

News from Washington: May 18-21

***Unless stated otherwise, stories are sourced from [Politico](#).***

### **Invoking DPA For the Rest Of the Food Supply**

President Donald Trump's [executive order](#) late last month invoking the Defense Production Act to keep meat and poultry plants open got a ton of media attention, but there's one big thing that was largely missed: The EO could actually grant USDA the same sweeping authority over, well, the rest of the country's food production.

The broadness of Trump's order came to light as the FDA and USDA late Tuesday announced [a wonky MOU](#) under a vague headline about strengthening food supply protections. The MOU outlined a process for the two agencies, which share jurisdiction over food safety, to make decisions about when USDA's broad authority under the DPA could be used to keep other food facilities and even farms that grow FDA-regulated products operating.

"This is an important preparedness effort as we are approaching peak harvesting seasons, when many fruits and vegetables grown across the U.S. are sent to be frozen or canned," the agencies said in a statement.

There are broad concerns about farmworker safety and there already have been several Covid-19 outbreaks at farms and facilities that do not process meat. And the Food and Environment Reporting Network is [keeping tabs on and mapping](#) all of the food industry worker cases.

So can the feds mandate that any food biz stay open? It's not clear. The document, which sent business leaders scrambling for answers, is still being interpreted by lawyers. Everyone hopes to see more guidance.

"Is this a blessing or a curse?" wrote Jennifer McEntire, vice president of food safety and technology at United Fresh Produce Association, of the MOU in a note to members late Wednesday. She added: "Collaboration between USDA and FDA is a good thing, but I hope we never need to call upon this MOU."

There's also a debate about how effective the DPA is when a facility is slowed down or shuttered due to illness. "Invoking DPA doesn't seem like an effective strategy here," said Jerold Mande, who served as deputy undersecretary for food safety at USDA during the Obama administration and deputy OSHA administrator during the Clinton administration. Federal agencies, including OSHA, the CDC, USDA and the FDA, "can keep the food system open by keeping workplaces safe," he said. "They have more than enough resources to do that. They have failed so far to do so apparently due to a lack of leadership, not resources."

### **Coronavirus Throws a Wrench into U.S.-China Communication**

The global pandemic mixed with a dramatic rise in U.S.-China tensions have further eroded back channel communications that have so often underpinned relations since the two sides restored diplomatic relations decades ago.

"The pandemic has cut off personal meetings. That is very bad," said Wang Huiyao, director with the Center for China and Globalization, a Beijing-based think tank that includes former Chinese officials and prominent Chinese scholars. "Many messages can only be conveyed indirectly by spokesmen and media, which could compromise the effectiveness of the communication and easily lead to misunderstanding."

As tensions rise, it's unclear how effective future interactions among government officials, business executives, former officials and academics will be. With the relationship now focused on strategic competition and national security, "it's going to be very hard to keep these discussions going because they're going to be looked at as suspect in both countries," said Jude Blanchette, a China scholar at the Center for Strategic and International Studies.

### **USDA Announces Details of Direct Assistance to Farmers through the Coronavirus Food Assistance Program**

U.S. Secretary of Agriculture Sonny Perdue today announced details of the Coronavirus Food Assistance Program (CFAP), which will provide up to \$16 billion in direct payments to deliver relief to America's farmers and ranchers impacted by the coronavirus pandemic. In addition to this direct support to farmers and ranchers, USDA's [Farmers to Families Food Box](#) program is partnering with regional and local distributors, whose workforces have been significantly impacted by the closure of many restaurants, hotels, and other food service entities, to purchase \$3 billion in fresh produce, dairy, and meat and deliver boxes to Americans in need.

"America's farming community is facing an unprecedented situation as our nation tackles the coronavirus. President Trump has authorized USDA to ensure our patriotic farmers, ranchers, and producers are supported and we are moving quickly to open applications to get payments out the door and into the pockets of farmers," said Secretary Perdue. "These payments will help keep farmers afloat while market demand returns as our nation reopens and recovers. America's farmers are resilient and will get through this challenge just like they always do with faith, hard work, and determination."

Beginning May 26, the U.S. Department of Agriculture (USDA), through the Farm Service Agency (FSA), will be accepting applications from agricultural producers who have suffered losses.

