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COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

NOVEMBER 16, 1981

B-204746

RELEASED

The Honorable Wes Watkins
House of Representatives



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Dear Mr. Watkins:

Subject: The Packers and Stockyards Administration's
Regulatory Reform Activities (CED-82-11)

Pursuant to your July 8, 1981, letter and subsequent discussions with you, we obtained information on the U.S. Department of Agriculture's (USDA's) Packers and Stockyards Administration's (P&SA's) regulatory reform activities. We were particularly interested in the P&SA task force which was established in January 1981 to review and recommend changes in P&SA regulations and policy statements to reduce unnecessary regulatory burdens on the livestock industry. We briefed you on the results of our work on October 14, 1981. This letter, which is a followup to that briefing, summarizes P&SA's regulatory reform process and discusses the task force's recommended changes in four major areas--bonding requirements, custodial accounts, trade practices, and sales promotion programs.

OBJECTIVES, SCOPE, AND METHODOLOGY

We obtained information on P&SA's regulatory reform activities primarily from P&SA and USDA's Office of General Counsel in Washington, D.C. We discussed the regulatory reform program with P&SA and Office of General Counsel officials. We reviewed the P&SA task force's report on recommended regulatory changes and talked with several task force members. As you requested, during September 1981 we also met with representatives of several national organizations representing various sectors of the livestock industry to obtain their views on P&SA's regulatory reform activities. These organizations were the Livestock Marketing Association, National Cattlemen's Association, American Farm Bureau, American Meat Institute, American Stockyards Association, National Farmers Organization, and National Pork Producers Council.

Our objective was to provide you with information on P&SA's regulatory reform activities, including comments from representatives of the regulated industries. We did not make a detailed analysis of P&SA's programs or activities nor did we discuss its proposed regulatory changes with organizations representing consumers who also could be affected by changes to P&SA regulations.

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THE PACKERS AND STOCKYARDS ACT

The Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), is intended to assure fair competition and fair trade practices in the marketing of livestock, meat, and poultry as well as meat and poultry products. The act sets forth rules for fair business practices and free, open, and competitive markets. Its objectives are to (1) assure that farmers and ranchers obtain fair market value for their livestock and poultry, (2) protect consumers against unfair business practices in marketing of meats and poultry, and (3) protect members of the livestock, poultry, and meat industries against unfair practices of competitors.

P&SA administers the act by regulating stockyards, packers, market agencies, and dealers engaged in interstate commerce. P&SA responsibilities include:

- Investigating the financial condition of market agencies and dealers required to register with P&SA and ensuring that (1) livestock is paid for promptly, (2) market agencies and dealers are solvent and bonded, and (3) market agencies maintain trust (custodial) accounts for shippers' funds. If the Secretary of Agriculture, after notice and hearing, finds that any market agency or dealer is insolvent, he may issue an order suspending the agency's or dealer's right to purchase livestock.
- Conducting investigations to insure that unfair trade practices are not used and that prices are established by fair and competitive marketing practices.
- Supervising markets and market agencies to insure reasonable services and facilities at reasonable rates and carrying out investigations to eliminate false and careless weighing.
- Providing producers with reparation procedures for losses resulting from unfair practices by markets, market agencies, or dealers.

P&SA regulations appear in chapter 2 of title 9 of the Code of Federal Regulations. By P&SA's count, it had 104 regulations as of January 1981. The chapter also includes the rules of practice governing proceedings under the act and 16 statements of general policy under the act. These policy statements, which set forth P&SA's views on various industry practices, are intended as guidelines to assist firms in complying with the act's provisions.

P&SA REGULATORY REFORM PROCESS

The Acting Administrator, P&SA, established a task force on January 12, 1981, to review all regulations and general policy

statements issued under the Packers and Stockyards Act. The task force was to recommend rescissions or modifications to eliminate or reduce unnecessary regulatory burdens on the livestock industry. The task force was made up of two P&SA headquarters' branch chiefs, three P&SA regional supervisors, and two representatives from USDA's Office of General Counsel.

During its study the task force sought input from various sectors of the livestock industry through meetings with national organizations representing the industry, including those whose representatives we spoke with as well as others such as the National Grange. The task force issued an interim report in April 1981 on three major areas--bonding requirements, custodial accounts, and meat packer sales promotion programs--in which it was considering changes. This interim report was circulated to representatives of the various industry organizations for their information and informal comments.

In July 1981 the task force submitted a report with its recommendations to the Acting Administrator. According to the task force, its recommendations would result in revoking 29 of the 104 existing regulations and in consolidating 17 with other regulations. Also, 6 of the current 16 policy statements would be revoked. According to P&SA task force officials, many of the task force recommendations would not only reduce the regulatory burden on the livestock marketing industry but update and streamline the regulations and policy statements and make them easier for the industry to understand and follow.

The task force's July report represents only the first phase in P&SA's overall regulatory reform program. This report is now being reviewed informally by the various organizations representing the industry. After P&SA considers informal comments, formal proposed changes will be published in the Federal Register. As required by law, the formal Federal Register proposals will allow time for formal comments from all interested organizations, after which the changes will be modified, if necessary, and finalized. Changes will be published in the Federal Register as they are developed. P&SA plans to have the entire regulatory reform process completed by September 30, 1983.

