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(b) The legislative intent shown in subsections (a) and (b) that certain persons take free and clear of certain interests of a ''secured lender'' ''when the seller fails to repay the lender,'' unless such persons have information about such interests made available to them as provided in the Section.

§ 205.213 Obligations subject—"person indebted"—"debtor."

(a) A debt need not exist at the time of filing of an EFS. The basis for this is that subsection (c)(4) does not require the EFS, and subsection (c)(2)(C) does not require the master list, to show any amount of debt.

(b) The Section does not provide for the transaction in which one person subjects a product to a security interest for another's debt. However the terms ''person indebted'' and ''debtor'' in the Section refer to the person who owns a product and subjects it to a security interest, whether or not that person owes a debt to the secured party. The basis for this is the purpose for which the information is supplied. Any buyer of a farm product, commission merchant, or selling agent querying a master list or system operator about a prospective seller of a farm product is interested in whether that seller has subjected that product to a security interest, not in whether the debt is owed by that seller or by another.

(c) Security interests existing prior to establishment of a system can be filed in such a system and reflected in the master list if documents are in existence or are created which meet the requirements of subsection (c)(4) besides filing, if such documents are filed wherever State law requires, and if the system operator receives the information about them needed for the master list.

(d) A system can be in compliance with the Section, although it reflects security interests not supported by EFS's as defined in the legislation, and although it reflects security interests on items other than farm products. However, subsections (e) (2) and (3), and (g)(2) (C) and (D), will apply only as to entries reflecting farm products and supported by EFS's as defined in the Section, and it must be possible to distinguish the entries to which these provisions apply from the other entries.

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[51 FR 29451, Aug. 18, 1986, as amended at 71 FR 56343, Sept. 27, 2006]

§ 205.214 Litigation as to whether a system is operating in compliance with the Section.

(a) The requirements for a system in subsection (c) are written as the definition of the term ''central filing system,'' so that failure of a system to meet any such requirement, either at the time of its establishment or later, will mean that it is not a ''central filing system'' as defined.

(b) The issue whether a system, after certification, is operating in compliance, thus whether it is a ''central filing system'' as defined, could be litigated and ruled on in a case involving only private parties, such as a lender and a buyer of a farm product. The only immediate effect of a finding in such a case, that a system is not a ''central filing system'' as defined, would be that the rights of the secured party in the case would be as if the State had no system. However, others would be in doubt as to whether they could safely rely on the same system.

PART 206—SWINE CONTRACT LIBRARY

Sec.
206.1 Definitions.
206.2 Swine contract library.
206.3 Monthly report.

AUTHORITY: Sec. 941, Pub. L. 106–78, 113 Stat. 1135; 7 CFR 2.22 and 2.81.

SOURCE: 68 FR 47826, Aug. 11, 2003, unless otherwise noted.

§ 206.1 Definitions.

The definitions in this section apply to the regulations in this part. The definitions in this section do not apply to other regulations issued under the Packers and Stockyards Act (P&S Act) or to the P&S Act as a whole.

Accrual account. (Synonymous with ''ledger,'' as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of

a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

Base price. The price paid for swine before the application of any premiums or discounts, expressed in dollars per unit.

Contract. Any agreement, whether written or verbal, between a packer and a producer for the purchase of swine for slaughter, except a negotiated purchase (as defined in this section).

Contract type. The classification of contracts or risk management agreements for the purchase of swine committed to a packer, by the determination of the base price and the presence or absence of an accrual account or ledger (as defined in this section). The contract type categories are:

(1) Swine or pork market formula purchases with a ledger,

(2) Swine or pork market formula purchases without a ledger,

(3) Other market formula purchases with a ledger,

(4) Other market formula purchases without a ledger,

(5) Other purchase arrangements with a ledger, and

(6) Other purchase arrangements without a ledger.

Formula price. A price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.

Ledger. (Synonymous with ''accrual account,'' as defined in this section.) An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract.

Negotiated purchase. A purchase, commonly known as a ''cash'' or ''spot market'' purchase, of swine by a packer from a producer under which:

(1) The buyer-seller interaction that results in the transaction and the agreement on actual base price occur on the same day; and

(2) The swine are scheduled for delivery to the packer not later than 14 days after the date on which the swine are committed to the packer.

Noncarcass merit premium or discount. An increase or decrease in the price for the purchase of swine made available by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium or discount is known before the purchase and delivery of the swine.

