OSHA staff members are often asked, “Why do standards take so long?” In fact, as the saying goes, if I had a few dollars for each time I have been asked this question, I would be rich. OSHA is a complex agency involved in various types of work. OSHA staff inspect workplaces; set enforcement policy; issue guidance; maintain current web pages; develop and deliver training; administer voluntary programs such as partnerships, alliances and the Voluntary Protection Programs; conduct oversight of state OSHA programs, consultation agencies and education centers; and manage and administer in the federal government bureaucracy.

While all of these activities present challenges, in my personal experience, setting OSHA standards is the most difficult challenge. Completing a rulemaking normally takes a long time. Even the simplest change takes years, and in some cases, such as the recently published rule on respirable crystalline silica, some regulatory actions can take decades (see the timeline graphic on pp. 44-45).

While rulemaking is a long, difficult and sometimes frustrating process, the people who do it find it extremely rewarding. Being able to publish a standard that will improve safety for U.S. workers, whether thousands or millions, is the highlight of any standard writer’s career. Because the process is difficult, the standard may protect workers for 40 to 50 years. Completing just one substantial standard is a worthy accomplishment.

**Rulemaking: Taking the Long Route**

Many factors contribute to the length of the rulemaking process, but in no case is one of those reasons unmotivated standards writers. The team of OSH subject-matter experts, attorneys, economists and agency managers are highly motivated to do this important work. That is why successful standards writers learn to motivate themselves with small victories along the way as a project plods forward. Activities such as sending a first draft of a chapter or section to the staff attorney, completing an options paper, finishing a docket analysis or clearing a press release are all small achievements that produce a positive feeling of progress.

Like other professionals, standards writers are driven to learn and improve their knowledge, skills and expertise. The Office of Standards Development monitors the performance of its staff and makes regular improvements in the process. The Office of Enforcement Strategies monitors the performance of its enforcement effort and makes regular improvements in enforcement strategies. The Office of Training and Education monitors the performance of its training of OSHA inspectors and makes regular improvements in their training.

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OSHA’s mission is to assure safe and healthful working conditions for workingmen by preventing injuries, illnesses, and deaths from occurring in America’s workplaces. To achieve this, OSHA promulgates and enforces standards that apply to the workplace, maintain a Strategic Plan, conduct outreach and training, and respond to problems.

**ASSE Standards**

Why Do They Take So Long?

By Jim Maddux

Jim Maddux

The University of Alabama

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and abilities. One way to think about the regulatory process is to view it as a continuous learning of the issues, stakeholder views and evidence regarding the provisions of a standard. The faster the team learns, the faster the work gets done.

Each regulation has its own history and its own story. When new team members join the team, they must learn the issues. When administrations and agency leadership change, so, too, do priorities and policy ideas. Any of these factors can, and often do, cause delay. In addition, each rule has its own set of issues, often complex, involving a combination of science, engineering, law, economics and policy. Standards writers must consider all of these elements while striving to develop a protective and enforceable standard that is flexible enough to accommodate future technologies and work practices, and that delivers as much clarity as possible.

Regulating is also controversial. For each rule, there are those in favor of it, those who think it is unnecessary or onerous, those who think it is only half as protective as it should be, and those who think the standards writer must be insane, stupid or the victim of an unforgivable personality flaw. (And, I have been accused of all of these and more, and often in colorful language.) In rare situations, the comments are even threatening, and law enforcement must investigate to ensure the standards team’s safety.

The effective standards writer handles this controversy as objectively as possible, trying to tease out the underlying reasons for these feelings. This is why hearings are vital. After an individual or group testifies at a hearing, other participants can ask questions, then the OSHA panel asks questions. This round-robin approach helps surface key concerns. For example, during the PPE hearing, OSHA learned that a major concern was that workers would not properly maintain and store employer-purchased PPE, would carelessly lose it or perhaps intentionally damage the equipment. This lesson helped the team address the concerns in the final rule.

But the main reason that OSHA standards take so long is because the regulatory process is designed to be slow and deliberate.
recent rulemaking, OIRA staff asked OSHA to revise the benefits discussion to add emphasis to the uncertainty of the estimates, even though none of the comments in the record had stated a concern about that issue. Again, however, the team works through such issues as they arise.

