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To: Comments, U S DOJ Workshops
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Re: Market Transparency, Captive Supplies, and Leveling Compulsions of Buyers & Sellers To Make Beef & Swine Markets Work.

These comments are offered in connection with joint USDA, US DOJ concerns for markets for major crops produced by U S food producers. Particular concern in these comments focuses on markets for live cattle, slaughter hogs, corn, soybeans, and wheat.

I. Basic Concepts.

A viable market requires transactions at "fair market value" and a balanced way to discovery the transaction price. Essential components of a viable market are:

1 Transparent transactions.

2 Equal access to information about assets traded & participants' compulsions.

3 Absence of undue compulsions for sellers to sell or buyers to buy.

Currently, markets for cattle and hogs sold for slaughter are typified by:

1 Opaque transactions.

2 Incomplete and therefore unequal access to information about traders' compulsions, largely because of captive supplies, including forward contracts or other forms of packer control or ownership of about 80% of hogs and more than 50% of cattle. Concentration also afflicts grain markets.

3 Compulsions forcing hog producers to contract swine to a single packer because the cash market will not absorb non-contracted animals and the thin cash market offers undue risks to the producer. Compulsions forcing cattle producers to contract cattle when placed on feed because the cash market and geographic isolation by packers teaches that only one bid is likely on cattle at a particular feedyard, and price risks are perceived by banks as so great banks require forward contracting. Somewhat similar compulsions impact grain markets.

4 Buyers and sellers who each know the other's identity. This facilitates actual or apparent "deals" and drives negotiations underground. It also facilitates threats and retaliation.

II. Interests to be Accommodated.

A viable market must be facilitated by sufficiently simple, enforceable rules, to be functional. Interests to be accommodated include:

1 The public needs for a secure, affordable food supply.

2 The government needs for minimal rules to allow economic activity to define success and failure, and to adjust supply to demand, while being "governed" by awareness that enforcement is possible, relatively simple, and forceful enough to command the respect of market participants.

3 The processors' needs for a reliable, steady supply of quality, stable goods that conform with processors' specified needs.

4 The needs of producers to earn a sufficient profit on capital assets, labor, and skill to assure sustainability.

5 The public need to decentralize food production, and processing, sufficiently to protect against disruption risks.

6 The needs of buyers and sellers to be secure against risks of default.

7 The Exchange's needs to police its own trade with rules approved by the regulatory agency.

1) History's Suggestions.

History prior to the 20^{th} century is of little known assistance to identify policy and legal parameters to make the market work. Transportation and communication methods, along with the sciences of production, have distinguished the factors affecting markets in recent years (defined as 100 years for convenience) from prior times.

The *Packers & Stockyards Act of 1921* and its regulatory scheme helped define rules governing securities markets in the 1930s. Securities regulation and markets have generally adapted, to, and accommodated, changes in technology. Meat markets have not.

GIPSA has not regulated markets moving slaughter cattle or hogs to market by impacting on contracts or relations creating captive supplies. The CFTC has excepted out of its oversight forward contracts where the Seller declares the transaction is a true hedge, i.e., there is a genuine intention to deliver the product. The courts consistently recognize that forward contracts accompanied by intent to deliver are not subject to the CFTC Act.

Just as the securities markets borrowed from the Packers & Stockyards Administration when regulation commenced in the 1930s, now livestock market regulation, and structure, can borrow from the experiences and tools used in securities markets, with adaptations for the important difference between:

1 trading for investment and to raise equity in the securities markets, and

2 trading to provide a market for producers to sell "crops" (in this case meat-bearing animals at market weight & grain) produced for the national foods supply, and for processors to buy raw goods for manufacture into useable goods by processors.

2) Suggestions for A New Market Structure and A Regulatory Process Allowing Enforcement.

Trading must occur in an electronic market only in which buyers and sellers trade pounds of product within contract specifications defining contract trades. Certain small transaction exceptions will be necessary. Aside from these exceptions the market structure suggested for consideration would include these features:

1 All sales and purchases would be required to occur in a transparent securities market generally like the NASD Exchange.

