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Petition to the U. S. Department of Labor – Occupational Safety and Health Administration (OSHA) for an Emergency Temporary Standard (ETS) for Infectious Disease

October 9, 2020

Dear Principal Deputy Assistant Secretary Loren Sweatt:

ORCHSE Strategies, LLC (ORC HSE) is formally petitioning the U. S. Department of Labor, Occupational Safety and Health Administration (OSHA) to issue an Infectious Disease Emergency Temporary Standard (ETS).

ORC HSE became an independent enterprise on January 1, 2014. As the successor to ORC Worldwide and Mercer HSE Networks, ORC HSE has provided a wide array of specialized occupational safety and health services to global businesses for nearly 50 years. Currently, more than 100 large (mostly Fortune 500) companies in over 28 industries are members of ORC HSE Occupational Safety and Health Networks. The focus of these groups is to promote effective and efficient occupational safety and health programs, policies, and practices, facilitate constructive communications between businesses and government agencies responsible for establishing national occupational safety and health policy, and advocate responsible business positions on Agency rulemaking. The activities of ORC HSE's Occupational Safety and Health Networks are based on the premise that providing safe and healthful working conditions is the mutual concern of employers, employees, and government agencies.

We all realize that the United States is in the midst of an infectious disease pandemic from the coronavirus that is affecting workplaces and communities throughout this country. It is continuing to spread through the United States with increasing numbers of infected persons and fatalities. COVID-19 impacts health care providers, emergency responders, police and fire departments, schools and universities, and an untold number of workers in other sectors. OSHA's role in addressing the disease has been limited to providing guidance and compliance assistance in coordination with the Centers for Disease Control (CDC). Without an ETS employers are left on their own to determine the preventive measures that need to be undertaken. In recent months ORC HSE has been repeatedly asked about OSHA's expectations, and what OSHA requires under its existing standards, regulations, and the General Duty Clause (Section 5(a)(1) of the OSH Act). An ETS for infectious disease would provide

important guidance for employers and needed protections for workers by establishing consistent minimum requirements in jurisdictions under federal OSHA and all the OSHA State Plan States.

An ETS would also eliminate confusion and unnecessary burden on workplaces that are already struggling. Due to the federal regulatory void, a growing number of states such as Oregon and Virginia have issued their own ETS or Executive Orders to address COVID-19 in the workplace. As a result, many employers operating in multiple states are faced with confusing and differing requirements from several of the Agency's State Plan States. This causes problems with uniformity and consistency and places an unnecessary burden on employers trying to protect their workers and do the right thing. Consequently, it is imperative that OSHA issue an ETS. All the State Plan States would then be required to implement a standard that is at least as effective as the federal standard. True, OSHA could not pre-empt a State from keeping its own rule (assuming it is "at least as effective"). However, historically, the impact of federal rulemaking in similar situations (e.g., HazCom) has been that most, if not all, of the States ultimately adhere to the federal requirements.

Employers need one standardized set of requirements to address safety and health for their workers in connection with exposure to COVID-19 and other infectious diseases. That can only be accomplished if OSHA takes the lead.

We know that OSHA is serious about its mandate to protect the health and well-being of American workers. Millions of workers are at elevated risk of exposure to the coronavirus during the current pandemic. A significant number of these workers, including those workers who answer the call when an outbreak occurs, are likely to become infected and die. All workers deserve to have confidence that the appropriate resources, equipment, training, and protocols are available in their workplaces to protect them, and to prevent them from infecting other people, including patients, co-workers, the public, and their families when they go home.

Given the significant and growing threat that health care workers, first responders, airline and other transportation workers, social service, and other public-facing workers are now facing from the COVID-19 pandemic, and the immediate need for workplaces to plan, prepare, and respond to this workplace hazard, ORC HSE petitions OSHA to issue an Emergency Temporary Standard to protect working people from occupational exposure to infectious diseases, including COVID-19. Ideally, the ETS would be followed by formal rulemaking.

