

June 21, 2021

Agricultural Marketing Service
USDA
Room 2055-S, STOP 0201
1400 Independence Avenue SW
Washington, DC 20250-0201

Docket # AMS-TM-21-0034

Dear Secretary Vilsack,

The Campaign for Family Farms and the Environment (CFFE) is a coalition of state and national organizations, including Dakota Rural Action (SD), Iowa Citizens for Community Improvement, Land Steward Project (MN), Missouri Rural Crisis Center, Food & Water Watch and Institute for Agriculture and Trade Policy. We work together to support family farmers, our rural communities and a vibrant, sustainable food system. Through this work, we oppose the national, state and local policies propping up corporate factory farms that are putting independent livestock producers out of business, extracting wealth from our rural communities, polluting our land, water and air, and threatening our national security. We appreciate the opportunity to comment on "Supply Chains for the Production of Agricultural Commodities and Food Products."

Introduction

Our current agriculture system is a result of intentional policy choices, lack of market competition enforcement that has concentrated agribusiness' market power, unfair trade agreements, regulatory enforcement failure and marketing deception and secrecy that separates farmers from consumers. A plan to meaningfully address supply chain resilience must address these structural issues, not just attempt minor improvements in logistics or tweak how data is collected in a highly consolidated, industrialized system.

Decades of corporate-controlled markets and policies have driven persistent overproduction which lowers prices paid to farmers. We need a more decentralized and functional marketplace where farmers and workers are paid fairly, consumers pay a fair price, our rural communities are supported and our environment is protected. USDA should include in its supply chain plan a commitment to making sure agriculture markets function well enough for farmers to get a fair price for the actual crops or livestock they produce and for workers in the food chain to be treated well, paid fairly and guaranteed safe and dignified working conditions.

There are many reforms needed to address the stranglehold that a handful of multinational corporations have on each step of the livestock and protein supply chain. The recent disruptions in the food system caused by the pandemic, especially the meat supply chain, offer

a vivid example of how excessive corporate control has made our food system less resilient while exploiting family farms, workers, rural communities, the environment, and public health.

University of Missouri rural sociologist Mary Hendrickson summed up how the pandemic exposed the brittle nature of the food supply chain:

“It has only taken 6 weeks for the Covid-19 pandemic to brutally expose the flaws of our modern food system—flaws documented by scholars for decades. Produce destroyed in fields because restaurants and food services are closed. Covid-19 hotspots emerging in meatpacking communities forcing closure of up to 20% of pork packing in the U.S. Farmers in alternative agrifood markets pivoting to online ordering and reorienting their supply away from restaurants and to retail or delivery. Low paid grocery store clerks and meat packing workers deemed essential but provided little protective gear or means of social distancing. Farmers facing euthanizing animals for lack of slaughter space. Food service workers losing jobs overnight fed through pop-up charity dinners. Farmworkers unable to cross closed borders in Europe or North America. Economic disaster forming long lines at emergency food distributions and potentially doubling the number of very hungry people globally to 265 million.”¹

During the Covid-19 disruption, the largest corporate meatpackers exploited the pandemic by forcing workers back into unsafe conditions at their processing facilities while continuing to export record amounts of meat outside the United States. Big meat companies’ lobbyists have steadily and successfully pushed for lax enforcement and deregulation of worker safety, antitrust, environmental and food safety protections. In this unprecedented crisis, multinational meat companies acted like they always do – increasing their profits while independent family farm livestock producers are paid less, workers are put at risk, and consumers pay more.

These problems have been plaguing family farmers and rural communities for many years, but the pandemic brought them into public view. As you develop plans to increase the resilience of the food supply chain, we urge you to not only create a workplan for addressing the excessive market power held by just a few dominant players at every step of the food chain, but also to apply a resilience lens to future decisions made throughout all of the mission areas of USDA. For example, decisions made about future program changes in conservation, credit, research or food safety programs should be evaluated to assess whether the proposed policy is more advantageous or feasible for large-scale operations or certain sectors of agriculture, or is likely to drive further consolidation.

