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001. list	OSHA reform Testimony [partial] (1 page)	2/8/94	b(6)

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Michael Schmidt
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FOLDER TITLE:

OSHA Testimony - 2/8/93

2013-0968-S

sb57

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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RR. Document will be reviewed upon request.

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- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

OSHA Testimony - 2-8-93

PHOTOCOPY
PRESERVATION

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503**

February 10, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #I-2020

TO: Legislative Liaison Officer -

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SUBJECT: LABOR Copy Testimony RE: HR 1280,
Comprehensive Occupational Safety and Health
Reform

DEADLINE: *NO RESPONSE*

COMMENTS: FYI -- Attached is a copy of testimony on HR 1280 that Labor submitted for the House subcommittee hearing 2/10. It essentially tracks the testimony we cleared on S. 575 earlier this week.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
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STATEMENT OF
JOSEPH A. DEAR
ASSISTANT SECRETARY OF LABOR
FOR OCCUPATIONAL SAFETY AND HEALTH
BEFORE THE
SUBCOMMITTEE ON LABOR STANDARDS, OCCUPATIONAL HEALTH AND SAFETY
COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES

February 10, 1994

Mr. Chairman, Members of the Subcommittee:

I am pleased to appear today before you to announce the Administration's support for the efforts to reform the Occupational Safety and Health Act of 1970.

The OSH Act has been effective, and thousands of working men and women are alive today because OSHA was created in 1970. As you can see in Chart #1, fatality rates have declined by more than one-half since 1974. OSHA's standards save lives. According to the Office of Technology Assessment, OSHA's rules for lead and cotton dust reduced worker exposures and illnesses significantly. Those who have examined OSHA's inspection program also conclude that enforcement works. For instance, Professors Wayne B. Gray and John T. Scholz concluded in 1991, after studying injury/illness data from 6,842 manufacturing plants, that when OSHA inspects and imposes penalties for violations, there is measurable injury reduction in those workplaces following the inspection ("Do OSHA Inspections Reduce Injuries? A Panel Analysis").

Despite the achievement over the last twenty years, the continued occurrence of death, injury and illness in American workplaces is a national problem. The Bureau of Labor Statistics

tells us that in 1992 over 6,000 American workers were killed due to workplace injuries, an average of about seventeen workers each and every day. Workplace deaths are not confined to certain industrial sectors; they are found across the spectrum of American industries. Chart #2 shows us that fatalities occur in small workplaces as well as the larger ones. In fact, according to data collected by OSHA, businesses with fewer than 10 workers account for 40% of all fatalities but only 15 percent of employment.

In addition, according to BLS, one out of every eleven workers suffers a recordable injury or illness every year. Also, the rate of Lost Workday Injuries and Illnesses as reported by BLS has been essentially stable since 1974, as we see in Chart #3. Moreover, the public sector is not immune from injury and illness as we see in Chart #4. In 1991, the incidence rate for the State and local public sector, in those States for which we have data, was higher on average than for the private sector.

There are also thousands of workers who die each year from illnesses caused by exposure to chemicals such as asbestos, silica, chromium, and carbon monoxide. As shown in Chart #5, the Office of Technology Assessment has reported that as many as 20,000 cancer deaths annually--more than 50 each day--may be caused by workplace exposures. The story does not end with these deaths. Hundreds of thousands of workers experience pain, suffering, and disability from work-related disorders including asthma, carpal tunnel syndrome, dermatitis, hearing loss, and

neurological disease. These numbers tell me that we still have a great deal of work to do in guaranteeing a safe and healthful workplace for every American worker.

OSHA's experience of more than two decades has shown us that most workplace injuries and illnesses are not unavoidable accidents. They are predictable and preventable. We need to strengthen the tools which the Department now has and to empower employers and employees jointly to reduce or eliminate hazards from their workplaces.

The costs to society from injury and illness in the workplace are substantial. The Rand Institute for Civil Justice estimated that accidents occurring on work time in 1989 imposed costs of \$83 billion. (See Chart #6.) The National Safety Council estimates the total costs of work-related accidents was \$115.9 billion in 1992. Compensation for back injury alone costs American employers \$11.4 billion each year. These figures do not even include the cost of most diseases caused by occupational exposures. The Nation's health care system also shoulders untold billions of costs from occupational diseases that may manifest years after a worker has been exposed to a toxic substance at the place of employment.

In a highly competitive global economy we simply cannot tolerate the high costs of workplace injuries and fatalities. We must recognize that investment in our workers is the best investment we can make in the future. By strengthening OSHA we

strengthen our ability to protect America's most precious and irreplaceable resource--its working men and women.

Beyond the quantifiable costs associated with workplace accidents and illnesses, there are the human costs of pain and anguish. Secretary Reich and I met with Lisa Eilar, who appeared before the Committee in 1992. She described to us her brother's tragic death when he and a co-worker were crushed in a stamping press after just five days on the job at a small auto parts plant. We also talked to Amy Delguizzo who had a tragic story to tell about her father's accident in 1992. Her father, a public employee in Ohio, was critically hurt in a trench cave-in while fixing an underground pipe. If he had been an employee of a private firm, he would have been protected by an OSHA standard. But because he was a public employee in a "non-OSHA plan" state, he was not covered by OSHA. These tragedies and thousands of others encountered by OSHA inspectors during their worksite visits remind us of the importance of the observation of Rene Dubos, the renowned microbiologist, when he said that, "In a truly civilized society, protection of the worker should be regarded as the most essential, irreducible aspect of production cost."

The workplace has changed since 1970. Workplace illnesses which were barely recognized when OSHA was created, such as cumulative trauma disorders, including carpal tunnel syndrome, now make up more than three-fifths of all illnesses recorded by employers. Other recent health concerns not envisioned by the

authors of the original OSHA include indoor air pollutants in office environments, HIV, tuberculosis, and hepatitis. Under the present law, our Nation has been unable to respond in a timely fashion to many emerging hazards. We need new tools to combat new dangers to America's workers.

As we consider H.R. 1280 we should ask two basic questions: Will this bill give OSHA, as well as the employers and employees of this Nation, the tools needed to remove hazards from American workplaces in an effective and efficient way? Is it a sound investment in prevention? We believe the answer to both questions is yes. We have concluded that in its main elements H.R. 1280 will strengthen this Nation's ability to combat workplace hazards. We are prepared to work with the Congress to achieve rapid legislative action. In addition, we are prepared to suggest some changes to the bill.

Let us discuss those provisions that will be most helpful.

Title I-Safety and Health Programs

The Department supports the requirement that employers have a written safety and health program. Everyone agrees that employers and employees must have greater involvement in identifying and abating safety and health hazards. The purpose of a program is to identify and fix hazards before workers become sick or injured.

The value of preventive workplace safety and health programs has been widely recognized. America's most forward-looking

companies already provide comprehensive programs in safety, quality control and other related aspects of production. The Insurance Information Institute has provided us numerous examples of companies which not only protected their workforce through safety and health programs, but realized savings in workers' compensation costs and gains in performance. The Atlantic Mutual Insurance Company reports that one of its policyholders, a manufacturer of aluminum windows, reduced the total number of compensation claims by 50 percent between 1990 and 1992, and reduced the cost of the claims by 89 percent during that period. These savings were realized after the company adopted and implemented a comprehensive safety and health program.

The value of good programs in reducing workers' compensation costs has also been demonstrated in Hawaii, Oregon, and Colorado. Because employers' workers' compensation premiums had increased by over 400 percent in a single decade, the Colorado legislature passed the Workers' Compensation Cost Containment Act of 1989. That law was designed to encourage employers to adopt well-planned safety and health programs. If they do so, they are eligible for up-front automatic deductions worth 5 to 10 percent of their workers' compensation premiums. In the program's first three years of operation, over 500 employers have enrolled. These employers have reduced their accident frequency by 23 percent and their compensation costs 62 percent. Total first year cost savings were \$24 million.

In a nation of almost 6 million employers, there is no "one-size-fits-all" approach to workplace safety. H.R. 1280 wisely provides OSHA the administrative flexibility to modify the requirements for programs according to need in different types of workplaces. We look forward to discussing with the Committee how these provisions would be implemented to ensure that each employer, working with its employees, can fashion a program unique to the individual workplace while maintaining such basic elements as a method to identify and correct hazards and opportunities for employee training. Employers and employees must be encouraged to tailor their programs to fit their special needs.

Title II-Safety and Health Committees

It is inconceivable that major improvements in workplace health and safety can occur without the active involvement of workers. To provide for employee participation, the Department supports the provision of joint labor-management safety and health committees for employers with 11 or more employees.

The committee provisions in your bill include elements of flexibility which we support. Employee members must be chosen by and from the nonmanagerial workforce in a free and fair manner. It is our understanding that various methods chosen by employees, including elections, volunteers or rotational systems, could be used. The number of employee members is to be proportionate to the size of the workforce, thereby addressing the special needs

of small business. We particularly approve of the provisions for alternative mechanisms for employee participation.

In Canada, many nations of Europe, and an increasing number of States in this country labor-management committees have become a commonly accepted method for reducing injuries and illnesses and for involving employees in key workplace decisions. In the United States forward-looking companies, such as Xerox, are already using committees to solve workplace problems. Twelve States have recognized the value of employee participation in safety and health by requiring committees for some or all employers.

Employee participation and involvement are key ingredients in a "high performance" workplace and have benefits beyond safety and health. In February 1992 Professor Thomas Kochan of MIT told the House Education and Labor Committee that "an effective labor-management committee serves as a catalyst for other innovations at the workplace." A number of State officials have testified that safety and health committees have improved workplace conditions in jurisdictions where they are mandated.

Oregon's experience is particularly instructive. In 1990, Oregon made the kind of public commitment to workplace safety and health that H.R. 1280 would make for the nation. Oregon enacted a committee requirement similar to that in H.R. 1280 but with broader application, raised its penalties for OSHA violations to Federal levels, and added seventy-three enforcement and consultation staff. The state also strengthened its requirement

for a written loss control program. From 1989 (the year before reform) to 1992 Oregon's fatality rate dropped from 6.2 to 4.9 per 100,000 workers, and the total case incidence rate fell from 10.3 to 8.8 per 100 full-time workers. The rates of work-related injuries and illnesses in Oregon construction and manufacturing are now at all-time lows.

The business community in Oregon has not been hampered by the requirements of the law--far from it. Writing about the success of the committee requirement, the Vice-President and Director of Legislation of Associated Oregon Industries said:

How successful has the mandatory safety committee program been? It is difficult to quantify . . . However, Oregon has enjoyed three consecutive years of double-digit decreases in overall rates. I personally believe that any true reform movement of a state's workers' compensation law must involve focusing on "loss prevention," as well as "loss control." And most certainly, the creation of a program involving mandatory safety committees is a vital ingredient of "loss prevention."

Title III-Coverage

It is essential to close the gap in public employee coverage. Unfortunately, for 7 million public employees in States without an OSHA-approved program there is widely varying protection. These workers handle some of the most dangerous tasks in our society such as firefighting, hazardous waste clean-ups, and sanitation work. According to the American Federation of State, County, and Municipal Employees (AFSCME), almost 200 of their members were killed on-the-job between 1983 and 1993.

We must be sensitive to the impact on the States and municipalities from the requirement not only to maintain an OSHA

program but to correct the hazards found in public workplaces. However, most States are not starting from scratch. Twenty-five States and jurisdictions already provide full OSHA coverage for their public employees. The remaining States may need some assistance to develop public sector plans. Many States maintain some type of worker protection even though they are not "OSHA-plan" States and thus are not required by Federal law to protect their employees. Florida, for example, has written many OSHA standards into State law and has 29 public sector safety and health inspectors.

Nevertheless, because State governments will need time to develop and implement their response to this expansion of coverage, we believe a phase-in period that takes account of their legislative calendars would be appropriate.

Title IV-Standards

Setting standards is one of OSHA's most important functions. We realize that we must do a better job of setting priorities since OSHA does not have unlimited resources. We must focus on those health and safety issues that present the greatest hazards to workers. We must also continue to provide compliance assistance, such as information, education and consultation, to enable employers to understand and comply with OSHA's rules.

We agree that standards must be developed in a more timely and efficient manner. The process must be streamlined. For that reason we do not object to meaningful timelines in which OSHA

must complete regulatory steps or to procedures for judicial review of alleged agency delay. We understand the Chairman's intent to be that the deadlines in the bill will create a presumption of reasonableness, but that special factors will allow modification in individual cases. OSHA must be free to assign appropriate priorities to rulemaking projects and to allocate more resources to higher-priority standards. We do not believe the intent of the bill is to deprive OSHA of its necessary authority to establish rational priorities.

In the interest of making certain that the statutory timelines are realistic, we would suggest that they be lengthened somewhat--that the standards for Secretarial action and judicial review be changed to recognize the Secretary's responsibility to set OSHA's agenda and priorities. For example, it would be appropriate for OSHA to have 120 days rather than the 90 currently in the bill to respond to petitions; and 18 months, rather than the 12 in the bill, to propose a standard following a decision to do so. Basic principles of administrative law require a regulatory agency to issue a detailed and complete proposal if it hopes to proceed expeditiously to a final rule that can be upheld on judicial review. Thus, we think it appropriate for OSHA to have equivalent amounts of time for preparation of proposed and final standards.

I would note that we are pleased with the language in the Senate's OSHA reform bill, S. 575, which prohibits judicial challenges to OSHA's feasibility findings if those challenges

were not first presented to the agency during the rulemaking process. This concept--exhaustion of administrative remedies--is so sensible, and so widely accepted, that we believe it should be added to H.R. 1280 and expanded to cover all of the findings OSHA must make in promulgating a standard.

In addition, we think that the courts should review OSHA standards under the same criteria that they use for most other Federal regulations--that the standards should be upheld if they are not arbitrary or capricious. The current substantial evidence standard has been taken by some courts as a signal that Congress intended especially strict scrutiny of OSHA standards, and so has contributed to many of the court remands that have played a significant part in clogging the regulatory pipeline.

I also wish to express our support for establishing uniform criteria for both health and safety standards. Having different criteria applicable to safety and health standards is making it difficult for OSHA to regulate because it is not always clear how a particular standard should be classified. Thus we believe that uniform criteria for health and safety standards would strengthen OSHA's standard-setting capability.

Title IV would also require that OSHA issue as a standard the final Permissible Exposure Limits rule originally promulgated in January 1989. The PEL revision issued in 1989 was designed to update exposure limits that were more than 20 years old. OSHA estimates that the PEL reduction would have prevented about 55,000 occupational illness cases and approximately 520,000 lost

workdays each year. However, the courts have placed such a difficult burden of proof on OSHA that it has become nearly impossible to regulate more than a few chemicals at a time. In striking down the PEL revision in 1992, the 11th Circuit Court of Appeals stated that:

Unfortunately, OSHA's approach to this rulemaking is not consistent with the requirements of the OSH Act. Before OSHA uses such an approach, it must get authorization from Congress by way of amendment to the OSH Act (AFL-CIO v. OSHA, 965 F.2d 962, 987 (emphasis added)).

As a result of this decision, many workers remain exposed to hundreds of chemicals at levels that most experts from labor and industry consider obsolete and dangerous. This situation requires a legislative solution. We also support the principle that OSHA and NIOSH should work closely together to review and revise the PELs at regular intervals.

We also agree that PELs should cover employees in the construction, maritime, and agriculture industries. OSHA has already proposed such action, but without legislative action its fate is uncertain. Legislation enacting the limits but allowing the Department to conduct rulemaking on feasible means of compliance may be the most appropriate solution.

The bill's requirement for OSHA to promulgate standards on ergonomics, exposure monitoring, and health surveillance is consistent with OSHA's stated priorities. Particularly important is the need for an ergonomics protection standard to reduce the alarming numbers of preventable musculoskeletal injuries as shown in Chart #7.

