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April 18, 2022

The Honorable Debbie Stabenow
Chairwoman
U.S. Senate Committee on Agriculture,
Nutrition, and Forestry

The Honorable John Boozman
Ranking Member
U.S. Senate Committee on Agriculture,
Nutrition, and Forestry

TRANSMITTED ELECTRONICALLY

Dear Chairwoman Stabenow, Ranking Member Boozman, and Members of the Committee:

For good reason, R-CALF USA is deeply concerned that Section 7 (Market Acquisition of Fed Cattle), including new Section 259 (Mandatory Minimums), (collectively, Sec. 7 *et seq*.) included in the *Cattle Price Discovery and Transparency Act of 2022* (S.4030) represents an ineffectual reform to the abject market failure plaguing the U.S. fed cattle market since 2015. For reasons stated below, R-CALF USA strongly urges the committee to reject Sec. 7 *et seq*. (The basis for R-CALF USA's standing is found farther below.)

On a continuum between maintaining the status quo and achieving reform, Sec. 7 *et seq*. decisively favors the status quo. The only market-impacting directives from Congress are that the U.S. Department of Agriculture (USDA) may not change the five in-region proportions of negotiated transactions below their 2020-2021 averages and may not increase any region's negotiated quota above 50%. But even the unacceptably low negotiated floor is likely inapplicable as Congress further directs the USDA to establish as many as seven new regions, without effectively preserving the preexisting regions to which the 2020-2021 average proportions exclusively apply.

In effect, Sec. 7 *et seq*. constitutes the granting to the USDA carte blanche as to whether any change in the current mix of negotiated versus non-negotiated transactions will ever occur in the fed cattle market, and the USDA will have up to two years to make its initial decision.

Very recently, two economic studies have emerged that should substantially alter Congress' thinking and goals. Chief among the goals of Sec. 7 *et seq*. is to determine the levels of negotiated transactions necessary to achieve robust price discovery in each of the up to seven regions without disrupting, to the extent practicable, contemporary fed cattle purchase practices, which include pre-existing contractual arrangements (*i.e*., alternative marketing arrangements (AMAs) such as formula contracts) of the packers. But one of the new studies suggest the pre-existing AMAs of the packers are themselves the likely culprit undermining fed cattle prices (hence, true price discovery) when, as here, those contractual arrangements are combined with an oligopolistic packing industry.[1] The other study suggests it is the packers' internal coordination of their multiple plants in combination with

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[1] *See* Buyer Power in the Beef Packing Industry: An Update on Research in Progress, Francisco Garrido, Nathan Miller et al., April 13, 2022 (hereafter, "the Miller study"), available at http://www.nathanhmiller.org/cattlemarkets.pdf.

other factors, including AMAs, that explain persistently wide spreads between beef prices and fed cattle prices at the aggregate level.[2]

Given these findings, a prudent course of action would be for Congress to reject Sec. 7 *et seq*. and, instead, hold a hearing to learn first-hand the ramifications of AMAs and packer concentration on the cattle market even when negotiated transactions are deemed sufficient for price discovery purposes under earlier economic theories. Further, Congress should explore the ramifications of multi-plant coordination to determine whether the adverse effects of such coordination are exacerbated when a packing firm coordinates its procurement and slaughter activities among its multiple plants in multiple regions, each with differing negotiated transaction requirements.

But there are more reasons to reject Sec. 7 *et seq*. First, it codifies both a 50% maximum requirement for negotiated transactions and the unfounded and controversial notion that the fed cattle market's ills can be rectified using arbitrary regions that are not themselves economically independent geographic areas.[3] Consequently, the enactment of Sec. 7 *et seq.* will stifle implementation of President Biden's July 9, 2021 executive order. That order urges the USDA to write rules to identify recurrent practices that violate the Packers and Stockyards Act of 1921 (PSA).

