Testimony Submitted for the Record
Julie Anna Potts, President and Chief Executive Officer,
North American Meat Institute

Hearing before the Senate Judiciary Committee
Beefing up Competition: Examining America's Food Supply Chain

July 28, 2021

On behalf of the North American Meat Institute (NAMI or the Meat Institute) based in Washington, DC, and its 724 members around the country, thank you for the opportunity to submit this testimony.

The Meat Institute is the United States' oldest and largest trade association representing packers and processors of beef, pork, lamb, veal, turkey, and processed meat products. NAMI members include more than 350 meat packing and processing companies, large and small, and account for more than 95 percent of the United States' output of meat and 70 percent of turkey production. The Meat Institute provides legislative, regulatory, international affairs, public relations, technical, scientific, and educational services to the meat and poultry packing and processing industry.

On July 19, NAMI and eleven other organizations representing livestock producers, farmers and companies who produce the vast majority of America's meat, poultry, and dairy, as well as animal feed and ingredients, unveiled the Protein PACT for the People, Animals, and Climate of Tomorrow. The Protein PACT is the first joint initiative designed to accelerate momentum and verify progress toward global sustainable development goals across all animal protein sectors to ensure customers, consumers, and policy makers trust that meat aligns with their sustainability expectations. The Protein PACT has been submitted to the United Nations' (UN) Food Systems Summit as a sustainability game changer, and sustainable livestock and poultry production was featured in a side event at the Food Systems Summit ministerial in Rome on July 27.

Through the Protein PACT, Meat Institute members have developed robust metrics for continuous improvement that sustain healthy animals, thriving workers and communities, safe food, balanced diets, and the environment and align with the UNs' 2030 Sustainable Development Goals.

Claims about Increasing Consolidation and Concentration are Misplaced.

Let me state at the outset, the members of the Meat Institute – and their livestock suppliers – benefit from, and depend on, a fair, transparent, and competitive market. This testimony is offered to provide a comprehensive picture of the dynamic, competitive market in which cattle producers and beef packers operate.

Much of the rhetoric about concentration in the beef packing sector wrongly implies that consolidation is on-going and that packers' market power is becoming more and more concentrated. That is not the case. The four-firm packer concentration ratio for fed cattle slaughter has not changed appreciably in more than 25 years. According to the Agricultural Marketing Service's (AMS) Packers and Stockyards Division (P&S), the four firm concentration ratio was 82 percent in 1994; today it is 85 percent.

The meat packing industry has been, and continues to be, one of the most highly scrutinized industries when it comes to antitrust review. P&S is uniquely charged, by statute, to provide on-going oversight for fair business practices and to ensure competitive markets in the livestock, meat, and poultry industries. Additionally, any potential merger or acquisition regulators believe threatens "too much market power" is subject to review by the Justice Department or the Federal Trade Commission. The last proposed merger of two of the "big four" fed cattle slaughterers occurred in 2008 – and it was blocked by the Department of Justice.

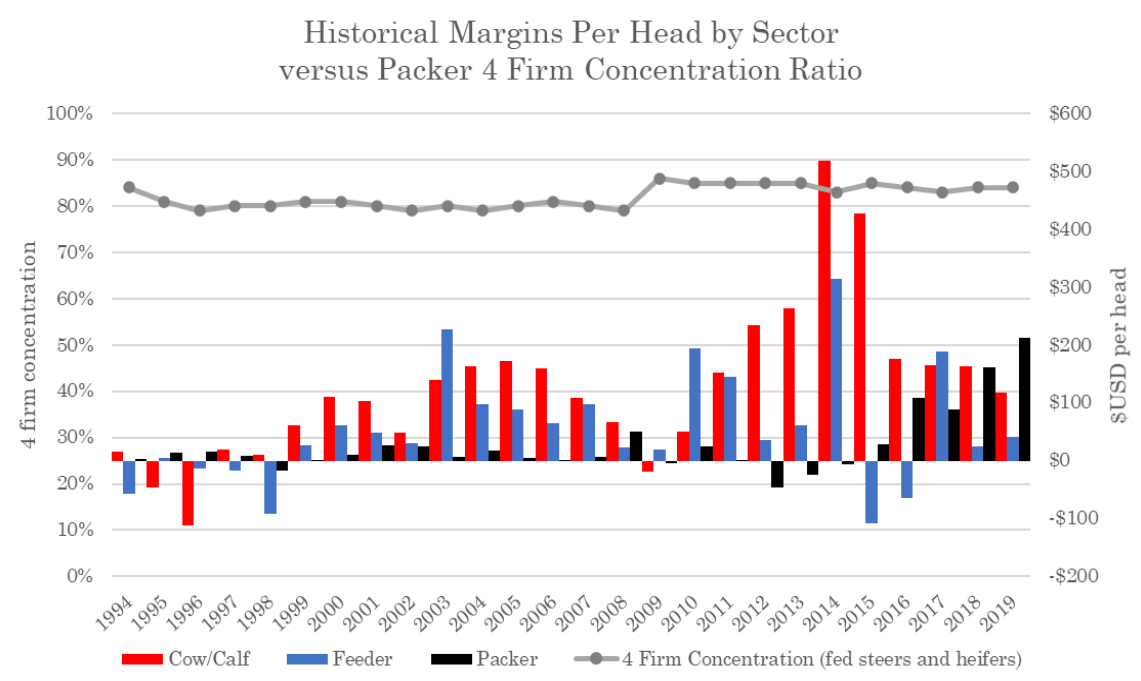
Another clarification is needed. It is frequently claimed that the big four packers control 85 percent of beef production in the U.S. Again, that is not the case and a misleading exaggeration. Fed cattle make up 79 percent of the total cattle slaughter. Cows and other non-fed cattle, make up the balance, primarily slaughtered to be made into hamburger. The lean meat from these animals is a necessary ingredient to be made into America's supply of hamburger produced in combination with the less demanded muscle cuts from the fed cattle. This distinction is important because up to 50 percent of all beef in the U.S. is consumed as hamburger. Even factoring in the non-fed cattle slaughter plants they own; the four largest beef packers represent about 70 percent of total U.S. beef production.

