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Briefing Report to the Ranking Minority Member, Subcommittee on Health and Safety, Committee on Education and Labor, House of Representatives

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May 1987

WORKER PROTECTION:

Notifying Workers at Risk of Occupational Disease



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

Human Resources Division

B-227196

May 11, 1987

The Honorable Paul B. Henry
Ranking Minority Member
Subcommittee on Health and Safety
Committee on Education and Labor
House of Representatives

Dear Mr. Henry:



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This briefing report responds to a request by Congressman Rod Chandler, the Subcommittee's former Ranking Minority Member, for information on legislative proposals to establish a federal health risk notification program for workers exposed to hazardous substances. Under such a program the Department of Health and Human Services (HHS) would (1) determine which substances in the workplace cause disease and illness, (2) identify and notify employee populations and individuals found to be at risk, and (3) provide medical and support information and services to notified workers. Similar risk notification legislation was introduced during the 99th Congress (H.R. 1309 and S. 2050) and the 100th Congress (H.R. 162 and S. 79).

We were asked to address questions on (1) the difficulties for the federal government in carrying out risk notification, including the feasibility, cost, and Privacy Act restrictions; (2) the potential benefits and disadvantages to workers of risk notification; and (3) the possibility of expanding the Department of Labor's hazard communication standard to carry out the proposed legislation's intent. This standard requires that the hazardous effects of chemicals be evaluated and information about the hazards be made available to workers in the manufacturing industry. Labor's Occupational Safety and Health Administration manages the hazard communication standard.

This report expands on our March 12, 1987, presentation to you, Representative Cass Ballenger and Representative Thomas E. Petri. As noted during that briefing, sufficient information is unavailable to adequately answer these questions. We could not estimate the potential impact of worker notification on litigation, workers' compensation,

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and insurance costs because (1) no reliable data were found and (2) an acceptable approach for projecting these costs could not be developed within the time available. In addition, no evaluative information was available on Labor's effectiveness in implementing the hazard communication standard which went into effect in May 1986.

When addressing the questions, as agreed with the Subcommittee's office, we primarily considered the key provisions of H.R. 162, including amendments made during the Subcommittee's mark-up hearing on April 23, 1987. As agreed, we considered the substitute proposal suggested by you and Congressman James M. Jeffords, introduced on April 23, 1987, at the Subcommittee's mark-up hearing, to expand the hazard communication standard as an alternative to H.R. 162.

Our review was made between February and April 1987. We used information from available studies, journal articles, and congressional testimony. We also reviewed agency files and interviewed knowledgeable officials from the Departments of HHS, Labor, and Justice, as well as representatives of private groups.

Our principal observations are summarized below and discussed in more detail in this briefing report.

FEASIBILITY OF NOTIFYING WORKERS

Several pilot projects conducted by HHS's National Institute for Occupational Safety and Health (NIOSH) showed that identifying and notifying individual workers that they might be at risk of occupational disease is feasible, at least on a small scale. For one such study conducted in Augusta, Georgia, NIOSH concluded that notification is feasible and that medical monitoring and support services are needed. Recent attempts by NIOSH to fund a notification program have not been successful.

The pilot projects also raised a feasibility issue regarding the appropriate method for deciding which workers should be notified. To address this issue, H.R. 162 would establish a Risk Assessment Board within HHS. The board would review medical and scientific studies to determine which employee populations, based on scientific evidence, are at risk of work-related diseases. The bill establishes procedures and priorities for the board to follow in making its decisions. Using the board's findings, the HHS Secretary, through NIOSH, would notify individual workers of their risk.

Recent changes to the proposed legislation provide the government access to records containing information and data necessary to identify and notify workers at risk; and restrictions on the collection, use, and protection of records will protect workers' privacy consistent with the Privacy Act.

COST OF NOTIFICATION

No comprehensive cost estimates for a large scale program such as H.R. 162 have been developed primarily because of (1) uncertainty about the number of workers to be notified, and (2) difficulties in estimating costs associated with a notification program, such as possible increases in litigation and workers' compensation claims.

Based on NIOSH cost estimates, it could cost about \$25 million annually to notify 300,000 workers; to implement other provisions of H.R. 162, including establishing 50 health centers, and to improve methods for identifying and treating workers at risk by funding research, training, and education. Labor estimates that about 9 million workers may be exposed to chemicals covered by the hazard communication standard. Because it is not known how many of these and other current and former workers potentially at risk will meet the bill's criteria for notification, it is quite possible that the number of workers covered would be much greater. The actual number of workers notified each year and the program's cost will also depend on factors such as the number of studies reviewed by the Risk Assessment Board and the number of workers it determines to be at risk. Thus, unless the program is constrained by funding, the cost of the program could be increased beyond the NIOSH estimate.

