

STATEMENT OF EDWARD AVALOS
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U.S. DEPARTMENT OF AGRICULTURE
BEFORE THE HOUSE COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON AGRICULTURE, ENERGY, and TRADE

JULY 7, 2011

Chairman Tipton, Ranking Member Critz, members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the proposed rule issued by the Grain Inspection, Packers and Stockyards Administration (GIPSA) on June 22, 2010.

While I also am looking forward to getting the important small business perspectives from the members of the Committee today, I am limited by the Administrative Procedure Act (APA) and USDA's ex parte guidelines in what I may discuss while we are in this stage of rulemaking. For example, I cannot discuss the specific evaluations or potential changes related to the comments or hypotheticals about the impact of the rule. I can, however, discuss where we are in the process.

Before I talk about the proposed rule, let me provide some context. It is very appropriate that the Small Business Committee has decided to focus this hearing on small businesses in the livestock and poultry industries. The vast majority of farmers in general, and specifically livestock and poultry producers, are small businesses. There are currently over 70,000 hog producers, almost a million cattle farmers and ranchers, and nearly 20,000 poultry growers. The majority of these individuals are family-owned small businesses.

I think the point that farmers, ranchers, livestock producers and poultry growers are small businesses is something to be emphasized. As you all know, small businesses are the lifeblood of our economy and where jobs are created and new ideas are tested. The Secretary and I have long recognized the importance of farmers, ranchers and producers to rural communities. Our livestock and poultry producers benefit rural communities because they utilize other small local businesses, like hardware and feed supply businesses and local tractor dealerships, to succeed.

A primary mission of GIPSA and in particular the Packers and Stockyards Program is to make sure the marketplace is fair and transparent. More often than not this means ensuring small businesses get a fair shake. Decades before the Small Business Administration was formed and the importance of small businesses was fully recognized, the predecessor of GIPSA was created by Congress through the Packers and Stockyards Act of 1921. This was largely done to protect small businesses—i.e. livestock producers and ranchers—against the abuses of market power by large meatpackers.

In addition to making sure that the industry as a whole follows certain standards like buying and selling over certified scales to ensure livestock are weighed and priced

accurately, the Packers and Stockyards Program's enforcement focus to this day remains correcting unfair activities. More often than not this means standing up for small businesses that are found to have been mistreated. For example, GIPSA's priority is to seek restitution for the producers or other parties that are harmed. A recent settlement included a civil penalty of \$125,000 for violations where producers were underpaid. These small businesses—hog farmers in this case—have already received about \$1,000,000 in restitution. When producers are not paid properly, it can have a rippling effect through local economies. We take our mission to make sure producers are properly paid very seriously.

The Packers and Stockyards Act, which is the basis for GIPSA's enforcement authority in the livestock and poultry industry, is 90 years old this year. These industries have changed dramatically over this time period—for example, stockyards are virtually nonexistent today. This longevity means that the regulations and Act itself need to be updated periodically. Congress recognized this in the 2008 Farm Bill by making some changes to the Act and also directing USDA to promulgate specific regulations. Combined with a handful of additional areas that USDA felt deserved closer attention and needed input from stakeholders, this was the genesis of the rulemaking that is the subject of this hearing.

The purpose the proposed rule was to make the markets more fair and transparent, which was intended to benefit livestock producers and poultry growers, the vast majority of which are family owned small businesses. This is in no way to minimize concerns about potential unintended consequences of the proposed rule either generally or related to small businesses. For example, I know there are concerns raised by many that the rule would hinder value-added and other market activities. I want to make clear that this is not our intent and the Secretary and I are strong supporters of these arrangements that often provide premiums to farmers and ranchers and at the same time meet consumer demand.

I do not claim that the proposal was perfect. We will consider the comments we have received and work to address the concerns. This is why we are taking our time. The proposed rule recognized that we need a fuller understanding of certain aspects of the livestock and poultry industries and the potential impacts of the proposed rule, which is why it contained requests for additional information and for assistance evaluating the costs and benefits of the rule.

We received close to 61,000 comments. These comments were comprehensive, thoughtful, and educational. We view these comments as the tools that will guide us on our path to make the appropriate and needed reforms. It is important to us to have a workable and commonsense rule. These comments will assist the Department to determine if all factors have been properly considered. The comments will also aid more rigorous cost-benefit and related analyses, such as the small business component of the regulatory flexibility analysis pursuant to the rulemaking process.

We are currently engaged in an iterative process where we are taking sections of the

proposed rule and reviewing each particular section in light of the comments that we received. After considering the comments, the Department could finalize without change, modify, withdraw or repropose the overall rule or certain provisions. Until our analysis is complete, we are not able to know what the final form the rule or any specific provision will take.

While it would not be appropriate to go into detail on specific modifications, I can assure you that the Department will take careful account of public comments. We ask that everyone have patience as we carefully work our way through the comments and not to pre-judge the outcome.

Thank you again for the opportunity to appear before you today to talk about this proposed rule and our shared support for small businesses in rural America. While I am limited in what I may discuss while we are in this stage of rulemaking, I welcome your questions.