Testimony Submitted for the Record

**Julie Anna Potts, President and Chief Executive Officer,
North American Meat Institute**

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Antitrust, Commercial, and Administrative Law**

Reviving Competition, Part 5: Addressing the Effects of Economic Concentration on Americas Food Supply

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

The Meat Institute is the United States' oldest and largest trade association representing packers and processors of beef, pork, lamb, veal, turkey, and processed meat products. NAMI members include more than 350 meat packing and processing companies, the majority of which have fewer than 100 employees, and account for more than 95 percent of the United States' output of meat and 70 percent of turkey production.

Last summer, NAMI and eleven other organizations representing livestock producers, farmers, and companies who produce the vast majority of America's meat, poultry, and dairy, as well as animal feed and ingredients, unveiled the Protein PACT for the People, Animals, and Climate of Tomorrow. The Protein PACT is the first joint initiative designed to accelerate momentum and verify progress toward global sustainable development goals across all animal protein sectors to ensure customers, consumers, and policy makers trust that meat aligns with their sustainability expectations.

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

COVID-19 Affected the Cattle and Beef Markets.

The COVID-19 pandemic was a shock to the meat supply chain, as it was for every industry in America, and the shock continues to reverberate today, as evidenced by the lack of available labor, high consumer demand, and disruptions throughout the supply chain.

During 2020, pandemic-related plant interruptions temporarily idled about 40 percent of slaughter capacity for cattle and hogs at the peak of its impact. This disruption happened in tandem with unprecedented retail demand for beef due to panic buying and freezer stocking as shelter-in-place orders were effectuated. The situation was worsened by the significant operational changes needed to rebalance production, processing, and distribution away from foodservice toward retail. The cuts, product sizes, processing equipment, packaging, and distribution vary considerably between retail and foodservice and are not easily transitioned, but the industry was resilient and adapted.

The shift from foodservice to retail had a dramatic impact. In 2020, retail beef sales increased by 606 million pounds by volume, or more than 11 percent. All fresh meat and poultry sales increased 19 percent by value, an increase of $9.6 billion. Beef sales increased by $5.9 billion in value, accounting for 61 percent of that overall growth in protein demand. Ground beef sales alone grew by $2.02 billion, accounting for 21 percent of the total increased aggregate demand for meat and poultry.[1]

Beef and pork demand remained high in 2021: the total volume of retail beef sales through December was up 4.1 percent over the pre-pandemic levels of 2019. Pork sales volumes were up 2.2 percent, and certain product categories grew even more; for example, retail bacon sales were up 6.2 percent.[2] The increased demand in 2021 happened while the packing sector's ability to process livestock was experiencing operational constraints because a lack of available labor reduced the packing industry's ability to operate at full capacity.

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[1] Beef Checkoff, Hindsight 2020: Retail and Foodservice Trends Through the Pandemic, accessed November 2021.

[2] Source: IRI, Integrated Fresh, fixed and random weight, Multi Outlet stores, 52 weeks ending 12/26/2021 versus year ago and versus two years ago

Claims about Increasing Consolidation and Concentration are Misplaced.

