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# OCCUPATIONAL SAFETY AND HEALTH STANDARDS AS FEDERAL LAW: THE HAZARDS OF HASTE

ROBERT D. MORAN\*

The Williams-Steiger Occupational Safety and Health Act of 1970<sup>1</sup> gave to the Secretary of Labor broad powers to develop and promulgate standards to protect the safety and health of workers throughout the United States. The development and issuance of adequate job safety standards within a relatively short period of time, while not foreseen as a major problem area at the time of the Act's passage, has proved very troublesome. The initial standards package promulgated pursuant to the Act was, for the most part, adopted verbatim from two sources: voluntary guidelines developed by private standards organizations and job safety regulations authorized under earlier legislation. Unfortunately standards from both sources have proven to be, many times, entirely unrelated to the health and safety of workers. An examination of these standards reveals that they frequently are unenforceable or otherwise inadequate to promote employee safety. Clearly, an urgent need exists for the development of more meaningful standards if the purposes of the Williams-Steiger Act are to be achieved.

## DEVELOPMENT OF THE PRESENT STANDARDS

It is doubtful that Congress has ever enacted a broader grant of lawmaking authority to any officer of the executive branch than that delegated to the Secretary of Labor in the following provision of the Williams-Steiger Act: "The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard . . . [w]henever . . . [he] . . . determines that a rule should be promulgated in order to serve the objectives of this chapter . . ."<sup>2</sup> The last part of this grant hardly limits the Secretary's discretion, for the objectives of the Act include "developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems."<sup>3</sup> Moreover, the standards which the Secretary is authorized to promulgate are not innocuous

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1. 29 U.S.C. §§ 651-78 (1970).

2. *Id.* § 655(b).

3. *Id.* § 651(b)(5).

or precatory guidelines. The Act requires that every employer engaged in a business affecting commerce<sup>4</sup> "shall comply with occupational safety and health standards promulgated under this chapter";<sup>5</sup> violators are subject to severe penalties.<sup>6</sup>

It is difficult to conceive of anything that does not affect the safety and health of working people; the hours he works, his diet, his state of mind as he leaves for the job each day, and even his sex life conceivably can affect the mental health of a worker while on the job. Some innovative future Secretary of Labor who fancied himself a benevolent incarnation of the "Big Brother" of George Orwell's *1984* could approach that status merely by using the existing authority for job safety regulation. Perhaps the single constraint lies in the Act's definition of an "occupational safety and health standard" as "a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, *reasonably necessary or appropriate* to provide safe or healthful employment and places of employment."<sup>7</sup> By thus providing a reasonableness requirement, Congress retained an opportunity for judicial review<sup>8</sup> which may limit the Secretary's discretion to some extent.<sup>9</sup>

The Secretary's extensive power to promulgate standards was exercised almost immediately following passage of the Act through the adoption of regulations previously developed by government agencies and private organizations. These hurriedly promulgated standards gen-

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4. The Act applies to employers engaged in business affecting commerce throughout the United States but excludes federal and state agencies. *Id.* §§ 652(3), 653(a), (b)(1). See generally Moran, *The Impact of the Job Safety Act*, 6 GA. L. REV. 489, 493-94 (1972).

5. 29 U.S.C. § 654(a)(2) (1970).

6. Maximum penalties for noncompliance are \$1,000 for an ordinary violation, \$10,000 for a willful or repeated violation, and \$1,000 for each day a previously established violation goes uncorrected. Willful violations resulting in death to any employee render the employer potentially subject to criminal fines of \$10,000, six months in prison, or both. *Id.* § 666.

7. *Id.* § 652(8) (emphasis supplied).

8. Citations of violations of standards, rules, and orders under the Act are issued by the Secretary of Labor. *Id.* § 658(a). Such citations, if contested, are adjudicated by the Occupational Safety and Health Review Commission. *Id.* § 659(c). Any party adversely affected or aggrieved by an order of the Commission may obtain review of that order in the court of appeals for the circuit in which the violation is alleged to have occurred, or in the Court of Appeals for the District of Columbia Circuit. The Commission's findings of fact, if supported by substantial evidence, are conclusive, although the court of appeals may grant leave to introduce new evidence. *Id.* § 660.

9. The recent decision of the Court of Appeals for the Second Circuit in *Associated Indus. of N.Y. State, Inc. v. United States Dep't of Labor*, 487 F.2d 342 (2d Cir.

erally have been ineffective in enabling employers to identify and eliminate hazards to their employees, and proper enforcement has been hampered by problems of interpretation. Drafting sufficient job safety guidelines does not appear to be an onerous task; verbatim adoption of standards drawn by others, however, without careful consideration of the purpose to be served, has proved unsatisfactory as an examination of these standards and their historical development will amply indicate.

Standards for worker safety had been in existence for many years before the Williams-Steiger Act<sup>10</sup> became law. Accident-prevention and disease-avoidance techniques have a history as long as human existence. Hippocrates, the father of medicine, recognized the effects of work on health more than 400 years before Christ, and the German physician Ellenborg over 500 years ago described the damage which may be sustained from working with coal, nitric acid, lead, mercury, and various metallic fumes. Nevertheless, although individual employers and employees have always attempted to guard their safety and health from hazards, the process of formulating, formalizing, and testing the effectiveness of safety methods and techniques and of applying them to more than one industrial establishment seems to have begun only slightly more than a century ago. One of the first known sets of job safety

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1973), suggests the potential role of the courts. Viewing with disfavor the Secretary's determination of the minimum number of lavatories required for industrial establishments, Judge Friendly, writing for the court, observed: "[W]hen the Department imposes a standard considerably more stringent than that which apparently has been found satisfactory by many states with a long history of protection to industrial workers, and particularly when it does so over explicit objections grounded on that history, then it has an obligation to produce some evidence justifying its action." *Id.* at 352-53. This was one of the first indications that the discretion of the Secretary of Labor was not absolute in deciding what conditions or practices would best promote job safety and health.