Critics of the industry frequently mistake individual packing plant size with overall industry concentration. The size and location of plants, however, reflect basic economic factors like the cattle supply and the economics of plant operations. Indeed, the cattle supply itself is concentrated. The farms and ranches that produce about half of all beef cattle in the U.S. are in just seven states. Further, more than 70 percent of all fed cattle are in just five states. Economies of scale drive the capacity and production of a packing plant. That is especially true in areas with large numbers of fed cattle.

Likewise, cow slaughter plants rely on a supply of cull cows from pasture-based cow-calf farms or dairy farms and are structured based on those factors. Each packing plant has its own cost structure. Packers bid on cattle based on the supply and demand factors in their own region. Owning a plant in Texas does not change the bottom-line to a company's operation in Iowa or Colorado.

Finally, given that the structure of the beef packing industry industry is driven by supply and demand factors, the false premise regarding concentration providing undue market power for beef packers must be corrected. The bottom-line is the current level of four-firm concentration has existed for more than 25 years and it has not ensured packer profitability at the expense of producers.

No sector – cow-calf, feedlot, nor packer – has realized positive margins every year. For example, the four-firm ratio in 2014, when cow-calf and feedlot margins were at record highs, was the same as in 2017 when all three sectors showed positive margins. However, over this 25-year timeline, the cow-calf sector incurred negative margins the fewest number of years of the three as the chart below shows.



Source: USDA Packers and Stockyards Divison (concentration); Sterling Marketing (margin)

The U.S. Meat Industry is Efficient and Affords Americans the Benefit of Spending Less of their Personal Disposable Income on Food than any other Country in the World.

Notwithstanding some popular perspectives being espoused about supply chains, particularly the meat the industry's response to significant "black swan" events, including the Holcomb packing plant fire, the recent cybersecurity attack, and the COVID-19 pandemic, the facts support the conclusion the industry proved resilient in extraordinary circumstances. One can argue the market worked as one would expect and suggestions that the government needs to step in and "do something" may be trying to fix something that is not broken.[1]

Before trying to "fix" something it is prudent to look back and acknowledge the benefits that flow from the system as it exists. In 2019, Americans spent an average of 9.5 percent of their disposable personal incomes on food—divided between food at home (4.9 percent) and food away from home (4.6 percent). Between 1960 and 1998, the share of disposable personal income spent on total food by Americans, on average, fell from 17.0 to 10.1 percent, driven by a declining share of income spent on food at home.[2] Indeed, Americans spend less of their disposable personal income on food than any other country in the world. This remarkable drop is attributable largely to systemic efficiencies that allow food processors to offer food to consumers at lower prices.

COVID-19 Affected the Cattle and Beef Markets.

The COVID-19 pandemic was a shock to the meat supply chain, as it was for every industry in America. A brief review provides some instructive context for a discussion of cattle and beef markets during the pandemic. Meat was not the only item affected in the grocery store; we saw similar situations in everything from toilet paper, to disinfectants, to hand sanitizer.

Last year, pandemic-related plant interruptions temporarily idled about 40 percent of slaughter capacity for cattle and hogs at the peak of its impact. This disruption happened in tandem with unprecedented retail demand for beef due to panic buying and freezer stocking as shelter-in-place orders were put in place. The situation was worsened by the significant operational changes needed to rebalance production, processing, and distribution away from foodservice toward retail. The type of cuts, product sizes, processing equipment, packaging and distribution vary considerably between retail and foodservice and are not easily transitioned.