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

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

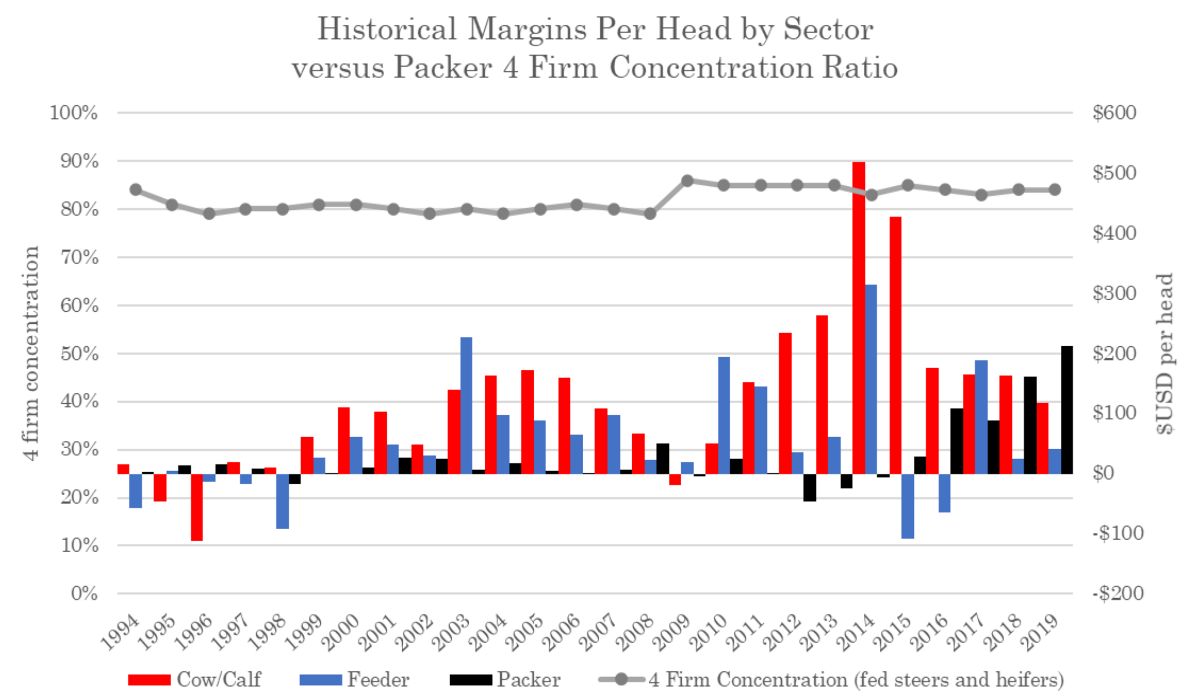
The meat packing industry has been, and continues to be, one of the most highly scrutinized industries when it comes to antitrust review. The USDA Agricultural Marketing Service's (AMS) Packers and Stockyards Division (P&S) is uniquely charged, by statute, to provide on-going oversight for fair business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

