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March 25, 2020

The Honorable Christopher Krebs
Director
Cybersecurity and Infrastructure Security Agency
U.S. Department of Homeland Security
Washington, D.C. 20528
Sent via email to: CISA.CAT@cisa.dhs.gov

RE: Request for Technical Corrections to *Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response (Guidance)* issued on March 19, 2020.

Dear Director Krebs:

The Associated General Contractors of America (AGC)ⁱ, the largest national commercial construction trade association representing more than 27,000 firms including America’s leading general contractors, specialty contractors, service providers, and suppliers, appreciates the efforts of the Cybersecurity and Infrastructure Security Agency to help the nation combat the novel coronavirus (COVID-19) outbreak, in part, through the issuance of *Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response (Guidance)* on March 19, 2020.

Unfortunately, issues have arisen throughout the country as a result of a lack of clarity in the Guidance surrounding the standing of the construction industry and the essential nature of its workforce. AGC and many of its 89 chapters—located in every state, Washington, D.C., and Puerto Rico—and members are reporting confusion at all government levels. Without clarifying the Guidance, the essential work undertaken by the industry will continue to be impeded.

To address this, AGC respectfully requests that the list of “Essential Critical Infrastructure Workers” in the Guidance be revised to explicitly include all construction workers. This change is necessary because the construction workforce is critical to the operations of the identified critical infrastructure sectors, as underscored by a recent joint statement of construction management and building trades unions partners.ⁱⁱ

Why the Construction Industry and Its Workforce Are Essential & Safe

The construction industry and the work it performs is vital to the 16 critical infrastructure sectors and must remain in operation unimpeded to respond to this outbreak and the challenges to come. Specifically, construction workers’ skills are essential now and in the coming weeks to construct, maintain, and repair all facets of the nation’s infrastructure; to build temporary health facilities; and to retrofit or expand existing ones. Moreover, any responses to natural disasters that

may occur must be immediate. Mobilizing the men and women of the industry will be more expedient if they are already working.

The industry has long placed a heavy emphasis on worker safety and is well positioned to mitigate the risks related to the COVID-19 outbreak. Along with its organized labor partners, the industry continues to closely monitor and provide guidance on all recommended health and safety job site precautions for its workers so that proper measures are deployed in order to ensure a safe work environment.ⁱⁱⁱ

Concerns with the Guidance and its Accompanying List of Critical Infrastructure Workforces

The collective Guidance includes two parts: (1) an introductory memorandum; and (2) a list of critical infrastructure workforces deemed essential. The memorandum states that the accompanying list: “identifies workers who conduct a range of operations and services that are essential to continued critical infrastructure viability, including staffing operations centers, *maintaining and repairing critical infrastructure* [emphasis added], operating call centers, *working construction* [emphasis added], and performing management functions, among others.” Even though it appears clear from this language in the memorandum that construction should be included under the critical infrastructure workforces on the list, the term construction is not explicitly listed in *all* the further descriptions of those critical infrastructure workforces.

The absence of the word “construction” from many of the critical infrastructure workforces descriptive, bulleted language on the list has become problematic. Many state and local governments appear to be ignoring the memorandum and evaluating only the descriptions included under the various listed critical infrastructure workforces. In the few instances where construction is noted or, perhaps, implicitly referenced in the list, significant confusion has arisen. Examples of the language where the term “construction” may be implicitly or explicit include:

- For the Water and Wastewater sector, the list only extends to employees needed to operate and maintain drinking water and wastewater/drainage infrastructure.
- For the Public Works sector, the first bullet only addresses “Workers who support the operation, inspection, and maintenance of essential^{iv} dams, locks and levees”; and while the second bullet includes the “construction of critical or strategic infrastructure”, it is buried within that bullet and is not clearly defined. For reference, the current language states: “Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues.”
- For all other identified sectors, the term “construction” is inexplicitly absent, as in the Healthcare/Public Health sector, where the industry stands ready to support the U.S. Army Corps of Engineers build additional medical facility capacity^v.

