GAO

United States General Accounting Office

Report to the Chairman, Subcommittee on Investigations, Committee on Post Office and Civil Service, House of Representatives

February 1987

PERSONNEL PRACTICES

Employee Allegations Concerning OSHA Personnel Practices

GAO/HRD-87-5

GAO

United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division
B-223859

February 3, 1987

The Honorable Gerry Sikorski
Chairman, Subcommittee on
Investigations
Committee on Post Office
and Civil Service
House of Representatives

Dear Mr. Chairman:

Your letter of June 12, 1985 (see app. I), expressed concern about the possibility of widespread violations of civil service and ethics laws within the Department of Labor's Occupational Safety and Health Administration (OSHA). You expressed particular concern that OSHA employees were being told to write inadequate standards and weaken existing standards. These practices were discussed in testimony before your subcommittee in May 1985.

After discussing these matters with your office, we agreed to focus our efforts on OSHA headquarters, concentrating primarily on the identification and review, to the extent possible, of the following: (1) any alleged actions by OSHA officials that could adversely affect agency operations and (2) any weakening in OSHA's promulgation, revision, and enforcement of its health and safety standards. We obtained specific allegations by interviewing individuals who contacted us to discuss questionable OSHA personnel practices and sending questionnaires to 3,431 employees and consultants who worked for OSHA from January 1983 to November 1985. We accepted allegations from anonymous sources, but reviewed only those allegations that contained sufficient factual information to allow us to follow up.

We selected 124 allegations from 34 questionnaire responses and interviews with 16 OSHA headquarters and field personnel for further follow-up with OSHA officials. We selected these allegations because they contained the degree of specificity (e.g., names, dates, and places) we believed necessary to warrant further inquiry. We summarized each of the allegations and asked OSHA to comment on them; we also asked OSHA to respond to specific questions we believed relevant. OSHA commented on each allegation, providing us with documents supporting its position on 58. We reviewed 49 of the 124 allegations, including 15 of the 58 for which OSHA provided documents. We selected the 49 based on a variety of factors, including the relative significance of the allegations. For details on the objectives, scope, and methodology, see appendix IV.

This report contains detailed information on two allegations that we believe require additional follow-up by the inspector general (see app. II); the report also contains detailed information on additional allegations, which are similar to those discussed previously at the Subcommittee hearings and for which our review indicated a reasonable basis for concern among OSHA employees (see app. III).

Results in Brief

In conducting our review, we concluded that 97 of the 124 allegations brought to our attention did not appear to have merit, primarily because they were adequately explained by OSHA, or could not be substantiated by our review. The information we obtained on the remaining allegations does not support a conclusion that widespread violations of civil service and ethics law have occurred within OSHA. In fact, relatively few of the allegations brought to our attention would be statutory violations if they were fully corroborated.

The allegations brought to our attention by current and former OSHA employees involved

- professional differences between OSHA management and staff involving policy and scientific judgments made during the formulation and revision of OSHA standards;
- disagreements between OSHA management and staff concerning the qualifications of individuals who had been hired and promoted;
- disagreements between OSHA management and staff concerning staff management;
- actions taken to lessen the enforcement of OSHA standards; and
- miscellaneous personnel-related actions taken by OSHA officials, which were perceived to adversely affect agency operations.

We believe that the following two allegations require further investigation to fully assess their merits.

- In OSHA Region IX (San Francisco), it is alleged that 46 complaints, filed by workers who believed they were discriminated against by their employers for reporting health and safety violations, were improperly handled.
- In an OSHA regional office, it is alleged that an assistant regional administrator, on two occasions, promoted an employee with whom he had a direct financial and personal interest.

These allegations are discussed in appendix II.

Recommendation to the Secretary of Labor

We recommend that the Secretary of Labor request his inspector general, in cooperation with the Office of the Assistant Secretary of OSHA, to initiate further investigation of the matters discussed in this report concerning the questionable handling of discrimination complaints filed by 46 workers in OSHA Region IX and a possible conflict of interest regarding an OSHA employee's promotions.

The Office of Inspector General's findings on these matters should serve as the basis for the Secretary's determination of the merits of these allegations and, if necessary, appropriate corrective actions. On request, we will provide pertinent documentation to the Office of Inspector General to facilitate these investigations.

Agency Comments and Our Evaluation

In its November 3, 1986, comments (see app V) on a draft of this report, the Department of Labor said it was "gratified" by our conclusion that widespread violations of civil service and ethics laws have not occurred within OSHA. Labor emphasized that it would not tolerate any illegal or unethical personnel practices within OSHA and agreed that the two allegations discussed above required further investigation. Labor said that the inspector general would be asked to thoroughly investigate these allegations, and agency officials will work with the inspector general to resolve them.

Labor disagreed with our decision to include in the final report, and thus make public, the allegations for which we recommended no further action or investigation. In Labor's view, certain of these allegations seemed out of place in a report purporting to focus on possible civil service and ethics law violations. Labor said that many of these allegations appeared to be simply the result of differences in scientific and professional opinion between OSHA management and staff.

We included these allegations in this report to be responsive to your request that our review include the types of allegations that were brought to the Subcommittee's attention during hearings held in May 1985. Our goal was to apply our normal audit techniques to all the allegations brought to our attention, and to report on those allegations that were supported by corroborating evidence or where our review indicated a reasonable basis for concern among OSHA employees.

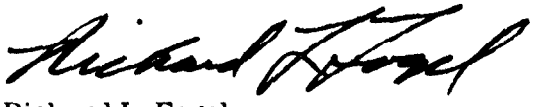
Finally, Labor included in its comments a copy of the cover letter and questionnaire we sent in November 1985 to the home addresses of over 3,400 current and former OSHA staff and consultants, so that readers of

this report could read the questionnaire on which, according to Labor, our review and report were based. We have included the questionnaire, which only served as the starting point for our review, in appendix V. Labor had previously expressed strong concern about our approach to determine whether there were "widespread violations" of civil service and ethics law within OSHA as alleged during the Subcommittee hearings.

We concluded, after considerable discussion with our methodological experts, that the best way to obtain information concerning the extent to which such violations existed was to develop the letter and questionnaire that we subsequently sent. We also decided that it was necessary to offer anonymity to obtain leads for our staff to follow.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to the Secretary of Labor, the Director of the Office of Management and Budget, the Chairmen and Ranking Minority Members of the congressional committees concerned with OSHA, and other interested parties. We will make copies available to others on request.

Sincerely yours,



Richard L. Fogel
Assistant Comptroller General

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Abbreviations

GAO	General Accounting Office
OASAM	Office of Assistant Secretary for Administration and Management
OMB	Office of Management and Budget
OOM	Office of Occupational Medicine
OPM	Office of Personnel Management
OSHA	Occupational Safety and Health Administration

Request Letter

U.S. House of Representatives
SUBCOMMITTEE ON INVESTIGATIONS
OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
608 HOUSE OFFICE BUILDING ANNEX 1
Washington, DC 20515

TELEPHONE (202) 226-6206

June 12, 1985

Honorable Charles A. Bowsher
Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Bowsher:

The Subcommittee on Investigations of the Post Office and Civil Service Committee has been investigating personnel practices in the Occupational Safety and Health Administration. Recently, the Subcommittee conducted a hearing on this issue.

Allegations of widespread violations of civil service and ethics laws at OSHA have raised serious questions about the agency's effectiveness in protecting America's 75 million working men and women in America's 4.5 million workplaces. Sworn testimony at the hearing disclosed that career scientific and technical employees were told in advance how to draft standards, that career scientific and technical employees have been purged and replaced with unqualified political appointees, and that at a recent taxpayer financed seminar at a Williamsburg, Virginia resort, OSHA managers discussed at length "Kicking Ass and Taking Names" as an effective management strategy. Further, a medical doctor trained in the specialty of occupational medicine and one of only two physicians associated with OSHA, told the Subcommittee that her contract was abruptly terminated after she complained in writing that the scientific and medical evidence supporting the issuance of an OSHA field sanitation standard was being ignored. Instead, the doctor and other members of the team were told to write a standard which did not require drinking water and toilet facilities to be made available to farm workers.

