

Calendar No. 296

106TH CONGRESS }
1st Session }

SENATE

{ REPORT
106-168

LIVESTOCK MANDATORY REPORTING ACT

SEPTEMBER 30, 1999.—Ordered to be printed

Mr. LUGAR, from the Committee on Agriculture, Nutrition, and Forestry, submitted the following

REPORT

The Committee on Agriculture, Nutrition, and Forestry, having considered an original bill (S. 1672) to amend the Agricultural Marketing Act of 1946 to establish a program of mandatory market reporting for certain meat packers regarding prices, quantities, and terms of sale for the procurement of cattle, swine, lambs, and products of such livestock; to improve the collection of information regarding the marketing of cattle, swine, lambs, and products of such livestock; and for other purposes, reports favorably thereon and recommends that the bill do pass.

CONTENTS

	Page
I. Purpose, need, and background	1
II. Section-by-section analysis	2
III. Legislative history and votes in the committee	15
IV. Regulatory impact statement	17
V. Budgetary impact of the bill	17
VI. Changes in existing law	20

I. PURPOSE, NEED, AND BACKGROUND

Currently, packers and processors are not required to report the prices or the terms of sale for the animals they buy from producers. Rather, daily sales and price information is collected by USDA's Agricultural Marketing Service (AMS) on a voluntary basis. However, more and more animals are now being sold under private marketing arrangements where prices are not publicly disclosed.

The livestock industry, particularly in the meat packing segment, has undergone fundamental changes in recent years, both structurally and in its marketing practices. Today, four firms slaughter about 80% of all fed cattle, and four firms slaughter about 55% of

all hogs. Rather than buy on the open cash market, these and other large firms increasingly feed their own animals or utilize private marketing arrangements, such as forward contracts, formula pricing, and exclusive purchase agreements—for which prices and terms of sale are not publicly disclosed. This makes it difficult for producers, particularly smaller-sized ones and those that want to utilize open cash markets, to determine the market price. Many producers contend that they cannot obtain the data needed to quickly and easily compare bids from different packers and to negotiate the best possible price for their livestock.

All four major packers provide daily information to USDA about cash price sales and total numbers of livestock involved in transactions on a voluntary basis. Daily, USDA reports packers' prices and numbers. This information is provided to the DTN internet service and several radio news services. USDA estimates that 60–65% of cattle transactions, and 40% of hog transactions, are reported through this voluntary process. The remaining 35% of cattle transactions, and 60% of hog transactions, are involved in contract sales and non-reported cash sales.

Various groups have asked for mandatory reporting of livestock prices, arguing that meat industry consolidation, and the fewer public marketing arrangements that have resulted, make it difficult for producers to determine prevailing market prices.

Mandatory price reporting would require packers to provide to USDA all terms of their marketing contracts. The price paid under these contracts is often determined by formulae, which are usually based on futures market prices. USDA has informed the Committee that the terms of these contracts seldom change—often not for a year or more.

In developing this legislation, the Committee was aware that sensitive market information obtained by competing meat packers through mandatory price reporting could give a competitive advantage to some firms because those firms could use the information of smaller firms to offer a higher price, thus driving the smaller firms out of business. In a period of already limited slaughter capacity, this would have a devastating effect on the smaller producer in two ways. First, it could lower the price that the producer receives because of the lack of available shackle space and, second, the possible closure of slaughter facilities would force the producers to travel farther to market their animals. To avoid this potential problem, the bill requires that market information be aggregated, prior to its reporting, so that market participants cannot determine the source of any information.

II. SECTION-BY-SECTION ANALYSIS

TITLE I—LIVESTOCK MANDATORY REPORTING

Section 101. Livestock mandatory reporting. Mandatory price reporting is added to the Agricultural Marketing Act of 1946 as a new Subtitle B.

Chapter 1—Purpose and definitions

Section 211. Purpose. The purpose of this subtitle is to establish a program of information regarding the marketing of cattle, swine, lambs, and products of such livestock that: provides information that can be readily understood by market participants; improves the U.S. Department of Agriculture’s price and supply reporting services; and encourages competition in the marketplace for livestock and livestock products.

Section 212. Definitions. This section defines terms used throughout the legislation.

Section 212(8) defines “negotiated purchase” as a cash or spot market purchase by the packer from the producer under which the base price for livestock is determined by seller-buyer interaction. To be a “negotiated purchase,” the livestock must be scheduled for delivery within 14 days after the day on which the livestock are committed to the packer.

Section 212(12) defines “reporting day” as a day on which a packer conducts business regarding livestock committed to the packer, or livestock purchased, sold, or slaughtered by the packer, and the Department of Agriculture is open to conduct business. Swine and cattle slaughtered by a packer on a weekend day or holiday is to be reported by the Secretary on the next reporting day.

Chapter 2—Cattle reporting

Section 221. Definitions. This section defines terms used in the cattle portion of the legislation.

Section 221(3) defines the term “formula marketing arrangement” as the advance commitment of cattle for slaughter by any means other than through negotiated purchase or a forward contract, using a method for calculating price in which price is determined at a future date.

Section 221(4) defines the term “forward contract” as an agreement for the purchase of cattle in advance of slaughter, in which the base price is established by reference to prices quoted on the Chicago Mercantile Exchange or other comparable publicly available prices. It is intended that the term “other forward contracts” in subparagraph (B) of section 221(4) include those cash sales that would otherwise be included in the definition of “negotiated purchase” except that the cattle are scheduled for delivery to the packer later than 14 days after the date on which the cattle are committed to the packer. If these purchases are not included as forward contract purchases, they might go altogether unreported, contrary to the intent of the legislation.

Section 221(5) defines the term “packer,” for the purpose of the cattle reporting provisions of the bill, is as any person or processing plant that slaughters 125,000 cattle per year.

Section 221(8) defines the term “type of purchase” as a negotiated purchase, a formula marketing arrangement, or a forward contract.

Section 222. Subsection (a) and (b). Mandatory Reporting for Live Cattle. This section requires the Secretary of Agriculture to establish a program of live cattle price information reporting that will provide timely, accurate, and reliable market information about the marketing and slaughter of livestock. This section calls for the Sec-

retary to categorize the prices or quantities, as applicable, of the cattle purchased in the domestic market and imported cattle. Information required under this section for packer-owned cattle (cattle owned by the packer for 14 or more days before slaughter) will include quantity and carcass characteristics, but not price.

Subsection (c). Daily Reporting. The corporate officers or officially designated representatives of each packer processing plant are required to report to the Secretary at least twice daily (once not later than 10:00 a.m. Central Time and once not later than 2:00 p.m. Central Time) the following information for each cattle type: (1) Prices for cattle (per hundredweight) established on that day, categorized by type of purchase, the quantity of cattle purchased on a live weight basis, the quantity of cattle purchased on a dressed weight basis, a range of the estimated live weights of the cattle purchased, an estimate of the percentage of the cattle purchased that were of a quality grade of choice or better, and any premiums or discounts associated with weight, grade, or yield; or any type of purchase. (2) The quantity of cattle delivered to the packer (quoted in numbers of head) on that day, categorized by type of purchase, the quantity of cattle delivered on a live weight basis, the quantity of cattle delivered on a dressed weight basis; (3) The quantity of cattle committed to the packer (quoted in numbers of head) as of that day, categorized by type of purchase, the quantity of cattle committed on a live weight basis, the quantity of cattle committed on a dressed weight basis. The packer must also report the applicable terms of trade for the cattle.

Packers are required to report and, the Secretary is required to publish daily, a variety of specific information regarding the prices, quantities, and terms of trade with respect to cattle priced by, delivered to, or committed to packers. The Committee is aware that under the Agricultural Marketing Service's current cattle price reporting system, some of this same information is reported on a voluntary basis for each lot of cattle purchased by packers on a negotiated basis (spot sales). The Committee intends that information provided under this act also be reported on a lot-by-lot basis.

If the information were to be aggregated before being reported to the Secretary, a reduction in the information available to producers would result compared to the current reporting system. To avoid this result, any aggregation of the lot-by-lot information will be performed by the Secretary, in conformance with aggregation guidelines established by the Secretary.

Subsection (d). Weekly Reporting. The corporate officers or officially designated representatives of each packer processing plant are required to report to the Secretary, on the first reporting day of each week not later than 9:00 a.m. Central Time, the following information applicable to the prior reporting week (the week prior to the reporting day): (1) The quantity of cattle purchased through a forward contract that were slaughtered; the quantity of cattle delivered under a formula marketing arrangement that were slaughtered; the quantity and carcass characteristics of packer-owned cattle that were slaughtered; the quantity, basis level, and delivery month for all cattle purchased through forward contracts that were executed, and the range and average of intended premiums and discounts that will be in effect for the current reporting week (the

week in which the reporting day occurs). (2) Regarding cattle purchased through a formula marketing arrangement: the quantity, weighted average price paid for a carcass, range of premiums and discounts paid, weighted average of premiums and discounts paid, range of prices paid, aggregate weighted average price paid for a carcass, and terms of trade regarding the cattle, as applicable. The weekly reports are to be made available to the public on the first reporting day of each week not later than 10:00 a.m. Central Time.

The purpose of the weekly reports is to summarize and add to the daily data accumulated during the prior reporting week on the prices, volumes, types of purchase, types of cattle, etc., used in the industry. The Committee intends that prices established under a formula marketing arrangement on a daily basis and required under Section 222(c) be actual prices established for each lot. In the weekly report required under Section 222(d), a weighted average is required. The identity of the packer purchasing the cattle is intended to be kept confidential, and proprietary information of the packer is not to be disclosed.

Information regarding "terms of trade" is intended to be published daily and weekly by the Secretary only in a summarized fashion for each cattle type, price level, region, or other category reported to the Secretary. For example, the term of trade regarding "whether a packer provided a financing agreement or arrangement with regard to the livestock" could be published by the Secretary as simply the percentage of cattle in the applicable transactions for which such financing was provided. These publication provisions are not intended to require the publication of the specifics of a financing agreement or arrangement.

Information regarding an estimate of the range and average of premiums and discounts for the current reporting week is intended to codify and make mandatory the reporting by packers and the publication by the Secretary of information that is currently included in the report entitled the "National Carcass Premiums and Discounts for Slaughter Steers and Heifers."

The Committee encourages the Secretary to make the reporting information available in such a manner that comparisons with historical reporting data may be made.

The Secretary is to determine whether adequate data can be obtained on a regional basis for fed dairy steers and heifers, cows, and bulls based on the number of packers required to report under this section. Not later than 2 years after the date of enactment of this subtitle, the Secretary is to submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the determination of whether or not this data can be obtained on a regional basis.

Section 223. Mandatory Packer Reporting of Boxed Beef Sales. The corporate officers or officially designated representatives of each packer processing plant are required to report to the Secretary at least twice daily (not less than once before, and once after, 12:00 noon Central Time) information on total boxed beef sales. This information includes: the price for each lot of each negotiated boxed beef sale, quoted in dollars per hundredweight; the quantity for each lot of each sale, quoted by number of boxes sold;

information regarding the characteristics of each lot of each sale, such as the grade of beef, the cut of beef, and the trim specification. The Secretary is required to make this information available to the public at least twice daily.

