Fair Farmer Contract Standards
DFTA Policy Position
Adopted December 5, 2009

This DFTA Fair Farmer Contract Standards Policy Position is intended establish our public position during a critical period of economic stress and pressure on family farms. It is based on our DFTA principles regarding family scale farming, freedom of association, fair and stable pricing, shared risk, transparency and accountability. It is intended to educate our members and the broader market and policy areas about what constitutes the baseline for fair terms for agricultural contracts. It can also serve as a template for any future state or federal fair contract reform opportunities, such as the 2012 Farm Bill.

Background

In 2003, 40% of all US agricultural products were produced with either a marketing and/or production contract.[1] This trend is rapidly spreading from poultry to hogs to tobacco to specialty crops and grains. Unfortunately, these agricultural contracts are developed in an environment in which the corporate processors, handlers, packers or buyers have monopoly-like market power and farmers have almost no legal protection. The result is a growing imbalance in market power between the family farmer and agribusiness corporations, which is depressing farm income and threatening the economic viability and environmental health of our rural communities.

Market trends

Traditionally, farmers produced and then sold animals or crops in an open market to the highest bidder among several local processing firms. But today's agricultural markets are highly concentrated with less than a handful of national and multi-national firms controlling the majority of the market for many commodities. For example, the top four processing firms for beef, pork and chicken control from 55 to 87 percent of the U.S. market for their commodity. At the local level, this means a single processing firm is often the only marketing option for a farmer, eliminating price-enhancing competition. Organizations across the country support both market and legislative reforms that help to balance the contract relationship and create fair and more efficient markets.

Model State Legislation

Sixteen State Attorneys General joined together to advocate that states consider reasonable oversight of agricultural contracting. They stated that regardless of any benefits, *"contracting poses serious risks for producers and, ultimately, for consumers."*

The joint statement noted the spread of contracts within highly concentrated agricultural markets and warned of the "greater and greater disparity between processors and farmers with respect to market information and bargaining power." The Attorneys General also noted, "Contracting can result in the unfair shifting of economic risk to farmers" and that contracts with confidentially clauses destroy market transparency, limiting the ability of farmers to negotiate a fair deal.

In response to these problems, the Attorneys General provided model state legislation, the Producer Protection Act, designed to set basic minimum standards for contract fairness and promote meaningful competition in agriculture. Several noteworthy provisions include:

- **An implied promise of good faith** - The processor must present the contract to the producer with honest and accurate information. This applies to both written and oral communication.

- **Plain language and disclosure of risks** - The contract must be easy to read and understand, with a clear disclosure of the major material risks to the producer up front.

- **Confidentiality clauses prohibited** - Any confidentiality provisions - whether written or oral, express or implied - are void and unenforceable.

- **First priority producer lien** - The producer can register a lien, making the producer a primary and secured creditor. This provision significantly increases the producer's ability to be paid, even if the processor has financial problems.

- **Recapture of capital investment** - If there is a not a breach of contract and the company terminates the contract, the company should reimburse the farmer for capital investments made for purposes of the contract.

- **Ban unfair trade practices** - This provision would ban unfair trade practices and clarify producers rights such as the right to join producer associations without fear of retaliation. In the model state legislation this provision explicitly prohibits "tournament competition" (the ranking system) for payment. This protects the same pay for same work principle to prohibit companies from paying lower rates to farmers who attempt to organize.

- **Ban on arbitration clauses -** The initial model calls for dispute resolution alternatives such as mediation. As the legislation has been drafted for various federal and state legislative bodies, this section has been revised to clearly prohibit binding arbitration clauses. Such clauses can limit a farmer’s access to the courts even when a violation of state or federal law has occurred. The 2008 Farm Bill gave poultry, swine and livestock producers the option to decline to be bound by a binding mandatory arbitration clause in new, amended, altered, modified, renewed, or extended contract after June 18, 2009.

Fair Contract Terms for the Marketplace

In addition to the above provisions, the following principles should be included in any agricultural contract:

- **Good faith collective bargaining** – farmers as individuals or as a group should be able to bargain with the company that they contract with for a fair price and conditions of the contract.

- **Minimum contract security** - the contract should at least be for as long as the length of the loan for the infrastructure that is required for the contract. Additionally, the contract should guarantee a minimum number of animals or product that would allow farmers to pay for their expenses.

- **Upgrade compensation** - For any contracts that require farmer owned building upgrades to maintain their contract – i.e. livestock contracts. Any new upgrades that the company requires beyond the farmer's original capital investment (maintenance not included), the company should be required to give the farmer compensation for the upgrade and any increased utility costs in addition to the farmer's regular pay when the upgrade is required. In addition, the company should be required to produce evidence that the upgrade will be economically beneficial to the farmer. Companies should be prohibited from forcing farmers to upgrade their buildings, equipment, and/or land prior to selling their farms, or in any way interfering with the right of farmers to sell their farms.

- **Livestock Mortality Disposal** – In livestock contracts where the farmer does not actually own the livestock, if there is a spike in hog, poultry, and/or livestock mortality above normal, the company should be responsible for the expenses and where applicable the disposal of the animals in an environmentally friendly manner.

For more information, contact
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[1] Ahearn, Mary Clare, Penni Korb, and David Banker. "Industrialization and Contracting in U.S. Agriculture." *J. of Agric. And Applied Econ*., vol. 37 (2), pp. 347-364, Aug. 2005