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MEMORANDUM

April 24, 2020

BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: COVID-19: Food Industry Update

OFW is continuing its efforts to provide timely updates on the actions of food-related regulatory agencies in response to the COVID-19 pandemic.

Below is a summary of the recent statements provided by relevant federal agencies regarding COVID-19.

U.S. Food and Drug Administration (FDA)

FDA maintains FAQ Guidance to assist industry and consumers in responding to the COVID-19 pandemic. FDA has recently updated this guidance to address a few questions, which are summarized below:

- *Where should the food industry go for guidance about business operations?*

Food facilities, like other work establishments, need to follow protocols set by local and state health departments, which may vary depending on the amount of community spread of COVID-19 in a particular area. We encourage coordination with local health officials for all businesses so that timely and accurate information can guide appropriate responses in each location where they have operations. Also see the CDC's What Grocery and Food Retail Workers Need to Know about COVID-19.

- *Do you have best practices to share with retail food stores, restaurants, and food pick-up and delivery services that cover safe food handling, as well as employee health?*

FDA is sharing information about best practices to operate retail food stores, restaurants, and associated pick-up and delivery services during the COVID-19 pandemic to safeguard workers and consumers. The information in two convenient formats addresses key considerations for how foods offered at retail and restaurants 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). See Best Practices for Retail Food Stores, Restaurants, and Food Pick-Up/Delivery Services During the COVID-19 Pandemic. Also see the CDC's What Grocery and Food Retail Workers Need to Know about COVID-19.

Center for Disease Control and Prevention (CDC)

Strategies to Reduce COVID-19 Transmission in Food Manufacturing Environments

On April 22, 2020, CDC issued a memorandum to the South Dakota Department of Health regarding strategies to reduce COVID-19 transmission at a packing plant located within the state. Although CDC conducted an investigation into a particular plant, several of the recommendations contained in the report are applicable to other food manufacturers. The federal government is in the process of developing COVID-19 guidelines specific to workers in meat and poultry establishments. We anticipate CDC's recommendations provide a preview of the guidelines that will ultimately be published.

We have summarized the recommendations of general applicability below.

Hierarchy of Controls

CDC recommends that plants adopt the hierarchy of controls approach. Under this approach, the most effective means of controlling an outbreak is to eliminate a hazard or exposure. Until this can be achieved, plants can install engineering controls and implement appropriate sanitation to reduce exposure. Until these controls can be achieved, plants can protect workers through the use of personal protection equipment (PPE).

Social Distancing, Screening, and Sick Leave

Social Distancing

CDC recommends that plants take steps to keep space between individuals in the manufacturing environment. In addition to instructing employees on physical spacing, CDC recommends installing physical barriers in work areas as well as other areas of a plant where workers may come in contact, including break rooms, cafeterias, entrance and exit areas, and locker rooms.

In addition to physical barriers, CDC also recommends installing visual cues, such as floor markings, at six foot intervals in areas where employees tend to congregate. This includes areas

where equipment is checked out, around sinks and handwashing stations, in screening areas and time card stations, plant entrances and exits, and other areas where employees may congregate.

CDC also recommends improving spacing by expanding the distance between tables where employees tend to sit, such as in the cafeteria or in administrative offices. Also, CDC recommends installing physical barriers, such as plexiglass, if these tables are used where two individuals would sit across from each other. If locker rooms, restrooms, or hand washing stations are a chokepoint where employees congregate, CDC recommends making use of alternative locker locations and providing temporary or portable restrooms and hand washing stations to prevent crowding.

To promote spacing, CDC also recommends staggering shifts, start times, and break times when feasible to decrease the number of employees in locker rooms, cafeterias, and break rooms at one time. If possible, CDC recommends setting up outdoor break and lunch areas to reduce crowding and improve airflow. Some plants have assigned individuals to monitor social distancing efforts in communal spaces to remind employees to maintain proper spacing.

