

# COVID-19: *Regulatory Responses Affecting the Food & Agriculture Sector*

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## Overview



- Regulatory Response & Enforcement Discretion
  - U.S. Department of Agriculture
  - Food and Drug Administration
  - Department of Homeland Security
  - Department of Transportation
  - Occupational Safety and Health Administration
- Guidance and Best Practices
- Relief for Producers
- Resources

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## Background



- HHS declared COVID-19 a Public Health Emergency on Jan. 31, 2020
- President Trump declared National Emergency on March 13, 2020
- DHS designation of critical infrastructure workers on March 28, 2020
- Surge in demand for food at grocery stores and other retailers
- Collapse in demand for foodservice (restaurants, school lunches)
- Numerous meat and poultry plants, food processors emerge as hot spots, production halted

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## USDA Food Safety and Inspection Service Overview



- Responsible for inspection of meat, poultry, and egg products
  - Safety (HACCP, SSOPs)
  - Labeling
- Slaughter Plants
  - Inspectors must perform the following inspections for each animal slaughtered:
    - Ante-mortem
    - Post-mortem
    - Humane Handling (livestock) / Good Commercial Practices (poultry)
- Processing Plants, Warehouses
  - Under “continuous” inspection – inspector not always present
    - Inspector will often rotate among several establishments

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# USDA Food Safety and Inspection Service

## COVID-19 Response



- Activated Human Pandemic Response Plan
  - Focus on planning for absenteeism amongst inspection personnel
    - Pull FSIS employees with inspection experience out of “office” roles
    - Make use of part-time inspectors
    - Relocate inspectors to meet inspection needs
  - Coronavirus Preparedness and Response Act provided \$33 million to ensure continuity of inspections
  - FSIS may be required to modify inspections, but is committed to meeting statutory obligations

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# USDA Food Safety and Inspection Service

## COVID-19 Response



- Inspectors are submitting to screening by establishments
  - Forehead thermometer measurements
  - Screening questions
    - Symptoms (fever, shortness of breath)
    - Living in household/ close contact with someone who has COVID-19
    - Recent travel to high risk countries

Establishments may deny entry to inspectors if they pose a risk of carrying COVID-19, have symptoms, or refuse to submit to screening

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## USDA Food Safety and Inspection Service COVID-19 Response



- Labels on foodservice products re-routed to retail sales
  - Exempts nutrition label requirements for meat and poultry if:
    - Final label applied at federal establishment does not contain nutrition facts panel
    - Bulk product is portioned, repackaged at retail store without nutrition facts panel
  - Retailers can apply labels to unlabeled protective coverings encasing meat or poultry
  - Retailers can sell products with restricted use labeling, such as “for foodservice only”

FSIS will exercise enforcement discretion until May 22, 2020

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## U.S. Food and Drug Administration COVID-19 Response



- FDA suspended routine inspections of domestic facilities on March 18
  - Foreign routine inspections have also been paused
  - Routine inspections are typically conducted every few years based on a risk analysis
- “Mission critical” inspections will continue
  - In response to natural disasters, outbreaks, and public health emergencies
  - Unless circumstances warrant, inspections will be “announced” to accommodate social distancing, screening

FDA has not set a date for re-commencing routine inspections

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## U.S. Food and Drug Administration COVID-19 Response



- Temporarily suspended supplier verification onsite audit requirements on March 17
  - 3 FSMA regulations require receiving facilities and importers to conduct supplier verification activities based on the facility's Food Safety Plan
    - Preventive Controls for Human Food
    - Preventive Controls for Animal Food
    - Foreign Supplier Verification Programs
  - If Food Safety Plan requires onsite audits as part of supplier verification activities, FDA will not enforce this requirement

FDA expects onsite audits to resume when travel is practical

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## U.S. Food and Drug Administration COVID-19 Response



- Temporary Policy - Egg Safety Rule
  - Facilities that only sell eggs for further processing (e.g., egg products) may sell to the table eggs market
    - 21 CFR part 118
- Temporary Policy – Egg Packaging and Labeling
  - Shell eggs can be sold at retail in cartons or flats without labels
  - Retailer must provide counter card, sign, or tag including:
    - Statement of identity
    - Name and place of manufacturer, packer, or distributor
    - Safe handling instructions

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## U.S. Food and Drug Administration COVID-19 Response



- Temporary policy regarding nutrition labeling to accommodate re-directing foodservice food to retail sales
  - Nutrition labels will not be required on:
    - Foods labeled by restaurants for retail sale
    - Foods labeled by manufacturers with foodservice labels on hand
    - Foods labeled by manufacturers if retail packaging is unavailable
- All other label elements are required

This policy will remain in place for the duration of the pandemic

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## Department of Homeland Security Cybersecurity & Infrastructure Security Agency (CISA)



- Food and Agriculture Sector deemed “critical infrastructure”
  - Encourage federal, state, and local governments to keep food chain operational during emergencies
    - Predates COVID-19 pandemic
- CISA issued guidance on identifying critical infrastructure workers during COVID-19 response on March 28
  - Resource for state and local governments to identify workers that should be allowed to travel, work in spite of travel restrictions and stay-at-home orders

State and local governments ultimately have authority to determine who is essential

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## U.S. Department of Transportation Federal Motor Carrier Safety Administration (FMCSA)



- Emergency Declaration originally issued on March 13
- Motor carriers (e.g., commercial trucks, buses) providing direct assistance to emergency efforts exempt from most Federal Motor Carrier Safety Regulations (49 CFR Parts 390 – 399)
  - Hours of service restrictions
- Emergency cargo:
  - Food, paper products, and other groceries and “immediate precursors”
  - Includes: all shipments of livestock, “final” ingredients
  - Does not include: pet food, livestock/poultry feed, grain

