

Stakeholders Spar Over Proposed GIPSA Rule

USDA extends comment period into mid-November.

by Barb Baylor Anderson

Opinions vary within the beef industry about how proposed marketing rule changes to the Packers & Stockyards Act would affect beef producers. The one thing that is certain is everyone now has until Nov. 22, 2010, to express their opinion. The U.S. Department of Agriculture (USDA) has extended the comment period to the changes proposed by the Grain Inspection, Packers and Stockyards Administration (GIPSA) in the *Federal Register* June 22.

“The Secretary of Agriculture referred to this as one of the most sweeping reforms of the Packers & Stockyards Act,” says Steve Foglesong, Illinois cattle producer and president, National Cattlemen’s Beef Association (NCBA). “As such, it is extremely important that we thoroughly understand the rule and intended, and unintended, consequences on the U.S. cattle community.”

Proposed rule changes

Proposed changes to the Packers & Stockyards Act stem from language in the 2008 Farm Bill, which directed GIPSA to issue regulations for poultry and swine contracts, and for arbitration use in contracts, and to establish criteria for determining undue or unreasonable preference or advantage in violation of the act.

Currently, if a producer or someone else wants to show competitive injury, they must prove that a packer or processor harmed the market through such activities as collusion or price fixing. Under the proposed rule, a person no longer needs economic proof of competitive injury or likelihood of competitive injury for a lawsuit to be brought against a packer or processor. The proposed rules suggest that producers must only declare unfair treatment.

The proposed rule also would require packers and processors or other buyers using such marketing arrangements as forward, formula or production contracts to submit a sample copy within 10 days of completed arrangements for GIPSA to review. Arrangements would be posted on GIPSA’s website with confidential business information about buyers, trade secrets and personally identifiable information removed. The proposed rule is not clear whether producer

(seller) information would be protected under the Freedom of Information Act (FOIA).

USDA would have new criteria to determine whether undue or unreasonable preference or advantage is given to any cattle producer and to require that buyers make similar offers to all producers. If a producer does not feel price differentials are justified, suits could be filed.

Finally, packer-to-packer sales would also be disallowed under the proposed regulations. A beef packer in the Pacific Northwest that owns a feedlot in Kansas, for example, may be required to ship all of its Kansas feedlot cattle to Washington state for processing. Order buyers would also no longer be able to represent more than one packer.

Varied opinions

Many comments for and against the proposal are expected to be filed prior to the deadline.

NCBA leaders have been vocal about the proposal on a number of fronts. Foglesong says the group has concerns that new liabilities associated with the proposed rule could cause buyers to withdraw, reduce or inhibit the use of alternative marketing arrangements.

NCBA contends such arrangements are used by nearly 60% of the market. Cattlemen have found ways to develop and market premium-quality and branded products. In addition, NCBA stresses that the 2007 GIPSA Livestock and Meat Marketing Study found that producers and consumers would be worse off if such arrangements were reduced or eliminated. Ultimately, if rules change, NCBA predicts packers could choose to own more of their own livestock, rather than risk litigation. Packers directly own less than 5% of the market today.

“The components of this proposed rule hurt producers and could drastically change the way cattle are marketed in the U.S.,” Foglesong says. “American cattle producers are innovators who have worked hard over the past several years to develop alternative marketing arrangements and alliances to get paid for the value they add to their cattle. Whether intended or not, we believe this rule jeopardizes these long-standing arrangements

that compensate producers for providing higher-quality cattle . . . and meet specific consumer demand at the retail meatcase.”

The American Meat Institute (AMI) similarly suggests the proposal is flawed.

“USDA fails to understand the seriously adverse impact the proposed rule will have,” notes AMI President J. Patrick Boyle. “If USDA does not intend that the proposed rule have many of the results/concerns that have been voiced, the obvious solution is to withdraw the proposed rule, rewrite it with input from all the affected entities, and then offer a new proposed rule for public comment.”

