

*Fighting for the U.S. Cattle Producer!*



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July 13, 2010

The Honorable J. Dudley Butler  
Administrator  
U.S. Department of Agriculture  
Grain Inspection, Packers and Stockyards Administration  
Stop 3601, Room 2055 – South Building  
1400 Independence Ave, SW  
Washington, DC 20250-3601

**Sent Via E-mail and Facsimile:** [comments.gipsa@usda.gov](mailto:comments.gipsa@usda.gov); 202-690-2173

**Re: R-CALF USA's Opposition to Requests for Extension of Time in the Matter of the Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Conduct in Violation of the Act, RIN0580-AB07**

Dear Mr. Butler,

On behalf of the thousands of independent U.S. cattle-producing members of R-CALF USA located in 46 states, we respectfully request that the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA), resist any effort to extend the public comment period established in the GIPSA proposed rule, "*Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Conduct in Violation of the Act,*" (Proposed Rule) published at 75 Fed. Reg., 35338-354 (June 22, 2010).

It is our understanding a few trade associations that primarily represent the interests of the highly concentrated meatpacking industry have requested a considerable extension of the original 60-day public comment period established in the Proposed Rule. The National Cattlemen's Beef Association (NCBA), the American Meat Institute (AMI) and the National Pork Producers Council (NPPC), for example, each have requested a 120-day extension *in addition to the 60-day comment period* already established within the Proposed Rule. Such an extension would effectively delay any opportunity for the publishing of a final rule until sometime in 2011. This, we believe, would be extremely detrimental to the interests of hundreds of thousands of U.S. livestock producers and poultry producers who continue to experience profound, competition-related problems in the marketing of their livestock and poultry.

The Food, Conservation and Energy Act of 2008 (2008 Farm Bill), enacted into law in June 2008, recognized the profound competition-related problems in U.S. livestock and poultry markets and amended the Packers and Stockyards Act (PSA) to rectify several of those issues.

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The 2008 Farm Bill also directed GIPSA to, *inter alia*, promulgate regulations to clarify the PSA's prohibition against the making or giving of an undue preference or advantage. U.S. livestock producers, therefore, already have been denied the congressionally mandated reforms and regulations required by the 2008 Farm Bill for over two years and should not be subjected to any further delays in the regulatory rulemaking process, as would most certainly occur if GIPSA were to extend the already adequate 60-day public comment period for the Proposed Rule.

Moreover, the Proposed Rule, pursuant to GIPSA's existing authority under the nearly 90-year-old PSA, addresses additional competition-related problems the agency itself has discovered. Included among these additional problems are livestock procurement practices that are an affront to competition.

The dire need for GIPSA to immediately address such additional problems is evidenced by a 2006 audit conducted by the U.S. Department of Agriculture (USDA) Office of Inspector General (OIG) that found not only was the Packers and Stockyards Program (PSP) *not* performing competition and complex investigations,<sup>1</sup> but also, the PSP had failed since 1997 (for nearly a decade) to remedy substantive deficiencies in its operations.<sup>2</sup>

Thus, disaggregated independent livestock producers and poultry producers have been deprived of the congressionally mandated protections contained in the PSA for well over a decade (estimate based on the four-year-old, 2006 OIG audit) because the PSP did not provide proper oversight or enforcement of the PSA, and presumably allowed the concentrated meatpacking industry, with its considerable market power, to operate in the marketplace with impunity. Independent livestock and poultry producers have an absolute right to the market protections afforded by the PSA, and GIPSA should proceed posthaste to expeditiously catch up on its responsibilities to independent producers that for so long have been ignored.

The above-mentioned groups that seek a delay in GIPSA's rulemaking process essentially argue that the Proposed Rule addresses novel issues that they have not had adequate time to evaluate. However, these groups have long fought against some or all of the very reforms contained in the Proposed Rule, and already have taken a definitive position.

For example, the NCBA, AMI and NPPC each are members of the Meat and Poultry Promotion Coalition that has long fought against a key provision within the Proposed Rule. As long ago as 2007, they jointly sent a letter to Congress in full opposition to the provision that would free producers from having to show harm to competition in order to be protected by the PSA. In 2007, the three groups wrote in regard to that important provision: "*In any event, such a provision is virtually certain to have a chilling effect on current producer/processor relationships.*"<sup>3</sup> The fact that AMI, NCBA and the NPPC now cite their same, timeless objections to the Proposed

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<sup>1</sup> See Audit Report, Grain Inspection, Packers and Stockyards Administration's Management and Oversight of the Packers and Stockyards Programs, U.S. Department of Agriculture, Office of Inspector General, Northeast Region, Report No. 30601-01-Hy, January 2006, at ii.

<sup>2</sup> See *id.*, at i.

<sup>3</sup> Letter to the Honorable Tom Harkin from the Meat and Poultry Promotion Coalition, Oct. 18, 2007, available at <http://www.r-calfusa.com/Competition/071018lettertoHarkin2OpposeLvstktTitlein07.pdf>.

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Rule does not indicate these groups need more time for evaluation. Instead, it indicates the likelihood that these groups merely seek a delay in any new regulations that would limit any marketing practices of meatpackers.

In substantiation for this assertion, as far back as at least 2001 for example, both the NCBA and NPPC formally voiced their objections to granting USDA new authority to “regulate corporate relationships, commercial practices and contracts for the production of agricultural commodities.”<sup>4</sup> And, at the same time, they also have objected to *any* new laws that would address competition-related issues, e.g., the NCBA and NPPC wrote in 2001, “Creating new laws in an already complex regulatory environment is unnecessary and could result in serious unintended consequences.”<sup>5</sup>

GIPSA should not facilitate an undue delay of its current rulemaking process by granting an extension of time to groups that already have signaled contempt for any competition-related reforms.

For the foregoing reasons, R-CALF USA respectfully requests that GIPSA stand firm on its original, 60-day comment period as established in its Proposed Rule, thus leaving intact the Aug. 23, 2010, deadline for receiving public comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bill Bullard", with a stylized flourish at the end.

Bill Bullard, CEO

Cc: Edward Avalos, USDA Under Secretary  
John Ferrell, USDA Deputy Under Secretary

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<sup>4</sup> Letter to Senator from the National Cattlemen’s Beef Association, the National Pork Producer’s Council, and others, Nov. 6, 2001, archived by the American Meat Institute at <http://www.meatami.com/ht/a/GetDocumentAction/i/2410>.

<sup>5</sup> *Ibid.*