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

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

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

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

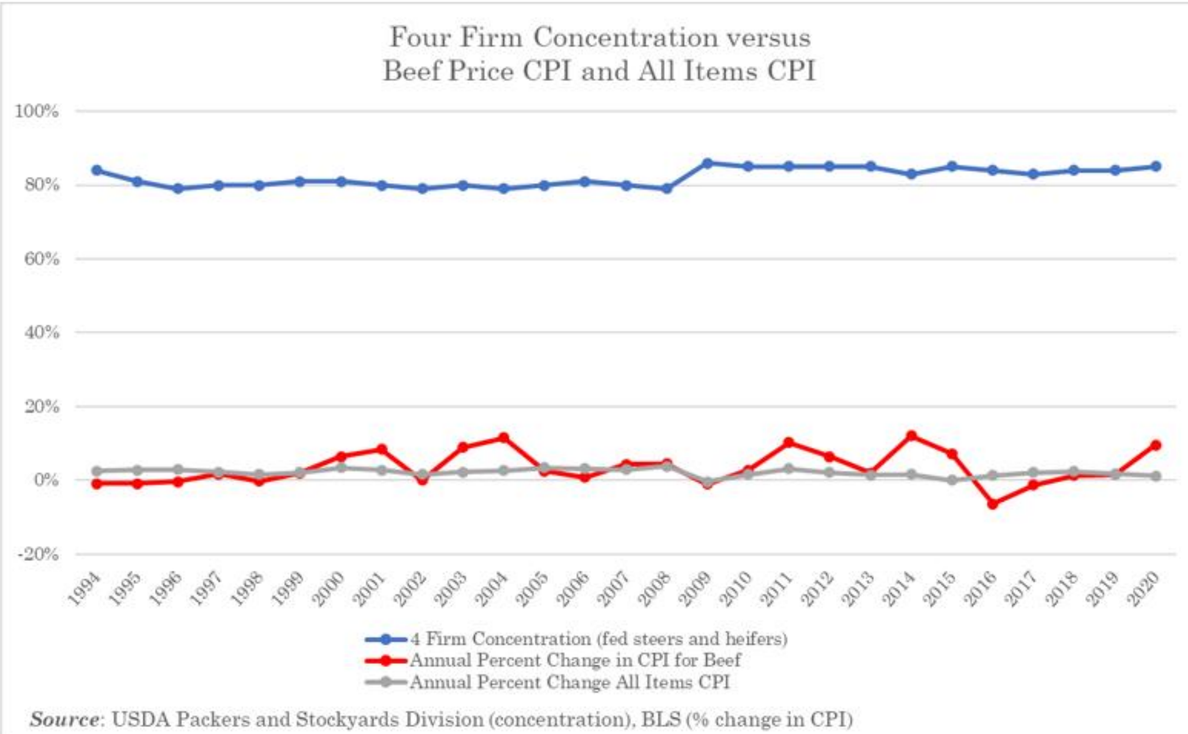


Source: USDA Packers and Stockyards Divison (concentration); Sterling Marketing (margin)

Rebutting Administration Claims.

Looking for a scapegoat for economy-wide inflation, the Biden administration has alleged that meat and poultry industry concentration is to blame for rising consumer prices. The truth is not so convenient.

Using USDA's meat industry concentration data, the chart below demonstrates that, while the four-firm concentration in fed cattle beef packing has remained relatively constant since 1994, the Consumer Price Index (CPI) for beef has been variable over that same period; sometimes above and sometimes below the overall consumer price index.

