
REMAPPING DEBATE

Asking "Why" and "Why Not"

Caution: going to work may still be dangerous to your health

Readable Research | By Abby Ferla | Regulation

Oct. 5, 2011 — In 1970, Congress passed the Occupational Safety and Health Act and, to enforce it, created the Occupational Safety and Health Administration (OSHA). Congress declared that its policy and purpose was “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.”

PUTTING REGULATORY FAILURES IN CONTEXT

Our specialty is [original reporting](#). But in this case, we thought that it would be useful to compile previous reporting by others on individual instances of regulatory failure. A picture quickly emerges that is very different from the bogeyman of *overregulation*: an unmistakable, systemic pattern of *under-regulation*.

The series began with a look at the strikingly limited extent to which the Food and Drug Administration has regulated the cosmetics industry (read it [here](#)). This edition's readable research is a chronicle of OSHA's travails over the decades. Up next: the Securities and Exchange Commission, with more agencies to follow.

The series will conclude later this fall with original reporting that explores the key reasons — both internal to agencies and imposed upon them — for the recurring failures.

— *Editor*

Over the decades, very significant declines have been achieved in workplace death and injury rates, but hazards — old and new — continue to harm workers and undermine the clear goal of the legislation.

From the readily available public record, several recurrent issues leap out: under-funding, under-staffing, under-enforcement, lax penalties, a tortured process under which it routinely takes several years to promulgate regulations on a vast array of workplace hazards.

Among other things, the agency's task has become ever more difficult as anti-regulatory fervor has increased and as the will to insist that worker safety be treated as the preeminent policy consideration has, for much of the last 40 years, diminished.

When sources are available online, we link to them. When not available online, we use cite them in note form. To view the note online,

place your cursor over the superscript number. To view the full article with end notes, click “Download a PDF” on the upper right of this page.

As extensive as this compilation is, it is only an illustrative — not a comprehensive — account of how the Occupational Safety and Health Act has and has not been enforced.

1974

Senate Labor Subcommittee and the General Accounting Office (GAO, now the Government Accountability Office) [conduct study](#) on OSHA and find that, since its creation in 1971, the agency has inadequately protected worker safety. The study concludes that OSHA functions inconsistently across states and, in general, inspects only a small percentage of American workplaces every year. The study also reveals that OSHA investigators do not issue citations as frequently as they observe violations of OSHA rules; that agency record collecting is both flawed and inadequate; and that the agency devotes “an inordinate amount of time to non-serious violations.” Sen. Harrison A. Williams Jr. (D-N.J.) attributes these shortcomings to the fact that “OSHA has been shackled by administrative ineptness.”

1975

[An AFL-CIO study determines](#) that OSHA has too small a budget, is not sufficiently staffed, and has neither established nor properly enforced safety standards. The study additionally critiques the administration’s poor inspection record, noting that it visited only 1.3 percent of workplaces under its jurisdiction in 1974. The AFL-CIO suggests that OSHA’s poor record is due both to repeated under-funding and to a failure to consider human costs above financial costs.

“The policy requiring an economic impact study before promulgating standards takes a one-sided view and fails to balance dollar costs of a standard against the cost in deaths, injuries, and illness and their economic and human consequences.” — AFL-CIO report, 1975

