

United States Senate

WASHINGTON, DC 20510

September 10, 2021

Secretary Tom Vilsack
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

Dear Secretary Vilsack,

Over the last two weeks, we heard from a number of meat packing and poultry processing plants in our states regarding what appears to be an extrajudicial mandate on private businesses by the Food Safety and Inspection Service (FSIS). These businesses informed our offices that, due to FSIS's sudden actions, they have been forced to shut down or are fearful they will be soon be shut down for reasons wholly unrelated to compliance with laws, rules, or regulations enforced by FSIS. We write to request information on this new FSIS policy and how the agency will enforce the notice.

On August 20, 2021, FSIS issued a notice stating, "Establishments must require their employees or contractors to wear masks when IPP are present, if the establishment is located in a county with "substantial" or "high" community transmission of COVID-19."¹ The notice states FSIS will withhold inspections if an establishment does not require its employees to wear a mask when FSIS personnel are present. Given the nature of constant presence of FSIS inspectors at facilities like meat packing and poultry processing plants, this notice seems to be a backdoor maneuver to regulate the internal policies of private businesses and potentially set a precedent for mandatory vaccinations of employees of private business.

This notice imposes a mask mandate for employees at private businesses not engaged in interstate travel, the first such mandate of the Biden administration. Many businesses told our offices they were given little notice of this mask mandate, and, after seeking opportunity to appeal the new restrictions, FSIS informed them it would no longer provide inspection services after August 25, 2021, and any products out of such facilities would be deemed adulterated and subject to recall. This action has effectively shut down these plants. Meat packing and poultry processing plants are critical to our nation's food supply chain. We are concerned with the impact this notice will have on the economy and availability of food nationwide.

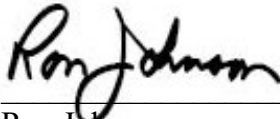
We stand with these businesses in taking issue with this federal overreach by FSIS. Individual processing facilities and plants have established policies to mitigate the transmission of COVID-19 that work best for their employees and operations and are adhering to local and state guidance and restrictions. Further, it is questionable whether FSIS has the authority to withhold conducting inspection services, thus resulting in products being labeled as "adulterated," for reasons not authorized by Congress or outside the rulemaking process required by the Administrative Procedure Act.

¹ FSIS Actions at Establishments That Do Not Follow Mask Requirements, FSIS Notice 34-21, August 20, 2021, <https://www.fsis.usda.gov/policy/fsis-notice/34-21>.


To better understand the rationale and authority for this notice, and to ensure our meat packing and poultry processing plants are not shut down by overreach of the federal government, we request answers to the following questions:

- 1) Please provide the legal authority under which USDA and FSIS issued this notice.
- 2) Please provide the legal authority by which USDA and FSIS can deem a product to be adulterated solely due to a facility not requiring universal mask use but operating in compliance with local and state guidance for COVID-19.
- 3) Please provide the total number of businesses that FSIS has withheld inspections as a result of noncompliance of the notice.
- 4) Has the USDA conducted any analyses to determine the economic impact of the FSIS actions to shut down plants under this notice, either before or since its issuance?
- 5) Was this notice developed and issued pursuant to any collective bargaining agreement with a FSIS representative?
- 6) Under this notice, are the personnel of private businesses required to wear masks when an inspector is not present?
- 7) Does USDA require inspectors to wear masks whenever they are in public, either on or off-duty?
- 8) Does USDA bar FSIS inspectors from entering, either on-duty or off-duty, any private establishment that does not require mask use for its personnel and/or patrons?
- 9) Will FSIS issue any notice in the future requiring employees and contractors at facilities to be fully vaccinated in order for FSIS to conduct inspections?

Respectfully,



Ron Johnson
U.S. Senator



Josh Hawley
U.S. Senator



Rand Paul
U.S. Senator



Kevin Cramer
U.S. Senator



Tom Cotton
U.S. Senator



Jim Inhofe
U.S. Senator



Roger Marshall, M.D.
U.S. Senator



James Lankford
U.S. Senator

cc: Administrator Paul Kiecker, Food Safety and Inspection Service