

General Session
Monday, September 19th
8:30 a.m.
Indianapolis, Indiana

- I. Mike Bergeaux called the 69th Annual Conference to order at 8:30 a.m.
- II. The Indiana National Guard presented the colors and the national anthem was played.
- III. Mike Bergeaux led the group in the Pledge of Allegiance.
- IV. Mike Bergeaux introduced Terry Adkins who provided an opening prayer.
 - a. Mike Bergeaux thanked the hosts: Indiana Statewide of RECs and Hoosier Energy and then identified the Sgt at Arms: Gary Sheffer, Roger Wenning from Indiana Statewide, Ken Seger-Hoosier Energy and George Berry of Jackson County REMC and the parliamentarian: Danny Hayes
- V. The group passed hard hats to benefit Riley Children's Foundation supports Riley Hospital for Children. The group agreed to round-up the hard hat donation from \$973 to \$1000.
- VI. Gayvin Strantz provided some housekeeping notes and introduced Bruce Graham, Indiana Statewide Assoc of RECs CEO. Bruce Graham provided the welcome for the group and encouraged everyone to explore downtown.
- VII. Business Meeting. Mike Bergeaux asked anyone who is not a voting member of the organization to leave the room while the following business was conducted.
- VIII. Mike Bergeaux welcomed Michael Weltzheimer to the podium. Michael thanked the members of the Membership Committee: Kurt Kumlin, Wendy Regan and Jamie Hull. The following New members were voted in to the organization by the group.

First	Last Name	
Charlene	Anderson	Active
Royce	Anderson	Active
Charles	Armstrong	Active
Beverly	Baumstead	Active
Gueth	Braddock	Active
James	Carpenter	Active
Paul	Davis	Active
Douglas	Dean	Active
John	Dvorak	Active
James	Elkins	Active
Chris	Gearld	Active
Chris	Hall	Active
Steve	Henderson	Active

P.Kelly	Huffman	Associate
Scott	Martino	Active
Craig	Moeller	Active
Chuck	Neuhaus	Active
Tony	Powell	Active
Benjamin	Rhode	Active
Stuart	Rice	Active
Dale	Ring	Associate
Stephen	Sampson	Active
Gerald	Smith	Associate
Connie	Sparks	Active
Lisa	Wagner	Active
Tammy	Willingham	Associate

IX. Nominating Cmte- Stan Rucker thanked the committee of Bob Cooper & Danny Hayes and noted the careful consideration that the committee gave to nominees. The committee presented the following proposed slate for 2011-2012:

Executive Committee Nominees

Chairman	Norm McDugle, NM
Vice-Chairman	Jim Wright, GA
Secretary	Jamie Hull, PA
Treasurer	Bobby Love, NC
Past Chairman	Mike Bergeaux, LA
1 Year Director	Fran Achille, SC
1 Year Director	Terry Adkins, IN
2 Year Director	Lou Delaby, IL
2 Year Director	Glenn Gunningam, GA
3 Year Director	Jim Ed Burris, KY
3 Year Director	Doyle Totty, TN

There was a motion from the floor to elect Norm McDugle as the NUTSEA Chairman. There were no other nominations from the floor and Norm was voted into the position.

There was a motion from the floor to elect Jim Wright as the NUTSEA Vice Chairman. There were no other nominations from the floor and Jim was voted into the position.

There was a motion from the floor to elect Jamie Hull as the NUTSEA Secretary. There were no other nominations from the floor and Jamie was voted into the position.

There was a motion from the floor to elect Bobby Love as the NUTSEA Treasurer. There were no other nominations from the floor and Jim was voted into the position.

There was a motion from the floor to elect Jim Ed Burris as a NUTSEA 3 year Director. There were no other nominations from the floor and Jim Ed was voted into the position.

There was a motion from the floor to elect Doyle Totty as the NUTSEA 3 year Director. There were no other nominations from the floor and Doyle was voted into the position.

The group recessed the meeting until Tuesday, September 20th.

- I. The business meeting was called back into order at 3:43pm on Tuesday, September 20th. Dennis Corcoran, Chairman of the Operations and Rules Committee thanked the other members of the committee (Doyle Totty, Tommy Greer and Jim Wright). Dennis Corcoran presented bylaws changes suggested by the Operations & Rules Committee and asked for a motion to accept the bylaws as posted. There was no discussion. The motion carried unanimously.
- II. Michael Weltzheimer presented two additional names for Active Membership. Dennis Durbin and Michael Cantay were accepted into Active Membership.

The group recessed the meeting until Wednesday, September 21st

- I. The meeting was called back into session at 12:47 on Wednesday, September 21st.
- II. Quorum was established at Monday's meeting.
- III. Minutes of previous meeting were approved as presented.
- IV. Committee Reports
 - a. Host Comte Report – Gayvin Strantz reported that the evaluations look very good. Thanks to Hoosier Energy and Indiana Statewide.
 - b. Operations & Rules Cmte- Dennis Corcoran-none
 - c. Resolutions Cmte – Don Harbuck thanked the BOD for opportunity to serve on committee. He also thanked the other members: Jim Ed Burris, Ravonda Laws and Bobby Love.

- d. Membership Cmte- Michael Weltzheimer thanked the other members of the committee: Wendy Regan, Jamie Hull and Kurt Kumlin. 24 Active Members and 4 Associate members accepted representing 17 states. New Members were asked to stand and be recognized.
- e. Regulatory Report- Roger Stegman stands on this morning's report and will be submitted by Martha Dugen (below). Thanks to Martha Dugen, Mark Zavislan and special thanks to Jon Glazier.

SAFETY REGULATORY UPDATE

Presented by:

Jonathan Glazier

Retired Association Counsel

National Rural Electric Cooperative Association

And

Martha A. Duggan

Senior Principal, Regulatory Affairs

National Rural Electric Cooperative Association

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September 2011

I. Occupational Safety and Health Administration

A. Integration of General Industry and Construction electric utility standards.

1. June 15, 2005 *Federal Register* has OSHA's proposed changes to the electrical standards for general industry and for construction.

