

United States Senate

WASHINGTON, DC 20510

April 26, 2021

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Biden:

We write to seek information about the delay of the Occupational Safety and Health Administration's (OSHA) Emergency Temporary Standard (ETS), and to urge your administration to release the ETS as soon as possible to address the heightened risks for frontline workers during the pandemic.

On your first day in office you issued an Executive Order calling on the Department of Labor (DOL) to "consider whether any emergency temporary standards 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."¹ According to reports, by mid-March, OSHA had "provided the White House Office of Information and Regulatory Affairs a draft ETS for review."² Yet, to date, the Office of Management and Budget has not formally noticed receiving the standard.³

More than a month has now passed since your deadline for issuing an ETS. The consequences of each day of delay are dire – and potentially fatal – for frontline workers who have toiled without enforceable health or safety standards specific to COVID-19 since the beginning of this pandemic. Hundreds of thousands of essential workers have become sick, and many have died, after being exposed to coronavirus at their workplaces. In the food industry alone, an estimated nearly 90,000 workers tested positive for COVID-19, and at least 383 have died from the disease.⁴ A majority of essential workers are at increased risk for severe COVID-19.⁵

¹ White House, "Executive Order on Protecting Worker Health and Safety," January 21, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-protecting-worker-health-and-safety/>.

² National Law Review, "OSHA Taking Its Time to Issue COVID-19 Emergency Temporary Standard," Courtney M. Malveaux, March 18, 2021, <https://www.natlawreview.com/article/osha-taking-its-time-to-issue-covid-19-emergency-temporary-standard>.

³ Office of Information and Regulatory Affairs, Office of Management and Budget, "Regulatory Review Dashboard," accessed April 26, 2021, <https://www.reginfo.gov/public/jsp/EO/eoDashboard.myjsp>.

⁴ Food and Environment Reporting Network, "Mapping Covid-19 outbreaks in the food system," Leah Douglas, accessed April 26, 2021, <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>.

⁵ U.S. News & World Report, "Nearly 74 Million Essential Workers at High Risk for COVID in U.S.," Steven Reinberg, November 9, 2020, <https://www.usnews.com/news/health-news/articles/2020-11-09/nearly-74-million-essential-workers-at-high-risk-for-covid-in-us>.

We first called for an OSHA ETS more than a year ago,⁶ and an ETS has been a top priority of labor groups since the earliest days of the pandemic.⁷ A recent DOL Inspector General report recently reaffirmed the importance of an ETS, given “[g]uidance in and of itself cannot operate in lieu of an ETS as an enforcement tool.”⁸ While we appreciate that your administration is working to aide in mass vaccination efforts, to date only about 26.9% of the U.S. population is fully vaccinated.⁹ Frontline workers remain at risk.

An ETS will prevent additional, unnecessary worker illnesses and deaths due to COVID-19. We urge you to issue this necessary standard without further delay.

Sincerely,

/s/
Elizabeth Warren
United States Senator

/s/
Tammy Baldwin
United States Senator

/s/
Tammy Duckworth
United States Senator

/s/
Richard Blumenthal
United States Senator

/s/
Edward J. Markey
United States Senator

/s/
Sherrod Brown
United States Senator

⁶ U.S. Senate Health, Education, Labor, and Pensions Committee, “Murray, Menendez, Colleagues Urge Trump Administration to Protect American Workers against COVID-19,” press release, March 10, 2020, <https://www.help.senate.gov/ranking/newsroom/press/murray-menendez-colleagues-urge-trump-administration-to-protect-american-workers-against-covid-19>.

⁷ AFL-CIO, “A Petition to Secretary Scalia for an OSHA Emergency Temporary Standard for Infectious Disease,” March 6, 2020, <https://aflcio.org/statements/petition-secretary-scalia-osa-emergency-temporary-standard-infectious-disease>.

⁸ Department of Labor Inspector General, “COVID-19: Increased Worksite Complaints and Reduced OSHA Inspections Leave U.S. Workers’ Safety at Increased Risk,” February 25, 2021, pp. 10, <https://www.oig.dol.gov/public/reports/oa/2021/19-21-003-10-105.pdf>.

⁹ Centers for Disease Control and Prevention, “COVID Data Tracker Weekly Review,” accessed April 26, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html>.

_____/s/_____
Sheldon Whitehouse
United States Senator

_____/s/_____
Cory A. Booker
United States Senator

_____/s/_____
Mark R. Warner
United States Senator

_____/s/_____
Benjamin L. Cardin
United States Senator

_____/s/_____
Tim Kaine
United States Senator

_____/s/_____
Jack Reed
United States Senator

_____/s/_____
Robert Menendez
United States Senator

_____/s/_____
Bernard Sanders
United States Senator

_____/s/_____
Tina Smith
United States Senator