REPORT TO THE CONGRESS

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

States' Protection Of Workers Needs Improvement

Occupational Safety and Health Administration

Department of Labor

State safety and health enforcement activities are deficient because the Occupational Safety and Health Act permits States to operate during a "developmental" period using criteria less effective than the Department of Labor's.

The law should be changed so that States must use Labor's criteria until they have developed their own equally effective criteria.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report describes how State safety and health enforcement activities are deficient because States are permitted by the Occupational Safety and Health Act of 1970 (29 U.S.C. 651) to use, during a developmental period, criteria less effective than the Department of Labor's. The Congress should amend the act to require States to use Labor's criteria until States develop their own equally effective criteria.

We made our review because of the many States that are or may be relied upon by the Department of Labor to attain the act's worker protection goal. We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of the report are being sent to the Director, Office of Management and Budget, and the Secretary of Labor.

Acting Comptroller General
of the United States

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ABBREVIATIONS

GAO	General Accounting Office
OSHA	Occupational Safety and Health Administration
OJE	on-the-job evaluation

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

STATES' PROTECTION OF WORKERS NEEDS IMPROVEMENT
Occupational Safety and Health Administration
Department of Labor

D I G E S T

Under the Occupational Safety and Health Act, States 1/ with Department of Labor-approved plans may inspect workplaces using legal authority, safety and health standards, and enforcement procedures less effective than Labor's. This works against the act's primary objective: to make workplaces safe and healthful for employees.

The Congress should, therefore, amend the act to require that States enforcing safety and health standards under the act use Labor's authority, standards, and enforcement procedures until they have developed and adopted their own authority, standards, and procedures at least as effective as Labor's.

STATE PROGRAM PROVISIONS OF THE ACT

Under the act Labor establishes safety and health standards and enforces them in private industry through workplace inspections, citations, and penalties. The act and Labor's regulations and procedures contain detailed authorities, standards, enforcement procedures, and employer and employee appeals provisions.

Labor has broad authority to permit States to develop and enforce safety and health

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1/The term "State" as defined in the Occupational Safety and Health Act and as used in this report includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

standards, if they submit plans which provide that their legal authority, standards, and enforcement are or will be as effective as Labor's. States may meet these criteria by merely including provisions in plans for future development and adoption of authority, standards, enforcement procedures, and employer and employee appeals systems. (See p. 5.)

Labor can pay States up to 50 percent of their costs of operating under approved plans. The act contains no prerequisites for permitting States to inspect workplaces after developmental plans are approved, no matter how deficient their existing programs may be when approved. (See pp. 3 and 8.)

As of June 1976, 23 States were making workplace inspections, for which Labor was paying 50 percent of the cost. Labor had allocated about $29 million for such grants for fiscal year 1976 and was reviewing plans submitted by 16 other States for approval. (See p. 3.)

WEAK REQUIREMENTS REDUCED WORKER PROTECTION

In reviewing State plans for approval, Labor did not compare the States' existing programs with all the specific Federal legal authorities, standards, enforcement procedures, and employer and employee appeals provisions. Thus, it did not identify all deficiencies in State programs and could not include commitments and target dates in the plans for correcting all deficiencies. (See pp. 8 and 9.)

Also, Labor gave the States grants amounting to 50 percent of costs shortly after plan approval and permitted them to start inspections using whatever legal authorities, standards, enforcement procedures, and appeals systems they had. (See p. 8.)

Labor knows of numerous instances in which State inspections did not provide either (1) adequate

worker protection at places inspected, (2) adequate incentives to employers for voluntarily complying with safety and health standards before being inspected, or (3) adequate employer and employee appeals rights. (See chs. 3, 4, and 5.)

Such conditions will exist until the States develop, adopt, and obtain Labor's approval of all the needed improvements in their programs. Because none of the 23 States making inspections as of June 1976 have reached this point, inadequate inspections by these and other States, whose plans are to be approved, will continue indefinitely unless corrective actions are taken. (See p. 27.)

HAZARDS FOUND IN MONITORING STATE INSPECTIONS NOT CITED FOR CORRECTION

Labor policy and procedures for monitoring State inspections do not require States or Labor monitors to cite hazards noted during Labor's monitoring inspections. Labor records on monitoring of State inspections show hundreds of violations not cited by Labor or States for correction. (See ch. 6.)

RECOMMENDATIONS

The Congress should amend the Occupational Safety and Health Act to require that:

--The grant arrangement for State inspections under an approved plan be used only if the State either (1) has fully developed, adopted, and obtained Labor's approval of all specific legal authorities, standards, enforcement procedures, standards-adoption provisions, and appeals procedures or (2) agrees to use Labor's established procedures, standards, and provisions pending development, adoption, and approval of the State's.

--A contract arrangement be used if a State wants to make workplace inspections under the act but is precluded, by limited legal authority or other problems, from operating satisfactorily under a grant arrangement.

--As a condition for inspecting workplaces under the act, a State promptly adopt and use all new or modified standards and enforcement criteria adopted by Labor to improve worker protection, pending development and Labor approval of the State's.

The Secretary of Labor should require that:

--Labor compare the States' existing legislation, safety and health standards, enforcement procedures, standards-adoption provisions, and appeals systems to identify all instances where they are not as effective as Labor's.

--State plans include specific commitments and target dates for developing, adopting, and getting Labor approval of specific program authorities, standards, procedures, provisions, or systems needed to be as effective as Labor's.

--Labor or the State issue citations requiring abatement of safety and health violations identified during Labor's on-the-job evaluations and spot checks of State inspections.

--Labor or the States (1) review records of Labor's past on-the-job evaluations and spot checks of State inspections to identify hazards which neither Labor nor the State has required to be corrected and (2) act to insure correction of such hazards.

LABOR'S COMMENTS

Labor said that, although GAO's findings were well founded, most deficiencies noted have since been corrected.

Some deficiencies may have been corrected, but the causes of the problems identified in this report remain. Unless corrected, they could allow States with approved plans and other States entering the program to operate with similar deficiencies. Also, unless States are required to promptly adopt and use all Federal program changes intended to improve worker protection, States' programs will not be as effective as Labor's.

CHAPTER 1

INTRODUCTION

The Department of Labor has reported that in 1974 about 1 of every 10 of the 63 million American workers in private industry incurred job-related injuries or illnesses. Of the estimated 5.9 million injuries and illnesses, about 5,900 were fatal.

PURPOSE OF FEDERAL LEGISLATION

The Congress passed the Occupational Safety and Health Act of 1970 (29 U.S.C. 651) to assure, to the extent possible, safe and healthful working conditions for every worker in the Nation. This legislation was prompted by the numerous occupational injuries and illnesses incurred each year and the poor record that States had in the areas of occupational safety and health.

The act gave the Department of Labor responsibility for administering occupational safety and health programs. The Secretary of Labor delegated this responsibility to the Assistant Secretary for Occupational Safety and Health. The Assistant Secretary heads the Occupational Safety and Health Administration (OSHA), created on April 28, 1971, to discharge the Department's responsibilities under the act.

A primary means for providing worker protection under the act is OSHA's authority to set mandatory occupational safety and health standards and enforce them by inspecting workplaces, citing employers for violations, setting penalties, and establishing deadlines for correcting violations. This authority is designed not only to allow OSHA to identify and require abatement of observed hazards but also to stimulate employers to comply with OSHA standards by identifying occupational hazards in their workplaces and correcting them without being inspected. Employer compliance with standards without inspections is important because inspecting all workplaces is not feasible.

STATE PARTICIPATION

Because some States 1/ might want to be responsible for developing and enforcing their own occupational safety and health standards, the Congress included provisions in the act to permit this. The act encourages States to assume responsibility for and to improve the administration and enforcement of occupational safety and health laws.

A State may assert jurisdiction, under State law, over any occupational safety or health issue for which no Federal standard exists. The act provides that any State wanting to develop and enforce safety and health standards relating to any safety or health issue for which a Federal standard has been established under the act shall submit a plan to the Secretary for development of such standards and their enforcement. Criteria for approving a State plan are discussed in chapter 2.

When the Secretary approves the plan, the State may begin making workplace inspections. The Secretary is to monitor State activity so that he can determine whether the State is effectively applying all the act's criteria. Once the Secretary determines that the State is applying such criteria, Federal authority to enforce Federal standards covered by the State plan is suspended. The Secretary can withdraw approval and thereby reassert Federal jurisdiction if he later determines that a State is not operating in accordance with its plan.

FEDERAL FUNDS FOR STATES

Section 23(a) of the act authorized grant funds to assist States in identifying their needs and responsibilities in occupational safety and health and in developing State plans. The Federal share under such grants could not exceed 90 percent of total costs. Authority for awarding such grants expired on June 30, 1973. About $12 million in Federal planning grants was provided to help States develop occupational safety and health plans. Fifty States subsequently submitted plans to OSHA. As of June 30, 1976, 29

1/The term "State," as defined in the Occupational Safety and Health Act and as used in this report, includes the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

plans had been approved by OSHA, 5 had been withdrawn by the State before OSHA evaluation, and 16 were being evaluated by OSHA.

Section 23(g) of the act authorizes OSHA to pay States up to 50 percent of the cost of State operations under the approved plans. Through fiscal year 1974, 27 States received about $22 million in Federal funds to help finance their operations; in fiscal year 1975, 26 States received about $28 million; for fiscal year 1976, OSHA allocated $29 million to 23 States. As of June 30, 1976, six States had withdrawn their approved plans. The table on the following page details individual State activities through June 30, 1975.

SCOPE OF REVIEW

We made this review to determine whether OSHA's policies and procedures for administering the State program provisions of the Occupational Safety and Health Act insured the best possible worker protection. We interviewed OSHA and State officials and examined laws, regulations, procedures, and records relating to the review, approval, and administration of State occupational safety and health plans.

We made our review at OSHA headquarters in Washington, D.C.; OSHA's regional offices in Atlanta, New York City, and Seattle; and State offices in New Jersey, New York, Oregon, South Carolina, Tennessee, and Washington.

State	Planning grant funds received	Date plan approved	Amount of operating grants	Date plan withdrawn
Alabama	$ 228,048	(c)	-	
Alaska	342,653	7-31-73	$ 899,708	
American Samoa	87,937	(c)	-	
Arizona	114,230	10-29-74	108,000	
Arkansas	125,650	(c)	-	
California	588,277	4-24-73	7,916,625	
Colorado	263,302	9- 7-73	1,013,053	
Connecticut	210,780	12-28-73	790,920	
Delaware	201,726	(c)	-	
District of Columbia	153,460	(c)	-	
Florida	255,642	(c)	-	
Georgia	248,134	(b)	-	
Guam	84,447	(c)	-	
Hawaii	241,030	12-28-73	436,257	
Idaho	303,066	(c)	-	
Illinois	290,516	10-30-73	2,082,408	6-30-75
Indiana	115,676	2-25-74	461,842	
Iowa	223,859	7-12-73	657,698	
Kansas	116,871	(a)	-	
Kentucky	225,288	7-23-73	1,582,983	
Louisiana	190,895	(a)	-	
Maine	220,396	(b)	-	
Maryland	332,438	6-28-73	2,581,031	
Massachusetts	266,666	(c)	-	
Michigan	285,196	9-25-73	3,789,298	
Minnesota	216,620	5-29-73	906,505	
Mississippi	193,554	(b)	-	
Missouri	349,269	(c)	-	
Montana	224,630	11-30-72	263,750	6-30-74
Nebraska	115,966	(a)	-	
Nevada	72,458	12-28-73	396,281	
New Hampshire	117,734	(b)	-	
New Jersey	433,550	1-22-73	1,888,424	3-31-75
New Mexico	47,218	(c)	-	
New York	639,913	5-14-73	10,485,430	6-30-75
North Carolina	168,019	1-26-73	1,626,386	
North Dakota	113,042	1-19-73	20,957	6-30-73
Ohio	353,516	(a)	-	
Oklahoma	152,077	(c)	-	
Oregon	236,083	12-22-72	3,105,034	
Pennsylvania	350,578	(b)	-	
Puerto Rico	241,497	(c)	-	
Rhode Island	110,038	(c)	-	
South Carolina	304,580	11-30-72	1,241,340	
South Dakota	61,500	(a)	-	
Tennessee	257,508	6-29-73	1,325,312	
Texas	114,926	(c)	-	
Trust Territories	-	(a)	-	
Utah	105,129	1- 4-73	575,250	
Vermont	139,580	10- 1-73	272,905	
Virgin Islands	113,744	8-31-73	198,718	
Virginia	154,357	(c)	-	
Washington	227,835	1-19-73	3,680,825	
West Virginia	188,152	(c)	-	
Wisconsin	223,103	3- 1-74	1,052,518	6-30-75
Wyoming	246,372	4-25-74	276,347	
Total	$11,987,731		$49,635,805	

a/State has not submitted a plan.

b/State plan rejected by OSHA or withdrawn by State before approval.

c/State plan pending approval as of June 30, 1975.

