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TESTIMONY OF

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FARMERS' LEGAL ACTION GROUP, INC. (FLAG)

BEFORE THE

SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

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My name is Lynn Hayes. I am an attorney and the Program Director at Farmers' Legal Action Group, Inc. (FLAG), in St. Paul, Minnesota. Thank you for the opportunity to present this testimony regarding "Economic Challenges and Opportunities Facing American Agricultural Producers Today." The concerns I raise have been developed through our work with the Campaign for Contract Agriculture Reform, Rural Advancement Foundation International–USA, Western Organization of Resource Councils, and other farm organizations, as well as FLAG's work with individual farmers and ranchers.

I. FLAG's Work Related to Contracts, Competition, and Concentration in Agriculture

Farmers' Legal Action Group, Inc., is a nonprofit, public interest law center that provides legal education, training, and support to family farmers and ranchers and their lawyers and advocates across the country. Over the past two decades, FLAG has provided legal education or assistance to thousands of small- and mid-sized family farmers throughout the nation who produce agricultural commodities under contract.

FLAG's former executive director published one of the first law review articles on the subject of agricultural production contracts.[1] FLAG later led a project which resulted in publication of a detailed report, including results of a survey of over 1,400 poultry growers, a contract review and analysis, a legal review and analysis, and broiler grower legal educational materials.[2]

FLAG attorneys have addressed the rights and responsibilities of contract growers in dozens of training sessions around the country, and have fielded hundreds of calls, letters, and e-mail messages from farmers and their attorneys across the country on these topics.

FLAG submitted an extensive petition for rulemaking to regulate the use of captive supplies in the beef industry on behalf of the Western Organization of Resource Councils, which USDA published for comment in the *Federal Register*. In the course of USDA's consideration of this petition, FLAG participated in numerous meetings with then-Secretary Glickman, USDA economists and lawyers, and GIPSA officials on captive supply issues in beef industry. No final agency decision on the petition for rulemaking has ever been issued.

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1 Randi Ilyse Roth, *Redressing Unfairness in the New Agricultural Labor Arrangements: An Overview of Litigation Seeking Remedies for Contract Poultry Growers*, 25 U. MEMPHIS L. REV. 1207 (1995).

2 ASSESSING THE IMPACT OF INTEGRATOR PRACTICES ON CONTRACT POULTRY GROWERS, (FLAG, *et. al*. 2001) (*hereinafter* ASSESSING THE IMPACT), available on the Internet at http://flaginc.org/topics/Contracts/index.php.

II. Topics of Testimony

Over the last few decades, the markets for farmers' agricultural commodities have experienced a rapid consolidation of market share in the hands of a few large companies and dramatic trend toward more vertical coordination by processing and packing companies. These trends have resulted in huge reductions in the number of buyers available to compete for farmers' products, a loss of transparency in the markets, manipulation of prices paid to farmers, a sharp increase in the use of production contracts, and a horrendous imbalance in bargaining power between farmers and processors.

My testimony addresses predominantly the problems farmers face as a result of two prominent methods used to accomplish vertical integration or coordination in today's highly concentrated agricultural commodities markets: the use of production contracts of which the poultry industry is a prime example, and the use of captive supplies procurement methods (forward contracts, marketing agreements, and packer ownership of livestock) in the hog and cattle sectors.

III. Improving Fairness In Production Contracts

A. Introduction to the Issue

One of the most dramatic recent trends in the agricultural sector is the rise of vertical integration through production contracting. The poultry industry pioneered this business model several decades ago. Today nearly 90% of poultry is raised through production contracts.[3] Although more recently, production contracting has increased dramatically in other agricultural sectors—notably the hog sector where, by 2003, nearly 58% of hogs were being produced through production contracts[4]—it has reached its zenith in the poultry industry. For this reason, I will use predominantly examples from the poultry industry to illustrate the problems farmers face under production contracts. I acknowledge that each type of agricultural commodity will present some unique production contracting issues. However, my recommendations on legislative actions addressing methods to begin to reduce the vast disparity in bargaining power between farmers and companies would apply to all agricultural commodities.

A typical poultry production contract is drafted by the company and presented on a "take it or leave it" basis. Growers are described as "independent contractors." The company owns the poultry and contracts with farmers to provide the labor, facilities, and services necessary to raise the birds. Even though it is not unusual for growers to invest $500,000 or $1 million in a poultry farm, the contracts are usually of a short duration, such as one seven-week period for a flock of broiler chickens. Even where contracts appear to be for a number of years, there is typically a clause which allows the company to cancel the contract at will. In addition, the contracts leave to

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3 USDA/ERS, *Agricultural Contracting Update: Contracts in 2003*, Economic Information Bulletin No. 9, January 2006.

4 *Id*.

the company's discretion when the grower will receive flocks, how much time will pass between flocks, and how many flocks a grower will receive in a year. In most contracts for boiler chickens, the company provides the inputs needed by the grower, such as chicks, feed, and medications, though the grower is responsible for fuel and other costs. Broiler growers, for example, are generally paid according to a "tournament" or "ranking" system, in which a grower's flock production efficiency is ranked against that of other growers whose birds are processed in the same time period. The formula to calculate production efficiency essentially compares the number and weight of chickens harvested to the number of chicks and pounds of feed delivered to the grower, thus measuring the efficiency with which the flock converts feed to weight gain. Under this system, a grower will be paid more or less than other growers in the group depending on where the flock falls in the ranking system. Despite being paid based on the flock's efficiency in converting feed to weight gain, the grower has little or no control over key elements affecting how the flock will perform, e.g., the quality of the chicks, feed, and medications which are all provided by the company.

B. Need for Disclosure of Risks of Contracts

1. Background

As in the poultry industry, in most production contracting situations the companies draft the contracts and present them to farmers on a take-it-or-leave it basis. The farmers have little or no opportunity to negotiate the terms of the contract. As would be expected under these circumstances, contract terms are primarily designed to minimize the risks to the company rather than to protect the interests of the farmer. Thus, it is imperative that farmers have a fair opportunity to at least read and understand the full range of material risks they face before entering into company-dictated production contracts.

Despite the take-it-or-leave nature of the contracts, farmers are often persuaded to enter into them through promotional materials and oral statements of the companies' representatives touting the financial and lifestyle benefits to the farmers. Often these representations are not borne out in the contract provisions themselves.

