

Statement by the Hon. George Miller (D-CA)

Chairman of the Committee on Education and Labor
On Introducing the “Prohibiting the Department of Labor’s Secret Rule
Act.”

Wednesday, July 30, 2008
Extension of Remarks

Madam Speaker, today I am introducing a bill to stop the Department of Labor from proceeding with a new proposed rule that would seriously undermine the ability of the federal government to protect workers’ health. The Department’s proposal is the product of a flawed, politicized process.

On July 7, 2008, the Department of Labor submitted a proposed regulation entitled “Requirements for DOL Agencies’ Assessment of Occupational Health Risks” to the Office of Management and Budget (OMB) for E.O. 12866 regulatory review.

This proposal is being made in contravention of a number of rules and processes. No notice of this rule was published in the semi-annual Regulatory Agenda as required under Executive Order 12866. Furthermore, unlike all other DOL regulatory submissions to OMB, the information provided on the OMB website did not originally contain the rule’s abstract, legal authority, timetable, agency contact, and other information required by the Executive Order. Although the intent is to finalize this rule before the end of the Bush administration, this submission violated the White House’s own directive prohibiting submission of new regulations to OMB after June 1 except in “extraordinary circumstances.

What are the “extraordinary circumstances” that are being used to rush through this last minute, secret regulation on a subject as arcane and technical as “risk assessment?” Assessing risk is the backbone of any OSHA or MSHA standard that addresses hazards posed by chemicals or other health hazards. Changing the assumptions underlying risk assessment to those favored by industry can seriously erode the effectiveness of all future OSHA or MSHA standards far beyond the life of this administration.

The Department claims that this proposal was not published in the most recent regulatory agenda because when the last regulatory agenda was issued, they had not yet decided whether they would issue a proposal. But the *Washington Post* has revealed that they

have been working on this regulation as far back as September 2007 when they paid \$349,000 to outside consultants to conduct a study of the risk-assessment process.

The entire proposal appears to have been designed and originated by political appointees at the Department of Labor, bypassing the real experts at OSHA and MSHA. According to the *Washington Post*, when a draft was finally shown to health scientists in MSHA and OSHA, they objected to both the legality and substance of the proposal and suggested that the proposal not be issued. The political appointees at the Department went ahead anyway.

In the last 7 ½ years, the Department has only managed to issue one health standard – and that was done under court order. It has failed to meet its own deadlines on regulations to protect workers against the health effects of silica, against the health effects of beryllium, or against the serious health effects of diacetyl, which causes popcorn lung.

Yet, suddenly, the Department of Labor has decided that further weakening the ability of OSHA or MSHA to issue any future health standards has become its highest priority.

No one is arguing that OSHA or MSHA do not need guidance for risk assessment. But the Department of Labor already has such guidance. This new regulation, however, which clearly has the potential to weaken worker protections, will be codified, binding all future administrations. Other agencies that have such guidance, such as the Environmental Protection Agency, note that “because the science of risk assessment continues to develop rapidly....risk assessments will be modified to use different approaches if appropriate.”¹

The new Labor regulation, on the other hand, would add an entire additional layer of review to the already overstressed regulatory process by requiring notice and comments for all risk-related studies before a proposal can be issued. This would be in addition to numerous economic reviews, small business reviews, OMB reviews, public comments and public hearings that are already required before a standard is issued.

This Congress will not stand for further weakening of worker protections, particularly when it’s done secretly – as this administration heads out of town. This bill would forbid the Department of Labor from issuing, administering or enforcing any rule, regulation, or requirement derived from the proposal submitted to the Office of Management and Budget. The Department’s proposal is the product of a flawed, politicized process that has failed to properly consider the views of experts or the consequences for workplace health.

I urge my colleagues to support this bill.

¹ EPA, *Guidelines for Carcinogen Risk Assessments*, EPA/630/P-03/001F, March 2005