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INDUSTRIAL HEALTH AND SAFETY REPORT

April 15, 1971

PURPOSE

This is the first of a continuing series of analyses on federal actions influencing policies, programs and regulations in the field of industrial health and safety. The focus of these reports will be largely confined to (1) implementation of the Occupational Safety and Health Act, and (2) health policy legislation, funding and executive actions which relate to occupational health services or to employer-provided health services (including insurance coverage) for employees and their dependents.

The following report summarizes developments in the Departments of Labor and Health, Education and Welfare in carrying out provisions of the 1970 OSH Act. Discussion deals with:

1. Organization
2. Standards
3. Data collection
4. Research
5. Enforcement
6. Federal-state relations

Detailed reference to the statute is omitted, assuming widespread prior knowledge of its provisions.

SUMMARY

Preparations for the April 28 effective date of the 1970 Occupational Safety and Health Act are proceeding in the Departments of Labor and Health, Education and Welfare on somewhat related tracks, but with differing results. Labor has moved more rapidly to establish a structure and to name key people, but its view of the dimensions of the OSH responsibility differs from HEW's. HEW, despite its professional knowledge of health aspects, is somewhat handicapped by deferral of decisions on the leadership, organization and physical location of the new National Institute of Occupational Safety and Health.

Appointments:

Soon to be confirmed by the Senate are Assistant Secretary of Labor for Occupational Safety and Health George C. Guenther and the three Presidential appointees to the Occupational Safety and Health Review Commission. The leading candidate to become director of the new National Institute for Occupational Safety and Health (NIOSH) is Dr. Marcus M. Key, current head of the Bureau of Occupational Safety and Health (BOSH).

Organization:

The Secretary of Labor April 14 announced the establishment of a new Occupational Safety and Health Administration (OSHA) under Mr. Guenther's direction. The responsibilities and key personnel of OSHA are described below in section I.A. OSHA's leadership and staff are largely career employees familiar with the Labor Department's approach since most will come from the Bureau of Labor Standards (formerly headed by Guenther). The fiscal 1972 budget request for OSHA is almost \$25 million compared to fiscal 1971's \$5.4 million. A large supplemental appropriation request of \$11 million has come too late to expect full approval by the Congress.

In HEW, NIOSH will become official April 28. Its chief source of manpower will be the Bureau of Occupational Safety and Health. The fiscal 1972 budget request of \$16 million compares to \$8 million for the current fiscal year. A supplemental request for \$5.6 million faces the same fate as OSHA's.

Standards:

On or about April 28, the Secretary of Labor will announce an interim standards package consisting of "consensus standards" which have been adopted by private organizations and existing standards which have been officially promulgated under prior statutory authority. Emphasis will be on industrial safety rather than health standards, for which there are few consensus mechanisms.

An early target for revision of standards will be the 450 standards adopted by the American National Standards Institute, Inc., and the National Fire Protection Association, largely due to their age or lack of adequate coverage. HEW indicates interest in moving rapidly toward recommended standards for beryllium, carbon monoxide, heat stress, ultra-violet exposure and noise.

NIOSH plans to publish by June 29, 1971, a generic listing of all known toxic substances; it appears that perhaps 10,000 agents will be included in the compilation.

Data collection:

A new plan for employer-supplied information on injuries and illnesses is undergoing Labor Department review. It is expected to be effective in July 1971. Mandatory use of new definitions will be required of about 250,000 business establishments.

A cooperative program involving state agency reporting is also being developed. Nineteen states are currently participating. Their data will reflect the new system also.

In HEW, NIOSH's statistics collection will involve medical examinations and tests of workers. To some extent, NIOSH's data gathering is closely related to its inspection role for potentially toxic substances. Internal task forces are seeking to clarify these procedures.

Research:

NIOSH's research activity will provide much of the scientific foundation for recommended health standards in the future. At present, the ongoing approach of BOSH is likely to continue, although broad new areas of investigation will be pursued. In developing criteria on which new standards can be based, several substances appear to be objects of great interest: carbon monoxide, asbestos, coal-tar pitch volatiles and ammonia. Other research appears certain to deal with alcoholism among employees. There is some expectation that congressional pressure may lead to studies of work safety and health among migrant farm workers.

Studies on low-level exposure are underway in BOSH, dealing with uranium, coal dust, carbon monoxide and benzene. Before Dec. 29, 1971, NIOSH will publish the first of an annual series of reports on industry-wide studies of chronic and low-level exposures to materials, processes and stresses.

Enforcement:

Labor has indicated ten target industries ("worst-first" in terms of injury-frequency rates) as the most likely to be inspected for enforcement purposes: longshoring, lumber and wood products, trucking and warehousing, contract construction, foundries, food and kindred products, stone, clay and glass products, fabricated metal products, rubber and plastic products, paper and allied products.

The Labor Department sees a need to stimulate organized labor and employee capacities in order to cope with the Act's requirements. Early 1971 conferences have emphasized education of labor and management to their responsibilities.

Operational changes in enforcement are largely deferred until more inspectors become available. About 100 inspectors will be in various (but not all) regional offices by April 28. After another 50 are trained, Labor will concentrate on training instructors in perhaps five occupational safety and health training centers.

Federal-state relations:

Nearly 35 states have requested authority to continue state enforcement until the end of 1972, or until a state plan can be developed. Labor intends to issue guidelines as quickly as possible for states seeking planning and program grants; it had hoped to issue initial grants during May and June but is about a month behind schedule. It appears that program grants to state agencies will not be completed before September 1972.

In HEW, initial attention to grants supporting health manpower is focused on aid to medical schools to develop physicians with occupational health specialties, and to community or junior colleges to develop two-year programs for industrial hygienists. It is possible that a regional approach to manpower development may be preferred.

OUTLOOK

The formal implementation of the 1970 OSH Act is being carried out with dispatch in the Labor Department, less so in HEW. White House interest in the subject has sharply declined following enactment of the law. Congressional concern will be keen, particularly in the Senate where strong industrial health measures are favored by members of both parties. Considering the early stages of the new agencies, there is already concern that politically-visible steps may be needed to assure that the Labor Department not neglect the development and enforcement of health standards. Committee investigations into some industries (e.g., metallic and non-metallic mining) and substances (e.g., exposure to lead) can be expected.

