

Confidential
FED CATTLE PACKING CIVIL INVESTIGATION
DOJ/STATE CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is entered into by and among the Antitrust Division of the U.S. Department of Justice (“DOJ”) and State Attorneys General (“States”) (collectively, “Parties”) with respect to the Parties’ civil investigations of potential coordination by Cargill, Incorporated (“Cargill”), JBS USA Holdings, Inc. (“JBS”), National Beef Packing Company, LLC (“National Beef”), and Tyson Foods, Inc. (“Tyson”) to reduce fed cattle slaughter, decrease the prices of fed cattle, and/or increase the prices of boxed beef (the “Fed Cattle Packing Investigation”). This Agreement facilitates cooperation between DOJ and the States. It ensures that the sharing of Confidential Information among the Parties does not diminish in any way the confidentiality of that information or constitute a waiver of any privilege; it sets forth certain terms regarding the contribution of resources by the Parties; it clarifies the Parties’ intent regarding communications with the public and press; and it gives adequate notice to other Parties of an intent by a Party to enter into settlement discussions or withdraw from this Agreement.

I. CONFIDENTIALITY

A. Confidentiality Obligations

“Confidential Information” means any non-public information related to the Fed Cattle Packing Investigation that is shared from one Party to another Party. The term “related to the Fed Cattle Packing Investigation” shall be broadly construed so as to include any Party’s investigation of fed cattle packing, any Party’s litigation associated with that investigation, and any Party’s litigation associated with any subsequent enforcement action under federal or state law.

Confidential Information includes, but is not limited to: the nature of coordination between the Parties, including the substance of any discussions between the Parties or the fact that the Parties are coordinating; the existence of this Agreement; factual, legal, or economic analyses related to the Fed Cattle Packing Investigation; memoranda (including interview memoranda); legal strategies; draft investigatory subpoenas or Civil Investigative Demands; draft complaints, motion papers and other litigation documents; draft settlement agreements and consent orders; information about or the existence of meetings or discussions with other Parties; and any other information regarding the analysis, approach, timing, conclusions, opinions, or strategy of a Party with respect to the investigation or litigation. Notwithstanding the above, the Parties may disclose the fact that they are coordinating to Cargill, JBS, National Beef, or Tyson, or to other third parties, when such disclosure is necessary to obtain waivers or to schedule or conduct an interview in furtherance of the investigation or settlement of the Fed Cattle Packing Investigation.

The Parties expressly reserve all evidentiary privileges, protections, and immunities applicable to Confidential Information. The Parties must take all actions reasonably necessary to preserve and protect the confidentiality and all privileges to which the Confidential Information is subject, including by:

- (i) Not revealing in any way any Confidential Information to any non-Party, except as authorized under this Agreement or required by law or court order;
- (ii) Restricting access to Confidential Information within a Party only to employees, agents, or consultants (including, but not limited to economists) of a Party, and not to any other person;

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- (iii) Promptly informing any persons who receive Confidential Information pursuant to (ii) above of their obligations under this Agreement;
- (iv) Establishing appropriate and reasonable administrative, technical, and physical safeguards for maintaining and transmitting Confidential Information; and
- (v) Using the Confidential Information only in the investigation or litigation related to the Fed Cattle Packing Investigation or for other law-enforcement purposes.

These obligations apply to any Party's interactions with Cargill, JBS, National Beef, Tyson, and any other party directly involved in a proposal to remedy competitive concerns related to the Fed Cattle Packing Investigation, with one exception: Any party may share Confidential Information with Cargill, JBS, National Beef, Tyson, or a third party insofar as the Confidential Information originated with, was provided to the Parties by, or is otherwise already known to that party.

B. Continuing Obligations

The confidentiality obligations of this Agreement continue:

- (i) Through any Party's investigation and any litigation related to the Fed Cattle Packing Investigation; and
- (ii) After a Party withdraws from this Agreement, otherwise stops coordinating its investigation with the other Parties, or decides to pursue a different enforcement path from any other Party.

If any Party decides to withdraw from this Agreement, but continue its enforcement efforts related to the Fed Cattle Packing Investigation ("Continuing Party"), it may, in furtherance of such enforcement efforts, use any information or documents that were initially provided by Cargill, JBS, National Beef, Tyson, or any third party to one of the Parties even if such information or documents are Confidential Information, consistent with any agreement between the producing party and the Continuing Party governing the use of information or documents. Notwithstanding any other language in this Agreement, such Continuing Party may use, in furtherance of its enforcement efforts, any Confidential Information shared among the Parties prior to its withdrawal from this Agreement, provided that it is otherwise used in accordance with the terms of this Agreement.

C. Disclosure of Confidential Information in Contravention of Agreement

Any Party that becomes aware that Confidential Information has been disclosed in contravention of this Agreement shall promptly advise all other Parties so that the significance and implications of the disclosure can be assessed. If Confidential Information is disclosed in a manner contrary to the terms of this Agreement, such disclosure does not constitute a waiver of any applicable privilege.

The Party responsible for disclosure shall describe for the other Parties the manner of the disclosure, the full extent of information disclosed, and any steps the Party has taken to remedy that disclosure and to avoid any future such disclosures.