¹ Mary Hendrickson. May 2020. “Covid lays bare the brittleness of a concentrated and consolidated food system.” *Agriculture and Human Values*. 37(3).
https://www.researchgate.net/publication/341324932_Covid_lays_bare_the_brittleness_of_a_concentrated_and_consolidated_food_system

A serious plan to address resilience must focus on how to create the economic conditions necessary for a diverse set of independent, family-scale operations to use the best environmental practices possible while remaining economically viable. USDA's supply chain policy should have an explicit goal of increasing not just the overall yield and predictability of the U.S. farm system, but also the number of U.S. farms. Additionally, when designing new programs, USDA needs to expand the list of impacts it considers beyond just the traditional assessments of costs and benefits to ask:

- Will this program be not just available, but feasible, for all types of farms (considering region of country, types of crops or livestock produced, ownership models, scale) and farmers?
- What impact will the policy have on land tenure?
- What impact will the policy have on farmgate prices for crops and livestock? Are supply chain programs creating a competitive advantage for some operations that can then sell their crops or livestock for lower prices?
- What impact will the policy have on economic viability of independent, family-scale farms?
- What impact will the policy have on markets – will it drive further consolidation or vertical integration? USDA policy evaluation should no longer ignore the impact new policies will have on consolidation and the structure of the farm system.

To increase the resilience of the food supply chain, the USDA must prioritize immediate actions to restore competition and fair practices to agriculture markets while working towards longer-term reforms that shift resources to family farm-based regional food systems and BIPOC and other historically underserved communities. If the outcome of this process is the continuation of long-standing trends the USDA designing programs for industrialized farm operations tied to supply chains run by multinational corporations, this will have been a wasted effort.

We also encourage you to carefully consider the detailed case studies of impacts of consolidation in agriculture supply chains provided in the comment of the Open Markets Institute and the recent data on market share and concentration ratios commissioned by Family Farm Action.²

² Family Farm Action Alliance. "The Food System: Concentration and Its Impacts." May 6, 2021. https://farmactionalliance.org/wp-content/uploads/2021/05/Hendrickson-et-al.-2020.-Concentration-and-Its-Impacts_FINAL_Addended.pdf

Questions for Comment

(ii) *"...USDA is particularly interested in comments on the following goods and materials pertaining to agricultural and food supply chain resilience..."*

(iii) *"the manufacturing or other capabilities necessary to produce the materials identified in subsections (i) and (ii) of this section, including emerging capabilities."*

As described in the introduction, decades of increasing consolidation in every sector of the agriculture system have resulted in extreme levels of control by just a handful of players in each market, with devastating consequences for farmers, rural communities, public health and the environment, and the ability of supply chains to bounce back quickly from a shock.

This consolidation raises input costs for farmers, reduces farmgate price for crops and livestock, restricts consumer choice and contributes to a widening farm to retail price spread, as is clearly evident right now in the cattle sector. The levels of consolidation throughout the agriculture sector are disturbing. A few examples of the extreme levels of market share show the extent of the problem:

- Concentration Ratio of the top 4 firms (CR-4) for soybean processing: 80%
- CR-4 for beef processing: 73%
- CR-4 for pork processing: 67%
- CR-4 for agrichemicals: 65%
- CR-4 for fresh cut salad: 50%³

These are not the only sectors of the agriculture and food system that exceed the traditional mark of 40 percent that indicates a high level of concentration, but serve to show that this problem is not isolated to one crop or sector. This has resulted in a trend that shows no sign of slowing of crop acreage consolidating in larger farms and a dramatic increase in the sales midpoint for livestock that has starkly increased between 1987 and 2017. For hogs, the midpoint of sales has increased from 1,200 to 51,300 and in dairy the herd size has gone from 80 to 1,300 cows.⁴

There is no segment of the agriculture or food supply chain that does not have an excessive level of concentration, from inputs to grocery retail, including processing, shipping and final product distribution. Any examination of supply chain resilience must not start with an assumption that resilience is only a challenge for certain parts of the supply chain. It is a systemic problem at every step.

³ Family Farm Action Alliance.

⁴ Family Farm Action Alliance.

(v) *“the resilience and capacity of American manufacturing supply chains, including food processing (e.g., meat, poultry, and seafood processing) and distribution, and the industrial and agricultural base...including an assessment of:”*

(A) *“The manufacturing or other needed capacities of the United States, including the ability to modernize to meet future needs, including food processing (such as meat, poultry, and seafood processing) and distribution;”*

The limited options for slaughter and processing available to small and mid-sized livestock producers have been a problem for decades, and the disruption caused by the pandemic simply brought this problem into public view. Decades of lax antitrust enforcement, regulation that is biased towards the largest operations and predatory marketing practices by the largest players have hollowed out livestock processing infrastructure across the country. Plants that used to serve regional or local markets have exited, leaving those producers who do not participate in commodity markets with few or no feasible options for processing their animals. During the pandemic, this lack of capacity became very clear and millions of animals backed up in the supply chain when large corporate plants were closed or slowed their production. There was nowhere near enough capacity in small or regional packing plants to make a dent in that oversupply of animals; many of the small plants that do exist were already booked to capacity before the surge in demand for their services last year.

This is not a new problem. It is a tragically common refrain at sustainable agriculture convenings to hear producers say that they see consumer demand for their product, they know they can produce more animals and keep their standards high, but that the lack of processing capacity is an obstacle that prevents them from expanding.

