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Title 3—

The President

Executive Order 12291 of February 17, 1981

Federal Regulation

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations, it is hereby ordered as follows:

Section 1. *Definitions.* For the purposes of this Order:

(a) "Regulation" or "rule" means an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the procedure or practice requirements of an agency, but does not include:

(1) Administrative actions governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code;

(2) Regulations issued with respect to a military or foreign affairs function of the United States; or

(3) Regulations related to agency organization, management, or personnel.

(b) "Major rule" means any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

(c) "Director" means the Director of the Office of Management and Budget.

(d) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), excluding those agencies specified in 44 U.S.C. 3502(10).

(e) "Task Force" means the Presidential Task Force on Regulatory Relief.

Sec. 2. *General Requirements.* In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, all agencies, to the extent permitted by law, shall adhere to the following requirements:

(a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(c) Regulatory objectives shall be chosen to maximize the net benefits to society;

(d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the

particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

Sec. 3. *Regulatory Impact Analysis and Review.*

(a) In order to implement Section 2 of this Order, each agency shall, in connection with every major rule, prepare, and to the extent permitted by law consider, a Regulatory Impact Analysis. Such Analyses may be combined with any Regulatory Flexibility Analyses performed under 5 U.S.C. 603 and 604.

(b) Each agency shall initially determine whether a rule it intends to propose or to issue is a major rule, *provided that*, the Director, subject to the direction of the Task Force, shall have authority, in accordance with Sections 1(b) and 2 of this Order, to prescribe criteria for making such determinations, to order a rule to be treated as a major rule, and to require any set of related rules to be considered together as a major rule.

(c) Except as provided in Section 8 of this Order, agencies shall prepare Regulatory Impact Analyses of major rules and transmit them, along with all notices of proposed rulemaking and all final rules, to the Director as follows:

(1) If no notice of proposed rulemaking is to be published for a proposed major rule that is not an emergency rule, the agency shall prepare only a final Regulatory Impact Analysis, which shall be transmitted, along with the proposed rule, to the Director *at least 60 days prior to the publication of the major* rule as a final rule;

(2) With respect to all other major rules, the agency shall prepare a preliminary Regulatory Impact Analysis, which shall be transmitted, along with a *notice of proposed rulemaking*, to the Director at least 60 days prior to the publication of a notice of proposed rulemaking, and a final Regulatory Impact Analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of the major rule as a final rule;

(3) For all rules other than major rules, agencies shall submit to the Director, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.

(d) To permit each proposed major rule to be analyzed in light of the requirements stated in Section 2 of this Order, each preliminary and final Regulatory Impact Analysis shall contain the following information:

(1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;

(3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

(5) Unless covered by the description required under paragraph (4) of this subsection, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in Section 2 of this Order.

(e) (1) The Director, subject to the direction of the Task Force, which shall resolve any issues raised under this Order or ensure that they are presented to the President, is authorized to review any preliminary or final Regulatory Impact Analysis, notice of proposed rulemaking, or final rule based on the requirements of this Order.

(2) The Director shall be deemed to have concluded review unless the Director advises an agency to the contrary under subsection (f) of this Section:

(A) Within 60 days of a submission under subsection (c)(1) or a submission of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under subsection (c)(2);

(B) Within 30 days of the submission of a final Regulatory Impact Analysis and a final rule under subsection (c)(2); and

(C) Within 10 days of the submission of a notice of proposed rulemaking or final rule under subsection (c)(3).

(f) (1) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary Regulatory Impact Analysis or notice of proposed rulemaking under this Order, and shall, subject to Section 8(a)(2) of this Order, refrain from publishing its preliminary Regulatory Impact Analysis or notice of proposed rulemaking until such review is concluded.

(2) Upon receiving notice that the Director intends to submit views with respect to any final Regulatory Impact Analysis or final rule, the agency shall, subject to Section 8(a)(2) of this Order, refrain from publishing its final Regulatory Impact Analysis or final rule until the agency has responded to the Director's views, and incorporated those views and the agency's response in the rulemaking file.

