

IS OSHA WORKING FOR WORKING PEOPLE?

HEARING

BEFORE THE

SUBCOMMITTEE ON EMPLOYMENT AND WORKPLACE
SAFETY

OF THE

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

EXAMINING THE EFFECTIVENESS OF THE OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION (OSHA)

APRIL 26, 2007

Printed for the use of the Committee on Health, Education, Labor, and Pensions



Available via the World Wide Web: <http://www.gpoaccess.gov/congress/senate>

U.S. GOVERNMENT PRINTING OFFICE

35-165 PDF

WASHINGTON : 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

EDWARD M. KENNEDY, Massachusetts, *Chairman*

CHRISTOPHER J. DODD, Connecticut	MICHAEL B. ENZI, Wyoming
TOM HARKIN, Iowa	JUDD GREGG, New Hampshire
BARBARA A. MIKULSKI, Maryland	LAMAR ALEXANDER, Tennessee
JEFF BINGAMAN, New Mexico	RICHARD BURR, North Carolina
PATTY MURRAY, Washington	JOHNNY ISAKSON, Georgia
JACK REED, Rhode Island	LISA MURKOWSKI, Alaska
HILLARY RODHAM CLINTON, New York	ORRIN G. HATCH, Utah
BARACK OBAMA, Illinois	PAT ROBERTS, Kansas
BERNARD SANDERS (I), Vermont	WAYNE ALLARD, Colorado
SHERROD BROWN, Ohio	TOM COBURN, M.D., Oklahoma

J. MICHAEL MYERS, *Staff Director and Chief Counsel*
KATHERINE BRUNETT MCGUIRE, *Minority Staff Director*

SUBCOMMITTEE ON EMPLOYMENT AND WORKPLACE SAFETY

PATTY MURRAY, Washington, *Chairman*

CHRISTOPHER J. DODD, Connecticut	JOHNNY ISAKSON, Georgia
TOM HARKIN, Iowa	RICHARD BURR, North Carolina
BARBARA A. MIKULSKI, Maryland	LISA MURKOWSKI, Alaska
HILLARY RODHAM CLINTON, New York	PAT ROBERTS, Kansas
BARACK OBAMA, Illinois	WAYNE ALLARD, Colorado
SHERROD BROWN, Ohio	TOM COBURN, M.D., Oklahoma
EDWARD M. KENNEDY, Massachusetts (ex officio)	MICHAEL B. ENZI, Wyoming (ex officio)

WILLIAM C. KAMELA, *Staff Director*
GLEE SMITH, *Minority Staff Director*

C O N T E N T S

STATEMENTS

THURSDAY, APRIL 26, 2007

	Page
Murray, Hon. Patty, Chairman, Subcommittee on Employment and Work- place Safety, opening statement	1
Isakson, Hon. Johnny, a U.S. Senator from the State of Georgia, opening statement	2
Michaels, David, Ph.D., Research Professor and Associate Chairman of the Department of Environmental and Occupational Health, George Wash- ington University, Washington, DC.	6
Prepared statement	8
Seminario, Peg, Director, Occupational Safety and Health, AFL-CIO Wash- ington, DC.	16
Prepared statement	18
Compagna, Konnie, R.N., Nurse at Valley Medical Center, Kent, Washington .	30
Prepared statement	32
Cecich, Thomas, CIH, CSP, President, TFC and Associates, Apex, North Caro- lina	35
Prepared statement	36

ADDITIONAL MATERIAL

Statements, articles, publications, letters, etc.:	
Kennedy, Hon. Edward M., Chairman, Committee on Health, Education, Labor, and Pensions, prepared statement	48
Enzi, Hon. Michael B., a U.S. Senator from the State of Wyoming, pre- pared statement	49
Brown, Hon. Sherrod, a U.S. Senator from the State of Ohio, prepared statement	50
Worker Safety Report by the Democratic Staff of the HELP Committee .	51
Response to questions of Senator Kennedy by:	
David Michaels	55
Response to questions of Senator Enzi by:	
Peg Seminario	56
David Michaels	58

IS OSHA WORKING FOR WORKING PEOPLE?

THURSDAY, APRIL 26, 2007

U.S. SENATE,
SUBCOMMITTEE ON EMPLOYMENT AND WORKPLACE SAFETY,
COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:00 a.m. in Room SD-124, Dirksen Senate Office Building, Hon. Patty Murray, chairman of the subcommittee, presiding.

Present: Senators Murray and Isakson.

OPENING STATEMENT OF SENATOR MURRAY

Senator MURRAY. This subcommittee will come to order. I want to thank Senator Isakson for joining me today for this hearing. We may have some other Senators as well. I want to thank all four of our witnesses for coming this morning and sharing your expertise on the important issue of employment and workplace safety. We really appreciate everybody being flexible with the time change. Senator Isakson has to leave early and I do as well, to manage a bill on the floor.

We want all of you to know that your words and your testimony are critically important to this committee. Everything you have will be submitted into the record as far as your written testimony. I will likely have some questions as well as other committee members that we will submit to you and ask for your response. This will all be part of the committee record.

Although this committee may feel shortened and a tad bit rushed, we really do feel that this is a critical issue and we want to make sure we get all of your information as we look into this issue.

The Landmark Occupational Safety and Health Act was passed more than 35 years ago to a lot of acclaim and promise and for many years, we did see workplace injury and death rates steadily drop because of vigorous enforcement and new safety standards that had been in place.

Over the last 6 years, as I have watched, I have become deeply concerned that it appears that OSHA is no longer living up to its mission, which is to ensure safe and healthful working conditions for our working men and women. Unfortunately, we have seen both a tremendous human and a financial cost to OSHA's shortcomings. In fact, Liberty Mutual Insurance has estimated that businesses pay up to \$300 billion annually in direct and indirect costs for workplace injuries and illnesses. What concerns me as much if not more, is the people—people like the , construction and low-wage workers who come to my office and talk to me about the problems

they have and the protections that they deserve when they go to work every day.

Unfortunately, under this Administration, we have continually seen OSHA dragging its feet and nowhere is that more true than in the area of setting worker protection standards. In the last 6 years, OSHA has only set one new standard, despite all the changes in the workplace, one new standard and that was under court order. So today, workers are continuing to become ill and injured from a variety of workplace dangers and yet as we've seen, OSHA is setting no new standards to protect them.

In fact, when this Administration took office, OSHA threw out all the ergonomic standards that protected workers that were prone to lifting and back injuries at work. States like my own have now had to write their standards to safeguard these workers. I am concerned that it appears far too often that OSHA has decided to disregard proven science and instead, just simply rely on suggestions, consultations or partnerships with industry. To me, that sounds like the classic case of the fox guarding the henhouse.

We hear words like voluntary compliance but I'm concerned that ignores the safety hazards that we see in 90 percent of our American workplaces. I think it is really important that we keep in mind that it is our responsibility to oversee this and that we cannot just simply watch as 6,000 Americans die on the job every year and not pay attention. That is 16 people a day, nearly 6,000 people a year, who are dying today in work-related accidents across the country and there are serious questions about OSHA's fatality and injury reporting methods. So the bottom line is that even if we believe OSHA's numbers are correct and that worker injury and deaths are going down, 16 deaths a day is still unacceptable to me.

I do want to mention my disappointment with OSHA's inability to provide assistance in my efforts to ban asbestos. Instead of working with me to protect the American people from this deadly chemical, OSHA has been a consistent roadblock. It appears very clear to me that more work needs to be done to reform OSHA and later today, Senator Kennedy is going to be introducing his Protecting America's Worker Act, which I believe will offer us real solutions to real problems and I'm proud to be a co-sponsor of that legislation.

Again, I want to thank all of our witnesses for being with us today so we can really look at how we can make OSHA work for working America.

Senator Isakson.

OPENING STATEMENT OF SENATOR ISAKSON

Senator ISAKSON. Well, thank you, Chairman Murray, for calling this important hearing. Good morning and thank you to all our witnesses for taking your time to share your thoughts and your experience and your expertise with all of us. Working Americans spend almost half their waking hours at work and it's important that we ensure they and their employers are committed to workplace safety.

The Bush administration has adopted an effective and proactive approach to workplace safety, emphasizing compliance, assistance and cooperative approaches. It has produced results. The rate of

workplace fatalities is now down to 4 deaths per 100,000 workers and the injury and illness rate is down to 4.6 per 100 workers. Both of these are lowest levels in the 32-year history of OSHA.

Now, I'm a businessman. I'm not a fox guarding a henhouse as a businessman, but I am someone whose assets have two legs. If they're not working, if they are not healthy, if they're not safe, my business is not producing. In the 33 years that I ran a business and also at the same period of time, was very active in the Chamber of Commerce, I saw the positive effects of OSHA as a catalytic agent to ensure that business put safety first and the results have been pretty astounding. Many of you understand one of the biggest costs you can have in a business is workers' compensation, particularly a business like mine where although I had low injury work in terms of sales associates, I had very high injury possibilities in a golf course development, a construction company, which obviously the workers' compensation rates are much higher.

I have long supported pre-employment drug screening because so many accidents took place, particularly in the construction industry, because employees who came in actually were under the influence of some kind of a narcotic or alcohol. Pre-employment screening saw to it that companies knew if they had somebody applying who had used or was using narcotics or illegal substances.

So I am really glad we're having the hearing today because as we focus on things that are wrong, we ought to also focus on things that are right and being proactive and putting safety first is important.

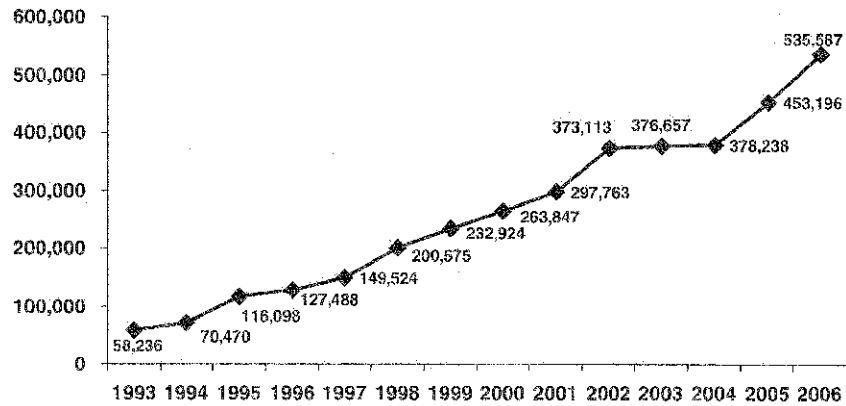
Ana Cablic, an Hispanic woman, owner of a large construction business in Georgia testified at my request before a recent full committee hearing. Her company's motto, which is on her cards and her signs, which is Safe, Correct, Quick, which demonstrated to me that here is a business owner that understands the first principle in a three-legged stool of success is safety. UPS, a Georgia company invites me to their safety awards annually. I went to an award 2 weeks ago and gave a guy his brown jacket with yellow letters for having 30 years of employment, 3 million miles of driving and never having an accident. They illuminate safety because they know how important it is and the Chairman is exactly right.

The cost of an unsafe workplace to a business is unacceptable and intolerable. The loss of life to an individual because of a lack of good oversight or attention to safety is inexcusable and I look forward to working with the Chairman to find those partnerships where business, OSHA and the Congress together can work toward the positive programs that provide safety for workers.

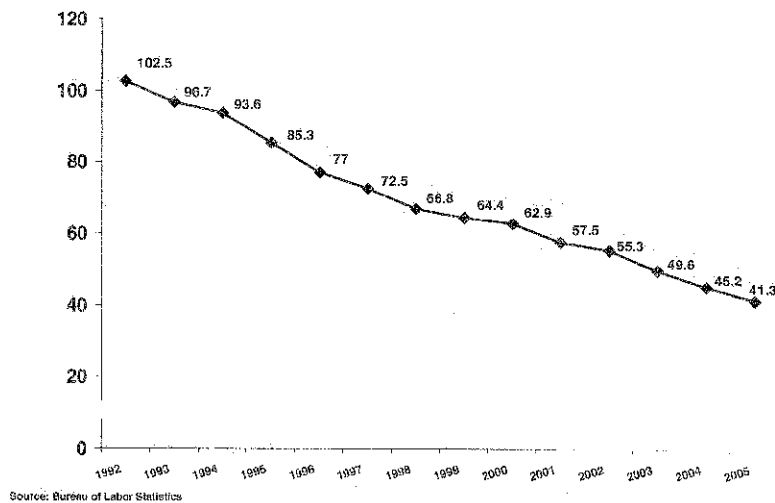
STATISTICAL CHARTS

Safety and Health Training

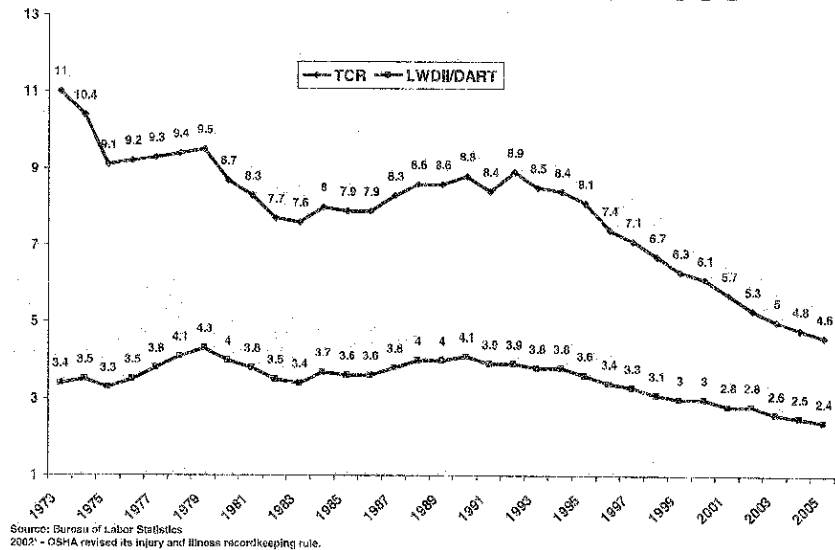
Total Number of People Trained Per Year



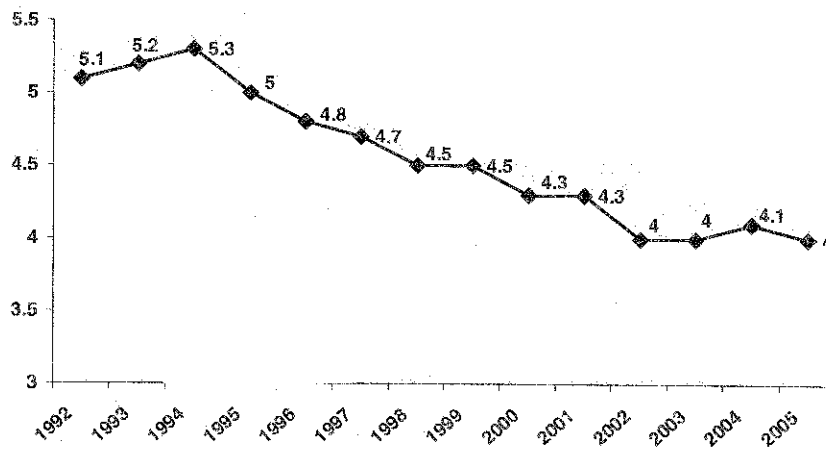
Ergonomic Injury Rate per 10,000 Employees



Occupational Injury and Illness Incidence Rates -- 1973-2005



Occupational Fatality Rate 1992 - 2005



Thank you, Madam Chairman.

Senator MURRAY. Thank you very much, Senator Isakson, for being one of those good business owners and for being here today. Just so you all know, that's a regional dialectical difference. I say OSHA (O-SHA), he says OSHA (AH-SHA).

[Laughter.]

With that, we will turn to our witnesses and again, you will all be given 5 minutes. The timer is in front of you and we would ask you to stick to the time limit this morning. I will start tapping up here when you're getting close to time. If you can't get through all of your written testimony, it will be part of the written record. We do have copies of it. We want to make sure we've got some time for our questions today as well.

We are going to begin with Dr. David Michaels. He is a Research Professor and Acting Chairman of the Department of Environmental and Occupational Health at the School of Public Health and Health Services at George Washington University. He directs the project on Scientific Knowledge and Public Policy and his research areas include studies of pressmen, construction workers and bus drivers.

Margaret Seminario is the Director of Occupational Safety and Health for the AFL-CIO. She has worked for the AFL-CIO since 1977 and since 1990, has been responsible for directing the AFL-CIO's program on Safety and Health.

Konnie Compagna—did I say your name right?

Ms. COMPAGNA. Yes.

Senator MURRAY. Is an R.N. from Washington State and a member of the Service Employees International Union. She has been a nurse for 38 years and is currently a labor and delivery nurse at Valley Medical in Washington.

Thomas Cecich is President of TFC and Associates. He is with a Safety, Health and Environmental Consulting Firm. He was previously Vice President of Global Business Support Corporate Environment Health and Safety at GlaxoSmithKline and Chair of the American Society of Safety Engineers.

We thank all of you for coming and sharing your expertise with us and Dr. Michaels, we're going to begin with you.

STATEMENT OF DAVID MICHAELS, PH.D., RESEARCH PROFESSOR AND ASSOCIATE CHAIRMAN OF THE DEPARTMENT OF ENVIRONMENTAL AND OCCUPATIONAL HEALTH, GEORGE WASHINGTON UNIVERSITY, WASHINGTON, DC.

Mr. MICHAELS. I would like to thank Chairperson Murray and Ranking Member Isakson for inviting me to testify here today. Occupational illnesses and injuries are a serious and significant public health problem. BLS statistics, the ones OSHA relies on to make claims about the state of workplace injuries and illnesses dramatically underestimate the burden and therefore also the costs of work-related conditions.

Recent sophisticated studies have shown BLS data to be incomplete and misleading. Researchers at Michigan State University, using the capture/recapture method, identified the portion of those cases reported to workers' compensation and other data systems that are also captured in the BLS reporting system. The research-

ers found that BLS statistics include only about a third of all work-related injuries and illnesses. Two thirds are simply missed. So using the Department of Labor's data might conclude the risk of injury in any given year is about 1 in 15. The actual risk is probably closer to 1 in 5.

Senators, you have no doubt been told that the rate of workplace injuries is decreasing but using data logs completed by employers, BLS reports the rate of occupational injuries has been declining steadily for the last 15 years, dropping 36 percent between 1992 and 2003.

A newly published analysis of these data attributes 83 percent of this decline to changes in OSHA recordkeeping rules. These findings are also supported by the results of a different study, which found that from 1995 to 2003, there was no drop in occupational traumatic injuries reported to a trauma registry, although BLS reported injuries were decreasing.

The accuracy and completeness of occupational illness statistics are even more questionable. Most occupational illnesses that are caused by toxic exposures are never recorded in any system as work-related, either because they occurred after the worker left the employment where the exposure occurred or because the link with occupational exposure was never made.

The second point I'd like to make today that is in the area of diseases caused by toxic exposures, OSHA has done little to protect workers from emerging hazards and does a poor job protecting workers from any other older industry hazards.

Members of this committee, on April 26, 2002, exactly 5 years ago today, the CDC published a well disseminated report about the risk of a terrible and sometimes fatal disease, bronchiolitis obliterans. They found the disease in workers in microwave popcorn factories. Dozens of workers at factories where artificial butter flavors are produced, mixed or applied have become sick and at least three workers have died. Others are awaiting lung transplants.

While the index cases were seen at microwave popcorn factories, scientists now recognize a potential health risk to thousands of other food industry employees using diacetyl, the primary component of artificial butter flavor. Eight months ago, two unions petitioned OSHA for an emergency temporary standard to protect workers from this chemical. The petition also asked OSHA to initiate a national emphasis program focusing on all factories where workers were exposed to the chemical. I was among a group of 42 scientists who signed a letter to the Department of Labor in support of the petition.

OSHA's response to this occupational crisis has been minimal at best. Given the severity of the health effects, one has to wonder, where was OSHA's sense of urgency? Workers lungs are being destroyed by these exposures and for months, the agency's only response was to say the matter was under study. One OSHA official was quoted in a newspaper saying the agency's review of the petition might take 2 years. Then, 2 days ago, perhaps in anticipation of the congressional hearings this week, OSHA announced a National Emphasis Program limited to microwave popcorn plants.

OSHA's decision to focus the program solely on the microwave popcorn industry is misguided at best and cynical at worst. For the last 5 years, since the CDC alert, OSHA standards and enforcement have been nothing. Now, with Congress finally focusing on the agency, OSHA has chosen to use its scarce resources in the one part of the food industry where NIOSH has already done extensive work assisting employers in controlling exposure.

Cases of bronchiolitis obliterans have been identified among workers that manufacture and mix flavorings as well in bakeries and snack food factories. One worker developed this disease from mixing flavoring chemicals for dog food. Why would OSHA inspect these factories or the large, industrial bakeries where diacetyl containing products like Twinkies are manufactured?

Diacetyl is not the only chemical OSHA should regulate but does not. There are huge gaps in OSHA standards and for the chemical hazards that OSHA does regulate, the exposure limits are distressingly out of date.

I strongly believe that to better protect American workers from workplace hazards, OSHA needs to move away from hazard-specific standard setting. I outline in my testimony some steps OSHA could implement immediately. Others will require legislation.

In summary, my answer to the question posed in this hearing, is OSHA working for working people, is no. OSHA has the potential to contribute to a real reduction in workplace injuries and illnesses, preventing countless injuries and saving hundreds if not thousands of lives each year. Sadly, it is not fulfilling this promise.

I hope this committee will assist in moving OSHA in the right direction for being an agency fully committed to protecting the health and safety of America's workers. I'd be happy to answer any of your questions.

[The prepared statement of Mr. Michaels follows:]

PREPARED STATEMENT OF DAVID MICHAELS, PH.D., M.P.H.

My name is David Michaels. I am an epidemiologist. I am Research Professor and Acting Chairman of the Department of Environmental and Occupational Health at The George Washington University School of Public Health and Health Services, and Director of the Project on Scientific Knowledge and Public Policy (SKAPP). From 1998 to January 2001, I served as Assistant Secretary of Energy for Environment, Safety and Health, and was responsible for protecting the health of workers, communities and the environment around the Nation's nuclear weapons facilities.

I would like to thank Chairperson Murray, Ranking Member Isakson and the other members of the committee for inviting me to testify here today.

The number and cost of preventable work-related injuries and illnesses occurring in the United States are unacceptably high. Furthermore, the true incidence of these conditions is far higher than reported by the Bureau of Labor Statistics since these data do not include approximately two-thirds of occupational injuries and illnesses.