Another former OSHA employee, an industrial hygienist, explained how the Director of Health Standards told her team to justify weakening the standard protecting workers from dangerous exposure to lead regardless of the scientific evidence or the health hazards that were documented. She also related that several OSHA employees had expressed to her their concerns, but that they were unwilling to come forward and testify because they were fearful for their jobs.

Based on the information which was developed by the Subcommittee, I am concerned that there may be serious violations of the civil service laws and regulations at OSHA. I am aware that GAO is investigating the "Kick Ass and Take Names" seminar. I request that the investigation be broadened to include the additional allegations raised at the Subcommittee hearing.

I appreciate your attention to this request and ask that your report be made as quickly as possible. If your staff has any questions on this matter, please have them call Nancy Broff at 225-6295.

Sincerely,

GERRY SIKORSKI,
Chairman

GS/NB

Allegations Requiring Follow-Up by the Department of Labor's Office of Inspector General

Improper Handling of Region IX's Backlog of Discrimination Complaints

Allegation

In August 1985, a team of Occupational Safety and Health Administration (OSHA) investigators was brought to Region IX (San Francisco) on temporary duty from OSHA's Dallas Regional Office to help deal with a backlog of complaints of discrimination in violation of section 11(c) of the Occupational Safety and Health Act. It is alleged that these investigators did not conduct investigations, but merely told many of the complainants that they did not have cases worth pursuing; the investigators requested that the complainants withdraw their cases. Some of these cases had been reviewed by Region IX staff. It is alleged that the OSHA Region IX staff believed that certain cases were worth pursuing. After the Dallas Regional Office investigators left, some of the cases, which had been dismissed by OSHA investigators as lacking sufficient evidence to warrant further investigation, were appealed by the complainants to OSHA headquarters and reversed.

OSHA Response

OSHA stated that the primary cause of the backlog was the Region IX Discrimination Program officer's failure to properly screen complaints in a timely manner. OSHA indicated that the Region IX backlog was too large for its four investigators. To reduce the backlog, a decision was made to detail eight investigators and one supervisor from OSHA's Dallas Regional Office for a period of 1 month. Forty-six cases were investigated by the Dallas Regional Office staff. Of the 46 cases, 17 were dismissed because of the lack of sufficient evidence to warrant further investigation; 23 were withdrawn; 4 were settled; and 2 were determined to fall under other sections of law. Three of the 17 dismissed cases were appealed to OSHA headquarters, but in each case the appeal was denied.

GAO Analysis and Comments

We were told that one Dallas investigator, who was responsible for investigating six cases, was heard (by another OSHA employee) advising several complainants that they should not fight the actions taken by employers or that they should file complaints with other agencies, although such agencies had no jurisdiction regarding these complaints.

Similarly, we were told that another Dallas investigator, who was responsible for investigating eight cases, told another OSHA employee that he knew how to handle such matters without investigation. According to an OSHA Region IX employee, the investigator's technique for handling so many cases involved only contacting the complainants and attempting to get them to withdraw their discrimination charges.

A review of the two cases that were officially determined not to warrant further section 11(c) investigations by the Dallas staff reveals more justification for additional investigation. In one case, the complainant was an employee of a private day care center (engaged in interstate commerce) providing services to naval personnel on the Port Hueneme Naval Base in California. Because the employee was neither a federal employee nor an employee of a federally funded organization, she was subject to federal OSHA protection as a private sector employee on federal land. However, OSHA Region IX sent her a letter telling her that (1) she was not covered by the Occupational Safety and Health Act because she was a federal employee and (2) her file was being turned over to the federal program coordinator for OSHA in Region IX.

In the other case, an individual complained that he was not satisfied with a determination he had received from the California Division of Labor Standards. The individual raised several problems, including the quality of evidence relied on at the state hearing. A September 19, 1985, OSHA memorandum concerning the case supported screening out this complaint; the memorandum stated that further inquiry and analysis indicated the complainant wanted to file a Complaint Against State Program Administration rather than a section 11(c) complaint, but no specific reason for wanting to do so was given. By pursuing a Complaint Against State Program Administration rather than an 11(c) complaint, emphasis was placed on possible problems with state procedures rather than the employer's alleged violations of discrimination provisions of the Occupational Safety and Health Act. No field investigation of the complaint was conducted, and no further action was taken on the former employee's appeal of the results of the state hearing.

Noncompetitive Promotions of Unqualified Individual in an OSHA Regional Office

Allegation

It is alleged that an OSHA assistant regional administrator improperly detailed and promoted a former safety and occupational health specialist to a GS-12 administrative officer position on April 1, 1984, and then promoted this individual to a GS-13 management officer position in October 1985, although he had a direct financial and personal interest in these promotions. In fact, he and the employee had jointly purchased a house in August 1983, and currently reside in this house. Among other things, it is alleged that this employee was detailed to the GS-12 position under an Office of Personnel Management (OPM) special waiver, conditional on the completion of a 2-year training program. It is alleged that although the training program was never initiated, the administrative officer was promoted to a GS-13 position on a noncompetitive basis.

OSHA Response

OSHA stated that this employee's detail, appointment, and promotion to the GS-12 administrative officer position were initiated and directed by the regional administrator and approved by the regional Office of the Assistant Secretary of Administration and Management (OASAM). According to OSHA, OASAM submitted a request for a waiver of qualifications for the grade 12 position to the regional OPM. Waivers of qualifications are routinely requested when OSHA management identifies the need to noncompetitively reassign an employee, but the candidate does not meet minimum OPM qualifications. The waiver request was approved. Further, OPM did not require that any training take place in order for the individual to be qualified for the administrative officer position. Instead, on-the-job training was provided by the regional administrator and other OSHA managers familiar with OSHA policies and procedures and Labor personnel responsible for such areas as personnel, procurement, and budget.

The promotion to a GS-13 position followed a desk audit by the OASAM personnel officer to review and evaluate the duties performed. The personnel officer determined that the work justified a grade 13, and the promotion was made as a result of these findings.

GAO Analysis and Comments

The assistant regional administrator was responsible for preparing the paperwork justifying and requesting approval of these personnel actions, according to regional OASAM staff involved in (1) approving the personnel actions cited in the allegation and (2) forwarding the waiver request to OPM. He also acted as OSHA's liaison with OASAM. We obtained evidence that the assistant regional administrator and the employee cited in the allegation were both named as borrowers/trustors[1] on a deed dated August 8, 1983. Both individuals applied, on July 21, 1983, for a loan to use the property specified in the deed as their principal residence.

The joint ownership of property by the assistant regional administrator and the employee, as well as subsequent employee promotions, may constitute a conflict of interest. Civil Service Regulation 5 C.F.R. 735.204(a)(1) governing ethical and other conduct and responsibilities of employees states that "An employee shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his [or her] Government duties and responsibilities . . . ."

Because the assistant regional administrator, with whom the promoted OSHA employee was living, was responsible for preparing the paperwork justifying and requesting approval for an OPM waiver of minimum qualifications and promotions to GS-12 and 13, a conflict of interest may be involved.

