

**Testimony of Peg Seminario, Director Safety and Health, AFL-CIO**  
**Before the House Subcommittee on Workforce Protections,**  
**Committee on Education and the Workforce**  
**Hearing on**  
**“Workplace Safety: Ensuring a Responsible Regulatory Environment”**  
**October 5, 2011**

Chairman Walberg, Ranking Member Woolsey I appreciate the opportunity to testify today to discuss workplace safety regulations.

My name is Peg Seminario. I am Director of Safety and Health for the AFL-CIO, where I have worked for more than three decades on a wide range of regulatory and policy issues related to worker safety and health. During that time, I have participated in the development of many worker safety and health standards and regulations through the Occupational Safety and Health Administration’s (OSHA) rulemaking process. I have seen regulations that have been promulgated make a real difference in the lives of workers. And I have also seen the failure of the regulatory process and the lack of government action to address serious well-recognized hazards result in unnecessary deaths, injuries and illnesses to workers and hardship and loss for their families.

The title of today’s hearing is “Workplace Safety: Ensuring a Responsible Regulatory Environment.” I must ask the question – A regulatory environment that is responsible for whom and to what end? Is it a regulatory environment that is primarily or solely concerned about costs and impacts on businesses and regulated entities? Or is it a regulatory environment that is concerned with ensuring the protection of workers’ safety and health through regulations that are sound and effective.

It is the AFL-CIO’s position that first and foremost, any examination of worker safety and health and related regulations should be based on the premise that protection of workers from harm is our shared priority and goal. Indeed, in the Occupational Safety and Health Act, the primary law that governs worker safety in this country, the Congress declared as its purpose and policy “to assure as far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.” Congress also declared that this purpose and policy was to be pursued through the exercise of its powers to *regulate* commerce, and mandated the Secretary of Labor to develop, promulgate and enforce safety and health standards that are reasonably necessary and appropriate to protect workers from harm.

Under the Act, OSHA standards are required to provide a high level of protection. For toxic substances and harmful physical agents the Secretary of Labor is required to set standards that provide workers protection from material impairment of health or loss of functional capacity even if exposed over a working lifetime, to the extent technologically and economically feasible. The Supreme Court has ruled that the OSH Act prohibits OSHA from basing health standards on a cost-benefit determination, since protection of health, subject to feasibility constraints, is required to be the primary consideration.

## **Workplace Safety Laws and Regulations Have Saved Lives, But There is Much Work to Be Done**

Over its 40 year history the Occupational Safety and Health Administration (OSHA) has issued standards on major workplace hazards including asbestos, benzene, lead, arsenic, confined spaces, trenching, lock-out of hazardous equipment, scaffolding and fall protection. These standards and their enforcement have changed industry practice, reduced exposure to serious health and safety hazards and the resultant injuries, illnesses and deaths.

Since the OSH Act was passed, workplace fatalities due to injuries have been reduced from 13,800 a year in 1970 to 4,547 deaths in 2010. The fatality rate has dropped by 81%, with significant drops in fatality rates in hazardous industries like construction (86% reduction) and manufacturing (76% reduction).

Over 400,000 lives have been saved from traumatic injury deaths since the passage of the OSH Act due to improved workplace protections and the efforts of employers, unions, workers, safety and health professionals and the government.

But our work is far from done. In 2010, we saw a series of workplace catastrophes that claimed dozens of workers lives— the Upper Big Branch mining disaster that killed 29 miners in an explosion, the BP Gulf Coast oil rig explosion that killed 11 workers and caused an environmental disaster, the Tesoro Refinery explosion in Washington State that killed 11 workers and Kleen Energy Plant explosion that claimed the lives of 6 workers. Not all of these investigations have been finalized, but from what has been documented in all these cases the lack of safety rules, the failure to comply with existing rules, the push for production and inadequate government oversight and enforcement were all major factors. None of these catastrophes was the result of too much government regulation or too much enforcement.

The deaths from these catastrophes were among the 4,547 workplace deaths due to job injuries reported in 2010 by BLS. Last year on average 12 workers died each day because of job injuries—women and men who went to work, never to return home to their families and loved ones. This does not include those workers who die from occupational diseases, estimated to be 50,000 each year—an average of 137 deaths each day.

In 2009, the most recent year for which data is available, more than 4.1 million workers across all industries, including state and local government, had work-related injuries and illnesses that were reported by employers, with 3.3 million injuries and illnesses reported in private industry. Due to limitations in the injury reporting system and underreporting of workplace injuries, this number understates the problem. The true toll is estimated to be two to three times greater—or 8 million to 12 million injuries and illnesses a year. The cost of these injuries and illnesses is enormous—estimated at \$159 billion to \$318 billion a year for direct and indirect costs of disabling injuries alone.