Organized labor seems anxious that there be greater attention to health standards than is likely in the interim package. This, combined with congressional interest and the professional objectives of career administrators in the soon-to-be-official NIOSH, suggests a growing agreement on this point. It can be anticipated that these parties, in order to influence the Labor Department's OSHA in behalf of stronger health standards, will recognize that NIOSH's role is crucial: Without adequate evidence of medical hazards, no criteria can be developed to support standards. Hence, NIOSH's priorities and actions are of greater long-term importance despite the fact that it will be the Labor Department which actually sets standards.

I. OrganizationA. Department of Labor

Primary responsibilities placed in the department by the 1970 Act include:

1. Standard-setting, variations, tolerances and exemptions;
2. Establishment of priorities for standards;
3. Enforcement, inspections and citations;
4. Grants to states and approval of state plans;
5. Record keeping for enforcement or statistical purposes;
6. Record keeping for occupational injuries, illnesses;
7. Training of inspectors; and
8. Educational and prevention programs aimed at employers and employees.

Four organizational provisions were contained in the Act:

1. Assistant Secretary of Labor for Occupational Safety and Health
2. Occupational Safety and Health Administration (OSHA)
3. National Advisory Committee on Occupational Safety and Health (NACOSH)
4. Advisory committees for standards setting process (optional)

Status

1. George C. Guenther, currently director of the Bureau of Labor Standards, has been nominated and will soon be confirmed as the Assistant Secretary of Labor after the Senate reconvenes April 14.

2. Labor Secretary J. D. Hodgson announced the establishment of the Occupational Safety and Health Administration April 14 (see attachment). Job safety responsibilities have been reassigned from the now-defunct

Bureau of Labor Standards (in the Workplace Standards Administration). OSHA will be under Quentner's direction. At the same time, Workplace Standards has been renamed the Employment Standards Administration, with Assistant Secretary Arthur Fletcher as its head. Quentner will report to the Secretary on job safety and health; Fletcher will report on matters dealing with job compensation and contract compliance.

OSHA is to consist of three central parts: Office of Operations, (with an evaluation arm in the Office of Policy Development), Management offices, and the Regional and area offices.

a. Office of Operations will be directed by Robert D. Gidel (former deputy director, Bureau of Labor Standards). Operations has four subdivisions covering Labor's primary responsibilities under the Act:

- 1) Office of Safety and Health Standards - Patrick F. Cestrono (former chief, Office of Standards Development, Bureau of Labor Standards)
- 2) Office of State Programs - Thomas C. Brown (former director, Office of Program Development, Workplace Standards Administration)
- 3) Office of Compliance - Eugene L. Newman (former chief, Office of Training, Bureau of Labor Standards)
- 4) Office of Training and Education - Dr. Earl D. Heath (National Highway Traffic Safety Administration)

The Office of Policy Development (headed by Albert J. Angebrannt, former deputy director, Office of Management Systems, Office of Financial Management, Manpower Administration) will work closely with Operations Director Gidel to develop recommendations from the program offices and legislative and policy reports on the basis of experience with the Act.

b. Management offices will consist of three elements:

- 1) Office of Program Management Services - Barry J. White (former director, Office of Management Systems and Services, Workplace Standards Administration)

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b. Management offices will consist of three elements:

- 1) Office of Program Management Services - Barry J. White (former director, Office of Management Systems and Services, Workplace Standards Administration)

2) Office of Management Data Systems - (vacant)

3) Office of Information Services - Robert Resor (former special assistant, National Railway Labor Conference in Washington)

c. Ten regional offices will be established, each with staff for compliance, state programs (administrative services and technical support programs). Forty-three area offices will be structured more to deal with standards-oriented programs--with construction, maritime and general industry subdivisions in each office. (See Appendix A for regional officials and offices.)

The fiscal 1972 budget request for OSHA's activities is six times greater than the original appropriation for the Bureau of Labor Standards in fiscal 1971. A large supplemental request has not been passed. A comparison (in millions of dollars):

	(OSHA-1972)	(BLS-1971)	(BLS-1970)
	24.9*	5.42	4.57
Supplemental	--	10.90*	--
	<hr/> 24.9	<hr/> 16.32	<hr/> 4.57

* Not yet appropriated

3. The Secretary of Labor is to appoint a 12-member National Advisory Committee on Occupational Safety and Health (NACOSH) with four members designated by the Secretary of HEW. Members are to be chosen from management, labor, occupational safety, and occupational health professions and from the public. One of the public representatives is to be named by the Secretary as chairman; NACOSH must hold public meetings at least twice a year.

The Secretary's existing National Safety Advisory Committee probably will be reconstituted as NACOSH. Thirteen safety experts from management, labor and the public currently advise the Secretary on new standards.

The mandate for NACOSI is vague, indicating that it will provide general public review of overall Labor-HEW administrative problems rather than continue the functions of the Secretary's Advisory Committee. Personnel adjustments in NACOSH will make room for the four HEW-designees and transfer the emphasis on standards-review responsibilities to the advisory committees.

Appointments to NACOSI are expected shortly after April 28.
Current Safety Advisory Committee members are:

Chairman: Howard Pyle, president, National Safety Council

Public members:

Dr. Clyde Berry, chairman, division of environmental and health engineering, College of Medicine, University of Iowa

Dr. John Grimaldi, director, Center of Safety, New York University

Jack F. Hatton, chief, division of industrial safety, California Department of Industrial Relations

Donald Peyton, managing director, American National Standards Institute

Labor members:

Walter J. Burke, secretary-treasurer, United Steelworkers of America

Arthur P. Gildea, secretary-treasurer, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America

Elwood Swisher, vice president, Oil, Chemical and Atomic Workers International Union

George H. R. Taylor, economist, department of research, AFL-CIO

Management members:

Dr. Lester V. Cralley, director, industrial hygiene, Aluminum Co. of America

J. S. Queener, manager, safety and fire protection division,
E. I. DuPont de Nemours & Co., Inc.

Albert W. Turner, supervisor, employee relations, Southern Cali-
fornia Gas Company

Frank R. Barnako, manager, safety and workmen's compensation
division, Industrial Relations Department, Bethlehem Steel Co.

4. Advisory committees on standards may be appointed by the Secretary of Labor. None are currently anticipated (in the immediate future) by OSHA. When named during the next two years, the advisory committees will review all other possible federal standards as a federal consensus mechanism rather than the former private review mechanisms of the American National Standards Institute, Inc. or the National Fire Protection Association. Thus, the "consensus" system will be applied by DOL advisory committees to proprietary or professional standards currently not incorporated in federal regulations.

