



Agricultural Marketing Service

9 CFR Part 201

[Doc. No. AMS-FTPP-21-0046]

RIN 0581-AE04

Fair and Competitive Livestock and Poultry Markets

AGENCY: Agricultural Marketing Service, Department of Agriculture.

ACTION: Withdrawal of proposed rulemaking and termination of rulemaking proceeding.

SUMMARY: The United States Department of Agriculture’s (“USDA” or “the Department”) Agricultural Marketing Service (“AMS” or “the Agency”) is withdrawing a notice of proposed rulemaking, the “Fair and Competitive Livestock and Poultry Markets” proposed rule.

ADDRESSES: Packers and Stockyards Division, USDA, AMS, FTPP; Room 2097-S, Mail Stop 3601, 1400 Independence Ave. SW, Washington, DC 20250-3601.

DATES: The proposed rule published on June 28, 2024, 89 FR 53886, is withdrawn on [INSERT DATE OF PUBLICATION THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Chief Legal Officer/Policy Advisor, Packers and Stockyards Division, USDA AMS Fair Trade Practices Program, 1400 Independence Ave. SW, Washington, DC 20250; Phone: (202) 690-4355; or email: s.brett.offutt@usda.gov.

SUPPLEMENTARY INFORMATION: On June 28, 2024, AMS published the proposed rule entitled, “Fair and Competitive Livestock and Poultry Markets,” which sought to amend 9 CFR part 201 by adding § 201.308, “Unfair practices and devices,” to specify general practices that are unfair and in violation of section 202(a) of the Packers and Stockyards Act, 1921 (“P&S Act”). The proposed rule defined unfair conduct to

include harms to market participants and harms to the market. Regarding harm to market participants, proposed § 201.308(a) defined unfair practices with respect to market participants and proposed § 201.308(b) set forth standards for assessing whether an allegedly unfair practice under proposed § 201.308(a) causes or was likely to cause substantial injury with respect to market participants. Regarding harm to markets, proposed § 201.308(c) set standards for the unfair practices with respect to markets and competition and proposed § 201.308(d) set forth standards for assessing whether a practice poses or was likely to pose a threat to competition under proposed paragraph (c).

AMS received 13,241 public comments (some single comments including hundreds of signatories) on the proposed rule during the 75-day comment period, which closed on September 11, 2024. Of the comments received, 352 submissions were unique and 12,889 were part of several form letter campaigns. These comments were submitted or signed by producers, processors, industry trade organizations, farmers' coalitions, advocacy organizations, government entities, and a variety of other interested parties. Topics that garnered considerable attention in the comments—positive and negative—included questions of legality and authority surrounding the proposed rule, potential impacts to the market and market participants, potential economic impacts of the proposed rule, potential changes to and ramifications of legitimate business justifications, and countervailing benefits.

WITHDRAWAL OF THE NOTICE OF PROPOSED RULEMAKING AND TERMINATION OF THE RULEMAKING PROCEEDING

While AMS continues to support the intent and purpose of the proposed rule to increase competition and clarify the unfair practices prohibited under the P&S Act, based on the considerable feedback we received through the public comment process, we have determined it appropriate to withdraw the proposed rule. AMS believes that withdrawing the rule both preserves its ability to re-examine these important issues in the future and

enables the Agency to explore with stakeholders regarding how best to implement the requirements of the P&S Act.

Although this proposal is being withdrawn, AMS continues to support the intent and purpose of the proposed rule. Notably, the Department is not withdrawing this proposed rule and terminating this rulemaking proceeding based upon a change in agency interpretation of its authority under section 202(a) or 407 of the P&S Act. Nor should the withdrawal of this proposed rule be read to affect any other existing legal requirements or policies of the Department. This withdrawal action does not affect AMS' ongoing application of existing statutory and regulatory requirements or its responsibility to faithfully administer the P&S Act on a case-by-case basis.

Erin Morris,
Associate Administrator,
Agricultural Marketing Service.

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