

**CONSULTATION / LISTENING SESSION**  
**FRAMING PAPER**  
*on*  
**INCLUSIVE COMPETITION AND MARKET INTEGRITY UNDER THE**  
**PACKERS AND STOCKYARDS ACT**  
*Thursday, January 19, 2023*

**TRIBAL CONSULTATION**  
2:00 – 3:30p.m. CT

**TRIBAL LISTENING SESSION**  
3:30 – 5:00p.m. CT

Updated information on this event will be available at  
<https://www.usda.gov/tribalrelations/tribal-consultations>.

**GENERAL BACKGROUND**

- In 2021 President Biden issued an Executive Order on [\*Promoting Competition in the American Economy\*](#), and in 2022, an [\*Action Plan for Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain\*](#).
- USDA subsequently released the [\*Agricultural Competition: A Plan in Support of Fair and Competitive Markets\*](#).
- On October 3, 2022, USDA released a proposed rule on [\*Inclusive Competition and Market Integrity Under the Packers and Stockyards Act\*](#) (87 FR 60010) to affirm the below objectives:
  - Prohibit certain prejudices against market vulnerable individuals that tend to exclude or disadvantage covered producers in those markets;
  - Identify retaliatory practices that interfere with lawful communications, assertion of rights, and associational participation, among other protected activities, as unjust discrimination prohibited by the law;
  - Identify unlawfully deceptive practices that violate the Packers and Stockyards Act with respect to contract formation, contract performance, contract termination, and contract refusal; and
  - Promote inclusive competition and market integrity in the livestock, meats, poultry, and live poultry markets.
- USDA recognizes that tribal nations and citizens may perform like activities to those of packers and otherwise engage packers in their food supply chain.
- The Packers and Stockyards Act provides for antitrust and fair market enforcement and concentration returned to the meat packing industry.

**BACKGROUND ON THE PACKERS AND STOCKYARDS ACT**

- Congress [enacted the Packers and Stockyards Act](#) (P&S Act) “to assure fair competition and fair trade practices to safeguard farmers and ranchers...to protect consumers...and to protect members of the livestock, meat, and poultry industries from fair, deceptive, unjustly discriminatory and monopolistic practices...”.
- P&S defines a “packer” as *any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of marketing meats, meat food*

*products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce.*<sup>1</sup>

- P&S further defines a “person” as *individuals, partnerships, corporations, and associations.*<sup>2</sup>
- The P&S Act makes it unlawful for any packer, swine contractor, or live poultry dealer, to engage in unfair or discriminatory practice or to give undue preference to any person or locality as identified by 7 U.S.C. §192.
- [Packers are required](#) to file bonds if their annual livestock purchases equal or exceed \$500,000; pay promptly; if a seller prefers, mail checks in payment for livestock purchased for slaughter, for cash, and not on credit; maintain accurate scales; weigh accurately; hold assets for unpaid cash sellers under packer trust; use fair business practices; maintain adequate records; file annual reports; permit inspection by USDA of business records and facilities; provide information about the business to USDA; resolve contract disputes; and permit producers to decline arbitration, among other stipulations.

#### **USDA’S GOALS FOR NEW PACKERS & STOCKYARD RULES.**

- Prohibit undue prejudices, disadvantages, and adverse actions against market vulnerable individuals or localities at heightened risk in relevant markets;
- Prohibit as unjust discrimination, retaliatory and adverse actions that interfere with lawful communications, assertion of rights, associational participation, and related protected activities;
- Prohibit, as deceptive practices, regulated entities employing pretexts, false or misleading statements, or omissions of material facts, in contract formation, contract performance, contract termination, and contract refusal; and
- Require recordkeeping to support USDA monitoring, evaluation, and enforcement of compliance with aspects of this rule.

#### **FRAMING QUESTIONS FOR THE TRIBAL CONSULTATION**

##### **1. Undue Prejudices, Disadvantages, Deceptive Practices, and Discriminatory Practice**

- As framed by the rule, have you (as the Tribe or a Tribal citizen) been treated differently or unjustly (with prejudice, discrimination, or deception) when negotiating or pursuing a business relationship with any packer, swine contractor, or live poultry dealer (*see definition above*)?

##### **2. Retaliatory Practices**

- Has a packer, swine contractor, or live poultry dealer sought to retaliate (harm in some way) against your business after you engaged any of these activities?
  - communicating with a government agency on any matter related to livestock, live poultry, meats, meat food products, et al;
  - asserting rights indicated in the P&S Act;
  - looking to create or join an association;

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<sup>1</sup> 7 U.S.C. §191

<sup>2</sup> 7 U.S.C. §182(1)

- exploring a new business relationship; witnessing any action that may cause claim to an alleged violation of P&S Act;
- or any other like circumstance.

### 3. Recognition of Jurisdiction and Tribal Sovereignty

- The P&S statute gives USDA jurisdiction over “person[s],” which is defined as “*individuals, partnerships, corporations, and associations.*” Do you identify your tribal nation (including tribal arms and instrumentalities) as an individual, partnership, corporation, or association?
  - If not...
    - Do you believe the tribe and its arms/instrumentalities are subject to regulatory oversight by the Packers & Stockyards Act?
    - Can a tribe waive jurisdiction to allow USDA to assert regulation under the P&S?
    - What type of policies does your tribe have in place for its meat processing or other “packer” tribal enterprises?
    - Do your tribe’s policies, practices, or concerns differ when the tribal enterprise does business with producers or businesses that are tribal enterprises/ tribal members, versus those that are not?
    - How does your tribe/enterprise view risks to the tribal meat processing enterprise from potentially unfair/discriminatory practices by packers in meat sales markets?
    - How does your tribe/enterprise view other P&S regulations that may affect tribal and other producers (such as auction market oversight; bonding; prompt payment; accurate scales; holding assets for unpaid cash sellers under packer trusts; protections against mandatory arbitration, poultry grower disclosures, etc.)?
    - Would your tribe be interested in developing tribal regulations similar to the federal regulations regarding discriminatory practices identified in this rule?
    - Would your tribe be interested in a Memorandums of Understanding or other agreements with USDA to provide for inspection or audit of covered practices?
  - If yes...
    - Is the tribe and its arms/instrumentalities subject to regulatory oversight of the Packers & Stockyards Act?
    - How should USDA best regulate tribes and their arms and instrumentalities?

**General Public Questions.** A full list of questions that USDA has sought input from the general public on is available in the proposed rule ([87 FR 60010](#)).