

1999 HOUSE AGRICULTURE

HCR 3058

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3058

House Agriculture Committee

Conference Committee

Hearing Date 3-4-99

Tape Number	Side A	Side B	Meter #
Three HCR 3058	x		0.0 to 3.0
Committee Clerk Signature <i>Arlin Hanson</i>			

Minutes:

Summary of Resolution: Directing the Leg Council to study the chemical application industry and develop a method for assessing or determining damage due to misapplication and for resolution of disputes through mediation.

Rep Warner: Feels we could see as much as 1 million acres of roundup ready canola in the state in the near future. This roundup will be sprayed by airplane and there will be an increasing likely hood of drift damage from spray. The big problem as we access the damage is who charge of the mediation between the owner of the crop and the owner of the spray equipment. How to access the damage.

Rep Belter: Rep Warner did an excellent in his presentation of the proposed resolution. No longer just a valley problem with the sugar beets and row crops but now has expanded to the interior of Dakota with the Canola being grown throughout the state.

Page 2

House Agriculture Committee

Bill/Resolution Number Hcr 3058

Hearing Date 3-4-99

Motion by Rep Johnson for a DO PASS & place on consent calendar. second by Rep Mueller

motion prevailed. Unanimous.

1999 SENATE AGRICULTURE

HCR 3058

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3058

Senate Agriculture Committee

Conference Committee

Hearing Date 3/18/99

Tape Number	Side A	Side B	Meter #
1	X		2025-3250
3/25 1	X		4058-4265
Committee Clerk Signature <i>Cristina Jorgensen</i>			

Minutes:

Senator Wanzek called the meeting to order, roll call was taken, all were present.

Senator Wanzek opened the hearing on HCR 3058.

Representative Belter introduced the bill. The bill deals with chemical application.

Gary Knutson from the ND Ag. Association spoke neutrally. Concerned as to what this resolution would direct be done.

Gary Ness, ND Aeronautics Commission Director spoke. Handouts are enclosed. Bill was passed out last session putting together a committee to study the drift.

Senator Wanzek: Any ideas how this is to be reworded?

Gary Ness: I would have to play with it.

Senator Wanzek: I would just be a study.

Gary Ness: They would be willing to work into that.

Page 2

Senate Agriculture Committee

Bill/Resolution Number Hcr 3058

Hearing Date 3/18/99

Senator Wanzek closed the hearing on HCR 3058.

MARCH 25, 1999

Senator Klein made the motion for a Do Pass.

Senator Urlacher seconded.

Discussion was held.

ROLL CALL: 7 Yes, 0 No

CARRIER: Senator Kroeplin

X

Date: 3/25  
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HCR 3058

Senate Agriculture Committee

Subcommittee on \_\_\_\_\_  
or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass Consent

Motion Made By Klein Seconded By Urlacher

Senators	Yes	No	Senators	Yes	No
Senator Wanzek	✓				
Senator Klein	✓				
Senator Sand	✓				
Senator Urlacher	✓				
Senator Kinnoin	✓				
Senator Kroepelin	✓				
Senator Mathern	✓				

Total (Yes) 7 No 0

Absent \_\_\_\_\_

Floor Assignment Senator Kroepelin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
March 25, 1999 12:06 p.m.

Module No: SR-54-5600  
Carrier: Kroeplin  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HCR 3058: Agriculture Committee (Sen. Wanzek, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3058 was placed on the Tenth order on the calendar.**



**1999 TESTIMONY**

**HCR 3058**

# Applicator Drift Insurance Committee

c/o NDAC, P.O. Box 5020, Bismarck, ND 58502, T: (701) 328-9650, F: (701) 328-9656

## Steering Committee Members:

Dina Butcher, Chair  
Cindy Schreiber-Beck  
Bill Hejl  
Ivan Williams  
Roger Johnson  
Jeff Lazur  
Bob Graveline  
Steve Spilde  
Paul Coppen  
Larry Maslowski  
Gary R. Ness

Dina Butcher, Director  
Office of Intergovernmental Assistance  
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600 East Boulevard - 14th Floor  
Bismarck, ND 58505-0170  
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Cindy Schreiber-Beck  
NDAAA  
Box 843  
Wahpeton, ND 58075  
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Bill Hejl  
Sugar Beet Growers  
15560 28th Street SE  
Amenia, ND 58204  
T: (701) 347-4922

