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Before the House Education and Workforce Committee Subcommittee on Workforce Protections US House of Representatives

"OSHA's Regulatory Overreach and Skewed Priorities"

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Good morning. My name is Jordan Barab. I served as Acting Assistant Secretary for OSHA in 2009, and Deputy Assistant Secretary from 2009 to the final day of the Obama Administration. I also ran the health and safety program for the American Federation of State, County and Municipal employees for 16 years, served for 4 years at the US Chemical Safety and Hazard Investigation Board and 4 years as a Senior Labor Policy Advisor on this committee from 2007 to 2009, and 2019 to 2021.

I am happy to be testifying before this Committee today, although I believe the title of this hearing is in error. As I will outline in my testimony, a much better title would be "Overcoming Obstacles to Saving Workers' Lives."

Because for those interested in protecting workers, a top priority should be increasing OSHA's budget and making it far easier and faster to issue standards that save workers' lives.

Let me jump to the most obvious truth: OSHA safety and health standards save lives. Period.

Far fewer workers are dying today of asbestos-related disease, or diseases caused by exposure to lead or formaldehyde because of OSHA standards. Comprehensive standards have significantly reduced deaths in confined spaces and deep trenches. Grain facilities may still occasionally explode, but the frequency of those disasters is significantly lower than before OSHA's grain handling standard was issued. Work-related hepatitis B has been eliminated since issuance of OSHA's bloodborne pathogens standard. And I could go on and on.

And despite the frequent complaints, OSHA standards do not harm businesses. As my old boss, Dr. David Michaels used to say, "OSHA standards don't kill jobs. They stop jobs from killing workers."

Second, and most importantly, there is no question that OSHA has legal authority to issue occupational safety and health standards to protect workers from hazards that pose a significant risk of harm.

When Congress passed the Occupational Safety and Health Act in 1970, one of the main duties you gave the agency was to issue and enforce safety and health standards. The very first line of the law charges OSHA "To assure safe and healthful working conditions for working men and women; *by authorizing enforcement of the standards developed under the Act"* [emphasis added].

Congress declared the purpose of the law to be "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 by providing for the development and promulgation of occupational safety and health standards*."

Congress further specifies that those standards "require conditions, or the adoption or use of one or more practices, means, methods, operations, or processes*, reasonably necessary or appropriate* to provide safe or healthful employment."

Health standards must assure, "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."

Congress also specified what health standards should include. Health standards "shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations."

And furthermore, that standards must be science-based. "Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws."

As evidenced by the fact that almost all OSHA health and safety standards have been upheld after industry legal challenges shows that OSHA has assiduously complied with the requirements of the law.

OSHA standards not only save lives, but they also benefit employers who are committed to protecting their employees. While some may claim that the General Duty Clause, which requires employers to provide a safe workplace, is adequate for worker protection, a standard tells employers exactly what they must do to protect their workers. Depending exclusively on the General Duty Clause makes it more difficult for employers to determine what they need to do to protect their employees and avoid an OSHA citation.

Loper Bright

I have read the letter from the Chairwoman Foxx to Acting Assistant Secretary Julie Su regarding the Loper Bright decision.

While I am not an attorney who can speak authoritatively about all of the legal issues involved, that decision is like the elephant in the room that cannot be ignored.

A few non-legal observations:

First, we do not yet know what impact Loper Bright will have on OSHA rulemaking, although the Court stated that Loper Bright does not impact OSHA standards or regulations that have already been issued and adjudicated.

Second, the decision focuses on the Court's authority to determine "all relevant *questions of law,"* and states that the courts must interpret *statutory provisions*.

Given OSHA's clear statutory authority to issue standards as long as they address a significant risk, are feasible and are reasonably necessary or appropriate to provide safe or healthful employment, it is not clear at this early stage that the Loper Bright decision will have any significant impact on OSHA rulemaking.

The actual contents of standards are not matters of law; they are matters of scientific fact which the law and subsequent court decisions clearly authorize OSHA's scientific experts to determine as long as the agency strictly follows the criteria set forth in the OSHAct.