Packers who fail to accurately report information regarding boxed beef sales, will be subject to monetary penalties or injunction. The Secretary is provided the authority in section 251(f) to take such actions necessary to verify the information reported under the bill. However, the Committee does not intend that the Secretary verify every report regarding a boxed beef sale that is made under section 223. Section 251(f) authorizes the Secretary to verify reported sales by requiring the packer to provide invoices or other information (whether paper or electronic). The Committee is hopeful that non-packer purchasers will voluntarily provide the information necessary to verify the information reported by packers, and specifically encourages such purchasers (including retail establishments) to provide the requested verifications. Section 251(f) does not provide for mandatory verification of boxed beef sales by non-packer purchasers. The Committee recognizes the importance of producers gaining a greater share of the marketing dollar through the development of branded products to meet the needs and demands of the consuming public. The Secretary currently reports generic product where there is significant competition and volume of product. The Committee expects this policy to continue and does not intend that individual branded products will be reported.

Chapter 3—Swine reporting

Section 231. Definitions. This section defines terms used specifically in the swine portion of the legislation.

Section 231(9) defines “noncarcass merit premium” for the purposes of the swine reporting provisions of the bill. Such a premium includes, but is not limited to, the timing of delivery, the number of animals included in a delivery, or the particular production method of the swine.

Section 231(10) defines “other market formula purchase” as a purchase of swine in which the pricing mechanism is a formula price based on a market other than the pork market. The term includes a purchase in which the price formula is based on a futures or options contract.

Section 231(11) defines “other purchase arrangement” as the purchase of swine by a packer that is not a negotiated purchase, swine market formula purchase, or other market formula purchase.

Section 231(12) defines “packer” for the purposes of the swine reporting provisions of the bill as any person or processing plant slaughtering 100,000 swine per year.

Section 231(21) defines “swine or pork market formula purchase” as a purchase of swine by a packer in which the pricing mechanism is a formula price based on a market for pork other than a future or option for pork, swine, or pork product.

Section 231(22) defines “type of purchase” as a negotiated purchase, other market formula purchase, a swine or pork market formula purchase, or other market arrangement.

Section 232. Mandatory Reporting for Swine. Subsections (a) and (b). This section requires the Secretary to establish a mandatory program of swine price information reporting that will provide timely, accurate, and reliable market information about the sales and slaughtering of swine. Information regarding packer-owned swine (swine owned by the packer for 14 or more days prior to slaughter) will include quantity and carcass characteristics, but not price. If information regarding the type of purchase used to procure packer-sold swine is required under this section, the information is to be reported according to the numbers and percentages of each type of purchase comprising sales of swine by packers and all other sales of swine. The Secretary will review the information required to be reported by packers under this section at least once every 2 years. If the required information no longer accurately reflects the methods by which swine are valued and priced by packers, or packers that slaughter a significant majority of the swine produced in the United States no longer use backfat or lean percentage factors as indicators of price, the Secretary is authorized, after public notice and an opportunity for comment, to promulgate regulations that specify additional information that shall be reported. However, the Secretary may not require packers to provide any new or additional information that is not generally available or maintained by packers, or would be burdensome to provide.

The Secretary is required in subsection (b)(4) to periodically review the information required to be reported regarding swine marketing and slaughter. If the Secretary determines that the required information does not reflect the actual methods by which swine are valued by packers, or the packers' backfat or lean percentage measurements, the Secretary is required, after public notice and an opportunity to comment, to promulgate regulations specifying the additional information to be required of packers regarding swine pricing methods or value indicators. This provision is intended to provide the Secretary with the authority necessary to adapt the bill's mandatory reporting scheme to reflect the value indicators and pricing methods that have evolved and are actually used by packers to price swine. The provision is not intended to empower the Secretary to prompt the adoption of new value indicators and pricing methods by packers. This provision will allow the Secretary to collect and publish information consistent with practices actually used by the swine packing industry. Finally, the provision prohibits the Secretary from requiring the reporting of additional information not otherwise required by the bill if that information is not generally available or maintained by packers.

The public comment requirements will serve to ensure that the authority of the Secretary to periodically adjust reporting requirements is used to require the reporting of additional information only when a particular carcass measurement, valuation tool, or other industry practice becomes generally accepted. Once generally accepted, information regarding the measurement, tool, or practice should be readily available from packers, and thus the new requirement will not be unduly burdensome.

Subsection (c). Daily Reporting. The corporate officers or officially designated representatives of each packer processing plant must report to the Secretary 3 times each day the packer does business.

The first packer reporting deadline is to be not later than 7:00 a.m. Central Time on each reporting day, known as the "Prior Day Report". This report will include information regarding all swine purchased, priced, or slaughtered during the prior reporting day. The prior reporting day report will include all purchase data, such as the total number of swine purchased, scheduled for delivery and the base price and purchase data for slaughtered swine for which a price has been established. This slaughter data information shall be categorized according to type of purchase used to procure the swine, the hog class, packer-owned swine, and the quantity of swine slaughtered. The Secretary is required to publish the prior day report not later than 8:00 a.m. Central Time on the reporting day on which the information is received from the packer.

The second packer reporting deadline is to be not later than 10:00 a.m. Central Time, on each reporting day and is known as the "Morning Report." This report will include information regarding, for the current reporting day: (1) the packer's best estimate of the total number of swine, and packer-owned swine, expected to be purchased through all types of purchases, (2) the total number of swine, and packer-owned swine, purchased before 10:00 a.m. Central Time through all types of purchases, (3) the base price paid for hogs purchased through negotiated purchases, and (4) the base price paid for hogs purchased through types of purchase other than negotiated purchases. The Secretary is required to publish the morning report not later than 11:00 a.m. Central Time, on each day that packers report information to the Secretary.

The third packer reporting deadline is to be not later than 2:00 p.m. Central Time, each reporting day, and is known as the "Afternoon Report." The Afternoon Report is intended to be an updated report that includes the same information as the Morning Report. The Secretary is required to publish the Afternoon Report not later than 3:00 p.m. Central Time, on each reporting day.

This section specifies times for the three specific reports of prices and other swine market data. It is important that the reports occur at several separate and consistent times so that market participants can count on receiving the information consistently. The Prior Day Report of actual data from the previous day's business must occur early enough to provide producers with comprehensive information about marketings and slaughter from the prior day, since one day's prices often reflect the prior day's transactions. Such knowledge will lead to better informed decisions throughout a given reporting day. The Morning and Afternoon Reports are spaced out during the day in order to reflect any changing market conditions. Finally, the times must be consistent in order to facilitate effective decision-making and provide a clear base price for contractual agreements.

The intent of this provision is to provide flexibility in the timing of price reporting with the understanding that the price must be reported as soon as it is known. Some pricing systems require longer chill periods or additional carcass measurements before the price for the animal is determined. It is likely that such systems will increase in number and importance in the future as new consumer needs are identified and met. This reporting system is intended to provide the flexibility for these systems to work as de-

signed, provided that the prices are reported in a timely manner once they are determined.

Subsection (d). *Weekly Reporting.* The corporate officers or officially designated representatives of each packer processing plant must report to the Secretary a noncarcass merit premium report not later than 4:00 p.m. Central Time on the first reporting day of each week. This report is to include each category of standard noncarcass merit premiums used by the packer in the previous business week, and the amount paid to producers for each category. A packer is to maintain and make available to a producer, on request, a current listing of the dollar values of each noncarcass merit premium used by the packer during the current or the previous business week. A packer will not be required to pay a listed noncarcass merit premium to a producer that meets the requirements for the premium if the need for swine in a given category is filled at a particular point in time. The Secretary is required to publish the weekly report not later than 5:00 p.m. Central Time on the first reporting day of each week.

Chapter 4—Lamb reporting

Section 241. *Mandatory Reporting for Live Lambs and Lamb Carcasses.* This section authorizes the Secretary to establish a program of mandatory lamb price information reporting that will provide timely, accurate, and reliable market information. If the Secretary establishes a mandatory price reporting program, the Secretary is to provide an opportunity for comment on proposed regulations to establish the program during the 30-day period beginning on the date of the publication of the proposed regulations.

Chapter 5—Administration

Section 251. *General Provisions.* This section requires the Secretary to make available to the public information, statistics, and documents obtained from, or submitted by, packers, retail entities, and other persons under this subtitle in a manner that ensures that confidentiality is preserved regarding the identity of persons, including parties to a contract, and ensures that proprietary business information is protected. No officer, employee, or agent of the United States may, without the consent of the packer or other person concerned, divulge or make known in any manner, any facts or information regarding the business of the packer or other person that was acquired through reporting required under this subtitle. Information obtained by the Secretary under this subtitle may be disclosed to agents or employees of the Department of Agriculture in the course of their official duties under this subtitle, as directed by the Secretary or the Attorney General for enforcement purposes, or by a court of competent jurisdiction. No facts or information obtained under this subtitle may be disclosed through the Freedom of Information Act.

The packer is to report information to the Secretary on an individual lot-by-lot basis. The Secretary is required to publish the information obtained under this subtitle on a national and on a regional or statewide basis. The Secretary is given the discretion to determine whether the aggregation guidelines are best satisfied by reporting the information on a regional or statewide basis. This dis-

cretion is necessary to carry out the prohibition against disclosing the identity of packers by geographic region.

The Secretary is authorized to make reasonable adjustments in information reported by packers to reflect price aberrations or other unusual or unique occurrences that the Secretary determines would distort the published information to the detriment of producers, packers, or other market participants. Regarding the publication of information relative to swine, the Committee expects the information to be aggregated into, and published in, at least 2 geographic regions. In addition, the Committee understands that information will not be published on a regional basis if more than 50 percent of the information is obtained from a single packer.

The Secretary is authorized in section 251(e) to adjust information collected from packers if the Secretary determines that failure to adjust would result in the skewing or distorting of the information to the detriment of producers and market participants. This provision is intended to empower the Secretary to adjust the information made available to the public by excluding altogether data that is somehow faulty, or that may be accurate but still may result in skewing or distorting of the published data due to unusual or unique circumstances or occurrences. It is the Committee's understanding that this is similar to the practice currently followed by the Agricultural Marketing Service in its voluntary price reporting program to provide market news information to the public in its most useful and reliable form. In adopting section 251(e) it is the intent of the Committee to authorize the use of a similar practice in the mandatory price reporting program for livestock and the products of livestock.

The form and frequency of verification of packer-reported information is left to the Secretary's discretion. The Committee notes that the authority of the Secretary provided by this subsection for verification of information does not require retailers to verify any information.

Purchases and slaughter of livestock by packers on weekends or holidays is to be reported by the Secretary on the next reporting day (a day the packer conducts business and the U.S. Department of Agriculture is open for business). Information accumulated by packers from purchases and slaughter on weekends and holidays need only be reported once the next reporting day.

It is not intended that these mandatory reporting provisions will modify or restrict the authority of the Secretary with regard to the Packers and Stockyards Act of 1921, as amended, the current voluntary livestock reporting program, and the authorities of the Secretary under the Federal Trade Commission Act.

