

Real Choices for the Public to Work with OSHA

In policing the nation's workplaces, the Occupational Safety and Health Administration (OSHA) traditionally relied on inspections and after-the-fact fines for violations. The Maine Top 200 Program took a radically different approach. It encouraged employers to identify hazards themselves and take corrective action before they lead to injury or illness.

The Maine Top 200 Program started in 1993 after OSHA examined state workers' compensation data and recognized that enforcement efforts were not targeted to the firms registering the highest worker compensation claims. The mismatch was particularly troubling because of the state's relatively high incidence of hazards, injuries, and illness. The employer could choose to work with OSHA by identifying and correcting hazards themselves and also by implementing comprehensive safety and health programs to sustain the effort. The company's other choice was an increase in traditional OSHA inspections. Nearly all the firms chose to enter into partnership with OSHA.

The Maine Top 200 Program was selected for the 1995 Innovations in American Government Award sponsored by the Ford Foundation, the Council for Excellence in Government, and the John F. Kennedy School of Harvard University. In a set of May 1995 recommendations from the President, Vice President and the National Partnership for Reinventing Government (NPR) OSHA was asked to:

...expand the most successful features of this program (Maine 200) nationwide.

These successful elements include:

1. using worksite-specific data to help identify high-hazard workplaces,
2. providing information to employers about effective safety and health programs,
3. offering employers a choice in how they want to work with OSHA (an opportunity to partner),
4. ensuring management commitment and worker involvement, and
5. modifying enforcement policies for high-performance employers.

OSHA set out on a course to achieve this task. Despite set backs and challenges all five of the above successful elements are integral parts of OSHA programs today and will remain so in the future.

With the success of the Maine 200 pilot OSHA set out to further test its use of worksite-specific data via multiple pilots including the Alabama 4, Dakota First, New Hampshire Focused 50, Wisconsin 200, and Florida Focused 50. With lessons learned in mind OSHA then developed an agency-wide directive entitled, "OSHA High Injury/Illness Rate Targeting and Cooperative Compliance Programs," which became known as the CCP program.

Cooperative Compliance Program (CCP)

Background: The previous OSHA targeting system used data from the Bureau of Labor Statistics to identify high rate industries as defined by Standard Industrial Classification Codes (SICs). Employers in those industries were then randomly selected for inspection. With this system, OSHA did not know beforehand if the worksite being inspected was one with a high injury and illness rate, or one with a low injury and illness rate. Regardless of the employer's site-specific rate, OSHA conducted an inspection.

In view of these limitations, OSHA explored the use of worker's compensation data to target specific worksites with high rates. This led to the concept of a cooperative approach to compliance with the implementation of pilot programs in Maine, New Hampshire, and Wisconsin. These programs offered employers identified as having the highest number of workers compensation claims an opportunity to work with OSHA to identify and correct workplace hazards and reduce injuries and illnesses in their workplaces. Because of the success of these programs, CCPs were developed in each Region. Nine state-wide CCPs are operating today utilizing workers' compensation data and/or high hazard SIC data. Problems arose however, with the use of worker's compensation data. The data was not consistent among states, and the use of the number of compensation cases as the basis of selection was biased against employers with a large number of workers.

In May 1995, the President announced, "The New OSHA: Reinventing Worker Safety and Health." The "New OSHA" focused on the implementation of strategic "data-driven" initiatives specifically aimed at reducing workplace injuries and illnesses, as was demonstrated by the early CCPs. In January 1996, OSHA outlined the new requirements for the strategic CCP initiatives. The first and foremost requirement was that the initiative be driven by site-specific data. This would give OSHA the ability to target establishments with high rates of injuries/illnesses based on actual data from that worksite.

The use of uniform site-specific rate information made available by OSHA's Data Initiative for targeting specific worksites under the CCP would effectively address the above problems. With site-specific data now available, OSHA expanded its CCP to all of the Federal enforcement states.

The primary objectives of the CCP were:

- A. To establish a site-specific inspection targeting system for the highest LWDII rate employers.
- B. To reduce work-related injuries and illnesses in manufacturing and certain other industries that experience the highest lost work day injury and illness (LWDII) rates through the identification and correction of hazards.
- C. To provide eligible employers with an opportunity to work cooperatively with

OSHA to improve their workplace safety and health conditions, qualify for placement on a lower priority inspection targeting list, identify and correct workplace hazards, and develop and/or improve a comprehensive workplace safety and health program.

