using -- systems. And
18 when you do certain procedures, making sure you have a
19 respirator.

20 And so OSHA is making a change there,
21 suggesting the change, which is a good idea.

22 Now our folks, our respiratory experts at

1 NIOSH just had a couple of technical comments about
2 this.

3 And one is to say that because these chemicals
4 don't have either a NIOSH-recommended exposure limit,
5 or an OSHA permissible exposure limit, the way NIOSH
6 makes respirator recommendations in that particular
7 case, is that the respirators be either a
8 self-contained breathing apparatus with a full face
9 piece, operating in pressure demand or other
10 positive-pressure mode, or if it is a supplied air
11 respirator, which is the kind that's mentioned by OSHA,
12 that it also have an auxiliary self-contained
13 positive-pressure breathing apparatus.

14 And usually it's a small little tank. In case
15 something happens to the supply of air, there's a
16 separate air supply there.

17 And so that would be the suggested change
18 there, would be to add that into, to make it consistent
19 with what NIOSH views as good guidance there.

20 The other issue was that NIOSH specifically
21 refers to this section, where this is most critical,
22 which is 1910 1003C4. But they found there's one other

1 section, 1910 1003C5, Maintenance and Decontamination
2 Issues, that this might also apply too?

3 So it would be to sort of look at the same
4 issues for this other --

5 So that would be the second issue.

6 Then the third and last issue is, if you go to
7 the next, on page 7 under the Breathing Air Quality
8 there? There's just a slight -- change that NIOSH
9 would recommend to you.

10 Paragraph as written requires "Employers use
11 breathing gas containers, marked in accordance with the
12 NIOSH Respirator Certification standard."

13 We would request that the paragraph be
14 modified to clarify that the employer should use
15 breathing gas containers, marked and maintained in
16 accordance with quality assurance provisions of the
17 NIOSH approval for their self-contained breathing
18 apparatus, as issued under the Respirator Certification
19 Standard 42CFR, Part 84.

20 And this modification would aid in eliminating
21 user confusion about the acceptability of after-market
22 cylinders that have not been manufactured under the

1 Quality Assurance Program, incorporated as part of the
2 NIOSH approval for --

3 So highly technical changes, but NIOSH thought
4 these were important to try to include. And so OSHA is
5 making a change to these --

6 And if the OSHA folks have questions, or
7 someone's not here, we can get more information --

8 (Discussion was held off the record.)

9 MS. SHORTALL: All right. I have a feeling
10 what you may have to do, is before you go to -- take a
11 short break.

12 MR. GILLEN: Okay.

13 MS. SHORTALL: So I could put this down.
14 Either that, or you could indicate to Mr. Gillen that
15 maybe it would be best for NIOSH itself to give its
16 recommendations as its own agency.

17 When the time comes, you could do either or.

18 MR. JONES: Jim? Do you have any comment?

19 MR. MADDUX: I think that either of those
20 would work fine, or the Committee -- I've been on a
21 couple of these committees, so I would say the other
22 thing that the Committee could do is simply have in

1 their motion a recommendation that OSHA and NIOSH work
2 together to resolve these technical issues.

3 (Simultaneous conversation.)

4 (Laughter.)

5 MS. BILHORN: Was that a motion --

6 (Discussion was held off the record.)

7 CHAIRMAN MIGLIACCIO: Okay. So that takes
8 care of your, hmm.

9 Okay, do we have any G-H-I? We're all
10 agreeable?

11 MS. SHORTALL: Yeah. If you'll give the
12 motion?

13 CHAIRMAN MIGLIACCIO: Yeah. If you'll give
14 the motion --

15 (Discussion was held off the record.)

16 MS. SHORTALL: There has to be a motion for
17 someone to make.

18 ACCSH recommends that OSHA move forward with
19 the proposed rule on the Standards Improvement Project
20 and further recommends that OSHA explores ways to
21 preserve or procure employee medical records, or
22 require employers to give such records to employees or

1 their families, when an employer goes out of business;
2 and further recommends that OSHA and NIOSH work
3 together to resolve any outstanding technical issues
4 with the proposed Respiratory Protection Section.

5 CHAIRMAN MIGLIACCIO: Okay. Motion?

6 M O T I O N

7 MR. KAVICKY: Mr. Chair, Tom Kavicky, the
8 United Brotherhood of Carpenters. I make the motion.

9 MS. ARIOTO: Ms. Arioto seconds.

10 CHAIRMAN MIGLIACCIO: Okay. Made the motion,
11 and seconded it.

12 Questions, discussion?

13 All in favor say "aye."

14 (Chorus of ayes.)

15 CHAIRMAN MIGLIACCIO: Opposed?

16 (No response.)

17 CHAIRMAN MIGLIACCIO: The ayes so have it.

18 Okay. We are going to take a break now. All
19 right, in the back of the room, there is sign-in sheet.

20 (A brief recess was taken.)

21 CHAIRMAN THIBODEAUX: All right. Sarah, you
22 had something to enter into the record?

1 MS. SHORTALL: Yes, Mr. Chair. I'd like to
2 enter into the record correspondence from ACCSH Chair,
3 Frank Migliaccio -- Acting -- secretary.

4 The import of the letter indicates he is going
5 to have to leave early this morning, and would not be
6 able to chair the remainder of the meeting, indicating
7 in this, that he has requested you to serve as Chair
8 during the remainder of the meeting.

9 And under 29-CFR-1912.29, he has assigned his
10 proxy vote to Tom Kavicky, Employee Representative,
11 during his absence.

12 CHAIRMAN THIBODEAUX: Liz, you had a comment
13 to make?

14 MS. ARIOTO: Yes. I would like to recommend
15 that the ACCSH add a new provision to the SIPS III,
16 that the language found in 1926 construction standards
17 match the 1910 general industry standard language,
18 specifically select PPE that properly fits each
19 affected employee.

20 CHAIRMAN THIBODEAUX: Very good. Is that in
21 the form of a motion?

22 //

1 M O T I O N

2 MS. ARIOTO: That's a motion, yes.

3 CHAIRMAN THIBODEAUX: All right. Second?

4 MR. JONES: Second.

5 CHAIRMAN THIBODEAUX: Tom second. All right,
6 any discussion? Comments? Questions?

7 MR. JONES: Is Jim still here?

8 (Discussion was held off the record.)

9 CHAIRMAN THIBODEAUX: All right. All in favor
10 of the motion signify by --

11 MS. SHORTALL: Oh. I'm trying to understand
12 1926.95, is that the standard in construction?

13 MS. ARIOTO: In construction, yes.

14 MS. SHORTALL: You want all of 1910?

15 MS. ARIOTO: No, it's just the section that
16 relates to the PPE, that properly fits each affected
17 employee.

18 MS. SHORTALL: Okay.

19 MR. ZARLETTI: To be consistent between the
20 two.

21 MS. ARIOTO: To be consistent between the two.
22 So general industry and construction standards will

1 match. So they'll be the same. So it's allowing for
2 effective safety.

3 MR. JONES: And I think -- SIPS.

4 MS. ARIOTO: Yes.

5 MR. JONES: And it fits the role of SIPS.

6 MS. ARIOTO: And I think this is the role in
7 SIPS right now. So I would like this added to the list
8 that's present there, if possible.

9 (Discussion was held off the record.)

10 MS. SHORTALL: I think I have it now.

11 Ms. Arioto moves that ACCSH recommend that
12 OSHA add a provision to the Standard Improvements
13 Project proposed rule to revise the language of
14 1926.95, so it matches the requirement in 1910.132 that
15 employers must select PPE that properly fits each
16 affected employee.

17 MS. ARIOTO: Thank you.

18 M O T I O N

19 CHAIRMAN THIBODEAUX: That's the motion. Tom,
20 do you have the second?

21 MR. KAVICKY: I have the second, correct.

22 CHAIRMAN THIBODEAUX: All right. Any

1 discussion, questions, or comments? All in favor of
2 the motion signify by saying "aye."

3 (Chorus of ayes.)

4 CHAIRMAN THIBODEAUX: All opposed signify by
5 saying --

6 (No response.)

7 CHAIRMAN THIBODEAUX: Motion carried.

8 MR. KAVICKY: Good job, Liz.

9 MS. ARIOTO: Thank you.

10 CHAIRMAN THIBODEAUX: Next item we have is the
11 proposed Crystalline Silica Standard, that Director of
12 Standards and Guidance has asked for some
13 recommendations and comments.

14 And I'm going to suggest that we go to page 2
15 of that letter, and you've got three areas that they
16 want us to comment on.

17 One being Table 1, and they've got specific
18 questions.

19 The second area is Regulated Areas.

20 And the third is Protective Clothing. And
21 unless someone has a more expeditious way of going
22 through this, Table 1 is the one that outlines the

1 required control methods for specific operations that
2 they're proposing.

3 And the question proposed is the general
4 concept of providing an alternative to the exposure
5 assessment requirements, based on specified controls
6 for common activities appropriate.

7 Now does anyone have any specific items in
8 Table 1 that they wish to address? And I know we went
9 over this yesterday pretty much in detail.

10 MR. JONES: Chair, I think there's a standing
11 recommendation from the Silica Subgroup concerning
12 Table 1, that maybe Matt could re-read?

13 MR. GILLEN: Maybe.

14 MR. JONES: Maybe? Or I could do.

15 (Laughter.)

16 MR. JONES: I have it in front of me.

17 We do have a motion, a recommendation from the
18 Silica Subgroup that recommended -- and we haven't
19 asked the Full Committee here yet to take up the motion
20 yet, but we're waiting on this time period.

21 And I guess it would specifically, in response
22 to the first part of that question. And the

1 Subgroup -- I'll just read everything.

2 ACCSH Co-chair Walter Jones then moved that
3 the Silica Work Group recommend that ACCSH support the
4 concept in Table 1, which would exempt employers from
5 some exposure monitoring requirements in certain
6 construction work activities if they implement the
7 specific controls in Table 1 as being appropriate for
8 the crystalline silica proposed rule.

