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live poultry dealer intends to take an adverse action, including termination of a contract, against the poultry grower or swine production contract grower based on that breach of contract by the poultry grower or swine production contract grower;

(b) Whether the notice in paragraph (a) of this section includes the following:

(1) A description of the act or omission believed to constitute a breach of contract, including identification of the section of the contract believed to have been breached;

(2) The date of the breach;

(3) The means by which the poultry grower or swine production contract grower can satisfactorily remedy the breach, if possible, based on the nature of the breach; and

(4) A date that provides a reasonable time, based on the nature of the breach, by which the breach must be remedied.

(c) Whether the packer, swine contractor or live poultry dealer took into account the poultry grower's or swine production contract grower's ongoing responsibilities related to the raising and handling of the poultry or swine under their care when establishing the date by which a breach should be remedied; and

(d) Whether the poultry grower or swine production contract grower was afforded adequate time from the date of the notice of the alleged breach to rebut the allegation of a breach.

[76 FR 76889, Dec. 9, 2011]

§ 201.218 Arbitration.

(a) In any livestock or poultry production contract that requires the use of arbitration the following language must appear on the signature page of the contract in bold conspicuous print: “*Right to Decline Arbitration.* A poultry grower, livestock producer or swine production contract grower has the right to decline to be bound by the arbitration provisions set forth in this agreement. A poultry grower, livestock producer or swine production contract grower shall indicate whether or not it desires to be bound by the arbitration provisions by signing one of the following statements; failure to choose an option will be treated as if the poultry

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grower, livestock producer or swine production contract grower declined to be bound by the arbitration provisions set forth in this Agreement:

I decline to be bound by the arbitration provisions set forth in this Agreement

I accept the arbitration provisions as set forth in this Agreement

(b) The Secretary may consider various criteria when determining whether the arbitration process provided in a production contract provides a meaningful opportunity for the poultry grower, livestock producer, or swine production contract grower to participate fully in the arbitration process. These criteria include, but are not limited to:

(1) Whether the contract discloses sufficient information in bold, conspicuous print describing all the costs of arbitration to be paid by the poultry grower, swine production contract grower, or livestock producer, and the arbitration process and any limitations on legal rights and remedies in such a manner as to allow the poultry grower, livestock producer or swine production contract grower to make an informed decision on whether to elect arbitration for dispute resolution;

(2) Whether provisions in the entire arbitration process governing the costs and time limits are reasonable;

(3) Whether the poultry grower, livestock producer, or swine production contract grower is provided access to and opportunity to engage in reasonable discovery of information held by the packer, swine contractor or live poultry dealer;

(4) Whether arbitration is required to be used to resolve only disputes relevant to the contractual obligations of the parties; and

(5) Whether a reasoned, written opinion based on applicable law, legal principles and precedent for the award is required to be provided to the parties.

[76 FR 76889, Dec. 9, 2011]

Subpart O—Competition and Market Integrity

SOURCE: 89 FR 16198, Mar. 6, 2024, unless otherwise noted.

§§ 201.300–201.301 [Reserved]

§ 201.302 Definitions.

For purposes of this subpart, the following definitions apply:

Covered producer means a livestock producer as defined in this section or a swine production contract grower or poultry grower as defined in section 2(a) of the Act (7 U.S.C. 182(8), (14)).

Livestock producer means any person, except an employee of the livestock owner, engaged in the raising of and caring for livestock.

Regulated entity means a swine contractor or live poultry dealer as defined in section 2(a) of the Act (7 U.S.C. 182(8)) or a packer as defined in section 201 of the Act (7 U.S.C. 191).

§ 201.303 [Reserved]

§ 201.304 Undue prejudices or disadvantages and unjust discriminatory practices.

(a) *Prohibited bases.* (1) Except as provided in paragraph (a)(3) of this section, a regulated entity may not prejudice, disadvantage, inhibit market access, or otherwise take an adverse action against a covered producer with respect to livestock, meats, meat food products, livestock products in unmanufactured form, or live poultry based upon the following characteristics:

(i) On the basis of the covered producer's race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, marital status, or age.

(ii) On the basis of the covered producer's status as a cooperative.

(2) Actions that prejudice, disadvantage, inhibit market access, or are otherwise adverse under paragraph (a)(1) of this section are as follows:

(i) Offering contract terms that are less favorable than those generally or ordinarily offered to similarly situated covered producers.

(ii) Refusing to deal with a covered producer on terms generally or ordinarily offered to similarly situated covered producers.

