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Docket Clerk
Office of Legal Policy
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, D.C. 20530

**Re: Request for Information on State Laws Having Significant Adverse Effects
on the National Economy or Significant Adverse Effects on Interstate
Commerce; Docket No. DOJ OLP182**

Dear Department of Justice Office of Legal Policy and National Economic Council,

The National Pork Producer Council (NPPC) submits these comments to the Department of Justice Antitrust Division and the National Economic Council in response to the August 15, 2025, request for information on assisting the Department to Identify State Laws with Out of State Economic Impacts.

As President Trump made clear in EO 14192, the “ever expanding morass of complicated ... regulations impose massive costs on the lives of millions of Americans, creates a substantial restraint on economic growth and the ability to build and innovate, and hampers our global competitiveness.”

U.S. pig farmers are all too familiar with the challenges posed by disruptive extraterritorial regulations at the federal, state, and local levels. Burdensome and often poorly reasoned statutory and regulatory mandates impose economic harm. Usually that harm manifests as both direct increases in the production costs a family farm faces while, at the same time, dramatically reducing the marketplace for their products. These regulations, and the uncertainty they create in the marketplace, also lead to additional disruptions. They hamper the ability of a farmer to make long term investments designed to increase productivity and the competitiveness of the farm business. Altogether these regulations drive up costs for the family farmers who produce the bacon, ribs, and chops that feed America. Farmers, of course, aren't the only party impacted. The rising costs associated with these regulatory schemes also affect hardworking families already struggling with the soaring price of groceries, limiting the choices (and raising the prices) for the food necessary to ensure the sustenance of American families.

The U.S. pork industry appreciates the opportunity to offer the following insight into some of the regulations with significant adverse effects on interstate commerce that continue to challenge our nation's pig farmers and contribute to increasing food prices.

Background on NPPC and the US Pork Industry

NPPC, representing 42 affiliated state associations and their pork producing membership, works to ensure the U.S. pork industry remains a consistent and responsible supplier of high-quality pork and pork products to domestic and international markets. Through public policy outreach, NPPC supports reasonable legislation and regulations, develops revenue and market opportunities, and protects the livelihoods of more than 60,000 pig farmers across America.

The U.S. pork industry serves as a major contributor to both the agricultural and overall U.S. economy while providing a range of products that are both a staple of daily meals and the centerpiece of family celebrations. In 2023, U.S. pig farmers marketed more than 149 million hogs valued at over \$27 billion, supporting more than 573,000 U.S. jobs and supplying consumers with nutritional products that are raised safely and humanely. The U.S. is also a global supplier of pork, with exports accounting for nearly a quarter of annual pork production and supporting more than 140,000 U.S. jobs. To produce those hogs, farmers use roughly 1.7 billion bushels of corn and the soybean meal from 462 million bushels of soybeans.

Regulatory Overreach and The Chaotic Erosion of National Markets

In recent years, states have begun to enact laws that mandate certain production practices for out-of-state farmers as a prerequisite to sell products within their borders. Ballot initiatives like California's Proposition 12 (CA Health & Safety Code § 25990) and Massachusetts' Question 3 (Massachusetts General Laws § 129 App. § 1-1 et seq.) are two such examples. While neither state has any meaningful domestic pig farming industry, both decided to reach across the country and regulate how pig farmers in other states design and operate their farms by banning the use of long standing and widespread animal husbandry practices for managing sows (mother pigs). Instead, the states are prescribing conflicting standards as a prerequisite to enter their marketplace.

Compliance requires many farmers to completely revise how they raise and manage their sow herds, necessitating retrofits and reconstruction of barns and imposing costs on the farmers that will not be rewarded by consumers in the other 48 states nor in international export markets. These laws, and the regulations implementing them, stand as shining examples of inexplicable rule-setting, driving up costs for farmers, and ultimately leading to significant food price inflation. What's worse, the arbitrary rules are confusing and often make little sense. For example, in California, a typical package of uncooked bacon is illegal to be sold if it does not follow the state's arbitrary regulations, which includes being derived from a pig born or raised on any farm across the nation that has not been inspected and certified to supply California by an agent of the state. Violations risk criminal penalties. However, if that *same* bacon from that *same* farm and that *same* pig is, instead, first cooked and packaged prior to sale, the bacon is

then deemed legal to sell in California. Likewise, in Massachusetts, the state originally determined that ground pork was a whole cut of pork and subject to its law. However, if the same pork had salt and spices added to it, it would be deemed sausage and not subject to the law¹. More ironically, in both states, while the restrictions on sale apply to the meat of a sow's offspring, meat from the sow itself is generally not covered by the law and can be sold in the states².

