

The Honorable Debbie Stabenow
Chairwoman, Senate Committee on Agriculture, Forestry and Nutrition

The Honorable Thad Cochran
Ranking Member, Senate Committee on Agriculture, Forestry and Nutrition

The Honorable Frank Lucas
Chairman, House Committee on Agriculture

The Honorable Collin Peterson
Ranking Member, House Committee on Agriculture

May 2, 2013

Dear Chairwoman Stabenow, Chairman Lucas and Ranking Members Cochran and Peterson:

The 2013 Farm Bill represents an opportunity to take powerful steps to protect independent livestock and poultry producers from unfair and deceptive contract and marketing practices. In the few years since enactment of the 2008 Farm Bill, the United States has lost 4 percent of its beef cattle operations and 7 percent of its hog operations.

Today, there are only a handful of beef packers, hog processors and poultry integrators. Farmers and ranchers often have little alternative but to accept the terms and prices offered by the few, large firms that dominate the industry. The U.S. Department of Agriculture (USDA) should police the marketplace to protect livestock and poultry producers from the unfair, abusive and deceptive marketing and contracting practices that are routine in these markets.

The 2008 Farm Bill included many important and commonsense livestock reforms including improvements to country of origin labeling (COOL), enhancements to livestock mandatory price reporting, authorization for interstate shipment of state-inspected meat and clarified the contract and marketing protections for livestock and poultry producers under the Packers and Stockyards Act known as the GIPSA rule. Farmers and ranchers across the country as well as many agricultural, rural community, faith-based and consumer organizations had long advocated for these sensible protections and were vigorous supporters of the GIPSA provisions in the 2008 Farm Bill's historic livestock title.

The market access and contract fairness issues facing farmers and ranchers are as critical today as they were when Congress crafted the 2008 Farm Bill. Congress should enact meaningful reforms to level the playing field for livestock and poultry producers in the 2013 Farm Bill. We urge the House and Senate Agriculture Committees to enact these budget-neutral provisions to protect independent family farmers and strengthen the economic viability of livestock and poultry producers and rural communities:

Repeal the rescission of the poultry rules in the 2013 Continuing Resolution: The recently passed Continuing Resolution rescinded several contract poultry fairness rules that went into

effect in 2012. These rules provide basic protections, such as requiring poultry companies to provide adequate notice before suspending the delivery of birds to farmers. These and similar regulations are commonsense protections that should remain and be enforced.

Prohibit retaliation against farmers who speak up: It has become common for livestock and poultry companies to retaliate against contract farmers who speak up about abusive contracting practices in the industry, or who try to organize other farmers to work cooperatively for the right to negotiate fair contracts. Congress should make it a clear violation of the Packers and Stockyards Act for companies to retaliate against farmers for exercising their legal rights, such as talking to federal agency officials or members of Congress about their farming operations and contracts. In addition, Congress should close the loopholes in the Agricultural Fair Practices Act of 1967 (AFPA) that effectively allow meatpackers and poultry processors to retaliate against farmers who join producer associations. The AFPA was enacted to ensure that livestock and poultry producers could join associations and market their products collectively without fear of retribution from processors.

Allow the final GIPSA Rule to take effect: The 2008 Farm Bill required USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) to issue rules prohibiting unfair, deceptive and abusive practices in the livestock and poultry industry. The USDA, farm advocates and the meatpacking and poultry industry battled for almost three years over these rules. In the end, the opponents to the GIPSA rule convinced Congress to use the annual appropriations process to whittle away at the authority of USDA to address these anti-competitive practices. Congress should immediately remove any limitations of USDA's Packers and Stockyards Act authority.

Grant USDA administrative enforcement authority for poultry violations: USDA lacks full enforcement authority for poultry under the Packers and Stockyards Act, but it does have this authority for violations related to the red meat sector (beef, hogs and sheep). USDA can investigate poultry violations and issue cease and desist orders to stop poultry companies from violating the law. But to take full enforcement action, the cases must be sent to the U.S. Department of Justice. This split jurisdiction has greatly hampered enforcement of the Act with regard to poultry violations, and allowed unfair and deceptive trade practices to proliferate, leaving poultry growers very vulnerable to abuse.

