

Questions for the Record for the Honorable Douglas L. Parker

Subcommittee on Workforce Protections Hearing: “Examining the Policies and Priorities of the Occupational Safety and Health Administration.”

September 27, 2023

10:15 a.m.

Chairman Kevin Kiley (R-CA)

1. While DOL’s FY 2024 budget request lists the tree care standard as a priority, OSHA recently missed the Fall 2022 regulatory agenda’s May 2023 target date for issuance of a proposed rule. As OSHA has missed its self-imposed deadline for the fourth time under this Administration, will OSHA ensure that the standard is issued by its December 2023 target set forth in the Spring 2023 Regulatory Agenda?

Response: The Tree Care Operations rulemaking continues to be a priority for OSHA. The agency maintains a robust regulatory agenda and is working concurrently on multiple priority rules with limited resources. The agency does have staff dedicated to this rulemaking, and they are making progress developing a Notice of Proposed Rulemaking; however, at this time we cannot project the specific timeline for its publication.

Full Committee Chairwoman Virginia Foxx (R-NC)

1. Recently, the Mine Safety and Health Administration (MSHA) issued a proposed rule related to occupational exposure to silica. In 2016, the Occupational Safety and Health Administration (OSHA) issued a final rule which reduced the permissible exposure limit and focused enforcement on exposure risk. MSHA is relying on OSHA’s data to justify the new proposed rule, but the proposed rule is more prescriptive and would stifle small businesses that have no exposure risk. The Department of Labor’s (DOL) two differing standards on workplace silica exposure are confusing for industries that comply with both OSHA and MSHA regulations. Will you commit to working with DOL to ensure any MSHA final rule is more in line with OSHA’s standards, which keep resources focused on actual exposure risk?

Response: MSHA’s proposed rule was published in the Federal Register on July 13, 2023. The comment period for the rule closed on September 11, 2023. The Department received 157 comments, which are published in the rulemaking docket at MSHA–2023–0001 and represent a wide variety of views. In addition, the Department held three widely advertised public hearings to receive in-person and virtual comments. The Department is in the process of reviewing those comments and will carefully consider them in drafting a final rule. OSHA provides technical assistance to MSHA as requested.

2. OSHA is currently considering a whopping 23 new regulations and has taken a heavy-handed enforcement approach to ensure compliance.

- a. What is OSHA's top rulemaking priority for FY 2024?

Response: This Administration has added four actions to the regulatory agenda. Other actions on the agenda are intended to modernize or update existing regulations so that they continue to protect workers while not imposing an undue burden on employers, taking into consideration things like technology, as you mention below. Other items simply codify actions taken by Congress or relate to OSHA's administrative operations. All are at various stages of completion and/or information gathering and keeping them on the regulatory agenda is an important signal to the public about the full range of the agency's activities. This process allows stakeholders to more effectively communicate their challenges and concerns. We are working diligently on a range of rules, particularly emergency response, heat, infectious disease, and workplace violence, but that does not preclude significant progress on other important rulemaking projects such as tree care and lock-out/tag-out.

- b. What is OSHA's top enforcement priority?

Response: OSHA's priority remains using all its tools to protect workers from workplace safety and health hazards, with emphasis on employers that disregard health and safety obligations and high hazard workplaces, particularly those employing vulnerable and underserved workers.

- c. With respect to OSHA's commitment to each priority, do you believe OSHA is on track to meet those commitments during the Biden administration?

Response: OSHA continues to work diligently to advance the priorities of the Administration, the Department of Labor, and the agency in protecting the Nation's workers. OSHA believes it is on track to meet its commitments. We try to predict activities over the next 12 months as accurately as possible, but dates and schedules are subject to change. The President's FY 24 budget request would further invest in OSHA's work to ensure all workers have access to a high-quality job in a safe workplace, enabling them to build a better life for themselves and their families.

3. Will OSHA be able to publish a final rule on heat illness prevention by the end of 2024?

Response: Our focus is on completing a proposed rule that would lay the groundwork for a final rule that is highly protective of workers, is workable for employers, and provides predictability and clarity for both.

