

Protecting Workers through Government Regulation and Penalties

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Focus

- Compliance and Enforcement Strategies
- Occupational Safety and Health Standards
- Next (Current) Administration
- OSHA vs. The True Determinate

OSHA Statute

- Debated in Congress ~50 years ago
- Modified slightly mostly for penalties
- Lacks teeth in criminal sanctions
- After 45 years of court rulings and additional laws – standards development under the Act can not keep up with the science or needs

OSHA \$ Penalties Adjusted as of August 2016

Type of Violation	Old Maximum Penalty	New Maximum Penalty
Failure to Abate	\$7,000 per day beyond the abatement date	\$12,471 per day beyond the abatement date
Willful or Repeated	\$70,000 per violation	\$124,709 per violation

OSHA Statute

- Section 17(e) of the Occupational Safety and Health Act (“OSH Act”) provides for a Class B misdemeanor criminal penalty, including imprisonment up to **six months** and substantial monetary fines if an employer's willful violation of any OSHA standard causes the death of an employee.

OSHA Criminal Sanctions

- Since 1970 - >400,000 workplace fatalities
- < 80 OSH Act criminal cases prosecuted
- ~ 12 resulted in criminal convictions
- Prosecutions typically targeted falsified documents, lied to investigators

Atlantic States Cast Iron Pipe Company

September 2012, four former managers lost their appeal of prison sentences and financial penalties associated with several safety and environmental compliance violations, and cover-up.

- 70 months in prison plant manager
- 41 months in prison HR/Safety manager
- 30 months in prison maintenance supervisor
- 6 months in prison for a supervisor.

Types of EPA Enforcement

Civil Enforcement

- Settlements
- Civil Penalties
- Injunctive Relief
- Supplemental Environmental Projects (SEPs) and Mitigation

Criminal Enforcement

- Criminal Penalties
- Incarceration

EPA Criminal Provisions



Clean Air Act (CAA)

Clean Water Act (CWA)

Resource Conservation and Recovery Act (RCRA)

Comprehensive Environmental Response, Compensation, and Liability Act

Emergency Planning and Community Right to Know Act (EPCRA)

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

Hazardous Materials Transportation Act (HMTA)

Safe Drinking Water Act (SDWA)

Toxic Substances Control Act (TSCA)

U.S. Criminal Code (Title 18)

