



# Impact of Covid-19 On Spice Trade

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BEN ENGLAND, FOUNDER AND CEO

BENJAMIN L. ENGLAND & ASSOCIATES

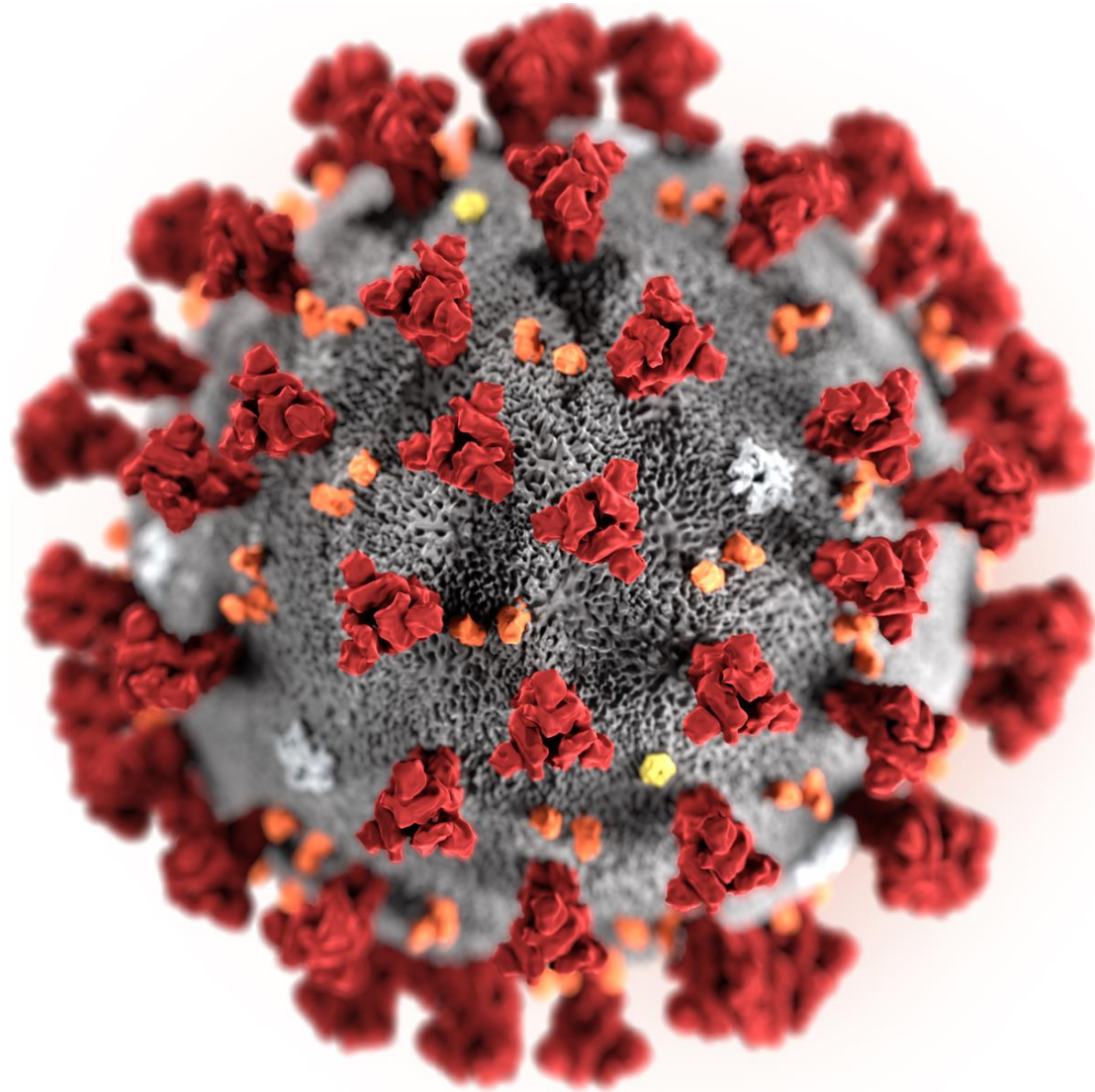
## Benjamin L. England, Esq.

