

June 21, 2021

Melissa R. Bailey, PhD
Acting Deputy Administrator, Transportation and Marketing Program
U.S. Department of Agriculture, Agricultural Marketing Service
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 Deputy Administrator Bailey,

On behalf of the 20,000+ family farmer, rancher, and rural members of South Dakota Farmers Union (SDFU), thank you for the opportunity to submit comments on the need to strengthen the resiliency of the United States’ agriculture and food supply chains. SDFU works to ensure that farm families and their communities are respected, valued, and enjoy economic prosperity and social justice. Resilient, diverse, and secure agriculture and food supply chains are a prerequisite for achieving these ends.

Our comments address several key areas highlighted by USDA in its notice, including facilitating fair and competitive markets, improving local and regional food production, supporting and promoting consumers’ nutrition security, and meeting the needs of the agricultural workforce. SDFU would refer to National Farmers Union (NFU) who has also included an addendum to these comments that respond to USDA’s request for information to inform its thinking regarding how stimulus relief programs and spending related to food supply chain resilience as authorized by the Consolidated Appropriations Act, 2021 (CAA), and the American Rescue Plan Act of 2021 (ARPA) can help to increase durability and resilience within the U.S. food supply. This addendum is identical to the comments submitted by NFU previously to USDA through the informal “AMS COVID Stimulus Programs” comment period in March 2021.

Facilitating Fair and Competitive Markets

Family farmers and ranchers have long faced immense consolidation in the markets that both supply and buy from their operations. Multiple waves of nearly unfettered mergers and acquisitions over several decades have resulted in agriculture and food supply chains that are uncompetitive, lack resiliency, and underpay farmers while overcharging consumers. Many sectors in American agriculture are dominated by a small handful of multinational corporations. Just four companies controlled approximately 85 percent of beef slaughter and processing in 2018; there are high levels of consolidation in pork and poultry as well. In 2015, four companies-controlled 85 percent of the market for seed corn and 76 percent of the market for soybean seeds in the United States. Four firms account for approximately 84 percent of the global herbicide and pesticide market, and just two companies manufacture about half of the tractors and other essential farm machinery used by farmers.

Corporate concentration in livestock and dairy markets

During the COVID-19 pandemic, extreme concentration in the food system was most evident in the disruption in the livestock and poultry industries, where the closures or slowdowns at several massive meatpacking plants resulted in lost markets for farmers, constrained supplies, and higher prices for consumers. As of June 16, 2021, nearly 60,000 meatpacking plant workers at 574 meatpacking plants tested positive for COVID-19. Many of these cases were part of outbreaks that led to temporary closures, greatly reducing processing capacity. At the peak of closures, beef and pork facilities were operating 25 percent and 40 percent below average,

respectively. This bottleneck stranded farmers with animals that were market-ready but had nowhere to go, leading to euthanized animals and depressed prices.

Livestock slaughter and processing is heavily consolidated. Today, there are approximately 835 federally inspected slaughter facilities and 1,938 other slaughter facilities in the United States. In 1968, there were nearly 10,000 total slaughtering establishments across the country. As the number of plants decreased, many remaining plants have become bigger; for example, just 50 plants slaughter and process 98 percent of all cattle in the United States. While these larger plants may create certain efficiencies, they also create serious supply chain vulnerabilities.

A stark example of the potential consequences of these vulnerabilities was the fire that shut down slaughtering operations at Tyson Foods' Holcomb, Kansas beef processing plant for months. The plant at the time ranked as one of the eight largest plants in the United States in terms of daily harvest capacity; the fire eliminated approximately 30,000 head per week of capacity. While the company was ultimately able to shift some production to other plants, the event precipitated market reactions that lowered prices paid to ranchers, and increased prices for consumers, for several months.

A more recent demonstration of supply chain vulnerabilities was the cyberattack in late May and early June of 2021 that shuttered plants operated by the world's largest meat processor. JBS, which controls approximately one fifth of U.S. cattle slaughter, was hacked by a Russian-based ransomware group, forcing all nine of its beef plants in the U.S. offline. JBS's poultry and pork plants were disrupted as well. While the long-term effects of this break in the supply chain are yet to be fully felt and understood, market analysts reported anticipating higher consumer prices and backlogs that would negatively impact ranchers.

Concentrated market structures also increase opportunities for market manipulation and coordinated behavior. There has been a raft of price fixing litigation brought against major livestock industry companies since 2016, with multiple indictments and guilty pleas. These instances of market manipulation are in part a symptom of concentrated markets and, while the pursuit of these cases is a welcome development, the need for these actions is a product of under-enforcement of existing antitrust laws.