For many groups of workers, workplace conditions remain particularly dangerous. Fatalities and injuries among Latino workers are much greater than among other groups of workers. Construction workers continue to be at especially high risk. Hazards to young and inexperienced

workers are a significant problem and there are growing concerns about safety and health challenges for older workers as more workers are staying on the job to an older age. Long recognized hazards such as silica, noise, and confined space hazards in construction remain serious problems, and ergonomic hazards, infectious diseases and most toxic chemicals have not been adequately addressed.

### **Current Attacks on Regulations Are Based on False Claims. Rolling Back Protections Will Not Create Jobs, But it Will Cost Workers Their Lives**

Despite the decades long record of accomplishments in protecting workers through a proven system of regulation and enforcement under the OSH Act, many in the business community and some in Congress are demanding that we abandon this path and instead return to the days when there were no regulations and enforcement and employers were free to do whatever they chose. They claim that employers have been buried by useless, burdensome regulations and that under the Obama Administration they are facing a tsunami of new unnecessary rules. They further claim that regulations are responsible for the current jobs crisis and economic situation and that they and the country simply can't afford any additional regulations, particularly if we are to be competitive in today's global economy.

To this end, business groups have been attacking any and all regulations being developed or considered by OSHA and other agencies and are pushing to roll back or block enforcement of existing rules. In Congress, particularly in the House of Representatives, there have been countless hearings on regulations and bills introduced to stop individual rules and to "reform" the regulatory process for all agencies in ways that would make it difficult if not impossible for agencies to issue new rules. Efforts are also being made to use the appropriations process to block rules or their enforcement by prohibiting funds for this purpose.

Just last week, the Chair of the House Subcommittee on Labor-HHS Appropriations unveiled a draft bill that would block much of the rulemaking activity at the Department of Labor. In the area of worker safety, the bill would stop OSHA rules on workplace injury and illness prevention programs, a recordkeeping rule reinstating a requirement that employers identify musculoskeletal injuries on the OSHA 300 injury log and prohibit OSHA from enforcing basic fall protection requirements in residential home construction. The Mine Safety and Health Administration would be prohibited from taking action on new coal dust rules to protect coal miners from black lung. Prohibiting action on these safeguards will cost workers their lives and their health.

The AFL-CIO has been the leading advocate for strong national action to create jobs in this country. Addressing the jobs crisis and the 14 million workers who are unemployed, the millions who are underemployed, and the lack of economic opportunity for our young people must be our highest priority.

But the AFL-CIO firmly rejects the proposition that to address our current economic situation the United States must roll back our system of government safeguards to protect workers and the public. We should all remember that it was the lack of regulations and government oversight that led to the collapse of the financial sector in 2008 and the loss of 8 million jobs that is the major

cause of the current situation. Our system of laws and regulations has made workplaces safer, our environment cleaner and our country fairer and more secure.

We reject the suggestion that current levels of protection are sufficient, and no further action is required. We do not accept that as a country we should not or cannot take action to reduce the still high toll of workplace injuries, illnesses and deaths. We do not agree that the government should roll back enforcement efforts and sit on its hands and do nothing to protect workers from serious harm and corporate neglect or abuse.

The claims that regulations have caused massive job loss are not supported by evidence. A comprehensive review of the literature on the impact of regulation on jobs conducted by the Economic Policy Institute found that most regulations result in modest job growth or have no effect.<sup>1</sup> Even researchers at the Mercatus Institute, a conservative regulatory policy center, acknowledged earlier this year in written comments to House Oversight and Government Reform Committee Chair Darryl Issa and in testimony before that committee that there little if any evidence available to support the contention that at a macro level regulations have caused massive job loss in the United States.<sup>2</sup> There is no evidence that any occupational safety and health regulation issued by OSHA has had negative job impacts.