(3) Nothing in this subsection shall be construed as displacing the agencies' responsibilities delegated by law.

(g) For every rule for which an agency publishes a notice of proposed rulemaking, the agency shall include in its notice:

(1) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination; and

(2) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis.

(h) Agencies shall make their preliminary and final Regulatory Impact Analyses available to the public.

(i) Agencies shall initiate reviews of currently effective rules in accordance with the purposes of this Order, and perform Regulatory Impact Analyses of currently effective major rules. The Director, subject to the direction of the Task Force, may designate currently effective rules for review in accordance with this Order, and establish schedules for reviews and Analyses under this Order.

Sec. 4. *Regulatory Review.* Before approving any final major rule, each agency shall:

(a) Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent, and include in the Federal Register at the time of promulgation a memorandum of law supporting that determination.

(b) Make a determination that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

Sec. 5. *Regulatory Agendas.*

(a) Each agency shall publish, in October and April of each year, an agenda of proposed regulations that the agency has issued or expects to issue, and currently effective rules that are under agency review pursuant to this Order. These agendas may be incorporated with the agendas published under 5 U.S.C. 602, and must contain at the minimum:

(1) A summary of the nature of each major rule being considered, the objectives and legal basis for the issuance of the rule, and an approximate

schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking;

(2) The name and telephone number of a knowledgeable agency official for each item on the agenda; and

(3) A list of existing regulations to be reviewed under the terms of this Order, and a brief discussion of each such regulation.

(b) The Director, subject to the direction of the Task Force, may, to the extent permitted by law:

(1) Require agencies to provide additional information in an agenda; and

(2) Require publication of the agenda in any form.

Sec. 6. *The Task Force and Office of Management and Budget.*

(a) To the extent permitted by law, the Director shall have authority, subject to the direction of the Task Force, to:

(1) Designate any proposed or existing rule as a major rule in accordance with Section 1(b) of this Order;

(2) Prepare and promulgate uniform standards for the identification of major rules and the development of Regulatory Impact Analyses;

(3) Require an agency to obtain and evaluate, in connection with a regulation, any additional relevant data from any appropriate source;

(4) Waive the requirements of Sections 3, 4, or 7 of this Order with respect to any proposed or existing major rule;

(5) Identify duplicative, overlapping and conflicting rules, existing or proposed, and existing or proposed rules that are inconsistent with the policies underlying statutes governing agencies other than the issuing agency or with the purposes of this Order, and, in each such case, require appropriate interagency consultation to minimize or eliminate such duplication, overlap, or conflict;

(6) Develop procedures for estimating the annual benefits and costs of agency regulations, on both an aggregate and economic or industrial sector basis, for purposes of compiling a regulatory budget;

(7) In consultation with interested agencies, prepare for consideration by the President recommendations for changes in the agencies' statutes; and

(8) Monitor agency compliance with the requirements of this Order and advise the President with respect to such compliance.

(b) The Director, subject to the direction of the Task Force, is authorized to establish procedures for the performance of all functions vested in the Director by this Order. The Director shall take appropriate steps to coordinate the implementation of the analysis, transmittal, review, and clearance provisions of this Order with the authorities and requirements provided for or imposed upon the Director and agencies under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Paperwork Reduction Plan Act of 1980, 44 U.S.C. 3501 *et seq.*

Sec. 7. *Pending Regulations.*

(a) To the extent necessary to permit reconsideration in accordance with this Order, agencies shall, except as provided in Section 8 of this Order, suspend or postpone the effective dates of all major rules that they have promulgated in final form as of the date of this Order, but that have not yet become effective, excluding:

(1) Major rules that cannot legally be postponed or suspended;

(2) Major rules that, for good cause, ought to become effective as final rules without reconsideration. Agencies shall prepare, in accordance with Section 3 of this Order, a final Regulatory Impact Analysis for each major rule that they suspend or postpone.

(b) Agencies shall report to the Director no later than 15 days prior to the effective date of any rule that the agency has promulgated in final form as of the date of this Order, and that has not yet become effective, and that will not be reconsidered under subsection (a) of this Section:

(1) That the rule is excepted from reconsideration under subsection (a), including a brief statement of the legal or other reasons for that determination; or

(2) That the rule is not a major rule.

