



Joint Legislative Audit Committee
Office of the Auditor General



**CALIFORNIA OCCUPATIONAL SAFETY AND
HEALTH ACT -- A PROGRAM REVIEW**

REPORT TO THE
CALIFORNIA LEGISLATURE

REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

855

CALIFORNIA OCCUPATIONAL SAFETY
AND HEALTH ACT--A PROGRAM REVIEW

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Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

California Legislature



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February 20, 1979

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report on a program review of the California Occupational Safety and Health Act (Cal/OSHA).

This report identifies weaknesses in the Cal/OSHA program which limit the ability of the agency to effectively target its resources. The report also compares the current state program with the coverage available if occupational safety and health standards were administered by the federal government.

The most important recommendation of the report is an invitation to the Legislature to carefully consider the costs and benefits of California's current level of participation in the OSHA program. If California were to turn over certain administrative responsibilities to the Federal government as has been done by a number of industrial states including New York, New Jersey, and Illinois, the potential annual savings would be \$6.8 million. In a period of significant fiscal restraint, this savings must be carefully weighed against the benefits of local administration of the program.

The most recent report of the Legislative Analyst (pages 1240-1244) recommends that the State terminate all participation in the Occupational Safety and Health Program. This report of the Auditor General will substantially aid the Legislature in assessing that and similar recommendations.

The auditors are William M. Zimmerling, Supervising Auditor; Samuel D. Cochran, and Andrew P. Fusso.

Respectfully submitted,

RICHARD ROBINSON
Assemblyman, 72nd District
Chairman, Joint Legislative
Audit Committee

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SUMMARY

In 1970 the U.S. Congress passed the Williams-Steiger Occupational Safety and Health Act (OSHA) which placed at the federal level the primary responsibility for ensuring safe and healthy working conditions. The act allowed states the option of (1) implementing state programs meeting federal criteria with, for the most part, 50 percent federal funding or (2) being preempted by the federal program. California chose to maintain control of its program and in 1972 submitted the California Occupational Safety and Health Plan (state OSHA plan) to the U.S. Department of Labor.

The California Occupational Safety and Health Act (Cal/OSHA) is administered by the Division of Occupational Safety and Health Administration (DOSHA) and other units within the Department of Industrial Relations (DIR). DIR's budget for Cal/OSHA activities for federal fiscal year 1979 is \$20,395,370 of which \$8,947,898 is state funds.

Our review of Cal/OSHA operations disclosed the following:

- Weaknesses in Cal/OSHA's Consultation Service have limited its effectiveness (page 11)

- Weaknesses in Cal/OSHA's method of directing inspections have prevented enforcement engineers from inspecting businesses where high employee hazards exist (page 16)
- The standards promulgated by Cal/OSHA's Standards Board in many cases are the same as federal OSHA standards. We recommend the Legislature consider whether the benefits of Standards Board activities justify its annual state cost of approximately one-half million dollars (page 21).

In addition, we compared Cal/OSHA's activities with those of the federal OSHA program. We found:

- Few differences exist between Cal/OSHA's program and the federal program (page 31)
- Those few aspects of employee protection not provided by federal OSHA could be provided by the State of California with substantial federal funding (Appendix B, page B-1)
- Annual savings of \$6.8 million could be realized by withdrawing the state OSHA plan and allowing federal preemption (page 57).

We recommend that the Legislature consider the potential annual state savings of \$6.8 million which could be realized by withdrawing the state plan and allowing federal preemption of certain OSHA activities. This savings should be weighed against the intangible benefits of a state-run program such as home control. (See page 57.)

INTRODUCTION

In response to a resolution of the Joint Legislative Audit Committee, the Office of the Auditor General conducted a review of the implementation of the California Occupational Safety and Health Act (Cal/OSHA). This review was conducted under the authority vested in the Auditor General by Section 10527 of the Government Code.

This report (1) identifies areas of the Cal/OSHA program which need improvement and (2) compares the functions of the Cal/OSHA program as currently administered under the state OSHA plan with the coverage available if the program were administered by the Federal Government as it is in 32 states and territories.

Program History

California has had a state safety and health program for many years. The California Industrial Safety System, established by the Legislature in 1913, became part of the Department of Industrial Relations when that department was created in 1927. The safety program has been part of the Division of Occupational Safety and Health Administration (DOSHA) since a departmental reorganization in 1945.

In 1970, the Williams-Steiger Occupational Safety and Health Act (Public Law 91-596), popularly known as OSHA was passed. In this act, Congress asserted its responsibility "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources." The act encouraged each of the states to adopt state plans and implement state programs meeting federal criteria; the alternative was preemption by the federal OSHA program. The act provided up to 50 percent federal funding to states that elected to develop their own programs.

Fifty states and territories elected to implement their own programs. Twenty-four are currently operating under approved plans, and another 14 have plans pending federal approval. The remaining 12 have withdrawn their state plans.

California opted to maintain state control by redirecting its existing program to meet federal requirements. An advisory council representing labor, management and the public developed and submitted the California State Plan to the U.S. Department of Labor on September 27, 1972. The plan was approved on April 24, 1973.

With the submission of the State Plan, work began on the federal grant application and the legislation needed for implementation. Effective June 1, 1973, California was awarded \$5 million in grant funds to provide full 50 percent federal funding. The California Occupational Safety and Health Act of

1973 (AB 150, Ch. 993/73) was signed into law on October 2, 1973.

The advent of Cal/OSHA drastically altered California's industrial safety program. In the past, safety engineers functioned almost like consultants to industry. The California act legislated a new state policy toward the problems of occupational health and safety--the program became enforcement-oriented. Citations and penalties are levied for violations; penalties escalate for repeat violations.

Funding

The Cal/OSHA program has grown steadily in recent years. In fiscal year 1973-74 total federal and state expenditures were \$11,280,452 and 399.5 man-years were used.* By fiscal year 1978-79, budgeted funding had increased to \$25,153,700 and the manpower commitment had risen to 537.1 man-years. These figures do not include those for the Cal/OSHA Consultation Service, which was established in October 1977. This unit, which provides safety and health consultations to employers, is funded through the federal grants discussed below. Its proposed expenditures for federal fiscal year 1979 are approximately \$3.3 million.

* Figures include the Elevator, Pressure Vessel and Mining and Tunneling Units which operate separately from the Cal/OSHA program.

Cal/OSHA receives federal OSHA funding under two separate grants. The first, covered by Section 23(g) of the Williams-Steiger Act, is the largest and most extensive. It provides 50 percent federal funding for enforcement, appeals, standards, public sector consultation, research, administration and other related activities. The Section 23(g) grant stipulates total Cal/OSHA outlays of \$17,306,595, of which \$8,653,297 is the State's share. The second grant, under Section 7(c)(1), provides for consultations to employers in the private sector. The grant calls for 90 percent federal funding and a combined \$3,088,775 outlay. Total funding for Cal/OSHA thus totals \$20,395,370, of which \$11,447,472 is federal funds.

It should be noted that penalties collected from OSHA violators revert to the General Fund. In fiscal year 1977-78, collections amounted to \$974,727. During calendar year 1977, 54,675 violations were cited.

Organization

The State Plan and Ch. 993/73 named the Agriculture and Services Agency as the State's designee responsible for the development and implementation of the state program. Effective January 1, 1978 this responsibility was transferred to the Director of the Department of Industrial Relations by AB 421 (Ch. 81/77).

The Division of Occupational Safety and Health Administration (DOSHA) in the Department of Industrial Relations is the responsible enforcement agency for Cal/OSHA. Reporting to the division chief are deputy chiefs for Occupational Safety and Health.* Occupational Safety has four regional offices and 20 district offices. Occupational Health is divided into northern and southern areas with six district offices. Attached to Occupational Health is the Occupational Carcinogen Control Unit (OCCU).

Workplace inspections are conducted by 145 safety engineers and 43 industrial hygienists. The safety engineers may request participation from industrial hygienists in inspections where health violations may be present. In addition, Occupational Health may conduct self-initiated inspections.

A seven-member Occupational Safety and Health Standards Board appointed by the Governor is the single board responsible for adopting occupational safety and health standards. It also has authority to grant or deny permanent or temporary variances from standards. Effective October 9, 1978, the Standards Board assumed administration of the Standards Development Unit (SDU) from the Division of Occupational Safety and Health Administration. The SDU is responsible for developing and revising standards and for issuing interpretations of standards.

* Occupational Health was transferred to DOSHA from the Department of Health Services under the Governor's Reorganization Plan Number One effective July 1, 1978.

A three-member Occupational Safety and Health Appeals Board, also appointed by the Governor, hears appeals of enforcement actions, i.e., the citations, civil penalties, and abatements in dispute. Board hearing officers travel throughout the State so that the hearings are conducted near the geographical location of the cited workplace.

Scope of Review

In analyzing the administration and management of the Cal/OSHA program, we examined all major program aspects, including activities of the Division of Labor Statistics and Research, the Standards Board, the Consultation Service and the Division of Occupational Safety and Health Administration. The purpose of this segment of the review was to identify opportunities for program improvements. We visited Cal/OSHA headquarters in San Francisco and 4 of the 26 field offices.

In addition, in comparing the extent of employee protection available under Cal/OSHA to that available under a federal OSHA program, we (1) reviewed federal preemption procedures, (2) compared federal and state standards, (3) analyzed state and federal staffing patterns, (4) compared inspection criteria of each program, (5) analyzed similarities in types of citations issued, (6) compared state and federal statistical data and (7) reviewed cited differences between state

and federal programs. We did not examine other states or audit the overall effectiveness of federal OSHA programs elsewhere; however, we do provide unaudited statistical information on federal OSHA programs in other states.

REVIEW RESULTS

CAL/OSHA'S CONSULTATION SERVICE NEEDS IMPROVEMENT

The Cal/OSHA Consultation Service is required to give high priority to serving small, high-hazard businesses. Problems with image, consultation targeting and measuring effectiveness have adversely affected the Consultation Service's performance. Improvements in planning and evaluating Consultation Service activities could improve service to this target group.

Consultation Service Organization

The Consultation Service is funded through the Section 23(g) and 7(c)(1) contracts with the Federal Government discussed on page 7. It is separated organizationally from the Cal/OSHA enforcement function. In the beginning of fiscal year 1978-79, 37 safety engineer and industrial hygienist positions were budgeted for the six Consultation Service field offices throughout the State. Although required to respond to all employer requests for consultation, they are mandated to concentrate their activities on small businesses in high-hazard industries.

Image Problems Have
Impaired Effectiveness

The effectiveness of the Consultation Service has been hampered by its perceived close association with OSHA compliance activities. Firms are reluctant to use the service for fear of inviting "trouble" from Cal/OSHA. These fears stem from the fact that consultants must refer unabated violations to inspectors. This must be done immediately in the case of an imminent hazard.

Use of the service does not allow an employer freedom from compliance inspections. We noted instances where firms were given routine inspections despite the fact that they were working with Cal/OSHA consultants to correct safety problems at the time of inspection.

A recent change in federal law requires states to exempt firms with ten or fewer employees from compliance citations for nonserious violations which have been examined by a consultant and are in the process of being corrected. Following our discussions on this issue, the Consultation Service proposed a policy which would go further and exempt such employers from inspection entirely. Such a policy could preclude the possibility of duplicate inspection and consultation effort spent on the same employer and increase the usefulness and credibility of the service.

Importance of
Consultation Targeting

The importance of the Consultation Service's legal mandate to concentrate its activity on small, high-hazard firms is emphasized by the availability of other providers of safety consultation services which are more likely to serve larger firms. For example, insurance companies, an estimated 4,650 registered safety engineers (many of whom function as organizational safety officers or private consultants) and organizations such as the National Safety Council also provide safety consultation services. These other providers, however, may not adequately serve smaller firms, either because those businesses cannot afford their service or it is generally unavailable to them. This reinforces the importance of the mandate directing Consultation Service activities toward the smaller, high-hazard firms.

Information for Measuring
Effectiveness Is Inadequate

Because information describing its activities according to firm size and industrial classification is not provided by the present management information system, the Consultation Service cannot measure its effectiveness in reaching its target group.

Under the current system, a form is filled out after each consultation containing information needed for reports to the Federal Government. Although the forms were designed to be used in an automated data processing system, this plan has not

been implemented because of staffing problems in the Division of Labor Statistics and Research (DLSR). Presently, the required federal reports, which do not include breakdowns by size of firm and industrial classification, are compiled manually in the program office.

