[redacted]

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AUG 29 2007

USDA, GIPSA
PACKERS & STOCKYARDS PROGRAM
DES MOINES, IOWA

August 28, 2007

Mr. Jay Johnson
Regional Supervisor
GIPSA
United States Department of Agriculture
210 Walnut Street, Suite 317
Des Moines, Iowa 50309

Dear Mr. Johnson:

This letter is written to express concern over the improper manipulation of the hog market by integrated hog producers.

These integrated hog producers are artificially inflating the reported hog market by only bidding prices to a few select producers who are similarly integrated. The prices bid to these integrated producers are considerably higher than those prices bid to non-integrated producers. The variation in these bid prices is not related to the quality of the hogs being sold.

This improper and harmful manipulation artificially inflates the weighted average and other price disclosure mechanisms reported by the USDA. Most non-integrated packers use these reported numbers to establish their pricing in purchase contracts. Therefore, this improper manipulation forces costs to be unnaturally higher resulting in a non-competitive economic environment, a chilling effect on the free-market, significant damage to non-integrated packers, and unnecessary higher prices for consumers.

As such, we are formally requesting that GIPSA investigate the hog procurement practices and market price reporting procedures of [redacted] We also request that GIPSA immediately force the cessation of these, or any other, improper and harmful practices.

If you have any questions or would like to discuss with further depth please contact me at [redacted]

Sincerely,

[redacted]

[redacted]

(b)(7)c

September 6, 2007

Mr. Jay Johnson

Dear Mr. Johnson:

This letter is written to follow up our initial letter regarding the improper manipulation of the hog market by integrated hog producers dated August 28, 2007. The purpose of this letter is to provide a general estimate of the impact of this improper behavior to our operations.

We generally estimate that (b)(4) has been negatively impacted by this improper pricing behavior by an amount in the range of (b)(4) since March 15, 2006. We also expect our research will indicate that the majority of these damages have been primarily incurred since January 1, 2007.

We are currently allocating resources to perform a thorough analysis of our procurement history to more accurately calculate the quantity of our damages. We will follow up in the future with this detailed account of our estimated damages and the methodology utilized to calculate the same.

If you have any questions or would like to discuss with further depth please contact me at (b)(7)c

Sincerely,

(b)(7)c

(b)(7)c

[redacted]

August 28, 2007

Jay Johnson
U.S. Dept of Agriculture
Packers & Stockyards Program
Federal Building
210 Walnut, Suite 317
Des Moines, IA 50309

Dear Jay:

I am writing on behalf of [redacted] to formally object to the conduct of certain pork packers and producers that are intentionally manipulating the Western Cornbelt Price.

In today's swine markets, traditional spot purchases generally make up about 10% of all slaughter hogs sold on a given day. Over 50% of hogs sold today are sold on formula-based contracts between packers and producers – the formula being based on the Negotiated Purchase Swine sold in the Western Cornbelt. It is in this way that the price of 10% of hogs sold determines the price of over 50% of hogs sold.

Since 2004, market manipulation by certain packers and producers has caused an artificial inflation of the Western Cornbelt (WCB) Negotiated Purchase Price. Originally, this was due to [redacted] practice of reporting hogs purchased from its [redacted], as Negotiated Purchases. AMS subsequently instructed [redacted] that it was to report such sales as Packer-Owned Swine or Packer-Sold Swine. This action has not resulted in the cessation of market manipulation, however.

Today, the WCB Price continues to be artificially inflated by market manipulation. We continue to see that the daily high prices reported in the Western Cornbelt are significantly above our bids. The inflation of the daily high prices inflates the entire WCB weighted average price. Upon information and belief, the high prices are set each day through sales between a small number of specific producers and a specific packer. This is accomplished through alleged "oral contracts" which apply a separate grade and yield matrix distinct from the routine grade and yield matrices applied by the majority of such contracts. Because of these "oral contracts," these sales should not be considered Negotiated Purchases.

Through this conduct, the participating companies intentionally and artificially drive the WCB Negotiated Prices higher, increasing costs to competing packers, which use these prices in their contract formulas. This artificial inflation in the prices of hogs paid by packers, in turn, harms all consumers when the affected packers are forced to pass the higher costs on and when the participating packers take advantage of these higher consumer prices.

