



September 28, 2008

U.S. Department of Labor
Office of the Assistant Secretary for Policy
200 Constitution Avenue, N.W.
S-2312
Washington, D.C. 20210

Re: RIN 1290-AA23

To Whom It May Concern:

The Communications Workers of America (CWA), AFL-CIO, CLC, appreciates the opportunity to submit the following comments on the U.S. Department of Labor (DOL) Proposed Rule regarding "Requirements for Department of Labor Agencies' Assessment of Occupational Health Risks." CWA represents over 700,000 U.S. private and public sector workers employed within the information technology and communications, print media and broadcasting, publishing, public service, health care and higher education, law enforcement, manufacturing, and the airline industries. The Union's members live and work in some 10,000 U.S. communities.

As indicated by DOL, the proposed rule would alter the existing risk assessment approaches used by the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA). DOL intends to compile its existing best practices related to risk assessment into a single, easy to reference regulation and to include two requirements to establish consistent procedures for conducting risk assessments intended to promote greater public input and awareness of DOL's rulemakings. To accomplish this:

The Agency states the importance of seeking out and receiving all relevant data before proposing an occupational health standard. More specifically, DOL is proposing that when developing a workplace health standard intended to regulate occupational exposure to a toxic substance or hazardous chemical, the involved agency/ies shall issue an Advanced Notice of Proposed Rulemaking (ANPR) soliciting public input on scientific studies and information; data describing the frequency, intensity, duration and other factors associated with worker exposure in the affected industries and occupations; key default factors and assumptions; and other relevant information prior to issuing a Notice of Proposed Rulemaking (NPR) or other regulatory action in the health standard rulemaking. The DOL agency/ies shall publish an ANPRM, except when issuing an emergency temporary standard under Section 6(c) of the Occupational Safety and Health Act (OSAHct) or Section 101(b)(1) of the Mine Safety and Health Act (MSHAct).

The addition of this ANPR step to the risk assessment process would lengthen the standard-setting activity by approximately two years (AFL-CIO) and, during this process, clearly weaken necessary worker protection to the substances(s) in question. Such delay would occur due to the proposal's requirement that: OSHA and MSHA respond to all public comments submitted on the risk assessment concerns, regardless of their validity or merit, before issuing a final rule-- Of importance, this idea was rejected in 1987 by the Administrative Conference of the United States-- and

Require the agency/ies to gather and analyze available industry-by-industry evidence related to work life exposures in the risk evaluation. This proposal incorrectly assumes establishing an industry-by-industry assessment of health risks would comply with the legislative mandate placed upon OSHA and MSHA to assure safe and healthful working conditions for U.S. workers. Further, this process would suggest DOL is considering establishing different exposure levels within different industries for the same hazardous substances/chemicals. Clearly, such procedures would establish unenforceable standards, and, possibly, be in violation of Congressional legislative intent specific to the OSHAct and MSHAct.

Although not included in the proposed rule, the proposal would appear to provide the Bush Administration with an opportunity to promote its stated belief of changing the assumption of a 45-year working lifetime exposure, i.e., eight hours a day, five days a week, fifty weeks a year over a 45-year working lifetime. Such a move would clearly undermine OSHA and MSHA efforts to fulfill their legislative mandate of providing workers with necessary and required exposure protections to hazardous substances/chemicals.

- In addition, in an effort to provide transparency and maximize public access to all rulemaking information, DOL proposes to electronically post together in an easily accessible and well-organized format on <http://www.regulations.gov> and/or <http://www.dol.gov> all relevant documents related to the rulemaking addressing occupational exposure to toxic substances and hazardous chemicals no later than fourteen days after the conclusion of the rulemaking step that relied upon or utilized those documents. These documents would include, but not be limited to any underlying scientific studies relied upon in the rulemaking (given copyright limitations); all risk assessment analyses underlying the NPRM and Final Rule; the text of the ANPRM; SBREFA process documents; the text of the NPRM; all public hearing transcripts and briefs; all public comments; the final docket of the rulemaking; and the text of the Final Rule.

As with DOL's proposal to add the ANPR step to the risk assessment process, this recommendation would significantly lengthen the standard-setting process with little, if any, added value.

Of concern, the method by which DOL has proceeded to establish the proposed rule is highly questionable and in violation of well established administrative

procedures. For example, the proposed risk assessment rule was developed by political appointees within DOL's Office of the Assistant Secretary for Policy without the necessary involvement from safety and health experts within OSHA and MSHA. This office has no expertise in risk assessment and no authority under the OSHAct and/or MSHAct regarding the development and issuance of occupational safety and health rules.

As required by Executive Order 12866, all rules under development must be listed in DOL's semi-annual regulatory agenda (in this case, published in April, 2008). DOL failed to comply with this requirement. In fact, the first public record of the proposed rule was on July 7, 2008 when a notice was posted on www.reginfo.gov stating the draft rule was at the Office of Management and Budget (OMB) for review under Executive Order 12866. Further, DOL refused to provide requested information to members of U.S. Congress, the public, or the media.

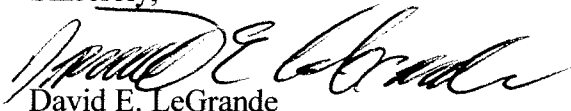
Finally, the proposed rule violated the Bush Administration's policy announced on May 9, 2008 indicating that, except for extraordinary circumstances, agencies were not to issue any new proposed rules after June 1, 2008.

For the above reasons, CWA joins with several other organizations including the AFL-CIO, the American College of Occupational and Environmental Medicine, the American Industrial Hygiene Association, the American Public Health Association, and OMB Watch requesting DOL withdraw the proposed requirements.

Given the significance of the proposed rule upon worker/occupational safety and health, if DOL decides to ignore/refuse to grant this request, CWA requests DOL extend the 30-day comment period to 90 days and conduct public hearings regarding the proposed rule.

If you have any questions regarding the Union's comments, please communicate directly with me at CWA, 501 3rd Street, N.W., Washington, D.C. 20001; E-mail legrande@cwa-union.org.

Sincerely,



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