

Secretary Tom Vilsack
United States Department of Agriculture
1301 Independence Avenue SW
Washington DC 20250

January 30, 2023

Dear Secretary Vilsack,

As organizations that advocate for fair and competitive markets, we are writing to urge you to issue strong rules in the proposed series of rulemakings to strengthen and clarify aspects of the Packers and Stockyards Act (P&S Act) and address the treatment of livestock and poultry farmers and ranchers by meatpackers and poultry companies. The corporate abuses allowed under USDA's current P&S Act regulations have contributed to a highly consolidated food and farm system driving record numbers of farmers and ranchers out of business - undermining local and diverse land ownership, polluting our air and water, and threatening public health in frontline communities. Farmers and ranchers have been going out of business in record numbers, and the ones able to continue often have to work second jobs to make ends meet.

Ineffective P&S Act rules have created an unfair market that results in too much corporate power.

In the poultry sector, and increasingly in the hog sector, the most common business model is a vertically integrated one in which companies own the animals, set the terms of the contracts, and dictate all aspects of raising the animals, from the design of the buildings that they are confined in to the feed that they eat. Just four corporations control 70% of the hog market, and the two biggest corporations, Smithfield and JBS, are foreign-owned. The chicken sector is even more vertically integrated, with a staggering 96% of all broiler chickens grown by contract growers in the United States. These growers lose their economic independence when they enter into contracts; they must invest in whatever infrastructure the integrators require - taking on incredible amounts of debt and putting taxpayers on the hook for federally backed loans - and are responsible for disposing of the enormous amount of waste generated. Where once growers were independent small business owners, upon signing a contract with an integrator they are beholden to a large corporation. The growers bear all of the risks and debt associated with raising livestock while the agribusinesses capture all the profits.

And contract farming is a risky endeavor. Contracts between growers and integrators are often short – sometimes just a single flock, meaning that integrators are under no obligation to continue the contract after the current flock is gone – and companies might refuse to renew contracts if livestock prices lag or the grower has fallen out of favor. Terminated contracts threaten to leave growers with crushing debts that they cannot repay, and fear of retaliation often prevents growers from speaking out against the unfairness built into the system. Because these loans are oftentimes federally backed, taxpayers unwittingly carry the risk as well.

Reform is also essential in the beef industry, where four giant meatpackers control 85% of the

market. Without viable options to access an open market where prices are set in a public forum, cattle ranchers are forced to sell their beef to feedlots that service these multinational corporations. Oftentimes, the corporations themselves own the feedlots in a system called vertical integration. This means there is little competition; meatpackers know that and take advantage of it to line their own pockets. As we see beef prices soar in our grocery stores, ranchers are making pennies on the dollar for their product and many are going out of business.

Strong rules are essential to address these long-standing injustices. They are also necessary to fully realize the benefits of USDA's historic investment in supply chain resilience - especially its massive investment in small-scale meat and poultry processing plants - and give them a chance for success. Rebuilding that lost infrastructure is a step in the right direction, and producers strongly support these investments, but enticing smaller plants into a marketplace designed to enable unfair practices by a few dominant firms is a recipe for failure. Restoring a fair and competitive market is not only the right thing to do, it is necessary to support USDA's priorities and keep this new infrastructure economically viable.

Farmer testimonials and public input provided throughout the past two decades show us what reforms are needed to reintroduce fairness and competition into our agricultural sector and build a more resilient food system that benefits farmers, workers, consumers, animals, our environment, and rural communities and economies.

We believe that if written strongly, reflecting the experiences and needs of farmers and ranchers, these rules can breathe new life into the P&S Act and finally give effect to Congress' original intent to protect competition and fairness in our food and agriculture system.

1. Require transparency and structural reforms to the poultry tournament system

The tournament system, widely used in the poultry industry to compensate growers, forces growers into a ranking system that determines their compensation and pits them against each other. The tournament system was designed to penalize or reward particular growers and to facilitate the unfair, deceptive, and discriminatory treatment of growers, which clearly violates the original intent of the P&S Act.

USDA's proposed rule to address transparency in this system is an important first step. Requiring integrators to increase the information provided to potential and current contract growers is critical to ensuring that growers have the information they need to make informed decisions before entering contracts, including what their obligations will be and how the integrator will determine their pay.

But transparency is only the first step. USDA should quickly finalize the proposed rule on transparency and then implement additional structural reforms that prevent integrators from manipulating prices and engaging in discriminatory treatment. These rules should make clear that any tournament system or formula payment arrangement that bases grower compensation on factors outside their control is an unfair practice that is prohibited under the P&S Act.

2. Strengthen prohibitions on unfair and deceptive practices, undue preferences, and unjust prejudices.

USDA also intends to strengthen farmer protections by revising its definitions of the practices prohibited by the P&S Act, making it clearer when meat companies have violated the law. The new rules should adopt definitions that address and prohibit a wide range of anti-competitive practices that are advantageous to large industrial-scale producers, including but not limited to long-term marketing contracts, shorter-term forward contracts, cash sales, production contracts to raise packer-owned livestock, secretive purchase arrangements, production contracts, preferential distribution of the best quality chicks and feed, inequitable condemnation of birds during processing, selectively requiring certain growers to invest in equipment upgrades, and preferential treatment regarding layout periods between flocks and numbers of flocks delivered per year . Together with eliminating the need to demonstrate competitive harm to the whole industry, these reforms will put teeth back into the P&S Act and give producers an avenue for ensuring they have a remedy for unfair and deceptive practices, undue preferences, or unjust prejudices.

3. Clarify that parties do not need to demonstrate market-wide harm to competition in order to bring an action under section 202(a) and 202(b) of the P&S Act.

The P&S Act was meant to enable producers to enforce the law when meatpackers subject them to illegal, unfair practices and undue preferences. However, while USDA asserts that it is not the agency's practice to require a demonstration of harm to market-wide competition in order to bring an action under 202(a) or (b), some federal courts have required it anyway. As a result, producers are unable to enforce the P&S Act as Congress intended. This needs to be reconciled in USDA's rulemaking by clarifying that producers need not meet this incredibly burdensome threshold.

We appreciate the Biden Administration's concern and dedication to providing a fair market for our farmers and ranchers. Corporate consolidation and concentration in the food system has enabled deeply unjust and inequitable practices to thrive in anti-competitive markets. But this is not inevitable - the status quo is the result of policy failures that have benefited large corporate interests at the expense of family farmers and ranchers. With a renewed and strengthened P&S Act, we can stop the abusive practices of corporate meat processors and make real progress to revitalize rural economies and create a more resilient food and agriculture system.

We look forward to working with you in support of finalizing strong and meaningful reforms to the P&S Act regulations as quickly as possible to ensure that all of our nation's livestock and poultry farmers have the opportunity to thrive in fair and competitive markets.

Sincerely,

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