[Source: USDA](#)

### **USDA, FDA Strengthen U.S. Food Supply Chain Protections During COVID-19 Pandemic**

*The following statement is attributed to Mindy Brashears, Ph.D., USDA Under Secretary for Food Safety, and Frank Yiannas, FDA Deputy Commissioner for Food Policy and Response.*

As the COVID-19 pandemic response continues, the U.S. Department of Agriculture and the U.S. Food and Drug Administration have been working around the clock on many fronts to support the U.S. food and agriculture sector so that Americans continue to have access to a safe and robust food supply. As a next step in carrying out Executive Order 13917, the USDA and FDA today announced a [Memorandum of Understanding \(MOU\)](#) (PDF, 137 KB) to help prevent interruptions at FDA-regulated food facilities, including fruit and vegetable processing.

This is an important preparedness effort as we are approaching peak harvesting seasons, when many fruits and vegetables grown across the U.S. are sent to be frozen or canned. The MOU creates a process for the two agencies to make determinations about circumstances in which the USDA could exercise its authority under the Defense Production Act (DPA) with regard to certain domestic food resource facilities that manufacture, process, pack, or hold foods, as well as to those that grow or harvest food that fall within the FDA's jurisdiction.

While the FDA will continue to work with state and local regulators in a collaborative manner, further action under the DPA may be taken, should it be needed, to ensure the continuity of our food supply. As needed, the FDA will work in consultation with state, local, tribal and territorial

regulatory and public health partners; industry or commodity sector; and other relevant stakeholders (e.g. Centers for Disease Control and Prevention, Occupational Safety and Health Administration) to chart a path toward resuming and/or maintaining operations while keeping employees safe.

We are extremely grateful to essential workers for everything they do every day to keep our pantries, refrigerators and freezers stocked. All of the food and agriculture sector -- whether it is regulated by the USDA or FDA -- are considered critical infrastructure, and it is vital for the public health that they continue to operate in accordance with guidelines from the CDC and OSHA regarding worker health and safety. As we work to get through the current challenge together, we remain committed to workers' safety, as well as ensuring the availability of foods, and that our food remains among the safest in the world.

[Source: USDA](#)

### **USDA to Provide \$1 Billion in Loan Guarantees for Rural Businesses and Ag Producers**

U.S. Secretary of Agriculture Sonny Perdue today announced that the Department is making available up to \$1 billion in loan guarantees to help rural businesses meet their working capital needs during the coronavirus pandemic. Additionally, agricultural producers that are not eligible for USDA Farm Service Agency loans may receive funding under USDA [Business & Industry \(B&I\) CARES Act Program](#) provisions included in the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#).

“Under the leadership of President Trump, USDA is committed to being a strong partner to rural businesses and agricultural producers and being a strong supporter of all aspects of the rural economy,” Secretary Perdue said. “Ensuring more rural agricultural producers are able to gain access to much-needed capital in these unprecedented times is a cornerstone of that commitment.”

In addition to expanding eligibility to certain agricultural producers, the changes Secretary Perdue announced today allow USDA to:

- Provide 90 percent guarantees on B&I CARES Act Program loans;
- Set the application and guarantee fee at two percent of the loan;
- Accept appraisals completed within two years of the loan application date;
- Not require discounting of collateral for working capital loans, and
- Extend the maximum term for working capital loans to 10 years.

B&I CARES Act Program loans must be used as working capital to prevent, prepare for or respond to the effects of the coronavirus pandemic. The loans may be used only to support rural businesses, including agricultural producers, that were in operation on Feb. 15, 2020.

USDA intends to consider applications in the order they are received. However, the Department may assign priority points to projects if the demand for funds exceeds availability.

USDA announced the expanded B&I CARES Act Program authorities in a notice published in the May 21 [Federal Register](#) (PDF, 217 KB). Program funding expires Sept. 30, 2021. Eligible applicants may contact their local USDA Rural Development [State Office](#) in the state where the project is located.

USDA is developing application guides for lenders and borrowers on the B&I CARES Act Program. The Agency also will host two webinars to provide an overview of program requirements.

[Source: USDA](#)

### **EU Lacks Data to Back Up Anti-Pesticide Policies**

The European Commission's new sustainable food and farm framework, the agricultural plank of its Green Deal, includes the goal of cutting agricultural pesticide use in half by 2030. But hitting that target could be difficult without proper data on the chemicals currently being sprayed across the bloc's farmlands.