9 This motion was seconded and the ACCSH members
10 in the group passed it unanimously. The motion also
11 reflected the consensus of those individuals
12 participating in the work group meeting.

13 CHAIRMAN THIBODEAUX: Okay. And that's the
14 motion you're proposing?

15 M O T I O N

16 MR. JONES: That's the motion I would propose
17 in response to the first part of a question
18 specifically asked of us from the Health Standards.

19 CHAIRMAN THIBODEAUX: Okay. The motion on the
20 floor. Do I have a second?

21 MR. GILLEN: I second it.

22 CHAIRMAN THIBODEAUX: Matt Gillen seconds it.

1 All right. Do we have any discussion,
2 comments, questions?

3 MS. SHORTALL: Sure. Walter Jones recommends
4 that ACCSH supports the concept in Table 1, which would
5 exempt employers from some exposure monitoring
6 requirements in certain construction work activities,
7 if they implement the specific controls in Table 1 as
8 being appropriate for the crystalline silica proposed
9 rule.

10 MR. JONES: I was just say not Walter Jones,
11 but the Silica Work Group recommends it.

12 MS. SHORTALL: But this is your motion.

13 MR. JONES: Okay.

14 CHAIRMAN THIBODEAUX: Any other comments? All
15 in favor of that motion signify by saying "aye."

16 (Chorus of ayes.)

17 CHAIRMAN THIBODEAUX: All opposed, same.

18 (No response.)

19 CHAIRMEN THIBODEAUX: The next question
20 concerning Table 1. Are the controls listed for each
21 activity in Table 1 the most effective of the available
22 control methods?

1 And I think we had some discussion about that
2 yesterday. Does anyone have any comments to that,
3 based on the presentation we heard yesterday --

4 MR. JONES: Well, based on the presentation we
5 heard yesterday, based on the work the Committee has
6 been doing for easily over a year and a half, we
7 believe that the controls -- the general consensus, I
8 should say, was that we believe that the controls
9 listed for each activity in Table 1 are very effective,
10 and among the best control methods available.

11 Whether they're the most effective, I don't
12 know that we've ever come to a decision on. And that's
13 where I'm having a problem with saying they're the most
14 effective.

15 And that goes even further to this ideal of
16 having a living table, so that as more effective
17 controls become available, that they be used or
18 implemented to the table, which his problematic from
19 the Agency's perspective.

20 So that's where I know I'm having a problem
21 with saying they're the most effective. It may be the
22 most effective today, and six months from now, when the

1 rule comes out, there may be a more effective control
2 for any of those activities.

3 And I don't want to be in a position to codify
4 something, you know, by saying here today that it's the
5 most effective.

6 That's where I'm having a problem with that.

7 Like I said, we the Committee, would have no
8 problem saying that they are effective control methods
9 for the activities listed.

10 CHAIRMAN THIBODEAUX: Kevin?

11 MR. BEAUREGARD: I was going to say the same
12 thing. I think we all agree that they're effective
13 measures, and leave it at that, and not necessarily
14 endorse the most effective, due to the information that
15 we have.

16 CHAIRMAN THIBODEAUX: Dan? Do you have a
17 comment?

18 MR. ZARLETTI: No.

19 CHAIRMAN THIBODEAUX: Any other comments?

20 Does anyone want to make a motion to that
21 effect, that consider them effective methods of
22 control?

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M O T I O N

MR. BEAUREGARD: Also moved that the ACCSH considers the methods listed in Table 1 as effective control methods.

CHAIRMAN THIBODEAUX: Do we have a second?

MR. BRODERICK: Second.

CHAIRMAN THIBODEAUX: All right. Any other comments or questions?

MR. GILLEN: It's not so much that we don't think these are effective. It's that there might be one or two that we could add, and we're still, you know, haven't had enough time to collect all that information and share and pass it along.

So there might be, for example, stationary masonry saws, it mentions wet methods, and you know, there might be local exhaust ventilation option that could be added as well.

But you know, if we had that information we need to pass it along to OSHA, so that they can put it in the table.

MR. JONES: And I don't know if this is related or not, but then there's still just a concern

1 of a living table, because right now the rule proposes
2 to support the hierarchy of controls, where we always
3 looked at engineering out the hazard, and because of
4 the level of the PEL, we're now looking at personal
5 protective equipment being codified into the rule
6 today, whereas in the future there may be control
7 methods, that could, you know, drive down the need for
8 ever having to use personal protective equipment, and
9 there is no mechanism to reflect that, as the proposal
10 is currently put forward.

11 I welcome to hear anything from Bill on these
12 items.

13 CHAIRMAN THIBODEAUX: Could you respond to
14 that, and tell us how that could be addressed?

15 MR. PERRY: Yes, I'd be glad to. I'm Bill
16 Perry from the Director of Standards and Guidance at
17 OSHA.

18 Remember that under our proposal, at least as
19 far as our current thinking is now, the employer always
20 will have the option, regardless of why dust control
21 method is being used, or conducting the required
22 exposure assessment, all right, sampling, and then

1 using respirators or not, as that exposure assessment
2 dictates, in complying with the PEL.

3 So even if, as technologies change, or new
4 technologies come out in the future, employers will be
5 absolutely free to implement those dust control
6 methods; but they will need to do an exposure
7 assessment, either through monitoring, or some
8 combination of monitoring and objective data.

9 We're still working out the exact language
10 there. But basically then the goal is comply with the
11 PEL, just as it is with any of our other health
12 standards.

13 The Table 1 is an option for employers. You
14 could simply implement the controls in that table with
15 supplemental respiratory protection, as laid out in the
16 table, in lieu of conducting an exposure assessment.

17 So the employer has two choices here for
18 complying with the rule.

19 So I think we certainly have a goal of
20 structuring this rule in a way that does not freeze
21 technology. We have no interest in doing that. We
22 want to encourage more effective dust control

1 technologies being developed, okay?

2 And I think under a traditional health
3 standard, if Table 1 wasn't part of this standard, we
4 would have that. We would have a pure performance
5 option for the employer.

6 And we still have that, okay? Table 1 is an
7 alternative to the performance option. It's a
8 specification option, where the employer could simply
9 implement what's on the table and not have to worry
10 about it.

11 That's the objective here. So I hope, if that
12 clarifies, great. Otherwise, let me know and we'll
13 talk some more.

14 MR. JONES: No. Don't get me wrong.

15 MR. PERRY: Okay.

16 MR. JONES: We fully support the distribution
17 you're going to. Or at least I fully support the
18 direction you're going to with task-based approach,
19 because it helps us out in construction on a multitude
20 of different levels.

21 But you're still going to get pushback from at
22 least myself in terms of trying to open up this

1 process, because if in New Jersey a bunch of
2 contractors get together, and they figure out a way to
3 not have to use filter and face pieces between their
4 association, and they've conducted the monitoring, and
5 it seems to work for this particular control technology
6 that they implement, I am just looking at ways that we
7 could just push that across the country instead of the
8 guy in Missouri having to out and do the monitoring,
9 and the guy in Alabama having to do the monitoring --

10 MR. PERRY: Sure --

11 MR. JONES: Whereas it's already been codified
12 by objective data, that may have been done by the
13 University of Washington, or wherever, or CPWR.

14 MR. PERRY: Right.

15 MR. JONES: So I'm just pushing on the idea of
16 this standard, as you guys move forward, looking at the
17 ability of this, to be whether through our comments,
18 where we say a living appendix, or whatever, that we
19 still push control technology.

20 But this is the direction we want to go in.
21 We want to get away from the onus of many small
22 employers that have to go out, that do a lot of

1 monitoring, and thereby not monitoring, just say "Go to
2 work," if now they got to at least use exhaust, or a
3 low exhaust, or water and a filter and face piece, or
4 whatever, for the three or four hours that they're
5 doing work, that's fine.

6 But I'm still, you know, as I said in the
7 subcommittee meeting, this is our only bite at a silica
8 standard construction for a couple generations. And
9 I'm just trying to make sure we get it tight.

10 MR. PERRY: Mm-hmm. And I certainly
11 appreciate that. I think all I was saying at the work
12 group meeting, when the issue came up, is the Agency
13 can't commit today to have a regular process down the
14 road for updating the list of required controls.

15 The Agency at any time down the road could
16 decide to revise the standard, and update the table.
17 But any update to the standard or any update to the
18 table will have to be through notice and comment we're
19 making. Okay?

20 Which is, can be fairly resource-intensive.
21 Presumably not as much as the original standard has
22 been and will continue to be. But still, it would be

1 committing future rulemaking resources of the Agency,
2 and we can't today promise to commit those future
3 resources to any kind of regular scheduled, I would
4 say, or periodic update of the rule.

5 But I think it's something that down the road,
6 when enough information is collected and technology has
7 changed enough, I think the Agency, I would hope would
8 consider updating the rule at that point.

9 Now certainly this is a proposed rule, and
10 we're going to be going through later this year having
11 an open record, having public hearings, okay, and
12 getting all that information.

13 And we will be asking for whatever additional
14 information is out there on dust controls that are
15 available today to contractors, in the hopes that we
16 can make the Table 1 in the construction rule as
17 inclusive as possible of the dust control approaches
18 and technologies that are available.

19 So the other side of this is the Table 1
20 you're seeing is from the fruit of research up to this
21 point.

22 Now I have no doubt that we've probably missed

1 some technologies that are out there, where there is
2 evidence or evidence between now and then could be
3 developed that would allow us to modify this table
4 before a final rule is issued.

5 So that's our goal also, is to try and get
6 this table as all-inclusive as we can to represent the
7 technologies that are available and effective today.

