



**Written Testimony of the
National Pork Producers Council**

**On
The Effects of Regulations on
Small Businesses**

**Before the
House Committee on Small Business
Subcommittee on Agriculture, Energy,
and Trade**

June 21, 2018

Introduction

The National Pork Producers Council (NPPC) is an association of 42 state pork producer organizations that serves as the global voice for the U.S. pork industry. NPPC represents the interests of America's 60,000 pork producers, the vast majority of whom would be classified as small businesses.

The U.S. pork industry represents a significant value-added activity in the agricultural economy and the overall U.S. economy. In 2017, pork producers marketed about 120.5 million hogs, and those animals provided total cash receipts of more than \$20 billion. Overall, an estimated \$23 billion of personal income and \$39 billion of gross national product are supported by the U.S. pork industry.

Exports of pork add significantly to the bottom line of each pork producer. U.S. exports of pork and pork products in 2017 totaled 5.4 billion pounds – a record – valued at nearly \$6.5 billion. That represented almost 27 percent of U.S. production, and those exports added more than \$53 to the value of each hog marketed. (The average price received for a market hog in 2017 was \$147.) Exports support approximately 110,000 jobs in the U.S. pork and allied industries.

Iowa State University economists Daniel Otto, Lee Schulz and Mark Imerman estimate that the U.S. pork industry is directly responsible for the creation of more than 37,000 full-time equivalent pork producing jobs and generates about 128,000 jobs in the rest of agriculture. It is responsible for approximately 102,000 jobs in the manufacturing sector, mostly in the packing industry, and 65,000 jobs in professional services such as veterinarians, real estate agents and bankers. All told, the U.S. pork industry supports more than half a million mostly rural jobs in the United States.

U.S. pork producers today provide 25 billion pounds of safe, wholesome and nutritious meat protein to consumers worldwide.

Cost of Federal Regulations

Federal regulations cost the American economy more than \$2 trillion annually in direct costs, lost productivity and higher prices, according to a 2014 study conducted by Lafayette College economists Mark and Nicole Crain for the National Association of Manufacturers. That's a cost to employers of about \$10,000 per employee per year, and for small businesses, the cost per worker is nearly \$18,000 annually. [<http://www.nam.org/Data-and-Reports/Cost-of-Federal-Regulations/Federal-Regulation-Full-Study.pdf>]

From 2009 through 2016, more than 21,000 new rules were imposed on business and agriculture at a cost of about \$110 billion, according to data from the Government Accountability Office.

America's farmers and ranchers, currently facing a decline in incomes, a growing labor shortage, market volatility caused by trade disputes and the vagaries of Mother Nature, can only be disheartened by also having to contend with the red tape and unfunded mandates spewing forth from bureaucrats in Washington.

(Chinese and Mexican tariffs on U.S. pork are causing significant harm to hog farmers. Iowa State University economists estimate losses for 2018 at more than \$2 billion, all attributable to the retaliatory duties on U.S. pork exports. See the attachment.)

Indeed, regulations consistently are cited by farmers as the No. 1 burden on their productivity; they must expend additional resources to hire professionals to ensure compliance, or must spend their own valuable time deciphering the regulatory maze, which carries its own opportunity costs. [<http://www.nsba.biz/wp-content/uploads/2017/01/Regulatory-Survey-2017.pdf>]

In addition to added costs and lost time, the ever-changing regulatory landscape creates uncertainty for farmers, hindering innovation while making it difficult to formulate investment plans or estimate next year's returns. (The Trump administration has made a tremendous effort to address the regulatory burden. The Office of Management and Budget's December 2017 "Current Regulatory Plan and the Unified Agenda of Regulatory and Deregulatory Actions"

showed that 635 regulations had been withdrawn, 244 were made inactive and 700 were delayed.)

Over the past 10 years, however, the U.S. pork industry – and many other sectors of American agriculture – have had to deal with significant federal regulations related to the buying and selling of livestock, labeling meat, trucking, air emissions, clean water, antibiotics use and organic livestock production.

Farmers aren't opposed to regulations, as such, but rules – whether federal, state or local – should be based on sound science and/or analyses, be practical to implement and cost effective and address actual problems that need solutions. Additionally, before being promulgated, regulations should be subject to cost-benefit analyses, and rules whose costs far outweigh their benefits should be scrapped.

Major Rules Affecting Pork Producers

The Bad

1. GIPSA Rule

Pork producers have had to struggle with several major regulations since 2010. Perhaps the biggest and potentially most costly was the so-called GIPSA Rule, a regulation written by the U.S. Department of Agriculture's Grain Inspection, Packers and Stockyards Administration.

