



GIPSA RULE; *Victimized by a Captive Congress and an Acquiescent Administration*

THOMAS F. "FRED" STOKES
PRESIDENT



Well they've done it; they've successfully ripped the very heart out of the proposed GIPSA Rule!

The current administration gave us high hopes for reform of livestock markets and fair treatment for contract poultry and hog growers by reinvigorating the 90 year old Packers and Stockyards Act (PSA) through the rulemaking process. But the proposed GIPSA Rule has been reduced to relatively insignificant fragments by a congress that is beholden to meat packer interests and an administration which became silent and submissive.

The GIPSA Rule was crushed through the appropriations process, using the same tactics employed to stall Country of Origin Labeling for six years,— but with a crafty twist. They snuck it into the minibuss appropriations bill via the conference process. No vote on defunding the Rule by either the House or Senate; no requirement for any senator or representative to reveal their position; just

an up-or-down vote on the must-pass appropriation bill itself.

The 2008 Farm Bill required GIPSA to promulgate rules to address specific aspects of the PSA. Now, through the rider inserted in the appropriation bill by the conference committee, congress has precluded USDA from carrying out its mandate.

USDA does not need congressional approval to make rules; it can and is obliged to promulgate rules as needed to properly administer laws for which it is responsible for administering. A critically important part of PSA which is addressed in the Proposed GIPSA Rule but not in the farm bill mandate is **Section 202, Unlawful practices:**

"It shall be unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry

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**"In the end, it is not the shrill shouts of my enemies
that I will remember, but the silence of my friends."**

OCM NEWS | DECEMBER 2011



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The opinions of the authors presented in our newsletter are their own and are not intended to imply the organizations position. OCM has membership with diverse viewpoints on all issues. OCM is committed to one and only one principal; competition.





Looking to the Future

ANITA ENDSLEY
EXECUTIVE DIRECTOR



I envision a future where farmers and ranchers remain independent and corporate agriculture compliments rather than dominates our existence. I look forward to a day when a cattle producer can realize a truly fair price at market because we as a society demanded that corrup-

teaching our own hard earned truths. Our students and young agricultural producers have to struggle to survive in an unfair agricultural system that WE allowed to grow and develop into a perversion of a free market system.

Many have realized, somewhat late in the game, that not protecting our institutions such as our agricultural markets has resulted in farmers no longer being able to remain independent as our fore-fathers once were. Market manipulation techniques pushed by "Big-Ag" such as captive supply, futures trading, and

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All across the world, a new generation of individuals are questioning the future that has been designed for them.

tion and manipulation are not allowed in a free and open market. I hope that our nation re-learns the truths made self-evident throughout our history, that the establishment of justice relies upon individuals taking a stand for what is right – and decent – and just.

How do we "grow" the future that we all want to see? We have to plant seeds of leadership in our young people, and cultivate their development through



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Letter From Langdon: Shhhhh...Farm Bill

BY RICHARD OSWALD

<http://www.dailyyonder.com/letter-langdon-shhhhhfarm-bill/2011/11/21/3614>

The less you hear about the farm bill, the more it's going to hurt us all when it's passed.



The federal government needs to protect family farmers from undue risk and disaster. This last year was a big one for disaster. The Missouri River flood (above) took out my house and farm.

There are just some things politicians can't talk about ahead of ballot time. That's why no one in Congress wants to utter those two little words "farm bill" before the 2012 elections.

I could write pages on the farm bill, and anyone who's never worked with one wouldn't really understand. Most of us who have worked on farm bills, truth be told, don't understand much either.

The way Congress does things makes it look as though you aren't supposed to understand, know or even see. That's because of an intricate process favoring a fistful of special interests that want a grab

bag of commodity crops for a shell game of food ingredients.

Where food is concerned two words are too many, and a thousand aren't enough. If I were in Congress, I think I'd keep my lip buttoned, too.

So agriculture and rural America are on the QT while Congress argues publicly over fiscal responsibility. The current farm bill expires in September of next year. Thanks to massive speculation in markets, world trade, and higher prices for the farm commodity basket, lots of politicians are wondering why we even need an ag law.

And keep this under your hat; if

we can play fast and loose on Wall Street, why not put food in the big casino, too?

Agriculture isn't fool proof. Trade can be disrupted, drought can rain misery, or floods can drain the pantry and farmers' bank accounts. Trust me, I know about this.

Without at least some government intervention, well, place your bets.

Who Lives in the 'Real World'?

If you set aside political rhetoric and special interest conniving, the end game of farm legislation should be about keeping a steady flow of food, priced not too low and not too high, out of the rural breadbasket into the real world.

