THE DILEMMA OF CONTRACTING: RISK MANAGEMENT OR RISKY BUSINESS?

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I. INTRODUCTION

Agricultural contracts are often discussed as a tool for risk management. But whose risk is managed through the use of contracts? How are risks allocated in contracts? What are the motivations of the parties entering into the contracts? And how are they working for producers? This paper provides an overview of the major risks faced by contract producers today and the federal and state laws that govern agricultural production.

A. The Growth of Contracting

The use of contracts in agriculture is not new, but it is growing overall and is growing rapidly in certain segments of agriculture. Contracts governed 36 percent of the total value of U.S. agricultural production in 2001, up from 28 percent in 1991 and 12 percent in 1969.[1] While many commodities such as soybeans, wheat, and corn are still dominated by spot markets, contracts dominate other markets, such as poultry, hogs, sugar beets, and tobacco.[2] For example, while 87 percent of hogs were purchased on the spot market in 1993,[3] by 1999 that number had dropped to 35.8 percent, and as of January 2006, only 10.6 percent of hogs were sold on the spot market.[4] The remainder were sold under some type of contractual arrangement.[5] In tobacco, contracts covered 81 percent of flue-cured tobacco in 2001 and almost two-thirds of burley sales.[6]

B. Definitions

There are a variety of types of contracts that are used in the sale of crops and livestock. Marketing agreements specify a price or pricing mechanism for the commodity under an agreement set before harvest or removal of livestock. The farmer owns the commodity during production and maintains primary control over production decisions.[7]

Forward contracts are contracts for the sale of agricultural commodities at a future date. These contracts are usually for a specific lot of the commodity and are of shorter duration than a marketing agreement.[8]

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[1] James MacDonald, *et al*., Econ. Research Serv., USDA, No. AER837, *Contracts, Markets, and Prices: Organizing the Production and Use of Agricultural Commodities* 8 (2004).

[2] *Id.* at 15-16.

[3] *Id.* at 14.

[4] Glenn Grimes & Ron Plain, *U.S. Hog Marketing Contract Study* 1-2 (Univ. of Mo. Dep't of Agric. Econ., Working Paper No. AEWP 2006-01, 2006).

[5] *Id.*

[6] MacDonald, et al., *supra* note 1, at 14.

[7] *Id.* at 4-5.

[8] Moeller, David, *Livestock Production Contracts: Risks for Family Farmers*, Farmers' Legal Action Group (March 2003). Available at http://www.flaginc.org/topics/pubs/arts/artcf005.pdf.

Production contracts are contracts between an owner of the commodity and a person who will grow or raise that commodity. The owner of the commodity is often the processor or meatpacker, also sometimes called the integrator. The integrator exercises control over the majority of the production decisions and usually provides feed, medicine, and other production inputs in addition to the animals. The grower provides the labor and facilities.

Marketing contracts are common for both crops and livestock. Production contracts have long been used in poultry, and their use in other segments of agriculture is growing, particularly in the hog industry.[9]

This paper will focus on the types of contracts that have been the most controversial in recent years: production contracts for livestock and poultry.

II. WHY DO PARTIES ENTER INTO CONTRACTS?

Production contracts are an essential part of a vertically integrated system of production, purchase, and delivery of agricultural commodities. The poultry system has been vertically integrated for decades, and the hog industry is very close.[10]

A. Processors

The primary justifications usually given for the trend toward vertical integration and contracting is that it improves efficiency in organizing production, allows for the adoption of large-scale and specialized techniques, allows for quality assurance, and reduces costs. Contracts also assure processors a steady and sufficient flow of commodities.[11]

Given increasing industry consolidation and vertical integration, contracts also can allow processors to exercise market power by restricting entry into the market of competitors by locking up the supply in an area, or through price manipulation. For example, if a processor has a large supply of a commodity under contract at a certain price, if the spot market dips below the contract price, the processor will buy on the spot market;

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[9] MacDonald, et al., *supra* note 1, at 14-15.

[10] For a more complete discussion of corporate concentration and vertical integration, *see*, O'Brien, Doug, *Competition and Trade Practice in Agriculture*: *Litigation and Legislation*, presented at FLAG CLE June 12, 2006; Hayes, Lynn, *Antitrust and Agriculture: Impact of the Loss of Competitive Markets*, presented at FLAG CLE June 12, 2006; Carstensen, Peter C., *Concentration and the Destruction of Competition in Agricultural Markets*, 200 Wis.L.Rev. 531 (2000).

[11] *See, e.g.*, John D. Lawrence, Ted. C. Schroeder & Marvin Hayenga, *Evolving Producer-Packer-Customer Linkages in the Beef and Pork Industries*, 23 Rev. Agric. Econ. 370 (2001); Brian L. Buhr & Dennis DePietre, *New Implications for Packer Contracts* 1, http://www.mnpork.com/producer/presentations/other/guide.pdf#search='new%20implications%20for%20packer%20contracts%20brian%20buhr' (last visited June 7, 2006); N. Key & W. McBride, *Production Contracts and Productivity in the U.S. Hog Sector*, 85 Am. J. Agric. Econ. 121 (2003).

conversely, if the spot market rises above the contract price, the processor can simply slaughter the supply it has under contract and hold out until the spot market falls to lower levels. By holding so much of the supply "captive," processors can depress the spot market price. The potential for market abuse through contracting in agriculture is one of the most pressing issues facing policymakers and courts today[12]

B. Producers

Producers' motivations for entering into contracts are usually stated as a desire to reduce risk of price fluctuation, to provide assured market access, and to reduce the time spent on marketing.[13] It has also become the case that having a contract can provide producers with a method for financing facilities, either through the processor or because lenders want to see a projected stream of income before agreeing to finance operations, and they look to the contract with the processor for such assurance.[14]

With the disappearance of competitive markets, farmers who wish to continue raising livestock have fewer options regarding how they raise that livestock. In more and more regions throughout the country, where there is only one processor producers can sell to, producers have little choice but to enter into contract with that processor.

