

February 21, 2017

Support of the Farmer Fair Practices Act; Scope of Section 202(a) and (b) of Packers and Stockyards Act. Docket No. GIPSA_FRDOC_0001-0315

The Organization for Competitive Markets (OCM) supports the Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) Scope of Section 202 (a) and (b) of the Packers and Stockyard Act (P&S Act). The language contained in this rule captures the original intent of the P&S Act and USDA's longstanding interpretation that not all violations of the P&S Act require a showing of harm or likely harm to competition. Rather, individual family farmers can demonstrate under certain circumstances a violation of P&S Act by showing they have sustained the harm from certain actions or practices. As stated by USDA, "This interim final rule finalizes a proposed amendment that GIPSA published on June 22, 2010. GIPSA is now publishing as an interim final rule what was proposed on June 22, 2010, with slight modifications, in order to allow additional comment on these provisions."

This rule exemplifies the market safeguards that are necessary to ensure that the market functions fairly for all parties engaged in a market sector. This is especially true when the concentration of the top four packers, processors, and integrators in the food sector control the overwhelming majority of the marketplace. In the beef sector alone, the top four multinational corporations control over 80% of the market. At this high level of concentration the market cannot function without market safeguards.

The authority and responsibility of a federal agency is to ensure the intent of legislation is carried out. This is the most basic foundation of our system of government. The Executive Branch is to execute the laws passed by the Congress. After a long, hard-fought battle, beginning with the "Trust Busting" days of Teddy Roosevelt through the Wilson administration's ordering FTC to conduct a "hoof to the table" investigation to the actions of the Congress during the Harding administration, the Packers and Stockyards Act was adopted and signed into law in 1921. It is important to note, the intent of P&S Act was not only protection of the market, but also protection of individual producers who were operating in a heavily concentrated market. The 1919 FTC investigation reported the top four corporations controlled 74.4% of the beef market.

Unfortunately, since the passage of P&S Act, the Federal Courts have taken the liberty to water down the intent and the Executive Branch's interpretation of the P&S Act. A decision in a 2008 federal case resulted in denying farmers from having their claims of marketplace abuse from being redressed unless they can prove the abusive actions cause an adverse impact to competition. This rule would right that wrong and restore the original intent of the P&S Act.

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