

**HEARING TO REVIEW LIVESTOCK AND
RELATED PROGRAMS AT USDA IN
ADVANCE OF THE 2012 FARM BILL**

HEARING
BEFORE THE
SUBCOMMITTEE ON
LIVESTOCK, DAIRY, AND POULTRY
OF THE
COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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TUESDAY, JULY 20, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LIVESTOCK, DAIRY, AND POULTRY,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Subcommittee met, pursuant to call, at 1:00 p.m., in Room 1300, Longworth House Office Building, Hon. David Scott [Chairman of the Subcommittee] presiding.

Members present: Representatives Scott, Costa, Kagen, Holden, Boswell, Baca, Markey, Murphy, Minnick, Peterson (*ex officio*), Neugebauer, Goodlatte, King, Conaway, Smith, and Roe.

Staff Present: Claiborn Crain, Nathan Fretz, Liz Friedlander, Dean Goeldner, Alejandra Gonzalez-Arias, John Konya, Clark Ogilvie, James Ryder, Rebekah Solem, Patricia Barr, John Goldberg, Tamara Hinton, Pete Thomson, Jamie Mitchell, and Sangina Wright.

**OPENING STATEMENT OF HON. DAVID SCOTT, A
REPRESENTATIVE IN CONGRESS FROM GEORGIA**

The CHAIRMAN. This hearing of the Subcommittee on Livestock, Dairy, and Poultry to review livestock and related programs at the U.S. Department of Agriculture in advance of the 2012 Farm Bill will come to order.

I want to thank everybody for coming. This is indeed a very important hearing. We have a broad range of subjects to cover today. We have animal identification and disease tracking system, as well as country of origin labeling to discuss. And we have the proposed GIPSA rules and the competition workshops held by the Department of Agriculture, the Department of Justice, and the Veterinary Services. And we have the 2015 Vision Initiative's implications for disease control program.

So, needless to say, the Subcommittee's agenda today is very substantial. It covers a broad array of subjects and is, indeed, very important to the future of agriculture in our country and the world.

Globalization has had a profound impact on the economic futures of American companies, workers, and their families, making the United States economy more productive overall. However, in this ever-more globalized society, the potential for devastating economic impacts in the event of a widespread animal disease epidemic is even more apparent today.

Should an outbreak occur, other countries will certainly close their borders to United States animals. By not having an animal identification system fully in place, we are indeed jeopardizing critical trade avenues. This program serves a vital role in protecting our food supply and our economic well-being. Thus, it is imperative that we focus our attention on improving participation in our animal ID system as quickly and as effectively as possible.

Today's hearing is a timely opportunity to hear about the progress of this program from our Agriculture Department, and the new approach proposed by Secretary Vilsack to increase participation, particularly amongst cattle producers. We are long overdue for this system to be fully up and running.

In that same light, we all are very interested in hearing about the overall implementation of, and compliance with, country of origin labeling. We all have worked on this program diligently during the last farm bill to empower the consumer with knowledge of where their food comes from and, in turn, strengthen the demand and price for the goods of American farmers. It is imperative that we continue our progress in country of origin labeling to further give the consumer what they have the right to know, which is information about where their food is coming from.

Regarding the Veterinary Services program for 2015, I know, in the face of decreasing Federal budget and diminishing returns, changes have been necessary to the traditional animal disease eradication approach in order to utilize these limited resources efficiently and appropriately. This will be an excellent opportunity to explore the program's new focus on prevention, preparedness, detection, and early response. I am interested to know how these changes will affect disease program activities for the states and tribes.

The United States Department of Agriculture and the Department of Justice have been holding competition workshops to address the dynamics of competition in agricultural markets. And although I applaud this opportunity for producers, processors, and consumer groups to share their perspective across the country, I do question the ultimate purpose and goal of these hearings. It is my goal today to gain a clearer picture on the expected outcome of those workshops, and to hear what has come to light already at these joint workshops so far.

And I am also very eager to discuss the new proposed GIPSA regulations regarding fairness in contracting. Many of my constituents, and the constituents of many on this Committee, have expressed deep concerns over these proposed rules, and they fear that they have stepped too far.

A number of these provisions had previously been rejected, their amendments on the floor, in the Senate process, and certainly in the farm bill. They were rejected strongly during the last farm bill deliberations. So the question is, why are they here? Is this an end-run around Congress?

And I worry that these rules need to be further examined to understand how they will affect our country's agricultural competition in a global market. So it is very important that we examine these rules today to illuminate any unforeseen consequences and scrutinize their potential effect on our agriculture sector.

This proposed rule goes well beyond—well beyond—what Congress intended. It eliminates the required showing of competitive injury to determine violations of the Act. You are given only 60 days for review and comment, which is clearly an inadequate amount of time. These are the most sweeping changes to the Packers and Stockyards Act in nearly 100 years, and GIPSA did little or nothing to get the input from the livestock and poultry industry. Clearly, this is a misstep. And we need to get this illuminated today and cleared up to give our livestock and our poultry industry a clear path and an understanding.

And it is my feeling that one of the things we need to do with this rule, the least we can do is certainly not have a 60 day limit for comment, but at least a 120 day limit for comment. This is critically important because, as I said, it definitely goes beyond what the 2008 Farm Bill intended for it to do.

And so, these are some very important issues. I look forward to the discussion on these issues. Again, I want to welcome everyone. [The prepared statement of Mr. Scott follows:]

PREPARED STATEMENT OF HON. DAVID SCOTT, A REPRESENTATIVE IN CONGRESS FROM
GEORGIA

I would like to welcome everybody once again to the Livestock, Dairy, and Poultry Subcommittee. I appreciate you all being here. We have a broad range of subjects to cover today; the animal identification and disease tracking system as well as country of origin labeling (COOL), the proposed GIPSA rules and the competition workshops held by the USDA and Department of Justice, and the Veterinary Services 2015 Vision Initiative's implications for disease control programs. Needless to say, the Subcommittee's agenda today is substantial and covers a broad array of subjects.

Globalization has had a profound impact on the economic futures of American companies, workers and families; making the U.S. economy more productive overall. However, in this ever more globalized society, the potential for devastating economic impacts in the event of a widespread animal disease epidemic is ever more apparent. Should an outbreak occur, other countries will certainly close their borders to U.S. animals. By not having an animal identification system fully in place, we are jeopardizing critical trade avenues. This program serves a vital role in protecting our food supply and economic well-being. Thus it is imperative that we focus our attention on improving participation in our animal identification system as quickly and effectively as possible. Today's hearing is a timely opportunity to hear about the progress of this program and the new approach proposed by Secretary Vilsack to increase participation, particularly among cattle producers. We are long overdue for this system to be fully up and running.

In the same light, I am interested in hearing about the overall implementation of and compliance with country of origin labeling. We worked on this program diligently during the last farm bill to empower the consumer with knowledge of where their food comes from and, in turn, strengthen the demand and price for the goods of American farmers. It is imperative we continue our progress in country of origin labeling to further give the consumers what they have the right to know; which is information about where their food is coming from.

Regarding the Veterinary Services program for 2015; I know in the face of a decreasing Federal budget and diminishing returns, changes have been necessary to the traditional animal disease eradication approach in order to utilize these limited resources efficiently and appropriately. This will be an excellent opportunity to explore the program's new focus on prevention, preparedness, detection and early response. I am interested to know how these changes will affect disease program activities for the states and tribes.

The USDA and Department of Justice have been holding competition workshops to address the dynamics of competition in agricultural markets. Although, I laud this opportunity for producers, processors and consumer groups to share their perspective across the country, I do question the ultimate purpose and goal of these hearings. It is my goal today to gain a clearer picture on the expected outcome of

these workshops and to hear what has come to light already at these joint workshops so far.

I am also eager to discuss the new proposed GIPSA regulations regarding fairness in contracting. Many of my constituents have expressed concern over these proposed rules and fear that they may step too far. A number of these provisions had previously been rejected during the last farm bill deliberations and I worry that these rules need to be further examined to understand how they will affect our country's agricultural competitiveness in a global market. It is important we examine these rules today to illuminate any unforeseen consequences and scrutinize their potential effect on our agriculture sector.

So I look forward to our discussion today of these issues and would like to again welcome everyone. With that, it is my pleasure to recognize the Ranking Member of the Committee, Mr. Neugebauer, for any comments he may wish to make.

The CHAIRMAN. And, with that, it is my pleasure to recognize the Ranking Member of the Committee, Mr. Neugebauer, for any comments he wishes to make.

**OPENING STATEMENT OF HON. RANDY NEUGEBAUER, A
REPRESENTATIVE IN CONGRESS FROM TEXAS**

Mr. NEUGEBAUER. Well, Mr. Chairman, thank you for calling this hearing. And let me say, a number of the things that you just said that I think a number of us on this panel are in total agreement with. I think this hearing is extremely timely.

You know, there are numerous threats to animal agriculture posed by Federal regulations, environmental and animal activists, even Congress. Producers in my district in west Texas are very concerned with the uncertainty surrounding their business models, and are finding it very difficult to make long-term planning decisions.

This is why I am very pleased we are holding this hearing today to begin discussing some of the programs this Subcommittee has jurisdiction over, and how we can work with the producers as we start thinking about the 2012 Farm Bill.

The three agencies represented here today have jurisdiction over a broad array of important topics, from country of origin labeling to mandatory price reporting, animal welfare to organic labeling, antibiotics in animal agriculture to check-off programs, animal ID, traceability, and recently proposed packers and stockyard rules.

While these are just a few of the issues that will come up today, I think it is safe to say that the lion's share of our discussion will be about the recently proposed GIPSA rule.

Mr. Chairman, make no mistake, I believe that fair and transparent markets are necessary for orderly commerce between producers, packers, processors, retailers, and consumers. It is vital that the law in this matter be strictly enforced. At the same time, we owe it to our constituents to ensure that the policy process is fair and transparent, so that a path of good intentions does not lead to the land of unintended consequences.

For my part, I am a bit dismayed by the particular proposed rule at this particular time. I am dismayed that it comes in the middle of a series of workshops that were represented as an effort to learn about the nature of potential problems in livestock marketing. It is bad enough that we have been told that the Administration has stacked the deck at these workshops in favor of their own regulatory agenda. But, now that the proposed rule is published, many are concerned that the Administration will hide behind the Admin-

istrative Procedures Act when asked questions by Congress or the constituents.

I am dismayed that this far-reaching proposal contains very thin economic analysis to justify its purpose and help us evaluate its impact. I am also dismayed that it is sold in part on the effort to correct what the Administration believes to be the court's misinterpretation of the current law, yet it does not come in the form of a legislative proposal.

Mostly I am dismayed that the agency believes that interested parties, especially producers, can respond to this significant proposal in a mere 60 days. Despite a recent letter from the Administrator of GIPSA saying that no extensions of the comment period would be granted, it is my understanding that the Secretary has not made his final decision. And for this reason, 21 of my colleagues, from both sides of the aisle, joined with me in requesting that the comment period be extended to 120 days so that the USDA and Department of Justice workshops can be completed and a thorough analysis can be conducted by everyone wishing to comment on this rule.

Mr. Chairman, I notice that you had mentioned that very same thing.

I think one of the things that concerns a lot of us is that, at a time in this country where there is great economic uncertainty and difficulty for small businesses, large businesses—and people in agriculture represent a substantial part of our economy—that we are creating even more uncertainty by some of the proposals that we have on the table here. Sometimes when the government tries to be the overall protector of everyone, what ends up happening is the markets are distorted and the normal market process is not allowed to work in an appropriate way.

So I look forward to this hearing today and to hearing from the witnesses, and also giving my colleagues an opportunity to ask what I think are very important questions about where the Administration is heading at this time.

So, Mr. Chairman, thank you for calling this hearing.

The CHAIRMAN. Thank you, Ranking Member Neugebauer. And I really appreciate your comments, as well, on this. They are very well stated.

For other Members, the chair is going to request that other Members submit their opening statements for the record so that we can get right to the witnesses and they can begin their testimony. And we will certainly ensure that we have ample time to ask all of your questions on this.

[The prepared statement of Mr. Peterson follows:]

PREPARED STATEMENT OF HON. COLLIN C. PETERSON, A REPRESENTATIVE IN
CONGRESS FROM MINNESOTA

Good afternoon and thank you, Mr. Scott, for holding today's hearing of the Subcommittee on Livestock, Dairy, and Poultry.

Today's hearing focuses on livestock and related programs at the U.S. Department of Agriculture (USDA) in advance of the 2012 Farm Bill.

There is a lot of ground to cover today. USDA's Grain Inspection, Packers, and Stockyards Administration recently announced a proposed rule to address competition in the marketing of livestock and poultry. This is something that we directed the Department to do as part of the 2008 Farm Bill, but there are legitimate concerns about what they have done and how far they took their authority. Since

USDA announced this rule just over a month ago I've heard from both sides of the issue—some groups are supportive while others have some pretty significant concerns. Today's hearing is an opportunity for our witnesses to address this issue.

I am also glad to see the rollout of the cattle dashboard, an online tool that will allow Internet users to easily access and understand a variety of data related to the sales of live cattle. An enhanced, easy to understand system of electronic reporting was also something we included in the 2008 Farm Bill. I am committed to seeing as much transparency and timeliness in price reporting as possible. Since seeing a prototype of the cattle dashboard a few months ago, I have been hopeful that it will give producers better information on which to base their management decisions and I am pleased that it is being implemented.

Implementing a functional, comprehensive National Animal Identification System (NAIS) in the United States is a high priority for this Committee. However, I think I speak for many of us when I say it has been disappointing and frustrating that, despite having the Federal funding to do so, USDA has not been able to implement such a system. The Agriculture Appropriations Subcommittee obviously shares these feelings, recently cutting funding for the program. I hope our witnesses today can shed some light on the current status of this program.

Today's hearing is another step in writing the next farm bill. A bill this large and that covers so many important issues takes a lot of time and effort to get it right, and I am committed to a process that is open, transparent and bipartisan. I look forward to working with my colleagues on both sides of the aisle and from all regions of the country to be sure that we put together a bill that supports the food, fiber, conservation, energy and rural development needs of this country.

I look forward to hearing from today's witnesses and again thank the Chairman for holding today's hearing.

The CHAIRMAN. Now I would like to welcome our witnesses and recognize them at this time.

We have the Honorable Edward Avalos, the Under Secretary for Marketing and Regulatory Programs with the United States Department of Agriculture.

Welcome.

He is accompanied by Ms. Cindy Smith, the Administrator of Animal and Plant Health Inspection Service for the U.S. Department of Agriculture.

We have Ms. Rayne Pegg, Administrator of the Agricultural Marketing Service for the United States Department of Agriculture.

And we have Mr. J. Dudley Butler, the Administrator for Grain Inspection, Packers, and Stockyards Administration for the U.S. Department of Agriculture.

Under Secretary Avalos, you may begin.

STATEMENT OF THE HON. EDWARD M. AVALOS, UNDER SECRETARY FOR MARKETING AND REGULATORY PROGRAMS, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.; ACCOMPANIED BY CINDY SMITH, ADMINISTRATOR, ANIMAL AND PLANT HEALTH INSPECTION SERVICE, USDA; RAYNE PEGG, ADMINISTRATOR, AGRICULTURAL MARKETING SERVICE, USDA; AND J. DUDLEY BUTLER, ADMINISTRATOR, GRAIN INSPECTION, PACKERS, AND STOCKYARDS ADMINISTRATION, USDA

Mr. AVALOS. Mr. Chairman, Ranking Member, Members of the Subcommittee, thank you for the opportunity to appear here today to discuss implementation of the livestock title of the Food, Conservation, and Energy Act of 2008.

The three agencies I oversee—Agricultural Marketing Service; Animal and Plant Health Inspection Service; and the Grain Inspection, Packers, and Stockyards Administration—are the primary

agencies with responsibility for implementing Title XI, the livestock title, of the farm bill.

Joining me today: AMS Administrator Rayne Pegg, APHIS Administrator Cindy Smith, and GIPSA Administrator Dudley Butler.

At MRP, we protect producers from unfair competition and unfair business practices. We also protect the U.S. livestock sector from animal health threats and ensure the humane care and treatment of certain animals. In addition, we facilitate and expand the domestic and international marketing of U.S. livestock products, providing information and marketing tools.

I am pleased to have the opportunity to describe what MRP has accomplished in implementing provisions of the 2008 Farm Bill. And I am looking forward to working with you as you work towards reauthorizing it in 2012.

Grain Inspection, Packers, and Stockyards Administration: I know that the issue on the forefront, right now, is GIPSA. Congress took action in the 2008 Farm Bill to address fairness in certain aspects of the livestock and poultry industry, particularly in regards to contracts and enforcement of the Packers and Stockyards Act under the jurisdiction of GIPSA.

On June 22, 2010, GIPSA published a proposed rule in the *Federal Register* that implements Sections 1105 and 1106 of the farm bill, which directs USDA to carry out certain rulemaking to improve fairness in the marketing of livestock and poultry, and addresses concerns raised by increasingly consolidated markets. The proposed rule seeks to provide significant new protections for producers against unfair, fraudulent, discriminatory, and retaliatory practices.

We did not come up with these rules on our own; rather, we have heard from producers across the country. As part of President Obama's Administration's rural tour, Secretary Vilsack visited dozens of communities in 20 states in an effort to engage in a more robust dialogue with folks living in rural areas.

Secretary Vilsack also joined Attorney General Eric Holder of the Department of Justice to hold agricultural competition workshops around the country to hear from livestock and poultry producers and industry experts, to learn from what they see on a daily basis, in an open and transparent way.

Preparing for the rule, GIPSA also held listening sessions in 2008. Many of these producers have raised concerns about what they are seeing, specifically about a lack of fairness, transparency, and market access.

I share Secretary Vilsack's concern about the depopulation of rural America. In the past 40 years, the United States has lost 800,000 farmers and ranchers. And for those living and working in rural America, the average income is a little over \$28,000, compared to over \$40,000 for the city folks. Our remaining farmers are aging. The average age of a farmer today is 58 years.

The overall loss in farmers and ranchers has impacted the number of livestock farms, as well. In 1980, there were over 666,000 hog farms in the country. Today, it is roughly 71,000. The same situation exists in the cattle industry. In 1980, there were over 1.6 million farms. Today, there are roughly 950,000 cattle farms.

I realize the reasons for the decline in farmers is complex, but we must also recognize that this mass exodus of producers has happened with the *status quo*. Farmers that want to stay in agriculture, and young people that want to get into agriculture, need a fair and transparent market. And that is why we seek to better restore fairness and transparency with the proposed GIPSA rule.

The public comment period closes August 23rd. We are currently receiving feedback from individuals and groups. Some Members of this Subcommittee asked that we either maintain the current comment deadline or that we extend it. We take all these views very, very seriously, and USDA plans to make a decision as soon as possible as to whether to extend the comment period.

Animal and Plant Health Inspection Service: APHIS has worked to implement a number of programs in the farm bill that address specific animal disease threats that U.S. producers face, taking into account the evolving animal health landscape. I would like to briefly mention a couple of these accomplishments, then update you on two key animal health initiatives at USDA.

APHIS drafted revisions to its 5 year Cattle Fever Tick National Strategic Plan, and also developed a business plan for the program to include new and previously proposed initiatives. While the divisions to the National Strategic Plan are still being finalized, APHIS has moved forward and funded a number of new initiatives with increased appropriated funding of \$2 million in Fiscal Year 2009, \$3 million in Fiscal Year 2010, making important and innovative strides in addressing this serious disease threat.

APHIS moved quickly to publish its final rule establishing a voluntary *trichinae* certification programs for U.S. pork. As outlined in the 2008 Farm Bill, the final rule was published in the fall of 2008. To jump-start the program, APHIS paid for on-farm audits and waived the program user fee for Fiscal Year 2009. In 2010, APHIS carried out outreach and promotion activities for the new program and funded farms as they moved from pilot programs into the official program.

I would also like to update you on the progress moving forward with our new flexible framework for animal disease traceability in the United States, a critical component of a quick and successful disease response. Our goal is to create a flexible framework that embraces the strengths of states, of tribal nations, and producers, and allows them to find the animal disease traceability approaches that work best for them. We are moving forward with a very cooperative effort, turning this framework into a flexible, coordinated approach to traceability. We anticipate publishing a proposed rule in spring of 2011.

To position APHIS to better meet the animal health needs of the 21st century, we have developed a strategic vision for our Veterinary Services program by the year 2015, known as VS 2015. APHIS announced the strategic vision to the states and industry in 2008, and is now developing the plan to achieve this vision. We anticipate a comprehensive yet focused strategic plan to guide our efforts by the end of calendar year 2010.

Agricultural Marketing Service: Four sections in Title XI of the 2008 Farm Bill contain provisions that fell under the jurisdiction of the Agricultural Marketing Service. More details are included in

my written testimony, but I would like to provide just a few comments.

USDA was directed to implement an enhanced system of electronic reporting and to carry out a market news education program. AMS has been developing a proof-of-concept “Cattle Dashboard” that will add an improved user interface, including tools for data visualization, to its primary system disseminating Livestock Mandatory Reporting information through the Web.

I would like to provide the Subcommittee with a brief demonstration of what the new “dashboard” would look like. Mr. Chairman, I am pretty excited about this. Where is it?

The CHAIRMAN. Yes, go ahead, proceed. There it is.

Mr. AVALOS. Okay.

It allows us to see weekly volume and price information. Viewers can select four different views: head count, weighted average price, all purchase types, and for negotiated cash transactions only. The ticket display provides the latest daily negotiated cash market information. Users can customize the display information by region, date range, and other specific information. Charts display 3 months of historical information. Current information is compared with prior periods. Viewers can look at price and information specific to their part of the country. After selecting the region, you can determine a time period to view the data.

This will be available on the AMS website tomorrow through our Market News Portal. In addition, AMS staff would be happy to provide a more detailed presentation of the Cattle Dashboard to this Subcommittee at a later date.

The farm bill also required country of origin labeling for certain products. The final regulation was published on January 15, 2009, in the *Federal Register* and became effective March 16, 2009. AMS education and outreach programs assist industry in achieving compliance with the provisions and requirements of the agency’s rules, and these efforts are ongoing.

The livestock title also provided for reestablishing the National Sheep Industry Improvement Center to promote the strategic development activities and collaborative efforts to strengthen and enhance the production and marketing of sheep and goat products in the United States. AMS has drafted an interim rule, which we plan to publish very, very soon.

Finally, I would like to share information with you on another very important issue that we are working on in part of USDA. As you may know, there has been an escalation of violence along the U.S.-Mexico border related to drug cartel activity. Due to the violence in northern Mexico, and based on advice from security experts in parts of the U.S. Government, USDA temporarily suspended livestock import activities in two ports along the U.S.-Mexico border in late March and another port in late June. The safety of employees is paramount.

However, we also understand how important the services we provide are to the livestock community. In this regard, we have implemented short-term fixes, we have opened temporary inspection facilities on the U.S. side of the border, and we are diverting cattle to other ports. We are working with U.S. producers, affected state officials, and our Mexican counterparts as quickly as possible to

identify long-term solutions that will meet the needs of both the United States and Mexico.

In conclusion, thank you for the opportunity to describe our successes and our challenges in implementing Title XI of the farm bill. I look forward to working with Members of this Committee and providing assistance as we work towards developing the next farm bill.

Thank you.

[The prepared statement of Mr. Avalos follows:]

PREPARED STATEMENT OF HON. EDWARD M. AVALOS, UNDER SECRETARY FOR MARKETING AND REGULATORY PROGRAMS, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.

Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for the opportunity to appear here today to discuss the implementation of the livestock title of the Food, Conservation and Energy Act of 2008. This hearing provides us with a chance to review this critical title of the 2008 Farm Bill in advance of the 2012 Farm Bill. I look forward to working with Members of this Committee, and other Members of the House and Senate, as you work to develop future policies, programs, and initiatives.

