

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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April 29, 2020

Ms. Loren Sweatt
Principal Deputy Assistant Secretary
Occupational Safety and Health Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Ms. Sweatt:

I write with great concern about the refusal of the Occupational Health and Safety Administration (OSHA) to issue a mandatory Emergency Temporary Standard for workplace safety during the coronavirus crisis and the agency's continuing failure to protect the health and safety of workers during this nationwide pandemic.

As of today, more than 1 million people in the United States are confirmed to have contracted the virus, and over 50,000 have died.¹ Governors across the country have issued stay-at-home orders to prevent the spread of the disease, but millions of Americans have been deemed essential employees who must continue to report for work.²

Transit workers, postal carriers, and grocery store employees are all essential workers whose jobs require constant contact with the public, exponentially increasing their risk of exposure to the virus. But reports indicate that employers are not doing enough to shield their workers. They are failing to provide personal protective equipment (PPE), enforce social distancing, or ensure employees have enough cleaning supplies. For example:

- Failure to follow consistent social distancing guidelines and provide PPE to all employees at three of the nation's largest meat producers, Tyson Foods, JBS USA and Smithfield Foods, has led to outbreaks and closures of more than 30 processing plants. Over 6,500 workers have tested positive for coronavirus, and at least 20 have died. Workers are pressured to continue reporting to work even when they feel ill. Further, as the U.S. Department of Agriculture has not provided standard PPE to inspectors who are

¹ *Coronavirus in the U.S.: Latest Map and Case Count*, New York Times (Apr. 29, 2020) (online at www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html).

² *Coronavirus: Who Are Considered "Essential" Workers?*, Fox News (Mar. 23, 2020) (online at www.foxnews.com/us/coronavirus-who-are-considered-essential-workers).

responsible for overseeing the safety of production of meat packing facilities, at least 100 inspectors have tested positive for coronavirus and at least one has died;³

- Nationwide, at least 1,500 grocery store workers have tested positive, over 3,000 are quarantined, and 41 have died. Employees have protested that stores are not providing PPE or hand sanitizer, not limiting the number of people who can enter the store, not maintaining social distance, and failing to take additional steps to protect older, vulnerable employees.⁴
- Early in the pandemic, airline companies disciplined flight attendants who chose to wear face masks. Some airlines changed their policies to allow masks and gloves, some require only masks, and there is no consistent policy among airlines to provide PPE or disinfecting supplies to all their workers. At least 250 flight attendants and pilots have been sickened by the virus and at least five have died.⁵

More than 3,000 employees have filed complaints with OSHA.⁶ OSHA is charged with protecting worker safety, but there is currently no federally mandated standard for how employers should safeguard employees from coronavirus.⁷ Instead, OSHA has issued advisory

³ *U.S. Meat Supply is 'Perilously Close' to a Shortage, CEO Warns*, National Public Radio (Apr. 13, 2020) (online at www.npr.org/sections/coronavirus-live-updates/2020/04/13/833110486/u-s-meat-supply-is-perilously-close-to-a-shortage-ceo-warns); *CDC Investigates Outbreak Linked to South Dakota Pork Factory*, CBS News (Apr. 16, 2020) (online at www.cbsnews.com/news/coronavirus-covid19-hotspot-smithfield-pork-factory-sioux-falls-south-dakota); *Thousands of OSHA Complaints Filed Against Companies for Virus Workplace Safety Concerns, Records Show*, Washington Post (Apr. 16, 2020) (online at www.washingtonpost.com/business/2020/04/16/osha-coronavirus-complaints/); *As They Rushed To Maintain U.S. Meat Supply, Big Processors Saw Plants Become Covid-19 Hot Spots, Worker Illnesses Spike*, Washington Post (Apr. 25, 2020) (online at www.washingtonpost.com/business/2020/04/25/meat-workers-safety-jbs-smithfield/); *USDA Leaves Meat Inspectors Hunting For Safety Gear*, Politico (Apr. 22, 2020) (online at www.politico.com/news/2020/04/22/usda-meat-inspectors-safety-gear-201717); *Trump Invokes Defense Production Act to Keep Meat Processing Plants Open Amid Coronavirus Crisis*, CBS News (Apr. 29, 2020) (online at www.cbsnews.com/news/meat-plants-defense-production-act-trump-executive-order/).

