



[Home](#) » Questions abound as Harris raises prospect of price-gouging ban

[ECONOMY](#) [NEWS](#) [POLITICS](#)

# Questions abound as Harris raises prospect of price-gouging ban

08/21/24 6:04 AM By Noah Wicks



Legal experts and economists say it's hard to tell how a federal ban on price gouging in the food industry would work, and they warn that price controls such as those suggested by Vice President Kamala Harris could come with unintended consequences.

Harris has vowed to pass the “first ever federal ban on price gouging,” adding the plan will “include new penalties for opportunistic companies that exploit crises and break the rules. “We will help the food industry become more competitive,” Harris said at an event last Friday.

There’s no universal definition for price gouging — but its use, at least in the current debate, could be interpreted as “unnecessary increases in price above cost,” according to Arizona State University agribusiness professor Tim Richards.

Gouging would be “completely opposite” of inflation, which is the general rise of all prices. If gouging were to occur, it would happen amid a price spike, or a short-term cost increase above average.

Still, it’s hard to pin down exactly what Harris sees as price gouging, and the lack of clarity has left some observers questioning what she truly means.

“I think the price gouging line, which sure got attention, was not advised, especially without a much more explicit one-sentence or two-sentence ‘what I mean by price gouging is,’” said University of Wisconsin-Madison law professor Peter Carstensen, who noted that it “opens the door to all kinds of fantasies.”

Price gouging laws are currently in place in around 37 states, with varying triggers and applications, according to the American Bar Association. Many are regional and don’t kick in unless some sort of emergency disaster, like a hurricane, is declared in the midst of rising prices. Some also apply only to certain products like food, gas or medical supplies.

While a potential Harris policy has been presented in the context of food, it’s unclear whether it would also apply in the case of emergencies. Her focus on high grocery prices could indicate a broader policy that could apply without an emergency situation, said Weber State University economist Gavin Roberts.

Such policies also come with risks and only benefit consumers in instances where one company holds a monopoly over the industry, Roberts said. Price controls could lead to product shortages and may not address, and possibly even contribute to, what is often the root cause of the pricing problem – industry concentration.



Gavin Roberts of Weber State

“Doing price gouging regulation is like putting a bandaid on the situation, because the problem, the disease, is some type of lack of competitiveness in the industry,” Roberts said, noting that under general economic theory, more competition helps to keep prices consistent and price gouging restrictions discourage outside competitors from jumping into markets during high-profit periods.

One route Harris could take would be to bar companies from increasing the price of any item by a certain percentage within a certain period of time like a month or a

a certain period of time like a month or a year, Roberts said.

If she made the percentage threshold high enough, such a policy would only be triggered by drastic price changes and violations, at least in the grocery sector, would occur rarely, if ever. Doing this would allow Harris to keep her campaign promise without drawing too much attention to the actual policy.

Barring price increases over a lower threshold, such as 1% a year, could come with consequences, Roberts warned. Competitors would face less incentive to jump into sectors where profits are increasing, if the government could step in and regulate prices. That in turn could lead to more consolidation in the food and grocery industry.

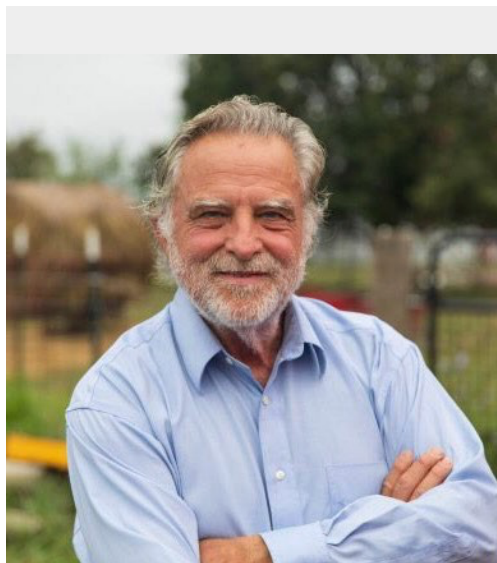
“It becomes a circle at that point because the beginning of the conversation is usually about competitiveness,” Roberts said. “So we want to be very careful about getting in the way of that competitiveness.”

A less likely approach could be to force grocery retailers to justify price increases by requiring them to show federal enforcers cost-of-production information, though Roberts noted that such

a policy would impose greater bureaucratic burden.

Harris could also be signaling an intent to throw her weight behind [a price-gouging bill proposed earlier this year by a group of Democratic senators](#), said Joe Maxwell, the president of the Farm Action Fund. That bill would list price gouging as an unfair and deceptive practice under the FTC Act, require public companies to disclose their costs and pricing strategies, and “create an affirmative defense for small businesses acting in good faith.”

Maxwell applauded Harris’ focus on price gouging, which he called “spot on.” Some of the actions she’d need to take, like providing additional authorities and resources for the FTC, would likely require congressional action, he noted. Harris’ potential pursuit of a price gouging ban could also separate her from current President Joe Biden when it comes to competition policy, Maxwell noted. Biden himself has not made the push for a similar FTC-centered authority, he said.



Joe Maxwell of Farm Action Fund

“I think that she’ll not just do lockstep everything that President Biden was looking at,” Maxwell said. “I think she’ll have her own approach.”

Harris’ economic plan also calls for a crackdown on “unfair mergers and acquisitions,” and says she intends to “support smaller businesses, like grocery stores, meat processors, farmers, and ranchers, so those industries can become more competitive.”

The Justice Department’s antitrust division, in addition to setting up an agriculture-focused team of enforcers in Chicago, has brought a case against information firm Agri Stats. DOJ also worked with the Agriculture Department to create a joint portal for producers to submit comments and concerns about anticompetitive behavior.

The USDA, meanwhile, has unveiled a series of Packers and Stockyards Act rulemakings aimed at preventing companies from engaging in retaliatory or discriminatory action against producers.

“The optimist in me wants to read what she says as much more of a broader commitment to the policy that the Biden administration is pursuing: enhanced competition, enforcement both as a regulatory matter at various agencies and

enforcement of antitrust laws,” Carstensen said of the plan’s language.

For more news, go to [www.agri-pulse.com](http://www.agri-pulse.com).