Let me start by acknowledging the hard work of the Members of this Committee and your staff. Having worked closely with my own staff across the country on a number of livestock programs over the past 10 months since being sworn in as Under Secretary for Marketing and Regulatory Programs (MRP), I appreciate the hard work that went into crafting this important title in the legislation. You are all to be commended for the strong bipartisan effort that produced a number of very important provisions for our producers and others who rely on this nation's livestock industry.

The three USDA agencies I oversee—the Agricultural Marketing Service (AMS), the Animal and Plant Health Inspection Service (APHIS), and the Grain Inspection, Packers and Stockyards Administration (GIPSA)—are the primary agencies with responsibility for implementing Title XI, the livestock title of the farm bill.

Joining me today are AMS Administrator Rayne Pegg, APHIS Administrator Cindy Smith, and GIPSA Administrator Dudley Butler.

I can assure the Subcommittee that one of Secretary Vilsack's top priorities is ensuring that the 2008 Farm Bill is implemented as quickly as possible. This Administration is committed to supporting rural America and the thousands of people across the country involved in farming, ranching, and related industries and endeavors.

In MRP, we work towards this goal by providing oversight to protect producers from unfair competition and unfair business practices. We also protect the U.S. livestock sector from animal health threats and ensure the humane care and treatment of certain animals. In addition, we facilitate and expand the domestic and international marketing of U.S. livestock products by providing information and marketing tools.

I am pleased to have the opportunity to describe what MRP has accomplished in implementing livestock provisions of the 2008 Farm Bill and am looking forward to working with you as you work towards its reauthorization in 2012.

Animal and Plant Health Inspection Service

APHIS has worked to implement a number of programs in the farm bill that address specific animal disease threats that U.S. producers face, taking into account the evolving animal health landscape. I would like to briefly mention a couple of these accomplishments and then update you on two other key animal health initiatives at USDA.

APHIS has drafted revisions to its 5 year Cattle Fever Tick National Strategic Plan and also developed a business plan for the program to include new and previously proposed initiatives. These include the evaluation of anti-tick vaccines and new tick control technologies, widespread use of efficient and enhanced tick control measures for deer that carry ticks, and the development of surveillance herd plans for any premises currently under quarantine due to the presence or exposure to fever ticks, among other things. While the revisions to the National Strategic Plan are still being finalized, APHIS has moved forward and funded a number of the new initiatives with increased appropriated funding of \$2 million in Fiscal Year (FY) 2009 and another \$3 million in FY 2010, making important and innovative strides in addressing this disease threat.

APHIS moved quickly to publish its final rule establishing a voluntary trichinae certification program for U.S. pork, as outlined in the 2008 Farm Bill. The final rule was published in fall 2008. To help jump start the program, APHIS paid for on-farm audits and waived the program user fee in FY 2009. In FY 2010, APHIS carried out outreach and promotion activities for the new program, and funded farms as they moved from the pilot program into the official program. However, despite Agency and industry efforts, demand for the program has been low because none of our trading partners currently recognize this program to be used for fresh pork export assurances with regard to *Trichinella* at this time. We recognize the importance of this issue, and will be working with industry to address this issue through the World Organization for Animal Health (OIE) once key data is obtained to support such an effort.

I would also like to update you on our progress moving forward with our new, flexible framework for animal disease traceability in the United States—a critical component of quick and successful disease response. APHIS is actively partnering with states, Tribal Nations, and industry, holding state and Tribal *fora* and public meetings to discuss ways of improving animal disease traceability, sharing the approaches under discussion, and continuing the dialogue with stakeholders.

As you know, last year USDA held 15 listening sessions across the country, and we heard from thousands of interested parties. We then incorporated that feedback to create a flexible framework that embraces the strengths of states, Tribal Nations, and producers, and allows them to find the animal disease traceability approaches that work best for them. In short, the new traceability approach:

- Will give us the ability to respond to animal disease outbreaks without overly burdening producers;
- Will apply only to animals moving interstate; and
- Will complement and intersect with existing disease programs, incorporating identification requirements for those programs, and encouraging the use of lower-cost technology.

The new traceability approach will be led and administered by the states and tribes, with Federal support focused entirely on disease traceability. This will allow states, producers, and industry to work together to find identification solutions that meet their needs. The new approach will also incorporate strengthening protections against the entry and spread of disease, more strictly enforcing existing disease control regulations, and finding ways to provide more resources to the states to combat diseases when they emerge.

We are moving forward with a very collaborative effort to turning this framework into a flexible, coordinated approach to traceability. Our ultimate goal will be to publish in the *Code of Federal Regulations* a new animal disease traceability section in straightforward, understandable language, allowing for full transparency and public comment. We anticipate publishing a proposed rule in spring 2011.

It is important that you know our commitment to developing a plan that most effectively protects the health of animals and allows for a rapid response when animal disease events take place. While APHIS has a long history of working effectively with livestock industries, state regulatory agencies, and accredited veterinarians to control and eradicate livestock diseases, the animal health landscape is changing, and as a result, we must adapt to that change. Numerous factors are affecting this change. These include, but are not limited to:

- Evolving needs of animal agriculture industry, in part because of changes in industry structure and the increase in the number of large-scale farm operations;
- Advances in technology such as diagnostics, vaccines, and novel treatment technologies;
- Emerging diseases, including an increasing number of them with zoonotic potential; and,
- Increasing global travel and trade, and the increasingly complex issues presented by U.S. involvement in global agricultural business and trade—with regard to imports as well as exports.

I mention just a few examples of the changing animal health landscape, but they all present opportunities for APHIS to take a step back, evaluate our mission, and determine how we must adapt to continue to meet animal health challenges.

To position APHIS to better meet the animal health needs of the 21st century, we have developed a strategic vision for our Veterinary Services program by the year 2015, known as VS 2015. We identified three key changes as essential for the VS organization:

- Greater emphasis on disease prevention, preparedness, detection, and early response activities;
- An expanded veterinary health mission that is responsive not only to issues that impact animal agriculture, but also public health concerns connected to animal populations of any kind; and
- An expanded portfolio of interstate and international certification services that meet the increasing expectations of global customers.

APHIS announced this strategic vision to the states and industry in 2008 and is now developing a strategic plan to achieve this vision. We anticipate that our four working groups will develop a comprehensive, yet focused strategic plan to guide our efforts by the end of calendar year 2010. While the strategic plan is being developed, APHIS has already begun revising several animal health programs to align them with the VS 2015 initiative, including our bovine tuberculosis, brucellosis, and animal traceability programs.

APHIS' ultimate goal with the VS 2015 program is to promote the continuing health of the nation's animal agriculture and to maximize VS' effectiveness in meeting emerging animal health challenges. As we further develop our strategic plan and identify any needed changes to our authorities, I look forward to having additional dialogue with the Committee as we move forward with these initiatives.

As you know, Secretary Vilsack announced in May that USDA is strengthening its enforcement of the Animal Welfare Act (AWA). The Administration is committed to fully enforcing the AWA and ensuring the humane treatment of regulated animals. This is consistent with several provisions from the 2008 Farm Bill, which APHIS has moved quickly to carry out. For example, APHIS is working closely with our counterparts at the Centers for Disease Control and Prevention, U.S. Customs and Border Protection, and the Department of Commerce to draft regulations to implement the provision on the importation of dogs. We anticipate publication of a proposed rule this fall to prohibit the air transport of dogs under 6 months of age and outline exemptions provided for in the farm bill.

I also thank the Committee for its effort to increase the maximum civil penalty for violations of the AWA to \$10,000, providing APHIS with a stronger tool to enforce the Act.

Agricultural Marketing Service

Four sections in Title XI of the 2008 Farm Bill contained provisions that fell under the jurisdiction of the Agricultural Marketing Service.

A number of amendments were made to the Livestock Mandatory Reporting Act, including the requirement that AMS undertake a study on the effects of requiring packers to report information on wholesale pork cuts. AMS entered into a cooperative agreement with a team of university researchers identified by the Livestock Marketing Information Center to complete the study of pork reporting. The final report was transmitted to the House and Senate Agriculture Committees on March 22, 2010.

USDA was also directed to implement an enhanced system of electronic reporting and to carry out a market news education program. AMS has been developing a proof-of-concept "Cattle Dashboard" that will add an improved user interface, including tools for data visualization, to its primary system for disseminating Livestock Mandatory Reporting information through the Web.

AMS is pleased to report that the "dashboard" feature will be added to the AMS website this week.

I would like to provide the Subcommittee with a brief demonstration of what the new "dashboard" will look like, see *Attachment 1*.

The farm bill also required country of origin labeling (COOL) for muscle cuts and ground beef (including veal), pork, lamb, goat, and chicken; wild and farm-raised fish and shellfish; fresh and frozen fruits and vegetables; peanuts, pecans, macadamia nuts, and ginseng sold by designated retailers. The final regulation was published in the January 15, 2009 *Federal Register* and became effective on March 16, 2009. AMS' education and outreach program assists industry in achieving compliance with the provisions and requirements of the agencies' rules.

Approximately 37,000 retail establishments are covered by COOL. USDA trained employees of state agencies who are cooperating with USDA by carrying out compliance activities through conducting in-store retail reviews.

In calendar year 2009, COOL reviews were performed in approximately 5,000 retail stores where approximately 1.16 million item types (for example, U.S. Choice Strip Steak, company branded strip steak, bin of tomatoes, package of carrots, Tilapia fillet, etc.) were evaluated. Out of the 1.16 million item types reviewed at retail from June 2009 through December 2009, greater than 96% were properly la-

beled. USDA plans to review 12,741 covered retailers by the end of the first full year of enforcement, which ends September 30, 2010.

The Livestock Title also provided for the re-establishment of the National Sheep Industry Improvement Center to promote the strategic development activities and collaborative efforts that strengthen and enhance the production and marketing of sheep or goat products in the United States. The authorization provided \$1 million in mandatory spending for Fiscal Year 2008 to remain available until expended. AMS is drafting an Interim Rule which it plans to publish very soon.

Also included in this Title is the establishment of an inspection program for domestic and imported catfish as well as the implementation a voluntary fee based grading program for catfish. AMS is responsible for establishing the grading system. AMS has conducted several meetings with representatives of the catfish industry, the National Marine Fisheries Service officials, and Food Safety and Inspection Service (FSIS) officials to discuss grading and inspection services. AMS is in the process of drafting proposed standards for this grading system, to be published in the *Federal Register*.

Grain Inspection, Packers, and Stockyards Administration

Congress took action in the 2008 Farm Bill to address fairness in certain aspects of the livestock and poultry industry, particularly in regards to contracts and enforcement of the Packers and Stockyards (P&S) Act, under the jurisdiction of GIPSA.

On June 22, 2010, GIPSA published a proposed rule in the *Federal Register* that implements Sections 11005 and 11006 of the farm bill, which directs USDA to carry out certain rulemaking to improve fairness in the marketing of livestock and poultry, and addresses concerns raised by increasingly consolidated markets. The proposed rule seeks to provide significant new protections for producers against unfair, fraudulent, discriminatory, and retaliatory practices.

The public comment period closes on August 23, 2010. We are currently receiving feedback from individuals and groups asking that we either maintain the current comment deadline, or extend it. We take all of these views very seriously and USDA plans to make a decision as soon as possible on whether to extend the comment period. GIPSA strongly encourages all interested parties to comment on the proposed rule. All viewpoints are needed to ensure we end up with a strong and workable rule.

On January 4, 2010, in a separate rulemaking action, a GIPSA final rule on poultry contracting became effective. GIPSA published this final rule to address certain standards of fairness in contracting in the poultry industry. The rule sets out the information that live poultry dealers must furnish poultry growers to improve transparency and requires adequate notice of when a contract will be terminated.

To explore competition issues affecting the agriculture and appropriate antitrust and regulatory enforcement, USDA and the Department of Justice (DOJ) are holding joint Workshops on Competition in Agriculture. These first-ever collaborative workshops afford farmers, ranchers, consumers groups, agribusinesses, and the Federal Government a forum to openly discuss legal and economic issues associated with competition in the agriculture industry. These workshops are aimed at creating a dialogue on these complex issues and a better understanding of what issues are most important to producers.

The first workshop was held on March 12, 2010, in Ankeny, Iowa, and focused on issues facing row crop and hog farmers. The May 21, 2010, workshop in Normal, Alabama, addressed contracts in the poultry industry, concentration, and buyer power. On June 25, 2010, we held a workshop in Madison, Wisconsin, that looked at concentration, marketplace transparency, and vertical integration in the dairy industry. Subsequent sessions will be held on August 27, 2010, in Fort Collins, Colorado, with a focus on beef, hog and other animal sectors, market concentration, and enforcement of the Packers and Stockyards Act; and, December 8, 2010, in Washington, D.C., with a focus on the discrepancies between the prices received by farmers and the prices paid by consumers.

Finally, I want to share information with you on one other important issue we are working on in our part of USDA. As you may know, there has been an escalation in violence along the U.S.-Mexico border related to drug cartel activity. Due to the violence in northern Mexico and based on advice from security experts in other parts of the U.S. Government, USDA temporarily suspended livestock import activities at two ports along the U.S.-Mexico border in late March, and another port in late June. The safety of our employees is paramount. However, we also understand how important the services we provide are to the livestock community. In this regard, we have implemented short-term fixes—opening temporary inspection facilities on the U.S. side of the border and diverting cattle to other ports—and we are

working with U.S. producers, affected state officials, and our Mexican counterparts as quickly as possible to identify long-term solutions that will meet the needs of both the United States and Mexico.

In conclusion, thank you for the opportunity to describe our successes and challenges in implementing Title XI of the farm bill, as well as some of the related initiatives being undertaken by USDA. I look forward to working with Members of this Committee and providing assistance as you work towards developing the next farm bill. The Administrators and I will be happy to answer any questions that you may have.

Livestock Mandatory Reporting Cattle Dashboard

United States Department of Agriculture
Agricultural Marketing Service

LIVESTOCK & GRAIN
MARKET NEWS

Direct Slaughter Cattle Reporting Dashboard

Criteria

Region:

Year:

Week Ending:

Negotiated Cash Slaughter Cattle
Head Count W/E Jul 12 2010

Region	Head Count	vs. Year Ago	vs. 3-Year Avg
National	181,785	-1.3%	-7.9%
5 Area	166,175	-0.7%	-7.5%
Colorado	5,864	-55.3%	-59.6%
IA/IN	43,337	17.0%	40.7%
Kansas	43,704	19.4%	3.3%
Nebraska	54,120	-3.2%	-12.8%
TX/OK/NM	21,150	-19.8%	-32.7%

Click a column header to sort

Negotiated Cash Slaughter Cattle
Head Count W/E Jul 12 2010

Region	Percentage
Nebraska	29.77%
TX/OK/NM	11.68%
Colorado	3.23%
IA/IN	24.04%
Kansas	24.04%
Rest of US	8.59%

National Negotiated Cash Slaughter Cattle
Head Count W/E Jul 12 2010 - 3 Month Data Set

Latest Cash Market Information

5 Area: 22,832 head | Live Steers: 3,715 head @ \$12.25 | Live Heifers: 2,277 head @ \$12.10 | Dressed Steers: 7,641 head @ \$146.30 | Dressed Heifers: 2,403 head @ \$11.50

Information

Welcome to the AMS Direct Slaughter Cattle Dashboard. This data visualization tool provides an interactive means of displaying and viewing cattle market information collected under the Livestock Mandatory Reporting Act. Navigational assistance can be found at the bottom of the dashboard.

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Speech bubble: Tabs Allow Users to Select 4 Different Views

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Direct Slaughter Cattle Reporting Dashboard

Neegotiated Cash Head Count
 All Purchase Types
 Weighted Average Price

LIVESTOCK & GRAIN MARKET NEWS

Neegotiated Cash Slaughter Cattle
 Head Count W/E Jul 12 2010

Region	Head Count	vs Year Ago	vs 3-Year Avg
National	181,785	-1.3%	-7.5%
5 Area	146,175	-0.7%	-7.5%
Colorado	5,864	-58.3%	-59.6%
IA/IN	41,337	17.0%	49.7%
Kansas	43,704	15.4%	3.3%
Nebraska	54,120	-5.2%	-12.6%
TX/OK/MS	21,150	-15.9%	-52.7%

Rest of US: 8.239%
 TX/OK/MS: 11.835%
 Colorado: 3.239%
 IA/IN: 22.748%
 Kansas: 24.348%
 Nebraska: 29.774%

Neegotiated Cash Slaughter Cattle
 Head Count W/E Jul 12 2010

National Negotiated Cash Slaughter Cattle
 Head Count W/E Jul 12 2010 - 3 Month Data Set

Information

Welcome to the ANS Direct Slaughter Cattle Dashboard. This application tool provides an interactive experience for searching and reporting slaughter and live information collected under the Livestock Mandatory Reporting Act. Navigational assistance can be found at the bottom of the page.

Latest Cash Market Information

5 Area: 22,832 head | Live Steers: 3,715 head @ \$48.75 | Live Heifers: 2,277 head @ \$32.48 | Dressed Steers: 7,614 head @ \$149.39 | Dressed Heifers: 2,423 head @ \$111.00

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Users Can Customize Region, Date Range, and Specific Types of Information to Be Displayed

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Direct Slaughter Cattle Reporting Dashboard

Region: **All** | **5 Area** | **Weighted Average Price**

Criteria

Region: **5 Area**

Year: **2010**

Week Ending: **Jul-12**

Class: **Steer**

Selling Basis: **Live - FOB**

Product: **Live - FOB**

Information: **Dressed - Dressed**

Weighted Average Price

Region	Avg Price	% 3 Year Avg	% 3 Year Avg
National	\$91.87	12.5%	2.0%
5 Area	\$91.84	12.3%	1.9%
Colorado	\$92.96	13.3%	3.3%
IA/MI	\$92.49	14.0%	3.3%
Kansas	\$91.24	11.4%	0.9%
Nebraska	\$92.04	12.6%	2.6%
TX/OZ/OK	\$92.21	12.4%	1.8%

5 Area Negotiated Cash Slaughter Cattle
 Weighted Average Price vs. Head Count
 Steer - Live - FOB - W/E Jul 12 2010

Negotiated Cash Slaughter Cattle
 Weighted Average Price - Steer - Live - FOB - W/E Jul 12 2010 - 3 Month Data Set

Latest Cash Market Information

National	Live Steers	Live Heifers	Dressed Steers	Dressed Heifers
27,287 head	4,811 head @ \$92.82	2,322 head @ \$92.25	8,816 head @ \$148.86	2,398 head @ \$111.00

[Welcome to the AMS Direct Slaughter Cattle Dashboard.](#)
 This interactive tool provides an interactive...

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Table Displays Current Information with Comparisons to Prior Periods



United States Department of Agriculture
Agricultural Marketing Service

LIVESTOCK & GRAIN
MARKET NEWS

Slaughter Cattle Reporting Dashboard

Criteria

Region: National

Year: 2010

Week Ending: Jul-5

National Direct Slaughter Cattle
Head Count W/E Jul 5, 2010

Purchase Type	Head Count	vs Week Ago	vs Year Ago
Negotiated Cash	257,225	↓ -8.3%	↓ -5.2%
Formula Net	156,862	↓ -4.0%	↓ 1.3%
Forward Contract Net	65,937	↓ -8.0%	↓ 128.0%
Negotiated Grid Net	32,442	↓ 19.4%	↓ -14.9%

Click a column heading to sort

Negotiated Cash

FN43.52%
FC45.08%
NC37.79%

Formula Net

FN43.52%
FC45.08%
NC37.79%

Forward Contract Net

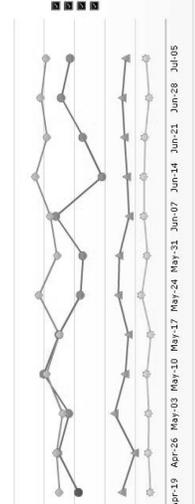
FN43.52%
FC45.08%
NC37.79%

Negotiated Grid Net

FN43.52%
FC45.08%
NC37.79%

Regional Comparison

National Direct Slaughter Cattle
Head Count W/E Jul 5, 2010 - 3 Month Data Set



Information

Welcome to the AMS Direct Slaughter Cattle Dashboard. This data visualization tool provides you with an interactive experience for searching and viewing cattle market information collected under the National Animal Identification System (NAIS) and the Animal Health Act. Navigational assistance can be found at the "Help" button.

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Graphical Display of Current & Prior Period Information – Can Be Toggled to Display in Tabular Format

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Direct Slaughter Cattle Reporting Dashboard

Criteria: Region: National, Year: 2010, Week Ending: Jul-12

Head Count: 281,795

Purchase Type	Head Count	% Week Ago	% Year Ago
Negotiated Cash	151,355	+5.9%	+7.9%
Formula Net	24,796	-2.8%	-1.7%
Forward Contract Net	31,254	+62.1%	+6.7%
Negotiated Grid Net		-2.7%	-2.4%

Click a column heading to sort

Current: FN44.56%, FC5.22%, FN67.85%, NC42.33%

Prior Week: FN43.51%, FC4.85%, FN67.11%, NC34.79%

Prior Year: FN43.2%, FC5.66%, FN63.25%, NC40.85%

Legend: NC: Negotiated Cash, FN: Formula Net, FC: Forward Contract Net, NG: Negotiated Grid Net

Regional Comparison: National Direct Slaughter Cattle, Head Count W/E Jul 12 2010 - 3 Month Data Set

Line chart showing head count trends from Apr-26 to Jul-12 for Negotiated Cash, Formula Net, Forward Contract Net, and Negotiated Grid Net.

Information: Welcome to the AHS Direct Slaughter Cattle Dashboard. This data visualization tool provides a graphical representation of purchase and viewing cattle market information collected under the Agricultural Marketing Act. Navigational assistance can be found at the "Help" link.

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Graphical Display of Current & Prior Period Information – Can Be Toggled to Display in Tabular Format

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 Agricultural Marketing Service

LIVESTOCK & GRAIN MARKET NEWS

Direct Slaughter Cattle Reporting Dashboard

Head Count | Weighted Average Price

Criteria: National | Year: 2010 | Week Ending: Jul-12 | Apply

Information: Welcome to the AMS Direct Slaughter Cattle Dashboard. This data visualization tool provides a graphical experience for searching and viewing cattle market information collected under the National Animal Health Reporting Act. Navigational assistance can be found at the "Help" link.

National Direct Slaughter Cattle
 Head Count W/E Jul 12 2010

Purchase Type	Head Count	vs Week Ago	vs Year Ago
Negotiated Cash	181,785	▲ 15.5%	▲ 2.7%
Formula Net	191,355	▼ 2.8%	▲ 1.7%
Forward Contract Net	24,996	▼ 62.1%	▲ 6.7%
Negotiated Grid Net	31,264	▼ 2.7%	▼ 5.4%

Click a column heading to sort

National Direct Slaughter Cattle
 Head Count W/E Jul 12 2010 - 3 Month Data Set

Period	Current	Week Ago	Prior Year
May 24 2010	140,289	39,340	288,576
May 31 2010	136,022	29,927	179,142
Jun 07 2010	159,635	35,691	189,747
Jun 14 2010	104,893	35,213	234,956
Jun 21 2010	135,639	33,968	195,294
Jun 28 2010	171,633	27,066	204,967
Jul 05 2010	157,329	32,142	196,862
Jul 12 2010	181,785	31,264	191,355

Regional Comparison: Purchase Type Comparison

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Charts Display 3 Months of Historical Information –
 Tabs Allow Users to View Different Comparisons

LIVESTOCK & GRAIN MARKET NEWS

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 Agricultural Marketing Service

Direct Slaughter Cattle Reporting

Criteria: Region: Nebraska, Year: 2010, Week Ending: Jul-5, Selling Basis: Dressed

Purchase Type	W. Avg Price	vs Week Ago	vs Year Ago	Head Count
Negotiated Cash	\$145.81	-0.3%	11.3%	48,085
Formula Net	\$148.81	-1.7%	12.6%	21,639
Forward Contract Net	\$142.10	-1.7%	7.0%	14,644
Negotiated Grid Net	\$147.84	-1.9%	13.6%	6,036

Weighted Average Price - Dressed - W/E Jul 5 2010

Information: Welcome to the AHS Direct Slaughter Cattle Dashboard. This data visualization provides an interactive view of the weekly and monthly average prices and head counts for direct slaughtering cattle market information collected under the...

