

Fighting for the U.S. Cattle Producer!



R-CALF United Stockgrowers of America
P.O. Box 30715
Billings, MT 59107
Fax: 406-252-3176
Phone: 406-252-2516
Website: www.r-calfusa.com
E-mail: r-calfusa@r-calfusa.com

July 28, 2010

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

Re: The Effect of the Proposed GIPSA Rule on U.S. Premium Beef

Dear Administrator Butler:

R-CALF USA was contacted by members of U.S. Premium Beef, LLC (U.S. Premium Beef), who were told by representatives of the U.S. beef industry that the proposed rule published by your Agency on June 22, 2010, at 75 Fed. Reg., 35338-35354 (Proposed GIPSA Rule) would limit, restrict, or otherwise harm the marketing program established between U.S. Premium Beef and National Beef Packing Co., LLC (National Beef).

This assertion appears to contradict the official “Farm Bill Regulations – Misconceptions and Explanations” document your Agency posted on the U.S. Department of Agriculture (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) website on July 26, 2010, at www.gipsa.usda.gov. That document expressly states:

“It [the proposed rule] does not ban packers from owning their own livestock.”

“There is nothing in this provision [the provision on packer to packer sales] that limits or eliminates marketing agreements.”

“The proposed rule prohibits only direct sales of livestock between packers. A packer could sell to individuals, market agencies, dealers or other buyers.”

“There is no provision in the proposed rule that would limit or eliminate the ability of companies to provide premiums to reward producers for providing certain quantity or quality of livestock.”

Attached please find an analysis completed by R-CALF USA that describes the U.S. Premium Beef/National Beef marketing agreement and draws the following conclusions:

The Honorable J. Dudley Butler

July 28, 2010

Page 2

1. U.S. Premium Beef is not a packer, stockyard owner, market agency, or dealer and, therefore, is not a regulated entity subject to the requirements contained in the proposed rule.
2. U.S. Premium Beef members market their cattle to National Beef, which is a packer that is a regulated entity subject to the requirements in the proposed rule.
3. Pursuant to the proposed rule, National Beef can justify differential pricing and deviation from standard price or contract terms for U.S. Premium Beef members based on those members' payment of a U.S. Premium Beef membership fee, investment in U.S. Premium Beef units (which give each member the right to deliver a specified number of cattle based on the number of units owned or leased), and on their members' opportunity to meet specific quality-based criteria established by National Beef for U.S. Premium Beef members.
4. Pursuant to the proposed rule, National Beef can continue to pay premiums and apply discounts to cattle marketed by U.S. Premium Beef members by providing reasons and substantiating the revenue and cost justifications for such premiums and discounts.
5. Pursuant to the proposed rule, National Beef is not in violation of the prohibition against giving any undue or unreasonable preference or advantage when it: i) offers specific contract terms to all U.S. Premium Beef members that may not be offered to livestock producers who are not U.S. Premium Beef members; ii) offers a premium and discount schedule to all U.S. Premium Beef members that may be different to the premium and discount schedule offered to livestock producers who are not U.S. Premium Beef members; and, iii) discloses to U.S. Premium Beef members information regarding acquiring, handling, processing, and quality of livestock for the U.S. Premium Beef program that may not be disclosed to livestock producers who are not U.S. Premium Beef members.

R-CALF USA's analysis reveals that the proposed rule would not limit, restrict, or otherwise harm the U.S. Premium Beef/National Beef marketing arrangement.

We respectfully request that you inform us as to whether R-CALF USA's five conclusions listed above are correct; whether R-CALF USA's final conclusion that the proposed rule would not limit, restrict, or otherwise harm the U.S. Premium Beef/National Beef marketing arrangement is correct; and whether it is the intent of GIPSA to prohibit, limit, or restrict the type of unique marketing arrangement that exists between U.S. Premium Beef and National Beef in the proposed rule. Thank you for your consideration of our request.

