

United States Senate
WASHINGTON, DC 20510

August 13, 2010

The Honorable Thomas J. Vilsack
Secretary of Agriculture
200-A Jamie L. Whitten Building
Washington, DC 20250

Dear Secretary Vilsack:

The Food, Conservation, and Energy Act of 2008, enacted by overwhelming majorities in both houses of Congress, contains amendments to the Packers and Stockyards Act of 1921 (P&S Act) as well as directions to the Department of Agriculture to conduct rulemaking with respect to additional issues relating to implementation and enforcement of the Act.

The proposed rule published by the Grain Inspection, Packers and Stockyards Administration (GIPSA) in the Federal Register of June 22, 2010 (75 Fed. Reg. 35338) would revise the P&S Act regulations, 9 CFR Part 201, to carry out the 2008 farm bill's statutory amendment and rulemaking direction. In addition, the proposed rule would clarify and define in the regulations conduct that is prohibited because it is an "unfair, unjustly discriminatory, or deceptive practice or device" in violation of section 202(a) of the P&S Act (7 U.S.C. §192).

GIPSA's authority and responsibility to address the full scope of subject matter covered in the proposed rule is amply supported and justified by the letter and intent of the P&S Act, as amended, and by well-established principles of federal administrative law enunciated by the Supreme Court of the United States and other federal courts.

A cardinal principle is that the courts are to give deference to the interpretation of laws by the federal agencies that are charged with implementing and administering them. Specifically, for instance, GIPSA is to be accorded deference in its interpretation, spelled out in the proposed rule, that the P&S Act protects individual producers against "unfair, unjustly discriminatory, or deceptive practice[s] or device[s]" without a necessity of showing such conduct has an impact on the broader market.

It is, of course, vitally important that the details of the regulations are carefully crafted, with close attention to practical, day-to-day realities of livestock and poultry markets and contract arrangements. Thus, while the proposed rule is designed to clarify and strengthen producer protections in accordance with the P&S Act, it should also maintain opportunities for marketing premiums and mutually beneficial contract arrangements, which it appears to do. The extended comment period, to November 22, 2010, will provide an abundant opportunity for the public to comment and thoroughly air any concerns about the consequences and practical impact of the proposed rule.

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The 2008 farm bill specifies that regulations carrying out its provisions relating to the P&S Act are to be issued not later than two years after the date of enactment, which was June 18, 2008. So we urge you to issue a final rule as expeditiously as possible once the comment period is closed and the Department has reviewed the comments and made any appropriate modifications to the proposed rule.

Sincerely yours,

Tom Harkin

Jim Johnson

Richard W. Durbin

Mark Fisher

Patrick Leahy

Chuck Grassley

Kent Conrad

Mary Landrigan

Ron Wyden

Byron D. Dorgan

Jon Tester

Tom Karper

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