



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

MEMORANDUM

From: Gary Jay Kushner
Maile Gradison Hermida
Elizabeth Barr Fawell
Brian D. Eyink
Leigh G. Barcham

Date: April 15, 2020

Re: COVID-19 Update: FDA Updates Guidance on Food Supply, Social Distancing, and Employees Positive for COVID-19; USDA Updates Guidance on Inspection and Export Services, Food Safety, and PPE

The U.S. Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA) recently updated their respective questions and answers guidance to address questions or update their recommendations concerning food safety and COVID-19. FDA has supplemented its questions and answers guidance on topics regarding the food supply, social distancing, and responding to a worker who tests positive for COVID-19. ^{1/} USDA also recently updated its questions and answers guidance to address inspection and export certification services, face coverings, and the transmissibility of COVID-19 through food. ^{2/}

FDA COVID-19 Guidance

The revisions to FDA's COVID-19 guidance include a new question and answer addressing the relationship of localized food shortages and reports of food being disposed of or crops being plowed under. The guidance reiterates that there are no nationwide shortages of food at this time, although some grocery stores may have low inventories of certain foods until they can restock. It also discusses the shifts in demand, as food use in large-scale establishments (e.g., hotels, restaurants) has declined while demand for food at grocery stores has increased. FDA reports that some foods previously destined for food establishments that are now closed are being diverted to retail or other settings. According to FDA "this is largely an issue of unprecedented demand from the retail sector – not a lack of capacity to produce, process and deliver." FDA notes that it is working with its federal partners to do all it can to ensure safe and available food does not go to waste.

The other revisions to the questions and answers reflect updates to incorporate other guidance documents issued by FDA or the Centers for Disease Control and Prevention (CDC):

^{1/} Food Safety and the Coronavirus Disease 2019 (COVID-19) (Apr. 14, 2020), available at <https://www.fda.gov/food/food-safety-during-emergencies/food-safety-and-coronavirus-disease-2019-covid-19#5e9714d963c4f>.

^{2/} Coronavirus Disease (COVID-19) (Apr. 10, 2020), available at <https://www.usda.gov/coronavirus>.

- FDA included a new question and answer reflecting the guidance the agency released last week on recommended practices for retail food stores, restaurants, and food pick-up and delivery services. ^{3/}
- FDA updated its discussion of how to respond when a worker tests positive for COVID-19 to reflect the recent guidance issued by the CDC. ^{4/} The guidance addresses the precautions the CDC recommends if a worker is in close contact with another worker who has tested positive for COVID-19. The CDC's guidance would allow for critical infrastructure workers who are not showing symptoms but are exposed to a suspected or confirmed case of COVID-19 to continue working, provided certain precautions are followed.

USDA COVID-19 Guidance

USDA updated its questions and answers guidance on the use of face coverings in light of recent CDC guidance. USDA also updated its guidance to incorporate statements previously issued in other documents about inspection continuity and food safety.

- USDA updated its guidance regarding whether employees in food production setting should wear face coverings to reflect the CDC's updated recommendation on the use of cloth face coverings to help slow the spread of COVID-19.
- USDA reports that inspection services, including export certification services, are continuing as normal. USDA also advises that planning for absenteeism is a normal part of the Food Safety and Inspection Service's (FSIS's) normal operations. The agency therefore is closely monitoring and tracking employee absenteeism to minimize impacts to operations and is working to prioritize inspections at establishments based on local conditions and available resources.
- The guidance states there is no evidence to suggest food produced in the United States can transmit COVID-19. It also reiterates there currently is no evidence of food or food packaging being associated with the transmission of COVID-19.

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We will continue to monitor FDA and USDA's response to COVID-19. Please contact us if you have any questions regarding this or other matters.

^{3/} See HL Memo – FDA Issues Best Practices For Retail Food Establishments and Food Delivery; FSIS Issues Notice on Use of PPE by Inspectors (Apr. 10, 2020), available at <https://www.hfoodlaw.com/2020/04/covid-19-update-fda-issues-best-practices-for-retail-food-establishments-and-food-delivery-fsis-issues-notice-on-use-of-ppe-by-inspectors/>.

^{4/} 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.hfoodlaw.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/>.