

FDA COVID-19 Updates of Relevance to the Food Industry

April 21, 2020

Human and Animal Food

Since Covington's last [client alert](#) on substantive FDA developments for the food industry during the COVID-19 public health crisis, the agency has posted a number of updates of interest to the industry:

- FDA [announced](#) that it will temporarily conduct remote importer inspections under the Foreign Supplier Verification Program (FSVP) rule due to COVID-19. FDA will begin requesting that importers send records required under the FSVP rule to the agency electronically or "through other prompt means." An FDA investigator will contact importers subject to these inspections and explain the process for the remote inspection and make written requests for records. Stakeholders may submit questions about this temporary change in FDA's inspection protocol to FDImportsInquiry@fda.hhs.gov.
- FDA [provided](#) temporary flexibility to chain restaurants and similar retail food establishments for menu labeling requirements. The agency recognizes that some of these businesses are temporarily changing their practices as a result of the pandemic, such as switching to takeout only, and some may be experiencing temporary disruptions in the food supply chain, which may lead to substitutions in menu items that could affect the accuracy of the nutrition information. Accordingly, FDA will not object if covered firms do not meet menu labeling requirements during the COVID-19 public health emergency.
- FDA released two guidance documents relating to shell eggs, to facilitate the distribution and sale of eggs at retail to meet increased demand during the COVID-19 pandemic. The [first guidance document](#) provides temporary flexibility regarding certain packaging and labeling requirements. FDA will not object to the retail sale of shell eggs in cartons or flats without labels if the criteria in the guidance are met, including that information about the packer or distributor of the eggs and safe handling instructions be displayed at the point of purchase. FDA's [second guidance document](#) provides producers of shell eggs that normally would be sent to facilities for further processing the flexibility to sell their eggs for distribution at retail, if certain criteria are met to ensure the safety of the eggs.
- FDA also released [Best Practices](#) for Retail Food Stores, Restaurants, and Food Pick-Up/Delivery Services During the COVID-19 Pandemic. These include key considerations for how foods offered at retail can be safely handled and delivered to the public, as well as key best practices for employee health, cleaning and sanitizing, and personal protective equipment (PPE). The Best Practices address four topics: managing employee health (including contracted workers), personal hygiene for

employees, managing operations in a foodservice establishment or retail food store, and managing food pick-up and delivery. Notably, these practices address not only special considerations to minimize the transmission of the coronavirus, but also general food safety considerations such as the importance of temperature control for safety and the need to avoid cross contamination by, e.g., keeping raw foods separated from cooked and ready-to-eat foods.

- Additionally, FDA released [Information for Consumers](#) on Shopping for Food During the COVID-19 Pandemic. There, the agency reassures consumers that there is currently no evidence of human or animal food or food packaging being associated with transmission of the novel coronavirus. FDA also reiterates that while local grocery stores may be temporarily out of some items, there are no nationwide shortages of food. The agency then goes on to provide guidance to help consumers protect themselves, grocery store workers, and other shoppers, and reminds consumers to follow standard food safety practices to help prevent foodborne illness.
- FDA posted a [Conversation with Frank Yiannas](#), FDA's Deputy Commissioner for Food Policy and Response, describing the agency's perspective on food safety and availability during and beyond the COVID-19 pandemic. There, Yiannas reiterates many of the points made in other agency documents and highlighted above, and describes the steps FDA has been taking to help facilitate the availability and safety of food for consumers during this public health emergency.
- FDA [extended](#) the comment period for the proposed rule on Laboratory Accreditation for Analyses of Foods by an additional 90 days, now closing on July 6, 2020. FDA also [extended](#) for an additional 90 days the reopened comment period on a 2005 proposed rule to establish a set of general principles for the agency to use when considering whether to establish, revise or eliminate a food standard of identity. That comment period will now close on July 20, 2020.
- Finally, FDA has also posted related updates to its [Q&A document](#), Food Safety and the Coronavirus Disease 2019 (COVID-19), which includes questions and answers for industry as well as for consumers.

Covington continues to advise the food industry extensively on issues relating to the COVID-19 crisis, and will continue to provide updates to our clients and contacts.

As the legal, regulatory, and commercial implications of coronavirus COVID-19 continue to evolve, our lawyers and advisors are helping clients navigate the complex considerations that companies around the world are facing and develop plans and strategies in response to COVID-19. Reach out to our COVID-19 task force COVID19@cov.com and visit our [COVID-19 Legal and Business Toolkit](#).

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Food, Beverage, and Dietary Supplements practice:

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