TESTIMONY OF DENNIS JONES

NATIONAL FARMERS UNION

BEFORE THE

U.S. SENATE COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

TO REVIEW THE STATE OF LIVESTOCK IN AMERICA

TUESDAY, JUNE 28, 2011

WASHINGTON, D.C.

SUBMITTED TESTIMONY OF MR. DENNIS JONES

A MEMBER OF NATIONAL FARMERS UNION

BEFORE THE SENATE COMMITTEE ON AGRICULTURE, NUTRITION & FORESTRY

CONCERNING: THE STATE OF LIVESTOCK IN AMERICA

JUNE 28, 2011

Introduction

Chairwoman Stabenow, Ranking Member Roberts and members of the Senate Committee on Agriculture, Nutrition and Forestry, thank you for inviting me to testify today about the state of the livestock industry. My name is Dennis Jones, and I am from Bath, S.D. I am among the fourth generation to grow up and work on my family farm, Jones Farms, and my two sons are also involved in the operation. I am a member of South Dakota Farmers Union and have been active on the boards of directors of several organizations, including the National Corn Growers Association, CoBank and the South Dakota Wheat Growers cooperative.

My farm is part of the James Valley Pork Cooperative, and along with seven other member farms, our cooperative finishes 40,000 hogs annually. The cooperative, which was established in the early 1990s, contracts with Smithfield Foods for the processing of our finished hogs. By being a part of a larger group of farmers, I had hoped to able to attain a degree of power in numbers to reach a favorable agreement with a processor and a more competitive price for my cooperative's pigs.

An Overview of the Livestock Industry

This year has already been a challenging time for livestock producers and the future appears that it will be even more difficult. Tight corn supplies and significant reductions to planted acres are driving high commodity prices and an increasing cost of production.[1] Corn futures prices are likely to stay near $7 per bushel and chances are good that pork and competing meat supplies will increase in the next year, which will push prices lower.[2] High energy costs are also cutting into already slim margins for livestock producers, as oil is trading near $90 per barrel on the New York Mercantile Exchange and the national gasoline price average is $3.61 per gallon.[3] High input costs and the threat of declining prices for meat are resulting trying in times for livestock producers.

Processors have not shared the difficulties faced by producers. Last week, Smithfield Foods Inc., announced record profits for Fiscal Year 2011. The company's pork segment produced a record fourth quarter operating profit with an earnings increase of 77 percent and fresh pork operating

---

[1] *World Agricultural Supply and Demand Estimates*. United States Department of Agriculture & World Agricultural Outlook Board. June 9, 2011.

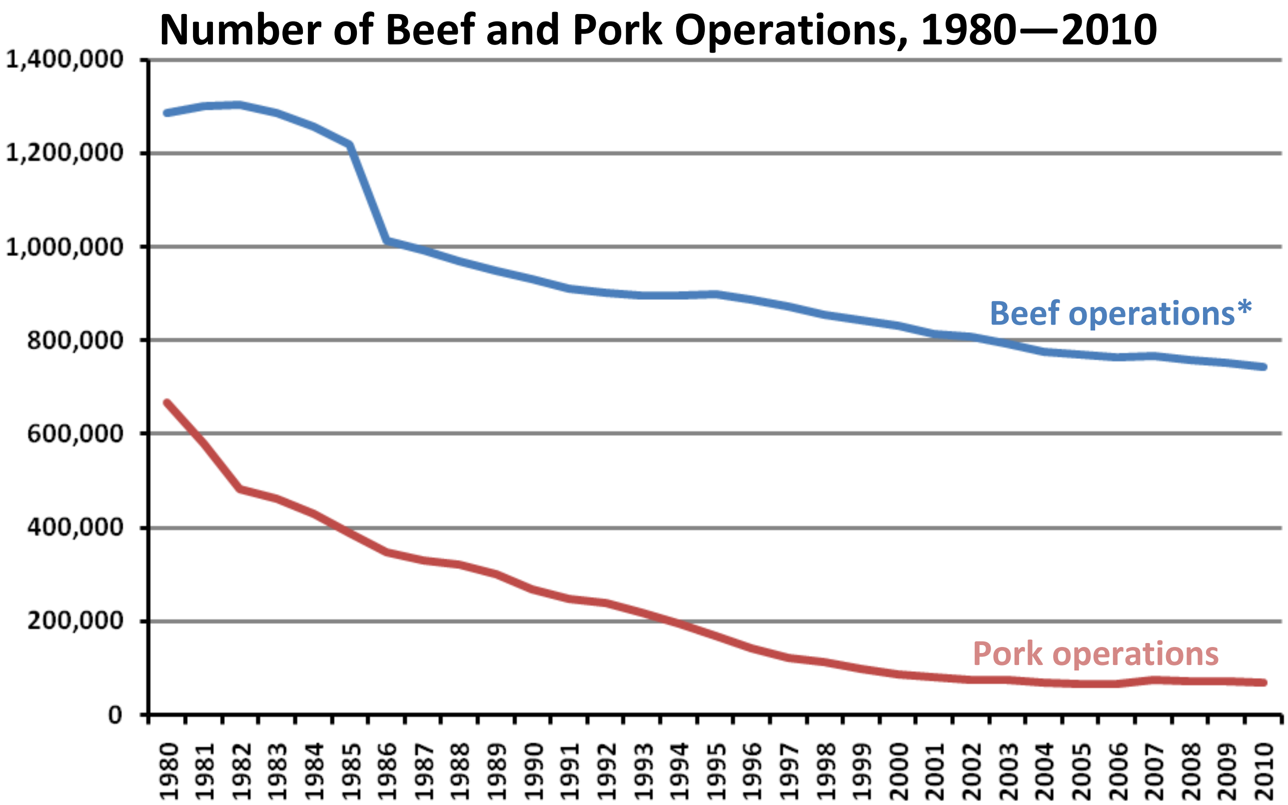
[2] Johnston, Greg. "Pork Producers brace for flood of red ink." Agriculture.com. Published June 10, 2011. Retrieved June 21, 2011.