For example, I once reviewed a contract for a farmer who was considering making a huge financial investment in barns to raise hogs under a production contract. The farmer provided me with the company's slick brochure which, among other things, touted the farmer's freedom to manage his own operation. However, when I reviewed the actual production contract, it would have required him to strictly follow the company's detailed management manual, leaving virtually no room for individual management decisions. The farmer, who was an experienced hog producer, was taken aback by this provision, having thought he would have management freedom. But even more disturbing to him was the contract provision that gave the company total discretion to declare that he was not properly caring for the animals or managing the operation, and giving the company the authority to kick him out of his own hog barns while the company hired someone else to run the facility and charged that cost to him. Incidentally, I recently provided legal advice on another hog production contract case in which the company had actually taken advantage of just such a provision and kicked the farmer out of his own hog barns while the company continued to raise animals in them using a company-hired manager. Clearly, contract terms relating to circumstances under which the contract may be terminated or the farmer may be required to turn over his facilities to the company are key factors of which the farmer must be aware when deciding whether to enter the contract.

In many instances, the farmers are also assured of the financial feasibility of the enterprise involved in the production contract by oral statements made by the company's representative or, in some cases, the lender who will finance the farmer's production contract enterprise. Often in the poultry sector, growers do not even see the production contract with the company until after they have taken out large loans to purchase a poultry farm or to build poultry houses on their existing property. Not long ago, I met with several growers who had made huge capital investments to purchase poultry farms based on the cash flow projections prepared by their lenders, who had relied, at least in part, on information from the companies. In reviewing those original projections, it became clear that there were many errors and that more accurate projections would have shown that the loans to purchase the farms could not have been paid off with the income received under the poultry contracts offered by the companies.

Though many oral representations are made to farmers to encourage them to enter into contracts, rarely would such representations be enforceable. Many court decisions disregard any oral promises that contract growers allege were made by company representatives because the contracts included "entirety clauses" stating that the entire agreement between the parties is included in the contract, and, consequently, refusing to enforce any oral promises not in the written contract. Farmers should be made aware that the oral representations or promises will not change the actual terms of the contract.

There are many terms in production contracts that pose substantial risks to the farmers by impacting the level of income they may receive, but which are rarely discussed or explained to the farmer. One significant example is a term that controls the number of animals that may be produced under the contract. For example, most poultry production contracts are written in such a way that it is left to the discretion of the company how many flocks will actually be delivered over any specific period of time. Some contracts are only for one flock and may provide for renewal as new flocks are delivered, but do not include any commitment to future flocks. Others may provide for a specified number of years in which the contract will apply, but do not establish how long the period between deliveries of flocks may be. This means that the company has the discretion as to when flocks will be delivered to the grower. When the companies choose to reduce their production levels due to market conditions or any other factors, they have the freedom to force longer periods between flocks. As the number of flocks per year decreases with the longer periods between flocks, growers' income is reduced dramatically, often causing them to default on loans and fail to pay their family living and farm operating expenses.

Other examples of poultry contract terms that may pose significant risks for farmers are those addressing equipment and facilities upgrades and those that relate to the company's provision of medication. Many contracts include provisions that explicitly or implicitly allow the company to require growers to make equipment and facilities upgrades as the companies see fit. Often it may cost growers thousands of dollars to install upgraded equipment. While some contracts may provide for sharing of the cost between the company and the grower or provide a small bonus on the payment of birds once the upgrades occur, these payments are often not sufficient to offset the cost for growers. Other contracts do not provide any additional payments to the grower, and it is often impossible for growers to recoup the costs of equipment upgrades merely through improved production efficiencies on which their payment per flock is based.

Many poultry contracts also set out that the company will provide the medication and veterinary services for the birds and often even prohibit growers giving the birds any medications not supplied by the company. Such a term may not on its face seem to have a huge impact on the grower's income. But it can be devastating. I recently met a grower whose chickens contracted a highly contagious disease. When informed, the company would only provide one type of treatment which failed, and refused to provide the medication a veterinarian suggested. The grower lost thousands of birds and eventually took the risk of purchasing the recommended medication in order to save at least enough birds to obtain a miniscule payment on that flock. Not only did the grower receive no payment for the birds that died, but because of the feed efficiency method of payment, the feed which the birds consumed before dying counted against the feed-to-weight gain efficiency of those that survived, essentially decreasing the payment received for the surviving birds as well.

As the size of livestock and poultry operations has increased, the public's concern over their potential environmental impact has also grown, resulting in more stringent review and regulatory requirements at all levels of government—local, state, and federal. Compliance with these more stringent standards can be quite expensive and many production contracts place compliance responsibility on the growers. This too can have a substantial impact on growers' net income from the contract.

Possibly the most significant risk to farmers under production contracts involves how much they can reasonably expect to be paid under a contract's payment formula. Yet under many poultry and livestock production contracts, the formula for calculating payment can be extremely complex and couched in technical language with no summary explanation provided. Even after some years of experience with production contracts, I once spent an entire afternoon trying to decipher the two-page payment formula on one turkey contract.

Despite their complexity, often involving many pages of technical and legal language, some contracts include a provision that requires the farmer to keep the contract confidential. This often prevents farmers from obtaining the necessary legal and financial advice that is absolutely essential to making an informed decision on whether to sign the agreement.

Current Packers and Stockyards Act (P&S Act) regulations state that poultry growers have the right to see their contracts, but there is nothing in current law to help ensure that they understand them. In workshops, growers are consistently surprised to learn that their right to even see the contract is protected by federal law. To be a meaningful right, growers must see and understand the contract before they take out a loan, purchase land, or begin building or upgrading facilities.

The first essential building block to ensure that livestock growers understand their contracts was added to the Packers and Stockyards Act in the 2002 Farm Bill—a provision protecting the right of growers to receive advice from attorneys, accountants, lenders, family members, and the government—by stating that any confidentiality clause in a contract is unenforceable, at least as to those parties. However, there is no similar legislation that applies to agricultural commodities not covered by the P&S Act.

2. Recommended Legislation

Congress should enact legislation that requires contracts for agricultural commodities to be in plain language understandable to growers and to disclose in a cover sheet the material risks associated with the contract. Requiring a cover sheet summarizing material risks the farmer faces would level somewhat the playing field for farmers in their dealings with companies that control contract terms, by improving the chances that growers understand the often technical provisions of the contract and giving them a better opportunity to evaluate their risks before signing. It would also create an incentive for companies to give farmers more accurate information in their promotional materials and recruitment discussions.

