



## **TESTIMONY OF SHELLY ZIESCH**

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**SUBMITTED TO THE U.S. SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY**

**“Legislative Hearing to Review S.4030, the Cattle Price Discovery and Transparency Act of 2022, and S.3870, the Meat and Poultry Special Investigator Act of 2022”**

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**215 Dirksen Senate Office Building**

**Washington, D.C.**

## Introduction

Chairwoman Stabenow, Ranking Member Boozman, members of the committee, thank you for the opportunity to testify today. My name is Shelly Ziesch, and I am a fourth-generation rancher from Pettibone, ND. My husband Robin and I have been farming and ranching together for over 30 years. Today, our commercial cattle operation includes roughly 600 cow/calf pairs. We background most of our calves and finish a small percentage that is processed locally. We also raise corn, soybeans, wheat, oats and alfalfa. Like many family farmers and ranchers, we are managing our operation for the future and doing everything we can to create new opportunities for the next generation. We have two daughters who are actively involved in ranching and one who is interested in returning to the ranch when she graduates college.

I also serve on the board of directors for North Dakota Farmers Union (NDFU), which represents over 50,000 farm, ranch, and member families. I represent District 6, which includes nine counties in central North Dakota. I am testifying today on behalf of both NDFU and National Farmers Union (NFU).

In 2020, I chaired an ad hoc livestock committee NDFU established in response to wide disparities between live cattle and boxed beef prices. In fact, in the six weeks leading up to the committee's first meeting, the spread between boxed beef and fed cattle prices increased by over 300 percent.<sup>1</sup> While those price swings were directly attributed to coronavirus pandemic-related disruptions, they also underscored the dangers of a highly concentrated food system. As a result, the committee's purpose was to develop rancher-oriented policy solutions to create a fairer marketplace for cattle producers. The committee identified seven policy proposals that are intended to:

- Increase competition and fairness in the cattle and beef industries;
- Establish transparent, truthful labeling on beef products; and
- Increase local and regional slaughter capacity.

In 2021, NFU launched the "Fairness for Farmers" campaign, an effort to shed light upon the devastating impact that monopolies have had on family farmers and ranchers. In addition to raising awareness of these problems, the campaign calls for legislative action including reforming the Packers and Stockyards Act (PSA), improving price discovery and transparency, diversifying marketing opportunities, and antitrust enforcement.<sup>2</sup> Today, most sectors in America's farm and food system are heavily consolidated and dominated by a small handful of multinational corporations, and this is particularly evident in the livestock sector.

One of Farmers Union's chief concerns in the cattle industry is the impact the decline in negotiated trades has on price transparency and discovery. While we recognize the benefits of alternative marketing arrangements as an option for cattle producers, the cash market serves as the basis for all cattle prices. On our operation, we sell our cattle through a combination of cash sales and forward contracts. We use the cash price we receive to help us determine a fair market value for our cattle, which informs our negotiations for forward contracts. Without the transparency a robust cash market provides, I am at a disadvantage when marketing my cattle, regardless of marketing arrangement.

NDFU initially was a strong supporter of S. 949, commonly referred to as the "50/14" bill. We believe establishing a floor for the cash market is critical to promoting a fair and transparent marketplace. While

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<sup>1</sup> U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), "Boxed Beef and Fed Cattle Price Spread Investigation Report," July 22, 2020.

<https://www.ams.usda.gov/sites/default/files/media/CattleandBeefPriceMarginReport.pdf>

<sup>2</sup> <https://nfu.org/fairness-for-farmers/>

we are disappointed the 50/14 bill has not attracted a broader base of support, our top priority is finding a way to move this issue forward. We recognize the delicate balance required to address concerns from all stakeholders and appreciate the work that has gone into developing S. 4030, the Cattle Price Discovery and Transparency Act. The bill takes meaningful steps toward protecting transparency in the cattle market.

The Cattle Price Discovery and Transparency Act includes several provisions that will promote fairness and transparency in cattle markets. The establishment of regional minimums for negotiated trades will improve and preserve price discovery. The bill also requires 14-day slaughter reporting, expedites carcass reporting, and mandates reporting of cutout yield, all of which will give producers deeper insight into the market and better leverage when negotiating prices for their cattle. Finally, the bill establishes a cattle contract library, which will improve transparency among alternative marketing arrangements (AMAs).

