

**TRANSITION ISSUES**  
**AGRICULTURAL COMPETITION AND CONTRACT**  
**FAIRNESS ISSUES**  
(USDA AND DEPARTMENT OF JUSTICE)

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Campaign for Contract Agriculture Reform  
Farm and Ranch Freedom Alliance  
Food and Water Watch  
Land Stewardship Project  
Institute for Agriculture and Trade Policy  
Iowa Citizens for Community Improvement  
Iowa Farmers Union  
Missouri Rural Crisis Center  
National Family Farm Coalition  
Organization of Competitive Markets  
Ranchers Cattlemen Action Legal Fund – United Stockgrowers of America  
Rural Advancement Foundation International-USA  
Western Organization of Resource Councils

*The above organizations have a long history of working together through the National Campaign for Sustainable Agriculture's Competition and Concentration Committee. The Committee's goal is to increase fairness in all agricultural contracts and markets and restore open public markets for livestock producers by ending price manipulation and discrimination in those contracts and markets. In January 2007, over 200 organizations signed on to a platform to return competition to the livestock and agricultural markets and urged Congress to consider those priorities while constructing the Farm Bill (see appendix 1).*

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## **COMPETITION AND CONTRACT FAIRNESS TRANSITION DOCUMENT**

### **Vision Statement**

Today, a small handful of corporations overwhelmingly dominate our food supply. The concentration of market control in the top four firms in U.S. food retailing, grain processing, red meat processing, poultry processing, milk processing, and nearly every category of food manufacturing is at an all time high. Corporate mergers and buyouts have concentrated the power of these firms and increased their ability to unfairly manipulate market conditions in their favor. This unprecedented level of horizontal market consolidation effectively eliminates free market competition to the detriment of independent family farmers and consumers.

Compounding the problem associated with horizontal consolidation is the rapid trend toward vertical integration. Manufacturers, processors and packers increasingly control all stages of production and inventory through commodity ownership and one-sided contracts. This corporate control of production unnecessarily eliminates market transparency, creating an environment ripe for price manipulation and discrimination. It replaces farm-level decision making with centralized corporate planning and leaves farmers trapped in long-term debts tied to short-term, non-negotiable production contracts. In addition, top retailers and packers increasingly engage in relationships with dominant suppliers that exclude smaller competitors and minimize price competition. Because the same few players in the market control both supply and demand, the basic principles of supply and demand cannot function.

A critical role of government is to ensure fairness by facilitating properly operating markets and balance in the economic relationships among farmers/ranchers, consumers and food companies. Currently, inadequate federal legislation and the lack of enforcement of anti-trust policies allow a handful of corporations to continue to consolidate market power, manipulate prices and create anti-competitive market structures. Federal government inaction has a dramatic, negative impact on not only farmers and ranchers, but also on rural communities, the environment, food quality, food safety and consumer prices. The federal government's abdication of its oversight responsibilities undermines sustainable production practices and state and local laws that support family-scale, sustainable farm and ranch operations.

Policy makers often voice the laudable policy goals of maintaining a diverse, farm-and-ranch-based production sector and providing consumers with a nutritious, affordable food supply. However, government failure to redress industry concentration—both vertical and horizontal—is thwarting these policy goals and driving the earnings of farmers and ranchers down and consumer prices up.

## **The Obama-Biden Campaign Platform**

The Obama Administration will take office at a time when the 2008 Farm Bill will be implemented providing important opportunities to shape the impact of this crucial omnibus food and agricultural legislation. Our organizations have an interest in the competition and fairness provisions of the Farm Bill. Over 200 organizations supported the platform-giving rise to these provisions. This transition document focuses upon the Farm Bill and other provisions that should be considered to achieve fair, open and competitive markets.

President-elect Obama campaigned, in part, upon a promise to reduce anti-competitive practices, increase fairness and revitalize family farm agriculture, as described in the following excerpt from Obama-Biden campaign platform document “Real Leadership for Rural America”:

*Prevent Anticompetitive Behavior Against Family Farms: In an era of market consolidation, Barack Obama and Joe Biden will fight to ensure family and independent farmers have fair access to markets, control over their production decisions, and transparency in prices. Obama is a strong supporter of Senator Tom Harkin’s (D-IA) legislation that protects independent producers by banning the ownership of livestock by meat packers, and he will fight for passage of the law as president. Today meatpackers produce more than 20 percent of the nation’s hogs, and their share is growing. When meatpackers own livestock, they bid less aggressively for the hogs and cattle produced by independent farmers. When supplies are short and prices are rising, they are able to stop buying livestock, which disrupts the market.*

*The 1921 Packers and Stockyards Act prohibits price discrimination by meatpackers against small and mid-size farmers, but the law has not been enforced. Obama will issue regulations for what constitutes undue price discrimination and his administration will enforce the law. He will also strengthen anti-monopoly laws; change federal agriculture policy to strengthen producer protection from fraud, abuse and market manipulation; and make sure that farm programs are helping family farmers, as opposed to large, vertically integrated corporate agribusiness*

The issues and actions listed in this document will achieve Mr. Obama’s goals. We hope they are helpful to the transition process.

# **UNITED STATES DEPARTMENT OF AGRICULTURE**

## **General Packers & Stockyards Act Enforcement Agency: (USDA Grain Inspection, Packers and Stockyards Administration)**

### **General Background**

Fair and open livestock markets enable farmers, ranchers, feeders and auction yard owners to keep their independence, run their businesses, provide for their families and build their rural communities. Unfortunately, our livestock markets are broken and this robs producers of the same opportunity enjoyed by other segments of our economy. The companies that make up the consolidated beef packing industry are using their market power to take advantage of honest, hardworking family farmers and ranchers by controlling livestock prices.

In 1921, a forward thinking Congress saw the problems created when only a few companies control so much of the market share in the packing industry. Congress adopted comprehensive laws to protect independent livestock producers from the anticompetitive practices of the highly concentrated and economically powerful meatpackers when it passed the Packers and Stockyards Act of 1921 (PSA).

However, current policy makers in Washington, D.C. are not interpreting or enforcing the law as intended in 1921. Furthermore, and as revealed by a recent Government Accountability Office (GAO) report the U.S. Department of Agriculture has failed for many years to properly enforce laws intended to protect producers from the meatpacking cartel.

Today, trends in the meat packing industry virtually mirror those in 1921. Four major companies have taken control of the marketplace in beef and control over 85 percent of all the U.S. steer and heifer market. In the pork industry, four firms now buy about 66 percent of the hogs that end up on American dinner tables.

## **Curb Contract Manipulation through Packer Ownership and Captive Supplies**

### **Issue**

The fewer packers there are to compete for cattle and hogs, the more control they have over the producers' ability to timely access the market and the greater their ability to drive down prices through the use of new livestock procurement tools. These new procurement tools allow packers to remove slaughter-ready livestock from the marketplace without ever establishing a price, thus thinning the market itself and restricting price disclosure. These new procurement tools are known as “captive supplies.”

There are two main types of captive supplies: 1) Cattle and hog packers actually own livestock in feedlots and confinement facilities and 2) Cattle and hogs the packers procure through several types of forward contracts and marketing agreements.

In our concentrated livestock markets, buyers (the packers) can—and do—use captive supplies to manipulate markets. By calling on captive supplies to fill slaughter needs, packers avoid having to bid for cattle or hogs in an open, public manner. A false period of low demand is created and prices are driven even lower. Contracting cattle for future delivery is not, in itself, anticompetitive. However, packers are using a contract method known as “formula pricing” in which feeders are enticed to commit their cattle through a contract that does not contain a negotiated price. Instead, the contract price is determined by a formula that is itself tied to a previous cash price and that is only determined after the cattle are removed from the competitive marketplace. For example, a packer might offer the feeder 50 cents per hundredweight over the average cash market price paid by the packer during the week preceding the week the cattle are actually delivered. Meanwhile, packers either own or have forward contracted enough cattle so they do not need to purchase significant numbers of cattle during the week preceding delivery, thus reducing the average cash market price upon which the contract is based. The result is that the cattle feeder receives a price lower than what a competitive market would predict, even with what appeared to be a premium offered to the cattle feeder.

According to calculations by the Organization for Competitive Markets (OCM) that were based upon a January 2007 study released by the U.S. Department of Agriculture, in 2006, captive supplies of livestock cost family farmers, ranchers and their communities more than \$5.7 billion. In cattle alone, captive supplies lowered prices for producers by approximately \$69 per head for cattle. Hog producers received \$32 to \$48 less per head than in a competitive market. Since that study was released, concentration in the livestock markets has continued to rise creating even more losses for livestock producers.

Consolidation of market power by these corporations in other foods adds to the problem of vertical integration. Vertical integration is the ability of a corporation or business to control a product from “the ranch to the dinner table”—and that is exactly what is happening in today's markets.

Tyson Foods Inc., JBS Swift and Co. (owned by JBS SA of Brazil) and Cargill Meat Solutions (formerly known as Excel) are the three major meat packers in the U.S. National Beef trails the “Big Three” as the fourth largest beef packer in the U.S.

- Tyson not only processes beef, but also processes and markets chicken and pork products. Tyson became the largest meat packer after acquiring IBP in 2002.
- JBS Swift is a privately held company owned by the Brazilian company JBS. They recently moved from the nation’s third largest packer to vie for second largest packer when JBS acquired Smithfield beef interests.
- Excel now ranks second in beef packing and is a subsidiary of privately held Cargill Inc., which is a leading grain merchant, and the leader in animal feed. In 2002, Excel bought the controlling interest in ConAgra Meats, the fresh beef and pork operations of ConAgra Foods Inc.

In 1989, the Western Organization of Resource Councils (WORC) organized ranchers to bring national attention to the problems of captive supplies. Since then WORC has involved thousands of ranchers and hundreds of organizations in promoting solutions to the problems created by a concentrated packing industry and the use of price-manipulating captive supplies.

In the past 20 years agricultural leaders have worked diligently to seek administrative and legislative remedies to the price manipulation that drives livestock producers out of business and in turn destroys their rural communities.

Since bringing the issue forward, agricultural leaders have had dozens of meetings with the Justice Department and USDA seeking enforcement of the PSA. As a result, USDA and Congress have conducted four costly investigations, none of which addressed the specific problems adequately or brought any relief. WORC’s “Captive Supply Chronology” is attached and outlines the process over the last two decades.