Title V-Enforcement

Where employees are seriously hurt by the willful violations of their employers, criminal prosecution is warranted--both to punish and to deter similar conduct in the future. Various statutes enforced by the Environmental Protection Agency contain criminal provisions with lengthy prison sentences. For example, under the Clean Water Act the maximum penalty for knowing endangerment, without even the occurrence of a death or injury, can include imprisonment of up to fifteen years. By contrast, OSHA's sanctions for employers whose willful conduct causes death are limited to a fine and/or imprisonment for 6 months. We support the provisions of H.R. 1280 that increase to ten years the maximum prison term for willful violations causing death. We also support the provision which allows OSHA to charge officers, management officials, and supervisors with criminal willful violations. We understand that this is intended to apply only to those management officials who have the power to bring about compliance, including the power to remove an employee from exposure to a hazard. By making willful violations involving death a felony, H.R. 1280 enables the government to prosecute and punish the small proportion of employers who are the truly "bad actors"--those who have shown a willful disregard for the lives of their employees.

The Department also supports criminal penalties for willful violations that result in "serious bodily injury" to employees.

Our understanding is that "serious bodily injury" will include only those injuries which have the most serious consequences.

Fears about criminalizing all of OSHA enforcement are vastly overblown. In Fiscal Year 1993 there were only about 600 inspections involving willful violations out of a total of 101,000 inspections conducted that year (Federal and State OSHA). Only a subset of the 600 inspections involved serious bodily injuries caused by willful violations. Fewer than 50 of these inspections involved a death in the workplace.

Also important is the provision in Title V that guarantees State and local law enforcement agencies the right to conduct prosecutions under generally applicable criminal laws. There has been considerable litigation on this issue and uncertainty in some States as to whether such prosecutions may proceed. H.R. 1280 codifies the role of State and local prosecutors who wish to enforce generally applicable criminal laws in cases involving safety and health at the workplace. Adding their resources to those of Federal OSHA will enable us to cast a wider net over the employers whose conduct is criminal in nature.

The Department of Justice joins us in supporting each of these criminal provisions.

The reform bill would make a number of other changes in enforcement. Under H.R. 1280, for the first time employers would be required to abate serious, willful or repeated violations during the period after an employer has contested the citation and before the final decision of the Occupational Safety and

Health Review Commission. A provision of this nature is necessary to ensure that workers are not endangered during contest periods that can last up to several years. Abatement during contest is not a new concept to the Department. The Mine Act gives MSHA this authority. Experience indicates that it is neither burdensome nor unworkable.

Concern has been expressed that employers would be forced to make costly alterations to the workplace only to see OSHA's citation overturned on appeal. H.R. 1280 provides protection for employers by ensuring that they will not be penalized for nonabatement if the Review Commission upholds their position.

The Department recognizes the valuable role played by employees and their representatives in enforcement under the Act. It is therefore our firm policy to consult with them in inspections and case settlements about all matters related to abatement. However, we are unable to support those provisions of the legislation that would overturn Supreme Court precedent and impair OSHA's ability to settle contested cases. The bill would authorize the Review Commission to review and disapprove citations and settlements negotiated by OSHA with an employer on the basis of employee objections on a range of matters. Authorizing such challenges could only delay and complicate final settlement. Moreover, the prospect of such a challenge would remove an important tool for encouraging settlement that OSHA has under current law: the employer's knowledge that agreement to the agency's terms will clearly and finally resolve the dispute.

Placing authority in the Commission to disapprove settlements is institutionally unsound as a matter of principle. Case settlements involve consideration of several factors, including the need for prompt and effective abatement, evaluation of the strength of the case and litigation risk, the Department's overall enforcement strategy, and efficient use of resources. As the agency responsible for enforcement of the Act, the Department must make policy judgments that determine the final balance among these factors. I wish to emphasize our commitment to consulting employees and obtaining their input as a vital ingredient in this determination.

We also cannot fully support the bill's approach to informal complaints. If OSHA were required to conduct an inspection in response to each informal complaint received, resources would be shifted away from inspections targeted to high-hazard workplaces. Moreover, we have found that a less formal response--for example, letter investigations and phone inquiries--can often resolve these complaints and lead to prompt abatement. We agree, however, that every bona fide complaint, even if not in writing, deserves a response from the agency. We have begun working with Committee staff on an amendment that would require an appropriate investigation and follow-up to verify abatement.

Finally, we support the provision in Title V which codifies current OSHA case law recognizing that employers have a defense against citation for unpreventable employee misconduct.

Title VI-Discrimination Protection

The Department supports provisions to enhance protection for workers who exercise their rights under the OSH Act. If employees hesitate to exercise their rights for fear of losing their jobs, these rights are meaningless. Section 11(c) of the OSH Act is designed to prevent discharge or discrimination but in practice workers have not been adequately protected. Witnesses before the Committee have described discrimination cases that took years to resolve while they suffered loss of income and other economic hardship.

Title VI would address this problem and would make the OSH Act discrimination provisions more consistent with those found in other laws such as the Surface Transportation Assistance Act which protects whistleblowers in the trucking industry. Particularly helpful is the provision of Title VI which extends the deadline for filing complaints of discrimination to 180 days and the provision allowing the Department to grant preliminary relief to workers when there is reasonable cause to believe that discrimination has occurred. Title VI would afford increased protection for workers who choose to exercise their rights under the OSH Act.

Title VII--Technical Assistance and Training

OSHA's full toolbox must include strong provisions for consultation and technical assistance which complement agency regulations and enforcement powers. We fully support the bill's

requirements to target these special services to small business and high hazards.

Title VIII-Recordkeeping and Reporting

Title VIII addresses the need for better and more specific data on the industries, individual work establishments, and work processes which have the highest rates of injuries and illnesses. We have recognized for many years that OSHA's data systems for occupational safety and health are inadequate. OSHA needs additional site specific data to target its efforts to the most dangerous workplaces. Title VIII contains provisions which would enable the Department to use its resources more effectively by gathering more specific safety and health data.

While Title VIII would enable OSHA to better meet its data needs by establishing an appropriately structured administrative data base, we must emphasize the equally important need to preserve the independent national safety and health statistics produced by BLS. At present, BLS collects confidential data from respondents to produce its Survey of Occupational Injuries and Illnesses and its Census of Fatal Occupational Injuries. The Department is studying the effect of OSHA's collection of site specific data on the ability of BLS to collect accurate information from employers to produce both the Census and Survey, and we expect to share our findings with the Committee in the near future.

Title IX--National Institute for Occupational Safety and Health

Regarding the bill's provisions affecting NIOSH, the Department of Health and Human Services has one strong concern that we note on their behalf. HHS agrees that this bill would fundamentally improve workplace safety and health. However, HHS opposes the provision that would remove NIOSH from within CDC and establish it as a separate agency in the Public Health Service because that would disrupt important scientific and organizational links between NIOSH and CDC to the detriment of both and, ultimately, workers. HHS would welcome the opportunity to work with the Committee on this and other issues raised by the bill.

Title XII-Construction

The reform bill would increase protection for workers in the construction industry, which has one of the highest rates of injury and illness (13.1 per 100 construction workers versus 8.9 per 100 workers for all private industries in 1992). This industry, which makes up five percent of all private employment, accounts for fifteen percent of fatalities.

Under present law, OSHA has not been able to address fully the unique hazards found in the construction industry. Unlike fixed-site manufacturing firms, the work done at construction sites is constantly changing. The most dangerous operation of the day may only last for 45 minutes. When OSHA arrives at a construction site, the work may be completed. These difficulties

are compounded by the fact that there may be dozens of different employers on a single large construction site. Finding out who is responsible for which hazards can be a daunting task. OSHA needs better ways of identifying the most hazardous construction sites at the most dangerous times.

Title XII would help reduce injuries and illnesses on construction sites in a number of ways. Construction employers would be required to designate individuals with overall responsibility for safety and health at the site. Construction employers would be required to have safety and health programs and workplace plans tailored to the unique hazards of the industry. The reporting requirements would assist OSHA in identifying which construction projects to inspect and when to visit the site. If stricter reporting had been in effect in 1987 the tragic accident at the L'Ambiance Plaza in Bridgeport, Connecticut might not have occurred. Twenty-eight workers might still be alive. A similar accident several months earlier had not come to OSHA's attention since no one was killed.

Generally, the Department supports those provisions which ensure that safety and health become a built-in feature of daily activity on construction sites without depending upon the threat of an OSHA inspection. As with many features of your bill, the construction provisions represent practical ideas which have been tested by numerous employers and found to work. The Corps of Engineers and its contractors, for example, have realized injury rates far below the national average by implementing

comprehensive programs with many of the elements required by your bill.

While many of the provisions in Title XII are needed, the organizational changes included in the bill are not necessary. OSHA's construction efforts can be improved under its current organizational structure. We also have concerns about the affect of applying all the provisions in Title XII to small construction projects.

* * * * *

There have been some concerns expressed--particularly within the business community--about the financial impact of OSHA reform. The cost of this bill is a valid concern. We should not impose unnecessary costs or regulations on any sector of our economy. After studying the legislation carefully, OSHA preliminarily estimates that the bill's investment in employee protection will result in a meaningful net benefit to our economy. We will be prepared to share and discuss our estimates with the Committee in the near future.

The critics of OSHA reform fail to consider the opportunities which the bill presents for investment in prevention of disease and injury. As you see in Chart #8, the cost of workers' compensation benefits was more than \$40 billion by 1991. Total workers' compensation costs in 1991 were \$53.8 billion. In an article in the Journal of the American Medical Association (August 7, 1991), Dr. Philip Landrigan estimated that 350,000 new cases of illness each year are caused by occupational

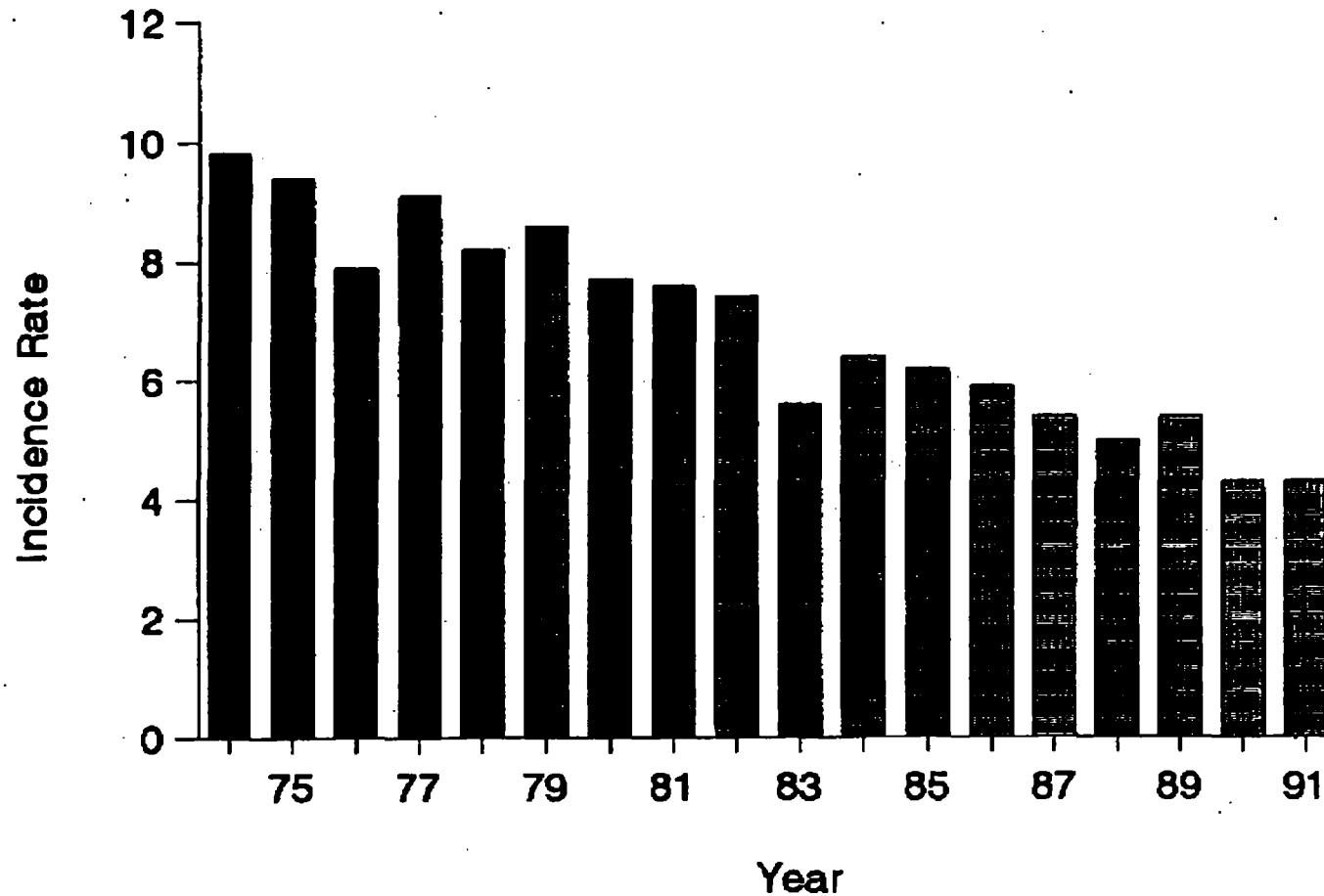
exposure. According to the National Safety Council the tangible costs of workplace injuries and illnesses exceed \$100 billion each year. This figure includes direct costs only and does not even attempt to attach a dollar amount to the savings in human life, and avoidance of pain, suffering, and disability.

I have discussed those provisions of the bill which would enable us to be more effective in reducing workplace injuries, illnesses, and deaths. Meanwhile OSHA is not sitting on its hands. OSHA is considering a number of new initiatives to enhance its effectiveness, such as changing data collection to target compliance resources more effectively, streamlining the inspection process to increase the agency's efficiency, and encouraging worker-management cooperation in occupational safety and health.

Mr. Chairman, you have taken an important step in presenting this comprehensive reform bill. It not only provides OSHA with new ways of accomplishing its goals; even more importantly it empowers employees and encourages employer-worker cooperation to undertake new ways of preventing injuries and illnesses in American workplaces.

