Small businesses may request information on this action by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202)720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of hearing issued on July 26, 1996, and published in the **Federal Register** on July 31, 1996 (61 FR 39911).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and therefore is not subject to the requirements of Executive Order 12866.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

Preliminary Statement

In January 1996, the California Pistachio Commission (CPC) and the Western Pistachio Association (WPA), representing the U.S. pistachio industry, requested that the Department hold a public hearing to consider a proposed marketing agreement and order for pistachios grown in California, Arizona, Nevada, New Mexico, and Utah. The proposed program would have authorized quality and container requirements and mandatory inspection.

A notice of hearing was published in the **Federal Register** on July 31, 1996. The hearing was held in Fresno, California, August 20 through 23, 1996. At the conclusion of the hearing, the Administrative Law Judge fixed October 31, 1996, as the date for interested parties to file post-hearing briefs. Three briefs were received, all in opposition to the proposed order.

Based on a review of hearing evidence and post-hearing briefs, on April 9, 1997, the Department announced its plans to reopen the hearing to take additional evidence relating to the economic and marketing conditions that justified the need for a pistachio marketing order as well as the economic impact of the proposed order on the industry. We asked for public input on scheduling the hearing by May 9, 1997. On July 22, 1997, the Department extended to September 1, 1997, the period during which it would accept public comment on reopening the hearing. On October 3, 1997, we further extended the comment period until January 31, 1998. No comments were received during the period provided.

On June 22, 2000, the CPC and WPA requested that the proceeding be terminated.

Termination of Proceeding

In view of the above, the proceeding is hereby terminated.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: August 28, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–22577 Filed 9–1–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 206

[PSA–2000–01–a]

RIN 0580–AA71

Swine Packer Marketing Contracts

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to amend its regulations to implement the Swine Packer Marketing Contracts subtitle of the Livestock Mandatory Reporting Act of 1999. GIPSA is proposing new regulations to establish a library or catalog of types of swine marketing contracts used by packers to purchase swine and to make information about the types of contracts available to the public. GIPSA is also proposing new regulations to establish monthly reports of estimates of the numbers of swine committed for delivery to packers under types of existing contracts contained in the library or catalog.

DATES: Comments must be received on or before October 5, 2000. Comments on the information collection and recordkeeping requirements must be received on or before November 6, 2000.

ADDRESSES: Send comments to the Deputy Administrator, Packers and Stockyards Programs, GIPSA, USDA, Stop 3641, 1400 Independence Avenue, SW, Washington, DC 20250–3641. Comments may also be sent via facsimile to 202–205–3941 or via e-mail to comments@gipsadc.usda.gov. Please state that your comment refers to Swine Packer Marketing Contracts (PSA–2000–01–a), RIN 0580–AA71. Comments received may be inspected during normal business hours in the Office of the Deputy Administrator, Packers and Stockyards Programs, room 3039 (same address as listed above).

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Caughlin, Jr., Director, Office of Policy/Litigation Support, (202) 720–6951.

SUPPLEMENTARY INFORMATION:

Background

In recent years, the swine industry has undergone fundamental changes in its structure and marketing practices. In 1998, four firms slaughtered about 55 percent of all swine. On the producer side, about 2000 large swine operations held about 47 percent of the swine inventory and the remaining 96,000 smaller operations held about 53 percent in 1999 based on the December 1999 issue of Hogs and Pigs Report published by the National Agricultural Statistics Service (NASS).

Many packers have entered into private contractual marketing arrangements, especially with larger producers. In the last few years, swine packers have begun procuring the majority of their livestock through such contractual arrangements rather than spot market transactions. With these procurement methods, such as forward contracts, formula pricing, and exclusive purchase agreements, prices and terms of sale are not publicly disclosed. Because prices and terms of sale are not publicly disclosed, these procurement methods make it difficult for producers, particularly smaller ones, to evaluate alternative marketing arrangements. Packers and larger producers have more resources to assemble market and pricing information, putting smaller producers at a disadvantage in negotiating the best possible marketing arrangements for their swine.

In recent years, various industry, trade, and producer groups began to ask State and Federal lawmakers for mandatory reporting of information concerning the availability and terms of these arrangements. Many market participants claimed they were no longer able to obtain information, such as actual purchase prices of swine and other terms of marketing arrangements, on which to base their production and marketing decisions. Many large producers also indicated they were unable to evaluate and compare contracts because of the unknown premium and discount schedules,

which may be different in each marketing agreement. These circumstances prompted increased industry support for mandatory reporting of prices and information on contracts. Ultimately, Congress passed the Livestock Mandatory Reporting Act of 1999, [1] which includes requirements for mandatory price reporting by packers and requirements for reporting of certain information on the types of contracts used by packers for procurement of swine for slaughter. Producers and other concerned parties have indicated they believe the information that would be submitted in compliance with the requirements of the Livestock Mandatory Reporting Act will provide more transparency in the price discovery process and equalize access to market information for all market participants, large and small.

The Livestock Mandatory Reporting Act of 1999

The stated purpose of the Livestock Mandatory Reporting Act of 1999 (LMRA) amendments to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) (AMA) 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.

The program of information created by the LMRA is to be administered by the Agricultural Marketing Service (AMS), the Grain Inspection Packers and Stockyards Administration (GIPSA), and other agencies of the Department. AMS is responsible for implementing a program of mandatory reporting of market information (including transaction prices) on livestock and livestock products, which is contained in section 911 of the LMRA. This section of the LMRA amends the AMA by adding new sections 111 through 256. The proposed regulations to implement the mandatory reporting program have been published by AMS in a separate rulemaking.

The LMRA also established a program of information regarding the marketing of swine. GIPSA is responsible for implementing this program of information. Section 934 of the LMRA, which amends the Packers and Stockyards Act (7 U.S.C. 181 *et seq.*) (P&S Act), requires the Secretary to establish and maintain a library or catalog of the types of contracts offered by certain packers to swine producers. The Secretary is also required to make information concerning those types of contracts available to producers and other interested parties. Additionally, the Secretary is to obtain information from certain packers concerning the estimated numbers of swine to be delivered under contractual arrangements for slaughter within the 6- and 12-month periods following each monthly report.

Swine Packer Marketing Contracts

There is no legislative history to speak of to aid us in determining the intent of section 934 of the LMRA, which amends the P&S Act. This section of the LMRA imposes requirements upon the Secretary and also grants certain authority to the Secretary. We have reviewed the statutory language and the stated purpose of the LMRA, along with the known circumstances under which the LMRA was enacted and GIPSA's expertise in regulating the swine packing industry. As a result, we developed our interpretation of section 934 of the LMRA as follows.

Section 934 of the LMRA amends the P&S Act by designating current sections 201 through 207 of Title II as *Subtitle A—General Provisions,* adding new sections 221 through 223, and designating them as *Subtitle B—Swine Packer Marketing Contracts.*

The first section of Subtitle B, new section 221, provides a list of definitions. Title I of the P&S Act contains definitions of terms that appear throughout the P&S Act. New section 221 contains the definition of terms that are applicable only to new Subtitle B. Other terms in Subtitle B that are not defined in new section 221 are to have the meanings given those terms in new sections 212 or 231 of the AMA which were added by the LMRA. A more detailed discussion of the definitions in new section 221 follows below in the Definitions section of this document.

New section 222(a) of the P&S Act reads as follows:

(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.

New section 222(a) contains key terms, such as ''library'' and ''catalog'' that are not defined in new section 221 of the P&S Act nor in new sections 212 or 231 of the AMA. Nor does the LMRA provide guidance on the intent of the word ''offered'' as it is used in this section. [2] The library or catalog that this amendment requires the Secretary to establish would be the first of its kind. The undefined terms and lack of specific guidance permit us to interpret the language and determine what we believe to be the best means to institute the program of information contemplated by the LMRA.

To establish a library of the types of contracts offered by packers for the purchase of swine, we would require packers to provide samples of each type of contract in effect when the final rule becomes effective. These contracts are considered ''existing'' contracts, a term that appears later in subsection (d) of section 222. Because existing contracts are the result of the acceptance of contracts that were ''offered,'' it is appropriate to begin the library with existing contracts. Once the library is established, packers would be required to report to GIPSA the ''offer'' of different or new types of contracts concurrently with making those contract offers to swine producers, without regard to whether these offers were accepted. Information from the contracts would be summarized and made available to the producers as described below in the Contract Library section of this document.

Although the library or catalog mandated by subsection (a) necessitates the collection of information from packers, it is subsection (d) of new section 222 that indicates the means of, and authority for obtaining that information. New section 222(d)(1)(A) of the P&S Act requires the Secretary to obtain information from packers regarding types of contracts.

Subsection (b) of new section 222 provides as follows:

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

[1] Title IX of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act of 2000 (Pub. L. 106–78).

[2] In another subparagraph of new section 222, the wording raises a question as to whether the word ''offered'' is used synonymously with ''available.''

We find that this subsection requires information regarding the types of contracts contained in the library to be made available to the public. The subsection does not indicate that the Secretary should make the contracts themselves available to interested persons. Furthermore, the information regarding contract offers is to be made available on a ''real-time basis if practicable.'' We find that this provision requires that notice of contract offers be made available in a time frame that allows the greatest number of producers to have the opportunity to take advantage of the offer, if such notice is practicable. The information we propose to make available to the public is described in the Contract Library section of this document.

New subsection 222(c) indicates that the confidentiality protections of new section 251 of the AMA that are afforded to packers reporting price information shall be applicable to packers providing contract information pursuant to subsections (a) and (b) of new section 222 of the P&S Act. Therefore, the information that would be made available pursuant to subsection (b) of this section shall not reveal the identities of parties to contracts or proprietary business information.

Subsection (d) of new section 222 sets out the authority granted to the Secretary to collect the information that must be made available and reported to the public. New section 222(d) of the P&S Act requires the Secretary to provide specific information in a monthly report: information on the types of contracts available from each packer; types of existing contracts for each packer; provisions contained in packer contracts that provide for expansion of numbers of swine committed under contract; and estimates of the number of swine committed under contract; and estimates of the maximum number of swine possibly committed for the following 6- and 12-month periods. Packers would be required to provide information on both ''types of contracts available'' and ''types of existing contracts,'' which the Secretary would report on a monthly basis.

Subsection (d)(1), entitled *Information Collection*, reads:

(d) Information Collection.—

(1) In General.—The Secretary shall—

(A) obtain (by 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.

The information that the Secretary is required to make available is to be obtained by a filing or other procedure required of packers required to report. The authority to collect information from packers in subsection (d) would be employed to gather information regarding the types of contracts ''offered'' (new section 222(a)), ''available'' (new section 222(d)(1)(A)) and ''existing'' (new section 222(d)(2)(B)).

Subsection (d)(1)(A) requires packers to provide information on the types of contracts that are ''available'' for the purchase of swine, while subsection (a) addressed the types of contracts ''offered'' to producers for the purchase of swine. Arguably, the types of contracts ''offered'' to producers are the types of contracts ''available'' to producers, *i.e.,* the words ''offered'' and ''available'' could be read as synonymous. However, since different words are used in different subsections of the amendments, and since Congress could have used the same word in both subsections if Congress had intended the meaning to be identical, we have given a different interpretation to each.

We interpret ''types of contracts available'' to mean contracts that a packer currently is offering and that are open to acceptance by producers or that a packer is making available for renewal to producers currently under contract with that packer. We interpret ''types of existing contracts'' to mean the types of contracts that are currently in effect, *i.e.,* contracts that have one or more producers providing swine to a packer under these types of agreements. We interpret ''types of contracts offered'' to mean all contracts that a packer has made available to swine producers for the purchase of swine, including those that currently are available or in effect and those that previously were offered but are no longer open for acceptance. ''Types of contracts offered'' includes both ''types of contracts available'' and ''types of existing contracts.''

Subsection (d)(1)(B) requires the Secretary to make the information obtained in subsection (d)(1)(A) available to producers and other interested parties by publication of a monthly report. This reporting requirement is separate from the requirement of subsection (b) to make information available regarding the types of contracts offered to producers. We interpret the monthly reporting requirement in subsection (d) and the availability requirement in subsection (b) to require us to provide information monthly on the types of contracts ''offered'' to producers and to provide notice regarding the types of contracts ''available'' to producers on an on-going, ''real-time'' basis. As described below in the Contract Library section of this document, we would make information on ''offered'' contracts available to producers and other interested persons through the GIPSA homepage on the Internet. This information would also provide notice on the types of contracts ''available'' to producers. The notice of types of contracts ''available'' to producers would be updated on a real-time basis, to the extent practicable. Therefore, this information would fulfill requirements in subsection (b) to make information available.

Subsection (d)(2) describes the additional information the Secretary is required to report on a monthly basis and provides as follows:

(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.

