

**GAO**

Testimony

Before the Committee on Health,  
Education, Labor, and Pensions,  
U.S. Senate

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# WORKPLACE SAFETY AND HEALTH

## Multiple Challenges Lengthen OSHA's Standard Setting

Statement of Revae Moran, Director  
Education, Workforce, and Income Security



**G A O**

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Chairman Harkin, Ranking Member Enzi, and Members of the Committee:

Thank you for the opportunity to discuss the challenges the Department of Labor's (Labor) Occupational Safety and Health Administration (OSHA) faces in developing and issuing safety and health standards. Workplace safety and health standards are designed to help protect over 130 million public and private sector workers from hazards at more than 8 million worksites in the United States, and have been credited with helping prevent thousands of work-related deaths, injuries, and illnesses. However, questions have been raised concerning whether the agency's approach to developing standards is overly cautious, resulting in too few standards being issued. Others counter that the process is intentionally deliberative to balance protections provided for workers with the compliance burden imposed on employers. Over the past 30 years, various presidential executive orders and federal laws have added new procedural requirements for regulatory agencies, resulting in multiple and sometimes lengthy steps OSHA and other agencies must follow.

My remarks today are based on findings from our report, which is being released today, entitled *Workplace Safety and Health: Multiple Challenges Lengthen OSHA's Standard Setting*.<sup>1</sup> For this report, we were asked to review: (1) the time taken by OSHA to develop and issue occupational safety and health standards and the key factors that affect these time frames, (2) alternatives to the typical standard-setting process that are available for OSHA to address urgent hazards, (3) whether rulemaking at other regulatory agencies offers insight into OSHA's challenges with setting standards, and (4) ideas that have been suggested by occupational safety and health experts for improving the process. To determine how long it takes OSHA to develop and issue occupational safety and health standards, we analyzed new standards and substantive updates to standards finalized between calendar years 1981 and 2010 and identified as significant by the agency. Through semistructured interviews with current and former Labor officials and occupational safety and health experts representing both workers and employers, we identified the key factors affecting OSHA's time frames for issuing standards and ideas for improving OSHA's standard-setting process. We reviewed relevant federal laws and interviewed current

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<sup>1</sup>[GAO-12-330](#) (Washington, D.C.: Apr. 2, 2012).

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OSHA staff and attorneys from Labor's Office of the Solicitor to identify alternatives to the typical standard-setting process available for OSHA to address urgent hazards. To determine whether rulemaking at other regulatory agencies offers insight into OSHA's challenges with setting standards, we conducted semistructured interviews with policy and program officials at the Environmental Protection Agency (EPA) and at the Mine Safety and Health Administration (MSHA). For more information on our scope and methodology, see the full report. This testimony is based on work performed between February 2011 and April 2012 in accordance with generally accepted government auditing standards.

In summary, we found that, between 1981 and 2010, the time it took OSHA to develop and issue safety and health standards ranged from 15 months to 19 years and averaged more than 7 years. Experts and agency officials cited several factors that contribute to the lengthy time frames for developing and issuing standards, including increased procedural requirements, shifting priorities, and a rigorous standard of judicial review. We also found that, in addition to using the typical standard-setting process, OSHA can address urgent hazards by issuing emergency temporary standards, although the agency has not used this authority since 1983 because of the difficulty it has faced in compiling the evidence necessary to meet the statutory requirements. Instead, OSHA focuses on enforcement activities—such as enforcing the general requirement of the Occupational Safety and Health Act of 1970 (OSH Act)<sup>2</sup> that employers provide a workplace free from recognized hazards—and educating employers and workers about urgent hazards. Experiences of other federal agencies that regulate public or worker health hazards offered limited insight into the challenges OSHA faces in setting standards. For example, EPA officials pointed to certain requirements of the Clean Air Act to set and regularly review standards for specified air pollutants that have facilitated the agency's standard-setting efforts. In contrast, the OSH Act does not require OSHA to periodically review its standards. Also, MSHA officials noted that their standard-setting process benefits from both the in-house knowledge of its inspectors, who inspect every mine at least twice yearly, and a dedicated mine safety research group within the National Institute for Occupational Safety and Health (NIOSH), a federal research agency that makes recommendations on occupational safety and health. OSHA must instead rely on time-consuming site visits to

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<sup>2</sup>Pub. L. No. 91-596, 84 Stat. 1590.

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obtain information on hazards and has not consistently coordinated with NIOSH to assess occupational hazards. Finally, experts and agency officials identified several ideas that could improve OSHA's standard-setting process. In our report being released today, we draw upon one of these ideas and recommend that OSHA and NIOSH more consistently collaborate on researching occupational hazards so that OSHA can more effectively leverage NIOSH expertise in its standard-setting process.