Fatality Rates Have Declined

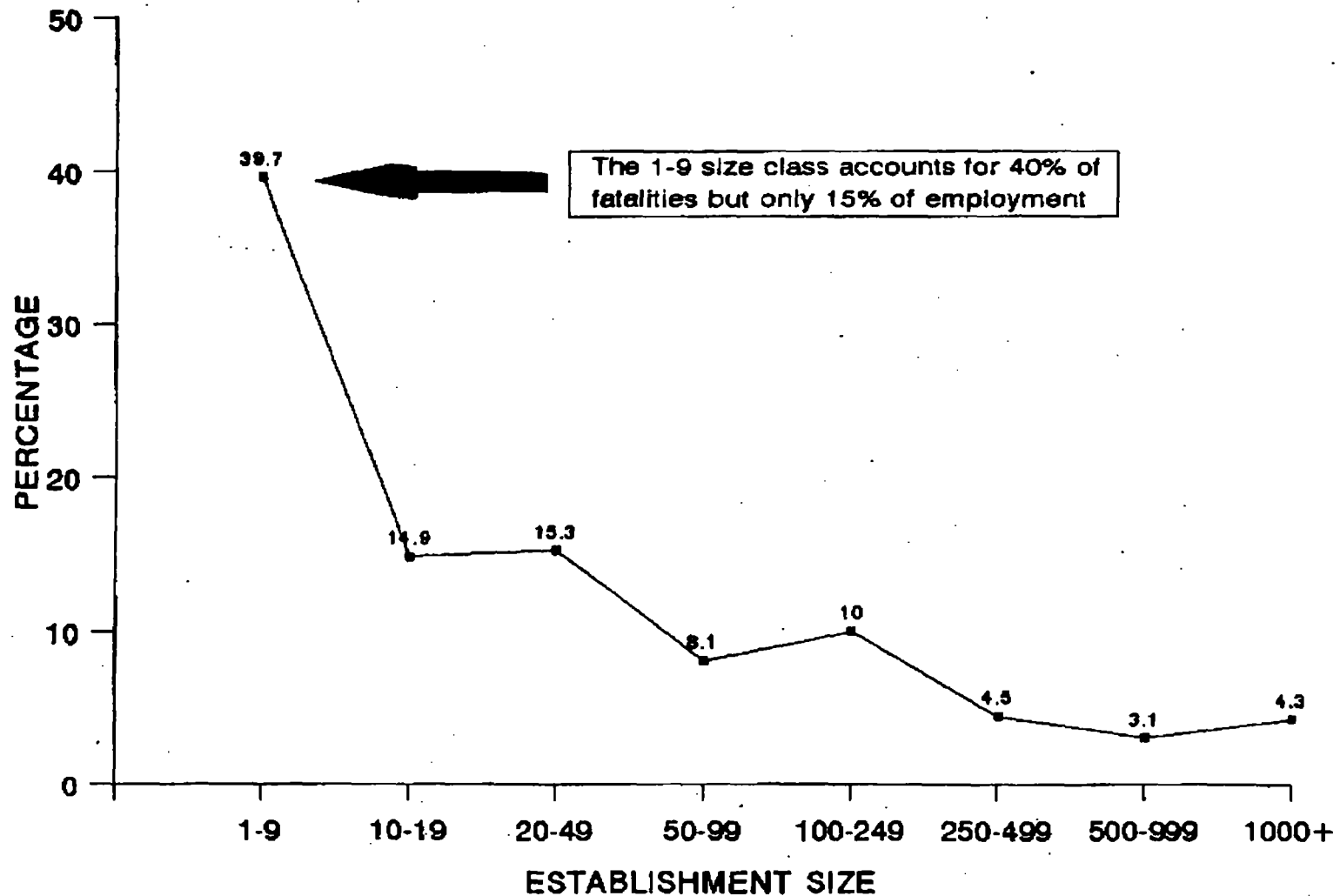
Fatal Injury Rates 1974-1991



As a result of reporting changes, comparable data are not available for 1992.

Source: Annual Survey of Injuries and Diseases, BLS
Rates per 100,000 workers
Prepared by OSHA OSTAT 1/13/94

PERCENT DISTRIBUTION OF FATALITIES REPORTED TO OSHA BY ESTABLISHMENT SIZE

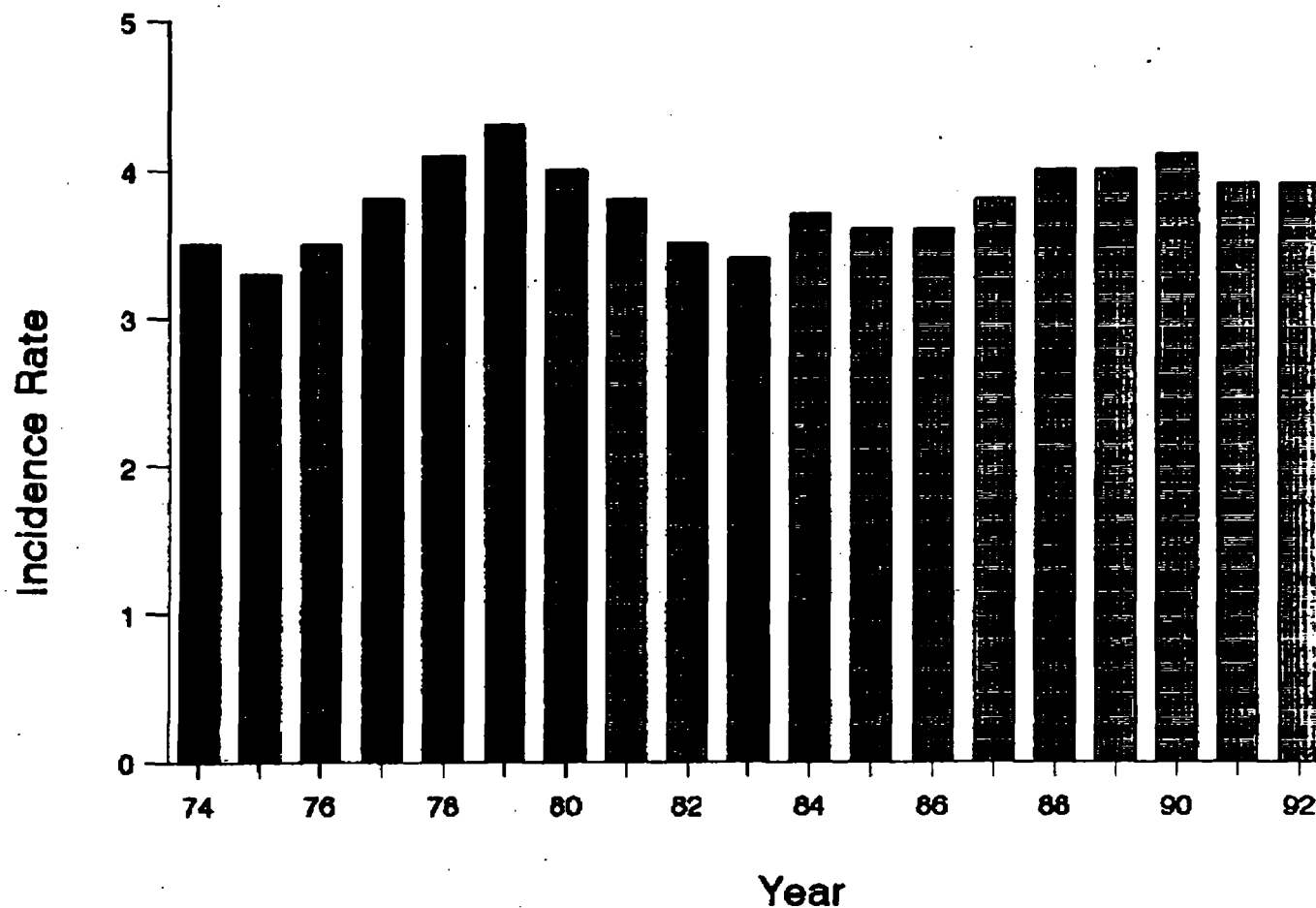


Fatalities Source: MFS FY 92 (includes Federal OSHA and State Plans)
Employment Source: County Business Patterns - 1990

Small employers account for a disproportionate amount of fatalities reported to OSHA

Lost Workday Injury and Illness Rates Have Not Fallen

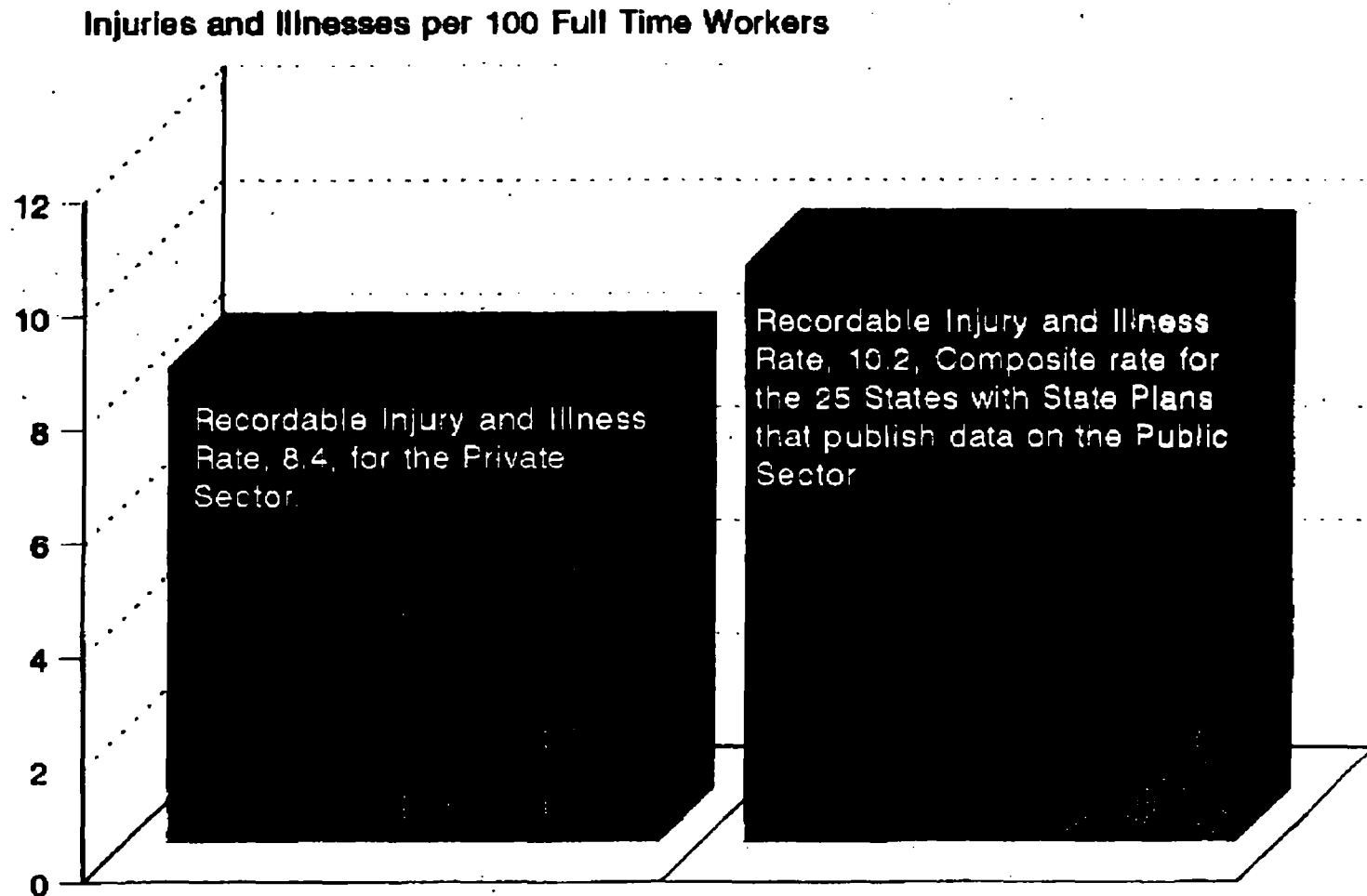
Lost Workday Case Rates 1974-1992



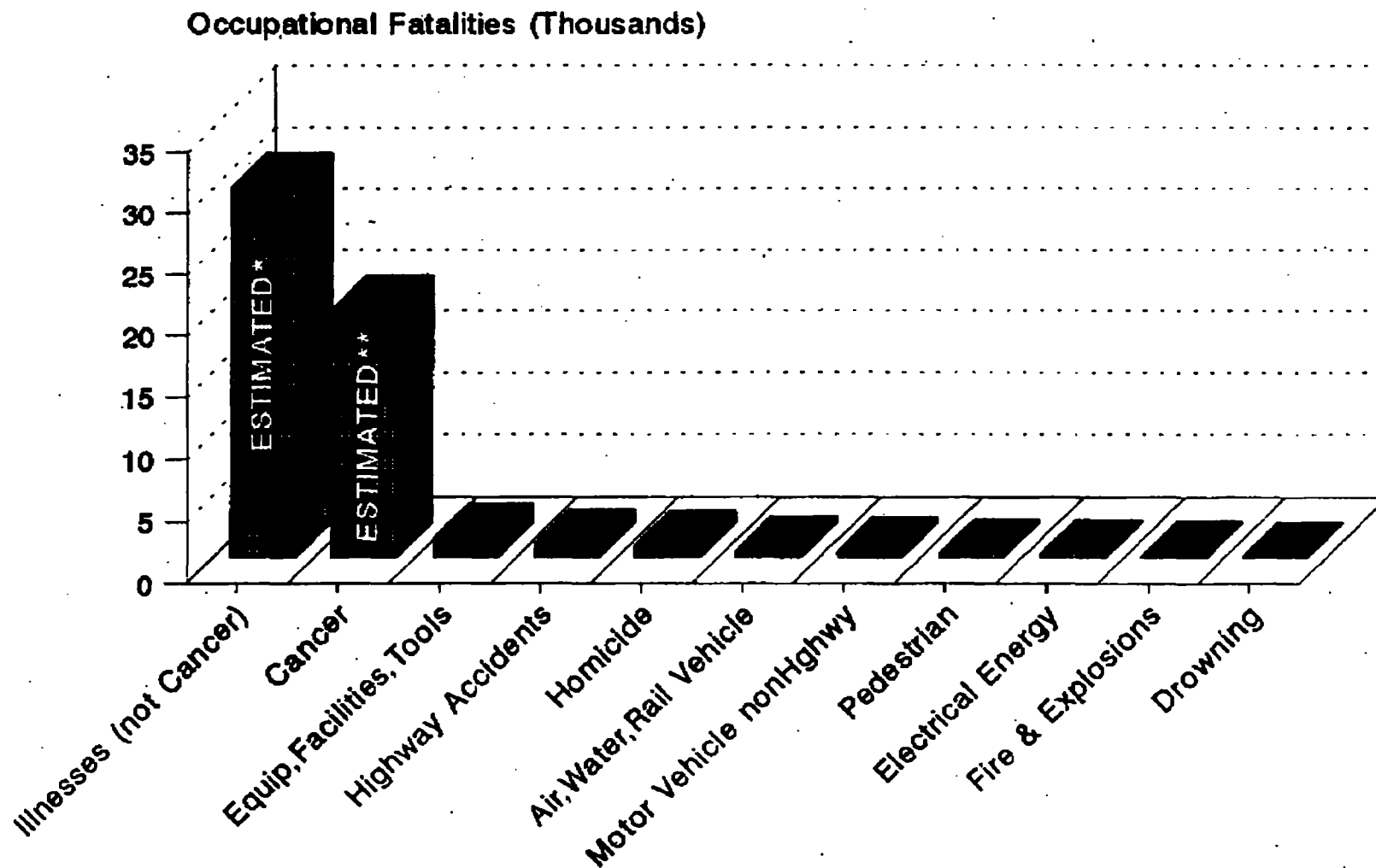
Source: Annual Survey of Occupational Injuries and Illnesses, BLS
Rates per 100 full-time workers
Prepared by OSHA OSHA 1/13/94

RECORDABLE INJURY AND ILLNESS RATES

Public Sector and Private Sector, 1991



DEATHS FROM ILLNESSES & INJURIES ON THE JOB BY SOURCE, 1992



BLS, CENSUS OF FATAL OCCUPATIONAL INJURIES, 1992.