[3] Scherer, Ron. "U.S. to tap Strategic Petroleum Reserve to drive gas prices down." Christian Science Monitor online. Published June 23, 2011.

profits jumped by $106 million.[4] The disparity between the economic plight of farmers and ranchers versus that of packers and processors is the biggest issue in the livestock industry. My testimony will examine the current status of these inequities and what can be done to ensure fairness in the livestock marketplace.

Concentration in the Livestock Industry

Figure 1:



Figures courtesy of the USDA Economic Research Service.

**Beef operation numbers were counted differently between 1980 and 1985. 1980 – 1985 figures on this graph were found by subtracting the ERS-reported number of dairy farms from "operations with cattle and calves."*

The livestock marketplace experienced a marked decline in the number of family farms and ranches over the last 30 years. In 1980, there were approximately 1,285,570 beef cattle operations across the country but as of 2010, only 742,000 remained. This is a decline of approximately 42 percent. In swine, the reduction has been even more dramatic. In 1980, there were 666,550 hog farms but in 2010 there were only about 67,100.[5] Between the losses of pork and beef operations, rural America has suffered through the closure of about 1.1 million

[4] "Smithfield Foods Reports Record Fourth Quarter and Full Year Results." Press Release. Smithfield Foods, Inc. PPublished June 16, 2011. Accessed online at: http://investors.smithfieldfoods.com/releasedetail.cfm?ReleaseID=585415

[5] USDA National Agricultural Statistics Service. 2010 Figures

livestock farms in thirty years. As more and more farms and ranches have closed, concentration among livestock sellers has become an increasingly important issue, not only for producers, but also for rural communities and consumers.

As the number of livestock producers has shrunk, there are fewer large buyers of livestock today than any other time in recent history. The top four beef packers have control over 81 percent of the sales of cattle for slaughter in the U.S., and the top four swine processors control about 65 percent of hog sales.[6] Fewer buyers result in less competition and greater opportunity for antitrust violations. Not coincidentally, the farmers' and ranchers' share of the consumer retail dollar for purchases of meat is shrinking. In 1980, beef producers received, on average, 62 percent of the retail dollar. That portion has fallen to about 42 percent today. Over the same time frame, hog producers saw their share shrink from 50 percent of the retail dollar to about 24 percent.[7] These statistics make it overwhelmingly clear that concentration is on the rise in the livestock marketplace and competition is declining.

During the last thirty years, there have been new processing standards placed on the meat industry and greater spending on marketing, but it should be known that costs between the slaughterhouse and the supermarket have come at the cost of the producers' share of the food retail dollar. These statistics are an indication of the scant market power of farmers and ranchers in today's livestock sector.

Enforcement of the Packers and Stockyards Act

Many Farmers Union members are engaged in livestock production. Our members felt the ill-effects of a consolidated marketplace that too often fails to provide farmers, ranchers and growers with the true value of their production. The proposed GIPSA rule, issued in accordance with Title XI of the 2008 Farm Bill and the authorities afforded the U. S. Department of Agriculture (USDA) under the Packers and Stockyards Act, is an important step forward for the rights of agricultural producers. The proposed rule, if implemented and enforced, would restore many of the common sense protections that were provided under the initial intent and interpretation of the PSA. As a result, NFU filed comments that were, in general, very supportive of the proposed rule. The comments also included some recommendations and questions for further clarification when promulgating the final rule.

NFU has been seeking an effective balance between regulators and other agricultural interests so that livestock and poultry producers may be treated fairly in the marketplace. The policy language agreed to by NFU members supports this. For example, in 1956, NFU adopted policy that asked federal regulators to start "a continuous Congressional investigation into the widening spread between prices received by farmers and those paid by consumers. If necessary, regulatory measures should be instituted."[8] In 1982, NFU policy asked "Congress amend the Packers and Stockyards Act to strengthen its enforcement provisions, with effective penalties for violations."[9] And in 1997, NFU's policy called for regulatory agencies with "jurisdiction over the PSA" to "vigorously prosecute and break up existing monopolistic entities, fully investigate all proposed mergers in the livestock industry, and prevent further monopolistic concentration with the use of

[6] Heffernan, William and Hendrickson, Mary. "Concentration of Agricultural Markets" University of Missouri. April 2007.
[7] USDA Economic Research Service. "Meat Price Spreads," 2010 Figures.
[8] "1956 Policy of the National Farmers Union." Adopted at Denver, Colo.
[9] "1982 Policy of the National Farmers Union." Adopted at Washington, D.C.

effective penalties."[10] Adequate oversight of the livestock marketplace, as provided in the proposed rule, has been sought at various times by farmers and ranchers throughout the 90-year life of the PSA.

Under the current administration, USDA has been proactive in ensuring that farmers, ranchers and growers are protected from illegal or deceptive anti-competitive business practices. In 2010, U.S. Secretary of Agriculture Tom Vilsack proposed an increased budget for GIPSA "to improve enforcement of unfair and deceptive practices in the marketplace."[11] Antitrust violations in agriculture have been at the forefront of the current administration's priorities for other departments as well. U.S. Attorney General Eric Holder made it clear in March 2010 that "an historic era of enforcement" is upon competition regulations in agriculture.[12] The joint workshops held by the U.S. Department of Justice (DOJ) and USDA demonstrated the level of commitment to these issues and explored competition issues further. The proposed GIPSA rule would provide stronger protections for producers and directly addresses the concerns that NFU members have raised for many years.

