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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

HUMAN RESOURCES  
DIVISION

B-202483

APRIL 27, 1981

The Honorable Raymond J. Donovan  
The Secretary of Labor



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Dear Mr. Secretary:

Subject: [MSHA's Regulation Development Process Needs  
Improvement] (HRD-81-80)

We reviewed the Mine Safety and Health Administration's (MSHA's) procedures for developing safety and health regulations. Performance in promulgating regulations has improved since 1977; however, further improvements are needed to better ensure protection of miners. A centralized focal point should be established to determine priorities and monitor progress in developing regulations. Regulations for hazards common to coal mines and metal/nonmetal mines should be developed concurrently.

BACKGROUND

On November 9, 1977, the Congress passed the Federal Mine Safety and Health Act of 1977 (Public Law 95-164). The act combined all Federal mine safety and health programs under a single statute, which provides for the promulgation of new or revised mandatory safety and health regulations to protect all miners. It also provides specific steps and time frames for the formal rulemaking process.

The Congress, in its deliberations on the act, was concerned that the separate laws which covered coal mining and metal/nonmetal mining were not providing equal protection for all miners. In addition, there was concern that only a few metal/nonmetal health regulations had been promulgated and that the development processes were too slow.

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Our report "After Years of Effort, Accident Rates Are Still Unacceptably High in Mines Covered by the Federal Metal and Non-metallic Mine Safety Act" (CED-77-103, July 26, 1977) discussed the need to improve health and safety regulations. We pointed out that hundreds of significant hazards were not adequately covered by existing regulations and additional regulations were needed. We also reported that regulations covering these hazards had been proposed but not promulgated because, in most instances, the process took too long.

We reviewed MSHA's procedures to develop regulations 1/ from March 19, 1978, the effective date of the 1977 act, through December 31, 1980, to determine whether MSHA was developing regulations in a timely and efficient manner. We reviewed files and reports related to the development of regulations and interviewed MSHA officials responsible for developing regulations. We also obtained data from officials of the National Institute for Occupational Safety and Health (NIOSH), which is responsible for developing data on toxic substances used in mines.

We did not attempt to determine whether regulations were adequate or necessary. These matters are addressed in great detail by MSHA officials, unions, mine operators, and other interested parties during the development of regulations.

#### The regulation development process

Although any interested person or organization can propose a regulation, most new or revised mine safety and health regulations begin with MSHA's Office of the Administrator for Coal Mine Safety and Health (Coal Office) or Office of the Administrator for Metal and Nonmetal Mine Safety and Health (Metal/Nonmetal Office). These two offices usually decide what regulations will be developed and form drafting committees to study the problems, gather and analyze information, prepare concept papers, 2/ and draft proposed regulations. Advisory committees can also be used--but seldom have

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1/MSHA promulgates both standards and regulations. Both are published in the Code of Federal Regulations, and the procedures used to promulgate them are essentially the same. Therefore, in this report, the word regulations is used to mean both standards and regulations.

2/Concept papers are required by the Department of Labor. They state the nature of the hazard, regulatory alternatives available, parties affected, and the economic consequences of the regulation.

been--to help develop regulations. Also, other MSHA organizations, such as the Office of Standards, Regulations and Variances (OSRV) and the Office of the Director of Education and Training, have been responsible for developing regulations. The drafting committees primarily consist of personnel from the Coal Office or the Metal/Nonmetal Office but generally include representatives from OSRV and the technical support staff.

OSRV is responsible for promulgating MSHA regulations. When OSRV receives a draft regulation, it obtains MSHA and Department of Labor approval, makes it available for public review and comments, analyzes and incorporates comments, clears the revised regulation through MSHA and the Department, and publishes it as a proposed regulation. The 1977 act contains no mandatory time frames for the above actions. When the proposed regulation is approved for publication, the formal rulemaking process starts and the procedural and time requirements of the act apply.

The act does not require soliciting public comments before publication as a proposed regulation. However, MSHA continued this practice, which was used prior to the act. MSHA officials said that the practice conforms with Executive Order 12044 on public participation in rulemaking. <sup>1/</sup> The practice provides early public involvement and helps resolve problems before starting the formal rulemaking process.

OSRV has primary responsibility for holding hearings on the proposed regulation, modifying the proposed regulation as appropriate, obtaining MSHA and Department approval, and publishing the final regulation.

TIME TAKEN TO FORMALLY PROMULGATE  
REGULATIONS HAS BEEN REDUCED

Since the effective date of the act, MSHA has completed 20 mine safety and health regulations development projects. Each project usually involved several regulations--six projects covered coal mine safety and health and five covered metal/nonmetal mine safety and health. The remaining nine projects covered various administrative, technical, and other matters related to the administration of MSHA's programs. Four of the 20 projects were mandated by the 1977 act, which set time limits for their promulgation. MSHA gave high priority to developing these regulations.

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<sup>1/</sup>Improving Government Regulations, signed March 23, 1978.

