Reg Review: DOL Pre-Brief Presentation

First Draft for VP Session

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Mike Schmidt DPC
Mike Ullman DPC

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. Fourth, it details specific OSHA and Wage & Hour proposals that fit within the framework. 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 <u>and</u> 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

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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:

<u>Fundamental shift in OSHA's approach</u> -- 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.

<u>Better-targeting of OSHA resources</u> -- 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.

<u>Focusing on common-sense results</u> -- 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:

<u>Increasing the use of public education and outreach</u> - 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.

<u>Updating regulations</u> - 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.

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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) At ETA, we are working the Social Security Administration and the IRS to simplify the employment, tax, and wage reporting burden on employers by collecting data once, not three separate times; 2) Other Reinvention II activities are expected to save employers nearly 10 million hours; and 3) 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.

IV. SPECIFIC PROPOSALS

To translate these principles into real results, we have assembled the package of proposals put forward by OSHA and Wage and Hour. These proposals are described more fully in Attachment 1.

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ATTACHMENT 1

Occupational Safety and Health Administration

- Making the High Road Pay

1) *Safety and Health Programs*: This proposed rule will provide employers and employees with the opportunity to establish their own effective hazard control program. Employers will be allowed to establish a safety and health program appropriate to their business; train employees, supervisors, and management in safety and health issues; work with their employees to identify and prevent health hazards in their workplaces; and conduct regular evaluations of the program's effectiveness. Pilot projects have shown that employers will receive several important benefits by choosing to take this path: they will save money through lower worker compensation costs; they will have more productive workers and workplaces; and OSHA penalties will be reduced by 25%. From OSHA's perspective, every dollar invested in this program will yield savings of between $5 and $9.

25%

2) *Nationalize Maine 200 Program*: OSHA will expand the use of Workers' Compensation data to other states where data is available to target employers ~~with unsafe workplaces~~. In Maine, Workers' Compensation claim data proved an effective method of targeting employers with excessive injury and illness rates. Employers so identified will be invited to develop a comprehensive safety and health program and to work with OSHA to abate any hazards identified - without fear of receiving a citation for ~~problems identified~~. If an employer chooses not to participate in the program, they will subject to a ~~regular enforcement inspection by OSHA~~

3) *Expand Focused Inspections to All Industries*: In 1994, OSHA set up a program for inspecting construction sites that gave recognition to contractors with comprehensive safety and health programs. Where an effective onsite program was operating, OSHA limited the inspection to the review of the four hazards that account for over 90% of the worker fatalities in the construction industry: falls, electrocutions, being caught in trenches, and being struck by machines or materials. Where a safety and health program was not established or was ineffective, a complete site inspection was conducted. Previously, wall-to-wall inspections were conducted at every worksite visited, no matter how safe the site. During 1995, OSHA will expand the focused inspection initiative to other employment sectors, targeting the hazards most relevant to the injury and illness experience of that industry. This effort will include the development of local emphasis programs focused on reducing excessive injuries and illnesses within industries in a single geographic area.

- Rough Timetable
- small industries

- Weeding Out Unnecessary Regulations and Reinventing the Standards Development Process

1) *Eliminating Out-of-Date Standards:* As part of its strategy to build a modern set of workplace safety and health standards that allow flexibility <u>and</u> protect workers, OSHA will revise standards that are obsolete and confusing and eliminate those that have no material impact on worker safety. OSHA stakeholders and front-line workers will be consulted as part of this process.

2) *Recordkeeping Simplification:* OSHA intends to simplify the recordkeeping requirements for more than 1 million employers currently required to maintain injury and illness records. The current requirements are paper-driven, too complicated, and too burdensome on employers. Simplification will include clarifying definitions, eliminating confusing requirements, allowing employers to computerize their records for easy retrieval and storage, and developing expert system software to aid employers in meeting their recordkeeping responsibilities.

3) *Steel Erection Negotiated Rulemaking*: As a first step towards promulgating better rules and, hopefully, reducing litigation, OSHA is increasing its reliance on negotiated rulemaking. To start, a negotiated rule making process is being used to develop safety requirements for the erection of steel structures in construction. Additional candidates for such a process will be identified by March 30 from proposals on OSHA's current regulatory calendar.

4) *Material Safety Data Sheets:* The point of this proposal is to speed the development of a centralized depository for the electronic storage of Material Safety Data Sheets. Under OSHA's hazard communication standard, each employer must maintain a file of Material Safety Data Sheets for the toxic chemicals used in their businesses. This file must be accessible to workers. Employers regard this requirement as and unnecessary and unproductive burden. A centralized electronic system would benefit employers and might also be used by other federal agencies such as the EPA (e.g. CERCLA Community-Right-to-Know requirements). Though developing this system will require additional analysis, OSHA will issue a proposal by the fall 1995.

- Focusing on Results, Not Process

1) *Re-engineering Enforcement:* OSHA's strategy for changing the way it does business is to focus on getting results and improving performance. To accomplish this, OSHA has started a number of initiatives: asking its area offices to develop new ways of increasing employer compliance; employing process-improvement techniques to eliminate unnecessary steps and unproductive work activities; using site-specific data to improve its targeting efforts on the worst workplaces and hazardous conditions; developing performance indicators focusing on real reductions in injuries, illnesses and fatalities; and updating its system of appraisal and performance for Compliance

Officers. These new strategies are being tested in two of its field offices and will be expanded to all sixty-five of its federal area offices.

2) *Must-Cite: [need to add]*

3) *Quick-Fix:* As an incentive for employers to immediately abate hazardous conditions and reduce the workers' exposure to worksite hazards, OSHA will nationalize its Quick-Fix program, which was successfully piloted tested in Parsippany, New Jersey in 1993. Currently, employers are not required to abate hazardous conditions until a final order has been issued by the Occupational Safety and Health Review Commission, a process which can take several years. Under the Quick-Fix program, employers agreeing to voluntarily abate a hazard in the presence of a Compliance Officer prior to the closing conference will receive an additional 10% penalty reduction for each hazard abated.

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Wage and Hour Division

- Making the High Road Pay

1) *Certification of Employee Handbooks*: Establishing systems of employer-based responsibility is the key to Wage and 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 several target industries (?). 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 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. → where did this come from?

- Weeding Out Regulations → on-line?

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 immediately 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. Among the candidates for simplification are the weekly payroll reporting requirements under Davis-Bacon and the Copeland Act.

list out 24

- Focusing on Results, Not Process

1) *Alternative Dispute Resolution*: In 1994, Wage and Hour experimented with the use of alternative mediation procedures to resolve worksite disputes. The New Jersey pilot resolved __ cases filed against agricultural employers in an average of about 3 months, a ___ % percent decrease over the norm of 3 years. Wage and Hour propos~~es 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 investigation to determine whether an employer is complying with its requirements. To leverage scarce inspection resources, qualified employers under this proposal will be encouraged to conduct a "self-audit" ensuring their compliance with various employment standards. This approach was successfully tested during the past year in one region and will be expanded to the rest of country in 1996. 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 also occasionally spot check 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 processes.

