



MEMORANDUM FOR: DOUGLAS L. PARKER
Assistant Secretary

FROM: Kimberly Stille, Director *Barton J. Kapanty* For
Directorate of Enforcement Programs

SUBJECT: Federal Advisory Council on Occupational Safety and Health
November 17, 2022, Meeting Minutes

Attached, for your certification, are the proposed minutes of the November 17, 2022, *Federal Advisory Council on Occupational Safety and Health* (FACOSH) meeting, held in the U.S. Department of Labor - Frances Perkins Building, in Washington, DC. FACOSH is governed by the Federal Advisory Committee Act, which requires the advisory committee minutes be certified by the committee chair within 90 calendar days, in this case no later February 15, 2023, of the meeting [§ 41 CFR 102-3.165(c)].

If you have any questions or need additional information, please contact Ms. Mikki Holmes, FACOSH Designated Federal Official, at (202) 693-2491.

Approved: *Douglas L. Parker*

Date: 2/14/23

Let's Discuss: _____

Date: _____

MEETING MINUTES OF THE FEDERAL ADVISORY COUNCIL ON OCCUPATIONAL SAFETY & HEALTH (FACOSH)

November 17, 2022

Mikki Holmes, Director of the Office of Federal Agency Programs (OFAP) and the Designated Federal Official (DFO) for FACOSH called the meeting to order on November 17, 2022, at 1:11 pm at the U.S. Department of Labor (USDOL), Frances Perkins Building, 200 Constitution Avenue, NW, Washington D.C. Due to COVID-19, members attended both in-person or via WebEx. The public was allowed to attend via WebEx in listen-only mode.

FACOSH MEMBERS:

(Note: Members attending via WebEx are marked with an asterisk.)

Chair: Douglas Parker, Chair and Assistant Secretary of Labor of OSHA *

Designated Federal Officer (DFO): Mikki Holmes, PhD, OSHA Director of Office of Federal Agency Programs

FACOSH Counsel: Jin Chong*

Labor Members:

1. **Raymond Baggett**, Professional Aviation Safety Specialists for employees in the FAA under DOT(AFL-CIO), (PASS)
2. **Mary K. Fletcher**, Safety and Health Specialist at the AFL-CIO-Congress of Industrial Organizations
3. **Doreen Greenwald**, National Executive Vice President for National Treasury Union
4. **Salvatore Insogna**, AFGE Local 948 National Council of Field Federal Locals*
5. **Steve Maiuri**, Hanford Atomic Metal Trades Council
6. **Manuel Peralta, Jr.**, Director of Safety and Health for the National Association of Letter Carriers
7. **Irma Westmoreland**, RN, National Nurses United*
8. **Gay Henson** was unable to attend but had Brian Kildee* attend.

Management Members:

9. **Josh Flesher**, Director of Safety and Health for the U.S. Fish and Wildlife Service within the Department of the Interior
10. **Jayne Hobson**, representing the DASHO of the Tennessee Valley Authority
11. **Laura Macaluso**, Force Safety and Occupational Health Director for the Department of Defense*
12. **Calvin Mather**, Chief of the Safety, Health, and Environmental Management Branch of the Agricultural Research Service
13. **Curtis Russell**, Industrial Hygienist with Office of Environmental Health and Occupational Safety with the Social Security Administration

14. **Rafael Sepulveda**, Safety and Occupational Health Manager at Department of Defense in West Point*
15. **Grant Watson**, Institutional Safety Management Director at NASA*
16. **Richard “Rich” Wright**, Director of the Office of Safety, Health, and Environmental Management for the Smithsonian Institution

Special Agency Liaisons (SALs):

1. **Stephanie Brown**, Office of Workers Compensation Program Special Agency Liaison, Deputy Director for the Longshore Program within the Division of Federal Employees’ Longshore and Harbor Workers’ Compensation*
2. **Frank Hearl**, Special Liaison for FACOSH and Deputy Director for program for National Institute for Occupational Safety and Health (NIOSH) in the Department of Human Services
3. **Marika Litras**, Special Agency Liaison and Assistant Commissioner at the Bureau of Labor Statistics for the Occupational Safety and Health Statistics Office*
4. **Morris Thompson**, Director of the Office of Personnel Management*

OTHER PARTICIPANTS:

1. **Sheila Hall**, FACOSH Liaison and Program Analyst/Industrial Hygienist, OFAP*
2. **Jennifer Kim**, Director of Office of Health Enforcement (Presenter - OSHA’s Heat Enforcement Activities)
3. **Lana Nieves**, Supervisor, OFAP
4. **Gary Orr**, Program Analyst/Ergonomist with Office of Health Enforcement* (Presenter - OSHA’s Heat Enforcement Activities)
5. **Derrick Southerland**, Program Analyst, OFAP
6. **Jens Svenson**, Economist, Directorate of Construction (Presenter – Construction Infrastructure and Safety)

Welcome and Introductions

Ms. Holmes introduced herself as the Designated Federal Officer and the Director of the Office of Federal Agency Programs (OFAP), welcomed everyone and had everyone in the room and on-line introduce themselves. Ms. Holmes then turned the meeting over to Assistant Secretary Doug Parker to explain his vision.

The Chair’s Vision and Comments

Assistant Secretary Doug Parker introduced himself, welcomed everyone, thanked them for their participation, and noted FACOSH last met in 2015 and a lot has happened since then.

COVID-19 continues to be a threat, but significant progress has been made. Mr. Parker explained what OSHA had been doing about COVID-19. OSHA learned about how it can and should work better with other federal agencies. Mr. Parker said that OSHA is in the process of

finalizing a permanent rule for COVID-19 in healthcare and developing an infectious disease standard to be better prepared for future outbreaks.

Health and safety are fundamental values that people have. Federal agencies need to lead by example, including OSHA, by having a comprehensive safety and health management system. As a country, the concept of health and safety needs to be a core value in every workplace. OSHA worked closely with its field offices to make sure OSHA's field workers had what protections they needed. It is hoped that through collaborations of this advisory committee that we can get all federal agencies leading by example and making sure that attention is given to the health and safety of workers. Management leadership is also necessary. OSHA wants to find ways where OSHA can help other agencies and support health and safety leadership. Employees have the most at stake and it is essential that we include their participation. OSHA is adding chapters to its own internal Field Safety and Health Manual, including employee medical health and wellness and infectious diseases, based on what was learned during the pandemic.

During the past administration, OSHA's hiring did not keep up with attrition, staff numbers decreased along with capacity. OSHA was at its lowest number of Compliance Safety and Health Officers (CSHOs) based on existing records. So, OSHA ramped up hiring during the past fiscal year. OSHA on-boarded 393 new employees. OSHA appreciates the additional funding it received from Congress for the past two years. OSHA has also increased the number of whistleblower investigators by about 60. Overall, OSHA has increased its staff from a little over 1,800 to almost 2,100. OSHA is meeting its goals to hire a greater diversity of workers and OSHA is working on an apprenticeship program to attract employees that may not meet the standard qualifications. Inspections are on the rise. In fiscal year 2019, OSHA conducted 24,000 inspections and in fiscal year 2020, OSHA conducted more than 31,000. Whistleblower inspections are increasing and OSHA has hired a permanent director in charge of the Whistleblower Directorate. OSHA has filled all its SES positions except for one.

In February, OSHA formed a National Advisory Committee for Occupational Safety and Health to give feedback and advise OSHA in framing its key campaign and key efforts.

In April, OSHA launched a National Emphasis Program (NEP) – Outdoor and Indoor Heat-Related Hazards that looks at more than 70 higher-risk industries for heat illness. OSHA's target was 400 heat inspections during the fiscal year and OSHA did more than 1,600. OSHA has a goal to do outreach on heat hazards. OSHA is working on a heat illness prevention standard. OSHA wants feedback from its stakeholders and the public on how heat hazards can be better addressed.

OSHA is looking at developing rulemaking for workplace violence especially in healthcare and social assistance settings. This will impact many federal workplaces.

OSHA is evaluating whether the medical protection benefits for lead need to be revised.

Suicide is a major cause of death among working age adults. Suicides account for 5.4% of all workplace fatalities in 2020. OSHA is creating more resources for outreach on prevention and intervention of suicide. OSHA is also trying to open the communication between workers, employers, and unions about suicide in the workplace. OSHA is releasing a handbook on workplace stress and strategies to address suicide.

Through OSHA's Safe and Sound program, OSHA has reached out to thousands of employers on the need for a comprehensive health and safety management system. There are tools for this on OSHA's website.