Regional Comparison: Nebraska Direct Slaughter Cattle, Weighted Average Price - Dressed - W/E Jul 5 2010 - 3 Month Data Set

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LIVESTOCK & GRAIN MARKET NEWS

Direct Slaughter Cattle Reporting Dashboard

Negotiated Cash
 Head Count
 All Purchase Types
 Weighted Average Price

Criteria

Region: Nebraska

Year: 2010
 Week Ending: Jul-5
 Selling: Dressed
 Apply

Information

Welcome to the AHS Direct Slaughter Cattle Dashboard. This data visualization tool provides an interactive view of the weekly pricing and weighing cattle market information collected under the

Nebraska Direct Slaughter Cattle
 Weighted Average Price - Dressed - W/E Jul 5 2010

Purchase Type	W. Ave Price	vs Week Ago	vs Year Ago
Negotiated Cash	\$145.81	↓ -0.3%	↓ 11.3%
Formula Net	\$146.81	↓ -1.7%	↓ 15.6%
Forward Contract Net	\$142.10	↓ -1.7%	↓ 7.0%
Negotiated Grid Net	\$147.84	↓ -1.9%	↓ 15.6%

Click a column heading to sort

Nebraska Direct Slaughter Cattle
 Price vs. Head Count
 W/E Jul 5 2010

Wgt Price	Head Count
\$145.81	48,055
\$146.81	21,639
\$142.10	14,654
\$147.84	6,036

Nebraska Direct Slaughter Cattle
 Weighted Average Price - Dressed - W/E Jul 5 2010 - 3 Month Data

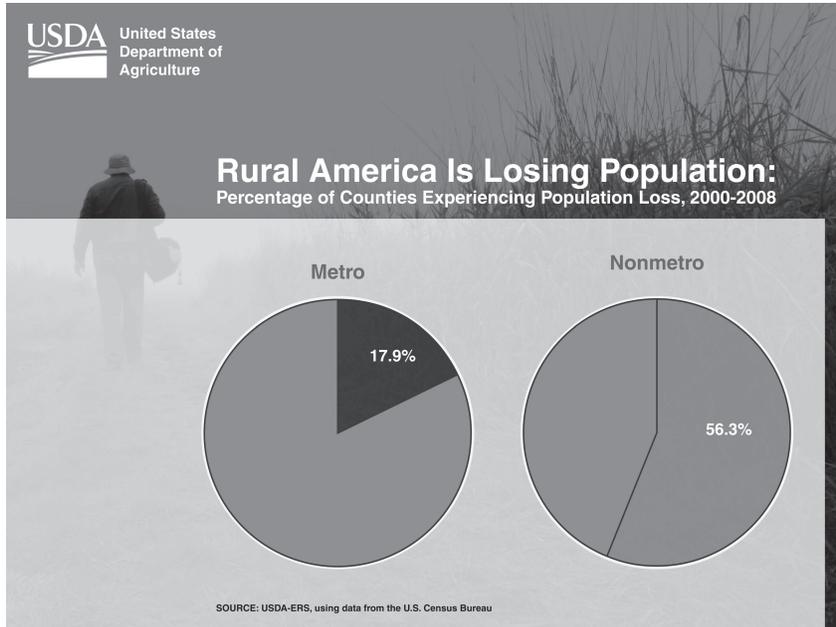
Negotiated Cash
 Formula Net
 Forward Contract Net
 Negotiated Grid Net

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Link to the Cattle Dashboard from the Livestock & Grain Market News Portal at www.marketnews.usda.gov/portal/lg

The screenshot shows the USDA Livestock & Grain Market News Portal. A large grey callout box is overlaid on the page, containing the text: "Link to the Cattle Dashboard from the Livestock & Grain Market News Portal at www.marketnews.usda.gov/portal/lg". The callout box has a pointer that points to a link in the "Livestock Mandatory Reporting" section of the website. The website header includes "LIVESTOCK & GRAIN MARKET NEWS" and navigation links for Home, About Us, Careers, Help, and Contact Us. The main content area features a "Welcome to Livestock and Grain Market News" message dated July 13, 2019, and a "Popular Reports" section. The "Livestock Mandatory Reporting" section is circled, and the link "Direct Slaughter Cattle Reporting Dashboard" is highlighted. The footer contains various links including "LGMN Home", "AMS Home", "LGMN Site Map", "Rulemaking", "USDA.gov", "FOIA", "Accessibility Statement", "Privacy Policy", "Non-Discrimination Statement", "Information Quality", "USA.gov", and "White House".





The CHAIRMAN. Thank you, Under Secretary.
Is there anyone else before we get some questions here?

Mr. AVALOS. No.

The CHAIRMAN. They are just there to add to it? All right. Thank you very much.

Let me start with a question, and then we will go around the horn here, with our Chairman as well. But let's start with the GIPSA deal.

The title of the proposed rule that was published on June 22, 2010, states that it is the implementation of regulations required under Title XI of the 2008 Farm Bill. But, in fact, the very language of this proposed rule goes far beyond the directives of the 2008 Farm Bill and, as a matter of fact, includes a number of provisions that were discussed and voted down and not adopted as part of the farm bill.

Now, why did GIPSA choose to go beyond what Congress directed and intended? And what is GIPSA's authority for going around Congress's intent, Mr. Under Secretary?

Mr. AVALOS. Mr. Chairman, the proposed rule seeks to improve fairness and transparency in marketing of livestock and poultry. GIPSA does have the authority. What is driving the need to use this authority under the Packers and Stockyard Act is our concern about the loss of farmers, and the depopulation of rural America.

If we are serious, Mr. Chairman, about keeping farmers in business, if we are serious about making sure that young farmers can get into the business and stay in business, then we really need to get serious about creating a market that is transparent and fair.

The CHAIRMAN. But, Mr. Under Secretary, isn't it the function of the Congress of the United States to legislate, and then isn't it the function of the Executive Branch to carry out the intent and the meaning of the legislation and not rewrite the farm bill, not violate what Congress has already disapproved and voted down and you all put back in? That, to me, is a clear violation.

Mr. AVALOS. Mr. Chairman, under the Packers and Stockyards Act, we do have the authority to implement the changes that we did. But I just wanted to say that, for years, for years, we have worked under the *status quo*. Unfortunately, one of the results has been the loss of thousands of farmers throughout rural America, particularly livestock producers.

Secretary Vilsack has traveled all over rural America, and he has heard a common theme: People are concerned the market is not treating them fairly. People are concerned about the continued increase in the consolidated market. People are concerned—

The CHAIRMAN. Mr. Under Secretary, I don't want to hog the time here, but I do want to get to the bone of contention that we have here. And it is clear to me that we are going to have to backtrack on this if we are going to maintain the value of the legislative process here. That is what I am getting at.

And the other point is that there have been great concerns raised for this from the livestock community—the National Cattlemen's Beef Association, the National Pork Producers Council, the National Chicken Council, the National Turkey Federation, the entire industry—that you have made this rule, have felt not only that it

violates the farm bill's intent, what Congress laid in, but there was not any input, not adequate input for this.

And the other point is that, clearly, the least of which should come out of this is that this comment period must be extended. In the view of what we are trying to do in the final analysis, it is to make it work for the producers, for the people out there that have to carry this on.

So could you just briefly answer on the input? Why wasn't there input from the very producers that have to execute this?

Mr. AVALOS. Mr. Chairman, we know that the proposed rule has issues that are very complex. That is why we started out with a proposed rule. And we are encouraging feedback from producers, from industry groups, from all stakeholders, to ensure that we have factored in all possible aspects when drafting the final rule.

Mr. Chairman, this is really about rural America. This is really about keeping the farmer on the farm and stimulating rural economies. Again, I want to emphasize that there is a proposed rule and there is a comment period, and we really want comments and input.

Now, I also want to address the comment period. It is customary for a 60 day period. And I want to emphasize that we have received letters requesting an extension; we have received letters requesting that we not grant an extension. And we take these requests very, very seriously.

The CHAIRMAN. May I ask you this, please? Where are the letters coming from requesting the extension, and where are the letters coming from that are not wanting the extension? You don't have to name the names of the person, but I just need to know what sector, where they are coming from. Are they—

Mr. AVALOS. Mr. Chairman, I know they are coming from trade organizations from all over the country. I am going to ask Administrator Dudley Butler to tell you. I don't know all the organizations, but maybe he can help answer your question.

Mr. BUTLER. Mr. Chairman, we have letters from industry organizations such as AMI and NCBA, the National Turkey Federation, wishing that the comment period be extended. We have gotten letters from numerous producers, and numerous producer groups—I received a letter just yesterday that was signed by 57 different producer groups all over the country—that do not want us to extend it.

So we take these comments very seriously. We are looking at the situation and trying to make a determination of what to do.

The CHAIRMAN. I see my time is well over. I may come back to that, but I don't want to hog the show as much. I am going to turn it to you, Ranking Member, and then we will go to the Chairman.

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

I want to go back to—you said you are receiving some letters from producer groups. But there are also producer groups, aren't there, Mr. Butler, that are requesting that the extension be made longer, is that correct?

Mr. BUTLER. That is correct. NCBA, in particular, is a producer group that asked that it be extended. NPPC is a producer group that asked that it be extended.

Mr. NEUGEBAUER. So, it is fair to say that people on both sides of the equation have sent you letters requesting that the time period be extended. Would you say that is a fair assessment?

Mr. BUTLER. I would say that the fair assessment would be that there were producers on both sides that have asked both ways. And so we find ourselves trying to deliberate and make a determination of what a fair comment period would be for all parties.

Mr. NEUGEBAUER. Now, what I found was interesting was that the comment period that you proposed closes 4 days before the final workshop. So I guess the workshops were for show, or were they to gather information?

Mr. BUTLER. No, sir, they were not for show. The workshops are a collaboration between DOJ and USDA, and they are set up to try to get more information about the concentrated marketplace and consolidation. They were set up to be separate and distinct from the writing of the GIPSA rule.

Mr. NEUGEBAUER. Now, would you say that the GIPSA rules are trying to address what many of these workshops are discussing?

Mr. BUTLER. I would say there would be some areas that would come up within the workshops, and have come up within the workshops, that are addressed in the GIPSA rule, yes.

Mr. NEUGEBAUER. Well, I am from west Texas and maybe I am a little bit slow here. But when you go out and ask for somebody's opinion, you don't go ahead and give them the answer. I think that is kind of what it looks like here. We went down the road to have these workshops to get information; then meanwhile, while we were doing all that, we were just writing this rule and we published this rule. And now the rule has come out and the comment period on it closes 4 days before the final workshops.

I think this is one of the things that the American people are getting a little tired of, is they don't think that the government is listening to them. And what we do—we have all these “big government” solutions where the government is going to come in here and save everybody.

Now, I have been in the free market system, and I believe in a very open and transparent market system here. But when I look at these rules, when you say we are trying to protect rural America, these very rules, in many ways, if some of the things happen, would be more detrimental to some of the producers than helpful.

And so, one of the things that I think is very reasonable—and Chairman Scott made a very good point—is that you all have gone way beyond the legislative intent. In fact, we had a lot of discussions about many of these issues. But I would find it extremely troubling if the Administration doesn't extend the time period here on something as important to producers in the whole animal agriculture as these rules. These aren't just little tweaks here; these are far-reaching regulations here that have some fairly major ramifications.

And so I hope—and, certainly, a number of us are going to be watching very closely—that the Administration takes this seriously. Because we are getting contacted by both groups, and they are thinking this process is being fast-tracked, and they have a lot of questions about whether this is going to be effective or not.

And, Mr. Under Secretary, I want to say this: Rural America isn't shrinking because of marketing activities. Rural America is shrinking for a number of reasons, and one is productivity. My wife was raised on a cotton farm in west Texas, and back then you could make a living off a quarter section. Today, to make a living off of growing cotton in this country, you have to farm 3,000 or 5,000 acres.

All through every area of agriculture, the productivity and the scale that operators have to get to to be profitable, and to be competitive, have increased. And it is unfortunate that that has caused a shrinking of our rural population. But to come in and say that the reason that rural America is shrinking is because of the marketing activities is a real stretch and is really not, quite honestly, the truth.

So I will close with saying I am deeply concerned with these rules, but I am more deeply concerned with the process that is unfolding before American agriculture. I think they are concerned, as well.

Mr. AVALOS. Mr. Chairman, Congressman, can I respond?

The CHAIRMAN. Yes, please.

Mr. AVALOS. Okay.

On the extension, I also need to point out that there are a lot of groups even in this room—there are a lot of cowboys in the room that don't want an extension. There are also a lot of cowboys in the room that do want the extension. And we recognize that, and we take that real serious. And we are going to make a decision very soon.

Now, on the workshops, it is very important to clarify that the GIPSA rule is separate from the workshops. First of all, there are still two workshops left, and it would be premature to prejudge what the outcomes are going to be. We should have the benefit of receiving all of the information from the workshops before coming up with any kind of a conclusion, or determining what the outcome is, or determine if there is a problem or not a problem.

So I just want to emphasize, Congressman, they are separate.

Mr. NEUGEBAUER. And I understand that. And I would say to the groups that are on both sides of that that extending the comment period—it may be there is overwhelming support for this. I don't know. I don't think so. I think there is going to be support for pieces of it.

Giving more time for people to digest this, to be able to think through this and to have some dialogue with you and trying to get a better understanding of why and where you are coming from, for whatever side you are on, giving more time for input and study is in everybody's benefit, no matter what side of this issue you are going to be on.

Mr. AVALOS. Congressman, I acknowledge your input.

The CHAIRMAN. And that is especially so because these are the most significant changes in nearly 100 years.

Mr. AVALOS. Yes, sir, Mr. Chairman.

The CHAIRMAN. With that, I am going to turn to the gentleman from Iowa, Mr. Boswell, for his comments.

Mr. BOSWELL. Well, thank you, Mr. Chairman.

It has been an interesting discussion so far. And I share some of your concerns, but I also should say, having been in your position when we did the farm bill, that I believe it is fair to say to our panel that, when we look back at the Packers and Stockyards Act, that you have operated within your authority. I think I should say that.

I have a deep concern. I make no bones about it, I am the producer guy, and I am going to be that way. And I have just been thinking over this discussion going on. On the road from the village out to the farm that I still operate, a cow-calf operation—and it is not a long trail, it is about 3 miles—there are seven less farmsteads than what there were when I was a young man on that same trip. That kind of verifies what you are saying about the loss of farms. Now, things change, and we know that, and that is going to continue to happen.

When this question about animal antibiotics came up in the Rules Committee—and that is all part of the record—I went over and visited about that. I managed to become a witness on that panel about the Danish question and all that business, and I won't take time to discuss that here. But it has been an interesting road since then, including some of us going to Denmark, and then lots and lots of meetings since then.

Several months ago, I had the occasion with Dr. Apley from Kansas State University, formerly at Iowa State, a veterinarian, scientist, academian, practitioner, and all around type of guy. And he was out here for the cattlemen to do something, and we got word, and we got a chance to have him go and meet with the Chairwoman of the Rules Committee, which she was very gracious to do. And I compliment her for that.

And when we got over there the next day, why, the witnesses that were at her hearing that were pro what was going on in Denmark were also there. It was a kind of an interesting little discussion. But it turned out very positive, in this sense: that these scientists, if you will, as they got into discussion, and the conclusion Dr. Apley made said—and something that I feel very strongly about—there is no producer that I know of out there that wants to put an afflicted animal of any kind on the market. We don't want to do that. It is wrong. It would be costly, too. Just don't do that.

And I could spend the rest of my time telling you about my own experience when I was in the military for 20+ years and came back and restarted, if you will. So a lot of effort goes on. And you look at how medication goes through the process of 8 or 10 years and the cost and everything. So this needs to be really looked at.

And in that discussion with these, sort of, opposing scientists, if you will, the conclusion was that, if true—T-R-U-E—if true science is applied, we all want that. I think that is pretty simple, straightforward, the way we all feel. That is what we want. And with anything less than that, then let's walk very, very slowly and not create a market problem or an implied problem or whatever.

I have talked to several physicians, one not too long ago, and probably some of the rest of you, too. And their concern for the overuse of antibiotics and the implication of that to humans and

pets, there is reason to believe it far exceeds what we are doing for animals we raise for the food resource.

So, this is something that needs to go on for a while. We need to look at it carefully and apply true science. I think that is what you are trying to do. So it is difficult. It is a hard row.

Now, with that discussion the Chairman and the Ranking Member had already, it indicates that to me, and I understand that. But, we need to go down that road. Maybe a compromise on the rule-making, maybe you could give it an extension of some amount. I don't know. That is a decision that you will have to make. But that might be a possibility, to maybe extend it for a few days. I don't know.

But I don't want us to be discouraged that we have this to do, and it has been laying out there for a while. And when we go back to some of the other issues—or maybe we will have another round, if I can stay—we would like to talk about some of the things we went through on the mandatory arbitration. Some of those things, if you remember that, some of you were in on that, and it was tough. I think that we tried very hard for a number of producers to represent their situation and make progress.

So, with that, I will stop and yield back. And, again, Mr. Chairman, I appreciate having this hearing. And if we get everything out, keep it out in the daylight so we can see what is going on. Thank you. I yield back.

Mr. AVALOS. Congressman, may I respond a little bit on your remarks?

The CHAIRMAN. Yes, you may.

Mr. AVALOS. Congressman, I appreciate your comments. I really do.

I grew up on a small farm in southern New Mexico, and I have worked with livestock producers all my life. In fact, I was just down in south Texas, in Laredo and Eagle Pass, working with livestock producers all weekend.

I understand the importance of antibiotics in the production program. And, Congressman, I sincerely feel that most livestock producers in this country are really good stewards, and they want to do the right thing. They want to use antibiotics only when it is absolutely necessary. And it costs money—so they are not going to use them just to use them, I know that.

Unfortunately, overall, antibiotic use does increase the risk of resistance, regardless of how careful we are. And this applies to animals and humans.

At USDA, we are very sensitive and very committed to revitalizing rural communities and keeping farmers in business. We don't want to create another hardship, and we don't want to create another burden on producers. We want them to be around in the future, and we want antibiotics to be around in the future for them to use.

That is why we are committed, Congressman, to using science-based decisions.

Mr. BOSWELL. If the Secretary would yield just for 30 seconds here, Mr. Chairman?

The CHAIRMAN. Go right ahead.

Mr. BOSWELL. In my statement of fairness in what I have just said, there was an article that was published in the *Des Moines Register* by Mr. Brasher that pretty much says what you said, Mr. Secretary.

You know, in fairness, I would like to ask that it be put into the record, Mr. Chairman. I don't necessarily agree with everything that is said here, but, again, I propose what I think you are saying, Mr. Secretary. Let's keep daylight on this, keep it out in the open, and so on.

So, with your permission, I would like to submit this for the record.

The CHAIRMAN. That is done.

[The document referred to is located on p. 59.]

The CHAIRMAN. Now the gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Mr. Avalos, you indicated that you had heard from producers on both sides of this issue about the extension. Have you heard from processors or packers on both sides of the issue?

Mr. AVALOS. Congressman, I will have to defer to my Administrator, because I don't have an answer for you.

Mr. BUTLER. Yes, sir. As I said before, Congressman, we received letters also from processors, packers, live poultry dealers, and organizations that they are members of.

Mr. GOODLATTE. That support this?

Mr. BUTLER. That supports the—they support an extension. The other groups did not—

Mr. GOODLATTE. Yes, the point being that Mr. Avalos said earlier that there were, as he said, "cowboys in the room" who wanted an extension and those who didn't.

My question is, well, this doesn't just apply to them, does it? It also it applies to the folks who process what they produce, the slaughter facilities. They market the product. They have tens of thousands of employees who are dependent upon their jobs.

These processors and packers, they will make decisions based upon the implementation of this, if indeed it does get that far, that will affect the jobs of their employees, that will affect these producers that Mr. Avalos is concerned about having more of in rural America—and we certainly all support that.

But producers and processors can purchase these products from anywhere in the world. And if you make the rules so that it doesn't make sense for them to do it here, then you are going to harm those producers, you are not going to help them.

So my question is, what kind of input did you solicit from them before you wrote this rule? Either one of you would be fine.

Mr. AVALOS. I am going to go ahead and let Mr. Butler continue.

Mr. BUTLER. There were many different meetings in the past before I got here. And the Secretary has also gone around on a rural tour—

Mr. GOODLATTE. When did you get involved, Mr. Butler?

Mr. BUTLER. I arrived on May the 10th—

Mr. GOODLATTE. May the 10th—

Mr. BUTLER.—of 2009.

Mr. GOODLATTE.—of 2009.

Mr. BUTLER. Right.

Mr. GOODLATTE. So you have been involved with it for over a year.

Mr. BUTLER. Correct.

Mr. GOODLATTE. What kind of outreach did you make to the processing industry and the packers to solicit their input and to work with them, if you will, in writing this rule?

Mr. BUTLER. I had an open-door policy when I got here. I can't think of too many packers, packer organizations, or live poultry dealer organizations that I have not met with in dealing with this rule. I have tried to meet with everybody. I didn't just try to meet with producers.

Because this is an industry rule, this rule is being prepared for clarity. It is going to deal with the marketing of livestock and poultry. And we are designing this rule to where the marketplace will be fair, transparent, but it also will not have fraudulent, deceptive, or retaliatory practice as a part of the marketplace.

So we are looking at it from a broad spectrum. That is the reason we have a proposed rule—

Mr. GOODLATTE. Mr. Butler, if you are looking at it from a broad perspective, then it would seem to me that if you have division amongst the producers as to whether or not we should have more time to look at this, and you have unanimity on the part of the processors that you need more time to look at this, it would seem to me that you need more time to look at this.

Mr. BUTLER. Well, I think that is what we have just discussed. And Under Secretary—

Mr. GOODLATTE. When will you make that decision?

Mr. AVALOS. Congressman, you are right in your comments. It is not only about the cowboys, it is not only about the hog producers, it is not only about the poultry growers. It is about the packer, the processor, even the wholesaler and the retailer, and even the consumer. I understand that.

To answer your question on when we are going to make a decision whether or not to extend the comment period, I can't tell you when, but I know it is going to be as soon as possible.

Mr. GOODLATTE. All right.

You know, both the current Chairman of the Committee, Mr. Scott, and the previous Chairman of the Committee, Mr. Boswell, acknowledged that this was a pretty heated issue in this Committee when we wrote the farm bill over 2 years ago. Now, a lot of the things that you have addressed were rejected by the Committee, by the Senate, and collectively by, ultimately, the entire Congress.

Why did you ignore that, whether or not you have the authority—and I know the lawyers will fight that out. I know there are some circuit court cases that some have claimed you have violated in these proposed rules. So I am sure that this is going to be a field day for the lawyers. Whether they are in rural America or urban America, they are going to get a lot of employment out of this.

But I want to know why, when the Congress spent a lot of time on this issue, you ignored what we resolved and what we asked to you do and went light-years beyond that, in terms of what you wrote here?