[1] A trustor is the person creating a trust

Other Allegations Made by OSHA Workers

Internal OSHA Draft of Proposed Lead Standard Improperly Provided to Industry

Allegation

The Occupational Safety and Health Administration (OSHA) deputy assistant secretary allegedly admitted in a November 4, 1981, staff meeting that a draft of the proposed lead standard was provided to industry. Further, notes made on the margin of the proposal indicated that an OSHA official had talked with industry officials because there were scientific issues involved that were outside his area of expertise. It is alleged that this industry involvement constituted ex parte contact;[1] it is also alleged a Department of Labor attorney in the Office of the Solicitor was ordered to incorporate comments, which she believed were industry comments, into the lead standard proposal.

OSHA Response

No one currently employed by OSHA could respond to this allegation because no one had direct knowledge of the allegation or of the directions that may have been given in the Office of the Solicitor.

GAO Analysis and Comments

To investigate this allegation, we interviewed the individual who alleged ex parte contact and certain individuals who were members of the OSHA lead standard team. We were not able to locate the former OSHA deputy assistant secretary to discuss this matter. We also obtained pertinent documents from various sources within OSHA and the Office of the Solicitor, indicating that lead industry representatives had contact with OSHA officials concerning the proposed lead standard. However, the documents had contradictory views as to whether a draft of the lead standard was improperly provided to industry representatives.

In this regard, a January 26, 1982, memorandum from a Department of Labor attorney to Labor's solicitor stated that the attorney was resigning because OSHA officials had had ex parte contacts with lead industry attorneys. On the other hand, a January 29, 1982, memorandum regarding these alleged ex parte contacts stated that the

[1]Communications with interested parties that are not recorded in the public record and for which public notice to all parties is not given

industry contacts with OSHA officials were for the purpose of gathering information and views on a number of issues, including the impact of the proposed lead standard. According to the memorandum, there was no intent to rely on these industry representatives to reach decisions on matters involving the lead standard. The same memorandum indicated that the marginal notes on an OSHA draft for the Federal Register document were made as a result of discussions with industry representatives. But the memorandum pointed out that the ultimate impact of the discussions on subsequent decisions was minimal.

OSHA Lead Standard Team Leader Threatened With Letter of Insubordination

Allegations

It is alleged that a special assistant to the assistant secretary for safety and health told the OSHA lead standard team leader that she should raise the control level. This occurred shortly before the OSHA lead team wrote a December 20, 1982, memorandum to OSHA management, expressing the team's dissatisfaction with raising the existing 50 micrograms per cubic meter lead engineering control level for battery manufacturers to 150 micrograms per cubic meter. The team leader was told that if she did not agree, a letter charging her with insubordination would be placed in her official personnel file.

It is also alleged that the special assistant subsequently pressured the lead team leader's supervisor to influence the leader's views so that they would conform to management's. The supervisor allegedly passed along management's position to her subordinate; when the team leader responded that management's position was not supported by the data, the supervisor responded that it made no difference. It is alleged that, at one point, the supervisor stated that the team leader's job might be in jeopardy if she could not convince the team leader to conform to management's view.

OSHA Response

OSHA denied the allegation that the lead team leader was threatened with a letter of insubordination if she did not raise the lead control level for batteries. OSHA also denied attempting to pressure the team leader, through her supervisor, into accepting management's position on lead control levels. OSHA stated that decisions on standards are based on the gathering and analysis of data that may contain conflicting evidence. The evaluation process often gives rise to differing opinions between scientists, economists, and management. This happens frequently, almost as a matter of course, especially in the promulgation of a controversial standard. Initial policy decisions are made, then discussed, modified, and made final by the assistant secretary.

OSHA believed there was evidence to support numerous positions concerning the proper lead engineering control level for battery manufacturers. Based on available evidence, the assistant secretary considered setting the levels at 150 micrograms per cubic meter. After a full review, with all the evidence and complete airing of all the options (taking into account the views of technical, scientific, and policy staff), the assistant secretary determined that changes to the existing standard were not appropriate.

GAO Analysis and Comments

The special assistant told us that he never told the team leader to change the lead standard for battery manufacturers. Likewise, the supervisor told us she did not exert pressure on the team leader to make her view conform to OSHA management's. However, the team leader told us that her supervisor made comments concerning repercussions if the team leader did not make the change. Another individual told us that he overheard the supervisor making such comments to the team leader. In addition, the team leader indicated that the special assistant told her that she would be labeled as "insubordinate" if she did not conform to OSHA management's view.

OSHA Management Dictated Lead Standard Revisions to OSHA Staff

Allegation

It is alleged that, at various times in the early 1980's, OSHA's deputy assistant secretary, a special assistant, and the director and deputy director of OSHA's Health Standards Programs Directorate told OSHA staff working on the lead standard revisions to make specific changes to the standard. These changes were unsupported by data gathered and analyzed by OSHA staff.

The sections of the standard that management wanted changed include the following: raising the permissible exposure limit from 50 to 150 micrograms per cubic meter, raising the allowable blood level from 50 to 60 micrograms per cubic meter, reducing the frequency of required monitoring, eliminating the zinc protoporphorin blood test for lead, deleting medical removal protection benefits, and delaying compliance dates for implementing portions of the lead standard. No justification for making these changes was provided to the staff

OSHA Response

OSHA denied that changes to the lead standard were ordered. Rather, the assistant secretary ordered that the standard be examined after Vice President Bush's Task Force on Regulatory Activity recommended that it be reviewed. The standard therefore received priority consideration and attention. Internal discussions were held among a political appointee, management, career management, and staff. Changes to the lead standard were proposed. An Advance Notice of Proposed Rulemaking was prepared to elicit views from industry, labor, the scientific community, and the general public. Extensive work was done; documents were prepared and compiled; data were gathered and interpreted; and vigorous debate took place, with conflicting views aired and discussed. In the end, no changes were made to the lead standard.

GAO Analysis and Comments

Our discussions with five members of the OSHA lead team and an official of the Health Standards Program Directorate, as well as our review of notes from OSHA management and staff meetings, confirmed the following: although no changes were actually made to the OSHA lead

standard, OSHA management had attempted to change the standard. Further, we found that OSHA submitted a proposed revision of the lead standard to the Office of Management and Budget (OMB) in September 1983, but it was rejected by OMB without explanation.

In addition, certain OSHA employees told us that the Task Force on Regulatory Activity did not recommend that the entire OSHA lead standard, promulgated in 1978, be reviewed. They told us that they believed the Task Force recommended consideration be given to a supplemental statement on lead, which was submitted to the courts in January 1981, at the end of the Carter administration. If this is true, it is unclear how OSHA justified reconsideration of the entire lead standard. OSHA officials were unable to provide us with any documents indicating that the Task Force on Regulatory Activity wanted OSHA to reconsider the entire lead standard

It appears that the primary reason for OSHA's attempt to revise the standard was given in a December 21, 1981, memorandum from the assistant secretary's special assistant to the executive director of the Policy Review and Coordination Committee. The memorandum states that

"Since the focus of this action [the proposed revision to the OSHA lead standard] is not to further reduce risk but rather to reduce the cost of compliance to employers, the revision may be vunerable [sic] to legal attack. In addition to expectable challenges to aspects of the rulemaking as being unsupported by substantial evidence and procedurally defective, the Agency should be prepared to defend its action . . ."

OSHA Cancer Policy Provisions Not Followed in Formaldehyde Standard Rulemaking

Allegations

The OSHA cancer policy (29 C.F.R. part 1990) defines a potential occupational carcinogen as a substance causing cancer in animals or in humans. It requires that (1) inferences about carcinogenicity consider studies involving animals exposed to high doses of studied substances and (2)

animal data be considered even if nonpositive human studies exist. In making decisions on rulemaking for the formaldehyde standard, it is alleged that OSHA has not followed its own regulations concerning potential occupational carcinogens.

In its January 29, 1982, letter denying a labor union petition for an emergency temporary standard on formaldehyde, OSHA disregarded the results of animal studies showing that formaldehyde caused cancers in animals. OSHA reasoned that the cancers occurring in those studies were statistically significant only in animals exposed to high doses.

