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Testimony

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OCCUPATIONAL SAFETY
AND HEALTH

Changes Needed in the
Combined Federal-State
Approach

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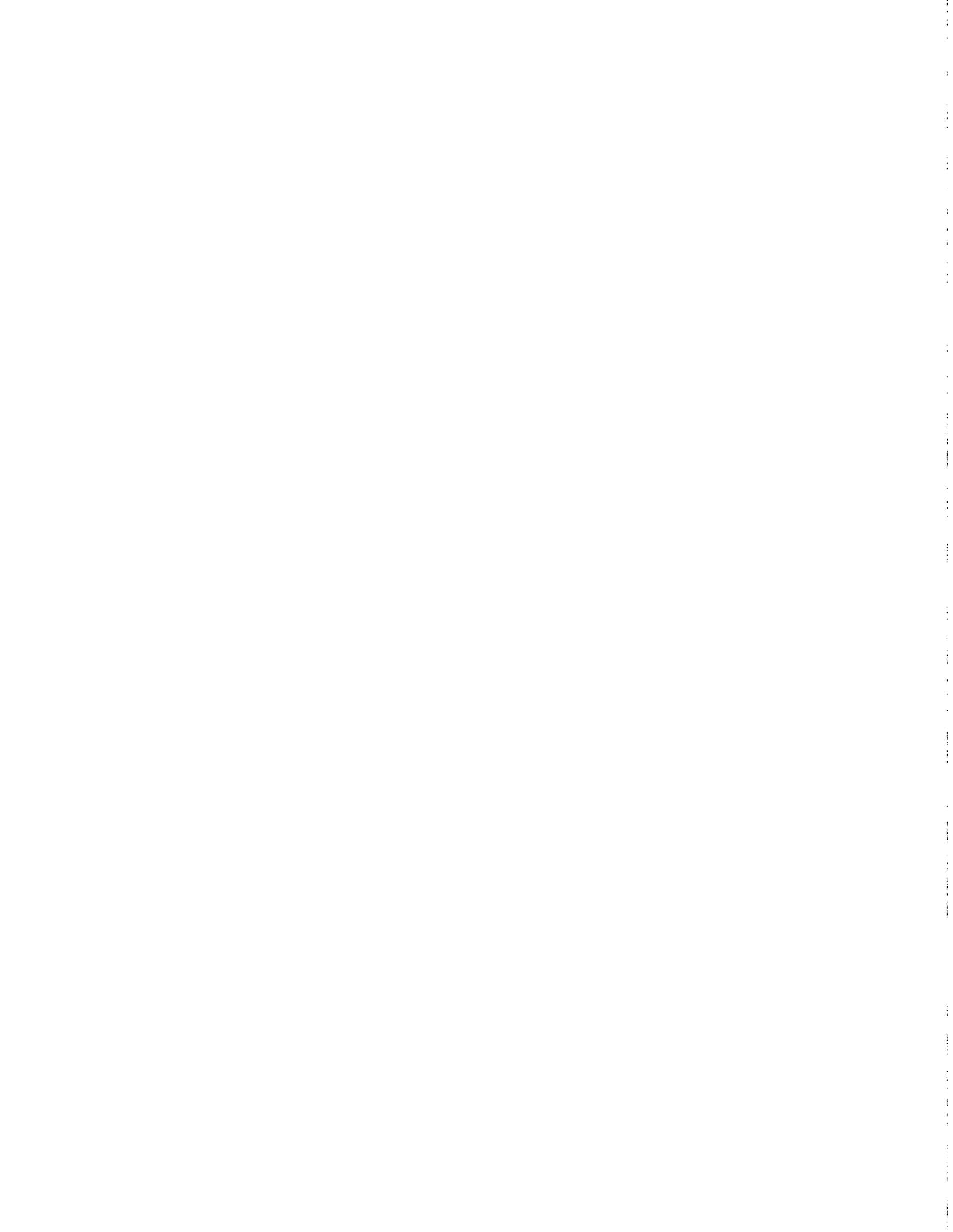
SUMMARY OF GAO TESTIMONY BY CLARENCE C. CRAWFORD
ON CHANGES NEEDED IN THE COMBINED FEDERAL-STATE APPROACH
TO OCCUPATIONAL SAFETY AND HEALTH

The Occupational Safety and Health Act of 1970 established a joint federal-state approach to workplace safety and health. It authorizes states to operate their own safety and health programs, but the Occupational Safety and Health Administration (OSHA) is responsible for oversight to ensure that they are "as effective as" OSHA's program. As long as state programs meet OSHA's requirements, they may develop additional features different from those of OSHA. GAO was asked to examine both the adequacy of OSHA's oversight and the differences among OSHA and state programs that might suggest ways OSHA and other states could improve their programs.

