



United States
Department of
Agriculture

Office of the General Counsel
1400 Independence Ave. SW
Washington, DC 20250-1400

August 2, 2021

Delivered via Electronic Mail

Adam R. Pulver
Public Citizen
1600 20th Street NW
Washington, DC 20009
apulver@citizen.org

**Re: Freedom of Information Act (FOIA) Request No. 2020-OSEC-04055-F
Supplemental Response**

Dear Mr. Pulver:

This is the Office of Information Affairs (OIA), FOIA Division's **supplemental response** to the above referenced FOIA request. This correspondence also responds to the matter of *Public Citizen, Inc., v. U.S. Department of Agriculture*, Civil Action No. 21-1408-APM, currently pending in the U.S. District Court for the District of Columbia.

The pending Complaint in the above-referenced matter is based on USDA's alleged failure to comply with the applicable time-limit provisions of the FOIA in response to Public Citizen's (PC) aforementioned request.

The OIA has rereviewed the Exemption 5 redactions in contention, which were listed in an email communication on July 9, 2021 from PC and its attorney, Wendy Liu. Upon secondary review, the OIA has made some discretionary releases.

Notwithstanding these discretionary releases, the OIA has determined that certain information should continue to be withheld pursuant to 5 U.S.C. § 552 (b)(5) (FOIA Exemption 5). Please be advised that for some portions in dispute, the Exemption 5 redactions have been removed; however, additional redactions have been made in accordance with 5 U.S.C. § 552 (b)(4) (FOIA Exemption 4). Below are explanations of the information that has been withheld.

Application of 5 U.S.C §552(b)(4) "FOIA Exemption 4"

Exemption 4 of the FOIA protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4). The exemption covers two distinct categories of information in federal agency records, (1) trade secrets, and (2) information that is (a) commercial or financial, and (b) obtained from a person, and (c) privileged or confidential. In this instance, the OIA is withholding a company's information and strategies in response to the coronavirus. We have determined that these records contain commercial or financial information that is customarily treated as private by the business submitters. Therefore, the information is considered confidential.

Adam Pulver

FOIA Case No. 2020-OSEC-04055-F

Page 2

Application of 5 U.S.C §552(b)(5) “FOIA Exemption 5”

FOIA Exemption 5 protects from disclosure those “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. §552(b)(5). This language is construed to protect records that are normally privileged in the civil discovery context, including through the deliberative process privilege and the attorney-client privilege. As an initial matter, the information withheld meets the threshold requirement because it is contained in internal emails sent between federal employees. Where possible, the OIA has determined to make discretionary releases of information that fall within the protection of Exemption 5.

In this instance, the OIA is continuing to withhold, under the deliberative process privilege, pre-decisional, intra-agency discussions regarding agency action and its response to the coronavirus. By withholding this information, the OIA is protecting the integrity of the agency’s decision-making process and ensuring no inhibition of free and frank exchange between agency personnel.

Moreover, the OIA is continuing to withhold information under the attorney-client privilege. This privilege protects confidential communication between an attorney and his/her client relating to a legal matter for which the client has sought professional advice. Although this privilege fundamentally applies to facts divulged by a client to his/her attorney, this privilege also encompasses any opinion given by an attorney to his/her client based upon those facts, as well as communications between attorneys that reflect client supplied information. In this instance, the FOIA Division is withholding information that would reveal substantive content of communications and documents between clients and their counsel.

In light of the matter *Public Citizen, Inc., v. U.S. Department of Agriculture*, Civil Action No. 21-1408-APM, currently pending in the U.S. District Court for the District of Columbia, administrative appeal rights are not being provided in this supplemental response letter.

If you have any questions or concerns about this supplemental response or the pending civil action, please contact Daniel P. Schaefer, Assistant United States Attorney, U.S. Department of Justice at Daniel.Schaefer@usdoj.gov.

Sincerely,

Alexis R. Graves

Alexis R. Graves

Director

Office of Information Affairs

Enclosures: 2020-OSEC-04055-F 2nd Interim 89_Redacted
2020-OSEC-04055-F 2nd Interim 325-327_Redacted
2020-OSEC-04055-F Final Response 189-094_Redacted
2020-OSEC-04055-F Final Response 698-711_Redacted
2020-OSEC-04055-F Final Response 714-716_RIF
2020-OSEC-04055-F Final Response 743-744_Redacted

Sonny Perdue alias email

From: [SP3.PS3 - OSEC, Washington, DC](#)
To: (b) (6) [@state.sd.us](#)
Bcc: [Young, Joby - OSEC, Washington, DC](#); [Rollins, Blake - OSEC, Washington, DC](#)
Subject: Fwd: Smithfield Sioux Falls, SD Plant Info
Date: Monday, April 13, 2020 11:33:16 AM
Attachments: [image001.png](#)

Kristi,

We need to talk about the unintended consequences regarding the closing of the Sioux Falls pork processing plant.