4. On July 21, 2023, OSHA issued a final rule titled “Improve Tracking of Injuries and Illnesses,” which re-instates provisions of the controversial 2016 Obama-era electronic injury and illness rule.

a. How does OSHA intend to use the data from the amended recordkeeping rule?

Response: Data from Forms 300 and 301 will allow OSHA to determine the prevalence of specific injuries and illnesses and respond appropriately, whether that response is in the form of targeted enforcement efforts or compliance assistance, general guidance materials or regulatory solutions, or cooperation with local public health authorities. Data can also be used to identify specific tools, processes, or activities within injury descriptions; identify occupations at higher risk for occupational injuries within and among industries; and compare severe and less severe injuries among industries or sectors.

b. Does OSHA have specific staff dedicated to reviewing the data or processing the data to identify trends in injuries?

Response: Yes.

5. On August 30, 2023, OSHA proposed a rule (“walkaround proposed rule”) that would enable its inspectors to allow union organizers, community activists, or other third parties to participate in an inspection if an employee requests the inspector do so.

a. With regard to union organizers’ access to non-unionized workplaces, has OSHA considered whether its proposed rule will circumvent the *National Labor Relations Act* (NLRA) and other requirements that employees must be covered by a collective bargaining agreement before union representatives can be permitted on the premises?

Response: The proposed rule, which would revise an existing regulation issued under the Occupational Safety and Health (OSH) Act implementing requirements for representatives of employers and employees, was published in the Federal Register on August 30, 2023. OSHA’s ability to conduct comprehensive inspections is essential to fulfilling the purpose of the OSH Act to protect working people from occupational safety and health hazards. The proposal was open to comment by the public through November 13, 2023. The Department will consider all timely written comments submitted to the docket regarding its proposal prior to issuing any final rule. The status of the rule limits the Department’s ability to provide information beyond what is published in the Federal Register or speculate about what may be in the final rule.

- b. Has OSHA communicated with the National Labor Relations Board (NLRB) about the walkaround proposed rule and the interplay between this proposal and NLRA case law?

Response: Please see OSHA’s response to 5a above.

6. The walkaround proposed rule provides OSHA inspectors absolute discretion to determine if a third party would “aid in the inspection,” and there is concern that individuals without any technical safety expertise may be allowed to participate.

- a. Does the proposed rule provide any meaningful barriers to keep a clearly biased third party from becoming involved in the investigation?

Response: Please see OSHA’s response to 5a above.

- b. Does the proposed rule permit an employee to designate a personal injury lawyer who has previously pursued workplace injury claims against an employer as his or her representative?

Response: Please see OSHA’s response to 5a above.

7. OSHA’s Field Operations Manual specifically advises against its inspectors becoming involved in a worksite dispute involving labor-management issues or interpretation of collective bargaining agreements. Is the walkaround proposed rule consistent with OSHA’s own policy? Why or why not?

Response: Please see OSHA’s response to 5a above.

8. Under 29 C.F.R. § 1903.8(c), a third-party expert with particular knowledge about a facility could potentially join inspectors as an employee’s representative for a worksite inspection.

- a. Provide data detailing how many times a third-party representative accompanied inspectors during their duties for FY 2019-2023.

Response: OSHA does not track this metric.

- b. Provide details on the circumstances under which OSHA has permitted or excluded “a third party who is not an employee of the employer” under 29 C.F.R. § 1903.8(c) from accompanying inspectors during FY 2019-2023, and provide justification for such determinations.

Response: As explained above, OSHA does not track this information and cannot provide these details. However, an example provided in the *walkaround proposed rule* involved third-party representatives who helped facilitate OSHA communication with workers during an inspection in 2012. The representatives were able to clearly identify and communicate safety concerns to the compliance

safety and health officer (CSHO) during the walkaround inspection. Many of the exposed workers were not fluent in English and having representatives who the workers trusted and facilitated communication with the CSHO enabled OSHA to conduct numerous worker interviews and better investigate the workplace conditions.

- c. Provide details on OSHA's criteria used by an inspector to determine "good cause has been shown [as to] why accompaniment by a third party which is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace" under 29 C.F.R. § 1903.8(c).