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[1] *Economic Reasons for What was Observed in Fed Cattle and Beef Markets During the Spring of 2020,* Steve Koontz, Department of Agricultural & Resource Economics, Colorado State University, may 28, 2020.
[2] https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/food-prices-and-spending/

The impact of the shift from foodservice to retail was substantial. Before the pandemic, in both 2018 and 2019, foodservice accounted for about 61 percent of all domestic beef consumption. That dropped to less than 55 percent in 2020. Conversely, retail sales of beef increased from 38 percent to 45 percent of overall domestic consumption.[3]

According to the Beef Checkoff,

> A major change in consumer behavior that affected the retail industry was the "stocking-up" behavior experienced at the beginning of the pandemic. Shoppers rushed to their grocery stores to buy surplus groceries, especially meat products. Even as late as September of last year, 50% of consumers surveyed reported to be "stocking-up" at a greater rate than normal. With this behavior, and with the foodservice industry restricted or shutdown, 83% of consumer meals were being cooked and consumed at home. Ground beef was one of the main products to be stored in refrigerators and freezers, with over 50% of consumers reporting to have surplus ground beef products.[4]

This had a dramatic impact. In 2020, retail beef sales increased by 606 million pounds by volume, or more than 11 percent. All fresh meat and poultry sales increased 19 percent by value, an increase of $9.6 billion. Beef sales increased by $5.9 billion in value, accounting for 61 percent of that overall growth in protein demand. Ground beef sales alone grew by $2.02 billion[1], accounting for 21 percent of the total increased aggregate demand for meat and poultry. Beef demand remains high: the total volume of beef sales in 2021 from January through mid-June remained more than 4 percent higher than the pre-pandemic levels over the same period in 2019. This increase in beef demand in 2020 happened while the packing sector's ability to process cattle was experiencing operational constraints, and has continued into this year while labor availability has similarly affected the packing industry's ability to operate at full capacity. Meanwhile, the supply of fed cattle remained large. In short, COVID-19 created a significant "kink in the chain" that took time to straighten.

Early in the pandemic the National Cattlemen's Beef Association (NCBA) commissioned the Oklahoma Cooperative Extension Service and several distinguished agricultural economists to examine the impact COVID-19 was having and was expected to have on the beef cattle industry. That paper warned "the timeline for market recovery from COVID-19 is unknown, and cow-calf losses could expand into 2021 when the summer and fall 2020 calf crops would be marketed."[5]

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[3] Nielsen, Answers on Demand, 2020 Beef Sales; NPD Category Sizing

[4] Beef Checkoff, Hindsight 2020: Retail and Foodservice Trends Through the Pandemic, accessed July 2021

[1] *Id* at 3

[5] Economic Damage to the U.S. Beef Cattle Industry due to COVID-19, OSU/NCBA, April 2020

The market is rebounding. This week Feeder Cattle futures reached contract highs for the August through March 2022 contracts. On Monday, July 26, the Feeder Cattle contract closed at its highest since March 2016. Live Cattle futures prices so far in July have averaged higher than the same month in 2017, 2018, and 2019, all pre-pandemic. This reflects a smaller supply of cattle, which according to USDA's mid-year cattle inventory report released last week, is down 1 percent from last year. Also, it reflects the recovery in cattle processing capacity.

Fed Cattle Marketing and Price Discovery.

From ranch to the slaughter plant rail, live cattle typically change ownership two to three times. Cow-calf producers market their cattle to feeders, or to backgrounders who in turn move those cattle to feeders, who then market to packers. The price for cattle at any of those three most common points of transactions is a function of how many cattle are in each respective market segment. In other words, the price is determined by supply of cattle to sell from one segment and the demand for buying cattle by the next segment. That explains why each segment can experience different margins and why there is a futures contract for two types of cattle: feeder cattle and fed cattle. When any of those segments are out of balance, prices move, and the moves can be dramatic, as witnessed by the COVID-spurred retail beef demand, which represents the final segment of the entire pasture to plate value chain, and the COVID-imposed imbalance within various segments of the cattle sector.

Considerable attention has been focused on packer margins hitting historic levels during COVID, and before that, after the 2019 fire at the beef packing plant in Holcomb, Kansas (which happened right before Labor Day weekend, a point of high seasonal beef demand). These dramatic and unforeseen events put the cattle supply chain temporarily out of balance. In both cases due to a temporary loss of processing capacity, the interrupted demand for cattle led cash market fed cattle prices to fall, while the reduced and uncertain supply of beef led wholesale beef prices to rise dramatically.

In his analysis of the COVID situation, Dr. Steve Koontz of Colorado State University wrote,

> To expect historical relationships between meat price and livestock prices to persist when major facilities in the packing sector are at times closed and in others operating at reduced capacity has no economic foundation.[6]

Nonetheless, calls for investigations into market transparency, collusion, and the structure of the beef packing industry were made. In August 2019 USDA

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[6] Koontz

announced its intent to investigate the economic impact to the cattle market stemming from losing beef processing capacity after the fire at the Holcomb slaughter facility. In April 2020 that investigation was expanded to include the impact of COVID-19 to "determine if there is any evidence of price manipulation, collusion, restrictions of competition or other unfair practices."[7]

In July 2020, USDA's AMS released its Boxed Beef and Fed Cattle Price Spread Investigation Report detailing the agency's investigation into cattle and beef price margins, finding no wrong-doing and confirming the disruption in the beef markets was due to devastating and unprecedented events.