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## Background

The basic process by which all federal agencies typically develop and issue regulations is set forth in the Administrative Procedure Act (APA),<sup>3</sup> and is generally known as the rulemaking process.<sup>4</sup> Rulemaking at most regulatory agencies follows the APA's informal rulemaking process, also known as "notice and comment" rulemaking, which generally requires agencies to publish a notice of proposed rulemaking in the *Federal Register*, provide interested persons an opportunity to comment on the proposed regulation, and publish the final regulation, among other things.<sup>5</sup> Under the APA, a person adversely affected by an agency's notice and comment rulemaking is generally entitled to judicial review of that new rule, and a court may invalidate the regulation if it finds it to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," sometimes referred to as the arbitrary and capricious test.<sup>6</sup> In addition to the requirements of the APA, federal agencies typically must comply with requirements imposed by certain other statutes and executive orders. In accordance with various presidential executive orders, agencies work closely with staff from the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs, who review draft regulations and other significant

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<sup>3</sup>Pub. L. No. 79-404, 60 Stat. 237 (1946), codified in 1966 in scattered sections of title 5, United States Code. Agencies may follow additional or alternative procedures if certain exceptions apply, or when required by other statutes.

<sup>4</sup>The APA defines a rule as "the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." 5 U.S.C. § 551(4). For this testimony, we use the terms rule and regulation interchangeably.

<sup>5</sup>The APA also provides for formal rulemaking in certain cases. Formal rulemaking includes a trial-type hearing, and if challenged in court, the resulting rule will be struck down if unsupported by substantial evidence. 5 U.S.C. § 553.

<sup>6</sup>5 U.S.C. §§ 702, 706(2)(A).

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regulatory actions prior to publication.<sup>7</sup> Most of the additional requirements that affect OSHA standard setting were established in 1980 or later.

The process OSHA uses to develop and issue standards is spelled out in the OSH Act. Section 6(b) of the act specifies the procedures OSHA must use to promulgate, modify, or revoke its standards.<sup>8</sup> These procedures include publishing the proposed rule in the *Federal Register*, providing interested persons an opportunity to comment, and holding a public hearing upon request. Section 6(a) of the act directed the Secretary of Labor (through OSHA) to adopt any national consensus standards or established federal standards as safety and health standards within 2 years of the date the OSH Act went into effect, without following the procedures set forth in section 6(b) or the APA.<sup>9</sup> According to an OSHA publication, the vast majority of these standards have not changed since originally adopted, despite significant advances in technology, equipment, and machinery over the past several decades. In leading the agency's standard-setting process, staff from OSHA's Directorate of Standards and Guidance, in collaboration with staff from other Labor offices, explore the

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<sup>7</sup>A regulatory action is "significant" if it will (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (sometimes referred to as "economically significant"); (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order. Exec. Order No. 12866, 58 Fed. Reg. 51,735 (Sept. 30, 1993). The principles, structures, and definitions established in Executive Order 12866 were reaffirmed by Executive Order 13563, 76 Fed. Reg. 3821 (Jan. 18, 2011).

<sup>8</sup>Codified at 29 U.S.C. § 655(b).

<sup>9</sup>Codified at 29 U.S.C. § 655(a). In general, national consensus standards are voluntary safety and health standards that a nationally recognized standards-producing organization adopts after reaching substantial agreement among those who will be affected, including businesses, industries, and workers. For purposes of section 6(a) of the OSH Act, a national consensus standard must have met certain requirements. See the full report for more information on national consensus standards. The OSH Act defines an "established Federal standard" as any operative occupational safety and health standard established by any federal agency or contained in any Act of Congress that was in effect on the date of enactment of the OSH Act. 29 U.S.C. § 652(10). Prior to the enactment of the OSH Act, other federal laws included provisions designed to protect workers' safety and health, such as the 1936 Walsh-Healey Act.

appropriateness and feasibility of developing standards to address workplace hazards that are not covered by existing standards. Once OSHA initiates such an effort, an interdisciplinary team typically composed of at least five staff focus on that issue.

## OSHA’s Standard-Setting Time Frames Vary Widely and Are Influenced by the Many Procedural Requirements and Other Factors

We analyzed the 58 significant health and safety standards OSHA issued between 1981 and 2010 and found that the time frames for developing and issuing them averaged about 93 months (7 years, 9 months), and ranged from 15 months to about 19 years (see table 1).<sup>10</sup>

**Table 1: Significant OSHA Safety and Health Standards Finalized between 1981 and 2010**

Decade/year	Number of standards finalized <sup>a</sup>	Average number of months from initiation to final rule <sup>b</sup>	Average number of months from proposed rule to final rule
1980s	24	70	30
1990s	23	118	50
2000s	10	91	36
2010	1	— <sup>c</sup>	— <sup>c</sup>
Overall	58	93	39

Source: GAO analysis of *Federal Register*.

<sup>a</sup>For the purposes of this analysis, we considered a standard to have been finalized on the date it was published in the *Federal Register* as a final rule.

<sup>b</sup>For the purposes of this analysis, we considered a standard to be initiated on the date OSHA publicly indicated initiating work on the standard in the *Federal Register*, by publishing a Request for Information or Advance Notice of Proposed Rulemaking. In cases where OSHA mentioned neither of these in the final rule, we used the date the standard first appeared on OSHA’s semiannual regulatory agenda.

