Written Testimony Of
National Pork Producers Council

On

A Review of the U.S. Livestock and Poultry Sectors: Marketplace Opportunities and Challenges

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Introduction

The National Pork Producers Council (NPPC) is an association of 43 state pork producer organizations that serves as the global voice for the nation's pork producers. The U.S. pork industry represents a significant value-added activity in the agricultural economy and the overall U.S. economy. Nationwide, more than 68,000 pork producers marketed more than 115 million hogs in 2015, and those animals provided total gross income of nearly $24 billion. Overall, an estimated $23 billion of personal income and $39 billion of gross national product are supported by the U.S. pork industry.

Economists Daniel Otto, Lee Schulz and Mark Imerman at Iowa State University estimate that the U.S. pork industry is directly responsible for the creation of more than 37,000 full-time equivalent pork producing jobs and generates about 128,000 jobs in the rest of agriculture. It is responsible for approximately 102,000 jobs in the manufacturing sector, mostly in the packing industry, and 65,000 jobs in professional services such as veterinarians, real estate agents and bankers. All told, the U.S. pork industry is responsible for nearly 550,000 mostly rural jobs in the United States. The U.S. pork producers today provide 25 billion pounds of safe, wholesome and nutritious meat protein to consumers worldwide.

Exports add significantly to the bottom line of each U.S. pork producer. U.S. exports of pork and pork products totaled 2.13 million metric tons in 2015, representing more than 24 percent of U.S. production, and those exports added more than $48 to the value of each hog marketed. Exports supported approximately 110,000 jobs in the U.S. pork and allied industries.

Cautious Expansion, Continued Focus on International Markets

The state of the U.S. pork industry has been shaped in recent years by disease. Recall the H1N1 flu in 2009 and the Porcine Epidemic Diarrhea virus (PEDv). The latter first was documented in the United States during the spring of 2013, and over the next 18-plus month killed between 8 million and 10 million piglets. The dramatic reduction in the supply of available market hogs led to record hog prices throughout 2014 after four straight years of economic losses primarily because of record-high feed costs.

Pig mortality since then has fallen dramatically, with the U.S. Department of Agriculture's Quarterly Hogs and Pigs report for the fourth quarter of 2015 showing the highest level of live births per litter in history at 10.53 pigs.

Seemingly recovered from the worst of PEDv's catastrophic effect on production, the U.S. pork industry appears to be moving into a period of cautious, calculated expansion. Pork production in 2015 increased year-on-year by a whopping 7.3 percent, albeit from the PEDv-ravaged calendar year 2014. Pork production this year is forecast by USDA to increase by 2 percent to 24.99 billion pounds, and 2017 production is forecast to increase 2.6 percent to 25.64 billion pounds. The total hog herd in the United States today is 67.6 million head, up slightly from 2015.

The typical cycle of barrow and gilt prices peaking in the summer and bottoming out in the November-December timeframe was essentially abandoned in 2014 and 2015 but is expected to return this year. The annual average for barrow and gilt prices received by producers, at $50.23 per carcass weight hundred (cwt.), fell dramatically in 2015 from its 2014 high of $76.03/cwt. Prices are expected to remain in the $46-$48/cwt. range for the remainder of the calendar year and lose another 6 percent throughout 2017. Estimated returns for farrow-to-finish producers continue to be positive for the year as a whole, with fourth quarter 2016 forecast at or below breakeven price levels.

There is currently a tremendous amount of red meat and poultry in the marketplace and coming down the pipeline. Per capita consumption of pork registered at just under 50 pounds in 2015, and pork retail prices have been historically low relative to beef retail prices over the past 18 months. Moving into grilling season (roughly Memorial Day through Labor Day), it will be interesting to see what happens to consumer demand and how it plays out in the marketplace.

Per capita consumption of pork is forecast to remain nearly even in 2016 before increasing by 1.8 percent in 2017. That marginal increase, coupled with the growing production expected throughout this year and next, highlight the importance of being able to send pork products to consumers outside the U.S. borders.

But economic growth in importing countries has been lackluster, and the value of the U.S. dollar has served as a headwind to growing exports of U.S. pork products, particularly in 2015. The Russian import ban on Western products and other global geopolitical events also have served as barriers to export growth. Total U.S. pork exports fell in 2015 on a value basis by 16.4 percent and on a volume basis by 2.1 percent. The top four markets for U.S. pork products on a value basis (Japan, Mexico, Canada and China/Hong Kong) all imported less in 2015 than they did in 2014. U.S. pork producers lost a tremendous amount of market share in the Chinese market to European producers, particularly from Germany, Denmark and Spain.

