

Title 64 Series 114

Department of Health and Human Resources

Bureau for Public Health

**PUBLIC HEALTH STANDARDS FOR BUSINESSES REMAINING OPEN
DURING THE COVID-19 OUTBREAK**

Section 3.3.b

Comment

The Department received the comment that the prevention of the spread of COVID-19 does not require an occupancy limitation of less than five (5) per 1,000 square feet, and an Opinion Letter authored by Becky Dawson, Ph.D. MPH was submitted in support of the comment.

Response

The Department has reviewed this comment, and no changes were made to the rule. The universally recommended (including the Centers for Disease Control) minimum distance for the purpose of maintaining social distancing during the COVID-19 pandemic is six feet, and this minimum distance is supported in the letter by Dr. Dawson. The Department has calculated that, based upon the area of a circle with a radius of six feet, the recommended social distance can be maintained between members of the public with an occupation density of three people per 1,000 square feet of retail space. The higher density allowance for grocery retailers also takes into account the common layout of grocery retailers, in that tall shelving generally separates aisle space, further separating patrons. The Department is also mindful of the risk to health by increased exposure of retail employees to the COVID-19 virus absent safe social distancing.

The Department does not believe easing the occupancy limitation to be protective of public health. However, should the circumstances regarding COVID-19 infection significantly change, the Department will revisit the necessity for the limitations on retail occupancy.

Comment

The Department received the comment that increased occupancy for food retailers is necessary because they perform an essential economic function.

Response

The Department has reviewed this comment, and no changes were made to the rule. The Department agrees that food retailers perform an essential function. Retail establishments that sell less than 80 percent grocery items are required to limit occupancy to two customers per 1,000 square feet of retail space, while businesses with sales of at least 80 percent grocery products are permitted the higher occupancy of three members of the public per 1,000 square feet of space at any given time. Thus, the agency has recognized the importance of food retailers to health and welfare of West Virginians as well as to the state's economy by implementing a tiered approach to the occupancy limitations contained in the rule. At this time, the Department does not believe easing of the occupancy limitation to be protective of public health. However, should the circumstances regarding COVID-19 infection significantly change, the Department will revisit the necessity for the limitations on retail occupancy.



ALLEGHENY COLLEGE

PROGRAM in GLOBAL HEALTH STUDIES
520 North Main Street
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April 17, 2020

VIA ELECTRONIC MAIL

Christian Antkowiak, Esq.
Shareholder
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Dear Christian:

In an effort to slow the spread of COVID-19, state and local governments have been calling for stricter social distancing measures. Among these measures, are orders that stores (often deemed “essential businesses”) limit customer occupancy to no more than two shoppers per 1,000 square feet of floor space.

On or about April 15, 2020, you asked me to provide an opinion concerning the efficacy of occupancy restrictions, generally; and, in particular, whether it would be necessary to increase occupancy restrictions from five to two customers per 1,000 square feet of floor space. You disclosed to me that you represent Aldi, Inc. (“Aldi”), and shared with me their efforts to mitigate the spread of COVID-19 in the communities they serve.

As discussed more fully below, it is clear that: (1) mitigation and prevention of disease spread does not necessarily require a more restrictive store occupancy than five per 1,000 square feet; and (2) prevention of disease spread is actually controlled best by instituting the types of mitigation measures discussed at the end of this opinion.

Background

In the midst of the COVID-19 pandemic, the primary route of disease transmission in grocery stores is from one person to another, not through food. The SARS-CoV-2 virus, which causes the disease COVID-19, is spread through droplets. These droplets are the spray produced when an individual coughs or sneezes. There is also evidence that an individual can infect another person through droplets created when one speaks. The most recent studies of the droplets containing SARS-CoV-2 demonstrate that the droplets fall to the ground within a few feet (~6 ft or 2 m). The scientific evidence regarding how long and how much of the SARS-CoV-2 virus can live on the ground/surface is quickly emerging. In a laboratory setting scientists found that the virus could survive for up to 3 days on a hard non-porous surface, such as stainless steel. The virus can also live on surfaces like cardboard for up to 24 hours. What is unclear at this point in time is the amount of virus that is surviving on these surfaces and how much virus is needed to cause infection in a human.