Ivan Williams  
NDAA  
4201 34th Avenue NW  
Mandan, ND 58554  
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Roger Johnson, Commissioner  
Department of Agriculture  
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Bismarck, ND 58505  
T: (701) 328-4754  
F: (701) 328-4567

Jeff Lazur  
Potato Growers  
Reynolds, ND 58275  
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F: (701) 847-2128  
C: (701) 739-1481

Bob Graveline  
ND Safety Council  
111 N. 6th Street  
Bismarck, ND 58501  
T: (701) 223-6372  
F: (701) 223-0087

Steve Spilde  
ND Insurance Reserve Fund  
400 East Broadway  
Bismarck, ND 58501  
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F: (701) 224-0609

Larry Maslowski  
N.D. Insurance Department  
600 East Boulevard, 5th Floor  
Bismarck, ND 58505-0320  
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F: (701) 328-4880

Paul Coppen, Mgr.  
Grain Dealers Association  
Hunter Grain Company  
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Hunter, ND 58408  
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F: (701) 874-2395

Gary R. Ness, Director  
North Dakota Aeronautics Commission  
P.O. Box 5020  
Bismarck, ND 58502  
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### FINAL REPORT AND RECOMMENDATIONS

This Committee was charged by the five member Aeronautics Commission to investigate a possible avenue towards this premise: "*To provide chemical application insurance at a reasonable cost to all commercial applicators across the state*".

After several meetings, contact with insurance companies and other interested parties, the following conclusions and recommendations are put forth.

#### **Conclusions:**

1. Insurance coverage is available for all perils for both commercial ground and aerial applicators.
2. Insurance premiums for aerial applicators are expensive, however, this is relative to size of operation and geographic location, larger operations consider this just a cost of doing business while smaller operators consider the premiums to be exorbitant.
3. The commercial applicator industry should include in its marketing and promotions reference to proper insurance protections for their grower clients.
4. Grower groups should increase efforts to the education of their members of the potential risks involved when using an applicator who does not carry acceptable insurance for their geographic and crop mix area.
5. The ADIC subcommittee was unable to come up with a viable alternative insuring mechanisms to replace the existing market mechanisms.

#### **Recommendations:**

1. The administration of the "*Financial Responsibility Law*" should be transferred to the Department of Agriculture. NDSU has a mission for research and education. The regulatory administration is best fitted to the Department of Agriculture's pesticide program.

*Final Report and Recommendations*  
*Page 2*

2. Strengthen the educational process of the certification program concerning drift and potential damage of all chemicals in today's diversified agriculture. This is to be accomplished with NDSU's Extension Service at the state and local level.

Cooperative efforts from the Grain Dealer's Association, North Dakota Agricultural Aviation Association and the North Dakota Agricultural Coalition will be instrumental in this endeavor for a more comprehensive educational effort.

3. Investigate and clarify the definition regarding a requirement for a business entity vs. individual certification.
4. Chemical certification requirements be expanded to include "*all agricultural chemical products*" with an exemption for "*household pesticides*".

This concludes the business of this committee. This paper will be shared with legislators, businesses and regulators that have an interest in the chemical application industry.

## APPLICATOR DRIFT INSURANCE COMMITTEE

(ADIC)

### SUB COMMITTEE REPORT:

The committee was created on February 12, 1998, by the Aeronautics Commission.

The first meeting was held March 4, 1998 in Bismarck.

It has been the charge of the steering committee to explore avenues *"to provide affordable chemical application insurance to all commercial applicators across the state"*. The effort was guided by the "Grower Applicator Road Map Paper", dated 02/06/97.

A consensus was reached that the direction outlined within the "Road Map" was acceptable. The suggestion to include the Insurance Department and Grain Dealers Association to the steering committee was accepted. Other groups and individuals were discussed and identified for invite and the appropriate time within the process.

It was discussed that all commercial applicators, ground and air, should be dealt within the same context. The cost differential of aerial vs ground was discussed and noted by the "Road Map" as the primary focus of the steering committee. Assignments were given for information gathering and a Jamestown meeting was suggested.

Bill Hejl and Gary Ness had the opportunity to discuss the process and advance information to Farmers Union Insurance and Nodak Insurance Companies.

On April 10, 1998, members of the committee consisting of Dina Butcher, Chair, Cindy Schreiber-Beck, Bill Hejl, Larry Maslowski, Bob Graveline, Barry Coleman - Ag Department and Gary Ness, met with Odean Olson of Farmers Union and John Czerwonke of Nodak Insurance in Jamestown. This meeting proved to be unsuccessful relative to the outcomes outlined within the "Road Map". Both companies felt that they could not participate any differently than they do today. Several sections of the "Road Map" were discussed and removed.

