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# One Step Forward, One Step Back: Just How Different Is The “New World” Of OSHA Under Trump From The “Old” One Under Obama?

Presented By: Eric E. Hobbs



# Agenda

- OSHA – Its recent past and its present state
- Increases in penalties
- The new OSHA
- The enforcement environment, including new developments in standards and

.... “But I’m not dead yet”





# OSHA Is Plenty Alive

- New “Improve Tracking of Workplace Injuries and Illnesses” Rule (under challenge and revision)
- New Silica Standard (delayed; *defunded?*)
- New Beryllium Standard (delayed)
- New Walking/Working Surfaces Standard (alive and well)

# OSHA Is Plenty Alive

- Multiple “interpretations”/changes of interpretation
  - Hearing conservation (withdrawn)
  - Walk-around representatives (withdrawn)
  - PSM retail exemption (struck down by court)
  - Safety incentive programs (under challenge)
- Recordkeeping statute of limitations – *Volks* (struck down by Congress)

# New Maximum Penalty Amounts Effective January 1, 2018

- Serious/Other-than-Serious – \$12,934 (up from \$12,675)
- Willful/Repeat – \$129,336 (up from \$126,770)
- Failure to Abate – \$12,934 per day (up from \$12,675 per day)

# The New OSHA – In General

- Supposedly much more conservative
- Supposedly likely to reverse interpretations
- Likely to “undo” new standards/rules
- Unlikely to “undo” old standards/rules, at least completely
- Not likely to publish (m)any new standards
- “Two-for-one” Executive Order – January 30, 2017



# New (And Almost-New) Faces

- Occupational Safety and Health Administration



Loren Sweatt



Rich Mendelson



# New And Familiar Faces

- Occupational Safety and Health Review Commission



Heather  
MacDougall



James  
Sullivan

# Familiar Face

- Occupational Safety and Health Review Commission



Cynthia Attwood

# The New OSHA

## ■ Recent activity

- Fall Agenda removed many notable Obama/Michaels items
  - Hazard Communication Standard Update (proposed)
  - Combustible Dust (pre-rule)
  - Bloodborne Pathogens (pre-rule)
  - Backover Injuries/Fatalities (pre-rule)
  - Emergency Response/Preparedness (pre-rule)
  - Hearing Protection Update (pre-rule)

# The New OSHA

## ■ Recent activity

- Fall Agenda pulled back on other Obama/Michaels item
  - Tracking of Workplace Injuries/Illnesses (“Electronic Recordkeeping”) (proposed)



# The New OSHA

## ■ Recent activity

### ● Spring Agenda

- Tracking of Workplace Injuries/Illnesses (“Electronic Recordkeeping”) (projected for July 2018)
- Request for information on updating Lockout/Tagout Standard (projected June 2018)
- New tree care industry standard (SBREFA April 2019)
- New workplace violence standard for health care (SBREFA January 2019)

# The New OSHA

- How about reversing Obama OSHA's internal penalty enhancements?

Example	"Summed Up"	"Serially"
GBP	\$12,000	\$12,000
History (-10%)		\$12,000 -10%
Good Faith (-20%)		\$10,800 -20%
Quick Fix (-15%)		\$8,640 -15%
Size (-30%)	10%+15%=15%+30%=-75%	\$7,344 -30%
Penalty Issued	\$3,000	\$5,142

# The New OSHA – Still Old For A While

## ■ Truth

- Bureaucracies are run by bureaucrats
- Policy change takes a while to “trickle down”
- *HQ v. Regions v. Areas*

