Proposed Packer Ban on Livestock Ownership or Control

Roger A. McEowen
*Iowa State University*

Neil E. Harl
*Iowa State University*

Follow this and additional works at: http://lib.dr.iastate.edu/aglawdigest

Part of the Agricultural and Resource Economics Commons, Agricultural Economics Commons, Agriculture Law Commons, and the Public Economics Commons

Recommended Citation
Available at: http://lib.dr.iastate.edu/aglawdigest/vol13/iss9/1

This Article is brought to you for free and open access by the Journals at Iowa State University Digital Repository. It has been accepted for inclusion in Agricultural Law Digest by an authorized editor of Iowa State University Digital Repository. For more information, please contact digrep@iastate.edu.
PROPOSED PACKER BAN ON LIVESTOCK
OWNERSHIP OR CONTROL
— by Roger A. McEowen and Neil E. Harl

The U.S. Senate, on December 13, 2001, approved an amendment to the Senate version of the farm bill (The Agricultural, Conservation and Rural Enhancement Act of 2001) making it unlawful, with several exceptions, for a meat packer to own, feed or control livestock intended for slaughter.

The proposed amendment

The final version of the amendment, which was approved by vote of the U.S. Senate on February 12, 2002, would amend the Packers and Stockyards Act of 1921 to read as follows—

It shall be unlawful for any packer with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to;

“(f) Own, feed, or control livestock directly, through a subsidiary or through an arrangement that gives the packer operational, managerial, or supervisory control over the livestock, or over the farming operation that produces the livestock, to such an extent that the producer is no longer materially participating in the management of the operation with respect to the production of livestock, except that this subsection shall not apply to—

(1) an arrangement entered into within 14 days before slaughter of the livestock by a packer, or a person that directly or indirectly controls, or is controlled by or under common control with, the packer;

(2) a cooperative or entity owned by a cooperative, if a majority of the ownership interest in the cooperative is held by active cooperative members that—

(A) own, feed, or control livestock; and

(B) provide the livestock to the cooperative for slaughter; or

(3) a packer that is owned or controlled by producers of a type of livestock, if during a calendar year the packer slaughters less than 2 percent of the head of that type of livestock slaughtered in the United States...."

The proposed legislation excludes forward contracts, marketing agreements and other types of marketing arrangements so long as the producer maintains material participation over the management of the operation.

---

1 Associate Professor of Agricultural Economics and Extension Specialist, Agricultural Law and Policy, Kansas State University, Manhattan, Kansas. Member of Kansas and Nebraska Bars.

2 Charles F. Curtiss Distinguished Professor in Agriculture and Professor of Economics, Iowa State University, Ames, Iowa; member of the Iowa Bar.
Meaning of “Material Participation”

The term “material participation” has a long history in agriculture as well as in other sectors of the economy. Each time the Congress has visited or revisited this area, the legislation enacted has used language sparingly—

• In 1956, Congress enacted an amendment to Section 1402 of the Internal Revenue Code to enable farm landowners to participate in the social security program. The amendment simply referred to “material participation” by the landowner in the production of agricultural or horticultural commodities. Regulations subsequently adopted by the United States Treasury have provided detailed guidance for that particular application of the term.

• In 1986, Congress, in enacting the passive loss rule, made it clear that the guideline should be more demanding than merely “material participation” and so defined “material participation” on a basis which is “(A) regular, (B) continuous, and (C) substantial.” Again, the Congress signaled that the test should be more demanding in the setting of passive losses and the regulations and cases have reflected that Congressional enactment.

For the proposed language, the passage communicates clearly that the administrative agency with the rule-making power is expected to develop implementing regulations but the message is that producers’ involvement in management must not be diminished below a “material” level.

State-level bans

It is noted that Iowa (as well as Minnesota, Nebraska and South Dakota) have state-level bans on packer ownership of livestock. The Iowa provision, for example, imposed a ban several years ago making it unlawful for a processor of beef or pork “to own, control or operate a feedlot in Iowa which hogs or cattle are fed to slaughter.” That language, while providing even less of a “bright-line” test, has not caused problems in Iowa, a leading livestock feeding state, particularly in hogs. Minnesota takes the position that livestock feeding is engaging in farming and thus is covered by the corporate farming statute.

Reasons for acting

The rising level of concentration in meat packing (see Table 1) coupled with vertical integration from the top down have provided the impetus for action to be taken at the federal level. While some past consolidations in meat packing have resulted in efficiency gains, which have largely been passed on to consumers, recent data indicate that the portion of the retail meat dollar attributable to packers (referred to as the farm-wholesale spread) has turned higher since the mid 1990s as shown in Figure 1. That indicates higher incomes for packers which has occurred in recent years.

