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On behalf of the
United States Cattlemen's Association

Submitted to the U.S. Senate
Committee on Agriculture, Nutrition, and Forestry

"*Legislative Hearing to Review S. 4030, the Cattle Price Discovery and Transparency Act Of 2022, and S.3870, the Meat and Poultry Special Investigator Act of 2022*"

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INTRODUCTION

Madam Chair Stabenow, Ranking Member Boozman, and Distinguished Members of the Agricultural Committee.

I am William R. (Ricky) Ruffin here today to testify on behalf of the United States Cattleman's Association (USCA) and on behalf of the nation's cow-calf producers, backgrounders, feedlot operators, livestock haulers, and independent processors. It is quite an honor for a rural Mississippi cattle producer to testify before this distinguished committee, and I am humbled and honored to be here.

My involvement in the commercial cattle business began in the 1960s, as a teenager, working alongside my father, who was one of the first to build a small feed yard in Stringer, Mississippi. Today, I manage a herd of commercial brood cows and run stocker cattle on wheat and rye grass.

I worked with other like-minded producers in my area to establish the Jasper and Smith County Producer's Association, where producers pool together their calf crops each year with a rigid vaccination program and weaning program so that calves can be marketed in groups in truckload lots. The program has been a boon to beginning farmers and ranchers who are still growing their herds.

In addition to the cattle business, I've practiced general law for over 40 years as a sole practitioner and as a small-town country lawyer in Bay Springs, Mississippi.

As a result of what I've learned through serving two terms as a Mississippi Farm Bureau Federation State Director and through my longtime membership with the U.S. Cattlemen's Association, I strongly believe that a grassroots effort by U.S. cattle producers can work positively and effectively with Congress and the Administration to reform U.S. agriculture policy and ensure a fair, competitive marketplace.

Even after a long career in volunteer service and advocacy, where it feels like the wheels of bureaucracy can slow to a crawl at times, I maintain that belief. The two bills before us today, the Cattle Price Discovery and Transparency Act Of 2022 and the Meat and Poultry Special Investigator Act of 2022, are worthy examples of what a grassroots movement—by producers, for producers—can accomplish.

USCA stands with county, state, and national producer associations across the U.S. in supporting these historic pieces of legislation. We offer the following in support of these proposals.

THE CATTLE PRICE DISCOVERY AND TRANSPARENCY ACT

Background

In 1999, Congress passed the Livestock Mandatory Price Reporting Act largely because of the need for cattle producers to have access to more transparent market price information.

First implemented in April 2001, the Livestock Mandatory Reporting (LMR) program requires meatpackers to report primarily prices, but also other relevant information, on purchases of cattle, swine, and boxed beef to the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS). However, cattle producers still are unable to access to most market price information due to restrictive confidentiality guidelines restricting the publishing of that information.

Prior to the establishment of LMR, price reporting was a voluntary practice. USDA AMS market reporters would contact buyers and sellers for market information, and information that could be confirmed was officially reported. Assuredly, voluntary price reporting was unsuccessful.

The first LMR authorization expired in September 2005. Congress reauthorized the program from September 2006 – 2010, and then again from 2010 – 2015. The program currently operates on several temporary extensions of its authorities, although it officially expired on September 30, 2020.

Currently, 38 processing facilities slaughter more than 125,000 head of cattle per year—the threshold for required reporting under LMR. Over 78 percent of total slaughtered cattle, 92 percent of national fed cattle transactions, 33 percent of all cow and bull transactions, and 90 percent of boxed beef volume are covered through LMR.

AMS publishes 25-29 daily cattle reports, 21 weekly cattle reports, 13 monthly cattle reports, 6 daily boxed beef reports, 11 weekly boxed beef reports, and additional weekly and monthly reports.