The artificial nature of the WCB Negotiated Purchase prices is clear. In 2007, we have seen lower exports and higher hog numbers than a year ago. Neither packing capacities nor demand have materially increased. By all economic analyses, WCB Negotiated Purchase hog prices should be lower, yet these prices are significantly higher than last year.

We estimate that the inflation of the Western Cornbelt Price since 2004 caused by this conduct has resulted in an artificial increase in our hog contract costs that is at least [redacted] (b)(4) We appreciate AMS's interest in this matter and request that you conduct an investigation and take the steps necessary to end this conduct.

We are happy to cooperate in your investigation. Please do not hesitate to contact us if you have questions or would like further information.

[redacted] (b)(7)d

Cc: [redacted] (b)(7)d

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United States Department of Agriculture

Grain Inspection, Packers and Stockyards Administration

Suite 317
210 Walnut St.
Des Moines, IA 50309

December 29, 2005

To: File

From: (b)(7)c Economist
(b)(7)c Legal Specialist

Subject: Interview with (b)(7)c
(b)(7)c

Investigation #: C1I6

On Friday, December 16, 2005, the above investigators met with (b)(7)c (b)(7)c It was explained to (b)(7)c that the purpose of the meeting was to obtain additional information regarding (b)(4) previous meeting with DC officials about its concern that (b)(4) was artificially raising and lowering market prices. Also present by telephone was (b)(7)c

The essence of (b)(4) complaint is that (b)(4) s using its size and corporate structure to artificially inflate hog prices. (b)(4) also believes that (b)(4) occasionally forces the price downward to benefit its futures position. According to (b)(7)c (b)(4) began noticing an increasing frequency of 'wild swings' in the market beginning in approximately July 2004. (b)(7)c defined 'wild swings' as any prices that are $1.00 to $1.50 off of the prior day price report. (b)(7)c definition of 'wild swings' also includes substantial changes in prices occurring after (b)(4) learns what the early trend is on prices being reported for a particular day. (b)(7)c has noticed the swings occurring from July 2004 to approximately August 2005. (b)(7)c stated that since (b)(4) meeting in DC, (b)(7)c has not noticed the swings as much.

(b)(7)c stated that the first 'red flag' for (b)(7)c occurred in July 2004 at a (b)(7)c (b)(7)c (put on b (b)(7)c). (b)(7)c explained that (b)(7)c (b)(7)c as a (b)(7)c, presented a chart showing a strong positive correlation between hog prices and (b)(4) stock price. (b)(7)c recalled being surprised that (b)(4) would make this type of presentation in public.

One of the indicators of artificially inflated hog prices is a striking inconsistency between early trend reports and actual prices reported by AMS. (b)(7)c described a scenario where (b)(4) buyers would hear from producers or AMS price reporters that price trends on a certain days are downward or steady, and then the AMS published price would end up considerably higher. (b)(7)c used $2.00 higher as an example and stated that there were no apparent reasons for such an increase. (b)(7)c explained that when (b)(4) packer-owned in the AMS report.

To demonstrate that (b)(4) will occasionally push prices downward as well as upward, (b)(7)c explained a scenario that occurred on the day before the interview with P&SP investigators. The (b)(4) asking price typically starts at $2.00 over the prior day's report (IA/MN) but yesterday (12-15-05) (b)(4) inexplicably accepted a (b)(4) from (b)(4) (b)(7)c showed investigators an invoice for three loads of hogs. Industry rumors suggested (b)(4) had a 'short position on the board' and needed the market to go down before they offset their futures contracts.

When asked what affect (b)(4) pricing practices are having on (b)(4), (b)(7)c explained that it is (b)(4) & (b)(7)(C) (b)(4) & (b)(7)(C) (AMS). (b)(4) (b)(7)c brought up the industry rumor that (b)(4) is attempting to raise (b)(4) procurement costs in order to weaken (b)(4) beef operation and allow (b)(4) to take over that part of (b)(4) (b)(7)c thought that may be part of the reason for the pricing practice but did not believe that was the sole reason.

(b)(7)c was asked if (b)(4) had any documentation in support of its complaint. (b)(7)c said they usually keep handwritten notes on the unofficial daily trend information received from AMS. (b)(7)c indicated that (b)(4) may be able to go back and locate the information for investigators. (b)(7)c also showed investigators a form (b)(4) uses daily to track what bids (b)(4) is hearing from producers that (b)(4) competition is paying and the high and low prices for the day. (b)(7)c used one of the daily reports as an example of the higher prices being paid by (b)(4) in comparison with other packers and with was the price given in the unofficial AMS report for that day. In addition to this type of information, (b)(7)c indicated that (b)(4) was willing to contact some of its producers to see if the producers would talk with P&SP investigators.