2. The proposal seeks to make changes to both the general industry electrical standards (29 CFR 1910.269) and the construction electrical standards (29 CFR 1926 Subpart V), resulting in updated rules that are as much like each other as possible.
3. Major concerns:
 - a. Relationship of host employer to independent contractor as relates to liability for safety practices of the contractor.
 - b. Clothing required to protect against second degree burns from arcs.
 - c. Prohibition of cotton and other 100% natural fibers when working on parts energized over 600 volts.
4. NRECA and its members have submitted comments and have testified during the SBREFA process and at a week-long informal OSHA hearing.
5. OSHA briefly re-opened the rulemaking in October of 2008, and again in September to October 2009, to consider re-calculating Minimum Approach Distances incorrectly calculated long ago. Meanwhile, current, incorrectly-calculated MAD tables remain in effect.
6. OSHA said to expect final rule in May 2011; early 2012 more likely.

B. Flame resistant clothing and arc rated clothing.

1. In its June 15, 2005 proposed rule, OSHA moves toward a protection standard and away from the current contribution standard. Stated another way, this is a proposed move from flame resistant clothing to arc rated clothing.
2. Current OSHA 1910.269 rule requires clothing not to ignite or melt under flame or electric arc. Most common way to comply is by wearing clothing that meets ASTM 1506 FR requirements (very thick natural fiber clothing also will comply).
3. Meeting ASTM 1506 means the clothing may ignite, but will self-extinguish when the heat source is removed. Although ASTM 1506 technically is based on a vertical flame test, the self-extinguishment should also occur if the heat source is an arc. Natural fiber clothing, because it continues to burn after a heat source is removed, can never be FR according to ASTM 1506.

4. ASTM 1959 provides a test for arc rating of clothing. The arc rating is given only to clothing that first passes a flame self-extinguishment test very similar to ASTM 1506. Because natural fiber clothing does not pass a flame self-extinguishment test, it can never receive an arc rating under ASTM 1959.
5. OSHA's June 15, 2005 proposed rule requires wearing clothing that is rated to protect against second degree burns from the arc likely on a particular system. Clothing with the proper ASTM 1959 arc rating may be used in computing the total arc rating required. Because natural fiber clothing cannot be arc rated, it cannot be used in computing the required total arc rating.
6. Unclear at this point exactly how to determine the arc rating of a layered system. Annex M to 2009 NFPA 70E notes that "the total system arc rating cannot be determined by adding the arc ratings of the individual layers."

C. High-visibility clothing.

1. In August 5, 2009 letter of interpretation, OSHA says General Duty clause requires construction workers to wear high-visibility clothing in highway work zones.
2. Although the letter is not directed specifically to utility workers, arguably it applies to utility workers doing "construction" and using highway work zones.
3. Also, the logic applies to general industry work involving highway work zones.
4. Read OSHA's August 5, 2009 letter of interpretation – which is NOT directed specifically to utilities – at http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=27155.
5. Check the Manual on Uniform Traffic Control Devices Part 6 for the proper ANSI hi-viz garments. <http://mutcd.fhwa.dot.gov/pdfs/2009/part6.pdf>.

D. Fall protection in bucket trucks.

1. For general industry (that is, not construction) work, current rule is that a body belt and a lanyard of any length are all that is required. Reg at 29 CFR 1910.67 stated in

letter to Glazier from OSHA of 3/30/01. This letter explains edit to letter to Glazier from OSHA April 1998 on OSHA's web page.

2. For construction work, "a body belt shall be worn and a lanyard attached to the boom or basket when working from an aerial lift." 29 CFR 1926.453(b)(2)(v). But a personal fall arrest system is also required. 29 CFR 1926.501(b)(15). After January 1, 1998, a body belt cannot be used as a personal fall arrest system. 29 CFR 1926.500 and 1926.502(d). A properly used body harness does qualify as a personal fall arrest system. 29 CFR 1926.500.
3. June 15, 2005 proposed electric rule would allow a 2 foot lanyard and a body belt, or body harness and lanyard allowing no more than 6 foot fall. May 24, 2010 proposed fall protection rule for all general industry does not appear to change this, but further integration is likely when these two rules become final.

E. Personal protective equipment.

1. November 15, 2007 *Federal Register* has OSHA's current PPE rule.
2. Gist of rule: employer pays for required PPE, with a few narrowly-drawn exceptions. No more employer judgment calls on whether the equipment is personalized and able to be used off the job, and therefore to be paid for by the employee. The employer pays unless the PPE is on the exception list.
3. OSHA says it is not intending to create new categories of PPE, but is merely clarifying who pays for PPE that is already required. Preamble to rule, however, appears to classify climbing gear, FR clothing and leather work gloves as PPE for the first time. Note that current 1910.269 does not require FR clothing, so that even if OSHA now considers FR to be PPE, there is no requirement now that employer pay for it.
4. Exceptions to "employer pays":
 - a. Ordinary safety-toe boots and ordinary safety prescription eyewear if employer allows to be worn off the job. Employer pays for specialty boots and eyewear and nonprescription eye protection.

- b. Metatarsal protection. Employer not required to pay for shoes or boots with built-in metatarsal protection. Employer must pay for metatarsal guards.
 - c. Everyday clothing, even if used as protection, like long sleeve shirts as protection against brush.
 - d. Ordinary clothing – including winter coats and rain gear -- and other items used for weather protection.
 - e. Employee owned PPE.
5. Employer pays for replacement PPE.
 6. Employer pays for upgrades if employer requires upgrades. If employer provides minimum PPE and employee desires upgrade, employer not required to pay any amount towards upgraded PPE.
 7. OSHA’s position, expressed in the Preamble and in a March 16, 2009 letter to Henkels & McCoy, is that “body belts, positioning straps, and pole and tree climbers (gaffs or hooks)” are required PPE. The employer therefore must pay for them.
 8. OSHA notes that FR clothing not currently required but if it becomes required, employer will have to pay for. In effect, OSHA says FR is PPE.
 9. Leather work gloves are PPE, if used for protection, and employer must pay for. If used to keep hands clean only, employer not required to pay.
 10. In the September 9, 2009 *Federal Register*, OSHA updated some PPE rules so that they refer to current ANSI or ASTM standards. Particularly helpful with footwear standard at 1910.136(b).
 11. On February 15, 2011, OSHA announced the release of an Enforcement Guidance addressing PPE payment at greater length.
 - a. Metatarsal guards: if employer requires employees to use metatarsal shoes instead of detachable guards, employer must pay for shoes. If employer provides guards and employee prefers shoes, employer is not obligated to pay for shoes
 - b. If employer chooses to use upgraded PPE (instead of minimum OSHA required) then employer must provide at no cost that equipment.
 - c. If employee loses or intentionally damages PPE issued to him, employer is not required to pay for replacement and may require employee to pay for replacement.

