



Reply to the attention of:

OCT 16 2015

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  
July 16, 2015, Meeting Minutes

Attached, for your certification, are the proposed minutes of the July 16, 2015, *Federal Advisory Council on Occupational Safety and Health* (FACOSH) meeting, held in the U.S. Department of Labor - Frances Perkins Building, in Washington, DC. FACOSH is governed by the Federal Advisory Committee Act, which requires the advisory committee minutes be certified by the committee chair within 90 calendar days, in this case no later than October 14, 2015, of the meeting [§ 41 CFR 102-3.165(c)].

If you have any questions or need additional information, please contact Mr. Sanji Kanth, Acting FACOSH Designated Federal Official, at (202) 693-2135.

Approved: \_\_\_\_\_

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

Let's Discuss: \_\_\_\_\_

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

**MEETING MINUTES OF THE  
FEDERAL ADVISORY COUNCIL ON OCCUPATIONAL SAFETY &  
HEALTH**

July 16, 2015

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 meeting to order on July 16, 2015, at the U.S. Department of Labor (DOL), Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC.

**FACOSH MEMBERS<sup>1</sup>**

LABOR MEMBERS:

Mr. William Dougan  
National President  
*National Federation of Federal Employees*

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

Ms. Deborah Kleinberg  
Counsel  
*Seafarers International Union*

Mr. Dennis Phelps  
Director – Government Employees Department  
*International Brotherhood of Electrical Workers*

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

Mr. Mark Segall  
National Vice President  
*National Association of Agriculture Employees*

Ms. Irma Westmoreland, RN  
National Vice President  
*National Nurses United – Veterans Administration*

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<sup>1</sup> Three members attended the meeting by telephone. They are indicated by an asterisk (\*) after their name.

MANAGEMENT MEMBERS:

Mr. Wesley Carpenter  
Director – Safety, Health & Environmental Management Division  
*U.S. Environmental Protection Agency (EPA)*

Ms. Catherine Emerson\*  
Chief Human Capital Officer, Designated Agency Safety & Health Official (DASHO)  
*U.S. Department of Homeland Security*

Dr. Gary Helmer  
Director, Office of Administration  
*National Transportation Safety Board*

Dr. Gregory Parham, DVM  
Assistant Secretary of Agriculture for Administration  
*U.S. Department of Agriculture*

Ms. Maureen Sullivan  
Deputy Assistant Secretary of Defense for Environment, Safety and Occupational Health  
*U.S. Department of Defense (DoD)*

Dr. Richard S. Williams\*, MD  
Chief Health and Safety Officer, DASHO  
*National Aeronautics & Space Administration*

Dr. Patricia R. Worthington  
Director, Office of Health and Safety  
*U.S. Department of Energy*

**SPECIAL AGENCY LIAISONS (SALs)**

Mr. Frank Hearl  
Chief-of-Staff  
*National Institute for Occupational Safety & Health (NIOSH)*  
U.S. Department of Health & Human Services

Mr. David Marciniak  
Safety and Health Manager  
*U.S. General Services Administration*

Mr. Thomas Powell  
SAL Alternate for Mr. Mariano S. Aquino  
*U.S. Office of Personnel Management (OPM)*

Mr. Hilery Simpson, Assistant Commissioner  
Bureau of Labor Statistics (BLS) for Safety & Health Statistics  
*BLS, DOL*

## OTHER PARTICIPANTS

Ms. Renee Carter  
Alternate FACOSH Designated Federal Official  
Acting Director - Office of Federal Agency Programs (OFAP)  
OSHA, DOL

Mr. Jeffrey McDermott (Presenter – *Best Practices, U.S. Department of State*)  
Counsel, Whistleblower Protection Ombudsman  
*U.S. Department of State - Broadcasting Board of Governors*

Ms. Maureen Modica (Presenter – *The U.S. Mint's Journey from Willful to Star*)  
Safety Manager  
*U.S. Department of the Treasury, U.S. Mint-Philadelphia*

Mr. John Seibert (Presenter – *Transitioning the GS-0018 Job Series from 'Administrative' to 'Professional'*)  
Assistant for Safety and Health  
Environment, Safety and Occupational Health Directorate  
Office of the Assistant Secretary of Defense (Energy, Installations & Environment), DoD

Ms. Sarah Shortall  
Counsel to FACOSH  
Office of the Solicitor of Labor, DOL

Mr. Robert Swick  
OSHA Directorate of Whistleblower Protection Programs, DOL

Mr. Alfred Woodson  
Office of Voluntary Protection Programs  
OSHA Directorate of Cooperative and State Programs, DOL

## ADMINISTRATIVE ISSUES

*Emergency Preparedness.* Ms. Carter provided a safety/emergency evacuation briefing to the Council.

