Comments on 2007 Farm Bill
Submitted by Doug Zalesky of Hesperus, CO
on Behalf of Colorado Independent CattleGrowers Association
To the U.S. Senate Committee on Agriculture, Nutrition and Forestry
Field Hearing
Brighton, Colorado

March 12, 2007

The Colorado Independent CattleGrowers Association (CICA) thanks U.S. Senators Tom Harkin and Ken Salazar for coordinating this hearing and for extending CICA the opportunity to offer comments on the 2007 Farm Bill through this testimony offered by CICA President Doug Zalesky of Hesperus, CO.

Since establishment in June 2005, CICA has worked diligently to protect and enhance the profitability and viability of Colorado's live cattle industry. The 2007 Farm Bill presents unique opportunities to strengthen the cattle sector of the economy not only for Colorado producers, but for those across the nation.

I. Introduction

The cattle industry is the largest single sector of U.S. agriculture. Rural communities, across America depend on the continued health of the industry. In little more than a decade, more than 122,000 cattle ranches have exited the beef cattle business. During the same period, the inventory of cattle and calves in the U.S. plummeted from 101 million to just under 95 million. The Farm Bill provides a crucial platform to reform U.S. agriculture policies to create a competitive playing field at home and abroad for cattle producers.

The new Farm Bill should focus on five key areas: 1) honest, open and transparent competition in the domestic livestock market; 2) animal health and safety; 3) consumer information; 4) international trade; and 5) the development of initiatives to sustain a more prosperous and competitive cattle and beef sector. The 2007 Farm Bill should contain a separate cattle chapter encompassing each of these issues to ensure they receive the urgent attention they deserve and are addressed comprehensively.

II. Ensure Competition in the Domestic Cattle Market

Consolidation in the meat packing industry has grown at an alarming rate over the past few decades. As consolidation has grown so have market abuses. Market concentration and packer-dominated contracting practices have systematically undermined independent cattle producers by denying them an honest price in a competitive marketplace. Concentration among meat packers has more than tripled since the late 1970s, and today just four beef packing companies control more than 83 percent of the industry. This level of concentration far exceeds other industries, and the rate of growth in concentration is unmatched among other industries for which the Census Bureau collects such data. This extreme level of concentration is indicative of a severe lack of competitiveness in the industry. It is an accepted economic theory that competitive conditions begin to deteriorate once the four-firm concentration level exceeds 40 percent.

At the same time that the meat packing industry has been consolidating dramatically, packers have increasingly used non-traditional methods of contracting and marketing methods that further erode the selling power of cattle producers. Thus, while the meat packing industry has become more integrated horizontally (through consolidation), it has also been increasing its vertical coordination through contracting practices. Such methods include purchasing cattle more than 14 days before slaughter, forward contracts, and exclusive marketing and purchasing agreements. Together, the four largest packing companies employed such forms of captive supply contracting methods for a full 44.4 percent of all cattle slaughtered by the same four firms from 1999 to 2002.

Captive supply practices place the risks of price instability on cattle producers and suppress cattle prices. As prices for cattle are artificially suppressed and become more volatile, it is cattle producers who suffer, even when broader demand and supply trends should be increasing returns to producers. The impact of packer concentration and abusive contracting practices is evident in the declining share of each beef retail dollar that actually reaches cattle ranchers. The rancher's share of each retail dollar earned on beef was 47 cents in 2005, down from 56 cents in 1993.

The 2007 Farm Bill presents an opportunity to provide safeguards against anticompetitive practices and protect producers from the abuses resulting from market power. Two key components are 1) strengthening tools to combat excessive concentration and enforce existing competition laws in the meat packing industry; and 2) improving regulations to prohibit unfair contracting practices that deny market transparency and reduce producer bargaining power in open markets.

The 2007 Farm Bill should provide for effective and vigorous enforcement of antitrust and competition laws. Study after study has criticized the failure of USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) and the Department of Justice (DOJ) for failing to aggressively enforce current laws. These agencies, along with the Fair Trade Commission, should be directed by Congress to work together to scrutinize mergers and acquisitions in the industry and to pursue strategies for preempting and remedying anticompetitive practices.

In January 2006, the USDA's Office of Inspector General (OIG) issued a report finding a broad range of management problems within GIPSA that have severely undermined the agency's effectiveness. The OIG found that GIPSA's investigative tracking system for violations of the Packers and Stockyards Act was inaccurate and incomplete; that GIPSA's process for managing investigations was inadequate; that GIPSA left important policy decisions unmade for months and even years; and that previous recommendations from the OIG and the GAO to strengthen GIPSA had not been fully implemented. As a consequence of these failures, GIPSA has referred only one competition investigation to the USDA's Office of General Counsel (OGC) for follow-up since the end of 2002, and the OGC has not filed any administrative complaints against the meat packing industry since 1999.

