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OSHA's Resumption of Private
Sector Enforcement Activities
in California

Statement of
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House Government Operations Committee
United States House of Representatives



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SUMMARY OF GAO TESTIMONY BY WILLIAM J. GAINER
ON OSHA'S RESUMPTION OF PRIVATE SECTOR
ENFORCEMENT ACTIVITIES IN CALIFORNIA

Until July 1, 1987, California was one of 23 states and territories that operated their own safety and health program for both private and public sector workers. On that date, the Occupational Safety and Health Administration (OSHA) assumed the responsibility for protection of 9.5 million workers in California because the Governor had decided to discontinue private sector enforcement activities. OSHA is providing enforcement coverage at least until the state Supreme Court rules on the legality of the Governor's decision.

OSHA CONTINGENCY PLANNING. At the time the Governor announced California's withdrawal, OSHA had no contingency plan to cover such a situation, nor do OSHA officials believe such a plan would be useful if a similar event should occur in the future. They believe it is better to tailor their response to individual circumstances rather than develop a general approach in advance because each state program has unique characteristics. This approach seems reasonable.

MANAGEMENT AND COSTS OF THE TRANSITION. OSHA gave high priority to the transition to a federally-run program and—given the size of the enforcement task it faced, the politically charged environment, and the uncertainty regarding the legal status of the Governor's action—did a good job of managing the transition. Several staffing approaches and area office arrangements were considered to provide continuous coverage for workers while minimizing disruption of OSHA activities elsewhere. The least disruptive arrangement—funding for some state employees to perform inspections for six months—could not be implemented because OSHA and the state failed to reach an agreement. Therefore, OSHA detailed almost a third of its inspectors and supervisors temporarily to California from other regions before the June 10, 1988, permanent workforce of 165 employees was established. One-time transition costs in fiscal year 1987 and ongoing fiscal year 1988 operating costs are less than what OSHA expected to spend if the state program had continued.

IMPACT ON OSHA'S OTHER ACTIVITIES. OSHA maintained its enforcement activities in other regions by temporarily assigning staff from other activities to perform inspections. As a result, these other activities—such as internal audits and monitoring of state-operated programs—experienced significant disruptions during the transition period.

COMPARISON OF OSHA TO CALIFORNIA PROGRAM. The number of safety and health inspections in California has decreased under OSHA and is expected to remain at about a third of the previous level through at least fiscal year 1988. The legislation and standards that guide federal enforcement activities also differ from those of California in that: (1) occupational safety and health standards and exposure limits under California rules are more comprehensive, are broader in scope, and cover more potential worksite hazards than under OSHA and (2) state legislation is more stringent, allowing more severe sanctions for employers who violate the law.

Mr. Chairman and Members of the Committee:

Our testimony today responds to your request for information regarding the recent resumption of private sector worker protection activities in California by the U.S. Labor Department's Occupational Safety and Health Administration (OSHA). You asked us to describe (1) OSHA's contingency planning for state-operated programs' withdrawing from worker protection responsibilities, (2) management and costs of the California transition to a federally-run safety and health program, (3) the transition's impact on OSHA activities outside California, and (4) OSHA's enforcement program compared to that of California.

My statement relies to some extent on information we developed for the Senate Committee on Labor and Human Resources.¹ To answer your questions we also (1) examined documents and talked with officials at OSHA headquarters and (2) conducted telephone interviews with the ten OSHA Regional Administrators.

I will elaborate on each of your questions after briefly summarizing the legislative provisions governing state occupational safety and health programs and the background for the current enforcement status in California.