CHAPTER 2

ACT ALLOWS STATES TO OPERATE DURING DEVELOPMENTAL PERIOD USING THEIR OWN CRITERIA

Section 18 of the Occupational Safety and Health Act contains provisions applicable to States wanting to develop and enforce safety and health standards. A State wanting to assume this responsibility must submit a plan to the Secretary of Labor. The Secretary is to approve a State's plan if, in his judgment, the plan:

--Designates a State agency or agencies to be responsible for administering the plan.

--Provides for the development and enforcement of safety and health standards relating to one or more safety or health issues. The plan must provide that the standards and their enforcement are or will be at least as effective in providing safe and healthful employment and places of employment as the Federal standards under the act.

--Provides for a right of entry and inspection of workplaces which is at least as effective as that provided in the act and prohibits advance notice of inspections.

--Contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel to enforce such standards.

--Gives satisfactory assurances that the State will devote adequate funds to administering and enforcing such standards.

--Contains satisfactory assurances that the State will, to the extent permitted by law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies in the State and that the program is as effective as the standards in an approved plan.

--Requires employers in the State to report to the Secretary in the same manner and to the same extent as if the plan were not in effect.

--Provides that the State agency will report to the Secretary in such form and providing such information as the Secretary shall require.

The act provides that, after the Secretary approves a State plan, he may (but shall not be required to) exercise his enforcement authority until he determines, on the basis of actual operations, that the above criteria are being applied. OSHA regulations provide that Federal enforcement authority in States with approved plans will be exercised to the extent necessary to insure occupational safety and health. In June 1974 this policy was supplemented by additional regulations providing that exercise of the Federal enforcement authority would cease after a State met certain minimum requirements. (See p. 26.)

Section 18(e) of the act requires that OSHA allow States at least 3 years after approving their plans before finally determining whether a State is applying the act's criteria. Until then a State is considered to be in a "developmental" stage.

Before OSHA makes a final determination of a State's capabilities, the State must have (1) completed all developmental aspects of its approved plan and (2) operated under the fully developed plan for at least a year. If OSHA then determines, on the basis of actual operations, that a State is applying the act's criteria and operating with legal authority, standards, and enforcement procedures at least as effective as OSHA's, the State assumes sole enforcement authority and continues to receive Federal grants. If OSHA finds the State is not operating at least as effectively as OSHA, OSHA can reassume enforcement authority in the State and stop providing grant funds.

OSHA regulations allow States 3 years to complete their developmental steps once they begin operating under an approved plan. OSHA cannot make a final determination of a State's capabilities until it evaluates the State's actual operations. The regulations provide that OSHA may evaluate actual operations under a State plan for up to 2 years after completion of all developmental steps. Furthermore, the regulations allow for extensions if a State has not met all the necessary criteria for a final determination at the end of the 2 years. Thus, a State may operate a program for more than 5 years before a final determination is made of its capability to operate an occupational safety and health program.

In summary, the act allows States to operate after plan approval although they might not have obtained or developed the legal authority, standards, enforcement procedures, or other program elements necessary to operate as effectively as OSHA. State inspections may continue for at least 3 years or longer before OSHA makes a final determination as to whether a State is operating at least as effectively as OSHA. During this period, States may inspect workplaces using criteria less effective than OSHA's.

CHAPTER 3

DEFECTIVE STATE INSPECTIONS DURING DEVELOPMENTAL PERIOD

The Occupational Safety and Health Administration knows of numerous deficiencies in State safety and health enforcement activities but has allowed them because the act contains no prerequisites for permitting States to make workplace inspections after their developmental plans are approved.

OSHA, as permitted by the act, approved the States' plans on the basis of their promises to develop and adopt the necessary legal authority, standards, and enforcement procedures to enable them to make inspections at least as effectively as OSHA. Shortly after the plan approvals, OSHA made 50-percent operating grants and permitted the States to make workplace inspections using whatever authorities, standards, and enforcement procedures the States had. In many instances States had deficiencies in either their enforcement authorities, safety and health standards, enforcement procedures, provisions for employer and employee appeals, or provisions for adopting new or modified standards. Consequently, OSHA officials found many instances in which State inspections were not as effective in providing worker protection as they would have been had OSHA's legal authority, standards, and procedures been used.

Before approving the plans, OSHA identified many deficiencies which it believed would result in the States' not operating as effectively as OSHA. OSHA incorporated into the plans specific commitments by the States to correct the deficiencies within specific time frames. However, OSHA personnel reviewing State plans did not compare all OSHA authorities, standards, and enforcement procedures with those the States had when the plans were approved and, therefore, did not identify all deficiencies in the States' programs. OSHA's principal criteria for reviewing State plans were the indices of effectiveness (29 C.F.R. 1902). The indices served as a checklist to insure that major enforcement processes, functions, and activities would be included in and covered by the State plan. They did not, however, contain specific information on what constitutes effective standards and enforcement. The indices did not state, for example, what constituted a serious violation, what constituted an imminent danger situation, or when and how quickly followup inspections should be made to insure

that hazards identified are abated. Such information is contained in OSHA's field operations manual for its compliance inspections.

OSHA did not require that provisions in the States' compliance manuals, to be used by State inspectors making workplace inspections, be compared with those in OSHA's compliance manual to determine whether State procedures would be as effective as OSHA's. OSHA personnel believed such comprehensive comparisons were unnecessary because the States were in a developmental period and had only to provide assurances that they would eventually have authority, standards, and enforcement procedures as effective as OSHA's.

In some cases, the States met their commitments to correct the deficiencies. In many cases, States did not meet such commitments, but OSHA permitted them to continue to make workplace inspections with Federal grants. For example, an OSHA evaluation of Maryland's progress, covering July through December 1973, showed that the State had not met its expected target dates for several commitments. These included commitments to adopt new Federal standards and revisions, promulgate regulations for enacting emergency temporary standards, and complete a compliance manual for inspectors. As of February 1974 the estimated completion dates for these commitments had been surpassed by several months yet the State continued to inspect workplaces. Legislation that Michigan promised to have enacted by December 1973 to provide the necessary legal authority was not passed until June 1974.

As of July 1, 1976, six States had withdrawn from the program because they could not meet the commitments to develop their enforcement programs as proposed in the plans. These States had received $17,718,241 in Federal planning and operating grants and had made 631,646 inspections with deficiencies in their legal authorities, standards, or enforcement procedures.

We recognize that the act authorizes OSHA (1) to approve State plans based on promises that the States will develop the needed criteria and procedures to enable them to be as effective as OSHA and (2) to award grants of up to 50 percent of the States' costs of operating under the approved plans. We believe, however, that States should not be permitted to make workplace inspections using inadequate criteria and procedures that may be in effect when plans are approved. Such a policy does not insure the best possible worker protection as intended by the act.

An alternative to the present approach would be to require States wanting to inspect workplaces but lacking adequate criteria and procedures to use the established OSHA criteria and procedures until they develop their own.

For example, a State with an approved plan but without legal authority as effective as OSHA's would not be given responsibility to make inspections under a section 23(g) grant agreement, but could make inspections--using OSHA's authority--under a contract with OSHA until it obtained its own authority. A State with authority and enforcement procedures as effective as OSHA's, but without standards as effective as OSHA's, could adopt OSHA's standards until it developed its own standards and could enforce them under a section 23(g) grant agreement.

OSHA has used a contract arrangement to permit States awaiting approval of their plans to make inspections using OSHA's authority, criteria, and procedures. Nine States whose plans OSHA eventually approved had entered into such contracts with OSHA pending approval of their plans. Each of these States, however, began operating with its own authority, criteria, and procedures when its plan was approved. As of January 1976, 2 of the 15 States awaiting approval of their plans were making inspections under contract with OSHA and were using OSHA's authority, criteria, and procedures pending plan approval.

According to OSHA headquarters officials, such an alternative as requiring the States to enter contracts or to adopt OSHA's standards as part of the 23(g) grant agreements would not be practical because of problems that would be created with the States. They said that, during the program's early stages, the overriding consideration in OSHA's administration of the program was to sell the program to the States to get and keep them involved, with the hope that their programs would eventually become as effective as OSHA's.

The Assistant Secretary of Labor stated in June 1975 that the alternative did not consider the realities of the developmental concept in State plans authorized by the act. He pointed out that the act requires approval of State plans if they contain satisfactory assurances that the State will develop criteria and procedures at least as effective as OSHA's. He stated that, once a State plan is approved on this basis, the State is permitted by OSHA to make workplace inspections under Federal grants using whatever criteria and procedures it may have.

According to him, OSHA knew of deficiencies in State programs being operated under this arrangement but, instead of requiring States to immediately use OSHA criteria and procedures pending development of their own, OSHA monitors and evaluates State performance to identify problem areas and require correction of inadequacies. The Assistant Secretary believed that through this process, OSHA could insure that eventually the States would perform workplace inspections with criteria and procedures comparable to OSHA's or OSHA would withdraw approval of the plan.

Although OSHA's approach may eventually result in the development and implementation of adequate criteria and procedures by States, our suggested actions would result in immediate use of OSHA's criteria and procedures pending development of the States'. None of the 23 States making inspections under approved plans as of December 1975 had developed or adopted all the legal authorities, standards, enforcement procedures, standards-adoption provisions, and appeals system needed to be as effective as OSHA. Inspections by these States, and the States whose plans are approved in the future, may continue to provide worker protection less effective than would be provided were OSHA's criteria and procedures used.

The information in the following sections illustrates how the defects in States' legal authority, standards, and enforcement procedures resulted in inadequate worker protection at workplaces inspected by some States. Similar problems concerning State provisions for promptly adopting new or modified standards as set by OSHA and for employee and employer appeals systems are discussed in chapters 4 and 5, respectively.

DEFICIENT STATE LAWS, STANDARDS, AND ENFORCEMENT PROCEDURES RESULT IN INADEQUATE WORKER PROTECTION

The 1970 act sets forth the authorities, requirements, and procedures for (1) setting safety and health standards, (2) making workplace inspections, (3) issuing citations for violations of standards, (4) assessing penalties for violations, (5) providing employers and employees the right to appeal citations or proposed penalties, (6) providing judicial review, and (7) counteracting imminent dangers.

Pursuant to the act, the Secretary of Labor has adopted hundreds of safety and health consensus standards and has

promulgated several other standards. Also, OSHA has issued detailed regulations and procedures governing inspections by its compliance officers. These regulations and procedures cover, among other things, selecting workplaces for inspection, making inspections, issuing citations, assessing penalties, setting abatement periods, and making followup inspections.