There is an urgent need to ensure effective enforcement of the laws to combat concentration and anticompetitive practices. Reform is needed within the structure of the enforcement agencies to ensure the existence of one central coordinating office which has the full authority needed to vigorously pursue enforcement actions and which can be held accountable by Congress for effectively enforcing the law. Agencies should report regularly to Congress on cases referred, pursued and prosecuted. Market consolidation thresholds that trigger enforcement action should be established. Protections should be put in place to ensure that producers complaining of anticompetitive practices are not retaliated against by packers and processors. It is incumbent upon Congress to see that the enforcement agencies have the proper funding needed for enforcement.

With regard to market coordination and unfair contracting practices, the Farm Bill should strengthen the law in order to prohibit packer ownership of cattle, end captive supply, and guarantee a minimum open market volume. In addition, the law should require processors to bargain in good faith and prohibit other unfair contract practices by:

~ Requiring a fixed base price in formula contracts and ban "tournament" or "ranking system" payments.
~ Ensuring cattle purchase contracts include a clear disclosure of producer risks and duration, termination, renewal and payment factors.
~ Requiring contracts to be traded in open, public markets and prohibiting confidentiality clauses.
~ Improving termination and arbitration provisions to ensure cattle producers can retain and enforce their rights.

The U.S. cattle industry has suffered precipitous drops in prices, despite widespread reports of tight cattle supplies and strong beef demand. Producers need accurate and complete pricing data. CICA urges Congress to develop legislation that will strengthen and enhance the Livestock Mandatory Price Reporting Act.

III. Safeguard Health and Safety of the U.S. Cattle Herd

CICA believes the 2007 Farm Bill should lay out aggressive, comprehensive strategy for protecting the integrity of the U.S. cattle and beef supply. The U.S. should be pursuing excellence with regard to import standards, providing the highest level of protection for animal health and food safety. Risk cannot be managed by increasing exposure.

The Farm Bill can ensure that USDA makes health and safety a top priority as it works to restore global markets for U.S. beef by:

~ Closing loopholes in the U.S. feed ban that were identified by an international scientific panel convened by USDA;
~ Instructing USDA to adopt the most stringent bovine spongiform encephalopathy (BSE) risk mitigation measures recommended for both imports and exports by the OIE pending an international agreement on BSE standards;
~ Allowing voluntary BSE testing by U.S. packers; and
~ Directing USDA to take the lead in bringing countries together to upwardly harmonize BSE standards that would allow trade of safe cattle and beef products to resume and prevent any

further global spread of the disease.

The U.S. should lead the way in a global approach to health and safety in the cattle and beef sector that will protect livestock health, ensure that products coming into the U.S. face standards as high as U.S. exports face internationally, provide producers with certainty and predictability, and confirm for consumers both at home and abroad that U.S. cattle and beef is among the safest, highest-quality product in the world.

While CICA agrees that animal identification can play an important role in controlling and tracking disease, it is absolutely essential that any program focus solely on animal trace-back from a disease control standpoint and should incorporate existing animal identification systems, while placing jurisdiction over such programs to respective states. A federalized animal identification system ignores the role of state and tribal authorities and will impose undue burdens on producers while providing limited protection to animal health and consumer safety. Producer-related liability associated with animal identification must cease when the animal changes ownership as long as proper animal production and husbandry practices have been followed. Information related to age and source verification should be driven by market incentives only.

IV. Provide Information to Beef Consumers

Country of origin labeling for beef and other agricultural products was mandated by Congress in the 2002 Farm Bill. Unfortunately, despite broad public support and the proven success of other programs, implementation of beef labeling has been delayed until 2008.

The 2007 Farm Bill should restore labeling by moving its implementation date as close as possible to the original date mandated by Congress. In addition, the Farm Bill should outline an implementation approach that ensures labeling is administrated in the simplest and most cost-effective manner for producers while providing the full scope of information to consumers. The GAO, along with independent analysts, have expressed concern that initial plans for labeling implementation as outlined by USDA are unnecessarily burdensome and expensive and could be simplified significantly. In the 2004 interim final rule for country of origin labeling for fish and shellfish, there were significant revisions and simplifications to the labeling and record keeping requirements outlined in the initial proposed rule by USDA. These are cost-saving revisions that do not weaken the intent and substance of the labeling law and should be considered in any final implementing rules for labeling of beef.