In the vertically integrated poultry industry, where production contracts have been the norm and the only means of producing commercial poultry, the question is not why the producer enters into a contract arrangement rather than selling on the spot market, but rather why do individuals decide to enter into poultry production at all. In a 1999 study of contract poultry growers, approximately 1,000 growers were asked their reasons for getting into poultry contracting. Ninety percent indicated that "mak[ing] more money" was a somewhat or very important motivation for entering into the contract.[15] Eighty-four percent thought that "provid[ing] more financial security" was a very or somewhat important motivation for entering into a poultry contract.[16]

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[12] The potential for abuse of market power through contracting has been addressed by many commentators (*see supra*, note 10) and was the basis for a jury finding that Tyson had "damaged the cash market price" in the amount of $1.28 billion. That verdict was overturned by the district judge, and his decision was affirmed on appeal. *Pickett v. Tyson Fresh Meats*, 420 F.3d 1272 (11th Cir. 2005), *cert. denied*, 126 S.Ct. 1619 (March 27, 2006).

[13] Buhr, *supra* note 11, at 2.

[14] Hennessey, David A. and Donald Lien, *Ledger Provisions in Hog Marketing Contracts* at 1, Center for Agricultural and Rural Development, Iowa State University, June 2003; Edelman, Mark A., *Hog Contracts: Leveling the Playing Field*, Iowa State University Extension, Janaury 25, 1999, www.extension.iastate.edu/newsrel/1999/jan99/jan9913.html (last visited June 7, 2006).

[15] *Assessing the Impact of Integrator Practices on Contract Poultry Growers* at 2-29 (Farmers' Legal Action Group, 2001).

[16] *Id.*

III. WHAT ARE THE RISKS TO PRODUCERS?

So how well do production contracts manage these risks? The answer to that question obviously depends on the contract itself, but given that the processors typically use form contracts drafted by their own attorneys, producers need to be aware that they have not shifted many of the risks to the processors, and that they are accepting significant financial risk in entering into these contracts.

A. Price

Contracts can be a significant help to farmers in managing fluctuating market prices. An extreme example of this can be found in 1998, when the price for hogs on the spot market dropped to eight cents a pound; some contract hog producers probably considered themselves very fortunate not to by trying to sell on the spot market. One economic study showed that contract producers face only ten percent of the income risk that independent farmers face.[17] Contract hog producers give up the potential for higher market prices in exchange for less variability and risk.[18] Some contracts, usually those tied to futures, can in fact reduce producers' price risk.[19]

But contracts do not always shift price risk away from the producer. For example, "ledger contracts," used in hog contracting for about a decade, can be—and have been—financially ruinous for many hog producers. Professor Neil Harl provides the best description of how a ledger contract works:

> Ledger contracts were developed as a risk-sharing arrangement between a producer and a livestock packer under which the parties agreed that the packer would pay a specified amount per pound of live hogs (such as 38 cents per pound) regardless of the actual cash price. If the specified price was less than the market price, a balance would build up on the packer's ledger in favor of the producer. When the cash price was less than the specified price, the producer would still receive the specified price and the ledger balance on the packer's books would be reduced accordingly. If the specified price was set at or near the long-term average price for live hogs, the ledger balance would fluctuate as the market price oscillates above and below the long-term average price.[20]

During the 1998-1999 period when hog prices plummeted, many producers sustained large, negative balances on their accounts.[21] Under ledger contracts, hog farmers can end

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[17] Laura A. Martin, *Production Contracts, Risk Shifting, and Relative Performance Contracts in the Pork Industry*, 29 J. Agric. & Applied Econ. 267, 278 (1997).

[18] MacDonald, *et al.*, *supra* note 1, at 36.

[19] Grimes & Plain, *supra* note 4, at 4.

[20] Neil Harl, *Reporting Income Under "Ledger" Contracts*, 21 Agric. L. Update 1, 1, 3 (2004).

[21] *Id.* at 3.

up owing processors hundreds of thousands or even millions of dollars, leading to bankruptcy or financial ruin.[22]

Although poultry growers cite higher income as their reason for entering into poultry contracts, a 1999 survey found that nine percent of growers surveyed lost money, and 66 percent had an annual net cash flow of less than $30,000.[23] Most poultry contract growers are paid using a "tournament" or "ranking" system, where their pay is based on the per pound cost of production at their operation compared to the cost of production for other growers during the same period. One of the biggest problems growers have with the ranking system is that the producer's pay depends more on the quality of chicks and feed supplied by the company than on the quality of their work.[24] Many poultry contract producers have complained that the integrators manipulate the quality of the inputs for many reasons, among them retaliation against them for joining an association of producers or complaining about company practices. These types of challenges are exceedingly difficult to prove,[25] as the settlement sheets typically do not include details regarding the inputs for other growers being ranked that would be needed to prove that one producer is being treated differently. Many growers also report that they do not understand what is included on the settlement sheets.[26]

Another factor that can have a significant detrimental effect on the producer's income is when the integrator forces the producer to make substantial improvements or "upgrades" to his or her facilities at the producer's expense, and often before the producer's original capital investments have been paid off, or risk receiving fewer flocks or none at all. The producer often has little choice, since his or her original buildings were likely built to the specifications of the integrator, and the producer is often still carrying significant debt.[27]

B. Contract Length and Termination

Hog contracts typically have a stated term of a certain number of years.[28] Poultry contracts, on the other hand, are often "flock to flock," meaning they legally guarantee

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[22] *See, e.g.*, *John Morrell & Co. v. ISO Pig Ltd.,* No. C 02-4116-MWB, 2004 U.S. Dist. LEXIS 6436, at *4 (N.D. Iowa 2004) (negative balance of $826,614); *SNB Farms, Inc. v. Swift & Co.*, No. C01-2077, 2003 U.S. Dist. LEXIS 2063, at *9 (N.D. Iowa 2003) (negative balance of $1,134,384); *In re Neuhoff Farms, Inc.*, 258 B.R. 343, 345 (Bankr. E.D.N.C. 2000) (negative balance of more than five million dollars).

[23] *Assessing the Impact of Integrator Practices on Contract Poultry Growers* at 2-34.

[24] *Id*. at 4-48.

[25] *See infra*, note 72.

[26] *See*, *e.g.,* Hamilton, Neil D., *Broiler Contracting in the United States — A Current Contract Analysis Addressing Legal Issues and Grower Concerns*, 7 Drake J. Agric. L. 43, 69 (2002).

[27] *Id.* at 65, 84.

