**Testimony of**

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**Hearing before the House Committee on Agriculture**
**Subcommittee on Livestock, Dairy, and Poultry**

**A Review of Animal Agriculture Stakeholder Priorities**

**May 17, 2023**

Chairman Mann, Ranking Member Costa, and Members of the Committee, thank you for the opportunity to present testimony today on behalf of the North American Meat Institute (NAMI or the Meat Institute).

The Meat Institute is the United States' oldest and largest trade association representing packers and processors of beef, pork, lamb, veal, poultry, and processed meat products. The Meat Institute has 330 general members, operating more than 800 facilities subject to daily federal inspection by the U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service. Of those members, more than half have fewer than 100 employees. NAMI also has 200 supplier members, which provide a broad range of products and services ranging from large processing equipment to laboratory testing for food safety to packaging, all to help ensure Americans enjoy a safe and abundant supply of meat and poultry products. The U.S. meat and poultry processing industry produces nutrient-dense foods that play a unique role in healthy diets and are driving solutions for the environment, farmers' livelihoods, animal care, and more.

The North American Meat Institute and our partners in the Protein PACT for the People, Animals & Climate of Tomorrow are committed to accelerating progress and building momentum for public commitments in each of five focus areas: the environment, animal care, food safety, nutrition, and our workforce. Protein PACT is a commitment to continuous improvement toward a common set of ambitious goals across the industry. It empowers the animal protein industry to proactively meet the needs of its customers and consumers by accelerating continuous improvement across animal agriculture, transparently verifying progress toward ambitious targets, and proactively communicating that progress. Protein PACT unites partners committed to sustaining healthy people, healthy animals, healthy communities, and a healthy environment.

To achieve its Protein PACT targets, the Meat Institute pioneered creating a sector-wide dataset and published in October 2022 the first-ever data report measuring baselines and providing a snapshot of achievements to date. In its first year, the Meat Institute's data collection effort covered an estimated 90% (by volume) of meat sold in the United States. By 2030, 100% of Meat Institute members will report on all metrics.

Other Protein PACT targets include:

- By 2025, the Meat Institute will help measure and fill the "protein gap" - the difference between the high-quality meat and dairy products needed by families facing hunger and what food banks and charities can provide. In 2022 alone, Meat Institute members announced more than $12.9 million in food security contributions, including building and expanding infrastructure needed to safely receive, store, and distribute fresh meat and milk.

- By 2030, 100% of Meat Institute members will have emissions reductions targets approved by the independent Science-Based Targets Initiative (SBTI). Today, 12 of the sector's leaders have set or committed to setting an SBTI, and 84% of facilities reporting data are covered by a company commitment to reduce emissions.

On May 1, the Meat Institute opened the second Protein PACT data reporting period, which will run through July 31. The Meat Institute and our Protein PACT partners look forward to sharing the animal agriculture industry's proactive improvement over the coming years.

The Meat Institute's member companies operate in what has become one of the toughest, most competitive, and certainly one of the most scrutinized sectors of our economy: meat packing and processing. The industry is very efficient, highly complex, extremely capital intensive, and heavily regulated. Beyond live animals, the packing and processing industry requires labor, capital, and technology, as well as other inputs to produce the products consumers enjoy and expect.

The most recent data from the U.S. Census Bureau shows meat and poultry processing is a $266.99 billion industry employing 526,849 people directly and supporting many more jobs up and down stream in the value chain across both rural and urban communities. Of course, packers and processors depend on livestock and poultry producers. Likewise, they support these farmers' livelihoods. According to the U.S. Department of Agriculture, animal agriculture represents 47 percent of total U.S. farm cash receipts.

Meat packers and processors compete, sometimes struggle, and mostly thrive in a volatile industry. They must continually adapt to changing market conditions and innovate to remain competitive and viable. And in times like these, they must maintain the capital to withstand negative margins in periodic down cycles. Indeed, the industry currently is facing economic headwinds due to a variety of factors, from higher production costs to consumers' concerns over economic uncertainty, and global economic forces. For the record, this is exactly what four beef company CEOs predicted would happen in testimony before the full Committee a little more than a year ago. Supply and demand fundamentals are at work.

USDA's most recent forecast, and the first look at 2024, projects total red meat and poultry production will decrease, which would be the first year-over-year decrease in a decade. On the beef side, a rapid decline in the beef cattle herd has resulted in record cattle prices, similar to 2014 when the cattle herd size was at its smallest since 1952. Moreover, USDA projects cattle prices in 2024 to increase further from today's records. On the pork side, building inventories, declining wholesale pork prices, and increased production costs are weighing on the industry.

Additionally, the pork and hog sectors now face the costs and uncertainty of California's Proposition 12 (Prop 12), which was recently upheld by the U.S. Supreme Court. Proposition 12, a 2018 ballot initiative, will effectively regulate sow housing, not only in California, but nationally by banning the sale in California of whole pork meat derived from sows – or the pigs they produce – unless they were housed with 24 square feet or more of floorspace.

The Prop 12 decision will embolden anti-animal agriculture groups to pursue ballot measures in other states and localities. The decision opens the door to chaos in interstate commerce through state-by-state trade barriers, not just for meat and poultry products, but for any agricultural or manufactured products not meeting standards set by another state. No industry can operate when facing 50 different standards. It is worth noting that with the Court's decision, similar restrictions will be allowed to go into effect in Massachusetts under that State's ballot initiative, Question 3. It is estimated that California represents about 13 to 15 percent of U.S. pork consumption. Based on the population in Massachusetts, it can be assumed that an additional two percent or more of U.S. pork consumption would be subject to these rules.

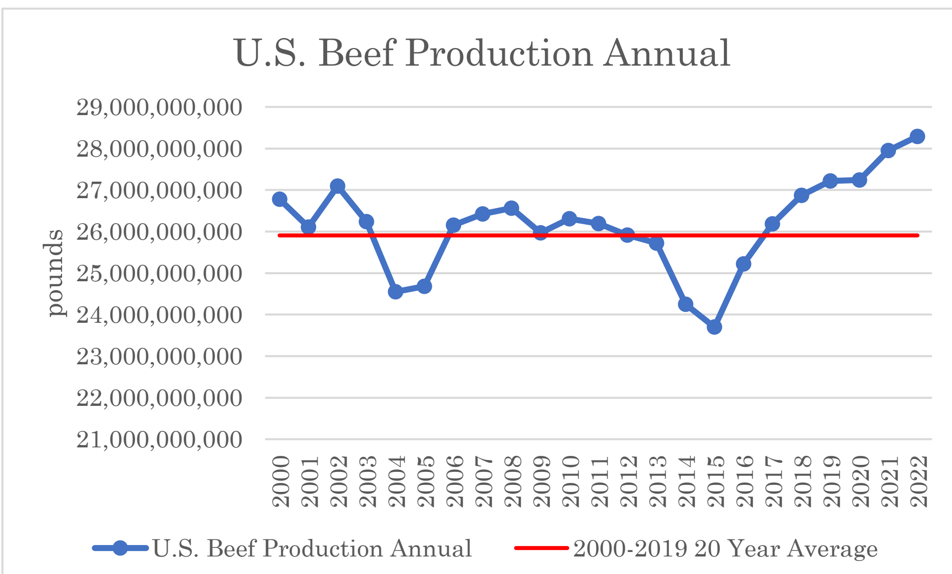
Our industry, like any other, needs certainty. But any federal solution requires deliberation and careful drafting to ensure it is legally sufficient.