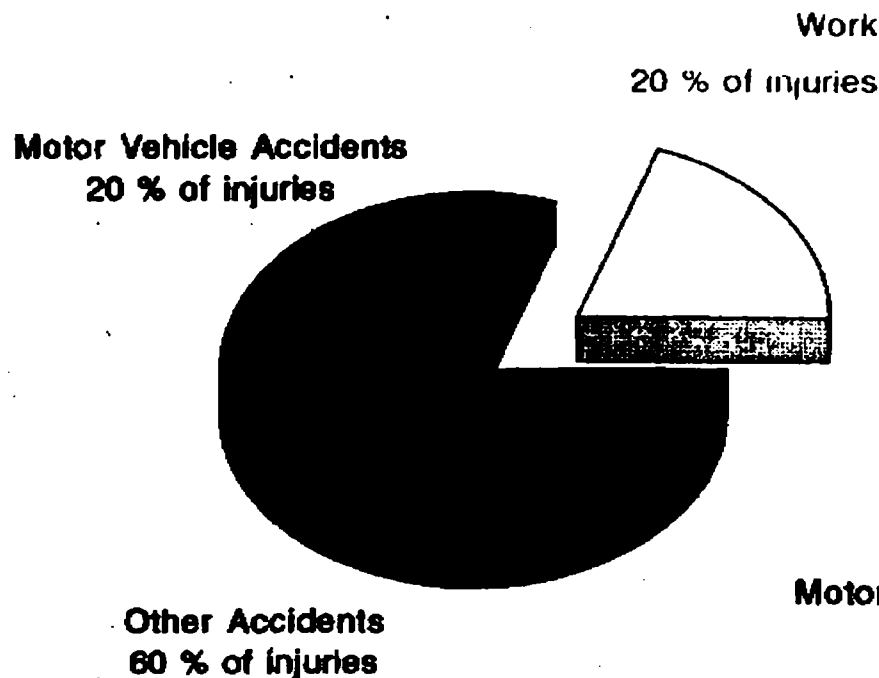
(Equip., Facilities, Tools = falls, struck by object, caught in equipment/objects, crushed by materials)

* Landrigan & Baker, JAMA 267/1991 (50,000 workplace illness deaths per year, including cancer)

** Doll & Peto, BMJ, 1981; Higginson, Prev Med 9, 1980 (4-6% of cancer deaths attributable to Occupation)

Work Accidents Account For Almost Half of All Injury Costs

Accident Frequencies



Accident Costs

Work Accidents

20 % of injuries

\$83.2 Billion

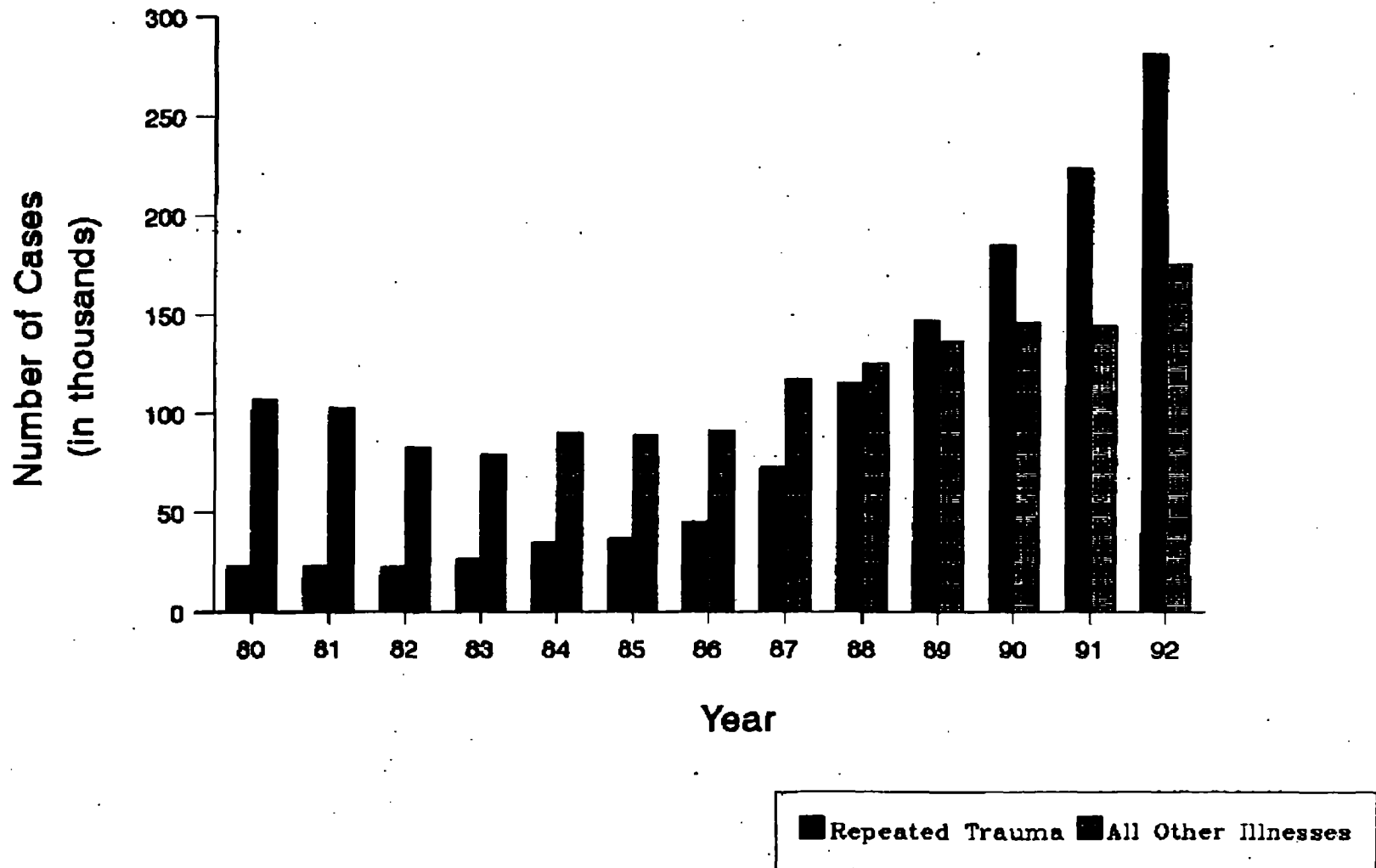
47% of costs

Motor Vehicle Accidents
\$37 Billion

Other Accidents
\$55.7 Billion

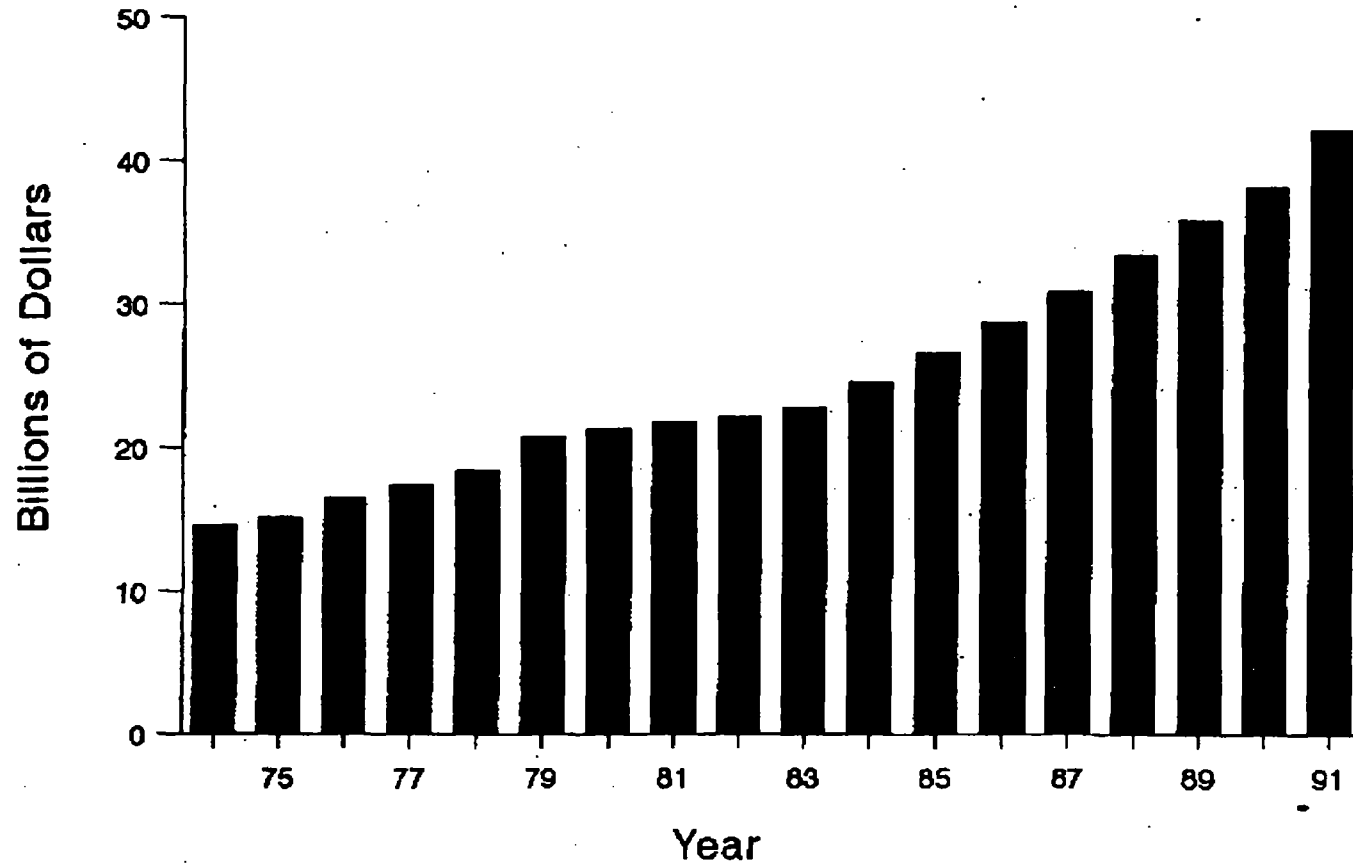
Disorders Associated with Repeated Trauma are Rising

Reported Occupational Illnesses 1980 - 1992



Source: Annual Survey of Occupational Injuries and Illnesses, BLS
Prepared by OSHA OSTAT 1/1/94

Workers' Compensation Disbursement Total Benefits Paid 1974-1991



Source: Social Security Administration
(1990 Dollars)
Prepared by OSHA OSTAT 1/18/92

OSHA Testimony M^y 2-8-14

3 major issues

① "Administration" vs. "Secretary" Support

② ^{aka cost} Flexibility Issues p. 8-9

Ellen Secretary's flexibility to deal with "real-life" situations that ~~don't~~ don't conform with ~~the~~ bills logic.

i.e. - "refresher course" requirement may want to be waived in some cases.

committee side · representation requirements, etc. --

↘ Caber wants broad statement of support

Institutional

to be sure these

and look forward to discussing with the committee how these provisions would be implemented.

Note that

Provision of Subject (g) in the House Bill provides alt. mechanisms for employee participation & feel it would be a valuable addition to your bill.

1.14 Uniform Criteria for Health & Safety Standards.

∨ Critical Issue to Bill's supporters

Labour → strong position... then back down

∨ Delete sentences on p. 14 - Sec. can wiggle around.

Tier 2

To OK

1/7/94 7:00

**STATEMENT OF
ROBERT B. REICH
SECRETARY OF LABOR
BEFORE THE
COMMITTEE ON LABOR AND HUMAN RESOURCES
U.S. SENATE**

February 9, 1994

Mr. Chairman, Members of the Committee:

I am pleased to appear today before you to announce the Administration's support for your efforts to reform the Occupational Safety and Health Act of 1970.

The OSH Act has been effective, and thousands of working men and women are alive today because OSHA was created in 1970. As you can see in Chart #1, fatality rates have declined by more than one-half since 1974. OSHA's standards save lives. According to the Office of Technology Assessment, OSHA's rules for lead and cotton dust reduced worker exposures and illnesses significantly. Those who have examined OSHA's inspection program also conclude that enforcement works. For instance, Professors Wayne B. Gray and John T. Scholz concluded in 1991, after studying injury/illness data from 6,842 manufacturing plants, that when OSHA inspects and imposes penalties for violations, there is measurable injury reduction in those workplaces following the inspection ("Do OSHA Inspections Reduce Injuries? A Panel Analysis.").

Despite the achievement over the last twenty years, the continued occurrence of death, injury and illness in American workplaces is a national problem. The Bureau of Labor Statistics tells us that in 1992 over 6,000 American workers were killed due

to workplace injuries, an average of about ~~seventeen~~ workers each and every day. Workplace deaths are not confined to certain industrial sectors; they are found across the spectrum of American industries. Chart #2 shows us that fatalities occur in small workplaces as well as the larger ones. In fact, according to data collected by OSHA, businesses with fewer than 10 workers account for 40% of all fatalities but only 16 percent of employment.

In addition, according to the BLS, nearly one out of every nine workers suffers a recordable injury or illness every year. Also, the rate of Lost Workday Injuries and Illnesses as reported by BLS has been essentially stable since 1974, as we see in Chart #3. Moreover, the public sector is not immune from injury and illness as we see in Chart #4. In 1991, the incidence rate for the State and local public sector, in those States for which we have data, was higher on average than for the private sector.

There are also thousands of workers who die each year from illnesses caused by exposure to chemicals such as asbestos, silica, chromium, and carbon monoxide. As shown in Chart #5, the Office of Technology Assessment has reported that as many as 20,000 cancer deaths annually--more than 50 each day--may be caused by workplace exposures. The story does not end with these deaths. Hundreds of thousands of workers experience pain, suffering, and disability from work-related disorders including asthma, carpal tunnel syndrome, dermatitis, hearing loss, and neurological disease. These numbers tell us that we still have a

great deal of work to do in guaranteeing a safe and healthful workplace for every American worker.

OSHA's experience of more than two decades has shown us that most workplace injuries and illnesses are not unavoidable accidents. They are predictable and preventable. We need to strengthen the tools which the Department now has and to empower employers and employees jointly to reduce or eliminate hazards from their workplaces.

The costs to society from injury and illness in the workplace are substantial. The Rand Institute for Civil Justice estimated that accidents occurring on work time in 1989 imposed costs of \$83 billion. (See Chart #6.) The National Safety Council estimates the total costs of work-related accidents was \$118.9 billion in 1992. Compensation for back injury alone costs American employers \$11.4 billion each year. These figures do not even include the cost of most diseases caused by occupational exposures. The Nation's health care system also shoulders untold billions of costs from occupational diseases that may manifest years after a worker has been exposed to a toxic substance at the place of employment.

In a highly competitive global economy we simply cannot tolerate the high costs of workplace injuries and fatalities. We must recognize that investment in our workers is the best investment we can make in the future. By strengthening OSHA we strengthen our ability to protect America's most precious and irreplaceable resource--its working men and women.

Beyond the quantifiable costs associated with workplace accidents and illnesses, there are the human costs of pain and anguish. Last October you heard Lisa Zilar describe her brother's tragic death after he and a co-worker were crushed in a stamping press after just five days on the job at a small auto parts plant. You also saw Vidal Rodriguez, who was unable to testify because of the severity of neurological damage he had suffered from mercury exposure at a plant in Brooklyn. These tragedies and thousands of others encountered by OSHA inspectors during their worksite visits remind us of the importance of the observation of Rene Dubos, the renowned microbiologist, when he said that, "In a truly civilized society, protection of the worker should be regarded as the most essential, irreducible aspect of production cost."

The workplace has changed since 1970. Workplace illnesses which were barely recognized when OSHA was created, such as cumulative trauma disorders, including carpal tunnel syndrome, now make up more than three-fifths of all illnesses recorded by employers. Other recent health concerns not envisioned by the authors of the original OSHA include indoor air pollutants in office environments, HIV, tuberculosis, and hepatitis. Under the present law, our Nation has been unable to respond in a timely fashion to many emerging hazards. We need new tools to combat new dangers to America's workers.

As we consider S. 575 we should ask two basic questions: Will this bill give OSHA, as well as the employers and employees

of this Nation, the tools needed to remove hazards from American workplaces in an effective and efficient way? Is it a sound investment in prevention? I believe the answer to both questions is yes. We have concluded that in its main elements your bill will strengthen this Nation's ability to combat workplace hazards. We are prepared to work with you to achieve rapid legislative action. In addition, we are prepared to suggest some changes to the bill.

Let us discuss those provisions that will be most helpful.

Title I-Safety and Health Programs

The Department supports the requirement that employers have a written safety and health program. Everyone agrees that employers and employees must have greater involvement in identifying and abating safety and health hazards. The purpose of a program is to identify and fix hazards before workers become sick or injured.