Significance

Major accommodations have been made by the Labor Department to carry out the 1970 Act through OSHA:

1. Separation of operations and administrative functions, providing a high priority for Labor's four major areas of responsibility.
2. Upgrading of policy development from a research/evaluation "study" level to the operations level, in preparation for reviews, reports and legislative changes.
3. Establishment of a compliance office, separate from regional and standards-setting functions, to concentrate on enforcement.
4. Establishment of regional offices as mini-bureaus with special capabilities for compliance, state plans, and technical assistance directed at the local level.

It is not clear whether Labor is merely shuffling Bureau of Labor Standards into a new title rather than into a new policy position. Six of eight appointments are personnel from either Bureau of Labor Standards or Workplace Standards Administration. In addition, two other areas of OSHA jurisdiction (legal enforcement and data systems) are to be handled outside of the administration itself:

Associate Solicitor for Occupational Safety and Health -
Benjamin W. Mintz (former special assistant to the Solicitor, DOL)
Associate Commissioner of the Bureau of Labor Statistics for
Occupational Safety and Health - Thomas McArdle (former Bureau of
Labor Statistics Regional Director, Chicago)

B. Health, Education and Welfare

Primary responsibilities placed in the department by the Act include:

1. A new National Institute for Occupational Safety and Health (NIOSH) with a broad mandate for extensive research programs, assisted by research and demonstration grants;
2. Development and recommendation (but not setting) of health standards;
3. Compilation and annual revision of lists of all known toxic substances; including toxic concentrations;
4. Regulation of medical examinations or tests to determine frequency or occupational illness or susceptibility;
5. Manpower development (but not inspectors) including training grants;
6. Information on protective equipment; and
7. Annual publication of research criteria.

Status

The chief organizational response to the 1970 Act is the establishment of the National Institute of Occupational Safety and Health (NIOSH). The institute is the key to implementing most of HEW's responsibilities under the Act. Most of HEW's other responsibilities are largely those of consultant or advisor to the Labor Department.

Although NIOSH became an official organization on April 28, many questions remain about its organization and relationship to the HEW Department. The core of the institute will consist of the present Bureau of Occupational Safety and Health (BOSH)--formerly a subunit of HEW's Environmental Health Service. The formation of the Environmental Protection Agency emasculated the Environmental Health Service and left BOSH reporting directly to Assistant HEW Secretary for Health Roger O. Egeberg. In this reorganization, BOSH also acquired parts of the old Bureau of Radiological Health, including the Electronics Products Division. More recently, BOSH has acquired the Occupational Studies Unit of the National Institute for Environmental Health Sciences.

Budget requests for fiscal 1972 are double that of BOSH's original appropriation in 1971; the comparison (in millions of dollars):

	(NIOSH-1972)	(BOSH-1971)	(BOSH-1970)
Grants	2.95 ^a	8.28	7.60
Direct oper.	13.52 ^a		
Supplemental	--	5.60 ^a	
	<hr/> 16.47	<hr/> 13.88	<hr/> 7.60

^aNot yet appropriated

Compared with the Labor Department, the reorganization and establishment of NIOSH is proceeding slowly. In-house task forces at BOSH submitted proposals for reorganization to a special task force under the

chairmanship of Surgeon General Jesse L. Steinfeld. The Surgeon General's task force has met on the proposals, endorsed them, and forwarded them to HEW Secretary Eliot Richardson for approval. Secretary Richardson has been in Europe and returns to the United States April 15.

Several key issues must be decided by the Secretary, including where the institute will be placed both physically and within the HEW structure, and who will direct the institute.

Significance:

1. Where the Institute will be placed within the over-all HEW organization. Options include making the Institute a separate unit, like the Food and Drug Administration; placing the Institute within NIH umbrella; or placing it within the Health Services and Mental Health Administration (HSMHA).

Mitigating against a separate organization, of the FDA type, is the high cost of administrative services--such as personnel, payroll, grants management, and so on--that a separate organizational unit must underwrite. Between NIH and HSMHA, speculation leans toward HSMHA, not only because HSMHA has been providing some administrative services to BOSH, but also because HSMHA is clearly identified as a basic research agency and the new Institute will be geared to applied research. Tipping the balance between NIH and HSMHA, however, may be the location chosen for the NIOSH campus.

2. The site of the NIOSH campus. Pressure has been exerted on HEW to locate the new institute in three different places: in Cincinnati where BOSH currently has a large laboratory (200 employees) with a variety of research undertakings; Fort Detrick, Md., for which considerable congressional pressure has developed to put to use the chemical and biological warfare facilities recently abandoned by the Defense Department; and North Carolina's Research Triangle, the headquarters for NIH's Institute of Environmental Health Sciences.

A fourth option, and one that is likely to prevail during the first year of the Institute's operation, is to establish an institute without campus--that is, decentralized facilities much as they are at present.

Should Fort Detrick, part of which will be occupied by NIH's Cancer Institute, be selected as a site for NIOSH, the availability of NIH's administrative support in nearby Bethesda, Md., could tip the scales in favor of placing the new institute in the organizational structure of NIH.

3. The naming of the NIOSH Director. Two front runners are Dr. Marcus M. Key, presently director of EOSH who reportedly has the support of both organized labor and the National Association of Manufacturers; and Dr. Edward P. Radford, professor of environmental medicine at Johns Hopkins University. Dr. Radford's name has been proposed to the HEW Secretary by Sen. Edward Brooke, R-Mass. HEW Secretary Eliot Richardson is also from Massachusetts.

C. Occupational Safety and Health Review Commission

The Act provides for a three-member Presidentially-appointed Occupational Safety and Health Review Commission, an independent quasi-judicial agency. The commission will have hearing examiners to review the enforcement provisions of the Act. It will have authority to develop its own operating rules.

Status

The President has nominated and the Senate will soon confirm three commissioners: Robert D. Moran (chairman with a six-year term), Alan F. Burch (two-year term) and James Van Namee (four-year term).

Significance

The nominees are well attuned to Labor's administration of the safety laws under existing federal contract law: Moran as administrator of the Workplace Standards Administration, Van Namee as president of the

American Society of Safety Engineers and Burch as a member of both the National Safety Council and Labor's National Safety Advisory Committee. None of the three are medically knowledgeable.

