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U.S. DEPARTMENT OF LABOR  
BEFORE THE  
SUBCOMMITTEE ON WORKFORCE PROTECTIONS  
COMMITTEE ON EDUCATION AND LABOR  
U.S. HOUSE OF REPRESENTATIVES**

**April 24, 2007**

Madam Chairwoman and Members of the Subcommittee:

Thank you for the opportunity to appear today to discuss the progress that the Occupational Safety and Health Administration (OSHA) is making to protect the Nation's working men and women. OSHA has a strong record of protecting the safety and health of our Nation's workers, and I am pleased to have the opportunity to discuss that record with the Subcommittee.

The Occupational Safety and Health Act (OSH Act) was enacted in 1970 to protect employees from hazards that may cause injury, illness, or death, and we take our obligations under this statute very seriously. We are proud of our record of results.

OSHA uses a variety of proven strategies to accomplish its mission of saving lives and reducing injuries and illnesses. This balanced approach includes: 1) strong, fair, and effective enforcement; 2) safety and health standards and guidance; 3) training and education; and 4) cooperative programs, compliance assistance and outreach. I want to make it clear, however, that, while we offer technical assistance to employers to comply with OSHA standards, compliance is not voluntary. There is no such term or practice as "voluntary compliance." In

fact, since 2001, as part of its strong enforcement program, OSHA proposed more than three-quarters of a billion dollars in penalties for safety and health violations and made 56 criminal referrals to the Department of Justice, which represents more than 25 percent of all criminal referrals in the history of the Agency.

OSHA's balanced strategy is achieving results, as evidenced by all-time low occupational injury, illness, and fatality rates. The overall workplace injury/illness rate, at 4.6 per 100 employees in 2005, is the lowest since BLS began publishing data in 1973. Since 2002, the injury/illness rate has fallen by more than 13%. Moreover, the overall fatality rate has fallen by 7 percent, and by 18 percent among Hispanics, since 2001. These numbers highlight the Administration's commitment and success in protecting the safety and health of the Nation's workforce.

A key component of OSHA's balanced approach is the development of protective safety and health standards and regulations. OSHA has set ambitious goals for its regulatory program as evidenced by its regulatory agenda published in the Federal Register last December. Let me assure you that the Agency is fully committed to achieving these goals.

As you are aware, rulemaking for safety and health standards is a complex process, which is governed by more than 30 years of Congressional, Judicial, and Executive Branch mandates. For example, as a result of judicial interpretations of the OSH Act, the Agency must study the feasibility and potential impacts of its standards in more depth than was the case early on in OSHA's history. In addition, the science impacting regulatory decisions has increased over the years in both volume and complexity.

OSHA has set ambitious goals under its current regulatory program. OSHA is actively working on 21 projects which include: four final rules, ten proposed rules, two Regulatory Flexibility Act Section 610 “lookbacks,” and other projects in the early stages of development. The Agency has devoted substantial resources to each of these regulatory projects, and I am committed to doing everything in my power to achieve these goals.

OSHA's recent substantial progress on its regulatory program, in part, includes:

1. Amending the Respiratory Protection Standard
2. Completing the SBREFA process for Cranes & Derricks
3. Publishing an Advanced Notice of Proposed Rulemaking (ANPRM) to amend the Hazard Communication Standard for global harmonization of classifying and labeling chemicals
4. Publishing an ANPRM for the Standards Improvement Project
5. Holding stakeholder meetings on ionizing radiation
6. Publishing a final standard on Fire Protection in Shipyards
7. Publishing a final standard for Electrical Equipment Installations
8. Publishing a proposed standard on Explosives

In addition, OSHA is diligently working on a number of other regulatory agenda items, such as the Payment for Personal Protective Equipment (PPE) rule, which we expect to complete by November 2007. The Agency will soon be issuing an ANPRM on mechanical power presses, and final or proposed rules to update a number of standards based on recent consensus standards.

With respect to silica, the Agency expects to issue a draft analysis on the health effects and risk assessment as part of a scientific peer review process. The peer review process is necessary and appropriate in the case of silica due to the extensive scientific literature and complexity of the subject. Conducting such a peer review will ensure that appropriate regulatory decisions are based on a firm scientific foundation.

OSHA has also received two petitions for Emergency Temporary Standards (ETS) to address important workplace health issues: *pandemic flu preparedness* and *diacetyl in food flavorings*.

