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001. memo	From Robert Rodriguez, to Carol Rasco, re: Dry Run Meeting from Labor [partial] (1 page)	02/22/95	b(6)

COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Michael Schmidt
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FOLDER TITLE:

Pre-briefing for Regulatory Reform meeting on Workplace Safety and Labor

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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]
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- b(1) National security classified information [(b)(1) of the FOIA]
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Pre-briefing for Reg Reform ~~22 Feb 1995~~
meeting on Workplace safety, 4:30-6:00pm
~~Meeting~~ & labor

PHOTOCOPY
PRESERVATION

Carol Rasco

THE WHITE HOUSE
WASHINGTON

April 3, 1995

MEMORANDUM FOR THE VICE PRESIDENT

FROM: Michael Waldman, Domestic Policy Council
Mike Schmidt, Domestic Policy Council

SUBJECT: Workplace Safety and Labor Regulatory Review Presentation

As co-chairs of the Workplace Safety and Labor Regulatory Review Team, we have attached a package of information from the Department of Labor that summarizes the Department's proposals. The Department's major regulatory reform initiatives are summarized in an attached memorandum to you from Secretary Reich. They focus on the Department's two major regulatory agencies: The Occupational Safety and Health Administration (OSHA); and the Wage and Hour Division, which implements the Fair Labor Standards Act.

As you will see from the attached information, regulatory reinvention is much further along in OSHA than it is in Wage and Hour, due to the fact that Assistant Secretary Joseph Dear has been working for almost two years on OSHA reinvention, while Wage and Hour has only been working seriously in this area since this reform process began late last year. Given OSHA's advanced work on regulatory reform, NPR is planning on focusing the next Regulatory Reform event in late April on OSHA's reform efforts.

In this memorandum we have provided you with some areas of concern that you should be aware of as you listen and react to the Department's presentation on Tuesday.

OSHA

Underlying OSHA's initiatives is a paradigm-shift, moving the locus of workplace safety from periodic inspections by government officials to a workplace-based system in which managers and workers take responsibility. The most significant result of this would be to implement nationally the "Maine 200" program, in which firms that implement safety and health programs effectively receive fewer inspections and fines from OSHA (In Maine, this has resulted in fewer fines and more safety). The Safety and Health Program initiative will assist firms in developing these programs as well. The White House and NPR have been working with OSHA to encourage them to define, with clarity, exactly what benefits businesses will receive by implementing an approved safety and health program (e.g., fewer OSHA inspections or reduced penalties). We recommend that you discuss this in detail with Administrator Dear, with an eye toward maximum impact for the April OSHA event.

Wage and Hour

Secretary Reich has personally requested that three important Wage and Hour regulatory reform ideas be taken off of the table:

- **FLSA Section 541 Reform**, which would modernize the outdated salary level test for overtime and possibly eliminate the salary basis test for overtime.
- **Updating Child Labor Law Regulation**, which would clarify and modernize existing regulations to bring them up to date and better able to meet the realities of the workplace of the 1990s;
- **A Review of the Comptime and 40 Hour Week Provisions in FLSA.**

Secretary Reich took this step because the GOP members of Congress have called vaguely for Wage and Hour changes, but have not yet spelled out their true intentions. All three of these areas were being discussed seriously by the Regulatory Review Team, and all three were still on the table as of the pre-briefing session with Carol Rasco and Sally Katzen several weeks ago. However, Secretary Reich now feels that the regulatory review process is not the proper forum to discuss the three regulatory issues listed above. He is especially reluctant to commit to anything on paper. However, he has promised to come to Tuesday's meeting ready to discuss any or all of these three areas with you. It may be a good idea to engage the Secretary in a discussion of these three areas -- without them, the Wage and Hour reform proposal has no really bold ideas.

The Department does recognize the need to go further in reforming Wage and Hour regulations, and has shown a willingness to work with NPR and White House staff on this front over the next few weeks.

General Labor Department Reform

The notion of reinventing the Department of Labor to create a "one-stop" regulatory process/function was considered worthy of serious consideration by both the White House and the Department of Labor members of the Team. A number of reforms in this area are possible; what they share is a desire to simplify the regulatory process for businesses and to become more efficient by cross-training inspectors and focusing attention on major violations. It was decided, however, that this reform should come under the NPR II process. Unfortunately, the NPR II process does not seem to have included this idea, and it seems to have slipped between the cracks.

**WORKPLACE SAFETY AND LABOR REGULATORY REVIEW PRESENTATION
AGENDA:**

- I. Overview and Remarks by Secretary Robert Reich
- II. Presentation by Assistant Secretary Joseph Dear, Occupational Safety and Health Administration.
- III. Questions and Answers and Discussion of OSHA's Presentation.
- IV. (If time) Presentation by Maria Echaveste, Wage and Hour Division.

APR - 4 1995

MEMORANDUM TO THE VICE-PRESIDENT

FROM: SECRETARY OF LABOR ROBERT B. REICH

RE: DEPARTMENT OF LABOR REGULATORY REFORM

I am pleased to present you with this memo detailing the Department of Labor's regulatory agenda. This memo is meant to serve as the basis for our March presentation and is designed to communicate four points: First, it outlines what we believe is at stake in the current regulatory reform debate. Second, it discusses some of the progress that OSHA and Wage & Hour have already made in reforming their regulatory structures. Third, it provides you with the framework that we hope to use as our model for future action. We look forward to working with you and your staff to refine and expand these regulatory reform proposals. Your leadership in creating a government that works better and costs less is appreciated - the times demand nothing short of this important goal.

I. WHAT'S AT STAKE

Simply put, the health, safety and livelihoods of millions of America's workers depend on our ability to make the best possible use of scarce public resources and give employers the flexibility to meet the demands of the new American economy.

OSHA has a vital role to play in protecting the health and safety of American workers. Since the agency was created in 1972, the number of workplace-related fatalities has decreased by half - OSHA is working. Without an energetic, clear-thinking public institution dedicated to the protection of American workers, the temptations for some employers to take the low road to profitability would simply be too great.

Similarly, the Wage Hour Administration is as important today as it was when it was created over 55 years ago - even though the economy has evolved, Wage & Hour's mission has evolved with it. Wage & Hour enforces the Fair Labor Standards Act to make sure that American workers are treated with the level of fairness and respect that should be earned by a hard day's work.

When we talk about regulatory reform, let's keep in mind that both OSHA and the Wage & Hour Administration are protecting ideals and realities that make the difference between a decent life and a hellish life for millions of American workers. We must change these

organizations to make them work better, and keep pace with a changing economy. But we must never retreat from the goals they embody.

- Regulatory reform is critical because the old way of doing business simply does not fit in with the new economic realities. Our public institutions must adapt to the new realities just as the private sector has been doing over the past two decades. Resources are scarce. The voters are rightly demanding that we do better with less. We heard that message in 1992, and have already taken action on it. But there's more to do.

II. PROGRESS TO DATE

At OSHA, Joe Dear is well along in reinventing his agency, an effort which recently earned OSHA one of your hammer awards. Other important efforts include the following:

Fundamental shift in OSHA's approach -- We have already started to implement a fundamental shift in the way OSHA approaches safety and health regulation. Given the gap between OSHA's resources and responsibilities, we are deemphasizing inspections and emphasizing cooperation and flexibility.

Better-targeting of OSHA resources -- In the construction industry, for example, at sites with safety and health programs and a record of responsible performance, we are focusing inspections on the four most serious hazards instead of spending time on the large number of less important regulatory requirements. These four areas account for 90% of construction-related fatalities.

Focusing on common-sense results -- We are training OSHA inspectors to focus on the identification and abatement of real workplace hazards, not bureaucratic inputs, and moving away from paperwork citations to more common-sense enforcement.

At Wage & Hour, Maria Echaveste is also well on her way to shifting resources from a "one size fits all" enforcement strategy to one that concentrates on industries with the most vulnerable populations of workers. Other Wage & Hour efforts include:

Increasing the use of public education and outreach - In 1993, Wage and Hour and California state labor officials began a joint program to dramatically increase the effectiveness of public education campaigns and enforcement activities.

Updating regulations - Wage and Hour has also undertaken a review of all of its regulations to make them fit today's employers and workers, to make it clear where state regulations apply and where federal regulations apply, and to get rid of regulations that no longer make sense.

III. FRAMEWORK FOR FUTURE ACTION

These are a few of our successes at OSHA and Wage & Hour. But throughout the Department we are developing other ways to reduce the regulatory burden on employers. Examples include: 1) By eliminating reports and reengineering programs, OFCCP will save employers over 5.8 million hours in reduced reporting time; 2) At the Pension Welfare Benefits Administration, we will save employers another 500,000 hours by replacing a paper reporting system with an electronic filing system; 3) And by streamlining the alien certification program and charging user fees, we now expect to save more than \$223 million over the next five years. But these changes don't go far enough. We need to do more. And we will. Briefly, we plan to use the following framework in our next phase of regulatory reform:

- 1) **Make the high road pay** -- We know that the majority of business people want to do the right thing by their workers. The high road to competitiveness is the right road for workers, and for the economy as a whole. But a minority of bad actors opt for the low road, seeking short-term advantage through lower wages and benefits, risky workplaces, and worse working conditions. Our rules and regulations have to make it pay to take the high road, by minimizing the burden on the responsible majority, and zeroing in on the cynical minority of businesses.
- 2) **Weed out rules that don't make sense and aren't needed** -- Nobody sets out to write rules that don't make sense. But times change. The economy evolves. Companies adapt. And sometimes, regulators just make mistakes. So any set of regulations accumulates unnecessary rules. That's normal. Our responsibility is to comb through the rules to get rid of what's not needed and update what's obsolete.
- 3) **Focus on results, not process** -- In government, as in business, it's results that counts. Are workers safe from avoidable injuries and illness? Are they fairly paid? There's seldom just one way to achieve those results. And when there's more than one way, there's often a better way. We need to learn from our own experience, and from the lessons we get from companies and workers, about better ways to achieve the results we value.

COMMON SENSE AT WORK--THE NEW OSHA

OSHA's mission is the same as it has been since its inception nearly twenty-five years ago--to save lives, prevent injuries and to protect the health and safety of America's working men and women. We've made progress. OSHA has helped to reduce the workplace fatality rate by more than 50% since 1970. Our protective standards have made the difference--literally between life and death--for millions of workers. And OSHA's enforcement has resulted in a decline in illness and injury rates in industries like construction and manufacturing where attention has been concentrated.

But OSHA is not remembered for its successes. It's known as the agency that banned the tooth fairy; that fines employees for rescuing their co-workers; and that prohibits workers from chewing gum while on a roof. Business complains about overzealous enforcement, while worker advocates complain about lax enforcement. From Philip Howard's *The Death of Common Sense*, OSHA is remembered as the agency that is so tied up in its own red tape that it has lost sight of its own mission.

Every day, 17 workers are killed in accidents and more than 100 die from diseases contracted at work. Accidents alone cost employers \$110 billion a year. So while OSHA's mission must remain the same, its means of achieving the goal of safe and healthy workplaces must change. OSHA is transforming itself from an organization focused on activities to one focused on results. The strategy to accomplish this change has three parts.

CHOOSE YOUR OSHA--PARTNER OR ADVERSARY

Creating incentives for employers to adopt safety and health programs will shift the emphasis from OSHA to the workplace, from regulations to results. Employers who demonstrate good faith by developing and implementing safety and health programs in partnership with their workers, who find and fix hazards, and who obtain lower injury and illness rates as a result will be treated differently than those who do not. Good faith employers will be the lowest priority for enforcement inspections, the highest priority for assistance and will receive up to 100% penalty reduction.

OSHA's Maine 200 and Focused Inspection in Construction programs are good examples of how incentives can generate impact. Nearly 60% of the employers participating in the Maine 200 program have reduced their injury and illness rates. The Boise Cascade Company's mill in Rumsford, Maine--once considered an egregious violator of health and safety standards--was able to reduce its illness and injury rate by 98%. OSHA is planning to implement this type of program nationally.

But for those employers who resist effective safety and health programs, or who consider their workers as expendable, OSHA will impose serious consequences.

COMMON SENSE COMPLIANCE: ENFORCEMENT AND REGULATION

OSHA is developing a safety and health program standard to serve as the foundation for its new strategy. The standard will spell out what the elements of an effective safety and health program are, so that employers know what constitutes a good faith effort. The standard will be developed with facilitators from the Keystone Center.

OSHA will use partnerships with labor and business organizations to set regulatory priorities, develop standards and evaluate results.

Much of the criticism of OSHA is based less on the regulations it enforces than on how it enforces them. OSHA will immediately suspend enforcement of standards involving paperwork violations and obsolete medical reports. The results of a comprehensive, page-by-page review of standards will be completed by June 1.

CHANGE OSHA'S CULTURE TO SERVE CUSTOMERS AND SAVE LIVES

To achieve success, OSHA must implement change where it counts--in the community. With the assistance of consultants from McKinsey and Company, OSHA is fine-tuning the reengineering of all its field offices. Developed by a team of front line workers--mid- and senior-level managers with an AFGE affiliate--the field office redesign is being pilot-tested in two offices. The design integrates new strategies for targeting, information technology, balancing enforcement and compliance assistance, and measuring performance.

A new performance measurement system will emphasize impact, such as lives saved, and injuries and illnesses prevented. Together with new personnel evaluation and recognition systems, these are the key elements for the transformation of OSHA.

Moving to an outcome-oriented performance measurement system will also establish the basis for changing how OSHA works with its 23 state plan partners. Instead of monitoring the states by comparing federal and state activities using 48 variables, OSHA will assess results and be able to reward innovations by states that increase the effectiveness of the state enforcement and compliance assistance programs.

Wage and Hour: Summary of Proposals

Wage and Hour is responding to the public's request that regulations make sense in today's workplace and that the amount of confusion and frustration which can accompany traditional enforcement practices be reduced by shifting from a "one size fits all" enforcement strategy to one that concentrates on industries with the most vulnerable populations of workers. Specifically, we propose the following:

Making the High Road Pay

1. **Certification of Employee Handbooks:** Establishing systems of employer-based responsibility is the key to Wage Hour's achieving its mission. Under this proposal, Wage and Hour will test the use of employer handbooks that lay out what employers and employees need to know to comply with the employment standards for their industry. Initially, the program will be conducted in the hotel/motel industry. As certain benchmarks are achieved the program will be expanded nationwide. Wage and Hour staff, working in partnership with one or two major employer associations, will certify a prototype handbook that the participating associations will be encouraged to distribute to their members. As an incentive to employer participation, participating employers will be exempted from targeted investigations and, if a complaint is filed, will have the opportunity to informally resolve the complaint without Wage and Hour intervention.

Weeding Out Regulations

1. **Eliminate Unnecessary Regulations:** In its first phase of eliminating out-of-date, unnecessary, and irrelevant regulations, Wage and Hour has identified for elimination over one-third (24 parts) of its existing regulations. In the short-term, enforcement staff will be directed to stop enforcing these provisions. These regulations will be formally removed following required regulatory procedures. This is a down payment. Longer-term, Wage and Hour will work with employer groups and its employees to review some of its longer and more complex regulations and recommend simplifications when possible.

Focusing on Results, Not Process

1. **Alternative Dispute Resolution:** In 1994 and 1995, Wage and Hour has experimented with the use of alternative procedures to resolve worksite disputes. A New Jersey pilot resolved 21 cases filed against agricultural employers in an average of about 3 months, a 90% percent decrease over the norm of 3 years. Wage and Hour proposes to expand the project to five states, and expand it to the rest of the country as soon as possible.

2. **Nationalize Self-Audits:** Wage and Hour has traditionally relied upon full investigations to determine whether employers are complying with its requirements. To leverage scarce inspection resources, qualified employers under this proposal will conduct a "self-audit" to ensure their compliance with various employment standards. This approach was successfully tested during the past year in several regions and will be expanded to the rest of the country this spring. Employers will be provided with information on the standards they are required to meet, perhaps as part of an employer-certified handbook. Upon conducting the audit, the employer agrees to pay any back wages owed to employees. Wage and Hour investigators will be available to guide the employer through the review process and will review the computations sent to Wage and Hour offices.
3. **Employee Performance Appraisal System:** Already, Wage and Hour has eliminated from its Investigator performance standards any quotas with respect to compliance activities. Instead, customer satisfaction and improved service to the public are being emphasized. During the coming year, investigators will be pushed to focus even more on satisfying the public's needs and not activity measures dictated by bureaucratic process.

OSHA

NATIONALIZE THE MAINE 200 CONCEPT

- Summary:* Use injury/illness data to identify employers with high rates of injuries and illnesses, interact with employers using an integrated program of outreach, technical assistance and enforcement, and measure the impact on the basis of reduced injuries and illnesses. Promote permanent comprehensive safety and health programs that lead to continuous improvement in workplace safety and health.
- Context:* OSHA has dealt with employers using a "one size fits all" approach. By using data intelligently, OSHA can deal with employers as individuals and improve workplace safety and health with a variety of interventions. When appropriate, employers will be given an opportunity to abate hazards before enforcement is used.
- Proposal:* OSHA will obtain site specific injury and illness data for a large number of employers. This data will be used with other information in problem solving conducted at the local level to identify and eliminate serious workplace hazards. Employers will be provided incentives to abate hazards and to develop a comprehensive safety and health program tailored to their workplaces and their problems. The safety and health program will include management commitment, worker participation, self inspection and correction of workplace hazards, including but not limited to hazards covered by OSHA's regulatory standards. OSHA will work actively with these companies to help them develop a good program. Employers who respond positively will receive services in the form of consultation, outreach and technical assistance. These employers will be monitored using random on-site inspections and regular progress reports, including injuries and illnesses. Employers who refuse to participate will receive enforcement inspections.
- Pros/Cons:* The program gives OSHA the capacity to conduct its operations in a more strategic and flexible manner. It encourages companies to improve working conditions, extend safety and health activities beyond the letter of OSHA regulations and make long-lasting changes. The program requires OSHA to obtain workplace specific injury and illness data, to work actively with each company to develop safety and health programs, and to monitor the firms over time.

Constituent Reaction: This approach represents a bold change of direction for OSHA, integrating the use of worksite specific injury and illness information, problem solving, non-enforcement interventions, and enforcement into a single, cohesive program and then using injury/illness data to measure the real impact of its efforts. Stakeholders in business, labor and academia have expressed support for the concept on numerous occasions.

Statutory Constraints: None.

Resources Required: The program will require resources to collect and analyze injury/illness data, to train OSHA field staff on the program, and to provide services to employers

OSHA

EXPANSION OF FOCUSED INSPECTIONS

- Summary:** OSHA will continue to emphasize and expand programs that focus on identifying and eliminating serious workplace hazards, and prove effective in reducing worker deaths, injuries and preventing illnesses. This will include the expansion of programs like the "Focused Inspection in Construction" program, and locally developed programs which target area specific safety and health problems.
- Context:** In 1994, OSHA implemented a program for inspecting construction sites that gave recognition to contractors who implemented comprehensive safety and health programs. Where an effective program was operating onsite, OSHA limited the inspection to a review of the top 4 hazards accounting for worker fatalities in the construction industry. Conversely, where a safety and health program was not established or was ineffective, a complete site inspection was conducted.
- Proposal:** OSHA will expand the focused inspection concept to other employment sectors to target the hazards directly related to the injury and illness experience of that industry. This will include the development of programs which focus on reducing excessive injuries and illnesses within identified industries.
- Pros/Cons:** These programs will promote the positive effect of occupational safety and health programs by demonstrating the link between effective programs and accident reduction.
- Constituent Reaction:** The Focused Inspection in Construction Program has already received positive reaction from the construction industry.
- Statutory Constraints:** None
- Resources Required:** This approach has the benefit of allowing OSHA to apply its resources in a limited way where effective employer efforts are evident, and to redirect inspection activity where it is most warranted.
- Timetable:** Expansion of focused programs is ongoing. The program could be expanded very quickly to a select number of general industries.

OSHA

QUICK FIX

<i>Summary:</i>	Provide a reduction in the penalty for safety and health hazards which are abated immediately during an inspection.
<i>Context:</i>	The OSHA inspection process does not mandate immediate abatement of hazards once they are recognized by an OSHA compliance officer. Because of the legal process, employers may continue to expose their employees to hazardous conditions for some time even after citations have been issued.
<i>Proposal:</i>	As an incentive to immediately abate hazards, an additional penalty reduction may be given for each violation an employer immediately abates in the presence of the compliance officer prior to the closing conference of the investigation.
<i>Pros/Cons:</i>	Pros - More efficient use of time available for conducting inspections. It is an incentive to the employer to immediately abate hazards and improve safety and health in the workplace. Cons - This could lead to abuses by compliance officers
<i>Constituent Reaction:</i>	Since implementation of the Quick Fix on October 1, 1993, the immediate abatement of hazards has increased by 17% in Parsippany, N.J. This has reduced worker exposure to serious safety and health hazards, but also has saved the area office considerable time and money in not having to verify employer actions in the abatement of hazards after a citation is issued.
<i>Statutory Constraints:</i>	None
<i>Resources Required:</i>	The additional time needed on site is offset by the time saving in tracking
<i>Timetable:</i>	This program is currently used by at least once office in every region. There are plans to introduce it to other area offices, after a review period, assuming it is successful.

OSHA

SAFETY AND HEALTH PROGRAMS RULE

Summary: OSHA is developing a rule for employer safety and health programs which will set minimum requirements for finding and fixing workplace hazards in order to reduce injuries and illnesses on the job. This rule for the first time will provide employers who want to understand and comply with OSHA regulations a clear starting place and a roadmap through the rest of the rules. It will be a flexible, performance based rule which is developed through partnership with business and labor. The rule, however, will be sufficiently specific so that employers will understand OSHA's basic expectations for finding and fixing hazards and will know how to meet these expectations.

With a comprehensive safety and health programs rule in place OSHA will be able to offer employers a clear choice: partners or adversaries. For employers who effectively use their health and safety program to find and fix serious, recognized hazards, OSHA will acknowledge successful performance by offering a variety of incentives including the lowest priority for inspections, the highest priority for assistance and the possibility of penalty reductions up to 100%. For those who choose to ignore this guidance and to not develop an effective program, OSHA will inspect more frequently and will view violations of specific rules much more seriously.

Context: The Occupational Safety and Health Act of 1970 requires that employers comply with specific regulations and also that they keep the workplace generally free of recognized hazards. While OSHA has developed a considerable number of specific regulations, it has never clearly articulated the minimum requirements for employers to meet their general obligation to keep the workplace free of recognized hazards. OSHA intends to work closely with business and labor groups to develop a rule to accomplish this.

Currently more than 10 states require employers to have comprehensive or partial safety and health programs. These have proven successful; the available literature suggests that employers can reduce injuries and illnesses substantially while at the same time enjoying a considerable financial return on their investment in safety and health. The experience in Oregon, for example, has been very positive. In 1991, Oregon extended its requirement safety and health programs and committees to all employers with 11 or more employees. Injury incidence rates in Oregon subsequently dropped while nationwide rates increased. Workers compensation premiums in Oregon also dropped following these changes and Oregon employers have saved more than \$5.1 billion. While there were several factors associated with these positive changes, including changes in Oregon's workers compensation programs and the state safety and health enforcement activity, it is widely believed that the requirement for employer safety and health programs has been a major determinant of change.

