



National Cattlemen's
Beef Association

Testimony of

Mr. Todd Wilkinson

On behalf of the

National Cattlemen's Beef Association

Submitted to the

**United States House of Representatives
Committee on Agriculture**

Prepared for

A Hearing to Review the State of the Livestock Industry

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Introduction

Chairman Scott, Ranking Member Thompson, and Members of the Committee, on behalf of America's cattle producers, thank you for inviting me to offer testimony on this important issue.

My name is Todd Wilkinson, and I currently serve as Vice President of the National Cattlemen's Beef Association. I am a 2nd generation rancher and live in De Smet, SD. I own and operate a cow-calf and cattle backgrounding operation with my son, who is the 3rd generation of our family to work the ranch. Additionally, I run a small cattle feeding facility and maintain a law practice, where I assist other farmers and ranchers with estate planning and other agricultural law issues.

The National Cattlemen's Beef Association (NCBA), on whose behalf I testify today, is the U.S. cattle and beef industry's oldest and largest national trade association. In addition to our 25,000 direct members, NCBA represents forty-four state cattlemen's associations with collective memberships numbering some 175,000 cattle producers — each of whom has a voice in our grassroots policy-making process. It is important to note that well in excess of 90 percent of those members are family-owned business entities involved in the cow-calf, stocker/backgrounder, and feeding sectors of the supply chain. In other words, like myself, true ranchers and farmers.

In a grassroots membership base as diverse as ours, it necessarily follows that business models and opinions are equally diverse. Just as cattle production in the western United States is very different than in the Midwest or Southeast, so too are the methods by which our producers choose to market cattle between segments of the supply chain. Our role at NCBA is to facilitate a policy process that respects those differing perspectives, consults informed expertise, allows for robust discussion and debate, and ultimately arrives at policy positions that are representative of the entire industry.

Background

The present situation unfolding within the U.S. cattle markets is highly complex and multifaceted. Some of the underlying dynamics at play have been present in our industry for some time. Other factors have emerged more recently. Independent of the origins of the issues themselves, the present conversations on how best to address them were recently elevated as a result of two major events.

In August of 2019, a fire at Tyson Foods' Finney County beef plant in Holcomb, KS wreaked havoc upon the cattle markets. In the days following the fire, live cattle prices declined substantially while boxed beef values soared.¹ At the peak of this market volatility, the spread between fed cattle and boxed beef prices reached \$67.17/cwt—at the time, the widest gap since records began under Livestock Mandatory Reporting (LMR).² While the supply shocks brought about by this "black swan" event created severe challenges for cattle producers, those hardships were dwarfed by those brought on by the COVID-19 pandemic.

As meatpacking plants began to temporarily close, whether due to isolated outbreaks of the virus or to comply with local public health orders, cattle supplies began to build up across all segments of the supply chain. At the height of the pandemic, the industry realized a roughly 40 percent decline in beef processing capacity utilization.³ The resulting supply and demand dynamics showed similar results to the Holcomb fire: fed cattle prices fell by 18 percent and boxed beef prices skyrocketed 80 percent.⁴ While the industry has made great strides toward recovery, the effects of COVID-19 are still being felt by cattle producers today.

The marketing environment for livestock these past several years has been immensely challenging for farmers and ranchers nationwide. Input costs have continued to rise and prices paid for cattle have not comparably risen from recent

¹ *Boxed Beef & Fed Cattle Price Spread Investigation Report*. USDA-AMS: 2020.

² *Ibid*

³ *Ibid*

⁴ *Ibid*



lows. As previously noted, some of these challenges were brought about because of the pandemic; others existed before and were merely accentuated by the immense volatility that COVID-19 brought to our markets. Earlier this year, USDA requested comments from the agricultural sector on ways to strengthen our supply chains.⁵ NCBA submitted exhaustive comments to this docket, and some of the issues discussed therein overlap with those the Committee is exploring today. Thus, those comments have been attached to this testimony for the Committee's consideration.