Section 252. Unlawful Acts. This section states that it is a violation of law for any packer or other person subject to this subtitle to willfully: (1) fail or refuse to provide or delay the timely reporting of accurate information to the Secretary (including estimated information or intentions); (2) solicit or request that a packer, the buyer or seller of livestock or livestock products, or any other person fail to provide, as a condition of any transaction, accurate or timely information required under this subtitle; (3) fail or refuse to comply with this subtitle; or (4) report estimated information in a

manner that demonstrates a pattern of significant variance in accuracy.

The Committee intends that the Secretary interpret “willfully” as in “willfully fail * * * to provide * * * accurate information * * *” to mean that a packer must have specific knowledge that the information provided by the packer is not accurate information or that a reasonable person in the packer’s place should have known that the information provided by the packer is not accurate information. The existence of one of the two elements—specific knowledge or what a reasonable person should have known—is sufficient to satisfy the willful standard.

Section 253. Enforcement. This section establishes that any packer or other person that violates this subtitle may be assessed a civil penalty by the Secretary of not more than \$10,000 for each violation. Each day that a violation continues will be considered to be a separate violation. A cease and desist order may be issued in addition to, or in lieu of, a civil monetary penalty. In determining the amount of a civil penalty to be assessed, the Secretary should consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the ability of the person that has committed the violation to continue in business. The order of the Secretary assessing a civil penalty or issuing a cease and desist order under this section will be final unless the affected person files an appeal of the order in United States district court not later than 30 days after the date of the issuance of the order.

Section 254. Fees. This section prohibits the Secretary from charging a user fee, transaction fee, or any other type of fee for the submission or reporting of information, or for providing reports or information to the public.

It is the intent of this provision to prohibit the Secretary from imposing any new fees, charges or assessments to cover the activities prescribed by this legislation. It does not prohibit the Secretary from charging for printing and postage of market news materials in the same manner and under the same policy that was applicable at the time of adoption of this legislation.

Section 255. Recordkeeping. This section requires each packer to maintain information required under this subtitle for 2 calendar years all original contracts, agreements, receipts and other records associated with any transaction relating to the marketing and slaughter of livestock. The Secretary may not require a packer to provide new or additional information if the information is not generally available or maintained by packers, or if providing the information would be burdensome. Each packer is required to record each purchase of a lot of cattle or swine to evidence whether the purchase occurred before 10:00 a.m., between 10:00 a.m. and 2:00 p.m., or after 2:00 p.m., on the day of the purchase.

Section 256. Voluntary Reporting. This section encourages voluntary reporting by packers that are not required to comply with mandatory reporting under this subtitle.

Section 257. Publication of Information on Retail Purchase Prices for Representative Meat Products. This section requires the Secretary to compile and publish at least monthly (weekly, if practicable) price and volume information on retail prices for representative food products made from beef, pork, chicken, turkey, veal, or

lamb. To ensure the accuracy of the reports required by this section, the Secretary will obtain the information for the reports from 1 or more sources including a representative set of retail transactions, and both price and sale volumes for the transactions. The Secretary may obtain the information from retailers or commercial information sources, and use valid statistical sampling procedures. Information under this section will be collected only on a voluntary basis. A penalty will not be imposed on a person for failure to provide retail information.

The retail price report is intended to capture sales prices and volumes of meat products including fresh muscle cuts, cured products such as ham, turkey ham, and bacon, and processed products such as fresh or frozen ground beef patties, sausage, chicken breasts, or pork cutlets. It is not intended to report data on prepared meal items such as traditional TV dinners or prepared entrees such as lasagna or pork tetrazzini. However, the Committee encourages the Secretary to work with the entire meat industry to develop a system for collecting and reporting comparable price and volume information regarding the away-from-home market for meat products (e.g. quick serve hamburger sales).

Section 258. Suspension Authority Regarding Specific Terms of Price Reporting Requirements. Recognizing that meat packing is a dynamic and evolving industry, the Committee believes it is necessary to provide authority to the Secretary to suspend any requirement of this subtitle if the Secretary determines that application of one or more statutory requirements has become inconsistent with the purposes of this subtitle. The suspension period may last for up to 240 days. If new legislation has not been enacted by the end of that time, the suspended provision will be reinstated.

Section 259. Federal Preemption. In order to achieve the goals, purposes, and objectives of this title on a nationwide basis and to avoid potentially conflicting State laws that could impede the goals, purposes, or objectives of this title, this section provides that no State or political subdivision of a State may impose a requirement that is in addition to, or inconsistent with, any requirement of this subtitle with respect to the submission or reporting of information, or the publication of such information, on the prices of livestock or livestock products.

Section 102 Unjust Discrimination. This section amends section 202 of the Packers and Stockyards Act of 1921 regarding a packer unjustly disqualifying or having undue prejudice against a producer. Superfluous language is struck from section 202 of the Packers and Stockyards Act of 1921. The Committee does not intend to affect the current interpretation of the section's language. A concern has been expressed by a number of pork producers and others that some packers may unjustly disqualify some producers from eligibility for certain preferential or advantageous contracts for the purchase of swine. Packers have argued against the enactment of a separate and specific prohibition on the grounds that denying the preference or advantage represented by such a contract to a given producer is already prohibited under section 202(b).

The Committee intends that section 202(b) prohibit a packer from unjustly disqualifying a producer from being eligible for a contract for the sale of swine, if the producer otherwise meets the con-

tract's reasonable specifications. Such reasonable contract specifications could include, for example, the payment of noncarcass merit premiums to qualifying producers who deliver swine to a packer that is in need of a limited number of slaughter hogs to satisfy its slaughter operations for a particular period of operation at a particular plant. Section 202(b) allows such a packer to limit the payment of this noncarcass merit premium only to producers that supply hogs, that otherwise meet the packer's specifications, up until the time that the packer receives the specific number of hogs required.

Section 103. Conforming Amendment. This section repeals the mandatory price reporting pilot program.

The Agriculture, Rural Development, Food and Drug Appropriations Act of 1999 is amended by requiring the Secretary to implement a streamlined electronic system for collecting export sales and shipment data for fresh and frozen meat products. The Secretary is required to develop a data-reporting program to distribute a summary of this information.

TITLE II RELATED BEEF REPORTING PROVISIONS

Section 201. Beef Export Reporting. This section amends section 602(a)(1) of the Agricultural Trade Act of 1978 by adding beef to the list of agricultural commodities that are subject to a weekly commodity export report by the Secretary. With regard to these contracts, section 602(a)(1) requires the Secretary to report on the type, class, and quantity of the commodity sought to be exported, the marketing year of shipment, and the destination of the commodity.

Exporters of beef products and carcasses will be required to report to the Secretary all United States origin sales, optional origin sales (United States and other countries), and exports for the exporter's own account. The Secretary may not convert this report from a weekly to monthly basis, notwithstanding the discretionary authority provided in section 602 (a)(4) of the Agricultural Trade Act of 1978 to publish the report on a monthly basis. All beef products and unprocessed carcasses, including fresh, frozen and cooked beef and beef variety meats, are to be reported by exporters and the Secretary. Processed products that contain beef as an ingredient are not included. Exporters are required to report beef exports in metric tons, rounded to the nearest half-metric ton. The weekly reports are to include all sales and shipments of both beef and beef variety meats that occur during the marketing year, which is January 1 through December 31.

Section 202. Export Certificates for Meat and Meat Food Products. This section mandates that not later than 1 year after the date of enactment of this Act, the Secretary is to fully implement a program, through the use of a streamlined electronic online system, to issue and report export certificates for all meat and meat products.

Section 203. Imports of Beef, Beef Variety Meats, and Cattle. The Secretary is to obtain information regarding the import of beef and beef variety meats and cattle using available information sources; and publish the information weekly and in a form that maximizes the utility of the information to beef producers, packers, and other

market participants. The published information will include information reporting the year-to-date cumulative annual imports of beef, beef variety meats, and cattle for the current and prior marketing years.

TITLE III—RELATED SWINE REPORTING PROVISIONS

Section 301. Improvement of Hogs and Pigs Inventory Report. The Secretary of Agriculture will publish on a monthly basis the Hogs and Pigs Inventory Report. With this report, the Secretary will include in a separate category of the Report the number of bred female swine that are assumed, or have been confirmed, to be pregnant during the reporting period. This section requires the Secretary to maintain and publish on a quarterly basis the Hogs and Pigs Inventory Report published on or before the date of enactment of this Act for 2 years.

Section 302. Barrow and Gilt Slaughter. This section requires the Secretary of Agriculture to obtain and maintain, through an appropriate collection system or valid sampling system at packing plants, information on the total slaughter of swine that reflects differences in numbers between barrows and gilts. A weekly report shall be made available to the public. Performance of this function cannot be delegated to any packer.

Section 303. Average Trim Loss Correlation Study and Report. This section requires the Secretary of Agriculture to contract with a qualified contractor to conduct a correlation study and prepare a report that establishes a baseline and standards for determining and improving average trim loss measurements and processing techniques for pork processors to employ in the slaughter of swine. The reports required under this section will be made available to the public on the Internet and to Congress.

The Committee expects the Secretary of Agriculture to carefully monitor the award of the contract and the performance of the contractor in conducting the study. The Committee expects the Secretary to ensure that the contractor consults periodically and appropriately with the Agricultural Marketing Service, the Food Safety and Inspection Service, and the Grain Inspection, Packers and Stockyards Administration concerning their respective jurisdictions that may be affected by the study.

Section 304. Swine Packer Marketing Contracts. This section amends the Packers and Stockyards Act by adding:

Section 221. Definitions. This section defines terms used for the swine contract library.

Section 222. Swine Packer Marketing Contracts Offered to Producers. Subject to the availability of appropriations, this section requires the Secretary to establish and maintain a library in which each type of contract that is offered by packers to swine producers for the purchase and slaughter of swine is catalogued. The terms of non-carcass premiums are also to be maintained. The Secretary is to make available to swine producers and other interested persons information on the types of contracts, and to ensure the confidentiality of the swine packer and producer. It will be unlawful and a violation of this subtitle for any packer to willfully fail or refuse to provide to the Secretary accurate information required under this section.

Section 223. Report on the Secretary's Jurisdiction, Power, Duties, and Authorities. This section requires the Comptroller General to provide to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the jurisdiction, powers, duties, and authorities of the Secretary that relate to packers and other persons involved in procuring, slaughtering, or processing swine, pork, or pork products that are covered by the Packers and Stockyards Act, the Federal Trade Commission Act, and the Agricultural Marketing Act of 1946. The Comptroller General is to provide an analysis of: (1) burdens on, and obstructions to commerce in, swine, pork, and pork products created by packers, and other persons that enter into arrangements with the packers, that are contrary to the public interest; (2) noncompetitive pricing arrangements between or among packers; and (3) the adequacy of the authority of the Secretary to prevent a packer from unjustly or arbitrarily refusing to offer a producer a particular contract or type of contract for the purchase of swine.

Section 305. Authorization of appropriations. Such sums as are necessary to carry out this title to the Packers and Stockyards Act are authorized to be appropriated.

