

Competition EO: Initiatives Targeting the Agriculture Industry

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On July 9, 2021, President Biden issued the [Executive Order on Promoting Competition in the American Economy](#) (the “Order”) and the White House’s [Fact Sheet](#), intended to promote competition and update regulations to combat anticompetitive practices. Included in the Order are several directives to address the Biden administration’s concerns about reduced competition in the agricultural industry, calling for sweeping updates to a key enforcement mechanism in the agricultural industry, the Packers and Stockyard Act of 1921. The Order directs the secretary of agriculture to create rules that increase farmers’ access to the market to sell their products, clarify country-of-origin requirements for agricultural products, create whistleblower protections for reporting certain business practices of agricultural processors, and strengthen farmers’ ability to repair their tractors at independent repair shops.

FAMILY FARMS AND RANCHERS

The Order principally addresses concerns over the impact of consolidation on family farms and ranchers. It views family farms and ranchers as pressured by decades of consolidation both from agricultural input industries—such as seed, fertilizer, feed, and equipment suppliers—and from the channels for selling agricultural products. According to the Order, consolidation has meant diminished profits for family farmers and ranchers, fewer outlets for them to sell products to, and higher prices for consumers. It calls for broad updates to the Packers and Stockyards Act to strengthen regulations against “discriminatory, deceptive, or unduly preferential practices” to address these concerns.^[1]

The Order further directs the secretary of agriculture to report to the White House Competition Council, within one year, on a plan to promote competition in the agricultural industries to “ensure that farmers have greater opportunities to access markets and receive a fair return for their products.”^[2] Several specific actions to promote competition are contemplated, including (i) using model contracts to lower transaction costs for family farmers, (ii) improving transparency for consumers who want to buy products that support fair treatment of farmers, (iii) enhancing price discovery in the cattle and other livestock markets, and (iv) increasing whistleblower protections for farmers by allowing farmers to claim a violation of the Packers and Stockyards Act without having to show an industrywide violation.

The Order also specifically references the patent practices of seed companies. It directs the United States Patent and Trademark Office to review patent regulations in seed and other input markets for anticompetitive effects. And

on the output side, the Order calls for a review by the secretary of agriculture of the effects of retail concentration and the practices of food retailers on competition, with the goal of making it easier for smaller producers to access the market. This will include an assessment of whether grants and loans to smaller producers could increase their access to the retail markets.

COUNTRY-OF-ORIGIN LABELING

The Order takes aim at foreign corporations that import meat from overseas with labels stating “Product of USA” when the meat was raised or slaughtered abroad. A fact sheet released with the Order highlights that grass-fed beef can be labeled “Product of USA” when most of it is imported. The secretary of agriculture is directed to consider rules to make these country-of-origin clarifications on labels so that consumers can support American farmers and ranchers.

RIGHT TO REPAIR

The Order also takes aim at restrictions on farmers’ ability to repair their own equipment or have it serviced at independent repair shops, rather than have more-costly repairs made at the dealer or manufacturer. A fact sheet released with the Order specifically calls out tractor manufacturers for using software to prevent third-party repairs to the tractors that farmers purchase. Some manufacturers, however, caution that requiring repairs at dealers is intended to ensure that environmental and safety standards are complied with and that allowing a right to repair could lead to modifications on tractors that bypass those systems.

\$500 MILLION TO INCREASE COMPETITION

As part of the Biden administration’s initial steps to increase competition and make markets more accessible to family farmers and ranchers, on July 9, 2021, the USDA announced that \$500 million in American Rescue Plan funds would be made available to expand meat- and poultry-processing capacity to expand marketplace offerings. The funds are to be made available as grants, loans, and technical assistance to support new meat- and poultry-processing facilities for producers in local and regional food systems, to give farmers and ranchers more access to markets.

KEY TAKEAWAYS

- Large agricultural producers should consider reviewing their business practices and prepare to defend those that the administration may claim have anticompetitive effects on family farmers and ranchers.
- Domestic meat producers should pay careful attention to proposed rules regarding country-of-origin labeling to see how they might benefit from rules requiring clarification for consumers that their meat was raised and slaughtered in the United States.

This article is part of our Unpacking the Executive Order on Promoting Competition series. Click [here](#) for related articles. Please contact a member of the Winston & Strawn Antitrust/Competition Practice or your Winston relationship attorney for further information.

¹¹ § 5(i)(i), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

¹² *Id.* § 5(iii).

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