

An Example of the Importance of Regulatory Flexibility for Small Business

The Nebraska Brand Committee's Review of Current Practices

The Nebraska Brand Committee was established in 1941 by the Nebraska Legislature to inspect cattle, investigate missing and/or stolen cattle, and to issue regulations governing the buying and selling of cattle. The Committee is currently reviewing and codifying its existing practices that govern cattle sales.

Under current Nebraska statute, upon the sale of cattle within a specified brand area, the seller must produce satisfactory evidence verifying ownership of the livestock to the brand inspector. The current practice of the Brand Committee requires the seller to produce the original bill of sale as evidence of ownership and to surrender it to the brand inspector at the time of inspection. The inspector then issues the buyer a brand inspection certificate which becomes the official record of title. The original bill of sale is then filed in the Brand Committee records.

Requiring the seller to present satisfactory evidence of ownership protects title in livestock, reduces theft and fraud, and supports investigation and prosecution when necessary. However, there are situations where it is difficult for the seller to surrender the original bill of sale or the owner may not have the original bill of sale. In such cases, the Brand Committee holds the payment from the buyer until evidence is presented to satisfy the seller's ownership beyond a reasonable doubt. This process can take several days and results in the delay of payment to the seller.

As a result of a cattle dealer complaining about the delay of his payment, debate has arisen as to whether the current Brand Committee policies are still relevant in the modern context of livestock transactions and whether they are valued by Nebraska cattle producers. In an effort to codify its current practices, the Committee will hold a public hearing to gain a better understanding of how their current practices affect the cattle industry and whether there are more modern methods of proving ownership that will not burden the seller by delaying payment.

Nebraska does not currently have a regulatory flexibility statute and the value of such a law is evident from this example. A strong regulatory flexibility law not only requires agencies to assess the impact of a proposed rule on small entities and to consider less burdensome alternatives, it also requires agencies to review existing regulations periodically. Periodic review is important because given the length of time that may have passed since the rule was finalized, technology, economic conditions or other relevant factors may have significantly changed in the area affected by the rule.

In this situation, the Branding Committee is reviewing its current practice only because of a cattlemen's complaint which led to the involvement of the Nebraska Ombudsman and the state legislature. By enacting regulatory flexibility legislation, analysis of the affect of proposed and existing rules on small entities would become an integral part of the regulatory process and enhance the business environment in Nebraska.