8 CHAIRMAN THIBODEAUX: Walter, does that
9 satisfy your question?

10 MR. JONES: That's fine.

11 CHAIRMAN THIBODEAUX: Sarah?

12 MS. SHORTALL: Well, I have one procedural
13 comment to Mr. Jones and I have one for Mr. Perry.

14 This certainly may be the only bite at the
15 apple at this particular point, for ACCSH to do
16 collectively; but the whole concept behind the
17 proposed -- is to have a wide-open door for several
18 forms of comment and participation.

19 Once the proposed rule comes out, there will
20 be a chance for you to submit the comment. If you feel
21 that this is an important issue you'd like to discuss,
22 you can petition to have a hearing.

1 I can't think of any time where the Agency has
2 had requests for a hearing that we've decided against
3 it. After participating in the hearing, you have
4 additional opportunities to provide post-comment
5 hearings, as well.

6 Once a rule is finalized, any person or
7 interested organization, including the representatives
8 of ACCSH, if they were find that the rule, they feel
9 the rule needs to be revised, they can always petition,
10 or in case of ACCSH, make recommendations that the rule
11 be changed.

12 While Mr. Perry is correct that a full
13 rulemaking can be re-service-intensive, and then this
14 question goes to Mr. Perry: If there were new
15 technologies that were widely recognized as being
16 effective, you know, for example, recognized by ACCSH
17 as well as other members of industry, would it -- to be
18 able to do a modification of Table A at a later time,
19 using what we call our "direct final rulemaking," that
20 allows the Agency to significantly reduce the procedure
21 requirements and the time needed for issuing the rule?

22 MR. PERRY: I think we'd have to explore that

1 at the time. My sense is, in general, I would
2 anticipate we would still have to go through notice and
3 comment, because any modification of the table is going
4 to have to have an evidence base behind it that
5 demonstrates that a certain control is effective.

6 Okay?

7 And because there would be that evidence base,
8 I think we would probably need to give the public
9 notice that this is the evidence the Agency is relying
10 on here, and allow people to comment on that evidence.

11 So.

12 MS. SHORTALL: If the Agency were to do a
13 direct final rulemaking, and the evidence you put in
14 your direct final -- a direct rule works, is that
15 Agency does two things simultaneously: It issues a
16 final rule, and it issues a proposed rule.

17 And if nobody finds the final rule
18 objectionable at all, then we sort of jettison the
19 proposed rule, and go with the final rule.

20 So if the evidence the Agency put in a final
21 rule was of such strength that it received no negative
22 comments, significant negative comments, could the

1 Agency utilize that method to get updates to a table
2 much more quickly?

3 MR. PERRY: Right. I mean, I think it's
4 certainly something that the Agency would need to
5 consider. And it's going to depend, I think, on the
6 nature of the evidence that the Agency has available,
7 and the nature of the changes being made to the table
8 at the time.

9 So it's a little bit hard to predict. But I
10 appreciate your pointing out that a more expeditious
11 mechanism does exist, than going through notice and
12 comment rulemaking.

13 CHAIRMAN THIBODEAUX: Okay. Thank you.

14 Any other questions or comments? Bill?

15 MR. AHAL: Bill Ahal. I have a question on,
16 another one on Table 1, not on that subject.

17 CHAIRMAN THIBODEAUX: Okay.

18 MR. AHAL: If you're ready for that.

19 CHAIRMAN THIBODEAUX: Sure.

20 MR. AHAL: Okay. Bill Ahal, Employer
21 Representative. Maybe I just missed this, and didn't
22 make any notes on this yesterday.

1 On page 1, the final line there, concerning
2 the permissible exposure limits, the current
3 requirement compared to the SBRFA draft standard says
4 "No longer considering 75." What I missed was, what
5 are you considering, then, no longer 75, but you think
6 50 or 100?

7 MR. PERRY: Both.

8 MR. AHAL: So you haven't decided? That's
9 still open?

10 MR. PERRY: No. The Agency has not made any
11 determinations what to propose yet.

12 MR. AHAL: Okay.

13 MR. JONES: Dave, you said that you thought
14 you were cutting it too -- could you repeat what you
15 said in the meeting?

16 MR. O'CONNOR: Yeah. That in terms of making
17 a determination as to whether 75 was an option, that it
18 was really a question of being able to make the
19 determinations with regard to the effectiveness of the
20 controls, whether they could get to 50 or 100.

21 But trying to slice it so thin that you could
22 make that determination as to whether a control could

1 achieve 75 but not 50 was a little bit difficult.

2 CHAIRMAN THIBODEAUX: Okay. Any other
3 questions?

4 (Discussion was held off the record.)

5 MR. BEAUREGARD: It's been so long, I can't
6 remember what it was. Do you have it written out?

7 MS. SHORTALL: Generally it sounded like Kevin
8 Beauregard moved that ACCSH recognizes that the
9 controls listed in Table 1 are effective.

10 CHAIRMAN THIBODEAUX: That's seconded,
11 correct?

12 MS. SHORTALL: Yes.

13 CHAIRMAN THIBODEAUX: Any more discussion?

14 All in favor of that motion signify by saying
15 "Aye."

16 (Chorus of ayes.)

17 CHAIRMAN THIBODEAUX: All opposed signify by
18 saying --

19 (No response.)

20 CHAIRMAN THIBODEAUX: Motion carries.

21 Okay. The next area concerning regulated
22 areas. Would a requirement for a written exposure

1 control plan for each construction site provide
2 equivalent protection, when compared to a requirement
3 to establish and demarcate regulated areas for
4 operations, with exposures in excess of the PEL?

5 And regulated areas is on page 7 of the draft.

6 MR. JONES: Again --

7 CHAIRMAN THIBODEAUX: Walter?

8 MR. JONES: We've been doing work on this, I'm
9 sorry that I don't want to dominate here, but the
10 problem here is with equivalent protection, whether it
11 could provide effective protection.

12 I'm sure a lot would agree that with
13 equivalent protection. I'm just not sure if that's the
14 word we might want to use.

15 (Discussion was held off the record.)

16 CHAIRMAN THIBODEAUX: It's Section E,
17 Regulated Areas.

18 MR. GILLEN: Are you in any of this --

19 CHAIRMAN THIBODEAUX: On page 8, demarcated.

20 MR. JONES: Actually looking at the comments,
21 the two-page comment. The second middle one.

22 Regulated Areas, we're just respondent, on the second

1 page, or third page I should say.

2 (Discussion was held off the record.)

3 CHAIRMAN THIBODEAUX: Anyone else have any
4 comments concerning what Walter has raised, the issue,
5 effective as opposed to equivalent?

6 And does the Committee have, you know, any
7 questions they wish to raise on that? And do we have a
8 motion to that effect?

9 MR. BEAUREGARD: I have a question.

10 CHAIRMAN THIBODEAUX: Yes?

11 MR. BEAUREGARD: Kevin Beauregard. Is the
12 reason why this question is being posed is you're
13 considering putting in an equivalency section within
14 the standard, indicating that if you have a written
15 exposure control plan, then perhaps you don't need to
16 demarcate and regulate the area?

17 MR. O'CONNOR: Yes. In fact it was a
18 different provision that the regulated areas provision
19 would not be included, but in its place there would a
20 requirement for a written exposure control plan, which
21 would be intended to accomplish the same objective of
22 limiting access to the work area, so that you don't

1 have people unnecessarily in near proximity to work
2 operations that are producing excess exposures, and
3 thereby exposing people, unnecessarily.

4 MR. BEAUREGARD: Have you ed the particular
5 language yet? Because I didn't see that in here,
6 unless I missed it.

7 MR. O'CONNOR: No. And we don't have that
8 exact language at this point.

9 MR. BEAUREGARD: Thank you.

10 MR. PERRY: If I could just point out, and I
11 think we probably neglected to mention this, either in
12 the work group or in yesterday's meeting when we
13 presented.

14 But the idea for this is derived somewhere
15 from what I believe is a written plan requirement
16 that's in the ASTM, Silica Standard for Construction.

17 There is a consensus rule for governing silica
18 exposures in the construction industry. There's also
19 an ASTM standard for general industry as well.

20 And we do have an obligation to consider what
21 are in consensus standards and explain, to the extent
22 we depart from them, explain why.

1 So just to point out that there is a written
2 plan requirement of sorts, that is in a consensus rule
3 now. And that's partly what gave us the idea to
4 explore this, instead of required regulated areas with
5 demarcation and signs.

6 Again, employers could decide that demarcating
7 an area and using signs is, you know, makes sense for
8 particular operations. So we're not taking that away.
9 It's just recognizing that there are many situations,
10 where maybe it isn't possible or practical to use
11 physical demarcation and signs for certain kinds of
12 projects.

13 CHAIRMAN THIBODEAUX: Any other questions?
14 Does anyone have a motion they wish to make on this,
15 from the Full Committee? Or no?

16 (Discussion was held off the record.)

17 CHAIRMAN THIBODEAUX: We're going to move
18 forward on this one. You've heard the comments that
19 were made, and we hope you would at least take those
20 into consideration when completing this rule.

21 The third area is protective clothing. And
22 the question is: Is a requirement for protective

1 clothing needed? And if so, what would be an
2 appropriate trigger for requiring the use of protective
3 clothing?

4 And we had quite a discussion yesterday
5 concerning this. Does anyone have any questions or
6 comments? Matt?

7 MR. GILLEN: Matt Gillen. It would be
8 interesting to hear from the unions and the contractors
9 that do a lot of the work, where there are jobs where
10 people get visible dust on them.

11 If options such as an 8-brand or something
12 like that would really take most of the contamination
13 there, and would be a good example of a type of
14 protective clothing that could be used, it would really
15 reduce a lot of the heavy exposure that somebody might
16 get, for example.

17 CHAIRMAN THIBODEAUX: Dan?

18 MR. ZARLETTI: Dan Zarletti, Employer Rep. As
19 a contractor, I could probably respond for at least
20 that part.

21 What we do is determine our ability to have
22 the employee cleaned off before he or she leaves work,

1 so that if in a day's dust can be either vac'd off or
2 clothes can be changed, so they don't take it home,
3 then it's efficient.

