CENTER FOR AGRICULTURE & FOOD SYSTEMS

VERMONT LAW SCHOOL

ISSUE BRIEF

JULY 2022

ADDRESSING CONSOLIDATION IN AGRICULTURE

USDA'S RESPONSE TO PRESIDENT BIDEN'S DIRECTIVE TO PROMOTE COMPETITION IN THE AMERICAN ECONOMY

HANNAH ANDREW

INTRODUCTION: AN OVERVIEW OF CONSOLIDATION IN AMERICAN AGRICULTURE

Patterns of Consolidation in US Agriculture

Consolidation occurs when many different business units merge into fewer larger units. In the United States, agricultural consolidation has caused a shift from many small farms to fewer large farms. Figure 1 shows consolidation through the increasing average farm size in the United States from 1900-2017.[1] In addition to fewer and larger farms, consolidation has also influenced other aspects of agriculture including production location, commodity and task specialization, and farm organization.[2]

Consolidation is widespread across agricultural commodities. It has increased consistently through each five-year interval between agricultural censuses from 1987 through 2017.[3] In 1991, only 31 percent of US agricultural production came from farms with at least $1M dollars in gross cash farm income (GCFI).[4] By 2015, this had risen to 51 percent (adjusted for price changes).[5] Although consolidation has been consistent, the patterns of consolidation for different commodities have varied. Consolidation of crop farms has been persistent and gradual.[6] On the other hand, consolidation of meat and poultry farms has been episodic.[7] Consolidation has not affected grazing land to the same extent as other agricultural sectors.[8]

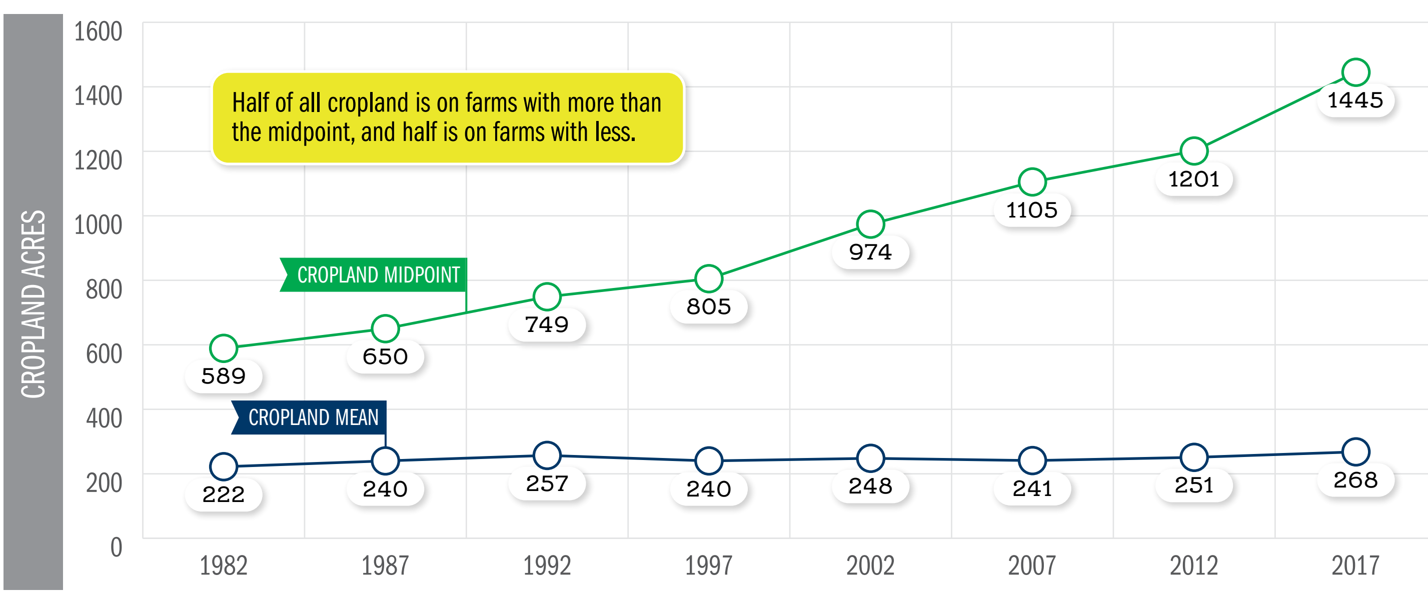


FIGURE 1: *AVERAGE FARM SIZE IN THE U.S. FIGURE FROM "TRACKING THE CONSOLIDATION OF U.S. AGRICULTURE," APPLIED ECONOMIC PERSPECTIVES AND POLICY, 42(3), 361-379.*

A few global corporations are responsible for:

65% of Agrochemicals Sales

50% of Seed Sales

45% of Farming Equipment Sales

In the United States, just four companies represent:

73% of all Beef Processing

67% of all Pork Processing

54% of all Chicken Processing

45% of all Retail Grocery Markets

Although consolidation is a complex topic, the structure that consolidation creates is relatively straightforward. Globally, four corporations are responsible for 65 percent of sales in the global agrochemicals market, another four control 50 percent of the seed market, and a final four firms sell 45 percent of farm equipment.[9] In the United States, just four companies represent 73 percent of beef processing, 67 percent of pork processing, 54 percent of chicken processing, and 45 percent of the retail grocery market.[10] As agricultural markets consolidate, competition lessens, meaning producers and consumers have fewer options. This creates myriad problems ranging from increased prices, supply chain bottlenecks, abusive practices, and reduced incentives for innovation.[11] The COVID-19 pandemic brought these issues to bear as consumers experienced widespread food shortages: because of the consolidation of the food supply chain, when one company was impacted, the ripple effects were enormous. Most recently, consumers experienced alarming infant formula shortages attributable to concentration in the market.[12]

Drivers of Consolidation in US Agriculture

Numerous interrelated factors drive consolidation. Financial considerations that favor large operations underlie patterns of consolidation in agriculture.[13] The technological, social, and political drivers of this pattern have made it more difficult for smaller farms to survive.

Advances in Technology

One aspect of the financial considerations that favor larger consolidated operations is the cost and importance of agricultural technology. Advances in technology have greatly increased agricultural production in certain sectors over the last century and have become vital to the success of some modern farming operations. At the same time, for some sectors, these technological advancements coincide with damaging and costly externalities or impact farm viability when the costs of production are high but prices remain low. Mechanization of farming processes has increased productivity by allowing one person to do more work in a day of farming[14] while also making it possible to enlarge and restructure farms.[15] Other technological advances have also driven increased production and consolidation in farming. Some of these technological developments include genetically engineered crops, antibiotics, confined animal feeding operations (CAFOs), chemical fertilizers, and communication/information technology.[16] Today, technological advancements in agriculture enable farmers to produce larger yields in some instances but may be accompanied by significant costs and externalities.[17]

However, there are high barriers to using this technology. Technology needed to keep up with the economic scale of production requires both capital and knowledge. Purchasing technology typically requires large, fixed investments.[18] Using this technology may also require learning the new processes or dependency on the technology service provider. Due to the cost of capital and knowledge investment, larger farms with more resources are more likely able to purchase new technology.

The high cost of technology in turn drives farm specialization. While specialization is not the same as consolidation, the two are related. In 1900, the average farm produced five different commodities, while by 2002, the average number of commodities produced per farm was just over one.[19] As production has shifted towards larger farms, many farms have become more specialized by focusing in on a limited set of agricultural processes or specific crops.[20] Farms are more likely to invest time and money in the technology needed for a specialized crop or process rather than a broad range of technology needed to make diversified operations economical.[21] As farms have specialized, agribusiness has stepped in to coordinate and control agricultural production among specialized farms.[22]

Shifts in Farming Culture

Additional shifts in farming culture have also increased consolidation. Traditionally, farming has been a highly place-specific practice that requires intimate knowledge of the land, weather, commodity, people, etc.[23] The need for specific place-based knowledge made smaller and more localized farms logistically easier to operate than large farms. However, standardization of practices across farms has become possible through a combination of increased communication, easier travel, research, and technology.[24] Currently, it is relatively common, especially for products like poultry and hogs, for a single company to control many farms through a network of contracts.[25] Consequently, intimate knowledge of a small farm no longer presents an advantage in agriculture. Rather, economies of scale and standardization have driven agricultural producers towards consolidation.