Other market formula purchase. A purchase of swine by a packer in which the pricing determination is a formula price based on any market other than the markets for swine, pork, or a pork product. The pricing determination includes, but is not limited to:

(1) A price formula based on one or more futures or options contracts;

(2) A price formula based on one or more feedstuff markets, such as the market for corn or soybeans; or

(3) A base price determination using more than one market as its base where at least one of those markets would be defined as an ''other market formula purchase.''

Other purchase arrangement. A purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase, and does not involve packer-owned swine.

Packer. Any person engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. The regulations in this part only apply to a packer purchasing at least 100,000 swine per

year and slaughtering swine at a federally inspected swine processing plant that meets either of the following conditions:

(1) A swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years, with the average based on those periods in which the plant slaughtered swine; or

(2) Any swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years that has the capacity to slaughter at least 100,000 swine per year, based on plant capacity information.

Producer. Any person engaged, either directly or through an intermediary, in the business of selling swine to a packer for slaughter (including the sale of swine from a packer to another packer).

Swine. A porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.

Swine or pork market formula purchase. A purchase of swine by a packer in which the pricing determination is a formula price based on a market for swine, pork, or a pork product, other than a futures contract or option contract for swine, pork, or a pork product.

§ 206.2 Swine contract library.

(a) *Do I need to provide swine contract information?* Each packer, as defined in § 206.1, must provide information for each swine processing plant that it operates or at which it has swine slaughtered that has the slaughtering capacity specified in the definition of packer in § 206.1.

(b) *What existing or available contracts do I need to provide and when are they due?* Each packer must send, to the Grain Inspection, Packers and Stockyards Administration (GIPSA), an example of each contract it currently has with a producer or producers or that is currently available at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in § 206.1. This initial submission of example contracts is due to GIPSA on the first business day of the month following the determination that the plant has the slaughtering capacity specified in the definition of packer in § 206.1.

(c) *What available contracts do I need to provide and when are they due?* After the initial submission, each packer must send GIPSA an example of each new contract it makes available to a producer or producers within one business day of the contract being made available at each plant that it operates or at which it has swine slaughtered that meets the definition of packer in § 206.1.

(d) *What criteria do I use to select example contracts?* For purposes of distinguishing among contracts to determine which contracts may be represented by a single example, contracts will be considered to be the same if they are identical with respect to all of the following four example-contract criteria:

(1) Base price or determination of base price;

(2) Application of a ledger or accrual account (including the terms and conditions of the ledger or accrual account provision);

(3) Carcass merit premium and discount schedules (including the determination of the lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied); and

(4) Use and amount of noncarcass merit premiums and discounts.

(e) *Where and how do I send my contracts?* Each packer may submit the example contracts and notifications required by this section by either of the following two methods:

(1) *Electronic report*. Example contracts and notifications required by this section may be submitted by electronic means. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit example contracts electronically, contact GIPSA through the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

(2) *Printed report*. Each packer that chooses to submit printed example contracts and notifications must deliver the printed contracts and notifications

to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

(f) *What information from the swine contract library will be made available to the public?* GIPSA will summarize the information it has received on contract terms, including, but not limited to, base price determination and the schedules of premiums or discounts. GIPSA will make the information available by region and contract type as defined in § 206.1, for public release one month after the initial submission of contracts. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality in accordance with section 251 of the Agricultural Marketing Act (7 U.S.C. 1636).

(g) *How can I review information from the swine contract library?* The information will be available on the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309. The information will be updated as GIPSA receives information from packers.

(h) *What do I need to do when a previously submitted example contract is no longer a valid example due to contract changes, expiration, or withdrawal?* Each packer must submit a new example contract when contract changes result in changes to any of the four example-contract criteria specified in paragraph (d) of this section and notify GIPSA if the new example contract replaces the previously submitted example contract. Each packer must notify GIPSA when an example contract no longer represents any existing or available contract (expired or withdrawn). Each packer must submit these example contracts and notifications within one business day of the change, expiration, or withdrawal.

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§ 206.3 Monthly report.

(a) *Do I need to provide monthly reports?* Each packer, as defined in § 206.1, must provide information for each swine processing plant that it operates or at which it has swine slaughtered that has the slaughtering capacity specified in the definition of packer.

(b) *When is the monthly report due?* Each packer must send a separate monthly report for each plant that has the slaughtering capacity specified in the definition of packer in § 206.1. Each packer must deliver the report to the GIPSA Regional Office in Des Moines, IA, by the close of business on the 15th of each month, beginning at least 45 days after the initial submission of example contracts. The GIPSA Regional Office closes at 4:30 p.m. Central Time. If the 15th day of a month falls on a Saturday, Sunday, or federal holiday, the monthly report is due no later than the close of the next business day following the 15th.

