

# COVID-19 Update for Food Companies Navigating Quarantine Disruption

March 30, 2020

Food Industry

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On March 28, 2020, the [Department of Homeland Security's Cybersecurity and Infrastructure Security Agency \(CISA\) updated](#) its March 19, 2020 "[Essential Critical Infrastructure Workforce](#)" advisory list. These updates largely focus on clarifying which workers CISA considers to be essential, which may be helpful for the human and animal food industries. At the same time, however, the CISA Guidance 2.0 also includes additional language emphasizing that the document is "advisory in nature" and that the primary authority and responsibility for COVID-19 response activities to protect the public health and safety lies with state, local, tribal and territorial governments, with the Federal government playing a "supporting role."<sup>1</sup>

As we noted in our March 24, 2020 [client alert](#), CISA guidance does not preempt State and local directives on essential businesses and workers. It does, however, reflect Federal intentions and can serve as a reference point for businesses that need to advocate for relief from state or local restrictions. But the CISA Guidance 2.0 includes new language that its "list of identified essential critical infrastructure workers is intended to be overly inclusive," suggesting that CISA anticipates that states and localities may define these categories more narrowly.

Specific to the food and agriculture sector, the new guidance expands and clarifies the list of essential workers within the sector. Below, we summarize some of these changes.

- While the previous guidance identified as essential "[w]orkers supporting groceries, pharmacies, convenience stores, and other retail that sells human food, animal/pet food, and beverage products," the new guidance makes clear that this includes unattended and vending retail, as "retail customer support service and information technology support staff necessary for online orders, pickup and delivery."
- The new guidance also refines the language regarding the previously identified essential categories of "food manufacturer employees and their supplier employees," and "farmers, farm workers, and agribusiness support" workers that are essential, specifying that these categories include those employed in "grain and oilseed handling, processing and distribution; animal food, feed, and ingredient production, packaging, and

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<sup>1</sup> CISA Guidance 2.0 at 2 ("State, local, tribal, and territorial governments are responsible for implementing and executing response activities, including decisions about access and reentry in their communities, while the Federal Government is in a supporting role. Officials should use their own judgment in issuing implementation directives and guidance. Similarly, while adhering to relevant public health guidance, critical infrastructure owners and operators are expected to use their own judgement on issues of prioritization of business processes and workforce allocation to best ensure continuity of the essential goods and services they support.")

distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport; farm and fishery labor needed to produce our food supply domestically and for export” and “those engaged in producing and harvesting field crops; commodity inspection; fuel ethanol facilities; biodiesel and renewable diesel facilities; storage facilities; and other agricultural inputs.”

The new guidance also:

- Clarifies that workers and firms supporting the distribution of food ingredients are covered in addition to workers and firms helping with the distribution of food, feed, and beverage, such as warehouse workers.
- Adds new language that workers supporting the “pest control” of food manufacturing processes are also essential in addition to workers that support sanitation (who were identified in the earlier guidance).
- Adds employees of companies engaged in the production, storage, transport, and distribution of seeds to the list of essential employees.
- Changes the list of covered animal agriculture workers to “include those employed in veterinary health (including those involved in supporting emergency veterinary or livestock services); raising of animals for food; animal production operations; livestock markets; slaughter and packing plants, manufacturers, renderers, and associated regulatory and government workforce.”
- Includes a new separate category for “[t]ransportation supporting animal agricultural industries, including movement of animal medical and reproductive supplies and materials, animal vaccines, animal drugs, feed ingredients, feed, and bedding, live animals, animal by-products, and deceased animals for disposal.”

This guidance is likely to continue to evolve. As you may recall, the original March 19th CISA Guidance followed the President’s March 16, 2020 Coronavirus Guidelines for America, which were extended on March 29, 2020.<sup>2</sup> Further updates to these presidential Guidelines are likely, as the President signaled in a March 26, 2020 letter to state governors.<sup>3</sup> In that letter, the President indicated that the country will likely switch to a new pandemic response model, which will classify counties as high, medium, or low risk for COVID-19 outbreaks and utilize robust surveillance testing for the virus. Whether the President’s subsequent Guidelines will take this form remains to be seen, as the situation and the Administration’s response is rapidly evolving. The Covington team will keep you apprised of developments as they come.

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<sup>2</sup> The White House, The President’s Coronavirus Guidelines (Mar. 16, 2020), available at [https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20\\_coronavirusguidance\\_8.5x11\\_315PM.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirusguidance_8.5x11_315PM.pdf).

<sup>3</sup> Letter from President Trump to American Governors (Mar. 26, 2020), available at <https://apps.npr.org/documents/document.html?id=6819627-letter1>.

To best advise our clients on the rapidly evolving public health situation in the United States, our COVID-19 task force is staying abreast of daily developments and tracking the latest federal, state and local policies related to COVID-19. Please feel free to reach out to our team members listed below with any questions, and to visit Covington's website for 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 Health Care practice:

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