Let me know best time for you today. I would classify as urgent.

Sonny

Subject: Smithfield Sioux Falls, SD Plant Info

Info on Smithfield's Sioux Falls, SD Plant:

- The facility processes 20,000 hogs a day, all from family farms.
- It sources from 550 family farms, who largely sell exclusively to this plant.
- Produces 5% of the country's pork supply.
- Employs 3,700 people.
- The plant produces 130 million servings of food per week, 18 million servings per day.



Sonny Perdue alias email

From: [Ibach, Greg - OSEC, Washington, DC](#)
To: [SP3.PS3 - OSEC, Washington, DC](#); [Kristi Noem - Member Of Congress \(b\) \(6\)@state.sd.us](#)
Cc: [Brashears, Mindy - OSEC, Washington, DC](#)
Subject: RE: State inspected meat plants
Date: Thursday, May 7, 2020 9:09:29 AM
Attachments: [image002.png](#)
[image004.png](#)
[image001.png](#)

Sir,

I just visited with Mike Naig, Secretary of Agriculture for the State of Iowa. He informed me that the Iowa Department of Agriculture has a CIS application pending with FSIS at the present time. He stated they are ready to launch as soon as FSIS completes the agreement as Iowa has met all requirements.

I am sure that Campbell or Shawna will have more details about timing of the approval.

Greg Ibach
Under Secretary
Marketing & Regulatory Programs

United States Department of Agriculture
228-W Whitten Building
Office: 202-720-4256
Cell: 202-617-4510
greg.ibach@osec.usda.gov

From: [SP3.PS3 - OSEC, Washington, DC <Sp3@usda.gov>](#) **Sonny Perdue alias email**
Sent: Thursday, May 7, 2020 8:21 AM
To: [Kristi Noem - Member Of Congress \(b\) \(6\)@state.sd.us](#) [\(b\) \(6\)@state.sd.us](#)
Cc: [Ibach, Greg - OSEC, Washington, DC <Greg.Ibach@usda.gov>](#); [Brashears, Mindy - OSEC, Washington, DC <Mindy.Brashears@usda.gov>](#)
Subject: Fwd: State inspected meat plants

Governor,

Our lawyer as well as under Secretaries Ibach and Brashears have confirmed my fear that the statutes preclude cross state shipment of meat processed unless the state system had taken steps to qualify as you can read in attorney's reply to me.

I know that under these conditions that seems nonsensical but obviously food safety is a zero tolerance deal. I will inquire as to the time and process to become CIS approved.

-SP

From: [Vaden, Stephen - OGC, Washington, DC <stephen.vaden@usda.gov>](#)

Sent: Wednesday, May 6, 2020 7:02 PM
To: SP3.PS3 - OSEC, Washington, DC
Cc: Young, Joby - OSEC, Washington, DC
Subject: State inspected meat plants

Sonny Perdue alias email

Mr. Secretary,

In response to your question, it would require Congress to change the statutes (Federal Meat Inspection Act and the Poultry Products Inspection Act) to allow state-inspected meat plants to ship their products in interstate commerce. An exception exists for state-inspected plants that employ 25 or fewer people; only Ohio, North Dakota, Wisconsin, and Indiana have taken advantage of this exception. Other than that small exception, known as the Cooperative Interstate Shipment Program, no state-inspected plants may ship outside of their home states. More information is below that goes into greater detail. If you have further questions, please let me know.

I am awaiting feedback from the White House Counsel's Office with regard to your other question.

Stephen

State Inspected Meat and Poultry Products

The Federal Meat Inspection Act authorizes the Secretary to cooperate with States to develop and administer a State meat inspection program if the State imposes requirements that are at least equal to Federal requirements with respect to ante-mortem inspection of animals, post-mortem inspection of carcasses, inspection of processed products and sanitation. The law specifically provides that such products are "solely for distribution within such State." Currently 27 states operate State inspection programs and the federal government contributes 50% of the costs of administering the State inspection program. The Poultry Products Inspection Act contains identical provisions.

Cooperative Interstate Shipment Program

The 2008 Farm Bill amended the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) to establish a cooperative interstate shipment (CIS) program under which certain small and very small establishments in States that operate a State Inspection Program are eligible to ship meat and poultry products in interstate and foreign commerce. To be eligible for selection into the CIS program, State-inspected establishments must employ, on average, 25 or fewer employees; be in compliance with all requirements under the State inspection program; and be in compliance with all Federal requirements under the FMIA, PPIA, and their implementing regulations. Inspection services for these establishments must be provided by State inspection personnel that have undergone all necessary inspection training and certification. Currently, four states (Ohio, North Dakota, Wisconsin, Indiana) have been approved to participate in the CIS program. The State is required to certify specific establishments within the State that qualify for the program.