Subsection (d)(2)(B) requires packers to provide and the Secretary to report the provisions in each type of contract that permit an expansion in the numbers of swine to be delivered to the packer in the following 6- and 12-month periods. The specific provisions used in contracts to permit an expansion in the numbers of swine to be delivered to the packer are numerous and it would be burdensome and onerous for packers to provide those provisions for each contract. We believe that these provisions fall into general categories that would provide adequate information to producers and other interested persons. Therefore, we interpret this subsection of the P&S Act amendment to require packers to indicate the types of existing contracts that contain a provision that permits the

expansion of the number of swine committed, and packers would categorize any such provision in general terms. Packers would indicate whether any contracts within each type of existing contract contain: (1) contractual terms that allow for a range of the number of swine to be delivered; (2) contractual terms that require a greater number of swine to be delivered as the contract continues; or (3) any other provisions that provide for expansion in the numbers of swine to be delivered. In the monthly report, the provisions for expansion of committed swine numbers and the estimates for maximum possible committed swine numbers for the following 6- and 12-month periods would be from existing contracts only.

New section 222(d)(2) of the P&S Act requires the Secretary to collect and publish and packers to provide, among other things, estimates of the total number of swine committed under existing contracts and the maximum total number of swine that could be delivered under existing contracts within the following 6- and 12-month periods. Further, the Secretary is required to publish these estimates in monthly reports. New section 222 of the Act does not contain an explicit requirement that packers provide estimates for each month of the following 6 and 12 months. However, we believe that the Secretary would be unable to accurately report estimates for the following 6- and 12-month periods unless packers compile and provide monthly data because we believe the estimates for the 6- and 12-month periods could vary each month. Therefore, the proposed rule would require packers to provide estimates of committed swine to GIPSA on a monthly basis.

The information that packers are required to provide to the Secretary would be published in a monthly report categorized by type of contract and reporting region. Among the factors we would consider in defining a region are: (1) relevant marketing areas; (2) statutory requirements to maintain confidentiality and protect proprietary business information; and (3) AMS definitions of regions in its reports of swine prices. To maintain confidentiality, and protect proprietary business information, the regions may change over time.

Subsection (e) of new section 222 provides:

> (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.

This subsection of the P&S Act provides notice to packers that to willfully fail or refuse to provide accurate information would constitute a violation of this section of the P&S Act. However, the subsection is silent as to what happens if a violation occurs, what penalties accrue for a violation, and how a violation of this section would be prosecuted. Section 203 of the P&S Act sets forth the procedures that the Secretary is authorized to follow whenever there is reason to believe that any packer has violated or is violating any provision of Title II of the P&S Act and the civil penalties that may be assessed if the Secretary determines that a violation has occurred. As stated above, the LMRA amendments added new sections 221 through 223 to Title II of the P&S Act. Therefore, we would follow the procedures set forth under section 203 of the P&S Act when there is reason to believe that a packer has violated any of the provisions in new sections 221 through 223.

New section 223 of the P&S Act directs the Comptroller General of the United States to provide the Agriculture committees in Congress with a report describing the jurisdiction, powers, duties and authorities of the Secretary of Agriculture that relate to packers [3] and those involved in the procuring, slaughtering or processing of swine covered by the P&S Act and other laws. GIPSA has no reporting obligations under this section of the Act.

The LMRA also includes a section on the expiration of the authority granted by its provisions. Section 942 of the LMRA states that:

> The authority provided by this title and the amendments made by this title terminate 5 years after the date of the enactment of this Act.

The President signed the appropriations act for Agriculture and other agencies on October 22, 1999. Therefore, the LMRA and the related amendments to the P&S Act will expire on October 22, 2004.

This proposed rule sets forth GIPSA regulations to implement section 934 of the LMRA. This regulatory program is intended to meet the purposes of providing to producers, packers and other market participants information that can be readily understood with respect to swine marketing contracts.

General Approach

The amendments to the P&S Act made by the LMRA require the Secretary of Agriculture to establish a program of information dealing with swine packer marketing contracts. First, new sections 222(a) and (b) of the P&S Act require the Secretary to establish and maintain a library of types of swine marketing contracts and make available information on those types of contracts. Second, new section 222(d) of the P&S Act requires the Secretary to collect specific information from packers and publish that information in a monthly report to the public.

We have reviewed contracts that packers use for the purchase of swine for slaughter obtained during previous GIPSA investigations. Based on our understanding of these contracts, we considered how to categorize them into ''types of contracts'' as required by the new subtitle of the P&S Act. A determining factor was the ability to collect and organize information in the library in a meaningful way to provide useful information. Another determining factor was to categorize the types of contracts broadly enough to be able to provide useful information for each region. In addition, the categories need to be flexible to adapt to changes in the way swine may be marketed for slaughter in the future.

There are many different types of contracts that packers use for the purchase of swine for slaughter. One way of categorizing these contracts would be by the names by which the contracts are commonly known, such as, window contracts, forward contracts, and exclusive purchase agreements. These are descriptive names for some types of contracts that are used by packers and producers. For example, a window contract generally specifies a low and/or high price (also called a ''floor'' and a ''ceiling'' price) that would be paid for swine. Window contracts sometimes use an accrual account or ledger to account for the difference in the contractual high or low price and a specified market. We determined that most producers know that packers in a region offer window contracts, forward contracts, or exclusive purchase agreements. Therefore, to categorize and report swine packer marketing contracts by these general descriptive names would not further the statutory goals of providing information on pricing, purchase contracting, or supply and demand conditions.

Another way of categorizing these contracts would be to use the categories suggested in the definition in new section 221 of the P&S Act for ''type of contract'' which identify the market or other method used to determine the base price (base price determination), as follows: Swine or pork market formula purchases, other market formula

[3] ''Packer'' as defined in section 201 of the P&S Act, not as defined in new section 221.

purchases, and other purchase arrangements. In addition, the definition in the amendments to the P&S Act specifies that the classification of contracts should specify the presence or absence of an accrual account or ledger. As described above, window contracts sometimes use accrual accounts or ledgers; further, window contracts may use any market or method to determine the base price. Therefore, if we classified contracts as window contracts, we would need to further classify the window contracts according to their base price determinations.

We believe that it would be more useful and in keeping with the purpose of the amendments to the P&S Act to classify the contracts by the three categories of base price determination (swine or pork market formula purchases, other market formula purchases, and other purchase arrangements) and the presence or absence of an accrual account or ledger as provided in the definition of ''type of contract'' in new section 221 of the P&S Act. This would result in the following six types of contracts: (1) swine or pork market formula purchases with a ledger; (2) swine or pork market formula purchases without a ledger; (3) other market formula purchases with a ledger; (4) other market formula purchases without a ledger; (5) other purchase arrangements with a ledger; and (6) other purchase arrangements without a ledger.

As mandated in new section 222(a) of the P&S Act, we would establish and maintain a library or catalog of each of these six types of contracts (contract library). New section 222 of the P&S Act does not specify what the contract library or catalog should be or how it should be established. A ''catalog'' could be a systematized list featuring descriptions of the listed types of contracts. A ''library'' could be a collection of materials that provide reference information for types of contracts. New section 222(a) of the P&S Act also mandates that the library or catalog of each type of contract offered by packers to swine producers for the purchase of swine for slaughter include all available noncarcass merit premiums. Noncarcass merit premiums (and discounts) are applied to the base price to calculate the actual price paid by the packer to the producer for swine. Noncarcass merit premiums (and discounts) are only some of the factors specified in contract terms that are used to calculate the actual price paid by packers for swine. Other factors that are essential to the calculation of the actual price include, but are not limited to, the determination and application of carcass merit premiums and discounts. We interpret the specific inclusion of all available noncarcass merit premiums in new section 222(a) of the P&S Act to mean that the library or catalog of the types of contracts offered by packers to swine producers should contain, and we should make available, information about contract terms (like noncarcass merit premiums) that may affect the calculation of the actual price paid to producers. We believe the best way to collect this information on contract terms would be for packers to submit copies of existing contracts to us. We would organize the submitted contracts by type of contract and use the submitted contracts as the reference materials to provide information to producers and other interested individuals on the types of contracts offered by packers, as required by new section 222(b) of the P&S Act. Therefore, we propose to require packers to submit copies of contracts that represent each of the types of contracts that they offered (as described in detail below in the Contract Library section of this document). This would enable us to establish a ''library'' of each type of contract offered by packers to swine producers for the purchase of swine for slaughter.

We would require that packers first group their contracts by the six types of contracts. Further, we expect that the contracts within the same type of contract would vary in their specific terms. As stated earlier, one of the purposes of the LMRA is to provide information with respect to the pricing and contracting for purchase for livestock. Therefore, we would obtain information and report on contracts that vary in terms related to the pricing of swine. The contract types identify a market or other method on which the calculation for the price of the swine is based. There can be many other components specified in a contract to determine the price of swine purchased by a packer for slaughter. Within each type of contract, we would require packers to group their contracts by variations in the components that determine the price of swine purchased by a packer for slaughter. Specifically, contracts would be considered identical if they are identical with respect to all four of the following components: (1) The base price or the determination of base price; (2) the application of an accrual account or a ledger; (3) carcass merit premiums and discounts schedules; or (4) the use and amount of noncarcass merit premiums and discounts. Identical contracts would be represented by a single contract that we would use as an example contract. We would require each packer to submit example contracts for each of the types of contracts that they have with producers to purchase swine for slaughter.

We would use this library of contracts as the resource for the information that new section 222(b) of the P&S Act requires the Secretary to make available to producers and other interested persons. We would not make available the contracts themselves or proprietary information in conformity with the confidentiality restrictions in new section 222(c) of the P&S Act and new section 251 of the AMA.

In addition, as required by new section 222(d) of the P&S Act, we would collect specific information from packers and publish that information in a monthly report to the public. The information that would be reported includes the types of contracts available from each packer, the provisions contained in each type of contract that provide for expansion in the number of swine to be delivered under contract for the next 6 and 12 months, and estimates of the number of swine committed and the maximum number of swine that potentially could be delivered under contract within the next 6 and 12 months.

All of this information could change from one month to the next. To ensure that the information in the monthly report is accurate and timely, we would require packers to file the required information monthly.

The contract library would require packers to file a copy of an example of each swine packer marketing contract currently in effect or available and an example of each new contract when it is offered. The monthly report would require packers to identify the types of contracts that are currently in effect and those that are available and provide estimates of the number of swine that could be delivered under the existing contracts in the next 6 and 12 months.

We would make both the information from the contract library and the monthly reports available on the GIPSA homepage (http://www.usda.gov/gipsa/) and at the GIPSA Packers and Stockyards Programs' Regional Office at Room 317, 210 Walnut Street, Des Moines, Iowa 50309 during normal business hours of 7:00 a.m. to 4:30 p.m. Central Time. The same information, in the same format, would be available from the GIPSA homepage and at the Regional Office.

We propose to implement the new sections of the P&S Act in regulations grouped in new Part 206 of Title 9 of the Code of Federal Regulations (the

regulations). The proposed regulations are described in detail below.

Definitions

Proposed section 206.1 of the regulations would provide definitions of certain words and terms. The definitions proposed in Part 206 would apply only to the implementation of the Swine Packer Marketing Contracts amendment to the P&S Act (codified at 7 U.S.C. §§ 198 and 198a). The proposed definitions would not apply to other regulations issued under the P&S Act or to the P&S Act as a whole.

New section 221 of the P&S Act specifies many of the definitions to be used in the implementation of the new sections to the P&S Act. New section 221(8) of the P&S Act requires that terms not specifically defined in new section 221 of the P&S Act have the meanings given to them in new sections 212 and 231 of the AMA. All of these definitions and any proposed clarifications of these definitions are explained below. The proposed definitions would be listed in alphabetical order and would constitute section 206.1 of the proposed regulations.

We propose to define *accrual account* as: ''An account held by a packer on behalf of a producer that accrues a running positive or negative balance as a result of a pricing determination included in a contract that establishes a minimum and/or maximum level of base price paid. Credits and/or debits for amounts beyond these minimum and/or maximum levels are entered into the account. Further, the contract specifies how the balance in the account affects producer and packer rights and obligations under the contract. (Synonymous with ''ledger,'' as defined in this section.)'' The term ''accrual account'' is not defined in the LMRA amendments to the P&S Act or the AMA. The term, as used by swine packers and producers in the industry, is generally understood to refer to the same type of arrangement as a ''ledger.'' Therefore, we propose to define ''accrual account'' and ''ledger'' synonymously to conform to standard industry practice.

Based on the use of the term ''accrual account'' in the definition of ''types of contract'' in new section 221(7)(B) of the P&S Act, we believe that the term ''accrual account'' needs to be defined for clarity. The definition of ''type of contract'' in the LMRA refers to accounts that must be repaid at the termination of the contract. However, contracts with accrual accounts may specify conditions that could change the rights and obligations of the contracting parties, including deferring the repayment of the balance in the account. Therefore, we propose to define arrangements that could defer payment or otherwise change rights and obligations under the contract based on the balance in the account as ''accrual accounts'' also.

For purposes of reporting, the existence of an accrual account in a contract would be used to classify the type of contract. The application (or use) of an accrual account (*e.g.*, the time frame for repaying the balance of the accrual account) would be used to determine whether a specific contract is a unique contract that the packer would be required to file with GIPSA under the proposed rule.

