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November 1, 2025

The Honorable Lori Chavez-DeRemer  
Secretary of Labor  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210  
(Submitted Electronically)

The Honorable David Keeling  
Assistant Secretary of Labor  
Occupational Safety and Health  
Administration  
200 Constitution Ave NW  
Washington, DC 20210  
(Submitted Electronically)

**Re: *Comments Regarding OSHA's Proposed Rule Entitled, "Occupational Exposure to COVID-19 in Healthcare Settings," Docket Number OSHA-2020-0004***

Below are comments of the American Conservative Union Foundation's (d/b/a. Conservative Political Action Coalition Foundation) (hereinafter "CPAC Foundation") Center for Regulatory Freedom (hereinafter "CRF") on the U.S. Department of Labor's (DOL) Occupational Safety and Health Administration's (OSHA) request for comments regarding its proposed rule entitled, "Occupational Exposure to COVID-19 in Healthcare Settings," Docket Number OSHA-2020-0004, published in the Federal Register on July 1, 2025.

CRF is a project of the CPAC Foundation, a non-profit, non-partisan 501(c)(3) research and education foundation. Our mission is to inject a common-sense perspective into the regulatory process, to ensure that the risks and costs of regulations are fully based on sound scientific and economic evidence, and to ensure that the voices, interests, and freedoms of Americans, and especially of small businesses, are fully represented in the regulatory process and debates. Finally, we work to ensure that regulatory proposals address real problems, that the proposals serve to ameliorate those problems, and, perhaps most importantly, that those proposals do not, in fact, make public policy problems worse.

On March 17, 2025, DOL posted a notice in the Federal Register requesting comment on the pending renewal of the collection of information, “COVID-19 Recordkeeping and Reporting in Healthcare Standard.” In its notice, DOL stated that extending authorization of this information collection for three years was necessary to “ensure full compliance with the technical requirements” of the Paperwork Reduction Act (PRA),<sup>1</sup> as a rulemaking to remove the mandatory COVID-19 recordkeeping requirements at 29 C.F.R. § 1910 subpart U “will take time.”<sup>2</sup> On April 16, CRF filed comments opposing the extension of this collection of information, arguing that OSHA’s enforcement stay of COVID-19 reporting requirements “nullif[ied] the practical utility of the information OSHA intends to collect.”<sup>3</sup> On July 1, OSHA issued a proposed rule to remove the agency’s COVID-19 Emergency Temporary Standard and its associated recordkeeping and reporting provisions from the Code of Federal Regulations (CFR).

**CRF appreciates the opportunity to comment on OSHA’s proposed rule and fully supports its proposed removal of the COVID-19-related provisions at 29 C.F.R. § 1910 subpart U, as stated previously in CRF’s comments to OSHA that were filed on April 16, 2025. CRF recommends that, to further OSHA’s compliance with Executive Order 14192 (“Unleashing Prosperity Through Deregulation”) and alignment with ongoing federal policies and investigations, OSHA should review any existing regulations compelling employers to purchase specific medical supplies and equipment.**

## **Introduction**

The coronavirus pandemic, now colloquially referred to as “COVID-19,” drastically expanded the United States’ net health care spending, resulting in a 10.4% increase in 2020, making health care spending 19.5% of the nation’s Gross Domestic Product (GDP) for that year.<sup>4</sup> Despite America’s health care spending decreasing in subsequent years (2022 only saw a 4.6% rise), the growth in health care spending outpaced GDP growth in 2023, culminating in \$4,866.5 billion in health-related expenditures.<sup>5</sup> This increase is due, in part, to the current regulatory scheme which has authorized the federal government to not only bypass manufacturing and certification requirements (*e.g.*, the Food and Drug Administration’s (FDA) Emergency Use Authorizations (EUAs)), but also to forcibly compel employers and regulated entities to purchase certain medical devices and equipment, such as personal protective equipment (PPE). The impact of

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<sup>1</sup> Agency Information Collection Activities; Submission for OMB Review; Comment Request; COVID-19 Recordkeeping and Reporting in Healthcare Standard, 90 Fed. Reg. 12,368 (Mar. 17, 2025).

<sup>2</sup> *Id.*

<sup>3</sup> CPAC Foundation Center for Regulatory Freedom, Comment on Agency Information Collection Activities; Proposals, Submissions, and Approvals: COVID-19 Recordkeeping and Reporting in Healthcare Standard (April 16, 2025).