- d. Upgraded (per employee choice) or personalized (per employee choice) PPE: the employer is not obligated to pay for upgrades and personalization BUT employer is still required to ensure that the equipment is “adequate to protect from hazards, properly maintained and kept in sanitary condition.”

F. Cranes and derricks in construction.

1. August 9, 2010 *Federal Register* has OSHA’s new cranes and derricks rule for construction. This rule has been largely untouched since 1971.
2. Final rule applies only to work involving “power-operated equipment, when used in construction, that can hoist, lower and horizontally move a suspended load.” 1926.1400(a).
3. Concerns for utilities as operators of equipment covered by the rule:
 - a. Rule does not cover digger derricks when used for auguring holes, placing and removing poles and handling associated materials. 1926.1400(c)(4). Rule does cover other uses of digger derricks. For example, rule covers digger derricks when used to set padmount transformers.
 - b. Of major concern: employer ensuring operator competence during period prior to November 10, 2014, third-party validation of operator competence by November 10, 2014, and on-going training of operators. 1926.1427 & 1430. Some leniency for equipment with manufacturer-rated lifting capacity of 2,000 pounds or less. 1926.1427(a)(3) and 1926.1441(a). But employers still must ensure operator competence for that equipment. 1926.1430(c)(3).
 - i. Employer must ensure that operators are “competent” during period prior to November 10, 2014. 1926.1427(k). “Competent” means having the “requisite knowledge and skill.” No third-party validation required. Preamble, page 48027. If not competent, employer must train prior to allowing operation, but no training topics given. 1926.1427(k)(2)(ii).
 - ii. Sometime prior to November 10, 2014, a special type of third party must validate competency – either by certification or by qualification -- if there is no state crane operator license available. 1926.1427(a) & (k)(1). Certification

- must be by an “accredited crane operator testing organization.” 1926.1427(b).
Qualification must be through an “audited employer program.” 1926.1427(c).
- iii. During the 4-year phase-in period from November 8, 2010 to November 10, 2014, employer “must train” on same topics as required for qualification/certification. 1926.1430(c)(2). There is no requirement that training be complete, just on-going.
- c. Other concerns for utilities as operators of covered equipment
- i. Signal person requirement and training. 1926.1419 and 1926.1428.
- ii. Inspections and maintenance of equipment. Recordkeeping for each. 1926.1412.
4. Concerns for utilities as owner/operators of power lines.
- a. Utilities may be asked to provide voltages (1926.1407(e)), sit on planning committees (1926.1410(d)), and de-energize, ground or relocate power lines (1926.1410(j)). Some requests require mandatory compliance, some have optional compliance.
- b. Utilities may charge for performing requested activities. Preamble page 47945.
5. There is a new 20 /50 foot rule, but not for utilities.
- a. New 20/50 foot rule allows a contractor to work close to power lines if 20 or 50 foot clearance (depending on voltage) is maintained. 1926.1407(a)(2) and 1926.1408(a)(2)(ii). Old requirement was based on 10 foot clearance. Old 1926.550(a)(15).
- b. But operators doing Subpart V work with equipment otherwise covered by the rule -- typically a utility using a digger derrick to set a padmount transformer -- need not comply with the new 20/50 foot rule. Subpart V workers may comply with the familiar 1910.269(p) clearances. 1926.1400(g).
- c. The new 20/50 foot rule, then, applies only to non-Subpart V construction work. It would apply, for example, to a construction outfit using a crane in building a building somewhere near a power line.
6. OSHA website has FAQs and other guidance documents.
<http://www.osha.gov/cranes-derricks/index.html>.

7. The rule went into effect November 8, 2010, with operator qualification/certification effective on November 10, 2014. Preamble, page 47906, 1926.1427(k)(1).
8. On October 6, 2010, the Edison Electric Institute, with support from NRECA, petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the rule.
 - a. In March, OSHA and EEI signed an Agreement in Principle evidencing OSHA's intent to amend the rule to exclude digger derricks doing Subpart V work. OSHA is now seeking approval from the Department of Labor to amend the rule. Notice of amendment must appear in the *Federal Register*. Meanwhile, OSHA has told its field personnel not to issue citations of the rule for digger derricks doing Subpart V work.
 - b. An exclusion for digger derricks doing Subpart V work would render the rule inapplicable to most electric utilities, because most electric utilities use digger derricks only for Subpart V work.
 - c. Under the settlement filed by EEI and OSHA on August 22, 2011, OSHA will continue its non-enforcement practice and will file a Rulemaking excluding digger derricks used for Subpart V work. Timing of effective date not clear until Federal Register notice appears and attracts any comment or protest.
 - d. The rule still would apply to other sorts of cranes – lattice cranes, for example – used by utilities and their contractors in Subpart V or any sort of construction work.
 - e. The rule still would apply to digger derricks used by electric utilities and others doing non-Subpart V construction – auguring a hole and setting a pole in constructing a billboard, for example.
 - f. The duties of utilities as owners of power lines – the duty to provide voltage information, for example – would not change.

