REGULATORY INJURY: HOW USDA'S PROPOSED GIPSA RULE HURTS AMERICA'S SMALL BUSINESSES

HEARING

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REGULATORY INJURY: HOW USDA'S PROPOSED GIPSA RULE HURTS AMERICA'S SMALL BUSINESSES

THURSDAY, JULY 7, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AGRICULTURE, ENERGY AND TRADE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in room 2360, Rayburn House Office Building. Hon. Scott Tipton (chairman of the subcommittee) presiding.

Present: Representatives Tipton, Bartlett, King, Ellmers, Landry, Critz, Cicilline.

Chairman TIPTON. Well, good morning, everyone, and thank you for joining us. The hearing will now come to order.

I would like to thank our witnesses for taking the time to be here today as well. We do look forward to your testimony.

One of the greatest barriers that job creation has today is regulatory uncertainty. Small businesses already bear a heavy regulatory burden. Overreaching new proposed regulations are having a chilling effect, prolonging the economic downturn that we are experiencing in our country. Today we will examine the U.S. Department of Agriculture's Proposed Grain Inspection, Packers and Stockyards Administration or the GIPSA Rule and the potential ramifications it will have on America's small businesses.

I would like to extend special thanks to each of our witnesses today for taking the time out of your busy schedules to be here. And I would like to especially thank the folks from the USDA and Under Secretary Avalos for being here. I also want to extend a warm welcome to Robbie LeValley, a constituent of mine from Hotchkiss, Colorado who we will hear testimony from later, along with other representatives for small businesses within the beef, pork, and poultry industries.

Just over a year ago the USDA announced a proposed rule that would significantly alter livestock marketing practices and further inject the government into small businesses' marketing and business decisions. If implemented, as proposed, this overreaching new rule would hurt thousands of small businesses in the livestock industry and cost our country thousands of jobs. The GIPSA Rule would create uncertainty for livestock producers and open the door for frivolous lawsuits based on nothing more than accusations of competitive injury. Further, although the rule was prompted by the

2008 Farm Bill, I believe what was proposed by the USDA went far beyond the intent of Congress.

The proposed rule has raised concerns for many in the agricultural community. During the public comment period, the USDA received more than 61,000 comments from stakeholders in the beef, pork, and poultry industries. Despite the proposed rule's potential for having far-reaching impacts on small businesses, no comprehensive cost-benefit analysis was performed.

Chairman Graves and I found the USDA's disregard for the Regulatory Flexibility Act extremely troubling. As a result, last month we sent a letter to USDA Secretary Tom Vilsack, expressing our concerns and calling for, among other things, a revised regulatory flexibility analysis. To ensure that the USDA fully understands the private sector costs of regulations and its imposing these new rules on small businesses. Independent studies estimate that the proposed rule would deal a $1.5 billion blow to our nation's economy and directly cause the loss of 23,000 jobs. Clearly, our country cannot afford further economic injury of this magnitude.

I look forward to hearing from our witnesses as they provide testimony and seek to prevent regulatory injuries that will likely result by the implementation of the existing proposed rule. I also look forward to hearing from Under Secretary Avalos on the current status of the proposed rule. It is my hope that if the USDA moves forward on the proposed rule it will do so only after significantly revising the rule to address concerns raised here today and to incorporate the suggestions from those who commented on the rule.

I would also encourage the USDA to consider and include in the record the letter that Chairman Graves and I sent to Secretary Vilsack on June 13, addressing inadequacies of the Agency's initial regulatory flexibility analysis and the potential ramifications on small businesses.

Again, I would like to thank all of you for taking the time to be here today and I will now yield to Ranking Member Critz for his opening statement.

Mr. CRITZ. Thank you, Mr. Chairman. Mr. Secretary, Mr. Christian, thank you for being here.

Over the past 60 years, technological improvements and scientific breakthroughs have enabled our farms to become the most productive in the world. However, the dramatic expansion of industrial agriculture has also made it increasingly challenging for small family farms to thrive. One area that has factored into this trend has been consolidation and vertical integration of the meat and poultry industry. Compared to 20 years ago, the cattle industry is roughly 40 percent more concentrated. The modern poultry industry is 67 percent more concentrated than two decades ago. These trends have profoundly affected how small farms operate. As industry consolidation reduced the number of outlets for agricultural products, many family farms have shifted toward contract production.

In addition, market forces have strained the bottom-line of many farmers. Congress recognized this and took steps to address these concerns in the 2008 Farm Bill. That measure contains provisions to improve marketing practices, including new rules for production contracts. The bill required the Grain Inspection Packers and Stockyards Administration (GIPSA) to define anti-competitive practices with the goal of improving oversighting compliance. Last June, GIPSA published its proposed rule intended to bring transparency to the industry and help small family farms compete.

Today we will examine how effective this proposal is in restoring the competitive balance to the meat and poultry industries. This Subcommittee will also be investigating the economic costs on small- and medium-size farms. I look forward to any suggestions our witnesses may have for improving the regulation before the USDA issues its final rule.

While the goal of the rulemaking is to help level the playing field, it is imperative that USDA properly weigh any adverse economic impact and explore less burdensome alternatives. I am confident after this hearing the USDA will continue to proceed in a transparent manner that allows public comments to the proposal, as well as the pending economic analysis. This input must be fully considered before a final rule is issued.

Independent family farms play a vital role in rural economies. In addition to providing jobs, family farmers also help support small businesses by purchasing goods and services within their communities. Without them, rural areas are left with higher rates of unemployment and little opportunity for economic growth. It is vitally important that farms who will be directly impacted by the changes are heard.

In advance of the testimony, I want to thank all of the witnesses who traveled here today, including Bob Junk from my Congressional District, for their participation and insights into this important topic.

Thank you, Mr. Chairman. I yield back.

Chairman TIPTON. Thank you, Ranking Member Critz. And I would ask if Committee members have a statement that they submit it for the record.

Gentlemen, you are probably familiar with it but if I may take a moment to explain our lighting system. You will have five minutes for your testimony. When the light turns yellow you have one minute left. If you exceed that a little bit, if you would wrap up your comments as quickly as possible and we can proceed on with questions from the Committee, we would appreciate it.

Our first panel today, we will hear testimony from the Honorable Edward Avalos, Under Secretary for Marketing and Regulatory Programs for the USDA. Mr. Secretary, I want to certainly let you know that we do appreciate your having reached out to our office and I know the other members as well.

Mr. Avalos provides leadership and oversight for the Animal and Plant Health Inspection Services which addresses animal and plant pests and diseases. The Agricultural Marketing Service, which provides standardization testing and marketing of commodities and specialty crops, and Grain Inspection Packers and Stockyards Administration, which promotes marketing of livestock, cereals, and meats, as well as fair trade practices. Mr. Avalos grew up in a family farm in Mesilla Valley of Southern New Mexico. Mr. Avalos is joined by Mr. Alan Christian, Deputy Administrator for Grain Inspection Packers and Stockyards Administration (GIPSA) and I would like to thank you gentlemen for taking the time to be here today.

Mr. Avalos, if you would begin with your testimony. Thank you.

STATEMENT OF UNDER SECRETARY EDWARD AVALOS, MARKETING AND REGULATORY PROGRAMS, U.S. DEPARTMENT OF AGRICULTURE

STATEMENT OF EDWARD AVALOS

Mr. AVALOS. Chairman Tipton, Ranking Member Critz, members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss the proposed rule issued by the Grain Inspection Packers and Stockyards Administration, better known as GIPSA, on June 22, 2010.

While I am looking forward to getting to the important small business perspectives from members of this committee, I am limited by the Administrative Procedures Act and USDA's ex parte guidelines of what I can discuss at this stage of the rulemaking.

Before we talk about the proposed rule, let me provide some context. It is very appropriate for the Small Business Committee to decide to focus on this hearing a small business in the livestock and poultry industries. The vast majority of farmers in general, and specifically livestock and poultry producers are small businesses. There are currently 70,000 hog producers in this country, almost a million cattle ranchers in the country, and nearly 20,000 poultry growers. The majority of these individuals are family-owned small businesses.

I think the point that farmers, ranchers, livestock producers, and poultry growers are small businesses is important to note. And as you all know, small businesses are the lifeblood of our economy and where jobs are created and where new ideas are developed. The secretary and I have long recognized the importance of farmers, ranchers, and producers to rural communities. Our livestock and poultry producers benefit rural communities because they also support other small local businesses such as the local hardware store, the feed store, local restaurants, the local tractor and farm equipment dealers.

The primary mission of GIPSA, and in particular the Packers and Stockyards program, is to make sure that the marketplace is fair and transparent, and ensuring small businesses get a fair shake. Decades before the Small Business Administration was formed and the importance of small business was really fully recognized, the predecessor of GIPSA was created by Congress through the Packers and Stockyards Act of 1921. This was largely done to protect small businesses in the form of livestock producers and ranchers, against abuses of market powered by large meat packers.

The Packers and Stockyards Act, which is the basis for GIPSA's enforcement authority and the livestock and poultry industry is 90 years old this year. These industries have changed dramatically over this time. For example, stockyards are virtually non-existent today. This longevity means the regulations and the act itself need to be updated periodically. Congress realized this in the 2008 Farm Bill by making some changes in the Act and directing USDA to propose specific regulations. Combined with a handful of additional areas that USDA felt deserved closer attention and needed input from stakeholders, this was the genesis of the rulemaking that is the subject of this hearing today.

The purpose of the proposed rule was to make the markets more fair and transparent, which was intended to benefit livestock producers and poultry growers, the vast majority which are family-owned businesses. This is in no way to minimize concerns about potential unintended consequences of the proposed rule, either generally or related to small businesses. For example, I know there are various concerns that have been raised about the rule hindering value-added and other market activities. I want to make clear to Mr. Chairman and the Committee that our intent and the intent of the secretary and myself, that we are very strong supporters of these marketing arrangements. These arrangements that often provide premiums to farmers and ranchers at the same time meet consumer demand.

We received over 61,000 comments. These comments were comprehensive, thoughtful, and educational. We view these comments as tools that will guide us on our path to make the appropriate and needed reforms. It is important to us to have a workable and common sense rule. These comments will assist the Department to determine if all factors have been properly considered. The comments will also aid us to develop a more rigorous, cost-benefit analysis and other related analyses, such as a small business analysis.

While it would not be appropriate to go into detail on specific modifications, I can assure you that the Department will take careful account with the public comments. We ask that everyone have patience as we carefully work through the comments and we ask that we not prejudge the outcome.

Thank you again for the opportunity to appear before you today to talk about this proposed rule and share our support for small businesses in rural America. I welcome your questions and your comments.

[The statement of Mr. Avalos follows on page 36.]

Chairman TIPTON. Thank you, Mr. Secretary. And we will now proceed with the questioning for Secretary Avalos. And I will begin.

I think it is important to probably note, and I think you brought up a very important word in "intent." You know, we have seen some good, cooperative work with the USDA, of course, and I am encouraged to hear that you are taking into consideration the 61,000 comments that came into play, particularly as it gets down to some of the cost-benefit analysis.

Mr. Secretary, in recent testimony before the Senate Agricultural Committee, the USDA Chief Economist Joe Glauber stated that the Department's economic analysis of the rule is difficult given how the regulations could affect behavior by packers and interrogators in how they do business. Given that the Department has now admitted that the rule would have a significant economic impact, will the findings of the economic analysis result in the Department undertaking a new regulatory flexibility analysis?

Mr. AVALOS. Congressman, first I want to—I am sorry, Mr. Chairman. First, I want to say that this administration is strongly committed to helping small business and we strongly support transparency, fairness, and equity in the marketplace. This is really very important to us. The comments that we received on the proposed rule, they bring up some of these concerns that we just talked about on the small business analysis that Dr. Glauber was talking about.

And I guess once again what I am asking is that we have patience to let the time tested rulemaking process continue. And I can assure you that we are going to listen to these comments, the comments on the cost analysis that was in the proposed rule, the comments that were on the small business analysis and I can assure you, Mr. Chairman and members of the Committee that Dr. Glauber, the chief economist, first of all, will lead the team to develop the cost benefit analysis because this is important. He will have considerable input on how this impacts small business.

Chairman TIPTON. One question I guess that I am curious about, Mr. Secretary, is once we have taken into consideration those 61,000 comments and we have that patience, before the rule goes final will there be a general review coming back to Congress?

Mr. AVALOS. Okay. Mr. Chairman, members of the Committee, this process has really been tedious and it is a new process for me. Coming from New Mexico, I have never been exposed to something like this and sometimes it can really try your patience. But we received all the comments, and then we summarized them. And now we put them in categories as to how they impact on specific provisions of the proposed rule. And having done all that, we are now looking at options, at alternatives. We are looking at possible modifications and I just do not want to prejudge the rulemaking process. So I cannot tell you what the end product is going to be. I cannot tell you, you know, what kind of form the end product will have and I cannot tell you if we are going to have additional comments or not.

Chairman TIPTON. You know, as mentioned in the comments from Chairman Graves and myself, the Department's information gathering on small businesses appeared to be inadequate. What procedures will the Department have in place to better measure, number one, the scope of small businesses potentially being impacted and how these businesses would be impacted compared to their larger rivals?

Mr. AVALOS. Mr. Chairman, once again, were you making reference to the letter that came into the secretary?

Chairman TIPTON. Yes, sir.

Mr. AVALOS. Well, Mr. Chairman, first of all I want to acknowledge and to appreciate the considerable thought and effort that was put into the letter. This is really important. But it did have some specific requests and recommendations that due to the Administrative Procedures Act I cannot discuss right now. But I can tell you this. Most of the requests that were in the letter also came up in the comments in the rule and are being considered. I can also tell you that these concerns, requests, are on my mind because of how they impact on small businesses, how they impact on growers and producers all over the country.

And maybe I should share a story with you, Mr. Chairman. The reason it is on my mind, why it is important to me, in the past I worked a lot with the livestock industry, did a lot of work to export livestock in New Mexico, and I still have friends all over the United States. And in particular, I have an old friend from, of all places, from Tulia, Texas. They called me up about the proposed rule. I told him, I cannot talk about it but I told him one thing. He was concerned about his operation, how he was getting premium for his cattle. Small operator, 300 mother cows—but because of the quality of his cattle he got a premium and he was concerned about losing that premium. So I told him, just like I said in my statement, Secretary Vilsack and I strongly support value-added. We strongly support marketing arrangements. We strongly support premiums to producers that producers that produce high quality cattle.

So anyway, going back to your question, Mr. Chairman, no option is being ruled out. We are really focused on the issues and concerns. We are taking these comments very serious. And I can assure you that at the end of the day we will fully comply with the provisions of the Farm Bill, the provisions of the Packers-Stockyards Act, the Administrative Procedures Act, and the Regulatory Flexibility Act.

Chairman TIPTON. Mr. Avalos, you and I are probably two of the only people in this room that know where Tulia, Texas actually is.

Mr. AVALOS. Probably.

Chairman TIPTON. We come from rural America. I am out of Colorado and we are actually pretty close neighbors. But during a recent Ag Committee Subcommittee meeting you had stated that you wanted to repopulate rural America as a result of the implementation of the proposed rule. And as I mentioned in my statement, independent studies estimate that the proposed rule would deal a $1.5 billion blow to our nation's economy and directly cause the loss of about 23,000 jobs. The majority of these job losses will be found, obviously, in rural America given the nature of this. How is this going to help really repopulate rural America?

Mr. AVALOS. Mr. Chairman, I appreciate those comments because rural America is very important, not only to me but to Secretary Vilsack and to the administration. This administration has made revitalizing rural America a priority, keeping farmers and ranchers on the farm and on the ranch a priority. The intent of this proposed rule was to maintain fairness, transparency, equity in the marketplace. The intent is not to hurt producers.

Once again, I will refer back to the 60,000 plus comments that we received. A lot of these concerns were raised in the comments and again, we are taking these comments very serious. We are not leaving out any options, and as we move forward the comments will guide us.

Chairman TIPTON. You know, under the proposed rule it will be necessary for small packers to determine and document the benefits of contractual terms in order to satisfy the recordkeeping requirements that are mandated. Is that correct?

Mr. AVALOS. Mr. Chairman, I want to make sure we get a correct answer to you so I am going to defer to Mr. Christian.

Mr. CHRISTIAN. Thank you. Mr. Chairman, I think the intent of the rule was to provide a fair and transparent market for producers, and in particular, small producers, that over the years we have heard from do not feel that they have the same access to those markets as some of the larger producers. And so the intent of that provision and others, similar to it was to provide that level playing field, if you will, and some transparency so they know what type of mechanisms or marketing arrangements are available for them.

Chairman TIPTON. When we were talking about those calculations, to whom are the benefits to be calculated? The packers? Producers? Consumers? What is kind of the matrix?

