

students remain in the prayers of the many thousands of Americans who have attended DREAM Sabbath events.

#### LIVESTOCK COMPETITION RULE

Mr. HARKIN. Mr. President, throughout the decades since the Packers and Stockyards Act was enacted in 1921, livestock and poultry producers and growers have depended upon the U.S. Department of Agriculture to enforce basic rules of honest dealing, fairness, and nondiscriminatory treatment when livestock and poultry growers and producers engage in sales and contractual transactions with meat and poultry packers, processors, and dealers.

The underlying justification for the Packers and Stockyards Act, and the regulations that have been issued to carry it out, is basic and straightforward. There is inherently a substantial inequality in bargaining power and economic leverage between the individual producer or grower of hogs, or cattle, or poultry, on the one hand, and the packing or processing company on the other hand. That is not to accuse or disparage the packers and processors, but simply to recognize the inherent disparities in economic power in the real world. It is accordingly only reasonable to have some basic Federal rules of the road, so to speak, because livestock and poultry production and processing is a national industry of huge importance to our country and its economy.

For many years we have heard repeated testimony before Congress that the Packers and Stockyards Act is not being carried out by the Department of Agriculture, specifically by the Grain Inspection, Packers and Stockyards Administration, in a manner that fully and effectively lives up to the language of the statute, its intent, and purposes. For that reason, in crafting the Food, Conservation, and Energy Act of 2008, as chairman of the Committee on Agriculture, Nutrition, and Forestry, I was proud to work with my colleagues in the committee and with our counterparts in the House of Representatives to include language directing the Secretary of Agriculture to issue new regulations under the Packers and Stockyards Act that would clarify criteria and interpretations for carrying out and enforcing the act. These new regulations are required to establish criteria that the Department of Agriculture will use in determining whether the actions of a packer or processor constitute an undue or unreasonable preference or advantage for one or more producers or growers to the disadvantage of others, in violation of the act; whether a live poultry dealer has provided reasonable notice for suspending the delivery of birds to a grower under a poultry growing contract; under what circumstances it would be an unfair practice in violation of the act for a packer or processor to require a swine or poultry grower to make additional capital investments during the

life of a contractual arrangement; and whether a live poultry dealer or swine contractor has provided a reasonable period of time for a swine or poultry contract grower to remedy a breach or failure to perform in order to avoid termination of the contract.

In accordance with the farm bill, the Department of Agriculture issued a proposed rule on June 22, 2010, and kept the public comment period open until November 22, 2010. Some 61,000 comments were submitted, which the department has been reviewing and responding to in the process of developing a final rule. The proposed rule is not perfect, of course. That is why there is a public comment process so that anyone who is interested can comment and make recommendations. Secretary of Agriculture Vilsack has made it very clear that the comments were being carefully reviewed so that the proposed rule can be appropriately modified and improved in response to the comments.

Contrary to some of the arguments that are being made, the topics and subject matter covered in the proposed rule, and which therefore likely would be encompassed in the final rule, are entirely consistent with the rule-making process that the 2008 farm bill directed the Secretary of Agriculture to conduct and with the authority provided by the Packers and Stockyards Act. It is not at all correct to assert that the Department of Agriculture has exceeded its authority or in some manner or contradicted the farm bill's directive to issue regulations on specified matter.

It is true the proposed rule would do more to interpret and clarify terms in the Packers and Stockyards Act than is specifically required in the farm bill. Most important, the proposed rule would clarify what many believe to be a misinterpretation of the act by some courts that have held that an individual grower or producer cannot succeed on a claim for harm suffered from a violation of the act without an additional showing of harm to competition in the broader market. The effect of these holdings is effectively to deny relief to independent producers and growers for harm caused by unjust, discriminatory, or unfair practices, which are clearly in violation of the act's protections, unless they can show the broader injury to competition. That showing of injury to competition in the broader market is usually very hard or impossible to make. What is lost in these decisions is that the Packers and Stockyards Act was written and intended to provide protection to individual producers and growers against harm from unfair, unjustly discriminatory, or deceptive practices and similar actions by packers, processors, and dealers. The act was not written or intended to require that harm to competition in the broader market must be shown in order to establish a violation.