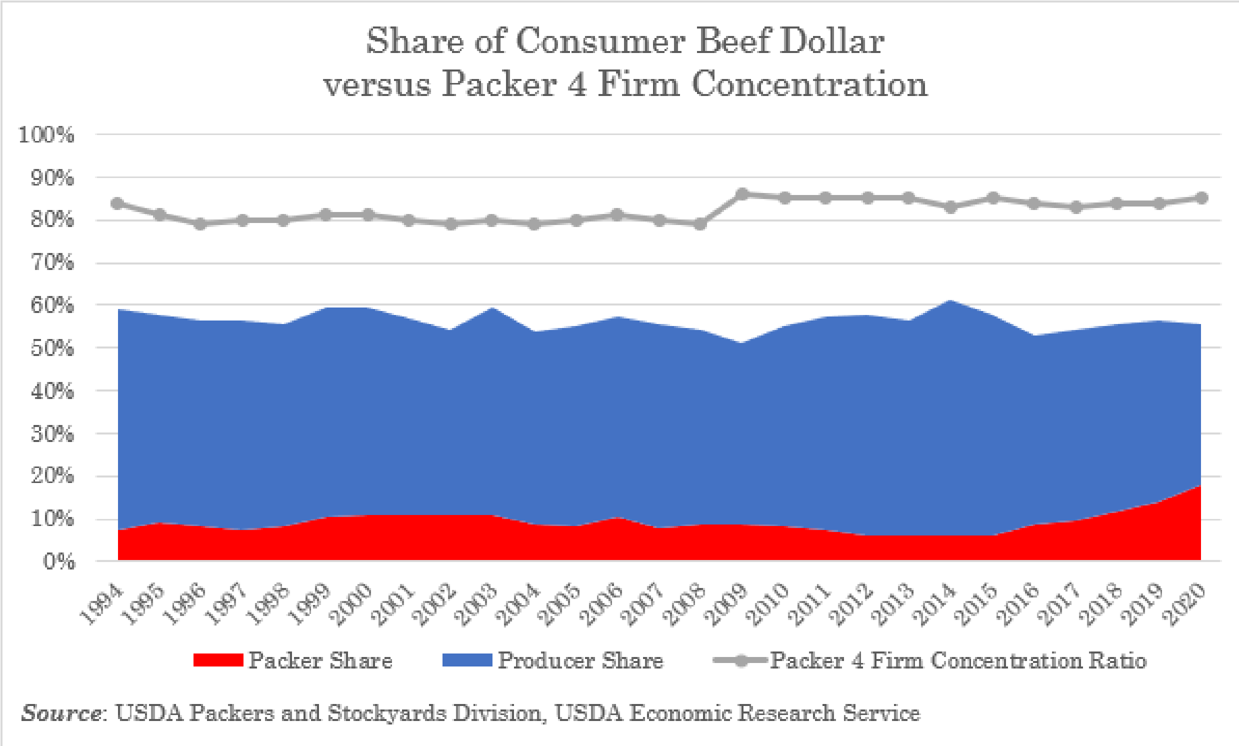


If concentration is causing the recent rise in consumer prices for meat and poultry products, why did concentration not cause inflation five or ten years ago? Moreover, the December CPI showed prices for meat dropped slightly, yet concentration remained the same.

The administration and some cattle producers have also blamed concentration for producers getting a smaller share of the consumer dollar for beef than they did decades ago. On January 3, 2022, a White House Fact Sheet noted:

> Fifty years ago, ranchers got over 60 cents of every dollar a consumer spent on beef, compared to about 39 cents today. Similarly, hog farmers got 40 to 60 cents on each dollar spent 50 years ago, down to about 19 cents today.

Unfortunately for the White House, the same USDA database referenced by the White House Fact Sheet, updated with December 2021 data released by USDA, shows in 2021 beef packers' share of the consumer dollar was 22.2 percent – lower than the producer share. For pork, the packers' average share of the consumer dollar was 18.9 percent in 2021, also lower than the producers' share, which was 25.8 percent in 2021.



On January 10, the *Washington Post's* editorial board pointed out the absurdity of the administration's claims:

> President Biden is facing mounting criticism for inflation's rise to its highest level since 1982. Unfortunately, the White House's latest response is to blame greedy businesses.
>
> Economists across the political spectrum are rightly calling out the White House for this foolishness. Even some within the White House are questioning this approach, The Post reports.
>
> Inflation, which was relatively low for years, did not suddenly rise in recent months because businesses decided now was the ideal time to squeeze their customers. What actually happened is that demand soared for many products as the economy recovered. Often, there were not enough products to meet it, thanks to supply chain hiccups and labor shortages, so prices went up. In a surprise to many, consumers kept buying goods such as cars and washing machines even at higher prices.

So what's going on?

The administration will be surprised to learn that economic fundamentals have led to inflation. Labor shortages. Transportation and supply chain challenges. Regulatory policies. And all of those input challenges were coupled with record meat demand.

Collectively, these factors drove up prices for wholesale and retail beef.

Free Market Supply and Demand Fundamentals Are at Work. Let them keep working.

In July, testifying for Rabobank before the House Agriculture Committee's Subcommittee on Livestock and Foreign Agriculture, Dr. Dustin Aherin succinctly summarized the fundamentals of supply and demand impacting the cattle and beef markets:

> The imbalance of excess market-ready cattle supplies in the face of reduced operational packing capacity has put downward pressure on cattle prices. Meanwhile, consumer demand for beef and all animal proteins has reached record levels, fueled by pandemic stockpiling, increased and reallocated consumer income, and more recently, restaurant re-openings, not to mention export demand. These dynamics, combined with elevated processing costs, have increased the spread between beef price and cattle price, just as economic principles, past research, and historical market relationships would suggest.

Dr. Aherin further explained:

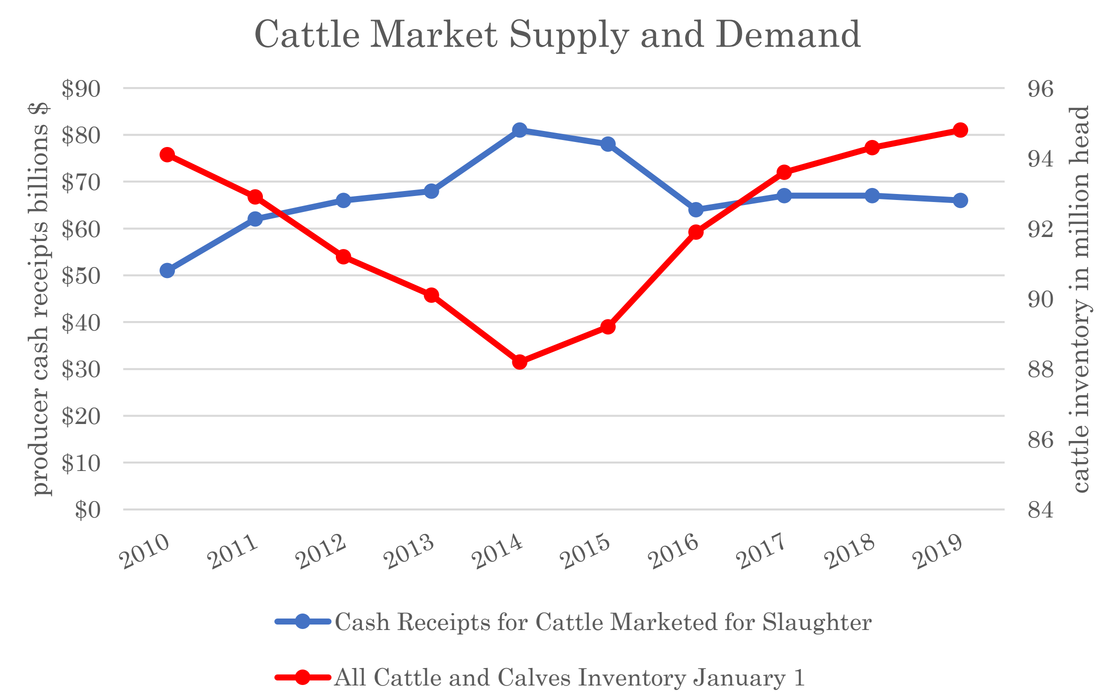
> …[C]attle are not beef. Cattle are one of several inputs into beef production. Other major inputs include labor, physical capital, and technology. These inputs are always seeking, but never finding, the perfect balance between one another.

Similarly, testifying before the Senate Committee on Agriculture, Nutrition, and Forestry last summer, Dr. Glynn Tonsor of Kansas State University highlighted for the Committee:

> Perhaps no relationship is currently more central to economic discussions in the U.S. beef-cattle industry than the relationship of fed cattle inventories to processor capacity.

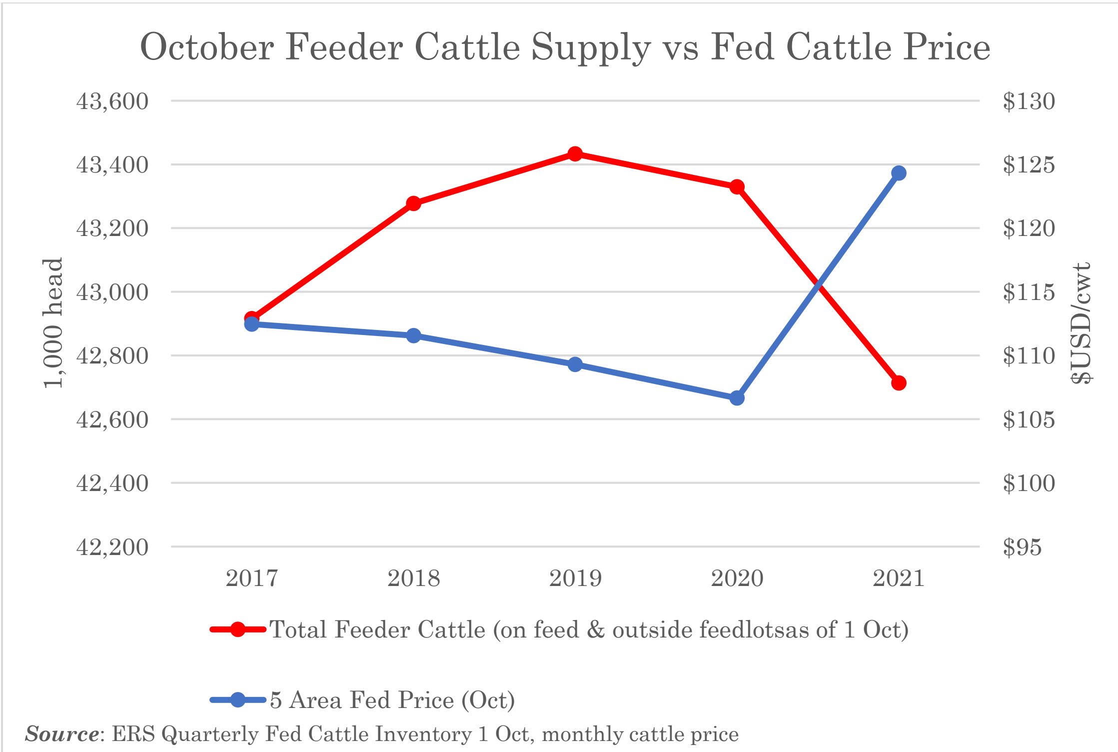
Before the pandemic, the supply of cattle was growing. For the first three months of 2020, the fed cattle supply experienced year-over-year growth. For each month – January, February, and March – the number of cattle and calves in feedlots with capacity of 1,000 or more head was larger than it was during the same months in 2019. Then the pandemic hit, dramatically reducing the ability of packers to harvest and process cattle into beef, especially during April and May 2020. That created a backlog of cattle through the remainder of 2020.

