



TUFTS UNIVERSITY
Global Development And Environment Institute

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The Honorable Tom Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Tess Butler
GIPSA, U.S. Department of Agriculture
1400 Independence Avenue, SW., Room 1643-S
Washington, DC 20250-3604

Electronically to: comments.gipsa@usda.gov.

From: Timothy A. Wise
Director, Research and Policy Program, Global Development and Environment Institute
Tufts University, Medford, MA 02155

November 19, 2010

In re: Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008: Conduct in Violation of the Act

Dear Secretary Vilsack and Ms. Butler:

On behalf of the Global Development and Environment Institute (GDAE) at Tufts University, please accept the following brief comments, which are intended to supplement my comments submitted earlier in relation to the U.S. Departments of Justice and Agriculture hearings. That included our recent working paper, “Buyer Power in U.S. Hog Markets: A Critical Review of the Literature.” See:

<http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b4cfcc>

I welcome the proposed rule, which can begin to rebalance livestock markets to ensure fair competition and the greater economic efficiencies that come with it. Here I want to summarize briefly the implications of our research for the proposed rule and offer a few comments on some of the erroneous economic studies that have been presented by industry lobbyists to suggest that the rule will result in high economic costs for the industry and the country.

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The proposed rule addresses many of the predatory and anticompetitive practices in livestock and poultry markets that we saw in our extensive review of the literature. In particular, the rule could help address:

- contracts that do not cover required investments;
- fairer contract arbitration;
- the lack of contract transparency, by requiring the posting of sample contracts;
- rights of producers to file suit against packers who engage in unfair practices without an undue burden of proof previously required by courts;
- protection from packer retaliation;
- price discrimination against group deliveries of animals;
- the impact of packer-to-packer sales on market prices;
- conflicts of interest when agents represent more than one packer.

The proposed rule is a good start. Further modifications could improve the functioning of fair hog markets in additional ways. For example, the proposed rule does not address marketing agreements, forward contracts, or formula pricing, all of which are prevalent in hog markets. Nor does it adequately address the anti-competitive impacts of packer ownership of livestock. Still, it represents an important step in rebalancing a market that continues to become less competitive as time goes on.

Finally, a brief comment on two recent studies commissioned by the livestock industry. Both use spurious assumptions to generate large estimates of losses from the proposed rule.

The American Meat Institute's (AMI) recent commissioned study of the economic impact of the rule projected that implementation would cost about 104,000 jobs and reduce the U.S. Gross Domestic Product (GDP) by \$14 billion and result in \$1.36 billion in lost revenues to the Federal, state and local governments. The high numbers come from the entirely unjustified assumption that packers would completely cease to engage in marketing agreements, which the study says offer large efficiency gains that would, because of the rule, be lost. First, there is no evidence the rule would result in such a full boycott of marketing agreements. Second, if marketing agreements offer efficiency gains, they will do so under fairer market conditions as well.

A second study, by Informa Economics and conducted for the National Meat Association (NMA), the National Cattleman's Beef Association, the National Pork Producers Council, and the National Turkey Federation, projected lower but still-dramatic losses. The study estimated the new regulations would result in a loss of 22,800 jobs, a reduction in annual GDP of \$1.56 billion and a decline in tax revenues of \$359 million. The study attributes 75% of these losses to the provision that would relieve plaintiffs from the burden of proving competitive injury for the industry as a whole. The fear of litigation, then, is the basis for such high projected losses. Again, this argument rests on the spurious assumption that the only way markets can operate efficiently is if packers are free to continue engaging in practices in relation to individual growers that a court of law, using accepted and defined standards of fairness, would find unfair.

Both studies assert that by defining and regulating unfair practices GIPSA would remove efficiencies from the market. In fact, GIPSA is acting precisely to address the *inefficiencies* in the market that come with high levels of concentration and that result in the suboptimal allocation of resources. If these markets are indeed not fully competitive – and our review of the literature on

hog markets suggests they are not – then restoring competition to livestock markets will result in greater efficiency and economic gains for both producers and consumers.

Finally, I would also take issue with the claim that the rule is being proposed without a cost-benefit analysis to support it. Industry organizations can take issue with the cost-benefit analyses that have been done – by USDA, the Small Business Administration and the Office of Management and Budget – but there is certainly no justification for claiming that the economic impacts of the proposed rule have not been studied in some detail.

Thank you for the opportunity to offer a supplemental comment on this important and overdue government effort to restore competition to livestock markets.

Sincerely,

A handwritten signature in black ink that reads "Timothy A. Wise". The signature is written in a cursive style with a large, sweeping initial "T".

Timothy A. Wise
Director, Research and Policy Program
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Medford, MA 02155