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 clarifying the Act's provisions and addressing perceived unfair business practices related to poultry production.

In 2010 and 2016, NPPC opposed a rule proposed by USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) that went beyond 2008 Farm Bill's requirements. The rule would have negatively impacted the U.S. pork industry by increasing litigation which may speed up industry consolidation. In part because of NPPC's advocacy, USDA rescinded its rule.

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

Following a 2021 Biden executive order, USDA began a series of rulemakings to strengthen the PSA, including one final and one proposed rule focused on the poultry industry. A second rule took effect May 2024 prohibiting actions that inhibit market access or are "materially adverse" against producers on the basis of certain protected characteristics. It also prohibits retaliation or adverse action against producers for certain government or business communications and for choosing to form or join an association. It also bars the use of certain deceptive practices during contracting.

As NPPC commented on the second rule in January 2023, the rules do not address any specific issue in the pork industry and will create uncertainty, confusion, and needlessly costly litigation. This is especially true in light of USDA's most recently proposed rule "Fair and Competitive Livestock and Poultry Markets," which would remove the requirement to prove harm to competition to bring a claim under the PSA. Together with the second rule, removing this requirement — along with the most recent proposal's overly broad and vague language — will likely create excess litigation and stifle market and contract innovation.

NPPC commented in September on the most recent proposed regulation, arguing that the proposal is overly vague, does not address any specific issues in the industry, and could negatively impact the pork industry. NPPC will continue to seek language in Congressional funding bills to defund these burdensome rulemakings.

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 **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.

Connect with us: