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August 20, 2021

Mr. Edmund C. Baird
Associate Solicitor of Labor for Occupational Safety and Health
Office of the Solicitor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Docket No. OSHA-2020-0004, Occupational Exposure to COVID-19: Emergency Temporary Standard

Dear Mr. Baird:

The Association for Professionals in Infection Control and Epidemiology (APIC) wishes to thank the Occupational Safety and Health Administration (OSHA) for the opportunity to provide input on the OSHA Occupational Exposure to COVID-19 Emergency Temporary Standard (ETS). APIC is a nonprofit, multidisciplinary organization representing over 15,000 infection preventionists whose mission is to advance the science and practice of infection prevention and control.

APIC supports efforts to improve employee safety, especially during the public health emergency (PHE) that has had a severe impact on healthcare personnel. We commend OSHA for releasing a standard to enforce safe practices. However, the standard comes after nearly eighteen months of experience with COVID-19 in the healthcare setting. Many healthcare facilities already have in place practices and procedures to ensure compliance with state and local regulations, which in turn were based on recommendations from the Centers for Disease Control and Prevention (CDC). While the facilities have diligently worked to balance any tension between state regulations and federal guidelines, OSHA is now implementing a third set of rules. These new regulatory requirements will create confusion and increase the potential to disrupt established competency-based training. Everchanging recommendations and workplace practices have compounded healthcare personnel fatigue and burn-out during the PHE. Introduction of an additional change that is inconsistent and, in some cases, contradictory with the CDC does not seem to be in the best interest of the healthcare workforce. APIC supports many portions of the issued ETS but advises that OSHA should take special efforts to coordinate and align closely with CDC guidance, emphasize vaccination of healthcare personnel, and make allowances for reasonable, evidence-based accommodations and updates.

The value and importance of vaccination of healthcare personnel must be emphasized.

APIC supports OSHA's requirement for employers to provide employees with reasonable paid time off for vaccination and any side effects experienced following vaccination. However, APIC is concerned that the OSHA ETS does not require COVID-19 vaccination for employees, which we know to be the most effective way to protect employees and prevent transmission.[1] For this reason, APIC has joined with

other infection control and epidemiology organizations in a Multisociety Statement supporting COVID-19 vaccination as a condition of employment for healthcare personnel.[2] APIC recommends that OSHA's most crucial employee protection act mandate COVID-19 vaccination for all employees. Recently, the Biden Administration has taken action to mandate COVID-19 vaccination for nursing home personnel.[3] While nursing homes care for many of the highest risk individuals, those same individuals receive care and treatment in other healthcare continuum settings. Without a similar OSHA mandate, there will be a discrepancy between vaccine mandates and vaccination status of healthcare personnel in various settings. APIC is hopeful that the CMS nursing home mandate will quickly be applied to other healthcare settings.

Rather than create a COVID-19 specific standard, this standard should be incorporated into a broader infectious disease standard

APIC does not support making this ETS permanent. If OSHA is going to create a permanent standard, it should not be specific to COVID-19. The COVID-19 PHE will wane, but there have been and will continue to be other emerging pathogens that may lead to pandemics. Each pathogen will have its own modes of transmission, prevention and treatment options, and vaccination opportunities. A permanent OSHA standard should be flexible enough to apply to employee protection efforts for any infectious disease outbreak. This would mean that all outbreak mitigation efforts should be evidence-based according to the specific pathogen causing danger to employees. Since the thoroughness of OSHA's standard development process does not allow for rapid development of emergency regulations for novel pathogens, employees would be best protected by an OSHA requirement that employers adhere to timely public health guidance from the CDC, National Institutes of Health (NIH), Food and Drug Administration (FDA), and other health agencies.

The COVID-19 ETS must align with, and remain consistent with, existing state and federal public health guidance

Since the Department of Health and Human Services declared the COVID-19 PHE in March 2020, most facilities have already conducted a facility-based risk assessment and developed plans to mitigate COVID-19 risk for patients/residents and personnel. These existing COVID-19 plans may not be consistent with the requirements in the OSHA ETS, but in most facilities, COVID-19 plans have been frequently reassessed and revised to comply with the evolving science, literature, public health guidance, and state and local regulations. APIC is concerned that many parts of the ETS do not align with current scientific evidence or CDC guidelines, especially post-vaccination guidance. CDC guidance is updated frequently to capture best practices as our knowledge of virus transmission evolves. Sections relating to patient and employee screening and management [1910.502(d)], physical distancing [1910.502(h)], and physical barriers [1910.502(i)] need to be revised to be consistent with current knowledge surrounding transmission, as indicated in CDC guidance. Although notes within the ETS allow employers to go beyond OSHA requirements to comply with state or local health department regulations or CDC guidance, it does not account for situations where current guidance may conflict with OSHA requirements.