An ETS is needed because there is no existing OSHA standard or basic regulatory framework that comprehensively addresses an employer's responsibility to protect workers from infectious diseases, other than the Agency's General Duty Clause. In the absence of a set of mandatory infection control requirements that employers must implement, there is no assurance that all workers will be protected from infectious diseases like COVID-19. *ORC HSE recommends that OSHA develop a performance-based ETS allowing employer flexibility in implementation, based upon relevant levels of risk.* In drafting the ETS OSHA may want to consider incorporating

elements of the emergency temporary standard issued by the Oregon State OSHA program.

ORC HSE finds the current OSHA and CDC guidance for COVID-19 to be very well-prepared and thoughtful. The guidance includes multiple elements that are essential in a codified ETS for infectious diseases:

1. Acknowledgment that a range of employees throughout this country are at an elevated risk of exposure to infectious diseases. This includes those who work in health care, laboratories, airline operations, border protection, solid waste and wastewater management, and occupations that require travel to key areas, as well as employees working in manufacturing, construction, maritime, retail, and administrative positions.
2. Incorporation of the Hierarchy of Controls, utilizing engineering controls as the first line of defense, appropriately supplemented by work practice controls and personal protective equipment where needed.
3. Recommending NIOSH-certified N-95 respirators or better and other personal protective equipment (PPE) for health care and other workers at an elevated risk.
4. Outlining a risk-based model for many workers who require different levels of protection depending on the tasks they are performing and their potential exposures.
5. Outlining the elements that employers should incorporate into their exposure or infectious diseases control plan.

A comprehensive response to the potential for COVID-19 in the workplace includes the Hierarchy of Controls, including the use of work practice controls and PPE. In an infectious disease outbreak, clear and strong respiratory protection requirements are necessary. There is evidence of airborne transmission of respirable infectious agent particles (droplet nuclei) from coughing, sneezing, singing, and merely talking. At a minimum, NIOSH-approved N95 filtering face piece respirators for high-risk employees and masks for lower-risk employees within the framework of a respiratory protection program should be required. Comprehensive requirements under an OSHA infectious disease standard would help to prevent the recurrence of equipment stockpile issues this country faced early on in the pandemic.

A comprehensive exposure or infectious disease control plan is necessary to implementation of an effective public health approach to controlling exposure to infectious diseases. This plan would require employers to determine the level of risk their site and their workers face and the activities and operations that put them at risk. An exposure control plan was a central component of OSHA's Bloodborne Pathogens Standard.

At a minimum, an ETS should include the following:

1. Use of the Hierarchy of Controls (engineering, work practice, and PPE controls);

2. Identification and isolation of infectious cases;
3. Immunizations for vaccine-preventable diseases (once a vaccine is available);
4. Standard and transmission-based precautions;
5. Training;
6. Management of health care workers' risks of exposure to infected persons, including post-exposure prophylaxis;
7. Work restrictions for exposed or infected health care personnel. Existing OSHA standards can also be utilized to support the development of infectious disease protections, but these alone are not enough to mitigate exposures to infectious diseases at work;
8. Medical surveillance; and
9. Highlighting and referencing existing OSHA standards that would support the ETS, including:
 - a. Bloodborne pathogens (1910.1030),
 - b. Hazard communication (1910.1200),
 - c. Respiratory protection (1910.134),
 - d. Personal protective equipment (1910.132), and
 - e. Housekeeping and warning signs (1910.141).

The COVID-19 outbreak has been a reminder that the U.S. is not prepared to adequately protect workers on the frontlines from infectious diseases. Given the ongoing occurrence of COVID-19 and the growing death toll – and in light of our experience dealing with conscientious employers that are trying to protect their workers – ORC HSE strongly recommends that OSHA issue an ETS. The ETS should apply to all infectious diseases, including COVID-19. ORC HSE would be pleased to assist and work with OSHA through the issuance of an ETS and in developing a final standard to protect workers from infectious diseases.

Thank you for considering this petition.

Sincerely,



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