Work-related injuries and illnesses are a significant problem—large numbers of workers are injured, disabled or even killed on the job. What is most troubling is that the vast majority of these are preventable. The Bureau of Labor Statistics (BLS) reports that in many private sector manufacturing jobs, a worker has an annual risk of being injured of about one in seven or one in eight. The industries where workers have injury rates 2–3 times higher than the rates for the entire private sector include truck trailer¹ and camper manufacturing,² iron foundries and truss manufacturing.³ Higher than average injury rates are not confined to manufacturing jobs; workers in hog farming, construction framing and nursing homes are examples of groups with dramatically higher risk of work-related injury.⁴

As distressing as these statistics are, however, it is likely that the true incidence of workplace injury and illness is far higher than BLS reports, since the Labor De-

partment's estimates clearly and dramatically underestimate the number of workers injured.

NIOSH-funded researchers at Michigan State University, led by Dr. Kenneth Rosenman, applied a capture-recapture methodology to identify the portion of those occupational injuries and illnesses reported to the workers compensation and other systems are also captured in the BLS reporting system that serves as the basis for national statistics on workplace injury and illnesses—and widely used to make statements about both the need for and success of OSHA. The researchers found that BLS statistics include only about one-third of all work-related injuries and illnesses. Two-thirds are simply missed.⁵ (This is not the first study to report this problem. An earlier study by a different group of researchers estimated the BLS missed between 33 percent and 69 percent of all injuries.⁶)

How does this translate into the risk faced by individual workers? Using the comprehensive estimate of work-related injuries and illnesses, the Michigan State researchers estimated that one in every five workers in Michigan develops a work-related injury or illness (although this figure may be somewhat inflated because some workers have more than one injury or illness per year). If only the BLS underestimate was used, it would appear that the risk was only 1 in 15.

This approach is useful in estimating the true incidence of work-related injury, but this method cannot overcome the structural impediments to collecting accurate data on occupational illnesses. Most occupational illnesses that are caused by toxic exposures are never recorded as work-related, either because they occurred after the worker left the employment where the exposure occurred or because the link with occupational exposure was never made.

OSHA enforcement does not appear to be effective in further reducing injury rates. While BLS reports a decrease in injury rates, sophisticated statistical analyses indicate that most of this decrease can be attributable to changes in OSHA recordkeeping rules.

Even with the limitations of the BLS data system, it seems reasonable to conclude that OSHA has made an important contribution to reducing work-related fatalities, since these are the workplace events most likely to be reported in the BLS system. The occupational fatality rate has dropped from 10 (per 100,000 workers) in 1974⁷ to 4 in 2005 (although part of this decrease may be attributable to the changes in recording rules discussed below).⁸ Despite this improvement, this still means that about 16 U.S. workers die each day on the job from preventable causes like falls from elevated platforms, trench collapses, explosions, violence, and vehicle crashes.⁹

Using data from the Survey of Occupational Injuries and Illnesses, based on OSHA logs, BLS reports that the rate of occupational injuries and illnesses has been declining steadily for the last 15 years, with a 35.8 percent decrease seen between 1992 and 2003. Given the decrease in manufacturing and mining jobs and the general shift in the U.S. economy to less hazardous jobs, combined with the decrease in OSHA's regulatory activities (the number of OSHA inspectors decreased from 1,300 to 1,100 between 1990 and 2003), observers have questioned whether the reported drop in injury rates could be attributed to OSHA's enforcement activities.

A sophisticated analysis of BLS data by two University of Illinois scientists, just published online by the journal *Occupational and Environmental Medicine*, attributes 83 percent of the decline in workplace injuries and illnesses between 1992 and 2003 to changes in OSHA recordkeeping rules.¹⁰ These findings are supported by the results of a different study by the same researchers who found that from 1995 to 2003, there was no drop in occupational traumatic injuries reported to the Illinois Trauma Registry.¹¹

In terms of occupational illnesses, OSHA has been successful in reducing exposures to certain widely recognized chemical hazards, and as a result, has unquestionably saved thousands of lives. Before OSHA issued its first asbestos standard, uncontrolled exposure to this carcinogen was widespread. The OSHA lead standard has no doubt prevented many cases of lead poisoning. The OSHA cotton dust standard eliminated byssinosis, a once common disease among U.S. textile workers.¹² But these successes from decades past should not distract us from the reality of today's occupational health problems. There are huge gaps in OSHA standards and, for the chemical hazards that OSHA does regulate, the permissible exposure limits are distressingly out of date.

OSHA currently enforces permissible exposure limits for only about 500 chemicals, a small fraction of the thousands of substances present in the American workplace. OSHA even lacks standards for some of the more common chemicals; there are OSHA standards for fewer than 200 of the approximately 3,000 chemicals characterized by the EPA as High Production Volume (more than a million pounds of

the substance is produced or imported each year). In the more than 35 years since OSHA began it has issued new standards for only about 30 substances.

The remaining exposure limits were adopted by OSHA in 1970, from the recommendations of private voluntary organizations like the American Conference of Governmental Industrial Hygienists (ACGIH). Many of these exposure limits were already out of date in 1970, when OSHA adopted them. Moreover, these are not comprehensive standards with requirements for employers to conduct exposure monitoring, provide medical surveillance or worker training, but only exposure limits. As a result, for most hazardous chemicals, OSHA's standards are either inadequate or totally absent.

One could write a book about the hazards that OSHA has failed to regulate adequately. Here are a few examples:

Beryllium¹³

Beryllium is a remarkable metal, lighter than aluminum yet stiffer than steel. Its alloys and compounds exhibit a host of unusual technical characteristics. At some point in almost every production process involving beryllium, fine dust or fumes of the metal or its compound are released into the air. Breathing the tiniest amounts can cause disability and death from chronic beryllium disease. This metal is a vital component of nuclear weapons; for many years, the U.S. Department of Energy (DOE) was the largest consumer of beryllium in the United States. The current OSHA beryllium standard, 2 $\mu\text{g}/\text{m}^3$, was calculated by two Atomic Energy Commission scientists sitting in the back seat of a taxicab in 1948. By the early 1990s, DOE recognized the standard was not adequately protective. In 1999, during the period I was Assistant Secretary, DOE issued a new standard 10 times stronger.¹⁴ At the time, OSHA acknowledged that DOE was doing the right thing with its radically restrictive beryllium standard. Almost 9 years ago, the Assistant Secretary of Labor for OSHA wrote,

“ . . . we now believe that our 2 $\mu\text{g}/\text{m}^3$ PEL does not adequately protect beryllium-exposed workers from developing chronic beryllium disease, and there are adequate exposure and health effects data to support [DOE's] rulemaking.”

The letter continued:

Cases of chronic beryllium disease have occurred in machinists where 90 percent of the personal exposure samples found levels of beryllium to be below the detection limit of 0.01 $\mu\text{g}/\text{m}^3$ Viewed from OSHA's regulatory perspective, these DOE study results document risk of sensitization to beryllium of 35–40 per 1,000 workers and risk of chronic beryllium disease to machinists of 94 per 1,000.¹⁵

There is really no longer any debate over the inadequacy of the OSHA beryllium standard. The beryllium industry has acknowledged that the current OSHA standard of 2 $\mu\text{g}/\text{m}^3$ is not adequately protective—the industry's experts recognize that workers get sick at exposure levels below the current OSHA standard.¹⁶

In 2000, OSHA committed itself to issuing a more protective standard, this time by the end of 2001,¹⁷ but in 2001, early in the first term of the George W. Bush administration, the agency did a quick about-face and announced that the agency needed “a substantial amount of information” before it would consider new regulation.¹⁸ Today, the Federal Government finds itself in the embarrassing position of explaining why the employees of DOE and its contractors are now covered by a workplace rule 10 times more protective than the one covering workers in the private sector.

Hexavalent Chromium¹⁹

Since coming into office, the Bush administration has issued only one new standard protecting workers from a hazardous chemical: hexavalent chromium (CrVI). The standard was issued only because a Federal court decision required OSHA to do so. Until last year, OSHA's standard was 52 $\mu\text{g}/\text{m}^3$; the new standard is 5 $\mu\text{g}/\text{m}^3$. This is certainly an improvement, although OSHA itself estimates that for every 1,000 workers exposed to 5 $\mu\text{g}/\text{m}^3$ for a working lifetime, between 10 and 45 will develop lung cancer.

By the early 1950s, there was plenty of evidence that hexavalent chromium was a lung carcinogen. The old standard of 52 $\mu\text{g}/\text{m}^3$ was based on data that predated even these 1950s studies. The old standard came from a 1943 recommendation by the American National Standards Institute, applying data contained in reports from the 1920s. The 1943 recommendation was chosen because it provided a level of chromium exposure that would not result in holes developing in the nasal septum of exposed workers.

When OSHA was starting out in the early 1970s, the cancer risk of CrVI was well understood. The new agency adopted the old voluntary limit, but recognized a change was necessary. In 1975, NIOSH urged a limit of $1 \text{ } \mu\text{g}/\text{m}^3$, basing this recommendation on dozens of studies, which were remarkable at the time for their focus on this single carcinogen. Today, OSHA estimates that more than 500,000 U.S. workers are exposed to CrVI.²⁰ It took 30 years and a court order for OSHA to issue a new standard, albeit one allowing exposure five times higher than NIOSH recommended in 1975.

Diacetyl²¹

Diacetyl is a commonly used food flavoring and is the primary constituent of artificial butter flavoring. There is compelling scientific evidence linking occupational exposure to diacetyl to bronchiolitis obliterans, a rare, debilitating and sometimes fatal lung disease. On April 26, 2002, exactly 5 years before the date of this hearing, NIOSH published a widely disseminated report about the risk of bronchiolitis obliterans in microwave popcorn factories. Dozens of workers at factories where these flavors are produced, mixed or applied have become sick, and at least three workers have died. Others are awaiting lung transplants. While the index cases were seen at microwave popcorn factories, scientists now recognize a health risk to thousands of other food industry employees using diacetyl in manufacturing both artificial flavorings and associated products including candy, pastries, and frozen foods. The California Department of Health Services, for example, recently reported 20 new cases of respiratory impairment at factories where flavorings are produced; one of the first cases reported in California was in a worker exposed mixing flavors for dog food. NIOSH is currently investigating 15 cases of respiratory disease, including some workers with bronchiolitis obliterans, among the employees at a single Cincinnati, Ohio flavor manufacturing plant.

In July of 2006, the United Food and Commercial Workers Union (UFCW) and the International Brotherhood of Teamsters petitioned OSHA for an emergency temporary standard to protect workers from diacetyl. SKAPP organized a letter to the Department of Labor, signed by 42 of the Nation's leading occupational health scientists and physicians, in support of the union petition.

OSHA's response to this occupational health crisis has been minimal, at best. Two days ago, perhaps in anticipation of the congressional hearings this week, OSHA announced a "national emphasis program (NEP) to address the hazards and control measures associated with working in the microwave popcorn industry where butter flavorings containing diacetyl are used."²² OSHA's decision to focus a NEP solely on the microwave popcorn industry is misguided at best and cynical at worst. By limiting the program to microwave popcorn facilities, OSHA has chosen to use its limited resources in the one industry where NIOSH has already done extensive work assisting employers in controlling diacetyl exposure. Government scientists know more about exposures in popcorn plants than those in any other type of factory. Moreover, popcorn plants are among the few factories in the country where exposure is likely being well controlled, since they have been the subject of a tremendous amount of work by NIOSH. Cases of *bronchiolitis obliterans* have been identified among workers that manufacture and mix flavorings, as well as in bakeries and snack food factories. OSHA makes no mention of visiting any of these factories.

One of the agency's extremely important enforcement tools is—or should be—the "general duty clause"²³ that asserts the obligation of employers to provide safe working conditions. Until a few years ago, OSHA inspectors encountering situations in which there was an obvious hazard but no applicable OSHA standard would cite this clause as the legal basis for their enforcement actions. Now this is rarely done. The clause has not been invoked in the case of diacetyl, even though such a notorious airborne hazard that has caused dozens of workers at numerous facilities to contract a serious lung disease would appear to be a logical candidate for such action. Instead, in this case OSHA officials have taken the position that hazards for which there is no applicable OSHA standard do "not fall within OSHA's jurisdiction."²⁴

Ergonomic Hazards

Work-related musculoskeletal disorders (MSDs) constitute the largest work-related injury/illnesses problem in U.S. workplaces, accounting for fully one-third of occupational injuries and illnesses reported to BLS.²⁵ OSHA first issued voluntary ergonomic guidelines for the meatpacking industry in 1990, and then-Secretary of Labor Elizabeth Dole introduced them by explaining:

"These painful and sometimes crippling illnesses now make up 48 percent of all recordable industrial workplace illnesses. We must do our utmost to protect

workers from these hazards, not only in the meat industry, but all U.S. industries.”

In 2001, the last year in which the information was collected, a meatpacking worker was 30 times more likely to develop a repetitive stress injury (RSI) than the average private sector worker.³⁸

In late 1999, OSHA proposed a comprehensive standard to protect more than 27 million workers from ergonomic injuries. The agency conducted 9 weeks of public hearings and amassed a record of hundreds of scientific studies on the association between physical exposures in the workplace (e.g., lifting, bending, reaching) and MSDs. Moreover, not one, but two National Academy of Science reports also found a consistent pattern of scientific evidence from epidemiological and biomechanical studies confirming the relationship between workplace physical exposures and MSDs.²⁶ A final ergonomics standard was published in November 2000, but in March 2001, it was repealed by the House and Senate under the Congressional Review Act.²⁷

This Senate committee has asked, “Is OSHA working for working people?” My response is that, when you look at the situation with working men and women and ergonomic hazards, the answer is NO. Work-related musculoskeletal disorders are by far the leading cause of workplace injuries, yet there is no OSHA standard to protect workers from the hazard of poorly-designed work settings. Ergonomic injuries cost employers \$15–20 billion annually in workers’ compensation costs alone,²⁸ yet this number one workplace safety and health problem is not even mentioned on OSHA’s most recent regulatory agenda.²⁹

This Administration’s approach to reducing workers’ risk of ergonomic injuries relies on the employers taking measures voluntarily to protect their employees. OSHA’s strategy relies primarily on issuing guidance documents, one industry at a time. During this Administration’s 6-year tenure, OSHA has issued just three of these documents (i.e., for nursing homes, poultry processing plants and retail grocery stores). A workplace hazard of this breadth and magnitude cannot be tackled one guidance document at a time.

On a related matter, at the end of the Clinton administration, OSHA published a change in recordkeeping requirements that would have required employers to check a special box on their injury/illness log if an injury was an MSD. This information would enable OSHA to better understand the magnitude and distribution of work-related MSDs. OSHA then delayed the effective date, eventually repealing the provision.

In short, there are many hazards common in the American workplace for which OSHA either has no standard or one that is based on old and out-dated science. Further, the results of new scientific studies appear to have little impact on the OSHA regulatory process.

Procedural Botox: Congress and the White House have constructed a system where it is extremely difficult and expensive to issue new standards.

Blame for the failure of OSHA to issue appropriate health standards can be shared among many parties. The primary cause of this failure does not rest with the current leadership of the agency, although they have demonstrated no commitment to issuing badly needed standards to protect workers from deadly hazards. The primary blame rests in a system that makes OSHA standard setting inordinately difficult and resource-intensive. There are numerous barriers to standard setting, including congressionally imposed special reviews by “small” business employers, OMB imposed regulatory reviews, and increasing demands for detailed economic analyses. My colleague Frank Mirer, a Professor at the Hunter College School of Health Sciences, has called this “procedural Botox.” I have appended to my testimony a table entitled “Limitations on OSHA Standard Setting Beyond OSHA Law,” prepared by Professor Mirer for his testimony earlier this week at a hearing held by the House Education and Labor Committee’s Subcommittee on Workforce Protections. This table lists the numerous impediments to OSHA standard setting.

The well-meaning legislators who wrote the idealistic law that created OSHA envisioned an agency that would use the best available science to set standards that would protect American workers. As scientists learned more about toxic chemicals and other hazards, NIOSH would perform the relevant research and OSHA would issue the appropriate standard. That was the vision, but the past few decades have served as a sobering lesson about how good intentions can go astray. When Congress enacted the OSHA law in 1970, it believed the new agency would adopt private industry consensus standards as a stop gap measure only, then issue new standards based on current research. But in the late 1980s, when the agency tried to update several hundred workplace chemical exposure limits en masse, it primarily used newer industry voluntary standards which were not necessarily as pro-

tective as a strong public health agency might require. Even so, dozens of industry groups took OSHA to Federal court demanding that OSHA address each change in a separate rulemaking. The court agreed, ruling in 1992 that health standards had to be issued one chemical at a time; OSHA announced that the outdated standards would remain unchanged.

Chemical by chemical standard setting would be a painfully time- and resource-intensive process for any agency, much less this beleaguered one. OSHA doesn't have the staff to work on more than one or two standards at a time, and, with no judicial or congressional oversight to speed the process, each standard takes years to complete. Unless things change radically, only a handful of the thousands of chemicals in daily use in American workplaces will ever be the subject of an OSHA standard.

I strongly believe that to better protect American workers from workplace hazards, OSHA needs to move away from hazard-specific standard setting. There are some steps toward this goal that OSHA could implement immediately. Others will require legislation.

OSHA has abandoned the general duty clause. It is time for the agency to start using it again.

When Congress passed the OSH Act, the bill's authors recognized that the agency could not have a standard for every conceivable workplace hazard. OSHA doesn't need a new standard if a hazard is serious and there are recognized measures to mitigate the hazard. Congress gave OSHA the "general duty clause," but the agency now is hesitant to use it, even for the most obvious and egregious hazards. In September 2004, for instance, a zoo employee was severely mauled by a black bear who escaped after its den was left unlocked. OSHA officials concluded that no citation could be issued, since OSHA has never issued a regulation saying that bears should be prevented from escaping their dens.³⁰ Does OSHA need a standard saying zoo cages must be locked? No, it needs to use the general duty clause when its inspectors document hazards.

OSHA's first priority should be to issue a Comprehensive Workplace Safety and Health Program Standard.

In all of its voluntary programs, like the Voluntary Protection Program (VPP) and its "alliances," OSHA emphasizes the importance of employers providing a safe workplace, not merely meeting the specific requirements on all of OSHA's rules. This is as it should be, and, more than anything else, this is the message that should go to all employers. The best way to do this would be to issue a Comprehensive Workplace Safety and Health Program Standard, in which every employer is required to develop and follow a hazard reduction plan, involving hazard characterization and abatement.

I had first hand experience with this sort of requirement. In DOE's nuclear safety enforcement system (under the Price-Anderson Act), the operator of every nuclear weapons facility must develop its own rigorous safety plan. When I sent inspectors out following an inadvertent release of radiation, or a report of an accident or near accident, the first thing the inspector did was to determine if managers were meeting the facility's own plan. If not, they were in violation. End of discussion.

We need the equivalent system in which every employer develops its own public health/hazard abatement plan, signed off by the corporation's CEO (call it "Sarbanes-Oxley for Safety and Health"). Each firm would be required to survey its facilities for the presence of hazards, both real and potential. Based on this survey, the managers would develop a plan that addresses all hazards—from digging trenches safely to limiting chemical spills, from having well-marked unlocked exits to educating all workers about the risks of their jobs. Does this sound utopian? Thousands of responsible employers would be in full compliance immediately, since this is how they already operate.

Under the new system, each employer's plan would be public, available to workers and community residents to examine and critique. It would be certified by the government, State or Federal, depending on the details or perhaps certification could fall to private sector organizations (like insurance carriers) that would bear some of the risk if a plan were found to be inadequate.³¹

As always, the devil would be in the details, and I'm under no illusions about the political difficulty of putting such a sensible, reasonable plan into place. But just think how a plan would clarify matters for all concerned. Public health protection would boil down to the enforcement of two questions:

- Does the employer have a plan that is adequate to protect workers, its neighbors and the environment; and
- Is the employer meeting the requirements of its own plan?

Such clarity would benefit regulators and responsible employers and would give irresponsible companies a clear direction for improvement.

Congress should mandate OSHA issue certain health standards.

The chromium standard shows that external deadlines are effective in overcoming barriers to regulatory action and agency inertia. Without reopening the OSH Act, Congress could step in using the appropriations process, for example, to require OSHA to issue the standards on beryllium and silica, which OSHA staff have been working on for years, along with any other standards that are partially completed.

Congress should authorize OSHA to adopt the current Threshold Limit Values List.

In passing the OSH Act, Congress required the agency to adopt by rulemaking (within 2 years) certain national consensus standards, such as the Threshold Limit Values[®] of the ACGIH, unless the Secretary determines that they would not result in improved safety. OSHA has not kept up with recommendations of voluntary organizations. It is time for Congress to require OSHA to again adopt the recommendations of voluntary organizations like ACGIH, with the same conditions set forth in the original OSH Act.³²

In conclusion, my answer to the question posed in this hearing, “Is OSHA Working for Working People?” is no. OSHA has the potential to contribute to a real reduction in workplace injuries and illnesses, preventing countless injuries and saving hundreds if not thousands of lives each year. Sadly, it is not fulfilling this promise. I hope the members of this committee will assist in moving OSHA in the right direction, toward being an agency fully committed to protecting the health and safety of America’s workers.

Limitations on OSHA Standard Setting Beyond OSHA Law

1970	.....	OSHA law passes.	
1974	.....	EO 11821 (replaced by EO 12044)	Inflation Impact Statements.
1978	.....	EO 12044 (replaced by EO 12291)	Regulatory analysis required.
1980	.....	Regulatory Flexibility Act	Regulatory Flexibility Analysis.
1980	.....	Paperwork Reduction Act	OMB approval of information collection requirements in standards, 3-year renewal of provisions.
1980	.....	Supreme Court Benzene Decision	Determine significant risk.
1980	.....	DC Court of Appeals Lead Decision	Industry-by-industry feasibility determination.
1981	.....	EO 12291 (modified by EO 12866)	Expanded RIA requirements.
1985	.....	EO 12498 (modified by EO 12866)	Regulatory Agenda approval by OMB.
1988	.....	Federal Advisory Committee Act	Advisory committees limited in number, approved by GSA.
1992	.....	11th Circuit PEL Update Decision	Must give full rationale for exposure limit, demonstrate actual exposure, even if no party objects.
1993	.....	EO 12866 (modified by EO 13252)	Modest changes in previous EO’s.
1996	.....	Small Business Regulatory Enforcement Fairness Act.	SBA panels review and comment on pre-proposal standards.
1996	.....	Congressional Review Act	Expedited process for congressional disapproval of standards.
2001	.....	Information Quality Act	Process to appeal information documents from agencies.
2002	.....	OMB Information Quality Act Bulletin	Amplifies process for complaints about information used in regulation.
2002	.....	EO 13252	Reorganize authority of EO 12866.
2005	.....	OMB Peer Review Bulletin	Detailed rules for external review of agency decisions.
2007	.....	EO 13422	Extends OMB authority to guidance documents, adds “market failure” to preconditions and adds to political control of rulemaking decisions.

Source: Mirer FE. “The Breakdown of OSHA Standard Setting.” Testimony to Subcommittee on Workforce Protections, Committee on Education and Labor, U.S. House of Representatives, April 24, 2007.

