

**Congress of the United States**  
**Washington, DC 20515**

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OPERATIONS

**COMMITTEE ON FINANCIAL SERVICES**

SUBCOMMITTEE ON  
DIVERSITY AND INCLUSION

July 9, 2020

President Donald J. Trump  
The White House  
1600 Independence Ave SW  
Washington DC 20250

Dear Mr. President:

I write to request additional information on how the Defense Production Act is being used now and how it will be used in the future with regard to your Executive Order on Delegating Authority Under the Defense Production Act (DPA) with Respect to Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19 as published on April 28, 2020.

As Vice Chair of the Committee on Agriculture and a Representative from the state of North Carolina, I am aware of the negative impacts that uncertainty around our food processing capacity has had on farmers and on all consumers.

As a Member of the Education and Labor Committee and Chair of the Subcommittee on Workforce Protections, I remain concerned about the health and safety of workers in food processing facilities given that there have been nearly 26,000 positive COVID-19 cases related to meat and poultry packing plants with more than 90 reported worker deaths<sup>1</sup> and at least four U.S. Department of Agriculture Inspector deaths<sup>2</sup> as of June 23<sup>rd</sup>. With COVID-19 cases spiking across the country, the risks to our food supply and vulnerable workers continue to be acute.

And, as a Member of the Financial Services Committee, I have a keen and vested interest in the precedent set by any Administrative use of the DPA.

Specifically, I seek your response to the following questions on how this Executive Order will be used going forward by July 27, 2020.

- What legal opinion or other information did your Administration use to determine that invoking the DPA was warranted in this case? Did you consult with the Department of Agriculture and Occupational Safety and Health Administration prior to issuing this Executive Order?

<sup>1</sup> <https://investigatemitwest.org/2020/04/16/tracking-covid-19s-impact-on-meatpacking-workers-and-industry/>

<sup>2</sup> <https://www.bloomberg.com/amp/news/articles/2020-05-14/fourth-usda-inspector-dies-from-virus-amid-meat-plant-outbreaks>

- The Executive Order states that “It is important that processors of beef, pork, and poultry in the food supply chain continue operating and fulfilling orders to ensure a continued supply of protein for Americans,” and meets the criteria set forth in Sec. 101(b) of the DPA that “such material is a scarce and critical material essential to the national defense.” At the same time, a significant amount of meat and poultry, including products that are also sold in domestic markets, have been exported prior to and over the period of time since the DPA was invoked, all while food inflation has reached its highest level in more than eight years.<sup>3</sup> Going forward, will you continue to use the DPA to support food industry exports? Will you exercise any authority under the DPA to prioritize contracts or allocate such resources, and if so, how will such prioritization or allocation be determined. Do you consider meat or poultry exports “essential to the national defense?”
- In the Executive Order, you stated that “any unnecessary closures can quickly have a large effect on the food supply chain.” What metrics would you use to determine that a closure is unnecessary? Can you provide examples of “unnecessary” closures?
- Under the Executive Order, the Secretary of Agriculture is to take “all appropriate action under [Sec. 101(b) of the DPA] to ensure that meat and poultry processors continue operations consistent with the guidance for their operations jointly issued by the CDC and OSHA.” How is compliance with CDC and OSHA guidelines being evaluated and enforced? What action are you prepared to take if you find that meat and poultry processors are not in compliance with CDC and OSHA guidelines? Please provide evidence that you have taken such action when you identified violations of CDC and OSHA guidelines. Has the federal government taken any action to prevent or discourage any state or local authorities from exercising their own authorities to protect worker safety and the safety of surrounding communities?
- Prior to issuing the Executive Order, you suggested that the order would protect companies from legal action. However, the DPA provisions relating to liability are generally interpreted to be applicable to violations of contracts with other vendors when a contract is prioritized or a resource is allocated by the U.S. Government. What is your basis for determining that a company would be exempt from any liability if opened pursuant to the Executive Order? Do you intend to take action to exempt meat or poultry processors from liability for illnesses suffered by workers due to unsafe conditions in the processing plants?
- Given that the Executive Order provides the Secretary of Agriculture with the power “to determine the proper nationwide priorities and allocation of all the materials, services, and facilities necessary to ensure the continued supply of meat and poultry, consistent with the guidance for the operations of meat and poultry processing facilities jointly issued by the CDC and OSHA,” what materials, services, and facilities have been or will be prioritized or allocated for this purpose? How do these materials, services or facilities ensure the safety of meat and poultry processing workers?

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<sup>3</sup> <https://www.agriculture.com/news/business/beef-prices-soar-food-inflation-is-highest-in-more-than-eight-years>

- What actions have you taken to ensure that inspectors at the Department of Agriculture have the necessary Personal Protective Equipment (PPE), procedures and training to be able to safely carry out their responsibilities?
- On May 18, 2020, Secretary of Agriculture Perdue stated: "We provided PPE equipment, personal protective equipment, face shields, masks and other things into the plants there, as well as testing where required to get the workers confident so they're operating in a safe working environment." Please provide a list of what PPE and testing has been provided by the U.S. Government to assist workers in meat packing plants by facility and date. In addition, please provide evidence that meat and poultry processing workers are "confident" that they're operating in a safe working environment.

I am also aware of a memorandum of understanding signed between food safety officials at the U.S. Department of Agriculture and the Food and Drug Administration outlining how the DPA would apply to food supply chain issues outside of meat and poultry. I ask that I be kept informed of any use of the provisions laid out in this agreement.

Sincerely,



Alma S. Adams, Ph.D.  
Member of Congress

CC: The Honorable Sonny Perdue, Secretary, U.S. Department of Agriculture  
The Honorable Eugene Scalia, Secretary, U.S. Department of Labor  
The Honorable Alex Azar, Secretary, U.S. Department of Health and Human Services  
The Honorable Robert Lighthizer, U.S. Trade Representative