Mr. England is the Founder and CEO of [FDAImports.com](https://www.FDAImports.com) and [Benjamin L. England & Associates](https://www.BenjaminLEngland.com), a fully integrated FDA, USDA, Customs, FTC, and EPA regulatory practice.

A 17-year veteran of FDA, he routinely represents domestic and foreign companies of all sizes, enabling them to reduce the risk of regulatory interference with products being imported, exported or distributed in interstate commerce.



Benjamin L. England & Associates | [contact@englandlawgroup.com](mailto:contact@englandlawgroup.com)



# Agenda

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FDA's Response to COVID-19 Crisis

Customs Enforcement and  
Transportation of Food

Imports and International Trade

Impacts on Business

Prediction on Food Trade in the  
Future

# Federal Response to COVID-19 Crisis

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- “Food and agriculture” one of 16 essential sectors as defined by DHS’s Cybersecurity & Infrastructure Security Agency (CISA)
- The President’s Coronavirus Guidelines specifically identified “food supply” as a critical infrastructure industry
- FDA has been putting most of their energy into drugs and medical devices. However, there are some guidances related to the Food industry during this pandemic.

# FDA Food Guidance Amid Covid-19

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FDA has issued several guidances that affect the food supply chain

## 1. FDA Inspections Postponed

- Most foreign inspections through April
- All domestic routine surveillance facility inspections
- FDA intends to only perform inspections considered mission critical

## 2. FDA Electronic FSVP Records Inspections

- Limited remote inspections already underway, prioritizing the inspections of FSVP importers of food from foreign suppliers whose onsite food facility or farm inspections have been postponed
- Plans to continue to conduct routine and follow-up inspections remotely

# FDA Food Guidance Amid Covid-19

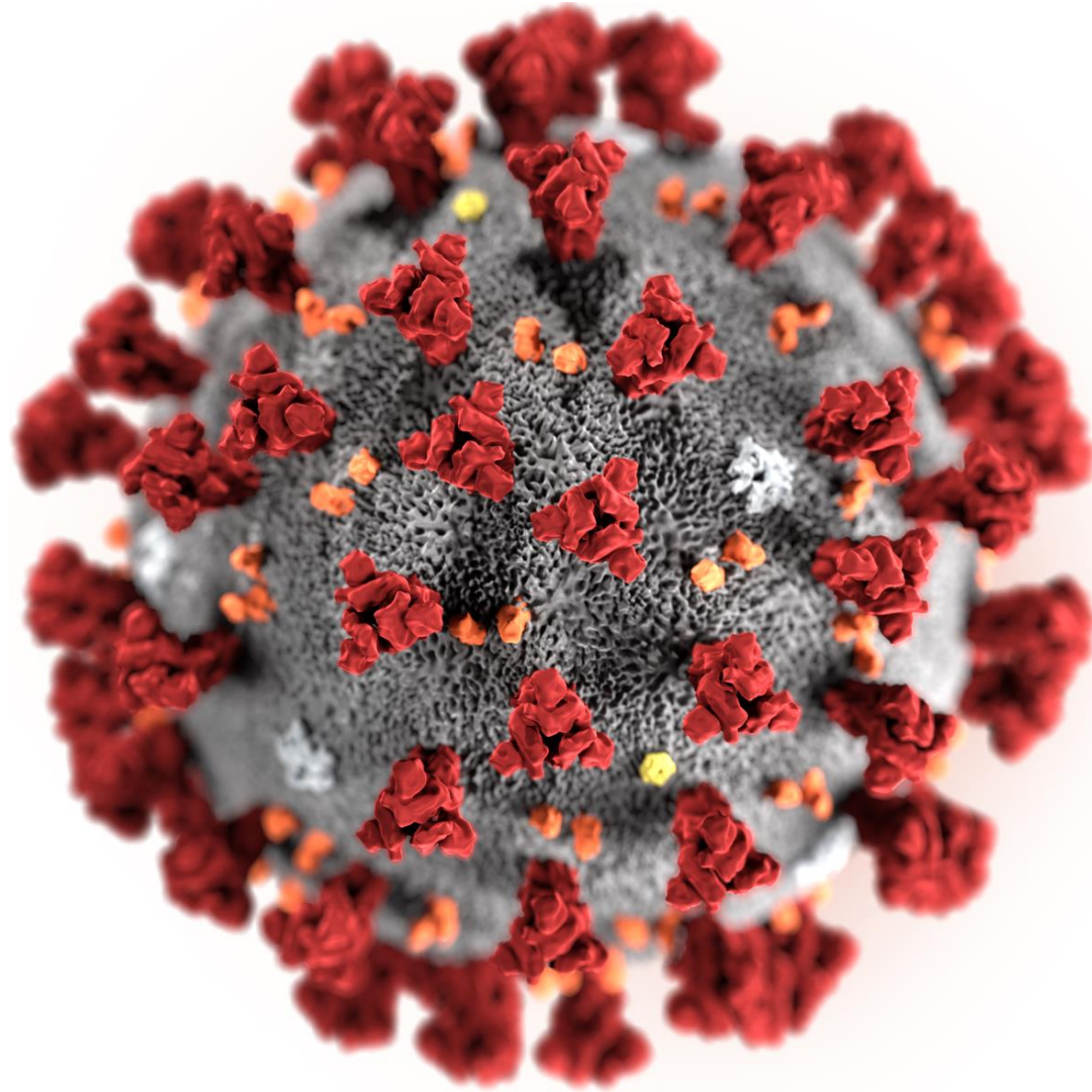
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## 3. FSVP Importers and receiving facilities inspection requirements

