
April 28, 2022

Bruce Summers
Administrator
Agricultural Marketing Service
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250

Re – Cattle Contract Library

Dear Mr. Summers:

The North American Meat Institute (NAMI or the Meat Institute) submits comments regarding the pilot program Cattle Contract Library (CCL or Library) the Agricultural Marketing Service (AMS or the agency) has been directed to create. The Meat Institute is the nation's oldest and largest trade association representing packers and processors of beef, pork, lamb, veal, turkey, and processed meat and poultry products. NAMI member companies account for more than 95 percent of the United States' output of these products. Several NAMI members will likely report contract information to AMS once the Library is functioning and for that reason the Meat Institute has a substantial interest in how AMS implements the law's provision, as discussed below in greater detail.¹

Above all Else, the Agency Must Ensure Confidentiality of Reported Information.

As NAMI stated in its oral testimony, as AMS contemplates how to develop this program and implement it, it is imperative that the agency remembers that information published through this mechanism is available for everyone to see -- not just producers and not just packers, but everyone in the supply chain and beyond. So, NAMI respectfully reminds the agency of the Hippocratic oath: First, do no harm. And the key to achieving that objective is ensuring the confidentiality approach followed is sufficiently rigorous to prevent disclosure of information that

¹ Because the provision in the appropriations bill does not amend either the Livestock Marketing Act or the Packers and Stockyards Act, whether AMS has the authority to require packers to report contract information is subject to question. By submitting these comments NAMI does not concede AMS has such authority. Rather, these comments are submitted to aid the agency's decision-making as it develops the Library, whether it be voluntary or mandatory program.

allows a reviewer to link proprietary information with a reporting entity. In that regard, the minimum confidentiality expectation is how AMS addresses confidentiality for the swine contract library. Indeed, the authorizing provision, section 779 of the Consolidated Appropriations Act, 2022, specifically says this cattle contract pilot program shall be similar to the swine contract library AMS already administers.

This program shall be similar, as determined by the Secretary, to the swine contract library the U.S. Department of Agriculture currently maintains pursuant to section 222 of the Packers and Stockyards Act (7 U.S.C. 198a).²

This provision recognizes there may be differences in contracts based on species and gives the Secretary of Agriculture the flexibility to adjust. But the direction is clear: the cattle contract library pilot program should mirror, to the extent possible, the swine contract library with data summarized and aggregated appropriately. For example, no single premium/discount should be published.

More specifically, data should be summarized and aggregated appropriately to blind the identifiers of producers and packers. AMS needs to consider the issues raised regarding regionality and concerns that current LMR aggregation is not sufficient to adequately blind business information. In addition, the three types of contracts currently defined should be used to aggregate the example contracts and believe it reflects the market. And on another specific issue, NAMI recommends keeping the five reporting regions currently identified for cattle for continuity. Expanding regions or creating new regions without receiving industry input, particularly in a pilot program, could have adverse unintended consequences.

AMS Should Seek to Minimize the Costs of Reporting and Publishing.

As a general rule, the Library pilot should publish only the key components/terms that affect price discovery or base price calculation. Reporting extraneous business to business dealings must not be mandated. For example, transportation costs, delivery schedules, among other business to business interactions, should not be subject to mandatory reporting. Rather, Library should be focused on key components critical for cattle marketing.

A key consideration for developing the Library is ensuring it includes components or terms that affect price discovery, *e.g.*, base price calculation. Harmonizing the schedule of premiums/discounts used to determine the base price may be useful. AMS should consider whether, and if so how much, this data is already being reported through LMR and how that data can be presented most effectively for stakeholder use. Additional reporting should focus on topics not

² <file:///C:/Users/mdopp/AppData/Local/Temp/BILLS-117hr2471enr.pdf>

currently being reported in LMR but the pilot should not collect data already being reported to AMS. In short, as AMS constructs the Library the agency should remember that better utilization of LMR data is needed, not necessarily a new reporting scheme through the pilot.