As I will discuss in this testimony, OSHA goes to great lengths to develop standards that strictly comply with the laws, court decisions and additional Congressional mandates to ensure that standards are based on strong science, that they address a significant risk, that they are feasible and that they are reasonably necessary or appropriate to provide safe or healthful employment.

OSHA's Regulatory Process

OSHA's regulatory process – the steps it needs to take to issue a standard – is long, but it provides a more robust public input process than any other governmental agency. Not only does OSHA generally issue a Request for Information in order to begin gathering evidence needed to issue standard, but the Small Business Regulatory Enforcement and Fairness Act requires the agency to collect information from small businesses on the impact of a planned standard.

After a proposal is issued, OSHA provides time – often months – for written comments, followed by public hearings which, for larger standards, can last for weeks. Anyone can testify at those hearings, and witnesses at those regulatory hearings can also question any other witnesses, as well as OSHA's experts.

The hearings are followed by another lengthy period of public comments and submission of briefs. All of those comments must be considered before finalizing the standard, and OSHA must justify why it accepted or rejected every comment.

For example, before issuing the OSHA standard to protect workers exposed to silica from silicosis and lung cancer, we held fourteen days of hearings and kept the comment period open for almost a year. Before the rule was completed, we had received more than 2,000 comments for a total of 34,000 pages of materials.

I can say from long experience that although OSHA's robust public comment period is lengthy, it provides valuable information to the agency about how a standard will not only protect workers, but also the best way the protections can be implemented to benefit workers and employers.

It does no one any good – OSHA, workers or employers – to issue standards that are unworkable. Happily, although new standards are always controversial and aways result in lawsuits from regulated industries, once implemented, they successfully protect workers with no significant burden on employers or business profitability.

OSHA's Regulatory History

During its first three decades of its existence, OSHA issued groundbreaking standards on hazards such as asbestos, lead, benzene, hazard communication and chemical process safety. These standards required employers to implement measures to reduce exposures to chemicals and other hazards, and to provide training, medical surveillance and protective equipment to workers. Numerous studies have documented that these rules

have been very effective, significantly reducing injuries, disease and fatalities, often at costs much lower than anticipated.

A 1995 study[1] of the regulatory analysis conducted on several OSHA regulations, conducted by the Office of Technology Assessment (OTA), evaluated several OSHA standards that had been in effect for a number of years to determine the accuracy of cost and benefit estimates conducted by OSHA and the regulated industries. The study showed that not only did industry grossly overestimate expected costs, even OSHA routinely overestimated the costs and underestimated the benefits of standards. OTA found that part of the reason that OSHA overestimates costs is that the agency fails to take into account the ingenuity of American industry. American businesses have been particularly good at developing new technologies that are much more cost effective and efficient than OSHA had predicted.

For example, when OSHA reduced the vinyl chloride exposure limit from 500 ppm to 1 ppm to prevent additional cases of hepatic angiosarcoma, industry spokespersons issued dire predictions of job loss and plant closures. However, in less than two 2 years virtually all U.S. manufacturing plants were able to meet the new standard while still maintaining rapid growth of sales volume. This was accomplished largely through better containment of unpolymerized vinyl chloride monomer and improved exposure monitoring. The OTA reported that actual costs to industry were only 25% of OSHA's projected costs for implementing the standard.

OSHA's Regulatory Process is Too Slow

Unfortunately, over the years, the standard setting process has become more difficult and lengthier. There are several reasons for this.

First, in addition to the strict criteria for OSHA standards spelled out by the Occupational Safety and Health Act, court decisions, executive orders and legislation over the past 50 years have imposed layers of new regulatory analysis and review requirements. Industry opposition and lawsuits have also increased, adding to the length of time it takes to finalize a standard.

A significant part of the regulatory stagnation problem is that OSHA's budget for standards and guidance has been starved. In FY 2017, that budget stood at a paltry $20 million. This level had largely remained stagnant for several years and was far too low for OSHA to move forward on more than a few standards at one time

[1] http://govinfo.library.unt.edu/ota/Ota_1/DATA/1995/9531.PDF

The Trump administration then cut that small budget by 10%. OSHA's Standards and Guidance line item only reached the $20 million level again last year. That line item currently stands at only $21 million compared with $19.5 million in FY 2010, 15 years ago.