The supply of fed market cattle remained high in 2021. According to USDA, the cattle-on-feed inventory reached the second highest monthly total ever on record for six months during 2021. As expected, when supplies of cattle increase, prices typically decrease – and vice versa. The chart below shows how this has played out over the past 10 years, with or without such significant "black swan" events as COVID or the fire at the Holcomb packing plant in 2019.

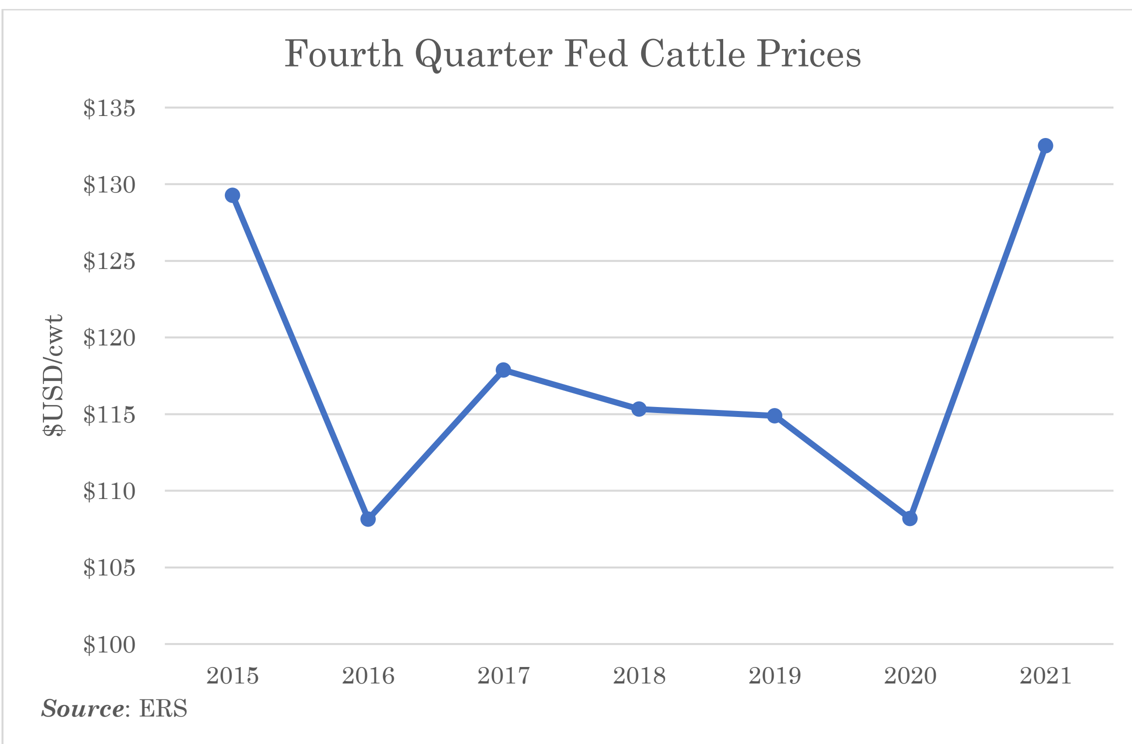


Source: USDA AMS

As packers were able to harvest and process through the backlog of cattle created by the COVID pandemic in 2020, over many months of additional overtime shifts including increased Saturday slaughter, the cattle market supply and demand moved toward more balance as the reports from USDA's quarterly feeder cattle supply show.



As a result, fed cattle prices in the fourth quarter of 2021 reached seven-year highs.



Labor is Capacity.

Production in meat packing and processing plants is labor-intensive, and therefore tied to the number of employees working the line. Throughout 2021, even as the comprehensive COVID-19 protections instituted by the meat industry since the