



March 30, 2010

OSHA Docket Office
Docket No. OSHA-2010-0004
Technical Data Center, Room N-2625
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The National Retail Federation (NRF) is pleased to submit comments in response to the Occupational Safety and Health Administration's (OSHA) stakeholder meeting: OSHA Listens (Docket No. OSHA-2010-0004).

By way of background, NRF is the world's largest retail trade association and the voice of retail worldwide. NRF's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the U.S. and more than 45 countries abroad. In the U.S., NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers and generated 2009 sales of \$2.3 trillion.

General Comments

NRF member companies are proud of their strong workplace safety programs and their overall commitment to workplace safety and health. Retail establishments vary by format, distribution channel and location, and as such, retailer's workplace safety programs differ as well. There are a number of common elements shared by retail companies, however. For example, building design and maintenance have many safety elements. Engineering controls, such as fire sprinklers/suppression, exist in retail facilities. Employee training on identifying hazards and on accident prevention techniques is vital. Use of Material Data Safety Sheets (MSDS), ladder safety, proper merchandise lifting techniques, and notification of renovation work and restricted areas are just several examples of similar actions taken to help ensure a safe workplace environment. It is also a common practice for companies to review their workplace incidents to determine trends and opportunities to do things differently, and to meet regularly with employees.

Many larger NRF members have accident prevention teams, which include employees, to discuss workplace safety issues and to develop ideas. Safety topics are consistently discussed in store and other facility meetings.

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The experience of NRF member companies demonstrates that employer and employee collaboration is the most important of all the elements that go into an effective workplace safety program. Management must constantly train employees in safety hazards and accident prevention techniques, and seek to engage them in implementing that training and playing an active role in workplace safety. A constant focus on employer and employee collaboration and the high quality of their safety know-how means a safer workplace.

Through such efforts, including those which focus on employee involvement, the number of workplace safety incidents in private industry establishments is on a downward trend. U.S. Bureau of Labor Statistics (BLS) data indicates that “incidence rates for injuries and illnesses combined among private industry establishments declined significantly in 2008 for all case types.”

In retail establishments, injury and illness figures compiled by BLS continue to show a downward trend as well. Injury and illness rates continue to decline year to year in all categories, including: recordable cases; cases involving days away from work, job restriction or transfer; and, cases involving days away from work.

NRF sincerely appreciates OSHA’s outreach to stakeholders and this opportunity to provide additional comments for the record. The NRF comments included in this document are based on feedback received from NRF member companies and are presented in the order of the questions listed in the “Scope of Meeting” section in the January 19, 2010 notice in the *Federal Register*.

II. Scope of Meeting

1. What can the agency do to enhance and encourage the efforts of employers, workers and unions to identify and address workplace hazards?

OSHA can play a critical role in further fostering employer-employee collaboration discussed above and enhancing the capabilities of that partnership by increasing safety know-how. OSHA should consider scheduling stakeholder meetings and focus groups on industry-specific issues for participants (employers, employees, and others) to share best practices. After all, not all industries are alike under the “General Industry” category, and even workplaces within the same industry are different.

For example, NRF members in smaller retail establishments have different challenges than our larger store members, and the retail workplace can be different depending on the channel, i.e. grocery, apparel, electronics, and others. Even in the same company there can be different workplaces, such as office buildings, retail stores and distribution centers. Yet all these workplaces fall under the same category of “General Industry” under the OSHA regulations.

Through stakeholder meetings and focus groups, discussions about how the same OSHA policies and regulations impact these work places in different ways would

help all participants better understand the resulting implementation challenges. Sharing of best practices would help everyone understand the opportunities, and build on their current safety know-how. OSHA has in-house and outside expert resources which can illuminate the discussion. OSHA could also lend that same expertise through webinars, symposiums and other communications to provide guidance in how to deal with workplace safety challenges. These communications could be open to employers and employees alike.

OSHA should also be encouraged to make readily available to retail companies training modules and materials on the hazard assessment process that are more specific to individual industries. Many of the materials currently available are generic in nature and often cover areas not applicable to the specific work environment.

2. What are the most important emerging or unaddressed health and safety issues in the workplace, and what can OSHA do to address these?

Suggestions provided by NRF member companies include continuing guidance on new exposures or risks (i.e. H1N1), more e-tools, and regularly updated materials.

3. How can the agency improve its efforts to engage stakeholders in programs and initiatives?

OSHA should endeavor to provide forums to share best practices. Currently, the focus seems to be on company fines and enforcement, but very little emphasis on companies which have outstanding programs. The ultimate goal of all stakeholders, including OSHA, should always be to make the workplace safer. This objective would be more effectively achieved by working in concert with employees and employers.

4. What specific actions can the agency take to enhance the voice of workers in the workplace, particularly workers who are hard to reach, do not have ready access to information about hazards or their rights, or are afraid to exercise their rights?

NRF members suggest that OSHA should strive to reach out equally and fairly to all stakeholders without the appearance of favoring one constituency over others. Other government agencies have successfully used a variety of methods to educate citizens on the services and mandate of their specific organizations. The average person has a very vague idea of what OSHA does, with the bulk of that knowledge coming from the employer rather than OSHA.