4 If it gets to a point where that's not
5 possible, then we look at other things like Tyvek
6 suits, and other things, that could then shed that with
7 their regular street clothes underneath. They'd shed
8 the Tyvek before they go home, and then their clothes
9 aren't as affected.

10 CHAIRMAN THIBODEAUX: Okay. Anyone else?

11 If I could ask a question. Is a requirement
12 needed, had you planned on putting one in there? Or
13 are you just getting comments from us to see from the
14 practicality of it, you know, do you need a requirement
15 that it be used?

16 Or is it just an employer-based, "if we see
17 it's a problem, we will handle it" type situation?

18 MR. PERRY: Our SBRFA did have, I think,
19 regulatory alternatives that would have required use of
20 protective clothing, or at least some way of cleaning
21 clothing, where there were exposures in excess of the
22 PEL.

1 And we're still considering that; but we did
2 get quite a bit of input from our small business
3 representatives on our SBRFA panels, that suggested
4 that that might not be a necessary requirement in a lot
5 of circumstances.

6 And they questioned the need for it, given
7 we're not looking at a dermal hazard, or ingestion
8 hazard, or dealing with something that's a recognized
9 take-home hazard, or at least it's been documented to
10 be a take-home hazard, the way lead and asbestos, and a
11 host of other things have been.

12 So you know, we want our standard to be
13 effective, but we don't want to put people in
14 protective clothing unnecessarily, since that creates
15 other problems as well, in terms of, you know, just
16 heat and what-not.

17 So really, we were looking just for some --

18 MR. JONES: And you're still --

19 MR. PERRY: Indication of your-all's
20 experience, you know, when do you decide to use it?
21 When do you decide it isn't necessary? And that might
22 help inform the Agency, then, how to proceed with

1 protective clothing in the proposed rule.

2 I would think in our proposal, we will
3 certainly be asking questions of the public about it,
4 so that we get more input, as well.

5 CHAIRMAN THIBODEAUX: Okay. Bill?

6 MR. AHAL: I'll suggest that because of the
7 variety of tasks that get involved with silica exposure
8 and the fact that it's hard to determine where you
9 might need the clothing, that this group either
10 consider just making either a recommendation that an
11 advisory be put in with the standard that the employer
12 use their best judgment as to the subsidy for consider
13 the use of protective clothing, depending on the
14 conditions, job, task, so forth and so on, and let it
15 go at that.

16 Otherwise, I don't think you're going to get
17 anywhere. And I think that's what you're looking for
18 is either a, or something, some kind of direction or
19 opinion.

20 CHAIRMAN THIBODEAUX: Steve?

21 MR. HAWKINS: No. Just looking at the actual
22 proposed wording that we were provided with, when you

1 read it, it reads almost exactly like what Mr. Zarletti
2 said his company does.

3 If it's not extremely dusty, they vacuum their
4 clothes off. If it's beyond that, and in their
5 opinion, they provide some kind of protective clothing.

6 And that's kind of what this proposed wording,
7 the original proposed wording, the action level is the
8 PEL, and then it gives the employer the choice of
9 either using a HEPA vacuum system to vacuum off the
10 clothing, or use a Tyvek suit -- or a protective
11 suit -- it doesn't say Tyvek. I'll withdraw that.

12 But use protective clothing, and then have a
13 way to dispose of them in a manner in which it doesn't
14 release excess dust.

15 I guess we could talk about this for a while,
16 but I think their original wording looks pretty
17 reasonable to me. I would not move to deviate from
18 this.

19 I'm not sure, we weren't privy to the
20 conversations and the SBRFA hearing, but this looks
21 reasonable to me, that if you had a person who was
22 blasting all day or blasting above the PEL, which I

1 guess would mean an eight-hour exposure, because
2 you --

3 MR. PERRY: Yeah. The exposure limit is an
4 eight-hour time-weighted average. So we're talking
5 about --

6 MR. HAWKINS: That's right. So it would be an
7 eight-hour exposure of above the PEL. That's how you
8 get above the PEL is that length of exposure that you
9 need to have a way for a person to vacuum themselves
10 off, or you'd have them in protective clothing, and
11 they'd dispose of their clothing at the end of the
12 shift in a manner that released the minimum amount of
13 dust.

14 I think it looks pretty reasonable like it's
15 written, to me.

16 MS. BILHORN: Steve is looking at page 15 and
17 16.

18 MR. HAWKINS: It's page 15 and 16, yes.

19 CHAIRMAN THIBODEAUX: Thank you.

20 MR. BRODERICK: Tom Kavicky. I agree with
21 Steve's assessment, and the way it's written.

22 CHAIRMAN THIBODEAUX: Bill, have you had an

1 opportunity to see that, page 15 and 16?

2 MR. AHAL: I just looked at it, and that's
3 fine. I mean, I just want to say that I don't think we
4 have enough here to tie it down or anything, more than
5 what's in here, where I said. So.

6 MR. JONES: I just have one question.

7 CHAIRMAN THIBODEAUX: Yes, sir?

8 MR. JONES: What's the hazard to the employee,
9 from what you're saying, in terms of, since it's not a
10 dermal hazard you're talking about.

11 MR. PERRY: Respiratory.

12 MR. JONES: A respiratory hazard. And what
13 level of dust on a person presents a respiratory
14 hazard?

15 MR. BRODERICK: Is there any data?>

16 MR. PERRY: We have a few, rather dated
17 studies that show when clothing can become grossly
18 contaminated with finely divided silica-containing
19 material, that it can become a measurable source of
20 inhalation exposure, just the dust coming off of the
21 clothing.

22 MR. JONES: You say "grossly." Can you define

1 that to any manner?

2 MR. PERRY: As I recall, these were either
3 people working with industrial sand, so which can be,
4 you know, as particle sizes in the range of flour, or
5 less, even.

6 Or really gross contamination. And I think
7 there are, in fact I remember a while back seeing a
8 video of a product that was like an air curtain or an
9 air stream designed to -- I think, was that NIOSH that
10 alerted that to us?

11 MR. GILLEN: Yes, that was -- us for use at
12 mines as a stationary unit people could use.

13 MR. PERRY: Right, right, designed to blow
14 excess dust off the clothing effectively, so that,
15 again, we don't have the clothing itself becoming a
16 source of airborne respirable dust.

17 So that, and I guess we just don't have very
18 good information on that. It's not something that's
19 been very well studied in terms of to what extent
20 clothing can become a meaningful source of inhalation
21 exposure, which is why were -- probably going out and
22 asking, at the very least asking more questions of the

1 public on this issue.

2 But if the Committee has a recommendation for
3 how we should proceed, you know, with a proposal, then
4 that's what we would be interested in.

5 CHAIRMAN THIBODEAUX: Mike?

6 MR. GILLEN: I mean, one way to think about is
7 that you have a case where there's visible dust on
8 somebody's clothes. And that's likely to be the case,
9 where there is much there, so that when the clothes are
10 being taken off or on, you're creating an inhalation
11 hazard for that person.

12 The question is, if there isn't any visible
13 dust, the person was in an area where the level was
14 over, and there is a smaller amount of dust that's not
15 visible, is that enough to create an over-exposure,
16 when the person is removing the clothes?

17 I mean, that's in a way, is part of the issue,
18 that there's not much data on where they're trying to
19 make a decision.

20 MR. TOMASESKI: I mean, when you read that
21 section on protective clothing, and what Matt just
22 brought up -- same situation with my work clothes or

1 whatever other garments you're going to put on, whether
2 it's a Tyvek suit or whatever.

3 So I have a hard time understanding what
4 protective clothing means, when you say "protective."
5 What are you protecting against?

6 You know, is it designed to protect from a
7 certain hazard, or what?

8 MR. BEAUREGARD: I think it's designed so that
9 your clothing itself doesn't become hazardous, when
10 you're removing it, or taking it off site, for the
11 respiratory issues.

12 (Discussion was held off the record.)

13 MR. BRODERICK: If we follow that line of
14 reasoning, then, it does come back into the area of a
15 take-home hazard. Right?

16 Because if the employee takes off his clothes
17 with children present, or the person who's laundering
18 them, they would have an exposure.

19 MR. PERRY: Right. I think the concern is
20 mostly the employee would be wearing the clothes for a
21 long period of time, and they would be dusty, and a
22 more prolonged source of inhalation exposure.

1 When I said that this wasn't a recognized
2 take-home hazard, I'm not aware of any documented cases
3 of family members being affected by silica exposure
4 through handling dusty clothes. Okay?

5 So it's really confined, I think, to the
6 inhalation hazard that would be experienced by the
7 employee wearing the clothing.

8 MR. BRODERICK: This would be after the shift?
9 Because during the shift, the person would be protected
10 with respiratory protection.

11 MR. JONES: No, during the task they may be
12 protected, not during the shift.

13 MR. PERRY: Right.

14 MR. HAWKINS: Hold on. You know, even that
15 and Tom brings up a good point, this point that Jim
16 Walker just discussed, and Steve Hawkins.

17 You might do blasting for four or five hours,
18 and then go do some other task for the other three
19 hours. And you know, the way this standard's written,
20 it only says you'll have protective clothing, you'll
21 have a way to vacuum yourself off before you leave that
22 area, to go do something else the rest of the day.

1 And I think it seems very reasonable to me.

2 MR. PERRY: Or presumably, for example, before
3 exiting a regulated area, you know, for breaks, lunch
4 breaks, that sort of thing.

5 MR. HAWKINS: Yeah. It only requires, when
6 you read it, it only requires that they have protective
7 clothing and a way to take it off and dispose of it, or
8 a vacuum in the area to vacuum the excess dust from
9 their clothes, or the dust from their clothes.

10 And then number four, that says they won't to
11 it by blowing or shaking.

12 Which, you know, when you read this in context
13 of silica exposure, it seems very reasonable and it
14 doesn't seem onerous to me. I'm not sure what the
15 small business, you know, I'm not sure whether it would
16 come from -- this doesn't look excessive to me.