The Review Commission will be watched carefully as it builds up a body of precedent for enforcement, but it is not likely to stray significantly from guidelines developed under the old procedures. Its initial cases should not be brought for some time.

D. Other

1. The White House gives no sign of intervening in the early process of Labor's reorganization, nor in establishing priorities for standards. A patronage issue may be involved in the eventual choice of NIOSH's Director, but there is general confidence in both Labor and HEW in respect to the Act's provisions; hence, no highly active White House role at present.

2. Environmental Protection Agency is in the process of its own organization and has not perceived any significant responsibility in the OSH field. Its growing attention to toxic and hazardous substances indicates an eventual role is likely, if only to support Labor and HEW responsibilities.

II. Standards

A. Background

The Secretary of Labor has two years to adopt as occupational safety and health standards any of the pre-existing "national consensus" or "established federal" standards which have gone through effective review procedures. If the Secretary promulgates new standards or modifies or revokes any of the existing standards, he must first follow the detailed notice, comment and hearing schedule required by the Act.

If the proposed standard has not been subject to "consensus" procedures, an advisory committee will undertake the procedural scrutiny formerly provided by the private organizations. Advisory committees' procedures are expedited: 90-270 days for a committee recommendation as contrasted with months or years for NFPA or ANSI procedures. This streamlined process allows the Secretary to consider proprietary or professional standards produced by industry groups or organizations which do not have diverse memberships and therefore cannot use the "consensus" principle of adoption.

Emergency standards can be promulgated in cases of imminent danger, temporarily bypassing the regular procedures for up to six months. These extraordinary powers were derived from the growing concern for health problems created by airborne contaminants and exposure to toxic agents. The emergency provisions were included to allow Labor to respond quickly to safety crises as well as new hazards research from HEW. The provisions for emergency standards can be exercised in conjunction with enforcement procedures to counteract imminent danger in extreme cases.

In setting standards and priorities, the Act requires the Labor Department to give "due regard" to the recommendations of the HEW Secretary. NIOSH is charged with developing the criteria on which the HEW recommendations will be made. The recommendations, however, will be subject to review and approval by the office of the Assistant HEW Secretary for Health.

The validity of a standard can be reviewed by the U.S. Circuit Courts of Appeals upon petition by any person claiming adverse impact. The first appeal process offers the employer the advantages of review at the Circuit Court level before enforcement steps begin. These are counterbalanced by the requirement that the employer must argue, separately, the issues of (a) the validity of the standard on the basis of substantial evidence and (b) the likelihood of adverse impact justifying a stay of effectiveness of the promulgated standard.

Employers' second pre-enforcement appeal alternative is to seek a temporary variance from immediate compliance. The burden of this approach weighs heavily on employers because noncompliance may be temporarily forgiven only under a few limited conditions:

- unavailability of personnel, equipment or facilities
- availability of protection for his employees from the hazard at issue
- reasonable schedule for compliance, or
- special exemption for participation in an approved experimental project.

Interim and renewed variance orders of limited duration are available to the employers, but no appeal on grounds of "economic hardship." Finally, employees have a right to a hearing to contest an employer's application for variance.

B. Status

1. Standard-setting

The interim "standards package" to be announced on or about April 28 will consist of "consensus standards"--those adopted under procedures which duplicate promulgation procedures required by the Administrative Procedure Act (such as the American National Standards Institute or the National Fire Protection Association procedures, where

interested and affected persons have reached substantial agreement on adoption).

The forthcoming standards package will streamline the general occupational safety and health standards adopted under existing legislation:

Walsh-Healey Act of 1936 (41 USC 35 et seq)

McNamara-O'Hara Service Contract Act of 1965 (41 USC 357 et seq)

Construction Safety Act of 1969 (40 USC 333 et seq)

Longshoremen's and Harbor Workers' Compensation Act of 1958
(33 USC 941 et seq)

National Foundation on Arts and Humanities Act (20 USC 951 et seq)

Standards to be included are those developed and adopted by the nationally-recognized standards-setting organizations or which already have been through administrative proceedings:

American National Standards Institute, Inc. (inclusive standards)

National Fire Protection Association (inclusive standards)

American Society of Mechanical Engineers (standards for boilers and pressure vessels)

American Society for Testing and Materials (material testing codes)

U.S. Government agencies -

Department of Labor (construction, maritime industry standards)

Department of Interior (mining industry standards)

Department of Transportation (transport of hazardous materials, and aviation safety standards)

Department of Health, Education and Welfare (standards for water, sanitation, food and beverages)

Department of Defense (explosives and ammunition standards)

2. Priorities and revisions

The 450 standards adopted by ANSI and NFPA will be an early target of revision; 32 per cent are over ten years old, 28 per cent are between five and ten years old. There are 50 areas where national standards do not exist or are inadequate (including manufacturing, primary metal, electrical equipment and supply, transportation equipment, construction and service industries).

Standards which will now have opportunity for promulgation include several health standards developed by such professional groups as the American Conference of Governmental Industrial Hygienists, the Compressed Gas Association and the Grinding Wheel Institute.

The most likely application of extraordinary powers would be in areas of chemical exposure (e.g., pesticides in farm industries) and mineral dust hazards (e.g., asbestos and coal mining industries). HEW is reportedly anxious to move toward early standards for beryllium, carbon monoxide, heat stress, ultra-violet exposure and noise.

In HEW, the mechanism for recommending standards criteria and priorities was included in the task force report forwarded by the Surgeon General to HEW Secretary Richardson. The task force unit which formulated these recommendations was under chairmanship of Edward Fairchild, director of BOSH's Division of Criteria and Standards Development. The procedures mechanism is an integral part of the NIOSH organization; it is not likely that it will be announced before the structure of NIOSH is announced.

Advisory committees may be appointed by the Labor Secretary to assist him in his standard-setting functions. Each such committee shall consist of not more than 15 members and shall include one or more members designated by the HEW Secretary.

HEW's designees to these committees will originate in NIOSH with the office of the Assistant HEW Secretary for Health retaining final approval. Task forces struggling to convert BOSH to NIOSH have yet to deal with committee appointments formally. Names are being readied, however, for approval and submission once NIOSH becomes official and its director is named.

Standards committee members will be drawn from the NIOSH staff of safety engineers and occupational health professionals; their interests are expected to be limited to scientific input with Labor representatives making necessary policy decisions.