TITLE IV—IMPLEMENTATION

Section 401. Regulations. The Secretary is to publish final regulations to implement this Act and the amendments made by this Act within 180 days. Not later than 90 days after the date of enactment of this Act, the Secretary is to publish proposed regulations. An opportunity for comment on the proposed regulations will be provided for 30 days beginning on the date of the publication of the proposed regulations. Not later than 60 days after the conclusion of the comment period, the Secretary is to publish the final regulations.

Section 402. Termination of Authority. The authority provided by this Act and the amendments made by this Act terminate 5 years after the date of enactment of this Act.

III. LEGISLATIVE HISTORY AND COMMITTEE VOTES

The Senate Agriculture, Nutrition, and Forestry Committee held a full committee hearing on Wednesday, May 26, 1999. The purpose of this hearing was to address issues affecting the livestock industry, including country of origin labeling and mandatory price reporting of livestock.

George Swan, president of the National Cattlemen's Beef Association testified before the Committee, supporting the need for legislation for mandatory price reporting. Mr. Swan gave his ideas of items that should be included in the legislation, such as complete mandatory reporting of prices and terms of trade for all cattle purchased for slaughter. He added that: cattle market reports should reflect cattle purchased in the domestic and export markets; prices, volumes and terms of trade should be reported to USDA twice daily by packers; and import reporting should be consistent with export reporting. To implement the legislation, he suggested that corporate offices of all Federally inspected cattle processing plants re-

port weekly to USDA the volume, basis level, and delivery month for all cattle purchased on "basis contracts" agreed to that week.

John McNutt of the National Pork Producers Council shared the ideas that pork producers have concerning mandatory price reporting. He stated that, to bring the pork industry back to previous levels, an accurate livestock market reporting system is needed. Mr. McNutt supported legislation calling for: mandatory livestock price reporting; mandatory swine marketing contracts reporting; improved monthly retail price reporting; monthly hogs and pigs inventory reporting; and a determination of Secretary's jurisdiction in the areas of consolidation and concentration.

Frank Moore of the American Sheep Industry Association testified that mandatory price reporting in the lamb industry will secure the wholesale boxed and carcass lamb prices of imported lamb. In regard to formula or contract purchases, he stated that reporting should accommodate yield grade and weight categories. An average price reported on a live animal basis could be utilized for formula or carcass sales by a company.

Harry Pearson of the American Farm Bureau Federation testified before the committee encouraging legislation on price reporting. The Farm Bureau policy states that "packers who process more than 5% of national daily slaughter should report all cash and contract prices," and would like to see expanded reporting details on livestock imported, number of animals sold under contracts, and reporting of export sales of meat and poultry products.

Philip Klutts testified on behalf of the National Farmers Union to support legislation to require meat packers to report to USDA prices, volume, and terms of sale for all livestock transactions. The Farmers Union also supports the idea of requiring packers to submit a copy of their contracts to USDA to be made publicly available. Klutts commented that he supports the current legislation S. 19 and S. 675 which were cosponsored by several members of the Agriculture Committee.

Bruce Bass of the IBP, Inc. supported legislation for mandatory price reporting but believed it isn't a "cure-all" for the recent low prices in the livestock market. He believed that a national system of reporting is better than the confusion of state implemented legislation.

Finally, Rosemary Mucklow of the National Meat Association finished the panel to testify before the Senate Agriculture Committee. She had many concerns and questions about the effect of legislation requiring mandatory price reporting. Some of her questions included what transactions need to be reported; how would reporting affect premiums and discounts; what burdens would it create for a small or medium sized firm; and how would mandatory price reporting be enforced? Ms. Mucklow ultimately hoped that any legislation would improve the current voluntary system and provide sound market information, not simply added burden.

COMMITTEE VOTE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following statements are made concerning the votes of the Committee in its consideration of the Committee bill:

The Committee met in open session on Thursday, July 29, 1999, to mark up this bill. The bill was agreed to unanimously by voice vote.

The Committee then ordered that the bill be favorably reported by a voice vote.

IV. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the following evaluation is made concerning the regulatory impact of enacting this legislation:

A packer that slaughters cattle or swine is required by this legislation to report the number of livestock that the packer purchases and slaughters, and the price paid to the livestock producer. A processing plant of a packer that slaughters 125,000 cattle or 100,000 swine in a year must comply with the reporting requirements created by this legislation. It is estimated that nation-wide 61 cattle packers, and 54 swine packers, will be required to comply with this new reporting regime. It is possible that some packers have more than one processing plant that will be required to comply with this new reporting regime.

The reporting and records retention requirements imposed by this legislation have been crafted to provide useful information to livestock producers, yet not impose costly burdens on packers. Most of the information required to be reported is kept by packers in the normal course of business. Packers are required to keep some purchase data for two years for compliance purposes, but the Committee determined that such records retention was reasonable in order to enforce the act.

Several precautions have been taken to avoid disclosure of the identity of the packer providing the information, and to avoid disclosure of confidential business information of the packer. The Secretary of Agriculture has been provided considerable authority to ensure that such disclosures do not occur. Confidential business information of a packer is to be subject to the business secrets exception contained in the Freedom of Information Act.

V. BUDGETARY IMPACT OF THE BILL

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office regarding the budgetary impact of the bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 30, 1999.

Hon. RICHARD G. LUGAR,
Chairman, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Livestock Mandatory Reporting Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Jim Langley (for fed-

eral costs), Marjorie Miller (for state and local impact), and Keith Mattrick (for private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Livestock Mandatory Reporting Act of 1999

Summary: This bill would amend the Agricultural Marketing Act to require certain meat packers to report on their activities to the Agriculture Department (USDA). The reports would include the prices, quantities, and terms of sale for domestic cattle, swine, lambs, and the meat products of such livestock. CBO estimates that implementing this bill would cost \$30 million over the 2000–2004 period, assuming appropriation of the necessary amounts. The bill would establish new civil penalties, so pay-as-you-go procedures would apply. However, CBO estimates that any additional penalties (which are recorded in the budget as revenues) would be negligible. The bill’s provisions would be effective for five years after enactment.

This bill contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that this mandate would impose no significant costs on state, local, or tribal governments. The legislation also would impose private-sector mandates, but CBO estimates that the direct costs of those mandates would not exceed the annual threshold established in UMRA (\$100 million in 1996, adjusted annually for inflation).

Estimated cost to the Federal Government: For the purposes of this estimate, CBO assumes that amounts necessary to administer this program will be appropriated for each fiscal year. The estimated budgetary impact of the bill is shown in the following table. The costs of this legislation fall within budget function 350 (agriculture).

	By fiscal year in millions of dollars—					
	1999	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION						
Baseline spending under current law:						
Estimated authorization level ¹	9	9	10	10	10	10
Estimated outlays	8	9	9	10	10	10
Proposed changes:						
Estimated authorization level ¹	0	6	6	7	7	7
Estimated outlays	0	3	6	7	7	7
Spending under the bill:						
Estimated authorization level ¹	9	15	16	17	17	17
Estimated outlays	8	12	15	17	17	17

¹The 1999 level is the amount appropriated for livestock meat, and grain marketing services of the Agricultural Marketing Service. The estimated authorization on levels for 2000 through 2004 reflect CBO baseline estimates, assuming adjustments for anticipated inflation.

Basis of estimate: The bill would significantly expand the volume and scope of marketing information about livestock that is collected and published by USDA. Based on information from USDA, CBO estimates that implementing the bill would require additional ap-

appropriations of \$6 million in both 2000 and 2001, and about \$7 million annually over the 2002–2004 period.

The bill would require more standardized collection and reporting of information from the meat processing industry regarding the marketing of cattle, swine, lambs, and the meat products of such livestock than is currently required. Livestock processors would have to report detailed information regarding prices and quantities of various categories of livestock twice a day, which USDA would be required to make available to the public three times a day. Certain other information would be collected and disseminated weekly. The bill also would require USDA to issue export certificates for all meat and meat food products, and to compile and report on the amounts of beef, variety meats, and cattle that are imported.

The market news service of USDA's Agricultural Marketing Service (AMS) employs 70 livestock news reporters stationed around the country servicing 670 local livestock markets. The bill would require USDA to expand coverage to about 2,000 local markets. Based on information from AMS, CBO estimates that the expanded duties of USDA would require an additional 82 livestock news reporters, and associated automated data processing equipment. We estimate that the expanded livestock reporting required by the bill would increase USDA's costs by \$30 million over the program's five-year authorization period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Because the bill would establish civil penalties for noncompliance with reporting requirements, it could lead to additional revenues. However, CBO estimates that any additional collections from such penalties would be negligible.

Estimated impact on State, local, and tribal governments: The bill would prohibit state and local governments from imposing additional or conflicting requirements regarding livestock price reporting. This preemption of state and local law would be a mandate as defined in UMRA. CBO estimates, however, that this mandate would impose no significant costs on state or local governments. The bill would have no other impact on the budgets of state, local, or tribal governments.

Estimated impact on the private sector: The bill would impose new private-sector mandates on certain firms that pack and process beef and pork, who would be subject to new requirements for reporting prices. Based on information provided by industry sources, CBO expects that the costs of the mandates would fall well below the threshold established in UMRA (\$100 million in 1996, adjusted annually for inflation). Among the burdens that would be imposed is a pricing report required twice daily from packing firms that have slaughtered an average of 125,000 cattle or 100,000 swine in the past five years. The bill also would require those firms to submit weekly reports incorporating data on specialized contracts and merit premiums. Packing firms would be required to maintain original contracts and other records verifying the accuracy of their periodic reports. Many packers currently participate in a voluntary reporting system operated by the Department of Agriculture. A number of states already require reports, but there are

significant differences between the programs of different states, which has led some packers to push for a uniform national standard for reporting. Industry experts indicate that the new mandatory program would particularly burden small and medium-size firms, who may not have the necessary systems in place to fulfill the bill's reporting requirements. The costs of the private-sector mandates in this bill could exceed \$5 million annually for beef and swine packers to pay for the increased staffing costs to comply with new requirements. The bill would also authorize the Secretary of Agriculture to establish a similar reporting program for lamb sales, which could impose similar requirements on lamb packers if such a program were instituted. The cost of such requirements to the industry would fall well below UMRA's threshold for private-sector mandates.

Estimate prepared by: Federal costs: Jim Langley; Impact on State, local, and tribal governments: Marjorie Miller; Impact on the private sector: Keith Mattrick.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made in the bill, as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

AGRICULTURAL MARKETING ACT OF 1946

TITLE II

This title may be cited as the "Agricultural Marketing Act of 1946".

* * * * *

Subtitle A—General Provisions

SEC. 208. The Secretary of Agriculture shall have the power to appoint, remove, and fix, in accordance with existing law, the compensation of such officers and employees, and to make such expenditures as he deems necessary, including expenditures for rent outside the District of Columbia, travel, supplies, books, equipment, and such other expenditures as may be necessary to the administration of this title: Provided, That the Secretary of Agriculture may appoint and fix the compensation of any technically qualified person, firm, or organization by contract or otherwise on a temporary basis and for a term not to exceed six months in any fiscal year to perform research, inspection, classification, technical, or other special services, without regard to the civil-service laws or the Classification Act of 1923, as amended.

