REGULATORY APPROACHES TO HEALTH STANDARDS

I. Statement of Issue

How can OSHA more rapidly develop health standards for the thousands of chemicals in the workplace?

II. Background

OSHA has frequently been criticized for the slow rate at which it has promulgated new health standards. Critics have argued that OSHA, in its current approach, will never be able to provide comprehensive coverage for workers exposed to thousands of toxic substances found in the workplace. The rulemaking procedures are necessarily lengthy in order to conform to the administrative procedures set forth in the Act and in order to develop an adequate record of rulemaking on which to promulgate each standard. The substantial resource requirements for each rulemaking also limit the number of rulemakings for individual substances that can be ongoing at any given time.

In the longer term, critics argue that substance-by-substance regulations will pose unwieldy compliance problems for industry and for OSHA enforcement staff. In modern industry, hundreds of different chemicals may be found in the environment of any particular workplace. Under current standards, each substance regulated by OSHA in the workplace would have to be dealt with individually, discouraging efforts at a more comprehensive approach to control of the workplace environment. In addition NIOSH is developing criteria documents on a substance-by-substance basis, and the number of criteria documents issued to date far exceeds the number of corresponding OSHA standards. This growing gap between the activities of the two agencies is a source of criticism by the public and the Congress.

III. Status of Work

Precedent for promulgation of standards for groups of chemicals has been set in the issuance of the carcinogens standards in 1974 and in the Standards Completion Project now underway. Consistency in the language of the standards and in the requirements of standards for chemicals posing similar hazards, and the administrative feasibility of the group rulemakings offer some promise of a solution. However, we are actively seeking from concerned parties suggestions for new approaches which will more adequately address both the difficulties in setting new standards, especially where existing or new exposure limits are being evaluated, and the problems of compliance discussed above.

IV. Critical Dates

Major investments by private industry are being undertaken to comply with new OSHA standards. If a change in approach is to be made, that change should be made as soon as possible to avoid unwarranted investments and to forestall loss of agency credibility from both labor and industry over the slow rate of standards development and the unwieldy nature of the regulations.

CANCER POLICY

I. Statement of Issue

Should OSHA establish a general cancer policy through a rulemaking procedure which would shorten and simplify the process through which individual standards could be issued?

II. Background

Occupational cancer is a matter of growing public concern as a result of widely publicized episodes such as vinyl chloride and kepone. The Toxic Substances Control Act, the NCI Clearinghouse of Environmantal Carcinogens, and NIOSH will all contribute to the identification of carcinogens at a more rapid rate. OSHA, already criticized for moving slowly on health standards, must develop a more responsive regulatory approach, especially for carcinogens or expect to be the focus of additional attacks.

In 5 years, OSHA has promulgated only four health standards, each concerning carcinogens; namely, Asbestos (1972), the 14 carcinogens standard (1973), Vinyl Chloride (October, 1974), and Coke Oven Emissions (October, 1976). An examination of these standards indicates a set of policy issues common to each. Some of these policy issues include the assumption that an animal carcinogen poses a cancer risk to man, that there is no "safe" level of exposure for a carcinogen, that the standard should be set at the lowest level feasible, and that employees should be apprised of the hazards of exposure to a carcinogen.

After extensive public rulemaking proceedings, OSHA, in each of these instances, resolved these policy matters in a similar manner even under differing administrations.

Given the fact that there exists a consistent policy approach in previous OSHA carcinogen standards, it appears possible to establish a regulatory strategy based on these policy considerations that would limit the issues to be raised in individual standards proceedings, thereby shortening and simplifying the process and increasing the number of standards issued.

Opposition may be expected from industry and, to some extent, the scientific community on the basis that each substance should be treated on a case-by-case basis.

III. Status of Work and Critical Dates

A draft policy statement and regulatory strategy for carcinogens is under development and is expected to be completed by the end of calendar year 1976. After appropriate review, the policy would be published as a rulemaking proposal in early 1977.

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RATE RETENTION

I. Statement of Issue

What should OSHA's position be on guaranteeing workers against wage losses that flow from mandatory removal from a job in order to protect their health?

II. Background

The proposed coke oven emissions standard required that employers give all employees exposed to such emissions regular medical examinations and remove any employees whose health might be impaired by continued exposure. Organized labor fought strongly against any mandatory removal provision without complete rate retention protection. This protection would provide, first, for impartial medical arbitration of any mandatory removal action and, second, for a guarantee of worker's full wages, seniority and advancement rights, regardless of whether or where they might work after such removal. Although the unions claim that enforcement of such protection would be simple, occurring through the grievance process, OSHA would still face a number of difficulties, were this issued as a standard, because of its obligations to enforce it through citations and penalties.

The issue created a great deal of controversy and substantial pressure from the unions involved. A number of legal, administrative and factual problems eventually made it clear that OSHA could not adopt such a course of action as