REFERENCES

- ¹ NAICS code 336212; Incidence rate in 2005 was 16.6 compared to 4.4 for all private industry. Data available at: <http://www.bls.gov/iif/oshsum.htm>.
- ² NAICS code 336214; Incidence rate in 2005 was 13.3 compared to 4.4 for all private industry. Data available at: <http://www.bls.gov/iif/oshsum.htm>.
- ³ Bureau of Labor Statistics, Table SNR06, Highest incidence rates of total nonfatal occupational injury cases, private industry, 2005. Available at: <http://www.bls.gov/iif/oshsum.htm>.

- ⁴ Bureau of Labor Statistics, Table SNR06, Highest incidence rates of total nonfatal occupational injury cases, private industry, 2005. Available at: <http://www.bls.gov/iif/oshsum.htm>.
- ⁵ Rosenman KD, et al. How much work-related injury and illness is missed by the current national surveillance system. *J Occup Environ Med*. 2006;48(4): 357–365.
- ⁶ Leigh JP, Marcin JP, Miller TR *An estimate of the U.S. Government's undercount of nonfatal occupational injuries*. *J Occup Environ Med*. 2006;46(1):10–18.
- ⁷ Testimony of Secretary of Labor Robert Reich before the U.S. House of Representatives, Committee on Education and Labor, April 28, 1993, Report No. 103–35.
- ⁸ <http://www.bls.gov/iif/oshwc/foi/cfch0004.pdf>.
- ⁹ BLS reported there were 5,702 workplace fatalities in 2005. (Available at: <http://www.bls.gov/news.release/pdf/foi.pdf>) 5,702 fatalities divided by 365 days per year is 15.6; an average of 16 fatalities per year.
- ¹⁰ Friedman LS, Forst LS. The Impact of OSHA Recordkeeping Regulation Changes on Occupational Injury And Illness Trends In The U.S.: A Time-Series Analysis. *Occup Environ Med*. 2007 Feb 15; [Epub ahead of print].
- ¹¹ Friedman LS, Forst LS. Occupational injury surveillance of traumatic injuries in Illinois, using the Illinois Trauma Registry: 1995–2003. *J Occup Environ Med* 2007; 49(4): 401–10.
- ¹² National Institute for Occupational Safety and Health, Work-Related Lung Disease Surveillance Report, 2002, Available at: <http://www.cdc.gov/niosh/docs/2003-111/pdfs/2003-111e.pdf>.
- ¹³ Materials on the history of the beryllium standard are included in my article “Doubt is their Product, published in Scientific American in June, 2005, and available at: <http://defendingscience.org/upload/Doubt-is-their-Product.pdf>.
- ¹⁴ U.S. Department of Energy. Chronic Beryllium Disease Prevention Program; Final Rule Federal Register 1999;64(235):68854. Available at: <http://www.eh.doe.gov/be/docs/berule.pdf>.
- ¹⁵ Letter from OSHA Assistant Secretary Charles Jeffress to Peter Brush, Acting Assistant Secretary, DOE. August 27, 1998.
- ¹⁶ Borak, J. *The Beryllium Occupational Exposure Limit: Historical Perspectives and Current Inadequacy*. *J Occup Environ Med* 2006; 48: 109–116.
- ¹⁷ Department of Labor Semiannual Agenda of Regulations, 65 *Federal Register* 74120, November 30, 2000.
- ¹⁸ Department of Labor Semiannual Agenda of Regulations. 66 *Federal Register* 61873–61874, December 3, 2001.
- ¹⁹ SKAPP's Website includes a history of the failure of OSHA to regulate hexavalent chromium as a carcinogen, and the efforts by the chromium industry to manufacture uncertainty about the material's carcinogenicity. See: http://defendingscience.org/case_studies/Chromium-Case-Study.cfm.
- ²⁰ Occupational Safety and Health Administration: Occupational Exposure to Hexavalent Chromium, Final Rule, 71 *Federal Register* 10099–10385, February 28, 2006.
- ²¹ More details on the failure of OSHA to protect workers from the hazards of diacetyl are at: http://defendingscience.org/case_studies/A-Case-of-Regulatory-Failure-Popcorn-Workers-Lung.cfm.
- ²² Occupational Safety and Health Administration. National News Release: “OSHA announces focus on health hazards of microwave popcorn butter flavorings containing diacetyl,” April 24, 2007, Available at: <http://www.dol.gov/opa/media/press/osha/osha20070610.htm>.
- ²³ Section 5(a)(1) of the Occupational Safety and Health Act of 1970.
- ²⁴ Letter from Olmedo M (Area Director; OSHA Kansas City Area Office) to Powell AR (Humphrey, Farrington, McClain & Edgar, P.C.,). February 28, 2002. Available at: http://defendingscience.org/case_studies/upload/OSHA_2002_Olmedo_Letter_about_Glister_Mary_Lee.pdf.
- ²⁵ Occupational Safety and Health Administration. Proposed rule on ergonomics. 64 *Federal Register* 65768, November 11, 1999.
- ²⁶ National Academy of Sciences. *Musculoskeletal Disorders and the Workplace: Low Back and Upper Extremities*, Washington, DC: National Academies Press, 2001.
- ²⁷ The Congressional Review Act is one provision of the Small Business Regulatory Enforcement Fairness Act of 1996, and a core provision of the GOP's 1994 Contract with America.
- ²⁸ OSHA, Proposed rule on ergonomics, 64 *Federal Register* 65768, 11/23/1999.
- ²⁹ Occupational Safety and Health Administration, Unified Regulatory Agenda, 71 *Federal Register* 73540, December 11, 2006.
- ³⁰ Worker critical after bear attacks. *Chicago Sun Times*. September 13, 2004. Available at: http://www.findarticles.com/p/articles/mi_qn4155/is_20040913/ai_n12558833, discussed in Barab J. Wild animals? Lock the cage—even if

there's no OSHA standard. *Confined Space Blog*, January 18, 2006; <http://spewingforth.blogspot.com/2005/01/wild-animals-lock-cage-even-if-theres.html>.

³¹Silverstein M. Getting Home Safety and Sound? OSHA at Thirty-Five. Available at: http://www.defending-science.org/newsroom/upload/Silverstein_Complete_Draft.pdf.

³²Section 6(a) of the Occupational Safety and Health Act of 1970.

Senator MURRAY. Dr. Michaels, thank you very much.
Ms. Seminario.

STATEMENT OF PEG SEMINARIO, DIRECTOR, OCCUPATIONAL SAFETY AND HEALTH, AFL-CIO, WASHINGTON, DC.

Ms. SEMINARIO. Thank you, Senator Murray and Senator Isakson, for inviting me to testify today. It is particularly appropriate and timely that you're holding this hearing this week, several days before April 28, which is both the anniversary of OSHA and Workers Memorial Day, a day when we remember workers who have been killed or injured on the job.

The OSH Act of 1970 indeed was landmark legislation. Its goal, assuring as far as possible, every working man and woman in the Nation, safe and healthful working conditions is one that I think we all support. Since that time, significant progress has been made but we are a very, very long way from fulfilling the promise of safe jobs for American workers.

As we have heard, the total of workplace gas injuries and disease in this country is still enormous. In 2005, there were 5,734 workers killed by job injuries, an estimated 50,000 deaths from occupational disease. Ten thousand of those were from asbestos-related diseases. On an average day, 16 workers are killed in the United States every day.

The number and rate of job fatalities has fallen dramatically since the passage of OSHA. But in recent years, the progress has slowed. In the last few years, the job fatality rate has essentially remained unchanged. And for some groups of workers, the situation is actually getting worse. We have seen very, very significant increases in fatalities among Hispanic workers and foreign-born workers. Since 1992, fatalities among Hispanic workers have increased by 73 percent. And the fatality rate for Hispanic workers is 25 percent higher than it is for other workers.

Mr. Michaels has talked quite a bit and focused on the issue of under reporting of injuries. Again, I think this is a very, very important issue because we really do need to understand the true toll of occupational injuries and illnesses in this country. And if the recent studies are correct, that only one in three job injuries is being reported, then the real toll of workplace injuries and illness in this country is not 4 million but it's 13 to 17 million workers injured on the job and that isn't including the occupational disease, which actually claim lives and affects so many others.

The cost, as Senator Murray has pointed out, is enormous but those costs are only based on the BLS numbers. So again, the real costs are probably three to four times as high and those are only the costs to employers. They don't have the cost at all that are borne by workers in this country. It's only the cost to employers.

But unfortunately, the Bush administration has done little or nothing to address those major hazards that are the major source of job fatalities, injury and disease in this country. The biggest

source of workplace injury is still ergonomic hazards. Thirty percent of job injuries are caused by this hazard. The ergonomic standard was repealed in 2001 but since that time, the Administration has failed to take any meaningful action. They said they were going to have a comprehensive ergonomics plan but in the last number of years, they have issued no new guidelines.

They take no actions under the General Duty Clause. They've done nothing. Thirty percent of workplace injuries and no action taken. They've set only one significant safety and health standard. They've actually cut the enforcement staff and the staff devoted to setting standards in this country.

I think it is important to realize that OSHA needs to be a leader in safety and health and they have, indeed, abandoned their leadership role in safety and health in addressing major workplace hazards. And instead of addressing the major hazards through standard setting, through enforcement, that actually move things on a national basis, they've decided to work cooperatively with individual employers, trying to get them to address problems on a voluntary basis. With the level of disease, injury and death we have in this country, we need strong leadership and action. We don't need individual cooperative programs with employers.

So we think that the actions that focus on voluntary programs, cooperative efforts with individual employers—it's the wrong emphasis. There is nothing wrong with those programs but they shouldn't be the centerpiece. The centerpiece, the foundation still needs to be setting the protections, the legal protections that protect workers in this country and taking action to enforce them.

OSHA enforcement, unfortunately, is also very weak. OSHA has 800 inspectors federally. They can inspect workplaces once every 133 years. I think it is important to note that since OSHA was enacted, the workplaces and workers covered under OSHA have doubled. OSHA today has fewer people on staff than they did in 1975. Double the workers, double the workplaces, fewer people working to protect the safety and health of American workers.

So we believe that the Congress really needs to take action and provide the kind of leadership that has been lacking to strengthen and improve workplace safety and health. We urge the committee to focus attention on major safety and health issues, including the problems faced by Latino and immigrant workers, protecting workers from potential pandemic flu, protecting workers from ergonomic hazards and to a real, in-depth investigation into the true toll of occupational injuries and illnesses in this country.

And we urge you to take action to fill the key gaps in protection that only changes in the OSHA law can bring and that includes extending coverage to all workers.

As we approach Workers Memorial Day and the 36th anniversary of OSHA on this April 28th, we ask the Congress and the Nation to recommit to the promise of the Safe Job for every American worker that was made more than three decades ago and to do everything—everything possible to ensure that this promise is finally fulfilled. Thank you.

[The prepared statement of Ms. Seminario follows:]

PREPARED STATEMENT OF PEG SEMINARIO

Senator Murray, Ranking Member Isakson and other members of the committee, my name is Peg Seminario. I am Director of Safety and Health for the AFL-CIO, where I have worked for the past 30 years on a wide range of regulatory and legislative initiatives on worker safety and health. I appreciate the opportunity to testify at today's hearing as you examine the state of safety and health protections for America's workers. It is particularly appropriate and timely that you are holding this hearing this week, several days before April 28th, the anniversary of when the Occupational Safety and Health Act went into effect. April 28th is also Workers Memorial Day, the day that the unions in the United States and around the globe remember those who have died or been injured or diseased due to workplace hazards, and recommit to doing all we can to protect workers on the job.

The Occupational Safety and Health Act of 1970 was landmark legislation enacted by the Congress with the goal of assuring "so far as possible every working man and woman in the Nation safe and healthful working conditions." Since that time, significant progress has been made in protecting workers. Job fatalities and injuries have declined and exposures to many toxic substances have been substantially reduced. But in recent years progress has slowed, and now may be reversing.

Since 1970, the economy has changed greatly, with new hazards presented and new groups of workers at risk. The number of workers and workplaces covered by the OSH Act today is double what it was in 1970, but there are fewer resources available to OSHA to meet its responsibilities.

Health and safety standards are out of date or nonexistent for many workplace hazards. Millions of workers still are not covered by the OSH Act, and lack even the most basic safety and health protections.

Under the Bush administration, voluntary efforts and partnerships with employers have been favored over mandatory standards and industry-wide enforcement initiatives. With this approach, OSHA has abandoned its leadership role in safety and health, choosing to work with individual employers, rather than taking bold action to bring about broad and meaningful change in working conditions on an industry-wide and national level.

As a result, as a nation we are falling further and further behind in protecting workers from serious hazards that cause death, injury and disease.

In 2007, the promise of a safe job for every American worker is far from being fulfilled.

THE TOLL OF WORKPLACE DEATHS, INJURIES AND DISEASE IS STILL ENORMOUS

Since the Occupational Safety and Health Act was enacted in 1970, job fatalities, injuries and illnesses have been reduced significantly as have exposures to toxic substances such as asbestos, lead, benzene and cotton dust. But, as vividly demonstrated by the Sago mine disaster and other worker safety disasters that recently occurred, too many workers remain at risk, and face death, injury or disease as a result of their jobs.

In 2005, on an average day, 16 workers were fatally injured and more than 12,000 workers were injured or made ill each day, according to BLS reports. These statistics do not include deaths from occupational diseases, which claim the lives of tens of thousands additional workers each year. But since most of these workers are killed or injured one at a time, these events draw little public attention. These workers include:

Brandon Garrett, a 23-year-old oil rig worker who was killed in Floyd County Texas on Easter Sunday when he was caught in a winch in the oil field.

Linda Shearer, age 23, from Clay City, Kentucky who died on April 9th after being struck in the neck by a piece of steel while operating a 1,000 ton machine press manufacturing bumpers at a steel parts plant.

Damon Huhtala, age 26, killed in Harrison, Idaho on April 19th while framing a house when a nail from a nail gun pierced his skull.

Cornelia Salvador Moreno, a 22-year-old, who drowned in a tunnel collapse on his first day on the job on April 3rd, in Harris County Texas, leaves behind a wife and a 2-week-old daughter.

The devastation to the family members, friends and co-workers caused by job deaths and injuries is enormous. And like the tragedy at the Sago mine, the tragedy is compounded because most of these deaths and injuries could have been prevented.

In 2005, there were 5,734 workers killed as a result of traumatic injuries and an estimated 50,000 deaths as a result of occupational diseases, 10,000 of which were the result of asbestos exposures. The number of job fatalities has fallen dramatically

since the passage of the OSH Act in 1970, when the National Safety Council reported 13,800 work-related deaths. Similarly fatality rates have also declined from 18 deaths per 100,000 workers in 1970 to 4.0 deaths per 100,000 workers reported in 2005. In recent years, progress in reducing job-related deaths has slowed and the job fatality rate has largely been unchanged.

But for some groups of workers the situation is getting worse.

Since 1992, when BLS began its Census of Fatal Occupation Injuries (CFOI), job fatalities among Hispanic or Latino workers have increased by 73 percent, from 533 to 923 deaths. Hispanic workers experience a disproportionate number of work-related fatalities, with a job fatality rate of 4.9/100,000 workers in 2005 compared to the overall rate of 4.0 for all workers. Fatalities among foreign-born workers have also been on the rise, increasing by 63 percent, from 635 fatalities in 1992 to 1,035 fatalities in 2005.

Latino and immigrant workers have a high rate of fatalities largely because they work disproportionately in dangerous jobs and dangerous industries. Many of these workers are unorganized, and do not know or are unable to exercise their legal rights. Many do not receive training in safety and health and are not provided adequate protection by their employers. Moreover, those who are undocumented and lack immigration status are particularly vulnerable and fearful to speak out.

JOB INJURIES AND ILLNESSES

For 2005, the Bureau of Labor Statistics reported 4.2 million injuries and illnesses among private sector workers, a slight decrease from 4.3 million in 2004. An additional 578,200 injuries and illnesses occurred among State and local government employees in the 29 States and territories in which these data were collected. The national injury and illness rate (private-sector only) in 2005 was 4.6 per 100 workers. Since the OSH Act was enacted, the reported rates of job injuries and illnesses have declined from a rate of 11.0/100 workers in 1973, with biggest declines in manufacturing and construction sectors that have received the most intensive oversight by OSHA. In 1973 the reported injury and illness rate in manufacturing was 15.3/100, compared to 6.3/100 in 2005; and the rate in construction was 19.8/100 in 1973 compared to a rate of 6.3/100 in 2005.

In 2005, hospitals and nursing homes reported much higher injury and illness rates than manufacturing and construction, with rates of 8.1/100 and 9.1/100, respectively. And as the economy has shifted toward a service economy, more and more of the job injury burden is being born by service sector workers. In 2005, 8 of the 14 industries that reported more than 100,000 workplace injuries and illnesses were in the service sector. Despite this shift in the economy OSHA remains largely focused on the construction and manufacturing sectors, with major hazards in the service sector industries such as ergonomics, airborne infectious diseases and violence unregulated and only limited numbers of inspections conducted in these industries.

Musculoskeletal disorders (MSDs), such as back injuries, carpal tunnel syndrome, and other repetitive strain injuries, that result from ergonomic hazards, continue to be the largest source of job injuries, accounting for nearly one-third of all injuries and illnesses. For 2005, BLS reported 375,540 serious musculoskeletal disorder (MSD) cases that resulted in days away from work.

OSHA under the Bush administration has totally failed to address this leading workplace injury problem. In 2002, after the ergonomics standard was repealed, the Administration announced a "comprehensive plan" on ergonomics that included developing guidelines for hazardous industries, enforcement under the general duty clause, outreach and research. But since that time little has been done. Only three industry guidelines have been issued—on nursing homes, poultry, and retail groceries—the last one in 2004. Only 17 general duty citations have been issued, the last one in 2005. The Bush administration has stated that 408 ergonomic hazard warning letters have been issued to employers since 2002. But to date no followup inspections have been done to determine if hazards have been abated.

REPORTED CASES GREATLY UNDERSTATE THE JOB INJURY AND ILLNESS PROBLEM

While the BLS statistics show that occupational injury and illness are declining, numerous studies have shown that the government survey of occupational injury and illness is failing to capture a large proportion of the job injuries and illnesses that are occurring. The BLS Annual Survey of Injuries and Illnesses is based upon data that is recorded by employers on the OSHA Injury and Illness Log. If the injuries and illnesses are not recorded on the OSHA Log, they are not captured in the government injury and illness statistics. This is in contrast to the BLS Census of

Fatal Occupational Injuries that collects data from a number of sources in addition to employers' OSHA Logs.

A recent study published in the April 2006 *Journal of Occupational and Environmental Medicine* that examined injury and illness reporting in Michigan found that the BLS Annual Survey missed more than 2/3 of occupational injuries and illnesses.¹ The study conducted a detailed comparison of injuries and illnesses reported in five different databases—the BLS Annual Survey, the OSHA Annual Survey, the Michigan Bureau of Workers' Compensation, the Michigan Occupational Disease reports and the OSHA Integrated Management Information System. It found that during the years 1999, 2000 and 2001, the BLS Annual Survey, which is based upon employers' OSHA logs, captured approximately 33 percent of injuries and 31 percent of illnesses reported in the various data bases in the State of Michigan.

It is important to note that this undercount does not reflect those injuries and illnesses that were not reported or included in the databases examined. For example, injuries among self-employed individuals who are not covered by OSHA or workers compensation are not included. Also, injuries not reported by workers are also not accounted for.

The results of the Michigan study as well as other research indicate that the true toll of workplace injuries in the United States is likely to be 3 to 4 times that reported annually by the BLS. Thus the true toll of injuries is in the range of 13 to 17 million annually.

The causes of underreporting are many and varied. Employers may not report injuries to keep workers' compensation costs low, to remain eligible for government contracts that require a good injury record, or to avoid being placed on OSHA's inspection targeting list, which is compiled based upon employers' injury rates. Increasingly, employers are implementing programs that provide incentives to workers not to report injuries. At the same time, practices and policies are being implemented that discipline workers (including termination) if they report injuries.

The underreporting of workplace injuries and illnesses is a significant problem that must be addressed. Injury and illnesses statistics are used by OSHA as the primary indicator of an employer's or industry's safety and health performance. Injury and illness rates determine what industries and employers are inspected, and what employers are accepted into agency voluntary compliance programs. These rates are also used by OSHA to evaluate the effectiveness of its programs and initiatives.

The Occupational Safety and Health Act directs the Secretary of Labor to "compile accurate statistics on work injuries and illnesses." Despite this mandate and despite the mounting evidence that injury and illness data is woefully incomplete and unreliable, OSHA has largely ignored the issue of underreporting and undercounting of workplace injuries and illnesses.

Reliable data is needed to have an accurate picture of the true nature and toll of workplace injuries and illnesses, to develop policies and initiatives to address identified problems and to assess the effectiveness of efforts to reduce this toll and address safety and health hazards. We ask the Congress to examine in detail the extent and causes of underreporting of injuries and illnesses and determine the actions that can be taken to improve reporting and the accuracy of data.

THE COST OF OCCUPATIONAL INJURIES AND DEATHS IS HIGH

The cost of occupational injuries and death in the United States is staggering. In March 2007, Liberty Mutual Insurance, the Nation's largest workers' compensation insurance company, released its 2006 Workplace Safety Index on the leading causes and costs of compensable work injuries and illnesses based on 2004 data.² The report found that workplace injuries cost U.S. employers \$48.6 billion—nearly \$1 billion per week—in direct costs alone (medical and lost wage payments). When indirect costs (e.g., overtime, training and lost productivity) are taken into account, the costs rise to between \$145.8 billion and \$291.6 billion annually. But these costs are only for disabling injuries, and are based on BLS data; so do not reflect the cost of the significant number of injuries and illnesses that are not captured in the BLS system.

¹ Rosenman, K.D., Kalush, A., Reilly, M.J., Gardiner, J.C., Reeves, M., and Luo, Z., "How Much Work-Related Injury and Illness is Missed by the Current National Surveillance System?", *Journal of Occupational and Environmental Medicine*, Vol. 48, No. 4, April 2006.

² 2006 Liberty Mutual Workplace Safety Index. Report available at: <http://www.wausau.com/omapps/ContentServer?cid=1078452376750&pagename=wcmInter%2FDocument%2FShowDoc&c=Document>.

Moreover, the Liberty Mutual report also does not capture those costs of workplace injuries and illnesses that are born by workers, their families and the government, which are growing as workers' compensation coverage and benefit levels have been reduced.

A 2004 study conducted by researchers at the Rand Institute for Civil Justice found that 37 percent of those receiving Social Security Disability were disabled due to a workplace injury or illness.³ The majority of these disabilities were musculoskeletal disorders (58 percent). Few of these individuals—only 4.7 percent—received workers compensation. The Rand study estimates that occupational injuries and illnesses account for \$22.1 billion annually in Social Security Disability payments and \$11.0 billion in Medicare expenditures.

JOB SAFETY RESOURCES ARE WOEFULLY INADEQUATE

Under the Occupational Safety and Health Act, Federal OSHA and the State OSHA plans have responsibility for overseeing the safety and health of more than 131 million U.S. workers. But OSHA's resources available are woefully inadequate to meet this responsibility and to address the enormous toll of workplace death, injury and disease.

