



Reply to the attention of:

MEMORANDUM FOR: DAVID MICHAELS, PhD, MPH  
Assistant Secretary

FROM: *Thomas Galassi*  
THOMAS GALASSI, Director  
Directorate of Enforcement Programs

SUBJECT: Federal Advisory Council on Occupational Safety and Health  
May 3, 2012 Meeting Minutes

Attached, for your certification, are the draft minutes of the May 3, 2012 Federal Advisory Council on Occupational Safety and Health (FACOSH) meeting, held in the U.S. Department of Labor - Frances Perkins Building, in Washington, DC. FACOSH is governed by the Federal Advisory Committee Act, which requires the advisory committee minutes be certified by the committee chair within 90 calendar days of the meeting [§ 41 CFR 102-3.165(c)].

If you have any questions or need additional information, please contact Mr. Francis Yebesi, FACOSH Designated Federal Official at (202) 693-2233.

Approved: *[Signature]*

Date: 8-1-12

Disapproved: \_\_\_\_\_

Date: \_\_\_\_\_

## **FEDERAL ADVISORY COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH**

May 3, 2012

Dr. David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety & Health (OSHA), and chair of the Federal Advisory Council on Occupational Safety & Health (FACOSH), called the FACOSH meeting to order on May 3, 2012, at the U.S. Department of Labor (DOL), Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC.

### **FACOSH MEMBERS**

Mr. Curtis Bowling, Management Member  
Director, Environmental Readiness & Safety, *U.S. Department of Defense* (DoD)

Mr. Dennis Bushta, Management Member  
Deputy Director, Office of Administration, *U.S. Environmental Protection Administration* (EPA)

Mr. William Dougan, Labor Member  
National President, *National Federation of Federal Employees* (NFFE)

Ms. Catherine Emerson, Management Member  
Chief Human Capital Officer, DASHO, *U.S. Department of Homeland Security* (DHS)

Mr. William Fleming, Management Member  
Deputy Chief Human Capital Officer, *U.S. Department of Commerce* (DoC)

Mr. Edward Hamilton, Management Member  
Director, Facilities & Administrative Services, *U.S. Department of Justice* (DoJ)

Mr. Gregory Junemann, Labor Member  
International President, *International Federation of Professional & Technical Engineers* (IFPTE)

Ms. Deborah Kleinberg, Labor Member  
*Seafarers International Union*, AGLIWD

Mr. William Kojola, Labor Member  
Industrial Hygienist, *AFL-CIO*

Mr. Chico McGill, Labor Member  
Director, Government Employees Department, *International Brotherhood of Electrical Workers* (IBEW)

Ms. Milagro Rodríguez, Labor Member  
Occupational Health & Safety Specialist, *American Federation of Government Employees* (AFGE)

Mr. John Sepúlveda, Management Member  
*U.S. Department of Veterans Affairs* (VA)

Dr. Richard S. Williams, MD  
Chief Health & Safety Officer, DASHO, *National Aeronautics & Space Administration* (NASA)

### **SPECIAL AGENCY LIAISONS (SALs)**

Mr. Frank Hearl  
Chief of Staff, *National Institute for Occupational Safety & Health* (NIOSH)

Mr. Robert Shaw  
Director, Security & Safety Risk Management Division, *U.S. General Services Administration* (GSA)

Mr. Gary Steinberg  
Acting Director, *Office of Workers' Compensation Programs* (OWCP), DOL

### **OTHER PARTICIPANTS**

Ms. Mikki Holmes  
Alternate Designated Federal Official (DFO), Office of Federal Agency Programs (OFAP), *OSHA*, DOL

Ms. Sarah Shortall, FACOSH Counsel  
*Office of the Solicitor of Labor*, DOL (SOL)

*Announcements.* Dr. Michaels announced the new members to the Council. These included the reappointment of: Mr. Greg Junemann and Ms. Milly Rodriguez as labor members, and Mr. Dennis Bushta as a management member. Other newly appointed members included: Ms. Catherine Emerson, Ms. Rhea Suh (*U.S. Department of the Interior* – unable to attend), and Dr. Richard Williams. In addition, he identified Mr. Robert Shaw as the GSA-Special Agency Liaison, who was accompanied by Mr. David Marciniak, his alternate.