BACKGROUND

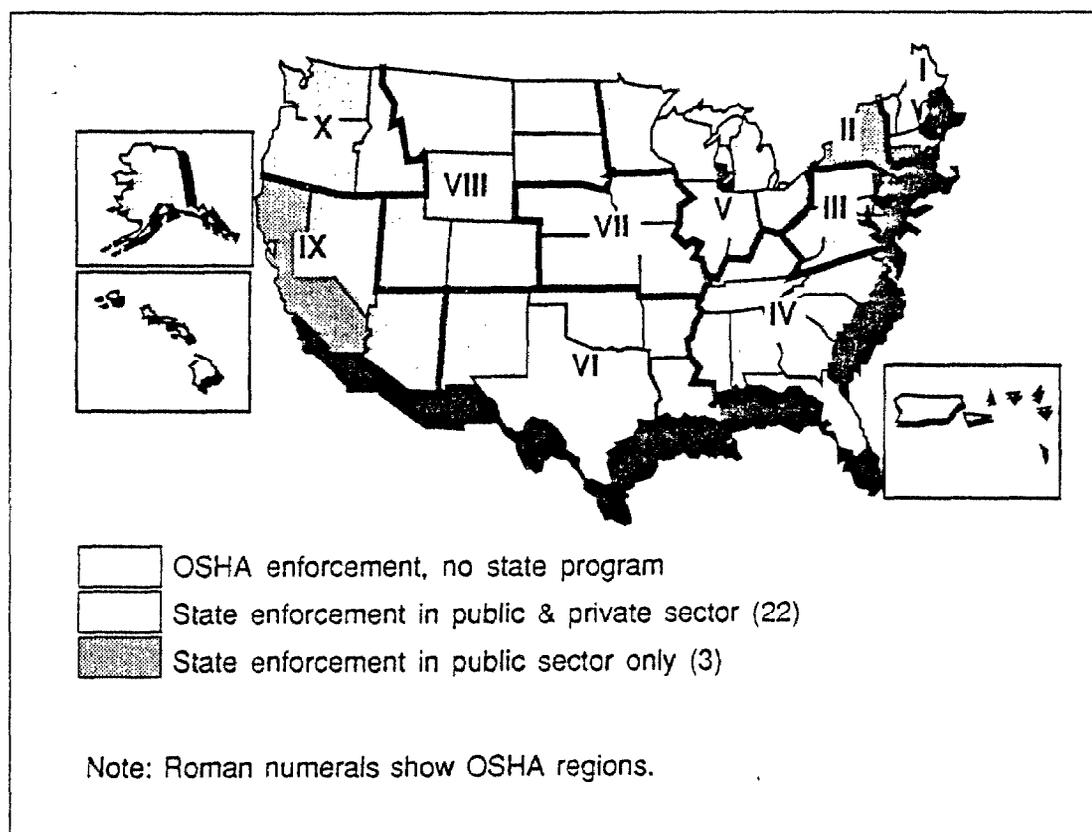
To meet OSHA's mandate to assure every U.S. worker safe and healthful working conditions, the Occupational Safety and Health Act of 1970 encourages states to develop and operate their own safety and health programs. To assume that responsibility, a state must submit a detailed plan for OSHA approval. A state may begin enforcing its own standards and receiving federal funds for up to 50 percent of the program's operating cost once OSHA certifies that its plan provides a framework that includes appropriate legislation, standard setting and enforcement procedures, a means for appeal of citations and penalties, and a sufficient number of competent enforcement personnel.

OSHA is required to monitor and evaluate these state programs. If OSHA concludes that a state is failing to comply with its plan, the state's authority to operate the program may be withdrawn. However, OSHA has never taken this action.

¹ Occupational Safety and Health Administration Oversight Hearings Before the Senate Committee on Labor and Human Resources, 100th Cong., 2d Sess. (statement of William J. Gainer, April 20, 1988, GAO/T-HRD-88-13).

As the map shows, twenty-five states and territories operate safety and health programs. Three of these provide enforcement only in the public sector (state and local government employees) while the remaining 22 cover both the public and private sectors. The chart also shows OSHA's ten regions, which contain 92 area and district offices.

GAO State-Operated Worker Safety and Health Programs



At present, California is one of the three states enforcing safety and health standards only for the public sector. However, with the exception of a brief transitional period shortly after OSHA was created, the state had enforced safety and health standards in the private sector from 1913 until July 1, 1987. On that date, OSHA assumed the responsibility for protection of 9.5 million workers in California because the Governor decided to discontinue private sector enforcement.

In accordance with a rider to the Labor Department's fiscal year 1988 appropriation, OSHA has not terminated California's state plan agreement but is providing enforcement coverage at

least until the California State Supreme Court rules on the legality of the Governor's decision. The appropriations rider did not prohibit OSHA from hiring staff and opening offices in California.

OSHA CONTINGENCY PLANNING FOR STATE WITHDRAWAL

OSHA had no contingency plan to cover a situation where a state withdrew from worker protection responsibility when California made its decision to do so. Nor do OSHA officials believe such a plan would be useful if a similar event should occur in the future. They believe it is better to tailor their response to individual circumstances rather than develop a general approach in advance. They note, for example, that OSHA's actions would depend upon (1) the characteristics of the particular state program, (2) the timing of the withdrawal, and (3) the funding available for implementing a federal program. Those actions in response to a state's withdrawal will also be shaped, according to top OSHA officials, by an overall philosophy of, first, encouraging states to continue operating their own worker protection programs and, second, allocating OSHA resources equitably across the states where OSHA has enforcement responsibility.