OSHA requirements must be consistent with standard infection prevention and control procedures

APIC supports the use of Standard and Transmission-Based Precautions [1910.502(e)] as a basic infection prevention and control procedure. Transmission-Based Precautions should always be updated according to evolving data on transmission. We appreciate OSHA's direction to comply with CDC guidance. APIC also agrees that cleaning and disinfection [(1910.502(j)] is a basic infection prevention and control procedure that should comply with CDC evidence-based guidance as well as the Environmental Protection Agency (EPA) regulations.

APIC supports the use of appropriate personal protective equipment (PPE) as a basic infection prevention and control procedure. However, the ETS does not account for the severe shortages of all types of medical-quality PPE, especially early in the COVID-19 pandemic. In such circumstances, compliance with this ETS would have been impossible. During the PHE, the CDC, FDA, and National Institute for Occupational Safety and Health (NIOSH) provided continuing guidance on how to prioritize, conserve, and safely reuse and reprocess PPE when supplies were low. APIC recommends that OSHA coordinate closely with FDA, CDC, and NIOSH guidance on PPE for healthcare personnel. Any OSHA standard must allow facilities the flexibility to adapt to extreme circumstances to protect employees during PHEs.

APIC believes that OSHA's definition and list of aerosol-generating procedures (AGPs) must also be consistent with CDC. During the initial absence of such a list from the CDC, many facilities developed their own procedure lists based on their assessment of personnel and patient/resident risk during the PHE. The CDC has since published a list of AGPs.[4] OSHA and CDC agree on several of the AGPs, but OSHA introduces a list that only applies to the postmortem settings. The very procedures listed are performed on patients/residents while they are alive. Limiting those procedures to the postmortem environment will once again create confusion. Each time such a different list is created, it impacts the trust healthcare personnel have in the individuals charged with implementing the latest prevention practice – the infection preventionist. We recommend that OSHA allow facilities to utilize the CDC list of AGPs and the scientific literature along with procedure lists based on their risk assessments.

APIC supports using airborne infection isolation rooms (AIIRs) for AGPs, when available. However, since many facilities do not have AIIRs, or sufficient numbers of AIIRs for all COVID-19 patients/residents during the PHE, APIC supports the ETS allowances for the performance of AGPs in isolated areas in the absence of AIIRs, the recommendation to limit the number of people present during AGPs, and the ETS requirements for post-procedure cleaning and disinfection of surfaces and equipment.

We urge OSHA to align its ventilation requirements with guidance from the CDC and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE), as well as State-mandated regulations.

The ETS must allow healthcare facilities the flexibility to accommodate reasonable, evidence-based alternatives and apply updated guidance based on evolving science

During a PHE, healthcare personnel safety must be addressed promptly. While OSHA's mission is focused on worker safety, the meticulousness required to develop a new standard in an emergency preempts the need for rapidity. We believe that healthcare personnel would be better served by OSHA developing a standard that would allow employers the flexibility to swiftly implement reasonable, evidence-based personnel safety processes that can be updated based on evolving science and public

health guidance. All recommendations should be timely, flexible, easily adaptable, and evidence-based, especially when recommendations include costly and possibly unnecessary items, such as plastic barriers in front of all workspaces occupied by an employee.

APIC appreciates the opportunity to comment on this COVID-19 ETS, and we appreciate OSHA's ongoing efforts to ensure a safe workplace for healthcare personnel. We look forward to working with OSHA to perfect procedures to prevent the transmission of COVID-19 and other infectious pathogens in healthcare facilities.

Sincerely,

Ann Marie Pettis, RN, BSN, CIC, FAPIC
2021 APIC President

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[1] Morbidity and Mortality Weekly Report /April 2, 2021/70(13);495-500

[2] Weber, D., Al-Tawfiq, J., Babcock, H., Bryant, K., Drees, M., Elshaboury, R., . . . Young, H. (2021). Multisociety Statement on COVID-19 Vaccination as a Condition of Employment for Healthcare Personnel. *Infection Control & Hospital Epidemiology,* 1-46. doi:10.1017/ice.2021.322.

[3] Centers for Medicare & Medicaid Services. Biden-Harris Administration Takes Additional Action to Protect America's Nursing Home Residents from COVID-19. August 18, 2021. Available at: https://www.cms.gov/newsroom/press-releases/biden-harris-administration-takes-additional-action-protect-americas-nursing-home-residents-covid-19 Accessed August 19, 2021.

[4] Centers for Disease Control and Prevention. COVID-19. FAQs. Infection Control. March 4, 2021. Available at: https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html#Infection-Control Accessed August 19, 2021.