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The Future of OSHA: The Joe Biden Administration

**Presenter: Sheldon Primus, COSM,
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About Sheldon

- Executive Director, National Environmental & Occupational Safety Training, Inc.
- Masters of Public Administration- with a concentration in Environmental Policy
- Former President, ASSP South Florida Chapter
- Over 20 years in Safety and Health in the utility sector, construction, and general industry
- Host of "The Safety Consultant with Sheldon Primus" podcast (Safety FM)
- Certified Occupational Safety Specialist (COSS)
- Certificate for Occupational Safety Managers (COSM)
- COSS and COSM Instructor
- SME for HSI, Red Vector, 360 Training, and others



The background of the slide is a photograph of a turbulent ocean. In the upper half, a large, powerful wave is cresting, with white foam and deep blue water. In the lower half, the water is more churning, with white foam and dark, mossy rocks visible. The overall scene conveys a sense of powerful, unstoppable change.

Overview

The tides of change have come to the Occupational Safety and Health Administration (OSHA) since the election of Joe Biden.

Objectives

Explain

Explain the regulatory climate related to worker safety

Understand

The implications of the proposed Congressional Budget for OSHA

Inform

Ways to find how OSHA will regulate standards including Emergency Temporary Standards (ETS)

Evaluate

The future of OSHA from the budget that was analyzed

OSHA's Enforcement

OSHA Inspection Statistics	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020*
Total Inspections	35,280	31,948	32,408	32,023	33,393	21,674
Total Programmed Inspections	16,527	12,731	14,377	13,956	14,900	8,726
Total Unprogrammed Inspections	19,293	19,217	18,031	18,067	18,493	12,948
~ Fatality/Catastrophe Inspections	912	890	837	941	919	1,508
~ Complaints Inspection	9,037	8,870	8,249	7,489	7,391	4,581
~ Referrals*	6,569	6,691	6,286	6,463	6,718	4,808
~ Other Unprogrammed Inspections	3,686	2,766	2,659	3,174	3,465	2,051

*The COVID-19 global pandemic caused by the novel coronavirus SARS-CoV-2 occurred during this time. FY20 enforcement OIS data is preliminary and as of November 9, 2020.



President Donald J. Trump Administration




Volks Rule and Executive Order

- OSHA was able to cite recordkeeping violations for up to 5 years as an ongoing obligation to make and maintain records of work-related injury and illness data
- Repealed under the Congressional Review Act right after the rule became effective January 18, 2017
- President Trump signed a resolution to eliminate the rule.



The OSH Act Wording

- The OSH Act of 1970 has a statute of limitation for fine of 6 months Section 9(c) provides. "...No citation may be issued under this Section after the expiration of six months following the occurrence of any violation."
- Accordingly, a citation shall not be issued where any alleged violation last occurred six months or more prior to the date on which the citation is actually signed, dated and served by certified mail as provided by Section 10(a) of the Act.



Congressional Review Act (CRA)

- In March 2001, President Bush was the first President to use the CRA to overturn the Clinton Administration OSHA Ergonomics rule.
- 60 legislative days to disapprove a regulation by a majority of the House and Senate.



FY 2022 Congressional Budget Justification

OSHA

2022 Budget Overview

- Total Budget \$664,624,000
- State Grant \$117,575,000
 - Federal OSHA pays no less than 50% of state plan operating cost
- Up to \$499,000 per fiscal year for training institute course tuition and fees
- NO enforcement for businesses with 10 or fewer employees who have a DART rate under the national average for its NAICS code (with some exceptions)
- FTE= Full Time Equivalent
 - Employee working a 40 hour work week on a project
 - FTE has increase 362
- Budget is increased \$73,391,000
- Susan Harwood Grant will be \$13,787,000
- 30 FTE increase in safety and health standards
- Increase of 259 FTE in the Federal Compliance Assistance budget

Key Takeaways



\$19,881,000 for 207 FTE for “Rebuilding and Strengthening OSHA’s Enforcement Program (There was \$0 for 0 FTE in 2021)”



\$10,084,000 for 30 FTE for “Restoring OSHA’s Rulemaking and Guidance Capacity”