Without such revisions to explicitly incorporate all construction workers in the list, AGC has seen and wants to avoid states and localities creating a confusing patchwork of regulations that would inhibit the full industry’s essential role in helping address the COVID-19 outbreak and protecting national security. Already, AGC and its chapters contended with the city of Boston^{vi} and the Pennsylvania Department of Transportation^{vii} halting construction projects last week. The AGC Chapter of New York State had to seek, and ultimately, did receive clarification from a state agency

that all construction was designated essential under Governor Andrew Cuomo’s “New York State on PAUSE” Executive Order^{viii}.

Recommended Technical Correction to the Guidance and List

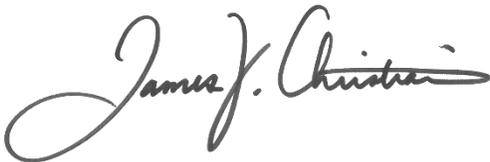
At a minimum, AGC requests that DHS make the following revisions to the list to help eliminate confusion among states, localities, and the construction industry as whole:

- Incorporate workers that “construct” and “repair” as applicable in the following sectors: Healthcare/Public Health (as applicable to building medical facilities, for example) Energy; Water and Wastewater; Transportation and Logistics; a Communications and Technology; Critical Manufacturing (which is needed to supply construction response and recovery efforts); Chemical; Other Community-based Government Operations and Essential Functions; and Defense Industrial Base (for which construction workers build and repair military bases, hospitals and medical clinics, among others).
- Ensure that references to workers who construct or repair critical infrastructure are done in such a way as to not exclude or limit workers who perform those functions. For example, one of the bullets in the Water and Wastewater section, incorporates workers who perform repair functions, but limits it to “workers who are repairing water and wastewater conveyances.”
- Insert an opening sentence prior to the bullets in the Public Works section that provides a broad, but not exhaustive, explanation for what is considered a public work facility.
- Insert “construction” and “repair” and strike “essential” in the first bullet in the Public Works Sector so that it reads as follows: “Workers who support the construction, repair, operation, inspection, and maintenance of dams, locks, and levees.”
- Insert “construction” and “repair” and strike “essential” and in the second bullet in the Public Works Sector so that it reads as follows: “Workers who support the construction, repair, operation, inspection, and maintenance of public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues.

Conclusion

AGC thanks the Department for its efforts to address the impacts of COVID-19 and appreciates your consideration of this request to explicitly include all construction workers in the list of “Essential Critical Infrastructure Workers.” If you have any questions or require additional information, please contact me at jimmy.christianson@agc.org.

Sincerely,



James V. Christianson
Vice President, Government Relations

ⁱ AGC contractors are involved in all aspects of nonresidential construction and are building the nation’s public and private buildings, highways, bridges, water and wastewater facilities, locks, dams, levees, airports, military bases and hospitals, among other things.

ⁱⁱ nabtu.org/press_releases/agc-nabtu-statement-calling-on-govt-officials-to-include-construction-as-an-essential-service-during-shutdowns

ⁱⁱⁱ Id.

^{iv} Here, the term “essential” before “dams, locks and levees,” is problematic. Locks, dams and levees are all generally essential to commerce and flood risk mitigation, among other things. The use of the term “essential” makes it seem like some of these structures are not essential. As such, we recommend striking the term “essential.”

^v enr.com/articles/48967-army-corps-of-engineers-launches-multistate-push-to-add-hospital-capacity

^{vi} City of Boston, “Construction activity to be suspended in city; library locations, bcyf centers to close,” March 16, 2020. <https://www.boston.gov/news/construction-activity-be-suspended-city-library-locations-bcyf-centers-close> (accessed March 24, 2020).

^{vii} Pennsylvania Department of Transportation, “PennDOT Closes All Driver, Photo License Centers, Extends Expiration Dates and Suspends Construction in Response to COVID-19,” March 16, 2020. <https://www.penndot.gov/regionaloffices/district-11/pages/details.aspx?newsid=4210> (accessed March 24, 2020).

^{viii} Governor Andrew Cuomo, “Governor Cuomo Issues Guidance on Essential Services Under The 'New York State on PAUSE' Executive Order,” March 20, 2020. <https://www.governor.ny.gov/news/governor-cuomo-issues-guidance-essential-services-under-new-york-state-pause-executive-order> (accessed March 24, 2020).