Mr. CHRISTIAN. I beg your pardon, Mr. Chairman. The——

Chairman TIPTON. In terms of who are the benefits when we are talking about when those are going to be calculated out. Are the benefits going to be to the packers, the consumers, the producers?

Mr. CHRISTIAN. In the cost benefit analysis?

Chairman TIPTON. Yes.

Mr. CHRISTIAN. Well, I think that it varies depending on the particular provision. Dr. Glauber, with the Chief Economist's Office is, in fact, as we speak, undertaking the cost benefit analysis for the rule based on the comments that we received.

Chairman TIPTON. I just have one final question here. Has GIPSA considered the cost for a small packer to engage separate packer buyers for each auction barn with which it currently does business?

Mr. AVALOS. Mr. Chairman, I think that is probably getting into the specifics of the rule. But I do know that has been brought up in the comments. And once again, I am asking for your patience and the patience of the Committee and the stakeholders to let this rulemaking process continue. And let us focus on these issues and concerns that were brought up in the comments and let us address them. And I can assure you that at the end the final product, whatever form it is, will take into consideration all these very important comments that we received.

Chairman TIPTON. Thank you, gentlemen. I would like to now yield to Ranking Member Critz for his questions.

Mr. CRITZ. Thank you, Mr. Chairman.

Mr. Secretary, as you mentioned in your statement and as you have been detailing, there has been a consolidation in livestock, in pork and in poultry over the last 10 to 20 years. I am new to this process, just elected last year so I am trying to get up to speed as much as possible. I have written to Secretary Vilsack about the economic impact of the rule. Can you detail what initially prompted this analysis for GIPSA? And then tell me about a timeline going forward as well.

Mr. AVALOS. Okay. Congressman, Mr. Critz, your question was what prompted the cost benefit analysis?

Mr. CRITZ. With the consolidation, and I guess going further, there is a lot of talk about loss of jobs resulting from this GIPSA rule. My concern is that in my part of the world, I have a lot of small farmers, so what has been the impact on them due to this consolidation over the years that prompted this revisiting of GIPSA?

Mr. AVALOS. Congressman, as I mentioned in the opening statement, the Packers and Stockyards Act is 90 years old.

Mr. CRITZ. Right.

Mr. AVALOS. And I will go back to advice I received from my dad a long time ago when I was just a young man and we moved—you will appreciate this, Mr. Chairman. We moved from the farm to town, to the city. And I was not very happy. And my dad sat me down and said, look, son. In this world everything is always changing. Nothing ever stays the same. You need to adjust to survive.

I think this applies with the Packers and Stockyards Act. It is 90 years old. The industry has changed tremendously in 90 years and we are having to make adjustments to the regulations to keep up with the industry, and to address the needs of the industry, whether it be the packer or the producer.

So, this need for change, for modification, is really what prompted these changes to the Act. I am going to, just to make sure we answer your question, Congressman, I am going to defer to Mr. Christian. Maybe he can help me out a little bit.

Mr. CHRISTIAN. Yes. Congressman, I think if you look over the last, say, 20 years, you go back to the '90s, there has been, as you mentioned, a very significant decrease in the number of farmers. If you look at cattle, you are going from say 1.2 million to under a million. You had 250,000 hog producers. Now you are down to around, under 70,000. And even with livestock markets, you are going from about 1,800 livestock markets down to about 1,200 livestock markets. I am sure there are many factors that have contributed to that decline but one of the things that we hear all the time from small farmers, and really, the smallest of small businesses, is that they cannot compete in the marketplace. I mean, we have heard from small poultry growers that they have invested a substantial amount of money, $500,000 to a million dollars. And they have got a contract that they have entered into freely to raise poultry for a large integrator and then after a short period of time the integrator comes back and changes their contract. Maybe from a three year contract to a flock-to-flock contract. And the grower at that point really is under a contract of adhesion and has no ability to then bargain. We have heard those kind of issues from small growers.

From small hog producers, we have heard that there are cost-plus contracts in the industry. There are ledger contracts in the industry. But a lot of these contracts that provide some type of financial protection are available to the large producers and are not available to small producers, even if the small producer can meet those terms.

So we have taken those concerns into account as we have developed this proposed rule and the intent of the rule is then to provide at least a more transparent marketplace and a fairer marketplace where the small producers can at least see what is available and have an opportunity then to compete for those marketing arrangements.

Mr. CRITZ. So we are looking to become more transparent to give the small producers a seat at the table. And I guess a fair chance to compete for contracts. And this comes back to, I think, the letter that the chairman and Chairman Graves had sent and that I talked about actually in a letter that I sent last year about the economic impact. And, you know, obviously in this country we like everything as cheap as possible. And I am assuming that with vertical integration it keeps the price compressed which dealing in the world of subcontracting I know that it is the guy at the bottom of the rung that usually feels the pinch the hardest.

Now, I do not know from your seat if you have seen——you talked about the loss of farming—farms, small producers over the years. What is the time, I guess I am asking—I think we have all asked for an economic impact of what this rule change would do. Where in process are we with getting an answer on the economic impact?

Mr. AVALOS. Congressman, as we all know, the Secretary directed our chief economist, Dr. Glauber, to lead a team of economists at USDA to conduct a very thorough and comprehensive cost benefit analysis and economic analysis. I do not know exactly where we are in the process. I know the team has been working very hard on this and I know that it has taken considerable time because of the extent of the comments. The comments received on the proposal are being used as guidance in preparing this cost benefit analysis.

So I cannot give you a timeline as to where we are but I can tell you that Dr. Glauber and the team are working very hard on this.

Mr. CRITZ. Okay. That brings me to my next question. And obviously, those of us in Congress get a two-year contract every two years, so time is very important to us. From the testimony and from the information I received, the comment period ended on November 22nd, which was about 32 weeks ago. With sixty-one thousand comments, one person going through 400 comments a week on a five-day work week could have covered that. So if you have got 10 people, that is only 40. So I am curious as to where we are in the process? You talked about putting these in silos or categorizing them. How close are we to coming up with some sort of guidance? For those of us on the Small Business Subcommittee on Agriculture, this is extremely important because we all represent small producers. But we also recognize the larger economy, and we have to figure out where the balance is.

Mr. AVALOS. Congressman, I wish I could just give you an answer. It is a hard question to answer because I do not know when we are going to have a final product. As I mentioned earlier, we have——

Mr. CRITZ. Tell me how many people are working on it?

Mr. AVALOS. I cannot but I can defer to Mr. Christian. He might know how many folks are working on this.

Mr. CHRISTIAN. Yes. Thank you, Mr. Congressman.

GIPSA is a very small organization. The Packers and Stockyards program is 160 people. The rules that we work on typically receive anywhere from, 20 to, a couple hundred comments. We have leveraged people from outside of the agency from the Animal and Plant Health Inspection Service to help us review these comments. We have been working as hard as we possibly can with the few amount of people that we have to get this completed. And I can assure you Dr. Glauber, the Chief Economist's Office, is working very diligently to get the cost benefit analysis completed. And I think, you know, that is a key piece. Once we get the cost benefit analysis then that gives us, a lot of information to look at the options that are available to move forward.

Mr. CRITZ. It has been seven months, so are we looking at within a year of the close, November 22, 2011? Can you even ballpark it that we are close, or that we have several months to go? I do not mean to be pushy about this, but I think the chairman mentioned that it is the uncertainty that creates issues for a lot of people. At least if you know where you are, you know how you can compete or how you cannot compete. I think this is creating uncertainty within all levels of this marketplace.

Mr. AVALOS. Congressmen, Mr. Chairman, I appreciate that.

I wanted to add a little something and I will try to give you a more direct answer. On the comments that we received, they were not just for the rule, against the rule. The stakeholders that took time and expense to submit the comments which we greatly, greatly appreciate, were very comprehensive. They gave alternatives, recommendations, options. Very, very thorough. So it is not just you read them, say this guy is for them, this guy is against them. It is really a very, very time consuming, thorough process. A very important process. So to answer your question on the timeline, fairly soon we should have a final product.

Mr. CRITZ.. Fairly soon. Okay.

Mr. AVALOS. Fairly soon.

Mr. CRITZ. Well, that is hopeful. It is summer. We will see where that takes us.

One thing Mr. Christian just mentioned about the size of GIPSA; with this proposed rule you are talking about a more transparent process but you are also talking about more enforcement. What does that mean to your level of staffing? If you were already a small organization, how do you then find people to do enforcement of some of these issues? I think the chairman mentioned there is a worry about frivolous lawsuits. I think if you look at our legal system, anyone can find different areas where there are frivolous lawsuits. Hopefully, farming and livestock would be immune to it, but we are not that lucky. So how is this playing into the size of your operation?

Mr. CHRISTIAN. Well, I think, as you know, obviously implementing new regulations requires an extra effort. I have kind of a theory of—I have been working in regulatory enforcement for about my entire career. And I have a regulatory enforcement theory related to the 80/20 Rule, and how it applies to enforcement. If you let folks know what the requirements are, about 80 percent will voluntarily comply. About two percent will never comply. And so you focus your efforts first on education to get the industry up to that 80 percent and then you focus your limited, resources on enforcement of that two percent so you can get the other 18 percent to understand that it would be better to comply than to not comply.

And so that is how GIPSA really—or the Packers and Stockyards program is implemented. I mean, we really just spot check. We make sure that people understand what the rules are in the industry the best we can by getting folks out there, working with industry, and then we identify the flagrant violators because we, cannot look over everybody's shoulder, and we try to take strong enforcement action against those flagrant violators to set up the deterrent to get that compliance rate up. And one of the areas that is of concern, because our overall goal, our measure, is compliance. If we can get 100 percent or 90-some percent compliance with the Packers and Stockyards Act and the regulations that were promulgated under it, and if it is a good law and if there are good regulations, then we will have done our job. We will have protected livestock producers, livestock sellers.

What we found in poultry, with the limited regulations that cover poultry right now, our compliance rate is still down around 67 percent when we are looking at contract compliance. And what I think will happen if these rules are promulgated in a way that helps provide guidance to the industry as to what we consider compliance under an unfair practice or an unreasonable preference, that it will help the industry get that compliance rate up, to over 80 percent and help improve the protections for poultry growers and the small entities that are out there.

Mr. CRITZ. Well, Mr. Chairman, I see you have a full slate of folks on your side, so I will yield back so that they can get to their questions. Thank you very much.

Chairman TIPTON. Thank you, Ed.

Now I would like to recognize Mr. Bartlett for his questions.

Mr. BARTLETT. Thank you very much.

Mr. Christian, would you tell us why our small businesses and our farmers think that they are going to be hurt by this proposed rule? And after you have done that then I would like the secretary to tell us why they are wrong.

Mr. CHRISTIAN. Congressman, you know, to look at the response that we have gotten to the proposed rule, the 61,000 comments will give you an idea of how people feel about the rule and how they——

Mr. BARTLETT. And how do they think it is going to hurt them? What do they think it is going to do to them?

Mr. CHRISTIAN. Well, I mean, looking at the comments there is a wide range of issues that different entities of different sizes have——

Mr. BARTLETT. Tell us some of those if you would.

Mr. CHRISTIAN. Would you like me to reiterate what some of the comments have indicated?

Mr. BARTLETT. Yeah. I am sure you can categorize them, you know, just a few of the biggest plurality of hits.

Mr. CHRISTIAN. Well, in the rulemaking process, the number of comments are not necessarily as relevant as the substantive nature of the comment. And so, I mean, in terms of numbers we received a lot of postcards. We received a lot of e-mails. I mean, we received probably——

Mr. BARTLETT. Of the substantive comments, why do you think this rule is going to hurt them? What will it do to them?

Mr. CHRISTIAN. Well, in terms of cost, we have identified in the cost benefit analysis adjustment costs. We have identified analysis costs. And, you know, those were identified and expounded on in the comments that we received. In fact, we asked for in the comments, information on cost benefit and information on the effect on small business, a number of times in our preamble.

Mr. BARTLETT. This is, I gather, an unprecedented number of responses. Am I correct? Pretty much unprecedented?

Mr. CHRISTIAN. For GIPSA?

Mr. BARTLETT. Yes.

Mr. CHRISTIAN. For the Packers and Stockyards program.

Mr. BARTLETT. So there must be some real major concerns out there. I am still having some trouble understanding what those major concerns are. What do they think this rule is going to do to them? Why did 80,000 of them you say respond to you we think this is a bad idea? Give me just a couple of the reasons that they think this is going to hurt them. So far you have just given me very generic things that I cannot get my teeth into.

Mr. CHRISTIAN. Well, I mean, there were a little over 60,000 comments and there were comments for the rule. There were comments opposed to the rule. There were comments suggesting modifications or changes to the rule. And we are considering every single one of those comments seriously as we move forward with the process.

Mr. BARTLETT. Mr. Secretary, can you tell us some of their major concerns and why you think they are wrong? Or they may be right and you are going to fix it.

Mr. AVALOS. Congressman, I appreciate your persistence and I really want to give you a direct answer but because of the ex parte I cannot get into the specifics of the proposed rule. But I can give you a perspective coming from the countryside, working with farmers and ranchers all my life. This is a proposed rule, something so different. We have not had a change in this law in 90 years at this magnitude. So there is concern.

There is concern just because it is a new regulation coming from the government. They are concerned about the impact on their livelihood, on their farm and ranch operation, the future of their kids. So once again, I cannot give you the specifics that you can put your teeth in but I can assure you, Congressman, that these comments that we received, their concerns are expressed in those comments and we are taking those comments very serious.

Mr. BARTLETT. Thank you. I am still having trouble understanding what their major concerns with the—there must have been enough specifics in your announcement of this proposed rule that really stirred them up and I am having trouble understanding of what those specifics were that they became so agitated you got, what, more than 50,000 responses.

Mr. AVALOS. Congressman, I would not say they became agitated. Because I can tell you this from the comments, and I want to make sure that the Committee—Mr. Chairman and the Committee knows that I did take time to read some of these comments. I promised—there is a gentleman here from NCBA that I visited with earlier—I promised the then-president of NCBA that I would read their comments and I did. And very thorough, very comprehensive, and very—it is pretty tough reading. And I also read some comments from the other groups that came in and it is tough reading. But they are not agitated. It is just something that is so different, so new, and they want to make sure that they understand what is being proposed. So they are asking questions. They are supplying alternatives, options.

Keep in mind also, Congressman, that not everyone was upset or agitated. A lot of people were really pleased that these changes were being proposed. So it is a group of stakeholders that submitted some very thorough comments and made some very good recommendations and I will leave it at that.

Mr. BARTLETT. Thank you. Thank you, Mr. Chairman.

Chairman TIPTON. Mr. King.

Mr. KING. Thank you, Mr. Chairman. I do thank the witnesses. And Mr. Secretary, I appreciate your demeanor here and a little about your background is interesting to me, growing up in the country and having to make that adjustment. I think that was an interesting narrative.

Can you just give me a few seconds on what the family farmer ranch operation was like? Did you have a family there? Brothers and sisters also you grew up with and you all had to be relocated to the city?

Mr. AVALOS. Congressman, I can. You know, I have always said that I grew up on a family farm but I usually do not get the opportunity to explain the rest of the story. That family farm was not my family's farm. We were the labor on that farm. I had relatives who owned farms nearby but my dad was injured in an accident, a tractor accident on the farm and we had to relocate to the city. And it was really, really tough, Congressman, when you grow up as a little kid, you run around barefooted all day long on the farm—you run cattle around, and all the different crops. To then move to a city, it is a strange world. So it was a major adjustment. That is what my dad always told me, that it was so different for me having come from a farm.

Mr. KING. Do you have siblings also?

Mr. AVALOS. I do. The one thing that I wanted to emphasize to you, Congressman and the Committee, agriculture is so important to me. It did not matter that we were the labor on the farm. It was so important to me because it gave me a work ethic. I remember being in town. I was a big kid, pretty athletic. I was on the football team, the basketball team, and I used to run the hurdles. And I remember all the city kids, they go lift weights and go hang out at the swimming pool. I go back to the farm and harvest onions all summer.

Mr. KING. Thank you, Mr. Secretary. I appreciate that. I know that the Chair has been a little lenient with the clock or I probably would have focused this a little bit more. As you talk about the tractor accident of your father I just happen to think that as we sit here now there is a funeral going on for one of my neighbors and friends that was killed in a tractor accident and I regret I am not able to be there today. Those things do happen on the farm. It is a dangerous place to work.

I am interested in that background because it forms you and the job that you do. I normally do not ask those kind of questions either. But I noticed that in both your testimony and that of Mr. Christian, the word fairness comes up over and over again. I mean, the effort in this GIPSA rule is to provide fairness. And so could you provide for this Committee a definition of the word "fairness"?

Mr. AVALOS. Well, I did not come prepared to give you a definition for fairness.

Mr. KING. But if that is a motivator for this rule there should be something that is pretty clear.

