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Testimony

on behalf of the

Kansas Livestock Association

with regard to

Livestock and the next Farm Bill

Submitted to the

United States Senate Committee on Agriculture, Nutrition and Forestry

Senator Debbie Stabenow, Chair

Submitted by

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President-Elect

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Madam Chairman, Senator Roberts and members of the committee, my name is Frank Harper and I have a cow-calf, backgrounding and farming operation near Sedgwick, Kansas. I am President-Elect of the Kansas Livestock Association (KLA) and serve on the Board of Directors of the National Cattlemen's Beef Association (NCBA), of which KLA is an affiliate. I am very pleased to be with you today.

KLA is a trade association representing nearly 5,500 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seedstock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations. Though the KLA membership is diverse, their primary interest is the beef industry. The beef industry is a key segment of the Kansas economy and the Kansas beef industry is a major piece of the U.S. beef industry.

Kansas ranks second nationally with 6.3 million cattle on ranches and in feedyards. Those cattle generated \$6.53 billion in cash receipts last year. Kansas is a national leader in cattle feeding and beef processing. The Kansas beef cow herd is the sixth largest in the country at 1.48 million head. Also, the presence of Kansas State University, the Animal Health Corridor and the addition of the National Bio and Agro-Defense Facility makes Kansas a world leader in animal health research.

Development of the next farm bill is an important process for livestock producers. Whether directly or indirectly, the provisions included in the farm bill can have a dramatic impact on our members' businesses. KLA members oppose agriculture policies that pit one industry group against another, distort market signals and inadvertently cause economic harm to the livestock sector.

KLA members believe the livestock industry is best served by the process of free enterprise and free trade. Even with its imperfections, free trade is relatively more equitable than regulated and subsidized markets which retard innovation and distort production and market signals. KLA members oppose attempts to narrow the business options or limit the individual freedom of livestock producers to innovate in the management and marketing of their production.

GIPSA Proposed Rule on Livestock Marketing

KLA and NCBA continue to strongly oppose the proposed regulations issued by the Grain Inspection, Packers and Stockyards Administration (GIPSA) issued June 22, 2010. KLA and NCBA filed extensive comments which may be found at <http://www.kla.org/proposedgipsarule.aspx>.

In short, producers throughout Kansas and the United States are concerned that the proposed regulations would greatly expand the role of government in marketing livestock and eliminate producers' rights and ability to market livestock to capture the benefits of their efforts to improve the quality of their livestock.

As outlined in both sets of comments, the regulations outline new definitions to be used to interpret the Packers and Stockyards Act that would expand the jurisdiction of USDA over all

marketing arrangements. USDA would require the reporting of marketing arrangements and then would post them on the USDA web site. Producers participating in marketing arrangements would have limited ability to protect their private information from public disclosure.

The proposed regulation has broad application and may include existing contractual arrangements if the agreement between the buyer and the seller were modified by the parties. The proposal also would require buyers to justify any discount or premium paid. USDA then would review these transactions and make determinations of violations based upon its judgment, not marketplace economics.

The proposal includes new definitions of “competitive injury” and “likelihood of competitive injury” and new listings of circumstances that may be considered “unfair, unjustly discriminatory and deceptive practices or devices.” Both sets are so broad that mere accusations, without economic proof, would suffice for USDA or an individual to bring a lawsuit against a buyer.

The proposal’s new listings of criteria that USDA would use to determine whether an undue or unreasonable preference or advantage was made by a buyer include requiring the buyer to make similar offers to all livestock producers; requiring the buyer to make price premium offers in a manner that does not discriminate against any other seller; and requiring the buyer to make offers known to all sellers if such offer is made to one or more seller.

Finally, the proposal would ban packer-to-packer livestock sales and allow dealers to represent only one packer. This language may have unintended consequences for some smaller regional packers and dealers.

We believe these provisions would negatively impact producers and consumers in the following ways.

Lost Opportunities and Lost Profits: NCBA and KLA 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 were restricted, producers and 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. Regulating marketing agreements would impact nearly 65% of the fed cattle market.

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 products. These alternative marketing arrangements have allowed producers to get paid for the added value. These arrangements ensure a consistent supply of livestock and poultry 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%, 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 web site 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 KLA 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% of the market) rather than risk litigation.

While the regulation is couched in many legal terms and arguments, it would have a real impact on producers like me. Over the years, I have invested in genetics that have helped me improve the quality and consistency of the calves I produce. To capitalize on this investment, I retain ownership on my calves and feed them in a commercial feedyard. This allows me to market my calves through U.S. Premium Beef and other programs that allow me to earn premiums for my high quality cattle.

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. If my competitors (other producers) don't agree with the justification the packer offers for not paying me a "standard price", the packer may be sued. Common business sense tells me that it wouldn't be long before the packer no longer would be interested in our agreement. This means I'll be back to selling cattle for the same average price as everyone else. My investment in superior genetics would be lost.