Key Takeaways cont

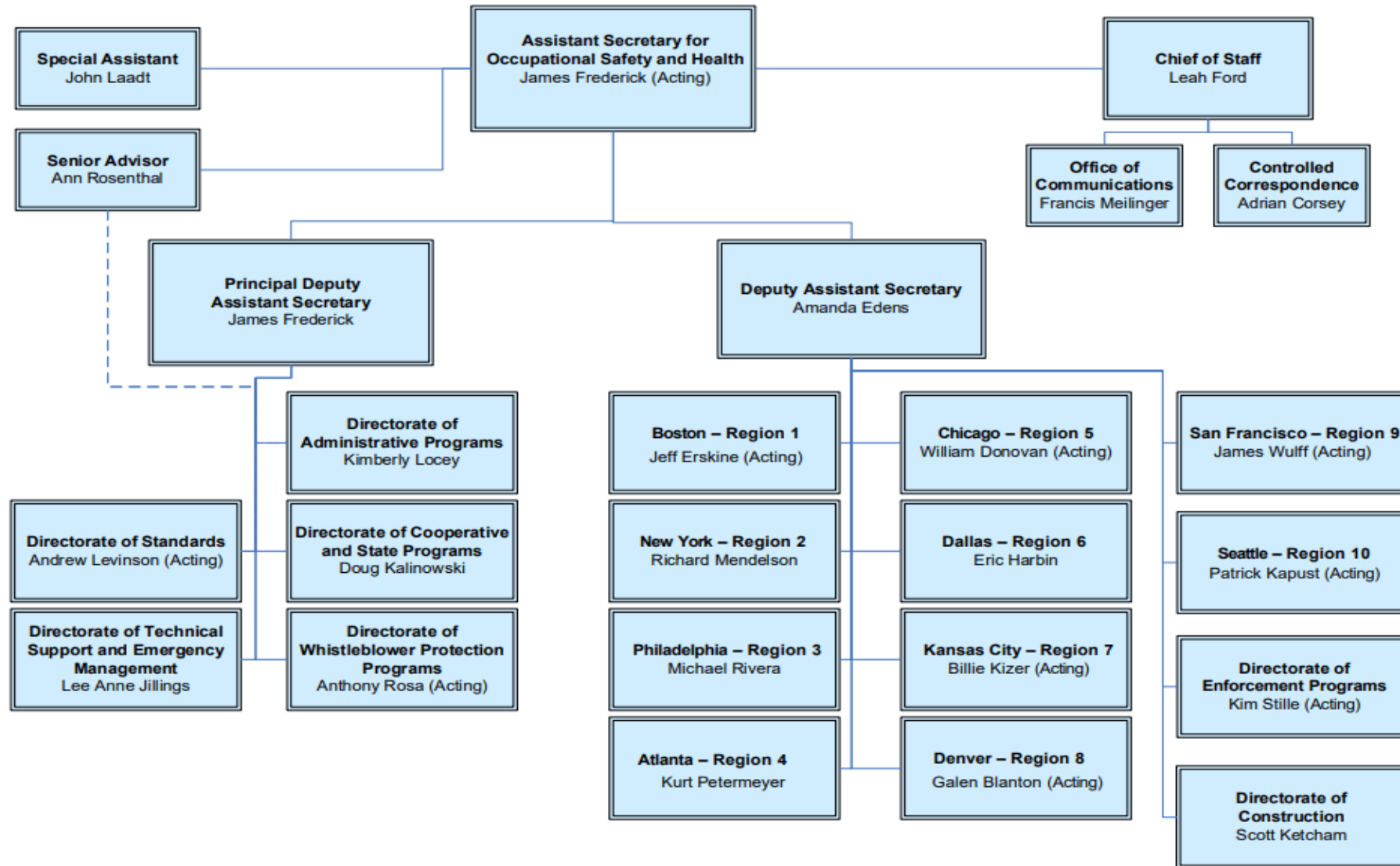


\$6,009,000 for 45 FTE for “Increasing Outreach and Compliance Assistance



Wording about “Modernizing compliance workforce and OSHA training

OSHA Organizational Chart



Current Organizational Chart (10/12/2021)

Health, Education, Labor & Pension (HELP)

It is expected that Douglas
Parker will be the first US
Senate-confirmed assistant
secretary of labor for
occupational safety and health
since Dr. Michaels with the
Obama administration.



OSHA's Master Plan for FY 2022!

