United States Senate
WASHINGTON, DC 20510

May 18, 2017

The Honorable Scott S. Dahl
Inspector General
Department of Labor
200 Constitution Avenue, NW
Room S-5502
Washington, DC 20210

Dear Inspector General Dahl:

We write to request an Inspector General review of the Department of Labor's (DOL) recent decisions to delay the implementation of two new safety regulations protecting workers exposed to lethal, cancer-causing silica and beryllium on the job. We also ask that you review what appears to be a post-January 20 reversal of OSHA's policy of announcing the results and findings of its workplace safety investigations.

Twice within the last four months, DOL has delayed the implementation of two final rules that will protect workers from deadly substances. On February 1, DOL announced a delay of the Beryllium Rule effective date, pushing back the date from March 10 to March 21; four weeks later, on March 1, the department announced a second delay, moving the effective date to May 20.[1] The rule, which was finalized by the Obama Administration on January 9, updated a 40-year-old standard for workers' permissible levels of exposure to beryllium, which can cause lung cancer and other dangerous lung illnesses among the 62,000 American workers who are exposed to the element and its compounds in their workplaces. During the delay period, OSHA submitted a proposed revision to the rule that is thought to loosen requirements for the shipbuilding and construction industries.[2] Before OSHA issued the final rule, DOL studied the appropriate way to regulate beryllium exposure in the workplace for 15 years. The rulemaking included a months-long public comment period, two days of public hearings, and consultation with industry and labor representatives, small businesses, and experts on beryllium exposure. The final rule is a carefully considered, overdue protection for workers who put their lives at risk for their paychecks. The rule is projected to save 90 lives each year—lives that are put at additional, unnecessary risk by the delay in implementation.[3]

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[1] "Occupational Exposure to Beryllium: Delay of Effective Date." 29 CFR 1910; 29 CFR 1915; 29 CFR 1926. *Occupational Safety and Health Administration* (Feb. 1, 2017). Online at: https://www.federalregister.gov/documents/2017/02/01/2017-02149/occupational-exposure-to-beryllium-delay-of-effective-date; Wheeler, L. "OSHA delays major Obama-era workplace rule." *The Hill* (March 1, 2017). Online at: http://thehill.com/regulation/labor/321760-osha-delays-major-obama-era-workplace-rule.

[2] Pearson, S. "OSHA Beryllium Proposal Sent to White House, Likely Weakens Rule." *Bloomberg BNA* (Apr. 30, 2017). Online at: https://www.bna.com/osha-beryllium-proposal-n57982087341/.

[3] "Final Rule to Protect Workers from Beryllium Exposure." Occupational Safety and Health Administration. *United States Department of Labor* (accessed Apr. 21, 2017). Online at: https://www.osha.gov/berylliumrule/.; "US Department of Labor issues final rule to lower beryllium levels, increase workplace protections to reduce health risks." Occupational Safety and Health Administration. *United States Department of Labor* (Jan. 6, 2017). Online at: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=33627.

Similarly, on April 6, DOL announced it would delay enforcement in the construction industry of the Silica Rule, pushing enforcement back two months, from June 23 to September 23, 2017.[4] Like the Beryllium Rule, the Silica Rule limits workers' exposure to a deadly substance—respirable crystalline silica, which can cause silicosis, lung cancer, other respiratory diseases, and kidney diseases among the hundreds of thousands of workers who encounter it in their workplaces. Silica standards were last updated when OSHA was created in 1971, but DOL has been studying silicosis caused by silica in the workplace since Frances Perkins was Secretary of Labor in the 1930s.[5] And DOL's recent rulemaking process for issuing the Silica Rule included 14 days of public hearings, thousands of public comments, and engagement with hundreds of stakeholders.[6] The rule was finalized on March 25, 2016.[7]

DOL provided little rationale for the delays of these rules. The announcement of the Beryllium Rule's delay stated that the delay would allow OSHA "an opportunity for further review and consideration of the rule," but it did not include any elaboration on what aspects of the rule deserved additional scrutiny after years of studying the issue.[8] With regard to the Silica Rule delay, DOL stated that "additional guidance is necessary due to the unique nature of the requirements in the construction standard."[9] The Department did not elaborate or provide any substantive rationale for the delay.