Issued almost eight years ago to the day, the GIPSA Rule would have dictated the terms of private contracts between the sellers and buyers of livestock and poultry, restricted marketing arrangements, required reams of paperwork and made certain industry practices *per se* violations of the Packers and Stockyards Act (PSA).

An economic analysis conducted in 2010 and updated in 2016 by Informa Economics found that today the regulation would cost the U.S. pork industry more than \$420 million annually, or more than \$4 per hog.

Livestock industry analysts said the rule would have stifled industry innovation, forced simple contract disputes into federal court and compelled meat packers to own animals rather than contract with farmers to raise them to avoid any PSA legal exposure.

With fewer contracts available, livestock farmers likely would have been forced to rely on the “cash” market, where prices tend to be lower and risks greater. Many farmers would have been hard-pressed to survive in that market, and others may not have been able to get from bankers – who are very risk averse – the capital needed to operate. As producers went out of business, concentration and vertical integration in meat processing would have increased.

But it wasn't just the potential costs, complexities and consequences of the regulation that perplexed pork producers and other food-animal farmers. It was how the rule was written that was most disturbing.

GIPSA lacked authority or exceeded it in writing certain provisions of the regulation, it failed to support the need for the rule with evidence of problems in the pork industry, and it didn't consider its own studies showing that restricting contracts could harm the livestock industry.

The provision of the rule that declared no showing of injury to competition would be necessary to establish a violation of the PSA, for example, was in direct contradiction to the rulings from eight of the 13 circuits of the U.S. Court of Appeals. It also was something Congress considered and rejected during its debate on the 2008 Farm Bill, the vehicle that directed USDA to write regulations related to the PSA.

The regulation also was offered with no meaningful analysis of its impact on the livestock industry, and no economic analysis was done.

Despite the significant flaws in the GIPSA Rule and 16,000 comments in opposition to it just from pork producers, it took more than seven years to kill it. (The Trump administration in mid-October 2017 announced it would withdraw the last proposed remnants of the 2010 regulation. But it's not dead yet. Congress should fix the problem once and for all.)

In the rule-making process, there often seems to be a disconnect between the federal bureaucracy and the “regulated community.”

2. WOTUS Rule

The Obama-era Waters of the United States (WOTUS) Rule is illustrative. The regulation, proposed in April 2014 and effective in late August 2015, sought to clarify the authority under the Clean Water Act (CWA) of the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers over various waters.

Their jurisdiction – based on several U.S. Supreme Court decisions – had included “navigable” waters and waters with a significant hydrologic connection to navigable waters.

But the WOTUS Rule broadened that to include, among other water bodies, grass waterways, upstream waters and intermittent and ephemeral streams (also known as ditches) such as the kind farmers use for drainage and irrigation. It also covered lands adjacent to such waters.

That expanded jurisdiction would have had a significant negative impact on many agricultural practices. That’s because under the CWA there is an absolute prohibition on discharging any “pollutant,” which would include manure, chemical pesticide, fertilizer and even a seed of corn, into a WOTUS without a federal permit.

Bureaucrats wrote a regulation that would have subjected farmers to criminal penalties and civil fines of up to \$38,500 a day for planting crops without a CWA discharge permit. What’s more, they gave private citizens and activist groups the power to enforce the rule!

(The WOTUS Rule is tied up in several courts cases. It is enjoined in 24 states, while its status is unclear in the other 26. Meanwhile, the administration is in the process of rescinding the regulation and proposing a new rule to protect the nation’s waterways, with input from stakeholders, including farmers.)

3. Organic Livestock Rule

While it was not a “major” regulation for pork producers, the Organic Livestock and Poultry Practices Rule is another good example of a flawed rule-making process and of an unnecessary, unscientific mandate from Washington.

Issued by the Obama administration at the very end of its term, the regulation would have added animal welfare standards to the nation’s organic food production law. That 1990 USDA statute limits consideration of livestock as organic to feeding and medication practices.

The proposed regulation would have dictated how organic producers raised and cared for livestock and poultry, including during transport and slaughter. It would have specified, without scientific justification, which common practices were allowed and prohibited in organic livestock and poultry production. The rule also would have established unreasonable indoor and outdoor space requirements for animals. In short, the regulation would have eliminated producers’ discretion to make sound decisions about animal care.

NPPC wrote to USDA in its comments in opposition to the regulation that the rule’s welfare standards were not based on science and were outside the scope of the 1990 organic food production law. The new standards would have presented serious challenges to livestock producers and added complexity to the organic certification process, creating significant barriers to existing and new organic producers. (In its own analysis of the regulation, USDA said 90 percent of the existing organic egg farmers wouldn’t have met the new standards.)

The organization also noted that the standards seemed to be based on public perception – or USDA’s understanding of that perception – of “good animal welfare” and did not reflect a consensus by experts in animal welfare and handling.