Because the challenges facing our industry are so diverse, it is imperative that policy makers at all levels of government remain focused on viable and tenable solutions with vast industry buy-in. Let me be clear, there is no such thing as a silver bullet. We strongly urge Congress to resist one-size-fits-all policy prescriptions.

Recent NCBA Engagement on Cattle Marketing Issues

NCBA has maintained a standing Live Cattle Marketing Committee for many years, and often employs a working group of market participants, state affiliates, and outside experts to research specific issues and offer objective guidance that may be used in the development of NCBA policies. While a few outside observers have been critical of NCBA's approach and policies, we have remained committed to respecting the direction and intent passed by our tens of thousands of grassroots members through our policy process. We strongly recommend against discounting those voices around the country simply because they do not align with those of one particular lawmaker, region, or organization. As our organization has navigated the complexities of the myriad challenges at play, and the differing opinions on how best to address them, we have consistently come back to four main issues.

Price Discovery

While long-term declines of negotiated trades of fed cattle had already begun an industry-wide discussion on the subject of price discovery, the Holcomb Fire and COVID-19 underscored the urgency of resolving this issue. In July 2020, NCBA's Live Cattle Marketing Committee met to discuss policy proposals as part of our organization's 2020 Summer Business Meeting. Producer leaders from more than forty state cattlemen's associations worked for more than six hours to craft a policy that would help resolve concerns about live cattle marketing issues and lead the industry toward more robust price discovery. The NCBA Committee considered several proposals, each aimed at achieving greater volumes of negotiated cattle trade. After debate, the NCBA Committee recommended, and the NCBA Board of Directors approved, a policy that supports voluntary efforts to improve negotiated trade volumes with the potential for a legislative or regulatory solution in the future should robust regional trade numbers not be achieved.

As mandated by this member-passed policy, NCBA leadership appointed a subgroup of the Live Cattle Marketing Working Group to develop a framework by which NCBA would monitor negotiated trades and establish benchmarks of weekly volumes. In October of 2020, the group announced this plan and issued a report titled, "A Voluntary Approach to Achieve Robust Price Discovery in the Fed Cattle Market."

NCBA implemented this framework in January 2021. Since that time, cattle feeders within USDA's five major cattle feeding reporting regions (the "5-Area")⁶ have responded to the need for more negotiated trade in order to improve price discovery at the fed cattle level. In an impressively short period of time, many cattle producers, particularly in the Texas-Oklahoma-New Mexico and Kansas regions, have adjusted longstanding business models to offer more cattle on a negotiated basis. In some cases, they have even traded cattle to achieve these weekly benchmarks despite short-term market indicators that prices would improve the following week. Our members' commitment to the success of this voluntary effort cannot be overstated.

We evaluate our framework on a quarterly basis, and have established a series of benchmarks (which we call "triggers") to inform the progress being made toward robust price discovery. Negotiated trade volumes were substantially higher

⁵ 86 Fed. Reg. 20652; Docket No. AMS-TM-21-0034

⁶ Alphabetically, USDA's five LMR reporting regions are: Colorado, Iowa-Minnesota, Kansas, Nebraska, and Texas-Oklahoma-New Mexico.



across the country during the first quarter, though this progress still fell short of our established triggers. In the second quarter, however, cattle producers again rose to the occasion to trend even higher—on par with our triggers, and the preliminary results from the third quarter are also promising.⁷ This is certainly a marked improvement from trends observed even one year ago, and cattle producers deserve high praise for this work.