Since its enactment nearly 90 years ago, the PSA has faced tremendous opposition from powerful packing and processing interests. Despite USDA's contention that smaller producers – the individuals for whom the PSA was designed to protect – should be safeguarded from anti-competitive behavior, judicial rulings have hampered enforcement of the PSA in the same manner as other antitrust laws. Jury decisions against packers and integrators for violations of the PSA have been overturned by circuit courts due to ambiguity in the act's language. In *Schumacher v. Cargill Meat Solutions*, a jury found that packers knowingly used manipulated prices for boxed beef sales to negotiate favorable prices from cattle sellers. However, the Eighth Circuit Court of Appeals remanded to the lower court, saying that the district court neglected to instruct the jury that it was necessary to prove that "defendants acted intentionally" to violate the PSA and that the plaintiffs did not produce any evidence to that end.[13] The Eighth Circuit contended that the PSA's use of the words "manipulate" and "control … suggested that some culpability, such as intent, is required to violate the PSA."[14] However, the court did not offer an opinion on the damaging effects the boxed beef prices had on cattle sellers. To prevent future reversals of jury decisions, the proposed rule clarifies the intent of the PSA and affirms the authority granted to GIPSA to address unfair business practices. NFU strongly supports this provision.

The proposed rule will help to ensure fairness, transparency, protection and bargaining rights for producers, and should help to restore at least a degree of competition for agriculture markets. A lack of market power is but one of many reasons for a shrinking population of farmers and ranchers, but stronger enforcement and greater clarification of the PSA should help to slow and hopefully reverse that trend.

Several years ago, lawmakers recognized the need for the PSA to be fully enforced and better explained in regulations. In January 2006, a report by the U. S. Government Accountability

[10] "1997 Policy of the National Farmers Union." Adopted at Nashville, Tenn.
[11] Remarks by Secretary Vilsack, August 27, 2010 – USDA/DOJ Workshop; Fort Collins, Colo.
[12] Remarks by Attorney General Holder, March 11, 2010 – USDA/DOJ Workshop; Ankeny, Iowa.
[13] *Annual Review of Antitrust Law Developments 2008*. American Bar Association, 2009. Schumacher v. Cargill Meat Solutions Corp., 515 F. 3d 867, 872 (8th Cir. 2008)
[14] U.S. Court of Appeals, Eight Circuit. *Schumacher v. Cargill Meat Solutions Corp.* Nos. 07-1586, 07-1588, 07-1590. January 29, 2008. *Id.*

Office (GAO) revealed GIPSA failed to enforce laws created to combat increased consolidation and anticompetitive practices. The audit report revealed GIPSA had no policy to define investigations and was not maintaining accurate records in a tracking system. The agency's administration had not implemented previous recommendations from the Office of the Inspector General or GAO.[15] Inadequate oversight of GIPSA resulted in ineffective enforcement of the PSA for years. As a result, NFU, along with more than 200 other organizations from across the country, urged Congress to include a livestock title in the farm bill to improve market fairness and competition for producers.[16] Because of the challenges livestock producers were facing, Congress recognized the need for a separate section in the omnibus farm legislation to address competition problems in the livestock sector. For the first time ever, the 2008 Farm, Conservation and Energy Bill included a livestock title so that the integrity of the livestock and poultry market might be better restored. The language in the 2008 Farm Bill included specific directives for USDA and GIPSA to, among other provisions, "promulgate regulations with respect to the PSA to establish criteria that the Secretary will consider in determining … whether an undue or unreasonable preference or advantage occurred in violation of the act."[17] Through the livestock title of the 2008 Farm Bill, Congress revised the PSA so as to clarify language that had previously prevented effective producer protections.

The 2008 Farm Bill required USDA to conduct an annual review of investigations of potential violations of the PSA to improve oversight and enforcement. Additionally, the farm bill called for USDA to provide a yearly compliance report detailing the duration and methods of the investigations. Studies of alleged PSA violations were required to be tracked and documented throughout the enforcement process and were to include a review of actions taken by GIPSA, DOJ and USDA Office of General Counsel. Furthermore, the 2008 Farm Bill included provisions to reform contracts between producers and packers. Contract reforms, such as optional arbitration, which offer producers the opportunity to decline mandatory arbitration clauses in a livestock or poultry contract, were introduced. The bill clearly delineated the right of swine and poultry growers to cancel a contract within three days of signing a document with a processor or integrator. This requirement gives producers the same contracting rights that are commonly afforded under consumer protection laws.

Many of the changes in the proposed rule have come as the result of the directives of the 2008 Farm Bill, but some aspects go beyond what was mandated in the omnibus farm legislation. Under the PSA, GIPSA is granted the authority to write rules to enforce the law without additional approval from Congress. The proposed rule currently pending combines the required changes from the 2008 Farm Bill with additional modifications that are allowable under the PSA. The changes not mandated by the farm bill are within the authority of the agency and are well within the scope of the PSA.