*Pandemic Flu:*

The Occupational Safety and Health Act (OSH Act) Section 6(c)(1) states that an ETS is to be issued when “employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards” and OSHA can show “that the emergency temporary standard is necessary to protect employees from such danger.”

Currently, all available medical evidence indicates that no human influenza pandemic virus exists. Therefore OSHA cannot, at this time, meet the legal requirements of the OSH Act to issue an ETS on pandemic flu and OSHA has denied the ETS petition. This does not mean that OSHA is sitting back and waiting for a pandemic to strike before taking any action.

To the contrary, OSHA has taken measures to assist employers and workers to prepare for and respond to a pandemic influenza. OSHA has worked closely with the White House, the Department of Health and Human Services (HHS), and the Department of Homeland Security (DHS) and other Federal agencies to implement the President’s *National Strategy for Pandemic*

*Influenza.* As part of this effort, OSHA developed a guidance document entitled: *Preparing Workplaces for an Influenza Pandemic*, which helps employers and workers assess risk levels and provides guidance on how to plan now for a possible pandemic in the future. The Agency is also developing guidance specifically for the health care industry that includes recommendations for respiratory protection. Up-to-date information on pandemic flu preparedness is provided through [www.OSHA.gov](http://www.OSHA.gov) and [www.pandemicflu.gov](http://www.pandemicflu.gov). Essentially, OSHA has already put in place the protections and policies that would be used should a pandemic strike.

*Diacetyl:*

In 2001, OSHA took immediate action when the hazard of butter flavorings containing diacetyl was brought to the Agency's attention by NIOSH's interim report on microwave popcorn manufacturing plants. The report's findings indicated that uncontrolled exposure to butter flavorings containing diacetyl was associated with the development of a severe obstructive lung disease called *bronchiolitis obliterans*.

OSHA promptly alerted its Regional Administrators and Area Directors to NIOSH's findings and instructed its field personnel to look into the issue when encountering individuals working around butter flavoring in popcorn manufacturing. OSHA's Region VII published a brochure on this topic and arranged for its distribution in the region. In 2004, OSHA issued a memorandum to senior field managers and encouraged them to contact employers in their regions who may have workers exposed to this potential hazard.

To further protect workers who may be exposed to this hazard, OSHA is finalizing a National Emphasis Program (NEP) for butter flavorings containing diacetyl in the manufacturing of microwave popcorn. The goal is to direct inspections to the facilities where workers may be at the greatest risk of exposure to this hazard. In addition, the NEP contains elements aimed at educating stakeholders about the hazard posed by butter flavorings containing diacetyl.

Implementation of this NEP would allow OSHA to begin inspecting microwave popcorn manufacturing facilities by the end of May, and to inspect every such facility under Federal jurisdiction by the end of this year. This will be followed by a second NEP that focuses on establishments manufacturing food flavorings containing diacetyl.

OSHA is also developing guidance to alert employers and workers to the potential hazards associated with food flavorings containing diacetyl. The guidance will provide recommendations on how to control these hazards and to ensure that information about those hazards is effectively communicated to workers.

The Agency is currently reviewing the petition for an Emergency Temporary Standard and is engaged in site visits to microwave popcorn and flavor manufacturing facilities in order to fairly evaluate the merits of the petitioner's request.

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Employers and workers should have no doubt about OSHA's commitment to enforcing the standards and regulations promulgated under by the OSH Act. The Agency's history of strong

enforcement has demonstrated the serious consequences employers face when they neglect their responsibility of providing safe and healthful workplaces for their workers. In fact, OSHA conducted 38,579 Federal inspections in 2006 and has exceeded its inspection goals in each of the last 7 years. OSHA's aggressive inspection record, coupled with the fact that more than one-quarter of all criminal referrals to the Department of Justice in the Agency's history have occurred since 2001, indicates the seriousness of the Administration's commitment to protecting workers and enforcing the law.

At the same time, the Agency is committed to providing the regulated community with the knowledge, tools, and assistance needed to comply with the law. By using all of OSHA's programs effectively, the Agency is able to save a significant number of lives each year. More workers return home safely each day because of the efforts of OSHA, its State Plan partners and all stakeholders who are committed to protecting employees from occupational hazards.

Madam Chairwoman, I would be happy to answer any questions.