

Senator Isakson Speaks for Growers on Propane & Homeland Security

In August, U.S. Senator Johnny Isakson (R-GA) spoke up for growers in a letter to the Secretary of Homeland Security, Michael Chertoff. The Department has issued an interim final rule which would make a poultry operation using 7,500 pounds or more of propane gas a "high risk" facility. This rule, proposed under the Chemical Facility Anti-Terrorism Standard, would affect as many as 20,000 individual family-owned poultry farms nationwide, according to Isakson.

Senator Isakson encouraged the Secretary to carefully review these regulations "to ensure that no unnecessary burdens are placed on the poultry industry". He pointed out that the rule could require growers to undergo an extensive web-based questionnaire to collect information on propane usage. This, he added, could place great difficulty on growers lacking the technological resources required to comply with the rule. ❖

'Myths vs. Facts' continued

MYTH: *If mandatory arbitration is removed, processors will take producers to court more often.*

FACT: This provision does not prohibit or discourage arbitration. It simply requires that arbitration be used to settle a controversy only if, after the controversy arises, both parties consent in writing. In some cases, companies coerce farmers to sign revised contracts with a mandatory arbitration clause and threaten to stop sending them animals unless they sign. Used fairly and appropriately, arbitration can be a beneficial dispute resolution tool, just not the only option. Mandatory arbitration should not be allowed to be used as a weapon to prevent producers from seeking justice when mistreated.

MYTH: *Mandatory arbitration clauses in poultry contracts are fair, whereas the mandatory arbitration clauses in the car dealers' contracts were not because they were not governed under the American Arbitration Association (AAA).*

FACT: While the mandatory arbitration clauses in poultry contracts are often governed by AAA, they also have numerous other requirements written into the contracts by the processors that add costs and restrictions to the producer, such as the amount for the arbitrators' fees before arbitration begins, the number of days to file a complaint, where the arbitration must take place (many times it is the state the processor is headquartered in), "loser pays rules" which can include attorneys' and arbitrators' fees, the limitation of damages, and the limitation of legal remedies available (*Source: RAFI-USA*). ❖



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FARM BILL Holds Hope for Poultry Growers

Washington, DC—During the August recess of Congress, poultry growers from many states have spent considerable effort educating their elected officials. At issue is the need for reforms that address poultry and livestock contracts during the debate and drafting of the 2007 Farm Bill. In July, the House passed their version of the Farm Bill, and during the process of drafting it, some key poultry concerns were addressed. However, before the final bill was passed, Congressman Mike Rogers (R-3rd) of Alabama offered an amendment, which removed those provisions. In the meantime, it is important that Georgia's Congressional delegation learn the importance of these provisions and poultry growers seek their support when Congress reconvenes in September. A conference committee will be created to hammer out differences in the House and Senate versions of the Farm Bill and it is then that the poultry specific provisions must be included.

Georgia growers can be proud of Congressman John Barrow (D-GA-12th) who stood up for our issues and took issue with the Roger's amendment. Congressman Barrow voted against the Rogers Amendment during the Farm Bill mark up by the House Agriculture Committee and UPGA completely agrees with the points he made during the debate. Unfortunately, Georgia's other two members of the House Agriculture Committee either voted for the amendment or didn't vote at all. UPGA is working to inform Congressman David Scott (D-GA-13th) and Congressman Jim Marshall (D-GA-8th) to help them understand how Barrow's position is the one that stands up for family farmers who want to continue growing poultry and making Georgia the number one poultry state in the nation.

Inside, read the the myths and facts surrounding the issue of voluntary arbitration as it relates to the 2007 Farm Bill, prepared by RAFI-USA. UPGA wishes to express sincere appreciation to this organization for providing leadership on this issue in DC.

UPGA members are encouraged to call and write their members of Congress and express their concerns regarding mandatory arbitration clauses. See Georgia Congressional Delegation contact information on the sidebars inside.

Lucius Adkins, UPGA President

UPGA Annual Meeting
October 30, 2007 - Albany, Georgia

Corporate Meeting & Election of Directors

See Details Inside...

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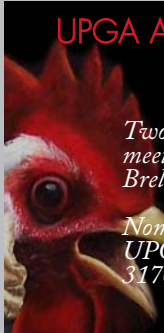
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Senate Farm Bill Version Would Help Poultry Growers

Poultry growers received some much needed support in early versions of the House Farm Bill, only to be disappointed by a surprise amendment from a poultry state lawmaker. As the process moves to the Senate and compromise negotiations ensue, producers hold out hope that the original voluntary arbitration language survives. Specifically, the language would have made it a matter of law to require that BOTH parties (grower and integrator) agree to arbitration AFTER the dispute arises. This is unlike the traditional poultry contracting process, where growers' often give up their rights to settle disputes in court. Unfortunately, this provision was replaced with what many consider to be toothless requirements for new arbitration standards, and to give farmers

access to small claims courts. Meanwhile, in Congress' upper chamber, Senate Agriculture Committee Chairman Tom Harkin (D-IA) remains dedicated to a Livestock Title that deals directly with poultry growers' concerns, through a voluntary arbitration provision. Senator Harkin would simply require that arbitration be used to settle the controversy only if, after the controversy arises, both parties consent in writing. In 2002, Congress passed a very similar provision to provide protections for car dealers in their contracts with car manufacturers and distributors. UPGA has teamed with numerous farm groups, including Georgia Farm Bureau and RAFI-USA to try and convince Congress that America's farmers should be given the same protections. ❖



