

true implications would be. My amendment would require the US Department of Agriculture to complete this study within nine months.

I have always been a free market conservative; however, I regularly hear from ranchers expressing concerns about concentration in the meat packing industry. In Idaho we have two packers, and the only thing worse than just two packers, is to have only one. I am concerned that the language as passed could result in further consolidation within the packing industry.

While I agree with my producers that we have a problem, we must be sure that our solution does not create an even bigger long-term problem.

MEAT PACKERS

Mr. GRASSLEY. Mr. President, last week the Senator from South Dakota and I offered an amendment which would prohibit meat packers from owning, feeding or controlling livestock prior to slaughter. Together, we had introduced legislation in the Senate to accomplish the very goal of our amendment. A majority of our colleagues in the Senate voted in favor of our amendment. However, since that time, concerns have been raised by the Secretary of Agriculture and some in the livestock industry that the language of the amendment, specifically the word "control" would affect forward contracts or marketing agreements. I do recall that the Senator from Montana inquired as to whether this amendment affected such contracts and that the Senator from South Dakota responded that the amendment did not affect them. However, I would ask the Senator from South Dakota for further clarification on that issue.

Mr. JOHNSON. I thank the Senator from Iowa for his leadership on this issue. Additionally, I thank him for his concern for livestock producers and for the opportunity to clarify any misunderstandings. The amendment is not intended to affect forward contracts or marketing agreements. Such arrangements have caused or can cause problems in the market, but they are outside the scope of this amendment.

The intent of the word "control" must be read in the context of ownership. In other words, control means substantial operational control of livestock production, rather than the mere contract right to receive future delivery of livestock produced by a farmer, rancher or feedlot operator. "Control" according to legal dictionaries means to direct, manage or supervise. In this case, the direction, management and supervision is directed towards the production of livestock or the operations producing livestock, not the simple right to receive delivery of livestock raised by someone else.

The word control is intended to close any loophole which may allow clever attorneys to circumvent congressional intent. Such loopholes could include

situations where a packer that owns livestock engages in a transaction where a farmer takes nominal title to livestock or livestock feeding operations, but a packer has substantial operational control over the livestock production which is similar to ownership. Another situation is where a packer could exercise such operational control through a related entity. However, where a farmer or rancher holds true operational control, this amendment would not affect him.

Mr. GRASSLEY. Mr. President, I understand that the Senator from South Dakota does not intend the word "control" to include forward contracts and marketing agreements. However, how are such contracts different from operational control?

Mr. JOHNSON. There are two reasons that forward contracts and marketing agreements are not within the definition of control. First, these contracts do not allow a packer to exercise any control over livestock production operation. Rather, the contracts merely provide the packer with the right to receive delivery of livestock in the future and most include a certain amount of quality specifications. There is no management, direction or supervision over the farm operation in these contracts. The farmer or rancher makes the decision to commit the delivery of livestock to a packer through the contract without ceding operational control. In fact, the farmer or rancher still could make a management decision to deliver the livestock to another packer other than the one covered in the contract, albeit subject to damages for breach of contract. Even where such contracts include detailed quality specifications, control of the operation remains with the farmer. The quality specifications simply related to the amount of premiums or discounts in the final payment by the packer for the livestock delivered under the contract.

Second, several states prohibit packer ownership of livestock, such as Iowa, Minnesota, and Nebraska. The Iowa law, for example, prevents packers from owning, operating or controlling a livestock feeding operation in that state. But packers and producers may still enter into forward contracts or marketing agreements without violating that law because operational control, in the context of ownership, is the issue. The term control is intended to be similarly interpreted and applies in this amendment.

Mr. GRASSLEY. I concur and understand the distinction between control of livestock production in the operational sense and a mere contract in which a packer has the right to receive delivery of livestock in the future. I also understand that farmer owned cooperatives, including federated agricultural cooperatives, are exempt if they own a packing plant. But there is yet another situation in which some pack-

ers enter into joint ventures with farmer-owned cooperatives that has members which would supply the jointly owned packing plant.

It has never been our intent to prevent cooperatives from engaging in relationships with packers, and the amendment does not do that. For example, in Iowa, Excel, which is owned by Cargill, is in negotiations with a beef cooperative to build a packing plant to be owned by a joint venture. If that deal is completed, the actual packer would be the joint venture entity formed by Cargill/Excel and the beef cooperative. Co-op members who chose to participate in that endeavor can freely commit all or a portion of their cattle for slaughter without violating this amendment. The reason is that the packer in the exercises no operational control over livestock production. Rather, the package again has a mere contractual right to receive delivery of cattle that meet its specifically on grade and quality. That contract may be a standards forward contract or marketing agreement, or the contract may take the form of a membership agreement between each farmer member and the beef cooperative. In either even, this amendment does not affect this joint venture arrangement.

Mr. JOHNSON. That is absolutely correct Senator GRASSLEY, and we have advocated this position all along. Thank you from clarifying that issue with me. While forward contracts and marketing agreements can pose problems for the marketplace, they are outside the purview of our amendment.

Mr. GRASSLEY. Thank Senator JOHNSON for clarifying the scope of the amendment.

MORNING BUSINESS

Mr. DASCHLE. I ask unanimous consent there now be a period for morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

FAILURE TO PASS A FARM BILL

Mr. HARKIN. What was the final vote, I inquire?

The PRESIDING OFFICER. The yeas are 54; the nays are 43.

Mr. HARKIN. We would have had 55. Senator AKAKA was missing, of course. This is a sad day and not a very bright Christmas next week for farmers and ranchers and people who live in rural America. What we have said to them is: You don't count; you will come on the tail end of everything else. We will do this, we will do that around here, but when it comes to our farmers and ranchers, you are at the tail end. That is what my Republican colleagues have said. Go take a hike, they said to rural America. We will deal with you later. We will deal with you later.