



North Dakota Stockmen's Association Comments
Grain Inspection, Packers & Stockyards Administration
Livestock Competition Hearing
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Good morning! My name is Casey Maher, and I am a cow-calf and seedstock producer from Sioux County, N.D. I am also a director of the North Dakota Stockmen's Association (NDSA), an 81-year-old beef cattle trade organization representing more than 2,800 members. It's on the Stockmen's Association's behalf that I am here today. We're grateful for this opportunity to share our perspectives, as well as to hear from others in this forum.

Our leadership spent considerable time evaluating the proposed Grain Inspection, Packers & Stockyards Administration (GIPSA) competition rule. We appreciate the effort that went into its drafting, and recognize that the goal was to improve fairness and transparency in the beef industry and, thereby, improve the plight of producers, which we appreciate.

However well-intentioned, though, there are several problematic provisions in the rule that could interfere with those goals and actually diminish some marketing options and profit opportunities that producers currently enjoy and have worked hard to develop over the past 10 to 20 years.

We have 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 preferred 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 both producers and consumers would be worse off if alternative marketing arrangements, which today are utilized by approximately 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 that we would also like to point out.

- 1) First and foremost, 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? Certainly, these details must 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 must be provided in the final rule to improve understanding and to determine how this will impact the beef industry.

In summary, the NDSA recognizes the proposed rule as one developed with the best intentions to improve fairness and transparency in the cattle business; however, several problematic and a few unclear provisions are concerning to us. We believe that, if the cattle industry is a game, then the government’s role is to be a referee, ensuring that the rules are being followed. However, under the proposed rule, the government goes too far in dictating the rules and interferes with the free-enterprise system that is a pillar for our organization and this great country.

Thank you for the opportunity to speak to you today. I would be happy to answer any questions you may have.