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U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210



June 19, 2020

RE: Freedom of Information Act Request # 892709

This letter is in response to your Freedom of Information Act (FOIA) request of May 25, 2020 in which you requested:

- "A copy of the Questions For the Record (QFR) and agency QFR responses to Congress responding to QFRs during calendar years 2017, 2018, 2019, and 2020 to date, for the Department of Labor...for the Bureau of Labor Statistics...for OSHA."

Your request was received in our office on May 26, 2020 and assigned FOIA tracking number #892709.

This correspondence is a response from the Office of Congressional and Intergovernmental Affairs (OCIA). In this production, OCIA encloses 73 pages responsive to the above request.

If you consider this an adverse determination, you have the right to file an administrative appeal. Your appeal must be received by the Solicitor of Labor within 90 calendar days of the date of this initial denial letter. Address your appeal to the following office: Solicitor of Labor, Division of Management and Administrative Legal Service, Room N-2420, U.S. Department of Labor, 200 Constitution Ave, NW, Washington, DC 20210.

Your appeal may also be sent by email to FOIAAppeal@dol.gov. Appeals submitted to any other address will not be accepted. Your appeal must state in writing the grounds for the appeal. It should also include a copy of the original request, the response to your request, and any supporting statement or arguments. The appeal letter, the envelope, and the email subject line should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Wheeler", is written over the typed name.

Joe Wheeler
Deputy Assistant Secretary

Enclosure

Ranking Member Scott (VA)

1. The Department of Labor (DOL) has proposed to roll back “ancillary” protections from workplace exposure to beryllium for construction and maritime workers. Eliminating the ancillary provisions across all industry sectors would decrease annualized benefits by 71 percent relative to the final rule, according to the DOL’s Final Economic Assessment. Construction and maritime workers are exposed to beryllium-containing abrasives, such as coal slag, when engaged in abrasive blasting. Companies that market coal slag abrasives to construction companies and shipyards have urged DOL to eliminate the ancillary protections for construction and maritime workers, due to concern about losing market share to competitors who sell beryllium-free abrasives that perform just as well.
 - a. Do you agree with the principle that the Occupational Safety and Health Administration (OSHA) should ensure that workers exposed to beryllium in the construction and shipyard industries are provided with protection that is comparable to the protection afforded workers in general industry?
 - b. In August 2017, approximately 1,600 shipyard workers petitioned OSHA not to roll back the ancillary protections under the beryllium rule, because they are concerned about unsafe levels of exposure. In your view, is there no benefit to construction and shipyard workers from ancillary protections, such as airborne exposure monitoring and medical surveillance?
 - c. Have you personally had conversations or meetings with companies, trade associations, unions, lobbyists or lawyers who have urged you to roll back the OSHA beryllium standard for construction or maritime workers?
 - d. If the answer to (C) is yes, please provide a list of such meetings.
 - e. Have you personally had conversations or meetings with companies, trade associations, unions, lobbyists or lawyers who have urged you to retain the OSHA beryllium standard for construction or maritime workers?
 - f. If the answer to (E) is yes, please provide a list of such meetings.

RESPONSE: OSHA is committed to ensuring the safety and health of working

Americans and does so through a number of programs and enforcement initiatives. To that end, on June 27, 2017, the Department of Labor published a Notice of Proposed Rulemaking for Occupational Exposure to Beryllium and Beryllium Compounds in Construction and Shipyard Sectors. The comment period has ended and the Department is reviewing the submissions it has received. In accordance with the Administrative Procedure Act, it would be premature to make any conclusions prior to the completion of this review. I have met with a number of stakeholders about various issues and the Beryllium rule may have come up at some point in a very high-level discussion. I have no specific recollection of those discussions sufficient to provide a list of such meetings. My calendar is made available periodically. All discussions and materials received during the notice and comment period are memorialized and included in the rulemaking record.

BERYLLIUM RULE

OSHA issued a comprehensive beryllium standard for construction, maritime, and general industry sectors in January 2017 that would reduce the allowable exposures to beryllium by 90 percent.

The date for employers to comply with the new, more protective standard was supposed to be March 12, 2018. However, the Department just announced it is postponing enforcement for an additional two months—until May 11—even though employers have been on notice for more than a year that the standard would be enforceable on March 12. There was no confusion about this date.

Based on OSHA's own risk estimates in its final rule, this delay is expected to cause new cases of beryllium disease, a severely debilitating lung disease which often leads to death.

Ms. DeLauro: The Department says the delay is "in response to requests from stakeholders." Can you tell us which stakeholders you spoke to?

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) is engaged in settlement discussions with various parties that sued OSHA regarding the beryllium standard rule, published on January 9, 2017. These litigants include Materion, Century Aluminum, and Edison Electric Institute. The United Steel Workers union is also a party to this litigation and an active participant in the settlement discussions. As part of these discussions, OSHA agreed to make clarifying revisions to the general industry standard, which necessitated delaying enforcement to permit OSHA time to complete settlements and effect changes to the rule.

Ms. DeLauro: Did any of these stakeholders include workers affected by beryllium?

Mr. Acosta: The United Steel Workers, whose members have been affected by beryllium, actively participated throughout the rulemaking process and are a party to settlement negotiations.

Ms. DeLauro: Are you going to start enforcing the Beryllium Rule on May 11, or do you expect to postpone enforcement again?

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) began enforcing many of the provisions of the beryllium standard beginning May 11, 2018. However, as part of a settlement agreement, OSHA plans to provide clarifications to select ancillary provisions of the general industry beryllium standard. These revisions are designed to enhance worker protections by ensuring that the rule is well-understood, and compliance is simple and straightforward. To avoid potential confusion in the short term, OSHA will propose a delay in compliance dates for those select provisions of the general industry beryllium standard until December 12, 2018, to permit OSHA sufficient time to develop the proposed clarifications to the rule. Finally, OSHA recently issued enforcement guidance indicating that it will not enforce those select provisions before June 25, 2018, to give OSHA time to complete the extension rulemaking.

BLS FUNDING

Mr. Secretary, the Bureau of Labor Statistics is an agency that provides invaluable data about the economy, which helps to inform business leaders and policymakers as they make investment and policy decisions.

BLS has been flat-funded since fiscal year 2010. Your fiscal year 2019 budget proposes flat funding again through fiscal year 2019. If Congress were to fund BLS at the requested level, the agency's budget will have declined by 15 percent since 2009, adjusted for inflation.

Ms. DeLauro: How much longer can its resources decline before BLS must eliminate or downsize important statistical products?

Mr. Acosta: The Bureau of Labor Statistics (BLS) remains prudent in its stewardship of resources and consistently seeks to transform how it collects, analyzes, and delivers its data. By increasing use of technology and identifying efficiencies to improve data accuracy, lower respondent burden, and reach its customers better, BLS continues to meet its core mandates.

Ms. DeLauro: Which programs would be cut first?

Mr. Acosta: At the proposed budget funding level, the Bureau of Labor Statistics (BLS) will meet its core mandates. At the proposed budget funding level, the BLS will rely upon non-permanent spending restrictions and programmatic solutions, reducing the frequency of surveys or number of data series, in order to reallocate funding to the production of core data series. Current budget realities do not require permanent program changes or program eliminations.

Ms. DeLauro: How important are the long, comparable time-series produced by the BLS for evidence-based policy making, such as monetary and labor market policy?

Mr. Acosta: As the principal federal statistical agency responsible for measuring labor market activity, working conditions, and price changes in the economy, the Bureau of Labor Statistics (BLS) provides sensitive economic data to a broad customer base including private citizens, businesses, policymakers, researchers, state and local governments, and other federal agencies. Various data, including the long, comparable time-series as well as newer data products, are important to these and other stakeholders who are in need of objective evidence to inform their decision-making. Regarding long-run time series, BLS not only takes care to ensure consistency over time, but also works to identify and measure new phenomenon in the economy.

Ms. DeLauro: Would it be acceptable for the BLS to discontinue or dilute the quality of its principal economic indicators or products required by law, knowing that the missing or inferior data can never be replaced in the time series?

Mr. Acosta: At the proposed budget funding level, the Bureau of Labor Statistics (BLS) will meet its core mandates. At the proposed budget funding level, the BLS will rely upon non-permanent spending restrictions and programmatic solutions, reducing the frequency of surveys or number of data series, in order to reallocate funding to the production of core data series.

Current budget realities do not require permanent program changes, program eliminations or discontinuation or dilution of the quality of principal economic indicators or products required by law.

Ms. DeLauro: The last time the BLS was funded to conduct the Survey of Employer Training was in 1995. Do you support a new survey of the landscape of employer-provided training? Why or why not?

Mr. Acosta: The Department understands that the Survey of Employer Training (SEPT) is important to a number of stakeholders; however, it needs to be balanced against resource requirements for existing, core Bureau of Labor Statistics (BLS) surveys. As requested by the Senate Appropriations Committee, BLS is preparing a report on design and cost options for a SEPT, which will help to inform any such decision making by Congress. The report will be provided to Congress in June, as required.

ELIMINATING THE SUSAN HARWOOD GRANT PROGRAM

OSHA's Susan Harwood Grant Program is proposed for elimination in the Department's budget.

Mr. Cole: Please explain why you believe this program should be eliminated?

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) is proposing to use alternative methods to develop and deliver training to reach the broadest possible audience. The House Appropriations Committee also eliminated funding for these grants in both Fiscal Years (FY) 2017 and 2018. In the FY 2017 report House language, the Committee specifically noted their concern that these grants are inefficient and ineffective. OSHA has a variety of programs and tools available that provide training, outreach, and assistance to employers and employees. These include Alliances, Strategic Partnerships, On-site Consultation, and numerous targeted outreach events, such as the Fall Stand Down in Construction, which provide information on workplace safety and health to the public. Training and outreach programs delivered directly by the agency can more efficiently provide the same type of information currently delivered through the training grants to a broader audience. Additionally, many Alliance Program agreements contain a training element, and numerous training and information resources are available on OSHA's website.

The President's Fiscal Year 2018 Budget includes a proposed increase of \$4 million and 20 full-time equivalent employees to provide additional outreach and training to high-risk workers. This includes funds for additional Compliance Assistance Specialists, new training materials, and support for OSHA's Cooperative Programs, Strategic Partnerships, and Alliances to address hazards in high-risk industries.

INVESTING IN OSHA COMPLIANCE ASSISTANCE

I believe most employers share our goal of worker safety and want to be compliant with existing standards, however, it is not always easy. There are numerous regulations at the Department that are complex and difficult to understand, and, in some cases, it can be difficult to achieve full compliance. Sufficient guidance is not always available and when it is, it can be hard to find.

Mr. Cole: Will the Department make greater investments in compliance assistance initiatives, especially for the small businesses for which compliance can be additionally burdensome?

Mr. Acosta: The President's Fiscal Year (FY) 2018 Budget would provide the Occupational Safety and Health Administration (OSHA) an increase of \$4 million for Federal Compliance Assistance, which would enable the agency to hire 20 Compliance Assistance Specialists (CASs) and provide funding to support additional outreach and training. With the requested funding, OSHA will expand its compliance assistance and outreach activities for high-risk industries and small- and medium-sized businesses. The additional CASs will increase the agency's capacity to meet directly with small businesses and related professional associations to ensure they have the tools they need to provide a safe workplace for their workers. Increased staffing will enable the agency to provide more outreach to help employers comply with OSHA regulations.

OSHA also will promote the On-site Consultation Program, which is the agency's small- and medium-sized business safety and health assistance program that operates in all States and several territories. The On-site Consultation program offers free and confidential safety and health advice to small businesses, which often cannot afford to hire in-house safety and health experts or outside consultants. Program Consultants work with employers to identify workplace hazards, provide advice on compliance with OSHA standards, and assist in establishing safety and health programs. In FY 2018, the On-site Consultation Program will continue to focus their efforts on the identification, assessment, and abatement of workplace hazards. Consultants will also assist with outreach and education efforts for small businesses to support OSHA's mission to assure safe and healthful working conditions. To better assist small businesses with practical and affordable solutions to hazard abatement, the On-site Consultation Program will continue to focus on development and improve communication of Low Cost/No Cost abatement methods gleaned from visits and provide this information in innovative and web-accessible formats. The On-site Consultation Program plans to conduct 26,870 Consultation visits in FY 2018.

REFORMING OSHA REGULATIONS

Under the prior administration, the Department of Labor placed a heavy emphasis on enforcement and promulgation of new standards at the cost of crucial compliance assistance to businesses subject to the Departments regulatory requirements.

Mr. Cole: Do you intend to reallocate funds traditionally budgeted for the development of new standards towards reforming regulations that are duplicative, onerous, and do not achieve their statutory objectives?

Mr. Acosta: On February 24, 2017, President Trump issued an Executive Order regarding Enforcing the Regulatory Reform Agenda. This Executive Order requires agencies to review and identify, among other things, standards or requirements that are “outdated, unnecessary, or ineffective.” The Department of Labor, and the Occupational Safety and Health Administration (OSHA), will review regulations pursuant to the Executive Order while fulfilling OSHA’s core mission to assure safe and healthful working conditions. When OSHA is regulating or deregulating, OSHA must as a matter of law follow its statute and the Administrative Procedure Act (APA). One of the principal components of the APA is providing notice and seeking comment from the public.

