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U.S. DEPARTMENT OF LABOR
BEFORE THE**

**COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES**

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Mr. Chairman, Ranking Member McKeon, and Members of the Committee:

Thank you for the opportunity to appear today to discuss OSHA's comprehensive efforts to protect the safety and health of employees who work in our nation's construction industry.

To accomplish its mission of saving lives and reducing injuries and illnesses, OSHA utilizes a balanced approach which 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. The Occupational Safety and Health Act (the OSH Act) enacted by Congress in 1970 stipulates that employers are ultimately responsible for providing a safe and healthful work environment. OSHA has a critical role in helping employers with their responsibilities, and utilizes all components incorporated in its balanced approach.

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 64 criminal referrals to the Department of Justice, which represents more than 30 percent of all criminal referrals in the history of OSHA and more than any previous Administration. In Fiscal Year (FY) 2008, of the almost 57,000 violations issued so far, 80 percent have been categorized as serious, willful, repeat or failure-to-abate, the highest percentage ever recorded by the agency. We are also effectively targeting our inspections – 78 percent of the worksites we inspected had violations. Our approach is working. All three key indicators - injury, illness and fatality rates - are all at the lowest levels in the nation's history. Most importantly, the overall fatality rate in construction has declined by 18 percent since 2001. These achievements highlight the Administration's commitment and success in protecting the safety and health of the nation's workforce.

Even with all these achievements, OSHA recognizes that there are still safety and health concerns to be addressed at workplaces, including construction sites. We must remember that a successful construction project is one that it is done safely and without loss of life. One fatality is one too many.

According to data from the Bureau of Labor Statistics (BLS) Current Population Survey, employment in the construction industry averaged approximately 11.9 million in 2007, with approximately 16 percent of the total classified as unincorporated self-employed. Since FY 2003, 78 percent of all OSHA fatality investigations in the construction industry have been

conducted on companies with 25 or fewer employees. According to the National Institute for Occupational Safety and Health (NIOSH), 80 percent of the construction businesses have fewer than 10 employees. Construction is dangerous work which requires constant vigilance against hazards such as falls from elevated positions; trenching and excavations; confined spaces; scaffolding; electrocution and exposure to dust and noise. The dangers in construction work are well known and the challenge for OSHA is to use the best mix of enforcement, outreach, education, and cooperative programs to address construction workplace hazards.

Another challenge presented to OSHA by the construction industry is the nature of this industry. Unlike other workplaces that have permanent and ongoing operations, the work performed at construction sites is highly dynamic, often involving dozens of different employers at a single construction site, whether it is a large industrial project or a residential home. It is in this complex and challenging worksite that OSHA works with employers, employees, and their representatives to improve safety and health.

OSHA is familiar with these challenges and in response, has a multi-faceted approach to reducing construction-related accidents and preventing exposures to health hazards. OSHA focuses on the four most common causes of occupational fatalities in the construction industry: falls; “struck by”; “crushed by”; and electrocutions. In addition to a strong, targeted enforcement program, OSHA continues to revise and update its standards, create meaningful compliance assistance resources, and provide outreach, education and training. OSHA is committed to protecting employees by identifying hazards, citing employers when standards are violated, and educating stakeholders on ways to reduce the hazards associated with construction work across the country. OSHA also helps employers to provide safer working environments by engaging in a balanced approach of enforcement and outreach to key stakeholders to collaborate on important safety and health issues.

OSHA: Strong Enforcement Program for Construction:

Strong enforcement of safety and health standards is a component of our effective approach on construction safety. In FY 2007, approximately 51 percent of total OSHA inspections, both federal and State Plan inspections, were conducted in the construction industry. More than 67 percent of all federal and about 74 percent of State Plan construction inspections were programmed inspections. In FY 2007, OSHA issued 74,816 citations just in the construction industry. Since 2001, OSHA has issued 256 significant enforcement cases - those with penalties of at least \$100,000 – in the construction industry. As these statistics show, OSHA enforcement is strong and enforcement of our safety and health standards is a top priority of the agency.

