

**Stakeholder Meeting:  
Establishing Indicators to Determine Whether  
State Plan Operations are at Least as  
Effective as Federal OSHA**

10:05 a.m. to 12:50 p.m.  
Monday, June 25, 2012

U.S. Department of Labor  
Francis Perkins Building  
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Washington, D.C. 20210

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

2 MR. LAHAIE: Good morning, everybody.

3 Thank you for coming this morning. I am just  
4 here to first welcome you to our Stakeholder  
5 Meeting and, second, let you know that bathrooms  
6 are on your left and on your right when you exist  
7 this room.

8 In the unlikely event that there is an  
9 emergency, if it is a shelter in place, we have  
10 the shelter in place cabinets here, so we're okay  
11 here.

12 If it is an evacuation where we would  
13 leave the building, in addition to myself and the  
14 OSHA folks up here, there are a number of OSHA  
15 people in the audience, and we will be able to  
16 point you to the nearest stairwells and bring you  
17 out to a safe point.

18 And with that, I will turn it back over  
19 to Barbara to kick us off. Thank you.

20 **Opening and Introductions**

21 MS. UPSTON: Good morning. My remarks  
22 are also addressed to you, but since these are

1 the participants, we are bringing them back.

2           Good morning, everyone. My name is  
3 Barbara Upston, and I am a consultant to OSHA and  
4 frequently facilitate meetings. My role is to  
5 help manage the discussion and the process, not  
6 the content, I assure you.

7           So what I'd like to do, though, is begin  
8 quickly with introductions, just go around, just  
9 your -- not "just," but your name and the  
10 organization you are representing today. If you  
11 could begin.

12           MS. TRAHAN: Chris Trahan, the Building  
13 and Construction Trades Department.

14           MS. HALL: Mary Lee Hall, Legal Aid of  
15 North Carolina Farmworker Unit.

16           MR. WILLIAMS: Chris Williams, Associated  
17 Builders & Contractors.

18           MR. MATUGA: Robert Matuga, National  
19 Association of Home Builders.

20           MS. SCHREIBERG: Frances Schreiber,  
21 Kazan McClain.

22           MR. PAYNE: Harry Payne, North Carolina

1 Justice Center.

2 MR. MCGRAW: Ron McGraw, International  
3 Association of Fire Fighters.

4 MR. WITHROW: Jay Withrow with the  
5 Virginia Department of Labor and Industry,  
6 representing the Occupational Safety and Health  
7 State Plan Association.

8 MR. KALINOWSKI: And I'm Doug Kalinowski,  
9 the director of the Directorate of Cooperative  
10 and State Programs with OSHA.

11 MR. BARAB: Jordan Barab, Deputy  
12 Assistant Secretary, OSHA.

13 MS. BROWN: Diane Matthew Brown with the  
14 American Federation of State County and Municipal  
15 Employees.

16 MR. VISSCHER: Gary Visscher with the Law  
17 Office of Adele Abrams.

18 MR. JACKSON: Gilbert Jackson, consultant  
19 with occupational safety and health regulations.

20 MS. SEMINARIO: Peg Seminario, AFL-CIO,  
21 and my colleague, Eric Frumin, is coming. He was  
22 on a train from New York and was supposed to get

1 in a bit ago, so he may be running late. Thank  
2 you.

3 MR. RIVERA: Jerry Rivera, National  
4 Electrical Contractors Association.

5 MR. O'CONNOR: Tom O'Connor, the National  
6 Council for Occupational Safety and Health.

7 MS. UPSTON: Thank you all.

8 One thing I can tell I think already, as  
9 the people sitting in the back, that I may have  
10 to remind you to speak up as much as possible,  
11 where the observers understand that the  
12 discussion is sort of up here and effectively  
13 through each other. I'm not going to keep  
14 saying, "Speak up. Speak up."

15 Do we have any microphones other than the  
16 one that Jordan has?

17 [No audible response.]

18 MS. UPSTON: No? We'll see what we can  
19 do.

20 Okay. So we have an agenda this morning,  
21 and I am assuming that everybody has a copy of  
22 it. After a brief opening, which I will do, we

1 will have a little background on what we are up  
2 to today and then also a presentation, brief  
3 presentation of the draft measures, which you can  
4 see.

5           And then there are four questions. About  
6 3 minutes is allocated to each of the questions,  
7 and they will both be on the PowerPoint  
8 presentation back there as well as they're on the  
9 agenda, so that you can help -- I will help you,  
10 but you can keep sort of focused on what the  
11 questions are and where they are going.

12           There will be a brief break in the 11:40  
13 range, 10 minutes. Please come back timely, as  
14 we will move on to Questions 3 and 4, and then  
15 close with what the next steps are with the  
16 results of the Stakeholder Meeting. And we  
17 promised to be closed on or before one o'clock.  
18 So that's our agenda.

19           The purpose for this is on the back there  
20 on the PowerPoint, it's to provide a forum to  
21 gather information and ideas on the key outcome  
22 and activity-based indicators and also ideas on

1 how OSHA can use the indicators to assess the  
2 effectiveness of State Plan States. So the  
3 agenda, as you can see, is designed to try to  
4 achieve the purpose and everybody help remember  
5 what the purpose is.

6           At the back table, there are a list of --  
7 a series of materials. I'm assuming that  
8 everyone got them. There's enough for everyone  
9 including the observers. There's a roster, which  
10 is an observer roster, the Federal Register  
11 notices, both the original and the one extending  
12 the comment period, copies of the draft measures,  
13 and one set of comments that were received from  
14 the Tree Care Industry, which is not  
15 participating or attending the meeting, but their  
16 comments are there.

17           So I just briefly -- oh, and I also  
18 wanted to remind you that there are -- let you  
19 know that there are people listening in on the  
20 phone. They are not participating, and they  
21 actually can't call in, but just to let you know  
22 that there are people, additional people who are



1 listening in on the phone.

2           And just some quick ground rules to help  
3 keep us on track, one is, of course, to  
4 participate actively. Those of you who are  
5 participants at the table, you are here to --  
6 OSHA is going to be listening. They are not in a  
7 -- really in a dialog with you, but they are --  
8 so they are hoping that you will participate  
9 actively.

10           We need to have one conversation at a  
11 time. It's very important for yourselves as well  
12 but also because we have someone who is doing the  
13 transcription and the recordings, and if you  
14 begin talking over each other or having side  
15 conversations, that creates a problem.

16           If you would, when you wish to speak,  
17 please just turn your name tag sideways like  
18 that. That way, you don't have to sit there with  
19 your hand up, and I will quickly acknowledge you  
20 as much as possible in the order in which you do  
21 that, and that helps keep us on target.

22           Also, one conversation at a time is

1 important. I wear double hearing aids. It used  
2 to be I couldn't hear anything, but now I can  
3 hear everything. So -- and if I can, I'm sure  
4 you can as well.

5           Please limit -- and I respectfully say  
6 speech fine. I know that you come with a  
7 perspective and an interest. What's wanted here  
8 is for OSHA to hear what those, your ideas are on  
9 the four questions, but it isn't really a forum  
10 for long comments of that sort. You can submit  
11 them in writing if you have something of that  
12 sort.

13           And if you disagree with other people's  
14 comments, please feel free to do so but to  
15 challenge constructively, obviously, and  
16 respectfully.

17           Observers, you are observers. You may  
18 speak, of course, at the break and other times,  
19 but please don't add comments during the  
20 discussion. And otherwise, all rules of  
21 civilized behavior apply, which I think most  
22 people know what those are.

1 So are there any questions or concerns?

2 [No audible response.]

3 MS. UPSTON: Okay. Otherwise, Jordan, if  
4 you would take it away.

5 **Background**

6 MR. BARAB: Okay, thanks.

7 As I said, I'm Jordan Barab. I'm Deputy  
8 Assistant Secretary. I want to also welcome you  
9 all here. Thank you for coming and showing your  
10 interest in this subject.

11 As Barbara said, we are looking forward  
12 to getting your input on defining and measuring  
13 the effectiveness of OSHA through State Plans as  
14 compared to Federal OSHA and really focusing in  
15 on what at least "as effective" means and how we  
16 can define that, how we can actually apply that  
17 to State Plans.

18 The purpose of this meeting is to provide  
19 a forum to gather information and ideas on key  
20 outcome and activity-based measures and how we  
21 should use such measures to assess the  
22 effectiveness of State Plans.

1           As you know, the Occupational Safety and  
2 Health Act encourages States to set up State  
3 Plans. One of the conditions of approval for  
4 OSHA is that these State Plans are at least as  
5 effective as the Federal program. The State  
6 Plans also have cooperative programs, as does  
7 Federal OSHA.

8           And one of the main features of State  
9 Plans, which I've always found, is that they  
10 cover public sector employees, and of course,  
11 OSHA is responsible for approval and monitoring  
12 of State Plans, Federal OSHA.

13           Under the monitoring system that's been  
14 in place for more than a decade, State Plans  
15 basically set their own strategic and annual  
16 performance goals. State Plans are not required  
17 to mirror OSHA's strategic plan or other plans  
18 but must include the goal, obviously, of reducing  
19 injuries, illnesses, and fatalities, and then  
20 State Plan performance is primarily -- has been  
21 primarily assessed by examining a State's  
22 progress in achieving those goals, a review of

1 performance data on certain mandated activities.

2           Our OSHA 10 regions are responsible for  
3 monitoring and evaluating the State Plans for a  
4 variety of means, which include regular  
5 evaluation reports, our Federal Annual Monitoring  
6 and Evaluation report, also know as our FAME  
7 reports. There are quarterly meetings with the  
8 States, between the States and the regions, and  
9 other activities.

10           State Plans and regions, as I said, meet  
11 quarterly and track State progress and different  
12 performance goals and other measures that exist  
13 now.

14           State Plans also prepare an annual  
15 self-evaluation, also known as the SOAR report.  
16 That stands for State OSHA Annual Report, which  
17 also becomes part of the FAME report we do on an  
18 annual basis.

19           I want to talk a little bit about the  
20 history of this exercise. After a series of a  
21 number of disturbing worker deaths in Las Vegas  
22 several years ago, there were concerns raised by

1 several different groups about the effectiveness  
2 of the Nevada State Plan and overall State Plan  
3 effectiveness, and this came from the media, from  
4 Congress, Office of Inspector General, GAO.

5 As a result of these concerns, OSHA  
6 initiated a special evaluation of a Nevada  
7 Occupational Safety and Health Program in 2009,  
8 and it revealed some fairly serious deficiencies  
9 in that plan.

10 We moved on from that plan. We decided  
11 based on the findings of that plan, we really  
12 needed to take a much closer look at all of the  
13 State Plans, and as a result, the FAME reports  
14 were enhanced in 2009 to include baseline special  
15 evaluations of each State Plan. And what we did  
16 was we included -- and in addition to looking at  
17 all the measures that were currently in use then,  
18 we also reviewed the effectiveness of  
19 programmatic areas related to enforcement  
20 activities, which included on-site audits and  
21 case file reviews.

22 And each State formally responded to

1 those, what we called the "Enhanced FAMES," as  
2 appropriate, and developed a corrective action  
3 plan that was approved by OSHA. And a more  
4 detailed review in the FAME reports has continued  
5 in the fiscal year 2010 and 2011. All of those,  
6 as you are probably aware, have been posted on  
7 our website.

8           The Office of Inspector General also took  
9 a look at the State Plan and especially at OSHA's  
10 mandate to ensure that the State Plans are at  
11 least as enforcement -- I'm sorry -- at least as  
12 effective as, and I think the report's title kind  
13 of describes our conclusion. The title was "OSHA  
14 has not Determined if State Plan Programs are at  
15 Least as Effective in Improving Workplace Safety  
16 and Health as OSHA's Federal Programs."

17           And part of it was looking at our  
18 oversight. Part of it was also pointing out that  
19 OSHA hadn't exactly been very good at defining  
20 effectiveness of its own program, and that was  
21 also set as a goal, which we have been, actually  
22 since way before this report, the beginning of

1 this administration, really looking at different  
2 ways to measure Federal OSHA's effectiveness.

3 OSHA is working with OSHSPA to examine  
4 the monitoring system and address the OIG  
5 recommendations to OSHA, which was, the main one  
6 to it, define "effectiveness," design measures to  
7 quantify impact, establish a baseline for State  
8 Plan evaluations, and revise monitoring to  
9 include an assessment of effectiveness.

10 Now, we've been working with the State  
11 Plans. We, Federal OSHA, have been working  
12 closely with the State Plans to develop a number  
13 of draft measures which were posted on our  
14 website.

15 Doug Kalinowski, who I think most of you  
16 know now -- and if you don't, you can meet him  
17 now -- our new director of our Directorate of  
18 Cooperative and State Programs, and Jay Withrow  
19 with the Virginia Department of Labor and  
20 Industry, who is representing OSHSPA here, they  
21 chair the committee. We kind of call it the ALAE  
22 Committee: At Least As Effective As Committee,



1 which has been meeting on a regular basis for the  
2 last year and a half and has really done some, I  
3 think, sterling work in not only developing  
4 measures, but I think more importantly even  
5 developing a consensus on some of the draft, on  
6 the draft measures that you'll see in -- that  
7 you've seen on the website, which I think it's  
8 been herculean task. And we really appreciate  
9 all the work that everyone has put into that.

10           There are several State Plans today  
11 participating as observers either here in the  
12 audience or on the phone, and obviously, they are  
13 very interested in this process and getting all  
14 of your input.

15           The goal of this meeting, again, is to  
16 solicit ideas about how to define and measure  
17 effectiveness and develop a revised monitoring  
18 system to ensure consistency and effectiveness  
19 across State Plans.

20           So I want to thank you for your  
21 participation. I also want to apologize, because  
22 I am going to have to leave at about 10:30,

1 despite the fact that I put this meeting in bold  
2 and red and flashing lights on your calendar.  
3 Somebody from the Deputy Secretary's office  
4 wasn't listening, I guess. So I will be in and  
5 out for about an hour, but this is really  
6 important work, and we are following it very  
7 closely.

8           Again, I want to thank you all for the  
9 time you are putting in today and that you will  
10 be putting in, I'm sure, after this as well.

11           So with that, Doug?

12                           **Draft Measures**

13           MR. KALINOWSKI: Thank you, Jordan.

14           I am Doug Kalinowski, and Jay Withrow and  
15 I will go through the 15 draft measures that we  
16 have.

17           I'm going to tell you a couple of things  
18 on the front end. Number one, like Jordan said,  
19 we met for about 18 months. It was the -- board  
20 as well as the Federal steering committee of  
21 about seven leaders within Federal OSHA.

22           Keep in mind a couple things. Number

1 one, these only focused on enforcement measures.  
2 I don't think the work of the ALAE work group is  
3 done, because at this point, we have not had time  
4 to address compliance assistance measures, but  
5 clearly those are key issues.

6 As Jordan mentioned, every State Plan is  
7 expected to have a strategic plan, which really  
8 says how they are going to focus the resources,  
9 what issues they are going to focus on or  
10 industries, and measure the results of that.  
11 That is part of the monitoring process as well.

12 Included in these is not injury rates,  
13 illness rates, or fatality rates. That's a given  
14 that those issues will also be tracked with every  
15 State Plan. So keep in mind that that is already  
16 expected on there. So those were listed in these  
17 issues.

18 And keep in mind also we have ranges. A  
19 lot of people have looked at them already. Some  
20 of the measures have ranges. Our expectation is  
21 that is not a pass/fail if you're outside the  
22 range. I think the expectation is if somebody is

1 monitoring the State Plan and they are outside  
2 the range, the message there is if you had  
3 drilled down deeper to find out why it's outside  
4 the range. Is it an acceptable reason it's  
5 outside the range or unacceptable reason? And  
6 obviously, if it's unacceptable, then it's up to  
7 OSHA to work with the State Plans to move that  
8 State forward and work together and do that.

9           And I guess I will begin and just go  
10 through the measures. Some are pretty  
11 self-evident. If they are not, let us know.

12           These measures came really from an  
13 agglomeration of all the measures used within  
14 OSHA to monitor State Plans over the 40 years.  
15 That is what we started with, looking at all of  
16 those issues, and we also started looking at some  
17 new ones. And that is why we have a lot of  
18 questions, because we couldn't always get to --  
19 we couldn't figure out exactly what the best  
20 thing, you know, how to measure issues that  
21 relate back to whistleblower discrimination. So  
22 that's one of the reasons we've having this

1 meeting, and we appreciate your input.

