

**USDA WHOLESALE PORK REPORTING NEGOTIATED RULEMAKING COMMITTEE  
SUMMARY MEETING MINUTES  
March 15-17, 2011**

The Wholesale Pork Reporting Negotiated Rulemaking Committee (hereafter the "Committee") convened its second meeting at 8:30 A.M. on March 15, 2011 at the Radisson Hotel, Arlington, Virginia. The meeting was facilitated by Commissioner Eileen B. Hoffman and Commissioner Jacques Wood of the Federal Mediation and Conciliation Service (FMCS) with summary minutes prepared by Commissioner D. Kevin Brahaney (FMCS), subject to approval by the Committee. The meeting lasted three days, with the Committee adjourning on Thursday, March 17, 2011.

Committee members present for the March 15 – March 17, 2011 meetings (delegates in alphabetical order by name of organization):

- American Meat Institute (AMI), Joe Weber
- Chicago Mercantile Exchange (CME), Paul Peterson
- Food Marketing Institute (FMI), Erik Lieberman
- Grocery Manufacturers Association (GMA), Bill Paulos
- Livestock Marketing Information Center (LMIC), Joe Parcell
- National Farmers Union (NFU), Alan Hoefling
- National Livestock Producers Association (NLPA), Richard Ellinghuysen
- National Meat Association (NMA), Shane Miller
- National Pork Producers Council (NPPC), Jason Logsdon
- North American Meat Processors Association, American Association of Meat Processors, and Southeastern Meat Association (NAMP/AAMP/SEMA), Day 1: Rob Nicolosi; Days 2 and 3: Jim Malek
- United Food and Commercial Workers International Union (UFCW), Mark Lauritsen; and, alternate R. Dennis Olson
- U.S. Department of Agriculture, Agricultural Marketing Service (USDA/AMS), Mike Lynch

From USDA:

- Mike Dinkel (USDA, AMS)
- Heather Pichelman (USDA, Office of General Counsel)
- Jennifer Porter (USDA, AMS, LGMN)
- Bill Sumpter (USDA, AMS, LGMN)

Members of the Public (including representatives of these and other organizations) were also in attendance throughout this public meeting and had an opportunity to comment at scheduled intervals.

***Day One: Tuesday, March 15, 2011***

**I. WELCOME AND INTRODUCTIONS**

The meeting was convened at 8:30 a.m. by the facilitators engaged by USDA: Commissioner Eileen B. Hoffman and Commissioner Jacques Wood of FMCS. Introductions included Committee members who were not present at the first meeting (February 8-10, 2011). Commissioner Hoffman reviewed administrative and general procedural meeting topics.

**II. REVIEW OF PRIOR MEETING MINUTES, GOALS, & AGENDA**

Commissioners Hoffman and Wood reviewed the goals that were adopted in the prior meeting of the Committee (February 8-10, 2011). The prior meeting minutes were reviewed and accepted.

Day 1 agenda (**Attachment #1**) was revised to include the presentation, “Livestock Mandatory Reporting Compliance Process.” The balance of the agenda remained as published.

### **III. LOGISTICS FOR MEETING 3**

May 10-12, 2011 is reserved for Meeting 3 to be held in the Washington, DC/Arlington area, with the specific location to be announced at a later date.

### **IV. LIVESTOCK MANDATORY REPORTING COMPLIANCE PROCESS**

Presentation (**Attachment #2**) was provided by Mike Dinkel, Compliance Program Manager, USDA/AMS. This overview of the audit process was added to the agenda in response to a suggestion from several Committee members. Following the slide presentation, Mike Dinkel answered questions that were presented by Committee members.

### **V. DISCUSSION of PREVIOUSLY TABLED ITEMS FROM PREVIOUS MEETING**

Commissioner Hoffman reviewed the Committee ground rules that were established in the first Committee meeting. The “Wholesale Pork Reporting Negotiated Rulemaking Committee, Tabled Items from Meeting 1” was presented as a guide for discussion to be conducted.

#### **Product Delivery Period**

Consensus was reached with regard to measuring and reporting all time period in units of calendar days. Following the development and identification of several proposals, it was decided to table the question of specific time windows, for the day only, in order to afford Committee members the opportunity to discuss with their constituents. The Committee decided that there would be two categories for reporting product delivery period based on packaging: boxed and combo.