Proposal:

Develop a proposed rule for safety and health programs which will assist employers in the implementation of effective safety and health programs. Such programs work by requiring employers to: 1) Look for and find all safety and health hazards in their workplaces; 2) Have workers participate in safety and health programs and management be committed to the program; 3) Fix and control hazards identified and prevent other hazards from developing; 4) Train employees, supervisors, and management in safety and health issues; and 5) Conduct regular evaluations of the safety and health program's effectiveness.

OSHA is writing the proposed standard in plain, easy-to-follow language, which will give users flexibility to respond to their own worksite-specific conditions. OSHA will involve business, labor and other representatives to work on key issues, such as employee involvement, scope, management commitment, and hazard control.

Pros/Cons:

This effort will involve all interested and affected parties in setting the benchmark for occupational safety and health programs. As mentioned earlier, safety and health programs create the foundation for safer and healthier workplaces, and they have been shown to produce positive, cost-effective results that save lives and protect workers. A successful development, promulgation, and implementation of this standard is expected to result in the most important of all of OSHA's policy objectives - decreased injury and illnesses and accidents at the workplace.

It is critical, however, to understand clearly the delicate nature of the process at this moment. OSHA has worked carefully and cooperatively to bring many different stakeholders together to appreciate the specifics of this program. If OSHA is even perceived to be going forward with the specifics of this program without successfully having achieved a significant level of buy-in from its stakeholders, then the end result could be to set us back even further, i.e., to make the development of such a rule even more difficult to pass.

Constituent Reaction:

This effort has already attracted strong stakeholder support. OSHA's business/labor advisory committee gives top priority to this work. State governments strongly endorse this approach. Many business groups, individual companies and labor organizations have offered to help OSHA shape this rule. Some organization opposition is expected from groups such as the National Association of Manufacturers, which are generally opposed to all rulemaking.

Statutory Constraints: Rulemaking statutory provisions apply. If the moratorium is in effect, it would likely delay the publication of the proposal.

Resources Required: This effort will involve significant OSHA staff time.

Timetable: This is projected in the FY 1995 Regulatory Agenda, however, required procedural steps will extend the effort beyond the current fiscal year.

ELEMENTS OF OSHA'S 1995 REGULATORY STRATEGY

In order to build a new set of modern workplace safety and health standards which make "real sense to real people," OSHA is taking action aimed at:

1. Clear and sensible priorities

OSHA's new planning process will identify the top priority hazards/issues for OSHA action, based on input from more than 200 stakeholders.

2. A logical framework of basic building blocks

Business and labor strongly support OSHA action on a basic new Safety and Health Programs rule, which will establish a foundation for all future workplace safety and health efforts.

3. Action on confusing and out-of-date standards

OSHA will intensify ongoing efforts to review existing standards in order to revise or weed out obsolete and confusing rules.

4. Emphasis on plain language

OSHA teams will use modern techniques borrowed from the private sector -- such as business and labor "focus groups" and panels of OSHA field staff -- to help make new standards understandable to real people.

5. Greater use of cooperative partnerships

OSHA will increasingly seek opportunities for addressing priority hazards/issues through cooperative partnerships with business, labor, State governments, and other groups; these partnerships will use information and education programs, incentives, voluntary compliance, and other non-regulatory approaches to workplace safety and health.

SENSIBLE SAFETY AND HEALTH STANDARDS

ELEMENT 3: OUT-OF-DATE STANDARDS

AN OSHA ACTION PLAN

INTRODUCTION

In 1994, the Occupational Safety and Health Administration (OSHA) put together a new strategy aimed at building a set of modern workplace safety and health standards, developed through partnerships with stakeholders, which make "real sense to real people." This strategy encompasses five essential elements, (1) setting clear and sensible priorities, (2) establishing a logical framework of basic building blocks, (3) taking action on confusing and out-of-date standards, (4) emphasizing easier-to-read standards, and (5) using cooperative partnerships more often. OSHA has challenged itself to address each of these vital issues in order to establish a more effective regulatory approach and has already taken significant steps to address these essential elements:

- OSHA established and implemented a new planning process to identify sensible priorities for regulatory and non-regulatory action. This process invited OSHA stakeholder participation both in submitting written suggestions and in attending scoping meetings to discuss issues/hazards for OSHA to consider in the process.
- OSHA streamlined the standard promulgation process within the Agency to improve the effectiveness of standards, including encouraging more effective team participation in the development of standards
- OSHA has emphasized writing standards in more easier-to-read language and format. OSHA began this process with focus groups of managers, professionals, and front line workers to solicit their views on the readability of OSHA's standards and to test possible variations on readability level and format.
- OSHA has actively pursued stakeholder involvement in the rulemaking process by bringing interested parties together with OSHA to discuss the Agency's draft proposed approach to such issues as recordkeeping and ergonomics.

This particular action plan focuses on Element 3 which commits OSHA to taking action on confusing and out-of-date standards. While OSHA identified this goal and developed an action plan earlier this year, OSHA has expanded its original strategy to include the assignment by President Clinton to review all existing regulations page-by-page.

As a matter of sound public policy, OSHA has developed a regular system for identifying and revising/revoking rules or compliance instructions which are obsolete, confusing, inconsistent, or

trivial. Even good standards may fall into this category by changes in technology, regulatory actions of other Federal agencies, or court case law.

Twice before, OSHA has undertaken regulatory action to clean up its standards.

- o In 1978, OSHA revoked 607 standards – mostly outdated industry consensus rules adopted en masse when OSHA was first established in 1971.
- o In 1984, OSHA revoked 153 provisions containing advisory language judged to be non-enforceable.

Still, a number of OSHA standards are obsolete, confusing, inconsistent, or trivial because of the way the standards are written or the way they are enforced. As a result, these standards may do little or nothing to reduce workplace hazards and may represent a burden on responsible businesses.

OSHA has already begun to address this issue:

- o In April 1994, OSHA established a process for reviewing existing standards which includes a Request for Information published in the Federal Register every two years to ask for public comment of existing standards to determine how burdens could be reduced and how standards could be improved without sacrificing worker safety and health. The system aims to identify appropriate items every two years for revision, deletion, or other compliance action. Once these issues are identified, OSHA fully intends to continue to involve stakeholders in determining appropriate regulatory or compliance action.
- o An October 18, 1994, Federal Register notice announcing a public scoping meeting on standards priorities and inviting public comment on existing standards (implementation of April plan). Commenters included, over 110 companies, trade associations, labor unions, and professional associations. They suggested a variety of existing OSHA standards which should be revised or revoked.
- o Many regulatory projects already slated for OSHA's 1995 regulatory calendar would modify existing standards which are considered outdated or confusing, such as revision of the walking and working surfaces rule, consolidation of maritime requirements, and standards clarification for the construction industry.

The following action plan will take this initiative a major step forward by identifying specific problem rules for immediate attention. OSHA will also continue this effort through its current system to review existing regulations every two years. This will reduce the regulatory burden on business while at the same time promoting safety and health rules which make sense through creative new partnerships with stakeholders. The result will be better protection for America's working men and women, and a better deal for America's businesses.

Throughout the action plan, OSHA will emphasize stakeholder involvement. It is essential that business and labor groups, OSHA state government partners, and other key stakeholder groups are fully involved in modernizing OSHA's standards, both to target the right rules for action and to achieve maximum consensus. It is not enough, however, that OSHA just listen to these stakeholder concerns. OSHA must also take action which is responsive to the public's comments.

IMMEDIATE ACTION PLAN:

In the short-term, OSHA will continue to identify potentially obsolete, confusing, inconsistent, and trivial rules, determine which of these rules it can immediately clarify, modify, or suspend from its enforcement plan, and seek input from stakeholders, including small business, on which ones should be formally revoked, revised, or enforced differently. Key steps include:

- o April 5, 1994: Establish a system for reviewing existing every two years. (Completed)
- o October 18, 1994: Issue a Federal Register notice inviting public comment on existing OSHA standards which are obsolete, inconsistent, confusing, or trivial. (Completed)
- o April 1, 1995: Prepare list of 25 potentially obsolete, confusing, inconsistent, or trivial OSHA rules (or parts of OSHA rules) based on responses to the October public notice and a poll of OSHA front-line staff. OSHA will take into account those standards or provisions which have raised considerable stakeholder attention. [See attachment A - The attached are rare examples of poorly written or enforced standards and are not considered representative of the quality of all OSHA standards.] (Completed)
- o June 1: Determine for which of these 25 rules it can immediately suspend or change enforcement without a reduction in safety and health protections. For those which are determined to be appropriate for enforcement modification, OSHA will develop an OSHA Field Directive instructing OSHA compliance officers to suspend citation of the identified standards or provisions. This directive will be based on the Secretary's prosecutorial discretion, and will remain in effect until superseded by further directives.
- o June 1: Issue OSHA field directive to suspend or modify enforcement of the 25 rules determined to be appropriate for this action. (March 21, 1995, OSHA issued a compliance memorandum on Hazard Communication which clarifies when it is appropriate to cite consumer products or articles under the rule.)
- o June 1, 1995: Review all existing regulations page-by-page and submit list to President Clinton identifying further obsolete regulations.
- o September 1: Determine for which of these other rules it can immediately suspend or change enforcement without a reduction in safety and health protections. For those which are determined to be appropriate for enforcement modification, OSHA will develop an

OSHA Field Directive instructing OSHA compliance officers to suspend citation of the identified standards or provisions. This directive will be based on the Secretary's prosecutorial discretion, and will remain in effect until superseded by further directives.

- o **December 1:** Issue OSHA field directive to suspend or modify enforcement of the rules determined to be appropriate for this action. Formally transmit copies of directive to key Congressional committees.
- o **December 1:** Draft a Federal Register notice inviting public comment on whether OSHA should revoke or revise the identified rules or modify compliance instructions; also seek comments on whether OSHA should use cooperative partnerships with stakeholders to address these rules.
- o **December 1:** Consult with stakeholder groups, including standing advisory committees (focusing on small business concerns); AFL-CIO, major business groups, and state governments.
- o **January 1:** Issue Federal Register notice..
- o **March 1, 1996:** Initiate formal rulemaking with cooperative partnerships, to eliminate or revise obsolete, inconsistent, confusing, or trivial OSHA rules. This rulemaking will be expedited and completed as soon as possible. OSHA will issue revised field directives modifying/expanding the non-enforcement instructions for those rules which can be addressed in this manner.

OSHA

MEASURING OSHA'S PERFORMANCE

<i>Summary:</i>	OSHA is in the process of developing a performance measurement system that will shift much of the focus from tracking activities to monitoring results. A key component of this system is the customer service standards.
<i>Context:</i>	Improvement of the performance measurement system is an Agency goal. There are also legislative mandates that require Agencies to measure their performance.
<i>Proposal:</i>	In FY 1994, OSHA established an interim performance measurement system that tracked milestones for the Agency's goals and objectives. In FY 1995, improvements are being made to develop a more comprehensive system. An initial set of intermediate indicators of Agency performance will be implemented. These indicators differ from the activity measures used in prior years. The intermediate indicators for FY 95 are intended to address questions about the effectiveness and efficiency of OSHA operations, including customer satisfaction. Other potential Agency performance indicators are being designed and tested as part of pilot tests (for example, the Maine 200 project and the Area Office Redesign) to measure the impact of OSHA operations on the occurrence of workplace injuries, illnesses, and fatalities. The intermediate indicators for FY 95 are intended to address questions about the effectiveness and efficiency of OSHA operations, including customer satisfaction.
<i>Pros/Cons:</i>	The data to measure the outcomes of Agency interventions are not currently available. An initiative is planned to collect establishment-specific injury and illness data that would facilitate outcome measurement.
<i>Constituent Reaction:</i>	For the first time in the Agency's history, OSHA is not using the total number of inspections as a primary measure of the Agency's performance. New indicators are being developed that will provide a much broader perspective of OSHA's activities. Constituents have reacted favorably to OSHA's shift from measuring activities (number of inspections) to measuring outcomes.
<i>Statutory Constraints:</i>	The Chief Financial Officer's Act (CFO) requires the Agency to highlight major accomplishments against established performance indicators as part of the consolidated financial statement prepared by the

Department. The Government Performance and Results Act (GPRA), enacted in 1993, will phase in requirements for Agencies to develop strategic plans; to prepare annual performance plans, including performance indicators; and to report annually on actual performance compared to goals.

Resources Required: Development and operation of the system requires ongoing commitment of staff and dollars. Considerable coordination among various groups within the Agency are necessary to make the system workable.

Timetable: The system will be phased in over the next several years as the needed information becomes available on a systematic basis.

OSHA

GETTING RESULTS AND IMPROVING PERFORMANCE

- Summary:** Getting Results and Improving Performance (GRIP) is OSHA's comprehensive strategy to change the way we do business. The area office, as the front line of OSHA customer service, is the logical focus for enactment of this strategy. All of OSHA's reinvention initiatives--improving core business processes, revising performance measurement systems and updating information technology--have been combined in GRIP, to insure effective implementation at the front line.
- Context:** Because of limited resources and the increasing complexity of workplace safety and health issues, OSHA has not been able to keep pace with changing demands. If OSHA is to be successful in having an impact on Safety and Health, OSHA must dramatically change the way it does business.
- Proposal:** OSHA has examined the factors that inhibit the performance of the and looked at both its own operations and other public and private organizations for examples of how to better deliver service. This information was then used to develop a model area office, which will serve as a prototype for OSHA's 65 federal area offices. OSHA's model for changing the area office way of doing business has five main components.
- 1) **Strategy:** Expand the number of ways OSHA staff encourage compliance; Encourage area offices to develop specific plans to address the leading causes of death, injury and illness within their jurisdiction. Plans should include a variety of proactive interactions, not just inspections; Encourage and assist employers in creating comprehensive safety and health programs that include the participation of their workers. Compliance officers will be expected to identify opportunities to work with employers on how to make their worksites safer and healthier; Encourage area offices to create partnerships with the public and business community--and evaluate them on their success; Streamline the onsite inspection process by using new technology and by expanding focused inspection initiatives.
 - 2) **Use data to improve targeting efforts:** Gather data that identifies the leading causes of injuries, illnesses and fatalities in a given location--using site-specific information wherever possible; Analyze data to focus enforcement on the worst industries, businesses and hazards in that area.

3) Process - Implementation of process improvements: Identify and initiate systems and methods which improve service, conserve time and save money; Streamline the handling of formal and nonformal complaints; Streamline the handling of Freedom of Information Act requests; Streamline debt collection system; Streamline hazard abatement procedures.

4) Organization- Implementation of working teams of CSHO's and Supervisors: Strategic Intervention Team will use targeting initiatives and problem solving strategies to deploy limited resources and promote safety and health programs; Response Team will ensure effective and efficient response to workplace issues.

5) Measurement: Develop performance-based measurement system; Develop team-based performance appraisals; Develop pilot-implementation evaluation.

<i>Pros/Cons:</i>	Pros - ambitious and aggressive; well-received by Members of Congress; tremendous support from business and labor stakeholders Cons - Ambitious and aggressive; 2/3 of reorganization efforts fail, according to McKinsey.
<i>Constituent Reaction:</i>	GRIP is ambitious and aggressive in content and in timing, and has Reaction been well-received by Members of Congress. OSHA's business and labor partners have participated in the development of this proposal from its inception and now have a significant stake in its success.
<i>Statutory Constraints:</i>	Congressional approval for the redistribution of funds necessary to proceed with the proposal was granted by Congressman John Porter, Chair of the Appropriations Subcommittee, contingent on frequent appraisal of the pilot programs' progress.
<i>Resources Required:</i>	Travel costs for 10 OSHA field personnel. Extensive training for area office staff Information technology costs
<i>Timetable:</i>	Two area offices have begun pilot programs. Roll out of other area offices is entirely contingent on OSHA's FY 96 budget.

OSHA EXEMPLARY EMPLOYER PENALTY POLICY

- Summary:** This policy for exemplary employers encourages the implementation of effective safety and health programs by providing significant penalty reductions, assuming certain conditions are met. Exemplary employers are proactive in that they demonstrably have made a genuine commitment to employee safety and health in their establishments prior to, and irrespective of, an OSHA inspection.
- Context:** A penalty policy that allows OSHA to acknowledge and promote effective onsite safety and health programs will ultimately promote workplace safety and health, and more fully recognize individual employer efforts.
- Proposal:** Exemplary employers may be given significant penalty relief in order to encourage the implementation of effective safety and health programs in the workplace. The Compliance Safety and Health Officer (CSHO) will determine the effectiveness of the safety and health programs based upon review of available data, documentation, and walkaround observations. Employers will be given "good faith" reduction based on the implementation of the four safety and health program elements (1) management commitment and employee involvement, (2) worksite analysis, (3) hazard prevention and control, and (4) safety and health training. These elements will be evaluated in accordance with the 1989 Safety and Health Program Management Guide lines, Federal Register, Vol. 54, No. 16, page 3904, January 26, 1989. Employers will also be given a "history" reduction based on whether the workplace has a history of (1) no serious, willful, repeat, or failure to abate violations in the last three years, (2) no previous inspection, and (3) an LWDI rate significantly less than the national average. Employers generally will be ineligible for penalty relief when (1) a fatality or catastrophe has initiated an inspection, (2) when the employer is cited for willful, repeat, failure to abate violations, or high gravity serious violations in the current inspection, or (3) when the employer is in arrears in paying previously assessed OSHA penalties.
- Pros/Cons:** This policy gives OSHA flexibility in proposing penalties, and encourages companies to be proactive in implementing effective safety and health programs in their workplaces.
- Constituent Reaction:** This policy represents a bold change in OSHA's recognition of the employer who is a "good actor". Stakeholders in business, labor and academia have expressed support for safety and health programs on numerous occasions.

- Statutory Constraints:* There are statutory constraints that will have to be considered in implementing and developing this policy.
- Resource Required:* Implementation of the policy will require CSHO re-training on the elements of safety and health programs. The training will be based on the 1989 Safety and Health Program Management Guidelines (see Federal Register, Vol. 54, No. 16, page 3904, January 26, 1989).
- Timetable:* This policy could be implemented nationwide once details of the policy are determined, and the training is completed.

WAGE AND HOUR

EMPLOYER HANDBOOK CERTIFICATION PROGRAM

- Summary:** The proposal is a pilot program in the hotel/motel industry. Under the program, employers or their associations may voluntarily submit their employee handbooks to Wage and Hour for review and certification of the FLSA and FMLA aspects of the handbook.
- Context:** Customer surveys show that a major concern of employers is understanding how Wage and Hour laws apply to them and what the employer needs to do to be sure that they are in compliance with the law.
- Proposal:** This program will provide a vehicle for most employers, at relatively low cost to the employer, to have their payroll practices reviewed in a non-adversarial environment and have the knowledge that their practices comply with the law. Besides having the knowledge that their practices are approved, employers will benefit by knowing that their establishment will not be subjected to a targeted investigation, and if a complaint is filed, the employer will have the opportunity to informally resolve the complaint without Wage and Hour intervention.
- Pros/Cons:** This effort will address a major concern of employers, and will further employee knowledge by encouraging many small employers to develop employee handbooks.
- Constituent Reaction:** Although this addresses a major concern of employers, employees are often afraid to have their complaints raised with their employers, and this approach may greatly affect employees seeking to assert their rights under the FLSA.
- Statutory Constraints:** None.
- Resources Required:** Wage and Hour review of employee handbooks will be a significant resource burden, but we will try to mitigate that burden by working with major employer associations to develop prototype handbooks.
- Timetable:** This project will be piloted beginning October 1, 1995.

WAGE AND HOUR

ELIMINATION AND SIMPLIFICATION OF REGULATIONS

- Summary:** Identify and eliminate regulations that are out-of-date, unnecessary, or irrelevant.
- Context:** Wage and Hour has not revised or updated a great majority of its regulations. As a result, many regulations, or parts of regulations, are out-of-date or inapplicable to today's world.
- Proposal:** In a first phase of eliminating out of date, unnecessary, or irrelevant regulations, Wage and Hour has identified for elimination 24 parts (of 75 parts) of its regulations. Two-hundred and seventy-four of the 1165 total pages of regulations would be eliminated -- almost 25% of the total. Weekly payroll reporting requirements under the Davis-Bacon and Copeland Acts cannot be eliminated without statutory change.
- In a second phase, Wage and Hour will review some of its longer and more complex regulations for simplification. For example, Wage and Hour regulations include 100 pages relating to retail and service establishments. Wage and Hour will identify parts of these regulations that can be removed or simplified.
- Pros/Cons:** Pros: Wage and Hour will have fewer regulations. Cons: The elimination of rules setting forth the application of the law to specific contexts may cause criticism from employers who prefer specificity.
- Constituent Reaction:** Elimination of hundreds of pages of regulations should receive wide support from the general public and employers. As stated above, however, in some cases both employers and employee groups want greater specificity in the regulations.
- Statutory Constraints:** A Notice and Comment period is usually required before any regulation can be deleted or altered. Additionally, some regulations cannot be eliminated unless the statute in question is changed (for example, Davis-Bacon and Copeland reporting requirements).
- Resources Required:** The second phase of this effort would require significant staff time.
- Timetable:** Wage and Hour has already identified 24 parts of regulations for elimination. We have begun work on the second phase and expect to make significant progress by June first.

WAGE AND HOUR

ALTERNATIVE DISPUTE RESOLUTION

- Summary:* Expand a pilot Alternative Dispute Resolution project to five states. This is especially urgent considering the Dunlop Commission Report, which observed that between 1971 and 1991, litigation in Federal Courts increased fourfold.
- Context:* The formal administrative appeals process in cases involving fines assessed by Wage and Hour against farmers in farm labor cases takes an average of two to three years to resolve. Typically, cases involving small assessments end up getting dropped.
- Proposal:* Expand a New Jersey pilot project that resolved cases filed against agricultural employers in about three months, instead of three years. Wage and Hour will not expand this project to cases involving back wages, because (1) over 95% of these cases are resolved at the administrative level already, and (2) employees' back wages are nonnegotiable.
- Pros/Cons:* Pros: If successfully expanded, this initiative should have a very positive impact on the administrative settlement of cases that otherwise might be dropped or substantially delayed at the Solicitor's office. Cons: The success of this approach requires third-party participation. Successful expansion of this pilot will be contingent upon the cooperation of employer groups.
- Constituent Reaction:* This model is very bold because it gives employers an impartial forum at the administrative level. Employers who have participated in the pilot have been very positive about this type of forum. Employee groups may not be as positive and may seek involvement.
- Statutory Constraints:* This proposal is a methodology to process cases at the administrative level. As such, it does not supplant or replace the formal administrative appeals process.
- Resources Required:* Expansion of the pilot would require the investment of staff time in each state which begins this project. Additionally, because the pilot operates in local farming communities, Wage and Hour participants would require funding for travel and other miscellaneous expenses.
- Timetable:* Wage and Hour could begin its search immediately for states in which to replicate this project.