2           The first one is projection -- projected  
3 versus actual conducted. Have you ever heard the  
4 States project that they are going to do 5,000 or  
5 2,000 or whatever number of inspections a year?  
6 And the expectation is, you know, in their grant  
7 application, will that be within a certain range,  
8 and I think what we agreed to is plus or minus 5  
9 percent of that range. I mean, if you're way  
10 less than that, why is that? If your staffing is  
11 down, et cetera, those are the kind of things  
12 that we need to look at dig down deeper if it's  
13 outside of that range.

14           Average lapse time. Clearly one of the  
15 --

16           Yes.

17           MS. SEMINARIO: Just a question on the  
18 process here. Are you going to run through  
19 these, and then we are going to come back and  
20 comment on them, or how do you want to just --

21           MR. KALINOWSKI: Yes.

22           MS. SEMINARIO: So you'll run through --

1 MR. KALINOWSKI: Yes, we're going to run  
2 through them all.

3 MS. SEMINARIO: -- and then we'll come  
4 back. Fine.

5 MR. KALINOWSKI: Then we'll come back.

6 So the second one is average lapse time.  
7 Clearly, one of the key issues from the  
8 initiation of an inspection to the issuance of  
9 citations where they're appropriate, I mean, you  
10 get the hazards corrected or the violations  
11 corrected in a timely manner, and that's one of  
12 the things we're looking at, average days between  
13 the opening conference and citation issuance  
14 separated by both safety and health. And we have  
15 a range there of plus or minus 20 percent.

16 Number of inspection denials where entry  
17 not obtained. You know, every employer has the  
18 right to deny OSHA or the State Plan members not  
19 access initially and, you know, mandate that the  
20 State or the Federal should get -- administrative  
21 inspection -- and the key issue is that when that  
22 happens, if that happens, which is very rare in

1 -- world, but if it does, the expectation is  
2 States will indeed, as well as Federal OSHA will  
3 indeed, you know, obtain access when denied.

4           Percent of enforcement presence. It is  
5 not something we have measured in previous years.

6 It is a relatively new thing to look at, and  
7 that really is the number of inspections done in  
8 high-hazard industries, okay, divided by the  
9 number of high-hazard industries in that State.  
10 You know, that's a ratio that you would compare  
11 on national average. Are we getting to the  
12 high-hazard industries? And that's really the  
13 percent enforcement presence.

14           Average number of days to initiate a  
15 complaint investigation. And by complaint  
16 investigation, we are talking about, as many of  
17 you probably know, OSHA and the States often do  
18 some investigations of complaints by a phone,  
19 fax, and letter. And that's really the key issue  
20 we're looking at where we don't actually do an  
21 on-site inspection, and that's negotiated  
22 depending on the State. States have different

1 expectations, different requirements, and each  
2 State could have some variation. So once that is  
3 negotiated, are they meeting that negotiated  
4 number.

5           The next one is average number of days to  
6 initiate a complaint inspection, and that is  
7 actually get on site. And that's a negotiated  
8 number as well.

9           MR. FRUMIN: Just a clarification. In  
10 the first one about investigations, it makes a  
11 reference to an open conference, but are you  
12 referring to opening conferences in a --

13           MR. KALINOWSKI: In a phone call kind of  
14 manner, yeah.

15           MR. FRUMIN: Okay. So that --  
16           [Simultaneous speaking.]

17           MR. FRUMIN: [In progress] -- is not what  
18 you mean by a traditional opening conference in  
19 an inspection?

20           MR. KALINOWSKI: No.

21           MR. FRUMIN: Okay.

22           MR. KALINOWSKI: I apologize for that,



1 Eric.

2           Average number of violations per  
3 not-in-compliance inspection, serious, read  
4 willful or repeat. You know, that's really the  
5 number of violations for not-in-compliance  
6 inspection. Are we getting to this? Are we  
7 finding violations at the sites we go to? That's  
8 the question. Are the States finding violations  
9 at the sites they go to?

10           And then that's just another issue. If  
11 you're outside the range plus or minus 20  
12 percent, there could be various reasons for that.  
13 Are you not going to the places that have  
14 violations? Are you not classifying them  
15 correctly? Are you not finding them? Those are  
16 the things you have to drill down deeper if we're  
17 outside that range.

18           The next one is field compliance measure.  
19 The in-compliance rate for inspections where no  
20 violations were found for safety and health  
21 inspections, and the real issue is are we getting  
22 to sites where we are finding violations, again,

1 not the number but number of sites we get to. In  
2 other words, if we went to 100 sites, 80 of those  
3 sites we go to, did we find violations or not  
4 there? And I guess this is the opposite, not  
5 finding violations, not -- the in-compliance rate  
6 would be 20 percent. Okay?

7 MR. WITHROW: I wanted to just say a  
8 couple of things before I go over the rest of the  
9 measures.

10 I have been with the Virginia State  
11 program for 27 years, and 25 of those years, I've  
12 been representative for the State with the  
13 Occupational Safety and Health State Plan  
14 Association, or OSHSPA. I did want to express on  
15 behalf of OSHSPA thanks to Federal OSHA and to  
16 this group as well for looking at monitoring  
17 procedures.

18 The last two times that OSHA went through  
19 the process of revising their monitoring  
20 procedures, I was the State Plan representative  
21 on that. I have a lot of background in this  
22 area.

1           One thing I wanted to remind the group --  
2 again, this is based on my experience -- years  
3 and years ago, OSHSPA had a great deal of,  
4 comparatively speaking, resources to do  
5 monitoring. They had more positions in the  
6 national office. They had positions in the  
7 regional offices.

8           Over the years, with budget cuts and  
9 reorganizations, OSHA's resources for monitoring  
10 have been pushed down to the area office level.  
11 So you currently have primarily CSHOs and area  
12 office directors doing monitoring. So they are  
13 being taken away from enforcement inspections to  
14 do that kind of thing.

15           So when you have, when you set up a  
16 monitoring system and you comment on a monitoring  
17 system and the measures, keep in mind that you  
18 could have all the monitoring and data you want  
19 in the world, having the people to actually do it  
20 and write the reports and do the on-site  
21 monitoring, takes resources to do that. So there  
22 always has been for the last 25 years a rub

1 between resources and on-site, you know, doing  
2 detailed monitoring of State Plans.

3           So when we have measures that are  
4 computer-based, data-based, activity-based  
5 measures versus outcome-based measures, those  
6 things are balanced so that OSHA does not have to  
7 commit too much in the way of inspection  
8 resources to do State Plan monitoring. OSHA is  
9 always torn. The area offices and the regional  
10 offices particularly are torn by the difficulty  
11 of balancing that.

12           The last thing I wanted to say, that on  
13 behalf of OSHSPA, we have had a very good  
14 relationship with OSHA, particularly over the  
15 last 20 years, I would say. We have sought a  
16 partnership with OSHA to work with them on lots  
17 of different things, not only just monitoring but  
18 standards development, policies and procedures.  
19 We very much appreciate that ability to have  
20 input and work directly with OSHA officials.

21           I second what Doug said about -- and what  
22 Jordan said about the work group. Although this

1 is really a small number of measures, everybody  
2 should realize, as Doug said, that the State Plan  
3 policies and procedures manual currently sets out  
4 the strategic plan and goals and objectives that  
5 are required for strict State Plans, lists  
6 outcome measures, lists activity-based measures.

7 There's a lot more data that is looked at than  
8 just these 15 things. So keep that in mind.

9 But we wanted to start with a core group  
10 of things, and if there are things that we need  
11 to add into this to make sure that all the core  
12 issues of effective government-run safety and  
13 health program -- you know, that those things are  
14 there.

15 And lastly, after what happened, you  
16 know, with Nevada and the transparency movement  
17 in government over the last 10 years and putting  
18 things online, OSHSPA is on the record as wanting  
19 to make sure that when State Plan reports are put  
20 out there, to look at how effective State Plans  
21 are, that OSHA should be held to the same  
22 measurements and the same transparency

1 requirements. We would like to see these reports  
2 that are done in area offices and regional  
3 offices put on the Web as well, so that everybody  
4 sees a national picture of what safety and health  
5 enforcement, consultation, compliance assistance  
6 is like, what it currently is, and I think it  
7 gives everybody the opportunity to make  
8 improvements to it as we go.

9           And personally, I like what the AFL-CIO  
10 does on their annual report on fatalities where  
11 they list State by State. I think not only right  
12 now when States are compared to Federal OSHA,  
13 it's either a national number, or we can look at  
14 regional office numbers, the 10 regions, but we  
15 don't have very much data broken out State by  
16 State. And it would be helpful, for instance,  
17 for a State the size of Virginia to be able to  
18 look at other comparably sized Federal States to  
19 see what the data is like.

20           Similar industry breakdowns, that would  
21 be of benefit to us in trying to see how things,  
22 how we measure up against other folks.

1           Now, to finish off the measures, the next  
2 measure is percent of 11(c) discrimination  
3 investigations completed within 90 days. That is  
4 a requirement in the Act and has been measured  
5 previously, and we all feel it's important to  
6 continue to measure that.

7           We tried to add a second measure to look  
8 at efficiency as opposed to just meeting the  
9 statutory requirement, so having an average days  
10 to complete that initial investigation, we wanted  
11 to add that in there as well.

12           Measuring effectiveness of a  
13 discrimination program is very difficult. If  
14 anybody has any ideas, we have discussed it ad  
15 infinitum, and we would love to hear folks'  
16 opinions on that.

17           Average current penalty per serious  
18 violation, that is a measure that's been there  
19 for a long period of time. We did feel that it  
20 would be helpful to break the measure down by  
21 size, since part of the OSHA Act requires Federal  
22 OSHA and the State Plans to -- when they're

1 assessing penalties, take into consideration the  
2 size of the employer. That is the largest  
3 reduction an employer gets in a penalty  
4 calculation. It can be upwards of 60 percent.

5           So, obviously, if a state or Federal area  
6 office has a larger mix of small employers that  
7 get that 60-percent reduction or, vice versa, if  
8 they have a much smaller mix, then that can  
9 impact that average serious penalty. And average  
10 serious penalty is one of those measures that has  
11 been a lightning rod for Federal OSHA with their  
12 stakeholders, for State Plans with Federal OSHA  
13 and their stakeholders. So it's something that's  
14 been there a long time. It's always probably  
15 going to be there, but we did want to give a  
16 little more up-front ability to look at how those  
17 -- how that larger -- that average for the  
18 serious penalties is impacted by size of the  
19 companies.

20           Next one is average percent of initial  
21 penalty retained for noncontested violations.  
22 That is just getting at -- well, it's really



1 getting at two things. One is what are the --  
2 how good is the State doing on settlement of its  
3 cases. Is it giving the farm away or not in  
4 trying to settle the case?

5           It also could reflect how well the  
6 inspection was done or how well it was not done.  
7 Obviously, if you are negotiating from a  
8 stronger position, you could hold the line more  
9 on penalties.

10           And if you retain policy -- retain more  
11 penalty, that can act as a deterrent against  
12 future violations.

13           The next two measures have to do with  
14 response to fatal accidents and imminent dangers.  
15 Long-standing requirement to respond within 1  
16 day of those. Obviously, with the fatality,  
17 somebody has already been killed. You want to  
18 get there as quickly as you can, first of all, to  
19 assure that nobody else is going to get killed  
20 immediately. Secondly, fatalities are, you know,  
21 the most high-profile kind of situation that OSHA  
22 normally gets into. It's important to get to

1 those quickly and do a good job on them.

2           Responding to imminent danger complaints,  
3 obviously that's a situation where by the very  
4 definition of it, somebody can immediately be  
5 killed or suffer serious physical harm, and you  
6 want to get there and prevent anything, prevent  
7 that from happening.

8           And the last item, again, gets to a core  
9 element of a safety and health program. Besides  
10 identifying occupational hazards, you want to  
11 inform the employers of them, and then you want  
12 to assure that they get corrected in a prompt  
13 manner. And this measures the number of open  
14 noncontested cases with incomplete abatement for  
15 60 days or more.

16           And that's all the measures.

17           MS. SCHREIBERG: Can I just ask a  
18 clarification --

19           MR. WITHROW: Sure.

20           MS. SCHREIBERG: -- on what you mean by  
21 noncontested? Does that simply mean that no  
22 appeal was filed or that it didn't go through a

1 whole thing in front of the OSHA administrative  
2 law judge and so forth?

3 MR. WITHROW: The reports when they run  
4 are kind of snapshots. So when you write the  
5 criteria for pulling the data out, it is just  
6 going to look at violations that are currently  
7 not contested. It's a current shot, not  
8 contested, which means then there was an  
9 abatement date and whether the system indicates  
10 it was abated or not.

11 As you know, in the OSHA law, except for  
12 two State, two State Plans, employers are not  
13 required to abate an item that's contested at the  
14 time. So it is just that when this report is  
15 run, looking at violations that have become final  
16 during the period for, let's say, the year and  
17 that are currently not contested.

18 MS. SCHREIBERG: And then how does it fit  
19 with the settlement thing? Because to me, a  
20 settlement means there was some kind of contest.  
21 That's where I got confused.

22 MR. WITHROW: Well, the informal

1 conference process, it could be contested or not  
2 contested.

3 MS. SCHREIBERG: So you're just talking  
4 through the informal as opposed to what the  
5 percentage retained is once the case starts  
6 through that appeals process?

7 MR. WITHROW: Once it goes in the --  
8 because cases, you know, with the review  
9 commissions and in States as well can go on for  
10 -- and appeals processes can go on for years,  
11 most of these reports are written so that it's  
12 cases that are opened during the period, because  
13 you want to look at current inspection activity;  
14 and in this case, cases that were closed during  
15 that period, and the violations are no longer  
16 contested.

17 So the problem, one problem, you know,  
18 overall with the computer system is to catch  
19 those cases that have been 3, 4, 5 years in the  
20 process. Obviously, they weren't opened during  
21 the period that you are going to start looking  
22 at, and that initial inspection was done 5 years

1 ago. Some of that, some statistics look at, you  
2 know, contested violations that were open for  
3 that period 5 years ago, but catching results for  
4 cases that work their way through the system over  
5 years and years is not a -- it's just not very  
6 well done currently.

7           Yeah.

8           MS. UPSTON: Before we get into the  
9 actual questions and purposes, are there any  
10 other questions for clarification?

11           The purpose of this, just to remind you,  
12 is not to get into a deep dialog about the draft  
13 measures, although if there are questions that  
14 you need clarified, there's a few moments to do  
15 that, but it's not a debating about the measures.  
16    Okay.

17           Yes, thank you.

18           MS. SEMINARIO: That was helpful, because  
19 it wasn't clear to me in coming to this meeting  
20 if the focus that it was the draft measures and  
21 trying to get input on those or it was these  
22 broader questions.

1           And I think, personally, there needs to  
2 be both, because the draft measures here are  
3 what's going to be moved operationally, and so  
4 the question is how to organize a discussion  
5 around these draft measures, fitting it into 1,  
6 2, 3 or 4.

7           So we had some discussion beforehand. We  
8 were sort of grappling with how do we get at  
9 commenting on the draft measures, because they do  
10 fit into this, the structure here, but they are  
11 what are going to be moved immediately. So  
12 that's the question for folks.

13           It would help, I think, if just there's  
14 some time to talk about some of these and get,  
15 you know, some questions and some back-and-forth,  
16 if we can, in some organized way, given that this  
17 is the work that the work group has put so much  
18 time and effort into, but --

19           MS. UPSTON: Well, I mean, really, the  
20 question is, Doug, you and Jay have to decide  
21 where are the draft measures and how much  
22 discussion do you want to devote to that, because

1 that's not where I understood you wanted to go  
2 with today.

3 MR. KALINOWSKI: No, I think we want to  
4 get feedback on the draft measures as well as how  
5 they tie into these as well.

6 The draft measures are at this point  
7 proposals or drafts.

8 MS. UPSTON: They're drafts, yeah.

9 MR. WITHROW: I would just say we don't  
10 want to get probably bogged down late in  
11 discussions for the whole time, because I think  
12 these questions, the questions -- you know, we do  
13 want to hear a lot about any ideas for  
14 outcome-based measures, because the GAO report  
15 and so forth have been pushing OSHA for outcome  
16 measures. States get pushed by their  
17 legislatures for outcome measures.

18 Some of these -- anybody familiar with  
19 the monitoring system? A lot of these are ones  
20 that have been monitored over the years.