- where is Section 541 and child labor ~~laws~~ regs

- comp time to 40 hr week provision of FLSA

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I. TITLE SAFETY AND HEALTH PROGRAMS RULE

II. SUMMARY OF PROPOSAL

Safety and Health Programs have been shown to be part of the foundation to a safe and healthful workplace. The development of a safety and health rule is the essence of employers being able to "choose" their OSHA. Under this proposal, OSHA will require employers to develop and implement a safety and program, and as an incentive these employers will not be held to all of the detailed specifications of the OSHA regulations. This rule will revolutionize OSHA enforcement in that OSHA's focus will be on effective programs and the reduction of injury and illness, rather than on identifying and citing violations.

This proposed rule will provide guidance for the development and use of comprehensive safety and health programs. Emphasis will be on demonstrating management commitment and using employee involvement to identify workplace hazards and develop effective abatement plans.

III. CONTEXT

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.

Presently, OSHA reduces penalties by 25% for employers who have a good safety and health program in place. OSHA is looking into the possibility of other/additional incentives that OSHA may decide to offer to high-road employers who are in compliance with the rule (once it has been promulgated). Preliminary contractor reports suggest that employers can expect to see a return on their investment in safety and health programs of between $5 and $9 for every dollar invested in the programs (NOTE: these numbers are very "soft" and HAVE NOT been confirmed independently by OSHA). Currently, 10 states require employers to have safety and health programs, and many private insurers are also requiring them. The experience in Oregon has been very positive. In 1991, Oregon extended its requirement for safety and health committees and programs to all employers with 11 or more employees. Injury incidence rates in Oregon have dropped about 10%, while nationwide the rates have increased about 11%. Workers comp premiums have dropped every year since, and Oregon employers have saved more than $5.1 billion.

IV. 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.
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.

V. 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.

VI. BOLDNESS/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.

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VII. STATUTORY CONSTRAINTS

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

VIII. RESOURCE REQUIREMENTS

This effort will involve significant OSHA staff time.

IX. TIMETABLE

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

I. **NATIONALIZE THE MAINE 200 CONCEPT**

II. **Summary of Proposal**

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.

III. **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.

IV. **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.

V. **Pros and 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.

VI. **Boldness/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

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numerous occasions.

VII. **Statutory Constraints**
There are no statutory constraints.

VIII. **Resource Requirements**
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.

IX. **Timetable**
The program could be expanded very quickly to a select number of states by using injury/illness data from workers' compensation, and then implemented nationwide after OSHA begins to collect workplace specific injury/illness data.

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OSHA

EXPANSION OF FOCUSED INSPECTIONS

SUMMARY OF PROPOSAL

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 local emphasis programs which focus on reducing excessive injuries and illnesses within identified industries in a particular geographic area.

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.

BOLDNESS/CONSTITUENT REACTION

The Focused Inspection in Construction Program has already received positive reaction from the construction industry.

STATUTORY CONSTRAINTS

None

RESOURCE REQUIREMENTS

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.

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I. TITLE OUT-OF-DATE STANDARDS

II. SUMMARY OF PROPOSAL

OSHA will revise or revoke a limited number of 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.

III. CONTEXT

OSHA is undertaking a comprehensive strategy to build modern set of workplace safety and health standards which protect workers and make "real sense to real people". As part of this strategy, OSHA will focus on revising or revoking targeted standards that do not significantly improve worker safety and health.

IV. PROPOSAL

OSHA will identify standards or provisions which have become problems because they are confusing, obsolete, inconsistent or trivial in the way they are written or enforced. Where an immediate change can be implemented without a reduction in safety and health protections, directives will be issued. In the long term, OSHA will follow rulemaking procedures to formally eliminate or revise provisions.

V. PROS/CONS

This effort will involve stakeholders and the regulated community in a consensus effort to improve OSHA enforcement activity.

VI. BOLDNESS/CONSTITUENT REACTION

OSHA will continue to address stakeholder concerns and fully involve them in the process, both to avoid targeting the wrong rules and to build a strong business/labor consensus supporting effective workplace safety and health programs.

VII. STATUTORY CONSTRAINTS

Rulemaking procedures must be followed.

VIII. RESOURCE REQUIREMENTS

This effort can be accomplished with existing resources.

IX. TIMETABLE

Action can be taken within 90 days to issue directive to field offices. Formal rulemaking changes are partly prescribed by statute.

I. RECORDKEEPING SIMPLIFICATION

II. Summary of Proposal

The injury and illness recordkeeping requirements under 29 CFR 1904 are being simplified under the regulatory rulemaking process.

III. Context

Approximately 1 million employers are required to maintain the OSHA injury and illness recordkeeping forms (OSHA Nos. 200 and 101) each year. The current recordkeeping requirements are paper driven and viewed to be complicated and overly burdensome. Several studies have been conducted (by GAO, NAS, and a Keystone group) and have made recommendations to simplify the system. OSHA is currently acting upon these recommendations.

IV. Proposal

Simplification of the recordkeeping system consists of multiple components: (1) The current system consists of a 5 page regulation and an 83 page instruction booklet. Through clarification and reduction of definitions and requirements, the revised system will be reduced to an 8 page regulation with no need for an instruction booklet; (2) The current recordkeeping form (OSHA No. 200) contains 19 columns and fits on 11" x 17" paper. Its replacement form (OSHA Form 300) will contain 11 columns and fit on 8½" x 11" paper; (3) The current system allows minimum use of computer technology to meet its location, maintenance and access requirements for the recordkeeping forms. All forms must currently exist in paper copy. The revised system will allow for maximum use of electronic technology and only require paper copy of the records when access provisions are exercised; (4) OSHA will develop and provide personal computer software to aid employers in meeting the revised recordkeeping requirements.

V. Pros and Cons

While reducing employer burden, simplification will lead to the recording of more consistent, accurate data. The revised definitions, however, will break the series of occupational injury and illness data developed over the past years.

VI. Boldness/Constituent Reaction

Revision of the system has been discussed for the past 7 years. Both labor and industry await a simplified recordkeeping system. Proposed revisions to the recordkeeping system are delayed because of questions about several key issues. A stakeholder meeting to elicit reaction to the current proposed system is scheduled for March 7 & 8. By bringing together labor and industry representatives, OSHA hopes to resolve these issues and move the proposed rule forward.

VII. Statutory Constraints

There are no statutory constraints.

VIII. **Resource Requirements**

Revision of the system will require an extensive outreach effort by Federal OSHA and the State Plan States.

IX. **Timetable**

A draft version of the revised system has been developed by the OSHA Office of Statistics and awaits Agency and Departmental clearance. A stakeholder meeting to elicit reaction to the current proposed system is scheduled for March 7 & 8. Agency, Departmental, and OMB clearance and Federal Register publication of an NPRM could be accomplished by mid-summer of this year (under the best of circumstances). Publication of a final rule could occur by early to mid-1996.

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I. **Title** - **Negotiated Rulemaking - Steel Erection**

II. **Summary of Proposal**
develop by consensus, a proposed rule for steel erection, utilizing a committee composed of representatives of all the interests that will be significantly affected by the rule,including those interests represented by the Federal government.

III. **Context**
as part of OSHA's effort to achieve consensus on a new proposed steel erection standard, which will encompass all hazards associated with steel construction. Tentative subjects that are all being discussed by the Steel Erection Negotiated Rulemaking Advisory Committee(SENRAC)

IV. **Proposal**
a negotiated rulemaking advisory committee, consisting of representatives of all the interests that will be significantly affected by this proposal are representatives of the U.S. Army Corps of Enginers, California Division of Occupational Safety and Health, NIOSH and OSHA. This group was formed in June, 1994 to resolve issues and draft a proposed rule acceptable to all stakeholders.Other interested parties have been invited and have attended the public meetings and have enthusiastically joined in the work groups established by the SENRAC.

