

Testimony of  
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before the  
House Education and the Workforce Committee  
Subcommittee on Workforce Protections  
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## Introduction:

Chairman Kiley, Ranking Member Adams, and distinguished members of the Subcommittee:

Thank you for holding this hearing today on “Safeguarding Workers and Employers from OSHA Overreach and Skewed Priorities” and for the opportunity to testify. I am Peter Gerstenberger, the Senior Vice President of Industry Support for the Tree Care Industry Association – also known as TCIA. I am responsible for the development of TCIA’s safety and compliance training programs, and I am the association’s primary contact with company owners and their employees on safety and compliance matters. I also act as TCIA’s liaison with OSHA and similar state entities and regularly work with these agencies in an effort to improve safety throughout our industry. In 2011 and 2018, I had the opportunity to testify before this Subcommittee about the unique hazards facing our industry, concerns we have with OSHA’s enforcement approach, and our industry’s long-standing efforts to obtain a separate OSHA standard based on our established consensus standard to improve safety and reduce injuries in our high-hazard industry.

TCIA represents approximately 1,460 businesses nationwide that engage in commercial tree care and provide services to residential communities, state and local governments, commercial businesses, and utilities. Collectively, TCIA members employ more than 150,000 people, an estimated 75% of all tree care workers in the country. They work tirelessly across the United States to care for urban forests by conserving important trees in cities and towns across the United States and safeguarding mature landscapes and green spaces. Their swift action after storms to clear fallen trees, restore power, and reopen roads is vital to residents and businesses in the affected regions. Additionally, tree care professionals manage vegetation around power lines to prevent future outages and collaborate with property owners and municipalities to create defensible spaces around structures, reducing the risk of wildfire spread in susceptible areas.

While this work is critical, tree care is a high-hazard industry. In fact, according to data TCIA gathered by gleaning the news media and OSHA fatality reports for accounts of accidents, there were 243 tree care-related fatal occupational injuries in the U.S. for calendar years 2020 through 2023, yielding an average of 61 such incidents a year.<sup>1</sup> Depending on what data one looks at, our industry’s fatality rate is between 10 to 30 times higher than the BLS all-industry average of 3.7 per 100,000.<sup>2</sup> In addition to fatalities, tree care workers also experience a high rate of non-fatal injuries, with about 1,100 injuries reported annually.<sup>3</sup>

As a result, worker safety has been one of the central tenets of TCIA since its inception more than 80 years ago, and our effort to promote safety is multi-faceted. We regularly engage our members and the industry in safety through education and training. As part of this effort, we

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<sup>1</sup> See “Insights Into Accidents in Tree Care.” Tree Care Industry Magazine, April 2024, <https://tcimag.tcia.org/safety/insights-into-accidents-in-tree-care/>.

<sup>2</sup> See “Tree-Work Safety by the Numbers.” Tree Care Industry Magazine, May 2023, <https://tcimag.tcia.org/tree-care/safety/tree-work-safety-by-the-numbers/>.

<sup>3</sup> Occupational Safety and Health Administration, *Small Business Advocacy Review Panel: Tree Care Operations Preliminary Initial Regulatory Flexibility Analysis* (March 2020), 5, [https://www.osha.gov/sites/default/files/PIRFA\\_OSHA\\_Small\\_Business\\_Advocacy\\_Review\\_Panel\\_March\\_13\\_2020.pdf](https://www.osha.gov/sites/default/files/PIRFA_OSHA_Small_Business_Advocacy_Review_Panel_March_13_2020.pdf).

direct the only credentialing program for safety professionals within our industry, produce a wealth of bilingual safety training programs, offer employers a model illness and injury prevention program, and maintain the Arborist Safety Training Institute (ASTI), which provides grants to fund job and safety training to tree care workers who otherwise may not have access to proper, regular training or workshops.

We also helped establish and actively participate in the ANSI Z133 Committee, which develops the only consensus safety standard for tree care operations. The Z133 Committee was formed in 1969, pre-dating OSHA. TCIA remains very active in that standard-making process.<sup>4</sup>

Our efforts have not been limited to our membership and the Z133 Committee, however. We also consistently engage regulators to push for policy changes that can improve safety for our members' employees as well as the multitude of small employers outside our membership. In this regard, we have been fortunate to collaborate with Federal OSHA and several State Plan OSHAs, such as California, Virginia, Maryland, and Michigan. These partnerships have led to the adoption of more effective rules and guidance for tree care operations. Recently, an alliance with the North Carolina Department of Labor Occupational Safety and Health Division (NCOSHA) further fortified workplace safety within the industry. NCOSHA has increased outreach to arborists in their jurisdiction, including participating in our November 2022 trade show in Charlotte and partnering with us to present at a large arborist event in Asheville earlier this Spring. They aim to publish and eventually codify safety guidelines based on our industry's consensus standard. TCIA also had an OSHA Alliance for six years and on multiple occasions has sought and received assistance from DOL through the Susan Harwood Grant Training Program, which has been instrumental in training thousands of workers at no cost to them.