#### **Refrigeration**

With regard to time periods, there was considerable discussion regarding whether the start date is day 0 or day 1. Discussion also included which event (sale, kill, ship, or pack, etc.) determined the beginning of the time period. Several Committee members representing the pork industry expressed a strong preference for continuing their established practice of considering the triggering event date as day 0, such that the day 1 would be the date following the triggering event.

Several Committee members caucused during the lunch break and reported that continuing the current industry practice of starting at day 0 remained a key concern. This topic was tabled so that the Committee members would have opportunity to further consider and discuss with constituents.

#### **Price Reporting Basis FOB Plant or FOB Omaha**

AMS indicated its strong position that reporting basis must be FOB Plant, so as to reflect the actual transaction in the marketplace (“transparency”) and in keeping with the intent of the law. CME and FMI also expressed support for FOB Plant basis.

Industry representatives on the Committee expressed their equally strong belief that that the reporting basis must be FOB Omaha, citing the need to continue the long-established current practice in the pork industry. Rationale for FOB Omaha was explained as being historically rooted as based on the geographic location that offers the most common actual grain (feed) prices. For some constituencies, this is considered the most important topic in this entire rulemaking process.

All Committee members appreciated and considered the notable ramifications if a change were to be made from the current industry practice of FOB Omaha to FOB Plant.

A caucus was held by the Committee members who represent the industry producers. Members from the caucus reported back to the full Committee that, in order to explore the possibility of using FOB Plant under mandatory reporting, a time period in which the industry was reporting both FOB Omaha, as is done in voluntary now, and FOB Plant would be requested. Members of the caucus requested that this dual reporting be done for an extended period of time, suggesting one year.

The Committee then explored and discussed a number of possible ideas (parallel, phase-in, beta-test) and further shared their concerns and interests in the event that such a transition could be fashioned. Several Committee members agreed that there is merit in considering a phase-in or transition period.

The Committee discussed whether such a transition would follow a voluntary or mandatory commitment. It was concluded that if such reporting becomes required, it is then no longer voluntary.

AMS indicated that the topic of a transition period would need to be explored with appropriate USDA staff to determine what might represent a practical approach to address the discussed interests of the parties.

It was discussed and clarified that the Mandatory Price Reporting Act of 2010 requires that a final rule to implement mandatory reporting be promulgated by March 2012, but that there may be some flexibility as to the effective date of that final rule.

Commissioner Hoffman explained that the Committee is not per se tabling the FOB topic. Rather, some progress has been made to the point that time is now needed for AMS to determine what course(s) of action or approach(es) could be practical so as to mitigate the impact of such a significant change upon those in the industry.

### **Branded products**

Discussion suggested and it was agreed that it would be helpful to refer this topic to a Branded Products Sub-Committee, comprised of volunteers Alan Hoefling, Shane Miller, Joe Weber, and Joe Parcell. This Sub-Committee was also given the task of addressing Brokerage Fees and Accruals.

### **Enhanced/and or injected product?**

Consensus was reached with regard to the decision to strike the term "injected," and then work to define the term "enhanced."

### **Definition of wholesale pork**

Discussion then turned to the definition of wholesale pork. Commissioner Wood asked whether the Committee remains comfortable with the definition from the prior Committee meeting:

"Fresh and frozen primals, sub-primals, cuts fabricated from sub-primals, pork trimmings, pork for processing, pork offal, and variety meats, excluding portion-control cuts, flavored, cured, smoked, cooked, ground, and diced pork products."

While the Committee agreed to continue in using this definition, the definition might need to be later reconsidered, depending upon the discussion of other tabled items that could impact this definition.

### **Intra-Company Transactions**

Consensus was reached in agreeing that Intra-Company Transactions do not warrant a separate reporting line. However, discussion of this topic suggested a need to later visit the topic of Packer-to-Packer transactions.

Committee Discussion of Tabled Items was closed for the day so as to accommodate the following agenda item.

#### **VI. PUBLIC COMMENT**

The Committee allocated 30 minutes to allow for public comment beginning at 4:30 p.m. There was no public comment offered.

