



Consumer Impact on Livestock Production

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Today's Agenda

- Dairy Contracts
- Poultry and Egg Contracts
- Beef Contracts
- Pork Contracts
- The Lawyer's Role as Advocate for the Farmer



History Lesson

The problems with milking cows

- Perishable commodity
- Produced every day
- No long-term on-farm storage
- Production changes slow

Dairy Cooperatives

- Pooling of milk
- Collective marketing
- Carved out from anti-trust statutes



Failure of the co-op model?

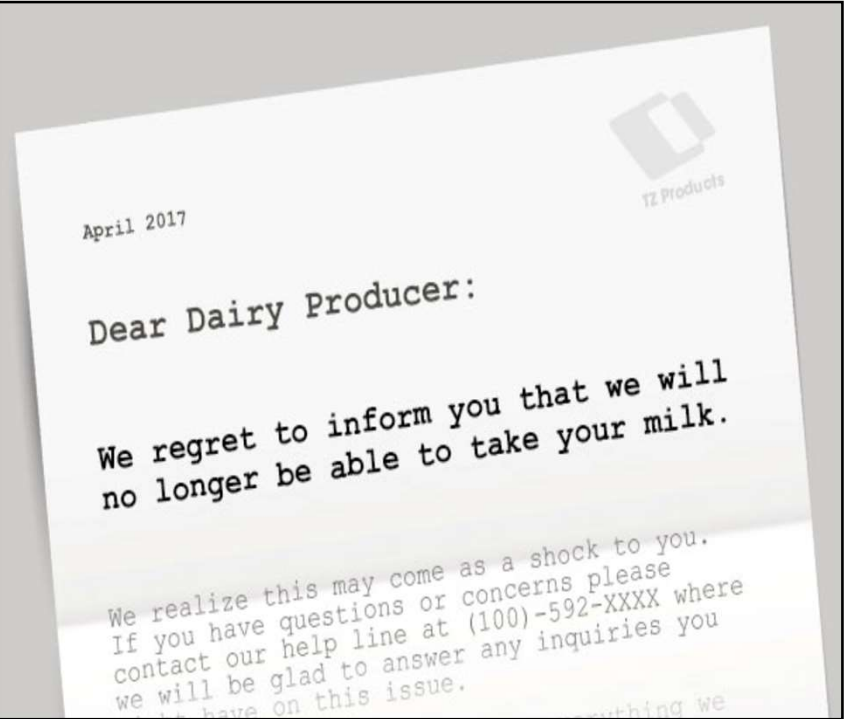
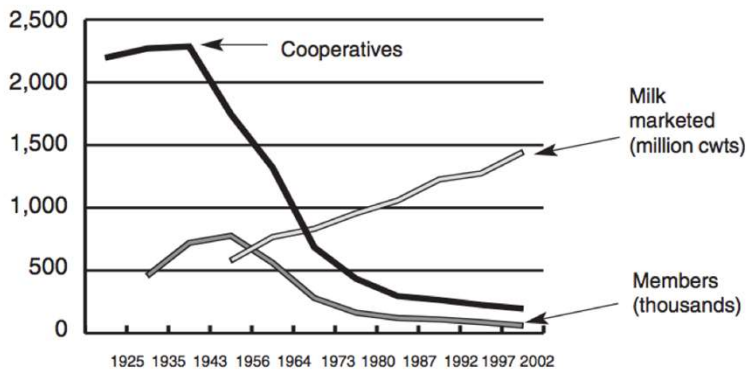


Figure 1—Trends in number, volume, and membership of dairy cooperatives, 1925-2002