Using its existing authorities under the Packers and Stockyards Act, USDA has written proposed regulations, as part of the proposed GIPSA rule, to prohibit retaliation by packers, swine contractors or poultry companies against farmers for speaking out in opposition to the status quo in the livestock industry. Reports of this nature have surfaced when producers raised concerns about the problems within the livestock industry, joining with other farmers to voice their

[15] USDA Office of Inspector General, *GIPSA's Management and Oversight of the Packers and Stockyards Programs*, Report No. 30601-01-Hy (Washington, D.C.: Jan. 10, 2006)
[16] USDA GIPSA, Release No. 0326.10. June 18, 2010.
[17] Food, Conservation and Energy Act of 2008. Title XI, Section 11.0006.

concerns to seek improvements, or raising these concerns with federal officials. Testimony during workshops held throughout 2010 by the DOJ and USDA showed that these abuses have been happening and are continuing, and independent producers will be hard-pressed to succeed in the absence of protection from unfair, anti-competitive practices.

Justification of Premiums

The proposed rule contains provisions that will enable regulators to identify unfair trade practices, as defined by the PSA. The GIPSA rule expressly allows premiums to be paid to livestock producers who produce a premium product, a fact that stands in stark contrast to the claims of many who oppose the rule. The rule requires packers or swine contractors to keep records to detail why certain pricing and contract terms are provided to certain producers. As is described in Section 201.94 (B) of the proposed GIPSA rule, "A packer, swine contractor or live poultry dealer must maintain written records that provide justification for differential pricing or any deviation from standard price or contract terms offered to poultry growers, swine production contract growers or livestock producers." NFU strongly supports this measure with the understanding that regulating undue preference among producers by processors may not be best solved by a one-size-fits-all approach. The differing needs of each sector ought to be considered and particular attention must be paid to situations of unequal market power.

Justification of producer treatment is not an onerous burden to place on packers and processors. Any enterprise that is operating honestly should be maintaining records of why and how business decisions are made. There is a need for explanations of the reasoning behind the treatment that packers, swine contractors or live poultry dealers afford to producers. Unfounded and arbitrary punishments meted out to farmers, ranchers and growers have reportedly resulted from simple expressions of free speech, including sharing contract terms with other producers or speaking out about market abuses by packers. The proposed rule clearly defines and prohibits volume-based price discrimination. Rewarding high-volume producers – or punishing lower-volume producers – drives smaller-scale producers out of business in the effort to concentrate production. Packers and processors should not be able to wield this amount of power over producers, and the proposed rule addresses this concern by prohibiting such action unless it is based on legitimate differences such as quality or timeliness.

The method for harvesting this information does not need to be overly intrusive. The rule would allow producers, processors and retailers to maintain records in a manner of their choosing as long as the information is available and can be transferred to a standardized format in the event of an audit by USDA. Because the data that would be collected is not anything beyond what any other business would track, this should not be considered a threat to viability. These are merely normal business records.

USDA has asserted that the proposed rule will not preclude packers and processors from using marketing and production contracts that provide premiums to producers.[18] Even if the proposed rule precluded marketing agreements as some livestock and poultry interests have inaccurately claimed, quality cattle can still be obtained from the cash market. Packers' own data show they

[18] USDA GIPSA "Statement by Under Secretary Avalos: Misconceptions and Explanations of the GIPSA Proposed Rule." July 26, 2010. "There is no provision in the proposed rule that would limit or eliminate the ability of companies to provide premiums to reward producers for providing certain quantity or quality of livestock."

have been buying two million cattle annually for the last six years from cash markets, which makes up about six percent of the national annual cattle slaughter total.[19] Additionally, high quality cattle are available on the cash market, as 27.8 percent of cattle sold on cash grid market between April 2004 and August 2010 graded "more than 80 percent choice."[20] Moreover, if packers and processors agree to pay one price for all livestock, harm to competition could be alleged, raising the possibility of class action litigation on behalf of consumers and producers under the PSA. Agreement by packers to pay one price also raises the possibility of litigation under Sherman and Clayton Antitrust Acts, as collusion is a "per se" violation, carrying civil as well as criminal penalties.

The proposed rule would reduce litigation in the industry by eliminating the ambiguity in interpretation of the terms of the PSA. Such ambiguity leads to lawsuits as farmers and packers seek court action to clarify the intent of the PSA, which has become convoluted by recent court decisions as previously discussed in this testimony. That the proposed rule would increase litigation among participants in the livestock industry is unfounded, but the mistaken notion that it would do so has been used as the foundation of a number of economic studies used in opposition to the GIPSA rule.

A study released by the American Meat Institute in October 2010 made the dubious assertion that the rule will "change longstanding judicial precedent to make it easier for a disgruntled supplier to sue and win in a PSA lawsuit."[21] Since the law was enacted in 1921, the widely held interpretation of the PSA was that farmers and ranchers who had been victims of a processor's anti-competitive practices were not required to prove that the damage done to them had impaired competition across the entire livestock industry.[22] An individual producer was simply required to prove that he had been harmed in order to be protected by the PSA. It was not until 2005 that a U.S. Court of Appeals ruling went against the long-standing judicial precedent and required farmers and ranchers to prove harm to the entire industry.[23] The proposed rule restores the original intent of the PSA and affirms the opinion of USDA, which dissented from the 2005 U.S. Court of Appeals decision in its interpretation of the PSA.[24] Additionally, the first 81 years of the PSA were not rife with litigation and processors were able to use marketing and production contracts.[25] To claim that the proposed GIPSA rule would result in prohibitive levels of litigation ignores both history and the content of the rule.