Response: Whether a CSHO determines that a third-party is reasonably necessary depends on the particular circumstances of the inspection. For example, a CSHO may determine that a third-party representative such as a union safety and health representative may reasonably enable more open and candid communication by workers with the CSHO to help the agency better understand safety and health concerns associated with their work. These workers may not otherwise be willing to participate in the inspection without their representative present. While this is a long-standing requirement under OSHA's regulations, OSHA has also sought stakeholder comment on it in the proposal.

9. Describe how OSHA has determined which companies or industries merit targeted enforcement since January 1, 2022. In your description, provide the percentage of OSHA facility inspections that result in citations since that date.

Response: OSHA's targeted enforcement programs, such as National Emphasis Programs (NEPs) and Local Emphasis Programs (LEPs), are temporary programs that focus OSHA's resources on particular hazards and high-hazard industries. OSHA evaluates existing and potential new emphasis programs using inspection data, injury and illness data, National Institute for Occupational Safety and Health (NIOSH) reports, peer-reviewed literature, analysis of inspection findings, and other available information sources. LEPs are designed and implemented at the regional office and/or area office levels. These programs are intended to address hazards or industries that pose a particular risk to workers in the office's jurisdiction. The emphasis programs may be implemented by a single area office, or at the regional level (Regional Emphasis Programs) and applied to all the area offices within the region. Each program lays out the criteria used to justify the program and describes the targeting methodology regarding how particular establishments are chosen.

In addition to emphasis programs, OSHA also uses the illness and injury data submitted to OSHA by employers, as required by OSHA's recordkeeping rules, to target high-rate worksites under the Site-Specific Targeting program.

From January 1, 2022, to October 22, 2023, 65% of all federal OSHA programmed inspections were not-in-compliance (i.e., resulted in citations). This calculation excludes inspections that are currently open with no violations issued. This is a lower not-in-

compliance rate than in some prior years because several recent efforts have emphasized a significant outreach and education component, such as those on heat illness prevention and COVID-19, where the focus has been on preventive intervention.

10. Describe how OSHA determines that a safety and health complaint will trigger an inspection if it is received by an employee or a third party. Does OSHA treat certain complaints differently depending on who makes the complaint?

Response: OSHA evaluates each complaint on a case-by-case basis. OSHA’s process for handling safety and health complaints is outlined in Chapter 9 of OSHA’s Field Operation Manual (FOM). There are two types of complaints: formal and non-formal. Formal complaints are made by a current employee or a representative of employees; asserts that an imminent danger, a violation of the Act, or a violation of an OSHA standard exposes employees to a potential physical or health harm in the workplace; is reduced to writing or submitted on a Complaint OSHA-7; and is signed by at least one current employee or employee representative. Non-formal complaints are any complaints alleging a safety or health violation that do not meet all the requirements of a formal complaint and do not come from a CSO, another safety and health agency, a whistleblower investigator, another government agency, the media, or an employer or employer representative. There are a number of different conditions that would normally trigger an inspection, such as: whether a valid formal complaint has been submitted; whether an imminent danger situation has been alleged; whether the establishment has a history of egregious, willful, failure-to-abate, or repeated citations; and whether an employee under 18 is exposed to a serious hazard. See Chapter 9-3 – 9-4 of OSHA’s FOM for further details.

11. How does OSHA confirm that a third-party organization or labor union that files a safety and health complaint as an alleged representative of an employee actually has the authorization of an employee to file a complaint on his or her behalf?

Response: As Chapter 9 of OSHA’s FOM states, “the representative capacity of the person filing complaints on behalf of another should be ascertained unless it is already clear. In general, the affected employee should have requested, or at least approved, the filing of the complaint on his or her behalf.”

12. How many referrals did OSHA receive from the NLRB about potential safety and health and whistleblower violations? Of these referrals, how many resulted in an OSHA inspection? Please provide data from FY 2022 and FY 2023.

Response: OSHA’s tracking does not show that we received any referrals from the NLRB regarding potential safety and health or whistleblower violations in FY 2022 or FY 2023. However, the NLRB may reach out to Area Directors directly or via email which may not be captured as a referral.

13. How does OSHA handle a complaint when it has previously investigated a complaint by the same person at the same facility within the last year, but the investigation resulted in no violation?

