

**MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. DEPARTMENT
OF AGRICULTURE AND THE U.S. DEPARTMENT OF JUSTICE REGARDING
ENFORCEMENT OF THE PACKERS AND STOCKYARDS ACT**

I. Purpose and Scope

- A. The Packers and Stockyards Act “address[es] the unfair treatment of farmers and improve[s] conditions of competition in the markets for their products.” The Packers and Stockyards Act contains expansive prohibitions on a range of harmful, unfair, discriminatory, or anticompetitive practices.
- B. Both the U.S. Department of Agriculture and the U.S. Department of Justice (the “Agencies”) are vested by the Packers and Stockyards Act with authority to initiate and pursue enforcement proceedings under the statute.
- C. The Agencies share an interest in effectively pursuing violations of the Packers and Stockyards Act. Where appropriate for the effective administration of justice, they therefore share an interest in ensuring the timely referral of potential violations of the Packers and Stockyards Act from the Department of Agriculture for enforcement by the Department of Justice in appropriate cases. This Memorandum of Understanding (“MOU”) supports the communications and collaborations necessary to effectuate those referrals.

II. Authorities

- A. Section 407 of the Packers and Stockyards Act, 7 U.S.C. § 228, authorizes the Secretary to cooperate with any Federal agency including the Department of Justice. Section 404, 7 U.S.C. § 224, of the Packers and Stockyards Act authorizes the Secretary to refer violations to the Attorney General for enforcement in federal court.
- B. The U.S. Department of Justice’s authority arises whenever the Secretary of Agriculture, or the Secretary’s designee, reports a violation to the Attorney General or the Attorney General’s designee. 7 U.S.C. § 224.

III. Referral of Certain Packers and Stockyards Act Matters from the Department of Agriculture to the Department of Justice.

- A. The Agencies agree to regularly confer about potential violations of the Packers and Stockyards Act. Each Agency will designate a point of contact responsible for ensuring effective, ongoing discussion of potential Packers and Stockyards Act violations for referral to the Department of Justice. Those points of contact will meet with sufficient regularity to ensure coordination and the timely referral of appropriate matters. Appropriate matters may include those involving potential unfair, unjustly discriminatory, or deceptive practices; practices that may restrain commerce or create a monopoly; practices that may manipulate or control prices;

and any conduct that may also constitute a criminal violation of the Sherman Act, including price fixing, bid rigging, or market allocation agreements.

- B. Each Agency will work to establish procedures that streamline the referral process, including as necessary delegations of authority, governing regulations, and internal rules of procedure.
- C. The Agencies will jointly develop a public-facing complaint center for agriculture-related complaints that could potentially implicate one or more of the Packers and Stockyards Act, Sherman Act, and Clayton Act. They will develop internal procedures to ensure each such matter is handled in a way that vindicates all relevant authorities, including through matter referrals as appropriate. The Agencies will ensure that the information collection will comply with the Paperwork Reduction Act and its implementing regulations.

IV. Non-Public Information

- A. When one of the Agencies provides Non-Public Information pursuant to this MOU to the other Agency (hereafter such Agency providing such information shall be designated a “Providing Agency” and the Agency receiving such information shall be designated a “Receiving Agency”), the Receiving Agency shall presume the information so provided to be confidential Non-Public Information, and will maintain the confidentiality of such information in accordance with the terms of this MOU, unless and until the Providing Agency designates otherwise in writing.
- B. For purposes of this MOU, “Non-Public Information” means any information shared pursuant to this MOU that has not been designated as public information. Such Non-Public Information includes the information itself, in any form (including written, oral or electronic), and any document to the extent it contains such information.

V. Protecting the Confidentiality of Non-Public Information

- A. All Non-Public Information transferred from the Providing Agency to the Receiving Agency remains the records of the Providing Agency. The Receiving Agency shall maintain the confidentiality of the Non-Public Information and, except as specifically provided in this Section V., or with the written approval of the Providing Agency, will not disclose or otherwise make public any Non-Public Information to a third party.
- B. Unless otherwise authorized in writing by the Providing Agency, Non-Public Information may be shared only with officials and employees of the Receiving Agency who have a need to know the information in the performance of their official work duties consistent with applicable law. The Receiving Agency will establish and maintain such safeguards as are necessary and appropriate, including appropriate administrative, technical, and physical safeguards, to protect the confidentiality, data security, and integrity of any Non-Public Information obtained from the Providing Agency. All officials and employees of a Receiving Agency with whom Non-Public Information is shared must

comply with the terms of this MOU. The Receiving Agency will promptly notify the Providing Agency in the event of an unauthorized disclosure of the Providing Agency's Non-Public Information, including identifying, where possible, any recipient of information outside of the Receiving Agency or Providing Agency.