One Year of Defending the GIPSA Rule

There have been many attempts in the past year to circumvent the completion of the standard rulemaking process. The agriculture appropriations bill passed by the House of Representatives for FY 2012 included language that would withhold funds from any effort to implement the proposed GIPSA rule. USDA has indicated that it is still evaluating the 60,000 comments received during the 2010 comment period on the initial GIPSA rule proposal and is carrying out

---

[19] USDA National Agricultural Statistics Service. 2008 Figures.
[20] "Restoring Economic Health to Beef Markets" Domina, David A. and Taylor, C. Robert. August 25, 2010.
[21] "GIPSA Methodology," John Dunham and Associates, Inc.
[22] *London v. Fieldale*. 410 F3d 1295. 11th Circuit Court of Appeals. 2005. The judge's opinion overturned the long-held judicial opinion that the PSA did not require "industry-wide competitive damage."
[23] Federal Register. Volume 75, No 119. Pg 35342. June 22, 2010.
[24] Lubbers, Jeffrey S. *Developments in Administrative Law and Regulatory Practice, 2004 – 2005.* Pages 172 – 174.
[25] "Restoring Economic Health to Beef Markets" Domina, David A. and Taylor, C. Robert. August 25, 2010.

an economic analysis of the rule.[26] This economic study comes in addition to a cost-benefit analysis performed by USDA when the rule was proposed in June 2010.[27]

USDA's economic analysis determined that the potential benefits of the proposed rule will be greater than the costs. USDA found that any additional costs to packers and processors would be due primarily to the effects of a more competitive and open marketplace. Benefits include greater market access for producers, greater availability of information needed by producers for contract negotiations and the reduction of deadweight losses that result from very few buyers dominating many sellers with little market power, among other improvements.[28] It may also be worth noting that many of the organizations that called for further economic review of the rule also called for the review to be defunded in the agriculture appropriations bill for FY 2012.

NFU and dozens of other producer organizations have been outspoken in their support for the GIPSA rulemaking process and have urged USDA to expeditiously promulgate the final version of the GIPSA. NFU and 143 other organizations, including rural community, faith-based, and consumer interests, sent a letter to the House and Senate in favor of the GIPSA rule, which is attached. In November 2010 and February 2011, NFU and allies hosted briefings in the House and Senate to allow congressional staff the opportunity to meet informally with producers who support the GIPSA rule. These same organizations have led two call-in drives to the White House, the most recent event being last week, to urge the Obama administration to finish and implement the GIPSA rule. They have issued reams of press statements, held dozens of interviews on the topic, and generated thousands of comments to the GIPSA rule docket.

The latest delaying tactic adopted by the processors and packer-producer organizations was the inclusion of a rider to the House of Representatives' version of the agricultural appropriations bill for FY 2011. The rider would prevent USDA from expending any funds for the completion, implementation and enforcement of the proposed GIPSA rule. Even in the face of opposition from the two largest general farm organizations in the country and dozens of other stakeholder organizations, the rider was included in the final version of the House bill. This alarming development makes it all the more important for the members of this committee to take a stand on behalf of independent family farmers and ranchers and to oppose any such riders in the Senate version of the FY 2012 agriculture appropriations budget.

In August 2010, 21 senators signed a letter to USDA in support of the proposed GIPSA rule. This letter is attached and includes language urging swift action to implement and enforce the regulations. For example, the letter states, "We urge [USDA] to issue a final rule as expeditiously as possible once the comment period is closed and the Department has reviewed the comments and made any appropriate modifications to the rule." It also recognizes the care that must be observed in putting the rule into effect, stating that, "While the proposed rule is designed to clarify and strengthen producer protections in accordance with the PSA, it should also maintain opportunities for marketing premiums and mutually beneficial contract arrangements, which it appears to do."[29] As the Senate continues to review the state of the

---

[26] Statement of Administration Policy on H.R. 2112 – Agriculture, Rural Development, Food and Drug Administration, and Related Agencies. United States Department of Agriculture. Issued June 12, 2011. Access at: http://content.govdelivery.com/bulletins/gd/USDAOC-8d534

[27] Federal Register, Volume 75, Number 199. Page 35345. Published June 22, 2010. Access at: http://archive.gipsa.usda.gov/rulemaking/fr10/06-22-10.pdf

[28] Federal Register. Volume 75, No 119. Pgs 35345 - 35349. June 22, 2010.

[29] Letter to the Honorable Thomas J. Vilsack, August 15, 2010. From Sens. Harkin, T. Johnson, Grassley, et al.

livestock industry, it is important to remember that many senators have spoken out in favor of fairness and transparency in the marketplace.

Grain Buffer Stocks to Reduce Feed Price Volatility

This hearing is an opportunity for all aspects of the livestock sector to be reviewed. As such, I urge the committee to consider the possibility of incorporating a grain buffer stocks program, also known as a reserve, in our national farm policy. Livestock producers are especially interested in the option of including a mechanism to better control the wild volatility in feed prices and a buffer stocks program might very well be the most cost-effective and efficient way of doing so. Flattening the price spikes for feed commodities would make livestock production more conducive for longer-term investment and would help the next generation of farmers and ranchers to get started. From the perspective of row crop commodity production, without even a rudimentary system of supply management, our existing farm programs could be overwhelmed by a bumper crop. High production and low prices could result in huge countercyclical payments or revenue insurance payouts. In a time when government expenditures are highly scrutinized, a bumper crop of subsidies could spell disaster for the public's perception of farm policy.

In the 2010 NFU policy, our members called for the establishment of "a farmer-owned strategic national reserve for all storable commodities to ensure consumer food security, livestock feed supplies and national renewable energy needs in times of short supply." To create a functional program, a portion of the national commodity production should be held off the market in times of excess supply. The reserve would be opened to the market when ending stock ratios reach a predetermined trigger level and subsequently would be sold at a value reasonably greater than current market price. Storage rates for these reserve commodities should be paid to the farmer in advance and set at the prevailing commercial storage rate. Additionally, supply management methods should not be overly burdensome for new farmers to enter the industry, but should balance any swings that may cause unacceptable price volatility.