While we appreciate these efforts by both federal and state plan OSHAs to work with us to promote safety in the industry, we are frustrated by federal OSHA's continuous delays and missed deadlines in establishing a safety standard specifically for arborists. This Subcommittee requested OSHA consider doing so in August of 1999—25 years ago—and in 2006, TCIA formally petitioned OSHA to promulgate a standard. The petition received bipartisan and bicameral support, including support of prior chairs and ranking members of this Subcommittee as well as chair and ranking members of the full committee. Thus far, OSHA publication of a proposed rule has been delayed seven times in three-plus years. This inaction sends a troubling message to our industry—that the safety of our workers is not a priority.

### **Need For an OSHA Standard for Tree Care Operations**

As I discussed earlier, tree care is a hazardous industry. This is evident from the data and acknowledged by OSHA, which has an enforcement memorandum and Local Emphasis Programs (LEPs) specifically for tree work.<sup>5</sup> Despite the widespread recognition of the inherent dangers of tree care work, OSHA continues to regulate tree care through a patchwork of

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<sup>4</sup> The American National Standard's Institute (ANSI) Z133.1-2006, Safety Requirements for Arboricultural Operations. ANSI Z133 was first published in 1972. It has been revised in 1979, 1982, 1988, 1994, 2000, 2006, 2013, 2017, with an expected revision to be finalized in the Fall of 2024.

<sup>5</sup> OSHA Regions 1, 2, 3, 4, and 9 have local emphasis Local Emphasis Programs (LEPs) specifically for tree work.

standards intended for other industries. These standards fail to provide clear guidance to employers, workers, and OSHA officers on the most effective safety measures for the industry.<sup>6</sup>

### *Logging Standard*

For instance, OSHA took a position in the 1990's that the Logging Standard (29 CFR § 1910.266) should apply to tree care operations, despite fundamental differences in work scope, hazards, and safety measures. This standard does not cover crucial tree care practices like piecing trees down, using roping or rigging, or using cranes to lower tree sections. Additionally, it also mandates chainsaw operators wear cut-resistant footwear, which is not appropriate for many types of situations arborists find themselves in. Logging boots are heavier and can cause foot and ankle injuries when climbing, whereas tree climbing requires more flexible footwear with different safety features. The two-tree-length separation between adjacent work areas is also infeasible in many arborist situations, and in the dismantling process of a tree, it is often safer for workers to be within the distance prescribed by the Logging Standard to conduct rigging operations correctly. Recognizing these discrepancies, the Occupational Safety and Health Review Commission (OSHRC) eventually rejected the application of this standard to our industry, highlighting the need for industry-specific regulations tailored to tree care's unique challenges and safety requirements.<sup>7</sup>

### *Using Cranes to Safely Elevate and Secure Arborists*

Another critical area requiring attention is the improper regulation concerning the use of cranes for hoisting tree care workers. Arborists rely on several methods for accessing a tree for trimming or removal. The preferred method of access for any given tree will be dictated by the condition and type of tree and its surroundings. The most common methods of accessing trees include climbing the tree, utilizing an aerial lift or compact lift, and the crane access method, which utilizes a crane load line or boom to hoist an arborist into the tree. The crane access method often presents the safest way to put a climber into a tree, as the crane's load line provides a reliable, predictable, and engineered anchor point for arborists, allowing them to avoid hazards such as falling branches, structural failure of the tree, and the fatigue associated with manual climbing. In contrast, OSHA's current regulation, specifically 29 CFR § 1910.180, Crawler, Locomotive and Truck Cranes, generally prohibits the hoisting of personnel with a crane. Although an employer may assert that compliance with the General Industry Crane Standard is impossible/infeasible or presents a greater hazard, this process is very burdensome and subjects the company to potential litigation for relying on the safest means of tree access.

Notably, several states have recognized the safety and necessity of the crane access method and have adopted rules allowing its use. For instance, California implemented an emergency standard

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<sup>6</sup> Occupational Safety and Health Administration, *Small Business Advocacy Review Panel: Tree Care Issues Document* (March 2020), 1, "The agency currently applies a patchwork of standards and the OSH Act's general duty clause, 29 U.S.C. 654(a)(1), to attempt to address the serious hazards in this industry. However, the relatively high frequency of fatalities and injuries for tree care workers indicates that further regulation may be needed to improve the safety of this work environment."