10. Under the Act, employers are required generally to maintain places of employment free of recognized hazards likely to cause death or serious harm; in addition, they must comply with specific standards promulgated by the Secretary of Labor pursuant to the Act. 29 U.S.C. § 654(a) (1970). The Secretary is empowered to promulgate occupational safety or health standards based on any established federal standard or national consensus standard without regard to Administrative Procedure Act requirements during the first two years following the effective date of the Act. *Id.* § 655(a). Additional standards, or modifications of existing standards, may be promulgated by the Secretary upon the basis of information available to him or submitted to him by an interested person, a representative of an organization of employees or employers, a nationally recognized standards producing organization, the Secretary of Health, Education and Welfare, the National Institute for Occupational Safety and Health, or a state or political subdivision. The Secretary may request the aid of an advisory committee in the formulation of such standards. *Id.* § 655(b)(1).

standards was developed at an 1869 meeting of the heads of mechanical engineering departments of various independent railroads and adopted in 1893 in a standards code for all railroads. Other private associations subsequently were formed to develop and coordinate safety standards, and a number of states enacted legislation designed to reduce or protect against occupational hazards. Fifty to a hundred years of experience with the development, issuance, and observance of safety standards is thus available for guidance in drafting safety and health standards under the Williams-Steiger Act.

Transposing this accumulated experience into the 1970 law, however, poses difficulties. The former standards were not binding, not enforced, and not written in terms amenable to enforcement. Nor were they concerned exclusively with worker safety; standards encompassing the safety of workers, equipment, buildings, the general public, and consumers frequently were intertwined. These standards, in addition, were not applicable to industry as a whole or, in many cases, even to a single segment of an industry. Finally, standards adopted by various organizations and states often were inconsistent or conflicting<sup>11</sup> and included language lacking the specificity necessary for comprehension by the ordinary businessman or employee.

These difficulties of transposition, nevertheless, appear to have been ignored in the initial flurry of activity under the Williams-Steiger Act, for hundreds of regulations were adopted for enforcement by the Occupational Safety and Health Administration (OSHA)<sup>12</sup> without change from preexisting standards. The result has been inefficiency in enhancing job safety and health. Many of the standards which now have the force of law not only fail to guide interested employers in their attempts to improve job safety but also lack the specificity necessary for fair and adequate enforcement; indeed, they often are so vague as to suggest conflict with requirements of due process.

The Act provided that the Secretary could promulgate a preexisting standard as an "occupational safety and health standard" without pur-

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11. See, e.g., *Associated Indus. of N.Y. State, Inc. v. United States Dep't of Labor*, 487 F.2d 342 (2d Cir. 1973). At issue was a standard relating to the number of lavatories required in places of employment. See note 9 *supra*. The promulgated standards were based upon the codes of five states, those of the American National Standards Institute and the Building Officials and Code Administrators, as well as the National Plumbing Code. Twelve conflicting state codes were cited by petitioner. *Id.* at 352.

12. The Secretary of Labor has delegated much of his authority under the Williams-Steiger Act to this agency of the Department of Labor.

suing formal rulemaking procedures<sup>13</sup> if he found that it was a "national consensus standard" which:

(1) has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded an opportunity for diverse views to be considered and (3) has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.<sup>14</sup>

In addition, the Secretary was given authority to adopt, without following formal rulemaking procedures, any "established Federal standard," a term the Act defines as "any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on December 29, 1970."<sup>15</sup>

Although minimal concern was expressed in Congress about the Department of Labor's ability to develop reasonable standards within the initial two-year period during which formal rulemaking procedures were not required,<sup>16</sup> almost all legislators taking an active part in writing the law, despite other differences,<sup>17</sup> anticipated that the immediate standards would comprise "national consensus" and "established Federal" standards.<sup>18</sup> The Senate Committee on Labor and Public Welfare noted that these two sources would be used to "establish as rapidly as possible national occupational safety and health standards with which

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13. 29 U.S.C. § 655(a) (1970). See note 28 *infra*.

14. *Id.* § 652(9).

15. *Id.* § 652(10).

16. "How in the world are they [the Department of Labor] going to find time within the required 2 years to set forth reasonable standards for health and safety . . ." 116 CONG. REC. 37343 (1970) (remarks of Senator Dominick).

17. There was a marked difference of opinion in Congress over whether the power to promulgate standards was to be given to a board of experts or to the Secretary of Labor. See Gross, *The Occupational Safety and Health Act: Much Ado About Something*, 3 LOYOLA U.L.J. 247 (1972).

18. Three occupational safety and health bills were submitted to the Senate during the 91st Congress: S. 2193, by Senator Harrison A. Williams, Jr.; S. 2788, by Senator Jacob K. Javits; and S. 4404, by Senator Peter H. Dominick. All three Senate bills and all of the House bills (H.R. 843, H.R. 3809, H.R. 13373, H.R. 16785, H.R. 19200) except H.R. 4294 had some provision for adopting standards of these types.

industry is familiar."<sup>19</sup> It would be "appropriate," the Committee continued, for such standards to be adopted by the Secretary of Labor "without regard to the provisions of the Administrative Procedure Act."<sup>20</sup>

In the House of Representatives, members were similarly sanguine about using national consensus and existing federal standards. Representative William Scherle of Iowa, for example, spoke in favor of the approach, quoting President Nixon's message to Congress in support of job safety and health legislation: "Maximum use will be made of standards established through a voluntary consensus of industry, labor, and other experts."<sup>21</sup> This attitude was reflected in similar statements by other Congressmen.<sup>22</sup>

In short, although most members of Congress foresaw major difficulties with various aspects of enforcement,<sup>23</sup> imminent danger proce-

19. S. REP. NO. 1282, 91st Cong., 2d Sess. 6 (1970). Although industrial leaders now dispute the appropriateness of the phrase "with which industry is familiar," they gave no hint at the time the Act was being considered that they did not already live by the consensus standards.