- C. If a Receiving Agency receives a legally enforceable request or demand from a third party for Non-Public Information of a Providing Agency including, but not limited to, a Congressional request or Freedom of Information Act request, the Receiving Agency will:
1. unless prohibited by law, promptly notify the Providing Agency in writing of such request or demand for any Non-Public Information of the Providing Agency and furnish to the Providing Agency copies of any such demand or request as well as any documents related thereto;
 2. afford the Providing Agency a reasonable opportunity to take whatever action it deems appropriate to preserve, protect, or maintain the confidentiality of the Non-Public Information or any privileges associated therewith;
 3. consistent with law, notify the requestor seeking the Non-Public Information that requests for such information should be made directly to the Providing Agency in accordance with applicable law;
 4. cooperate fully with the Providing Agency to preserve, protect, and maintain the confidentiality of the Non-Public Information and any privileges associated therewith, including asserting any legal exemptions or privileges on the Providing Agency's behalf that may reasonably be requested to be asserted, including withholding Non-Public Information from disclosure and not disclosing except as provided in this Section V.
 5. consent to an application by the Providing Agency to intervene in any related action solely for the purposes of asserting and preserving any of its privileges or claims of confidentiality with respect to Non-Public Information shared pursuant to this MOU.
- D. Nothing in this Agreement shall prevent a Receiving Agency from complying with a legally valid and enforceable order of a court of competent jurisdiction or, if compliance is deemed compulsory, a request or demand from a duly authorized committee of the United States Congress with authority to require and receive the Non-Public Information or testimony thereto if:
1. In the case of a legally valid enforceable subpoena of a court or order by a court of competent jurisdiction, the Receiving Agency reasonably determines that efforts to quash, appeal or resist compliance with the subpoena or order would be unsuccessful; attempts, to the extent practicable, to secure a protective order to preserve, protect and maintain the confidentiality of the Non-Public Information and

any privileges associated therewith; and immediately notifies the Providing Agency of its intent to comply with the subpoena or order and of any actions taken in compliance with the subpoena or order; or

2. In the case of a request or demand from a duly authorized Committee of the United States Congress with authority to require and receive the Non-Public Information, the Receiving Agency (a) advises the Committee that the Non-Public Information being produced belongs to the Providing Agency and requests that the Committee obtain the Non-Public Information directly from the Providing Agency; and (b) uses its best efforts to obtain the commitment or agreement of the Committee that it will maintain the confidentiality of the information.

E. The Agencies intend that sharing of information that is subject to this MOU will not constitute public disclosure, nor will it constitute a waiver of the work-product doctrine, confidentiality or any privilege or disclosure exemption applicable to such information including, but not limited to, deliberative and consultative materials.

VI. Sharing Agency Resources

A. Consistent with the purposes of this Agreement, and each Agency's interest to ensure the Packers and Stockyards Act is appropriately enforced, the Agencies may share staff resources if available and based on each Agency's own determination of its priorities.

B. The Agencies' sharing of staff resources may include detailing attorneys and staff from one agency to another on a reimbursable or non-reimbursable basis subject to applicable law, regulation, agency policy, and this Agreement.

VII. Other Matters

A. This MOU does not modify or supersede the MOU among the U.S. Department of Agriculture, the U.S. Department of Justice, and the Federal Trade Commission relating to "Cooperation with Respect to Monitoring Competitive Conditions in the Agricultural Marketplace," dated August 31, 1999.

B. The MOU shall become effective on the date of the latest signature date on this document and shall remain effective until terminated by an Agency. This MOU may be revised or modified upon written request of either Agency and the subsequent written concurrence of the other Agency. Either Agency may withdraw from the MOU by providing thirty (30) calendar days written notice to the other Agency. In the event an Agency withdraws from this MOU, Non-Public Information provided or obtained pursuant to this MOU will remain confidential and continue to be governed by the terms of this MOU.

C. Nothing in this MOU requires the parties to obligate, expend, or transfer appropriated funds. Specific work projects or activities that involve the transfer of funds, services, or


property among the various agencies and offices of the Agencies will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

- D. This MOU and all of its terms and conditions are not intended to relieve either a Providing Agency or a Receiving Agency of the requirements of any applicable law, including the Privacy Act of 1974, 5 U.S.C. § 552a, or the Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3422.
- E. This MOU does not create any obligations on the Agencies that are enforceable in a court of law. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person. This MOU also does not confer upon any third-party the right or ability, either directly or indirectly, to obtain, suppress, or exclude any information, or to challenge the execution of a request under this MOU. This MOU does not modify the ability and responsibility of the Agencies to enforce their respective statutes and regulations.
- F. This MOU may be executed in separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same agreement.
- G. In accord with paragraph III.A., each Agency shall designate a primary contact person to facilitate communications between and among attorneys, economists, and technical experts of the Agencies, and to contact for purposes of notice under the MOU. As soon as practicable after execution of this MOU, each Agency will advise the other Agency of the name, title, and contact information of this contact person. This contact information will be updated as appropriate.

[Remainder of this page intentionally left blank]

AGREED:


U.S. DEPARTMENT OF JUSTICE

By: **JONATHAN KANTER**  Digitally signed by JONATHAN KANTER
Date: 2022.02.03 14:41:07 -05'00' Date: 2/3/2022

Name: Jonathan Kanter

Title: Assistant Attorney General for the Antitrust Division

U.S. DEPARTMENT OF AGRICULTURE

By: **Janie Simms Hipp**  Digitally signed by Janie Simms Hipp
Date: 2022.02.03 10:28:05 -05'00' Date: 2/3/2022

Name: Janie Simms Hipp

Title: General Counsel