17 CHAIRMAN THIBODEAUX: It seems from the
18 comments and such, that we as a Committee -- and you
19 folks correct me if I'm wrong -- don't really have an
20 appropriate trigger for requiring, other than, you
21 know, the dust we see on the clothing, et cetera.

22 So I don't know that we have a recommendation

1 for these folks.

2 MR. HAWKINS: PEL is what's here --

3 MR. JONES: I think we do have a
4 recommendation, that it's as stands, as written.

5 CHAIRMAN THIBODEAUX: Okay.

6 M O T I O N

7 MR. HAWKINS: Yeah. I would make a motion
8 that recommend to OSHA for a motion that they maintain
9 the wording for protective clothing, which includes a
10 vacuuming option and a prohibition against shaking or
11 blowing the dust from the clothing.

12 CHAIRMAN THIBODEAUX: Second?

13 MR. JONES: Second it.

14 CHAIRMAN THIBODEAUX: Walter. Any other
15 discussion or comments? All in favor of that motion
16 signify by saying "Aye."

17 (Chorus of ayes.)

18 CHAIRMAN THIBODEAUX: All opposed same?

19 (No response.)

20 CHAIRMAN THIBODEAUX: The motion carries.

21 MR. JONES: Before you dismiss them, I think
22 the subcommittee had one more recommendation about

1 competent persons. If, Matt, you could review that for
2 us, please?

3 MR. GILLEN: Okay.

4 M O T I O N

5 The motion that the work group took, and I
6 guess that we're requesting that ACCSH do as well, is
7 that ACCSH urge OSHA to return the competent person
8 requirement and responsibilities to the crystalline
9 silica proposed rule.

10 That's with the motion.

11 CHAIRMAN THIBODEAUX: All right. Do I have a
12 second?

13 MR. KAVICKY: I second it.

14 CHAIRMAN THIBODEAUX: Tom Kavicky.

15 Any question, comments? We discussed this
16 yesterday also at the presentation.

17 (No response.)

18 CHAIRMAN THIBODEAUX: None? All in favor of
19 that motion signify by saying "Aye."

20 (Chorus of ayes.)

21 CHAIRMAN THIBODEAUX: All opposed, same.

22 (No response.)

1 CHAIRMAN THIBODEAUX: The motion carries.

2 Gentleman -- oh --

3 MS. SHORTALL: Did the Committee want to go on
4 record about any general recommendation about OSHA
5 moving forward with this rulemaking?

6 (Discussion was held off the record.)

7 MS. BILHORN: Okay. Susan Bilhorn. Also move
8 that we encourage OSHA to move quickly through the
9 process.

10 MR. HAWKINS: Second.

11 (Pause.)

12 (Discussion was held off the record.)

13 M O T I O N

14 MS. SHORTALL: Susan Bilhorn moves that ACCSH
15 recommend that OSHA move forward expeditiously with the
16 silica rulemaking.

17 CHAIRMAN THIBODEAUX: Any seconds for that?

18 MR. HAWKINS: I second.

19 CHAIRMAN THIBODEAUX: Steve Hawkins seconds
20 it.

21 Do we have any discussion? All right. Motion
22 on the floor. All in favor of that motion signify by

1 saying "Aye."

2 (Chorus of ayes.)

3 CHAIRMAN THIBODEAUX: All opposed, same.

4 (No response.)

5 CHAIRMAN THIBODEAUX: The motion carries.

6 Mr. Perry, do you gentleman have any other
7 comments or questions of us before --

8 MR. PERRY: No. No questions other than we
9 thought we had a really informative, from our
10 perspective, a really informative discussion with the
11 Silica Work Group, and with the Committee yesterday.

12 And these are all very good recommendations.
13 We will seriously take them up. And appreciate the
14 Committee's very thoughtful concern, with looking at
15 the material for this rule.

16 So the Agency thanks you for your efforts.

17 MR. HAWKINS: Thank you.

18 CHAIRMAN THIBODEAUX: Thank you.

19 MS. SHORTALL: Could I add an historical note
20 here?

21 I have been an ACCSH counsel for longer than I
22 want to remember. And as far as I'm aware, this is the

1 first time the Committee has been asked to consider,
2 during one meeting, three completely different proposed
3 rules.

4 And I think it's just amazing that you
5 accomplished all of that during a very busy time.

6 CHAIRMAN THIBODEAUX: Thank you, sir.

7 MR. PERRY: Thank you.

8 MR. O'CONNOR: Thank you.

9 (Discussion was held off the record.)

10 CHAIRMAN THIBODEAUX: Okay. The next item
11 we're going to take up is the ACCSH work groups. And
12 we have copies for everyone. And the assignments have
13 been made.

14 And who wrote this?

15 (Discussion was held off the record.)

16 (Laughter.)

17 CHAIRMAN THIBODEAUX: All right. Diversity,
18 Women in Construction.

19 MS. SHORTALL: Do you want me to do it?

20 CHAIRMAN THIBODEAUX: Yes. Because I can't
21 read this handwriting.

22 MS. SHORTALL: Okay.

1 (Laughter.)

2 MS. SHORTALL:

3 Diversity, Women in Construction, Co-Chairs
4 Jim Tomaseski and Elizabeth Arioto.

5 Green Jobs in Construction, Co-chairs Susan
6 Bilhorn, Emmett Russell, Matt Gillen.

7 Silica and Other Construction Health Hazards,
8 Co-Chairs Dan Zarletti, Walter Jones, and Matt Gillen.

9 Multi-lingual Issues in Construction Safety,
10 Co-Chair Michael Thibodeaux, Jim Tomaseski, and Tom
11 Broderick.

12 Power Fastening Tool Nail Guns, Co-Chair Tom
13 Kavicky and Elizabeth Arioto.

14 Prevention by Design, Co-Chair Bill Ahal and
15 Emmett Russell.

16 Residential Fall Protection, Co-Chair Mike
17 Thibodeaux, Tom Kavicky, and Steve Hawkins.

18 Education Training OTI, Co-Chair Tom Shanahan
19 and Walter Jones.

20 (Discussion was held off the record.)

21 MS. SHORTALL: Did I miss one?

22 CHAIRMAN THIBODEAUX: No.

1 Okay. Did we have anyone sign up for the
2 public comment?

3 MR. BUCHET: We've got one on the sheet.

4 MS. SHORTALL: Mr. Chair, while Ms. Dickinson
5 comes up to the microphone to speak, I'd like to enter
6 into the record as Exhibit 21, the draft ACCSH Work
7 Group Assignments and Charges.

8 CHAIRMAN THIBODEAUX: All right.

9 (Discussion was held off the record.)

10 CHAIRMAN THIBODEAUX: All right.

11 Ms. Dickinson, thank you for coming.

12 MS. DICKINSON: Thank you.

13 I'm Debbie Dickinson, the Executive Director
14 for Crane Institute Certification. We provide
15 accredited certificate nationally for crane operators,
16 riggers, and signal persons.

17 And I'm very interested in a number of the
18 topics that have surfaced today, because clearly
19 certificate is something that is rising in importance
20 and emphasis in the industry, and a lot of the
21 questions that you are addressing today with regard to
22 PPE, medical logs, and what role that information plays

1 and requirements play in certification are questions
2 that we're fielding on a daily basis.

3 So I wanted to thank you.

4 We are also working on some minority-based
5 emphasis in our certification programs, and so the
6 Diversity Council perspective.

7 I mainly wanted to introduce myself, because
8 I'd like to come to you for information, understand
9 what you're doing, and be able to use as a resource for
10 the questions that we're getting and don't necessarily
11 have answers to, either.

12 So thank you for the opportunity to observe,
13 listen, and learn. And I look forward to finding out
14 more about what you're doing, and the decisions you're
15 making.

16 Thank you.

17 CHAIRMAN THIBODEAUX: Thank you. Thank you
18 very much.

19 Is there anyone else who maybe didn't sign up
20 but wishes to make a public comment before the
21 Committee?

22 (No response.)

1 CHAIRMAN THIBODEAUX: Okay.

2 (Discussion was held off the record.)

3 CHAIRMAN THIBODEAUX: Tom, you had, from
4 yesterday you had a presentation to make for us?

5 (Discussion was held off the record.)

6 MR. SHANAHAN: All right.

7 Okay, so just following up from yesterday,
8 hopefully we can -- oh, I think I got it here
9 already -- wanted to -- honest to Pete. Where's my
10 little guy? Here he is. All right.

11 To share with you, you know, just some visuals
12 here to kind of help this a little bit. Like I said,
13 yesterday we got into it a little bit sooner than I was
14 ready.

15 But I wanted to share just some pictures and a
16 couple of things, just so we know what we're talking
17 about.

18 The residential roofing fall protection, and
19 the current compliance directive allowed slide guards
20 to be used without first having to establish greater
21 hazard or infeasibility, and then writing a
22 site-specific fall plan.

1 This applies in a narrow set of circumstances
2 where workers can be protected using slide guards as a
3 minimal level of protection.

4 I think we've kind of established that. But
5 just to -- and then in particular here's what it says.
6 On roofs with a ground eve height of 25 feet or less, a
7 slope greater than 4 and 12, which is about 15 degrees,
8 to 6 and 12, is 22-1/2 degrees, slide guards, which are
9 roof jacks with 2 x 6 planks installed the entire
10 length of the eve.

11 And then no trail, up or down, or material
12 stack within 6 feet of the rake head, which is that
13 open edge of the roof. And for those of you who are
14 not familiar, I'll show you a picture in a second.

15 And there are a number of other requirements
16 as well I won't get into. But just those are the basic
17 ones that I think it really addressed the fall issues
18 that we're talking about.

19 Then on slopes greater than 6 and 12, up to
20 and including 8 and 12, 30 degrees, the same above
21 requirements are required.