Many business trade associations and others in Washington are also claiming that regulations under development by the Obama Administration are creating “regulatory uncertainty” and this is the major reason why businesses are reluctant to invest and create jobs. But that is not what business owners themselves are saying. A recent survey by Small Business Majority found that the biggest problem small business faced was uncertainty about the economy, not government regulation.<sup>3</sup> A recent survey conducted by the National Federation of Independent Businesses found that “poor sales” was the biggest problem faced their members,<sup>4</sup> and a survey conducted by the Wall Street Journal of business economists found that it was the lack of demand, not uncertainty about government regulation that was keeping hiring down.<sup>5</sup>

Clearly regulations may have costs. But experience has shown repeatedly that the costs of regulations are often overstated by business groups who oppose these regulations. Moreover, studies have found that the actual cost of many government regulations when implemented are much less than the costs estimated by the government at the time the regulations were promulgated. A 1995 review of major OSHA rules by the Office of Technology Assessment

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<sup>1</sup> [Shapiro, Isaac and Irons, John, *Regulation, Employment and the Economy: Fears of Job Loss are Overblown*, Economic Policy Institute, 2011]

<sup>2</sup> Williams, Richard, *The Impact of Regulations on Investment and the U.S. Economy*, Attachment to Letter Submitted to Darryl Issa, Chairman, House Committee on Oversight and Government reform, January 5, 2011; Ellig, Jerry, *Regulatory Analysis: Understanding Regulation’s Effects*, Written Testimony Submitted to the House Committee on Oversight and Government Reform, February 10, 2011.

<sup>3</sup> Small Business Majority, Opinion Survey: Small Business Owners Believe National Standards Supporting Energy Innovation Will Increase Prosperity for Small Firms, September 20, 2011

<sup>4</sup> Dunkelberg, William C. and Wade, Holly, NFIB Small Business Economic Trends, NFIB, September, 2011

<sup>5</sup> Hollander, Catherine, “WSJ survey: Lack of demand, not uncertainty, keeps hiring down.” The Wall Street Journal, July 18, 2011.

found that for most of the rules examined, overestimated cost, because the agency had not adequately considered advances in technology. The report stated that “the actual compliance response that was observed included advanced or innovative control measures that had not been emphasized in the rulemaking analyses, and the actual cost burden proved to be considerably less than what OSHA estimated.”<sup>6</sup> For some standards, such as OSHA’s cotton dust standard and vinyl chloride standard, not only were the rules less costly than predicted, the rules led to technological innovations in the covered industries that made them more productive.

Most of the current attacks on government regulations, including attacks on OSHA rules are focused solely on the potential cost of the regulation to businesses. They totally ignore the benefits of the regulations to workers and the public. For the past 14 years, at Congress’ direction the Office of Management and Budget (OMB) has produced an annual report on the estimated costs and benefits of government regulations. Every OMB report that has been issued, by Republican and Democratic administrations alike, has found that the benefits of regulations to the public, workers and the country far exceed their costs. The latest OMB report issued in June, 2011, found that the estimated annual benefits of major rules reviewed by OMB over the last 10 years were between \$132 billion and \$655 billion, compared to the estimated aggregate annual cost of between \$44 billion and \$62 billion. For the OSHA rules that were examined, the estimated annual benefits ranged from \$0.4 to \$1.5 billion compared to estimated costs of \$ 0.5 billion.<sup>7</sup> These OSHA regulations not only provide a benefit to workers by reducing the burden of injuries and illnesses. They also benefit employers by limiting workers compensation and insurance payments and lost productivity.

### **There is No Tsunami of Workplace Safety Regulations**

The claim that there has been a tidal wave of regulation also is not borne out by the facts. According to historical information available on OMB’s Office of Information and Regulatory Affairs’ [www.reginfo.gov](http://www.reginfo.gov) website, during the past two and one half years there have 108 major final rules government wide, compared to 116 major final rules issued during the last two and one half years of the Bush Administration. The number of economically significant proposed rules issued during these time periods is also comparable for both administrations.

And no one who is familiar with regulation at the Occupational Safety and Health Administration can honestly claim that there is a fast moving tsunami of workplace safety and health regulation in recent years.

It is just the opposite. There is barely a ripple.

Over the past decade few OSHA rules have been issued. For eight years, the Bush administration shut down OSHA rulemaking. Only three significant final OSHA rules were issued between 2001 and 2008 (electrical equipment installation, employer payment for personal

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<sup>6</sup> Office of Technology Assessment, Gauging Control Technology and Regulatory Impacts in Occupational Safety and Health; An Appraisal of OSHA’s Analytical Approach, Washington, DC, OTA, 1995.

<sup>7</sup> Office of Management and Budget, Office of Information and Regulatory Affairs, *2011 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local and Tribal Entities*, Washington, DC, 2011.

protective equipment and hexavalent chromium), two of them a result of litigation by the unions. Under the Obama administration there has been one significant final OSHA rule issued – the cranes and derricks standard issued in 2010 – a rule that was initiated by the Bush administration in 2003 and designated as a high priority, but never completed.