*Announcements.* Dr. Michaels announced that Ms. Carolyn Bland-Bowles, *American Federation of State, County and Municipal Employees*, and Dr. Wayne Quillin, *U.S. Department of State* resigned as a labor and management member, respectively. Their resignations were a result of career changes which made them ineligible for continued FACOSH membership.

*Informational Items.* Dr. Michaels provided the Council with updates on several items, including: 1) that OSHA has prepared a decision memorandum for the Secretary's consideration to appoint six members, four labor and two management, to the Council (anticipate appointment before the year's end); and 2) the status of and the steps OSHA has taken to disseminate the "Occupational Safety and Health Training Guidelines for Federal Agencies" that OSHA developed per the Secretary's recommendation. The recommendation to OSHA to develop the Guidelines was a by-product of the 2011 FACOSH training recommendations approved by the Secretary.

*Proxies.* 29 CFR 1912.29 permits labor and management members who cannot attend the FACOSH meeting to request that another member within the same membership category to vote in their place. No proxies were designated for the July 16, 2015, meeting. In lieu of proxies, several members attended the meeting by telephone.

*Meeting Minutes.* Dr. Michaels announced that the certified minutes for the November 6, 2014, meeting are available for public viewing in the OSHA Docket at <http://www.regulations.gov>, the federal e-Rulemaking portal (Docket No. OSHA-2014-0005), and on the FACOSH Webpage at <http://www.osha.gov/dep/facosh/index.html>.

## **OLD BUSINESS**

### **FACOSH SUBCOMMITTEE REPORTS**

#### ***Emerging Issues Subcommittee***

Dr. Michaels reported that, currently, FACOSH has two working subcommittees: the Emerging Issues Subcommittee - Field Federal Safety & Health Councils, which has been working on strategies to revitalize the councils, and the Training Subcommittee, that developed multiple recommendations regarding transitioning the GS-0018 Job Series from 'Administrative' to 'Professional.'

*Report: Emerging Issues Subcommittee - Field Federal Safety and Health Councils (FFSHC).*

Ms. Rodríguez, and Dr. Williams, the Subcommittee co-chairs, provided the Council with a status report on the workgroup's progress in attaining its three goals: 1) evaluating the relevancy of the FFSHCs, 2) identifying alternate forums for the councils, and 3) developing strategies to strengthen the councils. They identified the five documents reviewed by the Subcommittee, including: 1) an Environmental Protection Agency report to FACOSH on the councils' relevancy; 2) the 2010 FFSHCs' Annual Report; 3) the February 2014 letters from OSHA's Assistant Secretary to the DASHOs, the Federal Executive Boards, and the Federal Executive Associations encouraging support and participation in the councils; and 4) the results of the subcommittee-developed, (a) survey of council chairpersons; and (b) the proposed leading recommendations to include in the subcommittee's final report. The co-chairs indicated that the Subcommittee is drafting their final report and recommendations; and anticipated that the report may be available for FACOSH deliberations by its next meeting.