Response: All complaints are evaluated independently. Whether an on-site inspection is warranted is determined by the information provided in the complaint and using criteria outlined in Chapter 9 of the FOM as discussed above. This analysis occurs regardless of whether there has been a prior complaint or prior on-site inspection activity since the work conditions can change over time.

14. Does OSHA use injury and illness data to direct its enforcement priorities and actions and deploy other agency resources? Explain what data is used and how that data is used to establish enforcement priorities and actions and use of resources.

Response: Injury and illness data allow OSHA to determine the prevalence of specific injuries and illnesses and respond appropriately, whether that response is in the form of targeted enforcement efforts or compliance assistance, general guidance materials or regulatory solutions, or cooperation with local public health authorities.

15. As you know, employers are utilizing new technology to improve workplace safety, including removing people from dangerous operations at heights, near machinery, or in other situations. Congress recognized the value of innovative technology in the workplace and asked OSHA to evaluate this issue in the FY 2023 appropriations report and to report its findings.

- a. Has OSHA completed this report?

Response: Yes, OSHA completed this report and submitted it to Congress on July 3, 2023.

- b. If so, provide the report to the Committee.

Response: OSHA will attach a copy of the report submitted to Congress in July 2023.

16. Has OSHA conducted a comprehensive review to determine whether any of its current regulations limit the use of innovative technologies in the workplace to improve employee safety and health?

Response: OSHA is aware that technology frequently outpaces the rulemaking process and engages with stakeholders on advanced technologies and how they are or are not covered under existing OSHA regulations. We have several modernizations and updates on the regulatory agenda. Additionally, OSHA works with manufactures and employers within the law in an effort to provide flexibility to prevent rules from interfering with technological advances that make workplaces safer, for example via the variance process.

17. The COVID-19 Public Health Emergency ended on May 11, 2023.

- a. Have all OSHA personnel returned to onsite, in-person work, as was the case before March 2020?
- b. If not, what are your plans to return personnel to onsite, in-person work?

Response: OSHA is following Departmental guidance on onsite work. The Department of Labor's workplace flexibilities are and have always been subject to the Department's mission and primarily based on position duties. OSHA's mission-critical onsite work continued through the pandemic and beyond, that included CSHO's onsite inspections, including investigations of fatalities, imminent danger, hospitalizations, and serious injuries. Additionally, onsite office work was and still is needed to issue citations, process debt collections, handle incoming mail, and issue credentials. OSHA will continue to follow Departmental guidance as in-person work requirements increase.

18. OSHA has received requests for years to update its Lock-out/Tag-out standard to protect workers better from the dangers of hazardous energy and address the availability of new technology to keep workers safe. While OSHA initially targeted January 2022 as the deadline to release a proposed rule, DOL's leadership has since deprioritized the rule and moved it to the long-term actions list. Meanwhile, OSHA has pushed forward with new regulations on walkaround rights and occupational heat exposure, both of which are highly controversial and do not enjoy the same broad support from the regulated community. Can you explain how the agency decides which regulations it will prioritize?

Response: OSHA has multiple regulatory priorities which may shift given emerging or significant risk of injury, illness, and death from hazards. The Spring 2023 Regulatory Agenda reflects a more realistic timeline for completion. OSHA will continue its work on updates.

19. As you are aware, employers have the right to refuse a jobsite inspection under the Fourth Amendment of the Constitution—unless OSHA obtains a court-ordered warrant. While most employers do not go this route, it is likely that many will choose to assert this right if the walkaround proposed rule goes into effect and antagonistic third parties are allowed to accompany OSHA inspectors at a jobsite inspection.
 - a. Does DOL's leadership believe it is a good use of resources to spend additional time in court to obtain warrants?
 - b. By what amount do you estimate OSHA inspections will be reduced if it needs to wait for court orders to conduct onsite inspections?

Response: The proposed rule, which would revise an existing regulation issued under the Occupational Safety and Health (OSH) Act implementing requirements for representatives of employers and employees, was published in the Federal Register on August 30, 2023. OSHA's ability to conduct comprehensive inspections is essential to fulfilling the purpose of the OSH Act to protect working people from occupational safety and health hazards. The proposal was open to comment by the public through November 13, 2023. The Department will consider

all timely written comments submitted to the docket regarding its proposal prior to issuing any final rule. The status of the rule limits the Department's ability to provide information beyond what is published in the Federal Register or speculate about what may be in the final rule.

