

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

OSHA LISTENS MEETING:  
Department of Labor Auditorium  
200 Constitution Avenue, NW  
Washington, D.C.  
March 4, 2010  
Afternoon Session

1

2

3

4

5

6

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

7

DEBORAH BERKOWITZ: Okay, just briefly because

8

people may -- we may have some new people here for the

9

afternoon that weren't here in the morning and that is

10

-- first of all, thank you and welcome.

11

And I just want to go over just some ground

12

rules is you have to wear your badge at all times in

13

the Department of Labor. There is a cafeteria on the

14

sixth floor if you want to go up. If you want to go

15

somewhere else in the building, just ask one of our

16

staff who has one of these official looking badges and

17

they'll take you.

18

And we have a little timer on the -- your

19

table there because we're limiting comments just to

20

five minutes which is, you know, what we said in the e-

21

mails. When it turns to yellow, you have a minute so

22

you don't have to finish and then at red it means it's

1 five minutes. And then we have a short question and  
2 answer session afterwards.

3 So thanks so much for coming. I appreciate  
4 it. And we -- you know, Karen, do you want to start?

5 KAREN HARNED: Yes.

6 DEBORAH BERKOWITZ: Great.

7 KAREN HARNED: Well, thank you for the  
8 opportunity to share some of the key issues that small  
9 businesses face when trying to learn, understand and  
10 comply with OSHA regulations. Small business owners  
11 view their employees as family, and as a result, want  
12 to do all they can to ensure that their workplaces are  
13 safe.

14 I'm Karen Harned and I'm here on behalf of the  
15 National Federation of Independent Business. We are  
16 the leading advocacy organization for small business.  
17 Our typical member at NFIB employs 10 people and has  
18 gross sales of about \$500,000 a year.

19 Continued emphasis on compliance assistance is  
20 the best way to enhance and encourage the efforts of  
21 employers to identify and address workplace hazards.  
22 NFIB understands that crafting effective compliance

1 assistance tools requires time and money, but we  
2 believe that each dollar spent on prevention achieves  
3 far more to ensure worker safety than a dollar spent on  
4 the after-the-fact enforcement.

5 OSHA's compliance assistance focus in the  
6 second half of the previous decade corresponded with  
7 consistent and significant decreases in non-fatal  
8 workplace injury and illness rates. For that reason,  
9 we are concerned by the trend started in fiscal year  
10 2010 which moves resources away from compliance  
11 assistance towards enforcement, shifting -- including  
12 shifting 35 inspectors who are presently doing  
13 compliance assistance to enforcement activities.

14 NFIB is concerned that this will result in a  
15 "gotcha style" of enforcement by targeting small  
16 business owners who often serve as the dedicated safety  
17 officers for their business. Instead, OSHA should  
18 expand its compliance assistance programs and invest  
19 more resources in publicizing those programs to small  
20 business. OSHA should assure small business owners  
21 that they will not be targeted for enforcement by  
22 participating in compliance programs.

1           OSHA can make compliance assistance more  
2 effective by making sure that small businesses know  
3 what resources are available to them. And to that end,  
4 OSHA should continue with outreach but OSHA can also do  
5 some regulatory in-reach by taking steps to improve  
6 Agency understanding of small business.

7           Being a small business owner often means that  
8 you are responsible for everything and OSHA is not the  
9 only regulator in small business. While ignorance of  
10 laws and regulations is no excuse, OSHA also must not  
11 abdicate its responsibility to American workers to  
12 educate employers of all sizes and levels of  
13 sophistication on their legal obligations.

14           A business owner looking for information on  
15 how to comply with applicable regulations who visits  
16 the OSHA website for the first time would most likely  
17 not know where to begin. A major hurdle to an OSHA  
18 compliant safe work environment is the inability of  
19 employers to easily identify which rules apply to their  
20 business. OSHA should fund, develop and implement a  
21 comprehensive authoritative compliance tool that walks  
22 small employers through OSHA regulations step-by-step

1 and in plain English.

2           Other recommendations include consolidating  
3 OSHA compliance resources into a single small business  
4 tool accessible by a conspicuous link on your home page  
5 and communicating OSHA regulatory obligations using  
6 easy to understand language rather than referring the  
7 business back to the Code of Regulations, Federal  
8 Regulations.

9           NFIB members have asked about penalty  
10 reductions and appealing OSHA citations. We are  
11 concerned that questions about penalties and appeals  
12 reflect efficiencies in the inspection and citation  
13 process itself. OSHA should ensure that inspectors  
14 take the time to adequately explain violations, penalty  
15 calculations and appeals to business owners at the time  
16 of inspection. An inspector should provide contact  
17 information for follow-up questions. Moreover, penalty  
18 reductions for employer size and good faith should  
19 continue to be employed to ensure well-meaning small  
20 businesses are not unfairly punished.

21           Engaging small business stakeholders in  
22 programs and initiatives begins in the rulemaking

1 process. When conducting SBREFA panels NFIB urges  
2 OSHA to include businesses with 20 or fewer employees  
3 as well as large or small businesses. Larger  
4 businesses can better afford the expense of a full-time  
5 safety supervisor to parse OSHA regulations, whereas  
6 most small business owners do this on their own. For  
7 this reason, a SBREFA panel that excludes small  
8 businesses with fewer employees results in a distorted  
9 picture of the impact of regulation on small entities  
10 as a whole.

11 NFIB appreciates the opportunity to provide  
12 these comments on behalf of small business. America's  
13 job creators are committed to making sure that their  
14 workplace is safe for their employees. However, small  
15 business owners are often the ones who must make their  
16 own way through the complex regulatory maze. The past  
17 decade shows that compliance assistance works and we  
18 urge OSHA to expand its efforts in this regard.

19 Thank you.

20 DEBORAH BERKOWITZ: Thank you, Karen. First  
21 of all, you had a big snowstorm so this is updated on  
22 the right date or whatever.

1 (Handing out documents to the panel.)

2 CYNTHIA HILTON: Thank you for permitting me  
3 to make these remarks on behalf of the Institute of  
4 Makers of Explosives. I serve as their executive vice  
5 president. We're called the IME. Our purpose is to  
6 develop safety and security standards for the  
7 commercial explosives industry.

8 This industry is heavily regulated by numerous  
9 federal, state and local authorities and with this  
10 perspective our comments today address the request to  
11 point out areas where OSHA's engagement is no longer  
12 necessary.

13 Last month OSHA terminated a rulemaking to  
14 amend its explosives and blasting agent standard at 29  
15 CFR 1910.109. The rulemaking was based in part on a  
16 petition filed by IME. These rules have not been  
17 substantively updated since they were promulgated in  
18 1974, and now they contain a number of outdated  
19 references, classifications and jurisdiction-related  
20 provisions that do not accurately represent the current  
21 regulatory environment best practice.

22 One of the major objectives of IME's



1 rulemaking petition was to update and streamline these  
2 regulations with particular attention to avoiding rules  
3 that duplicate those of other agencies. Regrettably,  
4 our concerns about overlapping jurisdictions are not  
5 resolved by withdrawing the rulemaking, simply  
6 withdrawing the rulemaking.

7           One of the main issues that frustrated the  
8 1910.109 rulemaking was opposition to OSHA's  
9 announcement that it had authority to regulate working  
10 conditions during the transportation of hazardous  
11 materials which includes explosives. This marked the  
12 first time that OSHA has expanded on its interpretation  
13 of authority granted the Agency through a drafting  
14 error that was made in 1990 to legislation  
15 reauthorizing the Hazardous Materials Transportation  
16 Act.

17           The drafting error created duplicative  
18 authority between OSHA and DOT over hazardous materials  
19 regulations arising from § 51.08 of that act. Prior to  
20 1990, the OSHA Safety and Health Act limited OSHA's  
21 authority to regulate employee health and safety where  
22 another federal agency exercised its authority over the

1 same subject matter. This so-called reverse provision  
2 was designed to ensure that important areas of federal  
3 regulatory authority are exercised while avoiding  
4 duplicative or conflicting requirements. This is not  
5 about not regulating.

6 A number of policy and practical problems  
7 result from the Agency's attempt to regulate the  
8 transportation of hazardous materials. First, § 5106  
9 is limited to criteria for handling hazardous  
10 materials. This section does not encompass the broad  
11 scope of authority OSHA announced in the 19 -- sorry,  
12 the 2007 rulemaking.

13 Second, as noted above, OSHA's hazmat  
14 transportation rules are woefully out of date. If  
15 these outdated rules were enforced, they would  
16 immediately put workers and the public in harm's way.

17 Third, DOT is constantly refreshing the hazmat  
18 regulations to cover new products and evolving  
19 international requirements. If OSHA is determined to  
20 share this jurisdictional spectrum the Agency would  
21 soon find its regulatory agenda driven by DOT as it  
22 attempts to keep pace.

1           Fourth, the Agency lacks the resources to  
2 enforce transportation related requirements. This is a  
3 conclusion that was reached by NTSB and the U.S.  
4 Chemical Safety Hazard Investigation Board.

5           And, finally, if OSHA stands down its  
6 enforcement posture in deference to DOT rules, states  
7 often look to OSHA to model their workers' safety  
8 requirements and so to the extent they adopt outdated  
9 transportation rules, the problems mentioned above  
10 would multiply.

11           In the preamble to the 1910.109 proposal, OSHA  
12 stated that it is important to avoid duplicative and  
13 conflicting regulatory requirements between federal  
14 agencies and that the Agency had no current plans to  
15 expand its transportation rules. And while we love  
16 those statements, the Agency's rulemaking proposed  
17 various requirements that duplicated, conflicted and  
18 exceeded those of DOT.

19           OSHA's withdrawing of the 1910.109 rule does  
20 not put an end to these concerns. After acknowledging  
21 that other federal agencies including DOT are already  
22 explosive hazards, OSHA stated that its rules for

1 transporting explosives and blasting agents will remain  
2 in effect.

3           So, OSHA's continued regulatory presence in  
4 the area of transportation has a substantive effect and  
5 if employers are forced to choose between OSHA's  
6 antiquated standards and DOT safety will suffer. We  
7 strongly urge OSHA to heed the concerns and objections  
8 of those who commented on the 2007 rulemaking and avoid  
9 duplicative or conflicting transportation related  
10 requirements. Should OSHA determine that DOT's  
11 regulations need to be augmented; we would suggest the  
12 Agency work with DOT to refine that department's rules  
13 rather than continue to advance a separate regulatory  
14 scheme.

15           The transportation of explosives and blasting  
16 agents has an enviable record of worker safety. IME  
17 members are constantly engaged in efforts to keep their  
18 operations and workers safe and workers in our industry  
19 are not well-served by OSHA's out-of-date rules nor is  
20 there any benefit to attempt to regulate the  
21 transportation of commercial explosives given DOT's  
22 expertise.

1           Thank you for your attention to these  
2 concerns.

3           SUBHASH VAIDYA: Hi, I'm Subhash Vaidya  
4 sitting in for Tom Slavin representing American Foundry  
5 Society. We would like OSHA to rethink its enforcement  
6 only approach and to adopt a more powerful vision for  
7 safety that we believe would save more lives.

8           Almost 20 years ago, the study of safety  
9 programs found that companies fell into three  
10 categories. The first was the leaders and compliance.  
11 Nearly 77 percent companies fell into that category and  
12 did only what was regulated.

13           The second strategy was catching up to leaders  
14 and about 16 percent of the companies fall into that  
15 category.

16           The third group was leaders and 7 percent of  
17 the companies fell into that one.

18           If I did it today, I believe I'm -- the study  
19 would show more companies have evolved into higher  
20 stages. In addition, it might show a fourth stage  
21 called sustainability where companies are committed to  
22 continuous improvement and use management systems to

1 maintain their safety processes.

2           To illustrate why it is important for  
3 companies and OSHA to look beyond compliance alone, I  
4 would like to use an analogy and an example. The  
5 analogy is from traffic safety.

6           A 1941 book from date on traffic safety by  
7 Maxwell Hasley contained a series of safety principles  
8 or traffic principles. Principle No. 1 was efficient  
9 automotive transportation, not accident reduction is  
10 the fundamental problem. Let me repeat, efficient  
11 automotive transportation, not accident reduction is  
12 the fundamental problem. Accidents like congestions  
13 are only indices of inefficiency.

14           When we think of improving traffic safety what  
15 often comes to mind are things like stop lights, speed  
16 limits, drunk driving laws and cell phone user  
17 restrictions. However, if we want to take a trip  
18 across the country by car along the safest route, it  
19 won't be along the one that has the most stop lights  
20 and the lowest speed limits. We'll go by interstates  
21 because that's the safest and most efficient way. And  
22 that was Hasley's point about efficient transportation.

1           That was the analogy. The example is a  
2 picture in the presentation. I believe you may have it  
3 in the handout. It shows the bar staggered along an  
4 assembly line using an inclined drag that makes parts  
5 more accessible on one side and you can lower them from  
6 the other side.

7           This is an example of good ergonomics with  
8 easy access to reduce bending and walking and also  
9 smaller part towards the -- that produce weight. But  
10 it's also an example of just in time delivery, improved  
11 inventory control, radio cycle time, lead manufacturing  
12 and better product quality.

13           Safety is a natural part of process  
14 improvement and process improvements can also end in  
15 safety.

16           Different companies are at different stages of  
17 safety maturity. Many companies are interested in  
18 going above and beyond compliance because it is the  
19 best way to do business. Erupting lower exposure  
20 limits than PEL is one example. The heights that  
21 safety prevents can reach, much higher than they can be  
22 required to reach.

1           So what about OSHA? Enforcement alone will  
2 not do it. Enforcement will always be there and will  
3 be needed to those motivated by simply compliance. The  
4 fact that good companies conduct audits is evidence  
5 that compliance cannot be taken for granted.

6           However, OSHA should also provide vision and  
7 motivation for those who desire to move beyond  
8 compliance. OSHA can do this by continuing or  
9 improving some current programs such as VPP,  
10 consultation and alliance.

11           The OSHA consultation program and AFS alliance  
12 has already helped many small foundries improve their  
13 health and safety. I cannot tell you today all the  
14 ways that OSHA can be a catalyst for safety improvement  
15 but, however, I can urge you to consider that goal as  
16 part of your vision and mission.

17           And I can suggest a couple of things for your  
18 consideration. The EPA has several performance  
19 recognition programs such as Energy Star, Climate  
20 Leader, Pollution Prevention that seem to be very  
21 successful in driving positive change above and beyond  
22 regulations. These could serve as a model. Other



1 initiatives could include best practice seminars and  
2 developing leading indicators.