Indirect costs of the bill could be substantial if notified workers initiate a large number of lawsuits and workers' compensation claims. To discourage lawsuits and claims, recent changes to the bill prohibit the use of the risk determination or notification as evidence in a lawsuit against an employer or a claim for workers' compensation. The changes also prohibit lawsuits against the federal government and limit liability of federal employees to knowing and willful violations of the act.

BENEFITS AND DISADVANTAGES TO WORKERS

For workers, the principal benefit of notification is the possibility of quicker and improved medical treatment

because of better information about occupational health risks. The medical benefits depend, however, on the disease the notified worker is at risk of contracting. For example, bladder cancer is more effectively treated in its early stages, whereas the treatment and outcome for leukemia are generally thought to be the same regardless of how early it is detected. H.R. 162 requires that the Risk Assessment Board, when determining workers to be notified, give priority to those most likely to benefit from medical intervention.

Several industry representatives contend that workers are already informed about workplace hazards under existing federal, state, and private programs and that H.R. 162 is not needed to do this. Supporters of the notification concept, however, have stated that current regulations, such as the hazard communication standard, cover only workers in certain industries (and no former workers) who were exposed to a hazard, and require that workers be told about a hazard's presence, but not about the probability of their contracting an occupational disease. H.R. 162 would apply risk notification to current and former workers in any industry where the board determines that workers are at risk of contracting an occupational disease.

Some industry representatives have testified that notifying workers of a potential health risk may produce distress and fear among workers. Labor unions and health groups, on the other hand, claim that notification projects carried out by NIOSH, the National Cancer Institute, and unions did not encounter such problems with workers they notified.

H.R. 162 VERSUS EXPANDED HAZARD COMMUNICATION STANDARD

The substitute proposal to expand the hazard communication standard as an alternative to H.R. 162 may advance the bill's goal of disease prevention, but the proposal does not include many of the key features of the bill and would not achieve its other goals. Informing workers of hazards through product labels and safety training before exposure as required by the standard, may enable some workers to reduce or eliminate their exposure and risk of disease. The proposal would not, however, achieve H.R. 162's goal of individual risk notification because the hazard warning alerts workers to the hazard's presence and not to their

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risk of disease. Further, the proposal would not require employers to pay medical monitoring costs, establish health centers, or fund research, as called for in H.R. 162.

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As requested by your office, we did not obtain comments from the Departments of Labor, HHS, or Justice on this briefing report. Their official position on H.R. 162 was transmitted to the Subcommittee Chairman on April 23, 1987. As also arranged with your office, we are sending copies of the report to the Ranking Minority Member of the Senate Committee on Labor and Human Resources. Unless its contents are publicly announced earlier, we plan no further distribution of the report until 10 days from its issue date. At that time, we will send copies to interested congressional committees; the Secretaries of Labor and HHS; the Attorney General; the Director, Office of Management and Budget; and other interested parties.

Should you need additional information on the contents of this report, please call me at 275-5365.

Sincerely yours,



William J. Gainer

William J. Gainer
Associate Director

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ABBREVIATIONS

CDC	Centers for Disease Control
HHS	Department of Health and Human Services
NIOSH	National Institute for Occupational Safety and Health
OSHA	Occupational Safety and Health Administration

WORKER PROTECTION:
NOTIFYING WORKERS AT RISK
OF OCCUPATIONAL DISEASE

BACKGROUND

The Occupational Safety and Health Act of 1970 established the Occupational Safety and Health Administration (OSHA) within the Department of Labor and the National Institute for Occupational Safety and Health (NIOSH) within the Department of Health and Human Services (HHS).

In carrying out its responsibilities, OSHA, in 1971, adopted as federal standards for about 400 chemical and toxic substances exposure limits established by the American Conference of Governmental Industrial Hygienists. Since 1971, OSHA has adopted health standards regulating the use of 22 specific chemical and toxic substances in the workplace and a generic standard--the hazard communication standard--which requires that (1) the hazardous effects of all chemicals be evaluated by chemical manufacturers and importers and (2) workers in the manufacturing industry be informed about hazards associated with chemical exposures. (Standards for two additional chemical substances and one for noise were overturned by the courts.)