Once all revisions are cleared, the team reviews the document again to ensure that it is consistent and coherent. The rule is then sent to the Federal Register, where it is reviewed for format and regulatory construction issues. Once any issues are resolved, the rule is published. And, thus, the outreach, interpretation, lawsuits and other post-publication work begins. In other words, the job is not done, it has just entered a new phase.

**Spreading Up the Process**

Because the standards process takes so long, it is natural to ask whether any shortcuts exist. The answer is that there are few shortcuts, even for items that appear to most people to be positive changes. For example, OSH professionals who serve on consensus standards committees (e.g., ANSI, NFPA) often ask why OSHA cannot just adopt these committees’ work and enforce the consensus standard. OSHA has done this for some rules (and of course, many original OSHA rules were consensus standards).

However, adopting consensus standards involves the same process as a rule written by OSHA; there simply are no shortcuts. So, the agency may use national consensus standards as a starting point, then modify the provisions to be more appropriate for enforcement, remove nonworkplace safety provisions, and see where the evidence and policy debate take the issue.

Two actions can accelerate a rule. The first is a court-ordered rulemaking, where the court provides oversight, sets deadlines and generally forces OSHA to move faster. In some cases, such rulemakings are the result of legal settlement. One such example is the 2007 final rule requiring employers to pay for PPE. OSHA, DOL and OIRA applied enough resources, facilitated clearances and cooperated to complete the rule by the court-ordered deadline.

The second accelerated action occurs when Congress passes a law (and the president signs it) requiring OSHA to complete a rule, and includes provisions in the law that waive some rulemaking requirements. It has been many years since Congress used this approach. In fact, the last time I heard a realistic discussion of a congressionally mandated rulemaking followed the Imperial Sugar combustible dust explosion in 2008; those proposals never got out of committee. The last successful use of this approach was in the late 1990s, when OSHA was mandated to add a provision to the bloodborne pathogens rule to require a sharps log. Given the current functioning of Congress, I do not expect to see this approach used often or soon.

It is possible to improve the efficiency of the process, however. For example, the recent updating of OSHA’s eye and face protection rule changed the requirements in the construction, maritime and general industry standards. When the issue or hazards are identical or nearly so, including as many industries as possible in one rulemaking is more efficient than regulating each industry separately.

The Standards Improvement Process (SIP) rulemaking, now in its fourth version, also helps ensure that smaller issues that present no costs have a way forward. Perhaps OSHA should consider inventing a new category of rulemaking similar to SIP that deals with several issues that have relatively small costs, and that are bolder in terms of improving the protections provided by the standards.

**Getting Involved**

As this article has shown, the regulatory process is long, slow and uncertain. That is why it is vital to make sure the rules are sound and workable, and that they protect workers from harm, have the flexibility to work well for many years and can be enforced fairly.

OSH professionals can help make that happen by getting involved in the rulemaking process. One avenue for involvement is the preproposal process. During this early phase, regulators reach out to anyone with experience, especially successful experience, in addressing a given hazard. By working with OSHA at this stage, an OSH professional can provide information at the ground level, when key decisions are being made that may carry throughout the process. At this stage, OSHA staff can arrange a confidential interview or site visit to ensure that participants’ identities are not divulged.

Another way to get involved is to comment on proposed rules. The feedback OSHA receives during the formal comment periods is often dominated by professional and trade associations, unions and academics. OSHA would benefit from more comments from OSH professionals who have direct experience with the hazards. Commenting is not difficult, and each Federal Register rulemaking notice lists several methods of submitting comments (e.g., electronically, by mail, by fax). Rulemaking is a debate of ideas, and your ideas can make rules better.

Jim Maddux recently retired as director of OSHA’s Directorate of Construction and was involved in regulatory issues for 25 years. He contributed to many final rules, including the 2001 injury and illness recordkeeping rule, the 2007 payment for PPE standard and the 2015 construction confined space standard. Maddux also contributed to hundreds of nonregulatory documents, including web pages, guidance products, interpretations and safety campaigns. He is a member of ASSE’s Chesapeake Chapter.

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