We propose to define *base price* as: ''The price paid for swine before the application of any premiums or discounts, expressed in dollars per unit.'' New section 212 of the AMA defines *base price* as: ''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.'' For purposes of implementing the swine contract library, we propose to exclude the requirement that the price be limited to the price paid for swine delivered at the packing plant because some contracts specify or allow swine to be delivered to another location, such as a buying station. We also propose to exclude the requirement that price be expressed in dollars per hundred pounds of carcass weight because some contracts do not express price in carcass weight units. Some purchase contracts express price in terms of live weight or grain prices, and in the future some may use pricing of other products, such as primal cuts. Therefore, to establish a library of types of contracts offered by packers to swine producers, we must obtain contracts without limiting the definition of base price to include only those contracts that express base price using plant delivered prices in terms of dollars per hundred pounds of carcass weight. In addition, the word ''livestock'' would be replaced with ''swine'' because the new sections of the P&S Act concern only swine.

In contracts for the purchase of swine by a packer, the base price is used as a starting point for determining the price that will be paid for the swine. A variety of factors can be included in determining the price paid for swine, such as how lean the meat is (where the carcass falls into the range of lean percent), the weight of the carcass, the time of delivery, and the market or formula used to determine the base price. As specified in the definition, the actual base price is a dollar amount. The adjusted base price, as generally understood by packers and producers, is the base price adjusted based on the application of carcass merit premiums or discounts. Generally, a contract will specify a schedule to be used to determine the amount of the premium or discount to be applied to the base price after the merits of the carcass have been identified. This schedule of carcass merit premiums or discounts is also known among packers and producers as a grid or matrix; in this document, we will use the term schedule. The schedule identifies the merits of the carcass that are used to determine the premiums and discounts and identifies the premiums and discounts for specific ranges of the identified carcass merits. For example, a schedule may specify premiums and discounts based on the lean percent of the carcass. In addition to specifying the merits of the carcass used in the schedule, the packer determines the method used to measure the merits of the carcass.

We propose to define *contract* as: ''Any agreement, whether written or verbal, between a packer and a producer for the purchase of swine by a packer for slaughter, except a negotiated purchase (as defined in this section).'' Although the term ''contract'' is not defined in the LMRA, Part 206 would include the proposed definition to make it clear that the contract library would only include agreements that did not meet the definition of a ''negotiated purchase'' listed below. Market procurement methods that are sometimes called ''non-spot,'' such as forward contracts, formula pricing, and exclusive purchase agreements, would be considered contracts under this definition of contract. In negotiated purchases, the buyer-seller interaction that results in a transaction and the agreement on the actual base price occur on the same day and the swine are delivered less than 14 days after the buyer and seller agree on a transaction. In contrast, in contract purchases either the buyer-seller interaction that results in a transaction and the agreement on the actual base price occur on different days or the swine are delivered more than 14 days after the buyer and seller agree on a transaction. In addition to written agreements, the proposed definition of ''contract'' would include verbal agreements. Based on our recent review of swine procurement practices, we believe that many marketing contracts for the purchase of swine are verbal agreements. To accomplish the statutory requirement of establishing a library of

types of contracts offered by packers, verbal agreements must be included in the definition of ''contract.'' Therefore, packers would be required to provide written descriptions of the terms of all agreements for the purchase of swine for slaughter for which the parties did not execute a document to signify the existence of the agreement. The packer would be required to provide all terms of a verbal contract to GIPSA including, but not limited to, the base price determination, a schedule of any carcass merit premium and discount (including the manner of determining lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied), noncarcass merit premiums and discounts, the application of a ledger or accrual account, and the length of the agreement.

We propose to define *formula price* as: ''A price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.'' The proposed definition would be taken verbatim from the AMA, new section 231(6). A ''specified market'' would be a market specified by the contract. The market may be a publicly reported market, such as the Iowa-Southern Minnesota Direct market, or may be a ''market'' that is not publicly reported, such as plant average prices paid. A formula price and the specified market would be identified in the base price determination.

As explained above, we propose to define *ledger* and would define it to be synonymous with the proposed definition of ''accrual account.''

We propose to define *negotiated purchase* as: ''A purchase, commonly known as a cash or spot market purchase, of swine by a packer from a producer under which: (1) The buyer-seller interaction that results in the transaction and the agreement on actual base price occur on the same day; and (2) The swine are scheduled for delivery to the packer not later than 14 days after the date on which the swine are committed to the packer.'' The proposed definition would be derived from new section 212(8) of the AMA. The word ''livestock'' would be replaced with ''swine'' because the new sections of the P&S Act concern only swine. The proposed definition would clarify the statutory phrase ''on a day'' to specify that a transaction would not be considered to be a ''negotiated purchase'' unless the buyer-seller interaction that results in the transaction and the agreement on the actual base price occur on the same day. Negotiated purchases contrast with contracts, where either the buyer-seller interaction that results in the transaction and the agreement on the actual base price occur on different days, or the swine are delivered more than 14 days after the buyer and seller agree on a transaction. Although the definition for ''negotiated purchase'' would be included in the new regulations for clarity, the new regulations would not apply to negotiated purchases.

We propose to define *noncarcass merit premium or discount* as: ''An increase or decrease in the price for the purchase of 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 or discount is known before the purchase and delivery of the swine.'' New section 231(9) of the AMA defines *noncarcass merit premium* as: ''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.'' For purposes of implementing the swine contract library, we propose to clarify the statutory definition. Because the noncarcass merit premium or discount is more accurately tied to the purchase price offered by the packer than the selling price offered by the producer, we propose to clarify the definition by replacing the word ''sale'' with the word ''purchase.'' In addition, we propose to replace the term ''base price'' with ''price'' because noncarcass merit premiums and discounts can be applied to the base price before or after carcass merit premiums or discounts have been applied. Finally, we propose to clarify the definition to include ''noncarcass merit discounts'' because packers assess both premiums and discounts.

We propose to define *other market formula purchase* as: ''A purchase of swine by a packer in which the pricing determination is a formula price based on any market other than the markets for swine, pork, or a pork product. The pricing determination includes, but is not limited to: (1) A price formula based on one or more futures or options contracts; (2) A price formula based on one or more feedstuff markets, such as the market for corn or soybeans; or (3) A base price determination using more than one market as its base where at least one of those markets would be defined as an ''other market formula purchase.'' New section 231(10) of the AMA defines *other market formula purchase* as: ''A purchase of swine by a packer in which the pricing mechanism is a formula price based on any market other than the markets for swine, pork, or a pork product. The term 'other market formula purchase' includes a formula purchase in a case in which the price formula is based on one or more futures or options contracts.'' For purposes of implementing the swine contract library, we propose to clarify the statutory definition.

A pricing ''mechanism'' is a formula or set of factors used to determine price; for clarity, in this definition and throughout the proposed regulation, we use the term ''pricing determination'' instead of ''pricing mechanism.'' The proposed definition would expressly include a contract that uses a market for feed for its pricing determination. In addition, the proposed definition also would explicitly classify a contract that uses more than one type of market in the price determination. For example, a contract in which the swine are sometimes priced from a swine market and sometimes priced from corn and soybean markets would be classified as an ''other market formula purchase.'' The proposed regulation would add this language to clarify how these contracts would be classified. Without this clarification, it would be unclear whether these mixed contracts would be classified as ''swine or pork market formula contracts'' or ''other market formula contracts.'' Other market formula purchases with and without accrual accounts or ledgers would be two of the six categories for types of contracts that must be filed by packers.

We propose to define *other purchase arrangement* as: ''A purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase, and does not involve packer-owned swine.'' The proposed definition would be from new section 231(11) of the AMA. The ''other purchase arrangement'' category would include contracts that are not included in the ''swine or pork market formula purchases'' or ''other market formula purchases'' categories, as they are defined in this section. In addition, the definition specifies that ''other purchase arrangements'' would not include a ''negotiated purchase,'' as defined in this section. Other purchase arrangements with and without accrual accounts or ledgers would be two of the six categories for types of contracts that must be filed by packers.

We propose to define *packer* as: ''Any person or firm engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing

or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. The regulations in this part would only apply to a packer slaughtering swine at a federally inspected swine processing plant that meets either of the following conditions: (1) A swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years, with the average based on those periods in which the plant slaughtered swine; or (2) Any swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years that has the capacity to slaughter at least 100,000 swine per year, based on plant capacity information.''

New section 231(12) of the AMA defines *packer* as: ''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: (1) The term includes only a swine processing plant that is federally inspected; (2) 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 (3) 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.''

The definition in section 231 of the AMA defines a ''packer'' as a ''plant.'' For clarity, we propose to distinguish between packers and plants. When we use the term ''packer,'' we mean ''Any person or firm 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.'' When we the term ''plant,'' we mean an individual swine processing or packing plant. Under the proposed rule, a packer would be required to submit the required contract examples and monthly information for each swine processing or packing plant that it operates or at which it has swine slaughtered that has the slaughtering capacity specified in the definition of ''packer,'' and only those individuals defined as packers who use plants meeting the slaughtering capacity specified in the proposed definition of ''packer'' would be required to submit the required contract examples and the monthly information.

We believe that the definition of ''packer'' in section 231 of the AMA is intended to identify all packers that slaughter at plants of the specified slaughtering capacity to ensure that these packers submit example contracts and monthly information. Most swine processing plants are owned and operated by packers. However, some packers contract with other swine processing plants to slaughter swine that the packer purchases. In these cases, the packer has a contract with the producer to purchase swine for slaughter. If we limit the reporting obligation to those packers who own or operate their own slaughtering facilities, the contract library would not include those contracts entered by packers whose swine is slaughtered or processed at plants owned and operated by other entities. Therefore, we propose to include all plants, even those that are not owned or operated by a packer, that meet the slaughtering capacity specified by in the definition of packer.

The definition of ''packer'' in section 231 of the AMA includes a swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years. Annual swine slaughter data for 1994 through 1998 show that some swine processing plants slaughtered more than 100,000 swine annually during one or more of those 5 years, but did not slaughter an average of 100,000 for the 5-year period because they did not slaughter swine throughout every year. For example, there were several new plants that opened after 1994 that slaughtered more than 100,000 swine each year after they began operations. However, when the average number of slaughtered swine is calculated over the full 5-year period, these plants slaughtered less than 100,000 swine per year during the immediately preceding 5 calendar years. The same is true of plants that were used to slaughter swine at the beginning and end of this 5-year period, but not to slaughter swine throughout one or more of the intervening years. Consider a plant that does not operate in Year 1, Year 3 or Year 4 but slaughters 50,000 head in Year 2 and 250,000 head in Year 5. The average annual slaughtering capacity for this plant over the five year period (Years 1 through 5) would be 60,000 head per year (300,000 head divided by 5 years = 60,000 head per year). The average annual slaughtering capacity for this plant over the years in which it operated (Years 2 and 5) would be 150,000 head per year (300,000 head divided by 2 years = 150,000 head per year). Because we believe that the purpose of the new legislation is to obtain information from packers using plants of comparable size, the proposed rule would clarify that the average used to determine whether a packer is required to submit example contracts and monthly information for a specified plant would be based on the plant's average slaughtering capacity in the years during which the plant slaughtered swine, even if that period is less than five years.

The definition of packer in section 231 of the AMA requires the Secretary to consider the plant capacity in determining whether a processing plant should be considered a ''packer'' for reporting requirements when the plant did not slaughter swine during the preceding 5 calendar years. The proposed regulatory definition reflects our determination that a swine processing plant that has the capacity to slaughter at least 100,000 swine per year would be comparable in slaughtering capacity to plants that meet the definition in the AMA. Packers know the capacity of their swine processing plants. Therefore, a packer would know if a plant would meet this capacity requirement. During the normal course of business of enforcing the P&S Act, we would become aware of the capacity estimates for new swine processing plants. Based on that capacity information, we would also know which plants would meet this definition and would notify the packer that owns or uses a qualifying plant if no report is filed.

We propose to define *producer* as: ''Any person engaged, either directly or through an intermediary, in the business of selling swine to a packer for slaughter (including the sale of swine from a packer to another packer).'' The proposed definition would be derived from new section 212(11) of the AMA. We propose to specify that producers may sell swine to a packer either directly or indirectly through an intermediary, like a marketing cooperative or other market agency. In addition, we would replace the word ''livestock'' with ''swine'' because the new sections of the P&S Act concern only swine. With this definition, the regulations would explicitly exclude

producers who sell feeder pigs to another producer or to a packer for feeding.

We propose to define *swine* as: ''A porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.'' The proposed definition would be taken verbatim from section 231(20) of the AMA.

We propose to define *swine or pork market formula purchase as:* ''A purchase of swine by a packer in which the pricing determination is a formula price based on a market for swine, pork, or a pork product, other than a futures contract or option contract for swine, pork, or a pork product.'' The proposed definition is from section 231(21) of the AMA. Swine or pork market formula purchases with and without accrual accounts or ledgers would be two of the six categories for types of contracts that must be filed by packers.

We propose to define *type of contract* as: ''The classification of contracts or risk management agreements for the purchase of swine committed to a packer by the determination of the base price and the presence or absence of an accrual account or ledger (as defined in this section). The type of contract categories are: (1) swine or pork market formula purchases with a ledger; (2) swine or pork market formula purchases without a ledger; (3) other market formula purchases with a ledger; (4) other market formula purchases without a ledger; (5) other purchase arrangements with a ledger; and (6) other purchase arrangements without a ledger.'' New section 221 of the P&S Act defines *type of contract* as: ''The classification of contracts or risk management agreements for the purchase of swine by: (1) 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 (2) 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.'' For purposes of implementing the swine contract library, we propose that the statutory definition specify the categories that would be used for grouping contracts. In addition, we propose to simplify the definition to specify that the type of contract depends on the presence or absence of a ledger or accrual accounts.