We determined the time it took for formal processing of regulations which were not mandated by the act because we believed the processing of these regulations would better represent MSHA's routine operations. [The time between publication of the proposed regulations and publication of the final regulations averaged 5.3 months when there were no public hearings and 8.7 months when there were hearings. Our July 1977 report showed that it took 19 months for formal processing of regulations when there were hearings and 9.5 months when there were not.]

We did not determine whether similar time reductions had been achieved in the earlier stages of developing regulations because only a few projects started after March 1978 had completed these early stages.

#### FEW HEALTH REGULATIONS PROMULGATED

Because of congressional concern over the few health regulations promulgated under the Federal Metal and Nonmetallic Mine Safety Act of 1966 (Public Law 89-577), [we determined how many metal/nonmetal mine health regulations had been promulgated. Ten health regulations were issued between March 1978 and December 1980, but all had been proposed before March 1978.]

MSHA officials said that other priority projects required by the 1977 act had precluded more work on new or revised health regulations. However, the Metal/Nonmetal Office had five health regulation projects underway. Also, an MSHA official said that NIOSH had not provided data needed to develop health regulations.

The 1977 act requires, in effect, that NIOSH provide to MSHA all pertinent criteria regarding substances or physical agents found in mines that are considered toxic or harmful. This information is to be used as a basis for developing safety and health regulations.

[In July 1979, NIOSH submitted a list of 35 toxic substances to MSHA based primarily on its review of information available from MSHA, including mine inspection reports. NIOSH officials told us that the list provided included only 35 of the about 600 substances that can be found in mines. However, NIOSH did not have sufficient data to determine the level of toxicity for the remaining 565. They said that NIOSH planned to start a mining hazard survey to obtain such data in fiscal year 1980. However, comprehensive data on substances found or used in the mines would not be available for 3 to 4 years.]

In March 1981, a NIOSH official said that the start of the survey had been deferred to fiscal year 1981 and may be further deferred because of budget and personnel limitations.

REGULATIONS FOR HAZARDS COMMON  
TO DIFFERENT TYPES OF MINES  
SHOULD BE DEVELOPED CONCURRENTLY

The legislative history of the 1977 act shows that the Congress believed there should be separate regulations for coal and metal/nonmetal mines. However, the history also recognized a need for uniform regulations where the situation is the same or analogous.

While the Coal Office and the Metal/Nonmetal Office worked jointly to develop a few regulations mandated by the act, usually each office developed regulations only for the mines under its jurisdiction. Each office generally decides what regulations will be developed, sets priorities, and forms drafting committees to develop regulations.

Much of the information concerning health hazards is the same regardless of the type of mine. In addition, the procedures used by MSHA to process a regulation after the initial draft is completed are essentially the same.

At the time of our review, the Metal/Nonmetal Office was developing new or revised health regulations for asbestos, noise, silica, radiation, and welding fumes for metal/nonmetal mines. Similar efforts were not underway in the Coal Office (noise regulations for coal mines have been promulgated). Besides noise, some of the above health hazards, such as welding fumes and some forms of silica, can also be found in and around coal mines.

When the same or similar hazards are involved in different types of mines, concurrent development of regulations would enable MSHA to more efficiently use the expertise and resources responsible for developing regulations and ensure equal protection for all miners.

SYSTEM NEEDED TO SET PRIORITIES  
FOR REGULATIONS AND MONITOR PROJECTS

MSHA's practice has been to complete as much of the development work as possible before formal publication of a proposed rule. This development work can take several years. MSHA does not have a centralized focal point to set or approve priorities for regulations or to monitor the overall progress of all projects from

initial development work to promulgation of the final regulation. Each organization developing regulations generally monitors its own projects, but the organizations are not required to periodically report to management on the progress of these projects.

Once a project is forwarded to OSRV for rulemaking, it monitors each project and periodically prepares status reports for management. It also establishes priorities for the projects under its control. OSRV has increased its involvement in the early stages of regulation development. However, it has little control over the organizations that develop regulations and, therefore, has little control over the early stages of regulation development. Since there is no reporting requirement, OSRV is not always aware of all projects in the early stages of development.

MSHA officials advised us that, for the past few years, the agency's efforts were directed at promulgating the regulations specifically required by the act and completing the projects in process on the effective date of the act. As a result, the agency did not have to establish priorities for future projects.

#### CONCLUSIONS

Since our July 1977 report, the time taken to formally promulgate regulations has been reduced.

Because of the priority of other regulatory development work, few health regulations have been developed, particularly for metal/nonmetal mining operations.

The organizations that develop regulations, primarily the Coal Office and Metal/Nonmetal Office, set their priorities and monitor their projects. However, there is no focal point or procedure to establish overall MSHA priorities for regulations or monitor the entire regulation development process.

Regulations were usually developed separately, either as coal or as metal/nonmetal regulations even though the hazards involved sometimes applied to both types of mines. Jointly developing regulations, when appropriate, would avoid some duplication of effort and help ensure the equal protection of all miners as envisioned by the act.