- On-site audits for supplier verification purposes can be postponed if in a travel-restricted area
- Must use alternative verifications, ex. sampling and testing and food safety records reviews

## 4. Relaxing of Labeling Rules

- Food manufacturers and restaurants can make retail sales of food that is not labeled for retail sale. Can lack a Nutrition Facts label but cannot make nutrition claims and must contain certain information on the label
- Enforcement of updated Nutrition Facts labeling delayed until the end of the year



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# Covid-19 and Section 301 Tariffs

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- USTR recently opened a period for the public to submit comments on whether goods used to respond to the COVID-19 outbreak should be excluded from the Section 301 tariffs on Chinese-origin goods
- Opportunity for importers to apply for Section 301 exclusions on a wide variety of products *in addition to* medical goods – must make some colorable connection of their good to the COVID-19 outbreak
- Includes goods for which USTR has previously denied exclusions
- Given the high potential for duty savings if exclusions are granted and the relatively low cost to submit comments, strongly advise you consider submitting comments
- Comments are due no later than June 25<sup>th</sup>; however, the USTR will be evaluating and making decisions on the comments on a rolling basis prior to June 25<sup>th</sup>



# COVID-19 and Section 301 Continued

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- Many food ingredient exclusions – specifically, applications for Section 301 exclusions for spices/seasonings/food-based extracts – have been filed and are still pending for decision by the USTR
- Include applications for products on both List 4A and List 3
- More of the spice/seasoning/extract-type products fall within List 4A, and the number of exclusion applications for List 4A reflects that
- Because the exclusion application process timing, none or almost none of the List 4A exclusion applications have been denied yet (they're all listed as being in Stage 2)
- Exclusions that are granted will apply to anyone importing product that fits within that exclusion (HTSUS provision plus description of the product set by the USTR), not just the importer who applied for the exclusion

# Other Customs Predictions

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- Companies need to reevaluate their supply chains
  - We've seen how the pandemic can cause suppliers to have problems producing goods due to stay at home orders or getting goods out of their countries if their governments decide to ban exports. We've seen recommendations for moving supply chains closer to home, or at least for building in redundancies in the supply chain so if one part fails, you can still have a back-up part.
- One larger question is whether the COVID-19 pandemic will lead to decoupling of the US from China and/or accelerate or solidify the decoupling that's already occurring.
- Another Decoupling issue: the US is going to do more to in effect ban imports of certain products from China. This isn't so much applicable to food products, but there's a number of reports that the Trump administration is considering some sort of "Buy American" requirement for critical products such as pharmaceuticals (and APIs).