Mr. AVALOS. And I can give you my perspective, not an official definition. From my perspective it is in any type of transaction there are two sides. And I just feel that fairness is where both sides are treated fairly.

Mr. KING. Okay. But you grew up on a farm with parents and siblings and all of you working together. Did you ever hear any of them say that is not fair?

Mr. AVALOS. Absolutely not. You are right. Absolutely.

Mr. KING. And so does anyone that grew up in a family with two or more kids understand that there is no such thing as fair in a family like that?

Mr. AVALOS. Well, again, fairness from what perspective?

Mr. KING. Well, and that is right. And that is my point. And this is being driven—I do not know if the president is involved—being driven by the Secretary of Agriculture, Secretary of ILSAC. It is being driven by some interests out there that think they are not being treated fairly in contracts. And I have been involved in a lot of contracts over the years and I have heard people use that word “fair” but it never really got us to a resolution. I see it scattered throughout the legal language in this Congress. It is scattered throughout the code of the U.S. code and through the states. And I will tell you I can define the state fair. I can define a county fair. But I cannot define fair. And if fair is our guideline here, it is in the perspective of whoever is advocating. And I will say from this perspective that if you have someone that raises a premium line of hogs and they go negotiate a contract to be paid that premium and they are producing that high quality product for a niche market and the packer is anticipating that load a week or whatever it is that they have agreed to do coming in and they get paid a premium on the other end, it is not fair to say to that producer and that packer that the government is going to intervene. Intervene in that contract.

Who can determine what is fair? Can government bureaucrats determine if a contract is fair? Or does it turn into the government deciding it is not fair that someone raises a premium product and the other person does not and they do not get paid the same amount. It is about the equivalent of 4–H giving participation ribbons instead of blue and red ribbons instead. We have got to have competition in this marketplace. And my argument would be that if people think it is not fair, why do they not get in and compete with those. What keeps them out of that market? If they believe they are locked out of the market start your own packing plant. Start your own business. Open your own niche market. Run the locker plant and expand it into a franchise. Come to this Congress and ask us to allow them to sell meat across state lines so that people can actually penetrate into this marketplace.

I think we are on the wrong path here. I think we are on a path that sets up the government to be setting prices in the terms of approving or disapproving of contracts. If the variance goes outside of the government’s variance, then government has to approve the contract? And what are they doing intervening themselves in between a producer and a packer who have two consenting adults have reached an agreement and now the government says well, it is not fair to somebody else.

I can tell you that as a young man I delivered hogs to the packing plant for a fellow that I worked for and there might be a 300 pounder in there. There might be a 160 pounder in there and a 220 pounder in there in a pickup with a stock rack waiting in line with pot trailers where every hog was uniform size and weight and easy for the packer to handle. Now, do we not know that even if I had one hog in that pickup truck that was the same profile I will call it of all those hogs on that pot trailer, is that hog worth as much to the trailer as the whole pack load? As a whole truckload?

Those were the kind of things that the government is seeking to interject themselves into. And if we are going to be a free market economy, then we have to let the market settle this. And I do not think government can determine fairness anymore than your father, whom I know that you respect and hold in high esteem and raised you, could broker that and have all of the siblings agree that he had come down in a fair decision. I do not want the government to be the nanny state. And I just give you an opportunity to respond to what I said and then I yield to the chairman. I have abused my privilege here. I am sorry about that.

Mr. AVALOS. Congressman, I appreciate your comments. They are good comments. But at the same token I cannot get into the detail of the proposed rule. But, those are good comments and I appreciate this and I have had similar conversations with producers throughout the country.

But I just feel that we still need to let this process continue because we have to respect all those comments that came in. And there are comments similar to concerns that you just expressed and comments you just made. We are going to take those into consideration as we move forward.

Now, I am going to ask if my partner here, Deputy Administrator Christian, would like to expand on this.

Mr. CHRISTIAN. Well, Congressman, I think the issue that you have raised is the question that a lot of people have asked us as well. The Packers and Stockyards Act has included the word "unfair practices," since the beginning and a lot of people have asked what does that mean? I think one of the things that you saw in this proposed rule was to try to provide some clarity as to what an unfair practice is to help provide that guidance to the marketplace to determine, okay, what is unfair and what is not. So that was part of the intent of the proposed rule.

Mr. KING. Thank you, Mr. Chairman. I yield back.

Chairman TIPTON. Mrs. Ellmers?

Ms. ELLMERS. Thank you, Mr. Chairman.

I have a couple of questions and thank you for coming today. And actually, I would like for both of you to weigh in on these. And I know that you have basically stated that you are not necessarily discussing some of the actual rule positions basically as it is. But I am curious again and I know this question has been asked already. I am just curious about the timeline. You know, I know you are still receiving comments now?

Mr. AVALOS. Congresswoman, no, the comment period is over.

Ms. ELLMERS. Okay. And the comments are being reviewed?

Mr. AVALOS. Absolutely. Congresswoman, the question that we receive all the time is when is this process going to end? When are we going to have a final product? And I appreciate that very much. And I was pleasantly surprised, or maybe not pleasantly surprised. When I came to work at USDA I never realized what everyone had to go through to go through the rulemaking process. This was really new to me. And it was a surprise to me.

Ms. ELLMERS. I think you may have—this question may have already been posed. I am not sure. But how many people are working on this? How many USDA staff are reviewing the comments and coming up with kind of a——

Mr. AVALOS. Congresswoman, I cannot tell you exactly how many but we have contracted outside the agency for assistance. But I am not sure if you were here when a similar question was asked. You know, we received these 60,000 plus comments and then we summarized them and we put them in a category based on how they address specific provisions of the proposed rule. And then now we are looking at alternatives and options that have been proposed. And it just takes a long time.

Ms. ELLMERS. Also, and there again, that gives me as much information as I need. I do want to ask about the economic analysis of the proposed rule. Will that information be released? My understanding is you have done an economic analysis.

Mr. AVALOS. Congresswoman, in the proposed rule there was an economic analysis, cost benefit analysis. We have received quite a few comments on the costs. And as I mentioned earlier, our chief economist is leading the team and is preparing a very thorough cost benefit analysis that will be in the final product. Right now it is really too early to prejudge what the final product is going to look like. And I want to emphasize to you, Congresswoman, and to the Committee that based on the comments, no option is going to be ignored. We are going to look at any possible option. And it is really too early right now in the process to, one, give you a timeline and to tell you what final product we are going to have——

Ms. ELLMERS. Will you allow for public comments on that? I mean, we have submitted a letter. Many of my colleagues, myself and 146 other members as per this.

Mr. AVALOS. Absolutely. I am real familiar with the letter. But on the comments, it is too early now to determine if we are going to have another comment period because we do not really know what the final product is going to look like.

Ms. ELLMERS. Okay. Have you spoken to stakeholders about how the rule may impact their businesses? And if so, have you spoken to those in North Carolina?

Mr. AVALOS. Congresswoman, we have not since the comment period opened and now that we are after the comment period trying to draft a final product, we cannot talk directly to stakeholders to tell them about what we might propose. However, I have spoken a lot with stakeholders. As part of my job I have been keynote speaker at different groups, cattle growers, and of course, the question always comes up on the proposed rule. And I cannot get into specifics with them but one thing that comes up all the time is premiums to producers and there is one thing I can say and I always tell them that the Secretary and I strongly support value-added. We strongly support marketing arrangements. We strongly support premiums being paid to producers.

Ms. ELLMERS. I have one more question and I ask the chairman if—I know I am about ready to run out of time here—if that would be all right. And I will direct this to Mr. Christian. It is a specific question. In the proposed rule, GIPSA is attempting to overturn numerous judicial decisions by providing that a finding—and I am going to—this is a quote. "Finding that the challenged act or practice adversely affects or is likely to adversely affect competition is not necessary in all cases."

Basically, the way that I interpret that is that the plaintiff would now not necessarily have to show actual harm when challenging a packer activity. Is this correct? Is this basically the interpretation of that?

Mr. CHRISTIAN. That is somewhat correct. The Department's longstanding position is that to prove a violation of the two sections of the Packers and Stockyards Act that apply to packers and swine contractors, that would be 202A and 202B, the unfair practice section and the unreasonable preference section, that in some cases you do not need to show competitive harm to prove a violation. An example might be if someone is fraudulently weighing your livestock at the packing plant, you as an individual packer, as an individual producer, when GIPSA brings that case against the packer for weighing your livestock incorrectly, we bring that administratively for livestock and can assess a penalty and we do not have to show competitive injury.

So that is the Department's longstanding position. There are some cases where you do have to show competitive injury. Some cases of unfair practices and that may be a situation where a packer is working also as a dealer. And there is a lack of competition in that practice. So that is the longstanding position. And then the intent of this rule was to clarify that longstanding position.

Ms. ELLMERS. Thank you. I yield back.

Chairman TIPTON. Thank you, Mrs. Ellmers. And we would like to thank the Secretary for taking the time to be here. You, as well, Mr. Christiansen [sic].

If the Committee members have any other questions, if you would submit them I am sure the secretary will be happy to answer some of those.

Mr. AVALOS. Mr. Chairman, would I be allowed to just make a few closing remarks?

Chairman TIPTON. Yes, sir.

Mr. AVALOS. Mr. Chairman, members of the Committee, I just wanted to emphasize that this administration is committed to helping small businesses. We strongly support transparency, fairness, and equity in the marketplace.

The proposed rule that we discussed today, it is a starting point. We received over 60,000 comments and I want everyone to know that we are listening. We are taking these comments very seriously. No option is being ruled out and we will let these comments guide us to develop the final product. And I want to emphasize to you, Mr. Chairman, and the Committee that I have spent a career working with small businesses. After leaving the farm I had the opportunity to work with many farmers, many ranchers, all family operations, to develop markets in Mexico for cattle and sheep. To develop markets in China for pecans. Develop domestic markets in 28 different states with chili peppers and onions. So I really, really feel connected to small businessmen and feel connected to farmers and ranchers.

And I just want to thank you, Mr. Chairman, members of the Committee, for all the work that you do for small businesses, for your commitment to small businesses. And thank you for allowing us to be here today and present to you. Thank you very much.

Chairman TIPTON. Thank you, Mr. Secretary. And we will have our second panel start in just a moment. Thanks.

[Recess.]

Chairman TIPTON. I would now like to yield to Congressman King for an introduction.

Mr. KING. Thank you, Mr. Chairman. I appreciate your deference. I have a markup going on in another Committee and I am afraid I have to slip out.

But I wanted to have the opportunity to introduce Mr. Gary Malenke, who is a constituent of mine from Sioux Center, Iowa, and also the center of the number one pork producing congressional district in America. He is the CEO of Natural Food Holdings, which was formerly known as the Sioux-Preme Packing Company. And that is also located in Sioux Center, Iowa.

Gary graduated from Northwest Iowa Technical College in 1985 with an Associate degree in Agribusiness. After two years in a livestock and feed business and one year at Iowa Beef Packers, Gary joined the Sioux-Preme Packing Company. And while at the company he held positions starting with hog buyer, then head of livestock procurement and community sales. And in 2001, he became the president of the company and he is currently serving as chairman of the North American Meat Packers Association and his business is also an active member of the U.S. Meat Export Federation and the National Meat Association. Mr. Malenke's company is a prime example of a kind of a small packing plant that is so important to local communities and small businesses that we have been talking about in the earlier panel. And the overall industry competitiveness is reflected by his company.

It is important that we think about these businesses, Mr. Chairman, especially because when they deal with specialty and niche markets, it is not just large companies. We evaluate rules and see how they affect the small companies as well.

So I want to thank Mr. Malenke and the other witnesses for being here to testify today. And I think it is important we turn our ear to the interests of the industry and I point out also that Mr. Malenke's company is again from the number one pork producing congressional district in America. I could not leave that commercial out, Mr. Chairman. I welcome all the witnesses. I thank you for your indulgence and I yield back the balance of my time.

Chairman TIPTON. Mr. Malenke, if you would like to go ahead.

STATEMENTS OF GARY MALENKE, PRESIDENT AND CEO, NATURAL FOOD HOLDINGS; ROBBIE LEVALLEY, LEVALLEY RANCH; JOEL BRANDENBERGER, PRESIDENT, NATIONAL TURKEY FEDERATION; BOB JUNK, FAY PENN ECONOMIC DEVELOPMENT COUNCIL

STATEMENT OF GARY MALENKE

Mr. MALENKE. Good morning, Chairman Tipton. Sorry. That is better. Good morning, Chairman Tipton and Ranking Member Critz. I appreciate this opportunity.

As Congressman King said, we are up in Sioux Center, Iowa. Our firm is not large enough to be classified in the top 10 hog slaughters plants, but nevertheless, we have been in business for over 40 years and I have had the privilege of being in the meat industry for over 20 years myself.

We are proud to have arrangements with a number of producers to bring us hogs that fit various niche markets with whom we have marketing agreements under various brands. And to do this we are looking for very specific hogs that require growers to follow very specific protocols. Our producers are then paid a premium for meeting these expectations, and these products are then sold into markets and restaurants, that differentiate our products to create an enhanced value. To accomplish this, we work with well over 500 growers, many of which are small family farmers. And we do this to really produce a consistent supply of product to our customers.

I am sensitive to the feelings in the countryside that producers are not getting a fair deal. And I and my senior staff are involved in industry organizations to give a little and to gain a lot in terms of advice and resources to better help us as business leaders. And indeed, I happen to be the chairman of one of those associations at this time.

At a recent meeting that I attended, I visited with a young man who inspired me to reach back to producers and to give back to the men and women, families, who produce hogs for a business. I want these producers to know as much about fixing a fair price for pork as they do about the business of raising hogs.

A couple of suggestions I might have in the ways that we can work together.

Meeting consumer expectations for pork, at retail and/or at the center of the plate is critical. I, and my organizations, can develop better programs to help producers better understand how we can work together. Working together every week of the year for the long haul and better share and communicate with each other what it takes for these programs to be successful in meeting consumer expectations.

There is already a great deal of information in the marketplace about the price for hogs and for pig meat. And I will agree that this can be very complicated. It is not always as accessible and could perhaps use some improvement. But nevertheless, I am committed to working with the organizations I belong to to enhance transparency and information that would be useful to producers. I believe that the enhancement set forth in current legislation would also be helpful. I also know that one of the organizations in which we hold membership has been meeting with USDA's marketing officials to improve the information for specifically pork price reporting. I expect these efforts to be useful in improving the flow of information.

I grew up on a small farm myself some 30 years ago and have witnessed firsthand the changes to rural America. There is no longer a hardware store and grocery store in small towns. Numerous school districts have merged and the economies of scale have been driven by the Wal-Marts of the world. This trend is not to fault the big business. It is driven by the changing consumer. Folks like Wal-Mart have done a great job of attracting customers. Face it. Thousands of people shop there every day because they choose to do so. As much as I desire to look back with nostalgia, the realities of the economic forces today are very strong. GIPSA's attempt to regulate the future by returning the way things used to be will be a bad economic decision and will not succeed.

In the summer of 2009, our business was not very good and we were not profitable. Fortunately, this year we are doing much better. I know it is because of both domestic demand and improved exports. In 2009, the price of hogs were some 30 to 35 percent lower than in 2010 and we lost money. In 2010, we had this improved demand and we did much better because of the market conditions. And even in light of the fact that the price of the livestock was higher.

My point is really this. The primary influence of the price of livestock is the demand for the finished products we produce. It is customers coming in the door and buying the product.

This is a tough business. It is a tough business for producers and for packers. Working together in partnership and cooperation will give us the opportunity to be successful together. I am not here to cry about the large firms. Their very largeness really denies them the flexibility that we enjoy at Natural Food Holdings. We do not need GIPSA, a government regulatory agency, in our business plan. Enhancing our partnerships with producers for the mutual benefit is a much better solution.

I thank you for allowing me to testify. I would be happy to take any questions.

[The statement of Mr. Malenke follows on page 42.]

Chairman TIPTON. Thank you, Mr. Malenke.

As a reminder, just in terms of the lights that we have, you have five minutes for your testimony and when it gets down to the final minute the yellow light will come on and then the red light. And if you could summarize after that.

I would also like to have the privilege of introducing one of my constituents, Ms. Robbie LeValley from Hotchkiss, Colorado. And I am sorry the secretary left because we could talk about Tulia and Hotchkiss. A lot of folks do not know where these communities are.

But Ms. LeValley is a beef producer who is past president of the Colorado Cattlemen's Association and a board member of the National Cattlemen's Beef Association. She received her Bachelor's and Master of Science in animal science from Colorado State University. I would certainly like to thank you, Robbie, for being here and taking the time to be here. And I look forward to your testimony.

STATEMENT OF ROBBIE LeVALLEY

Ms. LEVALLEY. Thank you, Mr. Chairman, Ranking Member Critz.

