

# 'All smoke and mirrors': How Trump's meatpacking order has failed to keep workers safe

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When President Donald Trump signed an executive order April 28 to declare meatpacking plants critical infrastructure, he tapped the secretary of agriculture to keep the plants open amid a wave of coronavirus outbreaks.

The move signaled that the nation's priorities focused more on the continued production of meat than the safety of workers.

Agriculture Secretary Sonny Perdue and the U.S. Department of Agriculture have nothing to do with worker protections. Their mission, as Perdue himself noted in a May 5 letter to meatpacking companies, "is to inspect meat and poultry products to ensure that they are wholesome and safe."

Worker safety instead is the purview of the Occupational Safety and Health Administration and the Centers for Disease Control and Prevention. Perdue said the USDA was partnering with OSHA and the CDC to protect meatpacking employees.

But since the executive order, COVID-19 cases tied to meatpacking plants have skyrocketed from fewer than 5,000 at the time to more than 25,000 as of this week, according to tracking from the Midwest Center for Investigative Reporting.

Deaths have increased five-fold to 91.

Rather than protecting workers, a half dozen experts and advocates said, the federal government is failing them.

“It’s all smoke and mirrors. There was never any expectation by the industry or the government that they would impose any requirements on the industry to change its practices to protect workers,” said Debbie Berkowitz, who spent six years as chief of staff and senior policy adviser at OSHA and is now director of the National Employment Law Project’s worker health and safety program.

In April, major meatpacking companies announced safety measures, such as requiring workers to wear masks, inserting plastic barriers on the cutting line and checking workers’ temperatures. But they have not slowed the virus’ spread. About a quarter of the workforce at a Tyson plant in Storm Lake, Iowa, tested positive after protections had been in place for about a month.

Throughout the pandemic, workers have reported they’re being forced to work alongside people with symptoms. One federal meat inspector, who agreed to an interview on the condition of anonymity because she was not authorized to speak to the media, said workers in several plants she visits were not wearing masks and practiced only limited social distancing. Some, she said, had also recently tested positive for COVID-19.

Following Trump's orders, red flags appeared almost immediately.

A day after Trump’s order, the USDA said meatpacking plants would have to submit to the agency their COVID-19 safety plans. But it later narrowed the directive to include only the plants that had closed without a clear timetable for reopening. As a result, no one submitted a plan.

Perdue also publicly ordered all plants to follow the meatpacking safety guidelines jointly issued by OSHA and CDC. But days later, the USDA admitted it had done nothing to confirm that plants were actually following them, according to a May 15 letter members of the Senate Agriculture Committee sent to Perdue.

The letter further details how USDA officials repeatedly said worker safety is OSHA's responsibility — the USDA primarily oversees food safety — but the agency did not consult with OSHA to ensure it inspected any of the previously closed plants before they reopened.

For its part, OSHA is operating with its fewest number of safety inspectors since it was created in the 1970s, according to the National Employment Law Project and based on a compilation of OSHA data and documents. An agency spokesperson said the agency was "actively recruiting" inspectors.

Between Feb. 1 and Tuesday, the agency received 185 complaints into meat and poultry plants related to the coronavirus, according to data OSHA provided. There have been 56 inspections.

At one JBS plant in Greeley, Colorado, the workers' union president asked OSHA to inspect the plant in March.

Kim Cordova, president of the United Food and Commercial Workers Local 7, said a regional OSHA official told her "that they have no direction on how to handle COVID and they simply just didn't have the staff to do it."

OSHA did not inspect the facility until mid-May. By that point, at least five workers had died. With nearly 300 cases, the plant is the site of the largest outbreak in Colorado. A sixth worker has since died.

"It took workers to die for OSHA to show up," Cordova said.

"They failed these workers. Here the president issues an executive order but it doesn't take into any account worker safety. ... Unless you have verifiable and enforceable laws, the companies will do the bare minimum."

JBS did not respond to requests for comment.

It's unclear how OSHA decides which plants to inspect. The agency opened an investigation into the Rantoul Foods pork plant in Rantoul, Illinois, after local health inspectors found no barriers between workers on the line and cold water at sinks. Almost 100 workers have tested positive, with no deaths. OSHA asked the county health department for information it had on the plant, but a DOL spokesman would not say whether OSHA inspectors had actually visited it.