In the Health Effects section of the April 17, 1985, Advance Notice of Proposed Rulemaking on formaldehyde, OSHA concluded that "the evidence presently available from human studies alone is inadequate to make any determination with regard to formaldehyde's potential carcinogenicity." This statement has been interpreted as meaning that OSHA disregarded animal studies. In its December 10, 1985, Proposed Rulemaking on formaldehyde, OSHA concluded, consistent with its cancer policy, that formaldehyde should be treated as a potential occupational carcinogen, but the same Proposed Rulemaking also presented a regulatory option of not regulating formaldehyde as a potential occupational carcinogen.

OSHA Response

OSHA stated that its cancer policy predates the 1980 Supreme Court benzene case decision, which requires OSHA, before it regulates, to demonstrate that a significant risk to workers exists, and that an OSHA standard will significantly reduce that risk. As a result of the benzene decision, the Department of Labor is required to consider all relevant data on carcinogenicity and risk. The cancer policy does not now contain any requirements for risk assessment. The requirement to make a significant risk determination under the benzene decision does not permit strict adherence to the cancer policy.

OSHA maintained, in its letter of January 29, 1982, which denied a labor union petition for an emergency temporary standard on formaldehyde, that it did not disregard animal studies as interpreted. Rather, it used the animal studies to calculate potential human risk. OSHA concluded in that letter that the magnitude of the cancer risk was not sufficient to justify issuance of an emergency temporary standard. In its December 10, 1985, Proposed Rulemaking on formaldehyde, OSHA calculated the risk of cancer, based on animal studies, and stated that the human evidence, although not conclusive, suggests possible cancer risk.

OSHA is in the process of reviewing its cancer policy to determine whether to modify, or even revoke, it. Portions of the policy (i.e., the requirements to publish priority lists of suspect carcinogens) have been administratively halted pending the outcome of the review. The current Regulatory Program of the U.S. Government cites January 1987 as the target date for OSHA's issuance of a Notice of Proposed Rulemaking on the cancer policy.

GAO Analysis and Comments

"Chemical Carcinogens. A Review of the Science and Its Associated Principles, February 1985" (published in the March 14, 1985, Federal Register) by the Office of Science and Technology Policy (in the Executive Office of the President) stated that deference on such matters should be given to the International Agency for Research on Cancer principle. The principle states that, in the absence of adequate data for humans, it is reasonable, for practical purposes, to regard chemicals for which there is sufficient evidence of carcinogenicity in animals as if they presented a carcinogenic risk to humans. This principle complements the current OSHA cancer policy. However, OSHA's response indicates a preference for conclusive evidence of carcinogenic effects in humans in addition to animal data.

OSHA's response does not explain the inconsistency in its December 10, 1985, Proposed Rulemaking on formaldehyde. In this regard, one part of the Rulemaking states that "evidence available supports the conclusion that formaldehyde is an animal carcinogen and should be treated for regulatory purposes as a potential occupational carcinogen," while another part of the Rulemaking presents an option, as mentioned earlier, of not regulating formaldehyde as a carcinogen. An OSHA official told us that OMB directed the insertion of this option.

OSHA's cancer policy has been under review since 1982. The projected date for publication of a notice of Proposed Rulemaking has been repeatedly delayed. In the October 1985 semiannual regulatory agenda, OSHA reported a projected date of December 1985. In the April 1986 agenda, the projected date was delayed to May 1986, and now the date is January 1987. One person is assigned to work on the policy's review.

OSHA Field Operations Manual Restricts Enforcement of Health Standards

Allegations

It is alleged that OSHA's Field Operations Manual is written in such a way that it has a negative effect on enforcement of health standards. The manual requires the grouping of violations (ch. V) to form a single citation. This severely limits the amount of any penalty. For example, it is alleged that violations of standard provisions cited for a routine coke oven inspection, which may have resulted in a $40,000 penalty in 1979, would result in a $2,000 penalty today. It is also alleged that an engineering controls deficiency, which results in exposing employees to a toxic substance, cannot be issued as a "serious" citation unless the employer's respirator program is inadequate. (Anonymous)

OSHA Response

OSHA stated that, in April 1983, its Field Operations Manual altered the penalty assessment procedures related to health standard violations, but these changes did not affect enforcement of those standards. There was no lessening of the requirements that employers remove hazardous conditions from the workplace as a result of the 1983 instructions on grouping health violations, nor was there any reduction in the number of health violations cited by OSHA. Since all citations of violations require removal of the hazard, the change did not lessen worker protection, but affected only the penalties assessed for those violations. Similarly, no matter how a cited violation is classified, the citation requires elimination of the hazard. The only practical difference between a "serious" violation and an "other-than-serious" violation is the proposed penalty amount. OSHA maintains that the safety and health of workers depends on the elimination of workplace hazards and not on the amounts of penalties that employers are required to pay.

GAO Analysis and Comments

Although we agree that the April 1983 OSHA Field Operations Manual changes did not lessen the requirement that employers remove hazardous conditions, the changes resulted in reduced penalty amounts, which directly benefit employers. OSHA did not explain why there was a need to institute changes that financially benefitted employers but had no impact on the number of violations cited. In our opinion, a penalty's

deterrent value is significantly reduced when penalty amounts assessed are reduced. Although not mentioned in its May 1986 response to this allegation, OSHA noted, when commenting informally on our report, that the question of grouping health violations is now moot because the April 1983 instructions in the manual were rescinded on March 27, 1986.

Input on Standards Not Provided by OOM

Allegations

It is alleged that OSHA's Office of Occupational Medicine (OOM) did not provide necessary medical and epidemiological assistance in support of standards development. Overall, it is alleged that OOM did not provide necessary input to health standards that were being developed or revised.

For example, the proposed ethylene oxide standard would have been sent to the Federal Register in 1984 without any medical surveillance provisions for protecting workers. However, a Johns Hopkins University resident physician, working in OOM, happened to discover this fact before the standard was sent, and brought it to the OOM director's attention. Consequently, a medical surveillance provision was included in the proposed standard.

During the development of the asbestos standard, no OSHA physician participated directly in developing the medical surveillance provisions. Instead, a nonphysician reviewed medical information. Likewise, the revised cotton dust standard was never given to OOM, nor was any medical opinion sought. OOM's director believed that the standard's medical surveillance provisions needed to be revised. Specifically, the pulmonary functions tests were used erroneously by some physicians as a test of the ability to work in a cotton dust environment, rather than as a test for the adequacy of worker's pulmonary function. Thus, some workers were excluded from work, which is not the purpose of the pulmonary function test. OSHA's goal is supposed to be to remove risks, not workers.

The formaldehyde standard is another example of a standard developed with no input from OOM. A nonhealth professional wrote the medical surveillance provisions. Many feel that without a physician in the standard-setting process, the best interests of both workers and industry

can suffer. In some existing standards, the medical surveillance provisions are too stringent or not in line with current medical practice, and they need to be changed. The coke oven standard is a case in point: the requirement for sputum cytology and chest X-rays every 6 months is not only expensive and time-consuming from industry's perspective, but the X-ray part may harm workers' health because of excessive radiation.

Lastly, it is alleged that the final judgment on a standard's medical surveillance provisions may be decided by nonphysicians, such as a statistician, industrial hygienist, or lawyer.

OSHA Response

In regard to the need for physician involvement in standard setting, OSHA stated that it was in the business of promulgating health standards long before it had an occupational physician on its staff. This means that although input is considered important and beneficial, a physician is not needed to develop most parts of standards. OSHA's Directorate of Health Standards Programs has the primary responsibility for review of the case to be tried and promulgation of standards. OOM's role is to provide assistance on an "as needed" basis.