<sup>c</sup>Because only one standard was finalized in 2010, we did not list the average number of months. However, the overall calculations include the 2010 standard.

<sup>10</sup>We included in our review standards that OSHA considered to be important or a priority, including but not limited to standards that met the definition of “significant” under Executive Order 12866.

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During this period, OSHA staff also worked to develop standards that have not yet been finalized. For example, according to agency officials, OSHA staff have been working on developing a silica standard since 1997, a beryllium standard since 2000, and a standard on walking and working surfaces since 2003.<sup>11</sup> For a depiction of the timelines for safety and health standards issued between 1981 and 2010, see appendix I.

Experts and agency officials frequently cited the increased number of procedural requirements established since 1980 as a factor that lengthens OSHA's time frames for developing and issuing standards. They indicated that the increased number of procedural requirements affects the agency's standard-setting time frames because of the complex requirements OSHA must comply with to demonstrate the need for new or updated standards (see fig. 1). For example, OSHA must evaluate technological and economic feasibility of a potential standard<sup>12</sup> using data gathered by visiting worksites in industries that will be affected, on an industry-by-industry basis.<sup>13</sup> Agency officials told us this is an enormous undertaking because, for example, it requires visits to multiple worksites. In addition to the feasibility analyses, OSHA staff generally must also conduct economic analyses, including assessing the costs and benefits of significant standards,<sup>14</sup> and may be required to initiate a panel process that seeks and considers input from representatives of affected small

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<sup>11</sup>Agency officials told us that OSHA issued a proposed standard on beryllium in 1975, but it was never issued as a final rule. Staff started collecting information on beryllium again in 2000. In addition, they told us that a 2010 proposed rule on walking and working surfaces replaced an outdated proposed rule from 1990 that was never issued as a final rule because of other regulatory priorities.

<sup>12</sup>These analyses are necessary because the Supreme Court has held that the OSH Act requires that standards be both technologically and economically feasible. *Am. Textile Mfrs. Inst. v. Donovan*, 452 U.S. 490, 513 n.31 (1981).

<sup>13</sup>See *United Steelworkers v. Marshall*, 647 F.2d 1189, 1301 (D.C. Cir. 1980), quoted in *AFL-CIO v. OSHA*, 965 F.2d 962, 980 (11th Cir. 1992). Assessing feasibility on an industry-by-industry basis requires that the agency research all applications of the hazard being regulated, as well as the expected cost for mitigating exposure to that hazard, in every industry.

<sup>14</sup>Executive Order 12866 requires that OSHA provide an assessment of the potential overall costs and benefits for significant rules to OMB. For rules that are "economically significant," the agency must also submit a more detailed cost-benefit analysis. See 58 Fed. Reg. 51,735 (Sept. 30, 1993).

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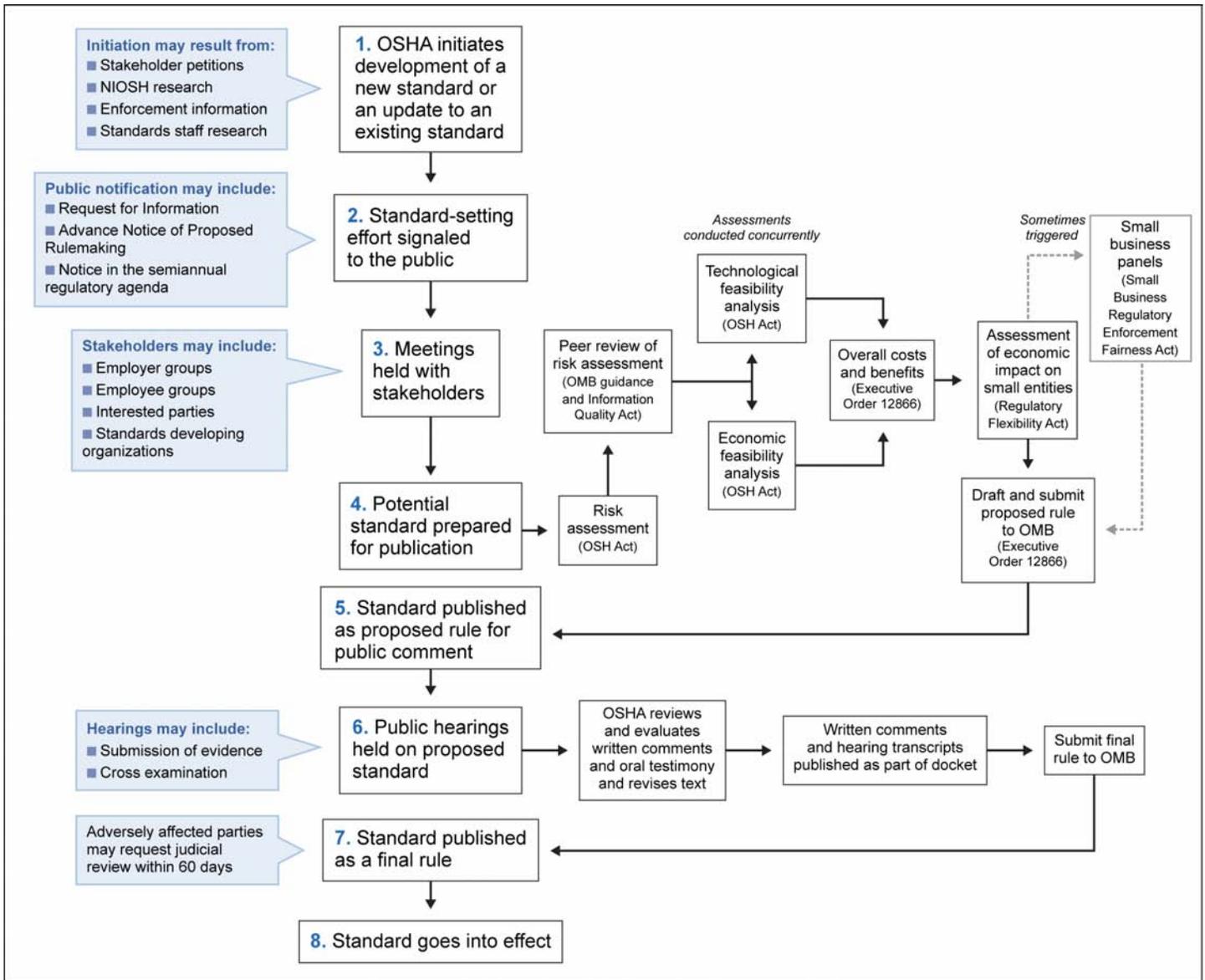
businesses.<sup>15</sup> According to agency officials, the small business panel process takes about 8 months of work, and OSHA is one of only three federal agencies that is subject to this requirement.<sup>16</sup>

