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ASTA Online: Navigating the Impact of COVID-19 on the Spice Industry

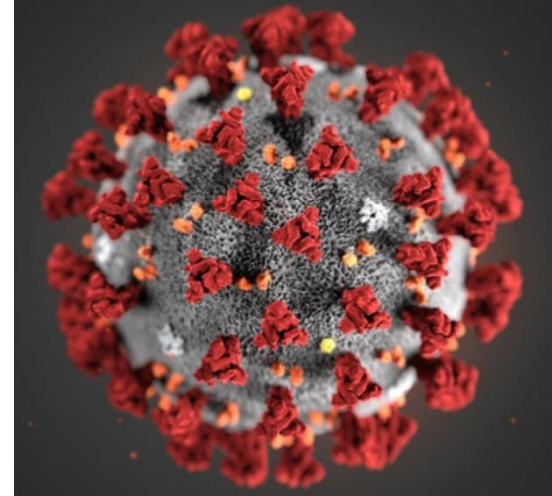
Regulatory and Legal Considerations for
Spice Operations

April 22, 2020



Agenda

- Critical Infrastructure Designation
- In-Plant Risk Mitigation
 - Face Coverings
 - Employee Screening
- Responding to Employee Illnesses
- Changes for FDA Inspections
- FDA Enforcement Discretion
- Planning Ahead



Critical Infrastructure Designation

- The Cybersecurity & Infrastructure Security Agency (CISA) designated the “food and agriculture” sector as part of the critical infrastructure:
 - “Food manufacturer workers and their supplier workers including those employed at food ingredient production and processing facilities; . . . human food facilities producing by-products for animal food; . . . and the production of food packaging.”
- State and local orders reference CISA or specifically exempt food and agriculture from limitations on operations
- Consider providing “critical infrastructure” letters to employees, suppliers, and shippers

Mitigating Risks to Employees

- Best practices are constantly evolving
 - [FDA Food Safety & the Coronavirus Disease 2019 \(COVID-19\)](#)
 - [CDC Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 \(COVID-19\)](#)
 - [CDC Interim Guidance for Implementing Safety Practices for Critical Infrastructure Workers Who May Have Had Exposure to a Person with Suspected or Confirmed COVID-19](#)
 - [Food & Beverage Issues Alliance \(FBIA\) guidance documents](#)
 - [World Health Organization Covid-19 and Food Safety: Guidance for Food Businesses](#)
- Your response strategy needs to be dynamic. Stay abreast of the latest developments

Face Masks

- CDC now recommends the use of simple cloth face coverings as a voluntary public health measure in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores)
- CDC advises that employers and employees in critical infrastructure sectors should consider pilot testing the use of face masks to ensure they do not interfere with work assignments
- FDA recommends the following for workers in food production facilities that choose to use cloth face coverings:
 - Maintain face coverings in accordance with parameters in FDA’s Model Food Code sections 4-801.11 Clean Linens and 4.802.11 Specifications.
 - § 4.801.11: “Clean linens shall be free from food residues and other soiling matter.”
 - § 4.802.11(A): “Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.”
 - Launder reusable face coverings before each daily use.
 - CDC also has [additional information on the use of face coverings](#), including washing instructions and information on how to make homemade face covers.
- FBIA has developed [guidance](#) on proper usage of face masks to protect against COVID-19
- Save surgical masks and N-95 respirators for healthcare workers and other medical first responders.



Employee Screening

- Employee screening may be appropriate, but needs to be done mindfully and in consideration of employment law limitations
- Practices to consider:
 - Self-monitoring
 - On-premises verbal employee screening
 - On-premises employee temperature screening
- Know the limitations on what you can and cannot ask employees
- FBIA has developed [guidance](#) on screening food industry employees for COVID-19 symptoms or exposure

Generally OK	Generally Not OK :
✓ Symptoms (e.g., cough, fever, shortness of breath)	✗ Family member diagnosis
✓ Exposure to COVID-19	✗ Preexisting condition
✓ Why out of work	
✓ Diagnosis of COVID-19	
✓ Temperature checks	

What Do We Do When An Employee Gets Sick from COVID-19?

- Direct the worker to stay home and follow CDC's recommended [steps to help prevent the spread of COVID-19 if you are sick](#)
- Inform fellow employees of their potential exposure to COVID-19 in the workplace
 - Maintain confidentiality about individual employees' identities
 - Follow guidelines set by state and local authorities when considering the need for self-quarantines of other employees
- FDA recommends contacting local public health department if an employee is confirmed positive
- Conduct enhanced cleaning/sanitation of the facility
 - Per FDA, there is no need to conduct environmental testing for the virus
- Follow protocols, including cleaning protocols, set by local and state health departments
 - Based on person-to-person transmission risk – not food safety risk

What Do We Do When An Employee Gets Sick from COVID-19?