(b)(7)c was asked if there was anything in the quality of the (b)(4) hogs that would justify the higher price. (b)(7)c explained that the (b)(4) hogs that (b)(4) (b)(4) but they were not any better than the top 50% of hogs going through (b)(4) from other sources. (b)(7)c did not consider the (b)(4) hogs to be 'elite' hogs. Furthermore, any differences in quality would theoretically be reflected in the premiums, not the base prices published in the AMS reports.

At the close of meeting, (b)(7)c told investigators to feel free to contact (b)(7)c with any additional questions and also advised that (b)(7)c will be in Des Moines for the (b)(7)c (b)(7)c to be held on (b)(7)c

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United States Department of Agriculture

Grain Inspection, Packers and Stockyards Administration

210 Walnut St., Room 317
Des Moines, IA 50309-2110

March 7, 2006

To: File

From: [redacted] Economist
[redacted] Legal Specialist

Subject: **Follow-up Interview with [redacted]**

On February 28, 2006, the investigative team met with [redacted] to follow up on the complaint [redacted] expressed in the December 16, 2005, meeting with [redacted]. [redacted] asked [redacted] to describe the contact they had with AMS regarding the purchase type classification of the [redacted] hogs sold to [redacted] packers. [redacted] explained that after the purchase type classification was established with mandatory price reporting, [redacted]. At the time, [redacted] questioned AMS regarding the classification of [redacted] hogs sold to [redacted] as "Negotiated Purchases." The AMS response was that because the State of Iowa considered [redacted] a company [redacted] then the [redacted] hogs were classified as negotiated purchases. More recently, [redacted] reported raising the issue on October 3, 2005, when [redacted] met with Undersecretary Chuck Connors and on October 26, 2005, with Jim Epstein, Eastern Area Supervisor for AMS.

[redacted] asked [redacted] to explain any updates or modifications to the complaint since the December 16, 2005, meeting. [redacted] explained that [redacted]. [redacted] stated that this behavior is unusual for a producer that sells open market hogs every day, to not solicit bids from all major buyers, and that it reinforces [redacted] suspicion that [redacted] is using [redacted] hogs in its strategic interest. [redacted] re-iterated public statements made by [redacted] officers claiming [redacted] benefits from high hog prices. [redacted] has instructed [redacted] to keep a log of when [redacted] employees, [redacted] contacts them to offer hogs. [redacted] stated that P&SP could have access to the log if it was necessary in the future.

[redacted] reiterated the original complaint that [redacted] is using its [redacted] to "make a market" for hogs, and that [redacted] has largely been behind the recent volatility in the market. The price volatility in the Western Cornbelt has continued. [redacted] has observed that since December, the spread between the Eastern and Western Cornbelt markets has narrowed. [redacted] primarily credited [redacted] plant for increasing its presence in Eastern Illinois and Indiana. [redacted] also said that [redacted] being classified as negotiated hogs is the primary source of [redacted] concern. [redacted] acknowledged, however, that reclassifying the (b)(4) hogs would not resolve the issue of (b)(4) collecting price information from (b)(4) competitors and forwarding the information to (b)(4) procurement officers. (b)(7)c stated that the classification of these hogs is going to be a larger issue as the (b)(4) comes on line. The consortium of owners of the (b)(4) plant is also comprised of large hog producers, such as (b)(4) (b)(7)c suggested these producers will continue selling hogs to (b)(4) plants and was unsure whether these hogs should be considered negotiated or packer owned.

(b)(7)c asked (b)(7)c to explain the large lot sizes apparent in the AMS data, and the potential impact of these large lots on the weighted average price reported that day by AMS. (b)(7)c responded that these lots typically represent a single transaction from a large producer, such as (b)(4) that sends multiple truckloads to the plant. (b)(7)c agreed that the large lots potentially carry a disproportionate influence on the weighted average price for a given day. (b)(7)c also asked (b)(7)c to address the mechanism by which (b)(4) drives the prices up or down. (b)(7)c agreed that (b)(4) can raise prices by simply bidding an artificially high price, and speculated that the sharp price drops are corrections to the price increases. (b)(7)c reiterated (b)(7)c suspicion that (b)(4) could be using higher prices to benefit their futures position, and alluded to the price drop that occurred the day after the February contract expired as support for (b)(7)c suspicion. (b)(7)c also explained that it is not unusual for hogs to sell at prices $5-$6 higher than (b)(4) break-even price. (b)(7)c added that (b)(7)c is certain that there are no plants in the industry that are that much more efficient than (b)(4) plants. (b)(7)c said there is no rational justification for a packer to pay that much for hogs.