*Meeting Minutes.* Dr. Michaels announced that the certified minutes of the December 1, 2011 FACOSH meeting were available for public viewing in the OSHA Docket at <http://www.regulations.gov>, the federal eRulemaking portal (Docket No. OSHA-2011-0192). Ms. Shortall said that exhibits and other information from this meeting (May 3, 2012) were made part of the public record for FACOSH at <http://www.regulations.gov> (Docket No. OSHA-2012-0006). They also were available for inspection and copying at the OSHA Docket Office.

*Proxies.* Pursuant to 29 CFR 1912.29, which permits management and labor members who cannot attend the FACOSH meeting to request that another member to vote in their place, Ms. Suh (management member) gave her proxy to Mr. Bushta (management member). The following labor members gave their proxies to other FACOSH labor members: Ms. Colleen Kelly to Mr. Dougan, Ms. Rodriguez (anticipating her late arrival to the meeting) to Mr. Kojola, and Mr. Greg Junemann (anticipating his early departure from the meeting) to Mr. McGill.

Ms. Shortall pointed out that the *Federal Advisory Committee Act* allows meetings to be held in whole or in part by electronic means, including teleconference. Ms. Shortall stated that this

provision allowed a member to attend *in absentia* via the phone. Dr. Michaels stated that with a little bit of forewarning, OSHA would attempt to accommodate such requests.

## OLD BUSINESS

### FACOSH Subcommittee Reports

#### *Training Subcommittee*

Dr. Michaels identified the three Training Subcommittee workgroups as: the *Federal Buildings Personnel Training Act of 2010 Workgroup*, the *Model Career Management Plan Workgroup*, and the *Uniform Safety & Health Training Guidelines for Federal Employees Workgroup*.

#### Report: Federal Buildings Personnel Training Act (FBPTA) Workgroup

Mr. Kojola and Mr. Bushta, the Training Subcommittee co-chairs, introduced the workgroup co-chairs, Mr. Matt Gillen, *NIOSH*, and Mr. Bruce Zaczynski, *National Archives & Records Administration*. Using a PowerPoint presentation, the co-chairs presented the work accomplished by the workgroup, to include: legislative background, the process which guided their deliberations, and outcomes and recommendations. Key items of Mr. Gillen's presentation included that the FBPTA requires:

- GSA, in consultation with different stakeholders and groups, to identify core competencies necessary for federal personnel performing building operations and maintenance, energy management, and safety. This effort was to be completed by June 2012.
- The designation of relevant courses, certifications that give people those competencies.
- Affected staff to demonstrate those competencies a year later; new hires would be required to demonstrate those competencies as well.
- The continuing education industry to develop or identify courses to ensure operation in accordance with industry best practices.
- Developing a curriculum for high performance building managers.
- The application of the FBPTA to both federal employees and outside contractors who work in federal buildings under contract.

Mr. Gillen identified the *American Recovery and Reinvestment Act* as a piece of guiding legislation which provided \$4.5 billion to upgrade federally-owned facilities with more efficient components and systems, and required that federal buildings be maximally productive. He identified that the *National Academies* reported core competencies for federal facilities and predicted outcomes from investment in maintenance and repair. He identified that in June 2011, FACOSH recommended that the Secretary of Labor should direct OSHA, in coordination with NIOSH, to identify and convene a panel of federal agency personnel with expertise related to building operations, design, maintenance, and safety to work with GSA on identifying core competencies. Mr. Gillen added that the workgroup was convened with representation from the Departments of *Energy* and *Justice*, *EPA*, *GSA*, *NIOSH*, and *OSHA*. The workgroup was charged to identify those safety and health competencies for the three key building-related positions identified by GSA for high-performing buildings: *facility manager*, *operating engineer-building technician*, and *sustainability manager*. Mr. Gillen stated that the workgroup used DOE's job task analyses (JTA) as identified by GSA for evaluating the requirements of the FBPTA.

Mr. Gillen provided an overview of the three analyses, and explained how to use their respective matrices. For each of the key building-related positions, he reported on the competencies based on the existing JTA. He identified topics/tasks not directly mentioned in the JTA that were used to develop the analyses, and provided examples of the specialized safety and health knowledge competencies needed, relevant federal regulations, and other best practice or consensus or agency standards. Mr Gillen stated that on April 11, 2012, the GSA released the draft *facility manager* core competencies for comment which tangentially mentioned safety and health. He proposed that the core competencies on safety that the workgroup developed would be useful to GSA. He suggested that FACOSH forward the workgroup-developed competencies to GSA for consideration.