This means that OSHA must carefully triage what standards it will work on, prioritizing those that will protect the most workers, and focusing on exposed workers with the least existing protections.

Furthermore, since the Reagan and George Herbert Walker Bush administrations, Republican administrations have almost never issued major new OSHA standards unless ordered to do so by the courts.

The problem is particularly acute for toxic chemicals. Over the entire 54-year history of OSHA, the agency has issued comprehensive health standards for only 31 substances. Most of these standards were set in the first two decades of the Act.

Over the last 25 years, OSHA has issued only three chemical standards — hexavalent chromium in 2006 (under court order), silica in 2016 and beryllium in 2017. Each of the last two took almost 20 years from start to completion. And for both chemicals, it was known for many decades before that the OSHA standards were not protective and that thousands of workers died during the lengthy rulemaking period from exposures that were finally regulated by OSHA.

For approximately 400 additional chemicals, there are permissible exposure limits (PELs) in place that govern exposure to these substances. However, for these substances, there are no requirements for monitoring, medical exams or other measures that are included in more recent, comprehensive OSHA standards.

These PELs were adopted in 1971 under a provision of the Act that allowed OSHA to adopt existing government and industry consensus standards so a body of regulation could be in place while new standards were being developed. The scientific evidence behind these PELs, which codified the ACGIH Threshold Limit Values from 1968, dates from the 1940s and 1950s. Many chemicals now recognized as hazardous were not covered by the 1968 limits.

In 1989, OSHA attempted to update those limits, but the revised rule was overturned by the courts because the agency failed to make the necessary risk and feasibility determinations for all of the chemicals covered by the rule.

The result is that many serious chemical hazards are not regulated at all by federal OSHA or subject to weak and out-of-date requirements. Some states, including California and

Washington, have done a better job updating exposure limits, and as a result workers in those states have much better protection against exposure to toxic substances.

Similarly, in its first years, OSHA adopted dozens of manufacturing and construction standards based on industry consensus standards. Although those consensus standards have been regularly updated by the consensus standard organizations every three to five years, the 50-year-old versions remain on OSHA's books.

Like chemical standards, OSHA doesn't have the resources available to update more than a small fraction of those standards.

OSHA's inaction and the slow pace of standard setting not only means that many workplace standards are out of date and that workers go without protection from hazards. It means that more workers will suffer death, illness and injury from preventable hazards.

For workers, delay equals injury, illness and death. The AFL-CIO has estimated the impact on workers' lives from delays in recent OSHA standards. Twelve-thousand lives were lost from exposure to silica in the 19 years it took for OSHA to issue the silica standard, and over 1700 workers died needlessly of beryllium related disease in the time it took for OSHA to issue its beryllium standard.[2]

The General Duty Clause

As we all know, where there is no OSHA standard, the agency can cite under OSHA's General Duty Clause (GDC). The GDC is section 5(a)(1) of the law which simply requires the employer to provide a safe and healthful workplace.

If employees are exposed to a serious, recognized hazard and there are feasible means of abatement, OSHA can issue a GDC violation.

General Duty violations, however, are not a replacement for OSHA standards. For OSHA, they are extremely time consuming. And, as I described above, relying on GDC violations also disadvantages employers who may find it difficult to determine what they are required to do to protect their employees, as opposed to a standard that clearly lays out requirements that employers must comply with.

In addition, the General Duty Clause is generally reactive; it is almost always used only *after* a worker has been injured or killed.

[2]AFL-CIO, 2024 Death on the Job, Page 79 https://aflcio.org/sites/default/files/2024-04/2411%20DOTJ%202024%20DIG%20NB%20REV.pdf 44

OSHA's alleged "overuse" of the General Duty Clause in such issues as ergonomics, workplace violence and heat has often come under sharp criticism from business associations and the attorneys that represent them.