3 In conclusion, a compliance only focus ignores  
4 the potential to advance safety and reduce risk above  
5 and beyond regulations. To use the traffic safety  
6 analogy, OSHA could not be content just to be the  
7 sheriff enforcing speed limits and stop lights, OSHA  
8 can save many more lives by promoting the development  
9 of better highways.

10 Thank you.

11 DR. DAVID MICHAELS: Thank you all very much.  
12 I think you've given us a lot to think about.

13 I want to actually relate two of these  
14 presentations to our earlier discussions. We heard a  
15 lot of people this morning talk about program standard  
16 and really thinking about risk going down OSHA  
17 standards, but to focus on what's going on in the  
18 workplace.

19 I'm wondering how small business would address  
20 that. I mean, Karen, you talked about the concerns of  
21 small businesses just to follow what OSHA requires,  
22 going through the CFR which is, you know, obviously, a

1 difficult task for someone who doesn't have the  
2 technical ability and is just -- you know, has a small  
3 number of employers.

4           But what about shifting that into thinking --  
5 to having the employer look at what the risks are in  
6 their workplace. Has that been tried in small  
7 businesses? What's your -- and has it been successful?

8           KAREN HARNED: Well, that's actually a really  
9 good question to which I don't -- I don't feel  
10 qualified to speak at this time. I mean, that would be  
11 something I'd want to go back and talk to our members  
12 about. I mean, I think it would depend obviously, on,  
13 you know, if they're manufacturing, I would guess, that  
14 the answer to that's more likely to be yes than maybe  
15 some other types of --

16           DAVID MICHAEL: We'd love to pursue it with  
17 you if you can --

18           KAREN HARNED: Okay.

19           DAVID MICHAEL: That would be great and  
20 helpful I think to us, thanks.

21           The issue though maybe is really reaching out  
22 to other employers that -- both in terms of small

1 employers and other large employers, how do we  
2 encourage them to do the things that the good employers  
3 are already doing? I mean, we find that a lot of  
4 employers don't even know about or consultation program  
5 which we fund. Obviously, those of you know, it's  
6 independent of OSHA, state run programs that we fund in  
7 a 90/10 match and employers often don't know about  
8 that. I mean, how do we -- how do we reach out to  
9 small employers? How do we get large employers to do  
10 the right thing like, as your employer does?

11 KAREN HARNED: Well, I mean, we've done some  
12 research in the past and it did indicate that most of  
13 the small businesses, I'd say two-thirds, received  
14 their information through trade publications and also  
15 just visiting with small business owners in their, you  
16 know, field. Oh, did you know about this requirement?  
17 Did you know about this service, that sort of thing?

18 Also, on consultation program, to the extent  
19 you all might be able to partner with some of the --  
20 those that are the workers' comp carriers. I know a  
21 lot of small business owners really rely on their  
22 workers' comp carriers to help them assess, you know,

1 workplace. You know, how their workplace is and the  
2 safety of it. And so that might be an effective way of  
3 getting a better reach there.

4 DR. DAVID MICHAELS: Debbie has pointed out,  
5 we actually -- for the first time in a number of years  
6 have increased the amount of money going into that  
7 consultation program. In the present proposal, there's  
8 a million more dollars in that to try to do more.

9 Now, we understand states have some difficulty  
10 expanding their programs; this is a state-based program  
11 but we're doing what we can to make those programs  
12 larger and more successful.

13 Did you have something?

14 RICHARD FAIRFAX: Yeah, actually, I have a  
15 couple of questions for Karen.

16 Kind of piggy-backing on what Dr. Michaels was  
17 saying in reaching small business, so in your, you  
18 know, with the work you do and everything, do you think  
19 going forward through trade publications and then tie  
20 it into the workers' compensation carriers in the best  
21 way to get out to -- to get information out, because  
22 that's what we're struggling with all the time is how

1 do we -- you know, how do we tell them what we're  
2 doing, what's available and everything?

3 Our experience is a lot of them don't go to  
4 the web page.

5 KAREN HARNED: Uh-huh. Right. Now, and I  
6 think that the web page, quite frankly, is still, you  
7 know, new for small business owners to look. Oh, I've  
8 got a, you know, question about any regulation not  
9 just, you know, OSHA, let me go to their website.

10 We are doing our best to let them know and  
11 help them navigate that. I'm not going to say those  
12 are the only ways, because I really do think, you know,  
13 the reason that everybody struggles with this is  
14 there's not a one-shot approach. Wouldn't we wish that  
15 there was? But, I do think that those are some -- some  
16 ways that we do know that they have contact with their,  
17 you know, their workers' comp carrier and they do --  
18 most of our -- most of our members do also have a  
19 membership with a specialty trade that can, you know,  
20 more easily identify and focus on these issues for  
21 them.

22 RICHARD FAIRFAX: Now, that's good and I think

1 that's helpful. I was -- and I liked your idea about  
2 maybe making sure our compliance officers when they  
3 visit a small business provide -- I think most of them  
4 do, but maybe we can reemphasize that, that if they can  
5 give them their card or something like that if they  
6 have questions they can call back.

7           And I also like the idea of, you know, maybe  
8 we -- I think we do need to give more on, you know, the  
9 legal responsibilities, their legal rights, penalties  
10 and issues.

11           But, one of the things I was wondering, is it  
12 -- would it be of more interest to a small business if  
13 they had a list of, you know, the top ten hazards in  
14 their industry that they could focus on or --

15           KAREN HARNED: Oh, yes, I mean, those lists  
16 are invaluable for a small business owner because it  
17 is, it's everything that can be as quick --

18           RICHARD FAIRFAX: Quick and easy.

19           KAREN HARNED: -- and as easy as possible.

20           And, so, yeah, they love tip lists and sheets  
21 and then that way they can really, you know, hone in.

22           CYNTHIA HILTON: Do you mind if I make a

1 suggestion? I'm so sorry, but building on the idea of  
2 the layered. I know that most of our members are small  
3 businesses. That shouldn't surprise anybody that --  
4 probably most industries, their members are small  
5 business.

6 But we tend to partner a lot with the Small  
7 Business Administration. That may be someplace you  
8 could reach out to push your information through them,  
9 cause we learn a lot of stuff through them.

10 DR. DAVID MICHAELS: That's right.

11 DOROTHY DOUGHERTY: Cynthia, can I just get a  
12 point of clarification, I guess.

13 So are you -- are you in agreement with OSHA's  
14 withdrawal of the explosives we're making or do you  
15 think that OSHA should have a separate standard for  
16 explosives?

17 CYNTHIA HILTON: Thank you, thank you so much,  
18 Dorothy for asking that. We -- the rule needed to be  
19 withdrawn. There were problems with it. But, just  
20 leaving the existing rules in place are still  
21 problematic because they're so out of date. We are  
22 going to supplement these comments with other comments

1 that will provide you with suggestions about how to go  
2 forward because we still have a very, very out-of-date  
3 rule which, as you know, I've only addressed the  
4 transportation part, cause you had a question about  
5 where you might not need to regulate. But you regulate  
6 far more than transportation.

7           But we're going to come forward. You've  
8 already invested a lot of time in that rule; we've  
9 invested a lot of time. We would like to see, you  
10 know, you -- we would all like to get to a place where  
11 we are embracing latest technology, latest -- I mean,  
12 we have devices that we use in blasting which are --  
13 save lives. And your rules don't even recognize that.

14           So we're really regulating -- I think if you  
15 had the response community out here, if you ask them,  
16 you know, some questions about what is industry  
17 practice and what your rules provide for, they would  
18 say we far prefer you to follow industry practice than  
19 what the rules say.

20           So we will be getting back to you.

21           DOROTHY DOUGHERTY: And then I think I'll  
22 follow-up with one for the panel. What do you believe



1 are the best ways for OSHA to shift employers from  
2 merely complying with the OSHA regulations to  
3 developing their own safety, health and environmental  
4 processes?

5           CYNTHIA HILTON: Well, I'll -- that's just  
6 what I said. We -- that's the purpose of our  
7 association. It's -- we handle very dangerous  
8 chemicals and our experience is if there is --  
9 something goes wrong, it tars the entire industry. So  
10 we have our own safety and health committee. We look  
11 at these things. We develop standards and -- and I  
12 think proof is in the pudding or, you know, whatever.

13           I mean, I think that we have a -- even when  
14 you withdrew your rule, you noted that the safety  
15 record of our industry simply doesn't justify you  
16 focusing resources when you have greater risks. So...

17           DR. DAVID MICHAELS: I have a question. How  
18 do you pronounce your --

19           SUBASH VAIDYA: Subash.

20           DR. DAVID MICHAELS: Subash. And you had --  
21 this was a very interesting study you described, the 77  
22 percent and the -- you know, the leaders. Often when

1 you talk to the different people in occupational, they  
2 say there are a group of companies that really aren't  
3 trying to get ahead for lots of good reasons, both  
4 economic and moral reasons.

5 SUBASH VAIDYA: Uh-huh.

6 DR. DAVID MICHAELS: But there are always the  
7 laggards.

8 SUBASH VAIDYA: Yeah.

9 DR. DAVID MICHAELS: How do you identify --  
10 and those are the people who we should be focusing our  
11 enforcement program. How do you target them? How do  
12 we figure out who they are? I mean, does the industry  
13 know? I mean, I assume they're not just laggards in  
14 safety and health. I'm sure they're laggards in  
15 environmental --

16 SUBASH VAIDYA: Yes.

17 DR. DAVID MICHAELS: -- and everything -- and  
18 technology. How do we know who they are cause that  
19 would help us rather than using injury and illness  
20 statistics that we know aren't so good?

21 SUBASH VAIDYA: Unfortunately, that's what you  
22 have between your hands, the injury and illness

1 statistics. And what we are saying is we need to send  
2 a better vision that compliance alone doesn't help or  
3 if we focus strictly on the regulatory matters that  
4 does not make us move forward. The challenges that the  
5 example showed, looking at traffic violations, same  
6 thing applies in business as well.

7           Any time an employee is off the job, it hurts  
8 everybody. We all recognize that and that's why, I  
9 mean, that's when you ask about, as a business, what we  
10 have been doing at least from Navistar side I can say,  
11 but we recognize that and we understand clearly the  
12 value of employee heading back to work.

13           So, any injury, whether it's off-the-job, on-  
14 the-job, makes no difference to us, it still hurts us  
15 when somebody's not there. And that's something OSHA  
16 doesn't go anywhere in terms of near misses, in terms  
17 of anything that happens off-the-job, cause it's --  
18 two-third of our life is outside. We have slips,  
19 falls, in the home a lot more than we have at work. So  
20 things like that we don't even get to.

21           So, when we -- what we need is help with some  
22 leading indicators. We also need help with some best

1 practices. That's something we don't get shared  
2 easily. And when you talk about leading companies,  
3 they use their data, they analyze their data and use it  
4 for making corrections or making changes.

5           And if I look into just in lead manufacturing  
6 or anything related to that, these principles help not  
7 only on operation side but those implements make life a  
8 lot easier for employee as well. And a lot of times we  
9 lose the focus of that and we shift for -- just  
10 strictly for compliance, then that is seen as a burden  
11 rather than processing, implement or rather than good  
12 for business.

13           KAREN HARNED: Well, and to follow-up on that  
14 and also answer your question, I mean, I think that the  
15 trick is that, you know, like so many things and like  
16 so much of what NFIB is always trying to express, you  
17 know, one size fits all is not going to work. I mean,  
18 it's just not realistic. And so to the extent you can,  
19 you know, have an understanding of what it means to  
20 have a manufacturing plant, for example, with 15  
21 employees. And what are the risks there and how can  
22 they be addressed in a way that is more -- that is

1 something that a person with 15 employees can -- can  
2 achieve, you know, that's not overly burdensome by cost  
3 or time commitment. I mean, those are the kinds of  
4 things that, you know, that distinction is important.

5           And following up on his point, when you only  
6 have 15 people and you've got one person out because of  
7 a work-related injury, I mean, that is a very, very,  
8 very big deal. And so, you know, it's -- it's in our  
9 interest, our -- those that we represent, small  
10 business, you know, and they very much view, as I said  
11 before, these people -- that's their numbers, I mean,  
12 they don't want to be, you know, putting them in harm's  
13 way.

14           So, again, things that make it easy for them  
15 to understand, easy for them to understand how they  
16 handle it and also, you know, recognize that one size  
17 fits all compliance is just -- it's just not going to  
18 work.

19           DR. DAVID MICHAELS: Thank you very much.

20           DEBORAH BERKOWITZ: Appreciate it.

21           And the next panel, I think there actually is  
22 Andrew Youpel, Robert Matuga and Tom Broderick. And

1 the panel on deck is Don Villarejo, Luzdary Giraldo and  
2 Peter Dooley. You can be ready to come up next.

3           ANDREW YOUPEL: Hi, my name is Andrew Youpel.  
4 I'm the safety director for Brandenburg Industrial  
5 Service out of Chicago, Illinois and also the VPP  
6 facilitator for the company.

7           I just have a few comments I want to make  
8 regarding Brandenburg's experience with VPP and mobile  
9 workforce and the Challenge Program and some SGE  
10 comments.

11           The employees of Brandenburg Industrial  
12 Service Company, one of the largest and most well-  
13 respected of demolition companies in the United States  
14 are extremely proud of our accomplishments of achieving  
15 VPP status subsequent to our participation in OSHA's  
16 Challenge Pilot Program.

17           In addition to our own efforts, we recognize  
18 that completion of this program will not have been  
19 possible without the assistance of our program  
20 administrator, the Construction Safety Council of  
21 Hillside, Illinois.

22           It is my belief that all construction

1 companies desiring to achieve VPP status of mobile work  
2 force, participate in the OSHA Challenge Pilot Program.  
3 Our mentor throughout the Challenge Pilot process, the  
4 Construction Safety Council, was instrumental in not  
5 only providing guidance for our successful completion  
6 of the program, but in helping us fine-tune our own  
7 existing program.

8           As you're well aware of being designated a VPP  
9 star company means that your safety program has  
10 exceeded the basic requirements set in place by OSHA as  
11 far as providing a safe and healthy workplace. That  
12 being stated, by completing the three stages of the  
13 Challenge Pilot Program, not only will your company be  
14 in compliance but you'll have the tools necessary to  
15 enhance your safety program, thus preparing you to move  
16 on to VPP and become a VPP company.

17           I'd like to mention that in our case the  
18 Challenge process not only helped us to identify our  
19 weaknesses in the area of employment -- employee  
20 involvement, but it provided us with ideas and the  
21 tools necessary to significantly improve that area of  
22 our safety program.