UPGA Annual Meeting **October 30, 2007 - 7:00PM**
2410 Westgate Blvd., Suite 101, Albany, Georgia

Two Board member positions will be elected by director's ballot at the annual meeting to fill the expiring 3-year terms of the current Board Members, Sam Breland of Cusseta and Mark Glass of Camilla.

Nominations from members may be submitted by delivering written notice to UPGA corporate offices at 2410 Westgate Blvd, Suite 101, Albany, GA 31707 before October 1, 2007.

For more information please call 229-420-4863

Mandatory Arbitration Contracts: *Myths vs. Facts*

MYTH: Mandatory arbitration is mutually beneficial to livestock and poultry processors and producers alike.

FACT: Mandatory arbitration forces producers to give up access to the courts, even in cases of fraud, breach of contract, misrepresentation or other blatant contract abuses by the processor. Producers want the opportunity to choose either a judge or arbitrator for dispute resolution; mandatory arbitration clauses take that choice away from producers. If arbitration is mutually beneficial, then there should be no problem agreeing to arbitration voluntarily after the dispute arises.

MYTH: Mandatory arbitration is cost-effective and a time-efficient method of dispute settlement compared to litigation.

FACT: Arbitration cases involving livestock and poultry are normally expensive and time consuming. Arbitration can require both filing fees and fees related to actual proceedings such as the arbitrator's hourly wage. Arbitration clauses require up-front arbitration fees and deposits that must be paid by the farmer before he is given an arbitration hearing. These amounts can easily exceed \$20,000 with further costs mounting as the arbitration process continues. These costs are so prohibitive, farmers are rarely able to use arbitration. In contrast, filing fees for a civil court case are \$150 to \$250. These types of Federal Court proceedings and arbitration proceedings are quite often similar in length. *'Myths vs. Facts' continued on back*

KEY Poultry Provisions Sought in Farm Bill



UPGA has worked for years at the state level to address inequities in poultry grower contracts. For the moment, however, it appears that the best opportunity to correct some of these problems may not be under the Gold Dome but instead in the nation's Capitol. As Congress finishes a new Farm Bill, UPGA has advocated for the the inclusion of the following provisions in the Livestock Title:

❖ Amend the Packers and Stockyards Act

Provide USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) full enforcement authority over unfair and deceptive trade practices in the poultry sector, parallel to the authority that they already have for pork and beef. Currently, USDA only has limited authority to provide protections for poultry growers. If there is any sign of a problem, USDA must transfer the case over to the Department of Justice. Yet, as you might expect, poultry farmer protections are very low on the DOJ's priority list. As a result, no real action is taken, and abuses in the poultry sector run rampant. USDA has asked for their authority to be updated to address this concern.

❖ Provide for Voluntary Arbitration

Require that arbitration be VOLUNTARY on the part of both parties to a livestock and poultry contract. This should be accomplished by specifying that both parties to a livestock or poultry contract must agree to arbitration in writing, AFTER the dispute arises, as opposed to allowing farmers to be forced to give up their right to defend themselves in court, as part of a take-or-leave-it contract. In 2002, Congress passed legislation to provide this same protection to car dealers in their contracts with car manufacturers. Congress should provide the same protections for farmers as it has already provided to car dealers.

❖ Protect Against Stranded Investments

Provide basic protections for livestock and poultry farmers against stranded investments. It is not uncommon for livestock and poultry integrators to cancel a farmers' contract simply because the company's production plans have changed. Often the farmers had been encouraged by the company to make the large investments in facilities and equipment on their farms, with the verbal assurance of a long-term relationship. But when the company's plans change, farmers are left with a million-dollar stranded investment, and no way to recoup the loss. A provision should be added to the Farm Bill that requires livestock and poultry companies to reimburse farmers for their investments if they decide to cancel the contact, through no fault of the farmer, and if the investments were made specifically for the contract production relationship with the company.

❖ Update the Agricultural Fair Practices Act

Close loopholes that have made it difficult for USDA to enforce, and to require processors to bargain in good faith with producer associations. A recent court ruling (*London vs. Fieldale Farms*) has suggested that the Packers and Stockyards Act does not protect individual farmers against unfair and deceptive trade practices, unless the practice can be shown to have an anti-competitive effect across the whole industry. This unprecedented ruling conflicts with decades of interpretation by USDA, as well as the specific intent of Congress when the Packers and Stockyards Act was passed in 1921. A provision should be added to the Farm Bill that clarifies that broad competitive harm across the industry does not have to be proven for an individual farmer to seek protections through GIPSA for unfair and deceptive trade practices by packers and poultry integrators.

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