On the consultation forms, each firm is coded by its four-digit Standard Industrial Classification (SIC). DLSR has ranked each SIC according to its level of hazard. If the Consultation Service collected information on (1) the size of the firms receiving services and (2) their industrial classification, it could match this data to the SIC listing. The Consultation Service would then have a basis for determining whether its activities are reaching its target group.

The Program Office compiled information on consultations by firm size for October 1978 and by SIC for April-June 1978. These figures showed that only 17 percent of consultations were given to firms of less than ten employees and only 14 percent of consultations were given to firms in the 25 most hazardous industries.

CONCLUSION

Because of its legal mandate and the availability of other sources of safety consultation, the Consultation

Service should concentrate its resources on small firms in high-hazard industries. At present, the Consultation Service does not know how effectively this goal is being met, although partial data suggests there is room for improvement.

RECOMMENDATION

The Consultation Service and the Division of Labor Statistics and Research should compile management information according to the size and industrial classification of businesses served so that the Consultation Service's effectiveness in reaching small, high-hazard firms can be measured. In addition, the Consultation Service should continue its effort to adopt a policy exempting firms from compliance citations for nonserious violations found by a consultant when such violations are in the process of being corrected.

CAL/OSHA INSPECTORS DO NOT
ALWAYS INSPECT WHERE THE
GREATEST HAZARDS EXIST

Limitations in the Cal/OSHA Program's Safety Data Base inspection scheduling system prevent district managers from giving priority to inspecting the most hazardous firms in their areas. Data used for the Safety Data Base are old, incomplete and not always based on inspection-preventable accidents. This has resulted in misdirection of the limited resources available for discretionary inspections.

Cal/OSHA district managers assign inspectors to firms according to the following priorities: (1) complaints of imminent hazards; (2) fatality or catastrophe investigations; (3) other complaints; and (4) discretionary inspections. About half of the inspection time is devoted to discretionary inspections, although this percentage varies among districts.

For these discretionary inspections, priority must be given to inspecting firms on the Safety Data Base discretionary inspection scheduling system. Other sources, such as forms submitted by physicians on work-related injuries or telephone books, are also used by district managers to locate firms for discretionary inspections.

Cal/OSHA district offices, however, are not using the Employment Development Department (EDD) computer listing of all firms on its unemployment insurance file. This file is available on microfiche. Three of the four district managers we talked to stated such a file would help them identify firms in their areas by SIC. DLSR obtains copies of this file from EDD but has not provided it to the district offices.

The Safety Data Base

The Safety Data Base (SDB) is an automated scheduling list prepared by the Division of Labor Statistics and Research. The data are derived from the accident report forms submitted to document worker's compensation insurance claims. Firms reporting accidents in the months sampled are listed within Standard Industrial Classifications by the number of accidents they had.

Each SIC listing is ranked within each industry by its Preventable Injury Rate (PIR) which is defined as the rate of injuries potentially preventable by compliance with safety orders. A print-out is then prepared for areas covered by each district office.

The federal OSHA program utilizes a similar inspection system. However, we did not review its effectiveness.

Limitations of the SDB

The usefulness of the SDB is limited by a number of problems related to its design and implementation. Two editions have been issued. The first, containing information on accidents occurring in manufacturing industries in January and February 1975, was issued in July 1977. The second was based on August 1976 injury data for all industries and was issued in August 1978.

Since the SDB was based on data at least two years old when given to the districts, the SDB did not take into account the firms on the list which had moved, changed ownership or subsequently improved their safety records. Some industries, such as construction, are relatively mobile and thus may not be effectively covered by the SDB.

Additionally, the sample selection, based on one or two months, does not necessarily result in a statistically valid sample and may not be a sufficient base to determine which firms to inspect. Firms in seasonal industries which were not operating during the sample months would be excluded. It is possible, therefore, for a firm on the SDB in a low-hazard industry to have higher inspection priority than a firm in a high-hazard industry which is not on the SDB.

We examined 1976 accident data for two industries and compared the data to the August 1976 edition of the SDB for four district offices. We then visited those offices to examine their records of subsequent inspections.

Of those firms we identified as not on the SDB, 69 percent reported accidents during the year. Individual firms had as many as 27 accidents yet were not targeted for inspections by the SDB because they had not had any accidents during August. Conversely, we also found firms which were included although their August accidents were the only ones reported all year.

Although the SDB industry ratings are based on the rate of injuries determined by DLSR to be preventable, the occurrence of any injury which resulted in time lost from work during the sample time period would cause an individual firm to be listed on the SDB. We found firms included on the SDB listing due to injuries such as a back strain, a cerebral hemorrhage and a shooting related to an armed robbery. District managers stated those types of injuries cannot be prevented by inspections. Moreover, they said they would not have inspected these firms had they not been on the SDB.

DLSR has recognized these problems but stated that the volume of required federal reports limited their ability to improve the SDB. An SDB incorporating a 50 percent sample of all injuries and illnesses updated every six months is planned. However, the planned SDB does not consider inspection preventability. An August 1979 target date has been set for incorporating those changes.

CONCLUSION

The SDB has limitations related to age of the data and sample and inclusion criteria. These limitations sometimes prohibit the scheduling of discretionary inspections where they will be most effective in preventing injuries.

RECOMMENDATION

Cal/OSHA and DLSR should design a current, continuous scheduling system targeting only those firms which have had inspection-preventable accidents. In addition, a listing of all firms (obtained from the unemployment insurance file) should be provided to district offices.

THE USEFULNESS OF THE STANDARDS
DEVELOPMENT PROCESS IS QUESTIONABLE

Most of the frequently cited California standards have identical federal counterparts. Standards development activities have been largely editorial in nature and little progress has been made on the standards simplification project requested by Senate Resolution 19 of 1977. The standard-setting process in California costs about \$1 million annually, of which half is state funds.

The Williams-Steiger Act allows states to either adopt their own standards or enforce standards developed by federal OSHA. California is one of six states which elected to adopt its own standards.* All state-adopted standards must be at least as effective as any existing federal standards. California standards are adopted by the Occupational Safety and Health Standards Board, a seven-member body appointed by the Governor. The board uses a full-time professional staff, advisory committees composed of labor and industry representatives and public hearings in its efforts to develop and adopt standards for the California work environment. Requests for variances from California standards are also heard by the board.

* Eighteen states and territories elected to adopt federal standards for use under their state plans.

Most Frequently Cited California Standards
Are the Same as Federal Standards

California's most frequently cited standards are, for the most part, the same as federal standards. There are approximately 28,000 state standards but only 2,225 were cited by inspectors in 1977. We analyzed the 100 California standards most frequently cited in 1977. While these 100 standards are less than one-half percent of all California standards, they accounted for approximately 56 percent of all citations. Ninety of the 100 had a federal duplicate or were sufficiently general as to be the same as a federal counterpart. Nine were different, and only one had no federal counterpart.* Of the nine that were different at least four were differences of degree, the benefits of which are impossible to quantify. One difference, for example, was in the minimum height for elevated work areas at which guardrails are required. The state minimum is 30 inches, the federal minimum is 48 inches.

There are two reasons why there are few differences between California and federal OSHA standards. Federal OSHA requires states to adopt standards which are "at least as effective as" federal standards previously promulgated. Federal officials stated that in years past this was strictly interpreted to mean "the same as". In addition, both California and federal OSHA have adopted a number of national consensus standards such as those of the American National Standards Institute (ANSI).

* The standards most frequently cited by Cal/OSHA inspectors are among those most frequently cited by federal OSHA inspectors (see page 39).

Little Accomplished in
Standards Development

California and federal law have empowered the State to identify areas needing standards and to develop standards applicable to these needs. With a few exceptions, some of which are noted on page 39, California has accomplished little in this area since the inception of Cal/OSHA. While having uniquely California standards may have unquantifiable benefits, state-initiated standards are infrequently cited by inspectors and may thus be of questionable importance. For example, 21 state-initiated standards were adopted between November 1975 and November 1977, yet they accounted for a small percentage of all citations issued in 1977.

Although occupational health was mentioned as a high priority area, development of these standards has been particularly slow. Cal/OSHA officials stated that the Standards Board had adopted federal standards almost exclusively. We were able to identify only 4 of the 21 state-initiated standards mentioned above as being health-related. At least two of these--reporting requirements for asbestos and vinyl chloride users--were no more than modification of the existing federal standards.

The Occupational Carcinogens Control Act of 1976 (SB 1678, Ch. 1067/76) requires the Standards Board to "adopt standards for substances as to which there exists a preponderance of evidence of carcinogenicity, but for which the federal government has not yet promulgated requirements...." Although Occupational Carcinogen Control Unit (OCCU) research for the purpose of standards development was started on three such substances, no uniquely California standard had been adopted by the end of 1978. The act appropriated \$1 million to DIR for enforcement, user registration and administrative activities; however it did not provide additional funds for preparation and promulgation of carcinogen standards.

Standards Board activity has been largely limited to reviewing and either adopting or changing federal standards. While this activity may be beneficial, some of it is of questionable value. For example:

- In the field of commercial diving the Standards Board determined that the federal standard had limited application to California working conditions. The board began working on a revised standard. Although a more workable standard may result, the board--by not adopting the federal standard--created a separate problem: that of jurisdiction. Location of the dive site and means of entry now dictate whether a diver must adhere to state or federal standards. This may result in confusion for both inspector and diver. For example, a diver who enters the water from the beach may be covered by the California diving standard while another diver who leaves the beach in a small boat is subject to the federal regulation. Adding to this problem is the fact that under certain conditions U.S. Coast Guard standards apply

- Another Standards Board action involved developing coke oven emission standards for steel plants. Despite the fact that there is only one coke oven in the State, the board elected to modify the federal standard because the oven in question was of different construction. After lengthy meetings and public hearings covering 8 months, a modified standard was finally adopted. Two alternatives to the standards development process were not used. The first is the Special order. The Special order enables Cal/OSHA inspectors to order employers to correct hazardous practices when no standard specifically addresses such practices. The second alternative is the variance procedure provided for under both state and federal law. The board could have instructed the firm to request a variance from the federal standard and submit a plan detailing how employees would be provided equivalent protection. Variance procedures allow for employee comments before the board makes its decision.

Much of the standards development activity is editorial in nature. Fifty-four percent of all 1976 standards brought before the board involved editorial changes. While some editorial changes may be necessary, others appear unwarranted since more important needs (such as standards simplification) exist. The following are examples of questionably needed changes found in 1978 hearing agendas:*

Amend definition of "Industrial Ramp" and relocate in alphabetical sequence in Subsection (a) of Section 3207 to read:

~~Industrial Ramp.~~ Ramp, Industrial. ~~A permanently~~ Permanently installed inclined passageway connecting two levels and designed primarily for industrial trucks. ~~Does;~~ does not include portable ramps, dockboards, dock levelers, or catwalks.

Amend title of Article 59 to read:

Article 59. ~~Wood Working~~ Woodworking Machines

* Deletions are crossed-out; additions are underscored.

There are several reasons why little has been accomplished in the area of standards development. First, the standards development process is slow and cumbersome. It entails as many as 21 steps from inception to adoption. Among the steps are legal reviews, advisory committee meetings, a federal OSHA review and public hearings. If no problems arise in any step, an average of six to eight months is required to develop a standard. Development of some standards has taken as long as two years.

The second reason is a lack of coordination. Until recently, standards development responsibilities were split among the Department of Health Services, the Department of Industrial Relations and the Standards Board. In an effort to increase coordination, DIR assumed the Department of Health Services' responsibilities in the area of health standards as of July 1, 1978. On October 9, 1978 DIR transferred DOSHA's Standards Development Unit, which deals primarily in safety standards, to the Standards Board.

A third reason, according to DIR, is the lack of knowledge about substances and conditions in the occupational health area. Two new laws, AB 3413 (Ch. 1244/78) and AB 3414 (Ch. 1245/78), are aimed at correcting this deficiency. AB 3413 establishes a repository of information on toxic substances to warn employers and employees of health-related hazards in the

work environment. AB 3414 provides \$2 million for occupational health research and the training of occupational health professionals at two University of California schools of medicine and public health. DIR claims that working together, these two efforts will result in better information with which California standards can be adopted.