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<sup>15</sup>Under the Small Business Regulatory Enforcement Fairness Act of 1996, this panel process is required if OSHA determines that a potential standard would have a significant economic impact on a substantial number of small entities, such as businesses. OSHA staff must work with the Small Business Administration to set up the small business panels. 5 U.S.C. § 609(b),(d).

<sup>16</sup>The other two agencies that are subject to this requirement are EPA and the Consumer Financial Protection Bureau.

**Figure 1: Steps in a Typical OSHA Standard-Setting Process**



Sources: GAO analysis of interviews with agency officials and relevant federal laws and regulations.

Note: This figure is for illustrative purposes only. Not all steps identified here may be performed for all standards and some standards may involve additional steps not included here.

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Experts and agency officials also told us that changing priorities are a factor that affects the time frames for developing and issuing standards, explaining that priorities may change as a result of changes within OSHA, Labor, Congress, or the presidential administration. Some agency officials and experts told us such changes often cause delays in the process of setting standards. For example, some experts noted that the agency's intense focus on publishing an ergonomics rule in the 1990s took attention away from several other standards that previously had been a priority.<sup>17</sup>

The standard of judicial review that applies to OSHA standards if they are challenged in court also affects OSHA's time frames because it requires more robust research and analysis than the standard that applies to many other agencies' regulations, according to some experts and agency officials. Instead of the arbitrary and capricious test provided for under the APA, the OSH Act directs courts to review OSHA's standards using a more stringent legal standard: it provides that a standard shall be upheld if supported by "substantial evidence in the record considered as a whole."<sup>18</sup> According to OSHA officials, this more stringent standard (known as the "substantial evidence" standard) requires a higher level of scrutiny by the courts and as a result, OSHA staff must conduct a large volume of detailed research in order to understand all industrial processes involved in the hazard being regulated, and to ensure that a given hazard control would be feasible for each process.

According to OSHA officials and experts, two additional factors result in an extensive amount of work for the agency in developing standards:

- *Substantial data challenges*, which stem from a dearth of available scientific data for some hazards and having to review and evaluate scientific studies, among other sources. In addition, according to agency officials, certain court decisions interpreting the OSH Act require rigorous support for the need for and feasibility of standards.

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<sup>17</sup>OSHA issued a final standard just 1 year after publishing the proposed rule, but, according to agency officials, in order to develop the rule so quickly, the vast majority of OSHA's standard-setting resources were focused on this rulemaking effort, including nearly 50 full-time staff in OSHA's standards office, half the staff economists, and 7 or 8 attorneys. The rule was invalidated by Congress 4 months after it was issued under the Congressional Review Act. Pub. L. No. 107-5, 115 Stat. 7 (2001).

<sup>18</sup>29 U.S.C. § 655(f).