[28] The Iowa Attorney General maintains samples of hog production contracts on its website at http://www.state.ia.us/government/ag/working_for_farmers/contracts.html.

the producer only one flock (approximately six to eight weeks), or they contain no term at all.[29] Poultry producers' attempts to argue in court that the integrator verbally promised them a longer contract term or more flocks have been largely unsuccessful.[30] Producers have to invest somewhere between $150,000 and $200,000 per house, and the houses are built to the integrator's exacting specifications, so the houses have no other use without a contract. With fewer and fewer integrators to turn to,[31] producers—whose contracts are "cut off" or simply not renewed—often find themselves with mounds of debt and very expensive, unusable buildings. Because producers have to provide the substantial capital investment but without having a contract term long enough to pay off the debt, they bear a significant share of the market risk when a processor cuts them off, for whatever reason.

Termination of contracts has its risks for processors as well. Recently, Tyson decided to close facilities in Bentonville, Arkansas, and terminated the contracts of more than 100 contract hog farmers. Eighty-five of those farmers sued Tyson in court, alleging fraud, deceit, and promissory estoppel. Tyson settled with those producers in July 2005 for $42.5 million.[32] Some states have passed legislation requiring processors to reimburse producers upon termination if the contract required the producer to make substantial capital investment in buildings or equipment.[33]

C. Liability for Environmental Damage

Large confinement facilities have the potential for causing considerable damage to neighbors and the environment.[34] This potential high cost is not contemplated or calculated in the price producers agree to in their production contracts.[35] Typically, most contract producers are unable to pay for the costs of cleanup or environmental damages.

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[29] Hamilton, *supra* note 26 at 45.

[30] *E.g.*, *Cogburn v. ConAgra Poultry Co.*, 1997 Ark. App. LEXIS 174 (Ark. Ct. App. 1997); *Gregory v. Perdue*, 267 S.E.2d 584 (N.C. App. 1980).

[31] In the 1950s, there were more than one thousand poultry companies entering into contracts with growers; today, there are fewer than fifty. Monte Mitchell, *Some You Lose: Raising poultry for the big boys can quite suddenly turn into a losing proposition*, Winston Salem J., June 20, 2004 (attached).

[32] Cristal Cody, *Tyson to Lay Off 320 in Bentonville, Settle Hog Farmer Lawsuit*, Ark. Democrat Gazette, July 20, 2005, http://www.nwanews.com/adg/News/122562 (last visited June 7, 2006).

[33] *See infra* notes 83-86, 115-117.

[34] For a more thorough discussion of environmental damages from confined animal feeding operations, *see* Susan M. Brehm, Comment, *From Red Barn to Facility: Changing Environmental Liability to Fit the Changing Structure of Livestock Production*, 93 Cal. L. Rev. 797 (2005); Halverson, Marlene, *The Price We Pay for Corporate Hogs*, Institute for Agriculture and Trade Policy (2000).

[35] *See id.*, Carpenter, Stephen J., *Farm Chemicals, Soil Erosion, and Sustainable Agriculture*, 13 Stan. Envtl. L.J 190 (1994).

In cases where an operation is charged with polluting or constituting a nuisance, the question for courts becomes whether the processor should also be liable. Most production contracts characterize the producer as an independent contractor and place the risk of liability for environmental damage squarely on the producer.[36] This is an area where the extraordinary amount of control the processor exercises over the producer's operation comes into play and can backfire on the processor.[37]

Courts generally have been willing to look beyond the terms of the contract to state common law in determining whether the integrator should also be liable for nuisances or environmental damages.[38] Courts that have ruled that processors are or could be liable for environmental damage along with the producer have looked to the degree of control the processor exerts over the producer, both in the contract and in practice.[39] In a recent groundbreaking case holding that Tyson could be held liable for violations of federal environmental laws, a United States District Court Judge in Kentucky based its ruling on its finding that Tyson Chicken had the capacity to control the alleged environmental damage. The district court described in detail the extensive control Tyson exercised over the contract grower's operation, including the fact that Tyson provides the chicks, feed, medicine, veterinary care, the equipment specifications, and a grower's manual, adding:

> Most importantly, Tyson Chicken technical advisors monitor the [contract] facilities. They provide detailed instructions to the growers. Tyson technical advisors test ammonia levels inside the house and direct ventilation program to exhaust ammonia into the environment. The record reflects that Tyson chicken directs its growers to discharge ammonia from the chicken houses at the production facilities. The Broiler Growing Guide specifically instructs growers to exhaust ammonia into the environment to limit ammonia buildup inside the chicken houses. Tyson technical

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[36] *See generally*, Susan M. Brehm, 93 Cal. L. Rev. at 799.

[37] Indeed, the Oklahoma Attorney General has opined that, where a processor exerted a "remarkable degree of control" over a poultry operation, including imposing detailed specifications as to the construction of the barns and how the chicks were to be raised, the producer is not an independent contract but rather should be considered an employee of the processor. Ok. Op. Att'y Gen. No. 01-17, 2001 Okla. AG LEXIS 17 (Apr. 11, 2001).

[38] *See, e.g.*, *Sierra Club v. Tyson Foods, Inc.*, 299 F. Supp. 2d 693 (W.D. Ky. 2003) (ruling that Tyson could be held liable for violations of reporting requirements under CERCLA and EPCRA as a "person in charge" of a facility); *Wendinger v. Forst Farms*, 662 N.W.2d 546, 554 (Minn. Ct. App. 2003), *rev. denied*, 2003 Minn. LEXIS 495 (Minn. 2003) (citing *Vacuara v. Haar's Equip., Inc.,* 264 N.W.2d 387, 391 (Minn. 1985)) (reversing the dismissal of a nuisance claim against integrator, noting that "the existence of an agency relationship is [a] question of fact."); *Tyson Foods, Inc. v. Stevens*, 783 So. 2d 804 (Ala. 2000) (holding Tyson liable for mismanagement of one of its contract hog operations even though the contractor was termed an "independent contractor").

[39] *Sierra Club v. Tyson*, 299 F. Supp. 2d at 720-21; *Wendinger*, 662 N.W.2d at 554.

> advisors also routinely visit the production facilities and tell the growers to discharge ammonia into the environment.[40]

Tyson's agreement in that case was fairly typical of poultry production contracts. Therefore, although most production contracts do place the risk for environmental damage on the producer, it is likely that courts will look beyond the terms of the contract to the actual relationship of the parties to determine if the integrator should share in the risk.