In Joslin, Illinois, the home of a large Tyson Foods plant, nearly 200 workers have tested positive and two have died. OSHA has not initiated an inquiry into the plant. The local health department has not heard from the agency, spokeswoman Janet Hill said.

An agency spokesperson said it was taking the necessary steps to protect workers from the coronavirus.

“It is important that employers seek to adhere to” the CDC and OSHA guidelines for meatpacking plants, the spokesperson said. “In the event of an investigation, OSHA will take into account good faith attempts to follow the (guidelines). OSHA does not anticipate citing employers that adhere to the (guidelines).”

The CDC also has visited plants, but it doesn't enforce worker safety. As of June 9, the agency toured facilities in 17 states, including Nebraska, Pennsylvania and North Carolina, said Jason McDonald, an agency spokesman. It has not sent a team to Iowa, which has several plants with large outbreaks.

The CDC issues only recommendations. It doesn't enforce companies' safety plans. When asked by USA TODAY what the agency was doing to ensure workers were safe, McDonald replied, “Please contact USDA and/or OSHA.”

The USDA did not respond to requests for comments. The White House did not respond to a request for comment about why the USDA was chosen as the lead agency on meatpacking plants during the pandemic.

“There has been much more energy and concern around addressing the concerns of the meatpacking and other food processing business interests than in what needs to happen for workers,” Sen. Debbie Stabenow, D-Michigan, the ranking minority member of the Agriculture Committee told USA TODAY. “I have not seen any plan from the USDA on how they are going to ensure that plants are taking the necessary steps to protect workers.”

Stabenow was among the 29 committee members who raised concerns about the USDA's handling of meatpacking worker safety in the May 15 letter. The senators also asked a series of questions related to how the agency planned to keep workers safe, and asked for answers by May 25.

The USDA has not provided answers yet, according to those who signed the letter.

A car protesting the working conditions of the Smithfield meat processing plant in Sioux Falls this April.

*Erin Bormett / Argus Leader*

## **An odd fit**

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That the USDA would spearhead a worker-safety effort is an odd fit, experts said. The agency has argued for years that it doesn't have the authority to oversee worker safety.

It noted that OSHA would be responsible for such regulations in a rule change lifting maximum line speeds in pork plants last year.

It argued the same point in a lawsuit challenging that rule change — one that plaintiffs argue further endangers workers in the plants. The agency's Food Safety and Inspection Service “does not have the statutory mandate to regulate worker safety,” USDA said in court documents.

Adam Pulver, an attorney with the watchdog group Public Citizen, said it's unclear what, if anything, the USDA is enforcing or how it's enforcing it.

“We have not seen any regulatory mechanism,” said Pulver, who is representing the plaintiffs in the federal lawsuit. “One thing that's very possible is they can say, ‘You have to submit safety plans to reopen, but if you don't, USDA isn't going to do anything.’ And two, USDA is not assessing those plans in any way.”

USDA's lack of authority to regulate worker safety — coupled with CDC and OSHA issuing guidelines rather than regulations — has left workers vulnerable to meatpacking industry inaction, experts said.

Among the OSHA complaints regarding the coronavirus that the agency and its state partners have closed are myriad claims of lack of personal protective equipment, inability to distance from co-workers and companies withholding information about exposure to co-workers who have tested positive for the virus. In some instances, the agency recommends following OSHA and CDC guidelines — the same ones the complaints allege are not being followed.

“All the companies have to do is say ‘I considered the guidance,’ and they're in compliance,” Berokwitz said. “It's outrageous because workers are paying with their health and their lives and their livelihood.”

Stabenow said any safety guidelines should be mandatory and enforceable. Optional guidance doesn't protect workers, experts said.

“Unfortunately, what the administration doesn't understand is that, in order for us to keep the supply of meat that consumers want to eat, in order to keep the supply chain going, we have to keep workers safe,” Stabenow said. “It's not either/or.”

USDA could have used its food-safety inspectors as a resource to understand what is happening in meatpacking plants, said Jerold Mande, a former deputy under secretary for food safety at USDA and deputy assistant secretary at OSHA.