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An example of one such decision cited by agency officials is a 1980 Supreme Court case, which resulted in OSHA having to conduct quantitative risk assessments for each health standard and ensure that these assessments are supported by substantial evidence.<sup>19</sup>

- *Response to adverse court decisions.* Several experts with whom we spoke observed that adverse court decisions have contributed to an institutional culture in the agency of trying to make OSHA standards impervious to future adverse decisions. However, agency officials said that, in general, OSHA does not try to make a standard “bulletproof” because, while OSHA tries to avoid lawsuits that might ultimately invalidate the standard, the agency is frequently sued. For example, in the “benzene decision,” the Supreme Court invalidated OSHA’s revised standard for benzene because the agency failed to make a determination that benzene posed a “significant risk” of material health impairment under workplace conditions permitted by the current standard.<sup>20</sup> Another example is a 1992 decision in which a U.S. Court of Appeals struck down an OSHA health standard that would have set or updated the permissible exposure limit for over 400 air contaminants.<sup>21</sup>

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<sup>19</sup>*Indus. Union Dep’t, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 639 (1980). Although the decision interpreted a provision of the OSH Act that applied only to health hazards, Labor officials said that there is little practical distinction between the evidence OSHA must compile to support health standards and the evidence it must compile for safety standards.

<sup>20</sup>*Indus. Union Dep’t, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 639 (1980).

<sup>21</sup>*AFL-CIO v. OSHA*, 965 F.2d 962, 986-87 (11th Cir. 1992).

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## OSHA Has Authority to Address Urgent Hazards through Emergency Temporary Standards, Enforcement, and Education

OSHA has not issued any emergency temporary standards in nearly 30 years, citing, among other reasons, legal and logistical challenges.<sup>22</sup> OSHA officials noted that the emergency temporary standard authority remains available, but the legal requirements to issue such a standard—demonstrating that workers are exposed to grave danger and establishing that an emergency temporary standard is necessary to protect workers from that grave danger—are difficult to meet. Similarly difficult to meet, according to officials, is the requirement that an emergency temporary standard must be replaced within 6 months by a permanent standard issued using the process specified in section 6(b) of the OSH Act.

OSHA uses enforcement and education as alternatives to issuing emergency temporary standards to respond relatively quickly to urgent workplace hazards. OSHA officials consider their enforcement and education activities complementary. In its enforcement efforts to address urgent hazards, OSHA uses the general duty clause of the OSH Act, which requires employers to provide a workplace free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to their employees.<sup>23</sup> Under the general duty clause, OSHA has the authority to issue citations to employers even in the absence of a specific standard under certain circumstances. Along with its enforcement and standard-setting activities, OSHA also educates employers and workers to promote voluntary protective measures against urgent hazards. OSHA's education efforts include on-site consultations and publishing health and safety information on urgent hazards. For example, if its inspectors discover a particular hazard, OSHA may send letters to all employers where the hazard is likely to be present to inform them about the hazard and their responsibility to protect their workers.

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<sup>22</sup>Section 6(c) of the OSH Act authorizes OSHA to issue these standards without following the typical standard-setting procedures if certain statutory requirements are met. 29 U.S.C. § 655(c).

<sup>23</sup>29 U.S.C. § 654(a)(1).

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## Other Regulatory Agencies' Experiences Offer Limited Insight into OSHA's Challenges

Although the rulemaking experiences of EPA and MSHA shed some light on OSHA's challenges, their statutory framework and resources differ too markedly for them to be models for OSHA's standard-setting process. For example, EPA is directed to regulate certain sources of specified air pollutants and review its existing regulations within specific time frames under section 112 of the Clean Air Act, which EPA officials told us gave the agency clear requirements and statutory deadlines for regulating hazardous air pollutants.<sup>24</sup> MSHA benefits from a narrower scope of authority than OSHA and has more specialized expertise as a result of its more limited jurisdiction and frequent on-site presence at mines. Officials at MSHA, OSHA, and Labor noted that this is very different from OSHA, which oversees a vast array of workplaces and types of industries and must often supplement the agency's inside knowledge by conducting site visits.

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## Experts Suggested Many Ideas to Improve OSHA's Standard-Setting Process, Including More Interagency Coordination and Statutory Deadlines

Agency officials and occupational safety and health experts shared their understanding of the challenges facing OSHA and offered ideas for improving the agency's standard-setting process.<sup>25</sup> Some of the ideas involve substantial procedural changes that may be beyond the scope of OSHA's authority and require amending existing laws, including the OSH Act.

- *Improve coordination with other agencies:* Experts and agency officials noted that OSHA has not fully leveraged available expertise at other federal agencies, especially NIOSH, in developing and issuing its standards. OSHA officials said the agency considers NIOSH's input on an ad hoc basis but OSHA staff do not routinely work closely with NIOSH staff to analyze risks of occupational hazards. They stated that collaborating with NIOSH on risk assessments, and generally in a more systematic way, could reduce

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<sup>24</sup>42 U.S.C. § 7412. However, as GAO reported in 2006, EPA failed to meet some of its statutory deadlines under section 112 of the Clean Air Act. See GAO, *Clean Air Act: EPA Should Improve the Management of its Air Toxics Program*, GAO 06-669 (Washington, D.C.: June 23, 2006).

<sup>25</sup>The ideas presented here are those most frequently mentioned in our interviews by agency officials and experts that are not addressed in other sections of the full report. For more information on our methodology, see the full report.

