

Responses to Questions for the Record by Hon. Douglas L. Parker

1. With respect to heat stress, please address the following:

a. First, explain for us briefly what a National Emphasis Program is.

An OSHA National Emphasis Program (NEP) targets a particular industry or specific hazard for additional compliance inspections. They are typically based upon quantitative evidence indicating that a particular industry has elevated numbers of injuries or illnesses, or a specific hazard is of particular concern. Compliance inspections may be combined with other forms of interventions, such as outreach and education.

b. When you led OSHA, you started a National Emphasis Program on heat. Why, and what did this program entail?

Excessive heat has long been recognized as a major hazard for indoor and outdoor workers nationwide. OSHA initiated a rulemaking process to propose a standard to protect workers from heat illness. During the development of the rule, OSHA recognized the importance of addressing excessive heat exposure with existing tools, and not waiting for a rule to act on workers getting sick and dying. In the Spring of 2022 OSHA introduced its heat illness prevention NEP. OSHA increased heat-related programmed inspections, conducting thousands a year, but also engaged in extensive outreach, especially in the first year of the NEP. It developed guidance on protecting workers from heat illness and engaged with employers on ensuring compliance with their obligations to protect workers from heat.

c. The Trump Administration replaced it with their own emphasis program. How does it differ from the one you established during the Biden Administration?

The Trump Administration renewed the 2022 NEP with some changes, the most notable of which was the elimination of numerical goals for the number of OSHA heat inspections.

d. What signal does this change send to employers?

I can only speculate as to why OSHA removed the numerical goals. The concern is that the elimination of a numerical goal is perceived as a de-emphasis on proactive inspections, and a signal to employers to expect less enforcement.

Regardless of whether it is or is not intended to be such a signal, reductions in OSHA inspections during this Administration due to staffing reductions mean that fewer inspections, including heat inspections, will occur. The Administration's FY 27 budget proposes a 36% reduction in the number of inspections from FY 24 levels, the last year of the Biden Administration. This is clearly going in the wrong direction.

e. What is the likely impact on workers from the Trump Administration's decision to weaken the heat emphasis program?

I am particularly concerned that, with staffing reductions in key area offices in the South, OSHA lacks the capacity to respond in force when heat waves put workers at particularly elevated risk, and that instead of proactively conducting sweeps to check that employers have heat protections in place, they will be responding to reports of worker heat illness and deaths.

Like you, Ranking Member Scott, I will be closely monitoring the number of heat inspections conducted by OSHA this year, when those numbers become available, as well as the outcomes of those inspections.

2. When the Trump Administration last published the semi-annual regulatory agenda, OSHA moved the topic of workplace violence down to the Long-Term Actions list.

- a. First, what are the kinds of risks that OSHA planned to address when it put workplace violence on the agenda to begin with?

The rulemaking process was initiated to address workplace violence in health care and social services settings. Health care workers suffer some of the highest rates of workplace violence, often at the hands of patients.

- b. Can you give us any examples that you saw when you were at OSHA or at Cal/OSHA?

There are infamous instances in California of health care workers being killed by patients at psychiatric hospitals. The patients were known risks for violent behavior and the facilities lacked preventive measures such as adequate staffing levels or operating procedures to ensure workers were not isolated with patients. These instances led in part to California adopting a workplace violence standard for health care workers. However, health care workers are severely attacked on a daily basis under much less obviously hazardous circumstances.

- c. What message does it send that the Trump Administration has demoted the topic to the long-term list?

I can only speculate as to the underlying reasons for moving workplace violence to the long-term agenda, but it is likely that either OSHA lacks the resources to act on a health care workplace violence standard due to large staffing cuts and expending its limited rulemaking resources on questionable, low-ROI de-regulatory efforts, or the Trump Administration does not want to see a workplace violence standard for health care workers move forward.

3. Witnesses in this hearing touched on the possible uses of artificial intelligence and other advanced software-driven technologies to update OSHA's Lock-Out/Tag-Out Standard.

- a. First, can you briefly explain this standard and how it protects workers?

The lockout tagout standard protects workers against unanticipated motion or energy from machinery and equipment. It requires that moving parts or equipment or machinery be blocked from motion, that electricity or other energy sources can't be activated, and that controls are in place to prevent others from inadvertently activating machinery when a worker is at risk of being harmed. An example would be, before cleaning or repairing an industrial meat grinder ensuring it is turned off, that power is disconnected, that a lock/tag are in place to prevent others from energizing the equipment, and that blades or other moving parts are not capable of moving due to potential energy in a way that could harm the worker.

- b. If OSHA were to update the standard in the ways Ms. Martin and Ms. Peters suggested, by incorporating software-driven alternatives, what kind of capacity would OSHA need to be able

to rewrite the rules and effectively enforce them?

OSHA would need sufficient mechanical, electrical, software engineering know-how, and legal capacity from the Office of the Solicitor to address a range of issues and circumstances across a wide range of industries where these approaches could apply.

c. Does OSHA have that capacity today?