D. To leverage limited OSHA resources.

Employer Requirements for the CCP were to:

1. Identify and correct hazards,
2. Work toward a significant reduction of injuries and illnesses,
 - a. In some cases the reduction of an employer's reported LWDII rate will occur swiftly. OSHA recognizes however, that in other circumstances reduction will be a gradual process. In fact, during the initial phases of identifying and correcting hazards and implementing a safety and health program an employer may find that its reported rate increases. This may occur because, as an employer improves its program, worker awareness and thus reporting of injuries and illnesses may increase. Over time, however, the employer's LWDII rate should decline if the employer has put into place an effective program.
 - b. OSHA did not set an LWDII-rate-reduction goal for employers. OSHA is expecting employers to experience a decline in their rates over time. The degree to which a rate is reduced will depend on the employer's efforts and the nature of the industry and the type of hazards prevalent in that industry.
3. Implement or improve a comprehensive safety and health program as set forth in the OSHA 1989 Safety and Health Program Management Guidelines; Issuance of Voluntary Guidelines
4. Involve workers in the identification and correction of hazards,
5. Involve workers in the structure and operation of the site's safety and health program
6. Maintain policies and programs that encourage the reporting of hazards to the employer for corrective action,
7. Provide OSHA with information from its Annual Injury and Illness Log (OSHA 200) each year.
8. Establishments with 100 or fewer workers (and no more than 500 workers controlled by the employer) have an additional option; they can commit to

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requesting outside assistance in the form of the OSHA Consultation Program
from the State

9. Contractors: The host employer shall ensure that appropriate information is exchanged with the contractor(s) about safety and health hazards, controls, safety and health rules, and emergency procedures.

CCP Agreement:

In return for making the CCP agreement, these establishments would be removed from the primary inspection list and placed on a secondary or tertiary list (for smaller establishments utilizing consultation services). The secondary and tertiary lists provide for a reduced chance of inspection (no more than 3/10 for a secondary list establishment and 1/10 for a tertiary list establishment) over a two-year period. Moreover, no inspection under the CCP will be scheduled until at least May 4th, 1998.

Interim Plan for Inspection Targeting (ITP)

Background:

On November 25, 1997, OSHA issued OSHA Instruction CPL 2-0.119, which initiated the use of a new high hazard targeting system that included a partnership component, the Cooperative Compliance Program (CCP). This new system was driven by establishment-specific illness and injury data, which was made available by OSHA's Data Initiative.

On February 17, 1998, the United States Court of Appeals for the District of Columbia Circuit stayed OSHA Instruction CPL 2-0.119, until the court could rule on the merits of the litigation challenging the instruction. The U.S. Chamber of Commerce, National Association of Manufacturers, American Trucking Association, and the Food Marketing Institute had requested the stay, contending that OSHA Instruction CPL 2-0.119 did not comply with legal requirements.

In view of the delay likely to result during the litigation, and in order to have a national targeting inspection plan that will enable the Agency to fulfill its responsibilities under the statute, OSHA developed an interim plan to use until the court makes its determination. The interim plan identifies high hazard industries using Bureau of Labor Statistics (BLS) data at the four-digit Standard Industrial Classification (SIC) level at which BLS makes those data available. It includes those industries with the highest average injury and illness rates for which establishment-specific data from the Data Initiative are available. The interim plan does not include a cooperative compliance component. OSHA notified the court of its intention to implement the interim plan for inspection targeting, and on April 6, 1998, the court clarified that its stay order of February 17, 1998, did not bar implementation of the interim plan.

On April 10, 1998, OSHA issued a notice implementing its interim plan for inspection targeting. Several questions from the field have necessitated this notice to clarify (1) size of inspection cycles, (2) Integrated Management Information System (IMIS) coding, (3) compliance officer verification of establishments' OSHA 200 log entries and SIC codes, and (4) how the interim targeting plan relates to Process Safety Management (PSM) Program-Quality-Verification (PQV) inspections.