The final responsibility concerning any section in any standard belongs to the assistant secretary. Although the assistant secretary may rely upon the recommendations of his/her professional staff to distinguish conflicting testimony in a case, the final judgment of a provision is a policy decision. Consideration must be given to cost and feasibility options of the provisions and how much protection or prevention the requirement will produce for safety and health. Generally, the final OSHA standards are a compromise with medical surveillance because only those tests that produce specifically relevant data are requested.

Many problems have plagued OOM management since its establishment. First, the original permanent physicians left after their first or second year for much greater salaries in the private sector. Second, resource allocations for OSHA's Directorate of Technical Support, of which OOM is a part, have been reduced over the past few years. This has affected contract funds and staff resources in all offices of the directorate Finally, there has been a management problem with the OOM director, which OSHA officials are working to resolve.

GAO Analysis and Comments

OSHA officials indicated that OOM staff were late in their input on standards. Generally, there appeared to be a reluctance to obtain OOM input. In addition, we found that it was "assumed" that OOM participated in the development of standards when needed, but requests for support were not put in writing. No system existed to assure OSHA management that OOM input was obtained.

OOM Was Understaffed and Could Not Fulfill Its Assigned Functions

Allegations

In addition to reviewing proposed OSHA standards, OOM was supposed to (1) advise other OSHA components on medical matters; (2) provide medical and technical support for the field, including field investigations of occupational health problems; (3) provide medical advice and investigation support in response to health emergencies; and (4) administer the occupational medicine intern-resident program.

It is alleged that the one permanent staff physician in OSHA was not sufficient. Through an agreement with Johns Hopkins University, interns and residents were rotated through the office for periods of 3 to 6 months as part of their training. Despite the success of the program, it was terminated; although later reinstated. It is also alleged that OOM played a limited role in regional and area office programs. An OSHA headquarters physician did not routinely examine workplace conditions in the field because the ability to participate in field activities was minimal without appropriate staff.

Another area where understaffing had a negative impact was in OOM's ability to respond to inquiries from the public. The OOM was supposed to respond to public requests for guidance on medical aspects of workplace health hazards. However, these requests for information were controlled correspondence, and were routed to nonmedical OSHA personnel for replies.

OSHA Response

OSHA agreed that OOM's mission and functions were important and that the office was understaffed. The office had recruitment and retention problems. OOM was provided administrative and program support

through OSHA's Directorate of Technical Support; research support was provided by technical information specialists in the Technical Data Center; clerical support was provided by three directorate secretaries; and medical support was provided by the intern-resident program. In an optimum situation, it is envisioned that OOM would be staffed with two to three full-time medical officers and a permanent secretary.

The intern-resident program was not funded for a short period of time (less than a month), during which the OOM director's ability to properly manage and to provide adequate supervision and training to the residents was questioned. Despite the lack of effective day-to-day OOM management, the Directorate of Technical Support managed to carry on its highest priority duties with the clerical support mentioned earlier. This was only a temporary solution, and OSHA made attempts to fill a medical officer position. On request, OOM provided support to field investigations involving occupational health problems requiring medical expertise. This support is primarily through written correspondence and telephone consultation. Occasionally, a site visit is required. Strictly medical-related inquiries are answered by medical officers. In cases such as those involving broad areas of health effects of substances, hazard control technology, advice on use of personal protective equipment, and interpretation of health standards, industrial hygienists are fully qualified to respond to inquiries.

GAO Analysis and Comments

OOM's inability to function effectively was brought out in this allegation and confirmed by OSHA's response and our subsequent discussions with OSHA officials. OSHA has taken action to increase OOM staffing. As of July 1986, OSHA had three resident physicians rotating through OOM and had recently obtained an additional physician, under the Intergovernmental Personnel Act, for a period of 1 to 1-1/2 years.

OOM Director Not Permitted to Speak at OSHA-Related Medical Meeting

Allegation

In April 1985, the director of OOM was asked to speak in September 1985 before the Institute for Occupational Health Nurses at George Washington University Medical School. After the director had prepared the speech, formal permission to give the talk was denied. It is alleged that a question was raised within OSHA about the kind of audience this speech would be given to. That is, if the audience was a group of "radical" nurses, it was thought that the acting assistant secretary would not approve of the talk. A high-ranking OSHA official allegedly wanted to send a nonmedical person to address the group, but this was not agreed to by the medical school coordinator responsible for the arrangement. Finally, the director was granted permission to give the talk, but was instructed to take an OSHA nonmedical person along to monitor it.

OSHA Response

OSHA stated that the part of the allegation describing the situation was generally accurate, but denied the position taken, which was attributed to the acting assistant secretary.

At the time this incident occurred, OSHA was having management problems within OOM. Among other things, reports concerning specific assignments were not being turned in. In addition, OSHA management believed that all too frequently the OOM director was attending meetings or giving speeches not specifically known to, or approved by, upper OSHA management. Finally, the director was informed by his immediate supervisor that he was being taken off all external OSHA committees, task forces, and other nonrelated OSHA assignments, including speeches. This drastic action was necessary so that the director would have sufficient time to complete high-priority internal assignments, and OSHA management could again begin directing the use of OOM's resources toward the accomplishment of OSHA's mission.

GAO Analysis and Comments

The position description for the medical officer/ administrator of OOM specifically includes responsibility for the delivery of speeches and maintaining professional contact with other groups. No additional

follow-up work by our staff was required because OSHA generally admitted the allegation's accuracy. OSHA officials have attempted to improve OOM's operation.

Revised OSHA Regulation Contrary to Occupational Safety and Health Act of 1970 and Applicable Case Law

Allegations

It is alleged that the adoption of 29 C.F.R. 1977.15(d)(3), as amended, was contrary to section 11(c) of the Occupational Safety and Health Act of 1970, as well as case law interpreting this section. The changed federal regulation was used by OSHA as a basis to dismiss consideration of approximately 30 complaints made by individuals within the geographical boundaries of Region IX (San Francisco); these individuals believed they had been discharged from their jobs, or otherwise discriminated against, because they filed a complaint alleging health and safety violations. In effect, this change removed a level of protection formerly afforded complainants. More specifically, it is alleged that the director of OSHA's Office of Field Coordination used ongoing changes being made to 29 C.F.R. 1977.15(d)(3) to comply with a 1980 Supreme Court decision dealing with arbitration. Thus OSHA rid itself of the responsibility for investigating complaints by individuals who were discriminated against after they reported health and safety violations. This was done by including another change to 29 C.F.R. 1977, which was not required by the Supreme Court decision.

Prior to August 1985, 29 C.F.R. 1977.15(d)(3) stated that the 30-day period for filing a section 11(c) discrimination complaint was suspended when the complaining worker resorted, in good faith, to grievance-arbitration procedures (under a collective bargaining agreement) or filed a discrimination complaint with another agency. According to the August 15, 1985, Federal Register, the Supreme Court ruling in 1980 made this provision invalid. As a result, the suspension provision for grievance-arbitration and filing with another agency were deleted from 29 C.F.R. 1977.15(d)(3). That provision was modified to state, among

other things, that the filing with another agency does not suspend the 30-day period for filing of section 11(c) complaints.

OSHA Response

OSHA believed that workers were not denied protection by the change to 29 C.F.R. 1977.15(d)(3). The California safety and health officials were required to advise complainants of the need to file a charge with OSHA within 30 days of an alleged discriminatory act. In doing so, the complainant retained the right to come to OSHA for section 11(c) protection if dissatisfied with the state's processing of the complaint. If the federal filing requirements are not met, a dissatisfied complainant has the additional right of filing a Complaint Against State Program Administration. If OSHA, after its investigation, finds deficiencies in the procedural or substantive handling of the case, the state would be required to make changes in its procedures. Further, OSHA would strongly encourage the state to reconsider the specific case to rectify any error.