However, pursuant to that order, a packer's practice of purchasing out-of-region cattle to suppress in-region prices intrinsically tied to the base price of the packers' own AMA contracts could be deemed an unfair practice under the PSA that would call for a national solution. But such a solution and/or its enforcement could prove untenable should Congress sanction a regional approach with differing procurement requirements while the packing firms themselves operate nationally.

Additionally, if emerging studies determine that packer buyer power is accentuated when captive supplies, such as AMAs, account for more than 50% of packer procurement, Sec. 7 *et seq*. would preempt USDA's ability to require non-captive procurements to exceed 50%. This is no small concern given the finding in the Miller study that a one percent increase in the fraction of cattle purchased under AMAs is associated with a 5.9% reduction in the cash market price.[4]

Sec. 7 *et seq*., therefore, does not compliment the USDA's preexisting authorities to promulgate rules under the PSA to protect cattle producers from unfair, deceptive, unjustly discriminatory, or preferential practices. Instead, it encumbers the agency by limiting its regulatory options to that of recognizing cattle procurement regions heretofore established exclusively for price reporting purposes, and by limiting its ability to restore whatever appropriate mix between negotiated transactions and formula transactions is needed to ensure packers do not maintain an unfair pricing advantage over cattle sellers.

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[2] *See* Multi-plant Coordination in the US Beef Packing Industry, Christopher Pudenz and Lee L. Schulz, Center for Agricultural and Rural Development, Iowa State University (hereafter, "ISU Study"), available at https://www.card.iastate.edu/products/publications/synopsis/?p=1343#:~:text=Abstract%20U.S.%20beef%20packers%20openly%20began%20employing%20multi-plant,downstream%20beef%20prices%20and%20upstream%20fed%20cattle%20prices.

[3] *See* Miller study, at 8.

[4] *See Id*., at 13.

Second, while Sec. 7 *et seq*. suggests that the USDA examine academic literature to, *inter alia*, eliminate the potential for price manipulation, the agency's Office of the Chief Economist completed just such a review as recently as last year and found, "Indeed, a large body of empirical work by agricultural economists has investigated the question over the past decades and has tended to find that meatpacking plants do not exercise market power to harm livestock suppliers or consumers."[5] The agency's ultimate conclusion that "[t]he resulting reduction in demand for livestock and supply of beef and pork [a function of reduced packing capacity] caused lower livestock prices and higher meat prices in the spring and summer of 2020," despite the manifest lower livestock prices and higher beef prices since 2015, is ominously void of long-recognized findings in other academic literature that a negative correlation exists between AMA purchases and cash market prices,[6] and that AMAs can distort pricing incentives."[7] As exemplified here, the USDA's ongoing defense of the packers' procurement practices, despite evidence to the contrary as to their effects, favors minimal, if any, movement beyond the status quo under Sec. 7 *et seq*.

Particularly noteworthy is the finding in the Miller study that the effect of AMAs interact with oligopsony power, and modeling shows that the current mix of negotiated transactions versus AMAs may result in a 100% increase in packer markdowns that would otherwise be expected to arise without the AMAs.[8] This finding has significant implications regarding the packers' current exercise of buyer power in the fed cattle market that has heretofore been ignored.

Congress should take note that from 2015-2019, the regions consisting of TX/OK/NM and Kansas – the regions with the lowest proportion of negotiated cash sales (7.4% and 12.5%, respectively[9]), sold fed cattle for the lowest average prices within the 5-area procurement region.[10] Conversely, the highest average cattle prices within the 5-area region were sold in the IA/MN/MO, and Nebraska regions,[11] which also had the highest proportion of cash sales (47.5% and 31.1%, respectively).[12] Indeed, the average difference in prices between the two low and two high regions was $100 per head during this five-year period. This argues against any extension of the status quo.

Third, because Sec. 7 *et seq*. allows packers between 7-30 days with which to comply with the mandatory minimum purchase requirements, it is possible that packers could shun the negotiated market for 1 or more weeks, thus depriving cash sellers timely market access.