WAGE AND HOUR

SELF-AUDIT ENFORCEMENT TECHNIQUE

<i>Summary:</i>	Implement the "self-audit" enforcement technique nationwide.
<i>Context:</i>	Wage and Hour has traditionally relied upon the "full investigation" enforcement technique. For each employer audited, this technique required a site visit, on-site records check, on-site employee interviews, and face-to-face negotiations with the employer.
<i>Proposal:</i>	Expand the use of the "self-audit" enforcement technique, which to date has been used sporadically and locally in Wage and Hour. Employers are asked to audit their records for violations and to compute and pay any back wages discovered because of violations of the law. Wage and Hour investigators guide the employers through this process, usually via phone conversations and spot-checks of computations sent to Wage and Hour offices.
<i>Pros/Cons:</i>	Pros: When used correctly, the average self-audit results in more money to employees and in less time spent by Wage and Hour than the average full investigation. Employers benefit by not having Wage and Hour investigators making site inspections. Cons: This technique is applicable only in certain narrow situations. Employers who have a track record of violations, for example, will not be asked to conduct self-audits.
<i>Constituent Reaction:</i>	Employer groups should be supportive of this initiative. If Wage and Hour can continue to provide evidence that the self-audit technique generates greater collections of back wages and can show that it does have some oversight of the process, then employee groups may become supporters.
<i>Statutory Constraints:</i>	We would not conduct this type of audit for Davis-Bacon investigations or other audits involving complex statutory requirements, such as "whistleblower" provisions.
<i>Resources Required:</i>	As noted above, this methodology, when applied correctly, usually saves resources.
<i>Timetable:</i>	Guidance to the field regarding the nationalization of the self-audit technique could be done immediately.

WAGE AND HOUR

IMPROVE PERFORMANCE APPRAISAL SYSTEM

- Summary:** Continue to improve the performance appraisal system for Wage and Hour Investigators.
- Context:** In the past, Wage and Hour has emphasized enforcement activity in its standards, for example, numbers of investigations completed, amount of back wages collected, number of employers audited, etc. While these statistics continue to be important data, Wage and Hour is beginning to shift its focus from ticket-writing to voluntary compliance.
- Proposal:** Wage and Hour has already changed its Investigator performance standards by eliminating enforcement quotas in the standards. Instead, customer satisfaction and improved service to the public are the focus. For example, Investigators are now evaluated on how well they provide "effective and timely service to customers," and on how effectively they communicate "orally and in writing with . . . complainants, employers, and other customers."
- Wage and Hour is interested in continuous improvement in its performance standards to further encourage Investigators and other workers to identify customer needs and provide the best possible service to them.
- Pros/Cons:** Pros: If performance standards continue to be altered to reflect an emphasis upon results, Wage and Hour Investigators will be held increasingly accountable for satisfying the public's needs, not internal accounting requirements. Cons: Any alterations to the performance standards will require formal approval by the employee unions.
- Constituent Reaction:** Any initiative that will greatly improve customer service is bold. Presumably, all constituents will be supportive of any reform that results in improvements in services.
- Resources Required:** The only resources required for this initiative would be an investment by Wage and Hour staff in studying the current system, drawing up new standards, and negotiating over their terms.
- Timetable:** Work on new standards could begin immediately.

OFCCP

Reengineer the Affirmative Action Program

<i>Summary:</i>	Reduce from 16 to 4 the factors used to determine the availability of minorities and women for employment.
<i>Context:</i>	Program Summary, (S 60-2.14) requires contractors and subcontractors to summarize their Affirmative Action Plans (AAPs) and to submit these summaries to the Director annually. After several years of compliance reviews, OFCCP has identified 4 (of the current 16) critical factors in the AAPs.
<i>Proposal:</i>	Reduce from 16 to 4 the factors required to be submitted. Contractors will only have to create an action-oriented plan if their participation does not approximate availability. Further, it is proposed the requirement contractors reconfigure their workforce by artificially composed job groups be eliminated. Unless selected at random, contractors with satisfactory submissions will be exempted from further audit.
<i>Pros/Cons:</i>	Pros: Contractors will save 4.5 million hours per year. The integrity of the program will not be sacrificed. OFCCP will continue to schedule reviews based on special initiatives and random selection.
<i>Constituent Reactions:</i>	Contractors should be pleased with reduction of a items in a required filing. Community based organizations could view any change in regulations as a weakening of affirmative action.
<i>Resources Required:</i>	Start up costs are estimated at \$3 million. These include developing and testing the statistical model used for analysis, designing the contractor identification and notification system and equipment purchases.

OFCCP

Certification of Nonsegregated Facilities

<i>Summary:</i>	End requirement for certification of nonsegregated facilities.
<i>Context:</i>	Prior to being awarded a contract, or Federal financial assistance involving a construction contract, all prospective contractors must submit certification that they do not maintain facilities segregated on the basis of race, color, religion onational origin.
<i>Proposal:</i>	Withdraw requirement for written certification.
<i>Pros/Cons:</i>	Pros: The proposal will save contractors 875,000 hours annually. And workers will still receive the same protection. OFCCP will still hold compliance reviews and investigate complaints. Cons: Contractors will not have a continuous reminder of the law.
<i>Constituent Reactions:</i>	Contractors should be pleased with elimination of a required filing. Community based organizations could view any change in regulations as a weakening of affirmative action.
<i>Statutory Requirements:</i>	Must publish a proposal for notice and comment and then a final regulation.
<i>Resources Required:</i>	Minimal

OFCCP

Monthly Utilization Report for Construction Contractors

- Summary:** Eliminate the required submission of the Monthly Utilization Report by construction contractors.
- Context:** The monthly Utilization Report, CC-257 is required of approximately one third (or 35,000) of the covered construction contractors every month. The CC-257 reports the employment hours of minorities and women in the construction trades for that contractor for the month. Only contractors in jurisdictions which have been covered by a hometown or imposed plans, or a special bid condition are required to report. These reports are used to schedule contractors for compliance reviews.
- Proposal:** Eliminate the required submission of the Monthly Utilization Report by construction contractors.
- Pros/Cons:** Pros: Approximately 400,000 hours per year would be saved by contractors. \$190,000 in processing costs would be saved by the Federal government. Cons: OFFCP would not have affirmative action results data to use in its targeting. However, it will still have contract information, complaints and community concerns.
- Constituent Reactions:** Contractors should be pleased with elimination of a required filing. Community based organizations could view any change in regulations as a weakening of affirmative action.

PWBA Automate Filing of Form 5500 Annual Report

- Summary:** Redesign the 5500 processing system to significantly expand the number of reports filed electronically.
- Context:** PWBA regulates the management of approximately 700,000 private sector pension plans and 4.5 million welfare benefit plans whose assets total more than \$3.2 trillion. These enforcement and regulatory responsibilities comprise 80% of PWBA's budget (over \$65 million). Currently, it costs the federal government (DOL, IRS, PBGC) over \$20 million per year to process the Form 5500 Annual Report.
- Proposal:** Redesigning and re-managing the Form 5500 by implementing electronic filing.
- Pros/Cons:** Pros: It is estimated that over 507,000 hours per year will be saved by employers. \$7 million can be saved by the year 2000. Cons: Because the Form 5500 is a multi-agency form, the success of this initiative will depend on the IRS cooperating with DOL agencies (PWBA & PBGC) in the planning and implementation.
- Constituent Reactions:** It is estimated be generally accepted by the regulated community because it will not impose substantial new burden
- Resources Required:** Approximately \$10 million investment but a net savings of \$7 million over 5 years. See chart below.
- Timetable:** 3-4 years.

Financial Savings

1996	1997	1998	1999	2000	Cumulative Savings
0.000	(3.000)	(4.000)	5.000	9.000	7.000

ETA

Millions Saved in Alien Certification Program through Streamlining and User Fees

-
- Summary:** Streamlining the Alien Certification process and charging user fees will save millions.
- Context:** The Employment and Training Administration (ETA), in partnership with the States and Territories administer labor certification and attestation programs. Under ETA's three labor certification programs, employers requesting permanent labor certification are first required to recruit U.S. workers. State Employment Security Agencies (SESA) process applications, determine prevailing wage rates, and assist employers to comply with regulatory requirements. ETA's Regional Offices currently review applications in the four attestation programs to determine if required documentation is submitted and that there are no obvious inaccuracies.
- The Alien certification program is a labor intensive process costing \$60 million/yr. Yet, only a small number of employers benefit from this government service.
- Proposal:** Streamlining the current process and charge employers who benefit from this service subsidize it through user fees -- as they do with service provided by the Immigration and Naturalization Service. Streamlining includes: decentralization of authority to SESAs, automation of form processing, consolidation of regional processing into four large centers, and making determinations based on labor market information rather than actual referrals.
- Pros/Cons:** Pros: It is estimated \$223. million will be saved over five years. (see chart below). Cons: employers would be responsible for finding their own sources of prevailing wage rates in accordance to standards set by regulations.
- Statutory Constraints:** One change necessary; to allow ETA to make determinations on cases based on labor market information rather than the actual referral of qualified workers to employers.
- Timetable:** A minimum of two years for the streamlining to be complete.
- Constraints:**

Financial Savings

1996	1997	1998	1999	2000	Cumulative Savings
0.000	38.700	61.500	61.800	61.800	223.800

NOTE: On the subject of the level of federal review; ETA is actively considering an approach similar to the IRS' level of review which would result in additional FTE and dollar savings. No final decision has been made.

Appendix: Reform Ideas Not Acted Upon

These regulatory reform ideas were raised by the Workplace Safety and Labor Working Group and were not pushed forward because of perceived lack of merit, insufficient time to consider, political considerations, or being outside of the OSHA/FLSA focus of our group. We will be happy to provide further detail for any ideas you find interesting.

Create a Coherent Workplace Regulatory System

Create One-Stop Regulating (A Virtual Office of Dry-Cleaners): Create a one-stop Workplace Agency, a single office that is responsible for assisting businesses to comply with all workplace regulations. This concept builds on the idea of a virtual Department of Cleveland. An effective One-Stop Workplace Agency implies that to a dry cleaner there is an "Office of Dry Cleaning," with cross-trained agents who know the important rules (although perhaps not every rule) on both handling chemicals (OSHA) and disposing of chemicals (EPA).

As initial steps:

- . Develop common recordkeeping forms and requirements for record retention. Unify wage reporting of state and federal unemployment insurance (proposed in DOL REGO II), Social Security, and IRS. Permit small businesses to use their standard pay stub for all record-keeping. Minimize the number of separate state record-keeping requirements multi-state employers must face.
- . Require agencies to accept electronic submissions.
- . Create a common information system to coordinate enforcement efforts and ensure multiple agencies do not inspect the same "good guys."
- . Consider creating uniform regions for most agencies.
- . Create common definitions for basic terms. For example, different laws define "employee" differently; many of these definitions rely on the outdated common law definition.

Consistent Adjudication: Replace the complicated system of National Labor Relations Board, Administrative Law Judges, state and/or federal OSHA citations and appeals, rights to private action under common law as defined separately in each state, workers comp insurance appeals, etc., into a single system of workplace law administration, with a single trained set of mediators, arbitrators and workplace-oriented appeals judges. Also rationalize the civil and criminal penalty structures.

Promote Internal Responsibility: Permit workers or their representatives to approve a range of alternative regulations. Just as OSHA is moving toward developing a safety program standard, the EEOC could experiment with giving deference employers with high-quality in-house ADR programs (e.g., including neutral arbitration, right to counsel). Along the same lines, we could permit employees and employers to jointly agree on reasonable alternative overtime rules (e.g., 80 hour two-weeks).

Other Changes for Multiple Regulations

Cost benefit analysis: Cost benefit analysis should be required for all regulations, including those currently barred by statute from such analysis (such as OSHA). Qualitative cost-benefit analysis should include difficult-to-quantify costs such as pain and suffering.

Ex Post Cost Benefit Analysis: Such an analysis should be required for all major regulations after enactment as well as before.

Marginal Analysis in Rule Making: Instead of only performing cost-benefit analysis of a single level of regulation compared to lack of regulation, analyze several alternate levels of a regulation as well as lack of regulation, to permit marginal decision-making.

Safety and Health

Right of employees to refuse hazardous work: Currently a form of this right is in existence, but has not proven particularly effective.

Greater protection for employee "whistle blowing" regarding work safety issues.

Outcome-Based Safety Metrics: Switch to a Worker's Compensation model to ensure work safety and healthy work environments, rather than OSHA regulatory enforcement measures. For example: Fine employers \$1 million flat cost (as well a punitive damages when there is negligence) for each work-related death.

Worker Inspections: Give employees the right to time off with pay to attend work safety inspections.

Revisit several major regulations:

- . Bloodborne pathogens to account for current knowledge of AIDS issues (idea from health reg group).
- . Rewrite hazardous communications rule to focus on the worst chemicals, rather than requiring Material Safety Data Sheets for all chemicals.

Fix the chewing gun issue in asbestos, pending methylene chloride, and other rules.

Remove presumption in favor of engineering controls over respirators for exposure to hazardous chemicals.

Experience rate Social Security Disability Insurance (as is done with workers' compensation), so that employers have greater incentives to reduce rates of long-term disability.

Permit On-Line Access to Material Safety Data Sheets: Allow employers to place relevant MHDS materials on line for employees to access via computer terminal.

Wage and Hours

Streamline FLSA wage and hour regulatory reporting requirements.

Replace 40-hour week with 160-hour month (or 80-hour two-weeks) to allow for flexible schedules.

Greater flexibility within the Overtime Regulations: Businesses may have the option of waiving many of the strict overtime/workhours regulations if they submit a more flexible compensation plan that includes flex-time, comp-time, etc. to replace the existing regime.

Consolidate contract laws: Davis-Bacon, Walsh-Healy, Service Contract Act, and Copeland Act should be combined into a single set of standards for Federal contractors. Lift the appropriations rider on use of helpers in Davis-Bacon projects.

Union-Management Relations

Union representation elections take place within two weeks of request. Disputes about bargaining unit and unfair labor practices will be settled afterwards. The speedy elections should greatly reduce the number of labor law violations.

Permit professionals to join unions by amending the NLRA.

Create a standing tripartite board to help negotiate troubled first contracts. Give the board the power to send the case to binding arbitration in egregious cases of failure to bargain in good faith.

Assorted Possibilities

Reinvent Collection of Statistics: BLS and Census both maintain nation-wide lists of establishments, and carry out regular surveys of corporate structure. To reduce respondent burden and save money, Census should eliminate its separate list and pay BLS half the cost of maintaining a single list.

National Awards System: Create a high-visibility, Baldrige-like award that would recognize those businesses who set the standard for workplace safety/health and labor standards.

Just Cause: Replace most EEOC, ADA, NLRA, and whistleblower protection laws with a single standard for just cause before dismissal (currently, most workers have employment at will, where companies can dismiss an employee for any good or bad cause that is not discriminatory against protected groups). This policy would reduce any barriers to hiring people from protected, and therefore hard-to-dismiss, groups now face.

IDEAS NO ONE LIKED

Liability Law for Safety: About eighty years ago, courts began to find some employers responsible for damages when their gross negligence led to injuries. At that time, employers and labor groups agreed to move to a workers comp no-fault insurance system: workers wanted to ensure some income when injured even when it was the workers' fault; employers' feared punitive damages; and both parties wanted to reduce the transaction costs of determining fault. This state-run system weakens both employers' and employees' incentives to be careful and to transaction costs that are not as low as they were a generation ago. One possibility is returning to a liability system. Such a system would permit us to eliminate safety and health regulation (with the possible exception of right-to-know laws) and replace them with employer liability for harms caused by negligence.

Deregulating EVERYTHING: Some conservative have argued for eliminating most laws regulating wages and hours (other than for safety, such as airline pilots, and for children) and letting the market decide.

Sunsetting Regulatory Laws: Legislation would be submitted that would provide for the sunset of various regulations by 1997. Between now and 1997, major restructuring of the regulatory apparatus that supports these laws would take place. If it is perceived by Congress and the Executive Branch that the regulatory structure underlying a given law has been adequately restructured to meet the needs of the new economy, that law would be re-authorized for a period of 10 years (rewritten to reflect the new regulatory structure that have arisen). If it is decided that the regulatory structure that underlies a given law has not been adequately restructured, that law will sunset out of existence.

Deregulate NLRA: Between the 1931 Norris-LaGuardia Act and 1936 National Labor Relations Act, unions had the right to strike for representation. That system was replaced by the NLRA's use of elections, with the intent of moving to a less confrontational and more pro-union method. Because unions now win a trivial number of new members via NLRB elections, some union leaders have proposed deregulating the process as it was in the early 1930s.

Regulatory and Enforcement Reform in the Wage and Hour Division

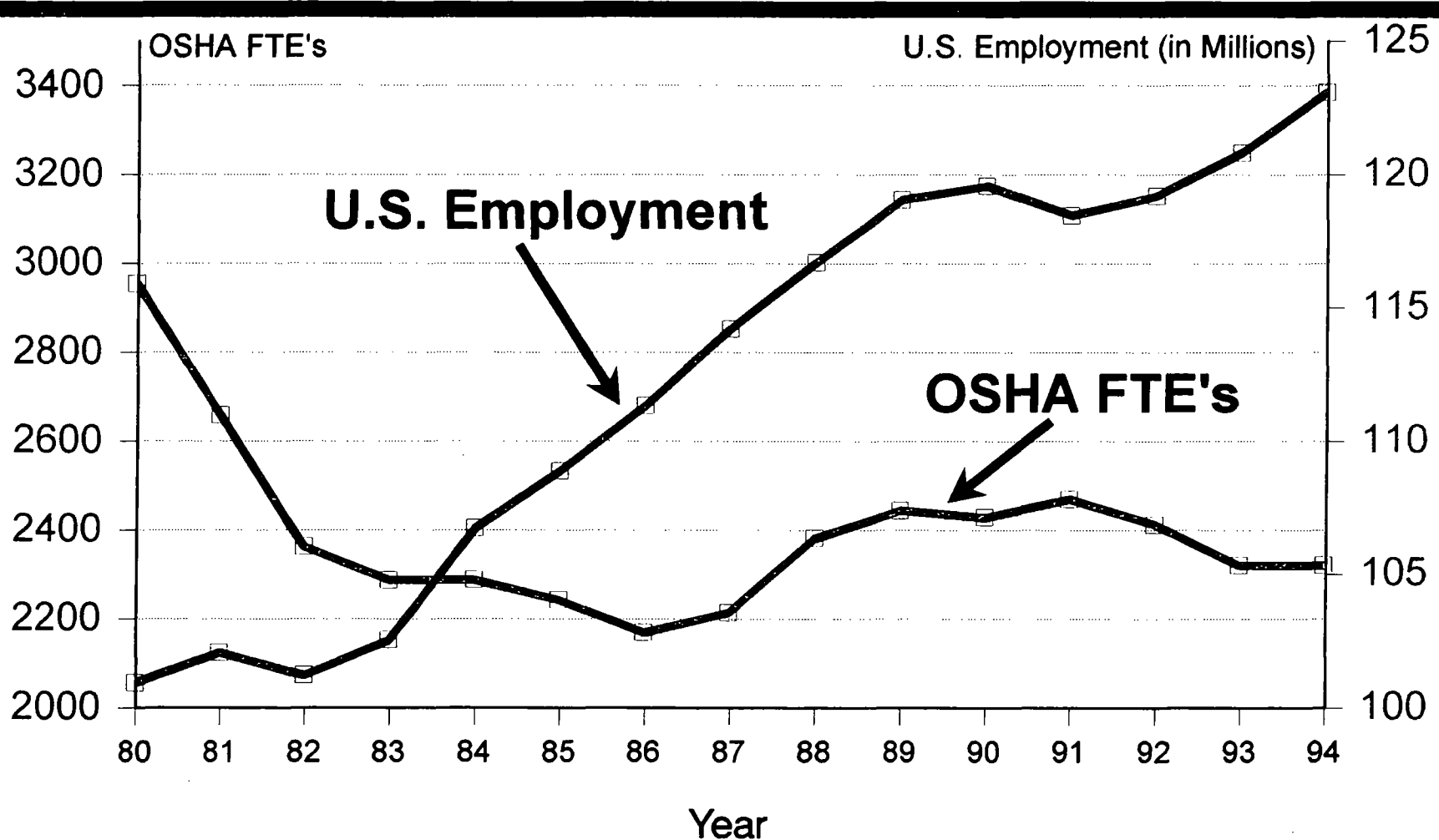
Problem: Wage and Hour must find new ways to serve its customers better. Our customers are in need of regulations which make sense in today's workplace and want Wage and Hour to reduce the amount of confusion and frustration which can accompany traditional enforcement practices.