Furthermore, the California withdrawal was unique--OSHA had never experienced a similar situation, and it believes a similar occurrence in the future is unlikely. Prior to the state's withdrawal, only two states (Colorado and Connecticut) had withdrawn after they began performing inspections. Both withdrew in 1978. Because these programs were relatively small and OSHA was still performing some inspections there, neither situation was as disruptive as California's withdrawal. Although other legislatures and governors have considered terminating their programs, OSHA does not anticipate further withdrawals in the near future. Moreover, no other state program is nearly as large as that of California. For example, the largest remaining state program (Michigan) had OSHA funding in fiscal year 1987 of \$6.5 million compared to \$14 million for California and 77 compliance officers compared to California's 215. The three largest state programs combined are only slightly larger than was the California program.

OSHA'S MANAGEMENT OF THE TRANSITION EFFORT

We believe OSHA did a good job of managing the transition in California, given the extremely difficult task it faced. This difficulty resulted not only from the number of workers to be protected and the size of the state but, especially, from the

politically charged environment and the uncertainty regarding the legal status of the Governor's action.

The success of OSHA's transition management may be due in part to the high priority given it by the Assistant Secretary for Occupational Safety and Health. (See the next chart.) The Governor notified OSHA on February 6, 1987, of his intention to terminate California's private sector program. By March 4, 1987, OSHA had formed a task force to prepare for resumption of federal coverage within the state. The task force was intended to assure that the California program met OSHA's expectations in areas such as staffing and enforcement policies. Members of the task force, who were National Office directors or regional administrators, were given individual responsibilities to plan or coordinate training, enforcement, and technical and administrative support. The head of the task force served as the Acting Regional Administrator for OSHA's Region IX, which includes California.

GAO Management of the Transition in California

- High priority by OSHA
 - Task force of key senior staff
 - Started planning early
 - Explored alternative solutions
 - Example: Transition period with state inspectors
 - Opened and staffed area offices
 - Detailed experienced staff
 - Hired permanent staff
 - Opened 7 area offices
-

OSHA considered several staffing approaches and area office arrangements to provide continuous coverage for California workers. Its stated goal was to do so while minimizing the disruption to its activities in the rest of the country.

The first staffing approach OSHA considered was one that would have been the least disruptive to its enforcement activities elsewhere--a combination of state employees performing inspections temporarily for OSHA and a few compliance officers detailed from OSHA's other regions. As provided under section 7(c)(1) of the act, OSHA explored providing a grant for some of the state's personnel to perform inspections from July through December 1987. During May and June, OSHA trained about 100 California staff in OSHA policies and inspection procedures. But OSHA and California were unable to reach a final agreement. California would not assure that all the employees OSHA needed to perform inspections would be exempt from anticipated reductions in the California program's workforce. Thus, about \$480,000 was spent for training, but OSHA was unable to use these California employees to perform inspections.

Thus, lacking an agreement with California, OSHA, as of July 1, 1987, had to rely entirely on experienced compliance officers and supervisors detailed from other OSHA regions. Each OSHA region provided a share of the personnel needed, with OSHA attempting to have at least 100 staff performing inspections in California at all times.

OSHA also began to move toward achieving self-sufficiency in California, that is, operating with permanent rather than detailed staff. Relying on permanent employees was delayed, however, by potential employees' reluctance to accept positions while the federal program's status was uncertain. Likewise, former state employees--a likely applicant pool--who accepted comparable positions with OSHA would receive a salary reduction of about 20 percent from what they were paid as state employees. Nevertheless, by June 10, 1988, OSHA was providing enforcement in California with permanent staff: 165 total employees, of which 119 were compliance officers or supervisors.

OSHA defined its California area office boundaries by considering the percentage of large high hazard firms in each county or part of a county. The intent was to allocate the available resources so that the area offices and their workloads would be roughly equal in size. OSHA initially considered ten area offices necessary, but revised the number to seven in the face of budget constraints. Five of these were open by July 1; the other two had been opened by January 1988.