Subtitle B—Livestock Mandatory Reporting

CHAPTER 1—PURPOSE; DEFINITIONS

SEC. 211. PURPOSE.

The purpose of this subtitle is to establish a program of information regarding the marketing of cattle, swine, lambs, and products of such livestock that—

(1) provides information that can be readily understood by producers, packers, and other market participants, including information with respect to the pricing, contracting for purchase, and supply and demand conditions for livestock, livestock production, and livestock products;

(2) improves the price and supply reporting services of the Department of Agriculture; and

(3) encourages competition in the marketplace for livestock and livestock products.

SEC. 212. DEFINITIONS.

In this subtitle:

(1) BASE PRICE.—The term “base price” means the price paid for livestock, delivered at the packing plant, before application of any premiums or discounts, expressed in dollars per hundred pounds of carcass weight.

(2) BASIS LEVEL.—The term “basis level” means the agreed-on adjustment to a future price to establish the final price paid for livestock.

(3) CURRENT SLAUGHTER WEEK.—The term “current slaughter week” means the period beginning Monday, and ending Sunday, of the week in which a reporting day occurs.

(4) F.O.B.—The term “F.O.B.” means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer.

(5) LIVESTOCK.—The term “livestock” means cattle, swine, and lambs.

(6) LOT.—The term “lot” means a group of 1 or more livestock that is identified for the purpose of a single transaction between a buyer and a seller.

(7) MARKETING.—The term “marketing” means the sale or other disposition of livestock, livestock products, or meat or meat food products in commerce.

(8) NEGOTIATED PURCHASE.—The term “negotiated purchase” means a cash or spot market purchase by a packer of livestock from a producer under which—

(A) the base price for the livestock is determined by seller-buyer interaction and agreement on a day; and

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

(9) NEGOTIATED SALE.—The term “negotiated sale” means a cash or spot market sale by a producer of livestock to a packer under which—

(A) the base price for the livestock is determined by seller-buyer interaction and agreement on a day; and

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

(10) *PRIOR SLAUGHTER WEEK.*—The term “prior slaughter week” means the Monday through Sunday prior to a reporting day.

(11) *PRODUCER.*—The term “producer” means any person engaged in the business of selling livestock to a packer for slaughter (including the sale of livestock from a packer to another packer).

(12) *REPORTING DAY.*—The term “reporting day” means a day on which—

(A) a packer conducts business regarding livestock committed to the packer, or livestock purchased, sold, or slaughtered by the packer;

(B) the Secretary is required to make information concerning the business described in subparagraph (A) available to the public; and

(C) the Department of Agriculture is open to conduct business.

(13) *SECRETARY.*—The term “Secretary” means the Secretary of Agriculture.

(14) *STATE.*—The term “State” means each of the 50 States.

CHAPTER 2—CATTLE REPORTING

SEC. 221. DEFINITIONS.

In this chapter:

(1) *CATTLE COMMITTED.*—The term “cattle committed” means cattle that are scheduled to be delivered to a packer within the 7-day period beginning on the date of an agreement to sell the cattle.

(2) *CATTLE TYPE.*—The term “cattle type” means the following types of cattle purchased for slaughter:

(A) Fed steers.

(B) Fed heifers.

(C) Fed Holsteins and other fed dairy steers and heifers.

(D) Cows.

(E) Bulls.

(3) *FORMULA MARKETING ARRANGEMENT.*—The term “formula marketing arrangement” means the advance commitment of cattle for slaughter by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

(4) *FORWARD CONTRACT.*—The term “forward contract” means—

(A) an agreement for the purchase of cattle, executed in advance of slaughter, under which the base price is established by reference to—

(i) prices quoted on the Chicago Mercantile Exchange; or

(ii) other comparable publicly available prices; or

(B) such other forward contract as the Secretary determines to be applicable.

(5) **PACKER.**—The term “packer” means any person engaged in the business of buying cattle in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from cattle for sale or shipment in commerce, or of marketing meats or meat food products from cattle in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce, except that—

(A) the term includes only a cattle processing plant that is federally inspected;

(B) for any calendar year, the term includes only a cattle processing plant that slaughtered an average of at least 125,000 head of cattle per year during the immediately preceding 5 calendar years; and

(C) in the case of a cattle processing plant that did not slaughter cattle during the immediately preceding 5 calendar years, the Secretary shall consider the plant capacity of the processing plant in determining whether the processing plant should be considered a packer under this chapter.

(6) **PACKER-OWNED CATTLE.**—The term “packer-owned cattle” means cattle that a packer owns for at least 14 days immediately before slaughter.

(7) **TERMS OF TRADE.**—The term “terms of trade” includes, with respect to the purchase of cattle for slaughter—

(A) whether a packer provided any financing agreement or arrangement with regard to the cattle;

(B) whether the delivery terms specified the location of the producer or the location of the packer’s plant;

(C) whether the producer is able to unilaterally specify the date and time during the business day of the packer that the cattle are to be delivered for slaughter; and

(D) the percentage of cattle purchased by a packer as a negotiated purchase that are delivered to the plant for slaughter more than 7 days, but fewer than 14 days, after the earlier of—

(i) the date on which the cattle were committed to the packer; or

(ii) the date on which the cattle were purchased by the packer.

(8) **TYPE OF PURCHASE.**—The term “type of purchase”, with respect to cattle, means—

(A) a negotiated purchase;

(B) a formula market arrangement; and

(C) a forward contract.

SEC. 222. MANDATORY REPORTING FOR LIVE CATTLE.

(a) **ESTABLISHMENT.**—The Secretary shall establish a program of live cattle price information reporting that will—

(1) provide timely, accurate, and reliable market information;

(2) facilitate more informed marketing decisions; and

(3) promote competition in the cattle slaughtering industry.

(b) **GENERAL REPORTING PROVISIONS APPLICABLE TO PACKERS AND THE SECRETARY.**—

(1) **IN GENERAL.**—Whenever the prices or quantities of cattle are required to be reported or published under this section, the

prices or quantities shall be categorized so as to clearly delineate—

(A) the prices or quantities, as applicable, of the cattle purchased in the domestic market; and

(B) the prices or quantities, as applicable, of imported cattle.

(2) *PACKER-OWNED CATTLE.*—Information required under this section for packer-owned cattle shall include quantity and carcass characteristics, but not price.

(c) *DAILY REPORTING.*—

(1) *IN GENERAL.*—The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least twice each reporting day (including once not later than 10:00 a.m. Central Time and once not later than 2:00 p.m. Central Time) the following information for each cattle type:

(A) The prices for cattle (per hundredweight) established on that day, categorized by—

(i) type of purchase;

(ii) the quantity of cattle purchased on a live weight basis;

(iii) the quantity of cattle purchased on a dressed weight basis;

(iv) a range of the estimated live weights of the cattle purchased;

(v) an estimate of the percentage of the cattle purchased that were of a quality grade of choice or better; and

(vi) any premiums or discounts associated with—

(I) weight, grade, or yield; or

(II) any type of purchase.

(B) The quantity of cattle delivered to the packer (quoted in numbers of head) on that day, categorized by—

(i) type of purchase;

(ii) the quantity of cattle delivered on a live weight basis; and

(iii) the quantity of cattle delivered on a dressed weight basis.

(C) The quantity of cattle committed to the packer (quoted in numbers of head) as of that day, categorized by—

(i) type of purchase;

(ii) the quantity of cattle committed on a live weight basis; and

(iii) the quantity of cattle committed on a dressed weight basis.

(D) The terms of trade regarding the cattle, as applicable.

(2) *PUBLICATION.*—The Secretary shall make the information available to the public not less frequently than 3 times each reporting day.

(d) *WEEKLY REPORTING.*—

(1) *IN GENERAL.*—The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary, on the first reporting day of each week,

not later than 9:00 a.m. Central Time, the following information applicable to the prior slaughter week:

(A) The quantity of cattle purchased through a forward contract that were slaughtered.

(B) The quantity of cattle delivered under a formula marketing arrangement that were slaughtered.

(C) The quantity and carcass characteristics of packer-owned cattle that were slaughtered.

(D) The quantity, basis level, and delivery month for all cattle purchased through forward contracts that were agreed to by the parties.

(E) The range and average of intended premiums and discounts that are expected to be in effect for the current slaughter week.

(2) **FORMULA PURCHASES.**—The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary, on the first reporting day of each week, not later than 9:00 a.m. Central Time, the following information for cattle purchased through a formula marketing arrangement and slaughtered during the prior slaughter week:

(A) The quantity (quoted in both numbers of head and hundredweights) of cattle.

(B) The weighted average price paid for a carcass, including applicable premiums and discounts.

(C) The range of premiums and discounts paid.

(D) The weighted average of premiums and discounts paid.

(E) The range of prices paid.

(F) The aggregate weighted average price paid for a carcass.

(G) The terms of trade regarding the cattle, as applicable.

(3) **PUBLICATION.**—The Secretary shall make available to the public the information obtained under paragraphs (1) and (2) on the first reporting day of the current slaughter week, not later than 10:00 a.m. Central Time.

(e) **REGIONAL REPORTING OF CATTLE TYPES.**—

(1) **IN GENERAL.**—The Secretary shall determine whether adequate data can be obtained on a regional basis for fed Holsteins and other fed dairy steers and heifers, cows, and bulls based on the number of packers required to report under this section.

(2) **REPORT.**—Not later than 2 years after the date of enactment of this subtitle, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the determination of the Secretary under paragraph (1).

SEC. 223. MANDATORY PACKER REPORTING OF BOXED BEEF SALES. 6

(a) **DAILY REPORTING.**—The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least twice each reporting day (not less than once before, and once after, 12:00 noon Central Time) information on total boxed beef sales, including—

(1) the price for each lot of each negotiated boxed beef sale (determined by seller-buyer interaction and agreement), quoted in dollars per hundredweight (on a F.O.B. plant basis);

(2) the quantity for each lot of each sale, quoted by number of boxes sold; and

(3) information regarding the characteristics of each lot of each sale, including—

(A) the grade of beef (USDA Choice or better, USDA Select, or ungraded no-roll product);

(B) the cut of beef; and

(C) the trim specification.

(b) PUBLICATION.—The Secretary shall make available to the public the information required to be reported under subsection (a) not less frequently than twice each reporting day.

CHAPTER 3—SWINE REPORTING

SEC. 231. DEFINITIONS.

In this chapter:

(1) AFFILIATE.—The term “affiliate”, with respect to a packer, means—

(A) a person that directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of the packer;

(B) a person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the packer; and

(C) a person that directly or indirectly controls, or is controlled by or under common control with, the packer.

(2) APPLICABLE REPORTING PERIOD.—The term “applicable reporting period” means the period of time prescribed by the prior day report, the morning report, and the afternoon report, as required under section 232(c).

(3) BARROW.—The term “barrow” means a neutered male swine.

(4) BASE MARKET HOG.—The term “base market hog” means a hog for which no discounts are subtracted from and no premiums are added to the base price.

