Comments of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO.CLC (USW)

on the

Occupational Exposure to COVID-19 in Healthcare Settings

Occupational Safety and Health Administration (OSHA)

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These comments are submitted on behalf of the members of the USW and we appreciate the opportunity to comment. We commend and thank the Secretary of Labor Marty Walsh, Assistant Secretary of Labor for Occupational Safety and Health (OSHA) Douglas L. Parker, and OSHA staff for their hard work in issuing an Emergency Temporary Standard (ETS) on June 21, 2021, which also served as a proposed rule for a permanent standard. The actual language found in the Healthcare ETS is a good start and it provided protections in many workplaces where employers did not have tools or enforcement. We strongly support the ETS becoming a permanent standard in healthcare settings to eliminate or control the exposures of aerosolized SARS-CoV-2 viral particles. This will shift the focus in workplaces from “infection” controls to “exposure” controls when OSHA will be far more effective than the Centers for Disease Control and Prevention (CDC).

As COVID-19 protections are rolled back because of cases not being counted accurately, along with the use of over-the-counter testing kits, healthcare workers continue to be at risk and exposed. Voluntary compliance with the CDC guidelines is not adequate to protect workers and there’s a lack of enforcement. This is one of many reasons why healthcare workers still need a permanent OSHA standard to prevent or control exposures and more. Nursing homes and other workplaces have seen an uptick in COVID-19 cases and as cases continue to cycle, immunity of vaccines is waning, cases will go up quickly as do outbreaks. COVID-19 will be on-going and with us for a long time. Having a permanent standard remains an urgent matter as healthcare workers have

nothing other than OSHA's recordkeeping and personal protective equipment (PPE) standards – unless a workplace is in California, where CalOSHA's Infectious Disease standard also applies. OSHA's PPE standard is important, but in the hierarchy of controls, PPE is the least effective control. However, when respiratory protection is used, an N-95 respirator, or better, must be used to provide the proper protection. The ETS not only helped in hospitals, but greatly benefited nursing homes and other facilities in an innovative way.

Too many healthcare workers have paid the ultimate price as COVID-19 stole their life and ruined their families' lives, while others are still dealing with "long COVID" symptoms. There's no price that can be put on a worker's life and health, regardless of the legal system. A permanent standard can help employers save money when they keep healthcare workers from getting sick, not to mention, the patients and visitors. Other costs that employers can save on include, but are not limited to: overtime to cover vacancies of sick workers, fatigue/burnout, turnover of the workforce, and critical mistakes that can be made due to work overload.

The ETS requirements provided workers and their representatives an opportunity and right to participate in workplace safety until the United States Supreme Court took this and other provisions of the ETS away. Unfortunately, there are still employers who are hostile to having labor-management safety committees and continue resisting this fundamental element of a safety management system. Without an OSHA standard guaranteeing worker access and advocacy in their own safety, unions will have to bargain for a seat at the table, one employer at a time, and workers without a union will be left behind.

We offer our suggestions for improvement to the 1910 Subpart U - COVID–19 Emergency Temporary Standard 1910.502 – Healthcare, in becoming a final standard that will protect healthcare and healthcare support service workers from occupational exposure to COVID-19.

1. Making the Healthcare ETS a Permanent Standard that Covers All Healthcare Workers Without Exceptions is Essential

COVID-19 does not seem to let go of its grip on society, as we try to control this devastating pandemic and get rid of this airborne transmission of viral aerosol. The new virus's variants, like the Omicron BA.2 variant, are extremely contagious. Vaccination rates, while trending towards a positive, still almost 40% of the national population are not yet fully vaccinated. Vaccine hesitancy and misinformation continue to hinder efforts to get booster shots and achieve herd immunity. Isolation and quarantine of those exposed have been and will be vitally important. America's healthcare workers still need robust protections against COVID-19, without permanent protections, they will be at risk. Workplaces have and continue to have outbreaks occurring in different industries and sectors, including USW represented workplaces.
https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases

A strong permanent standard is needed to protect workers against COVID-19 and it will safely promote the economy. Employers and workers will benefit by having a permanent standard for future infectious diseases that will save lives and prevent the spread. The U.S. DOL and the Occupational Safety and Health Administration (OSHA) have a longstanding history of helping employers with compliance and enforcement discretion with employers who are making good faith efforts.

2. One Agency with Authority Needs to Provide a Clear Standard for Employers and Workers

The Centers for Disease Control and Prevention (CDC) in the past has published improved guidance on their webpage only to have it taken down. The CDC reversed itself and claimed the guidelines it posted on coronavirus airborne transmission were wrong. Changes such as this in the CDC's guidelines appear to be about politics and corporate influence rather than science. Any CDC references in the standard must be removed. Having one agency and authority to work with is good for both employers and workers.

This also eliminates any political interference. Standard requirements do not change with no notice as CDC recommendations have been doing.

3. The ETS Could be a Strong Standard with Some Adjustments and Changes and Should Be Made Permanent

Employee Participation

One critical problem with the ETS is the lack of a stand-alone provision for employee participation. The standard must include a new section Employee participation which enables employees and their representatives to effectively participate. Employees have invaluable experience and knowledge of the workplace. Increased participation by employees and their representatives would ensure that those most directly affected by the hazards would have a say in how they are eliminated or controlled. Many federal OSHA standards and voluntary codes contain such provisions. For example, the federal OSHA Process Safety Management Standard contains:

1910.119(c) Employee participation.

1910.119(c)(1) Employers shall develop a written plan of action regarding the implementation of the employee participation required by this paragraph.

1910.119(c)(2) Employers shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this standard.