Since the passage of the OSH Act, the number of workplaces and number of workers under OSHA's jurisdiction has more than doubled, while at the same time the number of OSHA staff and OSHA inspectors has been reduced. In 1975, Federal OSHA had a total of 2,405 staff (inspectors and all other OSHA staff) responsible for the safety and health of 67.8 million workers at more than 3.9 million establishments. In 2006, there were 2,208 Federal OSHA staff responsible for the safety and health of 131.5 million workers at 8.5 million workplaces.

For Fiscal Year 2007, the Federal OSHA budget is \$485 million. This amounts to \$3.70 per worker.

Since the Bush administration took office in 2001, OSHA's budget has been reduced by \$17.5 million in real dollar terms, and 197 positions eliminated. One-hundred-forty of these positions have been in Federal enforcement, and 13 in the standard setting program.

The Bush administration's annual OSHA budget requests have reflected the Administration's policies toward worker protection. They have repeatedly favored voluntary compliance over enforcement and programs directed at employers over those for workers. Fiscal year 2008 is no different. This year's budget request seeks \$7 million in additional funding for employer compliance assistance programs, including a \$4.6 million increase and 13 new FTEs for the Voluntary Protection Program. At the same time, the funding request for Federal enforcement maintains the program at current levels. And while significant increases are sought in outreach programs for employers, the Bush administration has once again proposed to eliminate all funding for OSHA's worker training and education program.

The Bush administration proposed funding for employer compliance assistance programs in fiscal year 2008 is \$134.1 million with no funding proposed for worker training and outreach programs. It is worth noting that when OSHA initiated its employer compliance assistance and worker training programs in the 1970's that these programs were funded at similar levels of approximately \$17 million/year.

OSHA ENFORCEMENT IS INFREQUENT AND WEAK

When it comes to job safety enforcement it is clear that OSHA lacks sufficient resources and teeth. A combination of too few OSHA inspectors and low penalties makes the threat of an OSHA inspection hollow for most employers.

In fiscal year 2006, there were 2,112 Federal and State OSHA inspectors responsible for enforcing job safety and health protections. In fiscal year 2006, the 818 Federal OSHA inspectors conducted 38,589 inspections and the 1,294 inspectors in State OSHA agencies combined conducted 58,367 inspections. There were a total of 96,956 inspections at the 8.5 million workplaces covered by the OSH Act.

At its current staffing and inspection levels, it would take Federal OSHA 133 years to inspect each workplace under its jurisdiction just once. Inspection frequency is better in States with OSHA-approved plans, yet still far from satisfactory. In these States, it would now take the State OSHA's a combined 62 years to inspect each worksite under State jurisdiction once. In contrast, in the Nation's mines, which are subject to the Mine Safety and Health Act, there are regular inspections—at least four per year in underground mines and two per year in surface mines.

³Reville, R.T. and Schoeni, R., "The Fraction of Disability Caused at Work," Social Security Bulletin, Vol. 65 No. 4, 2003/2004.

The current level of Federal and State OSHA inspectors provides one inspector for every 63,670 workers. This compares to a benchmark of one labor inspector for every 10,000 workers recommended by the International Labor Organization for industrialized countries.⁴ In the States of Arkansas, Florida, Delaware, Nebraska, Georgia, Illinois, Louisiana, Mississippi and Texas, the ratio of inspectors to employees is greater than 1/100,000 workers.

Federal OSHA's ability to provide protection to workers has greatly diminished over the years as the number of workplaces and workers has grown, and agency resources have largely stayed the same and for some programs even declined. When the AFL-CIO first analyzed this issue in its first report "Death on the Job: The Toll of Neglect" in 1992, Federal OSHA could inspect workplaces under its jurisdiction once every 84 years, compared to once every 133 years at the present time.

The majority of OSHA inspections have always been conducted in manufacturing and construction, which have traditionally had high injury and illness rates. But, the service sector now accounts for 83.4 percent of the Nation's employment, with many of these industries, such as health care and nursing homes experiencing both high rates and numbers of injuries and illnesses. But the OSHA program has failed to keep up with these and other changes in the economy, and focuses little attention on these growing sectors.

The Occupational Safety and Health Act provides for citations and penalties for employers who violate the law. The maximum penalty for a serious violation—one which poses a substantial probability of death or serious physical harm to workers—is \$7,000. For violations that are "willful," the maximum penalty is \$70,000, with a minimum of \$5,000.⁵ Few willful violations are issued, only 446 by Federal OSHA and 153 by the State OSHA plans in fiscal year 2006.

Penalty levels assessed for violations are well short of the levels provided under the act. In fiscal year 2006, serious violations of the OSH Act carried an average penalty of only \$881 (\$873 for Federal OSHA and an average of \$890 for State OSHA plans). For willful violations the average penalty was \$32,158 for Federal OSHA and \$23,519 for the State plans.

One of the major deficiencies in the OSH Act are its weak provisions on criminal penalties for violations of the law that cause harm to workers. Under the OSHA law, criminal penalties only apply in those instances where an employer willfully violates an OSHA standard and the violation causes the death of a worker. Even these violations are classified as a misdemeanor, with a maximum sentence of 6 months in jail. There are no criminal penalties for violations that cause serious injury to workers, or for willful violations that put workers in harms way. In contrast, most environmental laws include substantial criminal penalties—jail time and fines—for violations of the law that endanger the public, even if no specific injuries or deaths occur.

As a result of the high threshold for criminal penalties, combined with the low sanction, few criminal prosecutions are brought under the OSH Act. According to OSHA, in fiscal year 2006, the Department of Labor referred 11 enforcement cases to the Justice Department for criminal prosecution.⁶

Since taking office in 2001, the Bush administration has maintained a level of enforcement similar to that during the second term of the Clinton administration. But there are differences worth noting. While the number of inspections has increased somewhat from 36,350 in fiscal year 2000 to 38,589 in fiscal year 2006, the number of workers covered by Federal OSHA inspections has declined significantly from more than 2.0 million in fiscal year 2000 to 1.2 million in fiscal year 2006. The length of time spent on inspections has also declined somewhat from 22 hours/safety inspections in fiscal year 2000 to 18.8 hours in fiscal year 2006.

The average penalty per violation have also declined somewhat from \$960 for a serious violation in fiscal year 2000 to \$873 in fiscal year 2006, and from \$36,487 for a willful violation in fiscal year 2000 compared to \$32,158 in fiscal year 2006.

The biggest change in OSHA's activities under the Bush administration has been a much greater emphasis on and expansion of voluntary programs. Since 2001, the number of Voluntary Protection Programs has more than doubled from 604 to 1,239

⁴International Labor Office. *Strategies and Practice for Labor Inspection*, G.B.297/ESP/3. Geneva, November 2006. The ILO benchmark for labor inspectors is one inspector per 10,000 workers in industrial market economies.

⁵Maximum OSHA penalties were last increased by Congress in 1990 under the Omnibus Budget Reconciliation Act (Public Law 101-508, 104 Stat. 1388). Penalties for most Federal agencies are increased regularly for inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, but OSHA and the IRS are specifically exempted from this statute.

⁶Statement of Edwin G. Foulke, Assistant Secretary, Occupational Safety and Health Administration, Before the Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, Committee on Appropriations, U.S. House of Representatives, March 20, 2007.

in March 2007. (The VPP is a program started in 1982 that provides recognition to employers who have better than average injury rates and establish comprehensive safety and health programs). The Administration is seeking additional funds and staff in the fiscal year 2008 budget for the expansion of the VPP program. This request is being made despite findings and recommendations from a 2004 GAO study that OSHA's voluntary programs should not be expanded until necessary data was collected to allow for a full and meaningful evaluation of these programs.

In addition to an expansion of the VPP program, the Bush administration has instituted other voluntary initiatives including its "Alliance" program. These alliances emphasize outreach, education and the promotion of safety and health. They have no set criteria, no specific outcomes and are less structured than OSHA's other voluntary programs (such as consultation and partnerships). Most of the alliances are between OSHA and employer groups and have excluded unions from participation.

OSHA STANDARD SETTING HAS COME TO A HALT

One of OSHA's major responsibilities under the OSH Act is setting occupational safety and health standards to protect workers from hazards that pose a significant risk of harm. During its first three decades, the agency issued groundbreaking standards on hazards such as asbestos, lead, benzene and chemical process safety. These standards required major action by employers to reduce exposures to hazards and to provide training, medical surveillance and protective equipment to workers. Numerous studies have documented that these rules have been very effective, significantly reducing injuries, fatalities and exposures, often at costs much lower than anticipated.

But over the years, the standard setting process has become more difficult and lengthy as court decisions, executive orders and legislation have imposed layers of new regulatory analysis and review requirements. Industry opposition has also increased adding to the difficulty and delays. While in OSHA's early years, major standards could be completed in a few years, recent standards have taken 6 to 10 years.

But under the Bush administration, the situation has gotten much, much worse. OSHA standard setting has essentially ground to a halt as the Administration has failed to move on important hazards, and instead tried to weaken and roll back protections. The first legislative act of President Bush in 2001 was to sign legislation repealing the OSHA ergonomics standard, which was issued in 2000 to address the major source of workplace injuries. Soon after, the Administration moved to withdraw dozens of safety and health rules from the regulatory agenda, ceasing all action on the development of these important safety and health measures. Rules withdrawn at OSHA included measures on indoor air quality, safety and health programs, glycol ethers and lock-out of hazardous equipment in construction. During its first 5 years, the Bush administration failed to issue any significant safety and health rules, compiling the worst record on safety and health standards in OSHA history.

In February 2006, the Bush administration issued its first major final OSHA rule—a standard on hexavalent chromium, issued as a result of a lawsuit brought against the agency by Public Citizen and PACE International Union (now part of the United Steelworkers).

In February 2007, a final standard updating OSHA's electrical safety requirement was issued. This rule largely codified changes previously adopted in the National Electrical Code and NFPA standards that were already required by many States and localities. The rule addresses an important hazard, but with an economic impact of \$9.6 million annually is well under the \$100 million OMB threshold for an economically significant rule.

For other rules on the OSHA regulatory agenda, there has been little or no action. A standard on Employer Payment for Personal Protective Equipment, which has been through the rulemaking process, has languished for 8 years. This rule would require employers to pay for the safety equipment that must be provided by employers under OSHA standards. This rule is particularly important for low-wage workers and immigrant workers who work in dangerous industries like meat-packing, poultry and construction.

In April 2003 the AFL-CIO and eight other union organizations and the Congressional Hispanic Caucus petitioned for OSHA to issue the final payment for PPE standard. Despite repeated promises that final action was forthcoming, from 2004 to 2006 OSHA missed every announced target date for completion of the rule. On January 3, 2007, the AFL-CIO and the United Food and Commercial Workers (UFCW) filed suit in the U.S. Court of Appeals for the District of Columbia asking the court to intervene and order OSHA to act. In response to this lawsuit, OSHA

has told the court that it will issue the PPE rule by the end of November 2007, barring unforeseen circumstances. However, the Administration has refused to commit to issue a final rule that is at least as protective as the proposal issued in 1999.

There are five economically significant regulations still on the OSHA regulatory agenda: Crystalline Silica (in the pre-rule stage); Confined Spaces in Construction (proposed rule stage); Beryllium (pre-rule stage); Hearing Conservation for Construction Workers (long-term action with the next action undetermined) and Electric Power Transmission and Distribution (final rule stage, public hearings held in March 2006). But, there is no commitment from OSHA as to when and whether they will finalize these rules or will propose rules that are in the pre-rule or long-term action stages.

There also has been no agency regulatory action to address newly identified hazards. In February 2007, OSHA denied a union petition for an emergency temporary standard to protect health care workers and emergency responders in the event of a flu pandemic on grounds that a pandemic had not yet occurred. Instead of issuing an emergency standard, the Department of Labor instead has decided to rely on guidelines and recommendations. In February 2007, OSHA issued guidelines on "Preparing Workplaces for a Pandemic" and has stated that it intends to issue guidelines on protecting health care workers and responders in the near future. However, such guidelines are only advisory and cannot take the place of an enforceable infection control standard, ensuring that comprehensive infection control plans and measures are developed and put in place before a pandemic occurs. The result is that millions of health care workers and responders remain in serious danger and will be unprotected if a pandemic occurs.

The agency has also failed to respond to a petition for an emergency standard on the chemical diacetyl, a butter flavoring agent used in microwave popcorn and other foods, that has caused a rare and fatal lung disease (bronchiolitis obliterans) in exposed workers. In contrast to Federal OSHA, the State of California, which has received a similar petition, has moved quickly to draft an emergency diacetyl rule and has established a special emphasis surveillance and enforcement program in the flavoring industry.

The result of OSHA's inaction and the slow pace of standard setting means that for many significant workplace hazards standards are out of date or completely lacking. This is particularly true for toxic chemicals. Since the OSH Act was enacted in 1970, OSHA has issued comprehensive health standards for only 27 substances. Most of these standards were set in the first two decades of the act.

For approximately 400 additional chemicals, there are permissible exposure limits (PELs) in place that govern exposure to these substances. However, there are no requirements for monitoring, medical exams or other measures that are included in comprehensive OSHA standards. These PELs were adopted in 1971 under a provision of the act that allowed OSHA to adopt existing government and industry consensus standards so a body of regulation could be in place while new standards were being developed. These PELs codified the ACGIH Threshold Limit Values from 1968. Most of these limits were set by ACGIH in the 1940's and 1950's based upon the scientific evidence then available. Many chemicals now recognized as hazardous were not covered by the 1968 limits. In 1989 OSHA attempted to update these limits, but the revised rule was overturned by the courts because the agency failed to make the risk and feasibility determinations for each chemical as required by the act. The result is that many serious chemical hazards are not regulated at all by Federal OSHA or subject to weak and out-of-date requirements. Some States, including California and Washington, have done a better job updating exposure limits, and as a result workers in those States have much better protection against exposure to toxic substances.

In recent years the American Industrial Hygiene Association (AIHA), major industry groups and labor attempted to reach agreement on a new approach to update permissible exposure limits through a shorter process that would allow quick adoption of new limits that were agreed upon by consensus. Unfortunately those efforts stalled when small business groups objected to an expedited process that would apply to a large number of chemicals and the Bush administration refused to take a leadership role in developing and advancing an improved process for setting updated exposure limits.

Last year, the State of California, moved to establish a new process for updating chemical exposure limits, that utilizes a two-part advisory committee process to recommend revised or new permissible exposure limits. This process is similar to the draft proposal developed by the AIHA, groups representing larger employers and labor to establish exposure limits through an expedited review process.

California and many other States have also moved beyond the hazard-by-hazard approach to addressing workplace hazards. They have established standards on

workplace safety and health programs that require employers to have a program to identify and correct workplace safety hazards and involve workers in the process. This systematic approach to addressing worker safety problems at the workplace has been adopted as a legal requirement in the European Union and many other countries as well. The implementation of safety and health programs are also the foundation of OSHA's voluntary programs. The development of a safety and health program rule was high on OSHA's regulatory agenda for many years, and a draft standard was developed in 1998. But in 2002, the Bush administration removed the Safety and Health Program rule from the regulatory agenda, stopping agency efforts to put this systematic framework in place.

The AFL-CIO urges this committee and the Congress to look closely at OSHA standard setting, particularly permissible exposure limits and safety and health programs, and to advance legislative proposals that will update PELs and put basic requirements for safety and health programs in place.

MILLIONS OF WORKERS STILL LACK OSHA COVERAGE

More than three decades after the passage of the Occupational Safety and Health Act, millions of workers still lack basic legal protections. The current OSHA law still does not cover 8.6 million State and local government employees. The OSH Act only covers State and local public employees where a State has adopted a State OSHA plan. In 21 States and the District of Columbia public employees are not covered, despite the fact that they encounter the same hazards as private-sector workers.

Federal Government workers are provided protection under Executive Order 12196 that was adopted in 1980. The E.O. applies OSHA standards to Federal Government executive branch workers and provides for OSHA inspections. But OSHA has no authority to levy fines or to take action to enforce the abatement of hazards and violations that are found.

Similarly, millions who work in the transportation and agriculture industries and at Department of Energy contract facilities lack full protection under the OSH Act. These workers theoretically are covered by other laws, which in practice have failed to provide equivalent protection. The void in protection is particularly serious for flight attendants. The Federal Aviation Administration (FAA) has claimed legal jurisdiction for airline cabin crews but has refused to issue necessary workplace safety rules. Efforts by the FAA and OSHA initiated in 2000 to resolve this situation were jettisoned by the Bush administration, which instead has announced a program limited to voluntary activities that will be overseen by the FAA.

CONGRESSIONAL LEADERSHIP AND ACTION IS NEEDED TO STRENGTHEN AND IMPROVE WORKER SAFETY AND HEALTH PROTECTIONS

The safety and health problems faced today by American workers are significant and growing. Unfortunately, OSHA has failed to address many well-recognized hazards and has not kept up with new hazards or changes in the workplace and workforce. After more than three decades since the OSH Act was enacted its time for the Congress to turn its attention to these problems and to take action to improve worker safety and health protections.

The AFL-CIO urges this committee to focus attention on major safety and health issues and the Administration's policies and initiatives through ongoing oversight and investigations. Key issues for examination include the safety and health problems faced by Latino and immigrant workers, protecting health care workers and responders from pandemic flu and protecting workers from ergonomic hazards. We also recommend that the committee conduct an in-depth investigation into the true toll of occupational injuries and illnesses and the reasons why a large proportion of job injuries and illnesses are going unreported and uncounted.

Some of the main gaps in worker protections are a result of deficiencies in the OSH Act itself. Extending coverage to all workers, enhancing civil and criminal penalties, and strengthening whistleblower protections for workers who raise job safety concerns require changes in the law. The Protecting America's Workers Act that will be introduced today addresses these fundamental issues and we urge the Congress to act on it expeditiously.

We also urge the committee to examine the issue of OSHA standard setting and regulation, why the standard setting process is no longer working and what can be done to fix it and update protections. We recommend that the committee examine the standards and standard setting practices in California and Washington under their State OSHA programs, which are more effective than Federal OSHA. Given the backlog in protections at the Federal level, we believe the Congress should consider updating the permissible exposure limits for toxic substances through legisla-

tive action, similar to the procedure that was utilized to establish an initial body of regulation under section 6(a) of the OSH Act in 1971.

Congress should also act to increase the resources available to OSHA, particularly for its enforcement and standard setting programs, so that the agency can move more quickly to set needed standards and expand oversight of dangerous workplaces.

As we approach Workers Memorial Day and the 36th anniversary of OSHA on this April 28th, we ask the Congress and the Nation to recommit to the promise of a safe job for every American worker, made more than three decades ago, and do everything possible to ensure that this promise is finally fulfilled.

Workplace Fatalities Since the Passage of OSHA ^{1 2}

Year	Work deaths	Employment (000) ³	Fatality rate ⁴
1970	13,800	77,700	18
1971	13,700	78,500	17
1972	14,000	81,300	17
1973	14,300	84,300	17
1974	13,500	86,200	16
1975	13,000	85,200	15
1976	12,500	88,100	14
1977	12,900	91,500	14
1978	13,100	95,500	14
1979	13,000	98,300	13
1980	13,200	98,800	13
1981	12,500	99,800	13
1982	11,900	98,800	12
1983	11,700	100,100	12
1984	11,500	104,300	11
1985	11,500	106,400	11
1986	11,100	108,900	10
1987	11,300	111,700	10
1988	10,800	114,300	9
1989	10,400	116,700	9
1990	10,500	117,400	9
1991	9,900	116,400	9
1992 ²	6,217	117,000	7
1993	6,331	118,700	8
1994	6,632	122,400	5
1995	6,275	126,200	5
1996	6,202	127,997	4.8
1997	6,238	130,810	4.7
1998	6,055	132,684	4.5
1999	6,054	134,666	4.5
2000	5,920	136,377	4.3
2001	5,915*	136,252	4.3
2002	5,534	137,700	4.0
2003	5,575	138,928	4.0
2004	5,764	140,411	4.1
2005	5,734	142,894	4.0

¹ Fatality information for 1971-1991, from National Safety Council Accident Facts, 1994.

² Fatality information for 1992 to 2004 is from the Bureau of Labor Statistics, Census of Fatal Occupational Injuries. In 1994, the National Safety Council changed their reporting method for workplace fatalities and adopted the BLS count. The earlier NSC numbers are based on an estimate, the BLS numbers are based on an actual census.

³ Employment is an annual average of employed civilians 16 years of age and older from the Current Population Survey, adjusted to include data for resident and armed forces from the Department of Defense.

⁴ Deaths per 100,000 workers.

*Excludes fatalities from the events of September 11, 2001.

Estimates of the True Toll of Workplace Injuries and Illnesses
Compared to Bureau of Labor Statistics (BLS) Reports
[2005]

	Estimated 2005 Figures Accounting for Impact of Undercounting Injuries and Illnesses ¹	2005 Data Reported by Bureau of Labor Statistics (BLS)
Total Number of Nonfatal Injuries and Illnesses in Private Industry	12.6 million	4.2 million
Total Nonfatal Injury and Illness Case Rate in Private Industry (Cases per 100 workers)	13.8	4.6
Total Number of Injuries and Illnesses Involving Days Away from Work Case Rate for Nonfatal Injuries and Illnesses Involving Days Away from Work (Cases per 100 workers)	3.6 million 4.05	1.2 million 1.35
Total Number of Musculoskeletal Disorders—Cases Involving Days Away from Work	1,126,620	375,540
Total Number of Estimated Cases of Musculoskeletal Disorders	3,792,780	1,264,260

¹ A detailed comparison of individual injury and illness reports from various reporting systems found that only one in three workplace injuries and illnesses were reported on the OSHA Log and captured by the Bureau of Labor Statistics Survey. This study did not address the number of injuries and illnesses that are not reported to any reporting system in the first place. Thus, this study represents a conservative estimate of underreporting of the true toll of injuries and illnesses. For more details on the study, see the paper by Rosenman, et al., "How Much Work-Related Injury and Illness is Missed by the Current National Surveillance System?" Journal of Occupational and Environmental Medicine, Vol. 48, pages 357–365, 2006.

Federal OSH Budget and Personnel
[Budget Fiscal Year 1975–2007]

Fiscal year	Budget	Positions Fiscal Year 1975–2007 (Staff— Full Time Equivalent Employment)
2007	\$485,074,000	2,173
2006	472,427,000	2,173
2005	464,224,000	2,208
2004	457,500,000 ²	2,236
2003	453,256,000	2,313
2002	443,651,000	2,313
2001	425,886,000	2,370
2000	381,620,000	2,259
1999	354,129,000	2,154
1998	336,480,000	2,171
1997	324,955,000	2,118
1996	303,810,000	2,069
1995	311,660,000	2,196
1994	296,428,000	2,295
1993	288,251,000	2,368
1992	296,540,000	2,473
1991	285,190,000	2,466
1990	267,147,000	2,425
1989	247,746,000	2,441
1988	235,474,000 ¹	2,378
1987	225,811,000	2,211
1986	208,692,000	2,166
1985	219,652,000	2,239
1984	212,560,000	2,285
1983	206,649,000	2,284
1982	195,465,000	2,359
1981	210,077,000	2,655
1980	186,394,000	2,951
1979	173,034,000	2,886
1978	138,625,000	2,684
1977	130,333,000	2,717
1976	139,243,000	2,494
1975	102,327,000	2,435

Source: Occupational Safety and Administration.