### **Actions To Be Taken By New Administration**

#### **1) Action for addressing Captive Supplies through forward contracts:**

In 1996, a Petition for Rulemaking was submitted to USDA with the endorsement of over 100 state and national organizations. The draft proposed rule was then published in the Federal Register in 1997. There were 1,757 comments submitted with 1,651 of those in favor of the rulemaking. However, no action has been taken by USDA and 11 years later, WORC’s Petition for Rulemaking remains on the Agriculture Secretary’s desk awaiting action.

USDA should move forward on this petition and issue rules under the authority of the Packers and Stockyards Act that:

1. prohibit packers from procuring cattle for slaughter through the use of a forward contract, unless the contract contains a firm base price that can be equated to a fixed dollar amount on the day the contract is signed and the forward contract is offered or bid in an open, public manner and;
2. prohibit packers from owning and feeding cattle, unless the cattle are sold for slaughter in an open, public market.

**2) Action for addressing the Packer Ownership of Livestock:**

USDA should pursue rulemaking or encourage Congressional statute to prohibit packers from owning livestock more than 14 days prior to slaughter.

## **Define and Enforce Undue Preference Language**

### **Issue**

The Packers and Stockyards Act (P&SA) makes it “unlawful for any packer or swine contractor with respect to livestock, meats, meat food products, or livestock products in un-manufactured form, or for any live poultry dealer with respect to live poultry to: . . . (b) make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever.” 7 U.S.C. § 192(b).

Though this provision has been law for decades, USDA has never issued regulations establishing the criteria it will use to evaluate complaints that a packer, swine contractor or live poultry dealer has violated this statutory provision. USDA’s failure to maintain and publish a coherent policy for analyzing such complaints has been a substantial contributing factor to the loss of thousands of family farm livestock and poultry producers over the last few decades.

As the packing and processing sectors of the livestock and poultry industries have continuously marched toward greater and greater consolidation of market share and significantly increased vertical integration, packers and poultry dealers have amassed and exercised market power in ways that have been devastating to family farm livestock and poultry producers forcing thousands of them out of livestock production and threatening the viability of their farming operations. Through this period of rapid consolidation and vertical integration, packers have granted large-volume industrial-style livestock producers great advantages over family farm livestock producers through the manner in which they offer to procure livestock, whether it be through long-term marketing agreements, shorter-term forward contracts, cash sales, or production contracts with farmers to raise packer-owned livestock. Livestock packers and swine contractors have also granted industrialized livestock producers great preference and advantage over family farm producers in more subtle ways through often-secret terms of purchase arrangements and production contracts. Such unlawful preferences have allowed packers to pay substantially higher prices to large-volume producers over smaller-volume family farm producers without there being transactional cost savings to support the higher prices. Live poultry dealers also continue to give preferential treatment and advantages to those contract poultry growers they wish to prefer over other growers through the subtle use of preferential distribution of the best quality chicks and feed, inequitable condemnations of birds during processing, selectively requiring growers to invest thousands of dollars in equipment upgrades, and preferential treatment with regard to lay-out periods between flocks and numbers of flocks delivered per year.

### **Farm Bill Outcome**

The new Farm Bill requires that USDA issue regulations establishing the criteria the Secretary will consider in determining whether an action of a packer, swine contractor, or live poultry dealer constitutes an undue or unreasonable preference or advantage in violation of the Packers and Stockyards Act, 7 U.S.C. § 192(b).

### **Actions To Be Taken By New Administration**

USDA should swiftly promulgate regulations pursuant to the mandate of Section 11006 of the 2008 Farm Bill establishing the criteria the agency will use to determine whether the actions of packers, swine contractors, and live poultry dealers constitute “undue or unreasonable preference or advantage” in violation of the Packers and Stockyards Act prohibition.

The regulations promulgated under Section 11006 of the 2008 Farm Bill should address the following issues.

#### **1. Rules Must Not Narrow Application of Statutory Language.**

The Packers and Stockyards Act (P&SA) prohibition against packers, swine contractors, and live poultry dealers giving undue or unreasonable preferences or advantages is extremely broad statutory language. It prohibits undue or unreasonable preferences that may be given not only to individuals but also that may prefer any particular location over another. The inclusion of the phrase “in any respect” means that it is intended to prohibit such undue preferences in any aspect of the relationship between packers, swine contractors, or live poultry dealers and livestock producers, wholesalers, retailers, or consumers. The USDA is not the only entity that will be enforcing this provision of the P&SA. Federal courts also have the authority to address claims of violations of this provision of the P&SA. It is imperative that USDA, in issuing the regulations required by the Farm Bill, does nothing that would in any way restrict, limit, or narrow the possible interpretation of this extremely broadly worded statutory provision by the courts. USDA regulations should state explicitly that they include criteria the agency will use in making its decisions about whether some action violates this provision of the P&SA, and such rules may provide courts with insights into how the agency views undue and unreasonable preferences, but that the rules do not narrow, restrict, or limit either the method a court uses to analyze undue preference claims or the types of situations the court may ultimately find violate this provision of the P&SA.

#### **2. Rules Must Make Clear It Is Not Necessary to Show Anti-Competitive Impact to Find an Undue Preference.**

The rules must explicitly state that it is not necessary to show an anti-competitive impact in order to find an action of a packer, swine contractor, or live poultry dealer to be unlawful as an undue or unreasonable preference or advantage. Similarly, the rules must state that just because a packer, swine contractor, or live poultry dealer presents a legitimate business reason for the challenged action, this alone will not keep it from being unlawful under § 192(b) of the P&SA. As USDA has repeatedly argued in court cases, the plain, clear, and unambiguous language of § 192(b) of the P&SA does not require any proof of an adverse effect on competition or of restraint of commerce or trade. The legislative history of the P&SA shows that Congress intended to prohibit actions that give undue and unreasonable preferences without regard to whether they restrain trade, create

a monopoly or control prices.

### **3. Rules Must Recognize that Undue Preferences May Arise in Any Aspect of Transactions between Packers and Producers.**

The rules must recognize that an “undue or unreasonable preference or advantage” may arise under many aspects of the transactions between packers, swine contractors, live poultry dealers, and producers. As examples, such unlawful actions may arise in price terms including any base or formula price; formulas used for premiums or discounts related to grade, yield, quality, or specific characteristics of the animals or meat; the duration of the commitment to purchase or to contract for the production of animals; transportation requirements; delivery location requirements; delivery date and time requirements; terms related to who determines date of delivery; the required number of animals to be delivered; layout periods in production contracts; and terms related to the companies’ provision of inputs or services, grower compensation, and capital investment requirements under production contracts.

It is easy for packers to unlawfully prefer large-volume livestock producers over smaller-volume producers in very subtle ways. Such unlawful actions may occur when certain types of purchase arrangements – forward contracts, marketing agreements, and cash market purchases – are offered to some producers but not to others. Unlawful preferential actions may also occur based on the actual terms of purchase including pricing, premiums/discounts, delivery, or length of commitment terms. Any new rules must include criteria that will ensure that when packer purchase arrangements are challenged, there will be a thorough review of how the various types of purchase arrangements are offered to livestock producers both large and small, and how the various terms within each arrangement may impact producers based on size. The rules must clarify that it is unlawful for packers to prefer large-volume livestock producers over smaller-volume producers in any manner that is not substantiated by actual, verifiable transportation and other transactional expenses. The rules should also require that packers offer the various types of livestock purchase arrangements they use in a non-preferential manner to livestock producers in general.

Because of the dramatic increase in packer ownership of livestock and production contracting, any rule related to “undue and unreasonable preferences” must address these forms of procurement. The rules must include criteria for evaluating when unlawful preferential treatment may occur in situations where packers and live poultry dealers both (i) slaughter animals they own and have raised through production contracts; and (ii) purchase for slaughter animals owned by other producers. Similarly, the new rules must address unlawful preferential treatment in a situation where a packer or live poultry dealer enters into arrangements to sell young animals for raising and then repurchases them for slaughter at the same time it is raising its own animals for slaughter through production contracts with growers. The rules must recognize that undue and unreasonable preferences or advantages may occur in the manner contracts are offered, in the terms of the contracts, and in any of a company’s dealings with the growers.

The rules must also recognize situations that may be unique to a certain sector or contract type. For example, for poultry production contracts, key criteria that should be used in determining an undue or unreasonable preference or advantage include:

1) When a grower is penalized relative to other growers based on performance factors that are outside the control of the grower and within the control of the poultry company. Specific examples of this include:

- a grower is given a majority of chicks in a flock that are not from a breeder flock that is 36-45 weeks old. (Chicks from very young and very old breeder hens are inferior.);
- a grower is given a different density (#chicks/square feet) than other growers in the settlement group (unless requested by the grower);
- a grower is placed in a settlement group with growers with different age birds. (The grower should be compensated if they are not settled within 2 days of all growers.);
- a grower is held out without birds one or more days longer than average;
- a company service employee is included in the settlement group;
- growers in the same settlement group receive feed from different feed mills; and
- growers in the same settlement group receive different amounts of starter feed than other growers in the complex (this is the most important feed).

2) When a grower is penalized relative to other growers based on the free exercise of rights protected by law. Examples would include:

- a grower who is cut off or otherwise penalized based on his/her leadership or membership in a poultry grower association, a right protected under the Agricultural Fair Practices Act; and
- when a grower shares the terms of his/her contract with a public official or an advisor, a right protected by the Packers and Stockyards Act.

#### **4. Rules Must Be Amended to Keep Pace with Industry Practices.**

Because the procurement practices in the livestock poultry industries change over time, it is imperative that USDA continuously monitors such practices and amends the rules whenever necessary to ensure that they appropriately address changes in industry practices.

## **Ensure USDA-GIPSA Annual Report on Its Investigations to Congress**

### **Issue**

The 2008 Farm Bill requires the USDA Grain Inspection, Packers and Stockyards Administration (GIPSA) to submit an Annual Report showing its activities to receive, investigate and prosecute complaints of Packers & Stockyards Act (“PSA” or “the Act”) violations. Section 11004 of the Farm Bill contains this language. This provision was added as a compromise in light of the proposal by Senate Agriculture Committee Chairman Harkin’s proposal to replace GIPSA with an Office of Special Counsel for Competition within USDA. GIPSA should increase its regulatory and enforcement aggressiveness and accurately report its activities to Congress under the PSA.

