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**BEFORE THE**

**COMMITTEE ON EDUCATION AND THE WORKFORCE  
SUBCOMMITTEE ON WORKFORCE PROTECTIONS**

**U.S. HOUSE OF REPRESENTATIVES**

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## **Introduction**

Chairman Walberg, Ranking Member Wilson and distinguished Members of the Subcommittee, thank you for inviting me here today. As Assistant Secretary of Labor for the Occupational Safety and Health Administration (OSHA), I am honored to testify before you about the important work the Department is doing to assure the health, safety and dignity of America's workers.

The Obama Administration is committed to helping workers reach and stay in the middle class by getting and maintaining good jobs. Workplace injuries, illnesses and fatalities stand in the way of workers earning a living wage. Today's sad reality is that many workers, and the families they support, are one job injury away from falling out of the middle class.

Under the Occupational Safety and Health (OSH) Act of 1970, employers have the responsibility to provide a workplace free of recognized hazards. The law gives us a range of tools and strategies and OSHA attempts to apply them in ways that will be most effective and efficient.

Working together, OSHA, our state partners, employers, unions, and health and safety professionals have made great strides in reducing the incidence of workplace injuries, illnesses and fatalities. In 1970, an estimated 14,000 workers were killed on the job, an annual rate of 18 per 100,000 or about 38 workers killed on the job every day. Today, with a workforce almost twice as large, that rate has fallen to 3.3 per 100,000, or about 13 workers killed every day. Injuries and illnesses also are down dramatically -- from 10.9 per 100 workers per year in 1972 to less than 3.3 per 100 workers in 2013.

OSHA's safety and health standards -- including rules for asbestos, fall protection, cotton dust, trenching, machine guarding, benzene, lead and bloodborne pathogens -- have prevented countless work-related injuries, illnesses and deaths. For example, OSHA's 1978 Cotton Dust standard helped drive down the rates of brown lung disease among textile workers from 12 percent to 1 percent. Since OSHA enacted the grain handling standard in the late 1980s, there has been a significant reduction in grain explosions resulting in far fewer worker injuries and deaths. In addition, since OSHA revised the excavation and trenching standard in 1989, there has been a twenty-two percent drop in fatal trenching injuries, even as construction activities have increased by twenty percent. Finally, OSHA's Bloodborne Pathogens Standard and the Needlestick Safety and Prevention Act have helped reduce Hepatitis B infections among healthcare workers by 90 percent.

While this represents great progress, 13 deaths a day is still 13 too many families devastated by the loss of a family member. Furthermore, over the last two decades, the rate of fatal work injuries has reached a plateau and is no longer decreasing as dramatically as it had in earlier years. The preliminary Census of Fatal Occupational Injuries results released by the Bureau of Labor Statistics (BLS) last month show the number of fatal work injuries was 4,679 in 2014, a 2 percent increase over the revised count of 4,585 in 2013. This increase was concentrated in a several particularly hazardous industries.

In addition to workplace fatalities, according to BLS, last year employers recorded almost 4 million serious job related injuries among private and public sector workers on the injury and

illness logs that OSHA requires them to maintain. It is now widely recognized that this statistic, although alarmingly high in itself, is an underestimate, and the actual number of workers who are injured on the job annually is substantially higher.

Workplace injuries and illnesses cause an enormous amount of physical, financial and emotional hardship for individual workers and their families. Combined with insufficient workers' compensation benefits, these injuries and illnesses can not only cause physical pain and suffering but also loss of employment and wages, burdensome debt, inability to maintain a previous standard of living, loss of home ownership and even bankruptcy. At the same time, costs to employers of workplace injuries and illnesses are also substantial, including workers compensation payments, decreased productivity and the costs of replacing injured workers.

These harsh realities underscore the urgent need for employers to provide a safe workplace for their employees as the law requires. That is why OSHA continues extensive outreach and strong enforcement campaigns and will continue to work with employers, workers, community organizations, unions and others to make sure that all workers can return home safely at the end of every day.

I want to briefly describe the work that OSHA has been doing to accomplish this end and improve the safety and health of all American workplaces.

### **Overview of OSHA**

As many of you know, OSHA's mission is to assure safe and healthful working conditions for working men and women by setting and enforcing standards and providing training, outreach, education, and compliance assistance. With a budget of approximately \$550 million, OSHA has a staff of 2,200, including about 1,100 inspectors. State plans have an additional 1,200 inspectors. Field activities are directed by ten regional administrators, who supervise approximately 85 local area offices throughout the United States. OSHA has approximately 350 staff in the National Office.