Indeed over its entire 40 year history, OSHA's regulatory activity has been fairly limited. Since 1971, there have been 34 significant health standards issued (some of these updates and revisions for the same hazard), and about 50 significant safety standards put in place by the agency. (Attachment 1). For many serious hazards there are no regulations or regulations are woefully out of date.

The majority of OSHA regulations that are on the books today come from industry consensus standards that were adopted right after the passage of the Act at Congress' direction. Many of these consensus standards were developed in the 1950's and 1960's and based on science and technology that is outdated and more than 60 years old. These standards do not protect workers.

The regulatory process itself is not working to produce needed regulations in a timely fashion. Layers of additional requirements and regulatory analyses have been added by Congress and through executive orders. These requirements have made the process more complicated and costly and added years to the process. It now takes OSHA 10 years to develop and issue a major rule, once it determines a regulation is needed. These years of delay put workers at continued risk of disease and injury and cost workers their lives.

Even rules that have broad support from employers, unions and workers alike must go through this process, and take years to issue. The OSHA cranes and derricks rule was initiated in 2003 under a negotiated rulemaking committee of employers, unions and government representatives that reached unanimous agreement on a draft standard in 2004. But due to endless analytical and review requirements, a proposed rule was not issued until 2008 and the final rule not promulgated until 2010. During these years of delay a number of serious catastrophic crane accidents occurred in New York, Miami, Las Vegas and other cities causing multiple fatalities to workers and the public. Based on OSHA risk estimates in the final standard, the six year delay in the rule resulted in 132 unnecessary deaths and 1,050 preventable injuries.

Since taking office the Obama administration has moved to resuscitate OSHA's moribund regulatory program. Much of the effort to date has been directed at completing rules that were initiated by the Bush administration or even earlier, and have been under development for years. In addition to the cranes and derricks rule, long overdue rules on global harmonization for hazard communication, confined space entry in construction, protective equipment for electrical power distribution, and silica have been priorities.

The agency's new rulemaking efforts have focused on rules to address serious hazards. These include rules to prevent combustible dust explosions, like the 2008 explosion at the Imperial Sugar Plant in Georgia that killed 14 workers, the food flavoring chemical diacetyl which has caused disabling and fatal lung disease in factory workers, and to protect healthcare workers from infectious diseases, including pandemic influenza. The agency has proposed several rules to improve the usefulness of workplace injury and illness information including reinstating a

requirement that employers identify which injuries and illnesses are musculoskeletal disorders (MSDs) by checking a box on the OSHA 300 injury log. And the development of a rule on workplace injury and illness prevention programs has been designated as a top priority by OSHA Assistant Secretary David Michaels. Given the lengthy rulemaking process, except for recordkeeping rules, it is unlikely that any of these new initiatives will even be proposed for a number of years, with final action being years down the road.

### **Business Groups Want to Stop All New Regulations, Even Rules on Well-Recognized, Deadly Safety and Health Hazards**

For eight years the Bush administration implemented a de facto moratorium on Department of Labor rules. The business community welcomed this inaction, and is now seeking to block the Obama administration from issuing any new protections at OSHA and other agencies.

At OSHA business groups have focused their efforts on opposing and stopping the agency's silica standard, injury and illness program prevention rule and recordkeeping rule on MSDs. All of these rules have been under consideration and/or development for years. Nothing about these rules is extreme or radical. All of them address well recognized serious safety and health problems, and seek to do so through the application of long standing safety and health practices and regulatory approaches.

The injury and illness program prevention rule would require employers to put in place a program to identify and correct hazards in the workplace on an ongoing basis. This systematic approach to addressing workplace hazards is the foundation for workplace safety and health efforts. This approach has been the basis of all of OSHA's voluntary programs and is widely advocated by consensus standards organizations and safety and health professionals. Regulations or free standing laws requiring safety and health programs have been adopted by more than 20 states, including the states of Washington, California and Minnesota, which have had requirements for decades. The Reagan administration developed detailed guidelines on safety and health programs in 1989, and the George H.W. Bush administration explored the development of a safety and health program rule. A draft rule was developed during the Clinton administration and underwent SBREFA review in 1998. The development of a safety and health program rule was a priority for OSHA Assistant Secretary John Henshaw during the George W. Bush Administration. But the Chamber of Commerce and other industry groups objected and the rule was pulled from OSHA's regulatory agenda.

