

ORAL STATEMENT
Celeste Monforton, MPH, DrPH
“Impact of Department of Labor’s Worker Health Risk Assessment Proposal”

September 17, 2008

Chairwoman Woolsey and Members of the Subcommittee:

I am Celeste Monforton, a researcher at the George Washington University School of Public Health. I appreciate the opportunity to appear here today and ask that my full statement be made part of the hearing record.

On its face, I understand how some individuals might ask “who could be against the Labor Department having requirements for risk assessment?” Others might wonder why a large group of health scientists, **AND** the American Public Health Association urged the Secretary to withdraw this proposal.

Here’s the problem:

Our nation’s system for protecting workers from harmful substances that cause injuries and illnesses is paralyzed. Thousands of workers are exposed every day to chemical compounds and physical hazards that are known to be harmful, yet these exposures are permitted by outdated or non-existent OSHA and MSHA standards. As the former chair of this subcommittee, the late Congressman Charlie Norwood acknowledged, there are many occupational standards that need to be updated in order to achieve safe and healthful workplaces.¹

The public health and workers’ rights communities would have welcomed a Department of Labor effort to improve the efficiency and effectiveness of the rulemaking process. The OSH Act and Mine Act are robust, well-crafted statutes that give broad authority to the Secretary to regulate workers’ exposure to toxic materials, and both were clearly grounded in the public health principle of **prevention**. The overarching goal of both statutes was to identify, mitigate and/or control hazards **before** they cause harm. But instead of being motivated by prevention, the Labor Department is sponsoring changes that will make it more difficult to issue health-protective rules - - - and the longer workers are exposed to harmful levels of toxic materials, the greater the risk of harm.

In the simplest terms, conducting a risk assessment means using the best information available to describe or estimate the risk of an adverse event. A risk assessment is a decision-making tool that allows users to make informed decisions.

In the context of occupational health standards, a risk assessment is prepared by OSHA to determine if exposure to a toxic material poses a significant risk to workers.² If the hazard does not pose a significant risk, the agency does not have the authority to regulate it.

Since the 1980's, when the Labor Department began preparing quantitative risk assessments, the agencies' products have consistently withstood vigorous scientific and public scrutiny, **and** legal challenges. No matter the contaminant---asbestos, lead, diesel particulate matter---the assessments were based on the best available evidence and determined, with little room for doubt, that the levels of exposure experienced by workers placed them at significant risk of "material impairment of health or functional capacity."³

Furthermore, these risk assessments are not the only factor used in OSHA's and MSHA's regulatory decisions; the agencies must also conduct analyses to determine if a proposed regulation is economically and technologically feasible. This means that even if the agency's risk assessment for chemical X suggests that an exposure limit should be set at Y (in order to protect workers' health) the agency is required to set the exposure limit at a level that is feasible. This might mean that the final exposure limit might be set at Y*2 or Y*5 even when the risk assessment suggested a much lower level was warranted.

In my written statement, I outline a number of problems with the Department's proposed rule, including its misreading of the 1997 Presidential/Congressional Commission report; the way it says it values public input but fails to allow adequate time for it; and its incomplete appraisal of key documents related to existing Departmental standard-setting practices.

With my remaining time, however, I would like draw your attention to the pitfall of preparing a proposed rule on risk assessment **in haste**, and without the benefit of the career federal employees who are most expert on the topic. Just last year, a panel of scientists from the National Academies offered a harsh critique of a comparable effort by OMB, and the NAS made specific recommendations for administrative agencies for the **content of** and **procedures for** developing risk assessment guidelines. The Labor Department ignores the NAS report in numerous respects, including the recommendation that any proposed risk assessment guidance draw on the expertise in federal agencies and be subjected to peer review.

Curiously, the Department indicates that it “does not have comprehensive regulations or formal internal guidance outlining consistent risk assessment procedures.”⁴ Yet in 2002, it issued a special appendix under its Information Quality Guidelines which specifically describes the procedures to be used by OSHA and MSHA when conducting risk analyses for health and safety rules.⁵

The Labor Department’s proposal is a sloppy piece of work that will impede, not improve, health protections for workers. It is imperative that this Committee use its oversight role to ensure that the promises of the OSH Act and the Mine Act are upheld for the sake of our nation’s workers. These are the men and women who create the wealth for businesses and for our entire country.

REFERENCES

¹ The Honorable Charlie Norwood, Opening Statements at hearings of the Subcommittee on Workforce Protections: “Making Sense of OSHA Rulemaking: A Thirty Year Perspective,” June 14, 2001; “The Role of Consensus Standard Setting Organizations,” November 1, 2001; “Can a Consensus be Reached to Update OSHA’s PELs,” July 16, 2002.

² Under the U.S. Supreme Court’s decision in *Industrial Union Department v. American Petroleum Institute*, [448 U.S. 607 (1980)], OSHA is required to find “as a threshold matter, that the toxic substance in question poses a significant health risk in the workplace and that a new, lower standard is therefore ‘reasonably necessary or appropriate’ to provide safe or healthful employment and places of employment.”

³ Section 6(b)(5) of OSH Act.

⁴ OSHA News Release, Release Number 08-1242-NAT, 08/29/2008.

⁵ U.S. Department of Labor. “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Department of Labor,” October 1, 2002.