My name is Robbie LeValley and I have been a beef producer all of my life and my two boys represent the fourth generation on our ranch. In addition to our ranch, my family and I are co-owners of Homestead Meats, a direct beef marketing business that has been in operation since 1995. There are six ranching families who co-own this small business and we have 13 full-time employees. To enhance our direct marketing beef business, Homestead Meats owns and operates a packing plant regulated by USDA. Therefore, we are producers, feeders, and packers.

The proposed GIPSA rule will significantly hinder our small business model, cripple our ability to market our cattle the way we want, and limit consumer choices. As I said, I am a producer on the cow-calf side and our business is built on relationships and alliances. Throughout the beef chain, for years we have successfully marketed our calves through an alliance with a packer. That alliance has created a relationship that provides feedback from the packer on the quality of our cattle, quality for which we get paid a premium for. I strongly believe in the fundamental American business tenet of a willing seller and a willing buyer being able to enter into a private business transaction because it protects my pricing and marketing mechanism.

Our cattle marketing contracts are the heart of our small business, the incentive to manage for the future, and the stability for our banking partner. And it does not warrant being posted on the Internet or receiving additional government intervention and oversight or being subject to potential litigation.

When the proposed rule banks packer-to-packer sales, the six families and Homestead Meats may not be able to sell to other packers. This will substantially reduce the profitability for the rest of our cattle and compromises the alliance we have spent years building. This is a great example of how this rule truly harms producers and processors across the country. For years USDA has promoted exactly what we are doing—sell direct to the consumer, operate as a small processor in a strategic area of the country, being rewarded for adding value to the end product and producing local food. We responded to consumer demand. We followed USDA's lead. Now we are being punished. This is a slap in the face to innovative businessmen and women across the U.S.

The proposed GIPSA rule offers neither clarity nor clear definition in terminology. Elimination of the competitive injury requirement will provide a disincentive for packer premiums and value-added contracts because of the fear of litigation. The vague definition such as unfair or reasonable person will open the door to an increased number of lawsuits because mere accusations without economic proof suffice for USDA or an individual to bring a lawsuit against a buyer. Who determines fairness? Does increased government intervention and litigation determine fairness? Arbitrary judgment by GIPSA will only increase paperwork and costs for small business owners like me. Who pays for this increased intervention and litigation? The beef cattle industry does.

When cost increase for the packer, the trickle-down effect is to decrease the price paid to ranchers, this will be a trial lawyer's dream and will devastate small businesses such as mine. What will be the consequence when the cost to defending prices paid for my cattle and complying with this rule add to the operating cost? What happens to every other industry when litigation increases? No one takes a risk or sticks their neck out or pays a premium for fear of reprisal. This ends creativity, partnerships, and the desire to take a chance, which is the very basis of the entrepreneurial spirit of the American small business owner. Do we truly want that for the beef industry?

The rule requires buyers of my cattle to justify paying a premium for my livestock. What will be the standard for that justification? Who will set it? One size does not fit all. The regulation seems to infer that it is the role of big government, and I strongly oppose the government setting or justifying the premiums paid. This will roll back the clock 30 years and take us back to commodity beef which consumers have told us they do not want.

Value-based marketing has given our family business the opportunity to compete for market share at the highest level. As a result, we have been able to build a small business that supports the local economy and provide consumers with the products they want. We do not need big government setting up shop on our farms and ranches, and government intrusion into the private marketplace is not the answer.

I urge the Committee to help stop this rule from being finalized as it is detrimental to ranchers, consumers, and the entire U.S. economy. Thank you.

[The statement of Ms. LeValley follows on page 38.]

Chairman TIPTON. Thank you.

Next we have Mr. Joel Brandenberger, president of the National Turkey Federation. Mr. Brandenberger joined NTF in 1991 as the Federation's director of public affairs and served in a variety of positions, most recently as senior vice president for legislative affairs, before being appointed to his current post in December of 2006. Thank you for being here today, Mr. Brandenberger.

STATEMENT OF JOEL BRANDENBERGER

Mr. BRANDENBERGER. Thank you, Chairman Tipton, Ranking Member Critz, members of the Subcommittee.

The National Turkey Federation represents all segments of the turkey industry, including growers, processors, breeders, hatchery owners, and allied industry. NTF appreciates the opportunity to testify because our members believe GIPSA's proposed marketing rule will harm the many small businesses that play a vital role in producing more than five billion pounds of ready to cook turkey meat in the United States.

A decade ago, our leadership recognized the need to develop comprehensive policy on legislation and regulation that could affect the grower-processor relationship. We formed a special committee of growers and processers and spent six months developing policy that was unanimously approved by our board of directors. The policy calls on NTF to support legislation or regulation that helps all parties better understand the nature of the contract they are entering into. We supported the 2009 GIPSA rule that enhanced transparency in contracts and permitted growers to discuss a proposed contract with financial and legal advisors, as well as business partners. But NTF strongly objects to any proposed law or rule that would insert the government into the negotiating process by dictating specific terms of compensation or excessively limiting the ability of either party to manage their financial risk. Our members believe this is exactly what the current GIPSA rule would do.

The rule fails to grasp the diversity of today's turkey industry. Turkeys are processed by family-owned companies, grower-owned cooperatives, and large diversified international companies. Ten of the 25 turkey processors in the country meet SBA's definition of a small business, but small business plays a bigger role in the industry as well. A significant percentage of the more than 8,000 family farms that raise turkeys are, in fact, small businesses employing staffs in some cases as large as 250 people. Some of these family-owned small businesses are also part of the seven grower-owned cooperatives that produce turkey in this country. All of them understand the critical importance of maintaining a strong business relationship between growers and processers.

About 80 percent of the turkeys today are produced under the traditional production contract where the company owns the turkeys, provides the feed, the veterinary care, and the grower provides the housing and their expertise. Another 10 percent are produced under marketing contracts where the grower owns the birds, provides the feed, the veterinary care, as well as the housing and expertise, and sells to the processor at a previously contracted price. In both of those cases, growers' compensation can vary according to specific terms in the contract. The remaining 10 percent of turkeys are raised on company-owned farms.

I want to highlight three aspects of the rule that create an enormous potential problem for today's industry. The first is the competitive injury provision that has been talked about quite a bit here. The second is the provision that would require processors to virtually guarantee a grower can recoup 80 percent of their capital investments, and the third is a series of provisions which the previous witness discussed that would discourage competitive contracts and reduce the premiums or deductions that growers can receive based on the performance of the birds in their care. Taken together these provisions create significant new legal and regulatory risk for turkey processors.

And as processors seek to manage that risk there could be serious, unintended consequences. The most obvious is the contracts will become less competitive and compensation more uniform. Those farmers, large and small, who are doing an outstanding job in receiving premiums will justifiably feel cheated as the new regulation forces everyone to a lower common denominator.

The bigger impact may come later. As processors seek to minimize their risk, one conceivable option would be to grow more turkeys on fewer farms, eliminating or reducing production on all but the best performing farms. Processors could also increase the number of turkeys grown on company-owned farms. An excellent example of unintended consequences comes from a grower-member who testified last week before the Senate Agriculture Committee. His family farm is one of 16 that owns a processing cooperative in the upper Midwest. This co-op is hoping to expand over the next few years. Some of the expansion can be covered by increasing the number of turkeys grown on the existing farms, but ultimately they believe that contracting with other farmers may be the only route they have to the expansion they envision. They have said if this rule takes effect they believe the risk will be too large and it will limit their expansion.

So the irony in this is rich. We have growers who feel that a rule allegedly designed to empower them will, in fact, ultimately stifle their ability to grow and create new jobs. What is especially frustrating is what has been discussed here already at length. USDA proposed this rule without conducting an adequate assessment of its economic impact. A study funded by NTF found an economic impact of $360 million to our industry alone. Others have shown impacts in other industries as large as one billion dollars over five years and a $14 billion reduction in the gross domestic product.

USDA now has agreed to conduct an economic assessment as we have heard, but as we have also heard, there is no commitment yet to open it for comment after it is completed. In order for there to be any level of confidence that this final rule really is going to promote the best interest of family farmers and their small businesses, it is essential that this economic analysis be submitted for public comment before the rule is finalized.

Thank you again for the opportunity to be here. I look forward to answering your questions.

Chairman TIPTON. Thank you, sir.

I would like to yield now to Ranking Member Critz to introduce our next witness.

[The statement of Mr. Brandenberger follows on page 44.]

Mr. CRITZ. Thank you, Mr. Chairman.

It is my pleasure to introduce Mr. Bob Junk. Mr. Junk is a local economy manager for Fay Penn Economic Development Council, a nonprofit organization aimed at increasing jobs and quality of life in Fayette County, Pennsylvania, which ranks usually either the second or third, or first poorest county in Pennsylvania.

As the local economy manager, he develops marketing plans to bring awareness to surrounding farms and build regional business networks. Bob has a degree in business agriculture from Penn State University and has extensive experience with farm operations. He once owned a 10-acre strawberry farm with 15 employees and has managed a large dairy operation in Uniontown. Mr. Junk also has 40-plus years of working on sustainable farm policy at the state and federal level. He has served as the State President of the Pennsylvania Farmers Union for 10 years, and has served on numerous committees and boards representing the interests of small farmers.

Welcome, Mr. Junk.

STATEMENT OF BOB JUNK

Mr. JUNK. Thank you very much, Congressman Critz. It is my honor to be here today and I thank you for the opportunity to bring testimony here in support of GIPSA's proposed rules.

Chairman Tipton, Ranking Member Critz, and Subcommittee members, my name is Bob Junk. As the congressman mentioned, I am the local economy manager for Fay Penn Economic Development Council.

I am going to summarize my testimony in lieu of time because there is no way I know because of all the issues that we are supporting and that these proposed rules are addressing. I would like to start out though by stating that our mission at Fay Penn is to maintain and increase employment opportunities/jobs in Fayette County in an effort to improve the quality of life for all of its residents. And again, it is all of our residents that we are focused on. And agriculture is a main part of our local economy.

So with that, today we have heard a lot of information and a lot of numbers thrown around. And I would really like to start out with the fact that to date we have lost 1.5 million beef and hog producers over the last 30 years. So I think we have a problem when we are looking at losing that many producers that are small business owners out of our local economy. They are reinvesting those dollars locally. They are creating the opportunity for small business entrepreneurs. They are also creating the opportunity for local reinvestment into the neighborhoods, communities, and also into our public schools and so on.

So with that, you know, we talk a lot about regulation, government. You know, we do not want big government. But when we take a look at really what the GIPSA rules are geared to, and we can go right back to the Farm Bill, and it was a directive through the Farm Bill and we all had an opportunity to debate and negotiate and vote on the Farm Bill which was approved three years ago, that this regulation is to be looked at to look how we can bring balance to the market for the producers. For many, many years, producers have been faced with a number of challenges. Being a producer a number of years ago, those challenges have not changed much. I am from a small rural community. We have lost a lot of our stockyards, our local packers because of consolidation and mergers and it has created even more of a hindrance to get access.

But what I am going to talk about a little bit now at this point in time is the fact that a lot of our producers today are being forced to do certain upgrades to their operations to be able to receive contracts. And a lot of times these contracts, and especially in poultry, are only six to eight weeks long. But at the same time they are forced into taking a 30-year mortgage to be able to do these upgrades. Knowing that, again, farmers have limited ability to access credit and they are not usually able to access the same type of credit that normal small business operations have, they are sometimes forced into taking alternative credit measures. And it forces them to be then relying on hopefully getting new contracts. This proposal will actually give the producers some compensation as long as they continue to meet those obligations with the processors.

Contract terminations, we have a serious problem with processors being able to just eliminate contracts with producers. This proposal would give the opportunity for those producers to capture at least 80 percent of their investment from those individuals and those processors.

The other issue I would like to talk about, and it is really key, is the issue of the ranking payment system and base assumption that all growers are provided comparable inputs in varieties of performance as a result in farm management. A lot of times what will happen today is farmers are just there for the management and the building as you heard from a previous witness and they are carrying the risk and there is really no way of them being able to make that relationship to what they are being paid and how they can truly balance the price that they are actually being paid by those companies.

And then the other issue I would like to also bring up is, in relationship to that, the company can still pay bonuses on top of what they pay to the producers. This does not restrict them from being able to pay premiums to performance. This is not in any way restricting niche markets to be able to pay a farmer for any of the added premiums that then could be passed on or that the consumers are requesting from the marketplace. I want to make that perfectly clear that there is no restriction from that.

With that I want to thank you for the opportunity to testify here and I will be ready for any questions. Thank you.

[The statement of Mr. Junk followson page 49.]

Chairman TIPTON. Thank you, sir. We will now begin our questioning. I would like to start with Ms. LeValley.

Under the proposed rule with packer-to-packer affiliates there would be a ban in terms of selling. In your case that would be very problematic obviously since you have a producer-owned packaging plant and also produce livestock. Therefore, you would not be able to sell livestock to your own packing plant. What would that mean for your business?

Ms. LEVALLEY. Well, we could continue to sell to our own packing plant. We just are six families and market about a third of the cattle through the Homestead Meats, through the packing plant that we own. But what it would hinder is our ability to sell to another packer. That is what it would hinder. So our other two-thirds of all the families of the six families would then be restricted in who they could market their cattle to. It takes buyers out of the market. And again, that would be a detriment to producers across the economy, especially us and other packing cooperatives. Premium beef, Oregon country beef, all of those that are in a similar situation.

Chairman TIPTON. You know, you mentioned in your testimony that this is going to create new paperwork and increase costs. Do you have any idea how much this is going to increase your costs?

Ms. LEVALLEY. When we have looked at the proposed regulation, again, we have 13 employees. Now, that does not consider the six families. Certainly, that is a great question. We have not done an in-depth analysis to say that it is going to cost us another $2 a hundredweight or anything like that. We do know that it would take another half-time person to comply with this regulation. That is approximately, you know, $30,000 to $40,000 additional to our operating cost for our packing plant. And we only, again, have 13 employees to begin with.

Chairman TIPTON. So you are a wealthy small business. You can afford that, surely.

Ms. LEVALLEY. We operate on a pretty slim margin.

Chairman TIPTON. I know you do.

You know, as you pointed out in your testimony, Ms. LeValley, for years the Federal government has pushed farmers and livestock operators to become more actively involved in value-added downstream economic activities as a means of being extremely—it seems to be problematic since you are a producer-owned packing plant and also produce livestock. Really when—sorry. I got lost in my paper here. In terms of going downstream, are you going to be able to maximize the value of your business? Is this going to be hitting you in the pocketbook and possibly creating job loss for you if this rule goes through?

Ms. LEVALLEY. Again, when I look at the in-depth analysis of this proposed regulation, and Mr. Chairman, I look at the unintended consequences. And yes, it has an impact on our business. Yes, it has an impact on our six families and our six ranches. But it also has a huge impact on the beef industry across—whether just our area or across the country. Again, increased government intervention, increased potential litigation. All of these factors have a trickle-down effect to where there is a reduction in the price and an increase in the operating cost. And again, in this era of very slim margin, increased cost and decreased revenue is never good for any producer of any size, whether it is small, medium, or large.

Chairman TIPTON. Great. Thank you.

Mr. Malenke, you mentioned in your testimony that you have arrangements with a number of producers that raise hogs for niche markets which requires producers to follow a very specific growing protocol. If the GIPSA rule is implemented as written, do you feel that an incentive exists for these producers to undertake the added expense in following these protocols and if they are not guaranteed a premium or the added value?

Mr. MALENKE. Clearly, these growers are not going to raise pigs with the protocol that really ultimately these consumers have set forth. In other words, it is the consumer saying, hey, this is what we want and this is why we want it. So it is flowing backwards. And if they are not assured of a premium, they simply will not do it.

Chairman TIPTON. Do you feel that by guaranteeing every producer base pay that the quality of livestock available to consumers, that will decrease? Is that what I am hearing?

Mr. MALENKE. I believe it would be that case, definitely.

Chairman TIPTON. Great.

Mr. Brandenberger, you mentioned in your testimony a provision in the proposed rule that would allow a grower to recover 80 percent of the cost of the required capital investment. Do you think given the margin small integrators may find it difficult to make such assurances?

Mr. BRANDENBERGER. I think that is a potential problem. In reality, in the overwhelming majority of the cases, that investment in our industry at least is going to be recouped and then some. It is going to happen. Usually for new growers, fairly long-term contracts are offered. We have relatively small turnover rates among our growers. It is the problem of once you put that risk in writing, you know, on the line. You assume that risk by guaranteeing it in essence. That is part of your contracts. How do the lenders, you know, how do the people that help finance the companies in our industry—how are they going to look at that? How is that going to affect their ability, their willingness to make some investments that are going to be important? And for our companies at that point if you are going to offer these guarantees in writing, that is part of our business obligation, which growers are you going to choose to do that with? And do you start making some very hard decisions that may affect some growers whose performance is far from poor but who may not meet the criteria necessary to survive in this new, higher risk world.

