

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



**R-CALF**  
*USA*

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June 8, 2017

M. Irene Omade  
GIPSA, USDA  
1400 Independence Avenue SW  
Room 2542A-S  
Washington, DC 20250-3613

Via Internet: [www.regulations.gov](http://www.regulations.gov)

**Re: R-CALF USA Comments on 9 CFR Part 201, RIN 0580-AB28, Scope of Sections 202(a) and (b) of the Packers and Stockyards Act, Proposed Rule**

Dear M. Irene Omade:

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) appreciates this opportunity to submit comments to the U.S. Department of Agriculture (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) regarding the agency's proposed rule: *Scope of Sections 202(a) and (b) of the Packers and Stockyards Act* (Proposed Rule), published at 82 Fed. Reg., 17,594 (April 12, 2017).

R-CALF USA is a non-profit association that represents thousands of independent U.S. cattle farmers and ranchers and sheep producers in approximately 43 states. It is the largest producer-only trade association representing the U.S. cattle industry. R-CALF USA works to sustain the profitability and viability of the U.S. cattle and sheep industries, which are vital components of America's rural economy. R-CALF USA's membership consists primarily of independent cow-calf operators, cattle backgrounders and feedlot owners. Various main street businesses are associate members of R-CALF USA.

R-CALF USA is perplexed by USDA's action of converting the Interim Final Rule (IFR), which bears the same name as this Proposed Rule and which had already received public comment, into a proposed rule that seeks no substantive comments about the IFR or the Proposed Rule. Indeed, the agency is not even asking for comments regarding whether any changes should be made to the IFR. Instead, the agency exclusively solicits a public vote on four specific options. But even the USDA's proposed four options are misleading because the only real question the agency is asking is whether the IFR should be implemented or not implemented, and if not implemented, for how long shall it not be implemented. Only one option; *i.e.*, Option 1 to allow the IFR to become effective, would result in the scheduled implementation of the interim final rule. All other options, Option 2-4, are merely a progressive series of options with which to

delay the IFR beyond the previously established October 19, 2017 effective date. Thus, this Proposed Rule is highly unusual and counterintuitive.

However, since this is an official proposal by the USDA, R-CALF USA hereby casts its vote to allow the IFR to become effective as quickly as possible. We choose Option No. 1. Our rationale follows.

**Reason (1):**

- A. The Secretary of Agriculture has a statutory duty to “strengthen the family farm system” of agriculture, including livestock production. (7 U.S.C. 2204(c)(2)(D).)
- B. Indisputably, the IFR empowers individual farmers and ranchers (*i.e.*, family farm system participants) to secure legal protections under the Packers and Stockyards Act (P&S Act) if: 1) they are independently harmed by a packer’s unfair, unjustly discriminatory, or deceptive conduct, or 2) if a packer independently subjects them to undue or unreasonable prejudice or disadvantage.
- C. Because the IFR strengthens the family farm system by affirmatively affording family farmers and ranchers the means to protect themselves against cheating, retaliation, fraud and other such unfair practices, even when such unfair practices may not harm all of competition, and because the Secretary offers no alternatives in the Proposed Rule other than to choose to implement or not implement the IFR, the Secretary has a statutory duty to choose to strengthen the family farm system by implementing the IFR.

**Reason (2)**

- A. The Secretary, and not the judicial system, has a statutory duty to carry out the intent of Congress by fully implementing and enforcing the P&S Act, including Sections 202(a) and (b).
- B. The Secretary acknowledges that Sections 202(a) and (b) of the P&S Act have not been properly implemented, resulting in some courts applying Sections 202(a) and (b) differently than other courts and differently than they are applied by the USDA (*See, e.g.*, 81 Fed. Reg., 92,567-568 (discussing the purpose of the IFR).)
- C. Thus, the Secretary’s current implementation of Section 202(a) and (b) does not constitute fulfillment of the duty to fully implement the P&S Act because it is fraught with substantial uncertainty and ambiguity and because the referenced sections are being unevenly implemented and enforced.
- D. The IFR eliminates the uncertainty, ambiguity and uneven enforcement of Sections 202(a) and (b) of the P&S Act because it enshrines the Secretary’s position in a regulation. (*See id.*, 92,568.)