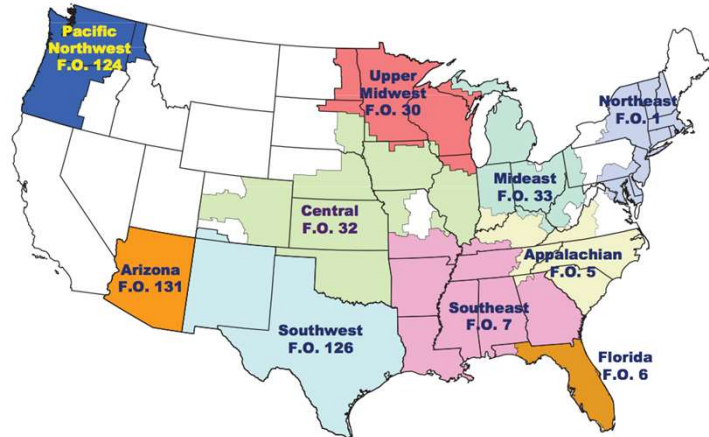
Cooperative Trends

The Original New Deal

Agricultural Adjustment Act of 1933

Agricultural Marketing Agreement Act of 1937

FEDERAL MILK MARKETING ORDER AREAS



2018

Direct marketing comes of age



Guidebook to Understanding Milk Supply Contracts

Why?

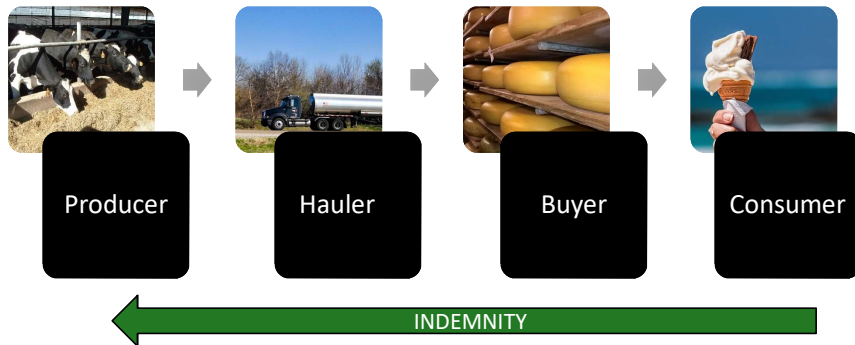
How?

- Reviewed ~10 milk supply contracts
- Identified standard terms
- Highlighted unusual terms



Title Risk of Loss

If Producer's milk is contaminated, or contaminates the milk of other producers with which Producer's milk is commingled, then Producer shall be liable to Buyer for the cost of the lost milk including any milk contaminated as a result of being commingled with Producer's milk, damages caused by such breach, including replacement costs, as well as disposal costs and/or lost profits for affected third-parties such as other producers whose milk was contaminated as a result of commingling with Producer's milk.



Pricing Models



Base + Premium

- “Base Payment” for every load plus
- Premium payment for meeting additional standards, e.g. animal welfare, volume, etc.
- Subject to market swings unless guaranteed floor



Cost+

- Payment based upon cost to produce plus profit margin
- Not subject to market fluctuations



Price - Marketing

- Subject to market swings
- Buyer deducts portion of payment to market products

Non-GMO considerations

Option 1: Incorporate GMO restrictions into purchase contract.

Option 2: Make non-GMO optional, but provide premium for non-GMO milk.

Questions to ask

- Does the contract allow the buyer to switch from GMO to non-GMO during the term?
- Producer liability for GMO contamination?
- Read carefully: Non-GMO may be in the schedules but not the contract.
- Does producer have available non-GMO feed sources available?



Animal Care Standards

No tolerance for animal abuse, with appropriate disciplinary and corrective action in any cases of animal abuse.

Use antibiotics judiciously and only for medical purposes (treatment and control of disease as directed)

Report antibiotics use annually to Buyer

Do not use artificial hormones (e.g., rBST) with the purpose of increasing milk yield

Do not practice tail docking on-site or at partner farms (e.g., heifer suppliers)

Do not utilize tie-stalls or ties for calves

The animals shall be free from thirst, hunger, discomfort, pain, disease, fear, distress, and shall be free to express normal behavior

Animal Care Standards

Considerations

- Buyer audit and inspection rights
- Resolution process for violations of animal welfare standards
- Third party welfare certification
- Antibiotic use restrictions



Employee Considerations

Producer will not discriminate against any employee or applicant for employment because of race, religion, disability, sex, national origin, age, veteran status, or any other unlawful characteristic. Producer shall conduct such other screening and checks for criminal conviction record, education, drug testing, credit searches, industry specific checks and testing as may be directed by Buyer and in compliance with applicable state and federal law.