<sup>7</sup> Davey Tree Expert Co., 2016 WL 845440, \*6 (No. 11-2556, Feb. 26, 2016) (also available at <https://www.oshrc.gov/assets/1/18/11-2556.pdf?7752>).

in 2004 in response to the profound hazard faced by tree workers who needed a safe means to access tens of thousands of beetle- and fire-killed trees. This standard was made permanent in 2012. Similarly, Washington, Virginia, and Maryland have also adopted rules permitting the use of cranes for hoisting arborists, acknowledging that this method is often the safest way to perform tree care operations. These state plans were reviewed by OSHA and found to be as effective as or more effective than federal standards. Despite this, federal OSHA continues to rely on a more than 40-year-old general industry standard, resulting in unclear guidance and inconsistent enforcement.

### *Personal Fall Protection Systems*

Similarly, existing OSHA standards are inadequate in the area of personal fall protection systems, specifically 29 CFR § 1910.140, which was intended for workers such as window washers. This standard does not adequately address the unique needs of arborists. Window washers use one system for controlled descent or work positioning, with a backup for fall arrest, whereas arborist systems allow them to move up, down, or sideways and include a lanyard for work positioning. Window washers wear failsafe fall arrest gear with a harness that has either dorsal or mid-ventral attachments for a lifeline, while arborists wear a suspension system with attachment at the waist that aids them in their work in addition to preventing falls. Window washers use an engineered and inspected anchorage, while arborists must rely on the tree itself. In terms of system inspection, window washers typically have a “qualified” third person inspect the system, whereas the arborist, who is the climber, is the qualified person but may not be recognized as such by an OSHA Certified Safety and Health Officer (CSHO). As a result, industry experts have found 1910.140 specifications unsafe and infeasible for arborist work. These discrepancies highlight the need for a tree care-specific standard that addresses the unique hazards and requirements of the arborist profession.

In summary, OSHA’s current patchwork of standards fails to address the unique hazards of tree care work, creating confusion and inefficiency. This approach wastes resources for both OSHA and employers and increases the risk of accidents and injuries. A dedicated tree care safety standard is crucial. It will provide clear guidance to employers, workers, and OSHA officials, ensuring effective safety practices. An arborist-specific regulation will empower OSHA CSHOs to identify and control unique tree care hazards, proactively preventing accidents and saving lives. Without this standard, the tree care industry remains vulnerable to avoidable fatalities, undermining the critical work of these professionals.

### **History of OSHA’s Tree Care Standard Rulemaking**

In the late 1990s, TCIA began meeting with OSHA to address the agency’s misapplication of § 1910.266, the standard on Logging Operations, and other outdated and inappropriate standards to our industry. During these meetings, we informed OSHA that this enforcement policy was ineffective and confusing for our members and recommended that the agency look to our industry’s voluntary consensus standard, the ANSI Z133 Standard, for guidance. Initially, OSHA interpreted that the Logging Standard did indeed apply to arboriculture, but within one year

withdrew its interpretation, only to resume citing tree care operations under the logging standard a short time after that.<sup>8</sup>

Over the next decade, OSHA continued to apply varying degrees of inappropriate standards to the industry, which led us to file our 2006 petition for a tree care standard. In 2008, despite receiving bipartisan and bicameral Congressional support for our petition, OSHA issued an enforcement directive, CPL 02-01-044 (dated June 25, 2008), which applied inappropriate standards to the industry and conflicted with several OSHA state plans that had developed standards specific to arboriculture. Following this, members of Congress sent a letter requesting the withdrawal of CPL 02-01-044, and TCIA was invited by OSHA to participate in discussions to revise OSHA's enforcement policy. As a result, CPL 02-01-044 and the Memorandum to Regional Administrators titled "OSHA's Enforcement Policy Regarding Arborists" were cancelled. Subsequently, CPL 02-01-045, the "Citation Guidance Related to Tree Care and Tree Removal Operations" (dated August 21, 2008), was issued.<sup>9</sup> While the directive provided some guidance on safety measures for our industry, it nonetheless was the product of an attempt by OSHA to cobble together various standards from general industry as well as other industries and apply them to tree care.