Farmers Union is also a strong supporter of the Meat and Poultry Special Investigator Act (S.3870), which would strengthen enforcement of existing competition laws. Since its founding, Farmers Union has been committed to restoring and enhancing competition in agriculture. Farmers Union members were strong supporters of the PSA when it was enacted more than 100 years ago. Yet, lax enforcement in the last few decades has left consolidation and anticompetitive practices largely unchecked. Since 1977, the share of the meatpacking market controlled by the four largest packers increased from 25 percent to 85 percent.<sup>3</sup> As a result, farmers and ranchers have been deprived of marketing choices, innovation, fair prices, and equal treatment.

The U.S. Department of Agriculture (USDA) and Department of Justice (DOJ) need stronger tools to enforce existing antitrust laws. The Meat and Poultry Special Investigator Act would provide USDA the authority and resources it needs to address anticompetitive behavior when it arises. The bill also provides the cross-agency collaboration necessary to address monopolistic practices within the industry. Put simply, the bill will make sure that existing laws are enforced the way Congress intended.

## Recent Activity and Policy Statements

The COVID-19 pandemic brought unprecedented disruptions to the economy, and the harmful effects of consolidation and lack of competition in the cattle sector was made clear to the general public. Fortunately, Congress and the Biden Administration have taken steps to secure a fairer market for family farmers and ranchers. In July 2021, NFU President Rob Larew testified at a Senate Judiciary Committee hearing focused on competition in the beef industry,<sup>4</sup> and Oklahoma Farmers Union president Scott Blubaugh testified on a similar topic at the House Agriculture Committee in October 2021.<sup>5</sup> Discussion during these hearings demonstrated bipartisan support for boosting competition and transparency in the heavily concentrated meatpacking industry.

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<sup>3</sup> Congressional Research Service, "Livestock Marketing and Competition Issues," RL33325, January 30, 2009. <https://www.everycrsreport.com/reports/RL33325>.

<sup>4</sup> Testimony of President Rob Larew, National Farmers Union. Submitted to the U.S. Senate Committee on the Judiciary, "Beefing up Competition: Examining America's Food Supply Chain," July 28, 2021. <https://www.judiciary.senate.gov/imo/media/doc/Larew%20-%20Testimony.pdf>

<sup>5</sup> Testimony of Scott Blubaugh, President, Oklahoma Farmers Union. Submitted to the U.S. House Agriculture Committee, October 7, 2021. <https://docs.house.gov/meetings/AG/AG00/20211007/114110/HHRG-117-AG00-Wstate-BlubaughS-20211007.pdf>

The Biden Administration’s Executive Order 14036 “Promoting Competition in the American Economy,” issued in July 2021, made an important commitment to restoring fairness to our economy.<sup>6</sup> With that directive, USDA has taken steps accordingly. To diversify marketing options, USDA has solicited public input and provided funding to the Meat and Poultry Processing Expansion Program.<sup>7</sup> USDA is preparing new proposed rules for the PSA and has enacted a new enforcement policy that aims to help address the unfair treatment of farmers and ranchers.<sup>8</sup> Just last week, the USDA Agriculture Marketing Service (AMS) held a public listening session to explore the best ways to set up a pilot project for a cattle contract library, which was directed by Congress in the Consolidated Appropriations Act of 2022.<sup>9</sup> Further action by the Biden Administration includes a cross-agency effort between USDA and DOJ, known as Farmer Fairness, to receive reports from farmers and ranchers who have been harmed by anticompetitive practices.<sup>10</sup>

During the NFU convention in March 2022, Farmers Union delegates adopted a special order of business that calls for “legislation that would strengthen antitrust laws, reverse the trend of consolidation, and protect family farmers and ranchers from anticompetitive practices.” Further, the preamble to Article III of the 2022 NFU Policy Book states that independent producers cannot succeed in the agriculture economy without protection from unfair, anti-competitive practices, and urges that “competitive provisions should be established that ensure fairness, transparency, protection, and bargaining rights for producers, and restore and enhance competition for agricultural markets.”<sup>11</sup>

Today’s hearing is timely. As Farmers Union policy states, and as so many farmers and ranchers have told this committee, there is a great need for transparency and price discovery in the cattle market. Furthermore, USDA, DOJ, and other agencies must have the resources and clear directives necessary to enforce our existing competition laws. Farmers and ranchers need action on the two bills being considered today. I urge the committee to approve these bills and look forward to their final passage and enactment.

