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Vice President

Infrastructure, Innovation and Human Resources Policy

March 18, 2021

James Frederick
Principal Deputy Assistant Secretary of Labor
Occupational Safety and Health Administration
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Principal Deputy Assistant Secretary Frederick,

As OSHA continues to follow President Biden's Jan. 21, 2021, executive action and consider whether any emergency standards on COVID-19 are necessary, the National Association of Manufacturers would like to provide OSHA with input to support ongoing deliberations. The majority of manufacturers have remained operational since the beginning of the pandemic and have learned firsthand what must be done to keep employees safe and reduce the risk of COVID-19 at manufacturing facilities. The NAM supports a collaborative approach to workplace health and safety to protect workers and mitigate the risks associated with the pandemic. As we are living and working in unprecedented times, it is only appropriate that we approach an ETS in different way than may have been contemplated in the past to assure alignment with the contemporary health and safety processes already put in place by manufacturers to respond to the evolving dynamics of COVID-19.

To that end, the NAM requests that OSHA consider the following input from manufacturers. Many of these recommendations are from manufacturers that operate in states that have issued an ETS. The recommendations account for the importance of avoiding confusion, inconsistencies and interruptions to essential operations so that our country can emerge safely from the pandemic. If OSHA is to develop and implement a standard, manufacturers recommend that:

- A standard should align with guidance from federal health officials and should respond quickly to evolving CDC guidance, especially as more Americans receive the COVID-19 vaccine;
- A standard should recognize the vast differences in physical characteristics of workplaces;
- Any new employer mandates should consider the nationwide supply and manufacturing capability of COVID-19 tests and personal protective equipment; and
- OSHA should consider good-faith efforts of employers to comply with a potential ETS.

The public should have an opportunity to comment on a potential ETS, given the significant changes to ongoing business operations and workplace policies. While the emergency nature of an ETS may allow OSHA to forgo the traditional notice-and-comment period, we urge OSHA to allow all stakeholders to submit comments, which will promote our shared goal of keeping workers safe during the pandemic.

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A standard should align with guidance from federal health officials and should respond to evolving CDC guidance.

OSHA standards are not traditionally flexible mechanisms that allow for updates or changes due to evolving guidance from public health officials. As more is learned about COVID-19 and its variants, as well as mitigation strategies, OSHA should consider how it will swiftly update any requirements in an ETS to respond to evolving health recommendations. This is especially important given that President Biden recently stated that every American will be eligible to receive the vaccine by the end of May.¹

Manufacturers have successfully limited the spread of COVID-19 at individual facilities by rapidly changing operations and procedures as health officials update recommendations. For example, as the CDC learned that facial coverings are effective countermeasures against COVID-19, manufacturers did not wait for new standards or regulations before implementing strict mask requirements in the workplace. Despite recent actions by states to lift mask mandates, manufacturers are continuing to enforce strict mask requirements at their facilities.

In its current deliberations, OSHA should pay particular attention to the rollout of the COVID-19 vaccine and rapidly changing CDC guidance. If the agency does not update ETS requirements promptly or fails to account for employees who have received the vaccine, employees may be unnecessarily removed from the workplace and the production of essential products will be slowed.

For example, OSHA should refrain from replicating the current Cal/OSHA ETS requirements for individuals who have been fully vaccinated. Although the CDC released new guidance on Feb. 11 stating that individuals who have been fully vaccinated do not have to quarantine if they have close contact with a person who has COVID-19 and they are not experiencing symptoms,² Cal/OSHA has stated that workers and businesses must follow the outdated quarantine recommendations issued in 2020, even if a worker is fully vaccinated.³ Manufacturers have shared that Cal/OSHA is forcing employers to make a choice whether to follow current CDC guidance or to follow differing Cal/OSHA guidelines. Recommendations from public health officials should be consistent, and employers and employees should not be forced to choose whether to follow the guidance of OSHA, CDC or state health departments.

Manufacturers have been operating under a patchwork of conflicting local, state and federal recommendations, which causes legal uncertainty and confusion about the most effective COVID-19 countermeasures. It will be critical that any nationwide standard provide a mechanism for updating its rules quickly as CDC and health officials learn more about COVID-19.

A standard should facilitate compliance.

Manufacturers have shared that the Virginia standard provides responsible and appropriate rules by allowing businesses to identify their risk level and assign rules accordingly.⁴ In the event of a federal standard, manufacturers would benefit from good-faith compliance

¹ <https://twitter.com/POTUS/status/1366863233538228233?s=20>

² <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html>

³ <https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html#vaccines>

⁴ <https://www.doli.virginia.gov/wp-content/uploads/2020/07/RIS-VR-FINAL-COVID-19-Emergency-Temporary-Standard-FOR-PUBLIC-DISTRIBUTION-final-July-23.2020.pdf>

protections, as well as detailed and thorough information on how a business can self-identify its risk level. Additionally, in an effort to streamline and speed up compliance, employers should not be required to perform a hazard assessment for each employee in a workplace; many employees operating in groups tend to stay in the same location and interact with coworkers in a similar manner. OSHA should allow employers to categorize or group workers and tasks within a facility.

