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MEMORANDUM

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BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: Trump Administration and the Impact on USDA and Related Policies

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On November 24, 2024, President-Elect Trump announced the nomination of Brooke Rollins[1] to serve as Secretary of the U.S. Department of Agriculture (USDA). If confirmed by the Senate, Rollins would oversee a $213 billion budget and several sub-cabinet agencies,[2] each with distinct functions that together support agriculture, ensure food safety, provide nutrition assistance, promote rural development, and manage natural resources across the U.S. While she was not on the "short list" of news reports speculating on potential candidates, her selection is supported by many agriculture associations.

If Rollins and Robert F. Kennedy Jr., Trump's pick for Health and Human Services (HHS) Secretary, are both confirmed, the two Cabinet secretaries would be expected to interact over

[1] Rollins is a long-term Trump ally. Rollins grew up on a family farm in Glen Rose, Texas, participated in 4-H, and served as a State FFA Officer. She earned an undergraduate degree in agricultural development from Texas A&M and a law degree from the University of Texas. More recently, she served as acting Domestic Policy Director in the White Houe during Trump's first term. She has since gone on to serve as president and CEO of the America First Policy Institute (AFPI).

[2] These include the Agricultural Marketing Service (AMS), Agricultural Research Service (ARS), Animal and Plant Health Inspection Service (APHIS), Economic Research Service (ERS), Farm Service Agency (FSA), Food and Nutrition Service (FNS), Food Safety and Inspection Service (FSIS), Foreign Agricultural Service (FAS), Forest Service (FS), FPAC Business Center (FPAC), National Agricultural Statistics Service (NASS), National Institute of Food and Agriculture (NIFA), Natural Resources Conservation Service (NRCS), Risk Management Agency (RMA), Rural Business-Cooperative Service (RBCS), Rural Development (RD), Rural Housing Service (RHS), and Rural Utilities Service (RUS).

Kennedy's criticism of many modern farming practices and agribusinesses and his "Make America Healthy Again" campaign.[3]

Below, we share our perspective on the potential impacts of a second Trump Administration on USDA, food and agriculture policy, and the food industry. Notably, while most of the topics below would require Congressional action, if an extension of the current Farm Bill is passed into law in December as expected, then the incoming Administration may consider pressing Congress for a number of program changes, including those outlined in Project 2025, pages 289-318. We are aware this memorandum ***does not address all areas of policy that may impact food manufacturers and marketers***. We also caution these matters and their influence upon food policy are very fluid and could change as the second Trump Administration is sworn in. ***If there are areas where you would like deeper analysis, please let us know.***

1. Overall Priorities for the USDA in the Second Trump Administration

As of now, the priorities of a Rollins-led USDA are not yet known, though we anticipate the following potential themes emerging:

- Defense of American agriculture;
- Addressing Commodity Credit Corporation (CCC) concerns;
- Reforming farm subsidies;
- Efforts to move the work of the Food and Nutrition Service to HHS;
- Reforms to the Supplemental Nutrition Assistance Program (SNAP) and the Women, Infants, and Children (WIC) Program;
- Reform of conservation programs;
- Eliminating or reforming Marketing Orders and Checkoff Programs;
- Focus on trade policy (not trade promotion);
- Removing obstacles for agriculture biotechnology;
- Eliminating or reforming the Dietary Guidelines for Americans (DGAs); and
- Addressing concerns over leadership organization.

In contrast, Kennedy's leadership at HHS will likely focus on stricter regulations concerning food safety and public health, particularly targeting issues related to diet and chronic disease prevention. While Rollins may promote productivity and market access within agriculture, Kennedy may emphasize addressing the health impacts of "ultra-processed foods" and corporate influence.

Below we provide an overview of some, but not all, of the major regulations and programs that could be prioritized by the second Trump Administration.

2. USDA-AMS

a. Packers and Stockyards (P&S) Act

[3] OFW Law did a memorandum on the Trump Administration and the Impact on FDA Food and Related Policies that can be found here.

