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STOCKYARD RATE REGULATION

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LIVESTOCK AND GRAINS

OF THE

COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 9482

JANUARY 18, 1978
FORT SMITH, ARK.

MARCH 14, 1978
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STOCKYARD RATE REGULATION

WEDNESDAY, JANUARY 18, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LIVESTOCK AND GRAINS
OF THE COMMITTEE ON AGRICULTURE,
Fort Smith, Ark.

The subcommittee was convened at 10 a.m., in the exhibit hall, Fort Smith Municipal Auditorium, Hon. Ray Thornton (acting chairman) presiding.

Present: Representative Jack Hightower.

Staff present: William A. Imhof, associate counsel.

Mr. THORNTON (acting chairman). The hearing will come to order.

On October 6, 1977, I introduced H.R. 9482, an auction barn rate reform bill to amend the Packers and Stockyards Act, 1921. My bill addresses that portion of the act intended by Congress to insure that public markets offer, and that livestock producers receive, services at charges which are reasonable for both the livestock producer and the auction market operator.

Unfortunately this is not how it has turned out in recent years for the small rural auction barns which compete aggressively with one another. They have recently been subjected to Federal regulation as public utilities, under which rates and charges can only be established after elaborate, lengthy and very costly Federal ratemaking proceedings. It is this issue of rate regulation which I hope to address today. I am gratified to see all of you with a stake in livestock marketing here to express your views.

[The bill H.R. 9482 follows:]

[H.R. 9482, 95th Cong., 1st sess.]

A BILL To amend the Packers and Stockyards Act of 1921

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 301 of the Packers and Stockyards Act, 1921 (7 U.S.C. 201), as amended, is amended by adding at the end thereof the following new subsection:

"(e) The term 'animal marketing unit' means one head of cattle, one calf, one horse, three hogs, or four sheep."

SEC. 2. Section 305 of such Act (7 U.S.C. 206), as amended, is amended by adding the following new sentence at the end thereof: "For the purpose of carrying out the provisions of this Act with respect to the justness or reasonableness of any such rate or charge (or the method of computing such rate or charge), the authority of the Secretary is restricted to those rates or charges (or methods of computing such rates or charges) for stockyard services at stockyards which (1) have an annual sales volume in excess of one hundred thousand animal marketing units, as determined by the Secretary; or (2) have an annual sales volume in excess of twenty thousand animal marketing units, as determined by the Secretary, and are located more than seventy-five miles from the nearest independently owned and operated stockyard."

Mr. THORNTON. I am grateful to Chairman W. R. (Bob) Poage, chairman of the Agriculture Subcommittee on Livestock and Grains for scheduling this public hearing. Senator Dale Bumpers and Congressman John Paul Hammerschmidt have introduced companion bills, S. 2195 and H.R. 9639. These bills have generated a great deal of interest and to date over 30 Members of Congress have joined us in cosponsoring this legislation. I am particularly pleased to have Congressman Jack Hightower of Texas from the Subcommittee on Livestock and Grains with us today. Congressman Hammerschmidt is responsible for our being in Fort Smith and to him and members of his staff I want to express my appreciation for coordinating this hearing. I also want to thank Mr. Jimmy Charles of the municipal auditorium staff for his help. Mr. Tony Imhof, associate counsel of the Agriculture Committee staff is also present to lend assistance.

When the Packers and Stockyards Act was passed in 1921, the then-existing 71 terminal stockyards were in effect monopolies and, as such, properly amenable to regulation as public utilities. Congress, therefore, appropriately gave the Secretary of Agriculture extensive jurisdiction over their rates and charges. However, by 1958 livestock marketing patterns had changed and a great volume of livestock was marketed through smaller stockyards known as auction barns, which were not subject to rate regulation by the Secretary. In fact the industry had expanded to include some 1,980 auction barns. The vast majority of these can be classified as small businesses by any definition of the term.

Congress amended the Packers and Stockyards Act of 1958 to bring the rates and charges of these auction barns under regulation by the Secretary. Unfortunately, Congress did not at that time review the manner in which this jurisdiction should be exercised. This left in effect the rigid, public utility standards which were entirely inappropriate in the new competitive marketing circumstances.

The decentralization of livestock marketing has continued and today only some 25 to 30 markets are even arguably of the type which Congress considered in 1921 and subjected to regulation as public utilities. In many instances, competition for business between these auction barns is fierce and these facilities serve hundreds of thousands of livestock producers each year. During 1975, posted stockyards handled over 95 million head of livestock, valued in excess of \$13 billion. For services rendered, producers paid \$263 million as commission and yardage.

My legislation was introduced out of the realization that the burdensome and costly Federal ratemaking procedures and standards presently being imposed upon the auction barns will drive many of these needed markets out of business. The provisions of the Packers and Stockyards Act prohibiting discriminatory practices at all stockyards have served the small livestock seller and the industry well and are not disturbed by my bill. However, there is, in my judgment, no valid reason for the Secretary of Agriculture to continue to regulate the reasonableness of rates and charges at small rural auction barns.

The Packers and Stockyards Act requires that each stockyard operator and market agency operating at a posted stockyard file a schedule of rates and charges—tariffs—they will assess consignors.

From 1958 until recently USDA merely accepted and filed each small auction barn's rate schedules without lengthy hearings.

Their silence on the point carried with it the implication that the schedules were in compliance with the Packers and Stockyards Act. As a result, a fixed percentage commission—the most common rate schedule being 2, 3, or 4 percent—has been followed by a majority of small barn operators throughout the country. But two recent administrative decisions by USDA involving auction barns located in Texas and Arkansas have declared these small barns to be public utilities and a so-called cost of service or per-head rate has been imposed by the Secretary. In his decision relating to the Arkansas sale barns, the Secretary stated that constitutional safeguards against confiscation of property under the due process clause should not be extended to the auction markets. The Secretary also suggested that the Federal policy should be to drive the small auction barns out of business.

My legislation would lift the burden of public utility ratemaking standards from small locally owned auction barns but at the same time leave undisturbed the jurisdiction of the Secretary of Agriculture over the very large facility and the isolated facility at which there is no effective competition. The bill does not disturb the Secretary's authority over the reasonableness of rates at stockyards which either have annual sales volumes in excess of 100,000 animal marketing units or have annual sales volumes in excess of 20,000 animal marketing units and are located more than 75 miles from the nearest independently owned and operated stockyard.

I have been pleased that Mr. Charles Jennings, Deputy Administrator for Packers and Stockyards with USDA's Agricultural Marketing Service has met with my staff on several occasions to discuss Federal rate regulation policy. Mr. Jennings has been most cooperative and has agreed to hold a series of additional hearings around the country to receive feedback from individuals who cannot come to Fort Smith. These hearings will be conducted at Sioux Falls, S. Dak., Boise, Idaho; Fresno, Calif.; Amarillo, Tex.; Macon, Ga.; Indianapolis, Ind.; and Lancaster, Pa.

Today we are scheduling this first hearing, and have received a telegram from Congressman John Paul Hammerschmidt expressing his regret that he couldn't be with us today. He has asked that I read this telegram to the group:

Deeply regret that a combination of adverse weather conditions and an unexpected joint hearing of the House and Senate Veterans Affairs Committee to receive testimony from the Disabled American Veterans have prohibited me from joining you today. As you recognize, Ray, in that I am ranking Member of the House Veterans Committee, my attendance at this joint hearing is mandatory. I want you to know, however, that I appreciate very much your holding these hearings in Fort Smith. In view of your membership on the Agriculture Committee you are logically in a position to take the lead in this important Congressional inquiry aimed at removing detrimental federal regulations which are currently imposed on stockyards. I am already on record as having jointly sponsored legislation to this end, and I will continue my efforts to protect auction barns from being regulated into extinction. Please pass on to those in attendance at the hearing in Fort Smith my apologies for not being able to join them, and express my best wishes for a successful early resolution of this problem. I would appreciate it if you would have the attached statement, which I had planned to make, entered into the record of the hearing at the appropriate place.

I have that statement here, and without objection this statement will be made a part of the record.

STATEMENT OF HON. JOHN PAUL HAMMERSCHMIDT, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ARKANSAS

In view of the importance of the livestock industry to citizens of the Third Congressional District in Arkansas, I am gratified that Fort Smith was chosen by the Agriculture Subcommittee on Livestock and Grains as the site for a field hearing to receive testimony on legislation to regulate sales commissions charged by stockyards.

I would like to take this opportunity to commend my colleague, Congressman Ray Thornton, for his efforts in arranging today's meeting. In that Congressman Thornton serves as a Member of the House Agriculture Committee it was both logical and desirable, in my opinion, that he was the Member to initiate this Congressional inquiry.

Although I do not serve as a Member of the Agriculture Committee, I have always maintained an active interest in matters involving this committee, especially those affairs which might affect farmers in Arkansas. In fact, in response to the problem this Subcommittee is now addressing, I joined in sponsoring legislation (H.R. 9639) which would lift the onerous and costly Federal ratemaking procedures and standards which are presently being applied to auction barns and which threaten to drive many of these markets out of business. In my view, these restrictive ratemaking procedures which served a legitimate purpose in the early 1920's are creating a damaging situation now that the livestock market has been decentralized.

I feel confident this forum will explore all the relevant facts in issue, and document the need for Congressional action to protect the small auction barn owner from antiquated and excessive regulation, and imminent extinction.

Lastly, I would like to personally thank the witnesses scheduled to appear before us for sharing their experiences and recommendations with the Livestock and Grains Subcommittee. Unquestionably, this panel will take these evaluations very seriously, and will give them foremost consideration.

Mr. HIGHTOWER. Mr. Chairman, I would like at this time move this statement and all other statements that may be submitted to the subcommittee within the next 2 weeks from this date be included as part of the record.

Mr. THORNTON. Without objection, it will be so ordered.

We have also received testimony in support of this legislation from Congressman Harold Volkmer of Missouri, and Congressman Jimmy Jones of Oklahoma, they've also called to express their regrets that they couldn't be with us today.

In addition, we have three statements submitted by people who could not be here to testify this morning:

Jack Shelton, of the Delhi Livestock Auction, Delhi, La.; Clifford and Dave Williams, of the Caldwell Sales Co.; and Glover Brothers, Union Stockyard, Pine Bluff, Ark.

Without objection, all of these statements will be included in the record.

[The statements referred to above follow:]

STATEMENT OF HON. HAROLD L. VOLKMER, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MISSOURI

Thank you for the invitation to attend the Fort Smith hearing. I am sorry but I will not be able to attend as I have a seminar scheduled for that date.

I would however like to submit this statement. As I am a cosponsor of H.R. 9482, I agree with its intent. Yet, I feel that the legislation should go further to exempt all stockyards from USDA regulations on sales commissions. It seems unfair for the larger stockyards to be regulated while the smaller ones are free to set their own prices.

It is my belief that we should let competition play its role in regulating the stockyards. If a larger stockyard charges a price that seems unfair, then producers will take their livestock elsewhere. Therefore allowing the market place to be the regulator.

So again, it is my wish that we remove the USDA completely from regulating the sales commissions for stockyards, large and small.

Thank you, Mr. Poage, for scheduling this hearing, and thanks again, Mr. Thornton, for giving me this opportunity to express my views.

STATEMENT OF HON. JAMES R. JONES, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF OKLAHOMA

Mr. Chairman, I regret not being able to personally attend the hearing being conducted today on the Thornton bill, H.R. 9482, and other companion pieces of legislation. I ask the committee to accept this statement, and include it in the official record of the proceedings.

I would like to go on record as endorsing and supporting this bill on stockyard rates. In my three terms in Congress, I have learned that any piece of legislation bearing Ray Thornton's name deserves a stamp of approval by those Members of Congress who support clear, concise, and reasoned approaches to the problems of our country.

I would like to commend you, Mr. Chairman, for recognizing an urgent problem, and moving swiftly and skillfully to solve it. I urge my fellow colleagues gathered with you today to support your bill, and you can rest assured that I stand ready to work for the speedy passage of this legislation when it reaches the floor of the House.

The Thornton approach to this problem makes good sense. It would increase free competition among stockyards and auction barns, and decrease unnecessary government interference in the agriculture industry. There are over 1,900 stockyards and auction barns in the United States, and 77 are in Oklahoma alone. I know Oklahomans will support the approach of H.R. 9482, as will the vast majority of stockyard and auction barn owners who would be freed from the red tape burdens currently imposed by the Department of Agriculture.

H.R. 9482 represents the mood of America by trimming back the bureaucracy and eliminating burdensome reporting requirements for the average citizen. It deserves our whole-hearted support, and I again commend the chairman for his leadership in this area.

STATEMENT OF JACK SHELTON, DELHI LIVESTOCK AUCTION, DELHI, LA.

I am in full support of H.R. 9482, S. 2195, and H.R. 9369. Any help you can give us will be deeply appreciated.

CALDWELL SALES CO.,
January 13, 1978.

COMMITTEE ON AGRICULTURE,
U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

DEAR MR. THORNTON AND COSPONSORS OF H.R. 9482 AND S. 2195: We have received earlier information regarding the proposed acts by the Packers and Stockyards division of the Department of Agriculture to revise the commission charges made by public auction. We feel it would put many of us out of business in a very short time. It is hard enough to keep things going with what regulations we now have to meet; such as, minimum wages and higher social security (which is set by government), high insurance, higher utilities and just all expenses in general.

We sincerely support these bills and you can count us as a vote for them. We appreciate your concern and efforts in our behalf.

Sincerely,

CLIFFORD WILLIAMS.
DAVE WILLIAMS.

STATEMENT OF GLOVER BROS., UNION STOCKYARD, PINE BLUFF, ARK.

Concerning H.R. 9482 introduced by you to limit the authority of Packers and Stockyards Administration on regulating sales commission on stockyards we are in full support of this bill and appreciate your concern in getting this bill passed. We are in 100 percent support in your Senate race.

Mr. THORNTON. Before we begin the hearing by calling our first witness, I would like to recognize my distinguished colleague from Texas, my good friend Jack Hightower, for any remarks that he may wish to make.

**REMARKS OF HON. JACK HIGHTOWER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TEXAS**

Mr. HIGHTOWER. Thank you very much, Mr. Chairman.

I appreciate being in Arkansas, as I know you do, even though I am just passing through.

I want to express the appreciation of Chairman Poage to you for your willingness to chair these hearings here today, and also his regrets that he could not be here, and other members of the subcommittee.

As I'm sure many of these people are aware, there are a good many things going on right now in Washington and around the country that demanded that members of the committee be at other places, such as Congressman Hammerschmidt's problem as has been detailed, but I see no reason why we should not have a good hearing here today. We want these witnesses to feel free to tell us their experience and their ideas about this legislation, because at a committee hearing we have the only chance for the public generally to make an impression on legislation. This is the opportunity for the people to speak. At this point in time we are looking at the legislation. Later on we'll be meeting in other meetings to actually draft the final result. But a great deal of what happens from now on depends upon the testimony of people that take the time to show an interest, to become involved, to give us the benefit of your experience.

I have looked over the list of witnesses, and I'm sure that we are going to have a good hearing here today, and I hope to be able to have the kind of record that we'll submit to the full committee that will show that there is much that needs to be done in this area.

Mr. THORNTON. Thank you very much, Mr. Hightower.

Our first witness this morning is the chairman of the Arkansas Public Service Commission, Dr. John C. Pickett.

**STATEMENT OF DR. JOHN C. PICKETT, CHAIRMAN, ARKANSAS
PUBLIC SERVICE COMMISSION**

Dr. PICKETT. Thank you, Mr. Chairman and Congressman Hightower.

My name is John Pickett. I'm currently the chairman of the Arkansas Public Service Commission.

I have participated in regulatory hearings before the Packers and Stockyards Administration, and am generally familiar with the methodology that they employ in setting rates for both local livestock auction barns and terminal facilities. I am also familiar with their outlook and basic philosophy that they employ when attempting to regulate livestock auction facilities.

The thrust of my testimony today is in three directions:

First, to demonstrate as an economist that the interpretation of the act establishing the Packers and Stockyards Administration by the USDA is probably incorrect;

Second, to demonstrate as an economist that the underlying market conditions supporting livestock auction barns are not those that underpin public utilities;

Third, to recommend changes in the Packers and Stockyards Act which will reflect the actual market conditions underlying the economics of local livestock auction barns.

The Packers and Stockyards Administration has chosen to assert that the 1958 amendment to the Packers and Stockyards Act requires that all livestock auction facilities be treated as public utilities. This assertion is supported by the methodology that the Packers and Stockyards Administration pursues when it sets just and reasonable rates for a livestock auction facility. These rates are based on costs of service principles generally used for public utilities.

Although the Packers and Stockyards Administration may set costs based on area averages rather than on the individual markets areas, this fact alone does not temper the methodology the Packers and Stockyards Administration pursues. The Packers and Stockyards Administration treats local livestock auction facilities as if they were public utilities.

In order for Government agencies to be charged with regulating certain lines of activity, the need for utility regulation must be based upon certain sound economic principles reflecting the market conditions in which an industry operates.

During an examination of competitive market performance one may observe that this market performance fails. Market failure is evidenced by excessive monopoly power. Monopoly power is demonstrated when a firm operating within an industry restricts output and/or simultaneously sets a price which will allow the firm to earn above average profits. Two straightforward tests for the existence of market monopoly power exist. First, one may observe excessive earnings on invested risk capital. Second, customer abuse is evident.

There is no evidence that I am aware of indicating local livestock auction facilities are earning above average rates of return on investment. There are no outraged customers complaining of unfair or unsafe services provided by auction barns.

Regulation is designed to supplant noncompetitive markets, and not just to supplement it. It seems to be extremely relevant to point out that the Packers and Stockyards Administration wants to supplement the market activity surrounding local livestock auction facilities, and not merely to replace it. It is fundamental to public utility regulation that a commission replace the market mechanism entirely when it sets prices and the quantity of goods and services produced.

The use of monopoly power is eliminated by regulation. There are many sources of monopoly power. A natural monopoly is said to exist when a certain level of investment is able to satisfy all of the market demand. If unrestrained, monopoly profits would invite unrestricted entry into the market, which will lead to prices set so close to marginal costs that firms incur losses. This will lead to the abandonment of investments that have been previously made. Abandonment of previously invested resources that still have a useful life is a characteristic of inefficient markets and is wasteful of national resources.

In order to allow only one firm to make the investment in a particular market area, public utilities must be the only supplier within a specified market area. Only one supplier in a particular market is

allowed so that all economies of scale can be achieved, and thereby lower the average cost of production for all consumers.

The packers and stockyards' current position is that they would like to see small, inefficient, local livestock barns cease doing business. The Packers and Stockyards Administration's position will, by necessity, require territorial allocation to block entry whenever unprofitable operations cause an owner to cease doing business.

In order for the Packers and Stockyards Administration to prohibit another inefficient operation to spring up, the Administration must in the future block entry. Consequently, in the future the Packers and Stockyards Administration will exercise authority or ask the Congress for legislation to authorize it to allocate the territory to be served by any one auction facility.

It is sometimes asserted that buyer ignorance will allow the producers to debase the quality of services offered. We see that regulation of physicians, attorneys, tree surgeons, and massage parlors is designed to protect the consumer from untrained and unqualified individuals. The Packers and Stockyards Administration asserts that the American livestock producer is ignorant of all services offered by competing auction barns. It seems clear that all barns in Arkansas offer the same services precisely because if they did not, the astute Arkansas livestock producer would never patronize that auction ring offering deficient services. Similar service offerings by all producers of livestock auction facilities is a characteristic of competitive and not monopoly markets.

After the 1958 amendment to the Packers and Stockyards Act, approximately 1,600 additional auction barns were made subject to the Secretary's authority to regulate rates. It is questionable whether the intent of Congress was to establish rates with a public utility cost of service for local livestock auction facilities.

There is an alternative currently available to the Packers and Stockyards Administration that will allow them to meet the intent of the statute rather than going through this taxing and expensive public utility rate regulation. This alternative is nothing more than comparing a local livestock auction barn's posted rates to rates posted by competing barns in the surrounding areas. Not only must posted rates be compared, but also the delivery conditions, health standards, check payment requirements, and other conditions surrounding the sale must be compared.

The Packers and Stockyards Administration's current position is that the major users of livestock auction barns are low-income livestock producers. There is no data in any of the Census of Agriculture which clearly establishes that users of local livestock auction facilities are also low-income individuals. There is no source of information which will establish the relationship between income and users of livestock auction barns.

The Packers and Stockyards Administration asserts that many auction facilities do not have annual volumes necessary to achieve efficient market operations. Consequently, they are encouraging some owners to cease offering livestock auction facilities in their particular area. The technique that the Administration has employed is to set a barn's rates based on the average area costs of doing business. This results in the firms which have a high cost of operations to incur losses, and the firms that have lower than average cost to earn high profits.

Those businessmen that experience operating losses will cease doing business. Their departure will deprive some areas of their auction facilities, causing the area producers to incur higher transportation costs when marketing their livestock at a more distant auction barn. This activity will further aggravate our balance-of-payments problem caused by imported fuel oil, it is certain to increase the marketing costs in an amount equal to the increased transportation costs, and will promote the monopoly process of the remaining barns by eliminating the market alternatives to local producers.

Other regulatory agencies of government have set areawide prices which has produced unfavorable results. It is clear when prices are based on area or industry costs, the industry will prepare a joint filing before the Packers and Stockyards Administration establishing area rates which are equal to the highest cost producer in a particular area. Examples of such activity are seen in the ratemaking for bus, railway, airline, insurance, and other common carriers. There is no need to cite examples other than the Federal Power Commission's field pricing of natural gas, and to generally refer to the consequences of this activity today.

Mr. Chairman, I recommend to the committee that it exempt small livestock auction facilities from public utility type regulation from the Packers and Stockyards Act. I recommend that a section be written into the act which will exempt a local livestock auction barn from Packers and Stockyards rate regulation if the preceding 5-year annual average number of animal marketing units is 100,000.

It is important that the exemption be based on animal marketing units, and not be based upon the physical size of the marketing facilities.

The exemption should be based upon the average of the past 5 years in order to avoid whipsawing those barns that market close to the 100,000 units each year and are also subject to annual variation in the number of animal units.

I assert, Mr. Chairman, that once a barn ever comes under Packers and Stockyards regulation with an exemption, that the Packers and Stockyards Administration will never cease regulating that business, once it comes under rate jurisdiction.

That's the conclusion of my comments, Mr. Chairman. I thank you and Congressman Hightower, and if you have any questions I'll be glad to try to answer them.

Mr. THORNTON. Thank you very much, Dr. Pickett.

In summary, you are not only familiar with the economic theories of monopolies and competition, but have you familiarized yourself with the actual marketing arrangement which exists in the State of Arkansas or in some areas of the State of Arkansas? Are you familiar with the number of barns that exist in the State, and their sizes?

Dr. PICKETT. Mr. Chairman, at one time I was familiar. It's been 9 months since I've reviewed the actual operation of some of the barns that I did some work for. I do not know how many barns there are in Arkansas at present.

Mr. THORNTON. I wanted to get your opinion on whether the situation is more competitive than monopolistic? Is this not also reflected in the actual number of barns that exist in this State and their close proximity to each other? Is it your observation that they are in a competitive situation in reality?

Dr. PICKETT. Yes, Mr. Chairman. If I had to estimate, there's probably somewhere between 65 and 90 barns in Arkansas. Probably one exists in every county seat. The proximity from one barn to the other I would estimate, for the average livestock producer, the geographical distribution of them is probably two barns located within 40 to 50 miles. And that fact alone constrains the ability of any one barn operator from extracting unjust and unreasonable rates from a producer, because the producer, if he sees that occurring, will immediately take his animal units to the competing barn.

Mr. THORNTON. Nothing would prevent him from driving an extra 10 or 15 miles, or many an equal distance, to another barn, is that correct?

Dr. PICKETT. That's correct, sir.

Mr. THORNTON. Do you have some questions?

Mr. HIGHTOWER. I have no questions.

Mr. THORNTON. Thank you very much, Dr. Pickett.

Our next witness is a good personal friend of mine, with whom I attended law school some years ago, Mr. George Hartje, an attorney from Conway, Ark.

Mr. Hartje, you're welcome to our hearing, and you may begin.

**STATEMENT OF GEORGE HARTJE, JR., ATTORNEY AT LAW,
CONWAY, ARK.**

Mr. HARTJE. Thank you, Ray.

Mr. Chairman, Congressman Hightower, my name is George F. Hartje, Jr. I am a practicing attorney in Conway, Ark.

I am an attorney for the four auction barns that are presently engaged in a ratemaking procedure with the Packers and Stockyards Division of the U.S. Department of Agriculture.

I have also represented the barn in Conway and its immediate predecessor for some 20 years, and I am familiar with the legal operations and legal aspects of the operations of auction barns.

Our ratemaking procedures are now before the Federal Court of Appeals in St. Louis, the eighth circuit.

These four barns that are now involved in these proceedings are located only some 50 miles from each other, and within a 50-mile radius of these four barns there are 17 other barns available to consignors and producers of cattle. Within a 50-mile radius of the barn at Conway, Ark., there are nine other barns available to consignors of cattle.

The barns operate on different days of the week, and serve primarily farmers and cattle raisers.