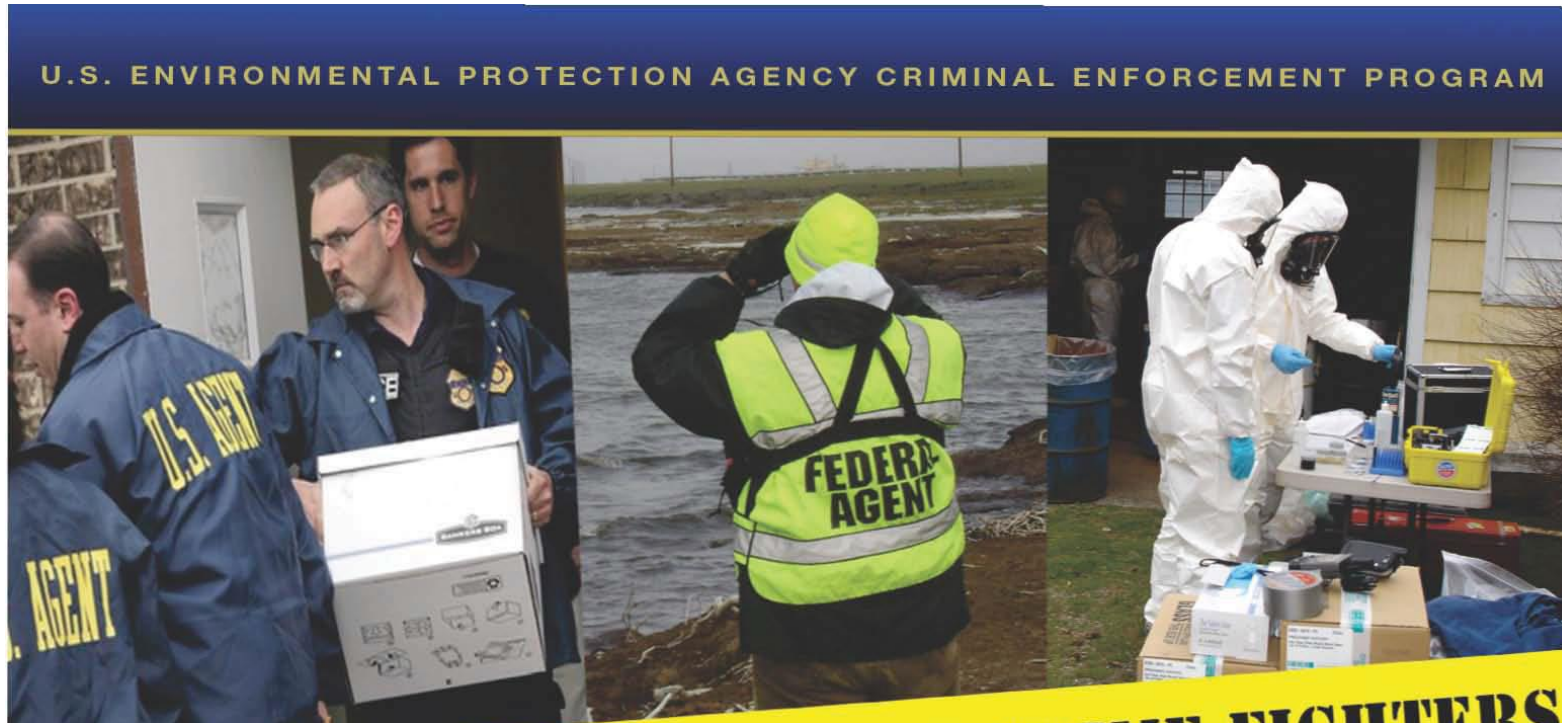
Endangered Species Act

Migratory Bird Treaty Act of 1918 (MBTA)

National Forests & National Park Service Lands

Classified as felonies in all the federal environmental statutes except for the toxic substances and pesticide statutes.

EPA's Criminal Enforcement



- 40 offices nationwide
- 1,500 leads/year evaluated for criminal violations
- 700 – 800 ongoing investigations
- 90% conviction rate average