1           In addition, another area of our safety  
2 program that benefited greatly from our participation  
3 in both the Challenge Pilot Program and VPP is our  
4 subcontractor safety program.

5           The Challenge Program sets in place  
6 requirements that you review and monitor the safety  
7 programs of your subcontractors working on your  
8 jobsites. Three stages of the Challenge Pilot Program  
9 educate you on why the subcontractor safety is so  
10 important and how you can qualify and monitor these  
11 programs.

12           Because of this process, we discovered that  
13 some of our better subcontractors needed to address  
14 certain safety issues in order to actually qualify as  
15 an approved Brandenburg subcontractor. The majority of  
16 our subcontractors, when applicable, successfully  
17 addressed the concerns we had with their safety  
18 programs. A few decided that for whatever reasons,  
19 they did not care to address our concerns. Those  
20 subcontractors were subsequently removed from our  
21 subcontractor list and we no longer have a working  
22 relationship with them.



1           On the contrary, some subcontractors requested  
2 assistance in meeting Brandenburg's qualifications and  
3 standards and we did so successfully.

4           Developing a subcontractor qualification  
5 matrix was probably the most costly and time-consuming  
6 as far as all the Challenges matrix's are concerned.  
7 The creation of a scorecard, so to speak, was very  
8 involved as well as determining what criteria should be  
9 used for our subcontractors to meet or exceed.

10           Over the past several years we've continued to  
11 fine-tune and revise our subcontractor qualification  
12 process. Presently, the process involves a  
13 subcontractor's completion of a safety program,  
14 questionnaire, interview of the subcontractor's  
15 submitted safety documentation. So it's a safety  
16 program, OSHA logs, citation history, et cetera.

17           Our participation OSHA Challenge Pilot Program  
18 caused us to focus both on management and employee  
19 efforts at addressing safety and health areas and  
20 concerns. The process not only brought management  
21 employees together addressing safety concerns but it  
22 opened better working relationships all around.

1           We strongly recommend that the Challenge Pilot  
2 Program continue to be used as a tool to prepare  
3 companies for VPP mobile work force demonstration for  
4 construction application.

5           Additionally, I have a few comments regarding  
6 the VPP and the use of the Department of Labor special  
7 government employees called SGEs.

8           As you know, in order to qualify as an SGE,  
9 you are required to be heavily involved in your  
10 company's VPP program. You must possess both a certain  
11 level of safety related knowledge and experience when  
12 applying the SGE designation. In addition, there is an  
13 SGE application approval process and subsequent  
14 mandatory OSHA SGE training. Both are required prior  
15 to becoming an SGE.

16           After all is said and done, it is considered  
17 in any industry to be a feather in your cap if you have  
18 an OSHA SGE designation.

19           It is my belief that the use of SGEs is an  
20 invaluable tool for OSHA to use in auditing companies  
21 applying for VPP certification. Due to the fact that  
22 SGEs are directed to participate in VPP initial and

1 recertification audits for OSHA, they are well-versed  
2 in VPP requirements. Also, SGEs can bring their own  
3 unique knowledge, experience and perspectives to the  
4 table.

5 I am highly recommending that SGEs be approved  
6 or allowed to mentor companies participating in the  
7 Challenge Pilot Program. Presently there are  
8 designated mentoring organizations in each region. For  
9 example, in Region 5, the Construction Safety Council,  
10 Hillside, Illinois was our challenge mentor.

11 I would just like to thank Ms. Beverly Carrick  
12 (ph), Mr. Paul Sodom (ph), Mr. Tom Broderick who's at  
13 the table here for their patience, cooperation and  
14 expertise during the 18 months that they guided us  
15 through the Challenge Pilot Program as well as  
16 preparing us for VPP process. Their knowledge and  
17 working relationship with us, the Construction Safety  
18 Council we will continue to be a positive force in  
19 Brandenburg Safety Program.

20 As a final thought in allowing SGEs to act as  
21 mentors for the Challenge Pilot Program and/or VPP,  
22 should be considered an option. Assisting for SGE --

1 assistance from SGEs would help lessen the burden of  
2 OSHA personnel and thus, would undoubtedly increase the  
3 VPP programs throughout the country and the  
4 construction industry.

5 Thank you.

6 ROBERT MATUGA: Thank you. My name is Rob  
7 Matuga. I'm the safety director for the National  
8 Association of Homebuilders. And on behalf of more  
9 than 175,000 of our members, I would like to thank Dr.  
10 Michaels and the OSHA staff for giving us an  
11 opportunity to really come and have a good conversation  
12 specifically about the compliance assistance needs of  
13 small businesses, particularly in the homebuilding  
14 industry or the residential construction industry.

15 By way of introduction, our members are  
16 builders, remodelers, and trade contractors that build  
17 approximately 80 percent of the homes throughout the  
18 United States. We're known as the "voice of the  
19 Housing industry," and our mission of our members is to  
20 provide safe, decent and affordable housing for all  
21 Americans.

22 Most of NHB's members are really small

1 businesses. They're single family builders and trade  
2 contractors such as carpenters, masons, and  
3 electricians and most of them build less than 25 homes  
4 per year.

5           One of the things that I wanted to address  
6 specifically that was noted in the Federal Register  
7 notices, the question, "How can OSHA effectively reach  
8 high risk employers and employees with training,  
9 education and outreach?"

10           I guess you can define "high risk employees"  
11 or "high risk employers" lots of different ways. I  
12 think we've defined this as small businesses in our  
13 industry. And the reason why we've defined it as small  
14 businesses in our industry is that if you look at the  
15 data, NHB did a fatality study using the Bureau of  
16 Labor Statistics CFOI data which is the census of Fate  
17 of Occupational Injury.

18           And what our data found was not real  
19 surprising to us, but what we did find is that 84  
20 percent of the fatalities in our industry, the  
21 residential construction industry, occur with employers  
22 with less than 20 employees. This is really the small

1 businesses. Think about that for one second, 84  
2 percent of the fatalities occur in businesses with less  
3 than 20 employees.

4 If you break that down just a little bit  
5 further, nearly three-quarters of the fatalities in the  
6 homebuilding industry occur with businesses with 10 or  
7 less employees. So three-quarters of those small  
8 businesses are where the fatalities are occurring.

9 And if you look at the homebuilding industry,  
10 we're really made up of employers that have very few  
11 employees. So I guess the question is, how do OSHA --  
12 how does OSHA reach this particular segment of the  
13 industry?

14 I think there's really three things that OSHA  
15 must do and I think it has to do it in a collaborative  
16 effort to really reach these high risk employees. I  
17 think number one, we need to work collaboratively for -  
18 - to make sure that those employers understand the  
19 complex OSHA standards.

20 I think the second is, is we have to get those  
21 employers really focusing on the most significant risks  
22 and the most significant hazards.

1           And the third way to really reach out to meet  
2 the needs of these small businesses is to expand the  
3 training opportunities to really those private sector  
4 employers as well as employees.

5           Well, how do we do that? Let me just give you  
6 a few examples. When I started talking about the  
7 complex OSHA regulations, everyone knows what this is,  
8 this is the Code of Federal Regulations, lots of  
9 really, really good information in here, but it's  
10 sometimes very complex for small businesses in our  
11 industry.

12           Going back to 1997, before the alliance  
13 program, right around the time I believe VPP and some  
14 of the other sharp programs were introduced by OSHA, the  
15 homebuilding industry and OSHA sat down and came up  
16 with this. This is the Selected Construction  
17 Regulations for the Homebuilding Industry. So, the  
18 homebuilding industry and OSHA working together took  
19 this book and reduced it down to this book, really good  
20 stuff at the time.

21           Not short -- not long after that, we went from  
22 this material which is the OSHA Regulations and OSHA

1 recognizes in here that these are the most significant  
2 things that employers in the homebuilding industry  
3 needed to work on. Well, this is still written in the  
4 complex regulatory language. So we actually worked  
5 with OSHA to develop this, the Job-Site Safety Handbook  
6 which was developed in conjunction with OSHA. And  
7 what's the great thing about this is that it takes  
8 everything from the regulation and puts into a best  
9 practice and also lots of pictures and photographs for  
10 how to comply with the OSHA.

11 I think most employers would read this for  
12 compliance and read this to be safe.

13 One other method that I think that OSHA and  
14 industry can work together is really through the Susan  
15 Harwood Training Grant Program. NHB has been lucky  
16 enough in the past to receive Harwood Training Grants  
17 and since about eight years ago, we've trained over  
18 12,000 small businesses and trade contractors. And I  
19 think one of the significant pieces about this is that  
20 if you look at the high risk portion of our industry,  
21 not only is it small business but it's also the  
22 Hispanic workforce as well. And approximately 15



1 percent of that 12,000 of individuals that we trained  
2 were Spanish-speaking workers.

3 I think one of the other things is that we've  
4 had this longstanding collaborative relationship with  
5 OSHA; one of the things that we've done now is through  
6 the alliance program is take this one step further.  
7 And just to quickly wrap up here, there are several  
8 things we've been able to do through the alliance  
9 program. Not only have we been able to take this  
10 material which is in written format, unfortunately,  
11 that may not meet the needs of the high risk workforce  
12 which is the Spanish-speaking workforce, that may not  
13 be literate enough to read this, so through the OSHA,  
14 NHB OSHA alliance, we're able to take this and put it  
15 in video format so those individuals who have a  
16 difficult time reading can actually watch the training  
17 video and understand exactly what they're supposed to  
18 be doing.

19 Just in wrapping up, there's also a couple of  
20 other things that we'd be willing to discuss with you  
21 all. In wrapping up, you know, we really appreciate  
22 this time that you all have given us and look forward

1 to talking to you all a little bit more about this.

2 Thank you.

3 TOM BRODERICK: Hi. I'm Tom Broderick with  
4 the Construction Safety Council in Chicago. And I  
5 wouldn't normally read a speech but given the time  
6 constraints I'm just going to blast through this and  
7 hopefully the fact that you have a hard copy of it or  
8 an electronic copy of it, some of the ideas would be  
9 able to be pondered at a later time.

10 So from the view of the stakeholder, there's  
11 been a palpable improvement in the spirit of the  
12 dedicated employees working at 200 Constitution Avenue,  
13 Northwest. In Washington and at regional and area  
14 offices throughout the U.S., Secretary Solis has  
15 inspired the DOL workforce with a renewed sense of  
16 purpose in the significance of their work. This is so  
17 critical today as our country struggles to revive an  
18 economy that has been plundered by an unscrupulous few.

19 She's made it clear that this revival --  
20 revival will be done in a way that will maintain the  
21 dignity of those families -- whose families are being  
22 hurt by the loss of jobs as well as their life savings.

1 She's made it abundantly clear that the economic  
2 revival will not be accomplished at the expense of the  
3 health and safety of America's greatest resource, our  
4 workers.

5 She alerted all of her fellow cabinet members  
6 whose respective agencies would receive economic  
7 stimulus funding, that OSHA would closely watch  
8 construction projects and imply enforcement measures  
9 whenever and wherever appropriate. Her interim  
10 appointment of Jordan Barab to lead OSHA came with the  
11 charge to ensure that ARRA funds spent to accomplish  
12 the economic revival would not also increase worker  
13 mortality and morbidity. Jordan rose to the occasion  
14 and served America's employers and the U.S. workforce  
15 with a firm, fair and consistent application of the  
16 Act.

17 The installation of Dr. David Michaels as  
18 Assistant Secretary of Labor for OSHA has provided a  
19 leader whose record has demonstrated a keen sense of  
20 ingenuity and intuition, a depth of safety and health  
21 knowledge and experience directing people and policy.

22 Given today's context of an American

1 government open to change, we may be at an incredibly  
2 opportune time to review the first 40 years of the OSH  
3 Act's performance and use its history to help OSHA grow  
4 and meet future challenges.

5           The Occupational Safety and Health Act of  
6 1970, did they get it right?

7           Is the relationship between DOL and OSHA and  
8 HHS NIOSH the best model going forward?

9           Could it be improved by housing them in a  
10 single cabinet level entity?

11           Is there a better model to leverage  
12 collaboration and effectiveness?

13           Have their respective parent agencies directed  
14 them in a way that optimizes their respective  
15 resources?

16           Are there opportunities to learn from MSHA's  
17 creation as a stand-alone safety and health regulatory  
18 agency?

19           Will its model be useful for a separate agency  
20 for construction, for instance?

21           Would the creation of a hybrid organization  
22 for construction such as MSHA by combining some

1 elements from OSHA and NIOSH make sense?

2           The EPA, unlike OSHA and NIOSH, was created as  
3 a cabinet level agency with a budget that dwarfs both  
4 the OSHA and NIOSH budget combined. What lesson should  
5 we, and can we, take from that to adjust the budget for  
6 OSHA and NIOSH as critical functions?

7           So OSHA, budget structure and programs,  
8 budget. Have incremental increases 1970 been realistic  
9 to meet all of the goals of the Agency or have they  
10 been in lockstep with the annual ranges of increased  
11 deemed acceptable by DOL as fitting into the overall  
12 federal budget expectations?

13           Structure: Does the current structure of the  
14 Agency lend itself to achieving the ultimate goal of  
15 saving lives and reducing injuries and illnesses?

16           If improvement can be made, what are the  
17 obstacles?

18           Should the state planned system be revisited?

19           Programs: Are there any programmatic changes  
20 that would improve the performance of the Agency in  
21 areas such as: Rulemaking, and for construction this  
22 is important, scheduling inspections, penalty amounts

1 and type, issuance and collection of penalties,  
2 consistency of enforcement, training of agency  
3 personnel, et cetera?

4           Moving on to OSHA voluntary programs and thank  
5 you, Andy, for your kind remarks about challenge.

6 Would a thorough external review of programs such as  
7 the Harwood Grant Program, Challenge and VPP, the  
8 Office of Training and Education's Ed Centers or  
9 Education Centers be appropriate and productive?

10           Could NIOSH undertake the lead in these  
11 external reviews?

12           Can Challenge and VPP make a business case for  
13 employers developing an effective safety and health  
14 management system?

15           Can Challenge and VPP make the case with  
16 solidly documented reductions and accidents and  
17 illnesses to garner support from both employee and  
18 employer groups? If the answer is yes, what can we do  
19 to adequately fund administration of these programs  
20 without reducing funding for an enforcement of  
21 standards, which I think is a critical notion here that  
22 might -- I really believe corporate America is --

1 wouldn't be opposed to sort of anteing up to be  
2 involved in programs like the voluntary programs.

3           Finally, could such programs be supported by  
4 tax incentives to employers if benefits are  
5 substantiated?