(b)(7)c asked whether (b)(7)c believed that (b)(4) were getting a right of first refusal for (b)(4) hogs. (b)(7)c unequivocally responded that they were indeed getting a right of first refusal, and speculated that the bids obtained from (b)(4) and other (b)(4) competitors are likely forwarded to (b)(7)c (b)(7)c had no evidence, however, to support (b)(7)c assertion that the price information was being passed from (b)(4) to (b)(4) corporate officers.

(b)(7)c reiterated (b)(4) objective to maintain a presence in the cash market that is proportional to their share of slaughter in the industry. (b)(7)c questioned why (b)(4) does not move to a different pricing mechanism or become a larger player in the negotiated market. (b)(7)c responded (b)(4)

(b)(4)

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United States Department of Agriculture

Grain Inspection, Packers and Stockyards Administration

210 Walnut St., Room 317
Des Moines, IA 50309-2110

March 23, 2006

TO: **File**

FROM: [redacted], **Economist**
[redacted] **Legal Specialist**

SUBJECT: [redacted] **Meeting with** [redacted] **Representatives**

On March 17, Jay Johnson, [redacted] met with [redacted] representatives [redacted]. [redacted] began by emphasizing the sensitive nature of the meeting. [redacted] Consequently [redacted] requested that any information it provides is preceded by a formal written request by P&SP, following procedures that will not compromise the information's confidentiality. [redacted] was assured that P&SP would make every effort to keep the information confidential, but that under certain circumstances, such as litigation, certain information could be disclosed but that [redacted] would be made aware of such circumstances.

[redacted] explained [redacted] concern regarding [redacted] alleged practice of purchasing [redacted] hogs through [redacted] at inflated prices and reporting the transactions to AMS as negotiated purchases. [redacted] believes this practice has raised the hog prices reported by AMS to artificially high levels. To support the allegation, [redacted] presented a set of graphs comparing the wholesale pork cutout price to the Western Cornbelt hog prices in the four years leading up to mandatory price reporting, and the five years since mandatory price reporting was enacted. The graphs were intended to illustrate two related trends: 1) the spread between wholesale cutout and Western cornbelt hog prices has narrowed in the last two years; and 2) the frequency that hog prices exceeded the wholesale cutout increased dramatically in the last two years. [redacted] identified early April 2004 as the transition point when these trends began. [redacted] Since the April 2004 transition, however, the Western Cornbelt negotiated price averaged 95%-105% of the wholesale pork cutout. Furthermore, the time interval between April 2001 and April 2004 revealed just two days when the hog price exceeded the cutout. In the time period between April 2004 and the present, there are over 86 days where the hog price exceeded the cutout.

Observing [redacted] behavior and communication with producers led [redacted] to believe that [redacted] is using its unique relationship with [redacted] to intentionally manipulate hog prices. [redacted] explained that [redacted] (b)(7)(D) & (b)(4) On days when (b)(7)(D) & (b)(4) (b)(7)(D) & (b)(4) (b)(7)(D) & (b)(4) (b)(7)(D) & (b)(4) buyers have been documenting the (b)(7)(D) & (b)(4) asking price and (b)(7)d presented a graphical comparison of those prices to the daily high price reported by AMS. The data shows that (b)(7)(D) & (b)(4) asking prices were very close to the upper range of daily reported prices. In further support of (b)(7)(D) & (b)(4) suspicion that (b)(7)(D) & (b)(4) is artificially increasing hog prices, (b)(7)d stated that (b)(7)(D) & (b)(4) buyers frequently hear rumors of (b)(7)(D) & (b)(4) buyers and/or officers boasting that they are keeping prices high.

