



Stephen E. Sandherr, Chief Executive Officer

September 8, 2021

The Honorable Martin J. Walsh
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW, C-2318
Washington, DC 20210

The Honorable James Fredrick
Acting Assistant Secretary of Labor
U.S. Occupational Safety & Health Administration
200 Constitution Avenue, Room: S2315
Washington, DC 20210

RE: Occupational Safety & Health Administration Emergency Temporary Standard for COVID-19
Vaccination or Weekly Testing Mandate for Employers with 100 or Fewer Employees

Dear Secretary Walsh and Acting Assistant Secretary Fredrick

As the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) works to promulgate an emergency temporary standard (ETS)—as directed under Path Out of the Pandemic: President Biden's COVID-19 Action Plan (Action Plan)—requiring all employers with 100 or more employees to ensure their workforce is either fully vaccinated against COVID-19 or mandate that any workers who remain unvaccinated produce a negative test result on at least a weekly basis, the Associated General Contractors of America (AGC) respectfully puts forth the construction industry's deep concerns with and sensible recommendations for this new mandate, assuming it is legally viable.

For background, AGC is the leading association in the construction industry representing more than 27,000 firms, including America's leading union and open general contractors and specialty contracting firms. Many of the nation's service providers and suppliers are associated with AF4.9 (a51 ()1ui6)1.9 (n (e)4.9 (30.4

OVERVIEW

- I. Any OSHA ETS Should Exempt Construction Activities—Other than those Deemed “High Exposure Risk” or “Very High Exposure Risk”—from this ETS Based on the Agency’s own Exposure Assessments
- II. Broadly Applying the OSHA ETS to All Construction Activities Could Exacerbate the Industry’s Workforce Shortage, Significantly Increasing Construction Project Costs and Delays that will Serve to Undermine the Economic Recovery
- III. Broadly Applying the OSHA ETS to All Construction Activities Could Impede the Achievement of the Action Plan’s Goal to Increase Vaccination Rates & Could Lead to Significant Supply Chain Delays for Testing that Could Undermine Efforts Protect Those Who are Ineligible for Vaccines
 - a. Do Not Underestimate the Willingness of Those Who Refuse the Vaccine or Testing to Find Work Elsewhere to Avoid this New Mandate Altogether, Impeding Efforts to Increase Vaccination Rates and Punishing Construction Businesses that Fall Under the Mandate
 - b. AGC Fears that if a Significant Number of Construction Workers, either Unvaccinated Workers in the United States Choose Testing Over the Vaccine, that there Could be Testing Supply Chain Issues that Threaten Both the Safety of those Ineligible for the Vaccine Ability of ETS Covered Construction Employers to Operate Safely & Efficiently
- IV. Any OSHA ETS Should Neither hold Prime/Controlling Contractors Liable for Subcontractors’ Compliance at any Tier nor Subcontractors Liable for their Aorh(c)1 (i)-2 Td [(Nh)-3.4 (eT

While the EEOC does require an employer to participate in the interactive process to consider an accommodation request, it ultimately allows the employer to deny a request that imposes an undue hardship on the business. OSHA must coordinate with the E 0 g /dsl1 mur

VIII. Conclusion

To be clear, proposed ETS could potentially have the unintended effect of causing further damage to the economy as well as unintended consequences to the health and safety of workers and other Americans. As the agency did with the health care ETS, OSHA must take the necessary time to carefully review and craft any such ETS required under the Action Plan. The agency should not expedite the regulatory process for the sake of fulfilling an obligation or avoiding public criticism. And it should focus its efforts on the industry sectors that present the highest exposure risks.

In addition to giving all aspects of such a standard due consideration, we strongly encourage the Administration to identify a "sunset" date to which the ETS will expire. Once the current surge is under control, as we all hope will be soon, a permanent standard covering all industry sectors, especially those with low exposure risk, will be unnecessary.

AGC remains committed to working with you to help ensure safe, healthy, and efficient workplaces. Thank you for consideration of the association's concerns and recommendations. We look forward to providing additional insight as the agency develops this ETS.

Sincerely,