We are deeply concerned by the delay of these rules for three main reasons. First, DOL finalized both rules only after lengthy, thorough, and transparent rulemaking processes that included intensive study and engagement with the public and with a wide variety of experts and stakeholders. In contrast, the decisions to delay the rules were made precipitously, with no public engagement and no public analysis of the impacts.

Second, because both of these rules concern workplace exposure to extraordinarily dangerous substances, their delay puts thousands of American workers at risk of contracting diseases like silicosis and lung cancer and may lead to early, painful, and preventable deaths.

Third, we are aware that both of these rules have long been the target of lobbyists from trade groups and other special interests seeking to protect certain corporations' bottom lines at the cost of their workers' lives. These efforts have been ongoing for decades: minutes of a 1996 meeting of the Chrome Coalition, a group of chemical companies, revealed a scheme to "forestall the [Silica] rulemaking" that finally came 20 years later.[10] Earlier this month, those chemical companies got their wish.

The precipitous nature of the delays to these two rules, the lack of public input into these decisions, and the failure of DOL to provide any substantive rationalization of the delays, raise questions about the

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[4] "OSHA to delay enforcing crystalline silica standard in the construction industry." Occupational Safety and Health Administration. *United States Department of Labor* (Apr. 6, 2017). Online at: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=33810.

[5] Levine, M. "The regulation that took more than four decades to finalize." *Politico* (March 26, 2016). Online at: http://www.politico.com/agenda/story/2016/03/the-regulation-that-took-four-decades-to-finalize-000078.

[6] "OSHA's Final Rule to Protect Workers from Exposure to Respirable Crystalline Silica." *Occupational Safety and Health Administration* (accessed April 21, 2017). Online at: https://www.osha.gov/silica/.

[7] "Occupational Exposure to Respirable Crystalline Silica" [final rule]. 29 CFR 1910; 29 CFR 1915; 29 CFR 1926. *Occupational Safety and Health Administration* (March 25, 2016). Online at: https://www.federalregister.gov/documents/2016/03/25/2016-04800/occupational-exposure-to-respirable-crystalline-silica.

[8] "US Labor Department Proposes Delay to Beryllium Rule Effective Date." *United States Department of Labor* (March 1, 2017). Online at: https://www.dol.gov/newsroom/releases/osha/osha20170301.

[9] Hopkins, J. S. "The campaign to weaken worker protections." *The Center for Public Integrity* (June 29, 2015). Online at: https://www.publicintegrity.org/2015/06/29/17522/campaign-weaken-worker-protections.

reasons for and process by which these rules were delayed–and about whether the new DOL leadership intends to ever fully implement them. Every worker should be able to go to their job without the fear of dangerous substances putting their health at risk. We therefore ask for a review of these decisions by your office, including but not limited to:

- What was the rationale for these decisions? Was this rationale justified based on science, sound analysis, and available facts? What analyses or reviews did DOL conduct prior to announcing the delays, and what did they show? Did DOL obtain any new or relevant facts in the time between the finalization of the rules and the announcement of the delays?
- What is the practical impact of the delay on the Beryllium and Silica Rules' implementation and on the rules' purposes and effectiveness?
- Was the decision-making process regarding the delay and the announcement of the delays consistent with the Administrative Procedure Act and with Department rules, processes, and precedent?
- Did DOL officials discuss or plan for additional or permanent delays, new rulemakings, or substantial modifications to the rules at the time of the delay announcements? What was the scope and content of any "further review" of and "additional guidance" related to the Beryllium and Silica Rules, and to what extent did these delays result in further delays and modifications to the rules?
- What was the rationale for and decision-making process regarding the proposed revision of the Beryllium Rule for the maritime and construction industries, which OSHA sent to the White House Office of Management and Budget on April 27?[10]
- Did lobbyists have an improper influence or impact on the decisions to delay the rules? What meetings, phone calls, or other communications did administration or agency officials have with industry representatives or lobbyists during DOL's process of instituting the delays of the rules?