#### **S.4030, The Cattle Price Discovery and Transparency Act of 2022**

High levels of concentration give meatpackers incredible levels of market power and market influence. The packers’ control of the market also gives them significantly more market information than cattle producers. While mandatory price reporting does not level the playing field between packers and producers, it does ensure that all market participants have access to basic information.

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<sup>6</sup> The White House, “Executive Order on Promoting Competition in the American Economy,” July 9, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

<sup>7</sup> <https://www.rd.usda.gov/programs-services/business-programs/meat-and-poultry-processing-expansion-program>

<sup>8</sup> “USDA Celebrates Landmark Agricultural Legislation’s Century of Service by Committing to Maximum Enforcement of the Packers and Stockyards Act,” August 24, 2021. <https://www.ams.usda.gov/press-release/usda-celebrates-landmark-agricultural-legislation%E2%80%99s-century-service-committing>

<sup>9</sup> “USDA to Host Listening Session on Cattle Contract Library Pilot Program Development,” April 11, 2022. <https://www.ams.usda.gov/content/usda-host-listening-session-cattle-contracts-library-pilot-program-development>

<sup>10</sup> <https://www.usda.gov/farmerfairness>

<sup>11</sup> National Farmers Union, *Policy of the National Farmers Union*, (March 2022). <https://nfu.org/policy/>

Last year, I marketed roughly 600 head of cattle in a year where 33.8 million cattle were commercially slaughtered in the United States.<sup>12</sup> A packer who controlled 20 percent of the industry would have purchased roughly 6.76 million cattle. On an average day, that packer would have access to price information from 26,000 cattle sales. That packer receives 43 times as much information on the cattle market in a single day than I would have in an entire year. Price reporting is important to all cattle producers because it brings transparency to a market environment where there are otherwise significant disparities in information available to producers and processors. That is also why transparency in the marketplace is critical to my ability to negotiate fair prices for my cattle.

Congress passed the Livestock Mandatory Reporting Act (LMRA) in 1999 in response to concerns about AMAs and high levels of concentration in the meatpacking industry. LMRA resulted in mandatory price reporting of most transactions for livestock, and it has been renewed and amended multiple times.<sup>13</sup> While LMR has been beneficial for price discovery in general, the continued erosion of the cash market for cattle is undermining its benefits. AMAs can be valuable tools for producers, creating opportunities to lock in prices, guarantee market access and reduce transaction costs. However, the cash market serves as the basis for pricing through AMAs. Negotiated trades also provide the greatest level of transparency in the market. Ensuring a robust cash market is thus important for improving and preserving transparency and price discovery in the cattle market.

In the last 15 years, the level of cash trades has declined dramatically. Nationally, cash trades have declined from 52 percent of all trades in 2005 to 20 percent in 2021. Over the same time frame, formula trades increased from 33 percent to 61 percent (see figure below).<sup>14</sup> This change allows packers greater control over the cattle supply and price discovery.

