



Nov. 21, 2010

Ms. Tess Butler
GIPSA, U.S. Department of Agriculture
1400 Independence Ave. SW
Room 1643-S
Washington, DC 20250-3604

RE: Farm Bill Comments on Proposed Farm Bill Regulations, 75 Fed. Reg. 35338-35354

Dear Ms. Butler:

The North Dakota Stockmen's Association (NDSA) is an 81-year-old beef cattle trade organization representing more than 2,800 members. NDSA staff, volunteer leaders and members spent considerable time evaluating the proposed Grain Inspection, Packers & Stockyards Administration (GIPSA) competition rule over the last several months. While we appreciate the effort that went into the rule drafting and recognize that the goal was to improve fairness and transparency in the beef industry, the proposed rule contains several problematic provisions that could interfere with those goals and actually stifle some of the innovative efforts of U.S. cattle producers to add value to and receive premiums for their cattle.

Members reflected these sentiments in a policy resolution passed at the NDSA Annual Convention in September 2010. The resolution reads:

"WHEREAS, the NDSA supports a competitive marketplace and more profit opportunities for all segments of the beef industry; and

"WHEREAS, the Grain Inspection, Packers and Stockyards Administration has recently proposed a rule to address livestock competition issues; and

"WHEREAS, the NDSA recognizes the intent of the rule is to improve the plight of producers; however, several problematic provisions in it could hinder some marketing options and profit opportunities available currently.

"THEREFORE BE IT RESOLVED, the NDSA continues to educate decision-makers about these problems and work to achieve results beneficial to the North Dakota beef industry."

The NDSA has four main concerns with the proposed rule:

- 1) Order buyers will only be allowed to represent one packer, not multiple packers. While the goal appears to be to require exclusive buyers for each packer and to increase the number of buyers bidding on cattle, we think that the opposite will actually occur, particularly restricting smaller, more regional packers from bidding on cattle they otherwise would be able to with a buyer representing multiple entities. Fewer buyers mean less competition, whether it is at an auction market or via an on-farm sale. Smaller auction markets would also likely suffer more than larger ones, as packers will be forced to pick

and choose which sales they can be at, and, likely, places with larger offerings and the ability to satisfy volume requirements would be chosen over smaller ones.

2) The proposed rule may limit packers' willingness to pay premiums because of the additional costs and paperwork required and the potential litigation that could result if the companies are called into question for deviating from the "standard price." Cattle producers have worked hard over the past 10 to 20 years to establish value-based marketing arrangements and to satisfy consumer demands for premium quality and branded products. If packers are penalized for differentiating price, we expect them to instead trend toward paying the same price across the board, which could reduce producers' premium opportunities and negatively impact branded programs and other alternative marketing arrangements, as the incentive to participate in such programs will be diminished. GIPSA's 2007 Livestock and Meat Marketing Study found that producers and consumers would be worse off if alternative marketing arrangements, which today are utilized by about 60 percent of the beef market, were reduced or eliminated.

3) To avoid the cost and regulations outlined in the proposed rule, we expect that some packers may opt to forego purchasing from some producers and feeders and, instead, opt to own more cattle themselves directly, thereby increasing the vertical integration of the beef industry and the overall percentage of packer-owned cattle. It is estimated that packers own approximately 5 percent of the market today.

4) The proposed rule requires packers to file copies of marketing agreements/contracts with GIPSA. While the rule affords some protection to packers to preserve private business information, the same safeguards do not appear to be in place for the other parties in the contract – the producers and feeders. The latter parties should have the same opportunity to protect their private business information from competitors, as well as from the public, which may have access to this information directly or through a Freedom of Information Act inquiry.

There are two major areas that need clarification:

1) Under the proposed rule, information needs to be disclosed when a price deviates from the "standard price," yet "standard price" is not defined in the rule. Is it based on a daily, weekly or annual average? The cash market? The futures market? A geographical area? A specific class of livestock? Those with like genetics, vaccination history or management? Also, who determines what the standard price is? And how do folks throughout the supply chain know what it is, when it changes and, therefore, whether or not they are deviating from it or have received a non-standard price? Certainly, these details would have to be clarified in order for people on all levels to understand and comply with the rule.

2) It is unclear how "competitive injury" or "likelihood of competitive injury" will be determined. After reviewing the sample contracts submitted, will GIPSA determine this, or is this something that will be initiated by another party? If either competitive injury or the likelihood of competitive injury is determined, are there penalties that GIPSA will assess, or will a judge determine this? Again, clarification would have to be provided to improve understanding and to determine how this will impact the beef industry.

Finally, we are concerned what the economic impact of the proposed rule will be. Informa Economics Inc., which was commissioned by the National Cattlemen's Beef Association, the National Pork Producers Council, the National Turkey Federation and the National Meat Association to conduct a comprehensive economic analysis of the rule, indicates that, as written, the rule will cause domestic cattle numbers to shrink by 494,000 head, gross domestic product to decline by \$1.56 billion, 23,000 jobs to be lost and the industry to further consolidate. The Informa study also indicates that the rule would result in "ongoing and indirect" costs to the livestock and poultry industries of more than \$1.64 billion, including nearly \$880 million to the beef industry.

A separate study conducted by John Dunham and Associates Inc. for the American Meat Institute also indicated negative consequences – 30,000 direct jobs and as much as \$14 billion in economic activity lost.

As we understand, the intent of the rule was to improve the plight of producers and, in effect, raise prices paid to them. According to the aforementioned estimates, though, the opposite would be true and the changes that result would actually cost producers money. Even if these estimates would be somewhat skewed and the U.S. economy and U.S. beef industry realized only a fraction of the losses identified, those would still be too much to bear. It is unfortunate that the U.S. Department of Agriculture did not itself conduct a substantial economic analysis and publish it along with the rule to shed more light on this important consideration.

In summary, the NDSA recognizes the proposed rule as one developed with the intentions to improve fairness and transparency in the cattle business; however, several of the rule's provisions are concerning to us, as are a couple of third-party economic analyses that point to its negative unintended consequences for the beef sector and broader U.S. sectors. Therefore, the NDSA rejects the proposed rule as written and asks that it either be rewritten to address our concerns and answer our questions or withdrawn completely.

We appreciate this opportunity to comment. If you have any questions, feel free to contact our office at (701) 223-2522.

Sincerely,

Jason Schmidt, President
North Dakota Stockmen's Association