3. Appeals, variances and exemptions

This will be a testing area for Labor's preliminary efforts to gain management and labor cooperation. Some informal and formal conferences have been held, with Labor encouraging business and union officials to help the department implement the Act. Labor has remained relatively quiet on discussions of standards, however, under the assumption that employers could be expected to comply with reasonable pre-existing standards. The Act tried to avoid the use of variance procedures to delay employer compliance, but the test will come when Labor starts to promulgate, modify or revise standards anew.

4. Toxic substances

NIOSH is charged with publishing, before June 29, 1971, a generic listing of all known toxic substances. The list must be updated annually and must show the concentrations at which toxicity occurs.

The toxicity list to meet the June 29 deadline is currently under preparation by a task force under Bobbie Kraft, deputy director of the BOSH Division of Occupational Injury and Disease Control.

The basis for the toxic substances list is the current "Threshold Limit Values of Airborne Contaminants" list adopted by the American Conference of Governmental Industrial Hygienists for 1970. The TLV

list contains about 400 toxic agents; BOSH predicts that the list now under compilation will contain about 10,000 agents.

Question has been raised, however, about including harmful physical agents--such as noise and laser beams--in the list. The law does not specifically require their inclusion but it does require NIOSH to develop criteria for standards (Sec. 20(a)(3)) on these hazards.

III. Data Collection

A. Background

Employers will have to keep--and make available--records about their activities under the Act. The Labor Secretary, in cooperation with the HEW Secretary, has a clear hand in prescribing the kinds of information to be kept. He is required, however, to prescribe regulations requiring employers to record and periodically report work-related deaths, injuries and illnesses. Exempt from reporting are minor injuries that do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

The Secretary of Labor (in consultation with HEW) shall also develop a nationwide statistical collection and evaluation program which will include information on all disabling, serious or significant injuries and illnesses whether or not they involve loss of time from work. Pre-existing MOU arrangements with the states regarding collection of such statistics are to remain in effect until contracts or grants are awarded under the new Act. Grants to states to develop and administer programs for occupational safety and health statistics are to be shared on a 50-50 federal-state basis.

While the Labor Secretary has the major role in developing and maintaining a program of collection, compilation and analysis of occupational safety and health statistics, NIOSH also has important statistics-gathering responsibilities.

Specifically, NIOSH is charged with collecting information about potentially toxic substances or harmful physical agents. The Institute may prescribe regulations requiring employers to measure, record and report exposure of employees to endangering agents. Employers who are required to keep such data, however, may claim full financial assistance to defray any additional costs.

The statistic-gathering proposals for NIOSH were developed some time ago by Vernon E. Rose, Jeffrey S. Lee and Howard L. Kusnetz, all

of BOSH's Cincinnati laboratory. They are included in 'National Surveillance Network for Occupational Health'--a document prepared by, and available from, BOSH, 1014 Broadway, Cincinnati, Ohio 45202.

2. Status

1. Records of employers

The Secretary of Labor in January 1970 asked ANSI to develop a new national system for collecting data on occupational injuries and illnesses. An ad hoc ANSI study group (with broad representation in occupational safety and health fields, the National Safety Council, management, labor and university professionals) offered recommendations for a Proposed National System for Uniform Recording and Reporting of Occupational Injuries and Illnesses.

The old, voluntary, ANSI reporting standard (Z-16.1) had been the only data system for information on injuries and illnesses. The Bureau of Labor Statistics' annual Cooperative States Work Injury Survey used this standard when it recorded information voluntarily submitted by about 148,000 business establishments in 19 states (about 1/5 the nation's workforce).

The new plan, while still undergoing DDL review, is expected to be in effect by July 1971. Both systems would continue to be available, although mandatory use of the new definitions would be required of about 250,000 establishments reporting to the Bureau of Labor Statistics.

The new system would count frequency of injury and illness, but not severity as under Z-16.1; would count injuries separately from incidents of illness; would use a "per 100 employees per year" rate base rather than "per million man hours"; and would simplify and expand the categories of injury and illness beyond the old definition of disabling criteria (i.e., new system includes three categories: death, loss-time injuries involving absence from scheduled work, and illness/injury requiring any visit to a physician).

The new system will be initiated under the direction of Thomas McArdle (currently Bureau of Labor Statistics' Acting Assistant Commissioner for Occupational and Safety Statistics).

2. State reporting systems

The coordinated use of data obtained from states was developed under Thomas McArdle about three months ago. Preliminary operations will involve Bureau of Labor Statistics working in close cooperation with the new Office of Management Data Systems in OSHA. Since pre-existing state-DOL arrangements are based on the ANSI Z-16.1 system, these must be converted when the new system takes effect.

The 19 states currently participating in the BLS Cooperative States Work Injury Survey program are the most prepared for the transition, are in the best position to obtain statistical program grants, and will provide the best comparison of data obtained under the two different methods of reporting.

The states with agreements are: Ala., Ark., Ariz., Conn., Fla., Ga., Idaho, Ind., Iowa, Ky., Maine, Mich., N.J., N.Y., Pa., S.C., Va., Wis. and Wyo.

3. NIOSH responsibilities for data

Part of NIOSH's statistics collection can be carried out by medically examining and testing workers to determine the incidence of occupational illness and the susceptibility of workers to illness.

Precedent for these examinations has been established under the Coal Mine Health and Safety Act (PL 91-173), and implementation is expected to parallel the Coal Act provisions. A task force under leadership of Vernon E. Rose will develop specifications for medical examinations that will detail tests to be performed by examining physicians.

IV. Research

The overall research called for by the Act will be conducted through NIOSH. This section describes the categories of research and their status.

A. Health and Safety

NIOSH has primary responsibility to conduct research, experiments and demonstrations relating to occupational safety and health. The Labor Department has consultation authority. The projects may be conducted directly by NIOSH or by grants and contracts with individuals or institutions.

The law leaves the area for investigation open, specifying only that the research relate to occupational safety and health, including psychological factors and innovative approaches to solving occupational safety and health problems.

This provision is an upgrading of research currently carried out by BOSH. Grants and contracts to outside investigators will follow the current proposal-screening mechanism and award system under BOSH's Safety and Occupational Health Study Section. (See Appendix B for study section members.)

