United States
Department of
Agriculture

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

June 9, 2021

Delivered via Electronic Mail
Austin R. Evers
American Oversight
1030 15th Street NW
Suite B255
Washington, District of Columbia 20005
foia@americanoversight.org

Re: Final Response to Freedom of Information Act (FOIA) Request No. 2020-OSEC-05149-F

Dear Mr. Evers:

This is the Office of Information Affairs' (OIA) final response to FOIA request 2020-OSEC-05149-F, which sought the following records from March 15, 2020, through the date of search: "[a]ny memoranda, analyses, modeling, findings, predictions, charts, or briefing materials about potential or actual food shortages related to the coronavirus pandemic by the Food Supply Chain Task Force [(FSCTF)]."

Your request was processed under the FOIA, 5 U.S.C. § 552.

A search was conducted by the Office of the Secretary's (OSEC) telecommunications provider, the Client Experience Center (CEC). The CEC provides comprehensive, fee-for-service information technology (IT) associated operations, security, and technical support services to USDA end-users. The CEC also implements and manages enterprise IT solutions for users Department-wide. The CEC searched the email accounts for USDA members of the Federal Emergency Management Agency's (FEMA) FSCTF. Responsive records totaling seventeen (17) pages were located as a result of the CEC's search. Eleven (11) pages are being provided to you, excluding 6 pages of records being withheld in full.

Manual searches were also conducted by the USDA's FSCTF members. The responsive records located as a result of the manual searches were duplicative of the records located as a result of the CEC search. The manual search, therefore, did not produce additional responsive records.

Following review of the responsive records, the OIA has determined that certain information contained therein should be withheld pursuant to U.S.C. § 552(b)(5) (FOIA Exemption 5). Below is an explanation of the information that has been withheld.

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." As a threshold matter, the records here are inter and intra agency because they were exchanged within the USDA and with other Executive Branch agencies.

One of the frequently invoked FOIA Exemption 5 privileges is the deliberative process privilege. To fall within the FOIA's deliberative process privilege, the records must be both pre-decisional and deliberative; the records must precede the adoption of an agency policy and include the opinions, recommendations, or deliberations on a legal or policy matter.

In this instance, the information being withheld under the deliberative process privilege consists of parts of a draft version of a FSCTF report that differ from the final version of the document. The final version is included within the responsive record set and is being released in full. The OIA is also withholding in full two draft versions of a three-page memorandum that was, ultimately, published as "Food and Agriculture: Considerations for Prioritization of PPE, Cloth Face Coverings, Disinfectants, and Sanitation Supplies During the COVID-19 Pandemic", and is publicly available at: https://www.fda.gov/media/138183/download.

These records are pre-decisional because they precede any final agency decision. They are also deliberative because they reflect the evolving process federal agency employees engage in when producing memoranda and reports. The back-and-forth process that results in various drafts of written material during the development of recommendations made by agency advisors for use in making policy decisions is integral to the Executive Branch decision-making process.

If these pre-decisional, deliberative memoranda were released to the public, USDA and other Executive Branch employees would be much more cautious in their contributions and collaboration with each other; specifically, in candidly reviewing, commenting on, editing, and changing written material in order to ensure an accurate work product reflecting of the agency's policies. It would also inhibit employees from providing all pertinent information and viewpoints in a timely manner to agency decision-makers. This lack of candor would also seriously impair agencies' ability to engage in forthright discussions necessary for efficient and proper agency decision-making.

You may appeal this response by email at USDAFOIA@usda.gov. Your appeal must be in writing, and it must be received electronically no later than 90 calendar days from the date of this letter. The OGC will not consider appeals received after the 90 calendar-day limit. Appeals received after 5:00 p.m. EST will be considered received the next business day. The appeal letter should include the FOIA tracking number 2020-OSEC-05149-F, a copy of the original request, the OIA's response to your original request, and a statement explaining the basis of your appeal. For quickest possible handling, the subject line of your email and the appeal letter should be marked "Freedom of Information Act Appeal" and reference FOIA No. 2020-OSEC-05149-F.