6           Finally, external review: Would review of all  
7 of the worker safety programs administered by the DOL  
8 similar to the National Academy of Sciences review of  
9 NIOSH be in order? If so, what would it take to  
10 initiate?

11           These questions should not be interpreted as a  
12 criticism for any of the agencies mentioned, their  
13 staff or their purpose. Because OSHA's performance is  
14 so critical to the well-being of all working Americans,  
15 striving for continuous improvement is paramount.

16           Thank you.

17           DR. DAVID MICHAELS: Thank you very much. I  
18 think I'm going to let Rich start this round off.

19           RICHARD FAIRFAX: Okay. Some interesting,  
20 interesting ideas there.

21           How about a comment and then a question for  
22 all of you. The first comment is to Ron (sic). I've

1 seen those books before and I actually recognize some  
2 of the old ones. But if -- it made me think back into  
3 the -- I'm sort of dating myself, back in the early  
4 1970s when I started. We had all these booklets that  
5 were -- that took our regulations and condensed them  
6 down into very small booklets but almost a -- almost a  
7 plain language and they weren't quite plain language  
8 but they dealt with, you know, maritime, they dealt  
9 with construction. I think there was one for  
10 residential construction. There were different aspects  
11 of general industry.

12           And those kind of went away, but that just  
13 made me start thinking about them again so I -- that  
14 might be a nice thing for especially a small  
15 businessman and a small employer to have access to.

16           You all touched on VPP and safety and health  
17 programs and that sort of thing. And one of the themes  
18 that's been going through here from a lot of the  
19 commenters earlier is then, you know, performance based  
20 standards, accident and injury prevention programs or  
21 safety and health management programs.

22           I'd be interested on comments from all three



1 of you on that, on those areas and what you -- what you  
2 think as far as moving forward for OSHA in that area?

3           ANDREW YOUPEL: Well, I see it as simply that  
4 I think you should -- we should go forward with -- OSHA  
5 should go forward with that program, with VPP and  
6 especially with the Challenge Program. That's --  
7 that's what we really what I'm here about, it's the  
8 Challenge Program and having the ESGs become involved  
9 in that.

10           RICHARD FAIRFAX: Okay.

11           ANDREW YOUPEL: So, Rob?

12           ROBERT MATUGA: Yeah, I'm -- I can't speak  
13 specifically about our entire association position on  
14 this, but we do have training materials out there,  
15 guidance for small builders how to develop and  
16 implement a safety program. We've actually even,  
17 through the Harwood Training Program, for one year went  
18 out and did training on how to develop and implement an  
19 effective safety and health program.

20           So I think it's probably a good idea for  
21 employers to have their own safety program. Now, the  
22 Devil's in the details. Now, how do you develop a

1 safety and health program rule that addresses the needs  
2 of the residential construction industry, big  
3 employers, small employers, and everyone in between?  
4 And I think that, you know, that is something that  
5 we're going to take back to our members and really ask  
6 what their opinions are about that.

7 RICHARD FAIRFAX: Okay. Tom?

8 TOM BRODERICK: I -- I watch with great  
9 interest the response that contractors have when  
10 they're just looking at our marketing efforts for  
11 Challenge to get them engaged. And I really believe  
12 that there are a lot of employers who would like to  
13 have a safety and health management program, but their  
14 whole -- their whole realm of where might we get help  
15 with this has pretty much been, well, we'll hire a  
16 consultant.

17 And I think probably most of the people in  
18 this room if they're around long enough to when 1926.59  
19 or the haz com standard came into construction. It was  
20 -- it was a free for all in terms of consultants out  
21 there developing in some cases, costing thousands, even  
22 tens of thousands of dollars to create a haz com

1 program when actually OSHA had provided a model haz com  
2 program that was basically just fill in -- fill in the  
3 names.

4           So I -- and when we -- when I do public  
5 speaking and talk about challenge, the documents that  
6 were created to my thinking that are the roadmap for  
7 Challenge, through the three phases, they're just  
8 excellent. I mean, they're really just about  
9 everything that different iterations that have come  
10 along over the years of how are we going to improve  
11 safety and health and what can the Agency do, a lot of  
12 things that were attempted to be gained by rulemaking  
13 are included in the requirements to get to VPP.

14           So, you know, it's -- it's -- sometimes it's  
15 frustrating that it's right there and how do we without  
16 -- without taking money away from enforcement -- and,  
17 in fact, I am an advocate for increasing funding for  
18 enforcement and maybe thickening the bifurcation  
19 between enforcement and involuntary programs and  
20 possibly seeking some creative ways to fund voluntary  
21 programs.

22           But, I think that the will is there to achieve

1 getting a first class safety program, it's just how do  
2 we get from here to there?

3 RICHARD FAIRFAX: Yeah. Thank you.

4 DOROTHY DOUGHERTY: Tom, if I could ask you, I  
5 thought you brought up a number of important issues.  
6 How in your opinion, could OSHA and NIOSH work better  
7 together?

8 TOM BRODERICK: Well, I think that right now  
9 probably by default it's going to happen given the --  
10 the fact that Dr. Howard is back at NIOSH and Dr.  
11 Michaels, I would say, looking at his track record in  
12 the past of managing safety and health, large complex  
13 programs, that they will take this opportunity to have  
14 their respective agencies work better together.

15 Because, you know, some years it really  
16 doesn't appear that -- that NIOSH and OSHA play well  
17 together and I think that we're -- we're missing some  
18 real opportunities here because NIOSH has the skill  
19 sets to do a review of things like VPP. I mean, go out  
20 and do an economic analysis and really challenge the  
21 safety records that VPP members are claiming they had.

22 I really think that that would be a really

1 good first step for a project for OSHA and NIOSH to  
2 work together on. And I think because of the -- the  
3 distance that has been between the two agencies there  
4 would be a lot of credibility in NIOSH doing such a  
5 third party review of VPP that it would be done with a  
6 great deal of impartiality and data that would come  
7 from it would be accepted with a good deal of credence.

8 DR. DAVID MICHAELS: If I could just add, you  
9 know, there are a number of people from NIOSH in the  
10 room here and I think -- I mean, I feel I'm only in  
11 OSHA less than three months now, but, you know, there  
12 is a phenomenal commitment on both agencies part to  
13 work closely together.

14 And actually I think we can use the assistance  
15 of our stakeholders in suggesting things we could do  
16 together because there isn't a long history of close  
17 work. But there is no question at all levels of NIOSH  
18 and OSHA, a commitment to following what the law -- you  
19 know, what the OSHA Act said. We are created together  
20 to work together and I think we will.

21 So, but I appreciate that comment. I want to  
22 --

1           TOM BRODERICK: I think certainly after their  
2 experience with going through the National Academy's  
3 review they're not unfamiliar with doing a pretty brisk  
4 overview or analysis of another federal agency.

5           DR. DAVID MICHAELS: Interesting ideas.

6           I want to circle back on something else, some  
7 NIOSH funded research we talked about this morning  
8 because Dr. Lipscomb's presentation on nail guns  
9 actually, I want to ask the three of you what your  
10 experience has been and if you concurred with her  
11 fairly severe prescription for dealing with the problem  
12 and how you think we should -- first, if you've seen  
13 problems like this and how you've in your organizations  
14 and if you think, how we should address it?

15          ANDREW YOUPEL: I didn't see that. I'm sorry.

16          DR. DAVID MICHAELS: Okay. Well, that's fine.

17          ROBERT MATUGA: Now, I guess since that was  
18 directed to -- in relationship to the construction  
19 industry, I will say that Dr. Lipscomb did come out and  
20 meet with our members, our Construction, Safety and  
21 Health Committee just in January and gave a very  
22 similar presentation. And I think that some of our

1 members are having different outcomes than what her  
2 research is actually showing.

3           Actually, one of our members helped her with  
4 her particular research and he's actually even taking  
5 this a little bit further. And his experience has --  
6 is slightly different between the different type of  
7 trigger mechanisms.

8           What our member was saying is that it's all in  
9 the training. You got to train the guys to use the  
10 tool regardless of which trigger mechanism that you use  
11 because they've seen both problems with both types of  
12 triggers, both the sequential trigger and the contact  
13 trigger.

14           So, you know, we're just in the early stages  
15 of working with Hestor and trying to understand exactly  
16 where the problem lies and is it a training issue or is  
17 it a tool issue? Or is it a combination of both? So,  
18 we're hopeful that we're going to continue the dialogue  
19 and really try to get some additional feedback from our  
20 members. But it's been mixed versus some of the  
21 research that she's -- some of her research findings.

22           DR. DAVID MICHAELS: Tom, I know you're part

1 of AKOSH that's looked at this.

2 TOM BRODERICK: Right. Yeah, and I've known  
3 Hestor for a while and she's quick to point out that my  
4 organization some years ago with the collaboration of  
5 the United Brotherhood of Carpenters in the greater  
6 Chicago area, at the request of the Trade Association  
7 for these staplers and nailing guns reviewed some  
8 information that they wanted to -- and in fact, they  
9 did create a safety video and some other materials.

10 And, you know, we were probably rightly  
11 criticized that we did not insist that we tell the  
12 users of that equipment that it should be a requirement  
13 for their company if it's not going to be gained  
14 through rulemaking that the sequential trigger should  
15 be used.

16 Having said that, you know, the enormous  
17 problem we had with that is you can go to Lowe's or  
18 Home Depot or any of the big hardware building supply  
19 companies and buy the -- buy the equipment that may  
20 come with a guard installed or without a guard but it's  
21 in the box with the machine, and go home and just nail  
22 away to your heart's content.



1           So the actual what do we have when we're  
2 through with rulemaking is something that I think would  
3 be a real challenge to -- for enforcement, but I don't  
4 -- I don't see that as a -- you know, as an end to -- I  
5 mean, I don't think we should throw up our hands and  
6 say well, we just can't do it. But I think we have to  
7 realize that a lot of the people who are using these  
8 nailing guns are homeowners and I can see there would be  
9 a pretty good deal of resistance in just absolutely  
10 outlawing them.

11           DR. DAVID MICHAELS: Well, thank you all very  
12 much and we hope to continue with this dialogue. It's  
13 very helpful to us.

14           DEBORAH BERKOWITZ: I just wanted to add one  
15 thing is -- is anybody -- everybody here probably  
16 recognizes Tom's picture cause he's on our  
17 advertisement of OSHA Listens. It's a picture of AKOSH  
18 with Tom and David.

19           DR. DAVID MICHAELS: We were predicting that  
20 was going to happen.

21           DEBORAH BERKOWITZ: And I also wanted to do a  
22 little plug for our conference coming up in April for

1 the National Action Summit for Latino Worker Safety and  
2 Health. We're just going to have a lot of good material  
3 to use for both your owners and employees who are  
4 Latino workers, good low literacy, targeted materials  
5 used by a lot of employers, community group so, we hope  
6 to see you there.

7 DR. DAVID MICHAELS: Thank you.

8 DEBORAH BERKOWITZ: Okay. The next panel.  
9 Don Villarejo, Luzdary Giraldo, and Peter Dooley.

10 And then on deck is Rick Engler, Tom O'Connor,  
11 Norman Pflanz, and Chris Trahan.

12 DON VILLAREJO: My name is Don Villarejo. I'm  
13 the founder and a director emeritus of the California  
14 Institute for Rural Studies. And I appreciate the  
15 referral to the National Academy review of NIOSH. I  
16 served on the National Academy Committee to review the  
17 NIOSH programs in agriculture, forestry and fisheries.

18 One of the issues we identified in our report  
19 and I'm going to amend my comments and submit  
20 additional material subsequently but you do have my  
21 initial comments in your hands.

22 One of the points that we observed is the

1 small farm exemption for farms is very unwise both in  
2 terms of determining, for example, the number and rate  
3 of injuries and illnesses. More than three-quarters of  
4 farms in the United States that hire workers are exempt  
5 from NIOSH regulation and exempt from reporting.

6 For that reason, we tend to rely on the CFOI  
7 and I appreciate Mr. Matuga's reference to that in the  
8 previous panel because the CFOI, the Census of Fatal  
9 Occupational Injuries, is far more comprehensive, it  
10 uses I think much better procedures and determines  
11 rates that are quite informative for our purpose.

12 For example, and I'm just going to speak  
13 extemporaneously and you can refer to my written  
14 comments as you choose. And that is in this graph  
15 taken right off of the BLS website, you see that the  
16 highest rate of occupational fatalities is in the  
17 agricultural forestry and fishery sector, 29.4 per  
18 hundred thousand FTE.

19 The all industries rate is about 3.6. In  
20 other words, a worker in the AFF sector is eight times  
21 more likely to be killed while working than in the all  
22 industry sectors.

1           If you look over time since CFOI began in '92  
2 up to the present, what you see is a clear decline,  
3 about 24 percent decline in the rate of injuries, all  
4 industry a rate of fatal occupational industries, all  
5 industries rate down quite a bit over that period of  
6 time. But if you look in the farm labor sector,  
7 there's been no change whatsoever. So something's  
8 going on here that needs attention, and this is one of  
9 the points we make in our report from the National  
10 Academy and I commend you to read you.

11           In California we have the same phenomena; that  
12 is, the panel to the -- my right, I guess your left, as  
13 you look at it, shows that there's been no change in  
14 the fatal occupational injury rate on the farm sector  
15 but in all industries it's down 40 percent and  
16 manufacturing down significantly.

17           We've had, as you are aware, a number of  
18 fatalities owing to heat stroke in the fields of  
19 California in recent years. And this provides us with  
20 an interesting opportunity to examine something that  
21 has actually been looked at, not in the case of heat  
22 stroke but for all industries.

1           The Workers' Compensation Insurance Rating  
2 Bureau of California did a multi-varied analysis of  
3 looking at indemnity claims over a period of years and  
4 found that the single largest factor leading to a  
5 reduction in indemnity claims under workers' comp was  
6 CAL OSHA education and enforcement. And I want to  
7 stress the enforcement end.

8           In the case of the heat-related illnesses and  
9 injuries, what we found is that we have a very  
10 difficult problem and these standards were first put in  
11 place in the state in 2005-'06. And even though our  
12 governor and several of the leaders of our government  
13 were very important in getting more enforcement in that  
14 industry, you have to understand that we have far more  
15 game wardens employed by Fish and Game than we do in  
16 all industries for occupational enforcement. I mean,  
17 that's a statement about priorities it seems to me that  
18 we all need to reflect on.