B. Criteria to Describe Harmful Agents

On the basis of research, demonstrations, experiments and available information, NIOSH has the responsibility to develop the basic information, or criteria, on which new standards will be based. Plans are to publish the criteria in documents that will be available to interested persons at the time new standards are proposed.

In the works by BOSH's Division of Criteria and Standards Development at the present time--partly because of the amount of literature available--are criteria documents covering carbon monoxide, asbestos and coal-tar pitch volatiles. Another area of concern is ammonia.

Following a written request from any employer or authorized employee representative, NIOSH is required to inspect work places to determine if any substance has potential toxicity in the concentrations normally found in the work place. If NIOSH determines there is a health hazard, it must notify the employer, employees and, if the substance is not covered by a health and safety standard, the Labor Department.

The inspection proceedings are interwoven in the relationships NIOSH will have with the Labor Department. Part of the reason for this is an immediate shortage of inspectors; another part is a reluctance by NIOSH's officials to duplicate inspections made by the Labor inspectors or to over-inspect employers.

Three task forces in BOSH have been groping with inspection procedures--those concerned with technical assistance, standards and disease monitoring. Their proposals are not clear, but the fact that the technical-assistance task force has a hand in establishing policy may indicate a larger role for state health departments.

C. New Research

NIOSH is authorized to conduct special research exploring new occupational safety and health problems--including those that may be created by new technology.

This provision is a far-reaching departure from the role BOSH has had in industrial health, and has the potential of great impact on industry. In the past, BOSH has had to rely on employers voluntarily acceding to its requests to conduct on-the-job research; this provision, together with the right-of-entry provision, gives NIOSH considerable muscle for fact finding.

A key factor in how NIOSH implements this provision, however, will most likely be how much manpower the institute devotes to new research. Another factor, according to BOSH staff members, may well be congressional pressure. Staff members point out, for example, that migratory laborers are covered by the Act and considerable congressional pressure could build for studies of work safety and health among the migrants.

D. Motivational Research

One key provision directs NIOSH to conduct research into the motivational and behavioral factors relating to occupational safety and health.

The main, and most obvious, area of concern under this provision will be investigations concerned with the incidence and effects of alcoholism among employees. Such a program of investigation, however, will require liaison with the National Institute of Mental Health and, possibly, a new advisory committee, or study section, to evaluate and process grant applications.

E. Low-level Exposure

Before Dec. 29, 1971--and annually thereafter--NIOSH is required to conduct and publish industry-wide studies of the effects of chronic and low-level exposures to industrial materials, processes and stresses.

Several studies are now underway on low-level exposures. Conducted by BOSI, the studies focus on exposure to uranium, coal dust, carbon monoxide and benzene.

The Occupational Studies Unit--recently added from the National Institute of Environmental Health Studies to the agency mix that will become NIOSH--will provide considerable support to this undertaking. The unit has previously been concerned with detecting morbidity and mortality trends for selected occupational groups, and has emphasized trends in cancer-caused deaths.

F. Publication of Research Criteria

The law requires that NIOSH consult with the Labor Secretary in developing its research, demonstration and experiment plans.

According to BOSI staff members, it is premature to consider research plans until priorities for standards have been defined. It is clear, however, that the research guidelines will contain greater controls over the scientists than the guidelines currently in effect for NIH institutes. NIH gives a great deal of leeway to scientific instinct and serendipity; NIOSH sees its primary research needs as goal-directed applied research.

This may mean that more obvious problems--carbon monoxide exposure, for example--will get first attention simply because a body of knowledge already exists on which research goals can be established.

VI. Federal-State Relations

A. Background

The Secretary of Labor can make agreements with states to let them continue enforcing standards until final state plans are approved, or until the end of 1972, whichever is earlier. If no federal standard exists for a particular occupational safety or health area, jurisdiction remains available to the state authorities.

If federal standards are adopted and the state wants enforcement responsibilities, the state must gain the Secretary's approval of a state enforcement plan. Even if a state plan is adopted, the Secretary has three years during which he can exercise his own enforcement responsibilities.

Several years ago, about half of the states had agreements with Labor for enforcement under the Walsh-Healey Act. Only six agreements survived: Calif., Conn., Mass., N.J., N.Y. and R.I. Since no state arrangement completely met the requirements of the new Act, Labor is starting from the base, requesting governors to designate OSH agencies which will apply for Section 18(h) agreements for continuing state enforcement.

Governor-designated state agencies may apply for state grants for projects relating to occupational safety and health statistics, training of personnel, standards administration or enforcement. Planning grants are shared 90-10 while program grants are shared 50-50. Authorization is for fiscal years 1971 through 1973.

B. Status

1. State plans

Between 30-35 states had responded (as of April 9, 1971) requesting authority to continue state enforcement until the end of 1972 or until a state plan could be developed. The Secretary will issue guidelines for state plans after the agreements are in operation and after some state-federal experience is developed. Sixty days after the guidelines are

presented, the states must express their intent to file a plan within the next nine months. If a state fails to follow this schedule, the agreement can be abandoned and the federal authority can preempt responsibilities in that state.

Labor's coordination efforts with state authorities and the financial assistance available make it likely that states will cooperate. Labor wants to encourage state programs, but will continue working closely with local officials to assure that state priorities are the same as Labor's.

Labor intends to issue guidelines for states seeking planning and program grants as soon as it completes its evaluation of pre-existing state safety and health laws and operations. The department is about a month behind in its scheduled plan to have all initial planning grants issued during May and June. This will create further delays in the initial schedule estimated for approval and funding of state programs:

Jan.-Feb. 1972 - submission of state program plans

May 1972 - approvals completed

July 1972 - funding completed

2. Health manpower

NIOSH is directed to foster--directly or through grants and contracts--education programs to provide an adequate supply of qualified personnel to implement the Act. Preliminary thinking in BOSHA has focused on two key areas where grants will be made for manpower development:

1. Medical schools, to develop physicians with occupational health specialties.

2. Community (or junior) colleges, to develop two-year certified programs for industrial hygienists.

Schools with the best chance for receiving aid from the institute will be those that have occupational medicine or industrial hygiene programs already underway or which exhibit a potential for developing such programs. NIOSH planners indicate that some consideration to schools is likely to be given on a regional basis.

V. Enforcement

A. Background

The Secretary of Labor may enter and inspect any workplace at any "reasonable times, and within reasonable limits and in a reasonable manner;" have available to him any employer's records which he requires; and may subpoena witnesses. Representatives of the employer and the employees have a chance to accompany the DOL inspector during his examination of the workplace.