⁴ *'It Feels Like A War Zone': As More of Them Die, Grocery Workers Increasingly Fear Showing Up at Work*, Washington Post (Apr. 12, 2020) (online at www.washingtonpost.com/business/2020/04/12/grocery-worker-fear-death-coronavirus/).

⁵ *'We're Definitely Spreading It.' Flight Attendants Fear They are Losing the Fight Against Coronavirus*, Time (Apr. 3, 2020) (online at <https://time.com/5815492/flight-attendants-coronavirus/>); *Flight Attendants and Pilots Ask, 'Is it OK to Keep Working?'*, New York Times (Apr. 12, 2020) (online at www.nytimes.com/2020/04/12/business/coronavirus-flight-attendants-pilots.html); *Flight Attendants Urge Feds to Limit Leisure Travel Due To Coronavirus*, The Hill (Apr. 24, 2020) (online at www.thehill.com/homenews/campaign/494482-flight-attendants-union-urges-trump-admin-to-limit-leisure-travel-due-to); *Masks On Airplanes: Where Things Stand on Personal Protection and Social Distancing*, CNN (Apr. 29, 2020) (online at www.cnn.com/travel/article/airlines-masks-middle-seats-beverage-service/index.html).

⁶ *Thousands of OSHA Complaints Filed Against Companies for Virus Workplace Safety Concerns, Records Show*, Washington Post (Apr. 16, 2020) (online at www.washingtonpost.com/business/2020/04/16/osha-coronavirus-complaints/).

⁷ 29 C.F.R. § 1910.1030 (2006).

guidance that creates no new legal obligations and points employers to non-binding, “informational” safety and health recommendations from the Centers for Disease Control and Prevention (CDC).⁸

In the absence of mandatory federal safety protocols, employers are creating their own rules, resulting in differing standards even within the same industry. For example, some retailers, including Walmart and The Home Depot, require temperature checks for employees before each shift, while others, like Target and Lowe’s Home Improvement, do not.⁹ In the health care industry, policies for the use of PPE differ from hospital to hospital.¹⁰ This patchwork approach and lack of mandatory standards is dangerous for both workers and the public.

Under the Occupational Health and Safety Act of 1970, OSHA is obligated “to ensure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education, and assistance.”¹¹ Though OSHA does not have a preexisting standard for coronavirus, the agency is failing to leverage its tools to hold employers accountable. Former OSHA Administrator David Michaels observed that OSHA “is almost completely missing from the federal response.”¹²

Section 6(c)(1) of the Act requires OSHA to issue an Emergency Temporary Standard (ETS) when “employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards.”¹³ Despite calls from Members of Congress, OSHA has refused to issue an ETS. Instead, OSHA has asserted that it sees “no additional benefit from an ETS in the current circumstances.”¹⁴

⁸ Department of Labor and Department of Health and Human Services, *Guidance on Preparing Workplaces for COVID-19* (Mar. 10, 2020) (online at www.osha.gov/Publications/OSHA3990.pdf).

⁹ *Companies Are Making Their Own Safety Rules as the Federal Government Stands Aside*, CNN (Apr. 5, 2020) (online at www.cnn.com/2020/04/05/business/walmart-amazon-home-depot-masks-retail-coronavirus/index.html).

¹⁰ *Doctors and Nurses Fighting the Coronavirus Outbreak are Getting Sick and Dying—And No One is Keeping Track*, BuzzFeed News (Mar. 26, 2020) (online at www.buzzfeednews.com/article/zahrahirji/us-health-care-workers-sick-coronavirus).