¹ Budget and personnel were increased when the California State plan turned back to Federal OSHA jurisdiction.

² Amount after rescission.

Fatal Work Injuries by Race, 1992–2005

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001 ¹	2002	2003	2004	2005
Total Fatalities	6,217	6,331	6,632	6,275	6,202	6,238	6,055	6,054	5,920	5,900	5,534	5,575	5,764	5,734
White	4,711	4,665	4,954	4,599	4,586	4,576	4,478	5,019	4,244	4,175	3,926	3,988	4,066	3,977
Black or African American	618	649	695	684	615	661	583	627	575	565	491	543	546	584
Hispanic	533	634	624	619	638	658	707	730	815	895	841	794	902	923
Asian or Pacific Islander	169	190	179	161	170	195	148	192	185	182	140	158	180	163
American Indian or Alaskan Native	36	46	39	27	35	34	28	57	33	48	40	42	28	50
Other Races/Not Reported	150	147	141	185	158	114	111	146	68	50	96	50	42	35

Source: U.S. Department of Labor, Bureau of Labor Statistics, Census of Fatal Occupational Injuries, 1992–2005.

¹Excludes September 11 fatalities.

Job Safety and Health Appropriations (Fiscal Year 2001–2008)

Category	Fiscal year 2001	Fiscal year 2002	Fiscal year 2003	Fiscal year 2004	Fiscal year 2005 ¹	Fiscal year 2006 ²	Fiscal year 2007 CR ⁷	Fiscal year 2008 Request
OSHA (in thousands of dollars):								
Total	425,886	443,651	453,256	457,500	464,224	472,427	485,074	490,300
Safety & Health Standards	15,069	16,321	16,119	15,900	15,998	16,462	16,900	16,900
Federal Enforcement	151,836	161,768	164,039	166,000	169,601	172,575	183,000	183,000
State Enforcement	88,369	89,747	91,139	92,000	90,985	91,093	91,100	91,100
Technical Support	20,189	19,562	20,234	21,600	20,735	21,435	22,100	22,100
Federal Compliance Assistance	56,255	58,783	61,722	67,000	70,837	72,545	79,600	79,600
State Compliance Assistance	48,834	51,021	53,552	52,200	53,346	53,357	54,500	54,500
Training Grants ³	11,175	11,175	11,175	10,500	10,423	10,116	10,116	0
Safety & Health Statistics	25,597	26,257	26,063	22,200	22,196	24,253	32,100	32,100
Executive Administration/Direction	8,562	9,017	9,213	10,000	10,102	10,591	11,000	11,000
NIOSH (in thousands of dollars):								
Total	260,134	276,460	274,899	278,885	285,357	254,401*	254,401	253,000

¹Includes a .83 percent rescission, that was part of the final fiscal year 2005 Consolidated Appropriations bill (Dec 8, 2004).

²From the President's Request, Budget of the United States Government, fiscal year 2006—Appendix (2/7/05).

³This line item was previously combined with Federal Compliance Assistance.

⁴This line item was added in the Senate Appropriations Committee recommendation January 15, 2003.

⁵This line item was added in the President's fiscal year 2004 budget request.

⁶\$34.8 million transferred to business services, IAP for administrative services eliminated. Direct comparison with NIOSH funding for earlier years, which included these administrative costs, cannot be made.

⁷Reflects 1 percent across the board rescission.

*Amounts do not include the 30 percent of costs for salary and benefit increases provided for under the Continuing Resolution for fiscal year 2007 (House Joint Resolution 20) enacted on February 15, 2007.

Federal OSHA Inspection/Enforcement Activity (Fiscal year 2000–2006)

	fiscal year 2000	fiscal year 2001	fiscal year 2002	fiscal year 2003	fiscal year 2004	fiscal year 2005	fiscal year 2006
Inspections	36,350	35,941	37,565	39,884	39,246	38,783	38,589
Safety	27,734	27,989	29,516	31,703	31,499	31,136	31,846
Health	8,616	7,952	8,049	8,181	7,747	7,647	6,743
Complaints	8,401	8,362	7,887	7,994	8,082	7,732	7,384
Programmed	18,343	17,929	20,528	22,452	21,598	21,430	21,497
Construction	19,507	20,238	21,384	22,959	22,404	22,181	22,901
Maritime		472	416	362	379	381	407
Manufacturing	8,536	8,060	8,287	8,576	8,770	8,467	7,691
Other	7,835	7,227	7,532	8,018	7,693	7,754	7,590
Employees Covered by Inspections	2,089,546	1,491,212	1,483,319	1,609,833	1,520,885	1,561,399	1,213,707
Average Case Hours/Inspections							
Safety	22.0	20.2	19.1	18.8	18.7	19.0	18.8
Health	35.0	33.4	32.7	34.7	35.6	34.8	34.4
Violations—Total	80,472	78,715	78,247	83,269	86,475	85,054	83,726
Willful	524	656	392	391	446	726	466
Repeat	2,012	1,960	1,953	2,115	2,329	2,326	2,544
Serious	52,489	53,099	54,512	59,474	61,334	60,562	61,085
Unclassified	209	299	263	363	217	70	14
Other	24,954	22,483	20,896	20,706	21,848	20,968	19,339
FTA	284	218	231	220	301	302	278
Penalties—Total (\$)	86,498,127	79,273,622	70,693,165	79,805,630	82,604,990	98,751,227	82,546,815
Willful	19,119,386	16,469,828	10,540,094	12,419,511	13,339,071	31,431,427	14,985,450
Repeat	8,876,269	7,816,889	7,479,806	9,094,708	9,327,664	8,454,113	9,559,903
Serious	50,365,620	48,088,016	47,248,283	50,897,990	53,467,165	52,965,118	53,298,790
Unclassified	3,903,859	3,692,309	2,620,058	3,626,250	2,194,084	1,506,735	558,650
Other	2,049,916	2,312,062	2,239,423	2,685,997	2,846,313	3,230,440	3,165,197
FTA	2,183,077	894,518	565,501	1,081,174	1,430,693	1,163,394	978,825
Average Penalty/Violation (\$)	1,075	1,007	903	958	955	1,161	986
Willful	36,487	25,106	26,888	31,763	29,908	43,294	32,158
Repeat	4,412	3,988	3,830	4,300	4,005	3,635	3,758
Serious	960	906	867	856	872	873	873
Unclassified	18,678	12,349	9,962	9,990	10,111	21,525	39,904
Other	82	103	107	130	154	154	164
FTA	7,687	4,103	2,448	4,914	4,753	3,852	3,521
Percent Inspections with Citations Contested	9.6%	9.4%	8.2%	8.6%	8.0%	7.7%	7.2%

Source: OSHA IMIS Inspection 6 Reports, fiscal year 2000, fiscal year 2001, fiscal year 2002, fiscal year 2003, fiscal year 2004, fiscal year 2005, fiscal year 2006.

Number of U.S. Establishments and Employees Covered
Per OSHA Full Time Equivalent (FTE) Staff, 1975–2005

Fiscal Year	Annual Average Employment ¹	Annual Average Establishments ¹	OSHA Full Time Equivalent (FTE) Staff ²	Establishments Covered Per OSHA FTE	Employees Covered Per OSHA FTE
2005	131,571,623	8,571,144	2,208	3,882	59,589
2000	129,877,063	7,879,116	2,259	3,488	57,493
1995	115,487,841	7,040,677	2,196	3,206	52,590
1990	108,657,200	6,076,400	2,425	2,506	44,807
1985	96,314,200	5,305,400	2,239	2,370	43,017
1980	73,395,500	4,544,800	2,951	1,540	24,871
1975	67,801,400	3,947,740	2,435	1,621	27,845

¹ U.S. Department of Labor, Bureau of Labor Statistics, *Employment and Wages, Annual Averages* (Total Covered).

² U.S. Department of Labor, Occupational Safety and Health Administration (OSHA).

Federal OSHA General Duty Citations and Guidelines on
Ergonomic Hazards Under the Bush Administration

Year	General Duty Citations Ergonomic Hazards (Number)	Status—Number Cases Closed	Status—Number Cases Pending
2001	0		
2002	0		
2003	12	11	1
2004	4	4	0
2005	1	1	
2006	0		
Total	17	16	1

Source: OSHA web page www.osha.gov. Search of General Duty Citations/Ergonomic Hazards, April 2007, <http://www.osha.gov/plis/imis/generalsearch.html>.

Ergonomics Guidelines Issued By Bush Administration: Nursing Homes—March 2003; Retail Grocery—May 2004; and Poultry Processing—September 2004.

Senator MURRAY. Thank you very much for your testimony.
Ms. Compagna.

**STATEMENT OF KONNIE COMPAGNA, R.N., NURSE AT VALLEY
MEDICAL CENTER, KENT, WASHINGTON**

Ms. COMPAGNA. Senator Murray, members of the Employment Workplace Safety Committee, I thank you for this opportunity. My name is Konnie Compagna. I am a Registered Nurse in the State of Washington. I work in the birth center of a hospital that has approximately 250 beds, near Seattle and I've been a nurse for 38 years.

I'm also a member of the Service Employees International Union 1199 Northwest. My union represents 21,000 hospital workers in the State of Washington and 1.8 million members nationwide.

I am here to testify that my co-workers—what my co-workers and I want you to know. Our government safety net to protect workers from health and safety hazards is broken. We lack the enforcement ability to deal with the numbers of workplaces and the standards to address the variety of hazards that face workplace employees today.

It would take 130 years for OSHA to inspect every workplace, even if they just did it once. If OSHA does inspect, four or five of these inspectors, I'm told are in the manufacturing/construction field. They are not experts in the industry. Yet today's workers in

hospitals and nursing homes have a higher injury rate and illness rate than workers in mines, manufacturing or construction.

There are no standards to prevent neck, back and shoulder injury, which is the major cause of injury in our field that are being caused by manual lifting and transferring of patients. Yet 12 percent of our nurses are leaving the bedsides due to these injuries, which is exacerbating the already critical nursing shortage.

There are no standards to prevent workplace violence, which is occurring ever more increasingly. A major hazard to the sector where nearly half of the nonfatal assaults occur to these workers. There are no standards to protect workers from pandemic flu, airborne biological agents and the government is telling us to be prepared for such an event as a national priority.

In the labor and delivery unit where I work, I estimate that 25 percent of my co-workers have been disabled by back or shoulder injuries. I, myself suffer from a shoulder and elbow injury, which would prevent me from ever going back into the medical surgical units to lift anybody bigger than a newborn.

As a charge nurse on my unit, I assign our nurses based on who can lift what, who can push what wheelchairs. It troubles me mostly that I know that those co-workers that are presently lifting might likely become the workers who will not be able to lift tomorrow and it's only a matter of equipment—upfront investment in the equipment. There is no equipment in our hospital.

The challenge is even greater for the rest of the hospital because we do have an aging nursing population and we are also facing an ever-increasing obesity in our patients. Just last week, on our 16-bed intensive care unit, we had four patients that were between 300 and 400 pounds. Americans are getting bigger and bigger.

A female employee, a worker in the hospital is required to lift 40 pounds but what is half of a 300 or 400 pound patient? And if you could get a couple of more workers and four of you lift, it's still an impossible and very dangerous task.

Armed by what I and my coworkers were experiencing, I started to work with my union to learn about back injuries and how to prevent them. We also learned that there are dozens of studies that show that safe patient handling programs that use mechanical lifting and transfer devices can dramatically cut these injuries. Yet despite this overwhelming evidence, according to OSHA, only 10 to 20 percent of nursing homes or fewer than 5 percent of hospitals have such equipment in place.

To fill the void of OSHA inaction, last year our union worked collaboratively with our State legislators and the State of Washington Hospital Association and I come here today proud to tell you that the State of Washington now has the most comprehensive law to protect patients, to protect nurses and other caregivers by establishing standards for safe patient handling.

The impact of the Washington State Safe Patient Handling Act will be No. 1, it is going to stem the accidents of experienced nurses from the bedside that is so critically needed. No. 2, it will help attract new nurses to our profession. No. 3, we will be able to improve the quality of patient care. No. 4, we will reduce injuries and No. 5, we will reduce workers' compensation premiums

and ultimately save employers and taxpayers millions of dollars, just by this simple act of upfront investing in lifting equipment.

Six other States have already passed this Safe Patient Handling law and six others are considering these laws. In closing, I just want to share with you what we have learned. Enacting the Safe Lifting law demonstrates that such a standard is clearly feasible. It is the right thing to do for workers, for the industry and for patient care, whether it is safe lifting, workplace violence prevention, pandemic flu or other neglected workplace hazards, States are stepping forward, one at a time, due to the inactivity on the Federal level. These hazards affect workers nationwide and they cry out for the need for national standards. Is this not why OSHA was created in the first place? Thank you.

[The prepared statement of Ms. Compagna follows:]

PREPARED STATEMENT OF KONNIE COMPAGNA, R.N.

Chairwoman Murray and members of the Health, Education, Labor, and Pensions Subcommittee on Employment and Workplace Safety, thank you for this opportunity to testify.

My name is Konnie Compagna. I am a registered nurse from Washington State and a member of Service Employees International Union 1199 Northwest. I work as a labor and delivery nurse at a 250-bed hospital 10 miles south of Seattle. I have been a nurse for 38 years. My union represents 21,000 hospital workers in Washington State and 1.8 million members nationwide.

GOVERNMENT'S SAFETY NET IS BROKEN

I am here to tell you what my co-workers and I want you to know. Our government's safety net to protect workers from health and safety hazards is broken. We lack the enforcement and the standards to deal with the number of workplaces and the variety of hazards that face today's workforce.

You already know that it would take more than 130 years for OSHA to inspect each workplace even just once. However, did you know that while the majority of workers, as well as on-the-job injuries and illnesses occur in the service sector, that OSHA continues to operate in an industrial mindset—still conducting four out of five of their inspections in manufacturing and construction?

Yet in the past decade, hospital workers have eclipsed the injury and illness rates of workers in mining, manufacturing or even construction. The rates for nursing home workers are substantially higher. And is where 1 in 10 workers work today.

In the rare occasion when OSHA does inspect a hospital or other service sector workplace, the agency is poorly equipped to address the leading hazards that are causing the majority of the injuries and illnesses due to a dearth of relevant health and safety standards.

There are no standards, for instance, to stem the tide of neck, back and shoulder injuries caused by the manual lifting and transferring of patients. Yet this problem is so severe that 12 percent of nurses nationwide leave the bedside due to these preventable injuries.

There are no standards to prevent workers from being assaulted on-the-job, even though workers suffer nearly half of all nonfatal workplace assaults that occur across industry sectors.

And there are no standards to protect workers from tuberculosis, SARS, weapons of mass destruction, pandemic flu, or other airborne biological agents, yet we have been told by the government officials that preparation for such events is a national priority.

Even when OSHA issues voluntary guidelines they can't seem to get it right. Draft ergonomics guidelines for nursing home workers were substantially weakened at the behest of the nursing home industry. The final product was significantly inferior to much more comprehensive guidelines issued by the U.S. Veterans Administration years earlier. The issuance of other promised ergonomics guidelines for hospitals and other industry sectors are years behind schedule or perhaps have stopped altogether.

Finally, with the relatively small budget available to OSHA, where it would take more than 130 years to inspect each workplace just once, we question spending half of a regulatory agency's budget on alliances, partnerships and other employer assist-

ance efforts. The GAO concluded that these programs, designed to make a very small percentage of the best employers better, in fact had no quantifiable benefits. Meanwhile millions of workers who work for the worst employers go largely unprotected.

I am sure you will agree with me based on these examples, that OSHA has clearly lost sight of its mission as envisioned in the first 22 words of the OSH Act: "To assure safe and healthful working conditions for working men and women by authorizing enforcement of the standards developed under the Act."

TOO MANY BACK INJURIES TO COUNT

On my labor and delivery unit, I estimate that 40 percent of the nurses have had debilitating back and shoulder injuries, usually ruptured discs and rotator cuff injuries. After more than 30 years of lifting patients in ICUs and other units, I suffer from shoulder and elbow injuries which prevent me from working almost anywhere else in the hospital.

I serve as the charge nurse for my unit, and every night I have to make patient assignments to the nurses and nurse aides based on who can still lift patients or push wheelchairs. But I know that the nurses and aides who can lift and push today are the nurses who will be injured tomorrow.

The challenges are even greater in the rest of the hospital. Aging nurses are facing increasingly obese patients. Just last week on our 16-bed intensive care unit, we had 4 patients who weighed between 300 and 400 pounds. Every nurse on the night shift ended up submitting back injury reports as they struggled to reposition these sedated patients every 2 hours as required to prevent bed sores and dangerous skin tears.

THE BACK INJURY EPIDEMIC AMONG HEALTH CARE WORKERS

I have worked with my union to learn more about back injuries and how to prevent them. Researchers tell us that the average nurse lifts and transfers 1.8 tons each 8-hour shift and that the problem is only getting worse as the average age of a nurse has increased to 47 years old and that patients are getting heavier, with more than two-thirds of patients now considered overweight.

Nurse aides suffer the highest number and rates of back injuries as a percent of their overall injuries of any occupation and that the rates and numbers of injuries for registered nurses follow close behind.

Nationwide, we are experiencing a shortage of hundreds of thousands of nurses, as many former nurses are not willing or not able to work in hospitals. I know that excessive manual lifting and transferring of patients is a major reason they are no longer at the bedside.

LIFTING INJURIES ARE PREVENTABLE

Yet we also know that safe patient handling programs that use mechanical lifting and transfer devices can dramatically cut these injuries. The overwhelming evidence is reflected in dozens of peer-reviewed scientific studies which document dramatic drops in injuries with the introduction of safe patient handling programs.

These studies show that patient care is improved, as the dropping of patients is reduced, patients incur fewer serious skin tears, and patients report feeling more comfortable and secure.

Safe patient lifting equipment literally pays for itself. For example, OSHA found one nursing home spent \$60,000 on mechanical lifting and transfer devices. A year later this facility reported a savings in medical and workers compensation costs of \$600,000; a savings of \$10 for every dollar invested.

And when you consider that 60 percent of all dollars come from tax dollars, you can also see how such programs can also save taxpayer dollars.

Kaiser Permanente, a employer with 150,000 workers, came to my union in 2000 seeking help in reducing their skyrocketing workers compensation costs. As they are self insured, every dollar they spend compensating workers injured on the job comes directly out of their bottom line.

Our union suggested that they first review their OSHA injury and illness logs. The vast majority of their reported injuries were neck, back and shoulder injuries—far and away the leading cause of these injuries was the manual lifting and transferring of patients. Based on these findings, we entered into a partnership with Kaiser to implement safe patient lifting programs in all of their hospitals.

As a 2006 Wall Street Journal article reported, one Kaiser hospital in Oregon "bought 14 portable mechanical lifts, trained 700 nurses and assistants to use them and ordered that no one raise, move, or lower a patient without the help of these

motorized devices that work with a boom and sling. In 2 years, [this hospital] cut worker-injury rates by 29%.”

Recently Kaiser announced that their injuries caused by patient lifting and handling have dropped 29 percent among all of their Oregon hospitals, 38 percent among their 18 northern California hospitals and an impressive 56 percent among their 11 southern California hospitals.

Yet despite this overwhelming evidence, according to the Federal National Institute of Occupational Safety and Health “only 10 percent to 20 percent of nursing homes and fewer than 5 percent of hospitals have [safe patient] lift programs.”

MY UNION TAKES ACTION

In 2006, working with my local union, we decided to try to fill the vacuum left by inaction by the Federal Government. I wanted to do what I could to reduce the likelihood that other nurses would incur a disabling back, neck and/or shoulder injury.

We met and worked with receptive legislators in the Washington State legislature. I am proud to report that Washington State now has the most comprehensive law in the country to protect patients, nurses and other caregivers by establishing standards for safe patient handling.

The Washington State law, which was also supported by the Washington State Hospital Association, requires that workers be trained and that patient lifting devices be available in every unit of every hospital to lift and transfer patients. In addition, a tax credit of \$1,000 per bed was allocated to hospitals to purchase lifting equipment.

The impact of the Washington State Safe Patient Handling Act will be to:

1. Help stem the exodus of experienced nurses from the bedside,
2. Help attract new nurses to the profession,
3. Improve the quality of patient care,
4. Reduce worker injuries,
5. Reduce workers compensation premiums, and
6. Save employers and taxpayers millions of dollars each year.

Right now my hospital has a lift team, but it is not in service on evenings, nights or weekends. Full implementation of our new law cannot happen soon enough. My hospital will soon have a comprehensive safe patient handling program to help take the strain off us.

In addition to my State of Washington, safe patient handling laws have already passed in Maryland, New York, Ohio, Rhode Island and Texas. Bills are currently under consideration in California, Florida, Hawaii, Illinois, Massachusetts, Minnesota, Nevada and New Jersey.

SUMMARY AND CONCLUSION

In the case of safe patient handling standards, we learned in my State that they are clearly feasible and the right thing to do for workers, the industry and for improved patient care. This epidemic of back injuries caused by manual patient handling is exacerbating our nurse shortage and costing employers and taxpayers.

However, the most important message I have learned from my experience and from speaking to nurses and other workers across the country is that this hazard—and many other hazards that workers face in the fastest growing sectors of the economy—are hazards that are not unique to Washington State or any other single State.

Whether it is safe patient handling, workplace violence prevention, airborne biological agents such as pandemic flu, or a host of other neglected workplace hazards, States are stepping forward one at a time due to inaction at the Federal level. However, these hazards cry out for national standards. Let us remember, this is why OSHA was created in the first place.

Unfortunately, the Federal Government is essentially “asleep at the wheel” when it comes to conducting inspections in the fastest growing sectors of the economy, and has failed to issue meaningful standards that impact the majority of our Nations’ workers. The few resources the agency does possess are squandered disproportionately on assisting the top ½ of 1 percent of employers with unproven cooperative programs, instead of committing more resources toward going after the worst.

I call upon this committee to push the Federal Government to expand standard setting and enforcement to protect workers in the largely neglected fastest growing sectors of the economy where the highest numbers of workers are suffering injuries and illnesses. We also urge you to evaluate and re-orient OSHA priorities to get the most done with their very limited budget.

Thank you for this opportunity. I would be glad to respond to your comments or questions.

Senator MURRAY. Thank you very much.
Mr. Cecich.