The history on the MSD recordkeeping rule is similar. For 30 years under OSHA's injury and illness recordkeeping rule, employers were required to record all work-related injuries and illnesses on the OSHA log. For seven categories of illnesses, including disorders related to cumulative trauma (CTDs), employers were required to check a box identifying the type of illness. This information helped identify particular types of illnesses both in the workplace and in national statistics and was useful in targeting prevention efforts. For CTDs this information identified major growing problems with ergonomic hazards in the 1980's and 1990's industries like meat packing and automobile assembly and led to major prevention efforts in these sectors.

In 2001, OSHA revised and updated its injury and illness recordkeeping rule, largely in response to industry requests that the agency clarify and simplify recording requirements. In that rule OSHA replaced the earlier CTD column with two columns, one for identifying hearing loss cases and another to identify musculoskeletal disorders (MSDs). But at the urging of business groups the Bush administration stayed the rule and in 2003 removed the requirement that MSDs be identified and deleted the MSDS column from the OSHA 300 injury log. This came after the repeal of OSHA's ergonomics standard in 2001, meaning that not only were there no rules to protect workers from MSDs, there was no easy tool for identifying and tracking these injuries.

In January 2010, the Obama administration proposed to reinstate the MSD column on the OSHA 300 log. Business groups have vigorously objected to this simply requirement claiming that it imposes far reaching new recordkeeping burdens that will be impossible to meet. But the proposed rule does not change OSHA recordkeeping requirements or require additional injuries and illnesses to be recorded. It simply requires employers to check a box to identify which injuries and illnesses are MSDs, similar to requirement that existed for 30 years under OSHA's previous recordkeeping rule. Due to business pressure and objections, OSHA withdrew the MSD recordkeeping rule from OMB review in January in order to receive more input from small businesses about their concerns, even though the OSHA recordkeeping rule exempts most small businesses from keeping any injury records due to their small size or inclusion in an industry designated as low hazard. Those special sessions with small business groups were held in April and OSHA has taken additional comments from all interested parties. Hopefully the agency will move forward and issue this simply requirement to help employers and workers identify and take action to prevent MSDs which remain the largest source of workplace injuries and illnesses in the country.

OSHA's efforts to regulate silica are also under attack. Silica is one of the longest recognized occupational health hazards. It causes silicosis, a disabling, sometimes fatal lung disease. It also causes cancer. Public health experts estimate that 280 workers die each year from silicosis in the United States and thousands more develop silicosis due to workplace exposures. Eradicating silicosis has been a priority for the Department of Labor for decades starting with efforts by Frances Perkins in the 1930's. OSHA first initiated rulemaking on silica in 1974 with the publication of an advance notice of proposed rulemaking (ANPR). But due to changes in administration and leadership that rulemaking was not advanced. In 1996 the Department of Labor conducted a major campaign to educate workers and employers about the hazards of silica and to reduce workplace exposures.

The current OSHA rulemaking on silica was initiated in 1997, more than 14 years ago. (See Attachment 2 for timeline on the silica standard). In its 2002 Fall Regulatory Plan, the Bush administration designated a new OSHA silica rule as a regulatory priority. The required small business review on the draft silica rule was completed in 2003, but years of foot dragging by the Bush Administration stalled progress on the rule. The OSHA silica rule was designated as a regulatory priority by the Obama administration in 2010. OSHA completed the required analyses and peer reviews and submitted the draft silica rule to OMB for review under Executive Order 12866 on February 14, 2011. More than seven months later, it is still under review despite the provisions of the EO limiting reviews to 90 days with one 45 day extension permitted. While the draft rule has been at OMB, there has been a parade of industry groups who have met behind



closed doors with OMB seeking to have the rule stopped or weakened. They claim that present standards are adequate and no further action is required.

We strongly disagree. As noted earlier, silica remains a significant occupational health hazard causing hundreds of deaths from silicosis each year, and many more deaths from lung cancer. The current silica standards for construction and general industry were developed in the 1960's and adopted by OSHA in 1972. The OSHA construction silica standard is based on a measurement technique that is obsolete and no longer available. Converting this standard to gravimetric terms which can be measured allows for construction workers to be exposed to silica levels that are more than twice those permitted for general industry. The existing silica standards are limited to a permissible exposure limit; there are no requirements for employers to monitor worker exposures, conduct medical exams for exposed workers or even to train workers on the hazards of silica.

According to OSHA's preliminary risk estimates reducing silica exposures to NIOSH's recommended level of 50 ug/m<sup>3</sup> would prevent 60 worker deaths a year – 44 from silicosis and 19 from lung cancer, and hundreds of cases of non-fatal silicosis annually. By these estimates, during the 14 years the silica standard has been under development, 800 workers have died due to the lack of a protective silica standard.

