

## Alphabet soup: Federal agencies with jurisdiction in KY

By George J. Miller  
Wyatt, Tarrant & Combs, LLP

**NIOSH has authority to enter any factory, plant, establishment, construction site, or other workplace where work is performed by an employee of an employer.**

**Similarly, the CSB is charged with investigating industrial chemical accidents.**

It may come as a surprise to some that although Kentucky has its own state occupational safety and health plan pursuant to which the Kentucky Labor Cabinet has jurisdiction to inspect workplaces and cite employers for alleged safety and health violations, certain federal agencies have simultaneous jurisdiction in certain instances.

Two such agencies are the National Institute of Occupational Safety and Health (NIOSH) and the United States Chemical Safety and Hazard Investigation Board (CSB).

NIOSH is the research arm of federal OSHA, and was established by Congress to carry out the policy set forth in the federal Occupational Safety and Health Act, and to perform the functions of the Secretary of Health and Human Services to conduct research, experiments, and demonstrations, develop plans, establish criteria, promulgate regulations, authorize programs, and publish results and industry wide studies pursuant to 29 USC § 669, and to conduct training and employee education pursuant to 29 USC § 670.

Like OSHA, NIOSH has authority to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other workplace or environment where work is performed by an employee of an employer.

This is true even in states, like Kentucky, which have their own state plan. Incidental to this authority to conduct inspections, NIOSH, like OSHA, has the authority to issue inspection warrants and subpoenas for documents, and to interview employees.

However, NIOSH does not have authority to cite employers for violations or impose proposed penalties. In all other respects, however, a NIOSH inspec-

tion is the same as an OSHA inspection.

Similarly, the CSB is an independent federal agency established by Congress and charged with investigating industrial chemical accidents. It is headquartered in Washington, DC, and its five board members are appointed by the President and confirmed by the Senate.

The CSB was created by the Clean Air Act Amendments of 1990 and became operational in January 1998. Its principal role is to investigate accidents to determine the conditions and circumstances which lead up to an event, and identify the cause or causes so that similar events might be prevented.

The CSB has the authority to conduct workplace inspections where an accidental release of a regulated substance into the atmosphere causes a fatality, serious personal injury, or substantial property damage, including the authority to subpoena documents pursuant to the statute, 42 USC § 7412(r)(6)(L)(ii).

A NIOSH or CSB inspection in conjunction with an OSHA inspection complicates the situation and can be a burden on small employers. Nevertheless, employers need to be aware of the possibility of NIOSH or CSB inspections concurrently with OSHA inspections. ▲

### Jurisdiction of Kentucky's state plan

Half of the 50 states have received federal authorization to operate their own OSHA plans, which are approved and monitored by the federal OSHA. Kentucky was among the first states to receive federal approval in 1985.

The states that run their own plans must meet a list of conditions, one of which is that the standards — and enforcement of those standards — must be “at least as effective” as comparable federal standards. And the states must submit regular reports to the U.S.