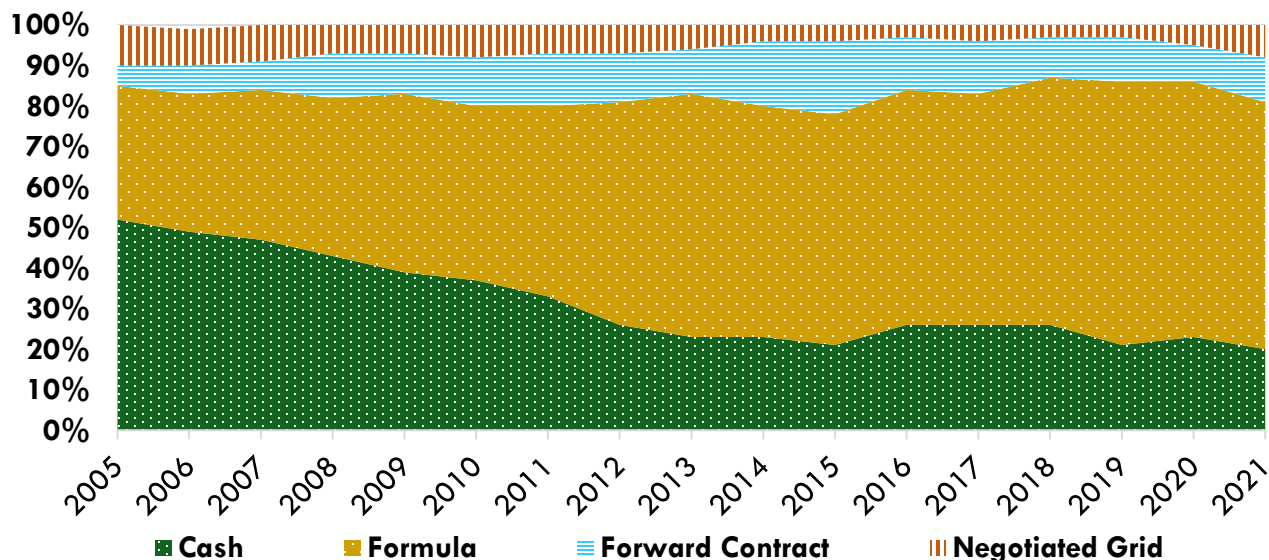
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<sup>12</sup> USDA National Agricultural Statistics Service (NASS), "Livestock Slaughter, 2021 Summary," April 2022. [https://www.nass.usda.gov/Publications/Todays\\_Reports/reports/lsan0422.pdf](https://www.nass.usda.gov/Publications/Todays_Reports/reports/lsan0422.pdf)

<sup>13</sup> Mathews, Brorsen, Hahn, Arnade, and Dohlman, "Mandatory Price Reporting, Market Efficiency, and Price Discovery in Livestock Markets," USDA, Economic Research Service (ERS), LPDM-254-01, September 2015. [https://www.ers.usda.gov/webdocs/outlooks/37626/53727\\_lpdm-254-01.pdf?v=5345](https://www.ers.usda.gov/webdocs/outlooks/37626/53727_lpdm-254-01.pdf?v=5345)

<sup>14</sup> USDA AMS "Annual LMR Live Cattle Purchase Type Breakdown by Region." <https://www.ams.usda.gov/sites/default/files/media/LMRLiveCattleAnnualPurchaseTypeBreakdown.pdf>

## Annual Livestock Mandatory Reporting Live Cattle Purchase Type; Nationwide



### *Price discovery from a cash market*

Packers prefer AMAs because they can reduce procurement and transaction costs and allow plants to operate closer to capacity more consistently. AMAs also have benefits for livestock sellers, allowing us to lock in prices, guarantee market access, and reduce transaction costs. However, AMAs are also associated with lower negotiated cash prices. A thinly traded cash market is susceptible to manipulation, resulting in producer prices lower than they otherwise would be with a more robust cash market. Ultimately, AMA prices are also negatively impacted, because many packer pricing formulas and contract prices are based on cash prices. This trend toward thinner and thinner cash markets is eroding cash and AMA prices alike.<sup>15</sup>

Greater use of AMAs also reduces price discovery within cattle markets. Declining transparency and price discovery should be addressed, in part, by establishing a minimum level of cash transactions in the marketplace. Preserving cash trades as an option for cattle producers will ensure that all market participants continue to have access to price discovery.

By establishing regional mandatory minimums for negotiated trades, S.4030 takes important steps toward protecting price transparency in the cattle market. The bill requires the Secretary to establish five to seven regional minimums for “approved pricing mechanisms” effectively establishing a floor for negotiated trades. Those minimums will be established through an open and transparent process that gives cow/calf producers, feeders, and packers an opportunity to provide input. The bill also requires regular reviews of those minimums to ensure that the floor for negotiated trades continues to reflect market conditions.

<sup>15</sup> USDA, Grain Inspection, Packers and Stockyards Administration (GIPSA), “Investigation of Beef Packers’ Use of Alternative Marketing Arrangements,” July 2014.

The bill also strengthens price reporting by expediting carcass weight reporting, and importantly, by mandating reporting of cutout yield data. The spread between boxed beef and fed cattle prices has been a major concern among cattle producers in recent years. Following the dramatic divergence between boxed beef and fed cattle prices in the early months of the coronavirus pandemic, it took nearly 18 months for the spread to fall back to five-year average levels.<sup>16</sup> Giving cattle producers greater access to cutout yield data will improve their ability to negotiate prices that better reflect consumer beef values.