Description of Interim Inspection Plan:

A. The interim targeting system targeted individual worksites with elevated rates in approximately 100 industries. The interim plan first uses BLS data for 1996 to identify the industries, as characterized by four-digit SIC Codes, with the highest LWDII rates, excluding construction, agriculture, mining, and public administration. (Construction is excluded because construction work-places are inspected pursuant to a separate administrative plan. Agriculture is excluded because most agricultural workplaces are subject to a low level of OSHA regulation, and inclusion of agricultural workplaces in OSHA's general administrative inspection plan would therefore result in inefficient use of OSHA's resources. Mining is excluded because mining operations are subject to the Mine Safety and Health Act. Public administration is excluded because state and local governments are not subject to federal OSHA enforcement.) For those four-digit SIC Codes for which BLS did not report LWDII rates at the four-digit level (such as non-manufacturing), OSHA attributed the rate reported by BLS at the three-digit SIC level.

B. The interim inspection plan also used establishment-specific injury and illness data obtained in OSHA's 1996 data survey. OSHA surveyed 80,000 establishments having 60 or more workers in manufacturing and fourteen other industries for their 1996 injury and illness experience.

C. Of the 107 SICs with the highest LWDII rates based on the 1996 BLS data, 99 were included in OSHA's 1996 data survey. Eight SICs were not included in OSHA's 1996 data survey, and there are therefore no establishment-specific LWDII data for them. They are:

1. SIC 4512, Air Transportation, Scheduled, and 4513, Air Courier Services, were not included in the 1996 data survey because, at the time the survey was designed, OSHA was uncertain about the extent to which these industries included worksites that were within OSHA's jurisdiction. OSHA has since learned that these industries include auxiliary land operations that fall within OSHA's jurisdiction, and they are included in the 1998 survey, which will collect injury and illness data for calendar 1997.

2. The following SICs from the 1996 data survey were excluded for

reasons such as a high concentration of public employers, regulation by other agencies, or a predominance of workplaces that are not readily subject to OSHA inspections or enforcement. They are: SIC 4111, Local and Suburban Transit; SIC 4119, Local Passenger Transportation, Not Elsewhere Classified; SIC 4131, Intercity and Rural Bus Transportation; SIC 4424, Deep Sea Domestic Transportation of Freight; SIC 4952, Sewerage Systems; and SIC 4959, Sanitary Services, Not Elsewhere Classified.

D. The interim plan applied to establishments in the 99 four-digit SICs with an LWDII rate of 6.4 or higher for which OSHA has establishment-specific data. (If all SICs with an LWDII rate of 6.3 were included, a list of 109 SICs would have been generated.)

E. For each four-digit SIC on the list, each establishment in the SIC reporting in the 1996 survey an LWDII rate equal to or greater than the LWDII rate for that industry will be subject to inspection. An exception is made for establishments in SIC 8051, Skilled Nursing Care Facilities; SIC 8052, Intermediate Care Facilities; and SIC 8059, Nursing and Personal Care, Not Elsewhere Classified. This group of three industries contained many more establishments than the other SICs on the list. To avoid over concentration of inspections in this group of industries, only the top 20% of the establishments in these SICs with LWDII rates equal to or greater than the industry rate will be subject to inspection.

OSHA's 3-pronged Approach to Deliver the Spirit of Maine 200 Nation-wide

Due primarily to the judicial set back OSHA faced with its CCP program, we have now developed a 3-pronged approach to expand the five most successful features of the Maine 200 program nationwide. This 3-pronged approach includes, 1). the Site Specific Targeting Plan, 2). OSHA Strategic Partnerships for Worker Safety and Health, and 3). a draft proposed Safety and Health Program rule written in plain language.

Site Specific Targeting (SST)

Background:

On April 10, 1998, OSHA issued a notice implementing its interim plan for inspection targeting. The interim plan targeted for inspection establishments in 99 high hazard industries for which establishment-specific data from calendar year 1996 (1997 Data Initiative) were available. These industries were identified by using Bureau of Labor Statistics (BLS) data. On August 14, 1998, the April 10 notice was updated and amended in minor respects.

