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Options to Improve Hazard-Abatement Procedures in the Workplace

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The Honorable William D. Ford
Chairman, Committee on Education
and Labor
House of Representatives

Dear Mr. Chairman:

Fatality rates today reflect a safer workplace than when the Occupational Safety and Health Act was passed in 1970. Nevertheless, thousands of U.S. workers die each year in workplace accidents, and many more are seriously injured or develop work-related illnesses. The Occupational Safety and Health Administration (OSHA) helps protect workers by inspecting workplaces to see if employers are complying with specific safety and health standards and with their general duty to maintain workplaces free of safety and health hazards. When OSHA finds violations in these inspections, it may issue citations that include fines to employers. Its highest priority, however, is to obtain prompt and thorough abatement (correction) of the identified hazards.

On August 1, 1991, you and 18 other members of the House introduced H.R. 3160, the Comprehensive Occupational Safety and Health Reform Act. The bill contains three provisions that would affect OSHA's hazard-abatement activities: (1) protecting workers in imminent danger situations,[1] (2) requiring certain employers to abate serious hazards while they contest citations for safety and health violations, and (3) requiring employers to verify that they have abated hazards. Because we had previously identified these measures as options for improving workplace safety and health,[2] you asked in March 1992, that we summarize and update our previous work and compare existing safety and health programs with the provisions of H.R. 3160.

To respond to your request, we compared OSHA's procedures in each of the three areas with the provisions of H.R. 3160. We also compared OSHA's

[1]The Occupational Safety and Health Act of 1970 defines imminent danger as "any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through enforcement procedures otherwise provided by this act."

[2]Occupational Safety & Health: Options for Improving Safety and Health in the Workplace (GAO/HRD-90-66BR, Aug. 24, 1990).

procedures in these areas with those of the Mine Safety and Health Administration (MSHA)[3] and with the procedures used by 21 states operating OSHA-approved state safety and health programs.[4] We obtained information for these comparisons from program documents, such as OSHA's January 1992 special evaluation reports on each state program, and interviews with federal agency officials and program officials in nine states. (Our objectives, scope, and methodology are described in more detail in app. I.)

Results in Brief

H.R. 3160[5] would (1) allow OSHA to levy substantial new civil penalties if employers refuse to either correct the hazard or remove employees from imminent danger situations and (2) continue OSHA's current option of obtaining a court order to compel compliance. The bill would give OSHA greater authority than it now has. However, safety and health inspectors for MSHA and at least eight states have even greater authority in imminent danger situations than what H.R. 3160 would provide. They have the authority to shut down equipment, operations, and job sites in order to remove employees from imminent dangers.

H.R. 3160[6] would allow OSHA to require that employers abate serious hazards without suspending the time allowed for abatement while a contested citation is being reviewed. Requiring abatement during the

[3]OSHA asked us to note that the Labor Department believes significant differences in the scope and nature of OSHA and MSHA responsibilities must be considered in comparing their programs.

[4]OSHA can delegate authority for enforcement of workplace safety and health in the private sector to state governments with approved plans for assuming enforcement responsibilities. As of March 1992, OSHA had approved state plans for 21 states, Puerto Rico, and the Virgin Islands. These state-operated programs must cover state and local government workers as well as those in the private sector; Connecticut and New York have OSHA-approved programs that cover only state and local government workers.

[5]Title V, section 510.

[6]Title V, section 506.

period of contest would be similar to MSHA procedures, whereby contesting the citation has no effect on the time allowed for abatement for any hazards. In contrast, OSHA and state programs, lacking the authority to require abatements while citations are being contested, negotiate penalty reductions to achieve prompt abatements. However, most employers who continue to contest citations will eventually have to abate the hazards. For example, in fiscal year 1991, 83 percent of all contested serious, willful, and repeat OSHA violations were upheld either by employer agreement with OSHA during negotiations or by an independent review commission decision.

H.R. 3160[7] would also require employers to (1) give OSHA written verification that they have abated identified hazards and (2) post at the worksite a statement that verification has occurred.[8] OSHA currently requests, but does not require, employers to provide evidence of their abatement actions, but it is developing a regulation that would require employers to do so. Most states also request employers to submit information about their abatement actions. However, California requires employers to send verification of their abatement actions to the state agency; failure to do so can result in a doubled penalty. Neither OSHA nor the state-operated programs require employers to post a description of the abatement action at the worksite. MSHA, instead of requiring employers to verify that they have abated a hazard, reinspects each facility to confirm abatement.