V. **Pros**
the interests that will be affected by the final rule are more likely to accept as their own a rule arrived at by their deliberations and consensus. Additionally, the proposed rule should have very little additional comments, thus truncating the time frame for the comment period and the ensuing time required to craft the final rule. **Cons**-extremely time and resources intensive process.

VI. **Boldness/Constituents Reaction**
strong support and interest from the public and stakeholders. State governments(State Plan States) strongly support this approach. Many industry groups, individual companies, professional organizations and labor organizations have offered to help OSHA shape this key regulation.

VII. **Statuory Constraints**
Administrative Procedures Act and Negotiated Rulemaking Act,as well as SOL determination that section 7(b) of the OSH Act requiring that equal numbers of persons qualified by experience and affiliation shall represent the viewpoint of employers and employees involved.

VIII. **Resource Requirements**
financial resources per year $500,000, 4 OSHA safety standards personnel, 2 Solicitor of Labor persons, 1 person from the Assistant Secretary's office.

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IX. Timetable.

Proposed rule by fourth quarter, FY '95.

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I. **TITLE** Material Safety Data Sheets Repository

II. **SUMMARY OF PROPOSAL**

Develop a centralized Material Safety Data Sheet (MSDS) system, for easy access by employers and employees

III. **CONTEXT**

The MSDS requirement for every employer to maintain a MSDS for every toxic chemical at the worksite is viewed as burdensome, and unworkable. It requires 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 at the worksite. A centralized system would not only benefit employers with meeting OSHS's requirements but would aid many local firefighters to be able to make use of thousands of MSDSs sent to their stations as part of the Environmental Protection Agency's CERLA requirement under community right to know. It would also be of immediate benefit to emergency personnel in a timely response to chemical reactions in the workplace and in the homes.

IV. **PROPOSAL**

Using existing informational retrieval systems, and requiring manufacturers to provide information in a systematic manner for development of new MSDSs when new chemicals are developed, to make available electronically to all interested parties, material safety data sheets on all chemicals in use in the workplace. The Chemical Manufacturers Association maintains a library of MSDS called Chemtrac. Chemtrac contains 1,400.000 MSDSs and is supported by the Departments of Transportation and Defense through a series of Memorandum 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.

V. **PROS/CONS**

The system will allow for easy and quick access to information by employers, employees, and emergency personnel when the need arises. The system will force the development of a centralized MSDS, that is easily systematically utilized, and easily understood. The system will eliminate many of the legal justification statements made to minimize product liability. **CONS** - the development of the central system will replace a service provided by service groups at a charge, which will affect employment opportunities and economic opportunities. Agency would be subject to greater product liability determinations. If an electronic system is developed, users will have to have electronic equipment.

VI. **BOLDNESS/CONSTITUENT REACTION**

A national repository is not close at hand. 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? Is it possible to authorize competing MSDS systems or should one system be established?

VII. STATUTORY CONSTRAINTS

There are not statutory constraints, however the regulations would need to be rewritten.

VII. RESOURCE REQUIREMENTS

Unknown, however the program will require considerable financial and personnel resources.

IX. TIMETABLE

Unknown.

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I. GETTING RESULTS AND IMPROVING PERFORMANCE

II. 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.

III. 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 the future, OSHA must dramatically change the way it does business.

IV. PROPOSAL

OSHA has examined the factors that inhibit the performance of the agency, and looked at both the public and private sectors 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 four main components.

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 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.

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.

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.

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.

Measurement

- Develop performance-based measurement system.
- Develop team-based performance appraisals.
- Develop pilot-implementation evaluation.

V. PROS/CONS

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

VI. BOLDNESS/CONSTITUENT REACTION

GRIP is ambitious and aggressive in content and in timing, and has 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.

VII. STATUTORY CONSTRAINTS

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.

VIII. RESOURCE REQUIREMENTS

- Travel costs for 10 OSHA field personnel
- Extensive training for area office staff
- Information technology costs

IX. TIMETABLE

Two area offices have begun pilot programs. Roll out of other area offices is entirely contingent on OSHA's FY 96 budget.

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I. TITLE QUICK FIX

II. SUMMARY OF PROPOSAL
Provide a reduction in the penalty for safety and health hazards which are abated immediately during an inspection.

III. CONTEXT
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.

IV. PROPOSAL
As an incentive to immediately abate hazards, an additional 10% penalty reduction is given for each violation 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 compliance history.

V. 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

VI. BOLDNESS/CONSTITUENT REACTION
Since implementation of the Quick Fix on October 1, 1993, the immediate abatement of hazards has increased by 17%. 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.

VII. STATUTORY CONSTRAINTS
there are no statutory constraints

VII. RESOURCE REQUIREMENTS
the additional time needed on site is offset by the time saving in abatement tracking

IX. TIMETABLE
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.

I. OSHA'S PERFORMANCE MEASUREMENT SYSTEM

II. Summary of Proposal

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.

III. Context

Improvement of the performance measurement system is an Agency goal. There are also legislative mandates that require Agencies to measure their performance. (See Statutory Constraints).

IV. Proposal

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.

V. **Pros and Cons** - 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.

VI. Boldness/Constituent Reaction

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.

VII. Statutory Constraints

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,

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including performance indicators; and to report annually on actual performance compared to goals.

VIII. **Resource Requirements**

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.

IX. **Timetable**

OSHA envisions that the system will be phased in over the next several years as the needed information becomes available on a systematic basis.

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WAGE AND HOUR

EMPLOYER HANDBOOK CERTIFICATION PROGRAM

Summary: The proposal is a pilot program in two states. 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. In addition to 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 have a chilling effect on employees seeking to assert their rights under the FLSA.

Statutory Constraints: None.

Resource Requirements: 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 which 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. 274 of 1165 total pages of regulations would be eliminated (almost 25%) of the total. The 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: The elimination of hundreds of pages of regulations should receive wide support from the general public and employers. As stated above, however, in some instances groups (both employers and employees) desire 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).

Resource Requirements: 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.

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WAGE AND HOUR

ALTERNATIVE DISPUTE RESOLUTION

Summary: Expand a pilot Alternative Dispute Resolution project to five states. This is especially significant as a result of the Dunlop Commission Report.

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 2 to 3 years to resolve (in many instances, cases involving small assessments end up getting dropped).

Proposal: Expand a New Jersey pilot project which resolved cases filed against agricultural employers in about 3 months, instead of 3 years. Wage and Hour will not expand this project to cases involving back wages, because (1) Wage and Hour resolves over 95% of these cases at the administrative level already, and (2) Wage and Hour takes the position that employees' back wages are non-negotiable.

Pros/Cons: Pros: If successfully expanded, this initiative should have a very positive impact on the administrative settlement of cases which 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 insofar as 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.

Resource Requirements: 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

Summary: Implement the "self-audit" enforcement technique nationwide.

Context: 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.

Proposal: 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 as a result 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.

Pros/Cons: 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.

Constituent Reaction: 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 demonstrate that it does have some oversight of the process, then employee groups may become supporters.

Statutory Constraints: We would not conduct this type of audit for Davis-Bacon investigations or other audits involving complex statutory requirements, such as "whistleblower" provisions.

