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OSHA's Oversight of Federal
Agency Safety and Health Programs

Statement of
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Before the
Subcommittee on the Civil Service
House Committee on Post Office
and Civil Service



SUMMARY OF TESTIMONY BY FRANKLIN FRAZIER
ON OSHA'S OVERSIGHT OF FEDERAL AGENCY SAFETY AND HEALTH PROGRAMS

GAO is reviewing (1) OSHA's oversight of federal executive agencies' occupational safety and health programs, which are required by law for federal but not private sector employers, and (2) OSHA's enforcement approach for federal agencies compared with its approach for private sector employers. Major preliminary results are that OSHA is not conducting the required annual comprehensive evaluations of federal agency safety and health programs, but it is conducting compliance inspections at individual worksites, as it does in the private sector.

OSHA is not conducting the required comprehensive evaluations of programs at the "largest or most hazardous" agencies and knows little about the effectiveness of programs at other agencies. OSHA is required to conduct annual evaluations of the largest or most hazardous agencies. However, none of the 15 agencies OSHA identified as meeting that requirement were evaluated annually in the 9-year period, 1982-1990. Thirteen were evaluated at least once, but only one was evaluated more than twice.

OSHA rarely evaluates the remaining 100 or so other agencies even if their work-related injury and illness rates are much higher than the average for all federal agencies. OSHA gets information about these agencies from their annual reports, but the reports differ greatly in the extent to which they allow OSHA to assess the effectiveness of their programs. OSHA also has the results of its compliance inspections at individual worksites, but it makes little use of those results to identify possible agency-wide problems.

OSHA's enforcement strategy in the federal sector emphasizes worksite inspections--as it does for the private sector. The requirement that federal agencies implement their own comprehensive safety and health programs, which OSHA then evaluates, distinguishes the federal from the private sector, for which this requirement does not exist. However, because OSHA is not conducting the required evaluations, it is, instead, relying on a strategy similar to the one it uses in the private sector--conducting compliance inspections at specific worksites thought likely to be hazardous. Comparison of those inspections shows

-- OSHA inspections cover proportionately more of the hazardous worksites and the workers in the federal than the private sector. In 1990, OSHA inspected more than half of the federal worksites identified as high-hazard for safety or health problems. In contrast, in 1989, it inspected only 10 percent of the private sector worksites identified as high-hazard for safety inspections and only 3 percent of those identified as high-hazard for health inspections. In addition, 18 percent of federal workers were covered by inspections, compared with 3 percent of private sector workers under OSHA's jurisdiction.

-- Specific federal agency and private sector inspection policies and procedures have both similarities and differences. They are similar in (1) the attempt to target inspections to the most hazardous worksites and (2) procedures used to conduct inspections. Yet they are different in that federal inspections (1) are targeted using individual worksite data about injuries and illnesses, (2) include advance notice about scheduled inspections, (3) allow no civil penalties for violations, and (4) have no independent agency for appeal if an agency disagrees with the inspection results.

Mr. Chairman and Members of the Subcommittee;

I am pleased to be here today to describe the Occupational Safety and Health Administration's (OSHA's) oversight of the safety and health programs federal executive agencies are required to operate. You asked us to conduct this study because of the Subcommittee's concerns about OSHA's oversight of these programs. Because of the short time since we began our study, you asked that for these hearings we (1) discuss the initial results of our study of how well OSHA determines whether federal agencies are maintaining effective and comprehensive safety and health programs and (2) compare OSHA's enforcement approach for federal agencies with its approach for private sector employers. As we agreed, we did not attempt to conclude how well federal agency safety and health programs protect federal workers.

To answer your questions, we relied largely on interviews with OSHA headquarters officials and statistical data obtained from OSHA. Also, we reviewed legislative histories, previous hearings records, research studies, and other documents.

BACKGROUND

The Occupational Safety and Health Act of 1970 requires every employer to furnish employees with safe and healthful worksites and working conditions. All federal agencies are required to develop and maintain effective and comprehensive occupational safety and health programs which are consistent with federal occupational safety and health standards. OSHA is responsible for assisting federal agencies with their programs and assessing the effectiveness of executive branch agencies' programs. Executive Order 12196 and the Code of Federal Regulations further describe the executive agencies' and OSHA's responsibilities.

Federal executive agency programs must provide for (1) top management support and participation; (2) measurable goals and

objectives; (3) employee involvement; (4) self-inspection and self-evaluation; and (5) annual reporting to OSHA. For example, procedures for reducing and eliminating worksite accidents, injuries, and illnesses must include inspections of all areas and operations of each worksite at least annually and more frequently when the nature of the work increases the risk of accident, injury, or illness. Agency heads are responsible for ensuring prompt abatement of unsafe or unhealthful working conditions once they have been identified. As a way to obtain employee involvement, federal agencies are encouraged to set up occupational safety and health committees comprised of management and nonmanagement employees. Where established, the committee is to assist and monitor the development and implementation of the agency's safety and health program. Agencies are required to provide adequate budgets, staff, training, and equipment and materials to implement their programs.