Background

Within the Department of Labor, two agencies, OSHA and MSHA, are responsible for protecting the safety and health of workers. OSHA administers the Occupational Safety and Health Act of 1970, which covers most employers and their employees. Coverage is provided either directly by federal OSHA or through an OSHA-approved state program. MSHA administers the provisions of the Federal Mine Safety and Health Act of 1977, which covers all mines and mine operators in the United States and its territories, contractors who perform work on mine property, some mine equipment manufacturers, and training services. OSHA does not cover working conditions regulated by other federal agencies, such as MSHA, under other federal statutes.

[7]Title V, section 506.

[8]Employers would also have to make available to employees and their representatives a copy of the verification sent to OSHA.

OSHA, MSHA, and state-operated safety and health programs encourage employers to comply voluntarily with their responsibility to provide workplaces free from safety and health hazards. However, the majority of these agencies' resources are devoted to inspecting workplaces to detect violations and obtaining abatement of identified hazards.

Hazard abatement is the elimination of an identified hazard. In the most urgent case—in which the hazard creates an imminent danger of death or serious physical harm—the OSHA inspector points out the danger and asks the employer to correct it or remove employees from it immediately. To compel action, however, OSHA must obtain a restraining order in a U.S. district court.

In situations that do not constitute an imminent danger and when employers cannot abate the hazard immediately, they are allowed additional time to do so. An OSHA citation specifies the date by which an employer must abate a hazard and notify OSHA to that effect. An employer who disagrees with the citation or its abatement requirements can contest it to the Occupational Safety and Health Review Commission.[9] If contested, the period of time allowed for abatement is suspended until the contest is resolved.[10] Uncontested items must be abated by the dates indicated on the citation, and corresponding penalties paid within 15 days of notification, but employers need not abate hazards related to the contested sections of the citation until a final decision is made.

Although OSHA conducts some follow-up inspections, it usually relies on information from employers to confirm that hazards have been abated. When OSHA issues a citation for violations, it asks employers to send a letter notifying OSHA that they have taken appropriate corrective actions within the time set forth on the citation. OSHA also asks employers to provide documentation, such as purchase orders and photographs, with their statement, but neither the letter nor the additional documentation is required by regulation.

[9]The Commission is an independent agency entirely separate from OSHA and Labor. Its function is to resolve formal contests of OSHA citations and penalties. It is headed by three commissioners, who are appointed by the President, and it has 19 administrative law judge positions.

[10]The period of time for abatement is not suspended if employers are contesting only the penalty amount. However, as we reported in 1990, OSHA told us that employers rarely contest only the penalty amount—they usually contest the entire citation.

The only way OSHA can know with certainty that hazards have been abated is to reinspect the worksite. However, resource constraints and the need to conduct higher priority inspections limit the number of follow-up inspections OSHA conducts. In fiscal year 1991, less than 5 percent of all inspections were follow-up inspections.

Between 1990 and 1992, we issued four reports that addressed OSHA's hazard-abatement procedures.[11] We raised the following concerns:

- OSHA inspectors believe that they need greater authority to shut down operations in imminent danger situations without having to wait for a court order. Eighty percent of the inspectors we surveyed said that they needed this authority. Based on their responses, we estimated that, in fiscal year 1988, OSHA inspectors encountered between about 1,200 and 3,100 imminent danger situations.

  OSHA believes that most employers comply with an inspector's request to correct imminent dangers. Although it does not track the number of imminent danger situations encountered, OSHA told us that its fiscal year 1991 inspection records showed 36 instances when employers were issued citations after they refused to comply with the inspector's request to take action to remove an imminent danger.[12] OSHA has no information about the number of times court orders were required or how long it took to get these court orders.

- To get employers to abate hazards more quickly when they contest citations, Labor negotiates with employers, reducing penalties well below the maximum allowed by statute. For example, in our 1992 study of OSHA

[11]Occupational Safety and Health: Penalties for Violations Are Well Below Maximum Allowable Penalties (GAO/HRD-92-48, Apr. 6, 1992); Occupational Safety & Health: OSHA Policy Changes Needed to Confirm That Employers Abate Serious Hazards (GAO/HRD-91-35, May 8, 1991); Occupational Safety & Health: Inspectors' Opinions on Improving OSHA Effectiveness (GAO/HRD-91-9FS, Nov. 14, 1990); and Occupational Safety & Health: Options for Improving Safety and Health in the Workplace (GAO/HRD-90-66BR, Aug. 24, 1990).

