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A report issued on May 10, 1977, dealt with efforts to develop and issue health standards under the Occupational Safety and Health Act of 1970. Responsibility for establishing standards was delegated to the Occupational Safety and Health Administration (OSHA) with assistance from the National Institute for Occupational Safety and Health (NIOSH). Standards for toxic substances are not keeping pace with substances already identified as hazards nor with new substances being introduced. As part of a "standards completion project," NIOSH gave OSHA its recommendations for 203 substances, but as of September 30, 1976, OSHA had issued no final revised standards. Administrative problems contributing to delays were lack of adequate data for deciding priorities for substances, OSHA's lack of an adequate management information system, OSHA's limited use of emergency temporary standards, OSHA's approach to developing comprehensive standards on exposure limits and to other protective measures, lack of NIOSH or OSHA policies on evidence needed to support the classifying of a substance as a carcinogen, limited teamwork by OSHA and NIOSH, time involved in inflationary-impact evaluations, and NIOSH's direction of laboratory and field research activities. Recommendations to the Secretaries of Labor and Health, Education, and Welfare were to estimate total needs for health standards, determine whether and to what extent additional funds can be effectively used, and base decisions on standards development partly on OSHA's ability to act promptly. (HTW)

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STATEMENT OF
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HUMAN RESOURCES DIVISION
BEFORE THE
SUBCOMMITTEE ON LABOR
COMMITTEE ON HUMAN RESOURCES
UNITED STATES SENATE

Mr. Chairman and members of the Subcommittee, I am pleased to appear here today to discuss our May 10, 1977, report to the Congress entitled, "Delays in Setting Workplace Standards for Cancer-Causing and Other Dangerous Substances" (HRD-77-71). This report deals with the efforts of the Department of Labor and the Department of Health, Education, and Welfare (HEW) to develop and issue health standards under the Occupational Safety and Health Act of 1970.

BACKGROUND

The Congress passed the 1970 act to assure, so far as possible, safe and healthful working conditions for every worker in the Nation.

The act authorizes the Secretary of Labor to establish national occupational safety and health standards, promote safety and health through employer and employee information and education programs, and enforce compliance with standards through workplace inspections with citations and penalties for violations. The Secretary delegated these responsibilities to the Occupational Safety and Health Administration (OSHA) which was created on April 28, 1971.

The 1970 act created the National Institute for Occupational Safety and Health (NIOSH) in HEW to do occupational safety and health research and related work. Although NIOSH cannot set standards under the act, one of its main responsibilities is to provide OSHA with recommended new or revised standards and scientific information and criteria for standards.

Occupational safety standards are to prevent injuries from mechanical, fire, electrical, housekeeping, and other safety hazards. Occupational health standards are to prevent illnesses from exposure to toxic substances and harmful physical agents. Health standards may require limits on the amount of dust, fumes, or particulates from a substance that can be in the air in the workplace. Health standards may also require employers to provide such other measures as protective clothing, warning labels, and medical examinations.

Because of the critical need for health standards, we reviewed health standards development under the act.

THE OCCUPATIONAL HEALTH PROBLEM

It is not known how many of the Nation's estimated 80 million workers are exposed to toxic substances and other health hazards in their workplaces. According to several sources, about 2 million chemical compounds exist today; information on toxicity may be available for 100,000; about 13,000 known toxic chemicals are commonly used; and about 500 new substances are introduced each year. In 1975, NIOSH published a list identifying about 1,500 substances as suspected carcinogens, or cancer-causing agents.

The Public Health Service estimates that each year 390,000 new cases of occupational disease appear and 100,000 workers die from occupational disease.

FASTER STANDARDS DEVELOPMENT NEEDED

Although workers are exposed to thousands of toxic substances, hundreds of which may cause cancer, standards had been promulgated under the 1970 act for only 15 substances as of September 30, 1976. Unless the rate improves, it will take more than a century to establish needed standards for substances already identified as

hazards. The problem is compounded because new substances, which may warrant standards, are being introduced faster than standards are being established on existing substances. Thus, the bleak occupational safety and health conditions which the Congress sought to improve still exist, and may be getting worse.

