Dakota Rural Action
PO Box 549, Brookings SD 57006
Phone: (605) 697-5204 Fax: (605) 697-6230
Email: action@dakotarural.org

THE CAPTIVE SUPPLY REFORM ACT

Meatpackers acquire more than half of all cattle and hogs they slaughter through what are known as *captive supplies* – livestock they own themselves or control through contracts with farmers and ranchers. These livestock are called *captive* because they are tied to one packer instead of being subject to normal market forces of supply and demand.

Four companies buy 80% of the cattle and 50% of the hogs processed in the United States today. In such a concentrated market, buyers (the packers) use captive supplies to manipulate markets. In 2004, an Alabama jury convicted Tyson Foods and its beef-packing unit, IBP, of using captive supplies to manipulate cattle prices in violation of the Packers and Stockyards Act (*Pickett v. IBP/Tyson Fresh Meats)*.

Captive cattle supplies cost family farmers and ranchers more than $1.4 billion in 2003.[1]

Senator Mike Enzi (R-WY), along with Senator Tim Johnson (D-SD) and two other cosponsors introduced the Captive Supply Reform Act (S. 960) in May 2005. A companion bill (H.R. 4257) was introduced by Rep. Stephanie Herseth (D-SD), Rep. Earl Pomeroy (D-ND), and Rep. Barbara Cubin (R-WY). The Captive Supply Reform Act would fix the problems with captive supplies *without* prohibiting their use. Rather than banning contracts, the Captive Supply Reform Act would make two reforms to restore open, fair competition in the market for livestock contracts. The Act would:

- Require a fixed base price in contracts and marketing agreements.
- Require that contracts be traded in open, public markets – no more secret deals.

Separate legislation would prohibit ownership of cattle and hogs by packers. But banning packer ownership, alone, would not address the secret, forward contracts and marketing agreements through which most hogs and cattle are transferred from producers to packers[2] -- and which the *Pickett* jury found to be illegal. The Captive Supply Reform Act preserves the benefits of these forward contracts and marketing agreements, while eliminating contract provisions that lead to price manipulation and price discrimination.

Most marketing agreements for cattle and hogs do not have a negotiated price. Instead, the price paid to a livestock producer under one of these agreements is based on reference prices that a packer can influence – such as the price it will pay for other livestock the week *after* the agreement is made. The Captive Supply Reform Act would end this price-manipulating practice by requiring contracts and agreements to have fixed base prices. The Act *would allow* contracts to be based on futures market prices, and to include premiums, discounts and other adjustments to the base price.

The Captive Supply Reform Act would restore competition by making packers (and livestock producers) bid against each other to win contracts. Forward contracts and marketing agreements allow packers and producers to coordinate supply and reduce risk, but as currently negotiated – in secret, with all bargaining power on one side – they depress prices and shut small and independent producers out of markets. The Captive Supply Reform Act would require such contracts to be traded in open, public markets (such as an electronic market) to which all buyers and sellers have access.

---

[1] The *Pickett* jury determined that the cost of captive supplies to cattle producers who sold IBP in the cash market from 1994 to 2002 was $1.28 billion. Testimony by Auburn economics professor Robert Taylor calculated that IBP's captive supplies lowered cash market prices by 5%. In 2003, packers bought and slaughtered 28 million head of fed steers and heifers at an average price of $85 per hundredweight. Assuming an average weight of1100 pounds, those 28 million head grossed $26.4 billion. If that price was depressed by 5.1%, the loss to cattle producers from IBP's captive supplies alone was $1.42 billion dollars in 2003. This compares to an earlier WORC estimate of $1 billion per year, based on analysis of USDA reports by Oregon State University Prof. Catherine Durham.

[2] Per January 2000 study by University of Missouri/National Pork Producers Council, cited in GIPSA report, *Assessment of the Cattle and Hog Industries, Calendar Year 2000,* p. 26)