The Packers and Stockyards Act has been rendered largely irrelevant due to administrative neglect. But the potential for reinvigorating fair, open and competitive markets in livestock and poultry agriculture, through re-invigorating the PSA, is great.

GIPSA has prosecuted no significant PSA cases for at least eight years. It is unlikely that the industry has not violated the Act during that time. The agency also has not modernized any substantial regulations to keep up with potentially troublesome industry practices. The USDA Office of Inspector General found, in a January 17, 2006 report (Report No. 30601-01-Hy) (2006 OIG Report), that GIPSA was essentially falsifying records of the number of investigations. The Deputy Administrator of GIPSA, Joann Waterfield, resigned just before the report was released to the public.

Despite GIPSA’s meager enforcement track record, the agency has a history of inaccurately telling Congress it is already aggressively enforcing the PSA, opposing legislative efforts to modernize the Act, while actually engaging in little meaningful activity. A series of three reports from the OIG and GAO from 1997 to 2006 found otherwise. The 2006 OIG Report found that GIPSA labeled every action as an “investigation” for past Congressional reporting purposes, including mundane tasks such as monitoring publicly available data, sending routine letters to request company specific information and performing onsite reviews of companies. In other words, GIPSA said it was performing its functions with diligence, but it was not.

GIPSA also has not allocated resources to monitoring anti-competitive behavior, according to the 2006 OIG Report. The USDA OIG had, in a February 1997 report, criticized the agency for failing to have sufficient legal and economic talent available to competently fulfill its anticompetitive behavior duties. A September 2000 GAO report echoed and expanded upon those findings of relative incompetence. GIPSA promised to change to comply with GAO recommendations. Our organizations doubted that GIPSA had in fact changed, and the 2006 OIG Report confirmed that fact.

In the 2002 and 2008 Farm Bill debates, Senator Harkin proposed that GIPSA’s anticompetitive practices activities be replaced by an Office of Special Counsel for Competition, headed by a Special Counsel for Competition. The Special Counsel would

have been an appointed position located just beneath the Secretary in the USDA hierarchy. The reason was to remedy GIPSA's failure to hire sufficient legal and economic staff to carry out these functions, by creating an FTC-like division within USDA to focus upon anticompetitive activities in the livestock industry. The Special Counsel would have the authority to both investigate and prosecute violations without relying upon the USDA Office of General Counsel or the Department of Justice, again like the FTC.

Strong opposition from industry resulted in a compromise. That compromise was increased transparency through an Annual Report by GIPSA to the Congress under the 2008 Farm Bill.

### **Farm Bill Outcome**

The 2008 Farm Bill requires the USDA Grain Inspection, Packers and Stockyards Administration (GIPSA) to submit an Annual Report showing its activities to receive, investigate and prosecute complaints of Packers & Stockyards Act ("PSA" or "the Act") violations.

### **Actions To Be Taken By New Administration**

Additional items which should be focused upon include whether professional staff is hired for the anticompetitive practices activities of GIPSA. Attorneys trained in competition law are needed. Staff with agricultural law and business law expertise are virtually irrelevant. Economists trained in industrial organization are crucially important. Mere agricultural economics does not provide the tools to investigate anticompetitive behavior.

Further, regulations should be propounded in areas that will assist USDA. In the 1990's, GIPSA tried to use administrative litigation to establish that captive supplies in beef, as used by IBP, were anticompetitive. The litigation was unsuccessful. The USDA's views would be more persuasive to courts if propounded through the regulatory process rather than through ad hoc litigation. Stated another way, courts provide far more deference to agency interpretations of the law when a regulation has been finalized than when agency attorneys assert a legal argument in court without specific regulatory backing.

## **Implement Reforms for Contract Livestock Growers**

**Agency: (USDA Grain Inspection, Packers and Stockyards Administration)**

### **General Background**

With the rapid rise of vertically integrated methods of agricultural production, farmers are increasingly producing agricultural products under contract with large processors. In many cases, particularly in the livestock and poultry sector, the farmer never actually owns the product they produce, but instead makes large capital investments on their own land to build the facilities necessary to raise animals for an "integrator."

Under such arrangements, farmers and growers are often given take-it-or-leave-it, non-negotiable contracts, with language drafted by the integrator in a manner designed to maximize the company's profits and shift risk to the grower.

Today's agricultural markets are highly concentrated with less than a handful of national and multi-national firms controlling the majority of the market for many commodities. For example, the top four processing firms for beef, pork and chicken control from 55 to 87 percent of the U.S. market for their commodity. At the local level, this means a single processing firm is often the only marketing option for a farmer, eliminating price-enhancing competition.

In many parts of rural America, farmers have few options but to do business with livestock and poultry integrators. The combination of industry consolidation and vertical integration creates the opportunity for abusive contract terms.

In many cases, the farmer has little choice but to sign the contract presented to them, or accept bankruptcy. The legal term for such contracts is "contract of adhesion." As contracts of adhesion become more commonplace in agriculture, the abuses that often characterize such contracts are also becoming more commonplace and more egregious.

## **Enforce Mandatory Arbitration Opt-Out Provisions in 2008 Farm Bill**

### **Issue**

One practice that has become common in livestock and poultry production contracts is the use of mandatory arbitration clauses, when growers are forced to sign away their constitutional rights to jury trial upon signing a contract with an integrator, and instead accept a private dispute resolution forum that limits their basic legal rights and is too costly for most growers to pursue.

These clauses are signed before any dispute arises, thus paving the way for integrators to employ practices that are fraudulent and abusive, without fear of legal reprisal from the farmer, or public record of the actions.

Because basic legal processes such as discovery are often waived in arbitration, it becomes very difficult for a farmer or grower to prove their case. In these cases, the company has control of the information needed for a grower to argue their case. In a civil court case, this evidence would be available to a grower's attorney through discovery. In an arbitration proceeding, the company is usually not required to provide access to this information, thus placing the farmer/grower at an extreme disadvantage. Other standard legal rights that are often waived through arbitration are access to mediation and appeal, as well as the right to an explanation of the decision.

In addition, it is often assumed that arbitration is a less costly way of resolving a dispute than going to court. Yet for the farmer, the opposite is usually true. The high cost of arbitration is often a significant barrier to most farmers. The up-front filing, case-service, and arbitrator fees can exceed the magnitude of the dispute itself. For a poultry arbitration proceeding, the up-front fees to begin an arbitration proceeding can be as high as \$30,000, with ongoing fees mounting beyond that figure. In contrast, the up-front filing fees for a civil court case are \$150 to \$250. Lawyer fees in a civil case are often paid on a contingent-fee basis.

Arbitration can be a valid and effective method of dispute resolution when agreed to voluntarily through negotiation by two parties of similar power, but when used by a dominant party to limit the legal recourse of a weaker party in a non-negotiable contract, it becomes an abusive weapon.

In recognition of these concerns, the Senate passed an amendment offered by Senators Feingold and Grassley during the 2002 farm bill debate to prohibit the use of forced, mandatory arbitration clauses in livestock and poultry contracts. (December 13, 2001, vote Number 366). The amendment was passed by the Senate by a vote of 64 to 31, but was ultimately dropped during Conference negotiations.

An arbitration fairness provision (described below) was ultimately enacted as part of the 2008 Farm Bill.

### **Farm Bill Outcome**

Section 11005 of the Food, Conservation and Energy Act of 2008 requires any livestock or poultry contract that contains an arbitration clause to also contain a conspicuous provision giving the grower the right to opt-out of the arbitration clause, prior to entering the contract.

The section also contains a provision making it a violation of the Packers and Stockyards Act for a packer, swine contractor, or live poultry dealer to take any action that has the intent or effect of limiting the grower's right to freely make a choice regarding arbitration.

GIPSA is required to write regulations to carry out this provision, and "to establish criteria that the Secretary will consider in determining whether the arbitration process provided in a contract provides a meaningful opportunity for the grower or producer to participate fully in the arbitration process."

The provision applies to any contract entered into, amended, altered, modified, renewed, or extended after the date of the enactment of the Food, Conservation, and Energy Act of 2008.

#### **Actions To Be Taken By New Administration**

1) Take enforcement action against live poultry dealers that are not complying with the opt-out requirements of Section 11005 of the 2008 Farm Bill.

GIPSA should not wait to take enforcement action against poultry companies that fail to comply with the arbitration opt-out requirements of the Act. The right to choose or decline arbitration is an immediate right for growers, following enactment of the 2008 Farm Bill. Enforcement action should include action against companies that fail to give growers with flock-to-flock contracts the right to opt-out of the arbitration clause for any new flocks delivered after the 2008 Farm Bill enactment.

2) Promulgate Arbitration Regulations, as required by Section 11005 of the Food, Conservation, and Energy Act of 2008. (2008 Farm Bill)

The regulation should clarify that the arbitration opt-out requirements of the Farm Bill apply to all contracts entered into, amended, altered, modified, renewed, or extended after the date of the enactment of the Food, Conservation, and Energy Act of 2008. This should include all existing flock-to-flock contracts, because each new flock delivered under those contracts constitutes a renewal or extension of the original one-flock arrangement. The Economic Research Service, in its June 2008 publication, "The Economic Organization of U.S. Broiler Production," has estimated that 45 percent of all broiler contracts are flock-to-flock contracts, so it is critical that the arbitration rights of growers with flock-to-flock contacts be addressed.

In addition, the regulation should require that the opt-out provision be included in each

contract subsequent to 2008 Farm Bill enactment, not just the first contract following enactment.

Lastly, the arbitration opt-out provision should be embedded as a conspicuous option within the contract itself, and the grower should not be required to take an additional action, such as sending a separate letter to the company, in order to opt-out of arbitration contract provisions. Extra requirements imposed on the grower in order to opt-out should be ruled by GIPSA to constitute a limitation on the growers' ability to make a free choice regarding the arbitration issue, in violation of Section 210(e) of the Packers and Stockyards Act.