Table 1. Four Firm Concentration Ratio in Livestock Slaughter (in percent)

<table>
<thead>
<tr>
<th>Year</th>
<th>Cattle</th>
<th>Steer &amp; Heifers</th>
<th>Cows/Bulls</th>
<th>Hogs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>28</td>
<td>36</td>
<td>10</td>
<td>34</td>
</tr>
<tr>
<td>1985</td>
<td>39</td>
<td>50</td>
<td>17</td>
<td>32</td>
</tr>
<tr>
<td>1990</td>
<td>42</td>
<td>55</td>
<td>18</td>
<td>33</td>
</tr>
<tr>
<td>1995</td>
<td>69</td>
<td>81</td>
<td>28</td>
<td>46</td>
</tr>
<tr>
<td>1996</td>
<td>66</td>
<td>79</td>
<td>29</td>
<td>55</td>
</tr>
<tr>
<td>1997</td>
<td>68</td>
<td>80</td>
<td>31</td>
<td>54</td>
</tr>
<tr>
<td>1998</td>
<td>70</td>
<td>81</td>
<td>33</td>
<td>56</td>
</tr>
<tr>
<td>1999</td>
<td>70</td>
<td>81</td>
<td>32</td>
<td>56</td>
</tr>
</tbody>
</table>

Source: International Agricultural Trade and Development Center, University of Florida.

Figure 1. The Farm to Wholesale Spread in Beef (U.S.D.A. Data Adjusted for Inflation)
For gains from increased efficiency in meat packing to be passed on to consumers, competition must be present. Without competition, any gains are likely to be passed on to shareholders or used to pad costs within the slaughter firm.\footnote{See Harl and McEowen, “The Material Participation Test,” posted at www.econ.iastate.edu/faculty/harl/papers of interest.}

**FOOTNOTES**


---

**ARBITRATION CLAUSE IN CROP INSURANCE CONTRACT UPHeld**

*by Roger A. McEowen*

In an April 3, 2002, decision, the Iowa Supreme Court upheld an arbitration clause in a crop insurance contract.\footnote{See n. 9 supra.} The plaintiff purchased a multi-peril crop insurance policy from the defendant for the 1999 crop year, covering 1000 acres of corn. In June of 1999, the plaintiff submitted a notice of claim for prevented planting, a covered event under the policy, on the basis that conditions were too wet for planting. The defendant refused the claim, determining that the cause of loss was flooding from a nearby reservoir – a condition excluded from coverage under the policy. The plaintiff then sued for breach of contract, and the defendant moved to compel arbitration pursuant to the Federal Arbitration Act (FAA)\footnote{See 9 U.S.C. § 2.} and a motion to stay. The trial court denied the defendant’s motion to compel arbitration on the basis of an Iowa law denying arbitration of adhesion (one-sided) contracts,\footnote{Id.} and likewise denied the defendant’s motion to stay. The defendant appealed.

Three issues were before the Supreme Court: (1) whether the Iowa arbitration statute denying arbitration of adhesion (one-sided) contracts\footnote{Id.} was preempted by the Federal Crop Insurance Act (FCIA);\footnote{7 U.S.C. § 1501-1521.} (2) whether the Iowa law was preempted by the FAA;\footnote{9 U.S.C. § 1-307.} and (3) whether the insurance policy was not an adhesion contract so as to be excluded from mandatory arbitration under Iowa law.\footnote{Id.}

The Supreme Court first rejected the defendant’s argument that the Iowa arbitration statute\footnote{Id.} was preempted by the FCIA because the issue was not raised at trial. On the issue of whether the FAA preempted the Iowa arbitration statute, the court reasoned that if the policy is a contract having a sufficient connection with interstate commerce, it is subject to regulation by the federal government. On that point, the court concluded that the sale of federal crop insurance clearly had a sufficient economic connection with interstate commerce to trigger the provisions of the federal law\footnote{Id.} despite Commerce Clause limitations recently recognized by the United States Supreme Court.\footnote{Iowa Code § 679A.1.} The court noted that the purpose of the FCIA is to “promote national welfare by improving the economic stability of agriculture through a sound system of crop insurance,” and as such was distinguishable from the criminal statutes at issue in the cases where the court failed to find a sufficient connection with interstate commerce to pass constitutional muster.\footnote{Id. See n. 9 supra.}

Thus, the Iowa Supreme Court held that the FAA applied and conflicted with the Iowa statute.\footnote{See 9 U.S.C. § 2.} As a result, the Iowa Supreme Court held that the trial court erred in refusing to enforce the arbitration clause and did not need to address the issue of whether the policy constituted an adhesion contract.

**FOOTNOTES**

4. Id.
5. 7 U.S.C. § 1501-1521.
8. Id.
11. See n. 9 supra.
12. See note 2 supra, footnotes 2-4.

*Associate Professor of Agricultural Economics and Extension Specialist, Agricultural Law and Policy, Kansas State University, Manhattan, Kansas. Member of Kansas and Nebraska Bars.*