OSHA regulations contain general requirements that State plans either provide for the eventual development of the same legal authorities, standards, procedures, criteria, and rules established by the act or by OSHA, or for alternatives that are at least as effective as OSHA's. In approving the States' plans, OSHA identified many instances in which the States' existing legal authorities, standards, and enforcement procedures were not as effective as its own. OSHA's criteria for reviewing and approving State plans, however, were not specific enough to enable reviewers to determine whether the plans conformed to OSHA's requirements in all respects. As stated on page 8, OSHA's principal criteria for reviewing State plans were its indices of effectiveness, which do not contain all the specific authority, standards, and procedures which comprise OSHA's criteria. As a result, OSHA did not identify all instances in which the States' existing legal authorities, standards, and enforcement procedures were not as effective as OSHA's.

The following table shows that all 24 States that had their plans approved and were making inspections with Federal grants as of January 1, 1975, had deficiencies in their legal authorities, standards, or enforcement procedures when their plans were approved and when they were making workplace inspections. The data, which is not intended to represent all deficiencies that may have existed, is based mainly on our review of the plans and records maintained by OSHA headquarters. The data includes items that had been identified by OSHA at the time of plan approval as well as some that, according to the records, OSHA had not identified until after the plans were approved.

State	Program elements in which OSHA had identified deficiencies		
	Legislation	Standards	Enforcement procedures
Alaska		X	X
California	X	X	X
Colorado	X		X
Hawaii	X	X	X
Illinois	X		
Indiana	X		
Iowa	X	X	
Kentucky	X		
Maryland			X
Michigan	X	X	X
Minnesota		X	X
Nevada	X		X
New Jersey	X	X	X
New York	X	X	X
North Carolina			X
Oregon		X	X
South Carolina	X		X
Tennessee	X	X	X
Utah		X	
Vermont	X		X
Virgin Islands	X		X
Washington	X	X	
Wisconsin	X	X	X
Wyoming	X		

According to OSHA, many of the deficiencies were minor and many were later corrected. Further, although each State had deficiencies, some had standards or provisions for protecting workers which OSHA did not have. However, as shown in the examples in the following sections, the deficiencies often had a significant impact on the effectiveness of State operations. In some cases the States corrected the deficiencies, but in others the deficiencies still existed after the States completed their developmental steps and had them approved by OSHA.

Defects in State laws

As shown in the preceding table, 18 States had deficient legal authority. The defects related to such things as prohibiting advance notice of inspections, counteracting imminent danger, assessing penalties, obtaining employee participation in inspections, prohibiting discrimination against

employees because of their activities in safety and health matters, requiring posting of citations issued as a result of inspections, and requiring certain recordkeeping procedures.

The act's requirements were designed to insure that enforcement activities were effective in providing safe and healthful workplaces for workers. The absence or inadequacy of any of these provisions reduces the effectiveness of worker protection.

Inadequate penalty assessment authority

The act authorizes OSHA to assess penalties of up to $1,000 for violations of safety and health standards. The act contains additional penalty authority for such things as failure to abate, willful violations, and repeat violations. These provisions were designed to obtain abatement of hazards cited at workplaces inspected and to stimulate voluntary compliance at other workplaces. At least 12 States conducted inspections under OSHA grants without legal authority for penalty assessment comparable to OSHA's.

New York lacked authority to assess penalties for violations. Under the OSHA-approved plan, New York conducted about 350,000 inspections during 1974 and cited employers for over 300,000 violations of safety and health standards without assessing penalties. OSHA regional office and State officials recognized that the lack of penalties limited the effectiveness of the New York program.

Before obtaining OSHA approval of the plan, New York made workplace inspections under a contract with OSHA. Under this contract, penalties were assessed, using OSHA's authority, for violations identified by State inspectors. OSHA approved New York's plan on the basis of the State's promise to enact adequate penalty assessment authority during 1974. Instead of continuing the contract arrangement until the State enacted such authority, OSHA permitted the State to make inspections under a grant arrangement without authority to assess penalties.

About 2 years after OSHA approved the plan, New York, which had still not enacted the needed penalty assessment authority, stopped operating under its plan. During this period OSHA had granted the State about $11 million for planning and operating costs.

After withdrawal of the State plan, OSHA reassumed jurisdiction for enforcement of occupational safety and health standards in New York. To help fill the void left by the removal of about 300 State inspectors, OSHA increased its inspection force in New York from 64 to 141 as of June 1976.

New Jersey and Wisconsin had not enacted legislation providing adequate authority to assess penalties for violations before withdrawing their approved plans during 1975.

Tennessee operated for a year and conducted 2,030 inspections before legislation was enacted providing the State with the authority to assess penalties for nonserious violations of safety and health standards. During this period the State cited 5,461 violations as nonserious but could not assess any penalties.

Incomplete authority for citing hazards

The act includes a general-duty provision requiring that each employer furnish his employees with workplaces free from recognized hazards that are causing or are likely to cause death or serious physical harm. Legislative history shows that the Congress included the general-duty provision in the act because (1) precise standards for every conceivable situation will not always exist and (2) the act would be seriously deficient if any employee was killed or seriously injured on the job because there was no specific standard applicable to a recognized hazard that could cause such misfortune. Therefore, the general-duty provision enables OSHA inspectors to cite and require abatement of serious hazards even though they are not covered by established standards.

OSHA, in reviewing and approving State plans, did not require States to adopt a general-duty clause. The approved plans and legal authority of Alaska and South Carolina did not include a general-duty provision. South Carolina adopted such a clause in June 1973, 7 months after its plan was approved. Alaska adopted a general-duty standard, but it lacks specific authority in its law to enforce it.

Lack of a general-duty clause limited the effectiveness of State enforcement programs. For example, in monitoring South Carolina's program before it enacted a general-duty clause, OSHA noted five instances in which employees

had been killed and it would have been appropriate to use the general-duty provisions to cite and require abatement of the hazards which caused the deaths. Although the State investigated the accidents, it could not cite and require abatement of the hazards.

Differences in authority to abate imminent dangers

The act authorizes OSHA to obtain court orders to require abatement of hazards which could reasonably be expected to cause death or serious physical harm immediately or before abatement could otherwise be obtained. OSHA's State plan approval criteria required the States to have or obtain the same legal authority to deal with such hazards. Some States' legal authorities, however, differed from OSHA's. For example:

--Washington enacted legislation defining imminent danger as a situation in which a "substantial" rather than "reasonable" probability exists that the situation could cause death or serious physical harm. This definition is more restrictive than the language in the OSHA act and could, therefore, apply to fewer situations. Despite this difference, OSHA approved Washington's authority for dealing with imminent dangers as being as effective as OSHA's.

--Nevada's law provided that employees who are injured may seek a writ of mandamus requiring the State enforcement agency to take action when it has arbitrarily failed to seek restraint of any imminent danger. Under the 1970 act, employees who may be injured may seek such a writ. Nevada made inspections until July 1, 1975, or for over a year, before its legislative authority was revised to read "employees who may be injured."

Inadequate authority for adopting standards

The act authorizes OSHA to adopt safety and health standards needed to protect workers. OSHA may set (without public hearings) emergency temporary standards, which take effect immediately upon publication. Such standards may be set when it is determined (1) that employees are exposed to grave danger from toxic or physically harmful substances or from new hazards and (2) that such standards are needed

to protect employees. These standards are to remain in effect until withdrawn or until superseded by permanent standards to be published within 6 months of the setting of the emergency standards.

OSHA may adopt permanent standards, after holding public hearings, which go into effect within 90 days of publication. OSHA regulations provide that public hearings held before adoption of permanent Federal standards will satisfy the public hearing requirements for States adopting such Federal standards. Under these regulations, however, States may adopt either the Federal standards or standards at least as effective as the Federal standards.

OSHA criteria for reviewing and approving State plans did not require States to obtain standards-adoption authority consistent with the specific OSHA authority. The approved plans and legal authority for some States did not include authority comparable to OSHA's for adopting standards. This limited the States' ability to promptly adopt needed changes to standards.

For example, in South Carolina, public hearings were required before the State could adopt emergency temporary standards in response to grave danger situations. This procedure was not as effective as OSHA's, which allows such standards to take effect immediately. In September 1975 OSHA approved South Carolina's legal authority as being as effective as OSHA's although South Carolina still required public hearings.

The period that emergency temporary standards can remain in effect was limited to 120 days in Alaska and Oregon. As a result, unless these States adopt the temporary standard as a permanent standard after 120 days, their standards will lapse. OSHA emergency temporary standards may remain in effect up to 180 days.

OSHA did not require States to obtain authority to adopt Federal permanent standards without public hearings. Oregon, South Carolina, and Washington required that public hearings be held before adoption of permanent standards, even if they chose to adopt new or revised Federal standards that had already undergone public hearings. This requirement delays the States' adoption of Federal standards. Despite this deficiency, OSHA has approved the legal authority of the three States as being as effective as OSHA's.

Opportunities for employee participation not required

The act requires that employee representatives be given an opportunity to accompany OSHA inspectors during inspections of workplaces to help insure that hazards are identified. Where there is no authorized employee representative, the act requires that the inspector consult with employees concerning safety and health in the workplace. At least seven States made inspections under OSHA grants without such a requirement.

Ineffective State standards

Twenty States with approved plans made inspections without approved standards as effective as OSHA's. As of January 1, 1975, OSHA had approved the standards of only nine States.

Through its evaluation of State programs, OSHA knew that many States did not have standards as effective as its own for certain hazards and workplaces. However, OSHA permitted, and these States made, inspections in workplaces with such hazards.

In monitoring 718 State inspections in New Jersey, New York, Oregon, and Washington (about 1 percent of the inspections performed through December 1974 by these States), OSHA noted 1,129 hazards which would have been cited by OSHA inspectors but which the State inspectors did not cite or require to be abated because the States had not fully developed and adopted standards as effective as OSHA's. For example:

--OSHA standards require lower guards on radial arm saws, primarily to prevent workers from being cut by saw blades. As of January 1, 1975, Oregon had not adopted a standard requiring such guards. OSHA inspectors have issued numerous citations for serious violations of sawguarding standards. Some of these citations involved radial arm saws without lower guards. In monitoring about 1 percent of the 15,975 inspections performed by Oregon through December 1974, OSHA officials observed 31 instances in which the State failed to cite an employer for not having a lower guard on the radial arm saw. OSHA's area office in Oregon has data showing that, from May 1971 to November

1972, 29 amputations resulted from accidents involving saws, some of which were radial arm saws.

--OSHA standards include requirements to reduce worker exposure to asbestos fibers in the air. Oregon did not adopt such a requirement until October 1974, more than a year after the State began operations under OSHA grants, although it had inspected workplaces where workers were exposed to asbestos. While monitoring the State's program, OSHA observed that the State did not cite and require abatement of an asbestos hazard because it did not have a standard equivalent to OSHA's. The Senate report on the bill which became the 1970 act states that manufacturing and construction workers exposed to asbestos fibers often suffer or die from pulmonary cancer and mesothelioma.

--OSHA standards require guards on mechanical power presses to protect the operators' hands. Amputations have resulted from accidents involving unguarded presses, and OSHA inspectors have issued citations for serious violations of this requirement. Washington did not have standards comparable to OSHA's for this item until September 1974, more than a year after the State began operations under an approved plan. In monitoring about 1 percent of the State inspections, OSHA inspectors observed eight instances in which the State inspectors did not cite employees for not having guards on their presses because the State standards did not cover such hazards.

--OSHA standards require that pressure in air hoses used for cleaning industrial equipment be limited to 30 pounds per square inch. New York and New Jersey made about 600,000 inspections under OSHA grants through December 1974 without such a requirement. OSHA noted several instances in which violations of this standard existed in workplaces inspected by these States. Since the States did not have this standard, they did not cite and require abatement of the hazard. OSHA inspectors advised us that air hoses with pressure in excess of OSHA's standard could result in such injuries as (1) air embolism in the blood stream, which can cause death, (2) damage to the respiratory system, especially when lead particles are present in the workplace, and (3) eye damage from debris blown by the air hoses.