NIOSH, one of the Centers for Disease Control (CDC) within HHS, is responsible for identifying occupational safety and health hazards and developing ways to prevent or eliminate them. To carry out its responsibilities, NIOSH conducts a wide range of studies on occupational health hazards. Based on its findings, NIOSH recommends health and safety standards to OSHA for consideration in its rulemaking process.

Most of NIOSH's studies are on-site investigations to determine the toxic effects of chemical, biological, or physical agents found in the workplace. The results of these studies are usually posted at the workplace and provided to employers, employee representatives, OSHA, and, in many cases, to individual workers.

For the type of epidemiologic study called retrospective cohort mortality studies, NIOSH generally does not notify individual workers of the results. These studies involve reviews of various records for groups of workers in multiple locations rather than direct contact with individuals in a single workplace. From the data collected, NIOSH develops general, aggregate information about trends and potential risk factors for the groups studied. By 1977, from 66 of its mortality studies, NIOSH identified between 200,000 and 250,000 surviving workers from 66 of its mortality studies who were potentially exposed to

workplace health hazards and who were not individually notified of their exposure.

The issue of worker notification was initially raised during congressional hearings in 1977 before the Senate Subcommittee on Labor of the Committee on Labor and Human Resources. In its testimony and in a follow-up report, The Right to Know: Practical Problems and Policy Issues Arising From Exposures to Hazardous Chemicals and Physical Agents in the Workplace, submitted to the Committee, NIOSH said that individuals were not notified of the results of its mortality studies because (1) many logistical issues pertaining to individual worker notification were unresolved; (2) the cost of notification had to be considered; (3) there is a need for subsequent medical surveillance after notification, but such medical surveillance is not NIOSH's responsibility; and (4) there are problems inherent in notifying individuals when no effective early detection method is available. Subsequent to these hearings, NIOSH carried out several pilot studies to demonstrate the feasibility of and criteria for worker notification.

During the 99th Congress two similar bills (H.R. 1309 and S. 2050) were introduced, but not passed, to establish a federal program for identifying, notifying, and preventing illness and death among workers who have an increased or high risk of occupational disease. In January 1987, the beginning of the 100th Congress, H.R. 162 and S. 79 were introduced; their provisions were similar to H.R. 1309 and S. 2050.

Representatives of industry, labor, public health groups, insurance companies, and federal agencies generally supported the concept of protecting workers from health hazards in the workplace, but disagreed on who should be notified of potential hazards and how it should be done. Congressional hearings have resulted in substantial changes to the current House and Senate bills. To lessen concerns expressed during the hearings, key revisions to H.R. 162 included making the criteria for identifying workers at risk more scientific and strengthening the procedures to be followed in the decision-making process. Changes were also made to protect employers and the federal government and its employees from lawsuits. The bill is currently identical in most respects to S. 79 and is supported by some of those who initially opposed it.

The key provisions of H.R. 162, revised as of April 23, 1987, are shown in table 1.

Table 1:

Key Provisions of H.R. 162

- o Establishes a Risk Assessment Board within HHS to:
 - (1) identify current and former workers at risk of disease,
 - (2) develop a form and method of notification, and
 - (3) determine the appropriate type of health monitoring and/or counseling for the disease associated with the risk.
- o Requires the HHS Secretary, through NIOSH, to notify individually workers at risk.
- o Requires employers, on request of notified employees, to pay for medical testing, evaluation, and monitoring if exposure occurred in the current employer's workplace; requires employees to pay if exposure occurred elsewhere.
- o Prohibits discrimination by employers against workers on the basis of identification and notification of occupational disease.
- o Requires HHS to establish 50 health centers to provide (1) education, training, and technical assistance to notified employees' personal physicians and (2) diagnosis, treatment, medical monitoring, and family services, if not otherwise available.
- o Authorizes funds for research to improve the identification, notification, and treatment of worker populations exposed to hazardous substances.

OBJECTIVES, SCOPE, AND
METHODOLOGY

The former Ranking Minority Member of the Subcommittee on Health and Safety, House Committee on Education and Labor, requested information on issues related to legislative proposals for establishing a federal program for identifying and notifying workers who may be at increased risk of disease because of exposure to hazardous substances in the workplace. We were asked to respond to the following questions as they relate to the House bill (H.R. 162) under congressional consideration:

- What difficulties would the federal government face in identifying and individually notifying employees (including cost and feasibility, as well as Privacy Act and other statutory restrictions)?
- What are the potential benefits and disadvantages of risk notification to workers?
- What is the best way to carry out the intent of this legislation; that is, should disease prevention and risk notification be done by HHS, or is expansion of OSHA's hazard communication standard more appropriate?