It should be noted, however, that recent policy changes by federal OSHA may hinder improvements in health standards development. Federal OSHA recently announced that in the future a closer parallel between federal and state-initiated health standards will be required. This may result in the "at least as effective as" requirement reverting to the "same as" requirement. Also, all state health standards will have to be approved at OSHA headquarters in Washington, D.C. rather than at the federal OSHA regional office.

Standards Revision Project
Has Made Little Progress

There are currently about 28,000 sections and subsections of standards now published in Title 8 of the California Administrative Code. Despite the voluminous number of standards, only ten percent were cited by inspectors in 1977, and 100 accounted for 56 percent of all citations. Senate Resolution 19, of April 1977 and the supplemental language to the 1977-78

budget bill requested that Cal/OSHA develop and present a plan to simplify its standards to eliminate those which are irrelevant to worker safety, unenforceable or contradictory to other standards. Federal OSHA recently eliminated 928 such standards as part of its own simplification efforts.

We found that Cal/OSHA has made little progress in complying with the requests. Not a single section of standards had been simplified by the end of 1978. Three projects were chosen as pilot efforts to test the plan's viability.* It was intended that these projects would be carried through to adoption and serve as models for future simplification efforts. None has cleared the advisory committee stage despite thousands of man-hours of Standards Development Unit (SDU) effort. An SDU official estimated that at the current rate, it would take 87.5 man-years to simplify the standards.

SDU management stated that higher priorities have been placed on other tasks. Although the plan calls for four safety engineers to work full-time and four more to assist as time permits, periods as long as a month have passed when only one person was working on the project. In addition, advisory committees composed of representatives of various occupations and businesses have objected to the dilution of standards for the

* The projects were (1) simplification of the ladder standards, (2) simplification of the access-workspace standards and (3) elimination of unnecessary standards.

sake of simplicity. It is the Standards Board's policy to work closely with such committees. Rejection of proposals by the committees can result in time delays while proposals are modified.

CONCLUSION

Our review of the standards development process revealed that (a) the most frequently cited federal and state standards are similar, (b) citations issued by federal inspectors in other states are issued for the same types of violations as those issued by Cal/OSHA, (c) little progress has been made in simplifying state standards, and (d) Standards Board activity has resulted largely in editorial changes to standards. The cost to the State of developing California standards for federal fiscal year 1979 is estimated at approximately \$539,000. Given the various standards-related problems, the cost of having California standards may outweigh the benefits.

MATTERS FOR CONSIDERATION BY THE LEGISLATURE

We recommend that the Legislature consider whether the contributions of standards unique to California are worth the accompanying annual state cost of \$539,000 for maintaining the Standards Board.

THE FEDERAL OSHA PROGRAM COULD
PERFORM ESSENTIALLY THE SAME FUNCTIONS
AS THE CAL/OSHA PROGRAM AT A STATE SAVINGS
OF APPROXIMATELY \$6.8 MILLION ANNUALLY

If the Federal Government assumed control of California's OSHA program, it could administer the program in essentially the same manner. While there is no way of measuring the differences in effectiveness of OSHA programs in reducing accidents, federal OSHA programs in other states provide comparable numbers of inspectors and inspections and enforce similar standards. Cal/OSHA claims a number of differences between its program and a federal program. Our review disclosed the differences are (1) of either little or no merit or (2) could still be provided for in the event of federal preemption. As a result, California could potentially save \$6.8 million if it returned certain OSHA functions to the Federal Government.

Background

The Occupational Safety and Health Act of 1970 assigns primary responsibility for OSHA programs to the Secretary of Labor. In addition to having standards-setting and enforcement responsibilities, the Secretary is authorized to enter into agreements with states authorizing them to run their own OSHA

programs. Up to 50 percent federal funding is available to states whose OSHA plans have been approved. Section 18(e) of the act authorizes federal OSHA to monitor the state programs.*

Federal tests of Cal/OSHA performance are extensive. Every aspect of the program is reviewed and evaluated for compliance with federal guidelines. Standards and appeals processes are reviewed in addition to the enforcement function. Federal inspectors monitor Cal/OSHA inspectors by accompanying them on inspections, reviewing their case files and conducting follow-up inspections of Cal/OSHA-inspected establishments. A semi-annual evaluation report summarizes monitoring for the period and requires corrective action when necessary.

If a state withdraws its OSHA plan, federal OSHA assumes occupational safety and health responsibilities for that state. Federal OSHA has prepared preemption procedures to facilitate such takeovers. Since 1973, 12 states have either withdrawn their plan applications or terminated their OSHA programs.

* California is one of four states within federal OSHA Region IX which is headquartered in San Francisco. The area offices in California are located in Long Beach and San Francisco.

Effectiveness of an OSHA Program
Cannot Be Measured

The effectiveness of an OSHA program--state or federal--in reducing accidents cannot be measured at this time.*

Numerous variables prohibit such measurement, including:

- (1) Employee awareness--As employees become more aware of job safety and benefits they report more accidents
- (2) Accident reporting--There is no way of knowing if all accidents are reported
- (3) Physician caution--Due to the upsurge in medical malpractice suits, doctors are more conservative and may keep employees out of work more often
- (4) State of the economy--As employment increases, more accidents occur because new employees are inexperienced in safety practices.

* Similarly, the effectiveness of monetary penalties in ensuring compliance with safety orders cannot be measured.

Opinions differ regarding the effectiveness of inspections in reducing accidents. Two studies have indicated that most injuries are momentary or behavioral in nature and are therefore not "inspection preventable". They estimate that no more than 25 percent of all accidents involve hazards which could be noted during an inspection. However, a DIR official estimated that nearly all accidents are inspection or training preventable.

The Department of Finance's 1976 study of Cal/OSHA also questioned the effectiveness of standards and inspections in reducing accidents.* The Finance analysts assumed that if the injury rate is relatively high in a particular industry group, the compliance rate should be relatively low. They found this not to be the case. In fact, the industry with the highest injury rate--construction--had the highest compliance rate. The Department's report concluded that "the majority of industrial injuries are due to causes not addressed by the standards."

* A Review of the Implementation of the California Occupational Safety and Health Act, California Department of Finance, February 1976. Report No. PR-125.

A recent Cal/OSHA publication stated that the most frequently cited standards are those which are most visibly being violated during the inspectors' rounds. It advises employers to abide by these standards and thus avoid penalties. However, a comparison of these often-cited standards with California accident data shows that violations of the standards in question may not account for a significant number of accidents.

Despite problems in determining the effectiveness of an OSHA program, intensive inspections conducted in certain industries may have had a positive impact on reducing the number of deaths and injuries. For example, following intense inspections in the construction industry, trenching accidents were reduced significantly. However, this program is impractical for daily use because it requires a large amount of inspection time for specified industries and may direct inspectors from other areas.

Comparable Federal and
Cal/OSHA Enforcement Performance

Although we did not compare the effectiveness of Cal/OSHA and federal OSHA, we analyzed enforcement data (Table 1) and found that federal OSHA compares favorably with Cal/OSHA. Though Cal/OSHA inspectors visit more establishments, about twice as many employees are covered by the average federal OSHA

inspection.* The percentage of federal OSHA's citations judged serious is more than four times that of Cal/OSHA's. Moreover, the average proposed penalty for serious violations is nearly twice that of the state program's. The percentage of federal occupational health inspections--an area DIR acknowledges as becoming increasingly important--is over twice that of Cal/OSHA's. On the other hand, Cal/OSHA inspectors cite more hazards per 100 employees.

* A recent semi-annual evaluation by federal OSHA may result in a reduced number of Cal/OSHA inspections per month. This subject is discussed on page 43.

TABLE 1
 COMPARATIVE ENFORCEMENT ACTIVITY
 FOR NINE-MONTH PERIOD
ENDING JUNE 30, 1978

	<u>Cal/OSHA</u>	<u>Federal OSHA</u>
Average Number of Inspections per Month by:		
Safety Inspector	10.7	5.7
Health Inspector	2.7	2.3
Average Man-Hours per Inspection		
	12	19
Percentage Inspections for:		
Safety	92.6	81.2
Health	7.4	18.8
Average Number of Employees Covered by:		
Safety Inspection	39	80
Health Inspection	51	97
Average Number of Employees Covered by Inspector per Month:		
Safety	417	456
Health	138	223
Citable Hazards per 100 Employees		
	10	7
Percentage of Citations Judged:		
Serious	6.5	30.0
Non-Serious	93.5	70.0
Average Proposed Penalty for:		
Serious Violations	\$239	\$471
Non-Serious Violations	10	3

Cited Differences Between
Cal/OSHA and the Federal
OSHA Program

Cal/OSHA states there are certain differences between the state and federal programs which make Cal/OSHA more desirable. However, we found the stated differences (1) are of little or no merit or (2) could still be provided for in the event of federal preemption. Cal/OSHA's list of differences is in Appendix A. The cited differences are discussed below.

(1) On-Site Consultation

Cal/OSHA claims that one of the most important services provided under a state program is on-site consultation. The federal program, it claims, does not permit on-site consultation.

We found that a consultation service can be provided in federal jurisdiction states. Seven states currently have such activities. Under the Section 7(c)(1) grant, 90 percent federal funding is provided for private sector consultation. States can also provide 100 percent state-funded public sector consultation.

(2) Standards

Cal/OSHA claims that California chose to retain its existing safety orders because federal standards in many cases do not protect workers, are unreasonable and unenforceable and do not always satisfy the needs of the California work environment.

Some standards are unique to California. For example, California's logging and sawmill standards--adopted in 1945 before the inception of OSHA--have no federal counterpart. The recently adopted requirements for employers to have accident prevention programs and to hold safety meetings are also unique. However, we found that:

- The standards most frequently cited by Cal/OSHA are the same as federal OSHA's. Moreover, the most frequently cited federal standards are largely the same as Cal/OSHA's. Thus, the same standards would be cited whether California had a state or a federal OSHA program

- Many California standards are also unreasonable, unenforceable and irrelevant to worker safety. California has made little progress in complying with the Senate Resolution 19, April 1977, request to simplify and codify the State's standards. Federal OSHA, on the other hand, recently

announced the deletion of 928 standards deemed unnecessary

- Federal OSHA has a general duty clause (Section 5(a)(1)) which is used when no federal standard exists. This was the 19th most frequently cited federal standard in 1977.

(3) Coverage of State and Local Government Agencies

Cal/OSHA claims that state and local government employees covered by Cal/OSHA could not be covered under the federal program. We found this to be untrue. Federal law allows states under federal jurisdiction to adopt plans specifically designed for public employees. Fifty percent federal funding is provided for compliance activities. In 1977 Connecticut dropped its state OSHA plan for the private sector but maintained a public employee plan.

(4) Number of Inspectors

Cal/OSHA claims the level of employee protection provided under federal OSHA would be reduced by as much as one-half the current level since only about half the number of inspectors would be in the field.* The apparent rationale for this claim is that only half the funds (all federal) would be available. However, we found the following:

* At current inspection rates, each firm in the State could be visited only once every 24 years.

- Staffing patterns in states under federal OSHA are comparable to California's. We compared California's compliance staffing with that of the five largest federal OSHA states. Table 2 summarizes the comparison. Although California has the largest number of inspectors, it ranks second in number of safety inspectors per 1000 workers and it has the lowest number of health inspectors per 1000 workers. California and Illinois have the lowest total inspectors per 1000 workers of the six states.

TABLE 2

COMPLIANCE STAFFING FOR CALIFORNIA AND THE FIVE
MOST POPULOUS FEDERAL OSHA STATES*

	# Covered Workers**	# Industrial Health		Total Inspectors	# Safety Inspectors/ 1000 Workers		# Industrial Health Inspectors/ 1000 Workers		Total Inspectors/ 1000 Workers
		# Safety Inspectors	# Industrial Health Inspectors		# Safety Inspectors/ 1000 Workers	# Industrial Health Inspectors/ 1000 Workers			
California	7,677,710	145	43	188	.019	.006	.025		
New York	5,543,637	103	67	170	.019	.012	.031		
Illinois	3,774,890	49	45	94	.013	.012	.025		
Texas	3,755,267	77	40	117	.021	.011	.031		
Pennsylvania	3,698,732	59	43	102	.016	.012	.028		
Ohio	3,343,165	49	41	90	.015	.012	.027		

* Figures for three right-hand columns are rounded and therefore may not total.