## ■ Consequences: Lots of inertia and lag time

## ■ Result: More of the same in the field for a while

# FY 2010 - FY 2017 FEDERAL OSHA ENFORCEMENT STATISTICS

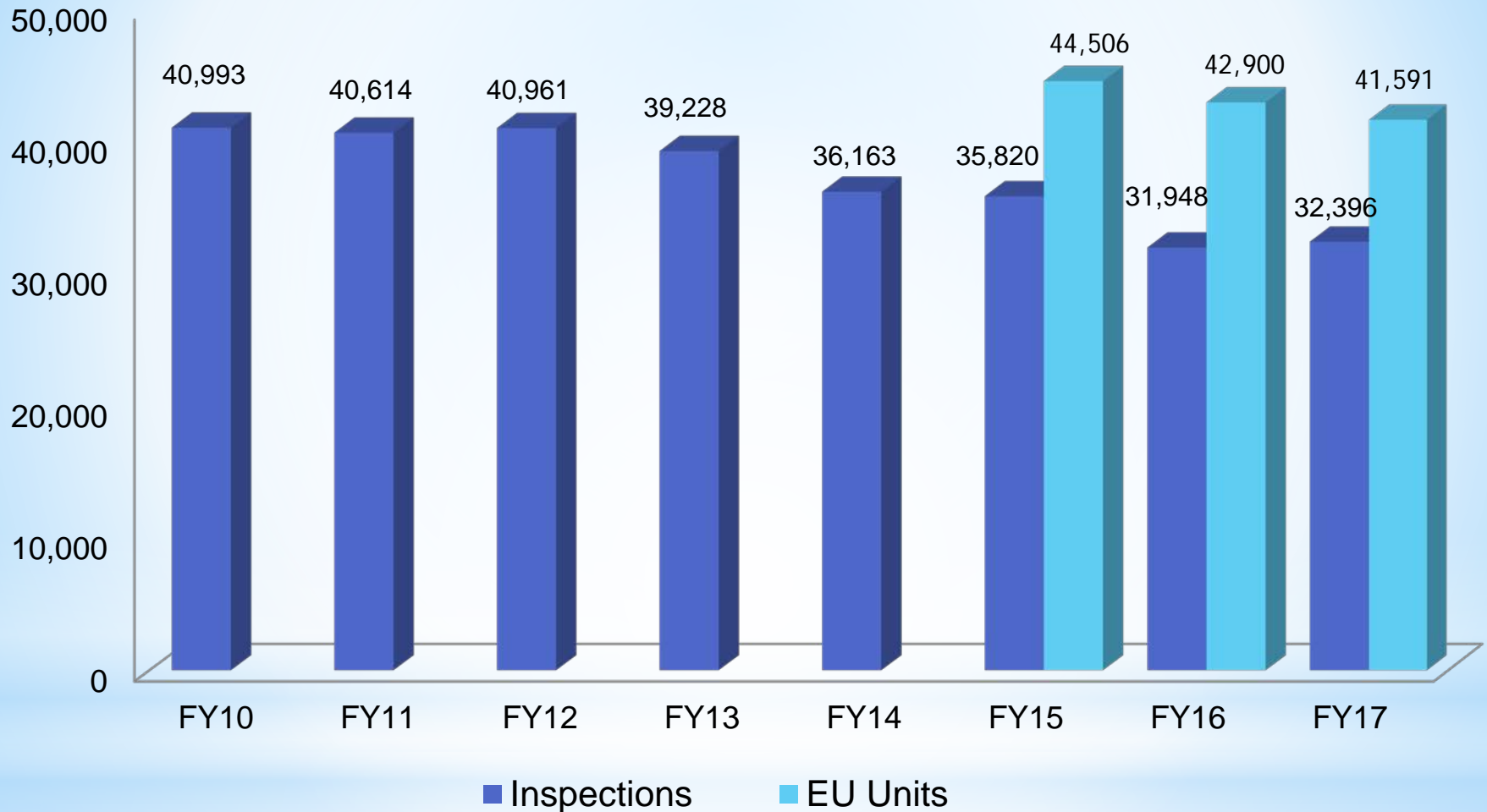
*(All data is preliminary and subject to further review, analysis, and revision; FY2017 data is as of 11.13.2017)*