The potential impact of the Trump Administration on the Packers and Stockyards Act (P&S) and its rules could be significant, especially given the historical context of his previous tenure and the current regulatory landscape. During Trump's first Administration, USDA rolled back several regulations which AMS had introduced to try and enhance protection for farmers under the P&S. This included the withdrawal of rules that would have made it easier for livestock and poultry producers to prove unfair treatment by large meatpacking and poultry processing companies. The Administration's approach was characterized by a focus on reducing what it viewed as burdensome regulations, which many advocates argue disproportionately favored large agribusinesses over small farmers. As Trump prepares for his second term, he faces a set of finalized, proposed, and forthcoming proposed rules designed by the Biden Administration.[4]

Since Rollins appears to take a traditional limited-government approach, this could lead to a rollback of some or all of these rules; similar to previous actions taken during Trump's first Administration. For Final Rules, this would likely involve a lengthy federal rulemaking process that allows public comment, making it challenging but feasible for the administration to undo existing regulations. However, proposed rules and Advanced Notices of Proposed Rulemaking (ANPR) may simply be withdrawn, as new Administrations typically will freeze the regulatory process and direct agencies to review any pending proposed regulations and withdraw those with which they disagree.

There is some speculation Trump's second Administration might not mirror his first one entirely. Some industry voices express optimism that new advisers may push for a more balanced approach that recognizes the need for fair competition in agriculture. On the other hand, advocacy groups are preparing to push back against any attempts to weaken their preferred regulations.

b. National Organic Program (NOP)

During his first term, pro-organic advocates feared the Trump Administration would weaken organic standards. In some respects the Administration did so by withdrawing the Organic Livestock and Poultry Practice (OLPP) final rule.

Looking ahead to his second term, pro-organic advocates are concerned similar actions could undermine the NOP. Advocates fear Trump's Administration may prioritize the interests of larger agricultural producers, potentially leading to a dilution of organic standards and increased corporate consolidation within the organic sector. The emphasis on reducing regulatory burdens could result in less stringent enforcement of existing organic standards, making it easier for larger operations to enter the organic market.

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[4] These include: *Two Final Rules* (Inclusive Competition and Market Integrity Rule (March 5, 2024) and Transparency in Poultry Grower Contracting and Tournaments (February 12, 2024)); *Two Proposed Rules* (Fair and Competitive Livestock and Poultry Markets (June 25, 2024) and Poultry Grower Payment System and Capital Improvement Systems (August 9, 2024)) and; *One Advanced Notice of Proposed Rulemaking (ANPR)* (Price Discovery and Competition in Fed Cattle Markets (October 11, 2024)).

Generally, there are unknowns regarding how new leadership appointments within USDA might influence the direction of organic policy, but we would not be surprised to see significant changes.

c. Bioengineered Foods

The Trump Administration's approach to the bioengineered program, particularly regarding agricultural biotechnology, may continue the trends seen during his first term. However, while HHS Secretary-nominee Kennedy has not spoken about bioengineered foods as part of his agenda, his belief in other areas of food technology could mean he will target bioengineering in direct contrast to the historical perspective of the Trump Administration.

In 2019, the Trump Administration issued an Executive Order aimed at modernizing the regulatory framework for agricultural biotechnology. The directive encouraged federal agencies, including the USDA, U.S. Food and Drug Administration (FDA), and U.S. Environmental Protection Agency (EPA), to streamline approval processes and reduce perceived regulatory burdens on biotech products. This trend is expected to continue, potentially leading to fewer regulations and more marketplace innovation.

A significant change made during Trump's first term was allowing biotech companies to self-determine whether their gene-edited products required regulation. This shift raised concerns for some about transparency and oversight. In the past, the Administration's rhetoric often framed regulation as a hindrance to innovation. However, depending on the collaboration with Kennedy, there could be notable shifts.

d. Marketing Orders and Checkoff Programs

The Trump Administration's impact on marketing orders and checkoff programs could be substantial, considering the proposed changes outlined in Project 2025. Project 2025 suggests eliminating or reforming marketing orders and checkoff programs. It states:

> Marketing orders and checkoff programs for agricultural commodities are similar in many ways. They both allow private actors within an industry to collaborate with the federal government to compel other competitors within an industry to fund the respective marketing order or checkoff program. There are currently 22 checkoff programs, and they focus on research and promotion of commodities such as beef and eggs…..Marketing orders and checkoff programs are some of the most egregious programs run by the USDA. They are, in effect, a tax—a means to compel speech—and government-blessed cartels. Instead of getting private cooperation, they are tools for industry actors to work with government to force cooperation.

In summary, Project 2025 recommends the incoming Administration: (1) reduce the number and scope of marketing orders and checkoff programs; (2) work with Congress to eliminate marketing orders and checkoff programs; and (3) promote legislation that would require regular votes.