We are a small agency with a large mission -- ensuring the safety and health of roughly 130 million workers, employed in somewhere between 7 and 8 million workplaces all across the country. OSHA and its state partners are accomplishing the gains discussed above with relatively fewer personnel. In the late 1970s, there were about 36 federal and state compliance officers for every million covered workers. In the second half of the last decade, that ratio dropped below 20. Currently, there are less than 20 inspectors for every million covered workers.

With limited resources, we achieve this mission through a balanced approach, consisting of standards, enforcement, compliance assistance and outreach, and whistleblower protection.

### **Standards**

OSHA's common sense standards have made working conditions in America today far safer than 44 years ago when the agency was created, without slowing the growth of American business. Developing OSHA regulations is a complex and long process, with extensive public consultation

before any new standards are issued including, depending on the standard, requests for information, stakeholder meetings, Small Business Regulatory Enforcement and Fairness Act (SBREFA) panels, public hearings, and pre- and post-hearing comment periods. We are required by law to ensure that our standards are economically and technically feasible. Over the past few years, OSHA has finalized long-awaited standards to protect shipyard workers and electrical workers, a standard protecting workers from hazards associated with cranes and derricks, a confined spaces standard for construction workers, as well as a standard to harmonize chemical hazard communication with programs around the world. In addition, we finalized a rule expanding requirements for employers to notify OSHA when a worker is killed on the job, or suffers a work related hospitalization, amputation or loss of an eye.

We have made significant progress in protecting workers from exposure to silica dust which causes silicosis, renal disease, chronic obstructive pulmonary disease, and lung cancer. Silica has been known for hundreds of years to cause deaths and severe lung disease. Secretary of Labor Frances Perkins, more than 75 years ago, committed the country to eliminating silica related disease. Our current standards are over 40 years old and the overwhelming weight of science has shown these antiquated standards to endanger workers' health.

OSHA held three weeks of public hearings on our proposal last year, and accepted public comment on our proposal for almost a year. This critical update to the current standards will better protect workers and modernize inadequately protective, antiquated and difficult-to-use rules.

### **Enforcement**

Earlier this year in Houston, Texas, a worker was hospitalized with broken arms and severe contusions after falling 12 feet off of a roof. The saddest part of this case wasn't that the employer did not provide fall protection for this worker; it was that the worker had actually requested fall protection and the employer had denied it. The employer then waited three days to report the incident to OSHA, despite a requirement to do so within 24 hours.

And in February 2014, Sarah Jones, a 27-year-old camera assistant, was killed while trying to escape an oncoming freight train during the filming of a scene for the movie "Midnight Rider." The company had been denied authorization to film on live railroad tracks, but decided to do so anyway and put the lives of its crew at risk in the process. Sarah Jones paid the ultimate price for that decision and eight other workers were injured.

This type of willful disregard for the safety of workers is why enforcement remains one of OSHA's fundamental tools. Our enforcement program specifically targets the most dangerous workplaces, where workers are most likely to be hurt on the job, and the most recalcitrant employers. We recognize that most employers want to keep their employees safe and make great efforts to protect them from workplace hazards. But there are still far too many employers that cut corners on safety and neglect well recognized OSHA standards and basic safety measures.

For this second category of employers, enforcement remains an effective deterrent. In the last several years, we have made strong, fair and effective enforcement one of OSHA's primary

objectives. OSHA's targeted Severe Violator Enforcement Program includes increased OSHA inspections of recalcitrant employers, mandatory follow-up inspections, and inspections of other worksites managed by the same employers. Under this program, we are uncovering more systemic problems -- sometimes in multiple worksites owned by the same employer, and sometimes across entire industries. Rooting out systemic problems can eventually make a huge difference in the lives of tens of thousands of workers.

### **Compliance Assistance and Outreach**

Because the vast majority of employers want to do the right thing and protect their workers from harm, OSHA is committed to providing assistance. For those employers who need technical assistance, we provide free on-site consultations to small employers, as well as other compliance assistance, educational materials and training.

We want to make sure that no small business in this country fails to protect its workers simply because it can't afford good safety information or doesn't understand how to comply with safety and health standards.

Last year we provided assistance to more than 200,000 individuals by phone and answered an additional 23,000 e-mail requests for help. In FY 2014, OSHA's On-site Consultation Program conducted more than 26,700 free on-site visits to small and medium-sized business worksites employing almost 1.3 million workers nationwide. On-site consultation services are separate from enforcement and do not result in penalties and citations.