22 And then additionally you've got slide guards

1 installed every 8 feet, going up the roof, at the work
2 areas.

3 Okay. So here is what it looks like, here is
4 what basically what a steep slope or a roof would like.
5 A steeper slope, 6 and 12 to 8 and 12. But you see the
6 eve guard all along the eve there, and then additional
7 slide guards, as you move up the roof.

8 And that line to the right there is -- and
9 that's how we showed on our videos and all of our
10 training materials too, is that you, you know, even
11 draw a line down, so that you know that workers are not
12 to stack materials in that area, or ascend or descend
13 the roof in that area.

14 And the whole purpose of that is to keep them
15 away from that rake edge, and that open edge there.
16 It's what's known as the rake edge.

17 Any questions about that? Just so we are all
18 on the same page? Is that clear as it can be? Okay.

19 So here's a typical 4 and 12 roof, just to
20 kind of give you a sense of slope, here. So that
21 initial -- just the eve guard goes on, you know, above
22 4 and 12, this 6 and 12.

1 So I guess I think it was 15 degrees or 22
2 degrees. And you can see these, 4 and 12 and 6 and 12,
3 and at least in our industry is considered walkable
4 roofs.

5 And I think you can kind of see from here why
6 that would be the case. Maybe many of us wouldn't want
7 to be walking on a roof like that, but for those people
8 who do this on a daily basis, that's what it looks
9 like.

10 And then here's a steep roof, with actual
11 slide guards in place. Again, get the sense of how
12 they do that. And of course, you could even see a
13 rope -- coming down off the roof there.

14 So again, on a steeper slope roof, this is
15 what we would recommend as well.

16 So I wanted to add a couple comments that I
17 received recently. I had written an article in our
18 magazine, Professional Roofing, about this whole issue,
19 asked for information, and actually put a questionnaire
20 together, which I got a tremendous amount of responses
21 from.

22 This particular person wrote me a letter,

1 wrote me this e-mail written note, and says, "Thank you
2 for your article. Wanted to add to the logic of
3 keeping 3.1. In effect, my installers are union
4 journeymen, and are very safety conscious.

5 "Having said that, they are very confident in
6 the use of slide guards. Their confidence comes from
7 years and multi-decades of utilizing this method,
8 without mishap.

9 "The use of ropes causes tripping hazards.
10 Tripping on a sloped surface multiples the possibility
11 of injury.

12 "Additionally, we have had some near disasters
13 when safety ropes became entangled around stacks of
14 shingles, bundles, rolls of felt stored on the roof.

15 "Thank you for what you're doing."

16 And in particular, if you can remember back to
17 that picture of that roof, of you know, the 4 and 12 to
18 6 and 12, you get a sense of where those ropes are
19 lying on the ground. And that's where these things
20 come from, because they're lying down, versus when
21 you're on steeper roofs, and the ropes are in a much
22 different orientation.

1 In addition I had one contractor -- and what I
2 try to do is take two of the comments of the many
3 comments that kind of encapsulate these opinions. He
4 feels they're very effectively when properly used.

5 "If the option is taken away, I believe it
6 will only encourage using nothing at all by many
7 companies that don't go to the expense of PFAs for
8 their workers. Also too many ropes on the lower slope
9 job, where walking around is relatively easy can cause
10 more hazards. In other words, more tripping hazards."

11 You know, so one of the things that struck me
12 as I was thinking about this, you know, when I teach
13 the OSHA and ten and 30-hour class, I always start the
14 class out with this statement, here.

15 Because we talk about the Act, you know, to
16 assure safe and healthful working conditions for
17 working men and women.

18 What's so important about that, as I talked to
19 roofing contractors and foremen and workers, is that I
20 want them to know that what we're about is doing just
21 that.

22 And of course, that's I think what we're about

1 here, as well. You know, the rest of that paragraph
2 goes on to talk about in creating standards and
3 training, all of those things that support this
4 happening here.

5 And so I want you to know that from me
6 personally this is a really important issue. You know,
7 we've got a tremendous amount -- NRCA represents 35
8 hundred roofing contractors in the United States. And
9 the do about two-thirds of all the dollars spent in the
10 industry.

11 However, if you look up the SIC code, there's
12 about 35 thousand roofing contractors in the SIC code.
13 So that ten percent that we represent are doing, you
14 know, two-thirds of the dollars spent in roofing.

15 But that means 90 percent of the contractors
16 listed out there are not represented necessarily by
17 NRCA -- I mean, we represent the entire industry and
18 try to fight on their behalf, but they're not
19 necessarily members.

20 And that's because these guys are small, small
21 contractors. Three employees, what have you. But if
22 you multiply, you know, 35 thousand times three

1 employees, or so, per company, you're talking well over
2 100,000 workers.

3 So it's a big deal in terms of exposure out
4 there to falls. Very, very, very important, and
5 something, like I told you, I recognize, and I'm really
6 very, very concerned about, as we, in essence, take an
7 option away.

8 The number of options that we have available
9 to us for fall protection, as you know, are very few.
10 And what I hear overwhelmingly from our members, and
11 what I feel after 21 years of doing this, is that if we
12 take that away, we dis-encourage safety, and in a group
13 of people who don't know about this, you know, who
14 don't deal with OSHA, who don't see OSHA.

15 And we have to do everything we can. I've
16 been trying over the years, just to raise that up.

17 I can tell you, and like I said, in the 20
18 years, 20 years ago it was very different in terms of
19 fall protection for roofing. Very, very different.

20 We, yeah?

21 MR. BUCHET: Excuse me. Are you going to go
22 on much longer? Because we may have two more comments

1 to get in, and --

2 MR. SHANAHAN: Okay. No, I'm finishing up,
3 Mike --

4 MR. BUCHET: I believe that the Chairman
5 wanted to suggest that this be worked out in the work
6 room?

7 MR. SHANAHAN: Which I think would be great.
8 I mean, so, you know.

9 CHAIRMAN THIBODEAUX: Okay. That was going to
10 be one of my questions, is you know, it would have been
11 nice to have this Tuesday, when we had our meeting, and
12 discuss it there, and then have, I think we had ten
13 members of the Committee there.

14 MR. SHANAHAN: Yeah.

15 CHAIRMAN THIBODEAUX: Do you have any
16 objection as to making this presentation at our next
17 meeting also?

18 MR. SHANAHAN: Heavens, no. And you know,
19 Mike, the only thing that concerns, the only reason I'm
20 actually bringing here, is because of the imminence of
21 the recision, and having OSHA create or draft or craft
22 its compliance directive, that it consider this.

1 And that's the only thing that I'm concerned
2 about. Because the timing is more important right now.

3 But continuing working on it, absolutely.

4 MR. BUCHET: I believe that in fairness to
5 everybody here, big presentations like this are
6 usually -- the Federal Register, so that we can get the
7 public involved in the hearing as well.

8 And certainly booking for this
9 presentation -- but I believe the work group Co-Chairs
10 have made the invitation to bring this material to the
11 work group, and that's probably where it needs to be
12 worked on, as a contribution to their recommendation to
13 the Full Committee.

14 MS. SHORTALL: Mr. Shanahan, what I could do
15 also is enter this into the record, so it will be here,
16 ready for you to do it at the next work group meeting
17 too. So.

18 MR. SHANAHAN: Mm-hmm.

19 (Discussion was held off the record.)

20 MR. SHANAHAN: Well, I mean, yeah. You know,
21 the main thing is the question I just asked. I mean, I
22 don't know what the procedure is for Mike or Sarah, you

1 know, Michael.

2 But like I said, my concern is that ACCSH
3 members, the fact that this thing is going, probably
4 happen before the next time we meet.

5 So that being the case, I'm concerned about
6 the consideration. So that was the question.

7 M O T I O N

8 CHAIRMAN THIBODEAUX: Do you have a motion to
9 make to the Full Committee?

10 MR. SHANAHAN: Yeah. Like I just asked, I
11 said, so that I just wanted to ask the question, move
12 that we ask OSHA to consider -- I said it nicely
13 before, you know, the slide guards, as, let's see, what
14 did I say?

15 As a craft of its new compliance directive for
16 residential construction, that it consider including
17 the option of slide guards used in certain limited roof
18 and re-roof repair operations.

19 MR. KAVICKY: Okay. Is that in lieu of fall
20 protection? In lieu of personal fall risk?

21 CHAIRMAN THIBODEAUX: Hold on just a second.

22 MR. SHANAHAN: So --

1 CHAIRMAN THIBODEAUX: It's your motion, Tom.

2 MR. SHANAHAN: Oh. So, I mean, to answer your
3 question, I don't know about in lieu of fall
4 protection. But in terms as another option in addition
5 to PFAs, guard rails, and safety nuts.

6 CHAIRMAN THIBODEAUX: Okay.

7 Do we have, on Tom's motion that we have now,
8 on the floor, do we have a second?

9 (No response.)

10 CHAIRMAN THIBODEAUX: No second?

11 MR. JONES: I second it.

12 MS. ARIOTO: I'll second it.

13 CHAIRMAN THIBODEAUX: Second for Mr. Jones.

14 Do we have any questions, comments, discussion?

15 MR. RUSSELL: Yeah. I just want to comment,
16 and I do appreciate you doing the presentation, Tom,
17 because of yesterday I wasn't sure what a slide guard
18 was.

19 And even today I'm a little leery about voting
20 on a motion for which I really don't have enough
21 information to make an accurate judgment.

22 MR. AHAL: Mike?

1 CHAIRMAN THIBODEAUX: Yeah?

2 MR. AHAL: It's Bill Ahal. There seems to be
3 maybe a little confusion as to whether or not the slide
4 guards are actually going to be removed from available
5 use, or prohibited, if they are.

6 I don't know. And I guess maybe that's
7 interpretation. But perhaps we might consider amending
8 the motion, so that they don't get removed, if that's
9 the point that's trying to be made?

