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[Proposed Rules]

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Proposed Rules
Federal Register

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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DEPARTMENT OF AGRICULTURE
Grain Inspection, Packers and Stockyards Administration
9 CFR Part 201
RIN 0580-AA65

Prohibition on the Non-Reporting of Price as a Condition of the Purchase or Sale of Livestock

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Agriculture (USDA) has received information that some livestock transactions are conditioned on an agreement that the transaction price not be reported to public or private reporting services. USDA is concerned that the non-reporting of price as a condition of the purchase or sale of livestock may result in inaccurate and incomplete price information, adversely affecting the price discovery process. Therefore, USDA is considering a proposed rulemaking that would prohibit, as a violation of the Packers and Stockyards Act (P&S Act), the non-reporting of price as a condition of the purchase or sale of livestock. In order to assess the need for regulatory action, this Advance Notice of Proposed Rulemaking invites comments from all interested parties.

DATES: Comments concerning this potential regulatory action must be received on or before December 9, 1998.

ADDRESSES: An original and two copies of all comments may be sent to the Deputy Administrator, Packers and Stockyards Programs, GIPSA, USDA, Stop 3641, 1400 Independence Avenue, SW, Washington, D.C. 20250-3641. Comments may also be sent by fax to (202) 205-3941 or by e-mail to PSP.GIPSA@USDA.GOV.

FOR FURTHER INFORMATION CONTACT: Daniel L. Van Ackeren, Director, Office of Policy/Litigation Support at (202) 720-6951.

SUPPLEMENTARY INFORMATION: The Packers and Stockyards Programs (P&S), GIPSA, monitors and regulates purchases and sales of livestock in interstate commerce. The Market News Service, Agricultural Marketing Service, USDA, and other public and private reporting entities collect and disseminate reported spot market transaction prices for cattle and

other livestock. This price information is used by livestock industry members to evaluate the purchase or sale price of livestock.

Currently, the price reporting system is voluntary; neither party to a sale is required to report a spot market transaction price. Because the reporting system is voluntary and some prices may not be reported by the parties to the transaction, the prices reported to Market News Service and other price reporting services may not reflect the highest and lowest prices paid for livestock. As a result, the prices reported by Market News Service and other price reporting services may not be complete. Many sellers may make decisions on when or at what price to sell based on the prices reported by these reporting services. Consequently, conditioning the purchase or sale of livestock on non-reporting of prices may be an unfair trade practice in violation of the P&S Act. Additionally, a regulation that prohibits non-reporting of price as a condition of the purchase or sale of livestock may enhance the availability and accuracy of complete market information.

The livestock industry has a vested interest in the accuracy and completeness of price information. The importance of price information to the livestock industry, particularly small cattle producers, was made evident during the public hearings held by the USDA Advisory Committee on Agricultural Concentration.¹ This perspective was echoed in the comments ² filed in response to the petition ³ for rulemaking filed by the Western Organization of Resource Councils.

\1\ The substance of the hearings conducted by the Advisory Committee is contained in Agricultural Marketing Service, USDA, Concentration in Agriculture: A Report of the USDA Advisory Committee on Agricultural Concentration (June 1996).

\2\ Comments filed in response to WORC's petition are available for review in the Office of the Deputy Administrator, Packers and Stockyards Programs, GIPSA, USDA. GIPSA's analysis of the petition and comments is available on GIPSA's Internet site (<http://www.usda.gov/gipsa/lateadd/lateadd.htm>) or by contacting the Deputy Administrator, Packers and Stockyards Programs, GIPSA, USDA, Stop 3641, 1400 Independence Avenue, SW, Washington, D.C. 20250.

\3\ 63 Fed. Reg. 1845-59 (January 14, 1997). WORC's petition is also available on GIPSA's Internet site (<http://www.usda.gov/gipsa/lateadd/lateadd.htm>).