Sincerely,

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

Bill Bullard, CEO

Attachment

**Would the Proposed GIPSA Rule Harm U.S. Premium Beef, LLC?
July 27, 2010
Analysis Prepared by R-CALF USA**

The Packers and Stockyards Act of 1921 (P&S Act) has jurisdiction over packers, stockyard owners, market agencies, and dealers.¹ The proposed rule published June 22, 2010 by the U.S. Department of Agriculture (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) titled *Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008; Conduct in Violation of the Act* (Proposed GIPSA Rule),² was promulgated pursuant to the P&S Act's authority granted to USDA-GIPSA to "make such rules, regulations, and orders as may be necessary to carry out the provisions of this Act . . ."³

The reach of the Proposed GIPSA Rule, therefore, is limited to the jurisdiction of the P&S Act, which is limited to packers, stockyard owners, market agencies, and dealers.

Is U.S. Premium Beef, LLC, a company subject to the jurisdiction of the P&S Act (in other words, is U.S. Premium Beef, LLC, a packer, stockyard owner, market agency, or dealer)?

U.S. Premium Beef refers to itself as "a marketing company which provides U.S. beef producers an opportunity to retain ownership of the beef they produce from the ranch to retail."⁴

U.S. Premium Beef, LLC (U.S. Premium Beef), does not appear to meet the P&S Act's definitions of a "packer"⁵ "stockyard owner," "market agency," or "dealer."⁶ Moreover, U.S. Premium Beef is not listed on the USDA-GIPSA list of Bonded Packers in the United States, which is current as of Feb. 1, 2010,⁷ nor is it listed on USDA-GIPSA lists of registered and bonded market agencies and dealers.⁸ Thus, it does not appear that U.S. Premium Beef is regulated by the P&S Act and, consequently, it is not subject to the jurisdiction of the Proposed GIPSA Rule.

As a result, the Proposed GIPSA Rule would not impose any regulatory burden on U.S. Premium Beef Unitholders and Associates.

Would the Proposed GIPSA Rule interfere with U.S. Premium Beef Unitholders' and Associates' ability to continue marketing cattle in the same manner they do today?

¹ 7 U.S.C. 181 *et seq.*

² 75 Fed. Reg. 35338-35354, June 22, 2010.

³ Packers and Stockyards Act of 1921 (hereafter "P&S Act"), Section 407.

⁴ U.S. Premium Beef website, about us, available at <http://www.uspremiumbeef.com/Aboutus.aspx>.

⁵ See P&S Act, Section 201 ("[T]he term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. (7 U.S.C 191).").

⁶ See P&S Act, Section 301.

⁷ See Bonded Packers in the United States, Current as of February 1, 2010, U.S. Department of Agriculture (Hereafter "USDA") Grain Inspection Packers and Stockyards Administration (Hereafter "GIPSA"), available at http://archive.gipsa.usda.gov/psp/buying_packer_list.pdf.

⁸ See Regulated Entities, USDA-GIPSA, available at <http://www.gipsa.usda.gov/GIPSA/webapp?area=home&subject=imp&topic=re>.

U.S. Premium Beef Unitholders and Associates market their finished cattle through their beef processing company, National Beef Packing Co., LLC,⁹ and the cattle are priced “based on individual value as determined by USBP’s quality-based grids.”¹⁰ U.S. Premium Beef cattle can be forward contracted using a contract written by National Beef Packing Co.’s cattle buyer.¹¹

National Beef Packing Co., LLC (National Beef) is a regulated entity under the P&S Act and, unlike U.S. Premium Beef, is subject to both the P&S Act and the Proposed GIPSA Rule.

The regulatory requirements of the Proposed GIPSA Rule that would pertain to National Beef’s procurement of cattle owned by U.S. Premium Beef Unitholders and Associates are:

1. National Beef “must maintain written records that provide justification for differential pricing or any deviation from standard price or contract terms offered to . . . livestock producers.”¹²

2. National Beef, when “[p]aying a premium or applying a discount on the . . . livestock purchase price received by the livestock producer from the sale of livestock . . .,” must document the reason(s) and substantiate the revenue and cost justification associated with the premium or discount.¹³

3. National Beef must not grant any undue or unreasonable preferences or advantage (which is an express prohibition contained in the P&S Act¹⁴). To determine compliance with this statutory prohibition, the Proposed GIPSA Rule provides that the Secretary of Agriculture may consider:

i) “Whether contract terms based on number, volume or other condition, or contracts with price determined in whole or in part by the volume of livestock sold are made available to all . . . livestock producers . . . who individually or collectively meet the conditions set by the contract.”¹⁵

ii) “Whether price premiums based on standards for product quality, time of delivery and production methods are offered in a manner that does not discriminate against a producer or group of producers that can meet the same standards.”¹⁶

iii) “Whether information regarding acquiring, handling, processing, and quality of livestock is disclosed to all producers when it is disclosed to one or more producers.