The Department of Agriculture clearly has the authority to issue regula-

tions to clarify interpretations of the Packers and Stockyards Act in order to ensure that it is properly carried out. This authority of a department or agency to issue regulations that will clarify the interpretation of a statute within its purview is fully supported by basic principles of administrative law established in the decisions of the Supreme Court and other Federal courts. Claims that in some way the proposed rule exceeds the authority of the Department of Agriculture are plainly unfounded.

As for the details of the proposed rule, it is not designed or intended to put an end to systems in which packers pay premiums for higher quality or distinctive livestock, for example, "Certified Angus" beef, or assess a discount if animals fail to meet standards. The proposed rule is quite clear that it is not designed to prohibit premiums and price differentials that are based on the quality of the livestock or poultry or similar features or circumstances. Because there is a valid economic justification for quality-based premiums and discounts, they are not prohibited by the Packers and Stockyards Act. Accordingly, the proposed rule is clear that such quality-based premiums or discounts are entirely valid and won't be prohibited or jeopardized by the final rule. It just stands to reason, that since there is now obviously economic justification and reward to packers as well as producers for these systems of quality-based premiums and discounts, there will still be incentives and motivation to keep them in place after the final rule is issued.

Finally, regarding the claims that the proposed rule will be very costly and eliminate jobs, the short answer is that these studies, as I understand them, are founded on basic misreading and mischaracterization of the terms and intent of the proposed rule and upon misguided and exaggerated predictions of the effects of carrying it out. They are undoubtedly very extreme predictions of the effects of a rule that is designed and intended, fundamentally, to do no more than simply to ensure fair and nondiscriminatory treatment of livestock and poultry producers and growers in the market.

This rule is vitally important to producers and growers across our country. We should not in legislation prevent the Department of Agriculture from going ahead to make improvements and modifications and issue a final rule that is greatly needed to enhance the effectiveness of the Packers and Stockyards Act.

Mr. JOHNSON of South Dakota. Mr. President, today I rise to reiterate and again offer my full support of the United States Department of Agriculture Grain Inspection, Packers, and Stockyards Administration's, GIPSA, authority to continue promulgating its proposed rule concerning livestock competition. There have been some comments made with concern about both the substance of GIPSA's proposed rule as well as the authority of

the Department to continue its rule-making process. I would like to respond to some of those concerns and to discuss the critical importance of the protections afforded under the proposed rule.

The 2008 Farm Bill, more formally known as the Food, Conservation, and Energy Act of 2008, was enacted by overwhelming majorities in both the House of Representatives and the Senate with amendments to the Packers and Stockyards Act of 1921 as well as directions to USDA to conduct rule-making with respect to additional issues relating to implementation and enforcement. As a result of this rule-making authority, as well as given the authorities permitted explicitly in the Packers and Stockyards Act, GIPSA in 2010 issued a proposed rule that would provide a variety of new protections for livestock producers. Among these protections would be to further define practices that are unfair, unjustly discriminatory or deceptive, establish new protections for producers required to provide expensive capital upgrades to their growing facilities, prohibit packers from purchasing, acquiring or receiving livestock from other packers, and bar them from communicating prices to competitors, as well as including arbitration provisions that give contract growers opportunities to participate in meaningful arbitration. The Department has not yet published a final rule.

In August 2010, I joined with Senator HARKIN in leading a bipartisan letter with 19 of our Senate colleagues to USDA Secretary Tom Vilsack that reiterated our belief that GIPSA has the authority to promulgate such rules as is consistent with its responsibilities under the Packers and Stockyards Act and that the rules should and will allow for continued marketing opportunities including pricing premiums and contracting.

