Ongoing 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 2016, 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 rule because it negatively impacted the U.S. pork industry by encouraging frivolous litigation and industry consolidation. In part because of NPPC's advocacy, USDA rescinded its GIPSA rule.

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

In 2021, an executive order USDA began a series of three rulemakings to strengthen the Packers and Stockyards Act. The first that took effect February, focused on the poultry industry. A second, taking effect May 6, would prohibit actions that inhibit market access or are "materially adverse" against producers on the basis of race, color, national origin, sex, disability, marital status, age, or because of a producer's status as a cooperative. It prohibits retaliation or adverse action against producers for communicating with government officials or businesses or for choosing to form or join an association. It also bars the use of "false or misleading statements or omissions of material information" during contract formation, performance, termination, and in situations where regulated entities refuse to form a contract.

As NPPC commented on the proposed rule in January 2023, the rule does not address any specific issue in the pork industry and will create uncertainty, confusion, and needless litigation. This rule is only the second in a series of three USDA intends to publish, which prevents the industry from evaluating the potentially overlapping and damaging effects of this series of rulemakings. A third rule covering the scope of the PSA and changing the harm to competition requirement is anticipated in early 2024.

Facts That Matter:

According to the 2022 Census of Agriculture, about **41%** of hogs are cared for by contract growers, **35%** are raised by independent hog farmers, and the remaining **24%** are raised directly by contractors or integrators.

Concentration ratios in pork production and processing have **declined** from 2017 to 2021, 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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