Operated through offices in every state, this free service saves small- and medium- sized employers money and reduces workplace injuries. Consultants from state agencies or universities work with these businesses to: identify workplace hazards; provide advice on compliance with OSHA standards; and help employers establish injury and illness prevention programs.

OSHA's standards are the minimum legal requirements, but many employers go further and establish safety and health management systems (also known as injury and illness prevention programs) to protect their employees more effectively. OSHA recognizes those employers through several cooperative programs under which businesses, labor groups, and other organizations work cooperatively with OSHA to help prevent injuries, illnesses and fatalities in the workplace. OSHA's Voluntary Protection Program (VPP) recognizes employers and workers in industry and federal agencies who have implemented effective safety and health management systems and who maintain injury and illness rates below the national average for their industries. OSHA's Safety and Health Achievement Recognition Program (SHARP), run by the state Consultation programs, recognizes small business's exemplary safety and health management systems.

OSHA also provides extensive outreach and assistance to employers and workers to help them prevent injuries and understand OSHA requirements and best practices. Accompanying OSHA standards are web pages, fact sheets, guidance documents, on-line webinars, interactive training programs and special products for small businesses. In addition, there is a compliance assistance

specialist in almost all of OSHA's 85 area offices who assists employers and workers in understanding hazards and how to control them.

Lastly, OSHA's Outreach Training and the OSHA Training Institute Education Centers Programs trained more than 825,000 workers, supervisors and employers in the last year. These training programs are an integral part of OSHA's outreach plans through timely dissemination of knowledge and training on new occupational safety and health initiatives and standards to both the public and private sectors.

### **Whistleblower Protection**

In passing the OSH Act, Congress understood that workers play a crucial role in ensuring that their workplaces are safe, but also recognized that employees would be less likely to participate in safety or health activities, or to report hazardous conditions to their employer or to OSHA if they feared their employer would fire them or otherwise retaliate against them. For that reason, section 11(c) of the OSH Act prohibits discrimination against employees for exercising their rights under the law. In the decades since the passage of the OSH Act, Congress has enacted several other statutes containing whistleblower protection provisions and has given OSHA responsibility for enforcing most of them. This is a strong acknowledgement that workers are this Nation's eyes and ears, identifying and helping to control not only hazards facing workers at jobsites, but also practices that endanger the public's health, safety, or well-being and the fair and effective functioning of our government.

Whistleblowers serve as a check on the government and business, shining a light on illegal, unethical, or dangerous practices that otherwise may go uncorrected. Whether the safety of our food, environment, transportation systems, or workplaces; or the integrity of our financial systems is at issue, whistleblowers help to ensure that the laws that protect the public's safety, health and well-being are fairly executed. OSHA is a small agency with a big role to fill in protecting whistleblowers. We take our responsibility under all 22 whistleblower statutes very seriously, and protecting whistleblowers has been a priority of this administration.

Over the last several years, we have implemented a number of significant structural and programmatic changes to strengthen our whistleblower program. OSHA has established the Whistleblower Protection Program as a separate Directorate, with its own budget; developed an online form so that employees can file complaints electronically; enhanced training; streamlined investigation procedures; and, with additional resources appropriated by Congress, significantly increased staffing. In addition, by updating our Whistleblower Investigations Manual and establishing a Federal Advisory Committee on Whistleblower Protections, we have been able to improve our enforcement efforts, including enhancing the completeness and consistency of our investigations of complaints filed under the anti-retaliation statutes that OSHA administers.

### **OSHA Initiatives**

#### ***EO 13650 Actions to Improve Chemical Facility Safety and Security***

Late last year, at a DuPont chemical plant in LaPorte, Texas, 4 workers died -- including two brothers -- as a result of a release of highly toxic methyl mercaptan. Unfortunately, chemical facilities continue to experience serious incidents that not only kill and injure workers at these plants, but also threaten the health and safety of those living nearby. Since 2009, at least 28 significant process safety related incidents have occurred, resulting in over 79 fatalities, multiple injuries, and extensive consequences for work places and communities.

A catastrophic failure of a heat exchanger in Geismar, Louisiana in June 2013, resulted in a fire and explosion that killed two workers. And, of course, there was the tragic explosion at the West Fertilizer Company in West, Texas, which killed 15 people in April of 2013 and destroyed surrounding buildings, including a middle school and a nursing home. The West Fertilizer explosion came only three years after the Deepwater Horizon explosion that killed 11 workers and created the biggest environmental catastrophe in our Nation's history.