(c) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:

(1) Require reconsideration, in accordance with this Order, of any major rule that an agency has issued in final form as of the date of this Order and that has not become effective; and

(2) Designate a rule that an agency has issued in final form as of the date of this Order and that has not yet become effective as a major rule in accordance with Section 1(b) of this Order.

(d) Agencies may, in accordance with the Administrative Procedure Act and other applicable statutes, permit major rules that they have issued in final form as of the date of this Order, and that have not yet become effective, to take effect as interim rules while they are being reconsidered in accordance with this Order, *provided that*, agencies shall report to the Director, no later than 15 days before any such rule is proposed to take effect as an interim rule, that the rule should appropriately take effect as an interim rule while the rule is under reconsideration.

(e) Except as provided in Section 8 of this Order, agencies shall, to the extent permitted by law, refrain from promulgating as a final rule any proposed major rule that has been published or issued as of the date of this Order until a final Regulatory Impact Analysis, in accordance with Section 3 of this Order, has been prepared for the proposed major rule.

(f) Agencies shall report to the Director, no later than 30 days prior to promulgating as a final rule any proposed rule that the agency has published or issued as of the date of this Order and that has not been considered under the terms of this Order:

(1) That the rule cannot legally be considered in accordance with this Order, together with a brief explanation of the legal reasons barring such consideration; or

(2) That the rule is not a major rule, in which case the agency shall submit to the Director a copy of the proposed rule.

(g) The Director, subject to the direction of the Task Force, is authorized, to the extent permitted by law, to:

(1) Require consideration, in accordance with this Order, of any proposed major rule that the agency has published or issued as of the date of this Order; and

(2) Designate a proposed rule that an agency has published or issued as of the date of this Order, as a major rule in accordance with Section 1(b) of this Order.

(h) The Director shall be deemed to have determined that an agency's report to the Director under subsections (b), (d), or (f) of this Section is consistent with the purposes of this Order, unless the Director advises the agency to the contrary:

(1) Within 15 days of its report, in the case of any report under subsections (b) or (d); or

(2) Within 30 days of its report, in the case of any report under subsection (f).

(i) This Section does not supersede the President's Memorandum of January 29, 1981, entitled "Postponement of Pending Regulations", which shall remain in effect until March 30, 1981.

(j) In complying with this Section, agencies shall comply with all applicable provisions of the Administrative Procedure Act, and with any other procedural requirements made applicable to the agencies by other statutes.

Sec. 8. *Exemptions.*

(a) The procedures prescribed by this Order shall not apply to:

(1) Any regulation that responds to an emergency situation, *provided that,* any such regulation shall be reported to the Director as soon as is practicable, the agency shall publish in the Federal Register a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency shall prepare and transmit as soon as is practicable a Regulatory Impact Analysis of any such major rule; and

(2) Any regulation for which consideration or reconsideration under the terms of this Order would conflict with deadlines imposed by statute or by judicial order, *provided that,* any such regulation shall be reported to the Director together with a brief explanation of the conflict, the agency shall publish in the Federal Register a statement of the reasons why it is impracticable for the agency to follow the procedures of this Order with respect to such a rule, and the agency, in consultation with the Director, shall adhere to the requirements of this Order to the extent permitted by statutory or judicial deadlines.

(b) The Director, subject to the direction of the Task Force, may, in accordance with the purposes of this Order, exempt any class or category of regulations from any or all requirements of this Order.

Sec. 9. *Judicial Review.* This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person. The determinations made by agencies under Section 4 of this Order, and any Regulatory Impact Analyses for any rule, shall be made part of the whole record of agency action in connection with the rule.

Sec. 10. *Revocations.* Executive Orders No. 12044, as amended, and No. 12174 are revoked.

Ronald Reagan

THE WHITE HOUSE,
February 17, 1981.