Reinvention: Wage and Hour proposes improvement in the following areas:

- ***Eliminate 24 parts of Wage and Hour regulations that are out of date or unnecessary. A total of 274 pages out of 1165 would be eliminated, about 25% of the total.***
- ***Delegate enforcement authority to those states which have labor protections equivalent to federal standards and the resources to enforce them. Devote federal resource savings to other enforcement areas in need of attention.***
- ***Fix overtime regulations for professionals. Clarify the overtime regulations for higher-paid workers while maintaining protection for lower-paid workers.***
- ***Fix child labor regulations. Revise child labor regulations to give employers and minors greater flexibility while maintaining workplace protections for children.***
- ***Expand Alternative Dispute Resolution . A pilot project in New Jersey resolved cases filed against farmworker employers in about 3 months, instead of 3 or 4 years with the formal appeals process. It also reduced the amount of staff time devoted by Wage and Hour to the formal litigation process.***
- ***Nationalize the "self-audit" enforcement technique, which simplifies the enforcement process for both the employer and Wage and Hour. Local experience with this innovative technique suggests that it may reduce the amount of investigator time on a per-case basis by 50–75% and the number of days to complete an investigation by 20–50%.***
- ***Restructure field and national office operations to reduce hierarchy and provide better customer service. Wage and Hour's restructuring plan will reduce the number of regional offices from 8 to 5 and will increase the ratio of staff to management from 6:1 to 11:1.***

Why we need reinvention

The Gap Between OSHA 's Mission and Resources

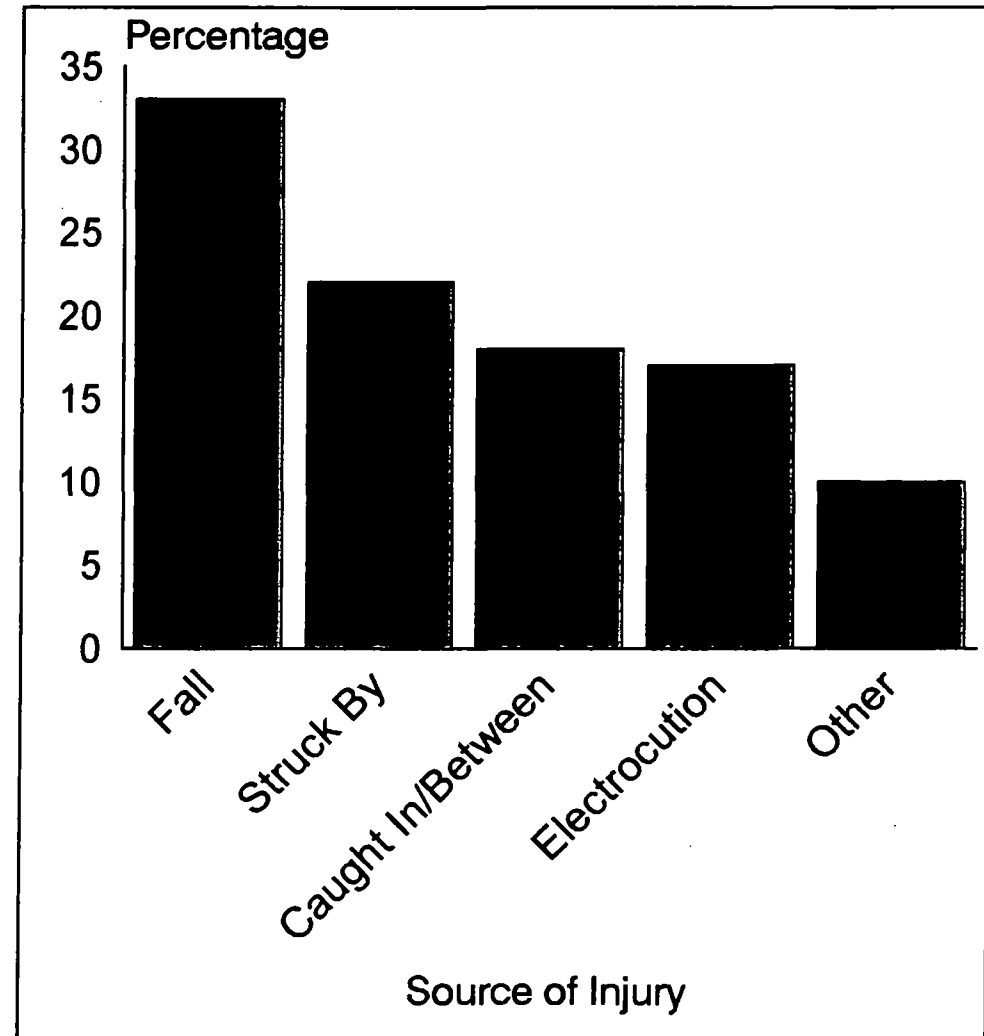


OSHA REINVENTION RESULTS

- **Field Operations Manual**
 - * 369 to 108 Pages
- **Parsippany Quick Fix**
 - * 20% Increase Immediate Hazard Abatement
- **Worker Complaint Response Time**
 - * Cut by 75%
- **Expanding Compliance Assistance**
 - * 23,728 Consultation Visits
 - * 72% Increase in VPP Sites
 - * 23% Increase in Small Business Exemption Program

FOCUSED INSPECTIONS IN CONSTRUCTION

- Focus on the Worst Hazards
- Recognize Effective Safety Programs
- Conserve OSHA Resources



Maine 200

- Use workers' compensation data to target employers
- Offer incentives to develop safety and health programs
- Results:
 - ▶ Employers self-identify 14 times more hazards than OSHA inspections
 - ▶ 59% of employers have reduced injury/ illness rates
 - ▶ An S.D. Warren Co. papermill with over 2,000 workers has corrected over 10,000 hazards and dropped its injury/illess rate by 25%

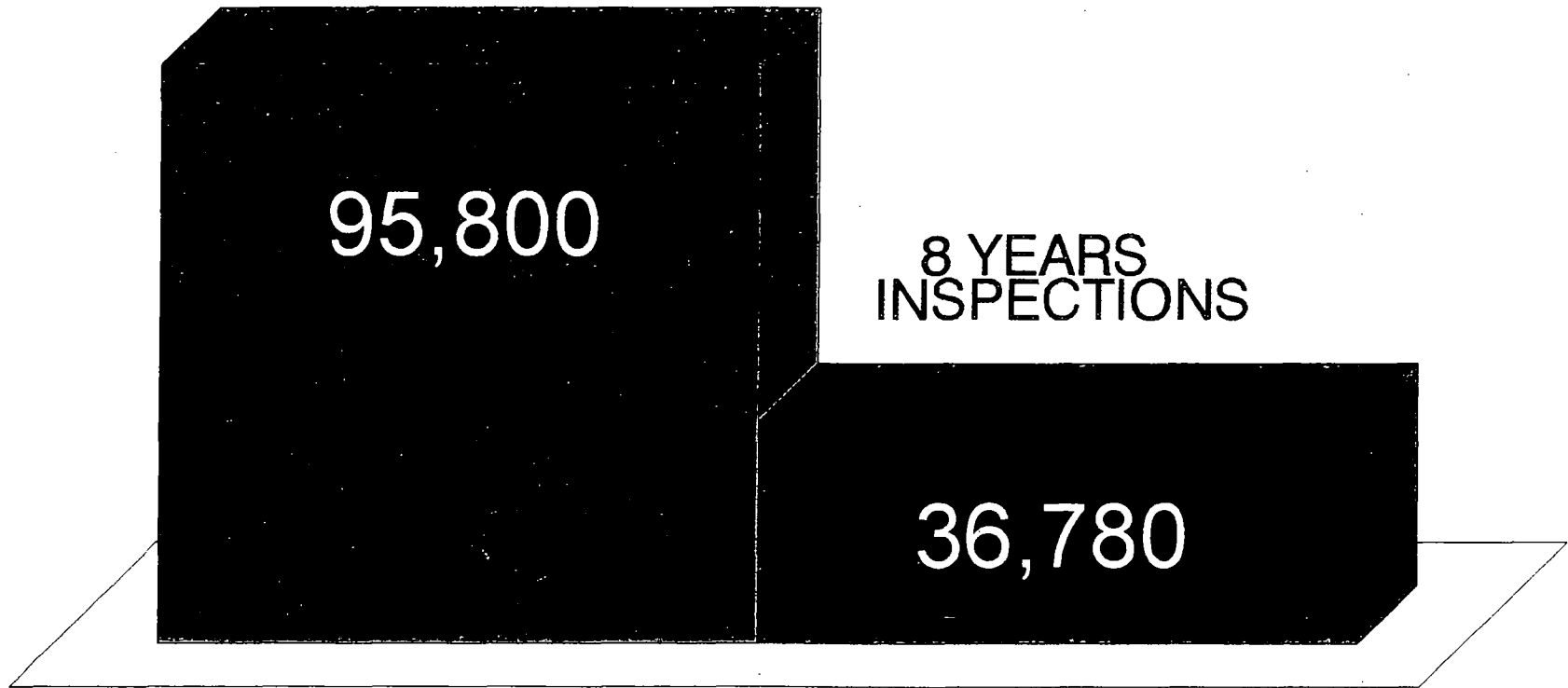
HAZARDS IDENTIFIED IN MAINE

18 MONTHS
TOP 200

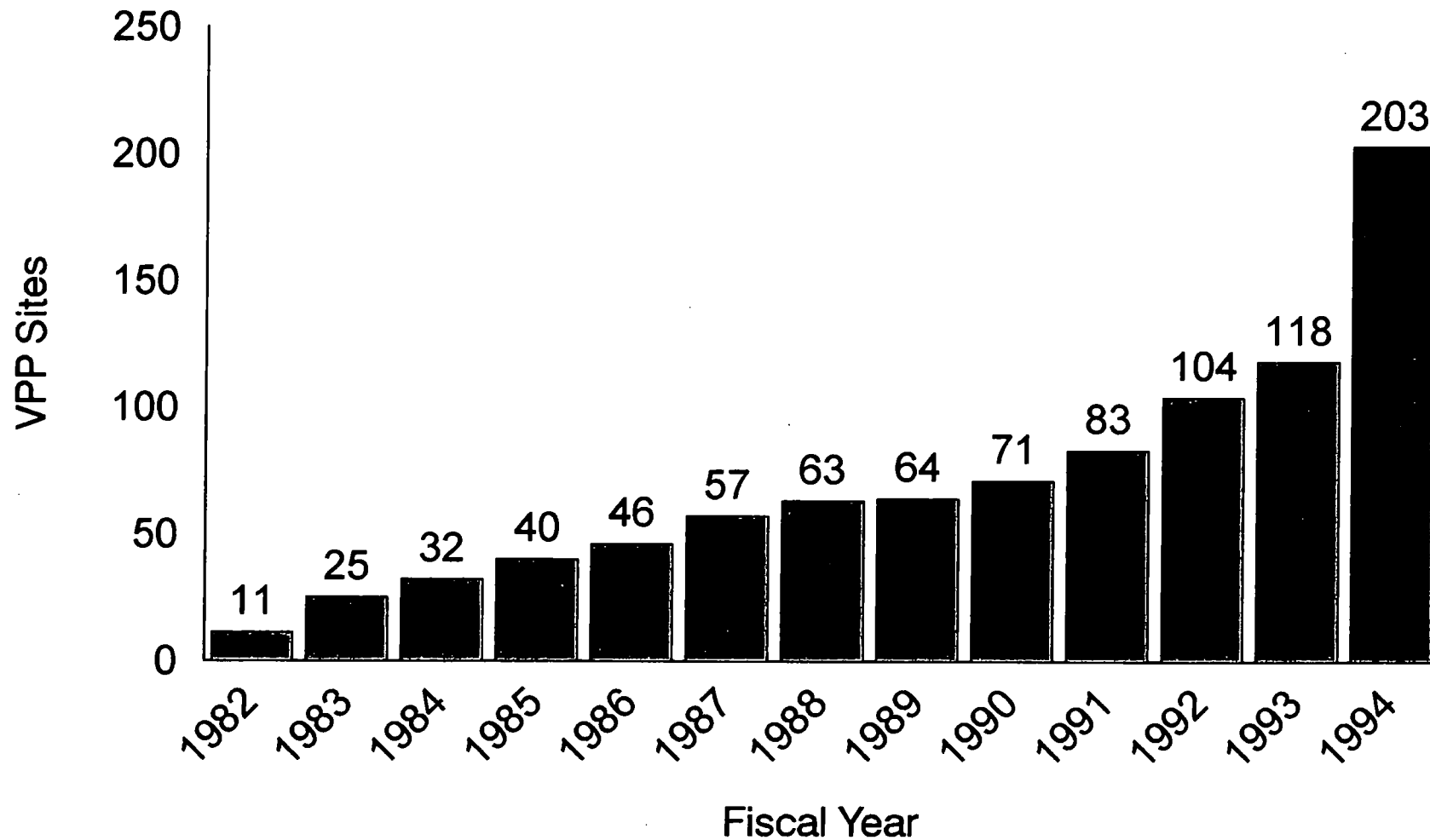
95,800

8 YEARS
INSPECTIONS

36,780



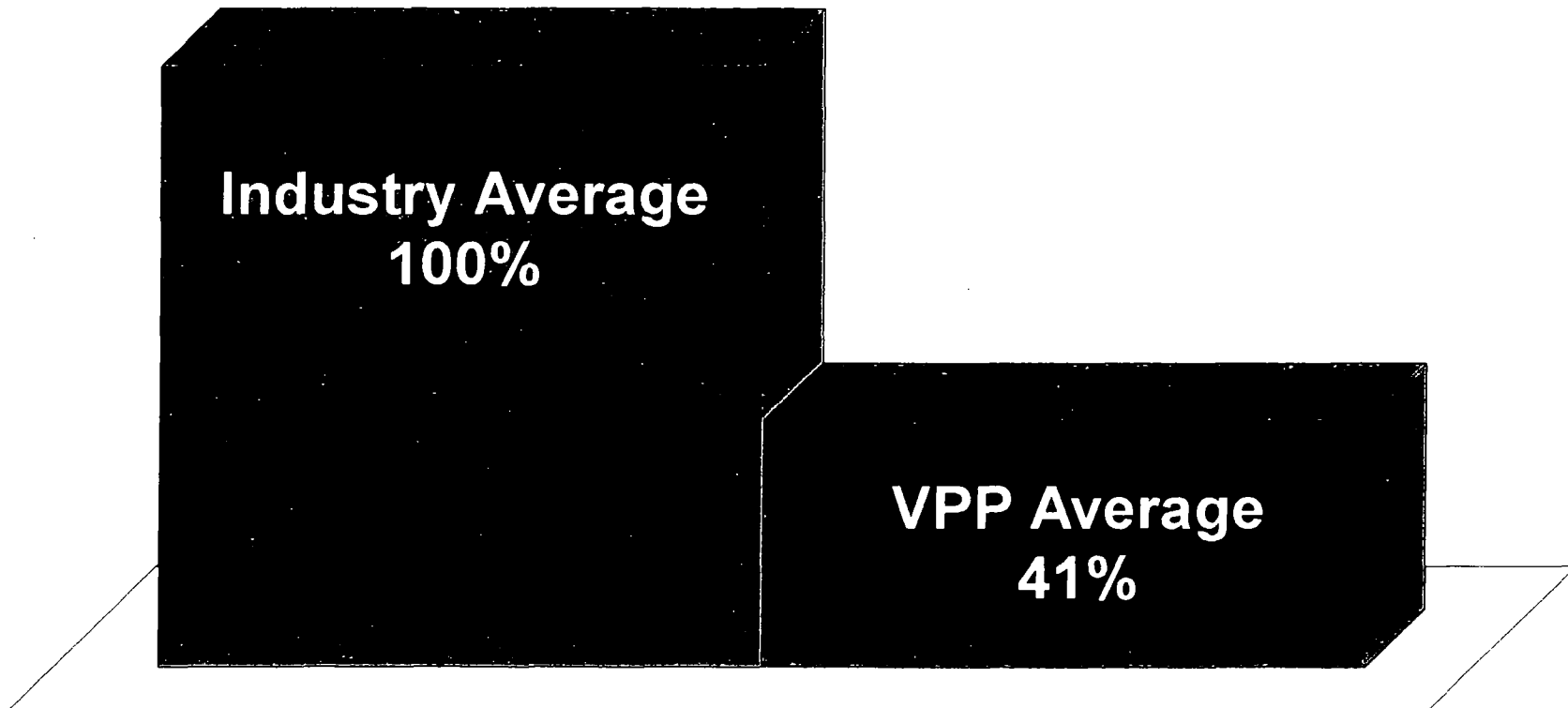
GROWTH OF THE VPP



Sites in both Federal and 18(b) States

BENEFITS OF SAFETY AND HEALTH PROGRAMS

LOST WORKDAY INJURIES



SAFETY & HEALTH PROGRAM RULE

- Systematic Approach to Identify and Correct Worksite Hazards
- Management Commitment to Program
- Employee Involvement in Program
- Effective Abatement Plan Development

CUT OBSOLETE REGULATIONS

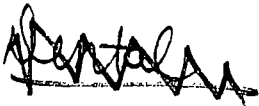
- **Ladder Regulation**
 - * Cut from 15 Pages to 2
- **Medical Reports on Carcinogens**
 - * Eliminate All 14
- **Suspend Unnecessary Medical Tests**
- **Explosives Regulations**
 - * Coordinate with DOT, DOD and ATF

FIX HAZARD COMMUNICATION

- Stop "Paperwork" Citations
- Simplify Compliance - Automation
- Improve Usefulness to Workers

DOL Regulatory Reform Presentation to the Vice President
Agenda

1. Introduction (Waldman/Schmidt) 3 minutes
2. DOL's Approach to Regulatory Reform (Secretary Robert B. Reich) 7 minutes
 - Reg Reform a part of Reinvention II
 - DOL regulatory Reform Principles
 - Information Technology and Regulatory Reform at DOL
3. OSHA (Joe Dear) 12 minutes
 - OSHA's Culture Change
 - Safety and Health Programs
 - Maine 200
 - Focused Inspections
4. Wage and Hour (Maria Echaveste) 8 minutes
 - FLSA
5. Q's and A's (Vice President and group) 30 minutes

A handwritten signature in black ink, appearing to read "Pantaleo", with a horizontal line drawn underneath the name.

Reinventing OSHA—Front-Line Service Improvement Project

- Purpose:** To fundamentally change the way OSHA enforces the law and conducts its business. The individual field office is the unit of organization where the action is; where guidance is given to individual inspectors or Safety and Health Compliance Officers (CSHOs) who provide the contact between OSHA and businesses and employees. Therefore, this effort to dramatically improve the way OSHA does business targets the field office as the target for change.
- Problem:** Change the role of OSHA from “cop on the beat” to more consulting and problem solving with employers to assure safety for employees. In the past, OSHA has relied principally on a reactive and piecemeal enforcement and compliance strategy.
- Solution:** OSHA plans to move to a problem solving approach similar to the practice that has been used effectively in community policing. The emphasis will not be on simply reacting to the incident but to work in a proactive manner to develop solutions that address the larger causes of a problem. This will result in the use of a diverse set of intervention tools, such as requiring employers to institute safety and health programs and will encourage OSHA compliance officers to consult with employers on how to make their worksites safer and healthier. The goal is to engage both employers and employees into the process of promoting safety and health.
- Problem:** Better target its enforcement efforts to focus on particularly unsafe employers and those workplace elements that are responsible for a large proportion of workplace accidents and illnesses.
- Solution:** OSHA will attempt to gather data from a variety of sources to better define the leading causes of injuries, illnesses and fatalities in a given location. Once this is accomplished the office staff will focus on analyzing the data to identify and then target the worst industries, firms and hazards in a given area.
- Problem:** Divide its resources to create specialized teams within field offices for more effective operations.
- Solution:** To achieve these two goals, OSHA will replace its current structure of safety and health compliance officers (CSHOs) who work on their own. In the new area office, these same CSHOs will work as part of one of two teams -the Strategic Intervention Team or the Response Team. The Strategic Intervention Team will use targeting initiatives and problem solving strategies to strategically deploy limited resources, as well as proactively promoting safety and health programs. The Response Team will ensure that OSHA continues to respond more effectively and efficiently to workplace issues such as fatality investigations and complaints of workplace hazards.

Reinventing OSHA—Front-Line Service Improvement Project(Cont'd)

Problem:

Develop a new performance measurement system that focuses on the impact OSHA has on improving safety, not just how many activities OSHA performs.

Solution:

For more than twenty years, OSHA's inspectors have had to operate under the "numbers game" system. Like cops who get rewarded for issuing more tickets, OSHA inspectors were evaluated by measures such as number of violations per inspection and penalty dollars collected. Inspectors also had to cite every single violation, regardless of any extenuating circumstances. This reinforcement system led to such events as OSHA fining workers who went into a collapsed trench to save their co-worker from near death. This new performance measurement system replaces the "numbers game" and rewards inspectors for performance that is based on results.

Problem:

Improve the overall operations of a field office to make it more professional, efficient and responsive to the needs of the customers it serves.

Solution:

In particular, the goal is to find ways of serving the public better, such as by addressing complaints more quickly and effectively, streamlining the onsite inspection by increasing the use of technological innovations, and assuring abatement by placing the responsibility for verifying abatement on the employer.

Methodology:

OSHA has developed a three-stage implementation plan that is based upon successful organizational transformations that have occurred in both the public and private sector. The three stages are (1) Model Design, (2) Pilot and Evaluate and (3) Rollout and Continuous Improvement. The Design Team's goal is to have all federal enforcement area offices redesigned by December 1996.

To achieve this transformation, the agency has created the Front Line Service Improvement Team. With assistance from organizational change consultants from McKinsey and Company, this team has examined factors that have inhibited the performance of the agency, as well as looking to both the public and private sectors for proven ways of delivering its service better.

Reinventing OSHA—Safety and Health Programs Rule

Problem:

As part of efforts to modernize America's approach to occupational safety and health, OSHA is working closely with key business and labor groups on a new set of tools which companies, large and small, can use to find and fix workplace hazards. This approach emphasizes several generic "building blocks" to provide employers and employees with a logical, systematic framework for establishing their own effective hazard control programs.

Solution:

At the heart of this effort lies OSHA's proposed Safety and Health Programs rule. This proposed rule, which is part of the FY 1995 Regulatory Agenda, will indicate how companies can use systematic safety and health programs, emphasizing management commitment and employee involvement, to identify hazards at their specific worksites. Once such worksite hazards have been identified, they would use more specific OSHA guidelines and standards to develop effective abatement plans.

OSHA is writing this draft in plain, easy-to-follow language, which will give users flexibility to respond to their own worksite-specific conditions. These efforts have already won strong public and stakeholder support:

- *OSHA's business/labor national advisory committee gives top priority to work on the S&H Programs rule.*
- *State governments strongly endorse this approach (nearly a dozen state governments already have their own S&H Programs rules).*
- *Many business groups, individual companies and labor organizations have offered to help OSHA shape this key workplace safety and health building block.*

OSHA plans to develop its proposal through rulemaking. OSHA will participate in a series of "dialogue meetings" with business, labor and other representatives to work on the key issues concerning safety and health programs. These discussions would cover such issues as employee involvement, scope and tiering, trigger mechanisms, management commitment, and hazard control.

Once OSHA completes work on this rule, it will become the basic foundation for all future workplace safety and health efforts. OSHA will use a wide range of outreach, education, training, and consultation programs, in partnership with business and labor groups, to provide all possible assistance to employers and employees in formulating their own programs to reduce occupational injuries, illnesses, and fatalities in America.

Concerns:

Some NAM members object to any rules or regulations and so object to this.

Reinventing OSHA—Getting Smart About Compliance The "Maine Top 200"

Problem:

Maine had one of the highest incidence rates of workplace injuries and illness in the country, 71% greater than the national average. Through review of workers compensation data, 203 companies were identified as having the highest number of injury claims. These 203 companies represent only 1% of the State's employers and 30% of the employees, but 45% of the injury and illness claims. These firms operate at 1,300 locations, far more than OSHA could physically inspect in a 2 year period. Only 10% of the companies would have appeared as workplaces to be inspected under OSHA's existing targeting plan.

Solution:

OSHA sees Maine as the first testing ground for employer-specific, targeted enforcement. Establishment-specific data was used to focus OSHA attention on the greatest safety and health hazards. OSHA then worked with employers to help them make real improvements in worker safety and health. Traditional compliance enforcement activities were reserved for employers who refused to cooperate.

Each of the 203 companies was sent a letter informing them of their inclusion in the program. Each company that chose to participate was required to submit an action plan to reduce injuries and illness in their workplaces, regardless of whether or not the hazardous conditions were covered by OSHA regulations. The employers were notified of the criteria OSHA would use to evaluate the plans, including management commitment, employee involvement, and a plan to establish a comprehensive safety and health program, perform self inspections, and bring their workplaces into compliance with OSHA regulations.

Employers who submitted plans that met the criteria were placed on a secondary inspection list. They would be inspected in response to employee complaints, catastrophic or fatal accidents, or referrals, and one out of five would be subject to random enforcement inspections to determine whether or not their action plans were adequate and they were actually implementing the individual components of the plan. Employers who decided not to participate or submitted an inadequate plan were placed on a primary list to be scheduled for a comprehensive "wall-to-wall" OSHA inspection.

Results:

The vast majority of the employers decided to participate in the program, submitted action plans and made a commitment to improve safety and health conditions in their workplaces. Only two companies refused to participate, and only three submitted inadequate plans. Employers in the program have identified over 95,000 instances of hazards, and have already eliminated 55,000 of them. They are continuing to work on abating the remaining hazards. This is more than twice the number of hazards OSHA had cited during 1,316 inspections performed during the previous 8 years.

Since joining the program, 59% of the employers have experienced a decrease in their lost time injury rate. Several companies have experienced dramatic improvements. S.D. Warren, a paper and pulp mill, reports that the process has "made a big difference in safety awareness, not only on the site but in the community as well." The decline in workplace injuries and illnesses is also affecting the premiums employers pay for workers' compensation insurance. Insurance premium rates have begun to drop in the last year.

Concerns:

In Maine, we used worker's compensation data to target which employers should be in the program, but that data is not available in every state. We will need to find other measures to help us target companies....Many unions are skeptical about this approach.

Reinventing OSHA—*Focused Inspections in the Construction Industry*

Problem:

Until recently, construction site inspections were comprehensive, and traditionally covered all hazards, resulting in less time spent on those hazards that caused the majority of fatalities, and more time on less serious "paperwork" requirements. OSHA's own data shows that the most frequently cited hazard in construction is hazard communication, yet only four hazards account for 90% of the fatalities in construction.