NIOSH has the authority to inspect work places and question employers and employees in order to carry out its responsibilities for record keeping, statistics gathering, medical examination, research, and so on.

NIOSH has deferred to the Labor Department for establishing right-of-entry procedures dealing with the enforcement side of HEW's role. NIOSH will, however, develop its own procedures for right of entry for research projects authorized under Sec. 20(a)(1) at a later date.

Information developed in inspections/investigations can be used as the basis for a citation specifying a time by which an employer must correct a violation of the Act or its standards. If the employer fails to correct the violation or if employees object to the time required, the Secretary notifies the employer of penalties to be assessed and the administrative procedures available to contest the matter. The Occupational Safety and Health Review Commission makes a determination on the matter if there is a contest, and the Review Commission's order is reviewable by the U.S. Court of Appeals. If no contest, the Secretary's order becomes final and is not reviewable.

Emergency enforcement procedures require the Secretary of Labor to obtain a district court temporary restraining order to counteract imminent danger. Total cessation of operations at the hazard site cannot be ordered, and expedited administrative procedures must be started, by the Secretary within five days of the court order.

Judicial review of Review Commission orders by the U.S. Courts of Appeals will consider two types of petitions:

1. By an employer if he contests the Secretary's citation for a violation or notice of proposed assessment of penalty.
2. By the Secretary for review or enforcement of any Review Commission order.

If an employee believes he has been discharged or discriminated against for exercising any rights afforded him by the Act, he may file a complaint with the Secretary (whose decision is reviewable by the district court directly).

* Civil and criminal penalties are specified in Sec. 17 of the Act.

B. Status

1. Target Industries

Labor has indicated the ten target industries ("worst first" in terms of injury-frequency rates) as the most likely to be entered and inspected for purposes of enforcement:

longshoring	food and kindred products
lumber and wood products	stone, clay, and glass products
trucking and warehousing	fabricated metal products
contract construction	rubber and plastic products
foundries	paper and allied products

Labor's criteria for selecting inspection sites combine the statistical ranking (frequency and severity rankings) with judgment factors, such as,

- the degree of catastrophic potential
- the relative need of small operations with limited safety staffs and
- the extent of employee or organized labor complaints.

Labor currently is concerned with developing the last factor by encouraging labor interests to establish health and safety subdivisions (in both the workplace and the union structure). Labor's enforcement responsibilities depend heavily on cooperation from employees. There is concern that labor is even less prepared to cope with the new requirements than either management or the states.

Both labor and management interests have to develop organization and staff capabilities for occupational safety and health. Most of the conferences held and planned during the first months of this year concern the newly-created rights and responsibilities. Significant steps into operational changes are being deferred, in many instances, until Labor's inspectors get into the field in April.

Since standards under the five pre-existing federal contract and service laws remain in effect until superseded by more effective standards, the Secretary can evoke the old enforcement provisions as well. Essentially this would mean the Secretary could bar a company from federal contract work if it violated any of the initial standards. This provision would only apply to those previously covered by the laws, but it gives the Secretary some enforcement flexibility as he starts to implement the Act.

These duplicative provisions are likely to be the first topic of legislative revision when Labor makes recommendations to the President and Congress during the first three years of operation.

2. Review Commission

The Senate is expected to confirm the three appointments to the OSH Review Commission. Hearings on the nominees were not eventful. Its actual staffing lies ahead. The Act establishes a detailed schedule for enforcement, separating abatement from penalties, and balancing procedural protections for both employer and employee rights under the Act.

3. Appeals

The provisions for review are not unusual, but are designed to assert employees' protection against discrimination for providing information or for filing complaints against an employer who is violating the Act. The appeals processes are relatively well-established on the management level (corporate counsel) and in Labor (Solicitor's office). Contrary to the opinion that this section affords employees new rights, it is doubtful that the complaint procedures will protect workers from being discharged for exercising employee responsibilities. In recognition of this, union representatives are considering alternative to individual action (e.g., adding safety and health inspectors to union and employee organizations and collective complaint procedures).

4. Training Inspectors

The Secretary of Labor can establish short-term training programs (under DOL or contracted direction and administration) to prepare for inspections, investigations, and enforcement responsibilities under the

Labor's first class of 27 compliance officers are graduated April 9, 1971. By the end of the month, they will be returning to their regional offices to start inspections:

Philadelphia - 8 officers

Chicago - 5 officers

Kansas City - 5 officers

Atlanta - 4 officers

Dallas - 3 officers

San Francisco - 2 officers

Each week, a new class of about the same number of safety and health compliance officers will complete the three and one-half weeks of training in technical standards, the requirements of the Act, state and federal relationships, and interviewing techniques.

By April 28, 1971 about 100 inspectors will be available for most of the regions. After reaching the peak of about 150 field inspectors, labor will concentrate on training instructors in probably five occupational safety and health training centers (locations yet to be finalized).

APPENDIX A

OSHA REGIONAL OFFICES AND ACTING ADMINISTRATORS

- I - Boston (Conn., Maine, Mass., N.H., R.I., Vt.)
Donald A. Mackenzie
- II - New York City (N.J., N.Y., P.R., V.I.)
(To be announced)
- III - Philadelphia (Del., D.C., Md., Pa., Va., W.Va.)
Joseph Perzella
- IV - Atlanta (Ala., Fla., Ga., Ky., Miss., N.C., S.C., Tenn.)
Basil Needham
- V - Chicago (Ill., Ind., Minn., Mich., Ohio, Wis.)
(To be announced)
- VI - Dallas (Ark., La., N.M., Okla., Tex.)
John Barto
- VII - Kansas City (Iowa, Kan., Mo., Neb.)
Joseph Reidinger
- VIII - Denver (Colo., Mont., N.D., S.D., Utah, Wyo.)
Howard J. Schulte
- IX - San Francisco (Ariz., Calif., Hawaii, Nev.)
Warren Fuller
- X - Seattle (Alaska, Idaho, Ore., Wash.)
(To be announced)

Cities with Regional and/or Area Offices (as of 3-1-71)

Albuquerque	Pt. Lauderdale	Nashville
Atlanta	Galveston	Newark, N.J.
Austin	Harrisburg	New Orleans
Baltimore	Honolulu	New York
Birmingham	Houston	Norfolk
Boston	Indianapolis	Philadelphia
Buffalo	Jacksonville	Pittsburgh
Butte	Kansas City, Mo.	Portland
Charleston	Little Rock	Providence
Chicago	Long Beach	San Francisco
Cleveland	Los Angeles	Santurce, Puerto Rico
Columbia, S.C.	Louisville, Ky.	Savannah
Dallas	Miami	Seattle
Denver	Minneapolis	St. Louis
Detroit	Mobile	Tampa
		Washington, D.C.