D. Dispute Resolution

Many production contracts provide for the use of alternative dispute resolution (ADR) procedures in case of a dispute arising under the contract. The types of ADR procedures can include peer review, mediation, or arbitration.[41] The latter two forms of ADR can involve costs a party normally would not incur in litigation in a court, since the parties have to pay a private mediator or arbitrator. Arbitration in some cases can cost each party more than $10,000, which makes it cost prohibitive for most producers.[42]

Arbitration clauses are generally enforced under the authority of the Federal Arbitration Act, which governs written contracts involving interstate commerce and requires courts to enforce arbitration agreements as they would enforce other written contracts.[43] To determine whether an arbitration provision in a contract is valid, courts look to state law.[44] Applying general state contract laws, courts have been willing to strike down arbitration clauses in contracts where the obligations are clearly one-sided or oppressive.[45]

Legislation that would address arbitration in production contracts has been introduced several times, most recently as S. 2131. That bill would allow for arbitration only if agreed to by both parties after a dispute arises.

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[40] *Sierra Club v. Tyson*, F. Supp. 2d at 720.

[41] *Assessing the Impact of Integrator Practices on Contract Poultry Growers*, at 4-27.

[42] *See, e.g., Sanderson Farms, Inc. v. Gatlin*, 848 So. 2d 828, 831-32 (Sup. Ct. Miss. 2003) (farmer owed $11,000 for his share of arbitration).

[43] *See Linville v. ConAgra, Inc.*, 2004 U.S. Dist. LEXIS 10129 at *12-15 (E.D. Ark. 2004); *Schoenrock v. John Morrell & Co., Inc.*, 2003 U.S. Dist. LEXIS 11733 at *5-6 (D. Minn. 2003).

[44] *See Perry v. Thomas*, 482 U.S. 483, 492 (1987) (holding that to determine whether an agreement to arbitrate is valid, courts look to general state contract law principles, not state laws applicable only to arbitration provisions).

[45] *Tyson Foods, Inc. v. Archer*, 147 S.W.3d 681, 685 (S. Ct. Ark. 2004) (declining to enforce arbitration agreement that reserved for Tyson but not the growers the right to "also pursue any other remedies at law or equity" for lack of mutuality); *Sanderson Farms v. Gatlin*, 848 So. 2d at 838 (denying motion to dismiss based on arbitration provision where processor had waived its right to compel arbitration by refusing to pay its half of the arbitration fees).

IV. LEGAL PROTECTIONS FOR PRODUCERS

Because of the imbalance in the relative bargaining power between processors and producers, attempts have been made on both federal and state levels to provide some protection for producers. Some of the provisions provide for procedural fairness, while a handful of others provide some substantive relief for producers in certain circumstances.

A. Federal Law

1. Packers and Stockyards Act

The Packers and Stockyards Act (PSA) contains several provisions applicable to contract producers.

a. Illegal Practices

The PSA makes it illegal for any packer, swine contractor, or live poultry dealer to: (a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or (b) Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice; or (c) Sell or otherwise transfer to or for any other packer, swine contractor, or any live poultry dealer, or buy or otherwise receive from or for any other packer, swine contractor, or any live poultry dealer, any article for the purpose or with the effect of apportioning the supply between any such persons, if such apportionment has the tendency or effect of restraining commerce or of creating a monopoly; . . . [46]

The PSA does not provide the United States Department of Agriculture (USDA) with authority to bring actions against poultry dealers under this section. In contrast, USDA does have enforcement authority of these PSA provisions against meatpackers and swine contractors.[47]

While the PSA does provide for a private cause of action,[48] individual contract producers have historically had a very difficult time proving violations under the PSA.[49] What constitutes an "unfair, unjustly discriminatory, or deceptive practice" has been difficult to define. A recent Eleventh Circuit case brought by an individual grower held that, in order to prove a violation of this section of the PSA, the plaintiff must also demonstrate that the

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[46] 7 U.S.C. § 192.

[47] 7 U.S.C. § 193(a) and (b).

[48] 7 U.S.C. § 209(b).

[49] *E.g., Pickett v. Tyson Fresh Meats, Inc.*, 420 F.3d 1272 (11th Cir. 2005), *cert. denied*, 126 S.Ct. 1619 (2006); *Adkins v. Cagle Foods JV,* 411 F.3d 1320, 1326-27 (11th Cir. 2005) (affirming summary judgment for processor where producers did not produce sufficient evidence for Packers and Stockyards Act to go to jury); *Mims v. Cagle Foods, JV*, 148 Fed. Appx. 762, 767-68 (11th Cir. 2005) (same); *Wheeler v. Cagle Foods JV,* 148 Fed. Appx. 760, 762 (11th Cir. 2005) (same).

practice "adversely affects or is likely to adversely affect competition."[50] USDA submitted an *amicus* brief on behalf of the grower in the case, arguing that "the plain language of the statute, the purpose of the PSA, and the . . . [Secretary's] interpretation all indicate that in order to prove that any practice is 'unfair' under § 202(a), it is not necessary to prove predatory intent, competitive injury, or likelihood of injury."[51] The Eleventh Circuit did not grant deference to USDA's interpretation because the PSA does not give USDA enforcement authority against poultry dealers.[52]

Contract producers have long expressed fears of retaliation for reporting suspected PSA violations. The Grain Inspection, Packers and Stockyards Administration (GIPSA), which is charged with enforcing the PSA, has taken the position that retaliation by a poultry dealer against a poultry grower for "expressing concerns and filing complaints with appropriate law enforcement agencies, including USDA, is an unfair practice."[53] GIPSA has further noted that it will "vigorously investigate reported incidence of retaliation and initiate action."[54]

b. Contract Protections

The PSA also provides some basic procedural protections for contract growers.[55] It requires processing companies to provide growers with a written copy of their contract.[56] This may seem obvious, but it is surprising how many processors do not provide growers with a written contract until after the grower has incurred hundreds of thousands of dollars of debt to build barns to the processor's specifications. The contract must clearly specify how long it will last and under what conditions it may be terminated by either party.[57] The contract also must clearly lay out the terms relating to payment.[58]

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[50] *London v. Fieldale Farms Corp.*, 410 F.3d 1295, 1303 (11th Cir. 2005), *cert. denied*, 126 S.Ct. 752.

[51] USDA, *Assessment of the Cattle, Hog, and Poultry Industries, FY 2005 Report*, 16 (March 2006).

[52] *London*, 410 F.3d at 1304.

[53] USDA, *Assessment of the Cattle, Hog, and Poultry Industries, FY 2005 Report*, 15 (March 2006).