In a 2015 workplace violence case before the Occupational Safety and Health Review Commission, the U.S. Chamber of Commerce, argued in an *amicus* brief[3] that OSHA was misusing the General Duty Clause. The Chamber wrote that the GDC "serves the limited purpose of insuring 'the protection of employees who are working under special circumstances' that are inappropriate for specific standards." The Chamber then complained that OSHA "has declined for years to promulgate any such [workplace violence] standard" even though "the Secretary has never made any showing that workplace violence issues are 'inappropriate for specific standards,'"

The Chamber made a forceful legal argument in favor of standards and against reliance on the General Duty Clause:

> Courts have long admonished the Secretary that "specific standards are intended to be the primary method of achieving the policies of the Act" and that "they should be used instead of the general duty clause whenever possible." *Usery v. Marquette Cement Mfg. Co., 568 F .2d 902, 905 n.5 (2d Cir. 1977)*

I therefore find it amusing and somewhat confusing that some business associations – and their attorneys – now argue that OSHA doesn't need a heat standard because it can just rely on the GDC.

For example, after OSHA's heat proposal was issued, Marc Freedman, the Chamber's vice president of workplace policy, was stated that instead of a heat standard, "the 'general duty clause' is actually the perfect avenue for OSHA to use because the clause works to "put employers on notice that there are some hazards without standards that they still need to protect employees from."[4]

What Mr. Freedman failed to mention is that OSHA's attempts to use the 'general duty clause' to protect workers from heat have been strenuously contested by employers cited by OSHA for GDC heat violations and made it more difficult for OSHA to effectively use this enforcement authority to protect workers from excessive heat.

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[3] BRIEF OF AMICUS CURIAE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF RESPONDENT INTEGRA HEALTH MANAGEMENT, INC.,., (OSHRC Docket 13-1124), October 28, 2015.

[4] https://www.eenews.net/articles/biden-in-hot-seat-to-protect-workers-from-warming/

It's almost as if the business community hates the General Duty Clause – until OSHA tries to issue a standard. Then they love it.

On the other hand, they *love* the General Duty Clause – until OSHA actually uses it. Then they hate it.

As I said, it's confusing. It's almost as if they don't want OSHA to its job.

OSHA's Regulatory Priorities

There are numerous workplace hazards that are not regulated by OSHA. Some hazards are old and well known, such as heat and workplace violence. Some are new, such as wildfire smoke and newly detected infectious diseases like COVID-19, Ebola and Avian Flu.

In addition, as mentioned above, there are numerous chemical, manufacturing and construction hazards that are significantly outdated.

Because of severe budgetary restrictions, however, OSHA can actively prioritize only a few standards at a time. OSHA's current top priorities are heat, infectious diseases, workplace violence, tree care and emergency response.

All are serious hazards to workers and the standards, when issued, will protect workers' health and lives.

Heat

There is no doubt that heat is a life-threatening hazard, and more specifically a workplace hazard. Climate change is making it worse. Last year was the hottest year on record since global temperatures began being documented in 1850.

Heat is the leading cause of weather-related deaths in the United States, killing more than 200 people last year.[5]

According to OSHA, excessive heat killed 121 workers between 2017 and 2022. There were an average of 34 heat-related workplace deaths each year between 1992 and 2022, according to the Bureau of Labor Statistics.[6] In 2022 alone, there were 43 such fatalities. In 2022, there were 43 heat-related deaths, up from 36 the year before.

We also know that these numbers are significant undercounts because heat-related illness often mimic other illnesses and frequently manifest themselves after work hours.

[5] https://www.weather.gov/hazstat/
[6] https://www.osha.gov/sites/default/files/Heat-NPRM-Final-Background-to-Sum-Ex.pdf

Climate change may be making the heat hazard worse, but heat-related illness is not new. The sun was created on the 4th day of creation and soon thereafter, death by sunstroke was documented in the Bible. Heat plagued the builders of the great pyramids and slowed the Roman legions.

The U.S Army developed strict work-rest rules in the 1950s to protect American soldiers. (If fact, OSHA successfully enforced the US Army's work/rest requirements, shaded rest areas, hydration liquids, and onsite heat monitoring to ensure that no workers suffered serious heat-related illness during the 2012 Deepwater Horizon cleanup when tens of thousands of unconditioned workers were deployed to the stifling and humid coast to clean up the oil spill dressed in protective clothing.)[7]

Heat was recognized as a preventable workplace hazard in the legislative history of the OSH Act as a preventable industrial disease. The txt noted at that time that "existing legislation in this area does not begin to meet the problems.