State laws like California's Proposition 12 and Massachusetts' Question 3 impose significant barriers on a farmer's ability to access a unified, nationwide market. By conditioning market access on compliance with state-specific production standards, these laws effectively regulate out-of-state conduct and force pig farmers across the country to conform to a patchwork of mandates dictated by the political preferences of individual states. The U.S. Constitution's Commerce Clause, and specifically the dormant Commerce Clause doctrine, were designed to prevent precisely this kind of fragmentation.

While the U.S. Supreme Court has thus far declined to strike down Proposition 12³, characterizing the issue as one better suited for resolution through the political branches, that decision underscores the urgent need for federal action. It is incumbent upon both the executive and the legislative branch to reassert the principle of a unified national marketplace, not only to address Proposition 12 and Question 3, but more importantly, to prevent the proliferation of conflicting state mandates that threaten to balkanize the domestic market for food and disrupt the efficient flow of commerce in essential agricultural goods. Indeed, since the Supreme Court's decision in *Ross*, some additional states have considered adoption of their own unique version of Proposition 12's standards, each of which differs from what California and Massachusetts prescribed.

Recognition of the harm that this balkanization of our national markets presents to the nation's economy is clearly understood by both the Biden and Trump Administrations:

¹ While Massachusetts original regulations remain in place, the Massachusetts Department of Agricultural Resources (MDAR) issued an updated FAQ document on May 29, 2024 which clarified that comminuted pork, also known as ground pork, would be exempt from Question 3. However, MDAR never provided any notice to stakeholders, let alone farmers looking to sell into the state, of this new FAQ. Absent a direct link to it, the document remains nearly impossible to obtain. Further, the underlying regulations are still in place. While the new FAQ indicates that proposed regulations are being considered, the state has so far not started that that process.

² Sow meat traditional is processed into sausage, which would be exempt under both laws.

³ In *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023), a fractured Court upheld Proposition 12 with Justice Gorsuch suggesting that weighing, and managing, the competing interests was a task best left to policymakers and not judges. As these comments are being submitted, the U.S. Supreme Court is currently contemplating a new Cert Petition challenging Proposition 12 in *Iowa Pork Producers Association v. Bonta*, No 24-728 (pet. for cert. pending).

“When you’re dealing with 12% of the pork market in one state, there is not a choice between doing business in California and not in California. It’s going to be driven by that [Proposition 12] requirement ... At some point in time, somebody’s got to provide some degree of consistency and clarity; otherwise, you’re just inviting 50 different states to do 50 different iterations of [Proposition 12]. Farmers don’t need the chaos; they need clarity and certainty.”

February 28, 2024 Testimony of then USDA Secretary Tom Vilsack to the U.S. Senate Agriculture Committee.

“[Proposition 12] is not just affecting California. It’s affecting multitudes of other states, multitudes of other parts of the ag community, including our hog family farms.”

January 23, 2025 Testimony of then USDA Secretary nominee Brooke Rollins to the U.S. Senate Agriculture Committee.

Transshipment of Pork

These initiatives do not just impact on the consumers in the states that pass them. They often have impacts on the overall supply chain and the ability to serve consumers elsewhere. While California regulations seemingly allow for pork to flow through California ports to foreign exports markets, or to other states, the impact of Proposition 12 remains. For instance, after the devastating 2023 wildfires in Maui, Hawaii charitable groups seeking to provide food assistance to shelters and displaced families faced challenges obtaining pork in the marketplace due to overall shortages in California as a result of Proposition 12.

In Massachusetts, the regulatory implementation of Question 3 has proven to be particularly troublesome. As originally promulgated, the state determined that Question 3 prohibited non-compliant pork from transiting through the state for final shipment and sale into other states. Due to the geography of New England, the routing of interstate highways (Interstates 91 and 95) and Massachusetts’ placement in the center of New England, this proved to be extremely burdensome on interstate commerce. As a practical matter, with no east-west highways through Vermont, it is nearly impossible to ship commerce into either New Hampshire or Maine without traveling through Massachusetts.