[12]This information came from OSHA's Integrated Management Information System (IMIS) data base. We did not examine case files to determine whether there were coding errors—such as those found in our review of OSHA penalty reductions (see GAO/HRD-92-48, page 18)—that would make this statistic inaccurate.

penalties, we found that the average penalty in a contested case was reduced 57 percent.[13] In effect, the Labor Department agrees to lower penalties—even though lower penalties have less deterrent value than do higher penalties—because doing so is its only way to get employers to correct hazards that would otherwise continue to endanger employees while the contested case is being decided.

- OSHA policies and procedures need to be improved to provide better evidence that employers have corrected hazards found during an inspection. We recommended that OSHA (1) issue a regulation that would require employers to submit detailed evidence of what corrective actions were taken to abate hazards and (2) improve its policies for confirming abatement of hazards found at construction sites. OSHA agreed with our recommendations and is taking action to implement them.

H.R. 3160 would address each of these issues through statutory changes.

Principal Findings

Imminent Danger Situations

In an imminent danger situation,[14] H.R. 3160 provides that OSHA inspectors, if authorized by the Secretary of Labor, shall (1) request that the condition or practice be corrected immediately or that an employee be immediately removed from exposure to the danger and (2) if the employer refuses to comply, post a notice identifying the equipment, process, or practice that is the source of the danger and assess a daily civil penalty of not less than $10,000 and not more than $50,000 when employees

[13]In Occupational Safety and Health: Penalties for Violations Are Well Below Maximum Allowable Penalties (GAO/HRD-92-48), we analyzed all cases in which OSHA (1) issued citations in fiscal year 1989 and (2) set and recorded the actual penalty amount by November 1990. The study excluded cases with citations issued under OSHA's procedures for "egregious" violations, which allow especially high penalties to be assessed. A recent Labor Inspector General report on egregious cases found a 72-percent reduction in penalties in contested cases settled in negotiations with Labor before the case reached the Commission (Review of How OSHA Settled and Followed Up On Its Egregious Cases, Mar. 31, 1992). That study also concluded that, in exchange for reductions, the abatement actions employers agreed to make were frequently broader and more timely than if the case had been decided by the Commission.

[14]This is defined in the bill as "a condition or practice in a place of employment . . . such that an imminent danger to safety or health exists that could reasonably be expected to cause death or serious physical harm or permanent impairment of the health or functional capacity of employees if not corrected immediately."

continue to be exposed to the hazard. OSHA would continue to have the option of seeking a restraining order from a U.S. district court. In addition, employers would be prohibited from taking reprisals against any employee who refuses to work in the designated imminent danger situation.

As described in appendix II, these provisions of H.R. 3160 would give OSHA more authority than it now has in imminent danger cases. However, OSHA would still have less authority than what is now available to MSHA and eight state-operated safety and health programs. MSHA inspectors have the authority to shut down operations involving a piece of equipment, a section or an area of a mine, or an entire mine in imminent danger situations. There are no separate civil penalties for violating the withdrawal order, but there are criminal penalties that include imprisonment. Inspectors in eight state-operated programs also have authority to post notices prohibiting employees' access to imminent danger situations;[15] in Maryland, inspectors can tag and prohibit use of specific pieces of equipment but cannot otherwise shut down operations. Two states (Oregon and Washington) have civil penalties specifically for violation of the imminent danger prohibition.

One possible disadvantage of giving inspectors greater authority in imminent danger situations might be that inspectors would abuse this authority, and shut down operations too readily. Statistics from MSHA and six of the eight states, however, show that notices were posted in about 2 percent or less of all inspections conducted. (In Alaska, notices were posted in 8.5 percent of the inspections; statistics were unavailable for California.)

Abatement During Employer Contests

H.R. 3160 would give OSHA the authority to require that the period permitted for abatement of a serious violation would run from the date of receipt of the citation rather than be suspended until a final order by the Occupational Safety and Health Review Commission. This option could be used where OSHA determined that an alleged violation was serious and delaying abatement would present a substantial risk to employees' safety and health. However, an employer could request an expedited review from the Review Commission, asserting that the period for correction should be suspended during the review proceedings.