*Report: FACOSH Training Subcommittee - Transitioning the GS-0018 Job Series.*

Dr. Michaels began the briefing by restating the events to date regarding FACOSH's efforts on the issue, including that:

- In 2011, the Secretary transmitted four FACOSH recommendations to the Office of Personnel Management (OPM) that would update the GS-0018 Occupational Management Series.
- On December 5th, 2013, OPM presented their assessment to FACOSH regarding the recommendations to include an educational requirement and move the series from 'administrative' to 'professional;' stating that the Agency,
  1. Did not have the legal authority to make the recommended changes,
  2. Wasn't able to show that the duties of a scientific, technical, or professional position could not be performed by an individual without the prescribed minimum education as required by the Code, and

3. Noted that since the required competencies, knowledge, skills, or abilities could be obtained through work experience alone, OPM could not legally use the lack of college education or professional certification as the sole basis for disqualifying applicants.
- After OPM's presentation, FACOSH revived the subcommittee which had developed the recommendations to review OPM's findings; after which, the subcommittee co-chairs requested a briefing with OPM attorneys to gain a better understanding of the legal framework that OPM uses to determine whether a job classification can include an educational requirement.
  - In response to OSHA's request to meet with OPM's attorneys, the OPM Deputy General Counsel responded that OPM attorneys did not see a legal issue, but rather a matter entrusted to their employee services division.

Dr. Michaels concluded by introducing the Subcommittee co-chairs and Mr. Seibert, a subcommittee member, to present current actions to facilitate the transitioning the GS-0018 Job Series from 'administrative' to 'professional.' Mr. Seibert identified the overarching goal of the subcommittee as "strategizing to improve the competencies of the safety and health staff in the federal government," thereby enabling said staff to provide government leaders, agency heads, frontline supervisors, and employees with expert safety and health advice on occupational safety and health issues. He further noted that although OPM could not support the recommendations forwarded to the agency, OPM did provide FACOSH with alternatives to consider, including: a) establishing strategic partnerships, b) reassessing the hiring processes, c) developing training and career development strategies, and d) revising the position classification standards. He suggested that the Council consider continuing exploring methods to improve recruiting/ hiring practices; identifying practice parameters, and how their interaction with workforce competencies; and the job series' career progression requirements.

Mr. Seibert primarily, and the co-chairs, responded to several questions posed by members. Regarding career progression and training, he emphasized that the Department of the Army has a very robust program, - in that the Department informs all of its personnel in the GS-0018 job series about what needs to be done to progress through grade levels, available jobs, and qualifications to successfully compete for positions; and that these 'standards' drive the development of the training systems and requirements. However, training funding may be problematic. Ms. April Davis, an OPM Classification Manager, offered the agency's assistance with assessment strategies, improving job opportunity announcements, training – including those offerings that are available free government-wide to human resources professionals at its Human Resources University, and policy development, acquisitions, and creating a career path guide. Ms. Shortall, indicating that since the Federal Advisory Committee Act does not require subcommittee members to be solely from the parent committee, invited individuals who may be interested in working with the subcommittee to contact OSHA.

## **PROTECTING OUR WORKERS, ENSURING REEMPLOYMENT**

### ***Report: Current Status***

The agenda for the July 16, 2015, FACOSH meeting included an update by Mr. Gary Steinberg, *DOL-Office of Workers Compensation Programs*, on the POWER Initiative. However, due to an agency exigent matter, he was unable to attend the meeting; and did not provide a copy of his



presentation to be included in the meeting proceedings. Therefore, the Council was not provided a status update, and was tabled to the next meeting.

#### **WHISTLEBLOWER PROTECTION PROGRAMS**

Dr. Michaels introduced the discussion by indicating that the Council has received two briefings on the topic, including presentations from OSHA's Office of Whistleblower Protection Programs, and the U.S. Office of Special Counsel (OSC), where members asked for specific examples of best practices within federal agencies.

Mr. Swick introduced Mr. McDermott, the main presenter on the topic, who continued by defining a whistleblower as a "federal employee who discloses what he or she reasonably believes is evidence of a violation of any law, rule, or regulation, or gross mismanagement, or a gross waste of funds, or an abuse of authority, or a substantial and specific danger to public health or safety." He continued by stating that the Whistleblower Protection Act (WPA) protects federal employees from any personnel action taken in retaliation for having made such a protected disclosure. And in 2013, Congress enacted a pilot program that extends these protections which have long existed for federal employees to federal contractor and grantee employees as well. In 2012, Congress amended the WPA to require every inspector general to designate a whistleblower protection ombudsman.