**Beef and Pork Industry Market Overview**

Despite the economic pressures facing the meat and poultry industry and its employees, consumers, and producer suppliers, it is important to highlight the industry's resiliency, especially over the past few years.

Cattle Market Fundamentals at Work

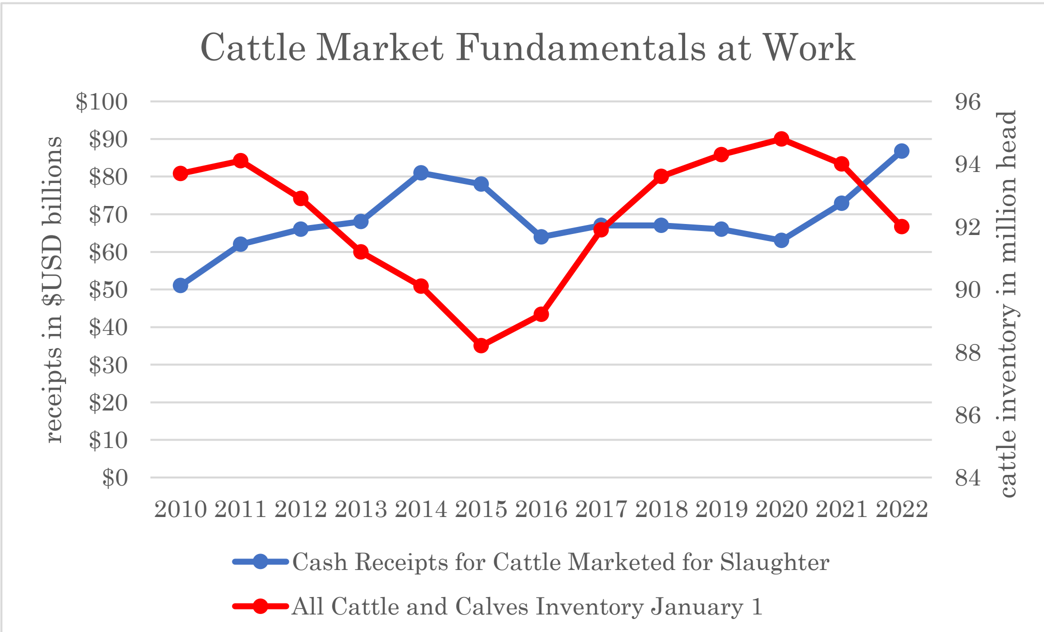
Faced with the many challenges – COVID, supply chain disruptions, labor availability, and impact of drought on the cattle supply – since 2020, the U.S. beef packing sector has proven resilient. Beef production has set historical records for the past four consecutive years. In short, since the pre-COVID year of 2019, beef production has increased 3.9 percent, and is up a remarkable 9.2 percent over the 20-year average from 2000 to 2019.




***Source***: USDA ERS

Cattle markets are driven by the fundamentals of supply and demand. After a five-year expansion cycle in the cattle herd size, inventories reached a peak in January 2020. Two and a half months later COVID hit, which created a shock to the demand for cattle as packers were temporarily unable to operate at full capacity. That shock created a backlog of cattle, negatively affecting cattle prices. Ultimately, packers worked their way through the bottleneck, and exceptionally strong consumer demand for beef in 2021 led to improving cattle prices and further increases in 2022.

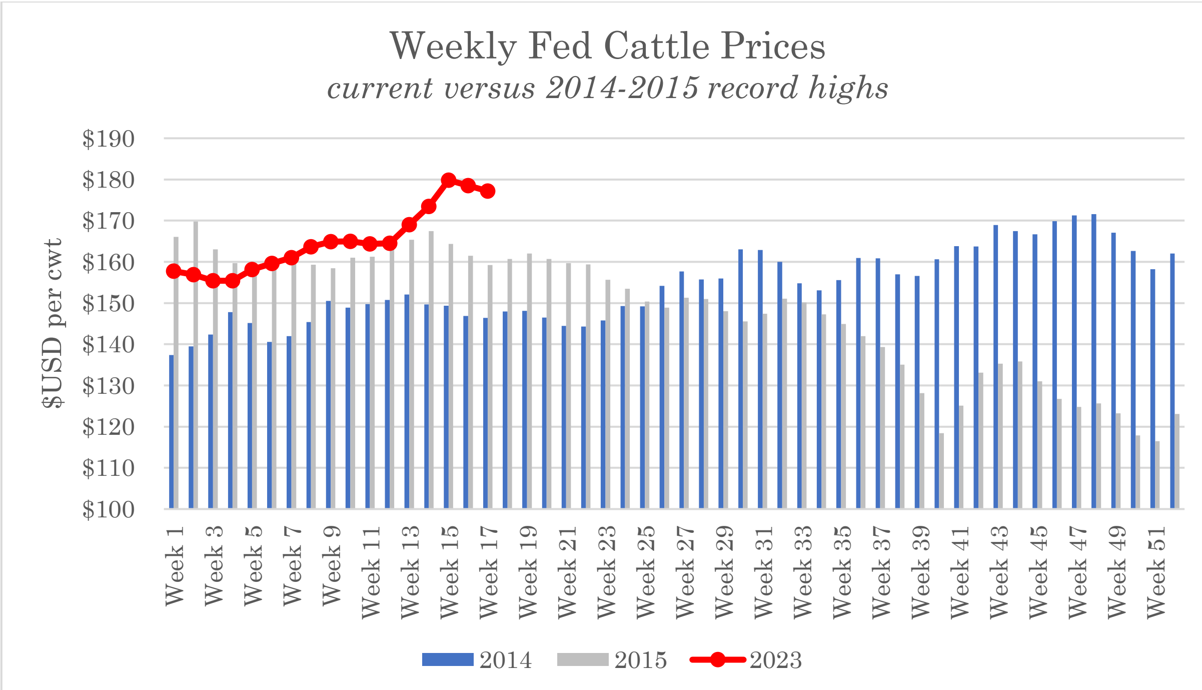
Total receipts for cattle in 2022 reached a record $86.8 billion, compared to the previous record of $81 billion in 2014, the only other year in which total producer receipts topped $80 billion.




***Source***: USDA AMS

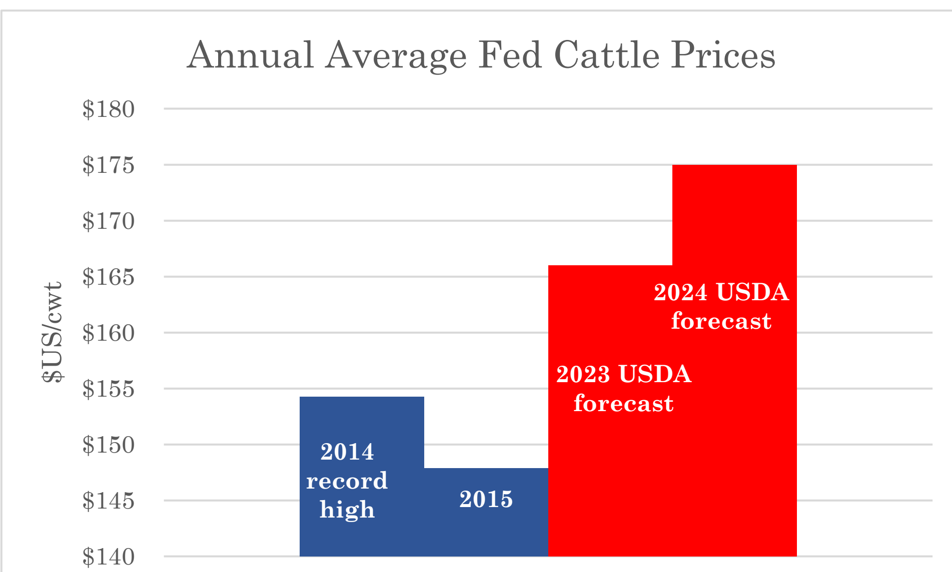
In 2022, liquidation of cattle off farms and ranches led to record monthly inventories of cattle on feed in nine of the 12 months of the year. But U.S. beef packers, having generally recovered from labor shortages and supply chain disruptions faced in 2020 and through much of 2021, were able to harvest and process all these cattle. As a result of packers' demand, cattle prices rose dramatically.

