



NATIONAL STONE, SAND
& GRAVEL ASSOCIATION

October 19, 2021

The Honorable Martin J. Walsh
U.S. Secretary of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Secretary Walsh:

On behalf of the 400 members of the National Stone, Sand & Gravel Association (NSSGA), I am writing to share our concerns regarding the obligations of the executive order requiring vaccinations or COVID-19 testing through an Emergency Temporary Standard (ETS) at the Occupational Safety and Health Administration (OSHA) or the Mine Safety and Health Administration (MSHA).

NSSGA represents aggregates producers and those who manufacture equipment and services that support the construction industry. Our members are essential to the work of this country, and we represent most of the crushed stone, sand and gravel produced in the United States. Our members employ more than 100,000 hard-working men and women, across OSHA and MSHA sites, who are responsible for the essential raw materials found in every home, building, road, bridge, and public works project.

Since the start of the COVID-19 pandemic, aggregates operators have taken aggressive actions to protect workers, as they continue to produce America's essential building materials. We support your overall goal of vaccinating Americans against COVID-19 and have launched a national vaccination campaign in concert with our member companies. Our member companies have also taken action to encourage vaccinations, including providing time off to get the shot; additional vacation days; and offering cash rewards and other incentives, valued in the thousands of dollars, to employees and their family members who get vaccinated. NSSGA has also partnered with MSHA to amplify their vaccine campaign message and is working with the agency as they pilot a program to bring vaccine vans to mine sites.

NSSGA shares your strong desire to protect American workers, and we are proud of our partnership with the Department of Labor (DOL), especially MSHA, to achieve this mission. However, we are concerned that this rushed and heavy-handed mandate will drive uncertainty, cost increases, and liabilities that clearly impact our ability as a nation to effectively produce building materials.

First, having the ETS apply to companies with 100 or more employees is already driving workers who are resistant to the vaccine to leave larger companies and work at smaller operations to avoid the mandate. Further, we are seeing other employees, especially those closer to retirement age, leave the



workforce altogether to avoid being vaccinated or forced into weekly testing. All this is already occurring prior to implementation of the ETS. The threat it presents combined with the arbitrary 100-employee application threshold is already impacting the strained workforce at a time when demand for aggregates is at a record high and finding and retaining employees is more difficult for employers than ever before.

Next, similar to the COVID-19 ETS issued in June, we would encourage the vaccine and testing mandates apply to industries that are at the most risk of contracting COVID-19. The aggregates industry has proven for almost two years we can safely operate, even during the height of the pandemic. For our members who are subject to MSHA, their work in quarries is socially distant by nature (for example, a single operator working in the enclosed cab of a haul truck) and the vast majority is done outside. For our members who are subject to OSHA (for example, vertically integrated companies that both operate quarries and have an asphalt paving or construction business) their office workers are able to work from home and construction or paving crews work outside, in well-ventilated areas, or in a socially distant manner. These conditions have been proven to significantly decrease the risk of COVID-19 or other airborne illnesses. NSSGA members are still following federal and local health guidelines, keeping employees separate and masked, encouraging vaccines and testing, and taking many other effective steps to address COVID-19.

It is no secret there are still millions of American families hesitant to receive a vaccine. Regardless of their reasons, it is irresponsible for the federal government to shift the burden of requiring vaccines to employers. Many of those who are hesitant will seek extraordinary measures to avoid being vaccinated. It is inevitable that once enacted, this ETS will drive legal opportunities for advantageous lawyers to exploit our members, targeting them with litigation and legal fees.

Our association, along with many other trades and businesses would appreciate the opportunity to comment and provide input on any ETS prior to its implementation. Working with industry, rather than forcing an untested mandate upon them, will lead to lower costs, less lawsuits and better results that improve the safety of our employees and help end the COVID-19 pandemic. It will also help maintain much-needed stability in the workforce.

We appreciate your consideration of the aggregates industry concerns of the unintended impacts the vaccine mandate ETS will have on our industry. We look forward to being partners with you and your team across the Department as we work together to promote safe and healthy workplaces that produce and supply the building materials needed to build back America.

Sincerely,



W. Johnson
President and CEO
National Stone, Sand & Gravel Association