The issue of “open commitments” was raised at the listening session and this issue demands careful consideration. So called open commitments should not be reported because of data variability and the assumptions based on that data may not be accurate as market factors evolve. This factor raises compliance and enforcement challenges. If open commitments are a component of the Library, AMS needs to recognize data variability and ensure enforcement activities do not retroactively punish reporting entities for providing accurate estimates, even if factors change when cattle are bought and slaughtered. Should open commitments be included, AMS should enable reporting entities to provide corrected/updated data in a reasonable timeframe, *e.g.*, 30 days.

AMS also needs to examine the issue of active and inactive contracts between packers and producers. The concept of an "offered contract," as described by AMS at the April 21 meeting is not a contract. An offer is an ongoing negotiation between parties and is not a reliable data point for accurate reporting for price discovery. Requiring reporting of so called “offered contracts” would likely disclose confidential business information, requiring redaction. Once a contract is entered into, *i.e.*, agreement both parties, it then becomes an active contract and remains so it is completed or until the parties agree it no longer is needed, when it becomes an inactive contract. Only active and inactive contracts should be reported in the Library. Following that approach will make the Library more focused and efficient avoid publishing information never included in an “active” contract.

Because this is a pilot program, the agency also should adopt an approach AMS and other agencies within USDA follow regarding Freedom of Information Act requests and discuss with reporting companies the proprietary or confidential nature of information reported. Knowing more about the information sought could help craft a program with better protection. Much has been made about the need for the Library and the “benefits” that arguably will flow to livestock producers in particular if this Library is established. But allowing publication of the wrong information or in an inappropriate manner could adversely affect not only packers but producers with whom they have entered into agreements.

Finally, companies should have to report monthly, if not every two months, and not at a greater frequency. This reporting frequency is preferable for two reasons. Information is not free. Someone pays when information is collected and disseminated. With LMR, that cost largely is borne by packers and this project arguably adds to that burden.³ The more often a packer reports the greater the

³ See footnote 1 whether reporting can be mandated.

cost. Undoubtedly, some will call for daily or weekly reporting but those are the voices of entities not writing the checks to pay for reporting. Balancing the added cost against the utility of the information published needs to be carefully considered.

A second reason reporting should be done monthly or even less frequently is because the more frequent the reporting the greater the burden on AMS's staff. The agency already has daily reporting obligations mandated by statute and a careful review needs to be done to determine what it will take from AMS to turn things around even monthly, given the other daily and weekly publishing obligations it has. That concern particularly applies if the number of contracts submitted regarding cattle is notably greater than swine.

Education Regarding what is in the Library, and what is not, is Critical.

Given this project is a pilot program, NAMI suggests AMS consider taking certain actions before creating a permanent Library, should that be the preferred approach. Specifically, an “after-action report” regarding what AMS and industry learn from the pilot should be prepared before creating a permanent a Library. This report should include input from all stakeholders. This report should be shared publicly, including with relevant Congressional committees.

Several participants in the public listening session commented on the importance of education, particularly producer education, for the CCL to be most useful. NAMI wholeheartedly concurs with this observation, but not in lieu of the above-discussed after-action report. As stated before, the Library will be available for everyone to see and use and the better everyone understands the information being provided the better for the market. Too often in the past there have been calls to amend, and subsequent amendments to, the Livestock Mandatory Reporting laws without an understanding of the utility of the information demanded. That failure has only led to more demands for other information/amendments. NAMI supports the recommendation regarding expanding training centers to help education producers about information published in the Library – and what will not.

Finally, the USDA panelists were asked whether the agency would consider doing “trial runs” to see the pilot before going live. Along the same lines, it was suggested AMS conduct an “after action review/report” of the pilot and reengage with stakeholders who participated to determine what worked and what did not work. The Meat Institute supports these suggestions as well because that process will not only help inform what a final CCL might look like, should Congress direct AMS to create a permanent program, but is consistent with the point at the beginning of these comments: First, do no harm. .

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The Meat Institute appreciates the opportunity to submit these comments. Please contact me if you have questions about this request or anything else regarding this matter. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark Dopp', with a long horizontal flourish extending to the right.

Mark Dopp
Chief Operating Officer
and General Counsel

Cc: Julie Anna Potts
Sarah Little
Nathan Fretz
Bryan Burns