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June 2, 2021

The Honorable Martin J. Walsh
Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Walsh:

I write regarding the Department of Labor's (Department) efforts to implement President Biden's January 21, 2021, Executive Order 13,999, *Protecting Worker Health and Safety*.¹ This Executive Order instructed the Department, through the Occupational Safety and Health Administration (OSHA), to "consider whether any emergency temporary standards [ETS] on COVID-19, including with respect to masks in the workplace, are necessary, and if such standards are determined to be necessary, issue them by March 15, 2021."²

With respect to an ETS determination and issuance, the Department appears, at this point in time, to have failed to comply with President Biden's Executive Order, which was issued to elevate the health and safety of workers and their families as "a national priority and a moral imperative."³

I know the importance of such workplace safety standards, and I appreciate the complexity of developing and implementing them. I represent many meatpacking workers, correctional-facilities workers, nursing-home workers, and other essential workers in my district. These kinds of workplaces have experienced COVID-19 outbreaks. Thankfully the workers in my district are currently protected

¹ Executive Order 13,999, *Protecting Worker Health and Safety*, Executive Office of the President (Jan. 21, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-protecting-worker-health-and-safety/>.

² *Id.* at sec. 2(b).

³ *Id.* at sec. 1.

by Virginia's COVID-19 Final Permanent Standard⁴ (and previously were protected by Virginia's COVID-19 ETS).⁵

But workers in other states do not necessarily have these protections. Their safety and health, and the safety and health of their families and communities, remain at risk. And many state OSHA plans around the country are looking to OSHA for guidance.⁶

Among other topics, we are looking forward to learning more about the Department's efforts to issue an ETS when you appear at our June 9, 2021, full committee hearing to discuss the Department's policies and priorities.

Accordingly, I request the Department respond to the following questions no later than June 7, 2021.

- 1) Why did the Department fail to comply with the Executive Order's March 15, 2021, deadline? Who determined that the Department was not ready to make a determination by the March 15, 2021, deadline?
- 2) Please provide a detailed timeline of the Department's process developing one or more proposed ETSs following the January 21, 2021, Executive Order. This timeline should:
 - a. show who within the Department approved an ETS at various stages of review and when they did so (including who directed the Department to send a draft ETS to the U.S. Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) on April 26, 2021, for review);
 - b. note dates on which the Department provided a draft of one or more versions of an ETS to other agencies (including the White House and related entities) for review;
 - c. include meetings or calls to discuss an ETS held between Department officials/employees and officials/employees of other executive agencies; and
 - d. include meetings or calls to discuss an ETS held between Department officials/employees and the White House.
- 3) Please provide the various drafts of any ETSs that were approved at the stages of intra-Departmental review noted in the timeline in response to request 2.a.
- 4) Please provide agendas and minutes, if any, for all meetings or phone calls identified in the timeline in response to requests 2.c and 2.d.
- 5) Did the Secretary, Deputy Assistant Secretary of Labor for Occupational Safety and Health, or an official acting in those roles determine that one or more ETSs were necessary to implement Executive Order 13,999?

⁴ 16VAC25-220, *Final Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19*, Virginia Department of Labor and Industry, Virginia Occupational Safety and Health Program (Jan. 27, 2021), <https://www.doli.virginia.gov/wp-content/uploads/2021/01/Final-Standard-for-Infectious-Disease-Prevention-of-the-Virus-That-Causes-COVID-19-16-VAC25-220-1.27.2021.pdf>.

⁵ 16VAC25-220, *Emergency Temporary Standard, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19*, Virginia Department of Labor and Industry, Virginia Occupational Safety and Health Program (July 27, 2020), <https://www.doli.virginia.gov/wp-content/uploads/2020/07/RIS-filed-RTD-Final-ETS-7.24.2020.pdf>.

⁶ Cf. Beth LeBlanc, *MIOSHA to bring workplace rules in line with new mask guidance*, The Detroit News (May 17, 2021, 4:51 PM ET), <https://www.detroitnews.com/story/news/local/michigan/2021/05/17/miosha-bring-workplace-rules-line-new-mask-guidance/5135507001/> (describing Michigan regulators' actions in response to new mask guidance from the U.S. Centers for Disease Control and Prevention).

- a. If so, what was the Department's planned scope of an ETS at that time?
 - b. Did the Department ultimately decide that meatpacking and grocery workers were not required to be covered by an ETS? Who made this decision and when was such decision made?
- 6) OIRA states that it received the Department's proposed ETS for review on April 26, 2021. Regarding this review:
- a. Did Department leadership state internally or to the public their belief about the expected duration of the OIRA review period for that ETS? If so –
 - i. what was the duration expected,
 - ii. who made these statements, and
 - iii. when did they make them?
 - b. Did the Department receive any communications or directives from the White House or any other executive branch entities regarding the expected length of the OIRA review period for that ETS? If so, has the duration of the review period exceeded that expected review period?
- 7) On May 13, 2021, the U.S. Centers for Disease Control and Prevention (CDC) issued new guidance relating to recommended precautions for people who are fully vaccinated.
- a. Did the CDC consult OSHA prior to the issuance of this guidance, including on whether this would have any impact on workplace safety?
 - b. Did OSHA send any documents to the CDC to assist it in developing its May 13, 2021, guidance for people who are fully vaccinated? If so, please provide those documents.
- 8) After January 21, 2021, has the Department received any instructions or unsolicited lobbying from any non-Department entity (either inside or outside of the federal government) to withhold issuance of an ETS? If so –
- a. who were the entities that gave these instructions or unsolicited lobbying, and
 - b. what was the rationale given by the outside entity in each instance?

Please also provide a briefing to Committee staff on these issues no later than June 7, 2021.

Please send all official correspondence and information relating to this request to the Committee's Clerk at Mariah.Mowbray@mail.house.gov. If the Department has any questions about how to comply with a request, please contact Yonatan Moskowitz at Yonatan.Moskowitz@mail.house.gov.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman

cc: The Honorable Virginia Foxx, Ranking Member