The Cattle Price Discovery and Transparency Act addresses three main trends negatively impacting the U.S. cattle industry: thinning negotiated trade, decreasing accuracy of price discovery, and diminished competition in negotiated trade. We must have a negotiated cash trade price to establish a market base price, along with a catalog of transparent prices paid to select feed yards for formula cattle to maintain a competitive cattle marketplace.

Thinning Negotiated Trade

The frequency and breadth of data released by USDA AMS through LMR inspired packers in recent years to pull back their participation in the negotiated market and, using the established market, increase the number of cattle purchased through formulas.

As formula trade increases (i.e., special prices paid to select feed yards), the negotiated market becomes thinner. We clearly see this inverse relationship in the below chart produced by USDA AMS Livestock, Poultry & Grain Market News[1].

Annual LMR Live Cattle Purchase Type Breakdown by Region

NATIONAL																	
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Cash	52.1%	49.4%	47.3%	42.6%	38.8%	37.4%	32.6%	26.0%	23.1%	23.1%	21.3%	25.6%	25.7%	25.5%	20.9%	23.4%	19.5%
Formula	33.2%	34.3%	37.4%	39.1%	43.7%	43.1%	47.4%	54.8%	59.8%	56.8%	57.0%	57.6%	57.2%	61.1%	64.8%	62.7%	61.0%
Forward Contract	4.8%	7.2%	6.8%	11.2%	9.5%	11.9%	13.2%	12.0%	10.8%	15.8%	17.5%	12.7%	13.0%	9.6%	11.0%	8.9%	10.9%
Negotiated Grid	9.9%	9.0%	8.5%	7.1%	8.0%	7.6%	6.7%	7.2%	6.3%	4.3%	4.2%	4.1%	4.1%	3.8%	3.3%	5.0%	8.6%

In 2005, cash trade accounted for over half of all live cattle purchases nationally. In 2021, that number drops to below 20 percent. The situation is more dire when we look at the regions individually.

For example, in the charts below, the Texas-Oklahoma-New Mexico region experienced a nearly 40-point decrease in cash sales. Kansas dropped from over 50 percent cash trade in 2005 to 12.5 percent in 2021. Unfortunately, the majority of the cattle produced, backgrounded, and wintered on rye grass in my state of Mississippi and the greater Southeast region enter feedlots in the Texas-Oklahoma-New Mexico regions, as well as the Kansas region.

TEXAS -OKLAHOMA-NEW MEXICO																	
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019*	2020	2021
Cash	47.2%	42.5%	36.7%	31.5%	26.4%	21.5%	17.0%	10.2%	6.1%	3.0%	2.6%	6.4%	9.3%	6.2%	5.4%	10.1%	7.4%
Formula	42.2%	42.2%	48.4%	53.3%	60.4%	66.9%	72.7%	76.0%	83.0%	84.6%	85.9%	82.4%	81.8%	86.2%	87.9%	84.2%	80.8%
Forward Contract	3.1%	5.0%	4.4%	5.8%	5.4%	4.9%	4.4%	5.4%	4.0%	7.4%	9.3%	7.0%	6.2%	4.9%	5.3%	4.3%	5.0%
Negotiated Grid	7.5%	10.3%	10.5%	9.3%	7.8%	6.7%	5.9%	8.4%	6.9%	5.1%	2.1%	4.2%	2.6%	2.7%	1.6%	1.4%	6.8%

KANSAS																	
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Cash	50.6%	47.3%	44.8%	41.7%	39.9%	41.0%	36.9%	27.4%	21.0%	15.6%	12.5%	23.0%	21.9%	19.3%	16.2%	18.2%	12.5%
Formula	44.8%	46.0%	48.5%	48.0%	52.1%	51.6%	54.1%	63.6%	68.5%	69.5%	64.8%	67.3%	70.7%	76.4%	81.6%	76.7%	74.4%
Forward Contract	2.8%	5.4%	5.4%	7.8%	7.0%	6.3%	7.1%	5.7%	6.5%	14.3%	22.2%	9.3%	7.0%	3.9%	1.7%	1.4%	3.8%
Negotiated Grid	1.8%	1.3%	1.3%	2.4%	1.0%	1.0%	2.0%	3.4%	4.0%	0.7%	0.6%	0.4%	0.4%	0.4%	0.5%	3.7%	9.3%

A study compiled by Texas A&M's Agricultural and Food Policy Center[2] forecasted that without enactment of significant cattle market reform legislation like the Cattle Price Discovery and Transparency Act, negotiated trade in Texas-Oklahoma-New Mexico is expected to fall to zero percent by 2026.