All transactions require both a willing buyer and a willing seller. As evidenced by the negotiated trade volumes exhibited in the first and second quarters, cattle producers have been willing to sell their cattle on a negotiated basis, rather than utilizing alternative marketing arrangements (AMAs), such as formulas and forward contracts. Still, some meatpackers have yet to demonstrate a serious commitment to purchasing cattle on a negotiated basis. This jeopardizes our efforts to improve price discovery since the packer represents the buy-side of a cattle producer's ledger. NCBA recently completed an addition to our voluntary framework which will allow us to gauge whether or not the largest meatpackers are participating in negotiated trade at sufficient levels. Known as the "packer participation silo," this addendum has been in place since the beginning of 2021's third quarter, and we expect to see its first results in mid-October.

AMAs are very important in the fed cattle trade, and NCBA supports their continued use as they fit the unique business models of many cattle producers. They allow cattlemen and women to earn premiums for higher quality cattle and mitigate those risks associated with selling in the spot market. However, equally as important, is the price discovery derived from direct, buyer-seller negotiations. Just as NCBA and industry experts warn against a total rejection of AMAs, we also know that lack of participation in the negotiated market will similarly result in dire consequences for our industry. The benefits of AMAs cannot be allowed to come at the cost of robust price discovery. There must be a balance. That is why we continue to explore new means to encourage greater use of the cash market and negotiated grids through our voluntary framework.

While more improvements are still needed to achieve consistency, including adequate meatpacker participation in the negotiated market, these results are encouraging. As new and innovative price discovery tools continue to emerge, we are confident our industry will continue to progress toward robust price discovery in the near-term future.

Market Transparency

Since enactment of the Livestock Mandatory Reporting Act in 1999,⁸ cattle producers have benefitted from the consistent and timely reporting of market information by USDA. Producers utilize this information to make informed marketing decisions that best suit their unique business needs. LMR requires congressional reauthorization every five years, and was set to expire at the end of Fiscal Year 2020. A one-year extension of the program was included in the Consolidated Appropriations Act of 2021,⁹ and it was temporarily extended again via the most recent continuing resolution. The program is currently set to expire on December 3, 2021. NCBA strongly supports LMR and urges Congress to ensure that this critical tool does not expire.

Though LMR is essential to cattle producers, improvements could be made to the program to increase transparency within the cattle markets. Though many of these proposals can be adopted through the regulatory process, NCBA supports the establishment of a cattle contract library, reporting of formula base prices, and next-day carcass weight reporting among other things. We believe that this new information could further benefit producers as they market their cattle.

USDA is required by law to protect the confidential business information of entities who report market information under LMR.¹⁰ To implement this mandate, USDA established the "3/70/20" confidentiality guidelines in 2001. Under this provision, price reports are published provided each report meets three conditions over the most recent 60-day period:

⁷ Negotiated trade volumes by region are attached for convenience.

⁸ P.L. 106-78

⁹ P.L. 116-260

¹⁰ 7 U.S.C. § 1636(a)



- 1) At least three reporting entities provide data at least 50 percent of the time;
- 2) No single reporting entity provides more than 70 percent of the data for a report; and
- 3) No single reporting entity may be the sole reporting entity for an individual report more than 20 percent of the time.

While NCBA recognizes the Agency's statutory requirement to balance information with confidentiality, the 3/70/20 guidelines have often resulted in withheld reports throughout the major cattle feeding regions – most frequently in the Colorado region. NCBA supports efforts to revisit confidentiality rules to reduce instances of nonreporting, and will continue to work alongside allies on Capitol Hill and with USDA to ensure this critical information remains accessible to cattle producers.

The reporting of formula transactions is another area where improvements to transparency could be made. Formulas are one of four transaction types reported by USDA under LMR, but it is the only type that is not clearly defined. Whereas negotiated grids, negotiated cash trades, and contracts are denoted by clear parameters and transaction structure, formulas are a catch-all for those trades which do not meet the definition of the other three. In an effort to bring more transparency to the formula bucket, we were pleased to see USDA announce they would begin publication of two new LMR reports on the subject. The National Daily Direct Formula Base Cattle report shares national base price information of formula agreements. The National Weekly Cattle Net Price Distribution reports the price and volume levels at which trade occurred across the weekly weighted average price for each purchase type – negotiated, negotiated grid, formula, and forward contract. The addition of these new publications will allow producers to better compare their marketing arrangement to others and allow them to make more informed business decisions on their operations. This was a tremendous step in the right direction, and NCBA encourages the enactment of similar transparency measures to shed more light on activity in the formula bucket.