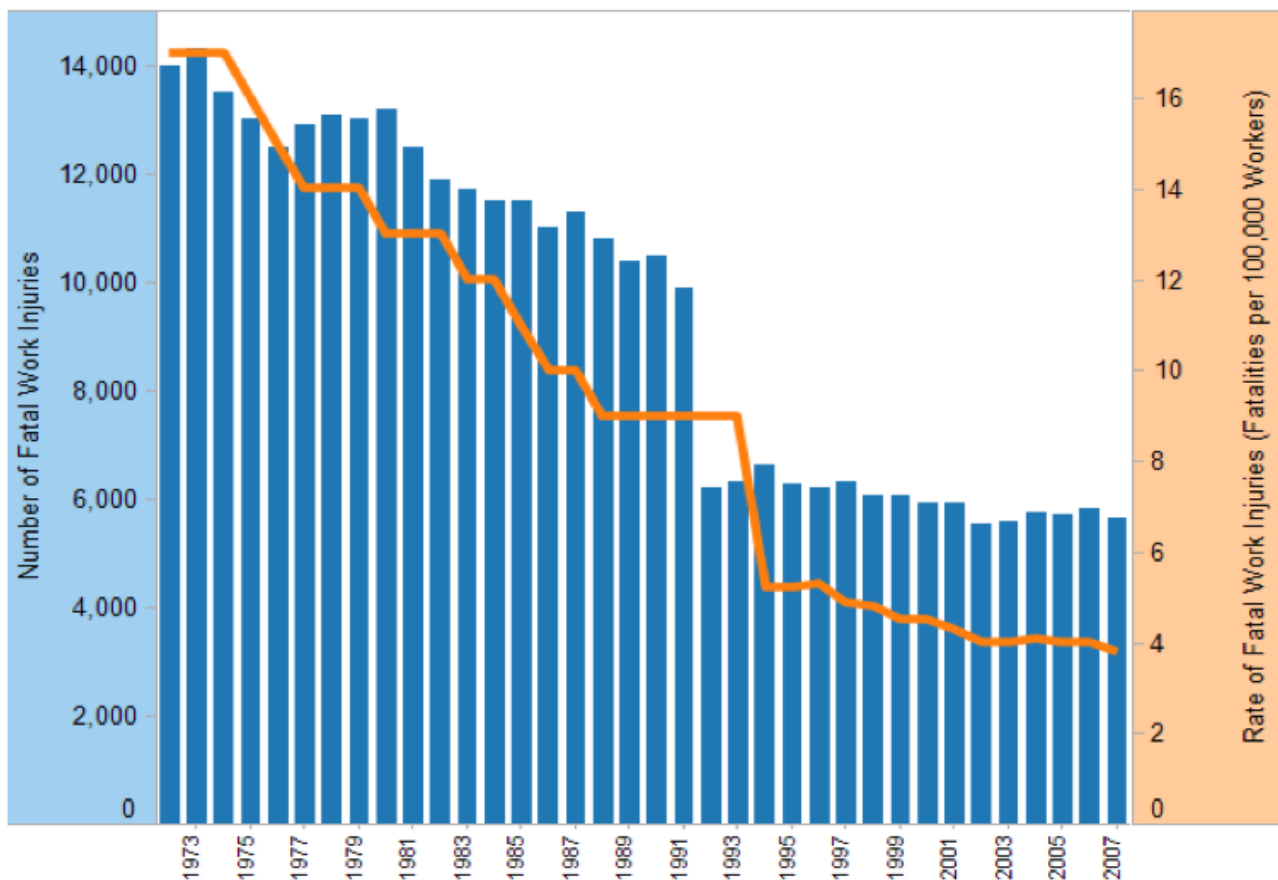
1976

[An article in the New York Times](#) reports that Congress only provides OSHA sufficient funds for 1,500 inspectors, “a force capable of examining annually – and often superficially – 2 percent of the nation’s workplaces.” The article reports that OSHA is under-funded, does not collect adequate information to make standards, and is met with abundant resistance from business interests in congress and presidential administrations opposed to regulation. Furthermore, the Times writers, “The agency concedes that almost all health standards that it has issued have been proposed only after it was threatened with legal action by a union or public interest groups.” Industry representatives say that businesses dislike OSHA because it is ineffective. The article references remarks made earlier in the year by President Gerald Ford at a Chamber of Commerce dinner in Nashua, N.H., in which he acknowledged that businesses had some reason to “want to throw OSHA into the ocean.” To ease the “petty tyranny of federal regulations” Ford assures them that, under his direction, OSHA will work with businesses as “friends, not as enemies.”

1978

A July article in the Washington Post reports, “the federal job safety agency is overwhelmed with a growing backlog of suspected hazard and worker complaints that it has too small a staff to handle.” In a House Education and Labor subcommittee hearing, the Post reports, Assistant Labor Secretary Eula Bingham testifies that OSHA needs at least 85,000 compliance officers to inspect all national workplaces, but that with its staff of 1,500 officers, it can only see about 2 percent of these workplaces. Meanwhile, a waiting list of 5,000 safety complaints has been increasing for months.[1]

Number of occupational fatalities and fatality rate, 1972-2007



Color Key

■ Number of Fatal Work Injuries

■ Rate of Fatal Work Injuries (Fatalities per 100,000 Workers)

Source: AFL-CIO, based on statistics from the U.S. Department of Labor, Bureau of Statistics, Employment and Wages, Annual Averages and from the U.S. Department of Labor, Occupational Safety and Health Administration

Share →



Download



1979

A closely divided Supreme Court [strikes down](#) OSHA regulation designed to limit airborne exposure to benzene, a carcinogen thought to cause leukemia. There is no majority opinion, but a plurality of three justices concludes that OSHA must demonstrate that there is “a significant risk of harm” from current exposure limits in order to pass a standard, and that it had failed to do so. Four justices dissent, writing that the plurality opinion “ignores the plain meaning” of the Occupational Safety and Health Act and “places the burden squarely on the shoulders of the American worker.” According to the dissent, the plurality opinion ignored a key section of the statute that provides that the standard to be set is the one “which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.” (The dissent further observed that, contrary to the plurality, “In its ordinary meaning an activity is ‘feasible’ if it is capable of achievement, not if its benefits outweigh its costs.”)

Industry lawyer Charles Lettow says that if the regulation had not been invalidated, the standards banning skin contact with liquids containing benzene would have shut down the rubber tire industry entirely.[2]

March 1980

Congress passes the [Regulatory Flexibility Act](#), which establishes the Office of Budget and Regulatory Affairs (a sector of the Office of Management and Budget). This new office is tasked with making sure that all proposed rules have met all requirements of the rule-making process outlined in the Act. Among these requirements, agencies must “solicit and consider flexible regulatory proposals and explain the rationale for their actions to assure that such proposals are given serious consideration.” The office has the authority to advise the agency to either withdraw or finalize a rule.

When the Small Business Administration is created, Chief Counsel of the Office of Advocacy Frank Swain says, “He adds that regulatory reformers will try to “purge the arrogant, inflexible attitudes” from the ranks of the bureaucracy.”[3]

“The law was historic, not for what has been accomplished under it, but because Congressional approval of it was formal recognition that the occupational health problem is serious. So far, though, Congress and the executive branch have been trying to fight this mighty war with a pea shooter.”

— Washington representative of the Oil, Chemical & Atomic Workers International Union, 1976

October 1980

An Associated Press article reports that “regulators take a rhetorical beating,” with both 1980 presidential candidates campaigning as deregulators. Each draws upon and reinforces the assumption that regulation hurts business. Ronald Reagan, for instance, is reported to be campaigning on the theme that the regulations promulgated under the Carter administration hurt businesses, farmers, and workers.

President Carter, on the other hand, is reported to be arguing that he has done more for deregulation than any other president. Carter has asserted that deregulation — including in the area of worker safety — has allowed industries to operate more efficiently and that consumers have as a result had billions of dollars of savings passed along to them every year. Reagan counters by saying that Carter’s actions are only “highly publicized examples of showcase deregulation where Mr. Carter has acceded to congressional demands to deregulate.”



A 2008 sugar dust explosion at a Georgia Imperial Sugar refinery killed 14 people and injured over 40. OSHA had been criticized in a 2006 U.S. Chemical Safety Board report for failing to have in place adequate to standards address dust explosion hazards.

Consistent with previous policy preferences — for instance, that OSHA be limited to an advisory role and that either house of Congress be permitted to veto OSHA regulations — Reagan says the he will eliminate what he calls unnecessary regulations that hamper the economy.[4] He also claims, despite his previous call to limit OSHA to an advisory role, that he will work to reform OSHA to strengthen its ability to reduce job-related accidents. After the election, Reagan’s aides say that Reagan will propose cuts to the budget and staff of OSHA while also ordering it to scale back on investigations.[5]