You may seek dispute resolution services from the OIA's FOIA Public Liaison, Mr. Harald Fuller-Bennett. Mr. Fuller-Bennett may be contacted by telephone at 202-239-4522, or electronically at Harald.FullerBennett@usda.gov or USDAFOIA@usda.gov.

You also have the option to seek assistance from the Office of Government Information Services (OGIS). Please visit https://www.archives.gov/ogis/mediation-program/request-assistance for information about how to request OGIS assistance in relation to a FOIA request.

Provisions of the FOIA allow us to recover part of the cost of processing your request. In this instance, no fees will be charged.

If you have any questions regarding the processing of this request, please contact me at USDAFOIA@usda.gov.

For additional information regarding USDA FOIA regulations and processes, please refer to the information available online at www.dm.usda.gov/foia.

The OIA Team appreciates the opportunity to assist you with this matter.

Sincerely,

Alexis R. Graves
Director
Office of Information Affairs

Enclosure: Responsive Records (11 pages)

FOOD SUPPLY CHAIN TASK FORCE INITIAL REPORT (dtd 1200 on March 27, 2020)

BACKGROUND

In response to Operations Order (OPORD) 05-2020 Amendment #06 COVID-19, the Food Supply Chain Task Force was established by the Federal Emergency Management Agency National Response Coordination Center (NRCC) on March 25 to analyze the impact of limited personal protective equipment (PPE) to the Nation's food supply. Emergency Support Function 14 (ESF-14) was appointed by NRCC the lead for coordination and deliverable development. The task force includes broad membership across the interagency and private sector. A table detailing task force membership is included at the end of this report.

DELIVERABLES

As per OPORD, required actions by March 27, 2020 include:

1. Recommendations for allocation of PPE across the enterprise
2. Recommendations for reducing PPE requirements and associated waivers to accomplish the recommendation
3. Timeline of impact to food supply if no steps are taken

FINDINGS

To meet the requirements defined in OPORD, the task force collaboratively developed the following insights and recommendations for consideration. This task force considers this an initial fact-finding report and requests additional time and resources to meet any leadership requirements. The task force will continue exploration of the problem space with the identified federal and industry partners as required.

This is an unprecedented stress on the supply chain system. PPE shortages are exacerbating the stresses in a system that is already stressed in multiple ways, including by extreme increases in demand and disruptions in normal transportation pathways. It is difficult to predict the impact of this across the entirety of the Food and Agriculture Sector due to the diversity of its components.

1. **Recommendations for allocation of PPE across the enterprise:**
    a. ***At this time, all task force members (federal and private sector) acknowledged that healthcare providers should remain the primary recipient of the limited PPE.*** The Food and Agriculture Sector is developing strategies to allocate any remaining PPE across the sector.
        i. Though the Food and Agriculture Sector can sustain supply shortages in a limited capacity currently, the continued diversion of PPE to the Healthcare Sector and the exhaustion of PPE will interrupt the food supply chain.
    b. ***Currently, there is no determined need to prioritize the allocation of PPE across the food supply chain enterprise*.** The inextricably-linked supply chain has PPE dependencies from the points or production/processing, transportation, and consumer transaction. There are no food and agriculture sector PPE standards across the food categories and supply chain nodes.

i. PPE need-types and demand vary across the Food and Agriculture Sector. Prioritization of PPE demands in one component of the food supply chain will likely impact upstream or downstream processes negatively.
ii. PPE (types) requirements vary:
    1. **Safety:** Face mask, respirators, and/or chemical-resistant gloves for high dust environments or pesticide/fertilizer application in agriculture or food facility sanitation activities
    2. **Sanitation:** Aprons, hairnets/beard nets, and gloves in (human and animal) food production/manufacture; sanitization products for facility cleaning or employee use
    3. **Consumer/employee demand:** Gloves/masks needed by retail/grocery stores for customer-facing employees at grocery and food establishments
iii. PPE requirements differ throughout the supply chain steps of production/processing, transportation, and point of sale.
iv. Federal, state and local inspectors use of limited PPE impacts the food supply chain. Inspector PPE inventories and food inspection schedules warrant additional consideration for impacts to the limited enterprise supplies.