G. Confined spaces in construction rulemaking.

1. Existing construction standard at 1926.956 is old and with minimal provisions.

2. There are two existing general industry standards that cover electric utilities: 1910.146 and 1910.269(e). Most utilities have been following these rules for general industry and construction.
3. New construction standard proposed in *Federal Register* November 28, 2007.
4. Comment period ended February 28, 2008. Public hearing held July 22, 2008. Utility industry has commented that it not necessary, as current standards work fine. Unions also opposed, as is non-utility industry.
5. OSHA says to expect final action November 2011.

H. Combustible dust.

1. OSHA's General Industry housekeeping rule requires that all places of employment "be kept clean and orderly." 49 CFR 1910.22(a)(1).
2. OSHA's General Industry Electrical Standard provides: "where coal-handling operations may produce a combustible atmosphere from ... dust, sources of ignition shall be eliminated or safely controlled to prevent ignition of the combustible atmosphere." 49 CFR 1910.269(u)(11)(xii).
3. In its Combustible Dust National Emphasis Program, CPL 03-00-006 (October 18, 2007), http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=3729, OSHA has said that "surface dust accumulations over 1/32 inch deep [covering] an area of at least 5% of the total area of the room" will result in a citation of 1910.22.
4. NRECA understands that, in coal fired power plant inspections, OSHA intends to evaluate the particular conditions, and issue citations only if there is a danger of explosion. That is, a citation will not automatically issue if there is a 1/32 inch dust layer. Citations have been issued, however.
5. On July 30, 2009, OSHA issued a 21 page Hazard Communication Guidance for Combustible Dusts. Download it at <http://www.osha.gov/Publications/3371combustible-dust.pdf>.

6. Meanwhile, on October 21, 2009 OSHA began a rulemaking by asking industry to voluntarily answer 69 questions on combustible dust. Electric utility representatives answered some of the questions, noting that OSHA already has adequate regulations in place covering dust.
7. OSHA held several stakeholder meetings in 2009, 2010, and 2011. OSHA expects to convene a SBREFA panel to assess impact on small business, OSHA target date for SBREFA is currently December 2011.

I. Tree trimming and tree care.

1. OSHA's Compliance Directive CPL 02-01-045 makes clear that OSHA's logging operations standard applies only to tree care and tree removal operations primarily involving the hazards addressed by that standard. It does not apply to employers solely engaged in tree trimming or removing trees piece-by-piece. Occasional tree removal also will not trigger the logging standard.
2. Note, however, that employers still must perform the hazard assessment required by 1910.132. And, as a result of that assessment, employers may be required to provide the same type of PPE – cut-resistant chaps, for example – that would be required if the employer were subject to the logging standard.
3. OSHA no longer working on a tree trimming standard.

J. Recordkeeping.

1. OSHA proposing to modernize its 1971 recordkeeping rule.
2. Issues include: What data should be collected? How? Who should have access in and out of government?
3. Through February 2012 OSHA is running a pilot National Emphasis Program on recordkeeping, aimed at uncovering instances of underreporting.
4. OSHA says expect a proposed rule September 2011.

K. Injury and illness prevention program.

1. OSHA beginning the process leading to requirement that employers have comprehensive programs preventing injury and illness from all sources.
<http://www.osha.gov/dsg/topics/safetyhealth/>
2. Informal stakeholder meetings held in June, July and August, 2010.
3. OSHA planned to convene a SBREFA panel in June 2011 to assess impact on small business. This has been delayed so that OSHA can gather more data and stakeholder input for economic and feasibility analysis.
4. Critics say I2P2 may open employers to 2 citations: one for the hazard under General Duty Clause and one for failure to identify it in a program.
5. FAQ's on OSHA website seem to rebut the concern:

“This initiative does not allow OSHA to cite employers for not addressing any hazards that are not now covered by OSHA standards. OSHA's General Duty Clause (Section 5(a)(1)) already covers recognized hazards for which OSHA does not have standards. Since its creation 40 years ago, OSHA has cited employers under the General Duty Clause when workers are exposed to serious recognized hazards that have a feasible means of abatement. The Injury and Illness Prevention Program standard will not change that in any way.

“Will a violation of an OSHA standard also be cited as a violation of the Injury and Illness Prevention program or vice versa?”

No. A citation for violating an existing OSHA standard or for violating the General Duty Clause does not mean that an employer will also be cited for violating the Injury and Illness Prevention Program standard.”

See: <http://www.osha.gov/dsg/topics/safetyhealth/I2P2QAs.html>

L. Ergonomics standard.

1. Ergonomics is the science of suiting the workplace to the worker.
2. Much ergonomic standard writing activity centered around repetitive motions, focusing on manufacturing, material handling, computer workstations.
3. OSHA issued final rule in November 2000.
4. Congress used Congressional Review Act to invalidate the rule in March of 2001.
5. OSHA announced 4-part “comprehensive plan” on April 5, 2002.
 - a. Industry- and task-specific guidelines.
 - i. Nursing home guidelines issued March 13, 2003
 - ii. Retail grocery guidelines issued May 28, 2004
 - iii. Poultry processing guidelines issued September 2, 2004
 - iv. Shipyard guidelines issued March 7, 2008
 - b. Ergonomics enforcement plan designed for successful prosecution
 - c. Outreach and assistance, with emphasis on small business
 - d. Research, with National Institute for Occupational Safety and Health
6. In April 2010, OSHA Administrator Michaels said agency will use General Duty Clause for ergo citations.
 - a. In the *Federal Register* of January 29, 2010, OSHA proposed to add a line on the OSHA 300 Log for reporting of musculoskeletal disorders. <http://edocket.access.gpo.gov/2010/pdf/2010-2010.pdf>. In April 2011, OSHA held meetings with small business reps in an attempt to determine the difficulty small businesses would face in reporting ergo injuries. See *Federal Register* of May 17, 2011 for how to access a summary of small business comments and how to comment on them. Comments due June 16, 2011.
 - b. American Wind Energy Association filed on June 16, in opposition citing cost, regulatory burdens, lack of clarity on what constitutes an MDO
 - c. Other energy/electricity comments in opposition were filed in an earlier phase by EEI, Ameren, Oncor and the Utility Line Clearance Coalition

M. Occupational noise exposure.

1. In the *Federal Register* of October 19, 2010,

<http://edocket.access.gpo.gov/2010/pdf/2010-26135.pdf> OSHA proposed

- a. to interpret the rule as it is written – that is to require feasible administrative or engineering controls before allowing hearing PPE, and
 - b. more importantly, to interpret “feasible” in 1910.95(b)(1) and 1926.52(b) as meaning “able to be done without threatening the employer’s ability to remain in business.”
2. Current OSHA interpretation allows use of hearing PPE without first attempting “feasible” administrative or engineering controls.
 3. On January 19, 2011 OSHA withdrew its proposed interpretation.
http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=19119.
 4. OSHA may pursue the matter further with stakeholder meetings and outreach efforts.