Deficiencies in State enforcement procedures

State plans were approved by OSHA on the basis that States would develop regulations and procedures to operate their programs as effectively as OSHA. Twenty-five States were permitted to make inspections under OSHA grants without having enforcement regulations and procedures approved as being as effective as OSHA's.

OSHA has published enforcement criteria and procedures in its regulations and field operations manual. Because OSHA's principal criteria for reviewing State plans, its indices of effectiveness, did not provide for a complete comparison of each State regulation and procedure with OSHA's, some defects in State enforcement regulations and procedures had not been identified. Further, OSHA did not require the States to promptly adopt changes that it makes to its regulations and procedures. If OSHA improves its inspection procedures or requirements and does not advise the States and require them to adopt the same or equally effective criteria, the States will not be operating with criteria as effective as OSHA's.

In monitoring State performance, OSHA noted numerous instances in which State regulations and procedures were not as effective as its own. The identified defects in State enforcement regulations and procedures related to such things as imminent danger, penalties, abatement dates, variances, and posting of citations. Such defects reduce the effectiveness of worker protection.

Setting penalties

The act requires that OSHA, in determining the amounts of proposed penalties, consider the size of the business of the employer being charged, gravity of the violation, employer's good faith, and history of previous violations. The OSHA field operations manual provides detailed instructions to inspectors for computing and assessing penalties.

At least 17 States made inspections under OSHA grants without having developed penalty assessment procedures and having them approved by OSHA. In monitoring the States' programs, OSHA noted that States had used a variety of penalty assessment procedures resulting in disparities between the penalties assessed by the States and OSHA for similar violations.

A major reason that OSHA assesses penalties is to require abatement of known violations and encourage voluntary compliance with OSHA standards. Procedures providing for lower penalties than OSHA's do not offer as much incentive for abatement and voluntary compliance and do not provide equitable treatment of employers.

Under OSHA's procedures, penalties of at least $500 but not more than $1,000 are mandatory for serious violations cited by OSHA inspectors. During the last quarter of 1974, the average OSHA penalty for serious violations was $632. During that quarter the penalty for serious violations assessed by 19 States ranged from an average of $760 to $195. 1/ Some States allowed minimum penalties for serious violations that were less than the $500 minimum established by OSHA. Oregon's minimum was $1 and Washington's was $30. Despite these deficiencies, OSHA has approved Oregon's and Washington's penalty procedures as being as effective as its own.

Under OSHA's procedures, a penalty of at least $100 a day is mandatory for failure to abate a nonserious violation previously cited. A penalty of $1,000 a day is mandatory for failure to abate a serious violation previously cited. OSHA has frequently assessed penalties for failure to abate, but it did not require that State plans include these requirements.

Washington's procedures did not require penalties for failure to abate. The procedures provide that daily penalties for failure to abate serious or nonserious violations may be assessed. They provide further that, if a penalty is assessed, the daily amount may be the same as the unadjusted penalty established when the violation was initially cited. Under these procedures, penalties for failure to abate could range from nothing to $1,000. In some cases Washington has not assessed penalties for failure to abate, and in others it has assessed penalties much lower than would have been assessed under OSHA's procedures.

1/Excludes New York, Wisconsin, and Michigan because these States did not have authority to assess penalties for serious violations. New Jersey is also excluded because its legal authority for penalty assessment did not provide for classifying violations as serious or nonserious.

Dealing with imminent dangers

The purpose of OSHA's imminent danger procedures is to insure that OSHA inspectors take prompt action, including use of legal proceedings if necessary, to require abatement of hazards which could reasonably be expected to cause death or serious physical harm immediately or before abatement could otherwise be obtained.

State plans were approved on the basis that the States would develop effective procedures for dealing with imminent dangers. However, at least 16 States made inspections under OSHA grants without having such procedures approved by OSHA. In monitoring State performance, OSHA noted that some States' procedures were not as complete or effective as its own in dealing with imminent dangers.

OSHA's procedures require that indications of imminent danger be given highest priority in selecting workplaces for inspection. Oregon's procedures did not include this requirement. An OSHA inspector was accompanying an Oregon inspector to observe a prescheduled inspection of a workplace. Enroute, they observed an employee at a different workplace working at the bottom of an unshored trench around an underground storage tank. The OSHA inspector considered this to be an imminent danger because many workers have been killed by trench cave-ins. The State inspector called a State supervisor and was told to make the prescheduled inspection rather than deal with this imminent danger. The OSHA inspector inspected the unshored trench.

South Carolina lacked imminent danger procedures for the first 10 months it conducted compliance inspections. The imminent danger procedures later developed and used were not as effective as OSHA's because the State's definition of imminent dangers was not as comprehensive as OSHA's. In January 1974 OSHA revised its field operations manual to define an imminent danger situation as one in which death or serious physical harm could reasonably be expected to result immediately or before the danger could be eliminated through ordinary enforcement action.

South Carolina's compliance manual defined an imminent danger situation as one from which death or serious physical harm will result immediately or within a short time. This was the definition formerly included in OSHA's manual. OSHA did not require States to promptly adopt the change in its procedures. Because South Carolina did not adopt

the OSHA change until June 1976, imminent danger situations as defined by OSHA could have occurred before June 1976 for which State guidelines would not have required immediate corrective action.

Citing hazards and requiring abatement

Procedures are included in the OSHA regulations and field operations manual for citing hazards and requiring abatement.

State plans were approved on the basis that States would develop procedures for citing hazards and requiring abatement that were as effective as OSHA's. At least 17 States conducted inspections under OSHA grants without having OSHA approval of such procedures. In monitoring States' performance, OSHA noted that many States operated with procedures for citing and requiring abatement of hazards that were not as complete or effective as OSHA's.

During Washington's first year of operation, State inspectors did not have adequate procedures for classifying violations as serious, nonserious, willful, or repeated. OSHA reviewed 200 case files for December 1973 through May 1974, 182 of which contained violations. OSHA found that 45 of the 182 files contained violations that were improperly classified by the State inspectors. According to OSHA, 49 of 867 violations cited as nonserious appeared to meet the criteria for a serious violation and numerous repeat violations were not cited as such. For violations classified as nonserious, a penalty or a followup inspection to insure abatement of the hazard is not required and the employer may be given a longer period for abatement. OSHA's procedures provide for higher penalties for repeat violations. OSHA noted similar problems with hazard classification while monitoring Oregon and South Carolina inspections.

Washington made worksite inspections before it adopted rules and regulations requiring citations to be posted immediately upon receipt by an employer as required by OSHA regulations. During this period, OSHA noted several instances in which employers had failed to post State citations in their workplaces. The posting requirement is intended to help make employees aware of hazards. OSHA noted similar problems in South Carolina.

OSHA's field operations manual states that the abatement period shall be the shortest period within which the

employer can reasonably be expected to eliminate the hazard. Washington, however, established procedures which prohibited setting abatement peiods of less than 16 days except for hazards abated during the inspection. OSHA identified numerous instances where this procedure resulted in abatement dates being set by the State which needlessly extended worker exposure to serious hazards.

For instance, from November 1974 to June 1975 the State established abatement periods of 16 days or more for 67 serious violations. The OSHA monitor determined that it would have been reasonable for the employers to abate 23 of these violations in less than 16 days. For example, the State allowed employers 20 days to move a crane boom away from high voltage lines, 16 days to stop using a cutting torch on flammable bottles, and 16 days to cover exposed electrical wires. The OSHA monitor advised us that, applying OSHA's procedures, he would have required immediate abatement of the first two violations and allowed 5 days for abatement of the third. In July 1975 Washington deleted its restrictions on setting abatement dates of less than 16 days.

Obtaining employee participation

State plans were approved on the basis that States would develop provisions for insuring effective employee participation in inspections. At least 16 States conducted inspections without having such procedures approved by OSHA. In reviewing State inspections, OSHA noted that the States' procedures for insuring employee participation in inspections were not as effective as OSHA's.

OSHA procedures require inspectors to record the names of employees who either participate in the walkaround inspection or are interviewed. The safety and health inspection report used by Washington inspectors, however, did not provide space to record the names of employees who were interviewed but did not accompany the inspector. The instructions for completing the form specifically exclude such documentation. OSHA noted that, in 57 of 92 Washington inspection files reviewed for June through November 1974, there was no documentation to show whether employees participated in the walkaround portion of the inspection or were interviewed.

Oregon had not adopted procedures similar to OSHA's for selecting employee representatives to accompany the

inspectors when the employees are represented by more than one union. OSHA's investigation in response to a complaint on Oregon's inspection of a large company showed that employee representatives were not permitted to fully participate in the inspection. Although three separate inspection teams inspected the plant, an employee representative was permitted to accompany only one even though two other employee representatives were ready. Allowing all three employee representatives to participate would have enabled one to accompany each inspection team. The OSHA investigation report said that this situation occurred because of deficiencies in the State's procedures.

Evaluating requests to vary from standards

The act requires that employers comply with established occupational safety and health standards unless they can provide equal or better protection to workers by alternative means. OSHA and States with approved plans may grant an employer permission to vary from a standard after reviewing an application and determining that the proposed alternative would provide equal or better worker protection.

State plans were approved on the basis that States would develop procedures for evaluating employers' requests for variances from safety and health standards. At least 16 States approved requests for variances before they had fully developed their procedures on variance applications. OSHA records showed that State variance procedures were not as complete or as effective as OSHA's.

From June 1973 through May 1974, Washington had not fully developed procedures for evaluating variance applications but had granted 47 variances from its standards. OSHA noted that, for 37 of these variances, the applicants did not specify the alternative protection they would provide. Seventeen of the approved variances involved circular saws, which can seriously injure workers if proper safeguards are not provided.

INADEQUATE STATE INSPECTIONS WILL CONTINUE UNLESS ACT IS AMENDED

Unless the act is changed to require States to use OSHA's criteria until they develop their own equally effective criteria, State inspections under plans approved and to be approved by OSHA will continue indefinitely to be made with defective legal authority, standards, or enforcement procedures.

In May 1974 OSHA issued regulations stating that it would stop its concurrent enforcement in States with approved plans after a State

--passed legislation to enable it to carry out its plan,

--promulgated safety and health standards,

--obtained enough qualified personnel, and

--established a review and appeals system.

As of December 1975 OSHA had determined that 16 of 23 States that were making inspections under approved plans had met the above minimum requirements. According to OSHA headquarters officials, of the other seven States:

--One had not passed legislation.

--One had not promulgated safety and health standards.

--Three had not obtained enough qualified personnel.

--One had neither obtained enough personnel nor established an appeals system.

--One had not established an appeals system.

The fact that it meets all four of the minimum requirements discussed above does not mean that a State has all it needs to make inspections at least as effectively as OSHA because (1) in determining whether a State meets the requirements pertaining to legislation, standards, and appeals systems, OSHA does not review these elements in detail to see whether they are as effective as OSHA's and (2) the minimum requirements do not include enforcement procedures and provisions for promptly adopting new or modified standards.

Of the 16 States that had met the minimum requirements as of December 1975, OSHA had completed semiannual evaluations of 8 that had operated at least 6 months after meeting the requirements. These evaluations showed that some deficiencies of the type discussed in this report still existed.

For example, OSHA found that certain Kentucky standards were not as effective as Federal standards relating to the same issue. According to the OSHA evaluation, the State Standards Board had shown some disregard for adopting standards as effective as Federal standards and that, as a result, "* * * there is some question as to whether adequate employee protection is being maintained throughout the State of Kentucky." In Tennessee, OSHA noted that language in the State's legislative authority limited the State's effectiveness in gaining entry to inspect railroads. In August 1975 OSHA approved Tennessee's legal authority as being as effective as OSHA's althougn it lacked authority to inspect railroads.