We also ask that you conduct a review of what appears to be a recent OSHA change in policy regarding the dissemination of information about the findings and penalties resulting from its investigations.[11] From 2009 to 2017, OSHA issued press releases whenever it imposed penalties greater than $40,000 for safety and health violations. Lobbyists for trade groups and large employers have opposed these disclosures, claiming that the data will be "distorted" or "misconstrued."[12]

OSHA appears to have changed its disclosure policy in January 2017. Between January 20 and April 12, 2017, OSHA did not release any press releases regarding penalties for safety and health violations,

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[10] Pearson, S. "OSHA Beryllium Proposal Sent to White House, Likely Weakens Rule." *Bloomberg BNA* (Apr. 30, 2017). Online at: https://www.bna.com/osha-beryllium-proposal-n57982087341/.

[11] Sixel, L. M. "OSHA resumes announcing health/safety violators after 3 month pause." *Houston Chronicle* (Apr. 17, 2017). Online at: http://www.chron.com/business/bizfeed/article/OSHA-resumes-announcing-health-safety-violators-11072309.php.

[12] Mavity, H. "Will OSHA's Shame Game Improve Workplace Safety?" *Forbes* (Jan. 8, 2014). Online at: https://www.forbes.com/sites/janetnovack/2014/01/08/will-oshas-shame-game-improve-workplace-safety/#21e6e0a3d248; Hoover, K. "OSHA's injury data disclosure rule could lead to 'public shaming' of companies." *The Business Journals* (May 11, 2016). Online at: http://www.bizjournals.com/bizjournals/washingtonbureau/2016/05/oshas-injury-data-disclosure-rule-could-lead-to.html.

despite issuing more than a hundred initial penalties greater than $40,000 during that period.[13] OSHA issued one single press release on April 12 about its findings in a particular case.[14]

Public communication regarding these findings is important for OSHA to fulfill its mission of "assur[ing] safe and healthful working condition for working men and women," because it informs employers, workers, consumers, and the general public of which companies have illegally endangered their workers and allows them to respond accordingly.[15] For employers, they serve as a reminder to implement require safeguards, which in turn could save workers' lives. For employees, they serve as an impetus to report wrongdoing, thereby protecting themselves and their coworkers.

DOL did not publicly acknowledge or explain its change of course. Given this apparent change of policy, we ask that you review DOL's decision to cease public notifications of major findings over most of this calendar year. We ask that your review include the following questions:

- Whether there has been a change in OSHA's policy with regard to publicizing major findings, and if so:
  - When was this change made, why was it done, and which individuals were responsible?
  - With whom did these individuals communicate in the White House, the transition team, elsewhere in the Administration, or outside entities prior to making this policy change? What was the nature of these communications?
- What is DOL's current policy for publicizing OSHA findings involving initial penalties greater than $40,000? What, if any, plans does DOL have to reexamine or revise that policy in the future? What is its rationale for doing so?
- What, if any other changes in policy has DOL made, in any division of the Department, since January 20, 2017, related to the disclosure, publication, or dissemination of information regarding violations of federal labor- and benefits-related law or regulation?

Please notify us if you have any further questions. We look forward to your prompt review of these matters.

Sincerely,

Elizabeth Warren
United States Senator

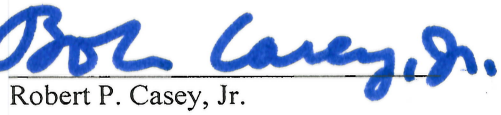
Patty Murray
United States Senator

[13] "Enforcement Cases with Initial Penalties Above $40,000." Occupational Safety and Health Administration. *United States Department of Labor* (accessed Apr. 21, 2017). Online at: https://www.osha.gov/topcases/allstates.html.

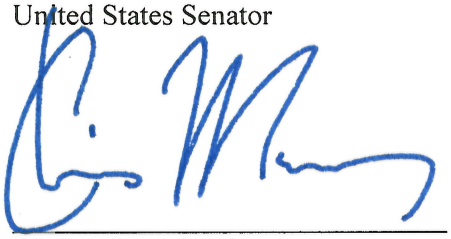
[14] "Employer in fatal Boston trench collapse did not provide safety training and basic safeguards for employees, OSHA finds. [press release]" Occupational Safety and Health Administration. *U.S. Department of Labor* (Apr. 12, 2017). Online at: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=33816.

[15] "About OSHA." Occupational Safety and Health Administration. *U.S. Department of Labor* (access May 1, 2017). Online at: https://www.osha.gov/about.html.

Al Franken
United States Senator



Robert P. Casey, Jr.
United States Senator



Christopher Murphy
United States Senator

Bernard Sanders
United States Senator