Cattle producers demand transparent markets in which to trade their livestock, and NCBA will work alongside all our federal partners to improve transparency wherever possible. At the 2021 Cattle Industry Convention & NCBA Trade Show in Nashville in August, voting delegates from NCBA's various affiliates adopted a directive to establish a working group of cattle producers to explore issues related to market information, transparency, and reporting. The cattlemen and women who were appointed to this working group had their first meeting last week. Over the course of the next several months, they will explore issues relating to LMR confidentiality, market transparency, captive supply, Packers & Stockyards, economic research, and reporting thresholds. They will report their findings to NCBA's Live Cattle Marketing Committee in February 2022, and may recommend further policies to build upon our existing market transparency efforts.

Processing Capacity

Adequate beef processing capacity is critical to maintaining profitability in the cattle industry and providing a steady supply of essential food products to American consumers. Currently, there is a serious shortage of processing capacity (commonly referred to as "hook space") throughout the beef production system. A recent study by Rabobank found that excess operational beef processing capacity — or hooks available in addition to those used to process existing fed cattle supplies — fell to zero in late 2016 and turned negative in early 2017. The same study found that, under the current dynamics of supply and demand, the industry could economically accommodate an additional 5,700 hooks of daily processing capacity. This equates to roughly 1.5 million additional animals per year.¹¹

At present, the processing sector represents a bottleneck in the overall beef supply chain. The result has a negative effect on cattle producer leverage in fed cattle negotiations. When cattle supplies exceed the capacity to process them,

¹¹ Aherin, Dustin. *The Case for Capacity*. RaboBank: 2020.



the livestock become a less scarce resource and cattle prices decline. It is important to note that this is independent of demand for beef. Even when demand for U.S. beef is strong, a lack of processing capacity depresses prices for live cattle. The most pointed examples of this can be found in the Holcomb fire and COVID-19. In both cases, operational beef processing capacity utilization fell dramatically following temporary closures of high-throughput beef plants. As a result, cattle prices declined, and boxed beef values drastically increased.

To improve producer leverage in fed cattle negotiations, either cattle supplies must be reduced, or processing capacity must be expanded. Herd contractions and expansions occur naturally over the course of a somewhat predictable ten-year cycle. Currently, U.S. cattle inventories are cyclically high,¹² but beef demand is also high both domestically and in our major export markets.¹³ Therefore, the clearest solution to meeting this demand while fostering profitability throughout the supply chain is not to shrink the cattle herd, but rather to expand beef processing capacity.

Meatpackers of all sizes face similar operational challenges, the most consistent and severe of which is labor recruitment and retention. The largest barrier to entry, however, is access to sufficient capital for construction. The industry average startup cost for a meat processing facility is roughly \$100,000 per hook.¹⁴ This means that a modest 25-head-per-day plant would need to secure \$2.5 million in financing just to build the infrastructure. As a further complication, traditional lending institutions are often unable to provide adequate financing due to the risk profile assessed to meatpacking business models. NCBA supported legislation such as the *Butcher Block Act*,¹⁵ introduced by bipartisan Members of this Committee, to provide federal assistance to new processors, or those who wish to expand operations.

We were further pleased to see USDA acknowledge this need for more processing infrastructure and welcomed the Agency's announcement that over \$500 million would be committed to support new market entrants in expanding beef packing capacity. While the addition of any new hook space is beneficial to remedy the current supply and demand imbalance, focusing on bringing more very small and small processors to market can provide producers additional options for processing and diversification for more resiliency within the sector overall. We submitted comments to USDA in response to their Request for Information,¹⁶ and have attached those comments to this testimony for the Committee's convenience.

