R-CALF USA Briefing Paper:

Proposed GIPSA Rule Provides a Rock-Solid Foundation for Correcting Severe Marketing Problems in the U.S. Fed Cattle Market

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The Powerful Packer Lobby – the NCBA, NPPC, AMI, and NMA – is using outright fear tactics to dupe U.S. cattle producers into opposing the proposed GIPSA rule that would restore the opportunity for independent cattle feeders to remain profitable. The Packer Lobby wants to chickenize the fed cattle industry, relegating it to an industry where the terms of production and terms of marketing are controlled by the packers themselves. To chickenize the industry, the Packer Lobby must first eliminate the competitive cash market for fed cattle. This is because competition in the cash market stands in the way of the control they seek. Defeating the proposed GIPSA rule, which protects the competitive cash market for fed cattle, is the first step in the Packer Lobby's strategy to gain full control over the fed cattle industry.

For more than two years, R-CALF USA's Marketing Committee has gathered information from independent cattle feeders to identify anticompetitive practices in the cash market for fed cattle. Below is a list of just some of the anticompetitive practices we have uncovered. Importantly, these practices cannot be halted unless the proposed GIPSA rule clarifies that cattle feeders *do not* have to show harm to competition in order to stop the ongoing, anticompetitive practices that are reducing their profitability. This is because these practices are narrowly focused to harm only the participants in the cash market for fed cattle – the independent cattle feeder. Thus, these anticompetitive practices do not necessarily cause direct harm to competition in the entire cattle industry.

By establishing that independent cattle feeders *do not* have to show harm to competition in order to halt the anticompetitive practices directed at them, the proposed GIPSA rule provides a rock-solid foundation for correcting these serious anticompetitive practices that are driving independent cattle feeders out of business and reducing the volume of fed cattle sold in the cash market. The proposed GIPSA rule, because it protects competition in the cash market for fed cattle, will help ensure that independent U.S. cattle feeders will continue to have an opportunity to sell *all* their cattle in an open, competitive marketplace, whether through cash sales or through alternative marketing arrangements.

The examples below depict practices occurring today in the cash market for fed cattle, which not only is the price discovery market, but the price determining market as well. Every price established for every contracted cattle sold, whether by forward contract, formula contract, production contract, or marketing agreement, is tied to the price discovered in the cash market. If the industry does not take immediate action to protect the cash market, the chickenization of the cattle industry will occur in a blink of an eye. Already, based on NCBA's attack on the proposed GIPSA rule, the fed cattle industry now suffers a tremendous imbalance where just 40 percent of the fed cattle sold in the cash market are establishing the price for the remaining 60 percent of cattle sold through alternative marketing arrangements (NCBA's briefing papers claims nearly 60 percent of cattle are involved in alternative marketing arrangements). USDA data show the percentage is much less in some regions, with cash sales representing only 34 percent of all sales in the TX-OK-NM region.

<u>The warning sirens could not be sounding any louder, so why are so few listening?</u>

Examples of Ongoing, Anticompetitive Market Practices that Can Be Corrected Only Under the Proposed GIPSA Rule:

1. Independent cattle feeders will receive bids for their pen(s) of cattle only from one packer for an extended time period, and for the next extended time period, a different packer will step in to offer the only bid, and then the rotation continues. This rotation of packer bids means there is no competition for the cattle feeders' pen(s) of cattle and even though there is more than one packer buying cattle in the feedlot, each packer is able to offer a take-it-or-leave-it bid to cattle feeders for each pen of cattle. And, this lack of competition in the cash market translates to a reduced price for all cattle contracted under alternative marketing agreements.

2. Independent cattle feeders will receive only below market-price bids for high-quality, slaughter-ready cattle from a packer that continually passes them over while offering either higher bids for similar or even lower quality cattle, or offering the same bid for green cattle, that all are a farther distance from the packer's plant; and then, the packer will return after a week or even longer to offer the cattle feeders a market-price bid when the cattle are known to be overfed, which effectively reduces the profitability for the cattle feeders.

3. Independent cattle feeders may have more than one packer buying cattle in the feedlot, but only one packer will offer a live-weight bid, which is below market price, while the other packer will bid market price only on a grade and yield basis. To receive market price, feeders must choose grade and yield, which not only requires them to pay transportation costs to the plant, but also, it allows the packer to apply deep price discounts to the cattle without the packer having to provide any dispositive justification for the discounts. As a result, cattle feeders receive an even lower price for their cattle than if they had sold their cattle at the below-market bid offered by the only packer that would offer a live-weight bid.