Further, per that report, AMS related "One of the underlying concerns about price discovery is the declining number of participants in the negotiated cash market."[8] Since then, there have been several proposals, including legislation introduced in Congress, to restructure and regulate the cattle market through significant government intervention. Prominent among the proposals is to require cattle feeders to sell cattle to packers, and packers to buy from feeders, a mandatory minimum volume of fed cattle on a cash, spot market basis, or "negotiated" basis purportedly to improve price discovery. These proposals, however, threaten the industry with numerous adverse, unintended consequences.

There is robust price discovery in the cattle and beef markets. Congress established and USDA administers the Livestock Mandatory Reporting Act (LMR) program to facilitate open, transparent price discovery and provide all market participants, both large and small, with comparable levels of market information for slaughter cattle and beef, as well as other species.

Under LMR, packers must report to AMS daily the prices they pay to procure cattle, as well as other information, including slaughter data for cattle harvested during a specified time period and with net prices, actual weights, dressing percentages, percent of beef grading Choice, and price ranges, and then AMS publishes the anonymized data. AMS publishes 24 daily and 20 weekly cattle reports each week. Weekly reports start Monday afternoon and end the next Monday morning. These reports cover time periods, regions, and activities and the data include actual cattle prices.

Further, packers report all original sale beef transactions in both volume and price through the Daily Boxed Beef Report. This data is reported *twice* daily, at 11:00 a.m. and at 3:00 p.m. Central Time. The morning report covers market activity since 1:30 p.m. of the prior business day until 9:30 a.m. of the current business day. The afternoon report is cumulative, including all market activity in the morning plus all additional transactions between 9:30 a.m. and 1:30 p.m., and is on the

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[7] USDA Statement on Beef Processing Facility in Holcomb, Kansas, August 28, 2019
[8] Boxed Beef and Fed Cattle Price Spread Investigation Report, USDA AMS, July 22, 2020

USDA DataMart website. The boxed beef report covers both individual beef item sales and beef cutout values and current volumes, both of which are derived from the individual beef item sales data.

Stepping back for a moment, it is unimaginable in virtually any other industry participants in a free market would be required to report such data on an on-going, daily basis, and that the data would then be published by the government for competitors and other market participants to view, analyze, and use as a basis for strategic decisions. And yet, despite all of the onerous, mandated reporting requirements already in place, some people claim there is no market transparency and there needs to be more price discovery. Where does it end?

The proposals to implement a mandatory minimum volume of negotiated cash sales go far beyond the purported objective of market transparency and price discovery to regulating terms of sale in a private transaction between producers and packers. They represent the beginning of the Federal government regulating more – or all – terms of sale in the cattle market. Such behavior should be concerning to producers given the number of transactions among the segments of the cattle production supply chain described earlier.

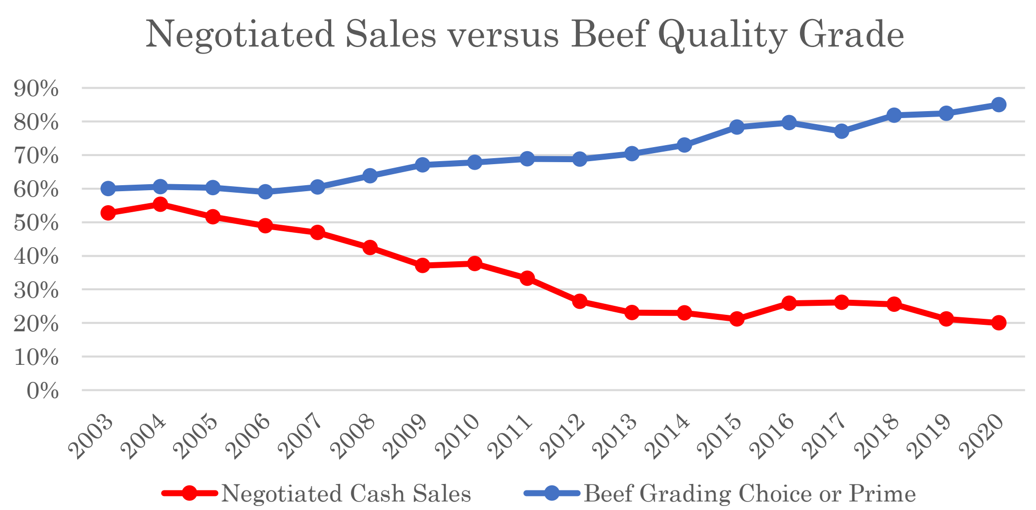
Further, there have been suggestions Congress should amend the confidentiality provisions in the Agricultural Marketing Act applicable to LMR. One bill has been introduced that would prohibit USDA from withholding any "information, statistics, and documents." This concept has data privacy and antitrust implications for both packers and feeders. USDA has examined the LMR confidentiality requirements and determined relaxing the requirements would not ensure anonymity among the market participants. Producers are not the only market participants using the published LMR data: packers and others constantly analyze the data, and any loosening of the confidentiality requirements could provide some market participants full view of their competitors' actions in the market.