Solution:

OSHA has initiated a new construction enforcement policy that follows the strategy of targeting the worst actors and worst offenses; protecting vulnerable populations; deterring violations with significant penalties, including criminal penalties; and fixing the problem swiftly and efficiently.

Focused inspections in the construction industry is a more efficient use of OSHA's limited resources, since it allows the OSHA inspectors to investigate whether a controlling contractor has an effective safety and health program, and if there is a person on the job site responsible for implementing that program. If the answers are "yes," then OSHA will perform an inspection focusing only on the four major killers of construction workers: falls, electrocutions; being caught in (trenches); and being struck by machines or materials.

OSHA wants to visit as many worksites as possible to identify those where there seems to be little regard for worker safety, especially in the four main areas of employee fatalities. Compliance officers have been instructed to concentrate their efforts on these four hazards, and may end the inspection after they have been evaluated.

And although the focus will be on the four most hazardous areas, when other serious hazards such as confined space are observed or reported by employees, a citation shall be proposed. Other-than-serious hazards which are immediately abated will not be cited.

If poor working conditions are noticed during the walkaround inspection, the inspector may determine that a comprehensive inspection is appropriate. CSHOs are expected to identify the need, if any, for subsequent inspections if a site is free of the four main hazards. State plan states have been provided with copies of the new policy, and have been asked to notify OSHA of their intent to adopt a similar construction inspection protocol.

An evaluation of the focused inspection in construction policy is planned. OSHA is considering development of a similar focused inspection policy for general industry.

Concerns:

Dependent on changing the culture of OSHA inspectors (to pass up nonserious violations) and getting contractors to prepare and implement plans. The plans could be considered paperwork.

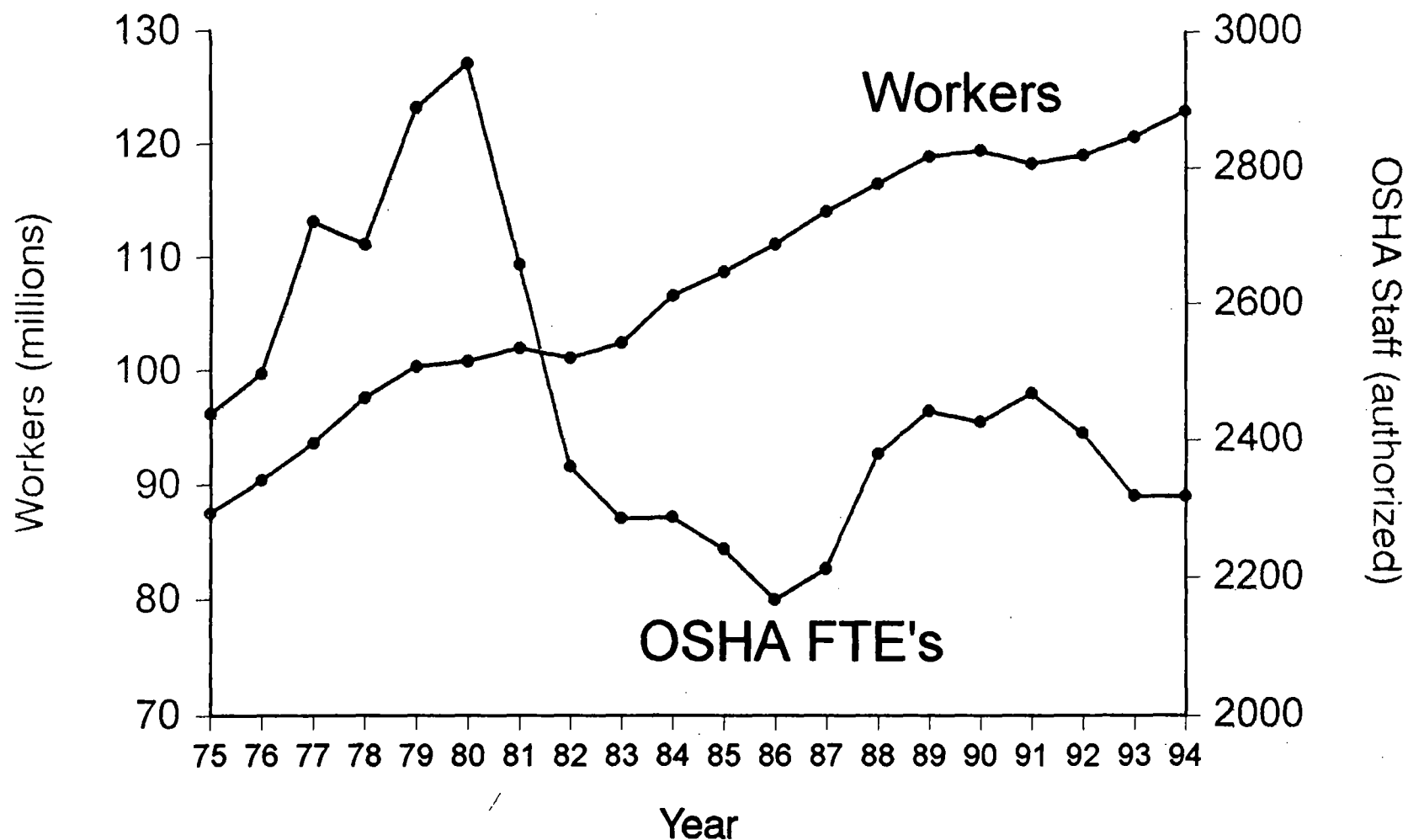
Why OSHA?

Workplace Illnesses, Injuries and Fatalities

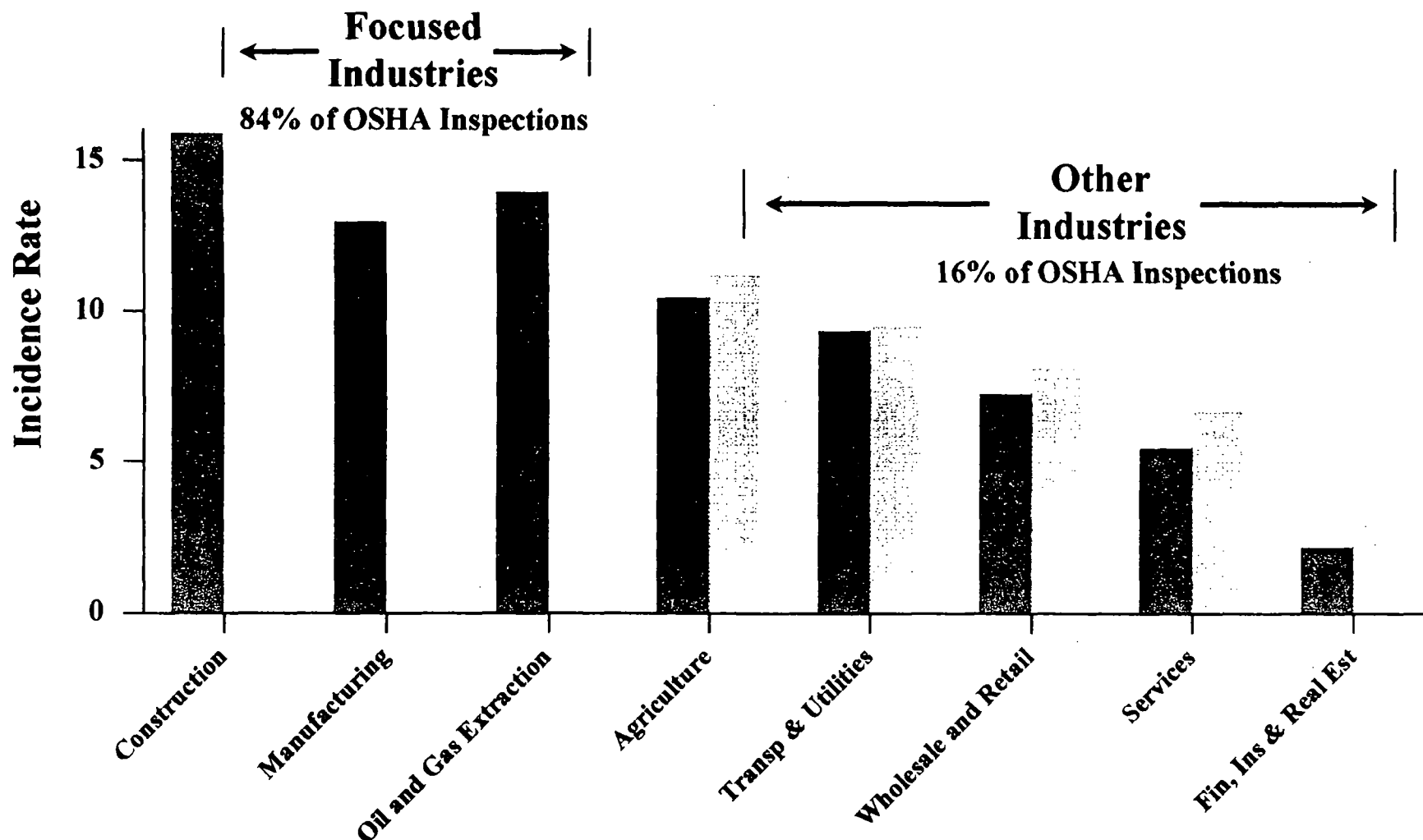
- **6,271 fatal injuries in 1993**
- **6.7 million injuries and illnesses in 1993**
- **\$112 billion in work injury costs during 1993**

Why we need reinvention

The Gap Between OSHA 's Mission and Resources



INJURIES AND ILLNESSES HAVE DECLINED IN INDUSTRIES WHERE OSHA HAS FOCUSED ITS EFFORTS



Source: BLS Annual Occupational Injury and Illness Survey
Rates per 100 full time workers, OSHA inspections 1976-1993
Prepared by OSHA OSTAT 12/94

■ 1975 ■ 1993
■ 1975 ■ 1993

Assure that DOL regulations make sense:

Fix "Regulation 541".

Problem: Executive, administrative, and professional employees are exempt from receiving overtime under regulation Part 541. The way the regulations are written right now, if an employee is paid on a "salary basis" they might qualify for exemption. If there is a reduction of the salary based on the number of hours worked, the employee is not considered exempt from overtime by Wage and Hour. As employers have developed new compensation strategies, a great deal of confusion has developed over just what the term "salary basis" means. There is so much confusion, in fact, that employers and employees have come into more and more conflict over the meaning of this term.

Analysis: The "salary basis" requirement has been in the regulations since 1940, and was last modified in 1954. Certain types of deductions from an employee's fixed salary are legal, while others are not. Certain types of payments are considered a "salary," while others are not. Over the years, as employer pay practices have become increasingly diverse, the courts have delivered divergent interpretations of what the "salary basis" requirement means in practice. It is close to impossible to reach a consensus on any future revisions of the salary concept.

Reinvention: *Restrict the "salary basis" requirement to low-paid employees and eliminate the requirement for high wage employees, and simply increase the amount of money a person has to earn in order to qualify for the exemption.*

By restricting the "salary basis" requirement to lower-paid employees, much of the confusion over which high-paid employees are paid a salary and which ones aren't would disappear. Instead, it would give employers the flexibility to devise pay arrangements according to their needs.

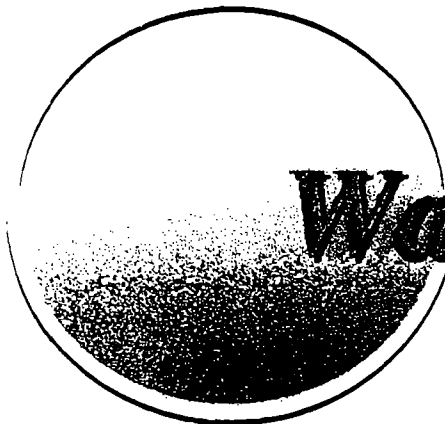
Low-income and non-professional workers' rights would continue to be protected under this system, however, because the "salary basis" test would remain in place for low-income workers and the minimum amount of money a person needs to receive every week in order to be considered for the exemption would also increase. In the regulations, a person who is paid on a "salary basis" must also earn a certain minimum amount every week. That amount has not been increased for many years, so it is currently very low (about \$170 per week).

In this new scheme, only bona fide executive, administrative, and professional workers would be considered for exemption — the original

point of "Regulation 541". A firm in Omaha, Nebraska recently paid \$6,500 in back wages to four employees who were called "copy machine technicians." The firm considered them to be exempt from overtime because they were "professionals" who were paid salaries ranging from \$250 to \$400 per week. The employees worked as many as 70 hours per week with no overtime. What were these workers really employed to do? They were employed to photocopy documents and service equipment. The increase in the amount of money necessary for exemption should prevent situations such as this one from occurring.

Concerns:

This is an approach that may not be fully embraced by employers because the simplification does not go far enough.



Wage and Hour Division

U.S. Department of Labor

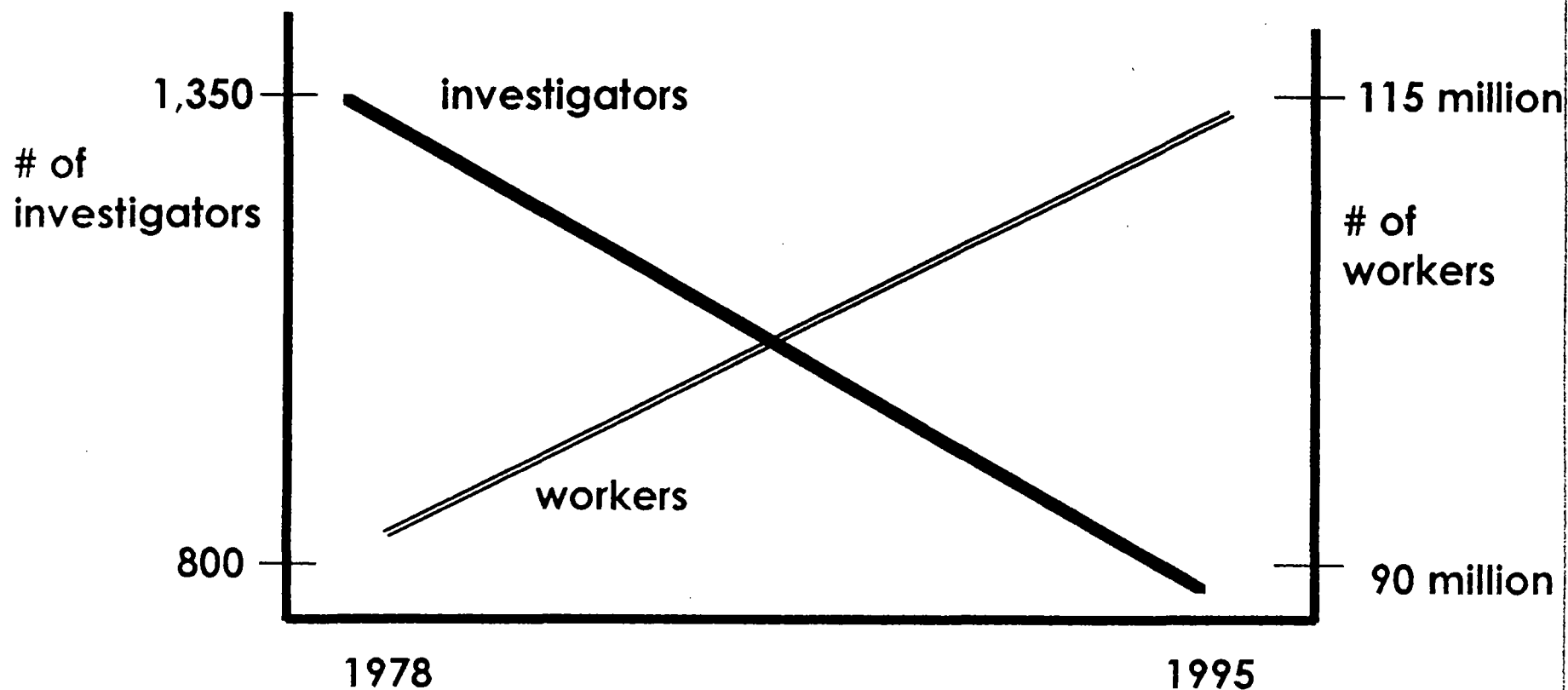
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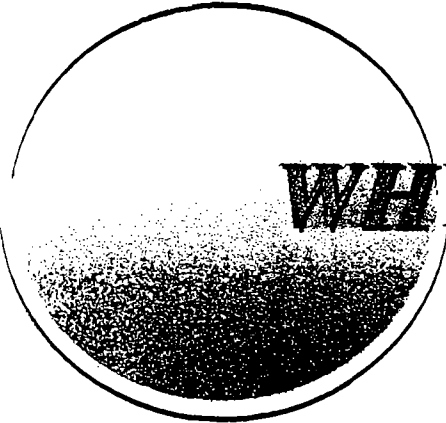
Maria Echaveste

Wage and Hour Administrator



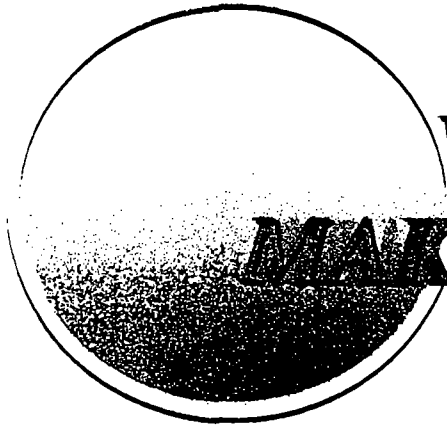
WAGE and HOUR INVESTIGATORS





WHY WE NEED FLSA

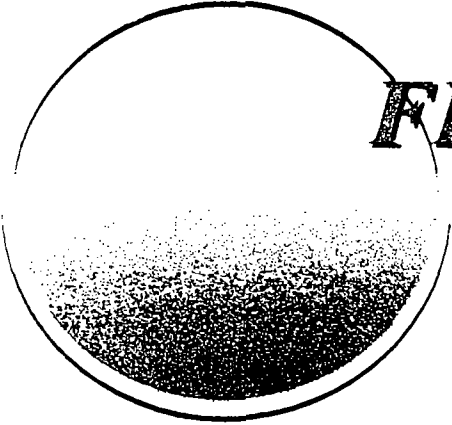
- **Fundamental protection for workers**
- **Over 6 million businesses**
- **Over 110 million workers**
- **1/4 billion dollars paid to over 625,000 employees (in the last 2 years)**



WAGE and HOUR: MAKING A DIFFERENCE!

- **“Low wage” industries: recovered \$55 million for 200,000 employees (last 2 years)**

- **Garment industry (last 2 years)**
 - **\$4.7 million in wages paid to about 17,000 employees**



FLSA

“Flexibility and Fairness”

- **Section 541 - exemption changes**
- **Child Labor - hours standard and hazardous occupation orders**
- **40 hour work week - alternatives**

Withdrawal/Redaction Marker

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	From Robert Rodriguez, to Carol Rasco, re: Dry Run Meeting from Labor [partial] (1 page)	02/22/95	b(6)

COLLECTION:

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

FOLDER TITLE:

Pre-briefing for Regulatory Reform meeting on Workplace Safety and Labor

2013-0968-S

sb58

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]

February 22, 1995

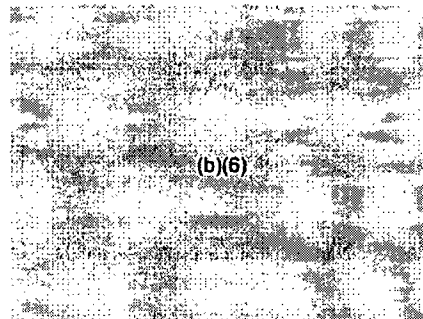
TO: CAROL RASCO

ATTENTION: MIKE SCHMIDT

FROM: ROBERT RODRIGUEZ

Attendees: For todays 4:30 Dry Run Meeting from
Labor:

Thomas Glynn -
Timothy Barnicle -
Robert A. Rodriguez -
Maria Echaveste -
Joseph Dear -
Cynthia Metzler -
Thomas Williamson -
Suzan Seiden -
Mary Ann Richardson -



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MEMORANDUM FOR THE VICE-PRESIDENT (Draft)

THROUGH: Carol Rasco
FROM: Michael Waldman
SUBJECT: Regulatory Reform Initiative

DRAFT

I. ACTION-FORCING EVENT

We will meet with you Tuesday, February 21 to discuss our findings for reengineering the development and enforcement of regulations at the Department of Labor. Our review addresses the activities of two DOL agencies: Occupational Safety and Health Administration (OSHA) and Wage and Hour Division in the Employment Standards Administration (ESA). A complete list of the ideas examined by the Working Group during this process, including those rejected for further consideration at this time, is also included.

II. FINDINGS

At DOL, they believe that enforcement has to be based on common sense -- and that regulations should be smart, not foolish or incomprehensible. They have heard the complaints of employers and know that some of their regulations are overly burdensome and outdated, waste resources, and do not provide the intended benefits. Justifiably, the public is angry and frustrated with parts of the current regulatory system. They also know that many of these concerns stem from the way DOL enforces its regulations, *not* the regulations themselves. To address these concerns, they are changing the way we regulate and enforce our laws. Five principals describe their approach:

1. **Direct compliance staff to focus on results -- achieving safe and healthy workplaces and adequate labor conditions -- not processes;**
2. **Target compliance efforts toward the worst violators and most hazardous conditions to increase our efficiency and limit unnecessary burden on employers and employees;**
3. **Coordinate enforcement activities to eliminate overlap and improve customer service**
4. **Eliminate unnecessary, regulatory functions; and**
5. **Assure that DOL regulations make sense. Eliminate or fix regulations that are unnecessary -- or worse.**

DOL has pilot tested many of these principles as part of projects run by OSHA and WH, with impressive results. In the future, DOL will expand those pilots that have proven successful to additional states across the country.

RESULTS NOT PROCESS

DOL's leadership believes that the majority of employers are responsible and understand the value of labor law regulations and their enforcement. Therefore, they are making sure that we work with employers and employees to help them assume the responsibility for safe and healthy work places and adequate working conditions together. On the other hand, employers who insist on violating labor laws and regulation will face close scrutiny and stiff penalties.

OSHA is changing its culture by creating incentives for its officers to focus on results -- safe and healthy work places. OSHA is undergoing a fundamental change in its culture. With the help of Mckensie and Co., OSHA is redesigning it's entire field operations by creating a new set of incentive structures for its officers. OSHA officers will be rewarding for achieving results such as safe and healthy workplaces, not number of citations.

OSHA is refocusing the responsibility for insuring healthy and safe workplaces to labor, management and government teams at the worksite. The best insights into compliance lie at the worksite, not in Washington. Key business and labor groups, working with OSHA, have urged that the responsibility for finding and fixing workplace hazards should be shared with labor-management teams at the worksite. Under this approach, employers and employees -- in companies of all sizes -- would create their own logical, systematic framework for establishing their own effective hazard control programs. To make this possible, OSHA is developing a Health and Safety Program rule. This proposed rule will show how companies can use comprehensive systematic safety and health programs, emphasizing management commitment and employee involvement, to identify hazards at their worksites. After identifying such worksite hazards, they would use more specific OSHA guidelines and standards to develop effective abatement plans.