- **CDC advises** critical infrastructure workers who are exposed to a known or suspected case of COVID-19 and are not showing symptoms can continue to work, provided the following precautions are followed:
 - **Pre-Screen:** Employers should measure the employee's temperature and assess the employee's symptoms prior to them starting work. In CDC's view, the temperature checks ideally would take place before the employee enters the facility
 - **Regular Monitoring:** As long as the employee does not have a temperature or any symptoms, the employee should self-monitor under the supervision of the employer's occupational health program
 - **Wear a Mask:** The employee should wear a face mask at all times while in the workplace for 14 days after the last exposure. Employers can issue facemasks or, in the event of shortages, can approve employee supplied cloth face coverings
 - **Social Distance:** The employee should maintain 6 feet of separation from others and practice social distancing as work duties permit in the workplace
 - **Disinfect and Clean Work Spaces:** All areas such as offices, bathrooms, common areas, and shared electronic equipment should be cleaned and disinfected routinely
- Employees who had close contact within 6 feet of the ill employee up to 2 days before the onset of symptoms should be considered exposed

What Do We Do When An Employee Gets Sick from COVID-19?

- Other Resources:
 - [CDC Cleaning and Disinfection for Community Facilities](#)
 - Food and Beverage Issues Alliance – [Food Industry Recommended Protocols When Employee/Visitor/Customer Tests Positive for COVID-19](#)



Do We Need to Recall Food if An Employee Gets Sick from COVID-19?

- The short answer: No.
- FDA's Q&As:
 - Do I need to recall food products produced in the facility during the time that the worker was potentially shedding virus while working?
 - We do not anticipate that food products would need to be recalled or be withdrawn from the market because of COVID-19, as there is currently no evidence to support the transmission of COVID-19 associated with food or food packaging.
- FDA Deputy Commissioner for Food Policy and Response Frank Yiannas:
 - “[B]ecause of the way the virus is transmitted, we do not anticipate that food products would need to be recalled or be withdrawn from the market if a person who works on a farm or in a food facility tests positive for COVID-19.”

Do We Need to Shut Down the Facility?

- FDA Q&A states the decision is up to the local public health department
 - *The decision will be based on public health risk of person-to-person contact – not based on food safety*
- Recognize employees will be concerned – take steps to allay employee fears

Changes to FDA Inspections

- FDA is temporarily postponing all domestic and foreign routine surveillance facility inspections due to COVID-19
- FDA will continue to conduct for-cause inspections if they are determined to be mission-critical, such as for foodborne illness outbreaks and Class I recalls
 - Typically will be pre-announced 5 days before the inspection
 - FDA is exploring alternative ways to conduct inspectional work while protecting public health, such as evaluating records in lieu of onsite inspections
- FDA's announcement does not affect inspections under state authorities
- For FSVP inspections, FDA is requesting that importers send the agency required records electronically for review

Temporary Flexibility for Labeling Requirements

- FDA announced it would work cooperatively with industry for remainder of the year on the new NFP requirements and not focus on enforcement
- FDA also issued a guidance document detailing when a restaurant or food manufacturer may sell packaged food labeled for foodservice use (i.e., without nutrition labeling) directly to consumers
 - Food labeled for foodservice without an NFP may be sold directly to consumers if:
 - No nutrition claims
 - Contains all other required label elements: statement of identity, ingredient statement, distribution statement, net quantity of contents statement, and allergen statement
- FSIS has issued temporary allowances from certain labeling requirements for foods already produced and labeled at a federal establishment, bulk product labeled already in commerce at retail, and product in unlabeled protective coverings already in commerce

Temporary FSMA Enforcement Discretion

- FDA announced a temporary policy not to enforce requirements to conduct onsite audits in the PCHF, PCAF, and FSVP rules under certain situations related to COVID-19:
 - A receiving facility or FSVP importer determines an onsite audit is the appropriate verification activity for an approved supplier, as reflected by its written FSP or FSVP;
 - The supplier due for an onsite audit is in a region or country covered by a government travel restriction or travel advisory related to COVID-19;
 - Due to a government travel restriction or travel advisory, it is temporarily impracticable for the receiving facility or FSVP importer to conduct or obtain the onsite audit of the supplier; and
 - The receiving facility or FSVP importer temporarily selects an alternative verification activity or activities, such as sampling and testing food or reviewing relevant food safety records, and modifies its FSP or FSVP to incorporate the alternative activity or activities
- Receiving facilities and FSVP importers should resume onsite audits within a reasonable time after it becomes practicable to do so

Planning Ahead

- This is the new normal for the foreseeable future, no matter where your facility is located
 - Interconnected supply chains and streams of commerce
- Develop plans to address the potential of:
 - High rates of employee absenteeism
 - Supply chain disruptions
 - Ingredient shortages
 - Cost impacts
- Address employee morale and emphasize the importance of supporting the critical infrastructure
- We are all in this together and we will not let COVID-19 get the best of us!



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