“The inclusion of animal welfare requirements into the organic food production law is no different than requiring that all farmers wear bib overalls or paint their barns red in deference to public sentiment,” wrote NPPC.

Some of the standards could have jeopardized animal and public health. The provision on outdoor access, for example, was in conflict with pork industry best management practices to prevent swine diseases that pose threats to animal and human health.

4. Hours of Service Rule

Another regulation on which the regulators seemed to take a one-size-fits-all approach is the Department of Transportation (DOT) Hours of Service Rule for commercial truckers, engaged in interstate commerce.

The rule limits such truckers to 11 hours of driving time and 14 consecutive hours of on-duty time in any 24-hour period. Once drivers reach that limit, they must pull over, go “off duty” and wait 10 hours before driving again.

But drivers transporting livestock and poultry can’t just pull over and leave their animals unattended to suffer or die in the 100-degree heat of Iowa, or the minus-20 degree cold of Minnesota.

NPPC has been working closely with DOT to add flexibility to the Hours of Service Rule and is supporting legislation sponsored by Sens. Hoeven and Bennet that would set up a DOT working group, which would include farmers and the truckers who haul livestock, to develop a regulation that protects highway safety while allowing livestock haulers to transport animals in a safe and humane way.

Of course, not all regulation is bad.

The Good

1. New Swine Slaughter Inspection System Rule

NPPC is urging USDA, for example, to finalize a regulation that would give packing plants greater responsibility for hog carcass inspections, while the agency’s Food Safety and Inspection

Service (FSIS) employees would ensure the effectiveness of those activities and focus on other food-safety verification tasks.

The New Swine Slaughter Inspection System (NSIS) Rule is an expansion of and improvement on the current HACCP-based Inspection Models Project (HIMP) pilot program currently in five pork establishments. HIMP has helped enhance food safety and humane animal handling and allowed for better utilization of FSIS and industry resources.

2. Alternative Proteins

NPPC also is asking USDA to regulate so-called laboratory proteins: plant- and chemical-based products that are manufactured in scientific laboratories and labeled and marketed as “meat.”

Manufacturers of plant-based products are trying to blur the distinction between their products and conventionally produced meat and poultry. Packages often have pictures of animals on them, or use words such as “beefy” in large type (much larger than any indication that the product is plant-based). Companies making the products are trying to occupy the best of both worlds, making broad claims about sustainability and taking issue with animal agriculture’s production practices while trying to mimic meat on grocery shelves.

Proponents of chemical-based products, which right now are not commercially viable, often refer to them as “clean meat,” which obviously is meant to disparage traditionally produced meat products and cause even further confusion for investors and consumers. For farmers, this is neither acceptable, nor true.

3. Agricultural Visas

The pork industry also is supporting federal legislation and its accompanying regulations to establish a non-seasonal agricultural guest worker visa to address a severe farm labor shortage. (The unemployment rate in the top pork-producing Congressional Districts averages 2.8 percent; the national average is about 3.8 percent.)

Additionally, NPPC is urging the Department of Labor to eliminate some of the red tape for hiring foreign-born workers under existing visa programs, including the non-immigrant NAFTA Professional, or TN visa. The program allows citizens of Canada and Mexico, as NAFTA professionals, to work in the United States in prearranged business activities for U.S. or foreign employers.

What Can Congress Do About Federal Red Tape?

NPPC supports reducing the regulatory burden on U.S. pork producers and American agriculture by increasing accountability and transparency in the federal regulatory process, broadening the scope of required economic analyses, requiring agencies to work with key stakeholders throughout the rulemaking process and strengthening congressional oversight.

Congress can take a number of steps to ease the federal (and state) regulatory burden:

- **Accountability:** The Administrative Procedures Act (APA), which governs how federal agencies may promulgate regulations, has not been updated in a significant way in 70 years.

NPPC supports legislation, such as the “Regulatory Accountability Act,” that would require agencies to consider cost-effective alternatives, use the best reasonably available science and periodically review whether existing regulations are meeting their original objectives. Additionally, NPPC supports legislation prohibiting federal agencies from using funds to advocate for comments on a proposed regulation.

- **Transparency:** Increasingly, key stakeholders are shut out of the regulatory process and often are given only 30 or 60 days to comment on regulations that an agency has spent years developing.

NPPC supports legislation, such as the “Regulatory Accountability Act,” that would increase public participation in developing regulations.

- Congressional Oversight: Currently, Congress only may disapprove a regulation by passing a resolution pursuant to the Congressional Review Act (CRA).

