

MEMORANDUM

From: Elizabeth Barr Fawell
Brian D. Eyink
Mary B. Lancaster

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Re: COVID-19 Update: Agriculture Workers and Employers Guidance; Meat and Poultry Facility Assessments Toolkit; Retail Food Establishment Checklist

The Food and Drug Administration (FDA) and the Centers for Disease Control (CDC) recently released several guidelines for various segments of the food industry to address the COVID-19 pandemic. First, CDC issued *Interim Guidance from CDC and the U.S. Department of Labor, Agriculture Workers and Employers* (“the Interim Guidance”), which provides recommendations related to COVID-19 transmission considerations for agriculture workers and employers. ^{1/} The Interim Guidance addresses the unique challenges of controlling the spread of COVID-19 given factors such as agriculture work sites, shared worker housing, and shared worker transportation vehicles, which are prevalent in the agriculture sector.

Second, the CDC issued *Meat and Poultry Processing Facility Assessment Toolkit* (“the CDC Toolkit”) for occupational safety and health professionals and government officials to use in assessing COVID-19 infection prevention and control measures at meat and poultry processing facilities. ^{2/}

Third, FDA released a food safety re-opening checklist, *Best Practices for Re-Opening Retail Food Establishments During the COVID-19 Pandemic* (“the Checklist”), for previously closed retail food establishments or those that have been open with limited service related to the COVID-19 pandemic. ^{3/}

We summarize these resources below. ^{4/}

^{1/} CDC *Interim Guidance from CDC and the U.S. Department of Labor, Agriculture Workers and Employers* (June 1, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-agricultural-workers.html#>.

^{2/} CDC *Meat and Poultry Processing Facility Assessment Toolkit* (May 29, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/php/meat-processing-assessment-tool.html>.

^{3/} FDA *Best Practices for Re-Opening Retail Food Establishments During the COVID-19 Pandemic – Food Safety Checklist* (May 21, 2020), <https://www.fda.gov/media/137867/download>.

^{4/} This memorandum is offered for general information and educational purposes. It is not offered as, and does not constitute legal advice. It is not intended to create, and receipt of it does not constitute, a lawyer-client relationship.

I. **CDC and Department of Labor (DOL) Joint Interim Guidance for Agriculture Workers and Employers**

The Interim Guidance addresses, among other things, COVID-19 exposure risk among agricultural workers, creating COVID-19 assessment and control plans, screening and monitoring workers, managing sick workers, and special considerations for shared housing and transportation. It also references and briefly reviews applicable laws and regulations related to worker safety and workers' rights. Below we highlight some of the key agriculture worker-specific strategies recommended in the Interim Guidance, such as social distancing measures for fieldwork and employer-provided group housing, heat exhaustion related to face coverings, and shared worker transportation. Agriculture employers, workers, and farm owners/operators should consult the Interim Guidance document for full details on the recommendations. CDC notes that the document may be adapted by state and local health departments to respond to rapidly changing local circumstances.

Before addressing control measures for COVID-19, the Interim Guidance explains some of the circumstances specific to agricultural production that may affect farmworkers' risk for COVID-19, including:

- Distance between workers
- Duration of contact
- Type of contact
- Other factors such as: shared transportation; employer-furnished housing and shared living quarters; living in crowded multigenerational housing; contact in community settings with ongoing community transmission; workforce mobility (i.e., migrant workers); and poor access to hygienic facilities throughout the day.

The Interim Guidance recommends that farm owners and operators develop a COVID-19 assessment and control plan, which should be specific to the region, work site, job tasks, and other features. The Interim Guidance explains that "those involved in the work can best set priorities and assess how realistic these recommendations are for specific situations at their facilities." Control plans should consider the following topics.

- **Screening and monitoring workers** for COVID-19 signs and symptoms.
- **Managing sick workers.** Recommendations include:
 - Workers who appear to have symptoms upon arrival at work, or who develop symptoms during the day, should immediately be separated from others at the workplace, sent to their permanent or temporary housing arrangements, or placed in alternative housing arrangements under quarantine away from other workers.
 - If a worker is in employer-furnished housing, consider providing a dedicated space for the worker to recover away from others, and then clean and disinfect living quarters, cooking and eating areas, bathrooms, and laundry facilities.
 - Consult DOL and the Department of Homeland Security (DHS) regulations and/or guidance for additional requirements concerning temporary foreign workers under the H-2A program.
- **Return to work after worker exposure to COVID-19.**
- **Engineering controls.** Recommendations address limiting close contact with others, if feasible.

- **Cleaning, disinfection and sanitation.** Recommendations address:
 - Hand hygiene, including:
 - Farmworkers must have reasonable access to handwashing facilities equipped with soap, potable water, and clean, single-use towels.
 - In addition to increasing the frequency of hand washing, if hands aren't visibly soiled or dirty, farmworkers can use hand sanitizer containing at least 60% alcohol, rubbing hands until they are dry.
 - Disinfection and sanitation, including daily cleaning and sanitation of work sites.
 - Targeted and frequent cleaning and disinfecting of high-touch areas of shared spaces.
 - Sanitizing tools and equipment.

- **Administrative controls.** These include:
 - Training, including ensuring it is provided in languages appropriate to the preferred languages spoken or read by those receiving the training, and at the appropriate literacy level.
 - Review leave and sick leave policies.
 - Promote social distancing. Recommendations include:
 - Consider reducing crew sizes, staggering work shifts, mealtimes, and break times, and having farmworkers alternate rows in fields to facilitate a 6-foot distance between each other.
 - Consider placing materials (such as harvesting buckets) and produce at a central transfer point instead of transferring directly from one worker to the next.
 - Consider grouping healthy workers together into cohorts that include the same workers each day.
 - Maximize opportunities to place farmworkers residing together in the same vehicles for transportation and in the same groups to limit exposure.