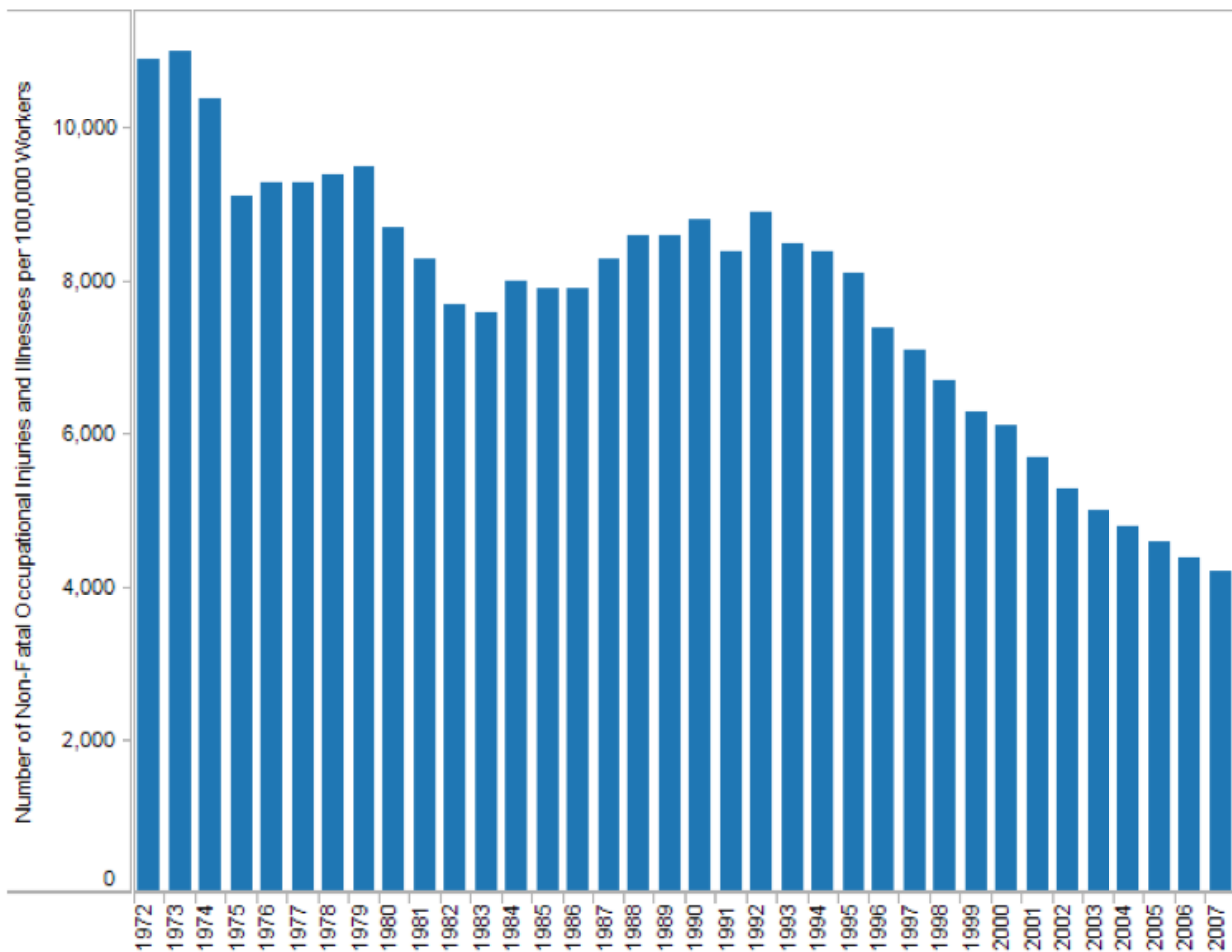
1981

Supreme Court, in a case involving regulation of cotton dust, rejects argument that OSHA is required by its enabling statute to conduct cost-benefit analyses, [ruling instead](#) that the agency must evaluate whether a proposed rule would threaten the economic vitality of an industry. Despite the ruling, other developments result as a practical matter in time-consuming analyses of costs and benefits being conducted over the ensuing decades. These developments include the impact of the Regulatory Flexibility Act and later Congressional enactments, executive branch direction to OSHA, and inter-agency policy and philosophy.

1982

[Sierra Club publishes report](#) called “Poisons on the Job: The Reagan Administration and American Workers,” which finds that 10 million workers are exposed to cancer-causing substances each day and that 100,000 will die yearly from this exposure. The report blames the Reagan administration for not creating new standards on chemical exposure and for weak enforcement of the existing but inadequate regulations. Reagan administration calls report “hogwash.”

Rate of non-fatal occupational injury and illness, 1972-2007



Source: AFL-CIO, based on statistics from the U.S. Department of Labor, Bureau of Statistics, Employment and Wages, Annual Averages and from the U.S. Department of Labor, Occupational Safety and Health Administration

REMAPPING DEBATE
Asking "Why" and "Why Not"

Share →



Download



1984

A regulation put in place in November 1983 setting federal standards that require manufactures to label hazardous chemicals and mandate that specified employers provide to their employees education and information on chemicals to which they are exposed is challenged in court by New York, Connecticut, and New Jersey. The states argue that the regulation would preempt more wide-ranging laws in 16 states: The federal rule only applies to employers in the manufacturing industries, whereas the state rules also cover sectors like agriculture, construction, and dry-cleaning. The [New York Times reports](#) that the New York Attorney General, Robert Abrams, says “the prospect of [f]ederal pre-emption was particularly distressing because OSHA was incapable of enforcing existing worker protections as a result of staff cuts under the Reagan Administration.”

“OSHA has been doing nothing for 13 years and this fits right in with that tradition.” — Ross E. Eisenbrey, a former aide to President Ford, describing a 1985 suspension of a sanitation standard for migrant farm workers

A few months later, an article in Chemical Week reports that industry groups — from the Chemical Manufacturers Association to the National Paint and Coatings Association — are supporting OSHA’s standard because they say it is too complicated to comply with differing state regulations. They also worry that more stringent reporting requirements will compromise their ability to protect trade secrets. OSHA’s standard exempts employers from naming the substance used if they believe that disclosure jeopardizes their trade secrets.

Unions such as the Oil, Chemical & Atomic Workers have thrown their support in with the states, saying that OSHA’s standard does not only fail to cover all relevant industries but that it does not require employers to provide sufficient information to workers. “The Reagan Administration comes in, announcing that

there has been too great a role for federal intervention and that they are going to have the states play a much larger role,” observes George Cohen, a Washington attorney with the law firm representing the Steelworkers in their case against OSHA. “Lo and behold, the states took them up on it, and a series of meaningful laws are passed. Now we’ve got the companies, who rejoiced at the idea of less federal regulation, saying, ‘Rescue us.’”[6]

April 1985

At the hearing on whether to confirm William E. Brock as the Reagan Administration’s new Labor Secretary, Sen. Edward Kennedy (D-Mass.) says that the Reagan administration has slashed OSHA budgets and “effective law enforcement has been brought to a virtual halt.” Kennedy, along with Sen.