Through the first quarter of 2016, U.S. pork exports were down 9 percent year-to-date on a value basis and up 2.5 percent on a volume basis. In particular, the volume of exports to China/Hong Kong were up 83 percent year-on-year, marking the largest first quarter pork shipments the United States ever has made to that market.

World economic conditions are expected to improve some, especially in Asian countries. The Chinese hog market, for example, currently is in flux, with red hot demand for imported pork and Chinese hog farming profits larger than ever. Rapid pork inflation potentially presents an opportunity for larger shipments of U.S. product into the Southeast Asian nation, but economics does not always drive reality in China.

USDA forecasts pork export volume to grow 5.2 percent in 2016 and 2 percent in 2017, but geopolitical events, the strength of the dollar and removal of non-tariff trade barriers will play an important role in realizing those export gains.

Looking forward, there is no shortage of both opportunities and challenges for the U.S. pork industry. As the world becomes more globalized, so too do grain and livestock markets. A flood in Argentina or a drought in Brazil are felt locally and have an impact on producers' bottom line. Since each finished hog consumes approximately 150 pounds of soybean meal and 10-11 bushels of corn, feed price levels and volatility are of the utmost importance to pork producers. The recent run-up in soybean meal prices has caught many by surprise, as did the initial estimate of prospective corn plantings.

Total U.S. red meat and poultry production is projected to be above 2016 levels. Hog supplies will be adequate over the summer and will be plentiful in the fall. Strong competition for slaughter hogs by packers could support hog prices, and the prospect of at least four new packing plants coming on line in the next couple of years could help boost producers' bottom line moving forward. The pace at which these new plants come on line and begin processing hogs will be an interesting storyline to watch and will have significant implications for both domestic pork supplies and the availability and competitiveness of exports overseas.

While the vagaries of Mother Nature – diseases affecting production and weather affecting feed grains – are out of anyone's control, the pork industry's fortunes can be affected, for good or for ill, by what passes through the halls of Congress; government policies can and do offer opportunities or pose challenges for pork producers.

Trade and the TPP Benefit Agriculture

One of the policies that could have a positive effect on the U.S. pork industry – and indeed on all of U.S. agriculture – is trade, specifically expanded trade.

Through free trade agreements (FTAs) and bilateral and multilateral trade initiatives, the United States has been very successful in removing barriers to U.S. exports and increasing trade in U.S. goods and services.

U.S. exports of pork, for example, have increased by 1,550 percent in value and nearly 1,300 percent in volume since 1989, the year the United States implemented the FTA with Canada and started opening international markets for value-added agriculture products. The importance of trade deals is evident given that the United States now exports more pork to the 20 countries with which it has FTAs than to all other nations combined.

Exports add to the bottom line of producers, spur economic growth and create tens of thousands of U.S. jobs. Last year, U.S. pork producers shipped 2.13 million metric tons of pork worth $5.6 billion to foreign destinations. Those exports added more than $48 to the price producers received for each hog marketed, and they supported more than 110,000 pork industry jobs. (USDA's Economic Research Service calculates that every $1 billion in U.S. agricultural exports generates more than 7,500 jobs across the U.S. economy.)

The United States has been, on average, the top global exporter of pork over the past 10 years, and given continued economic growth in the world and rising per capita incomes, U.S. pork producers stand to benefit significantly from new FTAs that eliminate tariff and non-tariff barriers to U.S. exports.

The importance of FTAs is evident by the fact that the U.S. pork industry now exports more product to the 20 countries with which the United States has FTAs than to the rest of the world combined.

That's why the U.S. pork industry has been among the most aggressive pro-trade voices in the U.S. private sector and why it is a strong supporter of the Trans-Pacific Partnership Agreement (TPP), the benefits of which will exceed all past FTAs.

NPPC was among the biggest cheerleaders for the U.S.-lead Asia-Pacific regional FTA negotiations from the beginning of the Obama administration. It was instrumental in getting Japan included in the TPP talks, which were concluded last October after nearly six years of negotiations.

The organization also led agriculture's efforts to gain congressional approval for Trade Promotion Authority to permit the administration to carry through with the TPP negotiations and conclude an agreement.