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The Regulatory Action Network:
Washington Watch

Special Supplement

Carter Activists Create "Baby OSHA"

by Hank Cox

While ex-President Jimmy Carter has packed his bags and fled the banks of the Potomac to more hospitable climes, some of the social-activist officials he brought into his government have burrowed into the bureaucracy to avoid dismissal.

Nowhere is this phenomenon more obvious than at the National Institute for Occupational Safety and Health (NIOSH) where two self-appointed champions of the working class have transformed a research agency into an enforcement arm of the Occupational Safety and Health Administration (OSHA) in defiance of the law and to the detriment of occupational health research.

The controversial administrators of NIOSH are Director Anthony Robbins and his deputy John Froines, dubbed "Bad Man and Robbin" by their subordinates. Robbins came to NIOSH via the health departments of Vermont and Colorado where his radical anti-business posture endeared him to labor union officials. Though he reportedly left both state agencies "in shambles," he was able to move onward and upward through his contacts with the Oil, Chemical, and Atomic Workers Union and the personal support of the late George Meany, president of the AFL-CIO.

Froines, who worked with Robbins in Vermont, was employed at OSHA when summoned to work with Robbins at NIOSH. Froines was one of the infamous Chicago Seven who disrupted the 1968 Democratic convention. Three years later, during the 1971 May Day riots in Washington, he was heard to howl outside the Department of Justice building: "I have not come to surrender. I have come to tear down the government." It did not seem likely at that time that he would pursue his goal at the taxpayers' expense.

Past and present officials of NIOSH accuse Robbins and Froines of a variety of offenses, ranging from mismanagement to malfeasance. The General Accounting Office has been asked by more than one Congressman to conduct an inquiry, but has yet to launch a full-scale investigation.

Background

Both NIOSH and OSHA were created by the Occupational Safety and Health Act; OSHA to enforce job safety and health standards, and NIOSH to conduct long-term research into the causes of occupational disease.

Congress took great care to separate NIOSH from OSHA, placing it in a separate department, because it knew OSHA would be subject to political pressures and unable to perform objective research.

Under its first leader, Dr. Marcus Key, NIOSH became a first-class research institute. Key and his successor, Dr. John Finklea, sought to fulfill the agency's mandates by producing scientific criteria on workplace health hazards, particularly those suspected to cause cancer. It published its findings in criteria documents which were sent to OSHA to serve as a basis for standards, as required by law.

Unfortunately, OSHA was unable to issue regulations as fast as NIOSH could produce criteria documents. From 1971-78, NIOSH sent about 100 documents while OSHA issued standards for only five or six.

The reason for the disparity is the complex nature of health hazards. Under the law, NIOSH is supposed to "develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work exposure."

This task is extremely difficult. Though much progress has been made in industrial hygiene in recent years, no one can say exactly what levels of exposure to hazardous substances are safe. The evidence against health hazards, especially cancer-causing agents, is seldom concrete.

Many scientists believe individual susceptibility is a more important factor than exposure levels in the development of occupational disease. Also, few workers are exposed to only one hazard and the problem of multiple exposures greatly complicates the issue.

The criteria documents produced by NIOSH are comprehensive analyses of all evidence against specific hazards. They state what is known and what is not known. They are scientifically sound, but make weak documentation for OSHA standards that must be defended in court.

Despite the legal shortcomings, however, the documents are the most detailed information on health hazards that exists. They are widely used by corporate medical staff, union officials, and other health professionals as guides for reducing work exposures. When a health hazard is present in the workplace, a professional's first response is usually to see if there is a NIOSH criteria document on the subject.

With or without an accompanying OSHA regulation, the criteria document is a valuable tool in the continuing campaign against occupational disease.

The Robbins Solution

When Eula Bingham was appointed OSHA Administrator in early 1977, she quickly voiced her disapproval of NIOSH's independent, scientific approach to dealing with occupational hazards. She wanted an end to the development of criteria documents which she considered an embarrassment to her agency.

Bingham also wanted NIOSH to back up her allegation that more than 30% of all cancers are related to workplace exposures. NIOSH had conducted its own research and concluded the real figure was between one and five percent. During public hearings on OSHA's proposed new cancer policy, Bingham's officials put pressure on NIOSH to raise its estimate. "We've got to get the figure up to justify the policy," one OSHA official told NIOSH representatives.