- E. Therefore, and because the Secretary offers no alternatives in the Proposed Rule other than to choose to implement or not implement the IFR, the Secretary has a statutory duty to implement the IFR to fulfill his duty to fully implement the P&S Act by eliminating the ambiguity and uneven application of Sections 202(a) and (b) of the act.

### **Reason (3)**

- A. Four beef packers control 85 percent of the U.S. fed cattle market and JBS is the second-largest of those packers, controlling about 24 percent of U.S. fed cattle market. (*See* R-CALF USA's letter requesting investigation of JBS activities, at 2, available at <https://www.r-calfusa.com/wp-content/uploads/2017/06/170606-Letter-Requesting-Investigation-of-JBS.pdf>.)
- B. JBS is a known bad actor. It paid penalties to settle charges of engaging in anticompetitive practices that harmed cattle producers in its home country. (*See id.*, at 3.) It unlawfully reduced the price of livestock paid to U.S. livestock producers and was involved in a U.S. cattle futures transaction that resulted in a violation of U.S. commodity trading laws by one of its business associates in 2011. (*See id.*, at 5-6.) JBS currently stands accused of widespread food safety violations in Brazil and widespread criminal acts including bribery of politicians. (*see, e.g.*, [http://www.theindependent.com/news/ag\\_news/dirty-family-secret-behind-jbs-billion-buying-spree/article\\_367033a2-48a7-11e7-b6bf-93bbde853c2d.html?utm\\_medium=social&utm\\_source=facebook&utm\\_campaign=user-share](http://www.theindependent.com/news/ag_news/dirty-family-secret-behind-jbs-billion-buying-spree/article_367033a2-48a7-11e7-b6bf-93bbde853c2d.html?utm_medium=social&utm_source=facebook&utm_campaign=user-share).)
- C. Cargill, the nation's third-largest beef packer (also controlling about 24 percent of the market), is also a known bad actor. Cargill openly and publicly retaliated against cattle farmers and ranchers who chose to associate with R-CALF USA. Canadian publications Farm Business Communications and The Alberta Express quoted Cargill spokesman Robert Meijer saying, 'We will not knowingly purchase or take on or do business with cattle directly or indirectly associated with R-CALF members or those affiliated with R-CALF.' (<https://www.r-calfusa.com/wp-content/uploads/2013/04/08-23-04-CDN-Cargill-Wont-Process-Cattle-Owned-by-RC-Members-S-Read-The-Alberta-Express.pdf>.) This clear and direct act of retaliation caused injury to certain cattle farmers and ranchers – those who associated with R-CALF USA and who wanted to sell cattle to Cargill, but it did not cause an injury to competition. This, alone, is a compelling reason why the IFR should be allowed to become effective as quickly as possible.
- D. Family farmers and ranchers cannot hope to overcome the huge disparity in economic and political power between them and the four big beef packers who, because of their dominant market shares, quite literally decide who among the hundreds of thousands of disaggregated cattlemen, who collectively sell millions of cattle each year, will have timely access to the market. Cargill, for example, unilaterally decided that R-CALF USA members would not.

E. Further, when two of the four packers that control 85% of the fed cattle market have histories of committing anticompetitive practices against cattlemen such as retaliation, entering coordinated price agreements (*see* R-CALF USA's letter requesting investigation of JBS activities, at 3, available at <https://www.r-calfusa.com/wp-content/uploads/2017/06/170606-Letter-Requesting-Investigation-of-JBS.pdf>), and seeking unlawful advantages through bribery, the necessity of empowering independent cattlemen to protect themselves against such despicable packer conduct immediately becomes self-evident. Therefore, the Secretary should allow the IFR to become effective as quickly as possible.

### **Conclusion**

For the foregoing reasons, R-CALF USA urges Secretary Sonny Perdue to allow the Interim Final Rule (IFR) to become effective as quickly as possible, and certainly no later than October 19, 2017.

We are confident that Secretary Perdue will stand up to the packer lobby's overwhelming display of political and economic power and do what is right for American family farmers and ranchers by allowing the IFR to become effective.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bullard". The signature is stylized and cursive, with a prominent flourish at the end.

Bill Bullard, CEO