Within these six categories, any contract that differs from other contracts in the determination of base price, the application of a ledger or accrual account, carcass merit premium and discount schedules (including the manner of determining lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied), or the use or amount of noncarcass merit premiums and discounts would be an example of a unique contract that must be filed by the packer and reported by GIPSA.

The type of contract would specify the existence of a ledger or accrual account. Ledgers and accrual accounts can vary in the way in which they are used. Therefore, we would require packers to use the terms and conditions of the ledger or accrual account provisions as one of the four criteria for identifying unique contracts. Throughout this proposed rule, we use the term ''application of a ledger or accrual account'' to represent the terms and conditions of the ledger or accrual account provisions that would be specified in a contract to identify how the ledger or accrual account would function.

Contract Library

Proposed section 206.2 of the regulations would address the criteria set out in new section 222 of the P&S Act for establishing and maintaining a swine packer marketing contract library. New section 222(a) of the P&S Act states that 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 swine.

As discussed above, we determined the best way to collect information for the library would be for packers to submit copies of contracts to us. Therefore, we needed to decide which contracts to require packers to file.

We considered requiring packers to file every contract they have with each individual producer. This approach, however, would be burdensome to packers and repetitive contracts would not provide additional information on the range of contracts existing in the industry. Therefore, we decided to require packers to file example contracts.

As specified in section 206.2(a), (b), and (c) of the regulations, we would require each packer to file an example of each unique contract within each type of contract category currently in effect or available and an example of each new contract that is offered at each plant at which the packer slaughters swine. To decide which contracts would serve as examples for similar or unique contracts, as specified in section 206.2(d) of the regulations, we propose to require packers to submit an example of each contract that varies in (1) the base price or the determination of base price; (2) the application of an accrual account or a ledger; (3) carcass merit premium and discount schedules (including the manner of determining lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied); or (4) the use and amount of noncarcass merit premiums and discounts. For contracts that are identical in all four respects listed above, a packer would need to file only one example contract for each plant that uses that type of contract to purchase swine. This would meet the requirements in new sections 221 and 222 of the P&S Act.

New section 221(7) (definition of ''type of contract'') of the P&S Act requires contracts to be grouped by the method of base price determination and whether a ledger exists. New section 222(a) of the P&S Act requires that the contract library also include all available noncarcass merit premiums. As discussed above, we determined that the contract library should also include information on noncarcass merit discounts, terms and conditions of the ledger or accrual account provisions, and carcass merit premium and discount schedules. The information on carcass merit premium and discount schedules would include the method the packer uses to determine the lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts, the amounts of the premiums and discounts, and how those premiums and discounts are applied. This information is essential to producers interested in the range of contracts existing in the industry because the carcass merit premiums and discounts are major factors in determining the actual price paid to producers for swine.

To make the initial submission of example contracts currently in effect and available, packers would mail, or otherwise deliver, a copy of each example contract in use at any of its plants to our Regional Office in Des Moines, Iowa, as specified in section 206.2(e) of the regulations. For a packer with more than one plant that has the slaughtering capacity specified in the definition of ''packer,'' a separate package of example contracts would be submitted for each plant. Using this criterion, a packer that uses the same contract to purchase swine for slaughter at different plants will be required to

submit the same example contract in the package submitted for each plant.

The initial submission would be due the first business day of the month following the determination that the plant has the slaughtering capacity specified in the definition of ''packer.'' For subsequent submissions, the packer would determine if a newly offered contract would be a new example contract for the plant. For offered contracts that represent a new example contract at that plant, the packer would send via mail, facsimile, or other delivery method a copy of the offered contract to our Regional Office in Des Moines, Iowa, on the same day the contract was offered. The information made available to the public from the contract library would be updated to reflect new contracts being offered.

In addition to submitting example contracts, packers would need to notify us of any contract changes, expirations, or withdrawals to previously submitted example contracts. The packer's example contracts should represent each type of contract offered by the packer to swine producers for the purchase of swine for slaughter. If changes to a contract, the expiration of a contract, or the withdrawal of an offered contract result in a change, expiration, or withdrawal of the example contract, then, as specified in section 206.2(h) of the regulations, the packers must notify GIPSA. Specifically, if contract changes result in changes to any of the four criteria specified above to identify example contracts, then the packer must submit a new example contract. In addition, the packer must notify GIPSA that the new example contract replaces the previously submitted example contract. If an example contract no longer represents any existing or offered contracts, then the packer must notify GIPSA on the day that the contract expires or is withdrawn. In addition, this notification must specify the reason, for example, changes to a contract, expiration of an existing contract, or withdrawal of an offered contract.

Various factors, such as the number of example contracts, the packer's method of maintaining contract information, and technological advances, would determine the most efficient method for submitting example contracts to GIPSA for the contract library. Therefore, we propose to allow packers to select, subject to approval by GIPSA, the submission method subject to the requirements for timely filing.

Proposed section 206.2(f) specifies the information that would be made available from the contract library to producers and other interested persons. We would use the example contracts submitted by packers as the resource for the information required to be made available to producers and other interested persons by new section 222(b) of the P&S Act.

New section 222(b) of the P&S Act requires the Secretary to make available to swine producers and other interested persons information on the types of contracts collected for the swine contract library. When the packer submits example contracts, the packer would specify the ''type of contract'' category applicable to each example contract. Within each of the six types of contract categories, example contracts would vary in contract terms for base price determination, the application of accrual accounts or ledgers, carcass merit premium and discount schedules, the use and amount of noncarcass merit premiums and discounts, and other contract terms. We would summarize information on contract terms from example contracts in the contract library as shown in the sample below. As specified in new section 222(c) of the P&S Act and new section 251 of the AMA, the information that we would make available would not disclose the identities of the parties to the contracts, including packers and producers. To ensure that confidentiality would be preserved regarding the identities of persons, including parties to a contract, and the proprietary nature of the information included in the contracts, we would present the contract library information without indications about how contract terms correspond to an example contract, packer, plant, or producer. The contract library information would provide a summary of the types of contract provisions that are available in each region.

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NOTE: Sample only. Not intended to represent actual contract information.

Range of Contract Terms in the Western Cornbelt Region for Swine or Pork Market Formula Contracts with a Ledger

- Base Price Determination
  - USDA Market News Western Cornbelt
    Opening Report
    Base market hog 49-51 % lean
    Weighted Average
    Plus $1.00
    Day of Delivery
  - USDA Market News Iowa-Southern Minnesota Direct
    Mid-Session
    Base market hog
    Weighted Average
    Plus $1.50
    Day prior to delivery
  - USDA Market News Western Cornbelt
    Closing Report
    Midpoint between low of 47-48 % and high 49-50 %
    Plus $0.75
    Average of three days prior to delivery

- Noncarcass Merit Premiums and Discounts
  Delivery before 7:00 a.m. = $0.75 premium

- Carcass Merit Premiums and Discounts

Range of Premiums and Discounts for Certain Lean Percentages, 185 Pound Carcass

Range of Percent Lean*	Premiums & Discounts in $ per 100 Pounds	Premiums & Discounts as a % of base price
57 – 58 %	$2 – 5	102 – 107 %
55 – 56	1 – 3	102 – 105
53 – 54	0 – 2	101 – 104
51 – 52	(1) – 1	98 – 102
49 – 50	(4) – (1)	96 – 100
47 – 48	(5) – (2)	90 – 95

*Lean percent can vary across packers depending on the device and estimation formula used. Devices used to estimate lean percent in this region include: AutoFOM, Carcass Value Technology (also known as AUS CVT), Fat-O-Meat'er, a ruler, and UltraFOM. Various estimation formulas may be used with each device. It is important to understand that different formulas used with the same device can result in different estimations of lean percent.

Range of Premiums and Discounts for Certain Carcass Weights

Carcass Weight in Pounds	Premiums & Discounts in Dollars per 100 Pounds
145	$ (20) – (5)
155	(10) – (4)
165	(5) – 0
175	(2) – 0
185	0
195	0
205	(2) – 0
215	(4) – (1)
225	(5) – (2)

- Application of Ledgers or Accrual Accounts Used in This Region Include:
  - Repayment of balance in the ledger or accrual account
  - Contract extension as a substitute for repayment of the balance of the ledger or accrual account
  - Forgiveness of ledger or accrual account balance at the termination of the contract

- Quality and Weight Restrictions
  - Producers must have certified at Pork Quality Assurance Program Level III
  - Hogs must be free of carcass defects (e.g. bruising), foreign objects (e.g. needles)

- Other General Contract Terms
  - Requires that producer uses specific genetics
  - Packer has the right of first refusal to purchase hogs in excess of the number specified in the contract

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As shown in the sample contract library report above, the contract library information would be provided by region and type of contract. Sample information is shown for swine or pork market formula contracts that use a ledger or accrual account. Under the base price determination, the sample shows how the base price would be determined under different available contracts using specified swine or pork markets (USDA Market News Western Cornbelt and USDA Market News Iowa-Southern Minnesota Direct) and other components of the formulas specified in available contracts to calculate the base price. Specifically, in the first base price formula, the base price would be determined by adding one dollar to a specified price listed in the opening report of the USDA Market News Western Cornbelt region on the day the swine are delivered to the packer. The specified price, in this case, would be the price listed as the weighted average for a base market hog in the 49–51 percent lean range. The information listed for base price determinations would vary based on the formulas used in each of the example contracts. Since base price determination is one of the criteria used to identify example contracts, the contract library would contain each unique base price determination.

The example contracts would provide the contract library with unique base price determinations, the application of ledgers or accrual accounts, carcass merit premium and discount schedules, and the use and amount of noncarcass merit premiums. Other contract terms that could be reported include a variety of terms that could affect producer's marketing decisions, such as quality and weight restrictions, length of contract, and use of packer specified genetics. These other contract terms would not be included in the criteria used to identify example contracts. Therefore, the information contained in the contract library on such other contract terms may not represent the full range of alternatives that packers are offering or have offered. We propose to summarize information on contract terms from the example contracts contained in the contract library to provide as much information about contract terms as possible, subject to the confidentiality protections.

We anticipate that interested parties, primarily producers, would use the summarized information that we provide from the contract library to determine the range of options in contracts offered by packers. The producer could identify the contract provisions of interest and approach packers or plants within the region to negotiate a contract. Although producers would not know which packers are offering any of the provisions listed in the summarized information or how those provisions would be combined in any contract, we expect the knowledge that those provisions exist in the marketplace could result in the producer conducting additional searches for contracts, agreements, or provisions that result in a more favorable transaction for the producer.

Monthly Reports

New section 222(d) of the P&S Act requires the Secretary to collect specific information from packers that are subject to this rule and publish the information in a monthly report. As directed in new sections 222(d)(1), (d)(2)(A), (d)(2)(B), (d)(2)(C), and (d)(2)(D) of the P&S Act, respectively, this monthly report would provide a summary of the types of contracts available from packers, types of existing contracts, provisions contained in packers' existing contracts that provide for an expansion in the number of swine committed under existing contract, and estimates of the number of swine committed under contract within the following 6- and 12-month periods, and estimates of the maximum number that could be committed under existing contracts for the following 6- and 12-month periods.

We interpret the monthly report requirement as mandating that the Secretary publish as much information collected from packers each month as possible, subject to the requirement to maintain confidentiality as discussed above. We interpret ''types of contracts available,'' as specified in new section 222(d)(1) of the P&S Act, to mean all types of contracts that are available for acceptance by producers, whether or not actually accepted by a producer. We interpret ''types of existing contracts,'' as specified in new section 222(d)(2)(A) of the P&S Act, to mean all contracts that currently have one or more producers providing swine under these agreements because these contracts have been offered, accepted, and are in place. In the monthly report, the provisions for expansion of committed swine numbers and the estimates for maximum possible committed swine numbers for the next 6 and 12 months would be from existing contracts only because there would be no estimates for contracts that had been offered, but not accepted. As specified in proposed section 206.3 of the regulations, packers would provide information on types of contracts available, types of existing contracts, and contract provisions that provide for expansion of committed swine numbers for each of their swine processing plants that has the slaughtering capacity specified in the definition of ''packer.''

New section 222(d)(2) of the P&S Act requires packers to provide, among other things, estimates of the total number of swine committed by contract and the maximum total number of swine that could be delivered within the 6- and 12-month periods following the date of the report. Although new section 222 of the P&S Act does not require that packers report information for each month of the following 6- and 12-month periods, we believe that packers would have to compile monthly data in order to prepare the required estimates. Proposed section 206.3(c)(3) of the regulations would require packers to provide information on swine committed for delivery under contracts for each of the next 12 months. We would calculate the aggregate 6-and 12-month totals and publish them in the monthly report. We believe that collection of monthly data would enable GIPSA to better monitor the accuracy of the estimates. With monthly data, we would be able to develop better statistical measures of the precision of the estimates that would enhance their utility to producers and others who would use the information.