Howard D. Metzenbaum (D-Ohio), is highly critical of OSHA's recent track record of inconsistent and inadequate regulation, saying, "As safety and health hazards for American workers proliferated, scarce resources were spent to delay or weaken existing rules and the unfinished list of toxic chemicals in need of regulation grew longer every day."[7]

A regulation put in place in November 1983 setting federal standards that require manufactures to label hazardous chemicals and mandate that specified employers provide to their employees education and information on chemicals to which they are exposed is challenged in court by New York, Connecticut, and New Jersey. The states argue that the regulation would preempt more wide-ranging laws in 16 states: The federal rule only applies to employers in the manufacturing industries, whereas the state rules also cover sectors like agriculture, construction, and dry-cleaning. The New York Times reports that the New York Attorney General, Robert Abrams, says "the prospect of [f]ederal pre-emption was particularly distressing because OSHA was incapable of enforcing existing worker protections as a result of staff cuts under the Reagan Administration."

May 1985

House Government Operations Committee releases report that says OSHA's regulation and enforcement of the hazardous waste industry has been "grossly inadequate."

Report finds that very few toxic waste sites were inspected (only 37 of thousands) in 1984. AFL-CIO says that it has been pressuring OSHA to set rules on toxic waste since 1971 and petitioned the administration in 1979. OSHA declines to comment. The New York Times reports "many of the concerns mentioned in the report are similar to those made by the agency's Congressional critics, mostly Democrats, and organized labor." The study supports the findings of another study released earlier in the year by the Congressional Office of Technology Assessment, which determined that OSHA inspections are not frequent and that its penalties are too low to provide adequate incentive for industry cooperation.

STRETCHING OSHA EVER MORE THINLY

Over the decades, the number of workplaces over which OSHA has jurisdiction has continued to mushroom, as have the number of workers employed in those establishments. OSHA's staffing levels, however, have not kept up. As such, each full-time OSHA employee is stretched among more and more workplaces and more and more employees.

Year	Workplaces per OSHA Staffer	Workers per OSHA Staffer
1975	1,621	27,845
1980	1,540	24,871
1985	2,370	43,807
1990	2,506	44,807
1995	3,206	52,590
2000	3,488	57,493
2005	3,882	59,589
2010	4,193	59,001

Source: AFL-CIO, based on statistics from the U.S. Department of Labor, Bureau of statistics, Employment and Wages, Annual Averages and from the U.S. Department of Labor, Occupational Safety and Health Administration

June 1985

“It’s embarrassing to the agency. It’s embarrassing to our compliance officers, and, frankly, it’s embarrassing to the country.” — Assistant Secretary of OSHA John A. Pendergrass on the slowness of developing and promulgating regulations, 1987

A federal appeals court rules on the right-to-know standard, deciding to uphold OSHA’s authority to preempt state laws but also ordering OSHA to rewrite provisions of the act. Court concludes that OSHA improperly limited the scope of the standard when it only included workers in the manufacturing sector. For several years, OSHA’s standard will preempt state on right-to-know standards only in the manufacturing industry while it develops right-to-know rules for other sectors (those standards are ultimately put in place in 1993). The court also orders OSHA to rewrite the provisions protecting trade secrets, saying that employers must extend confidential information to workers, though they can require that anyone requesting trade secret data sign a confidentiality agreement. Labor groups celebrate the ruling, and business groups say that they, too, are pleased, explaining that it will be much easier for businesses to comply with one federal standard than multiple state ones.[8]

June 1987

A Chicago-based research organization, the [National Safe Workplace Institute \(NSWI\)](#), leaks a draft of a Labor Department inspector general’s report on OSHA. The draft says that the agency’s regulation of job safety suffers from “systematic weakness,” pointing to poor management and to caps on the amount that inspectors can fine offenders. It also reports that the administration lacks both staff and monetary resources to adequately enforce safety standards, noting that for the four million work sites under OSHA’s jurisdiction, the agency had only 1,000 inspectors. The draft also finds that OSHA does not consistently levy fines or issue citations and often reduces penalties after meeting with businesses. Joseph E. Kinney, director of NSWI, comments, “This report demonstrates that OSHA lacks either the capability or political will to regulate unsafe working conditions.”

August 1987

The New York Times publishes extensive exposé called [“Is OSHA Falling Down on the Job?”](#) The paper reports, “Behind the flurry of citations is an agency that, the evidence suggests, is adrift and overwhelmed by its task.” Calling OSHA “slow moving to the point of reaching a complete stall,” it reports that in its 17 years, OSHA has finalized only 18 health and 23 safety rules and that it still lacks standards on dangerous chemicals such as benzene and ethylene oxide gas.

The Times reports that the safety agency's 1,044 inspectors means that OSHA has nowhere near the capacity needed to be able to inspect the nation's millions of workplaces, that recent studies have shown that as much as 35 percent of recent workplace deaths were either not reported or not investigated by OSHA staff, and that investigators were "limited by the fact that the law limits the maximum penalty for serious violations at \$1,000." The story notes that in March investigators with the Labor Department had written an urgent interim memo to William Pendergass, secretary of the Labor Department, asking for "immediate coercive action" to properly address employers that have committed violations resulting in repeated employee deaths.

Pendergrass says that OSHA is effective, citing data showing that rates of worker death and illness have declined, though, the report mentions, a recent National Institute for Occupational Safety and Health reported that there was still chronic under-reporting of worker illness, injury, and death. Pendergrass does say that the agency is working to address the "embarrassing" delay between when standards are proposed and when they are eventually finalized.

The exposé in the Times concludes that OSHA's shortcomings date back to being underfunded and understaffed from its inception: "Funding, staffing levels, and enforcement tools were never sufficient to mount much more than a scatter-shot approach to monitoring the nation's five million or so workplaces."

"Businessmen, wouldn't you like to have a friend overseeing OSHA?"

— Rep. Thomas Cass Ballenger (R-N.C.), then-Chairman of the House Subcommittee on Workforce Protections, explaining how he solicited donations from those under the jurisdiction of OSHA

May 1990

Labor Secretary Elizabeth Dole supports changes to the Occupational Safety and Health Act that would increase the maximum fines allowable under the law from \$1,000 to \$7,000 for serious violations and from \$10,000 to \$70,000 for repeated and willful violations. Additionally, cases of willful violations that resulted in serious bodily injury or recklessly endanger human life would be reclassified to be felony violations, carrying a maximum prison sentence of six months. "It [is] the first time OSHA has taken a stand on increased penalties," the Portland Oregonian reports. Business groups, however, tell the Oregonian that the legislation could harm innocent business owners. "Decent and respectable employers will have greater exposure to criminal penalties than bank robbers, drug dealers, and common criminals," says one industry leader.[9] Despite that opposition, [Congress increases fines](#). It does not, however, enhance criminal penalties. Willful violations resulting in the injury of a worker are not subject to criminal penalties, and willful violation resulting in the death of a worker remains a misdemeanor.