It is important that such legislation provide baseline requirements for what must be included in the cover sheet risk disclosure. The baseline risk disclosure provisions should require a summary explanation of terms that relate to the length of the contract, when and for what reasons it may be terminated, how renewal may occur, the factors to be used in determining payment, the minimum number of animals covered, the responsibility to obtain and comply with environmental regulations and liability for environmental damage, and identification of the state laws that will control disputes, as well as the venue for resolution of such disputes. In instances in which the level of grower pay is affected by factors outside the grower's control, an explanation of these factors should also be required in the risk disclosure statement. Examples of when such a disclosure would be required in the poultry context are when grower pay is affected by: (a) the quality of inputs provided by the integrator (such as chicks, feed, and medication); and (b) condemnations that may result from handling of the birds by company employees or agents. Other key risks which should be explained are the risk of termination of the contract before the grower's investment has been paid off, the risk of depopulation due to disease, the risk of a change in the timing, frequency, number, and size of flocks of chicks provided,[5] and the risk that the grower will be required to make substantial additional investments in the livestock operation in order to comply with facility and equipment requirements of the contractor. Any legislative description of the material risk factors that must be included in the cover sheet should be described in general enough terms to apply to all types of agricultural commodities but also

[5] One close review of poultry production contracts concluded that the short-term nature of the contracts is the critical element in the relationship between the parties. Neil D. Hamilton, *Broiler Contracting in the United States—A Current Contract Analysis Addressing Legal Issues and Grower Concerns*, 7 DRAKE J. AGRIC. L. 43, 84 (2002).

describe specific requirements for certain types of commodities such as poultry and other livestock where necessary.

As a corollary to the requirement that the company provide a material risks disclosure cover sheet, Congress should expressly prohibit companies from making false or misleading oral or written statements to farmers that are considering signing or have signed a contract with the company.

Legislation should also make void confidentiality clauses in production contracts to ensure that farmers are not deprived of the right to obtain the consultation and advice essential to making informed decisions on whether to enter into the contract or to how to address issues that arise during the contractual relationship.

C. Reduce Growers' Risks with Respect to Capital Investments

1. Background

The great imbalance of bargaining power between companies and farmers in production contract relationships is exemplified by the disparity in the level of the capital investments made. For example, in the hog and poultry sectors, farmers make capital investments of many hundreds of thousands of dollars in the buildings, equipment, and real estate in order to raise animals owned by the company. The companies, on the other hand, have very little invested in this infrastructure needed for the production of their animals. Sometimes these capital investments are directly required in the contract, with the company's building design and equipment specs being included. Though more often there is simply a tacit understanding that if farmers will purchase or build the facilities, the company will give them production contracts. As mentioned above, many livestock contracts also include provisions that allow the company to demand that the grower make equipment and facility upgrades as the company deems necessary. Thus, growers may also be required to spend tens thousands of dollars for capital improvements during the course of a production contract. Despite the large investments farmers make in order to obtain and retain the production contracts, the company-drafted contracts often are either for a very short duration or give the company the ability to terminate the contract at their discretion and with little or no notice to the farmer. Many poultry growers report that they have been told that their contracts will be cut off if they do not install equipment improvements such as tunnel ventilation.[6] These growers state that, as a result of complying with these capital demands, they are carrying greater debt loads after five, ten, or fifteen years as poultry growers than when they first purchased the farm. Growers also report that, even though they have installed expensive upgrades, the companies have cancelled their contracts. A grower's contract may be cut off, not because of any

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[6] In a 1999 survey, 67% of respondent growers had implemented equipment upgrades costing at least $ 3,000 per chicken house. ASSESSING THE IMPACT, at Appendix 2-C, page 2. Half of growers agreed that their contracts would not be renewed unless they followed the company' recommendations about building new houses or making major improvements. *Id.* at page 4.

malfeasance on the grower's part, but because of the sale of a processing plant, a contraction in the industry, the company's desire to reduce production levels, or the desire of the company to save on transportation costs. Terminating a contract is often cost-free for the company, but devastating to the grower. Often, because of the concentration in the industry, there is no other company operating in the region for the grower to approach. And the barns are not readily converted to other uses.

2. Recommended Legislation

To address this problem, Congress should pass a law that would impose a duty on companies to compensate growers for the remaining useful life of buildings, machinery, equipment, and other capital investment items if a company terminates or fails to renew a production contract without good cause. Legislation should require that if a farmer has made capital investments of $100,000 or more in order to obtain a contract or at the direction of the company, before the company may terminate or fail to renew the contract, even for cause on the farmer's part, the company must provide the farmer with a written notice of the reasons for the intended action and give the farmer at least 180 days to take corrective action to prevent the loss of the contract. The concerns of integrators and contractors may be addressed by excepting situations where a grower abandons or breaches the contract if that breach reasonably threatens the farmer's substantial performance under the contract. Such a law would balance the right of the parties to enter into agreements, while preventing predatory behavior by companies. It is critical that such a provision address both termination <u>and</u> failure to renew a contract, because so many contracts are for much shorter terms than the time needed to recoup the farmers' investment in buildings and equipment made to produce the companies' animals.

D. Address Use of the Tournament System in Determining Grower Pay

1. Background

The "tournament" or "ranking" system for calculating payment under many poultry contracts described above is presented by the companies as a way to create incentives for hard work and skill. However, as implemented, the tournament system depends largely upon factors controlled by the companies rather than on the quality of the growers' work. In the 1999 survey cited previously, 78% of growers either agreed or strongly agreed with the statement, "My pay depends more on the quality of chicks and feed supplied by the company than on the quality of my work."[7] The health of chicks, the quality of feed, and the timeliness and effectiveness of the medications—all factors that vary greatly, and all of which the companies provide—control much of how efficiently birds put on weight. Thus, their distribution amongst growers is crucial to how much each grower will be paid under the contract. As such, the "tournament" or "ranking" system is rife with opportunities for companies to treat growers unfairly, discriminating against some while providing undue preferential treatment to others.

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[7] ASSESSING THE IMPACT, at Appendix 2-C, page 4.

As an example of how such unfair and discriminatory treatment may occur, growers report being given sick chicks after speaking out about unfair treatment by the company. Other growers report being told by their field representatives that they were given sick chicks because the company hoped that as highly skilled growers, they would be able to nurse the chicks along.