<sup>4</sup> *Trends in Health Care Spending* (Am. Med. Ass’n, updated Apr. 17, 2025), <https://www.ama-assn.org/about/ama-research/trends-health-care-spending>.

<sup>5</sup> *Id.*

federal agencies' pandemic-era rules heightened domestic dependency on certain medical supplies and, by extension, United States spending on those supplies, as evidenced by the 5% increase in consumers' health-related expenditures from 2019 to 2021.<sup>6</sup>

America's continued increase in health care spending is not likely to be reversed without substantial change to the nation's health care industry and the regulations that govern it. The Centers for Medicare and Medicaid Services (CMS) estimate that, over 2024 to 2033, average national health expenditure growth is projected to outpace that of average GDP growth, "resulting in an increase in the health spending share of GDP from 17.6 percent in 2023 to 20.3 percent in 2033."<sup>7</sup> By still requiring employers to provide COVID-19-related preventative measures and supplies, OSHA's present regulatory framework at 29 C.F.R. § 1910 subpart U continues to perpetuate unmanageable growth in the United States' national health expenditures. The removal of these provisions from the CFR, as noted by OSHA in its proposed rule, will codify lasting regulatory relief for employers from burdensome pandemic-era policies, while also saving employers approximately \$1,587,494 annually.<sup>8</sup>

### **Support for Removing Provisions**

#### **29 C.F.R. § 1910.502(q)(2)(ii)**

One of the provisions in the CFR that OSHA is proposing to remove requires that all employers with more than 10 employees "establish and maintain a COVID-19 log to record each instance identified by the employer in which an employee is COVID-19 positive, regardless of whether the instance is connected to exposure to COVID-19 at work."<sup>9</sup> As the pandemic's initial urgency began to subside at the end of 2021, OSHA stopped enforcing most of 29 C.F.R. § 1910 subpart U, effectively rendering the section's reporting and recordkeeping provisions completely disconnected from OSHA's larger regulatory framework. Furthermore, COVID-19's public health emergency declaration, first issued by the Secretary of the U.S. Department of Health and Human Services (HHS) on January 31, 2020, officially expired on May 11, 2023,<sup>10</sup> indicating that the concerns originally responsible for enhanced COVID-19 reporting measures and mandatory use of PPE are nowhere near as prevalent as they were five years ago. OSHA

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<sup>6</sup> Grace Hill, *How Did the COVID-19 Pandemic Affect Healthcare Spending?*, Beyond the Numbers, Vol. 12, No. 14 (U.S. Bureau of Lab. Stat. Nov. 2023), <https://www.bls.gov/opub/btn/volume-12/how-did-the-covid-19-pandemic-affect-healthcare-spending.htm>.

<sup>7</sup> *NHE Fact Sheet* (Ctrs. for Medicare & Medicaid Servs., updated June 24, 2025), <https://www.cms.gov/data-research/statistics-trends-and-reports/national-health-expenditure-data/nhe-fact-sheet>.

<sup>8</sup> Agency Information Collection Activities; Submission for OMB Review; Comment Request; COVID-19 Recordkeeping and Reporting in Healthcare Standard, 90 Fed. Reg. 12,368 (Mar. 17, 2025).

<sup>9</sup> 29 C.F.R. § 1910.502(q)(2)(ii) (2025).

<sup>10</sup> OIG's COVID-19 Public Health Emergency Flexibilities End on May 11, 2023 Upon Expiration of the COVID-19 Public Health Emergency Declaration (Off. of Inspector Gen., U.S. Dep't of Health & Human Servs. Mar. 10, 2023), <https://oig.hhs.gov/coronavirus/covid-flex-expiration.asp>.

acknowledges this, stating that, “the recordkeeping and reporting provisions are of lesser utility, especially now that COVID-19 vaccines are widely available and the public health emergency has ended.”<sup>11</sup>

### **29 C.F.R. § 1910.502(q)(3)(ii)-(iv)**

This section of the regulations overseeing employer’s COVID-19-related obligations in healthcare settings imposes numerous arduous recordkeeping requirements, mandating that employers provide, upon request, all versions of their required COVID-19 plan; individual COVID-19 log entries; and a version of the COVID-19 log omitting employee names and contact information.<sup>12</sup> This provision faces the same difficulties as that which was mentioned previously, in that the lack of a present public health emergency coupled with changing COVID-19 testing mechanisms and technologies nullifies the applicability and utility of these regulations. In its proposed rule, OSHA correctly notes that “most COVID-19 testing is now through self-administered tests at home and there is no requirement to report positive test results.”<sup>13</sup> Because the reporting requirements for positive test results are not applied consistently across all persons taking the test and do not guarantee all positive COVID-19 cases will be documented, the reporting of positive tests pursuant to 29 C.F.R. § 1910.502(q)(3)(ii)-(iv) is effectively pointless.

