



April 22, 2022

Mr. Douglas Parker
Assistant Secretary of Labor Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: Docket No. OSHA-2020-0004
Filed via www.regulations.gov

Dear Assistant Secretary Parker,

On behalf of our food retailers, supermarket pharmacies, wholesalers, and product suppliers, FMI – The Food Industry Association appreciates the opportunity to provide input on the Occupational Safety and Health Administration’s (OSHA) proposed permanent COVID-19 standard applicable to the healthcare industry. FMI’s positions are aligned with the two sets of comments filed by Conn Maciel Carey LLP on behalf of diverse coalitions comprised of both pharmacy employers and companies that have on-site clinics embedded within their operations and/or contract with or employ medical personnel, such as nurses or emergency response personnel at their facilities. We also align ourselves with the comments filed by the Coalition for Workplace Safety.

As the food industry association, FMI works with and on behalf of the entire industry – from retailers who sell to consumers, including their supermarket pharmacies, to producers who supply the food and other products sold in grocery venues – to advance safer and more efficient consumer supply chains for both food and pharmaceuticals. In total, FMI member companies, which range from independent operators to large national and international players, operate roughly 33,000 grocery stores and 12,000 pharmacies, ultimately touching the lives of more than 100 million U.S. households per week and an industry that employs over 6 million individuals. Throughout the ongoing COVID-19 health emergency, our members have been and continue to be a critical component of ensuring the availability of food, pharmacy, and health care services in communities across this nation. Moreover, supermarket pharmacies have played an outsized role in the COVID-19 vaccination effort while also serving as a bridge between our communities and other providers, offering patients immediate care that is close and convenient to home.

FMI and its member companies hold the health and safety of its employees and customers to the highest importance. We continue to support efforts to encourage greater vaccination uptake among our workforce and the American public while our supermarket pharmacies have administered a significant volume of the nation’s COVID-19 vaccinations and boosters. As essential employers in communities around the country, our member companies have gone to extraordinary lengths to encourage employees to get vaccinated, by sharing expert information on vaccine efficacy and benefits, providing incentives and paid leave for vaccination and recovery, and easing the burden of administration of the vaccine by offering services through their pharmacies and on-site clinics. Additionally, since the onset of the COVID-19 pandemic, food retailers have invested more than \$24 billion in voluntary safety measures, including PPE, cleaning and





sanitizing supplies and services, and plexiglass to combat the spread of COVID-19 and ensure our businesses have been able to remain open to serve the American public. Furthermore, FMI member companies have implemented thorough and effective COVID-19 prevention plans that have achieved tremendous success in mitigating the spread of the coronavirus in their pharmacies and workplaces.

The COVID-19 Standard Should Exempt Pharmacy Operations in Retail Settings

We do not believe OSHA's COVID-19 standard should apply to retail pharmacies, including those located in grocery settings. While supermarket pharmacies provide vital healthcare services every day to millions of Americans, including in the area of COVID-19, its workforce is not exposed to the coronavirus in any way equivalent to those healthcare workers employed at hospitals (and/or nursing care facilities) for whom this standard was designed. Rather, the potential risk to pharmacy staff is very similar to the potential risk to their non-pharmacy staff counterparts working in other parts of the store. OSHA's COVID-19 standard is designed to protect workers who are in close contact for extended periods of time with hospital patients who are severely ill with COVID-19. This exposure is simply not present at supermarket pharmacies that offer vaccinations and immunizations, whether they be for COVID-19, shingles, pneumococcal, or Tdap. Importantly, we are not aware of any FMI pharmacy member company conducting non-prophylactic COVID-19 testing indoors; if FMI member companies are testing suspected COVID-19 cases, that is happening outside with safety protocols in place. That said, most of our members specify their testing services are for asymptomatic screening only.

The COVID-19 standard OSHA is developing is designed to protect against the high-risk present in hospital settings. For example, a centerpiece of the standard includes compliance with the standard and transmission-based precautions in accordance with CDC's "Guidelines for Isolation Precautions." This provision alone would be nearly impossible for supermarket pharmacies to meet as its entire context assumes a non-ambulatory care setting where patients are stationary and bed-ridden. As detailed in the coalition comments previously referenced, there are several other requirements of the standard with which FMI pharmacy members would have great difficulty complying. In conclusion, application of the COVID-19 standard to supermarket pharmacies would impose serious burdens on employers in our industry – with no commensurate benefit – while threatening the Administration's objective of making COVID-19 vaccinations and other services widely available. Therefore, we request OSHA exempt retail pharmacy activities from coverage of the standard by expanding the exemption for dispensing drugs.

At Minimum, the COVID-19 Standard Should Preserve the Non-Ambulatory Care Screening Exemption included in the ETS

If OSHA does not expand the retail pharmacy exemption, we urge the agency to preserve the non-hospital ambulatory care exemption, so pharmacy employers can avail themselves of this exemption by continuing the effective COVID-19 screening of pharmacy clients. As expanded upon in the coalition's comments, there is no scientific basis for removing the non-hospital screening exemption.

The COVID-19 Standard Should Preserve the Screening Exemption for Employer On-Site Health Clinics





In addition to supermarket pharmacies, FMI represents a wide range of food manufacturing and wholesale companies that have on-site clinics within their operations and/or contract with or employ medical personnel, such as nurses or emergency response personnel at their facilities. These companies' on-site clinics and operations were exempt from OSHA's ETS under the screening exemption in which people with suspected or confirmed COVID-19 are not permitted to enter those settings.

We encourage OSHA to recognize and focus on the critical distinction between the universe of "patients" serviced by healthcare personnel working in on-site clinics from those serviced by healthcare personnel working in hospitals. While nurses and emergency technicians working in FMI member company manufacturing facilities, warehouses or distribution centers may be professionally equivalent to their hospital counterparts, there is a fundamental difference between the clientele treated. Hospitals are designed to accept COVID-19 patients; on-site clinics are precisely the opposite – FMI member companies have had systems in place for years now to prevent COVID-19 employees from reporting to work if they have or are suspected of being infectious with the coronavirus. Thus, the healthcare personnel at on-site clinics are providing care to a universe of employees who already have been identified as not having COVID-19. Beyond this, even when COVID-19 sneaks into the workplace, the services provided at on-site clinics are fundamentally different than those provided at hospitals: on-site clinic healthcare personnel simply do not treat COVID-19; healthcare workers in hospitals do.

OSHA's screening exemption remains an effective tool in excluding suspected and confirmed COVID-19 persons from on-site clinics. As previously noted, and expanded upon in the coalition's comments, there is no scientific basis for removing the non-hospital screening exemption.

Conclusion

As noted above, the health and safety of employees is of the utmost importance to FMI member companies. However, we believe that OSHA's proposed permanent COVID-19 standard would be a bridge too far. Supermarket pharmacies and employment-based on-site clinics should be excluded from the standard.

Sincerely,

A handwritten signature in black ink that reads 'Christine Pollack'.

Christine Pollack
Vice President, Government Relations

A handwritten signature in black ink that reads 'Peter Matz'.

Peter Matz
Director, Food & Health Policy

