

Historical Timeline of Packers and Stockyard Act (PSA) Reforms and “GIPSA Rule” Fight (2008-2021)

1) May 2008

2008 Farm Bill includes language to require USDA's Grain Inspection Packers and Stockyards Agency (GIPSA) to write regulations under the Packers and Stockyards Act:

Title XI of the 2008 Farm Bill requires the Secretary of Agriculture to issue a number of regulations under the P&S Act, 1921, as amended. Among these instructions, the 2008 Farm Bill directed the Secretary to identify criteria to be considered in determining:

- Whether an undue or unreasonable preference or advantage has occurred in violation of the Act;
- Whether a live poultry dealer has provided reasonable notice to poultry growers of any suspension of the delivery of birds under a poultry growing arrangement;
- When a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of the Act;
- If a live poultry dealer or swine contractor has provided a reasonable period of time for a poultry grower or a swine production contract grower to remedy a breach of contract that could lead to termination of the poultry growing arrangement or swine production contract; and
- Whether the arbitration process provided in a contract provides a meaningful opportunity for the grower or producer to participate fully in the arbitration process.

In addition to developing criteria, the 2008 Farm Bill provided that livestock and poultry contracts must specifically disclose the right of the contract producer or grower to decline the requirement to use arbitration to resolve any controversy that may arise under the livestock or poultry contract.

2) June 22, 2010

USDA publishes a set of proposed regulations (referred to as the “GIPSA rules”), to address the issues raised in the 2008 Farm Bill language, but also to address other issues, such as retaliation and the poultry ranking system reform.

3) August 23, 2010

GIPSA Rule comment period ends. USDA received over 61,000 comments on the GIPSA rules, the majority of them being supportive of the rules.

4) 2010-2016

Livestock and poultry companies and industry groups lobby Congress to use the annual appropriations process to block USDA from finalizing GIPSA rules. As a result, the annual agriculture appropriations bills for Fiscal Years 2012-2015 included “GIPSA riders” to block USDA from implementing the GIPSA rules and in some cases, to require USDA to rescind some of the rules that had already been finalized.

5) 2011-2014

Livestock and poultry companies and industry groups lobby Congress for Farm Bill language to gut the Packers and Stockyards Act. The lobbying resulting in a provision in the initial House version of the Farm Bill to repeal the 2008 Farm Bill GIPSA provisions and to prohibit USDA from ever addressing any of the issues that were raised through the GIPSA rules. CCAR and partner organizations successfully blocked that effort, and the final 2014 Farm Bill did NOT include any anti-GIPSA provisions.

6) May 17, 2015

John Oliver's *Last Week Tonight* HBO episode about the plight of chicken farmers airs and puts a spotlight on Congressional efforts, on behalf of poultry companies, to block efforts by USDA to finalize basic protection for poultry farmers (GIPSA rules). To date, the episode has been viewed 12.4 million times and led to a long list of secondary articles and news segments in many mainstream media outlets. CCAR and CCAR member organizations worked behind the scenes with the John Oliver producers to provide content for the story, and some were featured on the episode.

7) December 2015

The Fiscal Year 2016 Appropriations bill funding USDA is enacted, and for the first time in 4 years, does NOT include any language to block USDA from finalizing GIPSA rules.

8) December 20, 2016

USDA, in the final weeks of the Obama Administration, published a set of 3 GIPSA rules, referred to as the “Farmer Fair Practices” rules:

- Interim Final Rule- to clarify that farmers do NOT need to show harm to competition across the entire livestock or poultry sector in order to prove

that they personally have been harmed by a meatpacker or poultry company. The effective date for the rule was set for February 21, 2017.

- Proposed Rule- to identify specific unfair and deceptive practices, and undue preferences by meatpackers or poultry companies that would be considered by the agency to be violations of the Act.
- Proposed Rule- to set criteria that the agency will use in determining when the poultry ranking system of payment would be considered a violation of the Packers and Stockyards Act.

USDA seeks public comments on all three regulations.

9) January 20, 2017

President Trump takes office, and soon after announces ambitious plans to roll back federal regulations, and establish hurdles to promulgation of new regulations, based on his concerns that regulations cost American jobs.

10) February 7, 2017

Trump Administration announces delay of implementation of the Interim Final Rule on Competitive Injury under the Packers and Stockyards Act, until April 22, 2017.

