

Reg Review: Background on OSHA
reform

PHOTOCOPY
PRESERVATION

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



January 18, 1995

MEMORANDUM FOR: Michael Schmidt
Domestic Policy Council

FROM: Joseph A. Dear 
Assistant Secretary

SUBJECT: Background Information on OSHA Reinvention Activities

Attached is background information on the reinvention activities that I will discuss at our January 18, 1995 meeting. If you need further information on any of these items, please do not hesitate to call me or my Director of Reinvention, Nelson Reyneri, at (202) 219-6092.

I hope this information is helpful and I look forward to your comments.

OSHA: FOCUSING ON RESULTS
Presentation to DPC Regulatory Reform Working Group
1/18/95

- I. The Gap - The necessity to reinvent the agency
- II. Get smart about compliance
 - A. Create incentives for management commitment and workers involvement
 - 1. Maine 200
 - 2. Focused inspection in construction
 - B. Create incentives for immediate abatement
 - 1. "Quick Fix" penalty reduction
- III. Improve customer service
 - A. Customer service standards
 - B. Worker complaints about hazardous conditions
 - C. Freedom of Information (FOIA) response process
 - D. Decrease citation lapse time
- IV. Regulatory reform and streamlining
 - A. Reinvent standards setting process
 - B. Policy dialogue on paperwork simplification rule
 - C. Negotiated rulemaking in steel erection
 - D. Negotiated rulemaking for safety and health program
 - E. MSDS Repository
 - F. Standards simplification initiative
- V. Making it happen where it counts - OSHA's front line service delivery
 - A. Front line service improvement project
 - B. Developing a problem solving capacity within the agency
 - C. Making the changes last by changing OSHA's culture

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, 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 which 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 1 out of 5 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 2 companies refused to participate, and only 3 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 eight 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.

OSHA--1/17/95

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.

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

OSHA-1/17/95



Prevention of Corporate Liability

Current Report

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Job Safety Enforcement

FIRMS CITED FOR SAFETY INFRACTIONS CAN OBTAIN DISCOUNT FOR 'QUICK FIX'

A test program devised by an Occupational Safety and Health Administration area office in New Jersey enables employers cited by the agency to reap an up-front discount of 10 percent on the penalty if they immediately rectify job hazards.

The Parsippany, N.J., OSHA office's pilot program, dubbed "Quick Fix," June 20 received a Hammer Award from Vice President Al Gore's office for government initiatives that improve efficiency and use of resources. David Katsock, a compliance officer in the Parsippany office, was credited by OSHA officials with coming up with the concept.

Policy Flipped

Area director Robert Kulick explained how the Quick Fix program works in a July 7 interview with BNA. Under existing OSHA policy, he said, the agency issues citations and then assesses penalties for serious violations. The compliance officer in the field makes a penalty recommendation to the area director, who actually assesses the penalty with guidance from the field operations manual.

Currently, Kulick noted, the area director calculates a base penalty related to the probability of an injury or illness occurring, coupled with its potential severity. Then, the director may reduce that base penalty depending on three factors:

- the size of the company;
- the history of the company—that is, is it consistently in trouble with OSHA?; and
- good faith—that is, what sort of commitment to safety and health had the company made before the enforcement action began?

Once those reductions (which potentially can reduce the fine as much as 90–95 percent) are made, the OSHA office issues a citation, Kulick said. The employer then can have an informal conference with the area office, and the area officer has the power to reduce the penalty assessed, based on abatement of the hazard, proof that the agency erred, or some other good reason. The penalty can also be reduced if the employer is willing to make "safety and health concessions," that is, to go above and beyond what the standard requires, Kulick observed.

"Quick Fix" basically takes that same philosophy and "just flips it a little bit," Kulick explained. Under the initiative, the OSHA office doesn't

(continued on page 2)

ALSO IN THE NEWS

CONFIDENTIALITY: 'Special master' law doesn't cover papers in environmental consultants' offices (Page 3).

DEFAMATION: Statement on NASD-required form can subject securities firm to libel claim by fired broker (Page 2).

EMPLOYEE PRIVACY: Firms should set policies to prevent breaches of employees' E-mail privacy (Page 6).

ENVIRONMENTAL ENFORCEMENT: Punitive civil fines, criminal charges for same offense to be avoided, EPA says (Page 4).

FRAUD ENFORCEMENT: Charges of health care fraud prompt \$379 million settlement, compliance plan (Page 5).

SELF-EVALUATIVE PRIVILEGE: States asked to postpone legislation on audit privileges pending EPA review (Page 4).

SELF-EVALUATIVE PRIVILEGE: Could push for voluntary environmental audits be on collision course with EPA enforcement policy? (Page 8).

WHISTLEBLOWERS: Discharge based on safety complaints elicits punitive award under OSH Act (Page 3).

FILING NOTE: Subscribers of the *BNA/ACCA Compliance Manual* should file this issue behind the Current Report tab.

Table of Cases

Baravati v. Josephthal, Lyon & Ross Inc. (CA 7, 7/1/94)	2
PSC Geothermal Services Co. v. Superior Court (Calif CtApp, 4thDist, 6/17/94)	3
Reich v. Cambridgeport Air Systems Inc. (CA 1, 6/20/94)	3
U.S. v. NME Psychiatric Hospitals Inc. (DC DC, filed 6/29/94)	5



NEWS AND DEVELOPMENTS

(continued from page 1)

wait for the employer to come in and seek a reduction after the citation is issued. Instead, he said, "we're saying to an employer right up front at the inspection end, if you're willing to correct this hazard right now, in my presence . . . we have the ability to reduce the base penalty and, after the initial reductions, by an additional 10 percent." Area officers already have the authority to reduce penalties later on in the process, he pointed out: what this program does is move that prospect up to the beginning of the system.