OSHA headquarters officials agreed that States which have met the four minimum requirements may still have shortcomings in such program elements as standards and enforcement procedures. As of June 1976 none of the 23 States making inspections had obtained Labor's approval that their legal authority, standards, enforcement procedures, and appeals system were at least as effective as OSHA's in all respects.

As of June 1976 OSHA was reviewing the plans that 16 States had submitted for approval. Unless States are required to use legal authority, standards, and enforcement procedures as effective as OSHA's when they begin inspections under approved plans, deficiencies such as those discussed in this report may exist in these States' inspection programs.

CHAPTER 4

STATES DELAY ADOPTING CHANGES IN OSHA'S STANDARDS

The 1970 act authorizes OSHA to set (1) emergency temporary standards to protect workers from grave danger and (2) permanent standards after an opportunity for public hearings to obtain the views of all affected parties, including States.

OSHA has set many new standards and modified others since the first State plan was approved. State standards are to be as effective as OSHA's, but States have not promptly adopted new or modified standards established by OSHA. OSHA's policy provides that OSHA inspectors are to enforce a new or modified standard pending adoption of corresponding standards or changes by States. In some cases, OSHA did little to enforce new or modified standards pending adoption by States. During this time States continued workplace inspections without having adopted the standards.

INEFFECTIVE EMPLOYEE PROTECTION FROM VINYL CHLORIDE HAZARDS

In April 1974 OSHA promulgated an emergency temporary standard reducing the acceptable level of worker exposure to vinyl chloride air contaminants from 500 to 50 parts per million. It also required employers to monitor employee exposure to insure compliance with the standard and to inform employees of such exposure. Vinyl chloride exposure has been linked to worker deaths from cancer. OSHA issued the emergency temporary standard because it decided that vinyl chloride exposure posed a grave danger. The emergency temporary standard was replaced by a permanent, more stringent standard on April 1, 1975.

In spite of the gravity of the vinyl chloride hazard, the six States we visited did not promptly adopt the emergency temporary standard. Tennessee took 4 months to adopt it, and New Jersey, New York, Oregon, South Carolina, and Washington never adopted it. The States had standards for vinyl chloride, but they were not as stringent as OSHA's emergency temporary standard.

Our inquiry into OSHA's enforcement of the vinyl chloride standard during the time the six States had no comparable standard revealed the following:

--An OSHA health inspector noted that about 75 firms in Washington used or may have used vinyl chloride. However, he said that, because he was the only OSHA industrial hygienist in the State and was responsible for other monitoring activities, only six firms had been inspected for vinyl chloride between April 1974 and January 1975. One of these firms was cited for violating the standard.

--We were told that, during the time the States were operating without a standard comparable to OSHA's, no OSHA inspections for vinyl chloride were made in Oregon and Tennessee and only four firms were inspected in South Carolina.

--In New York and New Jersey, we were told that OSHA had made 151 inspections for vinyl chloride as of May 1975. OSHA officials had not attempted to identify all workplaces in these States where vinyl chloride might have been present but estimated that there were several hundred.

As of June 30, 1975, three of the six States had not adopted standards on vinyl chloride as stringent as OSHA's permanent standard.

INEFFECTIVE EMPLOYEE PROTECTION FROM CARCINOGENS

In May 1973 OSHA established emergency temporary standards to protect employees from exposure to several cancer-causing chemicals (carcinogens). OSHA established permanent standards on those carcinogens in January 1974. New Jersey and New York had not adopted either the temporary or permanent standards before withdrawing their approved plans in March 1975 and June 1975, respectively. Tennessee adopted the permanent standards in April 1974, and Oregon and Washington adopted them in October 1974; but none of these States adopted the emergency temporary standards. Consequently, State inspectors made inspections using standards on these carcinogens less stringent than OSHA's.

OSHA did little to insure worker protection from the carcinogens while the States were without standards or without standards as stringent as OSHA's. For example:

--OSHA officials said OSHA made no inspections for the carcinogens in Tennessee and Oregon before they adopted the standards.

--Before Washington's adoption of the standards, OSHA inspected less than 10 of approximately 80 Washington firms identified by OSHA as possibly having the carcinogen hazards.

--As of May 1975 OSHA reported making only two inspections for the carcinogens in New Jersey and three in New York. According to OSHA officials, they did not attempt to compile a list of workplaces in these States that may have been using the carcinogens.

CHAPTER 5

NEED FOR MORE SPECIFIC REQUIREMENTS FOR STATE APPEALS SYSTEMS

The 1970 act provides that an employer may contest citations, penalties, and abatement periods proposed by OSHA. It also provides that employees may (1) contest abatement periods, (2) contest OSHA or State failure to issue citations for alleged violations, and (3) bring discrimination charges against employers. To protect these rights and provide for the independent and impartial settlement of contested cases outside of Federal courts, the act established the Occupational Safety and Health Review Commission. Commission decisions may be appealed through Federal courts.

OSHA's criteria for State plan approval generally require the State to develop an employer appeals system, but they neither specify what the State system should be nor mention employee appeals rights.

States began making inspections without having their appeals systems approved by OSHA. The absence or inadequacy of appeals systems in some States influenced the States' issuance of citations after inspections. Also, employers and employees in some States did not have the same rights provided under the Federal appeals system.

ABSENCE OF APPEALS SYSTEMS

After enacting legislation providing the legal authority to assess penalties for violations, California made 3,748 inspections before establishing an appeals system. Pending establishment of such a system, the State did not assess any penalties for the 20,414 violations of safety and health standards cited by its inspectors during this period.

During the first 5 months that South Carolina operated its program with OSHA grants, the State had no system, other than the courts, to handle employee and employer appeals. Accordingly, during this period rights comparable to those included under the Federal program were not available to employees and employers affected by citations issued by the State inspectors.

APPEALS SYSTEMS NOT SEPARATED FROM ENFORCEMENT AGENCIES

OSHA's criteria for State appeals systems did not require the State to establish an independent review agency comparable to the Occupational Safety and Health Review Commission. The existence of an independent review agency is intended to protect employer and employee rights and to provide for an independent review of appeals or contests. Under the systems established by seven States, the State agencies making compliance inspections also settled contested citations. Obtaining an independent review in these States requires appealing decisions to the courts.

Also, under the Federal system only the independent Review Commission can decide whether a citation may be modified or a case settled after the citation is formally contested. OSHA did not require that States adopt such a requirement. In some States the enforcement agencies were permitted to modify their own citations and settle cases after they had been contested.

STATES ALLOW LONGER CONTEST PERIODS THAN OSHA

The act provides that a citation and proposed penalty is final unless the employer notifies OSHA within 15 working days that he intends to contest. OSHA did not require that the States have similar provisions. Some States had established contest periods longer than 15 working days. For example, Utah and New York each allowed 30 days and South Carolina allowed 20 days.

Allowing a longer contesting period could delay required abatement of the hazard involved.

OTHER DIFFERENCES BETWEEN STATE AND FEDERAL APPEALS PROCESSES

In February 1974 the Occupational Safety and Health Review Commission sent a questionnaire to 24 States with approved plans, addressing the States' appeals processes. Responses from the States showed that some had established review processes with major departures from the Federal procedures for handling contested cases.

--In Michigan, employees or their representatives were not given an opportunity to participate as parties to

a contested case. The 1970 act provides for full participation of all parties in contested citations issued by OSHA.

--Five States did not require that notices of contested cases be given to employees affected by the hazards involved. OSHA procedures require that employees or their representatives be notified if an employer contests so that they may attend the hearing.

--Five States presumed that, when an employer contested a citation or proposed penalty, the allegations contained in the citation were true and the penalty proposed was appropriate unless the employer proved otherwise. This is contrary to the Federal procedures, which place the burden of proof on the citing authority.

--Twelve States did not allow the employer to petition for modification of the abatement date specified in an uncontested citation. The 1970 act provides that the employer may petition for and obtain an extension of abatement when good faith is exercised.

The act created the independent Occupational Safety and Health Review Commission to protect employer and employee rights and to provide for the independent and impartial settlement of contested cases outside the courts. If States are to provide their workers with protection at least as effective as that provided by the Federal Government, OSHA should insure that State appeals systems operate with criteria at least as effective as the Federal Government's.

CHAPTER 6

NEED TO ABATE HAZARDS OSHA IDENTIFIES WHEN MONITORING STATE INSPECTIONS

OSHA does not insure that safety and health hazards it identifies during monitoring of State inspections are abated. In monitoring States' activities under OSHA-approved plans, OSHA personnel regularly visit workplaces. Such visits include:

--"On-the-job evaluations" (OJEs) of State inspections as they are being made.

--"Spot checks" at workplaces previously inspected by State inspectors. Under OSHA's procedures State personnel may, but are not required to, accompany the OSHA representative making the spot check.

We reviewed OSHA records pertaining to OJEs and spot checks of State inspections in Oregon during the year ended January 1, 1975, and in Washington during the 6 months ended November 30, 1974. The records showed that OSHA personnel identified numerous hazards which they believed were violations of safety and health standards, as shown below.

	Number of hazards identified by OSHA (note a)		
	Serious	Nonserious	Total
OJEs:			
Oregon	75	726	801
Washington	9	113	122
	84	839	923
Spot checks:			
Oregon	49	357	406
Washington	50	204	254
	99	561	660
Total	183	1,400	1,583

a/As classified by OSHA personnel. Under the act, OSHA must assess a mandatory penalty for serious violations for which there is a substantial probability that death or serious physical harm could result. OSHA defines "serious physical harm" as that which could cause permanent or prolonged impairment of the body or temporary disability warranting inpatient hospital treatment.

None of the 923 hazards OSHA identified during the OJEs were cited and required to be abated by OSHA or State inspectors. 1/

Some of the hazards OSHA identified during the spot checks existed when the State inspectors made their initial inspection; others came into existence after those inspections. OSHA did not issue citations requiring abatement of any of the hazards noted during the spot checks and did not require the States to do so. We examined State inspection records to determine whether the States had reinspected the workplaces where OHSA's spot checks revealed serious hazards. As of April 7, 1975, Oregon had not reinspected the workplaces where 28 of the 49 serious hazards had been noted. As of March 28, 1975, Washington had not reinspected workplaces where 48 of the 50 serious hazards had been noted.

Many of the hazards noted during OJEs and spot checks were potentially harmful to employees. For example:

--Workers were exposed to unguarded saws.

--Workers were not protected from falling into an open vat filled with liquid salt heated to 1,500 degrees Fahrenheit. Employees were observed standing beside the vat.

--Blasting powder and blasting caps were not separated to prevent accidental detonation.

--The cutting heads on a wood-shaping machine were not guarded to prevent employee contact. The OSHA representative who made the spot check noted that an employee's fingers had been badly cut by the machine.

OSHA PROCEDURES DO NOT INSURE ABATEMENT OF HAZARDS

In April 1975 OSHA issued guidelines for OSHA field offices to follow in making OJEs and spot checks. Adherence to these guidelines, however, will not insure that all hazards found during these monitoring activities will be promptly abated.

1/Other hazards identified during the OJEs were cited by the State inspectors.

The April 1975 guidelines state that OJEs are for monitoring purposes only and that the OSHA monitor will not take enforcement action except in the case of an imminent danger not acted upon by the State inspector. The guidelines do not require State enforcement action for other hazards found during OJEs.

For spot checks, the April 1975 guidelines provide that:

--The spot check is for monitoring purposes and no enforcement action should be taken by the OSHA monitor or by any State personnel accompanying the monitor, except to abate an imminent danger situation.