OSHA's Oversight of State Programs. OSHA's oversight of state programs continues to have substantial weaknesses like those GAO and the Office of the Inspector General identified 5 years ago. In its state oversight, OSHA focuses on the same kind of measures it uses to describe itself to Congress--primarily measures of program activities (e.g. number of inspections conducted) rather than program outcome measures (e.g. reductions in workplace injuries). Other oversight problems OSHA should correct are (1) flaws in the activity measures, such as a lack of priority among them and "moving target" comparisons; (2) no requirement for states to conduct self-assessments and for OSHA to consider these results in its evaluations; and (3) lack of follow-up procedures for ensuring that states correct problems. OSHA corrected some of these problems in special evaluations it conducted after a serious industrial accident in 1991, but it has not incorporated those changes in its procedures since that time.

Results of Special Evaluations. In the five program areas it considered most important, OSHA concluded that all but one of the 21 states with private sector enforcement responsibility had performance that was unacceptable in some way. In follow up evaluations, all but seven states had corrected the problems OSHA had identified.

Unique State Program Features. Although state program procedures are generally similar to those of OSHA, some states have developed program features that differ. Unlike OSHA, some states require employers to have comprehensive worksite safety and health programs and use worksite-level injury and illness data to target inspections and/or educational activities. GAO believes these approaches are ones that OSHA and other states should consider adopting. Two other features--shutdown authority in imminent danger situation and coverage of state and local government employees--need further study by OSHA and the states.



Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss with you ways to improve the combined federal-state approach to workplace safety and health. Our comments today are based on prior work and an ongoing study that the Chairman and Ranking Minority Member of the House Committee on Education and Labor asked us to do as a result of a 1991 fire at a North Carolina chicken processing plant. Because the plant had never been inspected by the Occupational Safety and Health Administration (OSHA) or by the state--which operates its own safety and health program under approval by OSHA--congressional attention focused on whether the incident indicated a need for change to OSHA and state-operated safety and health programs.

My testimony today will first summarize weaknesses in OSHA's oversight of state-operated safety and health programs and the results of OSHA's special evaluations of state programs in the wake of the 1991 industrial fire. Next, I will highlight unique state safety and health program features. I will close by citing opportunities for improving the federal-state approach.

We found that OSHA's oversight of state-operated safety and health programs continues to have the substantial weaknesses that both we and the Department of Labor's Office of the Inspector General (OIG) identified about 5 years ago.¹ That is, OSHA continues to lack information about the outcomes and effectiveness of its own program and state programs as well. In addition, (1) the program activity measures it uses are flawed by having a lack of priorities and moving targets for comparison, (2) OSHA still does not require states to conduct self-

¹OSHA's Monitoring and Evaluations of State Programs (GAO/T-HRD-88-13, Apr. 20, 1988), and OSHA's Monitoring of State Programs, Final Report No. 05-88-003-10-105, Department of Labor, Office of the Inspector General (Jan. 30, 1989).

assessments, and (3) OSHA has been unsuccessful in getting states to implement its recommended corrective actions. OSHA's special evaluations found that all except one of the 21 state programs that cover private and public sector employees were unacceptable in one or more of the 5 priority program areas. We found four unique program features adopted by several states and/or supported by empirical studies that merit further consideration by OSHA and the states as ways to improve safety and health programs.

In conducting our current study, we obtained information about OSHA's policies and procedures from interviews with agency officials and documents, including previous GAO reports. We surveyed program officials in all state-operated programs with private and public sector enforcement responsibilities. We reviewed OSHA's state program oversight procedures and resulting evaluation reports. We interviewed OSHA and state representatives about ways to improve the federal-state approach to providing workplace safety and health.