The Quick Fix reduction only applies to the individual violation, Kulick stressed. If there are five violations and the employer acts immediately to correct just one, the 10 percent discount applies to that single violation.

"Why are we doing Quick Fix?" Kulick asked. "Because our sole purpose is to get abatements, to get hazards corrected. And so we're trying to show an employer that there's an incentive for getting hazards corrected immediately."

Early Returns Promising

The Quick Fix concept came out of a brainstorming session in the Parsippany office and was approved by the regional administrator as a pilot program, Kulick noted. The pilot has been up and running for about a year, he said.

Other area offices have already expressed interest in the program, but it remains in the experimental stage, he observed.

The results so far have been quite positive, Kulick stated. While the previous rate of immediate abatement had been about six percent, he said that proportion has jumped to 17 percent under Quick Fix—an increase of nearly 300 percent.

According to Kulick, the Quick Fix program already has proven useful in protecting workers, such as in one case in which the immediate addition of safety headgear to a workplace apparently saved two employees' lives.

Eligibility for the program is restricted to companies that are "good actors," however, agency officials made clear. Employers that are cited for repeat or willful violations, are issued failure-to-abate notices, or sustain a workplace fatality are not eligible for the penalty discount, they said.

Defamation

STATEMENT ON NASD-REQUIRED FORM CAN SUBJECT SECURITIES FIRM TO LIBEL CLAIM

A discharged securities broker who claimed he was libeled by his former employer was properly awarded punitive damages in arbitration even though the firm's allegedly libelous statements were made on a form required by the National Association of Securities Dealers, the U.S. Court of Appeals for the Seventh Circuit held July 1. (*Baravati v. Josephthal, Lyon & Ross Inc.*, CA 7, No. 93-3647, 7/1/94)

To afford brokers absolute immunity from libel charges arising from statements on the forms "would be tantamount to allowing a member of the NASD to blackball a former employee from employment throughout a large sector of the industry that the membership of the association constitutes," the court reasoned.

Valid Discharge or Reprisal?

Broker Ahmad Baravati was employed by the Chicago office of Josephthal, Lyon & Ross Inc., a New York-based securities firm and member of the NASD. Josephthal fired Baravati, alleging that he had stolen more than \$7,000 from the firm. Josephthal made those charges on a form U-5, which NASD members must complete upon terminating brokers. The forms are kept on file by the NASD and made available to other members.

Baravati alleged that Josephthal had really fired him in retaliation for reports he made to the Securities and Exchange Commission that the brokerage had defrauded customers. Baravati brought libel charges, which went to arbitration. The arbitrators found that he had been defamed and awarded him \$60,000 in compensatory damages and \$120,000 in punitive damages. A federal district court confirmed the award. Josephthal appealed.

'Employment Clearinghouse'

The appeals court first set out the standard to be used for reviewing arbitration awards: whether the arbitrators exceeded their powers. Then it addressed the question whether the contents of the U-5 form should be treated as "absolutely privileged," which would insulate Josephthal from liability, it said. Josephthal argued that the

PREVENTION OF CORPORATE LIABILITY: CURRENT REPORT

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REINVENTING OSHA--Improving the way OSHA responds to workers' complaints about hazardous conditions

PROBLEM: OSHA's customers are not satisfied with how OSHA handles complaints. Employees think OSHA takes too long to respond to complaints. Employers think that many complaints are not worthy of a formal inspection, yet current policy dictates that every formal complaint must be answered with an inspection.

SOLUTION: OSHA proposes to alter the way we handle complaints by prioritizing our response based on the nature of hazard; and by allowing compliance officers to work with employers and employees to resolve issues in ways that don't mandate a formal OSHA inspection. This improvement still ensures key elements of the complaint process--ensuring that employees have the right to get an inspection; that inspections are governed by defined and consistent decision-making; verifying that hazards abated; and increasing service delivery to OSHA customers.

RESULTS: Field Offices in Peoria and Cleveland have completed a test program on improving non-formal complaint processing. Cleveland's goal was to reduce the time from receipt of the complaint to abatement of the hazards from 61 working days to 45. They reduced the number of days to 9. Peoria's goal was to reduce the number of days from 35 calendar days to 20. They succeeded in bringing the number down to 5.

NEXT STEP: Refine improvements; develop test program for formal complaints; review with stakeholders and test in more pilot offices, and measure the progress of the entire agency with regards to how it responds to workers complaints

OSHA--1/17/95

REINVENTING OSHA--Improving the OSHA FOIA Response Process

PROBLEM: OSHA's field offices receive Freedom of Information Act Requests (FOIAs) which often involve voluminous case files and considerable administrative and professional resources. Two Area Offices are studying the FOIA process in an attempt to reduce the FOIA response time and the number of resources necessary to complete FOIA requests through revising or eliminating steps in processing.

SOLUTION: The Methuen, MA Area Office has identified the problem(s) with the current FOIA process, and developed some possible solutions.

They suggest reducing to ten the number of steps required to complete the FOIA process, an improvement of nearly 300%; replacing the letter acknowledging receipt with a phone call to the requester; eliminating one or more layers of required review currently necessary for processing the request; eliminating one or more layers of review required for authentication for records released; increased computerization of records to simplify the records review and redacting process. When they began their process improvement effort, their average time for responding to and closing a FOIA request was 32 days. As a result of their process improvement efforts, they have reduced their average time to 9 days.

The Houston South Area Office identified similar problems, but suggest that the solution is to automate the entire process through use of "scanner" technology. This team proposes using a computer with a scanner to both store all essential case files and to use the equipment to sanitize those files for response to the FOIA requester, rather than performing those duties manually.

