



April 30, 2021

Ms. Sharon Block
Associate Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th St. NW
Washington, DC 20503

Dear Administrator Block:

On behalf of the National Retail Federation (NRF), thank you for the opportunity to share retailers' efforts to mitigate the spread of COVID-19 within their workplaces and reiterate NRF's opposition to the issuance of an Emergency Temporary Standard (ETS) by the Occupational Safety and Health Administration (OSHA) regarding COVID-19.

NRF is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and internet retailers from the United States and more than 45 countries. Retail is the nation's largest private-sector employer, supporting one in four U.S. jobs — 52 million working Americans. Contributing \$3.9 trillion to annual GDP, retail is a daily barometer for the nation's economy.

On April 26, 2021, over 13 months after the commencement of the pandemic, Biden Administration officials submitted regulatory text to the Office of Management and Budget for consideration, thus beginning the process to promulgate an ETS to prevent the spread of COVID-19. This action is unnecessary, legally questionable and potentially counterproductive.

Over the past 13 months, retailers have invested tens of billions of dollars to mitigate the spread of the virus. Our members have implemented mask requirements, capacity limits, social distancing rules, traffic flow floor markings, and plexiglass partitions. We have repeatedly and extensively consulted with the Centers for Disease Control and Prevention (CDC), the National Institute of Occupational Safety and Health, state and local health agencies, our own safety and health experts, and OSHA itself to learn as much as we can about the virus and how to stop its spread.

Our industry's efforts have been enhanced by the rapid development of effective vaccines and the distribution thereof. As of April 27, 2021, CDC is reporting that 141.8 million people, 42.7% of the total population, have received at least one dose of the vaccine. On average, 2.7 million Americans receive a dose of a COVID-19 vaccine every day.

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This combination of safety practices and increased vaccinations has resulted in dramatically safer workplaces. As President Biden stated early this week, “Cases and deaths are down dramatically and are continuing to fall.” As such, there is little to no real imperative for OSHA to declare a sudden “emergency” and issue a standard at this time.

Moreover, there remains little legal justification for issuance of an ETS. While Section 6(c) of the Occupational Safety and Health Act of 1970 gives OSHA the ability to promulgate an ETS and avoid the normal review and comment process of rulemaking, it requires that OSHA demonstrate that employees are exposed to “grave danger” from exposure to substances or agents determined to be toxic or physically harmful and that an ETS is “necessary” to protect employees from such danger. The extensive efforts by the retail industry, especially when combined with expanded vaccinations, undermine any argument that COVID-19 continues to pose a “grave danger” to American workers, much less that an ETS is necessary at this time.

NRF has consistently maintained that a rigid, one-size-fits-all emergency regulation is unnecessary, but issuance at this point could be counterproductive. Retailers’ approaches to virus spread mitigation have repeatedly adapted over the past 13 months as scientific experts’ knowledge about the nature of COVID-19 and, resultantly, CDC guidance has evolved. An inflexible, mandatory ETS will only freeze in time one set of mitigation protocols, thus impeding retailers’ ability to adjust to the still evolving understanding of the nature of this hazard.

Issuance of an ETS will be harmful to the economy as a whole. As we begin to exit a global pandemic that has already imposed substantial economic hardship, employees should be able to return to work – and consumers to stores and restaurants – with confidence. On the same day the Administration began promulgation of an ETS, it also announced the easing of mask usage guidelines. This mixed messaging on COVID-19 undermines our much-needed economic recovery.

For these reasons and others, the imposition of a one-size-fits-all standard – especially one promulgated without the benefit of the normal notice and comment process – could hinder, not accelerate, employers’ efforts to protect their employees from the dangers of the COVID-19 virus. In lieu of issuing an emergency standard, we recommend OSHA continue to issue robust industry-specific guidance on how employers can best implement CDC guidance and best practices.

In closing, American retailers have prioritized and will continue to prioritize the health and safety of our employees and our customers. We appreciate the Administration’s focus on this issue and look forward to working together to ensure the safety of workers nationwide.

Sincerely,



David French
Senior Vice President
Government Relations