BACKGROUND

The Occupational Safety and Health Act of 1970 established the joint federal-state approach to workplace safety and health.² It authorizes states to operate their own safety and health programs, but it gives the Department of Labor responsibility for approving state programs and monitoring their performance to make sure they remain "at least as effective" as OSHA's program.

The act authorizes federal grants to the states that may cover up to half of a state's total program cost. In fiscal year 1993, \$67 million--about 23 percent of OSHA's \$288 million

²The act covers most workplaces; exceptions are principally for certain transportation and mining operations.

appropriation--went to state programs. In 21 states, the programs cover the private sector and state and local government employees³; two other states (New York and Connecticut) have programs only for state and local employees. OSHA's program covers private-sector employees in 29 states.

The act also requires the Secretary of Labor to collect statistics on injuries and illnesses in the workplace. These data serve multiple purposes, including targeting inspections and focusing on education and training programs. Although OSHA specifies the information that all employers must maintain at the workplace, the Bureau of Labor Statistics (BLS) collects injury and illness data from a sample of employers. BLS provides summary information, by industry, to OSHA and the public. Because of confidentiality constraints, BLS does not give OSHA access to worksite-level data.

OSHA evaluates all state safety and health programs at least annually. The two main features of OSHA's oversight of state programs are (1) collection and analysis of data in computerized state program activity reports and (2) an annual evaluation of each state program. The annual evaluation is based on these statistical analyses as well as other information, such as special studies and observations OSHA staff make while accompanying state compliance officers on inspections.

OSHA relies primarily on comparisons of a given year's statistical data about its own program activities with comparable data from state programs. For its annual evaluations, OSHA assesses states on 115 measures in 10 major program areas. Generally, OSHA considers state performance unacceptable when

³The 21 states are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.

program activity in a given area falls more than 20 percent above or below the national average performance for OSHA. For some measures, however, OSHA has established absolute standards for state activities. For example, states are expected to have 80 percent of their allocated safety compliance officer positions filled.

In 1988, we identified ways to improve OSHA's oversight of state safety and health programs,⁴ and recommended that OSHA (1) establish desired performance levels for state programs, (2) require states to develop self-assessment programs, and (3) help states develop and implement plans for evaluating the impact of their programs. In 1989, the OIG issued a report that included similar recommendations for improving OSHA's oversight process.⁵ OSHA agreed at that time to take actions and conduct a comprehensive review of its oversight process to address our concerns and those of the OIG by September 30, 1991. However, as of August 1993, OSHA had made little progress in revising its oversight process.

In addition to considering revisions to its oversight process, OSHA established a task force in April 1993 to assess the need for administrative or legislative change in several policy areas. The issues under consideration include use of worksite-level injury and illness data, authority in imminent danger situations, development of program outcome measures, and coverage for state and local government employees.

⁴OSHA's Monitoring and Evaluations of State Programs (GAO/T-HRD-88-13, Apr. 20, 1988).

⁵OSHA's Monitoring of State Programs, Final Report No. 05-88-003-10-105, Department of Labor, Office of the Inspector General (Jan. 30, 1989).

OSHA'S OVERSIGHT CONTINUES
TO HAVE SUBSTANTIAL WEAKNESSES

The most fundamental weakness of OSHA's oversight process continues to be its lack of information about the outcomes and effectiveness of both its own program and state programs. OSHA's oversight of the states uses measures similar to those OSHA uses in describing its own program to the Congress--that is, it basically focuses on program activity measures, such as number of inspections conducted, without emphasizing program outcome measures, such as reduction in workplace injuries, as well. Its oversight relies on the assumption that states must use activities similar to its own in order to be equally effective. OSHA makes this assumption in spite of the fact that it and the states have conducted few of the evaluation studies that would determine which specific program features are effective.

We also continue to find other previously reported weaknesses in OSHA's oversight of state safety and health programs. First, OSHA's program activity measures are flawed. OSHA still does not set specific program activity goals, but assesses states' performance relative to its own performance during a given assessment year. Since OSHA's performance can vary from one year to another, states in effect are asked to meet a "moving performance target." Also, OSHA does not identify which of the 115 program activity measures are key measures. Instead, OSHA treats all measures reported as if they were equally important. We further noted that there is no minimum number of measures or areas in which a state must be acceptable in order to retain OSHA's approval and remain in operation.