OSHA has revitalized its labor liaison position in each region so that each region is working with labor organizations, worker groups, and community centers.

OSHA recently had a major worker voice summit to listen to diverse groups of workers about bad work conditions. It did not involve federal workers but was eye-opening.

Raymond Baggett was happy to hear about OSHA's emphasis on mental health, workplace violence, and worker engagement. Mr. Baggett thought more work was needed on the use of safety committees and how the committees effectively engage employees. He felt that there was a need to look at past committees to see what has been done and leverage the efforts. Mr. Parker agreed.

Irma Westmoreland expressed appreciation for the COVID-19 standard efforts because COVID-19 is not over and healthcare workers are still at risk. She also stated that at a facility in Augusta, GA, the employer mixes up COVID and non-COVID patients in the same assignment for nurses, increasing the chance of cross-contamination and exposure. Nurses need a permanent standard. They no longer get notified of exposures at the facility and though they sit on an environment and care committee or an injury committee, they may not see a report until three months later. When OSHA was enforcing the temporary standard, there were better protections. Employees were able to get information about PPE. Ms. Westmoreland expressed concern that OSHA had exceeded the time that it said it would complete the standard and wanted to know when it would be completed.

Mr. Parker responded that it is a long rule-making process, he understood the frustration, and OSHA wants to get a rule out that will withstand legal scrutiny or challenges and is trying to shorten the process.

Ms. Westmoreland hypothesized that the protocols changed not because of the case levels, it was because the Emergency Temporary standard expired and managers will not do it unless forced. She feels the standard is needed because workers have died.

Mr. Parker stated that OSHA still takes COVID seriously, it is a priority, and OSHA did more COVID inspections in fiscal year 2022 than in fiscal year 2021. OSHA wants to know when COVID hazards are in the workplace.

Josh Flesher commended OSHA for focusing on employee well-being and mental health. It would be great to see best practices from the federal agencies so we can learn from each other. Fish and Wildlife is also hiring and seeing a generational change in the new recruits. How do we convey information to them using technology, social media, and platforms so that it is relatable and understandable?

Mr. Parker said this is a good place to share best practices and see what other agencies are doing for mental health issues for federal workers. Working remotely can be isolating. How do managers keep an eye on the mental health of employees that telework or remote work?

Mary K. Fletcher agreed with Ms. Westmoreland about COVID-19 being a very real hazard for healthcare workers and hopes the standard comes out very soon. She stated we need to look at sharing best practices on how we do things for internal inspection processes and how they are shared with OSHA.

Mr. Parker agreed that sharing processes was a good idea and thanked everyone for their comments.

OSHA's Heat Enforcement Activities

Jennifer Kim and Gary Orr from OSHA's Office of Health Enforcement presented OSHA's enforcement activities related to hazardous heat exposures. The contents of their PowerPoint presentation, OSHA's Enforcement Efforts to Prevent Heat Related Illnesses is located in Exhibit 2.

Ms. Kim discussed the background of OSHA and heat, workplace heat illness statistics, the outreach efforts, stakeholder meetings, and the push from Congress and the President on the topic of heat. Ms. Kim and Mr. Orr's presentation stated 70% of all work-related heat illnesses occur within the worker's first week on the job so acclimatization is important to new and returning workers. OSHA's heat initiative was superseded by the OSHA Heat NEP, CPL 03-00-024, effective 4/8/2022. The NEP provides information on inspections related to heat hazards. Details of the NEP were discussed, including general duty clause citations and Hazard Alert Letters. Heat inspection resources include Chapter 4 of the OSHA Technical Manual. Heat priority days (80 degree F heat index or higher) inspections will include questions on heat prevention programs. OSHA will target industries with a history of high heat hazards. Construction, USPS, landscapers, and restaurants have already had citations. OSHA is looking at things such as but not limit to, heat, humidity, workload, PPE, duration of exposure, work conditions, acclimatization process, available cool water, breaks, employee training, and treatment if employees show signs, and hazard assessment of the hazard. The OSHA-NIOSH heat app for phones was discussed. Federal agencies did receive heat inspections and were issued notices and hazard alert letters.

Raymond Baggett asked what initiated heat inspections at federal sites and was told it was the same as the private sector.