In December 2022, fed cattle prices hit their highest level for that month since 2014, when the overall cattle herd was at its smallest since 1952 (during the Truman Administration), and in January 2023 reached the highest January prices since 2015. So far in 2023, cattle prices have hit record levels – exceeding those of 2014 and 2015.




***Source***: USDA AMS

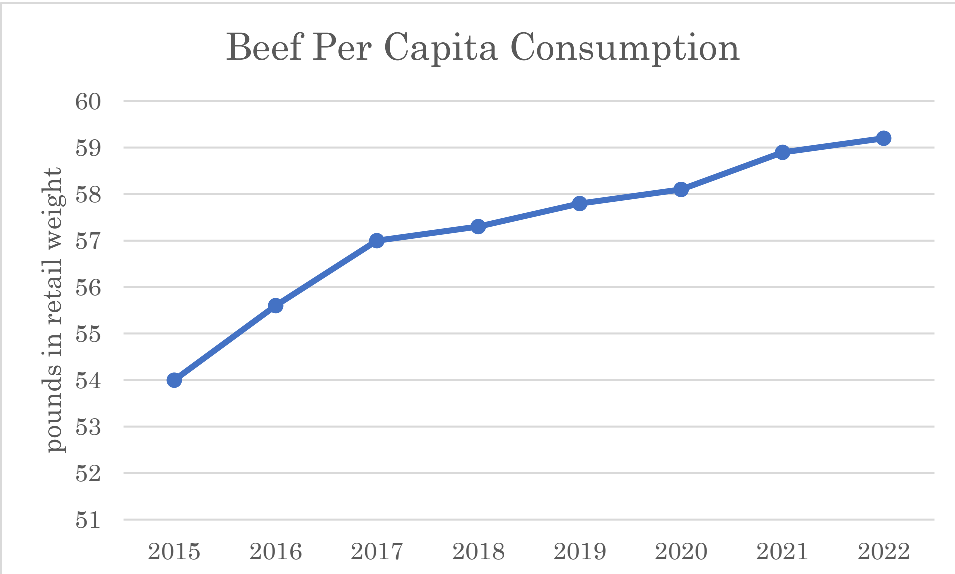
Looking ahead for the rest of the year, USDA projects record fed cattle prices to continue. The May World Agricultural Supply and Demand Estimates (WASDE) report forecast cattle prices to maintain an annual average of $166 per hundredweight. That is $12 per hundredweight, or 7.6 percent higher, than the previous record. USDA's forecast for 2024 projects another 5.4 percent increase over this year's historical record.




***Source***: USDA AMS

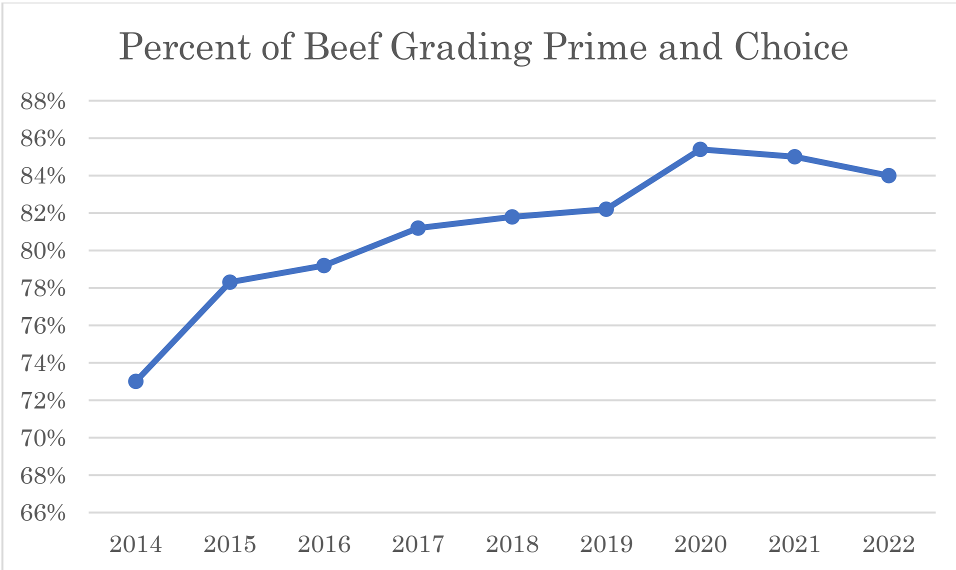
Consumer Demand & Beef Quality

Consumer demand for beef has been extremely strong. Consumption has grown by more than five pounds per capita since 2015.




***Source***: USDA ERS

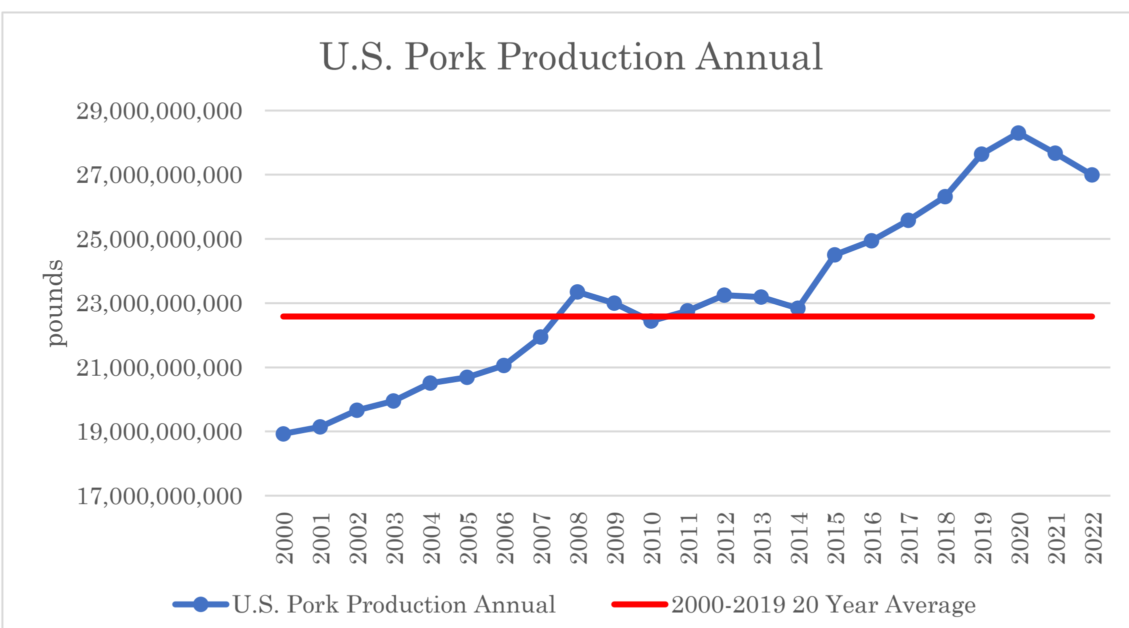
Importantly, beef quality over that time has improved hand-in-hand with per capita consumer demand because packers and producers have both focused on what consumers demand. From 2020 to 2022 beef production at the two highest quality grades, Prime and Choice, has averaged 84.8 percent. That compares to 76 percent for the same quality grades in 2014 and 2015.




