

Congress of the United States

Washington, D.C. 20515

March 1, 2021

Mr. Jeffrey Zients
Coordinator and Counselor to the President
COVID-19 Pandemic Response
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dr. Rochelle P. Walensky, MD, MPH
Director
Centers for Disease Control and Prevention
1600 Clifton Rd., NE
Atlanta, GA 30333

Mr. Al Stewart
Acting Secretary
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Mr. Zients, Dr. Walensky, and Mr. Stewart:

We commend the Biden Administration for taking strong, science-based action to address the COVID-19 pandemic, including its directive to the Occupational Safety and Health Administration (OSHA) to adopt an Emergency Temporary Standard. However, serious questions about the adequacy of the current Centers for Disease Control and Prevention (CDC) Guidance regarding protections from aerosol transmission of the virus have been flagged in a February 15, 2021 letter to the Biden Administration by leading experts in aerosol science, occupational health, and infectious disease (Experts' Letter).¹

The Experts' Letter recommends that the Biden Administration take immediate action to strengthen measures to address inhalation exposure to the virus. Their view is that updates are urgently needed to protect those who are at greatest risk of occupational exposure to the novel coronavirus and to ensure that OSHA's emergency standards are consistent with the latest science and updated CDC guidance that fully recognizes airborne transmission hazards.

In OSHA's entire 50-year history, COVID-19 represents the single largest threat to worker health and safety. COVID-19 has taken a particularly devastating toll on workers across key sectors, including health care, meatpacking, transportation, and corrections. At least 57,493

¹ Letter from Rick Bright, et. al. to Jeffrey Zients, Rochelle P. Walensky, MD, MPH, and Anthony Fauci, MD, *Immediate Action is Needed to Address SARS-CoV-2 Inhalation Exposure* (Feb. 15, 2021), https://aiha-assets.sfo2.digitaloceanspaces.com/AIHA/uploads/PressReleases/Immediate-Action-to-Address-Inhalation-Exposure-to-SARS-CoV-2_2142021.pdf.

meatpacking workers have tested positive for COVID-19 and 284 have died.² There have been 546,048 employees working at long term care facilities infected with COVID-19 and 1,590 related deaths, according to data from the Centers for Medicare & Medicaid Services (CMS) through February 14, 2021.³

Throughout the pandemic, worker infections have fueled major outbreaks across the country. Many essential workers at the greatest risk of contracting and dying from COVID-19 are people of color.⁴

To protect workers and reinvigorate the American economy, we must protect workers from exposure to this virus. The Experts' Letter lays out the evidence that the major mode of exposure is inhalation of small aerosol particles that carry the virus:

For many months it has been clear that transmission through inhalation of small aerosol particles is an important and significant mode of SARS-CoV-2 virus transmission. The gravity of this problem was emphasized this week by an editorial in the journal *Nature*. Numerous studies have demonstrated that aerosols produced through breathing, talking, and singing are concentrated close to the infected person, can remain in air and viable for long periods of time and travel long distances within a room and sometimes farther. Gatherings in indoor spaces without adequate ventilation place participants at particularly high risk, an important component of which is driven by asymptomatic and pre-symptomatic viral shedding of infected individuals.⁵

Despite numerous studies documenting the transmission risk via aerosol exposure, CDC guidance continues to rely on the view—which is outmoded according to the Experts' Letter—that most COVID-19 infections are caused by contact with larger infectious droplets. In the view of the Experts' Letter, up-to-date science needs to be reflected in updated policy if we are to effectively protect at-risk workers. Unless CDC scientists have persuasive evidence that contradicts the evidence presented in the Experts' Letter, CDC and OSHA should delineate the recommended measures that need to be taken to prevent aerosol exposure—especially in workplaces. These include control measures that limit concentrations of the virus in the air, such as through better ventilation and air filtration, limiting the number of people and the time people spend in the workplace, and providing effective respiratory protection for workers with prolonged exposures or close contact with other workers, patients, or the public.

² Leah Douglas, *Mapping COVID-19 Outbreaks in the Food System*, FOOD AND ENV'T REPORTING NETWORK (Feb. 26, 2021), <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants>.

³ *COVID-19 Nursing Home Dataset*, CENTERS FOR MEDICARE AND MEDICAID SERVICES (Feb. 14, 2021), <https://data.cms.gov/Special-Programs-Initiatives-COVID-19-Nursing-Home/COVID-19-Nursing-Home-Dataset/s2uc-8wxxp/>.