Dr. John Finklea, who was then director of NIOSH, balked at these demands. His stubborn refusal to compromise his agency's integrity for ideological purposes reportedly infuriated Bingham. Using her contacts with the White House and the labor unions, Bingham had Finklea removed and Robbins installed in his place.

Robbins quickly raised

NIOSH director Anthony Robbins.

NIOSH's estimate of the impact of workplace exposure on cancer rates to conform to OSHA propaganda and shut off the flow of criteria documents. At the time, the institute had between 30 and 50 documents in various stages of development by private contractors, for which funds had already been appropriated. A single criteria document can cost up to $250,000.

One by one, the expensive and important documents were completed and sent to Robbins' office where almost all of them disappeared. Critics say Robbins has sent only one document to OSHA during his tenure at NIOSH. Robbins says the figure is three, though that is still far short of the 24 per year the institute had been sending. The case of the missing criteria documents has been a source of vigorous debate in occupational health circles for the past two years.

The suppression of this valuable information appears to be a product of the political-ideological orientation of Robbins, Froines, Bingham, and other social-activists who rose to power in the Carter Administration. Closely allied with militant labor unions and environmental groups, they seemed to regard their agencies as weapons in a class war against the private enterprise system. If the criteria documents could not be converted into regulations to use against business, they did not fit into the OSHA-NIOSH scheme of things.

The expensive documents with life-saving potential are collecting dust on NIOSH shelves. Tens of millions of tax dollars have gone down the drain. Robbins has reduced the criteria document staff from 35 to a skeleton crew of five. According to NIOSH insiders, the agency has sent very little scientific criteria of any kind to OSHA during Robbins' tenure. "If it won't lead to an OSHA standard, why bother?" one NIOSH official told *Washington Watch*.

New Directions

The all-important independ-

Deputy director Froines.

ence of NIOSH from OSHA, so painfully crafted by Congress and preserved by Key and Finklea, was an early casualty of the Robbins-Froines regime.

The result is a "Baby OSHA." As NIOSH rejected the mission assigned to it by Congress, it became a covert arm of OSHA's enforcement mechanism. Congress had given NIOSH the authority to enter workplaces and conduct investigations as part of its research function. Robbins has greatly expanded this minor aspect of the NIOSH program to create an unauthorized inspection force working hand-in-hand with OSHA.

According to Phil Bierbaum, NIOSH deputy director for hazards surveillance, NIOSH inspectors automatically report all of their findings to OSHA and the labor unions. NIOSH on-site investigations, called health hazard evaluations, are used as "precursors" for OSHA inspections. If NIOSH finds what it believes to be a hazard, it orders the employer to make corrections. Then OSHA conducts a follow-up inspection and, if the alleged hazard has not been corrected, issues a willful and repeated violation citation carrying heavy penalties. In effect, NIOSH investigators are now OSHA inspectors.

This new emphasis has destroyed the institute's credibility as a scientific organization. Where once NIOSH could expect cooperation and assistance from industry, the agency now is often forced to seek Federal warrants to gain access to workplaces.

A spate of recent court decisions has upheld NIOSH's right to enter the workplace, view employee records, and obtain *ex parte* warrants. But the fact that NIOSH has been forced to go to court over these matters is itself evidence of the decline in the agency's prestige.

Fantasy Facts

Despite the curtailment of NIOSH research and his own meager experience in occupational health, Robbins is nevertheless undeterred from asserting himself as the expert on what should be done to reduce occupational disease.

His approach is awesome in its simplicity. Rather than spend the time and effort required to study a suspected hazard and develop control technology, Robbins suggests that "suspected" hazards be wholly eliminated, regardless of the impact on the economy and the loss of jobs.

A case in point is the problem of asbestos which is known to contribute to the development of cancer among workers exposed to large amounts, especially those workers who smoke cigarettes. For years, OSHA and NIOSH—along with business and labor—have wrestled with the question of how much exposure is dangerous. The problem is crucial, for asbestos is used in many consumer products. It is used in buildings as a fire deterrent, and its heat resistance and bonding properties make it uniquely suitable for automobile brakes.