NEXT STEPS: The agency will evaluate the progress of both teams to identify whether one or a combination of both efforts is feasible for adoption agency-wide. Depending on available resources to purchase necessary automated equipment, OSHA will identify those Area Offices experiencing the worst problems with the current FOIA process, and initially rollout the accepted process to those offices.

OSHA - 1/17/95

REINVENTING OSHA - Decreasing the citation lapse time

PROBLEM: In the Billings, Montana Area Office, it took OSHA an average of 34 days to issue citations following completion of an on-site inspection. The Area Office wished to reduce that lapse time. In addition, after a violation was issued, a Compliance Safety and Health Officer (CSHO) was required to return to the inspection site to ensure that serious violations were abated. The Billings office is responsible for conducting inspections throughout the entire state of Montana, making it difficult and inefficient for CSHOs to return to inspection sites at a later date.

SOLUTION: Inspectors now write up the citation immediately after the closing conference with the employer--while they are still at or near the inspection site. In complex or novel compliance cases, the CSHO has a laptop computer and modem to send the proposed citation to the supervisor for any necessary review. The CSHO then returns to the worksite later that day, issues the citation on the spot, and checks to see that the serious hazards discussed at the closing conference have been abated.

RESULTS: During Fiscal Year 1993, a total of 471 citations have been issued on-site, representing 70% of all citations issued by the Area Office. On-site citations were issued during 42% of all inspections conducted.

- The average lapse time for issuing citations was less than one day; the national average was 34 days.
- Abatement of serious hazards occurred within hours -- employers were encouraged to abate immediately for a potential reduction in fines.
- Travel costs of returning to sites for 63 follow-up inspections were saved.
- CSHOs spent more time in the field conducting inspections, less time in the office writing up citations.
- Paperwork that used to take three to four days was now accomplished in less than one day.
- The quality of inspections as reflected by the average number of violations per inspection has not decreased. In fact, there are far fewer mistakes. Of the 471 citation items issued, one was amended; one was reissued; and three were withdrawn.

OSHA - 1/17/95

REINVENTING OSHA--Reinventing the Standards Setting Process

PROBLEM: In the absence of unlimited resources, OSHA needs to determine what its action priorities are in order to deal effectively with the most serious workplace safety and health hazards. OSHA has not, however, had a workable system for setting priorities. Its regulatory agenda, for example has largely been responsive to outside pressures, Congressional requirements, or court orders. This lack of clear and sensible priorities has diminished OSHA's ability to carry out its statutory mission, and has led to frequent regulatory delays and policy about-faces.

SOLUTION: OSHA is setting the rules of the road with standards that are protective, comprehensive and enforceable with the input of more than 200 stakeholders from business, labor, state governments and professional associations. We are creating a system of priorities based on the nature of the hazard, the number of workers at risk, the level of exposure--using the best available scientific and economic information.

To establish priorities of regulatory and non-regulatory attention we are developing an action list of workplace hazards or issues that warrant appropriate OSHA actions. From that list, we will identify a subset for possible rule-making. For all of the items on the OSHA Action List, we will recommend appropriate agency actions such as rulemaking, the issuance of a hazard alert, enforcement emphasis, or consultation.

We will actively seek to use partnerships to promote training and education, voluntary compliance programs, cooperative research, and other outreach activities wherever possible.

The first use of this process is in developing OSHA's FY 95-96 Regulatory Calendar. Items on that calendar will be a combination of carryovers and new items drawn from the regulatory intent list.

NEXT STEPS: In early February, OSHA will make a preliminary selection of its action priorities. OSHA will then identify regulatory and non-regulatory activities. A cooperative partnership with business and labor will allow us to ensure consensus and to leverage resources effectively.

OSHA-1/17/95

REINVENTING OSHA--Policy Dialogue on the Paperwork Simplification Rule

PROBLEM: Employers see OSHA'S recordkeeping requirements as onerous. OSHA sees them as critical to its mission.

SOLUTION: OSHA is taking steps to simplify the regulation for recording occupational injuries and illnesses which currently affects more than one million employers nationwide. The revision would simplify the forms and definitions and provide greater flexibility to employers for maintaining and using the information. In addition, the revision would provide better data on several types of occupational illness and improve information on injuries and illnesses involving lost workdays and restricted work activity.

The revision stems from a joint effort of business, labor, and government. In 1987 the Keystone Center, an independent nonprofit organization that facilitates national policy consensus building dialogues, convened 46 representatives from labor unions, corporations, health professions, government agencies, Congressional staff, and academia for a year-long dialogue to discuss occupational injury and illness recordkeeping and the use of injury and illness statistics. Many of the proposed changes in the requirements stem from those discussions.

Improving the recordkeeping system is important. In addition to serving as an important source of information to employers and employees, the system is the only source for consistent national injury and illness statistics. The data are used by the Bureau of Labor Statistics to produce the only injury and illness statistics that are available on a nationwide basis.

Also, the records are of crucial importance to OSHA. For example, OSHA believes the use of site specific data is a prerequisite to improving the way the agency does business. Currently OSHA uses industry data to focus its intervention efforts. As a result OSHA is unable to distinguish between safe and unsafe workplaces. Relatively safe workplaces in high rate industries are treated the same as unsafe workplaces, and unsafe workplaces in relatively low rate industries are often exempt from OSHA scrutiny.

There is substantial evidence that in almost every industry a small percentage of employers have high injury and illness rates; the experience for these employers is persistent; and the type of hazards and the resulting injuries and illnesses vary among establishments, even when the establishments are in the same firm and the same industry. OSHA needs establishment specific injury and illness data (injury and illness rates) to divert resources away from safe establishments to those with the worst safety and health hazards.