Mr. Bushta emphasized that there were mandatory deadlines associated with this project. He added that although GSA was the real estate manager for the Federal Government, a number of present agencies managed and/or owned their buildings. In these cases, they assumed responsibility to address the requirements of the FBPTA.

Ms. Shortall asked whether the matrices of relevant federal regulations was exhaustive, to which Mr. Gillen responded affirmatively.

Mr. Kojola stated that the FACOSH Training Subcommittee would like the FBPTA workgroup to identify available training resources, and to engage GSA to ensure the use of these core competencies. Mr. Fleming encouraged the workgroup to put much of their work online. Dr. Michaels affirmed these requests; he then thanked the co-chairs and the members of the workgroup for their thoughtful and comprehensive efforts.

***FACOSH Training Subcommittee Workgroup Recommendations.***

**FBPTA Workgroup.** Dr. Michaels read the FBPTA workgroup's recommendation:

*FACOSH would review and approve this core competencies report and recommend that the Secretary of Labor transmit it to the current head of GSA so that it can be considered by GSA as part of their activities to respond to the statutory requirements of the FBPTA. Because the FBPTA includes a June 2012 deadline for initial listing of core competencies FOACOSH recommends that the transmittal process be expedited and/or that the Assistant Secretary transmit the report as soon as possible after the May FACOSH meeting.*

There was no discussion on the recommendation.

**Report: Model Career Management Plan (MCMP) Workgroup**

Mr. Kojola introduced the workgroup co-chairs, Ms. Nancy McWilliams, DoC, and Mr. John Siebert, DoD. Ms. McWilliams stated that FACOSH directed the workgroup to: develop a "model career management plan" for the GS 0018, *Safety and Occupational Health Manager*, job series; identify training and experience needed for advancement; and develop a mechanism to include training in an employee's individual development plan. She stated that the workgroup was currently researching extant safety career model plans from a variety of sources, such as military and civilian agencies; professional societies, such as the *American Society of Safety*

*Engineers*, and the *Board of Certified Safety Professionals*; standard-setting organizations, such as the *American National Standards Institute*; and selected certifications and licenses that meet rigorous criteria. She stated that the workgroup's next step was to draft a model career management plan for submission to FACOSH through the Training Subcommittee. She articulated that the plan would identify the steps that current GS 0018s, who do not meet the new requirements, could take to meet these requirements.

Mr. Fleming queried the workgroup regarding OPM's timeline and cooperation on the issue. Ms. Holmes responded by stating that: the *Office of Federal Agency Programs* had been in contact with OPM, and the agency anticipated providing FACOSH with an update at its next meeting. Mr. Sepulveda stated that the VA, the 3<sup>rd</sup> largest federal agency with GS-0018 job series employees, had a vested interest in the outcome of the workgroup. He stated that VA management representatives would work through the *Chief Human Capital Officers Council* to expedite the OPM process. Mr. Bowling added that the DoD Strategic Human Capital Management plan addressed GS-0018s competencies. He stated that it was crucial to the safety community that agencies hired the right people for the job, and worked with new hires to attain the right competencies through the right training. Mr. Bushta emphasized the need to maintain momentum to ensure the workgroup's efforts come to fruition; this was reiterated by Dr. Michaels.

Upon request of Ms. McWilliams, Ms. Shortall stated that there was a date error in the workgroup's report, specifically in the presentation slides; she stated that the date should read June 7, 2011, not December 1, 2011.

Dr. Michaels thanked the co-chairs and the members of the workgroup for their efforts to move forward.

*Report: Uniform Safety & Health Training Guidelines for Federal Employees Workgroup*

Mr. Kojola introduced the workgroup co-chairs, Mr. David Smith, *Department of Energy*, and Ms. Brenda Miller, *Department of the Army*. Mr. Smith stated that the workgroup was tasked to establish safety and health training guidelines focused on the 29 CFR Part 1960 training requirements. Their goal was to achieve a measure of consistency across the Federal Government. He stated the workgroup, deliberating through conference calls, defined the training to encompass the six categories that §1960 lists for employees. He identified the common training elements for all employee groups: 1) Section 19 of the *Occupational Safety and Health Act of 1970*, 2) Executive Order 12196, 3) §1960, and 4) agency-specific safety and health programs. He stated that the workgroup considered: the unique requirements for specific job/employee categories, such as supervisory employees should be provided training on motivation of subordinates, training focused on required skills and abilities, and OPM-mandated training, as a part of a position classification standard; the frequency and duration of training, such as, orientation, annual, or refresher; documentation and assurances of training; and training delivery methods, such as: hands-on, peer-to-peer, or interactive training.