By design, a mandate for packers to meet a minimum volume of negotiated cash sales would limit a producer's ability to use other, preferred types of cattle procurement and marketing tools, including forward contracts and various formula-based purchases that comprise the majority of transactions for market-ready cattle. These pricing methods – collectively known as alternative marketing arrangements (AMAs) – combined with the negotiated cash market pricing, have served U.S. cattle producers, the beef industry, and consumers well over the past two decades by:

- Providing producers and cattle feeders with an effective risk management tool;
- Reducing marketing costs for cattle feeders and producers;
- Improving efficiency though the supply chain;

- Improving the quality of U.S. beef;
- Meeting U.S. consumer demand and building trust by incentivizing not only quality, but the safety, sustainability, and consistency of U.S. beef; and
- Enhancing the competitiveness of U.S. beef in global export markets.

Greater utilization of AMAs has coincided with a significant improvement in beef quality. The percent of beef grading at the top two levels, Choice and Prime, has increased from 60 percent in 2000 to 85 percent in 2020.



Source: AMS

There are economic and business reasons why cattle transactions have evolved in the way they have. In its 2018 Report to Congress, AMS said "Stakeholders were in general agreement that formula-based purchases provide greater benefits, in terms of operational efficiency, for both packers and feedlots." [9] Proponents of mandatory negotiated cash sale volumes have not acknowledged, much less addressed, fundamental questions such as which producers would be forced to give up their AMAs, and what effect on beef quality and demand could result.

Analysis of this impact has been done, however. The Research Triangle Institute (RTI) conducted the definitive study about the use of and benefits that flow to all sectors regarding AMAs.[10] The study was mandated and funded by Congress, published in six volumes, by 30 researchers in four teams, conducting nearly three years of research and was peer reviewed. In the executive summary RTI said:

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[9] Report to Congress, Livestock Mandatory Reporting, USDA AMS, 2018

[10] See United States Dept. of Agriculture. Grain Inspection, Packers and Stockyard Administration. *GIPSA Livestock and Meat Marketing Study*. Vol. 1. Research Triangle Park: RTI International, 2007

> Many meat packers and livestock producers obtain benefits through the use of AMAs, including management of costs, management of risk (market access and price risk), and assurance of quality and consistency of quality.[11]

RTI also concluded:

> In aggregate, restrictions on the use of AMAs for sale of livestock to meat packers would have negative economic effects on livestock producers, meat packers, and consumers.[12]

RTI also found, for cattle, that

> Hypothetical reductions in AMAs, as represented by formula arrangements (marketing agreements and forward contracts) and packer ownership, are found to have a negative effect on producer and consumer surplus measures. … Over 10 years, a hypothetical 25% restriction in AMA volumes resulted in a decrease in cumulative present value of surplus of
>
> - 2.67% for feeder cattle producers;
> - 1.35% for fed cattle producers;
> - 0.86% for wholesale beef producers (packers); and
> - 0.83% for beef consumers.
>
> A hypothetical 100% restriction in AMA volumes resulted in a decrease in cumulative present value surplus of
>
> - 15.96% for feeder cattle producers;
> - 7.82% for fed cattle producers;
> - 5.24% for wholesale beef producers (packers); and
> - 4.56% for beef consumers.[13]

Finally, "price discovery" should not be confused with price determination, *i.e.* supply and demand fundamentals. Typically, when market prices are low or falling, there are increased concerns expressed about "price discovery." There appears to be a widespread perception that a reduction in cash trade is, by definition, bearish. In fact, in times of market disruption, formula and contract pricing can prevent precipitous drops and support quicker recovery. From an economic perspective, bearish cattle prices result from "price determination" factors, such as supply of cattle in each segment of the supply chain and the capacity to process cattle into beef, but also the overall demand for beef and other competing proteins.

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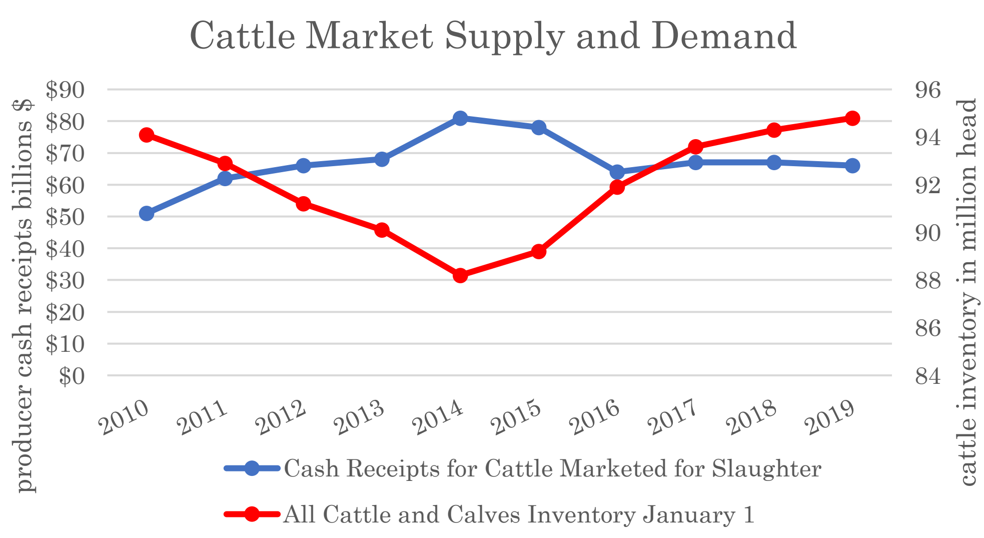
[11] *Id*. at ES-3.
[12] *Id*.
[13] *Id*. at ES-8-9.