### *ANPRM and Delays*

Shortly thereafter, OSHA published an Advanced Notice of Proposed Rulemaking (ANPRM) for Tree Care Operations, acknowledging the need for a specific standard based on the industry's high fatality rates.<sup>10</sup> TCIA filed comments on this ANPRM asking the agency to proceed with a proposed rule. Despite the vast majority of commenters supporting a standard, progress was slow. Due to a change in administration and new priorities to create a general Injury and Illness Protection Program (I2P2), our standard was further delayed. While we can't say for certain why OSHA took no additional action on the tree care standard at this time, our best guess is that OSHA felt promulgation of I2P2 would obviate any need for a vertical standard; however, they were not able to progress beyond the initial stages of the I2P2 rulemaking process. It was only after OSHA abandoned the I2P2 standard that the tree care standard was revisited.

In the summer of 2016, OSHA held a stakeholder meeting to begin discussions on the possible development of a proposed standard establishing industry-specific safety regulations. TCIA participated in that meeting, calling on the agency to use industry best practices and ANSI Z133 when developing its proposed rulemaking.<sup>11</sup> Shortly thereafter, OSHA announced it would initiate the formal rulemaking process on a tree care standard and OSHA placed a proposed rulemaking titled "Tree Care Standard" on the unified regulatory agenda.<sup>12</sup>

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<sup>8</sup> Memorandum to Regional Administrators: *Enforcement Policy Regarding Arborists, SIC 0783 (Ornamental Shrub and Tree Services)* July 1, 1998. Available at:

[https://www.osha.gov/sites/default/files/enforcement/directives/CPL\\_02-01-044.pdf](https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-01-044.pdf).

<sup>9</sup> Available at: [https://www.osha.gov/sites/default/files/enforcement/directives/CPL\\_02-01-045.pdf](https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-01-045.pdf).

<sup>10</sup> 73 FR 54118.

<sup>11</sup> Summary Report for July 13, 2016, Tree Care Stakeholder Meeting, OSHA-2008-0012-0077. Available at: <https://www.regulations.gov/document/OSHA-2008-0012-0077>.

<sup>12</sup> Fall 2016 Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions, "Tree Care Standard." Available at: <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201610&RIN=1218-AD04>.

## *SBREFA Panel*

While a change in Administration again took place, OSHA took a significant step completing the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel in May 2020, collecting information from affected small entities on a potential standard, including the scope of the standard, effective work practices, and arboricultural specific uses of equipment to guide OSHA in developing a rule that would best address industry safety and health concerns. TCIA filed comments in response to the documents OSHA provided small businesses to review, emphasizing the need for a standard that addresses the unique hazards of tree care work and aligns with the ANSI Z133 standards, and provided detailed recommendations on scope, application, employee training, and safety procedures.

The SBREFA panel concluded with strong recommendations for OSHA to move forward with the tree care operations standard.<sup>13</sup> The panel's report provided a clear path for OSHA to develop a proposed rule, including specific recommendations on addressing industry-specific hazards by aligning the proposed standard with the ANSI Z133 where practicable,<sup>14</sup> permitting employers to follow the industry practice of hoisting personnel in connection with tree work,<sup>15</sup> refining the scope of the standard, and incorporating stakeholder feedback to enhance the rule's feasibility and effectiveness.

## *Current Status*

Despite the progress made during the SBREFA process, the development of a proposed tree care operations standard has faced significant delays. Since first appearing on the Fall 2020 edition of the Unified Agenda and Regulatory Plan, the target date for issuance of a proposed standard has been delayed in seven subsequent editions, from October 2021 to December 2024—a total delay of 39 months. During this same period, the Office of Information and Regulatory Affairs has concluded review of 10 other distinct OSHA regulations, demonstrating that the agency has been able to progress with other rulemakings while the tree care operations standard has languished.<sup>16</sup> Several of the regulations are far more controversial and are now embroiled in litigation.<sup>17</sup> While

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<sup>13</sup> The final report by the SBREFA panel is available at <https://www.regulations.gov/> (Docket # OSHA-2008-0012-0112)

<sup>14</sup> SBREFA Panel Report, [31]. “In light of the significant risks preliminarily identified in the PIRFA as well as by SERs, the Panel recommends that OSHA proceed with a tree care operations rulemaking...The Panel further recommends that any specific provision in a proposed OSHA standard not substantially deviate from any corollary ANSI Z133 standard to the extent practicable.”

<sup>15</sup> SBREFA Panel Report, [39]. “The Panel also recommends that OSHA permit employers to follow the industry practice of hoisting personnel in connection with tree care work if OSHA determines that industry practice provides sufficient protection for workers.”

