

Testimony

on behalf of the

**National Cattlemen's Beef Association  
and  
Colorado Cattlemen's Association**

with regards to

**Regulatory Incompetency: How USDA's Proposed GIPSA Rule Hurts America's Small  
Businesses**

submitted to the

United States House of Representatives  
Committee on Small Business  
Subcommittee on Agriculture, Energy, and Trade

Representative Scott Tipton, Chairman

submitted by

Mrs. Robbie Baird LeValley

President  
Colorado Cattlemen's Association  
Member  
National Cattlemen's Beef Association

July 7<sup>th</sup>, 2011  
Washington, DC

Mr. Chairman, Ranking Member Critz, members of the committee, my name is Robbie Baird LeValley and I am a cow-calf producer and small meat packer from Hotchkiss, Colorado. I am the current President of the Colorado Cattlemen's Association (CCA) and a member of the National Cattlemen's Beef Association (NCBA). I have been a producer all of my life, first in Wyoming, and now in Colorado. My family and I are co-owners of Homestead Meats, a direct-beef marketing business that has been in operation since 1995. There are six families who co-own this small business and we employ 13 full-time employees. Each family markets one-third of their cattle through this business, with the remaining two-thirds being directly marketed to other feedlots. To enhance its direct-marketing beef business, Homestead Meats owns its own packing plant regulated by the U.S. Department of Agriculture (USDA), therefore making us producers, feeders, and packers. We have chosen this small business model as a way to differentiate our product, brand our beef, and provide ourselves with our own dedicated marketing program, as well as providing jobs for the local economy. The proposed GIPSA rule will destroy our small business model, force us to lay off our employees, cripple our ability to market our cattle the way we want to, and limit consumer choice.

The cow-calf side of our business is built on relationships and alliances throughout the beef chain. We have successfully marketed our calves through an alliance with a packer for several years. That alliance has created a relationship that provides feedback from the packer on the quality of our cattle – quality that we get paid a premium price for. I have used this information to select specific genetic traits known for increased marbling as a way to improve my cattle in order to continue this significant increase in the premium price I receive. The proposed rule would require my packer partner to justify any discount or premium paid to us. USDA would then review these transactions and make determinations of violations based upon its judgment, not marketplace economics. These contracts are private business transactions and should not be made available for public review and scrutiny, much less end up on a USDA website. I strongly believe in the fundamental American business tenet of a willing seller and a willing buyer being able to enter into a private business transaction because it protects my pricing and marketing mechanisms. I willingly and knowingly entered into this alternative marketing arrangement and it has worked well for our family's small business model. Our cattle marketing contracts are the heart of our small business and they do not warrant being posted on the internet, receiving additional government intervention and oversight, or being subject to potential litigation.

As mentioned, approximately one-third of our calves enter into our Homestead Meats company and are directly sold to consumers. This value-based marketing strategy was entered into by six families as a way to reap the rewards of quality cattle. These six families are small businessmen and women who support our local rural economy. When the proposed rule says that packer to packer, and their subsidiaries, sales are banned, I believe the six families which own Homestead Meats potentially will not be able to sell to other packers. This means that the other two thirds of our cattle can no longer be marketed the way we want them to. This is a great example of how this rule truly harms small producers and processors. For years, USDA has promoted exactly what we are doing: selling directly to the consumer; operating as a small processor in a strategic area of the country; being rewarded for adding value to the end product; and producing local

food. However, under this rule, our marketing options will be limited because we were innovative and took market risks.

Another concern that I have with the proposed GIPSA rule is that there is neither clarity nor clear definition in terminology. Elimination of the competitive injury requirement, the new definitions of “competitive injury” and “likelihood of competitive injury” will provide a disincentive for packer premiums and value-added contracts because of the fear of litigation. The vague definitions, such as “unfair” or “reasonable person” will open the door to an increased number of lawsuits because mere accusations, without economic proof, would suffice for USDA or an individual to bring a lawsuit against a buyer. This will be a trial lawyer’s bonanza and will devastate small businesses such as mine. In addition, the proposed rule allows for persons to sue without proof of injury or harm - they just have to say that their price was not fair. Who determines fairness? Will increased government intervention and litigation determine fairness? Arbitrary judgment by a federal agency will only increase paperwork and costs for small business owners like me. Who pays for this increased intervention and litigation? I will. When costs increase for the processor, the trickle down effect is to decrease the price paid to the ranchers who supply the cattle. The proposed rule is not clearly understood, and the unintended consequences are far reaching across this industry.