Emergency Declaration Expires on May 15th

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## Occupational Safety and Health Administration



- OSHA deems COVID-19 a “recordable” illness if it is workplace related (*see* 29 CFR 1904)
- Enforcement Guidance on Recording COVID-19 cases (4/10)
  - If employer located in area of community transmission, employers are not required to report COVID-19 unless there is:
    - Objective evidence that cases are work related (e.g., several co-workers who work in close quarters)
    - Evidence of illnesses is reasonably available to the employer
- OSHA will initiate investigation or Rapid Response Investigation (RRI) in response to reports of hospitalizations or fatalities
- Forthcoming guidance on safety for meat and poultry workers

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# Guidance and Best Practices

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## Food Safety

- Federal agencies are not aware of transmission of COVID-19 through food or food packaging
- FDA and USDA are not requiring that food produced in an establishment be placed on hold or recalled over concerns of transmitting COVID-19
  - Inspectors or workers who are ill should be excluded from production areas to avoid contamination through sneezing or coughing, regardless if COVID-19 or other illness

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## What if a worker or inspector has COVID-19?



- Sick employees should avoid showing up to work or leave if they develop symptoms on the job
- Notify local health authorities and follow their guidance
  - Contact tracing, sanitation, testing
- Inform fellow employees of their potential exposure, maintain confidentiality
- CDC Guidance for Exposed Critical Infrastructure Workers
  - Pre-screen – temperature, symptom check
  - Regular monitoring – if not showing symptoms
  - Wear a mask – for at least 14 days after exposure
  - Social Distance – maintain 6 feet distance where possible
  - Disinfect/clean – frequently touched surfaces, bathrooms, common areas

Local and state health departments have authority to shut down plants for COVID-19

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## Sanitation



- Follow directives provided by state and local health authorities
- Standard cleaning chemicals are believed to be effective
  - List N – EPA-recognized disinfectants for coronavirus
- Plant's approved sanitation system should be effective at eliminating coronavirus in the environment
  - FDA – CGMP
  - FSIS – HACCP / SSOP
- Many are voluntarily stepping up cleaning in common areas, frequently touched surfaces, bathrooms

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## Screening



- Temperature checks with forehead thermometer or infrared camera
  - Some plants are checking twice per day
- Questionnaires
  - Symptoms
  - Close contact with infected persons
  - Travel to hot spots
- FSIS inspectors are required to participate in screening
  - Can be refused entry if they fail to comply or if they are deemed high risk for COVID-19 based on temperature or questionnaire responses

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## Mitigation Practices



- Difficult to practice social distancing in food manufacturing environment
- Employee education on symptoms, paid leave
- Installation of plexiglass shields
- Spacing out workers to extent possible

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## Mitigation Practices



- Reduced line speeds, second shift
- Providing face coverings
- Outdoor tents for cafeterias, break rooms
- Staging screening to avoid large crowds
- Temporary closures

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## Testing



- Testing priority determined by state and local governments
  - FDA, FSIS are not involved in decisions on testing employees
  - OSHA has required testing in some manufacturing environments
- Inspectors may voluntarily submit to testing, but will not be required by FSIS

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# Lightning Round

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## Producer Relief Coronavirus Food Assistance Program

- CARES Act & Families First Coronavirus Response Act Funds - \$19 B
  - \$16 billion in direct support to farmers and ranchers
  - \$3 billion in product purchases
    - Monthly purchases of:
      - Fresh fruits and vegetables - \$100 million
      - Dairy - \$100 million
      - Meat and poultry - \$100 million
    - Boxes delivered to food banks, non-profit organizations
  - \$850 million to food banks
    - \$600 million must be spent on food purchases
  - Section 32 Funding - \$873 million to purchase commodities

Commodity	Direct Payment
Cattle	\$5.1 B
Row Crops	\$3.9 B
Dairy	\$2.9 B
Hogs	\$1.6 B
Specialty	\$2.1 B
Other	\$0.5 B

Source: AFBF

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## Cut for time



- FDA
  - Temporary Policy for Preparation of Alcohol-Based Hand Sanitizers
  - Safety Distributing Unused Human Food for Use as Animal Food
  - Best Practices for Retail Food Stores, Restaurants, and Food Pick-up Delivery Services During the COVID-19 Pandemic
- EPA
  - Temporary Amendment to Pesticide Registration Notice 98-10
- USDA AMS
  - Quality grading and inspection services continue

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## Cut for time



- School Lunch & SNAP
  - USDA has approved several state requests to increase availability of food
- H-2A Temporary Agricultural Workers
  - Tune in next week
- Packers & Stockyards Division
  - Oversight investigation into divergence between boxed beef and live beef prices extended to cover COVID-19
- Ethanol
  - No specific funding provisions provided for in CARES Act, FFCRA
  - Major supplier of captured CO2 used in industrial refrigeration systems

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## Resources



- FDA
  - FAQ Guidance ([fda.gov/food](http://fda.gov/food))
- USDA
  - FAQ Guidance ([usda.gov](http://usda.gov))
  - Weekly conference calls with FSIS leadership
- CDC
  - Interim Guidance for Businesses and Employers to Plan and Respond to COVID-19
  - Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19
- EPA
  - List N: Disinfectants for Use Against SARS-CoV-2
- Food & Beverage Issue Alliance
  - Numerous practical guidance resources

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