***Source***: USDA ERS

Hog Market Fundamentals at Work

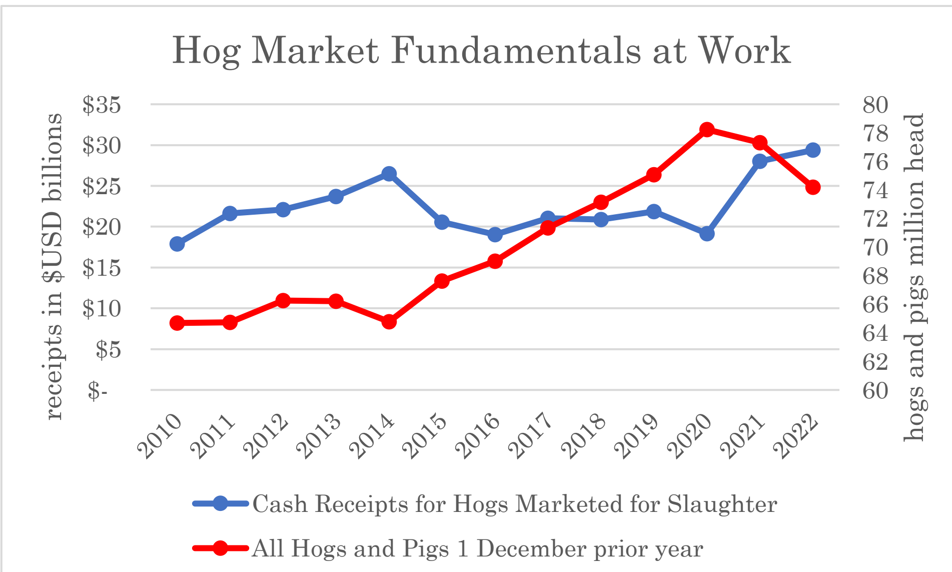
Pork production faced the same challenges from COVID and the ongoing disruptions, which came on the heels of unprecedented global pressures resulting from the outbreak of African swine fever in China, which maintains nearly half of the world's swine herd. U.S. pork packers also showed their resiliency through all this volatility. Pork production hit a record in 2020 at 28.3 billion pounds. Although pork production was down in 2022 to 26.995 billion pounds, it remained a staggering 19.5 percent above the 20-year average from 2000 to 2019.




***Source***: USDA ERS

Like cattle, hog prices are driven by the fundamentals of supply and demand. After a six-year expansion cycle driven by tight global supplies and record export demand, the December inventory of hogs and pigs hit its peak in 2019. Three and a half months later COVID hit, which created a shock to the demand for market hogs and feeder pigs as packers were temporarily unable to operate at full volume.

Total receipts for hogs in 2022 reached a record $29.375 billion, compared to the previous record of $28.03 billion in 2021 – the only other year in which total producer receipts topped $27 billion.

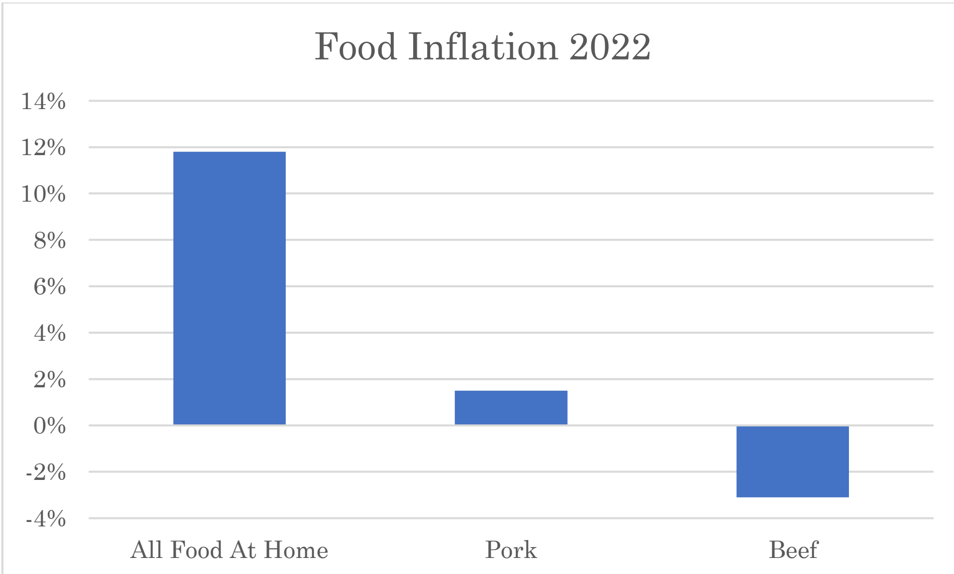



***Source***: USDA AMS

USDA is projecting an increase in pork production in 2023 of 1.4 percent. That would bring total output to 27.4 billion pounds – the fourth time that pork production has exceeded 27 billion pounds, and all since 2019.

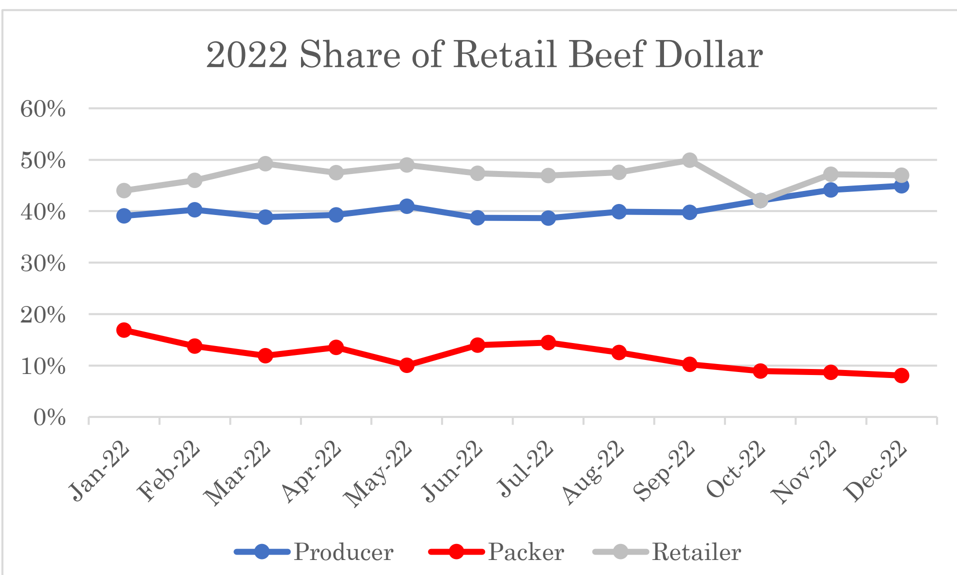
<u>Red Meat Outlook</u>

With exceptionally strong meat demand in 2021, inflation was an issue that year despite a record volume of 55.9 billion pounds of red meat production. In 2022, however, meat prices lagged far behind the general food inflation index. Red meat and poultry still lag behind the general consumer price index inflation rate, but consumers are faced with a great deal of economic uncertainty.