## **Reform Unfair Investment Requirements in Production Contracts**

### **Issue**

Under poultry contracts, growers are required to make very large capital investments in facilities built on their own property as a part of the contract arrangement, and usually go far into debt as part of this process. For example, a typical chicken house costs about \$300,000 to build, and most poultry companies encourage growers to build at least 4 houses, for an investment in excess of \$1 million. The houses are built entirely to the poultry companies' specifications.

What growers are often not told when they sign their initial contract and make their large investment is that it is very common for companies to come back within a few years to demand that growers make additional capital upgrades to their chicken houses, at the growers' own expense, even though the existing structure was built based on the company's own original design. While some companies offer a small increase in base pay to growers that make the upgrades, rarely is the additional pay sufficient to cash flow the new debt incurred by the grower. Growers who agree to make the upgrades go further into debt in order to stay in the company's favor, at least until the next upgrade request from the company. Growers who decline to make the upgrades based on financial concerns about excessive debts loads are often penalized, suspended or even have their contracts cancelled by the company.

The expensive upgrades requested by the company are often experiments in new technologies to help the company reduce its costs. Many of these experiments are rejected after a few years, and supplanted by a new experimental technology. The growers are forced to pay for the industry's research and development, without receiving proper compensation for their investment.

In recognition of these concerns, the Food, Conservation, and Energy Act of 2008 included two provisions to address the problems faced by growers as a result of additional capital investment requirements imposed on growers, as described below.

### **Farm Bill Outcome**

Section 208(b) of the Packers and Stockyards Act, as amended by Section 11005 of the Food, Conservation and Energy Act of 2008 requires poultry and swine production contracts to contain an "Additional Capital Investment Disclosure Statement" on the first page of the contract informing the grower that additional, large capital investments may be required of the grower during the term of the poultry growing arrangement or the swine production contract.

In addition, Section 11006 of the Food, Conservation and Energy Act of 2008 requires GIPSA to issue regulations under the Packers and Stockyards Act within 2 years of enactment to determine "when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation

of such Act.”

**Actions To Be Taken By New Administration**

1) Promulgate “additional capital investment” regulations, as required by Section 11006 of the Food, Conservation and Energy Act of 2008. (2008 Farm Bill)

For any poultry house upgrades that the company requires beyond the original house specifications (maintenance not included), the company should be required to give the grower compensation for the upgrade and any increased utility costs in addition to the grower’s regular pay when the upgrade is required. In addition, the poultry company should be required to produce evidence that the upgrade will be economically beneficial to the grower.

Companies should be prohibited from forcing poultry growers to upgrade their houses prior to selling their farms, or in any way interfering with the right of the grower to sell their farms.

2) Take enforcement action against live poultry dealers not complying with the additional capital investment disclosure requirements of Section 11005 of the 2008 Farm Bill.

## **Prevent Arbitrary and Unfair Suspension of Delivery of Birds**

### **Issue**

Under poultry contracts, one of the factors that directly affect a grower's income is the number of flocks of chickens the grower has in their chicken houses during the year. A typical grow-out period for a flock of birds is 7 weeks. The grower has to make payments on their chicken house loans, whether or not there are birds in their houses. Therefore, having long gaps between flocks can be devastating for the grower economically.

When a flock of birds is picked up from their farm by the poultry company and taken to the processing plant, growers often do not know when they will receive their next flock. Poultry companies often use this lag time as a mechanism to balance supply, to reward growers in favor with the company, or to penalize growers who are out of favor.

In the 2008 Farm Bill, Congress addressed the potential unfairness of this practice, by requiring USDA to promulgate regulations

### **Farm Bill Outcome**

Two of the regulations that USDA is required to promulgate by Section 11006 of the 2008 Farm Bill are directly related to the practices of suspending delivery of birds to poultry growers. The first requires USDA to issue regulations to determine whether an undue or unreasonable preference has occurred, in violation of the Packers and Stockyards Act. The rulemaking is relevant, because many poultry growers have their deliveries suspended for reasons that would constitute an undue or unreasonable preference, if other growers are not experiencing the same suspension.

In addition, USDA is required by the Farm Bill to issue regulations to determine whether a poultry company has provided reasonable notice to a poultry grower of the suspension of delivery of birds to the grower's farm.

### **Actions To Be Taken By New Administration**

1) Promulgate "suspension of delivery of birds" regulations, as required by Section 11006 of the Food, Conservation, and Energy Act of 2008. (2008 Farm Bill)

Companies should be required to give growers written notice of any suspension of delivery of birds at least 90 days prior to the removal of the last flock, with an explanation of the reason for the suspension, the grower's appeal rights, and the date that the bird delivery will resume.

2) Promulgate "undue or unreasonable preference or advantage" regulations, as required by Section 11006 of the Food, Conservation, and Energy Act of 2008. (See discussion

and specifics above in “Define Undue and Unreasonable Preference or Advantage” section.)

## **Finalize Pending Contract Disclosure and Contract Standards Regulations**

### **Issue**

For several years, farm advocates have been strongly urging GIPSA to issue regulations under its Packers and Stockyards Act authority to address unfair practices taking place in the livestock and poultry sectors. In addition, the U.S. Senate and USDA's own Inspector General have been critical of GIPSA for its inaction in promulgating and enforcing Packers and Stockyards Act regulations.

In response to this criticism, GIPSA started to promulgate some regulations under the Bush Administration, but those rules remain in the proposed form, and have not yet been finalized. Specifically--

On August 1, 2007 [72 Federal Register 41952-56], GIPSA published a package of proposed poultry regulations to:

- 1) Require live poultry dealers who offer a contract to a poultry grower to provide the poultry grower with a true written copy of the offered contract on the date the company provides the poultry grower with poultry house specifications.
- 2) Require live poultry dealers to allow poultry growers to discuss the terms of a poultry grow-out contract offer or poultry growing arrangement offer with: (1) A Federal or State agency; (2) The grower's financial advisor or lender; (3) The grower's legal advisor; (4) An accounting services representative hired by the grower; or (5) A member of the grower's immediate family or a business associate. (This regulation implements a provision of the 2002 Farm Bill)
- 3) Dictate that poultry contracts must specify any performance improvement plan guidelines, including: (i) The factors considered when placing a poultry grower on a performance improvement plan; (ii) The guidance and support provided to a poultry grower while on a performance improvement plan; and (iii) The factors considered to determine if and when a poultry grower is removed from the performance improvement plan and placed back in good standing, or when the contract will be terminated.
- 4) Require that when live poultry dealers terminate a poultry growing contract, they must provide the poultry grower with a written termination notice [pen and paper] at least thirty (30) days prior to the removal of a flock. Poultry contracts must also provide poultry growers with the opportunity to terminate their poultry growing arrangement in writing at least thirty (30) days prior to the removal of a flock. Written notice regarding termination shall contain the following: (1) The reason(s) for termination; (2) In the case of termination, when the termination is effective; and (3) Appeal rights, if any, the poultry grower may have with the live poultry dealer.

These rules were strongly supported by contract poultry growers, as well as farmer advocate organizations and the full membership of the Campaign for Contract Agriculture Reform. GIPSA received 450 comments, but the rules have never been finalized

On February 11, 2008 [73 Federal Register Page 7686-7690], GIPSA published another set of proposed regulations, this time to address the weighing of poultry, livestock, swine and feed. These rules were also supported by farmer advocate organizations, and should be finalized

**Actions To Be Taken By New Administration**

Issue the pending proposed rules (72 Federal Register 41952-56 and 73 Federal Register Page 7686-7690) in final form.

## **Improve Transparency in Poultry Settlement Sheets**

### **Issue**

Contract poultry grower pay is often based on the ability of the grower to put weight on the chickens and the amount of feed used during the seven-week grow out period, relative to the other growers' performance. This system is referred to as the "ranking system," which is designed to appear like a method for companies to use fair competition to assure grower performance. However, because the inputs that determine a producer's performance are supplied by the poultry company itself, the ranking system has become a back door, anti-competitive mechanism for poultry companies to shift risks to growers and to discourage dissension. For example, the final weight of a chicken depends more on the initial health of the chicks and the quality of feed, which are both provided directly by the company, than on the narrow range of managerial decisions within the growers' responsibility and control.

As part of this payment system, growers are given "settlement sheets" after each flock leaves their farm for processing. Current Packers and Stockyards Act rules for poultry require that "the settlement sheet shall contain all information necessary to compute the payment due the poultry grower. For all such arrangements in which the weight of birds affects payment, the settlement sheet shall show, among other things, the number of live birds marketed, the total weight and the average weight of the birds, and the payment per pound." [9 CFR § 201.100 (b)]"

These measures are useful in helping farmers check the final calculations to determine the settlement check but they provide little information to the farmer about factors contributing to actual farm performance.

The "ranking" pay system is based on the assumption that all growers are provided comparable inputs and any variance in performance is a result of farm management. Yet farmers have no ability to verify the equality of company supplied and controlled inputs. The characteristics of these inputs, such as the health of the chicks delivered, can have a great impact on the farm's actual performance and therefore the farmer's final pay. The actual price a farmer receives can vary considerably from check to check even though the variation in performance is relatively small. Only if farmers have systematic access to information on factors that significantly impact farm performance and are solely under the contracting companies' control can they verify fair treatment and fair pay.

Likewise, having access to more information on the company-supplied inputs can help the farmer determine how to improve his/her performance and/or if there is any disease or problem on his/her farm.

### **Actions To Be Taken By New Administration**

Amend the poultry Packers and Stockyards Act regulations [9 CFR 201.100(b)] to

require that the following information be included in the settlement documentation:

- Age of breeder flock,
- Breed of chicks,
- Mortality for each week of the grow out,
- Number of chicks initially received and the square footage of the barn(s) (density),
- Age at slaughter,
- Time between delivery of previous flock from grower and delivery of current flock,
- Percentage of male chickens,
- Pounds of different types of feed delivered, and
- Feed ingredients and percentage moisture

This information is already self-reported by the industry, and should therefore not be a burden on poultry companies.

In addition, the names and addresses of the people/farms in the settlement group should also be required to be included in settlement documentation.

## **Protect Growers' Capital Investments from Arbitrary Contract Termination**

### **Issue**

Poultry contract growers make very large investments in facilities built on their own land for purposes of the grow-out contracts with integrators. A typical initial investment for a contract poultry grower is in excess of \$1 million for 4 chicken houses.