September 1990

The NSWI releases report that calls occupational disease “the most neglected public health problem in the U.S. today,” blaming under-funding of OSHA for both the agency’s lack of adequate standards and for its inadequate enforcement of existing weak standards (particularly having to do with toxic chemicals).



Industry petitioned OSHA to develop updated standards on cranes and derricks in the early 1990s after a number of workers were killed or injured. Even with industry and labor support, OSHA took ten years to develop the standards — a period during which over 200 workers died in crane and derrick-related accidents.

Professor of environmental and occupational medicine at the Mount Sinai School of Medicine in New York City Phillip Landrigan tells the *Seattle Times*, “The government has relied on industries to decide whether new chemicals should be tested and what tests should be applied to new chemicals. Industry reviews the literature and claims there is no need to test.”

OSHA responds by saying that NSWI’s reports did not have to contend with the same limits as OSHA standards: “[The report] recommends a standard that deals solely with the health of the worker,” said Diane Porter, the agency’s assistant director. “OSHA must consider technological feasibility, economic feasibility, and they must go through a public rulemaking process.” Deputy Assistant of Labor Alan C. McMillan, however, acknowledges that, “We at OSHA are concerned and have been concerned about improving our collection of fatality information.” Sen. Kennedy comments that the report “documents in chilling detail the scope and seriousness of occupational disease in this country, and underscores the need for stronger federal laws to assure safe and healthy work conditions.”[10]

May 1992

Responding to the fact that it takes OSHA an average of seven years after it has presented draft rules for comment to get those rules finalized, Sens. Kennedy and Metzenbaum propose that the OSH Act be amended to increase maximum criminal penalties (including increasing the maximum penalty for a willful violation resulting in the death of a worker from six months to 10 years), extend OSHA’s jurisdiction to federal workers, and require OSHA to issue a standard within 18 months of drafting it. Threatening a veto, the Bush administration opposes legislation in favor of using more voluntary regulation programs, which it says would make OSHA more effective than the proposed changes. OSHA director Dorothy Strunk says, “Maybe we don’t need to do standards anymore. [...] Maybe we should do health and safety programs requiring employers to do their own hazard analysis.” Rep. Richard Armey (R-Texas)

says that “This so-called reform bill will burden the economy and impair out economic recovery.” Echoing his colleagues’ claims that the bill would “bury us in paper,” Rep. Cass Ballenger (R-N.C.) says that the bill “pits employee versus employer, and big government versus small business.”[11]

Newsday, however, reports that “health and safety experts say OSHA’s befuddled rule-making process is fraught with built-in delays.” Labor groups, however, say that voluntary programs will not work without clear federal standards. “One of the biggest objections our employers have to putting in new work standards is that they’re not convinced that it’s going to make a difference. They really need some sort of pressure like a standard to get them moving,” said an International Ladies’ Garment Workers’ Union spokesperson.[12] After going through several committee hearings, consideration the bill is indefinitely postponed by the Senate by unanimous consent.

July 1992

Federal appeals court throws out standards on maximum air contamination levels that had been established for 428 toxic chemicals. OSHA had finalized these rules in 1989, only to have them challenged by a suit by both the AFL-CIO, which wanted to have the standards strengthened, and by industry groups, who wanted the standards thrown out altogether. “Although we strongly criticized the standard, we asked the court to keep the standard in place, while ordering OSHA to adopt more protective exposure limits,” a spokesperson for the AFL-CIO said.

The court, however, ruled that OSHA had “insufficient” evidence to justify to the standards.[13] In its opinion, the court states, “Given OSHA’s history of slow progress in issuing standards, we can easily believe OSHA’s claim that going through detailed analysis for each of the 428 different substances regulated was not possible, given the time constraints set by the agency.” Nevertheless, court holds that law does not permit the kind of “short-hand approach” that OSHA had used to adopt the standards.

Court insists that, for each substance, OSHA analyze the estimated harm at levels sought to be proscribed. An approach of erring on the side of safety where some level of contamination is reasonably thought to pose some level of risk is not acceptable, the court rules.

Newsday reports that “if the ruling stands, standards for evaluating about half of the chemicals would be abolished, while the others would be covered by less stringent rules.” The court suggests that OSHA needed to gain congressional approval in order to pass broad standards, and OSHA says that a case-

“What’s most disturbing to me is that these tragedies are happening over and over again, in the same industries, and they are happening far too often at the same companies, where workers are doing jobs that their employers know are dangerous and unsafe.”

— Sen. Patty Murray
(D-Wash.), 2007

by-case approach to making standards is too slow.[14]

1993

Senate Labor and Human Resource Committee holds hearings on a Senate bill that would make willful violations of OSHA rules resulting in the death of a worker subject to criminal penalties; mandate that employers and employees form safety committees; and give OSHA the power to review, certify, and bolster safety programs for federal employees. The business community calls the changes costly and unnecessary. Specifically, it is opposed to preventative regulations that would require employers to pay for training and education programs. Labor Secretary Robert Reich says these kind of programs would actually save employers from incurring worker compensation and other injury-related expenses.[15] The bill dies in committee.

February 1994

Washington Times article reports that a proposal in Congress to expand OSHA's powers will not pass due to opposition from business groups. Among other provisions, the bill — which was supported by a broad coalition of labor, human rights and civil rights groups — would have raised the maximum fine

“On the enforcement side, the record is just dismal.”
— Margaret Seminario, AFL-CIO health and safety expert, at a congressional hearing in 1985

and penalties that OSHA can levy, required small businesses to establish worker-employer safety committees and provide training and education programs to workers, and extended OSHA coverage to employees in the public sector (workers not under OSHA's existing authority). Meanwhile, business groups and their allies say that the regulations would be costly for American industry without providing much benefit for workers. According to Sen. Dan Coats (R-Ind.), “We have a system that has run amok with paperwork that doesn't make a hoot of difference.”[16] The business solution? Voluntary regulation.