Lobbying and Policy

As technological and social developments have driven agriculture towards consolidation, developing agribusiness firms have, in turn, shaped policy that continues to support consolidation. During the 2016 election cycle, powerful agribusiness firms spent $116M on lobbying efforts.[26] While this amount decreased in 2021, agribusiness firms still spent significantly on lobbying—$36M.[27] Evidence demonstrates that these investments appear to have been successful as USDA policies continue to favor consolidation.[28]

One notable example is a change to the enforcement of the Packers and Stockyards Act in 2020 under the Trump Administration. The Packers and Stockyards Act was created "to assure fair competition and fair trade practices, to safeguard farmers and ranchers . . . to protect consumers . . . and to protect members of the livestock, meat, and poultry industries from unfair, deceptive, unjustly discriminatory, and monopolistic practices. . . ."[29] However, in 2020, the USDA issued a rule stating that unfair, deceptive, or discriminatory practices would be upheld as long as there was a "legitimate business justification."[30] This rule, among other policies shaped by the agribusiness lobby, has reduced protection from consolidation for farmers.[31]

Effects of Consolidation on US Agriculture

Consolidation of agriculture is fundamentally shaping the US food system. Increased vertical and horizontal consolidation have resulted in detrimental impacts to farmers.[32] Horizontal consolidation, such as when agribusiness firms buy up their competitors, reduces the number of options available to farmers to sell their products. In sectors like meatpacking, if a meat processor offers unfavorable contract terms or prices, the farmer has no alternatives.

On the other hand, vertical consolidation, which typically involves ownership of both production and processing, gives agribusiness firms control over the whole supply chain. For certain products, vertical integration has largely replaced the open production system where products are purchased for market rates determined at the time of sale.[33] The market power resulting from vertical integration effectively eliminates any need to compete, as competitors cannot easily enter the market without substantial investment and infrastructure. On the other hand, vertically consolidated supply chains are also highly vulnerable to disruptions.

For example, the impact of vertical consolidation became starkly apparent during the COVID-19 pandemic. During the pandemic, many workers in the meatpacking industry became infected with COVID-19, causing meatpacking plant closures.[34] Vertical consolidation within the meat industry meant that when meat processing plants closed, the industry was unable to adjust easily and quickly.[35] As a result, farmers were forced to euthanize their animals, killing upwards of 400,000 hogs and 2 million chickens and wasting the resources used to raise those animals.[36] In addition, consumers experienced high prices and shortages.[37] This failure of the supply chain shows that in a consolidated system, when there is a failure in one part, the whole system is disrupted.

"Vertical integration is fairly common in the turkey industry, for example, where about 30 percent of production takes place on farms that perform multiple functions. On the largest operations, the enterprise mix may include a feed mill, a hatchery, a grow-out operation, a slaughter facility, and a packing plant. In such cases, integration moves both backward into inputs (feed manufacturing) and forward into the finished, consumer-ready product."

Economic Research Service, USDA [38]

"Concentrated market structures and potentially anticompetitive practices leave America's farmers, businesses, and consumers facing higher costs, fewer choices and less control about where to buy and sell, and reduced innovation—ultimately making it harder for those who grow our food to survive," said USDA Secretary Tom Vilsack. "As I talk to farmers, ranchers and agriculture and food companies about the recent market challenges, I hear significant concerns about whether large companies along the supply chain are taking advantage of the situation by increasing profits—not just responding to supply and demand or passing along the costs."[39]

President Biden's Executive Order on Promoting Competition in the American Economy

On July 9, 2021, President Biden issued Executive Order 14036, entitled "Promoting Competition in the American Economy."[40] The Executive Order set forth 72 initiatives to be carried out by multiple federal agencies.[41] These initiatives were designed to address competition issues that the Biden Administration identified as contributing to harmful trends associated with corporate consolidation and decreased competition.[42] While the Executive Order did not immediately establish new requirements, it was a call to action for federal agencies to review these issues and establish policies to implement the administration's goals.[43]

The Biden Administration identified agriculture as one of the industries suffering negative consequences due to consolidation and decreased competition.[44] Consequently, the EO detailed a set of requirements for USDA to address the impacts of consolidation and decreased competition in the agricultural sector.[45] The full text of the Executive Order as it pertains to agriculture is included in the appendix.

In the Executive Order, President Biden:

- **Directed USDA to consider issuing new rules** under the Packers and Stockyards Act (hereinafter "the Act") making it easier for farmers to bring and win claims, stopping chicken processors from exploiting and underpaying chicken farmers, and adopting anti-retaliation protections for farmers who speak out about bad practices.[46] Specifically, the EO suggested:
  - Providing clear rules that identify recurrent practices in the livestock, meat, and poultry industries that are unfair, unjustly discriminatory, or deceptive.[47]
  - Reinforcing that it is unnecessary to demonstrate industry-wide harm to establish a violation of the Act. Violation of the Act can occur in actions concerning one farmer.[48]
  - Prohibiting unfair practices related to poultry grower ranking systems.[49]
  - Updating the definitions under the Act for undue or unreasonable preferences, advantages, prejudices, and disadvantages.[50]
  - Adopting anti-retaliation protections.[51]

- **Directed USDA to consider issuing new rules** defining when meat can bear "Product of USA" labels, so that consumers have accurate, transparent labels that enable them to choose products made here.[52]

- **Directed USDA to develop a plan to increase opportunities** for farmers to access markets and receive a fair return, including supporting alternative food distribution systems like farmers markets and developing standards and labels so that consumers can choose to buy products that treat farmers fairly.[53] The plan was due to the chair of the White House Competition Council on January 5, 2022,[54] and USDA released it in May 2022.[55] The executive order included the following examples for what to include in the plan:
  - The creation or expansion of useful information for farmers, such as model contracts, to lower transaction costs and help farmers negotiate fair deals.[56]
  - Measures to encourage improvements in transparency and standards so that consumers may choose to purchase products that support fair treatment of farmers and agricultural workers and sustainable agricultural practices.[57]
  - Measures to enhance price discovery, increase transparency, and improve the functioning of the cattle and other livestock markets.[58]
  - Enhanced tools, including any new legislative authorities needed, to protect whistleblowers, monitor agricultural markets, and enforce relevant laws.[59]
  - Any investments or other support that could bolster competition within highly concentrated agricultural markets.[60]
  - Any other means that the Secretary of Agriculture deems appropriate.[61]

- **Directed USDA, in consultation with the Federal Trade Commission**, to issue a report on the effect of retail concentration and retailers' practices on the conditions of competition in the food industry including any practices that may violate relevant laws, and on grants, loans, and other support that may enhance access to retail markets by local and regional food enterprises.[62] This report was due May 5, 2022.[63]

- **Directed USDA, in consultation with the Under Secretary** of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, to submit a report to the chair of the White House Competition Council, enumerating and describing any relevant concerns regarding intellectual property laws in regard to seed and other agricultural technology.[64] Also directed USDA to include strategies for addressing those concerns across intellectual property, antitrust, and other relevant laws.[65] There is no deadline attached to this report.

USDA'S RESPONSE TO THE EXECUTIVE ORDER

Since the issuance of the Executive Order on July 9, 2021, USDA has announced ten initiatives designed to address the tasks charged to the agency (see Table 1).[66] Each of these initiatives is discussed further below.

Grants to Expand Meat and Poultry Processing Options

On February 24, 2022, USDA announced that it is making available up to $215M in grants and other support to expand meat and poultry processing options, strengthen the food supply chain, and create jobs and economic opportunity in rural areas.[67] This funding will be allocated across three USDA programs.

First, USDA Rural Development (RD) will make $150M available in grants to fund start-up and expansion activities in the meat and poultry processing sector through a program called the Meat and Poultry Processing Expansion Program (MPPEP).[68]

What does this program do?

The Meat and Poultry Processing Expansion Program (MPPEP) provides grants to help eligible processors expand their capacity. USDA Rural Development designed the MPPEP to encourage competition and sustainable growth in the U.S. meat processing sector, and to help improve supply chain resiliency.

