NATIONAL FAMILY FARM COALITION

January 10, 2025

S. Brett Offutt
Chief Legal Office /Policy Advisor
Packers and Stockyards Division
USDA AMS Fair Trade Practices Program
1400 Independence Avenue SW
Washington, DC 20250

Re: "Price Discovery and Competition in Markets for Fed Cattle"
Advanced Notice of Proposed Rulemaking
Docket No. AMS-FTPP-24-0013-0001

Dear Mr. Offutt:

The National Family Farm Coalition (NFFC) is grateful for the opportunity to comment on the 'Price Discovery and Competition in Markets for Fed Cattle' (Docket No. AMS-FTPP-24-0013-0001). NFFC is an alliance of grassroots farmer- and advocate-led groups across 42 states, representing the rights and interests of independent family farmers, ranchers, and fishermen in Washington, D.C. Today NFFC's 31 state, national, and regional farm and rural organizations are bound by a common belief that communities have the right to determine how their food is grown and harvested; that everyone in the food system should receive fair prices or wages; that all producers have equitable access to credit, land, seeds, water, markets, and other resources; and, that our food and agriculture policy must support sustainable farming, ranching, and fishing practices. Since NFFC's founding in 1986, we have been advocating for more competitive cattle markets and fair prices for independent ranchers and cattle producers.

We appreciate USDA's efforts and willingness to start a frank conversation about the economic challenges facing America's cattle ranchers because of grossly inadequate price discovery mechanisms for fed cattle, and to invite public input about various methods to bring more competition into these markets to allow cattle ranchers to benefit from the true value of their work to feed our communities. The comments we offer are general in nature and are informed by the more detailed comments offered by our allied organizations Western Organization of Resource Councils, R-CALF USA, and the Campaign for Contract Agriculture Reform.

The market analysis offered in the preamble of this Advanced Notice of Proposed Rulemaking (ANPR) is the most detailed and honest assessment of the state of U.S. cattle markets and price discovery ever published by USDA. We see this as an important step towards meaningful policy debate about much needed solutions to the problems identified in the ANPR preamble. The fewer packers there are to compete for cattle, the more control they have over the producers' ability to timely access the market, and the greater their ability to drive down prices through the use of certain procurement methods. As you are aware, following decades of ineffective anti-trust enforcement and under-investment by public institutions in diversified rural economies, only four massive corporate meatpackers now control 80% of the U.S. cattle/beef market. The procurement methods of these corporate packers allow them to remove slaughter-ready livestock from the marketplace without ever negotiating or establishing a price, thus thinning the very market that determines the base price for virtually all fed cattle. As a result, livestock producers are relegated to selling into a market that not only lacks competition, but is also highly susceptible to manipulation. These procurement methods are often referred to as "captive supplies" because the livestock are either owned or controlled by packers without ever contributing to price discovery. There are two main types of captive supplies:

1) cattle owned by packers in feedlots and confinement facilities; and
2) cattle procured by packers through several types of forward contracts and marketing agreements, collectively known as alternative marketing arrangements (AMAs).

In the concentrated livestock markets of the United States, buyers (the packers) can—and do—use captive supplies to manipulate markets. By using captive supply procurement methods to fill slaughter needs, packers avoid having to bid for cattle, sheep, or hogs in an open, public manner. This creates a false period of low demand causing prices to be driven lower. Contracting cattle for future delivery is not, in itself, anticompetitive. However, packers use "formula pricing" methods, in which feeders are enticed to commit their cattle through a contract that does not contain a negotiated price. Instead, the contract price is determined by a formula that is itself tied to a previous cash price and that is only determined after the cattle are removed from the competitive marketplace. For example, a packer might offer the producer 50 cents per hundredweight over the average cash market price paid by the packer during the week before the producer's cattle are actually delivered. Meanwhile, packers either own or have forward contracted enough cattle so they do not need to purchase significant numbers of cattle during the week before delivery, thus reducing the average cash market price upon which the contract is based. The result is that the cattle feeder receives a price lower than what a competitive market would predict, even with what appeared to be a premium offered to the cattle feeder.