20. *Id.* The relevant section of the Administrative Procedure Act provides for hearings for submission and consideration of facts by interested parties. 5 U.S.C. § 554 (1970). This procedure was viewed as unnecessary in the case of existing federal standards because they had "already been subjected to the procedural scrutiny mandated by the law under which they were issued; such standards, moreover, in large part, represent the incorporation of voluntary industrial standards." S. REP. NO. 1282, 91st Cong., 2d Sess. 6 (1970). Subsequent experience has cast doubt upon the accuracy of this assertion. See notes 73-82 *infra* & accompanying text. The national consensus standards also were viewed as relating to the "traditional practice in the industry." 116 CONG. REC. 37327 (1970) (remarks of Senator Javits). These standards would be those developed primarily by organizations such as the American National Standards Institute. See 116 CONG. REC. 37623 (1970) (remarks of Senator Javits). Through these sources "the Secretary [of Labor] would utilize and build upon the work already done by private industry and Government in the formulation of standards . . ." 116 CONG. REC. 41762 (1970) (remarks of Senator Williams, co-author of the bill which eventually was enacted).

21. 116 CONG. REC. 42208 (1970).

22. Wisconsin Representative William Steiger, co-author of the Act, for example, observed:

Because such standards have already been scrutinized either through the consensus-method or through procedures provided under Federal law, the [Steiger-Sikes] substitute bill requires no hearings or other APA procedures for promulgating them under the new act; they simply become effective upon publication in the Federal Register. The national consensus standards would remain in effect until superseded by permanent standards as replacements.

116 CONG. REC. 38373 (1970). The Steiger-Sikes substitute bill, H.R. 19200, 91st Cong., 2d Sess. (1970), was the bill eventually adopted by the House.

23. The Secretary of Labor is empowered to inspect places of employment and

dures,<sup>24</sup> adjudication,<sup>25</sup> and the imprecision of the employer's "general duty" to provide safe and healthful workplaces,<sup>26</sup> few anticipated problems arising from the adoption of existing federal and national consensus standards as enforceable job safety regulations.<sup>27</sup> Thus, with little discussion and apparently little actual knowledge of what might be hauled up in the net, the Secretary of Labor was given authority to promulgate as occupational safety and health standards "any national consensus standard, and any established Federal standard."<sup>28</sup> Although section 6(a) of the Act allowed the Secretary two years<sup>29</sup> from the Act's effective date<sup>30</sup> to promulgate such standards without following the formal rulemaking procedures required by the APA and section 6(b) of the Act,<sup>31</sup> a package of "occupational safety and health standards" was pub-

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conduct investigations. 29 U.S.C. § 657 (1970). If violations are cited, the Secretary is required to inform the employer of the penalty assessed for each violation. The employer may, within 15 days, notify the Secretary that he intends to contest the citation before the Occupational Safety and Health Review Commission. *Id.* § 659. See generally Moran, *supra* note 4, at 499-501; Comment, *The Occupational Safety and Health Act of 1970*, 34 LA. L. REV. 102, 111-12 (1973).

24. Emergency temporary standards may be promulgated without regard to the requirements of the Administrative Procedure Act where grave danger to employees exists and emergency standards are necessary to protect employees from such danger. 29 U.S.C. § 655(c) (1970). See generally Moran, *supra* note 4, at 496-97.

25. Adjudication under the Act is by the Occupational Safety and Health Review Commission, composed of three members appointed by the President. 29 U.S.C. §§ 659(c), 661 (1970). Hearings are conducted by review examiners appointed by the Commission; the report of the hearing examiner becomes the final order unless a Commission member directs review within 30 days. *Id.* § 661(i). See generally Comment, *The Occupational Safety and Health Act of 1970*, 34 LA. L. REV. 102, 112 (1973).

26. Each employer is required to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees . . ." 29 U.S.C. § 654(a)(1) (1970). See generally Moran, *supra* note 4, at 494; Comment, *The Occupational Safety and Health Act of 1970*, 34 LA. L. REV. 102, 102-03 (1973).

27. Only Senator William B. Saxbe of Ohio seemed to have the slightest inkling that such an approach might carry certain concomitant difficulties: "[W]e are going to have to accept these consensus standards . . . wholesale, to start with, because we will not have the real opportunity to . . . start from scratch." 116 CONG. REC. 36537 (1970) (emphasis supplied).

28. 29 U.S.C. § 655(a) (1970) provides: "[T]he Secretary shall, as soon as practicable during the period beginning with the effective date of this chapter and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees."

29. *Id.*

30. The Act became effective April 28, 1971, 120 days after its enactment December 29, 1970.

31. 29 U.S.C. § 655(b) (1970).

lished on May 29, 1971, only a month and a day after the effective date.<sup>32</sup> This package consisted merely of a verbatim selection of standards from the two permissible sources.

This seemingly enormous task had been accomplished with surprising speed. Since the first of three parts covered about 300 pages of the Federal Register, it was some time before it was known generally that the standards included such matters as a ban on the use of ice in drinking water<sup>33</sup> and a requirement that workplace toilets be equipped with split seats.<sup>34</sup> This realization led to questioning of the supposed sanctity of job safety standards and to recognition that reappraisal of their capacity to fulfill their avowed purpose was in order.

There seems to be little dispute that a standard is developed and promulgated because of the existence or potential existence of a condition hazardous to the safety or health of workers. The purpose of standards presumably is to inform employers what must be done to eliminate, reduce, or prevent hazardous conditions. Experience has shown, for example, that it is dangerous to work as a painter on the Golden Gate Bridge; a fall of several hundred feet from the bridge would lead to almost certain death. This hazard could be reduced if a net capable of catching falling workers were strung under the bridge or if painters were required to wear safety belts hitched so that a fall from the bridge would not end in the depths of San Francisco Bay. Writing a safety standard establishing these requirements would not seem to pose any insurmountable problem.

Two basic ingredients essential to every meaningful job safety and health standard thus are identification of the hazard and specification of what must be done to eliminate it. All standards should include these two fundamentals in understandable language so that employers will know how to comply with the law and thereby protect employees from occupational hazards. Traditional enforcement techniques, by which safety inspectors find and punish violators and enforce abatement of

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32. 36 Fed. Reg. 10466-10714 (1971). There was a 90-day moratorium on the effectiveness of these standards to permit those employers not previously covered under other laws to attempt to gain some familiarity with them. Thus, the effective date of the regulations was August 27, 1971. COMMERCE CLEARING HOUSE, *GUIDEBOOK TO OCCUPATIONAL SAFETY AND HEALTH* 37 (1973).

