

**Comments of the United Steel, Paper and Forestry, Rubber, Manufacturing,  
Energy, Allied Industrial and Service Workers International Union, AFL-CIO.CLC  
(USW)  
on the  
1910 Subpart U - COVID–19 Emergency Temporary Standard  
1910.502 - Healthcare  
August 18<sup>th</sup> 2021**

These comments are submitted on behalf of the members of the USW. We commend President Joe Biden for his Executive Order 13999 of January 21, 2021, we thank the Secretary of Labor Marty Walsh, Acting Assistant Secretary of Labor for Occupational Safety and Health (OSHA) James Frederick, and OSHA staff for their hard work on the Emergency Temporary Standard (ETS) as well as the opportunity to comment. The actual language on the Healthcare ETS is a good start. We strongly support it becoming a permanent standard for all workers – no exceptions, and offer our suggestions for improvement.

**1. Making the Healthcare ETS a Permanent Standard that Covers All Workers Without Exceptions is Essential to Protect Working People in the United States**

COVID-19 will not end anytime soon. As fall and winter approach, so does the cold and flu season. People will be moving indoors, ventilation systems may not be adequate, and windows and doors are being closed. We expect an uptick in cases or perhaps yet another wave with increased airborne transmission of viral aerosol. New virus' variants, like the Delta variant that is extremely contagious. Vaccination rates are alarmingly low in many areas of the country, hospitalizations and deaths continue rising, in areas where there is low vaccination rate, there are new outbreaks and high levels of community transmission. Vaccine hesitancy and misinformation continue to hinder efforts to achieve herd immunity. Isolation and quarantine of those exposed has and will be vitally important. America's workers need robust protections against COVID-19, without permanent protections that will include all working people in the United States, 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](https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases)

A strong permanent standard to protect workers against COVID-19 and any future outbreaks from airborne transmitted of viral aerosol deceases, will safely get the United States' economy moving and thriving again. 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 to 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 off 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 ASTM F3502 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 off current OSHA standards and familiar to employers, workers and employee representatives.

#### **4. Recommendations for Improvement**

SARS-CoV-2 is clearly an airborne hazard and 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.

Strengthen the involvement of workers and their representatives' involvement in the Infectious Disease Preparedness and Response Plan. The language is good, but it happens less often in practice. 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. At one USW represented workplace, the safety committee plays a key role in designing, deploying and maintaining 48 sanitizing stations located strategically throughout the workplace. Workers and their representatives' participation is key for an employer to maintain safe workplaces. OSHA should ensure their educational materials and enforcement efforts bring attention to this fundamental element.

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 all 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 all 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. 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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