While many meat processing plants were shuttered or had reduced capacity during the pandemic due to outbreaks among workers, dairy processing was impacted by COVID-19 because unprecedented demand shifts emerged nearly overnight in March 2020. Consumer spending on food away from home plummeted as restaurants and food service facilities were closed, and demand for more traditional at-home dairy products spiked. The relative efficiencies of the dairy supply chain were a liability during these times, and even with extremely high demand for some products there was very little demand for others.

Backlogs ensued; and 2.5 percent of all milk produced in the U.S. in April 2020 was dumped (in a more typical time, about 0.2 percent of milk production is dumped). At the same time, in late spring and early summer of 2020, farm prices for milk dipped while retail prices rose. The Coronavirus Food Assistance Program (CFAP) afforded a degree of short-term assistance to farmers who felt the effects of the drop in

prices, but longer-term policy changes should focus on resiliency and adaptability in the dairy supply chain. Further flexibility will help to alleviate volatility in the dairy markets in the event of future shocks to supply and demand.

The importance of truth-in-labeling

Fair and competitive markets also require product labels that are accurate and do not mislead consumers. A supply chain that contains false or misleading product labels is less secure and resilient, placing domestic producers at a competitive disadvantage, while consumers are not empowered to make fully informed decisions about the products they buy. Farmers and ranchers want to provide consumers with accurate information about the origins of the food they purchase and consume, and federal labeling laws should support farmers in achieving that goal.

Moreover, consumers consistently express a desire to know the origin of their food. A 2017 poll demonstrates that 89 percent of a representative sample of American adults favored requiring retailers to indicate on the package label the country of origin of fresh meat they sell. Furthermore, 88 percent of adults favored requiring food sellers to indicate on the package label the country or countries in which animals were born, raised, and processed. More recently, a survey of a representative sample of American adults showed that 87 percent of American think that beef and pork should have a label listing its country of origin, with fairly consistent support across age groups, party identification, and areas of residence (rural, suburban, and urban).

SDFU has been a stalwart proponent of mandatory country-of-origin labeling (COOL) for meat. As an affiliate of SDFU and NFU's grassroots, member-driven policy states that mandatory COOL "is a valuable marketing tool for producers, and it allows consumers to know where the meat products they consume are born, raised, slaughtered, and processed." We also support the mandatory COOL rules in effect for other agricultural products, such as dairy, produce, honey, and nuts.

Truthful and accurate voluntary labels are important to producers and helpful for consumers, but voluntary labeling is not a replacement or substitute for mandatory COOL. The misuse of voluntary product label claims, including "Product of USA" and "Made in USA," are highly misleading to consumers and financially injurious to family farmers and ranchers. Falsehoods and uncertainty like this make domestic supply chains less secure and less resilient.

Currently, the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) Food Standards and Labeling Policy Book presents standards that do not require a meat product to be born, raised, and slaughtered in the U.S. to be labeled "Product of USA." The standard allows imported animals that are processed in the U.S. at USDA-inspected slaughter facilities to be labeled as "Product of USA." Due to the significant number of cattle imported from Canada and Mexico, many beef products of foreign origin are being represented with some variation of a "Made in USA" claim.

In response to a petition submitted by U.S. Cattlemen's Association in October 2019, FSIS stated that: "Permitting imported meat products that are further processed in a federally-inspected establishment to be labeled 'Product of USA' may be misleading to consumers and may not meet consumer expectations of what 'Product of USA' signifies. FSIS also agrees that to address these issues, the Agency needs to establish clear parameters that prescribe which meat product may voluntarily be labeled with U.S. origin statements, such as 'Product of USA' or 'Made in USA.'"

Thus, the standard used by USDA-FSIS to regulate the labeling of meat products is insufficient.

Recommendations for facilitating fair and competitive markets

To address multiple decades of corporate consolidation and anticompetitive behavior, and significant supply chain vulnerabilities from highly concentrated farm and food supply chains, there is a pressing need to vigorously enforce existing antitrust, competition, and market fairness laws. USDA must act expeditiously to create fairer and more competitive food and agriculture market.

