

COMPETITIVE AND FAIR AGRICULTURAL MARKETS ACT OF 2007

Sponsor: Senator Harkin

- **Reorganize USDA** to establish an Office of Special Counsel whose sole responsibility will be to investigate and prosecute violations on competition matters. Currently, the Deputy Administrator at GIPSA oversees the Packers and Stockyards program and has the responsibility of investigating potential violations of the Packers and Stockyards Act. GIPSA personnel responsible for investigating violations of the Packers and Stockyards Act would be transferred to The Office of Special Counsel. The Special Counsel would be appointed by the President and confirmed by the Senate. This position will also serve as a liaison between the Department of Justice and Federal Trade Commission.

USDA's Office of General Counsel (OGC) prosecutes violations of the Packers and Stockyards Act. OGC has been largely silent on anti-competitive cases since GIPSA was not referring investigations to them. In 1997, USDA's Inspector General revealed that GIPSA employees were concerned that OGC did not want to litigate competition investigations "because they were time consuming" and that OGC had "limited expertise" with them. These concerns remain. OGC has career employees. Therefore, even if GIPSA improves its investigation process, enforcement concerns will remain. The proposed Office of Special Counsel will combine both investigation and prosecution activities into one office, streamlining and improving overall enforcement.

Make the following amendments to the Packers and Stockyards Act:

- * **Strengthen Producer Protections** by making it easier for them to prove unfair actions by packers without additional burdens of having to prove adverse affects on competition. For example, recent court decisions such as London vs. Fieldale Farms have ruled that in order for producers to succeed in cases involving unfair actions they must prove how it adversely affects competition for their region. These rulings will now complicate USDA's ability to enforce the Packers and Stockyards Act.
- * **Strengthen USDA's authority** in enforcing the Packers and Stockyards Act over the poultry industry and make it more in line with livestock. Currently, it is illegal for poultry integrators to engage in unfair or anti-competitive practices, but the enforcement section of the law to prosecute violations was left out many years ago.

Make the following changes to the Agricultural Fair Practices Act:

- * **Prohibits unfair, deceptive, unjustly discriminatory and anti-competitive practices** by a person that affects the marketing, receiving, purchasing, sale or contracting of crops. This is especially important for specialty crops where very few buyers exist.

- * **Provides needed contract protections** to ensure that the contract clearly spells out what is required of the producer. Harkin's bill would require giving the producer at least 3 days to review or cancel the contract. Harkin's bill would prevent confidentiality clauses so that producers are free to share the contract with family members or a lawyer to help them decide whether or not they should sign it. The legislation would also protect producers from having their contracts prematurely terminated if they have made a sizable capital investment. The bill also prevents mandatory arbitration so that producers are not prevented from going to the courts to speak out against unfair actions by companies.

- * **Prevent discrimination against producers** belonging to an organization or cooperative by removing a disclaimer clause allowing processors, handlers, or contractors to refuse to do business with producers just because they belong to such organizations.

- * **Develop rulemaking** by requiring the Secretary of Agriculture to write regulations defining the term "unreasonable preference or advantage" under the Packers and Stockyards Act. This provision of law was never defined by USDA. This is important so that producers are not treated unfairly or differently from other producers by a firm.

- * **Remove hurdles** by allowing producers to have their trial heard in the state where they reside so that they are not required to travel long distances.