
EDUCATION & LABOR COMMITTEE

Congressman George Miller, Chairman

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**Chairwoman Woolsey Statement at Subcommittee Hearing On
“The Secret Rule: Impact Of The Department Of Labor’s Worker
Health Risk Assessment Proposal”**

WASHINGTON, D.C. – *Below are the prepared remarks of U.S. Rep. Lynn Woolsey (D-CA), chairwoman of the Subcommittee on Workforce Protections, for a subcommittee hearing on “The Secret Rule: Impact Of The Department Of Labor’s Worker Health Risk Assessment Proposal.”*

I’ve called this hearing today on DOL’s proposed risk assessment regulation because, quite frankly, I am troubled by the Agency’s attempt to rush through this rule without a full consideration of its effect on the health and safety of the American worker.

This proposed rule has without explanation leapfrogged ahead of many other worker protection standards that OSHA should have been working on for the last 8 years, including:

- A standard for diacetyl,
- The long delayed silica standard,
- The long delayed beryllium standard, and
- The long delayed crane standard.

By now most of you know why the proposed rule has been dubbed the “secret rule.”

It was developed by DOL’s Office of Policy with little input from anyone, not even its own experts at OSHA and MSHA.

And according to documents recently provided to the Committee, throughout the process, DOL only consulted with one outsider.

And this was a lawyer representing the industry.

When the Secretary’s office finally showed the rule to its own experts at OSHA and MSHA, those experts disapproved the rule and urged DOL not to proceed.

But the DOL Policy Department apparently ignored them and pushed ahead anyway.

Now, it is important to note that this proposed rule---developed in secret---was only brought to the public's attention in early July when the Office of Management and Budget (OMB), which reviews all proposed rules, posted the rule on its website.

Actually, it did not post the rule, but only its title.

And so, Chairman Miller and Senator Kennedy wrote to DOL and asked for specific information on the rule and how it came about.

But no documents were forthcoming until the day before the rule was published in the Federal Register on August 29.

So many of us have spent the summer scratching our heads about the content of the proposed rule.

Well, now we have the bad news, but only 30 days to comment on this misguided proposal.

Only 30 days to comment on a risk assessment regulation that would significantly lengthen the many years it takes currently to issue standards.

And only 30 days to comment on a regulation that will significantly affect the ability of OSHA and MSHA to protect workers from deadly health hazards.

The Department was so determined to put this rule in place that it even ignored a deadline set by White House Chief of Staff John Bolten who prohibited all agencies from proposing regulations after June 1, 2008, except in extraordinary circumstances.

In addition, DOL has decided not to provide an opportunity for a public hearing.

This is unprecedented in the history of significant OSHA or MSHA standards.

We have a chart, which shows the usual procedures DOL has chosen to ignore in its effort to quickly push through this proposed rule.

In addition to Mr. Bolten's memo, DOL has ignored the orderly processes set outlined in Executive Order 12866, the Regulatory Flexibility Act, the Administrative Procedure Act, the OSH Act and the Mine Safety and Health Act.

Chairman Miller, Senator Kennedy, Senator Murray and I have recently sent a letter to DOL asking for a public hearing and for an extension of the comment period.

Other groups have done so as well.

I hope that Assistant Secretary Sequeira will have good news for us on that front.

Of course, the irony of all of this is that during the entire Bush Administration, OSHA has not issued a single new health standard, except for one that was issued under a court-ordered deadline.

And MSHA has issued only one new health standard – on asbestos – that belatedly brought the mine standard up to the level that other American workers have enjoyed for over 20 years.

In April, 2007, this subcommittee had a hearing on OSHA’s failure to issue standards.

And Eric Peoples, a former worker in a popcorn factory testified about his losing struggle with “popcorn lung” disease caused by his exposure to diacetyl, a chemical used in the microwave popcorn manufacturing process.

Sitting beside Eric was OSHA Administrator Ed Foulke who assured us that the Agency was fully committed to achieving its regulatory goals.

Following the April 2007 hearing, many of us concluded that OSHA intended to take no action to prevent workers from exposure to diacetyl.

And, so I introduced legislation that would require OSHA to issue an interim standard within 90 days, and a final standard within two years.

As we were about to vote on the bill, which passed in the House, OSHA announced that it would begin rulemaking and shortly thereafter promised to have draft ready for small business review by January 2008.

But here we are in September with no draft of a standard for diacetyl but we have the secret rule, which is being propelled forward at lightning speed.

Sadly, we know where this Administration’s priorities are, and they are not with American workers.

Our witnesses will further explain this “secret rule,” and I look forward to their testimony.

With that, I defer to the ranking member, Joe Wilson, for his opening statement.

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