# Inspections Conducted

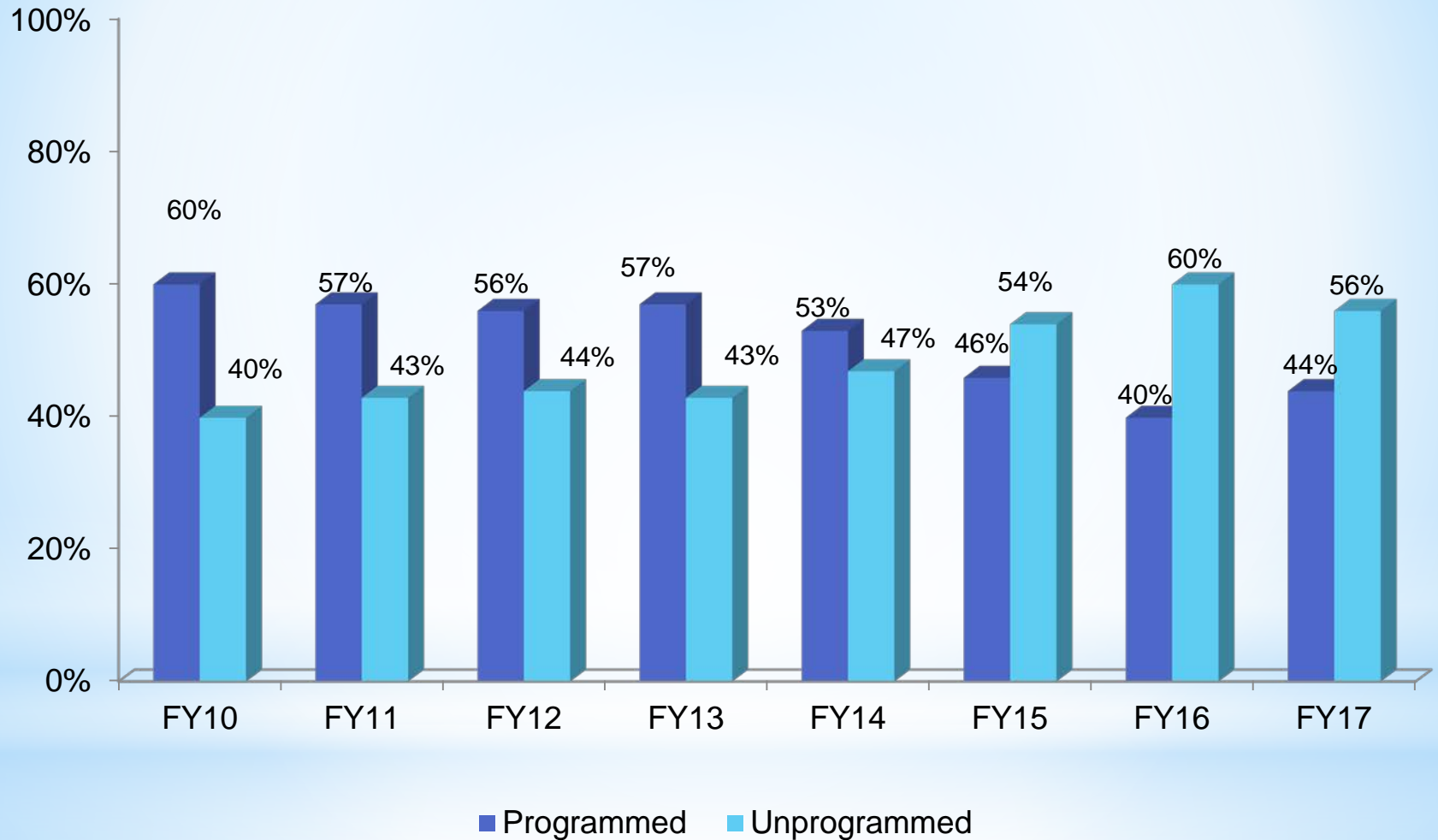
FY 2010 - FY 2017



**Note:** Enforcement Units are based on inspection opening conference date. However, additional EU values may be added for open inspections pending citation issuance. Final EU values for FY2017 will be available in March 2018.



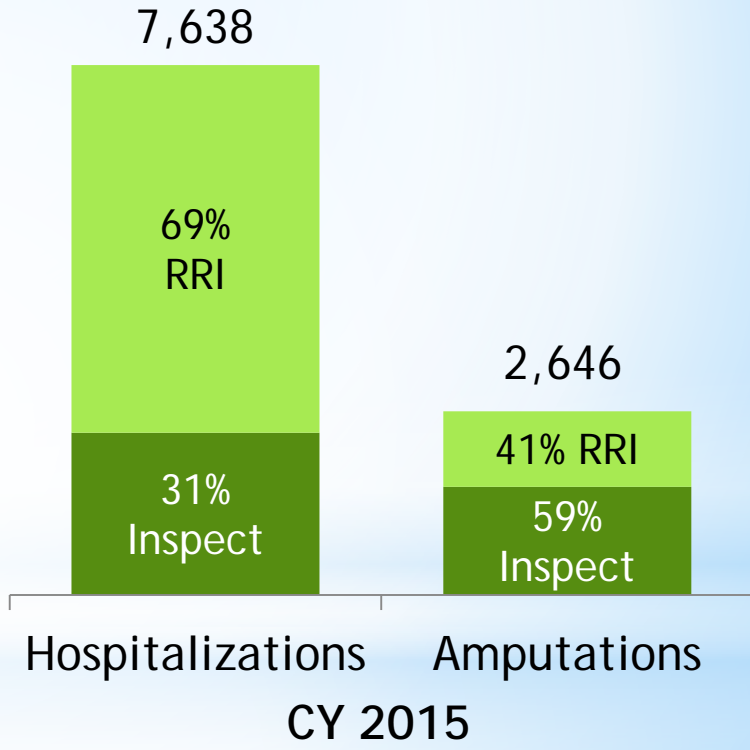
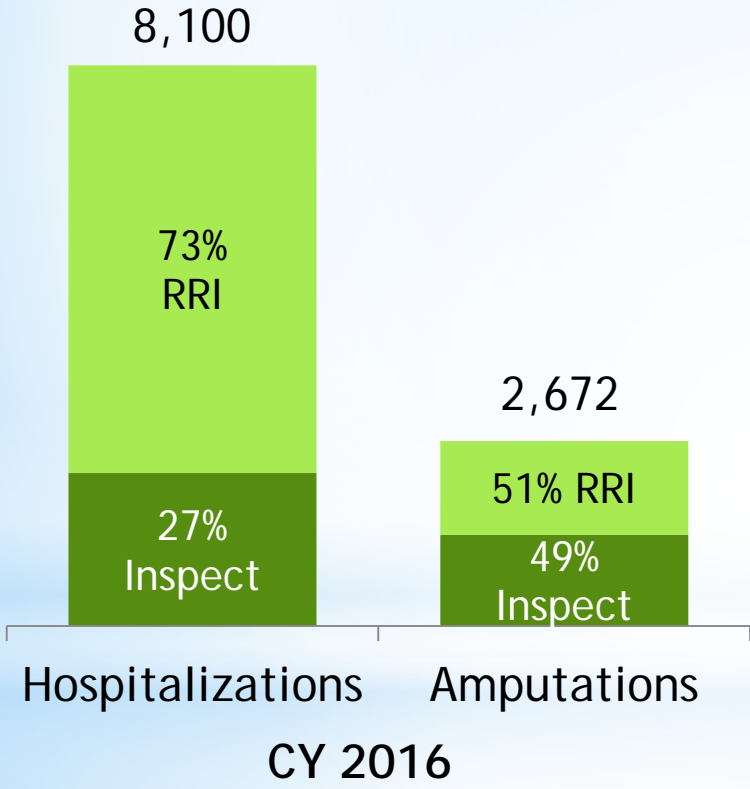
# % Programmed vs. % Unprogrammed Inspections FY 2010 - FY 2017