For food distributors located in Massachusetts, but who might serve businesses in New Hampshire, Maine, Rhode Island or Connecticut, Massachusetts regulations cut off a significant part of their potential business, as well as the supply lines for their customers located outside of Massachusetts. However, it was even worse for businesses located in those states that are required to transit through Massachusetts to either receive or make deliveries.

For example, there are a number of distributors in New Hampshire that were at risk of both not receiving shipments to their New Hampshire warehouse and also of being unable to ship to customers in Connecticut or Rhode Island. NPPC, along with state restaurant associations throughout New England filed suit against Massachusetts in 2022⁴. That litigation, and Massachusetts transshipment regulations, are currently stayed⁵ pursuant to a joint stipulation of the parties under which Massachusetts is planning to issue new regulations. See, FN1. However, despite promises to promulgate these regulatory revisions, as of today, nearly three years later, Massachusetts still has not begun that process.

Local Regulatory Burdens

While state level regulations provide one level of regulatory confusion and uncertainty, regulatory activity at the local level can be equally disruptive and force action by farmers far outside the boundaries of the local jurisdiction.

San Francisco's *Antibiotic Use in Food Animals Ordinance*⁶, enacted in 2017, requires larger grocery retailers operating within the city to report detailed information about the use of antibiotics in the meat and poultry products they sell, including data on dosage, duration, reasons for use, and third-party certifications. The ordinance proffered aim is to promote transparency in antibiotic use, but in practice, it imposes significant reporting mandates on retailers that inevitably shift responsibility upstream to farmers and producers, nearly all of whom lack any connection to San Francisco or the administrative capacity to provide the data required. The rule is unique in the United States and applies regardless of where the meat was produced, making it a de facto national regulation imposed by a single city.

The program creates significant challenges for farmers and processors in the pork sector. Pork production involves multiple stages and entities, making it extremely difficult to track and report the granular antibiotic data the ordinance demands. This compliance burden increases production costs, adds regulatory risk, and ultimately contributes to higher food prices for consumers. While San Francisco has issued conditional waivers⁷ in past years, these waivers are not automatic nor guaranteed. They are evaluated annually and granted at the city's discretion, creating a regulatory environment where farmers must plan around rules that are technically in force but functionally suspended. This legal limbo injects unnecessary

⁴ Mass. Rest. Ass'n v. Healey, No. 4:22-cv-11245-MRG (D. Mass. filed July 29, 2022).

⁵ The motion to stay and joint stipulation was originally entered on August 4, 2023 and has been renewed multiple times, including earlier this month. See May 9, 2025 Electronic Order of Judge Margaret R. Guzman.

⁶ <https://sfgov.legistar.com/View.ashx?M=F&ID=5527122&GUID=416E70B6-7805-4869-8784-B5D8BA8A043B>

⁷ <https://www.sfenvironment.org/antibiotic-use-food-animals-ordinance>

uncertainty into the food system and deters long-term investment in supply chain improvements.

Farmers need regulatory clarity, not a perpetual cycle of ad hoc waivers and temporary relief from a city located thousands of miles away. San Francisco's ordinance stands as an example of a poorly designed regulation that ignores the operational realities of farming. A law that remains "on the books" – yet is acknowledged, through repeated waivers, as impossible to implement – serves no one.

Meatless Monday and Municipal Barriers to Markets

Meatless Monday is a campaign that started out of the Johns Hopkins University Bloomberg School of Public Health⁸, encouraging schools to reduce meat consumption through the increased consumption of plant-based meals for the purpose of decreasing environmental impacts and improving "the health of the planet". While most locations in the program have done so by offering additional menu items, some major school systems have opted instead to remove meat products from their menu entirely on one or more days a week. In those localities, this can have an outsized effect on the marketplace for school and institutional meals, eliminating 20% or more of the potential marketplace for meat products in the school system⁹. Altogether these programs have the potential to cause significant localized reductions in the marketplace for meat.

The two most significant examples happen to be the nation's two largest school districts, New York City and Los Angeles.

