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MEMORANDUM

April 22, 2020

BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: COVID-19: FSIS Industry Call

On April 22, 2020, the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS, or the agency) hosted a conference call with meat and poultry industry stakeholders to discuss the agency's response to the COVID-19 pandemic and answer questions. FSIS will be hosting weekly conference calls to address COVID-19 for the foreseeable future.

FSIS Administrator Paul Kiecker opened the meeting with a summary of the agency's efforts to address staffing and inspector safety concerns as well as communications between inspectors and establishments. This introduction was very similar to the one that has been provided in prior industry conference calls. However, Mr. Kiecker addressed a few new items:

- Mr. Kiecker encouraged establishments to begin thinking about how they will transition and adjust plans once state and local governments begin re-opening the economy and reducing some of the stricter social distancing orders; and
- FSIS is aware that some establishments are installing plexiglass and other barriers in the work environment to improve social distancing and reduce contact. FSIS is supportive of these efforts and would not object if an establishment wanted to install these barriers in break rooms for FSIS employees.

Next, Mr. Kiecker opened the floor for questions. Several of these questions have been addressed in prior teleconferences. We have summarized new questions that were posed as well as FSIS' response below:

- *We are facing a shortage of CO₂ that we use for refrigeration in our processing facilities (due to reduction in fuel ethanol production). Is FSIS involved in efforts to ensure we have an adequate supply of CO₂?*
 - FSIS recently received a request to approve the use of commercial grade CO₂ (as opposed to “food grade” CO₂) for refrigeration and cooling. The agency approved this request. However, FSIS does not have a role in determining whether CO₂ should be made more available.

- *We are being encouraged to stay in operation because we are critical infrastructure although our employees are at risk of becoming infected with COVID-19. How is USDA going to protect essential food manufacturers from liability and lawsuits?*
 - This is not an issue that is within FSIS’ scope and we cannot speak for USDA as a whole. You can receive guidance on this issue from your trade association as a starting point.

- *Our regular inspector is going on vacation. We are concerned their replacement will be coming from an establishment with COVID-19 infections. What is being done to prevent an inspector that is infected from entering our establishment?*
 - Inspectors are instructed to notify their supervisors and take leave if they feel ill. We follow the guidance and recommendations of state and local health authorities in determining whether an inspector needs to be quarantined based on exposure to infected individuals. If the state/local health authorities provide no specific instructions, we follow the [CDC guidance](#) for critical infrastructure workers who have had exposure to infected individuals (e.g., monitoring, face masks).

We cannot guarantee that inspectors will not be infected, but we are working to make sure inspectors are not showing up to work with symptoms. The best protection to avoid infections is to practice social distancing, wear face masks, hand washing, and treat every person as someone that could potentially infect you.

- *We are a processing plant under continuous inspection and only require one inspector. If we have to turn away an inspector who fails or does not comply with our screening criteria, what are our options?*
 - FSIS will work to make sure your inspection needs are met. You should notify the Front Line Supervisor immediately so that backup arrangements can be met.

- *If a plant is closed due to a COVID-19 outbreak, are inspectors immediately assigned to another establishment (assuming they are not quarantined)?*
 - This will depend on if they are needed at another location. If there is no need, they will stay at home and await an assignment. If we need them, they will be detailed to a new plant. We are doing what we can to avoid travel where possible, but sometimes it is necessary.

- *We had an inspector threaten to issue a non-compliance record because an employee was wearing a mask improperly (e.g., nose not covered). Is this considered a noncompliance?*
 - No, improperly wearing a face mask is not considered a noncompliance. However, we have communicated to our inspectors that they should notify establishment supervisors if they observe an establishment employee wearing a face covering improperly.

- *Do you anticipate that we will see supply problems with meat and poultry due to shutdowns? How soon could we feel the impact?*
 - This is a question that is better answered by companies in industry. We are aware of some local concerns with the variety of product available, but we are not aware of any major shortages.

- *Can we require inspectors to undergo testing if they were at an establishment with COVID-19 infections?*
 - If you have testing procedures in place, the inspector could voluntarily submit to them. FSIS is not testing its own inspectors, but we will follow guidance from state and local health authorities as well as the CDC.

- *Will FSIS consider testing all of its inspectors in the future?*
 - It is hard for us to see this being required in the future. There are still a lot of issues with accessing tests. Moreover, even if an inspector tests negative, the inspector can still become infected the day after testing. Testing is primarily driven at the state and local level.

- *We understand the need to notify inspectors if they have been in contact with an establishment employee who has had contact with someone infected with COVID-19. Is there any guideline for the amount of time that an inspector spent in close contact with an infected person that should trigger reporting contact with an infected individual?*
 - The general CDC guidance is that prolonged contact is considered to be 10 minutes spent within 6 feet of someone. However, CDC also advises that it depends on the level of contact. Someone who is closer than 6 feet would pose a higher risk even if they were not in close contact for 10 minutes.

* * *

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