This program replaced the interim targeting plan with a new site specific targeting (SST) plan. The SST plan targets for inspection establishments with high injury and illness rates in calendar year 1997, as shown by data collected in the 1998

Description of the Site Specific Targeting (SST) Plan :

A. Inspection Targeting List. The SST plan targets individual worksites, as identified through the 1998 Data Initiative. The national average LWDII rate for private industry for 1997 was 3.3. The SST plan initially targets those worksites with a LWDII rate above 16.0 (over 2200 sites). However, an exception is made for establishments in Skilled Nursing Care Facilities (SIC 8051), Intermediate Care Facilities (SIC 8052), and Nursing and Personal Care, Not Elsewhere Classified (SIC 8059). This group of three industries contains many more establishments than the other SICs on the list. To avoid over-concentration of inspections in this group, only the top 20% of the establishments in these SICs with LWDII rates over 16.0 will be included on the list. All of the establishments on the Inspection Targeting List will be inspected by December 31, 1999, except as provided below in XI.B.

B. Supplemental Inspection List. If an Area Office will complete its inspections of all establishments with LWDII rates above 16.0 before December 31, 1999, it should estimate the number of additional programmed inspections it can conduct before that date. The Area Office should request a supplemental inspection list containing that number of additional establishments from the Office of Statistics through the Directorate of Compliance Programs. Additional establishments will be randomly generated by the National Office from those establishments reporting an LWDII rate between 10.0 and 16.0 in the 1998 Data Initiative. These establishments will be inspected using procedures defined in this notice.

To avoid over-concentration of the three SIC codes mentioned in paragraph X.A., establishments in these SIC codes will be pooled together with general industry firms. Then the needed number of establishments will be randomly selected from the pool, but the number of establishments from the three SIC codes may not exceed 10% of the number of establishments selected for an Area Office's Supplemental Inspection List.

C. Establishments with Fewer than 50 Workers. If an establishment to be inspected under the SST plan currently has fewer than 50 workers, the inspection will still be conducted, provided that it has more than ten workers and its LWDII rate is greater than 10.0 or if records are not available. See XIII. E., below for more details.

OSHA Strategic Partnerships for Worker Safety and Health (OSP)

Background:

Over the past several years, OSHA has been expanding on its already substantial experience with voluntary programs by proposing and implementing various new

cooperative initiatives in both the National Office and the field. These efforts have been designed to increase OSHA's impact on worker safety and health and, at the same time, to help OSHA change its way of conducting business from one of command and control to one that provides employers a real choice between partnership and a traditional enforcement arrangement. Employer groups, labor organizations, individual employers, and employees and their representatives committed to developing and implementing strong and effective safety and health programs are finding OSHA to be a willing partner. Individual employers who fail to step up their efforts to protect their workers are continuing to face strong enforcement.

In the absence of clear agency policy on partnerships, however, program developers specified varying partnership requirements, qualifications, and OSHA incentives. Seeing a need to establish "boundaries" for partnership programs, OSHA formed an ad-hoc workgroup of agency staff. The workgroup's task was to develop a partnership framework that would ensure a basic level of consistency for these various cooperative efforts. The workgroup was particularly concerned to strike a balance between consistency and flexibility so that the established boundaries were not so rigid as to inhibit innovation. After several opportunities for review and comment by a group of senior National Office managers, Regional Administrators, State Programs, and agency stakeholders, the efforts of this ad-hoc workgroup evolved into this document.

This instruction states the agency's general policy on OSP programs but does not bind the agency to approve or disapprove any particular partnership proposal, limit the agency's discretion to enter into agreements that do not meet the criteria listed within this instruction, or create any rights in private parties.

Core Elements:

A. Situation Analysis

This element is the analysis that determines if a particular situation lends itself to the OSP approach. Examples of possible reasons for developing OSPs:

1. Expanding OSHA's reach to industries and workplaces where no intervention models presently exist, or where current intervention methods are inadequate.
2. Providing the agency with a means to address cutting edge issues.
3. Experimenting with abatement technologies that may prove to be as effective as or better than traditional methods.

