

TRADE NAME INGREDIENT  
DATA BASE--PROGRESS REPORT

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To assist in carrying out its assigned mission in the field of occupational health, NIOSH is developing a trade name ingredient data base. This data base is intended to provide NIOSH with a more realistic perspective of the problems in the workplace, particularly hazards. As a result, effective programs and policies are designed and implemented.

This data base grew out of the first National Occupational Hazard Survey (NOHS I). Ingredient information on approximately 60,000 products has been compiled through the trade name ingredient clarification (TNIC) process which involves contacting manufacturers, editing incoming information, automating the data, and safeguarding confidential formulas.

To fully appreciate the complexities encountered in obtaining this data, a brief description of the TNIC process will be presented with special emphasis on obtaining information through administrative subpoena action. This action and authority for such action, i.e. Section 15 OSHAct 1970 and the McGee decision, will be described briefly. The involvement of foreign manufacturers provides a special case in the authority to obtain this information. This and other problems unique to the development of this data base will be presented. The current status of the data base will be included in the summary of this report.

## WORKSHOP PAPER

In carrying out its assigned mission in occupational safety and health, NIOSH requires a reliable data base on the nature and extent of potentially hazardous exposures in the workplace. The National Occupational Hazard Survey (NOHS) of 1972-1974 developed potential exposure information in a sample of nearly 5,000 plants. Almost 70% of the exposures noted by the surveyors occurred in the form of trade name products. In an effort to clarify those exposures, NIOSH is developing a trade name data base from information gathered in the National Occupational Hazard Survey. To date, ingredient information on approximately 60,000 products has been compiled through the Trade Name Ingredient Clarification (TNIC) process. This data base will be enlarged by the addition of resolved trade name data to be gathered in a second survey. This survey is tentatively scheduled to begin early in fiscal year 1981.

The uses of the NOHS data base are numerous and varied and include the development of estimates of numbers of workers potentially exposed to hazards, cohort location, and development of lists of potential hazards associated with industry types. The utility of the NOHS data base is directly affected by the accuracy and completeness of the trade name product ingredient information.

The trade name resolution process currently being used consists of the following steps:

1. Identify the manufacturer or distributor of the product.
2. Contact the manufacturer by certified mail requesting the information.
3. Edit responses to ensure accuracy and conformance with the required format
4. Code and automate the data.
5. Input the data to the NOHS data base.

In practice, however, the process of obtaining this information from product manufacturers is not a simple matter of going through the steps described. Numerous problems requiring clarification or further assistance are encountered. Briefly, some of the more common problems are:

1. The manufacturer is unable to identify a product by the name or number on file. Custom formulations, especially in paint and ink manufacturing can be particularly difficult. Several sources of error are possible here:

- a. The product name or manufacturer was incorrectly recorded.
  - b. There was an error in keypunching the information.
  - c. The product name has been changed.
  - d. Insufficient descriptive information was recorded e.g. need a batch or customer order number was needed.
2. A second major problem occurs when we cannot readily identify the correct manufacturer of the product; usually for one of the following reasons:
    - a. The manufacturer is no longer in business, at least not by the name recorded.
    - b. The original manufacturer has merged with another company, usually involving a name change.
    - c. Product formulation rights have been sold to another company, usually involving a product name change.
  3. There have been cases where the manufacturer chooses to give us no response or refuses to accept certified mail.
  4. If a request is sent to the wrong division or department within a large corporation, the recipient of the forms may not be able to respond.
  5. In some cases, there is no definite formula for an ingredient in a product. This often occurs in pigments, dyes, oils, fats, and polymers. In some instances boiling point ranges or length of carbon chains may be of some help. This problem is further complicated when ingredient composition varies because of variation in feed stock used in its manufacture. Efforts to resolve petroleum based products is a good example of this problem.
  6. Manufacturers occasionally refuse to respond because the information requested is considered a trade secret.

Approximately 30% of the trade name products in the current data base have been claimed as proprietary formulas by manufacturers. Obtaining and handling trade secret information presents unique problems. There is considerable reluctance by some manufacturers to provide trade secret information to NIOSH because of fear of accidental release of such information to competitors. This is particularly true of small chemical manufacturers who market one or a very few products and may also be true with larger manufacturers who market relatively unique products.

In a number of cases the impact on manufacturers providing this information is considerable in terms of time, money, and manpower. This is especially true for those manufacturers who market hundreds or even thousands of products for which information is requested.

Unfortunately this impact may be largely duplicated when information similar to that requested has already been provided to another Federal agency, e.g. Food and Drug Administration, Environmental Protection Agency, Consumer Product Safety Commission, but cannot be accessed by NIOSH for the purpose of the development of the trade name data base.

Trade secrecy also becomes an issue when one or more of the ingredients of a product are manufactured by another company which considers their ingredients to be proprietary information. Nondisclosure agreements between manufacturers are honored by NIOSH by re-routing the request for information directly to the primary manufacturer.

Under Section 15 of the OSHA Act of 1970 NIOSH is given the authority to obtain trade secret and other confidential information. This section also requires NIOSH to maintain and safeguard this information. This legislated authority, as described in the OSHA Act, is explained to manufacturers when necessary.