Chairman TIPTON. So it will impact smaller growers?

Mr. BRANDENBERGER. Smaller growers or, yeah, and growers that, you know, for whom the investment might be a bigger stretch it may have a little bit larger risk because of a variety of factors. Yes. That is what concerns growers a little bit is what is going to happen when my contract is renewed. They want to make this investment. If this is a guarantee, where am I going to fall in that new world?

Chairman TIPTON. And Mr. Junk, in your testimony it indicates that you agree with GIPSA in their proposal to remove the tournament pay system for poultry contractors. Smaller growers raise their flocks to meet certain requirements using different diet formulas and creating a niche market for their unique birds. If the growers know that they are going to be receiving the same base pay as another grower that does not follow the same requirements, these birds could be of a lesser quality. Where is the incentive for growers to continue to grow and produce these consumer-driven birds?

Mr. JUNK. Well, like I was saying, number one, they can be— well, first off, the contractors can still pay premiums for better quality or better performing animals. I am sorry. I just lost my train of thought. Could you repeat the last part of that question that you asked?

Chairman TIPTON. Yes. What it is, where is the incentive for growers to continue to produce consumer-driven birds?

Mr. JUNK. Well, right now as far as the small producer, because I think you were making a relationship to the smaller producers at the same time, right now the smaller producer does not have a lot of options in the first place because he is already being penalized. Secondly, in the poultry industry, most of the birds and the feed is already owned by the contractor. The farmer is basically providing the building which the birds are housed in.

Chairman TIPTON. But they are all receiving the same base pay.

Mr. JUNK. Yes. And so what I am trying to do is defend or define why we are supporting a base pay structure versus, you know, whatever the contractor wants to pay. I mean, the bottom-line right now is it is a take it or leave it contract. If you, as the poultry grower, are sitting there with a 30–year mortgage after you made the improvements and then all of a sudden you are sitting there saying okay, it is time to renew the contract and here is what we are going to pay for the birds or for your production on the birds but you do not have the opportunity to negotiate the price, who is setting the market then? And that comes back to, you know, what is the real value of that bird? And how does the producer have the opportunity to determine that without being able to negotiate with that contractor in a good, faithful way. Any other contracts, we have the opportunities to, if we feel that we have been unduly judged as far as fairness or whatnot, the ability to negotiate.

Chairman TIPTON. Do you see? I guess the point I am trying to get at is where you have the same base pay that is going to be put into place, I am having a hard time really understanding that distinction. Should there not be——

Mr. JUNK. There is still value to that bird. I mean, just like in the cattle industry. I may have a different size hog or a heavier hog versus an ideal hog. I could have a steer that is the ideal weight and the ideal size and it might be the ideal breed that does not have the big bone where you are going to have a lot of waste. But that animal is still valued at the same base price. It is at the same starting number. It is still there. It still has that value. That is what we are trying to say. Make it more balanced on that base price. If it is a higher quality animal, pay the premium. Nobody is saying that they cannot but we want to know as a grower what is that base price going to be when we are starting to enter into these contracts. You know, and it should not be pinning one producer against another producer.

Chairman TIPTON. Okay. Mr. Brandenberger, do you have some comments maybe?

Mr. BRANDENBERGER. Well, there is one thing that is mentioned a lot and I know Mr. Junk hears it a lot from the people he talks to, is the question of inputs. And you sometimes hear talk about the poults which are baby turkeys or chicks that they receive of varying qualities. Now, a live animal is not something you can rubberstamp, but in the turkey industry at least an important thing to know is that the genetic lines are managed almost entirely by two primary breeders that operate in the United States. They are the ones that produce the genetic lines that the processors use. They spend tens of millions of dollars to create as much uniformity between each poult that is delivered as through the hatchery owners who hatch the poults and get them out there. Their businesses suffer if the processors start seeing that any percentage of these poults are substandard, are not performing. And there is no percentage in sending substandard poults on to any farm because with the high feed costs we have today—we could talk about other government policies but we will let it go for this point—with the high feed costs we have today, you know, no processor is going to continue buying and sourcing poults and sending them to growers if they are not getting maximum feed efficiency off of that bird. So there is already an enormous economic disincentive for any substandard poult to be delivered to any farm with any degree of regularity.

Chairman TIPTON. Great. Just follow up one other question there, Mr. Junk. In terms of your organization, do you have any fears that the competitive injury provisions in the rule, along with provisions banning the use of tournament systems to rank growers and the requirements that growers recoup their investment in new barns and housing will lead to some processors restricting all their future contract buying only to the most successful growers or even doing all of their own growing in-house, reducing the number of opportunities for other growers, including beginning growers?

Mr. JUNK. Were you saying fares?

Chairman TIPTON. Yeah. No, when we are talking about the competitive injury provisions in the rule, is this going to be restricting some of these opportunities for growers to be able to develop and actually closing down the market?

Mr. JUNK. Myself personally? No. I do not think it will. If anything, it gives, again, the producers the opportunity to have an opportunity to identify and be able to access justice for their probable cause. And so, no, I do not see this causing any problems within the industry.

As far as the producers, again, for the last, you know, I was president of Pennsylvania Farmers Union back in the late '80s and '90s, and these are some of the same problems that we had back then that we have been trying to address and bring concerns to. The consolidation of the industry today has been growing bigger and bigger, and our concern is no different than any other industry's concern. When does it get too big to fail? And right now what we are looking at is make sure we have a fair balance opportunity to access the market and provide competitive pricing.

Chairman TIPTON. Okay. Thank you.

I would like now to yield to Ranking Member Critz for his questions.

Mr. CRITZ. Thank you, Mr. Chairman. Because time is running short I only have one question, but now I have a second question because you, Mr. Malenke, or you, Mrs. LeValley, talked about one size fits all. At the federal level, we do two things very well. One size fits all, and two, mandate. We do a lot of mandating, and push it down to states which then have to figure out how to pay for it.

You talked about the packer-to-backer sales. I understand in reading that there is a possibility that packer-to-packer sales are being used to effect prices. That is why they are talking about it. I am curious if there is a solution to protect against using packer-to-packer sales to influence pricing and not impact what you are doing at a smaller level? Is there a way to exempt smaller packers from this rule, or is there something that you see as a possible solution? Both of either one of you can answer.

Mr. MALENKE. Just from the pork side, today the pork industry operates under mandatory reporting of live animals. And packer-to-packer sales are reported there but they are in a separate bucket. In other words, they are clearly defined separate from other livestock.

Mr. CRITZ. Okay.

Mr. MALENKE. And, you know, my experience as a packer, buying hogs from another packer is, hey, the only reason I bought them was because it was the most attractive deal I could get. Purely a pure business decision.

Ms. LEVALLEY. And again, similar for beef. One size fits all again does not take into account the inherent variation across whether you are Utah or Colorado or the East. It does not take in that inherent variation or the significant difference, the significant miles between markets. All of that. The weight variation, the different environments, the operating, all of that. So to say that we could make a size threshold and again try to put that on industry will have the same trickle-down effect of decreasing the actual price paid to the rancher as you have mentioned earlier that is the person at the bottom of the ladder and all the way up through the beef chain. So, similar to the pork as far as the reporting. Size threshold would have a similar impact of ratcheting down the price paid.

Mr. CRITZ. I lack knowledge about your industries and I am trying to learn this so we can work together to come up with a stand when we are talking to USDA about what is the best way forward.

Mr. Malenke, you made a comment about Wal-Mart being successful. So you know where I stand, I do not buy into the Wal-Mart model—and I am going to give you a very specific example of why not. There have been several times when my wife has gone to Wal-Mart, because I live in a rural part of Pennsylvania and there are no other stores left. They have driven pretty much everyone else out of business, so you go to Wal-Mart. My wife goes to buy the thing that she wants and Wal-Mart does not carry it anymore because they demanded a price from the producer and the producer cannot meet that price, so they drop them from their shelves. So I have just a little bit of heartburn about how that operates; I think you are limiting your choices.

The other hat I wear in this Congress is I am on the Armed Services Committee, and we have seen a consolidation of industry. Consolidation is not always good because if you have a problem, and you only have one company, or two companies which can handle it, you have got some issues. So you know where I stand, many times people come into our Congressional offices and say they have a problem; you need to fix it. So then we push back, and that is what happened with this Farm Bill and with GIPSA; people were coming in saying there is a problem. So I am going to ask every one of you to answer this question and we will go right—your left to right, my right to left. What do you think drove this ruling, this revisiting of the GIPSA rule; what do you think caused that? Is it just bellyaching by some small farmers and that people are letting off some steam? Is there a real issue out there? Is this revision not the answer? Do you have any ideas? I am sure your industries have sent comments. At 60,000 comments, obviously, producers and the industries have commented; what do you think the solution might be? Or do you think there really is not a problem and that we should just leave it as is? That is my only question, Mr. Chairman.

So Mrs. LeValley, if you would start and then we will just work across.

Ms. LEVALLEY. Thank you, Mr. Critz.

You bring up an interesting question, and it is a question that we have thought about. You heard over and over the age on this rule and that the industry has evolved. When you look at the proposed regulation though and you look back at what you put forward in the 2008 Farm Bill, this regulation has overreach and it went beyond the 2008 Farm Bill. And so, again, the unintended consequences, the not having the clear economic analysis that has been fully vetted and looked at by USDA, and I know that they said they are continuing to work on it——

Mr. CRITZ. I am going to interrupt you for one second. I do not want to know what you think about what USDA is doing. What I want to know is do you think there is an issue, and is there something that USDA should be doing to address it?

Ms. LEVALLEY. Again, as I was starting to say, when you look at the unintended consequences of this proposed regulation, this does not address—this does not put more ranchers back in rural America. This does not put more sale barns back in small towns. So, no, this regulation, this proposed regulation does not take us where they want us to be. And no, this regulation should be shelved. Go back to the 2008. But this regulation should be shelved.

Mr. MALENKE. No, I do not believe that—the issue comes down to economics. You know, as I mentioned in my testimony, I mean, I grew up on a small farm. I love the small farm atmosphere, et cetera. But the forces of economics are simply against smallness. You know, smallness, you literally have to differentiate yourself in order to be competitive because, you know, like I say, those economic forces are huge. Face it, that is the way the world has become. You know, and I used Wal-Mart as that example. You know, is there anything USDA can really do about it? I do not know. I do not know what it would be. You know, encouraging producers to differentiate themselves, get into different markets or, you know, you have to, you know, what is the old saying? If you cannot beat them you have got to join them. Not great choices in some cases. I fully understand and I sympathize for those that are faced with those decisions but that is the world we are in.

Mr. BRANDENBERGER. It is a very good question. And I would say a couple of things. One, in any business relationship, you know, it is not always going to be smooth sailing. You know, I have got three people who work for me in here and they might not always say the best things about me. You know, there are concerns. There are grumbles that occur from time to time. But in our industry it would be hard to see how the growers would feel that they do not have an opportunity for empowerment. Four of the last five new business entities to enter the processing in the turkey industry have been grower-owned cooperatives. They have been able to empower themselves. In fact, two of them would tell you the biggest problem they had was the paperwork at USDA to get a loan guarantee that they needed for their financing.

Another situation in your home state, about five or six years ago a group of growers were not happy with the deal they had from the processor closest to them. They formed a cooperative. They decided not to go into the processing end of the business but with this cooperative they went to a processor in another state which was still close enough for the transportation to make sense and cut a better deal for themselves. I think they felt very empowered by what they were able to do for themselves as a group. So, you know, in terms of what we would recommend about will the rule have reach, I think if GIPSA started just by going back and adhering more closely to what was in the last Farm Bill that would probably be, you know, an important step forward.

Mr. JUNK. Of course, you know, I support the proposed rules. And I support moving forward into the process. We all know that there have been over 60-some thousand comments being made and we do not know what all those comments mean and how USDA is going to respond to it. So right now we are to comment on a proposed rule that is not a final rule and we believe that in order to really see what USDA is really going to implement, without going to the final rule part of that procedure, we do not know.

When I say we, we are members of NSAC, have developed a letter and sent it to each of the members and it is attached to my testimony of an additional 143 other organizations from all over the country supporting moving this into the next level. Because we do not know what the actual outcome is going to be here. Yeah, we had comments. We submitted comments also. So we do not know what those comments—what comments are going to get picked up, what is not going to be picked up.

Also, American Farm Bureau, National Farmers Union both have submitted letters saying let us take it to the final rulemaking. Let us see what, you know, just to throw the baby out with the bathwater at this point in time, the Farm Bill directed both the president, the Senate, and the House, all of those chambers approved the Farm Bill. It is in the Farm Bill. And this was approved under the Bush administration. So let us finish it out. Let us get the final rule out and let us see what actually is going to be the end result. A lot of these comments, 60,000 comments are coming from producers. It is coming from producer groups. It is coming from producer groups. It is coming from co-ops. It is coming from general farm organizations. It is coming from processors. So let us take it to the next level. Let us continue to process and let us see what the final rules are going to be like.

Mr. CRITZ. Thank you very much. I appreciate that this is all about perspective, and I appreciate you offering that. And with that I yield back.

Chairman TIPTON. Thank you. I would now like to recognize Mrs. Ellmers.

Ms. ELLMERS. Thank you, Mr. Chairman. And thank our panelists for being here today and discussing this very important issue.

Mr. Malenke, I have a question for you in regard to the USDA, the rule basically, and the approval of the contract terms after a sale has actually been completed. And I am wondering if you have concerns in relation to that. Obviously, that puts a little more cost and difficulty to you because you are having to deal with that upfront. Do you think that there may be a chance that packers will withhold part of their contract payment until they get the contract approved by USDA? Is that a possibility? Or what are your thoughts on that?

Mr. MALENKE. We are regulated under Packers and Stockyards today to make payments within 24 hours or the next business day. Okay? You know, how packers may look at those contracts in the future, you know, it is a little hard to tell. Face it, I can only assume that they are not going to want to take on extra burden or feel as if, gee, you know, I had this potential bull's-eye after me because I know I am in this contract. So there may likely be incentive to do less contracting.

Ms. ELLMERS. If some of the portion of the payment was withheld, what would that do to your business and your cash flow?

Mr. MALENKE. Well, obviously, I do not own the livestock. I am paying for the livestock. And, you know, face it. Paying for it within 24 hours from the time of delivery or from the time of processing, my money turns really fast. So——

Ms. ELLMERS. It would just extend everything out?

Mr. MALENKE. Well, basically, I would get to use someone else's cash, which I do not think that is—I do not really think that is the intent.

Ms. ELLMERS. Okay. Well, thank you. And Mr. Junk, I have a question for you, too. You state in your testimony that the GIPSA proposed rule will also help hog producers. Can you elaborate on that further? How do you feel in particular that this will help our hog farmers?

Mr. JUNK. Part of it is under the ranking. It will give them also the opportunity to be able to get a base price off of the—sorry, out of the contractor. The other issue, it would also give them the opportunity to be able to, if they feel that they have not been treated right within the contract, the ability to go to litigation and be able to have an opportunity to have a trial by jury hearing if so desired.

Ms. ELLMERS. Do you feel that the hog producers will benefit from every provision that is being put forward in the proposed rule that has the effects on all of the swine industry?

Mr. JUNK. I do not think—across the board different provisions will have different impacts in different livestock segments. So all the provisions that are being proposed, will they have an impact in hog production or hog producer? No. But will there be some benefits? Yes.

Ms. ELLMERS. What would you say in your assessment would be some of the negative effects that might occur?

Mr. JUNK. Negative? I could not honestly tell you at this point in time.

Ms. ELLMERS. Thank you, Mr. Chairman. I yield back the rest of my time.

Chairman TIPTON. Thank you, Congresswoman Ellmers. And I would like to thank all of you for taking the time to be able to participate today.

As this Subcommittee continues to focus on burdensome regulations that affect small businesses, I would like to once again encourage the USDA to take into consideration all of the testimony and questions that we have heard here today as they work through their economic analysis. I would also like to encourage the USDA to revise their analysis on small businesses as part of the more detailed economic analysis currently underway. After that, the USDA should publish the new regulatory flexibility analysis for comment to ensure small businesses that they can have input and can inform the agency on its effects on their businesses.

Again, thanks to all of our witnesses for being here today, and I ask unanimous consent that members have five legislative days to submit statements and supporting materials for the record.

Without objection, so ordered. This hearing is now adjourned.

[Whereupon, at 12:09 p.m., the Subcommittee hearing was adjourned.]