20. OSHA has its walkaround proposed rule underway, but I am interested in understanding how third-party participation in inspections can occur under its current regulations.

Response: The current regulation provides that a third party may accompany the CSHO if the party is "is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace." 29 C.F.R. § 1903.8(c). As explained in the notice of proposed rulemaking for the walkaround rule, OSHA has long interpreted this regulation as permitting third-party representatives authorized by employees to accompany OSHA on the walkaround inspection when reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.

- a. Under current regulations, how does OSHA determine whether an individual is acting as the representative of employees and, therefore, can participate in a worksite inspection?

Response: Chapter 3.IV of OSHA's FOM specifies that CSHOs shall determine as soon as possible after arrival whether the workers at the inspected worksite are represented and, if so, shall ensure that employee representatives are afforded the opportunity to participate in all phases of the inspection.

Chapter 3.VII of the FOM describes the current process for determining walkaround representatives.

- b. Do employees get to vote on the presence of such an individual claiming to act on their behalf?

Response: A vote is not required.

21. Through the implementation of its updated injury and illness reporting final rule, OSHA will collect detailed, site-specific injury and illness records from certain jobsites and publish this information on a public website. Although OSHA claims it will scrub personally identifiable employee information from public view, business owners and their employees are rightfully concerned about the disclosure of their private information.

- a. Does OSHA currently have the technological capacity to shield personally identifiable information from public disclosure?

Response: OSHA will utilize all available tools to protect worker information, including utilizing technology. For example, OSHA is not collecting worker data, such as names or addresses, and will convert birthdates to age. OSHA will remind employers not to submit information that could directly identify workers. The agency will utilize automated information technology to detect and remove any

information that could directly identify workers before posting text-based data online and is currently exploring software that can accomplish this task.

- b. How much of the OSHA budget will go to managing this information?

Response: OSHA is currently assessing costs associated with scrubbing personally identifiable information. Costs will vary depending on technical performance and need.

22. The Committee has heard from several participants in the Voluntary Protection Program (VPP). They have found that the collaboration between OSHA, employers, and employees through VPP has been extremely valuable in keeping workers safe. Earlier this year, OSHA solicited public feedback on how it can modernize, improve, and expand VPP. Do you have any updates on that effort or a timeline for when the agency plans to implement any proposed changes that have been recommended by stakeholders?

Response: OSHA is currently in the process of developing a framework to modernize, improve, and expand VPP while maintaining the reputation, integrity, and value of VPP status. OSHA received productive feedback in response to our request for public comment and is in the process of integrating that feedback with OSHA's priority elements.

23. On July 14, 2023, OSHA launched a National Emphasis Program (NEP) on Warehousing and Distribution Center Operations. We would like to better understand OSHA's reasoning for doing so.

- a. Cite the specific data points that OSHA used to justify its creation of the NEP and why the warehousing and distribution centers industry was prioritized over other industries with worse injury, illness, and fatality records.

Response: Employment in warehousing and storage experienced tremendous growth from January 2011 to December 2021, increasing from 647,000 employed to a total of 1,852,100 respectively (seasonally adjusted). The industry has also experienced high occupational injury and illness rates. Bureau of Labor Statistics data indicates workers in the warehousing and storage industry as well as the couriers and express delivery services industry suffer higher nonfatal injury and illness rates than the overall rate in all private industries.

- b. Provide the number of inspections OSHA conducted on employers in this sector since January 1, 2020—including but not limited to Amazon, Costco, FedEx, Target, UPS, USPS, and Walmart.

Response: From January 1, 2020 to October 22, 2023, OSHA opened a total of 3,992 inspections in the warehousing and distribution industry. OSHA opened the following number of inspections for each of the specific companies identified above: Amazon: 152; Costco: 22; FedEx: 118; Target: 75; UPS: 204; USPS: 791; Walmart (including Sam's Club): 215

- c. For each company, how many inspections resulted in at least one citation for a violation of the *Occupational Safety and Health Act* (OSH Act) since January 1, 2020?