OSHA should also consider providing businesses with compliance assistance for any requirements to maintain six feet of distance between employees in facilities where social distancing is not possible. Manufacturers have devoted significant resources to restructuring and retooling production lines since the pandemic began, but, in some cases, employees may be operating within six feet of each other. In these circumstances, manufacturers have closely followed CDC recommendations and implemented strict COVID-19 countermeasures, including, but not limited to, PPE, physical barriers, increased ventilation and air purifiers. OSHA should allow manufacturers to continue following CDC recommendations in situations where six feet of distance between employees is not possible.

A standard should consider the supply and manufacturing capability of COVID-19 tests and PPE.

Our country must have readily available testing resources to fight COVID-19. Despite additional funding from congressional relief packages, testing shortages in areas across the country have been a challenge.⁵ While we are currently in a downward trajectory in terms of positive cases, a new variant our community outbreak can quickly change the circumstances and availability of tests.

Manufacturers have shared that the testing requirements contained in the California ETS have presented challenges from a resource and compliance perspective. If companies choose to send employees to free testing centers, the time spent waiting in line and for results can amount to hours or days.⁶ If employees are required to remain outside the workplace while awaiting COVID-19 test results, absenteeism rates could rise, negatively impacting manufacturing operations. In December, the manufacturing industry had its highest rate of employee absenteeism since the pandemic began.⁷ If a company decides to purchase and administer the tests rather than sending workers to a free testing center, the costs can be tens or hundreds of thousands of dollars because of the expanded requirements of which employees need to get tested.

The NAM recommends that OSHA research and study the potential widespread impacts of mandating N95 or ASTM-standard masks in a potential ETS. If OSHA were to mandate that workers must wear N95 masks or masks that follow new ASTM standards⁸, supplies could quickly diminish due to the demands and even small businesses could be priced out of the marketplace. Moreover, OSHA should also consider grandfathering current mask supplies that manufacturers have already purchased if the masks meet a current appropriate standard set by a recognized standard-setting body or federal agency such as the FDA.

⁵ <https://www.nytimes.com/live/2021/03/01/world/covid-19-coronavirus>

⁶ <https://abc7.com/coronavirus-los-angeles-covid-dodger-stadium-testing-mayor-eric-garcetti/7898937/>

⁷ <https://data.bls.gov/timeseries/LNU02006735>

⁸ <https://www.nbcnews.com/shopping/apparel/face-mask-standards-n1257753>

Readily available supply in any mask mandate is important to ensure that essential businesses of all sizes can remain in compliance and purchase masks for their employees. If OSHA decides to add minimum mask requirements to a potential ETS, the requirement should allow employers to continue mandating that employees wear masks and facial coverings that the CDC has said are proven to significantly reduce the spread of COVID-19 when worn correctly⁹. Notably, the CDC is still recommending that the general public not use N95 respirators and that they be reserved for health care personnel.¹⁰

OSHA should consider good-faith efforts of employers to comply with a potential ETS.

Manufacturers are going above and beyond CDC guidance to protect team members despite unprecedented challenges caused by the pandemic. The most consistent sentiment shared with the NAM from our members is “the safest place for workers is at work,” because of the strict requirements that companies place on all employees and consistent training on COVID-19 countermeasures. As OSHA determines whether to issue an emergency standard, it should consider exercising its enforcement discretion to offer employers ample time to comply with new requirements.

New OSHA rules and definitions require significant time to review and implement, especially if the rules are not clear. In California, NAM members shared that they spent weeks deliberating complex and contradictory requirements in the new Cal/OSHA standard. Manufacturers reported conflicting or unclear definitions of “outbreak” and “exposed workplace” and struggled with the additional testing and paid leave requirements that accompany the definitions. Even though Cal/OSHA has released guidance and stated additional compliance material will be released, manufacturers are responsible for interpreting these definitions themselves. This uncertainty takes resources, including on-site safety managers, away from the important job of providing safe workplaces.

If OSHA intends to issue an ETS, manufacturers recommend OSHA introduce a public comment mechanism ahead of any official action to allow manufacturers to share best practices and innovative solutions that have proven effective at stopping the spread of COVID-19 for the benefit of all businesses and workers. Manufacturers believe in protecting the workplace the right way and have fully embraced masks, social distancing and de-densifying the workplace among many other important measures. The vaccine is a welcome countermeasure to help bring our economy and society back from the depths of uncertainty and darkness we faced throughout the pandemic. We believe in the shared responsibility to protect workers and workplaces. A robust economic recovery requires us to be collaborative and cooperative in ways we have not previously considered and aligned in our goals to stamp out COVID-19. Our request is that OSHA consider the recommendations in this letter to ensure that manufacturing workers are protected and manufacturers are able to lead our nation’s economic and health recovery.

Sincerely,



⁹ <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

¹⁰ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>