The TPP, which includes the United States, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam, presents an opportunity to open and expand markets to U.S. pork that include half a billion consumers and nearly 40 percent of the world's GDP.

The three key markets for U.S. pork producers in the TPP are Australia, Japan and Vietnam. Those countries account for the overwhelming majority of economic benefits that will accrue to the U.S. pork industry. While NPPC continues to have TPP implementation concerns, it is confident that the issues will be resolved. Here's a look at the benefits U.S. pork will gain from the TPP countries:

- **Australia** – Tariffs on pork were eliminated under the U.S.-Australia FTA. But while pork is the top U.S. agriculture export to Australia, it is not eligible to be sold at retail in that country because of non-science-based sanitary-phytosanitary barriers. While the issue is not technically part of the TPP negotiations, NPPC is working closely with the U.S. government to facilitate a review of the matter in Australia. There is no credible scientific reason to prohibit the sale of U.S. pork at retail in Australia.

- **Chile** –Tariffs on U.S. pork are zero under the U.S.-Chile FTA.

- **Japan** – The largest value and second largest volume market in the world for U.S. pork exports, Japan will eliminate tariffs on all pork products, including its Gate Price – a complex system of protection – on processed pork, in six to 11 years from entry into force of the agreement. For processed products not subject to the Gate Price such as seasoned ground pork and sausages (the United States shipped more than $400 million of these products in 2014), tariffs will be eliminated in year 6. Japan also immediately will reduce the impact of the Gate Price on chilled and frozen pork upon entry into force of TPP. The Gate Price will remain at 524 Yen per kilogram indefinitely. However, the specific duty that is assessed when products do not meet the Gate Price will phase down to 50 Yen per kilogram in year 10. There will be one safeguard on processed product and two safeguards on chilled/frozen pork. These safeguards disappear in year 11.

- **Malaysia** – Nearly all of Malaysia's tariffs on pork and pork products will be eliminated upon entry into force of the agreement. In addition, Malaysia dropped its non-tariff-barriers on U.S. pork in December 2014.

- **New Zealand** – Currently, pork exports from Australia, Canada and China enter New Zealand duty-free, but the United States must pay an import tariff. Under TPP, New Zealand will eliminate all pork tariffs for the United States and other TPP nations upon entry into force of the agreement except on hams and shoulders, which will go to zero in year 3.

- **Peru** – Tariffs on U.S. pork either now are zero or will be within three years under the U.S.-Peru FTA.

- **Singapore** – Tariffs already are zero on U.S. pork as a result of the U.S.-Singapore FTA. Separately, NPPC is working with the U.S. government to facilitate a review of certain non-tariff measures in Singapore.

- **Vietnam** – Despite being a larger consumer of pork than Mexico (the largest volume destination for U.S. pork), pork imports represent less than 2 percent of Vietnam's pork consumption. U.S. pork exports have been limited by tariffs and a series of non-tariff barriers. Under the TPP, Vietnam will eliminate tariffs on pork and pork products, currently as high as 30 percent, in five to 10 years. It will eliminate tariffs on frozen cuts and shoulders in eight years and on preserved pork, fresh pork cuts and shoulders in 10 years. Additionally, Vietnam's non-tariff barriers, which are being eliminated, are the subject of a side letter.

The TPP represents for the U.S. pork industry the biggest commercial opportunity ever negotiated. Economist Dermot Hayes, with Iowa State University, estimates that if the deal that was concluded last October is implemented – that is, if all tariff and non-tariff barriers are eliminated on pork in each TPP nation – U.S. pork exports to those countries will increase exponentially and more than 10,000 new U.S. jobs tied to those exports will be created.

But the reality is that if Congress does not expeditiously pass TPP, there will be no implementation, and that means the U.S. pork industry and the rest of American agriculture not only won't get the benefits of expanded trade but will lose market share in the fastest growing economic region in the world. The European Union and other nations are negotiating FTAs with Japan and other TPP countries. Of even greater concern is that if TPP fails, a much bigger regional trade agreement is likely to fill the void. The Regional Comprehensive Economic Partnership (RCEP) is comprised of 16 countries, including Australia, China, India, Japan, Korea and New Zealand as well as the 10 countries of the Association of Southeast Asian Nations (ASEAN). It does not include the United States. Make no mistake, U.S. exporters will be significantly prejudiced if TPP is not soon passed by the Congress.

NPPC urges Congress to quickly pass the Trans-Pacific Partnership Agreement.