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[5] The Impact of Coronavirus COVID-19 on U.S. Meat and Livestock Markets, USDA Office of the Chief Economist, J Joseph Balagtas and Joseph Cooper, March 2021, at 10, available at https://www.usda.gov/sites/default/files/documents/covid-impact-livestock-markets.pdf.
[6] *See* Miller study, at 13.
[7] *See Id*., at 12.
[8] *See Id*., at 18-19 (A markdown (downstream price minus price paid for cattle minus marginal cost of packing), is a potentially new measure for evaluating buyer power or oligopsony power in the packing industry).
[9] *See* National Weekly Cattle And Beef Summary, USDA Livestock, Poultry & Grain Market News, Jan. 17, 2022, (data based for calendar year 2021), available at https://usda.library.cornell.edu/concern/publications/qr46r082r?locale=en.
[10] *See* Miller study, at 8.
[11] *See Ibid.*
[12] *See* National Weekly Cattle And Beef Summary, USDA Livestock, Poultry & Grain Market News, Jan. 17, 2022, (data based for calendar year 2021), available at https://usda.library.cornell.edu/concern/publications/qr46r082r?locale=en.

Given the substantial harm America's cattle producers have suffered under the chronically dysfunctional cattle market since at least 2015, Congress should take swift and decisive action, but not the ill-informed and minimalist action embodied in Sec. 7 *et seq*. Instead, Congress should amend the *Cattle Price Discovery and Transparency Act of 2022* (S.4030) by deleting entirely Sec. 7 *et seq*. and inserting in its place the entire contents of S.949, the spot market protection bill. Unlike Sec. 7 *et seq*., S.949 would immediately lessen the adverse effects of AMAs found in the Miller study by reducing AMA volume to no more than 50% nationwide. It also would alleviate the potential problems associated with reliance on non-economically independent geographic areas subject to multi-plant coordination by packers with plants located in one or more regions. And, importantly, S.949 could be implemented immediately following enactment and would then immediately cause packers to begin once again to compete against each other for available fed cattle supplies. While acknowledging that S.949 would only reduce the negative price impact of AMAs by 50%, not eliminate it, R-CALF USA suggests this as a preferred starting point. Next logical steps would include severing the link between the remaining AMAs and prices realized in the cash market, which are presently subject to packer control, and ending packer-ownership and -control of cattle.

R-CALF USA has standing to make this important request as its about 5,000 independent cattle-producing members in 43 states makes it the largest U.S. cattle trade association whose membership is exclusively voluntary and whose voting members consist exclusively of live cattle producers within the multi-segmented beef supply chain. R-CALF USA's members comprise the entire live cattle supply chain – from seedstock producers to cow/calf producers, to backgrounders and stockers, and to cattle feedlots, both farmer/feeders and large commercial feedlots.

R-CALF USA's members have been substantially harmed by the disconnect between live cattle prices and wholesale and retail beef prices that has persisted since 2015. That disconnect results in our members' inability to achieve timely market access and recovery of production costs plus a profit from the market. Anecdotal information suggests large numbers of independent cattle producers have been and continue to be forced to exit the industry. Data from the USDA indicates another 1,000 feedlots exited the industry between 2020 and 2021, representing about 4% of all remaining feedlots. If independent beef cattle operations exited the industry at the same 4% rate during that period, then another 30,000 beef cattle operations would have been forced from the U.S. cattle industry in one year.[13]

Finally, Congress should be cognizant of the dire conditions faced by independent U.S. cattle producers this year. The prolonged and chronically dysfunctional cattle market combined with persistent and widespread drought, and further worsened by record feed prices, will likely spell absolute disaster for the United States cattle industry as we know it today.

Sincerely,

Bill Bullard, CEO
406-670-8157

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[13] The USDA no longer publishes annual data regarding number of beef cattle operations remaining in the United States, so this estimate is conjecture pending the completion of the next 5-year Census of Agriculture.