

*Fighting for the U.S. Cattle Producer!*



**R-CALF United Stockgrowers of America**  
P.O. Box 30715  
Billings, MT 59107  
Fax: 406-252-3176  
Phone: 406-252-2516  
Website: [www.r-calfusa.com](http://www.r-calfusa.com)  
E-mail: [r-calfusa@r-calfusa.com](mailto:r-calfusa@r-calfusa.com)

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September 8, 2015

The Honorable Pat Roberts  
Chairman  
Senate Committee on Agriculture, Nutrition & Forestry  
328A Russell Senate Office Building  
Washington, DC 20510

The Honorable Debbie Stabenow  
Ranking Member  
Senate Committee on Agriculture, Nutrition & Forestry  
328A Russell Senate Office Building  
Washington, DC 20510

**Sent via e-mail and Facsimile:**

**Re: Needed Updates for Reauthorization of the Livestock Mandatory Reporting Act**

Dear Chairman Roberts and Ranking Member Stabenow:

The Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF USA) strongly supports the reauthorization of the Livestock Mandatory Reporting Act of 1999 (LMR). R-CALF USA is the largest producer-only national trade association representing the United States cattle industry. Our members' ongoing success as cattle ranchers and cattle farmers is dependent on a free, open and robustly competitive marketplace that accurately discloses the economic value of livestock in a timely and transparent manner. The LMR was established to serve that very function. Below R-CALF USA offers its suggestions on how the LMR should be updated to reflect the considerable changes that have transpired in the U.S. fed cattle market within the past five years.

## **BACKGROUND**

Most R-CALF USA members are cow/calf producers who enjoy transparent price discovery for their feeder calves and cull cows and bulls at their local livestock auction yards that are open to the public. However, the price that is ultimately discovered at these public auction yards is predicated on private transactions that occur much further downstream in the supply chain – at the point where substantially concentrated cattle feeders sell fed cattle to the highly concentrated packers.

Consequently, any manipulation, distortion or non-disclosure of the price paid by any one of the four largest meatpackers (which together control approximately 85% of the fed cattle market<sup>1</sup>) for fed cattle sold by the 1,987 larger feedlots (those with a capacity of more than 1,000 head) that market 87% of the fed cattle in the United States,<sup>2</sup> will reverberate upstream throughout the entire live cattle supply chain. Such reverberations from either actual or reported noncompetitive pricing, as well as undisclosed competitive pricing, will adversely affect the economic viability of every one of the estimated 729,000 remaining stockers, backgrounders, cow/calf producers and seed stock producers that comprise the U.S. live cattle industry.<sup>3</sup>

The reason for this is straightforward: the current value of all unfinished cattle is based on the expected future value of cattle when they are finished and sold to a packer. Thus, the competitiveness, hence the success, of the entire U.S. live cattle industry is dependent first on the discovery of a competitive price arising from the sales transaction between the fed cattle seller and the packer and, second, on the timely disclosure of that price to all market participants.

## THE CHALLENGE

Unfortunately, the competitiveness of the U.S. live cattle industry is in peril. This is because the highly concentrated packing industry remains unrestrained in its ongoing effort to shift cattle from the competitive price discovery market, *i.e.*, the cash or spot market, to various forms of marketing agreements, such as formula contracts and forward contracts. As shown in Chart 1 below, this national shift from the price-discovering cash market to marketing agreements results in large volumes of unpriced, captive supply cattle being committed to the packers, which enable the packers to strategically avoid or shun the competitive cash market.

CHART 1

Purchase Type Breakdown by Region											
NATIONAL											
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015 Jan-Mar
<b>Cash</b>	52.1%	49.4%	47.3%	42.6%	38.8%	37.4%	32.6%	26.0%	23.1%	23.1%	20.8%
<b>Formula</b>	33.2%	34.3%	37.4%	39.1%	43.7%	43.1%	47.4%	54.8%	59.8%	56.8%	54.4%
<b>Forward Contract</b>	4.8%	7.2%	6.8%	11.2%	9.5%	11.9%	13.2%	12.0%	10.8%	15.8%	21.0%
<b>Negotiated Grid</b>	9.9%	9.0%	8.5%	7.1%	8.0%	7.6%	6.7%	7.2%	6.3%	4.3%	3.7%

Source: USDA AMS Livestock, Poultry & Grain Market News, St Joe, MO

Despite the packers' infrequent use of the competitive cash market that is now becoming ultra-thin, the packers nevertheless use the now dysfunctional cash market to establish the base price

<sup>1</sup> See Grain Inspection, Packers & Stockyards Admin., 2013 USDA P&SP ANN. REP.: PACKERS AND STOCKYARDS PROGRAM 26 (2014), available at [http://www.gipsa.usda.gov/psp/publication/ar/2013\\_psp\\_annual\\_report.pdf](http://www.gipsa.usda.gov/psp/publication/ar/2013_psp_annual_report.pdf).