Vaccine Bank Needed To Address FMD

On the disease front, while PEDv is still an issue for the pork industry, producers seem to have the disease in check. But other bacterial and viral diseases remain challenges for producers. The industry has devoted significant resources to endemic and foreign animal diseases, funding more than 120 research projects and spending more than $5 million for studying, monitoring and addressing swine diseases over the past 10 years.

But more must be done, particularly to address foreign animal diseases (FADs), which present a significant threat not just to the U.S. pork industry but to the entire animal agriculture sector.

Increased travel and trade among countries have made the United States increasingly vulnerable to several FADs, including African Swine Fever, Classical Swine Fever and Foot and Mouth Disease (FMD).

FMD is one of the most economically devastating foreign animal diseases affecting animal agriculture. It is highly contagious and spreads easily through livestock movement, by wind currents, on vehicles that have traveled to and from infected farms and even on inanimate objects that have come in contact with the virus. It affects all cloven hoofed species, including wildlife such as deer and elk.

FMD is endemic in Africa, Asia, South America and the Middle East. The FMD virus has seven viral serotypes and more than 60 subtypes, with wide strain variability. Managing and ultimately eradicating FMD requires strain-specific vaccines, making vaccination challenging and very expensive. Sporadic outbreaks with different types continue to pop up in countries around the world.

Because North America is free of FMD, an outbreak of the disease in the United States would immediately shut off all exports of U.S. livestock, meat and dairy products, creating a precipitous drop in livestock markets. Since U.S. consumers have little knowledge of the disease, there also likely would be serious disruptions in the domestic market because of decreased demand for those products. According to one recent study, prevention of FMD is estimated to be worth $137 million a year to the U.S. pork industry.

The House Agriculture Committee Nov. 4, 2015, held a hearing on “American Agriculture and National Security” that highlighted the vulnerability of the U.S. food supply to the potential for FAD introduction by terrorists or by accident.

Additionally, the bipartisan Report of the Blue Ribbon Study Panel on Biodefense – the panel was co-chaired by former Department of Homeland Security Secretary Tom Ridge and former Sen. Joe Lieberman – released Oct. 28, 2015, concluded that improvements are needed to the U.S. system for protecting the U.S. livestock herd and the nation’s food supply from FADs.

Since 2013, several diseases affecting swine have been introduced into the U.S. herd, including PEDv, Delta Corona Virus and Orthoreovirus. Government officials responsible for overseeing port-of-entry inspections and disease risk management have been unable to specifically identify the source or means of introduction of those viruses even though USDA’s Animal and Plant Health Inspection Service (APHIS) conducted a root cause investigation.

If there is an unidentified gap in the U.S. safety net that allowed the introduction of these new diseases, it also remains open for FMD.

In a USDA foreign animal disease preparation strategy document on the phases and types of an FMD outbreak, Dr. James Roth, professor and researcher at Iowa State University, identified four phases of the disease: 1) confirmation of an outbreak (typically three days); 2) surveillance and epidemiological work necessary to provide timely evidence of the extent of an outbreak to support decision making by government officials; 3) recovery from the disease; and 4) freedom from the disease (possibly with vaccination).

He characterized an FMD outbreak as having six types: Type 1, Small Focal; Type 2, Moderate Regional; Type 3, Large Regional; Type 4, Widespread or National; Type 5, Catastrophic U.S.; and Type 6, Catastrophic North American, which includes Canada and Mexico.

Given the structure of the U.S. livestock industry, the likelihood of having a Small Focal or Moderate Regional outbreak is remote. The livestock industry estimates there are approximately 1 million pigs and 400,000 cattle moved daily in the United States, some over long distances. In addition, there are numerous auctions, fairs and exhibits that concentrate large numbers of animals in a single location, providing the opportunity for one infected or exposed animal to spread disease to many animals. Thus, it seems unlikely that, if the United States had an outbreak, it would be a Small Focal outbreak that could be controlled without widespread administration of vaccine.

The World Organization for Animal Health (OIE) sets standards for managing and declaring freedom from FMD. Those standards range from "stamping out" (killing all infected and exposed animals) to being free of FMD with vaccination.

After watching countries such as the United Kingdom, Korea and Japan, whose livestock populations pale in comparison to the United States, struggle to manage an FMD outbreak by killing large numbers of animals, APHIS changed its existing policy on managing the disease from "stamping out" to using vaccine to limit the spread. This policy change was endorsed by the livestock industry as a cheaper and more practical alternative given the enormous size of the U.S. livestock herd and the rapid movement of livestock around the country. The United States simply cannot "kill" its way out of an FMD outbreak.