Dr. Michaels thanked the co-chairs and the members of the workgroup for their excellent work. He thanked the entire Training Subcommittee and its workgroups for taking on these three

challenging tasks and producing some very important materials. He stated that FACOSH needed to ensure that all these recommendations moved forward.

### ***Emerging Issues Subcommittee - Permissible Exposure Limits (PELs)***

#### **Report and Discussion: Revised PELs Recommendations Workgroup**

Dr. Michaels introduced Mr. Chico McGill, *IBEW*, and Mr. Tony Pierpoint, *DHS*, as the Subcommittee co-chairs. He stated that Mr. Pierpoint was standing in for Mr. Donald Bathurst, *DHS*, whose FACOSH term of office recently expired. Dr. Michaels stated that at the December 2011 meeting, FACOSH accepted the Emerging Issues Subcommittee - PELs final report and Recommendation 3. However, the Council requested the Subcommittee revise Recommendations 1 and 2.

#### **Discussion on Recommendation 1.** No discussion.

**Discussion on Recommendation 2.** Mr. McGill thanked all the Subcommittee members for their outstanding work. Regarding the insertion of procurement language, he stated that the Subcommittee's intent was that federal contractors performing work on behalf of the Federal Government should be covered by applicable standards endorsed by the contracting federal agency, whether the work was performed at federal facilities or those facilities overseen by the a federal agency. Mr. Hearl added that the Subcommittee did not intend that the contractor should follow these standards at the contractors' private facilities; but rather, only while performing contract work on federal sites. Mr. McGill added an example of a DHS employee working in an airport, operating federally-owned equipment; the DHS employee would be covered by the DHS standards, not those of the private sector employer.

Mr. Kojola asked Mr. McGill why the Subcommittee inserted the phrase "*regardless of minimum requirements*" into the recommendation, to which Mr. Hearl responded that an employer is not limited to the minimum requirement identified in a PEL. He stated that the phrase must be taken in the context of the recommendation: the Subcommittee used the "*as low as reasonably achievable*" or ALARA concept being the absolute lowest bound for an occupational exposure limit (OEL); the OSHA PEL being legally required and the minimum requirement that has to be met. Dr. Michaels asked whether Mr. Hearl meant "*regardless of minimum legal requirements*," to which Mr. Hearl responded affirmatively.

Mr. Bushta asked whether the adoption of the aforementioned language would open any doors against the Government for third-party legal actions, litigation, or other kind of issues regarding private sector expectations/perception or claims about potential exposures based on this "*lowest possible*" or "*most feasible*" level concept. Ms. Shortall responded that the Council should consider seeking legal opinion from SOL. Mr. Bushta suggested that this should be requested; Mr. Steinberg agreed, and suggested that the Council follow-through on the recommendation of seeking a legal opinion. Mr. McGill opined that this would be part of the process of seeking Secretarial approval for the recommendation. Dr. Michaels interjected that OSHA would work closely with SOL and OWCP to ensure that the language used in the recommendation did not create additional liabilities for either the Government or its contractors; and that seeking legal counsel would be an obvious consideration to be included in the approval process.

Mr. McGill stated that the recommendation itself provided a basis for the action, in that it stated the Secretary will publicize a list of recognized research from regulating bodies of OELs that agencies must consider when complying with this requirement, and that the list should be updated every five years. Dr. Michaels stated if the recommendation had proceeded through the promulgation process, it would include provisions stating that it would not impose any additional legal requirements or liabilities upon an employer. Mr. Sepúlveda noted that there was already language in the recommendation, "*to the extent authorized by applicable statutory authority,*" that indicated that an agency's actions would be consistent with extant laws and regulations. He also emphasized that this was a "*recommendation*" to the Secretary of Labor who would undoubtedly vet the recommendation with the Office of General Counsel and, if necessary, with the DoJ - Office of Legal Counsel. He stated that FACOSH was an advisory body to the Secretary, and that the Secretary would choose how to proceed, and would most likely include a very careful review by the Department's attorneys. Dr. Michaels assured the Council that the process would include such a review.