Response: The following counts include inspections opened from January 1, 2020 to October 22, 2023, with at least one current violation of an OSHA standard or Section 5(a)(1) of the OSH Act: All inspections in the sector: 1,646 (430 remain open); Amazon: 19 (16 remain open); Costco: 4 (1 remains open) FedEx: 27 (5 remain open); Target: 19 (2 remain open); UPS: 41 (22 remain open); USPS: 234 (77 remain open); Walmart (including Sam's Club): 46 (9 remain open).

- d. For each company, what percentage of inspections resulted in one or more citations for violations of the OSH Act since January 1, 2020?

Response: The percentages below count all initial inspections with at least one current violation of an OSHA standard or Section 5(a)(1) of the OSH Act divided by the total number of initial inspections that have had violations issued or were closed as in-compliance as of 10/22/2023. (Note: Inspections that are currently open with no violations issued are not included in the not-in-compliance rate.): All inspections in the sector: 53%; Amazon: 14%; Costco: 24%; FedEx: 27%; Target: 34%; UPS: 24%; USPS: 35%; Walmart: 23%

24. The OSH Act requires the head of every federal agency to maintain an occupational and health safety program that is consistent with OSHA standards, as well as to record and report all occupational accidents and injuries to the Secretary of Labor on an annual basis.

- a. To date, what percentage of federal agencies have submitted injury and illness records to OSHA?

Response: Of the 97 agencies that OSHA has historically contacted for injury and illness records, 88% (86 agencies) submitted establishment data for Calendar Year 2022.

- b. How many federal agencies did not fulfill this requirement in FY 2023?

Response: During FY 2023, of the agencies which OSHA historically contacts for injury and illness data, 11 agencies did not submit any data.

- c. Provide the names of the federal agencies that did not fulfill this requirement in FY 2023.

Response: During FY 2023, of the agencies which OSHA historically contacts for injury and illness data, the following did not submit their CY 2022 data: AmeriCorps; Department of Health and Human Services; Department of the Navy;

Department of the Treasury; Equal Employment Opportunity Commission; Export-Import Bank; Farm Credit Administration; Federal Communications Commission; Federal Labor Relations Board; Office of Navajo and Hopi Indian Relocation; Pension Benefit Guaranty Corporation.

25. OSHA suggests it is seeing an increase in opportunities for employees to be represented in walkaround inspections. Please provide all data statistics about the frequency that employees have sought non-employee representation during an inspection, including how many and what percentage of such requests were granted and how many were denied by OSHA.

Response: OSHA does not track this metric.

26. What legal authority does OSHA have for its walkaround proposed rule to delegate the agency's inspection and enforcement powers to non-governmental third parties?

Response: Please see OSHA's response to 5a above.

27. Will OSHA be responsible for any personal injuries to a non-governmental third party or for any loss or damage to the personal property of a non-governmental third party authorized by OSHA to enter an employer's workplace under the proposed walkaround rule?

Response: Please see OSHA's response to 5a above.

Rep. Tim Walberg (R-MI)

1. EPA appears poised to develop and impose its own occupational exposure limits (OEL) for workers under the *Toxic Substances Control Act* (TSCA). But OSHA Permissible Exposure Limits (PEL) remain on the books, as do suggested exposure levels by other entities like the American Conference of Governmental Industrial Hygienists (ACGIH). It is essential that American manufacturers understand how they are regulated and inspected, and they aren't subjected to double inspections and double fines. How does OSHA propose to work with EPA to ensure this doesn't happen?

Response: Consistent with TSCA section 9(d), EPA consults and coordinates TSCA activities with OSHA and other relevant federal agencies for the purpose of achieving the maximum applicability of TSCA while avoiding the imposition of duplicative requirements.

OSHA and EPA are working to develop a Memorandum of Understanding (MOU) to set forth the principles of the working relationship between the agencies with respect to existing chemical substances that are subject to prioritization, risk evaluation, and risk management by EPA under TSCA section 6. This MOU will supplement the MOU between the agencies with respect to new chemical substances regulated by EPA under TSCA section 5.

2. EPA does not have the same experience and industrial hygiene expertise in developing worker exposure levels as OSHA does.

a. What can OSHA do to ensure EPA is working with the best and brightest industrial hygienists to develop these new workplace standards?

b. Will OSHA recommend a peer review process for these OELs?