USDA needs to take a holistic approach to this problem and look at all of the obstacles for small-scale meatpacking infrastructure. USDA and state inspection programs are part of the problem and there are absolutely improvements to be made in this area, but food safety rules are not the only problem. Access to skilled labor, business planning for markets that can fluctuate dramatically between seasons, costs for environmental compliance, and technical assistance with organic certification or other marketing claims should all be considered.⁵ But perhaps most critically, USDA needs to make a concerted effort to address how the largest players in the meat and poultry sector use anti-competitive practices and overwhelming market power to create an unlevel playing field for everyone else in the market.

(C) *“supply chains with a single point of failure, single or dual suppliers, or limited resilience.... the role of market concentration and consolidation in agricultural sectors and how it affects food system resilience, including potential system failures in the face of supply chain disruptions;”*

⁵ Food & Water Watch. June 2009. “Where’s the Local Beef.”
<https://www.scribd.com/document/16745331/Where-s-the-Local-Beef>

The list of recent episodes of disruption that are the result of a problem at a single point in a tightly consolidated supply chain is too long to include here. But a few very high profile recent examples of disrupted livestock markets illustrate the dramatic results when a single stage in the tightly-controlled livestock supply chain experiences a problem:

2019: Holcomb, Kansas Tyson beef plant fire: “Margins for U.S. beef processors climbed to a record high on Friday as the closure of a Tyson Foods Inc slaughterhouse due to a damaging fire last week fueled concerns about a shortage of hamburger meat and steaks... The indefinite shutdown sent meat buyers for restaurants, food service companies and grocery chains scrambling for beef, traders said, because the sprawling facility in Holcomb, Kansas, killed about 6,000 cattle a day, or 5% of the total U.S. slaughter.”⁶

2020: Pandemic Disruptions in Pork Supply Chain: “In one of the most significant signs of pressure since the pandemic began, Smithfield Foods became the latest company to announce a shutdown, announcing Sunday that it would close its processing plant in Sioux Falls, S.D., after 230 workers became ill with the virus. The plant produces more than 5 percent of the nation’s pork.... The Smithfield plant in South Dakota is a stark example of a vulnerable link in the chain. On its own, it produces 130 million servings of food per week.”⁷

2021: Cyber-Attack on JBS: “The price of meat in the U.S. on Tuesday was a mystery.... A cyberattack against JBS SA, the world’s biggest meat producer, not only succeeded in crippling slaughter plants across the U.S. It also prevented the U.S. Department of Agriculture from releasing wholesale prices for beef and pork that agriculture markets rely on daily.... The agency is delaying the reports citing “packer submission issues,” since disclosures could potentially reveal proprietary information about JBS’s competitors.”⁸

This is not a new problem that started during the pandemic. For too long problems that indicate lack of resilience in the supply chain were treated as a series of unfortunate but unrelated isolated events. The never-ending stream of stories of disruption somewhere in the food chain are rarely viewed as having a common thread – highly consolidated systems with multiple points where the closure of a single facility, or even a slight delay, could throw an entire supply chain into disarray. Now, after the massive scale of disruption caused by the pandemic, perhaps we can stop treating these incidents as isolated events and call them what they are – evidence that consolidation and extreme levels of control by just a few players in each sector of agriculture have created unacceptable risk of disruption and economic damage that is borne by everyone except the dominant firms.

⁶ Tom Polansek. August 16, 2019. “Tyson Foods slaughterhouse fire ignites U.S. beef prices.” *Reuters*. <https://www.reuters.com/article/us-tyson-foods-fire-idUSKCN1V61WT>

⁷ Michael Corkery and David Yaffe-Bellany. “U.S. Food Supply Chain Is Strained as Virus Spreads.” *New York Times*. April 13, 2020. <https://www.nytimes.com/2020/04/13/business/coronavirus-food-supply.html>

⁸ Michael Hirtzer. June 1, 2021. “No One Knows How Much U.S. Meat Costs After Cyberattack Jams Report.” *Bloomberg*. <https://www.bloomberg.com/news/articles/2021-06-01/no-one-knows-how-much-u-s-meat-costs-as-cyberattack-jams-report>

The risks from supply chains with critical bottlenecks are more than economic, and extend far beyond the dominant firm that may have experienced (or caused) the initial disruption event. Another consequence of highly concentrated supply chains is the increased scope and extent of disruption when downstream users of ingredients or raw materials cannot function because of a disruption at a dominant supplier. The concept of “rolling recalls” should be included in USDA’s analysis of supply chain resilience. A dramatic example happened in 2008, when a dominant ingredient supplier, Peanut Corporation of America was tied to illnesses and deaths due to *Salmonella* contamination, triggering a major recall of their processed peanut ingredients. Because PCA was the major supplier of these ingredients to processed food companies, their recall triggered related recalls of thousands of products made by other companies.⁹ The scope of the recall effort was historic at that time, but nationwide multi-firm recalls triggered by production problems at one large facility are now common.