# Severe Injury Reports

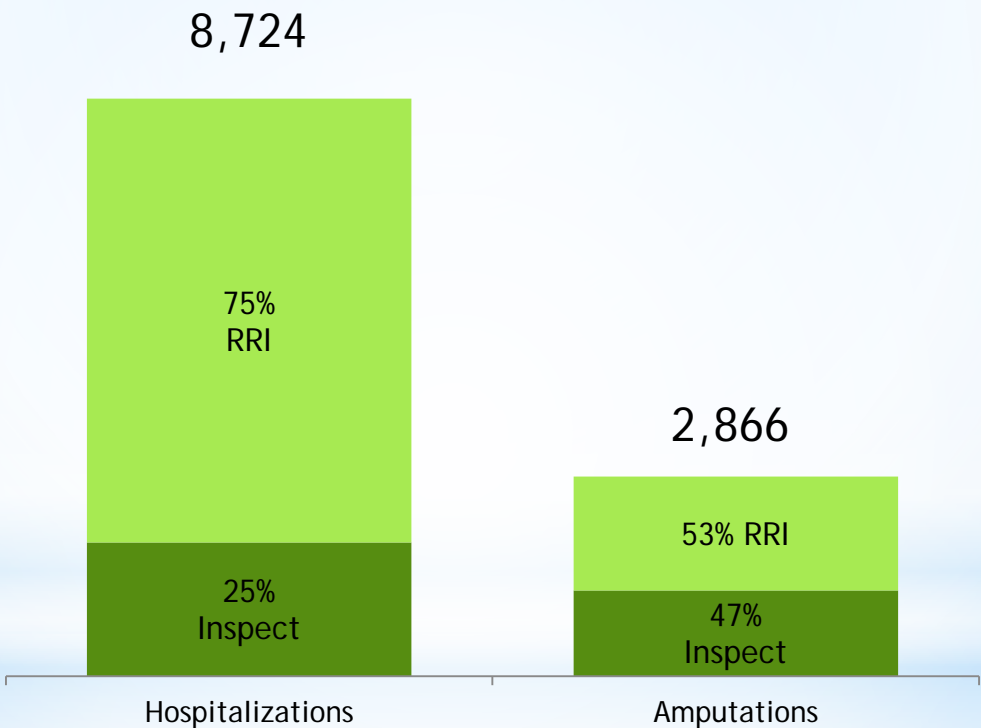
CY 2016: 10,887 Reports  
33% Inspection / 67% RRI