<sup>2</sup> See Nat'l Agric. Statistics Serv., FEB. 2015 USDA CATTLE ON FEED 15, available at <http://usda.mannlib.cornell.edu/usda/nass/CattOnFe/2010s/2015/CattOnFe-02-20-2015.pdf>.

<sup>3</sup> See Nat'l Agric. Statistics Serv., 2012 USDA FARMS, LAND IN FARMS, AND LIVESTOCK OPERATIONS: SUMMARY 18 (2013), available at <http://usda01.library.cornell.edu/usda/current/FarmLandIn/FarmLandIn-02-19-2013.pdf> (showing 729,000 beef cattle operations in the U.S. in 2012).

for all their unpriced, committed cattle. In other words, and as exemplified in Chart 2 below, the cash sales of only 3% of the fed cattle marketed in the Texas/Oklahoma/New Mexico fed cattle market established the base price for 97% of the cattle marketed in that region in 2014. Alarming, the cash sales of only 1.5% of the fed cattle established the base price for 98.5% of the cattle marketed in that region in the first three months of 2015.

**CHART 2**

<b>Purchase Type Breakdown by Region</b>											
<b>TEXAS -OKLAHOMA-NEW MEXICO</b>											
	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015 Jan-Mar</b>
<b>Cash</b>	47.2%	42.5%	36.7%	31.5%	26.4%	21.5%	17.0%	10.2%	6.1%	3.0%	1.5%
<b>Formula</b>	42.2%	42.2%	48.4%	53.3%	60.4%	66.9%	72.7%	76.0%	83.0%	84.6%	83.4%
<b>Forward Contract</b>	3.1%	5.0%	4.4%	5.8%	5.4%	4.9%	4.4%	5.4%	4.0%	7.4%	13.4%
<b>Negotiated Grid</b>	7.5%	10.3%	10.5%	9.3%	7.8%	6.7%	5.9%	8.4%	6.9%	5.1%	1.7%

**Source: USDA AMS Livestock, Poultry & Grain Market News, St Joe, MO**

It does not take an economics degree to discern that this is not a competitive market nor does it take a law degree to identify this manifestation of abusive market power. Because of the ongoing assault on the competitiveness of our U.S. live cattle industry, it is becoming more and more important that the LMR be amended to ensure timely disclosure of cattle sales transactions occurring in the fed cattle and slaughter-ready (*i.e.*, cows and bulls) cattle market, particularly in regions where the competitive market has been seriously eroded or has disappeared altogether. In the 2010 U.S. Department of Justice and the U.S. Department of Agriculture (USDA) joint workshop on livestock competition held in Fort Collins, Colorado, Bruce Cobb, General Manager of Consolidated Beef Producers, a fed cattle marketing cooperative, testified that his company conducted an assessment of the packers’ buying conduct in the Texas/Oklahoma/New Mexico fed cattle markets during the previous fifty-two weeks. During that period, he stated there were:

18 weeks in which there was only one market participant [meatpacker buyer],[and] four weeks in which there were none . . . . So we consistently can see region by region where we had a presence where the region is dominated by one buyer, clear and simple.<sup>4</sup>

In our assessment of the current operation of the LMR, the transactions that occurred during the 18 weeks in which Mr. Cobb’s analysis determined there was only one packer buyer in the Texas/Oklahoma/New Mexico fed cattle market would not be properly reported because of Congress’ concern that the identity of the lone packer buyer might be discovered and his/her proprietary bids might be disclosed. In other words, the current LMR fails to report sales data in regions where such reporting is needed most due to the Act’s misplaced confidentiality guidelines.

<sup>4</sup> Statement of Bruce Cobb, General Manager of Consolidated Beef Producers, *Public Workshops Exploring Competition Issues in Agriculture: Livestock Workshop Before the U.S. Department of Justice and U.S. Department of Agriculture*, 210-12 (2010), available at <http://www.justice.gov/atr/public/workshops/ag2010/colorado-agworkshop-transcript.pdf>.