Our work was done between February and April 1987 and carried out in accordance with generally accepted government auditing standards. We reviewed and considered the provisions of H.R. 162 and S. 79, as amended through April 1987, relating to the above questions. These bills are similar to H.R. 1309 and S. 2050, introduced during the 99th Congress. We also reviewed these bills and associated testimony given at six House hearings and one Senate hearing. Further, we reviewed testimony given at recent hearings on H.R. 162 and S. 79. In addition, we were provided with an advance copy of the substitute proposal for expanding OSHA's hazard communication standard which was introduced by you and Congressman Jeffords at the Subcommittee's Apr. 23, 1987, mark-up hearing on the bill. As agreed with the Subcommittee staff, we reviewed the proposal relative to its fulfilling the intent of H.R. 162.

We also reviewed agency files, studies, and articles in professional journals and newspaper. We discussed the bills' provisions and other factors related to risk notification with officials at NIOSH, Labor, and Justice, and with representatives of various business, labor, insurance, and health organization groups.

The estimated costs of various provisions of the bill discussed in this briefing report are based on our review of available documentation and discussions with NIOSH officials. Because of time constraints, we did not (1) verify the accuracy

of NIOSH's program cost estimates and (2) assess its methodology for developing these estimates. We also were not able to develop comprehensive costs for a nationwide worker notification program primarily because of uncertainty about the number of workers to be notified.

In addition, we were unable to find usable estimates for other costs associated with worker notification, such as possible increases in personal injury lawsuits against employers, workers' compensation claims, and business insurance rates. Furthermore, time available was not sufficient for us to develop an acceptable methodology and gather data that would result in reliable estimates for these costs.

DIFFICULTIES FOR THE FEDERAL GOVERNMENT IN IDENTIFYING AND NOTIFYING WORKERS AT RISK

We were asked about the program's feasibility, costs, and implementation difficulties, such as Privacy Act and other statutory restrictions, the federal government might face in identifying and notifying workers at risk if H.R. 162 is enacted. Based on several pilot projects, the program appears feasible, but there is no comprehensive estimate of its full cost. NIOSH has developed estimates for some provisions of the bill, however, the number of workers to be notified has not been determined and we are not aware of any available methodology to reasonably estimate certain costs associated with the bill, such as the costs of lawsuits and workers' compensation claims that might be filed as a result of notification. These costs could be substantial if a large number of workers file lawsuits and workers' compensation claims. However, recent changes to the bill discourage such lawsuits and claims.

The bill's provisions for collecting, using, and protecting records containing information and data necessary to carry out the program are consistent with the Privacy Act, and the bill specifically provides the government access to such records.

Feasibility of Notifying Workers

During the late 1970s and early 1980s, NIOSH carried out several pilot projects and concluded that the techniques for identifying and individually notifying workers at risk exist and can be used successfully. For example, NIOSH - in conjunction with the Workers' Institute for Safety and Health, a public interest group - began a major pilot study at an Augusta, Georgia, chemical plant in 1980 to (1) evaluate problems inherent in notifying individual workers of potential health risks and (2) identify criteria and develop a conceptual model for subsequent notification efforts. NIOSH selected for study 1,385 workers who, between 1949 and 1973, were exposed to a potent bladder

carcinogen at the plant. A key part of this study was a bladder cancer screening and educational program for workers and their families set up by NIOSH, state and local health departments, a medical college, and a community action group.

In 1981, NIOSH mailed letters to 1,094 of the workers presumed to be alive and for whom addresses were found, notifying them of their risk from exposure and the procedures to follow for medical screening. Follow-up letters were sent to workers who did not initially respond. NIOSH was able to locate 849 of the workers, including more than 200 who had moved and had to be tracked; 655 participated in the screening and education program.

In its report on the Augusta study, NIOSH concluded that (1) the results of an epidemiological study are applicable to individual members of the group studied; (2) individual worker notification can be achieved; and (3) there is a need in the notification process for providing information, medical surveillance, and support programs.