OSHA will nationalize its "Quick Fix" program. The current OSHA inspection process does not mandate immediate abatement of hazards once they are recognized by an OSHA Compliance Officer. Because of the legal process, employers may continue to expose their employees to hazardous conditions for some time even after citations have been issued. OSHA's "Quick Fix" program, which was designed to address such concerns, allows OSHA to reduce imposed penalties by 10% for each violation that an employer abates in the presence of the compliance officer, before the closing conference. In the Parsippany, New Jersey, field office, where the program was tested, the immediate abatement of hazards increased by nearly 20% -- and has saved at least two employees from serious injury.

Wage and Hour is offering alternatives to costly and time-consuming litigation such as negotiation between workers and managers. Settling workplace grievances in the courts is both costly and time-consuming. As an alternative to the formal ALJ appeals processes, a pilot project -- The Alternative Dispute Resolution of Civil Money Penalty Appeals program in New

Jersey -- successfully decreased the average length of time to resolve a case from three years to three months. The program has also been well-received by the employers opting to use the process. This program was begun in response to the backlog of cases pending administrative hearings, in which employers have been cited for violating the Migrant and Seasonal Agricultural Protection Act. Employers who wish to resolve their cases can go before an informal board, which recommends a settlement or more formal actions. In the future, Wage and Hour will be expanding this program to other regions of the country.

TARGETING COMPLIANCE

DOL is maximizing its compliance resources and maximizing worker protection by targeting the worst violators and the most serious hazards. Targeting resources is both a good idea and a necessary. Today more than ever, a wide gap exists between DOL's resources and the scope of its mission. Targeting our resources will not only help us achieve better results -- safe and healthy workplaces and adequate working conditions -- but it will minimize government intrusion and unnecessary burden on the majority of employers who are responsible and work with us to achieve labor law compliance.

OSHA will nationalize its innovative, self-inspection program -- Maine 200. In Maine, the 200 most unsafe employers (as measured by the largest number of worker compensation claims) were offered two choices: Set up a comprehensive safety program, or be put on a priority list for a wall-to-wall inspection by an OSHA inspector. Employers in the program are required to identify hazards and carry out plans for eliminating them. In a pilot test of this program, the vast majority of employers chose the first option, with stunning results. During the first 18 months of the program, participants identified nearly 100,000 hazards and corrected more than half. This is more than twice the number of hazards OSHA identified through inspection during the previous eight years. This carrot-and-stick approach has significantly increased compliance in Maine, and Wisconsin, where the program has been expanded.

OSHA will expand its focused inspection policy in the construction industry to general industry. Until recently, construction site inspections were comprehensive, and traditionally covered all hazards, resulting in less time spent on those hazards that cause most of fatalities, and more time on less serious "paperwork" requirements. OSHA's own data shows that the most frequently cited hazards in construction are hazard communications, yet only four hazards -- falls, electrocutions, being caught in trenches, and being struck by machines or materials -- account for 90% of the fatalities in construction. OSHA has initiated a new construction enforcement policy that directs compliance officers to concentrate their efforts on the four major killers of construction workers and allows them to end the inspection after they have been evaluated. Focused inspections are a more efficient use of OSHA's inspection resources.

Wage and Hour will nationalize its policy to offer responsible employers an option to self-audit. Over the past year, Wage and Hour has experimented with alternatives to random, tedious, and time-consuming investigations in several geographic areas. One such tool being

used is a self-audit. Eligible employers are provided with guidance on the requirements of statutes enforced by Wage and Hour and asked to conduct a self audit of their company's operations and to resolve any compliance problems, including the computation and payment of back wages. Those employers doing so pay any back wages owed, but do not receive any kind of citation from Wage and Hour inspectors. The use of self-audits result in less resource-intensive enforcement, recovery of more back wages, less government intrusion, and more government cooperation. The use of self audits will be carried out nationally in the Spring.

COORDINATE ENFORCEMENT

DOL is working to make enforcement more efficient and results oriented. We understand that when appropriate, coordinated enforcement will help us make the best use of our resources and create a regulatory and enforcement system that makes more sense to employers and employees. The various agencies of the Department of Labor are working together to improve its coordination and distribution of information to the public. It has been shown that information is a powerful tool but only if it gets into the hands of the employers and employees who need it, both to understand their rights and to simplify compliance with DOL regulations.

DOL is designing and implementing a regulatory information bulletin board with complete information of all DOL regulatory programs. This bulletin board provides the cornerstone of a comprehensive information and compliance assistance program. With this cornerstone in place, the Department will establish: (1) a turnkey 800 information number, (2) agency specific data bases in electronic or hard copy medium, (3) industry specific data bases, and (4) improved compliance assistance materials. A "Home Page" listing all DOL regulations, preambles and other information will be operational by the end of the this year and expanded in subsequent years.

OSHA is committed to providing regulatory information to all those who need it. OSHA is investigating distribution over the Internet of press releases, fact sheets, brochures, and text from speeches by the Assistant Secretary. In addition, OSHA has been working with the SBA to integrate their services with ERIC. The ErgoWeb, a project that uses Internet to provide remote users information on Ergonomics can serve as a model for the way in which will communicate with stakeholders in the future.

OSHA is committed to eliminating duplicative reporting requirements for employers. OSHA is working to develop a national repository Material Safety Data Sheet (MSDS). A national repository is not close at hand but it is possible. Such a system would result in tremendous savings to employers and ease their difficulty of finding the information.

ELIMINATING UNNECESSARY ENFORCEMENT FUNCTIONS

Overlapping layers of enforcement should be eliminated. In some states, the laws governing employment standards are equivalent or even stronger than the Federal statutes enforced by Wage and Hour. For example, California and Hawaii have strong wage and hour laws on the books and do a good job of enforcing them. In these instances, it makes little sense for both the state and the Federal government to be enforcing essentially the same laws. Such overlapping layers of enforcement waste scarce resources and cause an unnecessary burden and intrusion into the workplace. Therefore, Wage and Hour will let these states do the job themselves and limit its enforcement to areas or laws in which the state laws are absent or insufficient to protect workers. This will free-up scarce federal resources to focus on other serious concerns.

COMMON SENSE REGULATIONS

Some existing workplace regulations in OSHA and WH are obsolete, confusing, inconsistent or trivial, and as a result, do not significantly improve workplace conditions. Many other regulations, while still relevant, also do not make sense to the workers they are designed to protect or the employers who are responsible for carrying them out. The Department of Labor is moving forward with a comprehensive strategy aimed at building a modern set of workplace standards and regulations that protect workers and that make "real sense to real people." As a first step, unnecessary rules or major sections of rules will be identified. These regulatory requirements will no longer be enforced by OSHA and WH and will be eliminated. Eliminating these rules represents the beginning of the comprehensive process at DOL to continually modernize and revise its standards.

Wage and Hour will fix the overtime provisions of the FLSA. Under current regulations, there are specific provisions governing whether executive, administrative, or professional employees are exempt from the Fair Labor Standards Act's (FLSA) minimum wage and overtime provisions. For over 20 years, a bitter dispute has raged over compliance with these provisions of the FLSA. The confusion caused by diverging judicial interpretations of the "salary basis" requirements makes it extremely difficult for employees and employers -- both private and public -- to find out whether existing pay practice's meet the regulatory requirements. To address this contentious issue, Wage and Hour will eliminate the Section 541 "salary basis" requirement and increase the outdated salary test level.

Wage and Hour will fix the child labor regulations. The current hours and time restrictions on 14 - and 15-year old and prohibitions related to working in hazardous occupations (e.g., paper bailors and driving) have caused considerable consternation among American families. The current standards are inflexible and frankly, are outdated. For example, the regulations do not allow sensible child labor, such as teens working past 9 p.m. during the summer or working past 7 p.m. during the academic year even when the following day is not a school day. Wage and Hour has begun to modernize the current Child Labor regulations to provide flexibility to

employers and common sense, while maintaining necessary protections for youth.

Wage and Hour is reviewing the comp time and 40 hour week provisions in FLSA

Critics of the FLSA have portrayed the Act as inhibiting employee and employer flexibility. They argue that the FLSA, enacted in the 1930's, simply cannot adopt to the modern worker's lifestyle and needs. As there is significant flexibility, the real issue is employer's desire to minimize overtime payments to workers. Rather than focus on overtime obligations, the debate has focused on two proposals: the use of "comp time" in lieu of overtime pay, and increasing the workweek to an 80 hour/2 week period.

Reinventing OSHA—Front-Line Service Improvement Project

- Purpose:** To fundamentally change the way OSHA enforces the law and conducts its business. The individual field office is the unit of organization where the action is; where guidance is given to individual inspectors or Safety and Health Compliance Officers (CSHOs) who provide the contact between OSHA and businesses and employees. Therefore, this effort to dramatically improve the way OSHA does business targets the field office as the target for change.
- Problem:** Change the role of OSHA from "cop on the beat" to more consulting and problem solving with employers to assure safety for employees. In the past, OSHA has relied principally on a reactive and piecemeal enforcement and compliance strategy.
- Solution:** OSHA plans to move to a problem solving approach similar to the practice that has been used effectively in community policing. The emphasis will not be on simply reacting to the incident but to work in a proactive manner to develop solutions that address the larger causes of a problem. This will result in the use of a diverse set of intervention tools, such as requiring employers to institute safety and health programs and will encourage OSHA compliance officers to consult with employers on how to make their worksites safer and healthier. The goal is to engage both employers and employees into the process of promoting safety and health.
- Problem:** Better target its enforcement efforts to focus on particularly unsafe employers and those workplace elements that are responsible for a large proportion of workplace accidents and illnesses.
- Solution:** OSHA will attempt to gather data from a variety of sources to better define the leading causes of injuries, illnesses and fatalities in a given location. Once this is accomplished the office staff will focus on analyzing the data to identify and then target the worst industries, firms and hazards in a given area.
- Problem:** Divide its resources to create specialized teams within field offices for more effective operations.
- Solution:** To achieve these two goals, OSHA will replace its current structure of safety and health compliance officers (CSHOs) who work on their own. In the new area office, these same CSHOs will work as part of one of two teams -the Strategic Intervention Team or the Response Team. The Strategic Intervention Team will use targeting initiatives and problem solving strategies to strategically deploy limited resources, as well as proactively promoting safety and health programs. The Response Team will ensure that OSHA continues to respond more effectively and efficiently to workplace issues such as fatality investigations and complaints of workplace hazards.

Reinventing OSHA—Front-Line Service Improvement Project(Cont'd)

Problem: Develop a new performance measurement system that focuses on the impact OSHA has on improving safety, not just how many activities OSHA performs.

Solution: *For more than twenty years, OSHA's inspectors have had to operate under the "numbers game" system. Like cops who get rewarded for issuing more tickets, OSHA inspectors were evaluated by measures such as number of violations per inspection and penalty dollars collected. Inspectors also had to cite every single violation, regardless of any extenuating circumstances. This reinforcement system led to such events as OSHA fining workers who went into a collapsed trench to save their co-worker from near death. This new performance measurement system replaces the "numbers game" and rewards inspectors for performance that is based on results.*

Problem: Improve the overall operations of a field office to make it more professional, efficient and responsive to the needs of the customers it serves.

Solution: *In particular, the goal is to find ways of serving the public better, such as by addressing complaints more quickly and effectively, streamlining the onsite inspection by increasing the use of technological innovations, and assuring abatement by placing the responsibility for verifying abatement on the employer.*

Methodology: OSHA has developed a three-stage implementation plan that is based upon successful organizational transformations that have occurred in both the public and private sector. The three stages are (1) Model Design, (2) Pilot and Evaluate and (3) Rollout and Continuous Improvement. The Design Team's goal is to have all federal enforcement area offices redesigned by December 1996.

To achieve this transformation, the agency has created the Front Line Service Improvement Team. With assistance from organizational change consultants from McKinsey and Company, this team has examined factors that have inhibited the performance of the agency, as well as looking to both the public and private sectors for proven ways of delivering its service better.

Reinventing OSHA—Safety and Health Programs Rule

Problem:

As part of efforts to modernize America's approach to occupational safety and health, OSHA is working closely with key business and labor groups on a new set of tools which companies, large and small, can use to find and fix workplace hazards. This approach emphasizes several generic "building blocks" to provide employers and employees with a logical, systematic framework for establishing their own effective hazard control programs.

Solution:

At the heart of this effort lies OSHA's proposed *Safety and Health Programs rule*. This proposed rule, which is part of the FY 1995 Regulatory Agenda, will indicate how companies can use systematic safety and health programs, emphasizing management commitment and employee involvement, to identify hazards at their specific worksites. Once such worksite hazards have been identified, they would use more specific OSHA guidelines and standards to develop effective abatement plans.

OSHA is writing this draft in plain, easy-to-follow language, which will give users flexibility to respond to their own worksite-specific conditions. These efforts have already won strong public and stakeholder support:

- OSHA's business/labor national advisory committee gives top priority to work on the S&H Programs rule.
- State governments strongly endorse this approach (nearly a dozen state governments already have their own S&H Programs rules).
- Many business groups, individual companies and labor organizations have offered to help OSHA shape this key workplace safety and health building block.

OSHA plans to develop its proposal through rulemaking. OSHA will participate in a series of "dialogue meetings" with business, labor and other representatives to work on the key issues concerning safety and health programs. These discussions would cover such issues as employee involvement, scope and tiering, trigger mechanisms, management commitment, and hazard control.

Once OSHA completes work on this rule, it will become the basic foundation for all future workplace safety and health efforts. OSHA will use a wide range of outreach, education, training, and consultation programs, in partnership with business and labor groups, to provide all possible assistance to employers and employees in formulating their own programs to reduce occupational injuries, illnesses, and fatalities in America.

Concerns:

Some NAM members object to any rules or regulations and so object to this.

Reinventing OSHA—OSHA "Quick Fix" Saves Lives

Problem:

The current OSHA inspection process does not mandate immediate abatement of hazards once they are recognized by an OSHA Compliance Officer. Because of the legal process, employers may continue to expose their employees to hazardous conditions for some time even after citations have been issued.

Analysis:

Employers are not required to abate hazardous conditions until citations have become final orders of the OSHA Review Commission. If an employer exercises the right to contest a citation, abatement may not be mandated until several years after the issuance of a citation. Additionally, citations may not be issued to employers up to six months after they have been recognized. Employers found to have safety violations are assessed penalties by OSHA; penalties may be reduced based on the company's size, whether it has a comprehensive safety program, and whether it has received any serious citations during the past three years.

Reinvention:

The "Quick-Fix" program was suggested by a front-line worker in the Parsippany, New Jersey, Area Office during an EIQL/Reinvention brainstorming session during the spring of 1993. Management and employees agreed by consensus to implement the program in FY 1994. As an incentive for employers to immediately abate hazards, and thereby immediately reduce workers exposure to hazards, the "Quick-Fix" program provides an additional 10% penalty reduction for each violation that an employer immediately abates in the presence of the Compliance Officer prior to the closing conference of the investigation. The penalty reduction is offered above and beyond the normal reduction for size, good faith, and history.

Results:

Just before the holiday season in 1993, Quick Fix made an impact in a rather dramatic way. An OSHA compliance officer cited a work site for having insufficient head protection. Under the Quick Fix program, the employer provided the necessary hard hats immediately. Seven days later, a scaffold under erection fell causing a worker and some planking to fall. A second employee was struck on the head by the falling planks, but was uninjured because he was wearing his hard hat. He was able to keep his balance and catch the worker who had fallen from the scaffolding. The worker who fell sustained some minor injuries, but was undoubtedly saved from more serious injury by his hard hat-wearing colleague. Both employees thanked the compliance officer and OSHA for making it possible for them and their families to have a healthy and happy holiday season.

Since implementation of the Quick Fix on October 1, 1993, the immediate abatement of hazards has increased by 17%. This increase in immediate abatement not only has reduced worker exposure to serious safety and health hazards, but has also saved the area office considerable time and money in not having to verify employer actions in the abatement of hazards after a citation has been issued.

Concerns:

This empowerment of the inspector could possibly lead to abuses...since we routinely reduce penalties by 50%, a 10% reduction may not seem like much.

Offer employers a choice of regulatory environments:

Alternative Dispute Resolution

Problem: The formal administrative appeals process in farm labor cases often does not meet customer needs. This process can take a long time, frustrate the farmers who have to wait for their case to be resolved, does not solve problems discovered during Wage and Hour's investigations, and takes up a lot of staff time.

Analysis: When Wage and Hour conducts an inspection of a farmer's migrant worker employment practices and fines the farmer for violations of the law, the farmer often files an appeal for a hearing with the Administrative Law Judge (ALJ). Because of the backlog of cases before the ALJ, many of the smaller migrant worker cases are not addressed for years after the inspection. These cases tend to involve small amounts of money. Frequently, the Department's Solicitors Office will be unable to pursue the case. Thus, no one benefits: not the migrants, not the farmer who had to wait for years for some type of decision, and not the Department, which invested staff time for little result.

Reinvention: A team from the Southern New Jersey District Office tried a novel approach which recognizes farmers as partners in the compliance effort. They created a Farm Labor Appeals Committee, a sort of alternative dispute resolution board. This committee consists of representatives from Wage and Hour and the New Jersey Farm Bureau.

After Wage and Hour conducts an investigation of a farmer who employs migrant farmworkers and assesses fines, the committee gives farmers the option of coming before the board and pleading their case. Farmers can present evidence that they've corrected the problems on their farm (for example, they've improved the migrant housing conditions), and they can make arguments as to why they believe they were incorrectly cited with a violation. After hearing evidence, the committee resolves the case by either accepting an informal settlement or proceeding with formal action.

Results: Experience with the committee to date has been extremely positive:

- farmers have been overwhelmingly positive about this process, believing that they have received a fair "day in court";
- the average length of time to close a case before the committee is a matter of a few months, instead of years with the formal process;
- the Farm Bureau's presence gives the committee credibility with the farmers;
- the Farm Bureau representative has become an advocate of the committee.

Wage and Hour is planning to expand this concept to other areas of the country.

Concerns: The success of this approach is partially dependent upon the willingness of third-party groups to participate. In this pilot project, the Farm Bureau's representation gave the committee credibility with farmers. The success of additional efforts around the country will also be contingent upon getting farmers' advocacy groups to cooperate with Wage and Hour. Many of the farm bureaus, for example, view Wage and Hour as the enemy and might be reluctant to participate in a "joint venture" of this kind.

Reinventing OSHA—Getting Smart About Compliance The "Maine Top 200"

Problem:

Maine had one of the highest incidence rates of workplace injuries and illness in the country, 71% greater than the national average. Through review of workers compensation data, 203 companies were identified as having the highest number of injury claims. These 203 companies represent only 1% of the State's employers and 30% of the employees, but 45% of the injury and illness claims. These firms operate at 1,300 locations, far more than OSHA could physically inspect in a 2 year period. Only 10% of the companies would have appeared as workplaces to be inspected under OSHA's existing targeting plan.

Solution:

OSHA sees Maine as the first testing ground for employer-specific, targeted enforcement. Establishment-specific data was used to focus OSHA attention on the greatest safety and health hazards. OSHA then worked with employers to help them make real improvements in worker safety and health. Traditional compliance enforcement activities were reserved for employers who refused to cooperate.

Each of the 203 companies was sent a letter informing them of their inclusion in the program. Each company that chose to participate was required to submit an action plan to reduce injuries and illness in their workplaces, regardless of whether or not the hazardous conditions were covered by OSHA regulations. The employers were notified of the criteria OSHA would use to evaluate the plans, including management commitment, employee involvement, and a plan to establish a comprehensive safety and health program, perform self inspections, and bring their workplaces into compliance with OSHA regulations.

Employers who submitted plans that met the criteria were placed on a secondary inspection list. They would be inspected in response to employee complaints, catastrophic or fatal accidents, or referrals, and one out of five would be subject to random enforcement inspections to determine whether or not their action plans were adequate and they were actually implementing the individual components of the plan. Employers who decided not to participate or submitted an inadequate plan were placed on a primary list to be scheduled for a comprehensive "wall-to-wall" OSHA inspection.

Results:

The vast majority of the employers decided to participate in the program, submitted action plans and made a commitment to improve safety and health conditions in their workplaces. Only two companies refused to participate, and only three submitted inadequate plans. Employers in the program have identified over 95,000 instances of hazards, and have already eliminated 55,000 of them. They are continuing to work on abating the remaining hazards. This is more than twice the number of hazards OSHA had cited during 1,316 inspections performed during the previous 8 years.

Since joining the program, 59% of the employers have experienced a decrease in their lost time injury rate. Several companies have experienced dramatic improvements. S.D. Warren, a paper and pulp mill, reports that the process has "made a big difference in safety awareness, not only on the site but in the community as well." The decline in workplace injuries and illnesses is also affecting the premiums employers pay for workers' compensation insurance. Insurance premium rates have begun to drop in the last year.

Concerns:

In Maine, we used worker's compensation data to target which employers should be in the program, but that data is not available in every state. We will need to find other measures to help us target companies.....Many unions are skeptical about this approach.

Reinventing OSHA—*Focused Inspections in the Construction Industry*

Problem:

Until recently, construction site inspections were comprehensive, and traditionally covered all hazards, resulting in less time spent on those hazards that caused the majority of fatalities, and more time on less serious "paperwork" requirements. OSHA's own data shows that the most frequently cited hazard in construction is hazard communication, yet only four hazards account for 90% of the fatalities in construction.

Solution:

OSHA has initiated a new construction enforcement policy that follows the strategy of targeting the worst actors and worst offenses; protecting vulnerable populations; deterring violations with significant penalties, including criminal penalties; and fixing the problem swiftly and efficiently.

Focused inspections in the construction industry is a more efficient use of OSHA's limited resources, since it allows the OSHA inspectors to investigate whether a controlling contractor has an effective safety and health program, and if there is a person on the job site responsible for implementing that program. If the answers are "yes," then OSHA will perform an inspection focusing only on the four major killers of construction workers: falls, electrocutions; being caught in (trenches); and being struck by machines or materials.

OSHA wants to visit as many worksites as possible to identify those where there seems to be little regard for worker safety, especially in the four main areas of employee fatalities. Compliance officers have been instructed to concentrate their efforts on these four hazards, and may end the inspection after they have been evaluated.

And although the focus will be on the four most hazardous areas, when other serious hazards such as confined space are observed or reported by employees, a citation shall be proposed. Other-than-serious hazards which are immediately abated will not be cited.

If poor working conditions are noticed during the walkaround inspection, the inspector may determine that a comprehensive inspection is appropriate. CSHOs are expected to identify the need, if any, for subsequent inspections if a site is free of the four main hazards. State plan states have been provided with copies of the new policy, and have been asked to notify OSHA of their intent to adopt a similar construction inspection protocol.

An evaluation of the focused inspection in construction policy is planned. OSHA is considering development of a similar focused inspection policy for general industry.

Concerns:

Dependent on changing the culture of OSHA inspectors (to pass up nonserious violations) and getting contractors to prepare and implement plans. The plans could be considered paperwork.

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Increase efficiency and limit unnecessary burden on employees and employers:

Self-audit enforcement technique.

Problem: Wage and Hour's standard procedure for the typical investigation used to be to send out an investigator to a firm to conduct an exhaustive review of the employer's records, interview employees, compute fines, and negotiate with the employer. This process, while thorough, utilizes a lot of staff time. Furthermore, this method can be resisted by employers as being disruptive of their business operations.