CRANE OPERATORS REGULATION

Mr. Cole: I understand that the next compliance deadline for the Department's rule related to third-party certification of crane operators is November 2018. I've heard concerns regarding how the rule will apply to crane operators in the propane industry. Has this issue been considered within the Department's broader review of the agency's regulations?

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) considered the National Propane Gas Association's (NPGA) concerns during the Cranes and Derricks in Construction (cranes standard) rulemaking, and in a number of post-rulemaking meetings and correspondence.

OSHA explained in the final rule (75 FR 47922) its analysis of NPGA's public comment (OSHA-2007-0066-198) and similar comments from other stakeholders. NPGA has since requested an exemption from only the certification requirements.

The crane operator certification NPRM, "Cranes and Derricks in Construction: Operator Qualification" was published in the Federal Register on May 21, 2018 (RIN 1218-AC96). The NPRM's comment period closes on June 20, 2018.

BLS FUNDING LEVELS

BLS has a sizeable amount of built-in costs to support existing personnel—and yet, your fiscal year 2018 budget request is below the funding levels for fiscal years 2016 and 2017.

Ms. DeLauro: Under your budget proposal for BLS, would you be able to continue all surveys and data series that were supported in fiscal years 2016?

Mr. Acosta: At the proposed budget funding level, no surveys are planned for elimination.

Ms. DeLauro: Would you be forced to eliminate any surveys or data series?

Mr. Acosta: At the proposed budget funding level, no surveys are planned for elimination.

Ms. DeLauro: Would you be forced to reduce the frequency of any surveys or data series?

Mr. Acosta: At the proposed budget funding level, there may be non-permanent changes to some programs in order to reallocate funding to the production of core data series that may temporarily reduce the frequency of surveys or data series.

Ms. DeLauro: Would you continue to support the American Time Use Survey?

Mr. Acosta: The President's Fiscal Year 2018 budget request provides funding for the American Time Use Survey.

Ms. DeLauro: Would you continue to support the Job Openings and Labor Turnover Survey?

Mr. Acosta: The President's Fiscal Year 2018 budget request provides funding for the Job Openings and Labor Turnover Survey.

BUREAU OF LABOR STATISTICS - EMPLOYMENT SITUATION

Mr. Secretary, in recent years Donald Trump frequently expressed doubt about the validity of the Bureau of Labor Statistics' (BLS) monthly Employment Situation. He called the numbers "a complete fraud" (2012); "false numbers" (2013); "a totally phone number" (2014); and "one of the biggest hoaxes in modern politics" (2016).

Ms. DeLauro: Do you believe that BLS' monthly employment data are "false numbers"?

Mr. Acosta: The Bureau of Labor Statistics (BLS) and other government statistical agencies serve an incredibly important role. These agencies have protections and standards that are provided by the Office of Management and Budget to ensure the integrity of the information maintained and disseminated by BLS. These protections are important because the data they produce is used over time to set policy, including employment data. Each month, the *Employment Situation* release provides employment, hours, and earnings estimates based on data collected from employers through the Current Employment Statistics program, as well as six measures of labor underutilization, including the headline official unemployment rate, based on data provided by households through the Current Population Survey (CPS). Each of the six rates of labor underutilization measures what it is intended to measure based on the specific definition of underutilization that applies to each rate. The concepts behind the official unemployment rate largely have been the same for nearly 80 years. While each of the six measures of labor underutilization measures what it is intended to measure, that measure may not be what is being discussed.

Ms. DeLauro: Do you believe that BLS' monthly employment data are "a complete fraud"?

Mr. Acosta: The Bureau of Labor Statistics (BLS) and other government statistical agencies serve an incredibly important role. These agencies have protections and standards that are provided to them by the Office of Management and Budget to ensure the integrity of the information maintained and disseminated by BLS. These protections are important because the data they produce is used over time to set policy, including employment data. Each month, the *Employment Situation* release provides employment, hours, and earnings estimates based on data collected from employers through the Current Employment Statistics program, as well as six measures of labor underutilization, including the headline official unemployment rate, based on data provided by households through the Current Population Survey (CPS). Each of the six rates of labor underutilization measures what it is intended to measure based on the specific definition of underutilization that applies to each rate. The concepts behind the official unemployment rate largely have been the same for nearly 80 years. While each of the six measures of labor underutilization measures what it is intended to measure, that measure may not be what is being discussed.

Ms. DeLauro: Is there any reason to doubt the validity of BLS's monthly employment data?

Mr. Acosta: There is no reason to doubt the validity of BLS's monthly employment data. I note that the *Employment Situation* release provides six measures of labor underutilization, one

of which, the U-3, is the official unemployment rate. The concepts behind the official unemployment rate largely have been the same for nearly 80 years.

OSHA SILICA RULE

Last year, OSHA finally issued a long-needed standard to protect workers against deadly silica dust which causes silicosis and lung cancer. The silica standard was 19 years in the making and is projected to prevent nearly 700 silica-related disease deaths and 900 cases of silicosis a year.

The Department of Labor first started working to prevent silica-related diseases in the 1930's, when Secretary of Labor Francis Perkins launched a major campaign to stop silicosis deaths in this country. But unfortunately the exposures, deaths, and diseases continue.

The rule has been challenged in court by industry groups who claim it isn't needed. Recently those same industry groups petitioned OSHA to stay the rule and reopen it for reconsideration. The Department of Labor is defending this rule in court.

Ms. DeLauro: Mr. Secretary, will you commit to defending, maintaining, and fully implementing the silica standard that is currently in place?

Mr. Acosta: In a statement issued April 6, 2017, the Occupational Safety and Health Administration (OSHA) announced that it would delay enforcing the Construction Industry standard until September 23, 2017. Enforcement of the General Industry and Maritime standards is not scheduled to begin until June 2018. In addition, several industry and labor parties filed challenges to the standard, which are currently pending in the U.S. Court of Appeals for the District of Columbia Circuit. Oral argument is scheduled for September 26, 2017. The Department is currently preparing for oral argument and will comply with any order issued by the court.

PATHWAYS EMPLOYEES AT BLS

The Department recently terminated the employment of the majority of BLS Pathways employees. The Pathways program is an apprentice-style program to train employees for highly technical jobs and then convert them to permanent positions if they perform well.

Ms. DeLauro: Why did the Department terminate the employment of so many BLS Pathways employees?

Mr. Acosta: Positions under the Pathways Program at the Department of Labor are temporary excepted service appointments. As a condition of employment, the appointment expires at the end of the one-year service period, at which time the employee may or may not be converted into a permanent position. In accordance with the government-wide hiring freeze enacted in January, the Department has a process in place to evaluate all hiring activities, including conversions of Pathways individuals. Since January 20, 2017, the Department has converted 44 Pathways Recent Graduates, of which 35 were from the Bureau of Labor Statistics (BLS). BLS constitutes 15.5 percent of the DOL workforce and 79.5 percent of the Pathways Recent Graduates (converted since January 20, 2017) work at BLS.

Ms. DeLauro: Given the Department's emphasis on apprenticeship programs, why are you undermining the apprenticeship program that trains skilled staff at BLS?

Mr. Acosta: Positions under the Pathways Program at the Department of Labor are temporary excepted service appointments. As a condition of employment, the appointment expires at the end of the one-year service period, at which time the employee may or may not be converted into a permanent position. In accordance with the government-wide hiring freeze enacted in January, the Department has a process in place to evaluate all hiring activities, including conversions of Pathways individuals. Since January 20, 2017, the Department has converted 44 Pathways Recent Graduates, of which 35 were from the Bureau of Labor Statistics (BLS). BLS constitutes 15.5 percent of the DOL workforce and 79.5 percent of the Pathways Recent Graduates (converted since January 20, 2017) work at BLS.

Ms. DeLauro: What was the level of full-time equivalents (FTE) at BLS on June 1, 2017? And what was the level of FTE at BLS on June 1, 2016?

Mr. Acosta: On June 1, 2016, the Bureau of Labor Statistics (BLS) had 2,304 full-time equivalents (FTE). On June 1, 2017, BLS had 2,295 FTE.

SUSAN HARWOOD TRAINING GRANTS

Since 1978, over 2.1 million workers in dangerous jobs have received training and education on how to protect themselves on the job through this small, but vital OSHA training grant program. Grants were given to organizations that reached workers in the most dangerous industries with vital safety and health training. This in-depth training reached workers who had never been trained before and the results have been clear: workplaces made changes to increase safety.

As you know, there is no comprehensive OSHA standard requiring basic safety training for all workers, and these workers—landscapers, laborers, loggers, etc.—are in the most dangerous industries.

Ms. DeLauro: If this program is eliminated, how will these workers get the training and education to be able to identify and prevent job hazards?

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) is proposing to use alternative methods to develop and deliver training to reach the broadest possible audience. The House Appropriations Committee also eliminated funding for these grants in both Fiscal Years (FY) 2017 and 2018. In the FY 2017 report House language, the Committee specifically noted its concern that these grants are inefficient and ineffective. OSHA has a variety of programs and tools available that provide training, outreach, and assistance to employers and employees. These include Alliances, Strategic Partnerships, On-site Consultation, and numerous targeted outreach events, such as the Fall Stand Down in Construction, which provide information on workplace safety and health to the public. Training and outreach programs delivered directly by the agency can more efficiently provide the same type of information currently delivered through the training grants to a broader audience. Additionally, many Alliance Program agreements contain a training element, and numerous training and information resources are available on OSHA's website.

OSHA will continue its strong commitment to, and emphasis on, the enforcement of standards and regulations that serve as an effective deterrent to employers who put their workers' lives at risk. OSHA's budget request reflects a commitment to reduce workplace injuries, illnesses and fatalities through a balanced approach of both enforcement and compliance assistance.

Ms. DeLauro: Wouldn't it make sense to continue these small grant programs, as an investment in preventing injuries that cost workers, their families, and the economy billions of dollars every year?

Mr. Acosta: The President's Fiscal Year 2018 Budget includes such an investment. It includes a proposed increase of \$4 million and 20 full-time equivalent employees to provide additional outreach and training to high-risk workers. This includes funds for additional Compliance Assistance Specialists, new training materials, and support for OSHA's Cooperative Programs, Strategic Partnerships, and Alliances to address hazards in high-risk industries. In addition, OSHA uses its National, Regional, and Local Emphasis Programs to target its enforcement activities in industries where fatalities and serious injuries occur.

WHISTLEBLOWER ENFORCEMENT

Mr. Secretary, OSHA investigates whistleblower cases under the Occupational Safety and Health Act and 21 other federal laws. Strengthening OSHA's whistleblower program is crucial given the role whistleblowers play in safeguarding occupational health, financial reform, consumer product safety, and air and water supplies. At current funding levels, OSHA is often in violation of statutory deadlines to investigate its whistleblower cases, which stall at the agency for an average of 303 days. The fiscal year 2018 budget would further reduce funding for OSHA's whistleblower programs.

Ms. DeLauro: How would OSHA fulfill its statutory obligations to protect whistleblowers under the proposed funding level?

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) remains committed to protecting whistleblowers that raise workplace concerns. OSHA will identify opportunities to streamline processes and procedures while maintaining investigative quality and improving the time it takes to complete an investigation. One area being considered is an expansion of the Alternate Dispute Resolution (ADR) process, which has proven effective in resolving complaint disputes expeditiously.

OSHA will also focus on enhancing its Whistleblower Investigations Manual (WIM) with the goal of streamlining investigative steps and processes in order to more effectively carry out its mission of conducting fair, thorough, and neutral fact-finding investigations. OSHA will continue to focus on improved efficiencies and effectiveness including its ongoing goal of reducing the average age of pending investigations, average age for screening new complaints, and compliance with the prescribed WIM instructions.

Ms. DeLauro: At your proposed funding levels, how many whistleblower investigations would you estimate to complete in fiscal year 2018?

Mr. Acosta: At the proposed funding levels, the Occupational Safety and Health Administration (OSHA) estimates it will complete 2,795 investigations in Fiscal Year 2018.

Ms. DeLauro: At your proposed funding levels, what is the projected average age of pending whistleblower investigations in fiscal year 2018?

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) is diligently working to streamline the investigative process without compromising the quality of investigations. As of the second quarter of Fiscal Year (FY) 2017, the average age of pending whistleblower investigations was 296 days and the agency projects maintaining this average in FY 2018.

Ms. DeLauro: At your proposed funding levels, what is the projected processing time for whistleblower investigations in fiscal year 2018?

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) is diligently working to streamline the investigative process without compromising the quality of investigations. OSHA's average processing time is 290 days to complete an investigation and OSHA expects this processing time to continue in Fiscal Year 2018.

QUESTIONS SUBMITTED BY SENATOR JEFF MERKLEY

ELIMINATING THE SUSAN HARWOOD TRAINING GRANT PROGRAM

The Department is proposing to eliminate funding in the FY2018 budget for the Susan Harwood Training Grant program, which provides grant awards to non-profit organizations to provide direct and train-the-trainer training and education to workers on safety and health hazards in the workplace. The Department justifies the elimination these grants on the theory that eliminating funding will “maximize flexibility” and allow the Department to save money by providing direct training in place of the Susan Harwood grants.

Question. In light of the proposed 21% total budget cut to the Department, how exactly will the Department “do more with less” with respect to worker safety without the Susan Harwood Training Grant program?