In addition, the agency intends to make an additional $225M in financing assistance grants available to meat and poultry processors in 2022 and a new intermediary lending program to enable independent processors to access more capital.[69] MPPEP will provide grants up to $25M, or 20 percent of total costs, to expand processing capacity through a variety of activities, including but not limited to building new facilities, modernizing existing facilities, purchasing and installing equipment, taking actions to bring operations into regulatory compliance, paying for voluntary meat grading services, and supporting workforce recruitment.[70] Applications for this program were open until May 2022.[71]

For applicants to be eligible, they must meet three requirements:

1. they must process animals covered by the Federal Meat Inspection Act or the Poultry Products Inspection Act;
2. they must either have or plan to get a federal, Tribal, or state meat and poultry inspection program; and
3. they must comply with the National Environmental Policy Act and Section 106 of the National Historic Preservation Act, and any other applicable state, local, or Tribal laws.[72]

Second, USDA's National Institute of Food and Agriculture (NIFA) will provide up to $100M for workforce development and training.[73] The bulk of this funding will go to grants to support workforce training at community, junior, and technical colleges with programs specifically for meat and poultry processing.[74] A call for applications to these workforce development grants was posted on March 22, 2022.[75]

Third, the USDA Agricultural Marketing Service (AMS) will invest $25M to establish a nationwide Meat and Poultry Processing Capacity – Technical Assistance Program (MPPTA).[76] The MPPTA is intended to provide a network of technical support focusing on four key areas: "federal grant application management, business development and financial planning, meat and poultry processing technical and operation support, and supply chain development."[77] In March 2022, AMS identified six technical service providers who will provide technical assistance by offering access to experts, creating educational content and events, and providing one-on-one advising.[78]

Public Comment on the Impacts of Consolidation in Fertilizer, Seeds and Other Inputs, and Retail

In March 2022, USDA's AMS launched a public inquiry into the impacts of consolidation on the fertilizer, seeds and other agricultural inputs, and retail sectors.[79] AMS is also seeking information on competition and market access for farmers and ranchers, new and growing market competitors, especially small and medium-sized enterprises, and more about the context for these markets for farmers.[80] AMS is specifically seeking information on these issues as they relate to the intellectual property system and retail, including access for agricultural producers and smaller processors through wholesale and distribution markets.[81] Comments were due in June 2022.[82]

Relatedly, the Department of Justice (DOJ) and the Federal Trade Commission (FTC) recently launched a public inquiry seeking comment on merger guidelines that the agencies use to assess whether mergers or acquisitions may lessen competition or tend to create a monopoly.[83] The comment period for this inquiry closed in April 2022.[84]

Grants to Promote and Support American Fertilizer Production

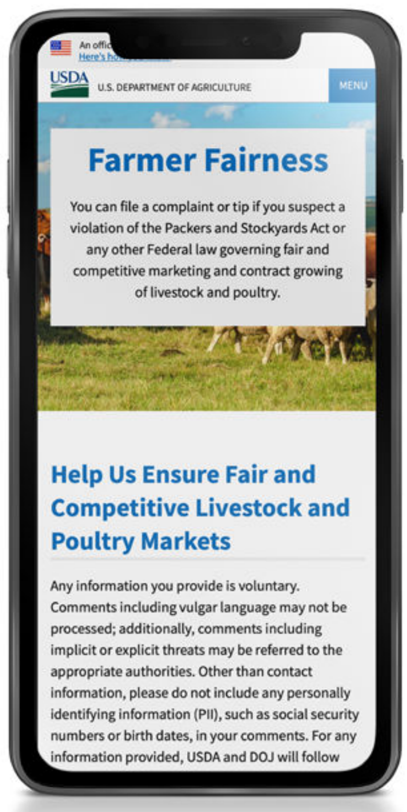
In March 2022, USDA announced a new $250M grant program to promote and support independent, innovative, and sustainable American fertilizer production.[85] This program will be part of the Commodity Credit Corporation (CCC), which is an entity owned and operated by the government intended to "stabilize, support, and protect farm income and prices."[86] The new program will support fertilizer production that is:

- **Independent**—outside the dominant fertilizer suppliers, increasing competition in a concentrated market.
- **Made in America**—produced in the United States by domestic companies, creating well-paying jobs and reducing the reliance on potentially unstable or inconsistent foreign supplies.
- **Innovative**—improving upon fertilizer production methods to jump-start the next generation of fertilizers.
- **Sustainable**—reducing the greenhouse gas impact of transportation, production, and use through renewable energy sources, feedstocks, formulations, and incentivizing greater precision in fertilizer use.
- **Farmer-focused**—like other Commodity Credit Corporation investments, a driving factor will be providing support and opportunities for US agriculture commodity producers.[87]

The grant program is expected to launch in the summer of 2022 and the first awards are expected before the end of 2022.[88]

New Online Tool Launched: Farmerfairness.gov

The Department of Justice (DOJ) and USDA launched farmerfairness.gov, a new online tool that allows farmers and ranchers to anonymously report potentially unfair and anticompetitive practices in the livestock and poultry sectors.[89] In addition, this website is intended to make it easier for USDA and DOJ to collaborate to ensure fair and competitive livestock and poultry markets by jointly reviewing and addressing concerns, complaints, and tips.[90]



Food Supply Chain Guaranteed Loan Program

USDA launched a $100M loan guarantee program which will make available nearly $1B in funds to back private investment in expanding meat and poultry processing capacity and financing other food supply chain infrastructure.[91] This program guarantees loans of up to $40M for qualified lenders to finance food system projects, specifically for the start-up or expansion of activities in the middle of the food supply chain.[92] The program will support new investments in infrastructure for food aggregation, processing, manufacturing, storage, transportation, wholesaling, and distribution to increase capacity and create a more resilient, diverse, and secure US food supply chain.[93] USDA Rural Development (RD) will administer the loans.[94]

New Funds to Support and Expand Meat and Poultry Processing Capacity

In July 2021, USDA announced its intent to invest $500M in American Rescue Plan funds to expand meat and poultry processing capacity to enable farmers, ranchers, and consumers to have more choices in the marketplace.[95] USDA stated that these funds would be distributed through grants, loans, and technical assistance designed to address consolidation within the meat and poultry sectors and relieve supply chain bottlenecks by supporting new meat and poultry processing facilities.[96] In addition, USDA issued a Request For Information (RFI) to solicit public comments on how to improve meat and poultry processing infrastructure.[97] The comment period for this RFI closed in August 2021.[98] USDA noted that it received over 450 comments, many of which were very supportive of USDA's efforts to address consolidation.[99]

Public Comments on USDA's Request for Information

"The UFCW commends USDA for recognizing that its investment of ... American Rescue Plan funds holds the potential to create a virtuous cycle that improves both the short-term and long-term resiliency of the meat and poultry supply chain while also lifting standards for packing and food processing workers...

[T]he federal government has the obligation to ensure that federal funds are spent not only on quality products, but also support quality jobs with high labor standards for workers. The UFCW supports USDA's efforts to use federal investments to guarantee that the government supports high-road companies that respect workers' rights, pay living wages, provide a safe and healthy workplace, and treat their workers with dignity and respect."

United Food and Commercial Workers[100]

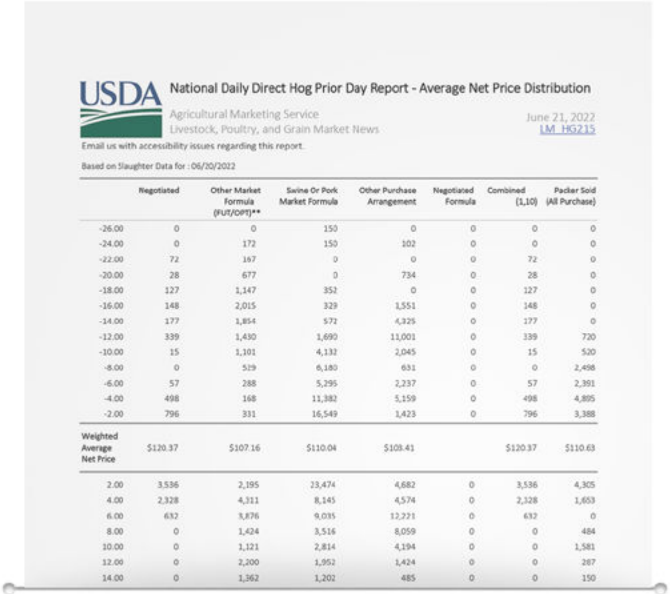
Cattle Price Transparency Initiatives

Beginning in August 2021, USDA issued two new USDA Market News reports based on Livestock Mandatory Reporting data.[101] These reports are intended to provide additional insight into formula cattle trades and help promote fair and competitive markets.[102]

"Formula purchase arrangements of fed cattle use an agreed to methodology of calculating the net price. The final net price for some formula purchases may include the application of any premiums or discounts associated with carcass performance as specified in the transaction agreement."[103]

The first publication, the National Daily Direct Formula Base Cattle, consists of a set of reports that provide information on the foundational prices used in different categories of the cattle market formulas, grids, and contracts.[104] USDA believes this information "will enable stakeholders to see the correlation between the negotiated trade and reported formula base prices, as well as the aggregated values being paid as premiums and discounts."[105]

The second publication, the National Weekly Cattle Net Price Distribution, is a set of reports that provide the information about the volume of cattle purchased at each different level of pricing within those formulas, grids, and contracts.[106] The market speculates about the numbers of cattle traded on each side of the price spread and, due to the application of premiums and discounts, those spreads can be quite large.[107] Consequently, a publicly available price distribution for "all cattle net prices" can "offer more transparency to each of the purchase type categories."[108] These reports are similar to the AMS net price distribution reports for direct hogs that have been published daily since January 2010 and provide information on the net average purchase price distribution.[109]


USDA

National Daily Direct Hog Prior Day Report - Average Net Price Distribution

Agricultural Marketing Service
Livestock, Poultry, and Grain Market News

June 21, 2022
LM_HG215

Email us with accessibility issues regarding this report.