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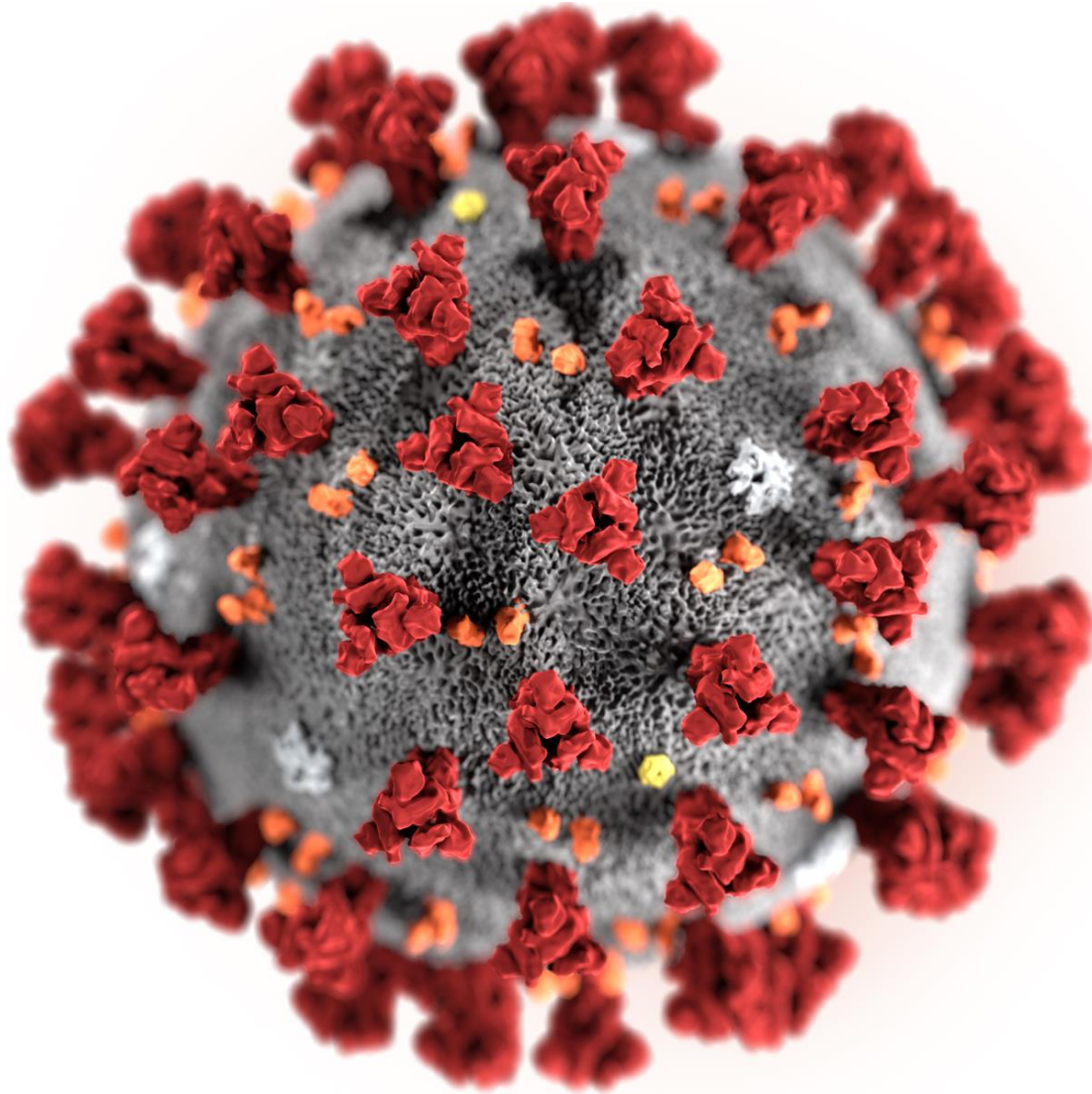
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# Headlines