CY 2015: 10,395 Reports  
38% Inspection / 62% RRI



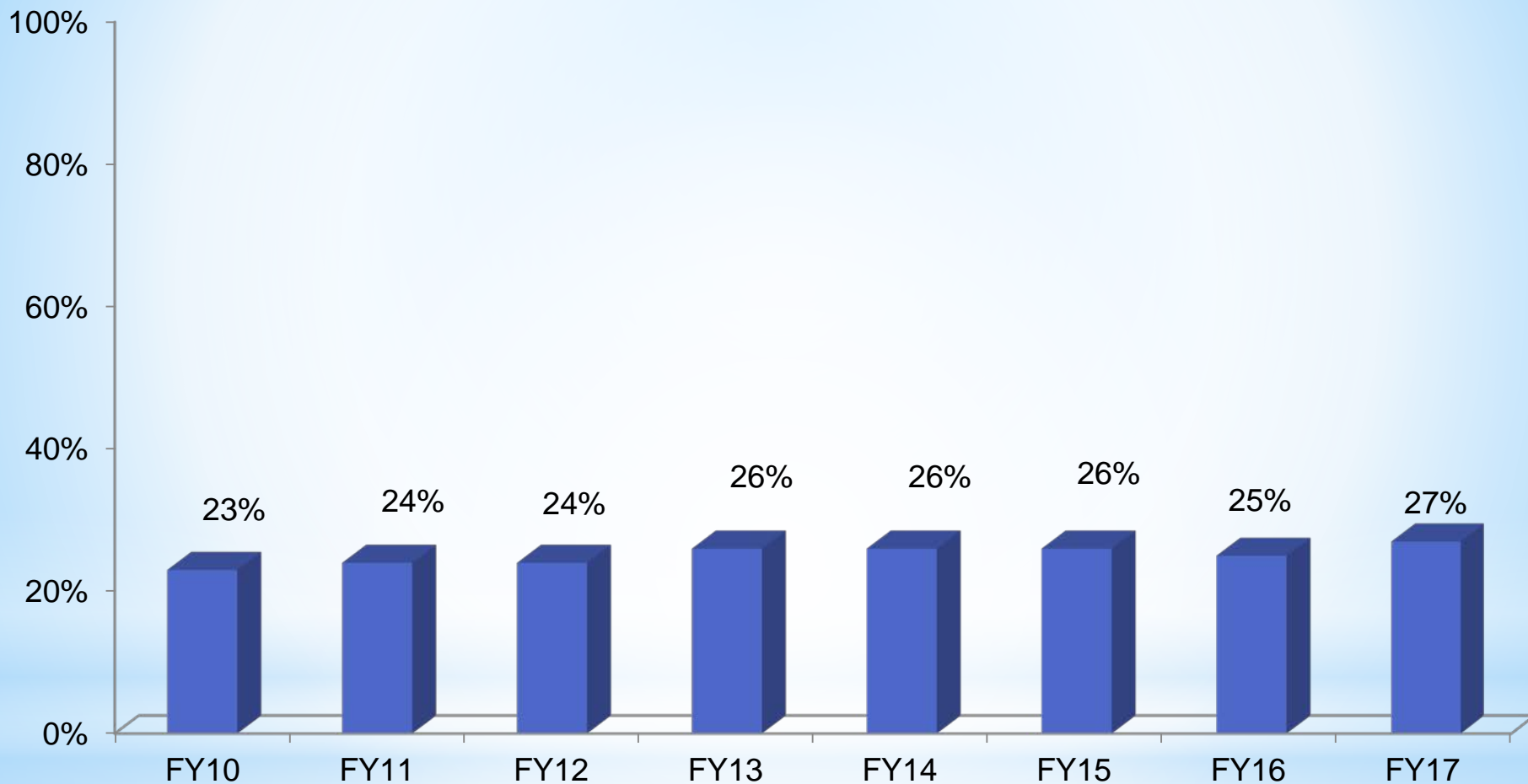
# Severe Injury Reports

CY 2017: 11,884 Reports  
30% (3560) Inspection / 70% (8324) RRI

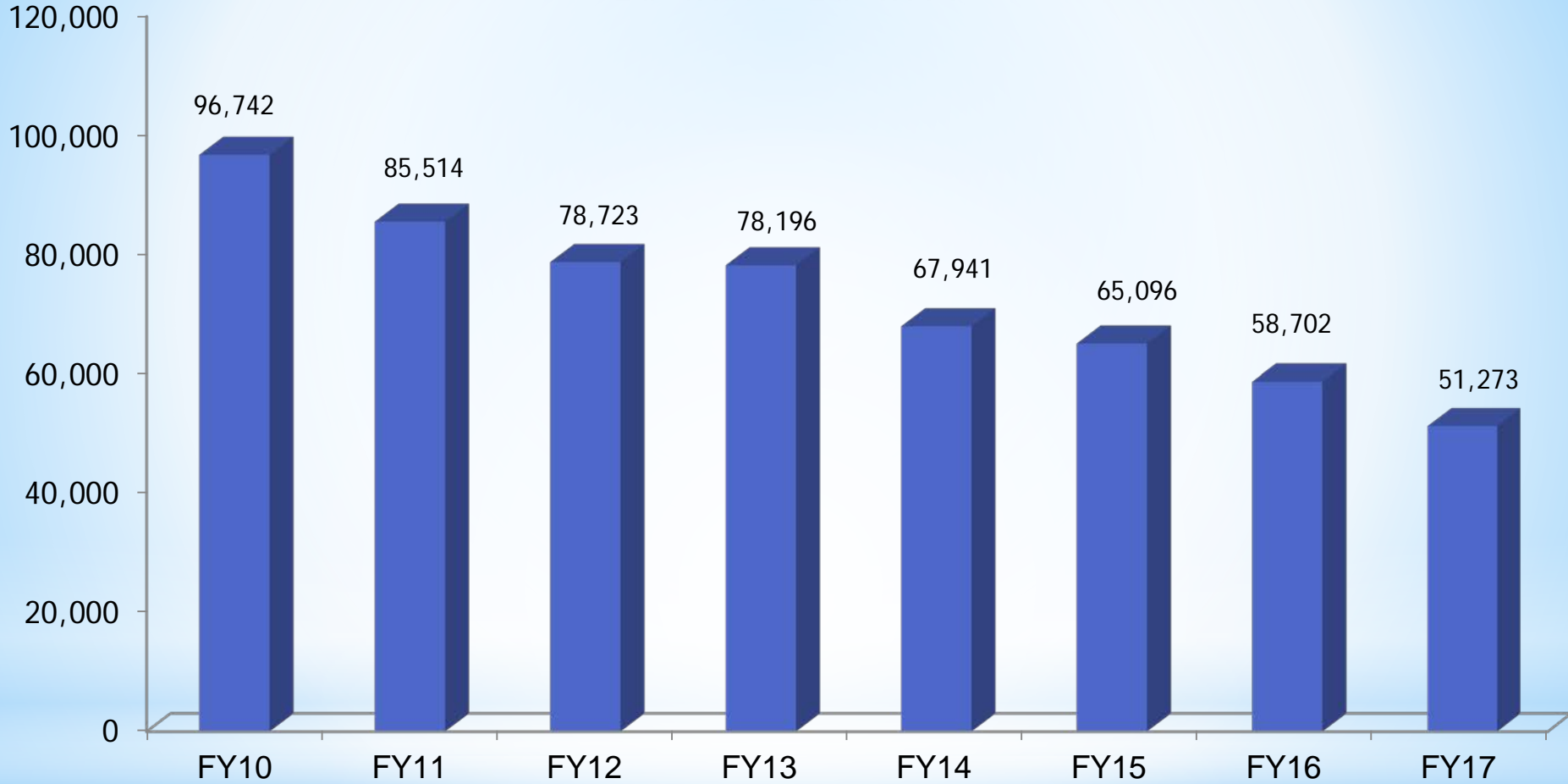