[15]These states are Alaska, California, Kentucky, Minnesota, Oregon, Tennessee, Vermont, and Washington.

MSHA has similar procedures, but they apply to all contests, not just to serious violations. The period of time allowed for abatement begins at the time of the citation. Any appeal to a MSHA district office or to the Mine Safety and Health Review Commission proceeds without affecting the allowed abatement period.

The state-operated programs are similar to OSHA in that most of them have statutes that require suspending the period allowed for abatement when an employer contests the citation. The two exceptions are California and Oregon. California gives a one-day abatement date—whether the employer contests or not—for all violations of the field sanitation standard, which requires agricultural employers to provide to field laborers, at no cost, drinking water and toilet and handwashing facilities. Oregon does not require abatement of nonserious violations if they are contested, but it does require abatement of serious violations during the contest period unless the agency has agreed to an employer's specific request for a stay of abatement.

One concern about requiring that the period allowed for abatement begin at receipt of a citation might be that, if citations are changed after employers contest them, employers might find they have made unnecessary changes. However, for OSHA and 16 of the 19 state programs for which such information was available, more than 80 percent of the contested serious, willful, and repeat violations in fiscal year 1991 were unchanged when the case was finally decided, either by settlement agreements with the employer or by a Review Commission decision.[16] (See app. III.) Nevertheless, as OSHA pointed out, these statistics suggest that some employers might be required to spend time and money making changes that were subsequently found to be unnecessary.

Verification of Abatement

H.R. 3160 would require that each employer to whom a citation for a serious, willful, or repeated violation has been issued verify the abatement of the violation in writing not later than 30 days after the period for correction has expired. In addition, the employer must prominently post, at or near each place a violation occurred, a notice that the violation has been abated and make available to employees and their representatives a copy of the verification statement sent to OSHA. The second part of this provision would use employees as a source of information about whether an

[16]In addition, some of these changes might include reclassifying the violation (for example, from "serious" to "other-than-serious") but still requiring abatement.

employer has corrected the cited hazards; if what they observe differs from what the employer has asserted, they could notify OSHA.

The requirement for employers to post a statement that abatement has occurred would be a change from current procedures used by OSHA, state-operated safety and health programs, and MSHA. However, it would be similar to the current OSHA requirement that employers post the citation in the worksite. It would also be similar to MSHA's statutory requirement that employers post orders, citations, notices, and decisions.

Regarding verification that abatement has occurred, H.R. 3160's provision would change federal OSHA policy from requesting to requiring employers verify abatement. It would also constitute a change for most states, because only California now has such a requirement. In California, employers are required to submit a form that describes abatement actions taken. Failure to return the form results in either a doubled penalty, a follow-up inspection, or both.

Procedures in the other states are similar to those of OSHA, in that verification is requested rather than required, that is, no penalty is attached to failure to submit the requested verification. State procedures differ in several ways: (1) some use a standardized form while others ask only for a letter; (2) some request only a statement that abatement has occurred while others request additional evidence, such as diagrams, photographs, or invoices; and (3) some specify that employers can be prosecuted for perjury if they provide false information while others do not.

OSHA and the Department of Labor have agreed with our recommendation that OSHA issue a regulation requiring employers to submit documentation of actions taken to abate hazards. (See app. IV.) As of May 1, 1992, the Office of Management and Budget had approved Labor's request to begin drafting such a regulation, and responsibility for doing so had been assigned within OSHA. OSHA estimated that a proposed regulation could be published for public comment as early as December 1992, and a final rule could be published by August 1993. If OSHA issues such a regulation, state-operated programs would be required to adopt it as well or demonstrate that they had comparable regulations as effective. A regulation such as this would be similar to the action OSHA would be required to take by H.R. 3160's abatement verification provision.

MSHA officials told us that requiring a letter or other documentary evidence from employers they inspect was not needed because they conduct

follow-up inspections at all locations cited for violations. This may be more feasible for MSHA than OSHA because of the difference in resources: in fiscal year 1991, MSHA and OSHA each had budget authority for about 2,000 employees for their enforcement efforts, but MSHA covered about 16,000 operations while OSHA covered about 6 million establishments.

Agency Comments

OSHA and MSHA officials reviewed a draft of this report and provided oral comments. They generally agreed with the report's content and presentation and suggested technical changes which we incorporated, as appropriate.