N. Pandemic flu preparation.

1. In February 2007 OSHA issues Guidance on Preparing Workplaces for an Influenza Pandemic.
<http://www.osha.gov/Publications/OSHA3327pandemic.pdf>
2. No specific legal requirement for pandemic flu plan, but may be covered by general requirement for business continuity plan applicable to some utilities.
3. OSHA’s position is that H1N1 illness contracted at work is recordable on the OSHA 300 Log, as it does not fall into the exception for the “common cold or flu” in 29 CFR 1904.5(b)(2)(viii).

O. Crystalline Silica.

1. OSHA has identified occupational exposure to crystalline silica as a top priority for a new rulemaking.
2. Crystalline silica is present in coal dust, concrete and many other materials prevalent in industrial setting.

3. OSHA initially said to expect proposed rule April 2011, but semi-annual regulatory agenda changes proposed rule date to June 2011 – still no proposed rule.

II. Federal Motor Carrier Safety Regulations

A. Hours-of-service regulations.

1. Restriction on the number of hours an employee can work – at any task – and then drive a truck over 10,000 pounds.
2. On August 10, 2005, President Bush signed into law an exemption for drivers of utility service vehicles from federal hours-of-service regs. New law also prohibits states from enacting or enforcing HOS rules against utilities.
3. On July 5, 2007, the FMCSA published final regs clearly exempting drivers of utility service vehicles from the hours of service and recordkeeping rules. Regs were updated November 19, 2008, but not changed in this respect.
4. On August 28, 2007, John H. Hill, Administrator of the FMCSA, sent a letter to Jonathan Hemenway Glazier, NRECA Association Counsel, noting that the 2005 law prohibits states from imposing an hours of service requirement on utility service vehicles in intrastate commerce.
5. FMCSA position, stated in several letters not on its website, is that the exemption does not cover utilities when they are doing new construction.

B. Entry-level driver training.

1. Final rule effective July 20, 2004. See May 21, 2004 *Federal Register*.
2. Employers must train drivers with less than one year experience before allowing them to drive a commercial motor vehicle requiring CDL in interstate commerce.
3. Training areas must include
 - a. Driver qualification requirements
 - b. Hours-of service requirements
 - c. Driver wellness

- d. Whistleblower protection
- 4. No prescribed curriculum, but agency estimates training will take 10 hours.
- 5. Driver must receive a prescribed certificate and employer must retain certificate for length of employment and for one year thereafter.
- 6. On December 2, 2005 US Court of Appeals for DC Circuit found the rules inadequate and ordered FMCSA to redo them. Rules still in effect during redo.
- 7. On December 26, 2007 FMCSA responds by proposing new CDL entry level driver training rules.
 - a. Proposal requires applicants for new or upgraded interstate CDL to complete specified entry level driver training course at an accredited institution.
 - b. A utility may become an “accredited institution,” but it will not be easy.
 - c. Proposal would require classroom and behind-the-wheel driver training.
 - d. Proposed training would not apply to drivers holding CDL during the 3 year period before the effective date of final rule.
- 8. In comments filed May 22, 2008, NRECA said
 - a. Rather than require a paper certificate, FMCSA should target a level of skill and then test for achievement of that level as part of the CDL application process.
 - b. In addition, FMCSA should test skills relevant to the type of driving that the CDL holder will do.
 - c. But if the final rule requires training, it should allow utilities to train their own drivers without requiring utilities to become accredited training institutions.
- 9. FMCSA said to expect a final rule in May 2011 (no final rule as of mid-August, 2011)

C. Medical certification.

- 1. On December 1, 2008, the FMCSA published final regs clearly linking a driver’s medical certificate with his CDL.
- 2. Interstate CDL holders will have to provide copy of medical certificate to state licensing agency by January 30, 2014.

3. State must record the info by January 30, 2012.
4. Medical certification required every 2 years for drivers of CMVs
 - a. FMCSA *recommends* that medical examiner not certify those with sleep apnea.
 - b. FMCSA Medical Review Board recommended in 2008 that FMCSA require individuals with Body Mass Index greater than or equal to 30 kg/square meter undergo a test for sleep apnea. FMCSA has not acted upon the recommendation.
 - c. Some sleep centers are characterizing the MRB recommendation *to* the FMCSA as a recommendation *of* the FMCSA.
 - d. Some medical examiners are requiring high BMI individuals to undergo an expensive sleep test as a condition of being certified.
5. Agency says expect a final rule July 2011 establishing a National Registry of Certified Medical Examiners able to provide CDL medical certificates. As of mid-August, no final rule has been published.

D. Drug and alcohol testing.

1. Applies to holders of Commercial Drivers License who drive a vehicle in commerce over 26,000 pounds gross weight or who drive a vehicle in commerce of any weight that requires hazmat placarding.
2. For 2011, 10% of an employer's covered drivers must be randomly tested for alcohol and 50% for drugs.
3. For more information, see <http://www.dot.gov/ost/dapc/rates.html?prog>.
4. Direct observation is required for follow-up and return-to-duty urine tests – that is, tests for those who failed their prior tests. Direct observation of urine going from the body to the collection receptacle previously was required only for those suspected of tampering with their specimens. Initial and routine testing still does not require direct observation. Federal appellate court has determined that the requirement is not arbitrary, capricious, or an unconstitutional search and seizure.