Mr Fleming stated that DoC had several laboratories located in the *National Institute of Standards & Technology*, and the *National Oceanic & Atmospheric Administration*, and that DoC would find the recommendation and its logic tables very helpful in enforcing a safety culture in these laboratories. He stated that the competencies and training would enable his staff to follow the material, understand it, and apply it.

Mr. Bushta asked whether the recommendation would apply to emergency response personnel/situations. Dr. Michaels, speaking from OSHA's perspective, stated that the Agency understood there would be situations when its OELs could not be applied. He said that the Agency wanted workers to be as prepared as possible, and as protected as possible. Mr. Hearl stated that when drafting the document and recommendations, the Subcommittee intended that the insertion of the word "*feasible*" would allow an agency head to determine feasibility, with the assistance of a competent person, as is laid out in the report. He opined that the recommendation left room for an agency head to make appropriate choices in specific situations. Mr. McGill stated that the report's definition of "*economically feasible*" implied that complying with an OEL would not threaten the agency's ability to fulfill its mission. He stated that in an emergency situation, the agency would have to deal with it in the best way it could, using available guidance. Ms. Shortall reminded the Council that, when corresponding to the Secretary, it had to be clear in its intent, and to whom the recommendation applied. Dr. Michaels paraphrased the intent "*to apply to all federal workers but within the context of feasibility.*" He stated that first responders needed protection; and when situations could be anticipated, agencies must provide workers protection, recognizing that there may be situations where that was not feasible. Mr. McGill agreed, and indicated that the Subcommittee's intent was to apply the recommendation to the entire federal worker community as a whole, not to individual groups. Mr. Bushta emphasized that in such situations, undoubtedly, there would be lengthy discussions regarding the Council's intent; and it needed to be clear in its language, and the Council must be prepared to address the issue. Mr. Sepúlveda noted that the Subcommittee was sensitive to giving maximum freedom to the agency heads to apply the recommendation under appropriate circumstances. He stated that the language recognized an agency's fiscal feasibility under current budget concerns, and was not intended to deter an agency from carrying out its fundamental mission. He stated that it would be inadvisable to add more specificity and more



specific scenarios to the recommendation, noting that it could paralyze the Council's efforts. Mr. McGill stated that since the recommendation had implications for an Executive Order, it would receive close scrutiny before being signed by the President.

Mr. Bowling paraphrased his understanding of the recommendations to "*require the Secretary to publish a list of recognized regulatory body's standards for use by federal agencies,*" and that "*an agency head would apply the most protective, feasible OEL based on the standards and the existing OELs.*" In addition, he stated that it required that "*the same standard applied to contractors working in a federal facility.*" Mr. McGill affirmed his interpretation to which Mr. Bowling suggested that the language be simplified to so state. Mr. Hearl affirmed that it was the intent of the Subcommittee that the recommendation would apply to contractors working on behalf of the Government at federal facilities, and was not intended to create additional burdens or requirements for an agency. Dr. Michaels stated his reluctance to change the recommendation, citing that it contained important language, such as "*authorized by the applicable statutory authority.*" Mr. Bowling corrected Dr. Michaels' interpretation, stating he was focused on that portion of the recommendation referring to "*regardless of minimum requirements.*" Dr. Michaels asked Mr. Bowling if he was suggesting dropping the phrase "*regardless of minimum requirement,*" which Mr. Bowling affirmed. Mr. Hearl stated that the inserted legal language was put into the recommendation in response to the Council's December 2011 request that the Subcommittee consider language that would not violate the *Federal Acquisition Regulation* (FAR). He stated that he had no objections to deleting the phrase as long as no one would interpret that the Council was suggesting easing the limits and allowing people to exceed PELs. Dr. Michaels stated that OSHA would assist the Secretary in crafting the language to preclude this interpretation from occurring.