spring of 2020 successfully lowered transmission among meatpacking workers and held case rates lower than case rates in the general U.S. population, worker shortages have persisted. The Meat Institute regularly hears from member companies challenged with 20 percent absenteeism on any day. Without a steady, reliable workforce, plants do not run efficiently and production declines. Labor is capacity.

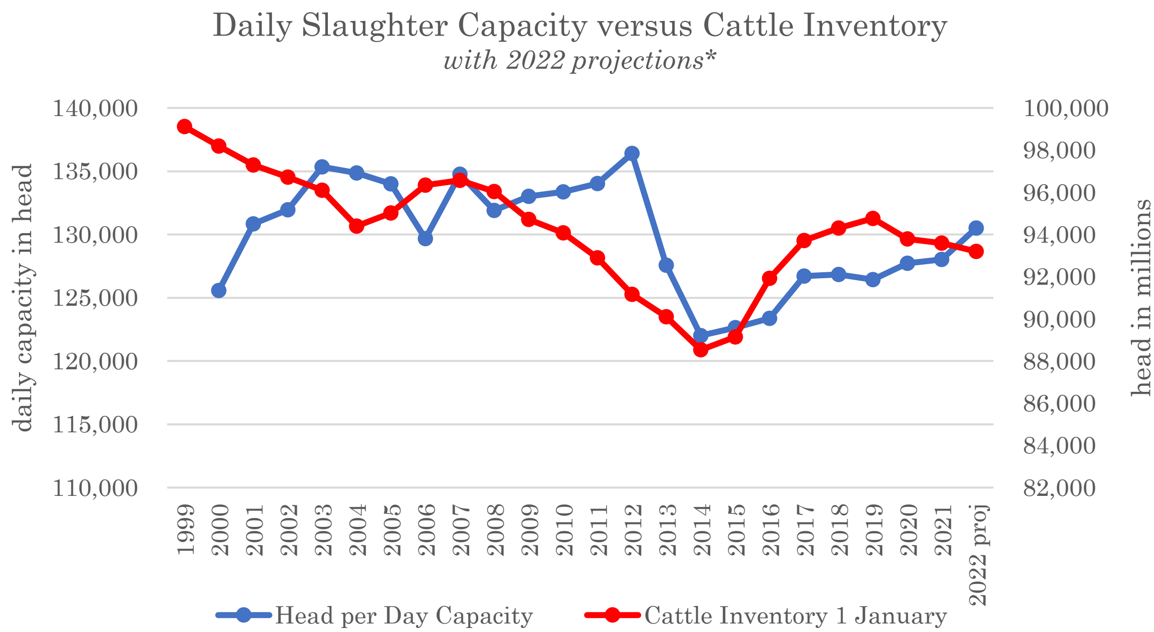
To be clear, labor challenges were not caused by the pandemic; COVID-19 only exacerbated the issue. The meat industry has been facing a labor shortage for some time and it continues today. Recent media reports underscore the industry's recruitment efforts, including wage increases, signing bonuses, relocation bonuses, retention bonuses, generous benefits, and at least one company initiating a childcare program. Several meat companies have publicly announced starting salaries at or above $20 per hour, which means raising all other salaries up the chain. The labor shortage not only affects processing lines but also warehouse workers, skilled maintenance positions, and other jobs critical to keeping plants running and maintaining the supply chain.