CDC recommends face coverings as a supplement to social distancing efforts. Employees should provide face coverings to their employees to cover their mouth and nose to prevent spreading the coronavirus. The face covering should be comfortable and allow the employee to breath easily. Employees should receive training on proper use, such as not touching the face covering once they are wearing it and disposing of it or washing it if it becomes wet or dirty. Employers should also be prepared to provide extra masks when am employees mask is wet or dirty; these masks should be distributed in a touchless manner. CDC also advises that face shields can be helpful in some circumstances, but they should not be used as substitutes for eye protection or face coverings.

Screening

CDC recommends screening all individuals that enter a plant, including contractors and inspectors. For measuring temperature, CDC recommends using either a temporal, tympanic, or oral thermometer (with a probe cover). If a plant wishes to use thermal imaging, CDC recommends procuring FDA-approved systems and using it with the manufacturer's specifications.

CDC recommends using large pictograms describing the screening process to reduce verbal communication and avoid issues arising from language barriers. Also, CDC recommends translating screening information and other instructions into all of the languages spoken by employees at the plant to improve communication.

If the plant is aware that an infected employee lives in a household where they do not have the ability to self-isolate from other household members (especially high risk individuals), CDC recommends identifying off-site housing options while the sick employee self-quarantines.

Sick Leave

CDC recommends ensuring that sick leave policies are flexible and consistent with public health guidance and that employees are aware of and understand these policies. CDC also recommends evaluating sick leave policies to ensure that employees are not penalized for taking COVID-19-related sick leave. CDC also recommends against policies that require a positive COVID-19 test result or a healthcare provider's note to validate an employee's sickness, qualify for sick leave, or to return to work.

Hand Hygiene and Sanitation

As is standard practice, CDC recommends that plants encourage employees to frequently wash their hands with soap and water for at least 20 seconds or use hand sanitizer if soap and water is unavailable. CDC also recommends that hand washing facilities should be as "touch-free" as possible; examples include no-touch sinks, soap and sanitizer dispensers, and paper towel dispensers. Employees should be encouraged to perform hand hygiene when coming off production lines for a break, lunch, or the end of a shift. They should also wash their hands after removing gloves and before and after donning and doffing their face coverings.

CDC also recommends developing a standard operating procedure that includes targeted and frequent sanitation of high-touch areas or shared spaces, including bathroom fixtures, locker rooms, tables and chairs in shared spaces, door handles, plug attachments, and other equipment. Sanitation should also be conducted between breaks (in break areas) and between shifts to reduce the potential for infection. Tools that are used by multiple employees should also be cleaned between uses. Also, CDC recommended developing protocols for safe storage of hardhats so that employees can avoid bringing them into common areas during breaks.

Training and Communication

CDC recommends providing employees with current information on methods to slow the spread of COVID-19. The training information should be reinforced with signage (e.g, infographics) placed in strategic locations. CDC recommends maintaining ongoing communication and message coordination where possible to avoid confusion and fear amongst employees.

CDC recommends that communication and training efforts address social distancing practices, hand hygiene, use and sanitation of PPE, and directions for what employees should do if they believe they are sick. To avoid crowding, training should be provided through videos to avoid in-person meetings. Also, training should be provided in multiple languages and reinforced with infographics to ensure as many employees as possible can understand the directions. Some plants use mobile apps that are capable of disseminating training through text messages in multiple languages.

Personal Protective Equipment

CDC recommends that employees wear PPE (e.g., face coverings) when appropriate to protect against spreading the coronavirus. The plant should provide training on the proper procedure for

wearing and donning and doffing PPE. The plant should provide facilities to either dispose of or sanitize the PPE. CDC also recommends that employees be instructed to not take PPE home with them.

CDC also indicated that face shields may be appropriate to serve as both PPE and controlling the spread of COVID-19. Care should be taken to reduce fogging up face masks. If they are used, CDC recommends they be sanitized after every shift and stored in a clean location.

