Proposed Rulemaking Under the Packers and Stockyards Act

National Pork Producers Council

NPPC's Position

- NPPC supports full enforcement of the Packers and Stockyards Act to ensure fair markets and competitive opportunities for producers.
- NPPC believes that producers of any size and with any type of production system should have market access and the ability to enter into agreements of their choosing.
- NPPC opposes legislation or regulations that restrict marketing opportunities unless such actions address a clear, unequivocal instance of market failure or abuse of market power.
- NPPC supports language to defund the promulgation, implementation, and enforcement of the current set of proposed rulemakings.

Background

The Packers and Stockyards Act (PSA) was enacted in 1921 to prohibit unfair, deceptive, and unjustly discriminatory practices by market agencies, dealers, stockyards, packers, swine contractors, and live poultry dealers in the livestock and poultry industries.

In the 2008 Farm Bill, Congress directed the United States Department of Agriculture (USDA) to issue rules under the PSA to clarify and better define the Act's provisions and address perceived unfair business practices related to poultry production.

In 2010 and again in 2017, USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) proposed new regulations — collectively known as the GIPSA rule — that went beyond the Farm Bill requirements. NPPC opposed the GIPSA rule because it negatively impacted the U.S. pork industry by encouraging frivolous litigation and forced industry consolidation. In part because of NPPC's advocacy, USDA rescinded its GIPSA rule.

In January 2020, the agency proposed significantly revised rules that clarified that to prevail in PSA challenges, a plaintiff must show a preference or advantage that is likely to harm competition in the marketplace. The new GIPSA rule also outlined four criteria for determining if a preference or advantage can be justified based on market conditions and reasonable business decisions. The new rules were finalized in December 2020 and took effect on Jan. 11, 2021.

In 2021, an executive order directed USDA to write new rules to strengthen the Packers and Stockyards Act. The first rule, proposed in June 2022, focused on the poultry industry. A second proposed rule, published in October 2022, attempts to promote competition by creating a new class of producers called "market vulnerable individuals" and naming a broad list of conduct as retaliatory if based on a producer's participation in protected activities. The rule would also turn any contract dispute into a federal violation rather than a state matter.

The proposed rule would not address any specific issue in the pork industry and instead would create uncertainty, confusion, and needless litigation. Additionally, this rule represents only the second in a series of three, which does not allow the industry to evaluate and provide input on the potentially overlapping impacts of this series of rulemaking. A third rule covering the scope of the PSA is expected sometime in 2023.

Facts That Matter:

According to the 2017 Census of Agriculture, about **43%** of hogs are cared for by contract growers, **34%** are raised by independent hog farmers, and the remaining **23%** are raised directly by contractors or integrators.

Concentration ratios in pork production and processing have declined over the past five years as producers have made significant investments in new packing plants and increased capacity.

We invite you to learn more about policy issues to support and strengthen America's pork producers at **NPPC.org**.

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