The 1970 act became effective in April 1971. In May 1971 OSHA, as authorized in the act, adopted standards that had been established under the Walsh-Healy Act and other Federal laws, and certain standards that had been developed by consensus groups. These included exposure limits for about 400 toxic substances or groups of substances. It has been recognized that many of these standards, which consist solely of exposure limits, need revising to update the exposure limits and to include work practices, employee medical examinations, and other measures to help protect workers.

NIOSH's recommendations to OSHA for health standards usually are included in "criteria documents." These documents contain scientific data on the effects of exposure, and other supporting information.

In 1974 the two agencies started a project--referred to as the "standards completion project"--to revise most of the estimated 400 standards adopted by OSHA in May 1971. The plan was to supplement the exposure limits by adding, where appropriate, requirements for work practices, medical examinations, and other measures to protect employees from the substances. NIOSH was to provide recommendations and support for the revisions, but in most cases the required NIOSH effort on each substance was to be far less than the effort usually involved in developing a criteria document. NIOSH continued to develop criteria documents on other substances.

As of September 30, 1976, NIOSH had submitted 53 criteria documents to OSHA. The time taken by NIOSH to complete each of the criteria documents ranged from 1 to 50 months and averaged 22 months. In April 1977 NIOSH told us that, for 13 documents which it had recently completed, the average time had been reduced to 14 1/2 months.

OSHA had issued final standards on only two of the substances (asbestos and vinyl chloride) covered by the 53 criteria documents completed through September 30, 1976.

As of that date, OSHA had had the other 51 documents for up to 51 months, or for an average of 18 months. At least 9 of the documents deal with suspected carcinogens; many others deal with substances that may cause other severe and irreversible effects. According to NIOSH estimates, millions of workers are exposed to the suspected carcinogens and other dangerous substances. For example, NIOSH estimated that 2 million workers are exposed to benzene, 1.5 million are exposed to inorganic arsenic, 175,000 are exposed to hexavalent chromium, and 80,000 are exposed to chloroform. These four substances are among the nine identified by NIOSH as suspected carcinogens.

As of September 30, 1976, NIOSH had given OSHA its recommendations for 203 of the substances or groups of substances in the special standards completion project. Of these, OSHA had had 71 recommendations for less than 6 months, 65 for 7 to 12 months, 38 for 13 to 18 months, and 31 for more than 18 months. NIOSH officials said that the hazardous nature of the substances in the standards completion project warrants the development of complete standards. OSHA had not issued final revised standards on any of the substances in this project.

IMPROVED MANAGEMENT COULD
REDUCE DELAYS

We identified a number of administrative problems which contributed to delays in completing standards.

First, neither OSHA nor NIOSH had adequate data for deciding which of the thousands of toxic substances should be given priority in developing standards. The two agencies have a common goal and face the same problems, but they have made separate, independent efforts to get data and set priorities. They had not agreed on the type and source of data needed and, in many cases, had assigned different priorities to the same substance. At least six of NIOSH's criteria documents for recommended standards were not promptly acted on by OSHA because OSHA considered them to be low priority. These covered ultraviolet radiation, hot environments, inorganic flourides, sodium hydroxide, xylene, and zinc oxide. The six documents were in process in NIOSH an average of 25 months and, as of September 30, 1976, had been with OSHA an average of 20 months.

Another problem was that OSHA did not have an adequate management information system and controls to identify and resolve problems which delayed the completion of standards. NIOSH has had problems in this area but has taken corrective actions. Neither agency could provide

us complete information on how long each criteria document or standard development project was in process, whether work was delayed beyond expected completion dates, where in the organizations delays were occurring, and the problems causing delays.

Another problem concerned OSHA's limited use of emergency temporary standards. Although many of the NIOSH criteria documents submitted to OSHA indicated to us that the toxic substances pose grave danger to workers. OSHA had not issued emergency temporary standards on most of these substances, as authorized in section 6(c)(1) of the act. Section 6(c)(1) requires that OSHA issue an emergency temporary standard if it determines that employees are exposed to grave danger because of toxic substances or agents or because of new hazards, and an emergency standard is needed to protect employees from the danger.