4. Enabling OSHA to increase its emphasis on known or traditional hazards.

B. Identification of Partners

Priority for OSPs will be given to those programs that support OSHA's Strategic Plan and make the best use of agency resources. Accordingly, OSP programs normally will be developed with groups of employers and employees and/or their representatives in high-hazard workplaces or in workplaces with prevalent types of injuries and illnesses. OSHA, however, may partner with employers, employees, and/or their representatives from individual workplaces or low-hazard establishments if the originating office finds it will have a significant impact on the reduction of injuries and illnesses, e.g., partnering with a large establishment or conducting a pilot program to test the efficacy of an innovative abatement strategy.

C. Goal

A clearly defined goal statement identifies the safety and health issues the program is intended to address, expected program impact, measures to gauge success, time frames including a "sunset clause" completion date (which can be extended after careful evaluation), and OSHA's resource needs. Comprehensive OSPs must contain goals for employers, employees, and/or employee representatives that are clearly articulated, measurable, and verifiable.

D. Measurement System

Comprehensive OSPs must contain a results-focused measurement system, developed at the outset of the program. This measurement system must:

1. Use activity, intermediate, and outcome measures (including measures to address the effectiveness of leveraging).
2. Identify baseline data corresponding to all summary line items on the OSHA-200 Log. Collecting this information, which is consistent with OSHA's data initiative, will help the agency compare the efficacy of various programs and develop impact data that spans more than one agency activity.

Consider for inclusion in the measurement system such measures as changes in exposure levels, the experience modification rate (EMR), and comparisons of pre- and post-intervention scores obtained using appropriate tools, e.g., the Safety and Health Assessment Worksheet (OSHA Form 33). Note: Care should be taken in using EMRs,

because some are workplace-specific, while others are employer-specific and involve multiple worksites. This makes direct comparisons of employers' EMRs difficult.

E. Safety and Health Programs

Effective workplace safety and health programs are self-sustaining systems that encompass four main areas: management leadership and employee involvement; worksite analysis; hazard prevention and control; and safety and health training.

Employers participating in Comprehensive OSPs must have now or agree to implement in the near future effective site-based safety and health programs. These programs should be based on OSHA's 1989 Safety and Health Program Management Guidelines whenever feasible. (Any alternative safety and health programs that differ significantly from OSHA's 1989 Guidelines must be carefully considered and thoroughly described in the Partnership proposal.)

A Limited OSP, e.g., one focused on a specific hazard, may find it feasible and appropriate to either require or encourage employers to implement effective safety and health programs.

One of the tools available to help determine a program's effectiveness is the agency's Safety and Health Program Assessment Worksheet (OSHA Form 33).

F. Employee Involvement and Employee Rights

1. Employees can bring valuable skills and perspective to the development stage of a Partnership. Their involvement in the initial formulation of Strategic Partnership policy and direction is encouraged. Employee involvement in the day-to-day implementation of worksite safety and health programs and other Comprehensive OSP activities is required.

2. Partnership Development: For Comprehensive OSPs that include the participation of unionized worksites, all affected unions must be supportive for the partnership to go forward. The level at which the union is involved, i.e., local, international, or both, will depend on the scope and nature of the Partnership. When employees are represented by labor organizations, union representatives at either the local or international level must be signatories to the Comprehensive Partnership agreement or, alternatively, must indicate their willingness for the Partnership to proceed but waive their opportunity to be signatory.

For non-union worksites, involving employees at the outset in the development of the Partnership is encouraged, if feasible. It is highly desirable that there be evidence of employee involvement in and commitment to an OSP.

3. Involvement at the Worksite: Experience has shown that employee involvement is an essential component of any effective safety and health program. In any OSP that requires implementation of safety and health programs, partnering employers must commit to incorporating in their programs a high level of employee involvement. The degree and quality of such involvement must be considered during any onsite inspections and as part of the periodic worksite safety and health program evaluations expected of all participating sites.

4. Examples of employee involvement include, but are not limited to:

participating on safety and health committees, joint labor-management committees, and other advisory or specific purpose committees, if otherwise lawful and appropriate; conducting site inspections, safety and health audits, job hazard analyses, and other types of hazard identification; developing and using a system for reporting hazards; developing and revising the site's safety and health rules and safe work practices; participating on workplace teams charged with identifying root causes of accidents, incidents, or breakdowns; implementing controls to eliminate or reduce hazard exposure; collecting samples for monitoring; making presentations at safety and health meetings; delivering training to current and newly hired employees; and participating in safety and health program reviews.