In addition, establishment specific data would enable OSHA for the first time to measure the impacts of different OSHA programs, and adjust and modify programs based on program results. The use of site specific data would provide establishment specific injury and illness rates and case profiles which are not available from any other source. The best source for the site specific data is the OSHA recordkeeping system.

The recordkeeping system is of fundamental importance to workplace safety and health. The goal is to simplify and improve the system so that it continues to provide needed and useful information while imposing a minimum burden on employers.

NEXT STEP: OSHA is undertaking the revision in cooperation with business, labor, and other interested government agencies. Discussions with interested parties have been ongoing throughout the development of the document.

OSHA--1/11/95

REINVENTING OSHA--Negotiated Rulemaking for Better Standards

PROBLEM: OSHA's standards are often complex, and are usually written more from the perspective of OSHA, and less from the real world that will have to comply with the standards. And without consensus from business and labor, litigation frequently follows final adoption of standards.

SOLUTION: One key element of OSHA's new approach to better rulemaking is to more directly involve those people who will be most personally affected by OSHA's regulations--employers and employees. OSHA does this through a variety of approaches: negotiated rulemaking (NegReg), advisory committees, and ad hoc approaches.

- *OSHA has used formal negotiated rulemaking on several occasions.*
 - OSHA is currently using NegReg to develop a proposed standard on fall protection for steel erection in construction. In the mid-1980s, a NegReg committee developed OSHA's standard on methylenedianiline (MDA).
 - OSHA has found that formal NegReg committees work best when dealing with fairly well-defined, narrow issues, where there are a limited number of interested parties, and the issues are only moderately controversial.
- *The 1970 Occupational Safety and Health Act itself permits another form of negotiated rulemaking through standards advisory committees.*
 - Under §7(b) of the Act, OSHA has convened advisory committees to develop rules on asbestos, carcinogens, heat stress, noise, coke oven emissions, marine terminals, and several other issues.
 - Although these advisory committees fell into disuse in the 1980s because of cumbersome requirements in the Act and the frequent submission of conflicting majority/minority reports to OSHA, the National Association of Manufacturers recently encouraged OSHA to take a fresh look at the use of advisory committees.
- *Most recently, OSHA has engaged business and labor groups in more informal, ongoing discussions of key regulatory projects.*
 - OSHA has met with more than 200 stakeholders representing business, labor, State governments, and professional organizations to help define OSHA's priorities for both regulatory and non-regulatory action. Their response to this ongoing dialogue has been enthusiastic.
 - OSHA expects to build on these discussions by working with a group of business and labor representatives to outline the key elements of OSHA's proposed Safety and Programs rule; this rule will be one of the basic building blocks for all future workplace safety and health efforts.
 - With assistance from the Keystone Center, OSHA will convene a dialog with business and labor to refine a record keeping simplification proposal.

REINVENTING OSHA-- Making a Real and Lasting Difference - The OSHA Front Line Service Improvement Project

PROBLEM: As the American economy has changed over the last twenty years, OSHA has not been able to keep pace with the changing demands of workplace safety and health issues. A large part of the challenge lies in the growing gap between OSHA's limited resources and the increasing complexity of safety and health issues faced by a growing number of workers and workplaces. If OSHA is to be successful in the future, OSHA must dramatically change the way its does business. The agency must retain its ability to enforce the law, yet do a better job of targeting its resources on the worst offenders, and do a better job of promoting cooperative solutions to workplace safety and health problems.

SOLUTION: To transform the agency from being overly focused on its processes and rules to being principally concerned with results, OSHA has developed a comprehensive strategy to change the way it conducts its everyday business of protecting workers. By choosing the field offices as the main emphasis of this strategy, OSHA will dramatically change the way its inspectors go about protecting workers--by focusing on the most serious threats to worker health and safety, and by working with employers and employees to create better health and safety programs.

OSHA is redesigning the strategy used in its field offices to achieve its mission. Utilizing a team of OSHA employees with guidance from organizational consultants from McKinsey and Co., OSHA intends to change the way its area offices respond to workplace safety and health issues. Instead of using the traditional strategy of protecting workers by reacting to workplace injuries and illnesses in an incidental and piecemeal manner, the redesigned OSHA area office will use a strategy that attempts to solve the problems. It will do this by developing approaches that are driven by evidence and data, as well as by encouraging inspectors to more fully use the variety of tools available to the agency. In doing so, OSHA will become more responsive to the needs of both employees and employers. By stressing results instead of activities, OSHA will be able to demonstrate its effectiveness in protecting workers.

Under this new OSHA, the field offices will analyze the root causes of injuries and illness in their jurisdiction and develop appropriate responses. Enforcement will be more focused on conditions and sites which are known to have a high likelihood of causing injuries and illnesses. At the same time, OSHA will promote safety and health programs at worksites--so that problems can be addressed directly by the employer and employees. OSHA will promote cooperation between local agencies, employee groups, business and labor to concentrate resources on safety and health problems within its area.

Employers can anticipate an OSHA inspection if they take no action to reduce high injury illness rates or have not instituted workplace safety and health programs. But OSHA staff will also be more willing to assist in creative solutions to safety and health problems and be more flexible in the applications of OSHA requirements.

Workers will find OSHA more responsive to their requests for assistance, more attentive to those conditions which are most likely to cause injuries and illnesses and less attentive to relatively insignificant concerns.

The Redesign streamlines many of the existing processes (complaints, onsite inspections, citation processing and abatement assurance) for improved customer service and enhanced ability of the agency to focus on activities other than administrative responsibilities--eliminating unnecessary paperwork, and freeing up additional resources. This ensures that more time will be spent promoting and protecting the safety and health of America's workforce.

OSHA's goal is to redesign all its federal enforcement area offices December 1996.