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the time it takes to develop a standard by several months, thus facilitating OSHA's standard-setting process.

- *Expand use of voluntary consensus standards:* According to OSHA officials, many OSHA standards incorporate or reference outdated consensus standards, which could leave workers exposed to hazards that are insufficiently addressed by OSHA standards that are based on out-of-date technology or processes. Experts suggested that Congress pass new legislation that would allow OSHA, through a single rulemaking effort, to revise standards for a group of health hazards using current industry voluntary consensus standards, eliminating the requirement for the agency to follow the standard-setting provisions of section 6(b) of the OSH Act or the APA. One potential disadvantage of this proposal is that any abbreviation to the regulatory process could also result in standards that fail to reflect relevant stakeholder concerns, such as an imposition of unnecessarily burdensome requirements on employers.
- *Impose statutory deadlines:* OSHA officials indicated that it can be difficult to prioritize standards due to the agency's numerous and sometimes competing goals. In the past, having a statutory deadline, combined with relief from procedural requirements, resulted in OSHA issuing standards more quickly. However, some legal scholars have noted that curtailing the current rulemaking process required by the APA may result in fewer opportunities for public input and possibly decrease the quality of the standard.<sup>26</sup> Also, officials from MSHA told us that, while statutory deadlines make its priorities clear, this is sometimes to the detriment of other issues that must be set aside in the meantime.
- *Change the standard of judicial review:* Experts and agency officials suggested OSHA's substantial evidence standard of judicial review be replaced with the arbitrary and capricious standard, which would be more consistent with other federal regulatory agencies. The Administrative Conference of the United States has recommended that Congress amend laws that mandate use of the substantial evidence standard, in part because it can be unnecessarily

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<sup>26</sup>See, for example, Jacob E. Gersen and Anne Joseph O'Connell, "Deadlines in Administrative Law," *University of Pennsylvania Law Review*, vol. 156 (2007-2008).

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burdensome for agencies.<sup>27</sup> As a result, changing the standard of review to “arbitrary and capricious” could reduce the agency’s evidentiary burden. However, if Congress has concerns about OSHA’s current regulatory power, it may prefer to keep the current standard of review.<sup>28</sup>

- *Allow alternatives for supporting feasibility:* Experts suggested that OSHA minimize on-site visits—a time-consuming requirement for analyzing the technological and economic feasibility of new or updated standards—by using surveys or basing its analyses on industry best practices. One limitation to surveying worksites is that, according to OSHA officials, in-person site visits are imperative for gathering sufficient data in support of most health standards. Basing feasibility analyses on industry best practices would require a statutory change, as one expert noted, and would still require OSHA to determine feasibility on an industry-by-industry basis.
- *Adopt a priority-setting process:* Experts suggested that OSHA develop a priority-setting process for addressing hazards, and as GAO has reported, such a process could lead to improved program results.<sup>29</sup> OSHA attempted such a process in the past, which allowed the agency to articulate its highest priorities for addressing occupational hazards. Reestablishing such a process may improve a sense of transparency among stakeholders and facilitate OSHA management’s ability to plan its staffing and budgetary needs. However, it may not immediately address OSHA’s challenges in expeditiously setting standards because such a process could take time and would require commitment from agency management.

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<sup>27</sup>59 Fed. Reg. 4669, 4670-71 (Feb. 1, 1994). The Administrative Conference of the United States is an independent federal agency that makes recommendations for improving federal agency procedures, including the federal rulemaking process.

<sup>28</sup> One suggested justification for judicial review of agency rulemaking is when there is genuine concern about the power agencies have in the regulatory process. Mark Seidenfeld, “Bending the Rules: Flexible Regulation and Constraints on Agency Discretion,” *Administrative Law Review* (spring, 1999).

<sup>29</sup>See GAO, *Managing for Results: Enhancing Agency Use of Performance Information for Management Decision Making*, [GAO-05-927](#) (Washington D.C.: Sept. 9, 2005).

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## Concluding Remarks

The process for developing new and updated safety and health standards for occupational hazards is a lengthy one and can result in periods when there are insufficient protections for workers. Nevertheless, any streamlining of the current process must guarantee sufficient stakeholder input to ensure that the quality of standards does not suffer. Additional procedural requirements established since 1980 by Congress and various executive orders have increased opportunities for stakeholder input in the regulatory process and required agencies to evaluate and explain the need for regulations, but they have also resulted in a more protracted rulemaking process for OSHA and other regulatory agencies. Ideas for changes to the regulatory process must weigh the benefits of addressing hazards more quickly against a potential increase in the regulatory burden imposed on the regulated community. Most methods for streamlining that have been suggested by experts and agency officials are largely outside of OSHA's authority because many procedural requirements are established by federal statute or executive order. However, OSHA can coordinate more routinely with NIOSH on risk assessments and other analyses required to support the need for standards, saving OSHA time and expense. In our report being released today, we recommend that OSHA and NIOSH more consistently collaborate on researching occupational hazards so that OSHA can more effectively leverage NIOSH expertise in its standard-setting process. Both agencies agreed with this recommendation.