In a speech before the AFL-CIO, Robbins said "There is no safe exposure limit for asbestos," a statement which cannot be true since asbestos is one of the most common minerals known to man and everyone has been exposed to it.

In a speech to an incredulous gathering of the Asbestos Information Association, Robbins said the U.S. must move to "halt completely" the use of asbestos because of its hazardous properties. To this pronouncement, David L. Kendall

of Research Triangle Institute responded that while there is "no absolutely necessary use of asbestos, there is no absolutely necessary use of the automobile either."

A New Approach

In the absence of criteria documents, Robbins and Bingham came up with a new system for standards development. According to ex-NIOSH officials, OSHA decides—with advice from the unions—what the exposure level for a given substance should be, and NIOSH tries to scrape up some "scientific data" to back it up.

This cart-before-the-horse approach is probably the one creative contribution made by the activist OSHA-NIOSH cabal, but its utility to occupational health is questionable. "When conclusions are drawn before the science is in," former NIOSH deputy director Ed Baier says, "something is amiss."

What little information NIOSH has produced under Robbins and Froines has come in the form of "hazard reviews" and "current intelligence bulletins" that provide some useful information but do not begin to address the critical question of safe exposure levels. Variously described as "scanty" and "shabby" by leading experts, these reports appear to be more designed to frighten workers than accomplish any scientific purpose.

The cadre of top-flight scientists assembled by Key and Finklea in the early days of NIOSH have fled the agency in disgust at the antics of Robbins and Froines. According to one report, there is now not one board-certified industrial hygienist in a position of power at NIOSH where once there were 40.

Professional Protests

Not surprisingly, the cavalier attitude of Robbins and Froines to scientific method has aroused animosity in occupational health circles. One particularly nasty furor arose over NIOSH's studies of the hazards of beryllium.

A former epidemiologist for NIOSH, David Bayliss, who was among those who fled the Robbins regime, has taken strong offense to efforts of NIOSH to rewrite the record and establish beryllium as a human carcinogen in defiance of scientific findings. In a sharply-worded letter to the head of the Center for Disease Control, Bayliss charged that NIOSH was trying to "provide support of the proposed OSHA standard and of the position advanced by OSHA that beryllium should be treated as a human carcinogen." According to Bayliss, "the entire study should be transferred out of NIOSH and placed in the hands of a truly independent research organization whose scientific integrity is unblemished and whose objectivity is uncompromised." Clearly Bayliss, who once served as assistant chief of NIOSH's biometry section at its Cincinnati laboratory, does not have much faith left in the institute's credibility.

Another tiff involved NIOSH and the American National Standards Institute (ANSI). After participating on an ANSI committee developing a voluntary standard for use of respirators and approving the final rule, NIOSH changed its mind and criticized the standard as inadequate. According to William H. Revoir, chairman of the ANSI committee, the criticisms made by NIOSH were "based on very little research, the use of some incorrect data, questionable assumptions, and the use of some improper methods of calculations." Other members of the ANSI panel shared Revoir's opinion of NIOSH's criticisms.

Other Missing Reports

In addition to the missing criteria documents, other important NIOSH reports have disappeared. One was a major study of the Bunker Hill Smelter in Idaho, a massive investigation upon which NIOSH spent more than $500,000 of the taxpayers' money. The study was completed in 1976, but NIOSH has yet to release a final report.

Former NIOSH director Dr. John Finklea acknowledges it could have taken NIOSH two years or so to analyze the data, but that does not explain why the report is still unissued in 1981.

Of greater significance is the Standards Completion Project, a long-term effort of NIOSH to supplement OSHA's Threshold Limit Values for 380 toxic substances. Many occupational experts believe that up to 80% of worker exposures to hazardous substances are related to these 380 toxic agents. OSHA has exposure limits on the books but nothing more. NIOSH began a project to supplement these limits in 1976, developing work practice guides, sampling methods, and the usual information employers need to control exposure. Up to $10 million was spent on the project, but Robbins has released nothing.