Summary

Under current law, only federally inspected establishments and qualifying establishments in States participating in the CIS program are eligible to ship meat and poultry products in interstate and

foreign commerce. Because the Federal Meat Inspection Act and the Poultry Products Inspection Act currently limit State inspected products to distribution within that state, a statutory change would be required to allow the interstate shipment of State inspected products.



Stephen Alexander Vaden
General Counsel
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Ave., S.W., Suite 107W
Washington, DC 20250
 **202-720-3351 (Office)**
 stephen.vaden@ogc.usda.gov

From: [Young, Joby - OSEC, Washington, DC](#)
To: [SP3.PS3 - OSEC, Washington, DC](#)
Subject: Fwd: From Chandler
Date: Thursday, May 14, 2020 9:45:49 AM
Attachments: [Swift Beef Subpoena \(005\).pdf](#)

Joby Young
Chief of Staff
U.S. Dept. of Agriculture

From: lbach, Greg - OSEC, Washington, DC <Greg.lbach@usda.gov>
Sent: Thursday, May 14, 2020 8:03:11 AM
To: Brashears, Mindy - OSEC, Washington, DC <Mindy.Brashears@usda.gov>
Cc: Censky, Stephen - OSEC, Washington, DC <Stephen.Censky@usda.gov>; Vaden, Stephen - OGC, Washington, DC <stephen.vaden@usda.gov>; Young, Joby - OSEC, Washington, DC <joby.young@usda.gov>; Hoskins, Dudley - OSEC, Washington, DC <dudley.hoskins@usda.gov>; Shuford, Campbell - OSEC, Washington, DC <campbell.shuford@usda.gov>
Subject: From Chandler

Mindy,
I am sure you are aware OSHA is evidently investigating the COVID 19 deaths of JBS employees.

Chandler Keyes texted these two documents to me last night related to the investigation. Attached is a subpoena and I also have a questions document I will send as well.

I am curious as to whether (b) (5), DPP, ACP

I know you are working closely with OSHA perhaps you can (b) (5), DPP, ACP
. It seems (b) (5), DPP, ACP

. I don't understand (b) (5), DPP, ACP

Greg

Get [Outlook for iOS](#)



SUBPOENA DUCES TECUM

**To: Swift Beef Company
800 North 8th Avenue
Greeley, CO 80631**

Pursuant to Federal law (Section 8(b) of the Occupational Safety and Health Act, 29 U.S.C. 657(b)), **you are hereby required to produce** to Amanda Kupper, Area Director, or her designee, of the OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES DEPARTMENT OF LABOR at the **United States Department of Labor, Occupational Safety and Health Administration, Denver Area Office, 1391 Speer Blvd, Suite. 210, Denver, Colorado, 80204, on or before 1:00 p.m., Wednesday, May 27, 2020, all of the following item(s):**

Unless otherwise noted, the requests set forth below pertain to the Swift Beef Company facility located at 800 North 8th Avenue, Greeley, Colorado, 80601 (the "Worksite").¹

- 1) For the period March 1, 2020 to present, please provide a list of all managers employed by Swift Beef Company at the Worksite, including each individual's designated department, phone number, and email address.
- 2) Organizational Flow Chart, in effect at the Worksite as of March 1, 2020.
- 3) Employer ID Number.
- 4) Identify all union organizations that represent employees at the Worksite, including their mailing addresses and contact information for their respective business agents, union stewards, and legal counsel.
- 5) List of employees who were found COVID-19 positive, including each employee's phone number, email address, physical address and primary language. For each employee, please include the same contact information for a family representative and/or emergency contact representative.
- 6) List of any employees that expressed experiencing symptoms associated with COVID-19 between February 1, 2020 and today, including their phone number, email address, physical address and primary language. For purposes of this response, "symptoms

¹ To the extent there are documents responsive to the instant requests that were generated by a corporate or regional entity, but nonetheless applicable to the Swift Beef Company facility, please produce such documents. If any response to this subpoena duplicates a response given to the written questions OSHA submitted as part of its May 11, 2020 opening conference, please incorporate by reference the appropriate opening conference question number.

associated with COVID-19" include fever, cough, and shortness of breath. [See https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html](https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html)

