

Unintended Consequences

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Here is a general background about pending agency rule changes to the way in which cattle are marketed. In the 2008 Farm Bill, language was included directing USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) to issue regulations regarding poultry and swine contracts; arbitration use in contracts; and to establish criteria for the Secretary to consider in determining whether an undue or unreasonable preference or advantage has occurred in violation of the Packers and Stockyards Act. GIPSA released their proposed rule June 22, 2010, and because of requests from the

National Cattlemen's Beef Association (NCBA) and others for an extension on the comment period, an extension was granted for 90 days to allow additional comments until November 22, 2010.

The extension was granted much to the dismay of the National Farmer's Union (NFU) and others. Under existing law, you must show that a packer or processor harmed the market by engaging in illegal actions such as collusion, price fixing, etc. This is known as showing "competitive injury." Under the new proposed rule, the terms "competitive injury" and "likelihood of competitive injury" is being re-defined. With the

definition changes, interpretation will play a major role in the manner in which cattle are bought and sold.

According to NCBA, the proposed rule bans packer-to-packer sales of livestock. This applies to individual packers and any affiliates or subsidiaries they might own or be a part of. This will have severe unintended consequences, especially to smaller packers and dealers.

First of all, if a packer selling to another packer has resulted in competitive injury to the marketplace then GIPSA should penalize violators and enforce existing regulations of the Packers & Stockyards Act.

Secondly, prohibiting packer-to-packer sales would encourage consolidation and displace producer livestock. This proposed rule requires buyers purchasing livestock through marketing arrangements (including forward contracts, formula contracts, production contracts or other marketing arrangements) to submit a sample copy of each unique type of contract or arrangement to GIPSA within 10 days of it being agreed to. GIPSA will review these arrangements and post them on their website.

New criteria will be used by USDA to determine whether an undue or unreasonable preference or advantage was given to a cattle producer by a buyer. This will require buyers to justify the difference they offer to one producer over another. It will also require them to make similar offers to all livestock producers. Inadequate justification for a price differential would give cattle producers another way to bring suit against another party.

The government will decide what the “acceptable” or “standard” price, terms, and conditions are for livestock transactions—not the marketplace. It should also be noted that a known and trusted business relationship is no longer considered an acceptable justification for a pricing differential.

If marketing arrangements are greatly reduced, cattle producers may lose because it takes away their ability and incentive to manage risk, finance production, and compete with one another to negotiate premiums. With alternative marketing arrangements being utilized by nearly 60 percent of the beef market, this will result in a huge shift in the way cattle are marketed.

According to NFU, the rule includes several new provisions that will grant protection to producers from previous obstacles, with a goal of defining unfair or unreasonable practices in the industry. The proposed rule is very comprehensive.

Key elements that NFU supports are: the allowance for a producer

to present individual harm cases only and no longer require proof of harm to regional competition when bringing a claim about an alleged anti-competitive practice; packers would be prohibited from purchasing, acquiring or receiving livestock from other packers, which increases competition for independent livestock producers; and producers will be given the option to decline the use of mandatory arbitration to settle a dispute and go to trial if necessary.

You may be asking yourself, why does this matter to me. Taken to the extreme, one producer could bring a lawsuit against another producer if their same weight cattle did not match the premium of the other at a video auction. The unintended consequences may result in decreased value-based marketing. This rule change can affect the manner in which we market our Limousin cattle. Over the years, cattle producers have responded to consumer demands by finding innovative ways to develop and market premium quality and branded products.

These alternative marketing arrangements have allowed producers to get paid for the value they add. The proposed rule changes may affect value-based marketing with Laura’s Lean Beef and Strauss Brands that currently provide marketing outlets for our Limousin and Limousin-influenced cattle. Without the contracted supply of cattle that meet the requirements of such programs, these programs may become obsolete or severely reduced in size and scope. Even though the proposed rule does not directly ban the use of alternative marketing arrangements, the unintended consequences because of interpretation may affect them.

So, does this matter to you? Does this affect the manner in which you market your cattle or could this affect your commercial customers? If anything, it has the opportunity to change the way in which cattle are bought and sold. **LW**