Studies done by the Department of Agriculture show that only some 7 percent of sales by small auction barns are to packers. And I can only suppose that the other 93 percent of their sales are to other raisers, would-be consignors, and cattle producers.

The studies done by the USDA show that the barns serve primarily as an assembly point for cattle producers, as a sorting point for cattle producers to allow those producers to specialize, if you will, in certain types of cattle, and that they do not serve ultimate buyers or consumers of livestock.

The barn in Conway, Ark., is typical. It is the Lewis Livestock Auction Sale, and it holds sales on Tuesdays, beginning about noon.

The barn accepts cattle for sale from Sunday afternoon through Tuesday evening late. The sales begin about noon on that day, and almost always last until midnight or later. And it is not rare for the sale to last 24 solid hours of cattle selling.

I will tell you, by way of explanation of the weather factor, Mr. Lewis told me this morning that only 25 cows were brought to the sale yesterday, the lightest sale anyone can ever remember at that particular barn.

After the sale is over, this barn holds these cattle for people that have bought them through perhaps the next weekend. The Packers and Stockyards Act specifically makes a barn operator an insurer of the moneys due the consignor, and the P. & S. regulation, very unjustly, requires the barn operator to pay the consignor whether or not the barn operator ever gets his money for the cattle that are purchased, and the losses in the cattle business can be terrific. Still it makes no difference to the P. & S., the barn operator or owner must pay for these cattle within 24 hours after they are delivered to the barn and sold.

This regulation is very burdensome. I know it's not the subject under discussion here this morning, and I'll not go into that anymore.

Every one of these sales are held in the glaring publicity of a sales arena. A consignor can bring his cattle to the barn and sit up in the stand and watch his cows sell. He can see for himself whether the barn operator is doing a good job or a poor job of disposing of his particular cattle, whether or not the auctioneer is doing his best to get the best price available for his cattle, and if he does not like what he sees or does not like the way he is treated, there are in our area 16 other barns he can go to until he finds the right treatment that he's looking for.

These operators live locally, they are fellow citizens and neighbors of the consignors who are selling cattle, they are there trying to do their very best for those people that have brought their cattle to them for sale. The P. & S., under their own testimony in our rate-making proceedings, testified under oath that they have never had a complaint from a user of a barn insofar as the rates charged or fees charged or amounts they paid for services rendered. Nevertheless, they seek to regulate these rates.

At the sales that I am familiar with, there is a ringman, generally the owner, who starts cattle at a price he believes to be proper. If the ringman starts these cattle at a price too high the barn ends up buying these cattle, and then either has to resell them at a loss through other sales, or resell them themselves to individuals.

This starting of cattle, and buying of cattle by the barns is referred to as market support. The P. & S. denies the validity of market support and does not recognize it as a cost of doing business. Yet market support serves an entirely and recognizable useful function. It starts the cattle at a high figure, thus assuring a good price to the consignor of cattle; it shortens the sale, and you might not consider this an asset until you remember that we have had some 24-hour sales; it also confirms in a potential buyer's mind the value of those cattle. It is not in market support. And yet under the formula devised by the P. & S., this item is not recognized as an expense, and there is no allowance for any recoupment of this loss by the barn operator. The P. & S.'s simple and arbitrary answer to it is, "Don't do it."

P. & S. feels that the auctioneer actually does nothing to aid or assist in sales, that the barn operator does nothing to aid and assist in sales, and that the competition between buyers is the sole determinant of the final price of cattle.

While I'm talking about the final price of cattle, the amount charged by the auctioneer has nothing to do with the final price paid by the buyer or ultimate consumer of cattle. Practically no one raises cattle from inception to slaughter. The cattle business and industry is broken down into several specialized fields, from calves to yearlings, to fat cows, et cetera and so forth. A cow will change hands during its lifetime from 1 or 2 times, to 10 or 12 times. And yet when the cow finally reaches the fattened state when the cow is ready for slaughter and ready to go to the packer, the packer pays the going price for the meat without any consideration as to how many times the cow might have been sold, and without any consideration as to what the charges were when the cow did change hands.

Finally, I am using the 50-mile radius, and Dr. Pickett used the 50-mile radius, because of studies done by the USDA that say that this is the practical range for a producer to ship his cattle to market. Most of the markets in Arkansas, and I have been informed that there are 43 auction barns in Arkansas, charge a percentage. They charge from 3 percent to 4 percent of the amount realized from the sale of the cattle. This figure is fair. Percentage rates are fair. They fluctuate with the amount received by the consignor for his cattle, and they fluctuate with the going market. The charging of rates for an auction service on a percentage basis is time honored and understood by everyone in the cattle business.

During the course of our ratemaking procedure it was the testimony of the Packers and Stockyards Administration that there are only four men in their ratemaking division, and that these four would attempt to regulate some 1,700 small auction barns in the United States.

Their testimony was, further, that four men could not do it, they did not have the time to properly do it, and the record is replete with their taking actual figures from auction barns' annual accounts, throwing them out, disregarding those figures of cost, and substituting for those actual figures what they felt they should have been, what their opinion was that they should have been, what the national average for a certain thing was, and the placing of persons operating barns on a per head basis based on those feelings and opinions and national averages.

Their testimony was that there are a great many barns in the United States that operate on a per head basis, and that they had twice as many complaints annually and requests for changes of tariff from those markets on a per head basis as they did from those markets on a percentage basis.

I believe that this is an attempt on the part of the P. & S. to build a little empire, if you will, a domain within their organization. Because if they are successful with the procedures that they have followed, it will only be a short time until they'll be coming back to Congress telling you and the rest of the Congressmen that they are unable to do this job and need to hire "x" number more employees in order to regulate these barns.

In 1921 the P. & S. Act was passed, and it was aimed at those large terminal markets located in the major cities at the end of rail lines,

who were catering primarily to the packers, who were deeply and greatly influenced by packers and the vast amount of money that packers spent on beef. They were taking cattle from consignors, say in Conway, Ark., shipped there by rail, the cattle were sold, disposed of, a check was sent back to the consignor. He had never had an opportunity to see his cattle sell, he had no control over what they sold for. And there were many irregularities, frauds, and downright illegal dealings done and performed. And the act served a useful purpose at that time.

It was not until about 1947-8, after World War II, that the local auction barns grew to be the industry that they are today. And when Congress extended the regulation of those small barns in 1958, I do not think they intended to give the P. & S. the right to regulate the rates that those small barns could charge. However, this is what the P. & S. is attempting to do.

The P. & S. is attempting to do this although it is their sworn testimony at our ratemaking proceedings that the annual reports filed by the auction barns are not designed for ratemaking procedures; instead, they are designed to check the bond of the auctioneer, to check to see if he is really financially able to do those things that he is doing, and no input has ever been made into the annual reports with the idea that they will regulate rates.

This is an effort on behalf of the P. & S. to engraft on the annual report a result that was never intended when the annual report was made up.

I believe that the Congress should pass H.R. 9482 introduced by Representative Ray Thornton in order to relieve the small auction barn owner-operator from needless interference by the Packers and Stockyards Division. It is an industry run by local people for local people with local people, and it does not need interference from anyone with no practical experience in operations of auction market facilities.

Gentlemen, I'll be happy to try to answer any questions that I'm asked.

Mr. THORNTON. Thank you very much, Mr. Hartje. I want to compliment you for an outstanding statement and for your work in this area.

Mr. Hightower, do you have any questions?

Mr. HIGHTOWER. No questions.

Mr. THORNTON. Thank you very much for your testimony.

I would like next to ask Mr. Sherman Durham, Mr. Tommy Lewis, Mr. Jim Baker and Mr. Dennis Wilcox to all come forward at the same time.

Gentlemen, I want to express my appreciation to each of you for being here and bringing us your testimony today. In order that our record may be most full and complete, I would like to ask each of you, if you have a prepared statement, to submit that statement for the record so that we can have it as you have prepared it, and then ask each of you in turn to highlight or summarize that testimony to us so that we can also have that in the record.

If that's agreeable to each of you, in order of your presentation, we will, without objection, accept the prepared written testimony as a part of the record.

Mr. Durham, please proceed.

STATEMENT OF SHERMAN DURHAM, PRESIDENT, ARKANSAS
LIVESTOCK AUCTION SALES ASSOCIATION

Mr. DURHAM. Thank you, Congressman Thornton and Congressman Hightower.

My name is Sherman Durham. I've been a barn operator with Central Arkansas Livestock Auction in Morrilton, Ark., for 26 years, and a cattle producer and livestock auctioneer for 23 years. I am president of the Arkansas Livestock Auction Sales Association, one of the parties which is now in a rate proceeding now pending.

I would like to testify that the small auction barn operators are competitive and need no regulation as far as ratemaking is concerned. We feel that the auction barn operators should have the choice of how he wants to charge, what he wants to charge, and we feel that if he gets his charges out of proportion his customers will regulate him or competition will regulate him.

The P. & S. in the U.S. Department of Agriculture are incapable of regulating for the simple reason there are 1,791 auction barns in the United States. They have only four men and two women in the ratemaking department of the P. & S. They attempt to set all weekly livestock auction barns on a national average commission, which will force several barns out of business. And they testify to the fact that there are too many livestock auction barns, small barns, in the United States.

They testify to the fact that if you don't sell 30,000 units they're inefficient and should be forced out of business, because of the social cost to the ratepayer. Do you know what social cost is?

They also fail to study the actual facts in the ratemaking hearings that were held. They substituted feelings and speculations, national averages in setting rates for each individual barn. They cannot be set on national averages for the simple reason of the cost to the barn operator, his overhead expenses and all other expenses related to his business.

The weekly livestock auction barn cannot, I say, be regulated by national rates.

The P. & S. have no practical experience in operating livestock auction barns. They study figures, facts, and books.

The P. & S. contends that the local auction barn, or weekly auction barn is a public utility as far as ratemaking is concerned. If the local auction barn is a public utility, we have competition. We have no franchise areas and no license is required. But they contend after your rates are set under the public utility concept you are no longer a public utility.

The Department of Agriculture records state that 7 percent of the cattle going through the weekly auction go to the packers only. That leaves 93 percent of them to go to producers, livestock dealers and order buyers.

The P. & S. law which Congress passed in 1921, at that time I think there were 11 terminal markets in the United States, was when the producer needed some protection. Your cattle in Arkansas was shipped to destinations as far as Kansas City and St. Louis. When your cattle was put up for sale there, there was no one there but the buyer and the salesman. They set the price, sold your cattle, deducted their expenses and mailed you your return.

Since then, in 1935 roughly—and I would like to say that this is not in my written testimony—but when the barn was organized in Morrilton, Ark., in 1935 it opened on a 4 percent commission, and operated on this 4 percent commission until competition forced it to 3 percent in 1959. And at that time P. & S. asked no questions about reducing the percent of commission. They went down without any trouble at all.

The weekly livestock auction sales started in the United States roughly in 1935. The weekly auction is attended by farmers, livestock dealers and everyone interested in the livestock business. The auction is out in the public, you have all the buyers bidding to the auctioneer competitively.

What I am saying to this committee is that there is a difference between the livestock auction market and a terminal market. The livestock auction has no way of doing any injustice to any producer, whereas the terminal market only deals with one buyer at a time in the sale. The salesman takes the bid on the cattle from the buyer. In turn he relays it to the seller, if he is present. If he is not, and the salesman feels that that is a fair price for his cattle, they are sold.

At the public auction the livestock is started at what the barn operator feels is a fair price and goes up for bids. The auctioneer is the determining factor in making the sale and anyone in the audience can bid, the producer can be there. The producer can see how you operate your business, and he can decide which market he would like to do his business with.

The livestock markets in Arkansas are located normally 25 to 50 miles apart. The mode of transportation that the farmer has, has a choice in his marketing. If he feels like he gets a better price at one barn, he has the opportunity and privilege to sell his cattle there.

The local barn operator is known throughout his trade territory by his reputation by the way he conducts his business.

What I'm telling you is that the local barn operator is known by his customers, and in your terminal markets the man selling 9 times out of 10 is a complete stranger to the consignor.

I hope I have made myself clear in stating the difference between weekly livestock auctions and the terminal markets. If you have any questions concerning this matter I'll be more than glad to discuss it with you.

Thank you for the opportunity to testify today before this committee, and at any time that I can be of any service or answer any questions concerning this very important matter, feel free to call upon me.

Mr. THORNTON. Thank you very much, Mr. Durham.
Mr. Lewis?

**STATEMENT OF TOMMY LEWIS, OWNER-OPERATOR, LEWIS
LIVESTOCK CO., INC., CONWAY, ARK.**

Mr. LEWIS. Congressman Thornton, I'm a little nervous up here, but maybe I can talk.

I want to thank you very much for introducing this bill, H.R. 9482, and also Senator Bumpers for taking time out to look at the small operation, and also Congressman Hightower for stopping by—which most of the time we don't get that kind of service, they don't recognize us that well.

Mr. THORNTON. We want to thank you for coming to this hearing and presenting your testimony.

Mr. LEWIS. Actually, I have taken over after my uncle, Major Lewis, passed away and I started operating the barn in Conway.

Well, I think it's unfair for the packers and stockyards to come in and tell you what you can and cannot do. They tell you that you can charge this and that amount of money, and you're supposed to do this. In other words, you don't have any authority to say what you do. They come in and tell you exactly what you can and cannot do. Otherwise, if you don't, they single out 4 barns to make an example out of how the other 43 barns in the State will look.

They're doing a good job of it. And at the rate they set for the four barns to operate under, they'll have to pull money in from somewhere else if they operate—I'll put it that way. To operate, they'll have to pull it in from another point.

In the first place, when the barn was built a lot of money came from other sources instead of the livestock business.

You have two or three gentlemen that are fine gentlemen with the P. & S. in Memphis. Well, they come by and tell you what you should do and what you should not do. I talked to a gentleman, he come by here a few weeks ago, and he's a nice gentleman, but I asked him—it wasn't long before he could retire, and I said, Why don't you come by and help me?

When a man walks up to the counter I'm guaranteeing that they get their money, which I'm obligated to do. He's paying me a service to sell his cattle. When I sell the cattle I have no assurance that I'm going to get my money.

They say, Why don't you make the man pay with a cashier's check? Why don't you do this? If you're going to do all that, you're not going to have any buyers. You'll have three or four, and the man that walks up and pays you cash right there is not going to give you anything—he's not going to give you market value, when he knows that he's not under obligation.

In Conway there's nine sale barns in a 50-mile radius, and it will not take any man more than 45 minutes to get to any one of the barns. If we do not do the services of any of the other barns, they can go anywhere else. And a lot of people trade with each and every one of us.

And it's unfair to pick out four barns and go across and not bother the rest—and that's fine, I'm glad they're not—but they'll make an example out of the four, and then they'll go after the rest of them. But those four either have to go out of business—of course, naturally the other barns it wouldn't hurt them until they get on them, and when they get on them of course they're going to holler.

But they have three or four over there in the office, and they work 8 hours a day. When a man's running a livestock barn, you get up all hours of the night to take care of your customers. They bring their cattle in, and we'll stay there and check them out until they're all gone. This summer I've went to work at 6 o'clock in the morning, and I did not take my boots off until Wednesday morning at 3 o'clock, and got back up the next morning to load cattle to go to the packing house.

They say, Why don't you hire this and hire that? It's pretty hard to do, when most—you don't work 8 hours at a barn and do your

job like you do for the Government. And I think we have too much Government in our business today. A man sitting in Washington, Memphis comes up there and tells you what you should not do and what you should do, and who's paying him? Folks like us, that works day and night pays taxes, and then they're drawing money telling you how to operate or how you cannot operate.

I could talk on and on, but I'll shut up and thank each and every one of you for listening.

Mr. THORNTON. Thank you very much, Mr. Lewis.

Without objection, your prepared testimony will be made a part of the record.

[The prepared statement submitted by Mr. Lewis follows:]

STATEMENT OF TOMMY LEWIS, OWNER-OPERATOR, LEWIS LIVESTOCK CO., INC.,
CONWAY, ARK.

I am Tommy Lewis, owner and operator of Lewis Livestock Co., Inc. of Conway, Ark. I have been in the livestock business since I was 14 years old. In 1971, I undertook the responsibility to build a Sale Barn in Conway, Ark. Cost of this facility and land investment is in excess of \$500,000.00. Money was borrowed from the local Production Credit Association at 9% interest. I was under the impression that the free enterprise system in the U.S.A. would permit me to build and own my own business and charge a competitive fee that would return reasonable profit on my investment.

The customers that we serve in the Central Arkansas area have no complaints to my knowledge of any discriminatory charges that the Packers and Stockers Administration has claim my Sale Barn is operating under the Free Enterprise System. Barn operators promote competition for livestock in this area. In a 50 mile radius, there are 9 sale barns which compete for the farmer's business in the Conway area. I feel that if my rate charges are out of line that the customer will carry his cattle elsewhere. I plan to have my charges competitive with other barns in this area, but I feel that as long as the rates are uniform and non-discriminatory to the customer, I should have the right to charge a rate that would allow me to operate, pay my bills, debts and give a return on my investment. The rates asked by the Packers and Stockers would not allow me to continue to operate if it is imposed on my facility.

The Stockers and Packers have singled out 4 sale barns in this area to test their authority to regulate the rates that a barn must charge. I feel that this is discriminatory and unfair to these operators. There is nothing fair about the method that the Stockers & Packers are trying to impose their rate making authority on these four barns and not attempting to regulate all the barns in Arkansas. The four barns involved in this action have always charged less than other barns in this general area. I presently charge commission based on the value of livestock, whether it is a baby calf, steer, cow or bull. I believe that it is the fairest way that I can operate for my customers.

The present rates that are being sought by the Packers & Stockers will force the small Sale Barn operator, like myself, out of business and create only large Terminal Markets, that provide very little service for the small operator like we have in Central Arkansas.

I do not understand why the Packers & Stockers Administration that was formed over 50 years ago to regulate the large Terminal Markets, would try to impose a rate that is unfair to the Sale Barns, based on the utility concept, and not consider the operation costs, investment, risks and the area service, that a local Sale Barn provides.

Mr. THORNTON. What you're saying is that competitive situation such as you've described, your customers are the people who tell you what services they want and what rates they're willing to pay, as compared with what your competitors are charging; is that right?

Mr. LEWIS. Yes; right. You take in, say the barn business, we charge 4 percent up to the first \$2,000, 3 percent for all over \$2,000.

All right. I started out with my uncle, Major Lewis. We went to the Morrilton sale, it was 30-some years ago, in an old Chevrolet that had

a thing on the back end of it that we hauled calves over there. The commission in Morrilton at that time was 4 percent. What you sold or what you did not sell, it cost you 4 percent to sell.

And the commission rate since that time has gone down instead of going up. So you can understand what with your labor—then you could hire an auctioneer for \$20, and now it's \$100-\$150 and on. And labor then you could hire for \$4-\$5 a day. Now it's \$2.75, \$3, \$3.25, or \$3.50 an hour, and on. And most of your barns—not all of them's the same—but most of your barns from Conway north is on a straight 4 percent. In ours, we're 4 percent for the first \$2,000, and 3 percent thereafter. And you know with today's expenses what it costs to operate.

All we ask is to be fair to each and every one of us. In other words, get on us all, or get off of all of us. I think that would be fair. And if he wants to charge 2 percent, I'm for it, if he wants to charge it. And if he wants to charge 4, I'm still for it. So the customers you do business with determine what you do.

Mr. THORNTON. Thank you very much, Mr. Lewis.

Mr. Dennis Wilcox is next.

STATEMENT OF DENNIS WILCOX, AGENCY MANAGER, FAULKNER COUNTY FARM BUREAU

Mr. WILCOX. Thank you, Congressman.

My name is Dennis Wilcox, and I'm a cattle producer from Faulkner County, Ark. I've been a cattle producer most of my life. I'm now connected with the Faulkner County Farm Bureau and still have a part-time cattle operation.

My operation would be typical, in my judgment, to most of the cattle producers in our area. I'm testifying on behalf of our cattle industry in my area in regard to the Packers and Stockyards Commission regulations on rates charged for the sale of our commodity. Our area is made up primarily of 50 percent agriculture and 50 percent industry.

The average herd in my area is primarily about 30 head, or less, per farm, so like myself most of these farmers have a job that they work at to make a living. They raise these small herds of cattle to subsidize their income, by the sale of these small herds of cattle.

The marketing system that we have enjoyed for years and years is very convenient to our type of operations. Inasmuch as since the average herd size is 30 or less, no individual farmer in our area has a great number of calves to market at a given time, like there is in some areas. For this reason we need markets available on a local basis where, whether after work or before work or the day before these cattle can be taken to the auction barns in the future, like it has been in the past.

Even though the rates would be regulated by the Packers and Stockyards Commission, we think that this would be a detriment to not only our people as producers, but it would be an increase in the end to the consumer that eventually and finally consumes the commodity.

So it's my opinion that if I'm forced to go 100 miles or 150 miles to a market it's going to increase my expenses. And we feel that the system that we've operated under for the past several years has been very successful, and for this reason we feel that the free enterprise

system in marketing is the system that we should continue under. We strongly feel that these rates that are charged should not be regulated by the Packers and Stockyards Commission on the small sale barns like it exists in our area now.

I am familiar with an area of 75 miles around here, and I would say in my area that there is a sales barn that would be no further than 30 to 50 miles, and at the outside no further than 75 miles from an individual farmer, where he could take his cattle.

We feel that should this free enterprise system not continue, that this would cause not only additional cost to the consumer but it would cause additional inconvenience to the producer and more especially to the small and the part-time producer.

The people that I visit with, in the everyday walk of life, feel that anything the Government has been involved in, in the way of controls, in the past not been successful, and in essence we feel that all and all we just have too much Government already.

For this reason we feel that the present system should be continued, and the rates charged or the commission charged by the local markets should not be regulated by the Packers and Stockyards Administration, but should be left alone and left to the free enterprise system. Of course, we think in the end this would be a savings to the consumer, which is really the ultimate goal.

I would say in my contact with my fellow farmers and my fellow workers, that my folks are satisfied with the marketing system as it exists, and we would urge our leaders in Congress to continue the system the way it is. We feel that continuing the way the system is now would in the end be a saving to the consumer, plus the fact that it would be much more convenient for the producers.

That's the end of my testimony.

Mr. THORNTON. Thank you very much, Mr. Wilcox.

Several times you said that you thought the system should be continued as it is now. And at the same time, you said that you believed in the free enterprise system of letting competition control the rates, the charges.

My concern, and what I would like to ask, is that under the present law, the Department of Agriculture has begun to regulate rates and charges and to substitute a Government determination for the free enterprise system. Now, that is the situation as it is now.

Are you suggesting that we should go back to the procedure where each barn had more authority to set its own rates, or do you want to have the Government regulate them?

Mr. WILCOX. No; I'm suggesting that—of course, the regulations, even though they have been a law in the past, have really never been enforced, and—

Mr. THORNTON. That's right, they have not been enforced. And now they're beginning to enforce it.

Mr. WILCOX. Well, my contention is that they shouldn't have gotten into it to start with, and let the free enterprise system work as it should, and let competition take care of the commission that's charged on the services.

I realize my prepared statement should have indicated that, but as Mr. Lewis testified, they've only started on four barns. This is the first four that I know of. So up to this point there hasn't been much regulation.

Mr. THORNTON. You're saying there should not be any regulation—

Mr. WILCOX. On the small type operation.

Mr. THORNTON. Where they are in a competitive situation.

Mr. WILCOX. Right.

Mr. THORNTON. I want to thank you for that clarification. As I listened to your testimony, I thought you might be advocating that the Government go ahead and regulate.

Mr. WILCOX. No, sir.

Mr. THORNTON. Do you have some questions, Mr. Hightower?

Mr. HIGHTOWER. To your knowledge of the barns in your area, you say that the Packers & Stockyards has not tried to regulate the rates all over the country, but yet they're starting to do it now, but during these last 10 years, say, without any effort on the part of the Packers & Stockyards to regulate the rates, have the rates been consistent for all the auction barns in your area? Has competition really meant uniformity, as far as the barns that you're familiar with?

Mr. WILCOX. The barns that I'm familiar with, competition has been, in my judgment the price is about the same, and that's been primarily regulated by competition.

Mr. HIGHTOWER. Mr. Chairman, if I may, I'd like to ask Mr. Lewis a question. I understand now that your company is involved in a lawsuit with the Packers & Stockyards Administration—

Mr. LEWIS. Well, I don't really know whether—I'm not, it was my uncle. He owned the livestock auction. He owned the business, which when he passed away everything else belong to me and I stepped in and had to take it or lock it up.

And the way I understand, you could go across the highway over there from my barn and build you a sale barn and charge a rate you wanted to charge. But on the existing barn you should do what they tell you to do.

Now, that's my understanding of the S. & P. In other words, if I would go up and buy his sale barn, then I would take his responsibility.

Mr. HIGHTOWER. But my question is: Are you now involved in a lawsuit with the Packers and Stockyards Administration?

Mr. LEWIS. No sir; I am not.

Mr. HIGHTOWER. Or your uncle's estate?

Mr. LEWIS. My uncle was involved in a lawsuit, I am not.

Mr. HIGHTOWER. These others, I believe you said there were three other barns that were involved?

Mr. LEWIS. Yes, sir.

Mr. HIGHTOWER. Is this a lawsuit that's now pending?

