NORTH AMERICAN MEAT INSTITUTE

FACT SHEET

KEY FACTS ABOUT THE PROPOSED GIPSA RULE

USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) was directed by Title XI of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) to promulgate a rule to address five specific issues within the jurisdiction of the Packers and Stockyards Act (PSA). In June 2010 GIPSA published proposed rules (the Proposal) that far exceeded the Farm Bill mandate and, among other things, would have created rules that conflict with established judicial precedent and set the meat and poultry industry back almost 30 years. Ultimately, after extensive criticism of the Proposal, in December 2011, GIPSA published a final rule that, despite several problematic elements, is more consistent with the Farm Bill's mandate. GIPSA, however, left open the possibility that it would move forward with many of the other problematic provisions previously proposed. Below are several key facts to know about the outstanding issues.

The Proposal's genesis was the 2008 Farm Bill but the 2010 Proposal went well beyond what Congress intended.

In the Farm Bill Congress directed GIPSA to do a handful of specific things. The Proposal, however, went well beyond Congressional direction, treading into areas such as attempting to overturn well established judicial precedent, banning packer to packer sales of livestock, and limiting the ability of livestock producers to make a living. Because of the Proposal's breadth and the impact it almost certainly would have had on how packers and producers interact, the Proposal was subject to intense scrutiny and the subject of thousands of critical comments.

The Proposal would have done a "regulatory end-run" around longstanding judicial precedent set by the decisions from eight separate federal appellate courts regarding whether a plaintiff has to demonstrate "injury to competition" in a Packers and Stockyards case.

Notwithstanding repeated court decisions to the contrary, the Proposal would have eliminated the requirement that a producer needed to demonstrate harm to competition as part of a PSA lawsuit. Federal appellate courts have repeatedly considered this issue and consistently ruled that a plaintiff must show such harm to win a case. GIPSA would have used the rulemaking process to outflank the courts. Our system of government, however, is designed such that if a law is going to be changed, it must be changed by Congress, not by bureaucratic fiat.

The use of marketing agreements between producers and packers would have been significantly limited or disappeared altogether because of the uncertainty about frivolous lawsuits.

Marketing agreements are tools developed by livestock producers and have been extensively used to the mutual benefit of producers and packers. These agreements also benefit consumers because they enable packers to procure the livestock that in turn allows packers to offer consumers consistent, high quality products. The Proposal would have made using marketing agreements untenable because of packers' concerns about litigation. Not only could lawsuits be brought by producers who don't get agreements, but lawsuits could have been filed by producers unhappy with the cash markets and blaming the cash prices on agreements between packers and other producers.

The Proposal would have prohibited packers that own livestock from selling their livestock to other packers, which could lead to more vertical integration or could put the packer out of business.

The Proposal would have led to absurd results. For example, a packer with its only plant in Washington State would have been forced to transport cattle it owns in Kansas more than 1500 miles, across the Rocky Mountains, to the Washington plant – rather than sell those cattle to any one or more of the numerous packing plants between Kansas and Washington. Such a proposal would have introduced needless inefficiencies into the system as well as subjecting the livestock to additional, unnecessary stress caused by needlessly long trips created by a bureaucratic mandate.

The Proposal would have precluded the best, brightest, and most innovative producers from being rewarded.

Under current law, packers can reward innovative and efficient producers with a premium for each animal purchased. The Proposal would have required this premium -- which once was a private agreement between a packer and a producer – to be documented and justified publicly. Such a system would lead to top producers being compensated in the same manner as the inefficient and unreliable ones.

The Proposal could have resulted in more vertical integration by packers.

The Proposal could have forced packers to become more vertically integrated to avoid being sued about their marketing agreements and livestock contracts.

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