As USDA examines the supply chain, we urge you to consider other impacts as well, including impacts on public health, such as the growing size and scope of food recalls triggered by problems at very large production and processing facilities. When consolidation results in massive amounts of product being made at just a small number of facilities, decision-making power is also concentrated – poor management decisions that result in food safety problems or in some cases, a total disregard for food safety rules, by managers at just one large facility can impact consumers nationwide. A classic example is the 2010 recall of recall of 500 million eggs from just two locations in Iowa.¹⁰

(D) *“the risks associated with the current geographic distribution and diversification of where U.S. crops and livestock are grown/raised, processed, and marketed;”*

The decades-long shift of the livestock sector from smaller, independent operations to large intensive confinement operations has had serious consequences for rural communities. When fewer farms produce more food, the environment, public health, and rural communities suffer, in addition to individual farm families who struggle to access markets that are competitive enough to pay a fair price. An analysis by Food & Water Watch and the University of Tennessee Agricultural Policy Analysis Center found that as the hog industry consolidated (and started to function more like the vertically integrated chicken industry) over three decades in Iowa, the counties that sold the most hogs and housed the largest hog operations had declining county-wide incomes, slower growth in median household income and declining numbers of local businesses compared to the statewide average.¹¹ Food & Water Watch also examined counties in New York with different scales of dairy production. Together the two examples illustrate what rural communities all over the country are finding out the hard way – that the number of

⁹ Patrick Woodall and Tyler L. Shannon. “Monopoly Power Corrodes Choice and Resiliency in the Food System.” *The Antitrust Bulletin*. April 26, 2018. <https://journals.sagepub.com/doi/abs/10.1177/0003603X18770063>

¹⁰ Woodall and Shannon.

¹¹ Food & Water Watch. November 2012. “The Economic Cost of Food Monopolies.” November 2012. <https://www.foodandwaterwatch.org/sites/default/files/Food%20Monopolies%20Report%20Nov%202012.pdf>

farms is more important to the health of the local economy than the number of animals. The trend of consolidating livestock production into fewer, larger operations is extracting wealth from the communities where this concentration is happening.¹²

In addition to rural communities' economic health, there are serious consequences of consolidation for the environment and public health. A report by Food & Water Watch called *Factory Farm Nation: 2020 Edition* outlines many examples of what happens to communities when livestock and their waste is concentrated in specific regions. Just one example of FWW's findings illustrates the problem: hogs on factory farms in Duplin County, North Carolina produce the same weight in manure as residents of Boston. But unlike human sewage, hog and other livestock waste is not treated before being released into the environment.¹³

In addition to environmental risks, large processing plants that consolidate product from many different farm sites can spread contamination from one specific lot of product and amplify that risk over a much wider area. For example, commingling huge amounts of product and shipping it nationwide has been a factor in persistent food safety breakdowns in the leafy greens industry. For many years, volume of production was not considered a risk factor in food safety decision-making. It should be.

Unfortunately, we are experiencing another risk of concentrating production in a single region right now, with the worsening drought in several major agricultural regions of the country. The USDA's own drought monitor provides a visual demonstration of the overlap between areas of serious drought and major production areas for crops. A disturbing number of crops including barley, durum and spring wheat, sunflowers, alfalfa hay, hogs, milk cows, and sheep have more than 50 percent of acreage or inventory in areas currently experiencing drought.¹⁴

Animal disease is yet another threat that can be exacerbated by the concentration of production in a region. Extremely contagious diseases like FMD and variants of avian influenza require dramatic biosecurity precautions and draconian depopulation efforts in response to outbreaks. These resource-intensive measures are required because of risk that is built into the industrialized confinement model of livestock and poultry production which concentrates animals in tight quarters under stressful conditions.

Concentrating agricultural production in certain regions also increases the risk that transportation bottlenecks that may be caused by factors outside the control of agriculture can severely impact both agricultural economics and food security. Transportation infrastructure is so critical to agriculture that the USDA runs a transportation program inside the Agricultural Marketing Service as well as a data platform to help agricultural business solve transportation

¹² Food & Water Watch. *The Economic Cost of Food Monopolies*.

