



August 20, 2021

[Submitted electronically via regulations.gov and e-mail to: [zzSOL-Covid19-ETS@dol.gov](mailto:zzSOL-Covid19-ETS@dol.gov)]

Edmund C. Baird  
Associate Solicitor of Labor for Occupational Safety and Health  
Office of the Solicitor  
Occupational Safety and Health Administration (OSHA)  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Room Number N3626  
Washington, D.C. 20210

**RE: Occupational Exposure to COVID-19; Emergency Temporary Standard, Interim final rule; request for comments (Docket Number: OSHA-2020-0004)**

Dear Associate Solicitor Baird:

The American Pharmacists Association (APhA) is pleased to submit comments on the “Occupational Exposure to COVID-19; Emergency Temporary Standard [“ETS”], Interim final rule; request for comments (Docket Number: OSHA-2020-0004).”

APhA is the largest association of pharmacists in the United States advancing the entire pharmacy profession. APhA represents pharmacists in all practice settings, including but not limited to community pharmacies (including independent and retail (chain, mass merchandise, grocery stores, etc.)), hospitals, long-term care facilities, specialty pharmacies, community health centers, physician offices, ambulatory clinics, managed care organizations, hospice settings, and government facilities. Our members strive to improve medication use, advance patient care and enhance public health.

Many of our members have already implemented the OSHA ETS requirements (especially if they provide COVID-19 testing) and do not support developing/implementing plans that exceed current ETS requirements (§ 1910.502(d)—Patient screening and management; § 1910.502(e)—Standard and transmission-based precautions.; § 1910.502(f)—Personal protective equipment (PPE).; and § 1910.502(g)—Aerosol-generating procedures on a person with suspected or confirmed COVID-19).

As you know, the Centers for Disease Control and Prevention (CDC) has issued “Guidance for Pharmacies, Guidance for Pharmacists and Pharmacy Technicians in Community Pharmacies during the COVID-19 Response.”<sup>1</sup> Thus, in accordance with the CDC Guidance, APhA believes the ETS should apply to all settings where any employee provides healthcare or healthcare support services, including retail pharmacies in grocery stores. The Interim final rule also stands in stark contrast to OSHA’s existing “COVID-19 Guidance for Retail Pharmacies.”<sup>2</sup> Accordingly, we strongly urge OSHA to remove the exception in the Interim final rule under paragraph (a)(2)(ii) which “exempts the dispensing of prescriptions by pharmacists in retail settings (e.g., pharmacies in grocery stores).” It is important to point out that the process of “dispensing of prescriptions by pharmacists in community / retail settings,” involves more than simply putting pills in bottles. The process of dispensing of prescriptions / medications by pharmacists and pharmacy team members includes person-to-person interactions with patients and caregivers to attain health information, provide health information and education, and conduct health monitoring activities. In addition, pharmacy team members counsel and assist patients evaluate health conditions and select appropriate over-the-counter medications to address particular needs. These encounters involve reduced social distancing.

Every pharmacist and pharmacy is required by law, under the Omnibus Budget Reconciliation Act of 1990 (OBRA ‘90), many state laws, and along with regulations later implemented by the Centers for Medicare and Medicaid Services (CMS) to provide patient counseling in order to continue to receive federal funding for Medicaid and to meet state practice requirements. Accordingly, the patient counseling requirements for pharmacists under federal law and state practice requirements make all pharmacies, even those in retail settings (e.g., pharmacies in grocery stores), “covered healthcare settings” under the ETS.

The Interim final rule provides the exception from the ETS because “[t]reatment or testing of COVID-19 patients would not be expected there.” However, we know from CDC’s current statistics that only 60.4% of the total U.S. population has received at least one dose of the COVID-19 vaccine and 51.2% are fully vaccinated.<sup>3</sup> There is also no universal way to identify whether customers and patients patronizing pharmacies in grocery stores have received COVID-19 vaccinations or have tested positive for COVID-19. Due to these facts, it is necessary for these pharmacies, pharmacists and their employers and employees to take actions to reduce their risk of exposure and reduce the risk for their patients by using the principles of infection prevention and control and social distancing. In addition, pharmacies located in grocery store locations are leaders in the provision of patient care services, including testing and vaccination

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<sup>1</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/pharmacies.html>

<sup>2</sup> <https://www.osha.gov/sites/default/files/publications/OSHA4023.pdf>

<sup>3</sup> CDC. COVID-19 Vaccinations in the United States. 2021, available at: <https://covid.cdc.gov/covid-data-tracker/#vaccinations>

services. With the expanding authorization of point of care COVID testing by the Food and Drug Administration (FDA), access to testing within grocery-based and other pharmacy locations will dramatically increase, exposing pharmacists and other pharmacy team members to individuals who could potentially transmit the COVID-19 virus.

For example, under § 1910.502(f)—Personal protective equipment (PPE) “[t]he ETS requires employers to provide and ensure employees use facemasks or respirators in specified situations, and also requires the use of other PPE, such as gloves and eye protection, in appropriate circumstances.” Pharmacists report their employers do not consistently provide gloves or masks. Healthcare professionals and the patients they serve have increased expectations that appropriate PPE are utilized during patient encounters and the risk to healthcare providers are minimized.

Pharmacists’ patient care by its nature regularly exposes pharmacists to symptomatic and asymptomatic patients. Pharmacy staff do not know whether the individuals coming into pharmacy practices are carriers or COVID-19 or not, as they could be asymptomatic. In the exchange of insurance cards, paper prescriptions, goods, cash, and credit cards, there is a constant fear. This, combined with limited mention of practitioners outside of hospitals in OSHA guidance will lead to sub-optimized protective procedures and a discounting of risk. In addition, pharmacists are strong advocates and providers of immunizations but OSHA’s current Interim final guidance increases these risk of pharmacists and pharmacy staff in grocery stores becoming hesitant to provide immunizations because of lack of appropriate protection. This lack of access could further exacerbate public health concerns. We are concerned about pharmacists’ and their staffs’ ability to meet community needs without appropriate protection.

We need clear OSHA guidance on the need for an ETS at all pharmacies, including community / retail pharmacies in grocery stores to ensure pharmacists’ and their staffs’ have the ability to meet community needs with appropriate protection. Pharmacists across all practice locations are committed to serving the needs of their patients and communities and need the support of the nation’s agency responsible for addressing the safety of workers. We offer any assistance you may need and look forward to OSHA updating the Interim final rule or forthcoming final rule by removing the exception from the ETS under paragraph (a)(2)(ii) for the “dispensing of prescriptions by pharmacists in retail settings (e.g., pharmacies in grocery stores).”

If you have any questions, or if we can be of any assistance, please do not hesitate to contact Michael Baxter, Senior Director of Regulatory Policy, at [mbaxter@aphanet.org](mailto:mbaxter@aphanet.org)



cc: James Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health  
The Honorable Martin J. Walsh, Secretary of Labor