2. Recommendations for reducing PPE requirements and associated waivers:

a. ***At this time, all task force members acknowledged that there is no demand from the private sector to seek waivers for PPE use***. Members also agreed that waivers will not provide an adoptable solution to PPE shortages. Reduction of PPE requirements associated with work safety (e.g. respirators, gloves, and eye protection) in critical demand puts worker and consumer health and safety at risk.
    i. Reduction of PPE requirements associated with worker safety is difficult, especially with respirators, chemical-resistant gloves, and eye protection as those are in critical demand. Reducing PPE standards also puts workers at health and safety risk. Recognizing the need for adequate standards to ensure safe food processing/production and provide the health and safety of sector employees, Food and Agriculture Sector Coordinating Council leadership and its private sector participants do not have any requests, requirements, or recommendations to reduce or waive PPE standards at this time.
    ii. Task force members acknowledged that flexibility in the use of certain PPE does exist. However, due to concerns that implementing such adaptability may then cause reductions in supplies used for other purposes (e.g., a lack of gloves may drive increased use of hand soap, which may then cause shortages for soap), the task force recommends further resources be committed to better understanding the impact of PPE substitution.

iii. In manufacturing and processing facilities under their respective jurisdictions, the Food and Drug Administration and U.S. Department of Agriculture noted flexibility in PPE regulatory requirements (state, local, territorial, and tribal regulatory requirements can differ). Under most federal regulations for food manufacturing and processing, *specific* PPE is not required in most cases. Private sector members indicated current and future adaptability regarding specific PPE use, but expressed concerns with creating additional supply chain shortages in materiel substituted.

b. The Occupational Safety and Health Administration (OSHA) publishes and updates guidance to the private sector:
    1. Guidance on Preparing Workplaces for COVID-19. OSHA Publication 3990, (March 2020). Also, available in Spanish.
    2. Temporary Enforcement Guidance - Healthcare Respiratory Protection Annual Fit-Testing for N95 Filtering Facepieces During the COVID-19 Outbreak. OSHA Memorandum (March 14, 2020). Note: This guidance is effective as of March 14, 2020 and will remain in effect until further notice. Updates are published on the webpage for public notification.
    3. Prevent Worker Exposure to Coronavirus (COVID-19). OSHA Alert (Publication 3989), (March 2020). Also, available in Spanish.

3. **Timeline of impact to food supply if no steps are taken:**
    a. Empirical numbers vary across the Food and Agriculture Sector and would require an extensive data call to provide the task force access to such data. However, as a representative sampling, task force participants indicate that some companies may exhaust current PPE within one week. An enterprise collapse could be triggered by vulnerabilities throughout the supply chain and customer behavior. Consumer availability of products nationwide varies by disruptions (e.g., consumer behavior, closure of shipment routes, workforce health and availability of inspectors, etc.) including PPE shortages:
        i. ***Fresh milk shortages may occur within 24 hours***
        ii. ***Produce supplies can be impacted within several days***
        iii. ***Meat, poultry, catfish, and processed eggs can be impacted in 2–4 weeks.***
        iv. ***Dry goods and processed foods inventories could be exhausted as soon as four weeks***

    Note: Local incidents like hurricanes or flooding may further complicate PPE availability or disrupt the food supply chain with little advance notice.

    b. The task force recommends the federal government position itself to address the concerns in the event private sector can no longer solely address COVID-19 impacts to the food supply chain. The task force acknowledges the urgency and need to address PPE concerns across the food supply chain. The private sector continues to shift priorities and operations to assuage COVID-19 impacts.

i. Currently, the industry is not experiencing major impacts related to COVID-19 in the workforce, but the anticipation is the number of COVID-19-positive detections will increase, which will increase the need for PPE, and create the need for downtime for cleaning, exacerbating potential disruptions in the supply chain.