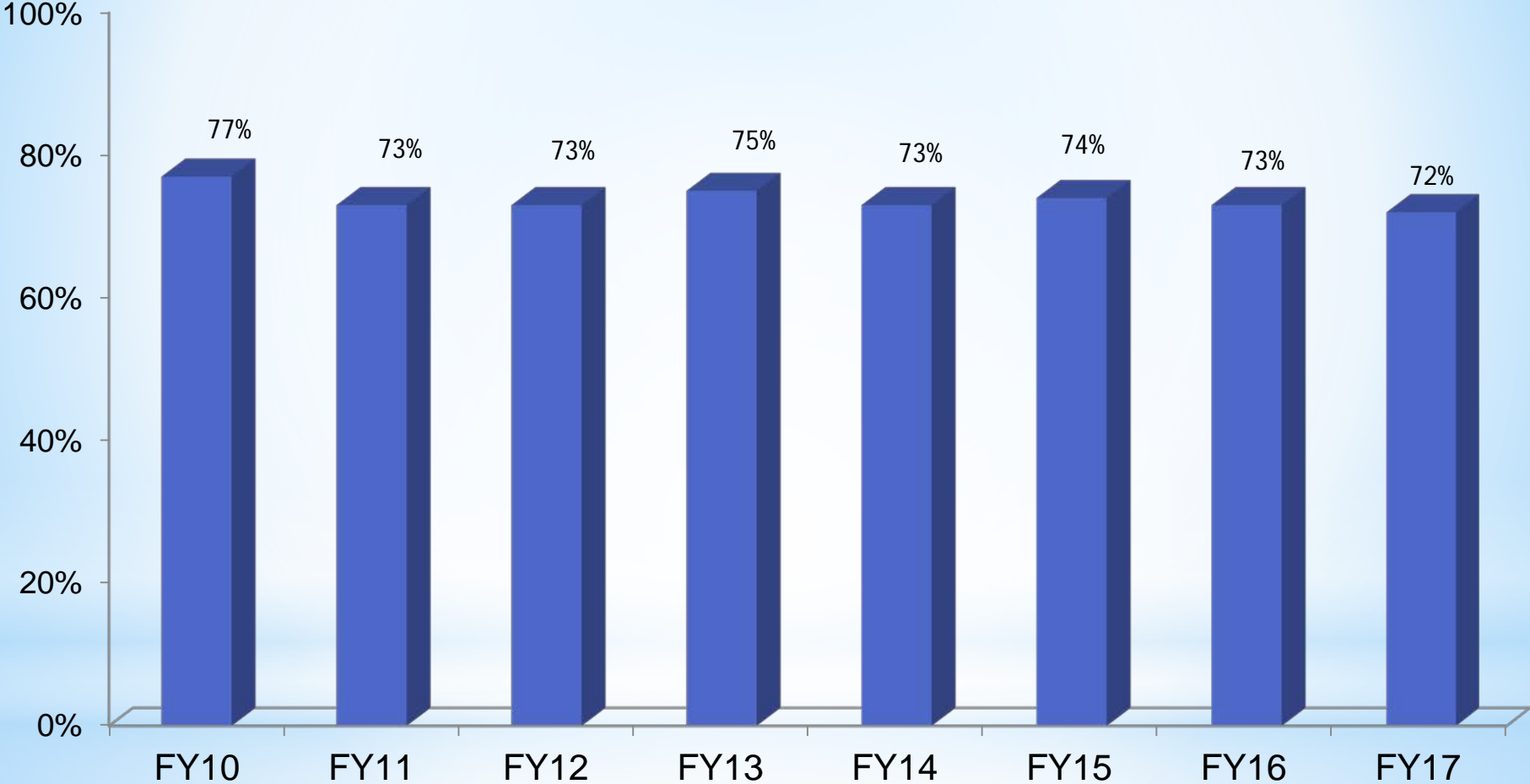
# % Inspections without Resulting Citations FY 2010 - FY 2017



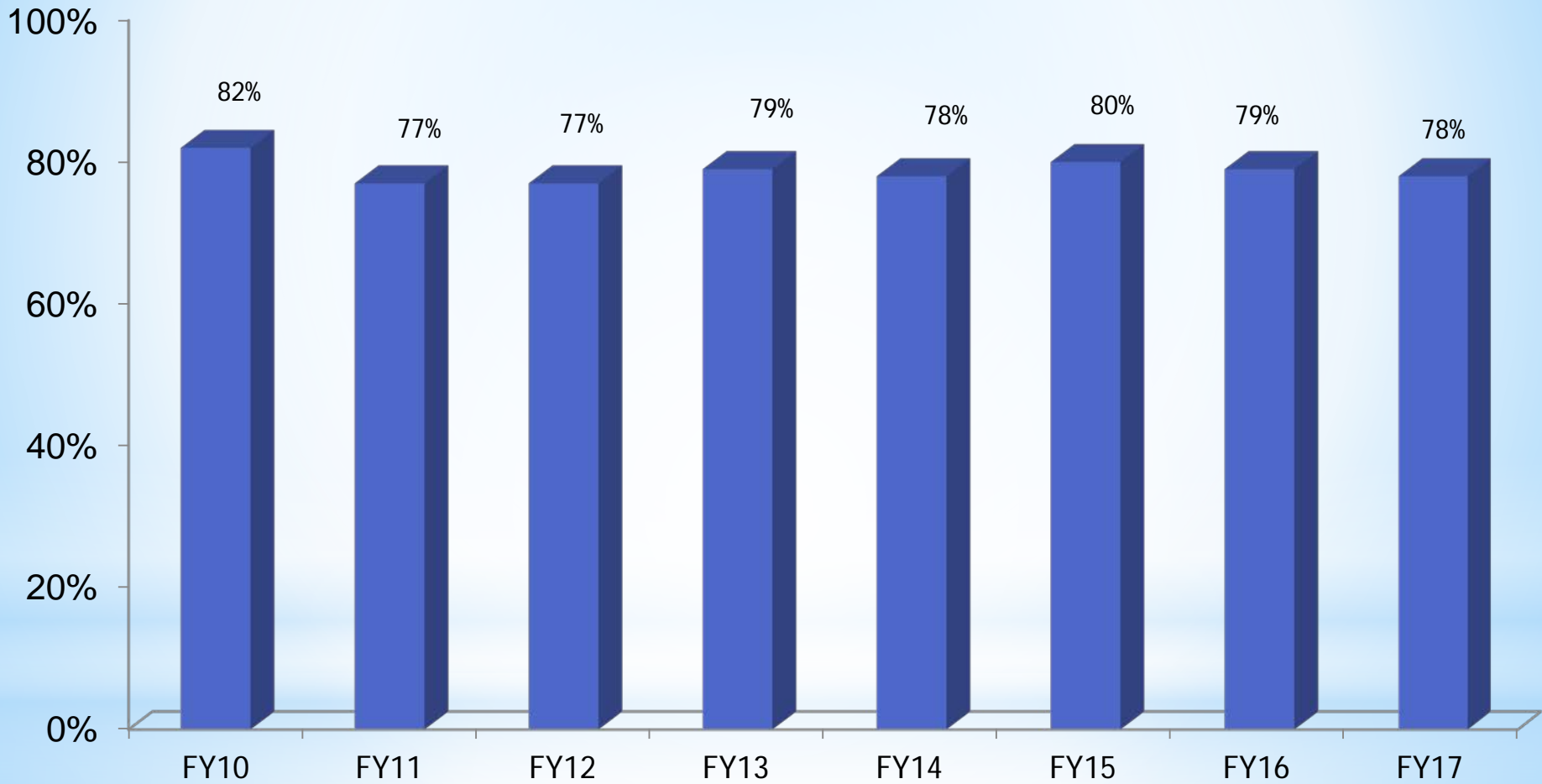
# Total Citation Items Issued FY 2010 - FY 2017