Considerations

- Liability to employee and Buyer for breaching employment discrimination laws.
- Issues Buyer cares about:
 - **Working hours.** Buyers may require Producers to follow all overtime laws and ensure that workers are provided adequate sick days and days off.
 - **Health care.** Some supply contracts may require that Producers provide health insurance, provide a safe workplace, and take steps to reduce workplace injuries.
 - **Drug testing.** As explained in the sample above, some Buyers may require drug testing to ensure workers are not impaired while on the job.
 - **Insurance.** Buyers may require Producers to provide proof of workers compensation and unemployment insurance.



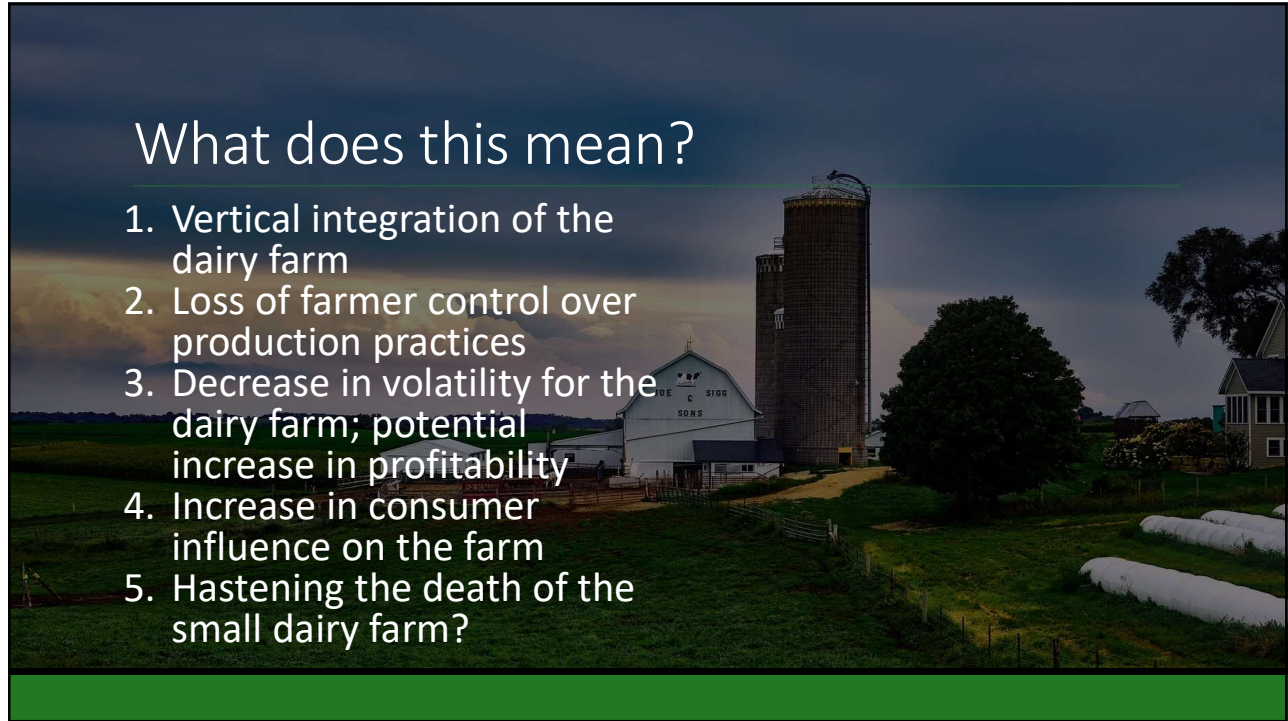
Climate Change Provisions

The dairy shall work at measuring direct and indirect greenhouse gas emissions from farm activities.