We are sending copies of this report to the Secretary of Labor and other interested parties. If you have any questions concerning this report, please call me at (202) 512-7014. Other major contributors are listed in appendix V.

Sincerely yours,

Linda G. Morra
Director, Education and
Employment Issues

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Abbreviations

MSHA Mine Safety and Health Administration
OSHA Occupational Safety and Health Administration

Objectives, Scope, and Methodology

The objective of our study was to compare three provisions in H.R. 3160 with procedures currently used by OSHA, state-operated safety and health programs, and MSHA.[1] These provisions concern (1) imminent danger situations, (2) interim or temporary abatement while contested citations are being resolved, and (3) verification of abatement.

For information about federal programs, we conducted interviews and examined agency documents. We interviewed Department of Labor officials in OSHA and MSHA and obtained statistical data from them pertaining to safety and health inspections, contested inspections, imminent danger situations, and shutdowns during fiscal years 1989-91.

To obtain information on states' procedures, we (1) reviewed descriptions of the 21 OSHA-approved state plans (excluding the two territories) and OSHA's special evaluation of each state's program, issued in January 1992; (2) sent a questionnaire requesting additional information from safety and health program officials in nine states that we identified as having "tagging" provisions or inspector shutdown authority; and (3) contacted officials in the nine states for clarification of information they provided or for additional data. We obtained statistics on the frequency of imminent danger situations in those states and officials' opinions about the advantages and disadvantages of shutdown authority.

Our work was done in March and April 1992 in accordance with generally accepted government auditing standards.

[1]H.R. 3160, Title V, section 506, abatement of serious hazards during employer contests, subsections (b) citations and enforcement and (d) verification of abatement; and section 510, imminent danger inspections.

Comparison of Imminent Danger Procedures and Penalties in Selected Federal Agencies and States

Federal agencies, such as MSHA and OSHA, as well as states that operate OSHA-approved safety and health programs, have procedures for dealing with imminent danger situations in the workplace. These federal and state agencies also have authority to assess civil penalties for violations of occupational safety and health standards. In some cases, courts may also assess criminal monetary penalties, imprisonment, or both for employers convicted of criminal violations as provided for by law.

MSHA and OSHA use similar definitions of imminent danger. The Federal Mine Safety and Health Act of 1977 defines imminent danger as

> . . . the existence of any condition or practice in a coal or other mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

The Occupational Safety and Health Act of 1970 defines imminent dangers as

> . . . any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this act.

Serious physical harm may be either an injury or an illness. Examples of injuries that might cause serious physical harm cited in OSHA's Field Operations Manual include amputation, concussion, crushing, fracture, burning or scalding (including electric and chemical burns), and cuts, lacerations, or punctures involving significant bleeding and/or requiring suturing. Illnesses that might represent serious physical harm include cancer, poisoning, lung diseases, hearing loss, central nervous system impairment, and visual impairment.

State safety and health program officials gave us the following examples of imminent danger situations that have occurred in their states: excavations (trenching operations) where the trench is not shored properly or excavated material is too close to the edge of the trench; asbestos abatement without proper equipment, respirators, and engineering controls; improper use of scaffolding, especially in window-washing operations; unsafe handling of explosive materials; working too close to high voltage electric lines; demolition; confined spaces; carbon monoxide poisoning; and use of lead in construction.

The Comprehensive Occupational Safety and Health Reform Act (H.R. 3160) would revise OSHA's procedures and penalties in imminent danger situations. (See table II.1.)

Table II.1: H.R. 3160 Provisions Compared With Imminent Danger Procedures in Selected Federal Agencies

H.R. 3160	OSHA	MSHA
Secretary of Labor shall request that condition or practice be corrected immediately	Same as H.R. 3160	Inspector may issue section 107(a) imminent danger/withdrawal order requiring shutdown
Secretary shall request that employees be immediately removed from exposure to danger, and employee can refuse to perform a duty that has been identified as the source of an imminent danger	Same as H.R. 3160, except employee refusal to work in imminent danger situations is governed by OSHA regulation rather than by statute	Withdrawal order restricts employee access to a piece of equipment, a section or an area of a mine, or an entire mine
Secretary may post notice to employees, using tag or other device identifying source of imminent danger	Notice of alleged imminent danger is posted to inform employees that Secretary will be seeking a court order to restrain employer from permitting them to work in the area	Inspector posts mine or equipment withdrawal notice ("closed" poster) at mine or section entrance or on the controls of equipment
Daily civil penalty of $10,000 minimum and $50,000 maximum is imposed if employer does not immediately correct hazard or remove all employees from exposure to imminent danger	No penalties specifically for failure to correct hazard or remove employees immediately, but citation(s) may be issued for serious, willful, or repeat violation of standards with associated penalties	No separate civil penalties for imminent danger. Criminal penalties include $250,000 maximum for failure or refusal to comply with withdrawal order, imprisonment for not more than 1 year, or both

