

STOP PACKERS' UNFAIR PRACTICES

“Twenty years of work on livestock competition and market fairness issues are paying off. WORC will take advantage of new opportunities to help achieve their long time goal of a fair, open and public livestock market. Farmers, ranchers and consumers will be asked to comment on these rules which will be published in the Federal Register this fall. Never has your input been more critical than in writing these rules.”

—Mabel Dobbs, rancher from Weiser, Idaho, and Chair of WORC's Livestock Committee

By the end of this year, the United States Department of Agriculture (USDA) is expected to propose new rules that will help ensure that the giant meatpackers and processors no longer use unfair contracts to give special deals to some farmers and punish others. These “undue preference” rules will put all livestock operators on a more even playing field.

Passed in 1921, the Packers and Stockyards Act (P&SA) forbids “undue or unreasonable preference or advantage” in the actions of packers, swine contractors and live poultry dealers. However, after over 88 years, the terms “undue preference or advantage” have never been defined.

Today, a tiny handful of meatpackers and poultry processors dominate the livestock industry, making it hard for an individual farmer to get a fair deal or equitable price for cattle, hogs or chickens. Packers are able to use their monopoly-like power to manipulate prices paid to livestock producers. Practices like owning their own cattle in feedlots and livestock producers into manipulative contracts give these multi-national agribusinesses an unfair advantage, and it's time for USDA to restore competition by enforcing the P&SA as Congress originally intended.

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COWBOYS CALL FOR CLEAR RULES

In two separate court cases over the last five years, juries have found that packers did use unfair practices when they bought their supply of cattle under the Packers and Stockyards Act. However, in both cases, judges overturned the juries because, in part, the terms “undue” and “unreasonable” are not clearly defined in the law or in the regulations issued by the USDA, the department that oversees the Act. In short, USDA has never defined what is unfair, making it more difficult for the courts to interpret the manipulative practices currently used in the packing industry as illegal.

Fortunately, the 2008 Farm Bill includes a requirement that USDA define the terms “undue and unreasonable preferences.” Once written, this definition will control packers and give guidance to the courts by specifically identifying “unfair practices” that are illegal under the Packers and Stockyards Act.

DEFINITIONS TO STOP DISCRIMINATION

The Western Organization of Resource Councils, working with the Campaign for Family Farms and the Environment and the Farmers Legal Action Group, is calling on USDA to issue rules that:



- ✓ Don't require that an action by packers harm the market as a whole in order to be considered unlawful. Some courts have found that a producer must show that the harm to him or her also affected other aspects of the market, which can be difficult to prove. These rules must ensure that a producer can bring a case against a packer alleging an illegal practice by the packer, even if the only harm done is to his or her own operation.
- ✓ Highlight specific situations where undue or unreasonable preference may arise, such as in pricing, delivery locations and times, and more. Packers should not be allowed to give preference (such as better terms or prices) to large-volume livestock producers unless the preference is justified by actual, verifiable quality differences or cost efficiencies. Any premiums offered for those differences should be available to all producers, regardless of the size of their operations. Packers should be required to offer all contracts in an open public manner that is accessible to all interested buyers and sellers.
- ✓ Finally, the rules should adjust over time as industry practices change. As the dominant packing companies, technology and livestock markets evolve, the way livestock is bought and sold will also change. By setting criteria that includes open public markets and firm base prices on livestock, these rules can ensure a fair playing field for the long term.

In addition, the three organizations provided four general principles for USDA to consider while drafting the undue preference rules:

- ✓ Evaluate whether common practices developed over the years by packers and poultry processors have the potential to create undue preferences violating the Packers and Stockyards Act;
- ✓ Establish detailed and specific criteria to ensure that under certain factual scenarios a finding of a violation will be made;
- ✓ Develop separate criteria addressing each sector of the poultry, hog, and cattle industries; and
- ✓ Create different sets of criteria for analyzing different aspects of the relationships between packers/processors and livestock producers/poultry growers.

After USDA issues the proposed rules, farmers and ranchers throughout the country will need to tell the agency why they deserve a fair price for their animals and why packers should use fair practices when procuring those animals.

TAKE ACTION

Once USDA releases the proposed rules, livestock and poultry growers, concerned consumers and the general public will have the opportunity to comment.

Let USDA know that fair treatment for farmers is important to you! It is essential that USDA hears how cattle ranchers, contract poultry growers and hog producers have been losing money through unfair practices by processors and how the rules will help them return to profitability. WORC and its allies will send out action alerts when the proposed rules are released.

Contact Jeri Lynn Bakken to sign up for these action alerts and regular updates.

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