New section 222(d)(2)(B) of the P&S Act requires packers to report on the provisions contained in each contract that provide for expansion in the numbers of swine to be delivered under contract for the next 6 and 12 months. New section 222(d)(2)(D) of the P&S Act requires an estimate of the total number of swine that potentially could be delivered under contract. In proposed section 206.3 of the regulations, paragraphs (c)(3) and (c)(5) would require each packer to provide an estimate, by month, for the next 12 months, of the number of committed swine by the type of contract, as well as an estimate of what could potentially be delivered if all existing expansion clauses in contracts are exercised.

Proposed section 206.3(d) of the regulations would require packers to estimate the number of swine that could be delivered under contracts that do not specify a number. Packers should be able to develop reasonably accurate estimates since they would normally do so for their own planning purposes.

We propose to have packers use new PSP Form 341, shown below, to provide the information required for the monthly report. In monthly reports, the packer would provide information for all of the contracts for each of its plants that has the slaughtering capacity

specified in the definition of ''packer.'' Therefore, if a packer uses more than one plant subject to proposed 9 CFR Part 206, the packer would submit a separate monthly report for each plant. The packer would estimate the number of swine to be delivered under each of the contracts at the plant, aggregated by type of contract. The packer would be required to submit a report for each plant that has the slaughtering capacity specified in the definition of ''packer,'' even if a plant had no existing contracts for which to report estimated deliveries of swine.

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NOTE: Sample only. Not intended to represent actual contract estimates.

PACKER/PLANT REPORT
ESTIMATES OF SWINE COMMITTED TO BE DELIVERED UNDER CONTRACT

FIRM NAME: Anyfirm Packing Company
PLANT NAME: Anyfirm Central
STATE WHERE PLANT IS LOCATED: Iowa
CONTACT NAME: Jamie Doe
DATE OF REPORT: 8/11/2000
FEDERAL INSPECTION NUMBER: 00000
PHONE NUMBER: (515) 000-000
TITLE: Head Buyer

Submit a separate report for each plant that has the slaughtering capacity specified in the definition of "packer" in 9 CFR 206.1. Provide estimates for each of the next 12 months.

I certify that the estimates provided in this report are accurate as of the date of the report.

NUMBER OF HEAD OF ESTIMATED DELIVERIES OF SWINE							
NUMBER OF SWINE PER MONTH		EXISTING CONTRACT TYPES					
	Month/ Year	Swine or pork market formula with ledger	Swine or pork market formula without ledger	Other market formula with ledger	Other market formula without ledger	Other purchase arrangement with ledger	Other purchase arrangement without ledger
	9/2000	1,000	46,800				
	10/2000	1,000	46,800				
	11/2000	1,000	47,000				
	12/2000	1,000	47,000				
	1/2001	1,000	47,000				
	2/2001	1,000	46,800				
	3/2001	1,000	46,800				
	4/2001	1,000	47,000				
	5/2001	1,000	47,200				
	6/2001	1,000	47,200				
	7/2001	1,000	47,200				
	8/2001	1,000	47,200				
Available contracts*			X				

NUMBER OF HEAD OF ESTIMATED MAXIMUM DELIVERIES OF SWINE							
NUMBER OF SWINE PER MONTH		EXISTING CONTRACT TYPES					
	Month/ Year	Swine or pork market formula with ledger	Swine or pork market formula without ledger	Other market formula with ledger	Other market formula without ledger	Other purchase arrangement with ledger	Other purchase arrangement without ledger
	9/2000	1,000	47,800				
	10/2000	1,000	47,800				
	11/2000	1,000	48,000				
	12/2000	1,000	48,000				
	1/2001	1,000	48,000				
	2/2001	1,000	49,000				
	3/2001	1,000	49,000				
	4/2001	1,000	49,000				
	5/2001	1,000	49,000				
	6/2001	1,000	49,000				
	7/2001	1,000	49,000				
	8/2001	1,000	49,000				
Expansion clauses in contracts**			1, 3				

*"Available contracts" means that producers may obtain this type of contract. Place an X in the appropriate box to indicate that this type of contract is currently available to producers.

**Place one of the following codes in the appropriate box to indicate the types of expansion provisions in use:

(1) Terms that allow for a range in the number of swine to be delivered
(2) Terms that require a greater number of swine to be delivered as the contract continues
(3) Other provisions that provide or allow for expansion in the numbers of swine to be delivered

PSP Form 341

Although monthly estimates would be collected to allow GIPSA to generate the estimates for the following 6- and 12-month periods, release of such monthly data could risk violating confidentiality restrictions. The proposed release of aggregated 6- and 12-month totals would fulfill the requirements of new sections 222(d)(1)(B) and (d)(2) of the P&S Act without jeopardizing the sensitive nature of the underlying information. This aggregated information is expected to greatly increase the quantity and quality of available market information, and aid producers in making informed marketing decisions.

The information in the monthly report received from all reporting packers would be aggregated and reported by GIPSA on a regional basis as shown in the example below.

NOTE: Sample only. Not intended to represent actual contract estimates.

ESTIMATES OF SWINE COMMITTED TO BE DELIVERED UNDER CONTRACT
IN THE WESTERN CORNBELT REGION
(Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota)

Deliveries beginning: September 1, 2000

ESTIMATED DELIVERIES

Contract type	Available contracts*	Number of swine estimated to be delivered during the:	
		Next 6 months	Next 12 months
Swine or pork market formula with ledger		290,000	580,000
Swine or pork market formula without ledger	X	14,790,000	29,580,000
Other market formula with ledger		2,610,000	5,220,000
Other market formula without ledger	X	3,000,000	6,000,000
Other purchase arrangement with ledger	X	275,000	550,000
Other purchase arrangement without ledger	X	580,000	1,160,000

ESTIMATED MAXIMUM DELIVERIES

Contract type	Maximum number of swine that could be delivered during the:		Types of expansion clauses in contracts**
	Next 6 months	Next 12 months	
Swine or pork market formula with ledger	290,000	580,000	
Swine or pork market formula without ledger	14,830,000	29,700,000	1, 3
Other market formula with ledger	2,610,000	5,220,000	
Other market formula without ledger	3,000,000	6,000,000	
Other purchase arrangement with ledger	275,000	550,000	
Other purchase arrangement without ledger	580,000	1,200,000	2, 3

* An "X" indicates that this type of contract is available to producers as of the date of this report.

** Codes for the types of expansion provisions in use:

(1) Terms that allow for a range in the number of swine to be delivered
(2) Terms that require a greater number of swine to be delivered as the contract continues
(3) Other provisions that provide or allow for expansion in the numbers of swine to be delivered

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Reporting Regions

To provide producers and other interested persons with the most valuable or useful information, the information made available by GIPSA would be presented on a regional basis, as specified in proposed sections 206.2(f) and 206.3(g)(2) of the regulations. Among the factors we would consider in defining a region are: (1) Relevant marketing areas; (2) statutory requirements to maintain confidentiality and protect proprietary business information; and (3) AMS definitions of regions in its reports of swine prices. For example, we would review the AMS regions for which AMS reports prices. If we determine that we could provide more precise estimates by splitting an AMS region into more than one region, then we would evaluate the information to determine if the information could be presented for smaller regions and maintain confidentiality. Alternately, if we determine that releasing information for an AMS region would not maintain confidentiality, then we would aggregate the information into regions that would maintain confidentiality.

In order to ensure confidentiality, information will only be published if it is obtained from no fewer than three packers representing a minimum of three companies, and no packer represents a dominant portion of the region's total. The specific factor used to establish dominance will not be released, to further assure confidentiality by preventing anyone from using knowledge about the factor to reveal information that we will suppress. In any region or set of circumstances that leads us to be concerned about our ability to publish information while maintaining confidentiality, we will consult with USDA statisticians to ensure that confidentiality is maintained.

To further maintain confidentiality, protect proprietary business information, and provide useful information, the regions may change over time. We propose that initially, based on our analysis of swine processing plants in the AMS regions, the regions would be reported as follows:

- Eastern Cornbelt—includes Illinois, Indiana, Ohio, Michigan, and Wisconsin
- Iowa-Minnesota—includes Iowa and Minnesota
- Mid-South—includes Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia
- Western Cornbelt—includes Iowa, Kansas, Minnesota, Missouri, South Dakota, and Nebraska
- Other—includes all states and U.S. territories not included in the other four regions.

Iowa and Minnesota would be reported as a separate region and also be included in the Western Cornbelt region. This would be consistent with AMS reported regions and would allow producers and other interested parties to make direct comparisons between the contract information and prices reported by AMS in the USDA Market News.

We would monitor changes in the swine industry, feedback from producers and other interested parties about the monthly report, and other information to determine if changes in reporting regions need to be considered.

Availability of Contract Library Information and Monthly Reports

Although the basic reporting requirements are mandated by the legislation, we are proposing the method by which swine contract information would be made available to the public. We considered a number of alternatives for making the information available, including publishing printed reports, sending copies on request, making printed reports available at selected locations, and making information available on the GIPSA homepage on the Internet. We determined that publication and mailing of the information in printed reports or making a printed report available at selected locations would be costly, time consuming, and result in the information not being provided to producers in a timely manner. As specified in proposed sections 206.2(g) and 206.3(g)(1) of the regulations, we would make the contract library information and monthly reports available on the Internet on the GIPSA homepage at http://www.usda.gov/gipsa/ and in the GIPSA Regional Office in Des Moines, Iowa at Room 317, 210 Walnut Street, Des Moines, IA 50309. The monthly reports would be available the 1st of each month (2 weeks following the packers' monthly submission). Initially, the contract information and monthly reports would be available 2 months after the final rule becomes effective (30 days after packers would be required to submit example contracts for each of their plants that has the slaughtering capacity specified in the definition of ''packer'' as specified in proposed section 206.1). Subsequent information on new example contracts offered by packers would be available on a real time basis, to the extent possible (packers must send GIPSA new example contracts on the same day they are offered). The method and time of delivery and the complexity of contract terms would determine how quickly GIPSA could make the information available.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be significant for the purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget. The following is an economic analysis of the proposed rule that includes the cost-benefit analysis required by Executive Order 12866. The economic analysis also provides an initial regulatory flexibility analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

These rules are proposed to implement Subtitle B of Title II of the P&S Act which requires packers to report information to the Secretary for each of their swine packing plants that has the slaughtering capacity specified in the definition of ''packer.'' The proposed rule would require the reporting of information on swine marketing contracts by packers for plants have the slaughtering capacity specified in the definition of ''packer'' measured by annual slaughtering capacity per plant.

Packers would be required to report for their swine processing plants that slaughtered an average of 100,000 head of swine per year during any of the immediately preceding 5 calendar years based on those years in which the plant slaughtered swine. Based on data for 1998, the most recent year for which complete data are available, this would include a total of about 50 plants owned by approximately 29 swine packers. These 50 plants accounted for 6.6 percent of the 757 federally inspected swine slaughter plants in 1998 and accounted for 93 percent of swine slaughtered. Swine packers are not currently required to report information on marketing contracts.

The proposed rules would establish a swine contract library and would require packers operating or utilizing plants of a specified slaughtering capacity to submit monthly reports that would provide information on contract terms and numbers of swine committed to packers under contract. We believe that the proposed regulations would benefit producers, especially small producers. The increase in available information could provide producers with additional leverage in obtaining favorable contract terms with packers,

as well as improve producers' and packers' ability to plan with improved knowledge of the volume of swine already contracted for slaughter.

Summary of Costs

No costs would be imposed on producers as a result of the proposed regulations. Monthly reports and information from the contract library on types of contracts would be available on the GIPSA homepage on the Internet. Producers with Internet access would be able to access the reports at no additional cost beyond their normal Internet costs. We believe that many producer organizations and private news and information services would copy and redistribute these reports at no direct cost to producers as part of the services they already provide to producers.

Packers required to report would face costs associated with submitting contracts for the contract library. The first component of these costs would be the initial cost of compiling and providing to GIPSA a copy of each example contract currently in use, available, or offered by the packer at each plant that has the slaughtering capacity specified in the definition of ''packer'' as specified in proposed section 206.1. This would include written contracts and descriptions of verbal contracts. The second component would be the cost of providing a copy of each new example contract subsequently offered by the packer. We estimate the hourly cost of these activities would average $20 per hour. Based on our experience reviewing swine packer contracts in the normal course of enforcing the P&S Act, we believe that the time required for a packer to review its contracts, identify an example of each type of contract, and submit those examples as a package would average 6.5 hours per plant for the initial submission, at a cost of $130.00 per plant ($20/hour × 6.5 hours = $130). This estimate includes an initial 4 hours to review the files of contracts and identify examples of existing and offered contracts ($20/hour × 4 hours = $80). Packers would identify which contracts are identical for reporting purposes, as specified in proposed section 206.2(d) of the regulations, in order to determine which contracts need to be sent as examples. The estimate includes an additional 0.25 hours per plant to collect and submit each example to GIPSA. Based on our experience reviewing swine packer contracts, we have determined that some packers would only have one example contract to report for each plant, while other packers would have a variety of example contracts. For this analysis and to provide an upper estimate for the costs associated with the contract library and monthly reports, we estimated that, on average, packers would have 10 example contracts per plant to be submitted to GIPSA for the initial filing ($20/hour × 0.25 hours × 10 examples = $50). The total one-time costs to compile the initial submission of example contracts for all 50 plants would be $6,500 ($130 per plant × 50 plants).

