

June 21, 2021

Dr. Melissa R. Bailey  
Agricultural Marketing Service, USDA,  
Room 2055-S, STOP 0201  
1400 Independence Avenue SW  
Washington, DC 20250-0201

RE: "Supply Chains for the Production of Agricultural Commodities and Food Products";  
Docket Number AMS-TM-21-0034; FR Notice Pages 20652-20654

Dear Dr. Bailey,

North Dakota Farmers Union (NDFU) appreciates the opportunity to comment on increasing the durability and resilience of U.S. food supply chains. NDFU is the largest general farm organization in North Dakota, representing more than 50,000 farm and ranch families, members and their energy and agriculture supply cooperatives. NDFU strongly supports efforts to reduce concentration in the food sector and create new market opportunities for family farmers and ranchers.

Consolidation in the food and agribusiness sector has created chronic challenges for farmers and ranchers. Many of the markets farmers and ranchers buy from and sell to are dominated by three or four large, multinational companies.<sup>1</sup> As markets become more consolidated, farmers and ranchers are often left with higher costs, less choice and lower prices for their commodities. Narrowing profit margins have forced many family farmers and ranchers out of business.

In the last two years, it has become increasingly apparent that concentration in agriculture and food supply chains has jeopardized our food system's resilience. Since August of 2020, there have been three separate instances where beef processing plant disruptions cause boxed beef and live cattle prices to diverge dramatically. The most severe of those events were the disruptions caused by plant closures in the early months of the COVID-19 pandemic, which caused the spread between fed cattle and boxed beef prices to increase by more than 300 percent.<sup>2</sup>

In response to COVID-19 supply chain disruptions, NDFU established a rancher-led livestock committee to develop priorities for market reform. The committee's proposals are broadly intended to strengthen competition and fairness, establish truth in labeling and increase local and regional

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<sup>1</sup> Mary K. Hendrickson, Philip H. Howard, Emily M. Miller and Douglas H. Constance. "The Food System: Concentration and its Impacts." May 6, 2021. [https://farmactionalliance.org/wp-content/uploads/2021/05/Hendrickson-et-al.-2020.-Concentration-and-Its-Impacts\\_FINAL\\_Addended.pdf](https://farmactionalliance.org/wp-content/uploads/2021/05/Hendrickson-et-al.-2020.-Concentration-and-Its-Impacts_FINAL_Addended.pdf)

<sup>2</sup> United States Department of Agriculture, Agricultural Marketing Service. "Boxed Beef & Fed Cattle Price Spread Investigation Report." July 22, 2020. <https://www.ams.usda.gov/sites/default/files/media/CattleandBeefPriceMarginReport.pdf>

slaughter capacity.<sup>3</sup> The committee's recommendations continue to guide NDFU's broader efforts on supply chain and market issues.

## **Fair Markets**

Vigorous antitrust enforcement is critical to competition and fairness in the food and agribusiness sector. NDFU supports efforts to strengthen and expand antitrust authorities. We also believe existing authorities must be leveraged to immediately evaluate and address the implications of current market structures. We urge USDA to increase coordination with the Department of Justice (DOJ) and Federal Trade Commission (FTC) on antitrust matters. We encourage closer scrutiny of future mergers and acquisitions with a stronger focus on how changes in market structure impact farmers and ranchers.

NDFU urges USDA to dedicate more resources toward Packers and Stockyards Act (P&S Act) enforcement to prevent anticompetitive behavior in the livestock, meat and poultry industries. NDFU welcomes USDA's recently announced intention<sup>4</sup> to strengthen Packers and Stockyards Act enforcement. Specifically, NDFU believes revisions to the "Undue Preference" rule should honor the statutory intent of protecting livestock and poultry farmers against certain practices by meatpackers and poultry companies. A revised rule should, at a minimum:

- Clarify that a reasonable business decision does not justify an undue preference or advantage;
- Establish methods and implement a program to continuously review and monitor industry practices to ensure that new practices do not result in violations of the P&S Act; and
- Provide explicit protections to farmers based on the right to association and communication, based on protected class.

NDFU also supports clarifying that the Packers and Stockyards Act does not require proof of competitive injury to the entire section where an unfair practice took place. This requirement is unnecessarily burdensome and ultimately exposes farmers and ranchers to anticompetitive practices.