Based on Slaughter Data for : 06/20/2022

	Negotiated	Other Market Formula (FUT/OPT)**	Swine Or Pork Market Formula	Other Purchase Arrangement	Negotiated Formula	Combined (1,10)	Packer Sold (All Purchase)
-26.00	0	0	150	0	0	0	0
-24.00	0	172	150	102	0	0	0
-22.00	72	167	0	0	0	72	0
-20.00	28	677	0	734	0	28	0
-18.00	127	1,147	352	0	0	127	0
-16.00	148	2,015	329	1,551	0	148	0
-14.00	177	1,854	572	4,325	0	177	0
-12.00	339	1,430	1,690	11,001	0	339	720
-10.00	15	1,101	4,132	2,045	0	15	520
-8.00	0	519	6,180	631	0	0	2,498
-6.00	57	288	5,295	2,237	0	57	2,391
-4.00	498	168	11,382	5,159	0	498	4,895
-2.00	796	331	16,549	1,423	0	796	3,388
Weighted Average Net Price	$120.37	$107.16	$110.04	$103.41		$120.37	$110.63
2.00	3,536	2,195	23,474	4,682	0	3,536	4,305
4.00	2,328	4,311	8,145	4,574	0	2,128	1,653
6.00	632	3,876	9,035	12,221	0	632	0
8.00	0	1,424	3,516	8,059	0	0	484
10.00	0	1,121	2,814	4,194	0	0	1,581
12.00	0	2,200	1,952	1,424	0	0	287
14.00	0	1,362	1,202	485	0	0	150

New Rules Under Packers and Stockyards Act

In June 2021, USDA announced that it will propose new rules under the Packers and Stockyards Act.[110] The Packers and Stockyards Act is designed to protect poultry and hog farmers and cattle ranchers from unfair, deceptive, discriminatory practices in the meat markets.[111]

The agency promulgated regulations to implement the Act in December 2020 in response to a mandate in the 2008 Farm Bill.[112] Recognizing the need to update these regulations, the new rules seek to make it easier for the agency to challenge unfair and deceptive practices by meat processors and would allow farmers to file complaints more easily with USDA or file lawsuits under the Packers and Stockyards Act. USDA plans to create three new rules to strengthen enforcement of the Act.[113]

First, USDA intends to propose a new rule that will provide greater clarity to strengthen enforcement of unfair and deceptive practices, undue preferences, and unjust prejudices.[114] Second, USDA will propose a new poultry grower tournament system rule and withdraw the currently inactive proposal.[115] USDA has taken two steps toward this goal by publishing a proposed rule to increase transparency in poultry contracting by requiring integrators disclose information to poultry growers paid through ranking systems, called tournaments, and by publishing an advance notice of proposed rulemaking to solicit input on other unfair aspects of the tournament system that the agency should consider addressing through future rulemaking.[116] Finally, USDA will re-propose a rule to clarify that parties do not need to demonstrate harm to competition in order to bring an action under sections 202 (a) and 202 (b) of the Act.[117] As of the date of this brief, the formal rulemaking process for these rules has not yet begun; however, the tournament system proposed rule and pre-rule dockets will likely be open for comment during the summer of 2022.[118]

Stronger Enforcement Policy Under Packers and Stockyards Act

In August 2021, USDA announced a new more robust enforcement policy under the Packers and Stockyards Act.[119] The enforcement policy is in the form of a Frequently Asked Questions (FAQs) page.[120] The FAQ page emphasizes two policies that reverse the interpretations of the Act set forth by previous administrations and strengthen enforcement. First, the FAQs emphasize that the 2020 Undue Preferences rule will not apply to cases that seek to protect farmers from a range of circumstances such as retaliation and racial discrimination by giant agribusinesses.[121] Second, the FAQs reiterate USDA's long-standing position that a violation of the Act does not require a show of harm to competition.[122]

These two policies allow for stronger enforcement of the Act by protecting farmers who bring complaints and by making the standard for showing harm easier to meet. These FAQs are intended to allow for stronger interim enforcement of the Act while the USDA undergoes the rulemaking process discussed above to formally strengthen and modernize the Act.

New Rules On "Product Of USA" Labeling

In 2020, USDA announced it would issue new rules on "Product of USA" labeling.[123] Then, in July 2021, following the FTC's efforts to strengthen "Made in USA" labeling, USDA stated that it would initiate a top-to-bottom review of the "Product of USA" label to help USDA determine what that label means to consumers.[124] The review is intended to inform the rulemaking process for new rules regarding Product of USA labeling.[125]

Currently, the new rules on Product of USA labeling are in the proposed rule stage.[126] In 2018, two organizations petitioned USDA to amend its policies on Product of USA labeling on the basis that the existing approach enabled producers to include false and misleading labels on meat products.[127]

As part of the rulemaking, USDA considered the current labeling guidance and the alternatives proposed in the two petitions:

1. **"to amend the USDA Food Safety and Inspection Service Policy Book** to state that meat products may be labeled as Product of USA only if significant ingredients having a bearing on consumer preference such as meat, vegetables, fruits, dairy products, etc., are of domestic origin and;

2. **to amend the FSIS Policy Book** to provide that any beef product labeled as Made in the USA, Product of the USA, USA Beef or in any other manner that suggests that the origin is the United States, be derived from cattle that have been born, raised, and slaughtered in the United States."[128]

As of the date of this issue brief, USDA's labeling review has not been published.

ANALYSIS OF THE EXECUTIVE ORDER AND USDA'S RESPONSE

As detailed above, many of the actions USDA has undertaken in response to President Biden's Executive Order are still in the nascent stages. Additionally, while some of the grant and loan programs have begun to roll out, others will begin or continue later in 2022. At this point, it is difficult to determine whether these responses will effectively carry out and meaningfully respond to the Executive Order's charge to encourage fair competition in agriculture. However, for those actions that have already commenced, the effectiveness and potential impact is analyzed below.

Strengthening Packers and Stockyards Act to Promote Fair Competition

USDA has taken two actions to strengthen the Packers and Stockyards Act in response to President Biden's Executive Order. In the short term, USDA has created a stronger enforcement policy for the Act by clarifying enforcement provisions through an FAQ page. The pertinent policies in the FAQs are:

- The 2020 Undue Preferences rule will not apply to cases that seek to protect farmers from a range of circumstances such as retaliation and racial discrimination.
- Violations of the Act do not require a showing of harm to competition.[129]

In the longer term, USDA announced that it will undergo a rulemaking process to promulgate and implement new rules that would strengthen the Act. The pertinent rules are:

- A new rule providing greater clarity to strengthen enforcement of unfair and deceptive practices, undue preferences, and unjust prejudices.
- A new poultry grower tournament system rule.[130]
- A rule clarifying that parties do not need to demonstrate harm to competition in order to bring an action under sections 202 (a) and 202 (b) of the Act.[131]

The Packers and Stockyards Act Enforcement FAQs

The first action, creating a stronger enforcement policy for the agency, provides an important first step in strengthening the Act to carry out the goals of the EO and encourage fair competition in the meatpacking industry. The policy makes it easier to demonstrate a violation of the Act and provides needed protections for farmers who report violations. However, the FAQs are not regulations meaning the enforcement policies contained within them are not binding nor are they permanent. Consequently, if the Biden Administration or a subsequent one wanted to change the enforcement policy to favor big meatpackers and continue to support consolidation, it could simply write a new enforcement policy. Although the policies represent an important step, strengthening the Act to promote competition through binding and last mandates requires rulemaking.

Proposed New Rules

The second action, USDA's new proposed rules under the Packers and Stockyards Act, if promulgated, will constitute more permanent and binding policies.

> **If these rules are promulgated and effectively implemented and enforced, they will be effective and necessary tools to carry out the directives included in the EO to support fair economic competition in the meatpacking industry.**

Since these rules have been in the works for more than a decade, it will signal a strong commitment from the agency.[132]

In 2010, the Obama Administration developed the first major update to strengthen the Act. These 2010 rules, called the Farmer Fair Practice Rules (FFPRs), added definitions that described and clarified what conduct would violate the Act.[133] However, in 2020, the Trump Administration promulgated rules to dilute the FFPRs.[134] The 2020 changes to the FFPRs favored meatpacking corporations over farmers by enabling meatpackers to legally retaliate and give undue preference to producers if they have a "legitimate business justification."[135] The new rules proposed by USDA would remove the 2020 "legitimate business justification" provision.