NIOSH insiders say it is the same old problem of OSHA not wanting the information. If OSHA doesn't want it, Robbins doesn't send it. The guidelines prepared by NIOSH would be extremely valuable to employers whose workers are exposed to the 380 toxic agents. Like the criteria documents, they are collecting dust on NIOSH shelves.

Robbins also stopped publication and distribution of NIOSH's "Worker Safety and Health Guides" and "Safe Practices Manuals" which were designed to help small businesses reduce exposures. The elimination of this inexpensive and useful program is inexplicable unless it is another example of the pro-union tilt of Robbins and Froines. Small businesses are usually nonunion.

Eccentric Behavior

Some observers theorize that Robbins and Froines have turned their backs on occupational health research because it takes too long and the results do not make good news stories. Anti-business rhetoric makes better news copy than quiet, painstaking research, especially when the results of that research do not support their pro-union biases.

More importantly, criteria documents are peer reviewed by scientific panels, a process that could be embarrassing to an institute that reaches conclusions prior to conducting

Former Director Key Looks Back . . .

As conceived by Congress, NIOSH is supposed to be a high-caliber research institute, not an enforcement agency, according to Dr. Marcus Key, the first director of the institute. Key, who served at NIOSH from 1971-1974, is now professor of occupational medicine at the University of Texas School of Public Health in Houston.

There should be regular feedback from OSHA enforcement to NIOSH research, Key said. NIOSH and OSHA should work together to develop priority lists of hazardous substances for study.

In the future, NIOSH will need to produce criteria documents, but not on the same scale as before, Key said. Future studies probably will not be devoted to single agents, but rather to types of industry and operations and to classes of substances.

Also, NIOSH will have to address issues of cost-benefit analysis and feasibility in future studies, Key said. "Scientists don't like cost-benefit analysis, but in the wake of the Supreme Court's decision on OSHA's benzene standard, they will have to get involved in it," he said.

NIOSH cannot stick with the dose-response approach to studying hazards, Key said. In the future, criteria documents may be part of industry-wide studies. Many top-notch occupational health scientists have never been in an industrial plant, he added. To that extent, they are "babes in the woods." Participation in industry-wide studies will enable them to gain practical experience in the workplace.

Key added that he hated to see NIOSH become politicized. "I hope professionalism will win out over the adversary relationship," he said. □

research.

As friends of Jane Fonda, Tom Hayden, and others in the anti-nuclear power movement, Robbins and Froines are very interested in nuclear power plants. They possess little expertise in the subject and NIOSH is expressly forbidden by the Occupational Safety and Health Act from interfering with authority of other agencies. Nuclear power plants are under the authority of the Nuclear Regulatory Commission and thus out of bounds for NIOSH, but "Bad Man and Robbin" are undaunted by such legal refinements.

When the nuclear accident occurred at Three Mile Island in Pennsylvania, Robbins quickly dispatched a NIOSH investigator to the scene. What the investigator was supposed to do is anyone's guess. In the words of one NIOSH official, he "mucked around and asked stupid questions," much to the annoyance of the Nuclear Regulatory Commission, the Bureau of Radiological Health, and other government agencies that had a legitimate reason to be there.

According to one eyewitness, Robbins summoned a subordinate to give him a quick briefing on nuclear energy. Robbins than called the Pennsylvania health commissioner and demanded the immediate evacuation of the Three Mile Island area. Fortunately, the state official had sufficient presence of mind to ignore the demand which Robbins had no authority to make.

Froines has reportedly used his office and facilities to assist in political campaigning, albeit not on behalf of Jimmy Carter. The object of Froines' admiration and support was Governor Jerry Brown of California. Three former NIOSH officials have confirmed to *Washington Watch* that Froines spent an inordinate amount of time on the telephone to California, at government expense, in stategy sessions with other Brown supporters.

Another questionable Robbins move was the assignment of a NIOSH official, Dr. Joseph Wagoner, to perform full-time work for the Environmental Defense Fund for two years. The assignment of a Federal employee drawing government salary to work for a private sector activist group is highly irregular. NIOSH officials report they know of no other incident of a public health officer being so used.