4. Independent cattle feeders will receive a bid for a pen of slaughter-ready cattle from a packer that owns more than one packing plant. And, even though one or more of the packers' other packing plants, which are located about the same distance from the feedlot, are offering a higher bid, the packer offers the cattle feeders only a lower bid and asserts the feeders cannot deliver cattle to the plants were the higher bids are being offered, even though the feeders have previously sold similar quality cattle to the other plants. As a result, the feeders must accept the lower bid in order to timely market their cattle. And, this lower price paid to cattle feeders in the cash market translates into lower prices for all the cattle contracted under alternative marketing arrangements.

5. Independent cattle feeders may have more than one packer buying cattle in the feedlot, but will only receive a bid reflective of the market price from one packer that, in return for offering the current market price for cattle that have reached their optimal slaughter weight, requires the feeders to delay delivery of the cattle for as long as three weeks. As a result, the cattle feeders' profitability is reduced because they must continue feeding their cattle after they have reached their optimal weight (a period when feed efficiency is drastically reduced) and the cattle feeders are responsible for the additional feeding costs.

6. Independent cattle feeders have agreed to sell cattle at a top-of-the-market price. However, after the sale is consummated and cattle are being loaded on trucks for delivery to the packer, the packer demands that a group of cattle be held back and exempted from the sale. Then, a week or longer later, after cattle prices have fallen, the same packer returns to purchase the group of previously

exempted cattle at the lower price. As a result, the cattle feeders' average price for their pen(s) of cattle is effectively reduced, thus reducing their profits.

7. Independent cattle feeders have received only below-market-price bids for their cattle for extended periods of time and have been informed that the packers have adequate supplies of captive supply cattle to enable them to stay out of the cash market for several weeks. As a result, the cattle feeder is forced to accept the below-market-price bid if he is to gain timely access to the marketplace, i.e., before his cattle become overfed. Because the packers' captive supply cattle are tied to the cash market price, this below-market-price sale effectively lowers the price for all captive supply cattle – all the cattle committed to the packer through alternative marketing arrangements.

8. Independent cattle feeders have sold high quality cattle on a carcass weight basis to a packer that subsequently applied substantial discounts to their cattle while the packer was simultaneously buying lesser quality cattle from a preferred feedlot without subjecting the cattle from the preferred feedlot to any comparable discounts.

The anticompetitive practices described above, we believe, are rampant in today's cash market for fed cattle. Because these practices directly affect the profitability of only the individual cattle feeder, unless the proposed GIPSA rule makes clear that cattle feeders *do not* have to prove harm to competition in the entire cattle industry *in addition to proving the packers' practices harmed them*, these serious anticompetitive practices will continue driving independent cattle feeders out of business and will continue reducing the volume of cattle sold in the cash market, which will result in lower-than-competitive prices for all cattle feeders, regardless of whether they sell cattle in the cash market or through alternative marketing arrangements.

In addition to the serious problems in the cash market for fed cattle, U.S. cow/calf producers also have experienced a severe reduction in competition in the cash market for their cull cows and bulls. In the Midwest and West, several packers joined together to share a single cattle buyer for all of their plants. As a result, rather than having three or more packers bidding for the ranchers' cull cows and bulls, only a single buyer was seated in the auction yards bidding for all the cattle needed by all the packers. This eliminated competition for cull cows and bulls and the packers were able to purchase their cattle without having to bid against one another, thus reducing the price paid to U.S. ranchers for their cull cows and bulls. The proposed GIPSA rule would end this anticompetitive practice.

The proposed GIPSA rule is the first meaningful action by USDA to preserve the independence of U.S. cattle producers by correcting the very serious anticompetitive practices that have become institutionalized in the U.S. fed cattle market and in the U.S. cull cow and bull markets.

If the entire U.S. live cattle industry does not step to the plate to help USDA-GIPSA to finalize this proposed rule so GIPSA can eliminate the ongoing, anticompetitive practices in the marketplace, then the U.S. cattle industry will soon be chickenized by the highly concentrated beef packing industry. Once the beef packers achieve their goal of forcing independent cattle feeders out of the cash market, they will dictate and control the terms of production and terms of marketing for fed cattle through contracts, just as they now do in the poultry and hog industries.

It is the independence of U.S. cattle producers that is at stake: nothing more, nothing less. And, the outcome will be decided based on whether independent producers support the proposed GIPSA rule.

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