



COMPETITION TITLE

Sustainable Agriculture Agenda for the 2007 Farm Bill

Background:

Large segments of the nation's food supply are dominated by a handful of corporations. In many rural communities there are only a few, or even just one, corporate buyer(s) for a given agricultural commodity, especially in the livestock and poultry sectors. At the same time there has been an expanding use of production and marketing contracts that prohibit farmers and ranchers from using legal measures to increase their bargaining power. Information about market prices for agricultural products has also decreased as the use of fair and open markets decreases. Many farmers and ranchers face price discrimination as a result. Congress should not let another farm bill go by without addressing its legislative responsibilities for the Packers and Stockyards Act and Agricultural Fair Practices Act and making the necessary changes to support farm and competitive markets.

Specific Policy Recommendations:

- The **Packers and Stockyards Act** should be amended to:
 - Prohibit packer ownership of livestock used to manipulate prices to the detriment of producers.
 - Prohibit the use of production contracts that do not fix base prices, with adjustments for quality, grade, or other factors outside of packer control, at the point of sale.
 - Require the Secretary to write regulations defining the statutory term “unreasonable preference or advantage” to ensure that small and mid-sized producers do not face market discrimination.
 - Establish that producers need not prove anti-competitive injury to an entire market in cases involving unfair or deceptive trade practices which have harmed them individually.
 - Give USDA administrative authority to investigate and file complaints against violations of the Act regarding all types of poultry transactions.

- The **Agricultural Fair Practices Act** should be amended to:
 - Make it unlawful for any firm to refuse to deal with a producer for belonging to or attempting to organize an association of producers or a cooperative.
 - Prohibit the use of binding mandatory arbitration clauses and restrictions on other legal rights available to farmers and ranchers involved in production and marketing contract disputes.
 - Expand the prohibition on confidentiality clauses to cover all agricultural marketing and production contracts, not just those for livestock and poultry, and to ensure that farmers and ranchers can share information about the details and terms of contracts with other farmers and producer associations.
 - Require that contracts include clear disclosure of producer risks. In addition, prohibit premature cancellation of contracts without a showing of good cause and providing for the recapture of producer capital investment, and ban unfair trade practices including “tournament” or “ranking” system payments that are calculated by the packer and processor and result in unpredictable and arbitrary payments.

Talking Points:

- We support the S. 622, the Competitive and Fair Agricultural Markets Act, introduced by Senators Harkin, Baucus, Enzi, Thomas, Dorgan, McCaskill and Feingold. This bill, with the others below, should form the basis of a competition title for the 2007 Farm Bill.
 - Recent court rulings have complicated and weakened USDA's ability to enforce the Packers and Stockyards Act (PSA). The bill would make it easier for producers to prove unfair actions by packers without the impractical burden of having to prove adverse affects on competition in the region or nation.
 - Courts have found current undue preference legal standards in the PSA virtually impossible to enforce. The bill would strengthen the undue price preference provision to ensure that preferential pricing structures are justified only for real differences in product value or actual differences in acquisition and transaction costs.
 - Currently, it is illegal for poultry integrators to engage in unfair or anti-competitive practices, but there is no enforcement section of the law to prosecute violations. The bill would provide for poultry enforcement, on a par with the livestock sector.
 - Retaliation by processors against farmers and ranchers who try to market their services and products through legally-sanctioned bargaining associations is commonplace in some sectors. The bill would protect bargaining rights and prevent processor retaliation.
 - Because of the dwindling number of regional buyers, farmers and ranchers have had to accept one-sided, take-it-or-leave-it contracts to stay in business. The bill would provide farmers and ranchers with the right to discuss the contract with family members, lawyers, and other producers. The legislation would also protect producers from having their contracts prematurely terminated after they have made a sizable capital investment.
- The major large-scale meat packers use packer-owned livestock to exert unfair market power over farmers and ranchers. Packer-owned livestock has been proven to artificially lower farm gate prices to farmers and ranchers, harming independent producers in the process. A ban on direct ownership of livestock by major meatpackers can address a significant percentage of the problem of captive supply which packers use to manipulate markets. We support S. 305, the packer ban bill, introduced by Senators Grassley, Harkin, Enzi and Dorgan.
- Many packers require that producers negotiate formula contracts and marketing agreements in secret, giving individual packers a great deal of market information while leaving producers in the dark about market conditions. Packers do not need to bid against each other openly. These formula contracts and agreements depress prices and shut small and independent producers out of markets. We support the forthcoming captive supply bill to be introduced by Senator Enzi.
- Farmers and ranchers should be able to exercise their full legal rights and choice of forum without having to bargain those rights away through mandatory arbitration clauses in order to gain access to markets for their products. We support S. 221, the Fair Contracts for Growers Act, introduced by Senators Grassley, Feingold, Kohl, Harkin, Hagel, and Leahy.

For more information about this and other 2007 Farm Bill policy priorities of the **Sustainable Agriculture Coalition**, please contact Aimee Witteman at (202) 547-5754 or visit the Farm Bill Action Center at: www.sustainableagriculturecoalition.org.

