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MEMORANDUM

From: Elizabeth Barr Fawell
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Re: COVID-19 Update: FDA and USDA Update COVID-19 Food Safety Guidance Regarding Masks, Inspector Availability, and More

The U.S. Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA) recently updated their respective COVID-19 questions and answers guidance. FDA updated its food safety questions and answers guidance on COVID-19 with additional information related to the Centers for Disease Control and Prevention's (CDC's) updated recommendations regarding the use of cloth face coverings. ^{1/} USDA's updated COVID-19 guidance reiterates that workers in the agricultural sector are considered essential critical infrastructure workers, conveys that there are no nationwide food shortages, addresses operational questions for the Food Safety and Inspection Service (FSIS) and FSIS-regulated establishments, and explains the Animal and Plant Health Inspection Service's (APHIS's) continued operations during the COVID-19 outbreak. ^{2/}

FDA's Updated COVID-19 Guidance

FDA updated its questions and answers guidance on COVID-19 to reflect the CDC's updated recommendation regarding the use of cloth face coverings to help slow the spread of COVID-19. ^{3/} The CDC recommends wearing simple cloth face coverings as a voluntary public health measure in public settings where other social distances measures are difficult to maintain (e.g., grocery stores and pharmacies). The cloth face coverings recommended by the CDC are not surgical face masks or N-95 respirators, which are critical supplies the CDC advises must continue to be reserved for healthcare workers and other medical first responders.

FDA offers the following considerations for workers on farms and in food production, processing, and retail settings who do not typically wear masks as part of their jobs, should they choose to use a cloth face covering:

^{1/} Food Safety and the Coronavirus Disease 2019 (COVID-19) (Apr. 6, 2020), available at <https://www.fda.gov/food/food-safety-during-emergencies/food-safety-and-coronavirus-disease-2019-covid-19>.

^{2/} Coronavirus Disease (COVID-19), available at <https://www.usda.gov/coronavirus>.

^{3/} Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission (Apr. 3, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>.

- Maintain face coverings in accordance with the parameters in FDA’s Model Food Code sections 4-801.11 and 4.802.11; and
- Launder reusable face coverings before each daily use.

FDA also notes the CDC has information on the use of face coverings, including washing instructions and information on how to make homemade face coverings. ^{4/}

USDA’s Updated COVID-19 Guidance

USDA has continued to supplement its COVID-19 questions and answers guidance since we first reported on the guidance in a previous memorandum. ^{5/} In addition to supplementing its information on food safety and food availability, the guidance also addresses questions concerning grading and auditing services, agricultural research, animal and plant health, critical infrastructure, data and reporting services, and economic research, among other topics. The following are some of the key points from the updated guidance.

- **Critical Infrastructure**

The guidance confirms individuals working in the agricultural sector are listed among the U.S. Department of Homeland Security’s Cyber Security and Infrastructure Security Agency list of Essential Critical Infrastructure Workers for the COVID-19 response. ^{6/}

- **No Food Shortages**

USDA reports there currently are no nationwide shortages of food, although inventory of certain foods at grocery stores may in some cases be low temporarily before stores can restock. USDA states there currently are no wide-spread disruptions in the supply chain. Both USDA and FDA are monitoring the food supply chain for shortages in collaboration with industry and other federal and state partners, and the agencies also are in regular contact with food manufacturers and grocery stores.

- **FSIS and Food Safety**

The questions and answers also address how FSIS is responding to the COVID-19 outbreak, as well as the agency’s expectations for FSIS-regulated establishments during this time.

With respect to the agency’s expectations for establishments to report to FSIS cases of employees who become ill with COVID-19, and for FSIS to reciprocate, the guidance states FSIS will follow and encourages establishments to follow the recommendations of local public health authorities regarding notification of potential contacts. If a case of COVID-19 is identified in an establishment, USDA states that the same sanitary procedures that establishments already are following to protect food safety will also help prevent the spread of respiratory illnesses like COVID-19. USDA provides links to the U.S. Environmental Protection Agency’s list of disinfectants that have qualified under the

^{4/} Use of Cloth Face Coverings to Help Slow the Spread of COVID-19 (Apr. 4, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>.

^{5/} See HL Memo, COVID-19 Update: FDA and USDA Issue Guidance for Industry and Inspectors (Mar. 18, 2020), available at <https://www.hffoodlaw.com/2020/03/covid-19-update-fda-and-usda-issue-guidance-for-industry-and-inspectors/>.

^{6/} See Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, available at https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated.pdf.

agency's emerging viral pathogen program for use against SARS-CoV-2, the virus that causes COVID-19. ^{7/} The guidance also notes that county or state health departments can shut down FSIS-regulated establishments, and FSIS will follow state and local health department decisions.

USDA explains that FSIS always encourages employees who are sick to stay home, and that FSIS employees exhibiting flu-like symptoms are encouraged to follow recommendations from local, state, and federal public health agencies regarding reporting of illness, consulting with healthcare providers, and self-quarantining as necessary. The agency also is following the CDC and State Department's recommendations for travel.

In response to a question concerning FSIS's preparation for an increased rate of absenteeism of food inspectors due to COVID-19, USDA states "FSIS is prepared to be operationally nimble and to use all administrative means and flexibilities available to protect the health and safety of employees based on local public health recommendations." According to the guidance, "[p]lanning for absenteeism is a part of normal FSIS operations," and the agency "has a plan and authority to address staffing considerations and is prepared to act accordingly."

Finally, in accordance with the State Department's guidance, FSIS has delayed both U.S. and foreign country audits.

- **APHIS and Food Safety**

The updated guidance also addresses the functions APHIS continues to serve during the COVID-19 outbreak. For instance, APHIS continues to provide services to complete required paperwork to support the import and export of live animals and plants and animal products, perform inspections of livestock at the border, and operate plant inspection stations, among other agency responsibilities.

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We will continue to monitor FDA's response to COVID-19. Should you have any questions or if we can be of assistance with your COVID-19 response strategy, please contact us.

^{7/} List N: Disinfectants for Use Against SARS-CoV-2 (Apr. 2, 2020), available at <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>.