Grain reserves should be considered as part of a supply management system that would serve our national strategic interests. Federal policy places high value on energy; we keep enough oil in strategic petroleum reserves that would fuel our country without imports for 75 days.[30] Food and feed are even more important, and a buffer stock system would help ensure our food security as well as smooth the peaks and valleys of agricultural prices.

Conservation Efforts in the Livestock Sector

While livestock producers face many challenges in today's economy, we also have many opportunities and stewardship of our natural resources is an area that is of high importance. The goals of agricultural production and environmental quality can be mutually compatible, and farm bill conservation programs help producers accomplish both. The 2008 Farm Bill increased funding for conservation programs by $4 billion, an investment that was critically needed and greatly appreciated in the farming community.

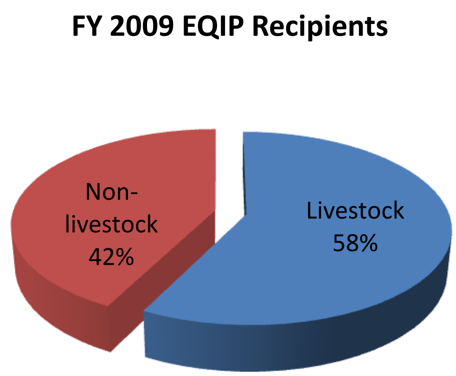
---

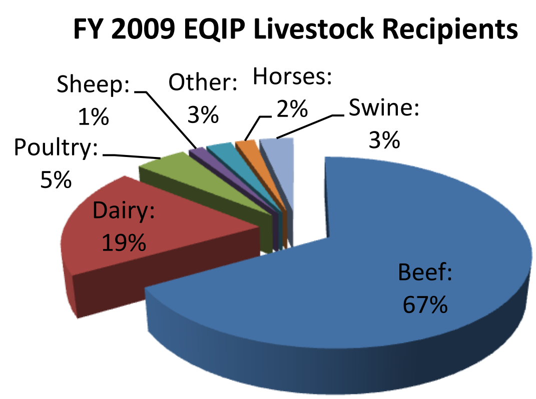
[30] U.S. Department of Energy, Office of Strategic Petroleum Reserves, "Quick Facts and Frequently Asked Questions."

One program in particular that is popular with livestock producers is the Environmental Quality Incentives Program (EQIP). Through EQIP, financial and technical assistance is provided by USDA's Natural Resources Conservation Service (NRCS) to farmers and ranchers to install and maintain conservation practices that sustain production while enhancing soil, water, wildlife and other related natural resources. NRCS develops contracts with producers to implement conservation practices to address a variety of natural resource issues related to livestock, crop production and non-industrial private forestlands. Cost share payments are made to producers once conservation practices are completed according to NRCS requirements.[31]

The 2008 Farm Bill authorized steady funding increases for EQIP from $1.2 billion in fiscal year 2008 to $1.75 billion in FY 2012. The program remains among the most popular for farmers and ranchers. In FY 2010 alone, producers enrolled more than 36,000 contracts on more than 13 million acres in EQIP.[32] In FY 2009, the program enrolled nearly 32,000 contracts for $731 million, of which livestock producers were around 60 percent of the recipients. While this represents significant conservation, there were more than 110,000 contracts that were unfunded in FY 2009.[33]

Figure 2:





Source: USDA-NRCS EQIP Program Information by Fiscal Year

EQIP is popular because of its broad application to a variety of natural resource benefits. Depending on identified local resources of concern, EQIP funding can be used to construct anaerobic digesters for manure management purposes. Some states, such as Vermont, have combined EQIP funding with funding from the Rural Energy for America Program (REAP) to utilize anaerobic digesters for renewable energy production. This innovative use of farm bill

[31] U.S. Department of Agriculture-Natural Resources Conservation Service. (2008) *Farm Bill 2008 Fact Sheet: Environmental Quality Incentives Program.* Retrieved from: http://www.nrcs.usda.gov/programs/farmbill/2008/pdfs/EQIP_factsheet.pdf
[32] U.S. Department of Agriculture-Natural Resources Conservation Service. (2010) *FY 2010 EQIP Contracts and Dollars Obligated.* Retrieved from: http://www.nrcs.usda.gov/programs/eqip/2010data/acres-and-dollars.html
[33] U.S. Department of Agriculture-Natural Resources Conservation Service (2009) *FY 2009 EQIP Data – Contracts and Funding.* Retrieved from: http://www.nrcs.usda.gov/programs/eqip/2009data/fundingdata.html

funding has significant benefits both for water quality as well as the production of renewable, on-farm energy.[34]

Another innovative approach is the potential to utilize conservation programs to avoid regulation. A recent example is the Sage Grouse Initiative, which was established in 2010 under an agreement between USDA and the U.S. Fish and Wildlife Service. The Sage Grouse Initiative is being utilized in South Dakota and other western states to ensure that NRCS programs and conservation practices will help ameliorate threats and produce significant conservation benefits to sage grouse, while providing certainty that farmers and ranchers who voluntarily implement NRCS-sponsored conservation practices that benefit sage grouse will be in full compliance with the Endangered Species Act (ESA) if the sage grouse is ultimately listed.[35] The initiative uses farm bill funding from EQIP and the Wildlife Habitat Incentives Program (WHIP) to provide financial and technical assistance to farmers and ranchers to implement conservation practices that restore sage-grouse habitat and avoid potential regulation. This relief from potential costly ESA regulation is an innovative use of conservation programs and is very attractive to farmers and ranchers. Similar opportunities could exist for conservation programs to provide farmers and ranchers regulatory relief, including water and air quality standards.