2. Recommended Legislation

Many other pieces of recommended legislation discussed in my testimony will improve transparency and fairness in the negotiating process and may ameliorate some of the unfairness of the tournament system. But to address this problem, Congress should ban the tournament system of payment outright.

E. Binding Arbitration

1. Background

Clauses providing for arbitration are a standard feature of most agricultural production contracts. Arbitration clauses essentially provide that any dispute that arises under the contract will be addressed through arbitration without recourse to review or appeal by any court. Arbitration clauses have blocked numerous contract growers who sought to have their day in court.[8] Many more potential cases were never filed in court due to an arbitration clause. In addition, many disputes with the companies were never challenged even through arbitration, because a livestock producer or contract grower didn't have the price of admission—the often thousands of dollars necessary to pay the arbitration proceeding cost and the fee of the private arbitrator or arbitrator panel. The costs of arbitration are a prohibitive barrier for farmers, as they are not for multinational corporations.[9]

In one case, the swine contractor unlawfully sought to limit hog producers to binding arbitration as a remedy, while reserving to itself the right to go to court. *Tyson Foods, Inc. v. Stevens*, 2000 Ala. LEXIS 491 (Ala. 2000). Even where the contract binds both parties to arbitration, however, many arbitration provisions require producers to file arbitration requests within an unreasonably

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8 *See, e.g., Steed v. Sanderson Farms, Inc.*, 2006 U.S. Dist. LEXIS 71752 (S.D. Miss. 2006); *Schoenrock v. John Morell & Co.*, 2003 U.S. Dist. LEXIS 11733 (D. Minn. 2003).

9 In a 1999 survey of 1424 contract poultry growers, the net cash flow from broiler production was negative for 9 % of respondent growers, and under $ 15,000 for another 36 % of respondents. ASSESSING THE IMPACT, at Appendix 2-C, page 6. For many growers, arbitration fees could equal or exceed their annual net income, as in the case of a grower who had lost her farm and was dependent upon social security, food stamps, and Medicaid to meet her own and her husband' needs, but would have had to pay over $ 27, 500 in arbitration fees in order for her legal claims regarding fraud, negligence, and wrongful termination of the contract to be heard. *Overstreet v. Contigroup Companies, Inc.,* 462 F.3d 409 (5th Cir. 2006). The court held the arbitration clause was not unconscionable.

short period of time—sometimes just days—after the dispute arises, or else waive the right to be heard. Moreover, there is little evidence of a need for companies to seek legal action against contract farmers; they simply terminate the contract and move on to the next farmer. In contrast, before the widespread use of arbitration clauses, poultry growers were more able to challenge egregious violations of the P&S Act through the courts, as in the case of *Braswell v. ConAgra*, 936 F.2d 1169 (11th Cir. 1991), where the jury awarded over $13 million in damages for purposeful misweighing of birds by the company resulting in underpayments to the growers for a period of more than eight years.

The inclusion of binding arbitration clauses in contracts is not a neutral tool to help both parties manage legal risk. Arbitration clauses are part and parcel of take-it-or-leave-it contracts presented by companies to farmers, and they compromise producers' ability to resolve disputes and ensure justice is served.

2. Recommended Legislation

Congress should prohibit the inclusion or enforcement of mandatory, binding arbitration provisions in contracts for the production and marketing of livestock and other agricultural commodities. Inclusion of an arbitration provision in these types of contracts should be lawful only if it provides that, after the dispute arises, all parties to the dispute agree in writing to submit to arbitration to resolve the dispute.

F. Require Good Faith Bargaining with Grower Associations

1. Background

As the poultry contacting situation demonstrates, there is a huge imbalance in the negotiating power between producers and companies. Growers are committed to one specific piece of real property in which they have made large capital investments, often including single-use buildings such as poultry houses, and on which their families reside. When, as is often the case in the poultry industry, growers have only one or a very few companies that serve their area, they are reluctant to enter into any disputes with the company for fear of losing their production contracts and only source of income from their single-use buildings. Companies, on the other hand, are not committed to any specific real estate on which to have their birds raised. They have not made large investments in the buildings housing their birds. As long as a company can find others to provide facilities and labor, the company is free to move. Companies contract with many growers in many regions of the country. A company does not "need" one particular grower in the way the grower needs the company. The physical asset specificity and the site specificity of livestock production mean that individual growers are vulnerable to a "holdup" by the company.[10]

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10 Physical asset specificity and site specificity are also present to varying degrees in other sectors of the agricultural economy. For example, sugar beet producers must invest in highly specialized harvesting equipment and seed beds, while transport costs and the rapid

The imbalance in negotiating power manifests itself in the grower's fear that the company will retaliate by terminating the contract if the farmer raises any significant issues.

I experienced an example of this recently in meeting with individual broiler growers in Arkansas. Their primary input expense is propane. The cost of propane had more than doubled over the last few years, significantly reducing any net earnings from their poultry operations. But the individual growers had no leverage to negotiate with the company for an increase in pay to cover their increasing operating costs. In the absence of collective bargaining, individual growers are forced to absorb those extra costs, while the companies remain unfairly insulated from the rising cost of producing birds they own. If there were a recognized bargaining association representing these growers, this issue would surely be addressed in negotiations with the company.

In fact, the companies are well aware of the weak bargaining posture of individual growers and exploit it to their advantage. For example, when a company closes a processing plant, it may offer a settlement to its growers in order to buy out the growers' contracts. To some extent, this may be a gesture of good will by a company, rather than forcing the growers to go to arbitration or litigation regarding any breach of contract. Yet the companies routinely insist on meeting with the growers individually to discuss the settlement terms. This serves to limit the bargaining power of the growers and to prevent them from joining together to negotiate collectively.

Collective bargaining rights are widely recognized throughout the economy as a necessary and lawful corrective to the harmful abuses found in an unregulated marketplace. The Agricultural Fair Practices Act (AFPA) establishes standards of fair practices required of handlers of agricultural products. 7 U.S.C. §§ 2301-2306. A "handler" includes any person who contracts or negotiates contracts, whether written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product. 7 U.S.C. § 2302(a). The Act prohibits handlers from knowingly coercing, intimidating, or discriminating against an individual grower because of the grower's decision to join or not join an association of growers.

