



Food & Beverage ADVISORY ■

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Reexamining the Packers & Stockyards Act: Recent Congressional and USDA Attention on the Livestock Industry

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Congress passed the Packers and Stockyards (P&S) Act in 1921 to ensure competition and integrity in the livestock, meat, and poultry farming markets. The P&S Act was enacted in response to concerns about the “Big Five” meatpackers of the time and sought to strengthen enforcement in the sector. One hundred years later, as part of the issuance of its July 9, 2021 Executive Order on Promoting Competition in the American Economy, the White House has reported that four companies dominate 80% of the beef market today.

On June 23, 2021, the Senate Agriculture, Nutrition & Forestry Committee conducted a hearing in response to concerns of cattle producers and other interested stakeholders about the “Big Four” processing plants. As the title of the hearing—“Examining Markets, Transparency, and Prices from Cattle Producer to Consumer”—suggests, some cattle producers are concerned about the lack of transparency and competition within cattle markets. Chairwoman Debbie Stabenow (D-MI) also noted that farmers and ranchers were concerned with “concentration in the packing industry, potential market manipulation, [and] lack of access to small- and mid-size plants.” The USDA has also signaled that it plans to work on three proposed rules to strengthen enforcement under the P&S Act—proposals that the White House has encouraged the USDA to act on as underlined in the Executive Order.

Why the Focus Now?

The pandemic and other recent events have revealed how concentration can take a painful toll on independent farmers and ranchers, while exposing working family consumers to higher prices and uncertain output.

– Agriculture Secretary Tom Vilsack

There are several factors that have led to the recent USDA and congressional attention on the livestock industry. As a result of the COVID-19 pandemic, consumers have seen shortages in meat and meat products, which has led to disparities between consumer box price and cattle market prices. In addition to shifts in supply and consumer demand, as highlighted by Stabenow during the Senate hearing, other problems have affected the cattle market industry, including inadequate protection of employees in meat-processing plants and COVID-19 outbreaks at processing plants.

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The Senate hearing focused on examining concerns about lack of transparency and competition from livestock farmers and ranchers and touched on meat processors' struggle with labor shortages, the difficulties in hiring staff converging with rising consumer demand for meat, and the recent ransomware attack on JBS—which halted one-fifth of the nation's meat-processing capacity. These vulnerabilities underscore many Senators' concerns about the current state of the cattle market and need for USDA review and potential for congressional action in the future.

USDA Developments

In the "Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions," the USDA outlined its upcoming regulatory and deregulatory plans, which included its intention to work on three proposed rules under the P&S Act:

1. Revisions to the criteria to consider when determining whether certain conduct or action by packers, swine contractors, or live poultry dealers is unduly or unreasonably preferential or advantageous. These revisions would also clarify the conduct the USDA considers unfair, unjustly discriminatory, or deceptive and a violation of Section 202(a) and (b) of the P&S Act.
2. A proposed new poultry grower tournament system rule. The proposed rule would establish requirements a live poultry dealer must comply with if a poultry grower ranking system is utilized to determine grower payment, and a failure to comply would be deemed an unfair, unjustly discriminatory, and deceptive practice.
3. Reproposing a rule to clarify that parties do not need to demonstrate harm to competition to bring an action under the P&S Act.

These proposals follow a similar proposed rule from 2016 aimed at, among other things, clarifying unfair, unjustly discriminatory, or deceptive actions under the P&S Act, as well as clarifying that any conduct or action that harms or is likely to harm competition is a violation of Section 202(a). That rulemaking was later withdrawn in October 2017.

However, this Administration appears poised to act. According to statements from Vilsack, the purpose of these proposed rules is to "seek to strengthen the fairness and resiliency of livestock markets on behalf of farmers, ranchers, and growers." In a press release, the Department of Justice (DOJ) has also announced its support for the proposed rules, commending the USDA for steps taken "to strengthen enforcement of the Packers and Stockyards Act to improve competition in our agricultural markets" and acknowledging that the DOJ stands ready "to work hand in hand with the USDA to use our combined enforcement authorities to pursue these shared goals." The White House is fully aligned with these efforts; the Executive Order directs the USDA to initiate rulemakings to strengthen its regulations implementing the P&S Act.

Whether these proposed rules will ultimately be implemented remains to be seen, and although no specific proposed rule language has been released by the USDA, the livestock industry is taking notice. The North American Meat Institute—a trade association that represents U.S. packers and processors of beef, pork, lamb, veal, and turkey—has criticized the USDA's decision to propose new regulatory actions. Other trade groups like the National Cattlemen's Beef Association, which represents cattle farmers and ranchers, has indicated that while no specific language has been released for the proposed rules, they would support regulations under the P&S Act that "do not reduce cattle producers' ability to realize higher profits and make the decisions that are best for their business."

Legislative Agenda – Congressional Scrutiny

As evidenced by statements made by Senators of both parties in the Senate hearing, congressional scrutiny over the consolidation of cattle markets and inequities in the marketplace has reached a new high. A number of bills related to the U.S. cattle market are also working their way through Congress, including:

Grassley–Tester Spot Market Bill: Transparency in Cattle Market, S.949: This bipartisan bill, also referred to as the “50-14” bill, will require that at least 50% of a meatpacker’s weekly volume of beef slaughter be bought on the open or spot market. The legislation has support across party lines, which suggests this effort may have momentum moving forward.

Fischer–Wyden: Cattle Market Transparency Act of 2021, S.543: According to cosponsor Deb Fischer (R-NE), this bill establishes “regional mandatory minimum thresholds of negotiated cash and negotiated grid trades to enable price discovery in cattle marketing regions.” It also calls for, among other things, a publicly available database of marketing contracts between packers and producers and mandates that packers report to the USDA the number of cattle sent to slaughterhouses each day for the next 14 days.

Johnson–Spanberger: Butcher Block Act, H.R.4140: This bill calls for stand-alone grants for small meat processors looking to expand or add shackle space. The bill aims to finance producer investment to drive competition within the industry.

Regulatory and Legislative Horizon

With the attention from Congress, the White House, and USDA, the livestock industry should be closely monitoring policy and regulatory action in this area because it appears certain that increased enforcement of the P&S Act is on the horizon. Whether that is viewed as a positive or negative depends on what side of the fence you sit on. Cattle farmers and producers will likely welcome increased enforcement as an attempt to make the industry equitable. Large processors and packers are likely anticipating more scrutiny.

Beyond enforcement, interested stakeholders should also monitor for developments out of the USDA as it looks to increase investment in livestock processing operations. Following the signing of the Executive Order, the USDA announced it intended to invest \$500 million in American Rescue Plan funds to expand meat and poultry processing capacity “so that farmers, ranchers, and consumers have more choices in the marketplace.” Interested parties should expect more announcements from the USDA to implement this proposal.

The Food, Beverage & Agribusiness Team at Alston & Bird will be reviewing this legislation for future developments and watching for specific details of the three anticipated proposed rules to evaluate how each will impact the livestock industry.

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