ii. This issue is unique from other emergency responses previously confronted by the Food and Agricultural Sector. In a typical hurricane scenario, a return to normal supply chain operations might take 5–6 weeks (for a regional event). This is a national-level event, which is still growing with no reasonable prediction of a return to business as usual. At this time, the best-case estimate for supply chain recovery after return to business as usual—based on **current** impacts—would be 5–6 months.

c. ***Federal guidelines and codes must be harmonized with state regulators.*** Federal, state, and local governments policies and actions have additional implications on PPE availability. As certain states and localities release guidance on the required use of gloves by all grocery retail employees, additional demand is placed on supplies which are in short supply.

d. ***The ability of a company to withstand PPE shortages depends in part on its size and operation***. Larger companies may be able to sustain production as they have more inventory stockpiled and the capability to move supplies around, while smaller companies are facing imminent shutdown. The needs for PPE also vary across the sector from production and manufacturing to distribution and retail. In an interdependent production chain, a shutdown at one level impacts the entire production line.

4. Recommendations for further action

While the items above answer OPORD requirements, they do not offer a solution to the identified problem(s) and the time allotted was insufficient to explore effective solutions. The task force stands by to support any further requirements requiring deeper study.

Food Supply Chain Task Force Membership

Member	Organization	Role
George Bamford	CISA	ESF 14
Dr. John Martin	CISA	
Christian Lowry	CISA	
Gwen Hess	CISA	
Stephanie Wenning	EPA	ESF10
Sarah Egan	FEMA	ESF6
Steve Elson	CISA LNO to FEMA	
Gary Mckeon	FEMA	
Edwin Lyons	FEMA	
Chris Lawver	OSHA	
Clay Detlefsen, Esq		SCC co-chair
Randy Gordon		SCC co-chair
LeeAnne Jackson	FDA	GCC co-chair
Michelle M. Colby	USDA	GCC co-chair
Jimmy Wortham	USDA	ESF 11
Melissa Moore	USDA	
Ben Dinsmore	USDA	
Betsy Booren	Consumer Brand Association	Private-sector
Sanjay Gummalla	American Frozen Food Institute	Private-sector
Michael Roberson	Publix Supermarkets	Private-sector
Jennifer McEntire	United Fresh (Produce)	Private-sector
Hilary Thesmar	Food Marketing Institute	Private-sector

FOOD SUPPLY CHAIN TASK FORCE April 2, 2020
PPE Prioritization Guidlines

Recommendation: The Food Supply Chain Task Force recommends using a two-factored approach to help policy makers, owners and operators, and other stakeholders prioritize personal protective equipment (PPE) use across the Food and Agriculture Sector. The two-factored approach allows for broad application and flexible solution implementation by industry operations. The first factor establishes a category by which the sector can prioritize PPE supplies. The second factor applies characteristics of the food supply chain and availability of alternative PPE solutions. This approach will inform decisions regarding limited PPE resources. While PPE is critical to the continuity of the food supply chain, in considering this approach, users acknowledge that healthcare and emergency responders have priority of scarce PPE supplies. The approach factors are defined in further detail below.

Factor 1: **Prioritization of PPE**
PPE considerations in the Food and Agriculture Sector fall into three main categories and should be prioritized in the following order:

1. **Worker Safety:** Face masks, respirators[1], and/or chemical-resistant gloves for high-dust work environments or pesticide/fertilizer application in agricultural production; commodity storage, handling, and distribution; or food facility sanitation activities, consistent with Occupational Safety and Health Administration (OSHA) standards[2]. This also includes eye protection and hearing protection, where applicable based on OSHA standards.
2. **Food Safety:** Aprons, hairnets/beard nets[3], and gloves in food and animal feed production/manufacture, at retail/grocery stores for those who have direct contact with ready to eat food, and ensuring food and feed produced meet safety and quality standards for consumption.
    a. **Disinfectant:** Food manufacturers may apply treatments throughout the production of food (e.g. antimicrobial spray or dips, irradiation, or carbon dioxide for animal stunning procedures). Exposure to those treatments may have a need for PPE.
    b. **Sanitation:** Chemicals, PPE, and products used for facility cleaning or employee hygiene use.
3. **Consumer/Employee Confidence:** Gloves, masks, and hand sanitizer may be needed by retail/grocery stores for customer-facing employees in addition to appropriate hand-washing activities. The current driving need for PPE within this category relates to