The National Institute for Occupational Safety and Health (NIOSH) issued its original Criteria Document on Heat in 1972. That document recommended an OSHA heat standard.

In response to the NIOSH recommendations, in 1973 OSHA appointed a Standards Advisory Committee on Heat Stress which presented recommendations for a standard for work in hot environments in 1974. Now, fifty years later OSHA is finally taking action to issue a standard to protect workers from this widespread serious workplace hazard.

Heat affects everyone, but American workers are on the front lines - 32 million people in the US work outdoors. Construction workers are just 6 percent of the American workforce while accounting for 36 percent of all occupational heat-related deaths. Farmworkers are 35 times more likely to die from heat than other workers.[8]

And although heat hazards impact workers in many industries, workers of color have a higher likelihood of working in jobs with hazardous heat exposure.

Almost every day we hear tragic stories of workers dying from preventable heat illness on the job. Earlier this month, postal worker Wendy Johnson died in North Carolina from heat stroke. She is at least the second postal worker to die recently of heat stroke after the death in Texas last year of Eugene Gates who died from heat stroke while delivering mail on his route in Lakewood, Texas, during a sweltering summer heatwave

[7] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3957409/
[8] https://onlinelibrary.wiley.com/doi/10.1002/ajim.22381

that saw the temperature reach 98 degrees. The heat index — factoring in humidity — climbed to over 113 degrees that day.

E&E News recently reported on a farmworker, Gabriel Infante, who started showing signs of heat stroke on the job. His employer thought he was on drugs and by the time they realized he needed help; it was too late. Gabriel died a few hours later after five days on the job. His body temperature was 109.8 degrees. He was 24.[9]

If OSHA's heat standard had been in place, Gabriel Infante would likely be alive today. He would have been supplied with water and rest. If he still got sick, his employer and co-workers would have recognized the signs and had an emergency response plan in place.

Heat is also a burden for the states. For example, heat accounted for nearly 50% of all injury claims filed with the Nevada Occupational Safety & Health Administration from 2020 to 2024. Employee injury claims related to extreme heat also accounted for the largest share of compensation claims awarded by Nevada OSHA at 30%.[10]

Finally, failure to address the hazards of workplace heat is a problem for employers and the economy. The *New York Times* recently reported[11] that

- In 2021, more than 2.5 billion hours of labor in the U.S. agriculture, construction, manufacturing, and service sectors were lost to heat exposure, according to data compiled by The Lancet.[12]
- Another report found that in 2020, the loss of labor as a result of heat exposure cost the economy about $100 billion, a figure projected to grow to $500 billion annually by 2050.[13]
- Other research found that as the mercury reaches 90 degrees Fahrenheit, productivity slumps by about 25 percent and when it goes past 100 degrees, productivity drops off by 70 percent.[14]

Ironically, Texas, the state that recently passed a law prohibiting localities from protecting construction workers from heat-related illness, leads all states in terms of

[9] https://www.eenews.net/articles/inside-bidens-push-to-stop-heat-deaths-after-decades-of-delay/
[10] https://nevadacurrent.com/2024/07/11/despite-some-progress-nevada-workers-still-arent-protected-from-extreme-heat/
[11] https://www.nytimes.com/2023/07/31/climate/heat-labor-productivity-climate.html
[12] https://www.lancetcountdown.org/data-platform/health-hazards-exposures-and-impacts/1-1-health-and-heat/1-1-4-change-in-labour-capacity
[13] https://onebillionresilient.org/extreme-heat-the-economic-and-social-consequences-for-the-united-states/#:~:text=Among%20the%20report's%20key%20findings,afflicting%20Black%20and%20Hispanic%20workers.
[14] https://link.springer.com/article/10.1007/s00484-021-02105-0

lost productivity linked to heat, according to an analysis of federal data conducted by Vivid Economics.[15]

Given these facts, I'm surprised there is any opposition to this standard. In fact, I'm astounded that 90% of Congressional representatives aren't racing to co-sponsor the Ascuncion Valdivia Heat Illness and Fatality Prevention Act[16] that would enable OSHA to issue an Interim Final Standard to protect workers in a matter of months, instead of the years it will take OSHA to finalize its much-needed standard.