We point out that OSHA's silica rule has not yet even been proposed. The proper place for to have the debate over the need for the standard and its merits are in a public rulemaking before the agency with the authority and expertise to issue the rule, where all parties have equal opportunity to comment on the agency's proposal and analyses, express their views and present evidence. In addition the OSH Act provides for public hearings on the rule where all interested parties will have the opportunity to testify and to cross examine the agency and other witnesses, providing extensive opportunity for input and participation in the rulemaking process.

It is time to move forward with the OSHA silica standard, and get on with this rulemaking.

Another OSHA safety initiative that has also recently come under attack is the agency's efforts to protect construction workers from roof falls in the residential construction industry. Fatal falls are a leading cause of workplace deaths. In 2010 BLS reported 598 fatal injuries from falls, with 260 of these deaths in the construction industry, including 84 fatalities due to falls in residential construction.

The 1994 construction fall protection standard put in place requirements for construction employers to utilize fall protection measures such as body harnesses and guardrail systems to protect workers. But due to industry concerns, in 1995 certain residential roofing operations were temporarily exempted from using fall protection equipment and methods set forth in the standard. Since that time, fall protection equipment has become widely available and industry practice has changed. In order to have uniform effective fall protection standards in all construction operations, OSHA's labor- management Advisory Committee on Construction Safety and industry groups, including the National Association of Home Builders asked OSHA to rescind the 1995 exemption and apply the 1994 standard in all operations. After consulting widely with industry, unions and others and receiving public comment, in December 2010

OSHA issued a new compliance directive to fully implement the 1994 fall protection standard and require the use of fall protection in all residential construction operations. This action was also supported by the states. Nine state OSHA plans never adopted the temporary exemption, and now 10 more states have reinstated the residential home building fall protection requirements.

But now, in this current anti-regulatory environment, the home builders have changed course and are taking the position that the fall protection standard is too complex and difficult to follow. They are seeking to block enforcement of the fall protection standard in residential roofing operations. Last week, the Chair of the House Subcommittee on Labor-HHS Appropriations took up their cause by including a prohibition on enforcing the fall protection rule in the draft appropriations bill that covers OSHA.

If we as a country are not willing to protect workers from disabling lung disease from exposure to a well recognized hazard like silica or from being killed by falls from roofs, we should ask what kind of country are we or will we become?

**The United States Should Not Turn Back the Clock and Put Workers In Greater Danger. The Country Must Move Forward and Strengthen Worker Safety and Health Protections**

For the past forty years as a matter of national law, the country has set as its goal and policy the protection of workers from injuries, illnesses and death on the job. The framework of government regulations and enforcement established by the Occupational Safety and Health Act has been successful in reducing exposures to workplace hazards and reducing the toll of job injuries, diseases and deaths. We should continue on this path and build on this progress.

We should start by moving forward with needed rules on silica, infectious diseases, combustible dust and other major hazards that put workers in danger. We should determine how to update permissible exposure limits for toxic chemicals, on which there is wide agreement that these limits are out of date and need to be modernized. Indeed, in March the U.S. Dept. of Commerce called for the update of these limits in comments to the Department of Labor on its regulatory review. We should revive the earlier effort by unions, employers, safety and health professionals and the government to come up with a plan for revising the PELs either through rulemaking, by statute or both.

Given its limited resources, OSHA needs to better target its enforcement and other programs to workplaces and hazards that pose the greatest risks. Better targeting strategies and criteria for inspections are needed as are better metrics for evaluating effectiveness of programs.

OSHA enforcement must be strengthened to provide a greater incentive to comply and to deter violations. Recently OSHA has taken steps in this direction by revamping its enforcement program to focus more effectively on severe and repeated violators and to enhance penalties for high gravity violations. These policies provide stronger enforcement for those employers with significant and severe violations, and should be welcomed by employers who make good faith efforts to comply with the law.

But even with these new policies and actions by OSHA, enforcement remains relatively weak, in large part due to deficiencies in the OSH Act itself. Since the law was enacted in 1970, there have been no significant changes in the statute, except for an increase in the maximum penalties adopted in 1990. OSHA is one of two agencies exempted from the Federal Civil Penalties Inflation Adjustment Act, so unlike for most other agencies, there have not even been inflationary increases in penalties for violations of workplace safety requirements.