Resource Requirements: As noted above, this methodology, when applied correctly, usually saves resources.

Timetable: 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 which will greatly improve customer service is bold. Presumably, all constituents will be supportive of any reform which results in improvements in services.

***Resource** Requirements:* 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.

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SIMPLIFIED TAX AND WAGE REPORTING SYSTEM (STAWRS)

OBJECTIVE

A feasibility study of and concept development for wage reporting simplification alternatives aimed at reducing the employment tax and wage reporting burden on employers, while maintaining or improving the efficiency and effectiveness of government operations. (Project was formerly known as the Wage Reporting Simplification Project (WRSP))

The simplification of employer wage reporting is an NPR recommendation.

SCOPE OF STUDY

All Federal withholding and tax related filings (i.e., Forms 940, 941, 942, and 943; W-2 and W-3; and Federal tax deposits).

State employer tax forms, tax payments, and W-2s.

UI contribution reports, payments, and quarterly wage records.

MAJOR STAKEHOLDERS

Federal Government
- DOL
- IRS
- SSA
- OMB

State Government
- Governors, represented by the National Governors' Association
- State Employment Security Agencies and the Interstate Conference of Employment Security Agencies
- State Tax Agencies and the Federation of Tax Administrators

Employers, Organized Labor, and the Public

DOL'S ROLE

DOL's representative is the Unemployment Insurance Service, with support from the Bureau of Labor Statistics

ETA

Millions Saved in Alien Certification Program through Streamlining and User Fees

Key Facts:

- The Alien Certification program is a **labor intensive process costing $60 million /yr.**
- Only a small number of employers benefit from this government service.
- **Streamlining** the process and charging **user fees** will **save $223.8 million.**

Program:

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.

Change:

- **Streamline** the labor intensive process.
- Charge **user fees** to fully fund the program.

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.

Savings:

Financial

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

OSHA: FOCUSING ON RESULTS

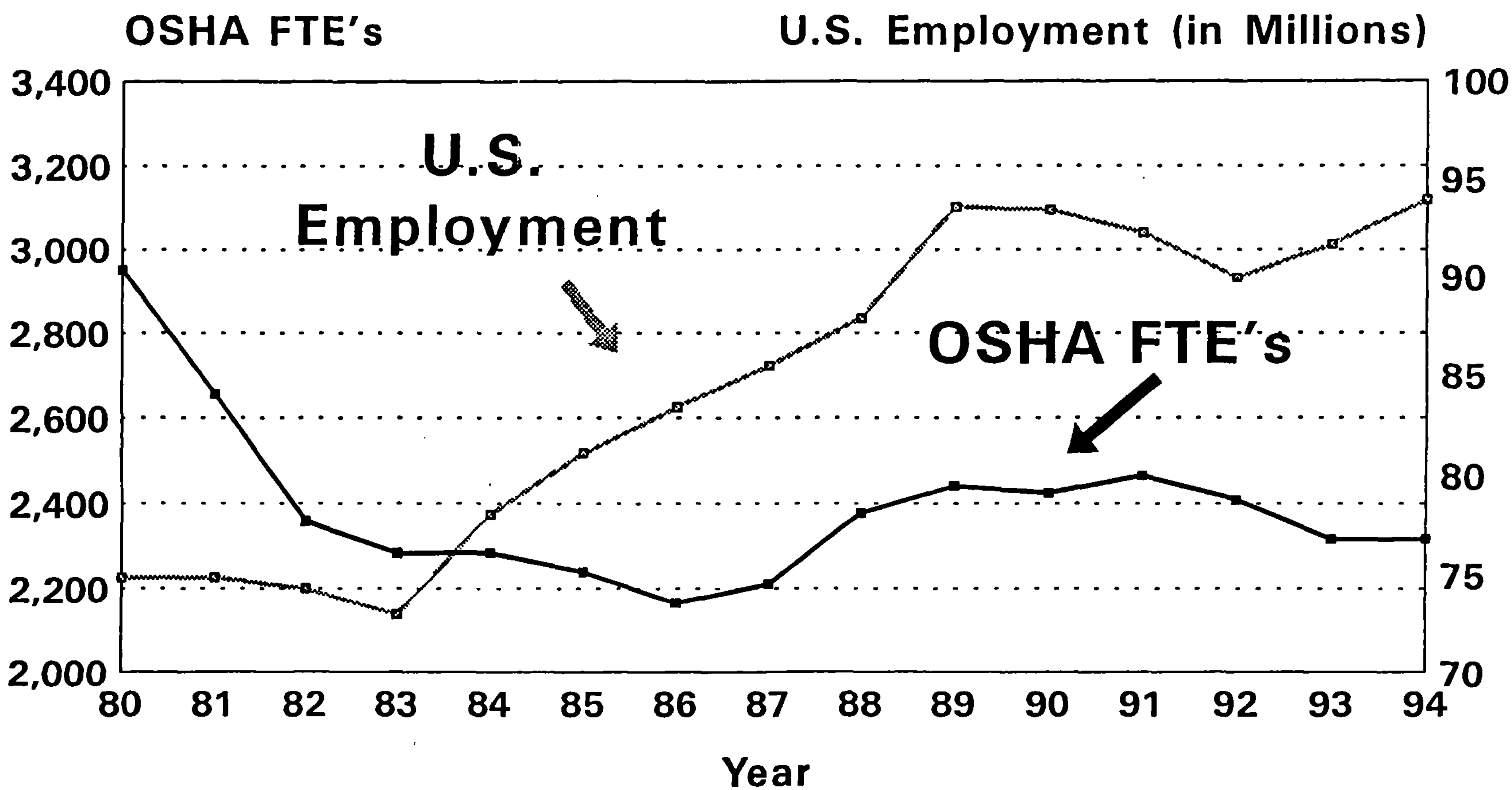
Presentation to the Domestic Policy Council Regulatory Reform Working Group

January 18, 1995

Why Change

THE GAP BETWEEN OSHA'S MISSION AND RESOURCES

Agency Resources Diminish While Demand Increases



Reinv#10

Get Smart About Compliance

- Create incentives for management commitment and worker involvement
  - establish in wkplace
  - self-sustaining
  - Maine Top 200 Targetting Program
    - 1. top 200 problems
    - Give them a choice
  - Focused Inspection in the Construction Industry
    - @ if presence of competent person on site, then OSHA only looks for major 4 dangers + move on
    - Hazard communication is key
- Create incentives for immediate abatement of hazards
  - "Quick Fix" penalty reduction program
    - hammer Award
    - 10% reduction in penalty if problem is fixed on the spot

- problem solving methodology

Improve Customer Service

- Customer Service Standards
- Worker complaints about hazardous working conditions
  - 25% of Demand for Compliance inspections
  - lots of wasted efforts on silly/non-relevant requests
- Freedom of Information (FOIA) response process
  - OSHA gets 4th most FOIA requests
- More explicit on this
- Decrease citation lapse time

Regulatory Reform and Streamlining

met w/200 stakeholders
- what should we regulate
- what should we not regulate

- Reinvent standards setting process

create electronic opportunities for filing

- Policy dialogue on paperwork simplification rule

reduce paperwork

- Negotiated rulemaking in steel erection

bold?