After the initial submission, we estimate an average of about 1.25 hours per year per plant would be required to submit an average of 5 examples of offers of new contracts or changes to previously submitted example contracts, at a cost per plant of $25.00 per year ($20/hour × 1.25 hours = $25). In months when a plant does not offer a new contract or modify a previously submitted example contract, there would be no cost of compliance with contract library reporting requirements. Packers must notify GIPSA on the day that one of its example contracts no longer represents any existing or offered contracts. The costs for this notification are included in the estimate for changes to previously submitted contracts. The total annual recurring cost for all 50 plants for the submission of examples of types of contracts would be $1,250 ($25 per plant × 50 plants).

Packers would also face costs in complying with the monthly reporting requirements. We believe that many packers already maintain the required information electronically for use in their own business planning and strategy. Based on our investigations and reviews of packers, we believe that all packers that are large enough to meet the statutory requirements for reporting already use computers in their business. Therefore, we do not anticipate that the packers would incur any additional costs for computer hardware to implement electronic submissions of monthly reports. For those packers who use computers but do not currently maintain contract information electronically, we estimate that at most 1 hour per plant, at an hourly cost of $50.00, would be required to set up a database or spreadsheet to maintain the necessary information. This estimate is based on our experience with creating spreadsheets and databases that would be similar in type and complexity. The higher hourly wage rate for this activity would be based on the use of personnel with specialized skills necessary to set up spreadsheets or databases. The creation of spreadsheets or databases to maintain the necessary information could be accomplished by in-house computer staff, or by other employees such as accountants or auditors who are responsible for operating the packer's electronic recordkeeping system. The total one-time cost for all 50 plants to set up a database or spreadsheet to maintain information for the monthly report would be $2,500 ($50 per plant × 50 plants) if all 50 plants chose to submit reports electronically.

An additional 2 hours per plant, at the hourly cost of $50.00 per hour for a total one-time cost of $100.00 per plant, would be required for personnel with similar skills in use of electronic recordkeeping systems to extract and format the required information from the packer's electronic information and develop methods for electronic transmission of the completed reports to GIPSA. Upon request, we would provide the necessary information for the interface to our system. Most, if not all, of these packers would be required to use an electronic system to provide information to AMS under mandatory livestock price reporting requirements in the AMA (7 U.S.C. 1636(g)). Packers that do not use electronic data transmission would not incur this initial set-up cost, but would not gain the advantage of potential savings from electronic recordkeeping and reporting as described below. The total one-time cost for all 50 plants to extract and format information and develop methods for electronic transmission for the monthly report would be $5,000 ($100 per plant × 50 plants) if all 50 plants chose to submit reports electronically.

Once a recordkeeping and reporting system was established, additional time would be required to enter data into the database or spreadsheet each month. Packers who choose not to use an electronic system for maintaining and compiling data required for the monthly reports would have to manually compile the data on paper forms each month. The total time required for either method would depend on the number of contracts in effect. The initial monthly report may take somewhat longer, but subsequent reports would be expected to require less time.

Based on our experience in working with similar documents and data entry processes, we estimate that it should take an average of 2 hours per month per plant to manually compile and report the figures needed for the monthly reporting provision. We estimate the cost per hour of this activity would average $20.00 per hour, for a total monthly cost per plant of $40.00 ($20/hour × 2 hours = $40). Packers who use an electronic system to compile reports would face lower

monthly compliance costs than those who do not use an electronic system. We estimate that packers who utilize electronic systems would take an average of 1 hour per month per plant at a total cost per plant of $20.00 to compile and report the monthly estimates. The total annual recurring cost for a plant to compile and submit the monthly report would be $480 ($40 per month × 12 months) if the plant chose to submit reports manually or $240 ($20 per month × 12 months) if the plant chose to submit reports electronically. The total annual recurring cost for all 50 plants to compile and submit the monthly report would be $24,000 ($480 per plant × 50 plants) if all 50 plants chose to submit reports manually or $12,000 ($240 per plant × 50 plants) if all 50 plants chose to submit reports electronically.

The following table summarizes the estimated compliance costs for packers required to submit example contracts and monthly contract information for plants that are subject to the regulations in proposed 9 CFR Part 206. As shown in the table, total first year costs for all 50 plants to comply with the requirements of the contract library and monthly reports would be $31,750 if all 50 plants chose to submit reports manually or $27,250 if all 50 plants chose to submit reports electronically. The total first year costs include the start-up costs, therefore, the annual recurring costs would be lower and are estimated to be $25,250 if all 50 plants chose to submit reports manually or $13,250 if all 50 plants chose to submit reports electronically.

	Costs per plant, manual	Costs per plant, electronic	Total costs if all 50 plants use manual methods [1]	Total costs if all 50 plants use electronic methods [1]
START-UP COSTS				
Contract Library:				
Review contracts, identify examples of each type (4 hours × $20.00/hr)	$80.00	[2] $80.00	$4,000.00	$4,000.00
Collect and submit examples (10 examples × 0.25 hr. × $20.00 per hour)	50.00	[2] 50.00	2,500.00	2,500.00
Monthly Report:				
Set up database or spreadsheet (1 hour × $50.00)	N/A	50.00	N/A	2,500.00
Development of transmission methods (2 hours × $50.00)	N/A	100.00	N/A	5,000.00
TOTAL START-UP COSTS	130.00	280.00	6,500.00	14,000.00
ANNUAL RECURRING COSTS				
Contract Library:				
Collect and submit examples of each type of contract (5 examples × 0.25 hr. × $20.00 per hour)	25.00	25.00	1,250.00	1,250.00
Monthly Report:				
Enter data into database or spreadsheet, or tabulate on paper, and compile totals				
(electronic: 1 hour per month × 12 × $20.00)	N/A	240.00	N/A	12,000.00
(manual: 2 hours per month × 12 × $20.00)	480.00	N/A	24,000.00	N/A
TOTAL ANNUAL RECURRING COSTS	505.00	265.00	25,250.00	13,250.00
TOTAL 1st YEAR COST (Start-up costs plus annual recurring costs)	635.00	545.00	31,750.00	27,250.00

[1] Although we believe it is likely that most plants will use electronic methods, we do not have a basis for estimating the actual number of packers that will choose to use electronic versus manual methods. Thus, estimates are shown for the alternatives of all manual submissions versus all electronic submissions to provide a range of the likely total costs to packers.

[2] We are not assuming any electronic submission of contracts for purposes of this analysis. Although facsimile transmission likely will be used by many packers, facsimile is not considered an electronic method according to definitions under the Paperwork Reduction Act.

GIPSA would incur costs of operating the Swine Packer Marketing Contract Library, analyzing the monthly reports submitted by packers, ensuring that packers are in compliance, and making the information available at the Des Moines office and on the GIPSA homepage. We estimate that GIPSA would incur total costs of $400,000 per year for all activities associated with implementing the proposed regulations. We would monitor and review contracts submitted for the contract library and monthly reports filed by packers to assure completeness, consistency, and accuracy. In addition, we would conduct ongoing analyses of the data and information obtained from packers, and would explore ways to increase the usefulness of the data and information. Our projected costs include communication costs, travel expense for plant visits to monitor compliance with the P&S Act and regulations, costs for office supplies, computer hardware and software acquisition and maintenance, and an additional four full-time equivalent staff years. The increased staff years would be used for the activities outlined below, described in terms of individual staff year equivalents.

We anticipate that our costs for providing assistance to packers and maintaining the contract library would decrease over time. As packers become familiar with the regulations, they would need less assistance from us. Once the analysis of the initial submission of contracts is complete, there would be fewer contracts coming in for analysis.

One staff-year equivalent would be required to deal primarily with activities associated with the contract library. These activities would include reviewing and analyzing contracts to ensure consistency in the way in which packers categorize example contracts into types of contracts, distilling information from the contracts for the GIPSA homepage on the Internet, and filing and scanning contracts for recordkeeping. This staff-year equivalent would include the staffing hours required to answer questions from packers to help them comply with

statutory and regulatory requirements, and from users of the GIPSA homepage on the Internet. Finally, this staff-year equivalent would include contract library compliance issues such as spot investigations, plant visits, and correspondence with packers.

A second staff-year equivalent would be required to deal primarily with activities associated with the monthly reports. These activities would include reviewing and analyzing monthly reports to ensure that all reports were complete and filed in a timely manner, entering data from the reports into a GIPSA system, verifying the data, and aggregating the data into the reports that we would make available. This staff-year equivalent would include the staffing hours required to respond to questions from packers to help them comply with statutory and regulatory requirements and from users of the GIPSA homepage on the Internet to answer any questions they may have concerning the public monthly reports that would be made available on the GIPSA homepage on the Internet. Finally, this staff-year equivalent would include monthly report compliance issues such as spot investigations, plant visits, and correspondence with packers.

A third staff-year equivalent would be required to develop and operate automated information systems for the contract library and the monthly report. For the contract library, this would entail continually updating and maintaining the contract library homepage on the Internet with information provided by the staff person responsible for reviewing contracts and determining what information would be included in the library and providing assistance and guidance to packers for electronic submission. This staff-year equivalent would include the staffing hours required to support the automated information systems used for aggregating and otherwise processing the data included in the monthly reports filed by packers, and to post the public report on our homepage on the Internet.

The final staff-year equivalent would involve a composite group of activities that would be performed by various people. This staff-year equivalent would include the staffing hours required to manage and oversee the operation of the contract library, including reviewing data and information to be released to see if releasing such data and information is consistent with USDA information release policies, and managing compliance issues. Additional activities would involve statistical analysis of the data on the monthly reports to determine ways to improve the quality of the reporting process and the usefulness of the information released to the public.

Summary of Benefits

The primary economic benefit of the contract library would be to alleviate some of the current imbalance in information between producers and packers by increasing the amount of information available to producers and to provide the potential to improve overall production planning and marketing efficiency. Many producers report that they cannot obtain the information needed to compare contracts available from different packers, giving packers an advantage over producers in negotiations. Producers may have very limited information, especially about contracts and contracting practices, since producers are parties to a fewer number of contracts and have fewer resources for searching out this information than do packers. Based on GIPSA's contacts with producers, we believe that most producers currently do not search out contract terms among alternative packers. Rather, they tend to contract with and deliver their hogs to a single packer. Producers have indicated that they do not have enough knowledge about potential alternative contract terms available to them to encourage them to search out more favorable terms.

This proposed rule would make information about contracts readily and easily available from a single source, specifically, the variety and types of contracts available in the marketplace, as well as the number of swine committed under contract by region. Availability of information from the contract library and monthly reports would serve to lower the search costs for producers and would enable producers to be more informed before entering the marketplace.

This increased information would be beneficial to producers in making production plans and determining how to market swine. The increased information about types of contracts and contract terms would enable producers, knowing that specific contract terms are available in the marketplace, to seek the particular terms that a producer considered most favorable. For example, different packers often have different requirements for swine with given carcass characteristics, and the packers' premiums and discounts reflect their unique requirements.[4] The information in the contract library will make producers aware of contract terms that better match the characteristics of the swine they produce. Although the monthly report would not identify which packers are offering specific contract terms, producers would know that specific terms are offered in identified regions. The information would encourage them to contact packers to find the one offering the most favorable terms. Under the current system, producers tend to be unaware when more favorable terms exist, and do not conduct such searches.

Additionally, the monthly report would provide producers with information on the number of contracted swine by region for the upcoming 6- and 12-month periods. Producers could use this information, in combination with data such as current inventories of swine on feed from the National Agricultural Statistics Service and projections of slaughter from land grant college extension services and other sources, to estimate the percentage of the region's swine slaughter requirements for the next 6 and 12 months that are being met by contracted swine. This would help producers to determine how many sows to breed, whether to search out packers in regions with lower volumes of swine already contracted, and to make other decisions related to the production and marketing of their swine. For example, knowledge of the volume of swine already contracted for delivery 12 months into the future would better enable producers to adjust their production plans to avoid situations such as occurred during a prolonged period in late 1998. During that period, extremely large supplies of swine for slaughter were out of balance with aggregate industry slaughter capacity and producers suffered losses in the billions of dollars.

By lowering the cost of acquiring market information and increasing the amount of available information, information contained in the contract library and available from the monthly report would alleviate much of the current imbalance in information available to producers relative to packers. The benefits are difficult, if not impossible, to quantify, but available evidence indicates the benefits should be substantial. We believe that benefits to producers, from the availability of contract terms and packers' estimates of future deliveries, would include better

[4] For example, one analysis found that net prices paid by different packers for the same quality of hogs varied by up to $2.00 per hundredweight. (''Factors That Influence Prices Producers Receive for Hogs: Statistical Analysis of Kill Sheet and Survey Data,'' John D. Lawrence, Staff Paper No. 279, Iowa State University. March 1996.)

planning for their marketing decisions and could result in contracts with better terms for producers, especially small producers.