But after reviewing the impacts of the policy change, it became apparent under the current structure of the FMD vaccine antigen bank that APHIS did not have the quantity of vaccine needed to implement the new policy, nor could vaccine be obtained in a timely manner in the event of an outbreak.

At APHIS's request, the U.S. livestock industry began a series of meetings with senior APHIS officials to develop a strategy for improving the vaccine antigen bank and vaccine availability. There has been significant progress in FMD preparedness through the development of secure supply plans for milk, pork and beef, and APHIS continues to work with the livestock industry to improve its preparedness capability. Fixing the antigen bank capacity and improving vaccine availability must be a priority in future preparedness efforts.

Current U.S. law prohibits live FMD virus from being introduced onto the U.S. mainland, so foreign production companies are the only source of finished vaccines. It has been suggested that recombinant DNA vaccines that do not use live FMD virus can be produced in the United States, thus avoiding the legal prohibition of having live virus on the mainland. However, current data is not sufficient to determine how quickly, and indeed whether, such vaccines provide protection outside of the laboratory environment and for all species.

The United States likely is years away from the development and commercialization of such novel vaccines. But the U.S. livestock industry must have vaccines that are protective against the strain of FMD that might be in a sample sitting at the Plum Island Animal Disease Center (PIADC) for analysis at this very moment.

The United States is the only country in the world to maintain its own antigen bank, located at the PIADC. The bank maintains antigen for a limited number of FMD strains. APHIS contracts with foreign vaccine production companies to produce finished vaccine from the antigen stored at Plum Island. If an outbreak occurs, the antigen is shipped to Europe to produce vaccine, and the finished product is shipped back to the United States. Based on the current production contract, after three weeks, this process would produce only 2.5 million doses of vaccine, and there is no surge capacity to produce more.

Iowa State's Dr. Roth estimates that the U.S. livestock industry would need 10 million doses for the first two weeks of an outbreak.

The FMD vaccine bank is currently funded at $1.9 million, and there have been no requests for a substantial increase in the President's budget despite the fact that Homeland Security Presidential Directive 9 (HSPD9) requires an adequate vaccine stockpile to be maintained.

Although APHIS is the agency charged with managing and controlling FADs, there is no logical reason there could not be mutual cooperation with the Department of Homeland Security on funding an enhanced vaccine bank and improving vaccine availability.

Another factor complicating upgrades to the vaccine bank is that it also serves as the North American Bank and thus includes Canada and Mexico. NPPC believes it is appropriate to include those neighboring countries, but the United States should not wait for negotiations with those countries to be completed before making necessary improvements, which are critical to the U.S. livestock industry.

There is concurrence among the livestock sectors that fixing the vaccine bank will require the following actions: 1) Contract for an offshore, vendor-maintained vaccine antigen bank that would have available antigen concentrate to protect against all 23 of the most common FMD types currently circulating in the world; 2) Contract for a vendor-managed inventory of 10 million doses (the estimated need for the first two weeks of an outbreak); and 3) Contract with an international manufacturer(s) for the surge capacity to produce at least 40 million doses.

For more than a year, NPPC and others in the livestock industry have urged APHIS to identify changes needed to modernize the antigen bank and increase vaccine availability by requesting information from vaccine producers to identify the cost of fixing the vaccine problem. The industry anticipates that the agency soon will make that request.

NPPC knows that fixing the vaccine shortage will require a significant increase in budget outlays. However, that cost pales in comparison to the cost of an FMD outbreak. Iowa State University economist Dermot Hayes estimates revenue losses to just the U.S. pork and beef industries from an FMD outbreak at nearly $13 billion per year over a 10-year period; the corn and soybean industries are estimated to lose $44 billion and almost $25 billion, respectively. A recent study by Kansas State University estimates cumulative losses to consumers and livestock producers at $188 billion, with an added cost to the government of $11 billion for eradication efforts if vaccination is not employed. If vaccination is employed, the study estimates – depending on the strategy used – the losses to consumers and producers could be cut by 48 percent.

The history of government involvement in disasters like an FMD outbreak is that, once an outbreak occurs, unlimited resources are committed to getting control of the situation. In the case of FMD, there is a clear opportunity to invest in a robust vaccine bank that would limit the economic impact on producers, feed suppliers and consumers and reduce the government's cost for control and eradication of the disease.

