Why a 50% National Negotiated Cash Volume Is Needed and Why That Volume Should Not Vary Region by Region

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A. Evidence Shows Regional Variations Contribute to Market Access Risk to Cash Cattle Sellers

In Iowa during the first week of August 2021, an independent cash cattle seller was informed that a major packer was full of cattle and would not resume purchasing Iowa cash cattle until September 7, and that a second major packer was reducing cash cattle purchases in Iowa. This indicates that independent cash cattle sellers in Iowa are denied a competitive market for at least 5 weeks.

Iowa has consistently met or exceeded a 50% negotiated cash volume for at least the past 16 years. But the 50% negotiated cash volume in one region (in this case the IA-MN Region) cannot guarantee timely access to the market for independent cattle feeders if packers can avoid it by shipping contracted cattle from other regions with lower negotiated cash volumes.

And that appears to be what was happening here, as reports indicate that fed cattle were being shipped by truck from Kansas to at least one of the plants the independent Iowa cattle feeder typically sold to.

The ability of packers to ship fed cattle via truck from region to region relegates the five fed cattle procurement regions to mere geographical reporting regions in a procurement market that is, in fact, national is scope. It also demands a cross-regional solution to the lack of competitive cattle purchases.

The Grassely/Tester Bill (S.949) provides Congress with such a solution. By mandating that all large packing plants purchase at least 50% of their cattle needs from negotiated cash cattle markets Congress can ensure that independent cattle producers located everywhere have access to a competitive market.

B. Opponents of the 50% Negotiate Cash Market Minimum Overinflate Quality-Related AMA Arguments

The 2007 GIPSA Livestock and Meat Marketing Study, Vol. 3 (LMMS), is often cited as evidence that Alternative Marketing Arrangements (AMAs) (defined as all possible alternatives to the negotiated cash market. *See* LMMS at 1-15.)) are an important element of branded products and meeting consumer demand by producing a higher quality, more consistent product. *Id*. at 5-16. However, the study shows that packer-owned and packer-fed cattle accounted for most of the branded volume (35.6%), and that direct trade cattle (*i.e*., negotiated cash cattle (*see id*., ES- 1)) were more likely to qualify for branded programs then were marketing agreement cattle (19.6% for direct trade versus 19.3% for marketing agreement cattle). This reveals that negotiated cash cattle, which were more likely than marketing agreement cattle to qualify for a

branded program, were almost as likely as forward contracted cattle (22.1%) to qualify for those programs. *See id.*, Table 4-1 at 4-5; *see also id.*, 4-6.

Thus, and contrary to the opponents of the 50% minimum negotiated cash requirement, the LMMS study reinforces the fact that cattle procured in the negotiated cash cattle market are more likely than marketing agreement cattle to meet the quality standards packers claim consumers demand. This reveals there is no truth to the claim that packers need to procure more than 50% of their cattle needs through AMAs to satisfy consumer preferences.

Very importantly, the LMMS study distinguished between large and small cattle feeders/producers and stated, "An estimated 85.0% of small producers used only the cash or spot market to sell cattle in the past year compared with 23.8% of large producers." *Id.*, at 2-2. But, small feeders/producers are defined by the LMMS as everyone except the nation's 25 largest cattle feeders. *Id.*, at fn. 1. Therefore, the study revealed that 85% of all but the largest 25 cattle feeders relied on the negotiated cash market to market their cattle in the mid-2000s. It should be alarming to decision makers that as the packers shrunk the negotiated cash market beginning just before the publication of the LMMS, and as USDA data show, 59% of these "small feeders" exited the industry since the mid-2000s, representing a decline in the number of "small feeders" of 67% just since 2005. Clearly, the rapid proliferation of AMAs since the mid-2000s is associated with the rapid dismantling of the United States cattle industry's feeding infrastructure.

C. <u>The USDA-GIPSA Has Since Cautioned Decision-Makers Against Relying on Theoretical Benefits of AMAs</u>

In its July 2014 investigative report, *Investigation of Beef Packers' Use of Alternative Marketing Arrangements* (GIPSA Report), the USDA-GIPSA found that:

> The use of AMAs is generally associated with lower negotiated cash fed cattle prices. The effects vary by region, but tend to be stronger in regions where there are fewer packers and more concentration in the negotiated cash market. Estimates by AMA type indicate the effects are largest for marketing agreements, forward contracts and packer fed cattle.

GIPSA Report, at 28. And, in 2009, when the average percentage of AMAs was only about 55%, the impact of those AMAs on negotiated cash prices in the United States was -$2.29 per cwt. *See id.,* at 26.

After finding this injury to cattle producers, the GIPSA Report then attempts to quantify offsetting theoretical benefits. In doing so, the authors found that 90% of those theoretical benefits flow to the packing and marketing sector, not to producers or consumers. *See id.*, Table 15, at 54. The authors further caution decision makers regarding their interpretation of GIPSA's finding. In particular GIPSA noted that independent cattle feeders who market cattle in the negotiated cash market may be harmed by the packers use of AMAs (*see id.*, at 54), and it further noted "there are likely some producers who sell cattle only through the negotiated cash market

that may be negatively impacted by the AMA price effect without receiving the offsetting benefits of AMAs." *Id*., at 61.

As small producers, such as the independent cash cattle seller from Iowa mentioned above, typically can only sell their perishable product in the cash market, they are carrying the brunt of this burden without any offsetting benefits. Indeed, they cannot even gain timely access to a competitive market!

D. Negotiated Grid Cattle Should Not Be Included As Negotiated Cash Cattle

Opponents of the 50% national minimum for negotiated cash sales further argue that negotiated grid cattle should be included in whatever minimum is ultimately established. However, the GIPSA Report discussed above provides compelling arguments against doing so. The authors point out that unlike negotiated cash cattle, the base price for negotiated grid cattle will not be known at the time of the agreement. *See id*., at 10-11; *see also id*., at 12, fn. 8. The authors further state that negotiated grid purchases are not reported under the Livestock Mandatory Reporting in the same manner as negotiated cash purchases and, instead, are reported like formula cattle because the reporting date and procurement date are not the same. *See id*., at 13. In fact, the GIPSA Report suggests that negotiated grid pricing could be treated more like formula pricing. *See id*., at 15, fn. 11.

Specifically, the GIPSA Report disaggregated AMAs into six categories: "packer fed, forward contract, marketing agreement, negotiated grid, TOMP, and cash with time." *Id.*, at 62. It explains that unlike negotiated cash sales, the base price in negotiated grid sales is usually determined "by a not-yet published reported cash price for the current week." *Ibid*.

Thus, unlike negotiated cash sales that contribute to price discovery, negotiated grid sales likely do not and, therefore, should not be included in the calculation for determining the minimum volume of cattle the largest packers must purchase from the negotiated cash market.

E. Conclusion

For the foregoing reasons, R-CALF USA urges Congress to act swiftly and decisively to correct the dysfunctional cattle market manifest since at least 2015. Congress should immediately pass S.949 to require the major packers to purchase at least 50% of their weekly cattle needs from the negotiated cash market and to slaughter those cattle at least within 14 days. Time is of the essence as evidenced by the packers' ongoing creation of market access risk for independent cattle producers who choose to promote competition by selling in the negotiated cash market.