Inspectors' Authority Varies in Imminent Danger Situations

OSHA is required under the 1970 act to obtain a court order to halt operations constituting an imminent danger situation that the employer refuses to correct immediately. In contrast, MSHA inspectors and state safety and health inspectors in at least eight states have "shutdown" authority to order an immediate halt to machinery operation; work processes; or work activity at part or all of a work location, such as a mine or a construction site. This authority accompanies procedures whereby the inspector affixes a warning notice (red or yellow "tag") to the dangerous machinery or operation, identifying its unauthorized use until corrected. Of the nine states we contacted, seven used tagging procedures, and eight provided their inspectors with shutdown authority, which includes

authority to order employees off the worksite.[1] Each state also specifies an appeals process for employers who disagree with inspector's action. (See table II.2.)

Table II.2: Occupational Safety and Health Imminent Danger Procedures in Selected States[a]

State	Type of tag and notice inspector can issue	Can inspector prohibit employees' presence?	Employer recourse
Alaska	Red tag and restraining order	Yes	May seek state superior court review of restraining order
California	Yellow tag and order prohibiting use	Yes	May seek hearing before Cal/OSHA Appeals Board
Kentucky	Notice of alleged imminent danger	Yes	May seek circuit court order to waive restraining/abatement order
Maryland	Red tag and notice of alleged imminent danger[b]	No	May contest red tagging by filing action in circuit court of workplace's political subdivision
Minnesota	Red tag and notice of alleged imminent danger	Yes	May petition district court to vacate notice of alleged imminent danger
Oregon	Red tag and order of immediate correction	Yes	May request informal hearing by Accident Prevention Division administrator and/or formal court hearing
Tennessee	Red tag and stop order	Yes	Hearing by Commissioner of Labor, then may seek court order to vacate stop order
Vermont	Notice of alleged imminent danger	Yes	May petition superior court to vacate notice of alleged imminent danger
Washington	Red tag and restraining order	Yes	May petition superior court to vacate restraining order

[a]We describe these procedures as being carried out by inspectors, even though their actions may be subject to supervisory review or approval.

[b]Inspector can tag equipment but does not have authority to shut down operations or job sites by ordering employees away from imminent danger.

[1]Kentucky and Vermont do not use tags, and Maryland does not have shutdown authority.

Statutes Provide for Civil and Criminal Penalties

Federal and state agencies and courts use a variety of civil and criminal penalties to enforce occupational safety and health standards and regulations. Although these penalties may be applied in imminent danger situations, agencies generally do not assess a separate penalty for the imminent danger itself. (See table II.3.) Instead, agencies like MSHA and OSHA assess civil penalties for violations of existing standards.

MSHA and some states we contacted have civil or criminal penalties that can be applied to imminent danger situations. Oregon employers, for example, may be assessed a maximum $1,000 civil penalty for each violation, such as using a workplace or equipment that has been "red tagged" or defacing, destroying, or removing a red tag notice.[2] And Washington may fine employers convicted of continuing to use equipment that has been "red tagged" a $10,000 maximum penalty, imprisonment for up to 6 months, or both.

H.R. 3160 would provide OSHA with new civil penalties of not less than $10,000 and not more than $50,000 daily if employers do not immediately correct the imminent danger situation or remove all employees from exposure to it.

[2]These penalties in Oregon would also apply when the tagging is used in nonimminent danger situations.