Frank Hearl asked if the NEP was used with emergency responders responding to hurricanes on the Gulf Coast. Mr. Orr stated that he wasn't sure if heat was a primary hazard in the current hurricanes because the hurricane season happened so late this year. Mr. Hearl brought up that heat was a major issue in the Deepwater Horizon response. Mr. Orr agreed since it had happened during the hottest part of the year while wearing impermeable hazmat suits.

Manuel Peralta thanked NIOSH for putting together the Criteria for a Recommended Standard: Occupational Exposure to Heat and Hot Environments in 2016. The study that was put together had a lot of information that really has not been put into effect. He discussed that they have had 2,000 letter carriers that suffered heat injuries in the past five years and six deaths since 2012. Mr. Peralta explained how each died. OSHA's recommendations were not followed, there were no citations, and the employers did not change their behavior. The changes in behavior are because the union is pushing. Due to the pushing by the union, there was an extensive hearing. Mr. Peralta thought that when the Sturgill case ruling came out, it led to OSHA being hesitant to issue citations in case they will not stand. Mr. Peralta urged OSHA to continue to issue citations because it changes behavior. Mr. Parker expressed his condolences for the loss of the employees and explained that OSHA has re-evaluated and trained their teams on what evidence they need to collect in the process of putting together a case and what constitutes an effective prosecution of the General Duty Clause case for heat illness and failure to prevent heat illness. OSHA is still actively pursuing these cases. Mr. Baggett asked if the elements of a good heat case could be shared and Mr. Orr discussed that some of this is addressed in the NEP and some of it may be considered privileged and he would have to discuss it with the solicitors.

Jayne Hobson said that she was grateful for the smartphone heat app and that they are a big believer in wearable technologies with physiological monitoring and it is something that could be worked on as an organization.

A break was taken from 2:56 pm to 3:11 pm.

Federal Agencies' OSH Responsibilities, 29 CFR § 1960

Ms. Holmes discussed the Office of Federal Agency Programs mission and how federal agencies need to comply with 29 CFR § 1960. The contents of the PowerPoint presentation, Federal Agencies' OSH Responsibilities, 29 CFR § 1960, is located in Exhibit 2. Ms. Holmes discussed OSHA's mission, activities, staff, and statistics. Federal agencies have conducted 793 inspections in calendar year 2022, which now exceeds pre-pandemic numbers and a large percentage resulted in violations.

Ms. Holmes discussed how there is a higher standard for federal agencies under 29 CFR § 1960 and other differences between the private sector and federal agencies. Differences include having a designated agency safety and health officer, what an establishment is, creating certified safety and health committees (which reinstates the importance of safety and health committees and exempts them from unannounced inspections from OSHA), a budget that

outlines safety responsibilities, making sure federal employees have access to OSH information, and alternate and supplementary standards. 29 CFR § 1960 essentially requires federal agencies to assess hazards, self-evaluate and assess their safety and health programs, and to investigate whistleblower complaints.

In the past, FACOSH worked on training for different levels of employees at federal agencies and developed an SOP on how to approach training.

Federal agencies are required to submit injury and illness data to BLS and the annual report. 29 CFR § 1960 requires a listing of fatalities that have occurred at the agencies. Information on recommended practices and core elements of an effective safety and health program can be found on OSHA's website.

Salvatore Insogna asked if hazard abatement requires some coordination between GSA and an agency, and if so, how can we get better results from it? Ms. Holmes said that OFAP would be happy to assist with reaching out to a GSA partner.

Mr. Parker said that he would be happy to explore hazard abatement with our federal partners and OSHA's Enforcement Policy Office. He would like to know more about the problem.

Ms. Fletcher expressed her appreciation and expressed a need to learn more about best practices from each agency on internal inspection processes.

Mr. Hearl said that he could share with the group what they went through with labs in Morgantown, WV and Cincinnati, OH to get into the Voluntary Protection Program (VPP). It was a best practice example.

Calvin Mather wanted to know what training was available to federal agencies on 29 CFR § 1960 and Ms. Holmes said that the OSHA Training Institute (OTI) had a 6008 course that addresses federal agencies.

