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

HUMAN RESOURCES
DIVISION

JANUARY 12, 1982

B-205980

The Honorable Raymond J. Donovan
The Secretary of Labor

Dear Secretary Donovan:

Subject: Improvements Needed in Monitoring State Plans
for Occupational Safety and Health (HRD-82-29)

The Occupational Safety and Health Administration (OSHA) is responsible for approving and monitoring State-operated occupational safety and health programs. OSHA pays up to 50 percent of the costs of State-operated programs. In fiscal year 1981, OSHA awarded grants totaling about \$43 million to the 24 States which operated their own occupational safety and health programs (see enc. I). The term "State" as defined in the Occupational Safety and Health Act of 1970 (29 U.S.C. 651), and as used in this report, includes the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

Our review showed that OSHA (1) has not established acceptable levels of performance for State-operated programs and (2) does not efficiently use its monitoring resources. The Assistant Secretary for Occupational Safety and Health plans to establish acceptable levels of performance for State-operated programs and to make more efficient use of OSHA's monitoring resources.

BACKGROUND

The Congress passed the Occupational Safety and Health Act of 1970 to assure safe and healthful working conditions. Your Department is responsible for administering the act, and the Secretary of Labor delegated this responsibility to the Assistant Secretary for Occupational Safety and Health, who heads OSHA.

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The act encourages States to assume responsibility for operating occupational safety and health programs. Any State wanting to develop and enforce safety and health standards may submit a State plan to OSHA describing how the State will develop and enforce such standards. OSHA initially approved 31 State plans. However, seven States withdrew their plans after OSHA's initial approval and one additional State has withdrawn the part of its plan covering private sector employees (see enc. I).

OBJECTIVES, SCOPE, AND METHODOLOGY

On April 28, 1981, the Chairwoman, Subcommittee on Investigations and General Oversight, Senate Committee on Labor and Human Resources, requested us to determine whether OSHA was providing adequate guidance and assistance to States operating their own occupational safety and health programs. The Chairman requested that we evaluate

- OSHA's efforts to monitor State plan activities and
- OSHA's application of financial and accounting controls over the States' expenditure of Federal grant funds.

As agreed with the Subcommittee, we are addressing this report to you and sending copies to the Chairwoman of the Subcommittee.

Preliminary work by us on OSHA's application of financial and accounting controls showed that Federal grant funds were audited by your Office of Inspector General, certified public accounting firms under contract with Labor, and State auditors. The auditors' reports generally stated that Federal grant funds were accounted for properly. To avoid duplicative audit effort, and with the agreement of the Subcommittee staff, we did not pursue this objective further.

Our review was performed in accordance with GAO's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." We performed work at Labor's headquarters in Washington, D.C.; the OSHA regional office in Atlanta, Georgia; the OSHA area offices which monitor State programs in Columbia, South Carolina; and Nashville, Tennessee; and State occupational safety and health agencies in South Carolina and Tennessee. We initially selected these field locations because (1) South Carolina and Tennessee were within the geographical jurisdiction of our Atlanta Region, and we wanted one of our regional offices to examine two State programs to compare the States' performances and problems, and (2) the OSHA regional and area offices monitoring the State programs in South Carolina and Tennessee were also located within the geographical jurisdiction of our Atlanta Region.

To determine whether the problems we identified in these field offices existed elsewhere, we performed limited audit work at OSHA's regional offices in San Francisco, California, and in Seattle, Washington, and at the OSHA area office in Bellevue, Washington, which monitors the State's program. The problems we identified have also been identified by OSHA headquarters officials as being prevalent throughout OSHA.

We examined regulations, directives, and correspondence relating to OSHA's State program monitoring. We interviewed Labor headquarters and OSHA regional personnel and State officials to determine policies and procedures followed to monitor State programs.

We reviewed OSHA's annual evaluation reports for South Carolina and Tennessee for 1980 and 1981. We also reviewed OSHA's annual evaluation reports for Oregon for 1980 and Alaska and Washington for 1981. We compared OSHA's evaluation reports for South Carolina and Tennessee with OSHA's internal evaluations of its operations to determine if weaknesses identified in the States' programs were also prevalent in OSHA's program.

PERFORMANCE MEASUREMENT STANDARDS NEEDED TO MONITOR STATE PROGRAMS

The act requires that State programs have standards and enforcement activities that are "at least as effective as" the Federal program, administered by OSHA. However, OSHA has not developed performance measurement standards for its field staffs' use in evaluating States' activities. As a result, some OSHA evaluations have criticized State program aspects even though the State's performance was better than OSHA's, and OSHA's field staff use different standards to evaluate State programs. OSHA headquarters officials said that developing performance standards had been given a low priority in the past, but in July 1981, OSHA began a project to establish improved standards.