Additional Recommendations to Increase Fair Competition in Agriculture

Although the new rules represent a starting point to carry forward the fair competition goals embodied in President Biden's Executive Order, farmer advocacy groups have suggested additional provisions to further increase fair competition in agriculture.[136] The Western Organization of Resource Councils (WORC) first created one such provision in 1996 when it called for restrictions on packers using forward contracts without establishing a firm base price and bidding in an open market.[137] WORC also proposed restricting packers from owning cattle and feeding cattle without offering their cattle for sale publicly.[138] Other advocacy organizations have called for additional amendments to the Act that would ban discrimination against producers based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, use of public benefits, political beliefs, or participation in community organizing or civil rights activity.[139]

A final change that would strengthen the Act but that has not yet been considered by USDA is to reinstate independent status of the Act administration and enforcement authority, the Grain Inspection, Packers, and Stockyards Administration (GIPSA). GIPSA was created in 1994 to "to ensure a productive and competitive global marketplace for US agricultural products."[140] GIPSA is currently a subsection of the USDA AMS.[141] Prior to 2017, GIPSA was an independent division of USDA.[142] At the time of the reorganization of the GIPSA, farmer advocates railed against the change.[143] Reinstating the independent status of GIPSA would restore funding, personnel, and bureaucratic power to the program and strengthen its ability to enforce the Act.

At the time of the change, the Organization for Competitive Markets spoke out against it, saying:

> **Now buried in the bowels of a marketing and promotion agency, P&S Act enforcers will lose direct access to the Secretary and Under Secretary of USDA, having to fight through a layer of unfavorable bureaucracy within AMS for their fair share of budget dollars and the ability to address farmers' and ranchers' complaints. . . . Placing a regulatory body—whose mission is to protect farmers from meat packers' and processors' abusive retaliatory and predatory practices—into a marketing and promotion agency guarantees a conflict of interest within that agency preventing them from being the fair market enforcers farmers desperately need in the face of ever increasing market consolidation.**[144]

Increasing Cattle Price Transparency Through Published Cattle Price Data

A second program that has already taken effect as part of USDA's response to the Executive Order is the agency's new cattle price transparency initiative discussed above. This initiative aims to provide additional insight into formula cattle trades and help promote fair and competitive markets. To carry out the initiative, USDA began to publish two new USDA Market News reports based on Livestock Mandatory Reporting data—the National Daily Direct Formula Base Cattle and the National Weekly Cattle Net Price Distribution.[145] In addition, USDA has conducted outreach to teach farmers how to use the data from the reports to inform their marketing decisions.[146]

Overall, farmers and farmer advocates find these reports useful and state that these reports encourage more fair competition in cattle prices. The reports make cattle prices more readily available so that farmers are better able to negotiate prices. However, some farmers and advocates argue that cattle price transparency could be further improved. There are calls for a Cattle Contract Library to provide user-friendly access to contract terms offered to other producers on a regional and national level.[147] USDA already maintains a contract library for hogs so it would not be difficult for the agency to apply the same transparency to cattle markets. The contract library would expand, summarize, and centralize the information contained in the reports to make the information more accessible.

Consider Expanding Focus on Crops

In general, USDA's response to the Executive Order focuses on meatpacking and poultry rather than crops. Seven out of ten actions focus exclusively on meat packing, two out of ten actions apply to both meat packing and crops, and one out of ten actions focus solely on crops. However, despite the unequal representation of crops in USDA's actions, crop production has experienced significant and persistent consolidation. USDA could provide a stronger response to consolidation in agriculture by creating more programs aimed at encouraging fair competition in crop markets.

CONCLUSION

Fair competition is necessary for the market to function effectively. Currently, the US agricultural market is highly consolidated. President Biden's Executive Order 14036 charged USDA, among other agencies, to take action to reduce consolidation. In response to the Executive Order, USDA has acted in several sectors. These responses can broadly be divided into actions that provide funds to increase competition, strengthen enforcement of the Packers and Stockyards Act, and provide data or technical assistance to farmers. Many of these actions are in the beginning stages and will fully take effect later in 2022. If these actions are enacted as proposed, they will be effective first steps toward reducing consolidation in agriculture. Although these actions are a good start, farmers and advocates argue that work remains to be done in the future. USDA should heed these warnings and continue to work collaboratively with stakeholders to identify solutions.

About the Center for Agriculture and Food Systems

Vermont Law School's Center for Agriculture and Food Systems (CAFS) uses law and policy to build a more sustainable and just food system. In partnership with local, regional, national, and international partners, CAFS addresses food system challenges related to food justice, food security, farmland access, animal welfare, worker protections, the environment, and public health, among others. CAFS works closely with its partners to provide legal services that respond to their needs and develop resources that empower the communities they serve. Through CAFS' Food and Agriculture Clinic and Research Assistant program, students work directly on projects alongside partners nationwide, engaging in innovative work that spans the food system. Please visit https://www.vermontlaw.edu/cafs to learn more.

ESTD CENTER FOR 2012 AGRICULTURE AND FOOD SYSTEMS VERMONT LAW SCHOOL

Table 1: USDA Response Summary

ACTION	SUMMARY	EFFECTIVE DATE
Grants to expand meat and poultry processing options	$215M split across three programs: $150M to fund start-up and expansion activities in the meat and poultry processing sector through the Meat and Poultry Processing Expansion Program (MPPEP). $40M for workforce development and training. $25M to establish a nationwide Meat and Poultry Processing Capacity – Technical Assistance Program (MPPTA).	Late summer 2022
Public inquiry into the impacts of consolidation in fertilizer, seeds and other agricultural inputs, and retail	USDA seeks information on competition and market access for farmers, ranchers, and new and/or growing market competitors, especially small and medium-sized enterprises. USDA specifically wants to understand the experience of these parties with regard to fertilizer, seeds, retail, and other agricultural inputs.	May 16, 2022
Grants to promote and support American fertilizer production	$250M grant program to promote and support independent, innovative, and sustainable American fertilizer production.	Late summer 2022
Farmerfairness.gov	Farmerfairness.gov allows farmers and ranchers to anonymously report potentially unfair and anticompetitive practices in the livestock and poultry sectors.	Already in effect
Food Supply Chain Guaranteed Loan Program	$100M loan guarantee program to back private investment in expanding meat and poultry processing capacity and for financing other food supply chain infrastructure. This program guarantees loans of up to $40M to finance food systems projects, specifically for the start-up or expansion of activities in the middle of the food supply chain.	TBD
Grants and technical assistance to support new competitive entrants in meat and poultry processing	$500M in grants, loans, and technical assistance to support new competitive entrants in meat and poultry processing. Additionally, USDA issued a request for information to gather comments on how to improve meat and poultry infrastructure.	August 30, 2021
Cattle Price Transparency Initiative	Publication of two new USDA Market News reports based on Livestock Mandatory Reporting data. These reports are intended to provide additional insight into formula cattle trades and help promote fair and competitive markets.	August 9, 2021
New rules under Packers and Stockyards Act	USDA plans to create three new rules to strengthen enforcement of the Act. First, USDA intends to propose a new rule that will provide greater clarity to strengthen enforcement of unfair and deceptive practices, undue preferences, and unjust prejudices. Second, USDA will propose a new poultry grower tournament system rule. Third, USDA will re-propose a rule to clarify that parties do not need to demonstrate harm to competition to bring an action under §§202 (a) & (b) of the Act.	Proposed rule on transparency in poultry contracting and ANPR on tournament system released May 2022; remaining rules TBD

ACTION	SUMMARY	EFFECTIVE DATE
Stronger enforcement policies under Packers and Stockyards Act	Clarification of USDA enforcement policy through the Packers and Stockyards Act Enforcement FAQ page. The FAQs emphasize that the 2020 Undue Preferences rule[148] will not apply to cases that seek to protect farmers from a range of circumstances such as retaliation and racial discrimination by large agribusinesses. Second, the FAQs reiterate USDA's position that a violation of the Act does not require a show of harm to competition.	Already in effect
New rules on "Product Of USA" labeling	New rules on Product of USA labeling are in the proposed rule stage. USDA has considered the current labeling guidance and the alternatives proposed in the two petitions: 1) to amend the USDA Food Safety and Inspection Service Policy Book to state that meat products may be labeled as Product of USA only if significant ingredients having a bearing on consumer preference such as meat, vegetables, fruits, dairy products, etc., are of domestic origin and; 2) to amend the FSIS Policy Book to provide that any beef product labeled as Made in the USA, Product of the USA, USA Beef or in any other manner that suggests that the origin is the United States, be derived from cattle that have been born, raised, and slaughtered in the United States.	TBD

APPENDIX

a. *Pertinent Text of Executive Order 14036: Promoting Competition in the American Economy, Section 5(i).*

(i) The Secretary of Agriculture shall:

(i) to address the unfair treatment of farmers and improve conditions of competition in the markets for their products, consider initiating a rulemaking or rulemakings under the Packers and Stockyards Act to strengthen the Department of Agriculture's regulations concerning unfair, unjustly discriminatory, or deceptive practices and undue or unreasonable preferences, advantages, prejudices, or disadvantages, with the purpose of furthering the vigorous implementation of the law established by the Congress in 1921 and fortified by amendments. In such rulemaking or rulemakings, the Secretary of Agriculture shall consider, among other things:

(A) providing clear rules that identify recurrent practices in the livestock, meat, and poultry industries that are unfair, unjustly discriminatory, or deceptive and therefore violate the Packers and Stockyards Act;

(B) reinforcing the long-standing Department of Agriculture interpretation that it is unnecessary under the Packers and Stockyards Act to demonstrate industry-wide harm to establish a violation of the Act and that the "unfair, unjustly discriminatory, or deceptive" treatment of one farmer, the giving to one farmer of an "undue or unreasonable preference or advantage," or the subjection of one farmer to an "undue or unreasonable prejudice or disadvantage in any respect" violates the Act;

(C) prohibiting unfair practices related to grower ranking systems — systems in which the poultry companies, contractors, or dealers exercise extraordinary control over numerous inputs that determine the amount farmers are paid and require farmers to assume the risk of factors outside their control, leaving them more economically vulnerable;

(D) updating the appropriate definitions or set of criteria, or application thereof, for undue or unreasonable preferences, advantages, prejudices, or disadvantages under the Packers and Stockyards Act; and

(E) adopting, to the greatest extent possible and as appropriate and consistent with applicable law, appropriate anti-retaliation protections, so that farmers may assert their rights without fear of retribution;

(ii) to ensure consumers have accurate, transparent labels that enable them to choose products made in the United States, consider initiating a rulemaking to define the conditions under which the labeling of meat products can bear voluntary statements indicating that the product is of United States origin, such as "Product of USA";

(iii) to ensure that farmers have greater opportunities to access markets and receive a fair return for their products, not later than 180 days after the date of this order, submit a report to the Chair of the White House Competition Council, with a plan to promote competition in the agricultural industries and to support value-added agriculture and alternative food distribution systems through such means as:

(A) the creation or expansion of useful information for farmers, such as model contracts, to lower transaction costs and help farmers negotiate fair deals;

(B) measures to encourage improvements in transparency and standards so that consumers may choose to purchase products that support fair treatment of farmers and agricultural workers and sustainable agricultural practices;

(C) measures to enhance price discovery, increase transparency, and improve the functioning of the cattle and other livestock markets;

(D) enhanced tools, including any new legislative authorities needed, to protect whistleblowers, monitor agricultural markets, and enforce relevant laws;

(E) any investments or other support that could bolster competition within highly concentrated agricultural markets; and

(F) any other means that the Secretary of Agriculture deems appropriate;

(iv) to improve farmers' and smaller food processors' access to retail markets, not later than 300 days after the date of this order, in consultation with the Chair of the FTC, submit a report to the Chair of the White House Competition Council, on the effect of retail concentration and retailers' practices on the conditions of competition in the food industries, including any practices that may violate the Federal Trade Commission Act, the Robinson-Patman Act (Public Law 74-692, 49 Stat. 1526, 15 U.S.C. 13 et seq.), or other relevant laws, and on grants, loans, and other support that may enhance access to retail markets by local and regional food enterprises; and

(v) to help ensure that the intellectual property system, while incentivizing innovation, does not also unnecessarily reduce competition in seed and other input markets beyond that reasonably contemplated by the Patent Act (see 35 U.S.C. 100 et seq. and 7 U.S.C. 2321 et seq.), in consultation with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, submit a report to the Chair of the White House Competition Council, enumerating and describing any relevant concerns of the Department of Agriculture and strategies for addressing those concerns across intellectual property, antitrust, and other relevant laws.

(j) To protect the vibrancy of the American markets for beer, wine, and spirits, and to improve market access for smaller, independent, and new operations, the Secretary of the Treasury, in consultation with the Attorney General and the Chair of the FTC, not later than 120 days after the date of this order, shall submit a report to the Chair of the White House Competition Council, assessing the current market structure and conditions of competition, including an assessment of any threats to competition and barriers to new entrants, including:

(i) any unlawful trade practices in the beer, wine, and spirits markets, such as certain exclusionary, discriminatory, or anticompetitive distribution practices, that hinder smaller and independent businesses or new entrants from distributing their products;

(ii) patterns of consolidation in production, distribution, or retail beer, wine, and spirits markets; and

(iii) any unnecessary trade practice regulations of matters such as bottle sizes, permitting, or labeling that may unnecessarily inhibit competition by increasing costs without serving any public health, informational, or tax purpose.

ENDNOTES

1 James M. MacDonald, Robert Hoppe & Doris Newton, U.S. Dep't of Agric. Econ. Rsch. Serv., Three Decades of Consolidation in U.S. Agriculture 29 (2018), https://www.ers.usda.gov/webdocs/publications/88057/eib-189.pdf?v=5743.1 (noting that modern farm structures often operate through contract production on multiple farms. USDA data does track contract production but does not link the farm operations of multi-farm businesses. Thus, the data may under report consolidation in agricultural sectors, such as poultry or cattle feedlots, where contract production is common).

2 *Id.* at 8–47.

3 *Id.* at 31.

4 James M. MacDonald & Robert A. Hoppe, *Examining Consolidation in U.S. Agriculture*, U.S. Dep't of Agric. (Mar. 14, 2018), https://www.ers.usda.gov/amber-waves/2018/march/examining-consolidation-in-us-agriculture/.

5 *Id.*

6 *Id.*

7 *Id.*

8 *Id.*

9 Mary Hendrickson et al., The Food System: Concentration and Its Impacts 4 (2020), https://farmaction.us/wp-content/uploads/2020/11/Hendrickson-et-al.-2020.-Concentration-and-Its-Impacts-FINAL.pdf (last visited Apr 30, 2022).

10 *Id.* at 9.

11 *See* James M. MacDonald, Consolidation, Concentration, and Competition in the Food System 85 (2017), https://www.kansascityfed.org/documents/765/2017-Consolidation,%20Concentration,%20and%20Competition%20in%20the%20Food%20System.pdf.

12 Press Release, Fed'l Trade Comm., Federal Trade Commission Launches Inquiry into Infant Formula Crisis: Agency Seeks Public Comment on Attempts to Deceive Families and Factors that May Have Contributed to the Ongoing Shortage of Infant Formula (May 24, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/05/federal-trade-commission-launches-inquiry-infant-formula-crisis.

13 MacDonald, Hoppe, & Newton, *supra* note 1, at iv.

14 Stephen F. Hamilton et al., *Farm Labor Productivity and The Impact of Mechanization*, 103 Am. J. Agric. Econ. 1–2 (2021), https://onlinelibrary.wiley.com/doi/10.1111/ajae.12273; *see also*, Bruce L. Gardner, American Agriculture In The Twentieth Century: How it Flourished and What It Cost 18 (2002) (citing Richard H. Day, *The Economics of Technological Change and the Demise of the Sharecropper*, 57 Am. Econ. Rev. 427 (1967)) (estimating that the mechanization of cotton production in the 1940s and 1950s reduced labor hours per bale of cotton from 160 hours to 24 hours).

15 *See* Gardner *supra* note 14, at 15 (discussing how the mechanization of milking and feeding led to the replacement of traditional dairy barns with smaller and more efficient milking parlors. This switch saved capital by allowing for large dairy herds without the expense of large barns).

16 *See, e.g.*, David Schimmelpfennig, U.S. Dep't of Agric. Econ. Rsch. Serv., Farm Profits and Adoption of Precision Agriculture (2016), https://www.ers.usda.gov/publications/pub-details/?pubid=80325 (last visited Apr 30, 2022) (discussing how the high fixed cost of the equipment necessary for precision planting crops makes this technique more likely to be adopted by large farms).

17 *C.f.*, Sun Ling Wang, Paul Heisey, David Schimmelpfennig, & Eldon Ball, U.S. Dep't. of Agric., Econ. Rsch. Serv., Agricultural Productivity Growth in the United States: Measurement, Trends, and Drivers 57 (2015), https://www.Ers.Usda.Gov/webdocs/publications/45387/53417_err189.Pdf?V=931.9.

18 Gardner, *supra* note 15, at 16.

19 Dimitri Effland & N. Conklin, The 20th Century Transformation of U.S. Agriculture and Farm Policy 2 (2005), https://www.ers.usda.gov/publications/pub-details/?pubid=44198.

20 MacDonald, Hoppe, and Newton, *supra* note 1, at 37.

21 Gardner, *supra* note 14, at 8.

22 *Id*. at 159

23 *C.f.*, Sandra Sumane et al., *Local and farmers' knowledge matters! How integrating informal and formal knowledge enhances sustainable and resilient agriculture*, 59 J. Rural Stud. 232 (2018) (discussing the challenges of moving away from industrialized agriculture after the local knowledge base is lost).