These tragedies prompted President Obama, on August 1, 2013, to issue Executive Order (EO) 13650 - Improving Chemical Facility Safety and Security, to enhance the safety and security of chemical facilities and to reduce the risks associated with hazardous chemicals to workers and communities. The EO directed the Environmental Protection Agency (EPA), the Department of Labor (DOL), the Department of Homeland Security (DHS), the Department of Justice (DOJ), the Department of Agriculture (USDA), and the Department of Transportation (DOT) to identify ways to improve operational coordination with State, local, tribal, and territorial partners; to enhance Federal agency coordination and information sharing; to modernize policies, regulations, and standards to enhance safety and security in chemical facilities; and to work with stakeholders to identify best practices to reduce safety and security risks in the production and storage of potentially harmful chemicals.

To accomplish goals set by the President, an interagency working group (National Working Group) was established that includes other Federal departments and agencies involved in the oversight of chemical facility safety and security. Recognizing that stakeholders are essential to managing and mitigating the risks of potential chemical facility hazards, the National Working Group initiated a robust stakeholder outreach effort to assist in identifying successes and best practices.

After conducting a thorough analysis of the current operating environment and existing regulatory programs and obtaining stakeholder feedback, the National Working Group took a number of actions to minimize risks and developed a consolidated Federal Action Plan outlining additional actions to further minimize risks. These actions focus on five principles:

- Strengthening community planning and preparedness;
- Enhancing Federal, State, local, and tribal operational coordination;
- Improving data management;
- Modernizing policies and regulations; and
- Incorporating stakeholder feedback and developing best practices.

The National Working Group has relied heavily on stakeholder input and feedback in the development of the Action Plan, and we continue to keep stakeholders involved in its implementation. Altogether, a dozen public listening sessions were held in addition to meetings

with scores of stakeholders from industry, labor and environmental organizations since the report was released. In addition, the EO Executive Committee held a public webinar on November 10, 2014, to update the public on our progress.

In addition, OSHA has made significant progress in updating key programs designed to protect workers.

- OSHA issued an RFI in November 2013 seeking public input on possible improvements for its Process Safety Management (PSM) standard and, in June 2015, initiated a Small Business Regulatory Flexibility Review Act (SBREFA) panel to get feedback from small businesses.
- OSHA issued new policy memoranda, explaining how it will apply the standard to chemicals without concentrations listed in Appendix A, memorializing its existing interpretation of the term Recognized and Generally Accepted Good Engineering Practices or RAGAGEP, and clarifying the definition of retail facilities.
- Both OSHA and EPA are considering new requirements in PSM and RMP for the use of safer technology and alternatives. As an interim measure, the agencies issued a joint alert promoting the use of safer technologies and alternatives. This alert includes information on best practices from industry and is the beginning framework for safer technology and alternatives.
- Regional Working Groups (RWGs) were established in all ten Federal Regions under the leadership of regional tri-chairs from DHS, EPA, and OSHA. The RWGs are holding regular meetings to foster relationships with regional and local stakeholders and share best practices.

The Working Group has made progress in furthering Ammonium Nitrate safety and security:

- EPA, OSHA, and ATF have updated and re-issued the Chemical Advisory on Safe Storage, Handling, and Management of Ammonium Nitrate, which was originally issued in August 2013. It incorporates stakeholder comments and concerns, as well as the latest practices in Ammonium Nitrate safety.
- OSHA issued a letter and additional materials to major stakeholders in the fertilizer industry to emphasize current requirements for Ammonium Nitrate storage.
- The Fertilizer Safety and Health Partners Alliance was formed between OSHA and the fertilizer industry, emergency response organizations, and other working group agencies to provide guidance and training resources to better protect the health, safety, and security of chemical facility work.
- OSHA also issued guidance to Regional Administrators on enforcement of the Explosives and Blasting Agents Standard and is in the process of developing Regional and Local emphasis programs to more effectively enforce standards for the safe storage of ammonium nitrate.

### ***Severe Injury Reporting Program***

On January 1st, OSHA changed the way we do business by requiring employers to report -- in addition to all work related fatalities -- every hospitalization, amputation and loss of an eye. Before 2015, employers were only required to report to OSHA work related fatalities or



incidents where three or more workers were hospitalized. Often, when we conducted inspections of the worksites involved in these tragic events, we found that they had previous serious injuries and amputations that we had never known about. These injuries were red flags that there were serious hazards in this workplace that needed to be prevented.

In the first 9 months of this new policy, we have already received more than 8,700 reports. We are triaging every call and initiating inspections in about a third -- but we are engaging with every employer. For those employers that we are not inspecting, we expect them to conduct an investigation and let us know what changes they will make to prevent further injuries. Investigating a worksite incident -- a fatality, injury, illness, or close call -- provides employers and workers the opportunity to identify hazards in their operations and shortcomings in their safety and health programs. Most importantly, it enables employers and workers to investigate incidents, and identify and implement the corrective actions necessary to prevent future incidents.