19           What we find though is that there were in the  
20 period '05, '06, '07, '08, after the standard was  
21 implemented, 504 CAL OSHA cases in which they were  
22 opened for violations of the heat illness standard. We

1 followed the 225 cases that had closed by April of last  
2 year and we found that there was a reduction of the  
3 penalty amounts by 43 percent in the final settlement  
4 pending appeal.

5           Moreover, of those cases that were considered  
6 serious in the initial penalty, 29 percent had been  
7 reduced to the category quote, "other", closed quote.  
8 And there was not a single instance in which an initial  
9 penalty had been raised nor a single instance in which  
10 and "other" category of violation was raised to the  
11 level of serious, willful or repeat.

12           I just want to conclude by saying we need more  
13 and better enforcement in agriculture, and I commend  
14 the removal of the small farm exemption from both OSHA  
15 enforcement and OSHA reporting. I also commend the  
16 examination of repeat violations, one farm, Gemaro (ph)  
17 Vineyards where two workers died from heat stroke has  
18 had 14 citations over the past six years and in those  
19 citations you see repeatedly again and again, the same  
20 standard being cited.

21           But because they occur in different fields,  
22 different vineyards of the same property in the same

1 county, they're not considered part of the same  
2 establishment. That's silly.

3 The Department of Commerce and the Department  
4 of Agriculture for years has said a farm is a single  
5 establishment unless -- unless there are separately  
6 managed units in non-contiguous counties. Otherwise,  
7 they must be treated as a single establishment or  
8 worksite.

9 And I'll close with that and I'll add my  
10 comments later.

11 LUZDARY GIRALDO: Good afternoon. My name is  
12 Luzdary Giraldo. I'm the Safety and Health Immigrant  
13 Project Coordinator at New York Committee for  
14 Occupational Safety and Health, NYCOSH. And I'm here  
15 today on behalf of NYCOSH and their Immigrant Worker  
16 Coalition, a committee of the Protecting Workers  
17 Alliance.

18 On behalf of the NYCOSH and the Alliance I  
19 thank you very much for the opportunity you are giving  
20 me to introduce to you our priorities for actions.

21 Since 1970, workplace safety and health  
22 conditions have improved. More than 400,000 workers

1 can now say that their lives have been saved since the  
2 passage of the OSHA Act. Unfortunately, for the  
3 immigrant workers that is not the case.

4           As you can see, I was going to start insert  
5 here the name of the last immigrant workers who died in  
6 the United States in 2010 and I had decided to leave it  
7 blank because of two reasons. One, because honestly, I  
8 don't have the name, I don't know the name. And two,  
9 because I wanted to reflect the fact that this  
10 immigrant worker may be undocumented, the name would  
11 never be known by OSHA or the media or the public-at-  
12 large, not even by the family. Because sometimes  
13 families don't know that this worker had died because  
14 of injury or illness at the workplace.

15           I'm not going to give you statistics because  
16 you all know the statistics I assume. And you'll know  
17 that immigrant workers have a disproportionate rate of  
18 injuries and illnesses and fatalities in the workplace,  
19 largely because they are hired to do the most  
20 undesirable and dangerous jobs at the lowest pay wage.  
21 They often do not know the rights they have or what  
22 laws protect them. And they often receive no training



1 in safety and health law.

2           Also, cultural barriers make it difficult for  
3 them to learn their rights. And those that lack  
4 immigration status are particularly fearful of speaking  
5 out.

6           All of this in addition to the fact that OSHA  
7 has some weaknesses in its programs and holes in its  
8 laws makes it difficult for immigrant workers to  
9 exercise their rights.

10           OSHA has limited number of bilingual  
11 inspections -- inspectors and lacks sufficient  
12 bilingual language appropriate informational material.  
13 Furthermore, OSHA laws does not mandate employers to  
14 indicate a workers place of origin when the worker is  
15 reporting an injury or an illness.

16           In addition, OSHA whistleblower in retaliation  
17 protections are too weak to provide any real protection  
18 to workers when they are trying to exercise their  
19 rights.

20           To be effective, OSHA needs to recognize its  
21 weaknesses into there with some of its limitations of  
22 its laws. OSHA needs to inspect workplaces with fewer

1 than 10 employees. Its inspectors need the right to be  
2 able to shut down unsafe jobs. It should be able to  
3 revoke the license of companies that have repeated  
4 violations of safety laws.

5 NYCOSH and the Protective Workers Alliance  
6 therefore, make the following recommendations:

7 That OSHA develops and implements coordinated  
8 and enforcement pilot projects targeting specific  
9 industries where high percentage of immigrants work.

10 What about a 10-hour OSHA training for  
11 healthcare workers or carwash workers or grocery  
12 workers where they -- we can see studies that they're  
13 increasing in numbers of injuries inside the workplace?

14 That OSHA increases the number of staff who  
15 serve as qualified interpreters and in the foreign  
16 languages spoken in the workplace.

17 That they will enter in our workplace to  
18 conduct an inspection, the compliance safety and health  
19 officer distributes printed material in the language  
20 that's spoken in the workplace that informs workers  
21 that OSHA is conducting the investigation and provides  
22 the information to workers about their rights and roles

1 during the process.

2           And that employers shall post citations in  
3 language as spoken by the employees.

4           Also, that supervisors are prohibited of  
5 serving as interpreters, and that they are told about  
6 the whistleblower protection that the employees have.

7           OSHA should not require employees to display  
8 their I.D. during these inspections.

9           That OSHA conduct targeted outreach to  
10 immigrant communities and develop effective and long-  
11 term relationships with these groups which can serve as  
12 liaisons to workers and family members so that they  
13 communicate with OSHA in a confidential and safe -- and  
14 safe setting knowing that their rights are protected  
15 regardless of their immigration status.

16           That OSHA implements a policy granting  
17 community-based organizations the authority to file  
18 complaints in order to ensure that improved workers and  
19 family members participate in the investigation  
20 process.

21           And, last, but not least, that OSHA  
22 establishes a committee comprised of OSHA staff as well

1 as labor and community presentation (sic) to supervise  
2 the implementation of an immigrant worker plan and  
3 establish progress benchmarks.

4           NYCOSH and the Immigrant Work Policy Coalition  
5 recognizes and supports the initiative that OSHA has  
6 taken to the relevant progress to protect the health  
7 and safety of immigrant workers but they are not  
8 enough; therefore we expect OSHA to effectively and  
9 promptly implement these recommendations,  
10 recommendations which I believe satisfy the scope of  
11 today's OSHA Listens event.

12           Thank you.

13           PETER DOOLEY: My name is Peter Dooley. I'm  
14 presenting on behalf of Roger Cook who is the Director  
15 of the Western New York Council on Occupational Safety  
16 and Health based in Buffalo, and also is part of the  
17 Protecting Workers Alliance which I am also.

18           And this testimony comes on behalf of the  
19 subcommittee that dealt specifically with ergonomics  
20 issues or trying to get protections for workers from  
21 ergonomic hazards and, in particular, about patient  
22 safe handling programs in which WNYCOSH is very

1 involved in.

2           First of all, some of the general  
3 recommendations from -- there was a national summit of  
4 health and safety activists held in November and some  
5 of the recommendations regarding ergonomics from that  
6 summit included that OSHA should adopt a safe patient  
7 handling standard if Congress fails to pass a law  
8 requiring that.

9           OSHA should promulgate a safety and health  
10 program standard which includes a provision requiring  
11 employers to conduct job hazard analysis including  
12 ergonomic standards.

13           OSHA should use its authority under the  
14 general duty clause to cite employers for failure to  
15 protect worker safety and health where employees are  
16 exposed to ergonomic hazards in which proven methods  
17 for reducing those hazards are not employed.

18           And lastly, OSHA should require companies  
19 participating in their VPP programs to implement a  
20 comprehensive ergonomics program.

21           The -- there are current OSHA guidelines for -  
22 - for ergonomics and safe patient handling, yet we know

1 that the current information tells us that one study  
2 cited 52 nurses surveyed complained of chronic back  
3 pain and 12 percent said they leave the profession  
4 annually because of chronic back pain.

5           The rest of the testimony I'm going to skip  
6 right to the -- the fact where the studies are cited  
7 that really show the impact that the safe handling  
8 patient programs have had in New York State, in  
9 particular.

10           The first one is Kaleida Health, Western New  
11 York's largest healthcare provider with five hospitals  
12 and four long-term facilities had 10 -- had \$10 million  
13 in annual workers' compensation costs associated with  
14 patient handling injuries in 2003. In 2004, after  
15 considerable prodding by the Communication Workers of  
16 America and SCIU, 1199, Safety and Health  
17 Representatives, the Kaleida internal assessment of  
18 their losses due to the musculoskeletal disorders, they  
19 implemented a comprehensive safe patient handling  
20 program. They invested \$6 million in new beds, lifts,  
21 and other patient -- patient handling devices and  
22 \$175,000 in staff training.

1           They hired a safe patient handling  
2 professional to manage the program and along with the  
3 unions built a strong safe patient handling/ergonomics  
4 committee. Two years after implementing the program,  
5 in 2006, musculoskeletal disorders related to patient  
6 handling decreased by 79 percent. In the third year,  
7 the safe patient handling investment costs were more  
8 than recouped by a \$6 million -- \$6,700,000 reduction  
9 in the actuarially monies set aside for compensation.

10           The next example also comes out of western New  
11 York, the New York State Veterans Nursing Home in  
12 Batavia where 126-bed facility and they -- they  
13 experienced a drop of 75 percent in their lost work  
14 days and their staff turnover rates consistently  
15 dropped dramatically as well from a facility rate high  
16 of 32 percent to a decade -- a decade ago to 3 percent  
17 in 2009.

18           The president of the union is quoted as  
19 saying, "Not one facility" -- "Not one worker at the  
20 facility was out on workers' compensation." And that  
21 "the contentious issue of mandatory overtime is no  
22 longer an issue."

1           The following recommendations were made as  
2 next steps for OSHA:

3           To conduct regional hearings inviting the  
4 stakeholders involved, have roundtable discussions with  
5 representatives and the rest is in the written  
6 testimony.

7           So we appreciate being able to present that.

8           DR. DAVID MICHAELS: Thank you all. And let  
9 me thank Dr. Villarejo for -- we're privileged you came  
10 from California to present this and we're very  
11 grateful.

12           DON VILLAREJO: I came for the cold.

13           DR. DAVID MICHAELS: Hey, this isn't cold. So  
14 speaking of cold, let's talk about heat stroke. I was  
15 very interested in your testimony and you obviously  
16 were critical of CAL OSHA's implementation in some ways  
17 of the heat stroke -- heat illness standard.

18           But what can be learned from the -- from the  
19 positive side? Are there things that -- in that  
20 standard that were successful and what are they and  
21 what can we learn from that?

22           DON VILLAREJO: Pray for a colder climate.



1            Seriously, the effort that was undertaken I  
2 thought was a substantial improvement in terms of CAL  
3 OSHA enforcement efforts as compared to past years.  
4 Far more inspections, far more education, far more  
5 activity. That's the good news.

6            The bad news is that the delay in the  
7 resolution through the appeals process with OSHA  
8 appeals board is so long that we found, for example, in  
9 the cases that were cited in 2006 it was more than two  
10 years before even a majority of those 2006 cases had  
11 reached a conclusion. That's unacceptable. In fact,  
12 I've learned recently that 47 CAL OSHA inspectors sent  
13 a public letter to the Agency saying that the appeals  
14 board process is not doing a responsible job.

15            So one of the things that could be done, it  
16 seems to me, is for the least serious citations to  
17 expedite the appeals process by having an  
18 administrative law judge on a regional basis  
19 periodically review all of them and come to a  
20 conclusion that's then ratified. Not allow a several  
21 year delay to occur that leads often to a reduction in  
22 the penalty.

1           If I, you know, run a red light in my  
2 hometown, it's \$340. I would love to have two years  
3 before I had to pay it, and then I'd love to have a 43  
4 percent reduction, that would be great. But that  
5 doesn't happen in running a red light. It happens in  
6 the workplace. And that's unacceptable in my view.

7           The second thing, and that's, this is the more  
8 critical and difficult task that CAL OSHA has not  
9 figured out and that you as an Agency are going to have  
10 to contend with and my colleague raised this important  
11 question. And that is, we now have, for example, in  
12 California agriculture where 95 percent of the workers  
13 are classified as of Hispanic origin, they're Mexicans  
14 basically and some from Central America.

15           We now have about one-third of the workforce  
16 are coming from indigenous communities in southern  
17 Mexico and Central America. Mistepec, Zapotec, Trika  
18 (ph), Rapacha (ph) and other folks, Mia, who do not  
19 have written language, speak Spanish if they do at all  
20 as a second language and who prefer to communicate  
21 because they don't have a written language in oral  
22 form. They will look you straight in the eye as

1 they've done to me and want to know exactly what I'm  
2 all about and why I'm there. But they want to hear it  
3 in an oral presentation, person-to-person, show me kind  
4 of thing. And that's very difficult.

5           Now, I and other folk who work in these  
6 communities would be delighted to help figure out with  
7 you ways to engage along the lines that my colleague  
8 has outlined to engage these communities. They have  
9 their own customs, their own traditions, as well as  
10 their own language and culture and so it's going to  
11 take, I think a far greater outreach than a document in  
12 Spanish or even a new novella (ph) or something along  
13 those lines. And that can be done.

14           There are leaders of those communities who  
15 would be more than willing to meet with you and be  
16 delighted to help in whatever way they can.

17           DR. DAVID MICHAELS: Thank you. Let me then  
18 go to a question maybe for both of you who were  
19 thinking about immigrant work. Peter, obviously, you  
20 can think about this too.

21           You know, one of the ways sort of traditional  
22 economists look at OSHA is OSHA had to be founded

1 because of a market failure, things that workers'  
2 compensation never put the cost of injuries back on the  
3 employer and therefore, there was insufficient  
4 incentive to prevent those.

5           And when you have immigrant workers and  
6 especially in California where you actually have the  
7 workers' compensation -- there agriculture workers are  
8 covered by workers' compensation.

9           DON VILLAREJO: That's right.

10           DR. DAVID MICHAELS: What's been their  
11 experience with workers' compensation in the United  
12 States and is there evidence that people go back to  
13 their native countries when they're injured, therefore,  
14 sort of globalizing the costs of --

15           DON VILLAREJO: That's a very important and  
16 good question. I don't think we have a good answer to  
17 that yet. The information that we do have is I led a  
18 study in, I guess, ten years ago, in which we did a  
19 cross-sectional population-based survey of hired farm  
20 labor in California, 970 folks. And we found was that  
21 folks who were undocumented men did not even know about  
22 the existence of the workers' compensation program.