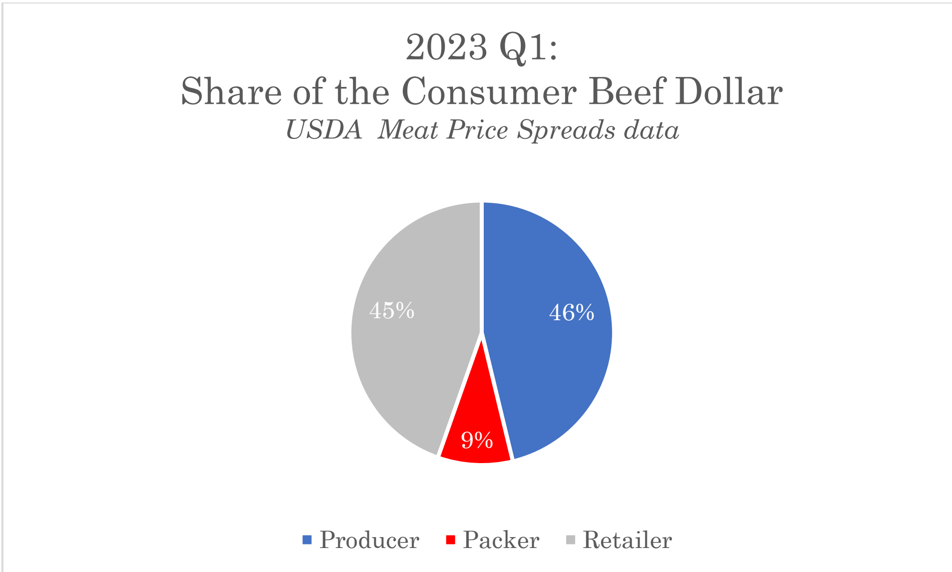

***Source***: Bureau of Labor Statistics

With rising cattle prices in 2022, cattle producers saw their share of the consumer beef dollar rise from 39 percent to 45 percent. The packers' share ended 2022 at 8 percent, remaining the smallest share of the consumer dollar it has been in the 640 months since records started in January 1970, with the exception of May 2020 at the height of the COVID disruptions to the packing sector.



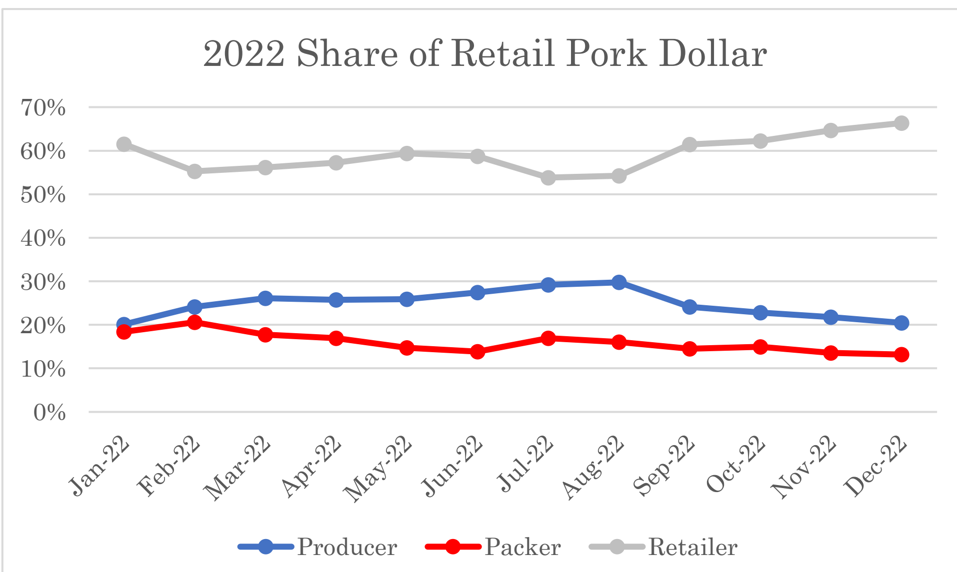

***Source***: USDA ERS

So far, for the first quarter of 2023, based on cattle and beef prices to date, the producers' share has averaged 46 percent, one percent higher than the retailers' share, and above the packers' share of 9 percent.



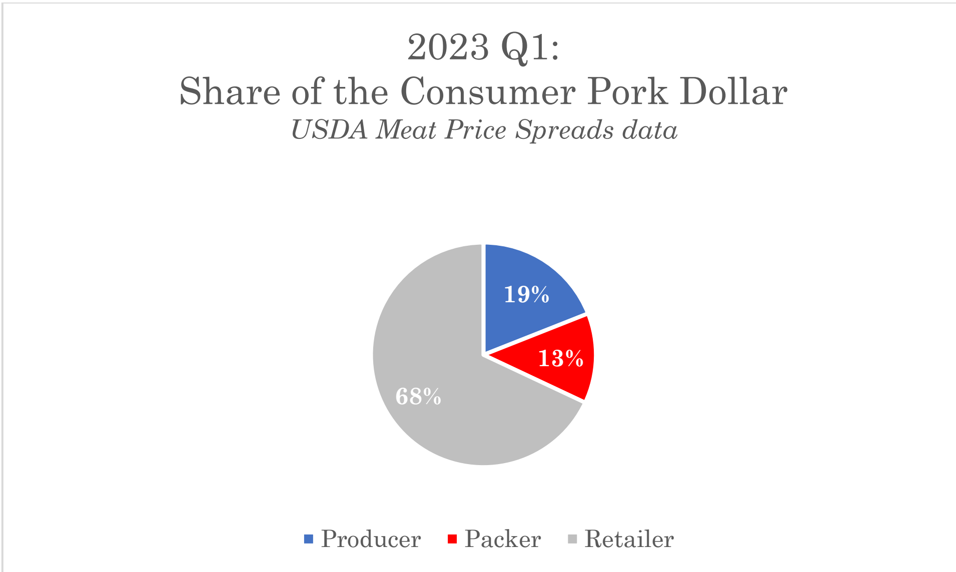

***Source***: USDA ERS

In 2022, the producers' and packers' share of the retail pork dollar came under pressure late in the year as the retailer share increased.




***Source***: USDA ERS

So far in the first quarter of 2023, that situation has continued.




***Source***: USDA ERS

**<u>Public Policy Issues</u>**

<u>Rulemaking Under the Packers and Stockyards Act</u>

First announced in July 2021, USDA is in the midst of proposing a "suite of major actions" to alter the structure of the meat and poultry industry through regulatory changes under the Packers and Stockyards Act (PSA). Last year, USDA's Agricultural Marketing Service (AMS) published a proposed rule and Advance Notice of Proposed Rulemaking to alter the poultry growing system, followed by a proposed rule titled, "Inclusive Competition and Market Integrity Under the Packers and Stockyards Act" (Inclusive Competition Proposed Rule) that would change the marketing of all species. Finally, USDA has stated it plans to publish a third proposed rule to limit the harm to competition standard under the PSA.