#### **VII. ADJOURNMENT**

The Committee adjourned at 4:35 p.m.

### ***Day Two: Wednesday, March 16, 2011***

#### **I. WELCOME AND INTRODUCTIONS and SUMMARY OF PROGRESS**

Commissioners Hoffman and Wood convened the meeting at 8:30 a.m. Commissioner Wood charted and presented the topics to be covered:

- 1) Branded Products Sub-Committee report
- 2) Issue of Packer-to-Packer – should it be a separate reporting item?
- 3) Pork carcass cutout
- 4) Export

#### **II. COMMITTEE DISCUSSION**

##### **Branded Products Sub-Committee report**

The Branded Products Sub-Committee presented its conclusions regarding Branded Products:

- 1) A trademark brand on a product, such as a packer logo on a cryovac bag, should not preclude it from being included in the negotiated reporting.
- 2) All incremental marketing costs like point of purchase (or “POP”) material, marketing funds, accruals, rebates, etc.; should be deducted from the net price.
- 3) Specialty programs such as genetically selected pork, certified programs, specialty selection programs, etc.; should be included in the negotiated reporting allocated to separate specification line items. The selection process for specialty programs shall include quality attributes not inherent in all pork carcasses and are deemed superior in nature to that manufacturer's commodity pork program.

The proposal was discussed point-by-point. Consensus was reached with regard to point 1. Consensus was reached with regard to point 2, with the provision that the term “incremental” would be changed to “direct” and/or with further qualification. (*See reference to consensus achieved under the later heading, “Brokerage Fees”*). Consensus was reached with regard to point 3.

##### **Packer-to-Packer**

Consensus was reached whereby packer-to-packer transactions will be reported, but they will not be reported as a separate item.

##### **Brokerage Fees**

Commissioner Hoffman suggested that since the morning’s earlier discussion had included several mentions of Brokerage Fees, the term may warrant further consideration. After discussion, a proposal was

offered by a Sub-Committee member intended to address the discussion of brokerage fees and other costs, as well as resolve earlier suggestions regarding point 2 of the Branded Products Sub-Committee proposal so as to now read:

*2) All direct, specific and identifiable marketing costs like POP material, marketing funds, accruals, rebates, etc.; should be deducted from the net price if these costs are known at the time of sale.*

Consensus was reached with regard to this discussion as well as consensus regarding the Sub-Committee proposal which, with the revision to point 2, now in its totality (with no change from the original points 1 and 3) includes:

- 1) A trademark brand on a product should not preclude it from being included in the negotiated reporting.
- 2) All direct, specific and identifiable marketing costs like POP material, marketing funds, accruals, rebates, etc.; should be deducted from the net price if these costs are known at the time of sale.
- 3) Specialty programs such as genetically selected pork, certified programs, specialty selection programs, etc.; should be included in the negotiated reporting allocated to separate specification line items. The selection process for specialty programs shall include quality attributes not inherent in all pork carcasses and are deemed superior in nature to that manufacturer's commodity pork program.

This discussion also produced consensus with regard to accruals whereby it was agreed that if it is known at time of sale it is to be backed out; otherwise, it will not be included.

#### **Pork Carcass Cutout**

AMS discussed how the cutout is currently developed and how yield and packaging information are used. Committee members representing the industry caucused, and reported that industry could agree to voluntarily provide yield and packaging information to create an accurate cutout, instead of making this part of mandatory reporting. AMS reiterated its primary concern being that of having a commitment from industry for providing ample data so as to be representative. AMS also explained that if any reporting is mandatory, it must then also be auditable.

Commissioner Hoffman asked what the industry concern would be if this reporting were mandatory. Industry representatives replied that their primary concern relates to "burden," or the possibility of a major cost, citing an explanation that a typical packer may have 2,000 or more codes. If a customer changes its specification, the yield must be revised.

The caucus did not consider frequency of the reporting of yields, while AMS indicated that the historic frequency has been "upon request."

It was suggested that the parties have clearly reached agreement that satisfies their interests, such that the only remaining concern is that of working through the mechanics.

Commissioner Hoffman established that the Committee has reached consensus on the idea of industry committing to the necessary level of participation in the voluntary reporting of yields. Commissioner Wood qualified that while we have a consensus, it is still necessary to discuss the next step(s) or approach.