Mr. LEWIS. Yes, sir.

Mr. HIGHTOWER. What is Packers and Stockyards attempting to do with this lawsuit?

Mr. LEWIS. Well, they're attempting to charge—or to set a rate—well, I'll let Sonny tell you, because I was not familiar with that part of it until—as I say, I've only tried to run the barn 7 weeks, and he's been in it all the way.

Mr. HIGHTOWER. Mr. Durham, are you involved in this lawsuit with Packers and Stockyards, your barn is one of the four that's named?

Mr. DURHAM. Yes, sir.

Mr. HIGHTOWER. What is Packers and Stockyards attempting to do in this lawsuit?

Mr. DURHAM. Do you want me to start at the beginning and go—

Mr. HIGHTOWER. Well, are they criticizing your rates, or—

Mr. DURHAM. OK. Their regulations so states that they cannot challenge tariff No. 1, that is your original tariff. It can be a per head, or it can be a percentage, they say, prior to 1972. But I happen to know personally that they've allowed some barns to open since 1972 on a percentage commission. They say that they cannot challenge tariff No. 1.

Therefore, if you don't ask for a rate increase, they don't bother you.

If you ask for tariff No. 2, or a percentage increase, you will be denied because they say it's unjust, unreasonable and discriminatory.

Mr. HIGHTOWER. They say that regardless of what the facts might be?

Mr. DURHAM. That's right, as long as it is a percentage commission they say that it is unjust, unreasonable, and discriminatory.

And if you don't believe they'll get it out, they'll put a news release out to you and it'll go out all over the State of Arkansas that you're a crook operating a sale barn and that you're being unjust, unreasonable and discriminatory against your customers. And yet they'll tell you that no customer has complained to them.

Mr. HIGHTOWER. Yes; but I'm really interested in knowing what the lawsuit itself is about.

Mr. LEWIS. Well, excuse me, but the way I think it is, is in other words he was charging 4 percent commission below \$2,000, and they come in and told him he had to sell per head—otherwise to charge \$3 a head to sell livestock.

Mr. HIGHTOWER. Well, he had increased to 4 percent, though, since 1972.

Mr. DURHAM. All right, let's go back there. When they challenged—tariff No. 2 is what they challenged, OK? Ken Purcell, out at the area office, made a trip to Waldron, Ark., and had it typed out on a piece of paper, the national commission that they felt like that I should charge. He told me in their office that if I would accept that, that they would grant me that, but they was not going to grant me from a 3 to a 4 percent increase on tariff No. 2.

I told him that the U.S. Department of Agriculture didn't buy that sale barn, and they wasn't going to run it, and I was going to have a little say-so about how I was going to charge. So we went to a hearing in Little Rock, Ark.

They set my commission on \$3.75 per unit at this hearing, which was an administrative hearing. This goes back to Washington to a man by name of Donald Campbell, who is a judicial officer inside the U.S. Department of Agriculture.

He says that \$3.75 is too much for me to charge, and he breaks it down. I have it at home. I don't have it with me. But he pulls me back to \$2.90, and he says you go in effective July 6.

July 6 we petitioned the Eighth Circuit Court of Appeals to issue a stay. The Eighth Circuit Court of Appeals did issue a stay against Judge Campbell and said, continue your 4 percent, but you're a public utility, so you escrow the money between \$2.90, the rate Judge Campbell has set, and 4 percent. And you escrow it in an escrow account for each consignor, and we will hear the case in the Eighth Circuit Court of Appeals on the 14th of December.

Our case was heard in the Eighth Circuit Court of Appeals, and no decision has come down as yet.

If you have any further questions about the lawsuit, George Hartje can answer, because he was there.

Mr. HIGHTOWER. That really answers my question. At the present time you are charging the commission you want to, but you're having to escrow a part of it pending the outcome of the lawsuit?

Mr. DURHAM. Yes, sir. Three barns are, and I hear that they're going to try to force Mr. Lewis to escrow his.

Mr. LEWIS. In other words, the Major's was in escrow like they was, but I didn't escrow mine because I feel like I come in under a new tariff, because it's a new operating deal.

Mr. HIGHTOWER. Do you know if there are other lawsuits pending from other areas of the country on the same issue?

Mr. LEWIS. No, sir, I sure don't.

Mr. DURHAM. Yes, sir, there's other lawsuits. It's been tested from California to Pennsylvania.

Mr. HIGHTOWER. Thank you, Mr. Chairman.

Mr. THORNTON. Thank you very much, Mr. Hightower.

Mr. Jim Baker.

STATEMENT OF JIM BAKER, FIELD REPRESENTATIVE, CENTRAL ARKANSAS PRODUCTION CREDIT ASSOCIATION

Mr. BAKER. Mr. Chairman, most of the things have been covered that are in my statement.

My name is Jim Baker, and I work for Central Arkansas Production Credit Association in Conway, Ark., and I'm a loan officer.

I also raise cattle, and have fed cattle in custom feedlots in Kansas.

I am involved in financing the producers that support these local markets in central Arkansas. I'm also involved in financing the facility at Conway, Ark. I feel that I can comment on a working knowledge of both fields.

I believe in the free enterprise system that promotes competition in the marketplace. This is what made this country so great.

When we financed the facility at Conway, we financed it based on the potential income of this facility. We financed it based on the man that was operating the facility at the time, and the security that was involved.

We didn't finance it on the basis of some regulatory agency telling him how he could make his payments, whether he'd have enough income to make his payments, and we didn't give him any cut rate in interest because some regulatory agency said he couldn't charge the competitive price that other sale barn operators were charging. He had to pay the straight rate of interest.

The barn has operated, this is the sixth year, it operated for years at a 3-percent commission, and in 1974 they asked to raise their commission and go under tariff No. 2 and it was challenged. And I think this is a result of P. & S. trying to set an example with these four sale barns, this challenge to the new commission.

It seems to me like in my business, and I think the sale barn operators would justly be so too, that the people I hire to work for me in my operations, places that I go it costs more, and my costs have gone up a little bit in the last few years. I think that some folks that I deal with can recognize this.

But the testimony that I've heard from the Packers and Stockyards, they don't indicate any provision in their ratemaking procedures for inflation, or repairs, or cost of insurance, fuel, and stuff of this nature. And there's not too many items that we buy today that haven't doubled in the last 10 years. Yet the rates that are set at the sale barn—you have to do a lot of projections: What's my cost going to be? How am I going to pay my bills? You have to do it on the basis of projections, and the risks that I take.

I don't own a sale barn, and I don't have any interest in one other than just financing it. But I do know of some cases where the risks in operating a sale barn are high from the standpoint of hot checks, the moral character of some people at this day and time. When a sale barn operator sells cattle he sells them on good faith. They come through the sale barn. The man that drops the cattle at the sale barn, he's paid that day or mailed a check out the next morning. He gets his money, and the sale barn operator backs it up.

But the sale barn operator that sold those cattle in good faith, it may be 10 days, 2 weeks, before he realizes the check that bought those cattle that went into another State, or maybe two other States, is refused payment on the other end. Well, the only thing that happens there is that check comes back and bounces. It's the responsibility of the sale barn operator to collect that check at his own expense.

To my knowledge, P. & S. has never offered to collect one that was given in Conway. They may have at other sale barns. But it's pretty difficult in this day and time to get a hot check collected. It costs a lot if you have forced legal action. It costs money just to make a phone call. They don't consider any of this expense.

There's other risks involved in operating a sale barn. In the position I'm in, the law is in our favor more so than it is for the sale barn operator. Every day that cattle go to that sale barn to be auctioned off there's a risk that the sale barn operator is selling mortgaged cattle. The law protects the lender. If this man sells mortgaged cattle at Tommy Lewis' sale barn or R. C. Williams' sale barn and the cattle are mortgaged, the lender has recourse on the barn operator to collect his money if default is made.

This is a risk of doing business. This is a risk that sale barn operators take on when they open up each sale day. It's just like paying for cattle twice and not actually owning the cattle, is what it amounts to, if you lose a judgment.

But other than supporting the central Arkansas markets in our area and having the support of farmer customers, I feel that's about all I have to add to what the others have said.

Mr. THORNTON. Thank you very much.

While you're all still here, my memory of the decision in the case that has been referred to was that P. & S. approved and established per-head rates for each of the four barns that were involved originally, and that those rates were different for each of the four barns, and that even though they were in the same general area that one barn had one approved rate, and another had another lower rate, and another had a higher rate.

Is my memory correct on that?

Mr. DURHAM. Judge Palmer's decision, that's the first decision that came out, as far as his is concerned I cannot answer that.

On the second order to come out from Judge Campbell, out of

Washington, the rates were different. And Major Lewis', on a 300-pound calf, his was set on a \$2.50, and my rate—which I'm to the west of Conway—my rate was set on \$2.90 per calf. At another barn it was set on \$3.05. At the Atkins livestock market, which is 15 miles west of Morrilton, it was on \$3.05.

Mr. THORNTON. Now, the effect of that, and you had no authority to charge either more or less, any one of the operators, and I can't see why, with the regulated rates like that, I don't see why anybody would take their livestock to the two barns that were required to charge \$3.05, instead of going to the barn that would charge \$2.50, and were required to do that.

So it seems to me the effect would be to drive out of business the barns whose rates were fixed at the higher level.

Did I misunderstand?

Mr. DURHAM. True. Major is dead, and for 30 days we stayed according to the \$2.90 that Judge Campbell put us on and the 4 percent. What I'm trying to say is the money that we escrow, and the money that we could actually keep and operate on for 30 days. P. & S. contends the Major's commission would have been \$2.50 because of his volume, that he could operate cheaper than I could because he sold more cattle than I did.

Mr. THORNTON. So P. & S. wouldn't let you compete even though you might want to compete.

Mr. DURHAM. That's right.

So I went down to pick his report up and take it to the attorney. He wanted me to see it. P. & S.'s commission that they had set him on, Judge Campbell, was \$11,990 some odd dollars—roughly \$12,000. His expenses, Congressman, for that particular month, was \$18,000. His 4-percent commission amounted to \$28,000. But he was only allowed \$12,000 of his \$28,000 to operate on. So he had \$5,000 that he took out of his pocket—is that right? Well, the difference between \$12,000 and \$18,000—\$6,000—that he took out of his pocket to put in his operation so he could keep operating.

P. & S.'s contention is if you don't do what I say or what I want you to do, I'm going to show you what I can do to you, and I'm going to tie you up financially. That's the whole story in a nutshell.

Mr. HIGHTOWER. It would seem, then, that there might be a philosophy of "Let the big get bigger."

Mr. DURHAM. True. They testified to the fact that the small operator should be forced out of business. And if you can tell me what social cost is . . . I don't know. But they say according to social cost to the rate payer.

Mr. THORNTON. Thank you very much.

Let me ask if both Mr. Jim Sanders and Mr. John McKnight are here.

Mr. SANDERS. One of us is.

Mr. THORNTON. Which one are you?

Mr. SANDERS. Jim Sanders.

Mr. THORNTON. Come on up here, Mr. Sanders.

At the same time, I'd like to ask Mr. Floyd Valentine to come forward.

Mr. Sanders, I understand you're the executive vice president of the Arkansas Cattlemen's Association. Is that correct, sir?

Mr. SANDERS. Yes, sir.

STATEMENT OF JIM SANDERS, EXECUTIVE VICE PRESIDENT,
ARKANSAS CATTLEMEN'S ASSOCIATION

Mr. SANDERS. The Arkansas Cattlemen's Association would like to thank the committee for the opportunity to present written and oral testimony on H.R. 9482.

Before we go into it, Congressman, I'd just like to say a few things and then I'll get into the written testimony a little bit.

We called certain producers—who are the people we represent—called across the State so I could get a cross section of their feelings, their attitudes. And the majority of them, to a certain extent, were not familiar with this bill and the pending legislation, and so forth. So we spent a good bit of time explaining to them, and hopefully the idea got across.

We, as an association, support the free enterprise system 100 percent. One reason the cattlemen of Arkansas and this country are in the business they're in is it gives them a chance to determine their futures without constant control and regulation by the State and Federal Government.

We feel the difference is, though, you cannot go in a free enterprise system from total and absolute control to no control at all.

Here's some of the things I'd like to bring forward into this:

At the last and latest report, which was yesterday, there are 47 sale barns in operation now within the State of Arkansas. Of these, only three would come close to still being regulated under the structure of the Packers and Stockyards Administration.

According to the latest State marketing report, there were 1,124,911 animal marketing units sold in Arkansas in 1977. That would give us about 70, in other words, 70 percent of the ones that are reported. There are several others, or people have told us that this is about 70 percent of all cattle that are sold are reported into marketing, and this is from about half of the barns. So there's about 23 of the barns reporting, but there's still over 50 percent of the cows. And so you really cannot conclude a percentage as far as these three barns go against the other ones, because of this lack of total information.

But as Mr. Wilcox brought out, the average cow herd in the State of Arkansas numbers less than 30 producing females. The vast majority of these producers do work full time at another job, and the cattle are the secondary occupation. They do not have the equipment or the time to move their calves and their cattle to larger barns and market their product at the most competitive sale available as the larger, full-time cattlemen do, who have the equipment and have the people and the facilities to do this. Their breeding programs are usually year round, and they generally send their cattle for sale to the nearest and most convenient location available to them. These are the people who make up the majority of the business for these small local barns.

If the bill, as written, were to be enacted he would probably receive less total gross dollars for his cattle than at one of the larger barns that are regulated by the P. & S. and in some instances be charged more sales fees than at the P. & S. regulated yards, resulting in a considerably less amount of total dollars received. Therefore, we feel that in equity, because you're going to be having some regulated and

some nonregulated barns, there needs to be a uniform type of legislation.

The second part of your bill, Congressman, I don't believe would have any effect in the State of Arkansas, because I pulled a map out and I couldn't find any area that is over 75 miles from one sale barn to another.

I think it was Dr. Pickett who said earlier, about the basis for the formula for the 100,000 units number, and we would like to ask this question: What system would determine whose sale barn qualifies under section 1 as a stockyard that has an annual sale volume of over 100,000 animal marketing units? What period of time and/or what records will this be based on? If nothing was established as a firm set, this could be very easily manipulated to stay under the 100,000 unit number.

It would also be unfair to these stockyards to base it on current figures, as the liquidation period of this cattle cycle has sent more cattle to market in the past years.

In the years ahead, these stockyard operations could reach a period of drastic reduction in total number of cattle sold through their barn if they were still regulated. His rates would be set on previous records, and he would not be able to operate effectively at that figure.

When we have another cattle cycle, and that will come one day, the liquidation phase takes place again, and a stockyard that has had annual sales under 100,000 marketing units could very easily exceed this figure.

Would this stockyard be placed under the P. & S. regulations, or would he continue being operated as usual? If the stockyard did face P. & S. regulations, would the manipulation of total numbers take place by canceling sales or sending cattle to other markets?

This is an area we would like to see explained to us and defined more accurately for us. Could the monopolization of an area take place? Could a larger and more profitable stockyard cut its fees in an attempt to shut down the small barns?

These are things that need to be brought into the question.

If this were to be accomplished, the remaining barn would be able to set prices as it chooses. There would be no more competition. If there were two stockyards in an area, what would stop them from raising their rates at the same time, fixing the price that the cattlemen had to pay?

We would like more definition in this area contained in the bill.

We know that the majority of the stockyards have had a rough time in the past years, as have the cattlemen. In most instances the cattlemen have not objected or would not object to an increase in cost at his local stockyard if he felt that he was receiving more services and the top dollar available for his cattle.

But the secret is good active competition among the stockyards themselves. This is the only answer to a healthy economy and free enterprise system in this business.

If in every case, statewide and nationwide, good healthy competition was evident, the problem would be solved. But that is not the case. The laws and regulations in the Packers and Stockyards Administration need to be updated and changed. But this bill, as it is written, we feel cannot accomplish this.

Hopefully, with hearings like this and the ones scheduled by the

Packers and Stockyards Administration around the country, a workable and profitable legislation can be made, can be arrived at, one that can be fair and honest to the cattleman and also profitable and economically sound for the stockyard operators.

Thank you, sir.

Mr. THORNTON. Thank you very much. We appreciate your testimony. And, of course, you've hit upon the purpose of the hearings being held around the country by the committee and also, as you mentioned, the Packers and Stockyards Administration.

As a result of the introduction of this legislation, there's been a great deal of interest in the whole question of whether, when you have nearly 2,000 small businesses in the United States, regulating any of them as a public utility is a proper way to go. The Packers and Stockyard Division of the Department of Agriculture is making a very serious inquiry as to whether, instead of trying to divide between large auction barns and small auctions barns, all ought to be removed from regulation as a public utility.

And I think what you're saying is that you think perhaps a uniform treatment across the board, to remove everybody from regulation, might be better than just removing the small barns from regulation. Is that right?

Mr. SANDERS. Well, Congressman, we just feel that it goes back to the old adage, "What's good enough for the goose, is also good enough for the gander." And we feel that if everybody around the State was competitive, whether he was a small barn or a large barn, the people themselves would be benefited. Because, like I say, there's a lot of people in this State, like Mr. Wilcox mentioned, that are small producers who've got a pickup and a stock rack, and if they've got to haul 50 miles they don't have the facilities to do it. And if everybody was able to compete and have good active competition around the State among themselves, and be able to charge a fair percentage that they could operate at and that everybody could operate at, they could accomplish this, because everybody would be receiving the same equal treatment. And we feel that percentage would be the best way to accomplish this, and it would be least discriminatory.

Mr. THORNTON. Do you like the percentage or per-head charge, or does it make any difference?

Mr. SANDERS. I think the percentage would be the fairest, because the simple fact is if a man has an animal that brings him, \$100, he's going to pay a rate for what that animal brought him, and the man that had an animal that brought \$300 is going to pay his proportionate share.

Mr. THORNTON. You are aware that the bill I introduced does continue all of the authority of the Packers and Stockyards over discriminatory rates and charges, and would prohibit two barns going together to agree to raise rates arbitrarily?

Mr. SANDERS. Yes, sir, I know this. But the thing is, these are questions that were brought up by some of the people, and that is what my job is, is representing them, and that's why we called them. And these were various comments around the State. I mean nowhere at all was there animosity about, you know, why are stockyards charging too much and all this, and so forth. There's nothing like that in the State. In other words, they're for the stockyards because they're neighbors, they're friends, and in many cases they're the same people.

Mr. THORNTON. Do you think in the situation we just talked about in Conway if Government regulations were to drive three barns out of business and leave one to serve everybody, that be a good thing?

Mr. SANDERS. It would be a terrible detriment, because, we can sit here and have coffee, and Tommy could be my cousin, and everything like this, and everything going on. But if a man is sitting here and he knows there's active competition going on, and these people are going to get the buyers out, they're going to get the best available dollar for the money, and if he knows that on Wednesdays he can take his cattle to a sale in Morrilton and get a higher dollar for them, he's going to do that. And I think that the man sitting here knows that too. I mean to me that's just good, active competition. It's pretty much like a political race where you go out and shake their hands and tell them what you're going to do for them.

Mr. THORNTON. Actually you're really helping in the legislative process right now, because the reason we schedule hearings is because we have a problem. The problem is that you've got a regulation that's having an unfair effect, and going to result in a harm being done to both producers and people operating these small rural barns. And we have hearings in order to find out how better to change the law.

So your testimony is very helpful. I'm hopeful that there will be some changes that may come out of these hearings that may make the law more fair. Maybe we'd even want to deregulate everybody.

Mr. SANDERS. Well, thank you. Because, I'll tell you what. We spend a lot of our time in Little Rock pretty much doing the same thing. We write several letters to Washington a week. The cattlemen around Arkansas, and I'm just going to get off the record here a minute, the cattlemen of Arkansas are pretty much like the cattlemen anywhere else. They're pretty much fed up with the Government telling them what to do. And that's just another case, if they feel like they can help the stockyards around this area I think it's a good idea. Yet at the same time, they're still watching their pocketbooks.

Mr. THORNTON. They want to make sure that the results are fair.

Mr. SANDERS. Fair and effective, yes, sir.

Mr. THORNTON. I want to thank you for your testimony. Do you have any questions?

Mr. HIGHTOWER. No questions.

Mr. THORNTON. Mr. Valentine?

STATEMENT OF FLOYD VALENTINE, PRESIDENT, LOUISIANA LIVESTOCK MARKET ASSOCIATION

Mr. VALENTINE. My name is Floyd Valentine. I live in Shreveport, La. I'm president and general manager of the Livestock Producers Auction Barn in Bossier City, La. Also, I'm president of the Louisiana Livestock Market Association.

I didn't start out working for any of these people because I thought it was going to be for free, but yet it actually turned out that way. The way I make my living, I farm. I farm a 3,500 acre Red River farm around the Shreveport, La., region, and run about 2,500 cattle on this farm. Therefore, I am vitally interested in the market and what a market can do for me as a farmer.

I don't think it would be very proper for me to appear here before you today unless I told you that at the present time I represent, as

president of the Livestock Producers, Inc., 144 stockholders. We're a corporation, we're not a cooperative. We went into this business for one thing, and that is to improve and enhance the free, competitive and the livestock way of marketing our cattle. We did not go in there as a means to reduce marketing costs. We went in there with the sole reason that we believed the livestock auction market system was the best, and that the best interests of the producer could be the amount of money that he received above the commission.

Also I might say that we opposed what we believed to be a procedure by the Packers and Stockyards Administration several years ago to gain information to change our structure of setting our tariff rates. And along the line in opposing this, our attorney made a mistake. And as a result, 17 markets in the State of Louisiana now have judgments against them in the amount of \$477,000, which I must say is very unreal.

Yesterday I was in Washington and appeared before the Packers and Stockyards Administrator and representatives of the Justice Department to attempt to determine what was real.

And I didn't come here today to try that, because I brought this up for one reason. And that is to let you know that we have been engaged in this litigation, that I have no vendetta against the Packers and Stockyards Administration, and they have a representative sitting in this audience here today.

Whatever rightful and reasonable justification the Packers and Stockyards has for its existence, I am for. But in no way as a conservative, and as a believer in free enterprise, can I class the livestock marketing system in the State of Louisiana as being any other than a free enterprise system. And to my dying day I will oppose Government regulatory and oppressive practices that would cause the producers of the State of Louisiana to receive less money for their products.

I believe the years of service of the livestock markets in Louisiana have set the tariff structure. And I might say this: If my good friend at the National Stockyard of Arkansas wants to sell cattle for \$2.50 a head, then he knows what his service is worth. And if I want to sell them for \$5 a head, I believe I know what my service is worth. And I believe that we, and we alone, have the benefit of knowing what that amount should be. Certainly we're going to have to make a profit if we are going to do anything for the cattle producers. When we walk in and pop that whip, as the gentleman mentioned here a few moments ago, and set a price and support that market, it takes money, it takes time, it takes ability. And I don't believe that there's any way that the Government can arrive at what rate of profit a man should make. Certainly the auction markets of this Nation have proved beyond the shadow of a doubt that this is one of the best ways in which to market cattle.

I would like to point out one thing. When we talk about the present capabilities of the Government to set tariff rates, and I believe Mr. Grizzell, who is in the audience here today will concur with this statement that I'm fixing to make now. A few months ago I called him and told him I needed to get an increase in yardage charges. We charge 4 percent, and 30 cents yardage, if my memory serves me correctly. And also I wanted to place a stated amount of money to cover insurance costs. And without any reservation, and Mr. Grizzell

and I are good friends, and I have no animosity toward him, but he stated, "We are not allowing any increases in Louisiana for anyone that has a percentage market tariff."

I have no argument with anyone turning me down for an increase in tariff based upon reason, and that's what the law calls for. But denying me just simply because of the way I set my tariff, to disqualify me for an increase is not reasonable. And I just tell you that for this reason, is to point out to you the incapability of Government to function in private enterprise, with one exception: And that is anything that they have to do that can provide a better climate in which any free enterprise system can operate. I think that is a duty of the Government. But to regulate it, to depress it, does not come under that jurisdiction. And I believe the setting of tariff rates is a depressing factor, because we are dealing in something over which they have no knowledge and which they do not have the ability to function. And the sole responsibility of the Government should be in the line of responsibility for a good condition under which to operate.

And I bring that up again simply for this reason: I believe that years of service or years that we have had the markets to operate in, has set the need for some way for the seller of cattle to be protected and get their money. And I noticed in your bill that you did exclude almost everything out of the present bill with the exception of the ability to set rates for tariffs.

What I'm saying here, time has proven that Government can be of service to the farmer by having a good and strong custodian account and the ability of the markets to service that account. And I believe it would be of value, even though you exclude this from your bill, that it would be of value in getting this bill passed if somewhere that could be restated and accompany this bill, giving the Packers and Stockyards the right to have markets to establish a custodian account and to properly service it.

Again I say that is my philosophy of life. That is my philosophy of what life is all about so far as Government and the economy is concerned. And with those statements I would like to make this remark: That I believe, without a doubt, that the 1,500-plus customers that we serve in our market in Bossier City, La., have a need for a small market at a rather short distance where they can sell their cattle. If you remove the market from the people that raise the cattle, the higher cost of transportation at this time in many cases will exceed the tariff itself. And that is unreasonable so far as the producer is concerned.