But what, really, is the "real world"?

A) For **farmers**, the real world is weather, expenses, weather, yield, weather, prices, weather, and income. And don't forget weather.

B) For the **big corporations that sell us** machinery, seed, and chemicals, the real world is R&D, marketing, and patents that let them dictate prices they receive without the leveling effects of competition.

C) For **big corporations that buy** our commodities and resell them, the real world is burgeoning supplies of grain and world trade. Some of those

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same corporations also raise livestock, feeding them a big part of the grain they buy. With those big players, the real world is expansion through control of the egg from kernel to Colonel.

D) For **consumers** the real world is two or three meals a day costing somewhere in the neighborhood of 10 percent of disposable income. That leaves room in the other 90 percent of the budget for household goods, appliances, automobiles, gasoline, cheap Chinese stuff, and taxes.

About the only people in the world who pay less for food than Americans are those who still chase dinner with a spear.



E) For **politicians** the real world is cheap food, continued corporate contributions and voter complacency.

F) For **commodity speculators** there is no real world.

The Long Full Circle

Federal, state, and local taxes actually cost the average family more than the food share of their budget. (See E above.). Except when weather (A) happens (good and bad), the cost of food is ultimately determined by B, C, D, E, and F.

That brings us full circle back to the tax-revenue-funded, corporate-dictated farm bill that politicians don't really want to discuss — especially funding for law enforcement of marketing laws through Commodity Futures Trading Commission and the Grain Inspection Packers and Stockyards Administration.

'Don't ask/don't tell is alive and well in corporate America and can be found at a farm near you.

Don't ask if it's illegal. Don't tell if it is.

Farm bill time is muscle-flexing time for farm groups with bulging biceps. But to hear them talk about subsidies you'd think they were 98-pound weaklings in need of a transfusion. Birds gotta sing, bees gotta buzz, and big ag producer groups have to lobby. But no real farmer wants a hand-out. All farmers really want are good prices, a decent living, fair markets, and a way to help control their risk.

If Congress Was Serious About Saving

The Farm Service Agency (FSA) is basically the only branch of the Department of Agriculture that works locally with people who actually produce something. It's a pretty cheap outfit. Only about 1/2 of one percent of the budget is spent at FSA on farms and agriculture. By comparison, if the entire Department Agriculture budget was the world, farm funding from USDA would be Uganda.

The rest of the farm bill goes to fill a big lunch box called USDA, where they feed the poor, fund rural development, supervise school lunches, watchdog food safety, and oversee the nation's forests. USDA has about 105,000 total employees, but only 5,000 work out in the country directly for Farm Service Agency.

On the other hand it costs taxpayers almost \$6 billion to fund 535 members of Congress in Washington, DC.

If Congress is serious about saving money, it would limit benefits any one farmer can collect, including crop insurance subsidies.

The USDA could also offer more insurance products for other family farm crops and livestock to help stave off disaster when weather or markets turn stormy. That would keep real family farms, the ones who work the cheapest, in business. (Remember; the bigger the farm, the bigger the federal cost, the bigger the farmer's tax-subsidized profit)

And the federal government could enforce competition laws and limit conservation payments for dubious activity, such as paying manure storage costs for big corporate livestock producers.

All of these are nothing more than backdoor subsidies.

Then Congress could have a heart and help young farmers get ahead with beginning farmer loans.

Up until yesterday, the farm bill was to be written by a committee behind closed doors where no one but corporations will hear the conversation. With the announcement that the supercommittee is unable to break their deadlock, we're back to square one on agriculture.

In the long run, maybe that's better for farmers, but it also leaves food policy at the mercy of big business.

That will drive food prices, imports, and corporate profits higher while food safety and quality get the silent treatment.

But you didn't hear it from me.^{RO}

Richard Oswald is a farmer in northwestern Missouri. He is president of the Missouri Farmers Union.



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dealer with respect to live poultry, to:

“(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or Device; or

(b) Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect;”

In several cases tried under this section of PSA, jury verdicts for plaintiffs have been reversed by judges who ruled that in order to claim harm to an individual or class, harm to competition across the industry must first be established. There is nothing in the plain language of PSA that says this and the proposed rule states:

“USDA has consistently held that under sections 202(a) or (b) of the Act, an unfair practice can be proven without proof of predatory intent, competitive injury, or likelihood of competitive injury. The court decisions that require proof of harm or likelihood of harm to competition in order to prove any violation of section 202(a) or (b) of the Act creates an unreasonable standard that may be difficult to meet.”