Incident investigations that focus on identifying and correcting root causes, not on finding fault or blame, also improve workplace morale and increase productivity by demonstrating an employer's commitment to a safe and healthful workplace. By establishing a relationship with all employers who report these severe injuries, and by encouraging them to investigate the incidents in which the worker was hurt, I believe we will make a huge difference.

Our field staff is already using data from the Severe Injury Reporting Program to focus their life-saving activities. For example, the employer at a sawmill in Kittanning, PA notified the Pittsburgh area office that an employee's left index finger had been amputated while he was operating a large circular saw. The Area Office conducted an inspection and found that the 52 inch blade of the saw was not guarded, along with a variety of other issues. To abate the cited hazards, the company has agreed to retain a qualified safety consultant to help develop a safety and health program and to train company managers concerning the applicable OSHA standards. Given the remote location of this company, absent the new reporting requirement, OSHA would likely never have known of the hazards at this workplace.

This is just one of the many success stories we've seen so far as a result of the new reporting rules. But the successes haven't been limited to our field work. We've also reacted quickly to new information to target compliance assistance where it is badly needed. For example, we developed a new fact sheet on hazards from food slicers and meat grinders used in grocery stores, restaurants and delis based on information we saw in initial reports from the new requirements. This is an issue we likely would not have seen without the new reporting requirements and now, because we did see it, there is a resource to help employers protect workers from these hazards.

### ***Reducing Workplace Exposure to Hazardous Chemicals***

Each year in the United States, tens of thousands of workers die from exposures to hazardous chemicals that they were exposed to years ago. This is why OSHA has launched several initiatives to protect workers from these hazards.

In March 2012 OSHA aligned its Hazard Communication Standard with the Globally Harmonized System of Classification and Labeling. We did this to provide a common, understandable approach to classifying chemicals and communicating hazard information on labels and safety data sheets worldwide.

OSHA has also begun a dialogue with our stakeholders to help prevent work-related illnesses and better protect the health of America's workers. While many workplace chemicals are harmful, only a few are regulated in the workplace, and for most of those, our standards are dangerously out-of-date. The process through which OSHA issues new exposure limits or updates old ones is inefficient, time consuming and unable to address the thousands of chemicals used in industry that need oversight. As a result, we have issued a Request for Information (RFI) to ask stakeholders to help us identify the best approaches to managing chemical hazards and strategies for updating our permissible exposure limits (PELs). We believe this RFI and the dialogue it will initiate are important steps towards protecting the current and future generations of workers who build and sustain our nation's economy.

We know that the most efficient and effective way to protect workers from hazardous chemicals is by replacing them with safer alternatives. Proactive, preventative approaches that drive the elimination of chemical hazards at the source and promote the development and adoption of safer alternatives must be a part of any chemical management strategy. But, in cases where efforts to control chemical hazards do not carefully consider the impact of substitutes, workers may face new or similar hazards. For example, workers in the furniture industry suffered severe neurological damage where 1-bromopropane was used to reduce exposures to methylene chloride.

To address this problem, in 2013, OSHA launched an online toolkit to help employers and workers find ways to eliminate hazardous chemicals, or substitute them with a safer chemical, material, product, or process. The resource includes information, methods, tools, and guidance on using informed substitution in the workplace. Thanks to our safer chemicals toolkit, employers are able to visit our webpage for help. We've also posted annotated PEL tables so employers can voluntarily adopt exposure limits that are more protective than OSHA's PELs.

### ***Protecting Vulnerable Workers***

We are also focusing on protecting day laborers and other vulnerable workers in America who work in high-risk industries. Because of language barriers, literacy, lack of training and other challenges, these workers are often hard to reach, and are also at the greatest risk for injury, illness and death on the job. Latino workers are killed and injured on the job often at higher rates than other workers. While the BLS preliminary data shows a decrease in the rate from 2013 to 2014 for these workers, it is still too high. About 15 Latino workers die on the job every week while often doing the hardest and most dangerous jobs in America.

These vulnerable workers are also the least likely to speak up for their rights. Following the groundbreaking National Action Summit for Latino Worker Health and Safety in Houston in April 2010, OSHA has partnered with consultants, community and faith-based groups, unions, employers, and other government agencies to reach out to vulnerable workers with information

about their rights and to enhance their ability to use these rights. We have translated hundreds of publications into multiple languages and created a Spanish language home page on OSHA's Web site.