(5) BRED FEMALE SWINE.—The term “bred female swine” means any female swine, whether a sow or gilt, that has been mated or inseminated and is assumed, or has been confirmed, to be pregnant.

(6) FORMULA PRICE.—The term “formula price” means a price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.

(7) GILT.—The term “gilt” means a young female swine that has not produced a litter.

(8) HOG CLASS.—The term “hog class” means, as applicable—

(A) barrows or gilts;

(B) sows; or

(C) boars or stags.

(9) NONCARCASS MERIT PREMIUM.—The term “noncarcass merit premium” means an increase in the base price of the swine offered 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 is known before the sale and delivery of the swine.

(10) *Other market formula purchase.*—

(A) *IN GENERAL.*—The term “other market formula purchase” means a purchase of swine by a packer in which the pricing mechanism is a formula price based on any market other than the market for swine, pork, or a pork product.

(B) *INCLUSION.*—The term “other market formula purchase” includes a formula purchase in a case in which the price formula is based on 1 or more futures or options contracts.

(11) *OTHER PURCHASE ARRANGEMENT.*—The term “other purchase arrangement” means a purchase of swine by a packer that—

(A) is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase; and

(B) does not involve packer-owned swine.

(12) *PACKER.*—The term “packer” means 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, except that—

(A) the term includes only a swine processing plant that is federally inspected;

(B) for any calendar year, the term includes only a swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years; and

(C) in the case of a swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years, the Secretary shall consider the plant capacity of the processing plant in determining whether the processing plant should be considered a packer under this chapter.

(13) *PACKER-OWNED SWINE.*—The term “packer-owned swine” means swine that a packer (including a subsidiary or affiliate of the packer) owns for at least 14 days immediately before slaughter.

(14) *PACKER-SOLD SWINE.*—The term “packer-sold swine” means the swine that are—

(A) owned by a packer (including a subsidiary or affiliate of the packer) for more than 14 days immediately before sale for slaughter; and

(B) sold for slaughter to another packer.

(15) *PORK.*—The term “pork” means the meat of a porcine animal.

(16) *PORK PRODUCT.*—The term “pork product” means a product or byproduct produced or processed in whole or in part from pork.

(17) *PURCHASE DATA.*—The term “purchase data” means all of the applicable data, including weight (if purchased live), for all

swine purchased during the applicable reporting period, regardless of the expected delivery date of the swine, reported by—

- (A) hog class;
- (B) type of purchase; and
- (C) packer-owned swine.

(18) **SLAUGHTER DATA.**—The term “slaughter data” means all of the applicable data for all swine slaughtered by a packer during the applicable reporting period, regardless of when the price of the swine was negotiated or otherwise determined, reported by—

- (A) hog class;
- (B) type of purchase; and
- (C) packer-owned swine.

(19) **SOW.**—The term “sow” means an adult female swine that has produced 1 or more litters.

(20) **SWINE.**—The term “swine” means a porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.

(21) **SWINE OR PORK MARKET FORMULA PURCHASE.**—The term “swine or pork market formula purchase” means a purchase of swine by a packer in which the pricing mechanism is a formula price based on a market for swine, pork, or a pork product, other than a future or option for swine, pork, or a pork product.

(22) **TYPE OF PURCHASE.**—The term “type of purchase”, with respect to swine, means—

- (A) a negotiated purchase;
- (B) other market formula purchase;
- (C) a swine or pork market formula purchase; and
- (D) other purchase arrangement.

SEC. 232. MANDATORY REPORTING FOR SWINE.

(a) **ESTABLISHMENT.**—The Secretary shall establish a program of swine price information reporting that will—

- (1) provide timely, accurate, and reliable market information;
- (2) facilitate more informed marketing decisions; and
- (3) promote competition in the swine slaughtering industry.

(b) **GENERAL REPORTING PROVISIONS APPLICABLE TO PACKERS AND THE SECRETARY.**—

(1) **IN GENERAL.**—The Secretary shall establish and implement a price reporting program in accordance with this section that includes the reporting and publication of information required under this section.

(2) **PACKER-OWNED SWINE.**—Information required under this section for packer-owned swine shall include quantity and carcass characteristics, but not price.

(3) **PACKER-SOLD SWINE.**—If information regarding the type of purchase is required under this section, the information shall be reported according to the numbers and percentages of each type of purchase comprising—

- (A) packer-sold swine; and
- (B) all other swine.

(4) **ADDITIONAL INFORMATION.**—

(A) **REVIEW.**—The Secretary shall review the information required to be reported by packers under this section at least once every 2 years.

(B) *OUTDATED INFORMATION.*—After public notice and an opportunity for comment, subject to subparagraph (C), the Secretary shall promulgate regulations that specify additional information that shall be reported under this section if the Secretary determines under the review under subparagraph (A) that—

(i) information that is currently required no longer accurately reflects the methods by which swine are valued and priced by packers; or

(ii) packers that slaughter a significant majority of the swine produced in the United States no longer use backfat or lean percentage factors as indicators of price.

(C) *LIMITATION.*—Under subparagraph (B), the Secretary may not require packers to provide any new or additional information that—

(i) is not generally available or maintained by packers; or

(ii) would be otherwise unduly burdensome to provide.

(c) *DAILY REPORTING.*—

(1) *PRIOR DAY REPORT.*—

(A) *IN GENERAL.*—The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary, for each business day of the packer, such information as the Secretary determines necessary and appropriate to—

(i) comply with the publication requirements of this section; and

(ii) provide for the timely access to the information by producers, packers, and other market participants.

(B) *REPORTING DEADLINE AND PLANTS REQUIRED TO REPORT.*—Not later than 7:00 a.m. Central Time on each reporting day, a packer required to report under subparagraph (A) shall report information regarding all swine purchased, priced, or slaughtered during the prior business day of the packer.

(C) *INFORMATION REQUIRED.*—The information from the prior business day of a packer required under this paragraph shall include—

(i) all purchase data, including—

(I) the total number of—

(aa) swine purchased; and

(bb) swine scheduled for delivery; and

(II) the base price and purchase data for slaughtered swine for which a price has been established;

(ii) all slaughter data for the total number of swine slaughtered, including—

(I) information concerning the net price, which shall be equal to the total amount paid by a packer to a producer (including all premiums, less all discounts) per hundred pounds of carcass weight of swine delivered at the plant—

(aa) including any sum deducted from the price per hundredweight paid to a producer that reflects the repayment of a balance owed by the producer to the packer or the accumulation of a balance to later be repaid by the packer to the producer; and

(bb) excluding any sum earlier paid to a producer that must later be repaid to the packer;

(II) information concerning the average net price, which shall be equal to the quotient (stated per hundred pounds of carcass weight of swine) obtained by dividing—

(aa) the total amount paid for the swine slaughtered at a packing plant during the applicable reporting period, including all premiums and discounts, and including any sum deducted from the price per hundredweight paid to a producer that reflects the repayment of a balance owed by the producer to the packer, or the accumulation of a balance to later be repaid by the packer to the producer, less all discounts; by

(bb) the total carcass weight (in hundred pound increments) of the swine;

(III) information concerning the lowest net price, which shall be equal to the lowest net price paid for a single lot or a group of swine slaughtered at a packing plant during the applicable reporting period per hundred pounds of carcass weight of swine;

(IV) information concerning the highest net price, which shall be equal to the highest net price paid for a single lot or group of swine slaughtered at a packing plant during the applicable reporting period per hundred pounds of carcass weight of swine;

(V) the average carcass weight, which shall be equal to the quotient obtained by dividing—

(aa) the total carcass weight of the swine slaughtered at the packing plant during the applicable reporting period; by

(bb) the number of the swine described in item (aa);

adjusted for special slaughter situations (such as skinning or foot removal), as the Secretary determines necessary to render comparable carcass weights;

(VI) the average sort loss, which shall be equal to the average discount (in dollars per hundred pounds carcass weight) for swine slaughtered during the applicable reporting period, resulting from the fact that the swine did not fall within the indi-

vidual packer's established carcass weight or lot variation range;

(VII) the average backfat, which shall be equal to the average of the backfat thickness (in inches) measured between the third and fourth from the last ribs, 7 centimeters from the carcass split (or adjusted from the individual packer's measurement to that reference point using an adjustment made by the Secretary) of the swine slaughtered during the applicable reporting period;

(VIII) the average lean percentage, which shall be equal to the average percentage of the carcass weight comprised of lean meat for the swine slaughtered during the applicable reporting period, except that when a packer is required to report the average lean percentage under this subclause, the packer shall make available to the Secretary the underlying data, applicable methodology and formulae, and supporting materials used to determine the average lean percentage, which the Secretary may convert to the carcass measurements or lean percentage of the swine of the individual packer to correlate to a common percent lean measurement; and

(IX) the total slaughter quantity, which shall be equal to the total number of swine slaughtered during the applicable reporting period, including all types of purchases and packer-owned swine; and

(iii) packer purchase commitments, which shall be equal to the number of swine scheduled for delivery to a packer for slaughter for each of the next 14 calendar days.

(D) PUBLICATION.—The Secretary shall publish the information obtained under this paragraph in a prior day report not later than 8:00 a.m. Central Time on the reporting day on which the information is received from the packer.

(2) MORNING REPORT.—

(A) IN GENERAL.—The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary not later than 10:00 a.m. Central Time each reporting day—

(i) the packer's best estimate of the total number of swine, and packer-owned swine, expected to be purchased throughout the reporting day through each type of purchase;

(ii) the total number of swine, and packer-owned swine, purchased up to that time of the reporting day through each type of purchase;

(iii) the base price paid for all base market hogs purchased up to that time of the reporting day through negotiated purchases; and

(iv) the base price paid for all base market hogs purchased through each type of purchase other than nego-

tiated purchase up to that time of the reporting day, unless such information is unavailable due to pricing that is determined on a delayed basis.

(B) PUBLICATION.—The Secretary shall publish the information obtained under this paragraph in the morning report as soon as practicable, but not later than 11:00 a.m. Central Time, on each reporting day.

(3) AFTERNOON REPORT.—

(A) IN GENERAL.—The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary not later than 2:00 p.m. Central Time each reporting day—

(i) the packer's best estimate of the total number of swine, and packer-owned swine, expected to be purchased throughout the reporting day through each type of purchase;

(ii) the total number of swine, and packer-owned swine, purchased up to that time of the reporting day through each type of purchase;

(iii) the base price paid for all base market hogs purchased up to that time of the reporting day, through negotiated purchases; and

(iv) the base price paid for all base market hogs purchased up to that time of the reporting day through each type of purchase other than negotiated purchase, unless such information is unavailable due to pricing that is determined on a delayed basis.

(B) PUBLICATION.—The Secretary shall publish the information obtained under this paragraph in the afternoon report as soon as practicable, but not later than 3:00 p.m. Central Time, on each reporting day.

(d) WEEKLY NONCARCASS MERIT PREMIUM REPORT.—

(1) IN GENERAL.—Not later than 4:00 p.m. Central Time on the first reporting day of each week, the corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary a noncarcass merit premium report that lists—

(A) each category of standard noncarcass merit premiums used by the packer in the prior slaughter week; and

(B) the amount (in dollars per hundred pounds of carcass weight) paid to producers by the packer, by category.