And I would say this: That as a producer of cattle, as an operator of an auction barn, and on behalf of the people of the State of Louisiana, I believe I have their full backing here today, that we wholeheartedly agree in supporting this bill that you have introduced.

Thank you, sir.

Mr. THORNTON. Thank you very much, Mr. Valentine.

It is almost 12 noon. We will be able to resume these hearings and hear all the scheduled witnesses in a short time after a reasonable break for lunch.

After lunch I'm going to ask Mr. Hightower to act as chairman of these hearings for the balance of the hearing. I'll be here to participate.

So we will stand in recess until 1:15.

[Whereupon, at 12 noon, the hearing was recessed, to reconvene at 1:15 p.m., this same day.]

AFTERNOON SESSION

Mr. HIGHTOWER [acting chairman]. Would you please take your seats?

I'd like to ask Mr. J. D. Branscome, Mr. Dan Murray, and Mr. Richard Koehler to please come and take seats at the witness table.

Because we have some time constraints it is going to be necessary for me to ask the witnesses to try to hold their remarks to about 10 minutes. That's flexible, and we want to give everybody an opportunity to make a full testimony. But we also want to remind you again that we will keep the record open for about 2 weeks, and if you have additional remarks, or anyone who has not come today prepared to testify but would like to submit some testimony, the committee will accept that and it will become a part of the permanent record just the same as if you had testified here today.

If you have prepared remarks, we'd be happy for you to submit those prepared remarks and then speak extemporaneously, if you'd like to do that. Or if you'd prefer to read—whichever way would suit you best. Because, as we said earlier, this is our opportunity to hear your ideas about this legislation, and we don't want you to miss the opportunity to speak, and we certainly don't want to miss the opportunity to hear from you.

I have asked Mr. Branscome, Mr. Murray, and Mr. Koehler to sit here jointly, because as I understand it you are each with a livestock marketing forum or association, and there might be a certain amount of agreement in your testimony.

So we would be happy to hear from you at this time. Let me say, though, first, that Mr. Thornton will be here in just a moment. He had to make an outside call. But he will be here in just a few minutes. But in order to give everybody full opportunity to be heard, we want to go ahead and begin.

I will be presiding this afternoon. We will try to watch the time, but, as I say, we want to give you plenty of time to be heard.

Now, Mr. Branscome.

STATEMENT OF J. D. BRANSCOME, CHAIRMAN, LIVESTOCK MARKETING FORUM

Mr. BRANSCOME. My name is J. D. Branscome, of Grenada, Miss.

At the outset I wish to express my appreciation for the opportunity to present this statement on a subject in which I have a direct and dual interest. That subject is if the tariff regulation of the livestock marketing business is subject to the Packers and Stockyards Act of 1921.

I have an individual interest since I am actively involved in the ownership and operation of the Oxford Livestock Market, Inc., of Oxford, Miss., which is a marketing business subject to the provisions of the Packers and Stockyards Act.

My experience with the livestock industry in general, and in the marketing sector in particular, spans my lifetime through the family ties and background in this particular area of Mississippi, and includes almost every aspect of the operation of the business.

In addition to my personal interest, I speak today too on behalf of an industrywide concern, as chairman of the Livestock Marketing Forum, a subdivision of the Livestock Laws Reform Commission.

The Livestock Laws Reform Commission is a foundation which is concerned with a broad range of laws, State and Federal, which affect the marketing sector of the livestock industry and is sponsored by the Livestock Marketing Association. I have some 7 years of experience with this industrywide effort.

In conjunction with this industrywide concern I take this opportunity to introduce to the subcommittee Daniel Murray, an executive officer of the Livestock Marketing Association, and Richard Koehler, an attorney with the association, each of whom will offer remarks on this same subject.

Presently tariff regulation is based on the statutory provisions of the Packers and Stockyards Act of 1921, and is carried out through the Packers and Stockyards Agricultural Marketing Service of the U.S. Department of Agriculture under the Department's recent reorganization.

Prior to this recent reorganization, the administrative organization was known as the Packers and Stockyards Administration. The tariff regulation now in effect deals with the charges that a marketing business can make for the services it provides in assisting a farmer and producer in selling his livestock, but is essentially limited to marketing businesses with fixed facilities.

My reference to a livestock marketing business or a marketing business includes such usual designations as terminal, stockyards, livestock auction markets, auction barns, and auction stockyards.

I know that I speak quite strongly for myself and the industry in general when I say that the tariff regulation of the Packers and Stockyards Agricultural Marketing Services is an unwarranted holdover of yesteryear, and really not applicable or responsive to today's—and I emphasize today's—industry.

The Thornton bill, H.R. 9482, as well as companion bills, H.R. 9639 and H.R. 10016, and S. 2195, which seek to limit the regulatory authority with regard to tariffs, focus attention on and deal with an area long overdue for reform and Congressional scrutiny. As such, I am quite heartened by the efforts of Representatives Thornton and Hammerschmidt and this subcommittee. We note that the Packers and Stockyards Agricultural Marketing Service has recently announced that it will hold a series of seven public hearings across the country, commencing January 23, 1978, in Sioux Falls, S. Dak., and we cannot help but believe that the impetus of such action must be attributed to no small extent to this legislative effort.

There is no doubt from the hindsight of historical perspective that tariff regulation was an important facet of the Packers and Stockyards Act at about the time of the original legislation. At that time this legislation dealt with a small number of rather large terminal markets, with strong and influential ties to large packers. It did deal with very real and undesirable profits.

At that time, too, the vast majority of such, approximately 80 percent of all livestock had to be, and were, marketed through these terminal markets and were shipped to such markets by rail.

In contrast to the above, we note significant changes in today's industry. Livestock from birth to slaughter changes hands or ownerships several times through one marketing system or another.

The announcement for the upcoming public hearings of Packers and Stockyards carry the following data: During 1975 posted stock-

yards handled over 95 million head of livestock, valued in excess of \$13 billion. Yet, in actuality, such data relate to only approximately one-half of the livestock transactions in this country. That is, there are another 95 million head of livestock involved in sales not subject to tariff regulations.

In that sense, one segment of the marketing sector is scrutinized and regulated far out of proportion to the other.

In addition, we have an element of competition present today that was unheard of at the time of the original legislation. There are some 14 marketing businesses within a 75-mile radius of my own business. Hence, I must strive to have Oxford Livestock Market at its best in all aspects of its operation in order to stay in business and maintain a viable entity.

A lack of attention to our endeavors would mean simply a loss to both consignors and purchasers of livestock.

Hence, we believe the overall concept of the tariff regulation is unwarranted. The reality of competition in a free economic system would provide the most meaningful regulation of services provided to the consignors for their marketing services and the charges set for such services. This basic concept of total deregulation of all stockyards and marketing businesses subject to the act has long been a goal of the livestock marketing forum, and is presently being pursued through S. 2275, introduced by Senator Eastland, entitled, "The Freedom of Livestock Marketing Act."

As such, I once again express my appreciation for the deregulation efforts of Representative Thornton and this subcommittee. Your interest in this area is certainly welcome.

Thank you.

Mr. HIGHTOWER. Thank you, Mr. Branscome.

We will now hear from Mr. Dan Murray.

STATEMENT OF DAN MURRAY, ASSISTANT MANAGER, LIVESTOCK MARKETING ASSOCIATION

Mr. MURRAY. Thank you, Chairman Hightower and Congressman Thornton.

My name is Dan Murray. I'm assistant manager of the Livestock Marketing Association with headquarters in Kansas City, Mo. This is a national trade association of livestock marketing businesses which represents better than 900-plus subscribers throughout the United States and also in Canada.

It's a great opportunity to be in front of this subcommittee today to discuss a very concerned subject of livestock marketing businesses which we represent, and the primary purpose that I'm here is that I represent these markets in the States of Missouri, Arkansas, and Oklahoma.

I would like to briefly focus my remarks on the day-to-day aspects as far as tariff regulations. That is, in any one given locale of any given marketing business there are a number of circumstances which can arise which relate to an increased cost of doing business.

A normal business, one whose incoming revenue is not strictly regulated, has more latitude and greater ability to deal with such circumstances as they arise. A good example is the recent increase in the Federal minimum wage as set by Congress. How does a business begin

to deal with such extra cost of doing business? Presumably such costs could be dealt with by each individual marketing business that's making application to the agency, at some point in time for the commission to increase their prospective tariff. This process might involve an exchange of letters, depending on the agency's review on a particular business situation. This, then, becomes a matter of extra expense and effort in dealing with the ordinary, or day-to-day problems.

A second aspect which I deal with is in the custom and usage of a trade. An example of this would be in reference to the tort bill as far as animal marketing unit. That is, in my experience the concept of animal marketing units is not a term or concept of the trade. Those who operate marketing businesses do so with the knowledge and understanding as far as head count, species, type, as far as fat cattle, feeders and stockers, feeder pigs and stock hogs.

These businesses' books and records as far as general accounting practices are handled along these same lines. As such, I wonder if the animal market units actually reflect the manner in which the industry does business?

In closing, I again would like to express that I am representing here today better than 900 marketing businesses that support as far as deregulation of tariffs on our marketing business, mainly because the association represents a wide range of size and category measured by the volume of livestock handled.

Hence, on behalf of the association I reiterate that the point made by Mr. Branscome, that we are hopeful that a total tariff deregulation can be an obtainable goal which would be beneficial and be responsive to the trade industry.

Mr. HIGHTOWER. Thank you very much, Mr. Murray.

We now will hear from Mr. Richard Koehler.

STATEMENT OF RICHARD A. KOEHLER, GROUP COUNSEL, LIVESTOCK MARKETING ASSOCIATION

Mr. KOEHLER. Chairman Hightower, Representative Thornton, I, too, would like to express my appreciation for being able to be here to present these remarks, and if I could I will try and give some background in regard to remarks which we have previously heard.

I'm an attorney with the Livestock Marketing Association, and have been for approximately 2 years. I have been counsel for two different subscribers to the association who have been involved in rate hearings before the Packers and Stockyards of the U.S. Department of Agriculture.

Mr. Hartje, who testified this morning, represented markets of Arkansas in a similar proceeding.

There have been, as a little bit of background, four rate hearings held since 1973, and of those four I have been involved in two of these. There has been some discussion of value-based tariffs, or percentage tariffs in previous testimony and, as such, I would give a brief bit of background of how a marketing business comes to a rate hearing.

I quote from a letter of July 1, 1975, as written by Mr. Jack W. Ringmeyer, who is Chief of the Rates Services Facilities Branch of the Packers and Stockyards. He says:

Our policy since November 1974 is not to accept modifications that will increase the revenues produced by tariffs based on the value of the livestock sold. However, we will accept increases based on reasonable per head charges if our analysis of the annual report and data shows an increase is warranted.

Basically, the marketing business makes an application to the Agency for a tariff increase. That application is passed upon by the Rate Services Facilities Branch in Washington, D.C.

If the Agency does not accept an application for a new tariff, the marketing business has three choices:

The first choice is to stay with the tariff which it is on; the second choice is to stand on the tariff that the business is seeking to move to; the third choice, with respect to the letter, the quotation from Mr. Ringmeyer, would be to accept a per head tariff as a counter offer by the Agency.

If the marketing business elects to stand on the tariff that it is moving to, the position of the Agency was to suspend that tariff for a total of 60 days per the provisions of the act, file an administrative complaint against the marketing business, and then hold a hearing before an administrative law judge on the concept of whether the schedule of rates and charges that the marketing business sought to implement would be just, reasonable, and nondiscriminatory.

After an administrative hearing is held, the administrative law judge will issue what is termed an initial decision and order. That initial decision and order is appealable to the judicial officer of the Department of Agriculture. The judicial officer has the final authority within the Department of Agriculture, to pass on administrative proceedings.

Once the judicial officer has issued his decision and order, the matter may be appealed to a U.S. Court of Appeals for the Circuit in which the marketing business is located. That is the situation that happened with the marketing businesses that were before us this morning, the Arkansas markets. Their appeal is in the U.S. Court of Appeals for the Eighth Circuit.

That is a brief outline of the procedure that is involved when the Agency makes a decision to take a marketing business to a rate hearing.

I would welcome any questions that I might answer with regard to my experience with the Agency or with the methodology that they apply in rate proceedings.

Mr. HIGHTOWER. Thank you, Mr. Koehler.

Mr. Thornton, do you have any questions of any of these witnesses?

Mr. THORNTON. Only one question. I think Mr. Koehler might best answer: Have you heard it explained why the Agency insists upon the per head charge and rejects the commission method of establishing rates?

Mr. KOEHLER. Based on my experience in rate proceedings in which I have had occasion to listen to the testimony of Mr. Brinkmeyer in two separate proceedings, and to cross-examine him, that concept is a concept which has been held by Mr. Brinkmeyer since he joined the Agency in 1958. He is a career employee. And that concept was passed on to Mr. Brinkmeyer by his supervisor at the time he joined the Agency. And it has been his belief, and a belief of, I believe, a small number of personnel within the Agency, that a per head charge is the only charge which meets the language of the act when it speaks of a schedule of rates and charges that are just, reasonable, and nondiscriminatory.

In 1968 Mr. Brinkmeyer became chief of the rate services and facilities branch, and that is the branch that the gentleman spoke of this morning that consists of approximately four people who, in essence, pass on the applications of any marketing business, of any of the

2,000 or 1,900 marketing businesses across the country. These gentlemen are the ones that pass on the application as to whether they will accept or not accept that application for a change in tariff.

Mr. THORNTON. Thank you, Mr. Chairman.

Mr. HIGHTOWER. Thank you, gentlemen, very much. We appreciate your testimony. Thank you for coming.

We now ask Mr. George Hall to please come forward. Mr. Hall is vice president of Oklahoma National Stockyards.

STATEMENT OF GEORGE HALL, VICE PRESIDENT, OKLAHOMA NATIONAL STOCKYARDS

Mr. HALL. Thank you, Congressman Thornton and Congressman Hightower.

My name is George Hall, from Oklahoma City. I am vice president of Oklahoma National Stockyards. I thank you for the opportunity to appear here today on behalf of the American Stockyards Association, an organization that represents 25 of the major livestock markets in the Nation.

I commend you, Congressman Thornton, for your foresight in holding this hearing where we in the livestock industry can come and be afforded the opportunity to make our views known concerning H.R. 9482 and other bills that have been introduced by you and your fellow Congressmen.

We are in agreement with that portion of your bill which would restructure the rate supervisory authority of the Packers and Stockyards Administration. We believe that there is a need for the lessening of the level of regulation concerning a livestock market's charges to its customers.

We do take exception to, and hereby go on record, as having been opposed to that portion of your bill which would discriminate and limit the rate supervisory authority of the Packers and Stockyards Administration to those stockyards which either have: (a) an annual sales volume in excess of 100,000 animal marketing units, as determined by the Secretary of Agriculture; or (b) have an annual sales volume in excess of 20,000 animal marketing units, as determined by the Secretary, and are located more than 75 miles from the nearest independently owned and operated stockyard.

If this bill were to be enacted into law in the present form we understand that only approximately 120 livestock markets would continue to be subject to the ratemaking authority of the present act. This would be highly discriminatory against those successful markets which, by virtue of their size or location, would continue to be regulated by the present act.

I represent markets which, for the most part, have operated ever since the enactment in 1921 of the Packers and Stockyards Act. All of our rates and charges, regardless of whether they've been per-head or percentage, through the years have been subject to the supervisory ratemaking authority of this act.

Times have changed since 1921. No longer are the only livestock markets located at major railheads, as they were then. Now there are nearly 2,000 posted stockyards or livestock markets in the Nation. They effectively compete with each other for livestock business.

It is for this reason that we urge you, Congressman Thornton, to

amend your bill to include and allow all stockyards and livestock markets, regardless of size or location, to file schedules of charges, known as tariffs, without first securing the approval from the U.S. Department of Agriculture.

The competition existing between markets effectively monitors the rate levels of the markets. The very number of such markets insures the customer a choice at a price he is willing to pay.

I would urge you to incorporate in your bill the following safeguards for the benefit of our market customers:

(a) Any change in any charge should be published by posting for not less than 10 days at a market before going into effect, as at present.

(b) Any change in any tariff charge should be filed with the Packers & Stockyards Administration 10 days in advance of the effective date, as at present.

(c) The rates and charges of all commission agencies doing business at the same market should be identical, as at present.

(d) All tariff charges must be applied uniformly and without discrimination, as at present.

(e) The Packers & Stockyards Administration should continue to hear customer complaints and hold reparation hearings where necessary.

It is our opinion that the reduced level of regulation, when so achieved, will be of benefit to all segments of the livestock marketing industry. The customer will still be protected and a large volume of paperwork which is inherent to a request for a rate change will be eliminated.

Congressman Thornton, I commend you for your sponsorship of this bill. With the changes I have suggested to exclude all markets, regardless of size or location, from the rate regulatory authority of the U.S. Department of Agriculture then a great step has been taken in the deregulation of one vital segment of our free enterprise system.

Thank you, and I will answer any questions you might have.

Mr. HIGHTOWER. Mr. Thornton?

Mr. THORNTON. We appreciate your very good testimony, and I must say that I was concerned at what level and how to draw a line between auction barns which are obviously of a highly competitive nature, small, not at all monopolistic in character, and any barns which I thought might exist—and I didn't know how many there might be, at Chicago or Kansas City that might still have an ability, through size and exclusiveness of territory, to have some monopolistic characteristics.

Are you saying that that line just can't be drawn, that there aren't any barns of a size or covering a wide enough area without competition that some regulation might be allowed on some of the very largest?

Mr. HALL. If I may, sir, use a personal situation. In Oklahoma we are the largest market, and in the Nation, the largest cattle market. And yet we have competition from approximately 40 smaller markets throughout the States of Oklahoma and in Arkansas, Texas, Kansas, all of which we consider our trade area.

I don't feel like that any of us need regulatory brothers looking over our shoulders to accomplish the job given the livestock producer to market his product.

If I may, sir, I would like also to say that we have an obligation as

livestock market to the livestock producer to be as efficient and as effective as we possibly can in the performance of services for him in the use of the facilities that we have.

I feel that we don't need that portion of the Federal Government under the Packers and Stockyards Act to control us, where we are managers ourselves. We need to take that into consideration as a manager of a market.

Mr. THORNTON. I very much appreciate what you've just said. I have never been among those who confused bigness with badness, and if competition exists, and if a monopoly is not present, then we ought to recognize that in the law.

On the other hand, if we still were living in a nation where there were only a handful of major markets and the circumstances were like those described this morning, in which the seller ships in cattle and the only persons there were the auction barn people and the purchaser, then that would be a circumstance in which some governmental intervention might be needed to avoid the effect of monopolistic condition.

Mr. HALL. I think this is absolutely true, your statement you just made. I would like to add one thing. Of these 25 markets that I represent, 20 of those do operate as auction barns. They have either 1 or 2 days, some as many as 4 days, of auction selling.

Again, a personal reference to the Oklahoma City yards, we operate 4 days a week. And 99 percent of the over 1 million head of livestock that goes through that market is sold at auction. So there's very little of the type of selling that was prevalent at the old terminal markets.

Again, this is in relation to the auction market method of selling.

Mr. HIGHTOWER. Thank you, Mr. Hall. We appreciate your testimony.

Now I'd like to ask Mr. Jim Sargent, of the Farmers Livestock Auction, Inc., Travis Justus, of the Arkansas Farm Bureau Federation, and Mr. Harold Henry of the H. R. H. Auction Co. of Hamilton, Mo., if you gentleman would all three take seats here.

Mr. Sargent, we'd be glad to hear from you at this time.

STATEMENT OF JIM SARGENT, FARMERS LIVESTOCK AUCTION, INC.

Mr. SARGENT. Congressman Hightower and Congressman Thornton; first of all, I would like to express my appreciation for you shouldering our burden, so to speak. I definitely appreciate the bill that you have introduced. The only thing, and I'll make mine very brief, the only thing that I would be in favor of in changing it would be to eliminate the size of the market.

Just like George told you there a minute ago, I think that a man that sells 10,000 head ought to be treated the same way as a man that sells 100,000. We sell in excess of 100,000 cattle a year. I do not feel like when by our efforts we have built this thing as large as it is that we should be jeopardized or put under any kind of a restraining order so to speak, different than a man that's selling 50,000.

Now I won't criticize the Packers and Stockyards Act. I think they have some good ideas. I think such things as your custodial accounts, your balancing of the scales, checking those, checking your books—I think it's only fair to the consignor that he has some protection from

someone. It might not come from the Packers and Stockyards Act, but I think he is entitled to some protection.

But I do not feel like that they have any right to set your rates as to what you charge. I think competition of itself will do that if you're the kind of operator you should be. And if you're not the kind of operator you should be, you won't be there long anyway.

Gentlemen, again I would like to express my appreciation and thank you for your time.

Mr. HIGHTOWER. We appreciate your being here, Mr. Sargent. Now, we will hear from Mr. Travis Justus.

STATEMENT OF TRAVIS JUSTUS, ARKANSAS FARM BUREAU FEDERATION

Mr. JUSTUS. Mr. Chairman, Congressman Thornton; my name is Travis Justus. I'm director, beef cattle division, of the Arkansas Farm Bureau Federation.

As you know, the Arkansas Farm Bureau Federation is a general farm organization made up of 76 county farm bureaus in the State, representing over 90,000 member families in the State of Arkansas, 25,000 of which produce or derive a major portion of their income from the sale of livestock. Our producer members have shown an interest in current developments regarding marketing changes and market charges, and the possible changes that could be coming forth in the regulation of those charges.

Livestock is a major source of income to many thousands of people in the State who need a dependable and efficient marketing system.

The livestock marketing sector, and particularly the auction market system in Arkansas, is of great importance and provides a needed and valuable service to our State's livestock industry.

This point is evidenced by the fact that approximately 90 to 95 percent of all cattle sold in the State of Arkansas goes through the auction markets. A similar high percentage of hogs and pigs marketed in the State are sold through auction facilities.

Not only do livestock producers rely on the livestock auction markets as an outlet for their products, but these markets also serve as a price-determining point for marketing transactions that occur outside regular marketing channels. They also provide a stimulus to the local economies of many of our rural areas in the State.

The necessity to keep market outlets for livestock or any other agricultural product operating in a climate of free and open competition is basic to the economic principles on which this country was founded, and is in the best interest of the producers, the market operators and the consumers.

While regulations under the Packers and Stockyards Act were promulgated to protect the livestock producers, such regulations should not be constructed or construed so as to hamper normal marketing practices nor to restrict or reduce marketing services provided by the various livestock market agencies.

The issue before us concerns a proposal to eliminate certain livestock markets from rate regulation under the Packers and Stockyards Act. We would agree with this amendment to the Packers and Stockyards Act on the grounds that our members have expressed deep concern with the degree of overregulation by Federal agencies.

This amendment would remove certain regulations which at times have proved burdensome and costly to both the regulatory agency itself and the livestock marketing industry.

Adoption of this amendment could also provide greater flexibility in ratesetting by market operators, and could allow market operators to choose the type of rate schedule and structure which best suits the needs of their market area. Both of these objectives are being sought by the livestock market operators in our State and around the country.

As an organization representing livestock producers, we would like to point out several concerns, however, regarding the effects of eliminating regulatory authority on rates charged by livestock markets.

Based solely on 1977 statistics, adoption of the amendment would remove all but 3 of Arkansas' almost 50 livestock markets from rate regulation. We would hope that this measure would allow open competition among these markets and we trust that the rates charged would continue to be reasonable and fair.

However, with no rate regulations in effect, we would wonder whether or not some rate supervision might be necessary in case of disputes or appeals on the part of producers. Procedures used in adopting specific rate structures and schedules might also need supervision to facilitate the organizational structure and assure accountability of the markets themselves.

Farm Bureau's basic philosophy is based on a free enterprise system of commerce which promotes open competition. While there is a need to eliminate overregulation in American agriculture, the Packers and Stockyards Administration still has a very important role in providing protection to livestock producers from unfair trade practices.

We have, and continue to support the vigorous enforcement of the Packers and Stockyards Act. The removal of markets from rate regulation under the act is a matter which should encourage more open competition, but we would urge that careful consideration be given to the concerns that I've just expressed as relate to the implementation of this proposed amendment.

Thank you, and I'll be glad to answer any questions you might have.

Mr. HIGHTOWER. Thank you, Mr. Justus.

Next we'd like to hear from Mr. Harold Henry.

**STATEMENT OF HAROLD R. HENRY, HRH AUCTION CO.,
HAMILTON, MO.**

Mr. HENRY. Thank you Congressman Hightower and Congressman Thornton.

It's a pleasure to be here. I operate a small market in Hamilton, Mo. I also at one time owned and operated a livestock commission company in St. Louis. At that time we operated on a per head basis, as well as a percentage basis—one at one place, and one at the other.

There seems to be a lot of discussion today about the percentage versus per head basis. The P. & S. people that have been out and talked to me from time to time and the ones I've visited say that in setting up this per head basis that we offer x amount of services and therefore should all charge the same per head for handling.