After the lunch break, the following companies were identified as being willing to provide yield data voluntarily, prior to the May meeting: Cargill, Farmland, Hormel, JBS, Seaboard Foods, Sioux-Preme, Smithfield, and Tyson. Committee members representing packers and processors indicated that their

industry members would be willing to sign a letter of commitment to provide such information. In order to meet this commitment, AMS will provide those packers the items and data needs for collection of the yield and packaging information.

Several Committee members reiterated their desire for a weekly comprehensive pork cutout report, similar to what is currently available for beef, in which all product is reported.

### **Sow/Boar Product Reporting**

Consensus was reached in deeming reporting once per day as appropriate. Discussion of the term “breeding boars” as opposed to simply “boars” led to consensus for using “boars,” based on the assumption that treated (immune-castrated) boars will be considered the same as barrows.

### **Product from Inferior Livestock**

Consensus was reached in deeming that product from inferior swine should be reported, and AMS will then determine how to handle reporting of that product based on its specifications.

### **Reporting Export Product**

Consensus was reaffirmed that there are three categories for reporting: Domestic, overseas, and NAFTA. Commissioner Wood suggested that the acronym NAFTA be spelled out (North American Free Trade Agreement) at least once in the minutes. Consensus was reached as pertains to NAFTA, in that reporting is to be net of export cost.

The Committee indicated a consensus with regard to its having exhausted the topic of exports. Committee members did note that subsequent consideration of other topics (e.g., definitions of offal and variety meats) may create a need to revisit to what extent exports are reported.

Industry representatives asked USDA-AMS to consider the possibility of publishing for Variety Meats and Offal exports to all destinations to provide better liquidity of the market and capture all sales.

Consensus was reached in that the destination will be part of the specification and may or may not be published, depending upon the amount of sales. That is, USDA-AMS will collect this data and then determine how to aggregate it and report it. Several members expressed the hope that NAFTA and US can be combined into a single category.

### **Specifications**

Consensus was established with regard to AMS building a straw man model of product lines (or categories) based upon the packers providing their specifications to AMS.

The handout “Part 59 – Livestock Mandatory Reporting, AMS Draft Version, updated 3/1/2011” was discussed (**Attachment #3**).

Commissioner Hoffman asked whether there is agreement with regard to “**Pork Type.**” Discussion focused on whether the addition of the fourth type, “(4) mixed,” as written, might create some confusion in reporting. It was suggested that AMS consider either deleting the 4<sup>th</sup> type, or further defining “mixed” as “combination of barrow/gilt, sow, and/or boar”.

Commissioner Hoffman asked the Committee to consider the proposed language regarding “**Type of Sale.**” Discussion led to the suggestion that AMS take the action item of refining the draft language for future presentation to the Committee for further review.

Commissioner Wood sought comment regarding draft definition of **“Wholesale Pork”**. It was agreed that this definition will also be within the scope of AMS’ refinement of the language for future presentation to the Committee for further review.

Commissioner Wood turned to the topic of “where the Committee is, and needs to be.” It will not be practical to conclude all open topics by the end of this meeting (tomorrow) since time is needed both for further consultation with constituents, and for consideration by AMS of such topics as a possible transition strategy relative to the FOB issue.

### **Refrigeration**

Consensus was established whereby time frames will be age at time of delivery.

Consensus was established whereby Day 0 is pack day.

Consensus was reached with regard to having the five (5) different categories proposed by Jason Logsdon: 0-6 days fresh combo; 7 days and over fresh combo; 0 to 10 days fresh boxed; 11 days and over fresh boxed; and frozen.

### **Wholesale Pork definition revisited**

A suggestion was made to add ‘tray pack pork’ as an item that is excluded to the definition of “wholesale pork.” Consensus was then established to add “tray pack” into the list of excluded items.

Commissioner Wood, for the benefit of the public, indicated that the public comment section on day 3 (tomorrow) is likely to run notably earlier than the 4 p.m. time that appeared on the original agenda.

Commissioner Wood announced that the Committee will convene at 9:30 a.m. tomorrow (Day 3), allowing AMS time to prepare for presentation.

## **III. PUBLIC COMMENT**

The Committee allocated 30 minutes to allow for public comment. There was no public comment offered.