Future OSHA Enforcement

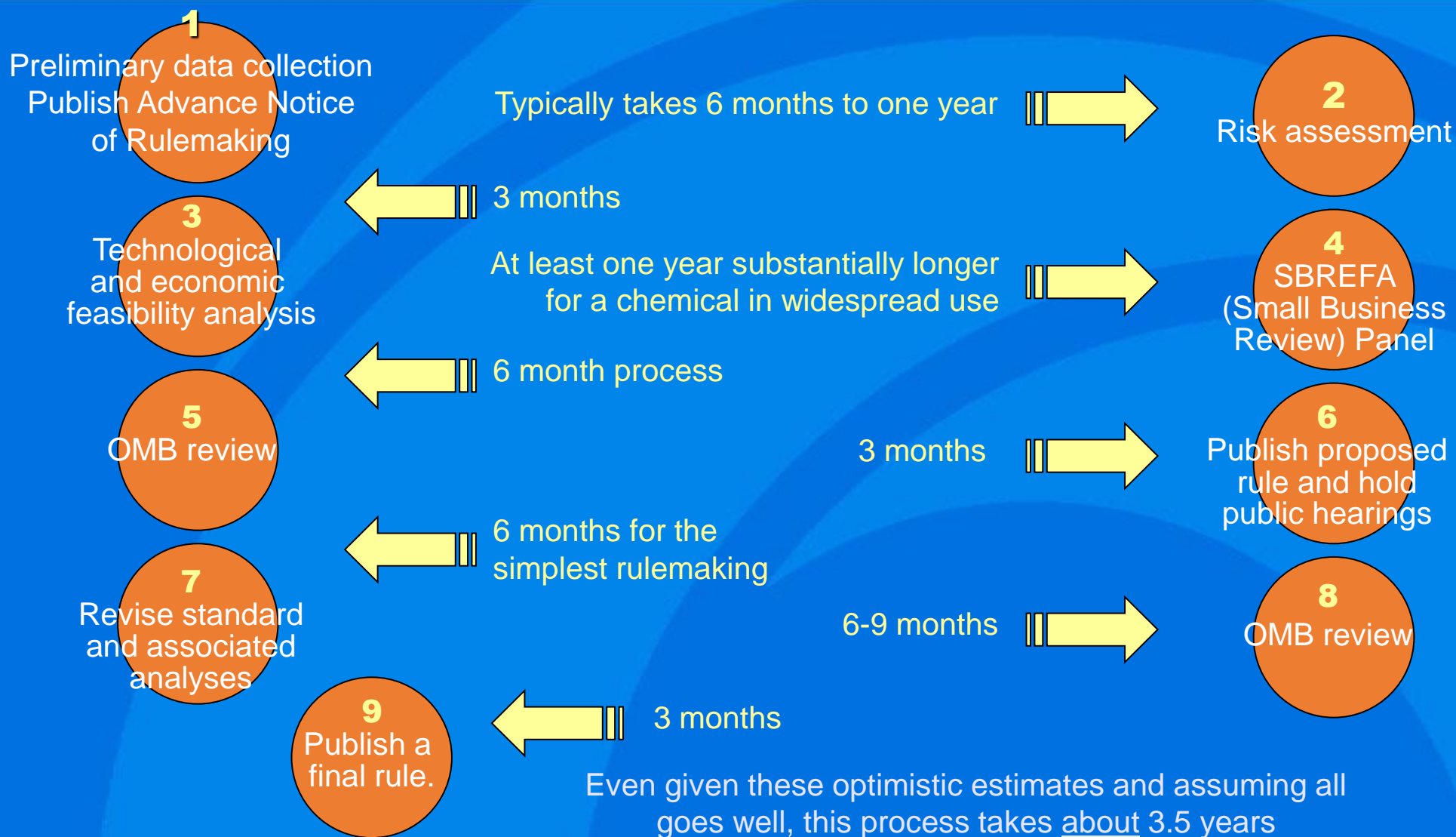
Civil Enforcement

- Civil Penalties
- Settlements – Classification

Criminal Enforcement

- Advance Notice
- Perjury
- Environmental Statutes
- State Criminal Laws

Highlights of the Regulatory Process for an Individual Chemical Substance:



Next (Current) Administration?



Next Administrator?

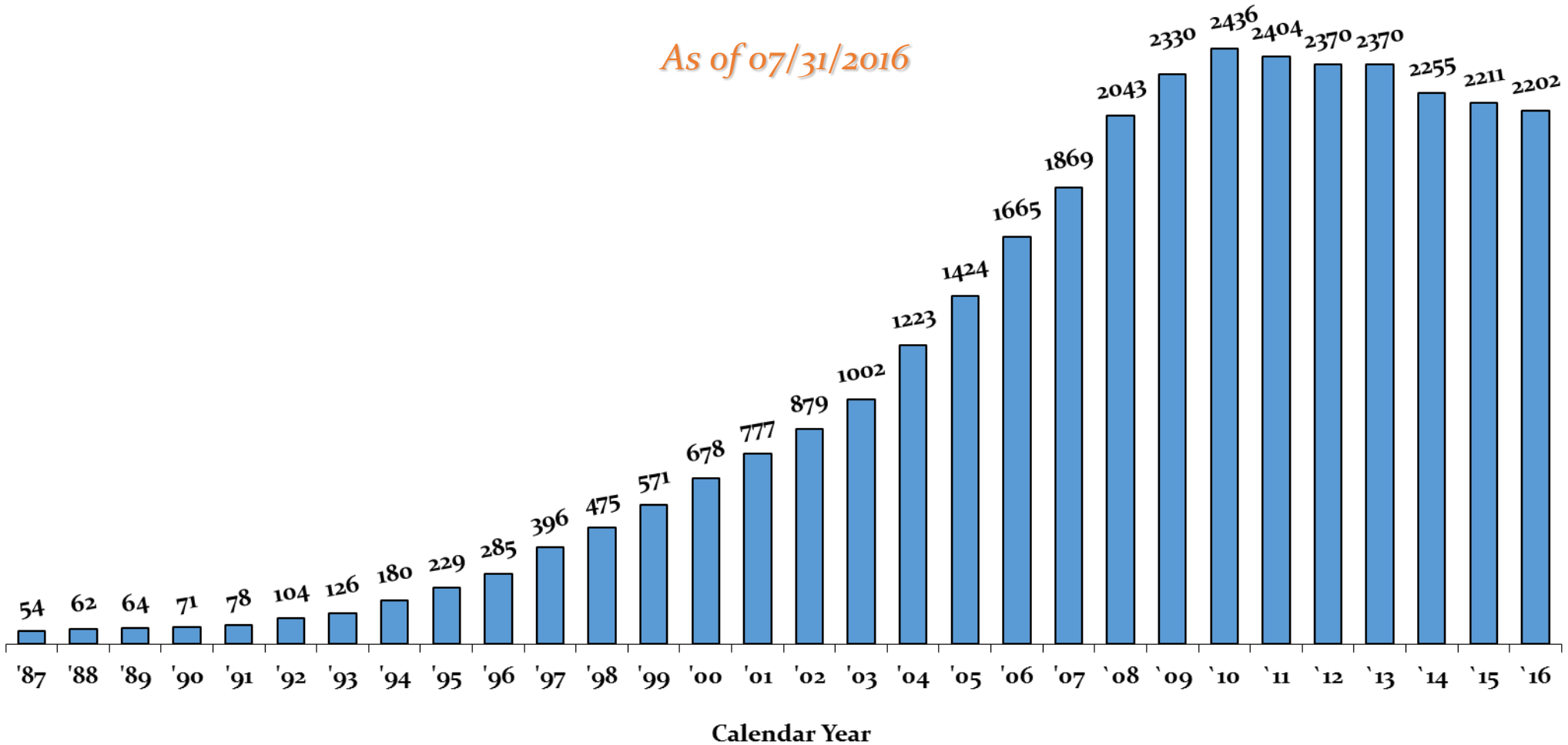


Most Likely Going Forward

- Standards ??
- Strong, Fair, Effective Enforcement
- Compliance Assistance - Education, Training, and Outreach
 - Consultation Program
- Cooperative Programs
 - Voluntary Protection Programs / SHARP
 - Strategic Partnerships
 - Alliances