[54] *Id.*

[55] For a more thorough discussion of Packers and Stockyards Act provisions relating to poultry and hog production contracts, see FLAG, *Assessing the Impact of Integrator Practices on Contract Poultry Growers* at 4-1 to -12.

[56] 9 C.F.R. § 201.100(a) (2005).

[57] 9 C.F.R. § 201.100(a)(1) (2005).

[58] 9 C.F.R. § 201.100(a)(2) (2005).

The Packers and Stockyards Act and its implementing regulations also include specific requirements with regard to settlement[59] and payment,[60] weighing of livestock and poultry,[61] and weighing of feed.[62]

c. Swine Contract Library

The Livestock Mandatory Reporting Act of 1999 amended the Packers and Stockyards Act to require the Secretary of Agriculture to establish and maintain a library of the types of contracts offered by packers to swine producers. The final rule did not require the actual contracts to be made available because the packers argued that they would reveal confidential and proprietary information. GIPSA provides summaries of information, but does not even do that where there are too few packers in an area and doing so would reveal the information of individual companies. The website can be found at: http://scl.gipsa.usda.gov/.

d. Right to Discuss Terms of Contract

The 2002 Farm Bill added a provision to the Packers and Stockyards Act establishing a statutory right of producers engaged in raising and caring for livestock and poultry for slaughter to discuss the terms or details of a production contract with federal or state agency employees, legal advisors, lenders, accountants, landlords, immediate family members and, if a producer is a business entity, a manager or executive of the entity.[63]

e. Swine Contract Production Arrangements.

The 2002 Farm Bill also amended the Packers and Stockers Act to ensure that it cover swine contract production arrangements.[64]

2. Agricultural Fair Practices Act

The Agricultural Fair Practices Act (AFPA)[65] protects the rights of farmers and ranchers to "join together voluntarily in cooperative organizations as authorized by law."[66] The AFPA prohibits handlers[67] from knowingly taking certain actions against an individual

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[59] 9 C.F.R. §§ 201.99, 201.100 (2005).

[60] 7 U.S.C. §§ 192(a), 228b-1.

[61] 9 C.F.R. §§ 201.49, 201.71, 201.108-1, 201.82 (2005).

[62] 9 C.F.R. §§ 201.29, 201.55 (2005).

[63] 7 U.S.C. § 229(b).

[64] 7 U.S.C. § 192(a).

[65] 7 U.S.C. §§ 2301-06.

[66] 7 U.S.C. § 2301.

[67] A "handler" is a person who: 1) acquires agricultural products from producers or associations of producers for processing or sale; 2) grades, packages, handles, stores, or processes agricultural products received from producers or associations of producers; 3) contracts or negotiates

grower because of the grower's decision to join or not join an association of growers.[68] The AFPA prohibits a handler from knowingly: 1) coercing a producer to join or refrain from joining an association of producers; 2) refusing to deal with a producer because he or she has exercised the right to join an association of producers; 3) discriminating against any producer with respect to price, quantity, quality, or other terms of purchase, acquisition, or other handling of agricultural products because of the producer's membership in or contract with an association of producers; 4) coercing or intimidating a producer to enter into, maintain, breach, cancel, or terminate a membership agreement or marketing contract with an association of producers or a contract with a handler; 5) paying or loaning money, giving anything of value, or offering any other inducement or reward to a producer for leaving or refusing to join an association of producers; 6) making false reports about the finances, management, or activities of associations of producers or handlers; or 7) conspiring, combining, agreeing, or arranging with any other person to do, aid, or abet the doing of any act prohibited by the AFPA.[69]

The AFPA does not require that a poultry company deal with growers who are members of an association of producers, so long as the company's reason for not dealing with the producers is not based on the membership in the association. The burden thus is on growers to show that the reason the poultry company refused to deal with them is in fact their affiliation with an association of producers.[70] While producers do not have to show that their membership in an association of producers is the *sole* reason for the company's action,[71] it is very difficult to prove that the motivation for a dealer's actions is the producer's participation in a producer association.[72]

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contracts or other arrangements for the production or marketing of any agricultural product with or on behalf of producers or associations of producers; or 4) acts as an agent or broker for a handler in any of the above actions. 7 U.S.C. § 2302(a).

[68] 7 U.S.C. § 2303.

[69] *Id.*

[70] The AFPA states: "Nothing in this Act shall prevent handlers and producers from selecting their customers and suppliers for any reason other than a producer's membership in or contract with an association of producers, nor require a handler to deal with an association of producers." 7 U.S.C. § 2304.

[71] *Burger v. Cagle's Farms, Inc.*, No. 4:98-CV-0246-HLM, slip op. at 12-15 (N.D. Ga. Oct. 11, 2000), *aff'd without opinion* 260 F.3d 627 (11th Cir. 2001).

[72] *See, e.g., Adkins v. Cagle Foods JV,* 411 F.3d 1320, 1326-27 (11th Cir. 2005) (affirming summary judgment for processor where producers did not produce evidence that processor harassed them for participating in growers' association; did not produce "significant" evidence of discrimination; and did not show a "systematic attempt" to provide them with inferior birds); *Mims v. Cagle Foods, JV*, 148 Fed. Appx. 762, 767-68 (11th Cir. 2005) (evidence grower produced insufficient to defeat summary judgment); *Wheeler v. Cagle Foods JV,* 148 Fed. Appx. 760, 762 (11th Cir. 2005) (same).

B. State Laws

While attempting to address the larger problems of concentration in agriculture and some limited aspects regarding contracting, federal laws do not address many of the major issues faced by contract producers. Recognizing this shortcoming, sixteen state Attorneys General[73] in September 2000 issued the following statement:

> In recent years, we have become particularly concerned about the rapid trend towards consolidation in agriculture at both horizontal and vertical levels. . . . The antitrust laws do not provide us with the tools to deal with an important cause of concentration in agriculture—contracting. The use of production contracts and marketing contracts by firms with ever growing market shares has dramatically increased vertical integration in American agriculture.[74]

The group of Attorneys General noted three major risks arising from contracting:

> 1) Because of the great disparity in bargaining power between processors and farmers, contracts are offered to farmers on a "take it or leave it" basis, leading to unfair treatment of producers.
>
> 2) Contracting can result in the unfair shifting of economic risk from processors to farmers. The example they cite is poultry contracts which require poultry growers to make substantial long-term capital investments and are offered a contract that covers only one flock of birds.
>
> 3) Because contracting is done in secrecy, with contracts often containing strict confidentiality provisions, the natural consequence could be the demise of market transparency.[75]

The sixteen state Attorneys General then urged state legislators to consider passing state legislation to address these risks in the form of the model "Producer Protection Act."[76] Highlights of the model Producer Protection Act include:

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[73] They include: Thomas Miller (Iowa), Ken Salazar (Colorado), Karen Freeman-Wilson (Indiana), Albert B. Chandler III (Kentucky), Mike Hatch (Minnesota), Mike Moore (Mississippi), Jeremiah W. (Jay) Nixon (Missouri), Joseph P. Mazurek (Montana), Don Stenberg (Nebraska), Frankie Sue Del Papa (Nevada), W.A. Drew Edmondson(Oklahoma), William H. Sorrell (Vermont), Darrell V. McGraw, Jr. (West Virginia), James E. Doyle (Wisconsin), and Gay Woodhouse (Wyoming).