The dairy commits to reducing its overall greenhouse gas emissions.

What does this mean?

1. Vertical integration of the dairy farm
2. Loss of farmer control over production practices
3. Decrease in volatility for the dairy farm; potential increase in profitability
4. Increase in consumer influence on the farm
5. Hastening the death of the small dairy farm?



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Conventional



Illustration by United Egg Producers Certified

- Climate-controlled
- Stacked rows of cages
- Continual access to food & water

Cage Free

- Birds roam in indoor areas
- Access to food & water
- Allows natural behavior

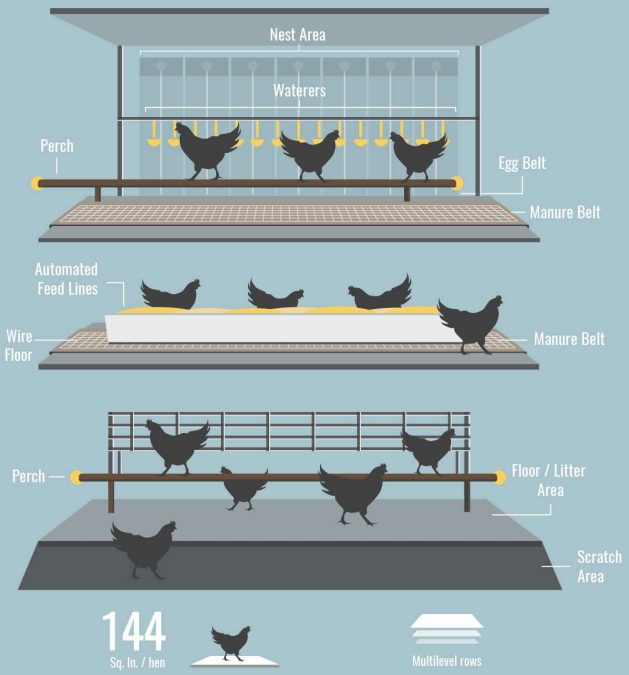
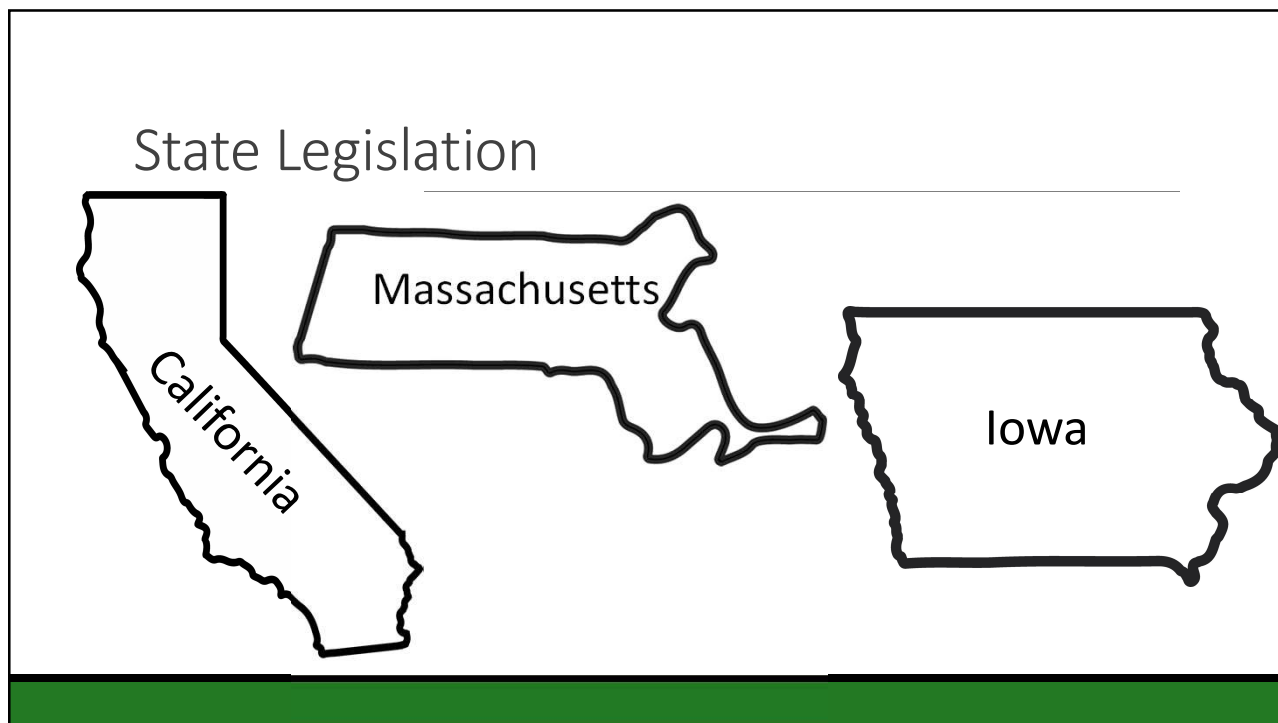
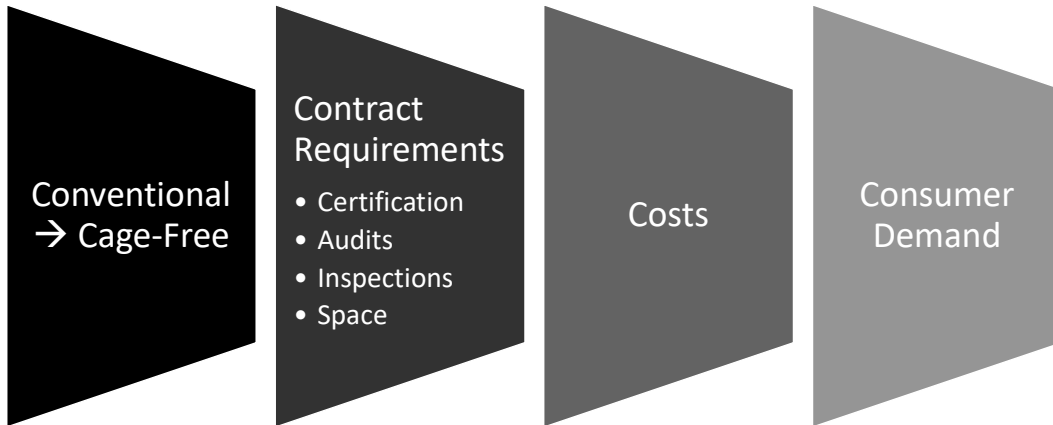