Answer. The Occupational Safety and Health Administration (OSHA) has a variety of programs and tools available that provide training, outreach, and assistance to employers and employees. These include Alliances, Strategic Partnerships, On-site Consultation, and targeted outreach events, such as the National Safety Stand-Down to Prevent Falls in Construction, which provide information on workplace safety and health to the public. Training and outreach programs delivered directly by the agency can more efficiently provide the same type of information provided by the training grants to a broader audience. Additionally, many Alliance Program agreements contain a training element, and numerous training and information resources are available on OSHA’s website. The President’s Fiscal Year 2018 Budget proposal includes an increase of \$4 million and 20 full-time equivalent workers for OSHA to support additional compliance assistance, outreach, and training.

Question. Though workplace fatalities and serious injuries are decreasing overall, both are increasing among Latino workers. What steps will the Department take to specifically address subgroups of workers who are experiencing rising fatalities and serious injuries?

Answer. Training all workers, including Latino workers, who work in high-risk industries on workplace safety, health hazards, and control measures is a priority for the Occupational Safety and Health Administration (OSHA). OSHA has 174 Compliance Safety and Health Officers, Compliance Assistance Specialists (CASs), and other staff who have intermediate or fluent language skills in Spanish. In addition, OSHA’s entire website is available in Spanish, including many publications that address hazards (e.g., fall protection, electrical safety) faced by Latino workers.

The President’s Fiscal Year 2018 Budget proposal includes an increase of \$4 million and 20 full-time equivalent workers for OSHA to support additional compliance assistance, outreach, and training. This includes funds for additional CASs, new training materials, publications, and support for the agency’s Cooperative Programs, Partnerships and Alliances to address hazards faced by workers in high-risk industries who are experiencing rising fatalities and serious injuries. In addition, OSHA uses its National, Regional, and Local Emphasis Programs to target its enforcement activities in industries where fatalities and serious injuries occur.

Rep. Courtney (D-CT)

1. The Department of Labor's draft strategic plan for the Office of Workers' Compensation Programs (OWCP) states: "In Fiscal Year 2019, OWCP and OSHA will propose to the Administration a Presidential initiative to improve government-wide workplace safety and return-to-work." In September 2017, an Executive Order eliminated the Federal Advisory Committee on Occupational Safety and Health (FACOSH), which brought federal workers, their unions and federal managers together to tackle workplace safety issues on a government-wide basis. FACOSH has been a longstanding venue to address these issues, and advises the Secretary of Labor. It has been chaired by the Assistant Secretary for OSHA.
 - a. How does eliminating FACOSH square with initiatives to promote government-wide workplace safety and health as a way to help reduce federal workers' compensation costs?
 - b. Would you support reconstituting FACOSH as one of several tools to identify and reduce workplace injuries and related workers' compensation costs?
 - c. The *Protecting Americas Workers Act* (H.R. 986), which was re-introduced this year, authorizes OSHA to exercise authority over federal workplaces, which, with the exception of the U.S. Postal Service, are presently exempted under the *Occupational Safety and Health Act of 1970*. Would you support legislation to provide OSHA with authority over federal workplaces?

RESPONSE: The Federal Advisory Council on Occupational Safety and Health (FACOSH) provided advice on how to reduce and keep to a minimum the number of injuries and illnesses in the federal workforce and how to encourage each Executive Branch department and agency to establish and maintain effective occupational safety and health programs. The tasks performed by FACOSH continue to be performed by more focused federal partner safety and health meetings. Some examples of these continuing efforts include monthly calls between OSHA and the National Institute for Occupational Safety and Health (NIOSH) and quarterly calls with the Mine Safety and Health Administration, NIOSH, and the Environmental Protection Agency (referred to as the OMNE). As members of the National Response Team, OSHA meets monthly with 15 federal agencies. Semi-annually, OSHA convenes the Federal Agency Managers Roundtable to discuss emerging notable safety and health matters. These are just a few examples of OSHA's focused interaction with our federal partners on the issue of safety and health.

In addition, the Department is involved in researching and testing effective return to work strategies outside of the federal government. The Department's Office of Disability Employment Policy (ODEP) has conducted research in retention and return to work for workers that become ill or injured, whether or not the illness or injury is

work-related.

ODEP is working with offices in the Department and with the Social Security Administration, Department of Health and Human Services, and Department of Education to stand up grants to states that build upon early intervention strategies that are demonstrating success in Washington State.

If it is determined that legislative changes are necessary, I will work with Congress and the President to address this important issue.

FEDERAL ENFORCEMENT STAFFING LEVELS

Mr. Secretary, OSHA's Federal Enforcement staffing level is down by 191, or 13 percent, since 2016. I understand some hiring actions are in process, but OSHA needs to do more to get its staffing up and quickly. Please provide an update on OSHA's actions to hire, train, and deploy compliance safety and health officers.

Question. What is OSHA's plan for maintaining its enforcement workforce and ensuring that vacancies are filled in a timely way?

Answer. The Occupational Safety and Health Administration (OSHA) has taken several steps to increase its Federal Enforcement staffing levels. Beginning in 2017, the agency received approval to fill all funded Compliance Safety and Health Officers (CSHO) positions. All vacancies are being recruited for, and OSHA is in the process of on-boarding the inspectors. The agency begins the recruitment process as soon as a vacancy occurs, or an upcoming retirement is announced. OSHA advertises and recruits individuals to fill all current vacancies, and the new inspectors then begin the on-boarding process. The recruitment and on-boarding process can take from three to six months, which includes the time necessary for advertisement, application, screening and interviews, and completing the required clearance of applicants under consideration, such as security and CSHO physicals. OSHA has also begun recruiting for a larger number of positions than available vacancies to ensure there is a continuous pool of CSHO applicants for selection when future vacancies occur.

QUESTIONS SUBMITTED BY SENATOR JOE MANCHIN

FUNDING FOR OSHA

Secretary Acosta, the Occupational Safety and Health Administration (OSHA) plays a critical role in ensuring that our workers are safe in their workplaces.

Unfortunately, the President's budget request both includes a small cut to OSHA and shifts their focus away from enforcement and inspections. It would cut 26 employees and conduct almost 1000 fewer inspections.

OSHA resources are already strained and too many workers are being put in danger. In 2015, 4,836 workers were killed on the job across the country.

Question. Secretary Acosta, given the danger that so many workers face in their workplaces, why is the Department of Labor shifting OSHA resources away from inspections? Won't this endanger workers?

Answer. The Occupational Safety and Health Administration (OSHA) will continue to enforce the standards and regulations that safeguard workplace health and safety. The President's Fiscal Year 2018 Budget proposal includes sufficient funding to maintain a strong enforcement program.

The President's Fiscal Year 2018 Budget includes an increase of \$4 million and 20 full-time equivalent employees to provide additional outreach and training to high-risk workers and their employers. This includes funding for additional Compliance Assistance Specialists, new training materials, and support for OSHA's Cooperative Programs, Strategic Partnerships, and Alliances to address hazards in high-risk industries.

[Questions for the record from Senator Murray]

GAO REPORT ON WORKPLACE VIOLENCE (GAO-16-11)

In 2016, in response to a Government Accountability Office report on workplace violence (GAO-16-11) that I requested along with Representatives Bobby Scott, Joe Courtney and Frederica Wilson, OSHA updated its voluntary guidelines on preventing workplace in healthcare and social services and its enforcement procedures for addressing workplace violence under OSHA's general duty clause. However, OSHA has yet to issue its report that will help compliance officers develop citations in workplace violence cases.

Question. When will the report be issued?

Answer. The Department recognizes the importance of preventing workplace violence in all workplaces, including the health care and social assistance sectors, and it has a long history of commitment to protecting health care employees from work-related physical harm and threats of physical harm.

In December 2016, the Occupational Safety and Health Administration (OSHA) published a Request for Information (RFI), which will help the agency identify existing workplace violence prevention requirements. OSHA continues to review and analyze the comments submitted to the record in response to OSHA's RFI. OSHA is also conducting a formal assessment of health care violence using all data available through the Department (e.g., Bureau of Labor Statistics, OSHA) to establish a baseline for future assessment and is reviewing enforcement data from 2005 to the present to inform this process.

In addition, OSHA is currently working with the Institute for Healthcare Improvement/National Patient Safety Foundation to identify best practices related to the nexus between patient care and health care worker protections with industry stakeholders.

[Questions for the record from Senator Baldwin]

GREIF INC. OSHA VIOLATIONS

The U.S. Occupational Safety and Health Administration cited the Mid-America Steel Drum facility, located just North of Milwaukee, Wisconsin, for 15 serious violations for exposing workers to chemical and heat-related burns, toxic gases, dangerous noise levels, risk of falls and other hazards. The Milwaukee Journal Sentinel has reported that a former safety consultant to the company, Will Kramer, documented these same safety violations and recommendations to abate the hazards in a detailed report he provided to the company prior to the OSHA investigation that led to these penalties. Mr. Kramer also provided these detailed reports to OSHA prior to the Agency inspecting and citing Mid-America Steel Drum for serious safety violations.

Question. Why were the citations issued by OSHA not classified as willful violations since both OSHA and Mid-America Steel Drum were made aware of the safety violations by Will Kramer prior to the OSHA investigation and the company being cited for 15 serious violations?

Answer. The inspection at the Milwaukee site was opened on October 27, 2016, after receiving an employee complaint, four months prior to the Milwaukee Journal article citing allegations.

The actions and classification of penalties as established in statute and the Occupational Safety and Health Administration's (OSHA) Field Operations Manual were appropriate for the actual worksite conditions identified by OSHA. The evidence indicated that the employer had taken steps to correct hazards, and was actively working to improve the overall safety and health of the facility. OSHA documented and issued serious violations during the inspection. The evidence gathered during the inspection did not prove the employer demonstrated intentional disregard or plain indifference to workplace safety and health hazards. At the time of the inspection, the employer had taken actions to correct items identified in the self-audit, and hired a different safety consultant firm to develop safety programs and train workers.

HIGHEST-IMPACT AND HIGHEST-RISK WORKPLACES

The OSHA Congressional Budget Justification states that OSHA plans to begin “shifting the focus to the highest-impact and most complex inspections at the highest-risk workplaces.”

Question. Please describe in more detail these plans, including how OSHA will identify the highest-impact and highest-risk workplaces.

Answer. The Occupational Safety and Health Administration (OSHA) is revising its enforcement weighting system. The updated system will include a greater emphasis on the impact of inspections, rather than the current system’s emphasis on the resources expended in an inspection. With this revision, OSHA can emphasize inspections that are not resource intensive, but save more lives and reduce exposure to hazards. These inspections include those addressing fall and trenching hazards.

Question. Further, what additional steps will OSHA take to publicize and promote its inspection findings and citations so that the regulated community understand that OSHA will vigorously enforce employer obligations under the Occupational Safety and Health Act?

Answer. OSHA makes use of a variety of tools to disseminate information on inspection findings, citations, and the importance of enforcement. OSHA’s website has several resources that provide enforcement information, including data on annual inspection activity; a map of enforcement cases with initial penalties of \$40,000 or more, and a search tool that allows users to access OSHA inspection data by establishment name, North American Industry Classification System code, or inspection number. The agency also maintains a webpage that provides data on work-related fatalities that occurred under Federal OSHA and State Plan jurisdiction. The page is updated regularly, as data become available. Additionally, any page on the OSHA website can be auto-translated into Spanish with the simple click of a button.

Information about enforcement cases and programs is also shared through OSHA’s twice-monthly QuickTakes newsletter, which reaches more than 257,000 subscribers; the agency’s Twitter feed; and a trade media email list through which news releases are distributed. The importance of strong, fair, and full enforcement is also shared in speeches and presentations by OSHA leadership and staff to a wide variety of audiences.

OSHA continuously looks for opportunities to improve its website and outreach tools, and make information—including enforcement information—more accessible, understandable, and usable.

QUESTIONS SUBMITTED BY SENATOR TAMMY BALDWIN

IMPACT OF CUTTING SUSAN HARWOOD TRAINING GRANTS

Sec. Acosta I am concerned that cuts to the OSHA budget and Susan Harwood training grants will lead to an increase in preventable workplace injuries and deaths.

Question. How can you assure me that employers will have the resources they need to adequately learn to take adequate safety measures, and that OSHA will continue to have resources to investigate violations?

Answer. The Occupational Safety and Health Administration (OSHA) has a variety of programs and tools available to provide training, outreach, and assistance to employers and employees. These include Alliances, Strategic Partnerships, On-site Consultation, and targeted outreach events, such as the National Safety Stand-Down to Prevent Falls in Construction, which provide information on workplace safety and health to the public. Training and outreach programs delivered directly by the agency can more efficiently provide the same type of information provided by training grants to a broader audience. Additionally, many Alliance Program agreements contain a training element, and numerous training and information resources are available on OSHA's website. The President's Fiscal Year 2018 Budget proposal includes a program increase of \$4 million and 20 full-time equivalent workers for OSHA to support additional compliance assistance, outreach, and training.

OSHA will continue its strong commitment to, and emphasis on, the enforcement of standards and regulations that serve as an effective deterrent to employers who put their workers' lives at risk. OSHA's budget request reflects a commitment to reduce workplace injuries, illnesses and fatalities through a balanced approach of both enforcement and compliance assistance.