⁴ *RISK FOR COVID-19 INFECTION, HOSPITALIZATION, AND DEATH BY RACE/ETHNICITY*, CENTERS FOR DISEASE CONTROL AND PREVENTION (Updated Feb. 18, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

⁵ Bright, *supra* note 1.

As the Experts' Letter points out:

CDC continues to recommend surgical masks for most healthcare workers and limits the use of NIOSH-certified respirators only to direct patient care or aerosol generating procedures with COVID-19 patients. It is now well documented that healthcare workers in non-COVID-19 patient care and support positions are also at high risk of infection and should be wearing respirators.⁶

To date, CDC and OSHA recommend only cloth face coverings that do not protect against small particle aerosol inhalation for non-health care workers, even those with high risk of aerosol exposure in food processing, prisons, and transportation.

To the extent that CDC guidance to health care employers was impacted by the severe supply issues that limited the nation's ability to provide better respiratory protection at the beginning of the pandemic, such guidance should be updated given the partial abatement of shortages. Many health care employers continue to hoard available supplies and continue the use of questionable contingency and crisis practices such as the reuse of disposable respirators for multiple days, decontamination of N95 respirators, and use of surgical masks in place of effective respiratory protection. Millions of NIOSH-approved N95 full face respirators are now available, yet supplies are sitting in warehouses and storerooms, and many new respirator manufacturers cannot find buyers and are threatening to go out of business.⁷

To ensure that OSHA, with CDC's support, issues an emergency standard that fully protects health care and other at-risk workers, we urge the Biden Administration to fully consider the evidence presented in the Experts' Letter and, unless Administration scientists have persuasive evidence that contradicts the letter's conclusions, consider adopting the following recommendations:

- Require CDC and OSHA to update and strengthen guidelines and standards to fully recognize inhalation exposure from small inhalable particles of the SARS-CoV-2 virus as a major source of transmission.
 - CDC should recommend control measures that focus first on reducing the concentration of the virus in the air through source controls such as ventilation and filtration as well as work practices, followed by respiratory protection for those workers who need it.
 - OSHA should adopt standards requiring the use of NIOSH-approved respirators—such as N95 respirators or better—for all healthcare workers as well as other workers at increased risk, including those in meat and poultry, corrections, and transit operations.

⁶ Id.

⁷ Jason Dearen, *Hospitals still ration medical N95 masks as stockpiles swell*, ASSOCIATED PRESS (Feb. 16, 2021), <https://apnews.com/article/hospitals-ration-n95-masks-coronavirus-b40b902991b75d8ae4000a20bccd6af4>.

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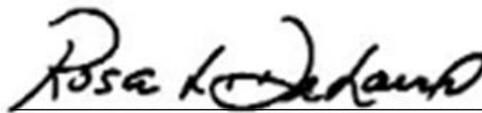
- Require CDC to evaluate current supplies, and, as appropriate, direct healthcare organizations to stop contingency and crisis practices (e.g., decontamination of N95s and use of non-respirator facepieces such as surgical masks in place of respiratory protection). Where necessary to ensure adequate supplies as N95 use expands, implement the *Defense Production Act* to ramp up production of respirators and high-quality barrier face coverings in order ensure adequate supplies for all workers who are at increased risk.
- Direct OSHA to issue an emergency COVID-19 workplace standard that requires employers to conduct an assessment of inhalation risk and adoption of appropriate controls—including enhanced ventilation, physical distancing, effective respiratory protection for workers at increased risk, and high-quality barrier face coverings and masks for other workers exposed to the virus on the job.

Please advise us as soon as possible on the steps the Administration is taking to update the CDC guidance and to ensure that OSHA’s regulations are informed by the best available science. Contact Jordan Barab with the House Committee on Education and Labor at jordan.barab@mail.house.gov with any questions. Please send all official correspondence relating to this request to the Committee’s Clerk, Tylease Alli, at tylease.alli@mail.house.gov.

Sincerely,



ROBERT C. “BOBBY” SCOTT
Chairman
Committee on Education and Labor



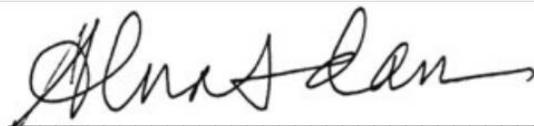
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