Bob Graveline, Larry Maslowski and Gary Ness, were appointed as a sub-committee to investigate; Risk Retention Pools, Purchasing Groups, Self Insurance Companies., etc.

The outcome is; the applicators (ground and air) do not create a large enough pool of financial resources to be viable. Several existing national pools, groups and companies of like nature were contacted with no positive response of interest.

It is the opinion of this sub-committee that the insurance industry has priced their product in a way that they feel appropriate. Risk assessment studies, increased deductibles and business vs aircraft premium out-lined in the "Road Map" do not interest them.

- ◆ Insurance coverage is available for all perils for both commercial ground and aerial applicators.
- ◆ The insurance premiums of aerial applicators are expensive, however, this is relative to the size of the operation (larger operations consider this just a cost of doing business while smaller operators consider the premium to be exorbitant).
- ◆ The commercial applicator industry should include in its marketing and promotions reference to proper insurance protection for their grower clients.
- ◆ Grower groups should increase efforts to education of their members of the potential risks involved when using an applicator who does not carry acceptable insurance for their geographic and crop mix area.
- ◆ The ADIC subcommittee was unable to come up with a viable alternative insuring mechanism to replace the existing market mechanisms.

# GROWER - APPLICATOR ROAD MAP PAPER

BY Gary R. Ness

February 6, 1997

ORIGINAL

## PROBLEM

Sugar Beet Growers, Potato Growers, Sunflower Council, and other ag groups want insurance for chemical and extended drift coverage for applicators especially aerials.

## BARRIERS

(1) Aerial applicators, in general, are opposed due to cost of such insurance.

\$3,000 - \$4,200 each aircraft being used by aerial operator.

(2) Aircraft insurance industry has tunnel vision on this issue, becoming harder to find. Three companies, now, will write the coverage. Fact: it does not matter east or west, north or south, the premium is the same for each aircraft.

## OUTCOMES WANTED

To provide a chemical application insurance at a reasonable cost to aerial applicators or all commercial applicators across the state.

That the ag groups agree that they will share in the additional cost of the "mandatory chemical/drift extended insurance" in some manner whether directly or indirectly.



COLLECTION OF INFORMATIONAL DATA:

1. By County, what is the planted acreages by crop type? (NDSU has this data).
2. By County, what has been the insurance claims paid in North Dakota over the last 7 years, 1990 - 1996?
  - A. # acres involved
  - B. Crop type
  - C. \$'s paid by crop type per acre
  - D. Ground #'s - air #'s (Insurance adjusters & companies have this data)
3. By County, what has been the claim of loss total numbers filed with the Agricultural Department in the same time period '90 - '96.
  - A. Acres involved
  - B. Crop type
  - C. What has been the outcome of the claims.
    1. Found for claimant
    2. Found for applicator
    3. Other outcomes
    4. Ground numbers & dollars - Air numbers & dollars
4. By County, determine the actual aerial risk assessment for application by county using data delivered by NDSU - insurance industry and state records.

Hail insurance premiums are developed similar to this and underwritten by township. So we are not reinventing the wheel. It is not rocket science.

**PREMIUMS**

There is a significant difference in exposures by county by crop type and the premium to the operator should reflect that difference. If the top premium valley coverage of \$4,200 for chemical/extended coverage is the highest risk premium, then the Adams County, Golden Valley or Foster - Wells County operator should have a significantly lower premium related to risk of crop growers in the counties of operation. Also, the insurance coverage should be written to the operating company or entity not to the aircraft flown. It is the operator that makes errors not the aircraft. Suggested: \$100,000 or \$250,000 coverage deductibles available at \$5,000 or \$10,000 for each policy and rated to county of operation.

**SOLUTION:**

After the collection of facts are done and a risk assessment, by county, has been accomplished, the two major insurance companies in the state with the greatest agricultural interest and base, Farmers Union and Nodak, will be contacted as the prime movers to provide a product for the applicators with the support of the grower groups. If the Union and Nodak ask the existing

aircraft insurance industry, they will get the same answers today as we have in the past.

If they want to play, may I be so bold as to suggest an applicator/grower self insurance pool. Managed by the North Dakota Insurance Reserve Fund, the North Dakota insurance companies can write policies on the pool underwritten by NDIRF.

FUNDING? I'm being bold again.

