



Newsletter September 2021

From the Executive Director: Federal Vaccine Mandate

On September 9, 2021, President Biden announced a COVID-19 Action Plan entitled “Path out of the Pandemic,” a six-pronged national strategy aimed at combating COVID-19, including requirements for private sector employees.

Under the President’s plan, employers in the private sector with 100 or more employees will be required to ensure their employees are fully vaccinated or test negative on a weekly basis. In addition, the plan also requires employers with more than 100 employees to provide paid time off to employees to get vaccinated, and to recover from side effects of vaccination. To achieve this goal, the President has directed the Occupational Safety and Health Administration (OSHA) to develop and implement a new emergency temporary standard (ETS) putting this requirement in place along with details regarding implementation.

Other goals of the plan are:

- COVID-19 vaccinations for workers in most health care settings that receive Medicare or Medicaid reimbursement and expands current regulations mandating vaccinations for nursing home workers in all Medicare and Medicaid-certified facilities.
- Vaccination for all federal executive branch workers, and of employees of federal contractors.
- Increased access to COVID-19 testing, and utilization of masking including increasing free and low-cost testing.
- Increased access to COVID-19 treatments by deploying medical support to hard-hit health systems and hospitals as well as increasing shipments and availability of monoclonal antibody treatments for COVID-19.

While there is still much unknown, the Hardwood Federation team is doing our best to track down the latest information to share with the industry.

Recently, Pat Rita, our Congressional Liaison, participated in a call hosted by the Small Business Administration to discuss the Emergency Temporary Standard (ETS) that OSHA is developing on vaccines and the workplace per the President's directive. Participating on the call were Ann Rosenthal, a Senior Advisor at the U.S. Department of Labor who is the point person for the White House and attorneys from Steptoe & Johnson, a Washington D.C. based law office. It was a very interesting and lengthy discussion that provided some insight into how companies can begin to prepare for mandate implementation.

What We Know

- The ETS will be most likely be issued in 6-10 weeks. Exact timing is unclear.
- The public will not see the ETS before it is issued.
- An ETS is effective IMMEDIATELY upon issuance.
- Public comment will be taken AFTER the ETS is issued.

Recommended Action

While it is unclear when an ETS will go into effect and what exact requirements will be included, the speakers recommended actions companies can take to be prepared.

- If you have unionized employees, sit it down with the union as soon as possible.
- If implemented, the ETS will most certainly require that employers ensure employees follow rules. Employers should line up agreements with vaccination and testing centers now—and try to negotiate arrangements to lessen the cost.
- Update leave policies for vaccinations and the aftereffects of receiving them.
- Revise policies regarding disability and religious objections and undue hardship
- In those states that have their own OSHA plan (so called OSHA plan states), review state laws that are contrary to mandatory vaccinations or vaccination cards that might delay the state from adopting the federal standard.
- In federal jurisdiction states, consider whether the federal ETS will preempt state regulation in the same area of vaccinations.
- Review state laws about compensability of time for testing and payment for testing.
- Assess how many of your employees are already vaccinated and how many will resist vaccination by conducting surveys.
- Regardless of all the above, make sure you have a written COVID-19 plan no matter what your size and train your employees in all aspects of COVID-19 disease prevention.

As noted above, there are still many questions about impacts of a vaccine mandate on business operations, including how such requirements will impact the labor pool for large employers, how multi-employer worksites will be impacted, how those employees who have recovered

from COVID will be classified, who bears the burden for fraudulent testing or vaccine records, and many more.

One final point is that the litigation is a certainty once the ETS is issued. The key question is whether the ETS will remain in place and be enforceable during judicial review or would it be stayed. Labor attorneys with whom we have consulted suggest that likely, the plaintiffs will seek a temporary restraining order and nationwide injunction which, if granted, will stay enforcement. Many federal courts dislike nationwide injunctions, but there are judges who would be inclined to enter such an order. The federal government would then appeal that order immediately to a federal circuit court.

The bottom line is there are more questions than answers at this point, but the Hardwood Federation is now plugged into the process and will keep you apprised about the implementation rules related to private sector employees as well as how companies and individuals may provide input to the process.

Issue Updates

This week Congress juggled multiple “big ticket” legislative items including a continuing resolution (CR) to keep the government operating past September 30, a vehicle to raise the debt-ceiling, which is expected to be met in late October, a bipartisan infrastructure package scored at around \$1 trillion, and the \$3.5 trillion “Build Back Better” plan that encompasses a variety of the Administration’s top policy priorities.

Passage of the CR was achieved on Thursday, effective through early December. Congress will have to pass additional legislation, either another CR or a budget bill, to keep the government open past December. Attempts to link the CR and raising the debt-ceiling failed, meaning the debt ceiling debate will continue next week.