Subsequently, debate within NIOSH addressed issues about the appropriate method for a notification program, such as selecting the studies to be included, identifying individuals in the studies who should be notified, and performing the notification. As part of this debate, the HHS Office of General Counsel issued an opinion, in February 1982, that NIOSH has no legal responsibility to individually notify workers included in its mortality studies of the studies' results. The CDC Ethics Advisory Committee, however, concluded in December 1983 that NIOSH has an ethical obligation to provide notification to individual workers, particularly when NIOSH is the exclusive possessor of clear evidence showing cause-effect relationships between an exposure and a health risk. Consequently, NIOSH continued its efforts and, in May 1986, adopted guidelines for a notification program. NIOSH has begun using its guidelines to select individuals from its mortality studies and plans to notify them of their risk.

Recent attempts by NIOSH to carry out limited notification programs have not been successful. NIOSH submitted budget requests for the programs for fiscal years 1985, 1986, and 1987, but did not receive funds. Its 1985 request was not funded because of the low priority given the program by CDC. The 1986 request was not approved by HHS because of concerns about ethical, social, economic, and legal issues related to worker notification. Finally, CDC did not fund NIOSH's request for 1987 funds because the funds were needed for federal salary increases and for benefits under the new federal employee retirement system.

To determine which employee populations are at risk of work-related diseases, the Risk Assessment Board, under H.R. 162,

would review medical and scientific studies. Recent changes to the bill require that the board use scientific evidence as the criteria for identifying these populations. The bill also establishes procedures and priorities for the board to follow in making its decisions about populations at risk. Based on the board's findings and recommendations, the HHS Secretary, through NIOSH, is responsible for notifying individual workers. The bill prescribes the content of the notification, but does not set the procedures to be followed for making the notification.

Cost of Notification

There are no comprehensive cost estimates for implementing the bill's notification program. Uncertainties about the potential number of workers to be notified make estimates of the federal costs for the bill imprecise. In addition, no reasonable basis exists for projecting the impact of increased lawsuits and workers' compensation claims, as well as businesses' increased health and liability insurance rates that might result from notification.

Although there is concern that risk notification may substantially increase the number of lawsuits and workers' compensation claims by notified workers, the bill does not change existing laws that permit workers to sue for damages or file claims for compensation. Even if the bill is not enacted, an increase in lawsuits and claims might occur because workers are generally becoming more aware of their rights to compensation for health problems caused by workplace exposure to hazardous substances.

Federal costs

H.R. 162 authorizes \$25 million to be appropriated annually to implement the bill's provisions, including \$4 million for research, training, and education grants to improve the ways of (1) assisting employees exposed to occupational health hazards and (2) identifying exposed worker populations.

In testimony on the initial version of S. 79, NIOSH estimated the annual cost of the bill to be about \$19 million to notify 100,000 workers and about \$26 million to notify 300,000 workers. Using NIOSH's estimates, where appropriate for the revised H.R. 162, the bill could cost about \$25 million to notify 300,000 workers a year, as shown in table 2.

Table 2:

Estimated Cost to Implement H.R. 162

<u>Function</u>	<u>Amount (Millions)</u>
Risk Assessment Board (Personnel costs, collecting research information, telephone hot line)	\$1.9
Notification to workers ^a	9.9
Occupational Health Centers (Establish initial 10 centers)	9.0
Research, training, and education grants	4.0
Total	\$24.8 ====

^a NIOSH's estimate of the cost to notify workers is based on notifying 300,000 workers at a cost of \$33 per worker.

The number of workers who may need to be notified, however, is dependent on the number of studies reviewed by the board and the number of workers determined by the board to be at risk. Moreover, the number actually notified each year depends on (1) the procedures established by the bill for designating worker populations at risk and (2) the process and procedures for actually notifying individual workers, which will be developed by HHS after the bill's enactment.

The universe of workers potentially at risk has not been determined. According to OSHA's estimates about 1.7 million workers are currently affected by its 22 health standards and about 9 million (including many of 1.7 million covered by the health standards) workers covered by the hazard communication standard may be exposed to the more than 575,000 regulated chemicals. Hundreds of new chemicals, however, are introduced annually and, when chemical products are combined in various mixtures, they can produce several hundred thousand potentially hazardous chemical products. NIOSH also estimates that there are about 45,000 toxic substances, including about 600 substances considered to be cancer causing, that are not regulated by OSHA. As a result, the number of workers potentially at risk may be substantially higher than 9 million. In addition, H.R. 162 requires that former workers who may have been exposed be notified; there is no estimate, however, of the number of workers at risk in the past who have since retired or changed jobs.

