



STATEMENT OF ROGER JOHNSON

President

National Farmers Union

**Submitted to the House Committee on Agriculture Subcommittee on Livestock and Foreign
Agriculture**

"The Next Farm Bill: Livestock Producer Perspectives"

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On behalf of the family farmer, rancher, and rural members of National Farmers Union (NFU), thank you for holding this hearing examining the livestock and poultry sector as we head into deliberation and consideration of the next farm bill.

NFU is a grassroots general farm organization with nearly 200,000 family farmer, rancher, and fishermen members nationwide. Since 1902, NFU has supported family agriculture and rural communities through advocacy, education, and cooperative development. Delegates to NFU's annual convention, through a vigorously debated and democratic process establish NFU's policies. NFU policy states support of "Clarification of the Packers and Stockyards Act to allow individual producers to seek recourse for abuse of market power without having to prove competitive injury to the entire marketplace."¹ The interim final rule on the scope of 202(a) and (b) directly addresses NFU's concerns. Additionally, NFU policy supports, "Modifications to regulations under the Packers and Stockyards Act that govern integrator fair-trade practices and strengthen the enforcement mechanisms therein."²

The Packers and Stockyards Act of 1921 was passed in response to the 1919 Report of the Federal Trade Commission on the Meat-Packing Industry, that stated, "The power of the Big Five in the United States has been and is being unfairly and illegally used to manipulate livestock markets; restrict interstate and international supplies of foods; control the prices of dressed meats and other foods; defraud both the producers of food and consumers; crush effective competition; secure special privileges from railroads, stockyard companies, and municipalities; and profiteer." In 1916, the "Big Five's" percentage of interstate slaughter was 82.2 percent for cattle and 61.2 percent for hogs. The passage of the Packers and Stockyards Act in 1921 followed the Sherman Antitrust Act of 1890, the Federal Trade Commission Act of 1914, and the Clayton Act of 1914. The basic premise of the core antitrust laws was to protect competition for the benefit of consumers.

The P&S Act was passed in order "to regulate the sale of livestock by farmers to the more economically powerful livestock buyers."³ Congress passed the Act with recognition that the previous antitrust acts did not adequately protect farmers and consumers from the monopolistic practices of the meatpacking industry. The Act set out to regulate meatpackers engaging in unfair or deceptive practices that harm individual farmers.⁴ While the P&S Act has some typical antitrust components (Sections 202(c) through (f)), the law is broader than just antitrust in that it also establishes statutory

¹ National Farmers Union, *Policy of the National Farmers Union*, (March, 2016), henceforth "NFU Policy".

² NFU Policy.

³ See *Van Wyk v. Bergland*, 570 F.2d 701, 704 (8th Cir. 1978).

⁴ Stumo, Michael J., and Douglas J. O'Brien. "Antitrust Unfairness vs. Equitable Unfairness in Farmer/Meat Packer Relationships." *Antitrust Unfairness vs. Equitable Unfairness* (2003): n. pag. The National Agricultural Law Center.

trusts for the benefit of all unpaid cash sellers and delivery of full amount due, for example. These are not antitrust components of the P&S Act and were designed for the benefit of individual farmers and ranchers.

One hundred years after passage of the P&S Act, the concentration ratio among the top four meatpacking companies is 85 percent for beef, 74 percent for pork, and 54 percent for poultry.⁵ Farmers and ranchers are subject to both monopolistic practices in the agricultural inputs sector and monopsonistic practices in the agricultural production sector. Due to a lack of competition across the agricultural sector, farmers are subject to both the bargaining power of sellers of agricultural inputs and the bargaining power of buyers of the products farmers grow.

The development of contract farming as the model in the poultry and hog sector has institutionalized the “monopsony/monopoly relations between farm and agribusiness and the ability of the latter to capture value by the producer through price manipulation.”⁶ The two parties that negotiate the contract are not equal. This asymmetrical power results in undue influence over contract farmers.

Contract poultry growers are often required to invest hundreds of thousands of dollars for poultry houses and equipment that have a single purpose – raising birds. Farmers often invest with loans amortized over decades. Because of the lack of competition in the meatpacking sector, farmers may only have access to one to two processors in their immediate area. The poultry houses and equipment are sunk costs, which puts farmers at a tremendous disadvantage when negotiating contracts. As one farmer stated at the U.S. Department of Justice and USDA Public Workshops Exploring Competition in Agriculture: Poultry Workshop, “And when you have that kind of debt load over you, of course you’re going to choose to sign the contract. You feel that there’s no other option when you owe, you know, half a million dollars or a million dollars.”⁷

For years, USDA has attempted to address the anticompetitive behaviors of the meatpacking industry by promulgating rules that would help clarify the P&S Act and its scope. Blocked by congressional riders fueled by outrage from the meatpacking companies, USDA has, thus far, been unable to promulgate rules. The status quo system of indentured servitude by contract growers who are subject to increasingly offensive demands by integrators is simply unacceptable. NFU strongly supports the interim final rule on Scope of Sections 202(a) and (b) of the Packers and Stockyards Act and the

⁵ Scope of Sections 202(a) and (b) of the Packers and Stockyards Act, 81 Fed. Reg. 92565, (December 20, 2016).

⁶Jyotishi, Amalendu. "Monopsonistic Exploitation in Contract Farming: Articulating a Strategy for Grower Cooperation." *Journal of International Development*.

⁷ USDOJ & USDA Public Workshops Exploring Competition in Agriculture (2010), Normal, Alabama. Print.

proposed rules on Unfair Practices and Undue Preferences in Violation of the Packers and Stockyards Act and Poultry Grower Ranking Systems.

Thank you for the opportunity to submit a statement for the record on the state of the livestock sector. The Farmer Fair Practices Rules are long overdue. Family farmers and ranchers operating in an extremely consolidated marketplace should have the full protection of the Packers and Stockyards Act of 1921. Over the last few decades, judicial decisions have weakened the original Act, providing farmers and ranchers with less protection in a more challenging marketplace. These rules will go a long way to make sure that farmers and ranchers can continue to operate with basic protections under the law.

Sincerely,

Roger Johnson
President