Mandating more cash purchases does nothing to remedy bearish price fundamentals. The volume of cash sales is less relevant than is the type and quality characteristics of the cattle sold being representative of the market. Additionally, the types of cattle transactions vary greatly over time, even week to week. Imposing mandatory minimum volumes creates an incentive to alter transaction types that could result in less price discovery.

Supply and Demand Fundamentals Are at Work.

Before the pandemic, the supply of cattle was growing. For the first three months of 2020, the fed cattle supply experienced year-over-year growth. For each month – January, February, and March – the number of cattle and calves in feedlots with capacity of 1,000 or more head was larger than it was during the same months in 2019. The supply of fed market cattle remains high this year. USDA reports that in 2021, the cattle-on-feed inventory has been the second highest monthly total ever on record for four of the first six months of the year, February through June 2021.

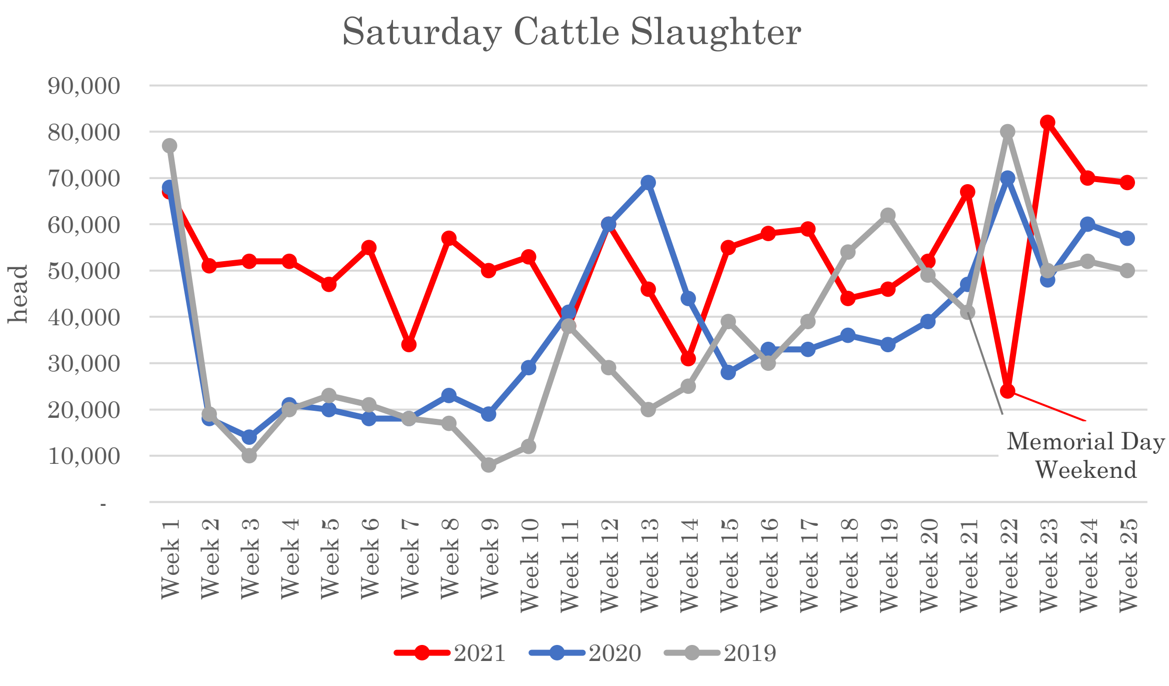
As expected, when supplies of cattle increase, prices decrease – and vice versa. The chart below shows how this has played out over the past 10 years, with or without such significant "black swan" events as COVID, the fire at the Holcomb packing plant in 2019, or this year's cyber ransomware attack.



Source: USDA AMS

Nonetheless, in the face of the many challenges, the beef packing sector has proven resilient. Total beef production in 2020 was slightly higher than 2019, based on heavier slaughter and carcass weights. As expected, cattle weights increased during the disruptions from COVID. Total head of commercial slaughter in 2020 was down just two percent from 2019, despite the dramatic disruption to the cattle harvest during the second quarter of 2020 resulting from the pandemic.

Packers adjusted to the combination of the large supply of cattle and constraints on their capacity by increasing their Saturday slaughter and processing operations to increase through-put. Saturday slaughter year-to-date (through June 19, 2021) has been nearly 40 percent higher than 2020 and 50 percent higher than the more normal year of 2019.