**TRANSITION AND CONTINUING
FEDERAL COSTS IN CALIFORNIA**

As the next chart shows, OSHA's fiscal year 1987 transition costs were less than if the state had continued to operate the program. OSHA calculates its transition costs in fiscal year 1987 as those costs, exclusive of salaries and benefits of detailees, that would not have been incurred if California had continued to operate its private sector program. According to OSHA financial records, about \$2.9 million was spent in the fourth quarter of fiscal year 1987 on travel, equipment transportation, rent, printing, supplies, equipment, and contract services. Salaries and benefits for OSHA staff from other regions and headquarters detailed to California are estimated at \$1.2 million. Because these personnel costs would have been incurred anyway, OSHA does not consider them as transition costs.

**GAO Transition and Ongoing
Costs to OSHA**

FY 1987: Cost was less than if state had continued	• Reprogrammed \$3.5 million; obligated \$2.9
FY 1988: Spending less than 1987 grant	• \$12.7 million for 127 staff
FY 1989: Requesting an increase	• \$15 million for 52 more staff

OSHA covered the transition costs in fiscal year 1987 by reprogramming about \$3.5 million of the \$14 million California would have received had it continued to operate the state

program. In requesting Congressional authority to reprogram these funds, Labor indicated that the funds were needed to allow OSHA to assure worker protection in California after July 1, 1987.

To obtain the funds to provide worker protection in California for fiscal year 1988, Labor submitted an amended appropriations request to Congress because the original request had assumed continued operation of the California program. The amended request was for \$16 million, of which \$1.5 million represented an increase while the balance would be transferred from the funds requested for state programs. This \$16 million would have provided for 10 area offices in California and 147 full-time staff for administrative, clerical, and inspection activities in California and 6 additional full-time staff for technical support and training.

However, after further budget reductions by Labor, OMB, and the Congress, OSHA now expects to spend about \$12.7 million for the California program in fiscal year 1988 to support 127 full-time staff in 7 area offices. This amount is less than both the \$14 million appropriated for fiscal year 1987 and the \$14.5 million requested for the California program for fiscal year 1988.

For fiscal year 1989, Labor has requested \$15 million for California activities to provide a net increase of 52 full time staff.

IMPACT ON OSHA'S OTHER ACTIVITIES

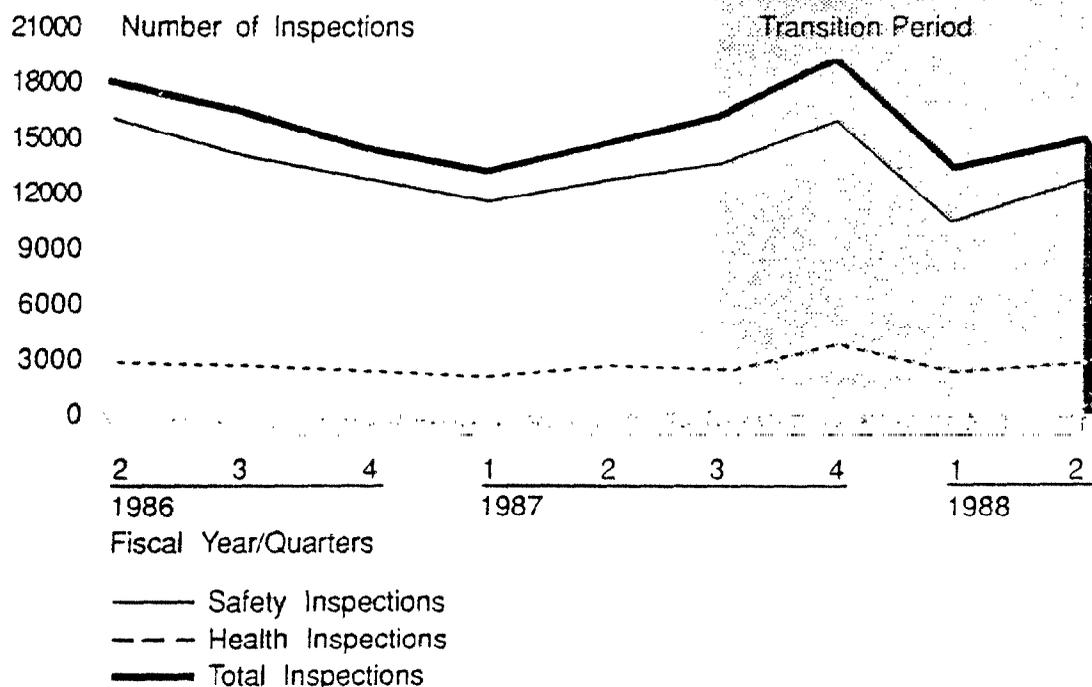
With a large number of its employees temporarily assigned to California, OSHA gave priority to enforcement, while cutting back on other activities. As a result, inspection volume was generally maintained, but some other activities were disrupted.