Mr. McDermott explained that the role of the ombudsman is largely educational, specifically to educate employees on: 1) how to make a protected disclosure, 2) the protections that exist after making a disclosure, and 3) the remedies that are available to them when facing retaliation. He stated that the ombudsman, however, is not allowed to act as their advocate or their attorney. He described the U.S. Department of State's current educational campaign to educate its employees and contractors and grantees about whistleblower protection, specifically, 1) a new Department hotline poster, 2) an educational video, 3) the final stages of doing a whistleblower pamphlet, and 4) weekly meetings with employees to advise them on how to make a disclosure or, what they do if they believe they are victims of reprisal. He responded to member inquiries by stating that, 1) since the educational campaign was initiated, his office has responded to an increase in employee calls requesting information; 2) Congress has included a provision in appropriations bills prohibiting monies going to contractors using certain types of confidentiality or non-disclosure agreements, and that other federal agencies have amended their procurement regulations to do so as well; 3) the Office of Special Counsel does not share their data in total on follow-back on the outcomes for the whistleblower; and 4) the Department's pilot program for contractors requires its Office of Evaluations and Special Projects to investigate, not only the wrongdoing, but the retaliation, too.

#### **Motions Regarding FACOSH OLD BUSINESS Items.**

There were no motions, regarding the reports provided by the FACOSH Emerging Issues and the Training subcommittees, and Whistleblower Protection Programs presentation, considered by FACOSH at the time.

## **NEW BUSINESS**

### **OSHA'S VOLUNTARY PROTECTION PROGRAMS AND FEDERAL AGENCIES**

Dr. Michaels introduced the agenda item by stating that several Council members had requested a briefing on the benefits afforded to federal agencies by participating in the OSHA Voluntary Protection Programs (VPP). Ms. Modica continued by detailing the U.S. Mint's – Philadelphia journey "From Willful to Star" status in 2005. She began by providing a history of the U.S. Mint from its establishment in 1792 (in Philadelphia) under the Constitution, to its present location on Independence Mall, where it occupies a full city block with more than 500,000 square feet of manufacturing space. She indicated that,

- Since being founded, the U.S. Mint has been plagued with a lack of safety affecting its work operations, continuing into 1969 at its newest building;
- Even with the founding of OSHA in 1970, safety remained an issue at the Mint, including unguarded equipment and other unsafe working conditions;
- Around 2000, the very contentious circumstances that existed between its unions, the American Federation of Government Employees and the Fraternal Order of Police, boiled over and involved whistleblower activities voiced to OSHA; which . . .
- Precipitated an OSHA inspection that resulted in over 300 citations;
- And at that time, the Mint Director made an unprecedented decision and closed the Mint for a period of seven weeks to address the situation.

She emphasized that the closure was the best thing that could have happened, in that it prompted cooperation between management and labor to address the issues. At the time, the Mint coined the slogan - "safety makes sense," and put in place a very robust safety program. These efforts reduced the number of injuries. The effectiveness of the program prompted OSHA to suggest that the agency pursue the VPP star program. Status was obtained in 2005, and recertification has occurred twice since. She emphasized that the process is continually evolving as work processes change, the workforce ages, shift demands change, and ergonomic issues become urgent. The Mint initiated a prevention program through design to address issues including noise, robotics, electroplating coinage, ladder usage, and powered industrial trucks. Its active safety committee provides resolution oversight.

### **Motions Regarding New Business.**

There were no motions considered by FACOSH at the time.

## **PUBLIC COMMENT**

There were no public comments addressed to the FACOSH at the July 16, 2015, meeting.

## **NEXT MEETING and ADJOURNMENT**

Dr. Michaels suggested that FACOSH meet in the January-February 2016 timeframe, at the FPB, stating that OFAP would survey the membership for their availability. Hearing no objections or counter-proposals from the Council members, he 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-2015-0005), Room N-3437, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210; telephone (202) 693-2350.

Exhibit	Exhibit Description
1	Agenda for the July 16, 2015, FACOSH meeting
2	Training Subcommittee Report on the GS-0018 Job Series
3	Hard copy of the PowerPoint titled "Whistleblower Protection at the Department of State and BBG" presented by Jeff McDermott, from the Department of State
4	Hardcopy of the PowerPoint titled "The U.S. Mint's Journey from Willful to Star" presentation Ms. Maureen Modica, from the U.S. Mint-Philadelphia