33. 29 C.F.R. § 1910.141(b)(1)(iii) (1972). This standard subsequently was revised to permit ice, as long as it is made from potable water, to come into contact with drinking water. 38 Fed. Reg. 10932 (1973).

34. 29 C.F.R. § 1910.141(c)(3)(ii) (1972). This standard subsequently was revised to require only seats installed or replaced after June 4, 1973, to be "open-front." 38 Fed. Reg. 10933 (1973).

unsafe conditions, cannot guarantee attainment of the legislative purpose, as there are less than 1,000 safety inspectors available to police approximately 5 million workplaces subject to regulation. Substandard working conditions can be effectively eliminated only by self-instructive standards explicitly defining the employers' obligations. An inspection of some national consensus and established federal standards nevertheless reveals their inadequacies in providing the basic identification and specification ingredients.

#### NATIONAL CONSENSUS STANDARDS FROM ANSI

The American National Standards Institute (ANSI) was established in 1918 as the American Engineering Standards Committee. The organization expanded and changed its name to the American Standards Association in 1928; the name was again changed in 1966 to the United States of America Standards Institute and in 1969 to the present title.<sup>35</sup> ANSI is a private body which "itself does not write standards . . . [but] makes use of the combined technical talent and expertise of its organizational members, technical, professional and trade associations, as well as the companies and industrial firms that comprise the federation."<sup>36</sup> According to its managing director, it is "the major clearinghouse and coordinating agency for *voluntary* standardization in the United States."<sup>37</sup>

Of nearly 5,000 American National Standards only some 120 ostensibly deal with job safety and health.<sup>38</sup> The remainder are concerned with such matters as the size of screw threads and bolts, the consistency and performance of portland cement, data processing practices, and the shape of electrical plugs and receptacles.<sup>39</sup> ANSI coordinates the development of standards primarily through two procedures<sup>40</sup> designed to ensure a diversity of input and to conform with the following principle:

[A] consensus must be reached of those having substantial concern with [a standard's] scope and provisions. In standardization practice a consensus is achieved when substantial agreement is reached by concerned interests according to the judgment of a duly ap-

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35. American National Standards Institute, *Guide for the Development of American National Standards* 3 (Nov. 2, 1972) [hereinafter cited as ANSI Guide].

36. *Id.*

37. Peyton, *ANSI: Consensus Agency for Voluntary Standards*, DEFENSE MANAGEMENT J., April 1973, at 41 (emphasis supplied).

38. *Id.* at 43-44. Those standards dealing with job safety and health have been referenced for use by the Occupational Safety and Health Administration. *Id.* at 44.

39. *Id.* at 43.

40. The first procedure, the canvass method, involves the submission of a proposed

pointed authority. Consensus implies much more than the concept of a simple majority but not necessarily unanimity.<sup>41</sup>

The consensus method employed in the development of ANSI standards almost necessarily resulted in the promulgation of some vague and ambiguous, as well as a number of purely advisory, standards. Moreover, the voluntary nature of ANSI standards often resulted in their idealization. Donald Peyton, ANSI's managing director, has commented: "In the days before OSHA, when standards were developed as advisories, not laws, the committees sometimes tended to incorporate some lofty goals, knowing they would never be held accountable if they didn't achieve them."<sup>42</sup>

Nevertheless, OSHA embraced these ANSI standards, including their strengths as well as weaknesses. Usually the standards were adopted verbatim, although many "grandfather clauses" exempting existing equipment and structures were deleted. Direct incorporation of ANSI standards led to OSHA enforcement of such standards as one dealing with floor loading protection which requires:

In every building or other structure, or part thereof, used for mercantile, business, industrial, or storage purposes, the loads approved by the building official shall be marked on plates of approved design which shall be supplied and securely affixed by the *owner of the building, or his duly authorized agent*, in a conspicuous place in each space to which they relate.<sup>43</sup>

In promulgating this standard, OSHA was completely faithful to the source: it is a national consensus ANSI floor load marking standard,

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standard by an interested group to a vote of knowledgeable individuals and organizations. The voter list must be approved for comprehensiveness by ANSI, and the completed standard and voting results are also reviewed by that organization. *Id.* at 42-43. The other principal method used to develop standards is the committee method, whereby representatives of affected groups are chosen to form a committee, with an interested organization as secretariat. This committee develops the standard, which again must be reviewed by ANSI. *Id.* at 43. *See also* ANSI Guide, *supra* note 35, at 29.

41. ANSI Guide, *supra* note 35, at 6.

42. Musacchio, *The Power Press Flap: Will It Reshape Standards Setting?*, OCCUPATIONAL HAZARDS, October 1973, at 108.

43. 29 C.F.R. § 1910.22(d)(1) (1973) (emphasis supplied).

word-for-word.<sup>44</sup> And that is the problem; the standard imposes a duty on building owners and their agents, not on employers.<sup>45</sup>

In at least one instance, OSHA attempted to enforce this standard against an employer who merely leased a textile mill in which the required floor load plates were not provided,<sup>46</sup> proposing a \$45 civil penalty for the alleged violation.<sup>47</sup> The employer, who was neither the owner of the building nor agent for the owner, promptly contested the enforcement action. Although an administrative law judge<sup>48</sup> found the employer in violation of the standard, discretionary review by the Occupational Safety and Health Review Commission<sup>49</sup> resulted in unanimous reversal. The Commission noted that "[s]ince the standard, by its terms, imposes a duty on an owner or his agent, compliance by this respondent was not required."<sup>50</sup>

The floor load marking standard is only one of many which by their terms either impose no duty on employers as such or impose a duty so vague as to be unenforceable. An example of the latter is found in an OSHA sawmill standard governing operations around mechanical tree barkers. Taken verbatim from an ANSI safety requirement for sawmills,<sup>51</sup> the standard requires that the "hazardous area around ring barkers and their conveyors shall be fenced off or posted as a prohibited area for unauthorized persons."<sup>52</sup> "Hazardous area" and "unauthorized persons" are not defined. Furthermore, the Williams-Steiger Act, of course, was not intended to protect "unauthorized persons," whoever

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44. ANSI Standard A58.3.6-1972.