- 7) For each employee identified in response to Request Nos. 5 and 6, above, please identify the dates in which each employee was found COVID-19 positive and/or expressed experiencing symptoms associated with COVID-19.
- 8) For each employee identified in response to Request Nos. 5 and 6, above, please provide the employee's job title, job duties and the location where each employee worked at the Worksite for the period March 1, 2020 to the present.
- 9) Detailed floor plan of the plant, including workstations, common breakroom areas, locker room facilities, and any other common areas.
- 10) Process diagrams, blueprints or schematics that depicts the distance between workstations, the name of each workstation, and the number of employees assigned to each workstation during a standard shift.
- 11) Training videos, internal camera or surveillance footage and/or photographs that depict normal operating conditions at each of the workstations identified in response to Requests No. 9 and 10, above.²
- 12) For the period March 1, 2020 to present, please produce employee work schedules, including the names of employees, those employees' designated work areas, and those employees' assigned supervisors.
- 13) Any documents, emails, and/or written guidance relating to any actions taken by Swift Beef Company to mitigate occupational exposure of employees to COVID-19.
- 14) Training records related to COVID-19, including but not limited to education and training materials associated with the identification or treatment of, and protection from COVID-19.
- 15) Sanitation records related to COVID-19, including but not limited to materials and documentation associated with Swift Beef Company's cleaning protocol, the specific areas subject to such protocols, the type of chemicals used to clean work areas, and the frequency of cleaning efforts.
- 16) OSHA 300 logs for 2020, 2019, and 2018.
- 17) First reports of employee injury or illness related to COVID-19.

² OSHA is seeking any photographs, videos, or surveillance footage that would reasonably reflect normal operating conditions at the Worksite prior to any modifications or adjustments associated with the existing global pandemic. The agency is willing to discuss this request in further detail to ensure that the data transmitted is limited in scope and time.

- 18) Produce any work rules, policies or procedures that Swift Beef Company implemented because of COVID-19, or to mitigate the spread of COVID-19 at the Worksite, including the date such rules, policies or procedures were developed and implemented.
- 19) Disciplinary records for employees who did not follow COVID-19 guidance.
- 20) A copy of any investigation, inquiry, and/or recommendations compiled by Swift Beef Company relating to the COVID-19 outbreak at the Worksite.
- 21) Any guidance or instruction Swift Beef Company received regarding the prevention or mitigation of COVID-19 at the Worksite including, but not limited to, information offered by federal, state, and local officials, Swift Beef Company's Regional or Corporate entities, or other health officials.
- 22) A copy of any employee incentive programs that were developed, implemented and/or maintained between February 1, 2020 and present, including but not limited to, any programs offering bonuses or secondary compensation for employees during the COVID-19 pandemic.
- 23) A copy of any documentation provided to Swift Beef Company from federal, state, or local officials either requiring or advising the company to maintain or reduce production at the facility as a result of the COVID-19 pandemic.
- 24) Identify all personal protective equipment provided to employees in response to the COVID-19 pandemic and the date the equipment was provided. For each form of personal protective equipment, please identify whether use by employees was voluntary or required by Swift Beef Company.
- 25) Identify all personal protective equipment provided to employees, prior to the COVID-19 pandemic. For each form of personal protective equipment, please identify whether use by employees was voluntary or required by Swift Beef Company.
- 26) A list of all equipment operated between March 1, 2020 and the present by Swift Beef Company employees who subsequently tested positive for COVID-19.
- 27) Records relating to whether and how Swift Beef Company cleaned equipment operated between March 1, 2020 and the present by employees who have tested positive for COVID-19.
- 28) A copy of employee time sheets and/or attendance records from March 1, 2020 to present.
- 29) A copy of any sick leave requests and/or leave notifications from employees at the Worksite from March 1, 2020 to present.

- 30) A copy of any company pandemic plan developed, implemented and/or maintained to address occupational exposure to COVID-19.
- 31) Any information regarding implementation of a hotline to report employee illnesses associated with COVID-19, including the date the hotline was set up and records of calls made to the hotline.
- 32) A copy of any actions taken by Swift Beef Company, and the dates they were taken, to ensure that employees were not reporting to work with COVID-19 symptoms, including but not limited to, taking temperatures of employees prior to entering the plant or throughout a shift, removing employees from the plant based on complaints of sickness, referring employees to a clinic (or paying for those expenses), encouraging and documenting self-reports of illness.
- 33) A list of any trade groups or associations to which the company holds membership.
- 34) A copy of Swift Beef Company's Emergency Action Plan related to the company's infectious disease response and reporting requirements.
- 35) Documents relating to the decision to close the Worksite on or about April 16, 2020.
- 36) Documents relating to the decision to re-open the Worksite on or about April 24, 2020.
- 37) Reports of COVID-19 symptoms made to Swift Beef Company since re-opening, including name of person reporting, date of report, and any symptoms reported.

If you have questions about the above items, contact the Area Director or Assistant Area Director at 303-844-5285.