USDA beef inspectors grade beef at a processing facility in 2019. *Preston Keres/USDA*

But that part of the agency is so understaffed that inspectors sometimes cover two-to-three times their normal workload, the Midwest Center for Investigative Reporting found in September.

“It’s always been just guidance, and even to go so far as to say, if you make a good faith effort, we’ll side with you in court,” Mande said of the government’s actions. “That’s sending really strong signals here that you need to take steps but you don’t need to get it right at the end of the day.”

## Safety plans

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At the time of the executive order, 16 of the 34 meatpacking plants that had closed due to coronavirus were still shut down.

The USDA said at the time it would spearhead a multi-agency team focused on worker safety that would review the safety plans companies submitted.

“The USDA-led federal leadership team will swiftly review documentation provided and work in consultation with the state and local authorities to resume and/or ensure continuity of operations at these critical facilities,” the spokesperson told USA TODAY and the Midwest Center for Investigative Reporting.

One week later, Perdue sent letters to meatpacking companies asking them for safety plans — but it applied only to plants without a “clear timetable” to reopen.

No plants fit the bill. The North American Meat Institute, an industry lobbying group, is “not aware of a single plant that has needed to submit a written plan to USDA,” Sarah Little, the group’s spokeswoman, said.

The USDA did not respond to questions about why it seemed to mandate safety plans and then backed off, or about the leadership team.

Before the criteria changed, Tyson, the owner of dozens of plants with outbreaks, told USA TODAY it was working on submitting a plan.

But in June Tyson spokesman Gary Mickelson said the company didn’t need to do it because it closed its plants down “voluntarily.” Perdue’s letter doesn’t mention anything about voluntary closures. Mickelson declined to provide more details.

Tyson and other large producers have said they’re adhering to the CDC and OSHA guidelines, including requiring masks and installing barriers.

“We’ve developed and implemented comprehensive safety plans using the guidance provided by the USDA, CDC, and local and state health officials,” Mickelson said. “USDA inspectors are on-site at our plants every day they’re in operation and CDC officials have visited some of our facilities.”

Cargill, a large meat processor, didn't need to submit a safety plan because it had a clear timeline to reopen its facilities, said spokesman Daniel Sullivan.

"This requirement was not relevant to our facilities," he said.

JBS, another large processor that owns plants with outbreaks, did not respond to requests for comment.

The Smithfield Foods plant in Sioux Falls, South Dakota, home to one of the first large meatpacking plant outbreaks, reopened on May 7, two days after Perdue sent his letter.

The plant did so after receiving "positive confirmation following both a CDC tour and review of our written processes and protocols," a Smithfield spokeswoman said. Smithfield received a copy of the memo the CDC produced after its tour.

Asked to identify the language in the memo that constituted a "positive confirmation," Smithfield's Martin said to contact the CDC and USDA.

The memo sent from CDC to Smithfield and the South Dakota Department of Health contains no such language. A CDC team visited in mid-April while the plant was closed and only a few employees were present.

Those that were there congregated closer than 6 feet and either were not wearing facemasks or were wearing them incorrectly, the memo states. While noting the measures Smithfield was taking — including, at that time, screening and education efforts — CDC gave 10 pages of recommendations to Smithfield.

They were "steps that Smithfield Foods may want to consider implementing to address the conditions we identified at the plant," the memo states.

The recommendations, though, are "discretionary and not required or mandated by CDC."

Despite the CDC visits and USDA's public statements, the federal government has still not moved to protect workers, Berkowitz said.

"The agency in charge of protecting workers in the private sector is the Occupational Safety and Health Administration, and they have decided not to issue any specific requirements that any employer, not just meatpacking, has to meet in the workplace to protect workers from COVID-19," Berkowitz said.

"They have issued guidance, in really pretty posters, and CDC has issued guidance. But that's voluntary. It's guidance. Employers can follow it or they can't.

She continued, "The government is just trying to obfuscate the fact that they have failed in every single way to protect workers."

*This story is a collaboration between USA TODAY and the Midwest Center for Investigative Reporting. The Center is an independent, nonprofit newsroom based in Illinois offering investigative and enterprise coverage of agribusiness, Big Ag and related issues. Gannett is funding a fellowship at the center for expanded coverage of agribusiness and its impact on communities.*