I know what you want to do, and I know what you told me were your concerns. But why did you simply ignore the work of this Committee in doing so? I mean, doesn't that invite the kind of confrontation that we would like to avoid here?

We want to make sure that we have good, transparent rules that work for our producers and our processors. But the fact of the matter is, that is why we have elected officials. That is why we have debates within the Congress. That is why we have these hard-fought discussions amongst the people who are actually elected to make these decisions. And then you turn around and you completely ignore those decisions and come forward with something that is to the contrary.

I mean, the Congress is faced with the problem of, if we think this process is unfair, and if we think this process is contrary to what the elected representatives of the people ask us to do, we are faced with, what, cutting off the funds for the implementation of that in the future? That is hardly a desirable way to go here.

Did you take all of that into consideration before you went ahead and moved in the direction you did?

Mr. AVALOS. Congressman, the proposed rule—and I emphasize, is a proposed rule—the proposed rule is a result of the Secretary traveling all over the country, traveling all over rural America, and hearing from producers, hearing from industry groups all over the country.

Mr. GOODLATTE. This Committee is composed of nearly 50 Members of Congress from all over the country. We don't have to travel to hear from our constituents. We are there. We hear from them all the time. And I know, I hear from some constituents who are in favor of what you are doing; I hear from some who are opposed to what you are doing, both producers on one side. I haven't heard from any processors that are in favor of what you are doing.

But be that as it may, we are the elected representatives of the people. We made a decision about how far we thought you should go based upon what we put in the last farm bill. And now you and apparently the Secretary have ignored that, and we want to know why. And that is not a partisan *why*; that is obviously a bipartisan *why*.

Mr. AVALOS. Congressman, again, we are not trying to ignore the Committee. We are not trying to ignore the voices of the Committee. By the same token, we are not wanting to ignore the voices of producers and stakeholders out in the countryside.

Mr. GOODLATTE. Did they elect you to make those decisions?

Mr. AVALOS. No, sir, they did not.

Mr. GOODLATTE. Mr. Chairman, my time has expired.

And, Mr. Avalos, I think you would be well-advised to give more time to this process.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Goodlatte.

Now we will turn to the gentleman from California, Mr. Costa.

Mr. COSTA. Thank you very much, Mr. Chairman. I want to thank you for holding this hearing. I think it is very important.

And I would like to echo the statements of some of my colleagues on this proposed rule as it affects both beef processors and poultry

processors, as well as the producers that I represent in the San Joaquin Valley of California.

And, first, as it relates to the proposed rule, let me weigh in. I would strongly suggest that you provide the extension. And I will make those views known to this Administration. Because I would suggest to you that if you don't, you are opening a can of worms, and you are creating a series of conditions which this Administration will wish they had not stepped in.

Let me also suggest to you that I think it is very clear, after having been a part of the 2008 Farm Bill, and the discussions that my colleagues and I just went over, that a host of elements in this proposed rule were rejected both in the form of amendments in the Senate and here in the House. So all I can deduce from looking at this proposed rule is that you are attempting to circumvent the will of those duly elected officials both in the House and the Senate when we put the 2008 Farm Bill together. These issues are not new, they were discussed during the 2008 Farm Bill.

Mr. Chairman, I would like to submit for the record a letter addressed to Mr. Butler and relates to a conference call that he had last week from Ms. Rosemary Mucklow, Director Emeritus of the National Meat Association. She, like many of my constituents, have made repeated requests to GIPSA to provide the public a list of comments and concerns that have been referenced as the basis for a ban on packer-to-packer sales. Mr. Chairman, without objection?

The CHAIRMAN. Without objection.

[The document referred to is located on p. 59.]

Mr. COSTA. Thank you. Mr. Butler, is GIPSA planning to provide documentation to the Committee, and our constituents, as to the request that was made last week in your conference call?

Mr. BUTLER. Yes, sir. I can provide that.

Mr. COSTA. Well, we would like it. The Committee, the Subcommittee would like it, I would like it, and certainly the request that was made to you in written form would like to be honored. Mr. Butler, I assume because this is your area, but Mr. Avalos, obviously, if you would like to respond, or Ms. Pegg, please weigh in.

If the packer-to-packer sales creates concerns about market price manipulation, doesn't GIPSA already have the tools to investigate and prosecute such manipulation?

Mr. Avalos, do you wish to respond? Do you have the tools or not, already?

Mr. AVALOS. I am going to go ahead and defer to—

Mr. COSTA. Mr. Butler, do you have the tools or not, already? My time is going. You dealt with this in a previous life a lot, so you have a view, a point of view, certainly, that would suggest whether or not they have the tools or not.

Mr. BUTLER. If I might, Congressman, if you are speaking of section 202(a) or (b) there are, generally, tools to bring certain action—

Mr. COSTA. Let's go to the next question. In the last several years, how many investigations has GIPSA conducted in price manipulations through packer-to-packer sales since you have been here since May 9th of last year, 2009? And what have the investigations produced on those packer-to-packer sales?

Mr. BUTLER. I would have to get you that information, Congressman. I don't have it off the top of my head.

Mr. COSTA. You know, you are proposing a rule on this, and it has to be based upon a series of facts and investigations. It would seem to me, especially since you are taking on an added effort that was rejected in the form of amendments when this was heard in 2008, so I would expect, and everybody else would expect, that you provide that information on the investigations and the totality.

Mr. Avalos, why is the ban on packer-to-packer sales necessary in your view?

Mr. AVALOS. First of all, Congressman, the USDA does have the authority and responsibility to prevent practices that could harm the market.

Mr. COSTA. No, I understand that. But you are assuming that every packer-to-packer sale is fraught with fraud?

Mr. AVALOS. We are concerned that packers—

Mr. COSTA. No, I mean answer my question.

Mr. AVALOS. No.

Mr. COSTA. Of course not.

Mr. AVALOS. Of course not.

Mr. COSTA. So then why would you ban it? Why wouldn't you just take the bad actors, because you have the tools to investigate, instead of banning it outright?

Mr. AVALOS. Well, well—

Mr. COSTA. I mean, many packers own types of livestock beyond those that they slaughter. Isn't it possible that the rules would result in less competition as larger packers expand their operations to the process by adding livestock, and small packers who can't afford to expand being forced to narrow their herds? Isn't it the opposite of the intention of the rule?

Mr. AVALOS. Congressman, the rule is about helping these folks.

Mr. COSTA. I am telling you I am thinking the rule is going to go in the opposite direction.

Mr. AVALOS. For years, Congressman, we have operated under the *status quo*. Unfortunately, we continue to lose farmers. We continue to hurt rural America. We continue to lose a lot of livestock—

Mr. COSTA. Mr. Avalos, for the record let me stipulate, my family has been farming for three generations. I have family both in the cattle business, in the dairy business, and I farm almonds. And I represent two of the highest-income agricultural counties in the nation: Fresno County and Kern County—and Kings is number ten. So I appreciate your passion, growing up in New Mexico in a small family farm for farmers. We all share this passion in this Committee. Most of us have similar farm backgrounds. When I am done here I am going back to the farm. So I am *sympatico* with you on that one.

There are a lot of factors that are hurting rural America and U.S. agriculture. I don't think the packer-to-packer ban on sales is the contributing cause, in my view. I think a surgical approach would be far more beneficial than simply outlining the ban.

Now, Mr. Chairman, I have gone beyond my time, but I really want to get into the area in the second round if you would oblige us, because I know other Members have questions to ask about the

issue of unfair, unjust, discriminatory, and deceptive practices and paying for—or applying the premium discount. And I also want to talk about how the unfair practices would be applied in this proposed rule. And I also want to talk about the issue on demonstrating harm based upon the legal threshold; because, boy, if this proposed rule is implemented the way I read it—and I am one of the non-lawyers here—I think it becomes a lawyers’ field day to sue with little provocation for cause. And I don’t think that is what we want in the proposed rule. Hopefully we will have a second round of questions.

The CHAIRMAN. We will definitely have a second round of questions.

Mr. AVALOS. Can I respond?

The CHAIRMAN. Very briefly. We will have a second round, so I want to get to each Member here first, because some may have to leave. We will have a second round. We want to make sure everybody gets a shot.

The gentleman from Texas, Mr. Conaway.

Mr. CONAWAY. Thank you, Mr. Chairman.

Mr. Avalos, I am particularly unpersuaded with this grandiose statement that you want to repopulate rural America as a result of implementation of this rule. That is incredulous, actually, that you would come to us and tell us that you want to circumvent the legislative intent that is clear; that you want to circumvent seven courts of appeals who have come down on the other side of this issue, in which the USDA participated in those court cases and you lost; that you would wave that flag of repopulated rural America as your basis for this rule.

You know, to have the Secretary travel the countryside and listen to anecdotal evidence is wonderful, but something this widespread and this sweeping—you ought to have something a little more substantive as to why it works, why it does work, what impact it will have on this industry in order to justify it. To just simply relay the blame for things that happened in rural America naturally, it is happened in every country in the world where folks who have moved off the farm to better opportunities in the city, to lay that whole issue at the feet of this deal seems to me a bit incredulous.

Also you have not yet laid the reasons why delaying this rule-making process—where is the down side risk to that? Where is the immediacy of having to get this implemented? I am sure folks who want this rule in place see it as giving them some sort of an advantage in the marketplace, and we probably ought to try to understand advantages there. This is a classic “Ready, Fire, Aim” circumstance that we have.

So the question I would have by background, Mr. Avalos, typically we get a résumé of our witnesses and there is not one in there. Could you give me a couple of seconds or minutes on what your professional background is when you came to this job.

Mr. AVALOS. Congressman, I grew up on a small farm in southern New Mexico. I have been in agriculture all my life, graduated from Mexico State University, went to work for the Texas Department of Agriculture in Amarillo, Texas. Went to work for the New Mexico Department of Agriculture, spent 30 years, and I worked

with an emphasis on marketing, domestic and international marketing. I worked everywhere from production, livestock and agricultural farm.

Mr. CONAWAY. That is helpful, trying to figure out how we get to where we are. But the fact that we have a circumstance where we have this proposed rule that is offensive to some of us up here on the panel as to how it has come about. But, I do think you need to lay the predicate, lay the basis for why a delay when the world stops turning if you don't grant this extension.

Mr. AVALOS. Congressman, on the extension request—

Mr. CONAWAY. Beat it to death.

Mr. AVALOS. We have to take all requests—

Mr. CONAWAY. Okay. Give us, since you have been reading letters individually yourself, the folks who want it done by the 27th or 23rd, whatever the date is, what is their rationale for the immediacy of getting it done?

Mr. AVALOS. I couldn't answer that.

Mr. CONAWAY. Really? But just the fact that—

Mr. AVALOS. I don't know why they are—

Mr. CONAWAY. So how do you make these decisions? You stack these letters up and whichever stack has the highest one wins? How does the process work?

Mr. AVALOS. There is input from several people at the USDA and—

Mr. CONAWAY. You have done a great job of sticking to the talking points, but you have not been real persuasive. You have also mentioned earlier that a conclusion has been reached. Does that mean that input between now and even the abbreviated 60 day period is not relevant to the decision-making process?

Mr. AVALOS. I didn't understand—

Mr. CONAWAY. Earlier in your conversation—

Mr. AVALOS. A conclusion had been reached?

Mr. CONAWAY. A conclusion had been reached on this issue, not on the extension but on the rule itself. Maybe I misunderstood what you said, but you seem to say that you came to this rule, you've reached a conclusion on it, and so it is mandatory we have 60 days before you implement it or—

Mr. AVALOS. That is not correct.

Mr. CONAWAY. So you are open to changing this rule from what is proposed, that would reflect the legislative intent that is clear, that would reflect the seven courts of appeal that are out there, that we could anticipate based on this hearing and others that the Department of Agriculture may decide they can't do by Executive *fiat* what ought to be done by elected officials, starting with the folks in this Committee; is that an option?

Mr. AVALOS. Well, Congressman, let me say this. Issues in this proposal are very complex, I won't argue that with anyone in this room. Now, I want to emphasize it is a proposed rule, and we are strongly encouraging input and feedback on the rule, not only from producers, but from all stakeholders.

Mr. CONAWAY. Let me flesh out one last thing. Maybe it has to do with this packer ban that Mr. Costa—if I own a pork processing facility in one state and I own pigs in another state, am I prevented under your proposed rule from selling those pigs to a closer

facility than the one I own three states away? Do I have to ship the pigs past other processing plants under this rule?

Mr. AVALOS. I am going to defer to the Administrator, Mr. Butler.

Mr. BUTLER. I didn't hear that whole question. I think I heard that you said you owned a facility in one state and there was another state—

Mr. CONAWAY. That had pigs.

Mr. BUTLER. Another facility three states away.

Mr. CONAWAY. Do I have to ship those pigs, three states over to process them in my own plant, or can I sell them to some other packer?

Mr. BUTLER. Under the proposed rule you could not sell them to another packer.

Mr. CONAWAY. So let me make sure—I know I am over the time, Mr. Chairman—but to flesh this out, in order to process my pigs on the ground, you have taken value away from those pigs where they are forcing me to ship them some number of miles past a closer processing facility in order to sell those pigs. So that makes the system more competitive, that makes rural—that in and of itself will repopulate rural America by that harsh a rule?

Mr. BUTLER. I think in all fairness, that is a little bit out of context.

Mr. CONAWAY. What—

Mr. BUTLER. Could I answer?

Mr. CONAWAY. Sure.

Mr. BUTLER. What the purpose of the packer-to-packer sales ban—this is not a packer ban of ownership, this is packer-to-packer sales.

Mr. CONAWAY. So you would argue that your stepping into the market in that regard by banning packer-to-packer sales, you have stepped into the market punitively.

Mr. BUTLER. The underlying reason for the packer-to-packer sales ban is because of the large concentration in the marketplace, it leads to a probability, if not a possibility, of price sharing. The price sharing affects many producers if their marketing agreement is based on that sale.

Mr. CONAWAY. So, you have evidence to this? You are saying *probable*, and *possible*, and *maybe*. You have empirical evidence where that is happening and you don't already have the authority to step into that?

Mr. BUTLER. Congressman, we have evidence, as Mr. Avalos said, there has just been degradation in rural America on—and that is the—

Mr. CONAWAY. And your evidence that fewer people living in America is directly tied to this issue, period? Where is the evidence to that?

Mr. BUTLER. I think that is partially true. I am not saying it is only—

Mr. CONAWAY. No, you come in here with a wide, sweeping change and you are waving this flag about repopulating rural America as your rationale for doing this. Is there—

The CHAIRMAN. We are going to give another round so all the Committee Members will get a round. I have been very, very fair

and very generous here, and I want to be because it is so important. But I am also reminding Committee Members that we will have a second round. But there are Members who have been here for a period of time and haven't had a chance, so let's be mindful of them.

Right now we are going to go to our Chairman, Chairman Peterson, from Minnesota.

Mr. PETERSON. I thank the gentleman and I apologize, I had to go out and meet with some constituents, so it sounds like you have spent quite a bit of time on the GIPSA situation. So maybe I will shift gears here a little bit.

I don't know who wants to answer this, but regarding the animal ID issue, we have been up and down through this voluntary/mandatory, and now we are off on this new state initiative.

And so I don't know who wants to answer this, but why does USDA believe that this new traceability framework approach will be better received or any more successful than past efforts? Do you have some indication that that is the case? And what kind of responses have you received from the industry in states and tribes on this new approach?

Mr. AVALOS. Well, Congressman, first I want to state that it is a responsibility of USDA in the case of a disease outbreak to identify the source, to put in place safeguards and to contain and prevent the spread of disease. This is important to us and very, very important to the livestock industry.

Now, I also want to state that in this country we are very, very lucky that we have the largest and most diverse livestock industry in the world. We have family farms, we have corporate farms, we have small producers, large producers, organic, conventional, a very complex industry.

The new approach that we have taken partners us with the states and tribes. This is very, very important because it is no longer a top-down request, mandate from the government. This is a request where we reach out to our states, reach out to our Tribal Nations, and we are going to develop standards that the whole country has to meet, but we are going to allow the states and tribes to meet those standards in a way that works best for them.

Also, we are not pushing high-dollar technology. We have gone back to basics. We are using simple identification that we have used for years in disease programs at USDA. These are programs that will give us better buy-in from the industry.

Now, to answer your question on where we are today and what kind of response we have received, overall the response has been positive. We have had workshops and forums all over the country. We have focused on state veterinarians, producers, and leaders of the Tribal Nations. We still have a ways to go. We have a lot of dialogue to continue with the industry. We still have to do quite a bit of tribal consultation, but we are making progress. And I feel comfortable that once we establish the standards that everyone has to meet, we are going to have buy-in from the industry and we are going to have buy-in from the cattle people.

Mr. PETERSON. Thank you. I guess I will—on the GIPSA. We have had a lot of different folks from this country, including different size entities, develop branded and value-added products. And

it has returned—one of the problems we have in agriculture is that we have farmers and ranchers more interested in producing livestock and the ag products, but they haven't really paid much attention to marketing, and that has cost us. We have ceded a lot of the profit to other people because we haven't wanted to do the marketing.

Well, now we have stepped in. I have small producers that have developed branded products, even at the local food level, that are making significant money. One of the concerns that I am getting from big producers, little producers, and processors is that this proposed rule could put at risk what they have put together here in terms of these branded premium products, you know. And I don't know how much attention you paid to that when you were putting this rule together, but, there is a concern out there from a number of my producers. As I said, some of them are very small co-ops that have been put together that are concerned about the way this thing has been put forward.

I don't know exactly what you are trying to get at, if you are trying to make sure that the big producers and the small producers, if they are producing the same quality, get the same price. Is that what you are trying to do? Or are you trying to eliminate branded products? Is that what you are trying to do? I don't know.

Mr. AVALOS. Congressman, no, we are not trying to eliminate value-added or branded products. The proposed rule does not impact on value-added products. The proposed rule does not prevent the use of marketing agreements, it doesn't prevent the payment of premiums. It doesn't require any purchases on the spot market.

What the rule does do, it does create transparency and exposes discrimination or retaliation when there is no reason for disparity in contract terms, in contract conditions, prices paid, or the treatment of the producer.

Now, I also want to emphasize that the proposed rule doesn't protect poor performance. Producers that aren't satisfying their contract and not doing their job as they are supposed to, are not protected.

Mr. PETERSON. Well, from what I have heard from people, you haven't convinced a lot of folks of that fact, if it is a fact. And you have some work to do. So I would hope that you will focus on this. We don't want to lose this market that we have developed, and this added value that we have been able to bring back to rural America. I don't think any of us want to do that. And so I would hope that we can get everybody on the same page here.

And as I told the Secretary, I had breakfast with him last week, that I really think this comment period should be extended some. I understand you are probably not going to extend it 120 days like some people want. But given the amount of interest in this, it just seems to me to be sensible to take a little more time and make sure that everybody is heard, and that you have time to sift through all of this so that you get the right outcome at the end of the day.

Mr. AVALOS. Thank you, Congressman. I just want to emphasize that it is a proposed rule and we really want input, we want some comments. That is important. That is really important for us to move forward.

The CHAIRMAN. All right, thank you. Thank you, Mr. Chairman. Now the gentleman from Nebraska, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman, and thank you to our witnesses here today. I appreciate your feedback and engagement here.

Obviously, I have gotten a great bit of correspondence, input, and so forth and concerns from producers themselves. And one of those concerns is their personal information. And I appreciate your efforts towards transparency. I think that is what could and should ensure a competitive environment so that producers themselves can engage on a competitive basis, making sure that there is a level playing field and adequate opportunity to pursue new ways of doing things perhaps. I know that there is a concern about the privacy of business transactions.

Can you elaborate on how their privacy can be insured throughout this new rule and application of the new rule?

Mr. AVALOS. Congressman, probably the best way to answer your question would be to explain that is why it is a proposed rule, that is why we want input and comments to address these type of concerns. That is why it is very, very important. We don't know everything at USDA, of course. We need stakeholders to comment, to provide input.

Mr. SMITH. Do you think that that can be accomplished in 1 month's time from now?

Mr. AVALOS. I don't know.

Mr. SMITH. Okay. I did want to also echo the full Committee Chairman's point of view or concern. I certainly can't speak for him, but it seems like some concern about a premium being paid for a product. It always surprises me how sophisticated some of these smaller operations are in answering the marketplace and dialoguing ultimately with the consumer, and now there would be some processors involved and so forth. It is always interesting to me that there are opportunities out there. There is some concern out there, however, among producers that there would not be the opportunity to charge a premium for their product. And I heard you say that is an unfounded concern, perhaps. But I do want to emphasize the fact that there is still concern out there. And I would be very surprised if 1 month's time could iron out all of those concerns. I think there is a lot at stake here. I believe it is our objective, speaking for myself, that we want to ensure opportunities for the future rather than that the government knows best with this kind of approach.

Mr. AVALOS. Congressman, there is a lot at stake here and I agree. Once again, I want to emphasize how important it is for USDA to receive input and comments. This is really, really important to, going forward, to the final vote.

I wanted to comment about—you made a comment about how government knows best. Before I came here—I have been here 10 months—before I came to the USDA, I was one of the guys who wasn't real happy with the government. A lot of times I felt the government moved too slow, I felt the government was such a bureaucracy that they never got down to understanding the needs of the people in the countryside. But now that I have been here 10 months, I understand a lot more. I understand, yes, we are a huge

bureaucracy. We also have a lot of people who care and want to do the right thing.

I think that the comments, I can't emphasize that enough, comments and input are critical to moving forward with this proposed rule.

Mr. SMITH. While you are touching on that, I hear what you are saying. There is only one thing worse than a government that moves too slowly and that is government who moves too quickly. So please keep that in mind.

Also, I know the producers have shared concerns about the litigation that this would probably bring about. Can you perhaps calm the fears of some producers that this would invite more litigation?

Mr. AVALOS. Congressman, I think it would be the opposite. The proposed rule is there for clarity. It clarifies the law. It lets the producer, it lets everyone know the rules of the game. And when there is clarity, there is probably less chance of expensive litigation. We are hoping that the clarity will eliminate the need for litigation.

Mr. SMITH. I appreciate that.

I would go back to the fact, though, that we have a situation here where producers see it a different way than apparently USDA does.

Can you tell me how you plan to go about ironing things out, and especially if there is only 1 month to do that?

Mr. AVALOS. Once again, we want the comments to come in about the comment period. I know you are asking, "How are you going to get this done in the time that is left?" Like I said, after reviewing the letters and requests that came in, we are taking both sides serious. We are going to make a decision quickly.

Mr. SMITH. You are going to make a decision quickly as to whether or not to extend; or what decision do you plan to make quickly?

Mr. AVALOS. Whether or not to grant an extension on the comment period.

Mr. SMITH. All right. Thank you, Mr. Chairman.

The CHAIRMAN. It is my hope that this Committee carries considerable weight in making that decision. The chair will turn to the gentleman from Idaho, Mr. Minnick.

Mr. MINNICK. Mr. Butler, following up on questions from Mr. Costa and Mr. Conaway earlier, I have a producer headquartered in my State of Idaho who has a processing operation in the State of Washington and a very large feedlot in Kansas. Is it correct that under your proposed rule that he will have to ship all of those cattle 1,700 miles across the Rocky Mountains from his feedlot in Kansas to his processing plant in Washington, because he will not be allowed to sell to other packing plants in Kansas or his immediate vicinity?

Mr. BUTLER. Congressman, the proposed rule deals with packer-to-packer sales.

Mr. MINNICK. This firm is a packer, also has a feedlot; the feedlot is in Kansas. The processing facility is in Washington. Is that packer going to have to ship the cattle from its feedlot in Kansas to its facility in Washington under your rule? Or can he sell to other packers in Kansas, next door or 10 miles away?

Mr. BUTLER. Quite honestly, I think it would have to be decided on what type of legal relationship there is between the feedlot and the packer the way the rule is proposed now.