The AFL-CIO response: “Management in this country has [already] proven that it is willing to roll the dice with respect to the health and safety of American worker safety.”

October 1994

OSHA proposes rules that would ban smoking in the workplace, a proposal that generates enormous criticism from business groups. Opponents say that the regulations will stop most smokers from going out to bars and pool halls — thereby hurting businesses, and, by extension, the local economies. The

Daily Oklahoma is told that “if people can’t smoke and eat, they may avoid sit down restaurants and stay at home.” Other opponents say that the tourism industry will suffer, because foreign smokers will no longer want to visit the United States.[17]

December 1994

The Washington Post interviews the incoming chair of the Senate Labor and Human Resources Committee, Sen. Nancy Landon Kassebaum (R-Kan.), reporting that “she outlined a legislative blueprint for turning over key regulatory programs to states and scrapping federal job training programs she said no longer serve their purpose.” She says that she intends to shelve labor and OSHA reforms currently in Congress and does not believe that the federal government should “get involved” with smoking in the workplace or repetitive motion injuries.[18]



2010 explosion of Deep Water Horizon oil rig, which killed 11 workers. BP has a well documented history of safety violations, including those that have led to oil refinery explosions and have been classified by OSHA as “willful.”

March 1995

Congress passes the [Unfunded Mandates Reform Act](#), which requires that for each rule created by a regulatory agency that “may result in the expenditure of funds by state, local, or tribal governments, in the aggregate or by the private sector of \$100 million or more in any one year,” OSHA provide a written statement including legal authority for the rule, cost-benefit assessment, a description of macro-economic effects, and a summary of how any concerns of the aforementioned governments were addressed. It must also consider all alternatives and select the least burdensome.

July 1995

Washington Post publishes article titled, “The Hill May be a Hazard for Safety Agency: Shift in Political Forces Brings GOP Push to Weaken OSHA.” Rep. Cass Ballenger (R-N.C.), chair of the House Subcommittee on Workforce Protections brags about getting campaign money from business by promising to weaken OSHA. He intends, he says, to fulfill these promises. Business groups tell the Post that OSHA is inefficient and costly. Article points out that OSHA was established under President Nixon and has been run by a Republican administration for 18 out of the 25 years of its existence.[19]

Not long after, Ballenger co-sponsors legislation to reduce OSHA's enforcement powers by requiring the agency to devote at least half of its budget to voluntary regulation programs that focus on education and compliance assistance for employers. It would also allow employers who opted to undergo safety inspections from independent third-party contractors to be exempt from OSHA penalties for two years. Responding to this proposed provision, Charles N. Jeffress, the director of OSHA's North Carolina office told a congressional panel that it would "free from any penalties employers who do nothing to protect their employees," adding that with 50 percent of its budget off limits, OSHA would be able to inspect even fewer workplaces than it currently does.[20] Bill dies in committee.

1996

Congress passes the [Small Business Regulatory Enforcement Fairness Act \(SBREFA\)](#), requiring OSHA to evaluate and address the effects of its regulations on "small entities," which are defined to include

"We don't think that's a reason you weaken OSHA and weaken the law; we think that that's a reason that you strengthen OSHA and give workers more rights at the workplace."
— AFL-CIO spokesperson, on the lack of sufficient OSHA inspectors

small businesses, governmental units, and small nonprofit organizations. To do this, OSHA must produce "initial regulatory flexibility analyses" and "preliminary economic analyses." These analyses require OSHA to: (1) document its efforts to consider all reasonable regulatory options and demonstrate that it has chosen the avenue that will minimize the rule's effect on small entities; (2) name the types and numbers of small entities affected by the rule, what these entities would need to do (in terms of reporting and record-keeping); (3) list all of the federal rules that duplicate, overlap or conflict with the proposed rule; and (4) determine whether or not rules will create "significant economic impact" on small entities. In the case that a rule does create a significant impact, OSHA must organize and convene a panel of small entities and consider their concerns. OSHA must either comply with the panels recommendations or provide a justification as to why it did not in its final rule.

SBREFA includes the [Paperwork Reduction Act](#), which requires regulatory agencies to analyze and report to the Office of Management of Budget on the paperwork requirements of any proposed regulation on affected businesses. It is then expected to minimize these requirements. Another part of the Act is the [Congressional Review Act](#), which requires the agency to submit a proposed rule to Congress 60 days before the rule is to be finalized. Congress then has a veto power over the rule. If both houses vote down the rule, it will not go into effect (see timeline for 2004).

1997

Rep. James M. Talent (R-Mo.) and Sens. Judd Gregg (R-N.H.) and Michael B. Enzi (R-Wyo.) concurrently introduce legislative proposals that would allow employers to hire third-party auditors to conduct safety inspections of the workplaces, for which they would obtain exemption from OSHA penalties for two years. They say that the provision would address the shortage of OSHA inspectors. A spokesperson from the AFL-CIO agrees that there are not enough OSHA inspectors to inspect all workplaces but says, “We don’t think that’s a reason you weaken OSHA and weaken the law; we think that that’s a reason that you strengthen OSHA and give workers more rights at the workplace.”[21]

1999

[Public Citizen Report](#) details the number of inspections conducted, violations found, and penalties imposed by OSHA from 1972 to 1998. Report finds a steady decline in inspections from 1975 through the end of that 26-year time span, with the last seven years of that period coinciding with the Clinton administration’s stewardship of the agency. Public Citizen concludes that the Clinton administration’s record on enforcement is comparable to or worse than that of its predecessor (the George H. W. Bush administration). It finds, among other things, an underreporting of incidents, a lack of standards on blatant workplace dangers, and a delay in making new rules, attributing these conditions to changes in OSHA policy resulting from the Clinton administration’s “Reinventing Government” initiative (an initiative that focused on voluntary regulation and a partnership between businesses and the agencies that regulate them).



Though it has been repeatedly petitioned to do so, OSHA has still not developed standards to prevent needle stick injuries in health workers.

2000

[OSHA finalizes rules intended to reduce ergonomic injuries](#). Representatives from the AFL-CIO call the standards “the most significant action that OSHA has ever taken to protect workers,” because, as it writes, “Musculoskeletal disorders are the biggest source of workplace injuries in this country.” Proponents of the regulations say that the rules will prevent 460,000 injuries a year and will save the country the costs associated with injuries such as medical bills, lost work time, the training of replacement workers, and worker compensation costs. OSHA’s director even says that the new rules should save American corporations \$9 billion a year. Business groups, however, say that these rules will be the largest and most costly regulations ever issued for the workplace and that they are unnecessary because the number of ergonomic injuries have declined in recent years.