Swift Beef Company must produce all items described above that are in the possession, custody, or control of Swift Beef Company, including those items in the possession, custody or control of any of such entities' officers, directors, employees, agents, representatives, accountants, or attorneys. No items requested by this subpoena shall be destroyed, modified, altered, removed, or otherwise made inaccessible to the OSHA Denver Area Office.

If any item responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the item and explain the circumstances by which it ceased to be in your possession, custody, or control.

If the subpoena cannot be complied with in full, it shall be complied with to the extent possible, with an explanation of why full compliance is not possible.

The information requested may be produced in any of the following formats:

- (1) Email attachment to the attention of Eugenia Im (Im.Eugenia.A@Dol.gov);
- (2) CD or thumb drive;
- (3) External hard drive;
- (4) Hard copy mailed to OSHA's Denver Area Office at the address identified above. If Swift Beef elects to send responsive documents via U.S. Postal Service, United Parcel Service ("UPS") or Federal Express, please contact OSHA Area Director Amanda Kupper prior to

mailing to arrange for delivery and signature. Ms. Kupper can be reached at 303-844-5285 or Kupper.Amanda@dol.gov.

FAIL NOT AT YOUR PERIL



*IN TESTIMONY WHEREOF I have hereunto affixed my signature and the seal of the
UNITES STATES DEPARTMENT OF LABOR AT OSHA DENVER AREA OFFICE this
12th Day of May 2020.*

Amanda Kupper

**AMANDA KUPPER
AREA DIRECTOR,
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED
STATES DEPARTMENT OF LABOR**

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Preliminary Recommendations: Not For Distribution

10/1/20



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

110 yr old Building

Memorandum

100% PERCENT OCCURRING
IN COMMUNITY!!
GOV NOEM

Date: April 20, 2020

From: Michael Grant, CDC National Institute for Occupational Safety and Health
Colin Basler, CDC National Center for Emerging Zoonotic Infectious Diseases
Jessica Jacobs, CDC Center for Surveillance, Epidemiology, and Laboratory Services
John Osburn, South Dakota Department of Health
Erin Kennedy, CDC Center for Global Health
Jonathan Steinberg, CDC Epidemic Intelligence Officer, South Dakota Department of Health
Suzanne Tomasi, CDC National Institute for Occupational Safety and Health

To: Joshua Clayton, South Dakota Department of Health

Copy: Russ Dokken, Smithfield Foods
Scott Reed, Smithfield Foods
Mark Wiggs, Smithfield Foods
B.J. Motley, President, UFCW Local 304A Union*

Subject: Strategies to reduce COVID-19 transmission at the Smithfield Foods Sioux Falls Pork Plant

