



January 17, 2023

S. Brett Offutt  
Chief Legal Officer/Policy Advisor  
Packers and Stockyards Division,  
U.S. Department of Agriculture  
AMS Fair Trade Practices Program  
Room 2097-S, Mail Stop 3601  
1400 Independence Ave. SW  
Washington, DC 20250-3601.

**Re: Document ID/Number: AMS-FTPP-21-0045-0404; November 30, 2022; Federal Register Vol. 87, No.229, Page 73507.**

Dear USDA Agricultural Marketing Service Chief Legal Officer S. Brett Offutt,

On behalf of the nearly 17,000 family farmers, ranchers and rural members of Rocky Mountain Farmers Union (RMFU), I am pleased to submit comments regarding the proposed rule, “Inclusive Competition and Market Integrity Under the Packers and Stockyards Act” and we believe that any producer is vulnerable to injury if they conduct business in markets that lack proper competition.

RMFU’s grassroots, [member-driven policy](#) states that, “We support the strengthening and enforcement of antitrust laws.” Additionally, RMFU’s policy endorses the idea that, “We support Congress and the Executive Branch using the full might of anti-trust laws to break up oligopolies that are causing unfair markets, price fixing, and non-competitive industry consolidation and we urge all branches of government act to prevent oligopolies and monopolies and remedy the concentration of power in the packing, marketing, processing, and crop and livestock input industries.”

Thus, we appreciate that the USDA-AMS has issued the proposed rule to strengthen the Packers & Stockyards Act (P&S Act), a law aimed at promoting fairness and competition in livestock, meat and poultry. It is widely held that the original 1921 law greatly needs updated to reflect modern realities and injustices that regularly occur within the industry. These additional protections will aid in protecting producers from certain prejudices, disadvantages, adverse actions, unjust discrimination, retaliation, and deceptive practices.

RMFU believes that the proposed rule will delineate specific forms of undue prejudice and unjust discrimination by creating the definition of a “market vulnerable individual” (MVI). However, the proposed definition could be strengthened, and would be more effective, if it was expanded to protect producers who operate in highly concentrated markets. For example, cattle producers here in the state of Colorado should be considered an MVI, because USDA has not publicly reported fed cattle prices in

the state for several years because there are too few packers purchasing fed cattle in our state to overcome USDA confidentiality guidelines. In addition, many of our members, within our three states of NM, CO and WY, report that it is a regular occurrence that two or fewer livestock buyers are present during local auctions.

RMFU's policy is representative of its members in CO, WY, and NM regardless of their age, race, color, religion, national origin, ethnicity, citizenship, immigration status, gender expression, marital status, source of income, military status, disability, criminal record, genetic information, or any other status protected by applicable federal, state, or local law and we agree that these protected classes should be explicitly included in the MVI definition in addition to individuals who are part, or are perceived to be part, of a group that historically has been discriminated against, faced prejudice or has been the victim of deception or retaliation by regulated entities.

Regarding "Undue prejudices or disadvantages and unjust discriminatory practices" Section [201.304](#), we strongly support the list of actions that a regulated entity is prohibited from taking with respect to an MVI or cooperative and the list of prohibitions are largely inclusive. However, we recommend that the clause "but is not limited to" be added to Section [201.304\(a\)\(2\)](#) to give USDA the flexibility to address other prejudices or disadvantages that may arise. In addition, we strongly support section [201.304\(b\)](#) and appreciate USDA's recognition of the retaliation and retaliatory threats faced by covered producers; we recommend more thoroughly protecting producers from retaliation by broadening the activities producers can participate in to share grievances regarding regulated entities and retain protection from retaliation under the P&S Act; we also recommend adding the clause "but is not limited to" to Section [201.304\(b\)\(3\)](#) to give USDA more flexibility to address other retaliatory actions that may arise.

RMFU appreciates that regulatory compliance can, at times, be challenging but believes that the proposed "Recordkeeping of compliance practices" Section [201.304 \(c\)](#) is a simple compliance requirement. We strongly support requiring regulated entities to retain all records relevant to its compliance with sections 201.304(a) and (b) of the proposed rule.

Regarding the "Deceptive practices" Section [201.306](#), we strongly support the section on deceptive practices, and appreciate USDA's recognition that deceptive practices are used by regulated entities in their business relationships with covered producers; while we see this section as broadly inclusive of deceptive practices that are used by regulated entities, we recommend including the clause "but is not limited to" in section [201.306\(a\)](#) to give USDA flexibility to address other deceptive practices that may arise.

Discrimination, retaliation and deception of covered producers by regulated industries is a major concern in American agriculture and RMFU appreciates these efforts to ensure market access for all. The current ability to exclude marginal competitors and exploit covered producers rather than producing meaningful price discovery and transparency in the production and sales of livestock, meat and poultry has greatly injured not only those involved in production but have restricted consumers from accessing reliable, affordable sources of protein.

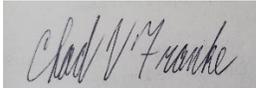
RMFU's members rely on competitive markets for their livelihoods. Current gaps in the P&S Act and the ability for USDA to enforce rules that prohibit intimidation, prejudice, retaliation, anti-competitive practices and threats has harmed America's farmers and ranchers and public policy should be reformed to address this. The draft rule is helpful in that it explicitly recognizes protected activities and the many

ways that covered producers are vulnerable because of the lack of competition that has grown over the last four decades. RMFU believes that this proposed rule, along with our suggested changes, will create an important path forward towards creating a fairer future for the producers of our nation.

Thank you again for the opportunity to submit comments. If you have any questions or would like to further discuss RMFU's position, please contact Director of RMFU, Dan Waldvogle, via e-mail at [daniel.waldvogle@rmfu.org](mailto:daniel.waldvogle@rmfu.org) or by phone at (970) 389-2041.

Thank you for your consideration of our comments during this pivotal moment that will determine the future of family-scale agriculture in the livestock industry.

Sincerely,

A rectangular box containing a handwritten signature in cursive script that reads "Chad Franke".

Chad Franke  
RMFU President