As early as 1991, P&S received complaints from cattle sellers that some sales were conditioned on the seller not reporting the price to Market News Service. The sellers complained that buyers were conditioning the purchase of higher quality cattle on a commitment not to report the price to Market News Service. Because the highest prices may not be reported, the reported prices may not reflect the prices actually paid for cattle. Consequently, higher quality cattle purchased in other sales may obtain lower prices than would be obtained if sellers were permitted to report the actual price obtained in all sales.

Conversely, sellers of livestock may request that buyers make a commitment not to report low prices. Because the lowest prices may not be reported, the reported prices may not reflect the prices actually paid for some cattle. Consequently, lower quality cattle purchased in other sales may obtain higher prices than would be obtained if buyers were permitted to report the actual price paid in all purchases.

In addition to affecting the prices (including the low, high, and average prices) reported by Market News Service and other price reporting services, conditioning the purchase or sale of livestock on

the non-reporting of prices may serve to give the buyers a competitive advantage over the sellers of livestock in the form of greater market information. Because the buyers of livestock generally are parties to more purchase transactions than are the sellers of livestock, the buyers may have more market information available to them than do the sellers. As a result, sellers of livestock may rely more heavily on publicly reported prices when making their sales decisions. Buyers, on the other hand, may supplement the market information they have assimilated from other purchases (including the purchase prices of

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transactions that are not reported) with reported market prices, which may give them an advantage over sellers.

Because conditioning the purchase or sale of livestock on non-reporting of prices may be an unfair trade practice in violation of the P&S Act, P&S is considering taking regulatory action to prohibit non-reporting of price as a condition of the purchase or sale of livestock on spot market transactions. The Agency is interested in receiving information from members of the public, segments of the livestock industry (including producers, marketing firms, packers, associations, etc.), academia, and industry consultants on this issue. The Agency is particularly interested in receiving information from small entities that would be affected by regulatory action. Small entities are defined as firms that meet the following standards: (1) beef cattle feedlots with annual receipts of \$1.5 million or less; (2) beef cattle producers, except feedlots, and producers of hogs, sheep, goats, and horses or other equines, with annual receipts of \$500,000 or less for beef cattle, hog, sheep, goat, and horse or other equine sales; and (3) meat packing plants with 500 employees or less.

We are seeking information on how frequently conditioning the purchase or sale of livestock on the non-reporting of prices occurs and how different segments of the industry are affected by this practice. The information received in response to the following questions will be considered in determining whether this practice violates the P&S Act and whether regulatory action is warranted.

<bullet> Do you use reported market prices in making livestock purchase or sales decisions? If so, how do you use reported market prices? For example, do you use reported market prices to determine what purchase price to bid or what sales price to offer? If so, how? Do you use reported market prices to determine whether to accept or reject a buyer's bid or a seller's offer? If so, how?

<bullet> Do you encounter or engage in non-reporting of price as a condition of purchasing or selling livestock? If so, please describe the circumstances under which this practice occurs, the frequency with which it occurs, whether you participate in this practice, and the business reasons for your decision. When this practice occurs, are the prices higher, lower, or about the same as concurrent reported prices?

<bullet> What benefits, if any, would a prohibition on non-reporting of price as a condition of the purchase or sale of livestock have on your business? The livestock and meat packing industries? The accuracy of reported market prices? Prices paid for livestock? The quality of livestock available for purchase or sale? The price discovery process? Competition? Please describe the bases for your conclusions.

<bullet> What harm or costs, if any, would a prohibition on non-reporting of price as a condition of the purchase or sale of livestock have on your business? The livestock and meat packing industries? The accuracy of reported market prices? Prices paid for livestock? The quality of livestock available for purchase or sale? The price

discovery process? Competition? Please describe the bases for your conclusions.

<bullet> Do you have available any economic, statistical, or other research relevant to the use and effects of non-reporting of price as a condition of the purchase or sale of livestock? If so, please provide us with a copy of the research and a brief summary of the conclusions.

USDA is seeking extensive public comment from all sectors of the livestock and meat packing industries concerning the practice of non-reporting of price as a condition of the purchase or sale of livestock. We strongly encourage participation in this important process.

Dated: September 3, 1998.

James R. Baker,
Administrator.

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