Since 2009, the volume of cattle procured through captive supply arrangements has increased dramatically. As noted in the ANPR preamble, by March 2021, cash negotiations accounted for only about 20 percent of cattle purchases, and formula agreements accounted for 65 percent, with wide regional variations.

Two events have occurred since 2019, a fire in a Tyson-owned packing plant and the COVID-19

pandemic, that brought intense awareness to the ongoing lack of competition in the nation's livestock procurement market, which manifested as historically high consumer beef prices while cattle prices remained seriously depressed.

Concerns over this situation resulted in the introduction of bipartisan legislation in the 116th Congress by Senator Grassley Senators Grassley and Tester (S. 3693) to prevent packers from achieving captive supply levels above 50%, which represents a meaningful solution to the chronic erosion of competition in the U.S. cattle market. In the subsequent 118th and 119th Congresses this bipartisan bill was amended and retitled "The Cattle Price Discover and Transparency Act (S.4030 and S.228). The bill was reworked to include a permanent cattle contract library, carcass weighing reporting from USDA, and sets a range of captive supply minimums specific to the region.

The ANPR asks for comments regarding many different approaches to improve price discovery and competition in fed cattle markets. There are several of the proposed approaches that we consider to be "low-hanging fruit" for which USDA can and should take immediate action. Specifically, NFFC fully supports the agency's suggestions to:

1) Discourage packers from requiring exclusivity of a producer in an AMA,
2) Require covered packers to fully compensate sellers if they fail to pick up cattle purchased in the negotiated transaction window,
3) Establish mechanisms to "thicken" benchmarks for prices in AMAs.

In our comments on the proposed Fair and Competitive livestock and Poultry Markets rule, we also referenced a long list of troublesome practices used by the beef packers to control the market. This list was drawn from the experiences of ranchers in our membership, as well as from our allied organization WORC and R-CALF. In addition to the practices referenced in the ANPR, we urge USDA to consider the unfair, deceptive, and unduly preferential nature of these packer practices in your efforts to improve price discovery and/or competition in fed cattle.

1. Limiting, restricting, or denying timely market access by:
   a. Blackballing or otherwise retaliating against any particular cattle feeder;
   b. Coercing cattle feeders into entering forward contract arrangements in return for a guarantee of timely market access;
   c. Offering a cash bid for cattle contingent upon an agreement to delay delivery for longer than seven days.
2. Providing monetary compensation to any cattle feeder not related to the market value of the cattle at the time of the purchase transaction (such as total weight delivered).
3. Providing financing arrangements to some cattle feeders while denying others of the same financing terms.
4. Refusing to provide written documentation of grade and yield calculations to some cattle feeders when such documentation is provided to others.
5. Selling cattle to a competing packer without offering the cattle for sale in a market where other packers can offer a bid.
6. Requiring that domestic producers incur the costs of certification or verification, such as Beef Quality Assurance certification.

More broadly, we believe that USDA should seek administrative and legislative avenues to achieve these policy actions, as well as establishing mechanisms to significantly limit, if not prohibit, Alternative Marketing Agreements, based on their on-going use to economically exploit cattle producers and generally erode competition in the U.S. cattle market. At a minimum, we urge USDA to support actions to prohibit the use of any contract, including a formula contract, that does not contain a firm base price for livestock that can be equated to a fixed and fair dollar amount, on the day on which the forward contract was entered into.

The ANPR also draws analogies to benchmark regulatory approaches used in the financial industry and invites discussion about whether such approach could be useful in regulating benchmarks used in cattle market price discovery. While we remain open to continue a dialogue with USDA on that topic, we are skeptical that such mechanism could be successful in the cattle markets without any accompanying regulatory structures to prevent packer manipulation of those benchmarks.

Thank you for consideration of these comments.

Jordan Treakle
Coalition Policy and Programs Director
National Family Farm Coalition