OSHA has addressed the top four causes of fatalities found in its Integrated Management Information System in several ways. The agency has been aggressive in issuing citations and penalties for violations of the standards that address these key hazards. In FY 2007, for fall protection violations, we issued 24,358 citations for a total of \$33.5 million in penalties; for struck-by and crushed-by, we issued 3,317 citations for a total of \$9.1 million in penalties; for electrical violations, we issued 3,566 citations for a total of \$2.4 million in penalties.

Enhanced Enforcement Program

In addition to our standard enforcement efforts, OSHA has created other enforcement mechanisms to focus on those companies that ignore their obligations under the OSH Act. The Enhanced Enforcement Program (EEP) complements the agency's targeted approach to enforcement by addressing employers who, despite OSHA's enforcement and outreach efforts, ignore their obligations to provide a safe and healthful work environment. The program looks at an employer's national inspection history, not just the violations at a single facility, to determine whether failure to comply with OSHA safety and health standards is a problem at one facility or job site, or systemic throughout the entire company. If an employer meets the criteria for EEP, it will be subject to much greater enforcement scrutiny from OSHA, which may ultimately result in court enforcement of citations or criminal referrals. This program has been used in the construction industry to focus resources on companies that fail to adequately protect their employees. There were 1,189 EEP construction cases, which represents almost half of all OSHA EEP cases. After four years of implementation, OSHA revised the EEP program to focus greater enforcement emphasis on those employers that have a history of violations with OSHA (including history with the State Plans.) The revised program became effective on January 1, 2008.

Special Emphasis Programs

OSHA conducts National, Regional, and Local Emphasis Programs (NEPs, REPs, and LEPs) that target particular hazards or industries such as trenching, amputations, and refining. These programs combine enforcement and outreach efforts to address a particular safety and health issue. OSHA has completed a number of successful emphasis programs focused on such topics as fall hazards in construction, mobile crane operations, bridge and tunnel construction, silica and road hazards, falls relating to scaffolding, and energized power lines.

Hexavalent Chromium

OSHA promulgated a standard on exposures to hexavalent chromium on February 29, 2006 which reduced the permissible exposure limit (PEL). Construction employees are primarily exposed to hexavalent chromium during the welding/cutting of stainless steel, removing paint from existing structures such as bridges, and during refractory restoration.

Portland Cement

OSHA implemented new Portland Cement Inspection Procedures at construction sites as part of its settlement of a legal challenge to the new Hexavalent Chromium Standard by the Building and Construction Trades Department, AFL-CIO, Laborers' International Union of North America, and International Brotherhood of Teamsters.

Preventing Falls

In 2001, OSHA issued a new steel erection standard that modified a provision to allow the use of nets instead of a fully planked floor. Specifically, the new provision provides that the employer has the option of either maintaining a fully planked/decked floor or maintaining nets, every two stories. In 2002, stakeholders asked OSHA to permit the use of 100 percent fall protection instead of using planking or nets. They argued that planking is not effective fall protection and that 100 percent tie-off is safer than allowing connectors and deckers to work without personal fall protection above a planked floor. In response, OSHA issued a compliance policy stating

that, if an employer used 100 percent fall protection, including for connectors and deckers, the failure to comply with this provision would be considered *de minimis*.

OSHA agrees with the rationale that 100 percent fall protection provides greater protection than what is required by the standard. The standard issued in 2001 does not require connectors and deckers working less than 30 feet from the ground to use fall protection. Under the 2001 standard, if an employer chooses to have a fully planked floor rather than a net 30 feet below the employees, which is allowed by the floor/net provision, those employees would be exposed up to a 30 foot fall to a planked floor. In contrast, under the *de minimis policy*, all employees would be protected by fall protection at all times. It is the position of OSHA that greater safety overall is achieved by employers using the *de minimis* policy.

Preventing Construction “Struck By” Accidents

An OSHA NEP addressing roadway work zone safety was created after the success of a local initiative that began in OSHA’s Parsippany, New Jersey office. This collaborative program brings together state transportation and police authorities, as well as local unions, in cross-training efforts to improve hazard identification and correction at highway job sites. The success of this approach is reflected in New Jersey, OSHA data indicates that where 8-12 employees were being killed in roadway work zones annually; the number of workzone fatalities there was reduced to one in 2007.