Second, we found that OSHA still does not require states to conduct self-assessments. We understand that OSHA and states are drafting guidelines to integrate self-assessments into OSHA's

oversight of state programs with an expected September 1994 issuance date.

Third, we found that OSHA has not been successful in getting states to implement its recommended corrective actions. Both the 1989 OIG study and our current review identified cases where states did not implement OSHA's recommended corrective actions. For example, we found that 11 of 21 states evaluated by OSHA in its special evaluations did not respond to OSHA's 1990 recommendations. In addition, 6 of the 11 states did not respond to recommendations made in previous OSHA evaluations.

We found that the special evaluations conducted in the wake of the fire showed some improvements in OSHA's oversight. First, as we recommended in 1988 testimony,⁶ OSHA established a set of priority and nonpriority program areas. Second, OSHA reduced the number of program activity measures from 115 to 36. Third, OSHA conducted follow-up evaluations to ensure that states corrected problems that it had identified as a condition for continued approval of their state program, which may have had a positive impact on states' performance. State action may also have been influenced by OSHA's release of evaluation and follow-up results to the public. But these improvements were not adopted when OSHA resumed its annual evaluation process in fiscal year 1993.

RESULTS OF SPECIAL EVALUATIONS

Concerning the special evaluation results, OSHA considered all except one of the 21 states unacceptable in one or more of the

⁶OSHA's Monitoring and Evaluations of State Programs (GAO/T-HRD-88-13, Apr. 20, 1988).

five priority areas.⁷ (For the purposes of this testimony, we will defer discussing the nonpriority program areas until the final report is issued.) At the time of our review, seven states had performance that OSHA still considered unacceptable in one or more of the five priority areas. (See attachment I.)

Most states (16 of the 21) were unacceptable in the area of abatement evidence. A state could be considered unacceptable in this area either because it conducted 20 percent fewer follow-up inspections to confirm abatement than OSHA did or because fewer than 90 percent of the case files examined showed adequate and timely evidence of abatement. It was the 90-percent standard, which was used for the first time in the special evaluations, that caused most states to be considered by OSHA as unacceptable.⁸

In the follow-up evaluation 6 months later, OSHA concluded that 13 of the 20 states had resolved program inadequacies in the five priority areas. In the seven states where OSHA still found state performance unacceptable, (1) six states lacked adequate and timely procedures for verification of abatement, (2) three states were below their required compliance officer (inspector) staffing levels, and (3) one state had not adopted OSHA standards within 6 months of OSHA's date of issuance.

⁷The priority areas were (1) timely adoption of safety and health standards, (2) inspector staffing levels, (3) adoption of OSHA's 700 percent penalty increase in fiscal year 1991, (4) abatement confirmation, and (5) inspectors' right-of-entry to worksites.

⁸If the employer does not immediately correct the worksite hazard, OSHA has to confirm abatement by information supplied by the employer or in a follow-up site visit. For further discussion of the way OSHA confirms abatement, and our assessment of its policies, see Occupational Safety and Health: OSHA Policy Changes Needed to Confirm That Employers Abate Serious Hazards (GAO/HRD-91-35, May 8, 1991).

UNIQUE STATE PROGRAM FEATURES

OSHA and state-operated safety and health programs pursue generally similar approaches to improving workplace safety and health. However, all states differ from OSHA in that they cover state and local government employees, while OSHA does not. In addition, some states have exercised their statutory flexibility to develop additional program features that OSHA does not have. We found four program features that merit discussion. We believe two of these--worksite safety and health programs and worksite-level injury and illness data--are options for adoption by OSHA and other states. The other two--shutdown authority in imminent danger situations and extending coverage to state and local government employees--are options that need further study by the OSHA and other states.

Comprehensive Worksite Safety and Health Programs

OSHA encourages, but does not require, employers to implement comprehensive worksite safety and health programs, including employee involvement in developing and operating such programs. In contrast, nine state-operated programs mandate written safety and health programs for some or all employers. (See attachment II.) Four of the nine states--Alaska, California, Hawaii and Washington--require that all employers implement safety and health programs, and the other five states--Minnesota, Nevada⁹, North Carolina, Oregon, and Tennessee--require that these programs be implemented by some employers. Six of the nine states--Alaska, Nevada, North Carolina, Oregon, Tennessee, and Washington--require this involvement to be through joint labor-management safety and health committees.