I am fully supportive of the proposed rule as I have consistently supported efforts to strengthen our anti-trust and competition laws. Independent farmers and ranchers must have an opportunity to leverage a decent price for their products. Market consolidation has done a severe disservice to our producers, and it is critically important that we maintain market access and price discovery options for independent farmers and ranchers. I am also fully supportive of GIPSA's authority to continue the rulemaking process as directed in the 2008 farm bill. The proposed rule takes an important first step toward finally enabling livestock producers to get a fair shake in the marketplace.

Opponents of the rule were able to include a provision in the House-passed version of the Fiscal Year 2012 Agriculture Appropriations bill which prohibits GIPSA from spending funds to finalize the proposed rule. A letter written by 190 organizations from across the country, including the South Dakota Farmers Union, the South Dakota

Livestock Auctions Markets Association, and the South Dakota Stockgrowers Association, was recently sent to Congress outlining the important protections provided for in the proposed rule and urging Congress to allow the rulemaking process to continue. I ask unanimous consent that the letter be printed in the RECORD. Fortunately, the Senate version does not contain this provision. As the appropriations process continues, I will work to defend GIPSA's ability to continue the rulemaking process, and I urge my colleagues to do the same.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AUGUST 3, 2011.

U.S. SENATE,  
Washington, DC.

DEAR SENATOR: In the 2008 Farm Bill, Congress directed USDA to propose rules to address unfair, deceptive and anti-competitive trade practices that have become rampant in the livestock and poultry sectors. Congress included these provisions to address concerns over the increasingly abusive and anti-competitive trade practices employed by meatpacker and poultry companies that have harmed farmers, ranchers, growers and consumers. Meatpacker and poultry companies opposed these provisions in the Senate, but compromise language was included in the final Farm Bill requiring USDA to use their existing authority under the 1921 Packers & Stockyard Act to take action.

USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) issued a proposed rule in June 2010. USDA received more than 66,000 public comments on the proposed rule, most of which were supportive. The same meatpacker and poultry companies that opposed the strong farmer and rancher protection provisions in the 2008 Farm Bill are now fighting the regulations to implement those provisions. These special interests, joined by purported farm groups that have meatpackers entrenched on their boards, have launched a misleading public relations campaign that distorts the provisions of the proposed rule.

The proposed rule includes many common-sense measures that protect farmers, growers and ranchers from abusive and unfair treatment at the hands of the meatpackers and poultry companies. These safeguards include:

Prohibitions against company retaliation against farmers for speaking out about problems within the livestock industry, joining other farmers to voice concerns to seek improvements, or raising concerns with federal officials. Today, meatpackers and poultry companies can and do economically retaliate against farmers that exercise these legal rights;

Sensible protections for contract poultry and hog growers that make expensive facility investments or upgrades on their farms to meet packer or poultry company requirements;

Requirements to provide growers and ranchers with information necessary to make wise business decisions regarding their operations;

Disclosure and transparency requirements to eliminate deception in the way packers, swine contractor and poultry companies pay farmers;

Eliminating collusion between packers in auction markets;

Clarification of the types of industry practices the agency considers unfair, unjustly

discriminatory, or a granting of unreasonable preference or advantage.

These are all terms used in the existing statute to prevent unfair trade practices, but these broad terms have never been defined in regulations.

Clarifying the ambiguity in interpretation of the terms of the Packers & Stockyards Act. Such ambiguity can lead to litigation as farmers and packers attempt to clarify the intent of the Act. Moreover, added clarity would enable the agency to address unfair trade practices, which likely would further reduce litigation.

Expressly ensuring that meatpackers can pay premium prices for premium livestock, but prohibit companies from unfairly offering select producers sweetheart deals but paying other producers less for the same quality, number, kind and delivery of livestock.

Recordkeeping requirements that would enable regulators to identify unfair trade practices while ensuring that livestock producers and companies can offer justified premiums or discounts.