APPENDIX B

SAFETY AND OCCUPATIONAL HEALTH STUDY SECTION

CHAIRMAN

Dr. George E. Briggs 1972
Dept. of Psychology
Ohio State University

Dr. Donald J. Birmingham 1974
Professor of Occupational Dermatology
Wayne State University

Dr. David A. Fraser 1974
Professor of Industrial Hygiene
University of North Carolina

Dr. John V. Grimaldi 1974
Director, The Center for Safety
New York University

Dr. Y. King Liu 1974
Tulane School of Medicine
Dept. of Orthopaedic Surgery

Dr. Thomas H. Milby 1973
Chief, Bureau of Occupational Health
and Environmental Epidemiology
Dept. of Public Health
Berkeley, California

Dr. Ayub K. Ommaya 1971
Associate Neurosurgeon
Neurology Branch, NIND
National Institutes of Health

Dr. George G. Snively 1971
Director of Research
Snell Memorial Foundation, Inc.
Sacramento, California 95817

Dr. Kenneth C. Stewart 1973
Director, The Center for Safety
New York University

Dr. Lloyd B. Tepper 1972
Associate Professor, Env. Health
University of Cincinnati

Dr. Julian A. Waller 1971
Professor, Dept. of Community Medicine
University of Vermont College of Medicine

Dr. Stanley N. Wampler 1972
Federated Medical Resources
Philadelphia, Pennsylvania

LIAISON REPRESENTATIVES

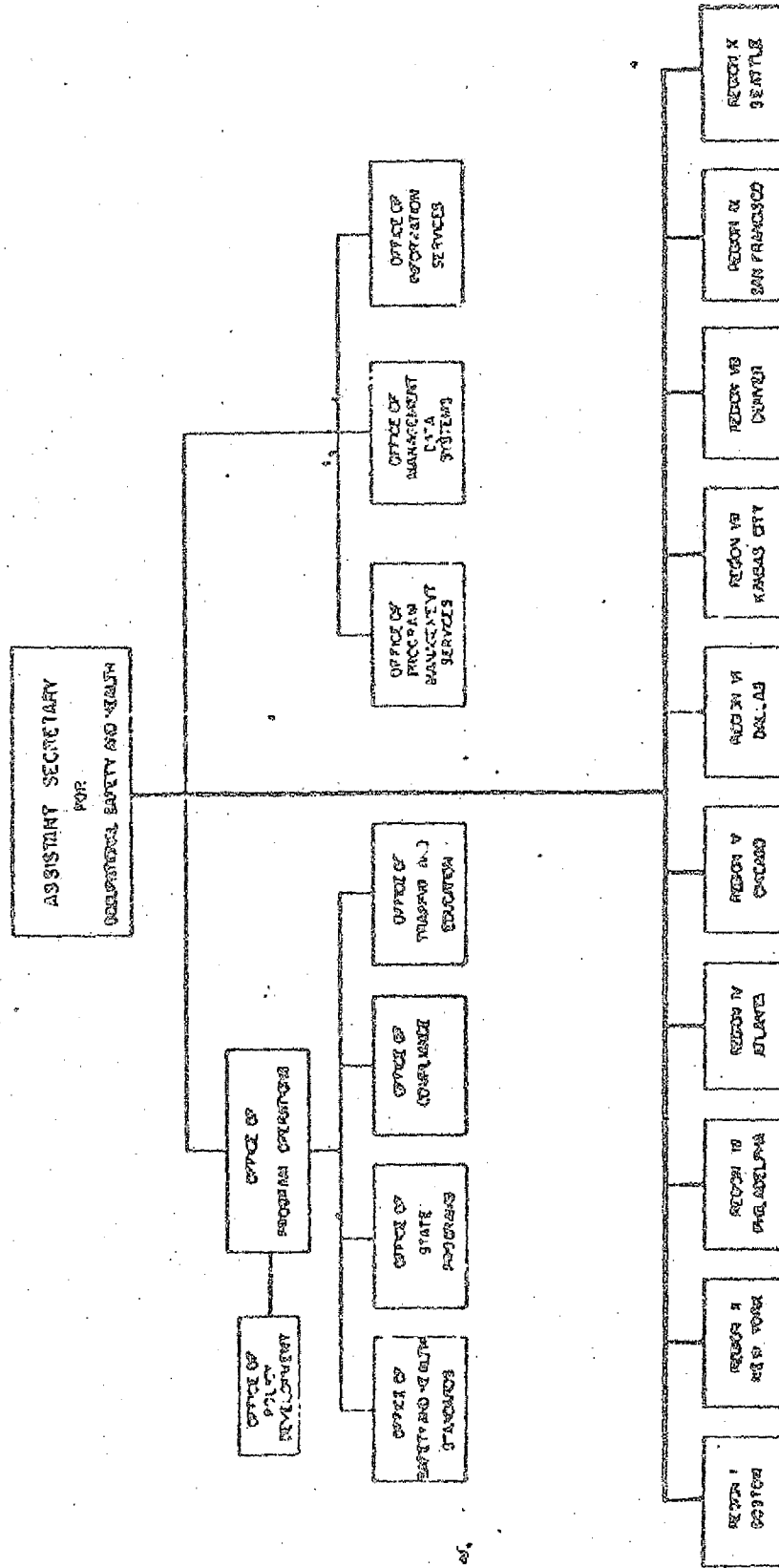
Col. P. A. Finck
Chief, Wound Ballistics Branch
Armed Forces Institute of Pathology

Col. J. P. Stapp
Principal Medical Scientist
National Highway Safety Bureau

EXECUTIVE SECRETARY

Dr. John F. Bester
Office of Grants Administration
Bureau of Occupational Safety & Health
12720 Twinbrook Parkway
Rockville, Maryland 20852

ORGANIZATION OF OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION



OSHA-ORR