** Includes private and public sector employees for California and private sector employees for other states.

- Federal procedures for long-term preemption give high priority to staffing to current "benchmark" levels.* Part of the preemption procedure calls for utilization of state inspectors if necessary to ensure adequate employee protection. In the case of Connecticut, we were informed that all 12 state inspectors were retained by federal OSHA. At the time of our review, nine were still federal OSHA inspectors; the other three returned to state service in other capacities.

Our review of comparative staffing patterns and long-term federal preemption procedures indicates that Cal/OSHA's claim is inaccurate. However, budgetary constraints could have a short-term negative impact on the number of federal inspectors OSHA could provide California.

(5) Home Control

Cal/OSHA claims a state-controlled program is more desirable because it is administered closer to home. Officials state home control is important "in all areas such as standards-setting, enforcement, appeals and is especially important in the consulting area which is not provided by the Federal program."

* Federal Program Directive No. 77-8 sets staffing requirements for all states. The staffing criteria have recently been challenged in the U.S. Court of Appeals (AFL-CIO vs. F. Ray Marshall) and may be changed. A federal OSHA official said the "benchmark" levels--those staffing levels on all states with state plans--will likely go up. The benchmarks also set staffing levels in federal jurisdiction states. Increases in benchmarks will result in costlier OSHA programs--both federal and state.

We found few differences between the two programs. Our discussion of the on-site consultation difference (page 38) showed that consultation services can be provided in federal jurisdiction states. In addition, we cited numerous problems associated with the standards development process (page 21) including low output of state-initiated standards and strict federal controls in health standards development. Our comparison of enforcement performance data (page 37) showed that federal OSHA compares favorably with Cal/OSHA.

Although in federal OSHA states employers appealing citations or requesting variances from standards must go through federal channels, the procedures under federal jurisdiction are essentially the same as those under Cal/OSHA. Under federal OSHA, appeals and variance requests are handled locally by federal representatives. Appeals are heard by hearing examiners throughout each state. Variance requests, though they must be submitted to federal OSHA headquarters, are heard as close to the place of employment as possible.*

Despite the inconsistencies we found in Cal/OSHA's claim there may be benefits to having a state-administered program which are not quantifiable. "Home control" can be an intangible but nevertheless important item. For example, Cal/OSHA officials may be more accessible to legislators,

* California's timeliness in servicing appeals and variance requests is noteworthy. The Cal/OSHA Appeals Board requires between four and five months to dispose of a case. The federal appeals process can require over a year. Variance requests are decided by the state Standards Board in three to four months; the federal procedure takes 17 months, although interim orders can be secured within one month of application.

employers and workers. Advisory committees do allow for some local input into the standards development process. Faster response to appeals and variance requests may justify program costs.

However, the value of home control can be overstated. As discussed on page 5, OSHA is a federal program and federal authority is extensive. The following examples indicate the extent of federal control:

- Cal/OSHA reduced the number of reporting forms used by its inspectors to facilitate more inspections as a result of Legislative oversight hearings and the Supplemental language to the 1977-78 Budget Bill; federal OSHA, however, refused to allow the reduction in paperwork despite the source of the recommendation

- One cited cause for Cal/OSHA's lack of a more current, reliable Safety Data Base for scheduling routine inspections is federal OSHA's extensive requirements for data from the Division of Labor Statistics and Research. (See page 21.)

(6) Permits for Hazardous Projects

Enabling legislation established a permit system whereby employers on certain types of construction or demolition projects are required to obtain permits from DOSHA. This process provides a means both of determining that the employer is aware of applicable standards and of informing the division of high-risk work sites. Federal OSHA has no such provision; however, if this is a valuable control mechanism it could be run as a separate program, along with such state programs as elevator inspections.

(7) Ability to Cope with Imminent Hazards

Cal/OSHA authorizes an inspector to "yellow tag" equipment or work places (physically attach a yellow-colored notice forbidding use) if they are deemed imminently hazardous by the inspector. Federal OSHA inspectors tag equipment in a similar manner but they cannot order an employer to shut down. A temporary restraining order must be secured under the federal program, and this is done only after an inspector consults with the area director and regional administrator.

While Cal/OSHA inspectors have greater authority, the question of "imminency" is a value judgment. There is no way to determine whether injuries could be prevented during the one day required to secure the temporary restraining order under a federal OSHA plan. Moreover, the responsibility accompanying such yellow tag authority is significant. Shutting down a workplace can result in lost wages for employees and foregone profits for employers. We found that in fiscal year 1977-78:

- Yellow tags were used in only one-half of one percent of all citations issued
- Ten California inspectors out of a total of 140 accounted for 68 percent of all tags issued
- Sixty-one percent of all California inspectors never issued a yellow tag.

(8) Sanctions

Cal/OSHA provides for some criminal sanctions beyond those found in federal OSHA law. Under the federal law, willful or repeated violators are subject to civil penalties of up to \$10,000. The California law not only provides for fines up to

\$10,000 but also treats violations as misdemeanors. Misdemeanor charges are allowable under federal law, but only when a violation causes the death of an employee.

California law established the Bureau of Investigation (BOI) to conduct accident investigations and prepare cases for review and prosecution by local district attorneys. If necessary, BOI lawyers will take appointments as Deputy District Attorneys and handle cases from start to finish. In 1978, the BOI was budgeted for 32 personnel, 21 of whom were professionals (lawyers, investigators and safety inspectors), and had a budget of \$575,000.

Though the BOI is unique to the Cal/OSHA program, its efforts have produced questionable results. We found that:

- Though the success rate is high, the number of prosecutions is low. Pleas of guilty or no contest were secured in 14 of the 18 prosecutions in 1977. However, the previous year there were 645 work-related deaths and a total of 294,991 work-related injuries and illnesses in California.

- The deterrence effect of penalties is questionable. Though \$10,000 fines are authorized, most penalties are far lower.* A total of ten injuries were involved in the 14 cases successfully prosecuted in 1977; eight were fatal. Total fines amounted to \$9,145.50; the average fine was only \$653. Imprisonment for up to six months is allowed in cases involving employee death or serious injury, yet no imprisonment was ordered. Probation was given in five cases.

The chief of the BOI stated that fines are often low for three reasons. First, courts do not usually levy higher fines. Fines are normally below \$500 in criminal cases. Second, judges are sometimes easy on firms, especially since many have already been assessed civil penalties by Cal/OSHA. Third, district attorneys often do not give these cases priority because more serious crimes warrant their attention.

Until passage of AB 3284 (Ch. 1224/78), much BOI activity was wasted on mandatory investigations and referrals to district attorneys. This is because the law required the BOI to investigate and prepare all cases involving a work-related death or catastrophe even though they had been found unfit for prosecution. More than 60 percent of all cases forwarded to

* The BOI chief stated that in past years a few fines of \$5,000 or more had been levied.

district attorneys were rejected for prosecution. BOI discretion in selecting cases has been allowed since January 1, 1979.

(9) Employment Accidents Involving Contractors

DOSHA is required by state law to forward reports of accidents involving contractors to the State Registrar of Contractors when (a) an employee is killed or (b) five or more employees are seriously injured. In 1976, 1,349 employees were involved in fatalities and catastrophes in all industries in the State; in 1977, 1,173 employees were killed or seriously injured.

The Contractor's State License Board employs approximately 100 investigators. It can revoke or suspend the license of a contractor who violates contractor license law. In 1976, the board received 38 Cal/OSHA reports. It revoked 4 licenses and suspended 9 more. In 1977, 42 reports were received and 5 revocations and 8 suspensions resulted. Such reports, therefore, are proposed for a relatively small proportion of the total number of fatalities and catastrophes.

Federal law makes no provision for contractor accident referrals. However, this function could be continued in the event of federal preemption. The Federal Regional Solicitor (Labor) stated that accident reports could be made available to the Contractor's State License Board upon closure of the cases.

(10) Poster

Federal and state regulations require display of a poster dealing with employee protection and employer obligations. Cal/OSHA's poster is printed in Spanish as well as English; both versions are on the same poster. The federal OSHA poster is distributed in its English version, but copies in Spanish are available upon request.

(11) Employee Complaints

Cal/OSHA must respond to complaints alleging imminent hazards immediately; complaints citing serious hazards must be answered within three working days. The federal OSHA requirements are now virtually the same as the State's. As shown on page A-4, the Director of Industrial Relations indicated that this difference is no longer significant.

Faster response to routine complaints is required under the Cal/OSHA law. Fourteen working days are allowed as opposed to 20 under the federal OSHA program. Federal OSHA, however, has begun a procedure which involves sending letters to the employers of complainants. These letters cite the alleged problem and the employer's obligations under the law and request the employer to report corrective action within 30 days. The complainant's name is not revealed.

(12) Employee Discrimination

State and federal OSHA laws protect employees who file complaints from being discriminated against by employers. The California law goes a step further in that employers are prohibited from laying off or discharging workers who refuse to work in hazardous or apparently hazardous situations.

The Division of Labor Standards Enforcement functions independently of Cal/OSHA within DIR. One of its responsibilities is to hear and decide cases alleging employer discrimination. Cases are resolved within 30 days. There is currently no federal counterpart to the California hearing system; complainants must currently use the federal district courts. Although the federal OSHA law mandates a 90-day resolution period, a federal OSHA official stated that case backlogs have been considerable. As a result, the 90-day requirement has generally not been met.

Since the Division's hearing system functions independently of Cal/OSHA, the California provisions guaranteeing greater employee protection could possibly be maintained and enforced in event of federal preemption.

(13) Carcinogen Program*

The Legislature passed the Occupational Carcinogens Control Act of 1976 (Ch. 1067/76) to clarify and strengthen state laws applicable to the use of cancer-causing substances. The act called for reporting of users of known carcinogens, especially those using asbestos and vinyl chloride. Federal law does not require users of asbestos to register. The act also required the Standards Board to develop standards for carcinogens in cases where no federal standards exist.

Our review revealed that no standards for such carcinogens have been developed (see page 24). Moreover, we found that the OCCU may not be registering all carcinogen users. Automotive repair shops use asbestos extensively in lining brakes. They are exempted from reporting asbestos use if they are registered with the State's Bureau of Automotive Repair. A previous Auditor General report described the bureau's failure to detect and register an estimated 3,000 repair facilities.**

* This was not formally cited as a difference although it was mentioned during conversations with various officials.

** Report No. 736, Program Deficiencies/Bureau of Automotive Repair, May 1978.

(14) Voluntary Compliance

Cal/OSHA is working on two agreements which would establish procedures for handling employee complaints informally between labor and management before calling in compliance inspectors. These agreements do not limit Cal/OSHA's authority, but instead provide a mechanism achieving compliance using minimum inspection resources.

The agreements are now in draft form. Cal/OSHA officials indicated they were to be signed in mid-December, but this had not been accomplished during our review. Federal OSHA has been involved in the negotiations and must give final approval to the agreements.

Federal OSHA has entered into self-policing agreements with other federal agencies that are similar to the voluntary compliance agreements. Federal OSHA has indicated it could provide for similar agreements in the event of state OSHA plan withdrawal.

(15) Fines to General Fund

Penalties assessed on employers for noncompliance with safety orders presently are credited to the General Fund. These fines would be collected by the Federal Government in the event of state OSHA plan withdrawal.

Actual revenue from this source was \$974,727 during the state fiscal year 1977-78. This is lower than the \$1.5 million figure quoted by Cal/OSHA (see Appendix A, pages A-6 and A-7) since some of the penalties proposed by inspectors are subsequently reduced by the Appeals Board or cannot be collected.

Attempts are made to collect delinquent penalties through legal actions instituted by DOSHA's Legal Unit. Legislation effective January 1, 1979 grants BOI discretion to redirect resources away from cases where evidence is legally insufficient and DOSHA management stated that the legislation should allow the transfer of enough staff activity from BOI to the Legal Unit to more effectively pursue delinquent payments.

We have taken this revenue into account in our estimate of the savings available through withdrawal of the state OSHA plan (Appendix B).

CONCLUSION

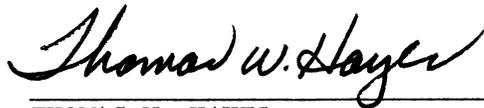
Our review disclosed that Cal/OSHA and federal OSHA would provide similar safety and health protection to California workers. A federal OSHA program in California would provide private sector enforcement activity similar to that which Cal/OSHA currently provides. Most of the functions which federal OSHA would not provide upon preemption could be maintained by the Department of Industrial Relations, including on-site consultation and public employee coverage. In addition, we found that federal OSHA staffing in other states is comparable to California's and similar standards are applied. The Legislature could withdraw the state plan and allow the Federal Government to assume the inspection and standard-setting functions at an annual state savings of \$6.8 million.* However, there are certain intangible and unquantifiable advantages to a state-run program such as public access to Cal/OSHA officials and home control.