21 We just tried to as -- we looked at  
22 hundreds at least, a couple of hundred measures

1 that have been used over the years, and tried to  
2 say what are the core ones, what are the best  
3 ones we have that we use most regularly from a  
4 management standpoint, from assessing  
5 measurements.

6 So that's -- this is an important --  
7 yeah, we'd like comments on those.

8 The questions, you know, you ask what  
9 outcome-based measures do you like, what  
10 activity-based measures you like. Some of these  
11 measures on here are activity measures. So on  
12 Question 1(a), (b), and (c), we can get into that  
13 under Question 1, the measures.

14 MS. UPSTON: Yes.

15 MR. FRUMIN: So I have a couple of  
16 clarification comments or questions about the  
17 draft measures. This is Eric Frumin from Change  
18 to Win.

19 I'm sorry. Under the technology, am I  
20 supposed to push a button or anything?

21 MS. UPSTON: No.

22 MR. FRUMIN: No? Okay.



1           One is that the term "negotiated" is a  
2 little unclear, is very unclear to us outsiders.  
3    So that would be an important clarification at  
4 some point early on in the meeting, so we  
5 understand what you are referring to.

6           Also, the term -- the reference to the  
7 State grant, the annual grants, OSHA, the States  
8 themselves are very familiar with that process of  
9 establishing what is, for instance, the number of  
10 inspections. For those of us on the outside,  
11 we're not familiar with that process. So that  
12 would be helpful to understand, because that's  
13 obviously a very critical measure here, just the  
14 raw number of inspections that the State is  
15 expected to do and that Federal OSHA is going to  
16 hold them to in a pretty tight range. So we  
17 appreciate some clarification about whether  
18 that's in negotiations or it's something else.

19           On this question of enforcement presence,  
20 you use rightly the term "high-hazard  
21 industries," but that is very different -- that  
22 means very different things in different States,

1 both in terms of the -- both because of the range  
2 of different kinds of industries in different  
3 States but also the criteria for defining  
4 "high-hazard industries."

5           And Federal OSHA has multiple versions of  
6 that. It's got, you know, the injury/illness  
7 rates and the data initiative. It's got the  
8 industries selected for emphasis programs at the  
9 national level, the regional level, at the local  
10 level. It's got industries selected for emphasis  
11 programs because of particular kinds of hazards,  
12 like amputations, which cuts across quite a few  
13 industries and so forth.

14           So I think it will be very important in  
15 terms of understanding this critical measure of  
16 enforcement presence for you to try to clarify  
17 for us what did the parties mean, so to speak,  
18 when you said "high hazard," and is there a way  
19 of quantifying that? Is there are way of  
20 defining it, so that the people who are going to  
21 hold themselves to it are going to be held  
22 accountable against some measure?

1           That transparency around that question  
2 obviously is very important.

3           MS. UPSTON: Okay. Can you let them  
4 answer?

5           MR. FRUMIN: Yeah. Yeah.

6           MS. UPSTON: Thanks.

7           MR. KALINOWSKI: I think the key thing is  
8 we are not really limiting in terms of high  
9 hazard. What we try to avoid is putting in a  
10 list, like insurance agencies and things like  
11 that in an office-type environment and get more  
12 to the manufacture and the construction. You  
13 would think that anything would have either a  
14 national -- program would be a high hazard where  
15 people are either getting injured or -- or there  
16 are fatalities.

17           So it is going to be more inclusive than  
18 exclusive. I think we are just trying to exclude  
19 in that situation. The "low hazard" probably  
20 would be a better description.

21           Does that make sense? Does that clarify?  
22 And we will have the list.

1           MR. WITHROW: I think we can give you the  
2 -- what we did was dealing with OSHA's Office of  
3 Statistics, the gentleman that -- Dave Schmidt  
4 runs all the reports and things, injury, illness,  
5 and stuff, and he has a particular definition he  
6 uses with the OSHA stuff. So we can give that to  
7 the group, I think, without spending a lot of  
8 time discussing the detail of that.

9           The other two items, I don't know how  
10 other States do it with the grants and estimating  
11 inspections, but we have used -- OSHA has a long  
12 time ago developed a form for estimating numbers  
13 of inspections in construction manufacturing,  
14 NEPs. Of course, you have to estimate how many  
15 complaints you are going to get in the coming  
16 year, and complaints can vary widely. You  
17 estimate how many accidents that you would  
18 investigate based on previous experience.

19           They have a chart that they use, and we,  
20 to the best of my knowledge, use that based on  
21 the number of positions we think we are going to  
22 have filled during the year and what are average

1 number of inspections per CSHO are and IH.  
2 That's what goes into it. Again, we could  
3 probably give more detail about that.

4           And the last item was "negotiated"? I  
5 think primarily in the issue of dealing with  
6 complaints, it goes back to when OSHA changed  
7 from calling complaints "formal" and "nonformal,"  
8 and then they went to "investigated" and  
9 "inspected" and the "phone" and "fax" stuff was  
10 -- you know, they put more flexibility into how  
11 much time they would take to do phone and fax,  
12 something that was a phone and fax versus a  
13 signed written complaint with a serious hazard.

14           And some States adopted that policy.  
15 Others kept the previous one, and there is  
16 variety in the States about dates for handling  
17 the formal and nonformal for -- to use the old  
18 language. And so when they say "negotiated,"  
19 that's what's in the FOM for that State, which  
20 OSHA has approved.

21           MS. UPSTON: Tom and then Frances.

22           MR. O'CONNOR: You have looked in a

1 couple of these measures at number of  
2 inspections, both absolute and then compared to  
3 high-hazard industries, but I didn't see if  
4 there's anything specifically about health  
5 inspections, just because they can often be very  
6 resource-intensive. There might be a tendency  
7 for some programs to focus exclusively on safety  
8 inspections. Is there any way that you are  
9 looking at getting at just looking at to see that  
10 they, in fact, are doing an adequate number of  
11 health inspections?

12 MR. WITHROW: In the calculation I said  
13 previously, you know, we actually start -- there  
14 is a safety calculation and a health calculation,  
15 how many planned inspections they're going to do,  
16 how many complaints they estimate, how many  
17 accidents they estimate.

18 So in our grant, yeah, it's broken out by  
19 safety and health and each of those  
20 subcategories, how many we think we are going to  
21 do based on how much staffing we have. So, yes,  
22 there is emphasis on health, and health is

1 tracked separately.

2 MS. UPSTON: Frances.

3 MS. SCHREIBERG: So I was kind of  
4 following up on some of the comments that were  
5 just made, and my question relates to a couple of  
6 things.

7 One, not to be a crazy statistician, but  
8 obviously, in addition to weighting differently  
9 health and safety, there are some situations that  
10 are much more complex, and so I am just wondering  
11 how that gets factored into evaluating an  
12 inspection, having done case tracking in other,  
13 you know, settings.

14 And then the second thing is that, going  
15 back to what I thought Eric was saying at the  
16 beginning about negotiated number of inspections  
17 that a State Plan is going to do, I think there  
18 needs to be some kind of initial bench mark that  
19 is outside of those negotiations, that relates  
20 not simply to the number of inspectors that you  
21 all have budgeted or we all have budgeted in our  
22 State Plans, but perhaps is related to the number

1 of employees that we have in a State and how they  
2 are distributed through the high-hazard  
3 industries or however it is that you are going to  
4 focus that, because just to, you know, come up  
5 with some number without regard to how that  
6 covers the State's needs doesn't make sense to  
7 me.

8 MR. KALINOWSKI: I don't think that the  
9 number of inspections -- I mean, I think the  
10 expectation, which everybody should keep in mind  
11 -- there are so many positions that are funded  
12 for the States, and the expectation is the  
13 majority of those positions will be filled, and  
14 that ties back.

15 And then based on those positions, it  
16 ties back to how many inspections you're expected  
17 to do.

18 MS. SCHREIBER: Yeah. And I'm saying  
19 that's not the way I would do it. That doesn't  
20 make sense to me.

21 MR. KALINOWSKI: You can't monitor the  
22 State and say you should -- I guess we don't want



1 to get in a discussion, but I think we only have  
2 so much funding for a State, and we can't monitor  
3 a State based on positions they don't have  
4 funding for from Federal OSHA. Does that --

5 MS. SCHREIBERG: Well, am I just asking  
6 the wrong question? Isn't there something that  
7 you have to start with, the population of that  
8 State, the working population, and how it's  
9 impacted in terms of health and safety hazards?

10 MR. WITHROW: Briefly, the benchmark  
11 numbers that are set for the States were based on  
12 those kinds of calculations. Of course, those  
13 benchmarks were done years and years ago. There  
14 are some States that if you re-calculated them,  
15 they would need more inspectors. Some States  
16 would need probably need fewer inspectors.

17 MS. SCHREIBERG: Right.

18 MR. WITHROW: There is a requirement  
19 that's part of the grant that States have to keep  
20 -- and I always get them confused -- 80-percent  
21 safety and -- is it 75 or 85 health?

22 [No audible response.]

1 MR. WITHROW: The State has to have  
2 funded and filled, keep filled that. So if  
3 you're going to say a minimum benchmark as far as  
4 staffing was concerned, that's 85.

5 MS. SCHREIBERG: Yeah. That's --

6 MR. WITHROW: Now, as far as having a  
7 measure that, you know, is for numbers of  
8 inspections based on population and so forth,  
9 this enforcement presence measure does get at  
10 that at least as tracking it.

11 And State Plans actually are -- when it  
12 comes to numbers of inspectors and benchmarks  
13 actually are more well staffed than OSHA is.

14 So if Federal OSHA was measurable, if we  
15 came up with a benchmark for that, OSHA would  
16 fail it themselves, even if a lot of States  
17 didn't pass it.

18 MS. SCHREIBERG: All right. But again,  
19 it's --

20 MS. UPSTON: Okay.

21 MR. WITHROW: But that's --

22 MS. UPSTON: I'm going to take three more

1 people, and then just a reminder about the  
2 purpose of the meeting and to say if you have  
3 other comments or particularly clarifying  
4 questions about the draft measures, you can  
5 submit them, and OSHA will respond to them and  
6 put the responses up where everybody can see  
7 them, just so I -- my job of moving the meeting  
8 forward now.

9 Diane?

10 MS. BROWN: You had mentioned that there  
11 is a formula that the States use for safety  
12 versus health. Is it also that way for private  
13 and public?

14 MR. WITHROW: The general thing, at least  
15 in Virginia for a long time, is we would at least  
16 have, as far as inspection activity, 5 percent of  
17 our inspections would be in public sector as a  
18 minimum, and we track that as well.

19 MS. BROWN: And can we include that in  
20 somehow in this draft measures, that there be  
21 some benchmark for public employment?

22 MR. WITHROW: That's a good comment.

1           MR. KALINOWSKI: I think that's  
2 expectation, where the States have both public  
3 and private sector. That is a universal  
4 application, is 5 percent.

5           MS. BROWN: Okay.

6           MR. WITHROW: But, yeah, to look at  
7 whether that is an appropriate percent is --  
8 yeah, that's a good point to make.

9           MS. UPSTON: Gary.

10          MR. VISSCHER: A lot of these compare,  
11 would be comparisons to a national number,  
12 correct? The range is based on what the national  
13 is, and I guess number one -- one of you  
14 mentioned the idea that -- I think Jay mentioned  
15 the idea that OSHA would also have to publish its  
16 numbers. This kind of implies that they  
17 following the same rating system, in a sense,  
18 right, for the same factors?

19                 And then related top that, I guess, is a  
20 national number, but you're doing quarterly  
21 evaluations, is it a rolling number, or is it  
22 based on what like OSHA's projection would be at

1 the beginning of the year? What's that sort of  
2 national number referring to, I guess, is the  
3 question.

4 MR. WITHROW: Yeah. The reports are run  
5 on a quarterly basis for the quarterly meetings  
6 that OSHA has with each State and where there is  
7 -- we -- some of the measures have a 1-year  
8 average, you know, for the Federal number, and  
9 some have a 3-year rolling average.

10 But as far as I know, that ends up being  
11 a rolling number. It changes from quarter to  
12 quarter, and if you would ask States, that's  
13 probably traditionally one of the things we've  
14 had problems with. Instead of having a  
15 hard-and-fast number there to be compared to, it  
16 -- you know, it moves around. It's a moving  
17 target kind of situation, which makes it  
18 difficult from a planning standpoint.

19 On the other hand, you can't go out and  
20 -- or you get in trouble if you say, "Okay, CSHO,  
21 you shall find four violations per inspection."  
22 Then you can be accused of trying to gin up stuff

1 that's not really there.

2           So some things do have to be kind of a  
3 rolling thing. Others where possible, we would  
4 like to have solid numbers when it's possible.

5           MS. UPSTON: Peg.

6           MS. SEMINARIO: On the complaint  
7 inspection indicators here, one thing that would  
8 be, I think, very useful as an indicator -- and  
9 it goes to what Jay was talking about earlier,  
10 this whole phone/fax, informal/formal -- that we  
11 have gotten away in many places the idea that a  
12 worker can file a formal written complaint and  
13 get an inspection, which is really core to the  
14 statutes.

15           And it's something that we've had a lot  
16 of disagreements with, Federal OSHA and some  
17 States over the years, as trying to basically try  
18 to minimize that by doing shortcuts through  
19 phone/fax.

20           It would be helpful to have an indicator  
21 here that is looking at the percentage of  
22 complaints that are responded to by inspection

1 and the percent that I responded to by some other  
2 means.

3           And again, I understand that there's --  
4 without trying to go and flip the entire policy  
5 here right now that exists, because this is what  
6 Jay said, it's very different at different  
7 places.

8           At least having that information and  
9 seeing as to whether or not -- you know, what's  
10 actually happening out there, would be very, very  
11 useful for those of us who represent workers,  
12 wanting to make sure that people are getting  
13 inspections in response to complaints that are  
14 being filed.

15           MR. WITHROW: Just in response to that, I  
16 would amend it by saying percent of signed  
17 complaints responded to, to get at your core  
18 issue, because if it doesn't come up 100 percent,  
19 then you know that some signed complaints are not  
20 getting an inspection. And we do keep that data  
21 in the system whether something is signed or not.

22           MS. SEMINARIO: And we'll provide some

1 more written comments, but something that gets at  
2 that and doesn't mush these all together but  
3 enables you to pull that data apart.

4 MR. MATUGA: I do have one question,  
5 clarification, and then just one comment as well.

6 From what I understand, these draft  
7 measures are going to also take a more balanced  
8 approach. These ones are only focusing on  
9 enforcement, but there's going to be other  
10 components that are going to be looked at as well  
11 in terms of what the States are doing, measuring  
12 their effectiveness for training and outreach in  
13 cooperative programs. Is that correct?

14 Well, I think it maybe premature for us  
15 to talk about just these draft measures, because  
16 that's only one, one small piece, but a comment I  
17 have about these specific measures about  
18 enforcement are really -- and one of the things  
19 that our members brought to our attention -- is  
20 sort of the lack of consistency and enforcement.

21 This talks about raw numbers. How many  
22 enforcement -- or how many inspections have you



1 done? What was the average penalty? How do you  
2 make sure -- and I'm not sure how do you do that  
3 with a measure -- to keep consistency across the  
4 board?

5           From members' experience and the feedback  
6 they have given me is that the State Plans  
7 generally are smaller entities. The enforcement  
8 is pretty consistent in each of the State plans  
9 for a single State Plan where you can actually  
10 have one OSHA region, and the Federal  
11 jurisdiction, there could be a couple States and  
12 one region where the enforcement is inconsistent.

13           So if that would be added to your list in  
14 some form or fashion, talking about a consistency  
15 and that being a measure that the States are  
16 looked at versus Federal OSHA, it might be  
17 helpful as well.

18           MR. KALINOWSKI: Well, about the  
19 challenge, I think between the 10 OSHA regions as  
20 well as all the States too, and that's something  
21 that we try to work towards.

22           And just to add onto Peg's, we do have

1 those data for looking at all those different  
2 aspects of complaints.

3 MR. WITHROW: I would just say, yes,  
4 everybody struggles with consistency. We do from  
5 region to region in our State, from compliance  
6 officer to compliance officer. It is one of the  
7 things we look at.