Table II.3: H.R. 3160 Imminent Danger Penalty Provisions Compared With Those of Selected Federal Agencies and States

	Penalties
H.R. 3160	In the event that an employer does not immediately correct the hazard or remove all employees from exposure thereto, the employer shall be assessed a civil penalty of not less than $10,000 and not more than $50,000 daily during which an employee continues to be exposed to the hazard.
Federal agency	
OSHA	No separate penalty for imminent danger. However, agency may assess civil penalties if imminent danger involves citation(s) for willful, serious, or repeat violations, or for failure to abate hazard within the time allotted.
MSHA	No separate civil penalty for imminent danger. Criminal: $250,000 maximum for failure or refusal to comply with imminent danger closure order, imprisonment for not more than 1 year, or both.
State	
Alaska	No separate penalty for imminent danger.
California	No separate penalty for imminent danger.
Kentucky	No separate penalty for imminent danger.
Maryland	No separate penalty for imminent danger.
Minnesota	No separate penalty for imminent danger.
Oregon	Same as OSHA, except that anyone who uses any workplace or equipment that has been "red tagged" or who defaces, destroys, or removes a "red tag"notice may be assessed a civil penalty of $1,000 maximum for each violation.
Tennessee	No separate penalty for imminent danger.
Vermont	No separate penalty for imminent danger.
Washington	Same as OSHA, except that employers who continue to use procedures that have been ordered restrained, or who use equipment that has been "red tagged", are guilty upon conviction of a gross misdemeanor, and may be fined $10,000 maximum, imprisoned for up to 6 months, or both.

State Officials' Opinions About Advantages of Inspectors' Shutdown Authority in Imminent Danger Situations

State program officials in Alaska, Oregon, Tennessee, and Washington told us that the major advantage of inspector shutdown authority is the ability to provide immediate protection to workers by stopping the practice or work condition that the inspector believes is causing the imminent danger. Without this authority, such protection may be delayed while the inspector seeks a court order, and workers could be killed or injured.

An Alaska official, for example, commented that shutdown authority is especially important for remote work sites where there are no judges or courts in the immediate area. He also said that authority to issue a stop order often results in the employer correcting a serious hazard immediately, without the inspector having to issue a red tag, because the

employer knows the inspector can stop the operation. A Vermont official noted that speed is critical in imminent danger situations to reduce the likelihood of death or serious injury. He contrasted a federal OSHA inspector's requirement to get a court order with a Vermont inspector's authority in situations, such as short-term construction projects like trenching, which may last only 4 to 8 hours. The Vermont inspector could order an immediate halt to operations if an imminent danger arose, whereas an employer in a state without shutdown authority could order employees to continue working in imminent danger conditions and even finish the project while the OSHA or state inspector without shutdown authority awaited a court order.

State Procedural Controls to Prevent Potential Abuse of Inspectors' Shutdown Authority

One concern regarding giving inspectors greater authority in imminent danger situations might be the possibility that they would misuse or abuse that authority. In response to our questions, we found procedures designed to prevent such abuse. For example, the Minnesota state official said that the potential for inspector abuse is negated in that state by the requirement that any imminent danger situation be reported to and discussed with the inspector's supervisor and/or the Commissioner. In addition, statistics on imminent danger situations/inspections show that, with the exception of Alaska, imminent danger/closure orders or notices were issued in about 2 percent or less of all inspections conducted. (See table II.4.) The number of such notices may understate the extent of imminent danger situations, however, because employers may correct the hazard immediately, thus preventing the need for the inspector to post a notice.

Table II.4: Number and Percent of Imminent Danger/Closure Orders Issued by Selected Federal Agencies and States, Fiscal Year 1991

	Fiscal year 1991 total inspections	Inspections with imminent danger orders	Imminent danger as percent of total inspections
Federal agency			
OSHA	42,113	[a]	[a]
MSHA	64,159	1,058	1.6
State			
Alaska	1,116	95	8.5
California	[a]	[a]	[a]
Kentucky	1,990	2	0.0
Maryland	2,476	32	1.3
Minnesota	3,797	10	0.3
Oregon	5,494	[a]	[a]
Tennessee	1,737	0	0.0
Vermont	580	0	0.0
Washington	8,931	191[b]	2.1[b]

[a]Information unavailable.

[b]This may include some imminent danger situations in which the employer voluntarily corrected the identified hazard without an order.