- New York City Public Schools: Following implementation of a pilot program in 2018, New York City adopted a strict Meatless Monday program in 2019-2020¹⁰ that eliminated meat from the menu for all of the nearly 1 million students¹¹ in the city's schools¹². In 2022, New York City expanded the program beyond Meatless Monday to also eliminate meat on Fridays¹³.

⁸ <https://meatlessmonday.publichealth.jhu.edu/>

⁹ Many of these school systems rely on significant federal assistance.

¹⁰ <https://www.nbcnewyork.com/news/local/meatless-mondays-program-expands-nyc-public-schools-food-health-student-menu/1783704/>

¹¹ <https://thehill.com/changing-america/sustainability/climate-change/471698-what-happens-when-the-nations-largest-school/>

¹² <https://www.nyc.gov/office-of-the-mayor/news/135-19/mayor-de-blasio-chancellor-carranza-brooklyn-borough-president-adams-citywide#/0>

¹³ <https://www.schools.nyc.gov/school-life/food/school-meals/plant-powered>; See also this New York Times article <https://www.nytimes.com/2022/03/14/dining/eric-adams-vegan-nyc.html>

- Los Angeles Public Schools: Prior to New York City's adoption, the Los Angeles Unified School District first adopted its Meatless Monday program for the school's half million students in the 2013-2014 school year¹⁴. Under the program, the menus consist entirely of vegetarian items on Monday¹⁵, again eliminating 20% of the potential market for meat within the school lunch program.
- San Diego Public Schools: Like Los Angeles, San Diego Unified School District has also eliminated meat from the menu for its nearly 100,000 students¹⁶.

Chicago Public Schools Prohibition on Serving Pork

In Chicago, the city has adopted instead the Good Food Purchasing Initiative¹⁷, to ensure that "institutional food purchasing advances an equitable, healthy, fair, local, humane, and sustainable food system."¹⁸ For the U.S. pork industry, Chicago has also made the arbitrary decision to eliminate pork entirely from its school systems menu¹⁹. This removes access entirely to a significant institutional marketplace, over 300,000 students for farmers across the country.

The U.S. pork industry is grateful for the opportunity to provide these insights into some of the regulatory challenges that reach out far beyond the states and municipalities that enact them to hinder and undermine the competitiveness of our nation's pig farmers. These regulations – often overly burdensome, poorly conceived, or outdated – create unnecessary barriers to innovation, efficiency, and market access, ultimately contributing to rising food prices for American consumers. By addressing the extraterritorial impact of these laws, policies, and regulations, the Administration can help foster a more resilient and sustainable pork industry, ensuring that our farmers can continue to provide high-quality, affordable pork to families across the country while maintaining the economic vitality of rural communities.

¹⁴ <https://www.latimes.com/opinion/la-xpm-2013-mar-05-la-ol-if-its-monday-the-school-cafeteria-is-meatless-20130305-story.html>

¹⁵ See page 12,

https://www.lausd.org/cms/lib/CA01000043/Centricity/Domain/577/Handbooks/Parent_Student_Handbook_2021-2022-English.pdf

¹⁶ See this link for an example of the typical menu: https://cdnsm5-ss18.sharpschool.com/UserFiles/Servers/Server_27858524/File/News/Kids%20Choice%20Lunch%20-%208.5x11.pdf

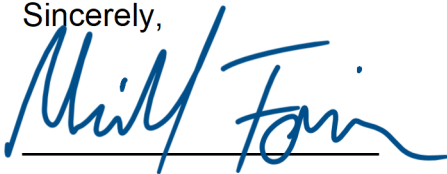
¹⁷ <https://goodfoodpurchasing.org/>

¹⁸ <https://cookcountypublichealth.org/chronic-diseases/good-food-purchasing-initiative/>

¹⁹ https://www.cps.edu/sites/cps-policy-rules/policies/700/704/704-7/#a_iv--nutrition-environment-and-services;
See also, <https://www.cps.edu/services-and-supports/school-meals-and-nutrition/>

We look forward to collaborating with the Administration further to promote fair, effective, and forward-thinking policies that support both farmers and consumers and welcome the opportunity to discuss these and other challenges with you directly.

Sincerely,



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