Illustration by United Egg Producers Certified



Changes in Production



USDA National Retail Report - Shell Egg and Egg Products
 Advertised Prices for Shell Eggs & Egg Products to Consumers at Major Retail Supermarket Outlets
 (prices in dollars per carton)

SHELL EGG NATIONAL SUMMARY													
Feature Rate	THIS WEEK				PREVIOUS WEEK				PREVIOUS YEAR				
	35.1% of 29,100 stores				22.9% of 29,100 stores				28.0% of 29,100 stores				
	X LARGE		LARGE		X LARGE		LARGE		X LARGE		LARGE		
	Stores	Avg	Stores	Avg	Stores	Avg	Stores	Avg	Stores	Avg	Stores	Avg	
REGULAR	USDA GRADE AA												
	White 12 pack			1,148	1.25	5	2.29	201	1.25			537	1.03
	White 18 pack			579	2.25	15	2.25	739	2.54			269	2.07
SPECIALTY	USDA GRADE A												
	White 12 pack	61	0.99	1,417	1.01	20	1.82	536	0.92	3	4.59	1,057	1.08
	White 18 pack			76	1.82			138	1.38			184	2.02
SPECIALTY	USDA ORGANIC												
	White 12 pack	11	4.99	15	4.19			33	3.99				
	Brown 12 pack			4,116	3.40	157	4.44	1,284	4.31	170	4.07	2,251	3.96
SPECIALTY	OMEGA-3												
	White 12 pack	45	1.99	2,670	2.13	109	2.98	1,508	2.23	466	2.21	714	1.97
SPECIALTY	CAGE-FREE												
	White 12 pack			202	3.04			9	2.50			235	2.13
SPECIALTY	VEGETARIAN FED												
	White 12 pack	46	2.92	521	2.12	137	4.29	168	2.94	107	3.29	193	2.23
SPECIALTY	VEGETARIAN FED												
	Brown 12 pack			2,405	3.12	137	4.29	1,841	2.63	107	3.29	3,064	2.96

