

North Carolina Agribusiness Suffers as a Result of the Flu

Written By **William S. Durr** (wsd@wardandsmith.com)

April 1, 2010



In April 2009, an influenza virus infection identified as "novel 2009 H1N1" or, simply, the "H1N1 virus," was detected in humans in North America. The virus quickly spread around the world. The first national media reporting on the new virus occurred on or about April 24, 2009, and, in those reports, the national news media referred to the virus as the "swine flu." The use of this phrase caught on and dealt an immediate blow to the already stressed pork industry. Now, some 11 months after the talking heads coined the phrase "swine flu," the pork industry continues to suffer the effects of the H1N1 virus. This article will examine the impact this virus and the misinformation surrounding it have had on the agricultural community, particularly in North Carolina, the nation's second largest pork producer.

The Origin of the H1N1 Virus

The exact origin of the H1N1 virus remains a bit of a mystery. Initial laboratory testing indicated that many of the genes in the H1N1 virus were very similar to normally occurring influenza viruses found in pigs bred and raised in North America. However, further study has shown that the H1N1 virus is very different from what normally occurs in such North American pigs. Instead, it has been determined that the virus has two genes from flu viruses that normally occur in pigs in Europe and Asia as well as genes from human and bird flu viruses. Scientists call this a "quadruple reassortant" virus.

The H1N1 virus can infect pigs, as do many other human flu and bird flu viruses. Pigs infected with the H1N1 virus have been found in countries such as Canada, Australia, and Argentina. However, it was only in October 2009 that the USDA confirmed the first case of the H1N1 virus in a pig located in the United States. It was not until November 2009 that North Carolina saw its first confirmed case of H1N1 virus in swine. In what many may say is the ultimate irony, that pig is believed to have been infected by a human worker.

H1N1's Impact on Agribusiness

On April 26, 2009, only two days after the initial media reports of the H1N1 virus, Tom Vilsack, Secretary of the U.S. Department of Agriculture ("USDA"), issued a statement regarding the H1N1 virus outbreak which, in part, included the following, "there is no evidence at this time showing that swine have been infected with this virus. According to scientists at USDA and the Centers for Disease Control and Prevention, H1N1 flu viruses are not transmitted by food so you cannot get H1N1 flu from eating pork or pork products."

One day later, Secretary Vilsack issued a statement directed to our international trading partners. The statement included the following, "I want to reiterate that U.S. pork is safe...USDA is reminding its trading partners that U.S. pork and pork products are safe and there is no basis for restricting imports of commercially produced U.S. pork and pork products."

Despite these assurances, China, the second largest export market for United States pork in 2008, quickly imposed an import ban on United States pork. Many have speculated that China's ban was due only in part, if

at all, to the H1N1 virus, as China has engaged in rebuilding its domestic swine herds and boosting its own pork production through various subsidies. Regardless of the reasons for the ban, it is expected that U.S. exports of pork products to China in 2009 will be nearly 50 percent less than the \$560 million exported in 2008. Likewise, United States pork producers have seen a similar drop in the value of pork exports to Russia, again not for reasons entirely related to the H1N1 virus outbreak.

It is now very apparent that the scientific evidence related to the H1N1 virus does not support such bans. Three major international health organizations – the World Organization for Animal Health, the United Nations' Food and Agriculture Organization, and the World Health Organization – have issued statements that the H1N1 virus is not transmitted by eating meat.

The Tide Appears to be Turning

Recent developments regarding the China and Russian bans appear promising. On October 29, 2009, Secretary Vilsack announced that China has stated its intent to re-open the Chinese market to United States pork. While the announcement occurred some four months ago, the resumption of pork exports to China has not yet begun due to the failure of China and the United States to reach an agreement on export certificate language.

In early March, the USDA reported a breakthrough in negotiations with Russia to lift its ban on imports from 13 pork producer plants in the United States which account for approximately 90 percent of the pork exported to Russia. These negotiations led to the development of a new veterinary certificate to ensure that pork exports from the United States meet specific Russian requirements.

The next step is for U.S. companies wanting to export to Russia to apply for approval with the Agricultural Marketing Service ("AMS"). The AMS, in collaboration with the USDA Food Safety and Inspection Service ("FSIS"), has developed an Export Verification ("EV") Program for pork addressing Russia's specific product requirements.

EV Programs are designed to facilitate the marketing and export of U.S. products. Companies wishing to participate in the USDA's EV Programs must meet the specified product requirements of the USDA Quality System Assessment ("QSA") Program. The QSA Program ensures that the specified product requirements are supported by a documented quality management system. Products produced under an approved EV Program are eligible to be issued an FSIS Export Certificate. We expect that AMS will issue approvals prior to this article's publication.

In further response to the current difficulties faced by the U.S. pork industry, the USDA completed an additional purchase of \$30 million of pork products in September 2009 and, in early November 2009, the USDA announced its intention to purchase \$50 million of pork products for several federal food nutrition assistance programs, including the National School Lunch Program, the School Breakfast Program, the Summer Food Service Program, the Food Distribution Program on Indian Reservations, the Commodity Supplemental Food Program, and the Emergency Food Assistance Program.

In December 2009, the USDA issued a news release on a study conducted by USDA scientists. This study provides additional confirmation that meat and tissue from pigs exposed to the H1N1 virus do not contain the virus and consumption of the meat cannot infect a human.

These developments, however promising, have come too late for some North Carolina producers. Despite industry steps to cut production and limit supply, four North Carolina pork producers have filed for bankruptcy protection in the last nine months. Until a very recent up-tick in pork prices, the cost to raise a pig was more than \$20 higher than the pig's market price. Indeed, some pork industry publications reported losses

exceeding \$40 per head in November 2009.

What the Future Holds

According to the Centers for Disease Control and Prevention ("CDC"), no states reported widespread influenza activity and only four states reported regional influenza activity during the week ending February 27, 2010. However, of the subtyped A influenza viruses reported to the CDC during the week of February 21, 2010, 99 percent were the H1N1 virus.

Thus, biosecurity measures continue to be critically important to pork producers. Protecting a healthy herd includes the restriction of access to the facility, the development of enhanced biosecurity measures for anyone entering the facility, and the development of strict mandatory leave policies for any worker who has developed influenza-like symptoms.

The pork industry will continue to suffer the effects of the media frenzy surrounding the H1N1 virus. Even with the USDA's repeated efforts to educate the general public and the world regarding the misnomer "swine flu," the use of the term has not been eradicated. In fact, even the CDC's own website still retains a parenthetical reference to "swine flu" when referring to the H1N1 virus.

Members of the Ward and Smith Agribusiness Practice Group continue to counsel pork industry clients on business strategies in this very difficult climate. It is likely, based upon the CDC's February reports cited above, that we have not heard the last of the H1N1 virus and, in the future, we certainly will face new reassortant influenza viruses. The pork industry will need to continue to implement sound business practices and biosecurity measures to meet these challenges and the ever-changing supply and demand cycles.

© 2010, Ward and Smith, P.A.

For further information regarding the issues described above, please contact William S. Durr.

--

This article is not intended to give, and should not be relied upon for, legal advice in any particular circumstance or fact situation. No action should be taken in reliance upon the information contained in this article without obtaining the advice of an attorney.

We are your established legal network with offices in Asheville, Greenville, New Bern, Raleigh, and Wilmington, NC.