Chicken houses are sole-purpose structures, and growers rarely have more than one poultry company in their area. Despite the large investment, growers are very vulnerable to contract termination, often without cause, leaving them with a large stranded investment and no way to pay the loans.

In recognition of this problem, some States have passed legislation to require companies to reimburse growers for large capital investments made for purposes of a livestock or poultry contract, if the contract is cancelled prematurely. [*Minn. R. 1572.0030 (2005) and § 505 Illinois Compiled Statutes 17/45.*]

### **Farm Bill Outcome**

The Senate version of the 2008 Farm Bill included a provision [section 10203(b)] that required a packer, live poultry dealer, or swine contractor to give producers at least 90 days to correct an alleged breach of contract before the company can terminate the producer's contract. If the producer remedies the cause of breach within the 90 period, the company cannot terminate or cancel the contract. The provision applied only to contract producers who have made an investment of \$100,000 or more for purposes of securing a production contract.

The provision was dropped in Conference, so it was not included in final 2008 Farm Bill.

However, Section 11006 of the 2008 Farm Bill does include a provision that requires USDA to promulgate rules regarding what constitutes a reasonable period of time for a live poultry dealer or swine production contract grower to remedy a breach of contract that could lead to termination of the poultry growing arrangement or swine production contract

### **Actions To Be Taken By New Administration**

1) Amend Packers and Stockyards Act regulations to require a live poultry dealer to reimburse growers for capital investments made for purposes of the contract if the contract is cancelled prematurely without reasonable cause.

The Reimbursement should be based on the appraised value of the structures, using a "capitalization rate" in order to include future income projections into the valuation. The value should be reached based on the average of 2 appraisals, one secured by the grower

and another secured by the company. If the values are more than 5 percent apart, a third appraisal should be secured jointly by the grower and the company, and the valuation should be an average of the 3 appraisals.

If GIPSA determines that such regulation is not within their current authority, send draft legislation to Congress asking for an amendment to the Packers and Stockyards Act to address this concern.

2) Issue proposed regulation, as required by Section 11006 of the Food, Conservation, and Energy Act of 2008, to determine what constitutes a reasonable period of time for a poultry grower or swine contractor to remedy a breach of contract that could lead to termination of the contract. We recommend that GIPSA include a 120-day minimum requirement for companies to allow contract growers to remedy any alleged breach, and that the rule should further specify that the company may not cancel the contract if the breach is remedied within that timeframe.

## **Include Poultry in Packers and Stockyards Act Enforcement**

### **Issue**

The present Packers and Stockyards Act (P&SA) makes it unlawful for a livestock packer or live poultry dealer "to engage in or use any unfair, unjustly discriminatory or deceptive practice or device," or "to give any undue or unreasonable advantage to any particular person or locality..." (Section 202) However, USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) has no administrative enforcement authority to stop the unfair practices or penalize poultry dealers.

When violations of the P&SA are discovered in the *livestock* industry, GIPSA has the authority to take administrative actions, including holding hearings and assessing civil and criminal penalties. When violations of the Act are discovered in the *poultry* industry, GIPSA can only issue an order to cease illegal conduct. After an investigation, GIPSA can send a complaint to the Justice Department for prosecution but such individual poultry cases are not likely to be considered a national priority by the DOJ. From the poultry company's perspective, breaking the law and increasing company profits through fraudulent or deceptive practices carries little financial or legal risk.

Both the Clinton and Bush Administrations have supported legislation to give GIPSA full enforcement authority over poultry, to parallel the agency's authority to address unfair and deceptive trade practices in the livestock and swine sectors. These efforts have been strongly supported by Senator Agriculture Committee Chairman Harkin and other allies.

In addition, the poultry provisions of the current Packers and Stockyards Act have been misinterpreted by GIPSA to apply only to protections for growers of broilers, to the exclusion of growers of breeder hens and pullets, an important part of the poultry production chain. (Poultry production has several stages. Before a group of breeder hens are of laying age, they are raised on a pullet farm. After the pullets reach laying age, they are moved to a breeder farm where the hens produce eggs that are collected and trucked to the hatchery. Once the eggs hatch, the chicks are delivered to a broiler farm where they are raised until ready for processing.)

### **Farm Bill Outcome**

While the Senate version of the 2008 Farm Bill included a provision to give USDA full administrative enforcement authority, the provision was dropped during Conference Committee negotiations.

### **Actions To Be Taken By New Administration**

- 1) The new Administration should send draft legislation to Congress to amend Title II of the Packers and Stockyards Act to give

- USDA administrative enforcement authority over live poultry dealers, similar to Section 10202 of the Senate version of the 2008 Farm Bill (H.R. 2419).
- The authority and discretion to any district court of the United States of competent jurisdiction by amending (7 USC § 209 ) to allow reasonable attorney's fee as part of the costs of the prevailing party. This change would be consistent with the powers previously granted district courts under the Agricultural Fair Practices Act.

2) GIPSA should re-interpret its analysis of the Packers and Stockyards Act, which has been misread in the past to exclude protections for breeder hen and pullet growers. Accurately interpreted, GIPSA should be exercising its authority under the Act to provide protections for breeder hen and pullet growers equivalent to the protections provided for broiler growers.

## **Prevent Retaliation Against Farmer Associations Under the Agricultural Fair Practices Act**

### **Issue**

Historically, one of the ways that farmers have been able to gain and maintain leverage in the marketplace is to join together in cooperatives and associations. Understanding this dynamic, processors and handlers during the 1950s and 1960s sought to discourage farmers from gaining bargaining power by forming producer associations.

Responding to the retaliatory practices of processors, the Agricultural Fair Practices Act of 1967 was passed by Congress to ensure that family farmers could join together in associations and cooperatives to market their produce without fear of interference or retribution from processors. Unfortunately, loopholes in the legislation and changes in markets are making it increasingly difficult for producers to organize and attain a fair price for their products

One of the biggest shortfalls of the AFPA is that handlers are not required to bargain in good faith with producer associations. Legislation requiring good faith bargaining will give associations the leverage to compel negotiations. It provides farmers a means of participation in contract negotiations with processors, participation reflective of the farmers' substantial financial investments in the industry.

While the Act prohibits processors from discriminating against producers simply because they are part of an association, it includes a disclaimer clause permitting the processors to refuse to do business with a producer for *any* other reason. This makes discrimination based on a producer's membership in an association extremely easy to disguise. Also, because the definition of marketing associations excluded some types of producer associations, farmers who tried to use the protections of the Act were unable to do so.

### **Farm Bill Outcome**

The Senate version of the 2008 Farm Bill included many important reforms to the Agricultural Fair Practices Act (AFPA), including provisions to:

- expand the definition of “association of producers” to also include general livestock, poultry and farm groups;
- clarify that it shall also be unlawful for any handler to knowingly engage in coercion or permit any employee or agent to coerce any producer in the exercise of his right to *form* an association of producers;
- add language to make it unlawful to “fail to bargain in good faith with an association of producers;”
- amend the enforcement provisions by striking section 5 and replacing it with a directive for the Secretary to conduct rulemaking to clarify what constitutes normal and fair dealing per section 10104; and

- strike section 6 of the current law to provide the Secretary of Agriculture the authority to bring a civil action in United States District Court by filing a complaint requesting preventative relief, including an application for a permanent or temporary injunction, restraining order or other order, against the handler. Under the Senate provision, handlers found to have violated the Act are liable for the amount of damages including the costs of litigation and reasonable attorneys' fees. The Senate provision also changes the statute of limitations from 2 years to 4 years and provides for an additional penalty of not more than \$1,000 per violation. (Section 10103)

In addition, the Senate bill includes a provision to clarify that a handler is not a producer, nor a person that provides custom feeding services, and further clarifies in report language that "custom feeding services should be interpreted to mean a producer or business that feeds livestock for other producers, but does not own the livestock they are feeding and raising for those producers."

In the final 2008 Farm Bill, most of these AFPA reforms were not included, because of opposition from the House during the Conference Committee deliberations. However, it does include a modification in definition of "association of producers" to also include general livestock, poultry and farm groups. The "custom\_feeding" clarification from the Senate bill was also retained.

### **Actions To Be Taken By New Administration**

The new Administration should take aggressive actions to start monitoring compliance with the Agricultural Fair Practices Act, and take enforcement action for clear instances where growers are being retaliated against based on their leadership or membership of producer associations.

If the Administration finds that statutory changes are necessary in order to fully enforce the Act, draft legislation should be sent to Congress to reform the Agricultural Fair Practices Act, to repeal the disclaimer clause and to require good faith bargaining by processors and handlers with producer associations.

## **Eliminate Loopholes in Country-of-Origin Labeling**

**(Agency: USDA Agricultural Marketing Service)**

### **Issue**

With increased globalization, food products produced by U.S. farmers and ranchers face ever-increasing competition from imported food products that are indistinguishable from domestic products – the appearance of Chinese apples or Canadian steaks can be identical to U.S. apples or U.S. steaks, for example. As a result, U.S. farmers and ranchers are relegated to mere suppliers of generic commodities, rather than producers of superior products produced under superior conditions. Consumers, who value choice in the marketplace, similarly are relegated to mere purchasers of generic commodities, unable to exercise choice regarding the country, or countries where they want their food grown.

The solution to this impediment to competition is to distinguish food products according to their origin with a country-of-origin label (COOL). With COOL, U.S. farmers and ranchers can promote their domestic products based on their U.S. attributes, including being produced under U.S. production, safety and quality standards. Similarly, with COOL consumers can make purchasing decisions based on attributes they may ascribe to a particular country. Consumers may prefer to support their domestic food industry, avoid products produced under certain regulatory regimes, or choose products created in countries in which they have the most confidence. In short, COOL facilitates competition by differentiating products based on their origins and it empowers consumers to exercise choice in the marketplace based on origin information.

A broad-based coalition of consumer, farmer/rancher, commodity, faith-based and rural groups successfully supported a mandatory COOL law in the 2002 Farm Bill. The 2002 COOL law required the labeling of a wide range of food commodities, including fruits, vegetables, fish and shellfish, muscle cuts of meat, ground meat and peanuts by retailers. It excluded commodities sold in food service establishments, and for meat, the 2002 COOL law reserved the USA label only for meat derived from animals that were exclusively born, raised and slaughtered in the United States. The law required implementation on or before September 30, 2004.