¹³ Food & Water Watch. April 2020. "Factory Farm Nation: 2020 Edition."
https://www.foodandwaterwatch.org/wp-content/uploads/2021/03/ib_2004_updfacfarmmaps-web2.pdf

¹⁴ U.S. Department of Agriculture. June 15, 2021. "U.S. Drought Monitor."
<https://www.usda.gov/sites/default/files/documents/AgInDrought.pdf>

problems, complete with the tag line of “Agriculture Depends on Efficient Transportation.”¹⁵ The disruptions in transportation in global supply chains that have happened just in the first half of 2021 include shortages of truck drivers, shortages of shipping containers, closure of critical shipping lanes, and closure of a fuel pipeline that served most of the East Coast. It seems clear that providing efficient transportation for agriculture will remain a challenge in the future. The USDA’s plan for supply chain resilience must include approaches that spread out food production, so that transportation and distribution are not the vulnerable chokepoints of connection between people who need food and the only region of the country that produces that food.

(E) “exclusive or dominant supply of critical goods and materials and other essential goods and materials, as identified in subsections (i) and (ii) of this section, by or through nations that are, or are likely to become, unfriendly or unstable;”

We expect USDA’s analysis of supply chain vulnerabilities to address the risks posed by foreign sourcing of key inputs (such as fertilizer), or technology like semi-conductors that are as important for farm and processing equipment as they are to the auto industry. But we urge you not to limit your evaluation to these items high profile items.

We are overdue for an analysis of the risk posed by our trade policy, which has prioritized the movement of crops and food products from low-cost production platforms in countries with weaker labor and environmental standards. This focus has served to benefit multinational agribusiness firms who do the trading, to the detriment of the United States’ ability to feed itself and the economic viability of U.S. farmers and processing infrastructure. There will always be some need for food imports to the United States, especially for crops we are not well-suited to grow. But there is risk that has never been acknowledged in allowing the infrastructure for raising and processing foods we can grow here to be outsourced.

The goals and priorities of U.S. trade policy related to agriculture need a radical overhaul that changes what our trade agreements are supposed to accomplish. Right now, the economic viability of US farms does not appear to be something that is ever considered as large agribusiness continues to steer USDA and trade policy towards the ever increasing flows of goods handled by multinational corporate traders. Instead, resilience that includes the ability to produce, process and distribute food in the United States must be part of the discussion when trade policy is being developed. This means that the economic viability of U.S. operations is prioritized and it means ending the race to the bottom of regulatory standards through harmonization that enables imports to undercut U.S. producers. And the overhaul of our trade policy must also include an acknowledgement that the U.S. agriculture sector’s dependence on potentially fickle trading partners to provide export markets to soak up our excess production also creates risk. The trade wars started by the last administration took a heavy toll on U.S. agriculture because of this dependence on export markets, and U.S. farmers and taxpayers paid the price.

¹⁵ U.S. Department of Agriculture. “Agricultural Transportation Open Data Platform.” <https://agtransport.usda.gov>

An even more immediate step that should be taken is to provide consumers with information about how globalized some food supply chains are. The USDA should immediately close loopholes in the “Product of the U.S.” standard for voluntary country of origin labeling of meat, and work with Congress to reinstate mandatory country of origin labeling of meat as soon as possible.

The USDA’s resilience analysis must also consider the multinational status of many of the dominant players in agriculture supply chains and what that means for the flow of capital in the agriculture system. Smithfield, JBS, Syngenta, Bayer, and other major players are not based in the United States. The industrial model of livestock production extracts wealth from rural communities and transfers it to distant corporations. Now, in many cases, those corporations are distant enough to be outside the country.

There is also growing concern that corporate ownership of farmland, including ownership by foreign-owned corporations, is exacerbating the already significant challenge many farmers face in accessing high quality, affordable farmland. Right now, the USDA is not even adequately tracking the extent of foreign ownership of farmland, let alone taking measures to address risks posed by increasing corporate and foreign control of the most basic piece of the agriculture supply chain – farmland. USDA must improve the accuracy of tracking of foreign ownership of farmland and compliance with the Agriculture Foreign Investment Disclosure Act and work with Congress to update USDA’s authority to track and make publicly available information about foreign ownership of farmland.

(J) “the risks posed by climate change to the availability, production, or transportation of critical goods and materials and other essential goods and materials, as identified in subsections (i) and (ii) of this section.”

The current system for raising food animals is part of the climate problem, not a solution. The decades-long trend of consolidation has transformed the livestock sector into a system dominated by large confinement operations that are tightly linked with a small number of extremely large slaughter and processing facilities. Factory farms require huge quantities of feed, water, chemical inputs and energy and manage manure in a way that drives greenhouse gas emissions. Investing even more public resources into this system will not address climate change.