Analysis: Wage and Hour has taken a "one size fits all" approach to enforcement. Every investigation proceeds through the same steps. Every case file is supposed to contain the same types and amounts of documentation. Every investigation proceeds upon the assumption that each employer audited must be checked in the same way and for the same violations.

Reinvention: Many of our field employees began to question why we had to operate in this way for every case, especially given that many employers seemed to be perfectly willing to help us out and that Wage and Hour's resources were getting smaller every year.

Field employees therefore developed the self-audit method. Investigators send out letters to employers asking them to audit their pay practices. The letter explains that Wage and Hour is interested in compliance in certain areas, such as the minimum wage or overtime, and informs the employer that compliance requires certain things. The employer is then asked to compute any back pay for employees if they discover errors in compliance. The investigator reviews the firm's work and either conducts a full investigation or oversees the payment of the back pay which the firm has computed.

Results: The evidence shows that the self-audit technique saves time for the employer, for Wage and Hour, and for workers. Last year, Wage and Hour conducted about 1900 self-audits, resulting in about \$25,200,000 in back pay to approximately 31,000 workers. This technique usually requires fewer investigator hours spent on each case.

One good example of the effectiveness of the self-audit technique is a project conducted by Wage and Hour employees in San Diego. A team of investigators utilized the self-audit procedure to blitz the construction industry in Imperial County, California. Their highly creative project increased awareness within the industry, generated almost \$200,000 in back pay to construction workers, dramatically reduced the number of hours put in by investigators on a per-case basis, substantially lowered the number of days it took to finish the cases, and required substantially lower amounts of travel monies for Wage and Hour investigators.

Wage and Hour will be implementing the self-audit, and other innovative compliance tools, nationwide.

Concerns:

Self-audits are not feasible in many instances because they are applicable only to those employers who have no track record of violations and where the regulatory issues involved are relatively simple.

Additionally, as Wage and Hour increases the proportion of its investigations using the self-audit technique, it must not allow employers to come to believe that Wage and Hour is dropping its "policing" functions in favor of an exclusive reliance on employer "self-policing". The self-audit technique will be most effective if it supplements other techniques.

DOL Regulatory Information Initiative Proposal

This proposal outlines the highlights of an electronic regulatory information and compliance assistance system, operating via the Internet, that would have two key purposes:

- providing DOL regulatory information to the public
- allowing receipt of information or filings from the public

With the appropriate approvals and funding, this system could be operational within six months and substantially up and running within a year.

The following are some of the specific services this system would provide:

- *a complete listing of all of the Department of Labor regulations* -- including their preambles, letters of interpretation, and court decisions that clarify, change, or modify the original regulatory provision; cross references would be included to any associated compliance assistance materials
- *regulatory promulgation* -- proposed regulations would be immediately posted and public comment would be available through electronic mail
- *compliance assistance* -- a wide variety of DOL compliance assistance materials, such as pamphlets, would be made available electronically
- *non-regulatory DOL information* -- a wide variety of the information that the Department of Labor produces is not regulatory related, but would also be made available on the Internet; for example, ETA's America's Job Banks program, the Women's Bureau's clearing house, OAW's best practices material, and BLS survey data

In addition, sometime within the next two years, it is also anticipated that filing of records required by regulations will be able to be done electronically. At this time the techniques for insuring the authenticity of a filed record are not yet standardized, however this should be resolved within the next year or so.

Reinventing OSHA—OSHA on Internet

Problem:

Provide OSHA regulatory information to those who need it.

Solution:

OSHA has been working on Internet connectivity for about 3 years and has had Internet Servers operating for about 8 months. At our Salt Lake City Lab we have the OSH Act, Federal Register (OSHA), Standards, OSHA Directives, and the Corporate Settlement Agreements on-line. The National Office has Office contact information and other items from Office of Information and references/pointers to other Safety and Health Information Resources.

OSHA is investigating distribution over the Internet of press releases, fact sheets, brochures, text from speeches by the Assistant Secretary. We expect to have several of these on-line within the next three months.

OSHA has been working with the SBA to integrate our services with ERIC (Electronic Regulatory Information Center) to the extent it remains consistent with our currently planned outreach initiatives. We are meeting with SBA to determine what information would be most valuable in helping the small business community remain in compliance. We will be integrating our current servers with the ERIC system, but some aspects of the ERIC system may be too expensive for OSHA to implement on a large scale.

OSHA is also following developments in Federal use of the Internet by the U.S. Postal Service in their Information Kiosk Project and with FedWorld.

Reinventing OSHA—ErgoWeb

AN INTERACTIVE
ERGONOMICS RESOURCE
DEVELOPED BY UNIVERSITY
OF UTAH

Problem:

Ergonomics information tends to be used to find and fix specific problems identified through:

- Employee complaints
- Injury/illness records
- Production indices

This process tends to be reactive. The information and applications framework is not easily used by non-ergonomists. Expert assistance is frequently required to structure the problem and apply analytical tools.

Solution:

Through internet of "the information highway," the ErgoWeb project provides remote users:

- Ergonomics information (books, journals, regulations, OSHA policies, etc.)
- Analytical tools (NIOSH WPG, biomechanical models, etc.)
- Case studies and "Success Stories" (Text, photo, video)
- Sources of ergonomic equipment, tools, and supplies
- Checklists
- Etc.

ErgoWeb can be used as a mechanism to exchange information between geographically separate installations who share a common interest in the identification and solution of ergonomic related disorders.

As an intermediate step or for users who do not have internet access, the entire ErgoWeb system may be made available as a CD ROM for each workstation.

- Ergonomics information also can be identified by the type of activity:
- Manual material handling
- Assembly/disassembly
- Information processing
- Machine operation
- Etc.

To date ErgoWeb has been funded by the American Automobile Manufacturers Association (AAMA) and has emphasized operations typically found in automobile assembly plants. ErgoWeb, however, is intended to be the repository for all types of ergonomics knowledge and we will cooperate with any party to incorporate specific ergonomic findings and tools into a usable form. Proprietary information or other classified data can also be implemented and maintained on ErgoWeb and restricted to specific users.

Reinventing OSHA—MSDS National Repository (Cont'd)

Where We Are:

Others should be archived because newer or replacement MSDSs have been placed into the system. Private companies, such as AT&T's EasyLink Service have joined up with the National Wholesale Drug Association (NWDA) to create an MSDS library for drug wholesalers and pharmacies. The University of Utah has a collection of MSDS available on Internet. This collection contains only 2,000 and depends upon individuals on the Internet to send them MSDS in electronic copy.

Several important steps in making a national repository feasible resulted several years ago. The first was the formation of the American National Standards Institute (ANSI) X-12 Committee to develop a standardized format for the electronic transfer of MSDS. Next, a subgroup of the committee developed the capability of sending MSDS information through Electronic Data Interface (EDI). This is a critical ingredient since the number of MSDSs present in the workplace is estimated to be in excess of 10,000,000. For a national repository to exist, most of the MSDS would have to be collected and disseminated electronically.

A national repository is not close at hand. Several years ago OSHA initiated a pilot project with a small number of companies who are members of Organizational Resources Counselors, Inc. (ORC). These ORC companies included Dupont, Chevron, BP America and Exxon. The conclusion from the pilot was that such a system would involve equipment and staff beyond OSHA's present means and that mandatory submissions of MSDS from companies was necessary. In addition, OSHA would have to modify its policy on the acceptance of an electronic centralized system. Up to this point, electronic systems were acceptable but they had to belong to the employer since each employer had to maintain their own system.

Certainly, a national repository MSDS system is possible. Such a system would result in tremendous savings to employers and ease their difficulty of finding the information. How best to establish such a system would need to be studied. For example, should OSHA join a partnership with the Canadian effort or would it be more cost effective for CMA to expand their present system and open it up to the public? If the government were to establish a national repository should it charge users for access and how much would it recoup from its operational costs.

Reinventing OSHA—MSDS National Repository

Need:

OSHA's Hazard Communication standard protects workers handling hazardous chemicals by informing them of the precautions that must be taken. It provides employees with information so they can better protect themselves in their jobs. The regulation requires employers to maintain a Material Safety Data Sheet (MSDS) for each toxic chemical at the worksite.

The MSDS requirement results in a tremendous amount of duplication for employers. Instead of going to a central location for a MSDS, each employer must have their own system for maintaining copies (or an electronic version) of the hazardous material at each worksite. Since OSHA requires each employer to have an MSDS for every toxic chemical present, the task of contacting manufacturers and importers to obtain this information is burdensome. The Canadian Government, in 1985, recognized the savings and benefits of a centralized MSDS system. A centralized electronic system would not only benefit employers with meeting OSHA's requirements but would aid many local firefighters to be able to make use of thousands of MSDS sent to their stations as part of the Environmental Protection Agency's CERLA requirements under community right to know. Subsequently, Fire stations have developed storage problems from the many paper copies of MSDS.

Workers also have problems with MSDSs. Some don't know where to look for them. When accidents occur, workers need the information quickly. Some MSDSs are very long and difficult to understand. A centralized electronic repository would not only standardize the format, it would allow the retrieval of just those parts of the MSDS needed. Further, computer programs and on-line help systems could be used to explain difficult terminology.

What Exists:

The Chemical Manufacturers Association (CMA) maintains a library of MSDS called Chemtrac. Chemtrac contains 1,400,000 MSDS and is supported by the Departments of Transportation and Defense through a series of Memoranda of Understanding. However, Chemtrac is a graphic based electronic system and not easily searchable. A new database recently developed by CMA, called "MSDS Central" is field searchable but it only contains 100,000 MSDS. CMA customers and their members can subscribe to this service for less than \$500.00.

However, neither the CMA system, Chemtrac nor MSDS Central, is a public system. Members of CMA determine who can get MSDS from their system and which MSDS they do not want in the public domain. While emergency responders and health care providers have access, CMA decides who has a legitimate reason for needing a copy and why. These limitations have to do with product liability and customer relations.

Other MSDS repositories exist. DOD maintains their Hazardous Materials Information System (HMIS) at the Defense Logistics Agency in Richmond, VA. However, HMIS only has 75,000 MSDSs in their system and some of the information on the sheets has been modified. Others

Coordinate enforcement activities:

Delegation of authority to states.

Problem: The Federal government and the State governments often do not share information and resources in ways which eliminate overlapping regulatory functions in the most effective ways possible. As a result, employers can become confused by the presence of different agencies with responsibilities in identical subject areas.

Analysis: The Fair Labor Standards Act (FLSA) involves the minimum wage, overtime compensation, and child labor provisions. Most States have laws which cover the same issues. As can be expected, the standards vary widely from State to State. Some States have labor standards in these areas which are as stringent or are more stringent than Federal standards under the FLSA. A few of these States also have the resources and the desire to enforce such standards. In these States, the overlapping jurisdiction of Wage and Hour and the state labor departments can cause employers to be confused and can result in the suboptimal utilization of public resources.

Reinvention: Wage and Hour might consider piloting the redelegation of its authority in two or three States that have strong labor laws and the resources to enforce them. Under this proposition, Wage and Hour would delegate its enforcement responsibilities in certain areas of Federal law to a State where the State has standards nearly equivalent to, or stronger than, Federal standards. Wage and Hour would consider doing this only where the delegation would not result in a loss of worker protections.

Implementation of such a project might have two benefits: (1) it would bring Wage and Hour and the various States closer together in their efforts, and (2) Wage and Hour could devote its resources to other critical enforcement areas within the chosen States.

Concerns: Wage and Hour has four primary concerns with this proposal.

- The loss of uniform application of national labor standards.

- The possibility that the States involved would request funding for taking on the added responsibility and workload, and that without funding, Federal withdrawal would be seen as a burden.
- The possibility that Wage and Hour's funding would be decreased as a result of the redelegation of its authority. A major reason for redelegating authority is to shift enforcement resources to areas where attention is needed, and away from areas where some States might be able to meet an enforcement burden. Wage and Hour is interested in increased effectiveness in areas which desperately need attention, but a redelegation might cause some to call for a corresponding decrease in Wage and Hour funding.
- Federal delegation might be strongly opposed by constituent groups.

Reinventing OSHA—Out-Of-Date Standards

Problem:

OSHA is moving forward with a comprehensive strategy aimed at building a modern set of workplace safety and health standards which protect workers and make "real sense to real people." At the same time, OSHA also aims to relieve business of unnecessary regulatory burdens. This new regulatory strategy encompasses five essential elements to achieve more sensible safety and health standards. One element of this strategy focuses on revising or revoking the limited number of OSHA standards, provisions of standards, or compliance instructions which are obsolete, confusing, inconsistent or trivial, and as a result, do not significantly improve worker safety and health.

Solution:

To address this element, OSHA is determined to take immediate action which is responsive to stakeholder concerns. At the same time, OSHA will establish more long term mechanisms to continually modernize and revise standards.

In the short-term, OSHA will:

- *Identify 20-25 standards or provisions which have become problems because they are confusing, obsolete, inconsistent, or trivial in the way they are written or enforced. OSHA, with NIOSH consultation, will determine for which of these it can immediately suspend or change enforcement without a reduction in safety and health protections. It will then issue directives to this effect.*
- *Invite public comment on all of the 20-25 standards or provisions in order to determine the appropriate permanent action [deletion, revision, compliance interpretation, or other action] to be taken by OSHA.*
- *Following public input, publish a proposal in the Federal Register to formally initiate a rulemaking to eliminate or revise provisions. Issue further compliance instructions for provisions which can be addressed in this fashion.*
- *OSHA will use its standing advisory committees to convene public meetings to develop sensible, workable regulatory approaches to meet small business needs.*

In the long-term, OSHA will:

- *Solicit public comment on existing standards every year through a request for information in the Federal Register and conduct expedited rulemaking to make appropriate changes.*

In carrying out this action plan, it is absolutely vital that OSHA continue to address stakeholder concerns and fully involve them in this process, both to avoid targeting the wrong rules and to build a strong business/labor consensus supporting effective workplace safety and health programs.

Reinventing OSHA—Sensible Standards Project (The Rulemaking Initiative)

Items for Immediate Action

- Problem:** Construction has different requirements for types of gas cans than manufacturing—some plastic cans OK in manufacturing—only metal cans allowed in construction.
- Solution:** *Suspended enforcement of “metal only” provision and begin rulemaking to eliminate differences.*
- Problem:** Failure to display OSHA poster is cause for citation.
- Solution:** *Compliance Directive to not issue citation if poster is immediately displayed.*
- Problem:** Excessive paperwork requirements for 14 carcinogen standards.
- Solution:** *Suspend enforcement.*
- Problem:** Unnecessary medical requirements in coke-oven standard—chest X-rays and sputum cytology tests.
- Solution:** *Issue Compliance Directive to cite de minimis until issues are addressed in medical surveillance provision of safety and health program standard.*
- Problem:** Height of guardrails—citation if not exactly 42" high.
- Solution:** *Compliance Directive already in effect to allow heights of rails to be between 36"-44"; the new Fall Protection Standard, effective February 1995, eliminates the 42" requirement.*
- Problem:** Duplicative Federal Regulations—DOT, DOD, and ATF all have better regulations on explosives handling.
- Solution:** *Revise OSHA regulations to make them compatible with other federal agencies.*
- Problem:** Conflicting federal regulations—OSHA requires radiation warning signs to be colored “MAGENTA”; DOE and NRC require black and yellow.
- Solution:** *Suspend enforcement of this requirement; revise the rule to be consistent with DOE AND NRC.*
- Problem:** Penalties for allowing workers to chew gum on roofs.
- Solution:** *Instructions have been sent to inspectors limiting conditions under which this provision should be cited.*
- Problem:** “Data Sheet” requirement for common household items.
- Solution:** *Issue clarification on when to enforce consumer product provision of the HazCom rule.*

Reinventing OSHA—Sensible Standards Project (Cont'd)

- Problem:** Excessive Paperwork Burden —Physician certification required in first-aid kits.
- Solution:** *Suspend enforcement of the "approval" requirement for first-aid kits, both for construction and general industry.*
- Problem:** "Hundreds" of confusing regulations about ladders, including prohibition against painting a ladder.
- Solution:** *Expedite work already in progress to consolidate these provisions from the current 15 pages to 2 pages; clarify when to enforce "painting" provision of the rule.*
- Problem:** Citations for not posting the 911 emergency phone number.
- Solution:** *Issue directive limiting conditions under which this provision would be cited.*
- Additional Candidates**
(Additional Research
Ongoing)
- Problem:** Unrealistic time frame—only 3 months to change labels.
- Solution:** *Issue compliance directive to suspend enforcement.*
- Problem:** Excessive employees clothing requirements in electrical power generation standard.
- Solution:** *Have already issued an interpretive notice clarifying the types of flame retardant clothing and limiting the conditions when citations can be issued.*

Assure that DOL regulations make sense:

Eliminating regulations.

Problem: Over time, some regulations have become outdated, obsolete, or trivial. This creates confusion for employers and adds to Wage and Hour's burden of explaining the law in a clear and concise way to its customers.

Analysis: As the economy changes, workplace regulations may not keep up with the times. Some of Wage and Hour's regulations were written for workplace conditions relevant to industrial-era structures. Some of the regulations which Wage and Hour enforces have never been relevant to very many people.

Reinvention: *Identify and eliminate regulations which are unnecessary, out of date, or irrelevant.*

Results: *Wage and Hour has already identified for elimination 24 parts of its regulations that are out of date, unnecessary, or trivial. A total of 274 out of 1165 pages of regulations will be eliminated, almost 25% of the total.*

One example of a regulation which would be eliminated is Part 517 of Volume 29 of the Code of Federal Regulations: Training Wage Provisions of the FLSA Amendments of 1989. This regulation allowed employers to pay temporary training wages to people under 20 years old. Why eliminate? The statutory authority for the training wage expired in 1993.

Another example involves a regulation, last revised in 1950, which allows employers to apply for authority to employ messengers at sub-minimum wages. To our knowledge, this regulation has never been used.

Concerns: Changes to many of these parts of the regulations will require a Notice and Comment period.

Assure that DOL regulations make sense:

Fix "Regulation 541".

Problem: Executive, administrative, and professional employees are exempt from receiving overtime under regulation Part 541. The way the regulations are written right now, if an employee is paid on a "salary basis" they might qualify for exemption. If there is a reduction of the salary based on the number of hours worked, the employee is not considered exempt from overtime by Wage and Hour. As employers have developed new compensation strategies, a great deal of confusion has developed over just what the term "salary basis" means. There is so much confusion, in fact, that employers and employees have come into more and more conflict over the meaning of this term.

Analysis: The "salary basis" requirement has been in the regulations since 1940, and was last modified in 1954. Certain types of deductions from an employees fixed salary are legal, while others are not. Certain types of payments are considered a "salary," while others are not. Over the years, as employer pay practices have become increasingly diverse, the courts have delivered divergent interpretations of what the "salary basis" requirement means in practice. It might be impossible to establish a consensus on any future revisions of the salary concept.

Reinvention: Restrict the "salary basis" requirement to low-paid employees and eliminate the requirement for high wage employees, and simply increase the amount of money a person has to earn in order to qualify for exemption.

By restricting the "salary basis" requirement to lower-paid employees, much of the confusion over which high-paid employees are paid a salary and which ones aren't would disappear. Instead, it would give employers the flexibility to devise pay arrangements according to their needs.

Low-income and non-professional workers' rights would continue to be protected under this system, however, because the "salary basis" test would remain in place for low-income workers and the minimum amount of money a person needs to receive every week in order to be considered for the exemption would also increase. In the

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regulations, a person who is paid on a "salary basis" must also earn a certain minimum amount every week. That amount has not been increased for many years, so it is currently very low (about \$250 per week).

In this new scheme, only higher-paid workers would be considered for exemption -- the original point of "Regulation 541". A firm in Omaha, Nebraska recently paid \$6,500 in back wages to four employees who were called "copy machine technicians." The firm considered them to be exempt from overtime because they were "professionals" who were paid salaries ranging from \$250 to \$400 per week. The employees worked as many as 70 hours per week with no overtime. What were these workers really employed to do? They were employed to photocopy documents. The increase in the amount of money necessary for exemption would hopefully prevent situations such as this one from occurring.

Concerns:

This is an approach that may not be as embraced by employers because the simplification does not go far enough.

Assure that DOL regulations make sense:

Child labor regulations.

Problem: Child labor regulations prohibit minors from operating dangerous machinery, including paper baling machines. Paper baling machines have traditionally been very dangerous pieces of equipment, but recent technological changes may be making our regulations obsolete.

Child labor regulations also limit the number of hours and times of day that 14- and 15-year-old children can work. The current standards do not permit minors to work past 7:00 p.m. during the academic year even when the following day is not a workday. A minor who works in the local mall, for example, is not allowed to work later than 7:00 p.m. on a Friday night.

Analysis: Wage and Hour wants to create child labor rules that make sense to all concerned. Therefore, Wage and Hour's goal is to create regulations that provide flexibility to employers yet still take into account the health, well-being, and educational needs of our young people. If technological changes to workplace devices mean that anyone, including minors, can safely operate such machines, then Wage and Hour should allow those devices to be used. If current regulations prohibiting the times of day minors need to be changed to make common sense, then Wage and Hour should look at ways to make them better.

Reinvention: Wage and Hour is simplifying and clarifying these regulations to make them both more relevant to current workplace conditions and easier to follow.

To attack the paper baler issue, Wage and Hour is utilizing the scientific expertise of the National Institute of Occupational Safety and Health to conduct on-site studies of this issue. The aim is to generate common sense regulations that give greater flexibility to employers while ensuring that minors are not placed in any danger if they are allowed to operate paper balers.

To address the hours standards issue, Wage and Hour issued a Notice of Proposed Rulemaking (NPRM). This notice proposed changes to existing child labor hours standards. While the Department received numerous comments reflecting a wide range

of opinions, Wage and Hour will increase the flexibility of its child labor rules.

A final rule will soon be issued which will allow 14- and 15-year-old professional sports attendants (such as "batboys") to work more flexible hours. Wage and Hour is also open to the idea of allowing minors in other job categories to work more flexible hours on non-schoolnights.

Concerns:

Wage and Hour does not want to implement any change which increases the odds that more minors would be harmed by workplace conditions. Therefore, any changes in the child labor regulations must be made only after thoughtful consideration of the trade-offs between the benefits to be gained from additional workplace flexibility and the dangers of removing certain child labor standards.

Additionally, Wage and Hour does not want to send the message that all child labor standards, particularly in the hazardous equipment area, should be loosened. Wage and Hour remains committed to protecting workplace safety for children.

The Fair Labor Standards Act

Critics of the Fair Labor Standards Act, (FLSA) have portrayed the FLSA as inhibiting employee-employer flexibility. They argue that the FLSA, enacted as it was in the 1930's, simply cannot adapt to the modern worker's lifestyle and needs. Actually there is significant flexibility under the FLSA, and the real issue is employers' desire to minimize overtime payments to workers. When employers say flexibility they mean an employee works 8 hours one day and 16 hours the next day; they mean an employee may work this week but not next week. Rather than focus on the real issue which is overtime obligations -- the debate has focused on two proposals amending the FLSA to allow private sector employers to use "comptime" in lieu of overtime pay just as currently permitted by public sector employers and increasing the work week to an 80 hour period over two weeks.

Below is a brief analysis of both of these proposals.