8 The serious, percent serious, percent of  
9 violations cited serious is something that's  
10 looked at, and if a State has a lower number or a  
11 higher number, OSHA will look. We normally look  
12 at the last that's published every year, the 25  
13 most frequently cited standards by State. We  
14 look at that and see individual standards that  
15 are cited higher percent serious or lower percent  
16 serious, and normally, that's where we'll see if  
17 there's a consistency issue.

18 And then from CSHO to CSHO, we will run a  
19 report to look at how many actual regulations  
20 they cited during the year. Some CSHOs will cite  
21 a very broad range of violations, of standards,  
22 and some will do a pretty narrow range of

1 standards. That's how you get at kind of quality  
2 control and consistency.

3 MR. FRUMIN: But I think that --

4 Oh, I'm sorry.

5 **Question 1**

6 MS. UPSTON: Thank you.

7 Doug, will you introduce the first  
8 question? We were going to collapse the amount  
9 of time with each of them to try to get through  
10 the main. Hopefully, this was a good precursor  
11 to getting at what OSHA is looking for.

12 MR. KALINOWSKI: And I think some of the  
13 issues that you are talking about will come out  
14 of these questions as well.

15 Question 1 is, how would you define or  
16 describe the components that constitute an  
17 OSHA-approved State Plan that was "effective" in  
18 achieving this mission, funding, staffing,  
19 standards setting, strong enforcement program,  
20 strong consultation, frequency of inspection,  
21 strong training and outreach programs, level of  
22 penalties?

1 MS. UPSTON: So those are obviously to  
2 seed the discussion, and if you have other ideas  
3 other than those, that's particularly --  
4 obviously, OSHA has already figured these out as  
5 possible. So anything new and different or  
6 clarifications or further ideas on those is what  
7 OSHA is really looking for. Now they are in the  
8 listening mode.

9 Yes.

10 MR. FRUMIN: Eric Frumin.

11 I think one of the things that needs to  
12 be evaluated much more carefully is the extent to  
13 which the different parts of the agencies take  
14 seriously the role of workers under this Act.

15 Worker participation as a category of  
16 activity, for instance, is not included in your  
17 sample list here, in your examples.

18 Peg mentioned the question of the extent  
19 to which worker's fundamental right to getting an  
20 inspection off of a complaint as well, but there  
21 are others as well. The extent to which workers  
22 participate in walk-around inspections is a

1 fundamental part of the Act.

2           These are written into the statute.

3 These are not policies adopted at the whim of  
4 some other administrator. These are core rights  
5 that distinguish this Act from what happened  
6 before 1970.

7           So, in a variety of ways, we think it is  
8 critical that this subject be opened up for a  
9 much more robust discussions, and that measures  
10 be selected which can actually reveal the extent  
11 to which compliance officers and the offices that  
12 support them interact in an effective way or,  
13 conversely, in an ineffective way regarding  
14 worker participation. I'll leave it at that for  
15 the moment, but it's an important addition.

16           MS. UPSTON: Chris.

17           MS. TRAHAN: Hi. One of the things that  
18 struck me as I was thinking about this was a  
19 broad concept of adoption of compliance  
20 directives.

21           You know, I understand States have to  
22 respond when new compliance directives come out

1 and determine whether or not they are going to be  
2 adopting wholesale or if they are going to be  
3 modifying their policies within their State and  
4 then report that back to OSHA, but how is that  
5 measured?

6           When you look at a State that -- you  
7 could look at how States, if States wholly adopt  
8 compliance directives. You could also look at  
9 when they are adopting some kind of modified  
10 policy. You have to do this kind of thought  
11 process to see is this as effective as the policy  
12 in place at the Federal level.

13           With that as a broad example, I don't  
14 know how deeply that's investigated during the  
15 evaluations, but at the more specific level,  
16 there is this great compliance directive on  
17 training of compliance officers. And one  
18 particular measures could be the percentage of  
19 staff meeting the training goal, as defined in  
20 this compliance directive from 2008.

21           Some States have not adopted this  
22 compliance directive and choose to do training

1 programs that are different for their new  
2 compliance staff and their ongoing compliance  
3 staff. Is that as effective? How do we  
4 determine that? Who is consulted to take a look  
5 at that?

6           Also in this compliance directive,  
7 there's a very lovely way to do separate training  
8 for safety compliance officers, health compliance  
9 officers, and construction specialists, and my  
10 understanding is that some States really stray  
11 away from that approach and don't have folks that  
12 are as focused on the high-hazard construction  
13 industry as the Federal model. So that, I think  
14 is a measure that would be very useful to look at  
15 and be part of the evaluation procedure for  
16 everybody, for all OSHA enforcement programs.

17           MS. UPSTON: Thank you.

18           Jerry.

19           MR. RIVERA: Yes. My name is Jerry  
20 Rivera with the National Electrical Contractors  
21 Association.

22           And I guess as I am looking at some of

1 the components, like funding staffing, I am  
2 trying to look at it from different angles and  
3 that's a percentage of employees reached.

4           And I don't want to look at it in one  
5 specific way of just enforcement. I think we  
6 should be looking at it from the training, you  
7 know, here's one component, X amount of  
8 employees, whether the State will reach through  
9 training, consultants, alliances, and yes,  
10 inspections and penalties. But there should be a  
11 way to kind of evaluate the percentage of  
12 employees within their State that are being  
13 reached to make sure the information is within  
14 the grassroots versus focusing on just we're  
15 going to do a thousand inspections, and we're  
16 going to find a thousand violations, and we're  
17 not going to twitch at the penalties production.

18           I think it's kind of misleading when you  
19 take it from that angle versus if you focus on  
20 what we should really be focusing the employee.

21           And that would kind of lead into if there  
22 is a penalty assessed. Instead of looking at



1 being hardcore on the penalty, let's look at the  
2 dynamics behind it. Is the employer really  
3 redoing or instituting programs that will help  
4 mitigate that hazard and prevent it from  
5 happening in the future? That should be  
6 considered.

7           So, again, let's focus on the employees,  
8 how many of them are being reached through these  
9 different means that we currently have in place.

10           MS. UPSTON: Thank you. Mary Lee.

11           MS. HALL: One measure that occurred to  
12 me that I think is important in terms of lots of  
13 low-wage and marginalized workers now is how well  
14 is -- are States meeting their obligations under  
15 Title 6 in terms of language access for workers,  
16 both in terms of inspections, information, and  
17 other things of that sort.

18           And I think the Secretary already has  
19 guidance on that, that could be made a little  
20 more specific in terms of State Plans that would  
21 assist in determining if workers really do have  
22 access to occupational safety and health

1 complaints and whatever.

2           The other point would be that both in  
3 terms of written, written complaints and oral  
4 complaints, language can be an extreme barrier  
5 for workers making that complaint.

6           MS. UPSTON: Thank you.

7           Harry.

8           MR. PAYNE: Yes. I think we have to look  
9 at the position of the State administrator, and  
10 they need a tool in advocacy for greater numbers  
11 of positions and money to train as some ideal  
12 standard that have their State graded against  
13 that standard, how are you doing, because  
14 inevitably there's a tragedy, and people say --  
15 the story says hasn't been inspected in umpteen  
16 years. And that's the only evidence that they  
17 see, inadequately funded State program.

18           And if you could say you're running at 60  
19 percent of the ideal State program or 70 or 90 in  
20 terms of a broad standard for a State program and  
21 a Federal program, which I think we should live  
22 under the same house.

1           But I think having that standard before  
2 the tragedy can help lower the probability that  
3 it occurs, but I think an administrator, State  
4 administrator needs that tool to go in and say,  
5 "Look, we stink in terms of the amount of  
6 commitment to this program. We've got to do  
7 something, and now it's on your head." And I  
8 think that would be helpful.

9           MS. UPSTON: Thank you.

10          Mary -- Diane. Sorry.

11          MS. BROWN: Some of my comments are going  
12 to talk about the training of the staff, but  
13 Chris, I think, got that pretty well.

14          So I want to talk a little bit about the  
15 level of penalties. As represented, public  
16 employees, number of State Plan States cannot  
17 find another public employer, or they are very,  
18 very restricted on what kind of monetary penalty.

19          So money for a penalty is not even -- how  
20 can we really even look at that?

21          So if you are going to look at  
22 effectiveness of penalties as a measure, what

1 about those public employees? What are you going  
2 to measure instead if it's not going to be the  
3 penalty, especially if you are looking at a  
4 dollar amount? Because zero is zero. Okay? Or  
5 \$2.90 is \$2.90. And so you need to have  
6 something else you are going to measure, and  
7 generally, that's abatement time.

8           The completeness of the -- what was asked  
9 to be fixed and how quickly they did it, I mean,  
10 that's what I look at when I deal with this issue  
11 with our public employees.

12           And there's -- when we talk about high  
13 hazards, public employment has slightly different  
14 high-hazard industries. They are not completely  
15 different than private sector, but there are some  
16 differences. There aren't comparisons to a  
17 wastewater treatment plant in private sector,  
18 mostly because wastewater treatment doesn't make  
19 money. So it's done by the public sector.

20           Are there compliance officers who can  
21 make those inspections? And if not, how do we  
22 staff that appropriately?

1           That's it.

2           MS. UPSTON: Thank you.

3           Frances.

4           MS. SCHREIBERG: Yeah. I think a couple  
5 of thoughts having actually even following on  
6 what Diane said, but the abatement issue, I  
7 think, is a key factor. And it's not just  
8 abatement incomplete for 60 days or more.

9           I think what needs to be looked at is  
10 whether State programs have a plan for speeding  
11 up on contested cases the abatement process, so  
12 do they have, you know, a process by which those  
13 cases can essentially be moved to the head of a  
14 queue, so that when you've got a serious citation  
15 and you've got abatement that hasn't occurred,  
16 that that case gets handled more quickly. I  
17 think that to me is a really important aspect,  
18 because everybody wants abatement to occur.  
19 That's one of the key elements that we're dealing  
20 with here.

21           In terms of the training of staff, I  
22 would add to that some of our State programs,

1 ours in California, are not -- are CSHOs, do the  
2 appeals, and they're not lawyers, and that's a  
3 big difference. And they need to have adequate  
4 training, and I think we need to -- in the  
5 evaluations, you need to look at who is doing  
6 those appeals. And whether they're attorneys or  
7 not, they should be getting some training. I  
8 think the attorneys can get that training too on  
9 how these appeals are presented, because there  
10 are lots of problems with that.

11           And then the final thing that I wanted to  
12 add was -- and I really don't know exactly how  
13 you all could approach this, but I think  
14 supervision of the CSHOs is an aspect that we  
15 have to think about.

16           And again, I am looking back at our  
17 California program to see where things fall  
18 through the cracks, and I think there is a big  
19 hole in terms of supervision. There are some  
20 districts where you got a district manager who is  
21 really looking very early on at the files that  
22 the CSHO brings in, and then there's some where

1 it doesn't happen until right before the case is  
2 appealed or going to trial on the appeal. And  
3 that makes a huge difference in terms of what the  
4 outcome is, so something about supervision.

5 MS. UPSTON: Thank you.

6 Tom and Peg.

7 MR. O'CONNOR: Okay. Just following up  
8 on what Mary Lee was talking about, the language  
9 capacity, that's something we hear from folks  
10 around the country, that it's often a problem of  
11 having inadequate number of particularly  
12 Spanish-speaking inspectors. A neighborhood it's  
13 related to staff training in addition to hiring  
14 process.

15 I think Cal OSHA has an interesting model  
16 where they offer incentives to inspectors that  
17 give them tuition, books, and 4 hours a week that  
18 they are paid, that they can learn Spanish. And  
19 so I think that's a really interesting model that  
20 other States could take up, and it's worth  
21 looking at whether States are at least analyzing  
22 what their non-English language population is in

1 their States and whether they are covering them.

2           Just following up on something that Eric  
3 was saying about worker involvement, we have seen  
4 a lot of lack of uniformity in both Federal and  
5 State jurisdictions on how inspectors involve  
6 workers and inspections in non-union workplaces,  
7 which in some States now is just the vast  
8 majority. So does the State have a specific  
9 policy of how they are going to get worker  
10 involvement in their inspection process, and how  
11 is that carried out? That should be a part of  
12 the monitoring process.

13           MS. UPSTON: Peg and then Chris.

14           MS. SEMINARIO: I think one of the  
15 things, as Eric said and others have said, the  
16 basis for certain standards are presented in the  
17 Act in OSHA regulations. This isn't a new issue.  
18 Obviously, there's a lot of history here.

19           And one of the things I did preparing for  
20 this is go back and read the statute and the  
21 regulations, and it lays out the different steps  
22 in the development, but it also lays out the



1 criteria for State Plans. And it lays out  
2 procedures for monitoring.

3           And I think at a minimum, the things that  
4 are covered have to reflect what's in the statute  
5 and the law, and you are missing some of those  
6 things. And some of them have been raised.

7           There is a focus, obviously, in the  
8 statute of people, staffing being qualified, and  
9 getting into that whole area of what the  
10 qualifications mean and how do you monitor that,  
11 measure that, I think is worth a fuller  
12 discussion. I'm not saying you should dump your  
13 measures you have now, but that clearly is  
14 something that is a critical issue, both for the  
15 Federal Government and for the States, and so  
16 developing that in a more robust way, I think is  
17 really important.

18           The whole issue has been talked about of  
19 worker rights is critical in workers being able  
20 to exercise rights of participating in  
21 inspections, filing complaints.

22           The outreach components, does that apply

1 only to employers but also to workers?

2           An area that Fran started and had begun  
3           to talk about, what is the State's capacity  
4           for handling everything at post contest?  
5           Because that is a big part of an enforcement  
6           program, and what is the capacity for doing  
7           that? What is the timeliness for taking  
8           those things up? What are the cases that get  
9           litigated? Because a lot of those are the  
10          big high-profile cases. What's a State's  
11          ability to handle some of the big-deal kind  
12          of cases that it confronts is an important  
13          piece of it.

14          And then as Diane had said, the other  
15          piece of it, States to have a State Plan have to  
16          cover public employees. It's the only way they  
17          get covered, and the statute says that that  
18          program has to be as effective as the program for  
19          everybody else.

20          So having means in place to look at what  
21          is going on vis-a-vis public sector workers which  
22          may have different types of hazards in certain

1 areas, different kinds of concentration, and how  
2 the program is set up to deal with the population  
3 but also the hazards that are present.

4 MS. UPSTON: Chris.

5 MR. WILLIAMS: Talking about the  
6 post-penalty phase and getting back to what Jerry  
7 said in terms of worker outreach, employee and  
8 employer, post-penalty phase, I think we need a  
9 performance metric as follow-up training after  
10 the penalty citation is issued; in other words, a  
11 root-cause analysis of why the citation, why the  
12 hazard occurred, training employer and employee  
13 on how to abate that hazard so that doesn't  
14 occur, there's no future occurrence.

15 Another part of it, we talked earlier  
16 about a metric, projected -- we talked about  
17 frequency of inspections. There should also be a  
18 metric in there, a projected number of  
19 consultation inspections. Simply put on that  
20 one, there needs to be more outreach done in  
21 terms of prevention, and we need to get ahead of  
22 not just actual enforcement inspections, but what

1 to do to help out the employer and employees in  
2 educating them.

3 MS. UPSTON: Eric.

4 MR. FRUMIN: Jay mentioned the question  
5 of transparency and new approaches to the way the  
6 government functions, and I think it's worth  
7 adding this criteria to how the States are  
8 monitored and the Federal OSHA as well.

9 There's quite a variety of practices  
10 among the States with regard to their maintenance  
11 of the documentation of enforcement records,  
12 including the basic retention of records, the  
13 provision of those records to the public. States  
14 have different policies regarding release of  
15 enforcement files, and there needs to be a  
16 fundamental level, a minimum foundation of  
17 transparency that cuts across the entire program.

18 Simply because a State has anxiety about  
19 releasing inspection files of a particular  
20 business should not allow the State to withhold  
21 those files. Likewise, files can't be destroyed  
22 within just a few years, even if it might meet

1 the minimum criteria for a repeat violation.

2           We know, for instance, in the Federal  
3 policy, which has been on the -- in the directive  
4 since 1998 that still follow today, files  
5 involving health inspections where air monitoring  
6 was done is kept for decades for good reason. So  
7 I think transparency is a very important addition  
8 to your list, again, as Peg said, not to hold up  
9 moving forward with the ones you have but to get  
10 into a serious discussion about it.

11           MS. UPSTON: Thank you.

12           Gary.

13           MR. VISSCHER: I am going to follow up on  
14 something Rob talked about earlier and also, I  
15 guess, comment on Peg's comment.