E. Federal Highway Administration worker visibility rule.

1. 2009 Manual on Uniform Traffic Control Devices requires all workers, including flaggers, within the right-of-way of a federal-aid highway, to wear high visibility safety apparel as of November 24, 2008.
2. In a change from the prior MUTCD, 2009 MUTCD also requires all workers, including flaggers, within the right-of-way of a non-federal-aid highway, to wear high visibility safety apparel as of December 31, 2011.
3. Garments meeting ANSI 107-2004 Class 2 or 3 comply.

F. Unified Carrier Registration.

1. New law effective January 1, 2007. Now being enforced.
2. Only regs are with respect to fees. 49 CFR 367. Law is Subtitle C of Title IV of Public Law 109-59.
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ059.109.pdf.
3. Unified Carrier registration is different from applying for DOT number.
4. You may not have received notification that you are required to register.
5. Federal UCR law covers all motor vehicles in interstate commerce that are:
 - a. Over 10,000 pounds gross weight, OR
 - b. Required to have hazmat placarding, OR
 - c. Designed to transport 11 or more passengers
6. Most states adopt identical language requiring registration for interstate commerce going through their states.
7. States may have similar language requiring registration for intrastate commerce.
Check your state law.
8. Beware: interstate commerce includes taking vehicle across state lines for service on the vehicle. Note response to Question 6 at
<http://www.fmcsa.dot.gov/rulesregulations/administration/fmcsr/fmcsrruletext.aspx?reg=390.5&guidance=Y>.

9. A governor declaring an emergency may, by executive order, exempt out-of-state utility vehicles aiding in disaster recovery from UCRA registration in the disaster state. Check home state as to its policy in this situation.
10. Unanswered question: is an exemption from UCRA registration available for disaster relief when there is NOT a declaration of emergency. Work this out ahead of time with your state authorities. See question O.33 at <http://www.ucr.in.gov/MCS/UCRFAQ.doc>.
11. Citations may come from federal DOT for violation of federal law covering interstate commerce, from state for violation of state law covering interstate commerce, and from state for violation of state law covering intrastate commerce.
12. Feds set registration fees for interstate commerce registration, but states set violation fees, ranging from a warning to \$1100 for first offense.
13. States decide whether to participate in the registration process, but all interstate CMVs are required to register, even if your state does not have a registration procedure. See <http://www.ucr.in.gov/> for how to register.

G. Ban on texting while driving.

1. In September 27, 2010 *Federal Register*, FMCSA issued a new rule, effective October 27, banning texting while driving a Commercial Motor Vehicle on public roads in interstate commerce. The rule also bans a motor carrier from requiring or allowing drivers to text while driving. The rule replaces and refines “guidance” from the agency to the same general effect issued January 27, 2010.
 - a. The rule applies to CMVs subject to the Federal Motor Carrier Safety Regulations -- that is, in general, to vehicles over 10,000 pounds in interstate commerce on public roads. It also adds to the list of state violations for which a CDL holder may lose his or her CDL.
 - b. The rule bans texting by drivers and bans requiring or allowing texting by employers. It does not prohibit the use of cell phones or other devices for activities other than texting. So talking on a cell phone while driving is not prohibited.

- c. The rule prohibits texting while driving. It does not prohibit texting by a passenger and does not prohibit texting by the driver while not driving. The rule does not prohibit the use of electronic dispatching tools and fleet management systems in non-texting applications.
 - d. Texting does not include:
 - i. “inputting, selecting, or reading information on a global positioning system or navigation system.”
 - ii. entering a telephone number or retrieval code in order to initiate or receive a phone call (but FMCSA proposes to delete this exception in its proposal on hand-held mobile telephones).
 - e. Drivers who text while driving may be subject to federal civil or criminal penalties up to \$2,750. Appendix B (a) (4) to 49 CFR 386. They also may lose their CDLs for up to 120 days for multiple offences. 49 CFR 383.51.
 - f. Employers who require or allow texting may be fined up to \$11,000 per violation. Appendix B(a)(3) to 49 CFR 386. The “guidance” did not impose sanctions on employers.
2. States receiving federal highway money have 3 years to promulgate similar or more stringent regs applying to intrastate commerce and to interstate commerce in their state.
 3. OSHA has begun an “education program” addressing work-related distracted driving. <http://www.osha.gov/distracted-driving/index.html>.

H. Using hands to operate cell phones while driving.

1. In a Proposed Rule in the December 21, 2010 *Federal Register*, FMCSA proposes to ban a driver of a Commercial Motor Vehicle from “using at least one hand to hold a mobile telephone to conduct a voice communication or to reach for or dial a mobile telephone.”

2. The Proposed Rule covers cell phones but does not cover two-way or Citizens Band Radio services.
 3. The proposed ban does not cover hands-free use of cell phones. In other words, talking on a cell phone is permitted as long as one's hands are not used to set up the call or to hold the phone.
 4. In comments filed February 17, 2011, NRECA said
 - a. The Final Rule should specifically name "electric utilities," as it names "law enforcement officials," as entities which may be contacted by CMV drivers using hand-held mobile telephones when necessary to communicate during emergencies.
 - b. The Final Rule should clearly allow negligible movements to activate a hands-free mobile telephone.
- I. Compliance, Safety, Accountability program (formerly Comprehensive Safety Analysis 2010).
1. A major FMCSA data-gathering initiative updating its existing safety rating system. <http://csa.fmcsa.dot.gov>.
 2. Now fully operational in all states.
 3. Safety ratings trigger escalating "interventions" from FMCSA which could lead to a request for "unfit" carriers to improve or discontinue operations. Expect a rulemaking in 2011 addressing the safety fitness determination process.
 4. Ratings apply to carriers over 10,000 pounds in interstate commerce, and to carriers that haul hazardous materials intrastate.
 5. For first time, information is collected on drivers of covered vehicles, although drivers are not rated.
 6. Carrier ratings and driver info based on rolling data base of info from prior 24 months (36 months for drivers) gleaned only from crash reports, roadside inspections and violations discovered during "interventions."
 7. All violations noted go into data base, not just those resulting in citation.