STATEMENT OF EDWARD AVALOS
UNDER SECRETARY, MARKETING AND REGULATORY PROGRAMS
U.S. DEPARTMENT OF AGRICULTURE
BEFORE THE HOUSE COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON AGRICULTURE, ENERGY, and TRADE

JULY 7, 2011

Chairman Tipton, Ranking Member Critz, members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the proposed rule issued by the Grain Inspection, Packers and Stockyards Administration (GIPSA) on June 22, 2010.

While I also am looking forward to getting the important small business perspectives from the members of the Committee today, I am limited by the Administrative Procedure Act (APA) and USDA's ex parte guidelines in what I may discuss while we are in this stage of rulemaking. For example, I cannot discuss the specific evaluations or potential changes related to the comments or hypotheticals about the impact of the rule. I can, however, discuss where we are in the process.

Before I talk about the proposed rule, let me provide some context. It is very appropriate that the Small Business Committee has decided to focus this hearing on small businesses in the livestock and poultry industries. The vast majority of farmers in general, and specifically livestock and poultry producers, are small businesses. There are currently over 70,000 hog producers, almost a million cattle farmers and ranchers, and nearly 20,000 poultry growers. The majority of these individuals are family-owned small businesses.

I think the point that farmers, ranchers, livestock producers and poultry growers are small businesses is something to be emphasized. As you all know, small businesses are the lifeblood of our economy and where jobs are created and new ideas are tested. The Secretary and I have long recognized the importance of farmers, ranchers and producers to rural communities. Our livestock and poultry producers benefit rural communities because they utilize other small local businesses, like hardware and feed supply businesses and local tractor dealerships, to succeed.

A primary mission of GIPSA and in particular the Packers and Stockyards Program is to make sure the marketplace is fair and transparent. More often than not this means ensuring small businesses get a fair shake. Decades before the Small Business Administration was formed and the importance of small businesses was fully recognized, the predecessor of GIPSA was created by Congress through the Packers and Stockyards Act of 1921. This was largely done to protect small businesses—i.e. livestock producers and ranchers—against the abuses of market power by large meatpackers.

In addition to making sure that the industry as a whole follows certain standards like buying and selling over certified scales to ensure livestock are weighed and priced accurately, the Packers and Stockyards Program's enforcement focus to this day remains correcting unfair activities. More often than not this means standing up for small businesses that are found to have been mistreated. For example, GIPSA's priority is to seek restitution for the producers or other parties that are harmed. A recent settlement included a civil penalty of $125,000 for violations where producers were underpaid. These small businesses—hog farmers in this case—have already received about $1,000,000 in restitution. When producers are not paid properly, it can have a rippling effect through local economies. We take our mission to make sure producers are properly paid very seriously.

The Packers and Stockyards Act, which is the basis for GIPSA's enforcement authority in the livestock and poultry industry, is 90 years old this year. These industries have changed dramatically over this time period—for example, stockyards are virtually nonexistent today. This longevity means that the regulations and Act itself need to be updated periodically. Congress recognized this in the 2008 Farm Bill by making some changes to the Act and also directing USDA to promulgate specific regulations. Combined with a handful of additional areas that USDA felt deserved closer attention and needed input from stakeholders, this was the genesis of the rulemaking that is the subject of this hearing.

The purpose the proposed rule was to make the markets more fair and transparent, which was intended to benefit livestock producers and poultry growers, the vast majority of which are family owned small businesses. This is in no way to minimize concerns about potential unintended consequences of the proposed rule either generally or related to small businesses. For example, I know there are concerns raised by many that the rule would hinder value-added and other market activities. I want to make clear that this is not our intent and the Secretary and I are strong supporters of these arrangements that often provide premiums to farmers and ranchers and at the same time meet consumer demand.

I do not claim that the proposal was perfect. We will consider the comments we have received and work to address the concerns. This is why we are taking our time. The proposed rule recognized that we need a fuller understanding of certain aspects of the livestock and poultry industries and the potential impacts of the proposed rule, which is why it contained requests for additional information and for assistance evaluating the costs and benefits of the rule.

We received close to 61,000 comments. These comments were comprehensive, thoughtful, and educational. We view these comments as the tools that will guide us on our path to make the appropriate and needed reforms. It is important to us to have a workable and commonsense rule. These comments will assist the Department to determine if all factors have been properly considered. The comments will also aid more rigorous cost-benefit and related analyses, such as the small business component of the regulatory flexibility analysis pursuant to the rulemaking process.

We are currently engaged in an iterative process where we are taking sections of the proposed rule and reviewing each particular section in light of the comments that we received. After considering the comments, the Department could finalize without change, modify, withdraw or repropose the overall rule or certain provisions. Until our analysis is complete, we are not able to know what the final form the rule or any specific provision will take.

While it would not be appropriate to go into detail on specific modifications, I can assure you that the Department will take careful account of public comments. We ask that everyone have patience as we carefully work our way through the comments and not to pre-judge the outcome.

Thank you again for the opportunity to appear before you today to talk about this proposed rule and our shared support for small businesses in rural America. While I am limited in what I may discuss while we are in this stage of rulemaking, I welcome your questions.

Testimony

on behalf of the

National Cattlemen's Beef Association
and
Colorado Cattlemen's Association

with regards to

Regulatory Incompetency: How USDA's Proposed GIPSA Rule Hurts America's Small Businesses

submitted to the

United States House of Representatives
Committee on Small Business
Subcommittee on Agriculture, Energy, and Trade

Representative Scott Tipton, Chairman

submitted by

Mrs. Robbie Baird LeValley

Immediate Past President
Colorado Cattlemen's Association
Member
National Cattlemen's Beef Association

July 7th, 2011
Washington, DC

Mr. Chairman, Ranking Member Critz, members of the committee, my name is Robbie Baird LeValley and I am a cow-calf producer and small meat packer from Hotchkiss, Colorado. I am the immediate past president of the Colorado Cattlemen's Association (CCA) and a member of the National Cattlemen's Beef Association (NCBA). I have been a producer all of my life, first in Wyoming and now in Colorado. My family and I are co-owners of Homestead Meats, a direct-beef marketing business that has been in operation since 1995. There are six families who co-own this small business and we employ 13 full-time employees. Each family markets one-third of its cattle through this business, with the remaining two-thirds being directly marketed to other feedlots. To enhance its direct-marketing beef business, Homestead Meats owns its own packing plant regulated by the U.S. Department of Agriculture (USDA), therefore making us producers, feeders and packers. We have chosen this small business model as a way to differentiate our product; brand our beef; and provide ourselves with our own dedicated marketing program, as well as providing jobs for the local economy. USDA's Grain Inspection, Packers and Stockyards Administration's (GIPSA) proposed rule on livestock and poultry marketing will destroy our small business model; force us to lay off our employees; cripple our ability to market our cattle the way we want to; and limit consumer choice.

The cow-calf side of our business is built on relationships and alliances throughout the beef chain. We have successfully marketed our calves through an alliance with a packer for several years. That alliance has created a relationship that provides feedback from the packer on the quality of our cattle – quality for which we get paid a premium price. I have used this information to select specific genetic traits known for increased marbling as a way to improve my cattle in order to continue this significant increase in the premium price I receive. The proposed rule would require my packer partner to justify any discount or premium paid to us. USDA would then review these transactions and make determinations of violations based upon its judgment – not marketplace economics. These contracts are private business transactions and should not be made available for public review and scrutiny much less end up on a USDA website. I strongly believe in the fundamental American business tenet of a willing seller and a willing buyer being able to enter into a private business transaction because it protects my pricing and marketing mechanisms. I willingly and knowingly entered into this alternative marketing arrangement and it has worked well for our family's small business model. Our cattle marketing contracts are the heart of our small business and they do not warrant being posted on the internet, receiving additional government intervention and oversight, or being subject to potential litigation.

As mentioned, approximately one-third of our calves enter into our Homestead Meats company and are directly sold to consumers. This value-based marketing strategy was entered into by six families as a way to reap the rewards of quality cattle. These six families are small businessmen and women who support our local rural economy. When the proposed rule says that packer to packer and their subsidiaries sales are banned, I believe the six families that own Homestead Meats potentially will not be able to sell to other packers. This means that the other two-thirds of our cattle can no longer be marketed the way we want. This is a great example of how this rule truly harms small producers and processors. For years, USDA has promoted exactly what we are doing – selling directly to the consumer; operating as a small processor in a strategic area of the country; being rewarded for adding value to the end product; and producing local food. However, under this rule, our marketing options will be limited because we were innovative and took market risks.

Another concern I have with the proposed GIPSA rule is that there is neither clarity nor clear definition in terminology. Elimination of the competitive injury requirement, the new definitions of "competitive injury" and "likelihood of competitive injury" will provide a disincentive for packer premiums and value-added contracts because of the fear of litigation. The vague definitions, such as "unfair" or "reasonable person," will open the door to an increased number of lawsuits because mere accusations, without economic proof, would suffice for USDA or an individual to bring a lawsuit against a buyer. This will be a trial lawyer's bonanza and will devastate small businesses such as mine. In addition, the proposed rule allows for persons to sue without proof of injury or harm – they just have to say that their price was not fair. Who determines fairness? Will increased government intervention and litigation determine fairness? Arbitrary judgment by a federal agency will only increase paperwork and costs for small business owners like me. Who pays for this increased intervention and litigation? I will. When costs increase for the processor, the trickle down effect is to decrease the price paid to the ranchers who supply the cattle. The proposed rule is not clearly understood and the unintended consequences are far reaching across this industry.

What will be the consequence when the costs of defending prices paid for my cattle and complying with this rule add to my operating costs? What happens to every other industry when litigation increases? I can tell you personally what happens to management of federal lands in Colorado and out West. As the costs and the threat of litigation have increased dramatically on federal lands, the actual use and management of federal lands has decreased significantly. No one takes a risk or sticks their necks out for fear of reprisal. This ends creativity, partnerships, and the desire to take a chance – which is the very basis of the entrepreneurial spirit of America's small business owners. Do we truly want that for the beef industry?

In short, the proposed GIPSA rule would negatively impact producers, small businesses, and consumers in the following ways:

Lost Opportunities and Lost Profits: NCBA and CCA members are concerned this regulatory proposal, coupled with the risk of litigation from USDA and citizen suits, likely would cause buyers to withdraw marketing arrangements rather than run the risk of litigation, civil penalties and potential revocation of licenses. If marketing arrangements are restricted, I, my family and my consumers would be the losers. The proposed regulation would restrict cattle producers' freedom to market their cattle as they see fit. It would limit their opportunity to capture more of the value of their cattle and eliminate important risk management tools.

The proposed regulations ultimately may remove products consumers prefer. Producers have responded to consumer demand by finding innovative ways to develop and market premium quality and branded beef products. These alternative marketing arrangements have allowed producers to get paid for the added value. These arrangements ensure a consistent supply of cattle that meet the requirements of such programs. Without this consistent supply, these programs cannot be sustained.

The 2007 USDA GIPSA Livestock and Meat Marketing Study found reducing or eliminating the use of alternative marketing arrangements (AMAs) would negatively affect both producers and consumers. No segment of the beef industry, from the ranch to the consumer, would benefit from the reduction or elimination of these marketing arrangements. The GIPSA study results showed if AMAs were reduced 25 percent, the 10-year cumulative effect would be a loss of $5.141 billion for feeder cattle producers; a loss of $3.886 billion for fed cattle producers; and a loss of $2.539 billion for consumers. If marketing arrangements were eliminated, the 10-year cumulative losses for producers and consumers would be as follows: feeder cattle producers - $29.004 billion; fed cattle producers - $21.813 billion; and consumers - $13.657 billion. Combined losses across all segments would exceed $60 billion.

Loss of Privacy/Risk of Litigation: The proposed regulation requires packers to file copies of marketing arrangements with USDA. Packers may assert some information is confidential and request that it not be released. However, producers who are parties to the marketing arrangements would not have the same opportunity to claim privacy. This means confidential producer information could be posted on USDA's website for producer competitors to view. The regulation would lessen the burden for bringing an action against a packer. Packer livestock purchase records likely would be a part of any litigation. Producers participating in questioned transactions likely would be drawn into the litigation.

Negative Restructuring of the Industry: NCBA and CCA members believe the proposed regulation prohibiting packer-to-packer sales and the potential elimination of marketing arrangements likely would encourage vertical integration. In order to satisfy consumer demand currently being met through the use of marketing arrangements, packers may choose to own livestock in larger numbers (today, packers directly own less than 5 percent of the market) rather than risk litigation.

The proposed regulation would require purchasers of my cattle to justify paying more than a standard price for my livestock. What is a standard price and who sets it? The regulation seems to infer that is the role of government. I strongly oppose the government setting standard prices for my livestock.

Value based-marketing has given our small family business the opportunity to compete for market share at the highest level. The consumer has been the one to determine the fair and justified price paid for the value added product, not USDA. As a result, I have been able to build a small business that supports the local economy and provides consumers with the products they want. Each step I take has been a private business contract between a willing buyer and a willing seller. I do not want increased scrutiny or increased litigation in my private business contracts. Government intrusion into the marketplace is not the answer. Therefore, I encourage the Committee to help us stop this rule from being finalized as it is detrimental to small businesses like mine.

Testimony of Mr. Gary Malenke

President & Chief Operating Officer

Natural Food Holdings
Before the

Subcommittee on Agriculture, Energy and Trade

Committee on Small Business

U.S. House of Representatives

July 7, 2011

Good morning Chairman Tipton, Ranking Member Critz and Members of Congress. My name is Gary Malenke. I am the Chief Executive Officer of Natural Food Holdings, earlier known as Sioux Preme Packing Co., in Sioux Center, Iowa. Our firm is not large enough to be classed in the top ten hog slaughterers. We have been in business for over 40 years, and I have been in the meat industry for over 20 years.

We are proud to have arrangements with a number of producers to bring us hogs to fit niche markets with whom we have marketing arrangements under various brands. To do this, we are looking for very specific types of hogs that often require the grower to follow a specific protocol. Our producers are then paid a premium for meeting these expectations. These products are then sold to markets and restaurants that differentiate our products to create an enhanced value. To accomplish meeting our customer expectations, we work with our producer partners that number over 500 growers to assure a consistent supply – we know that a disappointed end user of our product is unlikely to buy again, so meeting the requirements is critical to our growth and survival.

I am sensitive to the feeling in the countryside that producers are not getting a fair deal. I and my senior staff are involved in industry organizations to give a little and to gain a lot in terms of advice and resources to help us be better business leaders. Indeed, I am the President of one such group this year, a somewhat time-consuming activity, but I feel it is a modest pay-back for what our business gets.

At a recent meeting I attended, I visited with a young man who has inspired me to reach back to producers and to give back to the men/women and families who produce hogs for our business. I want these producers to know as much about fixing a fair value for pork as they know about the business of raising hogs.

Let me suggest a couple of things we can do together:

** Meeting consumer expectations for the pork they buy, at retail or on the center of the plate in a restaurant, is critical. I will develop with the organizations I belong to more information to make available to producers about how we can do this together. We are in this together, every week of the year, for the long haul, and the better we share and communicate with each other, the more successful we will be at meeting the end consumer's expectations.

** There is already a great deal of information in the marketplace about price for hogs and pig meat. I will agree that it is very complicated, and not as accessible as it could or perhaps should be. Once again, I will develop, with the organizations I belong to, more transparency in the information that would be useful to producers. I believe that the enhancements set forth in current legislation will also be helpful. I also know that one of the organizations in which we hold membership has been meeting with the USDA's marketing officials to improve the information for pork price reporting, and I expect these efforts to be useful in improving the flow of information.

I grew up on a small farm, some 30 years ago, and have witnessed first hand the changes to rural America. There is no longer a hardware and grocery store in small towns, numerous school districts have merged and the economies of scale have been driven by the Wal-Marts of the world. This trend is not the fault of big business. It's driven by the changing consumer; that folks like Wal-Mart have done a great job of attracting customers (face it thousands of people shop there every day because they choose to do so). As much as I desire to look back with nostalgia, the realities of economic forces today are very strong. GIPSA's attempt to regulate the future by returning the way things used to will be a bad economic decision that will not succeed.

In the summer of 2009, our business was not good and we were not profitable. This year, we are doing better, and I know it is because of both domestic demand and much improved exports of pork. In 2009, the price of hogs were some 30-35% lower than in 2010, and, we lost money. In 2010 with the improved demand we did better, because of the difference in market conditions, even when the price of hogs was higher! My point it this "the primary influence on the price of livestock is the demand for the finished products we produce".

This is a very tough business – for producers and for packers. Working together in partnership and cooperation will give us the opportunity to be successful together. I am not here to cry about the very large firms – their very largeness denies them the flexibility that we enjoy at Natural Food Holdings. We don't need to enroll GIPSA, a government regulatory agency, in our business plan – enhancing our partnerships with producers for our mutual benefit is a much better solution.

Thank you for the opportunity to testify. I would be happy to answer any questions you may have.