Establish a USDA special counsel on agricultural competition: Agriculture is one of the most consolidated sectors in the U.S. economy, but the federal antitrust and competition oversight of the food and agriculture sector is fragmented, with uncoordinated oversight shared among USDA, the U.S. Department of Justice and the Federal Trade Commission. The lack of coherent jurisdiction is further complicated by the increasing vertical integration in the sector, where some firms and combinations of firms require monitoring by more than one regulator. The agriculture and food industry appears poised to undergo another wave of mergers, but the current overlapping jurisdictions prevent sensible oversight and review of the continued consolidation of an already highly concentrated sector. The 2013 Farm Bill should establish a special counsel in USDA on agricultural competition to coordinate and oversee competition and antitrust enforcement activities among the federal agencies.

Require an annual USDA report on concentration in the agriculture and food industries:

Despite the dramatic concentration of the agriculture and food sectors, USDA lacks comprehensive, sector-wide and timely information about the overall state of competitiveness in the agriculture and food sector from seed to supermarket. USDA should collect annual information on the consolidation levels (measured by the market shares of the four largest firms) throughout the food and farm sector and issue an annual report. The study should include industries that provide inputs to farmers and ranchers (such as seed, fertilizer, agrochemical and farm equipment); commodity market handling and processing industries (including grain and oilseed handling, meatpacking, milk handling and processing, fruit and vegetable distribution and processing); the food manufacturing industry; and the retail grocery sector.

Include the Livestock Marketing Fairness Act: Provisions of the Livestock Marketing Fairness Act, introduced by Senators Enzi (WY) and Johnson (SD) in 2012, would bring secret, long-term contracts between packers and producers into the open and create a market for these contracts. It would require packers (and livestock producers) to buy and sell their marketing contracts in open, public markets where all buyers and sellers have access to the marketing and pricing information. Currently, formula contracts and marketing agreements are negotiated in secret, which gives packers all the information and market power and forces livestock producers to accept “formula” prices that are finalized on delivery instead of firm, base prices when the contracts are signed. These formula contracts and agreements allow meatpackers to manipulate prices and shut small and independent producers out of markets.

Prohibit packer-owned livestock: Mega-meatpackers such as Tyson, Cargill, and Smithfield Foods use packer-owned livestock to exert unfair market power over farmers and ranchers. These companies can buy cattle and hogs on the open market when prices are low, but, when auction prices rise, they can slaughter their own livestock. This effectively allows meatpackers to manipulate prices and puts long-term, downward pressure on cattle and hog prices, even when retail meat prices rise.

Oppose Any Legislative Changes, Studies, or Delays in Implementation for Country of Origin Labeling (COOL):

COOL provides consumers with vital information that they need to make informed choices about their food and allows American farmers and ranchers to differentiate their products from imported food. USDA has issued a proposed rule that strengthens the information consumers are provided through COOL and addresses the concerns of the World Trade Organization. USDA is set to publish the final rule in the near future, thus we urge the committee to oppose any language that would postpone or alter the implementation plan for COOL.

A fair and vibrant marketplace cannot function when the largest players are able to use their scale and market power to distort the basic functions provided by open and competitive markets. The largest agribusiness, meatpacker, poultry and food companies already have the capacity to distort or manipulate prices, impose unfair contract and marketing terms on farmers and create barriers for new market entrants. Implementation of any of the provisions listed above would be a significant and meaningful step toward preserving marketing opportunities for family farmers

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and ranchers. Taken as a whole these measures could restore competition and fairness to livestock, poultry, and other agriculture markets.

We urge members of Congress to include these provisions in the 2013 Farm Bill to restore competition to the agricultural marketplace, level the playing field for livestock and poultry producers, benefit consumers and strengthen rural economies.

Sincerely,

Alabama Contract Poultry Growers
Association
Campaign for Contract Agriculture Reform
Cattle Producers of Louisiana
Contract Poultry Growers Association of the
Virginias
Farm and Ranch Freedom Alliance
Food & Water Watch
Kansas Cattlemen's Association
Hmong National Development, Inc.
Independent Beef Association of North
Dakota (I-BAND)
Institute for Agricultural and Trade Policy

Missouri Rural Crisis Center
Missouri's Best Beef Co-Operative
National Family Farm Coalition
National Farmers Union
National Sustainable Agriculture Coalition
Organization for Competitive Markets
Poultry Partners (Arkansas)
R-CALF USA
Rural Advancement Foundation
International—USA
South Dakota Stockgrowers Association
Western Organization of Resource Councils