Ms. Shortall emphasized her previous statement that it was very important for the Council to clarify its intentions. She noted that the Secretary needed to know what she was being asked to approve. If the Council did not make their intentions known, and the requirements or the recommendation were very general, then it would leave the recommendation open to interpretation by an agency. She stated that if it was the Council's intention to have uniform application across agencies, lack of clarity made that uniform application less likely. Ms. Kleinberg asked whether it was the Council's recommendation to either change the actual substance of the document, or to supplement the report with a memorandum to the Secretary explaining the Council's intentions. Ms. Shortall stated that either approach was acceptable, but advised the Council that it would be best to make sure the actual recommendation was as clear as possible. She emphasized that it was the actual "*vote*" of the Council that constituted its "*official action,*" not a memorandum.

Dr. Michaels stated that after having heard the discussion, it was his thought that the recommendation was actually straightforward in stating that it could not be used by the agency to say it was not feasible to meet an OSHA PEL. Therefore, if everyone agreed, he stated that he did not see the need for further clarification. Ms. Shortall stated that Recommendation 1, as approved by the Council, very clearly spelled out the duty of the Executive Branch departments. But the question was whether the same duty applied to contractors, and would they be required to use the most protective, yet feasible OELs as published by a recognized research or regulating body, notwithstanding the existence of the PELs. She stated that this suggested that federal

Executive Branch departments were required to go further than the PEL if that was feasible. Therefore, the question was whether it was the Council's intention to apply this only to federal agencies or to contractors equally, or are contractors to be held only to the PEL.

Mr. Bowling stated that it was his interpretation, after listening to the discussion, that a federal agency would determine feasibility of new exposure limits based on the DOL list and the existing PELs. The agency would then apply the OEL equally to the federal workforce and contractors working on the federal facility where feasible to the extent authorized by applicable statutory authority, vis-a-vie, within the limits of the FAR. Mr. McGill stated that if a standard existed, then the agency must comply. However, if no standard existed the agency had to determine the most reasonable and most feasible OEL to apply to the situation. He stated that its application would apply to both federal employees and contractors working in the federal facility. Mr. McGill cited his experience when working at private sector shipyards as an example. He stated that when he went on site, he agreed to follow the safety regulations and rules that the company or the main contractor had; and that's what he complied with. Mr. Bushta stated that that was not his interpretation, asking whether the Subcommittee intended the recommendation to apply to work done "*for federal facilities*" or "*within federal facilities*," specifically referring to the phrase "*work done on behalf of the Federal Government*." Mr. McGill provided a simplified response by stating that "*the federal employee is there doing the work or the subcontractors are there doing the work on behalf of the Federal Government*." Mr. Bushta, seeking clarification, restated his point by asking whether the contractor was doing work for the Federal Government not directed towards a federal facility.

Ms. Kleinberg suggested that it would be beneficial for the Subcommittee to take a few more weeks to reassess the language, to which Mr. Dougan replied "*no*." Stating his understanding of the preceding dialogue as: *the Council is recommending that all federal agencies be held to the same standard; but with a caveat regarding contractors*; he suggested that the insertion of the phrase, "*to the extent authorized by applicable statutory authority*" to Recommendation 2 would address the legal issues, vis-a-vie, the FAR. Ms. Shortall opined that this would not address Mr. Bushta's concerns. Responding to Mr. Dougan's concern, she stated that although the easiest way to address it would be to indicate that Executive Branch agencies would hold their contractors to the same standard as applied to the Federal Government, this language did not include "*subject to other applicable statutory regulations*." Mr. McGill asked whether she was suggesting the insertion of the specific language into the recommendation. Ms. Shortall responded that she was trying to address the intent of the Council. If the Council was suggesting that its recommendation should supersede other statutory authority, which she thought was not the case, then she would not recommend inserting the phrase. Ms. Kleinberg stated that she did not want the Council to omit important language or detract from the Subcommittee's efforts and intentions. She re-emphasized her original suggestion that the Subcommittee take a few more weeks to reassess the language.

Mr. Sepúlveda opined that there was a consensus regarding the Council's intention, but that there was conflict finding the precise phrasing to make the recommendation "*perfect*." He stated that the recommendation should convey the intentions of the Council *to cover federal employees and contractors that work for the Federal Government*, and *allow agency heads a level of discretion* regarding implementation in the context of differing missions, circumstances, and emergencies;

all *subject to responsible fiscal management*. He stated that this collective intention expressed in a recommendation needed to be communicated to the Secretary. He opined that that the Secretary would communicate her intent based on her agreement with the recommendation. He ended by suggesting that if the recommendation went back to committee, that the Council would never see it again. Dr. Michaels suggested that the Council take a break and asked for volunteers to redraft the recommendation.