### **29 C.F.R. § 1910.502(r)**

Current regulations also require employers to report the following to OSHA:

- “(i) Each work-related COVID-19 fatality within 8 hours of the employer learning about the fatality.
- (ii) Each work-related COVID-19 in-patient hospitalization within 24 hours of the employer learning about the in-patient hospitalization.”<sup>14</sup>

This particular provision has proven to be especially problematic, as researchers reviewing total reported COVID-19 fatalities found that such reporting varied wildly, as “there is no consensus on what to consider as a COVID-19 death.”<sup>15</sup> Inconsistencies in reporting COVID-19 fatalities, such as opting to classify a death as COVID-19-induced when the deceased died primarily due to

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<sup>11</sup> Agency Information Collection Activities; Submission for OMB Review; Comment Request; COVID-19 Recordkeeping and Reporting in Healthcare Standard, 90 Fed. Reg. 12,368 (Mar. 17, 2025).

<sup>12</sup> 29 C.F.R. § 1910.502(q)(3)(ii)-(iv) (2025).

<sup>13</sup> Agency Information Collection Activities; Submission for OMB Review; Comment Request; COVID-19 Recordkeeping and Reporting in Healthcare Standard, 90 Fed. Reg. 12,368 (Mar. 17, 2025).

<sup>14</sup> 29 C.F.R. § 1910.502(r)(1)(i)-(ii) (2025).

<sup>15</sup> Garumma Tolu Feyissa, Lemi Belay Tolu & Alex Ezech, *COVID-19 Death Reporting Inconsistencies and Working Lessons for Low- and Middle-Income Countries: Opinion*, 8 *Frontiers Med.* 595787 (2021).

symptoms of a preexisting underlying condition, make the reporting requirements, even amidst a public health emergency, ineffectual. Furthermore, researchers determined that these differing reporting practices “confuse the comparison of case fatality rates across countries,” and “make it difficult to generate robust evidence to inform policies and strategies to reduce excess mortality from the pandemic.”<sup>16</sup> Given that these provisions failed to ensure that employers in health care settings provide accurate and comprehensive reporting on COVID-19 fatalities and hospitalizations during the pandemic, their utility and applicability have been substantially weakened as the public health emergency has come to an end. Thus, OSHA has appropriately decided to no longer apply recording and reporting regulations to COVID-19, asserting that these requirements have “lost importance and no longer warrant[t] a separate reporting system beyond that required for other diseases.”<sup>17</sup>

### **Compliance with Executive Order 14192**

On January 31, 2025, President Trump signed Executive Order 14192 to “promote prudent financial management and alleviate unnecessary regulatory burdens,”<sup>18</sup> requiring that at least 10 prior regulations be identified for elimination before a new regulation is issued. Section 1 of the order also establishes a new regulatory policy for the federal government, stating that it is the policy of the Trump Administration to “significantly reduce the private expenditures required to comply with Federal regulations to secure America’s economic prosperity and national security and the highest possible quality of life for each citizen.”<sup>19</sup> As demonstrated through OSHA’s proposed rule, the agency explicitly complies with this provision, as subpart U of 29 C.F.R. § 1910 required employers in health care settings to spend hundreds of thousands of dollars on COVID-19 report logs and PPE at no cost to their employees, and removing it is projected to save those employers over a million dollars a year.

Section 2 of this order goes on to reshape the policy of the executive branch, stating that this policy demands that federal agencies and entities “be prudent and financially responsible in the expenditure of funds, from both public and private sources, and to alleviate unnecessary regulatory burdens placed on the American people.”<sup>20</sup> In OSHA’s proposed rule, the agency considers promulgating similar requirements in the future, arguing that, to the extent additional reporting or recordkeeping tools are necessary and appropriate, such tools “could be considered as part of a broader rulemaking that would facilitate employer adoption of more cohesive and

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<sup>16</sup> Garumma Tolu Feyissa, Lemi Belay Tolu & Alex Ezech, *COVID-19 Death Reporting Inconsistencies and Working Lessons for Low- and Middle-Income Countries: Opinion*, 8 *Frontiers Med.* 595787 (2021).