We envision that the primary means of access to information from the contract library and monthly report would be through the GIPSA homepage on the Internet. The information would also be available in our Regional Office in Des Moines, Iowa. We believe that many producers have access to the Internet. Those who do not could get access through USDA agricultural extension offices or public libraries with Internet service. Therefore this method of providing the information should make it available to the widest possible audience in the most efficient way. We believe that many producer organizations and private news and information services would copy and redistribute these reports at no direct cost to producers as part of the services they already provide to producers.

Although packers would bear the compliance costs of the proposed regulations, packers are not the primary beneficiaries of the contract library. The chief benefit to the packers would be from improved knowledge about aggregate supply based on information provided in the monthly reports of aggregate future supplies of swine contracted for slaughter and knowledge of contract terms being offered by other packers.

In conclusion, the benefits to producers and other interested persons are not quantifiable and, therefore, difficult to compare to the costs that packers and GIPSA would incur to implement the contract library and monthly report requirements of the amendments to the P&S Act. We believe the contract library and monthly reports would provide useful information to GIPSA, producers, and other interested persons and the benefits would outweigh the costs. The total annual cost for GIPSA to implement the contract library and monthly reports would be $400,000. Although the total first-year costs would be higher for plants choosing to implement electronic methods, annual recurring costs thereafter would be substantially lower at an average of $265 per plant versus the $505 per plant for plants choosing to use manual methods. We believe all plants have the capability to use electronic methods. However, we do not have an estimate for how many plants will choose to use electronic versus manual methods. Thus, for purposes of comparing costs and benefits, we are conservatively using the highest cost, which is based on all plants using manual methods to submit monthly reports. Using this conservative estimate, the total first-year cost to the industry would be $31,750 and annual recurring costs thereafter would be $25,250. We are requesting comments on these estimates and on the likelihood that respondents will use electronic methods. Additionally, the benefits to the producer would be an increase in the knowledge about supply and contract terms that could result in better marketing decisions and more favorable contract terms. Because these benefits are difficult, if not impossible, to quantify, we are requesting comments to provide additional information on the benefits of this proposed regulation and the quantification of those benefits.

Effects on Small Entities

The Small Business Administration (SBA) classifies producers' swine production enterprises as small businesses if they have annual sales of $500,000 or less. There were approximately 92,000 producers that would be classified as small businesses by this criteria, or 90 percent of all producers reporting sales of swine in the 1997 Census of Agriculture. The proposed rule would not impose any reporting requirement or other burden on producers of any size. We believe the proposed rule would provide significant benefits for all producers, as discussed in the section on Summary of Benefits above, and especially to small producers.

According to the SBA size standard, a company that owns and operates a packing plant, including a swine processing plant, would be classified as a small business if the company has less than 500 employees in total. It is common in the red meat industry for larger companies to own several plants. A packer that owns and operates one or more plants would be considered as a small business under the SBA definition only if the packer, at all plants combined, had fewer than 500 employees.

A total of about 29 pork packing companies (packers) owning 50 plants that have the slaughtering capacity specified in the definition of packer in proposed section 206.1 would be required to report under the proposed regulation. The 50 plants for which packers would be required to report represent only 6.6 percent of all swine processing plants that slaughter swine in the United States. The remaining 93.4 percent of swine processing plants would not have the slaughtering capacity required for reporting and, therefore, would not be required to report. Based on the SBA size standard, approximately 15, or about 52 percent of the packers that own plants that would be required to report, would be considered small businesses. These small packers would bear some costs of compliance with the proposed regulation. The costs, as described above in Summary of Costs, would arise from the reporting and recordkeeping requirements for the small packers that are required to report. These are the same requirements that would be imposed on larger packers that have the slaughtering capacity required for reporting. However, we believe the burden of these requirements would be less on the packers classified as small businesses, as explained below under Reporting Burden on Small Business.

Projected Reporting Burden on Small Entities

The proposed rule would require packers to report two types of information regarding contracts for purchase of swine for slaughter. The first type would be a copy of each example contract currently in use, available, or offered by packers at each plant required to report under proposed section 206.1, and would not require the completion of any type of reporting form. A copy of an example contract would only be submitted once for each plant. Based on prior contacts with packers by GIPSA personnel during the normal course of enforcing the P&S Act, we believe that small packers would have a relatively small number of example contracts that would have to be submitted. Packers would submit their example contracts by mail, facsimile, or another method that is convenient for them and approved by GIPSA. We would use the information in these contracts to prepare a report for public release that would describe the types of contracts and contract terms existing, offered, and available, but would not identify individual packers of any size, or release copies of actual individual contracts used by any packer. We would make the report with the information from the contract library available on the Internet and at our Des Moines Regional Office.

The second type of information reported by packers would consist of a monthly report of the number of swine committed for delivery under each type of contract. The form for the monthly report would consist of up to 189 separate fields of information, including report date, packer, and plant identification information (9 fields); swine delivery estimates for 6 categories of types of contracts for 12 months (up to 144 fields for committed and maximum estimates); an X for any currently offered contracts under a

category of contract type (up to 6 fields); codes for the types of expansion provisions in existing contracts to increase swine deliveries to the maximum estimate (up to 6 fields); and the dates for which the estimates are provided (24 fields). A packer would have to fill out 189 fields of information for a plant that had one or more contracts under each of the 6 types of contracts. Packers would report this information once each month for each plant required to report under the proposed regulations. If 189 fields of information were required per submission, each plant would report 189 pieces of information each month. However, few if any packers would be expected to have contracts of such variety as to be required to complete all fields on any given monthly report. We expect that the average monthly report of packers of any size would require entry of data into 61 to 87 fields. Packers would compile and aggregate data from individual contracts to enter into these fields. Small packers that meet the minimum slaughtering capacity required for reporting would be expected to have a smaller number of contracts from which to compile data. Therefore, the total reporting burden for smaller packers should be less than that for the larger packers that are required to report.

We would encourage packers to utilize electronic data transmission to submit the required information to GIPSA. We would provide packers the necessary information on procedures to submit the data to GIPSA electronically. We expect that packers would use a variety of methods to provide the data to GIPSA. For electronic data transmission, the methods would vary based on technology. Therefore, we would not specify a single transmission method. Packers could mail or otherwise deliver a computer diskette to GIPSA or e-mail the data. In addition, we are developing a system to allow packers to submit their data via the Internet through the GIPSA homepage.

Those small businesses that choose not to use electronic submission methods for their contract information and monthly reports would send the information via facsimile or mail to GIPSA using the proposed standardized forms. However, they would have to meet the submission deadlines regardless of the method used for submission.

Projected Recordkeeping Burden on Small Entities

Each packer that would be required to report information would be required to maintain such records as are necessary to compile the information reported and verify its accuracy. Current P&S Act recordkeeping requirements are set out in 9 CFR 201. The proposed rule would not require maintenance of records beyond those that packers are already required to maintain. Therefore, the rule would not create new, unduly burdensome recordkeeping requirements. Professional skills required for recordkeeping under the proposed rule would not be different than those already employed by the reporting entities. However, packers may need to extract and format the required information from their records for their submissions to GIPSA. We believe the skills needed to maintain such records are already in place in those small businesses affected by the proposed rule.

Alternatives

We considered alternative methods by which the objectives of the regulations could be accomplished. The proposed regulations, as mandated by the Livestock Mandatory Reporting Act of 1999, require swine packing plants that slaughter a specified number of swine each year to provide certain information to the Secretary. There were few feasible alternatives possible with regard to obtaining the required information.

The contract library requirement for filing types of contracts in use could be accomplished by requiring that packers file copies of all contracts, not just examples. However, we believe this would result in an overwhelming and unnecessary paperwork burden for both packers and GIPSA. It would require all packers required to report to mail multiple copies of the same example contract. It would also require a significant increase in expense to the government for the time required to review and classify all the contracts received.

The monthly report requirement could be accomplished by GIPSA compiling all data necessary for the monthly report to determine each individual packer's projected deliveries of swine for slaughter for the following 6- and 12-month periods. This alternative would require that we also implement the first alternative discussed above (*i.e.,* require packers to file all contracts), for GIPSA to have the necessary details to compile the data each month. In addition to the cost to the government of collecting all contracts, it would add significant additional costs to the government to tabulate data each month from all contracts submitted by packers.

We also considered the option of requiring electronic submission of the information required to be published in the monthly report. However, in developing these proposed regulations, we decided that the reporting objectives could be accomplished by allowing packers to report the required information by facsimile or mail if they choose not to use electronic submission. Although we would encourage packers to utilize electronic data transmission, and we would provide to packers the necessary information on procedures to submit data to GIPSA electronically, we expect that packers would use a variety of methods to provide the data to GIPSA. For electronic data transmission, the methods would vary based on technology; to submit data electronically, packers could include mail or otherwise deliver the electronic data on a computer diskette or e-mail the data. In addition, we are implementing a system to allow packers to submit data via the Internet through the GIPSA homepage. Therefore, we would not specify a single transmission option.

In conclusion, as shown above, it is difficult to quantify all of the economic impacts on small entities based on the alternative submission methods that small packers may choose and the anticipated benefits, especially for small producers. Small packers would incur the costs of complying with these proposed regulations; however, only 15 small packers, representing a small percentage of all small packers in the United States would be required to comply with these regulations based on the slaughtering capacity of their plants. We believe that all of the approximately 92,000 small producers would accrue benefits at little or no cost. Therefore, we believe that the balance of the economic effects for small entities would be positive.

Executive Order 12988

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform, and is not intended to have retroactive effect. This proposed rule would not pre-empt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted before this proposal can be challenged in court.

Paperwork Reduction Act

The proposed rule contains recordkeeping and submission requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA). In

accordance with section 3507(d) of the PRA, the information collection and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). In accordance with 5 CFR 1320, the reporting and recordkeeping requirements and an estimate of the annual burden on packers required to report information under the proposed rules are described below.

Title: Swine Packer Marketing Contracts.

OMB Number: New Collection.

Type of Request: New.

Abstract: The information collection and recordkeeping requirements in these regulations are essential to establishing and implementing a mandatory library of swine marketing contracts and a mandatory program of reporting the number of swine contracted for delivery. Based on information available, we have determined that under the proposed rule there are 29 packers that would be required to file contracts and report certain information on deliveries for a total of 50 plants that they operate or at which they have swine slaughtered.

Packers would be required to report information for individual plants even in instances when a given company owned or used more than one plant. Estimates below on the information collection burden are based on time and cost requirements at the plant level, so packers that report for more than one plant would bear a cost that would be a multiple of the per-plant estimates.

We believe the packers that are required to report have similar recordkeeping systems and business operating practices and conduct their operations in a similar manner. Based on past reviews of packers' use of marketing contracts and the records maintained by those packers, we believe that most information to be submitted under the proposed rule could be collected from existing data and recordkeeping systems and that these data and systems can be adapted to satisfy the proposed rule. We recognize that some information, such as the contract terms for verbal contracts, may not be kept in the manner in which we are requesting. Therefore, packers would need to reduce the essential terms of verbal contracts to writing when the proposed rule would require them to be submitted as example contracts as described earlier in this document.

Under the proposed rule, the first information collection requirement would consist of submitting example contracts. Initially, a packer would submit example contracts currently in effect or available for each swine processing plant that would be subject to the regulations. Subsequently, a packer would submit example contracts for any offered, new, or amended contracts that varied from previously submitted contracts in the base price determination, the application of a ledger or accrual account, carcass merit premium and discount schedules (including the determination of the lean percent or other merits of the carcass that are used to determine the amount of the premiums and discounts and how those premiums and discounts are applied), or the use and amount of noncarcass merit premiums or discounts. The initial submission of example contracts would require more time than subsequent filings of new contracts or changes, as packers would initially need to review all their contracts to identify the unique types that would need to be represented by an example submitted to GIPSA. Thereafter, subsequent filings should require a minimal amount of effort on the part of packers, as only example contracts that represented a new type would need to be filed with GIPSA.

The second information collection requirement would be for a monthly filing of summary information in the standard format of the proposed new PSP Form 341, Packer/Plant Report, Estimates of Swine Committed to Be Delivered Under Contract (see the sample shown in the Monthly Report section of this document). The proposed new form for the monthly filing would be simple and brief. Packers would be required to compile certain data in order to complete the form, but these data should be available in the packers' existing record systems. Electronic submission would be encouraged, and we would provide the necessary information on procedures to submit data to GIPSA electronically. Packers unable or choosing not to use electronic submission could submit the report on the proposed form using facsimile or mail.

The estimates of time requirements used for the burden estimates below were developed in consultation with GIPSA personnel knowledgeable of the industry's recordkeeping practices. The estimates also reflect our experience in assembling large amounts of data during the course of numerous investigations involving use of data collected from the industry. Estimates of time requirements and hourly wage costs for developing electronic recordkeeping and reporting systems are based on our experience in developing similar systems, in consultation with our automated information systems staff.

(1) Submission of Contracts (No Form Involved)

Estimate of Burden: Reporting burden for submission of contracts is estimated to include 4 hours per plant for an initial review of all contracts to categorize them into types and identify unique examples, plus an additional 0.25 hours per unique contract identified during the initial review to submit an example of that contract. After the initial filing, the reporting burden is estimated to include 0.25 hours per plant to submit an example of each new or amended contract.

Respondents: Packers required to report information for the swine contract library.