Other costs associated with notification

Much of the controversy about notification has focused on the impact of a substantial increase in the number of lawsuits and workers' compensation claims that might be filed by notified workers. Industry organizations and federal agencies have testified that notification will result in costly settlements against businesses, adversely affect the tort and workers' compensation systems, and significantly increase businesses' health and liability insurance rates. Opponents of the bill also contend that notified workers may file lawsuits against the federal government and its employees, challenging the risk assessment and notification processes.

In the case of NIOSH's pilot project at the Augusta, Georgia, chemical plant, for example, after NIOSH began notifying workers of their risk from exposure to a bladder carcinogen, 171 current and former workers sued the company for more than \$335 million in damages. According to an attorney for the company, medical records showed that more than 90 percent of the employees had no physical injury related to the cancer causing substance and no exposed worker at the plant died from bladder cancer. The company, however, settled 120 of the suits out of court for various amounts totaling about \$500,000 before asking the courts to decide if employees can sue the company for work-related illnesses. In 1985, the Georgia Supreme Court ruled that employees must file occupational disease claims under the state's workers' compensation law.

To discourage lawsuits and claims, recent changes to the bill prohibit the use of the risk determination or notification as evidence in a lawsuit against an employer or a claim for workers' compensation. In addition, changes to the bill protect the federal government and its employees involved in carrying out the notification program from lawsuits.

Nevertheless, although determining and notifying workers at risk may increase both legitimate and frivolous personal injury lawsuits against employers--including the federal government--and claims for workers' compensation, the bill does not change existing laws, which permit workers to sue for damages and file for compensation claims. The number of such lawsuits and claims might be expected to increase without new legislation because workers are generally becoming more aware of both (1) workplace hazards and (2) their rights to sue when exposure to such hazards causes disease or illness.

Thus, within the time available for completing our work, we could not find usable estimates or develop an acceptable approach

for projecting the number of lawsuits and workers' compensation claims that might be filed as a result of risk notification and their costs. Despite the changes to the bill, these costs could be substantial if a large number of lawsuits and claims are filed.

Statutory Restrictions Affecting Notification

We were asked to comment on possible difficulties for the federal government in implementing H.R. 162 because of restrictions in other laws, including the Privacy Act. We believe that the 1970 OSHA act and the recent changes to the bill adequately provide for access to and protection of records needed to carry out a notification program.

The OSHA act provides statutory authority to OSHA and NIOSH for access to employer and employee records needed to carry out their responsibilities. Recent changes to the bill specify that the Risk Assessment Board (to carry out its responsibilities to identify worker populations and individual workers at risk) and the HHS Secretary (to carry out worker notification) have access to information and data in the records of any federal, state, or local government agency, as well as in the records of any employer covered by federal or state occupational safety and health laws.

The revised bill specifically limits the use of information and data collected solely for the purpose of notifying workers at risk. The revised bill also states that the information and data collected for purposes of worker notification is subject to Privacy Act restrictions on the collection, use, and protection of information.

POTENTIAL BENEFITS AND DISADVANTAGES TO WORKERS OF RISK NOTIFICATION

We were asked to provide information on the potential benefits and disadvantages to workers of risk notification. Congressional testimony and discussions with business, trade, health, and labor representatives, according to our analysis, showed disagreement concerning (1) the effectiveness of medical screening and early detection of disease (2) and the possible reactions of workers to notification. Moreover, some of these groups felt that a new federal program is not needed to protect workers' right to know about occupational risks. These key areas of concern are summarized in table 3.

Table 3:

**Potential Advantages And Disadvantages
Of Risk Notification To Workers**

<u>Area of Concern</u>	<u>Advantages</u>	<u>Disadvantages</u>
Medical Benefits (Monitoring and early treatment)	<ul style="list-style-type: none">- promotes early detection of disease- facilitates earlier, less costly, and more effective treatment of disease	<ul style="list-style-type: none">- medical monitoring is not recommended for some diseases- for certain diseases the prognosis, treatment, and cost are unchanged by early diagnosis
Worker Reaction To Notification	<ul style="list-style-type: none">- workers can handle notification when done responsibly- permits workers to take steps to reduce their risk	<ul style="list-style-type: none">- could create stress for workers (1) mistakenly notified, (2) with poor prognosis, and (3) who cannot afford monitoring
Right-to-Know	<ul style="list-style-type: none">- risk and medical data provided to workers at risk	<ul style="list-style-type: none">- risk information may be imprecise

Medical Benefits

The most frequently cited benefits of H.R. 162 are the potential medical benefits from notification and medical monitoring. Labor and health groups argue that the bill will result in the early detection of occupational diseases and the lowering of the incidence, death rates, and costs of such diseases. Industry and trade groups dispute these claims.