As a threshold matter, the Department should withdraw all the PSA proposals and publish the entire "suite" of interconnected proposals together, with a comment period sufficient to allow stakeholders and Congress to consider the authority undergirding the proposals, the overlapping impact of the proposals, and so stakeholders can provide comments with a comprehensive understanding of USDA's agenda. The piecemeal approach USDA has chosen is deliberate regulatory obfuscation.

For example, the Inclusive Competition Proposed Rule itself makes no reference to longstanding court precedent that a plaintiff in a PSA section 202 case must show injury, or likelihood of injury, to competition to prevail. The proposal's preamble, however, is a different story and is littered with statements to the contrary. In at least seven locations, AMS asserts an individual need not "show market-wide harm to secure relief under the Act," which suggests the agency believes simply saying something enough times is sufficient to overturn the precedent established by eight federal appellate circuits.

As the United States Court of Appeals for the Fifth Circuit correctly explained, Congress enacted the PSA "to combat restraints on trade" and to "promote healthy competition" in the livestock industry.[1] In enacting the statute, Congress "incorporate[d] the basic antitrust blueprint of the Sherman Act and other pre-existing antitrust legislation."[2] Congress intended the PSA to be a competition law, not a law creating individual rights of action. Under the settled principle of antitrust law, a plaintiff must show antitrust injury – a harm that the antitrust laws were designed to prevent.[3] To prove an antitrust injury, it is not enough for the plaintiff to show it was harmed by the defendant's conduct; rather, the plaintiff must prove that competition was harmed or likely to be harmed by the defendant's conduct.[4]

In an *en banc* decision, the Fifth Circuit stated succinctly:

> Once more a federal court is called to say that the purpose of the Packers and Stockyards Act of 1921 is to protect competition and, therefore, only those practices that will likely affect competition adversely violate the Act. That is this holding.[5]

And the most recent appellate court to address this issue said it best:

> The tide has now become a tidal wave, with the recent issuance of the Fifth Circuit Court of Appeals' *en banc* decision in *Wheeler v. Pilgrim's Pride Corp.*, 591 F.3d 355 (5th Cir. 2009) (*en banc*), in which that court joined the ranks of all other federal appellate

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[1] *Wheeler v. Pilgrim's Pride Corp*. 591 F.3d 355, 361 (5th Cir. 2009) (*en banc*); *see* H.R. Rep. No. 85-1048, at 1 (1957) (Act's purpose was to "assure fair competition and fair trade practices in livestock marketing and in the meatpacking industry").

[2] *De Jong Packing Co. v. United States Dep't of Agric*., 618 F.2d 1329, 1335 n.7. (9th Cir. 1980), cert. denied, 449 U.S. 1061 (1980).

[3] *See Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc*., 429 U.S. 477, 489 (1977).

[4] *See, e.g.*, *Race Tires Am., Inc. v. Hoosier Racing Tire Corp*., 614 F.3d 57, 83 (3d Cir. 2010); *see also Brunswick*, 429 U.S. at 488 ("[A]ntitrust laws …were enacted for 'the protection of competition not competitors.").

[5] *Wheeler* 591 F3d at 357.

> courts that have addressed this precise issue when it held that "the purpose of the Packers and Stockyards Act of 1921 is to protect competition and, therefore, only those practices that will likely affect competition adversely violate the Act." *Wheeler*, 591 F.3d at 357. All told, seven circuits – the Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits – have now weighed in on this issue, with unanimous results.[6] (Emphasis added.)

USDA's attempt to circumvent the courts and Congress to impose a new interpretation of the harm to competition standard brings to mind the Supreme Court's recent decision in *West Virginia v. EPA*.[7] In that decision the Supreme Court invoked explicitly the "major questions doctrine," which requires Congress to speak clearly when authorizing agency action in certain cases.

The "major questions doctrine" turns on several considerations, including whether: the agency discovered in a "long-extant statute an unheralded power" that significantly expands or even "transform[s]" its regulatory authority; the claimed authority derives from an "ancillary," "gap-filler," or otherwise "rarely used" provision of the statute; or the agency adopted a regulatory program Congress had "conspicuously and repeatedly declined to enact itself."[8] The Court is skeptical where an agency seeks to promulgate a rule "that Congress has conspicuously and repeatedly declined to enact itself."[9]

Where an agency has long administered a statute, the "lack of historical precedent, coupled with the breadth of authority that the [agency] now claims, is a telling indication that the mandate extends beyond the agency's legitimate reach."[10] Section 202 of the PSA can hardly be called an ancillary or rarely used provision of the statute and given Congress has amended section 202 multiple times over the decades, when it considered amending the statute to articulate the legal standard AMS promotes, Congress declined to do so.

Indeed, Congress has "conspicuously and repeatedly" declined to alter the harm to competition standard. In the 2008 Farm Bill that led to this rulemaking, Congress considered and rejected a proposal to amend section 202(a) to state that a business practice can be found to be "unfair, unjustly discriminatory or deceptive" "regardless of whether the practice or device causes a competitive injury or otherwise adversely affects competition and regardless of

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[6] *Terry v. Tyson Farms, Inc.,* 604 F.3d 272, 277 (6th Cir. 2010)
[7] *West Virginia v. EPA*, 142 S. Ct. 2587 (2022); see also *NFIB v. OSHA,* 142 S. Ct. 661 (2022) (per curiam); *Alabama Association of Realtors v. HHS*, 141 S. Ct. 2485 (2021)
[8] West Virginia v. EPA.
[9] *West Virginia v. EPA* at 2610.
[10] *NFIB*, 142 S. Ct. at 666 (quotation marks omitted).

any alleged business justification for the practice or device."[11] Senator Tom Harkin, who was then the Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, explained that his legislation would overturn court rulings that "producers need to prove an impact on competition in the market in order to prevail" in cases alleging that packers or dealers engaged in "unfair" or "unjustly discriminatory" practices.[12] Not only did the legislation not pass either the House or Senate, but Sen. Harkin did not include it in the Senate Farm Bill he introduced.[13] Congress's decision not to amend section 202 "after years of judicial interpretation supports adherence to the traditional view" that a finding of harm or likely harm to competition is required.[14]

And the 2008 Farm Bill was not the only instance Congress kept the harm to competition standard. Between 1921 and 2002, Congress amended section 202 of the PSA seven times, but it never disrupted the courts of appeals' statutory interpretation.[15] Congressional inaction in the face of the decisions of the appellate courts suggests that it has accepted that settled understanding.

But Congress has also affirmatively acted to stop changes to the harm to competition standard. AMS's statements regarding harm to competition embedded in the Inclusive Competition Proposed Rule's preamble are not the first time the agency has taken this position. In a 2010 failed rulemaking the agency stated a violation of sections 202(a) or (b) of the PSA "can be proven without proof of predatory intent, competitive injury, or likelihood of injury."[16]

The 2010 proposal failed when Congress, on a broad, bipartisan basis, prohibited USDA from moving forward with the rulemaking. Proposed section 201.3(c) of the failed 2010 rulemaking would have attempted to overrule the harm to competition standard established by the courts. However, Congress intervened and the appropriations bills for each of fiscal years 2012 through 2015 included language prohibiting the agency from expending any funds to "publish a final or interim final rule in furtherance of, or otherwise implement" proposed section 201.3(c), among other sections of the 2010 proposed rule.