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“Coronavirus: Global spice trade adjusts to the challenges posed by the virus”

“Coronavirus: Supply chains under scrutiny”

“U.S. Food Supply Chain is Strained as Virus Spreads”

“The Effects of COVID-19 Will Ripple through Food Systems”

“Virus epidemic leads some countries to restrict food exports”

“Coronavirus pandemic shows the U.S. food supply chain is due for an upgrade”

# The Impact Around the World

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- India had exports to the U.S. of over 71,000 metric tons of spices in 2019 and provides about 20% of the entire supply of spices to the U.S.
  - In March, India declared a 3-week nation-wide lockdown, which has been extended into May
  - For a while, no product was leaving India
  - April 15, India restarted exports of major farm products. Government is now helping with transportation and packaging issues
- China, Indonesia, Turkey, Vietnam, and other major markets
  - Quarantines
  - Production delays
  - Price fluctuations

# Bottlenecks

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## Sea Ports

- Shipping containers pile up
- Harder to clear shipments
- Foreign ports with limited operating hours or reduced staffing

## Air Freight

- Reduced passenger flights reduced air cargo options
- Rates – air competing with sea

# Short- and Long-Term Changes in Demand

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- Consumers' increased panic purchasing
- Immune boosters like turmeric and ginger saw strong demand
- But restaurant and food service purchasing falling dramatically
- Estimates that up to 40% of closed restaurants are not coming back
- Consumer demand for spices into restaurant / food service is less diverse
- Increase in value-add food manufacturing may offer reprieve in longer term
- COVID-20?