Mr. MINNICK. Well, you are the author of the rule. Tell me, give me the answer. My packer wants to know, because if he has to ship his cattle 1,700 miles in a railcar to Washington, he is going to go out of business. I want to know, does he have to do that and is he going to be in business once your rule goes into effect?

Mr. AVALOS. Congressman, if I could answer.

Mr. MINNICK. Yes.

Mr. AVALOS. That is a very, very good comment, very good example that you gave. That is why it is so important to have input and comments to the proposed—

Mr. MINNICK. I am not interested in comments. I want to know what this silly rule is going to do that you are proposing, that my packers and my industry have to live with. You are going to comment on it, all right. We are commenting on it to you today, and we are sure as heck going to comment to you on it later if you put it into effect. In fact, I don't think you are going to like either the comments or what the Committee is going to do about that rule.

I want to know whether you are going to promulgate it in the first place, or you are going to change it to something sensible. Are you going to go ahead with this silly rule, Mr. Secretary?

Mr. AVALOS. Again, it is a proposed—

Mr. MINNICK. Are you going to propose it in 30 days? Is this provision going to be in the rule that you are going to propose for comment? Just a yes or no answer, Mr. Secretary?

Mr. AVALOS. Well, I need to understand your question. Are you asking about the extension of the comment period?

Mr. MINNICK. I am asking, is this rule going to be proposed for comment, or are you going to change it in a way which would allow my constituent to stay in business?

Mr. AVALOS. Well, the proposed rule is already out there. So we want comments on the proposed rule.

Mr. MINNICK. Let me ask you this, then. Based on the information you have gotten, are you going to change that proposed rule in a fashion which will allow my packer to stay in business?

Mr. AVALOS. I can't answer that right now, because we haven't reviewed all the comments, and we are still waiting for more comments to come in. That is why I emphasized how important—

Mr. MINNICK. This is one of the reasons why people like yourself are frustrated with government. You have an opportunity to answer the question in a way which will result in a sensible outcome for my constituent. Now, if you say you can't answer it, you think that is going to create a lot of confidence in your ability to come up with a sensible rule and implement something that really is going to foster competition, or is it going to be viewed as another bureaucrat stalling on something that is obvious when there is a sensible solution? Come up with a rule that is sensible and allow my packer and other packers like him to continue to do business in a sensible and competitive fashion.

Mr. AVALOS. Again, Congressman, what I am trying to tell you is that it is a proposed rule. There is nothing final here, we want comments. This is a very good point that you made; it is going to

hurt a packer where he has to ship 1,700 miles to market his cattle. Anybody will tell you that is wrong.

Mr. MINNICK. Thank you.

The CHAIRMAN. Thank you. We will get another round and you will get another shot.

The gentleman from Tennessee, Mr. Poe.

Mr. POE. Thank you, Mr. Chairman. And just to go ahead with what Mr. Minnick was saying, why in the world would you have a rule that would—if it is just one packer like this, there have to be multiple other ones. Why in the world would you ever even think about proposing a rule that would do what he just described? Why would you do that? It is not repopulating rural America, it is not transparency. That is just stupidity right there. Why would you do that?

A rule that would put somebody out of business, you heard what he just said, and it seems to me like—I don't understand that at all. I don't believe anybody in the country could have—obviously, you can't explain it, so why would you even think about proposing something if it does that?

Mr. AVALOS. First of all, Congressman, like I told the other Congressman, it is a proposed rule. We—

Mr. POE. I think you heard the comments, I certainly have heard a lot of the comments. But my question is: Why would you even think about having a rule? If you were in his shoes right there, his producer, you would be banging your shoe on the table if you thought you were going out of business. I have heard, and it hasn't made any sense to me yet, I live in rural America, I live in about as rural a place as you can live in in Tennessee. And I can't for the life of me figure out what this is going to do to keep anybody in my district on a farm, this rule.

Mr. AVALOS. The only way I can answer your question is that we feel that this rule is about failures and transparency in the marketplace. We felt that this was critical to keeping farmers in business. It doesn't apply—

Mr. POE. We just got through saying it will put him out of business, so it can't keep him in business if he looked at the way it is proposed.

Mr. AVALOS. Your question was, why did we come up with a silly rule?

Mr. POE. Yes, sir.

Mr. AVALOS. It is all about transparency, it is all about fairness, and it is all about keeping producers in operation in rural communities. That is why it is a proposed rule, that is why we want input. This was a very good example that he gave. I don't think anyone in the room would argue with that.

Mr. POE. I think the Chairman, the full Chairman—of course, Mr. Scott has brought it up too. I am not sure another 30 days is going to clarify this.

Just another quick question. Have there been provisions in this proposed rule struck down by the court system; and if they have, then why would you propose them again?

Mr. AVALOS. You are talking about—

Mr. POE. Competitive injury. Yes, sir.

Mr. AVALOS. Okay. Let me try to put it in simpler terms because I am not an attorney. It is true several courts throughout the country have stated an opinion that an unfair practice was only unfair when you could show that there was going to be harm or committed harm to competition. So stop and think about that. They are saying it is only unfair if you harm competition, or you are likely to harm competition. So if my house catches on fire and I call the fire department, they are going to tell me, "We can't put out your fire until you can prove to us that you are going to harm all your neighbors." It doesn't make sense, it is not right, it is not fair.

I will give you some examples, Congressman. In many cases it is not necessary to show that you are harming competition. Let me give you an example. What happens when you are selling your animals over a scale that is required by the company you sell to, and the scales are manipulated—

Mr. POE. You have rules already. You know you just described a crook. I mean if somebody is manipulating scales, there are already rules out there to prosecute a crook. This is not going to change that. If you are manipulating scales, you are dishonest and you should be prosecuted and there are rules now that allow you to do that.

Mr. AVALOS. There are other examples. What happens when the company you are working for gives you inferior birds, they give you inferior feed, and they tell you to take it or leave it—

Mr. POE. I do that every time I buy a car. It is take it or leave it. And so you are describing the marketplace.

I don't have much time, but let me just ask one other question. And Mr. Scott, our Chairman, brought this up. Why was it necessary to impose regulations that have already been defeated by the Congress and the court system? I heard it around this entire dais about that. Why is that necessary, to bring up something that the Congress clearly didn't want or doesn't want?

Mr. AVALOS. I am going to ask Mr. Butler to help me out with this one.

Mr. BUTLER. As far as the court is concerned, I am going to do my best to answer this. When a court rules in some of these cases dealing with harm to competition, or the likelihood of harm to competition, they did so without much guidance in the past from USDA. Several courts spoke to that and said that USDA had not addressed these areas in certain sections of the Act, and that there was somewhat of a void.

Part of the reason that we looked at some of these areas is because of what the court had said. We tried to carry out the directive of Congress, as well as address some of the areas that the court had spoken about and tried to create a rule, a proposed rule, that we felt was fair, equitable, and concise enough that we could get comments on and try to make educated decisions, if you will, based on those comments from all over the industry, to determine what the final rule should be.

Mr. POE. Thank you, Mr. Chairman, for indulging me.

The CHAIRMAN. Thank you, Mr. Poe. We have Mr. King from Iowa.

Mr. KING. Thank the Chairman, I thank the witnesses for your testimony.

Maybe I will start out someplace easy here and direct my question to Administrator Smith. If I were to name a bill number, H.R. 1549, does that ring a bell with you?

Ms. SMITH. Yes, sir.

Mr. KING. I am inferring a little bit from what positions I can gather about USDA position on that, but can you state today whether you support or oppose H.R. 1549, the ban on non-therapeutic antibiotics and use of livestock?

Ms. SMITH. I think what I can state is that we would have concerns about any sweeping actions that would be taken to eliminate broad classes of antibiotics for agricultural purposes. If any restrictions are unjustified and not based on science, it could have a detrimental impact on agriculture.

Mr. KING. Are you aware of a definitive science that I would say would be adequate to justify changing a policy that would transfer the antibiotics through—from either use on animals and to humans who would consume them? Are you aware of any science that would confirm that particular hypotheses?

Ms. SMITH. The hypothesis of the movement of—

Mr. KING. Antibiotics. In fact, I should say non-therapeutic antibiotics through meat into humans that would cause a resistance in humans and make it more difficult to cure diseases in humans?

Ms. SMITH. I think there is some science that shows that the overuse of antibiotics for either animal purposes or human purposes can create resistance.

Mr. KING. And if you were to weigh that up against a body of evidence that is out there to the contrary, how would you characterize that sum science as a percentage of the whole?

Ms. SMITH. I don't think I could give you a summary of the science. What I could emphasize is that at USDA we think it is very important to support the judicious use of antibiotics for medical treatment to—

Mr. KING. If I were to say to you that I believe that there are a couple of small studies out there that may or may not be politically motivated, that would make that argument in opposition to a massive amount of scientific evidence that is nonconclusive at best, would you disagree with that?

Ms. SMITH. I think you can often have science that can have some motivations behind it.

Mr. KING. I am having a hard time getting you to say that you probably think what I do, then.

Ms. SMITH. Well, I think my message to you is that we stand behind using sound science as the basis for all types of decisions.

Mr. KING. Should there be some that is compelling, then we would join together and call for that kind of ban on non-therapeutic antibiotics and livestock. Could we agree on that?

Ms. SMITH. Could we agree that—

Mr. KING. Could there be that kind of compelling evidence and we would join together and make that request, rather than support H.R. 1549 based upon the evidence that happens to be out there today.

Ms. SMITH. You are asking if there was compelling evidence that said that there was a connection?

Mr. KING. Yes. In the absence of compelling evidence, the *status quo* is okay with you?

Ms. SMITH. Let me just emphasize again that it is important for us to make the decisions based on sound science. And I personally don't have an understanding of all of the studies that are out there. But it is important that we don't eliminate the use of broad groups of antibiotics for the purpose of agriculture if there is not sound science to support that.

Mr. KING. I appreciate your thorough understanding of the political nature of the scientific question, and I will not press that point any further. I would turn then—and thank you.

I would turn my attention to Secretary Avalos and ask you, as you were gathering data in preparation for the rule, and particularly with the contracts between producers and processors, the producers and packers, did you have a conversation with both sides of that equation, Mr. Avalos? Did you have discussions and meetings with packers and also with producers?

Mr. AVALOS. Congressman, I am going to defer to Mr. Butler.

Mr. KING. You can't answer whether you have had those conversations or not? How would he know what conversations you had?

Mr. AVALOS. Because I didn't have conversations personally.

Mr. KING. Okay, you didn't have conversations with them.

I would turn to Mr. Butler and ask the same question of Mr. Butler.

Mr. BUTLER. Yes, sir. We had conversations with both sides, and there were meetings in the countryside before I got here, and I was cognizant of those after I arrived. I was told by the staff at GIPSA.

Mr. KING. Can you give me an estimate of how many producers *versus* how many different packers you might have had discussion with?

Mr. BUTLER. I can't give you an estimate on the countryside meetings, because I wasn't a part of them. But, I have met with just about every producer organization and packer organization, I tried to have an open door policy.

Mr. KING. Do you have notes on those meetings and a schedule that might give a better snapshot of the analysis that went into this?

Mr. BUTLER. No, sir. I didn't take notes during the meeting.

Mr. KING. Do you have a schedule that shows the timing that you met with those producers?

Mr. BUTLER. I should have that. Yes, sir.

Mr. KING. Would you be willing to make that available to this Committee?

Mr. BUTLER. I don't see why not. I don't have anything to hide from it, we had the meetings.

Mr. KING. Well, thank you, I would make that a formal request. And included in my request, the clock has ticked down, Mr. Chairman, a slight deference in conclusion here. There has been a consistent call here around this panel for an extension of the comment period, that this window closing as quickly as it does, if it were—if the shoe were on the other foot, and you had to produce records, and if you had to produce an economic analysis, which seems to be a general analysis without notes, that have gone into this rule, peo-

ple out here that want to get comment in, they can't get mobilized in time. They can't do an economic analysis in time. The producers can't calculate the impact of this rule on their business. In fact, I don't think they actually can calculate it, because there are so many implications to the change in the rules.

And so some have talked about a 30 day extension. I am talking about a 120 day extension. I want to directly ask that that extension period be offered and allowed, especially for our producers whose lives are wrapped up in this. They don't get to change their business on a dime.

And so when I hear comments like it is all about transparency and fairness, if it is about transparency, then the public ought to know the discussions that took place. And you have no reservations about that, I recognize and appreciate that.

But *fairness* is a very hard word to define. In fact, I will say it is impossible. Anyone who has raised two or more children knows there is no such thing as fair. It is in the eyes of the beholder, the one that got the short half of the candy bar, so to speak.

And I will suggest that our producers in particular are getting the dirty end of this stick right now, and they need 120 days, at a minimum, to weigh in. And then we need to step back and really be objective and think about how we change this dynamic here.

I want our producers to have a market, and I want our consumers to have a good product. We can do that and there is not an urgency involved here. This is my strongest recommendation, is to extend this out 120 days. Give them an opportunity to weigh in.

Thank you, Mr. Chairman. I thank the witnesses. Mr. Chairman, I yield back.

The CHAIRMAN. Thank you, Mr. Chairman. We are going have, for those of you who would like to stay, we have some more questions. We are going have a second round. So we will be delighted. Some of you have requested that, to get back at this.

I want to go to a couple of other items to mention to get your response to, in addition to the GIPSA rule. And the first one, Mr. Under Secretary, is on animal welfare. You mention in your testimony the need for strengthening the enforcement of the animal welfare. I am particularly concerned about the problematic dealers that are producing serious problems, especially dog dealers. And the fact that I believe that your group is proposing to regulate the sale of dogs over the Internet.

Can you get into this a little bit for us and explain to us what the situation is in the Animal Welfare Act and strengthening it, as it relates to these problematic dealers?

Mr. AVALOS. Mr. Chairman, I am going to ask our Administrator, Cindy Smith, to talk about this a little bit. But first I just want to emphasize to you and to the Committee, Secretary Vilsack and I are fully committed to enforcing the Animal Welfare Act and ensuring there is humane treatment for all the animals for which we regulate.

Ms. SMITH. Thank you. I appreciate the opportunity to augment the Under Secretary's remarks and speak to this issue.

The Office of Inspector General, in this audit that you raised, recommended a legislative change around this issue of the sale of puppies through—the sale of animals through the Internet. The

Secretary asked Congressman Farr and Senator Durbin to address this loophole in the puppy legislation that they were drafting.

We knew this legislation was coming out so we wanted to take advantage of this avenue. However, when we looked at the legislation more carefully, we recognized that this would only address the impact in terms of dogs.

And so what we now believe we can do to address this, is end that loophole in terms of sale over the Internet of these animals through a regulatory change. We have just in the last 2 weeks initiated the work on a work plan to make a regulatory change in order to address this issue.

The CHAIRMAN. All right, thank you.

Now let me ask you about country of origin labeling. Can you give us an idea of problem areas that may have come about in terms of the implementation of COOL. And if so, what are these problems and how are they being resolved?

Mr. AVALOS. Mr. Chairman, I just want to say that at USDA we work in cooperation with the states to implement and to enforce COOL. USDA has worked hard to train state employees on agreements for the states to carry out compliance for historical use.

Today we have already done over 5,000 retail store reviews. Ninety-six percent of the items are being properly labeled. We plan to review up to 13,000 retail stores by September. And our focus has been on enforcement of the law and good compliance.

Now at this time I am going to ask our Administrator, Rayne Pegg, to expand on my answer.

Ms. PEGG. I think what the Under Secretary raises is very important. The retail reviews are giving us a landscape of what is going on in the marketplace. We are taking that information and developing a compliance program to follow up on the state audits that are taking place. We are also doing more training and outreach to our states and our cooperative agreements to ensure that they are auditing stores correctly and following up on the audits that they are conducting.

So right now, the reviews are really providing valuable information in looking at the landscape and looking at what is occurring in the marketplace. We can use that information to do more outreach and education to both stores, as well as producers and processors.

The CHAIRMAN. Okay. Thank you. Now I will turn to the Ranking Member for a second round.

Mr. NEUGEBAUER. Secretary, I hope that you have heard today that I think there is unanimity, both on the Republican side and the Democratic side, that this GIPSA thing needs some work; that there are a lot of unanswered questions, and that is the reason that that extension to the comment period is extremely importantly.

I want to move to a different subject. I want to move to COOL. You know a lot of the proponents of mandatory country of origin labeling have said really it is a program that won't cost the producers anything, that the benefits of having COOL will outweigh the additional costs of doing that.

So I guess the question is: Has the Department been monitoring the benefits and costs associated with COOL and has this proven to be correct?

Mr. AVALOS. Congressman, I don't know if I can answer your question the way you want it answered, but I am going to try and then turn it over to our Administrator.

Today we have been primarily in an education and outreach phase. We just started compliance enforcement and we are finding that we are doing a pretty good job. Our contractors have copies of agreements with states. We are doing a good job of enforcing the COOL regulation. Like I said earlier, 96 percent of items are being properly labeled. Tying that back into costs and cost-benefit, I can't answer that. Maybe an Administrator can help me.

Ms. PEGG. I think what the Chairman brought up earlier is very important; that this provides information to consumers about where products come from, which is a very valuable tool in the marketplace. Clearly the directive Congress gave us to do was to carry out this program. We don't have any direct information in terms of the cost-benefit analysis in regards to producers or packers. We are primarily in the first year of implementation, so we don't have that information available to us at this time.

Mr. NEUGEBAUER. Was the issue—remember, the program was sold that domestic producers would benefit from that and that there would be increased sales for domestic products. I guess the question is: Has it increased the sales for domestic products by having country of origin labeling?

Ms. PEGG. AMS has not conducted that analysis, so I am not aware of the answer. I do not have the answer for you at this time. We can see if others have done an analysis of it.

Mr. NEUGEBAUER. So you are not monitoring the marketing piece of this, only whether people are labeling it correctly? Is that—

Ms. PEGG. Correct. Our directive was for the enforcement of the law and regulations. And that is for proper labeling of products under COOL.

Mr. NEUGEBAUER. And so what is involved in your—where is the analysis taking place? In other words, are you looking at compliance in the grocery stores, at the producer level, the processing? I mean, what stages are you reviewing that?

Ms. PEGG. So, right now, we have cooperative agreements with all the states. And with those cooperative agreements, we are going into retail establishments, outlets, and looking at the items that are covered under COOL, and ensuring that they are labeled or not.

If they are not in compliance and they are notified, they have to provide corrective action to us within 30 days. If they don't, again, they have an additional 15 days, and then we can take action against them.

So that is our primary focus at this time. It is providing us with good information about possible areas where there is either mislabeling or covered products that are not being labeled at all.

Overall, we are seeing a 96 percent compliance rate. But, if there is an issue in the produce sector or the meat sector, then we can identify that and reach out, do some more education and outreach

appropriately. And that is the important component of this retail survey process that we are going through right now.

Mr. NEUGEBAUER. Mr. Secretary, did you want to add anything?

Mr. AVALOS. Congressman, if I could expand a little bit on that comment, I just wanted to state that, before I came to USDA, I was in New Mexico, and we worked quite a bit on New Mexico chili pepper promotions. And one thing about COOL, at the retail level they had to identify where the product comes from.

I will give you an example. New Mexico chili producers face tremendous competition from Mexico and Peru, but the retailer and the consumer preferred the American pepper ten times to the foreign competition. And when the consumer sees a sign, "New Mexico green chili," and right next to it you have "chili from Peru" or "chili from Mexico," the U.S. product sells 10:1.

Mr. NEUGEBAUER. Can you quantify that? I mean, has somebody put some data together that substantiates that? Or is that just an observation?

Mr. AVALOS. That is an observation, Congressman, because, before I came here, I worked for the Department of Agriculture in New Mexico, and we had promotions all over the country with retailers. And we would promote the green chili peppers. And it was so obvious, we would have maybe, I don't know, 50 percent of the space that was allowed for all peppers, and then the Mexican competition would have maybe a little small space. The consumer would not buy the Mexican pepper when the American pepper was available.

But I don't have data to quantify that, other than just referring you to retailers.

Mr. NEUGEBAUER. If the Chairman would indulge me in just one quick follow-up here.

The CHAIRMAN. Yes.

Mr. NEUGEBAUER. I want to go back to Ms. Pegg.

Now, so you go in the grocery store and it says, this is a New Mexico pepper—okay?

Ms. PEGG. Yes.

Mr. NEUGEBAUER. And so, what do you do to verify that—I mean, it has a label on it, and the label looks like it meets the criteria. But what do you do to determine that that is a New Mexico pepper?

Ms. PEGG. I will look at the retail documentation that is available and required, in order to look at whether or not it is really what it is claiming to be.

Mr. NEUGEBAUER. So, okay, the person that sold me the peppers said they were New Mexico peppers. I mean, how do you know that that pepper in that grocery store came from a New Mexico grower when you go in the grocery store?

Ms. PEGG. Well, that is what the documentation is supposed to support, when we go back and look at that. If we do find that there is an issue, then, of course, we will take action. What we sometimes find will happen is there will be New Mexico peppers in the bin, but the sign above will say something different.

Mr. NEUGEBAUER. But, I mean, do you do an audit all the way back to—in other words, if you went in a store just to see if there

is integrity in the system, you go say, "I am going to trace this pepper all the way back to Randy's farm?"

Ms. PEGG. We do traceback based on the documentation that is required.

Mr. NEUGEBAUER. Mr. Chairman, I am done.

The CHAIRMAN. All right. The gentleman from California, Mr. Costa.

Mr. COSTA. Thank you very much, Mr. Chairman, for your due diligence on this very important rule and the oversight, which is one of the important things that Members of Congress should do and that we don't always do well. But we are having a good oversight hearing this afternoon as a result of your leadership.

Mr. Under Secretary, when you go home—not home, but when you go back to the shop at the USDA this afternoon, and if the Secretary happens to call you or look into your office and say, "How did it go, the hearing this afternoon," what would be your response?

Mr. AVALOS. Congressman, that is an easy answer. I would say, "Mr. Secretary, it was a tremendous lesson for me. Mr. Secretary, we need to continue and encourage comments and input on the proposed GIPSA rule."

Mr. COSTA. Well, good. That is a start. Because you have said a number of times, at least almost countless to me, that this is a proposed rule. And I will tell you that I am going to request a meeting with the Secretary on this proposed rule, and I intend to bring my concerns to the White House as well. Because if you don't provide the extension of time, and if you implement the rule as it is proposed, you will be making, in my view, a serious, serious mistake to the U.S. poultry, beef industries that this rule is intended to address.

Now, let me talk about one of the parts that I think are the most significant distressing changes. You understand because of your farm background, as with my farm background, the whole concept of value-added. Farmers, as we all know—and that is part of the reason for this rule—are price-takers, not price-makers. And, therefore, to have an advantage in that marketplace, as opposed to saying what in fact they would like to get for that, they have to increase the value, the premium, just as Chairman Peterson was talking about in his area.

The area of Section 201, the proposed regulation that contains a list of unfair, unjustly, discriminatory, and deceptive practices which is proposed in this rule, one of which would therefore, under this definition, under this proposal, be paying a premium or applying a discount on the purchase price received by a livestock producer without documenting the reasons and substantiating the revenue and cost justification associated with the premium or discount—we are trying to upgrade and incentivize producers for growing, in this case, higher-grade beef, and therefore pay a premium for it.

Under this proposal, under this section, that becomes a claim for an unfair, unjust, discriminatory, and deceptive practice. Do you agree?

Mr. AVALOS. Congressman, I am—

Mr. COSTA. Well, no, I mean, it is a simple “yes” or “no,” “I agree” or “I don’t agree.”

Mr. AVALOS. I agree.

Mr. COSTA. Okay. That is a problem.