Growth of VPP Federal & State

As of 07/31/2016

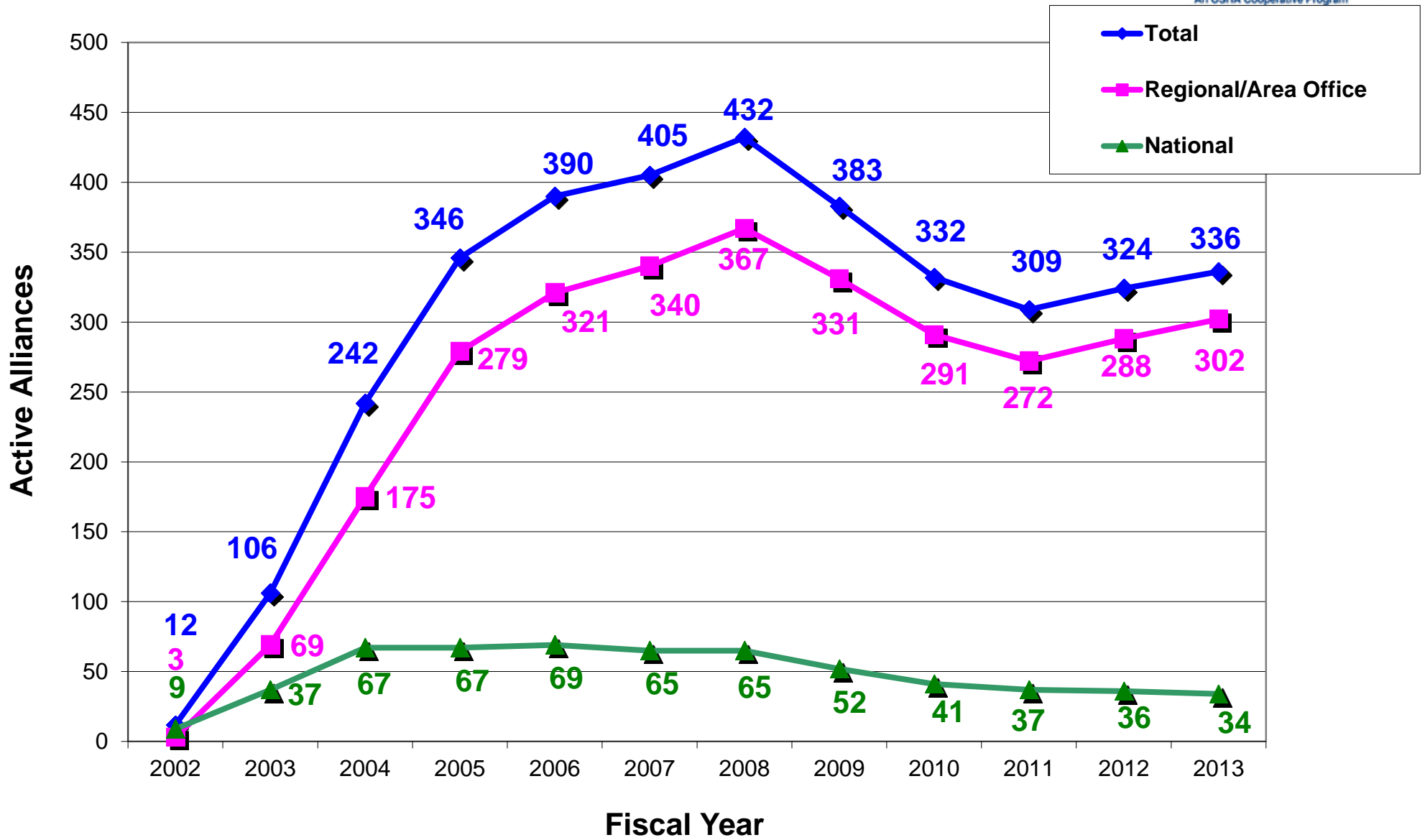


OSHA's Cooperative Programs

- Alliance Program
- OSHA Strategic Partnership Program
- Voluntary Protection Programs (VPP)
- OSHA Challenge
- On-site Consultation Program & Safety and Health Recognition Program (SHARP)



OSHA Active Alliances by Fiscal Year (through Sep. 30, 2013)



OSHA vs. OSH - LTB

de·ter·mi·nant

də'tɜrmənənt/

noun

noun: **determinant**; plural noun: **determinants**

1.

a factor that decisively affects the nature or outcome of something.

"pure force of will was the main determinant of his success"