OSHA officials in headquarters, regional, and area offices said that their program regulations and OSHA's field operations manual do not give adequate performance standards for field staffs' use in determining whether State enforcement activities are "as effective as" Federal operations. For example, OSHA requires that States' programs assure that identified hazards are corrected (abated), but OSHA's regulations do not cite any levels of performance for measurement.

OSHA's reports on its State evaluations have often criticized States' enforcement activities without knowing whether the States' performances were worse, the same as, or better than OSHA's performance. For example, OSHA criticized South Carolina for its failure to properly identify repeated violations of its health and safety standards in 5 percent of the case files reviewed. However, OSHA has not set an acceptable percentage that should be identified nor does it know the number of repeated violations its compliance officers have not identified.

OSHA's criticism of States' performances which are better than OSHA's

Because of the lack of adequate performance standards, each of the three OSHA area offices we reviewed based their State program evaluations on how an ideal State program should operate as opposed to the "as effective as" requirement in the act. As a result, OSHA's evaluation reports have criticized some State program aspects even though the State's performance was better than OSHA's.

We compared OSHA's 1980 and 1981 evaluation reports for South Carolina and Tennessee with the OSHA Atlanta Office's evaluation reports of its compliance efforts and identified nine comparable areas of State program administration where problems were cited. Of the nine comparable program areas, the States' performances were better than OSHA's in four instances. For example, in its 1980 evaluation, OSHA criticized Tennessee for improperly classifying violations in 8 percent of the case files reviewed. The OSHA Atlanta Office's evaluation reports showed that OSHA inspectors improperly classified violations in at least 21 percent of the case files it reviewed.

Different standards for OSHA evaluations

OSHA evaluates State programs using varying standards of acceptability because of the lack of adequate performance standards. This lack of monitoring uniformity results, in part, because OSHA's 23 area office directors, who monitor State programs, must base evaluations on their subjective opinions. We analyzed OSHA's evaluation reports for South Carolina, Tennessee, Alaska, Oregon, and Washington and found that OSHA had not evaluated and judged the acceptability of State performance on the same basis. For example, OSHA criticized South Carolina and Oregon because 29 and 32 percent, respectively, of the cases reviewed relating to extension of abatement dates did not contain adequate information about interim protection measures for affected employees. However, 47 and 55 percent, respectively, of Alaska's and Washington's cases had the same deficiency, yet OSHA did not criticize these States in its evaluation reports.

A 1978 South Carolina study of Federal monitoring efforts indicated that there was a significant inconsistency in what was expected of various States. In commenting on this report, in December 1978, an OSHA Assistant Regional Administrator for Federal-State Operations agreed that OSHA applied different monitoring criteria to different States because of the lack of performance standards. Other OSHA headquarters and regional officials generally agreed with this conclusion.

State concerns

The States are concerned about OSHA's lack of uniform performance standards. The Occupational Safety and Health State Designee Association represents States with occupational safety and health programs. In June 1981, the Association submitted the States' views about OSHA's monitoring to the Assistant Secretary for Occupational Safety and Health. Some of the concerns noted were that OSHA

- had not established basic guidelines on what was expected from the States,
- was imposing requirements on State programs that OSHA itself was not meeting, and
- did not monitor State programs uniformly.

In addition, during OSHA's 1980 Oversight Hearings before the Subcommittee on Health and Safety, House Committee on Education and Labor, a New Mexico State official testified that OSHA's monitoring criteria were entirely subjective. A South Carolina official testified that OSHA's regional and area directors had differing approaches to State program monitoring, and this resulted in different performance criteria for each State.

Current OSHA initiative to develop performance standards

On July 13, 1981, OSHA announced a project to establish specific performance standards to determine if States' enforcement activities are "as effective as" OSHA's. This project will develop Federal performance data against which State performance will be compared. OSHA expects these standards to be implemented by July 1982.

INEFFICIENT USE OF MONITORING RESOURCES

OSHA is not using its monitoring resources efficiently. OSHA routinely monitors many aspects of States' enforcement activities, even though OSHA personnel know from past experience that the States are performing satisfactorily. OSHA headquarters officials said the development of a new monitoring system had previously been given a low priority, but that OSHA has begun a project to improve its monitoring system.