(c) *What information do I need to provide in the monthly report?* The monthly report that each packer files must be reported on Form P&SP–341, which will be available on the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309. In the monthly report, each packer must provide the following information:

(1) *Number of swine to be delivered under existing contracts.* Existing contracts are contracts the packer currently is using for the purchase of swine for slaughter at each plant. Each packer must provide monthly estimates of the number of swine committed to be delivered under all of its existing contracts (even if those contracts are not currently available for renewal or to additional producers) in each contract type as defined in § 206.1.

(2) *Available contracts.* Available contracts are the contracts the packer is currently making available to producers, or is making available for renewal to currently contracted producers, for the purchase of swine for slaughter at each plant. On the monthly report, a packer will indicate each contract type, as defined in § 206.1, that the packer is currently making available.

(3) *Estimates of committed swine.* Each packer must provide an estimate of the total number of swine committed under existing contracts for delivery to each plant for slaughter within each of the following 12 calendar months beginning with the 1st of the month immediately following the due date of the

report. The estimate of total swine committed will be reported by contract type as defined in § 206.1.

(4) *Expansion clauses*. Any conditions or circumstances specified by clauses in any existing contracts that could result in an increase in the estimates specified in paragraph (c)(3) of this section. Each packer will identify the expansion clauses in the monthly report by listing a code for the following conditions:

(i) Clauses that allow for a range of the number of swine to be delivered;

(ii) Clauses that require a greater number of swine to be delivered as the contract continues;

(iii) Other clauses that provide for expansion in the numbers of swine to be delivered.

(5) *Maximum estimates of swine*. The packer's estimate of the maximum total number of swine that potentially could be delivered to each plant within each of the following 12 calendar months, if any or all of the types of expansion clauses identified in accordance with the requirement in paragraph (c)(4) of this section are executed. The estimate of maximum potential deliveries must be reported for all existing contracts by contract type as defined in § 206.1.

(d) *What if a contract does not specify the number of swine committed?* To meet the requirements of paragraphs (c)(3) and (c)(5) of this section, the packer must estimate expected and potential deliveries based on the best information available to the packer. Such information might include, for example, the producer's current and projected swine inventories and planned production.

(e) *When do I change previously reported estimates?* Regardless of any estimates for a given future month that may have been previously reported, current estimates of deliveries reported as required by paragraphs (c)(3) and (c)(5) of this section must be based on the most accurate information available at the time each report is prepared.

(f) *Where and how do I send my monthly report?* Each packer may submit monthly reports required by this section by either of the following two methods:

(1) *Electronic report*. Information reported under this section may be reported by electronic means, to the maximum extent practicable. Electronic submission may be by any form of electronic transmission that has been determined to be acceptable to the Administrator. To obtain current options for acceptable methods to submit information electronically, contact GIPSA through the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*) or at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

(2) *Printed report*. Each packer may deliver its printed monthly report to USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309.

(g) *What information from monthly reports will be made available to the public and when and how will the information be made available to the public?*—(1) *Availability*. GIPSA will provide a monthly report of estimated deliveries by contract types as reported by packers in accordance with this section, for public release on the 1st business day of each month. The monthly reports will be available on the Internet on the GIPSA Web site (*http://www.usda.gov/gipsa/*) and at USDA GIPSA, Suite 317, 210 Walnut Street, Des Moines, IA 50309, during normal business hours of 7 a.m. to 4:30 p.m. Central Time, Monday through Friday.

(2) *Regions*. Information in the report will be aggregated and reported by geographic regions. Geographic regions will be defined in such a manner to provide as much information as possible while maintaining confidentiality in accordance with section 251 of the Agricultural Marketing Act (7 U.S.C. 1636) and may be modified from time to time.

(3) *Reported information*. The monthly report will provide the following information:

(i) The existing contract types for each geographic region.

(ii) The contract types currently being made available to additional producers or available for renewal to currently contracted producers in each geographic region.

(iii) The sum of packers' reported estimates of the total number of swine committed by contract for delivery

during the next 6 and 12 months beginning with the month the report is published. The report will indicate the number of swine committed by geographic reporting region and by contract type.

(iv) The types of conditions or circumstances as reported by packers that could result in expansion in the numbers of swine to be delivered under the terms of expansion clauses in the contracts at any time during the following 12 calendar months.

(v) The sum of packers' reported estimates of the maximum total number of swine that potentially could be delivered during each of the next 6 and 12 months if all expansion clauses in current contracts are executed. The report will indicate the sum of estimated maximum potential deliveries by geographic reporting region and by contract type.

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