If I may, I'd like to refer to a personal experience for just a moment. In 1973 and 1974 I owned and operated John Clay Livestock Commission Co. at St. Joseph, Mo., where I sold cattle for \$1.80 per head. At

the same time I owned and operated a small auction market at Hamilton, Mo., where I sold cattle for 3 percent commission. When cattle got high in 1973, I was handling large sums of money, therefore making my risk of collections much greater than it ever had been. American Beef Packers came along and didn't pay for \$86,000 worth of cattle, and this loss put me out of business at the John Clay Co. I soon sold it. (A complete accounting of this loss was prepared by Mr. Bieber of the P. & S. Office in Omaha, Nebr., and is on file there.) Needless to say we are still operating our little sale barn at Hamilton, Mo., where we charge a 3-percent selling commission.

I have other comments which I'd like to make today, but due to the fact that much of what I have to say would be repetitious with other comments you have already heard, and in the interest of time, I will forward these comments to the committee by mail.

Mr. HIGHTOWER. Thank you, Mr. Henry.

[The prepared statement submitted by Mr. Henry follows:]

HAMILTON, Mo., January 25, 1978.

Re H.R. 9482.

COMMITTEE ON AGRICULTURE,
U.S. House of Representatives,
Longworth House Office Building, Washington, D.C.

GENTLEMEN: My name is Harold R. Henry from Hamilton, Mo. where I own and operate a small weekly cattle auction called HRH Auction Co. I am a former owner of John Clay Commission Co. at St. Joseph, Mo. I am 43 years old and my primary income since 1957 has been from selling cattle for farmers by private treaty, at public auction markets and at terminal markets. I've experienced a good working relationship with the P&S offices in Kansas City, Omaha, and Washington D.C. My following comments are based on fact and actual experience and not on hearsay or theory.

Four Sale barns in Arkansas are presently appealing a decision by the USDA upholding a per head rate set by P&S. This rate is not sufficient to meet the actual operating expenses. The fact that an individual employee of P&S has the authority to force some of these barns out of business is very alarming.

The Auction Market, big or small, brings people to town. Farmers that want to buy or sell can do it at home. The time and fuel they can save is a tremendous item. Any merchant in a town will tell you that a local livestock market helps the economy of that town. People that sell locally often buy locally. The markets also provide part time employment for the poor people in rural communities, who quite often need just that little bit of money to help feed their families during difficult times.

Competition, in livestock marketing is tremendous. Large terminals, large auctions, small auctions, order buyers, dealers, and packers all compete for the farmers livestock. If one can't compete effectively he soon goes out of business.

Loan Institutions make loans based on projected incomes. I have an F.H.A. loan of \$50,000 which would be difficult for me to repay if I was forced to operate at a loss.

Cost of operation goes up every year. This includes labor, rent or payment on facility, maintenance, travel expense, unemployment taxes (state and federal), social security, liability insurance, workmen's compensation, fire insurance, mortgage and theft insurance, utilities, public relations and advertising. These costs are rising rapidly. As the price of cattle goes up with inflation, a market should be allowed a percentage income to cover these growing costs.

Exposure and risk is much greater when cattle are high and the market operator handles larger sums of money. His collections aren't as good and his bad checks are for larger amounts. His risk in selling mortgaged livestock is greater. His losses will be greater. He guarantees payment to the consignors. This guarantee fluctuates with the amount of money he handles; therefore, his sales commission should also fluctuate in direct proportion with the amount of money he handles. The only way this is possible is on a percentage basis. If he is to remain in business, it is imperative that the market operator be paid for guaranteeing payments to consignors.

Incentive is very important in livestock marketing. When a selling agent is getting paid on a percentage basis it is to his benefit as well as the farmer's to sell

at the highest price possible. When you put this agent on a per head selling commission you dampen his incentive and interest in getting the top price. A per head tariff is very discriminatory in that the man that sells a \$100 cow pays the same price for services as does the man who sells a \$400 cow. That isn't fair to the poor man with a \$100 cow.

The American Way of Life and the free enterprise system is at stake in this bill. The method used in setting rates is not necessarily communistic nor socialistic, but it has overtones of a one man dictatorship. Law makers should not allow government employees dictatorial powers. They are dangerous and against all the ideals and principles that we citizens of the United States have been taught.

Percentage rates are considered fair and are accepted methods of charging for services in many fields of sale including: real estate, insurance, and other major businesses. Even the United States of America charges the taxpayer a percentage of his earnings in order that the funds become available to pay the salaries of all government employees. This percentage charge to the taxpayer makes funds available to pay the salary of the man that sets our rates. If this method is fair for the United States of America, it's fair for me.

In conclusion, I sincerely feel a percentage tariff is more fair to the seller than a per head tariff, but there is room for argument and compromise on this issue. Should it become necessary to find a compromise method of charging sellers, I'm prepared to present one.

The issue at stake is not what method we use to charge a customer as long as we serve him fairly, honestly, and competitively. I've done this for 21 years and I plan to continue. The issue is simply the fact that the American Way of Life and the free enterprise system doesn't need to employ these dictatorial methods in setting market rates.

Respectfully,

HAROLD R. HENRY.

Mr. HIGHTOWER. Mr. Thornton, do you have some questions?

Mr. THORNTON. I just want to say that's the best explanation I've heard of the difference between per head and percentage methods. I appreciate it very much, Mr. Henry.

I do want to ask Mr. Justus: If I understood your testimony correctly, it was that you support the basic purposes of the bill, but that you are concerned about the Department continuing to have regulatory authority over tariffs that discriminate?

Mr. JUSTUS. Yes, we support the bill as far as regarding the deregulation aspects that have been discussed today, and on the basis that it allows more freedom among the livestock market operators to adjust their rates to fit their situations.

However, with no regulation whatsoever there could be some need for some supervision maybe here, to make sure that the marketing charges or rate schedules adopted are under a certain procedure, to keep people accountable for what they do, whether it be formal or otherwise, but some type of supervision at least as to how markets go about charging certain things.

Now we have the situation of not total control, but severe restrictions on the marketing charges that are adopted. And going from that to no controls—I at least want to point out some concern that we have about either total control or no control at all. There could be some room there for some type of supervisory authority, if you want to call it that, over the rates set, but not the stiff controls that we have now.

Mr. THORNTON. Mr. Sargent, if I might ask you one question: As I understood your testimony, it was that everybody should be treated equally, and we shouldn't try to draw lines between different barns and sales just on the basis of size?

Mr. SARGENT. Yes.

Mr. THORNTON. And in connection with that, one thing that has occurred to me is to ask you the question—you said your barn is above 100,000?

Mr. SARGENT. Yes, sir.

Mr. THORNTON. Do you compete with any barns that are less than that?

Mr. SARGENT. Less, there's several in our area. I have never really bothered to count them. I would say that within a 50-mile radius there would be 10 auctions, and our closest competition which is comparable to the size of operation that we run, and he will do in excess of 100,000, is 6 miles.

Mr. THORNTON. But what you're saying is that you do have a very close competitive situation—

Mr. SARGENT. Very competitive, yes, sir.

Mr. THORNTON. Between two barns, and if there would be some barns which would be competitive and which would not be regulated—

Mr. SARGENT. Right. Well, my competitor and myself would be under the controls, the way the bill reads now, where these other 10 markets within this 50-mile radius would be at liberty to do whatever they please. And I think it would be just a little bit unfair to he and I. That is the only thing. And I do appreciate your bill and will support it 100 percent. I am 100 percent for it, with those stipulations I just mentioned.

Mr. THORNTON. Thank you very much.

Mr. HIGHTOWER. Thank you, gentlemen. We appreciate your coming.

I'd like to ask Mr. K. Rodgers at this time if he'd come forward. Mr. Shaw, would you like to accompany Mr. Rodgers?

Mr. SHAW. Yes, please.

STATEMENT OF R. K. RODGERS, PRESIDENT, FORT SMITH STOCK- YARD COMPANY; ACCOMPANIED BY DICK SHAW

Mr. RODGERS. My name is R. K. Rodgers. I'm president of the Fort Smith Stockyard Co., at Fort Smith, Ark.

We're not classified as one of the small auction yards. We're classified as one of the large ones. We had 259,000 head that went through our yard in 1977, and the dollar of sale that the farmer took home exceeded \$40 million.

Put that down on your tape.

We're not one of the little boys. We're one of the bigger boys.

I may say to you that I appreciate our chairman very much trying to protect the farmers and the ranchers. I was a farmer. I was a rancher. And I know what it takes to raise cattle. And I know you've got to get the last dime out of them if you make a living.

Now, I was raised up in Washington County under the shade of an apple tree and in my neighbor's watermelon patch. I know what a farmer has got to do.

In this connection, I wanted to be sure that we were right, and I turned this bill over to my attorney, Bruce Shaw, and his company. And I have his son, Dick Shaw, here with me taking notes. We're going to watch the bill very carefully about amendments. I may have to go to Washington. I don't know what effect I'll have up there, but I understand a lot of people go up there.

Mr. HIGHTOWER. Mr. Rodgers, let me assure you that you'd be more than welcome, and I'm sure you'd have an effect. [Laughter.]

Mr. THORNTON. May I concur in the chairman's statement.

Mr. RODGERS. I went into the stockyards business in 1945. You say a lot in this bill by reference to public utility. Now when I went into the stockyard company, when I went into that business we had a protection. It provided that another stockyard wasn't to be located within 10 miles of us. In the regulations now they done away with that. That was kicked out several years ago. And you can put a stockyard anywhere that you can get the Department of Agriculture to approve it.

Now, if you want to get them to approve you one, get your county judge to sign you a letter, get your mayor, go down to Little Rock and the Governor will sign it. He wants your vote, too. And they'll approve it. It don't make any difference how many yards there is. They'll approve it.

Now, in my 75-mile area I have eight—what would be termed under this bill I imagine maybe six of them, seven of them, would be termed small auctions. We have never been against the small auction. We think they're essential. They are essential. It isn't right that the farmer that lives down 2 miles or 5 miles the other side of Waldron, and he's got a cow and a calf for sale, to drive 50 miles to our yard to sell it. That yard in Waldron is a big asset to him.

Now, that man that operates that yard in Waldron, he's got to have more money to sell that man's calf and cow than we do, because he don't handle as many as we handle. Now, if that farmer's got 100 head to sell, we'd like for him to come on up here, and we think we could get him a little more money for them—we'd try to.

I admire the two men here that was ahead of me. One of them was from Kansas City and the other one from Oklahoma City. We depend on both of them.

Now that may sound strange to you. But I'll tell you, in our yard we have the Market News, and that's furnished by the Department of Agriculture. But we furnish free office space, we buy the machines, we buy the ticker tapes. And before we open up our auction of a morning at 9 o'clock we get the Market News. We want to know what they're selling for in Oklahoma City. We want to know what they're selling for in Kansas City. And before that auctioneer goes on the block he gets that market, and he tries to bring for our customers the price that they're bringing in Oklahoma City, St. Joe, and Kansas City.

Now, we also have another service at our yard to the farmer. We have a special telephone. And they can dial that number in any of the 24 hours of the day, and they will get the market of this stockyard here and Kanasa City, Oklahoma City, St. Joe, and the other big yards. It don't only give our market, it gives their markets, too. That is open 24 hours a day, at no cost to the farmer.

I was surprised when I heard the first speaker over here from the State of Arkansas with the Public Service Commission endorsing this bill. Why don't he operate that way? He don't operate his business that way. No. No. Fully controlled. Why, do you suppose he would permit a new man in business with one truck to come in and haul freight from Fort Smith to Russellville from a less price than he would let this big company that's got 150 trucks?

I don't know how he could see to approve a situation of this kind.

Now I have made many applications for tariffs, new tariffs. And I'm going to tell you: When we make that application my accountant, he makes a book of it. He don't make two sheets, he makes a book. Yes, it takes you a long time up in Washington to go look and see what you're going to do. But I have never yet got what I asked for. Usually they'll keep it up there 2 or 3 months, and they'll call you and say, "Well, if you'll cut off a dime off the cows, or a quarter off of the bulls, you can put it in effect next Monday."

Now, put that in the record.

I don't own the stockyard. I own part of it. But they elected me as president. And I try to do a pretty good job. What that stockyard's made we have plowed back into it. We haven't went south with it. Yes, we've got some stockholders, and they've got to have a little dividend. Yes. Two of them are widows. They're over 80 years old. And they're looking for that dividend check. And I try to do the best I can for them. Yes. Two of the other stockholders are heirs and adopted children of stockholders in the past that's passed the stock on down to them. They want a little dividend, too.

Well, I'll tell you what I think that a lot of people has in mind, that if you're trying to save money for the stockyard, you're trying to save it for yourself. I'll tell you that since 1950 when I was elected as the president of the yard my salary has been less than \$100 a month. And I think I do a pretty good job. Maybe I think I'm worth more than that. But I'm interested in plowing it back into the stockyard to make it a better stockyard and make a better market for the farmers and to give them better service. And that's what we have built our stockyard on.

I don't believe that you should take the cattle business in the United States and leave it without controls. I think it's got to be controlled. And I think when you leave the thing wide open that some of them is going to have to make an application for a tariff and others don't have to, I'm wondering when one of them is going to sit down across the street from my stockyard and go into business. He won't have no trouble. If he can make a bond and he can buy that, he can make his own tariff every day, according to this bill. Yeah, every day he could set his own rate.

But I couldn't do mine that way. It takes me 2 or 3 months to get a tariff. He could make it mighty hard on us for 2 or 3 months before we could adjust it.

We have four commission companies. One of those companies sells less than 20,000 head a year. All right. He's a small one. Are you going to let him set a rate that's less than the rest of us? If you do, you're going to have them all carrying pistols. They ain't going to stand for it. No. He shouldn't be allowed. They should be the same.

If you're going to control one stockyard in the State of Arkansas or in the United States, you've got to treat them all alike. And if you don't treat them all alike, it'll be a failure.

I endorse fully what has been said by the man from Mississippi and the man from Missouri. They're livestock men. They know what they're talking about. The man from Oklahoma City, he knows what he's talking about. He's been there a long time.

I want to make it clear, I've got nothing to hide and if you've got any questions you want to ask me, just ask them.

Mr. HIGHTOWER. Thank you, Mr. Rodgers. We appreciate so much your testimony.

Mr. Shaw, do you have anything you'd like to add?

Mr. SHAW. Only that it would appear to me from what Mr. Rodgers has said, he wants everybody treated the same. He wants no discrimination. That's the purpose of the act in the first place.

We have in this country certain statutes that were promulgated over a period of trial and error, including our antitrust, monopolistic, if you will, antidiscriminatory laws. Whether these are sufficient or not, I don't know. I haven't gone into it in detail. I do know they've been used very effectively before. I do know that there are loopholes in those laws.

But in closing, I would like to say on my behalf and in Mr. Rodgers behalf, he appreciates, as do I, the opportunity to make these views known and to make these views a part of the record.

Mr. HIGHTOWER. Thank you, Mr. Shaw.

Mr. Thornton, do you have any questions?

Mr. RODGERS. I may add to what I've already said, the small auction barn may think this is a big help to him. It's not. Because he's going to have competition. It may be in the horse lot, but that other fellow will be a small auction barn, and he will be able, under this law, to set his own rate, and he can set it every day if he wants to.

Mr. HIGHTOWER. Mr. Thornton, do you have any questions?

Mr. THORNTON. No. Thank you very much, Mr. Chairman. I just want to express my appreciation to Mr. Rodgers and Mr. Shaw for their good testimony. It's provided us with additional support for the idea that what's needed here is fairness and competition in order to avoid the necessity of treating as a monopoly businesses that are not truly monopolistic in today's world. I just want to thank you for that testimony.

Mr. RODGERS. I may make this recommendation to the Commission. They say in this bill, in the instructions, that it takes a long time in Washington and a lot of help to approve a tariff. The reason for that is the stockyards don't know exactly what you want. Why doesn't the Department of Agriculture furnish a form for that? That would make it very simple for all of them.

As I say, my auditor, he writes a book. And there ain't 2 pages in it, there's 40 pages.

Mr. HIGHTOWER. Thank you very much, Mr. Rodgers. We do appreciate your testimony.

I thank each of you for being here. I think it's been a very good hearing.

We will adjourn the hearings at this time, and then the Livestock and Grains Subcommittee will have additional hearings on this bill and related measures at a time to be announced later in Washington.

Thank you very much. It's been a pleasure to be here with you. [Whereupon, at 2:30 p.m., the hearing was adjourned.]

[The extraneous material submitted to the subcommittee follows:]

Mr. RAY THORNTON,
House Committee on Agriculture,
Washington, D.C.

MOUNTAIN HOME, ARK., January 17, 1978.

DEAR SIR: We are for the passage of H.R. 9482, a bill to limit the Packers and Livestock Administration from changing our tariff charges after many years of operation. I, along with my two sons, have operated the Mountain Home Livestock Auction, in Mountain Home, Arkansas since 1951. Our tariff charges are

the same today, as they were when I started, our livestock are bringing about the same amount of money, making our income the same today as it was twenty-seven years ago, even though our expenses, labor, electric bills, trucks and all supplies are many times higher.

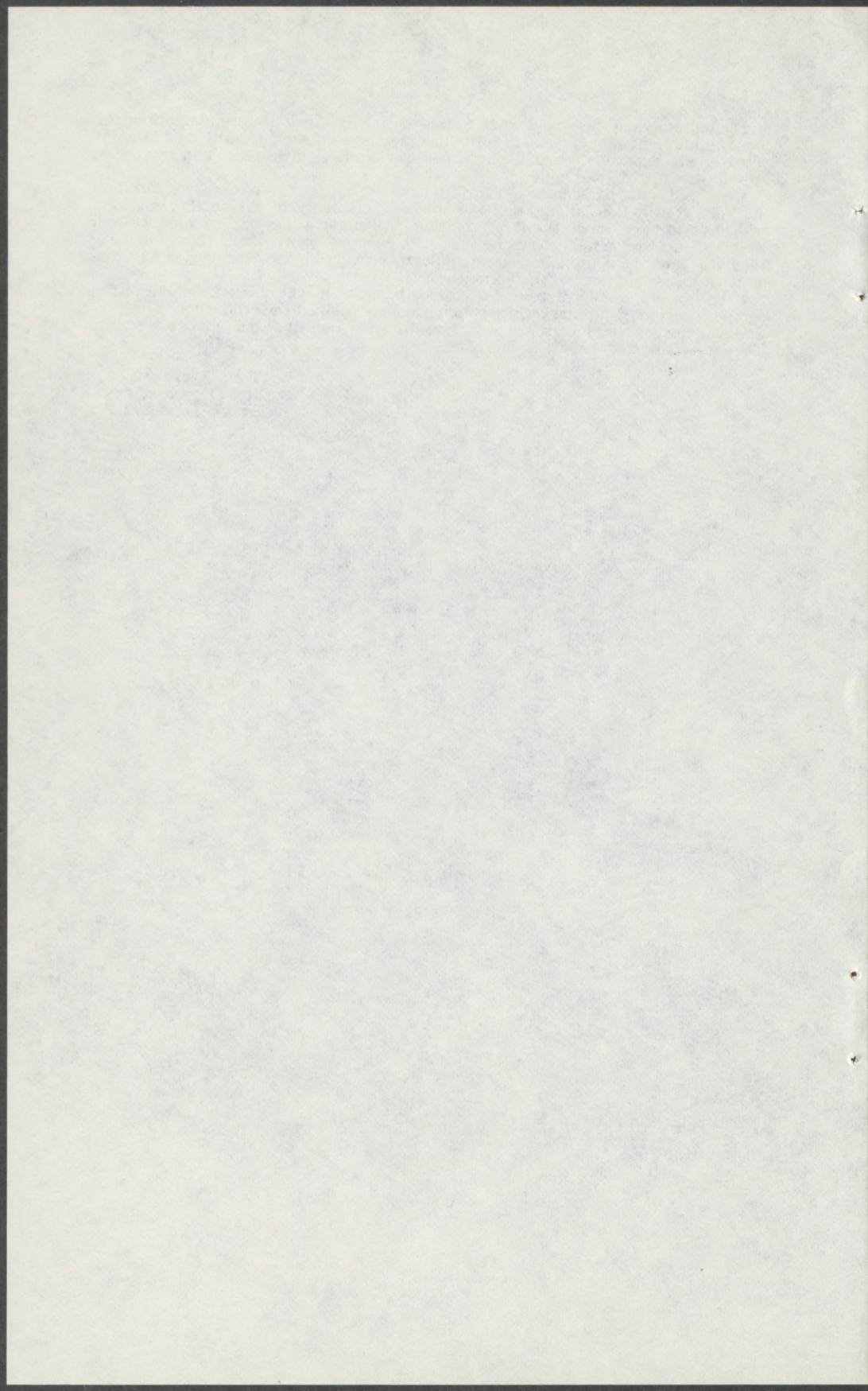
If this bill is not passed and our tariff is changed to the same as the large terminal markets, it will take about $\frac{1}{3}$ of our income and many of the smaller markets will have to close, since the larger markets sell many times the animals we sell, they can operate much cheaper. This will hurt every livestock raiser, causing them to haul their animals a greater distance, with higher transportation costs and greater weight loss to their animals.

If half of our smaller markets are forced to close, it will also take much of the competition out of our marketing system, this too will hurt the producers.

Our livestock producers are well pleased with our livestock markets today. They would like for them to be left alone.

Yours respectfully,

T.E. DAFFRON.
JOE DAFFRON.
STEVE DAFFRON.



STOCKYARD RATE REGULATION

TUESDAY, MARCH 14, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LIVESTOCK AND GRAINS
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1302, Longworth House Office Building, Hon. W. R. Poage (chairman of the subcommittee) presiding.

Present: Representatives Harkin, Hightower, Skelton, Jones of Tennessee, Sebelius, Thone, Hagedorn, and Coleman.

Staff present: William A. Imhof, associate counsel; Christine Abram, clerk; E. Lee Musil and John C. Baize.

Mr. POAGE. The subcommittee will come to order, please.

The Subcommittee on Livestock and Grains meets this morning to discuss the bill, H.R. 9482, by Mr. Thornton and related bills relating to ratemaking practices imposed on country auction barns.

The Chair is going to get this started, but I am going to have to go to a meeting of the full committee.

Mr. Thornton is here, and we would like to have him make a statement, and then possibly we will turn it over to someone else.

Mr. Thornton, we are pleased to have you.

STATEMENT OF HON. RAY THORNTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARKANSAS

Mr. THORNTON. Thank you very much, Mr. Chairman.

First, may I express my appreciation to you, sir, for scheduling this hearing today and also for scheduling the field hearing which was held in Forth Smith, Ark., at which we had a large number of witnesses appearing and testifying with regard to this proposed legislation.

Briefly, Mr. Chairman, this legislation was designed to overcome a problem which developed when the circumstances surrounding the marketing of livestock changed from the time of the 1921 act.

At that time, there were only a few giant sale barns located in places very distant from the producers. Because of the distances involved, it was often impossible for producers to travel with their livestock to the sale barns, and the only people present were the barn owners and the purchasers.

Accordingly, the Congress recognized there was a need to make sure that monopolistic practices did not deprive the producer of a fair market price for his livestock. The Congress adopted legislation which

gave to the Department of Agriculture the power to regulate not only discrimination in sales but also to actually regulate the prices, and terms, and conditions under which sales could be conducted.

Mr. Chairman, while this legislation probably was realistic with regard to the economic situation at that time, in the intervening years there has been a great change in the structure of the marketing apparatus. Now there are many hundreds of small auction barns located throughout the country, often in vigorous competition with each other.

In this competitive effort, the seller has the opportunity of choosing between two, three, or sometimes even more auction barns, depending on his location and the distance to a particular market.

Under these circumstances, it seems to me very inappropriate that the Federal Government would regulate these small country auction barns as a public utility using cost of service concepts to establish rates, terms, and conditions for service.

Recently, in my own State of Arkansas in hearings held involving three different auction barns located within a 50-mile radius—actually a circle probably 50 miles in diameter would have encompassed the three barns—the Department came up with conclusions which mandated rates which were different from barn to barn.

So, as a result of the work, one barn would have a much lower rate than either of the other two. The effect of this would be to drive the two barns which have the higher rates out of business because they will not be able to meet the competition.

It seems to me that this is an example of the use of a regulatory function in order to do something to destroy competition rather than to enhance it and also to make it more difficult for farmers to choose between which barn or which service they would like to use.

It is most remarkable also, Mr. Chairman, that federal regulation of rates for services to the ultimate consumer of those services are unique in this legislation.

There are only two instances which I have been able to learn about where the Federal Government regulates rates and terms and conditions for a product sold to the ultimate consumer. Those are in the TVA distribution system and in the Bonneville distribution system of power.

Regulation of natural gas rates, of electric rates, of telephone rates, of water rates, of any other utility rates that I know about, is a matter which is appropriate for State legislation and regulatory affairs.

The Federal Government only sets broad guidelines. The Federal Power Commission may regulate the price at which gas is sold from a transmission company to a distribution company. It may regulate terms and conditions in which traffic is exchanged between telephone companies.

Similarly, with regard to trucks, this is a matter which is left to State jurisdiction.

It seems to me, Mr. Chairman, that it is difficult to rationalize any logical reason for supporting Federal legislation to regulate the rates and charges of small, independent, country auction barns. I do not understand where the broad, national purpose is that says that these rates must be regulated, that the forces of the marketplace cannot do the adequate job of determining what these rates and charges should be.