Climate change is a serious challenge to the agriculture system that demands more than highly speculative market-based schemes that will allow polluters to keep polluting and let agribusiness pay farmers less for their crops and livestock. A family-farm centered system, with more farmers on the land, is best suited to revitalize rural communities, produce a healthy and sustainable food supply and respond to climate change. Farmers will be essential to responding to climate change, particularly through a greater emphasis on building soil health – including through longer rotations, more perennial crops, the use of cover crops, and more sustainably

managed grazing systems. A transition toward greater adoption of these systems must support farmers economically.

USDA needs to dedicate more attention and resources to helping farms adapt to climate disruption. Included in this effort should be a focus on rebuilding regional food processing and distribution infrastructure, which is not only more likely to create a level playing field and economic viability for more farm operations, but also be more resilient in the face of increasingly frequent weather extremes. As described in the earlier section on risks created by concentrating production in specific regions, a weather extreme in one important crop-producing region of the country now has nationwide implications for food availability and price. Decentralized production must be part of USDA's plan for both climate adaptation and supply chain resilience.

(vii) *“the primary causes of risks for any aspect of the agricultural and food production supply chains assessed as vulnerable pursuant to subsection (v) of this section;”*

As described in earlier sections, we believe that extreme levels of consolidation is the primary cause of risk in the agriculture and food production system. Consolidation of control and concentration of production makes the system less resilient when disruption occurs and amplifies problems that once would have been limited to a regional scope to national and global levels.

It is widely recognized that the food and agriculture sector is already highly concentrated. In 2010, the Department of Justice and the Department of Agriculture hosted joint workshops around the country to examine the issue of competition in agriculture markets. The resulting report summarizing those workshops states:

“Producers across commodities and geography identified market concentration — a term describing a situation where only a few firms compete in a market — as a concern. A consistent complaint was that, at various stages of the food chain, there are only a handful (if that many) of buyers or sellers, resulting in a lack of options for producers and lower prices for their commodities or higher prices for supplies.”¹⁶

Market conditions for our farmer members have not improved since this report was released in 2012, and in fact several very large mergers in agriculture inputs, processing and retailing have made things worse.¹⁷ The issue of consolidation in agriculture markets is at the center of most of the challenges our members face as they struggle to maintain economically viable farming operations. Our members experience the impacts of consolidation in many ways beyond the low price paid at various points in the supply chain. The radical decrease in the number of farm

¹⁶ U.S. Department of Justice. “COMPETITION AND AGRICULTURE: Voices from the Workshops on Agriculture and Antitrust Enforcement in our 21st Century Economy and Thoughts on the Way Forward.” May 2012, Available at <https://www.justice.gov/sites/default/files/atr/legacy/2012/05/16/283291.pdf>. Pg.5.

¹⁷ Woodall and Shannon.

operations producing crops and livestock (as operations have dramatically increased in size) have done tremendous damage that often is not acknowledged by regulators assessing antitrust or other impacts of existing consolidation or new mergers and acquisitions. If policymaker's evaluation of the health and function of our food supply chain continues to be so narrowly focused on isolated metrics that prioritize downstream players in the supply chain, the devastating impact of wealth being extracted from rural economies will continue.

In addition, USDA should examine the growing trend of large retailers creating their own vertically integrated supply chains, with Costco branching out into chicken production and Walmart opening a milk processing plant and establishing its own beef supply chain.¹⁸

Consolidation in what may seem like inconsequential sectors can also wreak havoc on agriculture and food supply chains. For example, the ability of a firm to foreclose a rival's access to a product should also be carefully examined in light of the ability of large processors to virtually lock up the supply of critical ingredients like specific varieties of aluminum cans to foreclose access by craft brewers, or specific products like certified organic ingredients that may be vital to innovative start up food companies but are in limited supply with long timeframes for building up availability.

Another potential adverse effect that should be considered is the impact that increasing control of a supply chain through acquisition or the use of contracts has on the ability of upstream producers to have a mechanism for price discovery. This is a critical issue in agriculture, especially for livestock producers, who in many parts of the country no longer have open markets (in the form of auctions) that they can use to determine a fair price for their animals. The extensive use of forward contracting and formula pricing has so reduced the transparency of these markets that independent producers struggle to determine what their products are worth.¹⁹ As referenced in the earlier discussion of the recent example of the cyber-attack on JBS, in many important cattle buying regions of the country, there are so few buyers covered by mandatory livestock price reporting that the exit of one buyer like JBS was enough to trigger privacy safeguards and shut down the publication of price data. This effectively disabled the only tool for gathering price data available for cattle producers trying to decide when and how to sell their animals.

