US Senators Deb Fischer and Ron Wyden

Cattle Market

• Transparency Act •

There are several, interrelated issues impacting the cattle market and industry right now. These issues include: packer concentration and decreased competition, a declining negotiated cash market, and subsequent decline in price discovery and transparent and accurate price information.

In an effort to restore transparency, predictability and accountability in cattle markets, the Cattle Market Transparency Act focuses on two main elements: restoring regionally sufficient negotiated cash trade and mandates regional negotiated cash minimums and adds new reporting requirements in order to provide producers with more information.

1. Establishes regional mandatory minimums of negotiated cash trades to achieve price discovery in cattle marketing regions

One of the biggest challenges facing the cattle industry right now is the declining number of participants in the negotiated cash market. Negotiated trade also called the "cash" or "spot" trade, has been replaced by formula pricing, forward markets and longer term marketing agreements—these are collectively referred to as "alternative marketing arrangements" (AMAs).

Cash transactions involve a bid and ask process. The cash market facilitates price discovery, which is the process of establishing the "going rate" of cattle based on market conditions at any given time. Formula pricing, where a reference price from another published report is used as the base price for the transaction, is becoming more common. Much of formula pricing uses negotiated cash prices as the base in the formula. Thus, negotiated cash trade is being leveraged more heavily even as it declines in volume.[1] Additionally, fewer cash transactions result in less competition amongst packers which leads to increased market vulnerability.

The cash market and lack of price discovery issue is not a national issue, but a regional one. The shift from cash to AMAs has been more dramatic in certain regions. For example, from 2005 to 2018, there has been a 40% decrease in cash sales in the Texas/Oklahoma/New Mexico cattle region. Meanwhile, in the Iowa/Minnesota region, transactions in the cash market have dropped only 16% during the same time period. Therefore, any solution that seeks to restore sufficient levels of cash trade must be based on regional need, not national. This legislation does just that by requiring the Secretary to establish regionally sufficient levels of negotiated cash trade, seek public comment on those levels, then implement. In the initial ruling, the regionally sufficient level of transactions will be subject to a floor. The legislation states that in their initial ruling, USDA may not set minimums that are less than a 3 year average percentage of negotiated and negotiated grid transactions by region. Under this new program, packers, on a plant by plant basis, will be required to procure a certain amount of cattle from the cash market in order to facilitate price discovery.

[1] https://www.ams.usda.gov/sites/default/files/media/LMR2018ReporttoCongress.pdf

2. **Adds new reporting requirements and addresses confidentiality guidelines in Livestock Mandatory Reporting.**

In 1999, Congress passed the Livestock Mandatory Price Reporting Act largely because of the perceived need for cattle producers to have access to more transparent market price information. Roughly two decades later, this need still exists, and while mandatory reporting has provided additional price transparency, packers have become the main beneficiaries, and LMR has evolved from a price-discovery tool for producers to a price-determination tool for the packers submitting data. Accordingly, the Cattle Market Transparency Act, creates new reporting requirements to improve price discovery and provide producers with additional information going into negotiations. These provisions are:

- **Beef Contracts Library--**Mandates the creation and maintenance of a library of marketing contracts offered by packers to producers. While confidentiality would be maintained in the monthly report, knowing certain contract provisions exist in the market place is valuable and could assist a producer with negotiating a more favorable contract with a packer in the future.

- **14 Day Slaughter Reporting**—Mandates that a packer report the number of cattle scheduled to be delivered for slaughter each day for the next 14 days. This tool could be used by the industry to project estimated slaughter numbers and packers' needs for cattle. This requirement already exists for the swine industry and has proven beneficial.

Another issue that also constrains LMR's effectiveness as a price discovery mechanism is confidentiality guidelines. The 1999 Act directs USDA to report information *in a manner* that ensures confidentiality is preserved through the LMR program regarding: "(1) the identity of persons, including parties to a contract; and (2) proprietary business information." However, USDA via regulation (7 CFR Part 59) has interpreted statute to mean "report everything *unless* it violates confidentiality guidelines." Unfortunately, this interpretation has led to several reports being consistently withheld in certain regions due to confidentiality violations. This is not a new concern and USDA commissioned a study released in 2019 entitled "Feasibility Assessment of Reporting Negotiated Slaughter Cattle Purchases in Separate Delivery Window Categories" that made several recommendations that, if adopted, would enable USDA to satisfy confidentiality requirements and report the information they are required by law to report. This legislation:

- **Doubles down on confidentiality--**The legislation makes it clear that all information should be reported in a manner that ensures confidentiality and adds "Nothing in this section permits the Secretary, or any officer or employee of the Secretary, to withhold from the public the information [required to be reported under LMR]."