



September 29, 2008

Assistant Secretary for Policy
U.S. Department of Labor
200 Constitution Avenue, NW
S-2312
Washington, DC 20210

ATTN: Risk Assessment Policy
RIN 1290-AA23

Dear Assistant Secretary:

On behalf of the American Industrial Hygiene Association (AIHA) I am writing to express our opposition to the proposed “Requirements for DOL Agencies’ Assessment of Occupational Health Risks”; and to express our opposition to the Department of Labor’s attempt to enact this rule without appropriate stakeholder input. The proposed rule was published in the *Federal Register* on August 29, 2008, pages 50909-50915.

As the premier association of occupational and environmental health and safety professionals, AIHA members serve on the front line of worker health and safety. AIHA members, as well as employees and employers, rely on federal and state rules and regulations to improve the health and safety of the workplace and believe such rules and regulations are of the utmost importance.

AIHA previously stated in an August 25 letter to Labor Secretary Elaine Chao our opposition to the approach undertaken by DOL to enact this rule and we remain opposed to DOL's approach, specifically the need for a more detailed review of the proposed rule and the proposed elements in the rule. We understand, but disagree with the DOL position that this is a simple change of internal workings which does not directly affect employers or workers.

AIHA finds that forgoing a full public review process prior to proposing the rule is not in the best interests of workers, employers or the public as the proposed rule would significantly relax some workplace exposure standards resulting in higher levels of worker exposure to occupational health risks. While we applaud the expressed intent in the proposed rule to add transparency to the assessment of occupational health risks, we are concerned that the approach being used to progress this rule lacks transparency and bypasses or shortcuts significant stakeholder input.

After review of the proposed rule by the AIHA Risk Assessment Committee, AIHA is concerned that the proposed approach will result in increased exposure to workplace toxins based on assumptions which do not accurately reflect workplace conditions or worker experience. AIHA

is also concerned that DOL has not solicited input from those individuals who have wide ranging expertise in evaluating worker exposure from chemicals and toxins, including industrial hygienists. It is hard to imagine that a rule could be proposed without the input from the professionals who do this work on a daily basis!

AIHA concern with this proposal, as with the draft, pertains to the process and not the content, due to the lack of specific examples or details in the proposed rule. The great unknowns associated with the proposed rule are the reasons to take more time and clearly define the requirements and elements of the rule, especially those items discussed below.

AIHA urges the Department to:

- Suspend its efforts to enact this rule until such time as all stakeholders have had a chance for adequate comment.
- Provide for an extension of the comment period. Notwithstanding the fact that the Department believes since this is an internal document that simply “codifies existing best practices into a single, easy to reference regulation”, AIHA believes that because of the considerable opposition to this proposal that the Department would be better advised to extend the comment period so that all stakeholders have adequate opportunity to provide complete and concise comments.
- Request a public hearing be held on this proposal. Individuals and organizations must be afforded the opportunity to provide input to this proposal. It appears that the proposal could potentially create guidelines that could jeopardize the health of workers. Implementing this rule could delay the standard setting process and create the potential for many lawsuits and challenges if an employer’s data is not considered.

AIHA has the following specific comments on the proposed rule:

- Page 50911, Section B – The Department’s Risk Assessment paradigm. The DOL risk assessment procedures need to be clearly defined and presented in a process flow chart understandable by experts and laymen. Clarity and completeness are necessary to ensure quality, transparency, etc. This includes defining the ranges of acceptable risk to be used.
- Page 50911, Section B.1. – Hazard Identification. This does not include a list of organizations used for references, such as NTP, NIEHA. The sources need to be specifically identified.
- Page 50914. The text indicates “the Department is proposing that when developing a health rule regulating occupational exposure to a toxic substance or hazardous chemical, its agencies shall issue an Advance Notice of Proposed Rulemaking (ANPR) soliciting public input on studies, scientific information . . . and other relevant information, prior to issuing a Notice of Proposed Rulemaking (NPRM) or other regulatory action in that health rulemaking . . . Any public comments received in response to the ANPR shall be reviewed by the agencies, and the strength or weakness of any data received shall be carefully evaluated by agency scientists and experts in the same manner that comments in response to an NPRM are reviewed.” The scope of this discussion does not identify or clarify the quality of the data that must be submitted. It does not discuss how the inherent nature of data submitted or variability in that data, might affect the development of a proposed standard.
- Page 50914, Section 2.9 (b) – “significant risk” definition should be enhanced and/or expanded. In the preamble “significant risk” was discussed. Neither OSHA nor the courts have defined this term. This must be made clear.

- The proposal must define the mechanism and practical steps in the implementation of the electronic posting requirements. This requires clarity and completeness.
- AIHA remains concerned with changes to require that OSHA consider employer provided work histories for personnel in specific industries. Without clearer guidance to establish the format and content of this data, our concern is the process for establishing standards would be extended and there would be greater potential for challenges as why or how the data was considered.

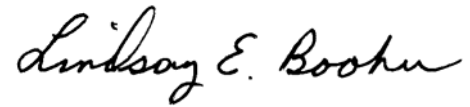
AIHA also agrees with much of the testimony before the U.S. House of Representatives Subcommittee on Workforce Protections hearing on the DOL Proposal on September 17. Summarizing some of the testimony in opposition to this proposal, AIHA agrees that this proposed rule would have a detrimental impact on the standard setting process and concern that the proposed requirements would extend the standard setting process.

Some of the statements from the House hearing which AIHA agrees are of concern:

- The rule would add a new step to the rulemaking process for setting occupational health standards by requiring both OSHA and MSHA to issue an advanced notice of proposed rulemaking (ANPR) for every occupational health standard to solicit scientific studies and other information on health risks and exposures. This could add years of delay to an already glacial process. In fact, for several years AIHA has urged the Department of Labor to streamline its approach to update the OSHA Permissible Exposure Limits currently used to control exposures to toxic chemicals. Many of these date back to the 1960's and have not been kept current with new information about the risks chemicals may pose to workers.
- The rule would require OSHA and MSHA to respond to every public comment submitted on risk assessment issues, regardless of the validity or merit of the comment, before issuing a proposed or final rule.
- The rule would mandate an additional formal step in the rulemaking process for every occupational health rule, and require OSHA and MSHA to respond to all comments on the risk assessment issues before even issuing a proposed rule.
- The proposal includes rules currently under development within its reach. This means that for rules that have been under development for years, OSHA may have to go back to square one and start anew under the new risk assessment rules.
- The rule would require the agencies to gather and analyze available industry-by-industry evidence related to working life exposures, which neither OSHA nor MSHA now do, which will add significant time to the rulemaking process.
- The rule requires the use of existing Office of Management and Budget (OMB) and DOL informational quality and peer review guidelines, locking into place by rule controversial regulatory policies.
- The rule requires OSHA and MSHA to post all relevant documents related to an occupational health standard, including all underlying studies and analyses within 14 days after the conclusion of the relevant step in the rulemaking process.

In conclusion, AIHA urges the DOL to suspend this proposal until such time as all stakeholders have had adequate time to provide input. AIHA will be pleased to work with DOL in drafting a proposal to improve worker health.

Sincerely,

A handwritten signature in cursive script that reads "Lindsay E. Booher".

Lindsay E. Booher, CIH, CSP
AIHA President

cc: AIHA Board of Directors
AIHA Risk Assessment Committee