

The Heritage Foundation **Backgrounder**

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SAVE LIVES BY CUTTING RED TAPE: REDEFINE THE FEDERAL ROLE IN WORKPLACE SAFETY AND HEALTH

(Updating *Rolling Back Government: A Budget Plan to Rebuild America*, The Heritage Foundation, 1995.)

The 104th Congress is considering proposals to reform the Occupational Safety and Health Administration (OSHA) and merge it with the Mine Safety and Health Administration (MSHA). The goal of these reforms is to redefine the federal government's role in workplace safety and health to "refocus the responsibility for ensuring worksite safety and health on the workplace."¹ In recent years, the federal government has been perceived as more concerned with maintaining bureaucracies and filling out paperwork than with working cooperatively with businesses to make workplaces safer.

Although Congress intended for OSHA and MSHA to assure all workers safe and healthy working conditions, the effectiveness of these agencies in carrying out their missions is questionable. From rulemaking to enforcement, the regulatory nightmare that businesses face has made OSHA inspectors as feared as IRS auditors.² Although most employers maintain relatively safe and healthy workplaces, OSHA maintains an adversarial approach to setting and enforcing standards. Consequently, many employers are reluctant to call OSHA for compliance assistance³ for fear of triggering punitive inspections. Further, the legal requirement that every mine be inspected four times a year makes it virtually impossible for MSHA to target enforcement resources where they are needed most—mines with poor safety records.

Merging MSHA with a reformed OSHA is a sensible first step toward improving workplace health and safety, limiting unnecessary government intervention, and reducing inefficient, wasteful government spending. The National Performance Review recognized that an army of OSHA inspectors is neither necessary nor likely given the federal budget situation, and MSHA's "lengthy approval process delays the introduction of new technologies that may improve mine safety."⁴ Businesses already have much stronger financial

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- 1 Vice President Al Gore, *From Red Tape to Results, Creating a Government That Works Better and Costs Less*, Department of Labor, *Accompanying Report of the National Performance Review* (Washington, D.C.: U.S. Government Printing Office, September 1993), p. 45.
 - 2 See Craig Richardson and Geoff Ziebart, *Red Tape in America: Stories from the Front Line* (Washington, D.C.: The Heritage Foundation, 1995).
 - 3 The testimony of Warren Daubenspeck before the House Subcommittee on Workforce Protections, July 27, 1995, provides examples of this problem. Daubenspeck is a member of the Johnson and Higgins Safety Round Table, a group of corporate safety directors at businesses employing more than 500,000 workers.
 - 4 *From Red Tape to Results*, p. 29.

incentives than OSHA penalties, such as the costs of lost productivity, workers' compensation, and liability claims,⁵ to maintain and continually improve the safety of their workplaces. Thus, the role of the federal government should be redefined from that of heavy-handed regulator to one of cooperative partner.

CURRENT REFORM INITIATIVES

A number of bills have been introduced in both the House and the Senate to reform workplace health and safety programs. The leading bill in the House is H.R. 1834, the Safety and Health Improvement and Regulatory Reform Act of 1995, introduced by Representative Cass Ballenger (R-NC). In the Senate, Judd Gregg (R-NH) has introduced the Occupational Safety and Health Amendments of 1995 (S. 526), and Kay Bailey Hutchison (R-TX) has introduced the Occupational Safety and Health Reform Act of 1995 (S. 592). Of these three bills, H.R. 1834 represents the most comprehensive OSHA reform. It also is the only bill that consolidates administrative overhead and ends duplicative costs by merging OSHA and MSHA.

Legislative changes are necessary to enable MSHA to allocate resources more efficiently and OSHA to work cooperatively with businesses—for example, by making compliance assistance a permanent, central part of its program and mission. Efforts to reprioritize agency spending or administratively reinvent the agencies would change their bureaucratic culture only marginally and do little to consolidate administrative overhead and eliminate duplicative activities. President Clinton offered to reinvent OSHA after the 104th Congress announced its intention to create a more effective and efficient OSHA.⁶

In addition, President Clinton's proposed FY 1996 budget increased funding for compliance assistance by 23 percent while increasing overall OSHA spending by 10.9 percent. However, Congress can accomplish much more by fundamentally redefining the role of the federal government so that it recognizes and more effectively utilizes the incentives businesses already have to improve workplace health and safety.

What Congress Should Do

❶ Significantly reform OSHA.

Although executive branch initiatives to reinvent workplace health and safety are welcome, statutory changes are required to redefine the federal government's role and ensure that congressional intent is carried out. Specifically,

✓ Reform OSHA's regulatory process.

OSHA's bureaucratic culture and lawyers have put the search for completely risk-free workplaces and ease of prosecution above common sense. As a result, it can take ten or more years to complete a rule.⁷ OSHA's regulatory process would be more timely and less burdensome if it focused initially on hazards that pose the greatest risk to the most workers. The development of compliance directives should be made part of the rulemaking process and tied directly to economic analysis. Far too often, compliance directives are more burdensome than the rules themselves. OSHA also should be required to reassess the actual costs and benefits of its regulations after five years.