A 1980 Supreme Court decision (Delaware State College v. Ricks, 449 U.S. 250) eventually caused OSHA to change 29 C.F.R. 1977.15(d)(3) because the decision dealt with circumstances that would suspend an established filing period. In 1982, however, the consensus was that previous decisions provided analogous case law to OSHA's regulation 1977.15(d)(3), but that the suspension for grievance-arbitration and state filing could not be supported. Accordingly, OSHA's position was not to change the regulation because it had not been directly challenged. Nevertheless, during several years, the opinion grew that the regulation was not consistent with existing case law. In 1984, a decision was made to revise the regulation; the decision went into effect in August 1985.

GAO Analysis and Comments

In 25 states (including California) with OSHA-approved discrimination investigation programs, state agencies, rather than OSHA, are initially responsible for investigating an individual's complaint. OSHA can conduct a subsequent investigation on the individual's behalf, but only if OSHA has been advised, within 30 days from the date the alleged act occurred, by the individual. Further, it is the state agency's responsibility to advise complainants of this requirement.

The individual's right of protection could be adversely affected if a state agency did not advise a claimant of this requirement, and a claimant did not file with OSHA within 30 days of the alleged act. In effect, there would be no section 11(c) protection because the complainants had not

filed with OSHA before determining whether the state agency's findings and action would be satisfactory.

OSHA did not issue an instruction requiring states to advise complainants of the 30-day requirement until February 1986, nearly 7 months after the change in 11(c) regulations. It is possible that some complainants may not have been advised of, and therefore may not have met, the 30-day filing requirement. On the other hand, an August 16, 1985, memorandum (from the director of OSHA's Field Operations Directorate to the Region IX administrator) cautioned against simply closing out cases that were affected by the change in suspension regulations for 29 C.F.R. 1977.15(d)(3). In fact, the regional administrator was told to continue to process such cases.

We did not investigate whether 29 C.F.R. 1977.15(d)(3) was actually used as the basis to dismiss specific complaints of workers who believed they had been discharged, or otherwise discriminated against, because they had reported health and safety violations. Such an inquiry was beyond the scope of our review.

Questionable Travel Practices in Region IX

Allegation

It is alleged that the Region IX management officer improperly approved travel expenditures for the regional administrator and assistant regional administrator. It is alleged that all three OSHA officials flew from Phoenix to San Francisco on September 28, 1984, with first-class tickets obtained from United Airlines, and these officials requested that mileage for this particular trip be credited against their United Airlines' Mileage Plus accounts. In addition, it is alleged that the management officer regularly approved, without sufficient scrutiny, 1984 travel expenditures for the regional administrator to travel to Minnesota to visit his family. A specific example of questionable voucher scrutiny was a November 1984 travel voucher for the regional administrator being approved on December 6, 1984, by the management officer although it was not formally submitted by the regional administrator until December 7, 1984.

OSHA Response

OSHA denied that regional officials flew first class on September 26 and 28, 1984, with tickets provided by United Airlines, and OSHA provided copies of tickets to substantiate its position. OSHA acknowledged that the regional officials held membership in the Mileage Plus program, but denied the allegation that the employees requested that the Phoenix trip mileage be credited against their accounts for future personal use. No corroborating evidence was provided on this matter. OSHA denied that the regional administrator's travel was not properly scrutinized and cited a recent Office of the Inspector General audit report in which this official's travel deficiencies or errors had been identified and remedies discussed. OSHA noted that procedures are being put in place to assure that all future travel vouchers of all regional administrators will be reviewed by headquarters personnel to assure "programmatic compliance."

GAO Analysis and Comments

We identified an October 27, 1982, memorandum to OSHA headquarters and field administrators from the Department of Labor Comptroller, which stated that such items as coupons, cash, and merchandise received while on official travel become the property of the federal government. All items of value were to be turned over to the appropriate finance office for disposition.

By a memorandum dated October 17, 1984, to United Air Lines, the assistant regional administrator requested that the airline credit his Mileage Plus account and that of the regional administrator and administrative officer for the Phoenix trip mileage. The memorandum did not specify, and the airline was unable to determine, whether the credit was for personal or business use. The assistant regional administrator told us that he did not use the credits for personal purposes, but said that he did not forward any material regarding the September 1984 trip to the OSHA finance office. The Office of the Assistant Secretary of Administration and Management (OASAM) issued guidance, after the trip in question, that cautions employees to separately account for government versus personal travel in order to assure compliance with existing regulations.

The audit that led to the report cited by OSHA resulted from external allegations about the regional administrator's travel rather than from OSHA's routine scrutiny of travel expenditures. The issue of mileage credits earned while traveling on government business was not included in this audit report.

Inequities in Hiring Industrial Hygiene and Safety Specialist Trainees

Allegation

Industrial hygiene trainees are hired according to set criteria (resulting in most coming in as GS-5s), while safety specialist trainees are hired with no set criteria (resulting in most Chicago, Illinois, area office trainees coming in as GS-9s). In the end, industrial hygiene trainees with college degrees are GS-5s, while safety specialist trainees with only construction experience are GS-9s. (Anonymous)

OSHA Response

OSHA stated that industrial hygienists are normally hired at the GS-5/7 levels and safety specialists at the GS-9 level. OPM hiring criteria exist for both categories of employees. All candidates hired for permanent positions from sources outside of the federal government are referred to OSHA by OPM, which rates and ranks the applications against these criteria. The major reason for the different hiring levels for industrial hygienists and safety specialists is the lack of an OPM examination process for safety specialists below the GS-9 level.

There is also another disparity in the established OPM hiring mechanisms. This is the crediting of graduate-level education for each of these positions. Both industrial hygienists and safety specialists can qualify for a GS-9 with a related graduate degree or 2 years of graduate study. However, the degree or graduate study is required for GS-9 industrial hygienist positions whereas experience may be substituted to qualify for GS-9 safety specialist positions. These conditions are not within the control of OSHA, but are determined by OPM criteria and procedures.

GAO Analysis and Comments

Inequities between the grade levels and education requirements for industrial hygiene and safety specialist trainees hired by OSHA are not unique to OSHA. This situation resulted from the OPM entry-level examinations (for several occupational series) being ruled racially biased and, therefore, inappropriate for further use. In effect, as cited in OSHA's response, OSHA has no structured examination to hire safety specialists below the GS-9 level. A resolution of this matter is dependent on the

manner in which OPM resolves, government-wide, the issue of entry-level hires.

Misrepresentation of the Number of Field Inspectors

Allegation

It is alleged that there are about 800 inspectors (compliance safety and health officers) in the field and 400 vacancies, but OSHA continued to tell the Congress that there are 1,200 inspectors in the field. It is alleged that supervisory staff in the field were counted as inspectors in order to keep the numbers up to levels existing about 10 years ago.

OSHA Response

OSHA maintains that the record shows that the agency has not misrepresented the number of its field inspectors to the Congress or to any member of the public. OSHA states that it has always made clear the difference between authorized positions and personnel on board. Throughout the agency's history, there has been a lag between attrition and hiring, with the result that the number of inspectors on board has always been less than the number of authorized positions.

OSHA disputes the charge that there had been an effort to mislead anyone into thinking that its staffing of field inspectors is at a level that existed 10 years ago. It also disputes the imputation that it has counted supervisory staff as inspectors in order to inflate the size of its inspection corps. At present OSHA has 1,200 inspector positions authorized by the Congress. These 1,200 compliance safety and health officer positions specifically include slots for supervisory safety and health compliance officers since they are directly involved with the inspection process. Their inclusion as part of the 1,200 has been openly explained to both the Congress and union representatives. As of March 1986, OSHA had 1,059 compliance officers on board. Of this total, 135 (or 12.7 percent) were in supervisory positions.