The Supreme Court has held that courts should give deference to the interpretation of the administering agency of a statute. In a letter to Secretary Vilsack, Senator Tom Harkin

expressed his view on the matter:

“A cardinal principle is that the courts are to give deference to the interpretation of laws by the federal agencies that are charged with implementing and administering them. Specifically, for instance, GIPSA is to be accorded deference in its interpretation, spelled out in the proposed rule, that the P&S Act protects individual producers against “unfair, unjustly discriminatory, or deceptive practice[s] or device[s]” without a necessity of showing such conduct has an impact on the broader market.”

A shameful example of the results of this ruling is the Terry v. Tyson Farms, Inc. case. Tom Terry, a contract poultry grower in Tennessee was maliciously and illegally wronged by Tyson. When he filed a court action for redress, the judge acknowledged the harmful acts but declined to hear the case by invoking the “harm to competition” ruling. The General Counsel for OCM along with three other attorneys petitioned the U. S. Supreme Court but the high court declined to hear the appeal.

If the Rule became final and the Chevron Supreme Court decision was honored, packers and integrators would suddenly become open to to accountability for infractions of PSA. It is the threat of removal of this “get out of jail free card” that has caused such frenzied opposition and the ultimate defeat of the Proposed GIPSA Rule.

The Informa Study commissioned by American Meat Institute claimed the GIPSA Rule would cause great

harm; 22,800 lost jobs, an annual GDP loss of \$1.5 billion and lost tax revenue of \$359 million. The “study” states:

“The provision that removes the burden for litigants to show competitive injury in order to seek damages is by far the largest area of concern. Informa finds that nearly 75% of the expected economic damage arising from this proposed rule can be tied directly to this provision.”

Now that AMI and their fellow conspirators have succeeded in killing this part of the Rule, the producer protection provision of PSA is effectively null and void.

The defeat of the GIPSA Rule is a devastating blow for those of us who were so hopeful of livestock market reform. We knew that there were powerful and highly motivated opponents to this reform effort but we had been led to believe that our friends in the congress, especially in the senate, would not let the GIPSA Rule be killed in the appropriations process.

However, when it really counted, these friends were not there. It is hard to believe that this defunding maneuver could have been pulled off by the conference committee without at least the tacit acquiescence of the administration and those in congress who pretended to be on our side. **Most disappointing!**

The Rule outcome sadly brings to mind the famous statement by Dr. Martin Luther King Jr.; ^{”FS}

“In the end, it is not the shrill shouts of my enemies that I will remember, but the silence of my friends.”



ENDSLEY (continued from page 2)

lack of oversight and enforcement have created a present reality that independent farmers are drowning in financial distress because the price they receive is inconsistent with the price they SHOULD earn for their labors. This reality pushes many producers into doing business directly with the same organizations that have subverted what should be a free market system. In essence, to stay in the farming "business," many choose to enter into growing arrangements that are at best lop-sided with a greater advantage to the company than the farmer receives.

The same principals apply throughout agriculture and across row crops and livestock alike. Independence is becoming a rarity. Our nation was developed as a result of a strong desire and will of the people that came here to live their lives free of the injustices rained upon them by other governments and ruling classes. How do we regain our independence? That is a question that we all must address together.

All across the world, a new generation of individuals are questioning the future that has been designed for them. Our children, our student, and our heirs are trying to determine how they will improve their lot in life faced with the failing institutions that we have allowed to develop. We can help them shape a more positive future through mentoring, education, and involvement.

We can teach our next generation about how a market should work. We can provide them with hard earned

insight as to why the market is no longer transparent and competitive. We can teach them how to carry on the fight with us and after we are gone to change how things are done, and to create their own vision of a fair future. And, we can learn from them. College students today are much better versed than prior generations on technological advancements in communications, marketing and other areas.

The Beatles once sang "You say you want a revolution, well you know, we all want to change the world...". OCM has a plan to change our world for the better. OCM would like to mentor a network of students across the nation who are interested in making our agricultural markets more competitive. Our colleges are great breeding grounds for ideas. Our organization will be stronger, our voices louder and our future leadership more secure with a steady infusion of new blood. We envision forming Collegiate Chapters at several universities that would give OCM an opportunity to educate the students about the need for market reform and productive ways to promote positive change—information they often are denied in traditional college courses underwritten by "Big-Ag". We look forward to infusing the organization with a new energy and revitalizing our advocacy efforts.

If you are interested in helping make connections with your local university to form OCM Collegiate Chapters, please contact me at apooleark@yahoo.com or 405-306-3612.^{AE}

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and a

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