QUESTIONS SUBMITTED BY SENATOR PATTY MURRAY

IMPACT OF ELIMINATING SUSAN HARWOOD GRANT PROGRAM

As you know, Secretary Acosta, OSHA cannot reach all of the most dangerous workplaces to make sure they are following OSHA's basic safety requirements. The President's budget eliminates funding for the Susan Harwood grant program that reaches workers in the most dangerous jobs with vital education and training to protect them from serious job hazards.

Question. If this program is eliminated, how will these workers get the training and education to be able to identify and prevent job hazards?

Answer. The Occupational Safety and Health Administration (OSHA) has a variety of programs and tools available to provide training, outreach, and assistance to employers and employees. These include Alliances, Strategic Partnerships, On-site Consultation, and targeted outreach events, such as the National Safety Stand-Down to Prevent Falls in Construction, which provide information on workplace safety and health to the public. Training and outreach programs delivered directly by the agency can more efficiently provide the same type of information provided by the training grants to a broader audience. Additionally, many Alliance Program agreements contain a training element, and numerous training and information resources are available on OSHA's website. The President's Fiscal Year 2018 Budget proposal includes an increase of \$4 million and 20 full-time equivalent workers for OSHA to support additional compliance assistance, outreach, and training.

OSHA will continue its strong commitment to, and emphasis on, the enforcement of standards and regulations that serve as an effective deterrent to employers who put their workers' lives at risk. OSHA's budget request reflects a commitment to reduce workplace injuries, illnesses and fatalities through a balanced approach of both enforcement and compliance assistance.

Question. Why isn't training high risk workers about safety and health hazards and control measures a priority for this administration?

Answer. Training workers in high-risk industries about safety, health hazards and control measures is a priority for the Department of Labor. The President's Fiscal Year 2018 Budget proposal includes an increase of \$4 million and 20 full-time equivalent workers for OSHA to support additional outreach and training to workers in high-hazard industries. This includes funds for additional Compliance Assistance Specialists, new training materials, and support for the agency's Cooperative Programs, Partnerships, and Alliances.

IMPROVE TRACKING OF WORKPLACE INJURIES AND ILLNESSES

In 2016 OSHA issued a regulation to Improve Tracking of Workplace Injuries and Illnesses. The purpose of the rule was to provide OSHA, employers, workers, public health officials and researchers with real-time injury and illness information from individual workplaces that could be used to help identify hazardous workplaces, and groups of workers at high risk of injury. The rule didn't require employers to keep any new records, but simply to report injury data they are already required to submit to OSHA in a new updated electronic format. And OSHA planned to share this data in a format that protected individual worker's privacy.

Some industry groups strongly opposed the rule because they don't want their workplace injury and illness data to be made public. So instead of fully implementing this important rule, DOL first refused to make any of the summary injury data collected public. Second, the administration moved to revoke the requirements for large employers to report their detailed injury data to OSHA, which means that OSHA and the safety and health community will not be readily able to get information on the types of injuries occurring in hazardous workplaces or the groups of workers at high-risk of injury. It's a disservice to workers and safety specialists committed to making the workplace safer that DOL has weakened this important rule.

Question. Will DOL commit to fully defend the remaining provisions of the 2016 injury tracking rule – both the requirements for employers to report summary injury data and the provisions that strengthen anti-retaliation protections for workers who report workplace injuries?

Answer. The Occupational Safety and Health Administration will fully defend the final injury and illness recordkeeping rule, which became effective on February 25, 2019.

IMPROVE TRACKING OF WORKPLACE INJURY AND ILLNESS REGULATION

Mr. Cole: Please provide the Committee with an update on the current status of the Department's Improve Tracking of Workplace Injuries and Illnesses regulation.

Mr. Acosta: The Department announced in the Office of Information and Regulatory Affairs' (OIRA) Spring 2018 Unified Agenda of Regulatory and Deregulatory Actions its intent to amend the Occupational Safety and Health Administration's (OSHA) recordkeeping regulation by proposing to rescind the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300 and 301 to OSHA annually. Under the proposal, these establishments would continue to be required to submit their Form 300A information.

On May 23, 2018, OSHA submitted the proposed rule to OIRA for review.

Rep. DeSaulnier (D-CA)

1. On November 24, 2017, the Department of Labor promulgated revisions to its final rule entitled "Improve Tracking of Workplace Injuries and Illnesses: Delay of Compliance Date". This action delayed from July 1, 2017 to December 15, 2017 the deadline for employers in certain high hazard industries to electronically submit summaries of their 2016 Occupational Safety and Health Administration (OSHA) Injury and Illness Logs. This rule is necessary so that OSHA can receive and evaluate establishment level injury and illness data in order to enable it to prioritize its scarce inspection resources to the highest hazard workplaces. However, Section 550 of the House consolidated appropriations bill for Fiscal Year (FY) 2018 (H.R. 3354), which was passed by the House of Representatives on September 14, 2017, blocks funding for the implementation of this rule. The rider states: "None of the funds made available by this Act may be used to implement, administer, or enforce the final regulations on "Improve Tracking of Workplace Injuries and Illnesses" published by the Department of Labor in the *Federal Register* on May 12, 2016 (81 Fed. Reg. 29624 et seq.)". The Senate is silent in its version of the Labor, HHS Appropriations Act for FY 2018.
 - a. Does the Department of Labor support or oppose House Section 550, which would block funding for the implementation of the injury and illness reporting rule?
 - b. The November 24, 2017 *Federal Register* notice indicated that OSHA intends to issue a separate proposal to reconsider, revise, or remove other provisions of the prior final rule and to seek comment on those provisions. These other provisions deal with large establishment disclosure of de-identified injury and illness logs and anti-retaliation provisions related to worker reporting of injuries. Please identify the data you are relying upon to propose the revision or removal of these "other provisions" of the May 16, 2016 rule?

RESPONSE: As outlined in the fall regulatory agenda, the Occupational Safety and Health Administration (OSHA) intends to issue a proposal to reconsider, revise, or remove provisions of the Improve Tracking of Workplace Injuries and Illnesses final rule, 81 FR 29624 (May 12, 2016). OSHA will propose to amend its recordkeeping regulation to remove the requirement to electronically submit to OSHA information from the OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report) for establishments with 250 or more employees which are already required to routinely keep injury and illness records. Questions on the utility of these case specific data have arisen and further public comment is needed to determine if the benefits of collecting these records are worth the burden it will impose upon employers. However, the utility of collecting the Summary data is well established and the Department supports

the continued collection of the OSHA Form 300A data.

LINE SPEED WAIVERS FOR POULTRY PLANTS

According to OSHA, poultry workers are nearly twice as likely to suffer from serious injuries as other workers in private industry, and more than six times as likely to have a work-related illness. In 2014, the USDA Food Safety and Inspection Service published a new rule on poultry inspection. In that final rule, the USDA did not increase line speeds in poultry plants because of the potential to further endanger workers in an already dangerous industry. Within the rule DOL said that the agency needs to consider the impact on worker safety before increasing line speeds. I understand that 6 or 7 poultry plants have been granted waivers by the FSIS from this rule and allowed to increase line speeds with little to no public comment or consideration.

Question. Did USDA request OSHA's input or ask your Department to conduct any evaluation, or gather any data from these 6-7 plants on worker safety prior to the waivers being issued?

Answer. The U.S. Department of Agriculture (USDA) did not request the Occupational Safety and Health Administration (OSHA) conduct any evaluations or collect data from poultry plants.

Question. Did USDA ask you to provide the OSHA records, or injury reports for the plants that were granted waivers?

Answer. USDA did not ask OSHA to provide records or injury reports for poultry processing.

[Questions for the record from Senator Baldwin]

MODERNIZING WHISTLEBLOWER PROTECTION REGULATIONS

Outdated and inconsistent whistleblower laws (compounded by resource restraints) have hampered DOL's ability to implement the OSHA Whistleblower Protection Program. Most of the DOL-administered whistleblower statutes enacted before 2000 have become obsolete and are virtually unenforceable. For instance, more whistleblower complaints have been filed under Section 11(c) of the Occupational Safety and Health (OSH) Act of 1970 than all other combined whistleblower laws enforced by DOL. However, between FY 2005 – 2013 whistleblowers won in less than two percent of cases. Part of the problem is the short statute of limitations. One third of DOL's whistleblower laws require employees to file a complaint within 30 days of the adverse action. Yet, workers often do not learn an action is retaliatory until after that timeframe and miss their window. Conversely, employees have 180 days to file a complaint under DOL's last 12 enacted whistleblower laws, increasing their rate of enforcement. Inconsistencies with the burden of proof, due process, and temporary reinstatement, among other areas, also cripple the older statutes. This creates confusion among DOL, employers and employees alike. Conversely, most federal employees enjoy whistleblower protections under one primary law, the Whistleblower Protection Act, which Congress unanimously strengthened in 2012.

Question. As Secretary, do you support Title II of the Protecting America's Workers Act, which would modernize section 11(c) of the Occupational Safety and Health Act and expand coverage to additional workers?

Answer. The Department fully supports the Occupational Safety and Health Administration's (OSHA) Whistleblower Protection Program (WPP), including ensuring the appropriate and timely sharing of complaints with other agencies and making sure there are appropriate resources to fulfill the WPP's mission. OSHA collaborates with several partners and other agencies impacted by the whistleblower statutes to ensure a basic exchange of information and facilitate referrals between each agency, including cross training investigators, conducting outreach, providing technical support, and sharing information.

Question. Do you think Adjusting the 30 statute of limitations in 11(c) to be more consistent with the 180 days employers have to file a complaint under DOL's last 12 enacted whistleblower laws would make the law more consistent and fair to workers?

Answer. Please see the response to the prior question. In addition, in July 2017, the Occupational Safety and Health Administration revised the Whistleblower Online Complaint form to assist whistleblowers in finding the correct agency in which to file their complaint.

Question. Further, do you support consolidating the 22 DOL-administered whistleblower statutes into one coherent law that reflects the gold-standard whistleblower rights that have received unanimous congressional support over the past decade?

Answer. Please see the response to the prior question.

MOST HAZARDOUS WORKPLACE HAZARDS

You highlighted in your testimony the 32,000 inspections conducted by OSHA. However, you failed to acknowledge that within this level OSHA has shifted its enforcement priorities away from those that OSHA acknowledges are “resource-intensive enforcement activity ...focused on some of the most hazardous work place hazards.” Ergonomics is one of those hazards, yet such inspections have dropped by almost 70 percent over the past two years, even though musculoskeletal disorders are a leading work-related illness reported by the Bureau of Labor Statistics.

Question. Why has OSHA reduced inspections of the most hazardous workplace hazards?

Answer. Ergonomic inspections are primarily based on complaints, and vary from year to year. While the number of ergonomic related inspections has declined over the last five years, OSHA believes that number will increase as a result of its Site Specific Targeting Program (SST), which was launched in the first quarter of FY 2018. Under SST, OSHA uses employer provided injury and illness data to direct enforcement resources to those workplaces with the highest rates of injury and illness. With more than one third of the non-fatal incidents reported by the Bureau of Labor Statistics related to ergonomics, OSHA expects the SST to find more ergonomic violations.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) FATALITIES

At the same time the number of inspectors at OSHA has dropped to a forty-year low, the number of workplace fatalities investigated by OSHA in FY18 is at a 10 year high.

Ms. DeLauro: What analysis the agency has done of why and where these deaths are occurring, and what are the agency's plans to bring these rates down?

Mr. Acosta: The Occupational Safety and Health Administration's (OSHA) balanced approach to inspect and provide compliance assistance has made workplaces safer. Injury and illness rates decreased to 2.8 cases per 100 workers in 2017, the latest year of data available. This equates to nearly 45,800¹ fewer injury and illness cases in 2017 as compared to 2016. Workplace fatalities have also declined with 3.5 fatalities per 100,000 full-time equivalent (FTE) workers in 2017, as compared to 3.6 per 100,000 FTE in 2016—resulting in 43 fewer fatalities in 2017. OSHA aggressively targets high hazard industries and activities through enforcement actions as well as compliance assistance activities.

OSHA has taken several steps to increase its Federal Enforcement staffing levels. Beginning in 2017, the agency received approval to fill all funded Compliance Safety and Health Officers (CSHO) positions. All vacancies are being recruited for, and OSHA is in the process of on-boarding the inspectors. The agency begins the recruitment process as soon as a vacancy occurs, or an upcoming retirement is announced. OSHA advertises and recruits individuals to fill all current vacancies and the new inspectors then begin the on-boarding process. The recruitment and on-boarding process can take from three to six months, which includes the time necessary for advertisement, application, screening and interviews, and completing the required clearance of applicants under consideration, such as security and CSHO physicals. OSHA has also begun recruiting for a larger number of positions than available vacancies to ensure there is a continuous pool of CSHO applicants for selection when future vacancies occur.

OSHA bases its programmed inspection targeting, i.e., emphasis programs, on available inspection data and injury and illness data from the Bureau of Labor Statistics. Additional data may be available at the local level, as well. OSHA analyzes this data to identify industries and processes with the most serious injuries and illnesses. Two examples of national initiatives to address these hazards are the National Safety Stand-Down to Prevent Falls and the Agency Priority Goal (APG) to prevent fatal incidents in trenches. Both are based on data showing high fatal incident rates in the construction industry. The Fall Stand-Down is the largest compliance assistance effort conducted by OSHA. More than one million employees participate in these events each year across the country that focus on the importance of preventing employee deaths from falls. The APG for excavations and trenching was established in 2018 to address an increase in fatal injuries of workers in the construction sector. OSHA utilized targeted enforcement and consultation in a balanced manner to reduce these incidents. These initiatives demonstrate OSHA's two-pronged approach of enforcement and compliance assistance to target leading causes of injuries and fatalities to reduce injury, illness, and fatality rates.

