

MEMORANDUM

From: Elizabeth Barr Fawell
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Re: Secretary Perdue Issues Letters to Governors and Industry Addressing Continuity of Meat and Poultry Processing Operations

Late Tuesday, U.S. Department of Agriculture (USDA) Secretary Sonny Perdue sent letters to state governors and meat and poultry processing company leaders setting forth USDA's expectations for continued operations during the COVID-19 pandemic. These letters follow President Donald J. Trump's Executive Order issued last week ordering USDA to take all appropriate actions to ensure that meat and poultry plants continue operations consistent with industry guidance jointly issued by the Centers for Disease Control and Prevention (CDC) and the Occupational Safety and Health Administration (OSHA) intended to protect plant worker safety. This memorandum summarizes these letters and outlines key takeaways.

Letter to Governors

In his letters to state governors, Secretary Perdue explains that the Executive Order signed by President Trump on April 28, 2020, delegated to the Secretary of Agriculture the powers of the President, under the Defense Production Act, to take all appropriate action to ensure America's meat and poultry processors continue operations consistent with the guidance jointly issued by CDC and OSHA regarding public health and worker safety.¹

The letter acknowledges that state and local leaders have been working hard to protect their citizens from COVID-19, including critical infrastructure workers in the meat and poultry industry. The letter calls for cooperation, stating, "It is essential that we work together to ensure the health and safety of those who help keep food on the table during this unprecedented time."

Secretary Perdue explained that he has "directed" meat and poultry processors to utilize the CDC/OHSA guidance specific to the meat and poultry processing industry to implement practices and protocols for staying operational or resuming operations while safeguarding the health of the workers and the community. The letter indicates that USDA also has directed meat and poultry processing plants currently closed and without a clear timetable for near-term reopening to submit to

¹ Letter from Sonny Perdue, Secretary of Agriculture, re Executive Order Delegating Authority Under the Defense Production Act with Respect to the Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19 (May 5, 2020), <https://www.usda.gov/sites/default/files/documents/governor-letters-covid.pdf>.

USDA written documentation of their protocols, developed based on the CDC/OSHA guidance, and to resume operations as soon as they are able after implementing the CDC/OSHA guidance.

The letter closes by noting that USDA, alongside CDC and OSHA, will continue to work with state and local officials to ensure that establishments are implementing best practices designed to mitigate the spread of COVID-19, while maintaining operations. Finally, the letter notes that “Further action under the Executive Order and the Defense Production Act is under consideration and will be taken if necessary.”

Letter to Stakeholders

Secretary Perdue’s letter to meat and poultry processing industry leadership is substantially similar to the letter to state governors.² He similarly commends companies and local communities that are cooperating to restore plant operations in accordance with the CDC/OSHA guidance. Secretary Perdue stated, “I write now to exhort you to follow those examples and with respect to any current or proposed actions that may lead to a reduction in the Nation’s meat and poultry food supply.”

The letter specifically states, “Effective immediately, meat and poultry processing plants should utilize the guidance issued on Sunday, April 26, 2020, by the CDC and OSHA specific to the meat and poultry processing industry to implement practices and protocols for safeguarding the health of the workers and the community while staying operational or resuming operations.”

Further, consistent with the letter to the governors, the letter instructs that “meat and poultry processing plants contemplating reductions of operations or recently closed since Friday May 1, and without a clear timetable for near term resumption of operations, should submit written documentation of their operations and health and safety protocol developed based on the CDC/OSHA guidance to USDA at foodsupplychain@usda.gov. Plants should resume operations as soon as they are able after implementing the CDC/OSHA guidance for the protection of workers.”

USDA intends to continue to work with plants, the CDC, OSHA, and state, tribal, and local officials to ensure facilities are implementing practices consistent with the guidance to keep employees safe and continue operations. Finally, the letter closes by stating, “I exhort you to do this; further action under the Executive Order and the Defense Production Act is under consideration and will be taken if necessary.”

Key Takeaways

The letters stop short of issuing formal orders, either to industry to continue operating plants or to stop states from shuttering plants. Rather, the letters appear to push for a voluntary cooperative approach and allude to formal orders should the voluntary approach fail.

This approach appears to hinge on plants’ voluntary implementation of written COVID-19 mitigation plans based on the joint CDC/OSHA guidance for meat and poultry processors. This approach was previewed in a May 1, 2020, Constituent Update issued by USDA’s Food Safety and Inspection Service, which referenced FSIS-regulated establishments preparing written programs based on the CDC/OSHA guidance. The Secretary’s letters, however, focused specifically on meat and poultry processing plants contemplating reductions of operations or recently closed since Friday, May 1, and

² Letter from Sonny Perdue, Secretary of Agriculture, re Executive Order Delegating Authority Under the Defense Production Act with Respect to the Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19 (May 5, 2020), <https://www.usda.gov/sites/default/files/documents/stakeholder-letters-covid.pdf>.

without a clear timetable for near term resolution of operations, instructing that those plants should submit written documentation of their protocols to USDA for review.

We anticipate the need for additional guidance from USDA, FSIS, or other federal agencies on this issue, including on implementing the CDC/OSHA guidance and submitting plant protocols.

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We will continue to monitor developments related to COVID-19. If you have any questions regarding this development or if we can provide any assistance, please do not hesitate to contact us.