24 *Id*.

25 Gardner, *supra* note 14, at 68.

26 *Sector Profile: Agribusiness*, Open Secrets, https://www.opensecrets.org/federal-lobbying/sectors/summary?cycle=2021&id=a.

27 *Id*.

28 Andrew Schwartz & Ethan Gurwitz, *Big Business Rules American Agriculture—and Congress Doesn't Seem to Care*, Ctr. For American Progress (May 16, 2018), https://www.americanprogress.org/article/big-business-rules-american-agriculture-congress-doesnt-seem-care/.

29 *Packers and Stockyards Act*, U.S. Dep't of Agric., https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act (last visited June 22, 2022).

30 Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act, 85 Fed. Reg. 79,779, 79,780, 79,786 (Dec. 11, 2020).

31 *C.f.*, Caitlin Oprysko, *Former House Ag chair lobbying on cattle market bills*, Politico (June 23, 2022), https://www.politico.com/newsletters/politico-influence/2022/06/23/house-ag-chair-cattle-market-bills-00041951 (discussing former House Ag Chair's registration as a lobbyist for livestock trade groups to oppose anti-consolidation initiatives); *see also*, Rep. Collin Peterson, *Opinion: Cattle community better equipped than Congress to address price discovery and transparency*, Agripulse (June 14, 2022), https://www.agri-pulse.com/articles/17845-opinion-cattle-community-better-equipped-than-congress-to-address-price-discovery-and-transparency.

32 *See generally,* Sarah Carden, The Fall of Antitrust, the Rise of Corporate Power: Impacts of Market Concentration on Farmers and Ranchers 4 (2022), https://farmaction.us/wp-content/uploads/2022/04/The-Fall-of-Antitrust-the-Rise-of-Corporate-Power.pdf.

33 U.S. Dep't of Agric., Econ. Rsch. Serv., Managing Risks in Farming: Concepts, Research, and Analysis 17-18 (1999), https://www.ers.usda.gov/webdocs/publications/40946/51082_aer774.pdf?v=4008.6.

34 House Select Subcommittee on the Coronavirus Crisis, How the Trump Administration Helped the Meatpacking Industry Block Pandemic Worker Protections 6 (2022), https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2022.5.12%20-%20SSCC%20report%20on%20Meatpacking%20FINAL.pdf ("A USDA analysis estimated that, by the end of May 2020, counties with high proportions of meatpacking workers accounted for about half of the top 25 and eight of the top ten rural counties with the highest infection rates."); Econ. Rsch. Serv., U.S. Dep't of Agric., Covid 19 Working Paper: Meatpacking Working Conditions and the Spread of Covid-19 17 (2021), https://www.ers.usda.gov/webdocs/publications/102206/ap-092.pdf.

35 Emily Green, *Econ Focus: Unpacking the Meat Industry*, Fed'l Reserve Bank of Richmond (Jan 11, 2021), https://www.richmondfed.org/publications/research/econ_focus/2020/q4/feature1.

36 Dylan Matthews, *The closure of meatpacking plants will lead to the overcrowding of animals.*

The implications are horrible., Vox (May 4, 2020), https://www.vox.com/2020/5/4/21243636/meat-packing-plant-supply-chain-animals-killed.

37 Green, *supra* note 35.

38 Press Release, U.S. Dep't of Agric., USDA Announces Plans for $250 Million Investment to Support Innovative American-made Fertilizer to give US Farmers more choices in the Marketplace (March 11, 2022), https://www.usda.gov/media/press-releases/2022/03/11/usda-announces-plans-250-million-investment-support-innovative.

39 Exec. Order No. 14036, 86 Fed. Reg. 36,987 (July 14, 2021).

40 *Id*.

41 *Id*.

42 *Id*.

43 *Id*.

44 *Id*. at § 5(i).

45 *Id*.

46 *Id*. at § 5(i)(i).

47 *Id*. at § 5(i)(i)(A).

48 *Id*. at § 5(i)(i)(B).

49 *Id*. at § 5(i)(i)(C).

50 *Id*. at § 5(i)(i)(D).

51 *Id*. at § 5(i)(i)(E).

52 *Id*. at § 5(i)(ii).

53 *Id*. at § 5(i)(iii).

54 *Id*.

55 U.S. Dep't of Agric., Agricultural Competition: A Plan In Support Of Fair And Competitive Markets 2, 7 (2022), https://www.ams.usda.gov/sites/default/files/media/USDAPlan_EO_COMPETITION.pdf (USDA identified the four strategies to address the directives from the Executive Order. "USDA is broadly focused on creating new opportunities for sustained on-farm profitability, especially as we work to address a consolidated food industry and return a larger share of the food dollar to those growing, harvesting, and processing our food. Our tools to do so can be grouped into four strategies: 1. Investing in promoting competition in meat and poultry processing; 2. Restoring confidence, fairness, and integrity to the regulation of livestock and poultry markets; 3. Enabling farmers and ranchers to fairly access value-added markets, where they can earn a greater share of the food dollar; and 4. Promoting competition analysis, advocacy, and action across the food system.").

56 *Id*. at § 5(i)(iii)(A).

57 *Id*. at § 5(i)(iii)(B).

58 *Id*. at § 5(i)(iii)(C).

59 *Id*. at § 5(i)(iii)(D).

60 *Id*. at § 5(i)(iii)(E).

61 *Id*. at § 5(i)(iii)(F).

62 *Id*. at § 5(i)(iv).

63 *Id*.

64 *Id*.

65 *Id*. at § 5(i)(v).

66 *Id*.

67 Press Release, U.S. Dep't of Agric., USDA Commits $215 Million to Enhance the American Food Supply Chain, (Feb. 24, 2022), https://www.usda.gov/media/press-releases/2022/02/24/usda-commits-215-million-enhance-american-food-supply-chain.

68 *Id*.

69 Press Release, The Whitehouse, Fact Sheet: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain (January 03, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/03/fact-sheet-the-biden-harris-action-plan-for-a-fairer-more-competitive-and-more-resilient-meat-and-poultry-supply-chain/; *Meat and Poultry Intermediary Lending Program*, Rural Dev., U.S. Dep't of Agric., https://www.rd.usda.gov/programs-services/business-programs/meat-and-poultry-intermediary-lending-program (last visited June 29, 2022).

70 *Meat and Poultry Processing Expansion Program,* Rural Dev., U.S. Dep't of Agric., https://www.rd.usda.gov/programs-services/business-programs/meat-and-poultry-processing-expansion-program (last visited June 29, 2022).

71 *Id*.

72 *Id*.

73 Nat'l Inst. of Food & Agric., U.S. Dep't of Agric., Request for Applications: Agriculture and Food Research Initiative Competitive Grants Program Education and Workforce Development Program 3 (2022), https://www.nifa.usda.gov/sites/default/files/2022-05/FY22-AFRI-EWD-RFA-508-MOD2.pdf.

74 *Agriculture and Food Research Initiative - Education and Workforce Development*, Nat'l Inst. of Food & Agric., U.s. Dep't of Agric., https://www.nifa.usda.gov/grants/funding-opportunities/agriculture-food-research-initiative-education-workforce-development (last visited June 30, 2022).

75 *Id*.

76 *Meat and Poultry Processing Expansion Program*, Agric. Marketing Serv., U.S. Dep't of Agric., https://www.ams.usda.gov/services/grants/mppta (last visited June 29, 2022).

77 *Id*.

78 *Id*. (The technical service providers are: Flower Hill Institute (the overall technical service coordinator for the MPPTA); Oregon State University- Niche Meat Processors Assistance Network; Intertribal Agriculture Council; American Association of Meat Processors; American Meat Science Association; and Agricultural Utilization Research Institute.).

79 *USDA Seeks Public Comment to Identify Anti-Competitive Market Structures and Practices in Fertilizer, Seed and Agricultural Inputs, and Retail Markets*, Agric. Marketing Serv., U.S. Dep't of Agric., https://www.ams.usda.gov/about-ams/fair-competitive/rfi (last visited June 27, 2022).

80 Competition in Food Retail and Distribution Markets and Access for Agricultural Producers and Small and Midsized Food Processors, 87 Fed Reg. 15,194, 15,196-97 (Mar. 17, 2022).

81 Competition and the Intellectual Property System: Seeds and Other Agricultural Inputs, 87 Fed. Reg. 15198 (Mar. 17, 2022).

82 Agric. Marketing Serv., *supra* note 78.

83 Press Release, Fed. Trade Comm'n, Federal Trade Commission and Justice Department Seek to Strengthen Enforcement Against Illegal Mergers (Jan 18, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/01/federal-trade-commission-justice-department-seek-strengthen-enforcement-against-illegal-mergers.

