

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Parts 407 and 457

[Docket ID FCIC–20–0008]

RIN 0563–AC70

#### Area Risk Protection Insurance Regulations; Common Crop Insurance Policy Basic Provisions; Common Crop Insurance Regulations, Sunflower Seed Crop Insurance Provisions; and Common Crop Insurance Regulations, Dry Pea Crop Insurance Provisions

##### Correction

In rule document 2020–26036, beginning on page 76420 in the issue of Monday, November 30, 2020, make the following changes:

##### § 457.108 [Corrected]

■ On page 76427, in § 457.108, in the third column, in the fourth and fifth lines from the bottom, “■ 5. Cancellation and Termination Dates.” should read “4. Cancellation and Termination Dates.”

[FR Doc. C1–2020–26036 Filed 12–10–20; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 9 CFR Part 201

[Doc. No. AMS–FTPP–18–0101]

RIN 0581–AD81

#### Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes a new regulation containing criteria the

Secretary of Agriculture will consider when determining whether an undue or unreasonable preference or advantage has occurred in violation of the Packers and Stockyards Act, 1921 (Act). A provision of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) requires the Secretary to establish the criteria. The Act protects fair trade, financial integrity, and competitive marketing for livestock, meat, and poultry.

**DATES:** Effective January 11, 2021.

**FOR FURTHER INFORMATION CONTACT:** S. Brett Offutt, Chief Legal Officer/Policy Advisor; Packers and Stockyards Division, USDA, AMS Fair Trade Practices Program; phone: 202–690–4355 or email: [S.Brett.Offutt@usda.gov](mailto:S.Brett.Offutt@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Act at 7 U.S.C. 202(b) specifies that it is unlawful for any packer, swine contractor, or live poultry dealer to either make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect. In administering this provision of the Act, the United States Secretary of Agriculture (Secretary) determines whether the conduct of regulated entities is considered a violation of the Act.

In the past, each determination was analyzed using general principles on a case-by-case basis, exercising the regulatory flexibility Congress provided when it passed the Act. Section 11006(1) of the 2008 Farm Bill (Pub. L. 110–234) requires the Secretary to promulgate regulations establishing criteria the Secretary will consider in determining whether an undue or unreasonable preference or advantage has occurred in violation of the Act. At that time, the Secretary delegated responsibility for establishing the required criteria to the Grain Inspection, Packers and Stockyards Administration (GIPSA). In 2017, GIPSA merged with the Agricultural Marketing Service (AMS). AMS now administers the regulations under the Act and undertook this rulemaking to meet the statutory requirement. This rule adds a new § 201.211 to 9 CFR part 201—Regulations Under the Packers and Stockyards Act (P&S regulations). This rule retains a flexible framework for the Secretary’s determinations, while providing criteria to support transparency in the Secretary’s determinations. Accordingly, the

regulated industry and the public now have a reference to the general framework that AMS will use to determine whether there is an unlawful preference or advantage under section 202(b) of the Act.

Newly added § 201.211 requires the Secretary to consider four specified criteria when determining whether any undue or unreasonable preference or advantage has been given or made to any particular person or locality in any respect in violation of the Act. The Secretary is not limited to considering only these four criteria but can also take other factors into consideration as appropriate on a case-by-case basis. We discuss each of the four criteria later in this document.

AMS published a proposed rule regarding this matter in the **Federal Register** on January 13, 2020 (85 FR 1771). The proposed rule invited public comments on the addition of the proposed criteria to the P&S regulations. AMS allowed a 60-day public comment period for interested parties to submit comments. The comment period ended March 13, 2020. AMS received 2,351 comments on the proposed rule, of which 235 were unique. The remaining comments represented 48 groupings of similar comments, each group having at least 80 percent matching text. Commenters represented numerous segments of the livestock and poultry industry, from individual poultry growers and livestock producers to trade organizations representing producers, poultry companies, the meat packing industry, and state and national level agriculture groups. After considering the comments received, AMS determined to adopt the proposed criteria with two modifications. Analysis of the comments and AMS’s responses are included later in this document.

#### Background

As mentioned above, the 2008 Farm Bill directs the Secretary to establish criteria the Secretary will consider in determining whether an undue or unreasonable preference or advantage has occurred in violation of the Act. At the time the 2008 Farm Bill was enacted, what is now the Packers and Stockyards Division (PSD) of AMS’s Fair Trade Practices Program operated within GIPSA. GIPSA undertook the responsibility for developing criteria for consideration. In June 2010, GIPSA