After discussing the emergency provisions with us in October 1976, NIOSH strongly recommended to OSHA that emergency temporary standards be issued for benzene, hexavalent chromium, and MOCA, a trade name for one of 14 chemicals covered by an emergency standard which is now expired. OSHA does not have written criteria on the

conditions under which emergency temporary standards should be issued, and had not taken the action recommended by NIOSH. During discussions with us on why OSHA had not made more use of the emergency provisions, OSHA officials raised several issues that need resolving.

First, according to one official, OSHA might have difficulty upholding an emergency temporary standard unless there is direct evidence of fatalities attributable to workplace conditions. According to a January 1974 decision by a U.S. court of appeals, however, such evidence is not needed. Second, an OSHA official told us that OSHA would not use the emergency standard provisions for any hazards that are already covered by standards. In our opinion, this position is not consistent with the act and its intent. For example, at least eight substances identified by NIOSH as carcinogens are covered by standards that provide exposure limits not designed to prevent cancer, and that do not require any other employee protective measures. Third, an OSHA official said that OSHA's legal interpretation that an emergency temporary standard expires after 6 months has caused reluctance to use the emergency provision. In our opinion, the act does not

require that an emergency standard expire after 6 months. Under OSHA's interpretation, unregulated exposure of workers to a grave danger would be permitted after 6 months merely because OSHA could not meet the 6-month requirement. Fourth, an OSHA official said that requirements should not be included in an emergency standard unless OSHA had assurance that industry would be physically able to comply with such requirements within 6 months. We believe that the act contains adequate provisions to allow industry reasonable time to comply with standards and that this question should not deter issuance of standards to protect workers from grave danger.

In January 1977, OSHA announced its intent to propose regulations under which emergency temporary standards would be issued for confirmed carcinogens. If carried out, this would be a significant step toward establishing the needed criteria. Additional criteria are needed for substances which, although noncarcinogenic, pose grave dangers to workers.

On May 5, 1977, OSHA issued an emergency temporary standard on benzene, stating that data conclusively establish that exposure to benzene presents a leukemia hazard. The standard called for lowering the existing

exposure limit and for engineering controls, protective equipment and clothing, employee medical surveillance, and other protective measures. The standard was to have taken effect on May 21, 1977. Before that date, however, a Federal court issued a temporary restraining order staying the standard's effective date. As of June 21, 1977, OSHA was awaiting a response to its motion to dissolve the restraining order.

Another problem causing delays concerned OSHA's approach to developing comprehensive standards that prescribe exposure limits and various other protective measures and work practices. For many of the substances being considered for standards development, NIOSH or OSHA officials determined that the data compiled by NIOSH did not adequately support all of the measures considered desirable for complete protection. In such cases, NIOSH has recommended standards based on its view that workers should be protected promptly with whatever standards can be supported by the data. But OSHA, instead of issuing standards containing the measures that were supported by the data, delayed issuing standards pending the development of more or better data. Delays of this nature were evident in OSHA's work on standards for:

--MOCA and 13 other carcinogens involved in a court decision to partially vacate an OSHA standard;

- benzene, which according to NIOSH causes leukemia;
- inorganic arsenic, which NIOSH believes can cause cancer;
- chloroform, which is also considered by NIOSH to be carcinogenic;
- and cotton dust, which can cause a serious lung disease known as byssinosis.

In our opinion, OSHA's approach in such cases has not been responsive to the act's intent that standards be promptly issued based on the best available data and improved later as more or better data become available.

Another cause of delays in completing standards was the lack of NIOSH or OSHA policies and guidelines on the evidence needed to support classifying a substance as a carcinogen for regulatory purposes. This problem was evident in the development of standards for cadmium, beryllium, inorganic lead, benzene, and chloroform. In January 1977 OSHA announced that it intended to propose regulations setting forth criteria for determining whether and how substances will be identified and regulated as carcinogens. The proposed criteria in the announcement is in line with our views on what needs to be done. Because OSHA plans to follow the rulemaking process, it will take at least 6 months to establish the criteria. In view of the importance of this matter, we believe that OSHA and NIOSH should immediately apply the criteria.

