

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

CARGILL MEAT SOLUTIONS  
CORPORATION, *et al.*,

*Defendants.*

Civil Action No.: 22-cv-1821

**PLAINTIFF UNITED STATES' MEMORANDUM OF LAW IN SUPPORT OF  
UNOPPOSED MOTION TO PUBLISH TUNNEY ACT COMMENTS  
ELECTRONICALLY**

The United States respectfully moves this Court to excuse publication of the public comments in response to its proposed Final Judgments in the *Federal Register* and, instead, allow comments to be posted on the Antitrust Division website in conjunction with *Federal Register* publication of the internet address at which comments can be read and downloaded.

The United States filed its Complaint in this case on July 25, 2022, along with two proposed Final Judgments, one with respect to Defendants Cargill Meat Solutions Corporation and Cargill, Inc. (together, "Cargill"), Wayne Farms, LLC ("Wayne"), and Sanderson Farms, Inc. ("Sanderson") (collectively, "Processor Settling Defendants"); and the other with respect to Webber, Meng, Sahl and Co., Inc., d/b/a WMS & Company, Inc. ("WMS") and WMS President G. Jonathan Meng ("Meng") (collectively, "Consultant Settling Defendants"). As required by the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the "Tunney Act"), the United

States caused notices to be published in the *Federal Register* and *The Washington Post*. In response, the United States received over 70 pages of public comments and attachments.

As required by the Tunney Act, the United States will file with the Court and serve on all Parties to this action a Response to Comments, which will include copies of all comments submitted as an attachment. The Response to Comments, without the attachment, will be published in the *Federal Register*. The Tunney Act also requires that the comments be made available to the public, which, before the Tunney Act was amended in 2004, the United States was required to accomplish through publication in the *Federal Register*.

However, the Tunney Act now authorizes the United States to publish comments by “alternative method” pursuant to 15 U.S.C. § 16(d) when “the expense of publication in the Federal Register exceeds the public interest benefits to be gained from such publication.” In this case, the United States received over 70 pages of comments, most of which will require photographic treatment for *Federal Register* publication at a rate of \$522 per page,<sup>1</sup> generating extensive publication costs. Instead, the United States proposes publishing the public comments on the Antitrust Division’s publicly accessible website, <http://www.justice.gov/atr>, to which the United States can refer interested members of the public, including by publishing the website’s address in the *Federal Register* as part of the United States’ Response to Comments. Using the Antitrust Division’s website, the United States can organize these materials and present them to the public in an accessible manner.

Publication of these comments in the *Federal Register* does not confer any significant public interest benefit that cannot be better served by electronic publication on the Antitrust

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<sup>1</sup> See Government Printing Office Circular Letter No. 1095 (Aug. 8, 2022), available at <https://www.gpo.gov/how-to-work-with-us/agency/circular-letters/open-requisitions-sf1-for-federal-register-and-code-of-federal-regulations-2022>.

Division's own website, which does not require a subscription. Indeed, at the time of passage of the 2004 amendment authorizing alternative publication, Senator Leahy of the Judiciary Committee noted that *Federal Register* publication can offer "little benefit, because those materials are, if anything, more accessible on the Web than in a library." 150 CONG. REC. 6,328 (2004). Likewise, Senator Kohl opined that alternatives such as "posting the proposed decrees electronically, [] are sufficient to inform interested persons of the proposed consent decree." 150 CONG. REC. 6,332 (2004).

Recognizing the benefits of electronic publication, other courts have excused *Federal Register* publication of Tunney Act comments and/or attachments in favor of electronic publication in several cases. *See, e.g., United States, et al. v. Deutsche Telekom AG, et al.*, No. 1:19-cv-02232-TJK (D.D.C. Nov. 5, 2019); *United States, et al. v. CVS Health Corp., et al.*, No. 1:18-cv-02340-RJL (D.D.C. Feb. 9, 2019); *United States v. Bayer AG, et al.*, No. 1:18-cv-01241-JEB (D.D.C. Jan. 2, 2019); *United States v. Anheuser-Busch InBev SA/NV, et al.*, No. 1:16-cv-01483-EGS (D.D.C. Jan. 19, 2017); *United States v. Anheuser-Busch InBev SA/NV, et al.*, No. 1:13-cv-00127-RWR (D.D.C. Aug. 2, 2013); *United States, et al. v. American Express Company, et. al.*, 1:10-cv-4496-NGG (E.D.N.Y. June 20, 2011); *United States v. KeySpan Corp.*, No. 1:10-cv-01415-WHP (S.D.N.Y. June 28, 2010) (attached together as Exhibit 1 to the United States' Unopposed Motion).

Accordingly, the United States respectfully requests that the Court grant the Unopposed Motion to excuse publication of the public comments in the *Federal Register* and permit such comments to be posted electronically on the Antitrust Division website in conjunction with a publication in the *Federal Register* of the relevant internet address.

Dated: January 27, 2023

Respectfully submitted,

FOR PLAINTIFF  
UNITED STATES OF AMERICA

/s/ Kathleen Simpson Kiernan  
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**CERTIFICATE OF SERVICE**

I, Kathleen Simpson Kiernan, hereby certify that on January 27, 2023, I caused true and correct copies of the foregoing Memorandum of Law in Support of the United States' Unopposed Motion to Publish Tunney Act Comments Electronically to be served via the Court's CM/ECF system.

/s/ Kathleen Simpson Kiernan

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