The value of preventive workplace safety and health programs has been widely recognized. America's most forward-looking companies already provide comprehensive programs in safety, quality control and other related aspects of production. The Insurance Information Institute has provided us numerous examples of companies which not only protected their workforce through safety and health programs, but realized savings in workers' compensation costs and gains in performance. The Atlantic Mutual Insurance Company reports that one of its policyholders, a

manufacturer of aluminum windows, reduced the total number of compensation claims by 50 percent between 1990 and 1992, and reduced the cost of the claims by 89 percent during that period. These savings were realized after the company adopted and implemented a comprehensive safety and health program.

The value of good programs in reducing workers' compensation costs has also been demonstrated in Hawaii, Oregon, and Colorado. Because employers' workers' compensation premiums had increased by over 400 percent in a single decade, the Colorado legislature passed the Workers' Compensation Cost Containment Act of 1989. That law was designed to encourage employers to adopt well-planned safety and health programs. If they do so, they are eligible for up-front automatic deductions worth 5 to 10 percent of their workers' compensation premiums. In the program's first three years of operation, over 500 employers have enrolled. These employers have reduced their accident frequency by 23 percent and their compensation costs 62 percent. Total first year cost savings were \$34 million.

In a nation of almost 6 million employers, there is no "one-size-fits-all" approach to workplace safety. S. 575 wisely provides OSHA ^{some} the administrative flexibility to modify the requirements for programs according to need in different types of workplaces. We look forward to discussing with the Committee how these provisions would be implemented ^{blended} such that each employer, working with its employees, can fashion a program unique to the individual workplace while maintaining such basic elements as a

method to identify and correct hazards and opportunities for employee training. Employers and employees must be encouraged to tailor their programs to fit their special needs.

Title II-Safety and Health Committees

It is inconceivable that major improvements in workplace health and safety can occur without the active involvement of workers. To provide for employee participation, the Department supports the provision of joint labor-management safety and health committees for employers with 11 or more employees.

The committee provisions in your bill include elements of flexibility which we support. Employee members must be chosen by and from the nonmanagerial workforce in a free and fair manner. It is our understanding that various methods chosen by employees, including elections, volunteers or rotational systems, could be used. The number of employee members is to be proportionate to the size of the workforce, thereby addressing the special needs of small business. We note that the House bill, H.R. 1280, contains provisions for alternative mechanisms for employee participation. We believe that this would be a valuable addition.

In Canada, many nations of Europe, and an increasing number of States in this country labor-management committees have become a commonly accepted method for reducing injuries and illnesses and for involving employees in key workplace decisions. In the United States forward-looking companies, such as Xerox, are

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already using committees to solve workplace problems. Twelve States have recognized the value of employee participation in safety and health by requiring committees for some or all employers.

Employee participation and involvement are key ingredients in a "high performance" workplace and have benefits beyond safety and health. In February 1992 Professor Thomas Kochan of MIT told the House Education and Labor Committee that "an effective labor-management committee serves as a catalyst for other innovations at the workplace." A number of State officials have testified that safety and health committees have improved workplace conditions in jurisdictions where they are mandated.

Oregon's experience is particularly instructive. In 1990, Oregon made the kind of public commitment to workplace safety and health that S. 575 would make for the nation. Oregon enacted a committee requirement similar to that in S. 575 but with broader application, raised its penalties for OSHA violations to Federal levels, and added seventy-three enforcement and consultation staff. The state also strengthened its requirement for a written loss control program. From 1989 (the year before reform) to 1992 Oregon's fatality rate fell from 6.2 to 4.9 per 100,000 workers, and the total case incidence rate fell from 10.3 to 8.8 per 100 full-time workers. The rates of work related injuries and illnesses in Oregon construction and manufacturing are now at all-time lows.

The business community in Oregon has not been hampered by the requirements of the law--far from it. Writing about the success of the committee requirement, the Vice-President and Director of Legislation of Associated Oregon Industries said:

How successful has the mandatory safety committee program been? It is difficult to quantify . . . However, Oregon has enjoyed three consecutive years of double-digit decreases in overall rates. I personally believe that any true reform movement of a state's workers' compensation law must involve focusing on "loss prevention," as well as "loss control." And most certainly, the creation of a program involving mandatory safety committees is a vital ingredient of "loss prevention."

Title III-Coverage

It is essential to close the gap in public employee coverage. Unfortunately, for 7 million public employees in States without an OSHA-approved program there is widely varying protection. These workers handle some of the most dangerous tasks in our society such as firefighting, hazardous waste clean-ups, and sanitation work. According to the American Federation of State, County, and Municipal Employees (AFSCME), almost 200 of their members were killed on-the-job between 1983 and 1993.

We must be sensitive to the impact on the States and municipalities from the requirement not only to maintain an OSHA program but to correct the hazards found in public workplaces. However, most States are not starting from scratch. Twenty-five States and jurisdictions already provide full OSHA coverage for their public employees. The remaining States may need some assistance to develop public sector plans. Many States maintain some type of worker protection even though they are not "OSHA-

plan" States and thus are not required by Federal law to protect their employees. Florida, for example, has written many OSHA standards into State law and has 29 public sector safety and health inspectors.

Nevertheless, because State governments will need time to develop and implement their response to this expansion of coverage, we believe a phase-in period that takes account of their legislative calendars would be appropriate.

In addition to addressing coverage of public sector employees, S. 575 seeks to ensure that no workers in the private sector are left with inadequate coverage because of questions concerning the jurisdiction of OSHA and other Federal agencies. Although we recognize that there have been problems in determining the appropriate agency to regulate particular hazards, we believe section 302 of the bill may not provide the best solution. The Department would be forced to review every Federal regulation affecting occupational safety and health and judge the effectiveness of the other agencies' programs. The Department's determinations that other agencies are "at least as effective" as OSHA can be challenged in court by any person. These provisions would divert OSHA resources from protecting workers to overseeing and certifying the efforts of other Federal agencies. Moreover, these provisions would call into question the regulations of other Federal agencies, potentially causing great enforcement problems and discouraging these agencies from being pro-active in using their authority to supplement or

improve their regulations. The Administration wants to work with you to develop an alternative that recognizes the need to avoid duplicative regulation while also ensuring that all employees have adequate safety and health protection.

Title IV-Standards

Setting standards is one of OSHA's most important functions. We realize that we must do a better job of setting priorities since OSHA does not have unlimited resources. We must focus on those health and safety issues that present the greatest hazards to workers. We must also continue to provide compliance assistance, such as information, education and consultation, to enable employers to understand and comply with OSHA's rules.

I agree that standards must be developed in a more timely and efficient manner. The process must be streamlined. For that reason I do not object to meaningful timelines in which OSHA must complete regulatory steps or to procedures for judicial review of alleged agency delay. I understand the Chairman's intent to be that the deadlines in the Bill will create a presumption of reasonableness, but that special factors will allow modification in individual cases. OSHA must be free to assign appropriate priorities to rulemaking projects and to allocate more resources to higher-priority standards. I do not believe the intent of the bill is to deprive OSHA of its necessary authority to establish rational priorities.

In the interest of making certain that the statutory timelines are realistic, I would suggest that they be lengthened somewhat--that the standards for Secretarial action and judicial review be changed to recognize the Secretary's responsibility to set OSHA's agenda and priorities. Specifically, it would be appropriate for OSHA to have 120 days rather than the 90 currently in the bill to respond to petitions; and 18 months, rather than the 12 in the bill, to propose a standard following a decision to do so. Basic principles of administrative law require a regulatory agency to issue a detailed and complete proposal if it hopes to proceed expeditiously to a final rule that can be upheld on judicial review. Thus, we think it appropriate for OSHA to have equivalent amounts of time for preparation of proposed and final standards.

I am pleased by the language in S. 575 prohibiting judicial challenges to OSHA's feasibility findings if those challenges were not first presented to the agency during the rulemaking process. This concept--exhaustion of administrative remedies--is so sensible, and so widely accepted, that we believe it should be expanded to cover all of the findings OSHA must make in promulgating a standard.

In addition, we think that the courts should review OSHA standards under the same criteria that they use for most other Federal regulations--that the standards should be upheld if they are not arbitrary or capricious. The current substantial evidence standard has been taken by some courts as a signal that

Congress intended especially strict scrutiny of OSHA standards, and so has contributed to many of the court remands that have played a significant part in clogging the regulatory pipeline.

I also wish to express my support for establishing uniform criteria for both health and safety standards. Having different criteria applicable to safety and health standards is making it difficult for OSHA to regulate because it is not always clear how a particular standard should be classified. Thus I believe that uniform criteria for health and safety standards would strengthen OSHA's standard-setting capability.

Title IV would also require that OSHA issue as a standard the final Permissible Exposure Limits rule originally promulgated in January 1989. The PEL revision issued in 1989 was designed to update exposure limits that were more than 20 years old. OSHA estimates that the PEL reduction would have prevented about 55,000 occupational illness cases and approximately 520,000 lost workdays each year. However, the courts have placed such a difficult burden of proof on OSHA that it has become nearly impossible to regulate more than a few chemicals at a time. In striking down the PEL revision in 1992, the 11th Circuit Court of Appeals stated that:

Unfortunately, OSHA's approach to this rulemaking is not consistent with the requirements of the OSH Act. Before OSHA uses such an approach, it must get authorization from Congress by way of amendment to the OSH Act (*AFL-CIO v. OSHA*, 965 F.2d 962, 987 (emphasis added)).

As a result of this decision, many workers remain exposed to hundreds of chemicals at levels that most experts from labor and

industry consider obsolete and dangerous. This situation requires a legislative solution. We also support the principle that OSHA and NIOSH should work closely together to review and revise the PELs at regular intervals.

I also agree that PELs should cover employees in the construction, maritime, and agriculture industries. OSHA has already proposed such action, but without legislative action its fate is uncertain. Legislation enacting the limits but allowing the Department to conduct rulemaking on feasible means of compliance may be the most appropriate solution.

The bill's requirement for OSHA to promulgate standards on ergonomics, exposure monitoring, and health surveillance is consistent with OSHA's stated priorities. Particularly important is the need for an ergonomics protection standard to reduce the alarming numbers of preventable musculoskeletal injuries as shown in Chart #7.

Title V-Enforcement

Where employees are seriously hurt by the willful violations of their employers, criminal prosecution is warranted--both to punish and to deter similar conduct in the future. Various statutes enforced by the Environmental Protection Agency contain criminal provisions with lengthy prison sentences. For example, under the Clean Water Act the maximum penalty for knowing endangerment, without even the occurrence of a death or injury, can include imprisonment of up to fifteen years. By contrast,

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OSHA's sanctions for employers whose willful conduct causes death are limited to a fine and/or imprisonment for 6 months. We support the provisions of S. 575 that increase to ten years the maximum prison term for willful violations causing death. We also support the provision which allows OSHA to charge officers, management officials, and supervisors with criminal willful violations. We understand that this is intended to apply only to those management officials who have the power to bring about compliance, including the power to remove an employee from exposure to a hazard. By making willful violations involving death a felony, S. 575 enables the government to prosecute and punish the small proportion of employers who are the truly "bad actors"--those who have shown a willful disregard for the lives of their employees.

The Department also supports criminal penalties for willful violations that result in "serious bodily injury" to employees. Our understanding is that "serious bodily injury" will include only those injuries which have the most serious consequences.

Fears about criminalizing all of OSHA enforcement are vastly overblown. In Fiscal Year 1993 there were only about 600 inspections involving willful violations out of a total of 181,000 inspections conducted that year (Federal and State OSHA). Only a subset of the 600 inspections involved serious bodily injuries caused by willful violations. Fewer than 50 of these inspections involved a death in the workplace.

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Also important is the provision in Title V that guarantees State and local law enforcement agencies the right to conduct prosecutions under generally applicable criminal laws. There has been considerable litigation on this issue and uncertainty in some States as to whether such prosecutions may proceed. S. 575 codifies the role of State and local prosecutors who wish to enforce generally applicable criminal laws in cases involving safety and health at the workplace. Adding their resources to those of Federal OSHA will enable us to cast a wider net over the employers whose conduct is criminal in nature.

The Department of Justice joins us in supporting each of these criminal provisions.

The reform bill would make a number of other changes in enforcement. Under S. 575, for the first time employers would be required to abate serious violations presenting a substantial risk to workers during the period after an employer has contested the citation and before the final decision of the Occupational Safety and Health Review Commission. A provision of this nature is necessary to ensure that workers are not endangered during contest periods that can last up to several years. Abatement during contest is not a new concept to the Department. The Mine Act gives MSHA this authority. Experience indicates that it is neither burdensome nor unworkable.

Concern has been expressed that employers would be forced to make costly alterations to the workplace only to see OSHA's citation overturned on appeal. S. 575 provides protection for

employers by ensuring that they will not be penalized for nonabatement if the Review Commission upholds their position.

The Department recognizes the valuable role played by employees and their representatives in enforcement under the Act. It is therefore our firm policy to consult with them in inspections and case settlements about all matters related to abatement. However, we are unable to support those provisions of the legislation that would overturn Supreme Court precedent and impair OSHA's ability to settle contested cases. The bill would authorize the Review Commission to review and disapprove citations and settlements negotiated by OSHA with an employer on the basis of employee objections on a range of matters. Authorizing such challenges could only delay and complicate final settlement and implementation of the agreed measures for abatement. Moreover, the prospect of such a challenge would remove an important tool for encouraging settlement that OSHA has under current law: the employer's knowledge that agreement to the agency's terms will clearly and finally resolve the dispute.

Placing authority in the Commission to disapprove settlements is institutionally unsound as a matter of principle. Case settlements involve consideration of several factors, including the need for prompt and effective abatement, evaluation of the strength of the case and litigation risk, the Department's overall enforcement strategy, and efficient use of resources. As the agency responsible for enforcement of the Act, the Department must make policy judgments that determine the final balance among

these factors. I emphasize our commitment to consulting employees and obtaining their input as a vital ingredient in this determination.

We also cannot fully support the bill's approach to informal complaints. If OSHA were required to conduct an inspection in response to each informal complaint received, resources would be shifted away from inspections targeted to high-hazard workplaces. Moreover, we have found that a less formal response--for example, letter investigations and phone inquiries--can often resolve these complaints and lead to prompt abatement. We agree, however, that every bona fide complaint, even if not in writing, deserves a response from the agency. We have begun working with Committee staff on an amendment that would require an appropriate investigation and follow-up to verify abatement.

Finally, we support the provision in Title V which codifies current OSHA case law recognizing that employers have a defense against citation for unpreventable employee misconduct.

Title VI-Discrimination Protection

The Department supports provisions to enhance protection for workers who exercise their rights under the OSH Act. If employees hesitate to exercise their rights for fear of losing their jobs, these rights are meaningless. Section 11(c) of the OSH Act is designed to prevent discharge or discrimination but in practice workers have not been adequately protected. Witnesses before this Committee have described discrimination cases that

took years to resolve while they suffered loss of income and other economic hardship.

Title VI would address this problem and would make the OSH Act discrimination provisions more consistent with those found in other laws such as the Surface Transportation Assistance Act which protects whistleblowers in the trucking industry. Particularly helpful is the provision of Title VI which extends the deadline for filing complaints of discrimination to 180 days and the provision allowing the Department to grant preliminary relief to workers when there is reasonable cause to believe that discrimination has occurred. Title VI would afford increased protection for workers who choose to exercise their rights under the OSH Act.

Title VII--Technical Assistance and Training

OSHA's full toolbox must include strong provisions for consultation and technical assistance which complement agency regulations and enforcement powers. I fully support the bill's requirements to target these special services to small business and high hazards. I also would be pleased to implement your innovative ideas on regional/state safety resource centers with tri-partite representation.