1           So lack of knowledge is an important barrier.  
2    You know, 60 percent didn't know. Of those who did  
3    know, there was a far less participation rate in  
4    workers' comp programs than documented workers. And  
5    that probably pertains to the undocumented status of  
6    the folk.

7           There are folk who go back home and who are  
8    cared for at home because it is cheaper, you can go --  
9    in Tijuana you can walk right in to a Pharmacia and you  
10   can get whatever you want, including medications that  
11   require prescription in the United States and at a very  
12   much lower cost. In fact, the workers of what is it,  
13   the Western Growers Association of which I'm an  
14   associate member, has a program to encourage workers  
15   who prefer to go to Mexico and still have coverage  
16   through the WGA to get their treatment in Mexico; as  
17   does the United Farm Workers. So it's not unknown.

18           So it is a multinational issue but there are  
19   workers who don't have any coverage in their view don't  
20   understand that they do and return home for their care.

21           LUZSDARY GIRALDO: So it would be the same in  
22   New York. However, right now we are kind of having a

1 new movement where we are forming a consult where  
2 workers' compensation lawyers, occupational doctors,  
3 consultants, day laborers, worker centers, unions,  
4 activists, all of us getting together and going out and  
5 educating these immigrant workers. Just let's remember  
6 immigrant workers it's not only Spanish-speaking but  
7 other countries, and to educating them on the rights of  
8 workers' compensation law, that workers' compensation  
9 is a right for everyone regardless of their immigration  
10 status.

11           And lately, I would say the past two years,  
12 immigrant workers are finally getting it and getting --  
13 really understanding and exercising their rights.

14           ROGER COOK: And I will add that many workers,  
15 including many low wage workers will also just leave  
16 their jobs when they're hurt, because they know how  
17 brutal the workers' compensation system is to most  
18 workers. So they don't even -- when they -- when  
19 they're too hurt to work they basically leave. I mean,  
20 that's what happens.

21           LUZDARY GIRALDO: Or they're forced to leave.

22           ROGER COOK: Yes.

1 LUZDARY GIRALDO: By employers.

2 ROGER COOK: Right. Right, right.

3 LUZDARY GIRALDO: Obviously. If they say  
4 something I'll call immigration. So they are forced to  
5 leave.

6 DEBORAH BERKOWITZ: Or fired.

7 LUZDARY GIRALDO: Yeah.

8 DON VILLAREJO: I have just one more comment  
9 to add, and that is that the situation in agriculture  
10 is a lot more complicated than it is in industries  
11 where you have brick and mortar. And it makes it very,  
12 very difficult for even medical care to arrive on the  
13 scene.

14 I'm just going to read to you a report from  
15 CAL OSHA about an individual who expired from heat  
16 stress. "Employee 1 was picking" -- this is from the  
17 CAL OSHA official report, it's on your website which is  
18 where I downloaded it and I'll read it to you.

19 "Employee 1 was picking grapes during a 10-  
20 hour shift..." As you know, in California workers in  
21 agriculture are exempt from the 40-hour limitation of  
22 Fair Labor Standards Act and overtime kicks in after

1 six consecutive 10-hour days or a 10-hour workday.

2 "Employee 1 was picking grapes during a 10-  
3 hour shift when he became ill, began to vomit, the  
4 collapsed. The crew foreman was summoned and only  
5 limited assistance was provided.

6 A 9-1-1 call was placed and later cancelled  
7 when other employees were unable to provide the exact  
8 location of the worksite, panicked and then hung up.

9 Employee 1 was transported by private car..."  
10 His son drove him actually. "...to Kern Medical Center  
11 in Bakersfield located at least 30-minutes away from  
12 the worksite.

13 Employee 1 arrived at the hospital in full  
14 cardiopulmonary arrest and died in the ER. The Kern  
15 County coroner determined that hypothermia was the  
16 cause of death. Employee 1 had been working  
17 approximately four-and-a-half days for this employer.  
18 And according to the Western Regional Climactic Center  
19 on the days prior to the incident the ambient  
20 temperatures was 102-degrees, and on the day that he  
21 died it was 100-degrees."

22 DR. DAVID MICHAELS: Let me ask, actually I



1 have a question also for Peter Dooley and you talked  
2 about the medical center complex in western New York  
3 that saved a great deal of money on essentially having  
4 -- implementing an ergonomics program.

5           So why is that not wide -- more widespread? I  
6 mean, it would see like if that were known in the  
7 healthcare industry that would be embraced.

8           PETER DOOLEY: I think it is becoming more  
9 widespread. It does require an initial investment to  
10 realize the gains later on, but there is more and more  
11 healthcare systems that are looking at this and -- and  
12 really becoming more informed about what the benefits  
13 are.

14           But it's this -- these pilot programs in which  
15 WNYCOSH, by the way, has been funded for the last four  
16 years to be implementing these programs and it also  
17 takes -- it takes programs that are -- that are jointly  
18 implemented with the cooperation of workers, their  
19 union and management to really make these things work,  
20 the dramatic effects that were cited here.

21           DR. DAVID MICHAELS: And finally, one last  
22 question I think really for all of you which is, you

1 know, from many studies and critical experience that  
2 young workers are particularly at risk for injuries,  
3 fatalities and we know the immigrant workers are  
4 particularly at risk.

5           What advice, suggestions do you have for us in  
6 reaching young immigrant workers who in some ways are  
7 socially much more isolated than other groups and they  
8 tend not to be with their families? I mean, what --  
9 what suggestions have you for --

10           LUZDARY GIRALDO: Young immigrant workers?

11           DR. DAVID MICHAELS: Yeah.

12           LUZDARY GIRALDO: I would start with making it  
13 mandatory for the -- for the ones who provide the  
14 working permits for teenagers to have it right there,  
15 to make it mandatory to receive safety and health  
16 training. If it is there at least we would do a good  
17 beginning.

18           And I guess I want to mention we need new  
19 faces and the DOAs having now a good -- as providing  
20 this research opportunity for young teenagers to  
21 involve in safety and health.

22           DON VILLAREJO: I would add one comment. It's

1 preliminary, we don't have the final word on this yet  
2 but we're working on it. Most of the heat illness  
3 fatalities that occurred in California in crop  
4 agriculture were among workers who had been on the job  
5 for less than a week. In fact, the worker whose case I  
6 mentioned to you was only there four-and-a-half days.

7           And we also have, as you know, quite a number  
8 of very young workers. Maria Jimenez who died in May  
9 of 2008, was 17 and pregnant at the time she passed  
10 from heat stroke. So -- and she had been working three  
11 days before the incident.

12           So I think the notion of a mandatory session  
13 with young workers provided by the employer with the  
14 possibility of people who are knowledgeable of the  
15 community present and participating would make quite a  
16 difference, because many workers like Maria who,  
17 according to all reports, had failed to seek any water  
18 at all during her entire shift because she was afraid,  
19 she didn't know what would happen if she complained,  
20 you know, what would she be viewed as, a worker who is,  
21 you know, not working hard enough.

22           And, you know, the denial of water, I mean,

1 that's outrageous. And even though the employer didn't  
2 actually intervene and prevent her from getting water,  
3 she was afraid and didn't know that she had a right to  
4 get it.

5 So that's the kinds of things that at the  
6 initial stage.

7 DR. DAVID MICHAELS: Right. Young workers are  
8 most susceptible to this.

9 DON VILLAREJO: Exactly.

10 LUZDARY GIRALDO: I just wanted to interject  
11 something; I don't know how to phrase it. Okay. So  
12 we're sitting here trying to find answers for changes  
13 and everything. And we're sitting in a place where  
14 Frances Perkins was a pioneer of child labor law. She,  
15 in the 1930s or whatever, she became the Secretary of  
16 State and she -- she made it possible for unemployment  
17 benefits to come alive for minimum wage, for other  
18 things and she was also a very, very huge fighter for  
19 the child labor laws.

20 And so, yes, we are changing, there is an  
21 environment, but we should go back to the 1911s or  
22 1920s and see how she did it. She made it possible for

1 these changes and you have the answer right there on  
2 books everywhere in here in these walls, Frances  
3 Perkins, this is why the name was given after her.

4 DON VILLAREJO: That's a very good comment.  
5 The GAO reported out in their study of child labor that  
6 a child of 14 can pick strawberries in a field all day  
7 but that same child is prohibited from working in an  
8 air conditioned office at a desk. A child of 16 can  
9 operate a forklift on a farm but is prohibited from  
10 operating that same equipment in a manufacturing plant  
11 or a construction site.

12 So we do have some work to do in cleaning up  
13 those laws.

14 DEBORAH BERKOWITZ: Thank you.

15 DR. DAVID MICHAELS: Thank you very much.

16 DEBORAH BERKOWITZ: Thank you, thank you.

17 Okay, and the next panel I see them coming.  
18 It's Rick Engler, Tom O'Connor and Norman and Chris  
19 Trahan.

20 All right. Thank you.

21 And we need to just bring up one more chair.

22 TOM O'CONNOR: All right. My name is Tom

1 O'Connor. I'm here representing both the Protecting  
2 Workers' Alliance and the National Council for  
3 Occupational Safety and Health which is the umbrella  
4 organization of 20 state and local committees or  
5 coalitions on occupational safety and health or COSH  
6 groups.

7 I appreciate the opportunity to testify today  
8 and we really appreciate you all being willing to sit  
9 here all day and listen to the public input. This is a  
10 great opportunity.

11 I'm going to be sharing with you today some  
12 recommendations regarding worker education and training  
13 that were developed out of the National Committee of  
14 Experts that convened at the National Worker Safety and  
15 Health Summit in November 2009.

16 And we all know that worker training and  
17 education is a vitally important part of any safety and  
18 health program and I'd like to discuss several topics  
19 related to this training.

20 First, we would encourage OSHA to establish  
21 and fund a worker health and safety education task  
22 force. This task force would review the various worker

1 training programs and mandates that currently exist in  
2 order to identify strengths, weaknesses and gaps. This  
3 task force should have representatives from  
4 organizations that have shown an ability and commitment  
5 to health and safety education.

6           We also would encourage OSHA to seek to expand  
7 the pool of funds that are available for worker  
8 training and education grants and we all now that this  
9 isn't the best time to be trying to seek new funding  
10 for anything but we do think it's worth emphasizing  
11 that the current funding for the training grants  
12 program is a very small fraction, about one-fifth, of  
13 what it was at the peak of its -- the training grants  
14 under the new directions program. So we're far below  
15 the funding level that we once had for these programs  
16 and we would urge OSHA to seek greater funds for these  
17 important programs.

18           We'd also encourage a number of changes to the  
19 Grants Program. For example, that OSHA develop  
20 meaningful evaluation methods for the Grants Program  
21 that go beyond just counting heads and try to take a  
22 look at other indicators of effectiveness like to the

1 extent to which workers are prepared to actively  
2 participate in injury prevention programs.

3           We'd like to also encourage OSHA to support  
4 grant activities; defined supported activities more  
5 broadly so that it's not just training but also include  
6 developing multilingual educational materials. For  
7 example, not be focused so narrowly on accumulating  
8 training numbers.

9           We also would encourage training grants to be  
10 multi-year to make programs sustainable and to build  
11 capacity. We all know that many OSH professionals and  
12 activists came into the field through the New  
13 Directions Grants Program and as someone observed  
14 earlier, none of us are getting any younger and we  
15 really need to take the opportunity to revitalize the  
16 field by creating opportunities for the next  
17 generation.

18           We'd also like to encourage that priorities  
19 should include training and educational materials that  
20 address a range of literacy and language needs and that  
21 make technical information readily accessible to worker  
22 populations.



1           Third, we believe that it's time for new  
2 leadership and training on training and education at  
3 OSHA. We would like to see OSHA establish a director  
4 of training and education position with staff support  
5 in the Assistant Secretary's office. This person would  
6 provide vision and leadership in terms of improving the  
7 quality of staff training for OSHA personnel using  
8 participatory methods of adult education that rely less  
9 on lecture and creating minimum criteria for effective  
10 training and education that would include an emphasis  
11 on training that's participatory hands-on, action  
12 oriented, linguistically and culturally appropriate, et  
13 cetera.

14           Fourth, we would like to encourage a new  
15 relationship to be developed between OSHA and its  
16 training grant, Susan Harwood grantees and among the  
17 grantees under the Harwood program. This program has  
18 been successful in getting funding out to many  
19 organizations over the years but it's really been  
20 limited to that. It hasn't really developed a network  
21 of organizations that share information, ideas about  
22 how best to reach workers with how training techniques,

1 et cetera.

2           And if we look at the model under the NIEHS  
3 program, that has been quite successful in bringing  
4 organizations around the country together in learning  
5 from one another. And so we'd like to see the Harwood  
6 Grant Program be more than just getting money out to  
7 organizations but actually a collaborative effort  
8 between OSHA and many of the organizations that do such  
9 training.

10           And, lastly, I just wanted to mention briefly  
11 that no training of workers on their rights under OSHA  
12 is relevant if they don't actually have a meaningful  
13 right to file a complaint to OSHA and so all of this is  
14 meaningless if there isn't a strong whistleblower  
15 protection mechanism in the Agency. And so we would  
16 encourage taking a look at how to make that stronger.

17           So I will submit my detailed report to the  
18 record, and thank you for this opportunity.

19           CHRIS TRAHAN: Good afternoon, I'm Chris  
20 Trahan. I'm here to present comments on behalf of the  
21 Building and Construction Trades Department, AFL-CIO.  
22 I'll call us building trades from here on in.

1           I'm here in place of Pete Stafford, the  
2 building trade's director of safety and health who  
3 could not attend today.

4           The building trades is an umbrella  
5 organization representing 13 international and national  
6 construction unions with over 3 million workers those  
7 unions represent throughout the U.S. and Canada. The  
8 building trade stands ready to work with OSHA or to  
9 improve the working conditions of construction workers.  
10 Within the building trades it's affiliated unions and,  
11 CPWR, the Center for Construction Research and  
12 Training, we have developed a focused and significant  
13 internal capacity to address construction safety and  
14 health, and we look forward to a new era of  
15 collaboration with OSHA. Working together, the  
16 building trades firmly believes a great deal can be  
17 accomplished to improve safety and health conditions in  
18 the construction industry.

19           Today I would like to briefly bring up five  
20 issues of utmost importance to the building trades  
21 where we hope that OSHA can focus your efforts.

22           First and foremost, OSHA urges -- the building

1 trades urges OSHA to again become a leader in  
2 occupational safety and health in the construction  
3 industry. There's two perfectly positioned existing  
4 tools you have to do that. One is the Directorate of  
5 Construction and the other is ACOSH.