OSHA - 1/17/95

REINVENTING OSHA--Solving problems instead of simply reacting to incidents

The example of OSHA reducing lead poisoning in New Jersey bridge workers

OSHA is striving to develop proactive programs which have the greatest potential to reduce injuries and illnesses in America's workplaces. One example of the success of these initiatives is OSHA's Parsippany New Jersey Office's effort to reduce airborne lead exposure to which bridge renovation workers are exposed.

OSHA became aware of the problem when the Executive Director of New Jersey's Poison Control Center alerted state and Federal agencies that his organization was encountering an increased number of lead poisoning cases among bridge workers. Traditionally, OSHA would have responded by increasing the number of inspections. In this case however, OSHA decided to forge an active partnership between OSHA's Parsippany Area Office and New Jersey's Department's of Health and Transportation with the purpose of working proactively to develop problem solving strategies.

Increased blood-lead level indicate lead poisoning which causes neurological, kidney and reproductive system damage. Through unprotected exposure to lead, bridge workers also put their families at risk by bringing excess lead into their homes. The three agencies worked together to develop strategies which would reduce the blood-lead levels in bridge construction and painting employees. The preliminary results suggest that this program has been had a highly successful impact on lowering blood-lead levels, for example:

- The mean blood-level among bridge workers dropped 25% from 1991 to 1994.
- The percentage of employees who had blood lead levels higher than 50 parts per million dropped from 24% in 1991 to 2% in 1994.
- The percentage of employees with blood-lead levels less than 40 almost doubled. In 1991 less than 5 out of 10 had blood lead levels of less than 40, in 1994, almost 9 out of 10 were below 40.

The Agency was able to achieve these results by adopting a 4-pronged response that involved the use of a variety of approaches:

1) Use the contracting process to mandate protection for all bridge workers

Since OSHA did not have a standard for lead in construction until recently (June, 1993), staff in the Parsippany Office drafted language which the Department of Transportation put in all its contracts requiring employers to keep blood-lead levels below 50 parts per million, implement a comprehensive medical surveillance program and develop a Lead Health and Safety Plan for the work site.

2) Provide up-front Training for all Employers, Employees and State Regulators

The Parsippany Area Office staff, assisted by the State Health Department sponsored training sessions for employers, employees before they started working on a bridge painting or renovation project. OSHA staff made sure that contractors understood their responsibilities and obligations concerning their workers safety and health. State personnel received the same training so they would know what was expected of their contractors and could identify safety violations themselves.

3) Provide On-Site Consultation to Contractors

OSHA ensured that the bridge contractors had a group of people they could turn to for assistance during the project. Staff from the State Department of Health and OSHA helped the contractors address hazards that put their workers in jeopardy.

4) Take Strong Enforcement Actions against "Bad Actors"

If an employer, after having been informed of their responsibilities and receiving resource opportunities to comply voluntarily, they chose to take the "low" road to compliance, OSHA initiated strong enforcement action. The enforcement action could be initiated based on a referral from the NJDOT or the NJDOH. Employers were informed of this possibility during the training session.

This proactive, "problem-solving" approach to address safety and health issues is part of OSHA integrated model for creating an organization that is both responsive to the public concerns and continually finding innovative and effective ways of protecting the American workforce.

OSHA—REBUILDING FOR RESULTS

SETTING THE STANDARD FOR WORKPLACE SAFETY AND HEALTH

OSHA will use good science, good economics and labor-management partnerships to develop safety and health standards that are clear and sensible, and that make real sense to real people.

- The Health and Safety Programs rule—how employers and employees can work together, using safety and health programs to find and fix hazards—is being written with the help of those who will be subject to the rule. The new rule is based on performance rather than specifications.

OSHA will weed out overly specific, obsolete and inconsistent regulations.

- OSHA will identify standards or provisions that can immediately be suspended, or exempted from enforcement.
- OSHA will solicit public comment on existing standards once a year, and conduct expedited rulemaking to make necessary changes.

COOPERATIVE COMPLIANCE

OSHA will create incentives for employers to improve workplace safety and health with the help of employees.

- OSHA will select ten states willing to share their workers compensation data with the agency to find the worst worksites. OSHA will then offer employers the choice of instituting a health and safety program with the help of employees and conducting self-inspection or OSHA inspection. This carrot and stick approach to compliance has worked in Maine, where employers identified over 95,000 instances of hazards and eliminated more than half of them, and in Wisconsin, where the program has been expanded with the help of significant advice from stakeholders.
- OSHA has begun focused inspections in the construction industry. On worksites with safety and health programs and an experienced safety representative onsite, the OSHA inspector will focus only on the four major killers of construction workers.

OSHA will create incentives for employers to immediately fix problems identified in an inspection.

- OSHA will 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, the “Quick Fix” program has increased the immediate abatement of hazards by nearly 20%—and it has saved at least two employees from serious injury.

CHANGING OSHA’S CULTURE

OSHA’s front-line workers will focus on quality instead of quantity.

- With the help of McKinsey and Co., OSHA is retooling field offices. OSHA inspectors will focus on the most serious threats to worker health and safety, and will work with employers and employees to create better health and safety programs. Enforcement actions will focus on results—not on numbers.

OSHA will streamline existing processes.

- OSHA will streamline field office processes to improve customer service. Reducing the number of administrative burdens will increase the assistance and allowing front-line workers to promote cooperation on workplace safety and health issues.

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—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 until 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 EI/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.

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 (see Attachment).

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.

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.

Reinventing OSHA—Improving Blood Lead Levels Among Construction Workers

Problem:

The old OSHA bureaucratic culture was characterized by the agency's reactive approach to workplace safety and health. OSHA inspectors would respond to an accident or worker complaint, or would inspect a workplace based on a targeting system that was of limited effectiveness. Because of its limited resources and its wide range of coverage—2,000 inspectors for over 6 million worksites with close to 100 million workers, the new OSHA is emphasizing a problem solving strategy.