## **Expanding Local and Regional Supply Chains**

A major challenge North Dakota farmers and ranchers face is their distance to market. The state is home to 975,000 beef cows.<sup>5</sup> Prior to 2020, less than 9,000 head of cattle were slaughtered in the state each year. Thanks to new market opportunities and increased state investment in plant upgrades and improvements, the state's commercial slaughter capacity grew to 10,400 in 2020.<sup>6</sup> NDFU believes USDA can support further progress toward establishing and expanding local and regional processors, which give producers more alternatives and opportunities.

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<sup>3</sup> North Dakota Farmers Union. "Policy Priorities for Livestock Reform," July 2020. <https://ndfu.org/wp-content/uploads/2020/07/Livestock-Reform.pdf>

<sup>4</sup> United States Department of Agriculture. "USDA to Begin Work to Strengthen Enforcement of the Packers and Stockyards Act." June 11, 2021. <https://www.usda.gov/media/press-releases/2021/06/11/usda-begin-work-strengthen-enforcement-packers-and-stockyards-act>

<sup>5</sup> United States Department of Agricultural Statistics Service. NASS-Quick Stats. Retrieved from <https://quickstats.nass.usda.gov>. Accessed June 17, 2020.

<sup>6</sup> Ibid.

### *Leveraging Rural Development Programs*

NDFU applauds USDA's recently announced plans to invest more than \$4 billion to strengthen supply chains.<sup>7</sup> We also encourage USDA to leverage existing programs to provide continued investment in local and regional processors. Since 2014, USDA has reserved five percent of Business and Industry Guaranteed Loan funds for local and regional food-related projects.<sup>8</sup> We urge USDA to expand that set aside and to prioritize funding for food and agricultural processors.

The Rural Energy for America Program can also be a powerful tool for helping processing plants install energy efficient equipment and to establish adjacent renewable energy systems. The Value Added Producer Grant is an important opportunity for producers and cooperatives to produce and market value-added products.

While the above programs are available to food processors, many producer groups and entrepreneurs looking to establish new plants often struggle to identify resources that fit their needs. NDFU urges USDA to develop a resource guide that outlines Rural Development programs, Food Safety and Inspection Service protocols and technical assistance. We also encourage USDA to devote Rural Development staff specifically to food supply chain development at headquarters and in field offices.

Finally, NDFU urges USDA to closely examine opportunities to expand processors' access to existing Rural Development programs. We support efforts to increase flexibility or create new programs that are specifically tailored for agriculture and food supply chain development.

### *Supporting Farmer-Owned Cooperatives*

NDFU has long viewed the cooperative business model as vital to the success of farmers, ranchers and rural communities. Farmer-owned cooperatives have an important role to play in strengthening the resilience of our food supply chain. Cooperatives often have lower margin requirements than corporations, allowing them to be successful in more remote or less lucrative locations. Local and regional cooperatives also help improve farmers' and ranchers' financial resilience. In situations where food and commodity prices diverge, member-owners often receive the benefits of a cooperative's higher profit margins through patronage dividends.

NDFU urges USDA to recommit to supporting establishment and expansion of cooperatives. While cooperatives provide several advantages to their members, new and expanding cooperatives often struggle with capital constraints and technical barriers. NDFU urges USDA to engage the Interagency Working Group on Cooperative Development to identify impediments to cooperative development and develop strategies for helping cooperatives overcome those challenges.

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<sup>7</sup> United States Department of Agriculture. "USDA to Invest More than \$4 Billion to Strengthen Food System." June 8, 2021. <https://www.usda.gov/media/press-releases/2021/06/08/usda-invest-more-4-billion-strengthen-food-system>

<sup>8</sup> United States Department of Agriculture, Rural Development. "Fact Sheet: Business and Industry Guaranteed Loan Program and Urban Eligibility for Local and Regional Food Products." [https://www.rd.usda.gov/files/Local\\_Food\\_Fact\\_Sheet\\_20150401.pdf](https://www.rd.usda.gov/files/Local_Food_Fact_Sheet_20150401.pdf)

## **Creating New Market Opportunities**

The establishment of local and regional supply chains create new opportunities for farmers and ranchers to sell directly to consumers, local retailers and restaurants. However, certain regulations can also limit potential opportunities for producers. NDFU encourages USDA to strengthen truth-in-labeling laws and relax barriers to intrastate and interstate sales of meat.

