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From: Iowa Attorney General's Office
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Subject: Comments of the Iowa Attorney General's Office: Assistant Attorney General Steve Moline

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Comments of the Iowa Attorney General's Office
Assistant Attorney General Steve Moline

On behalf of Iowa Attorney General Tom Miller, I would like to thank Attorney General Holder and Secretary Vilsack for giving our Office the opportunity to make a few short comments regarding some of the important issues facing livestock producers. General Miller has a long history of actively working to increase access to open and competitive markets for farmers involved in livestock production.

**Summary of Iowa Attorney General's Activities
Concerning Vertical Integration in the Livestock Industry**

1. Production Contract Task Force/Checklists/Education. In 1995, the Office formed a Production Contracting Task force to study the issues surrounding the growing use of production contracts. The Task Force produced two educational pieces -- a Livestock Production Contract Checklist and a Grain Production Contract Checklist. Over 20,000 Checklists were distributed to farmers who wanted more information about the risks and rewards of production contracting. Over the years, the Iowa Attorney General's Farm Division has conducted numerous training seminars about production contracting, and it continues to provide information to producers with questions about contracting.

2. Model State Producer Protection Act. In 2000, the Office announced that it had led 17 states in developing a model state statute called the "Producer Protection Act." The act was intended to provide statutory protections to contract producers and was premised on the growing disparity of contract bargaining power between producers and contractor companies. The goal of the Office was to prevent the abuses found in poultry contracting from occurring in hog contracting in Iowa. The Act amounted to a Contract Grower's Bill of Rights.

The Producer Protection Act:

- a. Required contracts to be written in plain language and contain disclosures of material risks.
- b. Provided contract producers with a three-day right to review contracts.
- c. Protected producers from having contracts terminated capriciously or as a form of retribution if farmers had already made a sizeable capital investment in the contract.
- d. Made it an unfair practice for processors to retaliate or discriminate against producers who exercised rights, including the rights to join producer organizations and to be a whistle-blower.
- e. Provided producers with a first-priority lien for payments due under the contract.

- f. Made it illegal to include confidentiality clauses in livestock contracts.
- g. Provided that producers would receive attorney's fees if they prevailed in a lawsuit to enforce their rights under the Act.

For several years, the Office advocated for passage of the full Producer Protection Act in the Iowa Legislature. Ultimately, only the first-priority lien and the prohibition of confidentiality clauses were enacted in 1999. The Farm Division has issued several Farm Advisories advising farmers to file the lien.

3. Posting Voluntarily Submitted Production and Marketing Contracts on the Iowa Attorney General's Website. Based on the passage of the above-described confidentiality clause prohibition, in 2000 the Office began a program of asking livestock producers to voluntarily submit copies of their marketing and/or production contracts to the Office. The Office asked producers to redact any information in the documents they submitted that would identify the individual producer, but asked them to leave in all other information including the price and/or payment information. The Office was able to collect approximately 80 marketing and production contracts. Based on the feedback received by the Office, it was quickly apparent that the price and/or payment information was considered to be the most valuable information by those who accessed the contract library. In fact, many producers, educators, and others who accessed the website informed the Office that the website was the only source of price discovery information they could find that included swine production contracting information.

4. Federal Contract Producer Protections. The Office also pushed for enactment of a Producer Protection Act at the federal level. In May 2001, Attorney General Tom Miller testified before the Subcommittee on Agriculture, Rural Development, and Related Agencies of the U.S. Senate Committee on Appropriation, asking for strong, nationwide protections for contract growers. Miller also emphasized that any federal law should not preempt state law protections.

In 2008, Congress did enact several contract producer rights, including a three-day right to cancel production contracts, enhanced disclosure of additional capital investments, choice of law and forum rules, and restrictions on the use of binding arbitration to settle contract disputes.

5. Smithfield Litigation -- Iowa's Ban on Vertical Integration in Livestock. On September 2, 1999, Smithfield Foods announced its acquisition of the Iowa hog production business of Murphy Family Farms. From that date until September 16, 2005, the Office was in litigation with Smithfield Foods to enforce Iowa's restrictions on vertical integration in livestock.

Initially, the litigation was brought by the Office in state court to enforce Iowa's ban on processors engaging in pork production. Later, after the Iowa Legislature amended and strengthened the packer prohibition, Smithfield Foods challenged the constitutionality of Iowa's law in federal district court. The statute was found unconstitutional by the district court because it violated the commerce clause of the U.S. Constitution. Again, the Iowa Legislature amended the statute. On appeal, the 8th Circuit Federal Court of Appeals vacated the district court's decision and remanded the case for full consideration of the facts.

Rather than prolong this already-lengthy litigation, the Office began negotiations with Smithfield. The result was a 10-year agreement whereby the Office agreed not to enforce Iowa's packer ban. This allowed Smithfield to legally contract with Iowa farmers to raise hogs owned by Smithfield.

In return, Smithfield agreed to do the following:

- a. Abide by a contract grower's bill of rights similar to the model state Producer Protection Act described above.
- b. Refrain from finishing hogs in company-owned facilities for a period of five years.
- c. Purchase 25% of the swine slaughtered in Smithfield's Iowa and South Dakota packing plants on the open market, for a period of two years.
- d. Give 90-day advance notice of any plant closure at these facilities.
- e. Pay \$2,000,000 over a 10-year period for environmental and swine production improvement programs.

The agreement was approved by the Governor and legislative leaders and was entered as a consent decree by the federal district court.

6. Cargill, Hormel, and Tyson Agreements. The Office agreed to consent decrees that were almost identical to the Smithfield agreement (although no financial payments were involved) with: Cargill Meat Solutions on January 19, 2006; Hormel Foods on April 6, 2006; and Tyson Fresh Meats on September 11, 2009.

With these agreements, a vast majority of Iowa pork producers with a production contract have the protections outlined in the model state Producer Protection Act. It should be noted that the existence of these protections has not led to the demise of the pork industry in Iowa. In fact, the industry has continued to expand, especially in the production contracting sector, the sector most directly affected by these protections.

GIPSA's Proposed Livestock Rules

On June 18, 2010, the USDA and GIPSA proposed new administrative rules that included several elements that are very similar to the protections provided in the Iowa Consent Decrees. General Miller strongly supports the USDA's effort with the caveat that the USDA should continue to allow the states to implement their own state initiatives in this area without fear of federal preemption. General Miller pledges to work with other State Attorneys General, farm organizations and industry representatives to develop final rules that increase access to open and competitive markets for livestock owners and contract producers.