11) April 12, 2017

Trump Administration announced further delay of implementation of the Interim Final Rule on Competitive Injury, until October 19, 2017.

12) October 18, 2017

Trump Administration formally withdraws 2 of 3 pending GIPSA rules. The Administration announces that Interim Final Rule on Competitive Injury is officially withdrawn and will not be permitted to go into effect. The Administration also announces that USDA is officially taking no further action on the proposed rule to address unfair practices and undue preferences in violation of the Packers and Stockyards Act. Proposed rule regarding poultry grower ranking system of payment has not been formally withdrawn, but remains in limbo at this time.

13) December 10, 2017

As part of Agriculture Secretary Perdue's reorganization plan, the Grain Inspection Packers and Stockyards Administration (GIPSA) was officially disbanded and its functions divided up and placed under the jurisdiction of the Agricultural Marketing Service (AMS). The Packers and Stockyards program is now part of the newly

created Fair Trade Practices branch of AMS. Farmer advocates raised objections to this demotion of the agency because of concerns that it signals further efforts to undermine enforcement of the Packers and Stockyards Act.

14) May 22, 2019

USDA formally announces plans to issue a new proposed rule on undue and unreasonable preferences and advantages under the Packers and Stockyards Act commonly referred to as “the undue preference rule.” The proposed rule was listed on the Office and Management and Budget Spring 2019 “Unified Agenda of Regulatory and Deregulatory Actions” with an anticipated publication date of June 2019.

15) January 13, 2020

The Federal Register publishes the USDA proposed rule entitled “Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act” with a 60-day comment period. The proposed rule established criteria that the Secretary will use in deciding when an undue or unreasonable preference or advantage has been given, in violation of the Act. The specific criteria proposed in the rule include, but are not limited to, whether the preference or advantage under consideration:

- (a) Cannot be justified on the basis of a cost savings related to dealing with different producers, sellers, or growers;
- (b) Cannot be justified on the basis of meeting a competitor’s prices;
- (c) Cannot be justified on the basis of meeting other terms offered by a competitor; and
- (d) Cannot be justified as a reasonable business decision that would be customary in the industry.

On January 10, 2020, CCAR issued a public statement expressing strong concerns about the rule and its lack of adequate safeguards for farmers.

16) March 12, 2020

Senators Tester (D-MT) and Grassley (R-IA) and Rep. Kaptur (D-OH) and other Members of Congress sent a letter to USDA commenting on the proposed PSA undue preference rule, and making recommendations to strengthen the rule.

16) March 13, 2020

CCAR filed comments on the proposed rule. The Office of Management and Budget website predicts that the final rule will be published in August of 2020.

17) December 11, 2020

Final rule on “Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act” is published in the Federal Register. The text of the final rule is as follows:

The Secretary will consider the following criteria, and may consider additional criteria, when determining whether a packer, swine contractor, or live poultry dealer has made or given any undue or unreasonable preference or advantage to any particular person or locality in any respect in violation of section 202(b) of the Act. The criteria include whether the preference or advantage under consideration:

- (a) Cannot be justified on the basis of a cost savings related to dealing with different producers, sellers, or growers;
- (b) Cannot be justified on the basis of meeting a competitor's prices;
- (c) Cannot be justified on the basis of meeting other terms offered by a competitor; and
- (d) Cannot be justified as a reasonable business decision.

The final rule is largely the same as the proposed rule, except that at the end of section (d), the phrase “that would be customary in the industry” was removed based on public comments.

Even with this change, the final rule was opposed by CCAR and many other farmer advocates. The Packers and Stockyard Act is structured to provide protections to farmers against illegal conduct by meatpackers, poultry companies and swine contractors. Instead of clarifying those farmer protections, the final rule goes the other direction, and establishes legal safe harbors for meatpackers, poultry companies and swine contractors to avoid prosecution under the Packers and Stockyards Act.

18) June 11, 2021

Under the Biden Administration, Agriculture Secretary Vilsack announces plans to begin work on three proposed rules to “support the enforcement of the Packers and Stockyards Act.”

In the statement, Secretary Vilsack explains, “The Packers and Stockyards Act is a vital tool for protecting farmers and ranchers from excessive concentration and unfair, deceptive practices in the poultry, hog, and cattle markets, but the law is 100 years old and needs to take into account modern market dynamics. It should not be used as a safe harbor for bad actors. The process we’re beginning today will seek to

strengthen the fairness and resiliency of livestock markets on behalf of farmers, ranchers and growers.”