A clear indicator that the U.S. cattle market is becoming both less competitive and less transparent was contained in the USDA's National Feeder & Stocker Cattle Summary report for the two weeks ending July 13, 2012. In that report the USDA issued a dire warning to the U.S. cattle industry regarding the packers' increased use of captive supplies and their effect on price transparency and disclosure. The report stated:

The fed cattle cash market lost [\$]2.00 this past week to [\$]115.00 with negotiated [cash] sales now routinely making up less than 20 percent of the weekly slaughter. Over 60 percent of the weekly movement is formula-priced off the scant cash trade that is more like a dictatorship than a democracy. Soon, cattle feeders may be forced to ship their cattle with only a ballpark idea of what their check will look like – similar to the sheep industry.<sup>5</sup>

As a presumptive example of how public market information is suppressed by the politically powerful, captive-supply wielding packers, and how even the USDA appears complicit in withholding relevant market information to the cattle industry, the above referenced report was scrubbed of the above quoted information by the USDA after the original report had been publicly issued and subsequently published by the agricultural trade press.<sup>6</sup>

## **PROPOSED UPDATES**

In addition to the heightened need to ensure that the LMR provides timely and accurate price disclosure in the face of a rapidly shrinking price discover market as well as the need to reform the LMR to require reporting of all cattle transactions, including those that occur in regions with little to no competition, reforms must also be made to address the many new forms of cattle procurement practices that have emerged over the past five years and that are causing the marketplace to become much less transparent.

Below are some of the new cattle procurement methods that are causing a significant reduction to price transparency. Although these new and varied cattle procurement tools are difficult to document, R-CALF USA has learned about them through anecdotal information provided by its cattle-feeding members. The LMR should be amended to ensure that transactions under these new procurement methods are timely and accurately reported as negotiated sales.

1. Packers appear to be relying more and more on negotiated, basis trade-type contracts that do not appear to be included in deliverable supply, meaning they likely are not reported at the time they are negotiated, if they are reported at all. The LMR must ensure that cattle sold on a basis trade-type contract be timely and accurately identified and reported.

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<sup>5</sup> USDA-MO, DEPT. OF AG MARKET NEWS, NATIONAL FEEDER & STOCKER CATTLE SUMMARY – TWO WEEKS ENDING 07/13/2012 (2012), *available at* [http://search.ams.usda.gov/mndms/2012/07/SJ\\_LS85020120713.TXT](http://search.ams.usda.gov/mndms/2012/07/SJ_LS85020120713.TXT) (original before USDA scrubbing).

<sup>6</sup> *See, e.g., Feeder Cattle Review: Calf Prices Fell Before Holiday Break*, DROVERS CATTLE NETWORK (July 13, 2012), <http://www.cattlenetwork.com/cattle-news/markets/feeder-cattle/Feeder-cattle-review-Calf-prices-drop-8-15-lower-before-holiday-162401246.html> (an example of the publication of the original report in the agricultural trade press) (last visited Feb. 20, 2013); *see also* USDA-MO, DEPT. OF AG MARKET NEWS, *supra* note 2 (scrubbed USDA report with caption “correction to narrative”).

2. A new and ever-more frequent packer procurement practice is to purchase cash cattle through a negotiated sale but then require the feeder to continue feeding the cattle for an additional two or three weeks, or even longer, prior to delivery. Some industry analysts indicate that these cattle are reported under the LMR as cash sales on the day of the agreement. If this is true, then the volume of captive supply cattle is being underreported because these so-called “cash” sales with an extended delivery period represent a conversion of cash cattle to captive supply cattle. The LMR must ensure, at the very least, that these extended delivery cash sales are identified and reported as to when they are negotiated and when delivery actually occurs.
3. Over the past few years, packers have deviated from their customary purchasing timeframes and have waited until after the close of business, hence after the close of all daily reporting times, to offer higher bids for cattle. It has been expressed by feeders that these after-hour bids have been made as late as 8:00 to 10:00 p.m. Central Time. It has been further expressed that these higher bids are frequently made after-hours on Friday, presumably to avoid any reporting requirements until the following Monday, if they are reported at all. One cattle feeder stated that he declined a bid offered by a packer during normal business hours only to have the packer call him back about an hour after close-of-business to offer a bid that was a full dollar more per hundredweight than the previous bid. The LMR must ensure, at the very least, that packers cannot game the system by either not reporting transaction or by delaying the reporting of transactions by strategically timing their purchases after the close of normal business hours.

In addition to the new procurement practices identified by its members, R-CALF USA has learned through an industry commentary of another new cattle procurement method that likewise appears to circumvent reporting requirements for cash sales under the LMR:

‘Tops’ trades- fed cattle trade routinely at a negotiated \$0.50 to \$2 [above the current spot market]. These trades are currently folded into ‘formula’ sales despite the fact the packer is paying a premium to spot cash market sales for the same week as incentive to favor one packer over another.<sup>7</sup>

We urge Congress to update the LMR to accurately capture this new “Tops” procurement method as a reportable cash sale.

