

United States Senate  
WASHINGTON, DC 20510

May 15, 2020

The Honorable Sonny Perdue  
Secretary  
United States Department of Agriculture  
1400 Independence Avenue S.W.  
Washington, DC 20250

Dear Secretary Perdue,

We write regarding your work pursuant to Executive Order 13917 classifying meat and poultry processing facilities as critical and strategic materials under the Defense Production Act. While we recognize the importance of keeping these plants running, it is wrong and shortsighted to use the Defense Production Act to mandate plants to stay open without effectively addressing worker safety issues. Reopening closed plants must be done in consultation with and with the support of the workers, their union representatives, companies, and local and state health officials. Prematurely reopening or pressuring unsafe plants to stay open could expose employees to COVID-19. This could then sicken more workers and their families, spread the virus in their communities, and cause further damage to our food supply chain, farmers and ranchers, and rural economies. Building confidence in safety measures and creating trust between communities, workers, and companies is the only path to rebuilding our food supply chain with reduced risk of future outbreaks, worker deaths, and closures.

As COVID-19 has ripped through our nation, meat processing plants have emerged as hotspots, with employees contracting the virus at very high rates. According to internal estimates by the United Food and Commercial Workers International Union, as of May 12, over 3,200 meat processing plant employees have been directly impacted by COVID-19, and at least 35 have died.<sup>1</sup> Additionally, over 190 USDA Food Safety Inspection Service employees have also contracted the virus, and four have died from it.

We are concerned the Executive Order has put pressure on plants to reopen and that USDA is not taking sufficient measures to ensure the plants are operating consistent with federal safety guidance.

The President's Executive Order directs you to take appropriate actions to ensure the plants continue operating consistent with the guidance for meat and poultry processing employers jointly issued by the CDC and OSHA. However, based on a recent USDA briefing with staff of the Senate Agriculture, Nutrition, and Forestry Committee, we understand that USDA officials could not confirm if the plants that reopened since the issuance of the Executive Order are operating in accordance with the CDC and OSHA guidance. They instead stated that it was their expectation that the plants were following the guidelines. According to USDA officials, they expected the plants to follow the CDC/OSHA guidance to the extent they can.

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<sup>1</sup> <https://www.judiciary.senate.gov/imo/media/doc/Perrone%20Testimony.pdf>

We are also concerned that the USDA officials in the briefing said the Department had not consulted with plant workers or relevant unions on safety issues or needed improvements. They repeatedly said that worker safety was OSHA's responsibility, however, USDA officials did not indicate that they had spoken to OSHA during the process of reopening twelve plants this past week or that OSHA had visited the plants.

At the same time, many stakeholders are seeking help to improve health and safety and other conditions at the plants. For example, governors and mayors are reaching out to the federal government for help with testing. Recently, 20 organizations representing the food supply chain wrote to President Trump requesting additional support and coordination, noting that the scarcity of personal protective equipment (PPE) could lead to shutdowns in the food sector.<sup>2</sup> These organizations requested the creation of a White House-led office for supply chain coordination. We urge you to consider, fulfill, and advocate for these requests.

This crisis has underscored that worker health and safety must come first. Meat processing plants should only operate in a manner that ensures worker health and safety, including reconfiguring the plants to allow for social distancing, providing appropriate personal protective equipment, instituting ongoing comprehensive testing, ensuring that infected or sick employees are not coming to work, and making other necessary changes so that workers can avoid COVID-19 exposure.

It is critical that you and the Administration clarify that nothing in the President's Executive Order requires meat processing plants to stay open and the plants should only operate in accordance with the OSHA and CDC guidelines and any other requirements from state or local authorities.

Additionally, we request that under the Executive Order, you ensure that all meat and poultry processing facilities operate in accordance with the OSHA and CDC guidance for meat and poultry processing employees and protect the workers from COVID-19 and that you institute a plan for monitoring and enforcement of that guidance.

It is concerning that the President has justified the use of the Defense Production Act with the goal of keeping plants open and suggested providing liability protection to meat processing companies, yet hesitated to use it to protect workers. We urge you and the Administration to use the authorities of the Defense Production Act and other contracting authorities as necessary to access and produce appropriate personal protective equipment, sufficient and ongoing testing, and support for workers who test positive. Without adequate testing and safety measures, COVID-19 will continue to spread through food processing plants and surrounding communities.