Zero percent negotiated trade is a vertically consolidated industry. Producers in the Southeast and all parts of the country will not be able to determine a fair market price for their feeder cattle and will be at the mercy of corporate feed yards who sell cattle through formula pricing, and who are already selling to the packers through exclusive "sweetheart" deals.

[1] (Annual LMR Live Cattle Purchase Type Breakdown by Region, n.d.)

[2] (Benavidez, Anderson, Fischer and Outlaw, 2022)

If packers rely on the information available through LMR to make market-based decisions, then there is an inherent public interest that they then also participate in those markets.

In short, without intervention, the current market trend is expected to continue until negotiated trade is virtually eliminated, spelling the end of the independent U.S. cattle producer. A consolidated industry, almost wholly owned and vertically integrated by multinational corporations, is a threat to the health, safety, and security of our citizens.

Decreasing Accuracy of Price Discovery

Price discovery is the fluctuation of prices to reflect changing real-time market conditions. It is most efficiently facilitated through the cash market, where participants actively work towards an agreeable price point by gathering information on current and expected supply and demand, formulating bids and offers in negotiation, etc.

Alternative Marketing Arrangements, or AMAs, take advantage of the work put in by negotiated market participants to arrive at a mutually agreed-upon “base price”. In other words, accurately priced formula trades rely on the market accuracy of the reported negotiated trade prices, upon which formula prices are based.

As outlined above, negotiated trade across the U.S. is falling. In the Texas-Oklahoma-New Mexico region, negotiated trade is below 10 percent. This is not a significantly nor statistically large enough sample size to ensure accurate price discovery.

As negotiated trade continues to decline in coming years, the cattle market faces the possibility of cattle being priced on transactions that do not reflect cattle values in a competitive market.

For the feeders and packers that benefit from the stability AMAs provide, there is a reduced incentive to revert back to cash sales. This challenge is a primary catalyst for the Cattle Price Discovery and Transparency Act.

Absent federal government involvement, the industry will continue trending towards zero percent negotiated cash trade. As already noted, some regions will arrive at this crisis point as soon as 2026.

Diminished Competition in Negotiated Trade

As formula trade has increased, some plants have begun purchasing their inventory exclusively—or nearly exclusively—using formula pricing. Formula trade heavily favors corporate feeder yards and large operations. I, being a relatively small cattle producer, have very little bargaining power with large corporate feed yards managing hundreds of thousand head of cattle and selling through formula pricing. Should we arrive at zero percent negotiated trade, there will be no established cash price for small feed yards to negotiate with, putting the small cattle producers, like myself, out of business. Cow-calf producers are not marginal operators and have very few, if any, risk management tools or programs available to protect them in the case of down-trending markets. **THE BUCK STOPS WITH THE COW-CALF PRODUCER**. They have no place to pass their cost. All downstream losses wind up on their plates and must be swallowed by them.

With only four major packers nationwide—and in some areas, only two packers within a reasonable trucking distance for live animals—eliminating one buyer from the negotiated market in any given week substantially undermines buyer competition.

Buyer competition is also diminished when plants procure enough cattle in advance to satisfy their needs for the coming week. This captive supply reduces packer's incentive to bid as aggressively as they would if they needed to procure a greater percentage of their animals for the week's kill.

Formula trade and captive supply keep packers from actively negotiating every week, resulting in decreased competition in an already thin market.