Targeted Enforcement

- “OSHA’s enforcement strategies include targeting inspections at workplaces with particular hazards or at specific hazardous industries”
 - AKA
 - National Emphasis Programs (NEP)
 - Regional Local Emphasis Programs (LEP)

OSHA's Master Plan for FY 2022

- Site Specific Targeting (SST) for non-construction workplaces
 - ≥ 20 employees based on information from ITA
 - Elevated DART cases
 - Corporate Settlement Agreements (CSA)
 - Used by large companies with multiple locations to abate areas of non-compliance as a firm instead of establishment
 - Severe Violator Enforcement Program (SVEP)
 - To target employers who have demonstrated recalcitrance or indifference to worker safety and health)

OSHA's Master Plan for FY 2022

- Random sample of Part 1904 non-compliant companies
- To verify data OSHA will include "a random sample of low-rate establishments for quality control purposes"
 - to "ensure adherence to the reporting requirements"

OSHA's Master Plan for FY 2022

- Trenching and Excavation activities
- Construction worksites through C-Target (A program that focuses on construction projects and not the construction firm)
 - Multi-employer worksites
- Severe Injury Reports (SIR)
inspections will be done by the new inspectors from 2 years and less employment status

The Workforce and Delivery System

- \$15,106,000 for 155 CSHO
- \$4,775,000 for 52 FTE to support the influx of CSHOs and growth of the enforcement program
- OSHA is assuming “some of the newly hired compliance staff are able to conduct inspections independently” within 2022.
- 36,984 inspections and reach 66,571 enforcement units (EU)
 - “shifting the focus to the highest-impact and most complex inspections at high-risk workplaces”

Enforcement Weighting System-Enforcement Units

1. Group A: Includes the most time intensive, complex, and high-priority inspections. *7 EUs*
 - a. Criminal cases
 - b. Significant cases
2. Group B: Includes inspections for high-priority hazards and those that are more complex than average and/or are of high lasting value. *5 EUs*
 - a. Inspections following fatalities and catastrophes
 - b. Chemical plant NEP and Process Safety Management (PSM) covered inspections
3. Group C: Includes programmed inspections following an established emphasis program (EP) for hazards that are among the leading causes of death in the workplace. *3 EUs*
 - a. Caught-in hazards—e.g., trenching, equipment operations, oil & gas
 - b. Electrical hazards—e.g., overhead power lines, electrical wiring methods
 - c. Fall hazards—e.g., scaffolds, elevated walking working surfaces
 - d. Struck-by hazards—e.g., highway work zones, landscaping, material handling
4. Group D: Includes programmed inspections following an established EP for priority hazards that are somewhat time intensive and are a high priority. This category also includes inspections for novel hazards and programmed inspections undertaken in conjunction with an established enforcement policy addressing associated serious safety and health hazards. *2 EUs*.
 - a. Amputation hazards
 - b. Combustible dust
 - c. Ergonomics
 - d. Federal agency inspections
 - e. Heat hazards
 - f. Non-PEL overexposures
 - g. Workplace violence hazards
 - h. Permit required confined space hazards—e.g., grain storage or maritime or construction
 - i. Personal sampling—e.g., air contaminants or noise
 - j. Site specific targeting
5. Group E: Includes all other inspections not otherwise listed. *1 EU*
6. Regions may submit other regional or local emphasis programs for approval and weighting if they are not already covered under items 1-4 and assign them two to three EUs.

OSHA COVID-19



Compliance Letter

[DIR 2021-03 \(CPL 03\)](#)



[Use the CDC definition for “close contact” to set your controls](#)



Seek Engineering controls



Recordkeeping is a key to OSHA compliance activities

September

Through Date	Total Number of Complaints Filed	New Complaints Since Last Report	Screenings			Dockets	
			Pending	Screened and Referred to State Plans	Screened and Administratively Closed	Docketed for Investigation	Docketed and Completed
9/26/2021	5,788	33	7	1,237	3,086	1,458	997
9/19/2021	5,755	35	9	1,233	3,063	1,450	989
9/12/2021	5,720	32	14	1,227	3,044	1,435	979
9/05/2021	5,688	15	9	1,223	3,025	1,431	970

OSHA's New Enforcement Mindset

OSHA will no longer prioritize fatalities to trigger enforcements in that industry or activity because the statistical correlation is obscured by too many external factors.

OSHA will now prioritize actions related to:

1. Employer Reports of Severe Injuries (1904)
2. Employer Submission of there summaries (300A)

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27

OSHA Compliance



The Future of OSHA

Organizational Culture

Safety Culture

**Evolving
Paradigm of
Safety
Compliance &
Organizational
Culture**

Online Event 10/27/21
events.sheldonprimus.com



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Questions?



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