Special Issue: The Implementation of California’s Proposition 12

On January 1, 2024, after a long and contentious process that included litigation that went all the way to the U.S. Supreme Court, California finally began full implementation and enforcement of the pork regulations mandated by Proposition 12, which voters approved in 2018. An ARE Update article in 2021 examined the likely long-run economic implications of Prop 12 for prices and quantities of hogs and pork. This special issue examines what has been happening during the implementation.

The first article traces the winding path of specific Prop 12 hog and pork regulations and the delays in when those regulations would take effect, if at all. It explains why many farms and businesses were naturally hesitant to make large investments until legal issues were settled. It shows the extended timelines needed to economically adjust to Prop 12 regulations.

The second and third articles examine pork and hog price and quantity patterns over the weeks and months of adjustment to Prop 12. The articles compare these recent patterns in California to earlier periods, to patterns for non-covered pork products, and to patterns for pork and hogs destined for the non-California markets. These two articles show the degree to which the long delays, and the possibility that Prop 12 would be rejected by the courts, have affected hog and pork prices and quantities.

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The Regulatory Path of Proposition 12 From the 2018 Vote to the Sales of Compliant Hogs and Pork in 2024

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The economic and legal forces driving the adaptation of pork prices and quantity to Prop 12 have been long, complex, and contentious. Legal uncertainties delayed industry investment, supply response, and convergence to long-term adjustments, which is not uncommon in markets governed by new regulations.

California’s Proposition 12 (Prop 12), officially the “Prevention of Cruelty to Farm Animals Act,” passed on November 6, 2018, with about 63% of the vote. And the Prop 12 vote was only the beginning of a long implementation process.

Importantly, Prop 12 applies to the treatment of certain farm animals no matter where they are located, as long as the eggs or meat from those animals or their immediate progeny are to be sold in California. Prop 12 included many complicated provisions and timelines for egg-laying hens, veal calves, and breeding pigs. The timeline in Figures 1 and 2 (on pages 2 and 3, respectively) shows that some rules went into effect as scheduled, but complications and legal challenges slowed the process for pork. Full implementation and enforcement of third-party certification only began on January 1, 2024.

An Overview of Prop 12 Regulations for Pork

Here we quickly summarize some key features of Prop 12 for pork. First, the housing rules apply to any mother sows that produce pigs that supply “covered” pork products (uncooked cuts) purchased in California. Second, the on-farm housing
rules are complex, costly, and different from other housing standards previously adopted in North America. Besides the headline rules of at least 24 square feet per sow and room to turn around freely, the requirements limit the number of hours a sow may be held in isolated stalls. The regulatory framework facilitates certification, registration, and documentation to assure buyers that the pigs supplying such pork were sourced from sows raised according to California standards. California regulators also accredit third-party certifiers, monitor standards. California regulators also accredit third-party certifiers, monitor the third-party certification process, and directly certify some operations. An extensive system of segregation and traceability facilitates compliance in other states and provinces, where almost all pork meat sold in California is produced, and where there are both Prop 12-compliant and Prop 12 non-compliant farms.

**Court Challenges**

Legal controversy about the pork provisions of Prop 12 added to uncertainty about when, if ever, Prop 12 rules would apply to hogs and pork produced outside of California. Two federal court challenges were filed in late 2019 and another in late 2021. In the first federal challenge, North American Meat Institute v. Becerra, NAMI lost at the U.S. District Court and at the U.S. Court of Appeals for the 9th Circuit. The U.S. Supreme Court denied the petition to hear the appeal in June 2021 (See Figure 1).

In the second federal challenge, National Pork Producers Council v. Ross the NPPC and the American Farm Bureau Federation (AFBF) argued that California violated the Commerce Clause (Article I, Section 8) of the U.S. Constitution because it engaged in “extraterritorial regulation” and would unduly burden the out-of-state pork industry (among other claims). The District Court and the 9th Circuit dismissed the case. However, in March 2022, the U.S. Supreme Court granted certiorari, agreeing to hear the appeal during its 2022–2023 term.