- Negotiated rulemaking for safety and health programs

already moving out on this.
- program standard
- partial privitization

- MSDS Repository
- Standards simplification initiative

- MSDS
- Hazard Communication
- what standards aren't being citations on
- Reporting requirements

expensive

Making It Happen Where It Counts The Most

- Front-line Service Delivery Improvement Project

  - change behaviors, incentives
  - pilot in 2 locations

- Institutionalize innovations by changing the organizational culture

- Developing a Problem Solving capacity

  need process improvements to

OSHA'S MISSION

The cost of preventable workplace injury, illness and death in America is staggering. In economic terms, it exceeds $112 billion every year. We have no way to quantify it in human terms--we know it is enormous.

Everyone is for improved safety and health--it doesn't matter whether you are a worker or an employer, a Republican or a Democrat. OSHA's mission is the same as it has been for nearly 25 years--to save lives, prevent injuries and illness, and to protect the health and safety of America's working men and women. But that doesn't mean that OSHA has to do business the way it did twenty-five years ago.

In fact, we are changing the way we do business. OSHA is focussing its efforts on the most serious threats to worker health and safety, and are redirecting our resources--enforcement, standards setting, and education, training and recognition--to where they can do the most to protect workers. Across the country, workers and managers are tackling the tough problems and showing that cooperation pays big benefits. Safe and healthy workplaces are productive workplaces.

OSHA's protective regulations save lives. According to the Office of Technology Assessment, OSHA's rules for lead and cotton dust have dramatically reduced worker exposures and substantially reduced illness rates. According to BLS statistics, in 1975, 9.4 workers per 10,000 were killed on the job. In 1993, that number has been reduced by nearly half to 5.5. Those who have examined the agency's inspection program also conclude that enforcement works. After studying illness/injury data from 6,842 manufacturing plants, Professors Wayne B. Gray and John T. Scholze concluded in 1991 that when OSHA inspects and imposes penalties for violations, there is measurable injury reduction in those workplaces following the inspection. While most employers try to protect their workers, there will always be "bad actors." OSHA's enforcement program is critical to deter these employers from taking the low road.

OSHA has had a positive effect upon workplace conditions. One way to measure its impact is to look at the overall injury/illness incidence rates calculated by the Bureau of Labor Statistics each year. According to BLS there has been a steady decline in the rate since OSHA began. In 1973 there were 11 injuries or illnesses per 100 full time workers. BY 1993 that number had fallen to 8.5 per 100--a decrease of 23%

The Problem
Illnesses, Injuries and Fatalities

- 6,271 fatal injuries in 1993

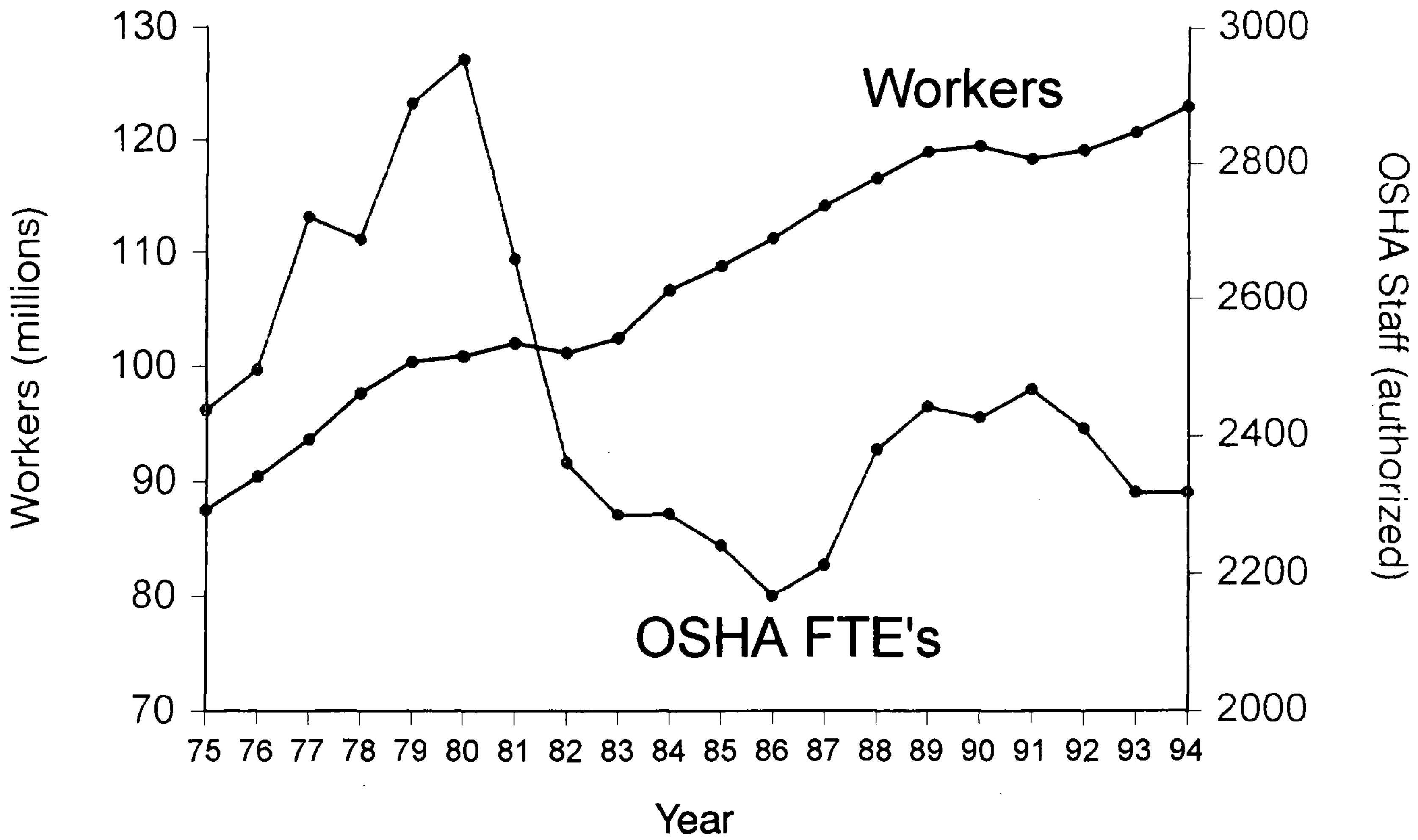
- 6.7 million injuries and illnesses in 1993

