

# Equitable and Fair Marketer and Packer Rules

Beef industry monitors GIPSA rules debate.

by Barb Baylor Anderson, field editor

**T**he new year could bring potential changes to cattle marketer and packer activities. One of USDA's stated goals with the Farmer Fair Practices Rules is to protect cattle and other livestock producers marketing animals. While some groups believe that would be the case under the current interim final rule up for public comment, other groups are concerned it will squash marketing opportunities. The Grain Inspection, Packers & Stockyards Administration (GIPSA) will review comments after the 60-day period ends in late February and make a determination.

USDA Secretary Tom Vilsack has stated the Farmer Fair Practices Rules seek to "help balance the relationships" between livestock producers and packers.

"GIPSA has worked extensively to examine the 2010 rulemakings and make adjustments where appropriate," he stated. The Farmer Fair Practices Rules were created as part of the 2008 *Farm Bill*.

GIPSA officials have said the interim final rule "affirmatively establishes USDA's long-time position that it is not necessary to demonstrate an unfair practice harms the entire market in order to prove a violation of the *Packers & Stockyards Act* (P&S Act).

"Such overly broad interpretations have put family farmers at a disadvantage for decades when pursuing their rights under the Act. This provision is necessary for GIPSA to more fully enforce the P&S Act ... The proposed rule seeks to clarify what conduct would violate the Act ... and protect farmers from retaliation and contract terms that would limit legal rights and remedies."

## Support for the rule

The U.S. Cattlemen's Association (USCA) supports the interim final rule. USCA President Kenny Graner commended Vilsack for advancing the rulemaking process, noting the "commonsense clarifications protect U.S. ranchers and cattle feeders from anti-competitive buying practices and help to advance true price discovery in a competitive marketplace."

USCA Marketing & Competition Committee Chairman Allan Sents says much of the 2010 proposal was misunderstood, and controversial provisions in it are not part of the current rule.

"USDA states the primary purpose of the P&S Act is to assure fair competition and fair trade practices," he contends. "What packer or producer can be against that? It has become virtually impossible for individual producers to show violations of the Act because of judicial rulings that misunderstood the intent of the P&S Act compared to anti-trust law. To continue to do nothing and render the Act unenforceable cannot be acceptable."

## Cons of the rule

The North American Meat Institute (NAMI) has a different perspective. Mark Dopp, NAMI senior vice president of regulatory and scientific affairs, believes the interim final rule changes the legal standard a plaintiff must satisfy when suing under the P&S Act.

"The standard set by the agency contradicts a longstanding legal standard

**Copies of the Farmer Fair Practices Rules can be viewed on the GIPSA website at <https://www.gipsa.usda.gov/psp/farmerfairpractices.aspx>.**

established by eight federal appellate courts, and when Congress recently amended the law, it did not make this change," he says. "USDA is simply trying to deliver a rule that is a gift to trial lawyers who will take advantage of it by filing new lawsuits and further clogging the courts."

Dopp says the proposal places marketing and other contracting agreements between packers and producers at risk.

"Such arrangements are often used to ensure an adequate supply of livestock products that meet characteristics or attributes consumers demand, such as organic, grass-fed or hormone-free. *Certified Angus Beef*® (CAB®) [brand] also falls into this category," he says.

Dopp further asserts adoption of the interim final rule could come with a cost. Research commissioned by USDA in 2007 found that if marketing agreement use is reduced by 25%, it would cost feeder-cattle producers \$5.1 billion, fed-cattle producers \$3.9 billion and consumers \$2.5 billion during a 10-year period. If marketing agreements were eliminated over 10 years,

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the study estimates cumulative losses for producers and consumers of \$60 billion.

“Ultimately it means consumers may see a diminished supply of specific products and increased prices for them. Concern about specious lawsuits will cause packers to shy away from these agreements, and the result will be limits on how producers can market cattle. That’s not good for producers; it’s not good for packers, and it’s not good for consumers,” says Dopp.

### Timing an issue

National Cattlemen’s Beef Association (NCBA) President Tracy Brunner is concerned about the timing, given the beef industry faces volatile futures markets and a fragile cash market.

“Rather than working to help ensure producers have accurate price information in a productive way, USDA is expending time and resources to push forward outdated rules to regulate an industry that never requested their assistance. Value-added programs have supported higher prices and premiums for producers even when markets are weak,” he says.

Colin Woodall, NCBA vice president for government affairs, contends packers will

be less willing to pay premiums for CAB or other programs. If someone complains and files a lawsuit, he says any premiums will never find their way back to producers.

“This is subjective federal regulation for USDA to determine what is fair in cattle marketing. You can’t define that,” he says. “It takes opportunities away.”

USCA’s Sents is uncertain of the price discovery impact.

“It has to be considered an attempt to improve the marketplace. If application of this rule would force more cattle into the negotiated market from exclusive, preferential and non-negotiated transactions, then it would be positive to the industry,” he says. “The ultimate pro would be a somewhat leveling of the playing field to allow efficient producers to negotiate with the much fewer and more powerful packers. The best outcome would be market access based on producer ability to supply reasonable quantities of packer-desired livestock with a base price determined in a vibrantly traded negotiated market.”

Value-based incentives have led to great improvement in the beef industry and will continue to be important, says Sents. “GIPSA expects packers will likely take a wait-and-see

approach prior to making any significant changes in their business models, marketing arrangements or other practices, which points to a likely small impact on current practices,” he explains.

NAMI’s Dopp hopes USDA will listen to the courts and Congress and rescind the interim final rule.

“Congress has repeatedly blocked the interim final rule and proposed rules over the last six years. If Congress agreed with USDA’s position, it could have made the change when Congress amended the P&S Act in October 2016,” he says. “The interim final rule rewrites law without Congressional approval and is being fast-tracked simply because of the administration change.”

“The best possible outcome is to get the proposal killed,” adds NCBA’s Woodall. “We must make sure Congress and the new administration understand the possible impact. We can’t afford for this to go forward. It is not new opportunity; it is opportunity taken away.”



**Editor’s Note:** A former National Junior Angus Board member, Barb Baylor Anderson is a freelancer from Edwardsville, Ill.