[74] Statement of State Attorneys General on "Producer Protection Act" (Sept. 13, 2000), http://www.state.ia.us/government/ag/agcontractingstatement.htm (last visited June 6, 2006).

[75] *Id.*

[76] Producer Protection Act, http://www.state.ia.us/government/ag/agcontractingexplanation.htm. A copy is also attached to these materials.

- Clear disclosure of producer risks;
- Prohibition on binding arbitration in contracts of adhesion;
- Recapture of capital investment; and
- A ban on unfair trade practices including the tournament or ranking system of payment.[77]

At the time of the statement of the Attorneys General, Minnesota, Iowa, and Kansas already had enacted some form of producer protection laws. Since that time, those three states and at least three others have passed some provisions contained within the model Producer Protection Act.[78]

1. Minnesota

Minnesota was the first state to enact laws specifically governing agricultural production contracts. Minnesota's laws provide some protections to producers entering into agricultural contracts through disclosure requirements, contract transparency and readability, and economic liability limits.[79] The laws apply to all agricultural contracts, which are defined as "any written contract between a contractor and a producer."[80] Contractor (or company) is defined as one who "in the ordinary course of business buys agricultural commodities grown or raised in this state or who contracts with a producer to grow or raise agricultural commodities in this state."[81]

a. Mediation or Arbitration Required Language

Agricultural contracts entered into in Minnesota must contain language providing for dispute resolution by either arbitration or mediation.[82] If an agricultural contract does not contain such language, it may be a defense to an enforcement lawsuit seeking damages based on the contract.

b. Recapture of Capital Investment

Minnesota law provides that, until certain conditions are met, a company must not terminate or cancel a written contract that requires a grower or contract producer to make

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[77] *Id*.

[78] For other sources summarizing state laws relating to production contracts, see Peck, Alison, *State Regulation of Production Contracts*, National Agricultural Law Center (May 2006), available at http://www.nationalaglawcenter.org/assets/articles/peck_contractregulation.pdf (last checked June 9, 2006); FLAG, *Assessing the Impact of Integrator Practices on Contract Poultry Growers*, 4-20 to 4-48.

[79] *See generally,* Minn. Stat. §§ 17.710, 17.90 – 98; Minn. R. Ch. 1572.

[80] Minn. Stat. § 17.90, subd. 1a.

[81] Minn. Stat. § 17.90, subd. 3.

[82] Minn. Stat. § 17.91, subd. 1.

a capital investment of $100,000 or more in buildings or equipment with a useful life of five years or more.[83] The conditions are: (1) the company must have given the producer written notice of its intent to terminate or cancel at least 180 days before the effective date of the termination or cancellation, and (2) the producer must have been reimbursed for damages incurred by the termination or cancellation. The recapture amount is limited to construction costs, and does not include damages relating to operating expenses or lost profits.[84]

Even if the company believes that the producer has breached the contract, the company may not cancel or terminate the contract in most cases unless it gives the producer written notice of the problem and the producer fails to correct the problem within a specified time.[85] Minnesota's recapture rule does not apply if the term of the contract simply expires and the company chooses not to renew it.[86] This is a significant limitation on the protection if contracts are for a short duration such as flock-to-flock contracts.

c. Implied Promise of Good Faith

Minnesota has imposed a duty of good faith on parties in all agricultural production contracts.[87] Generally, under the Uniform Commercial Code, "good faith" means honesty in fact in making and carrying out the contract.[88] This type of law can be important because it can provide a remedy for behavior that, although not otherwise illegal, creates unfair advantage through deception. If a court finds that a violation occurred, a court may award damages, court costs, and attorney's fees.[89]

d. Disclosure

In Minnesota, a contract between a producer and a company may not include a provision that prohibits the producer from disclosing the terms, conditions, and prices agreed to in the contract.[90] This restriction applies to contracts entered into, renewed, or amended on or after July 1, 1999.

e. Plain Language Requirements

In 2000, Minnesota added certain procedural protections for contract producers. Under the 2000 amendments, all agricultural contracts that were first entered into or substantially modified after January 1, 2001, must meet certain plain language

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[83] Minn. Stat. § 17.92; *see, e.g., Crowell v. Campbell Soup Co.*, 264 F.3d 756 (8th Cir. 2001).

[84] *Crowell*, 264 F.3d at 767.

[85] Minn. Stat. § 17.92, subd. 1.

[86] Minn. R. § 1572.0030, subp. 1.

[87] Minn. Stat. §§ 17.94, 336.1-201(20) (205).

[88] UCC § 1-201(19).

[89] Minn. Stat. § 17.94.

[90] Minn. Stat. § 17.710.

requirements. First, the contract must be accompanied by a cover sheet to help the producer understand the terms of the contract as well as the risks associated with the contract.[91] The cover sheet must state that the document is a legal contract, direct the parties to read the contract carefully, describe the material risks the producer would face if he or she entered into the contract, note the producer's right to cancel the contract within three days, and provide an index of the major provisions of the contract and the pages they are on. The risks associated with the contract may be described in a clear written statement or in a checklist.[92]

The law requires that the contract itself use "words and grammar that are understandable by a person of average intelligence, education, and experience within the industry."[93] Factors used in determining readability include simplicity of the sentence structure, the use of commonly used and understood words, the avoidance of esoteric legal terms, and the use of clear definitions.[94] The law also forbids the use of "fine print," and that the typeface must be a minimum 10 point type and one point leaded.[95]

If a farmer brings a civil lawsuit for damages related to the plain language requirements, it is a defense to the claim that the company made a good faith effort to comply with the statutory requirements.[96] Also, attorney's fees are generally not allowed except for class action attorney's fees where there is a statutory cap of $10,000.[97] In addition, violation of the plain language requirements cannot be used as a defense or claim in a breach of contract action unless the plain language violation caused the producer to not understand the rights, obligations, or remedies of the contract.[98] Any claims alleging plain language violations must be brought within six years of the date the contract is executed by the producer.[99]

f. Three-Day Review of Contracts

The 2000 law provides that a producer may cancel an agricultural contract by mailing a written cancellation notice to the company within three business days after the grower receives a copy of the signed contract.[100] This allows producers a "cooling off" period to

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[91] Minn. Stat. §§ 17.91, subd. 2, 17.942.