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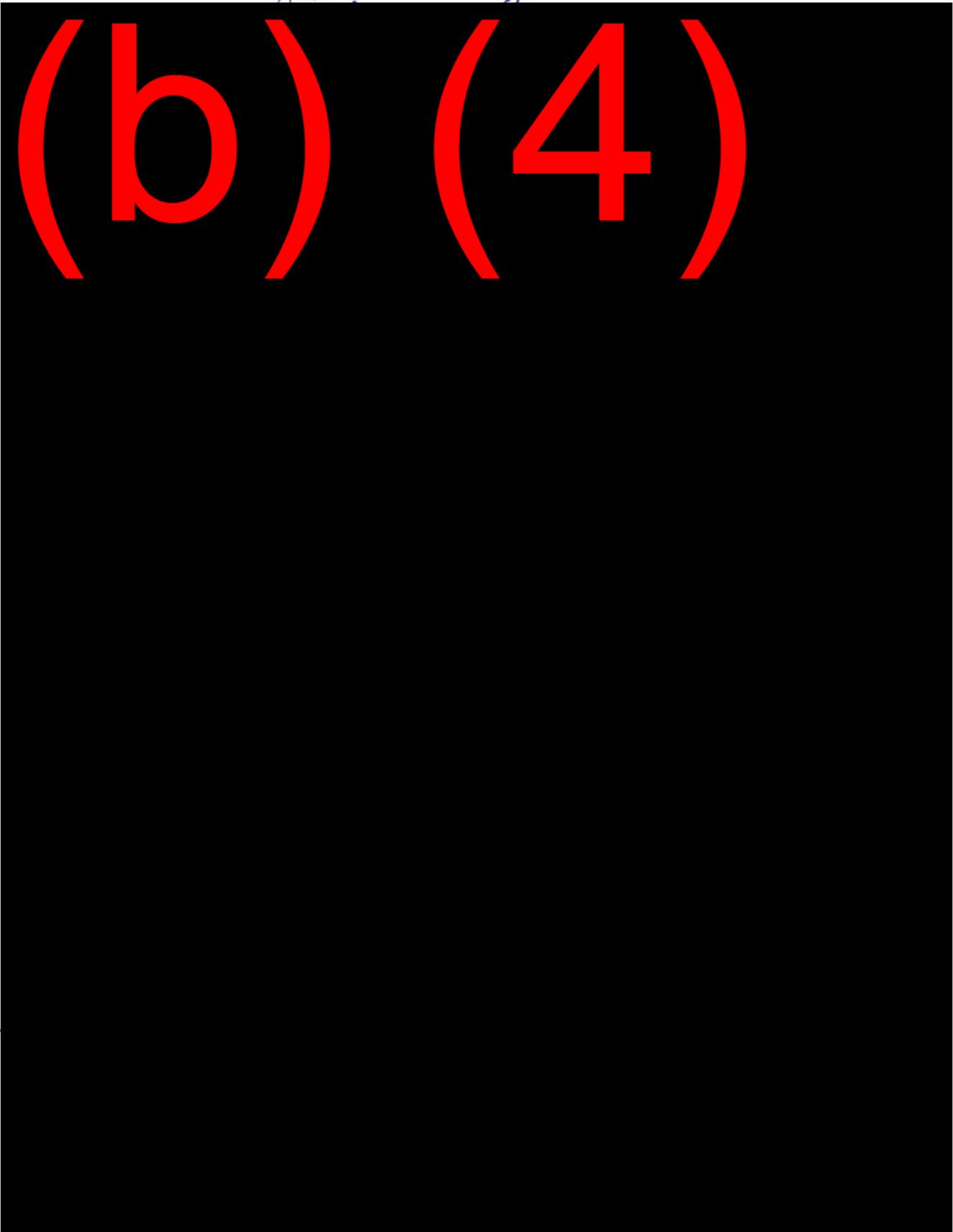
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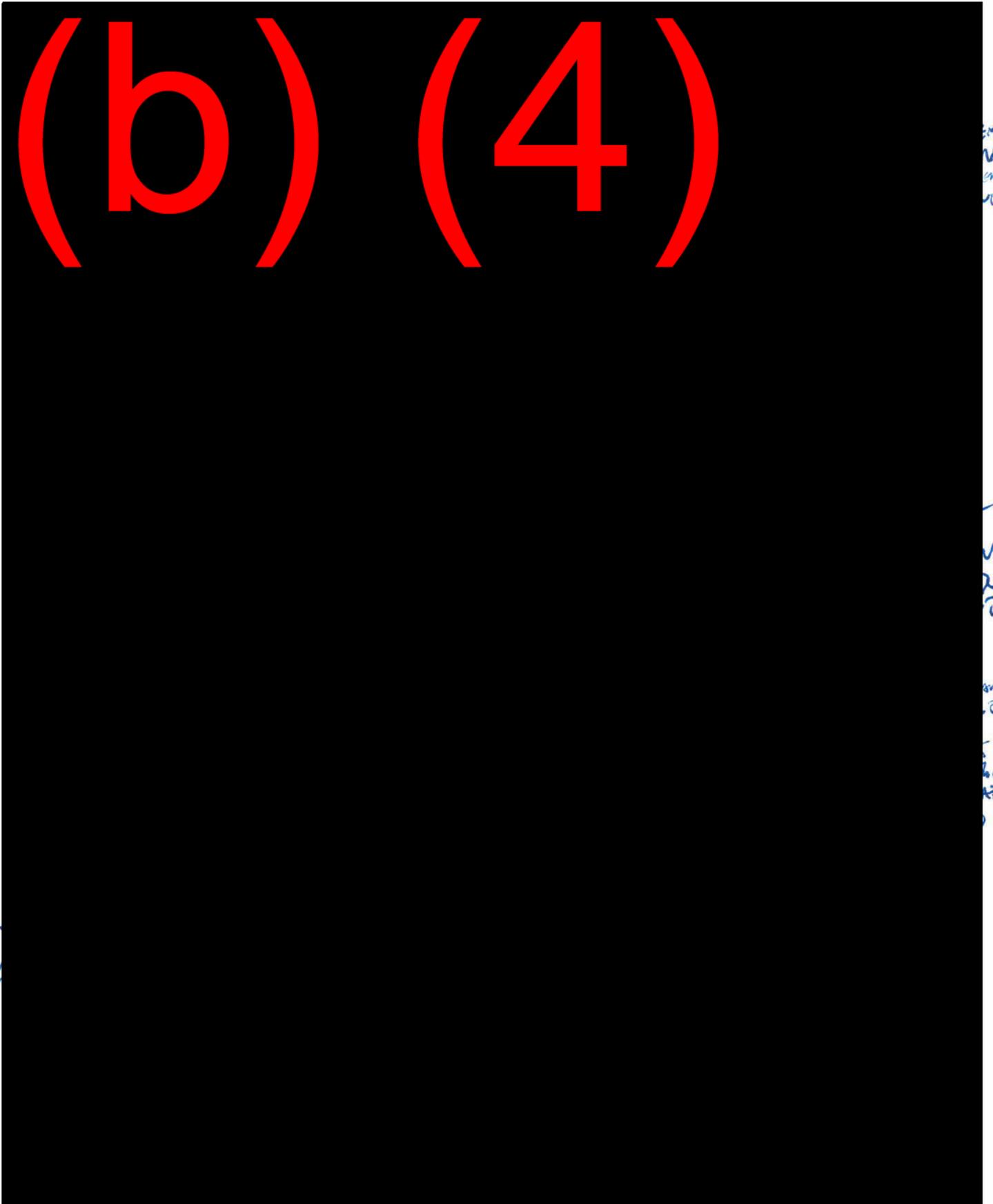