National Pork Producers Council v. Ross was important to industry preparations because it raised questions about a) the form that Prop 12 regulations would take, b) the timing of final implementation, and c) whether Prop 12 or similar state regulations elsewhere, would ever be enforceable for pork.

Pork producers and others recognized that, if blocked by the courts, investments in a Prop 12-compliant supply chain would likely be wasted. Negative court decisions for the pork industry in 2020 and 2021 made Prop 12 implementation more likely, but then when the Supreme Court agreed to hear the case, many major investments were again delayed, until May 11, 2023, when the Supreme Court announced its final decision (Figure 2).

The third federal challenge, Iowa Pork Producers Association v. Bonta, was dismissed by the District Court in March 2022. However, in its 9th Circuit appeal, heard on January 9, 2024, Iowa Pork argued that blocking Prop 12 implementation because it actively discriminated against California purchases of out-of-state pork was consistent with the Supreme Court’s May 2023 ruling. The 9th Circuit decision is pending, which means Prop 12 may yet be ruled unconstitutional and (perhaps slight) uncertainty continues!

On a separate legal track, in late 2021, retailers and food service groups in California asked the Sacramento County Superior Court to delay the implementation and enforcement of Prop 12 to allow them time to prepare. In response, the court ordered that Prop 12 for pork would not become enforceable until 180 days after California published final regulations.

However, before that deadline became effective, the U.S. Supreme Court had agreed to hear the NPPC/AFBF challenge, and the parties agreed to a delay until after the Supreme Court decision. In June 2023, an order from the Superior Court judge set out the final Prop 12 implementation timeline. Prop 12 rules would be in effect starting on July 1, 2023, except that any covered pork meat already in the supply pipeline on that date could continue to be sold through December 31, 2023. Also, CDFA stated that it would focus its resources on outreach and accreditation of certifying agents rather than on compliance for products self-certified until January 1, 2024.
Supreme Court Economics

The NPPC/AFBF claimed in their reply brief for the petitioners, docket No. 21-468, that “Californians adopted … requirements that petitioners plausibly allege are prohibitively expensive for farmers to implement … but the price of complying with them falls almost entirely on out-of-state businesses and consumers…” and “this is not a situation where producers may freely choose to alter their operations to comply with state regulation, … Instead, petitioners allege that the segmented nature of hog production and dispersed sale of cuts from each hog mean that farmers outside California will be forced to either comply with Proposition 12 or withdraw from the business…”

Economic issues before the Supreme Court concerned the legal implications of the economic impacts of Prop 12 on U.S. pork producers and consumers outside California. Petitioners raised the “extraterritorial” impacts that California was imposing on non-Californians and claimed that Prop 12 imposed burdens outside California that were, “clearly excessive in relation to the putative local benefits.” However, on May 11, 2023, the Court ruled 5-4 in favor of California, with a split of justices that defied supposed ideological or political categories.

A majority of justices found that Prop 12 did not impede interstate trade seriously enough to be rejected. Moreover, the majority found that the alleged burdens on out-of-state producers and consumers were insufficient to overcome the interests of California voters to regulate pork sold within the state. The lead minority opinion recommended that a factual assessment of the balance between California’s perceived benefits and burdens on interstate trade be remanded back to the lower court.

The Supreme Court found that state economic regulations could withstand constitutional challenge unless there was a clear case of substantial burdens on interstate trade. The written opinions of the justices all highlighted that discrimination in favor of in-state economic interests was the dominant consideration in weighing state laws that affect interstate commerce.

Subsequent Implementation

Many sow farrowing operations and other industry participants were unwilling to commit millions of dollars to farm and supply chain investments until they knew that Prop 12 would be required. Many farms and pork businesses were preparing for Prop 12 compliance, but they did not commit to irreversible investments when there was still a significant probability that such investments would be unneeded.

Starting on May 11, 2023, farms and others that planned to supply pork to California needed to move quickly to make compliant pork available. Four economic considerations governed adjustments. First, only the farrowing operations that anticipated relatively low costs of compliance would make any adjustments. Hence, farms assessed their own compliance costs compared to the likely compliance costs of others. Second, farms needed assurances from buyers of prices high enough to cover costs. Third, assurances of higher prices for Prop 12-compliant feeder pigs, slaughter hogs, and covered cuts of pork were needed all along the supply chain.