**STATEMENT OF THOMAS CECICH, CIH, CSP, PRESIDENT, TFC
AND ASSOCIATES, APEX, NORTH CAROLINA**

Mr. CECICH. Thank you, Senator Murray, Senator Isakson. I have been a practicing safety professional for 35 years and today, I speak as a volunteer member of the American Society of Safety Engineers. ASSE represents more than 30,000 safety, health and environmental professionals. We highly commend the subcommittee for taking this opportunity to look critically at OSHA's value to this Nation's workers.

Safety professionals have long understood that no single approach can make a workplace safer and healthier. To do our jobs, we work with management to ensure adequate leadership and resources are available for safety. We develop training programs to educate workers and management. We help management set workplace standards and support management to follow through with firm, consistent enforcements. Organizations that achieve leading safety performance use all of these approaches.

From this professional perspective, most safety professionals feel that OSHA—for OSHA to achieve its mission, OSHA must use a broad array of tools. Consultative services, alliances, cooperative programs, training and education resources, standard setting and enforcement are all tools that OSHA should be using to do its job.

With about 2,300 employees to serve more than 7 million businesses, OSHA has to leverage its limited resources to reach wide audiences. Cooperative programs help it to do that. OSHA's alliances and partnerships, we believe, have helped the agency become a more open organization that does a better job of reaching out to its stakeholders. ASSE's alliance with OSHA has resulted in increased involvement of OSHA staff in the safety and health of the professional community.

Within industry specific groups, OSHA has been able to create quality guidance documents, best practices and a broad array of web-based resources. ASSE members have worked on e-tools, working groups like Design for Safety and Spanish-speaking workplace issues. OSHA has worked with ASSE to expand the North American Occupational Safety and Health Week, helping employers and schools bring attention to workplace safety. This year, NAOSH Week begins next week, May 6th.

ASSE has many members who work for companies that participate in OSHA's Voluntary Protection Program, VPP. VPP recognizes excellent safety and health management achieved through a cooperative approach through labor, management and government. VPP companies have reduced their workplace rates to below 50 percent of the national average, protect workers and provide bottom line benefits to companies. Achieving VPP status requires the investment of significant time and financial resources. While VPP detractors view the program inspection exemption as too great a benefit, our view is that VPP companies get far more OSHA scrutiny during the long, detailed VPP approval process than could ever

occur during program inspections. The offer of a small incentive to encourage superior safety and health performance is a positive investment.

OSHA's Safety and Health Achievement Recognition Program, SHARP, gives small employers incentives and support to implement safety and health programs. Participants lack in-house safety expertise and find it too difficult to comply with the complexity of OSHA regulations. SHARP participants receive OSHA-sponsored site inspections and agree to correct safety and health hazards. The program offers an opportunity to voluntarily identify and correct workplace hazards, a win-win for OSHA and small business.

While ASSE supports OSHA's cooperative efforts, our support does not take away from ASSE's views that OSHA must be given the resources necessary to fulfill its enforcement responsibilities. As safety health professionals, we must note that OSHA's standard setting process is broken and needs to be fixed. The U.S. workplace is rapidly changing with new technologies, a changing workforce and globalization. The OSH Act limitations, congressional and executive branch actions, OSHA's resource constraints and a litany of court challenges have resulted in an inability of OSHA to update all regulations and develop new standards in a timely way to fully protect the U.S. workforce.

In conclusion, is OSHA working for working people? ASSE would say, "yes." Is there room for improvement? ASSE would say, "yes, definitely." Organizations that achieve world-class status in protecting workers always challenge themselves to get better. OSHA has succeeded in bringing national focus to workplace safety, has improved millions of workers lives but ASSE hopes that Congress can provide OSHA with the guidance and support it needs to meet the current and future needs of this Nation's workforce. Thank you for consideration of ASSE's position.

[The prepared statement of Mr. Cecich follows:]

PREPARED STATEMENT OF THOMAS F. CECICH, ON BEHALF OF THE AMERICAN SOCIETY OF SAFETY ENGINEERS (ASSE)

Chairwoman Murray and members of the committee, my name is Thomas F. Cecich. I have been a practicing safety professional for over 35 years and am a retired vice president of the pharmaceutical company GlaxoSmithKline where I had responsibility for Environment, Health and Safety Global Business Support. I am a Certified Safety Professional and Certified Industrial Hygienist who is currently a safety and health management consultant. I speak today on behalf of the American Society of Safety Engineers (ASSE), which I serve as Chair of its Government Affairs Committee. ASSE represents more than 30,000 safety, health and environmental (SH&E) professionals dedicated to seeing that every worker has the best possible opportunity to go home healthy and safe each day from their jobs. Founded in 1911, the Society is the largest and oldest safety organization. Our 13 practice specialty areas include construction, transportation, manufacturing, and health care, and our members include in-house safety professionals, representatives of labor, academia, and the public sector.

We highly commend the subcommittee for taking this opportunity today to look critically at occupational safety and health issues. We hope that this inquiry can lead to legislative initiatives that proceed in a bipartisan manner and help cement what should be a meaningful partnership between the Occupational Safety and Health Administration (OSHA), labor, management and SH&E professionals like our members. Such cooperative efforts can work to bring down the number of deaths, injuries and illnesses among this Nation's working people.

From the viewpoint of an SH&E professional, achieving safe and healthy workplaces requires the involvement at all levels of an organization from senior leadership, middle management, line supervision, workers and contractors. Everyone in an

organization has an appropriate role in minimizing risks in safe workplaces. Likewise, safety professionals have long understood that there is no single safety program element that will always work to achieve that goal. Safety professionals work with management to ensure adequate leadership and resources are provided to identify and reduce workplace risks. Safety professionals work to build relationships with all organizational stakeholders—management, workers, staff professionals, and contractors—to encourage safe work practices and behaviors.

Safety professionals also develop and present training programs to educate workers and management about workplace risks and necessary corrective actions. Safety professionals help management set meaningful and firm workplace safety and health standards that are designed to eliminate or minimize the threat of workplace injuries and illnesses. Finally, safety professionals support management in assessing compliance with established safety rules and ensure that firm enforcement and consistent penalties are applied. In short, safety professionals have long understood that there is not one effective approach to achieving workplace safety. The organizations that have consistently achieved leading safety performance have utilized all the above approaches as workplace conditions dictate.

From this perspective, most safety professionals feel that, for OSHA to achieve its congressional mandate of eliminating occupational injuries and illnesses, it is essential that OSHA utilize a similar broad array of tools in order to reach all types of organizations. Consultative services, alliances, cooperative programs, training and education, standards setting and enforcement are all tools that OSHA must utilize. With more than 3,000 employees to serve approximately 6 million businesses, it is vital that OSHA leverage all its resources to obtain the maximum benefit. While it is true that OSHA is and will always be a regulatory enforcement agency, practicing safety professionals have found that enforcement alone is not sufficient in eliminating workplace injuries and illnesses in this country. As safety professionals, we recognize that the other organizations testifying today will focus on standards setting and enforcement. We believe it is also important to highlight the value we see in the alliance and cooperative programs that OSHA has developed.

ALLIANCES

Through a broad network of alliances and partnerships, ASSE believes that OSHA has become a more open organization that does a better job at reaching out to its stakeholders and the safety and health community. If a history of OSHA on this matter were ever written, we believe it would state that this Administration found in John Henshaw a highly capable and experienced SH&E professional to lead OSHA. Mr. Henshaw, like SH&E professionals do every day in their jobs, saw the resources given him, the tasks at hand and the resource limitations and decided to leverage those resources to build a new way of trying to advance OSHA's mandate. We are pleased that Assistant Secretary Foulke has continued to advance OSHA's commitment to this approach.

ASSE itself is proud to have joined in one of the first Alliances with OSHA that we believe has established a much more positive cooperative relationship between OSHA and our members. The Alliance has resulted in better opportunities for OSHA staff to be involved in the safety and health professional community. For our members, the Alliance has created a much more positive understanding of the wide-ranging capabilities OSHA has in helping them achieve workplace safety, and a much better appreciation for the challenge OSHA has in carrying out its enforcement responsibilities. Our experience suggests that the Alliance has resulted in a much more positive view of OSHA's role and has mitigated the old us-against-them attitude within the safety and health community.

With industry-specific groups, OSHA has been able to create quality deliverable guidance documents, best practices, and a broad array of web-based informational resources. Our members have participated in various editorial boards for e-tools and other resources offered by OSHA. We have members who have helped lead OSHA work groups on issues like design for safety and small business safety. OSHA staff regularly meets with ASSE's members interested in Spanish-speaking workplace safety issues.

OSHA, through its alliance staff, has helped promote and expand North American Occupational Safety and Health (NAOSH) Week to more than 30 meaningful events in more than 25 States that help employers and even schools bring attention to workplace safety, unlike any other event in the United States, Canada and Mexico. This year, NAOSH week begins on May 6, and we invite the subcommittee members to join with ASSE and OSHA in helping promote workplace safety through this event.

In addition to its national alliance, ASSE chapters have formed their own alliances with OSHA in four regional offices. For example, the OSHA Region IV Office formed an Alliance with ASSE's chapter in Mobile, Alabama, to promote safe and healthy work habits to technical school students. The Alliance members share information, guidance and access to training resources to help educate young workers in hazard recognition before they leave school and prior to taking their places in the U.S. workforce.

We view the Alliance as a success, and our intent is to continue to work with OSHA to respond to safety and health workplace issues as they develop in the millions of workplaces across this country.

OTHER COOPERATIVE PROGRAMS

OSHA's other cooperative activities have likewise helped OSHA become a more multifaceted participant in safety and health.

OSHA's Voluntary Protection Program (VPP) initiative was established in 1982, was restructured in 1996 and is still effective. Over the years, ASSE has submitted comments to the agency to enhance and expand VPP and is pleased to see that the agency has launched a VPP program for the construction sector as well as making inroads into encouraging smaller business involvement. Many ASSE members are safety professionals at companies that are VPP participants. At VPP "Star" worksites, data indicate that lost workday rates are 53 percent below national averages.

VPP emphasizes the importance of worksite safety and health programs in meeting the goals of the OSH Act, and provides official recognition of excellent employer safety and health management through a cooperative approach among labor, management, and government. Sites are approved based on their written safety and health program and their overall performance in meeting the standards set by the program. VPP is valuable in providing recognition and incentives for companies that are doing the right things, such as voluntarily implementing proactive, state-of-the-art safety and health management programs that are demonstrably effective. VPP participation has been demonstrated to reduce the incidence and severity of workplace injuries and illnesses, thus protecting workers while also providing financial benefits to the companies that go beyond mere compliance with OSHA standards.

Companies that commit to achieving VPP status seek to be recognized for their leadership in protecting workers. Achieving VPP status also requires significant time and financial resources. Some detractors of the VPP program point to the programmed inspection exemption as too great a benefit for companies to receive for complying with the law. The truth is that VPP companies routinely exceed regulatory requirements and voluntarily receive far more OSHA scrutiny during the long and detailed VPP approval processes than can ever occur through programmed inspections. Further, companies can still be inspected and cited if conditions trigger employee complaints or they suffer a catastrophic event. Companies can also lose VPP status if they let their standards slip.

Although VPP is site-specific, ASSE was pleased to see OSHA recently roll out its pilot "VPP Corporate" program, which allows corporations committed to VPP and interested in achieving VPP recognition at facilities throughout their multisite organization with a more efficient means to accomplish this goal. ASSE has long advocated a philosophy of corporate responsibility for occupational safety and health and this approach may help raise the profile of SH&E activities to the highest levels. Some of the VPP Corporate participants are broadly recognized as some of the safest companies in America.

The ASSE strongly submits that programs like VPP that offer small incentives to encourage superior safety and health performance are good investments for both companies and taxpayers in that they allow OSHA to utilize its limited enforcement resources to target bad actors and those organizations that fail to safeguard their workers.

SHARP PROGRAM

OSHA's Safety and Health Achievement Recognition Program (SHARP) provides incentives and support to develop, implement and improve effective safety and health programs for smaller companies. Participating employers may be exempted from OSHA programmed inspections for a period of 2 years, and SHARP renewal exemptions will be for a period of up to 3 years. All consultation and visits are conducted at employer request.

Typical SHARP participants are smaller high-hazard businesses, generally with fewer than 250 employees. Participants undergo a comprehensive site visit and agree to correct all identified safety and health hazards, which is the preventative,

functional equivalent of an OSHA wall-to-wall inspection except that civil penalties are not imposed.

Everyone agrees that OSHA does not have the personnel to regularly inspect every worksite under its jurisdiction—most companies will never experience an OSHA inspection unless they have a serious incident or have employees who report problems to the agency. The SHARP program is a sound method of helping this largely uninspected sector understand what is needed for compliance, and providing them with qualified assistance in making improvements to their physical conditions and safety/health programmatic infrastructure proactively, before an injury or illness triggers an initial contact with OSHA.

SHARP participants report a successful return on investment when implementing the recommendations made by the consultants. One SHARP program participant indicated to OSHA that it reduced its lost workday incidence rate from 28.5 to 8.3 and reduced insurance claims from \$50,000 to \$4,000 through decreases in both direct and indirect losses through a reduction in its number of back and shoulder injuries. This is consistent with other research on the value of safety.

A STRONG OSHA

While ASSE fully supports the cooperative efforts of OSHA as a meaningful addition to the tools OSHA is able to use to help advance safety and health of workers, that support does not take away from ASSE's view that OSHA must be given all the resources necessary to fulfill its enforcement responsibilities given to it by Congress. Unlike some other stakeholders, we do not view this situation as either/or in nature. An increased commitment to standard-setting and increased enforcement capacity must also be supported by increased funding for OSHA by Congress, even when an Administration does not support such increases. As a Nation, our commitment to workplace safety should be such that OSHA can do the necessary relationship-building, resource development and information outreach necessary to build awareness and commitment to workplace safety and health among employers, workers and the public and do more in standards development and enforcement.

As safety and health professionals, we are compelled to note that the safety and health standards-setting process is broken and needs to be fixed. The workplace of the 21st Century is rapidly changing due to new technologies, a changing workforce, and globalization. Limitations in the original act, subsequent congressional and executive branch actions, resource constraints at OSHA and a litany of private court challenges have resulted in an inability of OSHA to update old regulations and to develop new standards in a timely manner to protect the U.S. workforce. We encourage Congress to engage in stakeholder dialogue to improve its standard-setting process to protect workers while preserving the productivity of American business.

ASSE is aware that legislation is being introduced this month that will address such areas as increased civil and criminal penalties, enhancement of whistleblower protections, and coverage of State and local public sector workers. We applaud Congress for moving these issues forward and will carefully review all new legislation in light of our commitment to a strong, effective OSHA. We look forward to offering our members' perspective.

CONCLUSION

Is OSHA working for working people? Yes. Is there opportunity for improvement? Yes. The OSH Act has changed little in 36 years. During that time, huge changes and many advances have occurred in U.S. workplaces and our workforce. OSHA has evolved during that period to reach as many stakeholders as possible. In organizations that achieve world-class status in managing safety and protecting workers, a characteristic that continuously stands out is that these organizations are always challenging themselves to get better. Since its beginning, OSHA has succeeded in bringing a national focus to workplace safety and positively impacted the lives of millions of workers. However, like world-class organizations, OSHA must seek continuously to improve its safety and health processes. ASSE hopes that Congress can provide OSHA with the guidance and support OSHA needs to continuously reinvent itself to meet the needs of this Nation's workforce. Today's hearing is an important part of that continuous improvement process.

Thank you for your consideration of ASSE's position on these significant issues. I will be pleased to respond to any questions you may have at this time as well as provide any additional information that you may request for the record.

Senator MURRAY. Thank you very much to all of you for your testimony. I am going to turn to Senator Isakson first for his questions as he has another engagement and needs to leave.

Senator ISAKSON. And I apologize and I thank the Chairman immensely for letting me go first and I apologize that I'm going to get up and leave after my questions. Please don't take it as an offense but I have another responsibility I have to take care of.

Mr. Cecich, I want to associate myself with the last paragraph of your remarks, which I think is reflective of precisely how I feel and that is that OSHA has done many good things and there are many good things it still can do and there is room for improvement and I think all of us agree with that. The mechanism is how you get there.

To that end, Dr. Michaels, I am told you have written—now, I didn't read this so if you didn't write this, you tell me I was misinformed and I'll talk to that person later.

[Laughter]

Senator ISAKSON. Uncertainty, you write, should not be an excuse for inaction. Is that a correct statement?

Mr. MICHAELS. Correct. Close enough. I don't know if I've written exactly that but—

Senator ISAKSON. This is going to sound like a loaded question but don't over react. Should uncertainty then require absolute regulation?

Mr. MICHAELS. No, I mean, obviously I think—probably what I've written is really in some ways, you flip it over. Certainty shouldn't be a requirement for regulation. For example, the artificial butter flavor. We have tons of studies of people exposed to artificial butter flavor who've gotten sick. We have animal studies that show they've gotten sick but we've no one in the country who has been exposed only to that one chemical, diacetyl.

So we can't know for absolutely sure that that chemical causes illness. On the other hand, if we're going to wait to do that study, which we can't do, we're not going to do anything. So that's why I think you have to think about uncertainty and see whether the implications of not addressing the problem, given the uncertainty.

Senator ISAKSON. Well, that's—I don't disagree at all. I think that's a great answer because a lot of times when we get in hearings like this, it's one of these pendulum deals where the pendulum goes too far the other way based on momentum rather than actual fact and a lot of times when you have a situation like that—and I was totally unaware of the microwave popcorn butter disaster that was going but when four people die and where there is an association with a common product but there is no definitive answer, that doesn't mean you do nothing but it also doesn't mean you might go too far either and so that was the only point I wanted to make. Both of the ladies and Ms. Compagna, my daughter informed me last night, she was dilated to 3 centimeters so I'm so excited I don't know what to do. I've got another grandchild on the way but both of you referred to pandemic flu and it's an open question to both of you. Is that a responsibility of OSHA?

Ms. SEMINARIO. Yes, when it comes to protecting the workers and responders who will be affected. They certainly have a major responsibility there. There are a lot of other aspects of pandemic flu that other parts of the government have responsibilities for and they are dealing with.

The problem that we have with OSHA is that they are refusing to move aggressively to put in place the measures in facilities that will, indeed, be in place before a pandemic, to protect workers in the event of a pandemic. And we think this is critical. I've been doing safety and health work for 30 years, dealing with lots of hazards. I can tell you that personally, I am more concerned and really terrified about this potential—for a flu pandemic and the risks that the workers and responders face because we are totally unprepared and OSHA is refusing to use its authority to step forward, to put in place the measures, the infectious control programs, the respirator programs, the training programs—put them in place now because once a pandemic occurs, it's going to be too late.

Senator ISAKSON. Well, the reason I asked that question is that I know how much we are investing and have been in the last few years, both in trying to be ready for the pandemic when it comes and the agencies that are already involved in it, like for example, CDC, which happens to be in my home State of Georgia, that is investing hundreds of millions of dollars on working on a lot of this. I didn't—when you referred to OSHA and pandemic, it kind of came out of right field for me because I've thought about so much stuff we were doing with CDC.

Ms. COMPAGNA. Yeah, there is no plan at our hospital for that.

Senator ISAKSON. The hospital has no plan whatsoever?

Ms. SEMINARIO. No.

Senator ISAKSON. OK. And one other question, Ms. Seminario. You said in referring to ergonomics that there had been no—I think you said this—that there had been no standard put out by OSHA and then you said there had been only one significant standard. Was that regarding something else or was that regarding ergonomics?

Ms. SEMINARIO. No, on ergonomics, there is no standard. There was a standard. It was repealed in 2001 by the Congress. The only standard that the Bush administration has put out on a major safety and health hazard is a standard on hex—chromium, a carcinogen and they were ordered to do so by the court. In the last 6 years, there had been no other major significant rules issued by this Administration.

Senator ISAKSON. Last, on the non-American workers, the foreign workers. You state that their injury rate is so much higher. Is that related to them not being able to speak English in some cases?

Ms. SEMINARIO. I think there is a lot of different reasons. I think one of the reasons is that when you look at where these workers are working, they are working in very dangerous industries and very dangerous jobs and so they face a lot of hazards and then there are a whole set of issues with respect to language problems, cultural issues but also just plain exploitation. They are working for employers who believe they can exploit them and don't put the protections in place. And this is an area that really just needs a lot more focus, a lot more attention to get a better handle on it, a better understanding of what's really going on and what needs to be done.

Senator ISAKSON. I want to thank the Chairman for letting me go and apologize that I'm going to have leave and thank all of our witnesses for taking their time to share with us today.

[Chorus of thank you.]

Senator MURRAY. Thank you very much, Senator Isakson. I look forward to working with you on this. Since OSHA was enacted 37 years ago, on average 16 people have died every day, and in the past 6 years, one new rule has been put in place and that was because of a court order. We know there are failures. You talked about pandemic flu and just the ability to protect our hospital workers who we are all going to rely on in a pandemic flu situation. What do they have in place protecting them? We know the marketplace has changed. We know there are new chemicals out there. I would like to ask Ms. Seminario and Mr. Cecich if you could just briefly give us what you think the priorities for OSHA ought to be as we move forward. Mr. Cecich, I'll start with you.

Mr. CECICH. Well, as we reflected, I don't know that we can say there is an individual priority. There certainly needs to be improvement in the standard setting process. It seems that that needs to be a direct area with new technologies, nano-technologies that need to be explored, the Global Harmonization System, GHS, for the classification and labeling of hazardous substances in the workplace.

Those are new technology, globalization type issues that need to be addressed. There are old issues, such as permissible exposure limits that have existed for 35 years that need to be addressed and updated. So certainly rulemaking is an important consideration. But we also think programs like—Voluntary Protection Program, which has expanded literally exponentially in the last 5 years—the number of companies that are coming forth willingly, saying we want to be the best at managing safety and health and reducing their workplace injuries by 50 percent.

We think those are the types of programs that OSHA should be encouraging and indeed, they are, to encourage companies to step forward and not only do these companies demonstrate their own value to themselves, they are passionate about safety and spreading that message to their peer companies and industry and going to meetings and sharing with other companies the value that safety brings to their organization.

So we think that's a parallel track that also is very important for OSHA to continue to cultivate.

Senator MURRAY. Ms. Seminario.

Ms. SEMINARIO. I think the priorities for OSHA need to be focusing on the major hazards that are killing workers, injuring them and making them sick. I mean, that is its job and when you look at that, what you see is basically the biggest source of job injuries—ergonomic hazards, 30 percent of injuries. They should really be making that a higher priority. We think a new standard needs to be set. Toxic chemical exposures. We have very few chemicals that are regulated. The permissible exposure limits are out of date. I think there is agreement among many in the professional groups, unions and the bigger employers about what needs to be done. I think we could get together and do something on that, updating those limits.

The area of pandemic flu that I mentioned, as far as a potential threat that is looming that could have bigger devastation than anything we have seen. This is something we all need to be focusing

on now and make sure the protections are in place. And one thing that I would also say is that I think we have to look at building a foundation in safety and health so we're not dealing with things one at a time—one hazard, one chemical. One of the biggest disappointments for me is under the Bush administration that OSHA abandoned putting in place a safety and health program rule, a basic requirement that employers identify hazards and correct them, involve workers in the process, train their workers. Many States already have this requirement.