Market Oversight

Markets can only properly function when all participants play by the same rules. While much of the spread between boxed beef and fed cattle prices during the pandemic can be explained by the inherent characteristics of supply and demand, NCBA called upon the Department of Justice to investigate the major meatpackers in June 2020. The purpose of this request was to ensure that no anticompetitive behavior or illicit activity contributed to these disparate prices paid for similar commodities. To date, we have not learned the results of this investigation, nor have we received definitive confirmation that it is still ongoing. Over 100 lawmakers have signed onto letters requesting a status update from the Attorney General, and NCBA supported most of these efforts. It is imperative that cattle producers learn the Department's findings at the earliest possible opportunity. They deserve transparency and accountability.

NCBA Recommendations

Throughout cattle marketing conversations over the past sixteen months, a small but vocal minority has suggested — and continues to suggest — that low cattle prices can be remedied or balanced simply through a government mandated marketing requirement. This is not accurate. Definitively, there is no simple solution sufficient to address the myriad challenges facing our industry. To suggest that any single legislative, regulatory, or industry-led action will solve all these

¹² Cattle Report, USDA-NASS, January 2021.

¹³ *Factors that Drive Beef, Cattle Prices to Record Highs*. RaboBank: 2021.

¹⁴ Newlin, Lacey. *So You Want to Build a Slaughter Plant?* High Plains Journal: 2020

¹⁵ H.R. 4140 (117th Cong.)

¹⁶ 86 Fed. Reg. 37728; Docket No. AMS-TM-21-0058



problems is to grossly oversimplify and mislead. Rather, progress and marked improvement will require a multifaceted response from the industry, Congress, and federal agencies.

In Congress, lawmakers should focus their efforts on bringing more transparency to the cattle marketplace, supporting small and mid-size beef packers, promoting expansion of processing capacity, ensuring a timely reauthorization of LMR, reviewing the confidentiality obligations required of USDA, and continuing oversight of the Department of Justice to ensure their ongoing investigation reaches a swift conclusion. We are continually reminded that a handful of lawmakers, are curious about legislation to require certain levels of negotiated trade, such as the *Cattle Market Transparency Act*¹⁷ and legislation known as "50/14."¹⁸ Per our member-driven, grassroots policy, NCBA opposes government mandates in the cattle market at this time. Our industry-led effort to achieve price discovery must be allowed the opportunity to succeed or fail before our membership decides to seek a legislative or regulatory solution. Simply put, the midst of an ongoing market crisis is never a good time to make long-term, market altering statutory changes. Careful consideration must be given to the risk and reward of enacting market-influencing laws for hundreds of thousands of American ranchers and millions of avid beef consumers.

As Congress evaluates several legislative proposals intended to help cattle producers during these uncertain times, we urge thorough vetting and attentive evaluation of economic assessments and feedback from the entire cattle industry. As we have for over fifty years, NCBA is happy to assist the Committee in this endeavor.

Conclusion

I appreciate this opportunity to testify on behalf of NCBA's members – the men and women who put beef on the American dinner plate. It has been a difficult few years for cattle producers, and this Committee's desire to aid our industry during this time has not gone unnoticed. Your attention to these issues is greatly appreciated. As we continue to discuss creative solutions and potential paths forwards, we stand ready to assist in any way. Please do not hesitate to reach out to the NCBA Center for Public Policy at (202) 347-0228 with any questions.

Attachments:

- NCBA Supply Chain Comments (Docket No. AMS-TM-21-0034)
- NCBA 2021 Q1 Negotiated Trade Tracker
- NCBA 2021 Q2 Negotiated Trade Tracker
- NCBA 2021 Q3 Negotiated Trade Tracker (Incomplete Dataset)
- NCBA Meat and Poultry Investments RFI Comments (Docket No. AMS-TM-21-0058)

¹⁷ S. 543 (117th Cong.)