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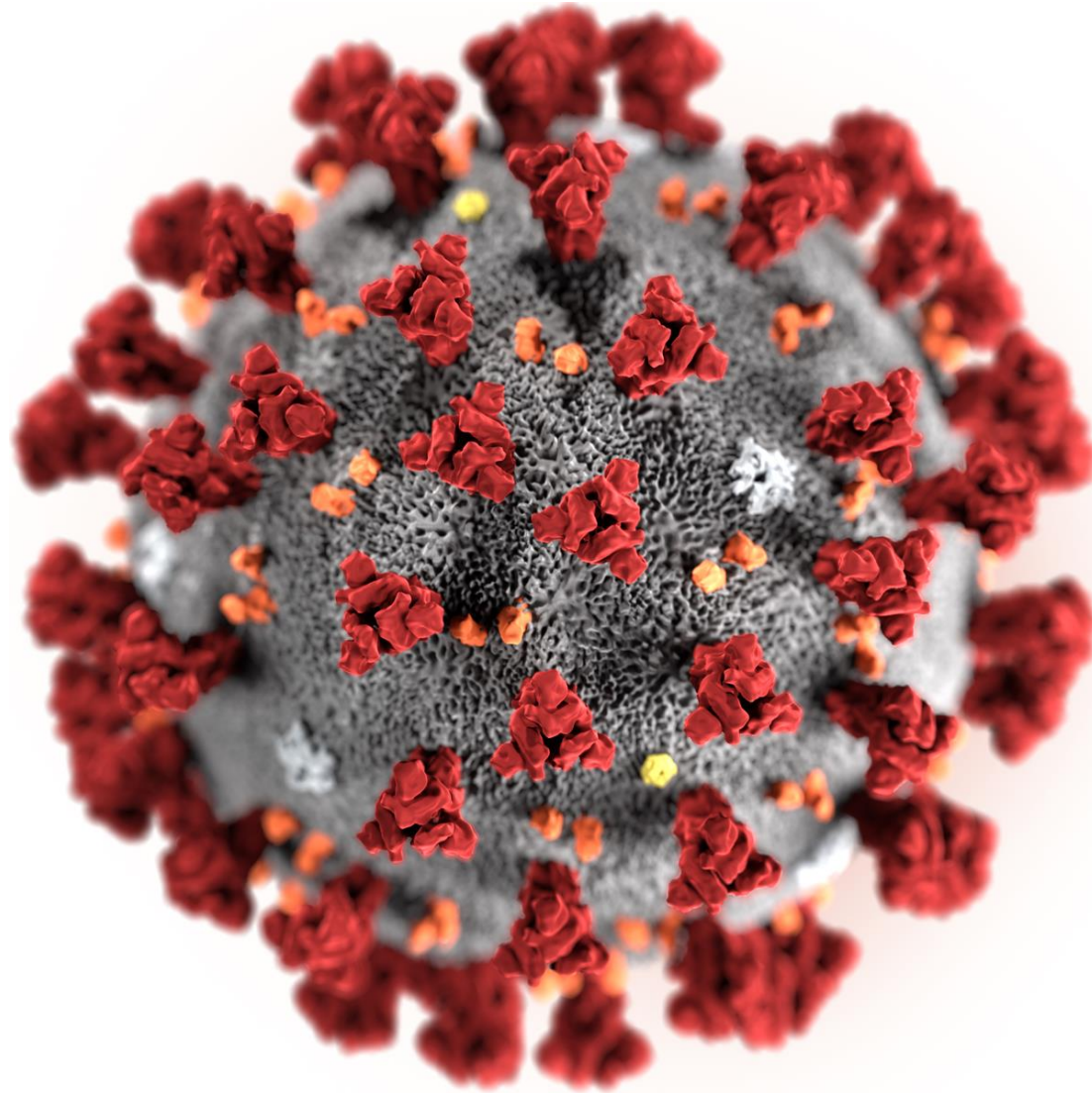
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# Essential Industries in the Supply Chain

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*Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response* from the US DHS's Cybersecurity & Infrastructure Security Agency (CISA)

- 16 sectors identified, including food and agriculture and transportation and logistics
- State and local govt restrictions on business operations may follow CISA advisory list or use their own list of essential industries
- Are your vendors considered essential services?
  - They may have to provide documentation for insurance, landlord, support services or other down or upstream supply chain purposes
  - Importers, exporters, warehouses may be questioned
  - Legal opinion letters can be used to explain their position

# Operating & Sustaining Essential Business

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- Fluid Situation with frequent new and revised requirements
- Impact from Sick Employees and high absenteeism
- Numerous Large Food Processing facilities shut down for periods from 2 days to 2 weeks or even longer
- Critical execution of Crisis management and business continuity plans is necessary for success

# Business Continuity Plans

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- Overall business sustainability and cash flow
- Two extremes of high demand for retail & low demand for foodservice
- Need resiliency to adapt quickly & innovate new packaging/ products
- Supply Chain concerns for raw material availability requiring multiple suppliers
- Plant staffing for employees and management
- Need for back up manufacturing capacity with multi-plants or co-packers
- BCP reassessments for current environments
- Increasing production capacity

# Continuity of Operations (COOP)

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## FEMA Best Practices/Considerations

- Maintaining operations while accounting for employee health and limited resources
- What are your business's essential functions?
- Who are your critical personnel?

# Continuity of Operations (COOP)

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- Disinfection and sanitation never more important
- Shift splitting and other methods to keep workers at the job
- Reduce density of workspaces
- Directional traffic patterns
- Telework options for other staff

# Continuity of Operations (COOP)

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Documents how a firm will perform essential operations during an emergency or long-term disruption.

- 2 days to several weeks
- Critical functions
- Modular and scalable
- Plan for recovery!