Solution:

Rather than reacting to workplace safety and health issues after the fact, OSHA is working with both employers and workers on ways to make their workplaces safer and healthier. Parsipanny's work with bridge painters demonstrates this approach.

When the Parsipanny area office became aware of an increasing number of lead poisoning cases among bridge workers, the office forged an active partnership with New Jersey's Department of Health and Transportation. Together they developed problem solving strategies to protect these workers from increased blood lead levels, an indication of lead poisoning which causes neurological, kidney and reproductive system damage. Through unprotected exposure to lead, bridge workers also put their families at risk by bringing excess lead into their homes.

The Parsipanny area office developed a four-part problem-solving strategy:

1) Use the Contracting Process to Mandate Protection for All Bridge Workers

Since OSHA did not have a standard for lead in construction until recently (June, 1993), staff in the Parsippany Office drafted language requiring employers to keep blood-lead levels below 50 parts per million, implement a comprehensive medical surveillance program and develop a Lead Health and Safety Plan for the work site.

2) Provide Up-Front Training for all Employers, Employees and State Regulators

The Parsippany Area Office staff, assisted by the State Health Department sponsored training sessions for employers and employees before they started working on a bridge painting or renovation project. OSHA staff made sure that contractors understood their responsibilities and obligations concerning their workers safety and health. State personnel received the same training so they would know what was expected of their contractors and could identify safety violations themselves.

3) Provide On-Site Consultation to Contractors

OSHA ensured that the bridge contractors could turn to staff from the State Department of Health and OSHA for helping contractors address hazards that put their workers in jeopardy.

4) Take Strong Enforcement Actions Against "Bad Actors"

If an employer, after having been informed of their responsibilities and receiving resource opportunities to comply voluntarily, chose to take the "low" road to compliance, OSHA initiated strong enforcement action. The enforcement action could be initiated based on a referral from the NJDOT or the NJDOH. Employers were informed of this possibility during the training session.

The preliminary results suggest that this program has had a highly significant impact on lowering blood-lead levels:

- *The mean blood-level among bridge workers dropped 25% from 1991 to 1994.*
- *The percentage of employees who had blood lead levels higher than 50 ug/dl dropped from 24% in 1991 to 2% in 1994.*
- *The percentage of employees with blood-lead levels less than 40 ug/dl almost doubled. In 1991 less than 5 out of 10 had blood lead levels of less than 40, in 1994, almost 9 out of 10 were below 40.*

Reinventing OSHA—Decreasing Citation Lapse Time

Problem:

In the Billings, Montana Area Office, it took OSHA an average of 34 days to issue citations following completion of an on-site inspection. The Area Office wished to reduce that lapse time. In addition, after a violation was issued, a Compliance Safety and Health Officer (CSHO) was required to return to the inspection site to ensure that serious violations were abated. The Billings office is responsible for conducting inspections throughout the entire state of Montana, making it difficult and inefficient for CSHOs to return to inspection sites at a later date.

Solution:

Inspectors now write up the citation immediately after the closing conference with the employer—while they are still at or near the inspection site. In complex or novel compliance cases, the CSHO has a laptop computer and modem to send the proposed citation to the supervisor for any necessary review. The CSHO then returns to the worksite later that day, issues the citation on the spot, and checks to see that the serious hazards discussed at the closing conference have been abated.

During Fiscal Year 1993, a total of 471 citations have been issued on-site, representing 70% of all citations issued by the Area Office. On-site citations were issued during 42% of all inspections conducted.

- *The average lapse time for issuing citations was less than one day; the national average was 34 days.*
- *Abatement of serious hazards occurred within hours—employers were encouraged to abate immediately for a potential reduction in fines.*
- *Travel costs of returning to sites for 63 follow-up inspections were saved.*
- *CSHOs spent more time in the field conducting inspections, less time in the office writing up citations.*
- *Paperwork that used to take three to four days was now accomplished in less than one day.*
- *The quality of inspections as reflected by the average number of violations per inspection has not decreased. In fact, there are far fewer mistakes. Of the 471 citation items issued, one was amended; one was reissued; and three were withdrawn.*

Reinventing OSHA—Improving the OSHA FOIA Response Process

Problem:

OSHA's field offices receive Freedom of Information Act Requests (FOIAs) which often involve voluminous case files and considerable administrative and professional resources. Two Area Offices are studying the FOIA process in an attempt to reduce the FOIA response time and the number of resources necessary to complete FOIA requests through revising or eliminating steps in processing.

Solution:

The Methuen, MA Area Office has identified the problem(s) with the current FOIA process, and developed some possible solutions.

They suggest reducing to ten the number of steps required to complete the FOIA process, an improvement of nearly 300%; replacing the letter acknowledging receipt with a phone call to the requester; eliminating one or more layers of required review currently necessary for processing the request; eliminating one or more layers of review required for authentication for records released; increased computerization of records to simplify the records review and redacting process. When they began their process improvement effort, their average time for responding to and closing a FOIA request was 32 days. As a result of their process improvement efforts, they have reduced their average time to 9 days.

The Houston South Area Office identified similar problems, but suggest that the solution is to automate the entire process through use of "scanner" technology. This team proposes using a computer with a scanner to both store all essential case files and to use the equipment to sanitize those files for response to the FOIA requester, rather than performing those duties manually.

The agency will evaluate the progress of both teams to identify whether one or a combination of both efforts is feasible for adoption agency-wide. Depending on available resources to purchase necessary automated equipment, OSHA will identify those Area Offices experiencing the worst problems with the current FOIA process, and initially rollout the accepted process to those offices.