OSHA also reminds employers to comply with requirements that they must present information about workers' rights, safety and health training materials, information and instructions in a language and level that their workers can understand. I issued a directive to OSHA inspectors to check for this during site visits to be sure that employers are complying.

In addition, through the Susan Harwood Training Grants Program, OSHA awards grants to nonprofit organizations, community colleges and business associations to provide training and education to vulnerable, hard-to-reach workers. Through outreach and the Harwood program, OSHA has for years helped workers control hazards in nail and hair salons, many of whom are Asian-American immigrants. These training grants focus on the recognition and control of safety and health hazards in workplaces. And last year our Harwood Grantees trained nearly 106,000 workers and employers -- an all-time yearly high!

Finally, we continue to focus on protecting vulnerable workers in high-risk industries through partnerships with consulates, community and faith-based groups, unions, employers, and other government agencies.

### ***Protecting Workers in Oil and Gas Extraction***

Hazardous working conditions are taking the lives of a growing number of workers employed in oil and gas extraction. The oil and gas extraction industry has experienced a fatality rate of several times the average of all U.S. industry over the past 20 years. In addition, the BLS 2014 preliminary data show that the number of fatalities in the oil and gas extraction industry increased 27 percent from the previous year. OSHA is utilizing all its tools to assist employers and workers to address hazards in the oil and gas extraction industry, including enforcement and compliance assistance. OSHA has also expanded its Severe Violators Enforcement Program to the upstream oil and gas industry.

Enforcement of the oil and gas industry presents many unique challenges. It is difficult to identify when these worksites are active because they are transitory, time-limited operations, often in very remote locations. And because the oil and gas industry is exempt from many OSHA standards, we must go through the added legal burden of issuing General Duty Clause citations when we identify clearly unsafe working conditions because these operations are often not covered by specific OSHA standards. General Duty Clause citations are more resource-intensive than citations issued for specific standards. And finally, the multi- or joint-employer structure of the industry presents many legal challenges to traditional enforcement.

Because of the difficulties in enforcement in this area, OSHA has conducted an unprecedented amount of compliance assistance in the oil and gas extraction industry. Our compliance assistance tools include work with alliances, the VPP program, and production of safety and health materials and training for employers and workers.

The National Service, Transmission, Exploration & Production Safety (STEPS) Network is an all-volunteer oil and gas industry organization which was founded in 2003 in South Texas by OSHA and industry, in an attempt to reduce injuries and fatalities in that region. STEPS has continued to grow, currently including twenty-two independent regional networks serving twenty producing states. OSHA has signed formal alliances with eight of the networks and, in December 2014, signed a formal alliance with the National STEPS Network and the National Institute for Occupational Safety and Health (NIOSH).

OSHA has taken a variety of compliance assistance actions. For instance, our free on-site consultation program has conducted 260 visits to oil and gas sites over the last four years. We helped develop an Emerging Issues Focus Group for U.S. Onshore Oil and Gas Extraction and a biannual OSHA Oil and Gas Safety and Health Conference. We have supported stand-downs reaching more than 70,000 workers and identifying over 20,000 hazards since the summer of 2013. In addition to the stand-downs, conferences and consultations, we've produced web resources, publications, hazard alerts about silica hazards and tank gauging hazards, and training materials, including assisting in the development of training for workers in the exploration and production industry. Together with NIOSH, OSHA has identified tank gauging, a previously unrecognized cause of death in oil production. The STEPS Network has now posted alarms and guidance that is available to industry.

Clearly, however, as the latest BLS numbers underscore, these unprecedented compliance assistance efforts have not been sufficient, and we are actively looking at ways to increase our effectiveness in preventing injuries and illnesses in the oil and gas industry.

### *Changing Structure of Work*

Another challenge OSHA must face is with the changing structure of employment relationships. OSHA has long addressed situations where more than one employer has a role in preventing injury and illness and we will continue to shape our work to address the realities of the 21st Century workplace. This is not a major challenge in the oil and gas industry only, as mentioned previously -- it's a challenge in almost every industry.

For example, just a few decades ago, temporary work was relatively rare and concentrated in white-collar professions. But in recent years temporary workers are now commonplace in virtually every type of workplace and their numbers have grown dramatically. According to the American Staffing Association, there are almost 3 million temporary workers in the nation's workforce today -- many doing highly hazardous construction and manufacturing jobs.

Unless properly managed, these structural employment changes greatly increase risks of injuries and illnesses among all the workers in these workplaces. We have found that too often employers do not provide temporary workers with the same protections or training as permanent employees. Similarly, many times employers of different workers at the same worksite fail to communicate about the presence of hazards, therefore endangering some or all the workers at the site.