# Tools for Supply Chain Risk Mitigation

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## Contractual Protections - supply and customer agreements

- Scope of indemnity and warranties
- Insurance requirements and additional insured provisions
- Force majeure provisions/common law “impossibility”

## Key Insurance Protections

- Commercial “all risk” coverage (business interruption/contingent BI)
- Transportation coverages (through-put, cargo, warehouse)
- Specialty coverages (pollution, supply chain, accidental contamination, others)

**COLLECT** all potentially applicable insurance policies early in (or before) the crisis

# Understand Strengths of Available Insurance

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## Business Interruption Coverages

- Generally in commercial property or “all risk” policy
- Business interruption and “contingent” business interruption
- Alternative triggers
  - Civil authority trigger
  - Ingress/egress trigger
- Communicable disease coverage (Sublimits? Required closure?)
- Other potentially applicable coverages (trade disruption, supply chain, pollution)

## Third-Party Coverages

- General liability/worker’s compensation
- Directors and Officers coverage
- Pay attention to potential riders for risk mitigation/crisis management

## “Force Majeure”



# Overcome Possible Hurdles to Coverage

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Are there physical loss or damage requirements?

- These are typical requirements
- Might be satisfied by presence of viral contamination?
  - Some case law supports coverage
  - Insurer arguments against coverage
- Burden of proving presence of virus

Are there communicable disease or viral exclusions/endorsements?

- Pollution or contamination exclusions
- Communicable disease coverage may apply

**DO NOT ASSUME “no coverage” without careful consideration from your professionals**

# Coordinate Insurance Strategy with Business Strategy

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- The role of insurance in business strategy (claims versus solutions)
- Keep coverage in mind in communications internally, with supply chain partners, and in public communications
- Recognize practical considerations in insurance recovery
  - Insurer resource limitations (timing, adjuster role, etc.)
  - Insurer incentives in claim resolution
  - Cross-border and global supply chain issues
- Consider coverage for risk mitigation or loss prevention

THINK STRATEGICALLY and try not simply to react to insurer positions

# Consider Other Coverages that Might Apply to Non-Supply Chain Losses

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- Event cancellation coverage (including reduced attendance and lost profit)
- Third-party coverages (worker's compensation, general liability)
- Errors and Omissions (if third party claim for professional services/wrongful acts)
- Directors and Officers

# Relieving the Financial Stress

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New Federal and State Programs: Loans, tax credits, tax-deferment among the options

- CARES Act created temporary programs (among other relief)
  - Paycheck Protection Program expands Small Business Administration (SBA) loan program and includes loan forgiveness for retaining employees
  - EIDL Loan Advance provides up to \$10,000 of relief
  - SBA express Bridge Loans to access up to \$25,000 for qualified small businesses
  - SBA Debt Relief to help with loan payments
- Families First Coronavirus Response Act covers a wide range of provisions, including:
  - Tax credits for small and midsize businesses to cover costs of providing
    - Required paid sick leave
    - Expanded family and medical leave