Lastly, R-CALF USA encourages Congress to review the LMR deficiencies discovered in 2005 by the Government Accountability Office (GAO). Some of the deficiencies identified by the GAO would only be known to those with insider information regarding how the USDA Agriculture Marketing Service (AMS) actually administers the LMR and, consequently, R-CALF USA has no knowledge regarding whether or not the identified deficiencies were ever properly addressed. Specifically, the GAO reported on a number of deficiencies in the LMR with regard to the

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<sup>7</sup> *The Evolution of Price Discovery*, THE BEEF, Cassie Fish (July 21, 2015), available at [http://www.thebeefread.com/page/6/?utm\\_source=Master%20List&utm\\_campaign=40cfbf0a83-2015\\_09\\_049\\_4\\_2015&utm\\_medium=email&utm\\_term=0\\_d51f5e6a0f-40cfbf0a83-148953709&ct=t%282015\\_09\\_049\\_4\\_2015%29&mc\\_cid=40cfbf0a83&mc\\_eid=1a06495add#038;utm\\_campaign=40cfbf0a83-2015\\_09\\_049\\_4\\_2015&utm\\_medium=email&utm\\_term=0\\_d51f5e6a0f-40cfbf0a83-148953709&ct=t%282015\\_09\\_049\\_4\\_2015%29&mc\\_cid=40cfbf0a83&mc\\_eid=1a06495add](http://www.thebeefread.com/page/6/?utm_source=Master%20List&utm_campaign=40cfbf0a83-2015_09_049_4_2015&utm_medium=email&utm_term=0_d51f5e6a0f-40cfbf0a83-148953709&ct=t%282015_09_049_4_2015%29&mc_cid=40cfbf0a83&mc_eid=1a06495add#038;utm_campaign=40cfbf0a83-2015_09_049_4_2015&utm_medium=email&utm_term=0_d51f5e6a0f-40cfbf0a83-148953709&ct=t%282015_09_049_4_2015%29&mc_cid=40cfbf0a83&mc_eid=1a06495add)

transparency of the reporting system and accuracy of the data reported.<sup>8</sup> Included among the deficiencies identified was the exclusion of a large percentage of cattle transaction data.<sup>9</sup> In addition to the lack of transparency and accuracy of marketing transaction data already impacting the U.S. live cattle industry, the so-called 3/70/20 confidentiality guidelines that structurally limit reports of transactions in concentrated regions likely are masking critical pricing information. The confidentiality guidelines that likely restrict or eliminate the reporting of currently reported cattle transaction data include the requirement that at least 3 reporting entities provide data at least 50 percent of the time during a 60-day period; no entity may provide more than 70 percent of the data during a 60-day period; and no entity may be the only reporting industry more than 20 percent of the time during a 60-day period.<sup>10</sup> As mentioned above, the nondisclosure of pricing information in regions with little to no competition is paradoxical to the LMR's purpose of providing essential price transparency to the U.S. cattle industry. Congress should investigate the extent to which unreported pricing data are impacting domestic cattle prices prior to reauthorizing any confidentiality guidelines that effectively limit price transparency.

We appreciate that Congress continues to reauthorize the LMR every five years to enable it to continually update the LMR to address the ever-changing cattle procurement methods in the marketplace. A properly updated LMR will serve the vitally important objective of providing cattle industry participants with timely and accurate market information regarding fed cattle prices.

We hope the Senate Committee on Agriculture, Nutrition & Forestry will carefully consider our comments and conduct a hearing on the reauthorization of the Livestock Mandatory Reporting Act to ensure the Act is properly updated to reflect the considerable changes in our industry that have transpired within the past five years.

Please let us know if we can be of any assistance as you consider this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Bullard". The signature is stylized and cursive.

Bill Bullard, CEO

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<sup>8</sup> See U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-06-202, LIVESTOCK MARKET REPORTING: USDA HAS TAKEN SOME STEPS TO ENSURE QUALITY, BUT ADDITIONAL EFFORTS ARE NEEDED (Dec. 2005).

<sup>9</sup> See U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-06-202, LIVESTOCK MARKET REPORTING: USDA HAS TAKEN SOME STEPS TO ENSURE QUALITY, BUT ADDITIONAL EFFORTS ARE NEEDED 10 (Dec. 2005).

<sup>10</sup> *USDA Announces New Confidentiality Guidelines for Livestock Mandatory Reporting Program*, U.S. Department of Agriculture, Release No. 0132.01, August 3, 2001.