Data must also be evaluated in any study of food and agriculture supply chains. For example, as retailers (both brick and mortar stores and online platforms) run more sophisticated data collection programs, the traditional relationship between their suppliers and the retailers is changing. Access to data about shopper's habits and preferences is being credited with shifting

¹⁸ Grant Gerlock. "Costco Builds Nebraska Supply Chain For Its \$5 Rotisserie Chickens." National Public Radio. October 22, 2018; Anna-Lisa Laca. "Dozens More Farmers Lose Milk Contracts." *Dairy Herd Management*. March 5, 2018; Tom Polansek. "Walmart creates Angus beef supply chain, cutting out meat processors." *Reuters*. April 24, 2019.

¹⁹ U.S. Department of Justice. Pg. 11-12.

that balance.²⁰ And data is now another commodity that is being controlled by large agribusiness firms that control key inputs like seeds, crop protection chemicals, yield and livestock quality data, trapping farmers into staying with a particular company for inputs or sales because they would lose valuable data about their own operations if they switched. The consolidation over who controls production and other data creates an entirely new type of risk for those involved in agriculture production, especially in light of recent revelations about the severity and prevalence of cyber-attacks across the economy.

(ix) “specific policy recommendations important to transforming the food system and increasing reliance in the supply chain for the sector. ... As USDA implements stimulus relief programs and spending authorized by the CAA and ARPA, we seek public comments on targeting funds toward food supply chain resiliency.”

Any effort to strengthen resilience in the food supply must ensure a fair price for farmers, as well as a fair wage for workers. It must manage over-production, invest in climate-friendly systems of production, protect rural water and air, and create new rural-based and owned economic opportunities.

Fair Markets

Decades of unchecked mergers and lack of enforcement to curtail anticompetitive behavior in agriculture markets have led to extreme levels of consolidation and concentration in every sector of the food system, especially meat, poultry and dairy. Any effort to increase the resilience of the U.S. agriculture and food supply chains must prioritize producers being able to access markets that are competitive enough to provide a fair price. USDA must address agricultural markets as part of its supply chain work by:

- Immediately reinstating the Grain Inspection Packers and Stockyards Administration (GIPSA) as a stand-alone agency within USDA. While this is an urgent first step, simply restoring GIPSA is not sufficient to address what is wrong in livestock markets. A restored GIPSA must also act to enforce and improve regulations on meat and poultry companies’ conduct.
- Swiftly completing rulemaking to fully utilize the authority of the Packers and Stockyards Act to address anticompetitive practices by meatpackers and poultry companies.
 - o Do not include the “legitimate business justification” portion of the 2016 proposed rule.
 - o Do not narrow the application of the statutory language.

²⁰ Annie Gasparro and Jaewon Kang. “Grocers Wrest Back Control of Shelf Space.” *The Wall St. Journal*, February 20, 2020.

- Make clear it is not necessary to show anti-competitive impact on the entire market to find an undue preference has occurred in violation of the Act.
 - Recognize that undue preferences may arise in any aspect of transactions between packers and producers.
 - Recognize that undue preferences may arise differently depending on the sector involved.
 - Include the 2007 proposed rules regarding contract transparency and disclosure requirements.
 - Include the 2008 proposed rules regarding the weighing of poultry, livestock, swine and feed.
 - Include the 2010 proposed rules to address a broader set of criteria and standards regarding livestock and poultry company actions that would be considered violations of the Act.
- Closing loopholes in the regulations for *voluntary* country of origin labels to require that meat displaying a U.S. label actually comes from animals that were born, raised and slaughtered in the U.S. and working with Congress to reinstate *mandatory* country of origin labeling for meat and expand it to include dairy products.
 - The USDA should establish a new division to address competition in the agriculture sector. The new division should assess the state of competition in all sectors of agriculture where it has some statutory mandate (Packers & Stockyards Act, Agricultural Marketing Act, Perishable Agricultural Commodities Act, Federal Meat Inspection Act, Poultry Products Inspection Act, Egg Products Inspection Act), including measurements of concentration of market share in specific sectors and regions, and impacts on competition and price discovery from vertical integration, contracting practices, and intellectual property practices. This division should not only assess the state of competition in the agriculture system, but should also recommend cases for referral to relevant antitrust authorities (DOJ, FTC and/or GIPSA) for enforcement actions.

Equity

USDA has a long and troubled history of failing to serve all landowners, producers, and communities equitably. The USDA has recently acknowledged the serious deficiencies in one recent initiative, the Coronavirus Food Assistance Program, which had tremendous disparity in how direct payments were distributed to farms. But this problem is not new and it is not isolated to the CFAP program – this is a pattern has been repeated for decades in USDA programs of all kinds. Therefore, it is critical that any new programs focused on supply chain resilience, or expansions of existing programs, do not just rely on the same methods USDA has always used for sign-up, outreach or technical assistance. There are small, beginning, and socially disadvantaged farmers who are not familiar with or not comfortable going into county FSA offices. Basing outreach efforts only on contacting those already in the Farm Services Agency system or relying solely on online outreach will limit who knows about new programs.