Moreover, OSHA points out that pre-1981 compliance officer totals included not only directors of OSHA's area offices, but also any regional OSHA employee who carried a job title conceivably permitting that individual to conduct an inspection. Unlike OSHA's present compliance

officer count, there was no requirement for an employee to be linked directly to the inspection process.

GAO Ana ysis and Comments

OSHA discrimination investigators (OSHA employees investigating charges of discrimination by employers against workers who report safety and health violations) are included in the OSHA field inspector counts although they performed no safety or health inspections.

OSHA explained that it includes discrimination investigators in its count of field inspectors because discrimination investigations are field investigations that contribute to improved safety and health in the workplace by protecting the right of workers to engage in safety and health activities.

A comparison of October 1981 and August 1986 data, supplied by OSHA (see table III.1), reveals a decrease in the number of both safety inspectors and industrial hygienists.

Table III.1 Number of Compliance Officers

Position classification	October 1981	August 1986
Safety inspectors	713	633
Industrial hygienists	447	366
Discrimination investigators	56	55
Total	**1,216**	**1,054**

Although there were not 400 field inspector vacancies as alleged, OSHA was 12 percent below its authorized number of inspectors as of August 1986.

Objectives, Scope, and Methodology

In a June 12, 1985, letter to our office, the Chairman of the Subcommittee on Investigations, House Committee on Post Office and Civil Service, requested assistance in investigating personnel practices at OSHA. The Subcommittee's interest in this matter was based on its May 1985 hearings, which addressed certain allegations of questionable OSHA personnel practices, including the following: OSHA staff were being told to (1) write a standard that did not require drinking water and toilet facilities to be made available to farm workers and (2) justify weakening the OSHA standard protecting workers from dangerous exposure to lead.

After subsequent discussions with the requester's office, we agreed to limit our efforts to the identification and investigation (to the extent possible) of any alleged instances of actions by OSHA officials that could adversely affect (directly or indirectly) agency operations, particularly, OSHA's promulgation, revision, and enforcement of standards. Specifically, we agreed to focus our efforts on such matters as

- actions taken by OSHA officials to adopt standards that do not adequately address health and safety concerns raised in available scientific and medical evidence;
- individuals being hired or promoted to positions within OSHA without proper competition or without meeting minimum qualifications;
- threats made, or actions taken, by OSHA officials against OSHA staff and consultants because of different views concerning the need for, or adequacy of, standards; and
- any other OSHA personnel practices that contribute to delays in issuance of standards, unnecessary revisions to existing standards, or the failure to formulate, implement, or enforce OSHA standards.

To obtain candid answers from current and former OSHA staff and consultants, we advised individuals who brought specific allegations to our attention that their names would not be disclosed to anyone. In addition, the requester agreed that allegations could be submitted anonymously, but we would investigate only those allegations that contained sufficient factual information to warrant further inquiry.

We obtained specific allegations through (1) interviews with individuals who called us to discuss questionable OSHA personnel practices or (2) questionnaires that we sent to all OSHA headquarters, regional employees, and consultants said, by the Department of Labor, to have been employed by OSHA from January 1983 to November 1985. While gathering initial information, we interviewed the following officials: 27

Department of Labor and OSHA and 2 nonfederal. We spoke, by telephone, with 21 additional OSHA headquarters or field staff. Subsequently, we talked with other current and former OSHA headquarters and field staff to obtain additional information.

Of the 3,431 questionnaires sent out in mid-November 1985, 207 were returned. Of these, 122 contained no specific allegations. For example, 65 provided only the respondent's name and address, indicating they had no allegation to bring to our attention; an additional 14 indicated that they favored OSHA's personnel practices. Of the remaining 85 responses, which contained allegations, 47 lacked the specificity needed for us to conduct further inquiry, and 4 contained allegations concerning types of personnel-related matters that were not part of the requester's specific areas of interest. Therefore, 34 questionnaires contained sufficient information or documentation for us to bring to the attention of OSHA headquarters officials for their consideration and comment.

In all, 124 allegations and specific questions (we believed to be relevant to these allegations) were provided in 73 separate write-ups to OSHA for review and comment. These 124 allegations were extracted from 34 responses (including 14 responses submitted anonymously) and interviews with 16 OSHA headquarters and field personnel. Seventeen of the 124 allegations were based solely on anonymous questionnaires. Thirty-eight of the allegations were made by two or more individuals.

OSHA provided supporting documentation concerning 58 allegations. We undertook further investigation of 49 of the 124 allegations, including 15 for which OSHA provided documentation. These 49 allegations were judgmentally selected, based on a variety of factors, including the relative importance of the allegations and the requester's desire for our staff to concentrate primarily on investigating headquarters-related matters. Our follow-up efforts were limited, for the most part, to discussions with individuals knowledgeable about the allegations. We obtained documentation whenever possible. As agreed with the requester's office, we are reporting only the allegations that appeared to have some degree of validity. Our work was done from September 1985 through mid-June 1986.

Comments From the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington D C 20210

RECEIVED

NOV 3 1986

Richard L. Fogel
Assistant Comptroller General
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Fogel:

In response to your letter of October 20, the Department of Labor offers the following comments on the report of the General Accounting Office (GAO) to the Chairman of the Subcommittee on Investigations of the House Committee on Post Office and Civil Service concerning personnel practices in the Occupational Safety and Health Administration (OSHA).

GAO's CONCLUSION

After reviewing the draft GAO report, the Department is gratified, overall, with GAO's conclusion that widespread violations of civil service and ethics laws have not occurred within OSHA, though this conclusion appears to be an understatement of GAO's findings. In fact, after its year-long investigation, GAO found only two instances which might prove to be violations and which require further investigation to more fully assess their merits. These almost entirely favorable findings are particularly remarkable considering the scope of the investigation, which entailed GAO's seeking information concerning potential improprieties from 3,431 former and current OSHA employees and consultants. In all, 34 of such inquiries yielded 124 allegations, of which 97 were determined by GAO to be without merit.

The remaining 27 allegations, which GAO states it believes have "some validity," have been grouped into the 14 charges which are the subject of the report. GAO has determined that two of these 14 charges warrant additional scrutiny. Since we have not had an opportunity to respond to new information which GAO developed concerning these two allegations, we agree that further investigation of these matters is in order.

SCOPE OF THE REPORT

We disagree, however, with GAO's decision to include in this report--and thus make public--the twelve allegations for which GAO recommends no further action or investigation. The subjects of these allegations range from charges that OSHA employees were instructed to write inadequate standards and weaken existing standards, to criticisms of provisions of the Field Operations

OSHA Manual that have since been revised. Other of the allegations in the report, such as alleged misrepresentations by OSHA of the number of field inspectors (an allegation that is without foundation) or alleged understaffing of a particular OSHA office, seem out of place in a report purporting to focus on possible civil service and ethics law violations.

Expansion of the investigation to include such allegations led GAO into areas which are substantially beyond the issue of personnel practices and which are much more difficult to evaluate. This difficulty is, frankly, reflected in the inconclusiveness of the discussions of these items contained in Appendix I to the report. Many of the allegations appear to be simply the result of differences in scientific and professional opinion between OSHA personnel and management. With respect to the issues pertaining to regulatory matters, we would point out that the Secretary and I remain committed to regulatory decisions which are based on a full and fair evaluation of the rulemaking record after objective staff review.

The Department was concerned about the treatment of this material at the outset of the investigation. The inclusion of these twelve allegations in GAO's report has done nothing to alleviate our concerns.