Thus to prevent transmission of SARS-CoV-2 from person to person, individuals in grocery stores need to distance themselves from other shoppers by at least 6 feet (or the equivalent of two

shopping carts). Additionally, in an abundance of caution, grocery stores need to ensure that common touch-points throughout the store are properly cleaned and that customers understand how to properly clean their groceries and homes after shopping.

The Efficacy of Social Distancing and Other Mitigation Measures

Numerous national grocery store chains, including Kroger, Safeway, Walmart, Albertons, Sam's Club, and Giant Eagle, have introduced mitigation and social distancing measures inside of their stores to prevent transmission of disease and to protect the health and safety of their workforce. To date, there is no scientific study that documents the most effective reduction in grocery store capacity to reduce the risk of transmitting SARS-CoV-2. Kroger has limited its store capacity to 50% while others, such as Safeway and Alberton's, are working with even lower capacity limits. Currently, Aldi stores are capping occupancy at the lowest end of the retail spectrum - except as otherwise provided by law, store capacity has been reduced by nearly 70%.

This marked reduction in the number of patrons and employees allowed in a store at one point in time should be applauded. With this reduction in capacity, employees will have time to participate in important mitigation and educational activities, such as cleaning and restocking shelves; wiping down common touch-points throughout the store – including door handles, shopping carts, checkout belts, and payment devices, among others; directing shoppers through the store; and encouraging shoppers to maintain 6 feet of distance from others. Additionally, there will be ample space for customers and employees to maintain the recommended 6 feet of separation from each other.

While we do not yet know the optimal reduction in store capacity to prevent the transmission of SARS-CoV-2 within our stores, the Centers for Disease Control and Prevention (CDC) has outlined a host of steps that can be taken to reduce the spread of this novel coronavirus. Specifically, CDC recommends staying 6 feet away from others when in public spaces (including stores), wearing a facemask, avoiding touching one's eyes, nose, or mouth, and frequent handwashing.

Given that Aldi stores have already reduced their store capacity by 70% as a result of this pandemic, it is my opinion that further mitigation and prevention of disease spread should not include further decreasing of store capacity. Instead, store associates should be working within the store to ensure the following:

1. Ensuring all customers and employees are wearing masks while in the store;
2. Ensuring customers are keeping 6 feet (which for many retailers, would mean two shopping carts) between themselves and others in the store;
3. Encouraging no more than two people per family come into the store to shop at one time;
4. Ensuring shopping carts are wiped down and that wipes are available for customers;
5. Maintaining one-way travel through the aisles of the store;
6. Providing education to customers as they enter the store – asking them not to congregate in the aisles and that they should avoid unnecessary bare-hand contact with food;
7. Providing education to customers as they leave the store, including reminders to wash produce, clean surfaces at home touched by grocery items and shopping bags, and to wash their hands as soon as they get home.

Conclusion

Our grocery store associates should be seen as an important arm of the public health workforce during this pandemic. The investment of time, money, and education to ensure that both workers and customers in the store are abiding by mitigation strategies and have the knowledge to protect themselves from the potential spread of SARS-CoV-2 through contaminated objects is of the utmost importance. A smart, reasoned approach to mitigation will allow businesses like Aldi to play an important part in the fight against the spread of COVID-19 while simultaneously fulfilling their critical role in providing customers with access to essential goods and services.

Respectfully,

Rebecca Smullin Dawson, PhD MPH
Epidemiologist
Associate Professor, Global Health Studies & Biology
Allegheny College

