

Fair and Competitive Livestock and Poultry Markets – Proposed Rule

Overview

On June 28, 2024, the U.S. Department of Agriculture’s (USDA) Agricultural Marketing Service (AMS) published the proposed rule, “[Fair and Competitive Livestock and Poultry Markets](#).” The public comment period is open until August 27, 2024. The purpose of this proposed rule is to promote fair and competitive markets in the livestock, meats, poultry, and live poultry markets.

Through the Packers and Stockyards Act (P&S Act), Congress granted rulemaking and enforcement authority to USDA to ensure that appropriate competitive and fair trade and market protections are afforded to those participating in the livestock, meat, and poultry industries. With this proposed rule, USDA defines unfair practices as conduct that harms market participants and conduct that harms the market. Combined, these two categories of conduct comprehensively define the counters of “unfair practices” under the P&S Act.

In the past, USDA typically identified unfair practices through case-by-case administrative adjudication. In these cases, USDA would examine if the alleged violation was among those harmful practices that congress designed the P&S Act to prevent. The Department has found, however, that this standard insufficiently guides its modern enforcement investigations, and fails to explain its position to regulated entities.

Proposal

This proposed rule, if finalized, would provide a workable guide for how the prohibitions on unfair practices would operate and be enforced. The proposal sets forth a two-part framework outlined below:

- 1. Defines “unfair practice” with respect to market participants as a practice that—**
 - causes or is likely to cause substantial injury to one or more market participants, which
 - the participant or participants cannot reasonably avoid, and which
 - the regulated entity that has engaged in the act cannot justify by establishing countervailing benefits to the market participant or participants or to competition in the market that outweighs the substantial injury or likelihood of substantial injury.
- The proposed rule sets forth several guidelines USDA will consider when assessing unfair practices. With respect to market participants, the Secretary may consider:
 - The extent to which:
 - the practice may impede or restrict the ability to participate in a market,
 - the practice interferes with the free exercise of decision-making by market participants,

- the practice tends to subvert the operation of competitive market forces
- the practice denies a covered producer the full value of their products or services,
- the practice violates traditional doctrines of law or equity, or
- the producer would have to take unreasonable steps to avoid injury.
- The potential magnitude of the injury.

2. Defines “unfair practice” with respect to *markets* as a practice that:

- is a collusive, coercive, predatory, restrictive, deceitful or exclusionary method of competition that may negatively affect competitive conditions.

Further,

- With respect to markets, the Secretary may also consider, in addition to similar factors above, the extent to which:
 - the practice has indicia of oppressiveness, such as evidence of anticompetitive intent or purpose, or absence of an independent legitimate business reason for the conduct,
 - the practice tends to foreclose or impair the opportunities of market participants,
 - the practice reduces competition between rivals,
 - the practice limits choice,
 - the practice distorts or impedes the process of competition, or
 - the practice denies a market participant the full value of their products or services.

Public Comments

USDA invites comments on this proposed rule [here](#). While not required, AMS encourages comments to fully explain all views and alternative solutions or suggestions, supplying examples and data or other information to support those views where possible. Parties who wish to comment anonymously may do so by entering “N/A” in the fields that would identify the commenter.

Get Involved

Read the proposed rule and learn more on the Fair and Competitive Livestock and Poultry Markets [webpage](#).