One EU official said there's a "shocking dearth" of pesticide data that could take years to address. While European laws require farmers to maintain three years of detailed records about their own pesticide use, each country is only required to send the aggregate data to Brussels every five years — much less frequently than the reporting rules for other farm figures.

Each country can choose which crops to focus on, and when to conduct its one-year survey during the five-year window. In 2015, the hodgepodge of information was deemed unfit to publish by Eurostat, the Commission's data wing.

"We will not be able to reach zero-pollution, reverse loss of biodiversity and achieve sustainable food production if we don't fix the whole framework for pesticides and overcome this knowledge gap," said Martin Hojsík, a Slovak member of the European Parliament from the Renew Europe group.

In lieu of usage statistics, the Commission plans to measure the volume of pesticides *sold* in each country. EU officials say it's a less than ideal metric, especially with strict rules governing the disclosure of private sales information. The Farm to Fork plan out today is also expected to propose changes to the 2009 law on pesticides data.

### **Republicans Want Wheeler Reduce Biofuel Blending Requirements**

EPA Administrator Andrew Wheeler is under mounting pressure from oil-state leaders to reduce the industry's biofuel blending requirements under the Renewable Fuel Standard because of the steep drop in gasoline use during the coronavirus lockdown.

On Tuesday, a group of 15 Republicans led by Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) sent Wheeler a letter citing the crash in fuel consumption and the rise in RFS compliance costs as cause to invoke the agency's purported powers under the Clean Air Act.

Bipartisan oil-state governors and state attorneys general have already requested waivers allowing refiners to skirt their RFS obligations for 2020. "A failure to grant, in part or in whole, the governors' petitions would render this provision within the Clean Air Act utterly meaningless," the senators wrote.

### **Food Lion Files to Disrupt Dairy Union**

In a federal [antitrust suit](#) filed in North Carolina on Tuesday, the supermarket chain (which is owned by Dutch food retailer Ahold Delhaize) and the Maryland and Virginia Milk Producers Cooperative Association said DFA, the largest U.S. milk co-op, is "the Standard Oil of the modern dairy industry."

Dean Foods, the nation's largest milk processor, filed for bankruptcy in November, and DFA won an auction to buy the majority of Dean's assets for \$433 million. The Justice Department scrubbed the transaction for antitrust concerns before signing off on the deal — with the condition that the companies sell-off plants in Illinois, Massachusetts and Wisconsin.

Antitrust prosecutors didn't set any conditions on the three plants at issue in the new lawsuit, including one in High Point, N.C., that the Maryland and Virginia co-op had tried to buy from Dean.

Food Lion has previously sued DFA and Dean for antitrust violations, [alleging that they conspired to divide up the southeastern milk market](#). Dean and DFA eventually reached a confidential settlement with Food Lion in 2017. The companies also [agreed to pay dairy farmers \\$300 million](#) in a related suit stemming from the same conduct.

### **Trump Backs Restaurants' Bid for Looser Loan Rules**

The president and Treasury Secretary Steven Mnuchin sent positive signals to restaurant industry leaders seeking changes to the Paycheck Protection Program, which includes strict rules about how small businesses are allowed to use the emergency loans.

Currently, the government will forgive PPP loans after eight weeks if businesses use the funds to maintain their workforce. But restaurants have been lobbying Congress and the administration to give them more time to spend the money, along with more flexibility about how to use it (for now, 75 percent of the funds must be spent on payroll). There's growing support among lawmakers for extending the timeline to 24 weeks.

Making the change "should be easy," Trump said on Monday, adding, "That's like one of the easiest requests I've ever heard."

Mnuchin said officials are working on a "technical fix" that has bipartisan support in Congress, though he wasn't sure if 24 weeks was the best window.

Marvin Irby, interim president of the National Restaurant Association, said the industry has shed 8 million jobs and lost more than \$240 billion in revenue because of the pandemic.

Small farmers and ranchers are also eligible for PPP loans, though ag producers initially struggled to access the funds amid a crush of interest from business in manufacturing, construction and many other industries.

### **Seafood Sector in Trouble**

It's hard to find a part of the food industry that's been more ravaged by the disruption to food service than seafood and the pain is being felt at every point along the supply chain.

U.S. seafood sales have dipped as much as 95 percent this year, and processors have had to scale back operations and lay off staff.