Under the OSH Act, the current maximum penalty for a serious violation of the law is \$7,000. This maximum penalty applies to all serious violations, even in cases of worker fatalities. In FY 2010, the median initial total penalty for fatality cases was just \$7,000, reduced to \$5,600 after contest or settlement, surely not a sufficient sanction for violations that are the most grave and result in death, or adequate to change employer behavior and deter future violations.

The OSH Act needs to be updated to strengthen enforcement and to provide workers greater protection. The Protecting America's Workers Act (PAWA) that has been introduced in this and other recent congresses is a good place to start. PAWA would adjust OSHA penalties for inflation and keep them up to date. It would set higher maximum penalties for violations resulting in worker deaths to ensure more adequate enforcement in these cases. It would strengthen criminal penalties to make willful violations that result in death and serious bodily a potential felony, rather than a misdemeanor. The legislation would require employers to abate serious hazards to protect workers during the contest of violations, and bring the anti-discrimination provisions of the OSH Act into line with other safety and whistleblower laws. And the legislation would finally provide coverage for the more than 8 million public sector workers who lack safety and health protection under the OSH Act.

Enactment of the Protecting America's Workers Act would bring our safety and health law into the 21<sup>st</sup> century and ensure continued progress in reducing job injuries, illnesses and deaths and protecting workers on the job.

In conclusion, I urge the committee and the Congress to reject the efforts by some in the business community and others to block and weaken government safeguards to protect workers from harm. We should not abandon the progress made over the past four decades and turn back the clock on our commitment to safer workplaces. Taking that path will lead to more workers being injured, diseased and killed on the job. That is not the kind of country we are, and it is not the kind of country we should become.

We must maintain the commitment and promise in the OSH Act that every worker in this country has a right to a safe job, and the right to return home from work safe and sound each day. We must work together to make sure that continued progress is made and that promise is fulfilled.

**Significant OSHA Health Standards Since 1971**

<u>Standard</u>	<u>Year Final Standard Issued</u>
1. Asbestos	1972
2. Fourteen Carcinogens	1974
3. Vinyl Chloride	1974
4. Coke Oven Emissions	1976
5. Benzene (vacated)	1978
6. DBCP	1978
7. Arsenic	1978
8. Cotton Dust	1978
9. Acrylonitrile	1978
10. Lead	1978
11. Cancer Policy	1980
12. Access to Medical Records	1980
13. Hearing Conservation	1981
14. Hazard Communication	1983
15. Ethylene Oxide	1984
16. Asbestos (updated)	1986
17. Field Sanitation	1987
18. Benzene	1987
19. Formaldehyde	1987
20. Permissible Exposure Limits (PELs) Update (vacated)	1989
21. Chemical Exposure in Laboratories	1990
22. Bloodborne Pathogens	1991
23. 4,4'-methylenedianiline	1992
24. Cadmium	1992
25. Asbestos (partial response to court remand)	1992
26. Formaldehyde (response to court remand)	1992
27. Lead – (construction)	1993
28. Asbestos (response to court remand)	1994
29. 1,3-Butadiene	1996
30. Methylene Chloride	1998
31. Respiratory Protection	1998
32. Ergonomics (revoked)	2000
33. Bloodborne Pathogens/Needlestick Injuries	2001
34. Hexavalent Chromium (response to court order)	2006

Source: Code of Federal Regulations.

## Significant OSHA Safety Standards Since 1971

<u>Standard</u>	<u>Year Final Standard Issued</u>
1. Cranes/derricks (load indicators)	1972
2. Roll-over protective structures (construction)	1972
3. Power transmission and distribution	1972
4. Scaffolding, pump jack scaffolding and roof catch platform	1972
5. Lavatories for industrial employment	1973
6. Trucks, cranes, derricks and indoor general storage	1973
7. Temporary flooring-skeleton steel construction	1974
8. Mechanical power presses – (“no hands in dies”)	1974
9. Telecommunications	1975
10. Roll-over protective structures of agricultural tractors	1975
11. Industrial slings	1975
12. Guarding of farm field equipment, farmstead equipment and cotton gins	1976
13. Ground-fault protection	1976
14. Commercial diving operations	1977
15. Servicing multi-piece rim wheels	1980
16. Fire protection	1980
17. Guarding of low-pitched roof perimeters	1980
18. Design safety standards for electrical standards	1981
19. Latch-open devices (on gasoline pumps)	1982
20. Marine terminals	1983
21. Servicing of single-piece and multi-piece rim wheels	1984
22. Electrical Safety in Construction (Part 1926)	1986
23. General Environmental Controls – TAGS Part (1910)	1986
24. Marine Terminals – Servicing Single Piece Rim Wheels (Part 1917)	1987
25. Grain Handling Facilities (Part 1910)	1987
26. Safety Testing of Certification of Certain Workplace Equipment and Materials (Laboratory Accreditation Revision)	1988
27. Crane or Derrick Suspended Personnel Platforms (Part 1926)	1988
28. Concrete and Masonry Construction (Part 1926)	1988
29. Mechanical power presses – (“no hands in dies”) – (Modified)	1988
30. Powered Platforms (Part 1910)	1989
31. Underground Construction (Part 1926)	1989
32. Hazardous Waste Operations (Part 1910) (Mandated by Congress)	1989
33. Excavations (Part 1926)	1989
34. Control of Hazardous Energy Sources (Lockout/Tagout) (Part 1910)	1989
35. Stairways and Ladders (Part 1926)	1990
36. Concrete and Masonry Lift-Slab Operations	1990