[Between the time](#) when Secretary of Labor Elizabeth Dole, in reaction to a study indicating that ergonomic injuries were the most rapidly growing category of workplace illness, committed OSHA to addressing the problem in 1991 to 2000, OSHA's ergonomic rules have run the gauntlet of challenges: they have been challenged in court, heavily attacked by industry groups, and blocked by congressional action from research or finalization. Business groups say that they will continue to oppose the standards through court or congressional action.

2001:

Congress overrides what would otherwise have been a final OSHA rule setting out ergonomic standards. This is the first use of the Congressional Review Act, a law passed in 1996 as part of SBREFA, which gives congress the power to veto OSHA regulations. A White House Statement says that it is committed to worker health but that “there is a real concern about the overly burdensome current rules because of the negative impact they would have on jobs and economic growth.” Business groups praise

OSHA has “really looked after the low-hanging fruit and, and refuses to look at the patterns and practices and gangers, when we have repeated kinds of laxity in safety in the workplace.” — Sen. Ted Kennedy (D-Mass.), 2009

the decision. “If it is not stopped, the ergonomics rule will create a cottage industry for lawyers and consultants seeking millions in fees and forcing businesses to postpone productive investments that benefit workers,” says Randel Johnson, the Chamber of Commerce vice president for labor policy.

Democrats argue that overturning the standard would leave workers without protection from repetitive motion injuries and that the costs of the regulations would have been balanced by savings in reduced injury-related costs. Labor groups are extremely disappointed because they cannot appeal the decision. “There’s nothing you can go to court on,” says Margaret Seminario, the AFL-CIO’s safety and health director. “This is an act of Congress. Period. End of story.”[22]

2004

Sen. Kennedy [announces support](#) for legislation strengthening criminal sanctions against employers who willfully violate standards. OSHA declines to comment on whether or not it supports the increased penalties. New York Times analyzes two decades of safety inspection data to determine that over the time span, 2,197 workers died as a result of willful safety violations by their employers, but that these employers collectively served less than 30 years in jail and paid a total of \$106 million in civil fines. Sen. Jon S. Corzine (D-N.J.) says the weak criminal sanctions represent “an incredible failure to protect American workers.”

February 2006

[Article](#) in Environmental Health: A Global Access Science Source chronicles the rule-making process for a now-abandoned standard on the carcinogen known as hexavalent chromium. Article argues that chemical industry derailed the finalization of the standard by withholding relevant information that demonstrated the correlation between chromium and increased risk of cancer until after OSHA's rule-making process had come to a close.

2006

Sen. Michael Enzi (R-Wyo.), chairman of the Health, Education, Labor, and Pensions Subcommittee, again introduces legislation that would weaken OSHA's authority and make regulatory programs more voluntary in nature. A major component of the bill is the one permitting employers to hire third-party auditors to inspect their workplaces in exchange for two years of exemption from OSHA penalties for violations. However, after 12 miners are killed in a West Virginia mine disaster linked to safety violations, the bill quickly dies.[23]



As early as 2004, courts awarded workers compensation for illness caused by diacetyl, a hazardous chemical that can cause of serious lung disease. But OSHA has yet to finalize standards on exposure levels in manufacturing plants that use the chemical, including those that use the chemical to create artificial flavoring that is used in popcorn.

2007

The Employment and Worker Safety Subcommittee of the Senate Health, Education, Labor, and Pensions Committee holds a hearing asking, "[Is OSHA Working for Working People?](#)" The hearing is intended to evaluate the proposed "Protecting America's Worker Act."

At the hearing, Margaret Seminario, the director of occupational safety and health for the AFL-CIO, [testifies](#) that, while significant progress has been made since the Occupational Safety and Health Act was passed in 1970, progress has slowed: standard-setting and rule making have come to a halt, inspections have declined, and penalties were well under the maximum.

"A combination of too few OSHA inspectors and low penalties make the threat of an OSHA inspection hollow for most employers," Seminario says. She attributes the slowing of progress in large part to the Bush administration's preference for voluntary regulation efforts over mandatory standards and industry-wide enforcement initiatives. She also says that OSHA's weaknesses stem from underreporting, legal hurdles to quickly setting standards, a lack of resources, and inadequacies in the law — among

which she names weak protections for whistleblowers and low maximum fines for criminal penalties. No action is taken on the bill.

2008

In a hearing by the Subcommittee on Employment and Workplace Safety of the Senate Committee on Health, Education, Labor, and Pensions asking the question, “[Is OSHA Failing to Enforce Construction Safety Rules?](#),” Chairwoman Patty Murray (D-Wash.) says that OSHA has been “dangerously ineffective” for the past seven years as a result of emphasizing voluntary enforcement, neglecting standard-setting for dangerous chemicals, and ignoring patterns of tragedy. Experts testifying blame administrative policies that emphasized industry self-policing over federal enforcement of regulations. Sens. Kennedy and Obama also testify, each saying that OSHA needs to be updated and that its staffing and resources have not grown proportionally with increase of American workers or with requirements.

March 2010

In a hearing in connection with the reintroduction of the “[Protecting America’s Workers Act](#),” Lynn Woolsey (D-Calif.), chairwoman of the House Subcommittee on Workforce Protections of the Committee on Education, says that OSHA cannot be completely effective until changes are made to expand coverage under the Act, to increase protections for whistleblowers, and to increase penalties for certain violators.

David Michaels, the Labor Department’s assistant secretary for occupational safety and health, testifies that fines for OSHA violations are inadequate, and that the proposal to increase the penalty for willful and repeated violations from the current maximum of \$70,000 to a new maximum \$250,000 would not represent an inordinate increase. He notes that the increase, when taking inflation into account, would only return penalties to a level roughly equal to those established in 1990.

Michaels adds that OSHA’s maximum penalties are extraordinarily small compared to the penalties available to other regulatory agencies, citing, among others, the Federal Communications Commission, which can fine a TV or radio station up to \$325,000 for indecent content. The reintroduced legislation dies in committee.

“There are limitations on OSHA’s effectiveness unless Congress makes fundamental changes to the OSH Act, which is a law that has not been updated since it was first passed in 1970.”