⁹At the time of our study, Nevada had not enforced this requirement pending clarification of important coverage issues by the state legislature.

As we previously reported,¹⁰ we believe that Congress should consider requiring high-risk employers¹¹ to have comprehensive worksite safety and health programs, and OSHA should use evaluation studies to determine whether other groups of employers should be required to have these programs.

Worksite-level Injury and Illness Data

In contrast with OSHA's industry-level data, we found that 14 states use worksite-level data to target their inspections, and 9 of them use these data to target their education and training efforts. State programs obtain these data from workers' compensation programs in their states.

Four of the 14 states--Hawaii, Michigan, Utah, and Washington--rely almost exclusively on worksite-level data. For example, Washington's system establishes a targeted pool of employers within each industry based on a variety of data including workers' compensation claims history, inspection or consultation visits, risk class, size, and nature and types of claims. The other 10 states use both worksite-specific data and OSHA's high-hazard industry lists, but they use the information in different ways. Two states--Minnesota and Oregon--develop their inspection targeting list using worksite-specific data, then refer to OSHA's list of high-hazard industries to supplement that information. Seven states--Alaska, Maryland, North Carolina, Tennessee,

¹⁰Occupational Safety and Health: Worksite Safety and Health Programs Show Promise (GAO/HRD-92-68, May 19, 1992), and Occupational Safety and Health: Options for Improving Safety and Health in the Workplace (GAO/HRD-90-66BR, Aug. 24, 1990).

¹¹High-risk employers could be defined on the basis of such things as (1) high rates of injuries and illnesses at their worksites or in their industries and (2) a past history of significant safety or health violations at their worksites or in their industries.

Vermont, Virginia, and Wyoming--use OSHA's list of high-hazard industries, but target specific employers within these industries based on workers' compensation data. Arizona has a pilot program underway in which about half of its targeted inspections are done using the number of workers' compensation claims while the remainder of the targeted inspections are done using OSHA's list of high-hazard industries.

The experience in these states, as well as the results of several empirical studies, lead us to believe that using worksite-specific data in addition to industry-aggregated data could improve OSHA's and the states' inspection targeting, education, and training efforts, and evaluations of program impact. These data will be more useful when OSHA completes the quality assurance program it is developing to improve the accuracy of employers' injury and illness records and incorporates in that program improved procedures for inspectors to verify the accuracy of employers' records, as we previously recommended.¹²

Shutdown Authority in Imminent Danger Situations

We found that 10 of the 21 states have greater statutory authority than OSHA does to take immediate action in imminent danger situations. An imminent danger situation is one in which worksite conditions or practices present a danger that could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated through the usual enforcement procedures. In contrast with these state programs, the existing statute requires OSHA to get a court order if an employer will not agree to abate the hazard immediately.

¹²Occupational Safety and Health: Assuring Accuracy in Employer Injury and Illness Records (GAO/HRD-89-23, Dec. 30, 1988).

OSHA lacks data, however, on how often these situations occur and the consequences of this limitation on OSHA's authority.

Coverage of State and Local Government Employees

All state-operated programs differ from OSHA in that they cover state and local government employees, while OSHA is prohibited by law from doing so. As a result, an estimated 7.3 million state and local public employees in 27 states are not protected by federal safety and health statute or regulations. We did not determine whether other state or local statutes or organizations, such as state workers' compensation programs or private insurers, have requirements that would help protect employees' safety and health.

OPPORTUNITIES FOR IMPROVEMENT EXIST

We believe that opportunities exist for improving the federal-state approach for providing workplace safety and health. With a ratio of one inspector to 3,000 worksites, OSHA and the states must find ways to extend their resources and impact far beyond the limited number of worksites they can directly inspect. OSHA and the states need to encourage employers to voluntarily identify and correct occupational safety and health hazards without an OSHA-directed inspection. One way to do this is through comprehensive worksite safety and health programs. Resource limitations facing OSHA also make it especially important for OSHA to have better information about what works and what doesn't. We recognize the difficulty OSHA faces in developing meaningful measures of program outcomes and conducting program effectiveness studies. But we believe that OSHA needs better information about the effects of its policies and procedures--and those of the states--so that it can make more

informed decisions and program improvements. It should increase its emphasis on measures of program outcome and evaluations of the effectiveness of specific program features as it assesses both its own activities and those of state-operated programs.