5. OSP programs must explicitly safeguard employees' exercise of their rights under the OSH Act and OSHA regulations and policy, including walkaround rights.

G. Stakeholder Involvement OSP programs are expected to involve those stakeholders, both national and local, whose input and participation are important to the program's success, as appropriate. Communication with other OSHA offices may be valuable in identifying important stakeholders.

H. OSHA Incentives All Comprehensive OSPs must offer OSHA incentives. If a Limited OSP chooses to offer any incentives, then it must adhere to the following parameters.

Incentives offered to OSP partners must be commensurate with the participating employers' efforts to provide safe and healthful working conditions and their degree of success. Further, OSP incentives must be consistent with OSHA

incentives contained in other agency programs, policies, and procedures.

Following are examples of OSHA incentives that OSP programs may offer:

1. Outreach information and assistance during the initial implementation phase of a Partnership.
2. Priority consideration for onsite consultative services provided by OSHA's 7(c)(1) Program if the appropriate Consultation Project agrees.
3. Programmed inspections that focus on the most serious hazards prevailing at the partnering workplaces when these hazards are identified as targets of the OSP effort.
4. For any cited hazards, penalty reductions calculated in accordance with agency procedures in the Field Inspection Reference Manual (FIRM) that provide good-faith reductions for effective safety and health programs.
5. Agreement about ways the parties may provide positive publicity about the OSP and the partnering establishments.
6. Technical Assistance. The providing of technical assistance will be a valuable component in many OSPs. Onsite services may be provided by OSHA's 7(c)(1) State Consultation Program to partnering employers who qualify under the Consultation regulations. OSHA Consultation is intended primarily to assist small and medium-sized businesses -- no more than 250 employees at the site requesting assistance, and no more than 520 employees company-wide -- that are either in high-hazard industries or involved in hazardous operations. A Partnership may make use of OSHA Compliance Safety and Health Officers (CSHOs) to deliver offsite technical assistance to employers. OSHA personnel may provide onsite and offsite training. OSHA's National and Regional offices are additional potential sources of technical assistance, e.g., assistance from OSHA's Health Response Team and other resources within the Directorate of Technical Support. It is anticipated that some OSPs will employ private consultants to provide technical assistance.

Note concerning OSHA Incentives and Programmed Inspections: Within the context of OSHA Strategic Partnerships for Worker Safety and Health, the term "programmed inspection" refers to traditional enforcement inspections as described in the FIRM, i.e., inspection of workplaces that are selected according to national scheduling plans for safety and for health or special emphasis programs. Exemptions from routine programmed inspections will not be provided under OSP programs. Only worksites qualifying for the Voluntary Protection Programs (VPP) and the OSHA Consultation Safety and Health Achievement Recognition Program (SHARP) are eligible for this incentive.

Draft Proposed Safety and Health Program Rule

What is the purpose of this rule? The purpose of this rule is to reduce the number of job-related fatalities, illnesses, and injuries. The rule will accomplish this by requiring employers to establish a workplace safety and health program to ensure compliance with OSHA standards and the General Duty Clause of the Act (Section 5(a)(1)).

(a) Scope.

(a)(1) **Who is covered by this rule?** All employers covered by the Act, except employers engaged in construction and agriculture, are covered by this rule.

(a)(2) **To what hazards does this rule apply?** This rule applies to hazards covered by the General Duty Clause and by OSHA standards.

(b) Basic obligation.

(b)(1) **What are the employer's basic obligations under the rule?** Each employer must set up a safety and health program to manage workplace safety and health to reduce injuries, illnesses and fatalities by systematically achieving compliance with OSHA standards and the General Duty Clause. The program must be appropriate to conditions in the workplace, such as the hazards to which employees are exposed and the number of employees there.

(b)(2) **What core elements must the program have?** The program must have the following core elements:

(i) Management leadership and employee participation;

(ii) Hazard identification and assessment;

(iii) Hazard prevention and control;

(iv) Information and training; and

(v) Evaluation of program effectiveness.