Estimated Number of Respondents: 29 packers (total of 50 plants).

Estimated Number of Responses per Plant: Number of responses per plant would vary. Some plants would have no contracts, while others could have up to 50 contracts. We estimate an average of 10 example contracts per plant for the initial filing of examples of existing types of contracts, and an average of 5 example contracts per plant per year for offered contracts and amended existing or available contracts.

Estimated Total Annual Burden on Respondents: Initial filing: 325 total hours for the initial filing of examples of existing contracts by all plants combined. Calculated as follows:

(4 hours per plant for initial review) × (50 plants) = 200 hours for initial review;

(.25 hours per contract) × (10 example contracts per plant) × (50 plants) = 125 hours;

(200 hours) + (125 hours) = 325 total hours.

Thereafter, 62.5 total hours annually for all subsequent filing of examples of offered or amended existing or available contracts by all plants combined, based on an average of 5 offered or amended existing or available contracts annually. Calculated as follows:

(.25 hours per contract) × (5 example contracts per plant) × (50 plants) = 62.5 hours

Total Cost: Initial filing $6,500.00 for all plants combined. Calculated as follows:

(325 hours) × ($20.00 per hour) = $6,500.00

Thereafter, $1,250.00 annually for all plants combined for submission of subsequent filings. Calculated as follows:

(62.5 hours) × ($20.00 per hour) = $1,250.00

(2) Submission of Monthly Swine Marketing Contract Report (Form 341(draft))

Estimate of Burden: The reporting burden for compiling data, completing and submitting the form is estimated to average 2.0 hours per manually prepared and submitted (via mail or facsimile) report and 1.0 hour per electronically prepared and submitted report. There would be an estimated additional one-time set up burden of 1 hour at a cost of $50.00 per plant for a packer that chose to create a spreadsheet or database for recordkeeping and preparation of monthly estimates. There would be an estimated additional 2 hour burden at a cost of $50.00 per hour or $100.00 per plant total for a packer to develop procedures to extract and format the required information and to develop an interface between the packer's electronic recordkeeping system and GISPA's system. The hourly rate for development of electronic tools is assumed to be higher due to the need to use personnel with specialized computer skills.

Respondents: Packers required to report information for the swine contract library.

Estimated Number of Respondents: 29 packers (total of 50 plants).

Estimated Number of Responses per Plant: 12 (1 per month for 12 months).

Estimated Total Annual Burden on Respondents: 1,200 hours for all plants combined if all plants used manual compiling, preparation, and submission. Calculated as follows:

(2.0 hours per response) × (50 plants) × (12 responses per plant) = 1,200 hours;

600 hours for all plants combined if all plants use electronic compiling, preparation, and submission. Calculated as follows:

(1.0 hour per response) × (50 plants) × (12 responses per plant) = 600 hours.

Total Cost: $24,000 annually for all plants combined if all use manual submission. Calculated as follows:

(1200 hours) × ($20.00 per hour) = $24,000.00

$12,000 annually for all plants combined if all were to completely utilize electronic preparation and submission. Calculated as follows:

(600 hours) × ($20.00 per hour) = $12,000.00

Additional $7,500 one-time set-up cost if all plants were to completely utilize electronic systems for preparation and submission. Calculated as follows:

(1 hour build spreadsheet/database) + (2 hours develop electronic interface) = 3 hours

(3 hours total development) × ($50.00 per hour) × (50 plants) = $7,500.00

We believe that most entities would choose to use electronic recordkeeping and reporting methods. Thus, the cost burden to respondents would be at the lower end of the range provided. We estimate the range of costs in the first year for a packer reporting for one plant would be $545 using electronic submission and $635 for manual submission. In subsequent years, we estimate the range of costs would be $265 using electronic submission and $505 for manual submission.

The PRA also requires GIPSA to measure the recordkeeping burden imposed by this proposed rule. Under the P&S Act and its existing regulations, each packer is required to maintain and make available upon request such records as are necessary to verify information on all transactions between the packer and producers from whom the packer obtains swine for slaughter. Records that packers are required to maintain under existing regulations would meet the requirements for verifying the accuracy of information required to be reported under the proposed rule. These records include original contracts, agreements, receipts, schedules, and other records associated with any transaction related to the purchase, pricing, and delivery of swine for slaughter under the terms of marketing contracts. We believe that additional annual costs of maintaining records would be nominal since packers are required to store and maintain such records as a matter of normal business practice and in conformity with existing regulations.

We are soliciting comments from all interested parties concerning the information collection and recordkeeping requirements contained in the proposed rule. Comments are invited to:

(1) Evaluate whether the proposed collection of information is necessary and would be useful;

(2) Evaluate the accuracy of the GIPSA estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who would be required to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

Please send your written comment regarding information collection and recordkeeping requirements to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for GIPSA, Washington, DC 20503. Please state that your comment refers to Swine Packer Marketing Contracts (PSA–2000–01–a), RIN 0580–AA71. Also, please send one copy of your comment regarding information collection and recordkeeping requirements to each of the following: (1) Deputy Administrator, Packers and Stockyards Programs, GIPSA, USDA, Stop 3641, 1400 Independence Avenue, SW, Washington, DC 20250–3641; E-mail: comments@gipsadc.usda.gov; and (2) Clearance Officer, OCIO, USDA, Room 404–W, 1400 Independence Avenue, SW, Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule. All comments will become a matter of public record.

List of Subjects in 9 CFR Part 206

Swine, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, GIPSA proposes to amend 9 CFR Chapter II as follows:

1. Add Part 206 to read as follows:

PART 206—SWINE PACKER MARKETING CONTRACTS

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

Authority: 7 U.S.C. 198, 198a, and 198b; 7 CFR 2.22 and 2.81.

§ 206.1 Definitions.

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

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

producer and packer rights and obligations under the contract.

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

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

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

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

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

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

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

Noncarcass merit premium or discount. An increase or decrease in the price for the purchase of swine 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 or discount is known before the purchase and delivery of the swine.

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

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

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

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

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

Packer. Any person or firm engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. The regulations in this part would only apply to a packer slaughtering swine at a federally inspected swine processing plant that meets either of the following conditions:

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

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

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

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

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

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

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

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

(3) Other market formula purchases with a ledger,

(4) Other market formula purchases without a ledger,

(5) Other purchase arrangements with a ledger, and

(6) Other purchase arrangements without a ledger.

§ 206.2 Swine packer marketing contract library.

(a) *Do I need to provide swine packer marketing contract information?* Packers, as defined in § 206.1, must provide information for the swine processing plants that they operate or at which they have swine slaughtered that has the slaughtering capacity specified in the definition of packer in § 206.1.

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

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

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

(1) Base price or determination of base price;

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

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

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

(e) *Where do I send my contracts?* Packers must send the example contracts required in paragraphs (b) and (c) of this section to the GIPSA Regional

Office at Room 317, 210 Walnut Street, Des Moines, IA 50309.

(f) *What information from the swine packer marketing contract library will be made available to the public?* GIPSA will summarize the information it has received on contract terms, including, but not limited to, base price determination and the schedules of premiums or discounts. GIPSA will summarize the information by region and type of contract as defined in § 206.1. Geographic regions will be defined in such a manner as to avoid divulging data on individual firms' operations and the parties to contracts will not be identified.

(g) *How can I review the swine packer marketing contract library?* The information will be available on the Internet on the GIPSA homepage (http://www.usda.gov/gipsa/) and in the GIPSA Regional Office in Des Moines, Iowa at Room 317, 210 Walnut Street, Des Moines, IA 50309. The information will be updated as GIPSA receives information and/or examples of new contracts from packers.

(h) *What do I need to do when a previously submitted example contract is no longer a valid example due to contract changes, expiration, or withdrawal?* Packers must submit a new example contract when contract changes result in changes to the criteria specified in paragraph (d) of this section. Packers must notify GIPSA that the new example contract replaces the previously submitted example contract. Packers must notify GIPSA on the day that one of its example contracts no longer represents any existing or offered contracts. This notification must specify the reason, for example, changes to a contract, expiration of an existing contract, or withdrawal of an offered contract.

§ 206.3 Monthly report.

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

(b) *What information do I need to provide and when is it due?* Each packer must send a separate monthly report for each plant that has the slaughtering capacity specified in the definition of packer in § 206.1. Packers must deliver the report to the GIPSA Regional Office in Des Moines, Iowa by the close of business on the 15th of each month. The GIPSA Regional Office closes at 4:30 p.m. Central Time. If the 15th day of a month falls on a Saturday, Sunday, or federal holiday, the monthly report is due no later than the close of the next business day following the 15th.

(c) *How do I make a monthly report?* The monthly report that packers file must be reported on PSP Form 341 and must provide the following information:

(1) *Existing contracts.* The types of contracts the packer currently is using for the purchase of swine for slaughter at each plant. Each packer must report types of contracts in use even if those types are not currently being offered for renewal or to additional producers. Existing contracts will be shown on the report by providing monthly estimates of the number of swine committed to be delivered under the contracts in each category of the types of contracts as defined in § 206.1.

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

(3) *Estimates of committed swine.* The packer's estimate of the total number of swine committed under contract for delivery to each plant for slaughter within each of the following 12 calendar months beginning with the 1st of the month immediately following the due date of the report. The estimate of total swine committed will be reported by type of contract as defined in § 206.1.

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

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

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

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

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

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

(e) *When do I change previously reported estimates?* Regardless of any estimates for a given future month that may have been previously reported, current estimates of deliveries reported as required by paragraphs (c)(3) and (c)(5) of this section must be based on the most accurate information available at the time each report is prepared. Packers must update or change any previously reported estimates for any month(s) included on the current report to reflect accurate information on producers' plans, initiation of new contracts, or any other circumstances that cause changes in expected future deliveries.

(f) *Where and how do I send my monthly contract information?* Packers may submit their monthly reports by either of the following two methods:

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

(2) *Printed report.* Packers may deliver their printed monthly report to the GIPSA Regional Office at Room 317, 210 Walnut Street, Des Moines, IA 50309.

(g) *What information from monthly reports will be made available to the public and when and how will the information be made available to the public?*

(1) *Availability.* GIPSA will provide a monthly report of contract types and estimated deliveries as reported by packers in accordance with this section, for public release on the 1st business day of each month. The monthly reports will be available on the Internet on the GIPSA homepage (http://www.usda.gov/gipsa/) and in the GIPSA Regional Office at Room 317, 210 Walnut Street, Des Moines, IA 50309 during normal business hours of 7:00

a.m. to 4:30 p.m. Central Time, Monday through Friday.

(2) *Regions.* Information in the report will be aggregated and reported by geographic regions. Geographic regions will be defined in such a manner as to avoid divulging data on individual firms' operations and may be modified from time to time.

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

(i) The types of existing contracts for each geographic region.

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

(iii) The sum of packers' reported estimates of total number of swine committed by contract for delivery during the next 6 and 12 months beginning with the month the report is published. The report will indicate the number of swine committed by geographic reporting region and by type of contract.

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

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

Dated: August 28, 2000.

JoAnn Waterfield,

Acting Administrator Grain Inspection, Packers and Stockyards Administration.

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DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 205–2000]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from the following subsections of the Privacy Act: The system of records is CaseLink Document Database for Office of Special Counsel—Waco, JUSTICE/OSCW–001 as described in today's notice section of the **Federal Register**. The system of records may contain information which relates to official Federal investigation. The exemptions are necessary to protect law enforcement and investigatory information and functions as described in the proposed rule and will be applied only to the investigatory information contained in this system.

DATES: Submit any comments by October 5, 2000.

ADDRESSES: Address all comments to Thomas E. Wack, Office of Special Counsel—Waco, 200 N. Broadway, 15th Floor, St. Louis, Missouri 63102.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

Executive Order No. 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly, this rule has not been reviewed by the Office of Management and Budget.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Dated: August 28, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR Part 16 by adding to Subpart E—Exemption of Records Systems under the Privacy Act, § 16.104 to read as follows:

§ 16.104 Exemption of Office of Special Counsel—Waco System

(a)The following system of records is exempted from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j) and (k): CaseLink Document Database for Office of Special Counsel—Waco, JUSTICE/OSCW–001. These exemptions apply only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

(b) Only that portion of this system which consists of criminal or civil investigatory information is exempted for the reasons set forth from the following subsections:

(1) Subsection (c)(3). To provide the subject of a criminal or civil matter or case under investigation with an accounting of disclosures of records concerning him or her would inform that individual of the existence, nature, or scope of that investigation and thereby seriously impede law enforcement efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties and civil remedies.

(2) Subsection (c)(4). This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) Subsection (d)(1). Disclosure of investigatory information could interfere with the investigation, reveal the identity of confidential sources, and result in an unwarranted invasion of the privacy of others.

(4) Subsection (d)(2). Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(5) Subsections (d)(3) and (4). These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) Subsections (e)(1) and (5). It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete; but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide leads in criminal investigations.

(7) Subsection (e)(2). To collect information from the subject individual would serve notice that he or she is the subject of criminal investigative or law enforcement activity and thereby present a serious impediment to law enforcement.

(8) Subsection (e)(3). To inform individuals as required by this subsection would reveal the existence of an investigation and compromise law enforcement efforts.