KLA and NCBA members believe the proposed rule will set the beef industry back to a time when all cattle received the same average price and beef demand was in a downward spiral. The rule also goes far beyond the intent of Congress. Members of this committee will recall several

of the proposals contained in this rule were either defeated or withdrawn during consideration of the last farm bill. We strongly urge you to take action to prevent the implementation of this rule.

Eastern Livestock Failure

Throughout the history of the cattle industry, we have experienced failed cattle dealers or marketing agents whose business dealings impacted hundreds of producers and hundreds of thousands of dollars. Last fall, we learned of yet another failed cattle dealer involving an estimated \$130 million in losses to producers, suppliers, truckers, auction markets and cattle feeders throughout the United States. As you know, the case is now in bankruptcy court.

These cases are difficult for the industry. We are all sympathetic to the producer/seller, supplier or trucker who did not get paid. However, in the cattle industry, we still value the “handshake deal” and believe most people are honest and truthful in their dealings. However, lending practices and financial security require that we analyze what transactions caused this and other failures. We need to understand what oversight was or was not provided to assure the integrity of financial transactions. NCBA has established a working group to analyze these issues and to make recommendations to assure the financial integrity of the feeder cattle trade. The group is composed of cattle producers from all segments of the industry, financial experts, lawyers, and representatives of auction markets, dealers, and marketing agents. The group hopes to make recommendations for consideration during upcoming farm bill deliberations.

Country-of-Origin Labeling

KLA has been a proponent of voluntary country-of-origin labeling (COOL) programs. KLA members believe the market will provide the information and attributes consumers desire and are willing to pay to receive. The number of branded beef programs being utilized by beef producers is a testament to the signals provided by the market.

Despite broad beef industry opposition, the current mandatory COOL program was included in the last farm bill. KLA actively engaged in the development of the regulation in an attempt to limit the recordkeeping burden for the industry. While we believe the requirements of mandatory COOL have been relatively benign for most of our members, the same cannot be said for all beef industry participants.

Recent leaks of a preliminary report indicate the World Trade Organization (WTO) will rule in favor of Canada and Mexico in their complaint against the U.S. mandatory COOL program. While the U.S. will have the opportunity to appeal the WTO decision, we encourage U.S. officials to forgo the appeal and immediately begin work on adjusting the program to comply with the WTO ruling.

It is in the interests of the U.S. as a whole, and the U.S. beef industry in particular, to resolve this dispute before retaliatory action is taken. Canada and Mexico are among the largest trading partners for the U.S. In terms of exports, Mexico and Canada represent the number one and two destinations for U.S. beef products. In 2010, Mexico and Canada purchased a combined \$1.546 billion worth of U.S. beef and beef products, nearly 40 percent of our total beef export value.

KLA strongly encourages the inclusion of language in the next farm bill to address the WTO finding. KLA recommends adopting language making the meat portion of the COOL program voluntary. An alternative approach would be to adopt the concept of substantial transformation wherein meat from any animal processed in the U.S. would be labeled as “Product of the U.S.” KLA believes either approach likely will satisfy WTO requirements, although the voluntary program would be our preferred method of compliance.

GIPSA Scale Testing Rule

On January 20, 2011, the Grain Inspection, Packers and Stockyards Administration issued a final rule titled “Required Scale Tests.” The rule clarifies the requirements for the frequency and interval of testing for scales used by regulated entities. At the same time, the testing requirement for scales used to weigh cattle sold through video auctions has been brought into question.

Video auctions are regulated entities and, therefore, are subject to the rule requiring the use of tested scales. However, due to the remote nature of the sales, the cattle do not pass through a facility with scales. Cattle typically are weighed on nearby scales after leaving the seller’s operation and before being delivered to the buyer. These scales typically are owned by grain elevators and other non-GIPSA regulated entities and only are tested one time each year. Requiring the use of bi-annually tested scales adds unnecessary transaction costs, transportation costs and stress on the cattle. Even the flexibility allowed for scales with “limited seasonal use” may not be sufficient because of the arbitrary seasonal periods prescribed by the rule.

KLA supports language that would allow the use of scales tested annually in these types of transactions. Alternatively, expanding the “limited seasonal use” exception to allow the use of scales tested any time within the previous six months would make the rule more workable. KLA seeks the support of the committee in addressing this issue, whether through legislation or in making the necessary regulatory changes.

Disaster Programs

Livestock producers appreciate the help offered through the Livestock Indemnity Program and the Supplemental Agricultural Disaster Assistance Programs. For some especially hard-hit producers, these programs have been essential to the continued survival of their operation. While extremes in weather always have been a challenge in agriculture, we see advantages in established programs with known guidelines versus an endless string of ad hoc disaster programs.

KLA does recommend a specific change to the Livestock Indemnity Program, if it is extended beyond its current expiration date. Some KLA members have been deemed ineligible for the program because they do not have a USDA farm number. We do not believe it necessary for a producer to participate in farm programs to be eligible for a livestock disaster program.