As we previously mentioned, the procedures used in the special evaluations reflected some of the recommendations we and the OIG had previously made. Therefore, it is unfortunate that these improvements were dropped. We continue to believe that OSHA should improve its oversight of state programs by (1) developing a set of improved outcome measures, (2) improving its activity measures by setting priorities among them and goals for state performance that are not "moving targets," (3) requiring states to conduct self-assessments, and (4) establishing more effective procedures to obtain state corrective action on significant issues.

OSHA also needs to assess the need for legislative change to (1) extend OSHA's coverage to state and local government employees in states without OSHA-approved safety and health programs and (2) give OSHA inspectors greater authority to protect workers in imminent danger situations.

Finally, OSHA needs to develop procedures for obtaining worksite-specific injury and illness data from employers so that it can better target its enforcement efforts and focus its education and training efforts. To make these data more useful, it should promptly move ahead with revised procedures to better ensure that employers accurately record occupational injuries and illnesses.

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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 Subcommittee may have.

PRIORITY AREAS IN WHICH OSHA CONCLUDED STATE PERFORMANCE WAS UNACCEPTABLE IN SPECIAL AND FOLLOW-UP EVALUATIONS

State	Initial Special Evaluation					Follow-up Evaluation				
	Timely Standard Adoption	Adequate Inspector Staffing Levels	Adoption of the Seven-fold Penalty Increase	Adequate and Timely Abatement Evidence	Right of Entry ^b	Timely Standard Adoption	Adequate Inspector Staffing Levels	Adoption of the Seven-fold Penalty Increase	Adequate and Timely Abatement Evidence	Right of Entry
Alaska	•		•	•						
Arizona	•		•	•						
California	•	•	•							
Hawaii	•		•							
Indiana	•			•					•	
Iowa	•	•	•	•			•		•	
Kentucky			•							
Maryland	•			•						
Michigan	•	•		•		•	•		•	
Minnesota				•						
Nevada			•	•						
New Mexico	•	•	•	•						
North Carolina	c	•								
Oregon			•	•						
South Carolina										
Tennessee		•		•					•	
Utah	•			•					•	
Vermont	•	•		•			•			
Virginia			•	•						
Washington	•	•		•						
Wyoming			•	•					•	
Totals	12	8	11	16	0	1	3	0	6	0

• Program areas that OSHA considered unacceptable.

^aFive standards not implemented within 6 months after OSHA promulgates them.

^bPercent of cases where the state compliance inspector obtained entrance to the worksite after the employer initially denied entry.

^cOSHA initially considered the state unacceptable in this area, but later agreed that its initial assessment was in error.

STATES' REQUIREMENTS FOR EMPLOYERS TO HAVE COMPREHENSIVE WORKSITE
SAFETY AND HEALTH PROGRAMS AND COMMITTEES

States	State requirements			
	Safety and health programs		Labor-management committee	
	All employers	Some employers	All employers	Some employers
Alaska	X			X
Arizona				
California	X			
Hawaii	X			
Indiana				
Iowa				
Kentucky				
Maryland				
Michigan				
Minnesota		X		
Nevada ^a		X		X
New Mexico				
North Carolina		X		X
Oregon		X		X
South Carolina				
Tennessee		X		X
Utah				
Vermont				
Virginia				
Washington	X		X	
Wyoming				
Total	4	5	1	5

^aNevada has not enforced this requirement pending clarification of important coverage issues by the state legislature.

RELATED GAO PRODUCTS

Occupational Safety and Health: Uneven Protections Provided to Congressional Employees (GAO/HRD-93-1, Oct. 2, 1992).

Occupational Safety and Health: Improvements Needed in OSHA's Monitoring of Federal Agencies' Programs (GAO/HRD-92-97, Aug. 28, 1992).

Occupational Safety and Health: Worksite Safety and Health Programs Show Promise (GAO/HRD-92-68, May 19, 1992).

Occupational Safety and Health: Options to Improve Hazard-Abatement Procedures in the Workplace (GAO/HRD-92-105, May 12, 1992).

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

Occupational Safety and Health: OSHA Action Needed to Improve Compliance With Hazard Communication Standard (GAO/HRD-92-8, Nov. 26, 1991).