The appropriations language Congress passed four times prohibiting USDA from finalizing the proposed rule supports the conclusion that the

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[11] See Competitive and Fair Agricultural Markets Act of 2007, S. 622, 110th Cong. § 202 (2007); see also H.R. 2135, 110th Cong. § 202 (same).
[12] 153 Cong. Rec. S2053 (daily ed. Feb. 15, 2007).
[13] S. 2302, 110th Cong.
[14] *Wheeler*, 591 F.3d at 362 (quoting *Gen. Dynamics v. Cline*, 540 U.S. 581, 593-94 (2004)).
[15] *See Wheeler*, 591 F.3d at 361-62; *see also General Dynamics Land Sys., Inc. v. Cline*, 594, 599 (2004) explaining that "congressional silence" in the face of "years of judicial interpretation" suggests that Congress has accepted the judicial consensus.
[16] 75 *Fed. Reg*. 35338, 35340 (June 22, 2010).

standard set by the appellate courts is the proper one. Congress spoke directly to the issue and stopped USDA from changing the harm to competition standard. Yet, once again, in the Inclusive Competition Proposed Rule and the announcement of a future proposal also related to the harm to competition standard, USDA is attempting to circumvent both Congress and the courts, directly contravening Congressional intent and exceeding the authority granted by the PSA.

The Inclusive Competition Proposed Rule's faults related to the harm to competition standard are compounded by the proposal's other provisions. The proposal would broaden the basis of liability under the PSA in a way that will fundamentally alter the operations of protein markets in the United States to the detriment of producers, packers, and consumers.

First, the agency proposal prohibits unequal treatment of a "market vulnerable individual," which AMS would define as a

> person who is a member, or who a regulated entity perceives to be a member, of a group whose members have been subjected to, or are at heightened risk of, adverse treatment because of their identity as a member or perceived member of the group without regard to their individual qualities. A market vulnerable individual includes a company or organization where one or more of the principal owners, executives, or members would otherwise be a market vulnerable individual.[17]

This definition is so vague, and the preamble discussion associated with it so wide ranging, a regulated entity could not begin to know what actions to take or policies to implement to even attempt to ensure compliance. The proposed rule would subject packers and poultry integrators to untold litigation risks and force the industry toward a one-size fits all, lowest common denominator approach to procurement and contracting practices.

The proposal would also prohibit certain actions the agency characterizes as retaliation or deception. As the courts have required showing harm or likely harm to competition in cases brought under PSA section 202, the courts have consistently rejected claims that the PSA makes a federal offense out of breaches of contract or retaliatory actions that have no adverse effect on competition. In *London v. Fieldale Farms* the Eleventh Circuit found no section 202 violation based on allegations that a poultry dealer committed a breach of contract and terminated a grower's contract in retaliation for the grower's testimony against

[17] 87 *Fed. Reg*. 60054, proposed section 201.302.

the dealer in a separate lawsuit.[18] Likewise, the Sixth Circuit rejected claims that an alleged retaliatory act by a poultry dealer violates the PSA absent harm, or likelihood of harm, to competition.[19]

Under the Inclusive Competition Proposed Rule, a regulated entity could be subject to liability under the Act for simply terminating, or refusing to renew a contract, with any covered producer that has "communicated with a government agency with respect to any matter related to livestock, meats, meat food products, livestock products in unmanufactured form, or live poultry." In creating such broad liability, the proposed rule will increase litigation costs for processors, which will likely be passed on, in some measure, to consumers.

Covered entities seeking to reduce litigation risk will be incentivized to reduce the variety of contracts, and instead offer standardized contracts to producers, reducing producers' ability to reap the rewards of value-added production practices. USDA has advocated the need for increasing environmentally sustainable agricultural production practices. Ironically, the Inclusive Competition Proposed Rule will disincentivize packers from contracting with producers to provide premiums for innovative sustainability practices.

USDA's Inclusive Competition Proposed Rule also attempts to transform a federal competition law into a federal tort claim statute. Producers have significant protections under state laws for the grievances USDA would turn into federal cases. Allowing individual claims to be brought under the PSA would trigger spurious litigation, reduce efficiency and inject added costs throughout the supply chain, resulting in higher costs and less innovative products available to consumers and limiting producers' ability to collect premiums for value added production practices. The Meat Institute urges Congress to once again step in and stop USDA's regulatory overreach.

## Livestock Mandatory Reporting Reauthorization

Despite claims to the contrary, 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, hogs and pork, and sheep and lamb. Despite the desires of some, LMR is not a tool to direct market changes.

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[18] *London v. Fieldale Farms Corp*., 410 F.3d 1295, 1303 (11th Cir. 2005)
[19] *Terry v. Tyson Farms, Inc*., 604 F.3d at 279

Under LMR regulations, packers must report to AMS daily the prices they pay to procure cattle, and other information, including slaughter data for cattle harvested during a specified 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, starting Monday afternoon and ending 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 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.

AMS also publishes 20 daily and two weekly hog reports each week covering similar time periods, regions and activities. Further, AMS reports four daily and eight weekly reports covering prices and quantities of all wholesale pork sold. Packers are required to report this information twice daily as well.

Few, if any, other industries have this degree of transparency via government mandated reporting of detailed price and product data on an on-going, daily basis, published for all other market participants – including up-stream sellers, downstream buyers, and direct competitors – to view, analyze, and use strategically. Given these regulatory mandates on packers, the most critical component of the program is confidentiality. Without the firewall of confidentiality, each entity in the supply chain from producer to retail and food service will know exactly what the other entities are doing at a given time.

When LMR was established, Congress smartly established a five-year authorization period such that the program was decoupled from the five-year farm bill authorization. Keeping LMR decoupled from the farm bill is critical: LMR requires highly technical knowledge of procurement and sales in the complex livestock and meat markets. Well intended changes to LMR enacted as part of broader farm bill policy negotiations and compromises could drive unintended market responses. By keeping LMR separate from farm bill policy deliberations, stakeholder groups can negotiate the technical changes to LMR they seek, reach consensus over any changes, and provide Congress with the technical changes upon which stakeholders agree. This consensus-driven approach has allowed LMR to be reauthorized without acrimony or market-disrupting changes.

The Livestock Mandatory Reporting program's five-year authorization was scheduled to sunset in 2020, but Congress has extended its authorization annually in appropriations legislation. Since 2019, the North American Meat Institute has supported a clean, five-year reauthorization of LMR, and NAMI continues to hold that position today.

Meat Institute member companies worked closely with the livestock producer community, AMS, and other interested stakeholders when this reporting program first came into being and on every reauthorization effort since. This iteration of reauthorization must be no different. In that regard, the Meat Institute is committed to working with its membership and with livestock producer groups, to find consensus on reauthorizing the Livestock Mandatory Reporting Act and I hope we continue this partnership free of controversy. I am confident we can achieve this goal in a manner that makes the program more effective and efficient without increasing costs or regulatory burdens.

Labor Availability

Access to a reliable, stable workforce continues to be the most pressing day-to-day challenge facing the meat industry – this was the case before the pandemic, and it has only become more acute. Meat packers and processors have significantly raised salaries and benefits, with starting salaries in many beef slaughter operations starting at more than $22 an hour, plus benefits.