NPPC urges the committee and Congress to work with the administration to address the alarming gap in the preparedness for an FMD outbreak. Whether the disease introduction is the result of terrorism, careless travelers or carried on traded commodities, the calamitous result is the same: devastation to the U.S. livestock industry and a significant hit to the U.S. economy.

Legislation and Regulation

Finally, the U.S. pork industry is, or can be, greatly affected by federal legislation and regulation.

NPPC works on behalf of America's pork producers to ensure that laws and rules don't impose unnecessary costs on the U.S. pork industry, restrict it from meeting consumer demands in an economical manner or prevent market-based solutions to issues. The structure of the pork production and packing sectors should be allowed to change with the demands of the growing global marketplace. This includes allowing producers and packers to adopt new technologies and pricing and marketing mechanisms that enable the former to reduce their risks and the latter to capture economies of scale.

The U.S. pork-packing sector is the envy of the world in terms of efficiency and food safety, and legislation and regulation should not take away or hamper that source of international advantage. Allowing producers and packers the freedom to develop new ways of doing business will only enhance the value of U.S. pork products, at home and abroad, and reduce costs and risks.

Today, the U.S. pork industry has developed a wide variety of marketing and pricing methods, including contracts, to meet the changing needs of a diverse marketplace. U.S. pork producers will not be well served by having certain types of contracting mechanisms eliminated, a move that only would force livestock markets to revert to a system used more than half a century ago in which animals were traded in small lots and at prices determined in an open-market bid system. Such a system was inefficient and makes no economic sense in today's economy.

That is why NPPC is very concerned about the revival of USDA regulations to amend the Packers and Stockyards Act, which is administered by the Grain Inspection, Packers and Stockyards Administration (GIPSA). The regulations, collectively known as the GIPSA rule and first proposed in 2010, would regulate the buying and selling of livestock and poultry. Congress in the 2008 Farm Bill asked USDA to address five specific issues related to production contracts:

- Criteria for determining whether an undue or unreasonable preference or advantage has been given to any producer.
- Whether a poultry dealer or swine contractor has provided sufficient time for a grower to remedy a breach of contract that could result in contract termination.
- Whether a poultry dealer has given reasonable notice of any suspension of delivery of birds to a grower under a contract.
- When a requirement of additional capital investment during the life of a contract constitutes a violation of the Packers and Stockyards Act as an unfair practice.
- The factors that comprise a fair usage of arbitration, including notification and the option for producers to opt out of automatic arbitration to resolve disputes.

U.S. pork producers were stunned in June 2010 when USDA proposed a rule that not only went well beyond the five issues Congress asked it to address but included provisions considered and rejected by congressional lawmakers during the 2008 Farm Bill debate.

One provision included in the rule, for example, would have required meat packers to justify and document, including with revenue and cost analyses, price differences paid for livestock, making it difficult for producers to negotiate premiums based on certain production practices, or accept lower prices for livestock of lesser quality. Such a “justification” provision was voted down by the Senate.

The rule would have had a devastating impact on livestock producers. According to an analysis of the regulation conducted by Informa Economics, it would have cost the U.S. pork industry more than $350 million annually. Industry analysis of the rule concluded that it likely would have had a chilling effect on innovation and flexibility, leading to a race toward mediocrity. It would have created legal uncertainty, driving costs higher and causing an increase in vertical integration in the livestock sector, forcing producers out of business and possibly affecting meat supplies. All of those effects would have harmed the U.S. pork industry’s international competitiveness, costing U.S. on-farm and pork-processing jobs as well as negatively affecting the U.S. balance of trade.

While there was overwhelming opposition to the GIPSA rule, including more than 16,000 public comments from pork producers, it took yearly action by Congress to prevent its implementation. Unfortunately, no such action – in the form of language in USDA’s annual appropriation – was forthcoming for fiscal 2016.

In March, at a meeting of the National Farmers Union, which supported the 2010 GIPSA rule, Agriculture Sec. Vilsack indicated that his agency will move forward with implementing the regulation, and NPPC confirmed last week that several of the regulations are with the White House Office of Information and Regulatory Affairs, the last step before rules are proposed final or become final.

Pork producers again are very concerned that USDA's GIPSA rule will be too expansive, limiting farmers' ability to sell animals, dictating the terms of private contracts, making it harder to get farm financing, raising consumer prices and reducing choices, stifling innovation and leading to more vertical integration in the livestock industry.