According to (b)(7)d quality differences do not explain the relatively high prices demanded by (b)(7)(D) & (b)(4) (b)(7)d explained that the average lean percentage of the (b)(7)(D) & (b)(4) hogs are slightly lower than the average hog processed by (b)(7)d. Furthermore, the (b)(7)d sorting is relatively poor. (b)(7)(D) & (b)(4) (b)(7)(D) & (b)(4) The primary advantage expressed by (b)(7)(D) & (b)(4) (b)(7)(D) & (b)(4)

(b)(7)d pointed to the mid February 2006 hog price patterns as an example of the market running counter to logical supply and demand fundamentals. (b)(7)(D) & (b)(4) plants, along with the other slaughter plants in the industry, were operating at a considerable loss during this time. Supplies were heavy and cutout values were sagging. A typical industry response to this situation is for the packing sector to cut back production in an attempt to boost margins. While (b)(7)(D) & (b)(4) the negotiated market during this period, (b)(7)(D) & (b)(4) increased production, even operating on Saturdays. Hog prices increased by $12 in the span of a few days, (b)(7)d contended this behavior defied economic rationale, and a run-up in hog prices at this time suggested some type of market interference. (b)(7)c questioned whether widespread losses in the packing sector was itself a sign of a market irregularity. (b)(7)d responded that industry losses without market irregularities do occur periodically. However, this circumstance was unusual in that (b)(7)(D) & (b)(4) were increasing production while everyone else was decreasing. At the same time hog prices increased substantially without a corresponding rise in cutout values.

The harm inflicted on (b)(7)(D) & (b)(4) and other competitors is that these artificially high prices are raising procurement costs. (b)(7)d stated that (b)(7)(D) & (b)(4) of hogs (b)(7)(D) & (b)(4) (b)(7)(D) & (b)(4). (b)(7)d acknowledged that reclassifying the (b)(7)d hogs from "Negotiated" to "Packer Owned" in the AMS reports will help rectify the situation. Johnson explained that P&SP had "done some heavy lifting" on this issue, but suggested it would be (b)(5) Predecisional and Deliberative (b)(5) Predecisional and Deliberative

Johnson asked (b)(7)d to discuss (b)(7)(D) & (b)(4) possible motives to artificially inflate the hog market, and whether they consider this a predatory behavior. (b)(7)d replied that they consider this a case of "raising rival's cost". (b)(7)d pointed to industry press and public comments made by (b)(7)(D) & (b)(4) expressing interest in (b)(7)(D) & (b)(4). Adding plausibility to this theory, (b)(7)d pointed to the agreement between (b)(7)(D) & (b)(4) (b)(7)(D) & (b)(4) to show that the additional proceeds generated by higher prices paid to (b)(7)(D) & (b)(4) suggesting (b)(7)(D) & (b)(4) as a whole is not as adversely impacted by higher hog prices as their major competitors. Furthermore, (b)(7)(D) & (b)(4) procurement contracts with outside producers specify a $40 floor price, consequently, (b)(7)(D) & (b)(4) buyers have reportedly heard (b)(7)(D) & (b)(4) boast that if they have to pay that price, other packers will as well. Another possible motive offered by (b)(7)(D) & (b)(4) is (b)(7)(D) & (b)(4) (b)(7)(D) & (b)(4) (b)(7)(D) & (b)(4) supplies hogs to this plant, and (b)(7)(D) & (b)(4) had long expressed interest in (b)(7)(D) & (b)(4) (b)(7)(D) & (b)(4) The contract price for between (b)(7)(D) & (b)(4) is a formula based on the Iowa/Minnesota reported price. (b)(7)d both stated that a further possible motive is retaliation for the consent agreement reached between (b)(7)(D) & (b)(4) and the state of Iowa. (b)(7)(D) & (b)(4) had incurred the resources to negotiate their agreement and did not want the concessions offered to competitors.

(b)(7)(D) & (b)(4) offered to provide any information P&SP needed to assist in this investigation. Johnson responded that initially, P&SP would limit the request to the data used to build the graphs presented in the meeting, but that in the future, P&SP may request (b)(7)(D) & (b)(4) weekly profit and (b)(5) Predecisional and Deliberative (b)(5) Predecisional and Deliberative Johnson also asked (b)(7)d to consider whether the unusual price patterns in the hog market are consistent with (b)(7)d attempting to benefit a futures position. Johnson informed (b)(7)d that P&SP had acquired futures trading data, but suggested (b)(5) Predecisional and Deliberative (b)(7)d responded that possibility had not occurred to (b)(7)d but (b)(7)d would consider it.