## **IV. ADJOURNMENT**

The Committee adjourned at 3:46 p.m.

## ***Day Three: Thursday, March 17, 2011***

### **I. WELCOME and AGENDA REVIEW**

The meeting was convened at 9:30 a.m. with Commissioner Wood presenting the day’s agenda:

- 1) Definition of type of sales
- 2) Definition of wholesale pork
- 3) Export issue(s)
- 4) Industry’s need for changeover to FOB Plant

### **II. COMMITTEE DISCUSSION**

#### **Definition of type of sales**

AMS distributed and discussed two possible draft definitions: **“Modeled after boxed beef” (Attachment #4)** and **“Modeled after existing swine” (Attachment #5)**.

Consensus was reached such that the term “forward sale” will be used, as well as avoidance of the term “forward contract.”

The term “negotiated” was discussed, and AMS offered that the term should refer to shorter time periods. Similarly, we do not want to use “negotiated” within other terms. Mike Lynch offered an example that trying to use a combination of “negotiated forward” would be a confusing contradiction.

A proposal was offered that is a refinement of the AMS’ draft, “*Modeled after boxed beef,*” so as to read:

Type of Sale: as proposed by AMS;

Negotiated sale: as proposed by AMS;

Formula marketing arrangement: at end, delete “at a future date” and replace with “using publicly available quoted prices; and,

Paragraph 4: replace “Forward Contract” with “Forward Sale.” Delete “established in reference to publically available quoted prices”; and add “negotiated,” “agreed upon by buyer and seller” and add a parenthetical qualification, (greater than negotiated sale 0/14 0/10).

### **Revisited Definition of Wholesale Pork, and Export**

The Committee joined in agreeing that sufficient discussion had transpired to the point of the next step being AMS’ refinement of proposed language.

With regard to the topic of export, the Committee may have to revisit an aspect of export, depending upon what determination is made with regard to such matters as whether offal is included in reporting of variety meats.

### **Industry’s concerns relative to changeover to FOB Plant**

Commissioner Wood invited clarification and qualification from Committee members who represent the pork industry (e.g., packers) with regard to their concerns and issues relative to the move from the currently used FOB Omaha basis to FOB Plant basis.

Industry representatives expounded upon the significance of an FOB change, and the appeal of being able to see both FOB Omaha and FOB Plant data for a transition time period. Committee members from industry reminded the Committee that the FOB change will have a very significant impact on reported pricing.

Industry representatives strongly encouraged that both FOB Omaha and FOB Plant data be concurrently available to the public for at least a one year period – the minimum that will be needed to provide a comparison through periods of seasonality and cyclicity.

### **Administrative items**

It was noted that the May meeting might only require two days, but it is suggested that we allow for the third day if/as needed.

Consensus was reached such that AMS will by April 25<sup>th</sup> provide the Committee: draft language regarding topics discussed, and possible approach(es) that might smooth a transition from FOB Omaha to FOB Plant.

Approaching adjournment, Commissioner Hoffman indicated that draft minutes from this second meeting will be distributed to Committee members by next Friday, March 25, 2011 for review.



A reminder was extended with regard to the next meeting being scheduled for May 10 – 12, 2011 in the Washington/Arlington area with specific location to be announced.

## **II. RECOGNITION**

Dr. Warren Preston, Associate Deputy Administrator, USDA/AMS/Livestock and Seed Program, presented certificates of appreciation to Committee members and alternates.

## **III. PUBLIC COMMENT**

The Committee allocated 30 minutes to allow for public comment. There was no public comment offered.

## **IV. ADJOURNMENT**

The Committee adjourned at 11:35 a.m.

### **ATTACHMENTS TO THE MARCH 15-17, 2011 SUMMARY MEETING MINUTES**

1. Agenda
2. "Livestock Mandatory Reporting Compliance Process" Power Point presentation by Mike Dinkel, Compliance Program Manager, USDA/AMS. Overview of the audit process
3. Part 59 – Livestock Mandatory Reporting; AMS Draft Version, updated 3/1/2011
4. Definition of Type of Sales— *"Modeled after boxed beef"*
5. Definition of Type of Sales – *"Modeled after existing swine definitions"*