Respectively submitted,
Gary Malenke
President/CEO
Natural Food Holdings

Testimony of Joel Brandenberger
President
on Behalf of
The National Turkey Federation
July 7, 2011

Good morning, Chairman Tipton, Ranking Member Critz and members of the committee. My name is Joel Brandenberger, president of the National Turkey Federation (NTF). NTF is the national advocate for all segments of the $14 billion turkey industry, providing services and conducting activities that increase demand for its members' products by protecting and enhancing their ability to profitably provide wholesome, high-quality, nutritious products. We represent integrators, slaughter operators, processors and growers. There is no one size fits all model in the industry, but regardless of the model we all understand the essential importance that grower relationships play in our industry. We have family-owned companies, grower-owned cooperatives, and large, agriculturally diversified international companies that all play a critical role in determining NTF policy from the general membership all the way up to our Executive Committee. I want to thank the committee for inviting me to visit for a few minutes about this important topic and its likely devastating impact on the industry should regulations be implemented as currently written by USDA.

I have worked for the federation for more than 20 years and have witnessed many changes in that time – the ups and downs of a global industry as it has matured into the fully integrated model that we see today. According to the Small Business Administration (SBA) definition, integrators, slaughtering operations and processors are small if they have less than 500 employees. For producers or growers the size standard is gross revenue of under $750,000. According to the 2007 Census of Agriculture there are approximately 8,284 farms in the United States averaging 35,707 turkeys with gross farm receipts of $476,943 per farm. Additionally, 10 of the 25 turkey processors fit into the SBA definition. It should also be noted that a large percentage of turkey farmers consider this their full time job and employ a staff of anywhere from 200 people to 250 people, and are part owners in one of the seven cooperatives that produce high quality turkey meat products. Many of these farm operations should appropriately be considered small businesses themselves when examining the rule's impact.

I recognize what USDA's Grain Inspection, and Stockyard Administration (GIPSA) was trying to accomplish when it proposed these rules; however I fear that these rules, if implemented as proposed, will ultimately only hurt those they were intending to help.

Structure of Today's Turkey Industry

Most people would characterize the turkey industry as vertically integrated and while the assessment is relatively accurate, it fails to capture the diversity of operations that make up today's industry, which raises 270 million turkeys per year.

The industry is vertically integrated in the sense that the individual processors make the decision about how many turkeys will be raised and marketed, and growers raise birds in accordance with those production plans. In many cases, the vertical integration follows the classical model: the processor, or integrator, owns the turkeys throughout their lifespan. The processor provides turkeys to a grower and also supplies the feed and health services necessary to raise the bird to maturity. The grower in turn provides the housing and his or her expertise in raising turkeys and is compensated by the processor based on a variety of factors, including weight gain, efficient use of feed, and low mortality rates.

In other instances, turkeys are raised on a marketing contract. In this situation, the grower or small business operator owns the turkeys throughout their life cycle and provides the feed and health services, as well as the housing and production expertise. The processor then purchases the turkeys at a previously contracted price. Certain premiums may be paid based on factors outlined in the contract.

Finally, some turkeys are raised on company-owned farms. In this model, the company not only owns the turkeys throughout their life cycle and provides feed and health services; it also provides the housing and employ growers to oversee the production.

Some companies exclusively use one model or another, but they all have a unique system that allows them to market their products, which will potentially allow for growth and expansion that hopefully leads to job creation. For example, we had a member testify last week at a Senate Agriculture Committee hearing about their co-op of 16 turkey growers who have a production plan that is periodically reviewed by a board of members. In this arrangement, that board establishes the quantity of turkeys raised and an agreed upon pricing model that allow for appropriate production levels to maximize the co-op's ability to remain profitable during various industry cycles.

It is also common in the industry for companies to use multiple production models. Some will raise birds on production and marketing contracts while others will utilize a mixture of production contracts and company-owned farms.

As mentioned earlier, many of these growers run small business operations that require creative expansion outside their business model. The current rules would certainly have a dampening effect over a small business owner's willingness to go outside the current structure to continue to grow.

Last summer, GIPSA officials said the rule is designed to give family farmers a level playing field when negotiating production and marketing contracts. That may have been the intent but the rule as proposed creates long-term dangers for many of the family farmers who raise livestock and poultry under contract.

Many of you are familiar with this rule, so I will not address it on a point-by-point basis, but I will call your attention to three aspects of the rule that, taken together, create enormous potential problems for all segments of the industry.

The first is the competitive injury provision that will make it easier to sue or bring regulatory action against livestock and poultry processors. The second is the provision that requires processors to virtually guarantee growers can recoup 80 percent of their capital investments. The third is a series of provisions that would discourage competitive contracts in which growers can receive premiums or deductions based on the performance of the livestock and poultry in their care.

Taken together these provisions create significant new legal and regulatory risk for the livestock and poultry processors. Within the turkey industry about 80 percent of all birds are raised via a production contract with family farmers. The first and most obvious outcome is that contracts will be less competitive and compensation will become more uniform among growers. For some growers this might be good news, but those small farmers that are doing an outstanding job and receiving premiums will justifiably feel cheated as a new regulation forces everyone down to a lower common denominator. This rule put no incentive in small farmers that want to continue to grow in an ever changing market place.

The bigger impact will come in the long term, though. The rule creates greater economic and regulatory risk for the processors who raise livestock and poultry under production contracts. These processors will have to find ways to minimize that risk, and since 80 percent of all turkeys and a large majority of other livestock are raised under these contracts, how that risk is managed will have an enormous impact on the industry. One conceivable option for processors could include reducing over time the number of farms on which they raise livestock and poultry. It could prove safer to expand operations on those farms with the best track record, and that poses a threat for growers whose performance is far from poor but who may not meet the rigid criteria necessary for processors to operate in a higher-risk marketplace. Another realistic option would be for more processors to raise livestock and poutlry on company-owned farms. Right now such farms make up only 10 percent of turkey production, but it is easy to envision a scenario in which the percentage is much higher a decade from now.

What is especially frustrating is that USDA promulgated this rule without conducting an adequate economic assessment of its impact. A study funded in part by the NTF found an impact of more than $360 million on the turkey industry alone. Other studies found the impact might be even higher. Another study released by the National Chicken Council concluded that the rule would cost the broiler industry more than $1 billion over the next five years. Industry analysis of the regulation concluded that it likely will have a chilling effect on innovation and flexibility, leading to a race toward mediocrity. It will create legal uncertainty that will drive costs higher and cause an increase in vertical integration in the livestock and poultry sector, driving producers out of the business and possibly affecting supplies. Finally, a study conducted by John Dunham and Associates showed job losses to the meat and poultry industry at 104,000 and would reduce the national Gross Domestic Product by $14 billion.

USDA now has agreed to conduct an economic assessment, and that is a positive development. Still, no one at the department has committed to submitting the study for public comment before finalizing the rule. It should be noted, that the USDA's chief economist stated, just last week, that the rule met the requirements for an economic significant rule, but the agency still has not sent the study to Congress for a review, as required. This is an essential step if there is to be any level of confidence that the final rule truly has the interests of small family farmers and businesses at heart.

This concludes my testimony. Thank you again for the opportunity to discuss the impact of the proposed GIPSA rules on the turkey industry. I will be happy to answer any questions.

Testimony of Bob Junk
Fay Penn Economic Development Council
Uniontown, PA

Before the

House Committee on Small Business
Subcommittee on Agriculture, Energy and Trade

Hearing on

Regulatory Injury: How USDA's Proposed GIPSA Rule Hurts America's Small Businesses

July 7, 2011

Chairman Tipton, Ranking Member Critz, Members of the Subcommittee-

My name is Bob Junk. I am the Local Economy Manager for Fay Penn Economic Development Council. Thank you for this opportunity to submit this testimony in support of the GIPSA proposed rule.

Fay-Penn's mission is to maintain and increase employment opportunities (jobs) in Fayette County in an effort to improve the quality of life for all of its residents. We also work with farmers to improve their direct marketing to the consumers. Before I was at Fay Penn I was the President of Pennsylvania's Farmers Union for 10 years and had the opportunity to meet many different types of livestock and poultry farmers throughout the state.

Fay Penn is a member of the National Sustainable Agriculture Coalition and through that coalition; I have learned about the abusive situation that many contract poultry growers face throughout the country.

These producers are small business owners and have been suffering the consequences of too much consolidation and collusion at the local level. Vertical integration in the poultry industry started back in the 1960s. At that time, there were many companies competing for growers' services. Now, a grower is lucky if he has 2 companies in an area to "choose" from. I say choose in quotations because there is no real competition for growers. They are presented with take-it-or leave-it contracts that are fairly similar from company to company. A study by Dr. Bill Heffernan of the University of Missouri documented this trend in a parish in Louisiana – showing that when there were more companies the relationships between growers and the companies they contract with were fair and balanced, and when consolidation increased, the relationships deteriorated.

I bring this up to set the stage for why the GIPSA rules were proposed. Growers now spend up to $300,000 per house and in return, get a 6-8 week commitment from the poultry company. Once the grower invests the money in his houses and equipment, he is stuck and has to take whatever the company gives him. In a truly competitive market, the companies would be competing for the best growers and offering them better deals. In most parts of the country that competition is not happening.

What is happening is that growers are:

- Being forced to upgrade their houses after they have built the houses to the companies' specifications. A USDA survey update revealed that **49% of broiler growers** were required to make capital investments in 2004, and that this investment in the single year averaged $49,037 per grower, which comes out to about $490 million total throughout the US. Most of the time, these upgrades do not pay for themselves and force the grower deeper into debt. The grower has to do the upgrade or will not have a contract. Without a contract, he can't pay off his mortgage and will default on his loan and other bills, all of which have a ripple effect in our local economy. Not only will the grower lose his poultry houses, but most of the time he has his personal house and the rest of his farm put up as collateral and thus will lose everything if he can't pay his mortgage. The proposed rule will simply ensure that if the company requires the upgrade, then the company must compensate the grower in return. This will help the poultry growers, who are small business owners in our community, stay in business without costing the government anything. Growers could hold on to the $49,037 each year and overall, our rural communities would keep $490 million instead of spending it on upgrades.

- Growers also have their contracts terminated through no fault of their own even when they still owe hundreds of thousands of dollars on their loans. A couple of years ago, one poultry company shut down 4 plants that resulted in hundreds of growers losing their contracts. Many of the growers had done all of the upgrades that the companies had asked for, which caused them to still owe money when they were cut off. They did everything the company told them to and still they were on the verge of bankruptcy. The federal government had to step in and spend $60 million to ensure that these farmers and their communities did not go under. Part of the proposed GIPSA rule says that the contract must be long enough for a grower to recapture 80% of their investment. If that provision would have been in place when the company closed its plants, then it probably would have had to make sure that the growers had recaptured 80% of their investment before terminating their contracts and might have decided not to close the plants at all. This provision is simply asking the companies to invest in the growers as much as the growers invest in the companies and gives the growers some security in their investment.

- Growers are retaliated against for talking to public officials or speaking about their conditions in public. In May 2010, the USDA and Department of Justice held a workshop on competition in the poultry industry and heard from grower after grower about the very real fear of retaliation for just being at the workshop. They were not speaking of it as something that has happened in the past, they spoke about being threatened if they attended the meeting. Also, if you look at the personalized comments submitted by growers in support the GIPSA rule, about half of them are filed anonymously because of the fear of retaliation. This is a real enough problem that part of the proposed rule declares that retaliation is an unfair practice. It is sad that in America in the 21st century people have to worry about the effect of speaking out on their livelihoods. The proposed rule will give growers more protections against this.

- Growers are being paid on a system that is mainly controlled by the companies. The "ranking" pay system is based on the assumption that all growers are provided comparable inputs and any variance in performance is a result of farm management. Yet farmers have no ability to verify the equality of inputs supplied and controlled by the company. The characteristics of these inputs, such as the health of the chicks delivered, can have a great impact on the farm's actual performance and therefore the farmer's final pay. The actual price a farmer receives can vary considerably from check to check even though the variation in performance is relatively small.[1] Growers can get chicks that are from an old breeder hen flock and then no matter how hard he works; he will be at the bottom of the ranking system because chicks hatched from older hens will almost always be weaker. Being at the bottom of the ranking is a double whammy for growers – they get paid less per pound and they have fewer pounds. In the cattle industry, if the animal weighs less, I will make somewhat less because of the lack of pounds, but I will still get the same price per pound. The proposed rule corrects this by saying that the base rate has to actually be that – a base rate, a rate that a grower cannot get paid below. The company can still pay bonuses on top of that. The rule does not restrict companies from paying above the base rate. It just wants to make sure that growers are not doubly penalized for things beyond their control by being paid less per pound if they fall below average. There have been rumors spread that this part of the rule means that growers will all be paid the same and that companies will not be able to pay more for better performance. That is simply not true. Read the rule.

- Growers are forced to sign away their right to a trial by jury. The 2008 Farm Bill gave livestock and poultry farmers the choice between arbitration and going to court in their contracts. This went into effect right after the Farm Bill was passed. Unfortunately, when companies changed their contracts, they tried to get around the law by putting in other clauses that limited farmers' abilities to have a trial by jury if they need it. In a current poultry company's contract, it says that a grower cannot have a trial by jury and that they have to have a trial by judge only. This is the United States of America! A person should not have to give up his right to a trial by jury just because he is a contract poultry grower.

The GIPSA proposed rule will also help hog producers. Currently, only four firms control the slaughter and packing of over two-thirds of the nation's hogs. The number of farms producing hogs has declined from 240,000 in 1992 to fewer than 70,000 in 2007. Many of the remaining hog producers raise hogs under production contracts with packers. The GIPSA proposed rule will provide independent hog producers with more transparent, open markets. It will also protect contract hog producers from abusive practices such as unexpected capital investments.

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[1] Dr. Mark Jenner, "Does Flock Performance Rank = Grower Performance Rank?"

As you can see by what I have just shared, this rule corrects some of the long time abuses that have occurred in the livestock and poultry industry. It will put thousands of dollars back in producers' pockets without costing the federal government any money. And as we saw with the Wall Street disaster, sometimes industry regulation is not a bad thing for the American people.

My organization, along with 143 other organizations, sent a letter to members of Congress this Spring asking them to support the GIPSA rulemaking process. I have submitted a copy of the letter with my written testimony.

Thank you for this opportunity to share with you how the GIPSA proposed rule will help America's livestock and poultry farmers.

ATTN: Agriculture & Appropriations Legislative Aides

April 21, 2011

U.S. House of Representatives
Washington, DC 20515

Dear Representative:

As a result of rapid consolidation and vertical integration, the livestock and poultry markets of this nation have reached a point where anti-competitive practices dominate, to the detriment of producers and consumers. Numerous economic studies in recent years have demonstrated the economic harm of current market structures and practices, and have called for greater enforcement of existing federal laws in order to restore competition to livestock and poultry markets.

Until recently, Congress and the U.S. Department of Agriculture have largely ignored these trends. Fortunately, Congress included language in the 2008 Farm Bill to require the U.S. Department of Agriculture to write regulations, using its existing Packers and Stockyards Act authorities, to begin to restore fairness and competition in livestock and poultry markets.

On June 22, 2010, the Grain Inspection Packers and Stockyards Agency (GIPSA) issued proposed rules to implement the 2008 Farm Bill mandates, and to address related anti-competitive practices in the livestock and poultry industries. These reforms are long overdue and begin to respond to the criticisms by farm groups, consumer groups, the Government Accountability Office and USDA's Inspector General about USDA's past lack of enforcement of the Packers and Stockyards Act. The proposed GIPSA rules define and clarify terms in the Act in order to make enforcement more effective, and to provide clarity to all players in livestock and poultry markets.

The Packers and Stockyards Act of 1921 makes it unlawful for packers, swine contractors, and live poultry dealers to engage in any "unfair, unjustly discriminatory, or deceptive practice or device," or to "make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect, or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect." The ambiguity of these terms has resulted in uncertainty in the marketplace and hindered enforcement of the Act.

Key provisions of the proposed GIPSA rules would:

- Provide contract growers with commonsense protections when making expensive investments in facilities on their farms to meet the packer or poultry company requirements;
- Provide growers, farmers, and ranchers with access to the information necessary to make wise business decisions regarding their operations;
- Require transparency and eliminate deception in the way packers, swine contractor and poultry companies pay farmers;
- Eliminate collusion between packers in auction markets;
- Provide clarity about the types of industry practices the agency will consider to be unfair, unjustly discriminatory, or when certain practices give unreasonable preference or

advantage. These are all terms used in the existing statute, which have never been adequately defined.
- Prohibit retaliation by packers, swine contractors or poultry companies against farmers for speaking about the problems within industry or joining with other farmers to voice their concerns and seek improvements. Currently, many farmers are often retaliated against economically for exercising these legal rights.
- Allow premiums to be paid to livestock producers who produce a premium product, but requires the packer or swine contractors to keep records to detail why they provide certain pricing and contract terms to certain producers.
- Reduce litigation in the industry by eliminating the ambiguity in interpretation of the terms of the Packers and Stockyards Act. Such ambiguity leads to litigation as farmers and packers seek court action to clarify the intent of the Act.