The seafood industry has so far been awarded \$300 million from a coronavirus emergency aid package from Congress. And USDA also promised to buy up \$70 million of catfish, haddock, pollock and redfish to distribute to food banks and nutrition programs.

Some producers say the meager aid doled out so far reinforces a long-held complaint that the industry is neglected on Capitol Hill where power players like the beef and pork industries dominate the agriculture space.

### **Biden Urges More Meat Worker Protections**

Presumptive Democratic presidential nominee Joe Biden on Wednesday said he thinks much more needs to be done to ensure that meat processing employees are safe at work during the pandemic. "Absolutely, positively, no worker's life is worth my getting a cheaper hamburger. No worker's life is worth that," Biden said a town hall discussion focused on food insecurity, [per USA Today](#).

Spot shortages of meat products should let up in the coming weeks as wholesale prices fall and supplies tick up just as it would normally be peak grilling season. After a slew of plant closures, beef and pork processing plants are now operating at over 80 percent capacity, [Bloomberg reports](#).

### **EU Aims to Stop Promoting Meat**

The European Commission on Wednesday will unveil its "Farm to Fork" plan for a sustainable food system, the agricultural plank of its European Green Deal. One new policy in the platform is curbing government support for meat production and consumption.

Agriculture accounts for 10.3 percent of the bloc's greenhouse gas emissions, and 70 percent of those emissions come from livestock production, according to the draft framework. The proposal to stop "stimulating" the meat business was not included in a previous version of the food strategy.

The Commission committed €200 million (roughly \$218 million) in 2020 to promote European food and farm goods around the world, including €5 million specifically for beef and veal. But most plant-based meat alternatives aren't eligible for promotional funding.

**Under the draft food plan**, Brussels would review the promotional program to consider backing "sustainable production and consumption" in line with the bloc's political priorities.

### **Perdue, Ivanka Launch Food Box Deliveries**

The president's daughter/adviser joined Perdue and Maryland Gov. Larry Hogan on Friday at Coastal Sunbelt Produce, a prominent distributor in Laurel, Md., which received \$4.5 million from USDA to provide thousands of boxes of fresh fruit and vegetables to nonprofits in the mid-Atlantic region.

The event marked the launch of the Trump administration's \$3 billion effort to have private distributors buy up excess farm goods — many of which have been going to waste because of supply chain disruptions — and deliver them to food banks and other feeding programs for the growing number of hungry or out-of-work Americans.

"I'm proud that the majority of the recipients are small and regional food suppliers who prioritize smaller farms and nonprofits in their bids," Trump said at the event. The list of about 200 companies that were awarded funds includes some firms with [little experience working with farmers or food banks](#), like an event marketing agency in Texas that received the seventh-largest contract.

The company, CRE8AD8 (pronounced “create a date”), which received more than \$39 million to deliver hundreds of thousands of produce, dairy and meat boxes in the Southwest region, doesn’t have a Perishable Agricultural Commodities Act license — a requirement under the program (and for operating a produce business in general). But the company has applied for one, [CEO Gregorio Palomino told the San Antonio Express News.](#)

The department has yet to publish its plan to distribute \$16 billion in direct payments to farmers and ranchers who have lost demand because of supply chain disruptions. [OMB finished reviewing the aid package on Friday,](#) giving USDA the green light to post the rule.

### **Pork Producers Get Approval to Coordinate Culling**

DOJ’s Antitrust Division on Friday said it “will not challenge” a proposal by the National Pork Producers Council outlining how the industry and regulators can work together to minimize the number of hogs that are euthanized because of limited meat processing capacity.

The NPPC is aiming to help farmers and state officials source equipment for culling hog herds and set up “centralized euthanasia and disposal stations.” The process includes sharing projections for the number of hogs that facilities can handle per day, for example, [the trade group said.](#)

Producers “may work at the direction of the USDA and state agriculture agencies to achieve humane and efficient euthanization of hogs that have grown too large to be processed and are thus unmarketable,” [the department said in a statement.](#) “The NPPC may also share general information with its members about best practices for depopulating unmarketable hogs.”

Under normal circumstances, collaborating to limit supply could violate criminal antitrust laws, punishable by up to 10 years in prison or \$100 million in fines. DOJ said it would have “serious concerns” if industry members coordinated to fix prices, restrict output or engage in other “anticompetitive conduct.”