* See Appendix B for costing details.

MATTERS FOR CONSIDERATION BY THE LEGISLATURE

We recommend that the Legislature consider the potential annual state savings of \$6.8 million which could be realized by withdrawing the state plan and allowing federal preemption of certain OSHA activities. This savings should be weighed against the intangible benefits of a state-run program such as home control.

Respectfully submitted,



THOMAS W. HAYES
Acting Auditor General

February 15, 1979

Staff: William M. Zimmerling, CPA, Supervising Auditor
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February 8, 1979

Thomas W. Hayes
Acting Auditor General
Joint Legislative Audit Committee
925 L Street
Suite 750
Sacramento, CA 95814

Dear Mr. Hayes:

Attached is our response to your draft audit report, California Occupational Safety and Health Act - - A Program Review, which we received on January 31, 1979. We would appreciate an opportunity to review and respond to any changes that may be made to the draft report prior to its being published in final form.

We greatly appreciate the time and effort expended by your staff in the conduct of this program review. We feel that all elements of our Cal/OSHA Program staff developed a cooperative working relationship with your staff that resulted in a free exchange of information. However, because of our perception of that relationship we were surprised and quite dismayed to find what we consider to be serious errors, unrealistic speculations, and significant omissions of relevant facts in the report. We have addressed this situation in our response as well as providing additional information on our program which will assist the audit committee in making sound decisions.

Please be assured that we have reviewed your report in detail and have already taken remedial action, where appropriate. If there are any questions regarding our response please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Donald Vial".
Donald Vial, Director/jp
Enc.

RESPONSE BY THE DEPARTMENT OF INDUSTRIAL RELATIONS TO
REPORT OF THE OFFICE OF THE AUDITOR GENERAL

California Occupational Safety
and Health Act--Program Review

February 1979

O V E R V I E W

This reply to the Auditor General's report on the program review of the California Occupational Safety and Health Act addresses the four recommendations in the report, two of which were directed to the Legislature as matters for their consideration and two to program management.

Highlights of the Department's response:

- Federal preemption of the CAL/OSHA program would mean loss of a number of features important to California workers and employers alike as well as loss of the State's ability to exercise initiative for program improvement;
- The State should retain the Standards Board and continue with its present plan to streamline its standards development process;
- Improvements in the Consultation Service are underway, including development of methods for encouraging its use by small firms in high hazard industries and for evaluating its effectiveness; and
- The Safety Data Base scheduling system is now being established on a current basis using a larger sample and incorporating other improvements in a methodology that has attracted national attention for its innovation.

Manpower and Funding

Information about manpower and funding is essential for background and perspective in understanding program operations. Such statistics appear on page 6 of the report. These figures, however, are inaccurate and misleading. As indicated in the Federal/State operations grant, the number of man-years budgeted for the CAL/OSHA program for 1973-74 was 545.7, not 399.5 as stated in the report; and in 1978-79,

the correct figure is 587.9 manyears, not 538.1. The total State and Federal funding of the CAL/OSHA program in 1973-74 was \$9,986,887, not \$11,280,452; in 1978-79, the correct figure is \$17,306,595, not \$25,035,287.

Figures from the grant do not include non-Federally funded activities such as elevators, pressure vessels, and mining but do include, in 1973-74, the Department of Health (100.3 manyears) and the Office of the State Fire Marshal (16.5 manyears). The correct 1978-79 figure includes manyears assigned to the Occupational Cancer Control Unit (39 manyears), which carries out the mandates of the Occupational Carcinogens Control Act of 1976, and consultation for public sector (10 manyears). (Consultation service to the private sector is covered separately under a 7(c)(1) contract.)

Concerning the figures on funding in the report:

- (1) The 1973-74 figure does not include the OSHA subventions then in existence to the Department of Health for the occupational health and laboratories component of CAL/OSHA and to the State Fire Marshal for CAL/OSHA technical support service; and
- (2) Making a direct comparison of the 1978-79 figure with the base period does not take into account the enactment of the Occupational Carcinogens Control Act, the phasing out of the State Fire Marshal program, and the upgrading of staff positions and salary increases.

Using correct data and adjusting for the factors noted in (2) above, the real comparison increase in funding was about 25 percent over the five-year period. This growth amounts to an annual increase of 5 percent, which is less than the annual rate of inflation of 10 percent according to the California Consumer Price Index.

Effectiveness Can Be Measured

The report maintains that the effectiveness of a state or Federal occupational safety and health program cannot be measured. On the contrary, a considerable body of data exists for determining at least to some extent what the impact of safety and health efforts has been. The Division of Labor Statistics and Research recently analyzed injury and illness rates and data on fatalities and issued a paper, Occupational Injury and Illness Experience in the 1970's. The Division found declines between 1972 and 1977 in the injury and illness rates for all major nonfarm industry groups and also found some noteworthy reductions in fatal and nonfatal injuries caused by hazards subject to stringent safety requirements. The paper is attached as Exhibit 1.

RESPONSE TO RECOMMENDATION CONCERNING STATE PLAN WITHDRAWAL

SUMMARY The recommendation that consideration be given to withdrawing the State Plan and allowing Federal preemption is based on an analysis that gives only the briefest of attention to qualitative factors that have made California a leader among states in the field of worker safety and health. In some instances, the report dismisses important distinctions and innovations in California's program with the unrealistic speculation that these factors might be retained in the event of Federal preemption of the program. Federal preemption would mean the loss of any opportunity for the State to exercise initiative for program improvement or modification to meet the State's specific needs.

OSHA's leadership has indicated that it could not provide comparable staffing at any time in the foreseeable future if it were necessary to preempt a state program in any relatively large state.

Important Enforcement Tools Would Be Lost in Preemption

The report maintains that a Federal program in California would provide private sector enforcement activity similar to that now provided by CAL/OSHA. To support this position, the report cites selected statistics comparing Federal and California enforcement activity (Table 1, page 37) and finds Federal and CAL/OSHA performance to compare favorably. At best, however, these statistics are open to a variety of interpretations and can be used to support opinions pro or con either program. More important, in the Department's opinion, are the enforcement tools that are unique to California's program and which in all likelihood would be lost under Federal preemption:

Permits for Hazardous Projects - The report's suggestion (see page 46) that this permit system could be run as a separate State program if Federal OSHA to preempt the CAL/OSHA program seems, at the least, impractical. The main purposes of the permit system--for the enforcement agency to determine that the employer is aware of applicable standards and to keep track of high-risk work sites--would no longer be the State's concern under Federal preemption. It should be noted that such catastrophes as the tower collapse in West Virginia that killed 51 workers might well have been avoided had a similar permit system been part of the Federal program. (Federal OSHA has jurisdiction in West Virginia.)

Yellow Tag Authority - The importance cannot be overstated of the ability to take immediate action when in the professional judgment of the compliance officer an imminent danger to life or limb exists. The Labor Code places limitation on this authority to prevent its misuse. Contrary to the view expressed in the report, a day--or even an hour--can make a difference where an excavation is unshored or where heavy equipment is being operated in close proximity to high voltage wires. This enforcement tool was used effectively to close down a chemical plant in 1977, when it was found that a soil fumigant, DBCP, was causing sterility among workers.

Special Order - Through issuance of a Special Order, CAL/OSHA can call attention to a new or previously unrecognized hazard for which no standard has yet been adopted. This procedure is valuable both for obtaining abatement of hazards and for pinpointing the need for developing new standards.

Accident Prevention Program - California has adopted a standard unique to the State that requires employers to establish and maintain an Accident Prevention Program that includes employee training and scheduled periodic inspections. This Safety Order is significant in that it puts the employer on notice regarding his responsibilities.

Contractor Accident Referrals - This is another function that the report states could be continued in the event of Federal preemption. The Federal Regional Solicitor is not likely to feel obliged to follow the State Labor Code on this matter, however, and any voluntary arrangement between the Federal Solicitor and the Contractors' State License Board would lack the force of law.

Preemption Would Mean an End to Innovation

California has undertaken a number of significant activities on its own initiative in the field of worker safety and health. These include the carcinogen program, which is primarily a legislatively mandated emphasis program; a hazardous substances information alert system and the occupational health centers on the UC campus, both established in the 1978 statutes; and voluntary compliance agreements, one of which is scheduled for signing in February between Bechtel Corporation and CAL/OSHA at the San Onofre nuclear power plant now under construction.

Importance of State Control

Pages 43-46 of the report deal with home control; and, on page 57 the authors note that the Legislature should measure the savings to the General Fund, if the OSHA program is returned to the Federal government, against the intangible benefits of retaining a state-run program.

The intangible benefit of easy access to CAL/OSHA officials by legislators, employers, and workers cannot be dismissed lightly. California is a leader among states in all aspects of economic, social, and educational policies. As a consequence, this State, unlike many of its counterparts, has a sophisticated population which demands actions more quickly than would be true elsewhere. It is for this reason, California has been a pioneer in many safety and health developments. For example, California is the

first state to have a Carcinogen Control Act because of this sophistication. Many more examples could be cited. With Federal preemption, California would be required to accept those policies that meet national norms, based on the abilities and limitations of all states.

Size of Compliance Staff Remains a Major Consideration

The report suggests that California would suffer no decrease in the size of the compliance staff under Federal preemption. It bases this view on a comparison of this State's staffing with that of the five largest Federal OSHA states. (See Table 2, page 42.) The comparability of the data in this table is questionable, however. Figures for California inspectors represent filled positions at the end of the last quarter of 1978, whereas those for the other states appear to be budgeted positions at some earlier date. If current data for California were inserted (178 budgeted field positions for safety, 50 for health, and 8,498,400 covered workers), the State would rise in some of the rankings, but data are still not comparable because of older statistics for the other states.

Statistical gamesmanship aside, however, the realities of the situation are that Federal OSHA is under severe budgetary constraints. OSHA's present budget problems clearly indicate that it would have serious difficulty for some time to come to build up a Federal staff in California that approaches the size of the State's present field staff.

RESPONSE TO RECOMMENDATION CONCERNING STANDARDS BOARD

SUMMARY The recommendation that the Legislature consider whether the benefits of Standards Board activities justify its cost ignores the need for a standards development and adoption process for State-initiated standards and for adjustment of Federal standards to circumstances unique to California. The State has made significant contributions in the development of standards that subsequently have been adopted nationally--an ability that should be retained.

Action is underway on some of the standards development problems noted in the report; a proposed reduction in the Standards Board budget for 1979-80 is aimed at streamlining the procedures whereby California adopts standards comparable with Federal OSHA standards.

Value of State's Standards Development Process

In recommending that consideration be given to eliminating the Standards Board, the report questions the usefulness of the State's standards development process. It fails to address the wide area of protection afforded to California employees that would not exist if only Federal standards were adopted. For example, Federal OSHA standards on agriculture cover only a few categories, such as agricultural tractors, machine guarding, and anhydrous ammonia. In contrast all of California's general industry, electrical, and pressure vessel standards apply to agriculture--affording protection to thousands of workers who would not otherwise be covered.

Other industries covered under CAL/OSHA that either are not regulated at all or are only partially regulated under Federal OSHA include logging, the petroleum drilling--transportation--refining industry, tunneling, and electric utilities.

The report is silent with respect to what to do with all the existing CAL/OSHA standards if the Standards Board were abolished or the program were turned back to Federal OSHA.

The report describes the standards development process as slow and cumbersome, in part because of the use of advisory committees. The CAL/OSHA Standards Board has never been challenged on its adopted standards in court, a fact attributed by some to the use of advisory committees. However, the proposed budget reductions for 1979-80 will necessitate a review of the standards development process to determine how it can be simplified.

Differences Between Federal and State Standards

Contrary to the impression given by the report that few differences exist between California's standards and those of Federal OSHA, a number of this State's standards on the same issue as Federal standards differ substantially. For example, both Federal and State standards exist on scaffolds, high- and low-voltage, blasting, cranes, and hoists. California's standards, however, additionally require scaffolds to be designed by registered engineers when the height exceeds 60 feet and require a permit for the erection of a scaffold. Only California's standards require electrical work procedures for high- and low-voltage, licensing and certification of blasters, annual certification of cranes, and regulation of the use of hoists in the construction industry.