Title VIII--Recordkeeping and Reporting

Title VIII addresses the need for better and more specific data on the industries, individual work establishments, and work

processes which have the highest rates of injuries and illnesses. We have recognized for many years that OSHA's data systems for occupational safety and health are inadequate. OSHA needs additional site specific data to target its efforts to the most dangerous workplaces. Title VIII contains provisions which would enable the Department to use its resources more effectively by gathering more specific safety and health data.

While Title VIII would enable OSHA to better meet its data needs by establishing an appropriately structured administrative data base, I must emphasize the equally important need to preserve the independent national safety and health statistics produced by BLS. At present, BLS collects confidential data from respondents to produce its Survey of Occupational Injuries and Illnesses and its Census of Fatal Occupational Injuries. The Department is studying the effect of OSHA's collection of site specific data on the ability of BLS to collect accurate information from employers to produce both the Census and Survey, and we will our findings with the Committee in the near future.

Expect to share

Title IX--National Institute for Occupational Safety and Health

Regarding the bill's provisions affecting NIOSH, the Department of Health and Human Services has one strong concern that we note on their behalf. HHS agrees that this bill would fundamentally improve workplace safety and health. However, HHS opposes the provision that would remove NIOSH from within CDC and establish it as a separate agency in the Public Health Service

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because that would disrupt important scientific and organizational links between NIOSH and CDC to the detriment of both and, ultimately, workers. HHS would welcome the opportunity to work with the Committee on this and other issues raised by the bill.

Title XII-Construction

The reform bill would increase protection for workers in the construction industry, which has one of the highest rates of injury and illness (13.1 per 100 construction workers versus 8.9 per 100 workers for all private industries in 1992). This industry, which makes up five percent of all private employment, accounts for fifteen percent of fatalities.

Under present law, OSHA has not been able to address fully the unique hazards found in the construction industry. Unlike fixed-site manufacturing firms, the work done at construction sites is constantly changing. The most dangerous operation of the day may only last for 45 minutes. When OSHA arrives at a construction site, the work may be completed. These difficulties are compounded by the fact that there may be dozens of different employers on a single large construction site. Finding out who is responsible for which hazards can be a daunting task. OSHA needs better ways of identifying the most hazardous construction sites at the most dangerous times.

Title XII would help reduce injuries and illnesses on construction sites in a number of ways. Construction employers

would be required to designate individuals with overall responsibility for safety and health at the site. Construction employers would be required to have safety and health programs and workplace plans tailored to the unique hazards of the industry. The reporting requirements would assist OSHA in identifying which construction projects to inspect and when to visit the site. If stricter reporting had been in effect in 1987 the tragic accident at the L'Ambiance Plaza in Bridgeport, Connecticut might not have occurred. Twenty-eight workers might still be alive. A similar accident several months earlier had not come to OSHA's attention since no one was killed.

Generally, the Department supports those provisions which ensure that safety and health become a built-in feature of daily activity on construction sites without depending upon the threat of an OSHA inspection. As with many features of your bill, the construction provisions represent practical ideas which have been tested by numerous employers and found to work. The Corps of Engineers and its contractors, for example, have realized injury rates far below the national average by implementing comprehensive programs with many of the elements required by your bill.

While many of the provisions in Title XII are needed, the organizational changes included in the bill are not necessary. OSHA's construction efforts can be improved under its current organizational structure. We also have concerns about the affect of applying all the provisions in Title XII to small construction

projects.

* * * * *

There have been some concerns expressed--particularly within the business community--about the financial impact of OSHA reform. The cost of this bill is a valid concern. We should not impose unnecessary costs or regulations on any sector of our economy. After studying the legislation carefully, OSHA preliminarily estimates that the bill's investment in employee protection will result in a meaningful net benefit to our economy. We will be prepared to share and discuss our estimates with the Committee in the near future.

The critics of OSHA reform fail to consider the opportunities which the bill presents for investment in prevention of disease and injury. As you see in Chart #8, the cost of workers' compensation benefits was more than \$40 billion by 1991. Total workers' compensation costs in 1991 were \$53.8 billion. In an article in the Journal of the American Medical Association (August 7, 1991), Dr. Philip Landrigan estimated that 350,000 new cases of illness each year are caused by occupational exposure. According to the National Safety Council the tangible costs of workplace injuries and illnesses exceed \$100 billion each year. This figure includes direct costs only and does not even attempt to attach a dollar amount to the savings in human life, and avoidance of pain, suffering, and disability.

I have discussed those bill provisions which would enable us to be more effective in reducing workplace injuries, illnesses,

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Legislative Reference Division
Labor, Welfare and Personnel Branch
Washington, DC 20503

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Janet Forsgren			

FROM: *Connie J. Bowers*

DATE: *Tue Feb 8, 1994 7:45pm*

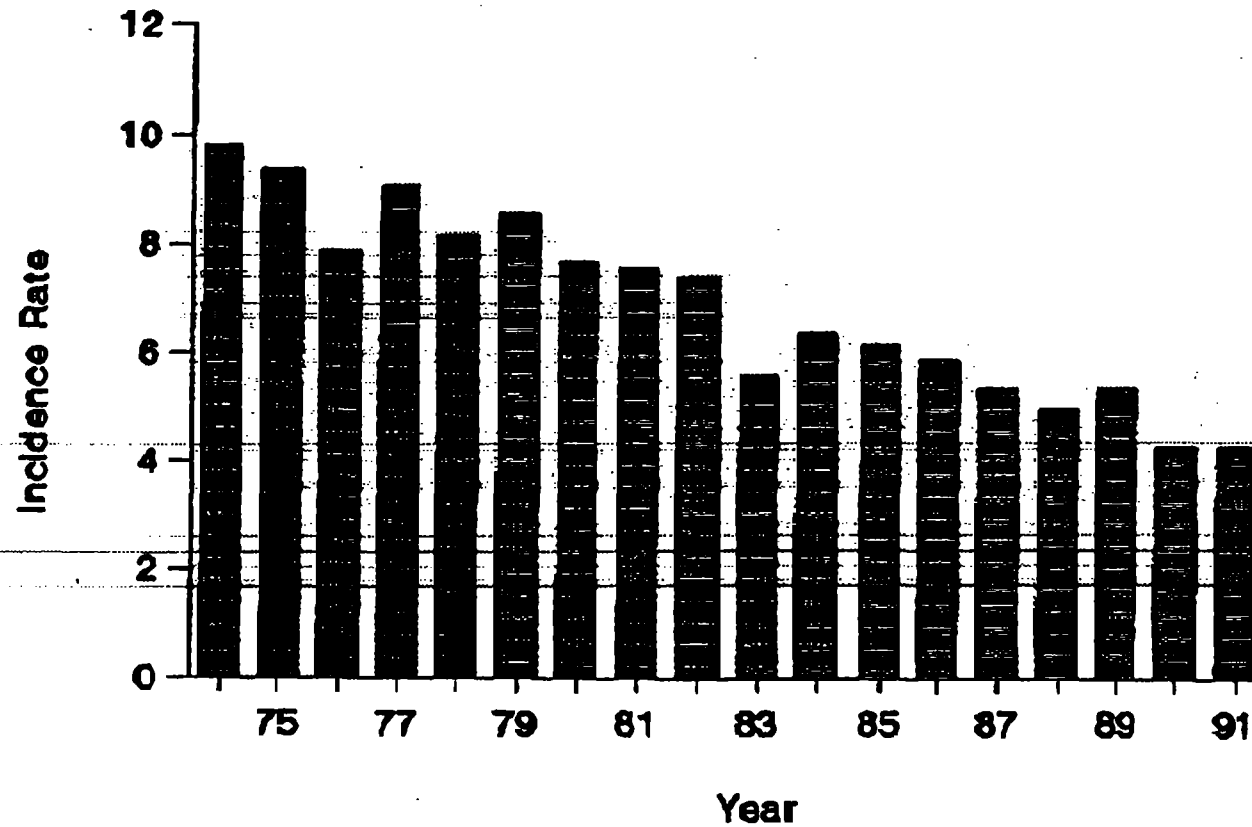
No. of Pages (including transmittal sheet):

COMMENTS:

OSHA REFORM TESTIMONY -- FINAL CHARTS

Fatality Rates Have Declined

Fatal Injury Rates 1974-1991



As a result of reporting changes, comparable data are not available for 1992.

Source: Annual Survey of Injuries and Diseases, B.I.
Rates per 100,000 workers
Prepared by OSHA OSHA-1000

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02/08/94

20:16

2-8-94 : 7:45PM :

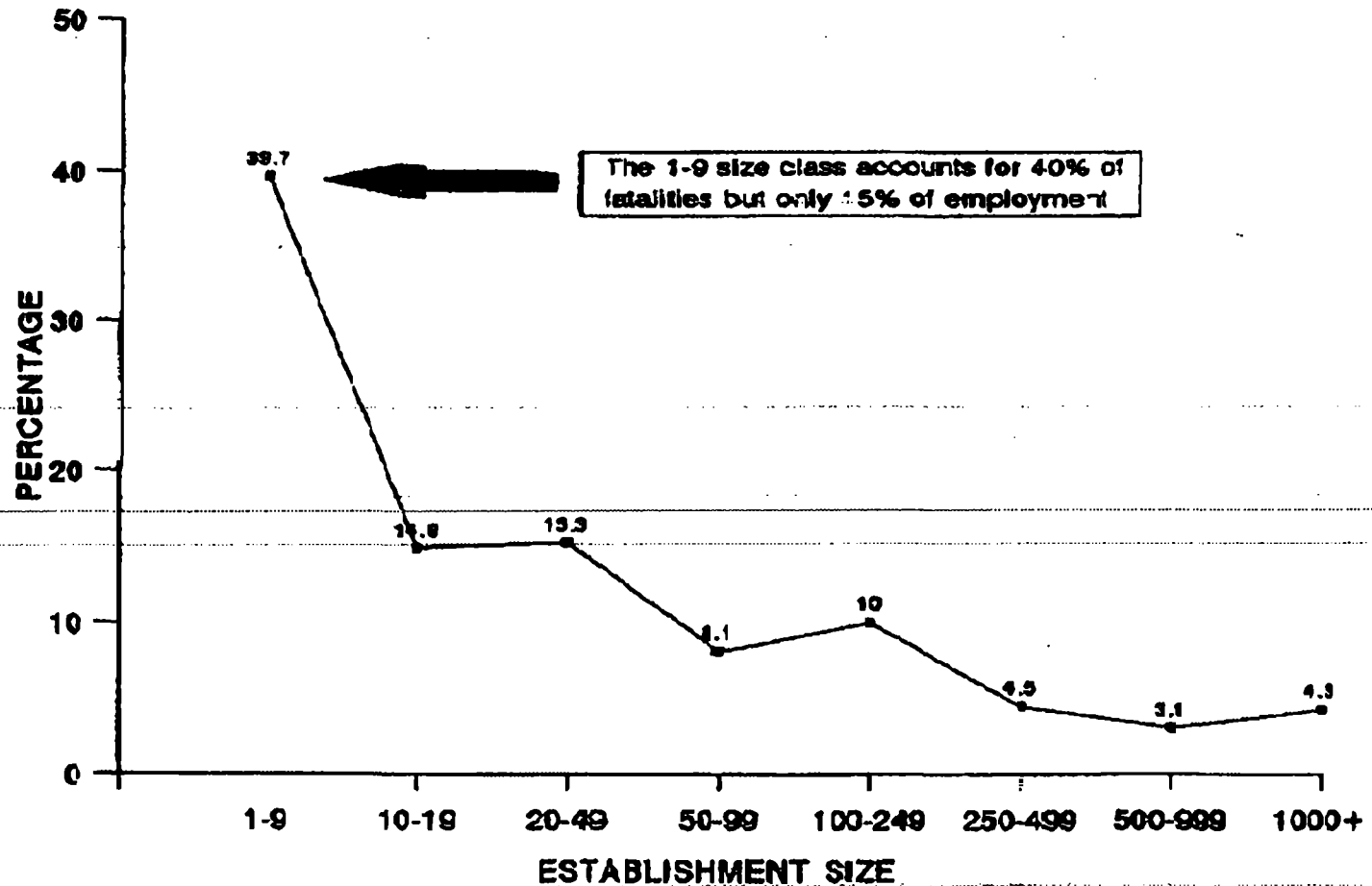
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202 385 0148: 2/ 8

028

PERCENT DISTRIBUTION OF FATALITIES REPORTED TO OSHA BY ESTABLISHMENT SIZE



The 1-9 size class accounts for 40% of fatalities but only 5% of employment

Small employers account for a disproportionate amount of fatalities reported to OSHA

Source: Bureau of Labor Statistics, Bureau of Census, and Bureau of Economic Analysis, 1990

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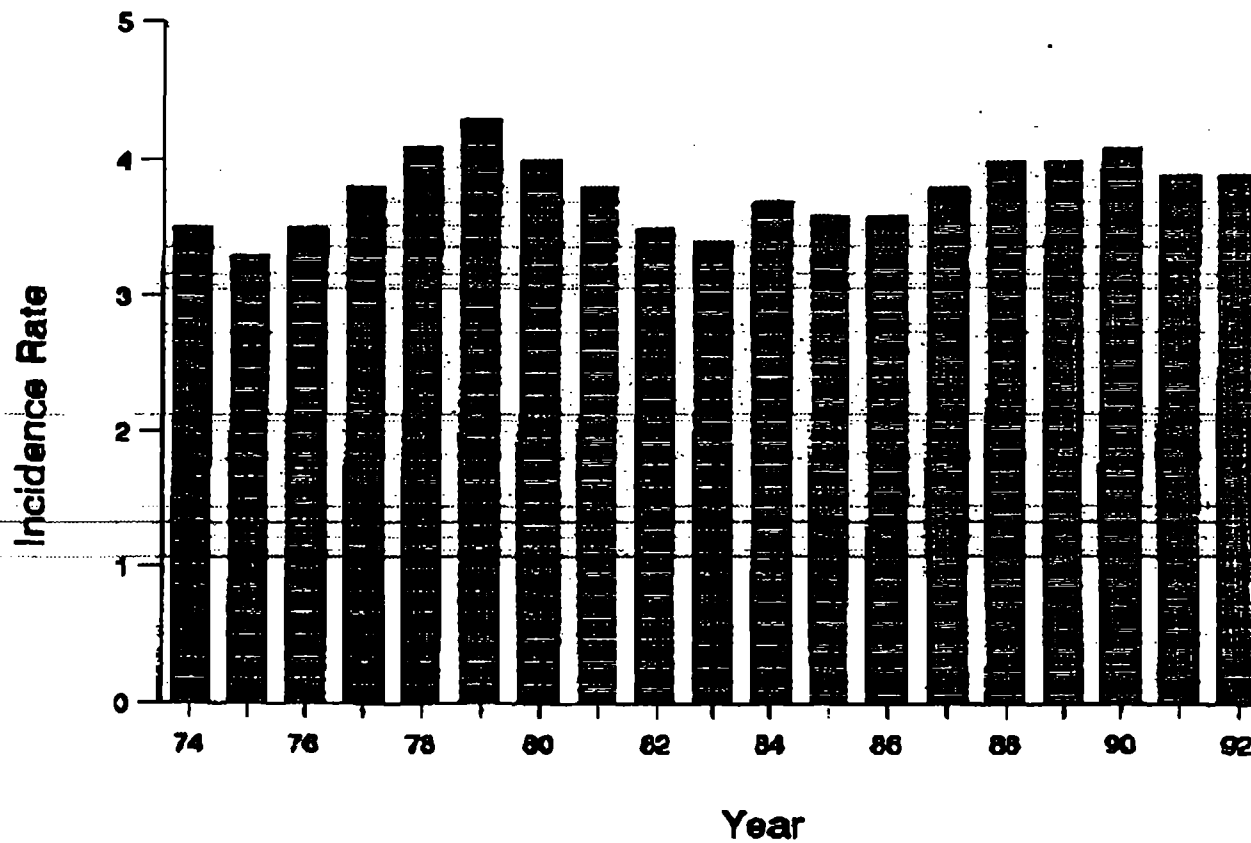
20:16
2-0-94 7:40PM

