Testimony

on behalf of the

National Cattlemen's Beef Association

with regards to

How A Broken Process Leads to Flawed Regulations

submitted to the

United States House of Representatives
Committee on Oversight and Government Reform

Representative Darrell Issa, Chairman

submitted by

Mrs. Robbie LeValley

Board of Directors
National Cattlemen's Beef Association

September 14th, 2011
Washington, DC

Mr. Chairman, Ranking Member Cummings, members of the committee, my name is Robbie LeValley and I am a cow-calf producer and small meat packer from Hotchkiss, Colorado. I am the immediate past president of the Colorado Cattlemen's Association (CCA) and a member of the Board of Directors for 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 United States Department of Agriculture (USDA), therefore making us cattle producers, cattle feeders, and beef 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. USDA's Grain Inspection, Packers and Stockyards Administration's (GIPSA) proposed rule on livestock and poultry marketing 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 for which we get paid a premium price. 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. The contracts would then be posted on a USDA website. 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. Our consumers have been clear – they want high quality beef that is consistent in taste and tenderness each and every time they purchase our steaks and ground beef. For years, the beef industry generally produced beef without any concern to what our customers really wanted. As a result, demand for beef declined in the 80's and early 90's. During that time, we started listening to the consumer demand for tenderness, leanness, natural, and other traits and production methods. This demand gave rise to programs such as Laura's Lean Beef, Certified Angus Beef, and numerous other branded products such as mine. Our customers responded and beef demand recovered and grew. Losing our ability to adequately differentiate our product will take choices away from the consumer and ultimately hurt our sales and profitability.

The six family co-owners of Homestead Meats are small businessmen and women who support our local economy. When the proposed rule says that packer to packer, and their subsidiaries, sales are banned, I believe the six families 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. Again, it is both cattle producers and our customers that lose.

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.

What will be the consequence when the costs of defending prices paid for my cattle and complying with this rule add to my operating costs? What happens to every other industry when litigation and costs increase? 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 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, I, 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 that 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, and a loss of $3.886 billion for fed cattle producers. If marketing arrangements were eliminated, the 10-year cumulative losses for feeder cattle producers would be $29.004 billion, and fed cattle producers would lose $21.813 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 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 buyers 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 government setting "standard prices" for my livestock.

I also have very serious concerns about the process behind this rule. As you know, the rule is the result of language included in the 2008 Farm Bill. However, we believe that the rule that was published goes beyond the intent of Congress. The five provisions in the Farm Bill were very specific, but this rule includes provisions that are very similar to provisions that were actually defeated by votes on the Senate floor, or through subcommittee or committee action on both the House and Senate side.

To compound the situation, it was very unclear as to what would, or would not, be considered as part of the record. Throughout 2010, USDA and the Department of Justice (DOJ) held workshops across the country on competition in agriculture. This rule was published while these workshops were going on, and we as producers were told that the workshops would not be a part of the record (or even had anything to do with the rule), but at the livestock workshop in August of 2010 (after the rule had been published in June), the Secretary said that comments made would be considered. This uncertainty has added to our frustration. It is also uncertain just how the over 60,000 comments received by USDA were sorted and considered.

The rule that was published also did not include a thorough economic analysis. Because of that, NCBA was one of several groups that commissioned an independent analysis by Informa Economics to look at the impact. The Informa report came back and said that this rule would result in the loss of over 23,000 jobs, annual GDP loss of $1.56 billion, and annual tax revenue losses of $360 million. As you can see, this is well over the $100 million threshold to be considered an economically significant rule, but yet the initial rule was not treated as economically significant. At a Senate Agriculture Committee hearing in July of this year, USDA's Chief Economist, Joe Glauber, admitted that the rule was economically significant and that he was conducting a cost/benefit analysis. Unfortunately, Secretary of Agriculture Tom Vilsack has said that none of the stakeholders will be able to review or comment on the USDA analysis, even after a letter was sent by 147 members of the House of Representatives asking for a review and comment period. Overall, we believe that the process in formulating and considering this rule is flawed and broken.

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 or increased litigation in my private business contracts. 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.

Robbie Baird LeValley is a cattle producer from Hotchkiss, Colorado, and has been in the cattle business all of her life. She ranches with her husband and two boys. She is the immediate past President of the Colorado Cattlemen's Association, and she serves on the Board of Directors for the National Cattlemen's Beef Association.

She received her Bachelors and Masters of Science in Animal Science from Colorado State University in 1987 and 1989, respectively. LeValley Ranch, and five other ranches, market their beef direct to consumers and own Homestead Meats, which is a USDA processing facility in Delta, Colorado.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: Roberta Baird LeValley

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

None

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

National Cattlemen's Beef Association
member and on Board of Directors

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None

I certify that the above information is true and correct.
Signature: Robbie LeValley

Date: 9/9/2011