Infectious Diseases

One of OSHA's main regulatory priorities is an infectious disease standard. Currently that standard focuses on health care workers, rather than the general workforce.

The only regulatory protections workers have from infectious diseases is the Bloodborne Pathogens standard, which was issued in 1991 to protect healthcare workers from serious diseases like hepatitis B and C, and HIV/AIDS. CDC Guidance is just that: guidance. It is not enforceable.

That standard, despite fierce opposition from the healthcare industry, has been a resounding success, changing the way health care is practiced and all but eliminated occupationally acquired hepatitis B.

Some of you may be too young to remember, but prior to issuance of the bloodborne pathogens standard, doctors, dentists and nurses rarely wore masks or gloves. Common practice was to manually recap syringes, leading to numerous needles sticks and disease. Needle boxes, where they existed at all, often leaked and overflowed. Infectious waste was with regular uncontaminated garbage. Healthcare workers had to pay exorbitant fees out of their paychecks for hepatitis B vaccinations.

Today, we are seeing more "new" diseases affecting this nation's citizens and its front-line healthcare workers. Just 50 years ago, when the OSHAct was passed, HIV/AIDS didn't exist, nor did Ebola, COVID-19 or the Avian flu. And research has shown that climate change is ushering in more new diseases.[17,18,19]

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[15] https://www.atlanticcouncil.org/wp-content/uploads/2021/08/Extreme-Heat-Report-2021.pdf
[16] https://www.congress.gov/bill/118th-congress/house-bill/4897?q=%7B%22search%22%3A%22valdivia%22%7D&s=2&r=2
[17] Jones, K., Patel, N., Levy, M. *et al.* Global trends in emerging infectious diseases. *Nature* **451**, 990–993 (2008). https://doi.org/10.1038/nature06536
[18] Schulte, P. A., et al. (2016). Advancing the framework for considering the effects of climate change on worker safety and health. Journal of Occupational and Environmental Hygiene, 13(11), 847–865. https://doi.org/10.1080/15459624.2016.1179388
[19] Schulte, Paul, Chun, Heekyoung, Climate Change and Occupational Safety and Health: Establishing a Preliminary Framework, *Journal of occupational and environmental hygiene*, 6(9):542-54.

Yet this nation's frontline caregivers – those we depend on to keep us alive when we get sick – have no enforceable protections, except for OSHA's Bloodborne Pathogen Standard, against these diseases.

Tree Care

There is no doubt that a Tree Care standard is needed and I commend the TCIA for pushing for a strong standard. Almost no week goes by where a worker is not killed in a tree-trimming incident. For that reason, the Tree Care standard is one of OSHA's top priorities.

OSHA has, over the last several years enforced tree care safety using a variety of existing standards. In 2015, the agency determined that tree are workers could better be protected though issuance of a vertical tree care standard. Unfortunately, the Trump administration shelved the rule on the "long term agenda" in 2017, and then moved it back to the active agenda the following year. Little progress was made until the current administration.

The sad fact is that OSHA's serious budget shortfall, as I discussed above, is keeping this, and other important rules from moving forward as fast as everyone would like. The good news is that there are existing OSHA standards protecting tree workers, including standards that address vehicle-mounted elevating and rotating work platforms; personal protective equipment, portable power tools; machine guarding; and electrical safety.

I would suggest to the Tree Care Industry Association and concerned members of this committee that the best way to move this standard forward more quickly is to significantly increase OSHA's budget for standards and guidance.

Emergency Response

I will never forget one evening in April 2013 when my wife called me from the TV to say she had just seen something about a huge explosion in Texas. That was the West Texas ammonium nitrate fertilizer explosion that killed 15 people and destroyed a good part of the city of West.