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029
202 083 0140: 0/ 0

Lost Workday Injury and Illness Rates Have Not Fallen

Lost Workday Case Rates 1974-1992



Source: Annual Survey of Occupational Injuries and Illnesses, BLS
Rates per 100 full-time workers
Prepared by BLSA, OSHA, 1/1993

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02/08/94

20:17

2-8-84 : 7:46PM :

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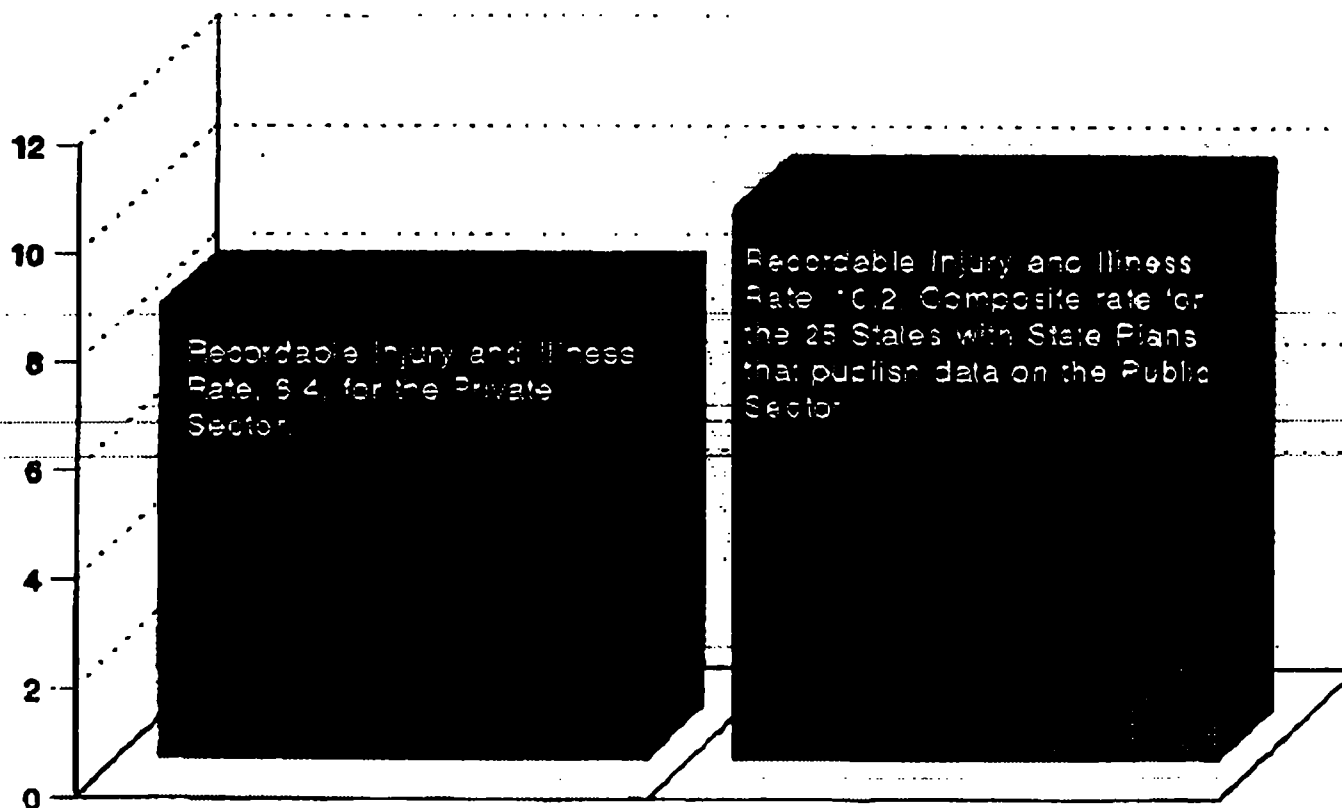
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030

RECORDABLE INJURY AND ILLNESS RATES

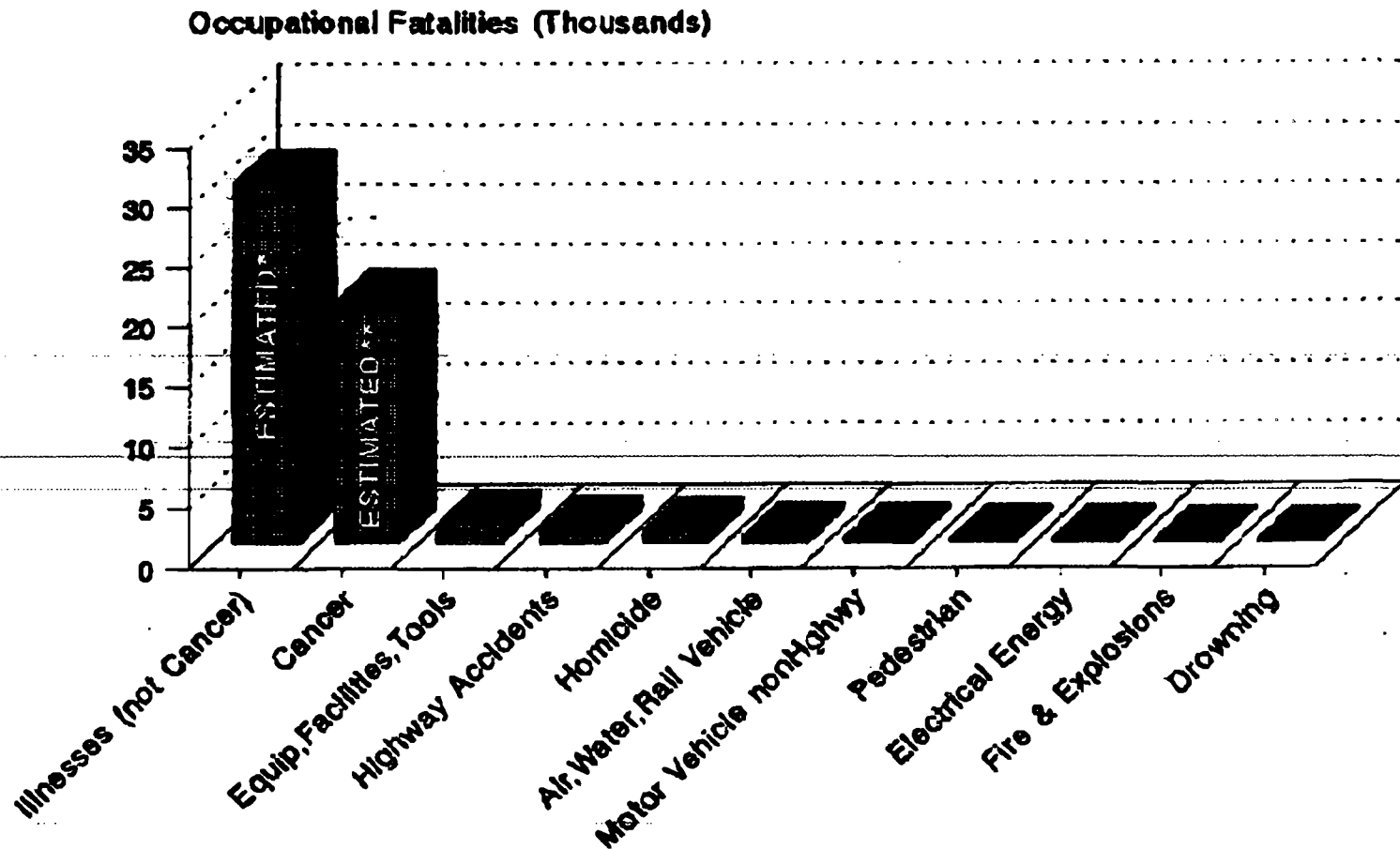
Public Sector and Private Sector, 1991

Injuries and Illnesses per 100 Full Time Workers



1991 BLS Annual Survey of Occupational Injuries and Illnesses (Data date 8/08/94)
Prepared by OSHA BLS/NIOSH

DEATHS FROM ILLNESSES & INJURIES ON THE JOB BY SOURCE, 1992



SLA, CENSUS OF FATAL OCCUPATIONAL INJURIES, 1992.
 (Equip., Facilities, Tools = falls, struck by object, caught in equipment, crushed by materials)
 * Landrum & Baker, SAMA 5/7/91 (50,000 workplace deaths decline per year, including cancer)
 ** CDC/NIOSH, NIOSH, HHS, 1990 (4-15% of cancer deaths attributable to occupation)

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2-8-94 : 7:40PM :

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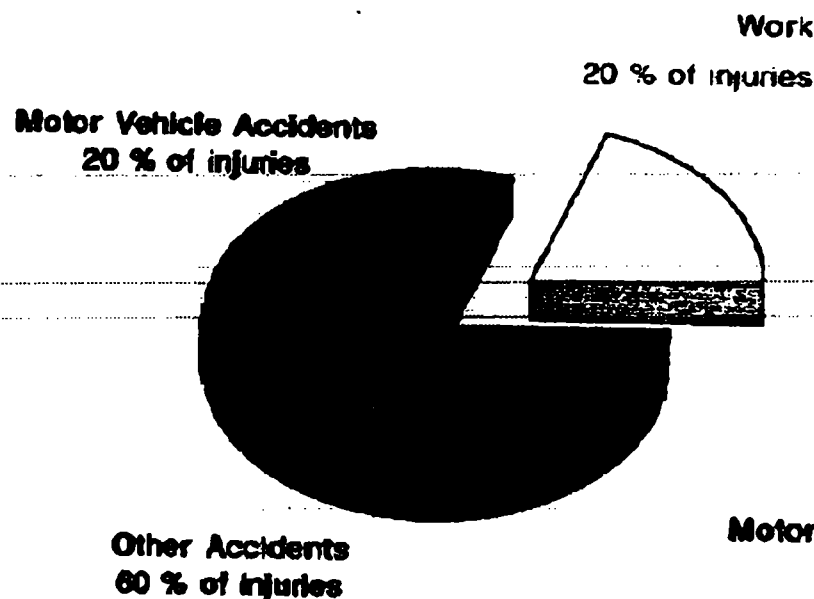
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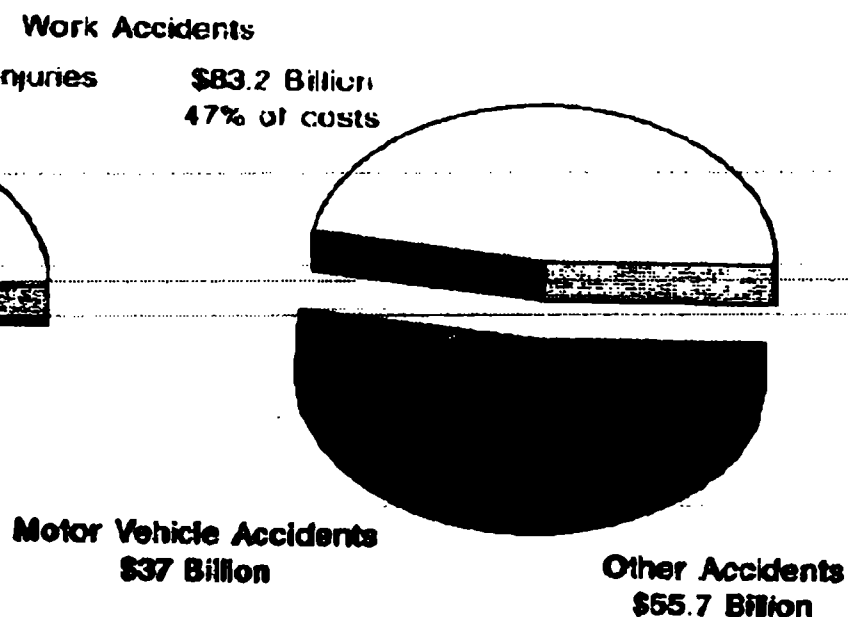
032

Work Accidents Account For Almost Half of All Injury Costs

Accident Frequencies



Accident Costs



Source: Compensation for Accidental Injuries to the United States
 Ford Institute for Civil Justice, 1994
 Prepared by OSHA OSHA-OSHA

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2-8-94 : 7:40PM :

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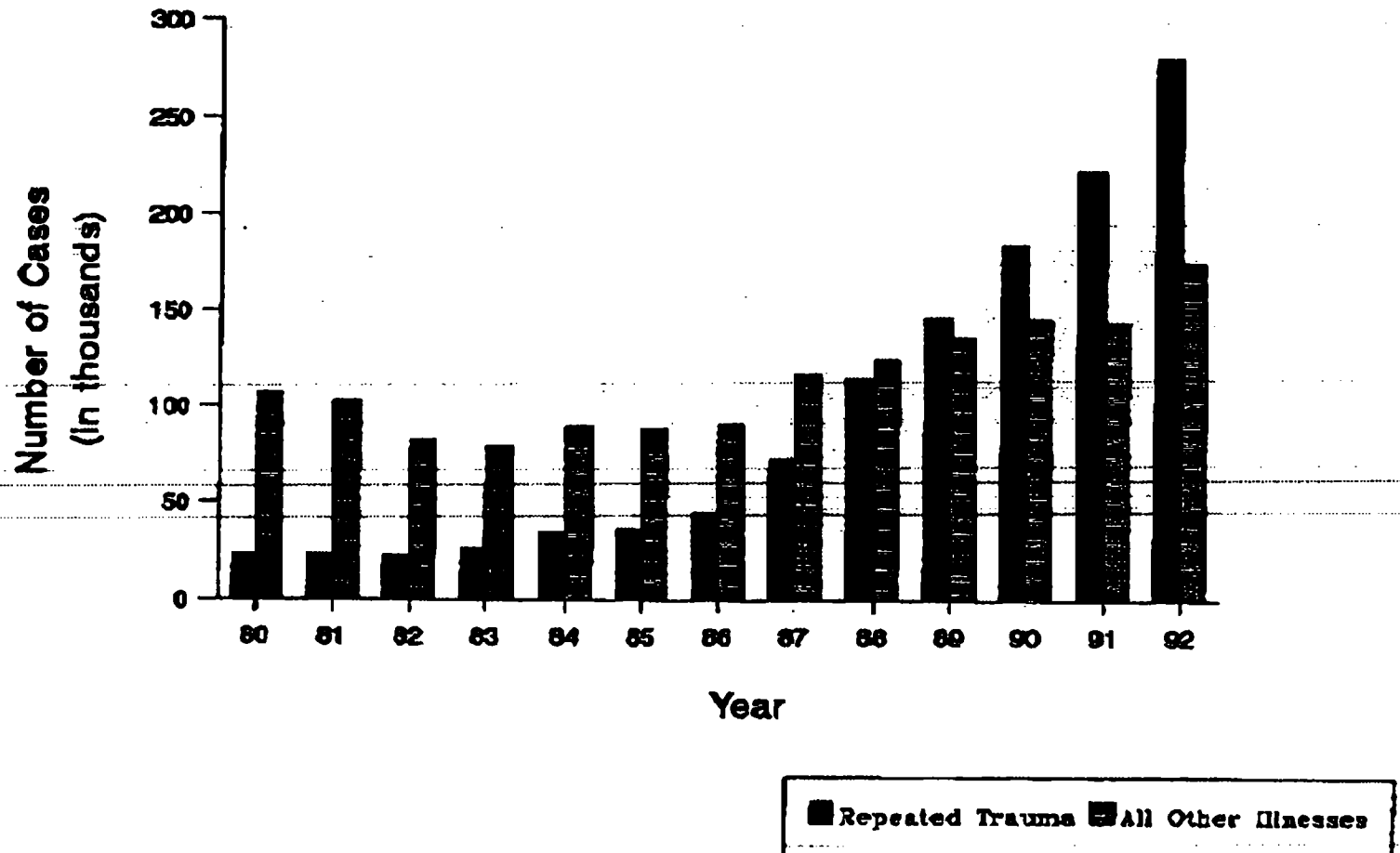
USDOL SOL LLC