10 Because I think there's some confusion as to
11 whether or not they're actually going to be removed, as
12 a possibility. I'm not sure. I don't know.

13 MR. BUCHET: You'll have to recall Mr.
14 Connell's discussion of where slide guards fit into the
15 standard yesterday. We can certainly try and catch him
16 if here's here, and he can come back and restate it.

17 It's currently not being discussed, removing
18 slide guards from the standard.

19 MR. JONES: I thought what he said was they're
20 going to go back to --

21 MR. BUCHET: We're going back to the language
22 of Sub-part M, the --

1 MR. JONES: And in Sub-part M, slide guards
2 are not listed.

3 MR. BUCHET: They're not prohibited.

4 MR. KAVICKY: They're not prohibited --

5 MR. BUCHET: They're not prohibited.

6 MR. KAVICKY: You can use them.

7 MR. BUCHET: They're not listed in certain
8 ways. You would have to get all the way through the
9 matrix that Mr. Connell went over to get them, and then
10 demonstrate that they were the next best effective
11 method, after you proved the infeasibility of a certain
12 other number of steps.

13 So they're not prohibited.

14 MR. JONES: Thank you.

15 CHAIRMAN THIBODEAUX: Susan?

16 MS. BILHORN: Susan Bilhorn. And we don't
17 work residential, so I'm having a little bit of a
18 challenge. And I really appreciate Tom's bring this
19 forward.

20 I guess I have two questions. One is, do we
21 have any idea what the timing really is to remove that?
22 If it is imminent, you know, I guess that would be A,

1 you know. And if it -- well, it's three questions.

2 If it's removed, will there be a common period
3 for the removal, and on what basis? The third. And on
4 what basis would it be removed?

5 So what is the consideration that OSHA has
6 gone through to decide that the removal was necessary?

7 CHAIRMAN THIBODEAUX: If I could -- Mike
8 Thibodeaux -- give you the background. Back in January
9 of '08, almost two years ago, this Committee
10 recommended to OSHA that they withdraw the interim fall
11 protection standard.

12 No action has been taken by OSHA since then.
13 You know, indications were they were considering doing
14 that shortly; however, no time line has been set, to my
15 knowledge.

16 And --

17 MR. KAVICKY: We're working on it.

18 CHAIRMAN THIBODEAUX: And that's all we've
19 got. And, you know, that's why I think that from what
20 we said earlier about the presentation and other
21 comments from folks, although your letters, you know,
22 are very effective, on what you said about slide

1 guards, you know, is probably appropriate for the fall
2 protection work group to bring that to the Full
3 Committee, and say, "Hey, we've seen all of this and
4 here is what we think." Period.

5 MS. BILHORN: Sarah, a question to you.

6 MS. SHORTALL: Yes?

7 MS. BILHORN: To remove the interim, I guess,
8 so you're saying there's an interim, what process would
9 be --

10 MS. SHORTALL: Is a directive --

11 MR. BUCHET: There is a fall protection
12 standard.

13 MS. BILHORN: Mm-hmm.

14 MR. BUCHET: It has a paragraph dealing with
15 residential construction.

16 Many years ago, the industry came and said,
17 "The technology doesn't allow us to do a lot of this
18 stuff very quickly. Can we come up with a series of
19 enforcement techniques or special equivalence or
20 alternatives to what's in the standard?"

21 That requires us to read through STD 3.1,
22 which is the affectionate name for it. It's been

1 renumbered twice since then.

2 And to analyze categories of work, the
3 definition of residential construction.

4 And narrowing it very quickly, there is a
5 group of work called "Group For Activities," anything
6 Mr. Shanahan's talking about.

7 And it allows, without a plan, written or
8 otherwise, to install slide guards as fall protection.
9 The removal of that document -- when I'm here, Noah,
10 you can jump right in -- the history of where we are
11 with the STD and the effect of removing the STD --

12 MR. JONES: And a time line on when it might
13 be removed -- the Group For Activities and where it
14 places the use of slide guards.

15 MR. CONNELL: What's the question, again?

16 (Laughter.)

17 MR. JONES: Well --

18 MR. BUCHET: And what effect does that
19 have --

20 MR. JONES: And if it's not going to be done
21 in the next few months, we could kick this back to the
22 fall protection committee, for them to review and come

1 up with a recommendation.

2 So that's kind of what we're --

3 MR. CONNELL: Well, I was going to say that
4 one simple idea would be to say to not finalize the
5 group for decision until the next ACCSH meeting --

6 MR. JONES: That's very --

7 MR. BUCHET: The Committee is considering
8 making motion different than what they've made in the
9 past.

10 MR. CONNELL: Well, the time line is we're
11 very far along in the process, but we aren't quite done
12 yet. The last part of the process internally is where,
13 as with all directives, we send them to the regional
14 administrators, our regional administrators, to review
15 and comment.

16 And we typically give them two weeks to do
17 that. So we're still a little bit away from finishing
18 it.

19 Now if the next ACCSH meeting --

20 MS. SHORTALL: February.

21 MR. CONNELL: Yeah. If the next ACCSH meeting
22 is in February, hopefully it will be out before the

1 next ACCSH meeting.

2 But that's, as you know, it's always difficult
3 to predict these things. But hopefully it would be out
4 before then.

5 MR. JONES: Matt, what was your suggestion?

6 MR. GILLEN: I wasn't making a motion. I was
7 just suggesting that was one way to think about it.
8 But it's up to you, if you want to make a motion on it.

9 MR. BUCHET: And there are some
10 considerations --

11 MS. SHORTALL: Yes, we do. Mr. Shanahan has a
12 motion. Do you want to withdraw your motion and do a
13 substitute? Or.

14 MR. SHANAHAN: Yeah.

15 MS. SHORTALL: Okay.

16 CHAIRMAN THIBODEAUX: Motion's withdrawn.

17 MR. SHANAHAN: So then, withdrawing the
18 previous motion, and inserting what --

19 (Laughter.)

20 MR. GILLEN: Do you remember what you said
21 last?

22 (Discussion was held off the record.)

1 MR. SHANAHAN: So we're not finalizing Group
2 Four until after the next ACCSH meeting.

3 MR. BEAUREGARD: Can I interject for just a
4 moment? Because I'm getting confused now.

5 This full group over a year ago, I think
6 recommended to OSHA to rescind the STD. And it sounds
7 like now we're saying we want to go back on that, and
8 we want you to delay rescinding the STD, which includes
9 Group Four.

10 Is that what you're asking OSHA to do? I'm
11 not sure what we're being asked to do, here.

12 MR. SHANAHAN: Well, I think the suggestion
13 that I'm taking is putting forward is that it has
14 nothing to do with the first three, just Group Four --

15 MR. BEAUREGARD: I understand that, and you
16 can make that motion. But I think our original motion
17 was to ask OSHA to rescind the entire document. It
18 wasn't to rescind sections of the document.

19 So I think you're going to have to make that
20 clear in your motion, if that's what you want to do.

21 And I also don't know how that's going to
22 affect OSHA, seeing that I think we heard that they're

1 just about to the point where they're sending out
2 whatever their recommendation is to the RA's.

3 MR. CONNELL: Well, I believe it was in
4 September that ACCSH voted to recommend rescinding the
5 directive.

6 MR. BEAUREGARD: That's correct --

7 MR. CONNELL: So that was voted on, and we
8 received that recommendation. September of '08.
9 Actually it was the second time that ACCSH had
10 recommended rescinding it.

11 So we already have that recommendation.

12 MR. BEAUREGARD: Right. But I think what I'm
13 hearing -- and maybe I'm confused -- I think what I'm
14 hearing is there's a motion on the floor to ask you to
15 delay part of that, part of our previous
16 recommendation.

17 MR. JONES: That's exactly what's on the
18 floor.

19 (Discussion was held off the record.)

20 MR. ZARLETTI: So make your motion specific to
21 that, and --

22 MR. JONES: Then take a vote and let's go.

1 MR. SHANAHAN: Sarah, did I -- right?

2 MS. SHORTALL: Well, if your motion was this,
3 then you've done it:

4 Tom Shanahan moves that OSHA not rescind Group
5 Four of the STD before ACCSH deliberates on it at its
6 next meeting.

7 MR. BRODERICK: Mr. Chair? I just have a
8 quick question. Would another way to get to where Mr.
9 Shanahan wants to get, could an XTA request a variance
10 that would allow for the use of slide guards for his
11 very narrow scope of work?

12 MR. CONNELL: Well, just to clarify further
13 from yesterday, we are rescinding the directive.
14 That's what we're doing.

15 We're nearing the end of that process
16 internally. And like I said, I'm hopeful that we'll be
17 finished with it before February.

18 That decision was made by then Acting
19 Assistant Secretary, Jordan Barab. And we're
20 implementing it.

21 So I mean, you guys are free to recommend
22 whatever you want to recommend. And we're acting on

1 ACCSH's -- well, let me be more specific.

2 We considered ACCSH's recommendation from
3 September of 2008, as part of the process. You know,
4 we of course always consider ACCSH recommendations. It
5 doesn't mean we always do what ACCSH recommends; but it
6 was considered, like all ACCSH recommendations were
7 considered.

8 I mean, if you all are free to make whatever
9 further recommendations you want to make. But --

10 MR. BRODERICK: Chair? Well, my question,
11 Noah, was not to obfuscate this whole situation. My
12 thought was if the motion that could potentially slow
13 down the recision process, if it got any legs, if that
14 were not put forth, would another way for the NRCA to
15 be accommodated for this very narrow bit of work --

16 MR. CONNELL: What narrow bit of work is that,
17 just by the way?

18 MR. BRODERICK: Re-roofing, doing the tear-off
19 and reroofing residential --

20 MR. CONNELL: The narrow 70 to 80 percent of
21 all the roofing work that is done in the United States
22 every year? That narrow bit?

1 (Laughter.)