1.19

Source: [1/1: FEAT](#)

Retailer Integration



Benefits

Transparency

Visibility up the chain

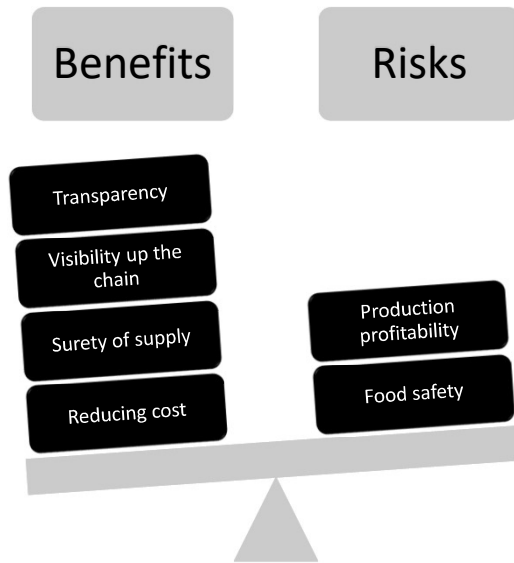
Surety of supply

Reducing cost

Risks

Production profitability

Food safety



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Beef Statistics

913,246 CATTLE OPERATIONS

■ Farms and Ranches ■ Feedlots ■ Milk Cow Operations

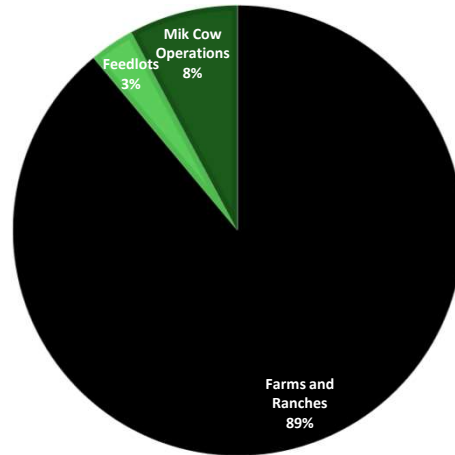
Cattle inventory: 93.5 million

The average herd size = 40 head of cattle

93% of Feedlots are under 1000 head

Most are family-owned

- 81% of farms and ranches
- 80% of feedlots

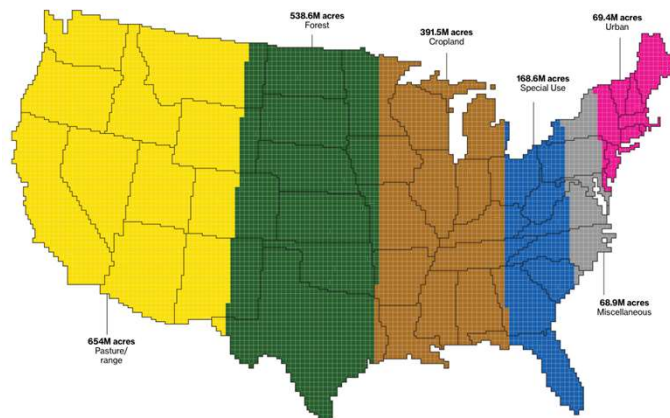


Beef remains fragmented

Broad spectrum of nutritional inputs

Wide range of brands

Raised in diverse climates



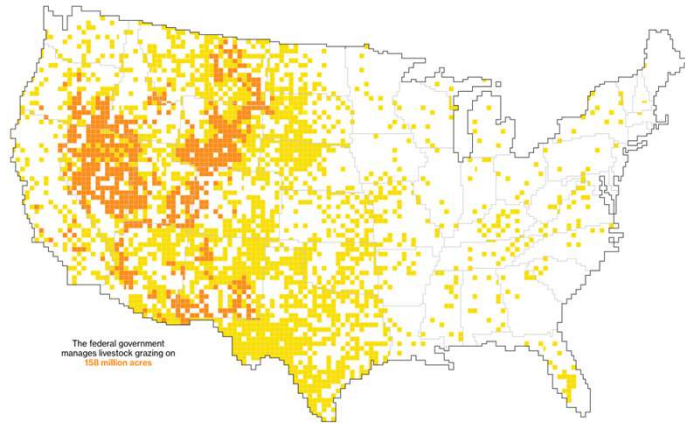
391.5M acres of cropland,
127M is for livestock feed

Beef remains fragmented

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Raised in diverse climates



Vertical Integration

USDA: 90 different certifications

From Certified Angus Beef to Nolan Ryan Tender Aged Beef

Certified Angus Beef:

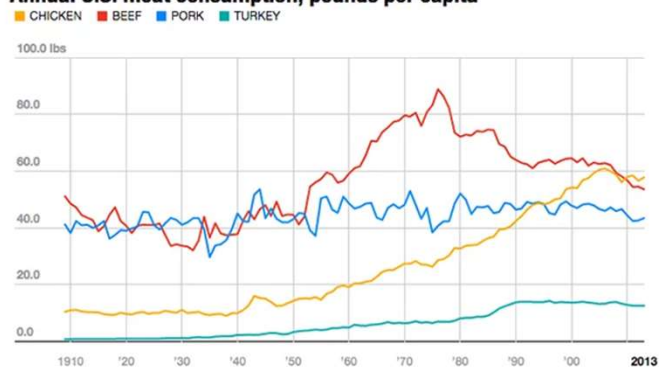
- At least 51% Angus
- Marbling score: Modest or higher
- Ribeye Area 10-16 inches
- Carcass weight >1,050 lbs

Vertical Integration Other Differentiating Beef Labels

- Grass-Fed
- Natural
- Organic
- No Antibiotics Added
- No Hormones Administered



Annual U.S. meat consumption, pounds per capita



Note: The USDA uses meat available in our food supply, minus estimated loss at the retail and consumer levels, as a proxy for consumption.