After a break, Dr. Michaels announced that Mr. Dougan, Mr. Hearl and Mr. McGill had redrafted the recommendation. Ms. Shortall read the revised recommendation (see below).

## **Motions Regarding the Training Subcommittee Workgroups' Reports and Recommendation.**

### ***FBPTA Workgroup Report and Recommendation.***

Mr. Bowling moved that:

*FACOSH approve the core competencies report prepared by the FACOSH Training Subcommittee, recommend that the Secretary transmit it to the current head of the General Services Administration (GSA) so GSA can consider the FACOSH report as part of their activities to respond to the statutory requirements of the Federal Buildings Personnel Training Act (FBTA), and further recommend, in light of the FBTA June 2012 deadline for initial listing of core competencies, that the transmittal process be expedited and/or that the Assistant Secretary of Labor for Occupational Safety and Health transmit the report as soon as possible after the May 3, 2012 FACOSH meeting.*

The motion was seconded and passed unanimously. Ms. Shortall entered into the record that Ms. Rodriguez had entered the room and had participated in the preceding vote.

### ***Model Career Management Plan Workgroup Report.***

Mr. McGill moved that FACOSH approve the Model Career Management Plan Workgroup report. The motion was seconded and passed unanimously.

### ***Uniform Safety and Health Training Guidelines Workgroup Report.***

Mr. Dougan moved that FACOSH approve the Uniform Safety and Health Training Guidelines Workgroup report. The motion was seconded and passed unanimously.

## **Motions Regarding the Emerging Issues Subcommittee - PELs Revised Recommendations.**

**PELs Recommendation 1.** Dr. Michaels read the recommendation. Mr. Kojola moved that:

*FACOSH recommend the Secretary of Labor submit to the President a recommendation for an updated Executive Order to amend E.O. 12196, Occupational Safety and Health Programs for Federal Employees, directing the heads of Executive Branch departments and agencies to require the use of the most protective occupational exposure limits (OELs) that are feasible, and are published by a recognized research of regulating body,*

*in federal workplaces, notwithstanding the existence of a Permissible Exposure Limit (PEL) for a given substance of concern, and that FACOSH further recommend that the Secretary publicize a list, updated every five years, of recognized research or regulating bodies whose OELs departments and agencies must consider in complying with this requirement.*

The motion was seconded and passed unanimously.

**PELs Recommendation 2.** Mr. McGill moved that:

*The Secretary of Labor include in the recommendation to the President that federal Executive Branch departments and agencies require their contractors, subcontractors, recipients, and subrecipients, to the extent authorized by applicable authority, to use the most protective occupational exposure limits (OELs) that are feasible and published by a recognized research or regulatory body, notwithstanding the existence of a permissible exposure limit (PEL), while working at federal workplaces.*

The motion was seconded and passed unanimously.

## **NEW BUSINESS**

### ***Pandemic H1N1 Influenza Protection for the Federal Workforce.***

Dr. Michaels announced that in November 2009, the Secretary of Labor approved multiple recommendations forwarded by the Council regarding *Pandemic H1N1 Influenza Protection for the Federal Workforce*. He stated that Recommendation 2c asked the Secretary to direct OSHA to coordinate periodic meetings with designated agency safety and health officials, medical personnel, technical experts, and labor representatives to discuss common operational issues and best practices, including pandemic influenza preparedness. He stated that OSHA believed that holding periodic round tables at DOL would meet this objective and minimize governmental costs. He further explained that OSHA conducted annual training for safety and health personnel, also known as FEDWEEK, and would include OSH-related pandemic preparedness as one of the topics presented at the training.

Mr. Fleming stated that DoC, in its pandemic influenza planning, had been struggling with the issue of “*how sick is too sick to come to work.*” He asked, “*Who would make the determination or decision whether or not an employee is too sick to enter a building, and if OSHA or OPM could develop a questionnaire or some other format for employees to fill out or complete or address this issue?*” Dr. Michaels stated that OSHA was not the appropriate agency to address this request, but indicated that the Agency would be willing to work with other agencies to fulfill this need. Mr. Steinberg indicated that OWCP would play a role in the endeavor as well. He stated that an individual’s doctor determined the employee ability to work or not. Mr. Steinberg stated that OWCP’s claims examiners were involved in the review and adjudication of these cases. He indicated that the Agency had procedures in place to deal with the issue, and expressed his willingness to work with DoC to resolve the concern. Mr. Hearl stated that the Centers for Disease Control and Prevention (CDC) Website had guidance for employees and employers on the issue; other guidance materials were available. Mr. Steinberg indicated that if the situation did not involve an adjudicated case, then it would fall under OPM’s jurisdiction.