Notifying workers of disease risk because of occupational exposure and putting such workers into health surveillance programs, labor and health groups have stated in congressional testimony, will reduce the incidence and death rates of occupational disease. The notification program, coupled with medical counseling provided in the bill, will inform workers about job risks and possible ways to reduce the chances of contracting diseases. For example, one health expert testified that, under the bill, exposed workers may be advised to change jobs so that they are no longer exposed to a hazard or to quit smoking, which is known to enhance the carcinogenic effects of many toxic agents.

Medical monitoring may increase the likelihood that some diseases (such as bladder cancer) will be detected in their early stages, labor and health groups testified, and treated more successfully and at less cost. They said that the costs of occupational disease may be reduced for two reasons. First, effective prevention and early treatment of disease may reduce the number of claims filed by sick workers against workers' compensation and health insurance programs. Second, medical surveillance may result in earlier diagnosis and less costly treatment of disease.

Representatives of industry and trade groups have testified that the effectiveness of medical monitoring and early detection may be limited. Representatives of one trade association testified that the American Cancer Society recommends medical monitoring for only cancers of the breast, colon, and cervix and argued that occupational exposure has not been solidly linked to these cancers. Several business representatives also testified that there is often limited value to early treatment for many diseases. One trade group noted that the treatment and prognosis for leukemia are the same, regardless of when the disease is first detected. Similarly, the same group noted, the detection and prognosis for lung cancer is also poor.

H.R. 162 addresses some of the industry and trade groups' concerns. The bill states that the Risk Assessment Board shall undertake, as its first priority, the designation of employee populations exposed to occupational health hazards whose members are most likely to benefit from health surveillance or counseling.

Worker Reaction to Notification

Also debated is the possible impact of notifying workers that they are in a group at increased risk of contracting disease. Industry and trade group representatives testified that the possible inaccuracies in the identification and notification processes and the nature of the notification message itself may produce distress and fear among notified workers. They said that workers who are mistakenly notified will be needlessly alarmed and may begin medical monitoring even though they are not, in fact, part of the group at increased risk. Labor union and health groups, however, have testified that the potential for such reactions is overstated and that notification projects carried out by NIOSH, the National Cancer Institute, and labor unions have not encountered such problems.

H.R. 162 does address some of the critics' concerns by requiring the Risk Assessment Board to consider specific factors, based on the best scientific evidence, when identifying populations at risk. These factors include the health

consequences of notifying or failing to notify a population at risk. These features of H.R. 162 attempt to limit the likelihood of false notifications and require that consideration be given to the negative effects of notification in relation to the potential health benefits.

Workers' Right to Know

Opponents and proponents of H.R. 162 agree that workers have a right to know about workplace hazards but they disagree over whether the bill is necessary to guarantee this right.

The current federal, state, and private efforts to notify or inform workers of hazards in the workplace are sufficient to protect a worker's right to know, according to several representatives of industry and trade groups, as well as the Departments of Labor, Justice, and HHS. For example, they make these claims:

- o OSHA's 22 health standards have health training and worker health monitoring requirements.
- o The hazard communication standard requires that hazardous chemicals be labeled, detailed information on the hazard be maintained at the worksite, and workers be trained to safely handle the chemical.
- o OSHA's rules require employers to inform workers of the existence of employee medical records and their access rights to those records.
- o NIOSH posts the results of its studies at worksites, and, in some cases, notifies employers and individual participants of the results.
- o Some states have right-to-know laws.
- o Some companies conduct training classes for relevant workplace hazards.

On the other hand, proponents of H.R. 162 argued that these efforts are not sufficient. Health and labor representatives testified that providing access to information about a potential hazard is not the same as directly informing workers of their exposure and possible risk of disease. They also testified that the nature of the message--a hazard notice versus a notice of increased risk of disease--is critically different.