We have constituents around the country that are known for their high-quality beef products. They have contracts with constituent cattle producers in my district. They pay them a premium.

What kind of documentation would a packer need to be maintained to be sufficient to both stand up to the Packers and Stockyards audit, and to fully protect the packer if the transactions became a target of a private lawsuit?

Mr. Butler probably wants to answer that question because of his previous background and experience and expertise. Quickly.

Mr. BUTLER. Well, first of all, Congressman, I am also a farmer and a rancher, and I have raised value-based products. But to answer your—

Mr. COSTA. Okay, that is fine. So you support the concept of value-based products?

Mr. BUTLER. To answer your question, that would be very simply done. All you would have to show is—let’s just say you had a product that you didn’t use antibiotics, or you didn’t use steroids on. That would be a value-added product.

Mr. COSTA. Who would determine whether the same quality of product standards can be met, and how would that be done?

Mr. BUTLER. It would be done through the records that are kept in the normal course of business by the packer. And if there was a complaint that was filed with GIPSA by another producer, then we would look at those records. That would be it.

Mr. COSTA. Okay.

Mr. Secretary, let me switch over to the area that I am very concerned about. There were eight circuit courts of appeals that have rendered decisions from 1921 to as recently as last month rejecting GIPSA’s interpretation of Sections 202(a) and (b) of the Packers and Stockyards Act that do not require proof of injury to competition. In each of those cases, GIPSA argued its position and the need to show injury to competition, either as a party, or in a case’s *amicus brief*.

Do you believe that the courts will now render a different decision just because of GIPSA’s interpretation of the embodied regulation?

Mr. AVALOS. Congressman, the purpose of this proposed rule is to clarify the law. The proposed rule is clarifying the law. It is informing all of the parties that are involved of what rules they must play under.

So, in other words, this is about clarity. This is about having all the players understand—

Mr. COSTA. No, I understand what you are trying to get to. The point I am trying to make is, I think you have overstepped the point of clarity, and you have now put yourself in a situation in which, maybe not the United States Department of Agriculture, but any lawyer out there will have any basis under which to show—because they don’t have to show injury or harm in essence, as I read this proposed regulation, to sue.

And so, what you are doing is making it very difficult for the transparency that you are trying to protect. I understand what you are telling me, but it flies in the face of it, in my opinion. And this is one of the areas that I think we have to work on, and why we need the extension of time.

Let me, finally, focus on—because my time has expired, but I want to get—the poultry industry in my area is very concerned about the plan to define a *situated grower* under the proposed rule. The *situated grower* is a term that seems to drive a lot of undue competition criteria, is it the size, is it the number of the birds, or what value-added products does it take to change whose business is compared to whose and which region of the country?

I don't know how you are going to define this with a poultry industry that is so diverse, spread throughout the country.

Mr. AVALOS. Congressman, I am going to defer to Mr. Butler.

Mr. COSTA. Mr. Butler?

Mr. BUTLER. And I am not so sure I understand the question. I am sorry. Are you talking about the tournament system, ranking different birds and different type houses?

Mr. COSTA. Yes. That is one of them.

Mr. BUTLER. Okay. The thought process behind this is if you had different type houses, then it is hard to have apples against apples, or oranges against oranges. You should rank the growers, we feel, based on their input, not input that they don't have any control over.

Mr. COSTA. So does that impact by size or number of birds?

I mean, I have situations where I have 60,000 square feet of space for some of my poultry operators and some as large as a million square feet. It seems to me here that you are going to incentivize larger operations at the cost of smaller operators.

I mean, and then what about value-added products? I mean, the poultry industry, just like the beef industry, is very focused on trying to increase the value added to the products, fresh poultry as opposed to fresh-frozen and the like.

Mr. BUTLER. Well, I think that is a point that needs to be made in the comments. That is the reason we are asking—it is a proposed rule—

Mr. COSTA. I got the part that these are proposed rules and that these are good suggestions. That is why we are having the oversight.

Finally, with respect to contracts, the proposed regulation requires an 80 percent recovery of cost of capital investment. Can you explain to me—I mean, again, farmers are price-takers, not price-makers. How we are going to make that work, in terms of its implementation—I mean, if you have a slump in the market, as we have had the last 2, 3 years in the poultry industry?

Mr. AVALOS. Congressman, the proposed rule, it is not guaranteeing the grower a recovery on its investment. What it does propose is that agreements be for a long enough period of time to give the producer an opportunity to recoup up to 80 percent of his investment.

For example, if you have a grower who is required by his buyer to put a million dollars' worth of improvements to his facilities and

he does so, but then only receives a 6 week agreement, this isn't fair.

Mr. COSTA. But the regulation requires an 80 percent recovery of the cost of a capital investment.

Mr. AVALOS. It just requires an opportunity. It is not——

Mr. COSTA. That is not the way I read it. And that is one of the reasons why you better provide the extension of time.

Thank you.

Mr. AVALOS. Thank you, Congressman.

The CHAIRMAN. Thank you.

And thank you all for your attendance.

In conclusion, let me just make these few closing remarks, if I may, and I think are appropriate after this very, very important hearing.

Mr. Under Secretary, I think what you have witnessed with this Committee today is a very passionate outpouring of very serious concern that the Agriculture Department, in proposing this new rule, has very seriously—seriously—overstepped their boundaries.

This is especially true given the fact that parts of this new law's provisions were soundly rejected through the legislative process, every step—through the Committee, through the Senate, the House, and the farm bill considerations itself. And for you and the Department to arbitrarily go against the wishes and the intent of Congress is serious. It is what Shakespeare referred to when he said, "*Et tu, Brutus, yours was the meanest cut of all.*" That is what this has done. That is why you heard the passion, the disappointment that was registered by both sides of the aisle against this proposed rule.

And I am suggesting that the least—the least—you can do is to extend the comment period another 60 days to 120 days. We know that there is some discussion within the industry itself. It is obvious. You received letters from both sides. Even the wisest person in the world—Solomon would say that it is time for us to take the time, take another 60 days, to find out what is going on inside the industry. Some want it, some don't. You have the letters. The comment period is too short.

And just as a way of showing some respect back to us in Congress, who rejected these proposals through the legislative process that you are instituting, to say, the least we can do, let's extend this to 120 days, let's get our hands around this problem, let's get the industry together.

Because a house divided against itself shall surely fall. This industry is divided. To move ahead would be the worst thing we could do for the industry and the people of America.

Mr. COSTA. Mr. Chairman, I thank you again for holding this Subcommittee hearing. And I want to reserve the right, as all Subcommittee Members, to submit questions to the witnesses, and thank them for their testimony this afternoon.

The CHAIRMAN. Absolutely. And under the rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive additional material and supplemental written responses from the witnesses to any questions posed by a Member to the panel.

The hearing of this Subcommittee on Livestock, Dairy, and Poultry is adjourned.

[Whereupon, at 3:20 p.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUBMITTED ARTICLE BY HON. LEONARD L. BOSWELL, A REPRESENTATIVE IN
CONGRESS FROM IOWA

Des Moines Register

July 15, 2010

Antibiotics in livestock affect humans, USDA testifies

By Philip Brasher

There is a clear link between the use of antibiotics in livestock and drug resistance in humans, President Barack Obama's administration says, a position sharply at odds with agribusiness interests.

In testimony to a House Committee on Wednesday, even the Agriculture Department, which livestock producers have traditionally relied on to advocate for their interests, backed the idea of a link between animal use of antibiotics and human health.

The Agriculture Department "believes that it is likely that the use of antimicrobials in animal agriculture does lead to some cases of antimicrobial resistance among humans and in animals themselves," said John Clifford, the USDA Chief Veterinarian.

The Food and Drug Administration, which regulates antibiotics in animals and humans, has recently proposed to end the use of many drugs as growth promoters in hogs and other livestock. Only antibiotics such as ionophores that have no human use would be permitted to speed animals' growth. The FDA has set a schedule for phasing out the drugs' use or proposed specific restrictions.

Officials said the ban is needed to ensure that the drugs remain useful in human medicine.

Clifford was joined by officials from the FDA and the Centers for Disease Control and Prevention in telling a House Energy and Commerce subcommittee that there was evidence of a link between animal uses of antimicrobials and human health.

At an earlier hearing, government health experts said U.S. data on the linkage was lacking. But Wednesday, Administration officials tried to make a closer connection. Studies of *Salmonella*, for example, have shown that giving antibiotics to livestock causes bacteria in the animals to develop resistance and that resistant bacteria in food can be transmitted to people, said Ali Khan, the Assistant Surgeon General.

Agribusiness representatives and their allies on the committee said more research is needed.

"So far there's nothing that links use in animals to a buildup of resistance in humans," said Rep. John Shimkus, R-Ill.

A representative of the drug makers, Richard Carnevale of the Animal Health Institute, said there is "no unequivocal evidence" of a connection.

A Committee Member, Rep. Bruce Braley, D-Ia., said there were "very real production concerns" with restricting the drugs. He said "this is an issue that demands thoughtful careful consideration of all points of view."

SUBMITTED LETTER BY HON. JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM
CALIFORNIA

June 18, 2010

J. DUDLEY BUTLER,
Administrator,
Grain Inspection, Packers & Stockyards Administration,
United States Department of Agriculture,
Washington, D.C.

Dear Mr. Butler:

During your industry teleconference this morning outlining the proposed changes to P&SA regulations that will be published next week, I asked a follow-up question in response to the statement by GIPSA that ". . . GIPSA has received complaints from market participants that packer-to-packer sales may have the intended or unintended effect of manipulating market prices." My question requested information about the complaints that GIPSA has received. These complaints are being used to justify and drive this arbitrary proposed change to ban packer-to-packer transactions, but they have not been delineated or substantiated in any way in the documents made public so far. Nor were you able to provide them to me during the call. After a secondary question, you responded that you would look into the issue and get back to me.

We appreciate your commitment to transparency in market conditions. I look forward to receiving the information I request, and which must clearly have been documented in order for you to develop this proposal. As I pointed out, all these packer transactions are reported through the Mandatory Price Reporting system run by USDA.

Thank you very much.
Sincerely,

ROSEMARY MUCKLOW,
Director Emeritus,
National Meat Association.

SUBMITTED LETTER BY J. PATRICK BOYLE, PRESIDENT AND CEO, AMERICAN MEAT INSTITUTE

July 28, 2010

Hon. THOMAS J. VILSACK,
Secretary,
U.S. Department of Agriculture,
Washington, D.C.

Dear Mr. Secretary:

The decision to extend the comment period for the Grain Inspection, Packers and Stockyards Administration's (GIPSA) proposed rule regarding the 2008 Farm Bill is appreciated, especially since the American Meat Institute's (AMI) original request for an extension was denied in a July letter from GIPSA Administrator J. Dudley Butler.

In conjunction with the announcement of a 90 day extension, the department released a "Misconception and Explanation" document regarding the GIPSA proposed rule—a somewhat unprecedented step in the midst of a notice and comment rule-making procedure. In reality, that document does little to address the many concerns that have been created by the proposed rule.

In some "Misconceptions" the department fails to characterize accurately the nature of significant concerns raised by the proposal. Moreover, in a seeming attempt to mollify critics and minimize adverse impacts, some "USDA Explanations" actually contradict the plain language of the proposed rule.

For your information, I am attaching an analysis which recites verbatim from the document the department's "Misconceptions" and "Explanations" followed by a "Response" which details the errors and misrepresentations in the department's document. I hope that it proves helpful as the Department continues to seek comments and information through the USDA/DOJ Workshops and the proposed rule's extended comment period.

Sincerely,



J. PATRICK BOYLE,
President and CEO,
American Meat Institute.

Attachment

CC:

Hon. EDWARD M. AVALOS;
Hon. J. DUDLEY BUTLER.

ATTACHMENT

Alleged Misconception

The provision on competitive injury would allow producers to sue companies without having to show competitive injury.

USDA Explanation

The proposed rule will bring clarity to an issue that caused problems for growers, packers and industry because key terms have been incompletely defined. To fully understand this issue, it is important to first be clear as to what competitive harm and the likelihood of competitive harm mean and how they impact. The proposed rule defines competitive injury and likelihood of competitive injury. Competitive in-

jury occurs when an act or practice distorts competition in the market channel or marketplace. How a competitive injury manifests itself depends critically on whether the target of the act or practice is a competitor (*e.g.*, a packer harms other packers), or operates at a different level of the livestock or poultry production process (*e.g.*, a packer harms a producer).

The likelihood of competitive injury occurs when an act or practice raises rivals' costs, improperly forecloses competition in a large share of the market through exclusive dealing, restrains competition among packers, live poultry dealers or swine contractors or otherwise represents a misuse of market power to distort competition. The likelihood of competitive injury also occurs when a packer, swine contractor, or live poultry dealer wrongfully depresses prices paid to a producer or grower below market value or impairs the producer or grower's ability to compete with other producers or growers or to impair a producer's or grower's ability to receive the reasonable expected full economic value from a transaction in the market channel or marketplace.

The proposed rule embraces the concepts of competitive harm and likelihood of competitive harm in certain instances; the proposed rule states that whether proof of harm or the likelihood of harm to competition is necessary depends on the nature and circumstances of the challenged conduct.

If a producer filed a claim on matters dealing with practices that could cause competitive harm, such as manipulation of prices, the producer would need to show harm or the likelihood of harm to competition. But some unfair practices do not have any implication on competition for a marketing region. If a producer filed a claim on matters that do not involve competitive harm, such as retaliatory conduct, using inaccurate scales, or providing a grower sick birds, proof of competitive injury or the likelihood of competitive injury would not apply. Such a requirement would be like having a car stolen, but before the police act, one would need to prove how the theft of the car impacts all of the neighbors. As detailed in the proposed rule, USDA feels this standard thwarts the purposes of the Act.

Response

The Explanation simply ignores the plain language in the proposed rule. Proposed subsection 201.3(c) provides that "A finding that the challenged act or practice adversely **affects or is likely to adversely affect competition is not necessary in all cases. Conduct can be found to violate section 202(a) and/or (b) without a finding of harm or likely harm to competition.**" *75 Fed. Reg.* 35351 (June 22, 2010) (Emphasis added). The very vague definitions of "competitive injury" and "creates a likelihood of competitive injury" are much broader than proving harm to competition, and if proven are deemed by the regulations to be unfair.

However, USDA's explanation above acknowledges that in some cases producers will not have to show injury to competition. Missing from the proposed rule, the preamble, and the Explanation above is any discussion or guidance regarding when that requirement would not apply or is waived. In virtually every case brought, a trial lawyer representing a plaintiff in a Packers and Stockyards Act case will argue that there is no need for the plaintiff to show injury to competition. (See discussion regarding the following Alleged Misconceptions as to the impact this proposal would have.)

The clarification offered in the Explanation is nothing more than a statement that a producer or grower would have to prove competitive injury or likelihood of competitive injury in cases where there could be competitive injury and likewise would not have to prove competitive injury when there is no competitive injury. Not only is this position contrary to the law in eight Federal appellate circuits, it would always stack the deck in favor of a plaintiff by only requiring proof of competitive injury when the plaintiff can meet that burden. This certainly will result in an increase in litigation by private litigants.

Alleged Misconception

The proposed rule will cause increased litigation due to the provision on competitive injury or harm.

USDA Explanation

The lack of clarity on the issue of competitive injury currently causes litigation. The proposed rule seeks to clarify the issue and is intended to reduce litigation.

One of the reasons the courts in recent years have ruled that proof of competitive injury or harm is necessary is because the Department has not articulated its position in regulation.

Out of the twelve Circuit Courts of Appeal, seven circuits have *not* made clear rulings that affirmatively require a finding of harm to competition or likely harm to competition for a violation of the Act. Also, several district courts have held that

an anticompetitive effect is *not* necessary to establish a claim for a violation of the Act.

Response

The issue is and has been clear for many years—just not in a manner satisfactory to USDA. The most recent interpretation of the Packers and Stockyards Act (PSA), this time from the United States Court of Appeals for the Sixth Circuit in *Terry v. Tyson Farms, Inc.* No. 08–5577, raises to **eight** the number of separate federal appellate courts that have considered the key issue of whether demonstrating harm or likely harm to competition is a necessary element of a PSA claim.¹ In *Terry* the Sixth Circuit said the following:

“The tide has now become a tidal wave, with the recent issuance of the Fifth Circuit Court of Appeals’ *en banc* decision in *Wheeler v. Pilgrim’s Pride Corp.*, 591 F.3d 355 (5th Cir. 2009) (*en banc*), in which that court joined the ranks of all other federal appellate courts that have addressed this precise issue when it held that ‘the purpose of the Packers and Stockyards Act of 1921 is to protect competition and, therefore, only those practices that will likely affect competition adversely violate the Act.’ *Wheeler*, 591 F.3d at 357. All told, seven circuits—the Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits—have now weighed in on this issue, with unanimous results. See *Wheeler*, 591 F.3d 355; *Been v. O.K. Indus., Inc.*, 495 F.3d 1217, 1230 (10th Cir. 2007); *Pickett v. Tyson Fresh Meats, Inc.*, 420 F.3d 1272, 1280 (11th Cir. 2005), *cert. denied*, 547 U.S. 1040 (2006); *London v. Fieldale Farms Corp.*, 410 F.3d 1295, 1303 (11th Cir. 2005), *cert. denied*, 546 U.S. 1034 (2005); *IBP, Inc. v. Glickman*, 187 F.3d 974, 977 (8th Cir. 1999); *Philson v. Goldsboro Milling Co.*, Nos. 96–2542, 96–2631, 164 F.3d 625, 1998 WL 709324, at *4–5 (4th Cir. Oct. 5, 1998) (unpublished table decision); *Jackson v. Swift Eckrich, Inc.*, 53 F.3d 1452, 1458 (8th Cir. 1995); *Farrow v. United States Dep’t of Agric.*, 760 F.2d 211, 215 (8th Cir. 1985); *DeJong Packing Co. v. United States Dep’t of Agric.*, 618 F.2d 1329, 1336–37 (9th Cir. 1980), *cert. denied*, 449 U.S. 1061 (1980); and *Pac. Trading Co. v. Wilson & Co.*, 547 F.2d 367, 369–70 (7th Cir. 1976).”

An interesting, and perhaps telling, indicator of the agency’s stubborn refusal to abide by the repeated court rulings against the position GIPSA articulated in proposed subsection 201.3(c) is the fact that in footnote 31 in the preamble to the proposed rule GIPSA does not even acknowledge the *Terry* holding, referencing only that the case was argued in March 2010. *Terry*, however, was decided on May 10, 2010—6 weeks before the proposal published on June 22. In short, USDA’s Explanation conflicts with the recent ruling above from the Sixth Circuit, as well as a December 2009 decision from the 5th Circuit, *Wheeler v. Pilgrim’s Pride Corp.* with its lengthy recital of the various appellate court holdings contrary to GIPSA’s position.

USDA states in the Explanation that “one of the reasons the courts in recent years have ruled that proof of competitive injury or harm is necessary is because the Department has not articulated its position in regulation.” This assertion conveniently ignores the fact that USDA has argued its position on a number of occasions to these Courts through *amicus* (friend of the court) briefs, and still the Court’s have not agreed with the USDA position.

Alleged Misconception

The provision on packer to packer sales will eliminate marketing agreements or other value added activities and take away the incentive to produce meat products that consumers prefer.

USDA Explanation

The proposed rule seeks to prevent collusion and price manipulation caused by the sharing of pricing information between packers. It does not ban packers from owning their own livestock. When a packer sells livestock to another packer, the information signals important market information about price and supply levels. With high levels of consolidation and vertical integration, firms may be able to affect the prices of sales on the open market. In recent years, the open market has become thinner and more volatile. This open market helps determine the price of most formula contracts.

¹*Terry v. Tyson Farms, Inc.* No. 08–5577, United States Court of Appeals for the Sixth Circuit (May 10, 2010) p. 7.

There is nothing in this provision that limits or eliminates marketing agreements. Instead, the proposed rule would provide integrity in the market to prevent manipulation of prices on the open market and in marketing agreements.

Response

The Alleged Misconception exposes a fundamental misunderstanding on the part of USDA about the intended and unintended consequences of the proposal. The above Alleged Misconception inappropriately and confusingly mixes concerns about the packer-to-packer sale prohibition (see next Alleged Misconception) and the very real danger to the use of marketing agreements caused by the threat of litigation created by proposed subsection 201.3(c) and its elimination of a plaintiff's obligation to show injury to competition in a lawsuit. The threat of litigation will be presented by disgruntled plaintiffs who are not offered the opportunity for a marketing agreement for legitimate business reasons. There also will be a threat of litigation from plaintiffs who sell livestock in the cash market, do not want to use marketing agreements but who will contend that the very existence and use of marketing agreements between packers and other producers distorts the markets and prevents a cash seller from realizing a "reasonable expected full economic value from a transaction." (See the definition of "likelihood of competitive injury.") This concern is not hypothetical as the latter scenario was the basis for *Pickett v. Tyson Fresh Meats, Inc.*, 432 F.3rd 1272 (11th Cir. 2005).

In addition, the Explanation asserts that the packer-to-packer sales ban is needed to prevent collusion and price manipulation caused by sharing pricing information between packers but neither the Explanation nor the preamble that accompanied the proposal provide even a scintilla of evidence that this type of behavior has, in fact, happened. To the contrary, the absence of cases brought by USDA suggests strongly that no such behavior has occurred.

Alleged Misconception

The packer to packer provision will now require packers to sell livestock across the country to other packers willing to buy livestock.

USDA Explanation

The proposed rule prohibits only direct sales of livestock between packers. A packer could sell to individuals, market agencies, dealers or other buyers.

Response

Unfortunately, in characterizing the purported misconception USDA does not grasp the nature of the very legitimate concern posed by the packer to packer livestock sale prohibition. Proposed subsection 201.212(c) provides that "A packer shall not purchase, acquire, or receive livestock from another packer or another packer's affiliated companies, including but not limited to, the other packer's parent company and wholly owned subsidiaries of the packer or its parent company." In a real life example that is not all that unique, a beef packer with its only packing plant in Washington State and who owns cattle in Kansas feedlots will be precluded from selling those cattle to a number of packers with plants in Kansas or Nebraska as it has done historically. Instead, that packer will be forced to do one of two things with the Kansas cattle: (1) transport those cattle a distance of more than 1,500 miles, over the Rocky Mountains to the Washington plant or (2) sell them to the various individuals, market agencies, *etc.* cited by USDA in its Explanation. The first option is cost prohibitive and even if it were not a trip of that length would endanger the cattle. The second option introduces unnecessary costs and inefficiencies into the market. In essence, the packer would sell the cattle to a dealer who in turn would sell them to the very same packers in Nebraska and Kansas only with added costs involved caused by additional and unnecessary transactions. USDA's rationale for this prohibition ignores the fact that packer to packer transactions are all reported to USDA through the mandatory price reporting program and if USDA believes some illegal activity is occurring it today has the power to take enforcement action. Yet, it has not done so in the past or in this current Administration.

Alleged Misconception

Poultry Growers and Swine Production Contract Growers would be guaranteed a return of 80 percent with their production contracts.

Explanation

Under the proposed rule, producers are to be offered production contracts with a sufficient period of time that provide the opportunity to recoup up to 80 percent of the cost of their capital investment. Producers would not be guaranteed an 80 per-

cent return on investment. This rule would not affect provisions in production contracts to deal with poor performers such as termination for cause.

Response

Again, the plain language of the proposal contradicts the Explanation. Proposed subsection 201.217(a) provides that “Any requirement that a poultry grower or swine production contract grower make initial or additional capital investments as a condition to enter into or continue a growing arrangement or production contract **must be accompanied by a contract duration of a sufficient period of time for the poultry grower or swine production contract grower to recoup 80 percent of the cost of the required capital investment.**” 75 *Fed. Reg.* 35353 (June 22, 2010) (Emphasis added) Conspicuous in its absence in the plain language of the proposed rule is the word “opportunity” with respect to recouping 80 percent of an investment.