- $112 billion in work injury costs during 1993

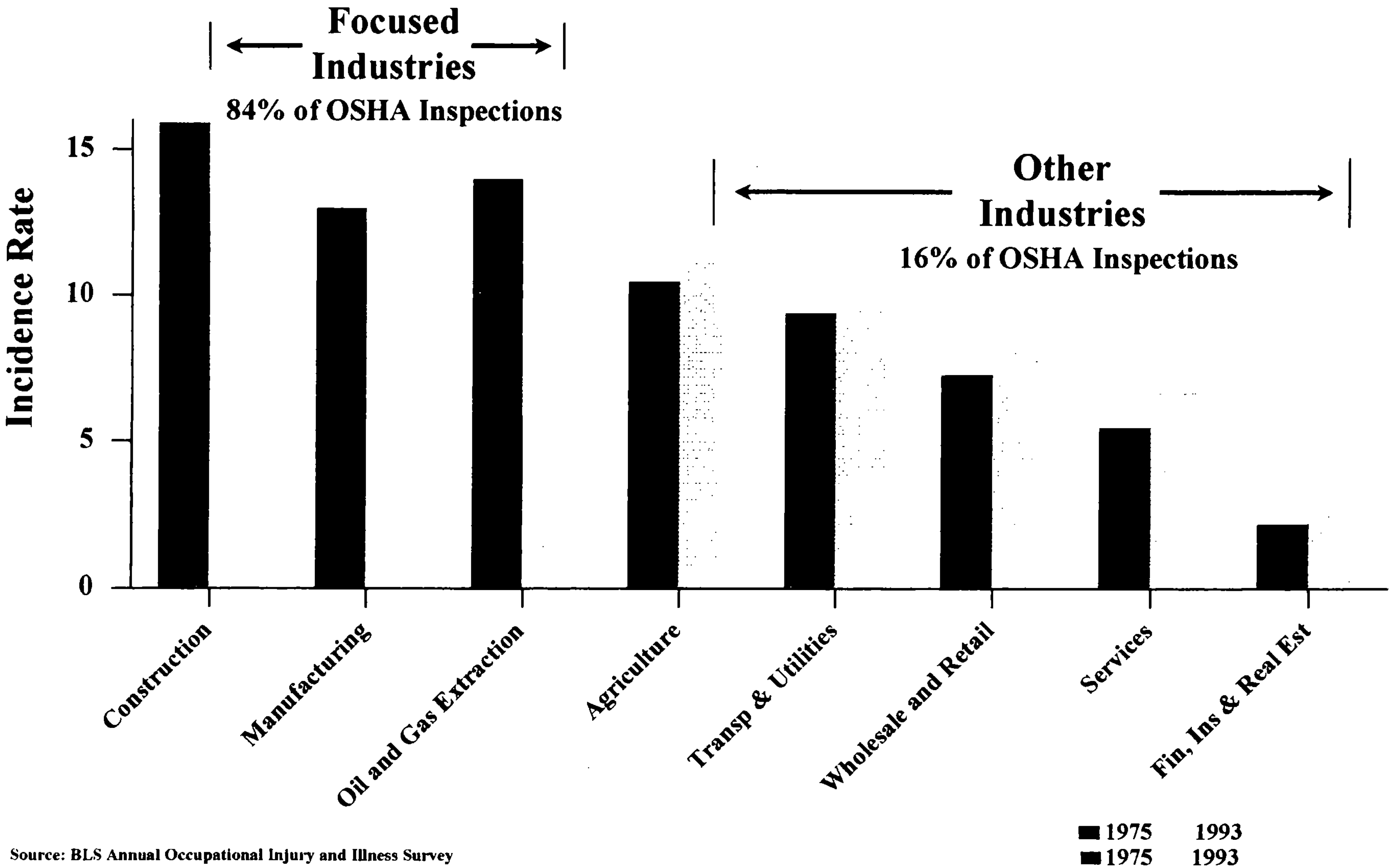
Sources: BLS Census of Fatal Occupational Injuries
BLS Survey of Occupational Injuries and Illnesses
National Safety Council Accident Facts
Produced by OSHA OSTAT 1/95

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

See 2nd page.

WORKPLACE SAFETY AND LABOR REGULATORY REFORM PRESENTATION
A Summary of Comments and Suggestions Made at the Pre-Briefing

Below is a summary of some of the comments and suggestions for improvement that were made at last week's Workplace Safety and Labor pre-briefing session. Some specific comments on OSHA and Wage and Hour are also included, but more specifics will be covered in the follow-up pre-briefings (OSHA's was held last Friday, and Wage and Hour's will be held this Thursday).

__General Comments and Suggestions__:

- **The Briefing Session with the Vice President is not meant to be a progress report or a defense of your agency's mission and accomplishments**. The most frequently (and adamantly) heard comment at last week's pre-briefing was "what are they proposing to do that's new?" Contrary to any advice that you might have heard from other sources, the Vice President does not need to hear a defense of your agency or an in-depth discussion of its mission and importance. The President made it clear in his speech last week on the regulatory moratorium issue that this Administration believes in the underlying importance of health and safety regulations for America's workers -- the regulatory review briefing with the Vice President is a chance to move beyond this point and discuss changes in the system, both regulatory and statutory, that will help your agencies accomplish their missions with less red tape and more cooperation with the states and the private sector.

- **Make your "bold" or "blue-sky" proposals clear.** Part (but by no means all) of the problem last week stemmed from a failure on our part to make our "bold" new ideas clear. In both presentations, the new proposals that we laid on the table got lost in both the defense of the agencies and the discussion of what is already happening at the agencies. Instead of saying "what we are proposing is x, y, and z. . ." we said "we are already doing x, y, and z. . ." You have done a lot of good work over the past month and a half and have come up with some interesting new proposals -- don't let them get lost in the presentation!

- **Make sure to include a discussion of the effects of your proposals on workers, businesses, etc.** In discussing the major new ideas that you have, also include a brief summary of the positive effects of each new proposal. Answer the following questions:

  -- How will this proposal affect businesses (fewer forms to fill out, less costly to comply, fewer legal challenges in court, etc)? Will they support this new idea/approach? Why or why not?

  -- How will this proposal affect workers? State or local governments?

-- Will this proposal result in any savings to either government or the private sector?

-- Will this proposal make it easier to understand and comply with health and safety regulations (does it cut out confusion, legal gobbledygook, etc)?

- **Include some brief discussion of any statutory constraints that you feel hamper your agency's effectiveness, and any legislative changes that would be helpful.** This is a subject area that is becoming more important as time goes on and clearly will be a focus of questions at our final briefing with the VP. Since many of the statutes that underlie your agencies are being opened up by Congress, we need to at least think about any positive legislative changes that we can propose that might contradict the damaging changes that some on the Hill are proposing. If there are no legislative changes that you can propose, be prepared to discuss why you recommend against any legislative changes, but be forewarned that it will not be enough to state that you are reluctant to propose opening up these statutes in the current political environment for fear of what might happen -- the statutes are already being opened up! We need to have something positive ready to counter this attack.

- **Be sure to include a brief discussion of any "low-hanging fruit" that you are prepared to offer the VP at this time or in the near future**. Include a <u>brief</u> discussion of the "low-hanging fruit" that you are prepared to offer the VP immediately or in the near future (i.e. any regulations that you are prepared to waive, any efforts underway to rewrite/simplify confusing regulations or ease requirements). Again, make sure that this section of your presentation is well defined ("In addition to our bold proposals, we have a number of "low hanging fruit" proposals that we are prepared to implement immediately. These proposals are . . . ." You may also want to create and hand-out a short list of the low-hanging fruit as well.

I added "t"

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- **Somewhere in your presentation you need to include a discussion of current political attacks/initiatives in your area and strategies for countering these attacks** (or perhaps how your proposals will counter these attacks). While the VP ~~doesn't~~ need to hear a defense of the need for worker protections, he does need to know wha the Hill GOP is doing.

- **Include charts or other visuals, <u>especially for your major proposals</u>**. At our presentation last week, we had some charts to use in our defense of the agencies, but almost none to go along with the major proposals that we were making. For example, it would be helpful to have a chart for the Maine 200 expansion (maybe showing the dramatic increase in the number of violations self-reported?). The charts do not have to be complex, and can be as creative as you want them to be.

<u>Specific Comments and Suggestions: OSHA</u>
(Not meant to replace the comments and suggestions that OSHA got from Sally last Friday!)

