



November 22, 2010

Tess Butler  
GIPSA  
US Department of Agriculture  
1400 Independence Avenue SW  
Room 1643-S  
Washington, D.C. 20250

**Farm Bill Comments**  
**Federal Register June 22, 2010**  
**Vol. 75 no. 119**

Dear Ms. Butler:

As a national association of U.S. cattle producers, USCA strives to effectively voice and fairly represent the interests and priorities of the U.S. cattle industry. USCA, whose membership includes cow-calf operators, backgrounders, feedlot operators, and state associations was founded upon the concept of creating agricultural policy that establishes and maintains high levels of competition and transparency within our agricultural markets through grassroots efforts by U.S. cattlemen and our collaborative work with the U.S. government.

The United States Cattlemen's Association whole-heartedly agrees with the intent of the proposed rules as outlined in the summary appearing on page 35338 of the Federal Register referenced above. The need for this rule is documented in the background information and is consistent with experiences we have heard from cattle producers of "undue and unreasonable" preferences being granted to certain producers and not to others. The fact that four of the five largest feeders appear to have exclusive packer access without identifiable quality specifications illustrates this. The description of "competitive injury" and the definition in 201.2(t) and (u) is especially needed to clarify conduct.

### **Value Based Marketing**

We appreciate direct reference in the preamble that recognizes the intent of these rules is not to in any way discourage paying different prices for livestock yielding differently valued meat products, or to in anyway discourage the growth of such programs, or stifle the introduction of new programs to the market. A concern may be if this language in the preamble is sufficient or does it need to be in the rule

itself? We expect this rule to provide integrity in the market to prevent manipulation of prices on the open market and in marketing agreements, while at the same time improving transparency and the opportunity for value-based market opportunities.

### **Cost-Benefit analysis**

Critics have called for a detailed economic analysis. We believe this has been adequately addressed in the proposal. We especially agree that the benefits referenced on page 35346 due to increased competition will be realized. In addition to the immediate benefit of making a more dynamic marketplace, these benefits will be evidenced by stronger rural communities. Communities that will benefit from more efficient producers having access to markets that are now or are becoming increasingly restricted to them because of preferential treatment extended to some. Innovation will increase as more producers are allowed to compete for consumer desired products. Present agreements stifle efforts by creative participants to gain market access.

### **Within Mandate**

Critics also contend the proposed rules go beyond the mandate of the 2008 Farm Bill. However, these critics fail to recognize the authority and obligation to protect the market-place is already in the Act. In addition, some of the specific issues they claim Congress rejected in the 2008 Farm Bill, were never adequately debated in that process. You have correctly identified in the background information for this proposal that judicial uncertainty and inconsistency necessitates these clarifications.

### **Items to clarify**

Because of the potential for unfortunate “unintended” consequences, we seek clarification on some issues.

#### **201.212**

Is the definition of “packer” in Section 201 adequate? We have heard special concerns that producer owners of a packer may be considered to be a packer even if they are not involved in the day to day operation. Specifically, we propose an owner of U.S. Premium Beef would not be considered a packer and prohibited from selling to a different packer under the proposed section 201.212 (c). Another concern with this section is with a packer geographically separated from their plant and the market they may need to sell cattle in to another packer. Another might be a feedlot owned by a packer and a customer of that feedlot needing the flexibility for that feedlot manager to sell his cattle to another packer. In light of these possibilities, could a statement be added at the end of 201.212 (c) similar to “if such acquisition leads to the violation of 201.2 (t) or (u)? Perhaps an exclusion should be included for packers processing less than 10% of the industry capacity, as there are several small producer owned or co-op’d plants who still need access to additional processing outlets. Certainly, nothing in the rule should stifle or depress producers’ ability to participate in downstream activities.

We have also heard concern that some cow buyers may be unduly restricted by 201.212 (a). Some remote auction markets feel a single buyer can represent more than one packer effectively and that this practice has led to more buying power instead of restricting competition. We urge the Administration to

carefully review comments addressing cow buyers and develop appropriate rules for them. With that said, there is a justifiable concern that such buyers would have a standard of ethics or conduct they should have to operate under.

In light of the above mentioned possibilities is section 201.212 even needed? The new definitions in 201.2 seem to clarify unlawful conduct especially when combined with the existing 203.19 language. If current concerns exist in this area about hog buying then perhaps this language should be specific to swine.

### **201.211**

We have concern that volume is listed as criteria in this section. Some of the largest entities could claim this criteria to justify their agreement even if that component was not as economically significant as other quality specifications. The conditions set in a contract or agreement should be based on economically justifiable levels, not just the ability of an entity to supply. The largest “captive supply”, exclusive arrangements have had little to do with quality attributes and primarily serve to secure supply in a non-bidding manner. It may be impractical for producers to combine to meet volume criteria, especially if the volume alone is not justified economically.

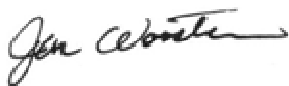
### **201.211**

In consideration of packer threats to cease value based buying if these rules are adopted, we propose adding language to limit that discriminatory action. For example, by adding in subsection (b) A violation of the Act could also occur if a packer changes a reasonable buying practice (value based buying) to an unreasonable one (all livestock bring the same price).

### **Conclusion**

The intent of these proposed rules is sound and sorely needed. We have outlined some concerns that need to be addressed. With these changes these rules will help restore competition to the marketplace. Longer trading windows and greater market access to more producers should be expected outcomes. These outcomes will enhance price discovery and stimulate innovation as more participants are encouraged in the marketplace. If these outcomes are not realized we hope the Administration will consider other remedies, perhaps including minimum negotiated sale amounts per plant or an outright ban on packer owned and fed cattle by any packer with more than 10% of industry processing capacity.

Sincerely,



Jon Wooster  
President  
U.S. Cattlemen's Association



Allan Sents  
Region VIII Director, Marketing Chair  
U.S. Cattlemen's Association