--At a closing conference the employer will be asked to abate imminent danger situations voluntarily. Further, the employer will be told that a subsequent enforcement inspection will result for any violations which appear to be serious and may result for apparent nonserious violations and that abatement of the hazards by the time of such reinspection will remove all cause for citation or penalty.

--Abatement of imminent danger situations will be required by OSHA or the State if the employer does not voluntarily abate. (The guidelines are unclear on the action that should be taken when the OSHA monitor does not believe that the State can and will take prompt action to require abatement of the imminent danger.)

--Serious violations noted during the spot check will be scheduled for reinspection by the State or by OSHA, depending on the operational status of the State program; such reinspection will not be required for apparent nonserious violations.

Although we recognize that OJEs and spot checks are intended to monitor State inspectors' performance, we believe that OSHA should do all it can to protect the workers exposed to the hazards noted during these visits.

OSHA should (1) insure that hazards identified in past OJEs and spot checks that could cause injury or illness to employees are abated and (2) revise its guidelines to insure prompt abatement of safety and health hazards identified in future OJEs and spot checks.

When an OSHA representative is accompanied by a State representative during OJEs and spot checks, OSHA should cite all violations not cited by the State representative that could cause injury or illness to employees. When OSHA makes spot checks without being accompanied by a State representative, it should cite all violations. OSHA's requirement for scheduling certain violations for subsequent reinspections by OSHA or by the State not only excludes some violations but also delays abatement of those included.

By letter dated June 9, 1975, we brought this matter to OSHA's attention and recommended that OSHA:

--Review or direct the States to review the records on past OJEs and spot checks to identify hazards which neither OSHA nor the States have required to be abated. We also recommended that OSHA take or require the States to take the necessary actions to insure that such hazards are abated by the employers.

--Revise the OSHA guidelines for making future OJEs and spot checks to require that OSHA or the State issue citations requirirng abatement of all hazards identified in OJEs and spot checks.

By letter dated August 5, 1975, the Department of Labor's Assistant Secretary for Administration and Management told us that OSHA recognized the importance of prompt abatement of hazards but that it disagreed with our recommendations because such actions (1) could invalidate the results of OSHA's monitoring activity, (2) could violate the terms of OSHA's enforcement agreements with the States, and (3) would not usually speed abatement of hazards.

The Assistant Secretary's comments on possible invalidation of OSHA's monitoring activity were addressed to OJEs. He said that

--during an OJE the State inspector is under considerable pressure because he is being observed by an OSHA representative;

--interruptions by the OSHA representative to point out hazards might unfairly damage the inspector's self-confidence, hamper his subsequent performance, embarass him, and lead to State charges of harassment; and

--the State might contend that the State inspector would have discovered and cited the hazard on his own had the OSHA representative not interrupted.

In our opinion, the Assistant Secretary's comments on possible invalidation of monitoring activity are not valid reasons for not requiring OSHA or the State inspector to promptly cite and require abatement of safety and health hazards. We believe that procedures could be formulated to avoid or minimize interruption of the State inspector until after his inspection.

Concerning OSHA's enforcement agreements with States, the Assistant Secretary said that enforcement action by OSHA as a result of a monitoring visit would subject the employer to two different appeals systems and possibly to two sets of "equal-but-not-identical" standards arising from a single inspection. According to him, this would cause confusion and charges of persecution and would directly contravene the provisions of any existing OSHA-State enforcement agreements.

The apparent problem of subjecting employers to two different sets of appeals systems and safety and health standards could be avoided if the law required OSHA to require States to make inspections with OSHA's criteria and procedures before the States' criteria and procedures were developed and approved as being as effective as OSHA's. (See ch. 3.) Concerning the OSHA-State agreements, we believe that any provisions in such agreements which preclude OSHA from acting promptly to protect the safety and health of employees should be amended.

In support of the position that issuing citations immediately after a monitoring visit would not usually speed abatement of the hazards, the Assistant Secretary said that

--in the case of spot-check monitoring, if the employer is informed of all serious violations and is aware that the State will reinspect, there will be no significant loss to worker safety and

--in the case of OJEs, OSHA has agreed to speed its notification to the States of serious violations so that remedial action can be taken by the State as soon as possible.

Making the employer aware of the hazards without issuing citations does not insure that he will abate them and does

not provide a basis for citing and penalizing the employer for failure to abate upon reinspection. Also, as previously stated, OSHA's reinspection policy delays abatement of the hazards. Issuing citations immediately after the initial OJE or spot check would reduce the number of inspections needed and should enable the inspectors to inspect more workplaces.

CHAPTER 7

CONCLUSIONS, RECOMMENDATIONS, AND AGENCY COMMENTS AND OUR EVALUATION

CONCLUSIONS

Legislation to amend the Occupational Safety and Health Act of 1970 is needed to insure that workers receive adequate protection in States operating under plans approved by OSHA. The 1970 act gave OSHA broad authority to permit States to carry out safety and health enforcement programs. It contains criteria that States must meet before their enforcement program plans can be approved. Such criteria, however, are met simply by including provisions in the plan for future development and adoption of needed program elements. There are no prerequisites in the act for permitting a State to make workplace inspections under an approved plan, no matter how deficient the State's program elements (that is, legal authority, standards, enforcement procedures, and appeals systems) may be when the plan is approved.

States have made and, unless the law is changed, will continue to make thousands of workplace inspections under OSHA-approved plans with deficiencies in their legal authorities, standards, enforcement procedures, or appeals systems. This is because OSHA, as permitted by the act, allowed the States to inspect workplaces shortly after OSHA approved their developmental plans, even if they did not have adequate legal authority, standards, and procedures. OSHA knows of numerous State inspections that did not provide adequate worker protection at places inspected or adequate incentives to employers for complying with safety and health standards. Although States have corrected many deficiencies, others nave not been corrected. OSHA has been willing to accept such conditions, however, until some future time when it hopes the States will have developed and adopted the necessary program improvements.

An alternative to permitting States to make inspections with inadequate authority, standards, and procedures would be to require States to use OSHA's authority, standards, and procedures until they have developed, adopted, and obtained OSHA's approval of their own. To the extent necessary, such requirements should include use of contracts rather than grant arrangements with the States. OSHA used this approach with some States before approving their plans. (See p. 10.)

Concerning our proposed alternative, the Department of Labor felt that we had not considered the realities of the developmental concept in State plans authorized by the act. Labor acknowledged that State inspections were deficient but maintained that eventually the States will be able to make inspections as effectively as OSHA or they will have approval of their plans withdrawn.

We recognize that the developmental concept is permitted by law. Our concern is that States are making inspections under criteria and procedures that provide less worker protection than those established by or pursuant to the 1970 act for Federal inspections. States are getting 50-percent Federal grants to help pay their operating costs. Our proposal would result in immediate use of OSHA's criteria and procedures pending development of the States' programs. This would not only provide for immediate improvement in worker protection; it would also preclude investment of millions of dollars for inadequate or ineffective State inspections.

Under the developmental concept, OSHA did not identify, before plan approval, all significant defects in the States' authorities, standards, and procedures so that commitments and target dates could be established for correcting them. When States did not meet target dates for correcting identified defects, OSHA often permitted the States to continue to make inspections with 50-percent grants. Under our suggested alternative, specific commitments and target dates would be established for all program elements; worker protection would not be affected by failure to meet targets because States would be using OSHA's program elements pending approval of their own.

As discussed in chapter 6, OSHA's policy and procedures for not citing or requiring the State to cite violations found by OSHA during its monitoring of State inspections result in delays in requiring abatement of the hazards involved and necessitate reinspections of the workplaces. In disagreeing with our proposals to change such policy and procedures to require citations without reinspections, Labor expressed concern that such actions could invalidate the results of monitoring visits, could violate OSHA's enforcement agreements with States, and would not usually speed abatement. As discussed on pages 38 and 39, we believe that such problems or potential problems should not override the need for prompt citation and abatement of violations that could result in death or serious injury or illness to employees and that our previous proposals on this matter should be reconsidered.

In summary, we believe that the matters discussed in this report show a need for requiring States to use the Federal authority, standards, and enforcement procedures when making inspections until they have obtained, developed, or adopted authority, standards, and procedures as effective. Such action is necessary to insure adequate worker protection under OSHA-assisted State programs.

RECOMMENDATIONS

Labor attributes deficiencies in the States' enforcement programs to the developmental concept of the act's State plans provisions. We recommend that the Congress amend the Occupational Safety and Health Act to require that:

--The grant arrangement for State inspections under an approved plan be used only if the State either (1) has fully developed, adopted, and obtained Labor's approval of all specific legal authorities, standards, enforcement procedures, standards-adoption provisions, and appeals procedures or (2) agrees to use Labor's established procedures, standards, and provisions pending development, adoption, and approval of the State's.

--A contract arrangement be used if a State wants to make workplace inspections under the act but is precluded, by limited legal authority or other problems, from operating satisfactorily under a grant arrangement.

--As a condition for inspecting workplaces under the act, a State promptly adopt and use all new or modified standards and enforcement criteria adopted by Labor to improve worker protection, pending development and Labor approval of the State's.

We recommend that the Secretary of Labor require that:

--Labor compare the States' existing legislation, safety and health standards, enforcement procedures, standards-adoption provisions, and appeals systems to identify all instances where they are not as effective as Labor's.

--State plans include specific commitments and target dates for developing, adopting, and getting Labor

approval of specific program authorities, standards, procedures, provisions, or systems needed to be as effective as Labor's.

--Labor or the State issue citations requiring abatement of safety and health violations identified during Labor's on-the-job evaluations and spot checks of State inspections.

--Labor or the States (1) review records of OSHA's past on-the-job evaluations and spot checks of State inspections to identify hazards which neither Labor nor the State has required to be corrected and (2) act to insure correction of such hazards.

DEPARTMENT OF LABOR COMMENTS AND OUR EVALUATION

The Department of Labor, by letter of May 12, 1976 (see app. I), agreed with some of our recommendations and disagreed with others.

Labor said that, in discussing deficiencies in State inspections, we had ignored the fact that OSHA personnel also make inspections. Our point is that States received 50-percent Federal grants for numerous inspections made with deficient legal authority, standards, enforcement procedures, and appeals systems. The fact that OSHA personnel also made inspections in a State had no bearing on the quality of the State's inspections.

Labor said some of our recommendations were already being implemented by OSHA and have been since the beginning of the State plans program, in that:

--OSHA compares States' existing legislation, enforcement procedures, standards-adoption provisions, and appeals systems with those of OSHA to identify instances where the former are less effective.

--State plans include specific commitments and target dates for developing and implementing parts of its program which are not complete at the time of approval.

--OSHA monitors the States' progress toward meeting those commitments.

As described on pages 8 and 9, we recognize that OSHA made comparisons, identified deficiencies, and included correction commitments and target dates in State plans before approving them. However, OSHA's criteria for such comparisons did not require, and OSHA personnel said they did not make, detailed comparisons of all aspects and provisions of the States' legal authority, standards, enforcement procedures, and appeals systems with OSHA's. The extent to which OSHA has already made comparisons and identified deficiencies would have to be considered in deciding, State by State, what remains to be done.

According to OSHA headquarters officials, complete comparisons of State standards with OSHA standards were not made for all States; they said such comparisons would be made as part of OSHA's evaluations of the States' actual operations under section 18(e) of the act. (See p. 6.)

Concerning two of our recommendations to the Congress, Labor stated:

> "Recommendations * * * which suggest that States with developmental plans operate under a contract arrangement or adopt OSHA procedures in the interim, have merit and may well have been a better approach when dealing with States like New York and New Jersey, which were very far afield from an OSHA type enforcement program at the time of their approval. However, as mentioned before, almost all State plans now approved or those which are expected to be approved do have legal authority, enforcement procedures, and standards-adoption provisions in place." (Underscoring supplied.)

