

107TH CONGRESS
2D SESSION

S. 2867

To amend the Agricultural Marketing Act of 1946 to increase competition and transparency among packers that purchase livestock from producers.

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2002

Mr. GRASSLEY (for himself and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Agricultural Marketing Act of 1946 to increase competition and transparency among packers that purchase livestock from producers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SPOT MARKET PURCHASES OF LIVESTOCK BY**
4 **PACKERS.**

5 Chapter 5 of subtitle B of the Agricultural Marketing
6 Act of 1946 (7 U.S.C. 1636 et seq.) is amended by adding
7 at the end the following:

1 **“SEC. 260. SPOT MARKET PURCHASES OF LIVESTOCK BY**
 2 **PACKERS.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) COOPERATIVE ASSOCIATION OF PRO-
 5 DUCERS.—The term ‘cooperative association of pro-
 6 ducers’ has the meaning given the term in section 1a
 7 of the Commodity Exchange Act (7 U.S.C. 1a).

8 “(2) COVERED PACKER.—

9 “(A) IN GENERAL.—The term ‘covered
 10 packer’ means a packer that is required under
 11 this subtitle to report to the Secretary each re-
 12 porting day information on the price and quan-
 13 tity of livestock purchased by the packer.

14 “(B) EXCLUSION.—The term ‘covered
 15 packer’ does not include a packer that owns
 16 only 1 livestock processing plant.

17 “(3) NONAFFILIATED PRODUCER.—The term
 18 ‘nonaffiliated producer’ means a producer of
 19 livestock—

20 “(A) that sells livestock to a packer;

21 “(B) that has less than 1 percent equity
 22 interest in the packer and the packer has less
 23 than 1 percent equity interest in the producer;

24 “(C) that has no officers, directors, em-
 25 ployees or owners that are officers, directors,
 26 employees or owners of the packer;

1 “(D) that has no fiduciary responsibility to
2 the packer; and

3 “(E) in which the packer has no equity in-
4 terest.

5 “(4) SPOT MARKET SALE.—The term ‘spot
6 market sale’ means an agreement for the purchase
7 and sale of livestock by a packer from a producer in
8 which—

9 “(A) the agreement specifies a firm base
10 price that may be equated with a fixed dollar
11 amount on the day the agreement is entered
12 into;

13 “(B) the livestock are slaughtered not
14 more than 7 days after the date of the agree-
15 ment;

16 “(C) a reasonable competitive bidding op-
17 portunity existed on the date the agreement
18 was entered into;

19 “(5) REASONABLE COMPETITIVE BIDDING OP-
20 PORTUNITY.—The term ‘reasonable competitive bid-
21 ding opportunity’ means that—

22 “(A) no written or oral agreement pre-
23 cludes the producer from soliciting or receiving
24 bids from other packers; and

1 “(B) no circumstances, custom or practice
 2 exist that establishes the existence of an implied
 3 contract, as defined by the Uniform Commercial
 4 Code, and precludes the producer from solie-
 5 iting or receiving bids from other packers.

6 “(b) GENERAL RULE.—Of the quantity of livestock
 7 that is slaughtered by a covered packer during each re-
 8 porting day in each plant, the covered packer shall slaugh-
 9 ter not less than the applicable percentage specified in
 10 subsection (c) of the quantity through spot market sales
 11 from nonaffiliated producers.

12 “(c) APPLICABLE PERCENTAGES.—

13 “(1) IN GENERAL.—Except as provided in para-
 14 graph (2), the applicable percentage shall be—

15 “(A) 25 percent for covered packers that
 16 are not cooperative associations of producers;
 17 and

18 “(B) 12.5 percent for covered packers that
 19 are cooperative associations of producers.

20 “(2) EXCEPTIONS.—

21 “(A) In the case of covered packers that
 22 reported more than 75 percent captive supply
 23 cattle in their 2001 annual report to Grain In-
 24 spection, Packers and Stockyards Administra-
 25 tion of the United States Department of Agri-

1 culture, the applicable percentage shall be the
2 greater of—

3 “(i) the difference between the per-
4 centage of captive supply so reported and
5 100; and

6 “(ii) the following numbers (applicable
7 percentages)—

8 “(I) during each of the calendar
9 years of 2004 and 2005, 5 percent;

10 “(II) during each of the calendar
11 years of 2006 and 2007, 15 percent;
12 and

13 “(III) during the calendar year
14 2008 and each calendar year there-
15 after, 25 percent.

16 “(B) In the case of covered packers that
17 are cooperative associations of producers and
18 that reported more than 87.5 percent captive
19 supply cattle in their 2001 annual report to
20 Grain Inspection, Packers, and Stockyards Ad-
21 ministration of the United States Department
22 of Agriculture, the applicable percentage shall
23 be the greater of—

1 “(i) the difference between the per-
2 centage of captive supply so reported and
3 100; and

4 “(ii) the following numbers (applicable
5 percentages)—

6 “(I) during each of the calendar
7 years of 2004 and 2005, 5 percent;

8 “(II) during each of the calendar
9 years of 2006 and 2007, 7.5 percent;
10 and

11 “(III) during the calendar year
12 2008 and each calendar year there-
13 after, 12.5 percent.

14 “(d) NONPREEMPTION.—Notwithstanding section
15 259, this section does not preempt any requirement of a
16 State or political subdivision of a State that requires a
17 covered packer to purchase on the spot market a greater
18 percentage of the livestock purchased by the covered pack-
19 er than is required under this section.

20 “(e) Nothing in this section shall affect the interpre-
21 tation of any other provision of this Act, including but
22 not limited to section 202 (7 U.S.C. 192).”.

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