6           Prior to the passage of the OSHA Act  
7 establishing OSHA, the Construction Safety Act  
8 established the Advisory Committee on Construction  
9 Safety and Health or ACOSH. And this Advisory  
10 Committee advises the Secretary of Labor on matters  
11 affecting construction worker safety and health. It's  
12 a statutory committee and it continues to function well  
13 and provides a balanced sounding board for the Agency  
14 on all matters of construction safety and health.

15           However, in recent years ACOSH has been under-  
16 utilized. We urge OSHA to take advantage of this  
17 incredible industry resource when considering all  
18 matters in construction safety and health. It's an  
19 appropriate forum for OSHA to solicit industry  
20 stakeholder input about any construction activities  
21 that Agency is considering.

22           And we also strongly believe that OSHA should

1 have more of a focus on the construction sector. As  
2 the starting point, OSHA should take whatever steps  
3 necessary to rebuild the Directorate of Construction in  
4 order to ensure the Directorate is both engaged with  
5 and responsive to the needs of the industry.

6           The core functions of the Directorate,  
7 including standard setting providing technical  
8 assistance to OSHA field staff and outreach and  
9 education to the industry must be carried out. For  
10 years the Directorate has been neglected by Agency  
11 leaders and now is the time to ensure the Directorate  
12 is fully staffed and supported to carry out its mission  
13 as intended. The Directorate needs leadership and  
14 revitalizing that office should be an OSHA priority.

15           Second, we urge OSHA to develop a  
16 comprehensive program standard to address general  
17 safety and health hazards in construction sites. We  
18 have established a working group of unions that is  
19 ready to work with OSHA to identify the key elements  
20 and requirements and such a standard, and we recommend  
21 OSHA use ACOSH to ensure the construction industry-wide  
22 group of stakeholders is involved in this process.

1           In fact, in the late 1990s, ACOSH recommended  
2 a revision to OSHA 1926, subpart C, Standards that  
3 serves as a well-developed starting point for these  
4 discussions. We recommend that OSHA establish a work  
5 group at the next ACOSH meeting to begin obtaining  
6 industry participation as the Agency moves forward with  
7 the program standard.

8           Third, we urge OSHA to work more closely with  
9 NIOSH, CPWR and other interested parties on  
10 collaborative approaches to disseminate useful safety  
11 and health information to workers, contractors, owners  
12 and users and other interested stakeholders in the  
13 construction industry.

14           The building trades through CPWR has  
15 maintained a very successful public, private  
16 partnership with NIOSH over the last 20 years and we  
17 encourage and welcome OSHA to join us as we explore  
18 effective ways to move research findings to practical  
19 applications in the industry and also work with us on  
20 emerging issues of importance such as addressing unique  
21 needs of the aging workforce and the unique hazards of  
22 green construction methods.

1           Fourth, I wanted to offer support to comments  
2 provided earlier by Scott Snyder, Director of Safety  
3 and Health for the Laborer's Health and Safety Fund of  
4 North America who urged OSHA to move ahead with a  
5 comprehensive hearing conservation standard for  
6 construction workers. There's no reason to believe  
7 OSHA -- that construction workers are any less  
8 susceptible to noise than worker in other industries  
9 and we urge OSHA to develop a standard to address this  
10 hazard as soon as possible.

11           Lastly, we urge OSHA to protect construction  
12 workers from the hazards of Silica. For over a decade,  
13 Silica has been the top regulatory priority of the  
14 building trades unions and we urge OSHA to continue the  
15 development of a proposed rule to address the  
16 significant construction health hazard. In 2001, the  
17 building trades forwarded a comprehensive draft  
18 language on how a construction standard should be  
19 structured and we stand by that document. And we have  
20 worked over the ensuing years provide the Agency  
21 research results, access to jobsites for data  
22 collection, additional support and participation

1 through ACOSH and we believe now that the Agency has  
2 the information necessary to publish a proposed rule,  
3 we look forward to participating in that rulemaking  
4 process.

5 Thanks.

6 NORMAN PFLANZ: Good afternoon. My name is  
7 Norman Pflanz. I'm a staff attorney with Nebraska  
8 Appleseed Center for Law in the Public Interest and  
9 we're a nonprofit, non-partisan public interest law  
10 project dedicated to equal justice and full opportunity  
11 for all Nebraskans. We promote healthcare access,  
12 immigrant immigration and civic participation, child  
13 welfare and also low income economic opportunity  
14 through a variety of approaches.

15 We have a long history of working on  
16 meatpacking issues, and I'm here today to testify in  
17 favor of policy changes that will improve the health  
18 and safety of the thousands of folks who work in our  
19 meatpacking plants across the country.

20 Nebraska Appleseed recently released a major  
21 meatpacking safety report entitled, "The Speed Kills  
22 You: The Voice of Nebraska's Meatpacking Workers."



1 This was the result of a survey that we did with 455  
2 meatpacking workers across the State of Nebraska in  
3 five different sites. But before we spoke to even one  
4 meatpacking worker we knew that the government  
5 statistics show that meatpacking injuries are double  
6 that as manufacturing as a whole according to the  
7 Bureau of Labor Statistics, 2007 report.

8 Our report went straight to the workers in  
9 order to document the safety conditions from the  
10 experience and prospective people who live this every  
11 day. We found that the workers' greatest concern was  
12 the safety risk associated with the unrelenting speed  
13 of work which is a combination of the actual line speed  
14 and the number of workers staffing the line.

15 So workers expressed several key concerns  
16 regarding workplace health and safety and there were  
17 five major ones. As I just said, unrelenting work  
18 speed which leads to the second one, high injury rates.  
19 Also supervisory abuse and humiliation, denial of  
20 bathroom usage and also the lack of neutrality of  
21 company medical staff, and I'll take these in order.

22 Regarding the unrelenting work speed, the

1 survey showed that 73 percent of the workers said that  
2 the speed of line had actually increased in the past  
3 year. At the same time, 94 percent of the respondents  
4 said that the number of workers working the line had  
5 decreased. So you have basically a perfect storm in  
6 the meatpacking plants of an increase in line speed and  
7 a decrease in the staff.

8           And that leads to our -- the second concern,  
9 the high injury rates. Two-thirds of the workers, 62  
10 percent of the workers surveyed described injuries in  
11 the past year. As predicted by the 2005 GAO study,  
12 this far exceeds the official government rate of 12.1  
13 percent.

14           Another concern is supervisory abuse and  
15 humiliation. The psychological impact of the work  
16 really went beyond what we anticipated before we did  
17 the survey. We received a flood of comments that  
18 describes supervisors screaming at and humiliating  
19 workers and raising doubts about the adequate training  
20 of these supervisors.

21           Another concern is the lack of neutrality of  
22 the company medical staff. A lot of times workers said

1 that they would go to -- they would have an injury and  
2 they would go to the nurse and they'd simply be told to  
3 take a pill, put some ice on it or learn to live with  
4 the pain.

5           We also saw that the workers were not informed  
6 of their rights under Nebraska State Workers'  
7 Compensation Law which allows the worker to choose his  
8 or her own physician rather than the company choosing  
9 the doctor. Obviously, that has a huge ramification  
10 for their claims down the road depending on the doctor  
11 that they see.

12           Another concern is denial of reasonable  
13 bathroom usage. We saw numerous comments from the  
14 workers about workers on the line having to defecate or  
15 urinate in their pants while working on the line  
16 because they were denied reasonable use of the  
17 bathroom. Obviously, this is a huge worker dignity,  
18 human dignity issue but it's also a food safety issue  
19 and this isn't exactly how we want our food to be  
20 processed. We always say that safe food comes from a  
21 safe workplace. And that's certainly true.

22           We have another -- a number of recommendations

1 we would like to present today. The first one goes  
2 back to the main concern, the speed of the line and the  
3 speed of work. We would like, if at all possible, for  
4 OSHA to regulate the speed of line. Right now, USDA  
5 regulates it only for food safety but not for worker  
6 safety. And perhaps if OSHA could not do that on their  
7 own, maybe a coordination, a uniform line speed by OSHA  
8 and the USDA for both worker safety and -- food safety  
9 and worker safety.

10 I would also like to look back at the  
11 ergonomics issue. We would recommend perhaps an  
12 industry specific ergonomics rule. Right now we have  
13 the 1993 Guidelines, Ergonomics Voluntary Guidelines  
14 for the Meatpacking Industry as well as the 2004 for  
15 the poultry industry. We could perhaps use that model  
16 to create an ergonomics rule for the food processing  
17 industry as a whole.

18 We'd also like to see obviously an increase of  
19 inspections of the food processing plants. We know  
20 that resources are limited but we would like to see  
21 that if at all possible.

22 Another item getting back to the MSDs, is to

1 go back to reporting them actually on the jury logs.  
2 We can't know how to address these injuries if we don't  
3 know the rate of injuries at all. So that's something  
4 that we would recommend.

5 And I appreciate the time. Thank you.

6 RICK ENGLER: Good afternoon. My name is Rick  
7 Engler. I'm Director of the New Jersey Work  
8 Environment Council which is an alliance of 70 labor,  
9 environmental and community organizations working for  
10 safe secure jobs in a healthy sustainable environment.  
11 We're affiliated with the National Council for  
12 Occupational Safety and Health, the Blue-Green Alliance  
13 and the Protecting America Workers' Alliance.

14 Our experience in New Jersey has offered us  
15 some valuable lessons. One is that OSHA can never  
16 have enough inspectors to regularly inspect most  
17 workplaces and we recently ran the most recent numbers  
18 just as a kind of case study of this problem.

19 So, for example, New Jersey currently has 51  
20 OSHA inspectors and inspector trainees, 34 safety  
21 inspectors and 17 industrial hygienists. New Jersey  
22 has more than 243,000 workplaces. Of this total there

1 are more than 60,000 construction, manufacturing and  
2 healthcare worksites. So even if OSHA deservingly  
3 received funds to triple its inspection staff, even  
4 though we would like to see it far beyond tripling,  
5 this number of compliance officers could just inspect  
6 the tip of the iceberg. For 153 New Jersey inspectors,  
7 if it were tripled, the workforce size, to annually  
8 inspect 60,000 facilities ignoring workplace size,  
9 character and complexity, each inspector would have to  
10 conduct 392 plus inspections per year which I suspect  
11 would lead to a major complaint from AFGE and that  
12 would be the least of the problems.

13           Obviously, this isn't possible and this  
14 reality of implies nationally as well.

15           Workers cannot rely on visits by OSHA, an  
16 external inspection system to substitute for workplace  
17 based mechanisms to prevent and abate hazards and  
18 that's why OSHA can and should find new ways to tap the  
19 experience and knowledge of employees about working  
20 conditions. And, therefore, the Work Environmental  
21 Council along with our allies urges OSHA to issue a  
22 comprehensive health and safety program standard and to

1 make it one of the top priorities for effort in the  
2 coming months.

3           As starting points, OSHA should assess the  
4 strengths and weaknesses of the Occupational Safety and  
5 Health Management System standard issued by the  
6 American National Standards Institute and the  
7 California OSHA Injury and Illness Prevention Program  
8 Requirements.

9           Critically, the proposed standard should  
10 include specific provisions for effective employee  
11 involvement. First, workplaces should have a mandatory  
12 safety and health committee. A number of states,  
13 Canadian Provinces and Western European nations as well  
14 as many collective bargaining agreements require such  
15 committees and they have often proven effective even in  
16 the absence of uniform standards for such committees.

17           Some employers want alternative structures and  
18 claim they can be just as effective as committees;  
19 however, such structures are rarely defined or function  
20 effectively. Varying structures would also impede OSHA  
21 enforcement of this provision.

22           In unionized workplaces, to be consistent with

1 the National Labor Relations Act, the union as the  
2 authorized representative employees for dealing with  
3 working conditions must select employee members of the  
4 committee. In non-union workplaces this standard  
5 should encourage individuals to volunteer and allow  
6 management to select members based on experience,  
7 expertise and coverage of work areas.

8 Management and employee representatives should  
9 co-chair the committee. Committee members must have  
10 clear rights and responsibilities. The committee must  
11 have adequate time during work hours for meeting  
12 preparation, to meet no less than monthly and for  
13 hazard assessment and incident investigation. Members  
14 must be paid their regular compensation for committee  
15 activities.

16 As part of the standard, management with  
17 committee input must assess in writing potential health  
18 and safety hazards including ones that may develop  
19 because of new processes, technology, chemicals or work  
20 organizations such as reduction of staffing, increased  
21 work hours or the pace of work.

22 The committee should review all accident,



1 releases, spills, fires, explosions and near missed  
2 incidents.

3           The committee must be able to promptly review  
4 reports and assessments of work hazards that indicate  
5 agreement, disagreement and minority viewpoints. If  
6 they decide not to obey the hazard, management must  
7 provide and post a written justification in a prominent  
8 location and provide it to the committee. And there's  
9 certainly room for exploration of other enforcement  
10 mechanisms to accomplish that.

11           Training is a particularly important component  
12 of the standard; there should be an annual training  
13 plan indicating how employees would be both trained  
14 under the existing applicable OSHA standards and to  
15 understand the program standard itself. There's other  
16 aspects of training that have been spoken to earlier  
17 that we would certainly support to make sure it's done  
18 right and that employees have an actual opportunity to  
19 participate in the training and not be the passive  
20 receptors of information.

21           The standard should also require that  
22 employers electronically register the names and e-mail

1 addresses of committee members with OSHA. The Agency  
2 should maintain that information in an automated  
3 confidential system but be able to send information and  
4 alerts to committee members.

5           A health and safety program standard is not a  
6 panacea or a substitute for a strong OSHA enforcement  
7 program and OSHA will still need to be the cop on the  
8 beat. It is not a substitute for other standards and  
9 any of the other recommendations that have been made  
10 today, but we do think that it could be a huge  
11 accomplishment for this administration to take this on  
12 and we look forward to working with OSHA to achieve it.

13           Thank you.

14           DEBORAH BERKOWITZ: Thank you.

15           DR. DAVID MICHAELS: Thank you. Thank you,  
16 all. You've really issued us quite a few challenges  
17 here and I -- I guess the -- there are -- we could  
18 start anywhere, but I'm interested in this question of  
19 a program standard. I've been percolating a lot today.  
20 There could be if we did a program standard literally  
21 millions of program standards that have to be produced  
22 by employers across the country. Should OSHA be sent

1 those and what would we do with them if so?

