

PolicyPennings by Daryll E. Ray & Harwood D. Schaffer

GIPSA: Does discriminatory behavior include issues of unequal access?

The USDA (United States Department of Agriculture) published a proposed rule in the June 22, 2010 Federal Register that would “add several new sections to the regulations under the Packers and Stockyards Act, 1921, as amended and supplemented (P&S Act). The new regulations that GIPSA is proposing would describe and clarify conduct that violates the P&S Act and allow for more effective and efficient enforcement by GIPSA [Grain Inspection, Packers and Stockyards Administration]. The proposed regulations would clarify conditions for industry compliance with the P&S Act and provide for a fairer market place (emphasis added).” The USDA originally allowed for a 60 day comment period but under pressure from industry groups extended the comment period to November 22, 2010.

As of early September 2011, GIPSA has not issued a final rule. And still the proposed rule continues to generate strong reaction by its opponents as witnessed by the testimony of Kansas Livestock Association President Ken Grecian at a 2012 Farm Bill field hearing on August 25, 2011 in Wichita, KS. The hearing was held by Kansas Senator Pat Roberts and Michigan Senator Debbie Stabenow, Senate Agriculture Committee Chair.

As reported on the Drovers CattleNetwork website, <http://www.cattlenetwork.com/>, “The proposed regulations ultimately may remove from the marketplace products consumers prefer. Producers have responded to consumer demand by finding innovative ways to develop and market premium quality and branded products. Programs like Certified Angus Beef, U.S. Premium Beef, “naturally raised” and others would be jeopardized,” said Grecian, who also serves on the Board of Directors of the National Cattlemen’s Beef Association (NCBA). “These alternative marketing arrangements have allowed producers to get paid for the value they add. These arrangements ensure a consistent supply of livestock that meet the requirements of such programs. Without these arrangements, neither these programs, nor the producer alliances that support them could be sustained.”

“Grecian stated that NCBA and KLA members believe the proposed rule would set the beef industry back to a time when all cattle received the same average price and beef demand was in a downward spiral.

He strongly urged the committee to take action to prevent the implementation of the GIPSA rule.”

In our reading, there is nothing in the proposed rule that would create the situation that Grecian foresees. Just the opposite, rather than eliminating these premium programs that allow cattle producers to earn a premium price for their products, the proposed rule is designed to ensure that packers offer these premiums to all producers who can provide the required volume, kind, and quality of livestock, either individually or collectively.

In his tentative wording, Grecian recognizes this when he says, “the proposed regulations ultimately MAY (emphasis added) remove from the marketplace products consumers prefer.” The problem is not with the wording of the regulation, but rather the fear that packers would eliminate quality product premiums to avoid litigation by farmers who felt they were unfairly denied the premium.

The whole reason GIPSA was adopted in the first place was the discriminatory behavior of packers that was aided by their concentration. And, the reason GIPSA proposed the rule was the testimony of cattle producers who complained about being denied access to premiums offered to other producers despite the fact that they could meet the same requirements.

We have no doubt that the packers would rather not have to comply with a new set of regulations, but that is no reason to eliminate a rule that ensures that all market participants are treated fairly and that no one is discriminated against when it comes to having the opportunity to earn premiums for a quality product.

Grecian feels so strongly about the elimination of the requirement that according to Drovers, he “suggested there is no need for a livestock title in the 2012 Farm Bill.” To our way of thinking that is akin to cutting off one’s nose to spite one’s face.

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