45. Under the Act, citations may be issued "[i]f, upon inspection or investigation, the Secretary . . . believes that an *employer* has violated a requirement . . . of any standard . . . ." 29 U.S.C. § 658(a) (1970) (emphasis supplied).

46. *Secretary v. Frankford Woolen Mills, Inc.*, OSAHRC Docket No. 961 (June 13, 1973). OSAHRC refers to the Occupational Safety and Health Review Commission, an independent tribunal established to adjudicate contested enforcement actions. 29 U.S.C. §§ 659(c), 661 (1970). See note 49 *infra*.

47. See note 6 *supra*.

48. See 29 U.S.C. § 661(i) (1970). Although the presiding officer at Commission hearings is termed "hearing examiner" in the Act, the proper (and official) title is "administrative law judge." 5 C.F.R. § 930.203a (1973).

49. The three-member Commission was established by 29 U.S.C. § 661(a) (1970). The report of an administrative law judge becomes final 30 days after it is submitted to the Commission unless a Commission member directs that it be reviewed. *Id.* § 661(i).

50. OSAHRC Docket No. 961, at 2.

51. ANSI Standard 02.4.4.3-1969.

52. 29 C.F.R. § 1910.265(d) (4) (iii) (1973).

they may be<sup>53</sup> and however laudable it may be to shield them from nebulous "hazardous areas."

This standard was challenged in *Secretary v. Moser Lumber Co.*,<sup>54</sup> in which OSHA's own inspector admitted that he could only "guess" that "unauthorized persons" meant visitors to the mill and other persons not charged with operation of the mechanical barkers.<sup>55</sup> He was similarly uncertain about the extent of the "hazardous area" around the machine, suggesting that it could vary depending upon how far the machine might throw rocks, pieces of wood, or other debris.<sup>56</sup> Uncertainty in the inspector's attempt to explain the standard was not a result of ignorance or inexperience; his difficulty arose from the imprecision of the terms of the standard. If precise application of the standard was difficult for the inspector, could an employer be expected to be any more successful in achieving compliance?

Although only a handful of cases under the Act have been decided by appellate courts,<sup>57</sup> the Court of Appeals for the Fifth Circuit has already commented on the imprecision of OSHA standards: "The difficulty in the present case arises from the use in regulation 1926.105(a) of the imprecise term 'impractical' . . . . The term . . . is simply not precise enough . . . . The fault lies in the wording of the regulation."<sup>58</sup> To permit enforcement of standards worded in vague and imprecise terms, even though they meet the "national consensus" procedural test for adoption, not only subjects the employer to discretionary determination of compliance by OSHA inspectors but also gives rise to possible conflict with the fair warning requirements of constitutional due process.<sup>59</sup> Employer compliance with a standard should not depend upon

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53. See 29 U.S.C. § 654(a)(1) (1970): "Each employer . . . shall furnish to each of his employees [a hazard-free place to work]" (emphasis supplied).

54. OSAHRC Docket No. 1221 (Aug. 10, 1973).

55. *Id.* at 18.

56. *Id.*

57. *E.g.*, Frank Irey, Jr., Inc. v. Hodgson, 409 U.S. 1070 (1972); Brennan v. OSAHRC, 481 F.2d 619 (5th Cir. 1973); Spangler v. Kranco, Inc., 481 F.2d 373 (4th Cir. 1973); Skidmore v. Travelers Ins. Co., 356 F. Supp. 670 (D. La.), *aff'd*, 483 F.2d 67 (5th Cir. 1973).

58. Brennan v. OSAHRC, 488 F.2d 337, 338-39 (5th Cir. 1973).

59. The fair warning requirement, applicable to both state and federal action, is part of the due process guarantees of the fifth and fourteenth amendments to the United States Constitution. *Cramp v. Board of Public Instr.*, 368 U.S. 278 (1961) (Florida loyalty oath); *United States v. Cardiff*, 344 U.S. 174 (1952) (section 301(f) of the Federal Food Drug and Cosmetic Act). The aspect of the fair warning requirement pertinent to the

the idiosyncratic interpretation of the standard by an inspector. Naturally, the inspector's interpretation will not be made known to the employer until a violation is cited; even then, the employer will not be able to predict the requirements that will accompany the next inspector's interpretation of the standard.

The *Moser Lumber* case discussed above was subsequently dismissed by the administrative law judge who originally heard the case. In dismissing the action, he noted: "[T]he Compliance Officer and the Respondent must guess as to the application of the standard. When the language of a standard is open to different interpretations; it is unenforceably vague. A standard is promulgated for the purpose of telling employers what they must do to avoid a workplace hazard."<sup>60</sup> The sawmill standard challenged in *Moser Lumber* had been through the consensus procedures of the American National Standards Institute and had been accepted by most of the persons affected by it. There was nothing wrong with it as an ANSI sawmill standard, as there is little doubt that "unauthorized persons" should be kept away from mechanical

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present discussion involves the doctrine of unconstitutional uncertainty or vagueness, summarized in *Cramp*:

We think this case demonstrably falls within the compass of those decisions of the Court which hold that "... a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." . . . "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids."

368 U.S. at 287. "The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." *United States v. Harriss*, 347 U.S. 612, 617 (1954). For a thorough discussion of the problems of vagueness, see Collings, *Unconstitutional Uncertainty—An Appraisal*, 40 CORNELL L.Q. 195 (1955).

Courts have employed various paths of reasoning to avoid finding a law or regulation unconstitutionally uncertain. In *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337 (1952), for example, an Interstate Commerce Commission regulation prohibiting transportation of explosives through congested areas if a practical alternative route is available was upheld despite a claim of unenforceability due to vagueness. The Court stated: "The statute punishes only those who knowingly violate the Regulation. This requirement of the presence of culpable intent as a necessary element of the offense does much to destroy any force in the argument that application of the Regulation would be so unfair that it must be held invalid." 342 U.S. at 342. For discussion of this and other rationales used to avoid applying the vagueness doctrine to strike down laws or regulations, see Collings, *supra*, at 223.

60. OSAHRC Docket No. 1221, at 19.

barkers. The error was in its unthinking adoption as a job safety standard and the OSHA attempt to enforce it as such.