The national organization representatives we talked with were generally satisfied with the way P&SA was going about its regulatory reform activities. The representatives generally agreed that P&SA was genuinely interested in obtaining industry input. The Livestock Marketing Association representative suggested in a September 18, 1981, letter to the Secretary of Agriculture that, in addition to conferring with national organizations in Washington, D.C., the Secretary should hold a series of hearings around the country to obtain industry input. The Director, Livestock Marketing Division, P&SA, told us that the

Secretary considered the suggestion, but decided such hearings were not necessary to obtain adequate industry input.

MAJOR AREAS OF REGULATORY REFORM
PROPOSED BY THE TASK FORCE

In addition to proposed changes in bonding requirements, custodial accounts, and meat packer sales promotion programs highlighted in its April 1981 interim report, the task force's July 1981 report highlighted proposed changes to trade practice regulations. These four areas are discussed below together with (1) the comments, if any, that P&SA received as a result of its interim report and (2) the informal comments we received from the representatives of various organizations. All organizations' representatives stressed that their comments were informal and that the organizations would comment formally after the proposed changes were formally published in the Federal Register. Not all the organizations' representatives commented on each area.

1. Bonding requirements--Currently, all dealers and market agencies are required to maintain or file a minimum \$5,000 bond. The task force recommended that small dealers and market agencies purchasing less than \$500,000 of livestock annually be exempt from the bonding requirements.

The task force concluded that the administrative costs of this program and bond purchase costs to the industry had far outweighed the return to the industry in bond claims paid. The task force estimated that adopting the recommendation would exempt about 3,200 of the 7,372 dealers and market agencies from the bonding requirements.

This proposed change drew mixed comments. The National Cattlemen's Association representative said that although the association had not taken a final position, it was concerned about the proposal. He said that the exemption would mean that many cattle buyers would not be bonded. He said that the value of the bond is not in its dollar amount, but rather in the review of the applicant's financial condition by an independent third party--the bonding company. The representative of the National Pork Producers Council said his organization would not favor eliminating the bonding requirements if it would reduce protection to hog producers. He pointed out that \$500,000 is a fairly large volume of hog sales. The representative of the National Farmers Organization also expressed some reservations about the proposed change. While not commenting on this specific proposal, the representative of the American Farm Bureau said that his association supports regulatory reform, but it would not favor changes which would lessen protection of producers.

The representative of the American Stockyards Association said his organization favors the proposed change. The Livestock

Marketing Association representative said that, although the association had not taken a formal position on the recommendation, it believed that all dealers and market agents should be treated equally--that either all should be subject to bonding requirements or all bonding requirements should be eliminated. He said that his association would prefer the latter. The American Meat Institute's representative did not comment on the proposal.

2. Custodial accounts--P&SA regulations require each market agency to maintain a custodial account into which it is to deposit the proceeds from the sale of consigned livestock. Under the regulations a market agency selling on commission must either collect from the buyers within 3 days or use its own funds to reimburse the custodial account for uncollected receivables. The task force recommended that the time allowed for collection be increased to 7 days.

Given present business conditions (delivery of invoices and checks by mail), P&SA does not believe 3 days is enough time for most market agencies to complete their collections and that 7 days would be more reasonable. According to P&SA task force officials, this proposal would in no way affect the prompt payment provisions of the act and regulations. The officials said that comments on this proposed change have generally been favorable.

The organization representatives we talked with generally had no problems with the proposal. The Livestock Marketing Association representative told us, however, that although the proposal looks good on the surface, the association is concerned because it believes the change could encourage a slowing down of packer payments to the market agencies. He believed the packers would stretch out payments to the market agencies since they would know that the agencies had 7 rather than 3 days to reimburse the custodial accounts.

3. Trade practices--P&SA regulations now contain 19 sections setting forth restrictions on trade practices. The task force recommended that most of the trade practice regulations be consolidated and simplified.

According to the task force, the proposed changes would remove or reduce several restrictions on the business activities of market agencies. Rather than attempt to anticipate and regulate every conflict of interest or unfair practice in which a market agency may engage, the proposed simplified regulations would emphasize the selling agencies' fundamental responsibility to sell each consignment in an open and competitive manner and in such a way as to obtain the highest available price.

The organization representatives we talked with did not offer comments on the proposed trade practice regulation changes generally because their organizations had not yet formulated positions on them.

4. Meat packer sales promotion programs (policy statement)--This policy statement prohibits certain meat packer sales promotion programs. The statement deals primarily with "point promotion programs" under which points are awarded to buyers for each unit of product purchased during a specified period. At the end of the period, the buyers can exchange points for merchandise or, in some cases, for cash. The task force recommended that this policy statement be revoked.

In its interim report P&SA had recommended only minor changes to this policy statement. According to P&SA task force officials, comments the task force received in response to its interim report generally stated that it should not consider sales promotion programs illegal per se, but instead should consider the programs illegal only when they result in secret payments to buyers, lessen competition, intentionally hamper competitors' sales, or tend to create a monopoly. The P&SA task force agreed that the per se restriction on meat packer sales promotion programs should be revoked.

The American Meat Institute representative told us that the institute was very much in favor of revoking the policy statement. Other organization representatives we talked with did not offer comments on this proposed change.

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At your request we did not take the additional time to obtain agency comments on matters discussed in this report.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from its issue date. At that time we will send copies to interested parties and make copies available to others on request.

Sincerely yours,



Henry Eschwege
Director