In addition, H.R. 162 would extend the workers' right-to-know concept to all current and former workers at risk from exposure to any hazardous substance. The hazard communication standard covers employees in the manufacturing industry, but not

in other industries, and the standard, as well as OSHA's 22 health standards, cover current workers but not at-risk workers who have since retired or changed jobs.

HIGH RISK BILL VERSUS EXPANDED HAZARD
COMMUNICATION STANDARD

We were asked (1) whether the intent of H.R. 162 could be better achieved through an expansion of OSHA's hazard communication standard and (2) related to this question, to examine the substitute proposal, introduced on April 23, 1987, to expand the standard as an alternative to the bill. We were unable to answer these questions because evaluative information was not available on Labor's effectiveness in implementing the hazard communication standard which went into effect in May 1986.

Although while H.R. 162's goal of disease prevention might be achieved by the proposal for expanding the standard, some fundamental differences exist between the bill and the proposed expanded hazard communication standard. The existing standard is essentially a requirement to label hazardous chemicals and inform employees in manufacturing businesses about the hazards of the chemicals; H.R. 162 establishes a program to individually identify and notify workers at risk of any occupational disease. The bill also protects notified workers' welfare through the provision of medical benefits, employment discrimination protection, and research. The key features of H.R. 162, the hazard communication standard, and the proposal to expand the standard are summarized in table 4.

Table 4:

Comparison of Alternative Approaches
to Risk Notification

<u>Component</u>	<u>High Risk Bill (H.R. 162)</u>	<u>Hazard Communication Standard</u>	<u>Proposal to Expand the Hazard Standard</u>
Administering Agency	Establishes the Risk Assessment Board in HHS	OSHA	OSHA
Substances Covered	All hazardous substances	Hazardous chemicals	All hazardous substances
Worker Population Covered	Any current and former worker determined "at risk" by the Risk Assessment Board	Workers in the manufacturing sector	Current and former workers in all sectors
Method of Notification	Individual notice and public service announcements	Product information at the workplace, labels, safety training	Product information at the workplace, labels, safety training; public service announcements
Contents of Notification	Notice that worker is in a group at risk; medical and other information	Hazard warning	Hazard warning and medical information; notice of access to information
Medical Monitoring	Employer pays if exposure occurred at the employer's worksite	No comparable provision	No comparable provision
Health Centers	Establishes 50 health centers	No comparable provision	No comparable provision
Research	Grant program of \$4 million annually	No comparable provision	No comparable provision
Protection of Workers' Rights	Prohibits job discrimination and protects worker benefits	No comparable provision	No comparable provision

Potential Advantages of an Expanded Standard

Expanding the hazard communication standard as outlined in the substitute proposal may achieve H.R. 162's goal of disease prevention. H.R. 162 would identify and notify current and former workers already exposed and found to be at risk of contracting an occupational disease; thus, through monitoring and early detection and treatment, the bill would prevent disease and death. The hazard communication standard, in contrast, attempts to inform workers about chemical hazards before exposure through product labels, product information, and training, and thus allow workers to take steps to minimize or eliminate their exposure and risk of disease. The proposal would expand coverage to workers in all industries who are exposed to hazardous substances and give former employees access to information held by their former employers and OSHA.

There may be other advantages to expanding the hazard communication standard. For example, the proposal to expand the standard, the administration believes, may avoid the potential liability and litigation problems that may result from H.R. 162 because the employer and not the government would be responsible (1) for notifying workers and (2) for any damages alleged to be a result notification. Expanding the hazard communication standard may also be less costly and easier to implement because it builds on an existing Labor program rather than establishing a new program within HHS.

The administration argued that workplace notification about potential hazards could be effective in preventing occupational disease. According to administration officials, the proposed expansion of the standard would reach millions more workers than individual risk notification and prevent dangerous exposures from occurring.

Limitations of an Expanded Standard

Expanding the hazard communication standard would not achieve the H.R. 162 goal of notifying individual workers of their risk of disease. Risk determination (by an expert board of scientists) and notification are not part of the proposed expansion of the standard. Under the current hazard communication standard and the proposal to expand it, workers are informed of the presence of a hazard but not their probability of contracting an occupational disease as a result of workplace exposures. Similarly, under the proposal's expanded standard, the notification of former employees informs them only of the right of access to hazard information and not the information itself.

In addition, the proposed expansion of the standard would not incorporate other features of H.R. 162. The expanded standard would not require employers to pay workers' medical

monitoring costs, establish health centers, fund research, or guarantee the employment rights and benefits of workers at risk of disease.

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