2 Sellers would offer cattle or hogs within a tightly defined set of elective contract parameters. Buyers would purchase within these parameters. For example, using cattle, all contracts would be for grain fed animals below a specified age:

a. Steer contracts. Heifer contracts.
b. Growth Stimulants / No growth stimulants.
c. "Northern Beef Breeds" (Angus, Hereford, Charolais, etc.)
d. "Southern Beef Breeds: (Longhorn, Brahman, etc.)
e. "Dairy Beef Breeds" (Holstein, Jersey, Guernsey)
f. "Cows, Bulls"
g. Within the foregoing categories two weight categories each may be necessary.

3 Sellers would offer to sell xxxx pounds for delivery within x days of the defined contract performance date. Buyers would agree to take the cattle then.

4 Payment would occur at delivery. Margin calls would be required of both participants to assure delivery. Defaulting parties would be sold out immediately, and penalized for a first offense, penalized more severely, or excluded from the market for subsequent offenses.

5 Sellers would warrant ownership of animals on a feeding program designed to deliver the contracted pounds according to the contract specs. Buyers would warrant that delivered animals will be slaughtered by the Buyer in a USDA approved packing plant and that the Buyer has the ability to pay for the goods purchases when delivered. Assurances or bonds would be required of Buyers. The commodities markets would not allow speculative " investment" but would be the medium for exchange of actual goods produced for actual goods needed for fabrication.

6 Falsehoods, and certain nondelivery and nonpayment circumstances, would be violations of the law, and punished with regulatory, civil and criminal sanctions. Insider trading, i.e., packer to producer discussions of matters impacting the market would be unlawful. Securities laws are likely resources for development of this portion of the regulatory and legal schematic. Nondelivery caused by natural disaster would be protected against by mandatory "commodity insurance" required as a part of the transaction price in each trade. This would protect against default.

7 Buyers would be restricted to prevent purchase of more than xx% of slaughter capacity more than xx days ahead of slaughter; this figure would be scheduled so transparent, market purchases would be limited to no more than xx% 90 days, yy% 60 days, and zz% 30 days, before slaughter. The aggregate would leave a sufficient balance for purchase during the slaughter month. Each month's trade, however, would effectively be a "cash trade" market because of its transparency, and known volume levels, and the industry's known capacity limits for slaughter monthly.

8 Each month of the year would be a delivery month. The current "spot month" system would be replaced with contracts providing for delivery each month of the year.

9 Funds would pass through trust accounts; trades and funds transfers would be monitored and

overseen.

10 Regulators would approve carcasses for contract compliance during grading. Noncompliance would be penalized by a significant, scheduled fractional price docks.

11 Transactions would be made only on public exchanges and would be posted automatically upon occurrence. Purchases and sales would be in the names of the true owners but known only the intermediaries (licensed brokers) executing trades, and regulators. Funds would clear through the Exchange or clearinghouse as they do with securities. Trade would pass through a transparent regulated market just as securities are forced through such a market. The overall market position would be known. i.e., the number of cattle or hogs contracted for mandatory future delivery would be known.

12 The Exchange would determine electronically where delivery is to occur, and issue a delivery order causing the animals to be delivered to the nearest available buyer plant. Transportation might be accommodated with a standardized freight and distance specification to a hypothetical delivery point. The delivery order would adjust the price for the freight variable and remaining costs beyond the standardized sum would be borne, or inure to the benefit of, the seller. This would uniformly adjust deliveries to minimize distances by distributing purchases among packers in accord with a uniform, Exchange operated, delivery point determination program.

13 Settlement would occur within 48 hours of delivery. Outstanding margin amounts would be credited, or debited, against the price due.

14 CFTC / GIPSA roles would require redefinition.

15 Exceptions from Electronic Market Transactions (Examples)

Specialty meats in volumes insufficient to endanger the integrity of the greater market would be excepted, but exceptions would involve both volume and grade limitations. For example

Excepted Type	Excepted Volume / Type
Grassfed	#xxx head / packer / wk

Cows and bulls may be so variable they must be excepted out.
Feeder cattle need not be included but their sale should be required to occur through a regulated market agency (sale barn) like those GIPSA now regulates.

"Rough hogs" would be defined and excepted in swine market regulations.

16 Conclusion

Reform is essential. These ideas are suggested. The markets must supply a way to assure the national food supply, and to provide a vehicle for traders to make a living at trading while diminishing the food security of the United States.

Respectfully,

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