The Meat Institute was pleased to hear Committee Chairman Glenn Thompson's plan to establish an agricultural workforce working group within the House Agriculture Committee. We appreciate the Chairman's leadership and innovative thinking in creating the working group, and are pleased the Committee will bring its expertise on agricultural issues to the agricultural workforce discussion.

As Committee members know, meat packing and processing facilities are not eligible to employ workers under the agricultural guestworker visa (H-2A) program. However, meat packers and processors are quite simply the harvest stage of the livestock industry – they are essential to the livestock industry and food supply. The Meat Institute urges the working group to consider the workforce needs of the packing and processing community as it deliberates, and we would welcome the opportunity to be part of the task force's discussions so a solution can be found that works for all of agriculture.

International Trade

Last year, 2022, was a strong year for U.S. meat exports. U.S. pork exports were the third highest on record, totaling more than 5.89 billion pounds and valued at $7.68 billion. Beef exports set records in both volume and value in 2022, at nearly 3.25 billion pounds and a value of $11.68 billion. According to the U.S. Meat Export Federation (USMEF), pork exports equated to $61.26 per head slaughtered, representing 27.5 percent of pork production, while beef exports equated to a record $447.58 per head of fed cattle slaughtered in 2022, and 15.2 percent of total beef production.

For the first quarter of 2023, beef exports are down, based on a smaller cattle herd and reduced production, from the record levels of 2022. Pork exports, however, are strong. Exports of U.S. pork through March 2023 are up 17 percent over March 2022 by volume and 18 percent by value. The month of March 2023 was the ninth largest month on record for pork exports in both volume and value, according to USMEF.

It is clear international trade is vital to the long-term strength of the U.S. meat and poultry industry, supports thousands of jobs along the supply chain, particularly in rural communities, and improves livelihoods of American producers, farmers, and ranchers. However, the U.S. meat and poultry industry's export potential remains limited by unjustified sanitary barriers, prohibitive tariffs and tariff rate quotas, and onerous registration and approval requirements for exporting facilities. These challenges are further exacerbated by the lack of new, comprehensive U.S. free trade agreements (FTAs).

Preserving and enforcing existing U.S. trade agreements and frameworks, while indispensable, will not alone guarantee export growth or the economic benefits it confers. This assertion is especially true as China, the European Union (EU), and other competitors forcefully, and swiftly, negotiate FTAs that shirk internationally-recognized standards and undermine U.S. access to growing and mature markets, alike. Rather, the U.S. would be prudent to negotiate additional access with existing trading partners, while also pursuing new markets to compete effectively, for example, with China's Regional Comprehensive Economic Partnership and the EU's mounting list of ratified FTAs and ongoing negotiations in Asia and the Americas.

Although the Meat Institute supports the Administration's initiatives to deepen collaboration, trade, and economic ties with the Indo Pacific region and in the Americas through the Indo-Pacific Economic Framework (IPEF) and the Americas Partnership for Economic Prosperity (APEP), respectively, these initiatives, as currently envisioned, will not create an equal playing field for American workers and businesses, especially small and medium-sized businesses, without addressing both tariff and non-tariff barriers inhibiting U.S. export trade. With the proliferation of FTAs in the Indo-Pacific, in particular, U.S. exporters face a substantial, and growing, tariff disadvantage compared to countries in the European Union and China, for example.

Therefore, NAMI continues to encourage the Biden Administration to prioritize improved market access through tariff reductions and non-tariff barrier elimination in IPEF and APEP negotiations. Existing tariff disadvantages facing U.S. agriculture in the Indo-Pacific drastically reduce the export potential of U.S. meat and poultry in the region. Even if non-tariff barriers are addressed through IPEF, APEP, and other similar initiatives, access will be severely impeded by prohibitive tariffs, leading customers in key markets to source product from alternate suppliers outside the U.S. This not only weakens U.S. export value, but also detrimentally affects American meat and poultry companies and the workers and communities they sustain.

In exercising its oversight and consultative authority on trade, Congress is well positioned to advance, in outreach to the Administration, the importance for American workers and the U.S. economy of addressing barriers – both tariff and non-tariff – that preclude U.S. exports from reaching strategically-significant global markets.

In addition to encouraging a more comprehensive, robust trade policy, Congress has an opportunity to support and promote U.S. agricultural exports by funding the successful USDA Market Access Program (MAP) and Foreign Market Development Program (FMD). According to USDA, between 1977 and 2019, every dollar invested in these proven export promotion programs returned on average $24.50 in annual export value. During the same period, these programs increased U.S. export revenue by $9.6 billion annually and added $12.2 billion to farm cash receipts. In an increasingly competitive global trade environment, where 95 percent of consumers reside outside the U.S., these export promotion programs provide critical investments that help level the playing field for American agricultural products in markets around the world, increase consumer awareness about the quality and safety of U.S. agricultural exports, and return value to American businesses and workers.

<u>Xylazine</u>

We have all watched with horror the death, trauma, and pain that fentanyl has inflicted across the country. Now, xylazine, a drug approved by the U.S. Food and Drug Administration for use in animals as a sedative, is being added to fentanyl to create what is sometimes called “tranq” or the “zombie drug,” which is cheaper to produce and sell than pure fentanyl. Xylazine is not an opioid and so does not respond to naloxone, further complicating the challenges for first responders to treat overdoses.

Xylazine is used legally and safely by beef packers and others in the animal agriculture industry. For beef packers, xylazine is used to quickly and humanely sedate sick or injured cattle before euthanization in a manner that can safely and effectively be administered by workers. Beef packers using xylazine follow strict protocols, including keeping it locked in a safe with access limited to a small group of specially trained personnel, and maintaining meticulous records of all administration and doses.

As Congress examined ways to address the human crisis related to xylazine, the Meat Institute worked closely with the bipartisan sponsors of the Combating Illicit Xylazine Act (H.R. 1839). The legislation gives the Drug Enforcement Agency (DEA) the power to stop the flow of xylazine to humans, while allowing its continued access for veterinary purposes. Thus, veterinary use of xylazine may continue, while the DEA and other law enforcement officials can go after criminals manufacturing and selling xylazine to humans.

The Meat Institute supports the Combating Illicit Xylazine Act and appreciates the deliberative approach the bill's sponsors took to ensure that xylazine would remain available for approved veterinary use. If you have not already, please consider cosponsoring the bill. The Meat Institute urges Congress to quickly pass the legislation to give DEA the tools it needs to go after xylazine traffickers.

## Rural Development Opportunities: Public-Private Partnerships

NAMI member companies are vital contributors to the predominantly rural areas in which they operate. Not only are they major employers and economic drivers, but also stewards of their communities. NAMI has several members providing free community college and other educational opportunities for their team members, cost-share, and in some cases free childcare in childcare deserts, and affordable housing in areas needing more infrastructure to support economic growth.

Our member companies are making substantial investments to improve rural communities, investments that stand to cost-effectively benefit even more rural Americans should a mechanism exist within Rural Development to foster public-private partnerships. The upcoming farm bill reauthorization presents a real opportunity to better leverage private company investments into a more prosperous rural America.

**Conclusion**

Thank you for the opportunity to testify before the Subcommittee. The meat and poultry industry is a critical part of the agriculture industry, and it provides an essential component of Americans' diets. I look forward to answering any questions.