<sup>17</sup> Agency Information Collection Activities; Submission for OMB Review; Comment Request; COVID-19 Recordkeeping and Reporting in Healthcare Standard, 90 Fed. Reg. 12,368 (Mar. 17, 2025).

<sup>18</sup> Exec. Order No. 14,192, 90 Fed. Reg. 9,065 (Feb. 6, 2025).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

consistent recordkeeping policies to address workplace-transmissible diseases.”<sup>21</sup> CRF recommends that, when considering establishing new reporting requirements for workplace-transmissible diseases, OSHA defer to the policy of the executive branch as stated in section 2 of Executive Order 14192. More specifically, CRF urges OSHA to refrain from imposing additional burdensome recordkeeping requirements, as such requirements forcibly compel employers to spend money unnecessarily, violating the provisions of Executive Order 14192.

## **Conclusion**

CRF fully supports OSHA’s proposed removal of the COVID-19 recordkeeping and reporting provisions at 29 C.F.R. § 1910 subpart U. This essential action is not merely an administrative cleanup; it is a direct and necessary step toward fulfilling the mandate of Executive Order 14192 to alleviate unnecessary regulatory burdens and promote prudent financial management. The need for this regulatory sunset is profoundly underscored by the documented financial and security risks inherent in the regulatory structure established during the pandemic.

Reliance on mandatory reporting and employee-submitted test results created significant vulnerabilities for both the private and public sectors. As early as Spring 2020, the FBI warned that employees were submitting fake positive COVID-19 test documentation, a deliberate scam that cost one critical manufacturing company over \$175,000 in lost productivity due to the falsified records.<sup>22</sup> More broadly, the Department of Justice’s coordinated action in April 2022 revealed extensive, large-scale fraud, citing schemes that resulted in over \$149 million in false billings to federal programs, with one case alone involving over \$125 million in fraudulent COVID-19 claims.<sup>23</sup> Furthermore, the reliance on testing data was consistently exploited, with the HHS Office of Inspector General warning as recently as February 2023 that fraudsters were actively offering COVID-19 services to steal personal details, including Medicare information, to fraudulently bill federal health care programs and commit medical identity theft.<sup>24</sup>

Continuing to require the collection or tracking of COVID-19 records, which are proven targets for both internal and external fraud and are now acknowledged to be of lesser utility, runs directly counter to the executive branch’s policy of financial responsibility and regulatory relief. Therefore, CRF urges OSHA to finalize the removal of these provisions immediately and, to

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<sup>21</sup> Agency Information Collection Activities; Submission for OMB Review; Comment Request; COVID-19 Recordkeeping and Reporting in Healthcare Standard, 90 Fed. Reg. 12,368 (Mar. 17, 2025).

<sup>22</sup> Katelyn Polantz, *FBI Warns of Scam Where Employees Submit Fake Covid-19 Test Results*, CNN (Apr. 14, 2020), <https://www.cnn.com/2020/04/14/politics/fbi-warning-fake-coronavirus-test-results>.

<sup>23</sup> Press Release, U.S. Dep’t of Justice, Justice Department Announces Nationwide Coordinated Law Enforcement Action to Combat Health Care-Related COVID-19 Fraud (Apr. 20, 2022), <https://www.justice.gov/archives/opa/pr/justice-department-announces-nationwide-coordinated-law-enforcement-action-combat-health-care>.

<sup>24</sup> Fraud Alert: COVID-19 Scams, Off. of Inspector Gen., U.S. Dep’t of Health & Human Servs. (Feb. 2023), <https://oig.hhs.gov/fraud/consumer-alerts/fraud-alert-covid-19-scams/>.

further align with Executive Order 14192, we recommend the agency review all existing regulations that may still compel employers to purchase specific medical supplies and equipment, thereby ensuring a comprehensive and lasting reduction in regulatory and financial burdens on American businesses.

**CRF appreciates the opportunity to comment on DOL's proposed rule removing the COVID-19-related provisions in 29 C.F.R. § 1910 subpart U, an action formally recommended in CRF comments filed on April 16, 2025. To further cement OSHA's compliance with Executive Order 14192, and to ensure alignment with ongoing federal efforts to combat fraud and reduce unnecessary costs, CRF recommends that the agency expand its review to include and repeal any residual regulations that still compel employers to purchase specific medical supplies and equipment.**

If you have any questions, do not hesitate to contact me at [kmcleroy@conservative.org](mailto:kmcleroy@conservative.org).

Thank you,

A handwritten signature in cursive script that reads "Kiley McLeroy".

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