Limited teamwork by OSHA and NIOSH was another problem contributing to delays. Generally, OSHA did not get involved in NIOSH projects until a draft criteria document was prepared. OSHA involvement in NIOSH decisions to start work on given hazards would increase the likelihood that OSHA will promptly act on NIOSH's subsequent recommendations. Earlier involvement by OSHA would also enable NIOSH to better consider OSHA's needs in deciding on such matters as the direction and scope of literature searches, the issues to be addressed, the desired protective measures to be included in the standard, and the evidence to be included in the criteria document to support the standard. This could eliminate or reduce OSHA's problems with NIOSH criteria documents. HEW told us that NIOSH has attempted to cooperate with OSHA.

In connection with the need for better teamwork, a major responsibility of NIOSH is to develop, compile, and analyze scientific data to be used as criteria and support for OSHA standards. However, OSHA has not placed enough reliance on NIOSH for doing so. This results in time-consuming duplication of much of the NIOSH effort and does not promote a sense of responsibility and commitment in NIOSH to

provide sound, defensible criteria and support for standards. OSHA's independent action to resolve problems with NIOSH's criteria documents relieves NIOSH of its basic responsibility to provide well-supported recommendations, and does not give NIOSH a basis for improving future work.

Another problem affecting the timeliness of completing standards was the evaluation of inflationary impact pursuant to Executive Order 11821. We did not make an in-depth review to evaluate the quality of inflationary impact evaluations or to identify specific ways for reducing the time required for such evaluations. The long periods of time taken for past evaluations, about a year on the average, indicate potential for OSHA to reduce the time for future evaluations. OSHA had not evaluated past cases to determine whether or not the time taken could be reduced.

Another area needing improvement was NIOSH's direction and control of its laboratory and field research activities. During its first 5 years under the 1970 act, NIOSH did not insure that its laboratory and field research was, to the extent practicable, directed to developing data needed for recommending

standards. NIOSH headquarters officials recognize this problem and plan to improve the direction and control of the research program.

NEED TO ASSESS PROGRESS AND
CONSIDER ALTERNATIVES FOR PROTECTING WORKERS

To improve the timeliness of health standards development, we made a number of recommendations for actions by OSHA and NIOSH on the problems identified in our review. A listing of our recommendations is attached to this statement. Such actions by themselves, however, may not be adequate to provide prompt protection against many of the toxic substances.

Labor and HEW had not made a thorough assessment of the total needs for health standards, how long it will take to produce them with current funding levels, and whether increased funds could be effectively used to increase their production. We believe that such an assessment is needed to enable the agencies and the Congress to adequately consider such alternatives as increasing funds for health standards development and/or putting more emphasis on informing and educating employers and workers about toxic substances.

Accordingly, we recommended that the Secretaries of Labor and HEW:

- Estimate, based on the best available data, the total needs for health standards and how long it will take to complete them with existing funding levels.
- Determine whether and to what extent additional funds can be used effectively to (1) speed up standards development and (2) increase efforts to inform, educate, and train employers and employees on toxic substances.

We recommended also that:

- If additional funds can be used more effectively, the Secretary of Labor allocate more funds to health standards development and health information, education, and training activities.
- The Secretary of HEW require that decisions on how much effort to devote to standards development, as opposed to other NIOSH worker protection programs, be based partly on OSHA's ability to act promptly on recommended standards.

AGENCY COMMENTS

On March 4, 1977, we gave the Departments of Labor and HEW a draft report on the results of our review and asked them for comments.

By letter dated April 12, 1977, Labor told us that, because of the recent appointment of a new Assistant Secretary for Occupational Safety and Health, and the serious issues which must be considered, the Department preferred to defer its comments until after our final report was issued.

HEW commented on the report draft by letter dated April 12, 1977. HEW provided extensive comments and suggestions, but for the most part did not say specifically whether or not it agreed with our recommendations. HEW cited the large number of substances already covered by its recommendations to Labor and said that it will have recommended standards for about 5,000 substances by 1981.

Under the Legislative Reorganization Act of 1970, both Departments will be required to comment on actions taken on the recommendations in our final report on or before July 11, 1977.

Mr. Chairman, this concludes my prepared statement. We will be pleased to answer any questions that you or other members of the Subcommittee may have.