Reinventing OSHA—Improving the Way OSHA Responds to Workers' Complaints About Hazardous Conditions

Problem:

OSHA's customers are not satisfied with how OSHA handles complaints. Employees think OSHA takes too long to respond to complaints. Employers think that many complaints are not worthy of a formal inspection, yet current policy dictates that every formal complaint must be answered with an inspection.

Solution:

OSHA proposes to alter the way we handle complaints by prioritizing our response based on the nature of hazard; and by allowing compliance officers to work with employers and employees to resolve issues in ways that don't mandate a formal OSHA inspection. This improvement still ensures key elements of the complaint process—ensuring that employees have the right to get an inspection; that inspections are governed by defined and consistent decision-making; verifying that hazards abated; and increasing service delivery to OSHA customers.

Field Offices in Peoria and Cleveland have completed a test program on improving non-formal complaint processing. Cleveland's goal was to reduce the time from receipt of the complaint to abatement of the hazards from 61 working days to 45. They reduced the number of days to 9. Peoria's goal was to reduce the number of days from 35 calendar days to 20. They succeeded in bringing the number down to 5.

WHY DO WE NEED OSHA?

OSHA WORKS

Rate of fatalities down 50 %

But over 6,000 killed per year, 17 per day

WHY DO WE NEED OSHA?

OSHA STANDARDS SAVE LIVES

Lead: high-lead levels dropped by 66% after 1978 standard

Grain Handling: fatalities from grain dust explosions down 58% after 1988 standard

Cotton Dust: "brown lung" cases down 40,000 to under 1,000 after 1978 standard

Trenching: fatalities declined 35% after 1990 standard

WHY DO WE NEED OSHA?

OSHA ENFORCEMENT PROGRAM SAVES LIVES

Following an OSHA inspection and fines, injuries at the inspected worksite decline by 22%

Workplace accidents and injuries cost \$112 billion per year according to National Safety Council

WHY DO WE NEED OSHA?

SETTING THE STANDARDS

Weed out regulations

Metal gas cans

Posters

Ladders

Guardrails

Explosives (duplication with other agencies_

Medical tests for coke ovens

Paperwork for firms going out of business

Clothing requirements for electric power generation

Radiation

Doctor certification of first-aid kits

Health and Safety Programs

WHY DO WE NEED OSHA?

COOPERATIVE COMPLIANCE

Create incentives for employers to improve workplace safety and health with employees' help

Expand "Maine 200" nationwide

Focused inspections for construction

WHY DO WE NEED OSHA?

Incentives for employers to immediately fix problems

Quick Fix

Replicate program nationwide

WHY DO WE NEED OSHA?

CHANGING OSHA'S CULTURE

Focus front-line workers on quality instead of quantity

McKinsey & Co.

Inspectors focus on most serious threats to worker safety and health

Enforcement actions will focus on results

WHY DO WE NEED OSHA?