No, unless perhaps it abandoned all other significant rulemaking and borrowed expertise from other parts of the agency.

d. With the budget that the Trump Administration proposed for FY27, how likely would OSHA be to develop that capacity?

The FY 27 President's budget proposes major cuts to rulemaking, so there is zero likelihood of expediting and 100% likelihood of impeding efforts to modernize the lockout-tagout standard if that budget is passed.

4. You testified that the worker health and safety risks related to artificial intelligence could be reduced through "prevention by design."

a. Please explain the concept of "prevention by design."

Prevention by design refers to the consideration of safety and health at the design and engineering phases of making a product, machine or process. For example, ensuring that a production assembly line does not have pinch points, and that the assembly process does not require workers to reach uncomfortably or experience strain in handling their tools, and ensuring those elements before the process is put on line is prevention by design in action.

In the AI context, prevention by design can mean things like removing bias in the training phase and a process for collaboration, input and review by and between process engineers, managers, safety professionals, AI developers, and workers so their goals and concerns are addressed when integrating AI into a work process.

b. How do the specific tools you mentioned ("risk assessment tools, auditing standards, and a safety certification process") exemplify prevention by design?

A ecosystem for evaluating the effectiveness and assessing risks of AI tools is still developing. How transparent those evaluation tools will be for those who need to understand the tools is still an open question. These tools all serve the purpose of understanding an AI application and its impact in a specific use context. This is a necessary condition for incorporating prevention into the design of the tool.

Certification is an important potential tool in ensuring AI does not introduce new physical or psychological hazards into the workplace. Certification should be more than simply a certification of the quality of technology. It should also ensure human-centered design so that technology is serving workers, not the other way around.

c. Are there any other workplace risks that would ideally be addressed through

prevention by design? If so, please elaborate.

As my definition above suggests, safety for all workplace processes that involve risk can be improved by prevention by design.

5. You testified that the best use of leading indicators is to track implementation of safety and health management systems.

- a. What are these systems?

Safety and health management systems (SHMS) are comprehensive approaches to health and safety which, in addition to technical components such as safety protocols and standard operating procedures, incorporate key leadership roles and responsibilities, risk management, procedures for worker involvement, and a comprehensive approach to finding and fixing hazards. SHMS address safety culture and climate as well as physical hazards. They emphasize continuous improvement, focus on learning instead of blame, and integrate safety into an organization's core values.

- b. In your experience, how broadly are employers adopting safety and health management systems, and what kinds of employers do not do so?

There is significant implementation of SHMS, or at least some components of SHMS, among larger, more sophisticated employers in higher hazard industries. The employers who do not implement SHMS are often smaller employers or employers who do not perceive a need to implement a SHMS, often instead using more compliance-based or behavior-based safety programs. There is also a subset of employers who simply do not invest significant resources in safety, or resist some component of an effective SHMS such as the need for worker involvement.

- c. If OSHA attempted to require employers to adopt safety and health management systems, what response would you anticipate from the industry groups and lobbyists representing employers?

I would expect most if not all employer associations to resist a mandate to adopt a SHMS.

Questions for the Record from REPRESENTATIVE Ilhan Omar

Representative Ilhan Omar (D-MN)

Question(s) for Hon. Doug Parker

1. Minnesota recently enacted a state ergonomics standards requiring baseline protections for workers in warehouses, healthcare facilities, and meat and poultry processing plants.

- a. Mr. Parker, could you describe the prevalence and significance of ergonomics hazards in the modern workplace?

Data from the Bureau of Labor Statistics show that a million US workers suffer ergonomic injuries each year. There are many more ergonomic injuries that go unreported. These injuries, caused by overexertion, repetitive motion and other ergonomic conditions can be debilitating,

leading to loss of employment or forcing workers into lower paying jobs. They often involve significant pain and medical treatment. The industries covered by the Minnesota standard include industries with some of the highest rates.

- b. Can you briefly explain the history of federal OSHA's ergonomics rulemaking and what happened to that standard?

OSHA issued an ergonomic standard in November 2000 that covered all industries. It was nullified by Congress under the Congressional Review Act in March 2001.

- c. What would it take for OSHA to issue a new ergonomics standard today, and, absent that, how should the federal government support states leading the way to address such urgent and emerging workplace health & safety risks?

Congress's actions under the Congressional Review Act places limitations on OSHA's ability to take regulatory action similar to the 2000 ergonomic standard, absent Congressional action. OSHA could still issue industry-specific ergonomic standards. OSHA can also issue standards that are less performance-based and more prescriptive than the 2000 standard.

States with approved OSHA plans such as Minnesota can issue ergonomic standards enforced by their state OSHA plans. States that do not have a state OSHA plan have some pathways to address ergonomic hazards through legislation but cannot establish an agency responsible for enforcing worker health and safety regulations without federal approval.

The federal government can support state action to address ergonomic hazards by funding applied research into ergonomics by the National Institute for Occupational Safety and Health. OSHA could also provide assistance to states, such as the development of model ergonomic standards for state implementation.