Source: U.S. Department of Agriculture

FORTUNE



Beef: The “Impossible” Road Ahead



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Gestation Stalls

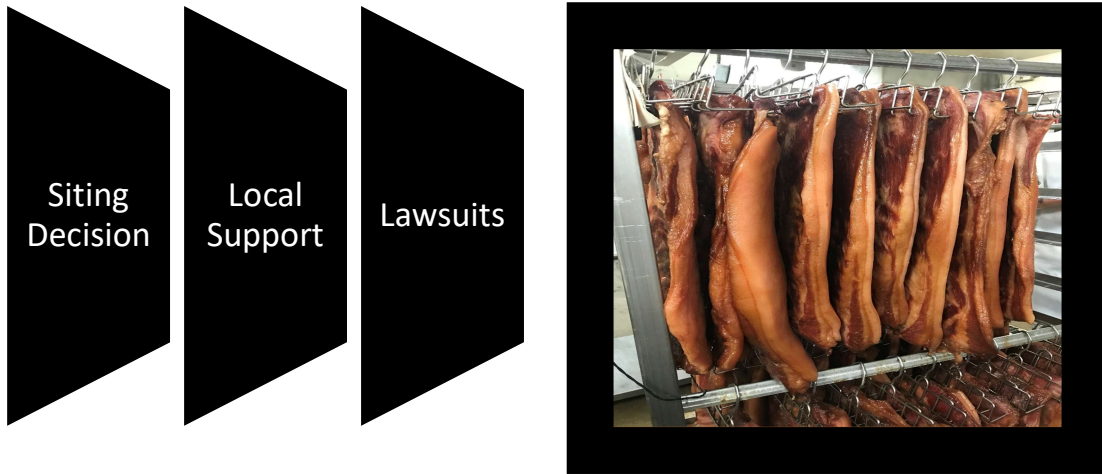
humansociety.org

Food Company Policies on Gestration Crates

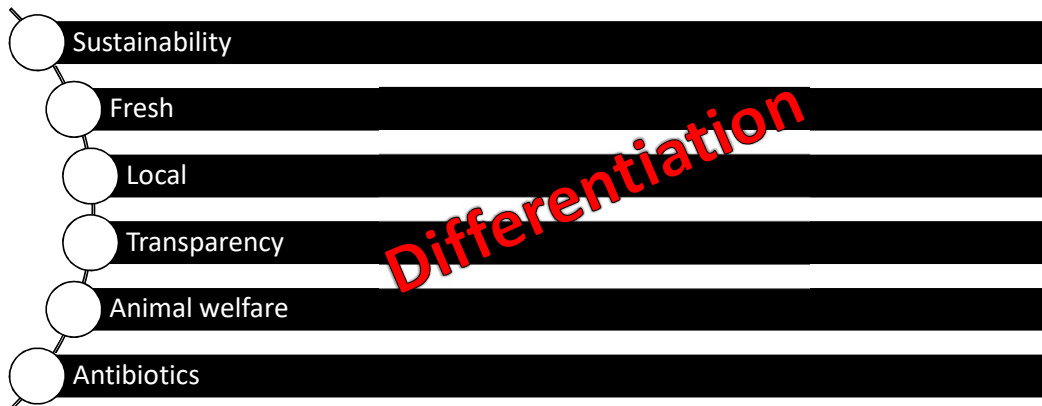
Below is a list of the food companies with policies to eliminate gestation crates, followed by quotes from each company regarding their policy.

Companies with Gestration Crate Elimination Policies				
McDonald's	DineEquity (IHOP & Applebee's)	Chipotle	Campbell Soup	Atlantic Premium
Wendy's	Costco	Sysco	Bon Appétit	Williams Sausage
Burger King	Smithfield Foods	Kraft Foods (Oscar Mayer)	Metz Culinary	Harris Teeter
Subway	Cracker Barrel	Compass Group	Einstein Noah Restaurant Group	Kmart
Denny's	Hormel Foods	Target Corp.	Carnival Cruise Lines	TrustHouse
Dunkin' Brands	Maple Leaf Foods	Jack in the Box/Qdoba	Brinker (Chili's, Romano's, Maggiano's)	Whole Foods
Sonic Drive-in	Kroger	ConAgra Foods	Wienerschnitzel	Heinz
Arby's	Safeway	CKE (Carl's Jr. and Hardee's)	Hillshire Brands (Jimmy Dean, Ballpark)	Bruegger's Bagels
General Mills	Supervalu	The Cheesecake Factory	Royal Caribbean Cruise Lines	Baja Fresh
ARAMARK	Sodexo	Wolfgang Puck	Tim Hortons	

Integrator Influence on Location



Consumer Trends





Copyright National Pork Board

Animal Welfare Standards

WeCare Initiative

- Food Safety
- Animal Care
- Public Health
- Sustainability
- Employee Care (PQA Plus and TQA)
- Community Contributions



Pork takeaways...



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Concluding Thoughts

Consumers are the new regulators

- Climate change
- Non-GMO
- Antibiotic use
- Animal welfare

Lawyer's role

- **Industry Advocate:** make contracts fair, even when you don't have to. E.g. liquidated damages
- **Farmer Advocate:** advocate for fairness, even when you might be ignored





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