Mr. Hearl indicated NIOSH's willingness to assist and provide contacts within CDC. Dr. Williams noted that in a pandemic, the CDC, World Health Organization, and other oversight bodies would provide "*specific infectious agent*" guidance regarding non-infectiousness and the timing of an employee's return-to-work (RTW). He indicated that it would be extraordinarily difficult to rule when it would be safe for an employee to RTW *a priori* for every pandemic without knowing the specific infectious agent. He stated that the guidance would be issued from pandemic to next pandemic. Mr. Kojola added that defining "*illness*," "*infectiousness*," and "*what to do*" with workers who have influenza-like illness was a big issue across the nation for all workplaces, both public and private sectors, alike. He stated that the CDC did have guidelines that help define influenza-like illness. He agreed that using NIOSH and getting assistance from CDC to help define these concepts would be extremely useful prior to and during a pandemic. Dr. Michaels stated that Dr. Williams' point was well-taken, in that guidance would depend on the specific situation. He indicated that currently there were interagency groups working the issues. Mr. Dougan stated that telework was an option. Rather than debating whether a person's sick enough to allow them in the door of a federal facility, he encouraged agencies to remain flexible and have a telework program in place, and that agencies should encourage people to stay home when ill. Mr. Hearl stated that an agency's continuity of operations plan should address these pandemic issues, too.

#### ***Proposed Recordkeeping Rule Change.***

Dr. Michaels announced that FACOSH's proposed recordkeeping rule change is currently being reviewed. He indicated that the rule change will: allow the Bureau of Labor Statistics (BLS) to collect OSHA 300-series data; provide BLS and OSHA with the data to compare the private and public sectors, and identify training needs; and, allow OSHA to more efficiently use its inspection resources by targeting those establishments experiencing the most injuries.

#### ***Workplace Violence in Healthcare.***

Dr. Michaels announced that the Agency was updating its guidance on workplace violence (WPV) in health care settings. He stated that the proposed changes would clarify the inspections involving allegations of WPV, and distinguished between the different types of abatement needed in different types of health care settings. He requested that federal agencies interested in participating in the review process contact OFAP.

#### **Public Comment.**

None of the public attendees expressed interest in addressing the Council.

#### **NEXT MEETING and ADJOURNMENT**

Dr. Michaels suggested that FACOSH meet in October 2012, at the Frances Perkins Building FPB, stating that OFAP will survey the membership for their availability. Mr. Sepúlveda moved to adjourn the meeting. The motion was seconded and passed unanimously. Dr. Michaels adjourned the meeting.

#### **MEETING EXHIBITS**

The exhibits listed below from this meeting can be read and downloaded at <http://www.regulations.gov>, the federal eRulemaking portal. In addition, the exhibits are available for copying and inspection at the OSHA Docket Office (Docket No. OSHA-2012-

0006), Room N-3437, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC, 20210; telephone (202) 693-2350.

### **Exhibits**

Exhibits entered into the public record of the May 3, 2012, FACOSH meeting:

- Ex. 1            Agenda for the May 3, 2012, FACOSH meeting
- Ex. 2            Proxy for Ms. Colleen Kelley
- Ex. 3            Proxy for Ms. Millie Rodriguez
- Ex. 4            Proxy for Ms. Rhea Suh
- Ex. 5            PowerPoint on *Recommendations for Consideration by FACOSH on the Federal Buildings Personnel Training Act of 2010* presented by Matt Gillen, NIOSH
- Ex. 6            Approved *FACOSH Training Subcommittee Report on Recommendations for Consideration by FACOSH on the Federal Buildings Personnel Training Act of 2010*
- Ex. 7            Approved *Model Career Management Plan Work Group report*
- Ex. 8            Approved *Uniform Safety and Health Training Guidelines Work Group report*
- Ex. 9            Summary of *Text Changes and Recommendations on the Adoption and Use of Occupational Exposure Limits by Federal Agencies*