Unfortunately, under pressure from meatpackers and poultry companies, the House approved a legislative rider in its FY 2012 Agriculture Appropriations bill that would prevent USDA from taking any further action on this regulation. The provision would even prohibit USDA from analyzing the 66,000 public comments received on the proposed rule and from completing an economic analysis of the rule. The meatpackers and poultry companies oppose the sensible transparency and disclosure provisions of the proposed rule that would shine sunlight onto their unfair practices. The two largest general farm organizations in the United States—the American Farm Bureau Federation and the National Farmers Union—have joined with over 140 farmers, consumer and community groups across the nation to oppose this rider.

The 190 undersigned groups urge you to stand with our nation's farmers, ranchers, growers and consumers to oppose the meatpacker and poultry special interest efforts to insulate themselves from federal scrutiny of their anti-competitive behavior and unfair treatment of farmers and ranchers. Congress should allow USDA to move forward expeditiously to implement a final rule that will strengthen and clarify the Packers & Stockyards Act with common-sense protections for farmers and ranchers.

8th Day Center for Justice (IL), Adams County North Dakota Farmers Union, Added Value (NY), Alabama Contract Poultry Growers Association, Alliance for a Sustainable Future (PA), Ambler Environmental Advisory Council (PA), American Agriculture Movement, American Federation of Government Employees (AFL-CIO), Local 3354, USDA-St. Louis, American Raw Milk Producers Pricing Association (WI), Ashtabula, Geauga, Lake Counties Farmers Union (OH), Assateague Coastal Trust (MD), Assateague COASTKEEPER (MD), Black Farmers and Agriculturalists Association (BFAA) (NC), BLK ProjE (NY), BUGS: Black Urban Growers (NY), Bronx Food and Sustainability Coalition (NY), Brooklyn Food Coalition (NY), Buckeye Quality Beef Association (OH), Bull Mountain Landowners Association (MT), California Dairy Campaign, California Farmers Union, California Food & Justice Coalition, California Institute for Rural Studies, Campaign for Contract Agriculture Reform, Campaign for Family Farms & the Environment (CFFE), Carolina Farm Stewardship Association, C.A.S.A. del Llano (TX), Catholic Charities of Central and Northern Missouri, Cattle Producers of Louisiana, Cattle Producers of Washington, Center for New Community (IL), Center for Rural Affairs,

Church Women United of New York State, Citizens for Pennsylvania's Future (PennFuture) Citizens for Sanity.Com (FL), Colorado Independent CattleGrowers Association, and Columban Center for Advocacy and Outreach (MD).

Community Alliance with Family Farmers (CAFF) (CA), Community Farm Alliance (KY), Community Food Security Coalition, Community Vision Council (NY), Contract Poultry Growers of the Virginias, The Cornucopia Institute (WI), Crawford Stewardship Project (WI), Cumberland Countians for Peace & Justice, (TN), Dakota Resource Council (ND), Dakota Rural Action (SD), Dawson Resource Council (MT), Delta Enterprise Network (AR), Earthworks Urban Farm, East New York Farms/United Community Centers, Endangered Habitats League (CA), Environment Maryland, Environmental Health Watch (OH), Family Farm Defenders (WI), Farm Aid, Farm and Ranch Freedom Alliance (TX), Farmworker Association of Florida, Fay-Penn Economic Development Council (PA), Federation of Southern Cooperatives, First Unitarian Universalist Church of Columbus (OH), Flatbush Farm Share (NY), Food Chain Workers Alliance (CA) Food Democracy Now! Food First, Food Freedom, Food for Maine's Future, Food & Water Watch, Friends of Family Farmers (OR) Friends of the Earth; Gardenshare: Healthy Farms, Healthy Food, Everybody Eats (NY), Georgia Poultry Justice Alliance, Grassroots International, Great Lakes Bioneers Detroit, Hattie Carthan Community Garden (NY), Hattie Carthan Herban Farm (NY), Hmong 18 Council of South Arkansas, Hmong Association Inc. (AR & OK), and Hmong National Development, Inc.