# % Total Citation Items Issued As Serious FY 2010 - FY 2017



# % Total Citation Items Issued as Serious, Willful, or Repeat FY 2010 - FY 2017





# Average Current Penalty per Serious Alleged Violation FY 2010 - FY 2017



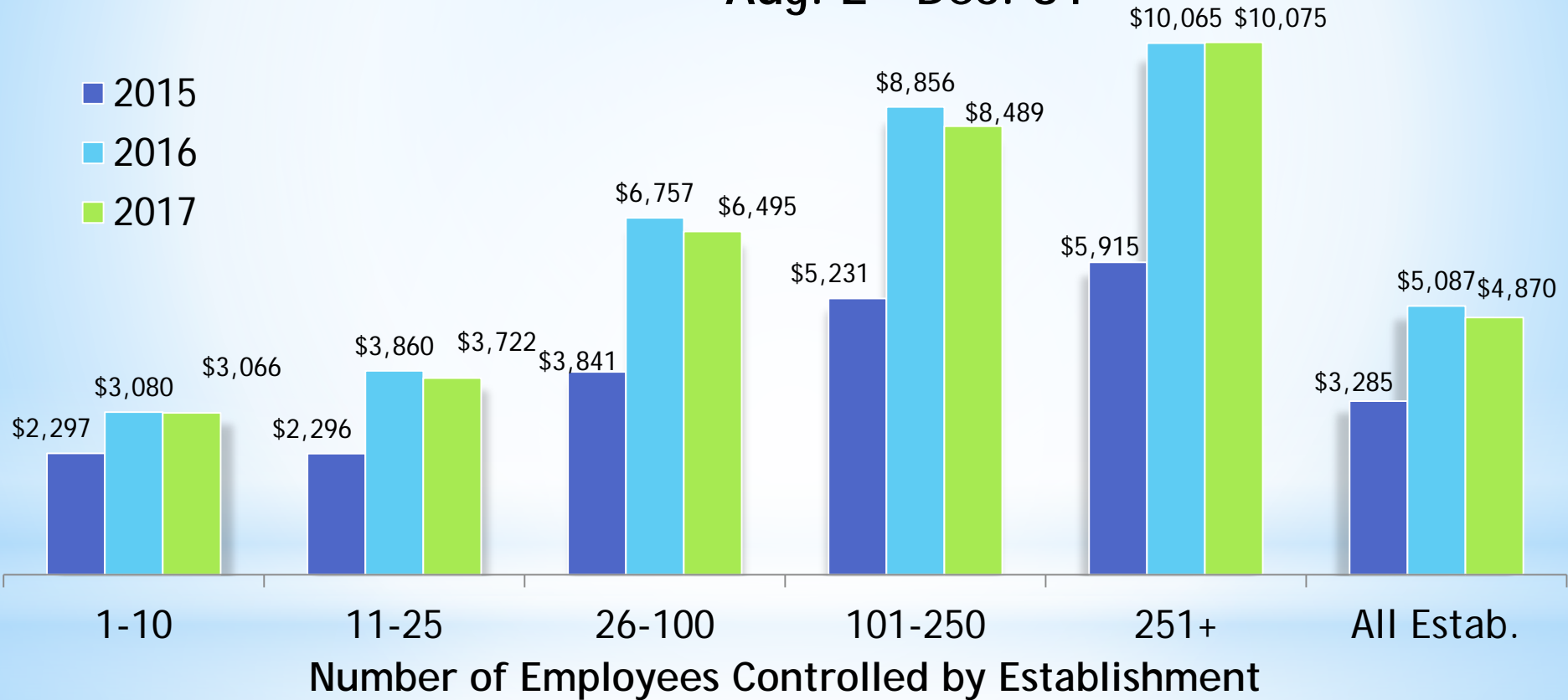
**Note:** Increased maximum OSHA penalties went into effect August 2, 2016 in compliance with the 2015 Inflation Adjustment Act.