Conservation Title

Several conservation programs authorized in previous farm bills have played an important role in assisting farmers and ranchers enhance our nation's natural resources for food production, wildlife habitat, and water quality. In Kansas, the Environmental Quality Incentive Program (EQIP) is improving habitat for grassland-nesting birds under consideration for listing as threatened or endangered species, enhancing the health of grazing lands, improving water quality near lakes used for public drinking water, improving soil quality, conserving groundwater, and reducing soil erosion. In fiscal year 2010, our state NRCS personnel completed over 900 contracts impacting over 213,000 acres of our state's agricultural landscape.

Farm and Ranchland Protection Program and Grassland Reserve Program (GRP) conservation easements are in strong demand by our state's agricultural landowners who desire to sell their development rights to protect their lands for future generations of farmers and ranchers. In many instances, selling a conservation easement has been a helpful tool for estate and succession planning as today's landowners prepare for the next generation of farmers and ranchers.

Kansas leads the nation in the number of GRP agreements. To date this program has permanently protected over 36,000 acres of high-quality native grasslands, through 66 GRP conservation easements in Kansas. We realize GRP does not have baseline funding for the next farm bill, but we encourage Congress to reauthorize this program and give it favorable consideration for its share of funding.

KLA also encourages this committee to remind your colleagues that federal funds spent on conservation are a good investment in our country's natural resources and the ultimate beneficiary is the general public. In addition, conservation program spending is not an entitlement as participants are required to use these funds on the land and, in many instances, are required to invest their own time and personal funds as a match or cost-share contribution.

Conservation Easement Tax Incentive

The Food, Conservation, and Energy Act of 2008 (farm bill) included a provision to extend the income tax incentive for qualified conservation gifts, including donated conservation easements. This extension expired December 31, 2009, but last December Congress extended this enhanced incentive until December 31, 2011. The Kansas Livestock Association is supportive of making this incentive more permanent, as proposed in S. 339, the Rural Heritage Conservation Extension Act. This bipartisan bill is sponsored by five members of the Senate Agriculture Committee. We urge all senators on this committee to become cosponsors and push for passage of this bill before December 31, 2011.

Agriculture Research

As we look at the next farm bill, it is imperative that we work to preserve the research title and not allow it to be raided in order to fund other titles or project areas. With the ever-increasing number of mouths we will have to feed in the United States and abroad, it is critical we have the

tools and techniques to be as efficient as possible in producing beef. As an industry, we work diligently to find ways to improve our herds through genetics and production methods. However, we still rely on the research functions at USDA to help discover new tools and methods, and more importantly, to continue work on ways to treat and control diseases such as bovine tuberculosis and brucellosis, just to name two. USDA's ongoing work to protect our industry from fever ticks and foreign animal diseases is highly important to our industry, and we want to see it maintained. Therefore, we ask that the next farm bill include a strong and robust research title.

Transportation

The agriculture industry constantly is being bombarded with increased regulations that hamper the industry's ability to do business. An example of this is the Federal Motor Carrier Safety Administration's release of a guidance document for public comment. The document basically would require all farmers and ranchers to meet all commercial motor vehicle standards in order to transport their products to market. This is an example of regulatory overreach. Senator Roberts and others have asked for an extension of the comment period to allow interested parties time to submit adequate comments. We appreciate Senator Roberts' efforts and are hopeful this misguided guidance will be corrected in order to allow farmers and ranchers to transport their products to market without excessive red tape.

Conclusion

As you can see, KLA members believe markets free from government interference best serve the beef industry. We prefer a farm bill that does not restrict our marketing options or distort market signals. We look forward to working with you as the next farm bill is developed.

Frank Harper
KLA President-Elect

Frank Harper has backgrounding facilities and grazes cattle on crop residue in Harvey and Sedgwick counties, near Sedgwick, Kansas. He and his wife, Mary, lease the majority of their grass from her family in Butler County. They own both commercial and registered cowherds. Calves from the commercial herd are backgrounded and retained through the feeding phase, with some sold through U.S. Premium Beef. Harper's registered cows serve as a cooperator herd for Harms Plainview Ranch, a purebred operation near Lincolnvile. The Harpers also partner with his parents on a dryland and irrigated farming operation.

Harper is very involved in beef industry leadership. He currently serves on the NCBA Board of Directors and as a member of the NCBA Joint Advertising Committee. Harper has served as vice chairman of the KLA Water Committee and on the KLA Policy & Resolutions Committee. He serves on the KLA Executive Committee and is a past KLA Harvey County director. He is a past chairman of the Kansas Beef Council Executive Committee.

Harper is a past member of the Groundwater Management District #2 Board of Directors, having served several terms as vice president. He has served in various leadership capacities with his local extension board and with the Sedgwick United Methodist Church.

He graduated from Kansas State University with an agronomy degree in 1992. Harper is a 1988 graduate from Sedgwick High School.

The Harpers have two daughters, Annie and Cora. They attend school in the Sedgwick school district.