It can be suspected that literally hundreds of such "national consensus" standards, vague and useless for protecting employees, were promulgated during the OSHA "start-up" period.<sup>61</sup> The indiscriminating adoption of these standards was due, no doubt, to the near sanctification Congress bestowed upon national consensus standards in enacting the law.<sup>62</sup> The unfortunate result, however, has been that the hazards to be avoided are often not mentioned in the OSHA standards or are submerged in vague terminology; in addition, curative procedures are not precisely articulated.<sup>63</sup> The unenforceability of many of the standards<sup>64</sup> clearly indicates their inadequacy as sources of job safety guidelines for concerned employers.

Adoption of national consensus standards by the Labor Department has also produced problems arising from the advisory nature of many of these originally voluntary standards. ANSI emphasized the distinction between advisory and mandatory requirements of the various standards developed under its auspices. The ANSI standard for overhead and gantry cranes,<sup>65</sup> for example, contains the following language:

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61. One of the 15 standards most frequently cited by safety inspectors involves walking-working surfaces and, more particularly, housekeeping. *To Prevent Costly Slips and Falls—Focus on Floor Safety*, OCCUPATIONAL HAZARDS, November 1973, at 37. Taken word-for-word from ANSI Standard 24.3.1.1-1968, this regulation requires that "[a]ll places of employment, passageways, storerooms, and service rooms shall be kept clean and orderly and in a sanitary condition." 29 C.F.R. § 1910.22(a) (1973). These are concepts with which everyone is familiar, yet everyone is also aware that what one person will call "clean" another will call "filthy." "Orderly" may mean quite different things to one's mother, first sergeant, and college roommate. Despite this indefiniteness, an employer was cited for violation of this standard in *Secretary v. Utah-Idaho Sugar Co.*, OSAHRC Docket No. 764 (Sept. 27, 1973).

62. There is, in fact, some question whether some of the national consensus standards satisfy the following definition of the term "occupational safety and health standard" in 29 U.S.C. § 652(8) (1970): "[A] standard which requires conditions, or the adoption or use of the one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."

63. For example, a standard for overhead crane hooks, taken verbatim from ANSI Standard B30.2-1.10.4-1967, requires that "[h]ooks shall meet the manufacturer's recommendations and shall not be overloaded." 29 C.F.R. § 1910.179(h)(4) (1973). An employer can only guess what he must do to comply with this regulation; the hazard to be eliminated is equally speculative.

64. Due to its vagueness, the crane hook standard discussed in note 63 *supra* has been held unenforceable. *Secretary v. Utah-Idaho Sugar Co.*, OSAHRC Docket No. 764, at 35 (Sept. 27, 1973).

65. ANSI Standard B30.2.0-1967.

"Mandatory rules of this Code are characterized by the use of the word 'shall.' If a rule is of an advisory nature it is indicated by use of the word 'should' or is stated as a recommendation."<sup>66</sup> A provision in the ANSI standard recommending bridge bumpers provides: "A crane *should* be provided with bumpers capable of stopping the crane . . . at a rate of deceleration not to exceed 3 feet per second when traveling in either direction at 20 percent of the rated load speed . . ."<sup>67</sup> When OSHA promulgated this standard as an occupational safety and health standard,<sup>68</sup> the word "should" was changed to "shall," although the remainder of the standard was not altered. With this change, however, the bumpers standard no longer met the definition of a "national consensus standard" in the Act, which specifies that such a standard is one which "has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, [and] was formulated in a manner which afforded an opportunity for diverse views to be considered . . ."<sup>69</sup> Clearly, the ANSI subcommittee which wrote the original standard had not reached "substantial agreement" on the standard as promulgated by OSHA since it agreed only upon an *advisory* standard *recommending* bridge bumpers. The mandatory language in the OSHA standard represented such a major variation from the original ANSI standard that the presiding judge in *Secretary v. Oberhelman-Ritter Foundry, Inc.*<sup>70</sup> ruled that the OSHA standard was invalid, noting that the desired alteration, to be valid, should have been executed pursuant to the rather elaborate procedures under the Act<sup>71</sup> for modification of standards.<sup>72</sup>

The careless adoption of national consensus standards has undoubtedly

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66. ANSI Standard B30.2.0-1967 (Section V).

67. ANSI Standard B30.2-1.7.2 (emphasis supplied).

68. 29 C.F.R. § 1910.179(e)(2)(i) (1972).

69. 29 U.S.C. § 652(9) (1970).

70. OSAHRC Docket No. 1572 (July 31, 1973).

71. 29 U.S.C. §§ 655(b)(2)-(4) (1970) require the Secretary to publish any proposed rule in the Federal Register. Any interested person may present written data or comments within 30 days, with the option of requesting a public hearing. Within 30 days of the period for presenting such objections, the Secretary is to publish the standard to which objection has been made and to set the time and place for hearing. Thereafter, the standard is to be published in the Federal Register, with an effective date which provides affected employers and employees sufficient opportunity to familiarize themselves with its terms.

72. OSAHRC Docket No. 1572, at 9-10.

weakened the beneficial effects of the Act. Enforcement has been hindered, and the standards have failed to inform employers of their statutory duties. It is also unfortunate that problems of equal or greater proportion have plagued the use of established federal standards promulgated in a similarly heedless manner.

#### ESTABLISHED FEDERAL STANDARDS FROM THE WALSH-HEALEY ACT

A rather large block of the initial package of standards issued by the Secretary of Labor was adopted from standards issued by the Walsh-Healey Act of 1936.<sup>73</sup> As with national consensus standards, many of these "established Federal standards"<sup>74</sup> were promulgated pursuant to section 6(a) of the Williams-Steiger Act verbatim as OSHA standards.<sup>75</sup>

The Walsh-Healey standards had been established in accordance with the formal rulemaking provisions of the Administrative Procedure Act (APA),<sup>76</sup> which requires publication of proposed rules in the Federal Register to provide notice and the opportunity for comment by interested persons prior to the time they become effective.<sup>77</sup> Thus, in theory, the Walsh-Healey safety and health standards had been scrutinized and discussed by those affected by them. In reality, however, the vast majority of employers were unaware of the existence of Walsh-Healey standards or of the Walsh-Healey Act itself, it being applicable only to those firms who were contractors with the federal government for the "manufacture or furnishing of materials, supplies, articles and equipment in any amount exceeding \$10,000 . . ." <sup>78</sup>

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73. 41 U.S.C. §§ 35-45 (1970). The Walsh-Healey Act prohibits federal purchase of items manufactured under "unsanitary or hazardous" working conditions, rather than forbidding the conditions themselves. It was not until 1960 that safety and health standards were promulgated pursuant to the Act.