The Cattle Price Discovery and Transparency Act's 14-day slaughter reporting requirement also improves cattle producers' negotiating position. The requirement will ensure that cattle producers can project estimated slaughter numbers and packer needs for cattle. This will give producers a better understanding of supply and demand dynamics that impact the value of cattle.

### ***Cattle contract library***

The Cattle Price Discovery and Transparency Act requires USDA to establish and maintain, through the Livestock Mandatory Reporting program, a cattle contract library, which provides information included in contracts between packers and producers for the purchase of fed cattle. This contract library is intended to aid in the price discovery process and provide equal access to market information for all market participants. The concept is already being piloted but needs to be made permanent.

For my operation, a contract library would provide better transparency. The contracts we use to market our cattle vary from sale to sale. As a basic example, some of our contracts have a six-cent slide, and some have an eight-cent slide. A cattle contract library will give producers better information about all the different contract elements that may be helpful or detrimental to their operation. The library can help producers establish a template to use in future negotiations. Put simply, the cattle contract library gives us a better sense of what we should ask for and what we should avoid when negotiating contracts.

### **S.3870, The Meat and Poultry Special Investigator Act of 2022**

The 2017 reorganization of USDA diminished the standing of the Packers and Stockyards Division (PSD) and placed it within USDA AMS. Reducing the resources available to this important division, which is charged with "protecting fair trade practices, financial integrity, and competitive markets for livestock, meat, and poultry," has been the wrong approach. Instead, greater emphasis should be placed on this important work, especially because the PSA has been underenforced in recent decades.<sup>17</sup> Given the high level of concentration in the market and price divergences over the last several years, it is imperative that our antitrust laws work the way Congress initially intended.

The Meat and Poultry Special Investigator Act of 2022 would help ensure that independent farmers and ranchers have a chance to succeed. A special investigator's office dedicated to upholding competition laws and confronting corporate control in agriculture will be able to use subpoena power to shed light on illegal market activities. Investigations surrounding violations of the PSA, using a staff of experts and

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<sup>16</sup> Kansas State University, Livestock & Hay Charts, "Choice-Select Boxed Beef Spread," March 21, 2022.

<https://www.agmanager.info/livestock-meat/livestock-marketing-charts/choice-select-boxed-beef-spread>

<sup>17</sup> United States Government Accountability Office (GAO), Testimony before the Committee on Agriculture, Nutrition, and Forestry, United States Senate, "Packers and Stockyards Programs: Continuing Problems with GIPSA Investigations of Competitive Practices," March 9, 2006. <https://www.gao.gov/assets/gao-06-532t.pdf>

attorneys, could expose wrongdoing and restore accountability in the marketplace. The special investigator's office would also promote cross-agency collaboration, working with DOJ and the Federal Trade Commission (FTC) to closely study and pursue action against potential abuses broadly in agriculture or in trade and could also work with the Department of Homeland Security to protect against abuses that would threaten our food supply infrastructure. Further and effective enforcement of the PSA and other fairness measures is critical to the long-term viability of independent farms and ranches.

### **Packers and Stockyards Act: Rulemaking and Enforcement**

NFU is heartened that President Biden's executive order on competition reaffirms the government's commitment to the principles that led to the passage of the PSA and specifically mentions the need for the Secretary of Agriculture to initiate rulemakings under the PSA "to address the unfair treatment of farmers and improve conditions of competition in markets for their products."<sup>18</sup> As USDA prepares rulemaking to strengthen the PSA, the department should ensure that it is not necessary to show a competitive injury broadly to find an action of a packer, swine contractor, or live poultry dealer to be unlawful under the PSA. As USDA has repeatedly argued in court cases, the unambiguous language of section 202(a) and (b) of the PSA does not require any proof of an adverse effect on competition or of restraint of commerce or trade. The legislative history of the PSA shows that Congress intended to prohibit actions that give undue and unreasonable preferences without regard to whether they restrain trade, create a monopoly or control prices.<sup>19</sup>

More generally, the update to the PSA should provide greater clarity about what practices in the meat and poultry industries constitute unfair, unjustly discriminatory, or deceptive practices, and thus violate the PSA. Particularly close attention should be paid to prohibiting unfair practices regarding grower ranking systems or "tournaments," which have been prevalent in the poultry sector. PSA rulemaking should also institute anti-retaliation protections that help ensure farmers' right to association and so that farmers can speak up about unfair treatment without fear of retribution.

