

HOW THE GIPSA RULE IMPACTS CATTLE MARKETING

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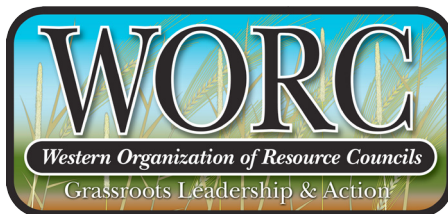
The Packers & Stockyards Act of 1921 (P&SA) was enacted to comprehensively regulate packers, stockyards, marketing agents and dealers. At the time of its passage it was considered to be the strongest anti-trust law ever to be enacted. However, in the last few decades the law has not been effectively enforced.

Consolidation and vertical integration have created a playing field ripe for abuse in which corporate meatpackers and large integrators manipulate markets, deny or severely restrict market access to independent livestock producers, and use unfair practices like confidentiality clauses to the detriment of both contract producers and independent producers.

Congress worked to remedy this lack of enforcement in the 2008 Farm Bill. The Farm Bill required USDA to write rules to address the problems of manipulative markets and unfair contracts as a first step to addressing the problems of the unfair livestock markets.

On November 22, USDA closed the comment period for the proposed rule, which Congress directed. The rule was issued by the Grain Inspection Packers and Stockyards Administration (GIPSA) aimed at bringing greater fairness to livestock and poultry markets. The new rule clarifies which unfair, discriminatory or deceptive practices meatpackers and their partners will be prohibited from using in the procurement of livestock, under the Packers and Stockyards Act.

These rules are vital to the livelihood of ranchers, poultry growers and feeders across our country. Without them, the trend of vertical integration, manipulated markets and unfair contracts will persist, resulting in the destruction of any free market system we have left in the livestock and poultry sectors. USDA is currently doing a review of 60,000 comments submitted (the majority of which support the rules) as well as conducting any additional analysis before publishing the final rule which GIPSA will enforce.



Fighting for the U.S. Cattle Producer!



WHAT THESE RULES DO

The rules lay out criteria the packers must follow to ensure contracts they make with producers, feeders and growers are fair. These rules would help livestock producers in five major areas:

1. It prevents packers from engaging in unfair trade practices that harm livestock producers and result in the elimination of livestock producers one at a time, or small groups at a time. (Sections 201.2 and 201.210.) It does this by defining “unfair, unjustly discriminatory and deceptive practices or devices” to include:
 - ✓ Unjustified material breach of a contractual duty by a packer.
 - ✓ A retaliatory action or omission by a packer.
 - ✓ An action to limit a livestock producer’s legal rights and remedies under the law.
 - ✓ Paying premiums or applying discounts without documenting reasons.
 - ✓ A fraudulent practice likely to mislead a reasonable livestock producer.
 - ✓ Any act that distorts or is likely to distort competition in the market.
2. It ensures GIPSA has the records needed to determine if packers are engaging in the unlawful practices enumerated in the Packers and Stockyards Act. (Section 201.94.) It does this by requiring packers to maintain written records that provide justification for differential pricing or deviations from standard prices offered to livestock producers.
3. It ensures packers are not engaged in giving undue or unreasonable preferences or advantages to select cattle feeders to encourage and accelerate the concentration of the feeding sector of the livestock industry (select feeders are incentivized to expand while non-select feeders exit the industry). (Section 201.211.) It does this by listing factors GIPSA could consider when determining if a feeder was subjected to legitimate supply-demand forces, or if the feeder received undue or unreasonable treatment. GIPSA may consider the following factors when making such a determination:
 - ✓ Whether contract terms are available to all producers who individually or collectively can meet the conditions set by the contract.
 - ✓ Whether premiums are offered in a manner that does not discriminate against other producers that can meet the same standards.
 - ✓ Whether information regarding livestock transactions is disclosed to all producers when it is disclosed to one or more producers.
4. It improves transparency in the fed cattle market. (Section 201.213.) It does this by requiring packers to provide GIPSA with sample copies of each unique type of contract or agreement offered by packers. GIPSA may then post a copy of each unique sample contract on its Web site but GIPSA will not disclose to the public provisions containing trade secrets, confidential business information and personally identifiable information.
5. It prohibits packers from obtaining their supply needs from other packers and from reducing competitive bidding for cattle. (Section 201.212.) It does this by prohibiting packer-to-packer sales and by prohibiting two or more packers from sharing a single packer buyer.

TAKE ACTION

Congress needs to step forward again to support these rules and ensure that they are fully funded and fully implemented. This needs to be done soon, so that the rules can be put in place before more livestock producers and contract growers lose their farms and ranches because of unfair markets.