¹ <https://www.bls.gov/news.release/osh.nr0.htm>

OSHA has a variety of programs and tools available that provide training, outreach, and assistance to employers and employees. These include Alliances, Strategic Partnerships, On-site Consultation, and numerous targeted outreach events, such as the Fall Stand Down in Construction, which provide information on workplace safety and health to the public. The training programs include the Outreach Training Program, the OSHA Training Institute (OTI) Education Center Program, and OSHA's cooperative programs. Training and outreach programs delivered directly by the agency can more efficiently provide the same type of information to a broader audience than is delivered through the Harwood training grants.

OSHA's Outreach Training Program and OTI Education Centers are in full operation for FY 2019 and the Administration continues its support of the programs in its FY 2020 Budget. In FY 2018, OSHA trained more than 1,000,000 workers and potential workers through the Outreach Training Program, which reaches at-risk worker populations, including individuals with limited English proficiency. In the same timeframe, the OTI Education Centers trained more than 55,000 workers through a nationwide network of OSHA-authorized training centers that educate participants on the recognition, prevention, and elimination of occupational hazards.

OSHA also offers training to workers through its Compliance Assistance Specialists located in various area offices across the country; through its use of both formal and informal alliances and partnerships with trade associations, labor organizations, and other groups; and through training provided by OSHA's On-Site Consultation Program in all 50 States and several U.S. Territories.

OSHA INSPECTION RATES

Mr. Pocan: Why is the number of heat related inspections fallen from FY 2016? Why is the number of ergonomic related inspections fallen from FY 2016? How many workplace violence related inspections did the agency conduct in FY 2017 and FY 2018?

Mr. Acosta: From FY 2014 to FY 2017 the average number of heat related inspections was 199 inspections per year. In FY 2018, that number was higher, reaching 234. Since the majority of these inspections are unprogrammed (i.e., complaints), the number of inspections will vary per year.

Similarly, ergonomic inspections are primarily based on complaints, and vary from year to year. While the number of ergonomic related inspections has declined over the last five years, OSHA believes that number will increase as a result of its Site Specific Targeting Program (SST), which was launched in the first quarter of FY 2018. Under SST, OSHA uses employer provided injury and illness data to direct enforcement resources to those workplaces with the highest rates of injury and illness. With more than one third of the non-fatal incidents reported by the Bureau of Labor Statistics related to ergonomics, OSHA expects the SST to find more ergonomic violations.

Regarding the number of workplace violence related inspections, OSHA conducted a total of 106 in FY 2017 and 125 in FY 2018.

OSHA INSPECTOR VACANCIES

Since the beginning of the Trump administration, there has been a decrease in the number of OSHA inspectors from 815 to 752 inspectors as of the beginning of this year. This is the lowest number of OSHA inspectors since the early 1970's when OSHA began. During this time, the workforce has nearly doubled and new safety and health problems have emerged.

In DOL's budget request for FY 2018 and 2019, DOL requested additional resources for OSHA enforcement. But at the same time, many of the already authorized and funded inspector positions at OSHA remain vacant.

Question. Why after more than two years in office are there so many vacant inspector positions, why have so few of these positions been filled?

Answer. The Occupational Safety and Health Administration (OSHA) has taken several steps to increase its Federal Enforcement staffing levels. Beginning in 2017, the agency received approval to fill all funded Compliance Safety and Health Officers (CSHO) positions. All vacancies are being recruited for, and OSHA is in the process of on-boarding the inspectors. The agency begins the recruitment process as soon as a vacancy occurs, or an upcoming retirement is announced. OSHA advertises and recruits individuals to fill all current vacancies, and the new inspectors then begin the on-boarding process. The recruitment and on-boarding process can take from three to six months, which includes the time necessary for advertisement, application, screening and interviews, and completing the required clearance of applicants under consideration, such as security and CSHO physicals. OSHA has also begun recruiting for a larger number of positions than available vacancies to ensure there is a continuous pool of CSHO applicants for selection when future vacancies occur.

Question. Will you commit to fill these vacant inspector positions by June 30th this year?

Answer. Please see the response to the prior question.

[Questions for the record from Senator Murray]

OSHA INSPECTOR VACANCIES

Mr. Secretary, the Occupational Safety and Health Administration (“OSHA”) has responsibility to set health and safety standards for over 100 million workers at millions of workplaces across the country and investigate corporations that may be putting their workers’ lives and wellbeing at risk.

But unfortunately, OSHA does not have the resources to meet this responsibility. Currently federal OSHA only has the capacity to inspect workplaces under its jurisdiction once every 159 years.

You’ve acknowledged the need to replace vacant inspectors and provided an exemption to the hiring freeze in order to start the process of hiring inspectors at OSHA. I believe you’ve stated that as of this month OSHA has about 65 hiring actions underway.

Question. What progress are you making in filling these vacant positions?

Answer. Since the beginning of FY 2018, 42 Compliance Safety and Health Officers (CSHOs) have been hired. In addition, the Occupational Safety and Health Administration (OSHA) has another 40 pending selections currently in process. For 20 of the pending selections, the selected candidates have Entry-on-Duty (EOD) dates and will be on-boarded shortly. For the remaining 20 actions, selections have been made, pending documentation from tentative selections, or required physicals and/or security clearances. OSHA is also recruiting to ensure there is a continuous pool of CSHO applicants for selection for vacancies.

It should be noted that despite the temporary reduction in inspectors due to attrition and retirements, between January 1 and December 31, 2017, OSHA conducted 31,944 inspections and issued citations for 52,515 violations. The number of inspections conducted in 2017 increased year over year for the first time in five years despite OSHA’s suspension of enforcement activities to provide more compliance assistance and to facilitate the provision of personal protective equipment during the hurricane recovery in areas affected by natural disasters this year.

Question. When will these vacancies be filled with inspectors in the field conducting inspections?

Answer. The Occupational Safety and Health Administration (OSHA) requires a comprehensive training program for inspector positions. New hires complete introductory courses at the OSHA Training Institute, on-the-job training, and independent study before being released to do inspections independently. Supervisors evaluate and determine when each new hire has enough hands-on education and experience to conduct inspections independently.

Question. The fiscal year 2019 budget request for OSHA is seeking funding for 42 additional enforcement positions, which I am happy to see. How many of these 42 new enforcement positions are for inspectors?

Answer. The FY 2019 President's Budget request for the Occupational Safety and Health Administration enforcement is for 42 inspector positions.

OSHA INSPECTORS

Mr. Pocan: Please provide the number of on board inspectors and supervisory inspectors at OSHA for March 2019, January 2019, and January 2018. Please also provide the number of vacancies of inspectors and supervisory inspectors for March 2019 and January 2019. Please provide the number of vacancies in FY 2017 and FY 2018.

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) has taken several steps to increase its Federal Enforcement staffing levels. Beginning in 2017, the agency received approval to fill all funded Compliance Safety and Health Officers (CSHO) positions. All vacancies are being recruited for, and OSHA is in the process of on-boarding the inspectors. The agency begins the recruitment process as soon as a vacancy occurs, or an upcoming retirement is announced. OSHA advertises and recruits individuals to fill all current vacancies, and the new inspectors then begin the on-boarding process. The recruitment and on-boarding process can take from three to six months, which includes the time necessary for advertisement, application, screening and interviews, and completing the required clearance of applicants under consideration, such as security and CSHO physicals. OSHA has also begun recruiting for a larger number of positions than available vacancies to ensure there is a continuous pool of CSHO applicants for selection when future vacancies occur.

The table below provides the number of on board inspectors and supervisory inspectors in OSHA for March 2019, January 2019, and January 2018. It also provides the number of vacancies of inspectors and supervisory inspectors for March 2019, January 2019, September 30, 2018, and September 30, 2017.

OSHA Inspectors		
Onboard		
Date	Non-Supervisory	Supervisory
Mar-19	748	201
Jan-19	743	202
Jan-18	759	206
Vacancies		
Date	Non-Supervisory	Supervisory
Mar-19	40	13
Jan-19	44	13
FY 2018	38	11
FY 2017	41	13

QUESTIONS SUBMITTED BY SENATOR TAMMY BALDWIN

OSHA INVESTIGATION OF CONTAINER LIFE CYCLE MANAGEMENT, LLC

Sec. Acosta, I am concerned that the Occupational Safety and Health Administration's (OSHA) investigation of Container Life Cycle Management LLC (CLCM) in Milwaukee, WI has been incomplete. Subsequently, I believe the citations filed against the company do not fully reflect the seriousness of the threats to the health and safety of Wisconsin workers in the company's three Wisconsin facilities and I remain concerned that OSHA has only investigated the facility on Cornell Street in Milwaukee but not the facilities in Oak Creek and St. Francis, Wisconsin. I urge you to direct OSHA to investigate the two other facilities in the Milwaukee-area in St. Francis and Oak Creek. I made this request of Deputy Assistant Secretary Dougherty on May 1, 2017, but have yet to receive a response. Please confirm that OSHA will investigate these two facilities.

Evidence provided to my office by a whistleblower makes clear that the violations for which CLCM was cited by OSHA are insufficient. Audio recordings with managers at the firm make clear that the health and safety violations were intentional and would not be changed, despite the recommendations of a safety consultant.

Question. Please explain why the violations at CLCM were not considered 'willful' by OSHA?

Answer. With regard to your specific question about Container Life Cycle Management (CLCM), the Occupational Safety and Health Administration (OSHA) issued ten Serious citations and four Other-than-Serious citations on April 12, 2017, with proposed penalties of \$108,461. These citations and the penalty amounts appropriately reflected the conditions observed at the time of the inspection and the evidence collected. Container Life Cycle Management, LLC, filed a notice of contest with respect to these citations on May 2, 2017, and the Office of the Solicitor filed the case with the Occupational Safety and Health Review Commission on June 20, 2017, pursuant to departmental procedures. Therefore, because the relevant citations and underlying facts related to them are the subject of ongoing litigation, I cannot discuss the classification or the penalties at this time. If, during the course of this pending litigation, the Office of the Solicitor obtains additional information related to these citations, that office will have the opportunity to reevaluate the designation of the citations as serious or willful and can, if warranted, seek to amend the classification of any pending citation.

On August 3, 2017, OSHA began an inspection of the St. Francis facility based on information provided to the agency's regional office by the Environmental Protection Agency. Upon the conclusion of that inspection, OSHA has six months from the occurrence of a violation to issue additional citations. It is important to note that OSHA may only inspect a workplace when it has administrative probable cause to believe that a violation exists. OSHA will continue to work with our state and federal partners including the U.S. Department of Transportation (Office of Hazardous Materials Safety), the Wisconsin Department of Natural Resources, and the Environmental Protection Agency, to determine if there are any on-going or recurring hazardous conditions. If OSHA receives information sufficient to provide probable cause for an inspection

of these, or any facilities, it may conduct an inspection pursuant to Section 8(f)(1) of the Occupational Safety and Health Act.

[Questions for the record from Senator Baldwin]

OSHA INVESTIGATOR STAFF LEVELS

In 2016, at the recommendation of Congress, stakeholder organizations, the GAO, and the Whistleblower Advisory Committee, OSHA made substantial improvements to its Whistleblower Investigations Manual. However, questions remain about effective enforcement of the manual amid limited staff capacity and resources.

Question. As Secretary, what actions would you take to ensure that OSHA whistleblower investigators are fully staffed and in compliance with the updated manual amid the administration's proposed DOL funding decrease for FY2019?

Answer. The Occupational Safety and Health Administration (OSHA) is working to fill whistleblower investigator vacancies to ensure the agency is fully staffed. Since the start of FY 2018, OSHA has hired four whistleblower investigators, and there are ongoing hiring actions for six additional whistleblower positions. OSHA will continue to offer comprehensive training through webinars and in-person courses at the OSHA Training Institute to provide investigator staff with the most up-to-date techniques, strategies, and tools for conducting successful investigations, consistent with the Whistleblower Investigations Manual.

QUESTIONS SUBMITTED BY SENATOR JEANNE SHAHEEN

OSHA REDUCTIONS

While I am concerned about adequate investment in our nations' workforce development, the fact is that guaranteeing a job for every American is not enough. We have to ensure that the jobs available are safe, secure and not hazardous to the health of our working men and women. That is why I am disappointed to see that your budget makes such steep cuts to the Occupational Safety and Health Administration (OSHA). OSHA is tasked with helping employers meet federal safety standards and holding accountable those that violate those standards. The agency's inspectors are responsible for protecting millions of workers at a vast number of workplaces across the country. Cutting the office's budget will only make it harder for OSHA to manage its oversight responsibilities.

I was particularly disappointed to see your proposal eliminates the Susan Harwood Training Grant program. These grants help provide training and education to workers that in turn help deter accidents and avoid future risks. Organizations like the New Hampshire Coalition for Occupational Health and Safety rely on these grants to help reach and educate vulnerable workers year after year.

Question. Can you speak to the justification behind the cuts to OSHA and elaborate on how you expect the agency to complete its core mission and increase workplace safety across the country when its funding has been slashed by more than \$500 million?

Answer. The President's Fiscal Year 2018 Budget includes \$543 million for the Occupational Safety and Health Administration (OSHA), and proposes to eliminate the Harwood Grant program in favor of leveraging alternative methods to develop and deliver training, including OSHA-produced materials. To assist in this effort, the President's Fiscal Year 2018 Budget proposal for OSHA includes an increase of \$4 million and 20 full-time equivalent employees in the Federal Compliance Assistance budget activity to expand OSHA's training, outreach, compliance assistance, and cooperative programs, including the Voluntary Protection Program.

Question. Can you also speak to the justification behind the elimination of the Susan Harwood Training grants and will the Department reconsider funding this very effective program?

Answer. The Occupational Safety and Health Administration (OSHA) has a variety of programs and tools available to provide training, outreach, and assistance to employers and employees. These include Alliances, Strategic Partnerships, On-site Consultation, and targeted outreach events, such as the National Safety Stand-Down to Prevent Falls in Construction, which provide information on workplace safety and health to the public. Training and outreach programs delivered directly by the agency can more efficiently provide the same type of information currently provided by the training grants to a broader audience. Additionally, many Alliance Program agreements contain a training element, and numerous training and information resources are available on OSHA's website. The President's Fiscal Year 2018 Budget proposal

includes an increase of \$4 million and 16 full-time equivalent workers for OSHA to support additional compliance assistance, outreach, and training.

OSHA will continue its strong commitment to, and emphasis on, the enforcement of standards and regulations that serve as an effective deterrent to employers who put their workers' lives at risk. OSHA's budget request reflects a commitment to reduce workplace injuries, illnesses and fatalities through a balanced approach of both enforcement and compliance assistance.

OSHA REPORTING

Last year's Committee report instructed "OSHA to resume timely and public reporting on its website of fatalities that occur at workplaces, regardless if a citation is issued." This directive has not been followed.

Question. Why is OSHA not in compliance?

Answer. The Occupational Safety and Health Administration (OSHA) is in compliance with this directive. Since October 2017, OSHA has published on its website a list of all inspections initiated in response to a workplace fatality that occurred on or after January 1, 2017. The list includes all fatality inspections under Federal OSHA or State Plan jurisdiction regardless of whether citations were issued. The list can be reached from anywhere on the agency's website through the "Fatality Reports" link under the main "Data" menu. The fatality reports page is updated approximately every two weeks to allow OSHA staff time to manually review each fatality report description and ensure that it does not include personally identifiable information. In order to provide the most accurate information possible about the hazards related to a fatality, inspection data is added to the fatality reports page after OSHA concludes the inspection.

Question. Why is OSHA opposed to recognizing those workers that have been killed on the job and the impact unsafe working conditions have on individuals and families?

Answer. OSHA takes every workplace fatality seriously. As a result, the agency maintains a dedicated page on its website listing all inspections that were conducted in response to a workplace fatality that occurred on or after January 1, 2017. The list includes a description of the hazard that led to each fatality, as well as an indicator of whether OSHA issued any citations related to the fatality. OSHA believes this publicly available data source is an important tool to better understand the impact that workplace hazards can have on individuals and their families. The hyperlink to the fatality data is: https://www.osha.gov/dep/fatcat/dep_fatcat.html.

[Questions for the record from Senator Baldwin]

OSHA SILICA STANDARDS

OSHA has issued two new standards to better protect workers exposed to respirable crystalline silica, including one for construction and one for general industry and maritime. Worker inhalation of silica can lead to an incurable lung disease known as silicosis, lung cancer, chronic obstructive pulmonary disease, and kidney disease.

I am pleased that OSHA began enforcing the standard for construction on September 23, 2017. OSHA reported that it would offer compliance assistance for the first 30 days, and on October 23 it would begin full enforcement of the silica construction standard.

Question. How many inspections and citations has OSHA issued for that standard since it went into effect?

Answer. The Occupational Safety and Health Administration (OSHA) began enforcing the Respirable Crystalline Silica in Construction standard (29 CFR 1926.1153) on September 23, 2017. Since September 23, 2017, OSHA has conducted 116 not-in-compliance silica inspections, resulting in 188 citations.

Question. Further, OSHA announced it will begin enforcing the standard for general industry and maritime on June 23, 2018. As Secretary, how will you ensure full implementation and enforcement of the silica standards amid the administration's proposed DOL funding decrease for FY2019?

Answer. OSHA is currently enforcing the silica rule in construction, general industry, and maritime. The FY 2019 President's Budget Request for OSHA does not reflect a programmatic decrease, but rather includes a request for 42 additional compliance safety and health officers. Additionally, OSHA continues to engage with stakeholders in general industry to provide compliance assistance to meet the new standard. OSHA's website has a number of helpful resources including compliance materials, fact sheets, and best practices for those seeking additional information on how to comply with the rule.

OSHA STAFFING

In January, NBC News reported on a 4% decline in OSHA inspectors since President Trump took office. The report says: “the Occupational Safety and Health Administration lost 40 inspectors through attrition and made no new hires to fill the vacancies as of October

Mr. Pocan: Can you tell me: (1) have you hired new OSHA inspectors to fill those 40 vacancies, (2) are all OSHA inspector positions currently staffed, and (3) has OSHA maintained its total number of inspections from 2016 to 2017 and 2018?

Mr. Acosta: Since the start of FY 2018, 15 Compliance Safety and Health Officers (CSHOs) have been hired. There are also 29 pending selections, 23 positions with applicant pools under review, four positions pending entry on duty dates, and 14 pending documentation from tentative selections, or requiring physicals and/or security clearances. OSHA is also presently recruiting to ensure there is a continuous pool of CSHO applicants for selection.

It should be noted that despite the temporary reduction in inspectors due to attrition and retirements, between January 1 and December 31, 2017, OSHA conducted 31,944 inspections and issued citations for 52,515 violations. The number of inspections conducted in 2017 increased year over year for the first time in five years despite OSHA’s suspension of enforcement activities to provide more compliance assistance and facilitating the provision of personal protective equipment during the hurricane recovery in areas affected by natural disasters this year.

[Questions for the record from Senator Murray]

OSHA WORKPLACE VIOLENCE STANDARD

In early 2017, OSHA granted a petition from healthcare unions and committed to issuing a workplace violence standard for healthcare and social services, and started to move forward with the rulemaking process. But the Trump administration has sidetracked that effort, taking the workplace violence standard off the active regulatory agenda, placing it in a long-term status with any further action “undetermined.”

Question. Secretary Acosta, do you agree that workplace violence is a serious and growing safety and health threat to workers- particularly women workers?

Answer. The evidence points to workplace violence as a serious and growing concern in the health care and social-assistance sectors. In addition to information provided by stakeholders in response to a Request for Information, the Occupational Safety and Health Administration (OSHA) is conducting a formal assessment of health care violence using all data available through the Department (e.g., Bureau of Labor Statistics, OSHA) to establish a baseline for future assessment and is reviewing enforcement data from 2005 to the present to inform this process. OSHA is currently working with the Institute for Healthcare Improvement/National Patient Safety Foundation to identify best practices related to the nexus between patient care and health care worker protections with industry stakeholders.

OSHA has conducted 60 workplace violence investigations in the health care setting in FY 2018. Currently, 20 of these inspections are open. As a result of inspections initiated in FY 2018, OSHA issued 14 hazard alert letters and two violations.

Question. What action is OSHA taking under the Trump administration to address this threat? Will the Trump administration commit to move forward to develop an OSHA workplace violence standard and put the rulemaking back on the active regulatory agenda this spring?

Answer. The Department recognizes the importance of preventing workplace violence in all workplaces, including the health care and social assistance sectors, and it has a long history of commitment to protecting health care employees from work-related physical harm and threats of physical harm.

In December 2016, the Occupational Safety and Health Administration (OSHA) published a Request for Information (RFI), which will help the agency identify existing workplace violence prevention requirements. OSHA continues to review and analyze the comments submitted to the record in response to OSHA’s RFI. OSHA is also conducting a formal assessment of health care violence using all data available through the Department (e.g., Bureau of Labor Statistics, OSHA) to establish a baseline for future assessment and is reviewing enforcement data from 2005 to the present to inform this process.

In addition, OSHA is currently working with the Institute for Healthcare Improvement/National Patient Safety Foundation to identify best practices related to the nexus between patient care and health care worker protections with industry stakeholders.

SILICA DUST STANDARD

Mr. Pocan: Will you commit to defend, maintain and fully implement the silica standard to finally keep Secretary of Labor Frances Perkins' pledge to "Stop Silicosis" and protect more than 2 million workers from deadly silica dust?

Mr. Acosta: In a statement issued April 6, 2017, the Occupational Safety and Health Administration (OSHA) announced that it would delay enforcing the Construction Industry standard until September 23, 2017. Enforcement of the General Industry and Maritime standards is not scheduled to begin until June 2018. In addition, several industry and labor parties filed challenges to the standard, which are currently pending in the U.S. Court of Appeals for the District of Columbia Circuit. Oral argument is scheduled for September 26, 2017. The Department is currently preparing for oral argument and will comply with any order issued by the court.

SUSAN HARWOOD GRANT PROGRAM ELIMINATION

The President's FY 2018 proposed budget zeroes out funding for OSHA Susan Harwood Training and education grant program. This program has provided approximately \$10.5 million in funding to non-profit employer and worker groups to provide training and education to workers in high-risk industries, with a focus on low wage vulnerable workers who are at increased risk of injury and death. It is the only program that OSHA has that focuses on outreach to workers.

Mr. Pocan: Why is the Trump administration eliminating the only OSHA outreach program that is directed to workers? Why isn't training high risk workers about safety and health hazards and control measures a priority for this administration?

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) is proposing to use alternative methods to develop and deliver training to reach the broadest possible audience. The House Appropriations Committee also eliminated funding for these grants in both Fiscal Years (FY) 2017 and 2018. In the FY 2017 report House language, the Committee specifically noted its concern that these grants are inefficient and ineffective. OSHA has a variety of programs and tools available that provide training, outreach, and assistance to employers and employees. These include Alliances, Strategic Partnerships, On-site Consultation, and numerous targeted outreach events, such as the Fall Stand Down in Construction, which provide information on workplace safety and health to the public. Training and outreach programs delivered directly by the agency can more efficiently provide the same type of information currently delivered through the training grants to a broader audience. Additionally, many Alliance Program agreements contain a training element, and numerous training and information resources are available on OSHA's website.

The President's Fiscal Year 2018 Budget includes a proposed increase of \$4 million and 20 full-time equivalent employees to provide additional outreach and training to high-risk workers. This includes funds for additional Compliance Assistance Specialists, new training materials, and support for OSHA's Cooperative Programs, Strategic Partnerships, and Alliances to address hazards in high-risk industries.

[Questions for the record from Senator Murray]

REPORTING LOCAL JOB GROWTH

You and Senator Blunt discussed BLS data that did not reflect the gains in job growth that a community had experienced.

Question. What is the level of additional funding that the Bureau of Labor Statistics must have in order to provide more timely local employment information? Please include the additional funding requirements for both the development of internal BLS systems as well as the additional funding that BLS must provide to its State partners.

Answer. The Current Employment Statistics (CES) program recently reviewed potential enhancements to its program including aligning CES estimates more frequently with population estimates, which would adjust current and historical estimates sooner. Aligning CES estimates with population estimates, or benchmarking, more frequently than once a year would require approximately \$5 or \$9 million per year in additional funding for Bureau of Labor Statistics (BLS) depending on whether benchmarking is done on a semi-annual or quarterly basis. This effort would take two years before the semi-annual or quarterly benchmarking could be implemented. In addition to the funding required to conduct more frequent benchmarking, BLS would need an additional \$2.5 million per year to provide to its state partners for analysis of the benchmark revisions and outreach activities.

SUSAN HARWOOD PROGRAM

The President's FY 2019 proposed budget zeroes out funding for OSHA Susan Harwood Training and education grant program. This program has provided approximately \$10.5 million in funding to non-profit employer and worker groups to provide training and education to workers in high-risk industries, with a focus on low wage vulnerable workers who are at increased risk of injury and death. It is supported by both industry and community and worker representatives, and the only program that OSHA has that focuses on outreach to workers.

Mr. Pocan: Why is the Trump administration eliminating the only OSHA compliance program that is directed to workers?

Mr. Acosta: The Occupational Safety and Health Administration (OSHA) has a variety of programs and tools available that provide training, outreach, and assistance to employers and employees. These include Alliances, Strategic Partnerships, On-site Consultation, and numerous targeted outreach events, such as the Fall Stand Down in Construction, which provide information on workplace safety and health to the public. Training and outreach programs delivered directly by the agency can more efficiently provide the same type of information currently delivered through the training grants to a broader audience. Additionally, many Alliance Program agreements contain a training element, and numerous training and information resources are available on OSHA's website. The Harwood Grant program is a small program in the larger OSHA Training Institute (OTI) effort to provide safety and health education and training programs. OTI training programs include the Outreach Training Program, the OTI Education Center Program, and OSHA's cooperative programs.

OSHA's Outreach Training Program and OTI Education Centers are in full operation for FY 2018 and the Administration continues its support of the programs in its FY 2019 budget request. In FY 2017, OSHA trained more than 900,000 workers and potential workers through the Outreach Training Program, which reaches at-risk worker populations, including individuals with limited English proficiency.

In FY 2017, the OTI Education Centers trained more than 54,000 workers through a nationwide network of OSHA-authorized training centers that educate participants on the recognition, prevention, and elimination of occupational hazards.

