



**INSTITUTE FOR
AGRICULTURE AND TRADE POLICY**

June 9, 2017

M. Irene Amade

Grain Inspection, Packers and Stockyards Administration
U.S. Department of Agriculture
1400 Independence Ave., SW, Room 2055-South Building
Washington, D.C. 20250-3613

Re: Comments on Grain Inspection Packers and Stockyards Administration (GIPSA) Interim Final Rule: Scope of Sections 202(a) and (b) of Packers and Stockyards Act (GIPSA-2016-PSP-0009-RULEMAKING-0348), posted in Federal Register Number 2017-07361 on April 12, 2017.
RIN 0580-AB25

Dear Ms. Amade,

The Institute for Agriculture and Trade Policy (IATP) appreciates the opportunity to provide comments on the GIPSA Interim Final Rule (IFR) on competitive injury. For the past 30 years, IATP has worked with farmers and rural communities to ensure fair and sustainable food, farm and trade systems. IATP is based in Minnesota, with an office in Washington, D.C. A fair and competitive market, where farmers and ranchers are paid at remunerative prices above the cost of production and have recourse to address contract abuse and anti-competitive business practices, is essential to establishing a fair and profitable farming system.

The IFR addresses the scope of sections 202(a) and (b) of the Packers and Stockyards Act, 1921, as amended and supplemented (P&S Act) to clarify that conduct or action may violate sections 202(a) and (b) of the P&S Act without adversely affecting, or having a likelihood of adversely affecting, competition.

IATP strongly supports option #1 proposed by the USDA: the immediate implementation of the IFR. The Packers and Stockyards Act was designed to provide protection to American farmers and ranchers against unfair, deceptive and discriminatory practices. The IFR clarifies the intent of the PSA by making clear that individual farmers and ranchers challenging in court the contracting and buying practices of meat and poultry companies do not have to show harm to the whole market to demonstrate their farms or ranches have been harmed.

Currently meat and poultry farmers seeking justice against fraudulent, abusive or deceptive practices have to prove that harm has been done to the whole industry in order to successfully argue that they have been harmed by the actions of an integrator or meat packer. This blatantly unfair standard has no statutory basis in the Packers and Stockyards Act. To require each farmer and rancher to commission an econometric study claiming to show whole market harm is to deny due process and equal treatment under the law with those entities that can pay for such studies. Econometric results are policy scenario dependent, so even if a farmer could afford such evidence, a meat packer facing adverse evidence could exhaust a farmer's litigation funds by arguing against the policy scenario. The IFR rule levels the playing field and allows farmers to seek legal remediation for harms done against them by corporate meat packers and integrators without being forced to pay for an impossible standard of proof.

Unfair treatment in the marketplace for meat and poultry producers has been well documented, including at a series of public hearings around the country held jointly by the U.S. Department of Agriculture and the Justice Department in 2010. The concentration ratio of these sectors is concerning: four meatpackers control 85 percent of the beef market; 74 percent for pork; and 54 percent for poultry. The C-4 ratio is a reliable and academically well documented indicator of the market power that a meat packer holds against any farmer or rancher brave enough to demand a competitive market and cash receipts above the cost of production.

In most parts of the country, taking into account livestock transportation costs and risks, farmers and ranchers effectively have access to only one or two processors in their area. In contract production, the two parties that negotiate the contract are not equal economically, so USDA must ensure they are equal under the law. This asymmetrical market power results in undue influence over prices paid to and implementation of contract terms for these farmers. Contract poultry growers are often required to invest hundreds of thousands of dollars for poultry houses and equipment. Through unfair contracts, meat packers and processing companies are able to dictate below costs of production prices, pit farmers against each other to chase lower prices, and retaliate against farmers if they speak out against abusive contract terms or prices below the cost of production.

We strongly urge the Department to implement option #1 immediately to protect our nation's farmers and ranchers legally and enable their operations to become profitable in a competitive marketplace.

Thank you for the opportunity to comment on a rule that requires the effective implementation of the Packers and Stockyards Act to ensure a viable economic future for farmers, ranchers, and their families and rural communities.

Sincerely,

Ben Lilliston

Institute for Agriculture and Trade Policy