Our position is that all States making inspections under the act should use legal authority, standards, enforcement procedures, and appeals systems as effective as OSHA's. Although some of the States have these program elements in place, OSHA had not, as of June 1976, determined that all elements for any one State were as effective as OSHA's in all respects.

Labor said that States object to operating under a contract after they have an approved plan and that operating under a contract would not give a State the experience it needs to operate its own program. We believe that the experience of operating under a contract would be basically the same as under an approved-plan operating grant. The

major difference would be that the States would use OSHA's authority, standards, and enforcement procedures until their own are as effective.

Concerning our other recommendation to the Congress, Labor said that:

--OSHA recognized that delays occur between its adoption of new standards and procedures and the States' responses.

--Such delays are particularly regrettable in the area of standards promulgation. OSHA now requires that States promulgate (1) changes or additions to OSHA standards within 6 months of Federal promulgation and (2) emergency temporary standards within 30 days.

--Although GAO's concern for such lapses is valid, a legislative amendment depriving States of the opportunity to develop and promulgate their own standards would be the only way of changing the present situation. This would create grave difficulties for States with approved plans in that their laws and regulations would have to be changed. At this late date, depriving States of their prerogative to develop their own standards would undermine credibility in the Federal-State partnership.

Our recommendation does not involve depriving States of their prerogative to set their own standards, but merely requiring them to promptly adopt and use new OSHA standards and enforcement criteria pending their developing and obtaining OSHA's approval of their own corresponding new standards and criteria. Labor said that some State laws prohibited such action. In such cases, the State plan should be revised to require the State to amend its legislation or develop alternative means for protecting workers in the interim.

In summary, Labor said that, although our findings were well founded when first made, time will render them obsolete because:

--The developmental periods for 19 of the 23 approved State plans will be completed during calendar year 1976.

--OSHA is no longer approving plans that lack essential items that would delay effective enforcement.

--It is too late for our recommendations to affect "more than a few" State plans; only two jurisdictions without plan approval show any progress toward approval.

Expiration of a State's 3-year developmental period does not insure that the State will have completed, and obtained OSHA's approval of, all needed program elements. As of June 30, 1976, the 3-year period had expired for 10 States, but OSHA had not determined that any of them had fully developed legislation, standards, procedures, and appeals systems as effective as OSHA's. Also, OSHA was reviewing 16 State plans for approval, and nothing precludes other States from submitting plans for approval in the future.

In support of its comment that OSHA was no longer approving plans that lack essential items that would delay effective enforcement, Labor said that OSHA decided in 1974 not to approve a plan if the State did not have enabling legislation or enough qualified personnel. This does not insure that such legislation or the State's standards, enforcement procedures, and appeals systems do not contain significant deficiencies before the State plan is approved and the State starts making inspections. OSHA's formal criteria--its indices of effectiveness--for approving plans have not been changed. Further, because OSHA's legislation, standards, and enforcement criteria are subject to change, the need to require States to promptly adopt changes intended to improve worker protection will continue indefinitely.

Labor disagreed with our recommendation to require OSHA or the State to issue citations requiring abatement of all safety and health violations identified during OSHA's on-the-job evaluations and spot checks of State inspections. Labor restated its policy of referring such violations to State or OSHA compliance personnel for followup inspections if the violations are serious. We, on the other hand, believe that OSHA or the State should promptly issue citations without making another inspection. (See pp. 38 and 39.)

According to Labor, a citation issued by an OSHA monitor could be successfully contested by the employer because the employer would not have been accorded proper procedures that go with an OSHA inspection. Labor added a citation issued by OSHA in the wake of a State inspection would make the employer subject to two separate, albeit equal, review

systems, which would result in confusion instead of a safe, healthful workplace.

We believe the first problem could be avoided by according the employer proper procedures during the monitoring visit. The second problem might cause confusion, but the hazards would be cited for abatement earlier than they would be through reinspection; also, this problem could arise under OSHA's reinspection procedure if OSHA, rather than the State, made the reinspection and issued the citation.

Labor concurred in our recommendation that OSHA or the States be required to review records of OSHA's past monitoring visits and act to insure abatement of hazards not previously cited. Labor said that OSHA had sent a memorandum to all OSHA regional administrators instructing them to carry out the recommendation.

STATES' COMMENTS AND OUR EVALUATION

The six States we visited commented on our findings and recommendations, agreeing with some, disagreeing with others. New Jersey, New York, and South Carolina agreed that some form of interim contract arrangement such as we recommended would be acceptable, but Oregon, Tennessee, and Washington disagreed. The latter cited their qualifications for performing effectively, including areas in which they believed they were more effective than Labor, and questioned the value of using Labor's criteria in lieu of their own.

Several States questioned the need for OSHA to review their plans, set target dates, and monitor their operations. They said OSHA had already done this. Some also questioned the need to adopt Federal standards and program changes immediately, particularly when State law required hearings before adoption or changes in standards.

We believe implementation of our recommendations is necessary to insure that States are operating with criteria as effective as Labor's. Notwithstanding the States' comments, States have operated with less effective criteria than OSHA. Unless more specific, detailed, and thorough reviews are made, additional States which seek plan approval may have plans approved and operate with deficiencies such as those discussed in this report. Similarly, unless States adopt Federal program changes when made, States will operate with criteria less effective than Labor.

The following summarize the more significant comments made by the States and our response:

1. A State may be more effective than Labor because it has certain provisions or standards that Labor does not have. Such strong points would therefore tend to offset State deficiencies.

Were our alternative adopted, States would use the more effective Labor criteria in those areas where they are now less effective than Labor while maintaining their own criteria in areas where they are more effective.

2. States have more inspectors than Labor and therefore make more inspections.

Making more inspections, covering more workplaces, does not compensate for inadequate inspection criteria. Quantity of inspections should not take precedence over quality. Using our suggested approach would not necessarily reduce the number of State inspections.

3. Deficiencies found in State programs could also be found in the Federal program.

We did not evaluate Labor's performance in making inspections. Because the act allows States several years before their operations must be as effective as Labor's, we evaluated Labor's approval of State plans and the criteria which it required its inspectors to follow and the criteria it allowed States to follow. We found that deficiencies in State criteria caused or contributed to the State performance deficiencies shown in this report. These deficiencies were generally identified by Labor during its monitoring of State performance.

4. Many deficiencies noted in the report have been corrected.

Some deficiencies noted in the report have been corrected, others have not. Some States have completed their 3-year developmental period yet still have deficiencies in the criteria they are using. To determine the extent to which States have corrected deficiencies and are now using criteria as effective as Labor's requires a comprehensive Labor evaluation and comparison of Federal and State criteria.

5. Some States have been enforcing worker safety and health programs for many years under procedures adopted by the State legislature. Such States have more safety and health experience than Labor. Labor should not attempt to require States to do what is contrary to State law. For example, OSHA should not require States to adopt standards without public hearings.

State participation in the Federal program is contingent on developing a program at least as effective as the Federal program. If a State's criteria are as effective as Labor's and Labor improves its program, the States would have to make similar improvements to retain an "as effective as" status. If States are to be as effective as Labor, as required by the act, it would appear that States should at least temporarily adopt new Federal standards or important program changes as soon as they are promulgated or announced. A State may then develop its own provision or adopt Labor's after holding the desired public hearings.

6. Our recommendations, if adopted, might discourage further State participation.

States interested in protecting workers should be willing to inspect using the Federal criteria until their own criteria are found to be as effective as Labor's. We are not recommending, as some States appear to have concluded, that States now operating under approved plans must immediately begin inspecting using all of Labor's criteria in lieu of their own. Instead, we are recommending that Labor review State criteria in detail to identify all deficiencies and that States be required to adopt Labor criteria wherever the State criteria are deficient. If Labor's detailed analysis of State criteria shows a specific provision to be as effective as Labor's, a State would be permitted to continue to use that provision. If a State's criteria are not as effective, it would adopt Labor's provision.

APPENDIX I

U.S. DEPARTMENT OF LABOR
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON

May 12, 1976

Mr. Gregory J. Ahart
Director
Manpower and Welfare Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Ahart:

Enclosed, as requested, is the Department's response to the draft GAO report "Federal Requirements Need Strengthening to Improve Worker Protection by States Under the Occupational Safety and Health Act."

Sincerely,

Fred G. Clark

FRED G. CLARK
Assistant Secretary for
Administration and Management

Enclosures

Response to GAO Draft Report "Federal Requirements Need Strengthening to Improve Worker Protection by States Under the Occupational Safety and Health Act"

The GAO report regarding State Plans approved under Section 18(b) of the Occupational Safety and Health Act of 1970 proposes recommendations to both Congress and the Secretary of Labor. We would like first to address those recommendations directed toward Congress as the Occupational Safety and Health Administration (OSHA) believes that some of them are based on inaccurate information and are therefore inappropriate, particularly for legislative amendment.

RECOMMENDATIONS TO CONGRESS

GAO's major concern appears to be that States with developmental plans are permitted by OSHA to make inspections even though all their program elements at the time of initial approval may not be as effective or as complete as those required by OSHA. GAO maintains that OSHA should preclude such States from making inspections under their own procedures until such time as these States have completed all required structural items. OSHA's position on allowing developmental State plans to operate after plan approval was explained to GAO in a letter to Mr. Gregory J. Ahart dated May 12, 1975 (Attachment #1). This letter included a decision by the U.S. District Court approving a State's administration of a safety and health program not yet as effective as the Federal government's. There appears to be a continuing policy disagreement between OSHA and GAO on the issue of operation of developmental State plans.

It should also be mentioned that the policy which OSHA instituted to offset the consequences of allowing States to function under developmental plans is not specifically referred to in this GAO report. Federal enforcement continues in States with approved developmental plans until such time as a State has the capacity for providing enforcement protection for workers and this fact needs to receive greater emphasis. GAO cites numerous examples of State inspections which were performed under systems not as stringent as OSHA's (e.g. New York and New Jersey); however, the report does not explain that these State inspections were over and above the number of enforcement inspections performed by OSHA personnel. State inspections were made in addition to those performed by OSHA, and not in lieu of Federal inspections. Operational Status Agreements are only briefly mentioned (although not referred to by that title) on pages 33 and 34; omission of explicit reference to this important fact creates the impression that only inadequate State inspections were performed.

The objectives of many of GAO's suggestions have already been met by OSHA's decision, in fall 1974, not to approve proposed State plans that do not have either enabling legislation or a sufficient number of qualified personnel. This change in policy has eliminated the highly developmental plans which OSHA approved in the early days of the State plan program and which are the object of most of the GAO observations in this report.

Another factor which should be considered is that, as well-founded as were many of GAO's findings when first made, 19 of the 23 approved State plans will be completing their developmental periods this calendar year, and so time will render these findings obsolete. Also, as explained in the preceding paragraph, OSHA is no longer approving State plans that lack essential items of a kind that would delay effective enforcement. Even if GAO's argument that States should be prevented from operating an enforcement program prior to completing the approval criteria were accepted, it is too late to have an effect on more than a few State plans. At this time only two jurisdictions without plan approval show any progress toward approval.

GAO's first three recommendations (pages 55 and 56 of the draft report) are already being implemented by OSHA - and have been since the beginning of the State plan program.

1. OSHA does compare the States' existing legislation, safety and health standards, enforcement procedures, standards-adoption provisions, and appeals systems with those of OSHA to identify instances where they are less effective. Attached are Program Directive 72-11, Review and Analysis of State 18(b) plans at the National Office (Attachment #2) and Index Form for State 18(b) plans which was completed for every State plan under review (Attachment #3).

2. State plans do include specific commitments and target dates for developing and implementing those parts of its program which are not complete at the time of approval. Attached is an example of a developmental schedule published in the Federal Register, which includes specific commitments and target dates. Such developmental schedules were furnished for all State plans (Attachment #4).