It was a high priority for John Henshaw, the first Assistant Secretary under President Bush but unfortunately, in the anti-regulatory attitudes in the Administration, he was forced to abandon it. So coming back to that particular rule, I think would be very, very important.

Senator MURRAY. OK. We go back—and voluntary, I understand that. It sounds really good. I worry though if we don't have some rules and regulations, particularly for chemicals and workplace hazards that there are those who, because of time, costs, money and everything else, will just simply ignore them. There is another aspect to a rule and that's enforcement and consequences for people who don't follow the rules. In Washington State, researchers have shown that enforcement actually reduces injury rates in small companies. I wanted to ask the panel if anybody had any experience with enforcement as the motivator to get companies to do the right thing. Mr. Cecich?

Mr. CECICH. Enforcement, at least—and I can only share my experience and I've been called the Safety Cop in companies I've worked for. Enforcement is a motivator but only, I think, at the lower end of motivation. People want to—don't want to be hurt. They want to feel good about safety and themselves and safety is about behavior and it is very difficult to enforce behavior. Standards are important to set workplace conditions, to remove hazards.

Those are all critical elements and if employers don't do those voluntarily, then enforcement is responsible for making that happen. But indeed, it is only one portion of the puzzle, if you will, of how to prevent injuries and illnesses. There is a strong behavioral component that it is very difficult to regulate and create standards around behavior.

Ms. SEMINARIO. Because I think the enforcement, what it does is it sends the message that these are serious issues that have to be taken seriously and they also bring attention by employers to focusing on issues. And I think enforcement needs to be more than side-by-side, plant by plant. One of the things we've seen to be most effective by OSHA is when they have an enforcement initiative that deals over the particular hazard or a particular industry. For example, the Reagan and Bush administration—they had a major effort on ergonomics under their General Duty clause and they took major actions in the auto industry, in the meatpacking industry and what you had was very substantial efforts being made by those employers in putting in place the measures to deal with the problems.

So they sent a message not only to a particular employer but to the whole industry and this Administration again, has gotten out of the business of dealing with things on a national basis and an

industry basis and has gotten out of the business of really leveraging their resources to bring about broad change on a wide-scale basis.

Ms. COMPAGNA. And in the medical industry, we had two dramatic examples. One was the Safe Needle. There was an airplane full of workers dying every year from needle sticks that were happening in emergencies with getting hepatitis and HIV and we passed a Safe Needle Stick—you know, they have caps on needles as soon as the needle comes out of the patient's body, the cap just goes over it.

So we had the regulation passed and the effect was, it didn't have to be enforced because the threat of the enforcement was enough and also, the wonderful thing also I feel about this particular industry because it's so competitive is that it strikes every hospital and every health care industry equally at the same moment in time. So someone who voluntarily does it is not going to be penalized because they've got a greater cost than another company and it just happened overnight, all these safe needles, all these manufacturing companies just came up with these wonderful ideas that people thought couldn't be solved.

And also with this safe lifting equipment, the same thing. It will affect all hospitals simultaneously and yes, you always have to have the threat of enforcement but we're finding that the hospitals are responding just with the threat of enforcement. So we're really, really pleased.

Senator MURRAY. You've had that legislation—I know it was just implemented. Have you seen any impact of that yet?

Ms. COMPAGNA. Not quite yet because it was established that it would be progressive. So we're just about to move at this point.

Senator MURRAY. I know that took bipartisan support, both sides of the aisle. Tell me how you did that.

Ms. COMPAGNA. It was initiated by the unions but we worked closely with our legislators and even the hospital association got involved also and was willing to work collaboratively with us. It is a win-win, win-win, win-win situation for everybody as is everything else because the cost of workplace injuries is so much more than prevention.

Senator MURRAY. OK, very good. Dr. Michaels, I wanted to get back to you. It's really troubling to hear how many work-related injuries and illnesses are missed in the OSHA and BLS recordkeeping you referred to in your testimony. The academic articles that you submitted will be included in the record.

But no matter how tiresome just plain numbers are and everybody gets tired of hearing about them, they really are critical for us to be able to understand some of the problems and help us focus on priorities. What should we do here in Congress to address this problem of recordkeeping and underreporting of work-related injuries and illnesses?

Mr. MICHAELS. Senator, I think that's a very good question. I would hope that this committee might have a hearing specifically on this. I think there are a lot of people around the country who have great expertise in recordkeeping and in reporting from both in the occupational injury world and elsewhere and this is the sort of question that—we could involve the National Academy of

Sciences and some of the best minds in the country to address the problems and say, “okay, we know there is a problem.” It’s certainly not BLS’s fault. They’ve used the same system for a long time. They’ve attempted to correct certain issues or make things easier by changing reporting rules and I think the unforeseen consequence is essentially this mis-reporting.

This is the sort of issue where we all sit down and really think about this or maybe even ask the National Academy of Sciences, which has taken on this issue before, actually in the seventies or eighties but there were problems with fatality reportings and there was a whole panel that looked at it and we got great improvement.

Ms. SEMINARIO. We did. We looked at—actually the fatality issue was similar. A number of years ago, OSHA and BLS were capturing half of the fatalities and what the recommendations were is that we had to look beyond the employer-only reporting system because if you rely only on that data, there are a lot of things going on in workplaces that may cause the under reporting of injuries and so what was done to expand it, to look in multiple data sources, to look at workers’ compensation records, look at coroner’s reports and look to sources that were independent of the employer and beyond the workplace to try and get a better picture of it. So I think that Dr. Michaels is correct that this is an issue that we really need to focus on, to think about seriously, to bring in other people and really look at what can be done and also fund some additional research. NIOSH has funded some of this research so now we’ve got some sense of the numbers being—the discrepancy in the numbers. I think we have to find out what’s the cause as to why the injuries aren’t being reported in the workplace and that’s an area we’d like to see NIOSH do some additional work and funding to look at what’s behind injuries not being recorded by employers and reported by workers.

Senator MURRAY. OK. I appreciate that.

Ms. COMPAGNA. And employees are afraid of retaliation.

Senator MURRAY. Mr. Cecich, let me go back to you. You talked about the Voluntary Protection Program. Is there any evidence-based research that shows that does reduce the rate of injury?

Mr. CECICH. Yes. In terms of actual reduction of injuries, there is data that OSHA has posted on the Websites. I presume it’s accurate data, that companies that participate in the VPP program, their disability or lost workday case incident rate is less than 50 percent of the average for that industry group to which they are in. So yes, there is, I think, pretty solid data to say that those are the—that the companies in that program have better records, better injury rates than—

Senator MURRAY. So because they are voluntarily complying, they are keeping the records for those companies but those companies that aren’t voluntarily complying may not be keeping records so we may be comparing apples and oranges when we—

Mr. CECICH. Well, it’s possible. May I correct one notion—the word voluntary compliance is a little misleading to people because it implies that compliance isn’t mandatory and it is. As safety professionals, we don’t like to use the word, voluntary compliance, because we don’t want anybody to have the misconception that people

can choose to comply or not. That's not an option. We like compliance assistance and terms like that.

The issue that was brought up—I think, based on the data, the Michigan study that I've read, I think it's a real issue. There probably are underreporting issues. I suspect that part of it, there are certain industry niches or types of businesses where it might be more of a problem than others. I think organizations that are part of VPP generally are established organizations. They are pulp and paper companies that compare to other pulp and paper companies. I'm—on a personal and purely antidotal level, I don't believe that comparing a VPP company to a non-VPP company in the same industry that the data quality is going to be significantly different. Now, I don't have data to support that but that would be my supposition.

Senator MURRAY. Dr. Michaels.

Mr. MICHAELS. Let me just follow up on that. A little over 3 years ago, when it was still called the General Accounting Office, the Government Accountability Office, issued a report evaluating VPP and related programs and essentially said, "you know, they look great in that it's the right thing"—it may be the right thing to do but there actually aren't any data that would say that they are effective and they asked OSHA to investigate this, to actually figure out a way to study this question. As far as I know, nothing has been done. But that would be a very useful thing to take on. I think we all agree that VPP programs—and actually, I ran the VPP program when I was at the Energy Department. There are good things and we certainly should encourage employers to do them but, what I saw is, it's the employers who are committed to safety who do a VPP program. And so I don't know that they're really getting to the source of the problem and OSHA is not investigating whether they actually are.

Senator MURRAY. Yes, I can see where that is a challenge. I do need to get to the floor. I have to manage a bill but Ms. Seminario, if I could ask you one last question. I'm concerned about this pandemic flu you mentioned and this exposure to artificial butter flavoring. What are the barriers to OSHA drafting an emergency temporary standard for one or all of these kinds of exposures? Is that possible?

Ms. SEMINARIO. Well, they've been petitioned to do so. We petitioned them for—

Senator MURRAY. And their response back to you has been?

Ms. SEMINARIO. Well, on pandemic flu, they said we can't do it because a pandemic has not yet occurred and diacetyl, they have not responded. I might say that in the State of California, who got a similar petition, they are actually drafting a standard. They have a draft rule that is being developed and they've also got legislation moving forward in their legislatures. So at the State level, there is movement forward. At the Federal level, we've had no response.

Senator MURRAY. So you don't see any visible barriers to it?

Ms. SEMINARIO. No, I think it is a matter of political will and priorities.

Senator MURRAY. OK. I appreciate it and I apologize to all of you for keeping the hearing short. But again, your testimony is all part of the record. There will be questions from other members of the

committee who were not able to be here this morning as well as a few more from me. We will submit them to you and would appreciate a response back. This committee is adjourned.

Thank you very much.

[Additional material follows.]

ADDITIONAL MATERIAL

PREPARED STATEMENT OF SENATOR KENNEDY

Today we turn our attention to the important task of keeping the hardworking men and women of America safer on the job.

I commend Senator Murray for holding this hearing and taking a lead on these issues that are vital to the safety and health of America's workers. We plan a number of hearings this year on worker safety and health—we've already had hearings on the health effects of the 9/11 terrorist attacks, and Senator Murray has convened hearings on the dangers of asbestos and domestic violence in the workplace. We also will continue to work on mine safety, an issue we worked closely on with Senator Enzi and Senator Isakson last year, with the passage of the MINER Act.

On Saturday, the Nation observes Workers' Memorial Day—the anniversary of the passage of the Occupational Safety and Health Act of 1970. It's a time to remember and honor the workers who have died or been injured on the job. It's also a time to look to the future and work to strengthen the Nation's workplace safety and health laws.

Under OSHA, we've made significant progress. Since 1970, according to the National Safety Council and the Bureau of Labor Statistics, the overall job fatality rate has been reduced by 78 percent. In manufacturing, the fatality rate dropped by 73 percent and the injury rate by 59 percent. In construction, the fatality rate declined by 84 percent and the injury rate by 68 percent. The adoption of standards—like those for confined spaces, dangerous equipment, and grain dust—have prevented thousands of unnecessary deaths and illnesses.

But even today, significant numbers of workers are still not safe. In 2005, over 5,700 workers were killed on the job, and over 4 million workers became ill or were injured. That's 16 workers who die every day, and nearly 12,000 who are injured or become ill from dangerous conditions on the job.

Some groups are at greater risk. Hispanic workers are almost 20 percent more likely to be killed on the job. Many of them are immigrants who do not know their rights, and do not receive safety training or protective equipment. This is an issue that we also need to bear in mind as we look at comprehensive immigration reform. Exploitation of the most vulnerable workers puts all workers at risk.

These statistics represent real workers and their families. They include men like Emanuel Torres-Gomez. Emanuel and his three brothers lost their father when he was killed in a dryer at a laundry processing plant in Oklahoma. The company knew it was putting workers' lives at risk by failing to provide guardrails, but it did nothing. They include daughters like Michele Lewis, whose step-father, Mike, lost his life in a trench collapse in Florida. The company failed to follow OSHA safety standards that would have saved his life.

These families and thousands like them every year lose parents, sons, and daughters in preventable workplace tragedies. One reason is that companies blatantly ignore the law, but are rarely held accountable. Criminal penalties are so low that prosecutors don't

pursue these cases. Employers who repeatedly violate the law pay only minimal fines, which they treat as just another cost of doing business.

Our health and safety laws need to be strengthened so that fewer workers feel the pain that people like Michele and Emanuel have suffered.

OSHA must do more to stop serious safety violations before, not after, workers are injured or killed. It needs to develop better standards for old hazards, and new standards for new hazards posed by new technologies and new chemicals. The record shows that when OSHA issues new standards and enforces them, lives are saved. Yet over the last 6 years, needed safety standards have languished, unfinished. It is time for swift action on strong regulations to protect America's workers.

Many serious issues face us as we try to make American workers safer on the job. We have an impressive group of panelists today and I look forward to hearing from them.

PREPARED STATEMENT OF SENATOR ENZI

Good morning. I want to thank Chairman Murray and Ranking Member Isakson for scheduling today's hearing on the very important topic of occupational safety and health. I have a long-standing involvement in worker safety legislation and, as I have noted on many occasions, fostering the development of safer work places is one of the most important tasks of the HELP Committee.

In the past decade or so we have witnessed steady progress toward safer and healthier workplaces. For example, in 1992, approximately 9 out of every 100 American workers suffered a workplace injury. By 2003, that injury rate had been cut nearly in half. Over the same period we have seen more than a 20 percent decline in the annual rate of fatalities from workplace injuries.

While such progress is certainly encouraging, it should not cause anyone to become complacent. The number of work-related deaths and injuries still remains unacceptably high. Workplace injuries continue to bring hardship to employees and their families and to impose significant burdens on our economy. All of us involved in this issue must continue our effort to make our Nation's workers and workplaces safer.

If we are to be successful in this effort we must be prepared to cast aside old assumptions, be willing to embrace new ideas, and be candid enough to agree on some fundamental realities.

Too often we focus solely on the handful of bad actors whose behavior is plainly reprehensible. While such anecdotes make great sound bites they do not make great policy. The fact is that the overwhelming majority of employers are concerned about the welfare of their employees; and, are fully prepared to comply with laws aimed at enhancing their safety on the job. The idea that employers do not care for their employees' safety is a dangerously inaccurate myth. It is dangerous because it creates and fosters an adversarial relationship between employers and government safety agencies at the very time that we need precisely the opposite. Cooperation, not confrontation is essential in making our workplaces safer.

It is fortunate that most employers want to do the right thing since without their cooperation there is little realistic hope of continuing to improve workplace safety. Since employer cooperation is essential, and since the vast majority of employers are fully prepared to cooperate, it makes little sense to base a system almost exclusively on inspections and sanctions.

Simple mathematics makes it clear that we cannot ever hope to inspect or sanction our way to greater job safety. There are over 7 million worksites in the United States, and only around 2,400 OSHA inspectors. Since inspectors average around 40 inspections a year the shortcomings of an inspect-and-sanction system are readily apparent.

If we truly want to continue to improve workplace safety we need to think creatively; and, to fashion policies aimed at getting results rather than headlines.

There are at least two areas that merit serious attention in terms of formulating workplace safety policy. First, we need to develop ways of leveraging existing resources. In the last several Congresses I have introduced legislation that would do precisely this by providing inducements for companies to utilize the services of private safety consultants. However, this is just one way of doing so. We must realize that while we have limited governmental resources, we have a wealth of private expertise. We need to continue to find practical and useful ways to harness our private sector resources to leverage our government efforts.

Second, we must look carefully and critically at the regulatory model that has traditionally governed matters of workplace safety. The traditional model has placed principal emphasis on eliminating unsafe conditions, and placed only minimal focus on eliminating unsafe behaviors. Engineering and environment play important roles in workplace safety, but so too does employee attitude and behavior. We need to develop a more holistic regulatory model that addresses all the factors that contribute to a safer workplace. A part of this must be a regulatory model that reflects the reality that safety is everybody's business.

It is my hope that the HELP Committee will closely examine these and other issues related to OSHA regulation as we move forward with any legislation in this area.

PREPARED STATEMENT OF SENATOR BROWN

I would like to thank the Chair and Ranking Member for holding this extremely important hearing. I also want to thank the witnesses who have joined us today.

Over the last 6 years there has been little congressional oversight of the Occupational Safety and Health Act and what it is, and is not doing, to protect workers in our ever-changing workforce.

Congress passed the OSH Act more than 35 years ago and we have made progress toward eliminating health and safety issues at the workplace; however, our economy has changed dramatically since 1970.

We have a responsibility to ensure that the backbone of our economy is protected and that workers have the active support of the Federal Government.

This Administration has ignored its responsibilities to protect workers, and too often it takes a national tragedy like the Sago mine disaster and other recent coal mining disasters to demonstrate that safety measures for miners, and our country's labor force as a whole, are inadequate.

To put it in perspective, 16 workers, on average, were fatally injured on the job each day during 2005.

In Ohio, there were 168 workplace deaths in 2005. That's three workers every week in our State who are victims of preventable workplace incidents, like trench collapses, falls from elevated platforms, job-related assault and violence, and exposure to harmful toxins.

Every week, Ohio families mourn loved ones who do not come home from work one day because of a horrible accident that could have been avoided.

The Bush administration's record on worker safety is dismal.

Under this Administration, workplace inspections have declined. In 2005 only 57 workplace safety inspectors were expected to cover the entire State of Ohio. With that level of staffing, it would take 103 years to inspect each workplace just once.

Through budget cuts and a shift in emphasis to voluntary employer programs, the Administration is essentially telling workers "you're on your own." It harkens back to an era when workers were treated like disposable goods. Those days are over.

Congress must ensure OSHA is meeting its responsibilities and adapting to new challenges.

Today I am proud to support "The Protecting America's Workers Act," re-introduced by Chairman Kennedy and Chairman Murray. This bill is an important first step toward meeting the new challenges workers face in the 21st Century.

The bill will provide OSHA protections to more workers, including flight attendants, correctional officers and government workers. It will increase penalties to law breakers, make it easier for whistleblowers to come forward, and improve transparency to ensure the public, and Congress, is informed as we meet both the existing and emerging challenges of our workforce.

Workplace safety isn't an option, it's an imperative. American workers built this Nation's prosperity, and it is in our Nation's interest to protect their health and safety in the workplace.

Thank you, Madam Chair.

WORKER SAFETY REPORT

TRAGEDY HAS A HUMAN FACE*—TEN STORIES OF THE TOLL WEAK SAFETY LAWS AND ENFORCEMENT TAKE ON WORKERS AND THEIR FAMILIES

All Americans agree that our safety and health laws should protect employees while they are hard at work. They believe that our laws should guarantee that employers make every effort to keep workers safe on the job. This is an American ideal, and this ideal is at the heart of the Occupational Safety and Health Act of 1970, which seeks to provide a safe and healthy workplace for Americans.

For too many of our hardworking men and women, however, that ideal is far from the reality. Every day, an average of 16 employees are killed on the job, and more than 12,000 suffer work-related injuries or illnesses. These are numbers, but the human toll is real. To protect the lives of our Nation's workers, and to give them

* Worker Safety Report prepared by the Democratic Staff of the Health, Education, Labor, and Pensions Committee

the security of a safe workplace that they deserve, we must fix the gaps in our safety laws and the shortcomings in their administration.

The personal stories of workers and their families who have suffered such workplace tragedies show us what needs to be done. Each story highlights a weakness in our safety system that, if corrected, would help prevent such tragedies in the future and make safe and healthy workplaces a reality for more workers.

MIKE MORRISON—LOW PENALTIES GIVE EMPLOYERS NO INCENTIVE TO IMPROVE
WORKPLACE SAFETY

In May 2005, Mike Morrison was an experienced, 48-year-old plumber in Florida. He was installing pipes at a construction site in Pinellas Park, when the nine-foot-deep trench he was working in collapsed. The dirt buried him up to his chest, crushing his ribs and pelvis. In pain and short of breath, he shouted to another worker that he thought his back was broken. Rescuers arrived, but were called out of the trench when it became clear that their lives were also in danger. Mike's arms were free, so they tossed him a shovel so he could try digging himself out. Mike dug around himself as best he could, but bled to death within an hour from internal injuries.

An OSHA investigation found that the trench had not been secured properly before workers were sent into it. There was no sloping, shoring, or shielding, as required. The agency cited Mike's employer, B&B Plumbing, with five safety violations. The fines totalled just \$21,000, a slap on the wrist. Two years earlier, the company had been cited and fined for other safety violations of the OSH Act. As Mike's step-daughter Michelle says, "If the penalties had been more substantial 2 years ago, maybe Mike's company would have complied with the law and protected him properly, and maybe he'd still be with us today."

What America's Workers Deserve: Stiff penalties that make companies think twice before breaking the law.

ELEAZAR TORRES-GOMEZ—COMPANIES REPEATEDLY IGNORE KNOWN SAFETY HAZARDS

On March 6, 2007, Eleazar Torres-Gomez went to work at a laundry facility in Tulsa, Oklahoma, where he had been employed for 7 years. That morning, he was working alone in an area where clothes are washed by an automated system and then sent up a conveyor belt system to an industrial dryer.

One of his co-workers heard a banging noise, and came over to the dryer. He discovered that Eleazar was trapped inside. Apparently, he had been dragged up the conveyor belt with the wet clothes. For 20 minutes, the laundry worker was subjected to temperatures near 300 degrees. By the time maintenance workers arrived to get the dryer open, Eleazar had died. OSHA is currently investigating this death.

The company had been fined by OSHA in 2005 for not installing adequate protective guards on similar machinery at one of its laundry plants in New York. What's more, OSHA had issued an industry directive notifying companies of the need for such protective guards. As Eleazar's eldest son, Emanuel said, "If the company had added the guards, which it knew were required by OSHA, my father would be alive today. The sorrow we feel is overwhelming."

What America's Workers Deserve: Strong enforcement against bad actors who repeatedly ignore known safety hazards.

TRACEE BINION—PUBLIC-SECTOR EMPLOYEES ARE NOT PROTECTED BY SAFETY LAWS

Tracee Binion is a science teacher in Pinson, Alabama. She is an energetic person and enjoyed running marathons. In 2003, her school was being renovated. Blow torches and chemicals were used without any system of containment; a simultaneous roof replacement project gave off asphalt fumes. Windows in Tracee's classroom could not be opened; the regular ventilation system was shut down, and school administrators said there was no other way to ventilate the building.

At first, Tracee had cold-like symptoms "that never got better." After 5 days, she developed a persistent cough and "couldn't catch her breath." Soon she had developed headaches, severe disorientation, and breathlessness. When she sought medical treatment, she was diagnosed with chemical pneumonitis and chemically-induced asthma, often referred to as "occupational asthma." Her doctor said her x-rays looked like she "had been a heavy smoker all her life." Ultimately, she missed 4 weeks of school, underwent outpatient treatments for 6 weeks, and to this day must manage her asthma with medication. She can no longer run long distances.

Unfortunately, Tracee teaches in Alabama, a State where public sector workers are not covered by our safety laws. They have no one to call when they need protec-

tion from workplace hazards. Tracee and other teachers were told repeatedly that there was nothing to be done. Finally, the Governor intervened and closed the school.

