August 26, 2010

The Honorable Tom Vilsack  
Secretary  
U.S. Department of Agriculture  
14th and Independence Ave, SW  
Washington, DC 20250

Dear Mr. Secretary:

I am writing today regarding the current rulemaking by the Grain Inspection, Packers and Stockyards Administration (GIPSA) dealing with livestock marketing.

We can agree that transparent and efficient markets benefit producers, processors, retailers and consumers. Make no mistake: there has never been any question that the Packers and Stockyards Act should be strictly and vigorously enforced. However, anyone who witnessed the recent Livestock, Dairy & Poultry Subcommittee hearing on the Administration’s proposed rule got the message that there are broad, bipartisan concerns that the proposed rule goes far beyond the scope of the 2008 Farm Bill, lacks a sound economic analysis necessary to judge both the need and utility of the proposed rule and may be the result of a flawed rulemaking process.

Unfortunately, several questions have been raised with this rulemaking that require your immediate response. These include what some view as an attempt by the agency to circumvent the clear intent of Congress in crafting the rules to implement provisions of the 2008 Farm Bill; a noticeable lack of an economic analysis of the costs of the proposed regulations; and what appears to be a carefully choreographed effort by the agency and others within the USDA to lobby the Congress, press, industry and the public on the proposed rule.

As you recall, when the Congress debated the 2008 Farm Bill, many livestock marketing issues were considered. Among those that Congress consented to was a request to the USDA to define certain terms under the Packers and Stockyards Act and to improve transparency in arbitration of contract disputes. It is noteworthy that elements in GIPSA’s proposed rule represent policies that were flatly rejected by the Congress during consideration of the Farm Bill. This is part of the reason that the objections raised during the recent hearing of the House Committee on Agriculture, Subcommittee on Livestock, Dairy, & Poultry were so strong and bipartisan.

While many in the affected industry and Congress have focused on what the proposed rule includes, also troubling is what it does not include – a sound economic analysis for interested parties to judge both the need and utility of the proposed rule. In my view, it is unprecedented
for a Federal agency to propose such a wide-sweeping regulation and not conduct an economic analysis. I am concerned that despite Congress having appropriated $13 million in the current fiscal year for the USDA Office of the Chief Economist, GIPSA has seemingly chosen to ignore this resource to analyze this proposal. In light of the fact that the President has requested continued funding for the Chief Economist, it is necessary and appropriate for you as Secretary to see to it that the expertise of this office is utilized when an agency under your supervision attempts to insert the Federal government into the day-to-day workings of our agricultural markets. As the public comment period has been extended and continued Congressional oversight is anticipated, I request and expect that a comprehensive analysis of this proposed regulation by the USDA Chief Economist be submitted in sufficient time for commenters to incorporate the analysis into their evaluation of the proposed rule.

Following the hearing held in the House Agriculture Subcommittee, USDA took the extraordinary step in the middle of a public comment period to publish an advocacy document aiming to persuade Members of Congress, the press, the affected industry and the general public regarding so-called “Misconceptions and Explanations” about this regulatory proposal. Some view this as contrary to the spirit and intent of the Administrative Procedure Act. This problem has likewise been exacerbated by the recent press reports of individuals within the USDA circulating information advocating specific points of view and activities concerning issues addressed in this regulation from groups with an economic interest in its outcome. Some observers have suggested that these incidents raise questions of impropriety within your department that may involve violations of the Hatch Act. I strongly encourage you to refer this matter to the Inspector General for an immediate investigation.

I am troubled that while the USDA and the Department of Justice are in the midst of conducting a series of workshops throughout the nation to gather information on a range of topics addressed by this proposal, USDA has chosen to focus its resources on efforts to promote this regulation rather than carefully consider the consequences, intended and unintended, particularly for those it purports to protect - producers.

Your attention to this critical matter is appreciated, and I look forward to your response.

Sincerely,

Jack Kingston