Hunger Action Network of New York State, Idaho Rural Council, Illinois Stewardship Alliance, Independent Beef Association of North Dakota, Independent Cattlemen of Wyoming, Institute for Agriculture and Trade Policy, Institute for Responsible Technology, Intertribal Agriculture Council, Iowa Citizens for Community Improvement, Iowa Farmers Union, Island Grown Initiative (MA), Jackson County, South Dakota, Board of Commissioners, Johns Hopkins Center for a Livable Future (MD), Just Food (NY), Kansas Farmers Union, Kansas Rural Center, The Land Loss Prevention Project (NC), La Familia Verde (NY), La Fines Del Sur (NY), Land Stewardship Project (MN), Local Matters (OH), Madison Farm to Fork (MT), Maine Organic Farmers and Gardeners Association (MOFGA), Michael Fields Agricultural Institute (WI), Michigan Farmer's Union, Michigan Interfaith Power and Light, Michigan Land Trustees, and Michigan Organic Food & Farm Alliance.

Midwest Environmental Advocates (IL), Minnesota Farmers Union, Missionary Society of St. Columban (MD), Mississippi Association of Cooperatives, Missouri's Best Beef Cooperative, Missouri Farmers Union, Missouri Rural Crisis Center, Montana Farmers Union, Mvskohe Food Sovereignty Initiative (OK), National Catholic Rural Life Conference, National Cooperative Grocers Association (NCGA), National Family Farm Coalition, National Farmers Organization, National Farmers Union, National Latino Farmers & Ranchers Trade Association, National Organic Coalition, National Sustainable Agriculture Coalition, National Young Farmers Coalition, Nebraska Environmental Action Coalition (NEAC), Nebraska Farmers Union, Nebraska Sustainable Agriculture Society, Nebraska Women Involved in Farm Economics (NE WIFE), Network for Environmental & Economic Responsibility (TN), New Agrarian Center (OH) New England Farmers Union, New York City Community Garden Coalition (NY), North Carolina Con-

tract Poultry Growers Association, and North Dakota Farmers Union.

Northeast Organic Dairy Producers Alliance, Northeast Organic Farming Association of Massachusetts (NOFA-Mass.), Northeast Organic Farming Association of New York, Inc. (NOFA-NY), Northern Plains Resource Council (MT), Northwest Atlantic Marine Alliance, NYC Foodscape, Oglala Lakota Livestock and Land Owners Association (SD), Ohio Ecological Food and Farm Association (OEFFA), Ohio Environmental Council, Ohio Environmental Stewardship Alliance, Ohio Farmers Union, Oregon Livestock Producers Association, Oregon Rural Action, Organic Consumers Association, Organic Farming Research Foundation, Organic Seed Alliance, Organization for Competitive Markets, PCC Natural Markets (WA), Peach Bottom Concerned Citizens Group (PBCCG) (PA), Pennsylvania Farmers Union People's Food Co-op (MI), Pesticide Action Network North America, Powder River Basin Resource Council (WY), Progressive Agriculture Organization (PA), Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America, (R-CALF USA), and Rocky Mountain Farmers Union.

Rural Advancement Foundation International—USA, Rural Empowerment Association for Community Help (REACH) (NC), Rural Coalition/Coalicion Rural, Slow Food Portland (ME) Slow Food USA, Slow Food USA—Rocky Mountain Region, Small Planet Institute, Socially Responsible Agricultural Project (ID), South Dakota Farmers Union, South Dakota Livestock Auction Markets Association, South Dakota Stockgrowers Association, Southwest Nebraska Women Involved in Farm Economics, Stevens County Cattlemen's Association (WA), Sustain LA (CA), Sustainable Economic Enterprises of Los Angeles (SEE-LA), Tidal Creek Cooperative (Food Market) (NC), Tilth Producers of Washington, Trappe Landing Farm & Native Sanctuary (MD), United Church of Christ Justice and Witness Ministries, United Poultry Growers Association, Virginia Association for Biological Farming, Western Colorado Congress, Western Organization of Resource Councils (WORC), West Side Campaign Against Hunger (NY), WhyHunger, Williams County Alliance (OH), Wisconsin Farmers Union, Women, Food and Agriculture Network (IA), and Yellowstone Valley Citizens Council (MT).