Surplus funds from the Ag Department Project Safe Send. \$300,000. \$300,000 from the Aeronautics Commission Special Fund, seed money of \$600,000 from the two agencies that receive their funding from constituents, taxpayers - users.

Now for the tread on sacred ground approach.

1. From the growers groups  $x$  mills, to be determined per acre, bushel, ton or pound from the existing check off programs to be deposited yearly in the NDIRF Applicator/Grower Self Insurance Pool. (AGSIP) This is the indirect method of sharing the additional costs of this program.
2. A special dedicated tax, to be determined, assessed per acre and collected at the time of application. The tax will be prorated as to the crop risk assessment. Wheat  $x$ ,<sup>(1)</sup> barley  $x$ ,<sup>(2)</sup> sugar beets  $x$ ,<sup>(3)</sup> potato  $x$ ,<sup>(4)</sup> etc. This money to be delivered to the Tax Department and deposited in the NDIRF

AGSIP. This is the direct method of sharing the additional costs.

A. Will cover all the acres and growers treated and will assess only those that use commercial applicators. (But does it have to be just an aerial pool?).

B. Will cover those that use the service and the actual acres will be assessed.

This may be a equalization method of assessing the cost. It is more of a user fee.

Final part of the equation is the applicator premium. Prorated to the state wide risk assessment, charged to business not to the aircraft. These dollars have not been determined nor do I know what is the amount needed to start the pool or what other funding is available for start up.

The insurance companies can review the Ag Dept. Regulation and the Aeronautics Commission Rules & Regulations pertaining to the ground applicators and aerals.

The Aeronautics Commission's rule regarding a two year apprenticeship before becoming a chief pilot or operator is more restrictive than any federal regulation regarding the aerial applicator. The program can be put together with the least of pain if applicators/growers can work together state wide to get this important protection for all accomplished.

A TRANSIENT THOUGHT:

In the investigation of claims, the insurance companies should be required to retain an independent crop consulting firm to inspect all claims first, to provide the best protection to the fund and the applicator. There should be a method of an administrative hearing and civil penalties assessed for frivolous or false claims filed. Those funds to be deposited in the NDIRF pool.

We all know in the aerial application business that once an applicator has taken the good business move to carry chemical and/or extended drift insurance, his incidents of claims increase immediately. That has got to stop. That is the number one reason that the applicators fight so hard to keep mandatory insurance off the table. We cannot create an economic barrier that might destroy a number of today's operators. We must create an atmosphere of partnership and trust to this industry - AGRICULTURE.

What we can do today in agreement with the structure of SB 2315 as it is today and enter into the Hearing Room on the \_\_\_\_\_ we then embark on making this idea work.

I suggest a committee of all the groups and representative from the insurance world and government. This can be a program that we solve the problems for a great need. I don't know if my collection of several conversations I have had in the last few weeks and it may not see the light of day, but it can start the debate we as an agricultural industry has need for years.

PROBLEM

Sugar Beet Growers, Potato Growers, Sunflower Council, and other ag groups want insurance for chemical and extended drift coverage for applicators especially aerials.

BARRIERS

- (1) Aerial applicators, in general, are opposed due to cost of such insurance.  
  
\$3,000 - \$4,200 each aircraft being used by aerial operator.
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OUTCOMES WANTED

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REMOVED 4-10-98

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CHANGED - Strengthened  
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6-1-98

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6

**Testimony of Roger Johnson  
Commissioner of Agriculture  
Senate Concurrent Resolution 4018  
March 11, 1999  
House Agriculture Committee  
Peace Garden**

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Chairman Nicholas and members of the House Agriculture Committee, my name is Roger Johnson and I am the Commissioner of Agriculture.

I am here today in support of SCR 4018, which calls on Congress to address concentration and consolidation in the meat and grain industries so farmers and ranchers can compete fairly and profitably.

The planned merger between Cargill and Continental Grain Company is only one of the latest of many mergers and consolidations that have been occurring in many sectors, including the broiler industry, meatpackers, banks, railroads and seed companies, just to name a few. In fact, economic concentration in eight different agricultural marketing and processing sectors continues to grow, with over 50% of the market controlled by the top four firms in each industry (Attachment 1).