Chapter XVII of OSHA's field operations manual is the primary guidance used to monitor State programs. It provides for OSHA to monitor State programs by reviewing States' case files, accompanying State inspectors on inspections, conducting special studies of State operations, and other activities. When OSHA personnel review case files, they examine information and documentation that State personnel gathered during inspections. On accompanied visits, OSHA personnel accompany State inspectors to evaluate the effectiveness of their inspections and their ability to identify hazards in the workplace. Special studies are detailed investigations of specific aspects of State operations.

Inflexible monitoring requirements

Chapter XVII of the field operations manual requires OSHA to annually review at least 70 aspects of State program administration. For example, each year OSHA personnel are required to review States' geographical distribution of inspections and safeguarding of trade secrets.

Our review showed that OSHA personnel continue to evaluate many aspects of States' performances even though they have evaluated those aspects in prior years and did not question the States' performances. For example, OSHA's evaluation reports for Tennessee and South Carolina for 1980 and 1981 showed that 73 and 63 percent, respectively, of the program aspects monitored did not result in recommendations or major areas of concern for those 2 years. Yet, OSHA is currently reevaluating these same program aspects. In addition, OSHA's annual evaluation of Washington's program for 1981 was based in part on 49 special studies. Only 12 (24 percent) of the studies identified problems that were serious enough for OSHA to comment on in the State's evaluation report. The OSHA area office director said he knew some of the 49 special studies were a waste of resources, but OSHA's monitoring guidelines required that he address these aspects of the State's performance.

Some accompanied visits represent a questionable use of OSHA's resources. OSHA conducts these visits to meet chapter XVII requirements regardless of whether these visits are disclosing problems

in States' administration of their programs. For example, Washington's evaluation report was based, in part, on 51 accompanied visits, but OSHA did not identify any substantial problems during these visits. Also, in the 69 accompanied visits conducted in Tennessee over the past 2 years, OSHA found that Tennessee inspectors overlooked only three minor violations.

OSHA's Seattle Region has taken exception to the requirement to evaluate such program aspects every year. According to the regional administrator, this monitoring approach is a waste of resources. He has recently instructed regional staff not to perform special studies or accompanied visits unless they expect to identify problems.

Current OSHA initiative to
develop new monitoring system

OSHA is aware that it is not using its monitoring resources efficiently and is developing a new State program monitoring system, in addition to developing performance standards (see p. 5). On July 13, 1981, OSHA announced that it intends to revise the monitoring system to rely primarily on OSHA analysis of State-submitted data and to make limited onsite monitoring visits, if necessary. OSHA expects to implement the new system by July 1982.

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In view of OSHA's initiatives to develop performance standards and a new State program monitoring system, we are not making any recommendations at this time. Please advise us when these initiatives are completed and the new performance standards and monitoring system are implemented.

We appreciate the courtesy and cooperation extended to our representatives during this review.

Sincerely yours,


Gregory J. Ahart
Director

Enclosure

DATES OF STATE PLAN INITIAL APPROVALS
AND FISCAL YEAR 1981 GRANT AWARDS

<u>State</u>	<u>Date plan initially approved</u>	<u>Date plan withdrawn</u>	<u>Fiscal year 1981 awards</u> (thousands)
Alaska	07/31/73		\$ 1,058
Arizona	10/29/74		652
California	04/24/73		11,507
Colorado	09/07/73	06/30/78	-
Connecticut	12/28/73	a/09/30/78	298
Hawaii	12/28/73		b/832
Illinois	10/30/73	06/30/75	-
Indiana	02/25/74		1,390
Iowa	07/12/73		c/825
Kentucky	07/23/73		2,012
Maryland	06/28/73		2,295
Michigan	09/24/73		5,397
Minnesota	05/29/73		1,342
Montana	11/30/72	06/27/74	-
Nevada	12/28/73		460
New Jersey	01/22/73	03/31/75	-
New Mexico	12/04/75		307
New York	05/14/73	06/30/75	-
North Carolina	01/26/73		1,720
North Dakota	01/19/73	07/23/73	-
Oregon	12/22/72		2,956
Puerto Rico	08/15/77		1,229
South Carolina	11/30/72		1,050
Tennessee	06/29/73		1,069
Utah	01/04/73		623
Vermont	10/01/73		356
Virgin Islands	08/31/73		b/126
Virginia	09/23/76		1,355
Washington	01/19/73		3,629
Wisconsin	03/01/74	06/30/75	-
Wyoming	04/25/74		304
			<u>\$42,794</u>

a/Plan covering private sector employees has been withdrawn; existing plan covers only employees of State and local governments.

b/Partially funded from fiscal year 1980 funds.

c/Totally funded from fiscal year 1980 funds.