THE MEAT AND POULTRY SPECIAL INVESTIGATOR ACT

In June 2021, Senator Jon Tester of Montana held a press conference at quite a fitting location for the occasion. Standing at the Public Auction Yards in Billings with various cattle industry leaders, he announced his intent to introduce the Meat Packing Special Investigator Act in conjunction with Senators Chuck Grassley (R-IA) and Mike Rounds (R-SD).

The bill amends The Department of Agriculture Reorganization Act of 1994 to establish the Office of the Special Investigator for Competition Matters.

It directs coordination between the U.S. Department of Agriculture, the U.S. Department of Justice (DOJ), the Federal Trade Commission, and the U.S. Department of Homeland Security. It grants these organizations subpoena power to aid in the investigation and prosecution of violators of the Packers & Stockyards Act and bolsters the legal power of the USDA by maintaining a staff of attorneys and other professionals with relevant expertise that can elevate cases of corruption.

Later that same month, Reps. Mariannette Miller-Meeks (IA-02) and Abigail Spanberger (VA-07) introduced a companion bill in the House of Representatives.

On May 22, 2020, the U.S. Department of Justice (DOJ) Antitrust Division sent civil investigative demands (CIDs) to the nation's four biggest meatpackers. Since that time, no results have been made publicly available regarding the DOJ's investigation. USCA has encouraged the Antitrust Division to fully complete its civil investigation and make its findings public as soon as possible.

If the Meat Packing Special Investigator Act were enacted, we would see increased coordination between relevant regulatory agencies that could evaluate current market conditions, step in and assist investigations as needed, and provide a pathway forward for a fairer, more competitive marketplace.

CONCLUSION

The cow-calf producer is at the bottom of the entire beef complex. The cow-calf sector, as well as the feeder calf sector, is the most exposed to market prices and downturns in the market and the least equipped to manage it, due to short capital supply.

That is why, in my state, cow-calf producers have dropped from 22,000 in 1997 to approximately 14,000 in 2020. The number of cattle in Mississippi has dropped from around 2 million head in the 1970's to approximately 800,000 head today. This historic decline should concern all those who eat, as these producers are a vital part of a resilient food supply system and a vital part of the economies in rural America.

Formula trading of cattle, combined with no clear established cash base price, creates a lack of market options for independent producers, which will eventually result in most of the producers in my state and the Southeast yielding to corporate interests and going out of business. The number of feed yards with which to market cattle from small producers has dwindled - put out of business by corporate yards using formula pricing.

Over one hundred years ago marked the first—and last—major regulatory action on the U.S. meatpacking industry. The creation of the Packers and Stockyards Act occurred at a time when the National Packing Company, a conglomeration of three of the largest meat processors at the time, controlled 45 percent of the nation's total slaughter capacity and 97 percent of the slaughter capacity in the West.

Today, the "Big Four" meatpackers, as they are now collectively known, have pushed past controlling 80 percent of U.S. steer and heifer slaughter[3]. The game has changed, but the rules have remained stagnant. Without bold action, the United States risks losing its independent livestock producers – which represents a significant loss to the security of our nation's food supply.

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[3] It is important to note here that the packers' special interest group, the North American Meat Institute, has been countering the claim that they control a significant portion of the market by stating that grain fed steers and heifers do not account for all of the beef we consume in the U.S. While it is true that we must add cull cows and bulls to the full equation, the total market share of the Big Four packers still accounts for nearly 70 percent of all commercial slaughter capacity.

That's not much of a talking point though, especially when it only took 45 percent market share to inspire action in the early 20th Century.

References

n.d. Annual LMR Live Cattle Purchase Type Breakdown by Region. [online] USDA AMS Livestock, Poultry & Grain Market News. Available at: <https://www.ams.usda.gov/sites/default/files/media/LMRLiveCattleAnnualPurchaseTypeBreakdown.pdf> [Accessed April 2022].

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