Twelve of the 15 deaths in that explosion were emergency responders. They bravely rushed in to fight the fire, with no information about what was burning, and even less information about how to handle a fire that involved ammonium nitrate. Nor did they know that the ammonium nitrate had been improperly stored at the facility. They were heroes who should not have died that night.

Emergency responders save lives put at risk from chemical plant disasters, train wrecks, hurricanes, tornadoes, floods and fires. They deserve the best protection we can provide. OSHA estimates that more than 80 emergency responders die every year who would be covered by this standard.

OSHA's current emergency response rules are antiquated and spread across several different OSHA standards. They equipment described in OSHA's currently applicable

standards would fit much better into a mid-20th century Noman Rockwell painting than a 21st century firehouse. They are in dire need of updating.

This emergency response standard is still in the relatively early stages. A proposal has been issued and it is currently in the written comment period, which will be followed by hearings and a post comment period.

But a proposal is just a proposal. OSHA has collected information, including extensive consultation with professional and volunteer fire organizations and other experts. Based on that input, OSHA experts and solicitors developed a draft standard and opened it to the public for comment.

Although there has been a lot of misinformation spread around about this proposal, there are also legitimate questions about whether this standard is feasible for small volunteer fire and rescue departments, as well as other issues.

In order to encourage discussion, OSHA has published a separate 8-page list of questions[20] it needs answers to so that people don't have to read the regulatory text and the 200 pages of preamble.

It is in no one's interest – and certainly not in OSHA's interest – for any volunteer fire or rescue organizations to be put out of business by this standard. Which is why OSHA is soliciting information, data and other evidence about the feasibility of this standard. If OSHA is presented with convincing evidence that the standard is not feasible for volunteer fire departments, I have no doubt that they will exempt them.

But there must be strong evidence, not just rhetoric. For every standard that OSHA has proposed over the last 50 plus years, the regulated industry has claimed that the new standard would put them out of business and kill jobs. Most of those claims were simple fear-mongering. The perennial accusation that an OSHA standard would throw entire industries or large numbers of businesses into bankruptcy is a myth.

Business owners are smart. The good ones figure out how to ensure their workers' safety, comply with OSHA standards and still make a profit.

Workplace Violence

Workplace violence has been on OSHA's regulatory agenda only since 2016, although it's a far older problem. I've been working to prevent assaults in healthcare and social service occupations since the early 1980, long before OSHA even recognized it as a hazard that the OSHA had authority over.

Health care and social service workers are at high risk of assault by patients, clients, and members of the public. Peer reviewed studies and Bureau of Labor Statistics (BLS) data show high injury rates from workplace violence for these workers. BLS statistics indicate

[20] https://www.osha.gov/sites/default/files/ER_NPRM_Questions_and_Issues.pdf

public employees are at even higher risk, but they are not covered by Federal or state OSHA in 23 states. Furthermore, assaults on health care and social service workers are underreported because reporting practices are burdensome; many health care and social service workers perceive such violence as part of their job; and, they are often disciplined for reporting assaults.

OSHA has had well-respected guidance to prevent workplace violence in health care and social service workplace since the late 1990s and has issued numerous citations under the General Duty Clause.

The House of Representatives have twice passed bipartisan legislation that would have required OSHA to issue a workplace violence standard within a far shorter period of time than OSHA is able to do under current conditions. I want to thank Mrs. Stefanik for her strong support of those bills and I urge this committee to reconsider that legislation.

Employee Walkaround Representatives on OSHA Inspections

While OSHA's revised walkaround regulation is not a health and safety standard, and therefore subject to different criteria than standards, I would like to make a few observations.

This regulation has been the subject of scurrilous misconceptions: that it is a stalking horse for union organizing, that it will result in the theft of trade secrets, that it will cause chaos and disruption in the workplace and that walkaround representatives will get themselves killed in dangerous machinery. None of these allegations is true.

The revised walkaround regulation is not about union organizing; it is about saving workers' lives.

OSHA has always allowed third-party walkaround representatives for employees with no problem. While the previous version of the regulation suggested industrial hygienists and safety experts as *examples* of third-party walkaround representatives, that list was not exclusive.