The U.S. pork industry opposes any legislation or regulation that restricts marketing opportunities and interventions into hog markets unless such actions address a clear, unequivocal instance of market failure or abuse of market power. To date, USDA has not presented any evidence that either is taking place.

NPPC urges Congress to ensure that any USDA rule to amend the Packers and Stockyards Act not restrict producers' ability to sell or packers' ability to buy animals and not limit their ability to use technologies and pricing and marketing mechanisms that work for their mutual benefit.

Another regulation that could have a profound negative effect on U.S. pork producers is the "Waters of the United States" (WOTUS) rule issued last year by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers.

The rule was promulgated ostensibly to clarify the agencies' jurisdiction under the Clean Water Act (CWA) over various waters. Historically and based on several U.S. Supreme Court decisions, those waters were limited to navigable waters, their tributaries and adjacent water bodies that are hydrologically connected or that otherwise affect navigable waters.

Certainly, pork producers are concerned about water quality, and they take a broad view of what it means to be environmentally responsible farmers and business people and have fully embraced the fact that their operations must protect and conserve the environment and the resources they use and effect. Producers take this responsibility with the utmost seriousness and commitment, and it has been in that spirit that they have made major commitments to environmental conservation, including meeting EPA's stringent zero-discharge standard that is part of the 2008 CAFO (Concentrated Animal Feeding Operation) rule and participating in a historic study of air emissions from farms.

But the WOTUS rule issued by EPA – over some objections from the Corps of Engineers – is overbroad, vague and fails to let regulated parties know what conduct violates the law. It includes, among other water bodies, upstream waters and intermittent and ephemeral streams such as the kind farmers use for drainage and irrigation. It also encompasses lands adjacent to such waters.

The rule, for example, would cover any discernable feature that possesses (or previously possessed) a bed, bank and high water mark. This would create uncertainty, confusion and significant legal liability for farmers. In short, the regulation as written could affect farmers' ability to use their land. Moreover, under the CWA, there is an absolute prohibition on discharging any pollutant – whether manure, a chemical pesticide or fertilizer or even a seed of corn – into a WOTUS without a federal permit. Violations of the prohibition are subject to significant criminal penalties as well as civil fines of up to $37,500 per day per discharge, with the power to enforce the penalties open to private citizens.

It's not so much EPA enforcement but the threat of activist groups suing – using the CWA's private right of action – over alleged WOTUS violations that will have a chilling effect on farmers.

A number of lawsuits brought at the U.S. District Court level were filed against the regulation, which took effect Aug. 28, 2015. (The North Dakota-based District Court in September 2015 issued a temporary injunction against EPA implementing the regulation in the 13 states that brought suit against the rule in that court.) The government wants the District Court cases to be consolidated in the U.S. Court of Appeals for the 6th Circuit in Cincinnati, which in October 2015 issued a stay of the rule until disposition of the cases before it.

In reaching its decision to stay the rule, the 6th Circuit found that there's a substantial likelihood that the WOTUS regulation fails to comply with the U.S. Supreme Court's instructions in previous Clean Water Act cases and that the actions of EPA in the rulemaking process, to which NPPC objected at the outset, are "facially suspect."

Despite its hints about the outcome of the consolidated cases, the possibility exists that the appeals court will find that the EPA and the Corps of Engineers were within their discretion in promulgating the WOTUS rule.

So NPPC continues to urge the agencies to withdraw the rule and to work with all affected stakeholders, including the agricultural community, to develop a rule that clarifies what waters are and are not jurisdictional in a manner consistent with the Supreme Court's rulings and that is workable and cost effective for the regulated community.

Conclusion

The U.S. pork industry is the lowest-cost producer and No. 1 exporter of pork in the world, and U.S. pork producers continue to produce the most abundant, safest, most nutritious pork in the world. They have proved very resilient, weathering financial crises and diseases as well as the vagaries of a supposedly free-market economy pushed and pulled in various directions by government intervention and regulation while investing in and adopting new technologies that have promoted animal health, protected the environment and added thousands of jobs and billions in national income to the American economy.

For America's pork producers to continue as leaders in the international and domestic economies, for them to take advantage of the opportunities and meet the challenges presented to them, Congress and the administration must pursue federal policies and regulations that support U.S. pork production rather than hinder its ability to continue to produce safe, lean and nutritious pork and pork products for the global marketplace.