OSHA estimates that about one-third of its 1,100 inspectors and supervisory staff have been detailed to California temporarily. During the first 6 months (June 15 through December 18, 1987), almost 300 inspectors and supervisors were detailed to California for periods ranging from 2 weeks to 4 months from its other 9 regions. Managerial and administrative personnel were also sent to California. Two regions appointed acting regional administrators while their administrators were in California and, in 6 regions, 8 area office directors were detailed to California and had to be replaced temporarily, usually with managers from the regional offices.

As the next chart shows, OSHA generally maintained the usual number of inspections during the transition period--fourth quarter fiscal year 1987 and the first two quarters of fiscal

year 1988. Excluding California, regional offices conducted 41,089 health and safety inspections in that period compared to 41,242 in the same three quarters of the previous year. The

GAO OSHA Inspections Maintained in Other Regions



increase in the first quarter was--according to OSHA headquarters and regional administrators--a result of the pressure to perform more inspections to achieve national and regional fiscal year 1987 goals. OSHA was able to increase the number of inspections with fewer compliance officers by changing the mix of inspections performed. For example, some regions did more in the construction industry, where a visit to one location counts as an inspection of not only the general contractor but also the subcontractors.

According to regional administrators we surveyed, they maintained enforcement activities by temporarily assigning regional and area office personnel from other activities either

to conduct inspections or to provide support services so that compliance officers could concentrate on inspections. As a result, these other activities sometimes experienced significant disruptions during the transition period, as shown in the next chart.

GAO Impact on Other OSHA Activities

- Reduced monitoring of state-operated programs
- Less monitoring of consultation grants
- Change in number and scope of internal audits

The negative impacts most often cited by the regional administrators were on monitoring of state-operated programs and consultation grants and on internal audits. Five of the 10 said their monitoring of state programs was reduced, and three said they did less monitoring of the consultation grants which states use to inform employers about safety and health standards. Eight of the 10 described reductions in the number or scope of internal audits. Nationally, OSHA only performed 43 of the 62 scheduled audits in fiscal year 1987. Regional administrators also noted some negative impact on the quality of the supervision and amount of technical support provided to inspectors, and some had to replace staff who relocated permanently in California.

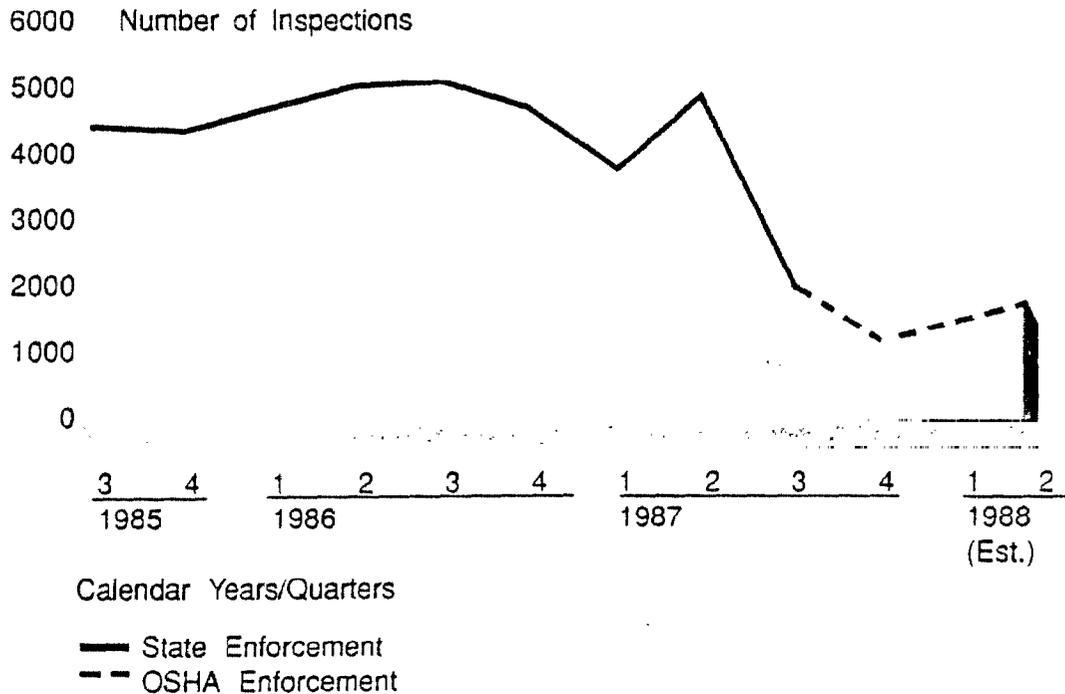
Regional administrators also noted positive impacts of the transition effort. For example, it helped to increase morale by providing professional opportunities, such as supervisory experience, or personal rewards such as a trip to California.