When the costs of defending prices paid for my cattle and complying with this rule add to my operating costs, what will be the consequence? What happens to every other industry when litigation increases? I can tell you personally what happens to management of federal lands in Colorado and out West: as the costs and the threat of litigation have increased dramatically on federal lands, the actual use and management of federal lands has decreased significantly. No one takes a risk or sticks their necks out, for fear of reprisal. This ends creativity, partnerships, and the desire to take a chance – which is the very basis of the entrepreneurial spirit of America’s small business owners. Do we truly want that for the beef industry?

In short, the proposed GIPSA rule would negatively impact producers, small businesses, and consumers in the following ways:

*Lost Opportunities and Lost Profits:* NCBA and CCA members are concerned this regulatory proposal, coupled with the risk of litigation from USDA and citizen suits, likely would cause buyers to withdraw marketing arrangements rather than run the risk of litigation, civil penalties and potential revocation of licenses. If marketing arrangements are restricted, me, my family, and my consumers would be the losers. The proposed regulation would restrict cattle producers’ freedom to market their cattle as they see fit. It would limit their opportunity to capture more of the value of their cattle and eliminate important risk management tools.

The proposed regulations ultimately may remove products consumers prefer. Producers have responded to consumer demand by finding innovative ways to develop and market premium quality and branded beef products. These alternative marketing arrangements have allowed producers to get paid for the added value. These arrangements ensure a

consistent supply of cattle that meet the requirements of such programs. Without this consistent supply, these programs cannot be sustained.

The 2007 USDA GIPSA Livestock and Meat Marketing Study found reducing or eliminating the use of alternative marketing arrangements (AMAs) would negatively affect both producers and consumers. No segment of the beef industry, from the ranch to the consumer, would benefit from the reduction or elimination of these marketing arrangements. The GIPSA study results showed if AMAs were reduced 25%; the 10-year cumulative effect would be a loss of \$5.141 billion for feeder cattle producers; a loss of \$3.886 billion for fed cattle producers; and a loss of \$2.539 billion for consumers. If marketing arrangements were eliminated, the 10-year cumulative losses for producers and consumers would be as follows: feeder cattle producers - \$29.004 billion; fed cattle producers - \$21.813 billion; and consumers - \$13.657 billion. Combined losses across all segments would exceed \$60 billion.

*Loss of Privacy/Risk of Litigation:* The proposed regulation requires packers to file copies of marketing arrangements with USDA. Packers may assert some information is confidential and request that it not be released. However, producers who are parties to the marketing arrangements would not have the same opportunity to claim privacy. This means confidential producer information could be posted on USDA's web site for producer competitors to view. The regulation would lessen the burden for bringing an action against a packer. Packer livestock purchase records likely would be a part of any litigation. Producers participating in questioned transactions likely would be drawn into the litigation.

*Negative Restructuring of the Industry:* NCBA and CCA members believe the proposed regulation prohibiting packer-to-packer sales and the potential elimination of marketing arrangements likely would encourage vertical integration. In order to satisfy consumer demand currently being met through the use of marketing arrangements, packers may choose to own livestock in larger numbers (today, packers directly own less than 5% of the market) rather than risk litigation.

The proposed regulation would require purchasers of my cattle to justify paying more than a "standard price" for my livestock. What is a standard price and who sets it? The regulation seems to infer that is the role of government. I strongly oppose the government setting "standard prices" for my livestock.

Value based-marketing has given our small family business the opportunity to compete for market share at the highest level. The consumer has been the one to determine the fair and justified price paid for the value added product, not USDA. As a result, I have been able to build a small business that supports the local economy and provides consumers with the products they want. Each step I take has been a private business contract between a willing buyer and a willing seller. I do not want increased scrutiny in my private business contracts, nor increased litigation. Government intrusion into the marketplace is not the answer. Therefore, I encourage the Committee to help us stop this rule from being finalized as it is detrimental to small businesses like mine.