- The Packers and Stockyards Act of 1921 (P&S Act) is a law meant to assure fair competition, safeguard farmers and ranchers, and protect consumers, from unfair, deceptive, and unjustly discriminatory and monopolistic practices of the livestock, meat, and poultry industries. USDA should:
 - o Dedicate substantially more resources toward the enforcement of the P&S Act; and
 - o Enforce the law more vigorously, including by working with the Department of Justice (DOJ) where appropriate.
- Revisit and update the “Undue Preference” final rule. The statutory intent of the “Undue Preference” provision of Section 202(b) of the P&S Act is to provide protections for livestock and poultry farmers against certain practices by meatpackers and poultry companies. But the final rule on “Undue Preference” issued by the previous administration ignored this statutory intent, and instead created a rule that further protects meatpackers and poultry companies. A revised rule should, at a minimum:
 - o Clearly state that the P&S Act does not require proof of competitive injury to the entire section where an unfair practice took place;
 - o Clarify that a reasonable business decision does not justify an undue preference or advantage;
 - o 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
 - o Provide explicit protections to farmers based on the right to association and communication, based on protected class.
- Discourage and otherwise prohibit the mislabeling of agricultural products by:
 - o Re-enacting mandatory country-of-origin labeling (COOL) for meat; and
 - o Ensuring that voluntary labels are fair and accurate.

Improving local and regional food production and developing new market opportunities

The COVID-19 pandemic has highlighted how large, seemingly efficient systems of production can falter when there are shocks to those systems. Local and regional food systems also faced disruptions but were often better positioned to adapt rapidly to new conditions, given their shorter supply chains and more direct connection to consumers. Given these recent experiences, local and regional farm and food systems play an essential role in protecting against these kinds of shocks.

Local and regional food systems have grown tremendously in recent decades. Nationally, between 1992 and 2007, direct-to-consumer sales of unprocessed products approximately doubled from \$706 million to \$1.4 billion (in 2017 dollars). The number of farmers’ markets in the United States grew from fewer than 2,000 in 1994 to more than 8,600 registered in the USDA Farmers’ Market Directory today. This growth can be attributed to many factors, including federal investment and support for local and regional food systems such as through the Local Agriculture Market Program, which includes the Farmers Market Promotion Program (FMPP), the Local Food Promotion Program (LFPP), and the Value Added Producer Grant (VAPG) program. Other key areas of essential federal investment in local and regional food systems include the Senior and WIC Farmers Market Nutrition Programs, the Gus Schumacher Nutrition Incentive Program (GusNIP), the Healthy Food Financing Initiative (HFFI), and the Farm to School Grant Program.

While continued investment in these programs is essential for strengthening our local and regional food systems, none of these programs adequately address a major gap: insufficient local and regional meat and poultry processing infrastructure. Many farmers are forced to schedule access to slaughter facilities years in advance, and many have no choice but to transport their livestock hundreds of miles to the nearest facility. The rise in massive slaughter and processing facilities and decline in smaller-scale facilities makes our food system more vulnerable to disruptions that can and have occurred at only a small number of facilities.

In the short-term, USDA can take the following actions to support local and regional processing:

- Develop detailed guidance that can help new or existing small meat and poultry slaughter and/or processing establishments comply with federal law;
- Examine how USDA can target existing resources to help smaller facilities achieve federal inspection, or to expand their existing capacity, including through grants and low-interest financing; and
- Evaluate and report on how current regulations may create unnecessary barriers for small facilities that might want to achieve federal inspection.

In the longer-term, USDA should work with Congress and state governments to devise ways to address the severe shortage of local and regional meat processing, such as by:

- Providing increased financial and technical assistance to smaller slaughter and/or processing facilities to expand their capacity;
- Helping smaller processors access interstate markets, including through appropriate regulatory reform, and by increasing the federal share of costs for inspection;
- Offering financial assistance to the development of new processing facilities, with particular emphasis placed on producer- or worker-owned cooperative business structures;
- Facilitating the development of mobile slaughter units that can fill gaps in slaughter where appropriate; and
- Investing financial and technical resources to expand meat processing training programs.

Risks posed by climate change

Climate change presents an immense challenge for farmers, ranchers, and rural communities, and puts the food supply for the United States and the world at risk. Rising temperatures, extreme heat, drought, heavy downpours, and wildfires are already disrupting the productivity of agriculture in the United States. While farmers and ranchers are on the front lines of experiencing the impacts of climate change, they also are in a unique position to contribute to mitigation through soil carbon sequestration.