However, the AFPA does not currently require that a handler deal with farmers who are members of an association, or with the association itself, so long as the stated reason for the decision not to deal with them is not based on membership in the association. This limitation in the Act greatly hinders its efficacy in promoting a stable and smoothly functioning marketplace for livestock production services. Companies may refuse to deal with grower associations, or with the leaders of emerging associations, and simply offer pretextual reasons for their refusal. More subtly, companies routinely discriminate against farmer leaders by manipulating input quality or picking up their birds a few days late in the production cycle, thus steering them toward failure in the ranking system. Broilers reach an optimum point of weight gain, after which they simply consume more food, but have little or no additional weight gain. It does not

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conversion of sugar to starch once harvested also contribute to the vulnerability of sugar beet producers.

take many cycles of defeated leaders before growers do not want to take on leadership in the association, and before most growers even fear to have their trucks seen parked at known meetings of the association. The AFPA currently does little to halt such unfair and abusive practices.

2. Recommended Legislation

The Agricultural Fair Practices Act should be strengthened to affirmatively require companies to bargain in good faith with an association of growers, and to refrain from interfering with the formation or administration of any association of producers. Good faith requires that the companies honestly and sincerely bargain with an association of producers, that they do not refuse to deal with growers because of their exercise of the right to join, belong to, and participate in the leadership of an association of producers. But an effective law must reach much more subtle unfair practices than an outright refusal to deal with a grower. It must declare unlawful actions that interfere with the right of the grower to participate in an association. Legislation should declare it unlawful for the companies to discriminate in the quality, quantity, price, or timeliness of inputs such as chicks or other young livestock, feed, and medication required to be provided by the company under the terms of a contract, because of a grower's joining, belonging to, participating in, or providing leadership for, an association. An alternative legislative approach would affirmatively require companies that provide inputs under the contract to provide inputs that are of merchantable quality, and to distribute them randomly.

Strengthening the collective bargaining protections will help ensure that farmers are able to engage in true negotiations with the companies, thus resulting in more fair and balanced agreements, reducing the need for enforcement actions, and promoting the stability of the poultry and meat industries.

IV. Use of Captive Supply Procurement Methods in Red Meat Sectors

A. Background

A few meat packers overwhelming dominate the livestock industry today. Over the last 20 years, there has been an unprecedented increase in horizontal market consolidation in both the beef and pork packing sectors. In 1985, the top four beef packing firms slaughtered 50% of steer and heifers and 39% of all types of cattle nationally. By 2005, the top four firms slaughtered 80% of all steers and heifers and 71% of all types of cattle in the U.S.[11] Using the Herfindahl-Hirschman Index (HHI)—a measure used by the Department of Justice when weighing an industry's concentration level—the beef packing industry reached a level that is considered highly

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[11] *Livestock Marketing and Competition Issues*, CRS Report to Congress, Geoffrey S. Becker, updated February 27, 2007, at 3 citing 2006 issues of *Cattle Buyers Weekly* and various USDA data sources.

concentrated (1,800 HHI) in the mid-1990s, and by 2004, its HHI was 1,900.[12] Between 1985 and 2005, the top four packing firms' percentage of the U.S. hog slaughter increased nearly two-fold, from 32% to 63%.[13] Such high levels of concentration in so few firms contribute to the packers' ability to exercise market power and control of the hog and cattle industries, reducing free market competition.

Compounding the problems for livestock producers associated with the horizontal consolidation in the meat packing sector is the rapid trend toward vertical integration. Packers and processors increasingly control their slaughter supplies through vertical coordination arrangements, such as production contracts with farmers who raise livestock owned by the packer; and marketing agreements and forward contracts in which the packer purchases livestock from producers, securing a commitment of supply weeks in advance of its slaughter.

A recent study indicated that, between October 2002 and March 2005, the largest 29 U.S. beef packing plants acquired over 38% of their cattle through vertically coordinated arrangements: 28.8% through marketing agreements; 4.5% through forward contracts; and 5% through packer ownership or other unknown methods.[14] In 2003, six large producers—Smithfield, Premium Standard Farms, Seaboard, Prestage, Cargill, and Iowa Select—together accounted for nearly 30% of the U.S. hog production.[15] The use of production contracts in the hog industry increased sharply from 29% of the production value in 1994-1995 to over 50% in 2003.[16] According to a recent study, vertically coordinated arrangements account for an estimated 89% of finished hog volume, of which 20% to 30% (depending on assumptions) was from packer-owned hogs.[17]

Because these vertically coordinated arrangements are individually negotiated outside any public market, they eliminate market transparency with regard to this rapidly increasing percentage of the total livestock slaughter in the U.S. In addition, packers tend to provide these individually negotiated contracts to larger livestock producers, excluding smaller producers who are then left to sell in the decreasingly competitive cash market that no longer reflects the price being paid for

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12 *Id*. at 3 citing Barkema; and USDA, Grain Inspection, Packers and Stockyards Administration (GIPSA), *Assessment of the Cattle, Hog, and Poultry Industries, 2005 Report,* March 2006.

13 *Id*. at 4 citing *Cattle Buyers Weekly*; Barkema, and GIPSA.

14 GIPSA, *Livestock and Meat Marketing Study*, Executive Summary and Overview, January 2007, at ES-5.

15 *Id*. at 3 citing Informa Economic, *Special Report: The Changing U.S. Pork Industry*, November 1, 2004.

16 *Id*. at 5 citing USDA/ERS, *Agricultural Contracting Update: Contracts in 2003,* Economic Information Bulletin No. 9, January 2006.

17 GIPSA, *Livestock and Meat Marketing Study*, Executive Summary and Overview, January 2007, at ES-2.

a large volume of livestock being slaughtered. Research suggests that it is the large farms that the vertically integrated companies rely on for their supplies, and that they are much less willing to work with small- or medium-size farms.[18] Thus, packers' use of captive supply arrangements excludes small and independent livestock producers from much of the market for slaughter animals.