(iii) Performing under or enforcing a contract differently than with similarly situated covered producers.

(iv) Requiring a contract modification or renewal on terms less favorable than similarly situated covered producers.

(v) Terminating or not renewing a contract.

(vi) Any other action that a reasonable covered producer would find materially adverse.

(3) The following actions by a regulated entity do not prejudice, disadvantage, inhibit market access, or constitute adverse action under paragraph (a)(1) of this section:

(i) Fulfilling a religious commitment relating to livestock, meats, meat food products, livestock products in unmanufactured form, or live poultry.

(ii) A Federally recognized Tribe, including its wholly or majority-owned entities, corporations, or Tribal organizations, performing its Tribal governmental functions.

(b) *Retaliation prohibited.* (1) A regulated entity may not retaliate or otherwise take an adverse action against a covered producer based upon the covered producer's participation in an activity described in paragraph (b)(2) of this section.

(2) The following activities by covered producers are protected under paragraph (b)(1) of this section unless otherwise prohibited by Federal, Tribal, or State law, including antitrust laws:

(i) Communicating with a government entity or official or petitioning a government entity or official for redress of grievances with respect to livestock, meats, meat food products, livestock products in unmanufactured form, or live poultry.

(ii) Refusing a request of the regulated entity to engage in a communication with a government entity or official that is not required by law.

(iii) Asserting the right to form or join, or to refuse to form or join, a producer or grower association or organization, or cooperative or to collectively process, prepare for market, handle, or market livestock or poultry.

(iv) Communicating or cooperating with a person for the purposes of improving production or marketing of livestock or poultry.

(v) Communicating, negotiating, or contracting with a regulated entity,

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another covered producer, or with a commercial entity or consultant, for the purpose of exploring or entering into a business relationship.

(vi) Supporting or participating as a witness in any proceeding under the Act, or any proceeding that relates to an alleged violation of any law by a regulated entity.

(vii) Asserting any of the rights granted under Act or this part, or asserting contract rights.

(3) The following actions are considered retaliation or an otherwise adverse action under paragraph (b)(1) of this section:

(i) Terminating or not renewing a contract.

(ii) Performing under or enforcing a contract differently than with similarly situated covered producers.

(iii) Requiring a contract modification or a renewal on terms less favorable than similarly situated covered producers.

(iv) Refusing to deal with a covered producer on terms generally or ordinarily offered to similarly situated covered producers.

(v) Interfering in a farm real estate transaction or a contract with third parties.

(vi) Any other action that a reasonable covered producer would find materially adverse.

(c) *Recordkeeping of compliance practices.* (1) The regulated entity shall retain all records relevant to its compliance with paragraphs (a) and (b) of this section for no less than 5 years from the date of record creation.

(2) Relevant records to paragraph (c)(1) of this section may include: policies and procedures, staff training materials, materials informing covered producers regarding reporting mechanisms and protections, compliance testing, board of directors' oversight materials, and the number and nature of complaints received relevant to this section.

§ 201.305 [Reserved]

§ 201.306 Deceptive practices.

(a) *Prohibited practices.* A regulated entity may not engage in the deceptive practices in paragraphs (b) through (e) of this section with respect to live-

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stock, meats, meat food products, live-stock products in unmanufactured form, or live poultry.

(b) *Contract formation.* A regulated entity may not make or modify a contract with a covered producer by employing a false or misleading statement, or omission of material information necessary to make a statement not false or misleading.

(c) *Contract performance.* A regulated entity may not perform under or enforce a contract with a covered producer by employing a false or misleading statement, or omission of material information necessary to make a statement not false or misleading.

(d) *Contract termination.* A regulated entity may not terminate a contract with a covered producer by employing a false or misleading statement, or omission of material information necessary to make a statement not false or misleading.

(e) *Contract refusal.* A regulated entity may not provide false or misleading information to a covered producer or association of covered producers concerning a refusal to contract.

§§ 201.307–201.308 [Reserved]

§ 201.389 [Reserved]

§ 201.390 Severability.

If any provision of this subpart, or any component of any provision, is declared invalid or the applicability thereof to any person or circumstances is held invalid, it is the Agricultural Marketing Service's intention that the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby with the remaining provision, or component of any provision, to continue in effect.

PART 202—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE PACKERS AND STOCKYARDS ACT

RULES OF PRACTICE APPLICABLE TO RATE PROCEEDINGS

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202.1 Applicability of other rules.

202.2 Definitions.

202.3 Institution of proceedings.