8. No new regs or recordkeeping requirements to comply with. CSA is primarily a system of tracking, measuring, evaluating and intervening with carriers. No direct intervention by FMCSA with drivers.
9. Carriers may check their safety rating status at <http://ai.fmcsa.dot.gov/CMS/Login.aspx>.
10. Drivers and carriers (with driver permission) may purchase individual driver safety records <http://www.psp.fmcsa.dot.gov/Pages/FAQ.aspx>.

J. Commercial Driver's License Training and Learner's Permit.

1. Final Rule updates federal regs on Commercial Driver's Licenses and Commercial Learner's Permit. In May 9, 2011 *Federal Register*, effective July 8, 2011. States must comply by July 8, 2014.
2. Establishes a knowledge test requirement for CLP, to be same as knowledge test for CDL.
3. Must be 18 years old to obtain a CLP.
4. Must have a CLP for 14 days before can obtain a CDL.
5. CLP must be a separate document.
6. CLP requires background driving record check.
7. Increases the amount and quality of documentation required for CLP and CDL.
8. States required to recognize CLPs of other states.
States must follow standard system of codes for endorsements and restrictions.
9. Requirements developed in tandem with DHS REAL ID program but does not adopt or incorporate the DHS program.
10. Improved ability for states to detect fraud in obtaining CLPs and CDLs.
11. Specifically prohibits employers from using a driver to operate a Commercial Motor Vehicle that requires a CLP or CDL if the driver does not possess one.

III. Federal Emergency Management Agency and other Homeland Security Issues

- A. NRECA developed one-page Mutual Aid Agreement to meet old FEMA requirement for a pre-existing written mutual aid agreement in order for FEMA to reimburse expenses paid by one utility to another for disaster recovery. New FEMA requirement removes the pre-existing component, but written agreement still required. Existing NRECA agreement meets the new requirement.
- B. Over 900 NRECA members and almost 500 munis have signed. See cooperative.com website for copy of Mutual Aid Agreement, list of all signatories, and downloadable copies of all signed Agreements.
- C. Recent FEMA funding restrictions: Due to agency concern over potential to run out of funds prior to end of the fiscal year, FEMA will, effective August 28, reimburse only for Type A (debris removal) and Type B (Emergency Protective Measures) expenditures. Payment on claims for other Types of expenditures (including Type F – Utilities) will be delayed.
- D. Also on website:
1. *An Electric Cooperative's Introduction to FEMA* explaining some of the basics.
 2. Letter to Association Counsel Jonathan Glazier, laying out the parameters of reimbursement for miscellaneous disaster expenses.
 3. Memorandum detailing legal authority for FEMA's flexibility in reimbursing reasonable costs of disaster recovery.
 4. Memorandum detailing legal authority for FEMA allowing replacement projects as Section 406 Mitigation measures. This can be an issue when wind resistant ACSR used to replace copper conductor.
 5. Memorandum addressing FEMA reimbursement for labor costs, including overtime.
- E. In the August 11, 2009 *Federal Register*, FEMA proposed regs to limit reimbursement for repetitive damage to facilities for which damage could have been prevented through mitigation.

F. On September 22, 2009, FEMA issued Fact Sheet DAP 9580.6, Electric Utility Repair (Public and Private Nonprofit). On FEMA's website in text form at http://www.fema.gov/txt/government/grant/pa/9580_6.txt. It contains electric utility specific guidance.

1. Reconductoring justified when conductor "is stretched beyond the point when it can be effectively repaired and re-sagged" according to 6 criteria.
2. FEMA pre-authorizes #2 ACSR as replacement for conductor of equal or lesser ampacity.
3. Costs of repairing ruts on easements are reimbursable, if requirements met.
4. Wind-motion resistant conductor – like T2 ACSR -- may be reimbursable in certain situations.
5. Time and material contracts allowable, with certain restrictions.
6. Noncompetitive contracts are allowable, with certain restrictions.
7. Category F Permanent Work is work done to code. Category B Emergency Work is temporary work not done to code.

G. In the September 10, 2010 *Federal Register*, FEMA proposed to remove a restriction in its mutual aid policy denying reimbursement for permanent work done under a mutual aid agreement. NRECA filed comments in support.

H. Transportation security.

1. Transportation Security Administration created within Department of Homeland Security.
2. TSA has power to issue regulations without notice and comment. January 25, 2007 Federal Register contains the regs addressing a Transportation Worker Identification Credential (TWIC). Those seeking unescorted access to secure areas of facilities covered by the Maritime Transportation Security Act will have to have a biometric identity card. April 15, 2009 was the deadline for obtaining the TWIC.
3. Some utilities – particularly those with power plants on navigable waterways – may have some workers who must hold a TWIC. More information at

http://www.tsa.gov/what_we_do/layers/twic/index.shtm or call TSA TWIC Program Help Desk at (866) 347 8942. Each facility is different, so coordination with TSA and Coast Guard is important.

4. Increased emphasis now on hazardous materials rules. For example, new requirement for fingerprinting and background checks for CDL hazmat drivers.

IV. National Criteria for Job of Electric Power Lineman

- A. Effort underway to come up with a set of skills and knowledge that everyone agrees an electric power lineman should possess.
- B. Thought is that this will lead to training programs that will produce greater number of qualified linemen.
- C. Recognized criteria will also allow greater worker mobility and facilitate management assessment of job applicants.
- D. Industry and labor effort. Department of Labor involved as a consultant.

V. Lineworker Recruitment

- A. NRECA and other industry representatives have established the Center for Energy Workforce Development to develop lineworker recruitment programs in high schools and elsewhere. See <http://www.cewd.org/index.asp> and especially <http://www.getintoenergy.com/>.
- B. Project likely will involve some development of training modules.

VI. National Electrical Safety Code

- A. 2012 National Electrical Safety Code available from IEEE:
<http://standards.ieee.org/nesc/>. \$130 members; \$165 nonmembers.
- B. In general, “NESC covers utility service facilities and functions up to the service point.” Some controversy as to how this coverage dovetails with NEC coverage.