The report does not mention the many areas in which CAL/OSHA has pioneered safety standards, such as roll-over protection (ROPS), personal protective clothing and equipment for fire fighters, work in confined spaces, and electrical work procedures. Earlier, California construction standards were used as a model for many of the Federal construction standards in the initial OSHA standards package when the Federal program was first implemented.

It is anticipated that the activities of the new occupational health centers at the University of California and the hazardous substances information alert system now in the process of being created will enable the State to take a leadership role in the development of health standards in the future.

Merits of a Standard are Not Measured by the Number of Citations

The adoption of worker safety and health standards is to effect worker safety and health, not to amass citations. In fact, the "ideal" worker safety program would be one in which there were no violations by any employer. Therefore, the fact that a relatively small share of all CAL/OSHA or Federal OSHA standards are cited has no bearing on the merits of the remainder of the standards.

Points for Clarification

Several points made in the report need clarification.

The discussion of circumstances surrounding the commercial diving standards needs amplification. The Standards Board adopted a standard modifying provisions in the OSHA commercial diving standard and also, exempting public and private institutions conducting scientific and research diving. These groups would have been virtually unable to meet the requirements of the Federal standard. OSHA freely admits problems with the Federal commercial diving standard and intends to make revisions patterned after California.

The example regarding the coke-oven emission standard also needs clarification. The Federal OSHA standard was inappropriate for application to specific operations in the one coke-oven installation in the State, and the Standards Board, after considering various alternatives, decided to develop a California standard tailored to meet the needs of the installation. In reference to the alternatives mentioned in

The report--the Special Order is used only if a standard covering an unsafe condition has not been adopted. Had the Federal standards been adopted verbatim, the Division of Occupational Safety and Health would have been precluded from using a Special Order. A variance is not a waiver of requirements. Because of the number and significance of the changes made to the Federal standard, granting a request for a variance would have been impractical. Further, it would be unreasonable for the Board to adopt a standard knowing that the employer could not comply and thus be forced to immediately seek a variance.

The report observes that minor editorial changes appear unwarranted and prevent more important priorities from being accomplished. It should be noted that most of the editorial revisions result from the procedure that, whenever a substantive change is being made in a section of an order, other sections on the same subject are revised at the same time even though the changes may be only editorial in nature. Also, editorial revisions result from decisions of the Appeals Board indicating a particular standard is ambiguous or unenforceable as written, from field enforcement input, from petitions from the public, and from variance requests.

The two examples of "questionably needed" changes in the report are taken out of context; these changes were in conjunction with other substantive changes made at the same time. First, the revision to "industrial ramp" is part of a revision to General Industry Safety Order Section 3273, Working Areas, regarding access and work space within places of employment. More specifically, the revision clarifies ramps and catwalks around machinery. The revision was a direct result of a petition and an Appeals Board decision involving access to bowling alley pinspotting machines. The second example, to amend the title of article 59 in the General Industry Safety Orders, is also taken out of context. The main revision of this package of standards was to add new sections for hog mills and for brush and slash chippers (types of woodworking machines).

RESPONSE TO RECOMMENDATION ON CONSULTATION SERVICE

SUMMARY The Consultation Service is already addressing the recommendation that information on consultations be compiled in a manner suitable for evaluating effectiveness of targeting efforts. Data on consultations by size of firm and by detailed SIC code are collected and compiled within the physical limits of a manual information system. Computerization of Consultation Service data in the near future will permit a more detailed analysis of program effectiveness. Efforts also are underway to establish procedures that will encourage use of the Consultation Service by allaying unfounded concerns about triggering enforcement action.

Improvement in Targeting and in Measuring Effectiveness

The Consultation Service staff has interpreted the Federal mandate "to give priority response to requests for consultation from small employers in high hazard industries" to mean that most of the program's resources should be directed toward that group, even though the staff must respond to all requests for consultation.

The Consultation Service is presently working with the Division of Labor Statistics and Research to develop a list of all California employers having 25 employees or less that are considered to be involved in high hazard industries. Data on the list will include number of fatalities, number of injuries, nature and cause of each injury, whether the injury was inspection-preventable, and the safety or health standard violated. This list will be used as a basis for promoting the availability of consultation services to small, high hazard industry employers.

Two changes have been introduced in the management information system in order to capture the Consultation Service efforts to reach small business and high hazard in-

dustries: (1) In August 1978, the consultation report form was revised to incorporate a provision for the number of employees at the work site; (2) Effective with the October-December 1978 quarter, consultations were recorded by four-digit SIC codes rather than the two-digit industrial breakdown used since the inception of the program.

Thus, at the close of the October-December 1978 quarter, the Consultation Service staff had a measure of consultations provided to employers, by establishment size and by specific high hazard industries.

A further form revision has been made incorporating a provision for company size, beginning with the January-March 1979 quarter. This information will help to identify firms that are branches of larger companies and therefore not to be considered "small business."

Efforts to Encourage Usage of the Consultation Service

The Consultation Service has been exploring methods for encouraging greater usage of the service.

Along the lines discussed in the report, one such effort is the Small Employer Certification Program, a pilot proposal now awaiting approval by Federal OSHA. It proposes to exempt employers with ten or fewer employees from scheduled compliance inspections when they have had an on site consultation within the previous 12 months and have met certain prescribed criteria. (See Exhibit 2.)

Another example of efforts to reach target industries was the recent experience with the California Cotton Ginners Association. This successful cooperative effort involved the association members, many of whom are small employers, the Consultation Service, and the Division of Occupational Safety and Health. (See Exhibit 3.)

A pilot project also is underway with the National Federation of Independent Business, an association of small businessmen with 55,000 members in California. This proposal, too, is aimed at overcoming reluctance of the membership to use the Consultation Service and provide information concerning the CAL/OSHA program.

Clarification Concerning Image Problems

The report notes that employers have been reluctant to use the Consultation Service because of their concern that a consultation may trigger compliance action, an accurate evaluation. However, the report tends to perpetuate this fear by oversimplifying how consultants must deal with unabated violations. Consultants are required to refer only unabated serious violations for enforcement action and then only after exhausting various means of attempting to achieve abatement. The report also can be construed to mean that all imminent hazards are referred to a compliance officer upon discovery, without reference to whether or not it is abated immediately. This interpretation, of course, is not correct, for referral is made only if it is not abated. It should be noted that since the inception of the program none of the serious violations or imminent hazards found during consultations have had to be referred for enforcement action because of nonabatement.

RESPONSE TO RECOMMENDATION CONCERNING INSPECTION SCHEDULING SYSTEM

SUMMARY The recommendations made for the Safety Data Base with respect to listing only inspection-preventable accidents does not recognize the purpose of the SDB. Suggesting an Employment Development Department listing fails to recognize that this procedure has been tried in a former inspection scheduling system and discarded because of its numerous problems.

After two pilot projects, the SDB is now being developed on a current basis using a larger sample and incorporating additional improvements. Its methodology has received national attention as a pioneering effort in this field.

Purpose of the Safety Data Base

The report notes that the planned SDB does not consider inspection preventability and recommends that this take place. This recommendation overlooks the purpose of the SDB. The SDB provides the compliance engineer with specific information to substantiate entrance into a firm for inspection. It provides a rationale which has been upheld in a recent court decision.

Following entry on the premises, the compliance engineer looks at the Log of Occupational Injuries and Illnesses. Here, the engineer must execute professional judgment as to the scope of his inspection at the firm.

If only inspection-preventable injuries were to be listed on the SDB, then current staff compiling the list would have to be augmented by compliance engineers. Their professional judgment would be necessary to identify "inspection-preventable" cases. Considering that close to 80,000 reports will be part of the 1979 SDB, this procedure would entail a prohibitive cost. Further, even if the costs of screening were provided,

this approach would limit the value of the SDB with respect to assistance in standards development. On site visits to places where injuries occur bring to light preventable injuries if a standard were to be revised, if one exists, or if a new standard should be developed.

Improvements in Process

The report notes that the Safety Data Base is old and incomplete. This statement is correct as the listings were pilot projects to determine SDB usefulness and what industries to include on an ongoing basis. Time was required to develop the computer programs for an ongoing Safety Data Base activity. With the two pilot projects completed, the Division of Labor Statistics and Research is putting the SDB on a current basis and will provide the Division of Occupational Safety and Health with two listings a year.

At first, a 50 percent sample will be used because of insufficient clerical help to do a 100 percent review. The report recognizes that the expansion of the sample is under way (p. 20).

The report notes that the Federal OSHA program utilizes a similar inspection system. As far as is known, no "similar inspection system" is available at the Federal level. The Federal system indicates high-hazard industries but does not pinpoint firms with poor safety records. Specifically, within a given SIC group, establishments are selected for inspection in order of size of employment. This array by size of employment has no relationship to injury performance. In the California SDB firms are arrayed by number of injuries and illnesses and, in future listings, the incidence rates are to be shown.

Because the California SDB methodology incorporates a firm's injury experience, it has received national attention. A draft report just released by the General

Accounting Office (GAO) describes the California system, along with Michigan's. This State is far more advanced on system development than other states. Further, the Division of Labor Statistics and Research has received many requests from all over the country for background information on how the SDB was developed.

EDD List Not Useful

The report recommends that district offices receive a listing of all firms from the Employment Development Department file of firms which shows the industry code of firms. The former inspection scheduling system (ISS) used by the then Division of Industrial Safety was precisely this list. It was discarded because it proved to be useless to District Managers. It lost credibility for the following reasons:

- (1) For multi-establishments the EDD listing shows only the address from which the unemployment insurance form is filed, generally a corporate office or a tax office. Consequently, the address given is in many instances not the location where an inspection would be made.
- (2) Names are not necessarily the firm names under which establishments are operating. For example, no listing would be shown for Shasta Beverage, Lyons Restaurant, Oxford Chemicals, Union Sugar, and Gem Furniture Products. All of these appear on the listing as Consolidated Foods, the parent corporation.
- (3) SIC codes are sometimes in error.
- (4) The SDB was developed precisely because District offices complained that, without knowing the injury experience of firms listed, they wasted inspection time.
- (5) The EDD listing is old. As a consequence, when the former ISS was used, many complaints centered about firms no longer in business or which had address changes. The SDB avoids these problems by using the address on the worker's compensation record.

Occupational Injury and Illness Experience in the 1970's

Because changes in labor market conditions affect year-to-year trends in incidence rates, it is necessary to look at the rates over a longer time span in order to see whether safety and health efforts have had an impact on the workplace.

The first annual survey of occupational injuries and illnesses in California, which covered establishments in the private nonfarm sector, was conducted in 1972, a year before the passage of the CAL/OSHA Act.

The table below which compares the incidence rates for occupational injuries and illnesses for major nonfarm industry groups in 1972 with recently released rates for 1977 indicates an average decline of 18 percent during the period, with all industry groups sharing in the improvement. It is interesting to note that the incidence rate in construction, a high-hazard industry subject to rather rigorous safety orders, has registered an incidence rate drop over the five years of 30 percent.

TOTAL INJURY AND ILLNESS RATES
CALIFORNIA, 1972 AND 1977

<u>Industry Sector</u>	<u>1972</u>	<u>1977</u>	<u>Percent Change</u>
Private Nonfarm Total	12.6	10.3	- 18.0
Mining	16.5	12.7	- 23.0
Construction	25.0	17.6	- 30.0
Manufacturing	17.7	14.0	- 21.0
Transportation, Communication, Utilities	12.4	11.1	- 10.0
Wholesale Trade	13.1	10.2	- 22.0
Retail Trade	10.7	9.6	- 10.0
Finance, Insurance, Real Estate	3.3	2.8	- 15.0
Services	7.7	6.8	- 12.0

Source: Division of Labor Statistics and Research

The overall incidence rates represent one measure of the injury and illness picture, but there are other measures derived from workers' compensation claims data that also point to progress in reducing the toll of injury, illness, and death.

For example, we may look at what has happened to standards-related fatalities.

Certain types of fatalities are compensable under California Workers' Compensation Act but are not subject to State Safety Orders. Fatalities resulting from airplane crashes, assaults, heart attacks, highway motor vehicle accidents and job-connected deaths among household domestics are included in this category. By subtracting these categories from the total, the number of deaths that may be associated with a failure to comply with a Safety Order is attained.