Alleged Misconception

Companies will no longer be allowed to provide premiums to producers.

Explanation

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.

The proposed rule simply requires that if differential pricing is offered, the packer, swine contractor, or live poultry dealer must maintain records to document the business justification for that pricing arrangement. The documents that would be required by this provision are those documents containing information typically used by the regulated entity.

Response

USDA’s Explanation again mischaracterizes the concern regarding the proposed rule. Proposed subsection 201.94(b) would require packers, swine contractors, and live poultry dealers to 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.” There is, however, no guidance in the proposed rule, the preamble, or in the Explanation above regarding what is meant by standard price or contract terms.

In addition, proposed subsection 201.210(a)(5) would make it an unfair practice to engage in “paying a premium or applying a discount on the swine production contract grower’s payment or the purchase price received by the livestock producer from the sale of livestock without documenting the reason(s) and substantiating the revenue and cost justification associated with the premium or discount . . .” 75 *Fed. Reg.* 35351 (June 22, 2010). Although this language does not prohibit packers from providing premiums to producers, it provides a strong incentive not to do so. In that regard, it would be virtually impossible for packers to know whether they are maintaining the necessary documentation in order to comply and to prevail in potential lawsuits alleging unfair pricing. Moreover, there is little to no discussion in the proposed rule, the preamble, or the Explanation on what type of “revenue or cost” documentation is required to be maintained. Furthermore, the reason for providing a premium or discount may not be cost justifiable to the penny even though there are other good business reasons for a premium or discount and documents showing the detail required are not kept in the information typically used by packers.

In short, the requirement that every transaction be documented with “revenue or cost” justification for a premium or discount is a heavy burden, particularly given the number of transaction that occurs annually. A livestock purchaser might well choose not to carry such a burden and can avoid doing so, and thereby avoid the possibility of being out of compliance, simply by buying all livestock on the average.

Alleged Misconception

The proposed rule takes away producers’ ability to maintain the privacy of business transactions because all transactions will have to be reviewed by GIPSA and then posted on a government website open to public access.

Explanation

There is nothing in the proposed rule that suggests GIPSA would review all business transactions, nor require that all these transactions be made available on its website.

To increase transparency, GIPSA is proposing that packers, swine contractors, and live poultry dealers provide *sample* contracts and poultry growing arrangements to GIPSA. In return, GIPSA will make these sample contracts available on

its website. The proposal requires the submission of sample contracts, not every transaction.

Any trade secrets, confidential business information and personally identifiable information submitted would be removed and not made available on GIPSA's website.

Response

Proposed subsection 201213(a) provides that "Packers and swine contractors purchasing livestock under a marketing arrangement including, but not limited to, forward contracts, formula contracts, production contracts or other marketing agreements, and live poultry dealers obtaining poultry by purchase or under a poultry growing arrangement must submit a **sample copy of each unique type of contract or agreement to GIPSA.**" 75 *Fed. Reg.* 35352 (June 22, 2010) (Emphasis added). The concern not addressed by the proposed rule, and the Explanation above, is that in many cases producers have unique agreements with their packer/customers, which means each of those agreements would be posted on the GIPSA website. In addition, the proposed rule seems to exclude producer input as to what constitutes confidential information in that the proposed rule provides that "[P]ackers, swine contractors and live poultry dealers must identify confidential business information when submitting contracts to GIPSA." *Id.*

SUBMITTED QUESTIONS

Questions Submitted by Hon. David Scott, a Representative in Congress from Georgia

Response from Hon. Edward M. Avalos, Under Secretary for Marketing and Regulatory Programs, U.S. Department of Agriculture

Animal and Plant Health Inspection Service, U.S. Department of Agriculture

Animal Identification/Animal Disease Traceability

Question 1. A mandatory Federal animal identification system would still seem to be the most logical way to assure rapid and accurate tracing in the face of a disease outbreak. Is such a system really out of the question? If so, why?

Answer. We believe that the only way for an animal disease traceability system that imposes mandatory requirements to move forward is to have significant buy-in from all sectors in agriculture and all our partners. The National Animal Identification System (NAIS) did not have strong support from many of our partners, who perceived it as a top-down, one-size-fits-all approach. We simply were not achieving the levels of participation needed for a fully successful program.

Our goal with the new animal disease traceability framework is to develop a system that allows us to quickly and effectively track and trace livestock when needed to prevent the spread of animal disease in a way that imposes the least burden on producers, and that leverages the strengths and expertise of states, Tribal Nations, and producers to empower them to find and use the approaches that work best for them. The flexibility of this approach, we believe, as well as our outreach efforts and coordination with many stakeholders will give us a broader frame of support to be able to have an effective national traceability program.

Question 2. If foot and mouth disease (FMD) were detected in the United States today, what mechanisms are in place to trace infected and exposed animals? How would such traceability differ or be improved under the proposed framework?

Answer. If there were a foot-and-mouth disease (FMD) outbreak in the United States, the first step would be to stop animal movements to prevent the further spread of disease, and to allow us to assess the scope of the problem. We would rapidly deploy the Incident Command System (ICS) to ensure the appropriate quarantine of affected herds, as well as movement controls to minimize the spread of the disease. The ICS would coordinate investigations and would focus on the task of gathering pertinent records from multiple available sources, such as health certificates, permits, farm records, ports of entry records, and auction market records, all in an effort to find basic information to properly trace affected animals.

The main advantage of the proposed animal disease traceability framework would be the speed with which we could obtain this information. The tracing methods and information sources would likely stay the same, but because we would have a system in place to determine where animals are and where they have been, we would be able to more effectively and rapidly target those animals affected for whatever actions the incident would warrant.

Question 3. If the states and tribes are to lead and administer the new traceability approach, how does APHIS intend to coordinate these various efforts?

Answer. First, in terms of coordination, APHIS convened a 2 day forum with state and Tribal animal health officials in March to begin developing a framework for the new approach to animal disease traceability. We followed up this successful effort by convening a group of state animal health officials to provide the Agency with continued input into the development of performance standards being drafted as part of the proposed regulation for the program. APHIS has also held a series of listening sessions across the country to update producers and others on progress being made in the development of the proposed regulation, answer questions, and obtain feedback.

Under the regulatory framework for traceability we currently envision, APHIS' primary role in terms of coordination will be to establish clear, uniform, Federal standards for interstate movement of animals. That way, states, tribes, and territories know what their traceability systems must achieve for their livestock and poultry to move interstate. Performance measures included in the traceability regulation will help to ensure that states and Tribal Nations are meeting the requirements and contributing to successful animal health traceability in the United States.

Question 4. If the new traceability framework will only apply to animals moving interstate, will APHIS be able to trace animals to their herd of origin or only to their state of origin? If the latter, how will herds or origin be identified and handled?

Answer. Under the proposed framework for animal disease traceability, APHIS will rely on states and Tribal Nations to determine whether to trace animals to their herd of origin or only to the state or Tribal Nation level. The proposed framework would only require tracing back to the state level. There will be strong incentives for states and Tribal Nations to develop a system that traces smaller units because failure to do so may result in an initial quarantine of the state or Tribal Nation until APHIS has information that allows APHIS to more finely define the scope of an outbreak. The APHIS Administrator would use epidemiologic information from these smaller traceability units to avoid a quarantine of the entire state.

Question 5. Will APHIS develop *minimum* standards for traceability that all industries, producers, states and tribes can follow? Will APHIS develop implementation benchmarks and timelines for state and Tribal compliance? Will the program meet and conform with international animal health and disease traceability and reporting standards?

Answer. Yes. APHIS is currently developing standards that would provide clarity for states and Tribal Nations. These would include items such as common data standards, and standards covering official identification requirements and interstate certificates of veterinary inspection. APHIS is preparing to publish a proposed regulation, which will lay out proposed performance standards, program requirements, and the timeline for implementation of specific animals for states and Tribal Nations.

With respect to the framework's conformance with international standards, it adheres to most of the recommendations of the October 2008 World Organization for Animal Health (OIE) Terrestrial Animal Health Standards Commission draft document, "Design and Implementation Systems to Achieve Animal Traceability." USDA's animal disease traceability framework is tailored to the American agricultural production system, so in a small number of instances, the OIE recommendations would be voluntary under USDA's system rather than mandatory—for example premises registration.

Question 6. Continued funding for this program is very uncertain. How does APHIS intend to support the traceability efforts of the states and tribes?

Answer. One of our main goals with the new animal disease traceability framework is to develop a system that is flexible enough to meet the needs of states, Tribal Nations, and their producers. As part of that, we have placed an emphasis on the ability for states and tribes to use low-cost technology if they believe that this will meet their traceability needs. For example, we have discussed the possibility of branding meeting the needs for traceback, as well as the use of low-cost ear tags. On the other hand, the flexibility of our approach will allow for the use of advancing technology. That is, producers wishing to use radio frequency identification (RFID) for official identification will continue to have that option.

Under the framework, funding would be provided through annual cooperative agreements that detail implementation strategies supporting the cooperator's traceability plan. Funding levels would be proportionate with the projected costs of the activities defined in the cooperative agreement.

VS 2015

Question 7. Millions of dollars have been expended over several decades trying to eradicate diseases like bovine tuberculosis, brucellosis in cattle and swine, and more recently, scrapie in sheep and goats.

If the new emphasis will be on prevention, preparedness, detection and early response activities, what will become of these traditional disease eradication programs?

Answer. Traditional disease eradication programs will continue as long as there is a need. These programs are an avenue for APHIS to support producers and ensure that program diseases continue to decline. Nevertheless, APHIS is in the process of revising these disease eradication programs to incorporate new scientific knowledge and accommodate changes in the agriculture industry, as many of these programs were created decades ago. Thus, the programs will continue to evolve.

Question 7a. What will be the Federal role and response when infected herds are detected?

Answer. Although VS2015 is focused primarily on additional efforts for prevention and preparedness, APHIS will continue to respond effectively when needed. APHIS will work with its partners to develop a clear understanding of roles and responsibilities. The Agency will continually evaluate the robustness of response plans for diseases and other events of concern and the availability of vaccines, diagnostics, stockpiles of materials, laboratory capacity, and disease simulation models. We will maintain readiness through ongoing preparation, training, and practice. When needed, APHIS will extend its prevention and early response efforts to address animal health issues occurring outside of the United States. APHIS will identify, prioritize, plan, and direct APHIS-funded animal health surveillance and disease control or eradication programs carried out overseas—as well as assisting other countries as they develop their animal health capacities.

Question 7b. Will depopulation of infected herds with Federal indemnity still be utilized? If so, under what circumstances? What criteria will be used to make these decisions?

Answer. For its Bovine Tuberculosis and Brucellosis programs, APHIS has traditionally encouraged producers to depopulate entire affected herds. This approach provided an effective and efficient way of eradicating this disease when herds of relatively small sizes included a high percentage of infected animals. However, as herd sizes increase and funding levels decrease, APHIS cannot always justify depopulating herds that often exceed 1,000 animals when only one or two animals in the herds are diagnosed with a disease. APHIS believes that a science-based approach can evaluate the circumstances with each herd to minimize the need for full-herd depopulation without impairing animal health.

Therefore, APHIS no longer recommends using Federal funds to depopulate entire affected herds and indemnify herd owners as the primary management option. Rather, whole-herd depopulation will be implemented when the data indicate that other options will not mitigate disease spread, an imminent public or animal health risk exists, or it is cost beneficial to do so. We are using an epidemiological model to guide decisions regarding herd depopulation and to evaluate whether other management options are more appropriate. This allows APHIS to use a science-based approach that evaluates the circumstances and risk surrounding each herd while being fiscally responsible with limited indemnity funds.

Question 8. Will states be expected to take on more responsibility for these established disease control and eradication programs? What Federal resources and support will be available to assist the states?

Answer. APHIS is continuing to explore all its options with respect to VS2015, particularly with how we assess the strengths and weaknesses of our various programs. Until these discussions and planning are complete, we do not have an answer to what the state role will ultimately be. Yet, cooperation between the Federal Government and states has long been a key component of animal disease programs, and it will continue to be a key as we move ahead with any changes. APHIS is examining regulations for traditional disease programs that are more performance-based. That will allow states to leverage resources and achieve performance standards in ways that work best for them, and their unique circumstances. At the same time, APHIS will continue to partner with and provide support to states through program managers and our extensive field staff. APHIS will evaluate the needs of the states and available resources to provide funding in the form of cooperative agreements to help them meet their animal health needs.

Question 9. Can you elaborate more on the expanded certification services you envision to facilitate interstate and international trade?

Answer. The animal health permitting requirements from importing countries are becoming increasingly complex. With the Administration's goal of doubling trade exports over the next 5 years—and with agricultural products expected to be a large part of that—the demand for certifications is likely to increase.

As part of VS 2015, we are considering offering a range of additional certifications to meet needs of producers and facilitate trade. We are currently analyzing potential opportunities that will address this goal, meeting the needs of trading partners and industry.

Antibiotics

Question 10. What are APHIS's authorities with regard to the use of antimicrobials in food-producing animals? How is APHIS coordinating with other Federal agencies on this issue?

Answer. APHIS has no regulatory authority over the use of antimicrobials in food-producing animals. We are committed, however, to playing an active role in scientific and inter-Agency dialogue on the issue, ensuring that policy makers have the information and the data they need to make sound scientific- and data-based decisions on these critical policies.

APHIS partners with many agencies within USDA, and throughout the Federal Government. Also key to our efforts to address antimicrobial resistance is the National Antimicrobial Resistance Monitoring System (NARMS). NARMS was established in 1996 as a partnership of the Department of Health and Human Services' Food and Drug Administration (FDA) and Centers for Disease Control and Prevention (CDC), as well as USDA's Agricultural Research Service (ARS), Food Safety and Inspection Service (FSIS), and APHIS. The NARMS program monitors changes in antimicrobial drug susceptibilities of selected enteric bacterial organisms in humans, animals, and retail meats. The system is intended to provide meaningful data to help identify antimicrobial drug resistance in humans and animals, and to provide timely updates to veterinarians and physicians on patterns of resistance. It is part of the overall Federal strategy to combat antimicrobial resistance that fulfills the need for a national surveillance program to monitor resistance among foodborne pathogens in humans and animals.

In addition to these efforts, APHIS has been collecting an increasing amount of data on production practices and samples containing bacteria that have been used to evaluate levels and impacts of antimicrobial use on livestock operations throughout the United States. This data and the samples are collected through the National Animal Health Monitoring System (NAHMS), which conducts national studies on the health and health management of domestic livestock and poultry populations. Bacterial isolates gathered via NAHMS had been tested for antibiotic resistance and included in NARMS. The data collected yielded information on, among other things, the types of antimicrobials used to treat various common diseases in animal populations, how producers decide to treat and what to treat with, how antimicrobial drugs are delivered to the animals (via feed, water, or parenterally), and primary influencers on the antimicrobial drug decision-making process. All of these factors are critical to understanding how to optimize antimicrobial drug use in animal populations.

Question 11. What conclusions, if any, has APHIS drawn regarding antimicrobial resistance in animals based on data collected in the National Antimicrobial Resistance Monitoring System, or "NARMS"?

Answer. The NARMS program has been a useful tool for bettering our understanding of antimicrobial resistance, and it has also helped us uncover additional questions that require further study. For example, we have found that there are episodic increases and decreases in the occurrence of some *Salmonella* serotypes, and that these changes in serotypes are often accompanied by different levels of, and types of resistance problems. We know we must better understand these changes, particularly the controls and influences on why certain serotypes increase in prevalence before fading away. NARMS has also allowed us to better understand the effects of certain types of drugs. For example, we learned that resistance to ciprofloxacin, an important drug for treatment of *Salmonella* infections in humans, remains low to nonexistent in isolates from most animals. On the other hand, NARMS data indicate that resistance to ceftriaxone, another drug used for treatment of *Salmonella* infections in humans has begun to appear at very low levels. For this reason, focused efforts are needed to continue to monitor drug resistance and understand why and how it emerges.

Animal Welfare Act (AWA)

Question 12. Your testimony references strengthening enforcement of the AWA. The May 2010 report from the Office of Inspector General on the Inspections of

Problematic Dealers reveals serious problems, not only in the inspections of these dog dealers but also in the investigation and enforcement of violations. Clearly the “educational” approach has not worked.

How will the reallocated resources be utilized?

Answer. An additional \$4 million has been made available for APHIS to ramp up enforcement activities in FY 2010.

The additional funding in FY 2010 will allow us to hire up to 60 additional employees. These employees would include inspectors, investigators, and compliance specialists. We will target these staff to help conduct investigations in areas where there is an intensive workload. This will reduce the current ratio of inspectors to facilities, allowing for a greater focus on problematic dealers. Just as important, this would include funding for additional training, policy, and program support personnel, all of which are critical to ensuring a strong enforcement program. Training is a critical part of our Enhanced Animal Welfare Action Plan, and we have already trained all of our inspectors and supervisors to strengthen their ability to identify direct and repeat non-compliant items, adequately describe non-compliant items, and to identify common medical conditions seen at commercial kennels, among other things.

For FY 2011, the President’s 2011 budget requests an additional \$5.3 million so APHIS can continue and expand these enhanced activities.

Question 12a. How is coordination with state and local authorities being improved?

Answer. Coordination with state and local authorities is an important priority for APHIS. In particular, these partnerships could be beneficial to improve enforcement. APHIS will continue to refer issues of mutual interest to states through local humane officers who enforce state laws and by sharing inspection reports and enforcement actions with several states that have state-level enforcement capability such as Colorado, Iowa, Kansas, Missouri, and Pennsylvania. Additionally, APHIS intends to develop formal procedures to refer suspected animal cruelty incidents to state governments that have felony laws for animal cruelty.

Question 12c. Has a new table of increased penalties been finalized and implemented?

Answer. APHIS continues to work on the development of the penalty worksheet. It will be published as soon as the review is completed.

Question 13. APHIS is also proposing to regulate the sales of dogs on the Internet. This will add several thousand facilities that will require inspection.

Given the poor record of performance to date with the existing problematic dealers, how does APHIS intend to accommodate this additional inspection, investigation and enforcement burden?

Answer. APHIS developed and is carrying out an Enhanced Animal Welfare Action Plan that lays out a series of immediate, intermediate, and long-term actions that we believe will allow us to meet the demands upon the Animal Care program. These actions include the eventual development of regulations on Internet sales.

As a first step APHIS is conducting an internal needs analysis to determine what resources are needed to effectively accommodate the additional inspection, investigation and enforcement burden that would derive from regulating the sales of dogs on the internet. Once that analysis is complete, APHIS will have a better understanding of the full requirements needed for enforcement of this proposed regulation, and how we could align resources to match those needs.

Question 13a. Is APHIS prepared to allocate sufficient resources to its AWA program activities to effectively implement a full range of robust enforcement actions?

Answer. During FY 2010, an additional \$4 million was made available to address recent findings of an Office of Inspector General (OIG) audit related to APHIS’ enforcement of Animal Welfare Act (AWA) inspections of problematic dog dealers. The additional funding in FY 2010 will allow us to hire up to 60 additional employees. These employees would include inspectors, investigators, and compliance specialists. Just as important, this would include funding for additional training, policy, and program support personnel, all of which are critical to ensuring a strong enforcement program. We will target these staff to help conduct investigations in areas where there is an intensive workload. We have also requested an additional \$5.3 million for AWA program efforts in FY 2011 that, if approved, will allow us to continue and expand our inspection and enforcement activities.

At the same time, we are conducting an internal needs analysis on what resources would be needed to effectively accommodate the increased activities related to the regulation of sales of dogs on the internet. This analysis will help us align resources in a way that will enable APHIS to effectively undertake the full range of enforcement actions.

Agricultural Marketing Service, U.S. Department of Agriculture

Electronic Livestock Price Reporting

Question 1. The Cattle Dashboard you previewed for us today appears to be a promising tool to assist producers and all segments of the cattle industry in evaluating price reporting data for live cattle. The 2008 Farm Bill also directs a marketing news education program to educate the public on the usage and understanding of this system. What sorts of educational efforts does AMS have planned?

Answer. AMS has actively reached out to users of the Cattle Dashboard to demonstrate its capabilities and plans to continue these efforts. Soon after its launch, AMS gave a presentation to NCBA's Live Cattle Marketing Committee; featured the dashboard at state fairs, farm shows, and smaller venues across the country; and published a user-friendly guide on the dashboard to help users customize data. AMS plans to promote the Cattle Dashboard at upcoming events and industry meetings, and is leveraging relationships with academic groups—such as the Livestock Marketing Information Center—to reach broader audiences. Also, AMS is currently developing a glossary of terms that will be prominently featured on the AMS Market News portal.

Question 2. Mandatory price reporting is also currently in place for boxed beef cuts and live hogs. Are similar tools being developed for those sectors? What are the timelines? Does AMS have the resources to develop and implement these additional tools?

Answer. The Cattle Dashboard was developed with existing funds as a proof of concept. Additional funds would be needed to develop other dashboards.

Country of Origin Labeling (COOL)

Question 3. Have there been problems in the implementation of COOL? If so, what are they and how have they been resolved?

Answer. In general, there have not been any widespread problems associated with implementing the country of origin labeling (COOL) program. As it might be expected with the large scope of this new program and the volume of covered commodities that require labeling, retailers and suppliers continue to work at improving their processes to ensure that all covered commodities are accurately labeled with origin information.

To assist regulated entities in complying with the final rule, AMS has posted several guidance documents on the COOL website, created a pod cast in collaboration with the Food Safety and Inspection Service, created a You Tube video clip describing the program, and participated in numerous government and industry-led events to educate the industry and consumers. AMS also continues to work with state co-operators to ensure that all retail reviews are being conducted in accordance with established procedures. Additionally, AMS has systems in place to respond to direct inquiries from retailers, suppliers and consumers by telephone and electronic mail in a timely manner.

AMS has also experienced some challenges in manually processing the large number of store reviews that have been submitted by state personnel. Currently, the process of reviewing state submissions, issuing compliance letters to retailers and suppliers, and tracking compliance is manual and time consuming. To make this process more efficient and to enhance compliance analysis and reporting capabilities, AMS is working with an outside firm to create a database management system, which is anticipated to be functional in spring 2011.

Question 4. It sounds like state agencies are largely carrying out the compliance activities under COOL. How is AMS coordinating with the state agencies in this effort? Are the combined state and Federal efforts adequate to assure compliance?

Answer. Various agencies from all 50 states have entered into cooperative agreements with AMS to perform COOL reviews in retail stores. State agency personnel have been trained in the regulatory requirements and in retail surveillance procedures, and also have been certified to conduct retail store inspections. In addition, Federal employees from AMS' Livestock and Seed Program have been trained to serve as a backup to state agencies that are unable to complete assignments and to also serve as follow-up reviewers to determine the integrity of tasks performed by cooperating partners.

AMS distributes COOL retail assignment information to the state partners that sets forth the actual stores to be reviewed in each state by street address. During fiscal year (FY) 2009, 5,000 retail reviews were conducted across the country. In FY 2010, over 7,700 retail reviews are scheduled nationwide. Plans for FY 2011 are to assign approximately 7,500 retail reviews to state agencies. There are approximately 37,000 covered retail stores in the country, so within a 3 year time period, over half of all U.S. stores will be reviewed for COOL compliance.

Question 5. When COOL violations are found, how is compliance enforced? Is it working?

Answer. State employees submit detailed reports of all retail reviews to AMS where the reports are further reviewed by COOL Specialists. Official determinations of compliance are made by the AMS COOL Program staff. In the event a retail store is cited for COOL violations, in accordance with the COOL statute, letters are sent to the retailer requiring them to submit written corrective actions and preventative measures within 30 days. The majority of retail stores provide adequate responses addressing violations within 30 days. Follow-up protocols are in place to address those retailers who do not respond to compliance violations as directed. To date, all retailers have satisfactorily responded by the conclusion of the notification process.