202 365 0148: 7 / 8

033

Disorders Associated with Repeated Trauma are Rising

Reported Occupational Illnesses 1980 - 1992



Source: Annual Survey of Occupational Injuries and Illnesses, BLS
Prepared by OSHA, OSHA 1/93/00

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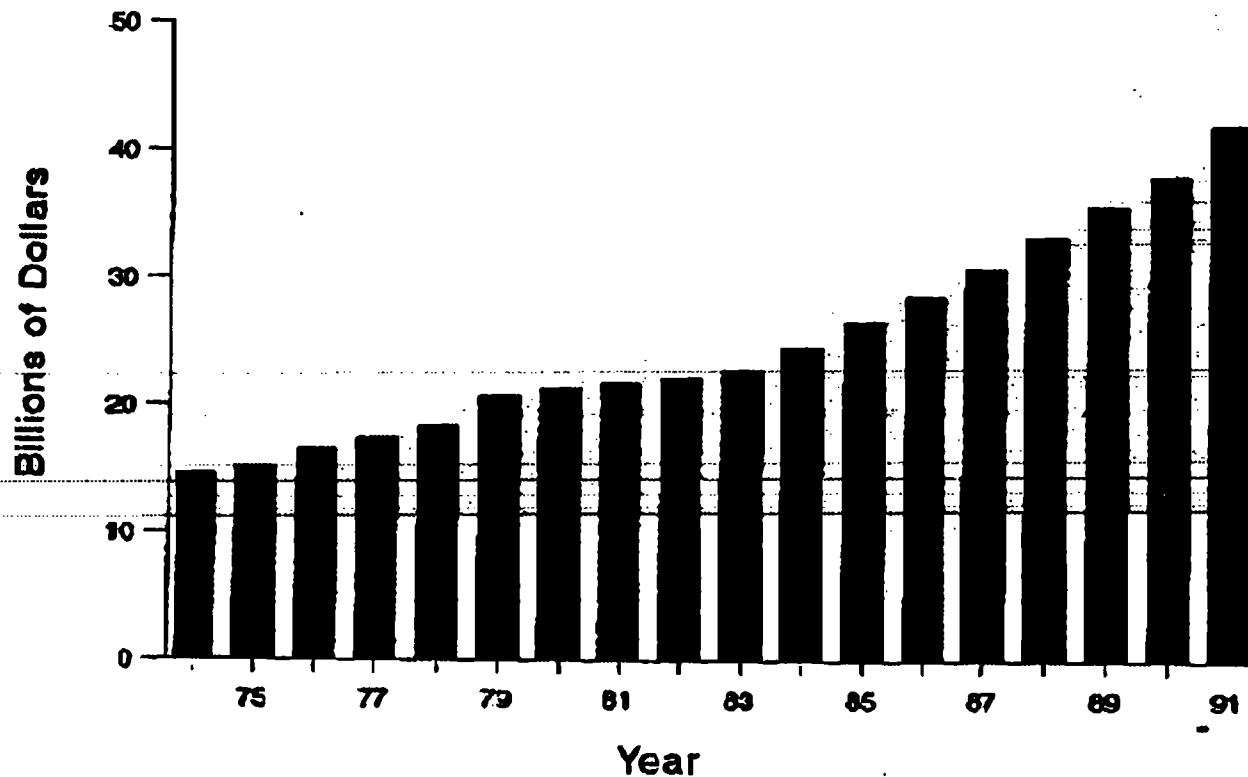
02/08/94

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2-6-94 7:48PM

OMB LRD/ESGG
USDOL SOL LLC

034
202 305 0140: P 0/ B

Workers' Compensation Disbursement Total Benefits Paid 1974-1991

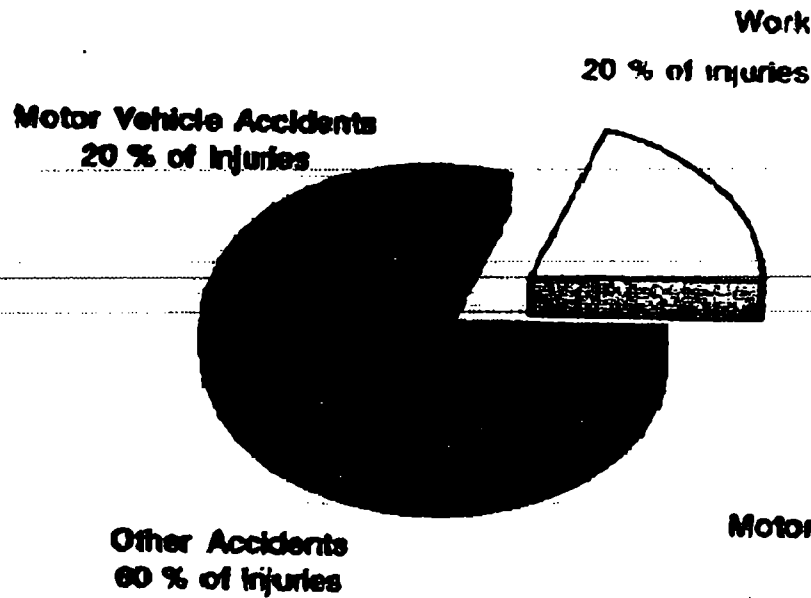


Source: Social Security Administration
1992 Release
Prepared by CIMA, OASDI, 1/1/92

NEW CHART #3 THAT THE SECRETARY WANTED — HE USED IT IN APRIL 1993
TESTIMONY — RELATES TO RAND DATA.

Work Accidents Account For Almost Half of All Injury Costs

Accident Frequencies



Accident Costs

Work Accidents

\$83.2 Billion
47% of costs

Motor Vehicle Accidents
\$37 Billion

Other Accidents
\$55.7 Billion

Source: Compensation for Occupational Injuries in the United States
Most Recent for 1992, OSHA
Report of David Collier, et al.

202 386 6148:1/1

USOOL SOL LLC

2-6-84 7:10PM
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02/08/94

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OMB LRD/ESGG

026

and deaths. Meanwhile OSHA is not sitting on its hands. OSHA is considering a number of new initiatives to enhance its effectiveness, such as changing data collection to target compliance resources more effectively, streamlining the inspection process to increase the agency's efficiency, and encouraging worker-management cooperation in occupational safety and health.

Mr. Chairman, you have taken an important step in presenting this comprehensive reform bill. It not only provides OSHA with new ways of accomplishing its goals; even more importantly it empowers employees and encourages employer-worker cooperation to undertake new ways of preventing injuries and illnesses in American workplaces.

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	OSHA reform Testimony [partial] (1 page)	2/8/94	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Michael Schmidt
OA/Box Number: 7344

FOLDER TITLE:

OSHA Testimony - 2/8/93

2013-0968-S

sb57

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

OSHA REFORM TESTIMONY**LABOR DEPARTMENT PARTICIPANTS****BIRTH DATE****Joseph Dear****Michael Silverstein****Ross Eisenbrey****Joseph Woodward****Bruce Cohen****William Lesser****Mary Ann Richardson**

(b)(6)

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

08-Feb-1994 09:51am

TO: (See Below)

FROM: Constance J. Bowers
 Office of Mgmt and Budget, LRD

SUBJECT: OSHA Reform Labor Appeal

The meeting is on for 11:00 in room 248 OEOB. Labor identifies the three major issues for resolution as:

1. Secretary Reich vs. Administration support for the legislation (p. 1).
2. Titles I and II (pp. 6-9 health and safety programs/committees) -- what is intended by our suggestion to work with the Committee to get more flexibility -- Labor feels the bill is sufficiently flexible.
3. Object to deletion of health standards criteria lanugage on page 14.

In addition, Labor has a myriad of other -- less important -- issues for resolution after the three major issues. I will provide a listing when available.

Distribution:

TO: Ellen S. Seidman
TO: Michael T. Schmidt
TO: Larry R. Matlack
TO: Pamela B. VanWie
TO: John F. Morrall, III
TO: Steven H. Semenuk
TO: Janet R. Forsgren

U.S. Department of LaborOffice of the Solicitor
Washington, D.C. 20210

February 8, 1994

FAX FOR: JANET FORSGREN
OMBFROM: BRUCE COHEN
DOL

SUBJECT: OSHA REFORM TESTIMONY

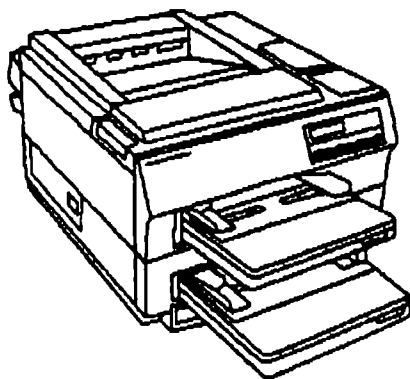
Based on the comments transmitted to us so far by Connie Bowers we have identified a number of issues on which we differ. However, given the fact that we only have an hour to discuss major issues we have highlighted the following three as the major policy issues which will need to be ironed out:

(1) Page 1: Secretary Reich's major comment on the draft that was presented to him was to change the first paragraph to state that he was announcing "the Administration's" support for the effort to reform the OSH Act. Connie has told us to return to "my" [meaning Bob Reich's] support. Why?

(2) Pages 8 and 9: OMB has provided language that OSHA should be given more "flexibility" with regard to safety and health programs and committees. What is intended here? What flexibility is OMB suggesting the Secretary needs? Such statements invite questions, and we do not know what OMB intends as an answer; nor do we know if we agree with the intended answer.

(3) Page 14: OMB would delete sentences two and three in the bottom paragraph regarding uniform criteria for health and safety standards. DOL wants them to remain.

As I stated, we have a number of other differences which hopefully we can deal with on a staff level following the meeting. Bill Lesser and I and others will be prepared to stay afterwards to try to wrap resolve as many as possible.



TELEFAX
MESSAGE

NO. OF PGS 5

TO: Connie Bowers

AGENCY: OMB

FROM: Ben Lesson

AGENCY: DOL

PHONE: 219-8065

SUBJECT: OSHA Testing Issues

FOR PROBLEMS REGARDING RECEIPT OF DOCUMENT, CONTACT:

AT PH#(202)-

U.S. Department of Labor
Office of the Solicitor
Legislation & Legal Counsel
200 Constitution Ave., N.W.
Room M-2428
Washington, D.C. 20210

OSHA REFORM TESTIMONY**ISSUES TO DISCUSS**

Page 1, first paragraph - "the Administration's support for your efforts to reform" the OSH Act.

Page 2, second paragraph - Add references to BLS data in first two sentences. In addition, in first sentence, delete "has not improved" and replace with "has been essentially stable".

Page 3, first paragraph - Show OMB the OTA reference to 20,000 cancer deaths.

Page 3, second paragraph, 4th line - DOL proposes to replace "manufacturing" with "construction" because it is a better example.

Page 6, top partial paragraph - Discuss Dickens suggested insert "We see this bill as a good step"

Page 7, first full paragraph - Clarify statement regarding Colorado dividends of 5 - 10% by redrafting sentence to read: "If they enroll in the program, they are eligible for automatic reductions of 5 to 10 percent of their workers' compensation premiums."

Page 8, second paragraph - Discuss suggested insert regarding possible need for more flexibility may be needed for programs. DOL would be provided regulatory authority to modify programs requirements with respect to classes of employers where it is determined that, in light of the nature of the risks faced by the employers' employees, such a modification would not reduce the employees' safety and health protection.

Page 8, last paragraph - Use of word "inconceivable" is appropriate.

Page 9, first paragraph - Delete "Again" from beginning of insert, rest of insert is O.K. This insert is not to be added to Dear's House testimony because H.R. 1280 has provisions on "Alternative Mechanisms for Employee Participation."

Page 10, first full paragraph - Delete second sentence and replace with DOL insert

In 1990, Oregon made the kind of public commitment to workplace safety and health that the S. 575 would make for the Nation. Oregon enacted a committee requirement similar to that in S. 575 but with broader application, raised its penalties for OSHA violations to Federal levels, and added 73 enforcement and consultation staff. The State also

strengthened its requirement for a written loss control program. From 1989 (the year before reform) to 1992, Oregon's fatality rate fell from 6.2 to 4.9 per 100,000 full-time workers and the total case incidence rate fell from 10.3 to 8.8 per 100 full-time workers. The rates of work-related injuries and illnesses in Oregon construction and manufacturing are now at all-time lows.

Page 10, second full paragraph, first sentence under Title III - Delete "correct" and replace with "close".

Page 11, first full paragraph - (1) Insert after the second sentence "The remaining States may need some assistance to develop public sector-only State plans." (2) Delete "OSHA has conducted a limited survey of other States" and replace with "Many other States". (3) Delete second to last sentence of paragraph "We found that substantial new resources"

Page 12, top partial paragraph - Modify beginning of DOT insert by deleting "place a jurisdictional cloud over" and replace with "call into question".

Page 13, first full paragraph - OMB suggested insert noting "standards for Secretarial action" and "judicial review modification" appear redundant with paragraphs that follow. What meant by insert?

Page 14, second full paragraph - Discuss Dickens' suggested changes to standards criteria discussion.

Page 16, top partial paragraph - Discuss OMB's requested change from "option" of rulemaking on feasibility of construction, maritime and agriculture PELs to suggestion that bill "require" rulemaking on the issue.

Page 16, first full paragraph - Regarding statement on musculoskeletal injuries, delete "stop the dramatic rise in" and replace with "reduce the alarming numbers of".

Page 17, second full paragraph - Reverse last two sentences of paragraph and slightly redrafted. We do not have number of inspections involving willful violations that also involved "serious bodily injuries."

Page 24, top partial paragraph - Discuss suggested insert raising notion that construction reporting requirements in the bill are more than OSHA can handle in light of regulatory authority given OSHA to define terms and limits of reporting requirements.

Page 25, first full paragraph - Discuss statement noting that the bill would appears to result in "net benefits to the economy".

Page 25, second paragraph - Discuss keeping workers' compensation data as well as Chart 8. This data was collected from Social Security Administration and was in Reich's previous OSHA reform testimony.

Chart 2 (Death from Injuries) - Discuss keeping chart as is and not combining various "transportation" deaths.

Chart 4 (Lost Workday Case Rates) - Discuss keeping chart as is. Data reported by BLS.

Chart 5 (State Public Sector) - Discuss replacement chart.

Chart 6 (Deaths from Illnesses and Injuries) - Discuss keeping as is and not combining various transportation deaths.

Chart 7 (Repeated Trauma) - Discuss keeping as is, was in Secretary's previous OSHA reform testimony.

Chart 8 (Workers' Compensation) - Discuss keeping as is. Data from the Social Security Administration. Chart was also in Secretary's previous OSHA reform testimony.

TO CONNIE BOWERS

~~TO: Bill Lesser
LabTV~~

EXECUTIVE OFFICE OF THE PRESIDENT

07-Feb-1994 04:30pm

~~TO:~~

Constance J. Bowers

FROM:

Pamela B. VanWise

Office of Mgmt and Budget, LVB

SUBJECT: Insert for OSHA Reform testimony

Please insert on page 22 after the last sentence in Title VIII the following new paragraph:

At present, the Department of Labor's Bureau of Labor Statistics collects confidential data to produce its Survey of Occupational Injuries and Illnesses and the Census of Fatal Occupational Injuries. The Department will study the effect of OSHA's collection of site specific data on the ability of the Bureau to collect accurate information from employers to produce both the Census and Survey, and we will share our findings with the Committee hopefully in the near future.

Thanks.

I haven't heard from Steve on the other numbers yet. I mailed him a reminder message. If we don't hear from him we will have to assume that the numbers are correct as is.