COMPTIME

Currently under the FLSA, comptime in lieu of overtime pay is not permitted for private employers. State and local government employers may grant overtime at the rate of 1.5 hours for each overtime hour worked. There are limits on how many comptime hours may be accrued, how comptime should be paid, and other conditions for implementing a comptime program.

Pros for extending comptime:

- * Employees say that flexibility in work scheduling is one of the most important factors in job satisfaction, and flexible scheduling has been shown to improve attendance and productivity.
- * Because comptime is accrued at 1.5 hours for each overtime hour worked, employees receive basically the same reimbursement that they would have received if they were paid overtime wages.

Cons against extending comptime:

- * Employees could lose their right to be paid overtime wages, if their employer requires them to take comptime instead. Many employees need all the money they earn and would prefer to be paid in cash rather than hours.
- * Unlike governments, private employers can close their businesses or declare bankruptcy, leaving the employees with no way to collect their accrued comptime.
- * Public employees may accrue up to 240 hours (480 hours for public safety employees) if comptime. This amount could lead to significant record-keeping problems, especially for small employers.

Approach: Comptime directly increases employee flexibility and should be accommodated under the FLSA by amending it to allow a modified form of comptime for private employers. Any comptime proposal, however, should contain the following safeguards:

- * Comptime should be totally voluntary for employees -- Employers should be prohibited from forcing an employee to take comptime in lieu of paid overtime. Employees should be protected from retaliation under the nondiscrimination provisions of Section 15(a)(3) of FLSA.
- * In order to ensure that employees are permitted to use their accrued comptime, it should be required that comptime be expended within a specified period [e.g. 1 year] following accrual of a trigger amount.
- * In the event of bankruptcy, employee comptime should be treated the same as employee wages earned during the months immediately prior to the bankruptcy filing.

80 Hour/2 Weeks

With a few exceptions, the basic overtime requirement under FLSA is the payment of one and one-half times the employees regular rate of pay for all hours worked in excess of 40 hours in a workweek. Each workweek stands alone and an employee who works 44 hours one week and 36 hours the next must be paid overtime for the four overtime hours worked in the first week.

The Labor Policy Association and others have suggested the FLSA be amended to permit hours to be averaged over a period longer than one week, and that overtime should be required only if the employee exceeded a weekly average of 40 hours.

Pros for changing the basic 40-hour workweek requirement:

- ▶ A longer work period would give employees greater flexibility to arrange their work schedules to meet family or other needs.
- ▶ The flexitime programs currently offered to Federal employees permit a great deal of flexibility.
- ▶ An 80-hour work period is currently available to hospital workers without any adverse impact on those employees. Similar flexibility should be offered to all workers.

Cons against changing the basic 40-hour workweek requirement:

- ▶ Eliminating overtime wages above 40-hours per week could encourage employers to schedule employees to work extremely long shifts. Longer shifts, that still average out to 80 hours over 2 weeks will lead to increase on-the-job accidents, because employees are tired and overworked.

- ▶ Rather than being family friendly, a change in the 40-hour week could lead to employees being forced to work substantially longer hours in any given week without the right to overtime compensation.
- ▶ The 40-hour workweek already allows flexibility because employers can begin the workweek on any day of the week and any time of day. Thus, an employee can be scheduled to work on a variety of different nontraditional schedules.

Recommendation:

Although the 80-hour work period would provide some additional flexibility, it would also subject employees to additional demands by their employers to work extra hours in a particular week. In actual practice, most employees have very little control over their work schedules, and a change in the 40-hour week would not provide them with any control or with any significant benefits for the employees.

A comptime amendment will provide almost all of the flexibility that an 80-hour work period would provide without as many accompanying negative effects.

OSHA: A REGULATORY "SUCCESS STORY"

1. OSHA'S MISSION. Congress created OSHA in 1970 "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions." OSHA's fundamental mission is as important to America's working families today as it was a quarter-century ago.

2. WHY OSHA WORKS. By developing protective standards, and making employers more safety conscious, OSHA has made a real difference-- often the difference between life and death-- to millions of working Americans. Overall, the workplace fatality rate has dropped by over 50% since OSHA was created in 1970, according to the National Safety Council.

a. OSHA's Protective Standards Save Lives. Here are just a few examples of how OSHA has saved lives and improved worker health and safety:

■ **Trenches.** Thousands of construction workers were buried alive in trench cave-ins before OSHA strengthened trenching protections in 1990. Since then, trenching fatalities have declined by 35%, and hundreds of trenching accidents have been prevented.

■ **Lead.** Thousands of smelting and battery plant workers suffered anemia, nerve disorders, seizures, brain damage and even death as a result of prolonged exposure to lead before OSHA issued protections in 1978. The number of workers with high-lead concentrations in their blood dropped by 66% in the ensuing five years, markedly improving the health of workers in these industries.

■ **Grain Handling.** Hundreds of workers were killed and thousands injured in grain dust explosions before OSHA issued protections in 1988. Since then, according to the grain industry's own data, the fatality rate has dropped by 58%, and the injury rate has dropped by 41%.

■ **Cotton Dust.** Several hundred thousand textile industry workers developed "brown lung"-- a crippling and sometimes fatal respiratory disease-- from exposure to cotton dust before OSHA issued protections in 1978. That year, there were an estimated 40,000 cases, amounting to 20% of the industry's workforce. By 1985, the rate had dropped to 1%.

b. OSHA's Enforcement Program Saves Lives. Millions of working Americans have also benefitted directly from OSHA's enforcement program. In FY1994 alone, OSHA inspections helped make over 40,000 workplaces safer for nearly two million working Americans. Most employers have reported that their workplaces became safer after OSHA inspected them; a recent study confirmed that following an OSHA inspection and fine, injuries at the inspected worksite decline by as much as 22%. There is no shortage of examples:

✱ Following a 1991 inspection, a West Virginia vending machine manufacturer instituted a safety program and lowered its lost workday injury rate by 73%.

✱ OSHA inspected a Cleveland construction site in 1994, insisting that workers wear safety belts while working on a scaffold seventy feet above the ground. Four days later, the scaffold collapsed, but the workers were saved by their new safety belts.

✱ OSHA's 1989 inspection and \$750,000 fine was "the catalyst" for Boise Cascade to improve worker protections. The company implemented a comprehensive safety and health program, cutting injury rates by 78% and workers' comp costs by 75%. "OSHA played a key role in these accomplishments," according to the company's counsel.

✱ Following a 1989 OSHA inspection and fine, an automobile carpeting manufacturer established an ergonomics program at two Pennsylvania plants. Cumulative trauma injuries declined by 94% and 77% respectively at the two plants over the ensuing 3 years.

c. Safe Workplaces Save Dollars. Every workplace accident cuts into the employer's profit margin. In 1992, for example, workers' compensation claims amounted to \$44 billion. Compliance with OSHA's protective standards helps save lives, reduce injuries, and cut these unnecessary losses. For example, two years after OSHA issued a cotton dust standard to protect workers from respiratory disease, The Economist magazine reported that the required protections were helping to make the industry more efficient.

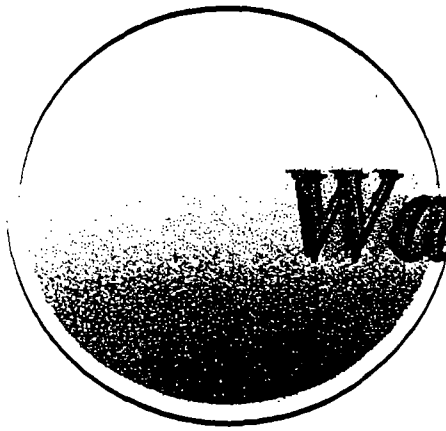
3. DO WE STILL NEED OSHA? OSHA has had notable successes, but its job is far from done:

✱ Every year, work-related incidents and illnesses cost an estimated 56,000 American lives-- more than the total American lives lost in battle during the entire 9-year Vietnam War.

✱ On an average day, 154 workers are killed in safety incidents or die from occupational disease, and another 16,000 workers are injured. Meatpacking workers, for example, suffer an incredible annual injury and illness rate of 39 per 100 workers. These incidents have a devastating impact on thousands of America's working families each year.

✱ There are staggering economic costs as well: safety incidents alone cost our economy over \$100 billion a year, and occupational illnesses cost many times more. We all bear these costs-- as employers, as workers, and as taxpayers.

Other federal programs may provide job training, civil rights protections, a minimum wage, or collective bargaining rights. But what good are they to a worker who is killed or disabled on the job?



Wage and Hour Division

U.S. Department of Labor

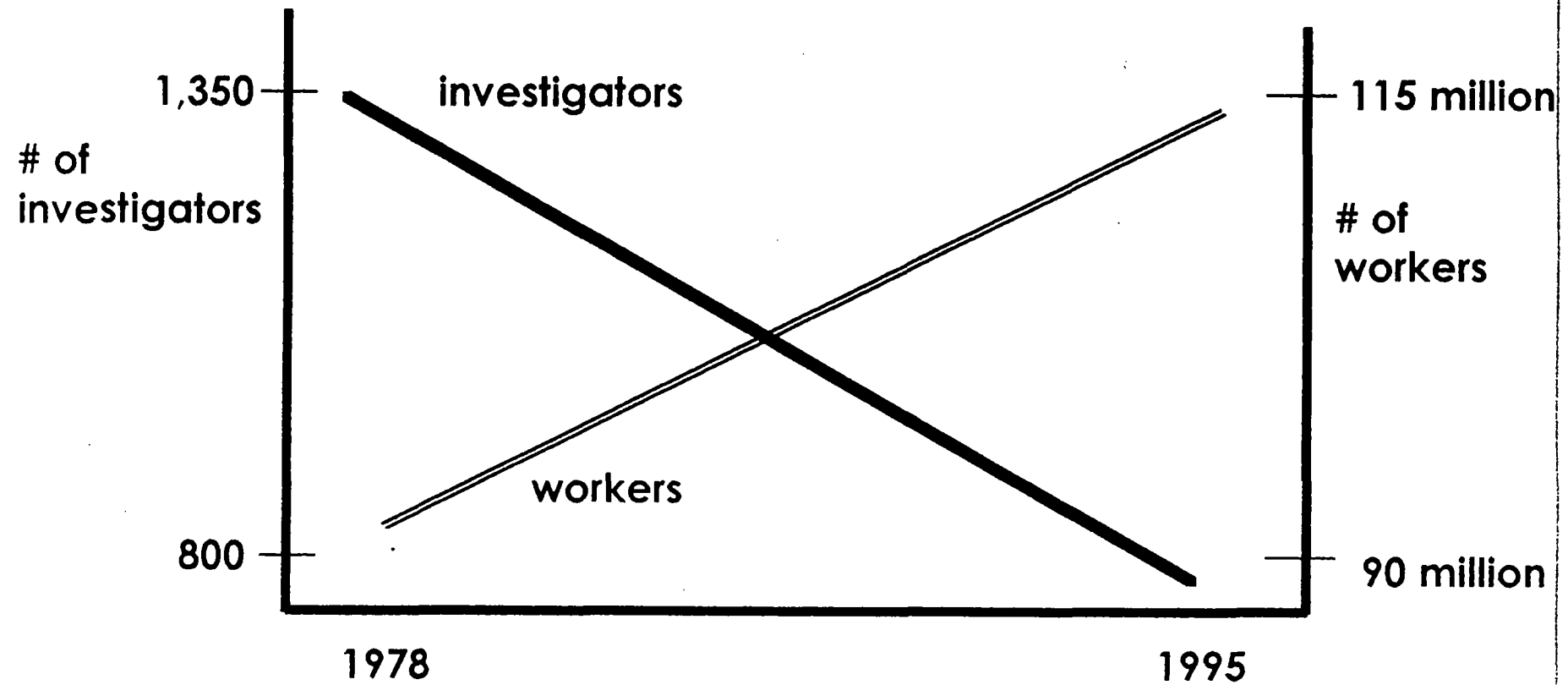
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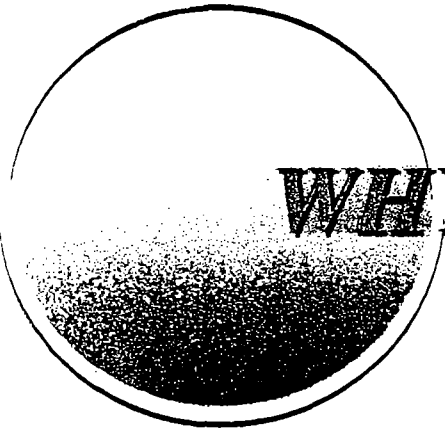
Maria Echaveste

Wage and Hour Administrator



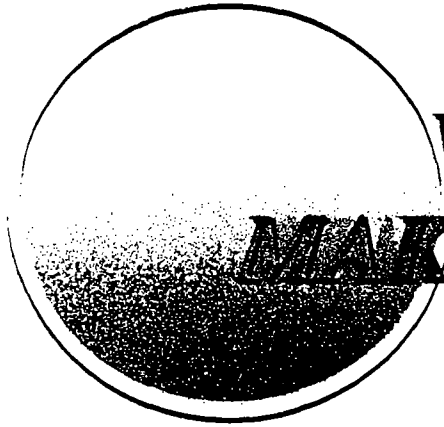
WAGE and HOUR INVESTIGATORS





WHY WE NEED FLSA

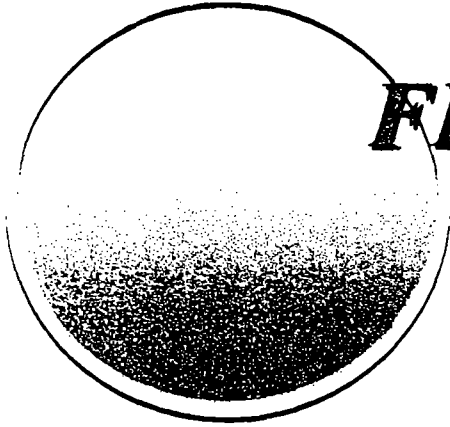
- **Fundamental protection for workers**
- **Over 6 million businesses**
- **Over 110 million workers**
- **1/4 billion dollars paid to over 625,000 employees (in the last 2 years)**



WAGE and HOUR: MAKING A DIFFERENCE!

- **“Low wage” industries: recovered \$55 million for 200,000 employees (last 2 years)**

- **Garment industry (last 2 years)**
 - **\$4.7 million in wages paid to about 17,000 employees**



FLSA

“Flexibility and Fairness”

- **Section 541 - exemption changes**
- **Child Labor - hours standard and hazardous occupation orders**
- **40 hour work week - alternatives**

WAGE AND HOUR: AN ENFORCEMENT SUCCESS STORY

Wage and Hour's Mission

The mission of the Wage and Hour Division is to enforce the nation's employment standards to serve and protect the present and future workers of America. Wage and Hour protects the most vulnerable workers in the United States -- children, low-wage workers, migrant farmworkers, and working families.

Why Wage and Hour Works

Wage and Hour is responsible for enforcing laws applicable to about 6 million firms and 110 million workers. To do this job, Wage and Hour has fewer than 800 investigators, down from about 1350 investigators in 1978.

Despite its resource limitations, Wage and Hour works because it continues to provide an indispensable safety net for millions of workers. For example:

- **Lost pay.** Wage and Hour helped about 625,000 workers in 1993 and 1994 in instances where employers failed to pay the minimum wage or overtime. For many employees, Wage and Hour's actions frequently mean the difference between getting paid something and getting paid nothing at all. For example, three days before Christmas last year, the Wage and Hour office in Atlanta received an urgent call from workers who said that the company was refusing to pay its employees. Because Wage and Hour took immediate action to get the firm to make its payroll, workers received their pay in time for the holidays.
- **Child labor.** Society has an interest in protecting minors from harm in the workplace. Wage and Hour's presence is crucial in deterring on-the-job accidents and in punishing those employers who expose minors to workplace dangers. In just this past year, Wage and Hour stepped in after minors were seriously injured in accidents involving metal forming presses, electric meat grinders, power-driven band saws, and other dangerous pieces of industrial equipment. One 17-year-old working for a tractor company in Tennessee, for example, suffered a broken wrist when he was pinned inside a fork lift. Wage and Hour assessed fines of \$9,700 against the firm for allowing the minor to operate the fork lift.
- **Whistleblower protection.** Wage and Hour is responsible for protecting workers who "blow the whistle" on their employers' unsafe practices in industries where unsafe practices could lead to serious accidents, for example the nuclear industry.

- **Migrant farmworkers.** It is estimated that there are between 1.6 million and 2.7 million migrant farmworkers in the United States. Wage and Hour is one of a very small number of organizations responsible for protecting this class of historically abused workers. In 1993 and 1994, Wage and Hour recovered about \$5.9 million dollars in back pay for 25,000 workers employed in violation of the migrant worker protection law, which provides for minimum standards in worker housing, transportation, and other areas.

- **Family Medical Leave.** Workers have the right under the Family and Medical Leave Act (FMLA) to take unpaid emergency medical leave from their jobs. Wage and Hour fights to prevent employers from firing workers simply because the worker faces an emergency medical situation. In one case, for example, a pregnant woman in Miami was illegally fired from her job and lost her health insurance after she requested a leave of absence to have her baby. After Wage and Hour worked to defend the employee's rights, the firm agreed to rehire the employee, pay back lost pay, and reinstate her health benefits.

Is Wage and Hour still necessary?

The Wage and Hour Division is as important to workers today as it was when it was established over 55 years ago. Wage and Hour is justly proud of its successes, but clearly its mission is ongoing:

- It is estimated that about 4.2 million workers in the United States are paid the minimum wage of \$4.25 an hour or less. Even if Wage and Hour devoted 100% of its enforcement resources to only those industries with the worst track records of paying below the minimum wage, abandoning all of its other enforcement responsibilities such as complaint-based investigations and child labor protection, it would have enough of a workload for at least five years.

- The Department estimates that between 2.5 million and 3.5 million minors are employed in the workforce every year. A 1988 study estimated that over 25% of all 15-year-olds and 50% of all 16- and 17-year-olds work some time during the year. A survey by the Bureau of Labor Statistics found that in 1992 nearly 100,000 workers aged 19 and below were injured on the job. In the last two years, Wage and Hour found about 18,000 minors employed under illegal, and often unsafe, working conditions.

- In the 1930s, John Steinbeck's novel *The Grapes of Wrath* focused America's attention on the plight of migrant farmhands. Unfortunately, today's migrant workers often fare little better than the migrants described by Steinbeck, enduring atrocious

living and working conditions. Last year, for example, one employer in North Carolina was found guilty of horrible abuses of his migrant workers, including peonage. Wage and Hour's continued presence in protecting farmworkers often means the difference between fair treatment and exploitation.

- Wage and Hour fights to protect workers who are exploited by "sweatshop" working conditions in the garment industry. Unfortunately, the sweatshop refuses to die in the United States. Garment manufacturers are discovered every year who employ their workers in conditions straight out of the industrial era: very low wages, long hours, hazardous machinery, padlocked fire escapes, and inadequate workroom ventilation. In 1993 and 1994, Wage and Hour collected about \$4.7 million in back pay for approximately 17,000 garment workers.

- Every year, many American workers have to take time off from their jobs in order to care for a sick family member. While workers sometimes lose their jobs for this reason, studies show that when firms utilize family and medical leave policies, corporate competitiveness may actually increase, not decrease. Since the passage of the Family and Medical Leave Act in 1993, Wage and Hour has devoted a lot of time to educating employers about the law and to enforcing workers' rights under it. Last year, Wage and Hour devoted about 35,000 staff hours to educating employers about FMLA and conducted about 1,200 FMLA investigations.

MAKING WAGE AND HOUR WORK BETTER

Wage and Hour understands the need for continuous improvement in its relationships with all of its customers. Wage and Hour wants smart regulations which make sense in today's workplace environment. Therefore, Wage and Hour is focusing on five areas for improvement:

- (1) *Offer employers a choice of regulatory environments; direct compliance staff to focus on results -- achieving safe and healthy workplaces and adequate labor conditions -- not processes.*
- (2) *Target compliance efforts toward the worst violators and most hazardous conditions to increase our efficiency and limit unnecessary burden on employers and employees.*
- (3) *Coordinate enforcement activities to eliminate overlap and improve customer service.*
- (4) *Assure that DOL regulations make sense. Eliminate or fix regulations that are unnecessary -- or worse.*
- (5) *Build upon Wage and Hour's solid Reinvention foundation by finding more ways to empower employees, eliminate silly and unnecessary internal rules, reengineer core work processes, and devote attention to devising performance measures based on results, not outputs.*

In the following pages, Wage and Hour will explain how it is making itself better in these five areas.

Build upon Wage and Hour's solid Reinvention foundation by finding more ways to empower employees, eliminate silly and unnecessary internal rules, reengineer core work processes, and devote attention to devising performance measures based on results, not outputs.

Problem: Wage and Hour knows that the government must fundamentally change the way in which it defines and approaches its work.

Analysis: Wage and Hour is a regulatory enforcement agency at the federal level. It is structured for a workforce of twice the size of the one it now has. It is a top-down organization built on hierarchy as the operating principle. It has a tradition of relying upon rules for decision-making purposes.

Reinvention: Wage and Hour will continue to build upon its solid reinventing foundation by empowering its employees, listening to its customers, reengineering core work processes, eliminating unnecessary internal rules, restructuring to encourage teamwork, and emphasizing results.

Employee empowerment. Wage and Hour has been delegating responsibility for decision-making to front-line employees. Innovation is now encouraged instead of discouraged. Employees are now allowed to improve work processes for better service to the customers.

Listening to customers. Last year, Wage and Hour conducted its first nationwide survey of important customer groups. Based on the findings, Wage and Hour is beginning to change the way in which it interacts with customers and the work priorities it sets for itself.

Reengineering core work processes. Wage and Hour is committed to reengineering its core work processes. Wage and Hour has already tasked groups of front-line employees to identify opportunities for improvement and to act on them. Through the Process Reinvention approach, Wage and Hour has approved dozens of changes to work processes.

Eliminating internal rules. Wage and Hour is working to eliminate obsolete internal rules which hamstring front-line workers. The Division's Field Operations Handbook, for example, is being altered to allow investigators and local offices

to use discretion and judgement when deciding how to pursue cases.

Restructuring Wage and Hour to encourage teamwork. Wage and Hour has formulated a restructuring plan which will combine groups of individual employees into self-managing teams, turn front-line supervisors into team leaders, increase the ratio of staff to managers, and flatten organizational hierarchy by consolidating regions.

Emphasizing results, not process. Wage and Hour is aggressively pursuing ways in which it might improve what it counts and why by focusing on results-based measures, not output-based measures. Wage and Hour wants to get away from its traditional reliance on enforcement aggregates as the sole means of evaluating its performance.

DATE: February 21, 1995
TO: Carol Rasco
FROM: Mike Schmidt
RE: Workplace Safety and Labor Regulatory Reform Background Information

I have attached a draft copy of the memorandum that Michael Waldman and I will eventually be sending to the Vice President in preparation for our Regulatory Review session with him next Tuesday. While the memorandum is not yet in final form, I thought it would give you some good background on the dry run presentation that we will be doing for you tomorrow afternoon. To streamline things a bit, I would suggest skimming the five page memo at the beginning of the attached packet, and then in the next section skim the five individual proposals that DOL will be presenting tomorrow, which I have highlighted and paper-clipped.