Mr. Flesher said the Fish and Wildlife Service had implemented a system that allows them to enter data in a user-friendly format agency-wide. They use Tableau to analyze the data and send it to the individual site letting them know their number one issue in the past year. Mr. Flesher would like a study to see if there is cost-effective technology or if an agency could try developing their own internal program. It would be good if many agencies could come up with a common standard. Fish and Wildlife determined that it was not cost effective to develop their own system because they couldn't make updates to the system fast enough.

Mr. Mather said that Agricultural Research Service was developing new policies and procedures for their agencies to set up safety management systems based on ISO 45001 standard. They developed their own internal inspection program using RGTS and slicing and dicing data using Tableau. They tried doing the off-the-shelf version but due to technological barriers instead went with an in-house version.

Mr. Baggett made a motion to have a subcommittee to look at the type of systems for tracking. It was seconded. Ms. Holmes reminded everyone that subcommittees can be made of staff members from everyone's agency. Ms. Holmes will reach out to all of the FACOSH members to see who is interested. Ms. Holmes will also send out the link for the SOP for training procedures that were created by FACOSH.

Construction Infrastructure and Safety

Jens Svenson spoke on how the Directorate of Construction was available to support FACOSH where needed to keep workers safe. The contents of his PowerPoint presentation, Construction Infrastructure and Safety, is located in Exhibit 2.

Due to the infrastructure bill that was passed and a climate change bill, there will be more construction projects around the country including with federal agencies. Construction work is hazardous. Not everyone is experienced at this type of work. OSHA has resources that can help, including OSHA's safety and health standards, safety and health programs, training, quick cards, references, training materials, and working with our federal partners. Half of OSHA inspections are in construction. OSHA can help with outreach events. Requests for OSHA's help is available for concerns of unsafe work conditions. OSHA has a state consultation program that is available to help private employers. OSHA is working on an initiative that focuses on falls, struck-by, electrocutions, and caught-in-between plus health hazards. OSHA's Safe and Sound Campaign is about changing the workplace culture and adopting a real commitment to safety and health. OSHA is launching an effort to lead by example, to show that the infrastructure projects can be done safely. VPP sites are examples of companies that have done the right thing and are profitable too. OSHA wants to get the resources where needed and to know where it can best help. Let OSHA know where you see problems and what kind of hazards need to be addressed. OSHA wants employers to implement comprehensive safety and health programs and does give penalty reductions to employers that have implemented the programs. OSHA asks FACOSH to spread the word that we have resources to help federal agencies and wants to know how FACOSH and OSHA can collaborate.

Mr. Insogna expressed concern that workers were being struck-by heavy equipment and receiving severe injuries, but OSHA does not have a standard to address it. Is the agency looking to develop a standard? Can the agency or the federal government use contracts to compel federally funded projects where heavy equipment is used to have rear-view cameras or presence sensing devices?

Mr. Svenson agreed that there were many controls out there and there had been regulatory effort in the past, but it had been dropped. He encouraged the Committee to identify what standards are deficit and advise OSHA.

Subcommittee Vote, Exhibits, and Adjournment

Ms. Holmes had a vote for forming the subcommittee that was discussed earlier and it passed with no votes against. Jin Chong moved the following documents into the record; today's

agenda for the meeting, the PowerPoint presentations (which included the presentations on heat enforcement, the federal agency program, and federal construction sites) and the meeting transcript.

Meeting Minutes. The certified minutes, for the November 17, 2022, meeting, will be available for public viewing in the OSHA Docket at <http://www.regulations.gov>, the federal e-Rulemaking portal (Docket No. OSHA-2021-0010), and on the FACOSH Webpage at <http://www.osha.gov/dep/facosh/index.html>. The meeting minutes will be entered into the record at a future meeting.

Mr. Parker thanked everyone for their input and for forming a subcommittee to explore existing practices and making it more transparent.

Mr. Peralta made a motion to adjourn the meeting and it was seconded by Mr. Mather. A unanimous decision to adjourn was granted.

EXHIBITS: Exhibits will be available in the OSHA Docket at <http://www.regulations.gov>, the federal e-Rulemaking portal (Docket No. OSHA-2021-0010).

Exhibit 1, Meeting Agenda

Exhibit 2, PowerPoint Presentation on OSHA's Enforcement Efforts to Prevent Heat Related Illnesses, 29 CFR 1960 Federal Agencies OSH Responsibilities, Construction Infrastructure and Safety

Exhibit 3, Meeting Transcript