



# South Dakota Farmers Union

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M. Irene Omade

GIPSA, USDA

Re.: Docket ID No. GIPSA-2016-FGIS-0008-RULEMAKING-0001

1400 Independence Avenue SW., Room 2542A-S

Washington, DC 20250-3613

Official comments on behalf of South Dakota Farmers Union regarding the proposed changes to the Packers & Stockyards Act

South Dakota Farmers Union (SDFU) is privileged to submit comments regarding the recently proposed rules from the United States Department of Agriculture's (USDA) Grain Inspection Packers and Stockyards Administration (GIPSA) on competition, as directed by the United States Congress under the 2008 Farm Bill's competition title. After 89 years of having the Packers and Stockyards Act (PSA) in statute, SDFU supports and understands the need for further direction of the rule. For 89 years the packing industry has found ways around the law through loopholes and dishonest practices. Under the newly proposed rules from GIPSA those infractions which have harmed American farmers and ranchers will be addressed and implemented in a way that will swing the pendulum back from packer control of the industry and give those producers the bill of rights they need to stand on. In the following comments, SDFU will highlight areas that will be beneficial to our producers and ask for clarity on misunderstandings of the intention of the rule in an effort to make the rules as producer friendly as possible.

The misconception and explanation talking points released by GIPSA clarified and eased some of the minor definitive concerns any of our approximately 10,000 members had. While fully supportive of the rules, some had questions regarding certain terms pertaining to livestock and poultry. SDFU feels these concerns were addressed adequately. We also believe the rules which give producers a much needed chance to receive repayment of damages which may have occurred while under contractual agreement with a packer are positive. For an individual to be able to bring civil action against a packer swings the pendulum toward the center of the balance of power. Under the proposed rules, the packer will, in effect, become better actors because the producer bringing the suit will no longer need to prove 'industry wide' harm. This, along with other segments of the rule, will make the packing industry adhere to a higher standard of business policy to ensure they are not susceptible to civil action. SDFU feels not being able to litigate on one's own behalf has been an infraction against the initial intent of the PSA. We know this to be a loophole that has been used against U.S. farmers and ranchers in the past. We cannot stress enough the importance of keeping these guidelines in place for the betterment of our producers.

When it comes to market collusion, the basis for the original rules, SDFU feels this is long overdue as well. Many of our members have feeding operations along with their cow-calf programs especially in the northeastern part of South Dakota. Often times when it comes time to sell their product they call on the packing industry to bid on their cattle. Many times, all four of the major packers send one man to do the bidding for all four of them. We feel this is not an open market bidding system. It is nothing more than the ultimate definition of monopolistic practices. Case by case, and state by state, we see collusion in the market place. In addition to depressing the price received at our smaller feeders, our members

recount the same types of 'closed bidding' at the local auction market. In various instances we see two buyers for the four big packers buying cattle on the same day. Often times back door trading between the two takes place, also depressing the price received. For example, buyer X for two packers and buyer Y will get together before the sale starts, go over what each needs and buyer X agrees to not bid on the livestock buyer Y needs, and vice versa. Enforcement of this portion of the rules is critical for an industry such as beef which receives a lesser portion of the farm to retail dollar than they did in 1979, while being forced to take relatively the same dollar amount.

While we understand that any rules sought by this administration will make our industry more self-reliant, SDFU fails to understand the argument of some industry groups which have voiced concerns over marketing rights and removal of premiums. SDFU feels this argument is merely a scare tactic to encourage producers, who are vigorously engaged in premium programs, to stand against these proposed rules. Many of the premium based programs operate based upon how a producer agrees to raise their animals. They are then rewarded with premium prices for raising their livestock per their agreement. The company buying the premium livestock then has access to foreign markets such as the European Union. Non-hormone treated beef (NHTB) is a prime example of why the premium basis will not go away with the implementation of these rules. If there are no rewards for putting time into a program, there will be no beef to export to regions with hormone free requirements. If there are no premiums, businesses exporting that beef will go out of business. Packer will not remove program premiums at the risk of losing markets overseas. The competition in the global marketplace for specialty meats is too great, and they won't risk losing that market. SDFU acknowledges the importance of sample contracts being submitted to USDA for review. It is in the best interest of both the packer and the producer entering into the contractual agreement that both parties are protected from misunderstandings or unwanted consequences from that contract. Ensuring the fairness of these contracts will save premium programs. This portion of the rule will keep both packers and producers more honest in their contractual agreements. In a NHTB scenario, it is important for USDA APHIS to understand why one head of livestock was treated differently than another of the same relative classification. Under a well written contract APHIS will have the obligation to ensure fundamental understanding of the contract. In a case where the parties are dealing with a poorly written contract, which would bring damage to one of the parties, APHIS can call on both parties to clarify what the intent of the document was and how to avoid harm. This portion of the rule would ensure that only correctly worded contracts are allowed in the marketplace. Ensuring the privacy of all parties involved, as the rule calls for, is also a very important provision. Privacy is of the utmost importance. Therefore, the rule calling for a sample contract without names, accounts, and other privately held information is an important requirement from APHIS to the contracting agent.

In closing, SDFU feels these rules are long overdue for American livestock producers. For far too long we have relied on a system of making the packer rich while the producer begs for a fair price each year. These rules are not the final answer, but are a great step in achieving what producers have needed since market consolidation began in the livestock industry over 100 years ago. We've watched as our family farmers and ranchers have been taken over by corporate farms, and thousands of producers have gone out of business each year. There is no better time that now to enforce these rules, to clarify the intent of

the original PSA, and make the marketplace transparent and equitable as the original rules had intended. With the producer finally being successful in our own country, the packers and retailers will also see continued success. With the implementation of these rules, we can reverse the trend of failing family farms, and give producers the right to a fair and open market. South Dakota Farmers Union strongly encourages full implementation of these rules. Thank you.