One further thing, Mr. Chairman, if I may, is that the bill which I have introduced is not perfect. It is a bill that is submitted in order to determine what extent of deregulation may be required. It seems clear to me, from the hearings which have been previously held, that there is a need to allow competition in this segment of our agricultural community, and that that competition will be beneficial, not just to the auction barns themselves, but also to the producers who use the services.

Mr. Chairman, again I would like to express my appreciation to you for scheduling these hearings.

I would be pleased to attempt to respond to any questions that you or Mr. Sebelius might have.

Mr. HIGHTOWER [acting chairman]. We thank you so much, Mr. Thornton.

Do you have questions, Mr. Sebelius?

Mr. SEBELIUS. No; thank you.

Mr. HIGHTOWER. Thank you, Mr. Thornton. We will try to move on now.

Our next witness will be Mr. Charles Jennings, Deputy Administrator of the Packers and Stockyards Administration of the U.S. Department of Agriculture.

Mr. Jennings, because of a conflict in the setting of the hearing this morning, we are also having a markup just down the hall in 1301. They are having a quorum call, so we would like to interrupt so that Mr. Thornton and I can answer the quorum call.

Mr. JENNINGS. Yes; Mr. Chairman. We were warned and were anticipating it.

Mr. HIGHTOWER. Thank you.

[Recess taken.]

Mr. HIGHTOWER. Mr. Jennings, please proceed.

[The prepared statement submitted by Mr. Jennings follows:]

Statement of Chas B. Jennings, Deputy Administrator
Packers and Stockyards, Agricultural Marketing Service
U.S. Department of Agriculture
before the
Subcommittee on Livestock and Grains
Committee on Agriculture
U.S. House of Representatives
March 14, 1978

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to appear before you today to give the views of the Department of Agriculture on the proposed amendments to the Packers and Stockyards Act as set out in H. R. 9482.

The Department opposes enactment of this bill.

Enactment of the bill, based on 1976 volume, would limit the Secretary's rate regulatory authority to only 103 of the 1,980 stockyards now regulated. The 103 stockyards include 71 auction markets with over 100,000 animal marketing units, 9 auction markets with over 20,000 units located over 75 miles from the nearest market and 23 terminal markets.

All 1,980 livestock markets furnish similar services to livestock producers, basically that of providing selling services and furnishing stockyard facilities through a principal-agent relationship. It is not equitable to retain ratemaking authority over 103 markets solely because of market size or distance between markets. Equity would seem to require the exemption of all markets or the exemption of none from review of rate levels.

The Packers and Stockyards Act was passed in 1921, during a time of widespread public concern over the apparent domination by some of the larger meat packers over buying and selling of livestock, meat and meat products. Stockyards at that time were considered to be in the nature of

a public utility due to the small number of markets and because most of the livestock was marketed through those facilities.

The principle behind the legislation enacted to regulate this vast and complex industry is that an open and competitive market works best for all concerned. The P&S Act and the regulations issued under it work toward this objective by setting out rules of fair play under which competitive markets can function.

The livestock industry has changed significantly over the years, especially in the area of marketing. When the P&S Act was passed about 80 percent of the slaughter livestock was sold through public markets. Today there is an almost complete turnaround, with about 80 percent of slaughter livestock sold directly from producers and feedlots to packers.

Terminal livestock markets and auction markets compete with each other as well as with other marketing channels. Stockyard owners and market agencies must continually seek ways to improve services and facilities offered to livestock owners.

Livestock markets are no longer deemed to be public utilities. The P&S Act was amended in 1968 to clarify the market's statutory right and duty to establish, observe and enforce regulations and practices which are not unreasonable or unjustly discriminatory, with respect to the furnishing of stockyard services. Packers and Stockyards, AMS, encourages and assists stockyard owners and market agencies to innovate and to establish and enforce regulations which foster efficient and competitive livestock markets. The P&S Act does not abridge the right of the stockyard owner to conduct his business and establish and enforce regulations and practices not in conflict with the purposes of the law.

Nationwide hearings conducted by the Department were completed February 14 of this year to determine first hand from livestock owners, stockyard operators, and market agencies what the future Packers and Stockyards rate program should be. Substantial interest was indicated both in oral testimony at the hearings and in written comments filed with the Department. The consensus of the regulated stockyard owners and market agencies is that some form of deregulation is warranted. Livestock producer association recommendations ranged from continued regulation without change to permitting markets to establish the level of rates with review by P&S to assure uniform and nondiscriminatory application of such rates.

The Department generally supports the concept of deregulation when it can be achieved and at the same time continue protection of the public interests. Some deregulation appears warranted in establishing rates at livestock markets. We believe the views expressed by livestock producing as well as the marketing segment of the industry support some deregulation. We believe the necessary changes can be accomplished by amending the current rate regulatory policy under the P&S Act in the following manner.

It is our belief that the Department should maintain its responsibilities to the livestock producing segment of the industry to assure uniform and nondiscriminatory rates and charges at livestock markets. Under our current policy every new tariff and all changes in existing tariffs are reviewed to determine the reasonableness under established criteria. An alternative for deregulation purposes might be to provide that a stockyard or market agency could establish and apply, as determined by the stockyard or market agency, its own level of rates after giving

adequate notice to its market users and to the Department of Agriculture. A copy of any rate change would be filed with the Department and it would review the tariff at the market for uniform application. The agency would review the level of rates based on the cost of service only on valid complaints.

Tariffs would be required to be filed on a per head basis. A recent decision of the U.S. Court of Appeals for the Eighth Circuit affirmed a decision by the Judicial Officer of the Department, in which it was held that a percentage or value based tariff was contrary to the provisions of the Packers and Stockyards Act. It was held that such tariff was discriminatory and did not uniformly or consistently reflect the cost of the service performed; fluctuations in the price of livestock bear no relationship to the changes in the cost of providing the stockyard services. Under the statutory provisions the Secretary is required to prescribe rates and charges which are just, reasonable, and nondiscriminatory, and he is required to prescribe the rates and charges which shall be both the maximum and minimum to be charged. Under the percentage based tariff, there was no way to predict the actual charges to be assessed since they would fluctuate with the unpredictability of livestock prices.

We plan to publish a notice in the Federal Register that we are considering changing our rate policy along the line I have described and invite views and comments from industry and any other interested persons. A decision would then be made on the future rate policy after consideration of all views, comments, and recommendations regarding this alternative.

We believe that the alternative deregulation rate policy we plan to propose would afford the market operators great flexibility in setting their rates and charges and thus the objections to per head based tariffs should be obviated. Furthermore, we believe per head tariffs would assure more competition among markets in their rates and charges, which should benefit the livestock marketing industry as well as the livestock producers.

The changes in our rate regulatory policy that we are considering can be accomplished without amendments to the P&S Act. We believe the changes will afford the relief markets contend they need to be able to promptly reflect in their market charges increased costs of doing business, plus a reasonable profit.

Throughout the hearings conducted by the Department many market owners expressed the immediate need for substantial increases in their market charges. The implication is that should deregulation occur so that each market could establish its own level of rates, there probably will be increases in market charges to the livestock producers. It is for this reason that we recommend deregulation by way of change in our policy rather than by statutory amendments. The Department would, after a reasonable period of operation under a change in policy, review the level of market charges. If it should be found that costs to livestock producers for market services are at unreasonable levels, the Department could immediately initiate procedures to alleviate the situation.

Mr. HIGHTOWER. Mr. Jennings, thank you for your testimony.

Would your time schedule permit you to stay until the conclusion of the other testimony here?

Mr. JENNINGS. Yes; surely.

Mr. HIGHTOWER. If you would, then we will take the whole panel of witnesses together for questioning.

Thank you.

Our next witness is Mr. Tom Peterson of the Iowa Livestock Auction Markets Association.

We are glad to have you, Mr. Peterson, and will hear from you at this time.

[The prepared statement submitted by Mr. Peterson follows:]

Testimony
Before the Subcommittee on Livestock and Grains
House Committee on Agriculture

Position Statement
of
The Iowa Livestock Auction Markets

Given by
D. Tom Peterson, Executive Secretary
March 14, 1978

- I. The I.L.A.M.A. supports Congressman Thornton's (Arkansas) bill to amend the Packers and Stockyards Act of 1921 (H.R. 9482).
- II. Iowa's auction markets are in total agreement that we in the auction market industry must have relief from the rigid, unreasonable control that the Packers and Stockyards Division wields over us in the auction markets.
 - A. Many Iowa auctions have attempted to have tariff changes made in the past. Almost all have been denied by the Packers and Stockyards Division of the U.S. Department of Agriculture (USDA).
 - B. The difficulty and lengthy time involved in attempting to change a rate is so slow and frustrating that most give up and yield to the Packers and Stockyards authority.
- III. Iowa's auction markets believe that if the bulk of the remaining 112 full service auction markets in Iowa are to survive -- the Packers and Stockyards Division must be eliminated from the rate-making and regulation of charges capacity that they now hold.

IV. Iowa's auction markets have decreased in numbers drastically these past 10 years -- from 167 markets in the 1960's to now less than 112. The decrease in the number of auctions can be directly attributed to inflation, increase in cost of doing business, and the inability to pass the inflation and higher costs to our customers, the consignor.

A. Our research into the rising cost of operating an auction market in Iowa clearly shows that in the past five years insurance premiums have risen some 70%, labor costs have risen 40%, and utilities and repair maintenance has increased an overwhelming 85%.

B. These overburdening cost increases have not been passed on to our customers. One reason for this is that the Packers and Stockyards Division would not permit us to. The result has been a loss in auction markets, resulting in producers' having to travel further with their livestock to sell them, or seeking new or other methods of marketing their livestock.

V. Iowa's auction markets serve the marketing needs of over 70,000 individual livestock producers. These producers need and want our markets to stay in business.

A. We have endorsements from leaders of the Iowa Farm Bureau Federation, the Iowa Cattlemen's Association, and the Iowa Pork Producers Association. They state that they support us in our efforts to free ourselves from the tight-fisted financial stranglehold the Packers and Stockyards Division has on us in the marketing industry.

VI. It is the opinion of the I.L.A.M.A. that the Packers and Stockyards Division of the U.S.D.A. is an outmoded administrative body that must now be updated if it is to have a functional service. When the Packers and Stockyards Division was created by the 1921 Act of Congress, its basic purpose was to protect the producer from overcharging by a commission company at one of the 71 terminal markets scattered sparsely across America. These terminal markets were few (these 71 terminal markets handled over 80% of all livestock sold during those early years). Now we have more than 2,000 markets posted with the Packers and Stockyards Division. These 2,000 markets handle just 44% of the livestock sales transactions. This clearly portrays that our markets today are not in a monopolistic position and that there are many other avenues of marketing livestock that a producer may and does use.

VII. Conclusion

After extensively polling and interviewing Iowa's auction market operators, livestock producers & farm livestock association leaders, the I.L.A.M.A. concludes that in order to financially survive and to continue to serve the marketing needs of the thousands of individual producers in Iowa and across the nation, we must acquire the latitude to change with our fast-moving American economy. We cannot with the present control the Packers and Stockyards Administration has on us currently. We respectfully ask for relief through H.R. 9482 which will give us the opportunity to stay in business and continue to serve our respective communities.

Thank you for this opportunity to appear and present testimony before your subcommittee.

Mr. HIGHTOWER. Thank you very much, Mr. Peterson.

Would you remain with the committee until we hear from the other witnesses?

Mr. PETERSON. Certainly.

Mr. HIGHTOWER. We are going to have to take another brief recess for our rollcall of the full committee.

[Recess taken.]

Mr. HIGHTOWER. Our next witness this morning will be Mr. H. L. Bowman, Jr., general manager of the United Livestock Auction of Maquoketa, Iowa.

Mr. PETERSON. Thank you, Mr. Chairman.

I am here to represent Mr. H. L. Bowman, Jr., of United Livestock Auction.

Mr. HIGHTOWER. For the purpose of the record, would you identify yourself, please?

Mr. PETERSON. Yes, My name is Tom Peterson. I am the executive secretary of the Iowa Livestock Auction Markets Association.

I have a statement on behalf of the United Livestock Auction Market of Maquoketa, Iowa, Mr. H. L. Bowman, Jr., director and manager.

[The prepared statement of Mr. Bowman follows:]

STATEMENT OF H.L. BOWMAN, JR., GENERAL MANAGER, UNITED
LIVESTOCK AUCTION, MAQUOKETA, IOWA

The Packers and Stockyards Act was written in 1921 to control what, at that time, was a monopolistic and corrupt system of approximately 70 stockyard facilities and packers concentrated in railhead cities. In 1921, these terminal markets handled nearly 80% of all livestock.

In 1958 the Act was amended to extend the Secretary of Agriculture's authority to the operations of the many livestock auctions now in existence. We are very cognizant of the fact that the public has every right to be assured that discriminatory practices at all stockyards are prohibited. We have no quarrel with that concept. However, the amendment did not spell out how the extended jurisdiction would be exercised. The public utility concept, which was probably acceptable for 70 markets in 1921, was left in effect. This standard is wholly inappropriate to the competitive circumstances that exist among the over 2000 livestock auctions in 1978. It is important to note that the Thornton Bill is aimed only at the costly public utility standards being imposed upon small markets. It in no way diminishes the Secretary's power to prohibit discriminatory practices at all stockyards.

For many years the P & S Division of the USDA simply noted the filing of rate schedules. No findings of justness or reasonableness were ever noted. For all those many years, the vast majority of livestock auctions used tariffs based on a fixed percentage commission - that is 2%, 3%, etc. - of the sale price of each

animal. Since all these tariffs were accepted by the P & S, it was assumed that the rates were in compliance with the Act and with the intent of Congress.

It has now become the contention of the hearings officers of the USDA that these small auction markets are to be treated as public utilities and that all rates are to be on a per head basis. This is being applied to every market in the country, regardless of size or tradition. A public utility enjoys a unique position in our society. It is, indeed, a monopoly. The 2000 plus livestock markets in the United States today have not been granted a legal monopoly and do not hold a monopolistic position in any way. It is a fundamental of law that for the government to have a compelling interest in rate regulation, it must grant the industry regulated a monopoly position either by statute or by case law. We do not have that situation in livestock marketing today. About 44% of the cattle merchandised in the United States are sold through posted stockyards. However, of all the diverse methods of marketing livestock, only posted stockyards are subject to rate regulation. All other methods are granted the American ideal of free enterprise.

We feel there are adequate laws presently on the books to control problems of anti-trust, unfair trade practices, restraint of trade and unfair competition situations. The P & S Division has recently brought anti-trust action against Iowa Beef Processors for its pact with feedlots in the Northwest, for example. The Sherman Act

and the Clayton Act could also provide relief if necessary. These actions may be brought by the government or by individuals or by a combination of the two. The entire concept of the public utility in this area is inappropriate.

Competition has been the cornerstone of the livestock marketing business throughout its history. But today the arbitrary methods used by the P & S Division in determining the reasonableness and justness of proposed tariffs is completely undermining the ability of these markets to adequately serve the needs of livestock producers. Ultimately, since everyone is a consumer, everyone is affected by the decisions made during rate hearings.

There seems to be little logic used in determining which rates are acceptable to the P & S. Let me give you a few examples. The P & S policy has traditionally been to accept nearly any tariff filed by a new market. Thus, it has happened in some cases, that a new owner operating in the same facility, with the same personnel, offering the same services to the same producers may receive permission to charge the exact tariff the P & S had refused to allow the previous owner to charge.

In other cases, requested tariff increases involving percentage charges were deemed unacceptable by the P & S, while the markets were advised that per head commissions which would actually result in higher charges to consignors were perfectly acceptable. In other words, the P & S found it within their power to have markets charge even more than they wanted to. We wonder whose interests were protected in those cases?

In other decisions, realistic business expenses which had been allowed by the IRS and were considered normal business accounting procedures were disallowed by the P & S in determining the justness of a proposed rate change.

Markets only a few miles apart have been granted such widely differing tariffs that some were given a very unfair advantage over the others. This naturally would result in business increasing greatly for some markets, while others could hardly survive.

We do not understand the P & S rationale in these matters and we don't believe anyone else could either. The Thornton Bill would assure these practices could not continue.

The government does not find it unfair to the country's farmers when their farms are sold by real estate agents for a percentage fee; or when a farmer pays his banker a percentage interest rate on his borrowed money. Indeed, in these and many other cases throughout business life, a percentage charge is deemed fairest of all. How then, can it be unfair to sell the farmers livestock at a market charging him a percentage fee?

Our interest in this bill, as livestock auction operators, is obvious. We think it is significant, however, that nationally the Farm Bureau has resisted attempts of P & S representatives to gain support for their current policies. In areas where the situation has been fully explained, local and state Farm Bureau chapters have passed resolutions supporting the markets. We may assume from this that these producers are acutely aware of the value to them of the services provided by localized markets.

It is our wholehearted belief that if livestock markets are allowed to operate as any other business in the United States, employing competition and free enterprise to its greatest advantage; while allowing the P & S to assure the industry, the producer and the consumer that everyone at each market is being treated equally and without discrimination, the industry will grow and the services provided by these markets will be better and better for all. If a market fails in this country, it should be because of poor management or unwise decisions, not because it was forced out of business by the Federal government. Thank you.

Mr. HIGHTOWER. Thank you, Mr. Peterson. We appreciate your being here to present this statement.

Mr. Harkin was delayed in the full committee, or he would have been here to have presented you.

Mr. HARKIN. Mr. Chairman, I knew that was not Mr. Bowman sitting there. I knew Tom very well.

Mr. HIGHTOWER. Our next witness is Mr. Bill Jones, vice president, policy development, of the National Cattlemen's Association.

Mr. THONE. Mr. Chairman, let me take this brief opportunity to apologize for not being here for the entire hearing. As you know, we are meeting next door on the budget for the Agriculture Department now.

I would like to very briefly welcome to the subcommittee my good, longtime friend Bill Jones. He is as knowledgeable and effective a person in this area of agriculture as I know. He certainly knows a lot about the Packers and Stockyards Act.

You will remember, Mr. Chairman and members of the subcommittee, that it was Bill Jones who had a lot to do with the rejuvenation of the P. & S. Act when we worked on the credit aspect of this about a year or so ago.

Mr. HIGHTOWER. Thank you, Mr. Thone. I certainly concur in what you say about Bill Jones.

We are glad to have you, Bill.

[The prepared statement submitted by Mr. Jones follows:]

STATEMENT
of the
NATIONAL CATTLEMEN'S ASSOCIATION

H.R. 9482
And Related Bills
Amendments to the Packers and Stockyards Act

The National Cattlemen's Association approves the deregulation of ratemaking at public livestock markets, subject to the Secretary of Agriculture retaining review authority to assure uniform and non-discriminatory application of such rates.

Cattlemen were involved in the original passage of the Packers and Stockyards Act, which brought major public livestock markets under utility-type rate regulation. In contrast to that period, however, the NCA membership has now said, in effect, that competition among public livestock markets has reached the point at which regulation of rates within the framework of the public utility concept is no longer justified.

The Association is also concerned that the resources of the agency be directed primarily to other enforcement activities which are currently of more important consequence to livestock producers.

In the policy position adopted at the January 26, 1978, Annual Business Meeting, the NCA Membership did not call for complete deregulation of rates. Rather, the policy calls for the Secretary of Agriculture to retain review authority over rates to assure uniform and non-discriminatory applications of such rates.

Resolving the ratemaking issues at hand by following the NCA recommendations would render moot such controversial questions as the percent-of-value or the per hundredweight method of charges vs. the flat-rate-per-head method. Also, such changes in P & S supervision of rates could be accomplished by administrative action, making it unnecessary to follow the legislative route outlined in H.R. 9482 and related bills.

In essence, H.R. 9482 provides for limiting the ratemaking authority of the Secretary of Agriculture to stockyards (public livestock markets) with an annual sales volume in excess of 100,000 animal units and those with over 20,000 animal units which are located 75 miles from the nearest competitive stockyard.

Again, following the NCA recommendations would make it unnecessary to establish what can be viewed as arbitrary size categories for regulatory purposes and the expenditure of resources to make such determinations under conditions of fluctuating individual market sales volumes.

It is our understanding that U. S. Department of Agriculture officials are receptive to making changes in the present system of supervising rates at public livestock markets, taking into consideration the recommendations received at the various field hearings held by the Department--at least on a trial basis.

Withdrawal from the more or less day-to-day supervision of rates by the Packers and Stockyards Administration would permit additional resources to be directed toward enforcement activities currently of more consequence to livestock producers, such as the prompt payment and trust provisions of the Act.

Under the recommendations proposed by the NCA, the Administration would still be in a position to respond to and take action on complaints received from livestock producers with respect to the application of rates for services rendered.

In summary, the National Cattlemen's Association recommends that the Packers and Stockyards Administration withdraw from the present system of more or less, day-to-day, public-utility-type rate supervision at public livestock markets but retain review authority to assure uniform and non-discriminatory application of such rates. It is also recommended that this be accomplished through administrative action, rather than resorting to legislative amendments to the Packers and Stockyards Act itself.

Mr. HIGHTOWER. Thank you, Mr. Jones.

If your schedule will permit, we would appreciate if you would stay until the conclusion of the hearing today.

Mr. JONES. Yes, I will. Thank you.

Mr. HIGHTOWER. Our next witness is Mr. Richard A. Koehler, counsel, Livestock Laws Reform Commission and Livestock Marketing Association, of Kansas City, Mo.

He is to be accompanied by Mr. C. T. Sanders, general manager of Livestock Marketing Association, and Mr. J. D. Branscome, chairman, Livestock Marketing Forum, from Oxford, Miss.

We are glad to have you, gentlemen. You may proceed.

Mr. KOEHLER. Mr. Chairman, at this time I would introduce Mr. C. T. "Tad" Sanders, general manager of the Livestock Marketing Association, who will read a statement.

Mr. HIGHTOWER. Fine. Then Mr. Branscome will follow with his statement.

[The prepared statements submitted by Mr. Sanders and Mr. Branscome follow:]

STATEMENT OF C. T. 'TAD' SANDERS, GENERAL MANAGER, LIVESTOCK
MARKETING ASSOCIATION

I am C. T. 'Tad' Sanders, General Manager of the Livestock Marketing Association, a national trade association for the marketing sector of the livestock industry, with headquarters in Kansas City, Missouri. Subscribers to the Association include some Twelve Hundred (1,200) marketing businesses subject to the provisions of the Packers and Stockyards Act, 1921, 7 U.S.C. Sections 181, et seq. and related regulations found at 9 C.F.R. Chapter 2, as registrants with the Secretary of Agriculture. These marketing businesses may sometimes be referred to as "auction markets," "livestock markets," "auction stockyards," "auction barns," as well as "terminal markets." We have followed closely the progress of the Thornton Bill, H.R. 9482, as well as the recent Rate Policy Hearings of the Packers and Stockyards - AMS. The Association participated in the hearing of January 18, 1978, in Fort Smith, Arkansas, for the Thornton Bill and also participated in the Rate Policy Hearings of the Packers and Stockyards - AMS.

With this background, on behalf of our subscribers and Elected Officers, I make the following observations:

We heartily and quite earnestly endorse the concept of rate/tariff deregulation, on which Representative Thornton's Bill has focused attention.

We extend our appreciation for Representative Thornton's efforts, and the attention of this Subcommittee. We are also appreciative of the

recent initiative of the Packers and Stockyards - AMS for its Rate Policy Hearings.

In following the recent public hearings on rate policy by the Packers and Stockyards - AMS, it was our observation:

1. That the preponderance of the testimony and comment from affected marketing businesses favored the basic concept of deregulation;
2. That there was strong testimony and comment from producer groups which supported deregulation. For example, the Marketing Committee of the National Cattle-men's Association adopted a resolution which emphatically favored deregulation and endorsed the concept of "Freedom in Livestock Marketing." The NCA's final resolution and explanatory letter are part of the comment of the Rate Policy Hearings.

I feel compelled to point out that as of March 2, 1978 the Packers and Stockyards - AMS had received some 208 comments directly, e. g. by wire or letter. Of these 208 comments, 35%, or 73 pieces, came from farmers and/or farmers' wives of Vidalia, Georgia, on mimeographed forms which indicate no origin or organization. While we do not question the integrity or beliefs of those who signed such forms, we do believe that

the origin and circumstances related to that group of comment might warrant a closer look.

We believe that a marketing business's tariff, its schedule of rates and charges to the producer, should take into consideration such factors as its cost of doing business; its satisfactory business relationships with its producers; and its competition from other businesses in the marketing sector. These basic tenets seem to be in harmony with the opinions expressed by both marketing businesses and producer groups supporting deregulation.

We do not seek to do away with the authority of the Packers and Stockyards - AMS to receive, investigate, and hold an administrative hearing based upon valid complaint.

We believe that a marketing business should post its tariff for the benefit of its producers and see nothing burdensome about having a marketing business file a copy of its tariff with the Packers and Stockyards - AMS, as it is generally handled today.

We do not endorse, or countenance, the charging of exorbitant rates to any producer by any business in the marketing sector.

We do not believe that the personal beliefs of the Packers and Stockyards - AMS personnel should be forced upon the registrants whom such personnel regulate.

We do not believe that the Packers and Stockyards - AMS should be permitted to prescribe a certain type of tariff, such as a per head tariff, for all registrants.

