# R-CALF USA Priorities for 2018 Farm Bill

Presented at

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By

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## I. INTRODUCTION

Over 40 percent of U.S. cattle operations in business about 30 years ago are gone today, we've lost over 500,000 producers during the past 30 years. When cattle producers began exiting the industry, our mother-cow herd began shrinking and just two years ago fell to the smallest size since 1941, which was 75 years ago. As producers exited our industry and as our factory (our mother-cow herd) shrank, domestic beef production began falling and last year fell to the lowest level in over two decades, since the year before NAFTA was implemented. Our industry's cattle cycle, which once predicted short periods of contraction (3-4 years) and longer periods of expansion (6-7 years), is being disrupted. With historically tight cattle supplies, producers should have experienced historically strong cattle prices for at least three more years – until 2018. Instead, however, the expected, long-term upswing in cattle prices was inexplicably compressed into less than 18 months. Since mid-2015, cattle prices have fallen farther and faster than any time in history and 2016 cash receipts from the sale of live cattle are expected to be nearly $12 billion below 2014 levels.

These are not indicators of progress. These are indicators of an industry in decline. In short, our industry, particularly at the juncture where fed cattle are sold into the highly concentrated beef packing sector, is fast becoming "chickenized." That is, the dominant meatpackers are aggressively capturing control of the cattle feeding sector of our live cattle supply chain and are increasingly dictating the terms of production, terms of marketing, and prices through the market control they are achieving through vertical integration.[1]

Incremental changes will have little impact in reversing the packers' capture of the live cattle supply chain – packers are simply too powerful and too sophisticated to allow one or two hurdles to get in their way. For example, as soon as Congress and regulators began commenting on how the volume of cattle in the price-discovering cash market had thinned below the threshold necessary to predict competitive prices, the packers shifted their market-control

[1] For a more detailed discussion on how packers are aggressively capturing the live cattle supply chain, *see* "Under Siege: The U.S. Live Cattle Industry," Bill Bullard, South Dakota Law Review, Vol. 58, Issue 3, 2013, at 566 (Chart 1 shows the number of U.S. cattle operations declined from 1,272,950 in 1980 to 729,000 by 2012), available at http://r-calfusa.com/wp-content/uploads/2013/04/130101UnderSiegeSDlAWrEVIEWBillBullard.pdf.

strategy away from the cash market and toward the cattle futures market. The cattle futures market is now the new *go to tool* the packers are using to "manage" the price of cattle.

As with our nation's four-year presidential elections interval, which provides the opportunity to reset government policy when it becomes obvious that we are on the wrong course – as is the case this year in which our nation's uncritical support of globalization and global governance is finally being questioned, the five-year Farm Bill interval provides us with the opportunity to reverse the cattle industry's decline, provided the new administration and the new Congress have the will and courage to stand up to the tremendously powerful meatpackers and their allied trade associations.

## II. REVERSING THE DECLINE OF THE U.S. CATTLE INDUSTRY

If we are to reverse the current decline of the U.S. cattle industry, below is what needs to be done before our industry's competitive marketing channels are dismantled or destroyed. Once this occurs, a reversal may no longer be possible – as the poultry, hog and sheep producer have already learned.

### A. Put in the Hands of Producers the Tools they Need to Compete in Their Domestic Marketplace and Abroad

1. Reinstate mandatory Country of Origin Labeling (COOL) for beef.

    a. Address WTO Criticisms.
        1. Too many exemptions for beef from imported cattle
        2. Inaccurate labels when cattle are raised in two countries

2. Require all trade agreements to adopt a born, raised and slaughtered origin standard for international trade in beef

### B. Put in the Hands of Producers the Tools they Need to Self-Monitor and Self-Enforce the Rules of Competition

Unlike the Sherman Antitrust Act that largely protects the competitive process but not actual competitors, and the subsequent Clayton Act that moved in that direction but focuses more on potential harms to consumers and preempts conduct that facilitates monopolistic behavior, the Packers and Stockyards Act (PSA) protects *individual* livestock and poultry producers from unfair, deceptive and unjustly discriminatory practices and prohibits undue preferences or advantages in the marketplace. These laws establish the rules of competition that define the legal framework within which our industry competes. Unfortunately, the concentrated meatpackers and their allied trade associations have thwarted any effort by the U.S. Department of

Agriculture (USDA) to promulgate rules with which to implement those important producer protections for longer than 90 years.

The USDA recently announced its intention to issue such rules before the end of this calendar year. Those rules, when promulgated, will enable producers to monitor and enforce the rules of competition within their industry. This action, however, falls short in two respects:

1. The PSA should be amended to clarify that a claim of a legitimate business justification is not a defense for violating the PSA.

    a. This will help establish a brighter line for PSA prohibitions and will act as a deterrent against violations.