Robbins also has reportedly instructed NIOSH personnel to conduct research into the value of transcendental meditation as a means of relieving stress among white collar employees. Considering Robbins' own allegations about the seriousness of workplace carcinogens, this does not appear a worthwhile expenditure of the agency's resources.

Robbins' latest ploy is to extend his influence by getting involved in the much-publicized "Superfund" that the Environmental Protection Agency will administer to clean up chemical waste sites. Congress gave NIOSH no role to play in this project, but once again the lure of publicity has tempted him beyond his agency's jurisdiction boundaries.

Burrowing In

While sabotaging NIOSH's long-term health research program and dabbling in nuclear energy and transcendental meditation, Robbins and Froines took care to insulate themselves from possible removal in the wake of election reverses such as occurred on November 4. Neither is a Schedule C political appointee and neither can be easily fired by the Reagan Administration.

Froines is a GS-15 in the Civil Service. He can be transferred but not fired. The taxpayers will be supporting him indefinitely.

Robbins has the best deal of all. With union backing, he obtained the status of Assistant Surgeon General and membership in the Commissioned Corps, a quasi-judicial military organization available only to Public Health Service officers. He has the status of an 0-7, equivalent to a one-star general, and draws a salary in excess of $70,000 a year, much of it in tax-free medical incentive and housing allowances.

Robbins has vowed to fight any efforts to remove him from office. His wife is a lawyer in the general counsel's office of the Department of Health and Human Services, of which NIOSH is a part, so he knows the rules as well as anyone.

Epilogue

As of this writing, Robbins and Froines are still in command at NIOSH. Unlike OSHA, NIOSH is far down in the bureaucratic chain and draws little attention from the media. Also, the issues are so complex that few people outside the occupational health profession are aware of what they have done to the institute.

Ironically, Robbins and Froines draw their political support from the same unions that orchestrated the smear campaign against Sen. Richard Schweiker (R-PA) last year when the Senator introduced a bill to curb OSHA's power. Schweiker is now Secretary of Health and Human Services. Robbins and Froines are his employees.

Apparently more concerned with his inflated salary than his leftist ideology, Robbins is sounding more like a conservative Republican every passing day. In a January 19 speech in Texas, he said NIOSH and OSHA will no longer be able to rely on regulatory powers to fulfill their missions, but will have "to work harder to demonstrate significant risk" of health hazards.

In the light of the Supreme Court's benzene decision of last summer, that is an understatement. In the future, OSHA will need NIOSH's research capability more than ever. In order to protect workers from hazardous substances, OSHA will have to prove the substances are in fact hazardous. To obtain that information, NIOSH will have to resume its research role and, more importantly, regain its reputation for scientific integrity. That is not likely to happen with Robbins and Froines in control. □

A Private Consultant's Report . . .

In late 1978, NIOSH retained a private contracting firm—Policy Research, Inc. (PRI)—to identify problems with criteria documents and recommend improvements in the program that would enhance their effectiveness in reducing occupational disease.

The viewpoints of 45 occupational safety and health experts from labor, industry, academe, and Federal and state government agencies were solicited. Their comments were analyzed and summarized in a report prepared by PRI.

Acknowledging that the criteria documents "make a helpful contribution to the national effort to protect the health and well-being of the workers," the report suggested the criteria document program be divided into two parts: one to serve as a basis for OSHA standard, and the other to provide information to concerned groups such as OSHA, industry, and labor.

While some of the experts thought OSHA's inability to issue standards in response to criteria documents meant the documents were not useful for that purpose, others thought it had more to do with OSHA's own internal problems. Many of the experts reported they had used the documents as reference sources for information on health hazards, and that they were very useful for this purpose, regardless of their utility in standards-setting.

Almost all of the experts agreed that criteria documents should contain information on what the workers can do to protect themselves while on the job, and that this section should be written in understandable language so it can be used by workers and small businesses.

The experts were very critical of NIOSH's on-site investigations—health hazard evaluations—recommending that such visits be conducted by "knowledgeable people," which, they said, was not standard NIOSH practice. □