Response: OSHA and other federal agencies, such as the National Institute for Occupational Safety and Health (NIOSH), are available to confer with EPA regarding issues related to industrial hygiene capabilities, subject to resource limitations, as EPA consults and coordinates TSCA activities with other federal agencies in accordance with TSCA section 9(d). The Science Advisory Committee on Chemicals (SACC) provides independent scientific advice and recommendations to the EPA on the scientific basis for risk assessments, methodologies, and pollution prevention measures and approaches for chemicals regulated under TSCA, including peer review.

3. Does OSHA plan to withdraw PELs and other chemical-specific requirements and guidance if and when EPA sets its own?

Response: OSHA does not plan to withdraw any of its chemical-specific requirements and guidance if and when EPA sets its own.

4. How does OSHA plan to communicate to workers about EPA's new OELs (called ECELs, or Existing Chemical Exposure Limits)?

Response: OSHA believes it should work with other agencies to play a role in providing clarity and guidance to stakeholders. We anticipate working with EPA pursuant to a finalized MOU, but have made no decisions regarding communications to workers about ECELs.

5. How will OSHA incorporate EPA's new OELs into its training and guidance programs?

Response: OSHA and EPA are working to develop a Memorandum of Understanding (MOU) to set forth the principles of the working relationship between the agencies with respect to existing chemical substances that are subject to prioritization, risk evaluation, and risk management by EPA under TSCA section 6.

6. OSHA and EPA define the universe of "employers" and "owners and operators" subject to worker regulation differently. How are the agencies going to avoid confusion with employers about who is responsible for workplace standards?

Response: OSHA and EPA are working to develop a Memorandum of Understanding (MOU) to set forth the principles of the working relationship between the agencies with respect to existing chemical substances that are subject to prioritization, risk evaluation, and risk management by EPA under TSCA section 6. Once the MOU is finalized, OSHA

anticipates working with EPA on issues such as coordination regarding outreach and training materials.

7. Will OSHA commit to establishing a stakeholder panel with EPA, including workers, to advise on the understandability of regulatory requirements, absence of conflicting requirements, and ease and comfort of compliance—including easy-to-use, easy-to-work, comfortable personal protective equipment?

Response: OSHA has several stakeholder committees that advise the agency on a range of issues related to occupational safety and health regulatory requirements, including the [National Advisory Committee on Occupational Safety and Health \(NACOSH\)](#), the [Advisory Committee on Construction Safety and Health \(ACCSH\)](#), the [Maritime Advisory Committee on Occupational Safety and Health \(MACOSH\)](#), and the [Federal Advisory Council on Occupational Safety and Health \(FACOSH\)](#). Each of these bodies includes labor, management and public representatives. OSHA will continue to rely on these and other sources of stakeholder input when coordinating with EPA regarding TSCA activities. It is also important to note that OSHA's ability to support EPA in this matter is subject to resource limitations.

8. Does OSHA agree that there is no implicit reason why federal agency employers should be regulated differently with respect to workers than similarly situated private business? Should they be treated the same if they follow the same criteria to protect workers, use personal protective equipment, and follow good industrial hygiene?

Response: Federal agencies are required to comply with most OSHA standards and regulations. Congress has determined that federal agencies should protect workers by maintaining safety and health programs consistent with OSHA standards, which includes use of personal protective equipment and following good industrial hygiene. Our actions toward federal agencies aim for the same result as the private sector—reducing hazards, illnesses and injuries, promoting comprehensive approaches to health and safety through outreach and education, and protecting the rights of workers.

Rep. Ilhan Omar (D-MN)

1. I want to discuss the growing prevalence of electronic surveillance, algorithmic/AI management, and other automated monitoring mechanisms to oversee worker productivity and performance. To address potential side effects, in part, Minnesotan legislators enacted limits on the use of harsh speed quotas, disciplinary actions, and other employment practices that may be contributing to high rates of injury in certain sectors.
 - a. A/S Parker, how is your agency examining the use of surveillance technology and other possibly intensive and invasive employment practices that can make work so exhaustive and physically demanding that they may be putting workers at risk?

