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MEMORANDUM

From: Gary Jay Kushner
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Date: May 11, 2020

Re: COVID-19 Update: USDA Updates FAQs to Address President Trump's Executive Order Invoking the Defense Production Act for Meat and Poultry Processors

The United States Department of Agriculture (USDA) recently updated its Frequently Asked Questions (FAQs) webpage regarding COVID-19 to include a section on President Trump's Executive Order (EO) invoking the Defense Production Act (DPA) for Meat and Poultry Processors. ^{1/} These FAQs address the role USDA plays in implementing the EO, what meat and poultry plants should do under the EO, and the potential actions USDA may take to ensure meat and poultry processors continue operations consistent with federal guidance issued by the Centers for Disease Control and Prevention (CDC) and the Department of Labor's (DOL) Occupational Health and Safety Administration (OSHA). ^{2/} Notably, USDA recommends meat and poultry plants that are closed follow the OSHA/CDC guidance specific to the meat and poultry industry. Further, if necessary, USDA may issue orders under the EO and the DPA requiring meat and poultry establishments to fulfill their contracts. Below, we provide the FAQs released by USDA. ^{3/}

^{1/} Coronavirus Disease (COVID-19) Frequently Asked Questions, President Trump's Executive Order (accessed May 11, 2020) <https://www.usda.gov/coronavirus>; See *HL Memorandum - President Trump Issues Executive Order Invoking Defense Production Act for Meat and Poultry Processors* (April 29, 2020) <https://bit.ly/3co20w5>.

^{2/} See *HL Memorandum - COVID-19 update: CDC and OSHA release interim guidance for meat and poultry processing workers and employers* (April 27, 2020) <https://bit.ly/2WmQNq7>.

^{3/} This memorandum is offered for general information and educational purposes. It is not offered as, intended as, and does not constitute legal advice. It is not intended to create, and receipt of it does not constitute, a lawyer-client relationship.

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President Trump's Executive Order FAQs

What does the Executive Order direct the Department of Agriculture to do?

Executive Order 13917 ^{4/} delegated to the Secretary of Agriculture the powers of the President under the DPA to take all appropriate action to ensure America's meat and poultry processors continue operations consistent with the guidance for their operations jointly issued by the CDC and OSHA regarding worker health and safety.

What should meat and poultry plants that are currently closed do?

Effective immediately, meat and poultry processing plants should utilize the CDC/OSHA 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.

What role will USDA play in implementing the President's executive order?

If necessary, the Secretary may issue orders under the EO and the DPA requiring meat and poultry establishments to fulfill their contracts.

Will USDA issue orders with allocations of production on a company-by-company basis or will there, instead, be an industry-wide approach?

The issuance of priority orders under the DPA is an option under active consideration. The USDA does not plan to issue an order to a facility unless necessary. USDA encourages establishments and state and local officials to follow the CDC/OSHA guidance specific to the meat and poultry processing sector to resume or maintain continuity of operations.

Will this be done in the form of an agency rule(s) or guidance? By when?

If necessary, USDA will issue an order to a company or an establishment requiring them to fulfill their contracts. Rulemaking is not necessary for USDA to carry out the delegated authorities under the DPA.

Is there a national testing plan specific to meat and poultry processing plants?

Testing strategy and protocol for critical infrastructure, including meat, poultry, and processed egg product facilities, should be developed by each State, based on ongoing guidance from the Department of Health and Human Services (HHS) and CDC.

What kind of resources can or will be made available to meatpacking facilities, to protect plant employees, given the new EO?

USDA will continue to work with the White House Task Force, other Federal partners, including HHS, CDC, FEMA, and the Supply Chain Stabilization Task Force, and state, local, and tribal officials to ensure that resource needs are met to keep employees safe and continue operations consistent with the CDC/OSHA guidance.

^{4/} Executive Order on Delegating Authority Under the DPA with Respect to Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19 (April 28, 2020) <https://bit.ly/2YWLwaf>.

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We will continue to monitor the federal government's response to COVID-19. Should you have any questions or if we can be of assistance with your COVID-19 response strategy, please do not hesitate to contact us.