This authority was challenged in the case of the United States of America versus McGee Industries, Inc. in January 1977. In this case, NIOSH was seeking the enforcement of an administrative subpoena (duces tecum) issued by NIOSH to McGee Industries, Inc. to obtain trade secret information that McGee Industries had refused to provide. The decision in this case, and a subsequent appeal, was ruled in favor of NIOSH. This case has since served as a legal precedent for NIOSH in obtaining trade secret information.

The use of administrative subpoena to obtain information from noncooperative manufacturers is used when other measures fail. Although this is not a court action, it does require the manufacturer to either comply with the request for information or show just cause as to why it should not have to comply. If this subpoena is not observed, court action is required. To date, only the McGee case has gone to court and a decision rendered.

We have attempted to minimize some of the problems involved in obtaining ingredient information through the careful design of the materials which are sent to the manufacturers. The initial letter and directions for completing the response forms must be carefully worded. The letter must be explicit and sufficiently comprehensive in describing precisely what information is requested and why without confusing or intimidating the recipient. Similarly, the directions for completing the forms must be simple and direct, without being perceived as threatening. Clarity of the response form is also important. In some instances, copies of the relevant portions of the OSHA Act and/or the McGee decision are sent along with the letter to provide information. It has become apparent to us

that communicating with the manufacturers of trade name products requires a well-designed package of basic letters and forms, with considerable flexibility to accommodate the unforeseen.

In addition, NIOSH has developed an unpublished Trade Name Product Security Policy for the TNIC process which includes background information of the National Occupational Hazard Survey, applicable legal statutes, physical security measures, data access procedures, and restrictions on data use. Copies of this policy are made available to manufacturers upon request. Despite these measures, several manufacturers have drafted up their own security agreements. These often take the form of an affidavit requiring the signature of a NIOSH representative as a precondition for compliance with NIOSH requests. NIOSH has taken the position that such agreements are not necessary, and has further stated that the Trade Name Product Security Policy provides appropriate protection for trade secret data. The penalty for disclosing trade secret information by a federal officer or employee is spelled out in 18 United States Code, Section 1905.

NIOSH's authority to obtain ingredient information on products manufactured by a foreign manufacturer rests with the fact that foreign-made products do in some cases involve exposures to American workers. Compliance to our request by foreign manufacturers has so far been on a voluntary basis. Nondisclosure agreements between foreign and domestic companies, or between foreign parent companies and American subsidiaries are honored.

The current status of the trade name data base (as of February 1980) is given in the accompanying table. Note that various code letters are assigned to a category of products depending on the status of resolution. These symbols are as follows:

- E = trade name entered into system, to be resolved
- 1 = first request letter sent out
- 2 = second request letter sent out
- N = referred to NIOSH surveillance staff by contracted clerical personnel for assistance
- S = satisfactorily completed response
- H = holding for additional information or decision
- R = response received containing chemical information
- Ø = mail returned by post office

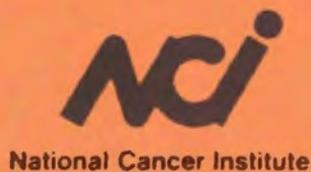
No discussion followed this paper.

TABLE

CURRENT STATUS OF THE RESOLUTION OF PRODUCT TRADE  
NAMES IN THE NIOSH PRODUCT TRADE NAME DATA BASE

<u>CODE</u>	<u>NUMBER OF PRODUCTS</u>
E	553
1	1,069
2	2,683
N	6,431
S	61,599
H	2,145
R	4,882
Ø	174

In closing, I would like to reiterate that the validity and reliability of the trade name data base and the larger NOHS data base is directly related to the accuracy and completeness of the trade name resolution effort. Subsequent use of this data base by NIOSH and other users will only be as effective as the data base itself. Although the file on trade name ingredients was initially compiled to complete the NOHS data base, it has emerged as an important resource in its own right. Our staff receives 600-700 requests for product ingredient information each year from field industrial hygienists, researchers, and other members of the occupational safety and health community. We continue to regard the identification of trade name products, which are potential occupational exposure agents, and the subsequent clarification of those products into their respective ingredients to be an important function of hazard surveillance.



PROCEEDINGS OF THE  
FIRST NCI/EPA/NIOSH COLLABORATIVE WORKSHOP:  
PROGRESS ON JOINT ENVIRONMENTAL AND  
OCCUPATIONAL CANCER STUDIES

MAY 6-8, 1980

SHERATON/POTOMAC, ROCKVILLE, MARYLAND

The papers included in these Proceedings were printed as they were submitted to this office.

Appropriate portions of the discussions, working groups and plenary session were sent to the participants for editing. The style of editing varied, as could be expected. To the extent possible, we have attempted to arrive at a consistent format.

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Proceedings were developed from a workshop on the National Cancer Institute's, the Environmental Protection Agency's and the National Institute for Occupational Safety and Health's Collaborative Programs on Environmental and Occupational Carcinogenesis.

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