Implementation of the 2002 COOL law proved problematic. COOL was outwardly opposed by the Administration and by food-processing industries and their affiliated trade associations. In 2003, the U.S. Department of Agriculture (USDA) published a proposed rule to implement the 2002 COOL law. The proposed rule was overly burdensome, complicated and resulted in congressional action to postpone the implementation of COOL until September 2006, with one exception: COOL for fish and shellfish was implemented in 2005. Heightened industry and Administration resistance to COOL caused yet another postponement of implementation, until Sept. 30, 2008.

### **Farm Bill Outcome**

The new 2008 Farm Bill amended the 2002 COOL law by, among other things, adding commodities including goat meat, chicken, ginseng, pecans and macadamia nuts; by clarifying a commodity's eligibility for various labels, including labels for commodities with mixed origins; by simplifying and reducing record keeping requirements, including allowing producer affidavits for verifying the origins of live animals and restricting records to only those maintained in the normal conduct of business; by establishing a presumption of U.S. origin for all livestock already in the United States; and, by reducing penalties to no more than \$1,000 per violation.

### **Actions To Be Taken By New Administration**

1. Immediately correct the deficiencies contained in the IFR and discussed above to ensure the proper labeling of meat produced exclusively in the United States and to broaden the range of products subject to the COOL law.
2. Immediately remove livestock from the U.S. Department of the Treasury's list of imported products that are exempt from the United States general requirement that all imported products be permanently marked with their respective mark of origin as a condition of importation into the United States. This list of exempted items is commonly known as the "J-List," and by removing imported livestock from this list, the long-term ability to distinguish livestock of foreign origin by visual inspection alone would be achieved.
3. Amend the COOL law to expand both the scope of commodities subject to the COOL law and the establishments that are required to label commodities (the COOL law's definition of retailer and its exemption for food service establishments effectively reduces COOL information to consumers).

## **Suspend Direct and Guaranteed Loans for Specialized Hog and Poultry Facilities**

**(Agency: USDA Farm Service Agency)**

### ***Issue***

A significant number of swine and poultry operations that produce animals through production contracts with integrator companies or for sale on long-term marketing agreements with packers are financed with federal direct or guaranteed loans through USDA's Farm Service Agency. Because the terms of many of these production contracts and marketing agreements place growers at extreme financial risk, it is doubtful that banks would be willing to extend loans based on these contracts in the absence of the federal guarantee.

Despite the risky nature of the production and marketing contracts from which the producers earn their income, taxpayers are underwriting direct and guaranteed loans, without adequate assurance the contract terms will provide the producers with sufficient income to repay the loans. Because the federal direct and guaranteed loans programs have made financing too readily available to producers using these risky production and marketing contracts, they have contributed to the over-supply poultry and swine.

### ***Poultry Industry Background***

Currently, the poultry sector has over-expanded production, fueled in part by the federal loan guarantees for new poultry houses. As a result, many poultry companies are cutting off growers or suspending delivery of chickens to manage supply. The contract terms give the poultry grower no protection against being cut off or suspended, even for reasons outside of their control. Despite being cut off, growers are still responsible for repaying their large loans on their stranded investments, a responsibility which reverts to the federal taxpayers if the grower goes bankrupt.

When the company needs to ramp up production again, it is once again easy for them get another new grower to get a federally guaranteed loan to start the cycle all over again.

### ***Pork Industry Background***

Since the 1990's the hog industry has rapidly consolidated and vertically integrated. As a result of this industry consolidation and integration more and more hogs are produced in single use facilities specially designed to produce large volumes of hogs under production contracts or to be sold through marketing agreements with packers. The changing structure of the industry and the use of specialized hog production facilities make it very difficult for pork producers to respond to market signals such as cutting-back production during periods of prolonged low prices.

For months live weight hog prices have been substantially below break-even figures with

experts predicting that this trend will continue long into the future. Industry experts have predicted that a 10% reduction in the sow herd is necessary to reach and stabilize profitability, however, to date the industry has managed only a 2.6% decrease in sow numbers.

Continuing the availability of credit through government direct and guaranteed loan programs for farmers using specialized hog production facilities would cause an expansion of production capacity that is not responsive to market signals causing further detriment to hog farmers. Continued financial stress on hog farmers may result in numerous loan defaults and further accelerate concentration of the production, processing, and marketing of hogs into fewer hands.

### ***Past Restrictions and Suspensions on FSA Loans***

When similar over-supply circumstances have existed in the past, the Farm Service Agency has placed restrictions on or suspended issuance federal direct and guarantee loans. For example, on May 10, 1984, USDA's Farmers Home Administration (FmHA) issued a directive to its State Directors, District Directors and County Supervisors requiring that poultry loan guarantees be closely scrutinized to assure that the loans were not contributing to the problem of overexpansion and oversupply of poultry houses in the area. In another example, the USDA's Farm Service Agency, citing concerns that FSA loans could exacerbate the crisis of oversupply and low prices that were affecting the hog industry, issued a directive on October 1, 1999 suspending all direct and guaranteed loan financing for the construction of specialized facilities for hog production. This suspension of lending was extended through numerous subsequent directives.

### **Actions To Be Taken By New Administration**

1) USDA's Farm Service Agency should issue an administrative directive that places a suspension on issuance of any direct or guaranteed farm ownership or operating loans for the construction or expansion of a specialized hog or poultry production facility. Specialized hog or poultry production facility is defined as any building or enclosure and related equipment specifically to house, raise, or feed hogs or poultry of any type, size, age, or market class. Pursuant to such directive direct and guaranteed loans may continue to be made to an existing specialized hog or poultry production facility currently in use.

## **Facilitate the Shipment of Meat from Small, State-Inspected Slaughterhouses**

**(Agency: Food Safety and Inspection Service)**

### **Issue**

Federal restrictions on interstate shipment of meat and poultry is a particular burden on small and mid-sized farmers and ranchers, who are often shut out of large-scale federally-inspected meat and poultry plants because they do not have contracts with the processors or because they deliver relatively small lots at one time for processing. Twenty-eight states currently have meat and poultry inspection programs. They serve more than 2,000 state-inspected meat processors, which are mostly small, family-owned businesses providing processing services for small farmers and ranchers. Smaller scale processors and the farms and ranches they serve provide significant economic resources for rural communities and are part of growing local and regional food networks.

### **Farm Bill Outcome**

Section 11015 of the Livestock Title of the 2008 Farm Bill amends the Federal Meat Inspection Act by adding a new Title for Inspections by Federal and State Agencies, which is codified as a note to 21 U.S.C. Section 683 (meat) and a note to 21 U.S.C. Section 472 (the Poultry Products Inspection Act). The new provision allows for the interstate shipment of meat and poultry and their products from certain small state-inspected packing and processing establishments.

### **Actions To Be Taken By New Administration**

Expediently promulgate regulations to implement Section 11015 of the Livestock Title of the 2008 Farm Bill, which provides for the interstate shipment of state-inspected meat and poultry by:

- Holding a series of public meetings in regions around the U.S. in the first part of 2009;
- Developing a regulatory framework that ensures:
  - small and mid-sized livestock and poultry farmers and ranchers have access to interstate markets for their products; and
  - safe, high quality meat and poultry products from state-inspected small-scale processing plants are available to consumers; and
- Securing adequate funding to launch this initiative, particularly funding for new state coordinators and a new inspection training division.

## **U.S. DEPARTMENT OF JUSTICE**

### **Reform Merger Guidelines to Account for Concentrated Buyer Power on Prices**

The U.S. Department of Justice (DOJ) and U.S. Federal Trade Commission (FTC) horizontal merger guidelines typically apply what is known as the SSNIP test (Small but Significant Non-transitory Increase in Price). The SSNIP test seeks to identify the smallest relevant market within which a hypothetical monopolist or cartel could impose a profitable significant increase in price, typically defined to be 5 percent. Applied to buyer power the SSNIP test would consider a small but significant *decrease* in price. We maintain that the 5 percent threshold is far too high in agriculture monopsony cases. For example, Iowa State University data show that the net returns (in current dollars) from feeding steers averaged only \$16 per head over the 1994-2007 period. For a \$1,000 per head fed steer, the 5 percent SSNIP test would allow a merger that would decrease price by \$50 per head, which would mean that cattle feeders would be losing \$34/head compared to the historical average. A price decrease of only 1.6 percent would completely eliminate the modest profits realized by cattle feeders over 1994-2007. Therefore, criteria used by the DOJ and FTC to define markets and to define an acceptable level of market power in their merger approval process are inappropriate to agricultural markets such as the U.S. cattle market.

## **Coordinate Packers and Stockyards Act Enforcement for Poultry Cases**

### **Issue**

The present Packers and Stockyards Act (P&SA) makes it unlawful for a livestock packer or live poultry dealer "to engage in or use any unfair, unjustly discriminatory or deceptive practice or device," or "to give any undue or unreasonable advantage to any particular person or locality..." (Section 202) However, USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) has no administrative enforcement authority to stop the unfair practices nor penalize poultry dealers.

When violations of the P&SA are discovered in the *livestock* industry, GIPSA has the authority to take administrative actions, including holding hearings and assessing civil and criminal penalties. When violations of the Act are discovered in the *poultry* industry, GIPSA can only issue an order to cease illegal conduct. After an investigation, GIPSA can send a complaint to the Justice Department for prosecution but such individual poultry cases are not likely to be considered a national priority by the DOJ. From the poultry company's perspective, breaking the law and increasing company profits through fraudulent or deceptive practices carries little financial or legal risk.

### **Actions To Be Taken By New Administration**

The new Administration should develop a MOU between the U.S. Department of Agriculture and the Department of Justice for a coordinated effort to prosecute poultry company violations of the Packers and Stockyards Act.

## **Pursue Antitrust Violations in the Dairy Industry**

### **Issue**

There are fewer than 60,000 dairy farmers remaining in the United States. Continued volatile milk pricing and skyrocketing production costs for farmers have left the dairy industry in crisis. While some solutions to address this crisis lie within Congress and the US Department of Agriculture (USDA), the Department of Justice (DOJ) and its enforcement of existing anti-trust laws is key to reversing the concentration and consolidation within the dairy industry.