(2) PREMIUM LIST.—A packer shall maintain and make available to a producer, on request, a current listing of the dollar values (per hundred pounds of carcass weight) of each noncarcass merit premium used by the packer during the current or the prior slaughter week.

(3) AVAILABILITY.—A packer shall not be required to pay a listed noncarcass merit premium to a producer that meets the requirements for the premium if the need for swine in a given category is filled at a particular point in time.

(4) PUBLICATION.—The Secretary shall publish the information obtained under this subsection as soon as practicable, but not later than 5:00 p.m. Central Time, on the first reporting day of each week.

CHAPTER 4—LAMB REPORTING

SEC. 241. MANDATORY REPORTING FOR LAMBS.

(a) *ESTABLISHMENT.*—The Secretary may establish a program of mandatory lamb price information reporting that will—

- (1) provide timely, accurate, and reliable market information;
- (2) facilitate more informed marketing decisions; and
- (3) promote competition in the lamb slaughtering industry.

(b) *NOTICE AND COMMENT.*—If the Secretary establishes a mandatory price reporting program under subsection (a), the Secretary shall provide an opportunity for comment on proposed regulations to establish the program during the 30-day period beginning on the date of the publication of the proposed regulations.

CHAPTER 5—ADMINISTRATION

SEC. 251. GENERAL PROVISIONS.

(a) *CONFIDENTIALITY.*—The Secretary shall make available to the public information, statistics, and documents obtained from, or submitted by, packers, retail entities, and other persons under this subtitle in a manner that ensures that confidentiality is preserved regarding—

- (1) the identity of persons, including parties to a contract; and
- (2) proprietary business information.

(b) *DISCLOSURE BY FEDERAL GOVERNMENT EMPLOYEES.*—

(1) *IN GENERAL.*—Subject to paragraph (2), no officer, employee, or agent of the United States shall, without the consent of the packer or other person concerned, divulge or make known in any manner, any facts or information regarding the business of the packer or other person that was acquired through reporting required under this subtitle.

(2) *EXCEPTIONS.*—Information obtained by the Secretary under this subtitle may be disclosed—

(A) to agents or employees of the Department of Agriculture in the course of their official duties under this subtitle;

(B) as directed by the Secretary or the Attorney General, for enforcement purposes; or

(C) by a court of competent jurisdiction.

(3) *DISCLOSURE UNDER FREEDOM OF INFORMATION ACT.*—Notwithstanding any other provision of law, no facts or information obtained under this subtitle shall be disclosed in accordance with section 552 of title 5, United States Code.

(c) *REPORTING BY PACKERS.*—A packer shall report all information required under this subtitle on an individual lot basis.

(d) *REGIONAL REPORTING AND AGGREGATION.*—The Secretary shall make information obtained under this subtitle available to the public only in a manner that—

(1) ensures that the information is published on a national and a regional or statewide basis as the Secretary determines to be appropriate;

(2) ensures that the identity of a reporting person is not disclosed; and

(3) conforms to aggregation guidelines established by the Secretary.

(e) *ADJUSTMENTS.*—Prior to the publication of any information required under this subtitle, the Secretary may make reasonable adjustments in information reported by packers to reflect price aberrations or other unusual or unique occurrences that the Secretary determines would distort the published information to the detriment of producers, packers, or other market participants.

(f) *VERIFICATION.*—The Secretary shall take such actions as the Secretary considers necessary to verify the accuracy of the information submitted or reported under chapter 2, 3, or 4.

(g) *ELECTRONIC REPORTING AND PUBLISHING.*—The Secretary shall, to the maximum extent practicable, provide for the reporting and publishing of the information required under this subtitle by electronic means.

(h) *REPORTING OF ACTIVITIES ON WEEKENDS AND HOLIDAYS.*—

(1) *IN GENERAL.*—Livestock committed to a packer, or purchased, sold, or slaughtered by a packer, on a weekend day or holiday shall be reported by the packer to the Secretary (to the extent required under this subtitle), and reported by the Secretary, on the immediately following reporting day.

(2) *LIMITATION ON REPORTING BY PACKERS.*—A packer shall not be required to report actions under paragraph (1) more than once on the immediately following reporting day.

(i) *EFFECT ON OTHER LAWS.*—Nothing in this subtitle, the Livestock Mandatory Reporting Act of 1999, or amendments made by that Act restricts or modifies the authority of the Secretary to—

(1) administer or enforce the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.);

(2) administer, enforce, or collect voluntary reports under this title or any other law; or

(3) access documentary evidence as provided under sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50).

SEC. 252. UNLAWFUL ACTS.

It shall be unlawful and a violation of this subtitle for any packer or other person subject to this subtitle (in the submission of information required under chapter 2, 3, or 4, as determined by the Secretary) to willfully—

(1) fail or refuse to provide, or delay the timely reporting of, accurate information to the Secretary (including estimated information);

(2) solicit or request that a packer, the buyer or seller of livestock or livestock products, or any other person fail to provide, as a condition of any transaction, accurate or timely information required under this subtitle;

(3) fail or refuse to comply with this subtitle; or

(4) report estimated information in any report required under this subtitle in a manner that demonstrates a pattern of significant variance in accuracy when compared to the actual information that is reported for the same reporting period, or as determined by any audit, oversight, or other verification procedures of the Secretary.

SEC. 253. ENFORCEMENT.**(a) CIVIL PENALTY.—**

(1) *IN GENERAL.*—Any packer or other person that violates this subtitle may be assessed a civil penalty by the Secretary of not more than \$10,000 for each violation.

(2) *CONTINUING VIOLATION.*—Each day during which a violation continues shall be considered to be a separate violation.

(3) *FACTORS.*—In determining the amount of a civil penalty to be assessed under paragraph (1), the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the ability of the person that has committed the violation to continue in business.

(4) *MULTIPLE VIOLATIONS.*—In determining whether to assess a civil penalty under paragraph (1), the Secretary shall consider whether a packer or other person subject to this subtitle has engaged in a pattern of errors, delays, or omissions in violation of this subtitle.

(b) *CEASE AND DESIST.*—In addition to, or in lieu of, a civil penalty under subsection (a), the Secretary may issue an order to cease and desist from continuing any violation.

(c) *NOTICE AND HEARING.*—No penalty shall be assessed, or cease and desist order issued, by the Secretary under this section unless the person against which the penalty is assessed or to which the order is issued is given notice and opportunity for a hearing before the Secretary with respect to the violation.

(d) FINALITY AND JUDICIAL REVIEW.—

(1) *IN GENERAL.*—The order of the Secretary assessing a civil penalty or issuing a cease and desist order under this section shall be final and conclusive unless the affected person files an appeal of the order of the Secretary in United States district court not later than 30 days after the date of the issuance of the order.

(2) *STANDARD OF REVIEW.*—A finding of the Secretary under this section shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) ENFORCEMENT.—

(1) *IN GENERAL.*—If, after the lapse of the period allowed for appeal or after the affirmance of a penalty assessed under this section, the person against which the civil penalty is assessed fails to pay the penalty, the Secretary may refer the matter to the Attorney General who may recover the penalty by an action in United States district court.

(2) *FINALITY.*—In the action, the final order of the Secretary shall not be subject to review.

(f) INJUNCTION OR RESTRAINING ORDER.—

(1) *IN GENERAL.*—If the Secretary has reason to believe that any person subject to this subtitle has failed or refused to provide the Secretary information required to be reported pursuant to this subtitle, and that it would be in the public interest to enjoin the person from further failure to comply with the reporting requirements, the Secretary may notify the Attorney General of the failure.

(2) *ATTORNEY GENERAL.*—The Attorney General may apply to the appropriate district court of the United States for a temporary or permanent injunction or restraining order.

(3) *COURT.*—When needed to carry out this subtitle, the court shall, on a proper showing, issue a temporary injunction or restraining order without bond.

(g) *FAILURE TO OBEY ORDERS.*—

(1) *IN GENERAL.*—If a person subject to this subtitle fails to obey a cease and desist or civil penalty order issued under this subsection after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, the United States may apply to the appropriate district court for enforcement of the order.

(2) *ENFORCEMENT.*—If the court determines that the order was lawfully made and duly served and that the person violated the order, the court shall enforce the order.

(3) *CIVIL PENALTY.*—If the court finds that the person violated the cease and desist provisions of the order, the person shall be subject to a civil penalty of not more than \$10,000 for each offense.

SEC. 254. FEES.

The Secretary shall not charge or assess a user fee, transaction fee, service charge, assessment, reimbursement, or any other fee for the submission or reporting of information, for the receipt or availability of, or access to, published reports or information, or for any other activity required under this subtitle.

SEC. 255. RECORDKEEPING.

(a) *IN GENERAL.*—Subject to subsection (b), each packer required to report information to the Secretary under this subtitle shall maintain, and make available to the Secretary on request, for 2 years—

(1) the original contracts, agreements, receipts and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock; and

(2) such records or other information as is necessary or appropriate to verify the accuracy of the information required to be reported under this subtitle.

(b) *LIMITATIONS.*—Under subsection (a)(2), the Secretary may not require a packer to provide new or additional information if—

(1) the information is not generally available or maintained by packers; or

(2) the provision of the information would be unduly burdensome.

(c) *PURCHASES OF CATTLE OR SWINE.*—A record of a purchase of a lot of cattle or a lot of swine by a packer shall evidence whether the purchase occurred—

(1) before 10:00 a.m. Central Time;

(2) between 10:00 a.m. and 2:00 p.m. Central Time; or

(3) after 2:00 p.m. Central Time.

SEC. 256. VOLUNTARY REPORTING.

The Secretary shall encourage voluntary reporting by packers (as defined in section 201 of the Packers and Stockyards Act, 1921 (7 U.S.C. 191)) to which the mandatory reporting requirements of this subtitle do not apply.

SEC. 257. PUBLICATION OF INFORMATION ON RETAIL PURCHASE PRICES FOR REPRESENTATIVE MEAT PRODUCTS.

(a) *IN GENERAL.*—Beginning not later than 90 days after the date of enactment of this subtitle, the Secretary shall compile and publish at least monthly (weekly, if practicable) information on retail prices for representative food products made from beef, pork, chicken, turkey, veal, or lamb.

(b) *INFORMATION.*—The report published by the Secretary under subsection (a) shall include—

(1) *information on retail prices for each representative food product described in subsection (a); and*

(2) *information on total sales quantity (in pounds and dollars) for each representative food product.*

(c) *MEAT PRICE SPREADS REPORT.*—During the period ending 2 years after the initial publication of the report required under subsection (a), the Secretary shall continue to publish the Meat Price Spreads Report in the same manner as the Report was published before the date of enactment of this subtitle.