Based on the above, even if some or all checkoff programs remain, there is a possibility the Administration could impose stricter regulations on how checkoff funds are used. This may include heightened oversight of spending and a push for more transparency regarding how funds benefit individual producers versus corporate interests. This elimination or even reevaluation of checkoff programs may reduce bureaucracy around checkoff programs, and it could reduce essential funding for research, marketing, and promotion that ultimately supports farmers' incomes. Reducing or eliminating checkoff programs could also result in destabilization of markets for certain commodities by decreasing promotional efforts and research funding that help maintain demand and improve production practices.

3. USDA-FSIS

a. General FSIS Food Safety Priorities

As with his first term, the Trump Administration could potentially delay various Biden-Administration USDA Food Safety inspection Service (FSIS) rulemakings, which could provide additional time to consider the impact of regulations on industry, but also may result in regulatory uncertainty for regulated companies. Trump's administrative actions may reduce compliance burdens and enhance operational flexibility. For example, during his first term, the Trump Administration proposed higher line speeds at chicken slaughterhouses, but the Biden Administration ultimately withdrew the proposal. Additionally, the Trump Administration has touted an interest in providing industry actors more leeway in their practices. However, while these changes may benefit producers in the short term, they may also result in regulatory uncertainty for the entire food supply chain.

Aside from promoting a deregulatory agenda, Project 2025, which does not focus much on food safety, highlights an interest in promoting legislation to allow state-inspected meat to be sold in interstate commerce. However, this may be in contrast to some sentiments around state inspection after several recent food recalls.

b. Salmonella Actions

As with other Biden Administration rules, the Trump Administration may delay or even roll back FSIS's recent efforts related to *Salmonella;* specifically *Salmonella* in Poultry. Under the Biden Administration, FSIS proposed significant reforms to curb *Salmonella* in poultry, including: (1) *Federal Register* Notice announcing its Final Determination declaring *Salmonella* an adulterant in not-ready-to-eat (NRTE) breaded stuffed chicken products when they contain at least 1 colony forming unit (CFU) per gram or higher of *Salmonella* (May 1, 2024); and (2) FSIS shared its long-awaited Proposed Determination and Proposed Rule entitled, "*Salmonella* Framework for Raw Poultry Products." The Proposed Framework, if finalized, would establish final product standards for raw chicken carcasses, chicken parts, comminuted chicken, and comminuted turkey products (June 29, 2024). While the Trump Administration may halt or reverse FSIS efforts around *Salmonella*, any attempts to roll back these rules could face legal challenges from stakeholders.

4. USDA-FNS

a. Supplemental Nutrition Assistance Program (SNAP)

The Trump Administration will likely attempt to reduce funding levels for SNAP, the nation's largest nutrition assistance program, which currently exceed $120 billion per year. Review of the SNAP-related portions of Project 2025 provides a possible window into legislative and regulatory efforts the incoming administration and/or Congress in the next Farm Bill may pursue, including increasing work requirements for able-bodied adults without dependents, eliminating SNAP categorical eligibility for state-issued Temporary Assistance for Needy Families (TANF) benefits, eliminating Low-Income Home Energy Assistance Program (LIHEAP) benefits from SNAP benefit calculations, and limiting future updates to the Thrifty Food Plan beyond inflation rates.

The issue of broadest concern to food retailers and SNAP participants are potential changes to the definition of "food" in the Food & Nutrition Act of 2008. Currently, all edible food items other than hot foods, alcohol, and tobacco are SNAP-eligible. U.S. Senators Rubio (R-FL) and Booker (D-NJ) (who introduced the SNAP Nutrition Security Act of 2023 during the 118th Congress), House Agriculture Appropriations Subcommittee Chairman Dr. Andy Harris (R-MD-4), and Kennedy, if confirmed as HHS Secretary, are expected to play leading roles proposing reforms focused on the nutritional quality of SNAP-eligible foods. A wide variety of interested parties – from anti-hunger groups to associations representing the interests of bottlers, confectioners, snack food manufacturers, and retailers of all sizes – can be expected to oppose many of these proposed changes to SNAP. If major changes to SNAP-eligible foods are enacted and/or promulgated, this would have a profound impact on the more than 42 million Americans who are SNAP participants and the more than 250,000 retailers authorized to redeem SNAP benefits.

b. School Meals and Other Nutrition Assistance Programs

Outside of Project 2025's interest in moving USDA nutrition programs to HHS, the Trump transition team has not made announcements about the direct impact the new Administration would like to have on school meals, SNAP, and other USDA nutrition programs. Legislation and/or regulatory action would be required to change USDA's nutrition assistance programs.