[92] Minn. Stat. §§ 17.91, subd. 2, 17.942.

[93] Minn. Stat. § 17.943, subd. 1.

[94] Minn. Stat. § 17.944, subd. 3.

[95] Minn. Stat. §§ 17.943, subd. 1, 17.90, subd. 3a.

[96] Minn. Stat. § 17.9441.

[97] Minn. Stat. § 17.9441, subds. 2, 3.

[98] Minn. Stat. § 17.9441, subd. 4.

[99] Minn. Stat. § 17.9441, subd. 5.

[100] Minn. Stat. § 17.941.

fully consider all aspects of the contract including legal risks through consultation with an attorney. A later cancellation deadline may apply if included in the contract. The producer's right to cancel, the method a producer must follow to cancel, and the deadline for canceling the contract must be disclosed in every agricultural contract entered into or substantially modified after January 1, 2001.[101]

g. Parent Company Liability

A 1990 Minnesota State Task Force that studied problems with contract farming concluded that in some cases small companies that are subsidiaries of larger companies failed to pay producers and became bankrupt, leaving producers with no recourse.[102] In response, the Legislature enacted a statute that mandates if a company that is the subsidiary of another company fails to pay its debts, the parent company is liable for those debts.[103] The statute does not define "subsidiary" or "parent company." The rules define parent company as an entity that owns more than 50 percent of the common or preferred stock entitled to vote for directors of a subsidiary corporation *or* provides more than 50 percent of the management or control of a subsidiary.[104]

h. Waiver Void

Waiver of any of the Minnesota agricultural contract protections found in Minn. Stat. § 17.90 through § 17.97 is void.[105]

2. Kansas

Kansas passed legislation relating to hog contract growers in 1994, which provides these limited protections:

- The law implies a promise of good faith into all production contracts;[106]
- For contracts that require an investment of at least $100,000, the law requires the processor to give 90 days' written notice of all reasons for termination, and give the producer 60 days to correct the problems. It does not provide for recapture, and the processor need not follow these steps if the producer, among other things, materially breaches the contract, fails to care for the swine "in accordance with good animal husbandry practices," or has any indebtedness secured by the property accelerated.[107]

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[101] Minn. Stat. § 17.942, subds. 1, 2(4).

[102] Agricultural Contracts Task Force, Final Report to the 1990 Legislature (Feb. 1990).

[103] Minn. Stat. § 17.93, subd. 2, Minn. R. § 1572.0040.

[104] Minn. R. § 1572.0040.

[105] Minn. Stat. § 17.9443.

[106] Kan. Stat. Ann. § 16-1501 (2005).

[107] Kan. Stat. Ann. § 16-1502.

Legislation passed in 2002 requires that poultry contracts in Kansas:

- Be in "readable form" and accompanied by a written disclosure statement setting forth material risks faced by the producer;
- Be "negotiated and entered into in an environment free from unfair or deceptive trade practices or other violations of law";
- Not prohibit or discourage producers from associating with other poultry producers "to compare contract terms or address concerns or problems";
- Not prohibit or discourage producers from seeking contract advice from legal and other professionals; and
- Not deny producers the ability to address disputes in Kansas courts, although the parties may allow the option of submitting disputes to an arbitrator.[108]

Poultry producers have a private cause of action and, if they win, may recover punitive damages as well as attorney's fees and costs.[109]

3. Illinois

Illinois passed its own Agricultural Production Contract Code (Contract Code) in 2004, applicable to production contracts entered into after January 1, 2005. Illinois' Contract Code imposes these procedural requirements:

- Contracts must be readable, meaning they must be in at least 10-point font; have captions and an index; and use commonly used terms.
- Contracts must limit references to other sections or provisions and attach any documents incorporated by reference.
- Contracts must have a "Flesch-Kincaid Grade Level Score" no higher than the twelfth grade.[110]

Illinois' Contract Code does not prohibit confidentiality provisions, but states that it is not a breach of contract for the grower to talk to his or her spouse; parents; siblings; and adult children if they are involved in the operation; accountant; attorney; banker; financial institution; farm manager; trusts; or partners in the operation, so long as the producer requests each such person to treat the information as confidential.[111]

Illinois' Contract Code also limits the termination or alteration of contracts to circumstances where there is a "legitimate force majeure" or the producer breaches a

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[108] Kan. Stat. Ann. § 16-1701(b).

[109] Kan. Stat. Ann. § 16-1701(d).

[110] 505 Ill. Comp. Stat. §17/20 (2005).

[111] 505 Ill. Comp. Stat. § 17/30.

material term of the contract or abandons the contract.[112] The Contract Code prohibits a processor from altering the "quality, quantity, or delivery times of contract inputs" without the consent of the producer.[113] It also requires that any cancellation or termination provision must include specific causes for the cancellation or termination.[114]

The Illinois Legislature also included some provisions to allow producers to recapture their investments upon termination. The Contract Code requires:

- 60 days' written notice of intent to terminate;
- reimbursement to the producer "for the value of the remaining useful life of the capital investment terms. In calculating this reimbursement amount, the contractor may take into account the producer's ability to use the capital investments in other business enterprises of the producer and the opportunity to recoup the cost of the capital improvements by sale or lease."[115]

Exceptions to the recapture requirements are: 1) the producer's voluntary abandonment of the contract; 2) failure of the producer to meet a specific provision of the contract *and* a failure to remedy the default; or 3) the conviction of the producer of fraud or theft against the processor.[116]

The Illinois Attorney General has the primary responsibility for enforcing the Code, and can fine processors no more than $10,000 per violation of procedural requirements. Producers have a private cause of action and may recover actual damages for violations of the termination and recapture provisions.[117]

4. Georgia

Georgia's contract producer law, passed in 2004, is perhaps the weakest of the state contract producer legislation. The law allows producers three days to review a production contract and the option to cancel it for three days after execution.[118] It also requires processors to provide growers with "any statistical information and data used to determine compensation paid to such grower" but exempts any data deemed a trade secret.[119] Violations of that provision or the denial of the producer's right to be present for

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[112] 505 Ill. Comp. Stat. § 17/40(a).