84 *Id*.

85 Press Release, U.S. Dep't pf Agric., USDA Announces Plans for $250 Million Investment to Support Innovative American-made Fertilizer to give US Farmers more choices in the Marketplace (Mar. 11, 2022), https://www.usda.gov/media/press-releases/2022/03/11/usda-announces-plans-250-million-investment-support-innovative.

86 Farm Serv. Ag., U.S. Dep't of Agric., Commodity Credit Corporation Fact Sheet (2015), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2015/ccc_fact_sheet_oct2015.pdf.

87 *Id*.

88 *Id*.

89 *Farmer Fairness,* U.S. Department of Agriculture, https://www.usda.gov/farmerfairness (last visited June 27, 2022).

90 *Id*.

91 Press Release, U.S. Dep't of Agric., USDA Launches Loan Guarantee Program to Create More Market Opportunities, Promote Competition and Strengthen America's Food Supply Chain (Dec. 9, 2021), https://www.usda.gov/media/press-releases/2021/12/09/usda-launches-loan-guarantee-program-create-more-market.

92 *Id*.

93 *Id*.

94 *Food Supply Chain Guaranteed Loan Program*, Rural Dev., U.S. Dep't of Agric. -, https://www.rd.usda.gov/food-supply-chain-guaranteed-loans (last visited June 28, 2022).

95 Press Release, U.S. Dep't of Agric., USDA Announces $500 Million for Expanded Meat & Poultry Processing Capacity as Part of Efforts to Increase Competition, Level the Playing Field for Family Farmers and Ranchers, and Build a Better Food System (July 9, 2021), https://www.usda.gov/media/press-releases/2021/07/09/usda-announces-500-million-expanded-meat-poultry-processing.

96 *Id*.

97 *Id*.

98 Investments and Opportunities for Meat and Poultry Processing Infrastructure, 86 Fed. Reg. 37,728 (July 16, 2021).

99 U.S. Dep't. of Agric., Competition and Meat Supply Chain Investments: Highlighted Comments from the Request for Information (RFI) (2022), https://www.usda.gov/sites/default/files/documents/Competition-RFI-Anecdotes-010322.pdf.

100 https://www.usda.gov/sites/default/files/documents/Competition-RFI-Anecdotes-010322.pdf.

101 Press Release, Agric. Marketing Serv., U.S. Dep't of Agric., New USDA Market News Reports to Enhance Price Transparency in Cattle Markets (Aug. 5, 2021), https://www.ams.usda.gov/press-release/new-usda-market-news-reports-enhance-price-transparency-cattle-markets.

102 *Id*.

103 U.S. Dep't of Agric., Highlights of the Evaluation of Formula Based Cattle Purchases (June 21, 2021), https://www.ams.usda.gov/sites/default/files/media/NegotiatedversusFormulaPurchases.pdf). *See also* U.S. Dep't of Agric., Operational Guidance on Negotiated versus Formula Purchases (De. 16, 2016), https://www.ams.usda.gov/sites/default/files/media/NegotiatedversusFormulaPurchases.pdf).

104 *Id*.

105 *Id*.

106 *Id*.

107 *Id*.

108 *Id*.

109 *See e.g.,* Agric. Marketing Serv., U.s. Dep't. Of Agric., National Daily Direct Hog Prior Day Report - Average Net Price Distribution (June 29, 2022), https://www.ams.usda.gov/mnreports/ams_2673.pdf.

110 Press Release, U.S. Dep't of Agric., USDA to Begin Work to Strengthen Enforcement of the Packers and Stockyards Act, (June 11, 2021), https://www.usda.gov/media/press-releases/2021/06/11/usda-begin-work-strengthen-enforcement-packers-and-stockyards-act.

111 *See* 7 U.S.C.A. § 192.

112 *Frequently Asked Questions on the Enforcement of Undue and Unreasonable Preferences under the Packers and Stockyards Act*, Agric. Marketing Serv., U.s. Dep't Of Agric. (Aug. 2021), https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/faq.

113 U.S. Dep't of Agric., *supra* note 94.

114 *Id*.

115 *Id*.

116 Transparency in Poultry Grower Contracting and Tournaments, 87 Fed. Reg. 34,980 (June 08, 2022); Poultry Growing Tournament Systems: Fairness and Related Concerns, 87 Fed. Reg. 34,814 (June 08, 2022).

117 U.S. Dep't of Agric., *supra* note 94.

118 *Id*.

119 *Frequently Asked Questions on the Enforcement of Undue and Unreasonable Preferences under the Packers and Stockyards Act*, Agric. Marketing Serv, U.S. Dep't of Agric. (Aug. 2021), https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/faq.

120 *Id*.

121 *Id*.

122 *Id*.

123 Press Release, U.S. Dep't of Agric., USDA Announces Efforts to Promote Transparency in Product of the USA Labeling (July 1, 2021), https://www.usda.gov/media/press-releases/2021/07/01/usda-announces-efforts-promote-transparency-product-usa-labeling.

124 *Id*.

125 *Id*.

126 Voluntary Labeling of Meat Products With "Product of USA" and Similar Statements, RIN: 5083-AD87, (Nov. 2021) (to be codified at 9 C.F.R. § 317.8).

127 *See generally*, Organization for Competitive Markets & American Grassfed Assoc., Petition for Change to the Food Safety and Inspection Services Standards and Labeling Policy Book on "Product of U.S.A.," (June 12, 2018), https://www.regulations.gov/document/FSIS-2018-0024-0001.

128 Voluntary Labeling of Meat Products With "Product of USA" and Similar Statements, *supra* note 123.

129 U.S. Dep't of Agric., *supra* note 109.

130 USDA has taken the first step toward developing this rule by proposing a rule to require more transparency for poultry growers in the tournament system. The agency continues to consider larger needed reforms to address unfairness in the system as a whole, signaled by the separate Advanced Notice of Proposed Rulemaking released in June. Poultry Growing Tournament Systems: Fairness and Related Concerns, 87 Fed. Reg. 34,814 (June 08, 2022).

131 U.S. Dep't of Agric., *supra* note 94.

132 *See generally,* Anna Straus, *A Guide to the Farmer Fair Practices Rules*, Farm Action (Feb. 24, 2021), https://farmaction.us/2021/02/24/a-guide-to-the-farmer-fair-practices-rules/ (providing a historical analysis of USDA and administration attempts to strengthen the Packers and Stockyards Act).

133 Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Conduct in Violation of the Act, 75 Fed. Reg. 35,338 (June 22, 2010).

134 Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act, 85 Fed. Reg. 79,779 (Jan. 11, 2021).

135 *Id*.

136 See e.g., *Livestock And Poultry Competition Reform On The Horizon*, Nat'l Sustainable Agric. Coalition (Aug. 27, 2021), https://sustainableagriculture.net/blog/livestock-and-poultry-competition-reform-on-the-horizon/.

137 Western Organization of Resource Councils, Petition for Rule-making on Captive Supply Procurement Practices under the Packers and Stockyards Act, at *45 (Oct. 06, 1996), https://web.archive.org/web/20161222010125/https://www.gipsa.usda.gov/psp/publication/worc_petition/petition.pdf.

138 *Id.* at *6.

139 Straus, *supra* note 129.

140 *GIPSA*, Am. Farm Bureau Fed'n, https://www.fb.org/issues/other/gipsa-rule-packers-and-stockyards-act/ (last visited June 29, 2020).

141 *About AMS*, Agric. Marketing Serv., U.S. Dep't of Agric., https://www.ams.usda.gov/about-ams (last visited June 28, 2022).

142 *Id*.

143 *See e.g.*, Larry Dreiling, *GIPSA no more, now part of AMS*, High Plains J.(December 15, 2018), https://www.hpj.com/ag_news/gipsa-no-more-now-part-of-ams/article_73d452fe-ffd6-11e8-884b-f3cbc9d3fc6c.html.

144 Organization for Competitive Markets, *Final Nail in the Coffin: USDA formally eliminates GIPSA*, Tri-State Livestock News (Nov. 30, 2018), https://www.tsln.com/news/final-nail-in-the-coffin-usda-formally-eliminates-gipsa/.

145 U.S. Dep't of Agric., *supra* note 106.

146 *See e.g.*, Jodie Pitcock,*Fall 2021 Webinar Series: Livestock Mandatory Reporting (LMR) Formula Transactions and Net Price Distribution of Fed Cattle*, Agric. Marketing Serv., U.S. Dep't of Agric. (Sept 22, 2021), https://www.ams.usda.gov/grades-standards/beef/cattle-carcass-training-centers/fall2021.

147 Cattle Contract Library Act of 2021, H.R. 5609, 117th Cong. (2021).

148 9 C.F.R. 201.211.