STREAMLINE EXISTING PROCESSES

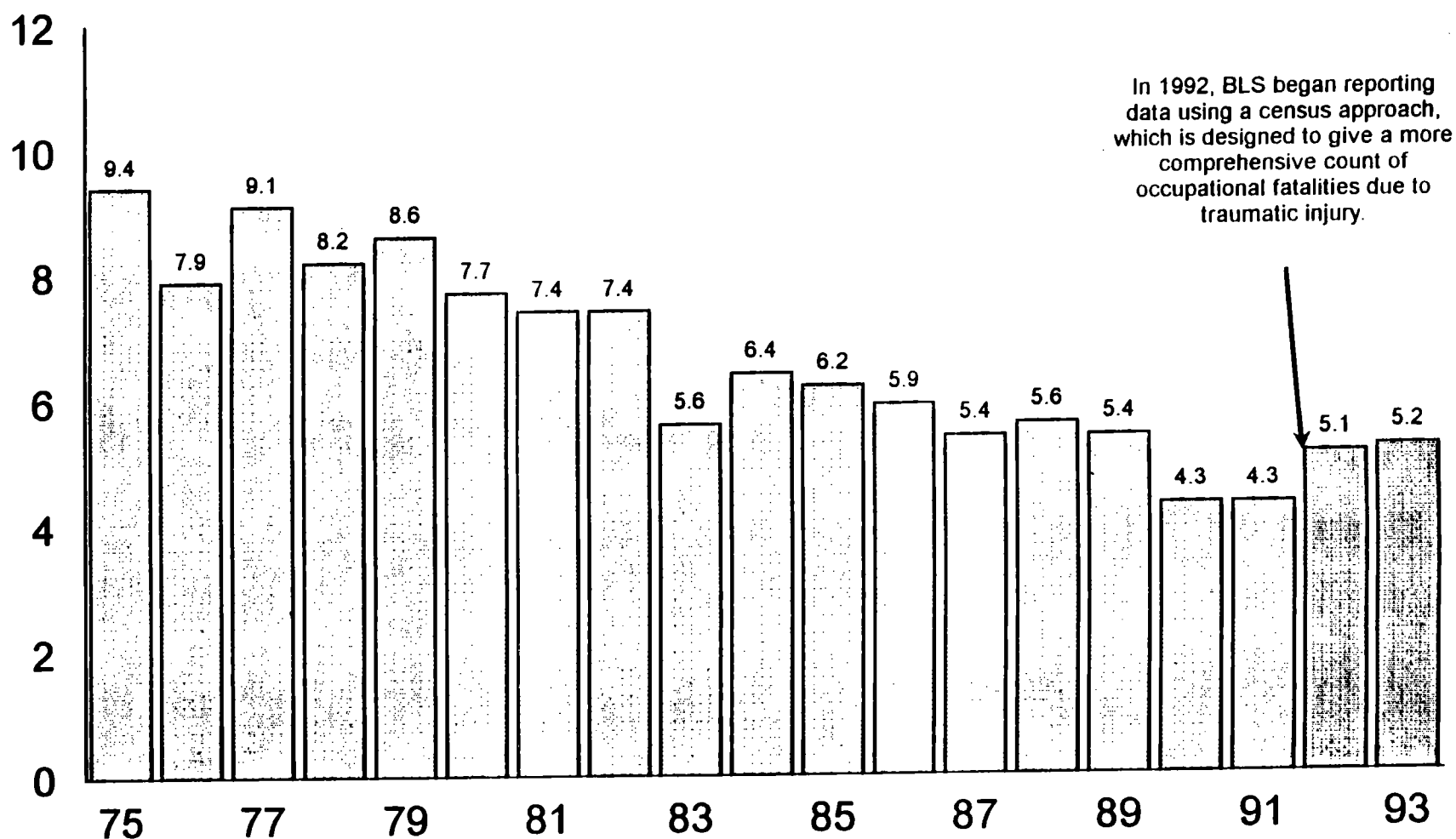
Improve customer service

FOIA

Complaint handling

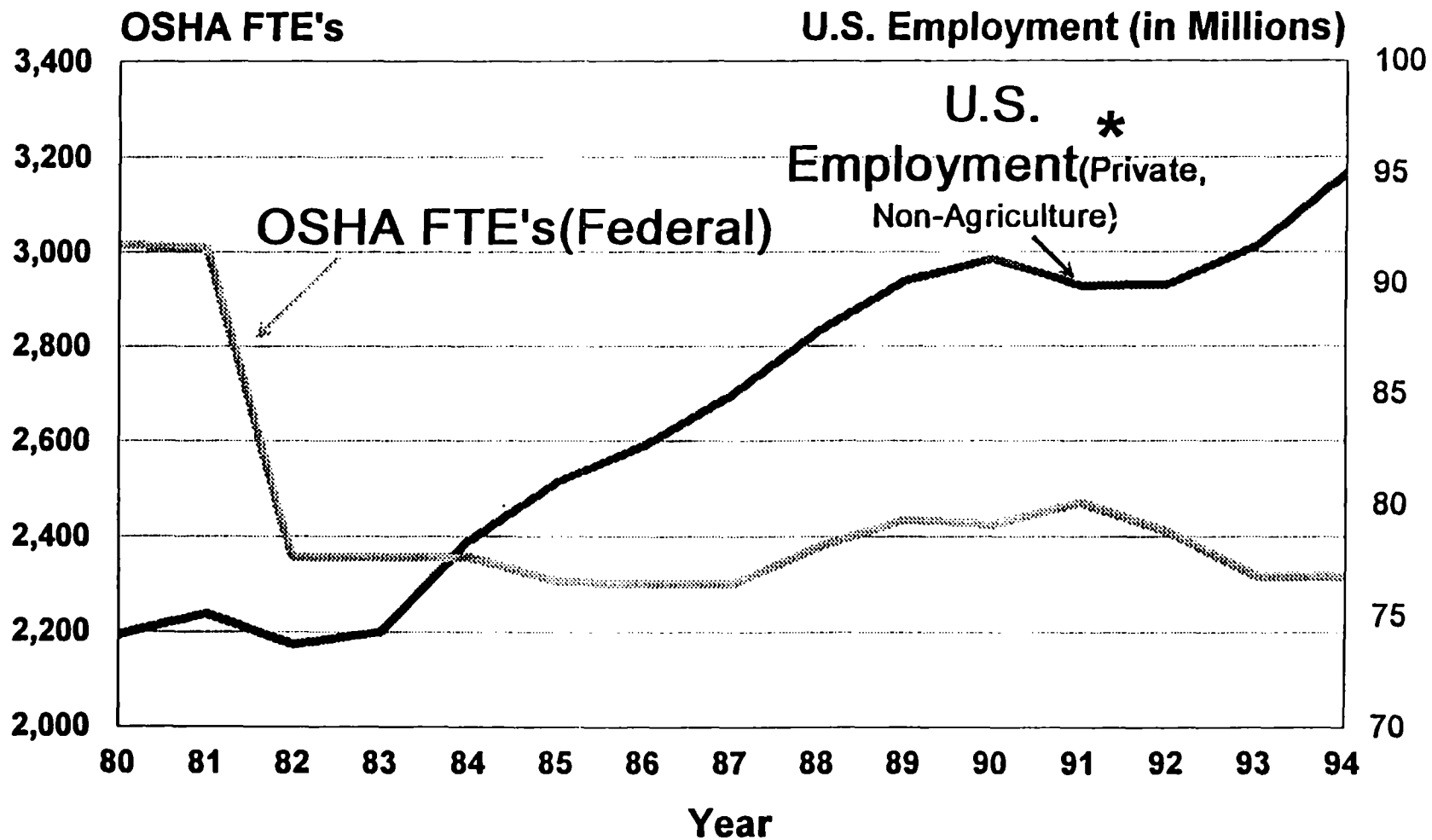
FATALITY RATES HAVE DECLINED

FATAL INJURY RATES 1975-1993



SOURCE: 1975-1991 BLS Survey of Occupational Injuries and Illnesses
1992, 1993 BLS Census of Fatal Occupational Injuries
Prepared by OSHA OSTAT 12/94

THE GAP BETWEEN OSHA'S MISSION AND RESOURCES



***Source: BLS Employment and Earnings, October 1994**

Reinventing OSHA

Strategies for Workplace Safety and Health

Market

Hands Off	Consultation and Cooperation
Cost/Benefit	Command and Control

Rules

Employer

Worker