COMPARISON OF OSHA TO CALIFORNIA PROGRAM

The federal program now operating in California differs in several significant ways from the state program. There has been a decrease in the number of inspections performed by OSHA in comparison to the previous levels, and the legislation and standards that form a basis for enforcement activities are quite different.

As the following chart shows, the number of private sector safety and health inspections in California has decreased

GAO California: Fewer Safety and Health Inspections



substantially since OSHA began enforcement and is expected to remain at about a third of the previous level through at least fiscal year 1988. From July 1985 through June 1987, the state inspectors conducted an average of 4,672 private sector inspections a quarter. In contrast, OSHA performed an average of 1,606 inspections a quarter from July 1987 through March 1988. It expects to conduct between about 1,500 and 1,700 a quarter through the rest of fiscal year 1988.

The smaller number of inspections is due in part to fewer staff. As of June 10, 1988, OSHA had 165 employees in California--its highest staffing level since assuming program responsibility--compared to the 271 state program staff in enforcement activities as of December 1986. In addition, OSHA has different policies about when and how inspections will be conducted.

Some of the differences between California and federal legislation and standards, which guide enforcement activities, are shown in the following chart.

GAO California Enforcement Structure Compared to OSHA

Standards More Comprehensive

- Standards for more activities and practices
- Exposure limits for more hazards
- Stricter exposure limits

Legislation More Stringent

- Higher limits on civil penalties
- Criminal charges possible in more circumstances
- Quicker action allowed on imminent hazards

Under OSHA, workers in California no longer have the benefit of the more extensive occupational safety and health standards and exposure limits used in the state program. States are allowed to develop different or additional standards so long as they are at least as stringent as those of OSHA. California standards are generally more comprehensive and broader in scope, and cover more potential worksite hazards than federal standards.

California has over 2,400 occupational safety standards compared with OSHA's approximately 700 standards. Although part of the difference in the number of standards can probably be explained by the way requirements are organized into separate standards, it also reflects the fact that California's safety standards cover numerous industry activities and practices not specifically included in OSHA standards. For example, petroleum drilling, a major hazardous industry in the state, is covered by specific comprehensive standards in California but is not covered explicitly by any federal standard.

California's health standards are also more comprehensive. For example, the state has a health standard for permissible exposure limits for 597 hazardous airborne contaminants--over 200 more than the 392 addressed in OSHA's standard. For another 100 substances, the exposure level defined as hazardous in California is lower than the level considered hazardous by OSHA. Of these 100 substances with stricter exposure levels, 21 are carcinogens to which it is estimated approximately 1 million California workers are exposed.

One of the most significant differences between the California program and the federal program is the underlying legislation. California's legislation, for example, authorizes higher maximum civil penalties, allows criminal prosecution under a much broader set of circumstances, and allows more prompt action on imminent hazards. In the construction industry, it also requires a permit for certain hazardous work. More specifically,

- certain civil penalty assessments allowed under California law are double that allowed under federal legislation (for example, a maximum of \$20,000 for each single serious and willful violation compared to \$10,000);
- California law permits criminal prosecution under a broader set of circumstances, which may be one factor explaining why over 250 cases have been prosecuted since 1973 for safety and health violations as compared to only 14 such prosecutions nationwide under federal legislation since 1970;

- under California law, an inspector can immediately shut down work where an imminent hazard exists, while federal law requires a court injunction; and
- California legislation requires a permit prior to initiation of certain hazardous construction work-- which allows for the review of contractors' safety plans and the scheduling of inspections to monitor compliance at these hazardous locations--but OSHA has no comparable system. A 1982 California government study cited the permit system as one of the major reasons for the significant decline in injuries and fatalities from ditch, trench, and excavation cave-ins during the 1970's.

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Mr. Chairman, this concludes my prepared statement. My colleagues and I will be pleased to answer any questions you and the other members of the Committee may have.