We believe that a marketing business should be able to utilize a tariff that will stand the test of customer acceptance and satisfaction.

In summary, while we fully support the thrust of Representative Thornton's Bill, we think that the deregulation concept of H.R. 9482 should be extended to all registrants under the Act, without resort to such constraints as animal marketing units, or volume of livestock handled, or proximity of other marketing businesses.

I want to express my appreciation for being permitted to testify before this Committee and express the thanks of the Association and its subscribers and Elected Officers for your attention to this particular area. We are certainly hopeful that your efforts here and those of Representative Thornton will lead to an appropriate deregulation of the rate policy now being applied by the Packers and Stockyards - AMS.

STATEMENT OF J. D. BRANSCOME, CHAIRMAN, LIVESTOCK MARKETING
FORUM

My name is J. D. Branscome of Grenada, Mississippi. Since I filed a statement with this Subcommittee through my participation in the hearing on the Thornton Bill, H. R. 9482, in Fort Smith, Arkansas, on January 18, 1978, my remarks today will be brief.

My interest in the subject of Representative Thornton's Bill is two-fold: I am actively involved in the ownership and operation of Oxford Livestock Market, Inc., of Oxford, Mississippi, a marketing business subject to the Packers and Stockyards Act. In addition, I speak today as Chairman of the Livestock Marketing Forum, a subdivision of the Livestock Laws Reform Commission. The Livestock Laws Reform Commission is a foundation which is concerned with the broad range of laws, federal and state, which affect the marketing sector of the livestock industry and is sponsored by the Livestock Marketing Association. My appearance today evidences the continued interest and concern of myself and the industry in general.

These remarks today stem from my individual interest in a marketing business, but I believe you will recognize their general applicability.

The Oxford Livestock Market is an independent business whose lifeblood is customers. We have a sale every Monday. Our customers include both seller and buyer. The sellers, of course, are the producers who sell their livestock through our business.

We do not have a monopoly. We do not have a territorial franchise.

In fact, there are at least 14 other marketing businesses within a 75 mile radius of our business. There is no guarantee that a producer who sold livestock through our business last Monday will utilize our business the next time he has livestock to sell. Neither Mr. Jennings, head of the Packers and Stockyards - AMS, nor Mr. Campbell, the Judicial Officer of the Department of Agriculture, nor Mr. Brinckmeyer, head of the Rates, Services and Facilities Branch of the Packers and Stockyards can guarantee that we will have any customers at all.

Can we guarantee customers? Yes, if we can operate our business in such a way as to earn the confidence, and respect, and satisfaction of those who choose to do business with us. We draw customers or earn their business.

Who are my regulators? The people that our marketing business serves and strives to serve. The producers know this. As do the organizations to which the producer belongs, at the local, state, and national level, such as a Farm Bureau, or a Grange, or a Cattlemen's Association. Because the producer is an independent businessman, too.

Thus, while the Packers and Stockyards - AMS cannot guarantee customers to us, the manner in which they apply their authority can adversely affect our ability to earn and serve our customers. Without satisfied customers, we have no marketing business. Hence, I cannot see that

the presently applied rate regulation by the Packers and Stockyards - AMS is applicable to my marketing business in today's livestock industry. Rather than have the Packers and Stockyards personnel in Washington, D.C. apply various formulas to our business in Oxford, Mississippi, we need to be able to utilize a tariff which will fit in with our first and basic objectives of having satisfied customers.

Thank you for your attention to this particular area of deregulation and the opportunity to appear before you.

Mr. HIGHTOWER. Thank you, Mr. Sanders and Mr. Branscome.

Mr. Koehler, does that conclude your testimony?

Mr. KOEHLER. Yes; Mr. Chairman.

Mr. HIGHTOWER. Thank you, gentlemen, very much.

If you can remain in the room until we have heard from the other witnesses, we would like to call you back for questions.

Our next witness is Mr. Robert B. McCreight, president of the American Stockyards Association, Omaha, Neb.

Mr. McCreight, we are happy to have you.

[The prepared statement submitted by Mr. McCreight follows:]

STATEMENT OF ROBERT B. MCCREIGHT
ON BEHALF OF THE
AMERICAN STOCK YARDS ASSOCIATION
H. R. 9482

Mr. Chairman, my name is Robert B. McCreight. I am President of the American Stock Yards Association 805 Livestock Exchange Building, Omaha, Nebraska 68107.

The American Stock Yards Association is a national association of major livestock markets or posted stockyards. Most of our members were in business and operating when the Packers and Stockyards Act of 1921 was enacted. Since then, the rates and charges for stockyard services in effect at the various livestock markets operated by our members are and have been continuously subject to the rate making authority of the Secretary of Agriculture, as set forth and contained in the Packers and Stockyards Act of 1921, as amended.

We have carefully considered the contents of H. R. 9482, as well as similar bills. Each of those bills would restructure the existing rate supervisory authority of the Secretary of Agriculture with respect to charges for stockyard services by amendment to the Packers and Stockyards Act of 1921, as amended, to only those stockyards which either -

- (a) have an annual sales volume in excess of 100,000 animal marketing units, as determined by the Secretary of Agriculture; or
- (b) have an annual sales volume in excess of 20,000 animal marketing units, as determined by the Secretary of Agriculture, and are located more than 75 miles from the nearest independently owned and operated stockyard.

Either of these proposed formulae present certain practical problems, it seems to us. For example, let us assume that during the calendar month of November, a livestock market obviously exceeds a volume of 100,000 animal marketing units, or 20,000 animal marketing units, as the case may be. Precisely

when would the rate making authority of the Secretary become effective ? After it became effective, how long does it last ? These are questions to which the bill does not address itself. They are questions which must be answered.

Today, no livestock market is either so large or so isolated that it is without effective competition either from another market or from the competition of direct marketing. The decentralization of livestock marketing in recent years has provided competition in one form or another literally in every corner of this nation and wherever there are livestock to be marketed. There are no markets which can even remotely by any stretch of one's imagination be considered today as public utilities or so affected with a public interest that they require rate regulation in the public interest. The posted stockyards under the supervision of the Secretary of Agriculture have neither franchise nor monopoly, which are the attributes of a public utility. Neither does the Packers and Stockyards Act of 1921, as amended, prescribe any entry requirements.

In 1921 practically all livestock moved to market by rail or else were driven on foot. As a result, livestock markets were concentrated at railroad terminals and numbered less than 100 then. No marketing alternatives existed, so the livestock markets in operation at that time were deemed to be affected with a public interest and as such necessary to be regulated as to their rates and charges for stockyard services.

Times have changed a lot since 1921. Today, practically no livestock moves by rail, but instead by motor carrier. Now, there are nearly 2,000 posted stockyards or livestock markets under the supervision of the Secretary of Agriculture.

While we are in sympathy with the intent of the proposed legislation, we cannot support H. R. 9482 in its present form. We are informed by the Packers and Stockyards - AMS that they estimate that approximately only 100 livestock markets will continue to be subject to the rate making authority of the Packers and Stockyards Act of 1921, as amended, in the event that H. R. 9482 should be

enacted into law. Such action would be grossly discriminatory, unfair and unreasonable as to those approximately 100 markets. They are entitled to receive equal treatment and consideration.

For these reasons, in its present form, we are opposed to H. R. 9482, as well as to H. R. 9639, H. R. 9822, H. R. 10016 and H. R. 10666, respectively.

Rather than attack the subject of rate making piecemeal, we recommend that serious consideration be given to amending this bill, as well as the several similar bills, so as to remove from the Packers and Stockyards Act of 1921, as amended, all supervision or control over the level of rates and charges for stockyard services. Necessarily, this recommendation should be subject to the retention of the following four safeguards for the benefit of both market customers and the posted stockyards themselves:

- (a) any change in any tariff charge should continue to be filed with the Packers and Stockyards - AMS ten (10) days in advance of its becoming effective, as at present;
- (b) any change in any charge for stockyard services should be published by posting at the market for not less than ten (10) days, as at present;
- (c) the rates and charges of all commission agencies doing business at the same market must be uniform and identical, as at present; and
- (d) all tariff charges must be applied uniformly and without discrimination, as at present.

We believe that this is the only correct approach to the solution of this problem. It is non-discriminatory in its application and deserved by a highly competitive industry.

The existence of active competition effectively serves in its self to monitor the rate levels for stockyard services at posted stockyards. The very number of markets and other marketing choices insures the livestock owner a choice at a price he is willing to pay. As a result, we believe that a program of rate regulation of posted

stockyards is no longer necessary in the public interest, in view of the changed circumstances since 1921 and the livestock marketing conditions existing today.

Thank you for the opportunity to present our views on H. R. 9482.

March 14, 1978

Mr. HIGHTOWER. Thank you, sir, and if you can wait for just a little, we have one more witness, Mr. Lemmy Wilson, president of the Tennessee Livestock Association of Newport, Tenn.

**STATEMENT OF LEMMY WILSON, PRESIDENT, TENNESSEE
LIVESTOCK ASSOCIATION**

Mr. WILSON. My name is Lemmy Wilson of Newport, Tenn.

Presently, I am privileged to serve as president of the Tennessee Livestock Association, an 8,000 member producer group, on whose behalf I offer my remarks.

In addition to my endeavors as a livestock producer, I am actively involved in the agricultural industry as a cattle feeder, a registered livestock dealer, and as a livestock marketing businessman.

I own and operate Wilson Livestock Market of Newport, Tenn., which is subject to the regulatory authority of the Packers and Stockyards Act. Hence, my background provides me with a broad perspective of the livestock industry.

In speaking for the producers, let me remind you that each of us is a businessman who very much values and respects an open and competitive marketplace for our products. We value our ability to make the decisions that lead to profitable and successful endeavors. We seriously question intrusions of our Government through various regulatory schemes which interrupt or impair a competitive marketplace.

We recognize that we are the customers of a livestock market, both as buyers and sellers. We recognize, too, that we can market our livestock without utilizing an auction market, or an auction stockyard, or even a marketing business.

We support deregulation with respect to the present rate policies of the Packers and Stockyards—AMS. We support the right of a marketing business to conduct its endeavors in accordance with good business judgment, personal and business integrity and commonsense. We point out that a very capable and accurate "first line" test of any marketing business will be its ability to have satisfied customers.

In summary, we ask that this subcommittee take a careful look at the present rate policy of the Packers and Stockyards—AMS to determine its applicability to the livestock industry today. We do not believe that such extensive rate regulation is applicable and supports deregulation efforts.

Thank you for the opportunity to appear and present this statement. Your concern and efforts at deregulation are very much endorsed and appreciated by the Tennessee Livestock Association.

Mr. HIGHTOWER. Thank you very much, Mr. Wilson.

If you will remain at the table, we would like to ask the other witnesses now if they will return to the counsel table so that they can be in a position to respond.

I had thought that some other members of the subcommittee would join us before this time. It is very unfortunate that we are having so many conflicts at this particular time.

I know that you have sacrificed your time to be here, and we want to make the best use of your expertise in this area.

I do have a few questions that I will ask, but before I do that, Con-

gressman Richard H. Ichord of the Eighth District of Missouri has given us a prepared statement to be included in the record. We also have a statement by the Texas and Southwestern Cattle Raisers Association, and without objection this will also appear in the record at this point.

[The statements referred to above follow:]

STATEMENT OF HON. RICHARD H. ICHORD, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF MISSOURI

Mr. Chairman, I am pleased to have this opportunity to submit testimony in support of H.R. 9482 which would amend the Packers and Stockyards' Act to exempt small country auction barns from rate regulations by the U.S. Department of Agriculture.

I have been concerned for quite some time about the effect of the rate-making practices upon country auction barns and can well understand the difficulty in producing sufficient income to meet operating expenses let alone the expenses incurred due to reporting requirements. In my judgment, there is no valid reason for the Secretary of Agriculture to continue to regulate the rates and changes of small rural auction barns. The burdensome and costly Federal rate-making procedures and standards which presently apply to the small auction barns will drive many of these needed markets out of business.

This legislation will not disturb the Secretary's authority over the reasonableness of rates at stockyards which either have annual sales volumes in excess of 100,000 animal marketing unit or have annual sales volumes in excess of 20,000 animal marketing units and are located more than 75 miles from the nearest independently owned and operated stockyard. In many instances, competition for business between small auction barns is fierce and these barns serve hundreds of thousands of livestock producers each year.

This legislation is geared to assist the many small auction barns in the United States. Mr. Chairman, I respectfully request that my colleagues give serious consideration to this proposal.

STATEMENT OF
TEXAS & SOUTHWESTERN CATTLE RAISERS ASSOCIATION

The Texas and Southwestern Cattle Raisers Association, with headquarters in Fort Worth, Texas, is a cattle producers organization which is composed of approximately 14,000 members, living principally in the states of Texas and Oklahoma.

We appreciate the opportunity to present the position of Texas and Southwestern Cattle Raisers Association today at this hearing, in regard to the rate policies under the Packers and Stockyards Act, and recommend eliminating regulation of rates and charges.

We understand that one of the principal aims of the Packers and Stockyards Act, as passed in 1921 and now amended, is to make certain that livestock producers selling livestock at public markets receive reasonable services and facilities for a just and nondiscriminatory charge. It should be noted that when the Packers and Stockyards Act was passed in 1921, there were only approximately 75 stockyards in the entire United States, as compared to the present number of over 2,000 posted stockyards regulated under the Packers and Stockyards Act. It is obvious that these markets are far more competitive with one another than in 1921; yet, the rate-making procedures have not been changed. Reliable data now indicates that today, livestock markets handle less than 45 percent of all livestock volume and merchandising transactions. This strongly suggests that the monopolistic tendencies which brought about the Packers and Stockyards Act no longer exist and rate regulation is no longer required.

As further evidence of the keen competition existing in the livestock marketing sector of our country, there are presently over 14,000 registered livestock dealers and a variety of other means are available to producers in marketing livestock by order buying firms, cooperatives, and through direct sales to packers and feedlots. These alternatives are all in addition to marketing through the posted livestock market or stockyard as we know it.

The policy of Texas and Southwestern Cattle Raisers Association generally stands upon the principle of reducing Government intrusion into the livestock business. We believe the Packers and Stockyards regulatory people can use their time and direct their energies and resources more productively in other areas of their regulatory duties if freed of the time-consuming responsibility involved in setting rates and charges and adjusting them periodically for the more than 2,000 posted markets in our country.

Texas alone has approximately 180 posted livestock markets selling cattle each week at the present time, and we feel that this highly competitive situation will keep rates reasonable and equitable.

As previously mentioned, the livestock producer has a wide variety of marketing alternatives available to him in addition to selling his livestock at a posted livestock market. Therefore, we believe and suggest that the best interests of buyer and seller alike may be better served by eliminating regulation of rates and charges by the Packers and Stockyards Administration, and focusing a greater concentration of effort on other areas of their responsibilities in safeguarding our industry from unfair and deceptive trade practices.

Your consideration of the position of this Association will be appreciated.

Mr. HIGHTOWER. Mr. Jennings, I did not get to hear your entire testimony.

I am not sure that I exactly understand what the position of the Department is. I gather that your statement is that the Packers and Stockyards Administration would oppose this legislation in its deregulation aspects and commit, in a sense, to bring about deregulation, or partial deregulation, administratively. Is that correct?

Mr. JENNINGS. Yes; that is correct, Congressman.

We do plan to issue a policy statement within the next 2 or 3 weeks—as quickly as possible.

Mr. HIGHTOWER. Would there be a size limitation as to the effect of the deregulation—as to the size of the stockyard or the number of animal units that would be affected?

Mr. JENNINGS. No, sir, there will not. It would apply to all markets.

Mr. HIGHTOWER. It would be clear, across the board? Whatever regulations you impose, or whatever deregulation is brought about, would apply to large and small as well?

Mr. JENNINGS. Yes, sir.

Mr. HIGHTOWER. I have some concern about that. This position was also taken by Mr. Jones that it might be best to approach the problem administratively.

In my brief experience, I am a little apprehensive about commitments at any level of bureaucracy that they are going to change the established procedure just as soon as they can get around to it. The problem there is that sometimes getting around to it is delayed, and anything that can be changed administratively can also be changed back administratively.

As we all know, these offices and the personnel that occupy them change from time to time. Their points of view and philosophies change—sometimes not as much as we had hoped—but they can change, and if you can deregulate, you would still have the power to regulate again. Is that not true?

Mr. JENNINGS. Yes, sir, I think that is correct.

Mr. HIGHTOWER. Do you think from the standpoint of desirability that the effect on the marketing of livestock ought to be the specter of utility-type regulation hanging over them if they do not do what what someone in Packers and Stockyards or the Department of Agriculture wants them to do?

Mr. JENNINGS. I referred earlier to the series of hearings we have just conducted throughout the country—seven of them, to be exact.

There was a very strong indication there that if we do deregulate, there will be some increases in tariffs. At the same time, there was some concern expressed by some ratepayers that if we deregulate it might cause some problems on their part and the amount of fees they would be required to pay for the selling services performed for them.

We like to subscribe to the theory that competition will hold these rates to a reasonable level. We are most hopeful that they will be held reasonably.

Mr. HIGHTOWER. Is the Packers and Stockyards Administration to be the judge of the reasonableness of these?

Mr. JENNINGS. No. Our proposal will be that whatever rate anyone wants to put into their market we would approve of and take no action concerning that in the absence of valid complaints from ratepayers.

The only thing we would be doing would be retaining the right to respond to complaints if they are forthcoming from a ratepayer.

Mr. HIGHTOWER. How would you respond? What would be the nature of your response to the rates?

Mr. JENNINGS. An investigation would be made of their rates to determine whether or not there was validity to the complaint, whether or not the rates were unreasonably high.

Mr. HIGHTOWER. And the test for that would be what?

Mr. JENNINGS. A reasonable return on investment plus an allowance for all business expenses plus compensation for the services performed by the owners. If it greatly exceeded reasonable figures there, then I presume we would be in a position to take action against them.

Mr. HIGHTOWER. Then it would not matter what the other markets in the surrounding areas were getting or doing or how they fit into this, if it should be determined by P. & S. that, in their opinion, it was unreasonable as it applied to that particular stockyard, and it would be changed. Is that correct?

Mr. JENNINGS. I think it would apply equally to all markets. We would not single out one market to make an example of them.

Mr. HIGHTOWER. But if you singled out one, you might start a domino effect all around. The changes you imposed with one would dictate changes to others. Would it not?

Mr. JENNINGS. I think it would. I think that could happen, yes, sir.

Mr. HIGHTOWER. So we would just be getting back onto the merry-go-round of regulations.

Mr. JENNINGS. I hope that does not happen Congressman.

I have just come from the livestock marketing industry, myself. I think I understand it far better than a lot of people do. I have every hope that there is sufficient competition between these markets that they stay at a reasonable level.

Very frankly, I am the one who proposed some deregulation. I am the one who suggested we hold these hearings to get input from the industry. I am quite pleased with the response to those hearings.

Mr. HIGHTOWER. I do not really want to prolong it, and I am certainly not trying to debate you on the issue. I am concerned that if we say regulation is bad and we ought to deregulate, why do we not take away the statutory authority rather than holding it in abeyance?

Maybe we ought to direct that to Mr. Jones.

Mr. JONES. Mr. Hightower, we have a reluctance at this point in time, No. 1, to open up the act. You will recall the actions that we went through during the time that we made the prompt payment trust provision amendments. You were very instrumental in that legislation.

We now have some very good machinery to assure payment of livestock, and we know that everyone involved is not particularly happy with the bill.

We would be reluctant to see the act opened up.

Mr. HIGHTOWER. For fear of some other amendment that might come in that would upset another aspect of the marketing?

Mr. JONES. That is correct. Or at least an attempt would be made. Very frankly, at this point, I guess we can say we are reluctant to take that risk.

The second thing is that the more at the time for deregulation has come about not because of a change of people or administrations. It

has come about, pretty much, because of the atmosphere and attitudes that now exist in the country.

Therefore, we feel that this will be a lasting of action. As rate-payers, we do not fear the risk of getting on a yoyo of being on regulations or not being on them.

We think this can be done administratively and that the Department would not be in a position to be very arbitrary in whether it came back to inflict regulation. After all, we would have to go through again giving the public an opportunity to have a word, and the industry certainly would come forth and speak its voice. So we do not have that particular fear.

In view of that, in view of our attitude toward opening up the act, we would just prefer to see it at least try to be done administratively on the first round.

Mr. HIGHTOWER. Mr. Jennings, do you believe that enactment of this bill could encourage a larger and more profitable stockyard to cut its fees in an attempt to shut down smaller barns? That deregulation would have that effect?

Mr. JENNINGS. This particular bill? No; I do not see that this bill would encourage that type of thing.

Mr. HIGHTOWER. What procedure does a sale barn go through when it applies to P. & S. for a rate increase and is turned down?

You have heard these witnesses here. There is some dissatisfaction. We heard it also in Fort Smith that one of the problems was that when they tried to get P. & S. to look at their problem, they finally just gave up because they could not get any response. Ultimately, many of them closed out.

What is the procedure?

Mr. JENNINGS. First of all, I think those that have that type of complaint must be referring to the time prior to the time when I was first brought into this Agency some 7 or 8 months ago.

The ones who are being turned down since I have been here are those that are on a percentage tariff. The reason they have been turned down is not based on whether or not they are entitled to an increase, but rather on the fact that percentage tariffs have been held to be illegal by both the judicial officer and now the eighth circuit has upheld it. We have no alternative, other than to turn down a request for an increase and a percentage tariff.

Mr. HIGHTOWER. If we deregulate by regulation, what effect is that going to have on this eighth circuit opinion?

Mr. JENNINGS. That does not touch that particular problem at all. It has no effect on it except indirectly. If we no longer pass on the level of rates, then I think many of those that are on a percentage tariff would find it more advantageous and be more willing, hopefully, to convert to a per-head charge.

To authorize the use of percentage tariffs, in the face of the court decision, would require legislation.

Mr. HIGHTOWER. If the Thornton bill is passed, would that not make it possible for the stockyards to impose percentage tariffs?

Mr. JENNINGS. Yes; it would.

Mr. HIGHTOWER. And it would override the eighth circuit opinion?

Mr. JENNINGS. Yes; it would do that.

Mr. HIGHTOWER. So really, if they believe that the answers to their

problems is shifting over to a percentage tariff, the answer must be legislation rather than change of regulations?

Mr. JENNINGS. Yes, sir, that is correct.

Mr. HIGHTOWER. Mr. Jones, do you have some questions?

Mr. JONES of Tennessee. Mr. Hightower, I have no questions. There was a lull in the other committee meeting, and I wanted to come in and make my presence known and my interest known in what is going on here.

We are working on the budget over there, as you know, and we just voted out the credit bill a few moments ago.

I was privileged to have a few moments so I could leave and come over here.

It is delightful to have you gentlemen here. I know that we are going to be seeing some more of you later today.

May I say that I am most interested in the problem you are talking about. I produce livestock, myself, and my district is a livestock-producing district, so I am very interested in what you are talking about here today.

I know I am going to see Mr. Wilson later today.

Thank you, Mr. Hightower.

Mr. HIGHTOWER. Thank you, Mr. Jones.

Mr. Thornton, we have concluded the testimony and have had some response to questions. We would be happy to have your questions at this time.

Mr. THORNTON. Thank you very much, Mr. Chairman.

I want to compliment the witnesses for the testimony which I have read and which I think gives us a great deal of additional information to use as we consider this legislation.

I want to thank you for your courtesy in coming to Arkansas and conducting the field hearings there at Fort Smith.

Because of the hour, I will not ask any questions.

Mr. HIGHTOWER. Thank you, Mr. Thornton.

The committee staff may need additional information as we move along in consideration of this matter. We would appreciate it very much if they might contact you, Mr. Jennings, or your staff for additional information. At the same time, we may call on you or other witnesses to fill in some blanks in our understanding as we move along. We appreciate your cooperation in that respect.

I will repeat again that it is unfortunate that other committee hearings this morning were in conflict. I know that it is at considerable expense and trouble that you are here.

You have helped us by coming to testify. We are grateful for the fact that you have participated. Thank you.

At this time, the meeting will be adjourned.

[Whereupon, at 11:25 a.m., the hearing was adjourned.]

[The extraneous material submitted to the subcommittee follows:]

STATEMENT OF HON. JIM GUY TUCKER, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF ARKANSAS

Mr. Chairman and members of the committee, I am a cosponsor of H.R. 9482, to amend the Packers and Stockyard Act of 1921 to better serve the needs of livestock sellers and stockyard operators in rural areas.

This legislation is necessary to relieve small competitive auction barns in my State of Arkansas from the burden of excessive federal regulation. Under current

law, rural auction barns are treated like public utilities with regulated charges. The bill we are recommending will establish an animal unit as one head of cattle, one calf, one horse, three hogs and four sheep. Weekly auction barns, that is, any barn that sells less than 100,000 animal units annually, would be exempt from federal regulation. If such a barn is more than 75 miles from a competing barn, the maximum number of head that could be sold free of federal intervention would be 20,000.