The act and the executive order cover about 100 federal executive branch departments and independent agencies and about 3 million civilian workers. (Military personnel are not covered.)

OSHA assists federal agencies with their programs through activities such as conferences and individual consultation and training for safety and health program staff.

OSHA assesses federal executive agency programs' effectiveness primarily through (1) comprehensive evaluations of agency programs¹ and (2) compliance inspections of specific worksites. OSHA also obtains information about agency programs through the annual reports they are required to submit.

¹Federal regulations describe a comprehensive evaluation as "a complete and extensive evaluation of all elements" of the agency's program.

In fiscal year 1990, OSHA's spending for all federal agency program activities was about \$2.5 million, about 1 percent of OSHA's total budget authorization. This included funding for the Office of Federal Agency Programs and those activities of the Office of Field Operations related to federal agency programs. The Office of Federal Agency Programs has the primary responsibility for providing assistance to federal agencies and overseeing their programs. It had 10 full-time employees at headquarters in fiscal year 1991. The Office of Field Operations conducts compliance inspections at federal as well as private sector worksites through its regional and area offices.

OSHA KNOWS LITTLE ABOUT THE
EFFECTIVENESS OF FEDERAL AGENCY PROGRAMS

OSHA is not conducting the required comprehensive evaluations of programs at the "largest or most hazardous" executive agencies and knows little about the effectiveness of programs at the remaining 100 or so other agencies. It rarely evaluates these programs, gets varying information from them in their annual reports, and makes little use of compliance inspection results to identify possible agency-wide problems.

OSHA Conducts Few Comprehensive
Evaluations of Agencies' Programs

The executive order requires OSHA to do annual evaluations of the "larger or more hazardous" agencies and to evaluate other agencies as necessary. However, OSHA has not conducted all the evaluations required by executive order and conducts few evaluations in other agencies.

Since 1982, OSHA has had a list of 15 agencies targeted for

annual evaluations because they were larger or more hazardous.² However, it has not done annual evaluations for any of them. Of those 15 agencies, OSHA evaluated 13 of them at least once in the 9-year period, 1982-1990, but evaluated only one more than twice.³ Of the total of 23 evaluations, 6 were followup visits of previous OSHA reviews at federal agencies.⁴ No comprehensive evaluations were completed by OSHA in 1990. OSHA currently has underway an evaluation at the Department of Veterans Affairs, which was last evaluated by OSHA in 1985.⁵

In addition to the 15 agencies targeted for annual evaluations, OSHA is expected to evaluate the programs of other agencies if there is reason to be concerned about them. However, it rarely evaluates other agencies, even when an agency's work-related injury and illness rate is unusually high. Since 1982, OSHA has evaluated two agencies not on the list--the Panama Canal Commission and the Department of Housing and Urban Development. Meanwhile, for example, the Smithsonian Institution's work-related injury and illness rate in 1989 was higher than the rates of 12 of the 15 agencies on the list targeted for evaluations.

²In 1991, these agencies comprised 95 percent of the executive branch workforce--over 2.8 million employees. The list was developed using worker compensation costs.

³The two agencies not evaluated are the National Aeronautics and Space Administration and the Department of Energy. Of the 23 evaluations, 4 were of service branches, such as the Department of the Army, within the Defense Department, which is counted as 1 of the 15 agencies.

⁴According to OSHA, follow-up evaluations are sometimes comprehensive evaluations and sometimes are limited to review of problems found previously.

⁵In addition, during fiscal year 1991, OSHA completed two special studies of the (1) Department of Energy government-owned contracting facilities and (2) Department of the Army chemical and biological defense research laboratories.

Agency annual reports
differ greatly

Most agencies submit the required annual reports on their safety and health programs, but they differ greatly in the information provided.⁶ Guidelines for the agencies address the general topics to be covered, which include (1) injury and illness data, (2) program accomplishments and initiatives to improve their program and (3) plans, goals, and initiatives for the next year. However, some of them submit too little documentation for OSHA to evaluate their comprehensiveness and effectiveness. For example, fiscal year 1988 reports submitted to OSHA ranged from 1 page to 100 pages in length.