OSHA also offers training to workers through its Compliance Assistance Specialists located in various area offices across the country; through its use of both formal and informal alliances and partnerships with trade associations, labor organizations, and other groups; and through training provided by OSHA's On-Site Consultation Program in all 50 States and several U.S. Territories.

Mr. Pocan: Why isn't training high risk workers about safety and health hazards and control measures a priority for this administration?

Mr. Acosta: Ensuring the safety and health of all workers is a priority for the Department and this Administration. The Occupational Safety and Health Administration (OSHA) has a variety

of programs and tools available that provide training, outreach, and assistance to employers and employees. These include Alliances, Strategic Partnerships, On-site Consultation, and numerous targeted outreach events, such as the Fall Stand Down in Construction, which provide information on workplace safety and health to the public. Training and outreach programs delivered directly by the agency can more efficiently provide the same type of information currently delivered through the training grants to a broader audience. Additionally, many Alliance Program agreements contain a training element, and numerous training and information resources are available on OSHA's website. The Harwood Grant program is a small program in the larger OSHA Training Institute (OTI) effort to provide safety and health education and training programs. OTI training programs include the Outreach Training Program, the OTI Education Center Program, and OSHA's cooperative programs.

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SWINE SLAUGHTER SAFETY INSPECTION RULE

Last spring, the USDA proposed a new swine slaughter inspection rule that would remove any caps on line speed in hog slaughter plants. There have been many concerns raised about this rule—including what an increase in line speeds means for workers in these plants. Meatpacking is one of the most dangerous industries, with worker injury rates more than two times the national average and illness rates more than 16 times. OSHA’s own guidelines for the meatpacking industry makes it clear that due to the forceful nature of these jobs an increase in the pace of work in these plants will increase injuries.

Over 80,000 comments were received by USDA on this proposed rule, almost all opposed to the rule. In the rule, USDA states that the agency would need to conduct an evaluation of the impact of increased line speeds on worker safety, and the agency said they conducted such an evaluation—but did not put in in the record for the public to view or comment on. Recently the agency said it is not USDA’s problem if their rule increases worker injuries, because worker safety is under the jurisdiction of OSHA.

Question. Please share with the committee any evaluation DOL did regarding worker safety and line speeds related to this proposed new swine slaughter inspection rule.

Answer. The Department did not conduct an independent evaluation of the impact of the proposed swine slaughter inspection rule on worker safety and health.

Question. Did DOL review the USDA evaluation of the impact on worker safety if line speed were increased in hog slaughter plants? Can you share with this committee any evaluation, or comments DOL made to USDA on such an evaluation?

Answer. The Department did provide comments to the Office of Management and Budget (OMB) on the U.S. Department of Agriculture’s (USDA) Modernization of Swine Slaughter Inspection proposed rule, when, pursuant to Executive Order 12866, OMB’s Office of Information and Regulatory Affairs (OIRA) was coordinating Executive Branch review of the draft regulation prior to publication in the Federal Register. The Department’s comments were reflected in USDA’s February 2018 Notice of Proposed Rulemaking.

The requested comment documents—which record the agencies’ deliberative, pre-decisional exchange about the draft proposed rule—constitute part of the Executive Branch’s deliberative process in the development of a regulatory action, and are not released outside of the Executive Branch.

Question. Do you think DOL has an obligation to raise serious worker safety concerns to USDA when the final rule comes to DOL for review?

Answer. The Department takes its obligation to ensure that employers provide safe and healthful workplaces very seriously.

Question. Do you think it is ok that USDA can increase line speeds and thereby increase injuries among the 90,000 hog slaughter workers without input from DOL?

Answer. The Department takes its obligation to ensure that employers provide safe and healthful workplaces very seriously.

SWINE SLAUGHTER SAFETY

In February of 2018, the USDA Food Safety and Inspection Service published a proposed rule entitled Modernization of Swine Slaughter Inspection. In that proposed rule the FSIS clearly states, “FSIS recognizes that evaluation of the effects of line speed on food safety should include the effects of line speed on establishment employee safety.” 83 FR 4796

Mr. Pocan: Did OSHA comment on this proposed rule when OMB sent it to the agency before it was proposed? Please provide any comments sent to OMB on this rule.

Mr. Acosta: Yes, the Department did provide comments to the Office of Management and Budget (OMB) on the U.S. Department of Agriculture’s (USDA) Modernization of Swine Slaughter Inspection proposed rule when, pursuant to Executive Order 12866, OMB’s Office of Information and Regulatory Affairs (OIRA) was coordinating Executive Branch review of the draft regulation prior to publication in the Federal Register. During this time, OIRA coordinates interagency review of draft rules to provide for further refinement before publication and formal comment from the public and to avoid inconsistent, incompatible, or duplicative policies. The Department’s comments were reflected in USDA’s February 2018 Notice of Proposed Rulemaking.

The requested comment documents—which record the agencies’ deliberative, pre-decisional exchange about the draft proposed rule—constitute part of the Executive Branch’s deliberative process in the development of a regulatory action. Release of deliberative, pre-decisional documents that do not necessarily reflect the final thinking with regard to a proposed rule could have an adverse impact on the interagency coordination and communication that is vital to the development of a regulation. This coordination must occur with the candor necessary for the free and uninhibited exchange of views and a chilling effect that would occur if Executive Branch employees knew the analysis and deliberations in which they engaged during the development of a regulation could be disclosed in a broad setting.

Mr. Pocan: Did OSHA see the preliminary analysis that USDA FSIS completed using the data from the OSHA Data Initiative that is mentioned in the proposed rule? If yes, please provide any comments submitted by the agency to FSIS on this analysis.

Mr. Acosta: OSHA did not see the preliminary analysis.

VOLUNTARY PROTECTION PROGRAM

The President's 2019 budget proposal calls for more than \$5 million additional to pay for compliance assistance activities, including the Voluntary Protection Program. Mr. Secretary, you have repeatedly said that you would only fund programs that are supported by evidence. In fact, you have justified proposed cuts to a number of Labor Department agencies by arguing that those programs are not supported by evidence.

There is a great deal of evidence, including a Harvard Business Review study (available at <https://hbr.org/2012/05/government-regulation-that-act>), that OSHA *enforcement* is very effective in bringing employers into compliance with the law and protecting workers' lives, health, and safety.

Mr. Pocan: Is there similar evidence — for example, an independent academic study, a program evaluation by the Chief Evaluation Officer — that shows that programs such as the Voluntary Protection Program (VPP) result in employers improving on safety more than they already are — since they are already the best of the best — and further reducing the number of workplace injuries, illnesses, and deaths?

Mr. Acosta: Significant research shows that implementing safety and health management systems (SHMS), which is a key component of the Occupational Safety and Health Administration's (OSHA) Voluntary Protection Program (VPP), plays a fundamental role in addressing occupational health and safety challenges, improving worker safety, reducing workplace safety and health risks, and creating better, more safe working conditions.¹

A recent study showed significant differences between Occupational Health and Safety Assessment Series (OHSAS) 18001-certified companies, which are companies that have been certified to meet the basic requirements for an effective SHMS, and uncertified companies for the following criteria: risk assessment and corrective actions, communication and dissemination of information, and incident investigation. Other research shows safety performance in companies with a safety and health management system is higher than those without.² This study supports other results that companies that do not adopt safety management systems have lower performance compared with those that do adopt safety management systems.³ SHMS are the foundation for OHSAS, VPP, and a number of other programs that evaluate corporate and site specific safety and health programs.

Data from VPP participants show significantly lower injury and illness rates than BLS rates for their respective industries -- 48.6 percent below industry averages for the last seven years and 53 percent below for the most recent data year (2016).

¹ Podgorski D. Measuring operational performance of OSH management systems. A demonstration of AHP-based selection of leading key performance indicators. *Saf Sci* 2015;73:146e66

² Mohammadfam, I., Kamalinia, M., Momeni, M., Golmohammadi, R., Hamidi, Y., Soltanian, A. (2016). Evaluation of the quality of occupational health and safety management systems based on key performance indicators in certified organizations. *Safety and Health at Work*, 1-6. Moorkamp, M., Kramer, E. H., Van Gulijk, C., & Ale, B. (2014). Safety management theory and the expeditionary organization: A critical theoretical reflection. *Safety Science*, 69, 71–81.

³ Bottani, E., Monica, L., & Vignali, G. (2009). Safety management systems: Performance differences between adopters and non-adopters. *Safety Science*, 47, 155-162.

[Questions for the record from Senator Baldwin]

WHISTLEBLOWER PROTECTION PROGRAM FUNDING

OSHA's Whistleblower Protection Program faces many structural and financial handicaps, making it difficult to enforce the 22 federal whistleblower statutes that it administers. An audit by the Department of Labor Office of Inspector General in September 2015 concluded: OSHA did not consistently ensure complaint reviews under the Whistleblower Programs were complete, sufficient, and timely; OSHA did not ensure the manual and training reflected the most recent program updates and changing priorities; more than 70 percent of investigations were not conducted within statutory timeframes; and OSHA did not adequately and timely communicate the violations alleged by whistleblowers internally to OSHA's enforcement units or externally to other federal agencies with jurisdiction to investigate the allegations.

Question. What concrete actions do you plan to take as Secretary to prioritize OSHA's Whistleblower Protection Program amid the proposed DOL funding decrease for FY2019?

Answer. The FY 2019 President's Budget proposed no funding changes to the Whistleblower Protection Program. The FY 2019 request will enable the Occupational Safety and Health Administration (OSHA) to continue to build on improvements in the program. OSHA expects to receive approximately 3,400 docketed complaints and conduct approximately 3,000 whistleblower investigations. To improve the investigative process, OSHA will continue to pilot new processes, such as the Expedited Case Processing and the Administrative Dismissals Report of Investigation, with the purpose of identifying steps in the investigative process that can be streamlined without compromising quality. Successful pilot programs will then be implemented nationwide and eventually incorporated into the Whistleblower Investigations Manual (WIM).

WHISTLEBLOWERS

Mr. Pocan: Please provide data on the OSHA's whistleblower program. Please provide the onboard staffing of whistleblower investigators and dedicated whistleblower program staff as of October 1, 2016, October 1, 2017, and October 1, 2018, and March 1, 2019. Please provide the average time for completing a whistleblower investigation in FY 2018, broken down by statute.

Mr. Acosta: The FY 2020 proposed budget includes an increase of five full time equivalent whistleblower investigator positions to address the growing number of new complaints filed and the ongoing backlog of docketed cases. These new positions need to be provided for in appropriations to be filled. These new investigators, once they complete intensive training, will join existing staff to increase the number of completed investigations, both newly filed and those in backlog. Due to the anticipated increase in complaint filings, OSHA will address the efficiency and effectiveness of the program by improving and streamlining administrative functions to ensure quality and timely investigations.

The table below provides the onboard staffing of whistleblower investigators and dedicated whistleblower program staff as of October 1, 2016, October 1, 2017, October 1, 2018, and March 1, 2019.

Whistleblower Program	
Date	Total Staff
Oct. 2016	127
Oct. 2017	119
Oct. 2018	116
Mar. 2019	116

The average time to complete a whistleblower investigation in FY 2018 was 283 days, this average is fewer days than in FY 2017 (292 days). In addition, below is a table with the average time for completing a whistleblower investigation in FY 2018, broken down by statute.

Statute	FY 2018 Average Days to Complete
Affordable Care Act	204
Asbestos Hazard Emergency Response Act	338
Wendell H. Ford Aviation Investment and Reform Act for the 21st Century	361
Consumer Financial Protection Act	243
Consumer Product Safety Improvement Act	312
Safe Drinking Water Act; Federal Water Pollution Control Act; Toxic Substances Control Act; Solid Waste Disposal Act; Clean Air Act; & Comprehensive Environmental Response, Compensation and Liability Act	342

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Energy Reorganization Act	330
Federal Railroad Safety Act	293
Food Safety Modernization Act	323
International Safe Container Act	N/A ¹
Moving Ahead for Progress in the 21st Century Act	326
National Transit Systems Security Act	305
Section 11(c) of the Occupational Safety and Health Act	271
Pipeline Safety Improvement Act	387
Sarbanes-Oxley Act	314
Seaman's Protection Act	271
Surface Transportation Assistance Act	284

¹ OSHA did not investigate any whistleblower complaints under the International Safe Container Act in FY 2018.

WORKER SAFETY AND HEALTH TRAINING PROGRAMS

Each day in this country, 275 workers die due to job related injuries and illnesses, and nearly 10,000 workers are injured on the job. Yet, the President's budget cuts key worker safety and health training programs, the number of inspectors at OSHA are at their lowest levels ever, and 400 more people died on the job in 2017 than compared to the average year under the last administration. In addition, the use of quick inspections under this administration has increased while inspections for high-penalty cases are down 50% from 2016.

Question. What is the Department doing to rectify this situation and to protect American workers?

Answer. The Occupational Safety and Health Administration's (OSHA) balanced approach to inspect and provide compliance assistance has made workplaces safer. Injury and illness rates decreased to 2.8 cases per 100 workers in 2017, the latest year of data available. This equates to nearly 45,800 fewer injury and illness cases in 2017 as compared to 2016. Workplace fatalities have also declined with 3.5 fatalities per 100,000 full-time equivalent (FTE) workers in 2017, as compared to 3.6 per 100,000 FTE in 2016—resulting in 43 fewer fatalities in 2017. OSHA aggressively targets high hazard industries and activities through enforcement actions as well as compliance assistance activities.