Source: USDA AMS

Although through the first half of 2021 there remained a large supply of fed cattle to be harvested, which affected cattle markets and prices, through June, year-to-date cattle slaughter is nearly six percent greater than the previous five-year average for the same period.

The Labor Supply Affects Cattle Markets.

Production in meat packing and processing plants are, in some respects, tied to the number of employees working the line. During the early phases of the COVID-19 pandemic, employee absenteeism, whether due to contracting COVID-19, or being sent home with symptoms, or quarantined because of exposure, or simply because of apprehension of coming to work as seen in some locations, caused processing lines in some plants to slow. Additionally, many packers were further challenged by the hodge-podge of enforcement actions, however well-intentioned, taken at the state and local level.

Moreover, certain cuts of beef and pork require comparatively more labor to process compared to other cuts. These include boneless steaks, which are high value products in high demand. Labor shortages for fabricating these cuts exacerbate the economic impact on beef and cattle prices from plant slowdowns. A slowdown at any point in a beef packing plant creates a bottleneck through the whole plant. Meat and poultry companies are utilizing capacity to the best of their abilities with COVID protocol constraints still in place and despite significant labor challenges.

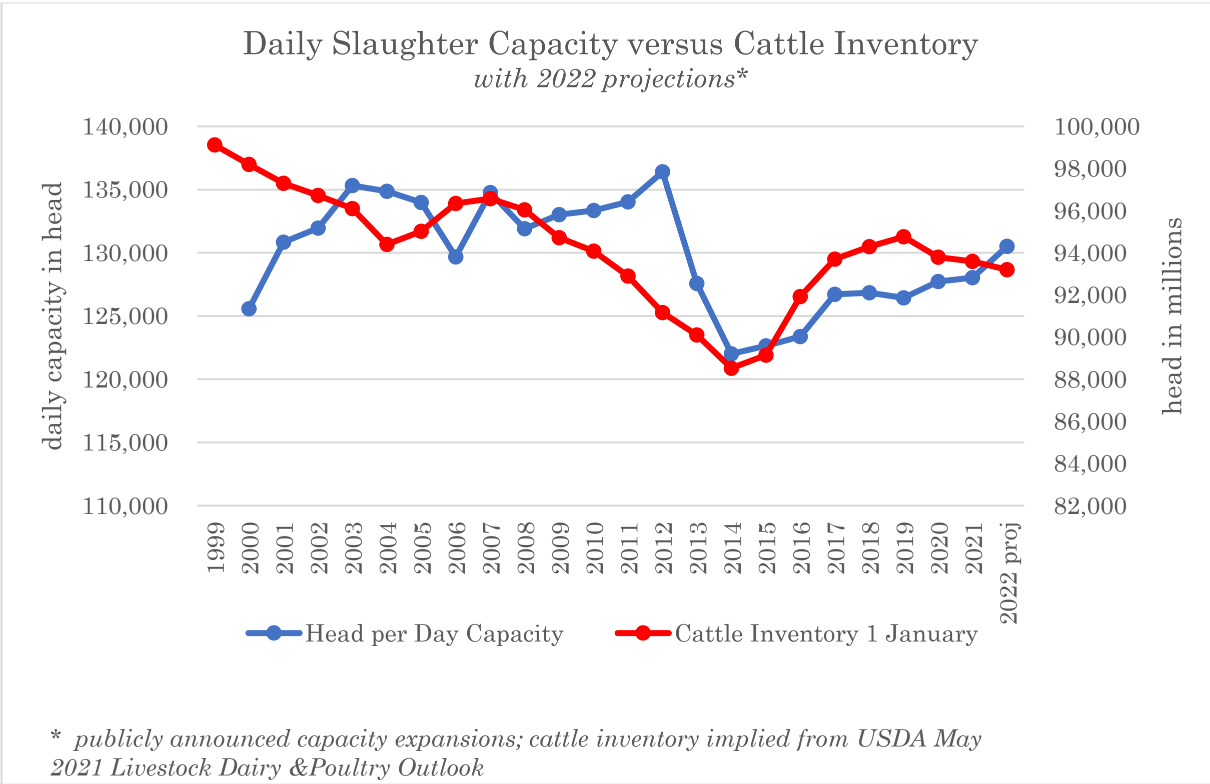
To be clear, labor challenges were not caused by the pandemic; COVID-19 only exacerbated the issue. The meat industry has been facing a labor shortage for some time, and it continues today. Indeed, the pace of Saturday shifts has also strained available labor and adds to processing costs. Recent press stories report the industry's recruitment efforts, including wage increases, signing bonuses, relocation bonuses, retention bonuses and generous benefits. This labor shortage impact is not only on processing lines but also warehouse workers, maintenance positions, and other jobs also critical to maintaining the supply chain.

Virtually none of the calls for government intervention into the market acknowledge or address labor availability, even though it is, and is likely to remain, a significant factor that affects utilization of capacity. Packers cannot work through large supplies of market-ready cattle when plants are not fully staffed with skilled labor.

The Private Sector is Adding Packing Capacity.

