

Why Trump's executive order to keep meat plants open is seen as 'risky'

By [Lillianna Byington @lil_byington](#)

The president invoked the Defense Production Act to ease concerns about supply and liability among companies, but the move has drawn mixed reactions and raised questions about worker safety.



Last month, the number of positive coronavirus cases at meat plants across the country climbed into the thousands. A rising number of plants started to close, and then on Sunday last week, Tyson Food's chairman publicly warned of a breaking food supply chain. Two days later, President Donald Trump signed an executive order to keep production running in meat facilities.

USDA. (2017). Retrieved from Flickr.

The move has drawn mixed reactions and raised questions about worker safety.

The order uses the Defense Production Act to label meat processing as "critical infrastructure" in hopes of preventing shortages. Trump said the move would result in "continued supply of protein for Americans," which is a growing concern among Big Meat executives, including Tyson and Smithfield Foods, who warn of supply disruptions.

Industry is largely supportive of the order, saying it could help companies get PPE supplies and help fight back against legal issues. The news, however, drew quick pushback from unions, who say it doesn't prioritize worker safety.

More than 20 meatpacking plants, including ones run by Tyson, JBS, Smithfield and Cargill, have closed temporarily or indefinitely under pressure from local authorities and their own workforce. The Labor Department and the Occupational Safety and Health Administration signaled that the federal government would assert authority over states, saying "no part of the joint meat processing guidance should be construed to indicate that state and local authorities may direct a meat and poultry processing facility to close."

Jacob Shapiro, founder and chief strategist of Perch Perspectives, told Food Dive this executive order shows that the government is worried about the industry's ability to function in the short-to-medium term future and is willing to use its authority to get the supply chain moving, he said.

"While it may take some time for that to happen, it will grease the wheels. However, given increased exposure and safety concerns, the executive order itself cannot compel workers to show up to their jobs," Shapiro said.

Along with the order, the Labor Department and OSHA issued guidance to provide additional protections for companies who want assurances that they won't be held legally liable if workers get sick. But experts say liability is still a gray area.

"The future of every food company hangs in the balance," Debra Bachar, president of Blueberry Business Group, which consults for CEOs in the industry, told Food Dive. "This crisis is a wakeup call for investors around risk exposure and quality of governance."

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What this means for industry

The president said the administration would "take all appropriate action" to ensure meat companies stay open and comply with safety guidance.

Abe Eshkenazi, CEO at Association for Supply Chain Management, told Food Dive the order is "consistent with the expectation of the employers" because they want to be in business — this just emphasizes how critical plants are to the supply chain. He said companies won't likely have to change direction or strategy from what they already need to do, which is keep workers safe and production running.

The new executive order puts USDA Secretary Sonny Perdue in charge of coordinating with companies to reopen or continue operations during the pandemic. Perdue said he anticipates plants to reopen in "days not weeks."

Some plants are already starting to reopen doors. A Smithfield Foods pork processing plant in South Dakota, where more than 850 workers tested positive, and a Tyson Foods pork plant in Indiana, where almost 900 employees tested positive, are both partially reopening production Monday.

While the Centers for Disease Control and Prevention and OSHA created guidelines calling for distancing and other safety measures, there are no requirements forcing companies to reconfigure facilities.

The National Council for Occupational Safety and Health, however, said in an email that essential workplaces should never be required to stay open unless they are safe. "To keep their doors open safely, meatpacking plants — and all essential workplaces — must operate under clear enforceable OSHA standards — not voluntary 'guidance,'" said Jessica Martinez, co-executive director of National COSH.

Barry Maxon, CEO of SafetyChain, told Food Dive the industry faces a significant dilemma with the need to balance worker safety with the need to produce. He said if the order is done right, it should facilitate partnership for the government, industry and unions to keep workers safe by helping them implement more precautions and testing.

"There is never going to be a single silver bullet that just removes all the risk," Maxon said. "But this is definitely a step in the right direction in helping with that because of the greater ability for meat plants to remain open and feed the nation."



Getty Images

GlobalData's Andy Coyne told Food Dive in an emailed statement that to keep meat processing facilities open during the crisis is a "risky strategy." It's a gamble, he said, to take responsibility away from meat giants in deciding whether to close when workers become ill.

"Trump is putting the economy ahead of health and safety, which is a concern and, if COVID-19 cases significantly increase within meat plants as a result, he will have to shoulder the blame," he said.

For companies that haven't shut down facilities, this order doesn't change much. Mike Cockrell, chief financial officer and chief legal officer at Sanderson Farms, told Food Dive he doesn't expect the order to

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have a significant impact on the company since they "have taken the most conservative approach" to safety and have enough supplies.

Sanderson operates plants in various states, and if one state requires more stringent safety policy than another, the company takes the most conservative route. For example, some states do not require self-quarantine for someone who has come in contact with the virus, but Sanderson still does.

"We have taken significant steps to protect employees," he said. "I think part of the reason we've been able to operate without interruption has been our communication effort [with employees]."

He said all of Sanderson's plants are operating, but it has adjusted production at some. The order targets companies that have shut down plants and could bring uniform regulations, Cockrell said.

Industry, farmers praise the order

Companies and industry groups applauded the administration for keeping plants open, and Trump is spreading that reaction around.

"They're so happy. They're all gung-ho, and we solved their problems," Trump said after a call with industry executives, AP reported.