In a letter to Agriculture Secretary Tom Vilsack, Boyle says USDA’s “Misconception and Explanation” document regarding the GIPSA proposed rule is a “somewhat unprecedented step in the midst of a notice and comment rulemaking procedure.”

“In reality, it does little to address the many concerns that have been created,” he says.

“In some ‘misconceptions,’ the department fails to characterize accurately the nature of significant concerns raised by the proposal. Moreover, in a seeming attempt to mollify critics and minimize adverse impacts, some ‘explanations’ actually contradict the plain language of the proposed rule.”

Others support

Other industry groups support efforts to revise the rules, including R-CALF USA. CEO Bill Bullard says, “Rural America has waited for decades for GIPSA to begin meaningful enforcement of the nearly 90-year-old Packers & Stockyards Act established to protect independent farmers and ranchers from unfair and deceptive practices by market-dominating meatpackers. This proposed rule is an essential first step in restoring lost competition.”

Organization for Competitive Markets (OCM) Executive Director Fred Stokes agrees.

“Cattle prices are increasingly determined by formulas that packer/buyers determine to their own best advantage. Any livestock producer who questions a corporate master does so at his own peril,” he says. “The

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proposed rules would clarify and restore the powerful Packers & Stockyards Act of 1921 and remove the basis for flawed judicial rulings, which, contrary to the plain language of the act, are gutting the law and setting dangerous precedents. Finalizing the rules and restoring PSA to its original intent would again make packers answerable for financial harm to producers.”

Roger Johnson, National Farmers Union (NFU) president, was disappointed to see the extension in the comment period.

“The extension gives leverage for packers to offer lower prices to producers as a fear mechanism, which we have seen in the past with rules such as country-of-origin labeling,” he says. “This rule is for the protection of producers. Further extending the deadline is proof that USDA is buckling under the pressure of industry. The focus needs to be on the producers. While USDA is taking a step in the right direction with this rule, the process needs to be expedited instead of slowed down.”

Congressional discussion

Several members of Congress also have weighed in on the controversy. The House

Agriculture Subcommittee on Livestock, Dairy and Poultry conducted a hearing in late July to review livestock and related USDA programs in advance of the 2012 Farm Bill. Subcommittee members found themselves immersed in discussion of the proposed rules.

“Fair and transparent markets are necessary for orderly commerce between producers, packers, processors, retailers and consumers,” Ranking Member Randy Neugebauer, Texas, noted. “At the same time, we owe it to our constituents to ensure the policy process is also fair and transparent so the path of good intentions does not lead us to the land of unintended consequences.”

Groups such as the Livestock Marketing Association (LMA) are still analyzing the proposed rule, and indicate they will provide comment at a later date.

And while the American Angus Association does not take a stand on public policy issues, CEO Bryce Schumann offers the following thoughts about the proposed rules.

“The Association has a long tradition of helping producers add value to their cattle. This organization played a pioneering role in the development of genetic evaluation programs. We also launched *Certified Angus Beef*® (CAB®) in the 1970s, and will sell more than 700 million pounds of CAB product

this year. In other words, the combination of technology, information and quality have converged into unprecedented marketing opportunities for users of Angus cattle today,” he says.

“We are supportive of efforts to protect open and free markets because our business is built on those things,” Schumann continues. “We have consulted with representatives on both sides of the GIPSA issue to gain a better understanding of how it could potentially hurt or help the industry. What we don’t want is a marketing system that refrains from allowing producers to be rewarded for hitting quality targets, such as *Certified Angus Beef* or *Certified Angus Beef Prime*.”

November comment deadline

More information from GIPSA on the proposed rule is found at www.gipsa.usda.gov/GIPSA/webapp?area=home&subject=landing&topic=landing. Comments about the proposed rule can be submitted by e-mail to comments.gipsa@usda.gov, or by mail, hand delivery or courier to Tess Butler, GIPSA, USDA, 1400 Independence Ave., S.W., Room 1643-S, Washington, DC 20250-3604. Comments may also be faxed to 202-690-2173 or submitted through the federal e-rulemaking portal, www.regulation.gov.