[1] Including air-purifying respirator equipped with an organic vapor cartridge in combination with particulate filters (to provide minimum protection). Any supplied air respirator also can be used. Powered air purifying respirators with organic vapor cartridges and particulate filters also will provide minimum protection. The selection of an appropriate respirator depends on the worker's exposure. A complete respiratory protection plan also must be implemented to comply with 29 CFR 1910.134, Respiratory Protection.
[2] OSHA's Personal Protective Equipment (PPE) standards (in general industry, 29 CFR 1910 Subpart I), which require using gloves, eye and face protection, and respiratory protection.
[3] The use of aprons and hairnets is specific primarily to the Food and Agriculture Sector and therefore is not in competition with healthcare and emergency responder PPE needs.

consumer and worker perception, whereas the previous two categories are tied directly to worker and product safety and quality.

Given the current supply and inventory shortages, and the higher-priority needs within the healthcare and public health community, when PPE is not required every effort should be made to implement effective alternative solutions (e.g. plastic shields, hand-washing, and other sanitation practices versus masks and gloves for customer-facing employees). As an example, industry can identify alternative respirator types based upon worker risk and by using the Centers for Disease Control and Prevention (CDC) National Institute for Occupational Safety and Health publications on *Respirator Selection Logic 2004* and *Frequently Asked Questions about Respiratory Protection, Respirator Reuse and Extended Use*.

Food and Agriculture Sector operations should monitor PPE utilization rates within their operations, particularly regarding the use of respirators, masks, and sterile gloves. CDC released additional guidance documents relating PPE use optimization—a burn rate calculator is publicly available on CDC's website at https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/burn-calculator.html.[4] Products released by CDC and OSHA relating to PPE use should be treated as authoritative unless explicitly stated otherwise by state or local laws or directives.

Factor 2: Consideration of Supply Chain Characteristics and Alternative PPE Solutions
When allocating PPE within the Food and Agriculture Sector, the following characteristics should be considered from a prioritization perspective:

1. Reference the essential critical infrastructure workforce guidance issued by the U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency in determining workforce PPE needs (i.e. is PPE no longer needed for a certain percentage of the workforce as they are not considered essential).
2. Production, harvest, distribution, and supply chain characteristics of the commodity or product should be considered. Products with short shelf life (fresh produce, eggs, dairy, seafood, meat, and poultry) may need to be prioritized over dry/packaged goods. Prioritization should also be given to animal-based products for which processing delays could result in business decisions to cull animals, and these actions could substantially impact future supplies.
3. Determination of mandatory versus voluntary PPE requirements and the authority directing mandatory use (i.e. federal, state, local, or industry best practices). Once PPE requirements sources are determined, evaluate for recent changes in guidance (e.g. regulatory flexibility based on CDC statements or state of emergency procedures) or alterative voluntary requirements.
4. Availability of approved alternative PPE solutions for various sectors (e.g. OSHA flexibility on appropriate PPE for employees working in dusty environments or performing planting and harvesting activities, industry best management practices, etc.).

[4] The Personal Protective Equipment (PPE) Burn Rate Calculator is a spreadsheet-based model that provides information for healthcare facilities to plan and optimize the use of PPE for response to coronavirus disease 2019 (COVID-19). Similarly, non-healthcare facilities (e.g., correctional facilities) may find this tool useful for planning and optimizing PPE use as part of the response to COVID-19. This tool can also be used for planning PPE use outside the context of COVID-19, where PPE shortages may also occur due to supply chain issues related to the COVID-19 response (e.g. manufacturing facilities).

As an example, suitable alternatives for 8ml nitrile gloves may include gloves made from butyl rubber, Teflon™, or Tychem™, which protect at a higher standard but may be reused and have available inventory.