- Include a discussion of the Hazard Communication Standards/Forms (HazLet?) and your efforts to make them more understandable. Apparently in the Small Business presentation the VP made a point of the fact that these documents are completely unreadable to the point of being a joke in many workplaces. Joe did discuss this last week, but it got lost in the presentation. You might want to preface this discussion by saying something like "I understand that at the Small Business presentation there was a discussion of the Hazard Communication Standards/documents and the fact that they are unreadable for many workers and employers. We agree, and we are taking steps to change these documents by . . . ."

- Include a mention of the PEL issue.

- Include a brief mention of the Dentistry/Tooth Fairy controversy (no need to focus on this, just a comment to let the VP know that you have heard these GOP claims and that they are not true).

- When mentioning any automation proposals, talk about the savings/improvements that will take place because of the automation.

<u>Specific Comments and Suggestions: Wage and Hour</u>
(More specific comments and suggestions will come from your meeting with Sally this Thursday)

- Include a discussion of the FLSA and any legislative changes that would be helpful or, conversely, why no legislative changes are needed (can we do it through other means more easily? Why?).

- If we decide to keep the discussion of the 541 changes, charts will be needed to help explain this very complex issue!!! Even the hand-drawn visuals that were used in our Friday evening session on this issue a few weeks were better than having no visuals at all (in fact, I found them helpful). Also, on 541, we need to make it clear who is helped by these changes and how. Are businesses helped? How? Will they be happy with these changes?

- We should be prepared to include a discussion (NOT a defense) of the 40 hour week/80 hour two-week issue.

NOTES FROM DOL REG REVIEW PRESENTATION

PART A: ORGANIZATIONAL STRATEGY:

Tim Barnacle began the meeting by stating the Department of Labor's proposed "five strategic concepts" (listed below):

Five Strategic Concepts

1. Eliminate unnecessary regulation (There are more than 120 OSHA and FLSA regulations that are obsolete or contradictory, which may be eliminated)
2. Eliminate unnecessary regulatory functions (Cut the overlapping areas of enforcement)
3. Target compliance priorities (i.e. OSHA: Proposal to expand "Maine 200" nationwide)
4. Coordinated enforcement (Entities which violate one regulation, usually violate other regulations as well)
5. Focus on results instead of process (i.e. Wage and Hour: Proposal to expand the use of self-audits)

These "five strategic concepts" could be incorporated into the White House working group's two-part plan in the following manner:

I. Conditional Deregulation: Responsibility System

1. Targeted compliance priorities
2. Coordinated enforcement

II. Reinventing Government Responsibility

1. Eliminate unnecessary regulations
2. Eliminate unnecessary regulatory functions
3. Results orientation rather than process orientation

PART B: PRESENTATIONS MADE BY OSHA AND FLSA WORKING GROUPS:

- **FLSA:**

  Wage and Hour made some notable suggestions which are applicable to the two-part plan and should be followed up:

  1. Defer federal regulations and enforcement measures for areas that the state has mandated the same or better standards.

  This proposal would fall within the "Reinventing Government Responsibility" portion of the two-part plan. When presenting this proposal, Maria mentioned the pros and the cons to such an arrangement which should also be mentioned during the proposal to the Vice President.

2. Self-Auditing
This proposal falls within the "Conditional Deregulation: Responsibility System" portion of the two-part plan. Maria mentioned that this type of system has been successful in the limited areas that it has been tested in.

3. Alternative Dispute Resolution
This proposal falls within the "Reinventing Government Responsibility" portion of the two-part plan. It would offer an alternative to the Administrative Law avenue that is currently the only viable option for many individuals.

4. Smart Regulation
This proposal falls within the "Reinventing Government Responsibility" portion of the two-part plan. Wage and Hour has found 274 pages of regulations that can be eliminated. This results in a 20% decrease in the number of regulations.

5. Fixing the Regulations to make more sense
When presenting this proposal, Maria specifically mentioned regulation section 541 and suggested that the issue of "exempt" vs. "non-exempt" should be examined closely. This proposal falls within the "Reinventing Government Responsibility" portion of the two-part plan.

6. Child Labor Regulation Reform
This proposal falls within the "Reinventing Government Responsibility" portion of the two-part plan. Maria suggested that teenagers be allowed to work later hours in limited circumstances.

- <u>OSHA</u>

  OSHA proposals outlined change in primarily three areas. Suggestions made by OSHA and their applicability to the proposed White House two-part plan are listed below:

1. Setting the Standard for Workplace Safety and Health
a. OSHA focus on results rather than process.
This is one of the White House goals as well, and falls within the "Reinventing Government Responsibility" portion of the White House plan.

b. Elimination of selected regulations
Again, this is one of the White House goals and falls within the "Reinventing Government Responsibility" portion of the White House plan.

2. Cooperative Compliance
a. OSHA provision of incentives for employers to self-regulate.
This proposal falls with the "Conditional Deregulation" portion of the two-part plan. OSHA currently has "proto-types" of this proposal in use (i.e. the "Maine 200" plan and the Construction industry plan) that have been successful.

b. OSHA provision of incentives for employers to immediately fix identified problems.
Remember this? This proposal was coupled with the example of the construction worker who was issued a new hard hat after an inspection found the company to have inadequate head protection. In the example, a piece of scaffolding fell and hit the construction worker on the head but, because he had a new hard hat, the worker was not hurt and was able to save the life of his fellow employee who fell from the scaffolding...Bottom line, thanks to the OSHA allowing employers to immediately fix identified problems, two lives were saved. Overall, the proposal falls within the "Conditional Deregulation" portion of the two-part plan.

3. Changing OSHA's Culture
a. OSHA inspectors to focus on quality rather than quantity.
Currently, OSHA is working with McKinney and Co., in an effort to apply models used in the private sector for organizational change in the government sector. This proposal falls within the "Reinventing Government Responsibility" portion of the two-part plan.

b. Streamline existing OSHA processes.
This proposal falls within the "Reinventing Government Responsibility" portion of the two-part plan.

Part C: OVERALL CONCERNS:
In earlier meetings, the White House working group identified several proposals that were significant. Below, please find a listing of those proposals that the Department of Labor did not address:

1. "OSHA On-line Repository" for workers
2. Flex-Time/Comp Time
3. Decrease in the amount of FLSA paperwork
4. Cross-cutting definition of "employee"
5. Cross-cutting re-alignment of "zones"/"areas"
6. "Beyond Compliance" themes
7. OSHA Standards Simplification
8. Strategy for addressing issues arising from the Office of the Inspector General

White House group members insisted that either the Flex-time/Comp-time issue had to be tackled in the presentation to the VP, or an explanation would have to be given as to why it was left alone. In addition, WH members agreed that a definition of "overtime" requirements taken from a two-week rather than a weekly frame of reference should be pursued (i.e. more than 80 hours per two-week period, rather than 40 hours per week would allow workers to work 45 hours one week and 35 the next).