USDA should partner with community-based organizations to develop new practices for setting up programs that will work for their communities.

Additionally, USDA must overhaul its civil rights processes and commit new resources to making sure there is a reasonable path for farmers to pursue a timely remedy when they experience discrimination in trying to access USDA services. And the USDA must vigorously defend against legal challenges to the implementation of the loan forgiveness provisions for socially disadvantaged producers created by the American Rescue Plan, as well as swiftly building an outreach program to socially disadvantaged farmers as required in the ARP.

Stop Subsidizing Risky Fragile Supply Chains

Local control and ownership must be an essential part of our food supply, so the rural landscape is protected and historic patterns of exploitation and wealth extraction are not repeated. The current agriculture system increasingly serves outside investors from Wall Street or foreign corporations – not people living in rural communities and working the land. Efforts to strengthen resilience in the food supply must support the next generation of farmers and food system workers and their right to make a fair living. New and young farmers, ranchers and farm and food system workers – including new immigrants, indigenous peoples, and people of color – are integral to the future of our rural communities and they need to be supported and valued.

- Public money should not be spent on new or expanding Concentrated Animal Feeding Operations (CAFOs), through direct payments, loan guarantees or other programs. CAFOs, whether beef, pork, poultry or dairy, are flooding our markets, pushing agricultural prices down, driving independent family farmers out of business and depressing rural economies. Corporate CAFOs are also directly tied to rising levels of harmful water and air pollution and negative health impacts in rural communities all over the country.
- Stop using taxpayer-funded conservation programs such as USDA's Environmental Quality Incentives Program to give grants to CAFO operations to subsidize waste management practices they should have to pay for themselves.
- Establish a program and provide funding for a voluntary buyout program to enable existing factory farm owners to pay down debt to facilitate the transition to alternative agricultural systems on their land (such as pasture-based livestock or specialty crops).
- Stop using USDA commodity purchase programs to buy excess meat production from multinational corporate meatpackers.
- Multinational corporations should not receive supply chain resilience funds; instead, these public dollars should be going to independent family farmers and local and regional food infrastructure.

- Improve the accuracy of tracking of foreign ownership of farmland and compliance with the Agriculture Foreign Investment Disclosure Act and work with Congress to update USDA's authority to track and make publicly available information about foreign ownership of farmland.

Climate

Rather than trying to make up for low prices paid to farmers in consolidated, uncompetitive markets with speculative schemes like carbon payments, USDA should revise existing conservation programs to prioritize climate-friendly practices, dramatically increase enrollment and provide more technical assistance. Public money should be invested in programs to support good practices and ensure good markets for crops and livestock, not a volatile, impermanent carbon payment system. A good way to do this is to improve and expand existing conservation programs by:

- Investing in the transition toward regenerative agriculture through the Conservation Reserve Program, Conservation Stewardship Program, and the Environmental Quality Incentives Program (EQIP).
- Revising conservation programs like EQIP to prioritize practices that provide real climate benefits, like longer crop rotations and pastured livestock, and to remove support for manure management infrastructure for large confinement operations, including anaerobic digesters or so-called renewable natural gas from manure. This means that the priorities for Rural Energy for America Program and EQIP must change to exclude anaerobic digesters, gas infrastructure and other manure management infrastructure for large-scale confinement livestock operations and instead prioritize true renewable energy sources like solar and wind.

Land Access

Access to affordable land is a critical barrier to many people who wish to start farming, as well as a barrier to many farmers in making long-term investments in practices that can build healthy soil and address climate change. Short-term rentals don't allow farmers to invest in the long-term practices necessary for better economic viability and environmental benefits. USDA must finalize and implement new regulations to address heirs property issues and finish its overdue study on land tenure as part of its resilience efforts plan.

Conclusion

Finally, the USDA should not have to ask the public for input about the lack of competition in agricultural markets or the amount of consolidation in food supply chains. The USDA's Economic Research Service should be fully staffed and funded with a mandate to track these trends and provide transparent information to the public about consolidation in agriculture and

economic viability of farm operations at every scale. It should not take a global pandemic and dramatic headlines about food supply chain meltdowns for USDA to pay attention to the structure and control of our food supply chain.

We appreciate the opportunity to comment on this critical subject and USDA's priorities. If you have questions or need more information, please contact Patty Lovera at pattylovera20@gmail.com.

Sincerely,

Campaign for Family Farms and the Environment