Let me briefly trace the situation that has necessitated this legislation action to secure a fair return on livestock sales by small rural auction barns. In 1976, auction barn managers in Arkansas were getting a 3 percent commission on gross sales up to \$2,000 and 2 percent on anything over that. When labor costs increased from \$2.30 to \$2.65, the managers asked for a reasonable 1 percent increase in commission to cover their costs. Their costs. Their request was turned down by the Packers and Stockyard Administration which in turn proposed a national commission lower than the 3 and 2 percent combined rates. The USDA stated as part of the rationale for the low rate proposal the need to weed out livestock operators from what they described as an unfeasible market. An administrative law proceeding subsequently set a rate per head which is inadequate for meeting the actual operating expenses of weekly auction barns in Arkansas.

These auction barns in Arkansas have continued to operate on a percentage rate, but have been ordered by the U.S. Court of Appeals to hold in escrow the difference between the low rate per head set by the court and the percentage rate. This is an unsatisfactory approach which requires one particular operator in Arkansas to hold more than 51 percent of his commission in escrow, leaving him with no return on his investment.

This law was written in response to the stockyard situation in 1921 when there were 71 terminal markets in the U.S. Today, with over 2,000 terminal stockyards nationwide, the days of a natural monopoly for rural stockyards are over. The regulatory standards applied to public utilities are ill-suited to modern stockyards. The law must be updated to reflect current conditions.

We are not recommending changing the rules for large stockyards in major cities or in isolated areas which do, in many cases, operate without effective competition. But in rural areas with a number of auction barns in close proximity, rates that are fair to both the livestock producer and weekly auction barn operators would be best determined by the competitive forces of a free market system.



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STATEMENTS SUBMITTED BY

A. C. (AL) SCHLOESSER, DIRECTOR
LIVESTOCK LICENSING AND WEIGHING DIVISION
MINNESOTA DEPARTMENT OF AGRICULTURE
132 LIVESTOCK EXCHANGE BUILDING
SOUTH ST. PAUL, MN 55075

DATE: March 10, 1978

TO: The Honorable W. R. (Bob) Poage, Chairman
Agriculture Subcommittee on Livestock and Grains
House of Representatives
Congress of the United States

RE: H. R. 9482 - Hearing Scheduled for March 14, 1978

My name is Al Schloesser. I am director of the Livestock Division of the Minnesota Department of Agriculture, and I sincerely appreciate the opportunity afforded me to share my views and opinions with this Committee.

The primary purpose of these hearings, as I understand them, is to determine just what the future rate-setting policy should be under the Packers and Stockyards Act at posted stockyards, but specifically as it relates to rural auction markets.

The Minnesota Department of Agriculture and the Packers and Stockyards - AMS have jointly and cooperatively regulated the activities of persons engaged in the business of livestock marketing for the protection and benefit of the farmer and livestock producer. In my 27 years of experience with the State of Minnesota in administrative or service and regulatory work, I have had the highest regard for the work performed and the accomplishments of the Packers and Stockyards - AMS.

Because of the heavy volume of livestock moving through interstate commerce, it is practical that a federal agency retain dominant authority; however, it is our strong feeling in the Minnesota Department of Agriculture that States have major input into the regulations that ultimately affect the citizens of the States. We must be particularly careful that in our search for change we do not undo the accomplishments of the past.

We urge the continued filing of uniform and non-discriminatory rates and charges. By continued surveillance, the Packers and Stockyards - AMS should require all tariffs be equitably applied as filed, without partiality.

In the case of auction markets, we favor the concept of letting competition set the level of rates by permitting the filing of a tariff without determining its reasonableness, after giving proper notice to livestock producers. We think "adequate notice" should be emphasized by requiring the tariff be publicized in the local media newspaper and farm periodicals as necessary to get accurate information to the farmer. If livestock producers file complaints alleging unreasonable or discriminatory rates, or if at any time the Packers and Stockyards - AMS has reason to believe the rates are discriminatory or unjustifiable, it should intervene and set an equitable tariff to be charged.

It is important that a policy governing the filing of fees and charges at a public stockyard be retained. Buying and selling charges assessed by the market agencies, order buyers and dealers on a public terminal market should be the same.

The following figures reflect the number of head of the various species of livestock marketed in Minnesota at the terminal market in South St. Paul and at the rural auction markets during the year 1977. The transactions conducted through livestock dealers or order buyers and the direct sales to packing companies are not included.

	TERMINAL MARKET	AUCTION MARKETS	TOTAL	PERCENTAGE	
				TERMINAL MARKET	AUCTION MARKETS
Cattle	845,516	482,934	1,328,450	64	36
Calves	112,976	112,155	225,131	50.2	49.8
Hogs	2,290,739	670,129	2,960,868	77	23
Sheep	165,342	33,296	198,638	83	17
Horses	159	7,053	7,212	2	98
	3,414,732	1,305,567	4,720,299	72.3	27.7

Because of the interest each State Department of Agriculture has in the welfare of its citizens, we would ask that a copy of each Minnesota tariff be filed with the Minnesota Department of Agriculture so it can properly respond to citizen questions or complaints.

We believe every buyer and seller of livestock is entitled to full disclosure of the tariffs, rates or charges levied against him for services; and these costs should be clearly reflected in the ACCOUNT OF SALE. Based on the kinds

of complaints we receive in the Minnesota Department of Agriculture, it appears there are many misconceptions and misunderstandings among farmers regarding the facts of their livestock transactions. This prompts us, as a State regulatory agency, to renew our efforts informing farmers of the various selling options available to them and the degree of risk and costs involved.

The Minnesota State Livestock Weighing Program is one of the major functions of the Livestock Division, under my supervision, and dates back to the year 1919. It is designed to protect the farmer/producer and sellers of livestock from dishonest and unfair marketing practices by providing accurate, honest and impartial weighing of livestock by State Weighers who issue Official Certificates of State Weight on scales that are State-tested and inspected. All livestock weighed at the South St. Paul Public Stockyards and at four out-state packing companies are State-weighed. Our weighing fees are approved by the Minnesota Commissioner of Agriculture; and as any other registrant at the Public Terminal Market, the fees are approved by the Packers and Stockyards - AMS.

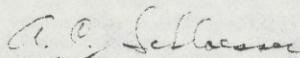
Minnesota marketing facilities have a high volume of dairy cattle and calves; consequently more transactions, or smaller drafts of livestock, are necessary -- more so than in the western states. Therefore, a shorted weight on each draft represents a higher percentage of loss in weight than would be experienced in a large draft of feeder cattle or calves. Our weighing personnel equate their job to that of a bank teller making change in dollars and cents.

My reason for making these comparisons is to highlight an important point. Farmers and producers of livestock spend a great deal of time, effort and money getting their livestock ready for market; and only one mistake in marketing can make the difference between profit and loss. So then we begin to ask ourselves -- which regulation is more important than another? A farmer can conceivably lose money in various ways in any single livestock transaction. He may be short-weighted, docked, or the buyer may figure in a percentage of shrink, etc. Then again, he may give up his rightful profit because of unreasonable service charges and rates. It doesn't make much difference what the cause -- the farmer is interested in the net figure on his check, and hopefully it is in the profit column.

We all know that in regulatory work we may never reach 100% of our goal, but I do believe the Packers and Stockyards - AMS has done a commendable and necessary job over the years. Whatever changes result from this hearing or legislation being considered in the Congress of the United States, the Minnesota Department of Agriculture urges the utmost cooperation between federal and state agencies in order to maintain efficiency and avoid duplication of effort as we pursue a common goal -- FAIR TRADE PRACTICES IN THE MARKET PLACE.

Thank you.

MINNESOTA DEPARTMENT OF AGRICULTURE


A. C. (Al) Schloesser, Director
Livestock Licensing/Weighing Division

ACS:at

STATEMENT OF ROBERT H. LOUNSBERRY, IOWA SECRETARY OF AGRICULTURE

As a leading livestock state, with currently over 20 million head of hogs and cattle on our farms, Iowa is vitally concerned in any decision made by or affect the Packers and Stockyards Commission and involving the marketing of livestock in Iowa.

We also recognize the right, in a Democratic society, of individual and cooperative livestock salebarn (auction) operators to be free to run their enterprises with the least amount of government interference. They should have a voice in selecting the type of marketing fees which will provide them with a reasonable margin of profit and will also provide a fair and equitable service to the customers they serve.

We believe that in the past, the Packers and Stockyards Commission has sometimes acted in an arbitrary manner in setting auction commission fees.

However, we do not believe the Packers and Stockyards Commission should be completely removed from its regulatory role. Rather than total de-regulation, we would suggest that a more cooperative and flexible attitude be taken in dealing with auction market owners to allow for unusual and mitigating circumstances and for the geographical locality which is served. A public posting of fees, which have been filed with and approved by Packers and Stockyards, should also be prominently posted for the benefit of all. Thank you.

ARKANSAS CATTLEMEN'S ASSOCIATION,
Little Rock, Ark., March 8, 1978.

HON. RAY THORNTON,
U.S. Congressman,
Washington, D.C.

DEAR RAY: Thank you for your letter of February 23, 1978 relating to H.R. 9482. We have been extremely busy with our convention which ended last week. During the convention, the following resolution was presented to the membership of the Arkansas Cattlemen's Association and was passed during the business session:

"Be it resolved that the Arkansas Cattlemen's Association supports the free enterprise system that promotes competition. We favor the general deregulation of the rate making authority of the Packers and Stockyard Administration over the public livestock markets. We feel that the commission structure at any public livestock market, as long as it shows uniformity and is nondiscriminatory can best be structured by the present owner."

Due to the fact that testimony on H.R. 9482 is scheduled for March 14 before the Subcommittee, we will not have ample time to prepare the proper written or oral testimony. I am enclosing two (2) copies of this letter and you may wish to present this to the Subcommittee at the hearing.

Very truly yours,

JIM SANDERS,
Executive Vice President.

STATEMENT OF
ARKANSAS FARM BUREAU FEDERATION

As you know, the Arkansas Farm Bureau Federation is a general farm organization made up of 76 County Farm Bureaus representing over 90,000 member families. Twenty-five thousand of these member families derive a major portion of their income from the sale of livestock. Our producer members have shown an interest in current developments and possible changes in the charges for the marketing services they receive from auction markets. Livestock is a major source of income to many thousands of people in Arkansas who need a dependable efficient marketing system.

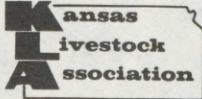
The livestock marketing sector and particularly the auction market system in Arkansas is of great importance and provides a needed and valuable service to our state's livestock economy. This point is evidenced by the fact that approximately 90 to 95 percent of all cattle marketed in the state are sold through auction markets; a similar high percentage also applies to hogs and pigs marketed in the state. Not only do livestock producers rely on local auction markets as an outlet for their products, but these markets also serve as a price determining point for sales outside regular marketing channels and provide a stimulus to many local economies. The necessity to keep market outlets for livestock (or any other product) operating in a climate of free and open competition is basic to the economic principles on which this country was founded and is in the best interest of producers, market operators and consumers. While regulations under the Packers and Stockyards Act were promulgated to protect livestock producers, such regulations should not be constructed or construed so as to hamper normal marketing practices nor to restrict or reduce marketing services provided by the various livestock market agencies.

The issue before us concerns a proposal to eliminate certain livestock markets from rate regulation under the Packers and Stockyards Act. We would agree with this amendment to the Packers and Stockyards Act on the grounds that our

members have expressed deep concern with overregulation by government agencies. This amendment would remove certain regulations which at times have proved burdensome and costly to both the regulatory agency and the livestock marketing industry. Adoption of this amendment could also provide greater flexibility in rate setting and could allow market operators to choose the rate structure and schedule which best suits the needs of their market area. Both of these objectives are being sought by livestock market operators in our state and around the country.

As an organization representing livestock producers, we would like to point out several concerns regarding the effects of eliminating regulatory authority on rates charged by livestock markets. Based solely on 1977 statistics, adoption of the amendment would remove all but three of Arkansas' fifty livestock markets from rate regulation. We would hope that this measure would allow open competition between markets and that rates charged would continue to be reasonable and fair. However, with no rate restrictions in effect, we would wonder whether or not some rate supervision might be necessary in case of dispute or appeals on the part of producers and other markets. Procedures used in adopting specific rate structures and schedules might also need supervision to facilitate organization and assure accountability.

Farm Bureau's basic philosophy is based on a free enterprise system of commerce which promotes open competition. While there is a need to eliminate overregulation in American agriculture, the Packers and Stockyards Administration still has a very important role in providing protection to livestock producers from unfair trade practices. We have and continue to support the vigorous enforcement of the Packers and Stockyards Act. The removal of markets from rate regulation under the Act is a matter which should encourage open competition, but we would urge that careful consideration be given the concerns expressed above as they affect implementation of this proposed amendment.



2044 FILLMORE / TOPEKA, KANSAS 66604 / TELEPHONE 913/232-9358
Owns and Publishes The Kansas Stockman magazine and KLA News & Market Report newsletter

COMMENTS
OF THE
KANSAS LIVESTOCK ASSOCIATION
ON
HR 9482

March 20, 1978

The Kansas Livestock Association, a voluntary membership organization representing over 7,000 cattlemen, swine and sheep producers in Kansas, submits the following comments relative to HR 9482.

The Kansas Livestock Association favors the concept of removing much of the regulatory authority of the Packers & Stockyards Administration over tariffs charged by livestock auction markets. However, it's our belief that the interests of both livestock producers and auction market operators would be best served by returning livestock auction business to a free market approach in the determination of commissions charged for livestock sales.

The industry has undergone substantial change since the present regulatory authority over stockyards was implemented in 1921. At that time the Act was basically directed toward the 72 terminal stockyards which handled a greater percentage of livestock sales than they do now.

However, since that era when the act was passed, livestock production - because of increased population, efficiency and demand - has increased dramatically. Livestock auction market outlets have also increased substantially. In fact, there are presently approximately 2,000 auction markets and stockyards under regulation by P&SA.

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J. C. BARR, Managing Editor

Even if it could be argued that there was a just need for governmental regulation in the earlier years of this century, it must be admitted that the economic and innovative changes in the livestock industry have increased competition to the point where further regulation of auction market tariffs is unnecessary.

Livestock producers have numerous alternative methods by which to market their products. Producers today may participate in the increasingly common practice of selling direct to order buyers, feedlots, packers or other farmers, in addition to taking their livestock to any of the numerous auction markets or terminal stockyards that exist.

Livestock markets should not be subjected to the same theory of regulation which is applied to public utilities where it is argued that consumers of these services would have little choice of alternative services if no governmental regulation were practiced.

Competition is the best "regulator" of the price and services available to producers. In a free market where the users of these services can express their preferences the auction market operators can hope for success only by superior performance. Hence, every market operator must always be engaged in seeking to provide better service at a more economical price than his competitor.

No third party (government) can correctly evaluate the price of the service; the mutually agreed upon price is evidence that the subjective values of both the buyer and the seller have been satisfied. A fair price is what satisfies both parties at the time the "sale" (for services) is consummated.

Competition is a natural phenomenon observable in the actions of choice making individuals. Livestock farmers and ranchers are very familiar with it because it daily sets the market price of their product. Government cannot legislate the free market or create competition. Neither should the P&SA decide an auction market's commission rate based on the bureaucracy's opinion of what a "reasonable revenue requirement" or a "fair return on investment" should be.

The Kansas Livestock Association submits that both the taxpayer and the entire livestock industry would be better served if P&SA authority to regulate livestock sales tariffs were removed. We respectfully urge the removal of P&SA authority in this area either by administrative action or by passage of appropriate legislation.

national grange

1616 H STREET, N.W.

WASHINGTON, D. C. 20006

(202) 628-3507

John W. Scott, Master



March 8, 1978

Honorable W. R. Poage, Chairman
 Subcommittee on Livestock and Grains
 Committee on Agriculture
 U. S. House of Representatives
 Washington, D. C. 20515

Dear Mr. Chairman:

The National Grange has among its approximately half million members thousands of small producers of livestock that rely on auction barns as the sole method of marketing. Therefore, we have a keen interest in the per-head commission charged by small rural auction barns.

The National Grange is in opposition to H.R. 9482, a bill to exempt small rural livestock auction barns from the rate regulations of the Packers and Stockyards Act. In our judgment, the amendments to the Packers and Stockyards Act are not necessary; in fact, they could be detrimental to the livestock producers who depend on small rural livestock auction barns as their means of marketing.

H.R. 9482 would exempt from the rate regulations of the Packers and Stockyards Administration 1877 livestock auction barns. These 1877 auction barns handle 44.3 million head of livestock or 90% of all livestock sold, with a total value of \$7.9 billion. We are not talking about small rural auction barns; we are talking about facilities that market nearly 100% of all cattle sold, facilities that small livestock producers depend upon as their market outlet. Therefore, the rates charged as commissions for services rendered by the auction barn have a direct effect on profits of small producers who are limited in their marketing choices and must depend upon rural auction barns.

One basic purpose for passage of the Packers and Stockyards Act was to insure that livestock producers selling their livestock at public markets would receive reasonable services and facilities at reasonable charges. The present regulations pertaining to rates and charges contain sufficient administrative authority to protect the livestock producer and at the same time allow the stockyard operator or market agency to recapture all of their reasonable operating expenses in furnishing the stockyard services and facilities plus a fair return on their investment.

In addition, fair procedures are set forth under the present regulations to permit increases in the rates or charges to cover operating cost and a fair return on the operator's investment.

We believe the regulations in the Act as briefed above provide the necessary protection of both auction barn operators and producers. The U. S. Fifth Circuit Court of Appeals at New Orleans, Louisiana, on December 27, agreed when it upheld an administrative order requiring the firm to use a per-head schedule of rates.

The court found that the rate schedule set by the judicial officer gave Giles Lowery Stockyards a rate of return which was "not unreasonably low". It also said the method used in establishing the rate-making proceeding had not violated rule-making procedures.

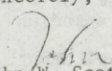
The court noted that "the same method is not required to be used in computing rates for auction stockyards as is used for terminal yards." Further, it said "it was permissible to use nationwide allowances or averages of auction markets in fixing the petitioner rates."

The P&S Act, a fair trade practices law, requires livestock market agencies to provide reasonable stockyard services and facilities at rates which are just and reasonable. Its purpose is to promote fair and open competition in the marketing of livestock, poultry and meat.

Therefore, H.R. 9482 should not be approved.

We would appreciate this letter being made a part of the hearing record on H.R. 9482. Thank you.

Sincerely,


John W. Scott
Master

JWS:mm

cc: All Members,
Agriculture Committee

national grange

1616 H STREET, N.W.

WASHINGTON, D. C. 20006

(202) 628-3507

John W. Scott, Master



March 16, 1978

Honorable W. R. Poage, Chairman
 Subcommittee on Livestock and Grains
 Committee on Agriculture
 U. S. House of Representatives
 Washington, D. C. 20515

Dear Mr. Chairman:

The National Grange has listened to and studied the testimony before the Subcommittee on Livestock and Grains of the House Agriculture Committee on H.R. 9482 and related bills to amend the Packers and Stockyards Act in regard to rate-making at public livestock markets, and we reaffirm our opposition to H.R. 9482.

The National Grange, after due study and consultation with representatives of the livestock industry, supports the concept of deregulation when it can be achieved and at the same time continue to protect the public interest. However, we believe the necessary changes can be accomplished by amending the current regulatory policy under the Packers and Stockyards Act, thereby making the proposed legislation unwarranted.

The National Grange will support regulation changes in the rate-making procedure of the Packers and Stockyards Administration that would: (1) provide that a stockyard or market agency could establish and apply, as determined by the stockyard or market agency, its own level of rates on a per-head basis, after giving notice to its market users and to the Department of Agriculture; (2) provide that a copy of any rate change would be filed with the Department of Agriculture and such proposed change would be posted 10 days prior to making the rate change; and (3) provide that the P&S Administrator would review the level of rates to assure uniform and nondiscriminatory application based on the cost of service only on valid complaints of producers.

We appreciate this further opportunity to comment on H.R. 9482 and ask that this letter be made a part of the hearing record. Thank you.

Sincerely,

John W. Scott
 John W. Scott
 Master

cc: All Members,
 Agriculture Committee

TEXAS DEPARTMENT OF AGRICULTURE,
Austin, Tex., March 13, 1978.

HON. RAY THORNTON,
House Agriculture Committee, Subcommittee on Livestock and Grains, Longworth House Office Building, Washington, D.C.

DEAR SIR: I would like to take this opportunity to express my support for legislation which would exempt small rural auction barns from Packers and Stockyards Administration (P&SA) rate-setting regulations. By approval of this legislation you have a rare opportunity to cut Federal red tape which is tying up the market segment of the livestock industry.

Texas livestock producers would be better served if small livestock auctions are allowed to set their own commission rates without government intervention. With the possible exception of a few isolated areas of the state, we have an adequate number of auctions to allow competition to set the necessary rates, as opposed to the Federal Government setting those rates.

The free enterprise system should be allowed to work. Competition alone is all that is necessary to establish the rate an auction charges for each animal sold. If that rate is out of line, a rancher will quickly shop around for a better rate.

Perhaps prior to our current transportation methods and our improved farm-to-market highway system, a Texas cattle producer was restricted to one single auction with sales commissions which might represent a monopoly. This is no longer the case in almost every area of our State.

In the few isolated areas where competition might not exist, a reasonable maximum rate might be necessary. Easing these regulations would also free P&SA personnel from this time-consuming duty to attend to higher priority functions.

Thank you for your consideration of this proposed legislation.

Sincerely,

REAGAN V. BROWN,
Commissioner.



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

MAR 14 1978

Honorable Thomas S. Foley
Chairman, Committee on Agriculture
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your letter of October 11, 1977, requesting a report of the Department's recommendations on H.R. 9482, a bill "To amend the Packers and Stockyards Act of 1921." The bill defines an animal marketing unit and restricts the Secretary's authority with respect to the justness or reasonableness of any rate or charge (or the method of computing the rate or charge) for stockyard services at stockyards which (1) have an annual sales volume of over 100,000 animal marketing units or (2) have an annual sales volume of 20,000 animal marketing units and are located more than 75 miles from the nearest independently owned and operated stockyard.

The Department opposes enactment of this bill.

Enactment of the bill, based on 1976 volume, would limit the Secretary's rate regulatory authority to only 103 of the 1,980 stockyards now regulated. The 103 stockyards include 71 auction markets with over 100,000 animal marketing units, 9 auction markets with 20,000 units located over 75 miles from the nearest market and 23 markets referred to as terminal stockyards.

During January and February 1978, the Department conducted a series of hearings nationwide to receive oral statements and written comments from livestock producers, livestock marketing industry representatives and others to assist it in determining a future rate regulatory policy.

The Department agrees with the basic objective of the bill to reduce regulation if the economic position of the livestock producers is not jeopardized or adversely affected. The Department shares the President's goal of eliminating unnecessary regulations and reducing unnecessary paperwork requirements. Testimony by some livestock market operators at the hearings indicates that if rate controls were removed, there might be substantial increases in the fees livestock producers would pay for selling their livestock. Therefore, the Department is preparing an administrative alternative to accomplish the same goals.

An analysis of the record of the hearings and other information indicates that some deregulation of rates and charges at posted stockyards may be

Honorable Thomas S. Foley

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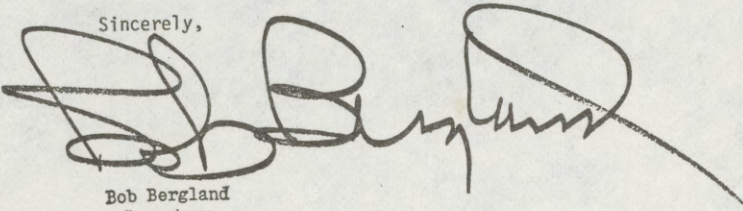
in the public interest. Some deregulation of rates and charges can be accomplished by a change in administrative policy. The Department plans to issue a proposed policy statement setting forth modification of our current policy, with proposed implementing regulations. The public will be given an opportunity to comment on the proposed changes prior to the issuance of a final rate policy. Because of the uncertainty as to the effect of deregulation on the livestock producers and the marketing industry, the Department, after one year, will review the program to assess the economic impact of deregulation. This is a first step in the Department's effort to carry out the President's commitment to reduce unnecessary regulation and unnecessary paperwork requirements.

This proposed policy would permit stockyard operators and market agencies to file any level of per head rates and charges they select after adequate notice to livestock producers. If no valid complaint is received, the tariff would be accepted for filing without any review or other action. Each market operator would be required to apply the tariff charges uniformly to their market users. Such a change in policy would give market operators unlimited flexibility in determining their own rates, adjusting them because of changing costs of operations, and will provide for livestock producers to be involved if they believe the proposed rates and charges are unreasonable.

We believe that enactment of this proposed legislation would result in approximately the same expenditure needs as are required in the present budget since all markets would be required to file tariffs and be subject to investigation to determine if they are properly assessing tariff rates and charges. Furthermore, a new and additional program activity would be required to review the volume of the various markets and determine whether new markets have been built or markets have been discontinued within 75 miles of another market of 20,000 animal marketing units or more volume. This would be necessary in order for the Secretary to determine whether the authority under the Act regarding the justness and reasonableness of rates and charges is applicable to the various markets.

The Office of Management and Budget advises that there is no objection to presentation of this report from the standpoint of the Administration's program.

Sincerely,

A large, stylized handwritten signature in dark ink, appearing to read 'Bob Bergland', with a long horizontal flourish extending to the right.

Bob Bergland
Secretary