4. National Beef must submit a sample copy of each unique type of contract or agreement used to procure cattle (including forward contracts, formula contracts, production contracts or other marketing agreements) to GIPSA.¹⁷ GIPSA may post these sample contracts on the Web but sample

⁹ U.S. Premium Beef website, about us, available at <http://www.uspremiumbeef.com/Aboutus.aspx>.

¹⁰ U.S. Premium Beef website, How to Market Cattle Through USBP, available at <http://www.uspremiumbeef.com/HowToMarket.aspx>.

¹¹ *See id.*

¹² 75 Fed. Reg., Section 201.94 (b), 35351.

¹³ 75 Fed. Reg., Section 201.210 (a)(5).

¹⁴ *See* P&S Act, Section 202 (b)

¹⁵ 75 Fed. Reg., Section 201.211(a), 35352.

¹⁶ 75 Fed. Reg., Section 201.211(b), 35352.

¹⁷ 75 Fed. Reg., Section 201.213 (a), 35352.

contracts with “[p]rovisions containing trade secrets, confidential business information and personally identifiable information will not be made public.”¹⁸

The application of the four above-listed regulatory requirements (Items 1-4) to the U.S. Premium Beef/National Beef marketing relationship does *not* support the assertion that the Proposed GIPSA Rule would, in any way, interfere with U.S. Premium Beef’s marketing arrangement. For example, in regard to:

Item 1: The written records that National Beef can provide to justify differential pricing or any deviation from standard price or contract terms offered to U.S. Premium Beef Unitholders and Associates, but not to other livestock producers, appear to already be recorded on the U.S. Premium Beef’s Webpage. For example, Unitholders and Associates have each paid a membership fee to market cattle to National Beef through U.S. Premium Beef’s grid and each purchased units or leased the rights to participate in the U.S. Premium Beef program. Indeed, Unitholders and Associates are not guaranteed a return on their investment to U.S. Premium Beef as the grid pricing system could return to them a cattle price less than the cash market price, should their cattle fail to meet the basic specifications incorporated in their grid.

Item 2: National Beef certainly can provide reasons and substantiate the revenue and cost justification for the various premiums and discounts listed on U.S. Premium Beef’s Cattle Settlement Worksheet Example[s] that are available on the company’s website.¹⁹ If not, U.S. Premium Beef Unitholders and Associates should be concerned about whether their grid system does, in fact, return to them a competitive price for their high quality cattle that is reflective of actual retail prices.

Item 3: National Beef can, again, use information that is publicly available on U.S. Premium Beef’s website to demonstrate that: 1) the contract terms, including the volume of cattle delivered by a Unitholder or Associate is determined by the number of units purchased or units leased (Item 3(i)); 2) price premiums are paid on the basis of an established schedule applicable to all Unitholders and Associates (Item 3(ii)); and, 3) all Unitholders and Associates are informed regarding acquiring, handling, processing, and quality of livestock (Item 3(iii)).

Item 4: National Beef can provide the same Cash Settlement Worksheet Example(s) to GIPSA that U.S. Premium Beef already discloses to the public on its website.²⁰

In conclusion, while the Proposed GIPSA Rule would impose record retention requirements on National Beef (which the company may already be doing to satisfy preexisting regulatory requirements), there is no provision in the Proposed GIPSA Rule that would limit, restrict, or harm the U.S. Premium Beef/National Beef marketing arrangement.

¹⁸ 75 Fed. Reg., Section 201.213 (d), 35352.

¹⁹ See e.g., U.S. Premium Beef website, available at <http://www.uspremiumbeef.com/DocumentItem.aspx?ID=34>.

²⁰ See U.S. Premium Beef website, (four sample grid contracts are publicly available), available at <http://www.uspremiumbeef.com/HowToMarket.aspx>