— Rep. Lynn Woolsey (D-Calif.), Chairwoman, Subcommittee on Workforce Protections, 2010

August 2010

[A GAO report](#) criticizes OSHA for not adequately training its investigators, not investing in standard equipment and resources, and poorly managing its whistleblower protection program. “OSHA lacks sufficient internal controls to ensure that the whistleblower program operates as intended due to several factors, including inconsistent program operations, inadequate tracking of program expenses, and insufficient performance monitoring,” the GAO writes, saying also that whistleblower protections are crucial in the enforcement of safety regulations. OSHA says that it is working to remedy the problems



A memorial to the 29 miners killed in 2010 by an explosion at a Massey Energy coal mine in West Virginia. Independent and state investigators found that Massey Energy had neglected safety rules, resulting in poor ventilation, equipment whose safety mechanisms were not functioning, and combustible coal dust “behaving like a line of gunpowder carrying the blast forward in multiple directions.”

identified. Sens. Tom Harkin (D-Iowa) and Patty Murray (D-Wash.), joined by Reps. George Miller (D-Calif.) and Lynn Woolsey (D-Calif.), distribute press release noting that, in congressional hearings on large workplace accidents, many employees testified that they had been afraid to report safety hazards to OSHA. OSHA spokesperson Jason Surbey cites “lack of resources” for the persistence of problems in the protection program. Assistant Secretary of Labor David Michaels says that OSHA is currently doing the best that it can with available resources to review and strengthen whistleblower protections.

February 2011

In hearing held by the Subcommittee on Workforce Protections of the House Committee on Education and the Workforce called “[Investigating OSHA’s Regulatory Agency and its Impact on Job Creation](#),” the new chair of the Subcommittee, Rep. Tim Walberg (R-Mich.), says that, under the Obama administration, OSHA has been too focused on punishment and not enough on prevention. Thomas M. Sullivan, an attorney with Nelson Mullins Riley and Scarborough, a large law firm that lobbies for businesses on regulatory issues, tells the committee that the cost per household of complying with federal regulations rose faster over the past two years than the cost per household of healthcare and that federal regulations have excessive impacts on small business.

Footnotes:

1. Alice Bonner, "OSHA Backlog Swells While its Staff Doesn't," The Washington Post, July 19, 1978, accessed September 2, 2011, Nexis.com.
2. Richard Carelli, Untitled, Associated Press, October 10, 1979, accessed September 20, 2011, Nexis.com.
3. Frank Swain, "Small Business's Turn for Relief from Red Tape," U.S. News and World Report, October 12, 1981, accessed September 29, 2010, Nexis.com.
4. Jeffery Mills, "In a Campaign Year, Regulators Take a Rhetorical Beating," Associated Press, October 24, 1980, accessed September 20, 2011, Nexis.com.
5. Merrill Sheils with Mary Hager and William J. Cook, "Reagan's Big Cleanup Fight," Newsweek, December 8, 1980, accessed September 28, 2011, Nexis.com.
6. Chemical Week, "Worker Right to Know; The Struggle Moves into Courts," Chemical Week, April 18, 1984, accessed September 28, 2011, Nexis.com.
7. Gene Grabowski, "Nominee Promises Review of Health and Safety Programs," Associated Press, April 23, 1985, accessed September 4, 2011, Nexis.com.
8. Vicky Cahan, "Court to OSHA: Rewrite Right-to-know," Chemical Week, June 5, 1985, accessed September 30, 2011, Nexis.com.
9. Karen Ball, "Bush Administration Supports Tripling Employer Safety Fines," The Oregonian (Portland, Ore.), May 2, 1990, accessed September 4, 2011, Nexis.com.
10. Deborah Mesce, "Workplace Illnesses Kill More People than Cars, Report Says," Associated Press, August 30, 1990, accessed September 30, 2011, Nexis.com.
11. Paul Kirby, "House Education and Labor Committee Approve OSHA Reform Bill," State News Service, May 28, 1992, accessed September 29, 2011, Nexis.com.
12. Dena Bunia, "Slow Road to Safety: As Congress Mulls Accelerating OSHA's Snail-like Pace, the Agency Head Says, 'Not So Fast,'" Newsday, May 31, 1992, accessed September 30, 2011, Nexis.com.
13. Scott Bronstein, "OSHA Air-quality Rules Toppled: Court Ruling Virtually Guts 3-year-old U.S. Stan-

dards,” Atlanta Journal and Constitution, July 9, 1992, accessed September 20, 2011, Nexis.com.

14. Edward R. Silverman, “Consumers Win, Workers Lose on Toxics,” Newsday, July 10, 1992, accessed September 30, 2011, Nexis.com.

15. Traffic World, “Rewrite of Workplace Safety Laws would Give OSHA More Authority,” Traffic World, July 26, 1993, accessed September 30, 2011, Nexis.com.

16. David R. Sands, “Clinton Pushes Bill to Overhaul OSHA, Extend Safety Rules to Government Jobs,” The Washington Times, February 9, 1994, accessed September 12, 2011, Nexis.com.

17. Jon Denton, “Smoking Ban Draws Fight City Restaurants Protest OSHA Proposal,” Daily Oklahoman (Oklahoma City, Okla.), October 30, 1994 (Sunday edition), accessed September 12, 2011, Nexis.com.

18. Frank Swoboda, “Kassbaum Hits Labor Initiatives; Senator Vows to Fight Smoking, RSI Rules,” The Washington Post, December 1, 1994, accessed September 30, 2011, Nexis.com.

19. Michael Weisskopf and David Maraniss, “The Hill May be a Health Hazard for Safety Agency; Shift in Political Forces Brings GOP Push to Weaken OSHA,” Washington Post, July 23, 1995, accessed September 12, 2011, Nexis.com.

20. Alexi Friedman, “Jeffress Blasts New OSHA Law, Says it will Harm Workers” State News Service, June 28, 1995, accessed September 30, 2011, Nexis.com.

21. Phillip Dine, “Rep. Talent Backs Bill to Overhaul OSHA,” St. Louis Post-Dispatch, September 30, 1997, accessed September 30, 2011, Nexis.com.

22. Phillip Dine, “Rep. Talent Backs Bill to Overhaul OSHA,” St. Louis Post-Dispatch, September 30, 1997, accessed September 30, 2011, Nexis.com.

23. Martha Lynn Craver, “OSHA Reform Dims After Mine Disaster,” Kiplinger Business Forecasts, January 13, 2006, accessed September 30, 2011, Nexis.com.