<sup>16</sup> Source: Executive Order Review Search Results. EO Review Search Criteria: Agency=Occupational Safety and Health Administration. Review Status=Concluded; Received from 1/1/2021; Received to 7/12/2024; Concluded from 1/1/2021; Concluded to 07/11/2024; Number of Records Found: 14. (<https://www.reginfo.gov/public/do/eoDetails?rrid=131084>)

<sup>17</sup> See Supreme Court's decision to stay OSHA's Emergency Temporary Standard, *National Federation of Independent Business, et al. v. Department of Labor, Occupational Safety and Health Administration, et al.* and *Ohio, et al. v. Department of Labor, Occupational Safety and Health Administration, et al.* (January 13, 2023). Available at: [https://www.supremecourt.gov/opinions/21pdf/21a244\\_hgci.pdf](https://www.supremecourt.gov/opinions/21pdf/21a244_hgci.pdf).

we are hopeful that OSHA will adhere to its latest target date, we remain concerned given its history of delays and the presence of several other regulations scheduled for the same timeframe.

## OSHA Needs to Move Forward Now

A tree-care-specific OSHA standard has received consistent bipartisan and bicameral support since TCIA's 2006 petition. This Subcommittee recommended OSHA promulgate a standard more than 25 years ago, and most recently, the leadership from this Subcommittee and the Senate Subcommittee on Employment and Workplace Safety sent a joint letter to OSHA Assistant Secretary Douglas Parker urging the agency to promptly issue a proposed rule for the tree care standard.<sup>18</sup> Additionally, several state OSHA's have already moved forward with regulations. Despite the support and actions taken by Congress and state OSHA's, federal OSHA has persistently delayed issuing a proposed rule.<sup>19</sup>

As we await an OSHA standard, tree disease, such as sudden oak death,<sup>20</sup> and invasive species like the emerald ash borer and Asian long-horned beetle<sup>21</sup> have made tree care work increasingly difficult and dangerous and increased the occurrence of wildfires.<sup>22</sup> Moreover, the federal government has just invested substantial sums in tree planting and tree care through the Inflation Reduction Act without including any standards designed to ensure this work is done by trained professionals in a safe and effective manner.<sup>23</sup> Thus, the time to act is now, and we urge the subcommittee and its members to ask OSHA to move forward with the rulemaking process.

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Also see *U.S. Chamber of Commerce, et al. v. Occupational Safety and Health Administration, et al.*, Complaint for Declaratory and Injunctive Relief from OSHA's "Worker Walkaround Representative Designation Process" (89 FR 22558). (May 21, 2024). Available at: <https://www.uschamber.com/assets/documents/Complaint-Chamber-of-Commerce-v.-Occupational-Health-and-Safety-Administration-W.D.-Tex.pdf>.

<sup>18</sup> Letter from Senator John Hickenlooper, Senator Mike Braun, Representative Kevin Kiley, and Representative Alma Adams to OSHA Assistant Secretary Douglas Parker, sent April 9, 2024.

<sup>19</sup> As mentioned earlier, OSHA has continuously postponed the target date for issuing a proposed rule since it was placed on the Fall 2020 Regulatory Agenda. For example, the Fall 2023 Regulatory Agenda targeted January 2024 for the proposed rule to be published, but the Spring 2024 Regulatory Agenda pushed this back once again with a target date set for December 2024. The Fall 2023 Regulatory Agenda listing is available at: <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1218-AD04>. The Spring 2024 Regulatory Agenda listing is available at:

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=1218-AD04>.

<sup>20</sup> "Phytophthora ramorum." Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture. May 16, 2024. <https://www.aphis.usda.gov/plant-pests-diseases/pramorum>.

<sup>21</sup> "Emerald Ash Borer." Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture. June 7, 2024. <https://www.aphis.usda.gov/plant-pests-diseases/eab>.

"Asian Long horned Beetle." Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture. April 6, 2024. <https://www.aphis.usda.gov/plant-pests-diseases/alb>.

<sup>22</sup> "Wildfire climate connection." National Oceanic and Atmospheric Administration (NOAA). July 24, 2023. <https://www.noaa.gov/noaa-wildfire/wildfire-climate-connection#:~:text=Research%20shows%20that%20changes%20in,fuels%20during%20the%20fire%20season>.

<sup>23</sup> The Inflation Reduction Act (IRA) has made significant investments in urban forestry. These investments aim to enhance urban green spaces, improve air quality, and provide numerous environmental benefits. However, without a comprehensive safety standard for the tree care industry, these federal investments are at risk. Unsafe working conditions can lead to accidents and project delays, undermining the effectiveness of these initiatives. By establishing a dedicated safety standard, OSHA can help ensure that the projects funded by the IRA are carried out safely and efficiently, protecting both the workers involved and the federal investments made in these critical programs.



Thank you again for this opportunity to comment on a very important subject for our profession.