Meat packers' acquisition of slaughter supplies through vertically coordinated arrangements, such as packer-owned cattle or cattle committed through forward contracts and marketing agreements weeks in advance of slaughter, are often referred to as "captive supplies." Economic studies have repeatedly shown an association between increases in use of captive supplies to fill slaughter capacity and declines in cash market prices. Livestock producers' belief that the use of captive supplies causes declines in spot market prices has been borne out in empirical analyses, "which found a price reduction of between $1-2 a hundredweight for live cattle compared to a situation without captive supply practices."[19] Even small (three percent or less) reductions in price from the use of captive supply practices can have a significant impact on livestock producers as it represents between 12 and 25 percent of long-run cattle feeding profits.[20]

There is also evidence in an economic study conducted for GIPSA showing that packers act differently with regard to formula-priced and fixed-priced forward contracts, tending to slaughter more fixed-priced forward contract cattle when cash market prices are relatively high, and to slaughter more formula-priced forward contract cattle when cash market prices are lower. Because the formula used to set the base price often references the cash market prices, the packers' different practices with regard to fixed-priced and formula-priced cattle indicate a strategic use of these contracts to manipulate prices paid to producers.[21] Many economists have

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[18] *Id*. at 11 citing Gebremedin, Tefsa G. and Christy, Ralph D., 1996; "Structural Changes in U.S. Agriculture: Implications for Small Farms," *Journal of Agricultural and Applied Economics*, 28, 57-66, General Accounting Office (1998). Changes in Nebraska's and Iowa's Counties with Large Meatpacking Plant Workforces. GAO/RCED-98-62.

[19] *Id*. at 11 citing Durham, C. (1998), Formula Pricing (Marketing Agreements) v. Fixed Pricing (Forward Contracts); Unpublished analysis commissioned by Western Organization of Resource Councils.

[20] *Id*. at 11 citing Lawrence, John (2004); Packer Concentration, Captive Supplies, and Fed Cattle Prices. Available online at http://www.econ.edu/classes/econ135/lawrence/captive%20Supplies %20and%20price.ppt.

[21] Durham, C. (1998), Formula Pricing (Marketing Agreements) v. Fixed Pricing (Forward Contracts); Unpublished analysis commissioned by Western Organization of Resource Councils.

emphasized that formula-priced contracts that are based on cash market prices distort buyer (packer) incentives in concentrated markets such as exist in the hog and cattle sectors today.[22]

Contract and packer-owned supplies have also been found to be associated with decreases in market prices. For example, a recent study conducted for GIPSA found that "the effect of both contract and packer-owned hog supplies on spot market prices . . . are negative and indicate that an increase in either contract or packer-owned hog sales decreases the spot price of hogs," and that increases in use of such supplies leads to packers buying fewer hogs on the spot market.[23]

The high concentration of market share in the top packing firms in both the hog and cattle sectors, coupled with the dramatic rise in the use of vertical coordination through packer ownership of livestock and formula-priced forward contracts, greatly reduces market transparency and creates an environment ripe for price manipulation and discrimination.

B. Recommended Legislation

Any legislative solution to the problems many livestock producers face in highly consolidated and vertically integrated hog and cattle sectors must ensure transparency in slaughter livestock transactions and remove the mechanism by which packers have an incentive and ability to manipulate prices and discriminate against smaller producers.

1. Requirements for forward contracts

To meet these goals, a legislative solution should require that all forward contracts for a purchase of livestock for slaughter—contracts in which the livestock is committed more than seven days in advance of slaughter: (1) include a fixed-base price that can be equated to a fixed dollar amount on the day the contract is entered into; and (2) be traded in an open and public manner which allows sellers and buyers generally to participate in the market, solicits blind bids (without identifying the bidder) that can be witnessed generally by buyers and sellers as the bids are made and accepted.

This captive supply provision would help restore competition by requiring packers to bid against each other to acquire forward-contracted slaughter supplies, preventing packers from unjustly

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[22] See, Taylor, Robert C., *Testimony to the United States House of Representatives Committee on Agriculture, Subcommittee on Livestock, Dairy and Poultry* (April 17, 2007), citing in footnote 5 statements of several economists at the Public Forum on Captive Supplies held by the United States Department of Agriculture, Denver, CO, September 21, 2000.

[23] *GIPSA Livestock and Meat Marketing Study*, Executive Summary and Overview, January 2007, at ES-10. This study has been roundly—and I believe appropriately--criticized for the methodologies used to attempt to explain away its findings regarding the impact of vertical coordination agreements' impacts on livestock markets and prices. See, Taylor, Robert C., *Testimony to the United States House of Representatives Committee on Agriculture, Subcommittee on Livestock, Dairy and Poultry* (April 17, 2007).

discriminating against smaller independent livestock producers when acquiring forward contracted livestock. It would remove the market-distorting incentives and ability of packers to use forward-contracted slaughter supplies to manipulate and control prices paid to producers, by eliminating formula prices that are based on cash market prices that occur after the contract is entered into. It would make all forward contract transactions transparent by requiring that they be conducted in an open and public manner. In addition, such a provision ensures that packers retain the alleged benefits of forward contracting: (1) the ability to coordinate supplies to keep packing plants operating at peak efficiency; and (2) the ability to pay premiums for specific traits and quality characteristics they desire by providing such premiums above the fixed-base price. Livestock producers would also retain the benefits they claim from selling through forward contracts—obtaining premium prices for higher quality livestock and improving supply management.

2. Packer-owned livestock

A legislative solution to address the declines in prices paid to producers associated with packer-ownership of livestock being raised for slaughter is to prohibit the large packing companies from owning or feeding livestock directly or through an arrangement in which the packer maintains the operational, managerial, or supervisory control of the livestock for longer than seven days in advance of slaughter.

Such a legislative provision would eliminate the packers' incentive and ability to strategically slaughter livestock it owns to keep prices paid to independent livestock producers relatively low. It would also prevent packers from freezing independent producers out of a significant percentage of the slaughter market which is now met with packer-owned livestock.

V. Enforcement of the Packers and Stockyards Act

A. Background

The Packers and Stockyards Act (P&S Act), was enacted in the 1920s as the "Big Five" packing firms were forced to divest their interest in companies by which they had vertically integrated the markets. It was intended to be the "most comprehensive measure and extend farther than any previous law in the regulation of private business, in the time of peace, except possibly the interstate commerce act."[24] The Conference report on the Act states, "Congress intends to exercise, in the bill, the fullest control of the packers and stockyards which the Constitution permits."[25] It was intended to go further than the anti-trust statutes and the Federal Trade Commission Act by not just restricting unfair competition between competitors on the same

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24 House Report No. 77, 67th Congress, 1st Sess. at 2 (1921).