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Recommendations



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Page 8 of 14

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- Increasing access to hand washing and hand sanitizing stations throughout the facility.

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Implementation of EO ____ for the Continuity of Operations for Meat and Poultry Processors

Overview

A deliberative process will be used to ensure that the establishment has implemented the CDC/OSHA Guidance for Meat and Poultry Processing Workers and Employers to protect the safety of the employees, inspectors, and graders.

Authority

Under the direction and leadership of Secretary of Agriculture Sonny Perdue, the established Federal departments will carry out the following plan of action under authority of the Defense Production Act as delegated to the Secretary by EO ____ by the President.

Leadership Team

- Mindy Brashears, PhD – Under Secretary for Food Safety, USDA
- Henry Walke – Centers for Disease Control and Prevention
- OSHA - Federal Representative

Dispatch Team

- CDC – EpiAid Team
- OSHA – Federal Representative
- USDA – FSIS District Managers or Frontline Supervisors

USDA Process for Ordering Reopening of Closed Meat Processing Plants

1. The Secretary will issue orders to companies under the Defense Production Act to fulfill contracts for purchase of animals and contracts for deliveries to food distributors which will require plants to reopen or expand operations so long as they are compliant with CDC/DOL guidance.
2. If a company feels that a company is not capable of reopening or expanding operations of a plant because of the presence of COVID-19, the company may reject the order issued by the Secretary under the procedures provided in the Agriculture Priorities and Allocations System (APAS) regulations. (7 CFR 789.13(c)(1) or (2)).

Requirements of Plants

1. Meat and poultry processing plants are expected to implement the CDC/DOL guidance regarding meat processing plant worker safety. Meat processing companies along with state and local authorities are expected to work together to ensure that they remain in operation to provide meat protein for the American people. Similarly, meat processing plants that were closed or under limited operation that quickly reopen or expand operations pursuant to receipt of a priority order from the Secretary will be assumed to be prepared to implement the CDC/OSHA guidance. If not, a company should reject the order.
2. If a company feels that a plant is not able to meet the CDC/OSHA, it should reject the order issued by the Secretary under the procedures provided in the Agriculture Priorities and Allocations System (APAS) regulations (7 CFR 789.13(c)(1) or (2)).
https://www.fsa.usda.gov/Internet/FSA_Federal_Notices/apas_2015.pdf

Assessment of Situation

Moving forward, when a local/tribal/state health department or industry determination is made, that a facility should be closed due to COVID-19, the USDA should be contacted via _____. USDA notifies the established leadership team and reaches out to set up a call with the company, state/local health authority, state department of agriculture and members of the leadership team.

The establishment should be prepared to provide the following information:

1. COVID 19 control plan
2. Number of COVID + employees and information regarding the following:
 - a. Graph or other type of communication of daily illnesses
 - b. Any relevant data indicating a pattern in the data
 - c. Total numbers of workers available to operate the establishment (healthy)
3. Written Assessment from local/state health dept (if available).
4. Additional test results if available (antibody or other).
5. Primary hurdles to re-opening the establishment.
 - a. Plant Needs
 - b. Health Department needs
 - c. Other

Leadership team will assess the situation and work with all parties to determine if an agreement for re-opening can be reached. Agreements could potentially include, but are not limited to implementation of CDC/OSHA guidelines, employee testing protocol, reduced production utilizing healthy employees, or other actions that can ensure that the health of the workers and inspectors is protected.

If an agreement among all parties is acceptable, the leadership team will notify the Secretary of the plan for continuity of operations.

Deployment of Dispatch Team

Once a rated order has been issued, the dispatch team will be sent to the establishment to assess the situation. Primary criteria for the team will be assessing if the CDC/OSHA guidelines are met to the extent feasible. If the steps outlined in the guidance documents are lacking, the team will work with the establishment to develop an expedited plan to meet the recommendations. A timeline for implementation will be established.