Dairy farm milk prices are determined by a very thin “market” trading at the Chicago Mercantile Exchange (CME) attached to a USDA formula. A Government Accountability Office (GAO) investigation, (*GAO-07-707, Spot Cheese Market: Market Oversight has Increased but Concerns Remain About Potential Manipulation*) was issued in June 2007 in response to the request of Senators’ Feingold (D-WI) , Specter (R-PA), Clinton (D-NY), Kohl (D-WI) and Schumer (D-NY).

While there were once multiple independent cooperatives available to buy a dairy farmer’s milk, many farmers now have access to only one buyer. Thousands of farmers cannot hope to attain a fair price for their milk when three corporations have near-monopoly market power. Dean Foods controls 40% of the fluid milk supply in this country (and 100% in some regions); Leprino Foods controls much of the pizza cheese market while Kraft dominates the retail sector for natural and processed cheeses. These powerful entities have recently come under scrutiny for manipulating cheese prices on the CME to depress milk prices for farmers. Cooperatives like Dairy Farmers of America (DFA) and Land ‘O Lakes have been identified in articles in the *Wall Street Journal*, *Kansas City Star*, and *New York Times* for failing to bargain on behalf of their dairy farmer membership. A system that allows cooperatives to pay less than the federally mandated minimum price for farmers’ milk means milk prices will be driven as low as possible with no hope of recouping a fair price for dairy farmers.

In 2007, the DOJ developed a complaint after an extensive investigation into DFA’s anti-trust violations, which drove many farmers out of business. At a Senate Judiciary Committee hearing in May 2008 on the pending JBS merger in the cattle industry, Senator Feingold (D-WI) asked the DOJ’s anti-trust division about the status of their investigation. While the division would not comment, Prof. Peter Carstensen, an anti-trust legal expert and witness at the hearing, was asked to respond on his understanding of the investigation’s status. In November 2008, the Asst. Attorney General responsible for this case resigned. Our understanding is that the case remains open.

### **Actions To Be Taken By New Administration**

1. Urge the Department of Justice to complete the DFA investigation and take action on the recommendations. Ensure that agriculture issues are a high priority for the new anti-trust division; and

2. Urge the Senate Judiciary Committee to hold hearings examining DFA's marketing power and predatory business practices.

## Appendix

January 18, 2007 joint signatory letter to Agriculture Committee Leadership

January 18, 2007

The Honorable Tom Harkin  
Chairman, Senate Committee on Agriculture, Forestry and Nutrition

The Honorable Saxby Chambliss  
Ranking Member, Senate Committee on Agriculture, Forestry and Nutrition

The Honorable Collin Peterson  
Chairman, House Committee on Agriculture

The Honorable Bob Goodlatte  
Ranking Member, House Committee on Agriculture

The Honorable Patrick Leahy  
Chairman, Senate Committee on the Judiciary

The Honorable Arlen Specter  
Ranking Member, Senate Committee on the Judiciary

The Honorable John Conyers, Jr.  
Chairman, House Committee on the Judiciary

The Honorable Lamar S. Smith  
Ranking Member, House Committee on the Judiciary

### **Dear Chairmen and Ranking Members:**

The over 200 undersigned organizations strongly urge you to make the issues of agricultural competition and market concentration a top priority as Congress considers the crafting of agricultural legislation and the next Farm Bill. During the 2002 Farm Bill debates, public testimony provided clear and compelling evidence of the need for free market competition and fairness for the nation's farmers and ranchers. Since that time these concerns have become even more urgent and prominent in the public eye.

Today, a small handful of corporations overwhelmingly dominate our food supply. The concentration of market control in the top four firms in U.S. food retailing, grain processing, red meat processing, poultry processing, milk processing, and nearly every category of food manufacturing is at an all time high. Corporate mergers and buyouts have concentrated the power of these firms and increased their ability to unfairly

manipulate market conditions in their favor. This unprecedented level of horizontal market consolidation effectively eliminates free market competition to the detriment of independent family farmers and consumers.

Compounding the problem associated with horizontal consolidation is the rapid trend toward vertical integration. Manufacturers, processors, and packers increasingly control all stages of production and inventory through commodity ownership and one-sided contracts. This corporate control of production unnecessarily eliminates market transparency, creating an environment ripe for price manipulation and discrimination. It replaces farm-level decision making with centralized corporate planning and leaves farmers trapped in long-term debts tied to short-term, non-negotiable production contracts. In addition, top retailers and packers increasingly engage in relationships with dominant suppliers that exclude smaller competitors and minimize price competition. Because both supply and demand are controlled by the same few players in the market, the basic principles of supply and demand cannot function.

A critical role of government is to ensure fairness by facilitating properly operating markets and balance in the economic relationships among farmers/ranchers, consumers and food companies. Currently, inadequate federal legislation and the lack of enforcement of anti-trust policies allow a handful of corporations to continue to consolidate market power, manipulate prices, and create anti-competitive market structures. Federal government inaction has a dramatic, negative impact on not only farmers and ranchers, but also on rural communities, the environment, food quality, food safety, and consumer prices. It undermines sustainable production practices and state and local laws that support family-scale, sustainable farm and ranch operations.

Policy makers often voice the laudable policy goals of maintaining a diverse, farm-and-ranch-based production sector and providing consumers with a nutritious, affordable food supply. However, government failure to redress industry concentration--both vertical and horizontal—is thwarting these policy goals and driving the earnings of farmers and ranchers down and consumer prices up.

To address these problems, we urge you to champion a strong, comprehensive Competition Title in the 2007 Farm Bill. We also ask that you co-sponsor and support any of the following measures of this comprehensive package if they are introduced as separate or combined bills and to work for speedy congressional consideration of these proposals.

## **LIMIT PACKER CONTROL/MANIPULATION OF LIVESTOCK MARKETS**

***1. Captive Supply Reform Act:*** This legislation will bring secret, long-term contracts between packers and producers into the open and create a market for these contracts. The Captive Supply Reform Act would restore competition by making packers (and livestock producers) bid against each other to win contracts. Currently, formula contracts and marketing agreements are negotiated in secret, where packers have all the information and power. These formula contracts and agreements 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 to which all buyers and sellers have access.

**2. *Prohibition CHANGE: OF [on] Packer-Owned Livestock:*** Meat packers such as Tyson, Cargill, and Smithfield Foods use packer-owned livestock as a major tool for exerting unfair market power over farmers and ranchers. This practice fosters industrial livestock production and freezes independent farmers out of the markets. Packer-owned livestock has been proven to artificially lower farm gate prices to farmers and ranchers while consumer food prices continue to rise. By prohibiting direct ownership of livestock by major meatpackers, a packer ban addresses a significant percentage of the problem of captive supply which packers use to manipulate markets, and would help increase market access for America's independent producers who currently experience great restrictions in market access due in part to packer ownership of livestock.

## **INCREASE FAIRNESS IN AGRICULTURAL CONTRACTS AND MARKETS**

**3. *Fairness Standards for Agricultural Contracts:*** In order to address the worst abuses contained in processor-drafted contracts, legislation that provides a set of minimum standards for contract fairness is urgently needed. Such standards should include at a minimum the following:

- (a) prohibition of the use of forced, mandatory arbitration clauses, which have been used by some packers or integrators to force growers to give up their access to the courts, even in the case of fraud, breach of contract, misrepresentation or other blatant contract abuses by the integrator or packer firm;
- (b) clear disclosure of producer risks;
- (c) full prohibition on confidentiality clauses;
- (d) recapture of capital investment so that contracts that require a significant capital investment by the producer cannot be capriciously canceled without compensation; and
- (e) a ban on unfair or deceptive trade practices, including "tournament" or "ranking system" payment.

**4. *Clarification of "Undue Preferences" in the Packers & Stockyards Act (PSA):*** Packers commonly make unjustified, preferential deals that provide unfair economic advantages to large-scale agriculture production over smaller family owned and sustainable farms. Courts have found current undue preference legal standards virtually impossible to enforce. Additional legislative language is needed in the PSA to strengthen the law and clarify that preferential pricing structures (those that provide different prices to different producers) are justified only for real differences in product value or actual and quantifiable differences in acquisition and transaction costs. Specifically, we are asking to:

- (a) Make clear that farmers damaged by packer/processor unfair and deceptive practices need not prove "harm to competition" to receive a remedy.

- (b) Make clear that "pro-competitive effects" or "legitimate business justifications" are not recognized packer defendant defenses, and not necessary for farmer-plaintiffs to prove the absence of, in a court case under the PSA.
- (c) Require courts to award attorneys fees to successful producer plaintiffs under the PSA.

**5. Closing Poultry Loopholes in the Packers & Stockyards Act (PSA):** USDA does not currently have the authority under the PSA to bring enforcement actions against poultry dealers. Poultry producers should have the same basic enforcement protection that is offered to livestock producers when packers and livestock dealers violate the PSA. We seek legislation to clarify that USDA has authority over PSA violations involving poultry dealers in their relations with all poultry growers, including those who raise pullets or breeder hens as well as broiler producers. The PSA enforcement loophole for poultry dealers should be closed.

**6. Bargaining Rights for Contract Farmers:** Loopholes should be closed in the Agricultural Fair Practices Act of 1967 (AFPA) and processors should be required to bargain in good faith with producer organizations. The AFPA was enacted to ensure that livestock and poultry producers could join associations and market their products collectively without fear of retribution by processors. These goals have not been attained due to loopholes in that Act. Retaliation by processors is commonplace in some sectors. Legislation should be enacted that promotes bargaining rights and prevents processor retaliation.

## **ASSURE ADEQUATE MARKET INFORMATION AND TRANSPARENCY FOR PRODUCERS AND CONSUMERS**

**7. Livestock Mandatory Price Reporting:** The Livestock Mandatory Price Reporting Act of 1999 (LMPRA) requires packers, processors, and importers to provide price, contracting, supply and demand information to USDA, which then uses the information to create price reports for livestock producers. Since its implementation, bureaucratic inertia has blocked effective enforcement of the LMPRA and prevented the Act from operating to benefit independent livestock producers. The Government Accountability Office, at the request of Senators Harkin (D-IA) and Grassley (R-IA), has reviewed USDA implementation of the Act. In December 2005, the GAO issued a report documenting lengthy lag times for USDA corrections to missing or incorrect information from packers, and the failure of USDA to inform the public about violations of the Act revealed in USDA audits. The LMPRA was reauthorized in September 2006 without including GAO recommendations to improve the Act. If USDA does not implement these recommendations, Congress should amend the Livestock Mandatory Price Reporting Act in 2007 by incorporating the GAO report recommendations as legislative directives to USDA in implementing the Act.

