U.S. Senator Deb Fischer

Cattle Market

• Transparency Act •

A number of interrelated issues are hurting the cattle market, including: packer concentration and decreased competition, a declining negotiated cash market, and subsequent decline in price discovery and transparent, accurate price information.

To restore transparency and accountability in the cattle market, the Cattle Market Transparency Act of 2021 focuses on two main elements: (1) ensuring regionally sufficient negotiated cash trade and (2) equipping producers with more information.

1. Establishes regional mandatory minimum thresholds of negotiated cash trades to enable price discovery in cattle marketing regions

One of the biggest challenges facing the cattle industry is the declining number of participants in the negotiated cash market. In order to have robust price discovery that provides accurate information about market dynamics along the supply chain, you need a competitive cash market with multiple price discovery points. Negotiated trade, also called the "cash" or "spot" trade, has been replaced by formula pricing, forward markets, and longer term marketing agreements—collectively referred to as "alternative marketing arrangements" (AMAs).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 a published report is used as the base price for the transaction, is becoming more common. The bulk of formula pricing uses negotiated cash prices as the base in the formula—meaning information from the negotiated cash market is being heavily leveraged by non-participants, even as it declines in volume.[1]

To address the declining negotiated cash market, and the resulting thinness of accurate price information, a regional approach is needed. The shift from cash sales 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.

Accordingly, this legislation:

- Requires the Secretary, in consultation with the Chief Economist, to establish regionally sufficient levels of negotiated cash trade, seek public comment on those levels, then implement. Under this new program,

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

packers—on a plant by plant basis—will be required to procure a certain amount of cattle from the cash market.

- Allows USDA to modify regional minimums after a public notice and comment period.
- Locks in current levels of negotiated cash and negotiated grid transactions by mandating that any new regional minimums proposed by USDA be not less than current levels. This safeguards against any future degradation of the negotiated market.
- Requires a cost benefit analysis after 3 years to ensure the program is working as intended.

2. Equips producers with more price information and prohibits confidentiality guidelines from being used to block disclosure of full market information 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 improved price transparency, packers have become the main beneficiaries. LMR has evolved from a price-discovery tool for producers to a price-determination tool for packers. Accordingly, the Cattle Market Transparency Act of 2020 requires UDSA to give producers more information that will better equip them for negotiating:

- **Beef Contracts Library:** Requires USDA to create and maintain a library of marketing contracts between packers and producers. Requires packers to supply this information to USDA. While confidentiality of parties would be maintained, knowing that certain contract provisions exist in the marketplace is valuable and could help producers negotiate more favorable contracts with packers 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 can be used by producers 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 constrains LMR's effectiveness as a price discovery tool is USDA's confidentiality guidance. 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 USDA consistently withholding information in certain regions due to confidentiality violations. This legislation:

- **Preserves confidentiality requirements in the underlying law, but forces USDA to find ways to regularly disclose all information required by LMR:** The legislation makes 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]."