(d) *INFORMATION COLLECTION.*—

(1) *IN GENERAL.*—To ensure the accuracy of the reports required under subsection (a), the Secretary shall obtain the information for the reports from 1 or more sources including—

(A) *a consistently representative set of retail transactions; and*

(B) *both prices and sales quantities for the transactions.*

(2) *SOURCE OF INFORMATION.*—The Secretary may—

(A) *obtain the information from retailers or commercial information sources; and*

(B) *use valid statistical sampling procedures, if necessary.*

(3) *ADJUSTMENTS.*—In providing information on retail prices under this section, the Secretary may make adjustments to take into account differences in—

(A) *the geographic location of consumption;*

(B) *the location of the principal source of supply;*

(C) *distribution costs; and*

(D) *such other factors as the Secretary determines reflect a verifiable comparative retail price for a representative food product.*

(e) *ADMINISTRATION.*—The Secretary—

(1) *shall collect information under this section only on a voluntary basis; and*

(2) *shall not impose a penalty on a person for failure to provide the information or otherwise compel a person to provide the information.*

SEC. 258. SUSPENSION AUTHORITY REGARDING SPECIFIC TERMS OF PRICE REPORTING REQUIREMENTS.

(a) *IN GENERAL.*—The Secretary may suspend any requirement of this subtitle if the Secretary determines that application of the requirement is inconsistent with the purposes of this subtitle.

(b) *SUSPENSION PROCEDURE.*—

(1) *PERIOD.*—A suspension under subsection (a) shall be for a period of not more than 240 days.

(2) *ACTION BY CONGRESS.*—If an Act of Congress concerning the requirement that is the subject of the suspension under subsection (a) is not enacted by the end of the period of the suspension established under paragraph (1), the Secretary shall implement the requirement.

SEC. 259. FEDERAL PREEMPTION.

In order to achieve the goals, purposes, and objectives of this title on a nationwide basis and to avoid potentially conflicting State laws that could impede the goals, purposes, or objectives of this title, no State or political subdivision of a State may impose a requirement that is in addition to, or inconsistent with, any requirement of this subtitle with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products.

* * * * *

PACKERS AND STOCKYARDS ACT, 1921

TITLE II—PACKERS

Subtitle A—General Provisions

SEC. 201. When used in this Act the term “packer” means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. . . .

SEC. 202. It shall be unlawful for any packer with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device; or

(b) Make or give any undue or unreasonable preference or advantage to any particular person or locality in any respect [whatsoever], or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect [whatsoever]; or

SEC. 207. (a) It is hereby found that a burden on and obstruction to commerce in poultry is caused by financing arrangements under which live poultry dealers encumber, give lenders security interest in, or place liens on, poultry obtained by such persons by purchase

in cash sales or by poultry growing arrangements, or on inventories of or receivables or proceeds from such poultry or poultry products therefrom, when payment is not made for the poultry and that such financing arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruction to commerce in poultry and protect the public interest.

* * * * *

(e) For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.

Subtitle B—Swine Packer Marketing Contracts

SEC. 221. DEFINITIONS.

Except as provided in section 223(a), in this subtitle:

(1) **MARKET.**—*The term ‘market’ means the sale or disposition of swine, pork, or pork products in commerce.*

(2) **PACKER.**—*The term ‘packer’ has the meaning given the term in section 231 of the Agricultural Marketing Act of 1946.*

(3) **PORK.**—*The term ‘pork’ means the meat of a porcine animal.*

(4) **PORK PRODUCT.**—*The term ‘pork product’ means a product or byproduct produced or processed in whole or in part from pork.*

(5) **STATE.**—*The term ‘State’ means each of the 50 States.*

(6) **SWINE.**—*The term ‘swine’ means a porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.*

(7) **TYPE OF CONTRACT.**—*The term ‘type of contract’ means the classification of contracts or risk management agreements for the purchase of swine by—*

(A) the mechanism used to determine the base price for swine committed to a packer, grouped into practicable classifications by the Secretary (including swine or pork market formula purchases, other market formula purchases, and other purchase arrangements); and

(B) the presence or absence of an accrual account or ledger that must be repaid by the producer or packer that receives the benefit of the contract pricing mechanism in relation to negotiated prices.

(8) **OTHER TERMS.**—*Except as provided in this subtitle, a term has the meaning given the term in section 212 or 231 of the Agricultural Marketing Act of 1946.*

SEC. 222. SWINE PACKER MARKETING CONTRACTS OFFERED TO PRODUCERS.

(a) **IN GENERAL.**—*Subject to the availability of appropriations to carry out this section, the Secretary shall establish and maintain a library or catalog of each type of contract offered by packers to swine producers for the purchase of all or part of the producers’ production of swine (including swine that are purchased or committed for delivery), including all available noncarcass merit premiums.*

(b) **AVAILABILITY.**—*The Secretary shall make available to swine producers and other interested persons information on the types of contracts described in subsection (a), including notice (on a real-time basis if practicable) of the types of contracts that are being of-*

ferred by each individual packer to, and are open to acceptance by, producers for the purchase of swine.

(c) *CONFIDENTIALITY.*—The reporting requirements under subsections (a) and (b) shall be subject to the confidentiality protections provided under section 251 of the Agricultural Marketing Act of 1946.

(d) *INFORMATION COLLECTION.*—

(1) *IN GENERAL.*—The Secretary shall—

(A) obtain (by a filing or other procedure required of each individual packer) information indicating what types of contracts for the purchase of swine are available from each packer; and

(B) make the information available in a monthly report to swine producers and other interested persons.

(2) *CONTRACTED SWINE NUMBERS.*—Each packer shall provide, and the Secretary shall collect and publish in the monthly report required under paragraph (1)(B), information specifying—

(A) the types of existing contracts for each packer;

(B) the provisions contained in each contract that provide for expansion in the numbers of swine to be delivered under the contract for the following 6-month and 12-month periods;

(C) an estimate of the total number of swine committed by contract for delivery to all packers within the 6-month and 12-month periods following the date of the report, reported by reporting region and by type of contract; and

(D) an estimate of the maximum total number of swine that potentially could be delivered within the 6-month and 12-month periods following the date of the report under the provisions described in subparagraph (B) that are included in existing contracts, reported by reporting region and by type of contract.

(e) *VIOLATIONS.*—It shall be unlawful and a violation of this title for any packer to willfully fail or refuse to provide to the Secretary accurate information required under, or to willfully fail or refuse to comply with any requirement of, this section.

(f) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated such sums as necessary to carry out this section.

SEC. 223. REPORT ON THE SECRETARY'S JURISDICTION, POWER, DUTIES, AND AUTHORITIES.

(a) *DEFINITION OF PACKER.*—In this section, the term 'packer' has the meaning given the term in section 201 of the Packers and Stockyards Act, 1921 (7 U.S.C. 191).

(b) *REPORT.*—Not later than 90 days after the date of enactment of this subtitle, the Comptroller General of the United States shall provide to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the jurisdiction, powers, duties, and authorities of the Secretary that relate to packers and other persons involved in procuring, slaughtering, or processing swine, pork, or pork products that are covered by this Act and other laws, including—

(1) *the Federal Trade Commission Act (15 U.S.C. 41 et seq.), especially sections 6, 8, 9, and 10 of that Act (15 U.S.C. 46, 48, 49, 50); and*

(2) *the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.).*

(c) *CONTENTS.—The Comptroller General shall include in the report an analysis of—*

(1) *burdens on and obstructions to commerce in swine, pork, and pork products by packers, and other persons that enter into arrangements with the packers, that are contrary to, or do not protect, the public interest;*

(2) *noncompetitive pricing arrangements between or among packers, or other persons involved in the processing, distribution, or sale of pork and pork products, including arrangements provided for in contracts for the purchase of swine;*

(3) *the effective monitoring of contracts entered into between packers and swine producers;*

(4) *investigations that relate to, and affect, the disclosure of—*

(A) *transactions involved in the business conduct and practices of packers; and*

(B) *the pricing of swine paid to producers by packers and the pricing of products in the pork and pork product merchandising chain;*

(5) *the adequacy of the authority of the Secretary to prevent a packer from unjustly or arbitrarily refusing to offer a producer, or disqualifying a producer from eligibility for, a particular contract or type of contract for the purchase of swine; and*

(6) *the ability of the Secretary to cooperate with and enhance the enforcement of actions initiated by other Federal departments and agencies, or Federal independent agencies, to protect trade and commerce in the pork and pork product industries against unlawful restraints and monopolies.*

§ 416. Mandatory domestic reporting pilot investigation.—

* * * * *

[(1) IN GENERAL.—The Secretary of Agriculture shall conduct a twelve month pilot investigation, beginning upon the date of implementation of such pilot, under which the Secretary shall require any person or class of persons engaged in the business of buying, selling, or marketing domestic or imported cattle for immediate slaughter and fresh muscle cuts of beef, or domestic or imported sheep and fresh or frozen muscle cuts of lamb, to report to the Secretary, in the least intrusive manner possible, information relating to prices for the procurement of these items.

[(2) APPLICATION.—This section shall only apply to a person that is engaged in the business of buying, selling, or marketing a significant share of the national market, as determined by the Secretary, of the total volume of domestic or imported cattle for immediate slaughter and fresh muscle cuts of beef, or domestic or imported sheep and fresh or frozen muscle cuts of lamb, bought, sold, or marketed in the United States.

[(3) REPORT.—Not later than six months after the conclusion of the mandatory domestic reporting pilot investigation, the

Secretary of Agriculture shall submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the effectiveness of the pilot investigation. No information collected under the pilot investigation may be disclosed until the report is submitted.】

AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1999

* * * * *

SEC. 1127. PILOT PROGRAMS.

(a) DOMESTIC MARKET REPORTING PILOT PROGRAM.—(Enacted section 229a of this title.)

【(b) Export Market Reporting Pilot Investigation.—

【(1) IN GENERAL.—The Secretary shall implement a twelve month pilot investigation, beginning on the date of implementation, of a streamlined electronic system for collecting export data, in the least intrusive manner possible, for fresh or frozen muscle cuts of meat food products, and develop a data-reporting program to disseminate summary information in a timely manner, not to exceed two weeks after issuance.

【(2) REPORT.—Not later than six months after the conclusion of the mandatory export reporting pilot investigation, the Secretary of Agriculture shall submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on the effectiveness of the pilot investigation.

(b) EXPORT MARKET REPORTING.—*THE SECRETARY SHALL—*

(1) *implement a streamlined electronic system for collecting export sales and shipments data, in the least intrusive manner possible, for fresh or frozen muscle cuts of meat food products; and*

(2) *develop a data-reporting program to disseminate summary information in a timely manner (in the case of beef, consistent with the reporting under section 602(a) of the Agricultural Trade Act of 1978 (7 U.S.C. 5712(a))).*

(c) FUNDING.—An amount of \$250,000 is hereby appropriated to carry out 【this section of the Act】 *subsection (b).*

THE AGRICULTURAL TRADE ACT OF 1978

* * * * *

SEC. 602(a) EXPORT REPORTING AND CONTRACT SANCTITY.—Section 327 of P.L. 102–237 made technical corrections to this subsection.—

(1) IN GENERAL.—All exporters of wheat and wheat flour, feed grains, oil seeds, cotton, *beef*, and products thereof, and other commodities that the Secretary may designate produced in the United States shall report to the Secretary of Agriculture, on a weekly basis, the following information regarding

any contract for export sales entered into or subsequently
modified in any manner during the reporting period:

* * * * *

○