Leadership team, members of the dispatch team or other public health specialists will join the dispatch team to discuss the situation with local public health authorities to address local concerns.

CDC guidance for essential workers and management of the workforce will be followed.

Leadership and dispatch teams will come to a decision that the establishment has met the requirements and the Secretary can issue and order to open the establishment as long as conditions set forth by the leadership and dispatch team are met.

Compliance review

Ongoing review of compliance will be conducted by leadership team or designees.

Communications

Once a decision is made, there should be a coordinated communication effort to communicate and reiterate sound, science-based decisions at the local and regional level.



To: Secretary Perdue
Date: Thursday, April 30, 2020
Re: Implementation of Meat and Poultry Processing EO

Draft, Deliberative, Pre-Decisional

Agenda

- Facility Update
 - Sioux Falls/Smithfield: Update from industry and state calls
 - Delaware poultry: Update from industry and state calls
- Personal Protective Equipment
 - Masks for FSIS:
 - 320,000 paper masks slated for delivery May 7, 2020
 - 50,000 additional cloth, reusable masks requested on 4/29/20 from HHS-procured supply. We understand that they are processing for immediate shipment.
 - DPA Authority/Proposals
 - **COMMERCE DELEGATION:** USDA request that Commerce delegate to USDA its DPA authority over “industrial items” to order industrial masks and other items, such as hand sanitizer, for two purposes:
 - **FOR USDA INTERNAL NEEDS:** This delegation of authority could be (b) (5), DPP [REDACTED]
 - **FOR BROADER FOOD & AG SECTOR NEEDS:** Secretary can use new EO DPA authority to place priorities on meat and poultry processor contract (*i.e.* USDA must issue “requirement to operate” letter to individual processing companies). Combined with the Commerce delegation, this would allow processors who are subject to a DPA order under the new EO to flow down their priority order to their suppliers for priority fulfillment and delivery of orders of industrial items in addition to food items.

<p>Federally Procured/Distributed PPE</p>	<ul style="list-style-type: none"> HHS has procured cloth, reusable masks for disbursement to states, Federal agencies, and critical infrastructure sectors. They are working with FEMA to distribute these masks (rolling delivery/distribution due to procurement size). USDA submitted a request for 900,000 masks to meet internal needs. Round One Distribution: approximately 15 million masks (6 million to the Federal Government -- 10,000 of those to USDA). FEMA indicates these 10,000 have been shipped, but we have not received as of 4/29/20. Working with FEMA and USDA OO to track down. As HHS and FEMA continue to develop a strategy for future allocation and distribution of this supply, HHS can provide limited supplies (based on available inventory) to meet critical needs. On 4/29/20, USDA requested an additional 50k cloth masks from this supply to be delivered to FSIS for distribution. We understand that they are processing for immediate shipment. <p>-----</p> <ul style="list-style-type: none"> HHS/FEMA are also managing limited supplies via the Strategic National Stockpile. At this time, due to limited resources, only requests for critical health care needs (requiring substantial documentation of need) are met through this resource. Food and Ag sector entities can now request supplies via this process.
<p>Supply Chain Stabilization Taskforce</p>	<ul style="list-style-type: none"> The Supply Chain Stabilization Task Force focuses on medical PPE (N95s, respirators, nitrile gloves, surgical gowns), with a primary focus thus far on increasing domestic market supply of medical PPE (via the “air bridge” model). They have also leveraged relationships with industrial suppliers to assist in procurement at USDA and entities in the food and ag sector by identifying distributors with available supply and connecting them to USDA and the broader food and ag sector for procurement. For the meat packing sector specifically: The Task Force staff has reached out to every company with closed operations (including JBS, Smithfield, Tysons) to determine where procurement assistance might be needed.
<p>Defense Production Act Authority (Proposals Outlined p.1)</p>	<p>COMMERCE DELEGATION: USDA request that Commerce delegate to USDA its DPA authority over “industrial items” to order industrial masks and other items, such as hand sanitizer, for two purposes:</p> <ul style="list-style-type: none"> FOR USDA INTERNAL NEEDS: This delegation of authority could be (b) (5), DPP [REDACTED] FOR BROADER FOOD & AG SECTOR NEEDS: Secretary can use new EO DPA authority to place priorities on meat and poultry processor contract (i.e. <i>USDA must issue “requirement to operate” letter to individual processing companies</i>). Combined with the Commerce delegation, this would allow processors who are subject to a DPA order under the new EO to flow down their priority order to their suppliers for priority fulfillment and delivery of orders of industrial items in addition to food items.