Also, OSHA updated the Signs, Signals and Barricades rule to improve protection for highway workzone employees. That standard had previously incorporated by reference the 1971 version of Part VI of the Department of Transportation’s Manual on Uniform Traffic Control Devices (MUTCD). On September 12, 2002, OSHA updated that rule so that now employers must at least comply with the 1993 version of the MUTCD; they have the option of complying with the Millennium version. This change has upgraded requirements for a variety of warning and traffic control devices.

In addition, OSHA is conducting a study of struck-by accidents to determine patterns and root causes.

Trenching Initiative is Successful

The OSHA Trenching Initiative, which was begun in 2003, has proven to be successful. The trenching initiative is a large scale effort to raise awareness of trenching hazards and basic trench safety practices. Working through cooperative programs such as the American Pipeline Contractors Association, and with other stakeholders, 500,000 Trenching Quickcards, 50,000 Trenching Posters, and NIOSH’s *CD Trench Safety Awareness Training* have been distributed. Most of these training and education materials, such as the Quickcards, are designed specifically for use by the many small contractors that are engaged in trenching work. OSHA data indicates that the Initiative has helped to reduce the annual number of trenching and excavation related fatalities by 46 percent.

Preventing Electrocutions in Construction

A National Strategic Partnership between OSHA and the Electrical Transmission and Distribution Construction Contractors, trade associations, and International Brotherhood of

Electrical Workers was originally signed in August 2004 and continues today. The partners represent the interests of more than 70 percent of the industry. The partnership's tri-level leadership (CEO's, corporate safety, employees/supervisors) harnesses industry expertise with that of OSHA to make significant progress towards the Partnership's goals: reduction of fatalities through data analysis, training, and best practice development/implementation.

Initially, shared data analysis drove the partners to develop and implement best practices; they continue to do so. The analysis also resulted in the development and delivery of an industry-specific OSHA 10-hour outreach training program. The course has reached more than 12,000 employees, foremen and general foremen. Most recently the partners started delivering their new Supervisory Leadership and Outreach Training course. It has reached more than 120 supervisors to date. OSHA data collected indicates that the training efforts and the implementation of best practices have helped accomplish the Partnership's overall goal of reducing fatalities, which has shown remarkable progress by declining from 67.24 per 100,000 employees in 2003 to 24.55 in 2007, a 63.5 percent reduction.

Unprecedented Levels of Hispanic Outreach Activities

OSHA continues to make workplace safety and health for Hispanic employees a priority. The agency has a Diverse Workforce Issues Group that focuses on outreach, training and education issues through various means, including the OSHA–Mexican Embassy Letter of Agreement (LOA), several construction alliances, including alliances with the International Association of Foundation Drilling, the American Pipeline Contractors Association, the American Society of Safety Engineers, the National Association of Home Builders, and the Roadway Work Zone Safety and Health Partners, and OSHA's On-site Consultation Program. There is active participation by our stakeholders, including foreign consulates, industry, professional associations, organized labor, community faith-based organizations, and small business employers to address the safety and health issues for this hard to reach segment of the work force.

OSHA continues to develop and distribute Spanish-language materials such as a Spanish-English construction dictionary, public service announcements, posters, QuickCards, Fact Sheets, and many other publications, which are available on the Agency's Spanish version Web site, OSHA En Espanol. In addition the Agency has developed Spanish-language eTools, like La Prevención De Fatalidades ("The Prevention of Deaths" in construction), which are also available on OSHA En Espanol.

Training for Construction Employees: OSHA Construction Outreach Training Program

The OSHA Outreach Training Program is a "train-the-trainer" program in which trainers who successfully complete the required OSHA Training Institute trainer course are authorized to conduct 10- and 30-hour training programs in construction and to give cards provided by the OSHA Training Institute to their students. This "train-the-trainer" program is OSHA's primary initiative for training employees in the basics of occupational safety and health hazard recognition and avoidance.