While Kennedy has spoken out against what he calls "ultra-processed" foods and restricting foods provided in school meal programs and SNAP (discussed in more detail above), HHS has no jurisdiction over these programs. No such limits have been included in the Farm Bills currently under consideration by the House (See Title IV, Nutrition) and Senate Agriculture Committees (See Title IV, Rural Prosperity and Food Security Act, discussed in more detail below). Provisions have been included in various agriculture appropriation bills to prevent USDA from imposing stricter limits on sodium, whole grains, and whole milk in the National School Lunch and National School Breakfast Programs. Imposing further limitations on foods that could be offered would likely be faced with opposition from some program operators. They would also face the practical question of how further restrictions on what foods could be provided in school programs absent increases in meal reimbursement rates.

Other nutrition assistance program policy considerations may include reforming the Women, Infants and Children (WIC) Program's state voucher system for infant formula rebates, re-

evaluating WIC baby formula labeling regulations, and eliminating the Community Eligibility Provision to reduce the number of students receiving free school meals.

5. Other Potential Areas of Impact for USDA

a. Farm Support Programs

As noted above, the Farm Bill is central to the operation of key farm programs and will likely be an early focus of the next Congress in January 2025.

Important to many of the programs and projects carried out by USDA is the Commodity Credit Corporation (CCC). The funding flexibility CCC provides the Secretary was key to offsetting effects of retaliatory trade tariffs during the first Trump Administration. More recently it was used to augment export promotion programs and pilot climate change strategies. Changes to the Secretary's CCC Authority, proposed by both parties in the House and Senate in 2024, would limit the ability of the Secretary to provide similar assistance to farmers in the future. Constraints are also recommended in Project 2025 and will likely draw attention from Trump's Department of Government Efficiency (DOGE).

Other changes to farm support policies have been discussed in D.C. for many years, including a repeal of the federal sugar program, a reduction or even elimination of crop insurance premium subsidy rates (discussed in more detail below), and reducing the number and scope or even the elimination of marketing orders and checkoff programs (discussed in more detail above).

While Project 2025 portrays conservation programs as unnecessarily broad in scope, they enjoy bipartisan support which may reduce the likelihood of reform. Still, USDA's Natural Resources Conservation Service (NRCS) wetland restrictions used as a prerequisite for participation in USDA farm programs and efforts to decentralize decision making could gain additional traction.

b. Pesticides and Agriculture

Pesticides and agriculture is one of the areas where we see potential tension with USDA and a Kennedy-led HHS. Historically, the Trump Administration promoted the use of pesticides as essential tools for increasing crop yields and ensuring food security. For example, during the first term, the Trump Administration rejected a proposed ban on the use of chlorpyrifos. The first Trump Administration aligned with agribusiness interests. However, Kennedy has been vocal about his desire to eliminate harmful pesticides and promote sustainable farming practices. Kennedy argues current agricultural policies contribute to environmental degradation and public health issues, advocating for a shift towards regenerative agriculture that minimizes chemical inputs. Kennedy's proposals represent a significant departure from traditional Republican agricultural policies.

Additionally, Trumps trade policy agenda (discussed in more detail below) could have a direct impact on pesticides in agriculture. Trump has indicated plans to impose substantial tariffs on imports, particularly from China, which could lead to retaliatory measures affecting U.S.

agricultural exports. This trade tension may disrupt the availability of agricultural inputs, including pesticides, which are crucial for maintaining crop yields

c. Crop Insurance Programs

Federal crop insurance programs remain highly popular among farmers and the House and Senate Ag Committees, and a Trump-led USDA would likely be reluctant to tinker too much with the formula. Federal crop insurance covered 539 million acres in crop near 2023 - a participation rate of over 80% for major crops - representing $181 Billion in guarantees and paying out $17 billion in indemnities. This is in addition to another $26 Billion in guarantees for livestock policies.