16           I sort of came here thinking this is a  
17 huge step backwards, because all the proposed  
18 measures were enforcement activity measures, and  
19 the government program evaluation world has moved  
20 away from all that and has moved into impacts,  
21 clearly, over the last decade. That's been the  
22 whole direction of things.

1           As I was thinking about that prior to  
2 today, I agree with Peg that the statute  
3 specifies or kind of directs that section of the  
4 OSHA act, directs you into looking more at  
5 activities. So I think you have sort of a  
6 dichotomy there of following the statute versus  
7 -- or in combination with the way that program  
8 evaluation has gone in the larger world over the  
9 last, you know, 15 or 20 years, which is to look  
10 at impacts, which is often more difficult but is  
11 really what the emphasis is. So I think to me,  
12 that's that challenge.

13           I guess picking up on what Rob said, as I  
14 said, I came in thinking this was a huge step  
15 backwards, and then I find out that really that's  
16 the next step in your process is to look at those  
17 things. And so we are looking at maybe a  
18 half-a-loaf or a quarter of the loaf or something  
19 here, which I think is important.

20           But I guess I just wanted to make the  
21 comment that with regard to this first question,  
22 which is really kind of the broad, how you define

1 "effective," the examples listed here are all the  
2 activities, and I think it's really important  
3 that if you are going to weight it one way or the  
4 other, from my perspective, you have got to look  
5 at impacts, because that's really -- I think  
6 we've learned that in a lot of other programs and  
7 in the OSHA world that if you just look at  
8 activities, you may be missing the real ball  
9 game.

10 MS. UPSTON: Which is really part of the  
11 next question.

12 MR. VISSCHER: Okay. Sorry.

13 MS. UPSTON: No, not -- Frances.

14 MS. SCHREIBERG: Yeah. Just partly that,  
15 but on the appeals issue, again, I keep coming  
16 back to that, because that was a big issue in  
17 California.

18 But in addition to all of the other  
19 things that I said, I think it's important to  
20 start looking at the procedures in the State  
21 Plans for these appeals and particularly, again,  
22 basic worker rights to participate in those

1 appeals.

2           And sometimes the law that's created in  
3 the State, either, you know, in State court  
4 proceedings if that's where these basic appeals  
5 go or in our little administrative law  
6 proceedings, you end up with procedures that cut  
7 off workers' rights and that in fact are  
8 different than the basic decisional law that has  
9 come up through the OSHA Review Commission and  
10 into the Federal courts in that regard. And that  
11 can be pretty significant.

12           Again, if you look at the regulations in  
13 California regarding how we handle our appeals,  
14 they are not up to snuff in terms of the Federal  
15 OSHA case law that has developed overall. And  
16 I'm not saying you have to match exactly what the  
17 Feds do or even follow those as decisions, but  
18 I'm saying in an overall capacity, you have to  
19 have some level of -- as effective as they are --  
20 particularly as it goes towards worker rights.

21           The other thing is, in terms of impact,  
22 again, I think the abatement issue has to do with



1 impact, how quickly that abatement occurs, but  
2 also the 11(c) has to do with impact. And, you  
3 know, not just how many of those cases are  
4 handled within 90 days, but it is an impact when a  
5 worker loses his or her job as a result of being  
6 involved in safety and health.

7           So, to me, I am concerned about, number  
8 one, there being a lot of information that our  
9 State plans are going to provide to the folks  
10 when they walk into that workplace and those  
11 folks are interviewed or those folks are on a  
12 walk-around or those folks are just sitting there  
13 in that plant. Those folks need to be able to  
14 have information about what their rights are in  
15 terms of the 11(c) components.

16           The people who do the 11(c) cases need to  
17 be trained properly to handle those cases, and I  
18 don't think that's necessarily happening. I  
19 don't think that there's any kind of consistency  
20 in terms of procedures, and I think you have to  
21 -- again, because it's impact -- look at the  
22 outcome of those cases. And that may not be

1 hugely easy, because some States have private  
2 right of action, and so the, quote, "easier" and  
3 maybe more -- you know, where there's a bigger  
4 amount of money at the end because the worker got  
5 fired, and there's a potential for a private  
6 attorney to take those cases. You know, maybe  
7 those get peeled off, so you have to think about  
8 balancing all that. But impact is in 11(c).

9 MS. UPSTON: Jerry and then Chris and  
10 Harry, and then we are going to take our break a  
11 little early and regroup our times for the next  
12 questions.

13 MR. RIVERA: Jerry Rivera with NECA.

14 As part of the assessment process, to  
15 assure that the States are as effective, I would  
16 like to suggest that based on the inspections  
17 that the CSHOs are gathering, what is the State  
18 doing to kind of mitigate or match those  
19 conditions on the ground? Meaning if they are  
20 finding the fatalities during inspections, falls  
21 is a huge issue, what is the State doing to kind  
22 of counter-react that?

1           I've got to commend the Falls Campaign,  
2    which was a great initiative, and that is  
3    something that should be considered as part of is  
4    the State being as effective. We always focus on  
5    inspection fatalities, but if we really stop for  
6    a second, we are looking at the lag in  
7    indicators. What are we doing proactively as a  
8    State to ensure that we really bring down those  
9    numbers and not necessarily focus on the numbers  
10   per se?

11           The other one is consistency among States  
12   in the standards setting, to verify if there is  
13   somewhat of a consistency in that assessment.  
14   You have Federal OSHA standards, and then you  
15   have some States who promulgate additional rules  
16   like ergonomics or heat. They are great, but for  
17   an employer who is crossing State boundaries, it  
18   creates somewhat of a confusion. You know, you  
19   are going from California to Nevada, there is not  
20   such a rule, but then you cross into California,  
21   you get a \$7,000 penalty. It's a hard price to  
22   pay for something that we assume they should be

1 known.

2           But these are things that maybe, as  
3 OSHSPA should consider is as they start  
4 promulgating rules that are that far away from  
5 what Federal OSHA is doing, there should be a  
6 consistency among all the States. That way, it  
7 makes it easier for employers to comply.

8           And the other one is the training. I  
9 want to capitalize on what folks have said for  
10 the CSHOs. I talked to a CSHO a while back, and  
11 he told me he hasn't received training in the  
12 last 4 years. You know, that's kind of a  
13 disconnect between what the employer being  
14 chartered with and the employee. You know, we  
15 trained the employees a bunch. We tell the  
16 employers you got to train the employees, but  
17 here we have the CSHO who hasn't been given  
18 training for the last 4 years. It's kind of a --  
19 you know, they're not being effective. They're  
20 not being offered an opportunity to develop  
21 themselves professionally, and at the end of the  
22 day, who pays for that? The employee.

1 MS. UPSTON: Thank you.

2 Chris.

3 MS. TRAHAN: Well, I think, you know,  
4 Jerry, you brought up a good point, and, Rob, you  
5 did too with consistency of enforcement. And I  
6 just wanted to reiterate the earlier comments I  
7 had about the implementation of compliance  
8 directives to be equally -- I think that would  
9 led itself to that, and it is measurable.

10 But there's one other thing that's come  
11 up that I wanted to kind of raise a red flag  
12 about. We are talking about measuring State Plan  
13 States, and a lot of folks have brought up  
14 consultation, which I think is an incredibly  
15 important program, and it is incredibly important  
16 to all employers in this country, but all States  
17 have these consultation programs, not just the  
18 State Plan States.

19 So there might be a way to measure  
20 compliance assistance by State Plan enforcement  
21 personnel, the same way Federal enforcement  
22 personnel offer compliance assistance that's not

1 specifically enforcement-related activity and  
2 separate out the compliance programs that are run  
3 typically through a different agency in that  
4 State, because it wouldn't be apples to apples  
5 and oranges to oranges. It just seems like a  
6 strange measure as part of the State Plan  
7 assessment to measure the State compliance  
8 assistance programs.

9 I don't know if there is a parallel  
10 activity in your office that looks at all of the  
11 consultation programs, but that to me is really a  
12 separate thing, and I like the way OSHA keeps the  
13 consultation program separate from the  
14 enforcement programs, because it does give the  
15 employers more confidence to use those programs  
16 without it being connected to an enforcement  
17 activity. So I don't know that they should be  
18 lumped in together -- measurement here.

19 MS. UPSTON: Harry.

20 MR. PAYNE: I don't know whether this is  
21 still the case, but there used to be a disconnect  
22 between the amount of fines and citations that

1 were issued and their degree and the final  
2 outcome, even in the contested case.

3 A lot of times, we get the press release  
4 with the \$400,000 fines issued, and what we  
5 didn't hear later on was a small piece in the  
6 paper that they were compromised out to a very  
7 small piece in the paper that they were  
8 compromised out to a very small percentage of  
9 that.

10 Part of our role, I would think, is to  
11 look at the quality of the activities, and the  
12 best measure of that would be what did you get in  
13 the end. What was the final result of the  
14 adjudicated case?

15 I think if there's a huge difference  
16 between what was initially started out and what  
17 you eventually ended up with, that's important to  
18 know. And I think a lot of times, we used to  
19 say, well, that's not our fault, that's the fault  
20 of the lawyers, they just don't press hard  
21 enough.

22 But you're in a better position to affect

1 the outlook of the lawyers than anybody else and  
2 the quality of the material you give them to work  
3 with. So I hope that in our measures, we will  
4 consider not just what was cited or agreed to but  
5 the final outcome of the tried-out cases to see  
6 whether they, in fact, held the -- what they  
7 found in the inspections in the course.

8 MS. UPSTON: Thank you.

9 Eric, you are going to have the last word  
10 on this section.

11 MR. FRUMIN: Any organization of any size  
12 knows that research and development, evaluation  
13 is a critical -- is critical to its success.  
14 Some States have done -- have plowed a lot of  
15 money into evaluation. Some States haven't.  
16 Feds have done -- up and down, there is a big  
17 evaluation on the way now. Other times, there  
18 wasn't. I think that would be an important thing  
19 to look at, and there might be a way to measure  
20 it in the way that any organization measures its  
21 investments in R&D.

22 MS. UPSTON: Okay. Thank you very much.



1           Let's take a 10-minute break. We're 10  
2 minutes ahead of the break, but we're 20 to 30  
3 minutes behind on the second question, so it all  
4 sort of comes out in the wash.

5           So go away, if you need to, for 10  
6 minutes. Participants, particularly, we are  
7 going to start back timely, so it would be  
8 helpful if you are here.

9           The rest rooms are there. There's  
10 fountains, and the fourth floor has a snack bar  
11 if you need to go quickly.

12           Thank you.

13           [Recess from 11:32 to 11:42 a.m.]

14           MS. UPSTON: Okay. If the participants  
15 will please take their seats again. However  
16 brief the break was, we will move along. I know  
17 that was brief. Thank you for coming back as  
18 timely as you could.

19           We have made some adjustments to the  
20 times to try to catch back up, and we will kind  
21 of borrow some time from the last one  
22 particularly and Doug's closing comments, which

1 he promises he will really need 10 minutes.

2           So we are on to Question 2. Doug, would  
3 you introduce it and if there is anything further  
4 about it before we ask for comments?

5                           **Question 2**

6           MR. KALINOWSKI: Question 2 is, what  
7 indicators would you use to determine and monitor  
8 whether approved State Plans are at least as  
9 effective as Federal OSHA as outlined in 18(b) of  
10 the Act? Outcome-based measures or  
11 activity-based measures. Outcomes is reductions  
12 in injury and illness rates, reductions of  
13 fatality rates, and activity-based measures begin  
14 number of inspections conducted, number of  
15 violations issued, et cetera.

16           And then we will add we really appreciate  
17 how complicated this really is, and we do  
18 appreciate your ideas. Thank you.

19           MS. UPSTON: Yeah. But one of the things  
20 in the pre-discussion, the two examples that  
21 they've given for outcomes, if you are someone  
22 who feels strongly that outcomes is important and

1 can offer some other suggestions, that would be  
2 also very helpful. The ones that are here are  
3 the ones that OSHA primarily can think of, but if  
4 you can offer other examples, that would be much  
5 appreciated and helpful.

6 So let's begin with comments and  
7 suggestions on Question 2.

8 Diane.

9 MS. BROWN: Okay. As far as outcome  
10 versus activity-based, I realize that we are  
11 always going to look at injury and illness rates  
12 and fatality rates. I don't think that we can  
13 get away from that in some way, shape, or form.  
14 That's what other people will judge us by as  
15 well.

16 However, I think more the trends over a  
17 period of time versus a specific snapshot in time  
18 is probably more important.

19 As far as activity-based measures, of  
20 course, that's where we would like to see it go.

21 Number of inspections conducted, in my view,  
22 isn't as important as the variety of inspections

1 that is covered in particular.

2           Okay? I am here representing public  
3 employees. I would like to see more of an  
4 emphasis placed on municipal employees. I think  
5 that is where the vast majority of hazards are in  
6 public employment. I would like to see  
7 inspections done that cover things like health  
8 care and maybe nursing home-based as well.  
9 There's a lot of hazards there.

10           I already know that in some States, they  
11 already are concentrating on these things, but  
12 it's all over the map, so more consistency in  
13 that regard.

14           Number of violations issued to me again  
15 is -- number doesn't mean anything to me. It's  
16 whether -- it's the quality of the violation, and  
17 did they look at a variety of hazards? Again, if  
18 someone is going into a wastewater treatment  
19 facility and they are not looking at chemicals,  
20 confined space entry, and possible exposure to  
21 waterborne pathogens, then they haven't looked  
22 everywhere. So I would like to see a more

1 quality type of activity-based measure, if that  
2 is feasible, if that's possible.

3 MS. UPSTON: Thank you.

4 Ron.

5 MR. McGRAW: Yeah. Well, at least as  
6 effective for public safety, I mean, when you get  
7 State Plans, it's a home run. Right? It's  
8 effective because at least it applies to public  
9 safety.

10 [Laughter.]

11 MR. McGRAW: But I think there's going to  
12 be many issues. Our employees, probably safety  
13 employees, there is not a lot of OSHA standards  
14 that actually apply to those sector employees, so  
15 it is going to be hard to -- now, some of the  
16 State Plans have gone and made their own.  
17 Michigan has a good public safety standard. Some  
18 of them have adopted NFPA standards that would  
19 apply to these employees.

20 So to -- in the area of public safety, at  
21 least as effective should be as effective as what  
22 is our private sector counterparts, I think, in

1 the area, so seeing inspections at the same rate  
2 for municipal employees as you see it in the  
3 private sector.

4 Injury. The public sector is also one of  
5 the worst people at reporting injuries. So when  
6 we are looking at injury rates and reductions,  
7 you are not going to see -- your experience with  
8 municipal governments, they don't report all that  
9 well to begin with.

10 If you saw the reporting, you'd see the  
11 rates go up extravagantly, but at least we'd see  
12 -- in the activity-based measure, you'd see  
13 inspections conducted, and therefore, you'd have  
14 some measure to go off of.

15 I also see that in our sector, there's an  
16 unwillingness in the State Plan States to  
17 actually inspect, particularly the public safety  
18 sector that does -- I don't know what it is,  
19 about inspecting a fire department or inspecting  
20 a police department, but the State OSHA doesn't  
21 seem to really want to do that. Maybe it's  
22 because of the nature of their work, but I would

1 like to see more inspections, so definitely  
2 activity-based measures. Seeing more OSHA  
3 oversight over those sectors would be helpful.

4 MS. UPSTON: Thank you.

5 Tom?

6 MR. O'CONNOR: Okay. To the outcome  
7 measures, I think everybody here is familiar with  
8 the problems that were just alluded to in terms  
9 of the reliability of the injury and illness  
10 rates, and I think there's a tendency to say,  
11 well, that's what we got to work with, it's  
12 better than nothing.

13 But, you know, I'm not sure it is better  
14 than nothing, because there's been an interesting  
15 study in the construction industry recently that  
16 found there was actually by State, there was an  
17 inverse correlation between the fatality rates  
18 and the injury and illness rates. And if you  
19 look a little closer at it, it seems to be in the  
20 places where there's fewer unions. There's maybe  
21 more pressure to not report injuries. So it  
22 seems staying away from that as an outcome

1 measure seems wise.

2 I could see using the reduction in  
3 fatality rates makes sense, but I would be  
4 interested in other people's ideas about what  
5 other outcome measures might be useful.

6 And in terms of the activity measures, I  
7 would second what Diane said about the need to  
8 look at the number of public sector inspections.