The OSHA Construction Outreach Training Program is a voluntary program. However, its considerable growth has been driven through industry groups such as the building trades,

contractors, employer associations, and specific companies. The endorsement by these groups has resulted in the requirement of the training as a condition of employment for their employees or members. Over 1.6 million construction participants have been trained by these trainers since 2004.

OSHA Cooperative Programs

OSHA makes use of a variety of effective cooperative programs which engages various stakeholders such as employers, organizations, organized labor, and others to improve safety and health in the construction industry. The agency's cooperative programs include Alliances, Strategic Partnerships, Voluntary Protection Programs (VPP), and On-Site Consultation programs to name a few.

OSHA's VPP has 113 construction participants across the nation. There are 146 Strategic Partnerships with construction companies which account for more than 80 percent of all partnerships. OSHA's newest program, OSHA Challenge, "A Roadmap to Safety and Health Excellence", has 72 participants. These programs have demonstrated that effective safety and health management systems can make a significant difference by helping to reduce injuries and illnesses by 20 percent to 80 percent below their industry average according to BLS data comparisons. In addition, there are 14 national construction Alliances. OSHA offers a number of opportunities for businesses, trade organizations, labor unions, universities and state and local governments to work together to protect employees in the construction industry by identifying and addressing workplace hazards, providing input on proposed rules, enhancing safety and health management systems, and promoting a national dialogue on the importance of protecting construction employees from hazards.

I want to make it clear, however, that, while the agency offers technical assistance to employers to help them comply with OSHA standards as well as recognize employers for implementing exemplary safety and health management systems, ***compliance with OSHA safety and health standards is not voluntary. There is no such term or practice as "voluntary compliance."***

Pending Rulemakings

OSHA recognizes that a dynamic industry requires that we continuously evaluate regulations and standards. The following four items on OSHA's current regulatory agenda are particularly applicable to the construction industry.

Cranes:

Several recent fatal crane accidents have highlighted the importance of crane safety. OSHA estimates that there are approximately 96,000 construction cranes in use each year in the United States. The recent crane accidents in New York, Miami, and Annapolis involved tower cranes. According to OSHA accident investigation data, in the period from 2000 to 2007, there were a total of 20 incidents involving tower cranes which resulted in 10 fatalities.

OSHA is proactively engaged to improve crane safety. The Administration is in the final stages of preparing a proposed rule to update and improve its current construction cranes and derricks standard. The rule is being developed through a negotiated rulemaking process which provides opportunities for all stakeholders to provide input.

The cranes and derricks proposed rule will comprehensively address the hazards associated with the use of cranes and derricks in construction, including tower cranes. Developing the proposal is a complex, large-scale project which requires diligent and thoughtful considerations of all the technical issues. Pursuant to statutory requirements, OSHA has completed the regulatory flexibility analysis, small business review, paperwork burden analysis, and economic impact analysis of the proposed rule.

In addition to rulemaking, OSHA is highly engaged in a number of activities designed to heighten awareness of best practices and the construction hazards associated with crane use. OSHA's regional offices have established Alliances and partnerships, participated in numerous training activities, and provided information and training as part of proactive outreach programs.

An increasing number of Compliance Safety and Health Officers (CSHOs) are attending OSHA Training Institute's (OTI) #2050 Cranes and Rigging Safety for Construction Course, which focuses on crane safety. Over the past 8 years, 111 Federal OSHA and 187 State plan employees have completed this course. OTI has also conducted a Web-based seminar in which over 670 CSHOs and other agency staff received crane safety training. Some OSHA employees in the field have also taken advantage of training opportunities provided by public and private sector entities. OSHA regional offices, such as Region V (Chicago), are organizing training events in conjunction with local unions and industry groups. The Region I office (New England) has conducted eleven different training events focused on crane safety. Regional offices have also recognized the need for additional efforts specific to crane use in urban and high-rise construction projects. Region I implemented a Local Emphasis Program for cranes in early FY 2008; Region IV is engaged in outreach activities on crane hazards with industry stakeholders in Florida; Region V has a Local Emphasis Program in high-rise construction in the Chicago area, and CSHOs in that region are using a Crane Initiative Questionnaire to focus attention on specific crane hazards. OSHA regional offices also are working with local building departments to exchange crane safety information.