Smithfield Foods said in a statement the order will provide priority assistance in securing supply of PPE and help secure broader testing for employees.

"This action helps ensure the American people will not experience protein shortages," Smithfield said. The company said it is evaluating next steps to open its currently shuttered facilities and will make announcements when it is ready to resume production.

Gary Mickelson, a spokesman for Tyson, told Food Dive the company remains "focused on the protection and safety of our team members in our plant communities."

From farming to trucking, other industries that rely on plant production also praised the move.

Howard Roth, president of the National Pork Producers Council, said in a statement emailed to Food Dive that triggering the DPA extends "much-needed federal support" to the pork industry.

Hog farmers are struggling with closures of the largest pork plants for both Smithfield and Tyson, triggering a financial downfall in the industry with an estimated \$5 billion in losses in 2020.

Chris Bomgaars, CEO and founder at EveryPig, told Food Dive that pork producers are facing an "unprecedented crisis" as these plants shutter because they don't have a place to bring their market weight pigs. Pork producers are deciding whether to euthanize pigs, while chickens have also been killed as closures diminish demand.

"The proof will be in the pudding. Let's see if the plants start opening up soon but it certainly is a positive step and I'm sure it was a very difficult decision to make, but for farmers out there, this is very welcome news," Bomgaars said.

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Ian Hess, senior vice president of brokerage operations at Nolan Transportation Group, told Food Dive this order would also help the trucking industry, which has been hurt by the drop in demand by plant closures. "Everybody in that industry has been struggling for volume. It helps people get back on the road," he said.

Pushback from workers

Union officials and workers are already blowing the whistle on this executive order, saying that pushing plants to stay open puts workers at risk. Some of the [top coronavirus hot spots](#) in the country are linked to meat plants as thousands have gotten sick and at least 20 workers [have died](#).

Since the news of Trump's order, protests have already ensued. In Crete, Nebraska last week, about 50 workers staged a brief walkout after company officials announced the plant would remain open despite rising coronavirus cases, [The Lincoln Journal Star reported](#). A second [drive-by protest occurred](#) over the weekend with protestors hold signs that read "essential not disposable."

"Using executive power to force people back on the job without proper protections is wrong and dangerous," Richard Trumka, the president of the AFL-CIO, [wrote on Twitter](#).

Using executive power to force people back on the job without proper protections is wrong and dangerous. I echo the call of [@UFCW](#) President [@Marc_Perrone](#) to put worker safety first. <https://t.co/CRRHK3c8o6>

— Richard Trumka (@RichardTrumka) [April 28, 2020](#)

UFCW International President Marc Perrone said in a statement sent to Food Dive that the executive order to force meatpacking plants to stay open should put the safety of meatpacking workers first.

"To protect America's food supply, America's meatpacking workers must be protected," he said. "The reality is that these workers are putting their lives on the line every day to keep our country fed during this deadly outbreak."

Perrone urged government to enact enforceable safety standards that compel all meatpacking companies to provide the highest level of protective equipment, ensure daily testing is available, enforce physical distancing at plants and have federal inspectors monitor plants.

Jeremy Collier, founder of FAIRR, told Food Dive in an email that the order offers a "band-aid" for the food supply chain.

"Trump's disregard for the fact that the meat industry's failure to provide its own 'critical infrastructure' in its facilities has led to hundreds of COVID infections and even deaths is deplorable," he said. "We cannot label an industry as 'essential infrastructure' if their own internal foundations are not strong enough to support that claim."

Workers at a Smithfield plant have [filed a federal lawsuit](#) about plant conditions. David Muraskin, litigation director of Public Justice's food project who is counsel on the lawsuit, told Food Dive that DPA is meant to protect the public's safety, but Trump is "turning that purpose on its head and using a well-intentioned law to jeopardize the well-being of workers and protect the pocketbooks of corporate executives."

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Photo Courtesy of Tyson Foods

"This is a time to show leadership, not a time to be passing around 'Get Out of Jail Free' cards to campaign contributors and corrupt corporations in an attempt to protect their bottom line," Muraskin said.

Liability remains a gray area

When Trump announced his plan to sign the order, he said it should help companies with liability hurdles, but the order itself doesn't explicitly address the issue.

Todd Haugh, assistant professor of business law and ethics at Indiana University, told Food Dive that unless there is something very specific limiting liability in the order, manufacturers will still face legal challenges.

"Despite the order that's out there and the state that we find ourselves in, I would be concerned about all kinds of liability — both criminal liability as well as civil liability — for all the actions that I'm taking right now," he said.

However, the Labor Department and OSHA [said in a statement](#) that courts often consider compliance with OSHA guidance as evidence in an employer's favor in litigation and DOL will consider a request to participate in litigation to support employers if they follow safety standards.

John Shapiro, co-leader of the food industry team and partner at Freeborn & Peters, told Food Dive that Trump's order requires meat processing plants to keep operating and takes away one way these companies can protect their workforce against getting sick: closing plants.

When it comes to liability, he said it is still a gray area. Shapiro said the government asking facilities to stay open isn't absolute immunity, but companies could argue they were required to keep doors open and implemented safety guidelines so they shouldn't be liable.

"It is probably somewhat naive to think that there won't be health issues that arise from this and litigation that follows but the important thing now is for companies to figure out how to continue to operate and keep their employees safe," he said.

Megan Poinski contributed to this report.