### *Truth-in-Labeling*

Truthful and accurate food product labels are imperative to a fair and transparent food system. Accurate and truthful labeling regimes can also create new market opportunities for farmers and ranchers. However, current labeling standards prevent consumers from making fully informed decisions about the products they buy, putting U.S. farmers and ranchers at a competitive disadvantage. NDFU is encouraged by President Biden's actions to support "Buy American" policies. We urge USDA to ensure those policies extend to our food system.

NDFU has long been a supporter of mandatory country-of-origin labeling (COOL). Consumers want to know where their food is coming from, and U.S. producers also deserve to take credit for producing a high-quality product. A 2017 poll indicates that 89 percent of American consumers support mandatory COOL.<sup>9</sup> However, since 2015, consumers have no reliable way of knowing where most of the pork and beef products in retail coolers originated.

In the absence of mandatory COOL, the "Product of U.S.A." label is the only existing mechanism for indicating whether pork or beef products are derived from animals raised on U.S. farms and ranches. However, current Food Safety and Inspection Service (FSIS) policy allows a product to be labeled "Product of U.S.A." if it is processed in the United States. This standard permits products derived from foreign born, raised and even harvested animals to bear the "Product of U.S.A." label. By FSIS's own admission, this policy may promote consumer confusion.<sup>10</sup>

NDFU urges FSIS to update the Food Standards and Labeling Policy Book to restrict use of the "Product of U.S.A." label to products derived from animals that are born, raised and harvested in the United States. This change would provide a valuable marketing tool for family farmers and ranchers and safeguard consumers from being deceived by inaccurately labeled meat and meat products.

### *Opportunities for Intrastate and Interstate Meat Sales*

Federal meat and poultry inspection standards require state programs to achieve a standard at least equal to federal standards. However, state-inspected facilities do not have the same market opportunities as their federally inspected counterparts. NDFU's members support eliminating that barrier to allow state-inspected meat to be sold across state borders.

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<sup>9</sup> Consumer Federation of America. "Large Majority of Americans Strongly Support Requiring Origin Information on Fresh Meat." July 24, 2017. [https://consumerfed.org/press\\_release/large-majority-of-americans-strongly-support-requiring-origin-information-on-fresh-meat/](https://consumerfed.org/press_release/large-majority-of-americans-strongly-support-requiring-origin-information-on-fresh-meat/)

<sup>10</sup> Rachel A. Edelstein. Letter to Elizabeth Drake. March 26, 2020. [https://mcusercontent.com/c35966bef9b816acff772766f/files/0b9966a4-0c88-4117-bb4d-d37fd7ceff6f/Signed\\_USCA\\_Product\\_of\\_USA\\_petition\\_response\\_final.pdf](https://mcusercontent.com/c35966bef9b816acff772766f/files/0b9966a4-0c88-4117-bb4d-d37fd7ceff6f/Signed_USCA_Product_of_USA_petition_response_final.pdf)

In the absence of a statutory change, USDA can take meaningful steps toward alleviating barriers to interstate sales of meat. NDFU is encouraged by the recent expansion of the Cooperative Interstate Shipment (CIS) program and encourages USDA to continue to build on that progress. While CIS involves extra requirements for state-inspected establishments, it provides an important avenue to accessing interstate markets.

NDFU also supports provisions in the fiscal year 2021 appropriations bill, which authorized grants to help meat processors satisfy federal food safety standards. We believe similar support should be provided to help custom-exempt plants transition to state-inspection. Doing so would create a continuum of opportunities for small processors, helping them access the market that best fits their needs.

### **Conclusion**

Thank you for the opportunity to provide comments on strengthening food supply chains. NDFU stands ready to support USDA's work to create a more fair and resilient food system and looks forward to further opportunities to provide input. Thank you for your consideration.

Sincerely,

NORTH DAKOTA FARMERS UNION



Mark Watne  
President