Livestock producers like EQIP because it can be broadly used for different types of operations and it provides flexibility for a variety of natural resource concerns. The single most limiting factor is lack of funding which has resulted in many contracts going unfunded. I encourage the committee to examine how conservation programs like EQIP can be efficiently and effectively utilized to provide farmers and ranchers the tools necessary to sustain the natural resources upon which we depend.

The Impact of Trade on the Livestock Sector

NFU supports trade; fair, mutually beneficial trade that seeks to increase human welfare and respects sovereign nations' need for food and national security. NFU has historically opposed free trade agreements on the basis that the agreements were more likely to increase imports rather than open new markets to U.S. goods, even for livestock and agricultural products as is often claimed by proponents.

Free trade agreements are typically justified by claims that the agreements will grant American producers access to previously closed markets and thus create jobs. U.S. agriculture, including the livestock sector, has a history of generating a trade surplus. Long-term agricultural surpluses have occurred because of our efficient system which provides a safety net for agriculture. On the other hand, the U.S. economy as a whole has a history of generating trade deficits as seen below in Figure 4.

---

[34] Vermont Natural Resources Conservation Service. *Vermont Anaerobic Digester Partnership*. Retrieved from: http://www.vt.nrcs.usda.gov/technical/Energy/VermontAnaerobicDigester_RD-NRCS.pdf

[35] U.S. Department of Agriculture-Natural Resources Conservation Service. (2010) *Partnership Agreement Between the United States Department of Agriculture Natural Resources Conservation Service and the United States Department of the Interior Fish and Wildlife Service.* Retrieved from http://www.nrcs.usda.gov/news/pdf/sage_grouse_agreement_04.13.10.pdf

Figure 3:

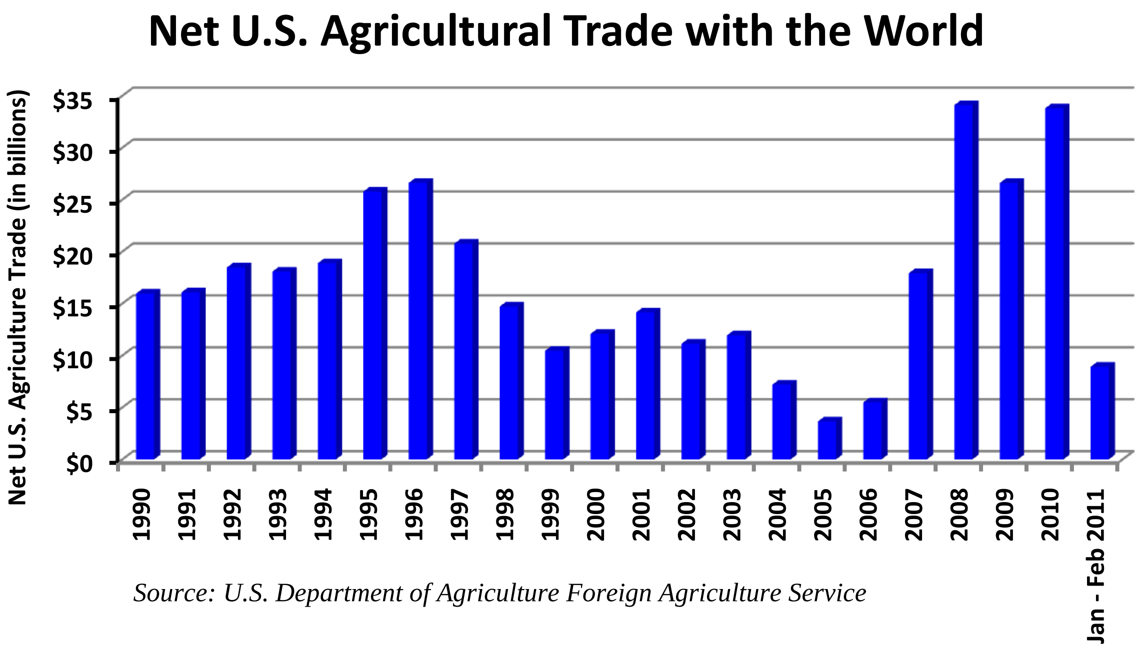
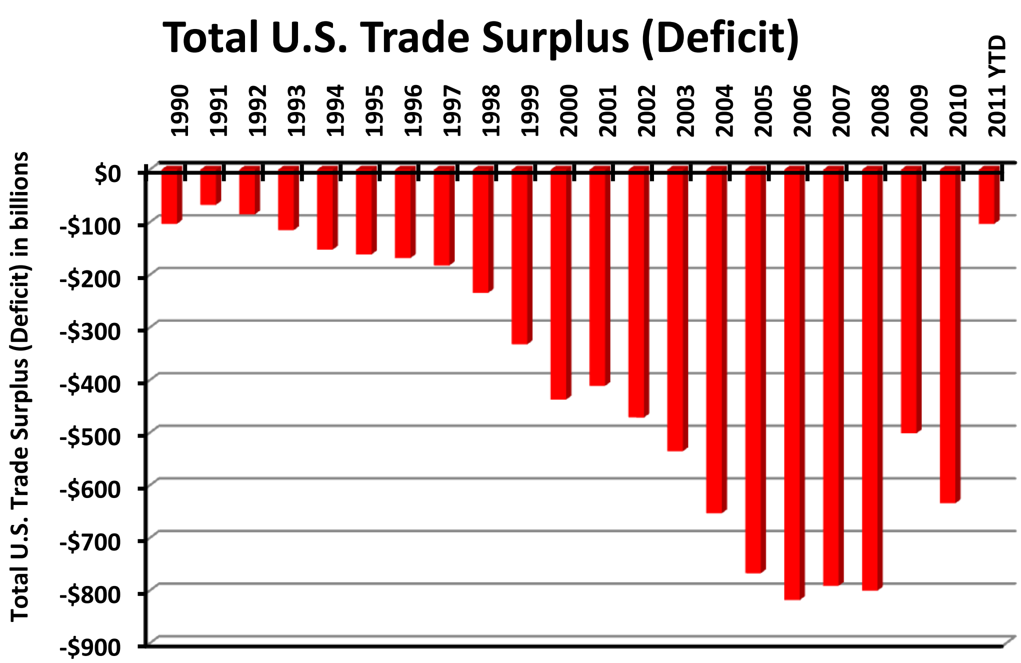


