

MEMORANDUM

From: Martin J. Hahn
Maile G. Hermida
Elizabeth B. Fawell
Leigh G. Barcham

Date: March 24, 2020

Re: HL Memo - COVID-19 Update: FDA Issues Updated Guidance for Food Industry

As the novel coronavirus (COVID-19) crisis continues to present new questions and challenges, the U.S. Food and Drug Administration (FDA) continues to update its website to provide additional information and guidance to the food industry. ^{1/} Since FDA initially issued guidance last week, ^{2/} the agency has supplemented this guidance with six additional questions and answers concerning important issues such as continuing operations in the event that an employee tests positive for COVID-19 and how to maintain social distancing in food production/processing facilities and food retail establishments. FDA continues to emphasize that COVID-19 does not pose a food safety risk. Below we provide the key takeaways from each of the new questions and answers.

- **Continuing Operations After an Employee Tests Positive for COVID-19**

FDA addresses the question of what food facilities or farms need to do in the event that a worker has tested positive for COVID-19 so that they can continue operations while protecting other employees. FDA explains that “[a]ll components of the food industry are considered critical infrastructure and it is therefore vital that they continue to operate.” FDA advises food facilities and farms to “follow protocols, including cleaning protocols, set by local and state health departments, which may vary depending on the amount of community spread of COVID-19 in a given area.”

If an employee is confirmed to have COVID-19, FDA advises employers to inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality about individual employees’ identities. FDA also advises that the CDC’s *Interim US Guidance for Risk Assessment and Public Health Managements of Persons with Potential Coronavirus Disease 2019 (COVID-19) Exposures: Geographic Risk and Contacts of Laboratory-confirmed Cases* provides a framework for assessing and managing risks of potential exposures to COVID-19. ^{3/}

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

^{2/} Hogan Lovells memorandum *COVID-19 Update: FDA and USDA Issue Guidance for Industry and Inspectors* (March 18, 2020), available at <https://www.hffoodlaw.com/2020/03/covid-19-update-fda-and-usda-issue-guidance-for-industry-and-inspectors/>.

^{3/} Available at <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html>.

- **How to Maintain Social Distancing in Food Facilities and Food Retail Establishments**

FDA explains that to prevent the spread of COVID-19, the Centers for Disease Control and Prevention (CDC) recommends that individuals employ social distancing or maintain approximately 6 feet from others, when possible. FDA recommends that food facilities and retail food establishments conduct an evaluation to identify and implement operational changes that increase employee separation. However, FDA also recognizes that “social distancing to the full 6 feet will not be possible in some food facilities.”

FDA explains: “The risk of an employee transmitting COVID-19 to another is dependent on distance between employees, the duration of the exposure, and the effectiveness of employee hygiene practices and sanitation. When it’s impractical for employees in these settings to maintain social distancing, effective hygiene practices should be maintained to reduce the chance of spreading the virus.”

FDA also emphasizes that maintaining social distancing in the absence of effective hygiene practices may not prevent the spread of COVID-19. FDA advises that food facilities should “be vigilant in their hygiene practices, including frequent and proper hand-washing and routine cleaning of all surfaces.” FDA also strongly encourages businesses to coordinate with state and local officials regarding their COVID-19 response, as the intensity of the outbreak and appropriate response may differ according to geographic location.

- **Essential Critical Infrastructure Workforce**

Addressing the question of whether workers in the human and animal food sector are considered part of the essential critical infrastructure workforce, FDA reiterates that the Department of Homeland Security’s *Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19* identifies workers in the Food and Agriculture sector as members of the essential critical infrastructure. ^{4/} The sector includes agricultural production, food processing, distribution, retail, and food service, and allied industries.

- **Resolving Issues Transporting Food**

FDA advises that businesses experiencing issues regarding their supply chain, delivery of goods, or business continuity due to issues such as transportation challenges in areas with curfews or restrictions in place due to the coronavirus should contact the FEMA National Business Emergency Operations Center at NBEOC@fema.dhs.gov. According to FDA, this is a 24/7 operation that can assist in directing an inquiry to the proper contact.

- **Off-Label Use of Quaternary Ammonium as Hand Sanitizer**

FDA acknowledges that alcohol-based hand sanitizers are out-of-stock temporarily. The agency also explains that it has learned that some food establishments have set up quaternary ammonium hand-dip stations and sprays at 200 ppm concentration as an alternative. FDA cautions that these products are intended for use on surfaces, and as such, may not be formulated for use on skin. The agency also is aware of adverse event reports from consumers using such products as a replacement for hand sanitizers, and therefore advises against using these products as replacements for hand sanitizers.

^{4/} Available at https://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_508C_0.pdf.

FDA notes that hand sanitizers are not intended to replace handwashing in food production and retail settings, but should be used in addition to or in combination with proper handwashing. CDC recommends that everyone wash their hands with plain soap and water. FDA says that alcohol-based hand sanitizers may be used if plain soap and water are not available.

Finally, note that FDA has issued guidance for the temporary preparation of certain alcohol-based hand sanitizers during the current public health emergency. ^{5/}

- **Use of Facemasks in Food Retail Settings**

FDA responds to the question of whether employees such as cashiers, baggers, and cleaning personnel in food retail settings should wear facemasks to prevent exposure to COVID-19. FDA explains that the CDC does not recommend that people who are well wear facemasks to protect themselves from respiratory diseases, including COVID-19. FDA states facemasks should only be worn if a healthcare professional recommends it.

FDA also sets out the CDC's following recommended everyday preventive actions for everyone, including service industry workers and customers:

- Avoid close contact with people who are sick.
- Avoid touching your eyes, nose, and mouth.
- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.
- Wash your hands often with soap and water for at least 20 seconds, especially after going to the bathroom; before eating; and after blowing your nose, coughing, or sneezing.
 - If soap and water are not readily available, use an alcohol-based hand sanitizer with at least 60% alcohol. Always wash hands with soap and water if hands are visibly dirty.

* * *

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 do not hesitate to contact us.

^{5/} *Guidance for Industry: Temporary Policy for Preparation of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID-19)*, available at <https://www.fda.gov/media/136289/download>.