What America's Workers Deserve: Safety and health laws to protect Federal, State and other vulnerable workers.

BOB JULIAN—SAFETY HAZARDS ARE RECOGNIZED IN ONE PLACE AND IGNORED IN ANOTHER

Bob Julian was an experienced worker at a tire factory in Oklahoma City, Oklahoma. His co-workers knew him as a very conscientious and safe worker who was dedicated to his job and his company. He was also a longtime member of the Rubber Workers Union. In October 1993, he was setting up a tire-building machine that unexpectedly began operating. The machine crushed and killed Bob. An investigation revealed that the company had failed to follow OSHA's lockout, tagout standard, which requires that hazardous machinery be locked down with the power off and tagged with a warning sign to protect workers from being injured by an unexpected start-up. If the company had complied with that OSHA standard, Bob would not have lost his life.

Earlier that year, the company had been cited for violating OSHA's lockout, tagout standard at another tire-building plant in Des Moines, Iowa. The company therefore knew about the deadly hazard to its workers, but failed to take any action to protect them. After an investigation, OSHA issued citations and proposed penalties of \$7.5 million.

What America's Workers Deserve: Requiring employers to implement health and safety protections on a national level.

KEN MARCANTONIO—WORKERS ARE PENALIZED FOR REPORTING DANGEROUS WORK CONDITIONS

Ken Marcantonio worked as a physicist and engineer, testing technology that detects explosives and weapons. While employed by a government contractor, he was assigned to an underground vault at the Denver airport. Within days, Ken became terribly ill with a high fever and vomiting, and began coughing up blood. He later learned that another employee had previously become ill at the same site.

When Ken was scheduled to return to the site to work, he told his managers that it needed to be inspected and cleaned before anyone else became ill from the environmental contamination. His employer refused, and told him that no inspection would be performed. Meanwhile, Ken's doctor had become concerned that his symptoms were similar to those of the hantavirus, which had killed another person recently in the Denver region.

Alarmed that his employer would require him to return to such a dangerous job site, Ken contacted OSHA, as well as the CDC, and the Denver Department of Health. The day after OSHA contacted his employer to investigate the complaint, Ken was fired, his security clearance was canceled, and he was escorted off of the facility as though he had committed a crime—when he had simply reported an unsafe work environment to his managers and OSHA.

What America's Workers Deserve: Stronger protections for workers who speak out about dangerous work conditions.

JEAN LUCUS—WORKERS HAVE NO PROTECTION FROM COMMON MUSCULOSKELETAL INJURIES

Jean Lucus is an experienced registered nurse whose life was changed forever in February 2004. While caring for an obese, 600-pound patient recovering from surgery, Jean was assigned to physically move the patient from a chair to her bed. She called in a patient-care technician to help her with the lifting. As the patient lay back in bed, one leg hung painfully over the bedside, and Jean responded quickly to lift the leg and alleviate the pain. Suddenly, Jean felt a sharp pain in her lower back, and sought treatment at an emergency room a few hours later. Jean missed 2 weeks of work. An MRI revealed multiple herniated and slipped disks in her back and neck.

As Jean put it, "It doesn't matter how good your lifting technique might be, the cumulative effect takes its toll. How many years can you abuse your body before it says 'no more?'" After 24 years of lifting patients, regularly lifting a total of 2.7 tons in each 12-hour shift, Jean's body said, "No more." Lifting devices exist to help nurses, but employers are not required to use them. Despite the fact that such mus-

culoskeletal injuries account for one-third of all reported injuries in this country, OSHA has not issued a standard for safe lifting.

What America's Workers Deserve: Federal standards that address lifting and other musculoskeletal injuries.

ERIC PEOPLES—NO SAFETY STANDARDS EXIST FOR THOUSANDS OF TOXIC CHEMICALS

In 1997, Eric Peoples began working at the Jasper Popcorn Company plant. After a few months, he was promoted to work as a mixer, combining popcorn, oil, butter flavor, and salt into microwaveable bags. It was a good job, and he was happy to get it. But Eric soon learned that he was being exposed to high levels of diacetyl.

The chemical gives popcorn a buttery taste, but is also an extreme health hazard. The company that supplied Jasper Popcorn with the butter flavor had since 1994 treated it as a hazardous chemical in its own plant, requiring its own workers to wear respirators and handle it only in restricted areas. Diacetyl suppliers and other flavor companies had reported that the chemicals had caused problems in rats and also in workers. In 1997, the Federal Government had warned flavor companies about these health hazards. Despite that warning, the buckets of flavoring that Eric was mixing were labeled as a product with "no known health hazards."

Today, Eric, at age 35, suffers from bronchiolitis obliterans, a severe and progressive lung disease. He has only 24 percent of his original lung capacity and is on the inactive lung transplant registry; a disease like pneumonia could cause him to need an immediate transplant. The average rate of survival after a lung transplant is only 5 years. A decade after Eric lost most of his breathing ability, OSHA has not yet issued a hazardous chemical standard for diacetyl.

What America's Workers Deserve: Standards to protect workers from toxic substances commonly used in the workplace.

BRIAN PLUCK—EMPLOYERS IGNORE THEIR DUTY TO PROVIDE A SAFE WORKPLACE

Brian Pluck, a 24-year-old steelworker and brakeman, lost his life in the early morning of December 27, 2006, at the Mittal Steel plant in Coatesville, Pennsylvania. When he died, Brian was doing what most brakemen do in steel plants with in-plant railroads: he was jumping aboard a train for a ride down the length of the facility. The long distances in steel mills make it necessary for steelworkers to ride the cars between locations. Unfortunately, the railcar Brian attempted to board had no stirrups, ladders, or handrails, and he slipped under the moving car and was killed.

OSHA has never issued a safety standard for in-plant railroads, despite the fact that related accidents are the leading cause of death by traumatic injury in the steel industry. The Federal Railroad Administration has no jurisdiction over railroads inside an industrial plant, but its regulations require safety equipment, such as stirrups, ladders, or handrails, on all outdoor railcars for worker safety. The dangers of in-plant railcars, and the need for such safety equipment, are widely known in the steel industry. Under the OSH Act, employers have a "general duty" to protect against such known hazards, but too often fail to do so.

What America's Workers Deserve: Aggressive enforcement of employers' duty to provide a safe workplace and eliminate known safety hazards.

HECTOR RIVAS—OSHA INSPECTIONS: TOO LITTLE, TOO LATE

On March 9, 2006, Hector Rivas, a mechanic, was working alone at the bus yard on Freeport Street in Boston, Massachusetts. As was the company's regular procedure, Hector used a gasoline-powered jumpstarter to start school buses on that cold winter morning. He was using the jumpstarter in an enclosed service truck. The carbon monoxide expelled by the jumpstarter overwhelmed him. He fell unconscious, then died.

OSHA found that the company had violated multiple safety measures that would have saved Hector's life. For instance, the company failed to install adequate ventilation controls to reduce the build-up of carbon monoxide in the mechanics' work area, failed to train the mechanics in basic safety procedures, and did not provide them with personal protective equipment.

All of those routine safety measures would have been identified by an OSHA inspection, but none had taken place before Hector's death. One simple OSHA inspection would have saved Hector's life and made his fellow mechanics safer on the job. What is more, the ventilator for the service truck that would have prevented this tragedy costs less than \$50.00. Instead, the company faced an OSHA fine of \$70,000 for its willful negligence that led to Hector's death.

What America's Worker's Deserve: Safety inspections that find and fix dangerous conditions before workers are hurt or killed.

UNDERFUNDING OF OSHA HURTS ALL WORKERS

A common thread runs through many of these personal stories of worker injuries and death: OSHA has much more to do to keep America's workers safe on the job. New standards are needed for existing and emerging workplace hazards; more inspections are required to find violations. America's workers also need and deserve stronger enforcement and tougher penalties to deter the worst actors, as well as stronger protections for whistleblowers who speak up about safety concerns.

A serious lack of resources at OSHA makes it much more difficult to accomplish these tasks. Since 2001, the OSHA budget has been cut by 6 percent in real dollars, and hundreds of positions have been eliminated. President Bush's recent budget proposals continue to maintain insufficient funding levels.

The results of this cost-cutting are grim. Today, Federal OSHA has only 818 safety and health inspectors, and the State OSAs have 1,294. Yet OSHA has jurisdiction over 130 million workers in the 8.5 million workplaces—about one OSHA inspector for every 63,670 workers.

OSHA is a small agency with a large and vital mission: to protect the hard-working men and women who put their lives at risk when they go to work to earn a living for their families. We must provide the resources OSHA needs to accomplish this goal. We owe America's workers no less.

RESPONSE TO QUESTIONS OF SENATOR KENNEDY BY DAVID MICHAELS

Question 1. In your testimony, you mention problems in the collection of data that have led to inaccurate information on occupational illnesses and injuries. Please explain what the impediments are to accurate data collection. Can you recommend specific strategies for overcoming them and improving our data on illness and injury rates?

Answer 1. Governmental and non-governmental organizations have examined our Nation's system for collecting and analyzing data on work-related injuries, illnesses and fatalities,^{1 2 3} as have numerous independent researchers.^{4 5 6 7 8 9 10} Without exception, all of these sources describe one or more of the following limitations with the existing data: (1) underreporting by employers because of misunderstandings about the recording and reporting systems; (2) inaccurate records of work-related injuries and illnesses by employers because it is not a high priority for them; and (3) intentional under-reporting by employers.

In 1987, a special panel convened by the National Academy of Sciences issued its report *Counting Injuries and Illnesses in the Workplace: Proposal for a Better System*.¹ The panel offered 24 specific recommendations to enhance the Bureau of Labor Statistics' system for collecting and analyzing work-related injuries, illnesses and deaths. It would be worthwhile for BLS to convene an advisory committee for a short period of time (e.g., 6 months) for the purpose of reviewing these 24 recommendations and determining which were implemented or are no longer relevant. The advisory committee should be comprised with as many of the original members as possible, along with a select number of additional members, including relevant officials from BLS, OSHA (i.e., those most familiar with the agencies' recordkeeping and reporting regulations) and NIOSH. The committee's report should identify the specific obstacles (i.e., legal, regulatory, and financial) which hinder adoption of the recommendations.

Question 2. Similarly, you discuss in your testimony numerous impediments to OSHA's administration of standard setting and rulemaking. Could you please expand on those subjects with an eye towards what Congress and OSHA can do to correct those problems?

Answer 2. There are several problems related to OSHA's inability to promulgate in a timely manner new health and safety standards. One needs to look no further than OSHA's rulemaking history for chemical contaminants: in its 37-year history, the agency has only issued comprehensive health standards for 31 hazardous substances.¹¹ In the last 10 years (1997–2006), the agency has only issued two of these protective rules.¹² The process is cumbersome and time consuming; many recognized hazards are not addressed by comprehensive OSHA standards, leaving workers at risk.

One relatively straight-forward solution available to Congress is to amend 1910.1000, Table Z–1 to conform with adopted value contained in the American Con-

ference of Governmental Industrial Hygienists 2007 TLVs® for time-weighted averages, short-term exposure limits, and notations.

A second solution is for Congress to require all employers to adopt a safety and health management program to identify hazards and potential hazards, adopt controls to prevent workers' exposure to the hazard, and training, and employee involvement.

REFERENCES

1. National Research Council, Counting Injuries and Illnesses in the Workplace: Proposal for a Better System, 1987.
2. The Keystone Center, Keystone National Policy Dialogue on Work-related Illness and Injury Recordkeeping, 1989.
3. General Accounting Office. *Occupational Safety & Health: Assuring Accuracy in Employer Injury and Illness Records*, 1988; *Options for Improving Safety and Health in the Workplace*, 1990; *Occupational Safety & Health: Changes Needed in the Combined Federal-State Approach*, 1994; *Occupational Safety & Health: Efforts to Obtain Establishment-Specific Data on Injuries and Illnesses*, 1998; *Workplace Safety and Health: OSHA Can Strengthen Enforcement through Improved Program Management*, 2002.
4. Azaroff LS, Levenstein C, Wegman DH. Occupational injury and illness surveillance: conceptual filters explain underreporting. *Am J Pub Health* 92(9): 1421–1429 (September 2002).
5. Seligman PJ, Sieber WK, et al. Compliance with OSHA recordkeeping requirements. *Am J Pub Health* 78(9): 1218–1219 (September 1988).
6. McNeely EM. Who's counting anyway?: the problem with occupational safety and health statistics. *J Occup Medicine* 33(10): 1071–1075 (October 1991).
7. Leigh JP. A report card for occupational injuries and illnesses. *Am J Ind Medicine* 33:422–424 (1998).
8. Rosenman KD, Gardiner JC, et al. Why most workers with occupational repetitive trauma do not file for workers' compensation. *J Occup Environ Med* 42(1): 25–34 (January 2000). Friedman LS, Forst L. The impact of OSHA recordkeeping regulation changes on occupational injury and illness trends in the U.S.: a time series analysis. *Occup Environ Med* (February 2007).
9. Rosenman KD, Kalush A, et al. How much work-related injury and illness is missed by the current national surveillance system? *J Occup Environ Med* 48(4): 357–365 (April 2006).
10. Welch LS, Dong X, Carre F, Ringen K. Is the apparent decrease in injury and illness rates in construction the result of changes in reporting? *Int J Occup Environ Health* 13:39–45 (2007).
11. Asbestos; 3,3 dichlorobenzidine; chloromethyl methyl ether; ethyleneimine; bis(chloromethylether); aminodiphenyl; alpha-naphthylamine; N-nitrosodimethyl amine; beta-naphthylamine; 4-nitrobiphenyl; benzidine; 4-dimethylaminoazobenzene; 2-acetylaminofluorene; beta-propiolactone; coke-oven emissions; vinyl chloride; arsenic; benzene; acrylonitrile; ethylene oxide; formaldehyde; 4,4-methylenedianiline; cadmium; 1,3 butadiene; methylene chloride. cotton dust, lead, DBCP, hexavalent chromium, bloodborne pathogens, cotton dust.
12. Methylene chloride final rule issued in 1997 and hexavalent chromium final rule issued in 2006.

RESPONSE TO QUESTIONS OF SENATOR ENZI BY PEG SEMINARIO AND DAVID MICHAELS

PEG SEMINARIO

Question 1. Ms. Seminario, as you know the AFL–CIO publishes an annual report entitled “Death on the Job.” The report includes as “workplace fatalities” a substantial number of fatalities that actually occur away from the workplace, or are not otherwise within OSHA’s jurisdiction. For example, over 25 percent of the fatalities cited in this year’s report involve highway crashes. In some States, most notably rural ones, the percentage is even higher. Do you believe that including these fatalities, and/or others over which OSHA does not have jurisdiction, in the statistical compilation is a fair indicator of OSHA’s effectiveness? Do you think it is a fair indicator of a given State’s effectiveness or commitment to safety in the workplace?

Answer 1. The AFL–CIO annual report “Death on the Job” provides a national and state-by-state review of job safety and health in the United States. In preparing the report, we rely on and utilize the occupational fatality and injury data compiled by the Department of Labor Bureau of Labor Statistics (BLS). Both OSHA and BLS

include work-related fatalities and injuries that occur away from the workplace in the definition of what is considered work-related for the purpose of recording and reporting. Fatality rates and injury and illness rates reported by the BLS are utilized by OSHA and others for measurements of effectiveness. While there are limitations in this data, particularly reported injury and illness data which undercount the actual incidence of work-related cases, this data provides one metric to evaluate workplace safety.

Question 2. Given the high percentage of highway crashes contained in the report is it not logical to assume that we could achieve an even more dramatic reduction in “workplace” fatalities through increased enforcement of traffic laws than through increased OSHA regulation or enforcement?

Answer 2. According to the final BLS fatality data, in 2005 highway incidents were responsible for 1,437 of the total 5,734 fatal workplace injuries, or 25 percent of fatal injuries. Better enforcement of traffic laws could help reduce these highway fatalities, but would not address the causes of 75 percent of fatal workplace injuries, nor the estimated 50,000 occupational disease deaths that occur each year. The majority of workplace injuries, illnesses and deaths are caused by exposures to occupational hazards which are firmly in OSHA’s jurisdiction, and not subject to regulation or enforcement by other agencies. Thus the most effective means to reduce the majority of work-related injuries, illnesses and fatalities is through OSHA regulation and enforcement to reduce exposure to major workplace hazards, supplemented by outreach, education and related activities.

Question 3. The report also references a bill which I introduced in the 109th Congress that was entitled “The Occupational Safety and Partnership Act” and claims this legislation would have “weakened” OSHA. The bill would encourage the use of outside consultants to leverage OSHA’s limited resources and increase compliance. Do you believe that the extensive review of the workplace by safety experts and the implementation of a comprehensive safety plan provided for in the legislation is so outweighed by the penalty exemption that my bill would “weaken” workplace safety? Why?

Answer 3. Strong, effective enforcement is one of the cornerstone’s of the OSHA law and OSHA program. I believe that the Occupational Safety and Partnership Act would make it much more difficult for OSHA to exercise its enforcement authority. The bill creates a penalty exemption for employers who implement a safety and health plan and are certified as being in compliance by a private consultant. The judgements and determinations of the consultant create a safe harbor and supercede the government’s determinations. If upon inspection, OSHA finds that the employer is not in compliance, and that the review and the determinations made by the consultant deficient, OSHA must none-the-less accept these determinations.

OSHA’s current penalty policies already provide for penalty adjustments/reductions for employers who have implemented a safety and health program and for the good faith exhibited by an employer. We do not agree that a total penalty exemption is wise or warranted.

We agree that implementing comprehensive safety and health programs in the workplace is important. We believe that the best means to achieve this is for OSHA to issue a safety and health program rule, similar to what was issued in California and other States, and to provide assistance, outreach and training to help employers meet their obligations. Private consultants could help employers to comply with a safety and health program rule and implement effective safety and health programs.

It should be noted that Federal OSHA was in the process of developing a safety and health program rule and was well into the regulatory process. The rule was widely supported by safety and health professionals, unions and many employers. But in 2003, that rule was withdrawn from the regulatory agenda by the Bush administration, and efforts by OSHA to implement safety and health programs on a wide-scale basis ceased.

Question 4. Do you believe that programs such as VPP that provide some exemption on the enforcement side “weaken” workplace safety? Why?

Answer 4. The AFL-CIO has generally been opposed to any enforcement exemptions. However, our main concern with VPP is that it is a very resource intensive program, and we question whether scarce government resources should be directed toward a recognition program for the “best” employers, rather than focusing on employers with poor safety and health records and unsafe and unhealthful working conditions.

Question 5. The AFL-CIO report previously referenced also criticizes my bill because it would impose penalties on employees that violate safety rules by failing to

wear protective equipment. Isn't workplace safety everybody's responsibility? If penalties enhance compliance then why are penalties aimed at employee compliance inappropriate?

Answer 5. Under the Occupational Safety and Health Act, *the employer* has legal responsibility to provide safe and healthful working conditions and to comply with OSHA standards, therefore, it is appropriate that OSHA citations and penalties be directed toward employers who fail to meet their legal obligations and comply with the law.

The AFL-CIO does believe that employees have a responsibility to comply with safety rules, and that disciplinary measures are appropriate for employees who do not comply with these rules. However, we believe that employers, and not the government are in the best position for enforcing compliance with employer safety rules.

Question 6. Do you believe we should eliminate the penalty provisions that are currently provided for under The Mine Safety Act? If not, why should there be employee penalties under the Mine Act but not under the OSH Act?

Answer 6. The AFL-CIO does not have a position on whether the employee penalty provisions provided under the Mine Safety and Health Act should be eliminated. This is not something we have advocated. However, the MSHA provisions are limited to willful violations by an employee of standards related to smoking or carrying of smoking materials. Such violations in a mining environment have the potential to cause a catastrophic event that endangers the lives of many. This is not analogous to failures of employees to wear personal protective equipment, which have been the focus of employee penalty proposals under OSHA.

DAVID MICHAELS

Question 1. To the extent that workplace injury and fatality statistics are used as a measure or indication of *OSHA's effectiveness* in achieving or improving occupational safety should we be including deaths and injuries that occur *outside of OSHA's jurisdiction* in such statistical compilations?

Answer 1. Collecting and analyzing work-related injury, illness, near-miss and fatality data serves multiple purposes, many of which were articulated by Congress when it passed the Occupational Safety and Health Act of 1970. Within the Statute's "Congressional Findings and Purpose," lawmakers recognized the value of recordkeeping and reporting system to "help achieve the objectives of this Act and accurately describe the nature of occupational safety and health problems."

The need for accurate data on workplace conditions is no less important today, yet our current system is disjointed and deficient. One key objective of an occupational health and safety reporting system is to assess which types of injuries, illnesses and fatalities are occurring and to develop prevention efforts to address these specific problem areas. Without complete and accurate data, such efforts are not as effective.

There may be some components of workplace injury, illness and fatality statistics that are not used in measuring OSHA's effectiveness, just as there may be some components that are not used in evaluating employer safety programs (see answer to Question 2). But as noted above, recordkeeping and reporting have multiple purposes, including priority setting and estimating the extent and distribution of the costs of workplace injuries, illnesses and mortality.

Question 2. To the extent that workplace injury and fatality statistics are used as a measure or indication of an *employer's effectiveness* in securing or improving occupational safety should we be including in such statistical compilations deaths and injuries that occur away from the worksite where the *employer has no practical control* over employee behavior that is contrary to external law or employer policy?

Answer 2. As I noted above, there may be some components of workplace injury, illness and fatality statistics that are not used in measuring employer safety programs, just as there may be some components that are not used in evaluating OSHA effectiveness (see answer to Question 1). But, to repeat the answer above, recordkeeping and reporting have multiple purposes, including priority setting and estimating the extent and distribution of the costs of workplace injuries, illnesses and mortality.

Furthermore, there are many different jobs in which workers are not at fixed-worksite, including window-washers, landscapers, homecare aids and visiting nurses, residential roofers and fisherman. Although these kinds of worksites may pose unique challenges for an employer in terms of ensuring workers with necessary safety and health protections, it would make little sense to remove them from any injury or illness recordkeeping and reporting system.

[Editor's Note: Due to the high cost of printing, previously published materials submitted for the hearing record are not reprinted. To review related articles, please see the following: *www.occenvmed.com* to review the article entitled, "The impact of OSHA recordkeeping regulation changes on occupational injury and illness trends in the US: a time-series analysis" by Lee S. Friedman, Linda Forst; *ACOEM.org* to review the article entitled, "How Much Work-Related Injury and Illness is Missed By the Current National Surveillance System?" by Kenneth D. Rosenman et al.; and *www.defendingscience.org/SKAPP-Staff.cfm* to review the article entitled, "Scientific Evidence in the Regulatory System: Manufacturing Uncertainty and the Demise of the Formal Regulatory System" by David Michaels, M.P.H., Ph.D. and Celeste Monforton, M.P.H.]

[Whereupon, at 10:00 a.m., the hearing was adjourned.]

○