2 MR. BRODERICK: Well, in the grand scheme of
3 Sub-part M --

4 MR. JONES: I'd like to call a question.

5 CHAIRMAN THIBODEAUX: Tom? Hold on just a
6 second. Now we have a motion on the floor. All right?

7 M O T I O N

8 MS. SHORTALL: I have someone to second it --

9 CHAIRMAN THIBODEAUX: And it has not been
10 seconded. Is there a second?

11 MR. AHAL: Second it.

12 CHAIRMAN THIBODEAUX: Bill Ahal is a second.

13 MR. RUSSELL: No, I just have to ask a
14 question. I think a lot of us are struggling with
15 trying to understand the whole ball of wax that's being
16 discussed here.

17 I personally am very comfortable when a work
18 group has a complete discussion on a matter, brings it
19 forth to the Committee, and everything's clear. I
20 don't have a problem voting on that issue.

21 In this case, I'm getting mixed signals as to
22 whether the work group actually had an appropriate

1 discussion.

2 Noah's obviously saying that the discussion
3 has been had, and the ACCSH committee has given its
4 vote on this issue. And we're going back and forth.

5 I'm most comfortable where a work group comes
6 with a recommendation, where we act on that
7 recommendation. And I guess I'm struggling that we are
8 having more discussion than we should have on an issue
9 that should be being discussed in the work group.

10 CHAIRMAN THIBODEAUX: Kevin.

11 MR. BEAUREGARD: Emmett -- and that's what I
12 was getting back before. This actual issue was
13 discussed in a work group many, many times. And it was
14 brought forward to the full group, and the full group
15 made a vote, and recommended to OSHA that they rescind
16 the STD in its entirety.

17 And now it seems like there's a motion being
18 made, or the group is considering going back on that
19 decision and asking for another vote or a motion on
20 that.

21 And I think it's very confusing. I'm not
22 opposed to if somebody wants to make a motion. But I

1 think we actually did already recommend that the STD be
2 rescinded in its entirety over a year ago. And that
3 was a by product of the work group making that
4 recommendation to the Full ACCSH, and ACCSH then voting
5 on it.

6 And there were seven members, and I believe
7 Tom's group was one of them, that dissented from that
8 decision.

9 But I think now we're being asked to look at
10 that decision and question our decision and re-vote on
11 it. And I think it's very confusing.

12 (Discussion was held off the record.)

13 MR. RUSSELL: Emmett Russell. Again, I would
14 say that the work group needs to come to us with
15 whatever that recommendation might be, or what that
16 change might be.

17 And I'm struggling because I don't know --

18 CHAIRMAN THIBODEAUX: I understand what you're
19 saying. And I think what Kevin said is the work group
20 did come. In September. That all of these items were
21 discussed, that we made the proposal of the
22 recommendation. ACCSH approved it, sent it on to OSHA.

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M O T I O N

And we have a separate motion now that's on the floor, and it's been seconded, and we need to vote on whether or not the Committee wants to -- what was it?

MS. SHORTALL: Hmm, Tom Shanahan, you can't remember any? Tom Shanahan moved that OSHA not rescind Group Four of the STD before ACCSH deliberates on the issue at its next meeting.

CHAIRMAN THIBODEAUX: Okay. That's the one we have on the floor right now.

Any other questions, comments, before we call for a vote?

(No response.)

CHAIRMAN THIBODEAUX: All right. All in favor of that motion signify by saying "Aye."

(Chorus of ayes.)

CHAIRMAN THIBODEAUX: All right. Let me see some hands, then. All right, that's four.

MS. SHORTALL: Is it five?

CHAIRMAN THIBODEAUX: Five, sorry.

All opposed?

1 (Show of hands.)

2 MS. SHORTALL: Six?

3 CHAIRMAN THIBODEAUX: Six.

4 MS. SHORTALL: Any abstentions?

5 MR. JONES: Abstain.

6 (Discussion was held off the record.)

7 MS. SHORTALL: Do you want to vote again?

8 MS. ARIOTO: Yeah, let's vote again. I was
9 kind of confused on that vote --

10 MR. KAVICKY: I have a proxy for Mr.
11 Migliaccio. He would oppose.

12 CHAIRMAN THIBODEAUX: Okay. All right. So
13 that makes?

14 MS. SHORTALL: Five, seven, and one.
15 Would you like to have a re-vote? Or just
16 a --

17 MS. ARIOTO: Could I have a re-vote? I'm
18 terribly sorry --

19 CHAIRMAN THIBODEAUX: All right. All in favor
20 of that motion please raise your hands.

21 MS. SHORTALL: Okay. Oh, in favor of the
22 motion?

1 CHAIRMAN THIBODEAUX: In favor of the motion.

2 MR. AHAL: In favor of the motion.

3 (Show of hands.)

4 MS. SHORTALL: Okay.

5 CHAIRMAN THIBODEAUX: That's six.

6 Opposed?

7 (Show of hands.)

8 (Pause.)

9 (Discussion was held off the record.)

10 MS. SHORTALL: Emmett, did we get you?

11 MR. RUSSELL: Yeah, I'm opposed.

12 MS. SHORTALL: Okay.

13 (Discussion was held off the record.)

14 MS. SHORTALL: Six to six. And then Walter's
15 in abstention.

16 MR. JONES: Yeah, I abstained.

17 MS. SHORTALL: Then the motion fails.

18 CHAIRMAN THIBODEAUX: Okay. Motion fails.

19 MS. SHORTALL: Mm-hmm.

20 CHAIRMAN THIBODEAUX: Okay.

21 MS. SHORTALL: I'm sorry about this, but I
22 have to do this real quickly.

1 These are additional exhibits. Okay, as
2 Exhibit 4.2, I'd like to enter these all into the
3 record, at this point. As Exhibit 4.2, Pneumatic
4 Nailer Sequential versus Contact Trip Presentation by
5 Dr. Gary DeGeer.

6 As 4.3, Whites Safety Best Practices Pneumatic
7 Nail Gun Safety.

8 As Exhibit 4.4, NIOSH-supported research on
9 nail guns suggests next set presentation by Matt
10 Gillen.

11 As Exhibit 7.1, California OSHA Regulation on
12 Permits for Excavation Trenches, Construction
13 Demolition, and Underground Use of Diesel Engines in
14 Works and Mines. Section 341.1 through 341.5.

15 Division of Occupational Safety and Health
16 Policy and Procedure Manuals for California on
17 Construction Permits, as 7.2.

18 As 7.3, State of California Department of
19 Industrial Relations Annual Permit for Trenching
20 Excavation.

21 7.4, State of California Trenching Excavation
22 Permit Renewal Application Form.

1 As 7.5, State of California Letter to Annual
2 Permit Holders.

3 As 7.6, OSHA Investigative
4 Fatalities -- Trenches, 1999 through 2003.

5 As 7.1, BLS Census and Fatal Occupational
6 Injuries on Construction Trenching Fatalities, 2004 to
7 2008.

8 As 7.8, BLS CFOI Construction Excavation or
9 Trenching Cave-In Fatalities, 2003 to 2008.

10 As 7.9, NIOSH Preventing Worker Dust from
11 Trench Cave-Ins.

12 7.10, Barbara Mulhern, T.J. Lentz, Trenching
13 Part 1: Don't Dig Your Own Grave.

14 7.11, Mulhern and Lentz, Trenching Part 2:
15 Steps for Employers.

16 7.12, Trenching Insuring Shielding Association
17 Trench Shoring, and Shielding Do's and Don't's.

18 7.13, TSSA, Eight Good Reasons Why Trench
19 Shoring and Shielding Saves You Money.

20 7.14, TSSA, In an Introduction to Modern
21 Trench Shoring and Shielding.

22 As 7.15, NIOSH Trench Safety Awareness

1 Training, Revised February 2006.

2 As 7.16, OSHA Working Safely in Trenches Quick
3 Card.

4 As Exhibit 8.1, Kent Simonson, The Data
5 Digest, Volume 9, No. 39, November 26th through
6 December 3, 2009.

7 As Exhibit 12.2, Comments on the Proposed
8 Rules on Standards Improvement Project Three, by the
9 National Personal Protective Technology Laboratory,
10 NIOSH.

11 As Exhibit 15.1, Excerpts from the Transcript
12 of the ACCSH 124, 2008 Meeting.

13 As 15.2, Evaluating Fall Protections,
14 Anchoring Systems Presentation by Bob Mantuga, NAHB.

15 15.3, Guard Rail Systems Safety Net Systems,
16 and Personal Fall Systems, Presentation by Jeremy
17 Bethancourt, LaBlanc Building.

18 Exhibit 15.5, LaBlanc Building Company Cost
19 Analysis Comparison of Employee Falls.

20 15.5, Cascutis et al., Fall Protection Control
21 Observed in Residential Construction Sites, American
22 Journal of Industrial Medicine, 2009.

1 As Exhibit 15.6, Slide Guards in Roofing
2 Presentation by Tom Shanahan, NCRA, and ACCSH.

3 Yes. Quick thing. My suggestion at this
4 point to everybody is I'm going to send you the list of
5 exhibits for you to look and see if there is anyone
6 from your work group that you want to have put on the
7 ACCSH web page, in the folder. And you can vote on it
8 at the next meeting.

9 And for the future work groups who want to
10 have something being placed on the OSHA or ACCSH web
11 page, should bring two copies, so one could go into the
12 record, and one can directly go to DOC.

13 CHAIRMAN THIBODEAUX: Anyone else for public
14 comment?

15 (No response.)

16 CHAIRMAN THIBODEAUX: Okay.

17 Reminder that tentative meeting date's
18 February 8th, the week of February 8th in Washington,
19 here. And the next one, April the 12th, in Houston,
20 Texas.

21 //

22 //

1 Unless there is any other business, other than
2 travel safe and have a happy holiday season, the
3 meeting's adjourned.

4 (Whereupon, at 12:08 p.m. the meeting was
5 adjourned.)

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