Workers deserve to go to work and return home safe and healthy. They must be confident that their plants are safe places to work. Otherwise, reopened plants will continue to have high rates of absenteeism. We strongly urge you to convene localized working groups for individual plants that include USDA, CDC, OSHA, companies, union representatives, workers, and appropriate state and local authorities. Working together to solve the safety issues by implementing a plan to safely reopen and respecting workers' voice in that process will help to make sure all issues are

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<sup>2</sup> <https://consumerbrandsassociation.org/wp-content/uploads/2020/05/CISCC-White-House-5.6.20.pdf>

addressed and build trust with the employees. If employees believe they are safe, the plants will have a stronger workforce and will be able to better maintain production.

We also ask that you urge OSHA to vigorously enforce the joint CDC-OSHA guidance under the General Duty Clause of the Occupational Safety and Health Act at meat and poultry processing plants.<sup>3</sup> We further ask you to urge Secretary Scalia to immediately issue and enforce an OSHA Emergency Temporary Standard that requires employers to protect their workers from the spread of COVID-19 in workplaces. This is a necessary step in reopening our economy.

We both agree that we must keep our food supply chain strong for consumers and producers. In these uncertain times, we appreciate that you have asked for recommendations to protect the food supply chain. Without strong leadership and creative solutions from the USDA, the risk to the country's food supply and families in rural communities will only continue to increase. Reopening plants without adequate health and safety measures – including slower processing speeds as necessary will only further harm workers, disrupt the food supply chain, and hurt consumers and producers. This is not a partisan issue. This is a matter of taking necessary actions to help stop the spread of COVID-19 so we can protect public health and reopen our economy. We ask you to work with us to stand with food workers and their communities to help solve this problem and avoid actions that could further spread COVID-19 into rural America.

Please respond to the following questions by May 25, 2020.

1. The Executive Order directs you to take all appropriate action to ensure that meat and poultry processors continue operations consistent with the jointly issued CDC and OSHA guidance.
  - a. How will you ensure that meat and poultry processors implement the CDC and OSHA guidance titled “Meat and Poultry Processing Workers and Employers” before they continue or resume operations and also as they continue to operate?
  - b. For each plant that has reopened since President Trump signed the Executive Order on April 28, please list all measures taken to bring the plant into compliance with the OSHA/CDC directive and whether these measures are sufficient to bring the plant into compliance with the CDC/OSHA guidance. Did these companies submit to USDA written documentation of their protocols to meet the CDC/OSHA guidance and document that they implemented the guidance? Which other companies will likewise need to submit this written documentation?
  - c. Are plants instituting policies to enable workers who have COVID-19 to isolate and stay out of the plant until they have recovered, such as full-compensation, short-term disability, or paid leave? And are plants ensuring that those who had close contact with the workers who tested positive are notified and also provided with such support to help stop the spread of COVID-19?
  - d. Do you plan to inspect plants to ensure compliance? Have you worked with Secretary Scalia on any joint inspection planning between USDA and DOL?

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<sup>3</sup> Centers for Disease Control and Prevention, “Meat and Poultry Processing Workers and Employers: Interim Guidance from CDC and the Occupational Safety and Health Administration (OSHA), April 26, 2020. Retrieved from: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/meat-poultry-processing-workers-employers.html>

