

Cattle Market Price Discovery and Transparency Act of 2022
Review and Recommendation for its Competition Provisions

Prepared by R-CALF USA

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R-CALF USA's primary interest in the *Cattle Market Price Discovery and Transparency Act of 2022* (modified compromise bill) centers on SEC. 7. MARKET ACQUISITION OF FED CATTLE and SEC. 259. MANDATORY MINIMUMS.

Modified Compromise Bill Provisions:

- The modified compromise bill rejects a national per-plant minimum negotiated volume requirement and instead delegates to the U.S. Department of Agriculture the authority to divide the continental United States into between five and seven regions.
- Only packers slaughtering 5% or more of the national fed cattle slaughter volume are subject to the modified compromise bill, a threshold likely only met by each of the "Big 4" packers.
- USDA must establish the mandatory minimum percentage of trade each covered packer located within that region must transact in the combined negotiated cash and negotiated grid markets (auction and video sales are included). In effect, each covered packer located in a particular region is assigned the mandatory minimum established for that region.
- The volume of cattle comprising the combined negotiated cash and negotiated grid sales must be slaughtered within 14 days of the purchase transaction.
- Each region may differ with respect to their assigned mandatory minimums, but no region can be assigned a mandatory minimum of more than 50%.
- Each covered packer is required to meet the mandatory minimums assigned to its respective region within a period of between seven and 30 days.
- The USDA is authorized to take up to two years to implement the modified compromise bill and may set mandatory minimums at the average percentage of trade that each region realized during calendar years 2020 and 2021.
- Within two years of implementation, USDA must conduct its first review and then must conduct subsequent reviews at least every five years thereafter.
- Packers violating mandatory minimum purchase requirements (as determined each week even though packers have up to 30 days to comply) may be subject to a \$90,000 fine for each violation.

General Concerns:

- Given the modified compromise bill's regional structure, it is most likely that alternative marketing arrangements (AMAs), in particular formula contracts tied to the cash market, will continue to predominate the national cattle market. However, new studies that focus on the combined effects of buyer power and AMAs raise concerns that a market predominated by AMAs will not ensure that cattle prices respond appropriately to supply and demand signals (Garrido, Miller, Kim and Weinberg, 2022; Pudenz and Schulz, 2022; Carstensen, 2022).
- Given that mandatory minimums are most likely to be different for each region, Congress must be viewing each region as an economically independent geographic area. However, new research

shows they are not, principally because fed cattle are transferred from one region to another (Garrido, Miller, Kim and Weinberg, 2022).

- Given that individual packing plants within each region are required to purchase the requisite mandatory minimums assigned to their region, but are not required to purchase their requisite minimums within their region, it is possible, if not likely, that the percentage of fed cattle in a particular region actually sold through negotiated cash or negotiated grid markets will be much less than the assigned mandatory minimum for that region, thus threatening timely market access for some, if not many, cash sellers. For example, given the congregation of “Big 4” packing plants near the current Kansas and Texas/Oklahoma/New Mexico regions, all those packing plants could elect to purchase their respective mandatory minimums in only one or the other region.
- Given the percentage of mandatory minimum purchases cannot exceed 50% in any region, Congress appears to have arbitrarily determined that the optimal level of negotiated trade in each region is no higher than 50%. Thus, Congress is undermining the very process it has established to determine mandatory minimum percentages – the process delegated to USDA to determine optimal mandatory minimum requirements. For example, if USDA’s analysis determined that a particular region required 60% negotiated purchases to overcome buyer power and/or a lack of competition in that region, USDA would be precluded from assigning to that region the optimal minimum percentage it had determined necessary.
- Given that packers have between seven and 30 days with which to comply with the mandatory minimum purchase requirements, it is possible that packers could shun the cash market for one, two or more weeks, thus depriving cash sellers of timely market access.
- Given the protracted rollout of the modified compromise bill, *i.e.*, up to two years to implement, and given USDA can establish the same minimums as realized on average during 2020 and 2021 (a period during which USDA data show the cattle industry lost another 1,000 small, independent feedlots), the modified compromise bill will do nothing to provide timely relief for the untold number of cattle producers who are presently suffering, and who have suffered during the past seven years, from a chronically dysfunctional market and perhaps the most severe economic cost/price squeeze in history. Consequently, the modified compromise bill is a woefully inadequate response to the severe chronic crisis in the U.S. cattle industry.
- The modified compromise bill flies in the face of R-CALF USA’s class action antitrust lawsuit against the “Big 4” packers, *In re Cattle Antitrust Litigation*, and likely in the face of the ongoing U.S. Department of Justice investigation. This is because the modified compromise bill would lock in for up to at least two years, if not indefinitely, the very market structure that facilitated and incentivized the alleged anticompetitive conduct alleged in R-CALF USA’s lawsuit.

Recommendation:

- Congress should table the modified compromise bill pending the conclusion of R-CALF USA’s antitrust lawsuit and/or the conclusion of the DOJ’s investigation. Unlike S.949, the modified compromise bill would constitute congressional approval to maintain the current proportion of cash versus non-cash purchases that facilitated and incentivized the alleged anticompetitive conduct alleged in R-CALF USA’s lawsuit and potentially the conduct under investigation by the DOJ. Unfortunately, this is precisely the unintended effect that the modified compromise bill would have.