As COVID-19 has made abundantly clear, meat and poultry processors are the harvest stage of livestock and poultry production, like field work is for so many crops. Meat and poultry packers and processors must have access to an expanded, year-round agricultural guestworker program. The current agricultural guestworker program fails to meet the needs of all of agriculture: it is seasonal and does not include the meat and poultry industry.

Numerous proposals have been made that will allegedly fix perceived problems related to cattle sales and packing plant capacity, yet none address increasing labor availability for packing and processing plants. If Congress wants to take concrete action that will help producers and help consumers, then pass legislation to alleviate the labor shortage in packing and processing plants.

When American consumers head to the grocery store, they expect to see the meat counter filled with animal protein options. America's farmers, ranchers, and processors produce the highest-quality animal protein in the world. However, bringing nutritious and affordable animal protein to consumers requires a strong, efficient supply chain – and that supply chain is hindered by the lack of access to a skilled, reliable workforce for meat and poultry operations across the country.

Nonetheless, in the face of the many challenges, the beef packing sector has proven resilient. Total beef production in 2020 was slightly larger than 2019, based on heavier slaughter and carcass weights. As expected, cattle weights increased during the disruptions from COVID. Total head of commercial slaughter in 2020 was down just two percent from 2019, despite the dramatic disruption to the cattle harvest during the second quarter of 2020 resulting from the pandemic. USDA data at the end of 2021 shows cattle slaughter up 3 percent over 2020 and beef production up 2.6 percent over 2020.



** publicly announced capacity expansions; cattle inventory implied from USDA December 2021 Livestock Dairy &Poultry Outlook*

Legislative and Regulatory Proposals will Adversely Affect Producers and Packers.

In response to market conditions during the pandemic, there have been several proposals, including legislation introduced in Congress, to end the free market and give the government significant control over the cattle market.

Prominent among the proposals is legislation requiring cattle feeders to sell cattle to packers, and packers to buy from feeders, a mandatory minimum volume of fed cattle on a cash, spot market basis, or "negotiated" basis, purportedly to improve price discovery. As a result, this legislation necessarily limits other terms of sales from cattle feeders to packers known as Alternative Marketing Agreements (AMAs). The legislation is intended to have a disproportionate, negative impact on cattle feeders in Texas, Oklahoma, Kansas, and Colorado where AMAs are relied upon to balance the seasonal supply of available fed cattle for harvest with beef demand. This legislation would threaten the entire cattle and beef industry with numerous adverse, unintended consequences. The proposal is nothing less than the government dictating when two private parties – cattle feeders and beef packers – can contract for cattle. The result is that some cattle producers in some regions of the country would lose their production contracts, not because they want to, but because the government says they must. Meanwhile, producers in other regions of the country would not be affected.

In June 2021, USDA announced it planned to propose rules to "strengthen enforcement" of the Packers and Stockyards Act.[3] The expected proposed regulations would be problematic for several reasons, including their impact on livestock producers' options to market their cattle, as described.

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

For example, USDA plans on re-proposing a rule to clarify that a plaintiff need not demonstrate harm to competition to bring and prevail in Packers and Stockyards Act litigation. Additionally, USDA indicates that it intends to "propose a new rule that will provide greater clarity to strengthen enforcement of unfair and deceptive practices, undue preferences, and unjust prejudices."[4] It is beyond dispute that eliminating the need for a plaintiff to show harm to competition, or likely harm to competition, will encourage litigation, most of it likely specious litigation. That threat will severely limit or terminate AMAs with all the adverse unintended consequences discussed.

Conclusion

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

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

[4] Ibid