2. We appreciate the information Under Secretary of Food Safety Mindy Brashears provided on May 1 when she briefed congressional staff and informed them that you would not issue any directives, requirements, or regulations pursuant to the Executive Order. In the briefing, Under Secretary Brashears also stated that meat or poultry processing facilities idled or shut down by their owners or state or local health authorities will not be forced by USDA to reopen over the objections or concerns of the owners or health authorities.
  - a. If state or local authorities have higher health and safety requirements, would you attempt to overrule state or local authorities?
  - b. Will you take any actions under the Executive Order to interfere with any actions taken by state or local officials to improve worker health and safety and protect public health at meat or poultry processing plants?
3. It is imperative that the plants are reopened as quickly and safely as possible, and remain open, which means that worker safety issues must be addressed.
  - a. What are you or others in the federal government doing to help food supply chain employers access much-needed COVID-19 testing capacity? How many tests has the federal government obtained for the plants, if any? Will you use the Defense Production Act or other authorities to increase COVID-19 testing capacity in order to help continue meat and poultry processing?
  - b. What are you or others in the federal government doing to help employers in the food supply chain access much-needed personal protective equipment? Your recent letter says that HHS is processing approximately 3.1 million cloth masks for distribution. What types and what quantities of PPE did food supply chain employers request? Will you use the Defense Production Act or other authorities to obtain PPE in order to help continue meat and poultry processing?
  - c. Do you need any additional authorities or resources in order to make sure food processing companies take appropriate actions to keep employees safe from COVID-19?
4. We appreciate the information you provided in your recent letter that USDA had just obtained some cloth masks for your inspectors. As you know, under FSIS directive 4791.1, the Agency is required to provide employees with safe and healthful working conditions as part of the overall inspection process.
  - a. How do you ensure that USDA inspectors are not being placed in plants that are not safe due to plant employees testing positive for COVID-19?
  - b. Have you removed any USDA inspectors due to safety concerns before the plant itself made a decision to close or it was closed by state or local authorities?
  - c. We understand that USDA transfers inspectors from facilities that are closed due to high rates of COVID-19 infections to plants that are operational. What measures do you take to ensure inspectors are not unknowingly spreading the virus to new plants? Given that scientists believe asymptomatic individuals are part of the reason for increased COVID-19 spread, do you test inspectors who are sent to new facilities from facilities closed due to high rates of COVID-19 infections?

5. It is also critically important that we ensure that other essential food chain workers, such as farmworkers, are protected from COVID-19.
- a. What measures are you taking to ensure that farmworkers and other workers in the food supply chain are adequately protected from COVID-19 so we can keep the food supply chain strong?
  - b. Do you see any unaddressed concerns with these workers?
  - c. What measures have you taken to ensure that employers of these workers have adequate access to PPE and COVID-19 testing supplies?
  - d. Do you need any additional authorities to address the COVID-19 safety issues with these workers?

Thank you for your prompt response to our questions.

Sincerely,

/s/ Debbie Stabenow  
Debbie Stabenow  
United States Senator

/s/ Kirsten Gillibrand  
Kirsten Gillibrand  
United States Senator

/s/ Sherrod Brown  
Sherrod Brown  
United States Senator

/s/ Michael F. Bennet  
Michael F. Bennet  
United States Senator

/s/ Thomas R. Carper  
Thomas R. Carper  
United States Senate

/s/ Robert Menendez  
Robert Menendez  
United States Senator

/s/ Richard J. Durbin  
Richard J. Durbin  
United States Senator

/s/ Benjamin L. Cardin  
Benjamin L. Cardin  
United States Senate

/s/ Tina Smith  
Tina Smith  
United States Senator

/s/ Jeffrey A. Merkley  
Jeffrey A. Merkley  
United States Senator

/s/ Robert P. Casey, Jr.  
Robert P. Casey, Jr.  
United States Senator

/s/ Kamala D. Harris  
Kamala D. Harris  
United States Senate

/s/ Chris Van Hollen  
Chris Van Hollen  
United States Senator

/s/ Cory A. Booker  
Cory A. Booker  
United States Senate

/s/ Mazie K. Hirono  
Mazie K. Hirono  
United States Senator

/s/ Tammy Duckworth  
Tammy Duckworth  
United States Senator

/s/ Bernard Sanders  
Bernard Sanders  
United States Senator

/s/ Elizabeth Warren  
Elizabeth Warren  
United States Senator

/s/ Patty Murray  
Patty Murray  
United States Senator

/s/ Jack Reed  
Jack Reed  
United States Senator

/s/ Gary C. Peters  
Gary C. Peters  
United States Senator

/s/ Ron Wyden  
Ron Wyden  
United States Senator

/s/ Doug Jones  
Doug Jones  
United States Senator

/s/ Amy Klobuchar  
Amy Klobuchar  
United States Senator

/s/ Charles E. Schumer  
Charles E. Schumer  
United States Senator

/s/ Tammy Baldwin  
Tammy Baldwin  
United States Senator

/s/ Maria Cantwell  
Maria Cantwell  
United States Senator

/s/ Patrick Leahy  
Patrick Leahy  
United States Senator

/s/ Edward J. Markey  
Edward J. Markey  
United States Senator