RECOMMENDATIONS BY
THE GENERAL ACCOUNTING OFFICE

1. OSHA and NIOSH should establish a single program for obtaining and using data with which to decide on priorities for health standards development. The program should be along the lines recommended in our August 1976 report. (Chapter 3)
2. OSHA and NIOSH should work together to develop uniform priorities for substances, industries, or industrial processes. (Chapter 3)
3. OSHA should establish project planning and reporting systems to provide for (1) setting milestone and completion dates for each standards development project, (2) making regular and periodic reports that compare planned and actual progress and explain any delays, and (3) maintaining complete files on each project. The system should be applied to each recommended standard received and to be received from NIOSH, and to any standard development effort initiated or to be initiated by OSHA without a recommendation from NIOSH. (Chapter 4)

4. OSHA should define grave danger to include exposure of workers to a toxic substance or harmful agent which has resulted or can result in incurable, irreversible, or fatal harm to health. (Chapter 5)
5. OSHA should issue emergency temporary standards in all cases where they are needed to protect employees from grave danger, including any such dangers posed by toxic substances or harmful agents covered by inadequate standards. (Chapter 5)
6. OSHA should require that emergency temporary standards remain in effect until superseded by permanent standards. (Chapter 5)
7. OSHA should promptly issue emergency temporary or permanent standards on toxic substances to require needed protection that can be supported by available evidence, and should revise and add to such standards as more and better evidence becomes available. (Chapter 5)
8. OSHA and NIOSH should establish and use, in consultation with the National Cancer Institute, a common policy and guidelines for developing and reviewing evidence and deciding whether a

substance should be regulated as a carcinogen. The policy and guidelines should be at least as stringent, in terms of protecting workers, as those applied to substances in the past and upheld by Federal court. (Chapter 6)

9. OSHA and NIOSH should establish and implement an agreement under which:

--OSHA will rely on NIOSH to provide the scientific information needed to support standards. This should include NIOSH defending its evidence at public hearings and court proceedings.

--OSHA will not duplicate literature searches and reviews on substances covered by NIOSH literature searches and reviews.

--OSHA will provide its views to NIOSH before NIOSH starts a project to develop recommended new or revised health standards or to update previous recommendations, and OSHA will inform NIOSH when it disagrees on the priority that should be given to the project.

--For each project, NIOSH will obtain OSHA's views on the direction and scope of the literature search, the issues to be addressed, the protective measures to be considered, and the evidence to be sought for support.

--OSHA will participate in NIOSH meetings to review and discuss draft criteria documents.

--OSHA will provide feedback to NIOSH on problems that may arise concerning the validity of, and scientific evidence for, NIOSH's recommended standards and work with NIOSH in resolving such problems. (Chapter 7)

10. OSHA should review and formally report to the Secretary of Labor on why inflationary impact evaluations have taken so long and whether steps can be taken to complete such evaluations in less time. (Chapter 8)
11. OSHA should decide which substances in the standards completion program do not warrant standards and expedite the completion of any required inflationary impact evaluations on the remaining substances. (Chapter 8)
12. NIOSH should take the following steps before starting research projects:
 - Identify those substances or hazards on which NIOSH has decided to develop or update criteria and recommendations for standards, and ascertain whether they are in line with NIOSH priorities.
 - Conduct complete literature searches on those substances to identify specific needs for research in light of existing literature.
 - Require that each research project be directed to fill a specific need identified by such literature searches, or an explanation be made as to what other specific need the project is to fill.
 - Require that research needed in two or more NIOSH research branches be coordinated so that, to the extent practicable, all such research can be done simultaneously for input to recommended standards and support. (Chapter 9)

13. NIOSH should maintain records to readily show the results of research and the use made of such results. (Chapter 9)
14. OSHA and NIOSH should estimate, based on the best available data, the total needs for health standards and how long it will take to develop them within existing funding levels. (Chapter 10)
15. OSHA and NIOSH should determine whether and to what extent additional funds can be used to speed up standards development and increase efforts to inform, educate, and train employers and employees on toxic substances. (Chapter 10)
16. If additional funds can be used effectively, OSHA should allocate a greater portion of its funds to health standards development and health information, education, and training activities. (Chapter 10)
17. NIOSH decisions on how much effort to devote to standards development, as opposed to other NIOSH worker protection programs, should be based partly on Labor's ability to promptly act on recommended standards. (Chapter 10)