5. Novel alternative PPE solutions for various sectors, such as the use of face masks constructed from other fabrics and respirators using filters made from other high-efficiency particulate air filter sources such as air purifiers or vacuum bags.

FOOD SUPPLY CHAIN TASK FORCE April 1, 2020
Draft PPE Prioritization Considerations

Recommendation: (b)(5) Deliberative

[redacted]

Factor 1: **Prioritization of PPE**

PPE considerations in the Food and Agriculture sector fall into three main categories and should be prioritized in this order:

1. **Worker Safety:** Face masks, respirators[1], and/or chemical-resistant gloves for high-dust work environments or pesticide/fertilizer application in agricultural production; commodity storage, handling, and distribution; or food facility sanitation activities, consistent with Occupational Safety and Health Administration (OSHA) standards[2]. This also includes eye protection and hearing protection, where applicable based on OSHA standards.
2. **Food Safety:** Aprons, hairnets/beard nets[3], and gloves in food and animal feed production/manufacture; at retail/grocery stores for those who have direct contact with ready to eat food; ensuring food and feed produced meet safety and quality standards for consumption.
    a. **Disinfectant:** (b)(5) Deliberative [redacted]
    b. **Sanitation:** Chemicals, PPE, and products used for facility cleaning or employee hygiene use.

[1] Including air-purifying respirator equipped with an organic vapor cartridge in combination with particulate filters (to provide minimum protection). Any supplied air respirator also can be used. Powered air purifying respirators with organic vapor cartridges and particulate filters also will provide minimum protection. The selection of an appropriate respirator depends on the worker's exposure. A complete respiratory protection plan also must be implemented to comply with 29 CFR 1910.134, Respiratory Protection.
[2] OSHA's Personal Protective Equipment (PPE) standards (in general industry, 29 CFR 1910 Subpart I), which require using gloves, eye and face protection, and respiratory protection.
[3] The use of aprons and hairnets is specific primarily to the Food and Agriculture sector and therefore is not in competition with healthcare and emergency responders PPE needs.

3. (b)(5) Deliberative [redacted]

Given the current supply and inventory shortages, and the higher priority needs within the healthcare and public health community; when PPE is not required, every effort should be made to implement effective alternative solutions (e.g. plastic shields, hand-washing, and other sanitation practices (b)(5) Deliberative masks and gloves for customer-facing employees). As an example, (b)(5) Deliberative based upon worker risk and by using the Centers for Disease Control and Prevention (CDC) National Institute for Occupational Safety and Health publications on *Respirator Selection Logic 2004* and *Frequently Asked Questions about Respiratory Protection, Respirator Reuse and Extended Use*.

Food and Agriculture sector operations should monitor PPE utilization rates (b)(5) Deliberative [redacted] website at https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/burn-calculator.html. Products released by the CDC and OSHA relating to PPE use should be treated as authoritative unless explicitly stated otherwise by state or local laws or directives.

Factor 2: Consideration of Supply Chain Characteristics and Alternative PPE Solutions
When allocating PPE within the Food and Agriculture sector, the following characteristics should be considered from a prioritization perspective:

1. (b)(5) Deliberative [redacted]
2. (b)(5) Deliberative [redacted]
3. Determination of mandatory verses voluntary PPE requirements and the authority directing mandatory (b)(5) Deliberative [redacted]. Once PPE requirements sources are determined, evaluate for recent changes in guidance (e.g., regulatory flexibility based on CDC statements or state of emergency procedures) or alterative voluntary requirements.
4. Availability of approved alternative PPE solutions for various sectors (e.g., OSHA flexibility on appropriate PPE for employees working in dusty environments or performing planting and harvesting activities, industry best management practices, etc.). As an example, suitable alternatives for 8ml nitrile gloves may include gloves

made from butyl rubber, Teflon™, or Tychem™ which protect at a higher standard but may be reused and have available inventory.

5. Novel alternative PPE solutions for various sectors, such as the use of face masks constructed from other fabrics and respirators using filters made from other high-efficiency particulate air filter sources such as air purifiers or vacuum bags.