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U.S. Rushes to Change Workplace Toxin Rules

By Carol D. Leonnig
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Political appointees at the Department of Labor are moving with unusual speed to push through in the final months of the Bush administration a rule making it tougher to regulate workers' on-the-job exposure to chemicals and toxins.

The agency did not disclose the proposal, as required, in public notices of regulatory plans that it filed in December and May. Instead, [Labor Secretary Elaine L. Chao](#)'s intention to push for the rule first surfaced on July 7, when the [White House Office of Management and Budget](#) (OMB) posted on its Web site that it was reviewing the proposal, identified only by its nine-word title.

The text of the proposed rule has not been made public, but according to sources briefed on the change and to an early draft obtained by [The Washington Post](#), it would call for reexamining the methods used to measure risks posed by workplace exposure to toxins. The change would address long-standing complaints from businesses that the government overestimates the risk posed by job exposure to chemicals.

The rule would also require the agency to take an extra step before setting new limits on chemicals in the workplace by allowing an additional round of challenges to agency risk assessments.

The department's speed in trying to make the regulatory change contrasts with its reluctance to alter workplace safety rules over the past 7 1/2 years. In that time, the department adopted only one major health rule for a chemical in the workplace, and it did so under a court order.

In an interview, Labor's assistant secretary for policy, Leon R. Sequeira, said officials did not disclose their interest in the rule change earlier because they were uncertain until recently whether they wanted to follow through and pursue a regulation.

But the fast-track approach has brought criticism from workplace-safety advocates, unions and Democrats in Congress. Some accuse the Bush administration of working secretly to give industry a parting gift that will help it delay or block safety regulations after [President Bush](#) leaves office.

"It's an insult to America's workers for the Department of Labor to be spending its time in the last year of this administration allegedly fine-tuning the details of how to do these regulations when, other than the one ordered by a court, they have issued no major worker-health regulations," said Adam Finkel, a professor at the University of Medicine and Dentistry of New Jersey who is a former health standards director at Labor's Occupational Safety and Health Administration. "The reality is there's a great need to light a fire under this moribund agency to do something - anything -- to protect workers."

[Rep. George Miller](#) (D-Calif.), chairman of the House Education and Labor Committee, said: "The fact that the Department of Labor seems to be engaged in secret rulemaking makes me highly suspicious that some high-level political appointees are up to no good. This Congress will not stand for the gutting of health and safety protections as the Bush administration heads out the door."

Sequeira said department policy prevents him from discussing the details of a draft rule, how it was written and by whom, until it is reviewed by the OMB. The public will have 30 days to critique the draft after it is published.

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"It's premature to comment," he said. "People appear to be making assumptions about what's in the draft."

Last week, the proposal was defended in an opinion piece in the [New York Sun](#) written by Diana Furchtgott-Roth, a fellow at the conservative-leaning [Hudson Institute](#). She wrote that it would bring a "rationalized approach" to risk assessments and probably move away from the incorrect assumption in current rules that workers stay in a job, with daily exposure to the same chemicals or toxins, for as long as 45 years.

Furchtgott-Roth did not mention in the article that she was one of the consultants who worked with Labor beginning in September 2007 on a \$349,000 outside study of the risk-assessment process.

The OMB has been trying to address the issue of risk assessment since 2006, when it attempted to set new standards governing how a host of federal agencies reach their conclusions. That plan was withdrawn after the [National Academy of Sciences](#) called it "fatally flawed" because it lacked scientific grounding.

Early this year, Deborah Misir, a political deputy in Labor's office of the assistant secretary for policy, worked with the OMB to draft a new risk-assessment rule. A former ethics adviser to Bush, Misir had complained that the department's assumption of a 45-year working life overstated the risk of exposure.

Typically, before drafting a rule, agency officials consult with staff members, lawyers and outside experts, and sometimes industry and other interested parties. But Misir initially did not consult scientific and workplace-risk-assessment experts in [OSHA](#) and the [Mine Safety and Health Administration](#), according to sources briefed on her work.

Charles Gordon, a recently retired Labor Department lawyer who worked on regulations in OSHA's solicitor's office for 32 years, said the policy office does not usually take the lead on rules involving risk assessments. "Normally, issues of health science like risk assessment are performed by OSHA and MSHA, that have statutory authority and expertise in the area," Gordon said.

Misir waited until April to seek comments from the department's experts. They objected to both the legality and substance of the proposal and recommended that Chao not pursue such a rule, according to the sources.

A few weeks later, when the agency listed regulations "under development or review" in its semiannual agenda, the risk-assessment proposal was not included. But a draft was circulating among a small group of advisers, according to a date-stamped copy obtained by The Post.

In spring 2007, the department listed 38 potential workplace-safety regulations as works in progress. Among its priorities were a proposal to reduce deaths and injuries from cranes and derricks, following a spate of fatal accidents; a new rule to reduce illnesses from silica, which can cause respiratory diseases; and a proposal to change regulation of beryllium, a light metal that can harm the lungs of dental and metal workers.

But virtually overnight, changing the risk-assessment process became the agency's top priority for workplace regulations. The July submission of its proposal broke a deadline set by [White House Chief of Staff Joshua B. Bolten](#), who had ordered that all agencies submit proposed regulations before June 1 and "resist the historical tendency of administrations to increase regulatory activity in their final months."

Nevertheless, the OMB agreed to work with Labor on the proposal. The July 7 posting on its Web site shocked many inside and outside the agency who had been following the events.

"This is flat-out secrecy," said Peg Seminario, director of health and safety policy at the [AFL-CIO](#). "They are trying to essentially change the job safety and health laws and reduce required workplace protections through a midnight regulation."

Seminario said she was stunned that the administration would consider the rule its top priority, when for years it has "slow-walked and stalled" safety rules that would reduce worker deaths and injuries from diacetyl and beryllium.

[David Michaels](#), an epidemiologist and workplace safety professor at [George Washington University](#)'s School of Public Health, said the rule would add another barrier to creating safety standards, in the name of improving them.

"This is a guarantee to keep any more worker safety regulation from ever coming out of OSHA," Michaels said. "This is being done in secrecy, to be sprung before President Bush leaves office, to cripple the next administration."

Research editor Lucy Shackelford contributed to this report.

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