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Food Producers and Manufacturers Face Uncertain Future as COVID-19 Pandemic Drags On

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During the current COVID-19 pandemic, the United States food industry has done an admirable job keeping food on the table of Americans with few shortages or disruptions reported, thanks in part to federal regulators easing up on enforcement of often burdensome food regulations. As the pandemic became mainstream, the Department of Homeland Security acted quickly to explicitly designate food and agriculture as essential critical infrastructure that must be preserved and protected in the interest of national security. But as the virus has now spread nationwide and the number of cases has soared, we are seeing strains on the system as food producers and their employees scramble to adjust to the new normal of COVID-19. This article discusses the current efforts of regulators to assist the industry through this crisis, the tensions that are building as the virus spreads across all areas of the country, and the steps that food producers and manufacturers should take to be prepared as the food safety system is pushed to the brink.

What federal regulators have done so far to ease the burden on food producers

Over the past several weeks both the United States Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA) have made significant announcements about their food safety enforcement approach and have issued guidance to the industry addressing food safety concerns related to the COVID-19 pandemic. Both agencies have posted industry information and have answered frequently asked Q&As on their websites. Here are some highlights:

- FDA and USDA have assured the public about the safety of the nation's food supply, stating there is no evidence that COVID-19 has been spread through food or food packaging. However, the agency warned that because COVID-19 is a respiratory virus, there is at least some risk of transmission of the virus through surface contact. Thus, manufacturers of food products must be extra vigilant in producing and handling food products, and in cleaning equipment and food contact surfaces, in order to reduce the risk of contamination due to sick employees. FDA recommends considering widespread use of hand sanitizers and a more frequent cleaning schedule with approved sanitizers. USDA, on the other hand, defers to the same sanitary procedures that establishments are already following to protect food safety to prevent the spread of respiratory illnesses like COVID-19 and also directs the industry to use the EPA's list of approved disinfectants. The USDA reasons that establishments should already have in place a comprehensive plan to reduce the risk of contaminations in their plants.
- The FDA also announced temporary limitations on inspections and audits. Specifically, routine surveillance inspections were largely suspended and only these "for cause" or "mission-critical" on-site inspections are being carried out: (1) inspections in connection with a foodborne illness outbreak; (2) a Class I recall; or (3) a product suspected to be associated with COVID-19. In most cases, these inspections will be pre-announced.

- The FDA suspended certain food supplier verification activities. Where manufacturers' food safety plans or foreign supplier verification programs require on-site audits of food suppliers to verify their food safety practices, the FDA will not enforce such requirements when travel to such facilities is restricted by a government travel restriction or travel advisory. Manufacturers are still required to employ other appropriate supplier verification methods, such as sampling and testing or a review of food safety records and should update their food safety plans or foreign supplier verification programs to incorporate these alternative activities.
- Unlike the FDA, the USDA announced in a March 17 press release that meat, poultry and processed egg inspection services carried out by the USDA Food Safety Inspection Service (FSIS) will continue as normal, with inspections prioritized at establishments "based on local conditions and resources available." However, USDA assured the industry that FSIS inspectors ill with COVID-19 would be excluded from work activities that could create unsanitary conditions. FSIS also provided a guidance document on March 2, 2020 stating that establishments may screen USDA employees for COVID-19 symptoms prior to permitting them into the plant.

Recommended action when an employee becomes ill with COVID-19

Food producers, manufacturers, and other supply chain participants have been rightfully worried about what to do when an employee becomes ill with COVID-19, and this materialized this week in press reports. FDA made clear early on that it did not anticipate that food products would need to be recalled or withdrawn when an employee tests positive for COVID-19 because "there is no evidence of food or food packaging being associated with transmission of COVID-19." In its March 18 briefing for stakeholders, Dr. Susan Mayne, director of the Center for Food Safety and Applied Nutrition (CFSAN), made clear that "we are not asking that food be placed on hold or that food be recalled" if a food facility employee tests positive for COVID-19. FDA has been resolute in this regard.

USDA was less direct, merely stating that establishments are encouraged to follow the recommendations of local public health authorities regarding notification of potential contacts if there is a diagnosed COVID-19 illness. USDA further reminded the industry that "FSIS-regulated establishments are required to have Sanitation Standard Operating Procedures (Sanitation SOPs), which are written procedures that an establishment develops and implements to prevent direct contamination or adulteration of product. It is the establishment's responsibility to implement the procedures as written in the Sanitation SOPs. The establishment must maintain daily records sufficient to document the implementation and monitoring of the Sanitation SOPs and any corrective action taken. FSIS verifies that regulated establishments adhere to the procedures in place. The same sanitary procedures that establishments are already following to protect food safety will also help prevent the spread of respiratory illnesses like COVID-19."

This guidance from regulators highlights the importance of traceability so that in the event an employee becomes ill with COVID-19, the employer can trace all food products and areas that were contacted by the ill employee. Many producers are transitioning to small teams who can work together in distinct areas of the plant with documentation of all in-process activities and related product. Other food producers are hiring extra employees or "relief pools" anticipating they will be needed to fill in for workers who become ill or are suspected of illness. Other strategies include screening all workers for temperature and other COVID-19 symptoms, staggering lunch breaks to reduce the size of gatherings and practicing "social distancing" in the workplace to the extent possible. Finally, some employers are providing protective gear for employees who must work in close proximity to other employees.

Warning signs as employees and producers adapt to demand for food products

One thing appears certain—the COVID-19 pandemic in the United States has not yet peaked, and the current strains on employers and the food workforce are only going to worsen in the coming weeks. In some countries, labor unions are sounding the alarm as food workers are concerned for their safety for working in an environment that makes it impossible to practice safe social distancing guidelines. In the United States, food workers have complained and threatened to strike over working conditions they believe expose them to unreasonable risk of contracting the virus. It is conceivable that an outbreak of the virus in a particular workforce will result in production disruptions and possibly a recall, despite what the regulators are currently saying they will or won't do.

As the pandemic drags on, food producers must be prepared for the worst-case scenario and have established plans in place in case employees become ill with the coronavirus and implicate products. Additional robust cleaning and sanitizing on the front end will make a plant contamination much less likely to occur and strategic planning for traceability will help mitigate the damage by permitting affected product to be identified and segregated. Lastly, food producers should closely monitor the FDA and USDA websites for updates on their current policies regarding enforcement of food safety regulations.

For more information about COVID-19 food-related safety issues, please contact [Sam Felker](#). Also, please visit the [Coronavirus \(COVID-19\): What You Need to Know information page](#) on our website.