9 But also going back to this issue of the  
10 health inspections, it's addressed in terms of  
11 projected versus actual, but that you have to  
12 look at is the actual appropriate -- excuse me --  
13 the projected appropriate, so are the health  
14 inspections adequate to cover, as Fran was  
15 suggesting, the hazards in the State.

16 MS. UPSTON: Thank you.

17 MS. SEMINARIO: I think it's really hard  
18 for all the reasons that have been said looking  
19 at injury rates and even fatality rates as  
20 measures of at least as effective, all kinds of  
21 problems with the injury rate.

22 But even looking at fatality rates, the



1 fatality rates vary significantly, depending upon  
2 the industry mix. If you look at the fatality  
3 rates in Massachusetts and Rhode Island and  
4 having to be Federal States, they're really,  
5 really low. If you look at the fatality rates in  
6 Alaska, Wyoming, and they're State Plan States,  
7 they are really, really high, but there is a lot  
8 more going on there. The industry mix is quite  
9 different in those States with a lot of the oil  
10 and gas, the oil drilling, a lot more  
11 transportation.

12           So I don't think you can use these as  
13 simple indicators to say, "Oh, there's a  
14 benchmark here," against the Federal average. I  
15 mean, I can send everybody our report. You can  
16 look, and you can see. You know, we track this,  
17 and it doesn't tell you a whole lot about whether  
18 the State is effective. It gives you some  
19 information about particularly fatalities, I  
20 think, what is going on in that State, but it  
21 really doesn't tell you a whole lot vis-a-vis the  
22 effectiveness as a benchmark between the

1 Federal.

2 Looking at some of that over time, maybe  
3 fatality rates in particular, may be worthwhile.

4 Can you get also at industry-level data  
5 and rate data, not numbers, at a State level? I  
6 know that has been difficult. It is not  
7 published data, and some attempts, which we will  
8 hear about, tried to get at that in some of the  
9 more hazardous sectors. But I think we should  
10 disabuse GAO, Inspector General, whatever, that  
11 somehow there is an easy measure out there  
12 against Federal, State, that you can match up,  
13 and it is going to tell you a whole lot.

14 I think they were totally wrong on that  
15 point at looking at that as a benchmark between  
16 the Feds and the States.

17 I think a lot more has got to be looked  
18 at, at levels of program effectiveness  
19 specifically, different initiatives, what kind of  
20 follow-up, and maybe looking at the Falls  
21 Campaign is an example. Those are incidents that  
22 you can count, you can measure, not necessarily

1 in the same time frame that you might want, but  
2 looking at some things over time where you can  
3 see if those kinds of initiatives, both at a  
4 Federal level, a State level are having impact.

5           So are you having impact on the big  
6 drivers of the causation, particularly on the  
7 fatalities, and then also on some of the  
8 well-identified injuries, and we will talk more,  
9 I guess, later about health and exposures about  
10 how to get to that.

11           And on activity-based measures, I would  
12 just say I think the Federal reports now provide  
13 a wealth of information, but again, looking at  
14 some of this more on an industry basis, broken  
15 out, that you are getting at a better sense of  
16 where the programs are focused.

17           And I know our colleague, Bill Borwegen  
18 from SEIU, raises this all the time, but you've  
19 been at such a move to the service sector.  
20 Health care is being such a big industry with  
21 high numbers and high rates of injuries, and just  
22 trying to get some sense of what kind of activity

1 is going on at an industry level and then  
2 beginning to look at what needs to go on, but at  
3 least beginning to break out the information in a  
4 fuller way at both the Federal and State level to  
5 get some data on the table for beginning to  
6 assess it would be helpful.

7 MS. UPSTON: Thank you.

8 Frances.

9 MS. SCHREIBERG: So I agree with a lot of  
10 the comments that have been made. I wanted to  
11 add that, again, I mentioned earlier this idea  
12 for at least the activity-based measures that you  
13 do need to weight things in relationship to the  
14 complexity of an inspection in order to be fair.

15 The other thing that I was thinking in  
16 terms of outcome-based measures is looking at the  
17 literature that has been put out there and having  
18 a sense of whether or not any of that would be  
19 useful to these outcome-based measures.

20 One of the articles that just recently  
21 came out of a Harvard study of the California  
22 program talked about the targeted programs that

1 we had, and it was a very positive analysis of  
2 the kinds of preventative measures that resulted  
3 from these random targeted inspections.

4           So if there's literature out there that  
5 talks about that and that has something to do  
6 with the mix of investigations that an OSHA  
7 program ought to be doing, including a good  
8 portion of targeted-type random inspections, then  
9 maybe we ought to include that as one of the  
10 outcome-based measures to look. I mean, it's  
11 kind of a combination of outcome and activity,  
12 but if you know that the outcome is positive from  
13 these types of inspections, then maybe that's  
14 something you want to incorporate into your  
15 evaluation. And there's other studies like that  
16 too.

17           MS. UPSTON: Thank you.

18           Gilbert.

19           MR. JACKSON: I want to support you need  
20 both outcome-based measures and activity-based  
21 measures. I want to emphasize the need for  
22 activity-based measures because of the employer's

1 underreporting of injuries and illnesses and  
2 questionable reliability of illness and injury  
3 reports.

4 MS. UPSTON: Ron -- or Rob. Excuse me.

5 MR. MATUGA: Yeah. I think that, you  
6 know, you are correct that both outcome- and  
7 activity-based measures are needed. However, if  
8 you look at sort of the outcome-based measures,  
9 those are really lagging indicators, injury and  
10 illness rates. Over time, that is going to tell  
11 you whether you're doing better or worse, the  
12 number of inspections, the percent of serious  
13 violations. Those are all lagging indicators.  
14 How do you switch us around and really look to --  
15 if you look at the best companies out there in  
16 the world, they are looking at leading indicators  
17 in terms of what's happening.

18 Can you use some type of real safety and  
19 health metrics? And I will just give you maybe a  
20 couple of examples. I understand that State  
21 Plans and Federal OSHA have very little resources  
22 to do this monitoring, so this may be something

1 that you all could look at.

2           The number of workers trained, that is  
3 going to tell you whether or not that's improved  
4 safety performance. The number of voluntary  
5 compliance inspections or site visits through  
6 VPP, through Sharp. You can also possibly do the  
7 number of hazards identified through those  
8 voluntarily compliance operations as well.

9           One of the other things -- we did spend a  
10 little bit of time talking to our members about  
11 this. One of the suggestions that came up is,  
12 you know, this is thinking outside the box. How  
13 about a possible survey of -- basically a  
14 customer satisfaction survey both with Federal  
15 OSHA and with each of the State plans?

16           I know that there is a lot of data  
17 collection requirements and the Paperwork  
18 Reduction Act, but this may be able to get to  
19 your points about how do you get interaction with  
20 the employees. You can -- possible survey to  
21 answer some simple questions in terms of how the  
22 performance in Federal jurisdictions versus the

1 States are doing as well.

2           But I would encourage you all to really  
3 look at some of these leading indicators, because  
4 I think that is going to really how we improve,  
5 and many of those are going to be probably  
6 activity-based, which is not really what Congress  
7 is looking at and what the other folks in this  
8 room are looking at. So it is really a balance  
9 between the two, but it's also the way you  
10 present these findings as well that's going to be  
11 critical.

12           MS. UPSTON: Thank you.

13           Chris.

14           MS. TRAHAN: Well, I wanted to echo the  
15 concern about using injury and illness rates in  
16 any way as a metric here.

17           I do see some value in using fatality  
18 rates, specifically in the construction issue.  
19 If you look at it over several years, you can get  
20 to those numbers and do some State-by-State  
21 comparisons that we think are pretty accurate.

22           But I also really think that the -- and



1 this is not something, of course, you're going to  
2 be able to roll out in phase one of this plan,  
3 but when you think about innovation and you think  
4 about adoption and the ability to actually make a  
5 difference in construction safety and health,  
6 this agency and the State Plan enforcement folks  
7 have more power and more sway than anyone else in  
8 the country to carry the message of what is  
9 making a difference in specifically construction  
10 safety and health, to bring the things that we  
11 are finding in the research, and bringing them  
12 out and making everybody aware of them, because  
13 everybody pays attention when OSHA says look at  
14 these innovations, when State Plan States look at  
15 what is going on in their State and see that  
16 there is something unusual and of specific  
17 industry. I think that should be included in the  
18 evaluation of that State to see what kind of  
19 innovation that we're having, to see the adoption  
20 of programs that are innovative by State Plan  
21 States that the Federal Government is  
22 undertaking.

1           All of these things, I think should roll  
2 into an evaluation process and shouldn't be  
3 underestimated in the impact they have, because  
4 outcome measure is really, really almost  
5 impossible in occupational safety and health  
6 because of a variety of factors, but the agency  
7 is uniquely positioned to probably move, move it  
8 furthest out of everybody in the field.

9           MS. UPSTON: Mary Lee.

10          MS. HALL: I just wanted to make a point,  
11 kind of following up on Peg, but specifically  
12 about migrant farm workers or farm workers.

13           And in terms of activity-based, many  
14 State Plan States will -- the majority of their  
15 activity in this are going to be preoccupancy  
16 inspections of labor camps, which really is --  
17 there's no interaction with workers. Workers are  
18 not there at that time, and it doesn't ever  
19 indicate how the campus actually used, and it  
20 certainly doesn't get to field sanitation, which  
21 is also something when a complaint is made, field  
22 san is usually looked at in addition to the

1 housing.

2           And so I think dividing that out, sort of  
3 segmenting that, and making sure that there are  
4 post-occupancy inspections and work in the ag  
5 area while workers are actually there is really  
6 important, and without that, health and safety is  
7 sort of compromised.

8           MS. UPSTON: Jerry.

9           MR. RIVERA: Jerry Rivera with NECA.

10           I also support the mix of the batch. I  
11 think to go with one or the other, again, it's  
12 skewed, but just to capitalize and get on Rob's  
13 point, activity-based, I look at it more as a  
14 leading indicator, what is the State program  
15 doing with the data that is gathering as far as  
16 to develop resources for employers, employees,  
17 the training that it's offering to the employee  
18 community, the collaborative efforts that are  
19 happening on the ground. I think those all  
20 should be measured, because at the end of the  
21 day, that's what's going to keep raising the bar  
22 to improve safety and health in the workplace.

1           And then obviously, the outcome-based is  
2 one that we are -- we should definitely revisit  
3 those data to see if they really are effective,  
4 but that is probably not the time here or place  
5 to address that. So I support the mixed batch.

6           One thing that Harry mentioned towards  
7 the beginning about a standardized process and we  
8 talk about at least as effective, well, this is a  
9 great start coming together for OSHA and State  
10 OSHA, but, you know, how about a standard  
11 approach towards it, you know, having not only  
12 the Federal, State, or safety professionals come  
13 together and develop what is, what are some of  
14 these effective approaches, because I think we  
15 are just throwing things out there, saying, okay,  
16 we think this is just, you know, at least as  
17 effective, but it will give some consistency, and  
18 it will give the industry a little bit more of an  
19 engagement in the process to make sure that we  
20 assess the right things, because it takes a lot  
21 of time and effort to put these things together.

22           And as we've identified, you know, the

1 training and education for some of the CSHOs or  
2 some of the Federal employees being cut, so are  
3 we really bringing in some of the top talent to  
4 put this thing together or can we make it better  
5 by including an industry and maybe agreeing on a  
6 standard approach towards instituting what is at  
7 least as effective.

8 MS. UPSTON: Thank you.

9 Eric.

10 MR. FRUMIN: I think this dichotomy  
11 between outcome- and activity-based measures is  
12 an unfortunate distraction, and it was  
13 exacerbated by the IG's report last year, which  
14 was also somewhat uninformed.

15 Without going into the details of why  
16 that happened, I'd like to analogize this briefly  
17 to looking at the health status for the country  
18 as a whole. We have a couple of very crude  
19 measures of health status, life expectancy,  
20 infant mortality, and, folks, you don't really  
21 want to know where we stand on that list. We're  
22 about number 22 or something behind countries

1 that have a lot less resources than we do.

2           Would that be our basis for determining  
3 our health care system, our health care program?

4 Of course not. We insist on high quality  
5 research, case control studies, want to make sure  
6 that drugs work. We want to make sure that  
7 therapies work. We want to know who is getting  
8 what kind of treatments if we're going to invest  
9 one-sixth of our GNP in terms of health care or  
10 nutrition programs or whatever else. So I think  
11 outcome measures are a nice idea, and  
12 politically, they are very important, but looking  
13 -- do we do the kind of rigorous evaluation, a  
14 little bit of which is starting to happen that  
15 Fran referred to, the controlled study in  
16 California, the study that the State of  
17 Pennsylvania supported concerning Federal  
18 enforcement in the State of Pennsylvania by The  
19 RAND Corporation?

20           They revealed many lessons about critical  
21 activity measures. OSHA owns the activity.  
22 Employers own the injury rates. Let's keep that

1 distinction clear.

2           If we are talking about what the OSHA Act  
3 can do, let's study carefully in a way that we  
4 would hope scientists would study health care,  
5 how these activities, these prevention activities  
6 are carried out, and what's effective.

7           MS. UPSTON: Thank you.

8           Frances.

9           MS. SCHREIBERG: Yeah. I have to say at  
10 the end of this in terms of looking at  
11 fatalities, if we are going to ever do outcome  
12 measures based on fatalities, that nowhere does  
13 anybody look at the long-term effects of  
14 exposures to toxic substances. And if that's not  
15 included in a way to measure the effectiveness of  
16 our program, we have left out all of the health  
17 protection issues that we were talking about in  
18 terms of activity monitoring.

19           You know, from my point of view, having  
20 dealt with exposures to asbestos for the last 20  
21 years or 25 years in my work, I think that, you  
22 know, I can just only say that it's just critical

1 that we look at these long-term effects and  
2 shortening of people's lives as a result of their  
3 toxic exposures.

4 MS. UPSTON: Gary.

5 MR. VISSCHER: Listening, I guess I feel  
6 like there's been a bit of a strawman setup here,  
7 which is that when we talk about outcomes, we're  
8 talking about the national injury rate is such  
9 and such and how did the States line up against  
10 that, and if they don't, if they're below the  
11 mean, then they are not effective or something  
12 like that.

13 I don't think OSHA has ever approached it  
14 that way, and I certainly wouldn't suggest that  
15 they do, but to throw out the idea then that not  
16 to look at how that State is doing in making  
17 progress on its injury rates and fatality rates  
18 does not seem to me to follow.

19 So I think the approach that OSHA has  
20 used in the past, which seems to me to be a wise  
21 one, which is require each State to look at its  
22 own numbers and its own outcomes and say how can



1 we make progress, how can we make improvements on  
2 this, and some of it trend analysis. Some of it  
3 is looking at particular issues within that  
4 State. It may be if it's a State with a lot of  
5 construction deaths that are really focused on  
6 the Fall Campaign, you know, it is very  
7 important.

8           There might be other issues. Landscaping  
9 may be an issue in some states. But I think you  
10 have to be guided by outcomes, because that's how  
11 you look at whether what you're doing is making  
12 any difference.

13           I don't want to get sort of thrown out,  
14 the idea thrown out that the outcome-based  
15 measures don't matter. It's how you do them, and  
16 it's obviously not that simple, but you do need  
17 to know. And I go back to what I said earlier,  
18 which is I think the whole government program  
19 evaluation world has moved to try and figure out  
20 whether any government programs make any  
21 difference. So you need to have that included in  
22 what you come out with.

1 Thanks.

2 MS. UPSTON: Thank you.

3 Shall we move on? Question No. 3.

4 **Question 3**

5 MR. KALINOWSKI: Question No. 3. What  
6 activity and outcome-based measures would you use  
7 to assess effectiveness as it relates to the  
8 reduction in health hazards, which is a tough  
9 one, and the effectiveness of the whistleblower  
10 program under Section 11(c) of the Act?

11 MS. UPSTON: Gilbert.

12 MR. JACKSON: The second, the effective  
13 of the whistleblower program, the reason that --  
14 I've been a whistleblower twice in my life, to  
15 give a little background.

16 Once in 1974, I was working on a  
17 construction site, and I reported unsafe  
18 conditions, special ones had. I was summarily  
19 fired, but I decided to go to law school.