OSHA is currently developing a national Crane Safety Initiative that will, with the help of labor and industry stakeholders, heighten awareness of key crane safety hazards and safe practices.

Finally, OSHA compliance officers inspect employer compliance with the OSHA construction crane standard as part of their inspections of construction sites. OSHA has detailed requirements for crane safety, which employers are required to follow. The requirements of the current crane standard include operational safety; a general requirement for employers to inspect construction cranes prior to each use; an annual inspection that must be "thorough" and documented, and that defects or deficiencies discovered in any inspection be repaired before the crane may be used; and requirements that employers conduct tower crane inspections prescribed by the manufacturer. Currently, there is no federal program under which OSHA is specifically charged with inspecting all construction cranes. Nor does OSHA currently require certification for crane operators.

After the March 2008 tower crane collapse in New York City, OSHA increased inspections of large construction sites there, since those are the sites where cranes are most likely to be used. Similarly, the State Plan partner, New York-OSHA, staff increased outreach efforts to address crane safety. OSHA's National Office deployed an engineering expert to the accident sites in New York and Miami as part of the agency's on-going investigations of those accidents.

Power Generation, Transmission and Distribution:

On June 15, 2005, OSHA published a proposed rule to revise the general industry and construction standards for electric power generation, transmission, and distribution work and for electrical protective equipment. Public comments were received, hearings were held, and the final posthearing briefs were due on July 14, 2006.

The proposed standard included revised minimum approach distance tables. Those tables limit how close an employee (or a conductive object he or she is contacting) may get to an energized circuit part. After the rulemaking record on the proposal closed, the technical committee responsible for developing the tables in the consensus standards on which the proposal was based discovered what they believe is an error in their calculation of minimum approach distances for certain voltages. OSHA will be reopening the record on this proposal for a period of 60 days to obtain comments related to the affected minimum approach distances.

Confined Spaces:

Fatality and injury data, OSHA enforcement experience, and advice from OSHA's Advisory Committee for Construction Safety and Health indicate that the existing construction standard for confined spaces does not adequately protect construction employees in confined spaces from atmospheric and physical hazards. The existing construction standard only requires employers to instruct their employees about confined-space hazards, and comply with other OSHA construction standards that address confined-space hazards. On November 28, 2007, the agency issued a proposed rule for confined spaces in construction that is estimated to prevent 6 fatalities and 900 injuries.

The proposed rule addresses construction-specific needs in several ways. It uses a comprehensive, step by step approach to confined space safety by setting out how to assess the hazards, classify the space and implement effective procedures to protect employees. Since construction sites often have a number of employers working simultaneously, the proposed rule would require controlling contractors to coordinate confined space operations. Upstream engulfment hazards, which are typical in sewer-type spaces, are addressed by a requirement for an early warning system. Also, because conditions in these spaces during construction can change rapidly and unexpectedly, continuous monitoring for hazardous atmospheres would be required.

We are currently analyzing the public comments that were submitted and have scheduled a hearing for July 22, 2008.

Hearing Loss in Construction:

OSHA is continuing work on a new hearing conservation rule for construction. The current requirement requires employers to implement an effective hearing conservation program but contains no details on what such a program must include.

We are continuing the research and analytical efforts necessary to move this rulemaking forward. These include reviewing effective hearing conservation programs and state and international noise standards, and researching noise control methods such as reduced noise hand tools.

Some of the issues under study that have added to the complexity of promulgating a rule include the seasonal nature of many construction jobs, the high employee turnover rate on many construction worksites, the temporary nature of many construction worksites, and the amount of noise generated by some commonly used construction equipment.

OSHA is committed to enhancing construction safety, to continuing to provide employers and employees with safety information, and to ensuring that worksites comply with existing safety regulations. I assure the subcommittee that construction safety is a top priority for OSHA and that we are striving to ensure that all employees return safely to their families and friends at the end of every work day.

Thank you Mr. Chairman. I would be happy to answer any questions.