Percent of Contested Violations Upheld Upon Review, OSHA and State Plan States, Fiscal Year 1991

	Percent of total contested violations (serious, willful, and repeat) upheld	Number of contested violations upheld	Total number of contested violations
OSHA	83	14,022	16,958
State			
Alaska	96	206	214
Arizona	86	222	257
California	90	89	99
Hawaii	78	58	74
Indiana	85	563	661
Iowa	85	767	906
Kentucky	91	874	958
Maryland	86	1,144	1,338
Michigan	87	271	313
Minnesota	100	64	64
Nevada	100	103	103
New Mexico[a]	72	355	491
North Carolina	92	651	709
Oregon	88	3,738	4,272
South Carolina	91	1,174	1,292
Tennessee	91	39	43
Utah	100	5	5
Vermont	74	63	85
Virginia	79	1,017	1,291
Washington	82	1,630	2,000
Wyoming[b]	94	220	233

[a]We consider these data, from OSHA's 1992 special evaluation report, not comparable with those of other states because they reflect the number and percentage of total cases rather than violations.

[b]According to OSHA's January 1992 special evaluation of Wyoming's state plan, the state's data are not comparable with federal data because Wyoming uses a different definition of contested case.

OSHA Actions to Improve Employers' Proof of Hazard Abatement

H.R. 3160 contains a provision[1] that would require employers to verify—in writing—that a hazard has been abated. OSHA, in response to our recommendation that employers be required to provide detailed evidence of abatement actions,[2] has taken steps to develop such a regulation.

Under existing laws and regulations, employers are asked to provide documentation that they have corrected cited hazards but compliance with OSHA's requests is voluntary, not mandatory. When OSHA mails a citation to an employer, it requests that employers respond with letters detailing specific abatement actions and the date abatement was achieved for each violation. Employers are asked to send photographs, invoices, diagrams, and other documentary evidence but there is no requirement that they do so. If the employer does not respond to OSHA's request or if the response is inadequate, it then becomes the OSHA inspector's responsibility to verify abatement by telephone or by follow-up inspection. If the inspector verifies abatement by telephone, OSHA procedures require the inspector to record in the case file what the employer said about the corrective actions taken.

GAO and OSHA internal audits have shown that incomplete abatement documentation is a problem. Auditors reviewing case files were often unable to determine how area offices had confirmed abatement and what types of information they had accepted as evidence. In September 1989, the Director of the Office of Field Programs notified all OSHA regional administrators that the audits also revealed many abatement assurance problems and improvements were needed in regional oversight efforts.

Confirming abatement is important to ensure that workers are protected and employers have fulfilled their responsibilities to provide safe and healthful workplaces. Because we believe that the responsibility for providing evidence of abatement should rest with the employer, we recommended in May 1991 that OSHA promulgate a regulation requiring employers to submit detailed evidence of what corrective actions have been taken to abate hazards.[3] OSHA and Labor agreed and, with the concurrence of the Office of Management and Budget, are in the process of

[1]Title V, section 506.

[2]See Occupational Safety & Health: OSHA Policy Changes Needed to Confirm That Employers Abate Serious Hazards (GAO/HRD-91-35, May 8, 1991).

[3]We also made additional recommendations concerning the abatement and verification of abatement of hazards found in the construction industry. OSHA plans to address that issue either in the regulation requiring employer verification or in a separate directive.

developing such a regulation. OSHA has targeted a draft regulation for Office of Management and Budget's approval and Federal Register issuance for public comment as early as December 1992. A final rule could be published by August 1993.

Major Contributors to This Report

Human Resources Division, Washington, D.C.

Carlotta C. Joyner, Assistant Director, (202) 512-7002
Dennis M. Gehley, Evaluator-in-Charge
Alice H. Spargo, Senior Evaluator

Related GAO Products

Occupational Safety and Health: Penalties for Violations Are Well Below Maximum Allowable Penalties (GAO/HRD-92-48, Apr. 6, 1992).

Managing Workplace Safety & Health in the Petrochemical Industry (GAO/T-HRD-92-1, Oct. 2, 1991).

Occupational Safety & Health: OSHA Policy Changes Needed to Confirm That Employers Abate Serious Hazards (GAO/HRD-91-35, May 8, 1991).

Occupational Safety & Health: Inspectors' Opinions on Improving OSHA Effectiveness (GAO/HRD-91-9FS, Nov. 14, 1990).

Occupational Safety & Health: Options for Improving Safety and Health in the Workplace (GAO/HRD-90-66BR, Aug. 24, 1990).

OSHA's Monitoring and Evaluation of State Programs (GAO/T-HRD-88-13, Apr. 20, 1988).

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