FOR DISCUSSION PURPOSES ONLY

CLOSE HOLD

NOTE: In reviewing the literature regarding work safety and labor regulation review, OUTSIDE EXPERTS have made the following suggestions for a "blue sky" approach to regulation reform:

CONDITIONAL DEREGULATION: TWO-WAY RESPONSIBILITY SYSTEM

A. Private Sector Responsibility

. **Voluntary Self-Enforcement**: Permit companies voluntarily to create high-quality employee representation committees (similar to European works councils), where quality refers to training, democratically elected, etc. Permit those committees to: approve the enterprise's safety program and opt out of many OSHA regulations; approve the enterprise's alternative dispute resolution program; approve the enterprise's overtime rules, and opt out much FLSA enforcement. Each of these employee-approved waivers would remain subject to minimum quality standards for the safety, ADR, and hours programs. However, if the company's plan exceeded minimum standards, broad flexibility would be granted.

. **Self-Regulation of Safety:** Eliminate or greatly scale back OSHA regulations, inspections and fines for companies with a combination of: an excellent safety program (e.g., one with an active safety committees with trained personnel, or with certification of the safety program by the workers' compensation insurance company, which saves money from reducing injury rates); a good safety record compared to industry and in absolute terms; approval by third party inspectors such as workers' comp insurers or industrial hygienists' association; or an unusually generous workers' comp insurance plan (which permits companies to put their money behind their claims their workplace is safe).

- In workplaces with high-quality safety programs (relying on employee involvement in improving safety, and maintaining a good performance record), regulators should reduce penalties and inspections. If an employer has an adequate safety program then OSHA will perform less monitoring and enforcement.

  * OSHA currently has two pilot tests along these lines.

    -- In construction, OSHA defines "adequate safety program" as a written safety program and a trained safety person, and gives the reward that any OSHA inspections will focus only on the four main deadly hazards, not on hazard communication and other minor violations.

    -- In Maine, the pilot is targeted on 203 manufacturing companies with the worst workers' comp records. "Adequate safety program" is defined as a written safety plan, and the reward is no immediate inspection when one would usually be called for by the poor safety record. Results so far have been very good in terms of companies voluntarily finding and fixing many hazards.

* Adequate safety program could also be defined as a combination of:

-- Having active safety committees with trained personnel.

-- Performing root cause analysis and fixing root causes of all accidents.

-- Certification of the safety committees by the workers' compensation insurance company, because the insurance companies also save money from reducing injury rates.

-- Good safety records compared to industry and in absolute terms. Injury rate would be measured by both OSHA 200 logs and workers' comp records. (Variation in workers' comp laws across states complicates this measurement.)

-- Third party inspectors such as workers' comp insurers or industrial hygienists' association.

-- An unusually generous workers' comp insurance plan (for example, giving 80% of wages after one week off the job, instead of the normal 67% of wages after two weeks off the job). This is a form of bonding as a credible self-selection device for who has a good safety plan. This plan also enlists the workers' comp insurance industry to determine who is a "good" company.

-- Having consulted with and received pre-approval from OSHA before installing a new piece of equipment or redesigning a workplace (that is, OSHA gives a safe harbor to pre-approved changes).

-- Demonstrating that a new technology or method meets the goals of a rule; and all rules have explicit goals even if the rules specify a method.

* Rewards for adequate safety plans could include a combination of:

-- Technical assistance and free training materials from OSHA;

-- Waivers from rules;

-- Fewer inspections or inspections that ignore minor hazards;

-- Lack of fines, lower fines.

.Rewarding High Performance Compensation and Hour Systems: Similar to the concept of self-regulation of safety outlined above, workplaces that have initiated innovative, high-performance systems of compensation and wage-and-hour requirements can get flexibility in federal regulations for overtime pay, maximum hours, etc. (rewarding innovative uses of comp-time, telecommuting, flex-time, etc.).

B. Reinventing Government Responsibility

. **Regulatory Culture Change**: Move from a culture of policing to a culture of compliance assistance. Change internal rules, standard operating procedures, and Inspector General regs to permit inspectors to give waivers or fix-it tickets for minor violations. The ultimate goal is for companies to *invite in* inspectors to assist them in solving problems everyone agrees are serious. Other changes that have been suggested along these lines include providing more training and assistance (more balanced funding ratio -- 60/40 enforcement/assistance rather than the current 90/10 approach?); focusing inspections on truly dangerous hazards; pre-certifying changes in the workplace; ensuring that enforcement efforts are targeted on hazards that pass not only the laugh test but also the local newspaper test; ensuring inspectors give on-the-site waivers to companies whose policies achieve the goal of a reg even if they do not comply with the reg; giving more warnings instead of fines for non-serious first offenses.

.Targeting Enforcement: Some outside experts have also suggested moving to better targeting of enforcement to the most serious violators of workplace safety and health regs. The 200 worst offenders of workplace safety regs account for more than 50% of all OSHA violations.

. **One-Stop Enforcement**: The Vice President has emphasized the advantages of creating a virtual Department of Cleveland to integrate the economic, social, and environmental programs run the Federal government that affect Cleveland. Following the same intuition, should there be (from the customer's point of view) a Department of Dry Cleaners in Southern Maryland that answers their questions and helps them maintain a safe, environmentally sound business? A dry cleaners has no desire to have employee safety regulations for a chemical run by a different agency than environmental regs for that chemical; they do not want OSHA whistleblower regs different than other whistleblower regs; they do not want the definition of "independent contractor" to differ for FLSA, OSHA, ERISA and the IRS.

At least for smaller enterprises, all compliance efforts (training and enforcement) would be carried out from a one-stop Workplace Improvement Agency. The intuition is that if rules are too complicated for a full-time inspector to learn, then they are probably too complicated for a small business to deal with. Thus, train a Workplace Improvement Officer in the regs that most threaten safety and well-being. This policy is consistent with the general reinvention thrust to de-emphasize less important rules. This reform would simplify life for businesspeople, who could call a single source for information, and could deal with a single agency for solving regulatory problems. If the Workplace Officer dealing with a company were unable to answer a manger's questions, he or she is clearly responsible for finding out the relevant information -- unlike the current situation where multiple phone calls are often required to find out about break times or paint fumes.

One-stop inspectors might become specialized in a set of industries or technologies, and would be able to call in specialists for complicated situations. Ideally, this one-stop Workplace Agency would transcend DOL regs, and could include basic state regs, EPA, etc. In a given industry such as education or health, the Workplace Officer could also manage many DoED or HHS programs, simplifying life even further.

. **Consistent Enforcement**: 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.

. **One-Stop Everything**. DOL's agencies should work together and with other agencies at the federal, state and local levels to create one-stop access to all resources.

. **On Line Information**: regulations, information and applications for funding, information on best practice, and other sources of information should all be on line. The goal is not "DOL On Line" but "Workplace Information On Line." For example, a manager does not care if the regulating agency is state government, FLSA, ERISA, or IRS. Most managers just want to know: "What is the rule, why is it there, and how do I comply?"

A key insight is that if workers know their rights, some enforcement and compliance will automatically increase. Right now it is non-trivial to find out hours rules for each state. Can we speed this up using modern information technology?

Major Theme: Responsibility Runs Both Ways

The most important idea that holds this approach together is that responsibility is a two-way street. The government must take steps to reinvent its outdated regulatory mechanisms and become more flexible and up-to-date with the changing needs of the workplace of the 90s. At the same time, businesses must do their part to re-invent the way they do business, making the kinds of high-performance changes that give workers a real say in the workplace. Implicit in this notion is a kind of trade-off: if businesses undertake these changes, they will work with the new, more flexible, more friendly federal regulatory system; if businesses choose not to make these changes, they will meet the same-old enforcement approach.

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