

PolicyPennings by Daryll E. Ray & Harwood D. Schaffer

GIPSA proposed rules have spawned concerns and divergent implications

As the weeks have passed since the June 22, 2010 publication of a new set of regulations written by the Grain Inspection, Packers, and Stockyards Administration (GIPSA), the debate over their effect on the poultry and livestock industry has become increasingly intense. The 2008 Farm Bill mandated GIPSA develop some new regulations in response to complaints from farmers describing problems with their contracts with vertical integrators.

Supporters of the proposed regulations see them as an important step to counter market concentration and strengthen the chance for independent producers to receive a fair market price for their animals.

They gave voice to that concern in a letter opposing an industry proposed 120 day extension of the 60 day comment period when they wrote: "Over past decades, very little attention was focused on the effects of ongoing industry concentration and supply chain integration on the competitiveness of U.S. livestock and poultry markets. Now we find that competition in the market where producers sell their livestock and poultry to the packers has all but disappeared. Unfortunately, the ongoing livestock procurement practices of packers, which evolved with radical industry restructuring, has institutionalized unfair trade practices and manipulative marketing schemes that are now viewed by many as being normal and natural. We adamantly disagree with that view" <http://sustainableagriculture.net/wp-content/uploads/2008/08/2010-House-Ag-Committee-GIPSA-Reg-Letter.pdf>.

Steve Kay in an article in "Beef" gives the other view, "GIPSA [has] come up with a rule that threatens to damage the livelihoods of tens of thousands of cattle and hog producers. These producers spent years upgrading their herds through careful genetic selection and utilizing management practices to produce high-quality, uniform livestock. Cattlemen have entered into marketing agreements with feedlots and packers to get rewarded for their efforts. All this is in jeopardy because of a proposal based on unsubstantiated concerns.

As we have seen in the last few columns, the new regulations deal with a number of distinct issues and to lump them all in one basket serves only to introduce confusion into the discussion. In this column we want to look at three issues: 1) the need to prove competitive harm as a condition for a farmer to prove unfair practices on the part of an integrator, 2)

packer-to-packer sales, and 3) the requirement that packers maintain records to justify paying one grower a different price from another.

We examined the first issue, the need to prove competitive harm as a condition for a farmer to prove that they have been treated unfairly by an integrator or packer in an earlier column (<http://agpolicy.org/weekcol/519.html>). While it is understandable that the American Meat Institute (AMI) views the proposed regulation as "a 'regulatory end-run' around judicial rulings that would have a severe and detrimental impact on livestock producers and the meat industry," it is difficult for us to understand why unfair practices that deserve redress need to show competitive harm at the consumer level.

And as we noted before, the courts only looked at harm to competition at the retail level. They ignored the possibility of harm to the competition among growers that occurs when a grower's contract is terminated in retaliation for speaking out against a company's practices.

GIPSA noted that "Many practices can be unfair and never have an anticompetitive implication. Examples of such practices include, but not limited to, not allowing a poultry grower to watch birds being weighed, using inaccurate scales, providing a grower poor quality feed, giving a grower sick birds to raise, failing to provide a grower the growing contract in a timely manner, or retaliation against a grower."

Our analysis: we believe that the average person would consider using inaccurate scales or prohibiting a grower from watching the weighing of chickens they have produced to be unfair practices. The need to prove competitive harm at the consumer level is beside the point. The meat packing and processing industry risks hurting their credibility by making such arguments.

The issue of packer-to-packer sales involves the broader issue of packer ownership of animals, primarily beef, and whether or not such ownership results in lower prices for independent producers. The proposed regulation avoided the broader issue, but instead sought to address perceived harm to independent producers by prohibiting packer-to-packer sales. As GIPSA writes, "when one packer buys from or sells livestock to another packer, the information trans-

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fers signals about the price that packers will pay producers."

AMI senior vice president of regulatory affairs and general counsel made the following argument in an interview by DTN's Chris Clayton, that by prohibiting packer-to-packer sales, "packers would have to sell to third-parties, who then in turn could sell to the other packer-processors, Dopp said. That introduces inefficiency into the system. 'All you are doing is introducing a middle man that didn't have to be there.... You gotta say, what's the point?'"

The analytical counterpoint is that they could sell these excess animals through an auction market and then everyone would see the price, farmers and producers alike. One of the things that makes our economic system work is information, and there is hardly a piece of information more important than the market price of an item.

The third issue is the requirement that packers maintain records to justify paying one grower a different price from another. The packing industry's argument is that this would endanger programs that farmers have implemented to improve their genetics and produce a superior product. One example of this is the Angus beef branding program. Some of the larger producer organizations have argued that to avoid endless litigation, the packers would go to a one price system and they would lose the benefit of producing a differentiated product.

We see nothing in the regulations that would bring this result. However, those concerned about this could enter comments on the rule emphasizing that criteria for paying premiums and discounts be posted for all to see and respond to. It is our analysis that consistent application of a fully transparent system of market-driven premiums and discounts could assist branding programs and generally increase the quality and efficiency of the transmission of price information from packers, via the market place, to producers.

Interested parties may submit comments to GIPSA by any of the following methods:

- E-mail: comments.gipsa@usda.gov.
- Mail: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643-S, Washington, DC 20250-3604.
- Fax: (202) 690-2173.
- Hand Delivery or Courier: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643-S, Washington, DC 20250-3604.
- Federal e-Rulemaking Portal: <http://www.regulation.gov>. Follow the on-line instructions for submitting comments.

Daryll E. Ray holds the Blasingame Chair of Excellence in Agricultural Policy, Institute of Agriculture, University of Tennessee, and is the Director of UT's Agricultural Policy Analysis Center (APAC). Harwood D. Schaffer is a Research Assistant Professor at APAC. (865) 974-7407; Fax: (865) 974-7298; dray@utk.edu; <http://www.agpolicy.org>.