GIPSA has received approximately 60,000 comments on the proposed rule during the five-month public comment period that ended in November 22, of 2010. USDA is in the process of analyzing those comments, and providing the in-depth cost-benefit analysis necessary before issuing the final rule.

Because of the great importance of this rule to livestock and poultry producers and consumers, and the large volume of misinformation about the rule perpetuated by livestock and poultry trade associations and packer-producer groups, the undersigned organizations are writing to reiterate our strong support for the GIPSA rule and for its swift publication in final form.

We urge your support for the GIPSA rulemaking process, and its efforts to restore fairness and competition in our nation's livestock and poultry markets.

Sincerely,

Agriculture and Land Based Training Association (CA)
Alabama Contract Poultry Growers Association
Alliance for a Sustainable Future (PA)
Alternative Energy Resources Organization (AERO) -MT
Ambler Environmental Advisory Council
American Agriculture Movement
American Corn Growers Association
American Federation of Government Employees (AFL-CIO), Local 3354, USDA-St. Louis (representing Rural Development and Farm Loan employees in Missouri, Oklahoma, and Kansas)
American Grassfed Association
American Raw Milk Producers Pricing Association
Ashtabula-Lake-Geauga County Farmers Union
BioRegional Strategies
Buckeye Quality Beef Association (Ohio)
C.A.S.A. del Llano (TX)
California Dairy Campaign
California Farmers Union
California Food & Justice Coalition

Campaign for Contract Agriculture Reform
Campaign for Family Farms and the Environment
Carolina Farm Stewardship Association
Cattle Producers of Louisiana
Cattle Producers of Washington
Center for Celebration of Creation
Center for Food Safety
Center for Rural Affairs
Chemung County Church Women United (NY)
Chemung County Council of Churches (NY)
Chemung County Council of Women (NY)
Church Women United of Chemung County (NY)
Church Women United of New York State
Citizens for Sanity.Com, Inc.
Citizens for Sludge-Free Land
Colorado Independent CattleGrowers Association
Community Alliance for Global Justice
Community Farm Alliance (Kentucky)
Community Food Security Coalition
Contract Poultry Growers Association of the Virginias
Court St Joseph #139, Corning/Elmira, Catholic Daughters of the Americas, Corning, NY
Crawford Stewardship Project
Cumberland Counties for Peace & Justice
Dakota Resource Council
Dakota Rural Action
Davidson College Office of Sustainability
Ecological Farming Association
Endangered Habitats League
Family Farm Defenders
Farm Aid
Farm and Ranch Freedom Alliance
Farmworker Association of Florida
Fay-Penn Economic Development Council
Federation of Southern Cooperatives
Food & Water Watch
Food Chain Workers Alliance
Food Democracy Now!
Food for Maine's Future
Gardenshare: Healthy Farms, Healthy Food, Everybody Eats
Georgia Poultry Justice Alliance
Grassroots International
Heartland Center / Office of Peace and Justice for the Diocese of Gary, Indiana and the Integrity of Creation
Hispanic Organizations Leadership Alliance
Idaho Rural Council
Illinois Stewardship Alliance

Independent Beef Association of North Dakota (I-BAND)
Independent Cattlemen of Nebraska
Independent Cattlemen of Wyoming
Institute for Agriculture and Trade Policy
Iowa Citizens for Community Improvement
Iowa Farmers Union
Island Grown Initiative
Izaak Walton League
Kansas Cattlemen's Association
Kansas Farmers Union
Kansas Rural Center
Ladies of Charity of Chemung County (NY)
Land Stewardship Project
Main Street Opportunity Lab
Maryknoll Office for Global Concerns
Michael Fields Agricultural Institute
Michigan Farmers Union
Michigan Land Trustees
Michigan Organic Food and Farm Alliance
Midwest Environmental Advocates
Midwest Organic Dairy Producers Association
Minnesota Farmers Union
Missionary Society of St. Columban
Mississippi Livestock Markets Association
Missouri Farmers Union
Missouri Rural Crisis Center
National Catholic Rural Life Conference
National Family Farm Coalition
National Farmers Organization
National Farmers Union
National Latino Farmers & Ranchers Trade Association
National Sustainable Agriculture Coalition
Nebraska Farmers Union
Nebraska Sustainable Agriculture Society
Nebraska Wildlife Federation
Network for Environmental & Economic Responsibility
New England Small Farm Institute
Nonviolent Economics
North Carolina Contract Poultry Growers Association
Northeast Organic Dairy Producers Alliance
Northeast Organic Farming Association - NY
Northeast Organic Farming Association, Interstate Council
Northern Plains Resource Council
Northwest Atlantic Marine Alliance
Ohio Ecological Food and Farm Association
Ohio Environmental Stewardship Alliance

Ohio Farmers Union
Oregon Livestock Producers Association
Oregon Physicians for Social Responsibility
Oregon Rural Action
Organic Consumers Association
Organic Farming Research Foundation
Organic Seed Alliance
Organization for Competitive Markets
Partnership for Earth Spirituality
Past Regents Club, Catholic Daughters of the Americas, Diocese of Rochester, NY
PCC Natural Markets
Pennsylvania Farmers Union
Pennypack Farm and Education Center (PA)
Pesticide Action Network North America
Pomona Grange #1, Chemung County NY
Powder River Basin Resource Council (WY)
R-CALF United Stockgrowers of America
Rocky Mountain Farmers Union
Rural Advancement Foundation International - USA (RAFI-USA)
Rural Coalition
Sisters of St. Francis of Philadelphia
Slow Food USA
South Dakota Livestock Auction Markets Association
South Dakota Stockgrowers Association
St John the Baptist Fraternity of the Secular Franciscan Order, Elmira, NY
Sustain LA
Taos County Economic Development Corporation
Texas Farmers Union
The Cornucopia Institute
Tilth Producers of Washington
Trappe Landing Farm & Native Sanctuary
Veteran Grange #1118, Chemung County, NY
Virginia Association for Biological Farming
Western Organization of Resource Councils (WORC)
WhyHunger
Women, Food and Agriculture Network

State of the Poultry Industry

Hearing of the Agriculture, Energy and Trade Subcommittee
House Committee on Small Business

The Honorable Scott Tipton
Subcommittee Chairman

Dan King
Dan & Janet King Owners/Operators
Zenda Poultry LLC and Zenda View Farm LLC
Rockingham County, Virginia

On behalf of the 400 poultry producers that are members of the Virginia Poultry Federation

July 7, 2011

Rayburn House Office Building

Washington, DC

Chairman Tipton, Congressman Critz, and Members of the Subcommittee, thank you for the opportunity to share with you and the Committee my views on the state of the poultry industry on behalf of the more than 400 poultry growers that are members of the Virginia Poultry Federation. I appreciate the privilege to discuss with you at this important hearing a number of issues that are most troubling to poultry producers like me.

My name is Dan King. My wife Janet and I are first generation farmers and the owners and operators of our family farm that trades as Zenda View Farm LLC and Zenda Poultry LLC in Rockingham County, Virginia. We raise crops, beef cattle, and broiler chickens. Our operation is typical of many diversified farming operations in the Shenandoah Valley of Virginia. We have three broiler houses with a capacity for 31,000 broilers each and average seven flocks each year. So our farm raises 650,000 broilers annually under contract with George's Foods, Inc. of Springdale, Arkansas. This may sound like a lot of chickens, but we in reality are an average-sized operation in the modern U.S. poultry industry. In fact, I take pride in the fact that my farm produces enough chicken meat annually for 20,000 people to consume the 82 pounds the average American consumer partakes of in a year.

My family farm is helping to provide Americans with a safe, affordable and environmentally responsible homegrown supply of wholesome protein and contributing to nutritional needs worldwide. This would not be possible without our contract with a vertically integrated poultry processing company, such as George's Foods, Inc. The contract arrangements between my family farm and Georges Foods has provided a good, dependable income over the 24 years we have been growing broilers.

Most, if not all, companies are currently suffering significant financial loses. The cost-price squeeze between very high feed and energy costs and relatively low prices received for broilers, parts, and products has been ongoing since the fourth quarter of last year and, according to a number of economists, may continue for some time yet. Fortunately, we have been somewhat insulated from this market risk and commodity price volatity. Our flock placement schedule has been basically unaffected, with down time only slightly increased, and our contract settlements have continued as prescribed in our contract.

USDA SHOULD NOT OVER-REGULATE POULTRY CONTRACTS

Having been a poultry producer for the past 24 years I have witnessed the highs and the lows in the farm economy and the poultry industry in particularly. The integrated production contract has provided us with a regular source of income while significantly shielding us from the adverse impact of low commodity prices in a down poultry market. In 2008 and again in recent months, the cost-price squeeze between very high feed and energy costs and relatively low prices received for broilers, parts, and products has caused most, if not all, poultry companies to operate at a loss. During these times, I have continued to be somewhat insulated from this market risk and commodity price volatility.

I am very concerned about the proposed Grain Inspection, Packers & Stockyards Administration's (GIPSA) regulation on poultry contracts. Any regulatory measures by USDA should only seek to promote transparency in contracts so that parties have a mutual and clear understanding of the terms. The government should not set the financial terms of contracts between private parties.

Unfortunately, the GIPSA regulation goes well beyond ensuring transparency. The proposal establishes an unprecedented level of government intervention in setting the financial terms of poultry contracts. I am concerned that this level of government regulation will have negative ramifications for the poultry industry in the United States, and actually hurt poultry growers. Specific concerns are the following:

- The 2008 Farm Bill required GIPSA to address five areas concerning poultry contracts. The 2010 GIPSA rule far exceeds what was mandated in the Farm Bill.
- Litigation – The rule is so vague in its terminology that it will most certainly result in costly litigation.
- Tournament System – The practical effect of the rule will be elimination of better pay for better results. This removes incentives that reward growers based on performance. It removes incentives for investments in innovation necessary for the U.S. poultry industry to remain competitive in the World market.
- Greater Integration – The rule could lead to greater integration of the poultry industry with a greater trend toward fewer and larger contract farms and more company owned farms.

GIPSA should reconsider this massive regulatory intervention into private contracts due to the harm it will cause to poultry farmers, processors, and the U.S. food supply.

Comprehensive Energy Policy Needed

One of my biggest concerns as a poultry producer is the high cost of energy. In 2002, we were paying about 65 cents per gallon for propane gas, which is one of our biggest input costs. This winter it was about $1.80 per gallon. Our average electricity bill has gone from $525.00 a month to $835.00 a month. We use about 2500 gallons of diesel fuel, which in the past 10 years has increased fourfold from $0.80 to $3.20 a gallon. The high cost of diesel impacts the cost of our supplies, as well. These costs are killing the American farmer and straining our entire food delivery system.

In 2008 I was meeting with a group of farms from around the country in Nashville, Tennessee. One of our speakers was from the natural gas industry. We spent ninety minutes looking at U.S. energy reserves and the leasing and permitting process. After the presentation was over our facilitator ask for questions or comments. A soft spoken farmer from the back of the room muttered what I think was, "We are being shafted". The facilitator asks him to speak up to which he replied, "We are being shafted by our own government." **It is critical that government get out of the way of energy production and adopt a comprehensive, forward-looking energy policy that allows U.S. companies to maximize the use of U.S. energy**. This country's economy will never be truly strong again as long as we buy most of our energy abroad or burn our food.

Corn Ethanol Policy

As you know, the Federal Government has adopted mandates, incentives, and trade barriers to prop up the U.S. ethanol industry, which now diverts some 40 percent of the U.S. corn crop away from traditional food uses to our gas tanks. These policies include the Renewable Fuels Standard (RFS), which specifies the annual amount of corn-based ethanol refiners must blend into gasoline; the so-called "blenders credit" or VEETC, which provides refiners with a 45-cent tax credit per gallon of ethanol used; and a 54-cent-per-gallon tariff on foreign ethanol imports into the United States

Additionally, EPA recently approved a petition from the ethanol industry to increase the allowable ethanol-gasoline blend from 10 percent to 15 percent in newer-model cars and light trucks, and the ethanol industry has begun to press Congress for an expansion of the RFS and additional new supports.

Feed is the poultry industry's largest input cost, at roughly 70 percent of total live costs. Industry feed costs have increased by billions of dollars since the RFS began to ramp up in 2006. In 2008, corn prices temporarily spiked to nearly $8 per bushel, having been consistently in the $3 per bushel range for years. Deflationary influences of the recession caused corn prices to moderate, but they have remained artificially inflated above historical market prices. Unable immediately to pass high feed costs along to consumers due to free market supply-demand dynamics, the meat industry lost billions of dollars and suffered significant job losses until production cuts finally led to higher prices. Now per capita meat supplies are as low as they have been since the 1980s and it is inevitable that consumers will feel the pinch of higher food prices.

Just as the meat industry painfully adjusted to corn prices of nearly $4 per bushel and regained profitability, and was poised for growth, the October 2010 USDA crop report signified a short 2010 corn crop. Corn prices quickly spiked to more than $5.50 per bushel and are now in many places more than $7.00 per bushel on a delivered basis. This along with the usual uncertainty about the new year's crop make high corn prices a near certainty for months to come. The "stocks-to-use ratio" – an indicator of grain availability – is at historically low levels.

These higher prices, exacerbated by ethanol policy, threaten the ongoing recovery in the meat and poultry sector. While processors must initially eat the higher costs, federal policies give the ethanol industry an incentive to produce more ethanol when the market is rationing a tight corn supply. This along with speculator investment will inflate feed costs for the foreseeable future and jeopardize poultry industry profitability and jobs, not to mention the impact of food inflation on consumers during these difficult economic times.

Federal ethanol supports cost taxpayers billions of dollars while causing economic harm to poultry and livestock industries that support tens of thousands of Virginia jobs. The volume of oil replaced by corn ethanol is low. The costs do not justify the benefits. Please support adopted legislation to restrict or eliminate federal support for ethanol, and oppose any bills that further prop up the industry through federal funding or other supports.

Free Trade Agreements

You might not think that international trade matters much to an individual farmer like me, but it is vitally important to my industry and, ultimately, to my success as a farmer. Export markets have played an ever larger role in U.S. poultry production. As recently as 1990, the U.S. exported only five percent of chicken production. Today, the U.S. exports close to 20 percent of our chicken production. Access to foreign markets is critical to the poultry industry. Let me just say that in order to be competitive in the world marketplace, I encourage Congress to take swift action on the various free trade agreements that have been successfully negotiated. Let's not lose the opportunities for prosperity that comes with trade and suffer the consequences of lost international market-share.

Environmental Protection Agency Needs to Take a Time-Out

The final, but certainly not the least important, topic I'd like to address is the environment. It has been said that farmers are the original environmentalists and as a conservationist I know I care more about and do more for the environment then most outspoken environmentalists. We live where we work and we work where we live. My farm has operated with a nutrient management plan since 1991. Over the years, we have installed many conservation practices on our farm, at considerable expense. Like most farmers, we are motivated more by a natural, inborn desire to take care of our land and the streams running through it than by heavy-handed government regulations. My family and I take pride in being the best stewards we can be.

The Chesapeake Bay is a tremendous natural resource that deserves our stewardship – but not in the heavy-handed regulatory manner proposed by EPA through the recently adopted Chesapeake Bay Total Maximum Daily Load (TMDL). Virginia's poultry industry has already spent millions of dollars on voluntary initiatives and compliance with existing regulations. The industry will continue to be a responsible environmental steward. However, more burdensome government regulations will be counterproductive by jeopardizing agricultural operations and accelerating conversion of well-managed farmland to other, less environmentally beneficial land uses.

The poultry industry questions EPA's authority for its mandates; has concerns about the accuracy of Chesapeake Bay computerized pollution loading models; is concerned about the lack of cost-benefit and economic impact analysis; and criticized the agency for allowing only 45 days for public comment and not fully documenting the basis for the decisions made in the proposed TMDL. EPA should reconsider its present course and allow states to chart a path forward that balances a widely shared desire to improve the condition of the Bay while preserving state prerogatives and avoiding detriment to agriculture and Virginia's economy.

Farmers are willing to do more, but we are producing food for this nation on thin margins and this TMDL could impose regulatory costs that drive farmers out of business. That's not good for the Bay and it's not good for the security of our nation's food supply.

Conclusion

Mr. Chairman, your interest and support for the poultry is most appreciated. On behalf of the Virginia Poultry Federation, poultry farmers look forward to working with you, Congressman Critz, and the Members of the Subcommittee to improve the environment for poultry production. And, not just for land, water, and air, but also the economic environment.