USDA has announced it will provide $500 million in grants and loans from the American Rescue Plan to expand meat and poultry processing. Asking taxpayers to subsidize harvest capacity ignores two fundamental issues. First, adding more capacity simply for the sake of having added capacity for a notoriously cyclical cattle supply is short sighted and could distort more significant and longer-term private sector investments. Second, adding capacity ignores the long-running challenge of finding a sufficient labor pool.

The beef and cattle markets are not static, but rather regularly adjust to find balance as the chart below shows. The industry responds to market signals in terms of capacity and the size of the cattle herd, and ultimately beef demand.


Daily Slaughter Capacity versus Cattle Inventory
*with 2022 projections**
daily capacity in head
140,000
135,000
130,000
125,000
120,000
115,000
110,000
head in millions
100,000
98,000
96,000
94,000
92,000
90,000
88,000
86,000
84,000
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Head per Day Capacity
Cattle Inventory 1 January
* *publicly announced capacity expansions; cattle inventory implied from USDA May 2021 Livestock Dairy &Poultry Outlook*

Over the past 10 months, in response to market signals, one new plant has opened, and several expansions and new facilities have been announced – including those with investment from cattle producer stakeholders.

2020-2021 Publicly Announced Beef Packing Capacity Expansion							
	Announced						
Packer	**Date**	**Action**	**Capacity** *hd/day*	**State**	**Est Investment**	**Ownership**	**Est on-line**
AgriBeef/ True West	Aug 2020	New Plant	500	ID		Producer	TBD
FPL	Oct 2020	Expansion	500	GA	$120 mln	FPL	Q42021
Iowa Premium/ National Beef	Mar 2021	Expansion	1,250	IA	$100 mln	National Beef	Q42022
Sustainable Beef	Mar 2021	New Plant	1,400	NE	$300 mln	Feeder	TBD
Missouri Prime	Mar 2021	Converted pork plant	500	MO		NexGen, feeders	Mar 2021
JBS	Jun 2021	Expansion	1,050	NE	$150 mln	JBS	Q42021
American Foods Group	Jun 2021	New Plant	TBD	WI		AFG	TBD
TOTAL			5,200 +	***Source***: company press releases and news coverage			

These new entrants or company expansions were based on decisions to build or expand based on market conditions, not because of government intervention. Government interference into the market could well undermine this industry growth.

This market-based expansion of the beef packing industry is what cattle industry analysts have identified and called for in various reports. As a Rabobank analysis stated in September 2020, “An additional daily packing capacity of 5,000 to 6,000 head of fed cattle could restore the historical balance of fed cattle supplies and packing capacity and still allow for positive packer margins.”[14] The Rabobank report further stated, “While many have discussed the need for more geographically dispersed, smaller plants, adding packing capacity in the name of supply chain resiliency is unlikely to work. It must be driven by long-run economics.”[15] Dr.

[14] *The Case for Capacity; Can the US Beef Industry Expand Packing Capacity?* Rabobank, Sept. 2020
[15] *Ibid.*

Koontz expressed similar concerns about building capacity that is not used when not needed but built "just in case."[16]

Small and midsize beef slaughter and processing companies endured the same challenges large companies faced during the pandemic, perhaps more so. Artificially creating more, smaller regional harvest facilities will not prevent future market disruptions nor protect cattle producers from cyclical or volatile markets. The unintended outcome could be the opposite.

Proposed Regulatory Actions by USDA Under the Packers and Stockyards Act will Adversely Affect Producers and Packers.

On June 11, USDA announced it planned to propose rules to "strengthen enforcement" of the Packers and Stockyards Act (PSA).[17] The expected proposed regulations would be problematic for several reasons, including their impact on livestock producers' options to market their cattle, as described previously.

The concepts expressed in USDA's announcement are not new and were considered, and rejected, in the past. When proposed, they will conflict with legal precedent in no less than eight federal appellate circuits, and will hurt livestock producers, packers, and consumers.

For example, USDA plans on re-proposing a rule to clarify that a plaintiff need not demonstrate harm to competition to bring and prevail in Packers and Stockyards Act litigation. Additionally, USDA indicates that it intends to "propose a new rule that will provide greater clarity to strengthen enforcement of unfair and deceptive practices, undue preferences, and unjust prejudices."[18] It is beyond dispute that eliminating the need for a plaintiff to show harm to competition, or likely harm to competition, will encourage litigation, most of it likely specious litigation. That threat will severely limit or terminate AMAs with all the adverse unintended consequences discussed.

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[16] *Economic Reasons for What was Observed in Fed Cattle and Beef Markets During the Spring of 2020,* Steve Koontz, Department of Agricultural & Resource Economics, Colorado State University, May 28, 2020.

[17] https://www.usda.gov/media/press-releases/2021/06/11/usda-begin-work-strengthen-enforcement-packers-and-stockyards-act

[18] Ibid

Conclusion

The discussion above demonstrates that market fundamentals drive the cattle and beef markets and that what we have seen before and during the course of the pandemic was to be expected. The North American Meat Institute is prepared to discuss these issues and work with the Committee on the issues facing the industry. Thank you for the opportunity to provide this testimony.