Packers are capable of identifying animals exclusively born and raised in the U.S., whose meat qualifies for a "U.S." label under the labeling law, without passing along undue additional costs and legal liabilities to producers. Current marking and sealed conveyance requirements for cattle imported from Canada and Mexico due to health and safety concerns, together with any necessary modifications to marking law and regulations which exempt imported cattle from regular import marking requirements, should be sufficient to ensure that packers have all of the information they need to comply with the law without imposing additional burdens on cattle producers.

V. Address Global Distortions in Cattle and Beef Trade

Typically, the Farm Bill does not address U.S. trade policy, despite the fact that these policies have a significant impact on cattle producers. It is important that the Farm Bill address more consistent policy goals for cattle and beef trade, particularly since the deficit in this sector has exploded over the past few years. Given the supply-sensitive nature of the U.S. cattle markets, the growing trade deficit in both cattle and beef has had a profound impact on the U.S. cattle industry.
The lack of harmonization of health and safety standards, as outlined in Section III, plays a large role in the loss of U.S. export markets. U.S. competitiveness is also undermined by large subsidies and high tariffs on cattle and beef in other countries, while the U.S. market is one of the most open in the world and U.S. cattle producers receive no trade-distorting subsidies. It is important that USDA become engaged in researching how exchange rates play into agricultural trade flows and that USDA monitor the manipulation of exchange rates.

The Trade Act of 2002 outlines steps that should be taken to eliminate the gross distortions plaguing global cattle and beef trade. Congress called for reduction of foreign tariff levels to meet U.S. levels, which would require substantial reductions in beef tariffs by certain trading partners. Congress also called for the elimination of "subsidies that decrease market opportunities for U.S. exports or unfairly distort agricultural markets" in the Trade Act of 2002. It is not yet possible to tell whether these goals will be met, but is imperative that Congress and USDA remain attentive.
Because of the limited time periods in which perishable products can be marketed, Congress also called for the creation of special rules on perishable and cyclical agricultural products such as cattle and beef and timely access for growers of such products to import relief mechanisms. Unfortunately, the special safeguard for agriculture that currently exists for beef is being compromised by the U.S. at the WTO without the establishment of special rules for perishable and cyclical agriculture as directed by Congress.

Preserving the right of developing countries to employ the special safeguard for agriculture while eliminating the right to do so for developed nations like the U.S. could result in a mismatch of market opportunities that puts U.S. cattle producers at a competitive disadvantage.

Further trade liberalization without special safeguards will erode the market for the U.S. cattle industry, and could happen even in the absence of unfair trade practices. The U.S. Trade Deficit Review Commission noted, "Easy availability of imports can limit price increases either by expanding available supply or reducing the ability of businesses to raise prices in order to pass on increases in their costs." This dynamic is particularly apparent in the cattle and beef industry, where, as former U.S. International Trade Commission Chairwoman Lynn Bragg observed, "The concentration of the packers' leverage relative to cattle producers, thus providing packers the ability to use imports to reduce domestic live cattle prices and/or prevent price increases."

VI. Support a Stronger, More Competitive Cattle and Beef Sector

The Farm Bill should sustain the cattle industry's health and competitiveness by removing impediments to growth and investing in development initiatives. A number of new or expanded initiatives to strengthen and support the domestic cattle and beef sector should be considered in the Farm Bill:

~ An increase in direct purchases of beef in the school lunch program and stronger rules of origin for beef in the program;
~ Conservation programs that sustain wildlife and habitat as well as the rancher, and reward agricultural producers for taking measures to improve their land;
~ Incentives and assistance for producer cooperatives and grower-owned value-added enterprises, research and development projects, and rural banking and economic development initiatives;
~ Reform of laws surrounding the interstate shipment of state-inspected meat.
~ Provide for beef producers the right to vote periodically on the federally mandated beef checkoff program, to ensure funds are being used adequately and appropriately; and
~ Provide reform of the Beef Act, permitting funds to be used to promote U.S. beef.

VII. Conclusion

The 2007 Farm Bill presents a myriad of opportunities to reform U.S. agriculture policy to level the playing field for U.S. cattle producers, guaranteeing competitive domestic markets for cattle and beef, strengthening safeguards for health and safety, improving consumer information, addressing global distortions in cattle and beef trade, and establish new programs to support the continued vitality of the largest sector of U.S. agriculture.