

Policy Pennings by Daryll E. Ray & Harwood D. Schaffer

GIPSA rules designed to encourage transparency and discourage arbitrary and non-uniform requirements of producers

On June 22, 2010, the US Department of Agriculture (USDA), Grain Inspection, Packers, and Stockyards Administration (GIPSA), published a proposed rule describing and clarifying conduct that violates the Packers and Stockyards Act, 1929 (PSA) in the Federal Register (<http://archive.gipsa.usda.gov/rulemaking/fr10/06-22-10.pdf>). These proposed regulations were put forth as required by the 2008 Farm Bill. The goal of the regulations is to provide for a fairer market place for producers of poultry, beef and pork.

Two weeks ago, we examined a regulation that clarified an area where the USDA believes that the courts have misinterpreted a section of the PSA. Last week we looked at areas where the policy recommendations made by Taylor and Domina in their testimony on competition overlapped with regulations in the proposed rule.

In this column we look at new regulations in the proposed rule that were not specifically on Taylor and Domina's list.

The proposed regulation on "records retention" would require a packer, swine contractor, or live poultry dealer to maintain written records that provide justification for differential pricing or any deviation from standard price or contract terms offered to poultry growers, swine production contract growers or livestock producers. The goal of this regulation is ensure that preference is not shown to some producers, as compared to others, when it comes to the price paid them for the animals that they raise.

This issue of preference is specifically dealt with in a section on "undue or unreasonable preferences or advantages; undue or unreasonable prejudice or disadvantages." These regulations establish criteria the Secretary may consider in determining if an undue or unreasonable preference or advantage, or an undue or unreasonable prejudice or disadvantage has occurred under the Act. For example, it could be a violation of the Act when a packer or swine contractor to offer better price terms to producers who can provide larger volumes of livestock than to a group of producers who collectively can provide the same volume of livestock of equal quality and it cannot provide a legitimate justification for the disparity.

The regulations on "livestock purchasing practices' are designed to prevent packers from engaging in practices by which they can communicate to their competitors information about the price that they will

pay producers. These provisions would open the market to other buyers, increase participation in the cow/bull slaughter market and would prevent collusion between multiple packers.

The section on "tournament systems" would require live poultry dealers to pay the same base pay to growers that are raising the same type and kind of poultry. Live poultry dealers would be prohibited from paying growers in growing arrangements below the base pay amount. Live poultry dealers would also be required to rank growers in settlement groups with other growers with like house types.

The issue of the "suspension of delivery of birds" has been a problem that poultry growers have complained about. This section spells out the criteria the Secretary may consider when determining whether or not reasonable notice has been given for suspension of delivery of birds. In particular, failure of a live poultry dealer to provide notice of any suspension of delivery of birds at least 90 days prior to the suspension taking place may be considered unreasonable. This 90-day period would be important to allow the poultry grower time to consider options for utilizing his or her poultry houses and for keeping up with any loan payments, some of which are government guaranteed loans.

Another section, "capital investment criteria," includes the criteria the Secretary may consider when determining whether a requirement that a poultry grower or swine production contract grower make additional capital investments over the life of a production contract or growing arrangement constitutes an unfair practice in violation of the Act. For example, if a producer made a large capital investment in a poultry house, in most instances he or she should not soon thereafter be required to make another capital investment to improve his/her facilities. Another example could be when a producer or grower is required to make an additional capital investment but no other similarly situated grower was required to make additional capital investments.

Finally, one section provides criteria that the Secretary can use to determine whether or not growers have been provided a "reasonable period of time to remedy a breach of contract" that could lead to contract termination.

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GIPSA will consider comments on the proposed rule that are received by August 23, 2010. Interested parties may submit comments 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.

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