SDFU would direct the Department to these public comments for full consideration of our recommendations for actions that could encourage the development, adoption, and equitable delivery of climate-smart practices for all family farmers and ranchers to address risks posed to agriculture by climate change. In summary, we encourage USDA to consider the following:

- Publicly state that climate change is an urgent priority across USDA and ensure programs reflect this prioritization;
- Appropriately staff and train USDA Natural Resources Conservation Service (NRCS) employees to ensure all farmers and ranchers across the country have access to technical assistance that addresses the specific needs of their land and operations;
- Implement a range of science-based tools – including private carbon markets, NRCS conservation programs, and state and local initiatives, among others – that provide operations for farmers and ranchers;
- Encourage the installation of on-farm renewable energy systems and use of biofuels; and
- Actively seek input, guidance, and participation from all farmers, including those who identify as

Black, Indigenous, and people of color (BIPOC), as well as other socially disadvantaged and underrepresented groups.

We look forward to working closely with NFU and USDA as the Department continues to build out and implement its strategy.

Supporting and promoting consumers' nutrition security

Across the country, Americans suffered from heightened food and nutrition insecurity during the pandemic, in part due to supply chain disruptions. In July 2020, 1 in 5 Americans with children reported that they were not able to afford enough food to feed their families, even though participation in the Supplemental Nutrition Assistance Program rose substantially. Many organizations that typically donate large amounts of food shut down, such as restaurants and hotels. Grocery stores had less to donate because panicked customers at times stripped shelves bare. Food banks had to purchase food that would typically be donated.

Important steps have been taken recently at the federal level to address food and nutrition insecurity, especially through funding provided by the American Rescue Plan Act. These essential actions include emergency increases in SNAP benefits, investment in technological improvements to support the use of SNAP benefits to purchase groceries online, investments in both child and senior nutrition programs, and further investment to support emergency food networks.

There is still a need to increase resiliency in the systems that promote nutrition security for all. The following are some key considerations for USDA:

- Continue to build on lessons learned during the COVID-19 pandemic to improve the systems by which USDA purchases food from family farmers and ranchers, and distributes those products to those in need;
- Help create stronger connections between farmers and ranchers producing for local and regional markets, and food banks and nonprofit feeding organizations;
- Eliminate barriers and increase access for socially disadvantaged farmers and ranchers to emergency feeding systems; and
- Continue to invest in the infrastructure needed to ensure that food banks and nonprofit feeding organizations can supply fresh, nutritious food all communities, including rural and low-income communities.

Meeting the needs of the agricultural workforce

While many employees have been able to work remotely during the pandemic, farmworkers, and other food supply chain workers, such as food manufacturing and grocery store workers, were deemed essential. The past administration's actions to keep meat processing plants open also kept plant workers working throughout the pandemic. Thus, many farm and food system workers continued to work at great personal risk to themselves and their families. Unfortunately, many of these workers fell ill, or lost their lives while doing the hard work of feeding us. It is important to prioritize protecting these workers as we build a more resilient food system.

According to data compiled by The Food and Environment Reporting Network (FERN), as of June 16, 2021, at least 1,451 meatpacking and food processing plants (574 meatpacking and 877 food processing) and 407 farms and production facilities have had confirmed cases of COVID-19. At least 91,122 workers (58,856 meatpacking workers, 18,601 food processing workers, and 13,665 farmworkers) have tested positive for the virus and at least 465 workers (297 meatpacking workers, 60 food processing workers,

and 107 farmworkers) have died. These numbers are staggering and deeply concerning.

For much of the pandemic, workplace safety rules and enforcement of standards varied from state to state. The scattershot approach to workplace safety, without a single clear and enforceable standard, put workers at increased risk. In June of 2021, the Department of Labor's Occupational Safety and Health Administration (OSHA) released a mandatory emergency temporary standard to protect workers from COVID-19 that included physical distancing and other protective measures. However, these new standards were only made mandatory for workers in the healthcare industry. OSHA then issued guidance for other industries; however, guidance cannot legally be enforced.

We ask USDA to consider the following:

- Work with OSHA to expand the scope of the emergency temporary standard to include other industries such as meat and poultry processing.
- Work with the CDC to increase vaccine and overall COVID-19 education among agricultural workers and employers. This includes information that can be shared across multiple languages.
- Take the lead on providing incentives and assistance opportunities for agricultural employers that have implemented or plan to implement COVID-19 assessment and control plans.

Conclusion

Thank you again for the opportunity to submit comments. SDFU and its members stand ready to work with NFU and USDA on these issues. If you have any questions or would like to further discuss NFU's recommendations, please contact our National office staffer Aaron Shier, NFU Senior Government Relations Representative, via e-mail at ashier@nfudc.org or by phone at 202-554-1600, or SDFU Executive director Karla Hofhenke at Khofhenke@sdfu.org

Thank you for your consideration.



Doug Sombke
President
South Dakota Farmers Union