### **Efforts to support local and regional processing facilities**

The COVID-19 pandemic highlighted how large, seemingly efficient systems of production can falter when there are shocks to those systems. Local and regional food systems also faced disruptions but were often better positioned to adapt rapidly to new conditions and protect against shocks, given their shorter supply chains and more direct connection to consumers.<sup>20</sup> Strengthening local and regional supply chains would promote greater competition in the cattle and beef industries. Local and regional slaughter facilities would also create new opportunities for ranchers.

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<sup>18</sup> Executive order 14036 of July 9, 2021, "Promoting Competition in the American Economy," Federal Register Vol. 86, No. 132, July 14, 2021. <https://www.federalregister.gov/documents/2021/07/14/2021-15069/promoting-competition-in-the-american-economy>

<sup>19</sup> Congressional Research Service, "USDA's GIPSA Rule' on Livestock and Poultry Marketing Practices," R41673, January 7, 2016. <https://crsreports.congress.gov/product/pdf/R/R41673>

<sup>20</sup> Dawn Thilmany, Elizabeth Canales, Sarah A. Low, and Kathryn Boys, "Local Food Supply Chain Dynamics and Resilience during COVID-19," *Applied Economic Perspectives and Policy*, October 26, 2020. <https://onlinelibrary.wiley.com/doi/full/10.1002/aapp.13121>



NDFU members are concerned by the high level of control that just a handful of companies have in the beef market. However, it is also important to note the geographic concentration that exists within the industry. Most of the cattle we raise on our ranch are sold into the Nebraska market. Nebraska has the highest commercial slaughter levels in the country, with a capacity of 6.9 million head in 2021. North Dakota's slaughter capacity was comparatively low, with a capacity of just 12,300 head in 2021.<sup>21</sup>

The lack of local and regional options limits opportunities for North Dakota ranchers to feed and finish our own cattle. Without local slaughter facilities, we are forced to transport our cattle hundreds of miles. Transporting livestock is costly for ranchers and stressful on livestock. When cattle get stressed, they lose weight, decreasing their value. These economic realities put producers in states like North Dakota at a competitive disadvantage. As a result, many North Dakota producers are forced to export their cattle to other states where feeding and finishing those cattle is more economically viable. Furthermore, when we do finish and process cattle locally, we must reserve shackle space more than a year in advance.

Increasing local and regional slaughter capacity will create opportunities for cow/calf producers to add value to their cattle on their own operations. Thankfully, action is being taken on this front. USDA has made \$1 billion available through loan guarantees, gap financing and technical assistance to support new and expanding local and regional slaughter facilities. USDA has also provided various programs to help small and very small processing facilities weather the challenges they faced during the COVID-19 pandemic.

Beyond increased capacity, it is also important that regulatory frameworks provide reasonable flexibility to small and very small processing facilities. Federal inspector requirements and fees can be burdensome for small facilities, causing many to operate under federally approved state inspection programs. However, despite the fact that state inspection programs must meet a standard of at least equal to federal inspection standards, state-inspected meat is not allowed to be sold across state lines. We support allowing interstate sales of state-inspected meat and providing appropriate regulatory flexibility that reflects the operating conditions in small and very small facilities.

## **Conclusion**

We urge you to act quickly to pass the Cattle Price Discovery and Transparency Act and the Meat and Poultry Special Investigator Act. Achieving greater transparency, price discovery and fairness in the cattle market is critical to the survival of family farms and ranches. Together, these two bills will ensure cattle producers have access to basic market information and are protected from anticompetitive behaviors.

Thank you for holding this hearing today and for the opportunity to testify. I appreciate the committee's attention to these important matters and I look forward to answering any questions you may raise.

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<sup>21</sup> USDA NASS, "Livestock Slaughter, 2021 Summary," April 2022.  
[https://www.nass.usda.gov/Publications/Todays\\_Reports/reports/lsan0422.pdf](https://www.nass.usda.gov/Publications/Todays_Reports/reports/lsan0422.pdf)