5. Are there additional measures to improve the effectiveness of the agency's current compliance assistance efforts and the on site consultation program, to

ensure that small businesses have the information needed to provide safe workplaces?

OSHA has made a good start with providing a small business handbook on the OSHA website. It is suggested by several NRF members that OSHA consider doing something similar to provide different approaches for mid-to-large size companies. In addition, one of the benefits of the Internet has been ready access to more workplace safety information than has ever before been available. However, much of the material on the OSHA website appears very dated and is in language that a non-safety professional might find confusing or intimidating. Providing simplified, up to date materials on relevant topics would be helpful in this regard. Recently, it appears that the agency has moved away from compliance assistance. Letting employers know that these services are still available and without risk would be a great step forward. NRF members agree that companies of all sizes--not just small businesses—could benefit from more dialogue with OSHA, including OSHA webinars and other educational material.

6. Given the length and difficulty of the current OSHA rulemaking process, and given the need for new standards that will protect workers from unaddressed, inadequately addressed and emerging hazards, are there policies and procedures that will decrease the time to issue final standards so that OSHA may implement needed protections in a timely manner?

Several NRF members state that before additional rulemaking is considered, and prior to any formal notice of proposed rulemaking, OSHA should consider initiating a variety of stakeholder meetings and focus groups discussed in response to question #1. These activities would help better inform how regulations will apply to different industries, and different workplaces within the same industry. Such communication would help avoid any unintended consequences and confusion from potential new regulations, and build in the flexibility needed for application in the diverse “General Industry.” Such an effort might take more time, but the end result would be better for everyone.

Regulation may not be necessary for retailers to take prompt and appropriate action once they understand the issues and, with OSHA’s and other participants’ help, get ideas on how to address them. The recent H1N1 development is an example of proactive industry action in that many companies had taken steps to address the risk, even before OSHA came out with guidance material.

OSHA should simplify and make it easier for the general public to comprehend and comply in a more efficient way.

In addition, whenever OSHA issues new standards, it has a significant impact on both industry and workers as they both begin the learning curve on practical, effective methods to implement these new regulations. As such, the process must be meticulous

in both identifying hazards and offering solutions. Attempting to "short-cut" this process would be a mistake.

7. As we continue to progress through a new information age vastly different from the environment in which OSHA was created, what new mechanisms or tools can the agency use to more effectively reach high risk employees and employers with training, education and outreach? What is OSHA doing now that may no longer be necessary?

Several NRF member companies note that OSHA intends to move budgetary funds from training assistance to inspections (along with the increased funds that the government had already approved). The agency should re-evaluate and re-invest in improving education and training in their regional offices.

Also, additional web-based educational resources would be helpful. In addition, OSHA should consider making training materials more readily available in electronic formats (DVDs, PowerPoint presentations etc.) that can be reproduced and distributed in an efficient, cost effective manner. OSHA staff should also be tasked with asking what the agency is doing now that may no longer be necessary. The collection of data in paper formats should be minimized. OSHA could more effectively gather such data electronically, which would minimize the workload on employers while allowing OSHA to more effectively analyze the data and target valuable resources.

8. Are there indicators, other than worksite injuries and illness logs, that OSHA can use to enhance resource targeting?

NRF members point out that OSHA already targets specific industries which by their nature are more hazardous. To begin to identify other accurate means of targeting resources, it might be useful to first more thoroughly examine the effectiveness of such targeting in individual industries to date. Furthermore, additional stakeholder meetings and outreach to industry discussed in question #1 would be helpful in this regard.

9. In the late 1980s, OSHA and its stakeholders worked together to update the Permissible Exposure Limits (PELs) (exposure limits for hazardous substances; most adopted in 1971), but the effort was unsuccessful. Should updating the PELs be a priority for the agency? Are there suggestions for ways to update the PELs, or other ways to control workplace chemical exposures?

If OSHA is considering the question of whether updating PELs should be a priority, NRF members ask that the agency base its conclusions on sound science and in-depth studies. Accurate PELs based on carefully obtained scientific study should be a priority for OSHA. There should be a risk assessment which factors in, among other things: the toxicity of the substances; the number of employees exposed to the

substance; how they were exposed and for how long; the probability and severity of any resulting adverse health effect(s); and the potential to reduce those risks.

Throughout this analysis, it is important for OSHA to understand how the substances exist in different workplaces and industries, how there may be differing exposure levels in these workplaces, and the varying ability of employers in these different workplaces to meet the PELs. As all chemicals do not present a comparable hazard, obtaining such data will take considerable time. Perhaps issuing grants to universities equipped to study such issues would be one method for OSHA to consider. Requirements for compliance should be practical (such as through phased in compliance dates, and permission to use administrative controls until engineering controls can be instituted) and cost-effective to comply with, especially given the current economy where retailers are suffering terribly.

Conclusion

Again, NRF welcomes this opportunity to submit these comments to OSHA. NRF members are committed to a sustained and proactive focus on workplace safety not only because it makes good business sense, but primarily because it is in the best interests of retail companies and their employees.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Green", with a stylized flourish at the end.

Robert J. Green
Vice President
Government and Political Affairs