

### **Additional Considerations from EO 12866 Meetings**

DOL's assertion that the rule will not have costs to businesses is incorrect. To demonstrate the types of costs businesses will incur, we have compiled the below summary.

- **Loss of production** – At the very least, businesses may need to halt operations due to the presence of external parties and the safety risks associated with their presence on-site. Additionally, many contracts impose liquidated damages for project schedule delays.
- **Dismissal of employees for the day** – Due to a complete work stoppage and to prevent inappropriate and unnecessary contact between third parties and employees, businesses may need to excuse employees for the day.
- **Expanded inspection time costs**- We foresee inspection times increasing due to third-party involvement, potentially expanding the scope of inspections. These parties might pinpoint additional areas for inspection, placing pressure on COSHOs to issue citations beyond the intended scope. COSHOs who resist third-party input may face accusations of bias, potentially prolonging investigations and inflating costs. This situation exacerbates existing operational challenges, particularly considering OSHA's understaffing.
- **Employee reallocation**- Businesses will need to designate chaperones for third-party attendees to ensure they stay in safe areas and do not disrupt equipment, materials, or operations by roaming around the worksite. Similar challenges have been encountered by ARTBA members in the past.
- **Reputational harm**- Third parties with agendas may exploit their access to gather information, aiming to tarnish the company's reputation and coerce them into actions such as supporting a unionization campaign or making donations to environmental groups to cease harassment. Companies will incur costs in responding to requests or demands from these third parties, stemming from the information obtained through their access while accompanying the COSHO.
- **Third-party liability claims**: There will be expenses associated with defending third-party liability claims and related costs. Plaintiff lawyers, sometimes referred to as "ambulance chasers," could potentially access an active accident scene, compromising the company's defense. They might exploit this access to recruit

new clients, essentially turning it into a sales opportunity.

- **Rule familiarization:** Time will be required to train safety staff on rule changes and establish standard operating procedures for managing OSHA inspections. Managers and employees need to be educated in these new procedures, necessitating significant investment in development and training hours, thereby incurring substantial costs for the company.
- **Additional legal expenses:** Businesses may establish policies requiring OSHA to obtain a warrant from a judge to access the worksite for inspections. In these instances there may be legal costs incurred by a business and that third parties would also need to request access from the judge, with the judge likely requiring good cause before granting access.