<u>Year</u>	<u>Total work fatalities</u>	<u>Standards-related fatalities</u>	<u>Other fatalities</u>	<u>Incidence rate for Standards-related fatalities^a</u>
1971	711	311	400	4.61
1972	650	287	363	4.07
1973	711	285	426	3.82
1974	727	283	444	3.69
1975	662	279	383	3.64
1976	645	248	397	3.09

^a Fatalities per 100,000 workers.

As seen in the above tabulation, standards-related fatalities have declined steadily since 1971, with the largest relative decline, 11 percent, taking place between 1975-76. In contrast, fatalities not subject to State Safety Orders have

followed an erratic pattern. Further, incidence rates per 100,000 workers for standards-related fatalities, which take account of variations in employment, have also declined steadily since 1971. Between 1975 and 1976, the standards-related fatality incidence rate declined by 15 percent, the largest relative year-to-year decline since 1971.

To measure the impact of CAL/OSHA one may also look at fatal and nonfatal injuries caused by hazards that have been subject to stringent safety requirements in recent years.

Ditching and trenching operations are subject to strict shoring requirements and in recent years permits have been required before the contractor can commence work. In the five-year period, 1960 through 1964, fatalities caused by collapse of ditches, trenches or excavations averaged 17 per year in California, and non-fatal injuries averaged 163 per year. In the last five years of the 1960's, fatalities averaged nine a year, and nonfatal mishaps averaged 140. In contrast, during the five years, 1972 through 1976, fatalities resulting from collapse of ditches, trenches or excavations averaged four per year, and nonfatal injuries sustained in such accidents averaged 59 per year. Thus in recent years, the fatality toll has dropped to 25 percent of what it was in the early 1960's and the number of nonfatal injuries has dropped to just over a third of the number registered earlier.

We can point to similar progress in reducing deaths due to rollover of earth-moving equipment since the requirement for rollover protective structures took effect.

A total of 168 workers were killed during the decade of the 1960's. The annual death toll from rollovers remained fairly constant during that 10-year span. The

number of deaths from rollover of earthmoving equipment has been sharply cut since 1972. The death toll in the peak year 1965 was 23; over three times the number of workers killed in each of the three years 1973 through 1975, and over 11 times the two deaths registered in 1976 due to equipment rollover.

Another area subject to stringent regulations are elevated working areas at the construction site. In the years between 1965 and 1969, fatal falls from elevated working surfaces on construction jobs in California averaged 35 per year. Between 1972 and 1976, deaths caused by falls from elevations in construction averaged just over 20 a year, a drop of more than 40 percent.

The overall incidence rates derived from the annual OSHA survey do point to substantial improvement in California's job-connected safety and health picture, particularly in high-hazard industries.

However, it is when one examines the sharp drop in fatal accidents, such as those described above, that have contributed to a high death toll over the years, that one can appreciate the remarkable progress that has been achieved in recent years.

Division of Labor Statistics and Research
Department of Industrial Relations
February 1979

THE SMALL EMPLOYER CERTIFICATION PROGRAM

A Pilot Project of the Cal/OSHA Program

PROPOSAL

Consultation and enforcement efforts within the Cal/OSHA program are separate functions, but they have a common purpose: assuring safe and healthful workplaces for California workers. With this purpose in mind, the Cal/OSHA Consultation Service and the Division of Occupational Safety and Health propose to undertake a pilot project, the Small Employer Certification Program. Under this program, small employers (10 or fewer employees) who have had a complete consultation by the Cal/OSHA Consultation Service in the previous 12 months and who are meeting certain criteria will not be inspected by DOSH in the course of its scheduled routine inspections.

The goals of this pilot program are twofold:

- To increase the use by small employers of the Consultation Service by removing the fear that a consultation visit will trigger a compliance inspection; and
- To promote better utilization of compliance personnel by eliminating the need to inspect firms that have taken positive action toward voluntarily complying with Cal/OSHA standards.

DESCRIPTION OF PROGRAM

Criteria

Under this proposal, an employer with ten or fewer employees at a single fixed worksite will not be inspected by DOSH as part of its scheduled inspections if the following three conditions are met:

- A Cal/OSHA wall-to-wall on-site consultation has been made within the previous 12 months;
- The employer has implemented or is implementing the abatement schedule for all hazards included in the Consultation Service report; and
- The employer has an accident prevention program that satisfies the requirement of Safety Order 3203.

Procedures

Detailed procedural directives are in preparation for the respective manuals used by the consultants and the compliance personnel. Basically, the small employer requesting a consultation will be told of the Certification Program. If the employer elects to participate, he is to encourage his employees to take part in the consultation. The consultant will make a wall-to-wall survey of the

workplace. All serious and general hazards will be identified and classified and abatement dates set that are mutually acceptable to the employer, employees or their representative, and the consultant.

The consultant will review the employer's accident prevention program to ascertain whether or not it meets the requirements of Safety Order 3203. If such a program is lacking, the consultant will assist the employer in establishing one. Involvement of employees in the accident prevention program, including safety committees and internal complaint procedures, should reduce the incidence of employee complaints to DOSH. Although the consultant will encourage employees to use such internal complaint procedures, he also will explain the procedures for filing a complaint with DOSH.

The employer will receive a written report outlining findings of the consultation and agreed-to abatement measures. The report will be posted for employee information. Follow-up visits by the consultant will be made to assure abatement of serious violations; written confirmation of abatement of general violations usually will be accepted.

When a DOSH compliance officer is on a routine inspection and determines that the employer is a participant in the Small Employer Certification Program, he will examine the consultation report and verify that the employer is adhering to the abatement schedule. If he is satisfied that the employer's obligations are being met, he will terminate his visit.

Employee rights

None of the procedures envisaged in the Small Employer Certification Program will diminish the rights afforded employees under the Cal/OSHA program. Instead, workers in general will benefit both because increasing numbers of employers will be encouraged to voluntarily eliminate safety and health hazards and because enforcement personnel can expend their efforts on inspections of workplaces where hazards have not been identified and abated.

Evaluation

The Small Employer Certification Program is an experiment. In order to track its impact, the forms used by consultants and enforcement staff will include provisions to document the extent of participation in the program. This information will be reviewed on a quarterly basis. At the end of one year of operation, an evaluation report will be prepared as a basis upon which to determine whether or not the program should be continued and, if so, what adjustments should be made to increase its effectiveness.

BACKGROUND TO DEVELOPMENT OF PROGRAM

The Small Employer Certification Program takes into account the OSHA mandate that consultation programs based on 7(c)(1) agreements give priority to small employers,

the implications of the recent Dole Amendment to the HEW-Labor Appropriations Bill, and the need to direct Cal/OSHA's enforcement resources to those workplaces most likely to be hazardous.

Federal mandate

Federal regulations pertaining to 7(c)(1) consultation programs require that a special effort be made to reach small employers. Many small employers either do not know of the service or are reluctant to use it because they fear that an on-site consultation will trigger a compliance inspection. This fear is further compounded by the disproportionate amount of attention given the requirement for referring unabated imminent hazards and serious violations to DOSH. The Small Employer Certification Program should generate publicity that will capture the attention of small businessmen, dispel these fears, and encourage use of the Consultation Service.

Dole amendment

The Dole Amendment -- a rider attached to the HEW-Labor Appropriations Bill for 1978-79 -- demonstrates the interest of Congress in the development of incentives for small business to use state consultation services. The effect of the amendment is to free the employer with ten or fewer employees from penalties for all violations other than serious, willful, or repeated found during an inspection if the employer has made or is making a "reasonable good faith effort" to comply with recommendations previously made by a consultant that relate to the conditions cited. It should be noted that, by means of another amendment to the Appropriations Bill, employers of all sizes and without regard to their use of consultation services are exempt from penalties on nonserious violations when the total number of all types of violations found are fewer than ten. Therefore, the only added inducement in the Dole Amendment is freedom from penalties on all nonserious violations.

The Small Employer Certification Program is in keeping with the spirit of the Dole Amendment but is designed to be considerably more effective in attracting small employers to use the Cal/OSHA Consultation Service by providing an exemption from a compliance inspection if certain criteria are met.

Enforcement resources

The Small Employer Certification Program should provide an opportunity for Cal/OSHA to have some impact on a greater number of the several hundred thousand workplaces in California. If sites that have had a consultation visit are excused from routine compliance inspections under prescribed circumstances, the enforcement personnel will be available to use their time more efficiently by directing their attention elsewhere to potentially more hazardous workplaces.

CALIFORNIA COTTON GINNERS ASSOCIATION

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February 5, 1979

Emmett E. Jones, Chief
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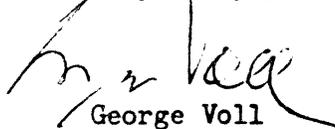
Dear Chief Jones:

The California Cotton GINNERS Association represents 95% of the 200 producing cotton gins located in or near the 11 cotton producing counties in the State of California. Many of the gins benefit from company sponsored safety and health programs while on the other hand to a large number of these gins these services are not readily available. In either case, it has long been realized that the complexity of the ginning system creates conditions which, on occasion, fail to comply with Safety Orders.

During this past season the Cal/Osha Consultation Service, directed by Harry M. Wallace and his staff has been extremely helpful in not only pointing out potential hazards but offering suggestions toward their solution.

It is gratifying to the California Cotton GINNERS Association that the Department of Industrial Relations provides a comprehensive and professional service as a back-up in interpreting and complying with existing regulations. This service is particularly advantageous to those who operate small companies and individual gins.

Very truly yours,


George Voll
Executive Vice President

GV/nh

cc: Honorable John Thurman
California State Assembly, Sacramento

Mr. C. Everette Salyer, President
California Cotton GINNERS Association



AUDITOR GENERAL'S COMMENTS ON
THE DEPARTMENT OF INDUSTRIAL
RELATIONS' RESPONSE

We normally do not comment on agency responses to our audit reports. However, in this instance, we find it necessary to comment on the Department of Industrial Relations' response to provide perspective and clarity.

As the Director of the Department of Industrial Relations (DIR) stated in his February 8, 1979 letter, a cooperative working relationship did exist between the audit staff and the Cal/OSHA staff. As is our policy, we kept the Cal/OSHA staff aware of every area we were developing and met with the director on several occasions. These meetings were held on June 29, September 27, November 9 and January 18. We also made it clear that we were available at any time to meet and discuss any elements of our work.

DIR takes exception to the facts presented in our report in only two instances:

- In manpower and funding (response pages 1 and 2)
- In federal staffing patterns (response page 6).

In both cases, our information is correct.

On pages 1 and 2 of its response, DIR takes exception to the statistics used in our introductory section. The staffing and dollar figures used in our report for 1973-74 were taken directly from actual amounts shown in the 1975-76 Governor's Budget. The 1978-79 budget amount reported in DIR's response (\$17,306,595) is identical to the amount we cite on page 7 of our report as the total outlay for the federal Section 23(g) grant only. Our draft report showed the proposed Governor's Budget for 1978-79 of \$25,035,287. Our final report has been updated and shows the approved 1978-79 budget of \$25,153,700. DIR did not include the costs of other components of its occupational safety and health activities as footnoted on page 6 of our report.

On page 6 of the response DIR questions the data reported in Table 2 (page 42). DIR states that California data represent "filled positions . . . whereas those for the other states appear to be budgeted positions at some earlier date." Nowhere in our report do we indicate that these data represent "budgeted" positions or are from "some earlier date." In fact, the data we report for the federal OSHA states represent actual filled positions in 1978 and are, therefore, comparable to the California data. This information was obtained directly from the federal Occupational Safety and Health Administration.

DIR implies that OSHA activities have reduced injuries and illnesses "at least to some extent." In our report (page 35) we note that intensive inspections may have had a positive impact on reducing injuries. On page 2 of its Exhibit I, DIR alludes that the reduction in the fatality incident rate shown in their chart "may be associated with a failure to comply with a safety order . . ." (emphasis added.) However, DIR has never provided us, nor does its Exhibit I provide, any data establishing a correlation between specific OSHA activities and the incidence of accidents or injuries. On page 2 of Exhibit I, DIR's chart indicates a decline in "Incident rate for Standards-related fatalities." However, one of the largest declines, from 1971 to 1972, occurred before Cal/OSHA enforcement activities began. Further, the Chief of the DIR Division of Labor Statistics and Research stated that there was no way to statistically measure the effectiveness of an OSHA program due to numerous variables, including those cited in our report such as the state of the economy and employee awareness.