Response: Identifying and addressing working conditions that create hazards for

employees continues to be a primary concern for OSHA. Emerging technologies, including those that enable employee monitoring and set pace of work through algorithmic and artificial intelligence (AI) technologies raise serious concerns about driving unsafe practices, but in some applications could improve worker safety. OSHA will evaluate all causes of high injury rates.

- b. Is OSHA considering any additional research or enforcement actions directly or indirectly related to such monitoring and (data) privacy issues?

Response: Under the OSH Act, the National Institute for Occupational Safety and Health (NIOSH) is the governmental agency with primary responsibility for researching emerging occupational safety and health issues and are examining a range of issues involving the intersection of technology and worker health. While not necessarily directly related to monitoring, this Administration has put increased emphasis on addressing the ergonomic hazards often associated with the issues you raise. Since January 2021, OSHA has issued 15 general duty clause citations for ergonomics violations to private-sector employers, and many more investigations have been opened. In the previous 5 years, no ergonomic citations were issued. The National Emphasis Program (NEP) targeting warehousing and distribution centers, mail/postal processing and distribution centers, parcel delivery/courier services, local delivery industries and high injury rate retail establishments will help OSHA address ergonomic and heat hazards, as well as a variety of safety hazards including material handling/storage and walking working surfaces. These are industries where surveillance and algorithmic productivity practices are frequently used.

2. I am very troubled by the surge in child labor violations and the stories of serious injuries to young workers in my home state.

- a. A/S Parker, can you provide an update on the work that OSHA is currently doing to engage and protect vulnerable children, especially unaccompanied migrant children who are finding themselves in these very precarious situations?

Response: Employers have a responsibility to provide a workplace free from hazards to workers regardless of immigration status, citizenship, or age. OSHA works closely with the Wage and Hour Division (WHD) to ensure underaged workers are protected. In 2021, OSHA and WHD renewed their Memorandum of Understanding, <https://www.osha.gov/laws-regs/mou/2021-08-04>, which promotes information sharing and encourages referrals between the agencies. If OSHA receives information during an inspection about workers under 18 years of age involving a possible violation of the Fair Labor Standards Act, OSHA will promptly refer the matter to WHD. OSHA and WHD continually assess our referral and investigation processes to improve their effectiveness.

3. In 2021, 1-in-10 Amazon workers were injured on the job in Minnesota, which was 30% higher than the national average. I'm glad to see that your agency is prioritizing oversight and investigation efforts of the warehousing industry.

a. A/S Parker, could you provide an update on OSHA's national emphasis program?

Response: OSHA announced its NEP on Warehousing and Distribution Center Operations on July 13, 2023. The NEP started with a 90-day outreach period, and we began enforcement on October 16, 2023. Since commencing enforcement, OSHA has opened 58 federal inspections and an additional 5 inspections have been opened by state plans under the NEP. All OSHA regions are engaged in protecting workers in warehousing and distribution establishments.

b. Do you have any new findings that you can share on the state of worker health and safety in Minnesota's warehouses & fulfillment and distribution centers?

Response: Minnesota operates under an OSHA-approved Minnesota State Plan. Minnesota has a new state statute, The Warehouse Distribution Worker Safety Law, aimed at protecting workers in the warehouse industry. They also have a new ergonomics standard, Minnesota Statutes 182.677, set to become effective on January 1, 2024, which is aimed at three industries known to have elevated levels of ergonomic risk and injury rates: health care facilities; meatpacking and poultry processing sites; and warehousing distribution centers. Finally, Minnesota adopted the OSHA National Emphasis Program for warehousing, effective October 1, 2023.

The Minnesota Warehouse Distribution Worker Safety Law was effective August 1, 2023, and since then, Minnesota has opened 12 inspections in the North American Industry Classification Systems (NAICs) related to warehousing as referenced in the state law. From October 1, 2022, to October 26, 2023, Minnesota opened an additional 12 inspections under NAICs listed in OSHA's National Emphasis Program on Warehousing and Distribution Center Operations.

For further information, please contact the Minnesota State Plan by reaching out to James Krueger, MNOSHA Compliance Director, (651) 284-5462 Jim.Krueger@state.mn.us