25 Conference Report, H.R. Report No. 324, 67th Congr. 1st Sess., at 3 and 5-6. Statement of the Managers on the Part of the House; 61 Congr. Rec. 4778, 4779 (1921).

plane, but also "unfair practice[s] as between the packer and the general public, the packer and the producer, or the packer and any other agency connected with the marketing of livestock."[26]

The primary manner in which Congress intended to regulate unfair practices between packers and producers, as well as consumers and the general public, was through § 202 of the P&S Act (7 U.S.C. § 192) which makes it unlawful for packers, swine contractors, and live poultry dealers[27] to engage in any of the enumerated practices. The prohibited practices include, among other things: (1) engaging in or using any unfair, unjustly discriminatory, or deceptive practice or device; (2) making or giving undue or unreasonable preference or advantage to any particular person or locality in any respect whatsoever, or subjecting any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; or (3) engaging in any course of business or doing any act for the purpose or with the effect of manipulating or controlling prices.

Under the P&S Act, the Secretary of Agriculture was granted extraordinarily comprehensive regulatory powers, including the authority to issue substantive regulations, as well as procedural and advisory regulations necessary to carry out the Act.[28] Congress intended that USDA use its broad regulatory powers to monitor the packing industry and adjust regulatory controls to ensure compliance with the purposes of the Act as industry structure and practices changed over time.[29] USDA, however, has failed to keep pace with the changing structure of the livestock and poultry industries. It has failed to issue regulations that help to define the types of practices that are unfair, deceptive, or unjustly discriminatory, or that have the purpose or effect of manipulating or controlling prices as the packers and processors have moved to strengthen their power over producers through vertical coordination practices such as production contracts and captive supply procurement methods. USDA has issued some minimal regulations addressing poultry

[26] 61 Cong. Rec.1805 (1921).

[27] The P&S Act was amended in 1935, making this provision apply to the sale of live poultry, while in 1987, the definition of "live poultry dealer" in the Act was amended to include companies that arranged for growers to raise and care for live poultry that the company continued to own. The Act was again amended in 2002 to include swine contractors.

[28] 7 U.S.C. §§ 228(a) and 222.

[29] Congressman Anderson of Minnesota, then a member of the House Committee on Agriculture and a sponsor of one of the bills that led to the act, stated during debates in the House that: "[I]ndustry is progressive. The methods of industry and the manufacture and distribution change from day to day, and no positive iron-clad rule of law can be written upon the statute books which will keep pace with the progress of industry. So we have not sought to write into this bill arbitrary and iron-clad rules of law. We have rather chosen to lay down certain more or less definite rules, rules which are sufficiently flexible to enable the administrative authority to keep pace with the changes in methods of distribution and manufacture and industry in this country." 61 Cong. Rec. 1887 (1921).

production contracts, but has failed to revise these for many years as retaliatory and other unfair practices persist in the industry.[30] It has not issued any regulations addressing practices regarding swine contractors in the five years since these entities were made subject to § 202 of the Act.

This failure to provide effective regulatory guidance on the types of packer, poultry dealer, and swine contractor practices that fall within the prohibitions of § 202 of the P&S Act has greatly contributed to the loss of one the key original purposes of the Act: to prohibit unfair, unjustly discriminatory, deceptive, and price manipulative practices that cause injury to livestock producers without regard to the effect on competition between packers or processors or their alleged business justification for taking such action. Despite USDA's recent assertion in the *London* case discussed below that it interprets the purposes and intent of § 202 this way, a few courts have failed to enforce the Act in this manner.

Two recent court cases highlight the serious problem with how the P&S Act is currently being enforced without regard to this original purpose. These cases demonstrate how it has become extremely difficult for livestock producers to effectively enforce § 202 of the P&S Act. In *London v. Fieldale Farm Corp*., 410 F.3d 1295 (11th Cir. 2005), a poultry grower sued the integrator, Fieldale Farms, for violations of § 202 of the P&S Act, asserting that the company retaliated against him for providing a deposition in a racial discrimination lawsuit against the company. The alleged retaliation involved terminating the poultry growing contract without economic justification, improperly adjusting weight of birds on which the grower's pay was based, and providing settlement sheets calculating the grower's payment that contained inaccurate weights. Despite a friend of the court brief filed by the USDA, arguing that the § 202 of the P&S Act does not require proof that the challenged action had an adverse affect on competition, the Court ruled that the grower was required to prove that such targeted practice or practices "adversely affects or is likely to adversely affect competition." The Court refused to give deference to USDA's interpretation of the P&S Act because, though the agency has the authority to adjudicate violations of the Act with regard to packers, it does not have the authority to adjudicate violations with regard to live poultry dealers.

In a class action lawsuit, *Pickett v. Tyson Fresh Meats, Inc.*, 420 F.3d 1272 (11th Cir. 2005), cattle producers sued a packer claiming that the use of marketing agreements with formula prices used to purchase slaughter supplies was unlawful under § 202 of the P&SA, because it was a practice that was unfair and had the purpose or effect of manipulating or controlling prices. The jury found that the packer's use of marketing agreements "damaged the cash market price" between 1994 and 2002, and awarded a total of $1.28 billion in damages to the class of cattle producers. The Eleventh Circuit Court of Appeals, in affirming the district court's decision to set aside the jury verdict, found that there was evidence to support the jury's finding that the packer's use of marketing agreements resulted in lower prices for cattle, both on the cash market and the market as a whole. However, the Court held that, in addition, the cattle producers were

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[30] *See, e.g.* 9 C.F.R. § 201.43, 201.49, 201.100.

required to prove that the use of marketing agreements that resulted in reduced prices had an adverse effect on competition. The Court accepted the packer's proffered business justifications for the use of marketing agreements.

In addition to its rulemaking authorities, USDA has the authority to bring an administrative enforcement action against any packer or swine contractor it has reason to believe has violated or is violating any provision of the P&S Act. 7 U.S.C. § 193. If in such an administrative adjudication a violation of the Act is found, USDA may issue an order to cease and desist and for penalties against the violator. This authority does not apply to poultry dealers. USDA's failure to aggressively pursue such administrative enforcement actions in the red meat sectors in a manner demonstrating its interpretation that the intent and purpose of § 202, does not require proof of an injury to competition, has also significantly contributed to the loss of enforcement of the original intent and purpose of the Act to protect producers from unfair, deceptive, unjustly discriminatory, unduly preferential, or price manipulative actions by packers.