- **Cloth face coverings in agricultural operations.** 5/ The Interim Guidance notes:
 - Cloth face coverings may be difficult to wear for extended periods of time, especially in hot humid environments, require touching of the face and repositioning of the coverings.
 - Employers may consider providing workers with alternatives to cloth face coverings, such as face shields.
 - Social distancing will be very important when the use of cloth coverings is not feasible.

- **Personal protective equipment (PPE).** 6/ Recommendations address:
 - Training in the use of PPE.
 - Glove use, noting farmworkers can continue to wear whatever gloves they normally wear while doing fieldwork.

5/ The Interim Guidance notes that **cloth face coverings are not personal protective equipment (PPE)**, and are not appropriate substitutes for PPE such as respirators (e.g., N95 respirators) or medical facemasks (e.g., surgical masks) where respirators or facemasks are recommended or required to protect the wearer.

6/ The Interim Guidance notes that farm workers are in the medium risk exposure category based on the Guidance on Preparing Workplaces for COVID-19. Medium risk workers rarely are required to use respirators for infection control. Filtering face piece respirators may increase the risk of heat-related illness. Water availability and frequency of breaks should be adjusted as appropriate whenever workers are at risk of heat-related illness.

- **Special consideration for shared housing.** Owners and operators are recommended to consult CDC’s guidance for shared or congregate housing facilities, for both operators and occupants of shared housing. ^{7/} Additional recommendations address:
 - Housing and enhanced sanitation.
 - Disinfecting living quarters, cooking and eating areas, bathrooms, and laundry facilities.
 - Housing and social distancing, including:
 - Support social distancing during the entire time farmworkers are housed, including while recreating, cooking, and sleeping.
 - Consider if possible, adding physical barriers, such as plastic flexible screens, between bathroom sinks when there are multiple sinks. Modify common areas to encourage social distancing, if feasible, including furniture removal or spacing.
 - Consider modifications to bed configurations.
 - Encourage residents to wear cloth face coverings in shared spaces.
 - Other considerations such as:
 - Consider instituting daily health checks.
 - Establish isolation plans for responding to farmworkers with COVID-19.
 - For H-2A temporary housing considerations, review the DOL explanation of alternative housing arrangements in response to COVID-19. ^{8/}

- **Special considerations for shared transportation.** Recommendations include:
 - Provide as much space between riders as possible.
 - Group (or cohort) workers in the same crews and/or those sharing living quarters together when transporting.
 - Increase the number of vehicles and the frequency of trips to limit the number of people in a vehicle.
 - Make hand hygiene (hand washing/hand sanitizer) available and encourage riders to use hand hygiene before entering the vehicle and when arriving at destination.
 - Instruct riders to follow coughing and sneezing etiquette when in the vehicle.
 - Highly encourage all passengers and drivers to wear cloth face coverings when in the vehicle.
 - Transportation vehicles should be cleaned and disinfected in accordance with CDC guidelines for non-emergency transport vehicles before and after each trip, or daily at minimum.

- **Special considerations for children.** The Interim Guidance also recommends addressing children in the workplace.

II. CDC Meat and Poultry Processing Facility Assessment Toolkit

The CDC Toolkit provides two resources for occupational safety and health professionals and government officials to use in assessing COVID-19 infection prevention and control measures at meat and poultry processing facilities.

- Facility Assessment Checklist. This 9-page checklist is intended for occupational safety and health professionals to use in assessing a facility’s COVID-19 control plan. It assesses the following major criteria:

^{7/} CDC *COVID-19 Guidance for Shared or Congregate Housing* (Apr. 25, 2020), <https://bit.ly/2AFzS9E>; CDC *Living in Shared Housing* (Apr. 27, 2020), <https://bit.ly/3gZhyc7>.

^{8/} DOL Office of Foreign Labor Certification, *COVID-19 Frequently Asked Questions Round 3* (Apr. 9, 2020), <https://bit.ly/2XB1CFu>.

- Ability to maintain social distancing
 - Promotion of hand hygiene
 - Identifying and excluding sick workers from working
 - Providing education, training, and communication
 - Cleaning/sanitizing/disinfection
 - Providing PPE
 - Providing cloth face coverings
 - Evaluating and maintaining ventilation
- Facility Assessment Tool. This 13-page document is intended to serve as a template for state and local health officials to assess COVID-19 infection prevention and control measures (and not regulatory compliance) in meat and poultry processing facilities. Information to complete an assessment can be gathered through review of written policies and procedures, discussion with facility management and worker representatives, and direct observation, if a site evaluation is planned. The template is separated into four sections:
 - Facility and workforce characteristics
 - Infection control program and infrastructure
 - Guidelines and other resources
 - Direct observation of facility practices

Meat and poultry processors may wish to review these documents in anticipation of inquiries by governmental authorities.

III. FDA Best Practices for Re-Opening Retail Food Establishments During the COVID-19 Pandemic

The FDA food safety re-opening checklist is for both previously closed retail food establishments and those that have been open with limited service related to the COVID-19 pandemic. The checklist is not a comprehensive list, but addresses key food safety practices retail food establishments should consider, such as:

- operations
- water, plumbing, and ice
- cleaning and disinfecting
- temperature controls
- warewashing equipment
- handwashing stations
- employee health
- social distancing

Re-opening and restarting establishments are encouraged to partner with local health authorities to discuss any specific requirements that may apply.

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We will continue to monitor the federal government's response to COVID-19. Should you have any questions or if we can be of assistance with your COVID-19 response strategy, please do not hesitate to contact us.