74. Other sources of "established Federal standards" included the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-33 (1970); the Service Contract Act of 1965, 41 U.S.C. §§ 351-58 (1970); the Longshoremen's & Harbor Workers' Compensation Act, 33 U.S.C. §§ 901-45, 947-50 (1970); and the National Foundation on the Arts & Humanities Act of 1965, 20 U.S.C. §§ 951-63 (1970).

75. 29 U.S.C. § 655(a) (1970).

76. 5 U.S.C. § 553(b) (1970) provides that general notice of proposed rulemaking be published in the Federal Register, unless persons to be subjected to the rule have been personally served with or have actual notice.

77. 5 U.S.C. § 553(c) (1970) provides that "[a]fter notice required by this section, the agency shall give interested parties an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation."

78. 41 U.S.C. § 35 (1970).

Moreover, it is quite likely that the relatively limited enforcement effort under the Walsh-Healey Act served to lull even the limited number of employers subject to its coverage into a lack of concern with the content of standards issued pursuant thereto. In fiscal year 1969, for example, fewer than 3,000 of the estimated 75,000 companies affected by Walsh-Healey were inspected for job safety and health conditions. These inspections resulted in only 34 formal complaints and only 32 formal hearings.<sup>79</sup> Although the Walsh-Healey Act provides for "blacklisting" violators for up to three years,<sup>80</sup> this sanction was applied to only two of the over 33,000 violations found in fiscal year 1969.<sup>81</sup> In fiscal year 1968, 1,570 firms were inspected, resulting in only 28 complaints issued and three firms "blacklisted."<sup>82</sup> This paucity of enforcement suggests that standards promulgated under the Walsh-Healey Act have been of little interest or concern even to those directly affected by them. The wholesale promotion of such standards to a position of vastly more pervasive effect can hardly be justified on a theory that they had been rigorously tested in the crucible of experience.

One of the earliest cases under the Occupational Safety and Health Act of 1970 involving a standard initially promulgated under the Walsh-Healey Act<sup>83</sup> was *Secretary v. Mountain States Telephone & Telegraph Co.*<sup>84</sup> The contested standard required that employers "be responsible for the safe conditions of tools and equipment used by employees, including tools and equipment which may be furnished by employees."<sup>85</sup> Attempted enforcement of this standard by the Department of Labor was disallowed, the Review Commission commenting:

Congress did not enact the Occupational Safety and Health Act to create guarantors upon whom to fasten responsibility for ill-

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79. J. PAGE & M. O'BRIEN, *BITTER WAGES* 100 (1973).

80. 41 U.S.C. § 37 (1970) provides:

The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by sections 35-45 of this title. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

81. J. PAGE & M. O'BRIEN, *supra* note 79, at 100.

82. *Id.*

83. 41 C.F.R. § 50-204.4 (1973).

84. OSAHRC Docket No. 355 (Jan. 3, 1973).

85. 29 C.F.R. § 1910.242(a) (1973).

nesses or injuries or deaths to employees. Their purpose was remedial. The Act is a broad scale effort to *prevent* "personal injuries and illnesses arising out of work situations." The first-stated purpose of the Act is to encourage and stimulate "*programs* for providing safe and healthful working conditions...."<sup>86</sup>

The Commission concluded that the cited employer, one of whose employees had been electrocuted while using a power tool, could not be held for a violation since the standard failed to inform the employer of the action he should take to avoid the occurrence. The language employed by the standard may be good advice, but its helpfulness in implementing the purposes of the Act remains doubtful.

Another OSHA standard adopted verbatim from one promulgated under Walsh-Healey<sup>87</sup> states:

Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.<sup>88</sup>

The vague constituent parts of this standard coalesce into a masterpiece of indefiniteness. The concept "protective equipment" might include everything from sunglasses and flowered parasols for protection from the sun to case-hardened steel capsules with self-contained individual life support systems. "Hazards of processes or environment" excludes even less, covering at least everything under the sun. It might even include the sun itself, since there are indications that skin cancer may be more prevalent among individuals such as farmers, merchant seamen, and lifeguards who are exposed to the sun's rays for prolonged periods.

This expansive interpretation is not greatly exaggerated, for the standard already has been employed to cite a variety of hazards<sup>89</sup> and

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86. OSAHRC Docket No. 355, at 3 (footnotes omitted).

87. 41 C.F.R. § 50-204.7 (1973).

88. 29 C.F.R. § 1910.132(a) (1973).

89. Secretary v. Nibco of Colo. Div., OSAHRC Docket No. 302 (pending) (muriatic acid); Secretary v. Smoke-Craft, Inc., OSAHRC Docket No. 995 (pending) (recipro-

required protective equipment<sup>90</sup> in enforcement actions by the Department of Labor. Although the enforceability of this standard has not yet been determined as a matter of law,<sup>91</sup> it clearly fails to implement satisfactorily the Act's underlying purpose of improving the safety and health of workers. That purpose can be achieved only through promulgation of specific guidelines which set forth fully and clearly what experience and research have shown to be necessary to maintain safe and healthful workplaces. If the steps necessary to avoid hazards are not clearly delineated in the appropriate OSHA standard, even the most sincere, dedicated, and safety-minded employers may fail to provide safe and healthful employment conditions.