37. Electrical Safety Work Practices (Part 1910)	1990
38. Welding, Cutting and Brazing (Part 1910) (revision)	1990
39. Chemical Process Safety	1992
40. Confined Spaces	1993
41. Fall Protection	1994
42. Electrical Power Generation	1994
43. Personal Protective Equipment	1995
44. Logging Operations	1995
45. Scaffolds	1996
46. PPE for Shipyards	1996
47. Longshoring and Marine Terminals	1997
48. Powered Industrial Truck Operator Training	1998
49. Confined Spaces (amended)	1998
50. Dipping and Coating (plain language re-write)	1999
51. Steel Erection	2001
52. Electrical Equipment Installation	2007
53. Employer Payment for Personal Protective Equipment	2007
54. Cranes and Derricks in Construction	2010

Source: Code of Federal Regulations.

## **Timeline on OSHA Silica Standard**

1972 – OSHA adopts 1968 ACGIH TLV of  $10 \text{ mg/m}^3 \div (\% \text{ quartz} + 2)$  as the general industry permissible exposure limit. The ACGIH standard was proposed in 1968.

1972 – OSHA adopts ACGIH TLV of  $250 \text{ mppcf} \div (5 \text{ quartz} + 5)$  as the permissible exposure limit for silica in the construction industry. The ACGIH standard was originally set in 1962.

1974 – NIOSH issues criteria document recommending silica exposure limit of  $50 \text{ ug/m}^3$ .

1974 – OSHA issues Advance Notice of Proposed Rulemaking on revising and strengthening the silica standard for general industry and construction.

1991 – National Toxicology Program (NTP) classifies silica as “reasonably anticipated to be a human carcinogen.”

1996 – International Agency for Research on Cancer (IARC) classifies silica as “carcinogenic to humans.”

1996 – Department of Labor launches major campaign on silica to reduce exposures and protect workers from silicosis in general industry, construction and mining. OSHA conducts special emphasis enforcement programs on silica.

1997 – OSHA puts silica on the regulatory agenda.

2000 – National Toxicology Program (NTP) lists silica as “known to be a human carcinogen.”

2002 – Bush Administration designates a new OSHA silica standard as a high priority in the Fall

2002 Regulatory Plan and Agenda.

2003 – The draft silica standard undergoes review by a small business panel under the Small Business Regulatory Fairness Enforcement Act (SBREFA).

2004 – The State of New Jersey enacts legislation banning the dry cutting and grinding of masonry to prevent silicosis and mandates the use of engineering and work practice controls to limit dust exposures where wet methods are not feasible.

2004 – 2008 – Work on the silica standard stalls. The required peer reviews are not conducted.

2008 – Cal/OSHA adopts regulations requiring the use of a dust reduction system in operations in which power tools or equipment are used to cut, grind, core or drill concrete or masonry materials.

2009 – International Agency for Research on Cancer (IARC reaffirms the classification of silica as “carcinogen to humans.”

2009 – The Obama administration designates the standard silica as a high priority in the Fall 2009 regulatory agenda and conducts the required peer reviews.

2010 – The draft proposed standard is prepared and required regulatory analyses completed.

2011 – On February 14, 2011, the draft silica proposed standard is submitted for OMB review under Executive Order 12866.

2011- Outside groups meet with OMB to convey their views on the standard.

2011 – On May 13, OMB’s review of the draft proposed silica rule is extended.

2011 – June – August – Industry groups continue to meet with OMB, with many industry groups advocating that the standard be stopped or weakened.

2011 – October – The draft proposed silica standard is still under review at OMB, more than seven months after it was submitted. The review has exceeded the 90 day review period and 45 day extension of review provided under Executive Order 12866.