Although the House and Senate have not yet reached a consensus on the size and scope of the Build Back Better plan, earlier in September the House Ways and Means Committee “marked up” legislation to offset the \$3.5 trillion package that includes a list of tax hikes (see below).

Although House Speaker Nancy Pelosi and Senate Majority Leader Chuck Schumer are committed to passage of both the infrastructure package and the Build Back Better plan, the path forward for both packages remains precarious, at best. They have been unable to find the votes to pass either out in the House or to sway Senators Joe Manchin (D-WV) and Krysten Sinema (D-AZ) that the \$3.5 trillion price tag is acceptable. Negotiations on all fronts are continuing today and could continue through the weekend.

Infrastructure Forestry Measures: In addition to funds for roads, bridges and other more traditional infrastructure projects, there are also a number of provisions in the infrastructure bill of interest to those of us in the wood products space, including:

- Truck driver work force development provisions that enable younger drivers, ages 18-21, to drive rigs interstate following completion of rigorous training and apprenticeship programs. Currently, drivers in this age range may only operate within state lines.
- A Women in Trucking Advisory Board to identify ways to encourage women to pursue a truck driving career. Currently, women make up only 10 percent of the truck driving workforce.
- A nationwide vehicle miles travelled user fee pilot program to fund highway programs. The VMT model has been put forward as an alternative to the federal gas tax.
- Provisions authorizing grants to educational institutions or state departments of transportation, in partnership with industry, to develop, test and review new curricula and education programs to train individuals at all levels of the transportation workforce. Further, the new curricula and education programs will provide for hands-on career opportunities to meet current and future needs.
- \$3.37 billion for Wildfire Risk Reduction and \$2.12 billion for Ecosystem Restoration that includes mechanical thinning, targeting mostly federal lands. Removes the current \$30 million funding cap and directs all wood product tariffs to refill the Reforestation Trust Fund—averaging \$120 million a year.

Build Back Better Tax Increases

As noted above, earlier this month, the House Ways & Means marked up its piece of the \$3.5 trillion budget reconciliation package. As anticipated, a number of tax increase proposals totaling \$2.2 trillion on businesses and individuals were included. Perhaps the most impactful for our sector are provisions affecting S-Corporations and other pass-through structures. Overall, the measure would increase the top pass-through rate of around 30 percent and ratchet it up to over 45 percent while also applying the higher rate to a broader base of income.

A few other provisions of note:

- An increase in the top individual rate from 37 to 39.6 percent while lowering the bracket's threshold to \$450,000 for joint filers.
- Expansion of the 3.8 percent Net Investment Income Tax to include all S-Corporation and partnership income above \$400,000.
- A cap on the maximum Section 199A deduction at \$500,000 for joint filers and just \$10,000 for ownership held by estates or in trusts. Section 199A, enacted as part of the Tax Cuts and Jobs Act, allows for a 20 percent deduction for S-Corporations and other pass-through structures.
- A new 3 percent surtax on individuals with incomes exceeding \$5 million.
- Significant changes to estate tax rules, including:

- Reducing the unified exemption to \$5 million per spouse; currently, the exemption level is \$11.7 million per individual and \$23.4 million per couple. And for 2021, the top estate-tax rate is 40 percent
 - Eliminating valuation discounts for assets not used in the active conduct of a trade or business.
- Increasing the top capital gains rate from 23.8 to 25 percent.

The cumulative effect of these numerous rate hikes is to take the top rate paid on S-Corporation and partnership profits from today's 29.6 percent all the way up to 46.4 percent.

For larger businesses organized as C-Corporations, the tax rate is increased to 26.5 percent from 21 percent and there are several provisions raising rates on global multinational corporations.

One piece of good news is that President Biden's proposal to end a tax break on inheritances known as "step-up in basis," which wipes out the capital gains tax on assets passed on to heirs, was not included in the House bill. However, this proposal remains alive in the Senate where Senate Finance Chairman Ron Wyden (D-OR) hopes to include it in the Senate Finance Committee's bill. This proposal has attracted widespread opposition from groups across the economy and will not likely pass in the evenly divided Senate. This is a positive development for family-owned and small to medium sized businesses.

So where do we go from here? The spending figures and revenue raisers in the House committee-produced packages are historic in terms of size and scope. Moderate Democrats in the House that voted against these proposals in committee opined that the chamber was wasting its time on measures that have no chance of becoming law. It is unclear if the votes are there even in the House for a number of these proposals, most notably the Ways & Means approved bill. The House Budget Committee last weekend merged all the committee's bills together into a unified package and sent it to the House Rules Committee, where there will be major surgery on this package to trim it down to secure the requisite votes for House passage.

In the Senate, we expect Senator Ron Wyden (D-OR), Chairman of the Senate Finance Committee, to unveil his tax package any day now. The process will be different in the Senate, where there will be no committee markups. The budget reconciliation package—which will be an amalgam of input from all the policy committees including Finance—will go straight to the Senate floor for consideration.