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June 17, 2020

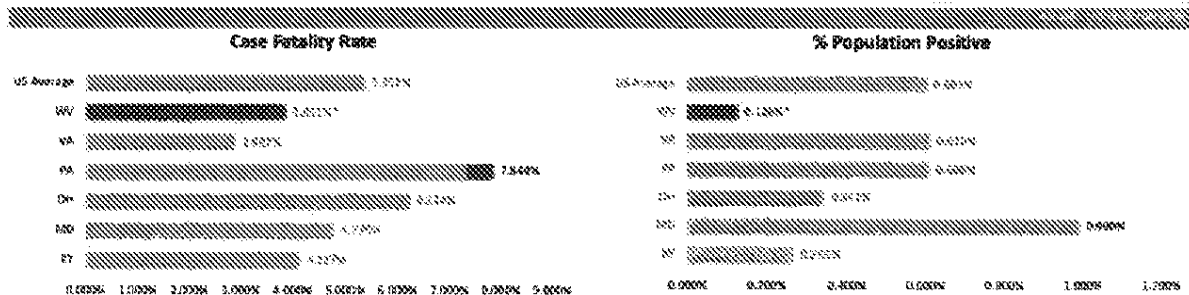
April L. Robertson
 General Counsel
 Office of Cabinet Secretary Bill J. Crouch
 West Virginia Department of Health and Human Resources
 One Davis Square, Suite 100
 Charleston, WV 25301

Re: Occupancy Density in Grocery Stores – Public Comment on Emergency Order Concerning Title-Series 64-114

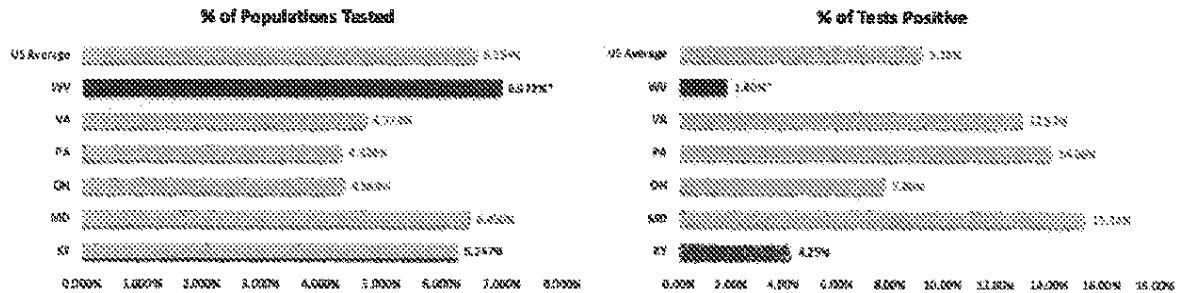
Dear Ms. Robertson:

Thank you for the opportunity to provide public comment concerning public health regulations in the State of West Virginia and, in particular, occupancy restrictions affecting food retailers pursuant to 64 C.S.R. §114 (“3.3.b...no more than three members of the public may enter a business per 1,000 square feet of customer floor space...”). I represent ALDI Inc., on whose behalf I submit this letter.

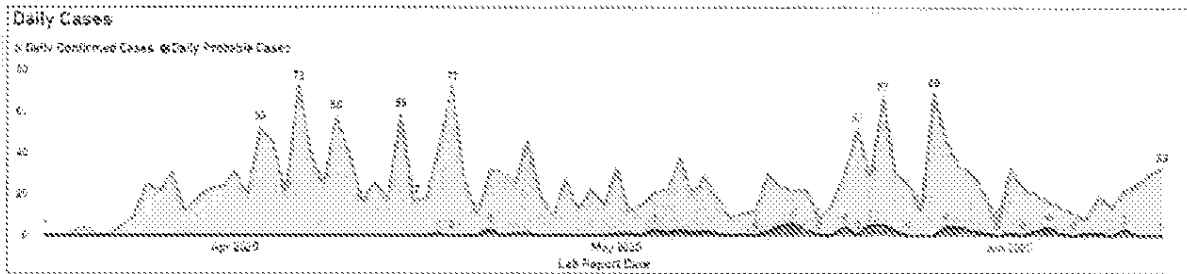
As I know you are aware, West Virginia has done a commendable job with its public health response to the Covid-19 crisis, as evidenced by recent data comparing West Virginia with neighboring states:¹



¹ <https://dhhr.wv.gov/COVID-19/Pages/default.aspx> (June 14, 2020)



Quick action, including the implementation of occupancy restrictions such as those arising under §114, undoubtedly played a significant role in controlling community spread throughout the state. Indeed, the numbers of new daily cases remain low as compared to the earliest days of the pandemic:²



For these reasons, we strongly believe it is time to open greater access to food retailers. Because public health remains our primary concern, and preventing a second wave of Covid-19 in the state counsels in favor of taking a measured approach, we are proposing an incremental change to §64-114-3.b, as follows:

For businesses whose sales are comprised of at least 80 percent grocery food products or more, no more than five (5) members of the public may enter a business per 1,000 square feet of customer floor space at any given time.