COMMENTS ON SPECIFIC AREAS OF
DIR'S RESPONSE

The following comments provide perspective and clarity to specific items discussed in DIR's response.

State Plan Withdrawal (response pages 3-6)

On page 3 of the response, DIR states:

The recommendation that consideration be given to withdrawing the State Plan and allowing Federal preemption is based on an analysis that gives only the briefest of attention to qualitative factors that have made California a leader among states in the field of worker safety and health.

As independent auditors we did not weigh the unquantifiable, qualitative value of this program against the potential annual savings to the State of \$6.8 million available through federal preemption of certain state-administered functions. Further, we question whether DIR can do so objectively. Therefore, as we say in our report, this matter is one more appropriate for consideration by the Legislature.

In our report we acknowledge that differences exist between California's OSHA program and the federal program. We also point out that many of these differences are unquantifiable. For example, on page 4 of its response, DIR attests that use of Special Orders would be lost under federal preemption; however, a Special Order cannot be accompanied by a monetary penalty, but merely instructs the employer to correct a hazard not covered by a standard. A federal OSHA inspector in the same circumstance can cite the Federal General Duty Clause which not only requires

the employer to correct the hazard but is also a citable violation that can be accompanied by a fine.

Standards Development (response pages 7-10)

DIR's response to this section of our report is again unquantifiable. DIR states that comparing cited standards is not a good indication of differences between programs, but it does not offer a better method. In our report we acknowledge differences between California and federal standards, but again we find the differences generally insignificant and as such believe the Legislature is the appropriate body to determine if the benefits are worth the cost.

Consultation Service (response pages 11-13)

DIR basically concurs with our report.

Inspection Scheduling (response pages 14-16)

On page 14 of its response, DIR states that the purpose of the SDB is to provide a legal rationale to "substantiate entrance into a firm for inspection." We found that the SDB is primarily used as a basis for scheduling routine inspections of firms listed. We recommended that deficiencies we identified in the SDB, such as targeting employers victimized by armed robbery (report, page 19), should be eliminated.

As stated in the report, DLSR recognized these deficiencies and has acted on our suggestions. However, we disagree with the contention that it is necessary to use compliance engineers to implement a scheduling system targeting only those firms which have had inspection-preventable accidents.

We accept that in some instances (such as an accident report stating only that "employee cut his finger"), it may be difficult to make a precise determination of inspection-preventability. However, as DIR states in Exhibit I, page 2 of its response, ". . . airplane crashes, assaults, heart attacks, highway motor vehicle accidents and job-connected deaths among household domestics are (not subject to State Safety Orders). . ." Thus, some categories of injuries clearly cannot be considered inspection-preventable.

Therefore, it would be more appropriate to develop a list of injuries which are not inspection-preventable for the use of clerical staff. This would prevent misdirection of inspections and reduce targeting of employers with otherwise satisfactory safety records.

In reference to DIR's comments on the EDD list, we do not recommend replacing the SDB with the EDD unemployment file listing. Rather, in view of the deficiencies we found in the SDB

and considering the opinions of district managers we talked to, we recommended it be provided to district officers as a reference document. DLSR now uses it as such despite the problems noted on page 16 of the response.

Conclusion

For the reasons stated in our report, we still recommend that:

- The Legislature consider the potential annual state savings of \$6.8 million which could be realized by withdrawing the State Plan and allowing federal preemption of certain OSHA activities
- The Legislature consider whether the benefits of Standards Board activities justify its annual state cost of approximately one-half million dollars
- Cal/OSHA and DLSR design a current, continuous scheduling system targeting only those firms which have had inspection-preventable accidents. In addition, a listing of all firms (obtained from the unemployment insurance file) should be provided to district offices

- The Consultation Service and the Division of Labor Statistics and Research compile management information according to the size and industrial classification of businesses served so that the Consultation Service's effectiveness in reaching small, high-hazard firms can be measured. In addition, the Consultation Service should continue its effort to adopt a policy exempting firms from compliance citations for nonserious violations found by a consultant when such violations are being corrected.

CAL/OSHA'S LISTS OF DIFFERENCES
BETWEEN ITS PROGRAM AND THE FEDERAL
OSHA PROGRAM

The Cal/OSHA Program Office provided us with a list of differences between state and federal OSHA programs (see page A-2). This list was subsequently verified and added to in a letter from the Director of the Department of Industrial Relations to the Auditor General (see page A-4).

MAJOR WAYS IN WHICH CAL/OSHA DIFFERS FROM THE FEDERAL OSHA PROGRAM

1. Standards

Unlike many states, California chose to retain its existing Safety Orders as its occupational safety and health standards rather than to adopt wholesale the OSHA standards package. Federal OSHA adopted many consensus standards which in many cases do nothing to protect workers, are unreasonable and unenforceable. Federal standards do not always satisfy the needs of the California work environment.

2. On-site Consultation

The State has an active on-site consultation program to assist employers which is completely separate from its compliance activities. The Federal Act has been interpreted as not permitting on-site consultation in the Federal program, although states are encouraged to do so.

3. Coverage of State and Local Government Agencies

Except for civil penalties, all provisions of CAL/OSHA are applicable to state and local governments, including the recordkeeping requirements. The Federal program does not cover these groups.

4. Ability to Cope with Imminent Hazards

California can claim "more effective than" status in its ability to eliminate imminent hazards. The Division of Industrial Safety engineers have "yellow tag" authority to shut down equipment or workplaces. Under the Federal Program, an injunction must be obtained.

5. Sanctions

CAL/OSHA has some criminal sanctions beyond those found in Federal OSHA. These are additional misdemeanor provisions dealing with negligent or repeated violations or failure to abate when a real and apparent hazard to employees is involved. A separate Bureau of Investigation conducts accident investigations and prepares cases for review and prosecution by local district attorneys.

6. Permits for Hazardous Projects

Enabling legislation established a permit system whereby employers on certain types of construction or demolition projects are required to obtain permits from the Division of Industrial Safety. This process provides a means both of determining that the employer is aware of applicable standards and of aiding the Division to keep track of high-risk work sites. Federal OSHA has no such provision.

7. Employment Accidents Involving Contractors

If a contractor is involved in an employment accident which is fatal to one or more employees, or seriously injures five or more employees, the enforcement agency is mandated by law to forward copies of its investigation report to the State Registrar of Contractors, who administers the licensing of contractors. The Contractors' Board can revoke a license of an employer whose record shows a disregard for employee safety. No parallel provision is found in the Federal Program.

8. Poster

In recognition of the ethnic background of a sizable portion of the California workforce, the CAL/OSHA poster dealing with employee protections and obligations is printed in Spanish as well as English on a single poster that must be displayed in all places of employment covered by the program. The Federal poster receives general distribution in its English version; copies in Spanish are available upon request.

9. Employee Complaints

The California Program requires that the Division must respond to employee complaints of unsafe conditions within three working days. There are no time requirements for Federal OSHA to respond to employee complaints.

10. Employee Discrimination

California's statutes provide greater protection to employees from discrimination in that an employee shall not be laid off or discharged for refusing to work in situations where a violation of any occupational safety or health standard or safety order would create a real and apparent hazard to him or his fellow employees.

**DEPARTMENT OF INDUSTRIAL RELATIONS**455 GOLDEN GATE AVENUE
SAN FRANCISCO 94102ADDRESS REPLY TO:
P.O. Box 603
San Francisco 94101

August 31, 1978

Mr. John H. Williams
Auditor General
Joint Legislative Audit Committee
California Legislature
925 L Street - Suite 750
Sacramento, California 95814

Dear Mr. Williams:

Thank you for advising me of your recommendation for a management review of the CAL/OSHA program as a result of your preliminary survey. I am informing the various components of the program, and I know you can count on their cooperation.

We have reviewed the list of differences between CAL/OSHA and the Federal program and find that, in general, it still is an appropriate list of major differences. However, a 1976 change in the Labor Code affected the time requirements specified in item 9, Employee Complaints. The three-day response period is required if the complaint charges a serious violation and 14 days if the complaint charges a nonserious violation. Since the list was developed, Federal OSHA, by administrative directive, has established a somewhat elaborate system of time frames for responding to complaints in the Federal program, including actions to take if the time requirements cannot be met. The Program Office will be able to provide you with further information on this matter. ^{1/}

Our efforts in developing voluntary compliance agreements and in developing an inspection scheduling system can be viewed as different approaches to problems than have been used by Federal OSHA; as such, you may want to cover them in your review if your preliminary survey did not touch on them in sufficient detail.

No doubt we should also mention that some of the CAL/OSHA procedures differ from Federal procedures in some respects. If you are interested in this type of detail, however, it can be developed during the review.

We are enclosing a related document that may not have been provided your staff with the package of materials at the initial meeting in June. It

^{1/} (Auditor General's note) See page A-2 for a copy of this list.

John H. Williams

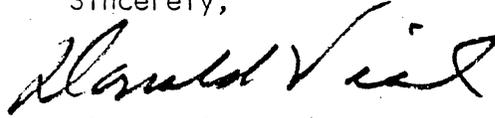
-2-

August 31, 1978

deals with the advantages of a state-administered occupational safety and health program, and, although the statistics are out of date, you may still find it of interest.

Please do not hesitate to contact me if I can be helpful in any way during the course of the review.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald Vial". The signature is written in a cursive style with a large, sweeping initial "D".

DONALD VIAL
Director

enclosure

ADVANTAGES OF A STATE-ADMINISTERED OCCUPATIONAL SAFETY & HEALTH PROGRAM

California has historically been concerned with the safety and health of workers and has generally been the leader among the states in this field. When the Federal Occupational Safety and Health Act of 1970 was signed, almost everyone agreed that California's working people would be better protected under a state program rather than the Federal program.

Several major advantages to a state-administered program are:

1. The State provides broader program coverage by including public employees. In 1974 some 1.3 million employees working for state and local government were afforded all the rights and protections to a safe and healthful workplace in the same manner as private employees. Federal OSHA's jurisdiction does not extend to public employees.
2. More resources or input can be devoted into a state program by obtaining 50 percent Federal funding. It is reasonable to assume that without a state program Federal OSHA would provide no more than one-half of what is spent today to protect California's working people. It should be noted that the fines imposed on employers for violating safety and health standards are deposited into the State General Fund. Although revenue from this source cannot be accurately estimated, penalties of

\$1.5 million were proposed during the last fiscal year. The estimated net cost of \$5.5 million to the State for this year translates into a very small state expenditure per covered employee since some 7.7 million employees are covered and benefit from the state program.

3. California's program provides employers and employees with the ability to deal with a program administered closer to home. This is important in all areas such as standards setting, enforcement, appeals and is especially important in the consulting area which is not provided by the Federal program. Employers can obtain on-site consultation without fear of citations and fines in dealing with safety and health hazards in the workplace. This contributes towards a safer work environment for California's employees.
4. Despite many implementation problems, some of which still exist today, most everyone agrees that the CAL/OSHA Program provides far better protection to workers than the Federal program. During the last fiscal year, 17,965 establishments were inspected affecting 1,006,578 employees in which 71,754 unsafe conditions were found and abated. Federal OSHA would in all probability not provide this kind of compliance activity.

ESTIMATE OF STATE GENERAL FUND
SAVINGS AVAILABLE THROUGH
WITHDRAWAL OF THE
STATE OSHA PLAN

(Based on Federal FY 1979)

UNAUDITED

State's Contribution (State's present share of total Cal/OSHA program costs)	\$8,947,898
Less Penalty Revenue (Employer fines, based on actual state FY 1977-78 collections. Revenue generated would be foregone in the event of withdrawal)	<u>(974,727)</u>
Present Net State Contribution	\$7,973,171
Less: Cost of ancillary state programs (To provide a similar level of coverage, based on state FY 1977-78 public and private sector workload proportions, for public sector inspections at 50% state funding, private sector consultations at 10% state funding, and public sector consultations at 100% state funding. All other program functions would be provided by federal OSHA)	<u>(1,204,469)</u>
Estimated savings available	<u><u>\$6,768,702</u></u>

Note:

These costs are estimates. Actual cost differences due to proration of administrative and training costs and certain minor costs of transition would be difficult to estimate but have minor impact on the estimated savings available.

The Federal Government now provides \$11,447,472 of Cal/OSHA's funds. It would contribute \$3,371,698 to the cost of ancillary state programs.

Office of the Auditor General

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Democratic/Republican Caucus
California State Department Heads
Capitol Press Corps