# Penalties

## Average Initial Penalty per Serious Citation Item Aug. 2 - Dec. 31

- 2015
- 2016
- 2017



# Enforcement Environment

- New Silica Standard – General Industry/ Construction
- New Walking-Working Surfaces Standard
- Novel Cases
- Combustible Dust NEP

# Enforcement Environment

- **New Respirable Crystalline Silica Standard**
  - Comprehensive standard establishes 8-hour time-weighted average, permissible exposure limit (PEL) of 50  $\mu\text{g}/\text{m}^3$ , and action level of 25  $\mu\text{g}/\text{m}^3$
  - Effective enforcement dates stepped
  - Legal challenge failed



# Enforcement Environment

## ■ New Silica Standard

- Interim enforcement guidance published
- CPL, FAQs, letters of interpretation in process
- Enforcement in construction – effective September 23, 2017
- Enforcement in general industry – effective June 23, 2018

# Enforcement Environment

- New Walking-Working Surfaces Standard
  - **Very** comprehensive
  - In the works for 20+ years
  - Effective January 17, 2017
    - Exceptions: training, rope descent anchorage inspections, some ladder requirements
    - Some requirements grandfathered for existing installations (e.g., height of stair rails)
  - Training requirements effective May 17, 2017
  - OSHA developing FAQs, CPLs

# Enforcement Environment

## ■ Combustible Dust NEP

- One of nine NEPs
- Proposed changes
  - New targeting based on 10 years of experience
  - More technical guidance for CSHOs
  - Experience requirement for CSHOs
- 476 total inspections in CY17, 319 resulting in citations, including under:
  - Walking-Working Surfaces Standard
  - General Duty Clause

# Enforcement Environment

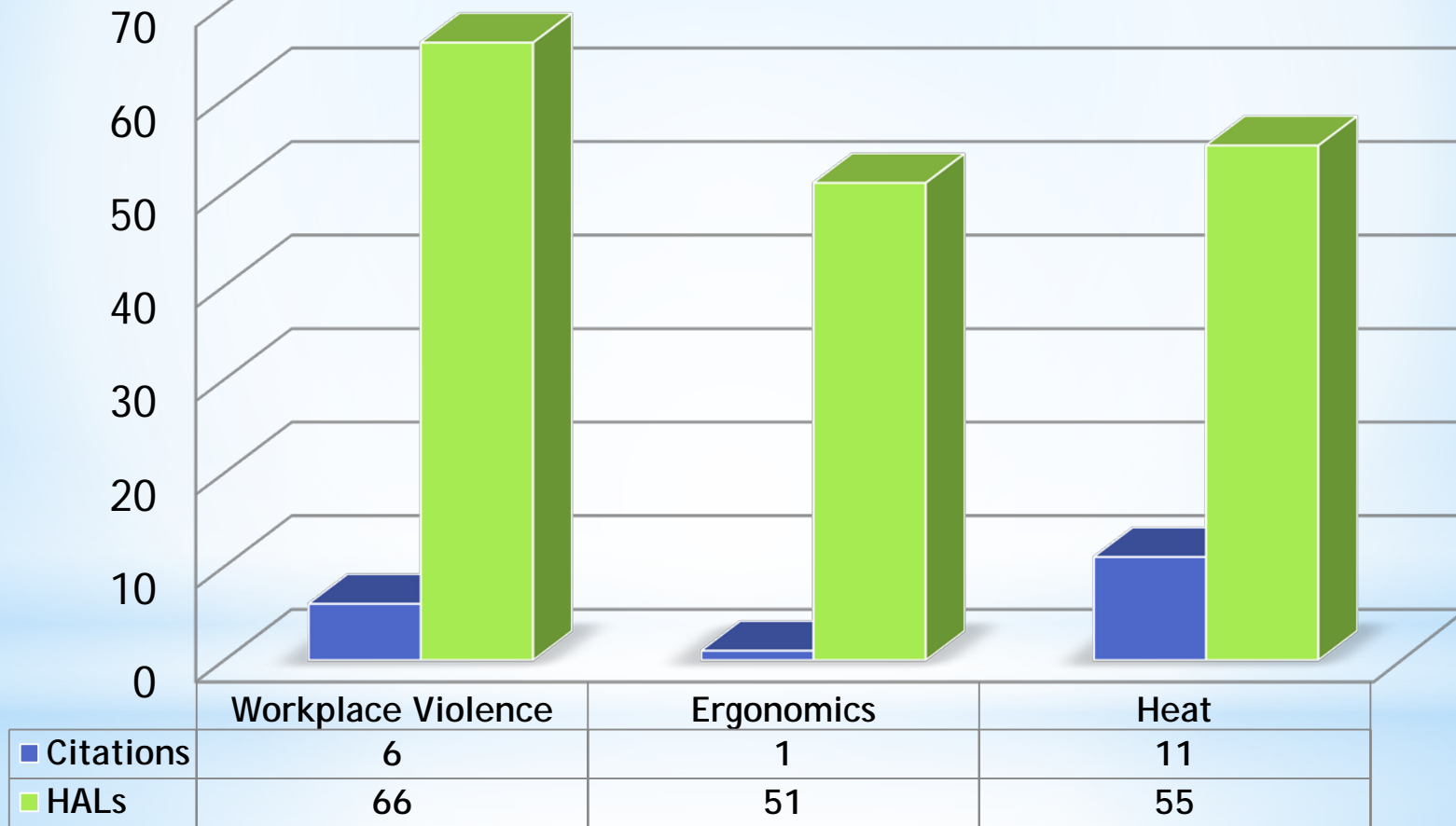
## ■ “Novel Cases”

- All under General Duty Clause
- Types
  - Workplace violence
  - Ergonomics
  - Heat
- Two kinds of results
  - Citations
  - Hazard Alert letters (HALs)



# Novel Cases

WPV, Ergonomic and Heat Citation/HAL Breakdown  
Fiscal Year 2017



# Questions?



# Thank You!

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