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Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or other Members of the Committee may have.

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## GAO Contact and Staff Acknowledgments

For questions about this testimony, please contact me at (202) 512-7215 or [moranr@gao.gov](mailto:moranr@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this statement include, Gretta L. Goodwin, Assistant Director; Susan Aschoff; Tim Bober; Anna Bonelli; Sarah Cornetto; Jessica Gray; and Sara Pelton.

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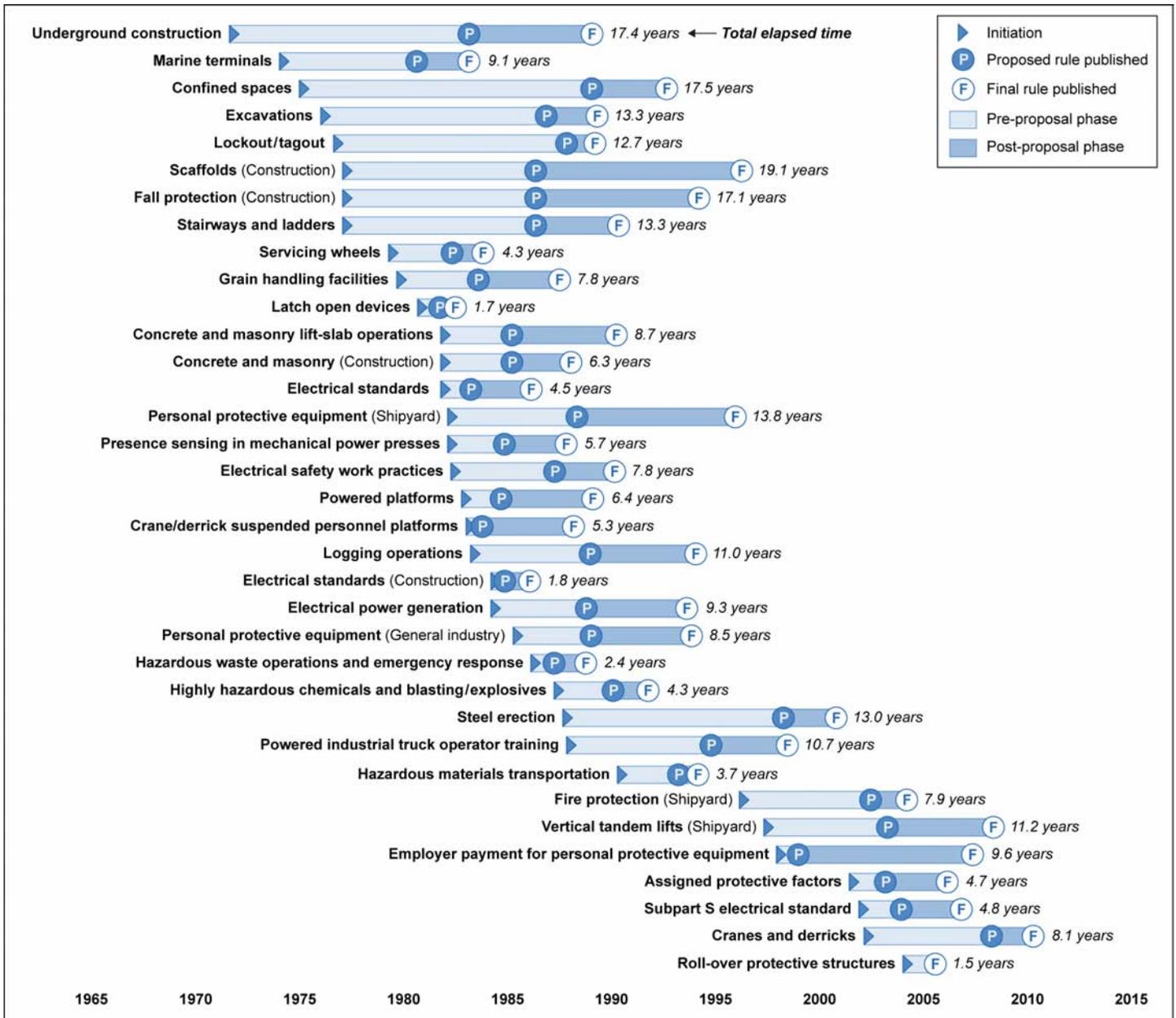
# Appendix I: Timelines of Significant OSHA Safety and Health Standards

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The following two figures (fig. 2 and fig. 3) depict a timeline for each of the 58 significant safety and health standards OSHA issued between 1981 and 2010.