- C. Requires employers to perform arc assessment and then insure that employees with “potential exposure” to an arc wear clothing rated to protect against that arc. At the request of NRECA and others, on December 19, 2008, IEEE issued an interpretation strongly implying that “potential exposure” means “likely exposure,” not just any exposure that is “theoretically possible”.
- D. Because cotton and other natural fiber clothing cannot be arc-rated, natural fiber clothing cannot be counted in computing the total arc rating required by the NESC.
- E. Unclear at this point exactly how to determine the arc rating of a layered system. Annex M to 2009 NFPA 70E – not NESC -- notes that “the total system arc rating cannot be determined by adding the arc ratings of the individual layers.”
- F. Clothing rule changes: 2012 edition adds:
 - 1. Detailed arc hazard to be performed for clothing of employees working near lines, parts and equipment of 50 V to 800 000 V
 - 2. Adds “lines” to potential exposure list.
 - 3. Adds Table 410-3 to list of tables that may be used to perform detailed arc hazard analysis.
 - 4. Deletes exception 2 (below 1000 V systems)
 - 5. Adds a note making clear that the assessments to determine potential exposure consider the employee’s assigned tasks and work activities.

VII. National Electrical Code (NFPA 70)

- A. National Electrical Code – also called NFPA 70 -- on a 3 year revision cycle.
- B. 2011 NEC now in effect and available from NFPA in many formats:
<http://www.nfpa.org/catalog/search.asp?query=2011+nec>
- C. After much discussion, changes in 2011 NEC attempt to clarify relationship of NEC with NESC: in general NEC covers inside wiring, NESC covers outside wiring.

VIII. NFPA 70E

- A. NFPA 70E provides the work rules for NFPA 70 – the NEC.

- B. NFPA 70E is on a 3 year revision cycle, but about a year later than NEC cycle. Expect 2012 NFPA 70E to be in effect September 2011. Purchase from NFPA:
<http://www.nfpa.org/catalog/search.asp?query=2009+nfpa+70e>
- C. Scope of 70E can be no greater than scope of NEC. Because 2011 NEC changed its scope, unclear exactly what scope of 70E is until 2012 70E goes into effect. But in general, 70E still sets out work rules for inside electrical work, and NESC contains rules for outside utility work. Some 70E rules may be usable if they apply to generation work, but very difficult to adapt them to transmission and distribution work.

IX. Loss Control Internship

- A. Intensive four-week-long program.
- B. Classroom lectures, daily testing, group projects, final individual project.
- C. Expert instructors.
- D. Held in cooperation with University of Wisconsin in Madison. Leading to certification as a Loss Control Professional.
- E. About 300 have become Certified Loss Control Professionals. Contact NRECA's Gary Pfann at (608) 441-7211.

X. NRECA member page: www.cooperative.com

- A. Sign up as an NRECA Member.
- B. Copies of all comments submitted by NRECA to federal agencies and private standards organizations.
- C. Safety Community has back issues of Safety Sentinel, listserv, discussion board, FEMA material, Loss Control Internship info and much else of interest.
 - f. New member orientation- Jamie Hull reported 23 members attended the lunch where the members were provided an overview of the organization and given a NUTSEA briefcase. CDs were provided that contain information on the website and NUTSEA documents.
 - g. G&T Section- Dustin Privette reported that 16 people attended (Davis Phaup was voted as Chairman for 2012 and Troy Stovall as Vice President). Topics covered

included: dashboards/metrics, combustible dust, hearing protection and new RESAP, Fall Protection. They will meet later in the day for further discussion.

- h. Distribution Section- Fran Achille reported that 21 attended their meeting, 13 states represented. They covered a project that Rotary has presented. Input on this was requested from the members. John Hoffman is sharing a program on distracted driving. Joint use agreements discussed. Abandoned underground a problem in some areas. Copper theft.
- i. JT&S Section-Jim Wright reported approximately 45 attended their meeting. The group was introduced to Jon Glazier and Martha Dugen who provided updates on regulations to be updated (FR Clothing). Metal theft was discussed and different problems with identifying utility wire and educating law enforcement on metal theft.
- j. Program Sharing- Norm McDugle thanked IN Statewide for the thumbdrives that the program sharing was provided to members on. 5 presenters provided programs plus 2 contributors that weren't present. 13 programs were given to the membership.
- k. SAIA Report- Wade Hurst reported that the group met in June in KS City (about 80 in attendance). New officers (Wade Hurst, Jason Saunders and David White). Next meetings are in Orange Beach, AL and Baton Rouge, LA.
- l. Quad State-Ken Miller reported the summer meeting was in Missoula, MT. They are working on a new website. Next meeting is in Wisconsin Dells. They plan to discuss NESC updates, Crane/Derrick, lineman fatigue. Summer meeting in MN.
- V. Treasurers Report-Jamie Hull provided figures for year to date at \$44830.04 starting balance, \$85696.44 for end of the month balance.
- VI. Report on Hard Hat Gayvin Strantz reported donations equaled \$1800 including additional donations from members.
- VII. RESAP-Bob Cooper reported they are trying to improve the program. They met in Arlington, VA in April. Glenn English confirmed that NRECA is backing RESAP if it is a resulted-oriented program (reduces losses). Working on modifying on-site observation form. Plan to work on application form next.
- VIII. Old Business-none
- IX. New Business
 - a. Mike Bergeaux passed the NUTSEA gavel to Norm McDugle. Norm thanked Mike for his hard work and presented Mike with a presentational gavel.
 - b. Resolution from the Membership. Garry Christopherson explained to the group that NRECA leadership is committed to the programs (RESAP) and would like to know what they can do to help. Stan Rucker suggested the BOD draft a

resolution to end to Glenn English. Motion for resolution to be drafted and sent. Motion carried as presented. Garry Christopherson and Stan Rucker to assist.

- X. Norm introduced the 2012 Meeting promo video. The 70th Annual Conference will be in Santa Fe, NM September 23-26, 2012.
- XI. There was a motion to adjourn the 69th Annual Conference. The motion carried and the meeting was adjourned at 1:31 pm.

