

Dietary Supplement Facilities Must Be Classified As Essential

The outbreak of the coronavirus disease (COVID-19) pandemic in the U.S. has spurred unprecedented, but necessary actions by federal, state, and local officials in the effort to reduce the spread of this virus. Some jurisdictions have limited non-essential commerce including restricting business activity for restaurants, gyms, retailers, manufacturers, and some service providers. While these difficult decisions are based on legitimate public health concerns, it is critical that key sectors of the economy maintain active operations during this time—especially key industries like food and healthcare product manufacturing that contribute vital products that keep people nourished and promote better health—to meet continuing need and demand. Dietary supplement facilities must be considered “essential.” These facilities include dietary supplement manufacturing, ingredient manufacturing, transportation and warehousing, testing laboratories and retail facilities.

On March 16th, the White House and the Centers for Disease Control (CDC) released the “Coronavirus Guidelines for America”¹ which included directives on how to slow the spread of the virus over the next few weeks. Part of the guidance included a recognition of “critical infrastructure” that must continue to operate during this time including “healthcare services and pharmaceutical and food supply.”² Food and healthcare product manufacturers have a central role to play in the fight against this pandemic. Provided employers comply with CDC guidelines to protect workers, food and healthcare product manufacturers have the special responsibility to maintain their current work schedules.

Dietary supplements qualify as essential because of their unique position straddling both food and healthcare products.³ According to CRN’s Annual Survey, 77 percent of Americans take dietary supplements. They do so for overall health and wellness benefits, to provide energy, to support immune health, to fill nutrient gaps, support healthy aging, and to support heart health, among many other reasons.⁴ This \$46 billion industry provides billions more in healthcare cost savings as consumers reduce their risk of chronic disease through supplement usage.⁵ Now more than ever, consumers need to access dietary supplements to assure they receive proper nutrition, stay healthy, maintain their immune health, receive proper sleep, and proactively reduce their risk of chronic diseases without burdening an already overstretched healthcare system. Dietary supplements help consumers achieve all these ends.

¹ <https://www.whitehouse.gov/briefings-statements/coronavirus-guidelines-america/>.

² https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.

³ Federal law recognizes dietary supplements as “food.” 21 USC 321 (ff)(3) [*“Except for purposes of paragraph (g) and section 350f of this title, a dietary supplement shall be deemed to be a food within the meaning of this chapter.”*] However, federal law also permits dietary supplements to make a range of health-related claims for these products. 21 USC 343(r)(6) [*“...a statement for a dietary supplement may be made if—(A) the statement claims a benefit related to a classical nutrient deficiency disease and discloses the prevalence of such disease in the United States, describes the role of a nutrient or dietary ingredient intended to affect the structure or function in humans, characterizes the documented mechanism by which a nutrient or dietary ingredient acts to maintain such structure or function, or describes general well-being from consumption of a nutrient or dietary ingredient,...*]

⁴ <https://www.crnusa.org/2019survey/Topline-Infographic#more>.

⁵ <https://www.crnusa.org/resources/smart-prevention-health-care-cost-savings-supplements>.

As retail data from late February and early March demonstrate, consumer demand for dietary supplements has increased sharply since the beginning of the COVID-19 pandemic in the U.S. Sales of multivitamins and immune-supporting supplements have spiked as consumers seek to promote their own general nutrition and immunity in the face of an over-stretched healthcare system. It is critical to maintain adequate supplies of these health-promoting products.

As states and localities plan their own approaches to this challenging issue, they should mirror the White House/CDC guidelines, and make special accommodation for critical infrastructure industries like food (including specific food categories, such as infant formulas, dietary supplements, and medical foods) and healthcare product manufacturing, including all parts of the manufacturing supply chain. For instance, the northern California ordinances for sheltering in place include exceptions for essential activity broadly, and for grocery and other retail food outlets⁶ and healthcare operations⁷ specifically. Such provisions should help ensure continued supply of these products. These ordinances also include exceptions for the companies that supply these consumer-facing operations (e.g., ingredient and excipient suppliers and analytical labs used to verify ingredient identity and prevent contamination).⁸ The California Department of Food and Agriculture reinforced the need for the exceptions and is helping ensure the state follows uniform guidelines by releasing crucial guidance on March 18th. This guidance acknowledges that the food supply “includes assets, systems, networks, and functions that provide vital services to the nation” and that [i]t is essential that critical infrastructure and supply chains are protected, and that all elements pertaining to the food supply remain operational.”⁹

Whether made explicit or not, these announcements should recognize the essential nature of dietary supplement manufacturers, their critical supply chains, and necessary service providers and ensure these entities can continue to bring these healthful products to consumers.

(prepared by the Council for Responsible Nutrition, March 19, 2020)

⁶ “For the purposes of this Order, ‘Essential Businesses’ means: ... ii. Grocery stores, certified farmers’ markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences.” City and County of San Francisco ORDER OF THE HEALTH OFFICER No. C19-07, subparagraph 10(f).

⁷ “For purposes of this Order, individuals may leave their residence to work for or obtain services at any ‘Healthcare Operations’ including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, or any related and/or ancillary healthcare services. ‘Healthcare Operations’ also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. ‘Healthcare Operations’ does not include fitness and exercise gyms and similar facilities.” City and County of San Francisco ORDER OF THE HEALTH OFFICER No. C19-07, subparagraph 10(b).

⁸ “Businesses that supply other essential businesses with the support or supplies necessary to operate.” City and County of San Francisco ORDER OF THE HEALTH OFFICER No. C19-07, subparagraph 10(f)(xv).

⁹ “COVID-19 and the Food Supply.” California Department of Food & Agriculture, released March 18, 2020.