Appendix I: Timelines of Significant OSHA Safety and Health Standards

Figure 2: Significant OSHA Safety Standards Timeline



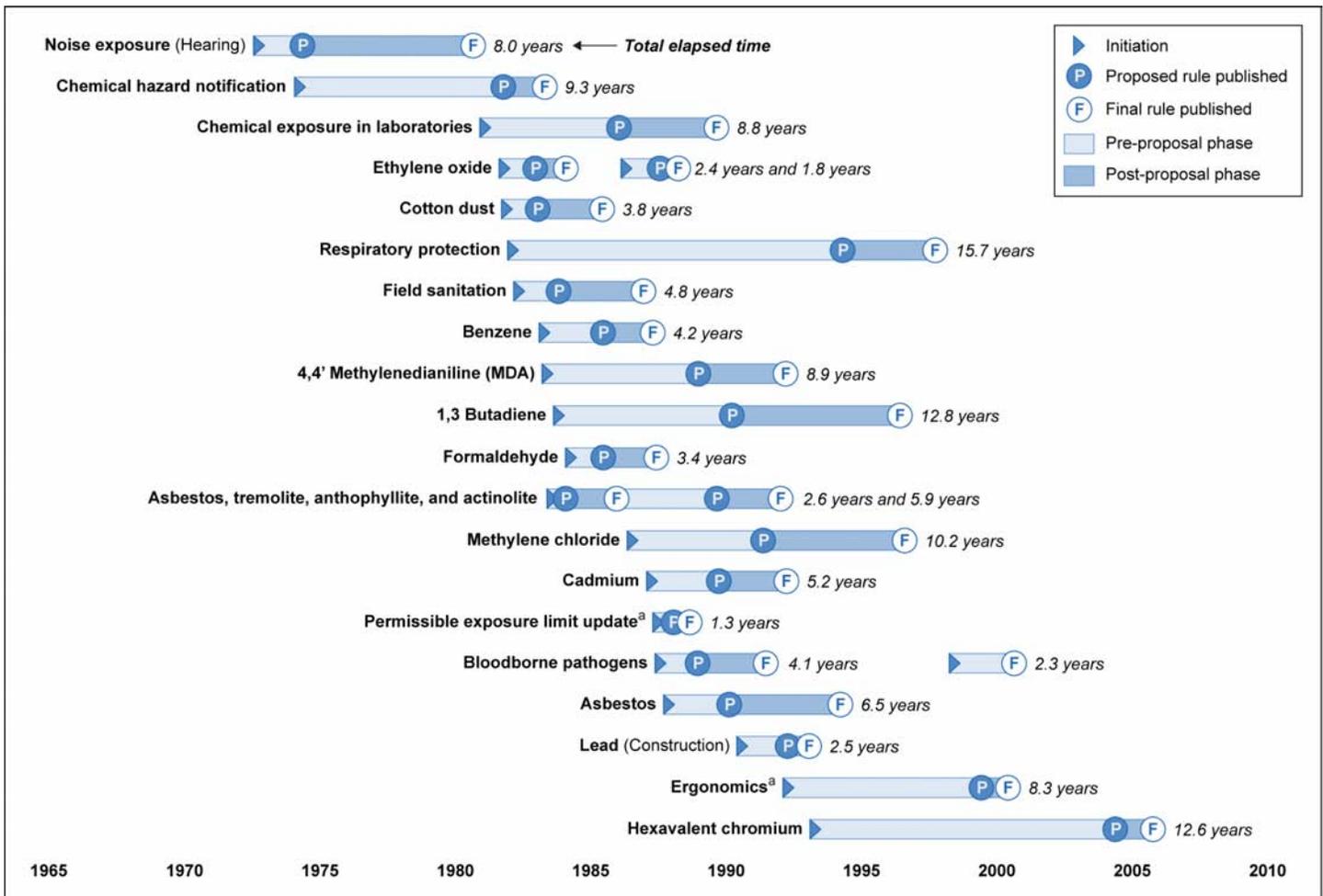
Sources: GAO analysis of interviews with agency officials and *Federal Register* notices.

Note: For the purposes of this analysis, we considered a standard to be initiated on the date OSHA publicly indicated initiating work on the standard in the *Federal Register*, by publishing a Request for

**Appendix I: Timelines of Significant OSHA Safety and Health Standards**

Information or Advance Notice of Proposed Rulemaking. In cases where OSHA mentioned neither of these in the final rule, we used the date the standard first appeared on OSHA's semiannual regulatory agenda. We considered a standard to be finalized on the date it was published in the *Federal Register* as a final rule.

**Figure 3: Significant OSHA Health Standards Timeline**



Sources: GAO analysis of interviews with agency officials and *Federal Register* notices.

Note: For the purposes of this analysis, we considered a standard to be initiated on the date OSHA publicly indicated initiating work on the standard in the *Federal Register*, by publishing a Request for Information or Advance Notice of Proposed Rulemaking. In cases where OSHA mentioned neither of these in the final rule, we used the date the standard first appeared on OSHA's semiannual regulatory agenda. We considered a standard to be finalized on the date it was published in the *Federal Register* as a final rule.

<sup>a</sup>These two health standards were wholly invalidated either by court decision or congressional action. Parts of other standards may have been invalidated but such analysis is beyond the scope of our review.

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