The results can be tragic, as in the case of Lawrence Daquan "Day" Davis, a 21-year-old temporary worker who died his first day on the job. He was crushed to death by a palletizer

machine at a Bacardi Bottling facility in August 2012. The company had failed to train temporary employees on utilizing locks and tags to prevent the accidental start-up of machines as well as failing to ensure its own employees utilized procedures to lock or tag out machines.

Our Temporary Worker Initiative has made the hazards facing temporary workers a national concern. We continue to insist that host employers and staffing agencies both protect temporary workers on the job, and provide them the same protections as all other workers.

When OSHA investigates a workplace, we consider different work arrangements and if there are multiple employers that are responsible for protecting workers exposed to hazards. Agency inspectors determine, in every inspection, whether **every** worker on the site has received the safety training and protections required by law for the job and, if there is joint employment, which employer is responsible, or depending on the circumstances, whether more than one employer should be held accountable.

OSHA has begun working with the American Staffing Association and employers that use staffing agencies, to promote best practices for ensuring that temporary workers are protected from job hazards. Together we are making sure that both host employers and temporary agencies understand their responsibilities for protecting workers. And we are making sure that all workers in the country understand that they have the right to safe workplaces, and that all workers, including temporary workers, have the right to contact OSHA if they face workplace hazards.

### *Safety and Health Campaigns*

Through nationwide safety and health campaigns, we are trying to ensure that all workers understand the workplace hazards they face and know their rights.

#### *Heat Illness Prevention*

Every year, dozens of workers die due to working in the heat and thousands become ill. In order to raise awareness about these preventable tragedies we are now in our fifth year of the Campaign to Prevent Heat Illness in Workers. In 2011, we launched a partnership with the National Oceanic and Atmospheric Administration (NOAA) and the National Weather Service to educate employers and workers on the dangers of working in the heat. As a result, important worker safety information is now included in all National Weather Service extreme heat alerts and on NOAA's Heat Watch Page.

We also worked with the National Weather Service to develop a smartphone heat safety app that allows users to calculate risk levels in their area code and learn the protective measures needed to prevent heat illness. More than 250,000 people have downloaded the app so far.

Through these efforts, we have reached over 11 million workers and employees and distributed over 800,000 print resources in over 4,150 national and local informational and training sessions.

#### *Fall Prevention*

Falls continue to be the leading cause of death in construction -- they account for roughly one third of all construction deaths. In 2012, we joined with stakeholders in the industry and labor, and with NIOSH in an unprecedented nationwide outreach effort to prevent these fatal falls.

Since then, OSHA has conducted more than 1,000 workshops, presentations, site visits, radio and TV interviews, and discussions with foreign consulates; produced new low-literacy fact sheets, posters, QuickCards, wallet cards, videos and other resources – many in multiple languages; and produced 10 new fall-prevention videos in English and Spanish, which have been viewed more than 32,000 times on YouTube.

We've worked with employers, workers, industry groups, and civic and faith-based organizations to host city-wide safety stand-downs across the country, where workers and employers voluntarily stop for part of the workday to focus on recognizing hazards and particularly on preventing falls. This year's stand down showed how effective these campaigns can be with thousands of employers and millions of workers participating.

### *Protecting Healthcare Workers*

In hospitals and other healthcare facilities, workers are hurt at rates even higher than in construction and manufacturing. OSHA is responding to the alarmingly high rate of worker injuries and illnesses in hospitals and other healthcare settings by helping hospitals and nursing homes recognize the close link between patient safety and worker safety -- we know that managing for worker safety will protect patients, too.

We are also responding to the danger of workplace violence, which disproportionately threatens workers in the healthcare industry. OSHA released updated guidance for preventing workplace violence in healthcare settings and established procedures for investigating these incidents. As we move forward we will continue to hold employers accountable for developing and implementing policies to prevent assaults on healthcare workers.

### **Potential Legislative Initiatives to Improve Worker Protection**

We cannot fully address the challenges facing OSHA in the 21<sup>st</sup> Century alone – we need your help as well. Congress passed the OSH Act in 1970 and while it has helped improve working conditions for American workers over the past 44 years, OSHA has identified areas where legislative updates to modernize the Act could have a significant impact in further improving protections for workers.

### *Civil and Criminal Penalties*

The most serious obstacle to effective OSHA enforcement of the law is the very low level of civil penalties allowed under our law, as well as our weak criminal sanctions. The deterrent effects of these penalties are determined by both the magnitude and the likelihood of penalties. However, OSHA's current penalties are not strong enough to provide adequate incentives.