Catfish

Question 6. There is growing concern about the length of time it is taking for the rules on both the grading and the inspection of catfish to be promulgated. What is causing the delay? When can we expect these proposed standards to be published?

Answer. AMS is responsible for developing and publishing catfish grade standards and implementing a grading program. A draft of the U.S. Standards for Grades of Freshwater Catfish and Derivative Products is being developed. AMS expects the draft standard to be published this fall in a *Federal Register* notice with a request for public comment.

The Food Safety and Inspection Service (FSIS) is responsible for developing and publishing a catfish inspection program. FSIS has developed a rule and it is under review by the Office of Management and Budget.

Negotiated Rulemaking

Question 7. What is USDA's experience with negotiated rulemaking? How often has it been used? In what situations? What have been the outcomes?

Answer. USDA has limited experience with negotiated rulemaking. USDA's Animal and Plant Health Inspection Service successfully engaged in negotiated rulemaking in the mid 1990s for changes to the care, handling, treatment, and transportation of marine mammals in captivity. The process took approximately 3 years from conception to publication of a proposed rule in the *Federal Register* for public comment.

Grain Inspection, Packers, and Stockyards Administration, U.S. Department of Agriculture

Proposed Rule on Fairness in Marketing of Livestock and Poultry

Question 1. Branded, value-added products often require animals that meet very specific criteria for size, weight, genetics, feeding practices, *etc.* Packers and processors are willing to pay producers a premium to supply such animals in a timely manner.

Please explain how the proposed rule as currently written would allow packers and processors to continue to pay such premiums without the risk of liability for undue preferences?

Answer. The proposed regulations would allow packers and processors to continue to pay premiums, so long as the offer of those premiums is not unduly discriminatory. The Packers and Stockyards Act currently prohibits an unreasonable preference or unjust discrimination and courts have allowed a reasonable legitimate business justification to be used to justify differential treatment. The proposed rule provides clarification and requires documentation be made available for review by the Grain Inspection, Packers and Stockyards Administration (GIPSA).

Question 1a. What justifications would be considered adequate to eliminate the concerns about such liability?

Answer. Justifications for premiums would not need to be extensive but should be sufficient to identify the benefit-cost basis of any pricing differential received or paid. The legitimate business justifications, along with the facts and circumstances of each case, would be considered in determining if a premium constitutes an undue or unreasonable preference.

Question 2. If implementation of this rule results in a decrease in the number of branded, value-added products, won't that have a negative impact on our international trade, which relies heavily on such products?

Answer. GIPSA invites comments on the potential impacts of the proposed rule on international trade and value-added products. We will consider all comments on this issue in drafting the final rule.

Question 3. GIPSA's proposed definition of "likelihood of competitive injury" includes a situation that "impairs a producer's or grower's ability to compete with

other producers or growers . . .” How would you enforce such a broad definition? If a producer is not offered a contract from a packer that has a premium product, would that producer be in a position to claim that their ability to compete has been impaired?

Answer. Producers not in the position to fulfill the terms of a contract would not be able to claim that their ability to compete has been impaired. The proposed definition is an example of a situation that we feel is likely to result in competitive injury. The definition is intended to provide transparency regarding the types of situations that we believe may be considered a violation of the P&S Act. As is our longstanding practice, the facts and specific circumstances of each situation will be carefully considered in determining when and if enforcement action is appropriate.

Question 4. One of the criteria for the Secretary to consider in determining if an undue or unreasonable preference or advantage has occurred is whether premiums paid based on product quality are offered in a nondiscriminatory manner to other producers that can meet the same standards.

Who will determine whether the same product quality standards can be met, and how will that be done?

Answer. The criteria included in the proposed rule are among those that would be considered by GIPSA in determining whether a particular practice grants an undue or unreasonable preference or advantage. GIPSA, using its experience and expertise, would conduct investigations of the use of premiums paid based on product quality to determine if a violation of the P&S Act has occurred.

Question 4a. What does a packer or processor need to do in order to offer the premium to one producer in a manner that does not discriminate against another producer?

Answer. The law currently requires that packers and processors have legitimate business justifications for differential treatment. The proposed rule would require packers and processors to maintain records documenting those legitimate business justifications.

Question 5. In GIPSA’s proposed rule, one criterion for the Secretary to consider in determining if an undue or unreasonable preference or advantage has occurred is “whether information regarding acquiring, handling, processing, and quality of livestock is disclosed to all producers when it is disclosed to one or more producers.”

How does GIPSA anticipate that packers and processors can insure that this information is disclosed to all producers?

Answer. In the proposed rule, GIPSA has included consideration of the dissemination of this information as one factor in determining whether undue or unreasonable preference or advantage has occurred. This proposed criterion is intended to address selective disclosure or disclosure to some to the exclusion of others. Comments on disclosure of information to producers are welcome.

Question 5a. Is it possible that requirements regarding the “quality” of livestock constitute proprietary business information, such as genetics?

Answer. In some cases it is possible that the requirements could include some aspects of proprietary information. The proposed rule does not require firms to release such proprietary information.

Question 6. Is it possible that concerns about liability will actually *increase* vertical integration as large corporations seek to control more parts of the process in order to avoid potential liability over perceived undue preferences regarding premiums paid to producers?

Answer. GIPSA invites comments on this issue and will consider them in drafting the final rule.

Question 7. The definition of unfair, unjustly discriminatory and deceptive practices includes paying a premium for a product without substantiating the revenue and cost justification associated with the premium. What documentation does a packer or processor need in order to fulfill this requirement?

Answer. Packers and processors, as a matter of course, determine and document value differences of products of varying quality to justify premiums they offer. The proposed rule would require them to retain that documentation and provide the criteria on which they base their decisions.

Question 8. If packer-to-packer sales create concerns about market price manipulation, doesn’t GIPSA already have the tools to investigate and prosecute such manipulation?

Answer. GIPSA has the authority to address alleged violations of the Packers and Stockyards Act through adjudication or rulemaking. We believe that the increased use of packer-to-packer sales in the current environment of high concentration of

packers and the thinning of negotiated markets creates a market-wide problem that is appropriately addressed through notice-and-comment rulemaking.

Question 8a. In the past several years, how many investigations has GIPSA conducted into price manipulation through packer-to-packer sales? What have any such investigations found?

Answer. We have conducted three (3) investigations related to packer-to-packer sales, one that is complete and two (2) ongoing. The completed investigation indicated that packer-to-packer sales affect the market price.

Question 8b. Why is a total ban on packer-to-packer sales necessary?

Answer. Based on the observed price effects from investigative cases, the thin spot market, GIPSA believes the practice of packer-to-packer sales carries a sufficiently high risk of potential anti-competitive and manipulative behavior that it should only be permitted only in emergency situations such as catastrophe or a natural disaster, e.g., if a packer's plant has become inoperative and the packer is unable to process previously purchased livestock.

Question 9. Under this proposed rule, if a cooperative group of producers owns a packing plant, would they be able to sell animals of a type not slaughtered in that plant directly to other packers or would they have to go through a dealer?

Answer. GIPSA invites comments on this aspect of the proposed rule, especially the use and definition of the terms "affiliate" and "affiliated companies," and will assess the need for refinements in drafting the final rule.

USDA/DOJ Competition Workshops

Question 10. What has USDA learned from the workshops held to date? How will the proceedings of these workshops be evaluated?

Answer. The workshops are still in progress. Participants have provided information on a broad range of topics related to competition in agriculture. USDA understands that having a fair and competitive marketplace is important to farmers and consumers. That is why having an open and transparent dialogue with farmers and experts is important. The goal is to have a dialogue on these complex issues and better understand what issues are most important to farmers. So far, there has been a very thoughtful dialogue on very complex agricultural competition issues from a diverse set of constituencies.

Question 11. How will the outcomes of these workshops affect USDA's approach to policies and regulations around competition issues?

Answer. USDA gives full consideration to all available, relevant information in making policy determinations. In this case, the workshops will provide some of that relevant information.

Question 12. Based on USDA's collaboration with the Department of Justice, what is your sense of how DOJ's enforcement of antitrust laws within agriculture might change as a result of these workshops?

Answer. Congress delegated to USDA the responsibility for enforcement of the Packers and Stockyards Act; DOJ and the Federal Trade Commission have been assigned separate responsibility for enforcement of certain other legislation commonly grouped under the heading of "antitrust laws." GIPSA and DOJ work together in a way so that each may carry out its statutory responsibilities. We expect that these workshops will add to DOJ's understanding of the U.S. agriculture and agricultural markets.

Question 13. In your opinion, what effect will these workshops and their outcomes have on the finalization of the proposed rule on fairness in the marketing of livestock and poultry that is currently out for comment?

Answer. The workshops were conceived, designed, and implemented independently of the promulgation of the rule. However, as a result of the timing of the workshops and the extension of the comment period, they will complement the rulemaking process by adding to the body of information available for consideration as we finalize the rule.

Question 14. In the USDA/DOJ competition workshops held around the country, farmers, ranchers and growers have been complimentary of both agencies for their work on the issue of anti-competitive behavior; however, some have been reluctant to testify. According to producers, processors and integrators threatened independent farmers and ranchers to the point that they are afraid of airing their concerns. Do you have any examples of producer intimidation? In your opinion, are there legislative or regulatory actions that could be taken to better ensure producer protections from abusive processors and integrators?

Answer. We have heard of such intimidation on numerous occasions. The following remarks were offered at the May 2010 poultry competition workshop:

[N]umerous growers are not attending these workshops because of being afraid of retaliation on them by their integrator. A grower this morning has already been threatened by his service person if he attends and speaks at this forum. All the integrator has to do is make sure that particular grower receives inferior chicks to start a grow out with and maybe short his feed delivery, which can lead to a higher feed conversion rate. This happens, really it does. (Poultry grower, USDA DOJ Workshop, May 21, 2010)

I've spoken to numerous growers about attending this meeting, but most of them were afraid to come for fear of retribution from their poultry company. You have to do as you are told or you could be refused placement of birds or could face a drop in the number of birds placed or worse. (Poultry grower, USDA DOJ Workshop, May 21, 2010)

I cannot reveal my identity for fear of severe consequences, like no more chickens. There is, incidentally, a blacklist among integrators so any grower cut off will not be picked up by another integrator. (Poultry grower, USDA DOJ Workshop, May 21, 2010)

And although I came here on my own today, it's not without a lot of worry when I leave that I'll have some retaliation. (Poultry grower, USDA DOJ Workshop, May 21, 2010)

The proposed rules would provide GIPSA improved tools to enforce the Packers and Stockyards Act.

Question 15. There are ever fewer options for farmers, ranchers and growers to choose from when it comes to processing. What impacts does this have on the nation's food supply? How would a wider variety in the scale and ownership of processing facilities affect this picture?

Answer. The structure of American agriculture production, exchange, and distribution has been evolving for decades. To provide a brief summary of some of the key aspects, it is reasonable to conclude that the development of alternative marketing and procurement arrangements in agriculture have to a large extent reflected that economy's move to a service-based economy with a premium placed on differentiation and value rather than production of a lesser number of uniform, highly standardized commodities. GIPSA believes available evidence suggests that this development has enhanced the variety, volume, and quality of the nation's food supply, and believes there remain opportunities for producers who are able and willing to provide the kinds of services that consumers have come to expect. Simultaneous with a shift from commodity to service centered production there has been a shift from negotiated markets to contract markets and the proposed regulation seeks to address the hazards for producers that are emerging in those contract markets and unfair practices that can occur when there are fewer buyers.

Questions Submitted by Hon. Randy Neugebauer, a Representative in Congress from Texas

Response from Hon. Edward M. Avalos, Under Secretary for Marketing and Regulatory Programs, U.S. Department of Agriculture

Grain Inspection, Packers, and Stockyards Administration, U.S. Department of Agriculture

Proposed GIPSA Rule

Question 1. Please provide a copy of the economic analysis conducted by USDA's Office of Chief Economist, both in making a case for the need for the proposed rule and in establishing that the proposed rule would effectively address the issues in the livestock markets by providing benefits that outweighed costs.

Answer. The cost-benefit analysis was prepared by GIPSA and can be found on pages 35345 to 35349 of the *Federal Register* notice of the proposed rule posted at GIPSA web address <http://archive.gipsa.usda.gov/rulemaking/fr10/06-22-10.pdf>. The cost-benefit analysis was prepared by GIPSA and reviewed within the Department and by the Office of Management and Budget prior to the publication of the proposed rule. GIPSA invites comments on the economic analysis as set forth in the proposed rule.

Question 2. Please provide for the Committee record a complete accounting of all meetings or formal communications, including interagency & interdepartmental, undertaken by the Administrator of GIPSA from May 10, 2009 to June 20, 2010 associated with the development of this proposed rule. In addition to the dates, such information should include a listing of the organizations and individuals that participated in each communication and the specific topics discussed.

Answer. GIPSA's Administrator has maintained an open door policy to all organizations. Additionally, GIPSA's Administrator and his staff have been involved in interagency and interdepartmental meetings that would be normally conducted in the development of a proposed rule. Listed below are the dates and organizations the GIPSA Administrator met with to listen to general industry concerns that organizations expressed to GIPSA. Organizations could have raised questions in regard to the rule during this time, but the purpose of the meetings was an opportunity for organizations to inform or discuss their respective industries. In most these meetings, the Administrator encouraged comments on the proposed rule once it was published.

The date and organizations the GIPSA Administrator met with are below.

1. Consolidated Beef Producers	May 21, 2009
2. Coalition for Prosperous America	May 26, 2009
3. National Pork Producers Council at the World Pork Expo	June 2-5, 2009
4. R-CALF via teleconference	June 2, 2009
5. National Pork Expo	June 5, 2009
6. Young Cattlemen Beef Association	June 4, 2009
7. Tyson Foods, Inc.	June 8, 2009
8. Livestock Marketing Association Meeting	June 11, 2009
9. Farmers Legal Action Group	June 26, 2009
10. Campaign for Contract Agriculture Reform, Pilgrims Pride and Perdue	June 29, 2009
11. National Cattlemen Beef Assoc. Conference	July 14, 2009
12. R-CALF USA	July 30, 2009
13. National Meat Association	August 4, 2009
14. American Meat Institute	August 5, 2009
15. Organization for Competitive Markets Annual Convention	August 8, 2009
16. National Chicken Council	August 25, 2009
17. South Dakota Stockgrowers Association Convention	September 10, 2009
18. Teleconference Call w/NCBA	September 15, 2009
19. Teleconference Call with National Pork Producers	September 15, 2009
20. Ag Work Solutions	September 22, 2009
21. Mountain States Lamb Cooperative	September 25, 2009
22. Colorado Farm Bureau	September 29, 2009
23. Canadian Cattlemen's Association	October 1, 2009
24. Visit Sheep Facilities in Denver Area	October 2, 2009
25. Independent Cattlemen of Nebraska	October 1-3, 2009
26. Mississippi Order Buyers	October 13, 2009
27. East Mississippi Livestock and Peco Foods	October 13, 2009
28. Agribeef	October 30, 2009
29. U.S. Cattlemen's Association	November 3, 2009
30. R-CALF	December 17, 2009
31. Lebanon Auction Yard	January 6, 2010
32. Visit Agri Beef Plant	January 8, 2010
33. American Farm Bureau Federation	January 10, 2010
34. Tour Mobile Slaughter Unit at Linda Neunzig Farm	January 13, 2010
35. 2010 R-CALF USA 11th Annual Convention	January 22, 2010
36. 2010 Cattle Industry Annual Convention & NCBA	January 28-29, 2010
37. Mississippi Cattlemen Conference	February 11-12, 2010
38. Amend Packing Company	March 11, 2010
39. USDA/DOJ Issues of Concern to Farmers	March 12, 2010
40. Briefing for CA Farm Bureau Federation	March 15, 2010
41. Livestock Marketing Association	March 17, 2010
42. Western Organization of Resources Council Staff Directors	April 14, 2010
43. Consolidated Beef Producers Annual Meeting	April 19-20, 2010
44. National Meat Association and Southwest Meat Association	April 22, 2010
45. USDA/DOJ Poultry Workshop	May 18-21, 2010
46. Agribeef	June 3, 2010

Question 3. Please provide for the Committee a copy of each of the letters sent to packers or other since the proposed rule was published requesting Answers to questions about cattle procurement practices to be given under oath. Please explain if this information was demanded for purposes of an investigation or further the knowledge of the Agency about typical industry practices.

Answer. The letters the Committee refers to were sent to specific packers during the course of an investigation that began in June 2009 and remains ongoing. Since the investigation is still active, release of this information including the identity of

the recipients and the investigative questions could have an adverse impact on the case.

Question 4. In the background case for the proposed rule, the Agency argues that it is necessary because the Courts have failed to agree with the Agency's reading of the law. If this is true, why didn't the Administration propose a legislative solution to this problem so that Congress, working with our constituents, could address this issue?

Answer. GIPSA believes that current statutory authority in this instance is sufficient, given proper clarification as would be accomplished by the proposed rule. The rule will facilitate adequate enforcement while affording the necessary flexibility to adjust to changing conditions and practices in the industry. GIPSA invites comments on all aspects of the rule.

Question 5. In the proposed rule, it is stated that USDA conducted three public meetings associated with the proposed rule. However, when the Secretary announced the ongoing USDA/DOJ Workshops, the press release stated the "*goals of the workshops are to promote dialogue among interested parties and foster learning with respect to the appropriate legal and economic analyses of these issues, as well as to listen to and learn from parties with experience in the agriculture sector.*" Why didn't the Administration complete the process of listening to people before it published this proposed rule?

Answer. The workshops were conceived, designed, and implemented independently of the procedures for promulgation of the rule. The timeline for the proposed rule was largely determined by the need to introduce new regulations in conformance to the 2008 Farm Bill. As a result of the timing and subject matter of the workshops, they clearly have complemented the rulemaking process by adding to the body of information available to consider as the rule is finalized.

Question 6. Many have criticized the proposed rule, stating that it will have a chilling effect on agriculture marketing arrangements in the livestock sector. Since producers and packers are the two parties to these agreements—and both producer groups and packer interests have raised concerns—how can the proposal be in the best interest of the animal agriculture community?

Answer. GIPSA has issued a proposed rule for the consideration of the public. The comment period on the proposed rule closes on November 22, 2010. GIPSA will then analyze all comments received in drafting the language of the final rule. GIPSA encourages comments on the proposed rule that may be considered in that process.

Question 7. When the Livestock, Dairy, and Poultry Subcommittee conducted a hearing in October of 2009 on the challenging economic conditions faced by the pork community, a witness representing the credit sector stressed the vital role of agricultural marketing arrangements in securing lending. Many believe the proposed rule will have a chilling effect on these marketing arrangements. What steps were taken to address these concerns in the proposed rule?

Answer. GIPSA has issued a proposed rule for the consideration of the public. The comment period on the proposed rule closes on November 22, 2010. GIPSA will then analyze all comments received in drafting the language of the final rule. GIPSA encourages all those who have comments in terms of its affect on credit to comment on the proposed rule so that their views and concerns can be considered in that process.

Question 8. Contract growing is only one way integrators can secure poultry. They could lease houses, or purchase their own houses, or raise poultry outside the United States. What steps does the Department anticipate taking if the combined weight of this proposed rule causes integrators to move to these options?

Answer. GIPSA has issued a proposed rule for the consideration of the public. The comment period on the proposed rule closes on November 22, 2010. GIPSA will then analyze all comments received in drafting the language of the final rule. GIPSA encourages integrators to comment on the proposed rule so that their views and concerns can be considered in that process.

Agricultural Marketing Service, U.S. Department of Agriculture

COOL Implementation

Question 1. Please take a moment to describe what is involved in a typical COOL review in a retail store. What methodologies are used by the reviewer to ensure that the claims being made in the store about a particular product are indeed accurate? What steps are taken in cases where a product is found to be improperly labeled?

Answer. A typical COOL retail store review is estimated to take 3 to 4 hours from arrival of the reviewer to the closing meeting with store management. The reviewer conducts an opening meeting with store representatives to provide information on

the COOL program and to describe the review process at the facility. Store representatives are invited to accompany the COOL reviewer. Each section of the store is examined for covered commodities and each covered commodity is reviewed for the presence, accuracy, and overall visibility of country of origin declarations. In addition, reviewers request records for five category-specific random items (e.g., a fresh fruit, a frozen vegetable, a fresh fillet of fish, a muscle cut of pork, and ground chicken), to verify that the retailer is maintaining records containing country of origin information and supplier information, and that the country of origin claims made at the point of sale are accurate. Upon completing the inspection of all areas of the retail store where covered commodities are sold, the reviewer has a closing meeting with store representatives to answer any questions and to provide them with a checklist describing any items found to be non-compliant. Reviewers inform store representatives that findings are not official until processed by AMS COOL Specialists.

State employees submit detailed reports of all retail reviews to AMS where the reports are further reviewed by COOL Specialists. Official determinations of compliance are made by the AMS COOL Program staff. In the event a retail store is cited for COOL violations, in accordance with the COOL statute, letters are sent to the retailer requiring them to submit written corrective actions and preventative measures within 30 days. The majority of retail stores provide adequate responses addressing violations within 30 days. Follow-up protocols are in place to address those retailers who do not respond to compliance violations in as directed. To date, all retailers have satisfactorily responded by the conclusion of the notification process.

In addition to conducting COOL reviews at retail stores, the program also audits the supply chain from the initiator of the claim to the retailer. Products that were chosen for records review (from the five category-specific random items) at the retail level are randomly selected for supplier traceback audits. In 2009, 200 products were selected for supplier traceback audits. The auditors begin with the retailer supplier information listed in the retail review and work backwards through the chain of commerce to the initiator of the claim to ensure that country of origin information is accurate and conveyed correctly from one entity to another.

Question 2. Proponents of mandatory country of origin labeling argued that the increased costs associated with the program would be more than offset by economic benefits to producers. Has the Department conducted any analysis to prove that domestic producers have enjoyed either increased sales or higher prices as a result of mandatory labeling?

Answer. USDA has not conducted an analysis of the overall costs or benefits of the mandatory COOL program outside of those conducted during the rulemaking process.

Animal and Plant Health Inspection Service, U.S. Department of Agriculture

Animal ID/New Animal Disease Traceability Framework

Question 1. Will compliance with the New Animal Disease Traceability Framework be mandatory? Will the Federal Government be providing any resources—in other words, money—for the program?

Answer. APHIS currently plans to propose a rule that would require that livestock moved interstate be officially identified and be accompanied by an interstate certificate of veterinary inspection (ICVI) or other official documentation, with some exemptions when appropriate. The proposed plan would specify the authorized methods of official identification for each species that must be accepted by all states and tribes, thereby ensuring national uniformity. Although states and tribes would have to meet the standards, they would have the flexibility to use the approach that works best for their needs.

The FY 2011 budget plan calls for \$14,241,000 to support the first full year's transition to the new traceability framework. Of this amount, \$4,629,400 will support program administration and system funding while \$9,611,600 will support direct field implementation including cooperative agreements with states and tribes to implement the new traceability plan, identification tags, outreach and APHIS field activities.

Question 2. The failed National Animal Identification System (NAIS) was the subject of a government-funded cost-benefit report. Are there any plans to conduct such an analysis of the New Animal Disease Traceability Framework?

Answer. USDA does not have any current plans to produce a similar cost-benefit report but is currently working on a cost analysis and will provide it to Congress when it is completed. As part of the rulemaking process, APHIS will also perform

an assessment of the benefits and costs of the planned proposed rule as required by E.O. 12866.