20 And the second was in 2008 when I was  
21 working as General Counsel for the North Carolina  
22 Occupational Safety and Health Review Commission,

1 and I reported asbestos violations in our  
2 workplace at the North Carolina Medical Society  
3 Building.

4 I did not know of the power of forces  
5 that were allied against me in that. The  
6 governor's brother was a doctor, lawyer,  
7 lobbyist, and member of the Medical Society, and  
8 the Medical Society contributed \$300,000 a year  
9 to different State politicians, including the  
10 governor. And I was forced out of that job.

11 So from my experience as a whistleblower,  
12 I've got 11 criteria, and -- well, whistleblowers  
13 get fired, as everyone knows, and blackballed  
14 from their --

15 But my first one I would look at, the  
16 number of whistleblower claims filed, if you have  
17 a State that doesn't file many whistleblower  
18 claims, it has a quelling effect on filing of the  
19 claims.

20 I know that in some States, the workmen's  
21 comp attorneys advise their clients not to file a  
22 retaliation claim, because they were never --

1 they were found for th emergency. So that's just  
2 a quelling effect if you don't have a certain  
3 number -- that's my first criteria.

4           And another criteria -- these are not in  
5 a good order, as they came to you. The criteria  
6 in the State whistleblower instruction manual as  
7 compared to the Federal, I think in a CASPA that  
8 I filed, they found that the State's  
9 whistleblower instruction manual was not as  
10 effective as the Federal.

11           The involvement of higher ups in the  
12 management in high-profile cases, as mine was  
13 considered, and how much independence the  
14 investigators had.

15           The number of discrimination complaints  
16 actually accepted, that's another criteria I'm  
17 looking at.

18           The number of discrimination complaints  
19 resolved favorably for the employee, the number  
20 of discrimination complaints dismissed with  
21 right-to-sue letters, the number of  
22 discrimination complaints taken to court. I know

1 in some States, in some administrations, they had  
2 never taken a retaliation claim to court --  
3 never, zilch, zero. And as far as I know, that's  
4 never been a criteria that Federal OSHA looks at.

5 The number of court cases resolved in  
6 favor of the employee and versus those numbers  
7 resolved in favor of the employer.

8 The State case law requirements, do they  
9 correspond to the discrimination law and the case  
10 law in the Federal level? I know there's  
11 criteria that the States case law must be  
12 comparable to the Federal interpretation of the  
13 regulations, et cetera, so that States' Plans is  
14 at least as objective. That's one of the --

15 And number 10, I'm getting close to the  
16 end -- and require legislation to overturn case  
17 law that's not favorable. I mean, this is  
18 required in Federal as a requirement anyways, but  
19 make it more important.

20 Cover constructive discharge, have more  
21 criteria in requiring the States to cover  
22 constructive discharge. I believe the Feds cover

1 discharge more so than many of the States.

2           And my last is the statute of  
3 limitations. Increase the statute of  
4 limitations. Thirty days, I think that's the  
5 Federal statute of limitations. That's not very  
6 long. Six months, a year, 2 years, 3 years.

7           So those are the criteria that I look at  
8 from my experience, and I hope you got a lot of  
9 information.

10           MS. UPSTON: Thank you.

11           Anyone else with comments or responses to  
12 Question 3?

13           Chris.

14           MS. TRAHAN: I was thinking about this  
15 term we keep using as "outcome," and everybody  
16 thinks it's the numbers, the fatality rates or  
17 the injury and illness rates, but there's got to  
18 be more to it than that, and perhaps instead of  
19 trying to identify specific outcomes for this  
20 round, it would be worth thinking.

21           It reminds me in the statute, I think,  
22 that it calls for NIOSH to be consulted when

1 determining the evaluation of State Plan States.

2 I think I can look up the reference, and I don't  
3 know if they were involved in this process with  
4 you all or not, but they have really wonderful  
5 definitions for their researchers and measures.

6 That as an organization that operates  
7 research projects with NIOSH, we have got to  
8 report outputs and outcomes. Those are the tow  
9 gold standards for our researchers, really  
10 striving to say what have we found in the  
11 research, what is the impact of the research, but  
12 specifically what are the outcomes. And we have  
13 specific definitions that we have to meet in  
14 order to report that.

15 Maybe that first step in this process  
16 would be to agree with the definition of outcome  
17 is for the purposes of this evaluation, because  
18 an outcome for one State may not be the same  
19 outcome for another State due to the different  
20 industry circumstances of what's gone on in that  
21 State.

22 And there could be a set of, you know,

1 essentially hypothetical outcomes that States can  
2 try to achieve and then be measured against their  
3 ability to achieve their outcomes that are really  
4 unique to what's going on in their States, and  
5 perhaps developed with the stakeholders in their  
6 States would give an input for those kind of  
7 things, could have some examples with Federal  
8 measures, but then, you know, there could be  
9 additional ones from the States that are really  
10 important.

11 MS. UPSTON: Peg.

12 MS. SEMINARIO: Just to address the issue  
13 of health hazards, which is obviously a tough  
14 one, in a lot of the activity around health  
15 hazards, it has been driven by the issuing of  
16 standards. And one of the things we really  
17 haven't talked about a lot is looking at States  
18 in the way of setting standards.

19 This may be looking at it as to not as  
20 effective but sort of going beyond, given how few  
21 health standards are coming out of the Federal  
22 Government, particularly in the area of exposure



1 limits or any area here, and so looking at what's  
2 actually been done in the way of issuing  
3 standards to address health hazards.

4           And with the issuance of those standards,  
5 what kind of inspections are done? And again,  
6 not just looking at the overall numbers, but are  
7 there breakouts as to how many of the health  
8 inspections are targeted in different areas and  
9 different industries? If we ever get any health  
10 standards at particular issues -- I mean, a  
11 standard comes out. You want to have enforcement  
12 activity. You want to have outreach activity.  
13 The whole point here is to reduce exposures.

14           So is there information out there that  
15 you can be looking at with respect to exposures  
16 and building into the system, going out and doing  
17 monitoring in workplaces over time? And again,  
18 none of this is like immediate, but looking over  
19 time what has happened in States and Federal  
20 agencies with respect to the kinds of exposures  
21 they're finding for particular hazards.

22           I don't think you could just address

1 health in general but focusing on some critical  
2 hazards, and as Chris said, there may be  
3 different hazards in different States or higher  
4 concentrations.

5           The agency just came out last Thursday,  
6 Friday with a hazard alert on silica exposure in  
7 hydraulic fracturing. Silica is a common problem  
8 in a lot of places, but hydraulic fracturing is  
9 in a lot of places but not everywhere. But maybe  
10 looking at what can be done here to see are we  
11 being effective through outreach efforts here at  
12 reducing exposures to silica that are within even  
13 some better range.

14           So in this area, I think it really is  
15 focusing on particular hazards and looking at a  
16 longer time frame than we have perhaps looked at  
17 in the past.

18           MS. UPSTON: Thank you.

19           Frances, I think Eric is next.

20           MR. FRUMIN: So we have got some handle  
21 on the question of targeting with regard to  
22 injuries and the, quote/unquote, "safety

1 inspections" that are at least in concept  
2 intended to prevent injuries. I would say we're  
3 still pretty much in the dark when it comes to  
4 health exposures to health hazards and the  
5 targeting of inspections related to health  
6 hazards, not that we're unable to do it. That  
7 just might be a counterpoint because of an  
8 enforcement infrastructure that extends beyond  
9 OSHA in many States over there.

10 MS. UPSTON: Frances -- oh, I'm sorry.

11 MR. FRUMIN: I think it's critical that  
12 as you move into this very first phase of  
13 defining what Federal OSHA and the States  
14 consider high-hazard industries, that you look  
15 extremely closely at the question of exposure to  
16 health hazards, much more so than has been the  
17 case up until now, and then attempt to use the  
18 next 5 years or whatever the period of time is  
19 that flows from that to do the kinds of  
20 evaluations of the agency's presence, not only  
21 enforcement but certainly that, to see what's the  
22 effect of that presence.

1           To simply say that we have a presence in  
2 these industries as a new measure, but not to  
3 devote to that measure the evaluation that it  
4 deserves would be a crime. It would be such a  
5 lost opportunity.

6           We've got a few important evaluations  
7 underway now. The case control study on the SST  
8 program, the one done in California on injury,  
9 and they are all around safety inspections, but a  
10 variety of them have come up with the kind of  
11 granular detailed look at the outcomes, what was  
12 the results in terms of compliance, what was the  
13 result in terms of workers' comp claims, what  
14 were the results in terms of OSHA recordables.

15           We are beginning to get finally a  
16 literature, a research method, some resources to  
17 make it work and know what the hell we're doing  
18 with regard to safety. If you are going to  
19 assign high-hazard categories to health, I don't  
20 see how you can avoid doing that. If you are  
21 going to create this as a benchmark, please  
22 assure that you have an evaluation component up

1 front to go with it, so that you can learn  
2 something from it within a few years.

3 MS. UPSTON: Frances.

4 MS. SCHREIBERG: I was going to add to  
5 the comments on the health issues that, yeah,  
6 these are tough to try to figure out how to get a  
7 grip on, because there are so few of these  
8 inspections that actually occur, because we don't  
9 necessarily have emphasis programs either at the  
10 State level that really have analyzed what is  
11 going on in the State regarding health hazards.

12 But from my perspective, there's two  
13 things that I see, and of course, this may not be  
14 something that is ever going to be a part of the  
15 evaluation, but I'll throw them out there.

16 One is media. I think you got a  
17 reasonable bang for your buck when cases -- and  
18 here, I am looking at health cases are  
19 publicized, and part of the reason that I think  
20 health cases are particularly susceptible to  
21 getting some traction through the media is  
22 because they relate to environmental concerns.

1 So those toxic substances that start in our  
2 workplace, seep out under the door, up the  
3 chimney, down the drain, and become environmental  
4 problems, which gets a lot more traction out  
5 there in the public.

6 So evaluating our health cases and  
7 whether or not the State Plan Program is issuing  
8 press releases and getting the word out, I think  
9 that's important.

10 And the other thing is that I started my  
11 OSHA career related to doing criminal  
12 prosecutions of health cases, and again, not very  
13 many States have that, have provisions that allow  
14 them to do that, but it sure makes a difference.

15 So I will just toss that out as well.

16 MS. UPSTON: Thank you.

17 Any other comments or observations?

18 Gary.

19 MR. VISSCHER: Are we permitted to ask  
20 questions?

21 MS. UPSTON: We will find out, won't we?

22 [Laughter.]

1 MR. KALINOWSKI: Are we required to  
2 answer them?

3 [Laughter.]

4 MS. UPSTON: That was my point.

5 MR. VISSCHER: And I couldn't let Rob sit  
6 through the whole meeting and not ask.

7 Is the 11(c) program right now part of  
8 the State evaluation? There are two measures  
9 listed on the proposed. Are these similar to --  
10 if the answer to the first question is yes, then  
11 --

12 MS. UPSTON: Well, let's find out. Is  
13 the first question -- okay. They are (c).

14 MR. VISSCHER: Then are these the kind of  
15 measures that are currently used? I don't know  
16 what is currently used.

17 MR. KALINOWSKI: Those are two of them.

18 MR. VISSCHER: Are there others right  
19 now?

20 MR. KALINOWSKI: There are others like  
21 percent meritorious cases and things like that,  
22 yes.

1           MR. VISSCHER: How is that measured?  
2 Percent meritorious, like a positive outcome or  
3 something?

4           MR. KALINOWSKI: Yes, that were actually  
5 found -- where either a State or a Federal OSHA  
6 found that there was a case for discrimination.

7           MR. VISSCHER: And I notice that the goal  
8 or the range under the proposed would be 100  
9 percent completed in 90 days.

10          MR. WITHROW: That is because the statute  
11 says it. We argued about that, but if you are  
12 going to have a measure like that and the statute  
13 says it has to be 90 days, you can't put a goal  
14 that's more than 90 days. That is why we threw  
15 in the second one, to get at an idea from an  
16 efficiency standpoint just how far over 90 days  
17 are you or under 90 days are you.

18          MR. BARAB: Yeah. Within 90 days, kind  
19 of threw up the question when I first looked at  
20 that, I said if we're actually using as effective  
21 as a basis, we are hardly in a good measure to  
22 compare against.



1 MR. VISSCHER: I was going to ask how was  
2 Federal OSHA doing.

3 MR. BARAB: Right, exactly.

4 MR. WITHROW: He doesn't want to give the  
5 exact --

6 [Laughter.]

7 MR. BARAB: No, we can give you the  
8 numbers, but they aren't anywhere close to  
9 actually, you know --

10 MR. KALINOWSKI: About six States meet  
11 that 90 days. Whether that makes them more  
12 effective or less effective is another question.

13 MR. BARAB: And we are looking at those  
14 measures here too. We don't want to also have  
15 measures that actually encourage basically a  
16 negative outcome, because we don't want to  
17 pressure our people or States to finish up cases  
18 just to reach that measure and rush them to  
19 completion before they're really there.

20 MS. UPSTON: Okay. Eric?

21 MR. FRUMIN: No.

22 MS. UPSTON: Anyone else on Question 3?

1 Did that answer your questions?

2 MR. VISSCHER: Yeah. Thank you very  
3 much.

4 MS. UPSTON: Okay. Then let's move on to  
5 Question 4. Doug, can you elucidate on this,  
6 please?

7 **Question 4**

8 MR. KALINOWSKI: If OSHA and the State  
9 Plans develop a core set of effectiveness  
10 measures that both OSHA and State Plan programs  
11 must meet, how should OSHA determine the range  
12 that State Plans must meet for individual  
13 measures, and how should OSHA work with the  
14 States to address measures that fall outside of  
15 these ranges?

16 MS. UPSTON: If you could take those two  
17 questions sort of one at a time. If you want to  
18 respond to both, then just be clear sort of which  
19 one first and second, so that we can kind of  
20 track whether they are getting answers to both of  
21 them.

22 Let me go to Harry and then Frances.

1           MR. PAYNE: I see the proposal that it  
2 would be a common goal between Federal and State  
3 OSHA programs to be one of the more heartening  
4 parts of --

5           MS. UPSTON: Can you speak up just --

6           MR. PAYNE: I'm sorry.

7           I see the fact that we are moving towards  
8 a common shared goal to be one of the more  
9 heartening things in this process, and I highly  
10 encourage it.

11           I do think it's important, though, in the  
12 same time insist upon transparency and  
13 communications, some of the things that the  
14 Federal OSHA program has done about publicizing  
15 the harshest industries have been, I think, very  
16 helpful.

17           The Federal OSHA program has done about  
18 publicizing the harshest industries have been I  
19 think very helpful. It is kind of like when you  
20 go up and buy a hot dog, and the health  
21 inspections stickers behind the person who is  
22 offering the hot dog, it tells you something, but

1 we can't say that about the company that actually  
2 made the hot dog.

3           And so I think it important to publicize  
4 who is doing a good job, who is not, and to give  
5 a State points for that effort.

6           I think to work together, if we're  
7 working on the same standard, it includes the  
8 likelihood that we will share best practices if  
9 we are trying to meet the same goals.

10           We can share the common research if we  
11 are working against the same standards. I just  
12 think that -- and also, I think in scoring, I  
13 don't think anything should be pass/fail. I  
14 think, ultimately, there has to be at some point,  
15 but I think to have degrees of how far you are  
16 off some standard or some median should be a  
17 reason to intervene or a reason to ask why, but  
18 -- and that score should be broken down by  
19 industry type, by illness, by whatever way you  
20 can do it to see who is doing a good job.

21           So if Idaho is doing a great job on  
22 something that I am not doing a good job, I would

1 like to know that, and so I think breaking it out  
2 in as much detail as we can, having transparency  
3 in the process, and then the scoring and  
4 communicating to the media is critical.

5 I think you should give States extra  
6 credit for some things, like using  
7 epidemiological mapping, using workers' comp  
8 data, using other databases to predict where  
9 problems would be. While we can't make them do  
10 it, I don't think, we can give them sort of extra  
11 points for that.

12 But I do think the core should be a  
13 common set of goals and expectations, not with a  
14 pass/fail notion, but with a highly scored  
15 improvement notion and a reason to understand who  
16 is doing it well.

17 I'm sorry that was so long. I apologize.

18 MS. UPSTON: Frances.

19 MS. SCHREIBERG: So I'm just going to  
20 talk about the second one, and I think that,  
21 again, I am going to use California as an  
22 example. And I think it was a good example, and

1 the key element in the oversight that the Federal  
2 OSHA folks had on the California plan was the  
3 involvement of workers and the involvement of  
4 worker representatives of the unions, of worker  
5 centers.