In fact, when I worked for a union, I was often the workers' walkaround representative – even in workplaces we did not officially represent. The employers never accused me of disrupting the workplace, stealing business information, organizing workers or doing anything except ensuring that the workers were provided with a safe workplace.

Congress determined when it passed the Occupational Safety and Health Act in 1970 that among workers' most important rights was the ability to walk around with OSHA inspectors when they were conducting an inspection. Those walk-around representatives were mostly – although certainly not exclusively – utilized in union workplaces. But in fact, there is nothing in the Act or previous regulations that restrict walkaround representatives to employees of the employer.

The alternative was for OSHA inspectors to consult with a reasonable number of workers. But that process was never as effective as worker authorized walkaround representatives. The comments submitted to OSHA about this rule were replete with reports of retaliation against workers that are seen talking to OSHA inspectors. Non-English-speaking workers are often more comfortable with their own translators than the employers. And the walkaround representatives of workers are often more familiar with unique work processes than OSHA inspectors.

Today we have far fewer unionized workplaces than we had in 1970, but the importance for workers – all workers – to be able to choose their walkaround representatives has never been greater. Today, this country has many more vehicles for worker representative than existed in 1970 – worker and immigrant rights organizations, COSH and faith-based groups and others that workers use to represent them in a variety of areas where non-union workers need help to resolve workplace problems.

And OSHA inspectors are well equipped and trained to exclude any third-party walkaround representative from the workplace if they are causing problems or doing anything except helping to ensure safe working conditions.

Conclusion

In conclusion, there are a few things we should all agree with.

First, I think we can all agree that workplace safety is and should continue to be a major priority in this country, and that reasonable OSHA standards play an indispensable role in protecting workers.

Second, we should also be able to agree that OSHA has a robust public input process that ensures its standards address serious hazards and are feasible – economically and technologically – as the law requires.

Finally, I have a few recommendations for the Committee's consideration that will ensure that the standard setting process works more effectively to protect workers.

1. The regulatory process needs to be strengthened, not weakened. Changes need to be made that will speed up the process of issuing OSHA health and safety protections so that workers don't have to wait decades to receive the safeguards they need.
2. The Committee should examine the standards and standard setting practices in California and Washington under their state OSHA programs. Those programs are more effective and far speedier than federal OSHA's.
3. OSHA's regulatory budget needs to be significantly increased. The current budget is tiny and totally inadequate to meet the scope of OSHA's mandate.
4. Given the backlog in protections at the federal level, we believe the Congress should consider updating the permissible exposure limits for toxic substances and other

antiquated consensus standards through legislative action, similar to the procedure that was utilized to establish an initial body of regulation under section 6(a) of the OSHAct in 1971.

5. Where there are urgent new hazards that need to be addressed to expeditiously provide workers with needed protections, Congress should pass legislation exempting the agency from some procedural requirements under section 6(b) of the OSH Act or the Administrative Procedure Act or pass legislation authorizing OSHA to issue interim final standards.

Finally, this nation and this Congress cannot forget that a safe workplace is a legal right for all workers in this country. And that sacred right has become weaker as the process of issuing legal protections has become lengthier and more difficult.

OSHA's efforts to issue standards under the Occupational Safety and Health Act is not an overreach. Far from it. It is the key job that Congress gave the agency over 50 years ago.

The data is clear that unsafe conditions cause injuries and deaths. Workers cannot depend on workers comp, insurance companies or individual state actions to protect their health and save their lives. And the data is clear that OSHA standards, and enforcement of those standards, save lives.

54 years ago, a huge, bipartisan majority of Congress understood those facts. It's hard to believe in these days of Congressional dysfunction, that the Occupational Safety and Health Act passed overwhelmingly in 1970 with only 25 House members and 3 Senators opposed.

And no one can argue with a straight face that the founding parents of OSHA in their wildest dreams imagined that it would take decades to issue a single OSHA standard.

I urge you to pay attention to the lessons learned over the past fifty years and join efforts to strengthen instead of to weaken our commitment to assuring safe and healthful working conditions for working men and women of this country

Thank you for inviting me to testify today, and I would be happy to answer your questions.