2. The PSA should be amended to provide attorneys' fees and treble damages.

    a. The authorization of attorneys' fees would act as a deterrent as well as make the PSA more assessable to independent cattle producers.
    b. Treble damages are already allowed in the Sherman and Clayton Acts and they would empower producers to enforce the rules of competition in the cattle industry.

**C. Take from the Dominant Packers the Tools They Use to "Manage," if not outright Manipulate, the Fed Cattle Market**

1. Amend the PSA to ban the largest packers from owning, controlling or feeding livestock for more than 7 days prior to slaughter.

    a. Support S.2911 introduced by Senator Chuck Grassley

2. Amend the PSA to ban the largest packers from procuring fed cattle through un-priced, *i.e.*, formula, contracts.

3. Authorize the Commodity Futures Trading Commission to prohibit dominant packers from shorting the cattle futures market or otherwise speculating in the cattle futures market with the effect of lowering both futures and cash prices.

**D. Take from the Dominant Packers and the USDA the Tools They Use Collectively to Simultaneously Lower Beef Prices and Prices for Fed Cattle while Substantially Increasing the Risk of Introducing Foot-And-Mouth Disease (FMD) Into the United States.**

1. Amend the Animal Health Protection Act to expressly prohibit the importation of fresh beef from Brazil, Argentina, Namibia, or any other country not free of FMD without vaccination.

2. Pending full enforcement of the above ban, there should be an immediate authorization of not less than $150 million for an emergency FMD vaccine bank.

**E. Put in the Hands of Producers Accurate and Real-Time Market Information that Is Not Currently Disclosed by Concentrated Packers.**

As R-CALF USA requested last year during its 2015 reauthorization, the Livestock Mandatory Reporting Act (LMR) should be amended to reflect the new cattle procurement methods and new cattle purchasing conduct now prevalent in the fed cattle market. Below are the amendments we requested but which were not included in the LMR reauthorization.

1. Require real time disclosure of basis-type cattle procurement contracts and other forward purchasing arrangements that are not presently included in deliverable supply.
2. Require cash sales for which delivery time is extended (which effectively converts cash cattle into captive supply cattle) to be reported at the time the price is negotiated.
3. Require all after-hour sales to be reported to stop packers from gaming the system by waiting until after close of business of LMR reporting to purchase cattle.
4. Prohibit the practice of folding “Tops” trades (in which a premium is offered above the current cash market) into formula reports and require such sales to be a reportable cash sale.
5. Require reporting from all regions, regardless of the number of known buyers operating in the region.

**F. Restore the Integrity of the National Beef Checkoff Program**

The U.S. Supreme Court determined that the national beef checkoff program is not an industry self-help program controlled by cattle producers; but rather, it is a government program that funds government speech under the explicit control of the USDA. Nevertheless, the USDA allows a lobbying organization to cross-subsidize its lobbying efforts by not only receiving approximately $40 million per year in checkoff funds: but also, by housing and controlling the Federation of State Beef Councils – representatives from which are accorded influential roles in awarding checkoff program contracts back to the lobbying group. Moreover, the program advertises and promotes beef regardless of whether the beef is derived from foreign or domestic livestock. As a result, U.S. cattle producers are forced to promote and advertise their competitor's products alongside their own.

1. Pass the Voluntary Checkoff Program Participation Act (S.3200) introduced by Senator Mike Lee that requires all checkoff programs to be voluntary at the point of sale.

2. Pass the Commodity Checkoff Program Improvement Act of 2016 (S.3201) introduced by Senators Cory Booker and Mike Lee.

    a. This legislation would ban lobbying groups from receiving checkoff dollars, prohibit conflicts of interest in contracting and decision-making; increase transparency of checkoff spending, require regular audits, and stop the funding of any anticompetitive program or program that disparages other commodities.
    b. This legislation should be amended to allow funds collected domestically to advertise and promote beef produced exclusively in the United States.

### G. Reinstate a Livestock Title in the 2018 Farm Bill

All of the foregoing amendments should be included in a reinstated "Livestock Title" in the 2018 Farm Bill

## III. CONCLUSION

United States farm policy, as it relates to the cattle industry, must be reset and redirected immediately if the U.S. is to maintain a viable rural economy replete with hundreds of thousands of independent cattle farming and ranching businesses.

For at least the past three decades, our nation's Agriculture Secretaries have embraced laissez faire policies to address competitive issues that have materially favored the interests of multinational packers and their industrialized models of livestock and poultry production over traditional family farming and ranching operations. This, we believe, is in direct contradiction to their statutory charge to carry out a rural development policy to revitalize rural areas, enhance rural economic wellbeing and "strengthen the family farm system. . ." (7 U.S.C. 2204 *et seq*.)

The scales are now tipped away from independent cattle producer and must be immediately reset. R-CALF USA believes that each of the foregoing recommendations are necessary to first restore and then protect free and open competition for independent U.S. cattle producers and the rural communities they support.