1910.119(c)(3) Employers shall provide employees and their representatives access to process hazard analyses and to all other information required to be developed under this standard.

The USW believes the standard is effective, but only if employers comply and implement the protections. The standard is based on scientific information, long-standing occupational health and safety practices, and recommendations making it most effective. The protections are important for controlling airborne hazards, which SARS-CoV-2 clearly is. Respiratory protection is clearly defined and required for workers who are deemed at risk. Also, face coverings are clearly defined and required according to previous

mandates (Face coverings shall meet the ASTMF3502 certification for masks), we suggest moving to the specific requirement to use N95 or better respirators. All PPE shall be provided at no cost to employees. More importantly in the hierarchy of controls, ventilation requirements are in line with industry standards per the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE). This helps control the spread of droplet and aerosol transmission. The standard should continue to be a programmatic standard. Instead of it being overly specific and prescriptive, employers are required to implement their own program that fits their workplace using scientific-based and longstanding workplace hazard control practices. The engineering, administrative, and work practice controls highlight the importance of key components for all at-risk workers by using risk assessments, plans, training, and more. Additionally, the key components are based on current OSHA standards and familiar to employers, workers, and employee representatives.

4. Recommendations for Improvement

SARS-CoV-2 is clearly an airborne hazard and healthcare workers provide direct care. Therefore, the hierarchy of controls must be applied as the six-foot rule is not an effective control for airborne transmission of viral aerosol. Airborne aerosol transmission involves viral particles that can float in the air for long periods of time over distances well beyond six feet. Ventilation, reduced number of persons and time in spaces, and other controls must be combined with distancing.

OSHA currently has standards that include the hierarchy of controls, for example, 1910.134 Respiratory Protection and 1910.1030 Bloodborne Pathogens. The bloodborne pathogens (BBP) standard calls for safer needles and they were phased in over a period of time. The permanent OSHA standard for Occupational Exposure to COVID-19 in Healthcare Settings could follow that same process of phasing in engineering controls, for example, NIOSH has lots of information about ventilated headboards and other measures that can be used. OSHA has a history of phasing in other health and safety controls with their standards and they could do the same with COVID-19. COVID patients

in hospitals and other healthcare facilities put staff at elevated risk. This is why the hierarchy of controls is key. The BBP standard is a model that assumes the worst and calls for appropriate precautions until proven otherwise. Screening questionnaires do not work, and most likely get pencil-whipped. Vaccines do not prevent transmission/infection, and the virus can still spread prior to symptoms appearing, including in symptomatic infected persons. Even taking a patient's blood pressure and other tasks puts workers in close proximity to a person. Therefore, quality ventilation and controls are needed to protect workers, regardless of the tasks involved. That being said, on March 29, 2022, the White House held a webinar on ventilation to address COVID and this further demonstrates the need for adequate ventilation to reduce exposures.

Strengthen the involvement of workers and their representatives in the Infectious Disease Preparedness and Response Plan. The language is good, but it happens less often in practice. Workplaces do not have enough trained safety committees to assist with making safer workplaces because the industry has been slow to have workers and their representatives participate in health and safety, outside of the patient safety experience. Active safety and health committee members have proven to be a valuable asset for employers to achieve compliance, and most importantly, protect workers. USW safety reps also conduct regular assessments to proactively identify and rectify problems with the employer. In many of our USW workplaces, the union achieved demands for proper PPE, COVID benefits for those unable to work, and other measures. Some workplaces were even able to change the work flow of employers to segregate COVID unit employees from the general labor pool, staggered break times, or create schedules to keep pools of employees working together to limit exposures. This is why workers and their representatives' participation are key for an employer to maintain safe workplaces. OSHA should ensure their educational materials and enforcement efforts bring attention to this fundamental element like they have with other OSHA standards where employees and their representatives' have participation rights.

Medical removal for known infections, exposures, or when recommended by a medical or public health professional, with removal protections is needed. Employers must maintain the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal until cleared for return to work.

Case reporting requirements – A clearly defined case management system that includes OSHA reporting on outbreak cases (involving two or more) and COVID-19 related fatalities not just record keeping are needed. A COVID-19 related fatality must be reported within 8 hours, and an in-patient hospitalization, COVID-19 outbreak, or confirmed case, must be reported within 24 hours.

In conclusion, a permanent standard is needed to protect workers, as COVID-19 and the new variants are not going away and this will not be the last case of a pandemic that we will have to face in the future. Therefore, A permanent all-inclusive standard will help protect workers from future pandemics. The Standard should be a strong, comprehensive standard that sets clear requirements based off longstanding practices and current science and should be made permanent. We strongly encourage OSHA to move forward with the permanent standard rulemaking with speed in order to ensure all workers are protected from COVID permanently. OSHA cannot simply reply on employers to comply with their obligations under the General Duty Clause, Personal Protective Equipment and Respiratory Protection Standards. Although these standards are important, these controls remain at the bottom of the hierarchy of controls as the least protective means to protect workers against the hazards of COVID-19 in the workplace. The time is now, OSHA must protect workers as the OSH Act provides. The CDC cannot provide enforceable protections. All OSHA standards protect the health and safety of America's workers. Other hazards can cause families to mourn and communities to suffer economically. But the actual injury does not spread beyond the injured worker. If a healthcare worker is injured in a fall, his/her family does not face an increased risk of falls. If a chemical worker contracts leukemia from benzene exposure, he/she will not infect others in his community with cancer. COVID-19 is different. Infections acquired at work can spread far beyond the workplace, as we have seen with nursing homes and meatpacking plants. A permanent

standard will make all Americans safer. We urge the for adoption of a permanent standard without delay.

Respectfully submitted,

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