6           And I think that this is not something,  
7 you know -- the question here is how should OSHA  
8 work to address measures that fall outside, and I  
9 want to push it back to how should OSHA start the  
10 whole process of doing the evaluation once you  
11 all have the criteria developed, and that is to  
12 sit down with the employees and their  
13 representatives who are affected by these  
14 programs, and to get input from them and to bring  
15 them along in this entire process, because I  
16 think that what you do afterwards has also got to  
17 be driven by what the worker needs are. They are  
18 the people who are supposed to be protected by  
19 this law, and I think that there are -- from our  
20 point of view, we guided Federal OSHA towards the  
21 appeals process, which was a horrible mess in  
22 California, and we were able to then make changes

1 through legislation and through, you know,  
2 continuing.

3           We are continuing to do changes through  
4 regulations, and we are still stuck, by the way,  
5 in some areas. And maybe that means we will file  
6 a CASPA, but if we weren't involved to begin  
7 with, we wouldn't be involved later on to get to  
8 your question of measures that fall outside your  
9 ranges. So that's kind of my emphasis on this,  
10 is to look at employee involvement all the way  
11 along.

12           MS. UPSTON: Peg.

13           MS. SEMINARIO: One of the things that  
14 has been helpful in this process is the amount of  
15 transparency that has gone in with just putting  
16 the reports up on the Web, making them available  
17 and accessible, because I think when you look at  
18 sort of the history of activity here, a lot of  
19 the move on State Plans, as Harry had said  
20 earlier, response to tragedies. You don't want  
21 to have to be in a place where you are only  
22 addressing problems in a crisis. The whole point

1 of this should be trying to have the States and  
2 Federal OSHA improve it.

3           And to go back to something Fran said  
4 initially, it wouldn't be a bad idea to come up  
5 with a sense of -- for both the Feds and the  
6 States -- what do we think effective is, and  
7 putting aside resources or whatever, but if we  
8 wanted an effective safety and health program,  
9 what level of oversight, coming up with some  
10 sense of what should it be, because obviously so  
11 much of this gets driven, almost -- a big  
12 determinate is what the resources are both at the  
13 Federal level and State level to devote to these  
14 activities.

15           If you go back, as Jay said, and you look  
16 at the benchmarks here and how they were  
17 developed, they really were developed initially  
18 based upon an industry mix, the number of  
19 workplaces, the frequency of inspection, how many  
20 inspectors you needed. That was never done for  
21 Federal OSHA.

22           So I think getting some sense of overall



1 what do you want it to be effective but some  
2 better clarity as to what the Federal benchmarks  
3 are and more transparency and consistency of what  
4 the Federal program you are matching it against  
5 and how that is playing out in the regions and  
6 area offices -- I mean, we delve into a lot of  
7 this stuff with our annual report, but having  
8 some consistency across the programs, both  
9 Federal and State, and making that data  
10 accessible in an easy way, that you can get a  
11 pretty clear picture easily as to what is going  
12 on, and what are the problem areas that need to  
13 be addressed would be very helpful.

14           And it would also be interesting to know  
15 what's the range right now, talk about what  
16 should the ranges be. If you had Federal  
17 benchmark, what is the range that you are seeing  
18 amongst Federal, State, and some of the key  
19 indicators now? How broad of a distribution is  
20 it, and what needs to be done to make that  
21 distribution either narrower on the back end or  
22 even having the States become leaders and out

1 there further ahead doing more than the Federal  
2 Government?

3 MS. UPSTON: Thank you.  
4 Gilbert.

5 MR. JACKSON: I want to address the  
6 second part of the Question 4: How should OSHA  
7 work with the States to address measures that  
8 fall outside of these ranges?

9 I think the first step would be  
10 cooperation to see if the State will make the  
11 effort to make those changes, and if that doesn't  
12 work, I think that the Federal law should be  
13 willing to use the statutory and regulatory tools  
14 they have when this happens. And that is if they  
15 don't make the change at the recalcitrant, take  
16 over concurrent jurisdiction. Don't be afraid to  
17 use it.

18 And the second thing would be, if that  
19 doesn't work, then revoke the State Plan. I've  
20 seen very strong reluctance on OSH to do either  
21 one of those two, and it may be because of the  
22 political climate. I don't know, but these are

1 the tools that OSH has to force States to comply.  
2 Don't be afraid to use them.

3 MS. UPSTON: Jerry.

4 MR. RIVERA: This is Jerry Rivera with  
5 NECA.

6 First of all, I want to start -- you  
7 know, we've all shared some ideas, but I also  
8 want to acknowledge that this is a huge step in  
9 the right direction on behalf of Federal OSHA and  
10 the State programs to work collaboratively on  
11 this front. I think that's the right path.

12 The agreed-upon measures should look at  
13 somewhat of a consistent approach, and I know  
14 we're talking just about State programs, but  
15 whatever is agreed upon at the table should  
16 really apply to both State and Federal, so that  
17 everybody is measuring themselves up to the same  
18 standard.

19 If there is any change that occurs that  
20 impacts a State program, I think, again, OSHSPA  
21 should be the group that should be communicating  
22 the dissemination among all of the States. And

1 again, I want to capitalize on that also because  
2 of the fact that some States develop some rules  
3 that are a little bit above the benchmark, which  
4 is great, but there should be somewhat of a  
5 concerted effort to drive that across other  
6 State-run programs. And at the same time, for  
7 OSHSPA to look at that internally and say, "Look,  
8 this is probably not a good idea for other States  
9 to adopt, because it was not as effective in one  
10 State."

11           Again, I want to get OSHSPA on the State  
12 front that flexibility to institute some of those  
13 changes and evaluate programs, so that they have  
14 that communication directly with OSHA.

15           And on the Federal front, maybe we can  
16 use this as a cleaning curve. Maybe OSHSPA could  
17 have the opportunity to evaluate a Federal  
18 program, if that's even allowed.

19           But again, I think I agree -- and the  
20 transparency and holding each other to the same  
21 standard versus just saying, "Hey, we're going to  
22 come in. We're going to evaluate you. Yeah,

1 we're including you here, but, you know, it ends  
2 there." I think it works both ways, and I think  
3 both will benefit. At the end of the day, again,  
4 the employees are the ones who benefit from this  
5 collaboration.

6 MS. UPSTON: Thank you.

7 Eric.

8 MR. FRUMIN: At the outset, Doug  
9 Kalinowski talked about the importance of these  
10 measures as kind of clues for looking further,  
11 and I think that's going to be an important  
12 lessons going forward.

13 These are very summary tools, and we  
14 could get fixated on whether it's exactly the  
15 right number or should be a little different, but  
16 we are hobbled by the fact that, as Jordan  
17 outlined in the beginning, the evaluation has  
18 been very hands-off for a long time, and it was  
19 only in response to a terrible disaster in which  
20 many people died -- and an enterprising young  
21 reporter decided to lift the lid on it and shake  
22 the dickens out of the powers-that-be in Nevada,

1 and some other political things changed around  
2 the same time -- that we're even here today with  
3 a completely different approach to monitoring.

4 Case file reviews are very important, and  
5 thank goodness, OSHA started doing them, but it's  
6 not enough. Hands-on evaluation of compliance  
7 officer competency, actual pairing up of  
8 inspectors would be a very important next step,  
9 and there are many other ways to dig down, as  
10 Doug Kalinowski referred, to dig deeper, to get  
11 to the bottom of these problems.

12 So I would say however OSHA and the  
13 States together answer the first question, bear  
14 in mind that one needs to have these measures  
15 serve effectively as windows, doors, whatever you  
16 want to -- clues for looking further. Don't  
17 create a measure that's the end of discussion,  
18 but create a measure that allows you to look  
19 further in the sense that Chris talked about,  
20 what are the root causes. How do we learn from  
21 what this problem is in one State across multiple  
22 States?

1           If you are then able to do that, to take  
2 these measures as clues, to dig deeper, then the  
3 results of that could be very revealing, not only  
4 for the agencies, for the governors, for State  
5 legislatures, for the media, whatever, and create  
6 the kind of presence and awareness on the issue  
7 that can drive some change, even where the  
8 politics are very helpful.

9           And I think if you can keep that kind of  
10 perspective open as part of what you are thinking  
11 about, then you won't be locked into this  
12 terrible dilemma that Gil just talked about where  
13 the choice is either the nuclear option of  
14 pulling the plug or continuing an ineffective  
15 hands-off enforcement that leads to the next  
16 Nevada or the next handling or the next disaster.

17           So give yourself the ability to dig  
18 deeper and make sure that there is transparency  
19 along the way, and you get a lot of help. You  
20 won't be hamstrung.

21           MS. UPSTON: Thank you.

22           Diane.

1 MS. BROWN: Very shortly, because I'm not  
2 quite as elegant as Eric is.

3 When you realize that there's issues at a  
4 State Plan level, realize too that the employees  
5 who depend on that State Plan lose a lot of  
6 confidence and feel that even though there is  
7 State Plan coverage, they really have nowhere to  
8 go. So that is important to address those issues  
9 very openly, very transparently, and with some  
10 due force.

11 On the other hand, revoking a plan  
12 affluently kills coverage for public employees  
13 because now they're not covered anymore. So we  
14 are not interested in seeing State Plans having  
15 their coverage pulled. We would like to see them  
16 remedy the problems that they have, realizing  
17 that some of the problems that all these States  
18 are having is a matter of funding. Can't do a  
19 whole lot when there is no money. So that that  
20 is a core issue I don't think any of us in this  
21 room can fix or even discuss out of a problem,  
22 that it has to be at some level, at a national



1 level, that they are willing to put money into  
2 safety and health and the people who enforce it.  
3 And that's a conversation for a different day.

4 MS. UPSTON: Peg.

5 MS. SEMINARIO: Just one follow-up to  
6 what I said earlier.

7 I think the Fed OSHA already does this in  
8 its evaluation, but I think when you are looking  
9 at States that are outside the ranges that you  
10 are establishing, that is also makes sense to  
11 give some emphasis as to whether the problem is  
12 really, really serious, like it's really, really  
13 bad, like critical, instead of where it falls in  
14 a degree of seriousness, and also in terms of  
15 priorities as to what really needs to be dealt  
16 with first, because clearly there are certain  
17 problems out there that have a much more  
18 immediate impact.

19 If you don't have any inspectors,  
20 suddenly your inspection floors isn't -- you  
21 don't have anybody conducting inspections. Even  
22 if you get all the standards and all the other

1 things, you've got a pretty severe problem. So I  
2 think some way of ranking these or some warning  
3 system, first, what are the critical aspects, the  
4 point of criticality would be considered maybe a  
5 useful thing to think about.

6 MS. UPSTON: Gilbert.

7 MR. BARAB: I think the points covered,  
8 if you don't have a State Plan State -- and I was  
9 a State employee, but an ineffective program for  
10 State employees, you know, is that any worse than  
11 no program? That's one issue.

12 And the other is that a threat to take  
13 over either a concurrent jurisdiction or revoke  
14 the State Plan can have a motivating effect on  
15 the legislator to take, to take action, and I  
16 think that in some States to remedy the problem,  
17 either by transferring the OSH division to  
18 another agency or passing stronger legislation.

19 That happened with the Hamlet, with the  
20 Hamlet fund, the same concurrent jurisdiction  
21 taking over. It had never gotten final approval,  
22 I don't think. The legislature stepped forward,

1 and you created position, the money for new  
2 positions, and the State's program, Occupational  
3 Safety and Health Program, had the benchmarks  
4 that were required of it, and they approved their  
5 outreach for safety and health and for affecting  
6 employees of the State.

7 So I think a credible threat would not  
8 necessarily lead to a taking over of the State  
9 program, but it has to be a credible threat.

10 MS. UPSTON: Any other last comments on  
11 this question?

12 [No audible response.]

13 MS. UPSTON: Thank you, Gilbert.

14 Going once, going twice?

15 [No audible response.]

16 MS. UPSTON: Okay. Doug?

17 **Next Steps**

18 MR. KALINOWSKI: Well, I can't thank you  
19 all enough for either listening in or speaking  
20 up, and you all realize how complicated this is.

21 I salute the States and all participating and  
22 working on this together. I think that's the

1 goal of everything we are going to be doing from  
2 now forward. What are the next steps?

3 Well, just so everybody knows, written  
4 comments will be received through July 6th. The  
5 transcripts of this meeting will be prepared and  
6 on our website this Friday, which is the 29th of  
7 June. You all will have the opportunity to look  
8 at those and study those again.

9 The work group is scheduled to meet on  
10 July 18th, I believe. We will look at all the  
11 comments and try to move forward and solidify  
12 some of these things. We have taken your  
13 comments and any comments received, and our goal,  
14 10 days, within the directorate is to get all of  
15 those comments summarized in advance, so the work  
16 group can deal with them in a constructive  
17 manner.

18 Something else you ought to keep in mind  
19 in evaluating States' plans -- and I think Jay  
20 said it earlier -- the area office of State Plan  
21 and OSHA has had a lot of turnover. So one of  
22 the goals, one of the difficulties we all deal

1 with is getting consistent evaluations. They  
2 come on, they get evaluated, the area office, so  
3 27 State Plans and territories are evaluated  
4 across the country.

5           So one of the key things that we have to  
6 work on doing, which we are working on right now,  
7 is revamping our monitoring and training program  
8 for our own OSHA people to monitor the State  
9 Plans and allowing the State Plans to be part of  
10 that training too, so they can understand how  
11 they should be monitored and will be monitored,  
12 because there's more monitoring than just these  
13 15 measures or just looking at the strategic  
14 plan.

15           I mean, part of the monitoring, if you  
16 have an issue and you want to do case file  
17 reviews, how do you look at those case file  
18 reviews? How do you study those? How do you  
19 prepare them? How do you put together  
20 information, so that if there are issues with  
21 those case files, you have a good way to get back  
22 to those States to say, "Hey, this is what we

1 found. This wasn't isolated," so that we would  
2 find a pattern of things? And how do you collect  
3 that information? I think the long-term goal is  
4 to figure out how to work together.

5           Somebody said this already, and it's one  
6 of my favorite terms. It's to make a difference.  
7 How do we make a difference on a Federal level?  
8 How do we make a difference on each State Plan?  
9 And that should be our goal to do that.

10           Jordan, do you want to say anything?

11           MR. BARAB: No. I just want to --  
12 nothing much.

13           [Laughter.]

14           MR. BARAB: I will start off saying no,  
15 and then I start blabbing away.

16           But I do want to thank you for coming  
17 here. On the one hand, this hasn't been an easy  
18 process. It's been a very necessary process, I  
19 think a very profitable process, but again not  
20 easy. And I appreciate, certainly appreciate the  
21 efforts of the States and OSHSPA in this. When  
22 we look at where we are now and where we began

1 this process, I think we've made enormous  
2 strides, and I think as the discussion today  
3 indicated, we still have a long way to go.

4           We are under no illusion that we are  
5 almost there or that we're even getting there  
6 now, but if we keep on with this process, more or  
7 less as a stage process, then I think we will  
8 eventually at least be making progress, making  
9 things better, and working toward that goal where  
10 we actually have a process that everybody agrees  
11 with and that actually is focused on making  
12 mistakes, at least as effective as the Federal  
13 Government, while hopefully making all of us more  
14 effective along the way.

15           Again, I appreciate this. I think we  
16 have a comment period that remains open. Please  
17 supplement with written comments, and we will  
18 certainly take all that into account.

19           MR. FRUMIN: Just a process question. So  
20 do you have a milestone in mind for what happens  
21 with these and when, understanding that there are  
22 many issues that are never going to be part of

1 this, others that might be part of a next phase?

2 What next?

3 MR. BARAB: Well, this phase, I think  
4 we'd like to have kind of this phase finished and  
5 ready to implement by the beginning of the next  
6 fiscal year, Federal fiscal year.

7 MR. FRUMIN: Good.

8 MR. BARAB: That's always a good time to  
9 implement things. So we'll see what we can get  
10 finished and agreed to at that point, and then we  
11 will immediately continue working on the next  
12 phase.

13 MR. FRUMIN: Great.

14 **Wrap-up and Adjourn**

15 MS. UPSTON: So we are adjourned. Thank  
16 you all very much.

17 [Whereupon, at 12:50 p.m., the  
18 Stakeholder Meeting concluded.]

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