Department of Homeland Security (DHS)

Cybersecurity and Infrastructure Security Agency (CISA) Stakeholder Conference Call

On Thursday, April 23, 2020, the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) held a call to discuss the most recent developments regarding the coronavirus pandemic, supply chain issues, and the Department of Homeland Security's (DHS) response. This call will be held every Tuesday and Thursday at 3:00 PM EST to provide updates on the coronavirus response until further notice.

Mr. Bradford Willke, Acting Assistant Director for Stakeholder Engagement at CISA opened the call. Globally, there are 2.4 million confirmed cases of COVID-19 and 169,000 deaths. There are 825,000 COVID-19 cases across the United States and 46,000 deaths. According to Mr. Willke, 42 states and 37 tribes have issued shelter-in-place advisories which will remain in effect until mid/late-May or early-June. Mr. Willke also highlighted the importance of local health facility resilience, robust coronavirus testing and scanning procedures, the issuance of "safe at work" procedures, and the reactivation of local transit systems as communities recover from COVID-19. Mr. Willke also drew attention to President Trump's recommendations issued on April 16, entitled "Guidelines for Opening Up America Again." Mr. Willke closed by encouraging interested stakeholders to visit www.cisa.gov for information on what federal agencies are doing to address the public health emergency.

Mr. Damon Penn, FEMA's Assistant Administrator of the Response Directorate provided an update on the directorate's activities to fight the coronavirus pandemic. Mr. Penn stated that the directorate has established task forces to address data and analytics, community mitigation, healthcare resilience, laboratory diagnostics, supply chain management, and medical countermeasures and is working with the Department of Health and Human Services to address medical products issues. Currently, all ten FEMA regions are participating in COVID-19 response activities and all U.S. states and territories have issued disaster declarations.

Mr. Penn stated that the burn rate for N95 respirators is high, and a year's worth of respirators were used in a three to four-week period. CISA is also working to distribute cloth masks to COVID-19 hotspots and established an airbridge to move personal protective equipment (PPE) back into the United States. The airbridge has conducted multiple flights per day over the past 30 days. Mr. Penn closed his remarks by stating that DHS is working to manage

product shortages and will continue to do so as the public health emergency continues and hurricane season approaches.

Mr. Dave Wolf gave an overview of the CISA guidance. According to Mr. Wolf, the revised CISA guidance entitled "Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response" provides additional information on which lawyers, legal aid workers, and healthcare workers are considered to be essential critical infrastructure workers. The revised guidance also discusses freedom of movement, references Centers for Disease Control and Prevention guidance on workplace safety, and is published in Spanish and French. Mr. Wolf clarified that CISA does not issue credentials to essential critical infrastructure workers. Additionally, the guidance may be adjusted and refined as necessary, and potential changes would be incorporated in a future version of the guidance. Mr. Wolf closed by stating that he believes that the guidance will ensure the smooth operation of global supply chains and workplace safety.

Questions and Answers

- *Where can individuals find lists of COVID-19 testing sites?*

Individuals interested in knowing where coronavirus testing sites are located should contact their local public health departments.

- *Has there been an increase in "spear phishing" cybersecurity incidents during the public health emergency?*

Yes. Cybersecurity incidents have increased during the COVID-19 pandemic and while all sectors are at risk, healthcare providers are at a particularly high risk of becoming infected. DHS is working to remove suspicious domains, evaluate businesses' cybersecurity infrastructure and information security policies, and monitor the global cybersecurity landscape.

- *Is FEMA prioritizing the delivery of PPE to specific sectors over others?*

While FEMA is working to provide PPE for all sectors, the agency is prioritizing the distribution of PPE to healthcare providers engaged in treating coronavirus patients. FEMA recommends that businesses conserve and repurpose PPE whenever possible.

- *When will United States Customs and Border Protection (CBP) release a template for letters of attestation?*

CBP is currently working on a template for letters of attestation and will provide information on how and when letters of attestation should be used when transporting commodities within a company's network.

*   *   *

We trust this information is useful. Please let us know if you have any questions.