

Campaign for Contract Agriculture Reform, Farm and Ranch Freedom Alliance, Food & Water Watch, Land Stewardship Project, Institute for Agriculture and Trade Policy, Iowa Citizens for Community Improvement, 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

Our organizations are promoting interrelated reforms to restore competitive livestock markets and fair contracts based on a platform supported by over 200 organizations that represent independent farmers and ranchers, contract growers, and consumers (available at <http://tinyurl.com/3gcty2>).

Agricultural Competition Issue Brief 3 of 18: **Define and Enforce Undue Preferences Language**

Obama-Biden Position “Obama will issue regulations for what constitutes undue price discrimination and his administration will enforce the law.”

Relevant Program: Packers and Stockyards Act

Relevant Agency: USDA Grain Inspection, Packers and Stockyards Administration

Policy Recommendation – Administrative Action

USDA should swiftly write regulations pursuant to Section 11006 of the 2008 Farm Bill establishing the criteria the agency will use to determine an “undue or unreasonable preference or advantage” in violation of the Packers and Stockyards Act prohibition. The regulations should --

- 1. Not narrow the application of statutory language:** USDA should do nothing to restrict or narrow the possible interpretation of this broadly worded statutory provision.
- 2. Make clear it is not necessary to show anti-competitive impact:** The rules must explicitly state that it is not necessary to show an anti-competitive impact in order to find an action to be unlawful as an undue or unreasonable preference or advantage.
- 3. Recognize undue preferences may arise in any aspect of packer-producer transactions:** An “undue or unreasonable preference or advantage” may arise under many aspects of the transactions, including for example base or formula pricing; formulas used for premiums or discounts; duration of the purchase or contract commitment; delivery location requirements; delivery date and time requirements; and terms related to the companies’ provision of inputs or services, grower compensation, and capital investment requirements under production contracts.
- 4. 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: a.) quality differences or, b.) transportation and transactional costs or efficiencies:** Any premiums paid for such quality differences or efficiencies must be available to producers of all sizes.
- 5. Recognize situations unique to poultry production contracts:** Those include, 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, or when a grower is penalized based on the free exercise of rights protected by law.
- 6. Keep pace with industry practices:** Procurement practices in the livestock poultry industries change over time, it is imperative that USDA continuously monitor such practices and amend the rules to ensure that they appropriately address changes in industry practices.