



TO: Editorial Page Editors and Writers

FROM: Rena Steinzor, President, Center for Progressive Reform

RE: DOL's Fast-Tracked Risk Assessment Policy Would Weaken Safety Protections for American Workers

DATE: September 3, 2008

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Over the last seven and a half years, the Bush Administration has repeatedly demonstrated that it is, in general terms, no fan of strong regulations to protect Americans from hazards in the environment, consumer products and on the job. One area in which the Administration has excelled has been in devising and imposing methods of regulatory analysis that would effectively diminish protections across the board. So, for example, early in the Administration, the White House Office of Management imposed a requirement that regulatory agencies, when conducting cost-benefit analyses of proposed regulations, assign a lower dollar value to the lives of seniors than to the lives of younger Americans, on the grounds that seniors had fewer productive work years remaining. OMB was forced to withdraw the directive in the face of public outcry, but had it succeeded, it would have driven a weakening of any number of standards by making it harder for protective regulations to survive OMB's already stilted cost-benefit analysis.

On Friday, August 29, 2008, the Department of Labor proposed another such regulatory initiative – one that would impose an across-the-board change in the method of regulation. The proposal would govern how DOL's scientists and policymakers engage in the complex task of screening the best available science when writing new occupational health and safety standards. The proposal is a sweeping, back-door effort to weaken safety protections for American workers.

***A policy that's bad for worker health and safety***

The Occupational Safety and Health Act and Mine Safety and Health Act mandate that the DOL craft safety standards adequate to ensure “that no [employee or miner] will suffer material impairment of health or functional capacity even if such [employee or miner] has regular exposure to the hazards dealt with by such standard for the period of his working life.” For years, DOL has used the relatively conservative assumption of a 45-year working life. In its newly proposed policy, however, DOL would require agency scientists to gather and analyze data that would support reducing the 45-year working life assumption. Since the risk of harm from an occupational hazard is the product of dose and exposure, if exposure estimates decrease because of a decrease in working life, risk will decrease also and, thus, the safety standards that are designed to prevent risk will be weaker.

So, for example, in crafting a safety standard to protect a worker exposed to carcinogenic fumes as part of her daily work, OSHA's traditional method of analysis would begin with the assumption that she worked eight-hour shifts, five days a week, from the age of 20 to the age of 65. Obviously not all workers remain in jobs with such exposures for 45 years. But some surely do. So by assuming such a cautious scenario, OSHA avoided under-regulating exposure to the fumes. But now DOL wants to undertake a laborious industry-by-industry accounting of how long workers typically stay in one occupation, and then plans to set safety standards based on those findings. If such studies conclude that an average worker stays on the job for 20 years not 45, it would lead to less protective rules and long exposure to higher doses of hazards. That would be bad news for all exposed workers, but particularly for those who stay on the job longer than the average. The 45-year employee might be exposed to significantly higher doses. In essence, DOL would create a penalty for loyal and longtime employees.

### *The product of a flawed process*

Molding the risk assessment process to their liking has been a goal of the White House for years. Ostensibly aiming at getting "junk science" out of the regulatory process, the Office of Management and Budget proposed a set of government-wide risk assessment standards in 2006. The National Research Council blasted OMB's proposal, calling it "fundamentally flawed" and suggesting its abandonment. NRC recommended that individual agencies put together expert advisory committees to help sort through the complex issues that attend risk assessment used in the regulatory process. These expert panels – not OMB staff – would build the framework for agency-specific risk assessment guidelines.

Disregarding NRC's recommendation, DOL contracted out the task of studying the agency's risk assessment policies. (A significant share of that \$349,000 contract went to the Hudson Institute, a right-wing think tank.) Comments that DOL staff submitted to NRC during its review of OMB's proposed risk assessment guidelines, suggested that career staff may have been shut out of the development of the new DOL policy. For instance, despite the DOL career staff's comment that detailed "uncertainty analyses" "have not been necessary to adequately characterize safety risks," the new proposal repeatedly calls for additional uncertainty analysis.

The speed with which DOL's new policy has made its way through the usually protracted regulatory process is extraordinary. In the first seven and one-half years of the George W. Bush administration, DOL finalized only one major safety regulation for a chemical in the workplace, and it did so under court order. The Hudson Institute and others began work on the DOL risk assessment study in September 2007. Less than a year later a new policy was published in the *Federal Register*.

Significantly, the timing of this proposal is at odds with the White House's recently announced policy on so-called "midnight regulation." In May, the White House announced that it had instructed (see link below) agency heads to begin no new regulations after June 1, 2008, on grounds of good government. Indeed, DOL's new proposal is precisely the type of parting gift to traditional supporters that President Bush decried when he first entered the White House. It comes on the heels of another controversial proposal that will please conservatives – proposed changes to Endangered Species Act regulations that would cut wildlife agency staff out of key

decisions about whether development and other projects will harm endangered or threatened species. A July story (see link below) in the *Washington Post*, published before the proposal was released, traced the extraordinary path of the proposal.

### ***Conclusion***

The Department of Labor has been tight-lipped about this new policy. When its existence first came to light (before it actually became public), Sen. Edward Kennedy and Rep. George Miller wrote to DOL Secretary Elaine Chao requesting details. The agency's "response" to the congressional effort at oversight was a curt letter essentially telling them that details would be available once the policy became public. Now that the rule has been published, with a public comment period of an uncommonly short 30 days, it will be interesting to see how the agency responds to the inevitable criticism. A group of prominent scientists (see link below), as well as the American Public Health Association, have already called for its withdrawal.

Ironically enough, the Department issued its proposed policy over the Labor Day weekend. Even though the holiday has passed, I hope you'll be able to find space to editorialize on the subject. I'd be delighted to provide more information or answer any questions you may have. If you'd like to follow up, please contact Matthew Freeman in our media office at [mfreeman@progressivereform.org](mailto:mfreeman@progressivereform.org), or at 301.762.8980. Our website is at [www.progressivereform.org](http://www.progressivereform.org).

### Additional Links:

- Administration directive to agencies prohibiting new regulations after June 1, 2008:  
<http://www.ombwatch.org/regs/PDFs/BoltenMemo050908.pdf>
- Washington Post story:  
[www.washingtonpost.com/wp-dyn/content/article/2008/07/22/AR2008072202838\\_2.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/07/22/AR2008072202838_2.html)
- Kennedy/Miller letter:  
[http://kennedy.senate.gov/newsroom/press\\_release.cfm?id=57AA61A4-3763-4DC3-9D39-2AA3A9F88260](http://kennedy.senate.gov/newsroom/press_release.cfm?id=57AA61A4-3763-4DC3-9D39-2AA3A9F88260)
- Scientists' letter:  
[http://www.defendingscience.org/case\\_studies/Secret-DOL-Rule.cfm](http://www.defendingscience.org/case_studies/Secret-DOL-Rule.cfm)
- American Public Health Association letter:  
[http://www.defendingscience.org/case\\_studies/Secret-DOL-Rule.cfm](http://www.defendingscience.org/case_studies/Secret-DOL-Rule.cfm)