#### YOM KIPPUR'S LESSONS IN IRENE'S AFTERMATH

Mr. LEAHY. Mr. President, recently in my State, as throughout the world, Yom Kippur was celebrated. This beginning of the Jewish year comes as Vermonters and residents of other States are struggling to regain their footing and to renew their lives and livelihoods after the devastation wrought by Hurricane and Tropical Storm Irene.

Vermonters of all faiths can take heart and inspiration from the thoughts about the meaning of the Yom Kippur observance, in the context of the aftermath of this natural disaster, which were presented in a recent essay published in the Rutland Herald and the Huffington Post. It was written by my good friend, Rabbi Michael Cohen. Vermonters' resilience in the face of this devastation and its lingering challenges truly has been remarkable. I commend Rabbi Cohen's message to the Senate's attention, and

I ask unanimous consent that his essay be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

#### BEGINNING THE JEWISH YEAR IN THE AFTERMATH OF HURRICANE IRENE (By Rabbi Michael Cohen)

Acting as a leitmotif rain lightly showers the beginning of the Jewish year. The powerful song *Avinu Malkeiyu*, Our Father, Our King sung on Rosh Hashanah and Yom Kippur was written by the first and second century Rabbi Akiva as a prayer for rain during a drought (Babylonian Talmud Taanit 25b). During the holiday of Sukkot, while the ancient Temple stood in Jerusalem, the ceremony of drawing of the water, *Simchat Beit Ha-Shoeva* was performed. It was said in the Babylonian Talmud (Sukkot 51b), the rabbinic discussion of Jewish law, that "One who has not seen the joy of *Simchat Beit Ha-Shoeva* has never seen true joy." Finally on Shemni Etzeret, the one day holiday after Sukkot, *Tefilat HaGeshem*, the Prayer for Rain is recited even to this day. With Judaism arising out of a parched region of the world when it comes to rain and water it is not surprising that such an emphasis is placed on them.

For those of us living in parts of the United States where the effects of Hurricane Irene are still an all too real reality the thought of praying for rain can be somewhat jarring. That being the case, what can the holidays at the beginning of the Jewish year offer us in the wake of Irene? The symbol most associated with the Jewish New Year is the shofar, the ram's horn blown during Rosh Hashanah and at the end of Yom Kippur. In the Torah, the five books of Moses, Rosh Hashanah is actually called *yom teruah*, the day of blowing (the shofar). There are numerous explanations why the shofar is blown on Rosh Hashanah and Yom Kippur; it is also blown every weekday during the month of Elul, the month before Rosh Hashanah. One explanation that addresses those of us who felt the wrath of Irene is taught by Rabbi Art Green. In the *Machzor*, a prayerbook for the Jewish holidays, of the Reconstructionist movement called *Kol HaNeshamah* Rabbi Green writes:

The shofar sound represents prayer beyond words, an intensity of longing that can only be articulated in a wordless shout. But the order of the sounds, according to one old interpretation, contains the message in quite explicit terms. Each series of shofar blasts begins with *tekiyah*, a whole sound. It is followed by *shevarim*, a tripartite broken sound whose very name means "breakings." "I started off whole" the shofar speech says, "and I became broken." Then follows *teruah*, a staccato series of blast fragments, saying: "I was entirely smashed to pieces." But each series has to end with a new *tekiah*, promising wholeness once more. The shofar cries out a hundred times on Rosh Hashanah: "I was whole, I was broken, even smashed to bits, but I shall be whole again!"

Hurricane Irene literally and figuratively broke in some cases, and smashed in other cases, people, their lives, and their possessions. The road to wholeness for some was quick, for others longer, and for some they are still a traveler on that journey. The message of the shofar, as taught by Rabbi Green, can help remind us not to lose hope along that path. A similar message is also taught during the Jewish High Holidays, but in a different way.

According to the traditional reading of the Bible, Moses received the Ten Commandments, called *Aseret HaD'varim*, literally the Ten Words, (Exodus 34:28) on the 17th of