Finally, even with higher prices, it takes many months to go from new sow housing to delivering compliant pork meat to retailers and food service operations in California. Even when planning was well advanced, it might take at least 8 to 10 weeks to have compliant housing ready for a substantial number of sows. Then gestation itself takes about another 16 weeks. Newly farrowed pigs from compliant facilities might be ready for weaning only in about six months after the Supreme Court ruling stimulated the final rush. Then another six months are needed from a farrowed pig to a finished hog ready for slaughter and on to retail pork on the shelf or in a restaurant.

Hence, it will likely take until May 2024, before we reach full supply of compliant pork meat in the California market.

Pork Availability and Interim Price Dynamics

Noncompliant covered pork meat already in the supply chain before July 1, 2023 was allowed to be sold in California through December 31, 2023 to allow California distributors and retailers to clear out their already-acquired supply of noncompliant pork meat. Because complaint pork was scarce, buyers had strong incentives to fill their supply pipelines with...
non-compliant pork that was available before July 1, 2023. But, any covered pork meat sold in California from hogs slaughtered after July 1, 2023 had to be compliant with Prop 12. After January 1, 2024, all covered pork meat sold in California is required to be compliant with Prop 12 requirements and traceable through an audit trail back to a third-party certified producer.

Of course, some farms correctly anticipated the Supreme Court would reject the NPPC/AFBF challenge and were ready to supply compliant slaughter hogs to meet the July 1, 2023 date. Other farms had been expanding group housing facilities and were able to supply hogs for the California market during the summer and fall of 2023. This compliant pork was ready for retailers during the fall of 2023.

Nonetheless, despite the announcement that enforcement would not begin until 2024, supply of pork meat to California consumers was relatively scarce from July 1, 2023, through early 2024 and has expanded only gradually.

The demand for compliant pork grew through the summer and fall, as existing non-compliant supplies were used. Because the available compliant pork meat supply has been limited, prices for Prop 12-compliant hogs and pork need to remain elevated during the adjustment period to ration the limited quantities of compliant hogs and pork to California buyers.

Prop 12-compliant pork has gradually become more available. In addition, Prop 12-compliant farms and processing and pork handling companies have likely improved practices gradually, as they adjusted to Prop 12 rules and the new post-farm supply chain. These cost and availability considerations imply that more Prop 12-compliant hogs and pork meat will gradually become available at lower costs. Therefore, prices of pork meat in California are likely to decline as markets adjust supplies. The transition prices of Prop 12-compliant hogs and covered pork meat depend on the availability of eligible supplies and the demand flexibility of California pork buyers.

Outside California, the interim impacts on the prices of hogs and pork in the rest of the United States are smaller and harder to measure accurately, given the many factors that affect national and international pork markets. Back in May and June of 2023 California buyers attempting to fill their supply pipelines with non-compliant pork may have caused a temporary jump in all hog and pork prices. And, as higher retail prices in California have lowered the quantities of covered pork meat sold in California, pork availability and pork prices likely fell slightly outside California.

However, given that California represents less than 10% of the relevant demand for North American-produced covered pork meat, impacts of California adjustments on markets outside California are bound to be small. For example, a 20% reduction in California’s quantity demanded of covered pork meat represents less than a 2% lower quantity demanded in the overall market for North American pork. Even if this all represented a net increase in available supply of covered pork products outside California, we would expect only slightly lower prices of hogs and consumer prices of bacon, pork chops, and other uncooked cuts of pork outside of California.

**Final Remarks**

Implementation of Prop 12 for pork was delayed for two years through a series of complications, including California and federal legal challenges. These seemed to be finally resolved in May 2023 by a prominent U.S. Supreme Court decision that allowed California to proceed with implementation. A long and complicated process is not uncommon for major regulations. Nonetheless, the result has been market fluctuations, uncertainty, and costs imposed on producers and consumers.

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**For additional information, the authors recommend:**

CDFA. 2024. “Animal Care Program. Proposition 12, Farm Animal Confinement.” Available at: https://bit.ly/3wV7IKA.