**8. Mandatory Country of Origin Labeling:** Country of origin labeling (COOL) for beef, lamb, fresh fruits, fish and shellfish was passed as a provision of the 2002 Farm Bill. Mandatory COOL for the fish and shellfish commodities was implemented by USDA in

April of 2005, but COOL implementation for all other commodities has been successfully stymied by the meatpackers and retailers. Country of origin labeling is a popular measure that allows consumers to determine where their food is produced and also enables U.S. producers to showcase their products for quality and safety. It also limits the ability of global food companies to source farm products from other countries and pass them off as U.S. in origin. Congress should reauthorize COOL to reiterate its benefits to producers and consumers and should provide funding to ensure that USDA undertakes immediate implementation of COOL.

In conclusion, farmers, ranchers, and consumers across the country are asking for these legislative reforms to ensure fair markets and a competitive share for family farmers and ranchers of the \$900 billion dollars that consumers pay into the food and agriculture economy annually. Market reforms remain a key ingredient for rural revitalization and meaningful consumer choice. The legislative reforms summarized above are key to achieving the goals of promoting an economically healthy and diverse agricultural production sector and providing consumers with healthy, affordable food.

Thank you.

Sincerely,

A Little Taste of Everything  
A Taste of the North Fork (NY)  
Adams County Farmers Union (ND)  
Agricultural Missions, Inc. (NY)  
Agriculture and Land Based Training Association (CA)  
Agriculture of the Middle  
Alabama Contract Poultry Growers Association  
Alabama Sustainable Agriculture Network  
Alliance for a Sustainable Future (PA)  
Alliance for Sustainable Communities (MD)  
Alternative Energy Resources Organization (AERO) -MT  
American Corn Growers Association  
American Society of Agronomy  
Appalachian Crafts (KY)  
Art & Nature Project (NY)  
Beartooth Stock Association (MT)  
Berkshire Co-op Market  
Bird Conservation Network  
Blessed Kateri Tekakwitha Region, Secular Franciscan Order, NYS  
Bronx Greens  
California Dairy Campaign  
California Farmers Union  
California Institute for Rural Studies  
Californians for GE-Free Agriculture

Campaign for Contract Agriculture Reform  
Campaign for Family Farms and the Environment  
Caney Fork Headwaters Association (TN)  
Catholic Charities Diocese of Sioux City, IA  
Catholic Charities of Chemung /Schuyler Counties (NY)  
Catholic Charities of Kansas City - St. Joseph, Inc.  
Catholic Charities of Louisville, Parish Social Ministry Dept. (KY)  
Catholic Rural Life, Archdiocese of Dubuque, IA  
Cattle Producers of Washington  
Center for Food Safety  
Center for Earth Spirituality and Rural Ministry (MN)  
Center for Popular Research, Education and Policy (NY)  
Center for Rural Affairs  
Central Colorado Cattlemen's Association  
Chemung County Church Women United (NY)  
Chemung County Council of Churches (NY)  
Church Women United of NYS  
CitySeed (CT)  
Community Action Resource Enterprises (OR)  
Community Food Security Coalition  
Concerned Citizens of Central Ohio  
The Cornucopia Institute (WI)  
Corson County Farmers Union (SD)  
Court St Joseph #139, Catholic Daughters of the Americas, Corning (NY)  
Court St Joseph #139, Corning/Elmira, Catholic Daughters of the Americas (NY)  
Crop Science Society of America  
Crowley-Kiowa-Lincoln Cattlemen's Association (CO)  
Cumberland Counties for Peace & Justice (TN)  
Dakota Resource Council  
Dakota Rural Action of SD  
Delmarva Poultry Justice Alliance  
Delta Land and Community, Inc.  
Eagle County Cattlemen's Association (CO)  
Endangered Habitats League (CA)  
Environmental Action Committee of West Marin (CA)  
Environmental Coalition of Mississippi  
Family Farm Defenders  
Family Farms for the Future (MO)  
Farm Aid  
Farm Fresh Rhode Island  
FH King Students of Sustainable Agriculture at UW Madison  
First Nations Development Institute  
Florida Organic Growers  
Food Alliance (OR)  
Food and Water Watch  
FoodRoutes Network

Foodshed Alliance of the Ridge and Valley (NJ)  
Friends of Rural Alabama  
Georgia Organics  
Georgia Poultry Justice Alliance  
Global Exchange  
Government Accountability Project  
GRACE/Sustainable Table  
Grassroots International  
Hahn Natural Foods (PA)  
Harding County Stockgrowers Association (SD)  
Harvest Co-op Market (MA)  
Heartland Center / Office of Peace and Justice for the Diocese of Gary, Indiana  
Hispanic Farmers and Ranchers of America Inc.  
Hispanic Organizations Leadership Alliance  
Horseheads Grange #1118, Chemung City (NY)  
Humane Society of the United States  
Idaho Rural Council  
Illinois Farmers Union  
Illinois Stewardship Alliance  
Independent Beef Association of North Dakota  
Independent Cattlemen of Iowa  
Independent Cattlemen of Nebraska  
Independent Cattlemen's Association of Texas, Inc.  
Indiana Campaign for Economic Justice  
Indiana Farmers Union  
Institute for Agriculture & Trade Policy  
Institute for Responsible Technology  
Iowa Citizens for Community Improvement  
Iowa Farmers Union  
Just Food (NY)  
Just Harvest, Pittsburgh  
Kansas Cattlemen's Association  
Kansas City Food Circle  
Kansas Farmers Union  
Kansas Rural Center  
Kerr Center for Sustainable Ag (OK)  
Kit Carson County Cattlemen's Association (CO)  
La C.A.S.A. de Llano (TX)  
Ladies of Charity of Chemung County (NY)  
Land Stewardship Project (MN)  
Little Seed CSA (NY)  
Madera County Cattlemen's Assoc (CA)  
McKenzie City Energies & Taxation Association (ND)  
Merced-Mariposa Cattlemen's Association, (CA)  
Mesa County Cattlemen's Association (CO)  
Michigan Farmers Union

Midwest Organic and Sustainable Education Service  
Minnesota Farmers Union  
The Minnesota Project  
Mississippi Contract Poultry Growers Association  
Mississippi Livestock Markets Association  
Missouri Farmers Union  
Missouri Rural Crisis Center  
Montana Cattlemen's Association  
Montana Farmers Union  
National Campaign for Sustainable Agriculture  
National Catholic Rural Life Conference  
National Center for Appropriate Technology (NCAT)  
National Family Farm Coalition  
National Farmers Organization  
National Farmers Union  
National Hmong American Farmers, Inc.  
National Latino Farmers & Ranchers Trade Association  
National Organic Coalition  
National Poultry Justice Alliance  
Nebraska Farmers Union  
Network for Environmental & Economic Responsibility  
Nevada Live Stock Association  
New England Small Farm Institute (NESFI)  
New York Beef Producers Association Southern Tier Region  
NY Sustainable Agriculture Working Group  
Nojoqui Ranch Produce (CA)  
North Carolina Contract Poultry Growers Association  
North Dakota Farmers Union  
Northeast Organic Dairy Producers Alliance  
Northeast Organic Farming Assoc -MA  
Northeast Organic Farming Assoc -NY  
Northeast Organic Farming Assoc-CT  
Northeast Organic Farming Assoc-VT  
Northern Plains Sustainable Agriculture Society  
Northern Plains Resource Coun (MT)  
NYS Safe Food Coalition  
Ohio Environmental Council  
Ohio Farmers Union  
Oregon Livestock Producer Association  
Oregon Tilth  
Organic Consumers Association  
Organic Seed Alliance (WA)  
Organization for Competitive Markets  
The Partnership for Earth Spirituality (NM)  
Past Regents Club, Diocese of Rochester (NY)  
PCC Natural Markets (WA)

PCC Farmland Trust (WA)  
Pennsylvania Association for Sustainable Agriculture  
Pennsylvania Farmers Union  
Perkins County Farmers Union (South Dakota)  
Platte County Farm Bureau (NE)  
Powder River Basin Resource Council (WY)  
Producers Livestock  
Provender Alliance (OR)  
Putting Down Roots (PA)  
Rainbow Natural Grocery (MS)  
R-CALF United Stockgrowers of America  
Red Tomato (MA)  
Regional Farm and Food Project (NY)  
Rochester Farm Connection (NY)  
Rochester Roots (NY)  
Rocky Mountain Farmers Union  
Rural Advancement Foundation International-USA (RAFI-USA)  
Rural Coalition/Coalición Rural  
Rural Life Committee of the North Dakota Conference of Churches  
Selene Whole Foods Co-op (PA)  
Sevananda Natural Foods Market  
Sierra Club Agriculture Committee  
Social Concerns Office, Diocese of Jefferson City  
Social Concerns/Rural Life Department, Catholic Charities, Diocese of Sioux City, IA  
Soil Association  
Soil Science Society of America  
South Dakota District IV Farmers Union  
South Dakota Farmers Union  
South Dakota Stockgrowers Association  
Southern Colorado Livestock Association  
Southern Research & Development Corp. (LA)  
Southern Sustainable Ag Working Group  
Spokane County Cattlemen's Association (WA)  
St John the Baptist Fraternity, Secular Franciscan Order, Elmira NY  
Stevens County Cattlemen's Association (WA)  
Sustainable Agriculture Coalition  
Temple Beth El of Flint, Michigan  
Texas Mexico Border Coalition Community Based Organization  
Tilth Producers of Washington  
United Hmong Association  
The Urban Nutrition Initiative (PA)  
Utah Farmers Union  
Valley Stewardship Network (WI)  
Virginia Association for Biological Farming  
Washington Cattlemen's Association  
Washington County Stockmen's Assoc (CO)

WA Sustainable Food & Farming Network  
West Carroll Cattleman Assoc. (LA)  
Western Organizations of Resource Councils  
Wisconsin Farmers Union