AMERICAN MEAT INSTITUTE

FACT SHEET

Ten Key Facts About the Proposed GIPSA Rule

USDA's Grain Inspection and Packers and Stockyards Administration (GIPSA) on June 18 unveiled a long awaited proposed rule (the Proposal) that would establish, among other things, criteria regarding undue or unreasonable preferences or advantages, as mandated by the Title XI of the Food, Conservation and Energy Act of 2008 (Farm Bill). Below are 10 key facts you should know about the proposed rule:

1. **The GIPSA proposed rule does a regulatory end-run around the precedent set by the decisions from eight separate federal appellate courts regarding whether a plaintiff has to show "injury to competition" in a Packers and Stockyards case.** USDA contends in the proposed rule that a producer need not show harm to competition as part of a Packers and Stockyards lawsuit. Federal courts of appeals, however, have considered the issue numerous times and consistently ruled that a plaintiff must show such harm to win a case. In the most recent decision, May 2010, the court stated that the "tide has become a tidal wave" concerning these rulings. Now, USDA is attempting to use the rulemaking process to outflank the courts. Our system of government, however, is designed such that if the law is going to be changed, it should be changed by Congress, not by bureaucratic fiat.

2. **The use of marketing agreements between producers and packers will be significantly limited or disappear altogether because of the uncertainty about frivolous lawsuits.** These agreements were initiated by producers and have been mutually beneficial to producers and packers. In addition, these agreements have benefited consumers, who are able to enjoy a consistent, quality product because they enable packers to procure the types of livestock that yield those products. If this proposed rule is implemented, marketing agreements between producers and packers will be significantly limited or will disappear because of concerns about litigation. Not only could lawsuits be brought by producers who don't get contracts, but also those who are unhappy with the cash markets and blame cash prices on contracts between packers and other producers.

3. **Under this proposed rule, packers who own livestock will not be permitted to sell their livestock to another packer, which could lead to more vertical integration or could put the packer out of business.** A packer with only one plant in Washington State will be forced to transport cattle it owns in Kansas more than 1500 miles, across the Rocky Mountains, to the Washington plant – passing several other packing plants in the process. The rule introduces needless inefficiencies into the system, in addition to the fact that the livestock will be subject to additional stress caused by needlessly long trips in order to meet a bureaucratic mandate.

4. **Although the rule's genesis is the 2008 Farm Bill, the proposed rule goes well beyond what Congress intended from that law.** In the 2008 Farm Bill Congress directed the agency to do several specific things. The provisions in the proposal go well beyond Congressional direction, treading into areas such as attempting to overturn well established judicial precedent, banning packer to packer sales of livestock, and limiting the ability of livestock dealers to make a living. Because of the breadth of the proposal and the impact it almost certainly would have on how packers and producers interact, the proposed rules warrant careful scrutiny, analysis, and the submission of comprehensive comments.

5. **This rule will prevent a livestock dealer who travels to cattle auctions from buying for more than one packer.** This limitation will greatly harm small packers who don't have the resources to send someone to every sale barn across the country and it will hurt the sale barns who will find fewer buyers at their locations. Additionally, some buyer-dealers will lose business and many sale barns could have fewer selling options. The net effect will be less competition, not more competition, at these auction barns if this rule goes into effect and this proposal could even trigger further consolidation.

6. **The proposed rule will ensure that the best, brightest, and most innovative producers are not rewarded for being so.** Under current law, packers can reward innovative and efficient

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producers with a premium for each animal purchased. Under the proposed rule, this premium -- which once was a private agreement between a packer and a producer -- must be documented and justified publicly. The system will lead to top producers being compensated in the same manner as the inefficient and unreliable ones.

7. **The economic analysis conducted by the agency in the proposal is sparse and inadequate.** An initial review suggests that the analysis understates the direct and indirect costs to producers, processors, and packers. In addition, the economic analysis does not appear to consider the direct and indirect economic impact the proposal could have on consumers in the form of higher meat and poultry prices.

8. **This proposed rule could trigger more vertical integration by packers.** This proposal could force more packers to vertically integrate by adding livestock subsidiaries because their ability to procure livestock through marketing agreements and livestock contracts will be limited and the various contracting limits will make it more undesirable to enter into production contracts and growing arrangements.

9. **Congress has expressed strong concerns about the rule**. During a July 20 hearing characterized by reporters as extremely contentious, House members pressed USDA officials about why they took the approach they did and said USDA had overstepped. House and Senate members wrote to Agriculture Secretary Tom Vilsack urging that he extend the comment period for 120 days.

10. **Perhaps most telling is the fact that this rule is very unpopular with the nation's largest producer groups.** The National Cattlemen's Beef Association and the National Pork Producer's Council have come out strongly against this type of government interference in the marketplace.

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