The statement explains further that “USDA intends to take three actions related to rulemaking in the months ahead. First, USDA intends to propose a new rule that will provide greater clarity to strengthen enforcement of unfair and deceptive practices, undue preferences, and unjust prejudices. Second, USDA will propose a new poultry grower tournament system rule, with the current inactive proposal to be withdrawn. Third, USDA will re-propose a rule to clarify that parties do not need to demonstrate harm to competition in order to bring an action under section 202 (a) and 202 (b) of the P&S Act.”

19) July 9, 2021

President Biden signs an Executive Order on “Promoting Competition in the American Economy,” establishing a White House Competition Council and directing federal agencies to take 72 different actions to “promote the interests of American workers, businesses and consumers.” Among other provisions, the EO directs the Secretary of Agriculture to:

(i) to address the unfair treatment of farmers and improve conditions of competition in the markets for their products, consider initiating a rulemaking or rulemakings under the Packers and Stockyards Act to strengthen the Department of Agriculture’s regulations concerning unfair, unjustly discriminatory, or deceptive practices and undue or unreasonable preferences, advantages, prejudices, or disadvantages, with the purpose of furthering the vigorous implementation of the law established by the Congress in 1921 and fortified by amendments. In such rulemaking or rulemakings, the Secretary of Agriculture shall consider, among other things:

(A) providing clear rules that identify recurrent practices in the livestock, meat, and poultry industries that are unfair, unjustly discriminatory, or deceptive and therefore violate the Packers and Stockyards Act;

(B) reinforcing the long-standing Department of Agriculture interpretation that it is unnecessary under the Packers and Stockyards Act to demonstrate industry-wide harm to establish a violation of the Act and that the “unfair, unjustly discriminatory, or deceptive” treatment of one farmer, the giving to one farmer of an “undue or unreasonable preference or advantage,” or the subjection of one farmer to an “undue or unreasonable prejudice or disadvantage in any respect” violates the Act;

(C) prohibiting unfair practices related to grower ranking systems — systems in which the poultry companies, contractors, or dealers exercise extraordinary control over numerous inputs that determine the amount farmers are paid and require farmers to assume the risk of factors outside their control, leaving them more economically vulnerable;

(D) updating the appropriate definitions or set of criteria, or

application thereof, for undue or unreasonable preferences, advantages, prejudices, or disadvantages under the Packers and Stockyards Act; and
(E) adopting, to the greatest extent possible and as appropriate and consistent with applicable law, appropriate anti-retaliation protections, so that farmers may assert their rights without fear of retribution;

These directives from the President are consistent with Secretary Vilsack's June 11, 2021 announcement regarding upcoming rules on Packers and Stockyards Act enforcement, and demonstrate the clear support of the President in these efforts and the relevance of those efforts to economy-wide actions to strengthen anti-trust and competition policy enforcement.

20) August 2021

USDA published a detailed list of answers to frequently asked questions regarding enforcement of the undue and unreasonable preference regulations under the Packers and Stockyards Act.

<https://www.ams.usda.gov/rules-regulations/packers-and-stockyards-act/faq>

21) October 7, 2021

The House Agriculture Committee held a hearing "to review the state of the livestock industry." During the hearing, Agriculture Secretary Vilsack testified. During questioning, the Secretary talked about USDA's plans to publish three Packers and Stockyard Act rules. Specifically, the Secretary stated that USDA would be focused initially on the poultry tournament system rule to ensure it is a fair system, and that he expects to see activity on this rule towards the end of 2021, or early 2022. Further, he stated that the poultry tournament system rule will be followed by a rule clarifying undue preferences and unfair practices, which will then be followed by a rule that involves the scope of the Packers and Stockyards Act (a reference to the anticipated rule clarifying whether a demonstration of competitive injury to the sector is required under the Packers and Stockyards Act).

The Secretary also stated that USDA recently posted a Frequently Asked Questions (FAQ) sheet that clarifies their interpretation of rules that were put out under the Trump administration, in terms of enforcement, to make sure that "folks understand and appreciate that USDA is looking at ways to prevent discrimination, retaliation, and unfair practices in this industry."

Lastly, the Secretary mentioned that USDA is working, at the instruction of the President, to put together a library of contract information and language so that "folks can decide whether their contract is fair, reasonable, and in line with what you would normally see in this industry."