Get advice from your tax professional

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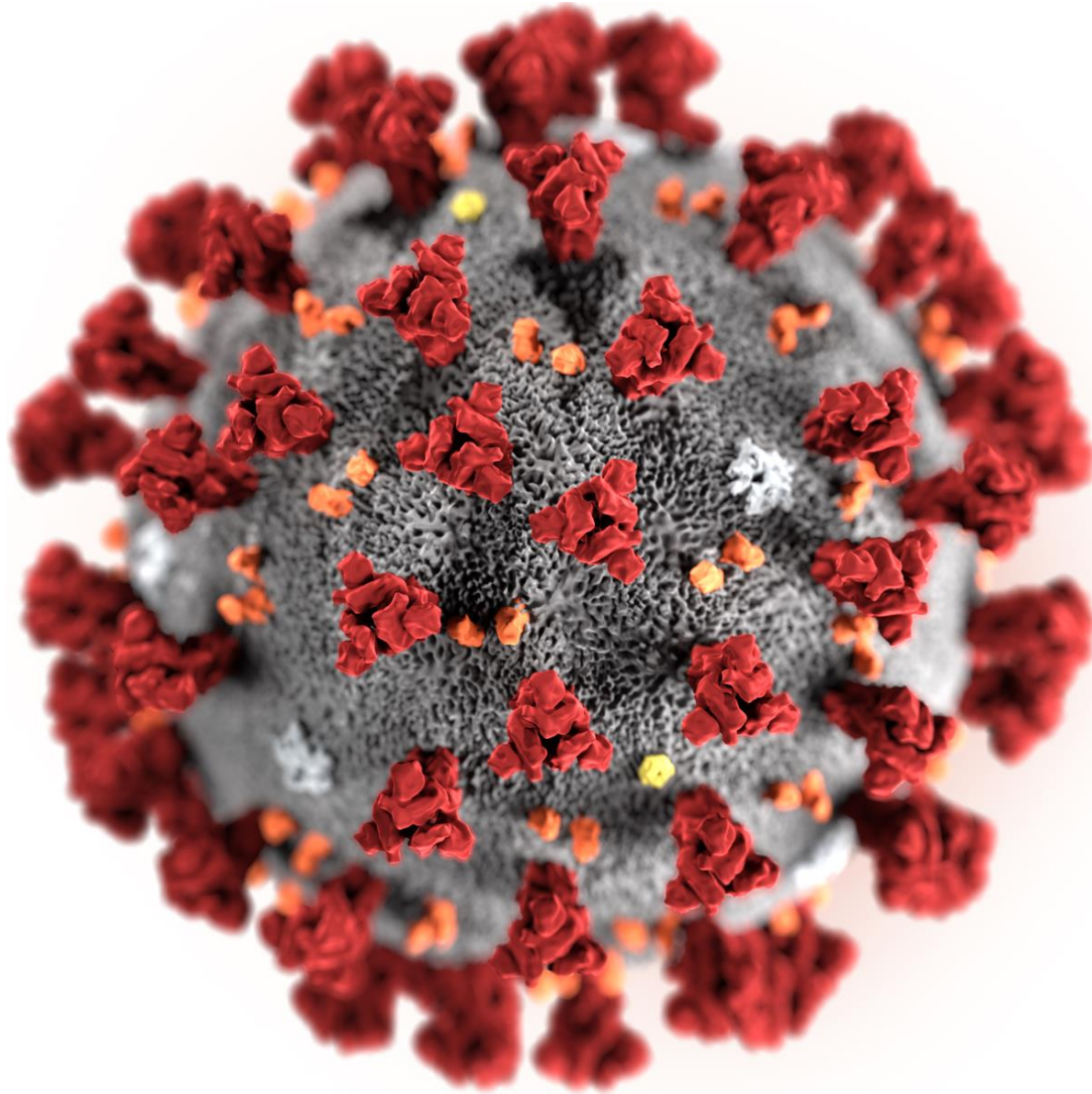
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# Predictions for the Future

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- COVID-19 is creating uncertainty and challenging the ability in food industries to make quick and intelligent changes in how to produce and deliver products to a scared population.
- Make sure you:
  - Check the diversification of your supply markets (Not All One Kind of Buyer)
  - Verify and REVERIFY your suppliers
  - Prepare for forced-labor investigations
  - Meet and maintain FSVP requirements and documentation
- Think about everyone in your supply chain (not just one up one down)

# Managing Supply Chain Risks

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## Supplier Verification Activities

- Vendor qualification
- Contract negotiation
- Minimum insurance considerations and force majeure clauses

Looking at your key supplier's own suppliers

KNOW your Customer (KYC) / KNOW your Supplier (KYS)

Use data and analytical tools to anticipate potential risk areas

# Questions

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**BENJAMIN L. ENGLAND**

— & ASSOCIATES —

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