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MEMORANDUM

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Re: COVID-19 Update: FDA Issues Best Practices for Retail Food Establishments and Food Delivery; FSIS Issues Notice on Use of PPE by Inspectors

This memorandum summarizes two recent steps by the federal government to provide food safety guidance in response to the COVID-19 outbreak. First, the U.S. Food and Drug Administration (FDA) has issued a fact sheet and corresponding summary infographic on *Best Practices for Retail Food Stores, Restaurants, and Food Pick-Up and Delivery Services During the COVID-19 Pandemic* to protect workers and customers. ^{1/} FDA's recommendations address how retail food establishments can prepare and deliver food safely to the public and suggestions for employee health and personal hygiene, cleaning and sanitizing, and personal protective equipment (PPE). Second, the U.S. Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) issued a notice to FSIS inspectors providing guidance on the use of protective face coverings to limit the spread of COVID-19. ^{2/}

FDA: Recommendations for Retail Food Establishments and Food Delivery

FDA's recommended practices for retail food establishments address four primary areas: managing employee health (including contracted workers), personal hygiene for employees, managing operations in a foodservice establishment or retail food store, and managing food pick-up and delivery.

- **Managing Employee Health (Including Contracted Workers)**

FDA's recommendations for managing employee health are consistent with recommendations in existing guidance documents from FDA and the U.S. Centers for Disease Control and Prevention

^{1/} Best Practices for Retail Food Stores, Restaurants, and Food Pick-Up/Delivery Services During the COVID-19 Pandemic (Apr. 2020), available at <https://www.fda.gov/media/136811/download>; Summary of Best Practices for Retail Food Stores, Restaurants, and Food Pick-Up/Delivery Services During COVID-19 Pandemic (Apr. 2020), available at <https://www.fda.gov/media/136812/download>.

^{2/} FSIS Notice 19-20: Use of Protective Face Coverings to Reduce the Spread of COVID-19 (Apr. 9, 2020), available at https://www.fsis.usda.gov/wps/wcm/connect/ae28e461-9361-4cdb-8a60-97d84907c5cf/19-20.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ae28e461-9361-4cdb-8a60-97d84907c5cf.

(CDC), such as requiring employees with COVID-19 symptoms to report to their symptoms to their supervisors and sending sick employees home immediately. The recommendations incorporate the guidelines the CDC issued April 8 concerning critical infrastructure workers who are exposed to a person with a confirmed or suspected case of COVID-19, which include precautions to follow to allow exposed individuals who are asymptomatic to continue to work.^{3/} The guidance notes that if FDA's recommendations differ from the CDC's recommendations regarding employee health and COVID-19, businesses should follow the CDC recommendations.

- **Personal Hygiene for Employees**

The recommendations for employees include measures that generally are already standard among food establishments, such as washing hands for at least 20 seconds with soap and water or, if soap and water are not available, an alcohol-based hand sanitizer; using gloves to avoid direct bare hand contact with ready-to-eat foods; and covering a cough or sneeze with a tissue, then throwing the tissue in the trash and washing hands after.

- **Managing Operations in a Foodservice Establishment or Retail Food Store**

FDA advises that foodservice establishments and retail food stores should continue to follow established food safety protocols, as well as important COVID-19 recommendations. FDA's recommendations include, for example, frequently disinfecting surfaces repeatedly touched by employees or customers and frequently cleaning and disinfecting floors, counters, and other facility areas using EPA-registered disinfectants. FDA also recommends that when changing normal food preparation procedures, service, delivery functions, or making staffing changes, businesses should apply procedures to ensure the safety of food (e.g., ensuring the time foods being stored, displayed, or delivered are held in the danger zone of between 41 °F and 135 °F is minimized).

FDA advises that businesses can help customers maintain good infection control and social distancing by:

- Discontinuing operations such as salad bars, buffets, and beverage services stations that require customers to use common utensils or dispensers;
- Avoiding displays that may result in customer gatherings;
- Finding ways to encourage spacing between customers while in line for service or check out in accordance with applicable state or local requirements (e.g., using every other check-out lane to aid in distancing);
- Setting up designated pick-up areas inside or outside retail establishments; and
- Discouraging customers from bringing pets—except service animals—into stores or waiting areas.

- **Managing Food Pick-Up and Delivery**

FDA's recommendations for managing food pick-up and delivery reinforce many of the food safety precautions businesses typically follow under normal operations, such as observing established time/temperature controls and taking steps to prevent cross contamination. Additional practices of note include:

^{3/} See HL Memo, COVID-19 Update: CDC Issues Interim Guidance on Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19 (Apr. 9, 2020), available at <https://www.hffoodlaw.com/2020/04/covid-19-update-cdc-issues-interim-guidance-on-safety-practices-for-critical-infrastructure-workers-who-may-have-had-exposure-to-a-person-with-suspected-or-confirmed-covid-19/>.

- Increasing the frequency of cleaning and disinfecting high-touch surfaces;
- Establishing designated pick-up zones for customers to help maintain social distancing;
- Offering curbside pick-ups and offering to place orders in vehicle trunks;
- Practicing social distancing when delivering food, such as offering “no touch” deliveries and sending text alerts or calling when deliveries have arrived; and
- Conducting an evaluation of an establishment to identify and apply operational changes in order to maintain social distancing if offering take out or carry out by maintaining a 6-foot distance from others, when possible.

FSIS Directive on PPE

FSIS Notice 19-20, *Use of Protective Face Coverings to Reduce the Spread of COVID-19*, provides guidance to FSIS employees regarding the recent CDC recommendation on the voluntary use of face coverings to reduce the spread of COVID-19. The guidance advises that FSIS employees may consider wearing a face covering consistent with CDC recommendations. The notice explains that at establishments that require their employees to wear face coverings FSIS will inform establishment management to distribute face coverings to FSIS inspection program personnel as well, when available. FSIS also acknowledges that due to increasing demand, the availability of commercial face coverings may be limited, which in some cases may require FSIS employees to provide their own face coverings. FSIS advises that agency employees who voluntarily use face coverings to perform their jobs should be sure the coverings meet CDC recommendations for face coverings, including that they fit snugly but comfortably against the side of the face; be secured with ties or ear loops; include multiple layers of fabric; and allow for breathing without restriction.

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We will continue to monitor the federal and state 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.