¹⁸ S. 949 (117th Cong.)



**Committee on Agriculture
U.S. House of Representatives
Information Required From Nongovernmental Witnesses**

House rules require nongovernmental witnesses to provide their resume or biographical sketch prior to testifying. If you do not have a resume or biographical sketch available, please complete this form.

1. Name: Todd Wilkinson
2. Organization you represent:
National Cattlemen's Beef Association (NCBA)
3. Please list any occupational, employment, or work-related experience you have which add to your qualification to provide testimony before the Committee: _____
- Life-long rancher
- past president, South Dakota Cattlemen's Association
- current NCBA vice president
4. Please list any special training, education, or professional experience you have which add to your qualifications to provide testimony before the Committee: _____
- B.A., Augustana College
- J.D., University of South Dakota
5. If you are appearing on behalf of an organization, please list the capacity in which you are representing that organization, including any offices or elected positions you hold:
vice president (2021)

**PLEASE ATTACH THIS FORM OR YOUR BIOGRAPHY TO EACH COPY OF
TESTIMONY.**

Truth in Testimony Disclosure Form

In accordance with Rule XI, clause 2(g)(5)* of the *Rules of the House of Representatives*, witnesses are asked to disclose the following information. Please complete this form electronically by filling in the provided blanks.

Committee: Agriculture

Subcommittee: _____

Hearing Date: 10/07/2021

Hearing Title :

"A Hearing to Review the State of the Livestock Industry"

Witness Name: Todd Wilkinson

Position/Title: Vice President, National Cattlemen's Beef Association

Witness Type: ☐ Governmental ☒ Non-governmental

Are you representing yourself or an organization? ☐ Self ☒ Organization

If you are representing an organization, please list what entity or entities you are representing:

National Cattlemen's Beef Association

FOR WITNESSES APPEARING IN A NON-GOVERNMENTAL CAPACITY

Please complete the following fields. If necessary, attach additional sheet(s) to provide more information.

Are you a fiduciary—including, but not limited to, a director, officer, advisor, or resident agent—of any organization or entity that has an interest in the subject matter of the hearing? If so, please list the name of the organization(s) or entities.

No.

Please list any federal grants or contracts (including subgrants or subcontracts) related to the hearing's subject matter that you, the organization(s) you represent, or entities for which you serve as a fiduciary have received in the past thirty-six months from the date of the hearing. Include the source and amount of each grant or contract.

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Please list any contracts, grants, or payments originating with a foreign government and related to the hearing's subject that you, the organization(s) you represent, or entities for which you serve as a fiduciary have received in the past thirty-six months from the date of the hearing. Include the amount and country of origin of each contract or payment.

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Please complete the following fields. If necessary, attach additional sheet(s) to provide more information.

- ☒ I have attached a written statement of proposed testimony.
- ☐ I have attached my curriculum vitae or biography.

* Rule XI, clause 2(g)(5), of the U.S. House of Representatives provides:

(5)(A) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof.

(B) In the case of a witness appearing in a non-governmental capacity, a written statement of proposed testimony shall include— (i) a curriculum vitae; (ii) a disclosure of any Federal grants or contracts, or contracts, grants, or payments originating with a foreign government, received during the past 36 months by the witness or by an entity represented by the witness and related to the subject matter of the hearing; and (iii) a disclosure of whether the witness is a fiduciary (including, but not limited to, a director, officer, advisor, or resident agent) of any organization or entity that has an interest in the subject matter of the hearing.

(C) The disclosure referred to in subdivision (B)(iii) shall include— (i) the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and (ii) the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government.

(D) Such statements, with appropriate redactions to protect the privacy or security of the witness, shall be made publicly available in electronic form 24 hours before the witness appears to the extent practicable, but not later than one day after the witness appears.