Figure 4:



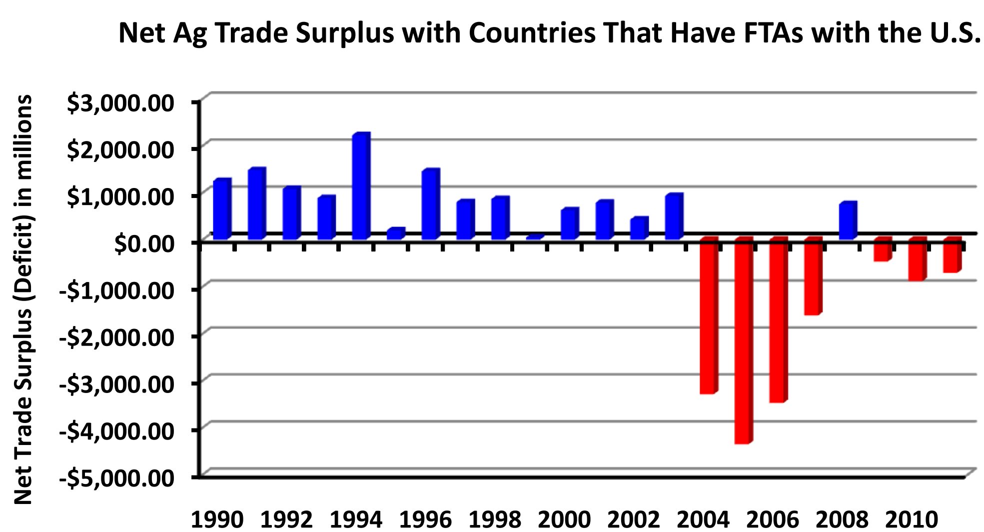
Source: U.S. International Trade Commission (ITC)

During the North American Free Trade Agreement (NAFTA) negotiations, for instance, members of Congress were given a list of tariff cuts for crops in their districts as evidence of the new market access their farmers would obtain. In reality, those tariff cut benefits were eliminated when Mexico devalued the peso 50 percent shortly after NAFTA went into effect.[36] These same claims are being made in regard to the proposed free trade agreement with South Korea. The U.S. International Trade Council (ITC) has estimated that "U.S. beef exports to South Korea could increase by $600 million to $1.8 billion under the FTA."[37] Unfortunately, the analysis does not take into consideration the effect of a Korean devaluation of their currency which could wipe out any gains made by reduced tariffs.

During the NAFTA debates, USDA analysts predicted an increase in U.S. exports of beef products to Mexico.[38] The reality is that beef and pork, two projected NAFTA winners, saw their exports to Mexico fall 13 percent and 20 percent, respectively, in the three years after NAFTA was implemented compared to the three years prior to NAFTA.[39]

On the whole, U.S. agriculture has actually done worse after trade agreements have been entered into than prior to the agreements. Figure 5 below shows the net agriculture trade surplus (deficit) with countries that have entered into trade agreements with the United States. Each year only includes trade data from countries with which the U.S. had a free trade agreement in that year. This subpar performance contrasts with U.S. agriculture's performance as a whole, as depicted in Figure 1. For example, the 1998 data includes only trade information with Israel, Canada and Mexico.

Figure 5:



Source: U.S. Department of Agriculture Foreign Agriculture Service

[36] Espana, Juan R. (July, 1995) *The Mexican peso crisis: impact on NAFTA and emerging markets.* Retrieved from http://findarticles.com/p/articles/mi_m1094/is_n3_v30/ai_17221265.

[37] *Cooper, William F. (June 17, 2009) The Proposed U.S.-South Korea Free Trade Agreement (KORUS FTA): Provisions and Implications.*CRS Report RL34330.

[38] *Congressional Budget Office. (May 1993) Agriculture in the North American Free Trade Agreement. Retrieved from* http://www.cbo.gov/ftpdocs/64xx/doc6444/93doc176.pdf.

[39] Calculations based on data obtained from the USDA Foreign Agricultural Service's (FAS) Global Agricultural Trade System on Jan. 21, 2011. Data was inflation-adjusted using the Consumer Price Index-U-RS as estimated by the Congressional Budget Office in the backup data for Table C-1 of their "The Budget and Economic Outlook: An Update", released August 2010.

Conclusion

The state of the livestock sector of agriculture is a tenuous one. As a member of a pork producer cooperative, I know the struggles that farmers and ranchers face in finding a way to make ends meet. There are many challenges today for livestock producers in America because the livestock marketplace is not entirely competitive, the regulatory climate is not always certain, prices are extremely volatile and the economic recovery has been sluggish.

Thank you for inviting me to be a part of this hearing of the Senate Committee on Agriculture, Nutrition and Forestry. I welcome any questions you may have.