(emphasis added). We offer two points for your review and consideration.

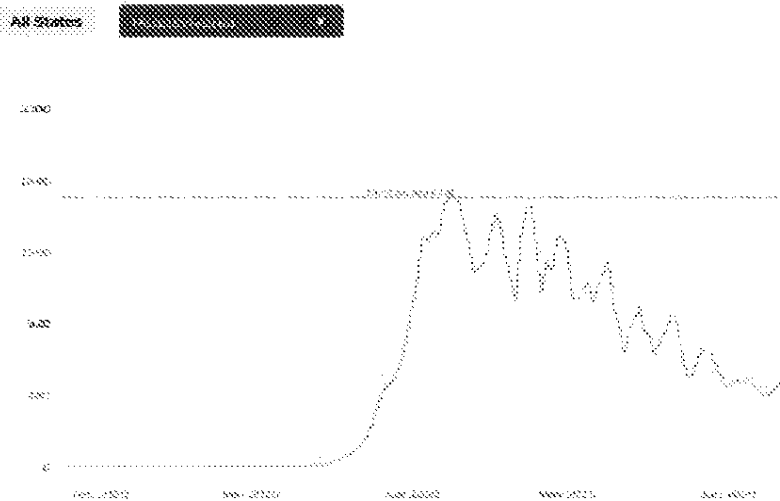
First, we believe that mitigation and prevention of disease spread does not necessarily require a more restrictive store occupancy than five (5) per 1,000 square feet. See Opinion Letter, Becky Dawson, Ph.D. MPH, epidemiologist and Associate Professor, Global Health Studies & Biology,

² *Id.*

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Allegheny College, April 17, 2020 (enclosed herewith), Pennsylvania, for example, does not impose a “3 per 1,000” food retailer restriction, and despite their food stores remaining open through the pandemic, new daily cases have declined substantially over time:³



What the evidence does suggest, however, is that prevention of disease spread is controlled best by instituting smart mitigation measures, many of which have taken hold throughout the food retail industry, such as:

- Ensuring all customers and employees are wearing masks while in stores
- Maintaining one-way travel through the aisles of stores
- Ensuring customers are keeping 6 feet between themselves and others in stores

According to Professor Dawson, “[a] smart, reasoned approach to mitigation will allow businesses like Aldi to play an important part in the fight against the spread of COVID-19 while simultaneously fulfilling their critical role in providing customers with access to essential goods and services.”⁴

Second, it goes without saying that food retailers are critical components of healthy, thriving communities.⁵ As states move to reopen their economies, ensuring that food is accessible to all is crucial, and limiting access is at cross-purposes with this end. “Without access, a nutritious diet

³ <https://coronavirus.jhu.edu/data/new-cases-50-states/pennsylvania> (June 14, 2020)

⁴ *Id.*

⁵ http://thefoodtrust.org/uploads/media_items/access-to-healthy-food.original.pdf (June 14, 2020).

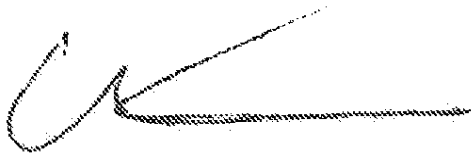
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and good health are out of reach” for many.⁶ “And without grocery stores and other ... food retailers, communities are also missing the commercial vitality that makes neighborhoods livable and helps local economies thrive.”⁷ This issue is especially acute in rural communities and small towns, where population losses and economic changes have diminished food retail options.⁸ Indeed, it has been especially concerning to us to see citizens waiting in lines outside our stores -- at times close to one hour and/or in inclement weather -- due to restrictive occupancy limits.

In sum, we strongly believe that a move to loosen incrementally food retailer occupancy restrictions is defensible at this time, in light of prevailing data, and is otherwise in the best interest of the public. ALDI Inc. appreciates this opportunity to communicate its concerns with you and looks forward to continuing to play a significant role in providing food supplies to the citizens of West Virginia.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Christian Antkowiak'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Christian Antkowiak

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*