2 RICK ENGLER: Oh, one thing that would be done  
3 is they could be posted. They could be public, they  
4 don't necessarily --

5 DR. DAVID MICHAELS: No, that's what I'm  
6 wondering.

7 RICK ENGLER: -- need to have an enormous  
8 paperwork transfer. The first response I got to the  
9 idea of the thought of having an electronic registry of  
10 committee members was a nightmare of administration for  
11 OSHA to maintain all this data. But it seems -- I know  
12 when I'm trying to, most of the time get off somebody's  
13 e-mail transmission list it works most of the time, not  
14 all the time, it works most of the time. And there  
15 seems to be ways to creatively have access and to  
16 generate information exchange without filling this  
17 building with paper that you can't possibly review.

18 DR. DAVID MICHAELS: Yeah.

19 RICK ENGLER: It would be very interesting for  
20 other types of organizations, agencies, management  
21 groups, trade associations to be able to look -- to  
22 actually look at the programs that have been developed

1 by different employers and compare, contrast, develop  
2 best practices.

3 DR. DAVID MICHAELS: Well, that's right. And  
4 certainly the direction that the Obama Administration's  
5 going is to try to make public as much information as  
6 we can so others can analyze it, because we know the  
7 government -- there -- we have limited analytical  
8 resources. And so it's worth thinking about.

9 Let me go over -- Norman, by the way, I've  
10 read this report that you wrote some months ago. It's  
11 a fabulous -- I can suggest it to all of you that -- it  
12 tells you -- it's a very well-written, provocative  
13 report.

14 NORMAN PFLANZ: Thank you.

15 DR. DAVID MICHAELS: What's been the  
16 experience with the workers' compensation system of  
17 these workers, both -- two different -- I'm interested  
18 in -- do these injuries get reported to OSHA, to the  
19 Bureau of Labor Statistics and what happens to them in  
20 workers' compensation?

21 NORMAN PFLANZ: It really varies. Like I said  
22 in the testimony, a lot of times workers are just not,

1 they don't have the information about our state  
2 workers' compensation law so they're -- they're told if  
3 you just fill out this form, you know, then you can see  
4 a doctor right away and we'll take care of everything.  
5 And we have, obviously, a language barrier.

6 About 80 percent of the meatpacking workers in  
7 the State of Nebraska are immigrants so we do have some  
8 language issues regarding that and they might not know  
9 all of their rights. So they definitely need to be  
10 informed of those rights.

11 And along the same lines, a lot of times we  
12 have -- there is a significant amount of undocumented  
13 workers in the meatpacking plants and when -- sometimes  
14 the employers do know that these individuals are  
15 undocumented but they don't raise that issue until an  
16 injury is reported, until a complaint is filed  
17 regarding harassment or anything like that.

18 And oftentimes we have in our survey that the  
19 management tells them, well, we'll talk about that  
20 tomorrow, why don't you bring your documents in  
21 tomorrow and then we can -- we can talk about it some  
22 more. And that -- for them that issue is resolved,

1 however, the injury is not at all resolved. And so you  
2 have not only the person that's still suffering from  
3 this injury but they're working -- as we've heard  
4 already, if you're working injured, you put a lot of  
5 other people at risk; you put the safety of the food at  
6 risk as well.

7           So it's one of the things that we want to do.  
8 We're actually, one of the two states that have a  
9 Meatpacking Workers Industry Bill of Rights which is  
10 really great. It was passed by then Governor Johanns,  
11 later Secretary of Agriculture and now our junior  
12 senator from the State of Nebraska.

13           And there was a great report in the journal --  
14 in Lincoln Journal Star, the local paper back in 1999  
15 that just raised a huge outcry about the condition of  
16 the -- in the meatpacking plants and that prompted then  
17 Govern Johanns to draft this Meatpacking Worker Bill of  
18 Rights which he didn't create any rights, he just  
19 listed them that you have these rights and that they  
20 need to be posted at the meatpacking plants. And one  
21 of those is you're entitled under workers' compensation  
22 laws to see your own physician, the right to organize,

1 the right to complain, et cetera are one of those.

2           So there is some work that needs to be done  
3 regarding that.

4           DR. DAVID MICHAELS: Thanks.

5           RICHARD FAIRFAX: I had a question for Tom.  
6 You raised something that was sort of interesting I  
7 thought and you said establish a group for worker --  
8 worker health and safety task group. I was wondering  
9 if you could elaborate on that a little bit.

10           TOM O'CONNOR: Yeah. I'm thinking there's --  
11 there's a lot of different standards that require  
12 worker training. There are a number of different  
13 federal programs that involve worker training. So we  
14 would like to see somebody step back and look at the  
15 big picture of what's happening in terms of worker  
16 training on a variety of programs and try to figure out  
17 what -- where OSHA can best use its resources to fill  
18 the gaps.

19           DR. DAVID MICHAELS: This is a question for  
20 all of you. A number of presenters earlier brought up  
21 competent persons and someone, I forget who, pointed  
22 out there's like 25 standards that deal with competent

1 persons. I'm just wondering, I know it's particularly  
2 in construction, but just if you have thoughts on that  
3 or the value of that, should it be -- should we go back  
4 and look at it and put together kind of a standardized  
5 definition for competent persons?

6 I know in the maritime industry it is spelled  
7 out very clearly in the responsibilities and they do  
8 have the authority to, you know, okay work to continue,  
9 to stop work until things are done but it's -- you  
10 know, that authority isn't in other -- other  
11 industries. So I just --

12 CHRIS TRAHAN: Well, the authority is there in  
13 the construction industry and it's there in subpart C  
14 and typically the term is defined in other standards.  
15 It's also there, both the ability to recognize the  
16 hazards and the authority to stop work essentially.

17 The problem is that we don't see compliance  
18 officers asking who the competent person is on a  
19 construction sites. I -- I think it's a little bit  
20 different issue than was raised this morning by the  
21 gentleman from ASSE as far as the competency level or  
22 I'm assuming, you know, the training of the competent



1 person. But the -- we just don't see it. It's an  
2 incredible tool, it's there, it's -- it's there because  
3 in the industry, we don't have fixed work sites and we  
4 have very small crews that go out and by mandating the  
5 use of this term of art competent person we see that  
6 somebody's got to be responsible for construction  
7 safety and health on the jobsite.

8           And we actually have raised that issue on  
9 Silica as well, because you send a four-man crew out to  
10 do a job where there's high generation Silica  
11 generating tasks and somebody's got to be responsible  
12 for ensuring that they brought the exhaust ventilation  
13 or whatever other controls are necessary to control  
14 that exposure.

15           So the term is -- is good and it's used in  
16 construction but I think there is a lack of  
17 enforcement.

18           DOROTHY DOUGHERTY: Mine is sort of combined  
19 one. Several of you have suggested that OSHA should  
20 develop a safety and health program type standard. Can  
21 you talk about like what current models are out there,  
22 what aspects you believe are the most successful in

1 some of those models or existing standards? Like,  
2 Rick, you had mentioned in your comments the injury and  
3 illness prevention program in California or ANCI Z10  
4 (ph).

5 RICK ENGLER: Well, I think those are two that  
6 have to be -- that have to be looked at. There's also  
7 a number of states that have mandatory safety and  
8 health committees or safety and health committees  
9 connected to reduction in workers' compensation  
10 premiums for those firms that voluntarily establish  
11 safety and health committees. There have been a number  
12 of studies which I'm sure you have or we can provide.

13 But the fact is that because there's never  
14 been much reach over all with this and much uniformity,  
15 that I frankly think it would be -- although we --  
16 there's been a number of studies in the United States  
17 showing the value of safety and health committees,  
18 there's also a lot of rhetoric just saying everyone has  
19 to have them and they're wonderful, part of the problem  
20 is that they've never -- we've never had a  
21 comprehensive overall analysis of them in terms of what  
22 are the cross worksite?

1           And, you know, of course, they don't apply to  
2 every single worksite in reality. You know, in the  
3 building trade just certain ones. Certainly, where  
4 the competent person's issue is far perhaps more  
5 relevant.

6           That until we have a system in place based on  
7 experience and not waiting for every perfect study, I  
8 don't think we're going to -- we're going to see the  
9 results because you have some collective bargaining  
10 agreements that have pieces of this, some are very very  
11 good. Other workplaces that have safety committees and  
12 then provision number two is hazard pay. You know, and  
13 they -- that still exists.

14           So I think it's up to OSHA to take the  
15 leadership on this in a way that we can have in -- at  
16 least in fixite (ph) workplaces, we can have committees  
17 across the board with a set of clear worker rights,  
18 with a set of clear management responsibilities and  
19 that will be the basis if we wanted to authorize that  
20 for a number of -- in years and build in a process for  
21 evaluation. That's certainly appropriate.

22           But I don't -- I don't think there's going to

1 be a magic study that proves the efficacy of this in  
2 advance because I don't think it's ever been done and  
3 that's the -- that's the challenge but it's also the  
4 opportunity of doing this in a comprehensive way, of  
5 engaging millions of workers in this process. We  
6 haven't done that. And they're not going to get  
7 engaged because Pennsylvania has a -- you know, a bill  
8 to have a committee and the employer gets a work comp  
9 premium reduction but there's no set of clear worker  
10 rights.

11           So until we have the set of worker rights that  
12 is built into the program, our studies are going to be  
13 intrinsically flawed about the success of such programs  
14 to date. And I frankly think that if we -- we talk  
15 about Canada and Western Europe and other places,  
16 they're instructive and they're valuable to review but  
17 there will be those that say this is a -- you know, not  
18 another country but another planet. And I would -- as  
19 someone who has attempted to find the best of  
20 experience in those countries in the past, that's just  
21 my -- my reaction is that we may need a uniquely U.S.  
22 approach to this.

1 DR. DAVID MICHAELS: I had a question, I think  
2 for all of you but maybe Chris is sort of the lead on  
3 this, is there's a lot of discussion about sustainable  
4 product and, you know, lead buildings. Everybody wants  
5 to work in the lead building. We had a number of  
6 fatalities in the last few years in people constructing  
7 lead buildings. In fact, the very -- the cause of the  
8 fatality was associated with making it a sustainable  
9 lead building. Yet the lead process takes no account  
10 of OSHA or worker safety in that, and they -- you know,  
11 people want, you know, free range chickens but they  
12 don't think about the poultry workers.

13 How do we incorporate that? What experience  
14 have you had in sort of trying to wrestle with that  
15 all?

16 CHRIS TRAHAN: Well, we've had -- at CPWR,  
17 we've had some research projects on going ongoing on  
18 this, and there's one that's really promising out of  
19 Oregon that looks at the lead building process. And  
20 for those who don't know the lead building, to get a  
21 lead certification means that you get to go to work on  
22 a green building after it's built but on the way up,

1 you have absolutely -- there's not any consideration to  
2 the builders, to the construction workers who are  
3 building that building.

4           And a lot of incidents, we believe, have been  
5 based on the fact that it's been lead -- it's been  
6 green construction so we got to put the skin up to keep  
7 the dust down for the community and inside it's 110-  
8 degrees and they're over the -- there's Silica dust  
9 from the concrete floors.

10           So -- so we've got this kind of balance and  
11 we've got some studies going on. We're trying to  
12 validate actually a tool that mimics the USBC, sorry,  
13 green lead structure to try and look at systemic kind  
14 of systems of safety in the same way that we look at  
15 lead constructions.

16           So, looking at the -- assessing the safety and  
17 health programs of the constructors and trying to  
18 identify a numerical rating with that and to do  
19 something that would mimic, and could be used hand-in-  
20 hand with the lead system, but look at it from a whole  
21 system of safety, a whole safety program's perspective  
22 and we'll be happy to share that with you what we've

1 got and the promising results we've got so far. We're  
2 just waiting to do some hard validation on it.

3 DR. DAVID MICHAELS: I'd very much like to see  
4 that.

5 TOM O'CONNOR: Just broadening that a little  
6 bit to the whole issue of green jobs, I think that has  
7 been an issue that's been of great concern to the COSH  
8 groups and our allies around the country that most of  
9 the time when people talk about green jobs they never  
10 mention the idea of worker safety and health.

11 And so we've been working hard, a number of  
12 our organizations to get involved in local community  
13 coalitions that are pushing for green jobs and  
14 constantly bringing up that issue of worker safety and  
15 health and trying to change the -- the paradigm of what  
16 a green job is so that it's -- a green job means also a  
17 safe and health job for the worker.

18 CHRIS TRAHAN: And just -- also, to build on  
19 that, I mean, you have -- you have a whole host of  
20 unique health and safety issues with weatherization  
21 projects which are all being funded under energy  
22 conversation funding, with alternative materials which

1 are being funded with U.S. money. And we don't know  
2 some of the health and safety ramifications of these  
3 and we've had limited success in trying to pursue the  
4 issue and find funding to study it.

5           RICHARD FAIRFAX: Just one comment to Norman.  
6 I was kind of bothered -- well, I was just bothered a  
7 lot by the bathroom break issue. That actually was  
8 raised to us 12 years ago and, you know, we do have  
9 standards that covered it and we've, you know, we have  
10 interpretive letters. I just -- if you don't know  
11 about them, I just want to make sure you do. That, you  
12 know, that basically state that -- I mean, that's an  
13 unhealthy condition besides being unsanitary for the  
14 food workers.

15           But we have, you know, looked at it,  
16 interpreted it and determined that our standards have  
17 covered it and, you know, we've been challenged on that  
18 and it's stood up. So I'm just -- I just wanted to  
19 make you aware of that. Thank you.

20           DEBORAH BERKOWITZ: Thank you. And with that,  
21 we get to take a ten-minute break.

22           RICHARD FAIRFAX: A bathroom break. OSHA



1 requires it.

2                   DEBORAH BERKOWITZ: There are bathrooms on  
3 both sides of the hall and we'll see you soon.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

## 1 CERTIFICATE OF NOTARY PUBLIC

2

3 I, NATALIA KORNILOVA, the officer before whom the  
4 foregoing meeting was taken, do hereby certify that the  
5 witness whose testimony appears in the foregoing pages  
6 was recorded by me and thereafter reduced to  
7 typewriting under my direction; that said hearing is a  
8 true record of the proceedings; that I am neither  
9 counsel for, related to, nor employed by and of the  
10 parties to the action in which this meeting was taken;  
11 and further, that I am not a relative or employee of  
12 any counsel or attorney employed by the parties hereto,  
13 nor financially or otherwise interested in the outcome  
14 of this action.

15

16

17

NATALIA KORNILOVA

18

NOTARY PUBLIC IN AND FOR THE

19

DISTRICT OF COLUMBIA

20

21 MY COMMISSION EXPIRES:

22 APRIL 14, 2012

1