Many other regulations adopted under the Act from established federal standards set forth neither the practices required for safety nor the conditions requiring such practices. Such standards not only are ineffective in fulfilling their underlying purpose of increasing workplace safety but also present problems of enforcement similar to those

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cating saws); Secretary v. New Bedford Gas & Edison Light Co., OSAHRC Docket No. 1186 (pending) (electrical power lines); Secretary v. Modern Automotive Serv., Inc., OSAHRC Docket No. 1541 (Feb. 27, 1974) (auto parts); Secretary v. Sun Shipbldg. & Drydock Co., OSAHRC Docket No. 161 (Oct. 3, 1973) (Rust-Ban 191, a water soluble paint); Secretary v. Ryder Truck Lines, Inc., OSAHRC Docket No. 391 (Aug. 16, 1973), *appeal docketed*, No. 73-3341, 5th Cir., Oct. 4, 1973 (boxes of cargo; wheels on freight handling equipment); Secretary v. Imco Container Corp., OSAHRC Docket No. 79 (July 31, 1973) (Stoddard solution); Secretary v. Grayson Lumber Co., OSAHRC Docket No. 793 (June 14, 1973) (cut lumber); Secretary v. Ira Holliday Logging, Inc., OSAHRC Docket No. 237 (Apr. 27, 1973) (logs); Secretary v. Young & Morgan, Inc., OSAHRC Docket No. 1085 (Jan. 26, 1973) (logs); Secretary v. Mack Trucks, Inc., OSAHRC Docket No. 134 (Oct. 10, 1972) (pinion gears); Secretary v. Spencer Foods, Inc., OSAHRC Docket No. 450 (Sept. 12, 1972) (slaughterhouse eviscerators' knives); Secretary v. Glass Containers Corp., OSAHRC Docket No. 555 (Aug. 18, 1972) (ash).

90. E.g., Secretary v. Nibco of Colo. Div., OSAHRC Docket No. 302 (pending) (rubber aprons); Secretary v. Dravo Corp., OSAHRC Docket No. 1487 (pending) (ordinary industrial coveralls); Secretary v. Sun Shipbldg. & Drydock Co., OSAHRC Docket No. 161 (Oct. 3, 1973) (rubber gloves); Secretary v. Ryder Truck Lines, Inc., OSAHRC Docket No. 391 (Aug. 16, 1973), *appeal docketed*, No. 73-3341, 5th Cir., Oct. 4, 1973 (safety shoes); Secretary v. Grayson Lumber Co., OSAHRC Docket No. 793 (June 14, 1973) (safety shoes); Secretary v. Ira Holliday Logging, Inc., OSAHRC Docket No. 237 (Apr. 27, 1973) (hard hats); Secretary v. Young & Morgan, Inc., OSAHRC Docket No. 1085 (Jan. 26, 1973) (spiked loggers "caulk" boots); Secretary v. Spencer Foods, Inc., OSAHRC Docket No. 450 (Sept. 12, 1972) (steel mesh gloves); Secretary v. Glass Containers Corp., OSAHRC Docket No. 555 (Aug. 18, 1972) (a counter-weight door).

91. The enforceability of this standard is being challenged in *Ryder Truck Lines, Inc. v. OSAHRC*, No. 73-3341 (5th Cir., filed Oct. 4, 1973).

found in applying many of the national consensus standards. The arguments are obvious that many of the established federal standards fail to provide a fair warning of the conduct required or prohibited and are subject to arbitrary application by enforcement officials.<sup>92</sup>

A recent decision of the Occupational Safety and Health Review Commission<sup>93</sup> accepted similar arguments in invalidating a job safety standard providing for employee medical services<sup>94</sup> and adopted verbatim from Walsh-Healey regulations.<sup>95</sup> The standard provided that "[i]n the absence of an infirmary, clinic, or hospital in near proximity to the workplace . . . a person . . . shall be adequately trained to render first aid."<sup>96</sup> In a prior case the Commission had indicated that a standard would not be declared unenforceably vague, although written in broad terms, so long as employers of common intelligence and experience were apprised of the conduct required of them and were not required to speculate with respect to the meaning of the regulation.<sup>97</sup> In considering the medical services standard, however, the Commission ruled that it was "unlimited in spectrum, unlimited in scope and application . . ."<sup>98</sup> Relying upon evidence in the record that the interpretation of "near proximity" varied from one safety inspector to another, the Commission concluded that a standard which could be "applied at the whim of local [OSHA] area directors"<sup>99</sup> cannot be enforced.

#### CONCLUSION

The national consensus and existing federal standards should have provided a foundation for effective job safety improvement under the 1970 Act. Uncritical adoption of such standards by OSHA in its initial promulgations, however, only weakened the effectiveness of the Act. Blame for such misuse of prior standards could be widely distributed, but pinpointing the causes is now only an academic exercise contribu-

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92. *Secretary v. Fulton Instrument Co.*, OSAHRC Docket No. 563 (pending); *Secretary v. A. Friederich & Sons*, OSAHRC Docket No. 344 (pending); *Secretary v. Santa Fe Trail Transport Co.*, OSAHRC Docket No. 331 (Dec. 18, 1973); *Secretary v. Imes Container Corp.*, OSAHRC Docket No. 79 (July 31, 1973); *Secretary v. Tilo Co.*, OSAHRC Docket No. 211 (April 27, 1973); *Secretary v. Diesel Constr. Co.*, OSAHRC Docket No. 827 (Feb. 20, 1973).

93. *Secretary v. Santa Fe Trail Transport Co.*, OSAHRC Docket No. 331 (Dec. 18, 1973).

94. 29 C.F.R. § 1910.151(b) (1973).

95. 41 C.F.R. § 50-204.6 (1973).

96. 29 C.F.R. § 1910.151(b) (1973).

97. *Secretary v. Georgia Pacific Corp.*, OSAHRC Docket No. 676 (Aug. 20, 1973).

98. OSAHRC Docket No. 331, at 3-5.

99. *Id.* at 4.

ting nothing to the solution of the current problem. The field of occupational safety and health is, after all, no place for blame-laying; nor is it a place for guessing games, tricky phraseology, or obfuscation. The job of rewriting existing regulations to include the fundamental elements of identification of particular hazards and specification of means of avoiding injury is enormous, for there are literally hundreds of cryptic and overly broad regulations which must be revised or eliminated. It will require dedicated effort to accomplish this task, but it is essential that the effort be made. The lives and well-being of people are at stake.