

**Testimony of Peg Seminario, Director Safety and Health, AFL-CIO
Before the Senate Employment and Worker Safety Subcommittee
of the Health, Education, Labor and Pensions Committee Hearing
on “Is OSHA Working for Working People?”**

April 26, 2007

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 exposure 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Health and safety standards are out of date or non-existent for many workplace hazards.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 based, 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 steelparts 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 two-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 OSHAct 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 OSHA 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 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 towards a service economy, more and more of the job injury burden is being born by service sector workers. In 2005, eight 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 follow-up 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 two-thirds 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.

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.

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.

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.³³ 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

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

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

the enormous toll of workplace death, injury and disease.

Since the passage of the OSHAct, 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 FY 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. 140 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. FY 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 FY 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 FY 2006, there were 2,112 federal and state OSHA inspectors responsible for enforcing job safety and health protections. In FY 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 OSHAct

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.

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 FY 2006.

Penalty levels assessed for violations are well short of the levels provided under the Act. In FY 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 six months in jail. There are no criminal penalties for violations

⁴ International 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.

⁵ Maximum 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.

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 OSHAct. According to OSHA, in FY 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 FY 2000 to 38,589 in FY 2006, the number of workers covered by federal OSHA inspections has declined significantly from more than 2.0 million in FY 2000 to 1.2 million in FY 2006. The length of time spent on inspections has also declined somewhat from 22 hours/safety inspections in FY 2000 to 18.8 hours in FY 2006.

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

⁶ Statement 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.

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 six to ten 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 five 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 rule-making process, has languished for eight 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 OSHAct 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 OSHAct 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 OSHAct. 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 OSHAct 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 OSHAct 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 legislative action, similar to the procedure that was utilized to establish an initial body of regulation under section 6(a) of the OSHAct 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

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

²Fatality 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.

³Employment 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.

⁴Deaths per 100,000 workers.

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

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.

¹ Excludes September 11 fatalities.

**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 Illnesses¹	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	3.6 million	1.2 million
Case Rate for Nonfatal Injuries and Illnesses Involving Days Away from Work (Cases per 100 workers)	4.05	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

<u>Fiscal Year</u>	<u>Budget</u>	<u>Positions Fiscal Year</u> <u>1975-2007</u> (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 bak to Federal OSHA jurisdiction.
2/ Amount after rescission.

**Job Safety and Health Appropriations
FY 2001 – 2008**

CATEGORY	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005 ¹	FY 2006 ⁶	FY 2007 CR ⁷	FY 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
Federal Enforcement	151,836	161,768	164,039	166,000	169,601	172,575		183,000
State Enforcement	88,369	89,747	91,139	92,000	90,985	91,093		91,100
Technical Support	20,189	19,562	20,234	21,600	20,735	21,435		22,100
Federal Compliance Assistance	56,255	58,783	61,722	67,000	70,837	72,545		79,600
State Compliance Assistance	48,834	51,021	53,552	52,200	53,346	53,357		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
Executive Administration/Direction	8,562	9,017	9,213	10,000	10,102	10,591		11,000
NIOSH (in thousands of dollars)								
TOTAL	260,134	276,460	274,899	278,885	285,357	254,401*	254,401	253,000

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

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

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

⁴ This line item was added in the Senate appropriations committee recommendation January 15, 2003.

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

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

⁶ Reflects 1% across the board rescission.

⁷ Amounts do not include the 50% of costs for salary and benefit increases provided for under the Continuing Resolution for FY 2007 (House Joint Resolution 20) enacted on February 15, 2007.

**NUMBER OF U.S. ESTABLISHMENTS AND EMPLOYEES COVERED
PER OSHA FULL TIME EQUIVALENT (FTE) STAFF, 1975 – 2005**

Fiscal Year	Annual Average Employment¹	Annual Average Establishments¹	OSHA Full Time Equivalent (FTE) Staff²	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 Inspection/Enforcement Activity, FY 2000-2006

	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 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
Willfull	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	60,662	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
Willfull	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
Willfull	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	130	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, FY 2000, FY 2001, FY 2002, FY 2003, FY 2004, FY 2005, FY 2006

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/pls/imis/generalsearch.html>

Ergonomics Guidelines Issued By Bush Administration

Nursing Homes – March 2003
 Retail Grocery – May 2004
 Poultry Processing – September 2004