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

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

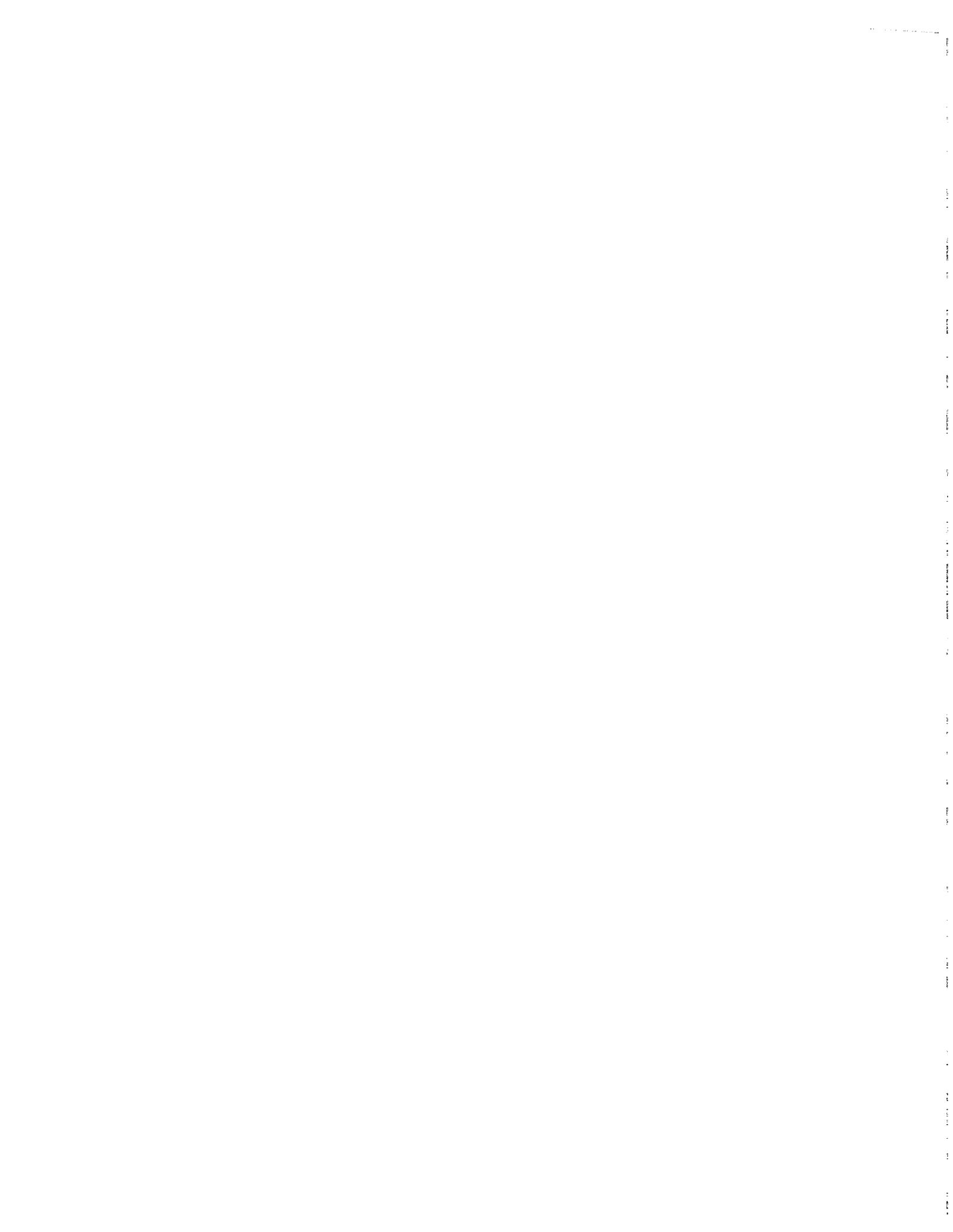
Occupational Safety and Health: Inspectors' Opinions on Improving OSHA Effectiveness (GAO/HRD-91-9FS, Nov. 14, 1990).

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

Occupational Safety and Health: Assuring Accuracy in Employer Injury and Illness Records (GAO/HRD-89-23, Dec. 30, 1988).

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

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