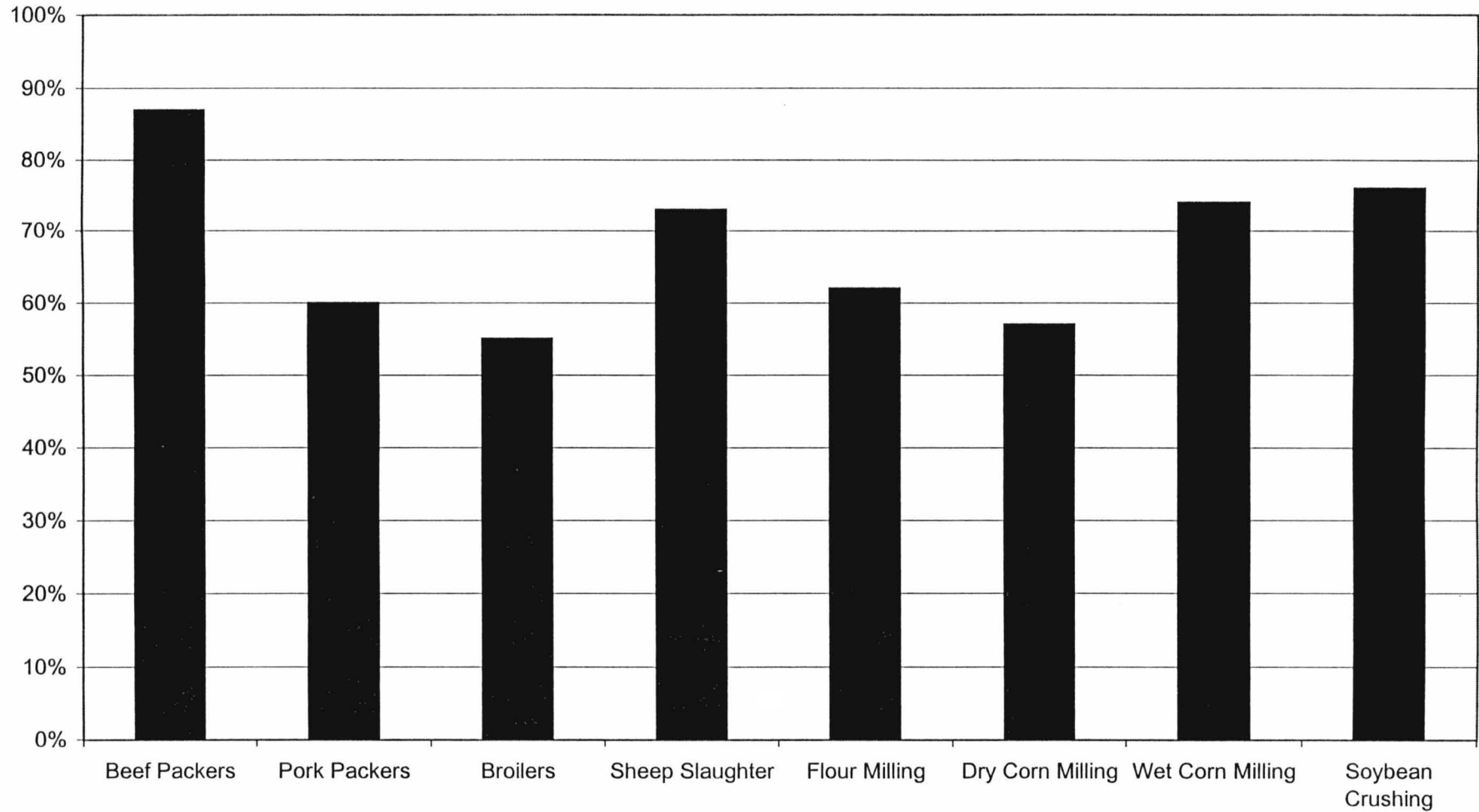
The effects of economic concentration are already adversely affecting farmers, ranchers, and consumers in North Dakota through market limitations, a lack of competition, and lower prices. For these reasons, I support National Farmers Union's recent call for a moratorium on all pending and proposed mergers and acquisitions of agricultural interests of significant size until a net farm income study is completed and publicly reviewed. I believe that we must act now to address the problems caused by economic concentration in all agricultural sectors.

Relevant federal agencies and departments, including the Justice Department, Attorney General, Department of Commerce, Federal Trade Commission, and USDA, must also be encouraged to aggressively and proactively deal with the issues relating to and created by economic concentration.

Chairman Nicholas and committee members, I urge you to support SCR 4018. I will be happy to answer any questions you may have.

# Concentration of Agricultural Markets

(Ratio of top four firms relative to all firms)



ATTACHMENT 1