RECOMMENDATION TO THE SECRETARY OF LABOR

GAO has recommended that the Secretary of Labor request his Inspector General, with the cooperation of the Assistant Secretary for Occupational Safety and Health, to initiate further investigation by the Department's Inspector General of the two charges described on pages 28 through 33 of Appendix I to the letter report.

ow on pp 10-13

I assure you that the Secretary will make such a request and that the Inspector General and I will cooperate in a thorough investigation of these allegations. As noted, we have not had an opportunity to respond to the new information which GAO developed concerning these allegations. We are grateful to GAO for calling these matters to our attention and will work with the Inspector General to resolve the issues raised. We will not tolerate any illegal or unethical personnel practices in our agency.

QUESTIONNAIRE

Finally, we wish to include with our comments a copy of the questionnaire and cover letter which GAO prepared at the Subcommittee's direction and which it circulated to 3,431 former and current OSHA employees and consultants at headquarters and in the field. Readers of GAO's letter report should have an opportunity to read the questionnaire on which the investigation and the report were based.

While we are pleased with the overall findings of the report, we are not complacent. We are mindful of the need to guard against any impropriety or appearance of impropriety in our dealings with employees and our implementation of the OSHA program.

Sincerely,

John A. Pendergrass

Enclosure

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

HUMAN RESOURCES
DIVISION

To Current and Former
OSHA Staff and Consultants:

Recently, the Chairman of the Subcommittee on Investigations, House Committee on Post Office and Civil Service, asked us to help the Subcommittee investigate personnel practices at the Occupational Safety and Health Administration (OSHA). As you probably know, the Subcommittee's hearings held in May of this year examined some allegations of questionable OSHA personnel practices. These practices included OSHA employees being told to (1) write a standard which did not require drinking water and toilet facilities to be made available to farm workers and (2) justify weakening the standard protecting workers from dangerous exposure to lead. Such practices could result, in health and safety standards being developed that are less stringent than scientific and medical evidence dictate.

On behalf of Chairman Sikorski and as an agency of the Congress, GAO is requesting your assistance in identifying specific instances of

--actions by OSHA officials to influence standards that do not adequately address health and safety concerns raised in available scientific and medical evidence;

--conflicts of interest among OSHA officials reviewing, approving, and/or revising proposed standards;

--individuals being hired or promoted to positions within OSHA without proper competition or without their meeting minimum qualifications;

--threats made or actions taken by OSHA officials against OSHA staff and consultants because of different views regarding the need for or adequacy of standards; and

--any other OSHA personnel practices that contribute to delays in issuance of standards, unnecessary revisions to existing standards, or the failure to formulate effective and crucial standards.

Our goal is to investigate as many of the specific documented allegations as possible that are brought to our attention by you and other current and former OSHA staff and consultants who were employed during the period January 1983 to the present. The allegations we investigate will be determined after discussions with the Subcommittee Chairman's office. We will subsequently report our findings to the Chairman.

We have anticipated the desire for a pledge of confidentiality in order to obtain candid responses from as many individuals as possible. Accordingly, the Subcommittee Chairman and our Office have agreed that your identity will be protected at all times. Only our staff will be able to link your identity to the specific allegation you make, and this link will not be disclosed.

If you have any knowledge of questionable OSHA personnel practices that involved you or your coworkers, we would like you to contact us. If you live in the Washington, D.C. metropolitan area, you are encouraged to call us to arrange a meeting at a convenient location. If you do not believe a meeting is necessary or are not in the Washington area, the enclosure to this letter can be completed and returned to our headquarters office in the self-addressed envelope provided. This completed enclosure will contain the type of information we need to begin making inquiries with OSHA officials. We ask that you complete the enclosure and return it to us by **December 6, 1985.**

Although information can be submitted anonymously, this will significantly limit our ability to effectively follow up with you on pertinent information that OSHA officials might provide during our investigation. If you decide to submit material anonymously, we ask that you create your own identification code and use this code to identify any material you forward to us or furnish in future telephone conversations. This arrangement will permit us to file and retrieve information regarding your allegation without needing to know your identity. In addition, it will enable us to gather more complete information to present to the Chairman, thereby enabling him to more effectively evaluate charges of intimidation of OSHA employees.

If you have any questions or would like to reach us to set up a meeting, you should call Paul Astrow of my staff on **(202) 523-9076 (or FTS 523-9076).** Thank you for your assistance.

Sincerely yours,

Carl R. Fenstermaker
Group Director

Enclosure

U.S. GENERAL ACCOUNTING OFFICE
REVIEW OF OSHA PERSONNEL PRACTICES

The information requested in this enclosure on behalf of the Chairman of the Subcommittee on Investigations, House Committee on Post Office and Civil Service, will permit the General Accounting Office--an agency of the Congress--to initiate an investigation into OSHA personnel practices that have, in your opinion, adversely affected the issuance of occupational safety and health standards. The specific allegations we investigate will be determined after consultation with the office of the Chairman of the House Subcommittee on Investigations.

Our ability to fully inquire into the allegations you make will depend upon the amount of detailed information you are able to provide to us. If your allegations are investigated, your identity will be protected at all times. If you prefer, you can submit information anonymously.

Part A should be completed only by individuals who want to remain anonymous. If you decide to provide information anonymously, we ask that you create your own identification code and enter this code in the space provided below and on any future correspondence you send to us. Your code should consist of any combination of six numbers and/or letters (for example, ABCDEF, 1A2B3C, 121647) that you will find easy to remember. The identification code will permit us to file and retrieve information regarding the specific allegation, which you describe in Part C, without the need to know your identity. If you do not require anonymity, please complete Parts B and C only.

Part A

SIX CHARACTER CODE:____ ____ _____ _____ _____ _____

Part B

NAME:_____

ADDRESS:_____
_____

TELEPHONE NUMBER:(___)_____(home)
(include area code) (___)_____(work)

BRIEFLY DESCRIBE YOUR DUTIES AND RESPONSIBILITIES AT THE TIME THE ALLEGED IMPROPER PERSONNEL PRACTICE TOOK PLACE:

PERIOD OF TIME
EMPLOYED BY OSHA:_____ TO _____

SPECIFY OSHA HEADQUARTERS DIRECTORATE
AND OFFICE OR FIELD LOCATION:_____

Part C

SPECIFIC ALLEGATION:

Names and titles of OSHA officials directly involved in allegation

Date (or approximate period of time) of questionable OSHA personnel practice

OSHA directorate or regional office involved

If the allegation relates directly to the formulation and issuance of a particular OSHA health or safety standard, identify the specific standard

If action alleged is contrary to federal or OSHA personnel policy and/or procedures, identify the specific provision of the policy or procedure violated

Describe any specific action undertaken by OSHA officials at any level that delayed, weakened, or terminated work relating to issuance of OSHA standards

If you believe a conflict of interest exists regarding the formulation and issuance of OSHA standards, cite the specific basis for OSHA officials not being completely objective during internal OSHA deliberations over issuance of standards

If you believe that OSHA officials to whom you reported were or are inexperienced or unqualified to satisfactorily carry out their responsibilities, provide the best example(s) of any resulting adverse impact

If you believe that individuals are hired and promoted within OSHA without having to meet OPM qualification standards for merit system promotions or to compete with other qualified individuals, provide the names of persons hired or promoted and the circumstances involved

Although our investigations will primarily focus on alleged OSHA personnel actions which affected the issuance of standards, the Subcommittee is interested in identifying any negative actions in OSHA's enforcement of these standards. If you are aware of such situations, briefly provide pertinent facts

In your own words, expand on the facts provided above or provide additional information you would like to bring to our attention (use additional paper if necessary)

Return this completed form in the envelope provided to:

U.S. General Accounting Office
HRD/Congressional Request Group
Room 6852
441 G Street, NW.
Washington, D.C. 20548
Attn: Paul Astrow

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