¹¹ Department of Labor, *Occupational Health and Safety Administration Mission Statement* (online at www.osha.gov/aboutosha); Occupational Safety and Health Act of 1970, Pub. L. No. 91-596.

¹² *One Thing We Can Do to Protect Frontline Workers*, Politico (Apr. 7, 2020) (online at www.politico.com/news/agenda/2020/04/07/can-do-more-protect-workers-coronavirus-169957).

¹³ Department of Labor, *Occupational Health and Safety Administration Code Section 6* (29 USC 655) (online at www.osha.gov/laws-regs/oshact/section_6).

¹⁴ Letter from Principal Deputy Assistant Secretary Loren Sweatt, Occupational Safety and Health Care Administration, Department of Labor, to Chairman Robert C. “Bobby” Scott, Committee on Education and Labor (Mar. 18, 2020) (online at www.documentcloud.org/documents/6820346-03-18-2020-Scott-RE-COVID-19-1.html).

Failure to issue an ETS during this global health emergency is a dereliction of duty to the American people and has encouraged the patchwork of polices that has not prevented the spread of coronavirus.

Even in the absence of an ETS, OSHA has authority to hold employers accountable through the Act's general duty clause, which requires employers to provide workers with a workplace "free from recognized hazards that are causing or likely to cause death or serious physical harm" to employees.¹⁵ However, nearly two months after the coronavirus was officially declared a pandemic, and despite receiving more than 3,000 coronavirus complaints, OSHA continues to merely issue guidance rather than mandatory standards.

The meatpacking industry provides a predictable example of how dangerous it is for workers to stay on the job without mandatory coronavirus standards from OSHA. President Trump has ordered processing plants to remain open despite the startlingly-high rates of infection among plant employees.¹⁶ Though OSHA and the CDC recently issued guidance for meatpacking plants, OSHA still has not made those recommendations mandatory or announced any penalties for plants that do not comply.¹⁷

I call on OSHA to immediately issue an ETS on coronavirus and, in the meantime, fully leverage the general duty clause to enforce meaningful safety standards and safeguard employees. I also ask that OSHA provide answers to the following questions:

1. Why does OSHA believe that there is "no additional benefit" from an ETS?
2. How many complaints have been filed regarding workplace exposure to coronavirus?
3. How many inspections has OSHA conducted in response to those complaints, and what is the current status of those cases?
4. How many citations has OSHA issued for coronavirus-related safety hazards and against which employers?
5. How many fines has OSHA issued for coronavirus-related hazards, for how much, and against which employers?

¹⁵ 29 U.S.C. § 654.

¹⁶ *Trump Orders Meat Processing Plants to Remain Open*, Associated Press (Apr. 28, 2020) (online at apnews.com/67cb4bad7ffe500beabdf8e7e7efea5d).

¹⁷ Department of Labor and Department of Health and Human Services, *U.S. Department of Labor's OSHA and CDC Issue Interim Guidance to Protect Workers in Meatpacking and Processing Industries* (Apr. 26, 2020) (online at www.osha.gov/news/newsreleases/national/04262020).

6. What plan does OSHA have to enforce workplace safety standards for coronavirus?
7. How does OSHA plan to enforce workplace safety standards for the guidance issued for workers in meatpacking and processing industries?
8. What role is OSHA playing in preparations to end stay-at-home orders and encourage Americans to return to the workforce.

Please provide the requested information by May 6, 2020, as well as a briefing to Committee staff by May 8, 2020.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,

A handwritten signature in blue ink that reads "Jamie Raskin". The signature is written in a cursive style with a horizontal line underneath the name.

Jamie Raskin
Chairman

Subcommittee on Civil Rights and Civil Liberties

Enclosure

cc: The Honorable Chip Roy, Ranking Member
Subcommittee on Civil Rights and Civil Liberties

Responding to Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Oversight and Reform, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a

part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.