5 John Hood, "OSHA's Trivial Pursuit," *Policy Review*, Summer 1995.

6 OSHA will "fundamentally change its operation from one of command-and-control to one that builds partnerships among regulators and business. Second, OSHA will eliminate or fix out-of-date and confusing standards and instead identify clear and sensible priorities. Finally, OSHA will target the most serious hazards and dangerous workplaces...." White House Press release, May 16, 1995.

7 *From Red Tape to Results*, p. 14.

✓ **Enhance and expand compliance assistance.**

Translating OSHA's confusing jumble of regulations into safer workplaces is difficult at best. Most employers want safe and healthy workplaces if OSHA will just tell them how. Unfortunately, the Department of Labor is more concerned with prosecuting employers than with providing accurate, reliable compliance information. Explicitly redefining OSHA's mission towards compliance assistance will leverage employers' desire for safety and dramatically improve workplace safety and health.

✓ **Allow inspectors to issue first instance warnings for hazards that do not pose an imminent danger.**

OSHA continues its adversarial approach to standard setting and enforcement. Many employers are reluctant to call OSHA for assistance in making their workplaces safer for fear of triggering punitive inspections. First instance warnings will remove a major barrier to voluntary compliance.

✓ **Require OSHA inspectors to have some expertise in the industry they are inspecting.**

OSHA inspectors are called upon to inspect a variety of workplaces, many of which, like mining, involve complex operations.⁸ Employers and employees deserve to have their workplaces inspected by qualified persons.

② **Merge MSHA into a reformed OSHA.**

Although OSHA and the MSHA were created separately, the rationale for keeping them apart no longer exists. Workplace injury and illness data no longer justify maintaining these agencies as separate entities with practically the same level of resources.⁹ Merging MSHA with a reformed OSHA and reallocating federal resources will accomplish two important objectives: It will eliminate administrative overhead and duplicative costs, and increase workplace health and safety in all industries.

Reforming the Mine Act to require only one inspection per year will enable MSHA to shift its inspection resources from mine operators with exemplary safety records to operators with poor safety records. By focusing on the "bad players," OSHA's new Mine Office will improve mine safety where it is needed most. Mine operators with good safety records will continue to have incentives to remain safe, in addition to fewer inspections and lower workers' compensation costs, and the new Mine Office will be able to use its resources more efficiently to focus on the "bad players." Further, merging the two agencies will settle jurisdictional questions about enforcement and eliminate the maze of memoranda of understanding that currently exists between OSHA and MSHA. Mine workers and taxpayers will get more mine safety for their hard-earned dollars.

Heritage Foundation analysts estimate that consolidating MSHA and OSHA could save up to \$510 million over five years.¹⁰ Merging MSHA and OSHA would eliminate the need for the federal government to write two separate health regulations covering the same workplace hazard, one for mining and one for everybody else. For example, there is no reason to have two separate Hazard Communication Standards, and noise protection for miners is no different from noise protection for other workers. Regional and administrative offices would be combined, and MSHA's Office of Information and Public Affairs could be eliminated.

⁸ Mine inspectors are required to have at least five years of practical mining experience.

⁹ MSHA and OSHA each have about 1,100 inspectors. Further, MSHA spends over \$13,000 per year for every mine and about \$750 per year for every miner, while OSHA spends around \$100 per covered worksite and \$6 per worker. However, in 1992 the coal mining industry had an injury and illness rate of 12.5, compared to 17.5 in the primary metal industry and 16.3 in the lumber and wood products industry.

¹⁰ Scott Hodge, ed., *Rolling Back Government: A Budget Plan To Rebuild America*, (Washington, D.C.: The Heritage Foundation, 1995), p. 237.

Merging MSHA with a reformed OSHA will not reduce workplace health and safety. No MSHA safety or health regulations would be abolished.¹¹ Each underground mine will be thoroughly inspected at least once a year by qualified inspectors, and all workers will be able to request federal inspections if employers ignore their concerns about unsafe conditions. MSHA's imminent danger closure rule will be maintained, and mine workers finally will be covered by OSHA's health regulations. Focusing resources on compliance assistance will improve the ability of "good players" to translate OSHA and MSHA regulations into safer workplaces. Most important, by requiring only one mandatory inspection per year instead of four, a new OSHA/MSHA will be able to reallocate its resources to focus on improving the "bad players" instead of legally having to inspect mines with good safety records.

CONCLUSION

Federal workplace health and safety laws should be reformed to redefine the government's role and leverage the strong incentives businesses already have to improve and maintain workplace health and safety. Statutory reform is required to enable MSHA to allocate resources more efficiently and OSHA to work cooperatively with businesses—for example, by making compliance assistance a central part of its program and mission. Merging MSHA with a reformed OSHA is a sensible first step toward improving workplace health and safety, limiting unnecessary government intervention, and reducing inefficient, wasteful government spending.

Redefining government's role in workplace health and safety should refocus the responsibility for ensuring workplace safety and health on employers and employees. Common-sense regulations and compliance assistance combined with competitive market pressures to increase productivity, keep skilled workers, and minimize legal and insurance costs will do more to increase workplace health and safety than any army of government inspectors and lawyers. Reforming OSHA and consolidating it with MSHA is a win-win for hard-working American taxpayers. American workers and taxpayers will get healthier, safer workplaces at lower cost.

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¹¹ A number of MSHA provisions that duplicate those in OSHA, and that therefore are no longer necessary, are being repealed by H.R. 1834.