[113] 505 Ill. Comp. Stat. § 17/40(b).

[114] 505 Ill. Comp. Stat. § 17/40(c).

[115] 505 Ill. Comp. Stat. § 17/45(b).

[116] 505 Ill. Comp. Stat. § 17/45(c).

[117] 505 Ill. Comp. Stat. § 17/50.

[118] Ga. Code Ann. § 2-22-2 (2006).

[119] Ga. Code Ann. at § 2-22-3.

weighing birds are subject to the same civil remedies provided for in Georgia's "Fair Business Practices Act of 1975."[120]

5. Arkansas

Largely in response to the high-profile case involving 85 contract hog producers who sued Tyson and had to go to the Arkansas Supreme Court to overcome the arbitration provision in their contracts,[121] the Arkansas Legislature in 2005 passed the Arkansas Livestock and Poultry Contract Protection Act ("Arkansas Act").

The Arkansas Act requires that all production contracts entered into after September 1, 2005, be in "readable form" and accompanied by a "clearly written disclosure statement" setting forth: 1) the duration of the contract; 2) the conditions for termination of the contract prior to its stated expiration date; 3) all terms relating to payment, including the party liable for condemnations, the method for figuring feed conversion rations, the method used to convert condemnations to live weight, the per unit feed charges, and the factors to be used when ranking growers.[122]

The Arkansas Act also requires that production contracts:

* * *

> (2) Be negotiated, entered into, and executed in an environment free from unfair or deceptive trade practices or other violations of law;
>
> (3) Not prohibit or discourage a grower from associating with other growers to compare production contract terms or to address concerns or problems;
>
> (4) Not prohibit or discourage growers from seeking professional, legal, financial, and agricultural production advice and counsel related to the production contract's terms, obligations, and responsibilities; and
>
> (5) (A) Not deny any party to the production contract the ability to address a dispute in any court of competent jurisdiction.
>
> (B) If after a dispute arises, all parties to the production contract agree, then any dispute arising under the contract may be submitted to arbitration.[123]

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[120] Ga. Code Ann. at § 2-22-5.

[121] *See* David Bennett, *Tyson Leaves Pork Producers In Doubt*, Delta Farm Press, Nov. 15, 2002, http://deltafarmpress.com/mag/farming_tyson_leaves_pork/ (last checked June 8, 2006); Wesley Brown, *Tyson Suffers Setback in Hog Farmers' Lawsuit*, Ark. News Bureau, Feb. 20, 2004, http://www.arkansasnews.com/archive/2004/02/20/ News/127405.html (last visited June 8, 2006).

[122] Ark. Code Ann. § 2-32-201(b)(1), (a)(3) (2006).

[123] Ark. Code Ann. § 2-32-201(b).

The Arkansas Legislature added some bite to the Act by providing for damages and attorney's fees and costs for growers who successfully sue their processor under this provision.[124]

6. Iowa

Iowa law prohibits confidentiality clauses in production contracts.[125] Any processor who includes a confidentiality provision in a production contract "is guilty of a fraudulent practice,"[126] which is an aggravated misdemeanor.[127]

In 2005 and 2006, Iowa Attorney General Tom Miller obtained noteworthy protections for contract hog producers through consent decrees with Smithfield, Hormel, and Cargill. The Smithfield Consent Decree settled Smithfield's lawsuit against the State of Iowa challenging the constitutionality of Iowa's anti-corporate farm law.[128] For the duration of the ten-year Consent Decree, Smithfield agreed to:

- Recognize growers' rights to join an association of growers and not discriminate against growers for joining such an association;
- Recognize the following "Contract Grower rights":
    * the right to join or refrain from joining an association of producers;
    * the right to be a whistleblower;
    * the right to use and enforce contract growers' liens;
    * the right to have contracts reviewed and disclose terms as provided in Iowa Code § 202.3;
    * in civil actions, the right to recover treble damages, court costs, and attorneys' fees and costs; and
    * the right to recover damages equal to the remaining value of the contract and the value of the remaining useful life of capital investments made to fulfill the contract.
- Refrain from retaliating against any grower who exercises his or her "Contract Grower rights";

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[124] Ark. Code Ann. § 2-32-201(d).

[125] Iowa Code §202.3 (2005).

[126] Iowa Code § 202.5.

[127] Iowa Code § 714.11 (2005).

[128] *See* Doug O'Brien, *Competition and Trade Practice in Agriculture: Litigation and Legislation* at 3-4, presented at FLAG CLE (June 12, 2006), for a more complete discussion of *Smithfield Foods v. Miller*, 241 F. Supp. 2d 978 (S.D. Iowa 2003).

- Refrain from providing false information to contract growers;
- Provide statistical data used to determine compensation on request; and
- Not require growers to make capital investments in addition to the requirements of the original contract unless "fair and equitable" compensation is paid to the grower and is agreed to by the grower in writing.[129]

The agreement also requires Smithfield to purchase, for a two-year period, 25 percent of its swine slaughtered at its Iowa facilities and its Sioux Falls facility on the open market.

In January 2006, the State of Iowa entered into a similar agreement with Cargill (minus the treble damages provision),[130] and in April 2006, entered into a similar agreement with Hormel (also minus the treble damages provision),[131] even though neither Cargill nor Hormel were parties to the original lawsuit.

The Iowa Attorney General also maintains a library of production contracts on its website at: http://www.state.ia.us/government/ag/working_for_farmers/contracts.html.

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129 Consent Decree, *Smithfield Foods, Inc. v. Miller*, Sept. 16, 2006, http://www.state.ia.us/government/ag/latest_news/releases/sept_2005/smithfield.pdf (last visited June 8, 2006).

130 Consent Decree, *Cargill, Inc. v. Miller,* http://www.state.ia.us/government/ag/latest_news/releases/jan_2006/cargill.html (last visited June 8, 2006).

131 Consent Decree, *Hormel Foods Corp. v. Miller*, http://www.state.ia.us/ government/ag/latest_news/releases/apr_2006/hormel.html (last visited June 8, 2006).

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