Rural America is heavily invested in these programs, and Republicans on Capitol Hill stand ready to defend it. Trump's Administration has generally understood the vital role farm and rural communities have played in his coalition. During his first term, when trade tensions with China and Covid shutdowns produced sharply lower commodity prices, Trump's USDA stepped in with ad hoc programs – MFP (Market Facilitation Program), CFAP (Covid Food Assistance Program), etc. – that ballooned farm subsidy payments beyond the basic Congressionally-authorized vehicles.

The biggest potential threats to Federal crop insurance (and farm support programs in general) under a new Trump Administration, however, would appear likely to come from outside USDA or the agriculture community. DOGE headed by Elon Musk and Vivek Ramaswamy, along with allies at the Office of Management and Budget (OMB), have promised massive cuts to Federal outlays and personnel, and USDA programs are not likely to escape scrutiny. DOGE and OMB budget-cutters might gravitate toward past efforts to cut crop insurance spending by means testing subsidies, capping payments to participating companies, or eliminating certain forms of coverage. Congress has generally blocked such cuts in the past and they would again be heavily opposed by farm constituents. However, cuts could be difficult to stop if bundled into larger government-wide cost-cutting efforts including the budget reconciliation process.

d. Trade Policy Implications on Agriculture

On November 26, President-elect Trump announced his selection of Jamieson Greer as the U.S. Trade Representative. He is a former Air Force lawyer who turned trade litigator, and a protégé of Robert Lighthizer, Trump's U.S. Trade Representative in his first administration. The USTR Chief Ag Negotiator is yet to be announced. Where agricultural *trade* is concerned, history is a valuable guide, and a more fulsome picture emerged with recent announcements on tariffs for U.S. agriculture's three largest trading partners – Canada, Mexico and China.

During his first term, Trump made significant changes, including withdrawing early from the Trans Pacific Partnership; undermining aspects of the World Trade Organization (WTO); threating to abandon North American Free Trade Agreement (NAFTA) before negotiating its replacement; releasing novel legal interpretation to impose tariffs on steel and aluminum; and imposing significant tariffs on Chinese-origin goods after releasing a report finding that several practices were unreasonable or a discriminatory burden on U.S. commerce. According to USDA, those tariffs cost U.S. agricultural producers about $27 billion in lost exports between 2018 and 2019.

As he campaigned for a second term, Trump suggested potential tariffs of up to 60% on Chinese imports and 10-20% on all imports, aiming to use these as leverage against countries he views as unfair. However, there was and continues to be opposition to this broad application of tariffs due to concerns over inflation and price increases. Additionally, the U.S. relies heavily on imports of food and agriculture products, both as agriculture inputs (e.g., fertilizer) and consumer food products, often further processed in the U.S.

Recently, Trump announced that on the first day of his Administration, he will impose new tariffs on goods from Canada, Mexico, and China of 25% on all Canadian and Mexican goods, and an additional 10% tariff on all Chinese goods, many of which are already under tariffs imposed by Trump during his first term. According to the announcement, the new tariffs are meant to push all three nations to take stronger efforts to bolster border security and crack down on illegal immigration and fentanyl exports to the U.S., and the tariffs can be avoided if they do so.

Such tariffs on Mexican and Canadian origin goods would likely violate the U.S.-Mexico-Canada Agreement (USMCA), Trump's rewrite of NAFTA, his first term trade accomplishment. Notably, the USMCA has a review clause which provides that on July 1, 2026, the U.S., Mexico, and Canada are to confirm whether to continue the agreement. If one of the countries does not confirm, it will start a process that will leave the future of the agreement in limbo for some time. As a candidate, Trump made clear he wanted to use the review to improve the agreement, and we may now be seeing how it will play out in practice.

6. OFW's Support for Clients

OFW is fully engaged and stands ready to engage on clients' behalf in this challenging environment. Our policy efforts include, but are not limited to:

- Ramping up our engagement with Rollins and other new and returning Members of Congress and their staff, as well as others within the new White House.
- Development of strategies for advocacy around USDA and HHS issues likely to arise.
- Asserting legal arguments as to why agency interpretations are in excess of USDA's and HHS's authority and contrary to law.
- Closely follow deliberations and initiatives at DOGE, OMB, and HHS that may effect the content, scope, and resources of USDA programs
- Mounting legal challenges if necessary.

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We hope this proves useful. Please contact the OFW Law USDA Practice Group, the OFW Law Government Relations Group, and/or the OFW Law SNAP/WIC Group with any of your public policy, scientific, and regulatory questions and/or needs.