It is difficult for farmers to pay for the resource-intensive legal assistance needed for cases challenging violations of the P&S Act.. These cases tend to require economic as well as legal expertise. For years, USDA's Office of General Counsel has itself balked at the expense and difficulty of these cases, leaving a vacuum in which farmers must take action in their own and the public's interest.

B. Recommended Legislation

To ensure that the provisions of the P&S Act are enforced in a manner consistent with the original intent and purpose to prevent packers, swine contractors, and poultry dealers from using unfair, deceptive, and unjustly discriminatory or price manipulating practices in their dealings with producers, the Act should be amended as follows:

- Giving the USDA the same authority to administratively adjudicate violations and enforce provisions of the P&S Act as to live poultry dealers, as it currently has with regard to packers and swine contractors;
- Expressly providing that practices that are unfair, unjustly discriminatory or deceptive, or which have the purpose or effect of manipulating or controlling prices may be held unlawful without regard to whether the practices cause competitive injury or have an adverse effect on competition and without regard to alleged business justifications for the practice; and
- Authorizing livestock and poultry producers who are successful in bringing actions to enforce the P&S Act to recover litigation costs and reasonable attorneys' fees. (Such a provision makes it much more likely that producers who have legitimate claims against packers or poultry dealers for violations of the Act will be able to find lawyers willing to represent them. Such private suits will encourage more comprehensive enforcement of the Act.)

VI. Consolidation and Vertical Integration in Non-Livestock Commodity Markets

A. Background

Markets for crops, dairy, and other agricultural commodities are also undergoing rapid horizontal consolidation and vertical integration similar to that seen in the poultry, hog, and cattle markets. Producers of these other agricultural commodities need the same kind of protections from unfair trade practices and anti-competitive actions by buyers, processors, and handlers as those that have been afforded poultry and livestock producers under the P&S Act. Producers of these other agricultural commodities should also be afforded the same type of regulatory and enforcement assistance to protect their interests as is afforded livestock producers under the P&S Act.

B. Recommended Legislation

Legislation should be enacted prohibiting handlers, processors, and buyers of non-livestock agricultural commodities from participating in the same types of both unfair trade practices and anti-competitive actions prohibited in § 202 of the P&S Act. Such legislation should also grant USDA the authority to issue both substantive and procedural rules to implement such provisions relating to non-livestock agricultural commodities. USDA should also be authorized to bring administrative enforcement actions, including the ability to issue cease and desist orders and assess penalties against violators. The legislation should also authorize USDA to bring civil actions in the United States district courts against alleged violators of the these provisions seeking injunctive and other preventive relief. Individuals aggrieved by alleged violations of these prohibited practices should also be allowed to bring enforcement actions in U.S. district courts seeking both injunctive relief, compensatory damages, and penalties. In order to encourage enforcement of these provisions, legislation should also provide for the award of reasonable attorneys' fees and costs of litigation to producers of non-livestock agricultural commodities in successful civil actions.

VII. Other Federal Laws that Affect Production Contract Growers

In addition to laws that govern relationships between farmers and companies, a variety of other federal laws could be utilized to ensure fair treatment of farmers under production contracts.

A. Farm Service Agency Guaranteed Loans

1. Background

FLAG has previously testified on the need for more aggressive review and oversight by the Farm Service Agency (FSA) of loans it guarantees under the Guaranteed Loan Program for farmers.[31] In this context, the urgency of the need is highlighted by the severe financial distress that hundreds of Hmong and other Southeast Asian American contract poultry growers in Arkansas, Missouri, and Oklahoma are experiencing within just a couple of years of receiving loans that FSA guaranteed. In many of these cases, FSA had guaranteed loans to these growers based on unrealistic cash flow plans and exaggeratedly high real estate appraisals developed by or for the

[31] *See* Testimony of Karen R. Krub, Farmers' Legal Action Group, Inc. (FLAG), before the Senate Committee on Agriculture, Nutrition, and Forestry, June 13, 2006.

lenders. Several Hmong poultry growers have been forced into bankruptcy as a result of these loans. Many more are unable to feed their families and keep their operations running. Significant loan restructuring and servicing are needed on these loans that were made based on suspect determinations by the lenders that they were adequately secured and financially feasible.

2. Recommended Legislation

To preserve the integrity of the FSA Guaranteed Loan Program and to ensure that contract poultry growers do not lose their farms due to inaccurate financial feasibility and adequacy of security determinations made by commercial lenders who obtained FSA guarantees, Congress should take action to: (1) appropriate funds making the Interest Assistance Program available to these growers in restructuring real estate secured loans with the commercial lenders that received FSA guarantees; and (2) authorize and appropriate funding to allow FSA direct loan refinancing of these guaranteed loans, when restructuring with the commercial lenders cannot be accomplished.

B. Disaster and Contagious Disease Assistance for Contract Livestock Producers

As Congress reexamines federal disaster assistance for farmers in an effort to make it more consistent and fair, it should be mindful of the predominance of contract growing arrangements in many sectors of the agricultural economy. In some instances in recent years, Congress has included disaster assistance for contract growers. This should be continued and systematized, so that whenever assistance is provided to livestock owners for livestock mortality, illness and injury, pasture losses, increased feed and heating fuel costs, and lost production, contract growers receive assistance on an equitable basis. Perhaps it goes without saying that the assistance should be provided directly to the growers, and not through the companies, due to the sometimes strained or adversarial relationship between the parties.

Whenever Congress deals with laws addressing forced depopulation of livestock and poultry to prevent the spread of infectious disease such as Avian Influenza, or compensation for the destruction of livestock and poultry, it should ensure that the losses suffered by contract growers are covered. In addition to any compensation for livestock and poultry owners in the case of forced destruction of animals, the contract growers who were raising those animals should also receive fair compensation for their losses under the contract, including income that they would have received had the animals been slaughtered for market, and the cost to sterilize their barns and equipment and for any added downtime between placement of animals in their facilities due to sterilization requirements.

In general, when drafting legislative language intended to provide assistance to livestock producers, Congress should consider the unique aspects of their contractual arrangements, since terms such as “owners” or “buyers” and “sellers” or “sales” will tend to exclude contract growers.

Congress should seize the opportunity to address these serious issues related to agricultural market consolidation and vertical integration in order to ensure the economic health and viability of our country's farming and rural communities. Thank you for the opportunity to present this testimony.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

s/Lynn A. Hayes

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LAH/rgc