OSHA has taken several steps to increase its Federal Enforcement staffing levels. The agency is seeking to fill all funded Compliance Safety and Health Officers (CSHO) positions. All vacancies are being recruited for, and OSHA is in the process of on-boarding the inspectors. The agency begins the recruitment process as soon as a vacancy occurs, or an upcoming retirement is announced. OSHA advertises and recruits individuals to fill all current vacancies and the new inspectors then begin the on-boarding process. The recruitment and on-boarding process can take from three to six months, which includes the time necessary for advertisement, application, screening and interviews, and completing the required clearance of applicants under consideration, such as security and CSHO physicals. OSHA has also begun recruiting for a larger number of positions than available vacancies to ensure there is a continuous pool of CSHO applicants for selection when future vacancies occur.

OSHA bases its programmed inspection targeting, i.e., emphasis programs, on available inspection data and injury and illness data from the Bureau of Labor Statistics. Additional data may be available at the local level, as well. OSHA analyzes this data to identify industries and processes with the most serious injuries and illnesses. Two examples of national initiatives to address these hazards are the National Safety Stand-Down to Prevent Falls and the Agency Priority Goal (APG) to prevent fatal incidents in trenches. Both are based on data showing high fatal incident rates in the construction industry. The Fall Stand-Down is the largest compliance assistance effort conducted by OSHA. More than one million employees participate in these events each year across the country that focus on the importance of preventing employee deaths from falls. The APG for excavations and trenching was established in 2018 to address an increase in fatal injuries of workers in the construction sector. OSHA utilized targeted enforcement and consultation in a balanced manner to reduce these incidents. These initiatives

demonstrate OSHA's two-pronged approach of enforcement and compliance assistance to target leading causes of injuries and fatalities to reduce injury, illness, and fatality rates.

OSHA has a variety of programs and tools available that provide training, outreach, and assistance to employers and employees. These include Alliances, Strategic Partnerships, On-site Consultation, and numerous targeted outreach events, such as the Fall Stand Down in Construction, which provide information on workplace safety and health to the public. The training programs include the Outreach Training Program, the OSHA Training Institute (OTI) Education Center Program, and OSHA's cooperative programs. Training and outreach programs delivered directly by the agency can more efficiently provide the same type of information to a broader audience than is delivered through the Harwood training grants.

OSHA's Outreach Training Program and OTI Education Centers are in full operation for Fiscal Year (FY) 2019 and the Administration continues its support of the programs in its FY 2020 budget request. In FY 2018, OSHA trained more than 1,000,000 workers and potential workers through the Outreach Training Program, which reaches at-risk worker populations, including individuals with limited English proficiency. In the same timeframe, the OTI Education Centers trained more than 55,000 workers through a nationwide network of OSHA-authorized training centers that educate participants on the recognition, prevention, and elimination of occupational hazards.

OSHA also offers training to workers through its Compliance Assistance Specialists located in various area offices across the country; through its use of both formal and informal alliances and partnerships with trade associations, labor organizations, and other groups; and through training provided by OSHA's On-Site Consultation Program in all 50 States and several U.S. Territories.

The President's FY 2020 Budget for OSHA includes an overall request of \$557,533,000, an increase of \$300,000 for the agency from the FY 2019 appropriation. Specifically, the Budget proposes additional resources for the following budget activities: \$3,780,000 for Federal Enforcement, \$1,124,000 for Whistleblower Programs, \$433,000 for Federal Compliance Assistance, and \$5,500,000 for Safety and Health Statistics.

Question. Given the effectiveness of the program, why did the Department choose to eliminate the Harwood Training Grants?

Answer. OSHA has a variety of programs and tools available that provide training, outreach, and assistance to employers and employees. These include Alliances, Strategic Partnerships, On-site Consultation, and numerous targeted outreach events, such as the Fall Stand Down in Construction, which provide information on workplace safety and health to the public. The training programs include the Outreach Training Program, the OSHA Training Institute (OTI) Education Center Program, and OSHA's cooperative programs. Training and outreach programs delivered directly by the agency can more efficiently provide the same type of information to a broader audience than is delivered through the Harwood training grants.

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Question. Why prioritize quick, random inspections over ones undertaken due to serious allegations or workplace injuries?

Answer. OSHA's priority system for conducting inspections is designed to provide the maximum feasible protection to working men and women. OSHA's Field Operation Manual (FOM), outlines those priorities in Chapter 2, Section IV as shown below:

Priority	Category
First	Imminent Danger
Second	Fatality/Catastrophe*
Third	Complaints/Referrals
Fourth	Programmed Inspections

*OSHA Area Offices determine the inspection priority of a catastrophe using the Memorandum entitled, "Interim Enforcement Procedures for New Reporting Requirements under 29 C.F.R. 1904.39", dated December 24, 2014, or unless superseded by future agency-approved correspondence.

The higher priority inspections are unprogrammed inspections, and tend to focus on specific areas or hazards, which does not always result in a comprehensive scope inspection. However, OSHA is required to respond to unprogrammed activity, which generally arises from serious workplace injuries/illnesses or allegations.

Question. How can you explain the decrease in inspections related to high-penalty cases, heat concerns, and workplace violence?

Answer. The Occupational Safety and Health Administration (OSHA) is revising its enforcement weighting system. The updated system will include a greater emphasis on the impact of inspections, rather than the current system's emphasis on the resources expended in an inspection. With this revision, OSHA can emphasize inspections that are not resource intensive, but save more lives and reduce exposure to hazards. These inspections include those addressing fall and trenching hazards.

Regarding the number of heat related inspections, OSHA conducted 81 in FY 2015, 233 in FY 2016, 106 in FY 2017, and 130 in FY 2018. Since the majority of these inspections are unprogrammed (i.e., complaints) the number of inspections will vary per year.

Regarding the number of workplace violence related inspections, OSHA conducted a total of 31 in FY 2015, 72 in FY 2016, 58 in FY 2017 and 49 in FY 2018.

WORKPLACE FATALITIES

Mr. Pocan: Data from the agency indicates that in FY 2018 the agency conducted the highest number of fatality/catastrophe related inspections in a decade. Please provide any analysis the agency has done on where these deaths and catastrophes are occurring—both industry and geography—and what the agency is doing to combat the rise in such incidents?

Mr. Acosta: The Occupational Safety and Health Administration's (OSHA) balanced approach to inspect and provide compliance assistance has made workplaces safer. Injury and illness rates decreased to 2.8 cases per 100 workers in 2017, the latest year of data available. This equates to nearly 45,800 fewer injury and illness cases in 2017 as compared to 2016. Workplace fatalities have also declined with 3.5 fatalities per 100,000 full-time equivalent (FTE) workers in 2017, as compared to 3.6 per 100,000 FTE in 2016—resulting in 43 fewer fatalities in 2017. OSHA aggressively targets high hazard industries and activities through enforcement actions as well as compliance assistance activities.

OSHA has taken several steps to increase its Federal Enforcement staffing levels. Beginning in 2017, the agency received approval to fill all funded Compliance Safety and Health Officers (CSHO) positions. All vacancies are being recruited for, and OSHA is in the process of on-boarding the inspectors. The agency begins the recruitment process as soon as a vacancy occurs, or an upcoming retirement is announced. OSHA advertises and recruits individuals to fill all current vacancies and the new inspectors then begin the on-boarding process. The recruitment and on-boarding process can take from three to six months, which includes the time necessary for advertisement, application, screening and interviews, and completing the required clearance of applicants under consideration, such as security and CSHO physicals. OSHA has also begun recruiting for a larger number of positions than available vacancies to ensure there is a continuous pool of CSHO applicants for selection when future vacancies occur.

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OSHA has a variety of programs and tools available that provide training, outreach, and assistance to employers and employees. These include Alliances, Strategic Partnerships, On-site Consultation, and numerous targeted outreach events, such as the Fall Stand Down in

Construction, which provide information on workplace safety and health to the public. The training programs include the Outreach Training Program, the OSHA Training Institute (OTI) Education Center Program, and OSHA's cooperative programs. Training and outreach programs delivered directly by the agency can more efficiently provide the same type of information to a broader audience than is delivered through the Harwood training grants.

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OSHA also offers training to workers through its Compliance Assistance Specialists located in various area offices across the country; through its use of both formal and informal alliances and partnerships with trade associations, labor organizations, and other groups; and through training provided by OSHA's On-Site Consultation Program in all 50 States and several U.S. Territories.

WORKPLACE VIOLENCE

Workplace violence is a serious and growing problem that has reached epidemic proportions. Violence is now the third leading cause of workplace deaths. Health care and social service workers - nurses, nursing assistants and emergency response workers - suffer more than 70% of all work-related assaults. And, women face the greatest risks – two of every three workplace violence events are suffered by women.

In 2016, OSHA accepted a petition from unions for OSHA to develop a standard to protect health care and social service workers from workplace violence. But under the Trump administration, there's been virtually no action or progress on the workplace violence rule. The latest DOL regulatory agenda from last Fall stated that OSHA would start a small business review of a draft proposed workplace violence rule this March, after first saying the review would begin in January.

Question. Does DOL consider Workplace Violence to be a serious safety and health problem and are you committed to develop and issue a workplace violence standard to protect healthcare and social service workers?

Answer. The Department clearly recognizes the importance of preventing workplace violence in all workplaces—including the healthcare and social assistance sectors—and it has a long history of commitment to protecting healthcare employees from work-related physical harm and threats of physical harm. The Department is committed to continuing to gather data to inform a potential standard to protect healthcare and social assistance workers.

Question. If so, what is DOL's schedule for issuing the workplace violence rule?

Answer. The Occupational Safety and Health Administration (OSHA) is in the process of analyzing the information it has gathered from petitioners for a standard, participants of the stakeholder meeting, comments received in response to its Request for Information, and experts. OSHA will use this information to develop regulatory alternatives and cost and benefit analyses required to initiate the small business review process required by the Small Business Regulatory Enforcement Fairness Act (SBREFA). OSHA anticipates initiating the SBREFA process in Fall 2019.

Question. When will DOL complete a small business review of the draft proposed rule?

Answer. OSHA anticipates initiating the SBREFA process in the fall of this year. OSHA expects to complete the small business review about four months after initiation.

Question. Can you give us a date when DOL plans to issue a final workplace violence standard?

Answer. The schedule for issuing proposed and final rules depends upon the input received and recommendations that arise from the SBREFA process, as well as the nature of comments received in response to issuing the proposed rule.

WORKPLACE VIOLENCE

It's been more than three years since the Government Accountability Office (GAO) made recommendations that would help reduce the risk of workplace violence for approximately 15 million health care workers in the United States. I, along with Representatives Bobby Scott, Joe Courtney and Frederica Wilson, requested GAO undertake this work. I am concerned about the pace of OSHA's actions to implement these recommendations. OSHA updated its voluntary guidelines on preventing workplace violence in healthcare and social services and its enforcement procedures for addressing workplace violence under OSHA's general duty clause. However, OSHA has yet to issue its report that will help compliance officers develop citations in workplace violence cases. And, it is still considering information from its December 2016 Request for Information (RFI).

Question. When will OSHA implement this report?

Answer. On January 10, 2017, the Occupational Safety and Health Administration (OSHA) issued the enforcement directive "Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence." This directive provides detailed guidance and procedures for compliance officers when conducting inspections and issuing citations related to workplace violence.

Question. When will OSHA act on the information it has received from the RFI?

Answer. OSHA is in the process of analyzing the information it has gathered from petitioners for a standard, participants of the stakeholder meeting, comments received in response to its Request for Information (RFI), and experts. OSHA will use this information to develop regulatory alternatives and cost and benefit analyses required to initiate the SBREFA process in Fall 2019. The enforcement directive can be found at <https://www.osha.gov/enforcement/directives/cpl-02-01-058>.

Question. When will OSHA convene a SBREFA panel so that it can finally issue a workplace violence standard, and what is delaying that process?

Answer. There is not a delay. OSHA is in the process of analyzing the information it has gathered from petitioners for a standard, participants of the stakeholder meeting, comments received in response to the RFI, and experts. OSHA will use this information to develop regulatory alternatives and cost and benefit analyses required to initiate the small business review process required by the Small Business Regulatory Enforcement Fairness Act (SBREFA). OSHA anticipates initiating the SBREFA process in Fall 2019.

Question. For each of the past 5 years, how many citations under the General Duty clause has OSHA issued related to workplace violence in healthcare settings?

Answer. The following table provides the number of citations under the General Duty clause for workplace violence by fiscal year:

2014	2015	2016	2017	2018
4	6	7	9	5

Question. Additionally, what is the Department doing more generally to address harassment and violence in workplaces across the nation?

Answer. OSHA regional and area office staff provide guidance to employers and employees concerning workplace violence. Each region has a workplace violence coordinator who can respond to questions concerning workplace violence and provide guidance to employers on developing policies and procedures to protect workers from violence. Similarly, these workplace violence coordinators support area office staff who respond to employee and employer questions about workplace safety. Employee training concerning workplace violence has been provided through Susan Harwood training grants, and those training materials are available on the OSHA website. In addition, workplace violence prevention is a current topic in the FY 2019 Susan Harwood Grants funding opportunity announcement.