NPPC supports legislation, such as the “Regulations from the Executive in Need of Scrutiny (REINS) Act,” that would require congressional approval for all new major regulations – those with an economic impact of \$100 million or more – allowing for the people’s voice to be heard and restoring balance between the executive and legislative branches.

Role of Congress on State Regulations

While they aren’t federal rules, Congress still can have a role in some state regulations.

Two cases on point are the California and Massachusetts laws dictating certain food-animal production practices and – more importantly – banning the sale in the state of out-of-state products that don’t meet their respective state dictates.

The California Legislature in 2010 banned the sale in the state of out-of-state eggs from hens housed in so-called battery cages. The law was adopted as an adjunct to a voter-approved 2008 ballot initiative that banned the hen housing as well as sow gestation stalls and crates for veal calves. California lawmakers wanted to protect the economic interests of their state egg producers by making out-of-state producers comply with the housing ban – just like in-state producers – if they wanted to sell product in California. (The state’s voters this November will decide whether to extend the out-of-state sales prohibition to pork and veal.)

In 2016, Massachusetts voters approved Question 3, which banned sow gestation stalls, battery cages and veal crates *and* the sale in the state of pork, eggs and veal produced anywhere in the country from animals kept in the prohibited housing.

That means pork from pigs born to sows housed in gestation stalls on farms in Iowa, for example, will be prohibited from being sold in Massachusetts, beginning Jan. 1, 2022.

Consumers in California already have seen higher prices for eggs.

A January 2016 study conducted by Cornell University economist Harry Kaiser found that California's ban on battery cages and on selling eggs from out-of-state hens housed in such cages resulted in a 49-cent per dozen increase in egg prices. Based on average per capita egg consumption in the United States of 21½ dozen a year, California consumers are spending almost \$14 per person more on eggs or \$70 per year for a household of five because of the ban. While that price increase may not be severe for an average California household, the same can't be said for the poorest households in the state, Kaiser pointed out.

Using the same economic model, Kaiser estimated that Massachusetts' ban would cost the state's consumers \$249 million in higher food prices – \$95 million in higher egg prices and \$154 million in higher pork prices – in just the first year after implementation.

Farmers outside of those states also have been or will be negatively affected by the sales bans. Pork producers in the Midwest who want to continue selling pork in Massachusetts would see an increase in transaction costs. Hog finisher, for example, would need to ensure that weaned pigs are from sows not housed in gestation stalls.

If more states are allowed to regulate agricultural activities outside their borders, such mandates – rather than the free market – could force farmers around the country to abandon their scientifically accepted production practices. That, too, would come with a significant cost to farmers and consumers.

Brian Buhr, professor in applied economics at the University of Minnesota, in a May 2010 study estimated a cost to the pork industry of between almost \$1.9 billion and more than \$3.2 billion to transition to group housing from sow gestation stalls, which currently are used by more than 80 percent of pork producers.

Those conversion costs would raise the price of pork, which in turn would start a cycle of consumers demanding less pork followed by higher prices. Buhr estimated a cost to consumers

of \$5 billion. Undoubtedly, some pork producers would go out of business, thus further reducing the production (supply) of pork and prompting another rise in consumer prices.

(Animal-rights groups not only know this, they count on it to have “market” forces do their dirty work of significantly reducing meat consumption.)

While the states have every right to regulate business and agriculture within their respective borders, they cannot dictate to entities outside of them, and they cannot restrain interstate trade.

Prohibitions on the sale of out-of-state pork from pigs born to sows housed in gestation stalls clearly is a restraint of interstate commerce and, therefore, a violation of the U.S. Constitution’s Article I., Section 8, Clause 3 – the Commerce Clause.

The Constitution grants Congress plenary power over interstate commerce, with the Commerce Clause operating as a check on the legislative powers of the states to regulate the economy.

NPPC supports legislation to help reign in states’ restraint of interstate commerce – even if unintended – and prevent a patchwork of state laws and regulations affecting the scientifically accepted production practices of livestock farmers.

Conclusion

One of NPPC’s missions for hog farmers is to ensure that federal regulations are reasonable. As previously stated, that means they should be based on sound science and/or analyses – including cost-benefit analyses – be practical to implement and cost effective and address actual problems that need solutions. (As economist Milton Friedman said: “One of the great mistakes is to judge policies and programs by their intentions rather than their results.”)

This Congress and the Trump administration have done a good job of starting to reign in the federal Leviathan, with the White House rescinding several burdensome rules and directing

agencies to eliminate two existing regulations for each new one proposed and with Congress providing more oversight of the regulators.

But more needs to be done.

Certainly, there must be rules, but eliminating expensive, confusing and time-consuming federal regulations and making sure the necessary ones aren't too burdensome will go a long way to ensuring that small business people and farmers – America's economic engine – can continue to be the world's best at what they do.