II. RESOURCES

The Parties recognize that the States and DOJ both have devoted and will continue to devote substantial resources, including personnel, travel, and equipment costs, to the investigation and any related litigation. The Parties recognize that it is appropriate for all the Parties to contribute resources to the investigation and any related litigation, as described in this section.

- (i) Each Party shall cover the costs of its own deposition transcripts by making payments directly to the court reporting company. Notwithstanding each Party's obligation to pay for its own transcript, the Party noticing a deposition, in its sole discretion, shall determine the conduct and the format (e.g., video vs. audio recording) of the deposition.
- (ii) For any document hosting services procured by the DOJ and made available to the States, the DOJ and any State that obtains access to those document hosting services shall negotiate in good faith a reasonable allocation of the costs of those document hosting services.

III. COMPLAINTS AND OTHER PLEADINGS

At least seven (7) business days prior to a Party filing with a court or administrative agency a complaint or other pleadings commencing an action, the filing Party shall orally brief the other Parties on the nature of the filing. For any Party that communicates to the filing Party a good faith intention to join the filing based on the oral briefing, the filing Party shall as promptly as practicable share the then-current draft of the filing with such Party for comment and review. Any Party receiving a draft pursuant to this paragraph agrees, in addition to abiding by its other obligations under Part I of this Agreement, not to share or discuss the draft filing with any Party that has not also received the draft filing.

IV. SETTLEMENT

- (i) A Party must give at least seven (7) calendar days written notice to all other Parties before it either presents an offer of settlement to Cargill, JBS, National Beef, or Tyson, or accepts an offer of settlement from Cargill, JBS, National Beef, or Tyson, whichever occurs earlier.
- (ii) If a Party's claims are resolved, dismissed, or settled, that Party shall be deemed to have withdrawn from this Agreement as of the date of the resolution, dismissal, or settlement.

V. WITHDRAWAL

A Party may withdraw from this Agreement by providing three (3) calendar days written notice to all other Parties.

VI. COMPULSORY PROCESS

If a Party is served with a discovery request, subpoena, order, or other similar legal process that purports to require production or disclosure of Confidential Information, the Party must:

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- (i) Notify the other Parties as promptly as is reasonably possible and provide to them copies of the discovery request, subpoena, order, or other process (including all attachments), but the Party served with the discovery request, subpoena, order, or other process need not notify any other Party that also has been served contemporaneously with the same discovery request, subpoena, order, or other process;
- (ii) Afford the other Parties reasonable opportunity to take steps to preserve, protect, and maintain the confidentiality of such Confidential Information or any applicable privileges;
- (iii) Cooperate fully, to the extent allowed by law, with the other Parties to preserve, protect, and maintain the confidentiality of the Confidential Information and any applicable privileges;
- (iv) Resist, to the extent reasonably practicable and consistent with applicable law, court order, or regulation, the production of the Confidential Information pending receipt of written consent of the other Parties to the production of that material; and
- (v) Consent to any application by any other Party to intervene in any action or proceeding to preserve, protect, and maintain the confidentiality of the Confidential Information and any applicable privileges.

VII. FREEDOM OF INFORMATION LAWS

If a Party receives a request for disclosure of Confidential Information under the Freedom of Information Act or analogous state freedom of information law, the Party shall assert all applicable confidentiality protections and exemptions to their fullest extent. Nothing in this Agreement shall be construed to prevent a Party from disclosing Confidential Information that the Party, in its sole discretion, determines must be produced to comply with the Freedom of Information Act, analogous state freedom of information laws, or any other law or regulation. However, the Party must give ten (10) days' notice to the providing Party before producing the Confidential Information (or, if ten days' notice is not consistent with an applicable law or order, the maximum permitted notice). If, at any point, a Party determines that it cannot protect Confidential Information due to new legislation, a new interpretation of the law, a court decision, or for any other reason, it will immediately withdraw from the Agreement under the provisions of Section V.

VIII. STATEMENTS TO THE PRESS

The Parties may speak to the public and the press at their discretion, but a Party may reveal Confidential Information—as defined above, including the fact of and any information related to coordination among the Parties—only upon obtaining express consent from the Party from whom the Confidential Information was obtained. Nothing in this Agreement shall preclude a State from disclosing that it is coordinating with other States as they may agree apart from this Agreement.

IX. MODIFICATION

The provisions of this Agreement may be modified only by written agreement of all Parties.

X. EFFECTIVE DATE

This Agreement shall be effective as of the date upon which it is executed by the DOJ and any State. Additional States may join the Agreement by executing the signature page and delivering a copy thereof to all other signatories.

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The undersigned have executed this Agreement on behalf of the Parties on the dates indicated below:

U.S. DEPARTMENT OF JUSTICE, ANTITRUST DIVISION

By: *Dorothy B. Fountain*
Dorothy B. Fountain
Senior Counsel and Director of Risk Management
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dated: June 22, 2020

FOR THE Office of the Idaho Attorney General
Consumer Protection Division
954 W. Jefferson St., Second Floor
P.O. Box 83720
Boise, ID 83720-0010

By: *Brett DeLange*

Dated: June 19, 2020

Brett DeLange
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