Summary of the Proposed GIPSA Rule and Its Effect on Fed Cattle Marketing

October 2010

What the Proposed GIPSA Rule Does:

A. It prevents packers from engaging in unfair, unjustly discriminatory, or deceptive practices that eliminate cattle feeders one cattle feeder at a time, or small groups of cattle feeders at a time. (Sections 201.2 and 201.210)

1. It does this by defining "unfair, unjustly discriminatory and deceptive practices or devices" to include:

    a. Unjustified material breach of a contractual duty by a packer.
    b. A retaliatory action or omission by a packer.
    c. An action to limit a livestock producer's legal rights and remedies under the law.
    d. Paying a premium or applying a discount to the purchase price of livestock without documenting the reasons and substantiating the associated revenue and cost justification for the premiums or discounts.
    e. A representation, omission, or practice that is fraudulent or likely to mislead a reasonable livestock producer regarding a material condition or term of a business transaction.
    f. Any act that distorts or is likely to distort competition in the market, including an act that wrongfully depresses prices below market value, impairs a producer's ability to compete with other producers, or impair a producer's ability to receive the reasonably expected full economic value in the market.

B. It ensures that GIPSA has the records needed to determine if packers are engaging in the unlawful practices enumerated in the Packers and Stockyards Act. (Section 201.94)

1. It does this by requiring packers to maintain written records that provide justification for differential pricing or deviations from standard prices offered to livestock producers.

C. It ensures packers are not engaged in giving undue or unreasonable preferences or advantages to some cattle feeders while giving undue or unreasonable prejudice or disadvantages to other cattle producers. (Section 201.211)

1. It does this by listing factors GIPSA could consider when determining if a producer has been subjected to legitimate market forces, including market-based prices, or if the producer was subjected to an unlawful practice. GIPSA may consider the following factors when making such a determination:

    a. Whether contract terms offered by a packer and based on number, volume or other condition, including price, are available to all producers who individually or collectively can meet the conditions set by the contract.

b. Whether premiums based on quality, time of delivery and production methods are offered in such a manner that does not discriminate against other producers that can meet the same standards.
c. Whether information regarding acquiring, handling, processing, and quality of livestock is disclosed to all producers when it is disclosed to one or more producers.

D. It improves transparency in the fed cattle market. (Section 201.213)

1. It does this by requiring packers to provide GIPSA with sample copies of each unique type of contract or agreement offered by packers, including marketing arrangements, forward contracts, formula contracts, production contracts or other marketing agreements.

    a. GIPSA may then post a copy of each unique sample contract on its Web site.
    b. GIPSA will not disclose to the public provisions containing trade secrets, confidential business information and personally identifiable information.

E. It prohibits packers from obtaining their livestock supply needs from other packers and from reducing competitive bidding for cattle. (Section 201.212)

1. It does this by prohibiting packer-to-packer sales (though packers can apply to GIPSA for a waiver from this prohibition in case of a catastrophic or natural disaster, or other emergency) and by prohibiting two or more packers from sharing a single packer buyer.

F. It distinguishes between forward contracts and marketing agreements. (Section 201.2)

1. It does this by including a definition for each:

    a. A forward contract is defined as either an oral or written fixed price or basis contract for a quantity or a lot or lots of livestock, where delivery will occur more than 14 days after the agreement is entered.
    b. A marketing agreement is defined as an agreement to purchase livestock at a future date with the price to be determined at or after the time of slaughter, where delivery will occur more than 14 days after the agreement is entered. In a marketing agreement, the seller agrees to sell all or part of its slaughter livestock to a packer when the livestock are ready to slaughter, and the packer agrees to purchase the livestock with price determined by an agreed formula. Terms of sale are not negotiated for individual lots of livestock under a marketing agreement.

It is urgent that you send comments to GIPSA in support of the GIPSA rule, and contact your members of Congress to urge them to fully support GIPSA's effort to restore competition.

Send Comments to:
E-mail: comments.gipsa@USDA.gov;
Fax: 202-690-2173

Mail to:
Tess Butler GIPSA, USDA 1400 Independence Ave., SW, Room 1643-S Washington, DC 20250-3604

R-CALF USA PO Box 30715 Billings, MT 59101
406-252-2516; www.r-calfusa.com