Wood Innovation Grant Funding

In marking up its piece of the \$3.5 trillion budget reconciliation package, the House Agriculture Committee approved a number of provisions that are positive for the forestry and forest products sector. Most of the \$40 billion in spending in the Committee's Forestry title is geared to forest restoration and resiliency projects and efforts to help forest landowners participate in carbon credit markets. However, there is one provision to note on the wood products side.

The committee approved \$1 billion for the Wood Innovation Grant program (WIG), which is run by the U.S. Forest Service and focuses on promoting wood building materials in residential and commercial construction projects, among other things. This funding level is extraordinary for this program, which has been a relatively small area of focus for the Forest Service since its inception in 2015. The Hardwood team will monitor developments on this proposal as the legislative process unfolds.

While this is certainly a positive development in terms of recognizing the importance of wood products to both the economy and the environment, there is still a long way to go to full implementation and funding. Even if these measures are eliminated or reduced in the reconciliation bill (or the reconciliation bill fails to gain passage), there will be other opportunities to move these funding proposals forward, particularly in the upcoming Farm Bill reauthorization.

Federal Forest Management

Last week, the Chairman and Ranking Member of the Senate Energy and Natural Resources Committee, Senators Joe Manchin (D-WV) and John Barasso (R-WY), introduced the America's Revegetation and Carbon Sequestration Act. The legislation has a couple of noteworthy provisions. One authorizes the Forest Service to collaborate with the National Forest Foundation to set up a system to fund Forest Service timber stand thinning projects off of revenue derived from voluntary carbon market credits. The intent is to establish a non-federal funding stream for mechanical thinning in forests that are at high risk from wildfires and to establish a consistent way of tracking their carbon impacts in terms of effectiveness at reducing wildfire risk and emissions from forest fires, promoting carbon sequestration and potential for storing additional carbon in harvested wood products.

The other provision pertains to mass timber. The bill directs the Forest Service's Forest Products Laboratory to establish a mass timber science and education program to respond to the emerging needs of architects, developers, and the forest products industry, and to work closely with higher-education research programs in administering the program. It also directs the Forest Products Lab to provide assistance to the Secretary of Transportation and to states on constructing wood bridges. And finally, the legislation directs the Department of the Interior and the Forest Service to develop and maintain a running database of its mass timber buildings and to collect data on the embodied carbon stored in these buildings. The bill goes on to direct the Department of the Interior and the Forest Service to prepare a plan to increase the amount of carbon stored in its buildings and to procure certain mass timber structures if feasible.

Senators Angus King (I-ME) and Roger Marshall (R-KS) are cosponsors of the bill.

Mass Timber in NDAA

As we reported last month, the House version of the Fiscal Year 2022 National Defense Authorization Act (NDAA) includes language authorizing a pilot program for mass timber to be used in military construction projects. The bill made it through the House Armed Services

Committee markup up with this provision intact, despite opposition from competing building material groups. The NDAA is on the House floor awaiting consideration this week and the Hardwood Federation team has been doing outreach to help ensure that the provision is not stripped out during floor consideration. Unfortunately, the Senate's version of the NDAA does not include this language, however we will be working with our wood industry allies in contacting Senate Armed Services Committee members to ensure that the House mass timber provision prevails in NDAA conference committee negotiations.

HAPPENING IN THE HARDWOOD WORLD

New HF Hire: The Hardwood Federation is very pleased to welcome Bryan Brendle to our team! Bryan will assume his role as the Hardwood Federation PAC and Policy Manager on October 4. He comes to us from the American Horse Council where he led Policy and Legislative Affairs. Prior to the AHC, Bryan had senior policy roles at the Portland Cement Association as well as the National Association of Manufacturers. His deep knowledge and understanding of federal environmental and tax issues will be a great asset to the Federation as well his many contacts on Capitol Hill and within the Administration.

Bryan is also anxious to dive into heading up the Hardwood Federation PAC program and is looking forward to working with the HFPAC Board to identify new ways to identify Members of Congress that receive HFPAC funds as well as ways to track Congressional activities that support the Hardwood Federation goals. He will also be charged with developing new fundraising opportunities and working with the HFPAC Board to implement them.

We are looking forward to introducing Bryan to the industry at meetings in 2022. Bryan may be reached at bryan.brendle@hardwoodfederation.com and at (202) 463-5186 starting on Monday, October 4th.

Hardwood Industry Meetings Are Happening! Dana Lee Cole is still on the road and very excited to be seeing so many hardwood industry leaders back together again. September travels included participating in the joint meeting of the Penn/York Club and the Pennsylvania Forest Products Association in State College, PA. Thank you to both organizations for their warm welcome.

And it was indeed warm in West Palm Beach where the National Hardwood Lumber Association was back in action after taking a year off due to COVID concerns. It was great to be with the NHLA membership and staff...congratulations on a great Covention!