



# U.S. Department of Labor Emergency Temporary Standard (ETS)

September 22, 2021

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# Background Information

## How does this rule happen?

- The Occupational Safety and Health Act of 1970 (OSH Act) gives OSHA the ability to promulgate an ETS that would remain in effect for up to six months without going through the normal review and comment process of rulemaking
- An ETS has not been used by OSHA since 1983 (historically unsuccessful)
- On Sept. 9, 2021, President Biden announced that OSHA is developing an ETS that would obligate employers with more than 100 employees to require their employees to be vaccinated against COVID-19 or be tested weekly for COVID-19

# Rulemaking Timelines

## Emergency Temporary Standard (ETS)

- Section 6(c) of the OSH Act provides the authority for OSHA to issue an Emergency Temporary Standard (ETS) without having to go through the normal rulemaking process.
- **ETS Requirements:**
- Employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and
- Emergency standard is necessary to protect employees from such danger.

## Regular Proposed Rulemaking

- OSHA rulemaking for new standards has historically been a relatively time-consuming process.
- After publishing a proposed standard, the public must be given a period of at least 30 days to provide comments. In addition, any person may submit written objections to the proposed standard and may request a public hearing on the standard.

# OSHA Rulemaking Timeline

<b>Stage</b>	<b>Activities</b>	<b>Estimated Duration</b>
○ 1	Preliminary rulemaking activities	12-36 months
○ 2	Developing the proposed rule	12-36 months
○ 3	Publishing the Notice of Proposed Rulemaking (NPRM)	2-3 months
○ 4	Developing/analyzing the rulemaking record, including public comments and hearings	6-24 months
○ 5	Develop final rule, Office of Information and Regulatory Affairs (OIRA) submission	18-36 months
○ 6	Publishing the final rule (promulgating the new standard)	2-3 months
	Total estimated duration	52-138 months
	Estimated duration from NPRM to final rule	26-63 months

**Source:** Congressional Research Service (CRS) with data from Occupational Safety and Health Administration (OSHA), Directorate of Standards and Guidance, *The OSHA Rulemaking Process*, October 15, 2012, at [https://www.osha.gov/OSHA\\_FlowChart.pdf](https://www.osha.gov/OSHA_FlowChart.pdf).

# OSHA State Approved Plans

- 22 states have OSHA-approved State Plans that cover both private and state and local government workers
- Idaho does not have an “OSHA-approved State Plan.” In states without “OSHA Approved State Plans”: The state and local government workers are not covered by federal OSHA (Expect them to be exempt from the upcoming federal mandate on vaccinations/testing).
- OSHA State Plans Map and FAQ’s
- <https://www.osha.gov/stateplans>
- <https://www.osha.gov/stateplans/faqs>

# Resources

- NCSL is tracking legislation related to the COVID-19 vaccine, including mandates and reporting, under “Health: Vaccine” in our COVID-19 database: <https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx>
- CRS Report: <https://sgp.fas.org/crs/misc/R46288.pdf>



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