3. And finally, OSHA does monitor the States' progress toward completion of those commitments. This progress is detailed in the Semi-Annual Evaluation on each State. When a developmental step is completed, it is submitted for review and approval as described in the attached 29 CFR 1953 (Attachment #5). Thus, OSHA is uncertain as to why a legislative amendment is recommended for these items.

Recommendations four and five (page 56 of the draft report), which suggest that States with developmental plans operate under a contract arrangement or adopt OSHA procedures in the interim, have merit and may well have been a better approach when dealing with States like New York and New Jersey, which were very far afield from an OSHA type enforcement program at the time of their approval. However, as mentioned before, almost all State plans now approved or those which are expected to be approved do have legal authority, enforcement procedures, and standards-adoption provisions in place.

Further, the States object to having their inspection staffs operate under a Section 7(c)(1) contract after they have an approved Section 18(b) State plan. Please see the attached letter from Mr. Jacobs, the Washington State designee, for a further explication of the States' view of this proposal (Attachment #6). If OSHA continues to control a State's personnel through a contract arrangement even after plan approval, the State will not get the experience it needs to operate its own program. OSHA still maintains that the best way to handle the "growing pains" of the developmental period in the State is to continue to conduct Federal inspections while allowing the State to run its own program. This is particularly true in that we no longer have, nor will have, States in the program with inadequacies such as lack of legislation.

The last recommendation to Congress (page 56 of the draft report) deals with States' immediate adoption of new Federal standards and procedures. OSHA recognizes that a delay usually does occur between OSHA's initiation of a program change and the States' response. This delay is particularly regrettable in the area of standards promulgation. Generally the States are in a position of "catching up" with new Federal standards.

Under the present legislation, States do have the authority to develop and to promulgate their own standards. For this reason OSHA cannot ask that States automatically adopt new Federal standards; in some cases, the State laws prohibit such action. We have tried to reduce this time lag in that we now require that States promulgate changes or additions to OSHA standards within six months of Federal promulgation and within 30 days for emergency temporary standards.

However, this time schedule still permits a lapse in coverage for the standard in question (though most States have been promulgating standards in a shorter time period). OSHA believes this GAO concern to be valid and recognizes that a legislative amendment depriving States of the opportunity to develop and promulgate their own standards would be the only way of changing the present situation. However, an amendment to that effect at this point would create grave difficulties for States with approved plans in that their own legislation and regulations would have to be changed. Also, States entered into plan agreements with the understanding that they could develop their own standards if such standards were at least as effective as OSHA's. To attempt to deprive them of this prerogative at this late date would undermine credibility in the Federal-State partnership.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

I. We recommend that the Secretary of Labor require that: OSHA or the State immediately issue citations requiring abatement of all safety and health violations identified during OSHA's future on-the-job evaluations and spot-checks of State inspections.

The recommendations to the Secretary of Labor deal with the procedures by which OSHA monitors Section 18(b) approved State plans. OSHA agrees, in part, with GAO's first recommendation regarding action that should be taken when safety and health violations are discovered in the workplace during the course of monitoring. We have already added requirements to our field operating procedures to handle this contingency. The attached sections from the Field Operations Manual on Spot-check Monitoring Visits and On-the-job Evaluations reflect this change (Attachment #7).

"Imminent danger" situations are now required to be corrected immediately by either the Federal monitor or the State inspector. If serious violations are found in the course of a monitoring activity, such violations are now required to be referred immediately to the State or to the OSHA Area Office for an immediate follow-up inspection. The State must also inform OSHA of the result of its subsequent follow-up on serious violations.

Non-serious violations are now also required to be referred in the same manner; however, a follow-up inspection is discretionary. OSHA chooses not to mandate an additional enforcement action in the case of a non-serious violation because of the wide range of severity included in the definition "non-serious." If the possible non-serious violations are of a minor nature, the States' enforcement capabilities might better be spent in following the priorities of their own inspection scheduling systems, e.g., inspecting for the first time workplaces with a high hazard incidence, rather than tracking down non-serious violations uncovered by monitoring. For this reason, we prefer to allow some latitude in the area of follow-up on non-serious violations.

GAO says that OSHA should issue citations during the course of a monitoring activity, such as a spot-check monitoring visit. OSHA believes that requiring immediate follow-up is a better procedure because a citation issued by a monitor, while actually in the plant in a monitoring capacity, is subject to successful contest by an employer in that the employer will not have been accorded the proper procedures that go with an OSHA inspection. Also, a citation issued by OSHA in the wake of a State inspection would make the employer subject to two separate, albeit equal, review systems. Confusion, instead of a safe and healthful workplace, would result.

II. We recommend that the Secretary of Labor require that: OSHA or the States (1) review records of OSHA's past on-the-job evaluations and spot-checks of State inspections to identify hazards which neither OSHA nor the State has required to be abated and (2) take actions to insure abatement of such hazards.

We concur with the second GAO recommendation to the Secretary of Labor that OSHA review past monitoring records to insure that follow-up activity has occurred where appropriate. The Associate Assistant Secretary for Regional Programs has sent a memorandum to all Regional Administrators explaining the need for this double-check and requiring that the Regional Administrator have his staff carry out the GAO recommendation.

ADDITIONAL OBSERVATIONS REGARDING THE GAO REPORT

The GAO report contains many descriptions of specific inadequacies of State plans. A response to much of this material is difficult in that the evidence is presented without source documentation or the references are too vague to be able to identify which States are referred to. However, we would like to address the following items:

1. Page 8. OSHA does review States' Compliance Manuals. If the Compliance Manual was submitted as part of the original plan package, review was performed prior to plan approval. In cases where completion of a Compliance Manual was a developmental step, the review was performed later, at the time of submission by the State.

2. Page 8. Contrary to the GAO statement, Maryland adopted Federal standards in March 1973, several months before the time of plan approval in June 1973. Also, the reference to emergency temporary standards dealt with the question of need to promulgate regulations governing emergency temporary standards and not the actual State promulgation of any emergency temporary standard.

3. Page 13. GAO needs to be more definitive on those areas "where OSHA's review is not specific enough." This statement is made several times in the report, but OSHA is never told where the State plan review was inadequate. (Also see bottom of page 24 of GAO report.)

4. Page 18. South Carolina now has the "general duty clause" in both legislation and regulations. Alaska includes a general duty provision in its standards.

5. Page 19. Mr. Jacobs, the Washington State designee has explained the issue of "substantial" versus "reasonable" in regard to imminent danger situations in his response to the GAO report (see Attachment #6). Further, GAO did not mention that Washington inspectors have immediate authority to shut down an employer's operation in cases of imminent danger. This procedure is more effective than OSHA's.

6. Page 19. Nevada's law was amended July 1, 1975, to read "employees who may be injured."

7. Page 21. Although a lack of employee participation in inspections in Indiana is a valid criticism, it does not stem from Indiana's not having such a requirement. This provision is in the Indiana law (effective May 1, 1973). The deficiency here is one of performance, not structure -- a distinction, which is not made clear in the report.

8. Page 28. South Carolina's definition of imminent danger in the Compliance Manual is the same as the Federal definition.

9. Page 29. OSHA's view of the issue of hazard classification, as described in the examples provided by GAO, is that it is a performance problem and not a matter of lack of procedures.

10. Page 30. Washington State has always had the requirement for posting of citations in its law. Also, the requirement to post is written on the citation itself. OSHA requested that the State add the posting requirement to its regulations, which was done. It may be true that employers have failed to post citations, but this problem is not due to inadequate procedures.

Further down on page 30 is a section on Washington's procedure of not setting abatement periods of less than 16 days. The State added this time stipulation to its procedures as a result of an OSHA Review Commission decision; however, at the request of the OSHA Regional Office, the restriction was deleted and Washington now has no artificial time limit on abatement periods.

11. Page 31. Oregon's administration rule 46-605 does require employee participation in inspections; consequently we are puzzled by GAO's interpretation of this important provision.

CONCLUSION

Most of the shortcomings observed by GAO during the past few years and presented in this report are, for the most part, no longer applicable. The examples of inadequacies in structural components of various State plans included in the GAO report have either already been eliminated or, as in the case of New York and New Jersey, the plans themselves have been withdrawn. The balance of the documentation in the GAO report serves to illustrate the success of States in completing their developmental commitments and correcting the plan deficiencies as identified by OSHA.

As stated, we concur with some of the recommendations made in this report. However, OSHA believes that some of the data in the GAO report is incorrect, and does not accurately represent the true status of State plans at this time. While the close scrutiny provided by GAO has been helpful to OSHA staff as a cross-check on possible inadequacies of State plans, we believe that some of the material needs a second look before it is included in final, public report. We would be very happy to meet and discuss in more detail the information in the GAO report.

GAO notes:

1. Attachments referred to in this letter have not been included because of their length.

2. Page references in this letter refer to the draft report and do not necessarily agree with the page numbers in the final report.

PROPOSED AMENDMENTS TO THE

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled

SEC. 1. Section 18 of the Occupational Safety and Health Act (29 U.S.C. 667) is amended by adding after subsection (d) the following new sections:

"(e) The Secretary shall not permit a State to make workplace inspections under a grant arrangement as authorized in subsection (g) of section 23 unless the State either--

(1) has fully developed, adopted, and obtained the Secretary's approval of all specific legal authority, standards, enforcement regulations and procedures, standards-adoption provisions, and appeals system, or

(2) agrees to use the established Federal procedures, standards, and provisions pending development, adoption, and approval of the State's.

(f) If a State is precluded from operating satisfactorily under a grant arrangement as provided for in subsection (e) of this section, any workplace inspections by such State under this act shall be under contract with the Secretary as authorized in section 7. Such contract shall provide for inspections and enforcement actions using the Secretary's legal authority and the Federal standards, regulations, procedures, and appeals system established by or pursuant to this act.

(g) Any agreement for State inspections authorized by the act shall require that the State adopt and use new or modified Federal standards and inspection and enforcement criteria upon their issuance pending the Secretary's approval of new corresponding State standards and inspection and enforcement criteria.

SEC. 2(a). Subsection (e) of section 18 is amended by striking out the second sentence thereof and by adding in lieu thereof the following new sentence: "The Secretary may exercise the authority referred to above until he determines that the State has fully developed specific legal authority, standards, enforcement regulations and procedures, standards-adoption procedures, and appeals system needed to enable the State to inspect workplaces and enforce standards

APPENDIX II

at least as effectively as the Secretary; and until he determines, on the basis of actual operations under the State plan, that the criteria set forth in this subsection and in subsection (c) are being applied."

(b) The third sentence of subsection (e) of section 18 is amended by striking out "(f)" after "subsection" and substituting "(i)" in lieu thereof.

(c) Subsections (e)-(h) of section 18 are redesignated subsections (h)-(k).

SEC. 3. Subsection (g) of Section 23 of the Occupational Safety and Health Act is amended by adding after the first sentence thereof the following new sentence: "Such grants shall not be made unless the State meets the requirements set forth in subsection (e) of section 18."

PRINCIPAL DEPARTMENT OF LABOR OFFICIALS RESPONSIBLE FOR ADMINISTERING ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office	
	From	To
SECRETARY OF LABOR:		
W. J. Usery, Jr.	Feb. 1976	Present
John T. Dunlop	Mar. 1975	Jan. 1976
Peter J. Brennan	Feb. 1973	Mar. 1975
James D. Hodgson	July 1970	Feb. 1973
ASSISTANT SECRETARY FOR OCCUPATIONAL SAFETY AND HEALTH:		
Morton Corn	Dec. 1975	Present
Vacant	July 1975	Dec. 1975
John H. Stender	Apr. 1973	July 1975
Vacant	Jan. 1973	Apr. 1973
George C. Guenther	Apr. 1971	Jan. 1973