September 24, 2008

The Honorable Elaine L. Chao, Secretary
Department of Labor
Office of the Assistant Secretary for Policy
200 Constitution Avenue, N.W. S-2312
Washington, DC 20210

RE: Risk Assessment Policy RIN 1290-AA23
Notice of Rulemaking

Dear Secretary Chao:

The American Federation of State, County and Municipal Employees (AFSCME) appreciates the opportunity to submit these comments concerning the above referenced proposed rule.

The proposed rule would change the way occupational risk assessments are conducted in developing workplace health standards. AFSCME strongly objects to the proposal for the following reasons:

- The proposed rule was developed by political appointees in the Office of the Assistant Secretary of Policy (OASP), who have no expertise in the area of risk assessment. The Department of Labor's own experts from the Occupational Safety and Health Administration (OSHA) and the Mine Safety and Health Administration (MSHA) were not consulted in the development of this rule, and it is in direct contradiction to recommendations made by the National Academy of Sciences. Furthermore, the OASP has no authority under the Occupational Safety and Health Act nor the Mine Safety and Health Act to develop such a rule.

- The proposed rule violates the White House's own policy announced by White House Chief of Staff Josh Bolten on May 9, 2008, which states that agencies were to submit any new proposed rules by no later than June 1, 2008, with the exception of "extraordinary circumstances." AFSCME is unaware of any such circumstances that would justify DOL proposing this rule.

- The Department's push to rush this proposal through deprives the public of its right to participate in the rulemaking process. The 30-day comment period is completely inadequate, especially considering that the rule was announced the Friday prior to the Labor Day holiday weekend. Historically OSHA and MSHA have provided much longer comment periods, and Executive Order 12866 states that agencies should ordinarily provide at least 60 days notice. Even as recently as July of this year, OSHA provided a 60-day comment period for a *guidance* document on workplace stockpiling of respirators and facemasks for pandemic influenza. Certainly, a proposed rule deserves at least that much open discussion.

- This rule would add a new step to the rulemaking process by requiring OSHA and MSHA to issue an advance notice of rulemaking (ANPR) for every occupational health standard. This would require OSHA and MSHA to respond to all comments on the risk assessments before even issuing a proposed rule. This is absolutely unnecessary and would add years of delay to an already painfully slow rulemaking process. Every year of delay means that workers suffer continued exposure to toxic substances, resulting in unnecessary disease and death.

- The proposed rule would include rules currently under development. This means that rules that have been worked on for years will have to go back to square one. For example, the rule on silica has been under development since 1997.

- The rule would fundamentally change the way OSHA and MSHA currently conduct risk assessments. As required by law, risks are assessed over the course of a working lifetime. Both OSHA and MSHA have adopted a practice of assessing workplace risks based upon exposure over 45 years. A single exposure limit is set for all workers exposed to a chemical, regardless of sector. The proposed industry-by-industry assessment of health risks, and the idea that different workers could potentially have different exposure limits makes no sense, would be burdensome, incredibly confusing, and impossible to implement or enforce.

- According to the notice, the objective of this rule is to compile all existing "best practices" into one easy-to-read reference regulation. What this rule actually does is codify the existing Office of Management and Budget and DOL informational and peer quality guidelines, thus locking into place the controversial regulatory policies of the Bush Administration. This will make it impossible for future administrations to effectively deal with new and emerging health and safety threats.

In conclusion, the Bush Administration has for the past 7 ½ years refused to issue any new health and safety regulations unless forced to do so by the courts. In its waning days it now proposes to push through new regulatory requirements that would make it difficult for future administrations to take action to protect workers. This incredibly flawed proposed rule, which is not based on sound policy or science, will result in unnecessary disease and deaths among workers. The Department of Labor should immediately withdraw this ill-advised proposed rule.

Sincerely,

GERALD W. McENTEE
International President

GWM/bd