

WHOLESALE PORK REPORTING NEGOTIATED RULEMAKING COMMITTEE
AMENDED GROUND RULES FOR NEGOTIATED RULEMAKING

I. Introduction

The U.S. Department of Agriculture (USDA or Agency), Agricultural Marketing Service (AMS) has established a Wholesale Pork Reporting Negotiated Rulemaking Committee (Committee). The Committee will attempt to reach consensus on proposed language that USDA AMS will publish as a proposed rule in the *Federal Register*.

Participants enter the proceedings in good faith in an effort to reach a speedy and amicable settlement on a variety of issues and interests. Participants agree to participate fully and openly in the discussions with a sincere desire to explore alternatives and solutions to a variety of conflicting concerns. All participants agree to exchange information to the fullest extent practicable and agree not to divulge information shared by others in confidence.

II. Participation

A. The Negotiating Committee will be comprised of the following 12 members:

American Meat Institute
Chicago Mercantile Exchange
Food Marketing Institute
Grocery Manufacturers Association
Livestock Marketing Information Center
National Farmers Union
National Livestock Producers Association
National Meat Association
National Pork Producers Council
North American Meat Processors Association, American Association of Meat Processors, and Southeastern Meat Association (1 combined representative for all three per organizations' request)
United Food and Commercial Workers International Union
U.S. Department of Agriculture—AMS (USDA AMS)

B. Each Committee member shall identify a principal and alternate spokesperson that will represent such member for purposes of consensus. Alternates will serve as spokesperson in the absence of the principal spokesperson. Committee members may appoint additional alternates as necessary.

C. Attendance at Meetings. Each Committee member spokesperson will make a good faith effort to attend each full negotiating session.

1. The Committee member may be accompanied by such other individuals as that member believes is appropriate to assist the member in effectively representing the member's interests. The Committee can limit the number of participants to accommodate space considerations.
 2. Only the Committee member or the alternate or USDA legal advisor will have the privilege of sitting at the negotiating table and of speaking from the floor during the negotiations without Committee approval, except any Committee member may call upon a technical advisor to elaborate on a relevant point.
- D. Representation. Committee members are participating in a representative capacity. They are expected to consult during the negotiations with their constituents, and to ensure that any agreement developed by the Committee is acceptable to their constituents.

III. Decision Making

- A. Consensus. The Committee will operate by consensus, meaning that there must be no dissent by any member in order for the Committee to be considered to have achieved consensus. Thus, no member can be outvoted. Members should not block or withhold consensus unless they have serious reservations with the approach or solution that is proposed for consensus. Absence will be equivalent to not dissenting. All consensus agreements reached during the negotiations are assumed to be tentative agreements until members of the Committee agree by consensus to make them final.
- B. Workgroups. Smaller Working Groups may be formed to address specific issues and to make recommendations to the Committee. Working Groups are open to any Committee member or the member's designee, plus such other individuals as the Committee believes would enhance the functioning of the working groups. Working groups are not authorized to make decisions for the Committee as a whole.
- C. The negotiations will be conducted under the Negotiated Rulemaking Act of 1996 (5 U.S.C. §§ 561-570).
- D. Open Meetings. Negotiating sessions will be announced in the *Federal Register* prior to the meeting and will be open to the public. Members of the public will be given opportunities at various times throughout each meeting to make comments, raise questions, or submit materials for the record. Such opportunity shall be granted only at the discretion of the Committee and shall usually come both at the end of a discussion on a subject by the full Committee or by request of a Committee member.
- E. Meeting Summary and Meeting Minutes. A meeting summary and draft minutes of the full Committee meetings, including a list of attendees and a general summary of the public comment, will be developed by the facilitators. The meeting summary and minutes will be distributed as expeditiously as possible to the Committee members for approval.
- F. Agendas. Meeting agendas will be developed by the facilitators in consultation with Committee members.

- G. Caucus. Any member may request a caucus at any time. Caucus meetings are not open to the public. The Committee members and the facilitators shall endeavor to keep the length of the caucus reasonable. The facilitators will be available to assist in caucus activities.

IV. Agreement

- A. Product of Negotiations. The intended goal of the negotiations is to develop a proposed rule for publication in the *Federal Register* that reflects a final consensus by the Committee.
- B. If the Committee reaches a final consensus on all issues, which includes proposed rule language ready for publication in the *Federal Register*, the USDA AMS will use this consensus language to the maximum extent possible consistent with the legal obligations of the Agency in its notice of proposed rulemaking. Unless otherwise agreed upon at the close of the negotiations, Committee members will refrain from commenting negatively on the consensus-based language.
- C. To the extent that the Committee does not reach a final consensus on some of the issues, the USDA AMS will draft a notice of proposed rulemaking consistent with any final agreements reached. Committee members shall retain the right to comment on those aspects of such notice of proposed rulemaking that are not based on a final consensus.

V. Safeguards for Members

- A. Good Faith. All members agree to act in good faith in all aspects of these negotiations. For these negotiations, good faith includes: (1) a willingness to bring all issues to the table; and (2) not to discuss the issues in other forums outside of these committee members and their constituencies. Good faith also includes a willingness to move away from taking adversarial positions and instead to explore openly all relevant and productive ideas that may emerge from the discussion of the Committee. Specific offers, positions, or statements made during the negotiations may not be used by other members for any purpose outside the negotiations or as a basis for future litigation. It is the intent of the Committee that other attendees of the Committee's meetings also voluntarily comply with this provision in order to support the regulatory negotiation process by encouraging the free and open exchange of ideas, views and information.
- B. Right to Withdraw. Any member may withdraw from the negotiations at any time without prejudice.
- C. Press Statements. No member will make public announcements or hold discussions with the press characterizing the position of any other member even if that member withdraws from the negotiations. Nothing in this section shall prohibit a member from characterizing their own position with the press.

VI. Facilitators

USDA-AMS has retained the services of the Federal Mediation and Conciliation Service (FMCS) to act as facilitators. It is understood that the facilitators serve at the pleasure of the Committee. The Committee members understand the role of the facilitators as outlined in Section VII.

VII. Meeting Facilitation

- A. The facilitator will serve at the discretion of the full Committee. The facilitator will be responsible for helping to ensure that the process runs smoothly, developing meeting agendas, preparing and distributing draft and final summaries, and helping parties resolve their differences and achieve consensus on the issues to be addressed by the Committee.
- B. The facilitator will be available to facilitate all Committee sessions and caucuses.
- C. Confidentiality. Anything said to the facilitator in private conversation or shared in private caucuses remains confidential, unless authorized by the members. A facilitator cannot and will not be called to testify, give deposition, or participate in any legal proceeding regarding the mediators' role or any information obtained by the facilitator in the course of performing the responsibilities as a neutral, nor will any member or their representatives request facilitator notes or written papers.