OSHA makes limited use of compliance inspections
to identify possible agency-wide problems

Although OSHA inspects federal agency worksites for compliance with the act and its safety and health standards, inspection findings play only a limited role in OSHA's oversight of the agencies' safety and health programs. According to OSHA officials, if an agency is selected for a comprehensive evaluation, they might use inspection results in developing and implementing an evaluation plan. Otherwise, OSHA does not use the compliance data to assess agency program effectiveness. For example, we believe OSHA might use a summary analysis of all inspections conducted at a given agency's worksites to highlight potential weaknesses in that agency's safety and health program. Instead, inspection results are used primarily as indicators of problems at individual worksites rather than as indicators of possible systemic problems needing an agency-wide response.

⁶For each of fiscal years 1987 and 1988, fewer than 20 agencies failed to send annual reports to OSHA. As of April 1991, 27 agencies had still not filed reports for 1989.

OSHA'S FEDERAL ENFORCEMENT STRATEGY IS
SIMILAR TO THAT IN THE PRIVATE SECTOR

OSHA's enforcement strategy in the federal sector is, in practice, similar to that in the private sector. Instead of assessing the effectiveness of the programs federal agencies are required to maintain, OSHA relies primarily on a strategy similar to the one it uses in the private sector--conducting compliance inspections at specific worksites thought likely to be hazardous. For example, since 1987, OSHA has conducted about 1,465 inspections a year at federal agency worksites, citing the agencies for an average of almost 11 violations per inspection.

Although we cannot conclude that reliance on worksite inspections rather than comprehensive evaluations of agency programs results in better or worse protection for federal workers, it does contrast with the approach anticipated by the legislation and executive order. That approach stresses use of OSHA resources for federal agencies in helping them develop their own safety and health programs and then evaluating those programs. Although OSHA encourages private sector employers to establish and maintain similar safety and health programs, it does not require them to do so.

Even though OSHA's approach in federal agencies is similar to the private sector in that it emphasizes compliance inspections, there are some differences in its use of inspections. First, the inspections cover a higher percentage of the hazardous worksites and a higher percentage of workers in the federal than the private sector. Second, inspection policies and procedures in the two sectors have both similarities and differences, but we did not determine whether those differences provided greater or lesser protection for federal workers.

In fiscal year 1990, OSHA inspected more than half of the federal worksites identified as high-hazard for either safety or health problems (91 of the 163); in contrast, in 1989, it inspected only 10 percent of the private sector worksites identified as high-hazard for safety inspections and only 3 percent of those identified as high-hazard for health inspections. In addition, 18 percent of federal workers were covered by inspections, compared with 3 percent of private sector workers under OSHA's jurisdiction.

Inspection policies and procedures are similar in (1) the attempt to target inspections to the most hazardous worksites and (2) procedures used to conduct inspections. OSHA's mandatory occupational safety and health standards, as well as its rules, regulations, and orders, generally apply to both federal agencies and private sector employers.

Yet federal inspections are different from private sector inspections in several ways, and these differences may have implications for the quality of protection for federal workers. They (1) are targeted using individual worksite data about injuries and illnesses, (2) include advance notice about scheduled inspections, (3) allow no civil penalties for violations, and (4) have no independent agency or commission to resolve appeals if an agency disagrees with the inspection results.

Targeted, or programmed, inspections are based on different criteria for the federal and private sectors. To identify federal agency worksites with the greatest potential for injuries or illnesses, OSHA uses workers' compensation data for individual worksites. For the private sector, OSHA uses information about which industries are generally more hazardous but does not use

injury or illness records of specific worksites.⁷ The area offices select from the targeted federal and private sector lists specific worksites to be inspected.

OSHA notifies federal agencies that they have been targeted for inspection and when an inspection is to take place. Targeted agencies are required to develop and implement action plans to reduce the potential for worksite injuries and illnesses. In contrast, OSHA inspections, are, with limited exceptions, unannounced to private sector employers.

A major difference in OSHA's authority is that it can propose civil and criminal penalties for private sector employers. However, OSHA cannot propose such penalties against federal agencies.

A federal agency or private sector employer who disagrees with a citation can request an informal settlement conference with OSHA, but if they do not reach agreement at that level, further appeals options differ. If private sector employers cannot reach agreement on the case at an informal settlement conference, they can request the independent Occupational Safety and Health Review Commission to decide. Commission rulings may be appealed to the courts. For federal agencies, compliance issues that are not resolved at the informal settlement conference are raised to higher organizational levels within the agency, OSHA, and the Labor Department until agreement is reached. There is no independent agency or court to which disagreements can be appealed.

⁷With OSHA approval, states can operate their own private sector safety and health programs. Some of the state programs use workers compensation data on individual worksites to target inspection efforts.

In summary, our study indicates that OSHA is not conducting annual evaluations of federal agency safety and health programs as required by executive order. However, it is conducting compliance inspections at individual worksites, as it does in the private sector.

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This concludes my statement. I will be glad to respond to any questions about our work.