This is apparent when compared to penalties in other statutes. For example, the Environmental Protection Agency can impose a penalty of \$270,000 for violations of the Clean Air Act and a penalty of \$1 million for attempting to tamper with a public water system. Yet, the maximum civil penalty OSHA may impose when a hard-working man or woman is killed on the job -- even when the death is caused by a willful violation of an OSHA requirement -- is \$70,000.

Similarly, the criminal provisions in the OSH Act are weaker than those in virtually every other safety and health and environmental law. The Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act all provide for criminal prosecution for knowing violations of the law, and for knowing endangerment that places a person in imminent danger of death or serious bodily harm, with penalties of up to 15 years in jail. There is no prerequisite in these laws for a death or serious injury to occur. Yet, under the OSH Act, criminal penalties are limited to those cases where a willful violation of an OSHA standard results in the death of a worker and to cases of false statements or misrepresentations. The maximum period of incarceration upon conviction for a violation that costs a worker's life is six months in jail, making these crimes a misdemeanor.

The Protecting America's Workers Act (PAWA) makes much needed increases in both civil and criminal penalties for every type of violation of the OSH Act and would index civil penalties to increases or decreases in the Consumer Price Index (CPI). In addition, PAWA would also amend the criminal provision of the OSH Act to change the requisite mental state from "willfully" to "knowingly." These changes would be consistent with other protective statutes. Harmonizing the language of the OSH Act with that of these other statutes would add clarity to the law. As we have previously testified, OSHA strongly supports these changes in the law. Simply put, OSHA penalties must be increased to provide a real disincentive for employers accepting injuries and worker deaths as a cost of doing business.

### ***OSHA Coverage for Public Employees***

In addition to making much needed changes to the OSH Act's penalty provisions, PAWA would cover all public employees. There are currently 26 states and two U.S. territories that are State Plans and therefore cover public employees. Twenty-two State Plans (21 states and one U.S. territory) cover both private and state and local government workplaces. The remaining six State Plans (five states and one U.S. territory) cover state and local government workers only. That leaves 10 million employees in 24 states where State and local government workers are left without the right to a safe workplace. These public employees are highway construction workers who work inches from speeding traffic in the middle of the night, firefighters who risk their lives to protect our homes and families, mental health workers, social service workers and corrections officers who face the threat of workplace violence on a daily basis, and wastewater treatment plant workers who wade through raw sewage and deadly gasses to ensure that the water we drink and use on a daily basis is safe. Public employees need the same right to a safe workplace – to come home in one piece at the end of the day – that private sector employees have enjoyed for more than 40 years.

### ***Strengthening Whistleblower Protection Provisions***

In the decades since the OSH Act was passed in 1970, we have learned a great deal from newer anti-retaliation statutes about protecting workers, particularly the statutes passed by the Congress within the last decade. These statutes are more effective at making whole workers who have been retaliated against, and are leading to significant improvements in workplace culture.

To give section 11(c) the teeth it needs to be as effective as newer whistleblower statutes, it must be updated. To this end, OSHA recommends strengthening the procedural requirements of section 11(c) to be consistent with more recent whistleblower statutes, by: (1) providing OSHA with the authority to order immediate preliminary reinstatement of employees that OSHA finds to have suffered illegal termination; (2) modifying the adjudication process to provide a "kick-out" provision which will enable workers to take their disputes to a Federal District Court if the Department fails to reach a conclusion in a timely manner; (3) allowing for a full administrative review of OSHA determinations to the Department of Labor's Office of Administrative Law Judges and Administrative Review Board; (4) extending the statute of limitations for filing complaints; and (5) revising the burden of proof under section 11(c) to conform to the standard utilized in more recently enacted statutes.

### **Conclusion**

We continue to work hard each and every day to ensure employers are protecting their workers from the myriad of safety and health hazards in workplaces across this country. Despite the challenges I have laid out for you today, we have been very successful in making America a safer nation in which to work. Even with our best efforts, every year, still nearly four million workers are injured or made sick at work, and thousands more die from work-related injuries or illnesses.

The financial and social impacts of these injuries and illnesses are huge, with the costs, which should be paid by employers, are borne primarily by the workers and their families, and by taxpayer supported programs. Every one of us has seen how injuries and illnesses can force working families out of the middle class and into poverty, and prevent the families of lower wage workers from ever entering the middle class.

I want to thank you again for inviting me to this hearing to describe to you the efforts we are taking to protect American workers and to discuss how, together, we can do this even more effectively. I look forward to your questions.